

BRIEF TO THE MEMBERS OF THE PARLIAMENTARY COMMITTEE ON INTERNATIONAL TRADE ON THE  
TRIPS WAIVER PROPOSAL FOR THE PREVENTION, CONTAINMENT AND TREATMENT OF COVID-19

**Amnistie internationale calls on Canada to strongly support the “Waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19” (Waiver Proposal) which would help ensure that COVID-19 medical products, including safe and effective vaccines, can be manufactured quickly and made available and affordable for all.**

**COVID-19 is not only a health and economic crisis but also a human rights crisis and cannot be overcome without true commitment to the Sustainable Development Goal (SDG) Principle to “Leave no one behind.” Based on the principle that “No one is safe until we are all safe,” Canada has the opportunity today to make a decision that can help make this a reality.**

**GLOBAL CONSENSUS ON THE NEED FOR INTERNATIONAL COLLABORATION ON EFFECTIVE COVID-19 HEALTH PRODUCTS**

When COVID-19 was declared to be a pandemic, there was overwhelming global consensus that there was an urgent need for international collaboration to speed up product development, scale up manufacturing, expand the supply of effective COVID-19 health products and ensure everyone, everywhere is protected. The UN General Assembly has on several occasions stressed the need for intensified international cooperation and multilateral efforts to contain, mitigate and defeat the pandemic, while fully respecting human rights.<sup>1</sup> Such cooperation includes the exchange of information, scientific knowledge and best practices and the expansion of manufacturing capacity to meet the increasing needs for medical supplies and ensuring that these are made widely available, at an affordable price, on an equitable basis, where they are most needed and as quickly as possible. States also have human rights obligations to provide financial and technical support to uphold the right to health, especially in the face of the international spread of disease.<sup>2</sup> This may include the sharing of research, knowledge, medical equipment and supplies.<sup>3</sup> In addition, the UN Committee on Economic, Social and Cultural Rights has interpreted the Covenant on Economic, Social and Cultural Rights to state that: “States parties should ensure that the right to health is given due attention in international agreements and, to that end, should consider the development of further legal instruments. In relation to the conclusion of other international agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to health.”<sup>4</sup>

Extraterritorial obligations of states as contained in international human rights law have been further clarified by the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (the Maastricht Principles).<sup>5</sup> States are required to “elaborate, interpret and apply relevant international agreements and standards in a manner consistent with their human rights obligations” – including in relation to international trade. States are also required to “take deliberate, concrete and targeted steps, separately, and jointly through international cooperation, to create an international enabling environment conducive to the universal fulfilment of economic, social and cultural rights, including in matters relating to bilateral and multilateral trade” which is to be achieved through, “inter alia: a) elaboration, interpretation, application and regular review of multilateral and bilateral agreements as well as international standards; b) measures and policies by each State in respect of its foreign relations, including actions within international organisations, and its domestic measures and policies that can contribute to the fulfilment of economic, social and cultural rights extraterritorially.”

The World Health Assembly has recognized the role of extensive immunization against COVID-19 as a global public good for health in preventing, containing and stopping transmission in order to bring the pandemic to an end, once safe, quality, efficacious, effective, accessible and affordable vaccines are available. It has also called on international organizations and key stakeholders to “[w]ork collaboratively at all levels to develop, test, and scale-up production of safe, effective, quality, affordable diagnostics, therapeutics, medicines and vaccines for the COVID-19 response, including existing mechanisms for voluntary pooling and licensing of patents to facilitate timely, equitable and affordable access to them, consistent with the provisions of relevant international treaties including the provisions of the TRIPS Agreement and the flexibilities as confirmed by the Doha Declaration on the TRIPS Agreement and Public Health.”<sup>6</sup>

Despite these urgent needs and consensus on the need for international cooperation to ensure equitable access, shortage of supply continues to occur. Companies in the pharmaceutical industry around the world continue to pursue a “business-as-usual” approach to Intellectual Property (IP), which places limits on manufacturing and supply capacities. Some pharmaceutical companies have indicated that they would consider voluntary licences but it is unclear whether these would necessarily be non-exclusive and include necessary technology transfer. Others have branded mechanisms such as the COVID-19 Technology Access Pool (C-TAP) as “nonsense.” Associations for the pharmaceutical industry have openly rejected initiatives calling for voluntary contributions and open sharing of COVID-19 technologies.

### **TRIPS FLEXIBILITIES ARE NOT ENOUGH ON THEIR OWN**

While the TRIPS Agreement enshrines the possibility of flexibilities to deal with health emergencies, including the use of compulsory license and the special procedures under Article 31*bis* of the agreement which facilitate the import and export of goods produced under compulsory licence, several other challenges limit access to medical technologies. A few countries, including Canada, have revised their national laws to make it easier and quicker for governments to use any patented medical technologies when needed during the pandemic, alerting the need to address IP barriers. However, when countries lack immediate manufacturing capacity for any of the essential parts for a product, including raw materials, components or packaging materials, removing IP barriers on one product in one country alone will not be sufficient. Therefore, a country-by-country and product-by-product<sup>7</sup> approach of using the TRIPS flexibilities remains limited in addressing IP challenges in this pandemic.

In October 2020, India and South Africa, co-sponsored by Kenya and Eswatini, submitted the Waiver Proposal. It envisages a temporary and complementary policy space within the TRIPS framework that could empower governments to take more automatic and expedited actions when accessing the IP-protected technologies that could save the lives of millions of people. Many developing countries demonstrated strong support when the proposal was first presented at the TRIPS Council on 15 October 2020. More than 300 civil society organizations globally, a group of UN Special Procedures and a number of international organizations have expressed their strong support for the move.

### **OPPOSITION TO THE WAIVER PROPOSAL UNDERMINES GLOBAL SOLIDARITY**

At the TRIPS Council meeting in October 2020, several states expressed full or general support for the Waiver Proposal. However, a group of mostly wealthy countries – including Canada – instead of realizing global solidarity by prioritizing public health, opposed the proposal, blocking a consensus decision at that meeting.

States opposed to the Waiver Proposal, like Canada, suggested that IP is not a barrier in relation to COVID-19 medicines and technologies, ignoring the hard evidence that restrictive licensing practices have already caused a shortage of supply in several countries, including in Europe.

We recognize that Canada has pledged important financial contributions to the Access to COVID-19 Tools Accelerator and the COVAX Facility for the purchase of potential COVID-19 vaccines by low-and-middle income countries. However, only limited quantities of COVID-19 vaccines can be reserved because high-income countries, like Canada, have engaged in “vaccine nationalism,” securing a vast share of global vaccine supplies to the detriment of the majority of the global population living in low-and-middle income countries.

## **THE WAIVER PROPOSAL IS TEMPORARY**

The Waiver Proposal does not overhaul the TRIPS Agreement, but provides a time-limited suspension to certain specific provisions during the current global crisis. Canada need not apply the waiver itself. Therefore, the strong opposition to the Waiver Proposal essentially denies other countries the additional legal flexibility to produce or import life-saving medical tools when needed – thereby impacting on the right to health and to life of individuals in those countries, particularly the most vulnerable. As such, this opposition is a regrettable disservice to the international community’s professed commitment to respect for human rights, which includes the obligation to engage in international cooperation to create an international enabling environment conducive to the universal fulfilment of economic, social and cultural rights.

## **RECOMMENDATION TO CANADA**

- Amnistie internationale calls on Canada to express strong support for the “Waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19” as submitted by India and South Africa.

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<sup>1</sup> UN General Assembly Resolutions: A/RES/74/270, 3 April 2020, A/RES/74/274, 21 April 2020, A/RES/74/307.

<sup>2</sup> World Health Organization (WHO), International Health Regulations (2005) Third Edition, <https://www.who.int/publications/i/item/9789241580496>.

<sup>3</sup> Committee on Economic, Social and Cultural Rights, 17 April 2020, E/C.12/2020/1 and the International Covenant on Economic, Social and Cultural Rights (Article 2.1 and 11.1).

<sup>4</sup> General Comment No. 14 of the International Covenant on Economic, Social and Cultural Rights.

<sup>5</sup> The Maastricht Principles, [https://www.fidh.org/IMG/pdf/maastricht-eto-principles-uk\\_web.pdf](https://www.fidh.org/IMG/pdf/maastricht-eto-principles-uk_web.pdf).

<sup>6</sup> World Health Assembly Resolution, UN Doc. WHA73.1, 19 May 2020, [https://apps.who.int/gb/ebwha/pdf\\_files/WHA73/A73\\_R1-en.pdf](https://apps.who.int/gb/ebwha/pdf_files/WHA73/A73_R1-en.pdf).

<sup>7</sup> There may be multiple patents for a given product, for example covering the manufacturing process as well as the product itself. Public Citizen has mapped the patent landscape for two potential vaccines. See <https://www.citizen.org/article/modernas-mrna-1273-vaccine-patent-landscape/> and <https://www.citizen.org/article/biontech-and-pfizers-bnt162-vaccine-patent-landscape/>.