

Minister Simon Coveney TD,
Minister for Foreign Affairs,
Department of Foreign Affairs,
Iveagh House,
80 St. Stephen's Green,
Dublin 2

By email

29 January 2021

Dear Minister,

Re: Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19

I write to you ahead of the upcoming informal TRIPS Council meeting on 4 February 2021 to urge Ireland to support the proposal for a Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19 and to engage in constructive negotiations with other WTO member states with a view to adopting the proposal at the next meeting of the WTO General Council on 10-11 March 2021.

As we enter 2021, there is a global shortage of vaccines, exacerbated by “vaccine nationalism” where rich countries secure bilateral deals for advance purchases of billions of doses of future vaccines for their populations. This leaves limited potential supplies for others, undermines efforts to ensure sufficient availability and inclusive distribution around the world. The shortage is also worsened by intellectual property protections that limit manufacturing and supply.

As a result, only a tiny fraction of people in lower income countries will receive a vaccine in 2021 – for example, [almost 70 countries are on track to vaccinate no more than one in 10 of their populations](#) this year. There is an urgent need to turn from mere words to a reality the earlier commitments of states to a multilateral approach for providing universal, fair access to COVID-19 diagnostics, treatments and vaccines in the earliest possible timeframe.

ACT-A and COVAX, while useful emergency tools, can at best provide a fraction of the total doses of vaccine that are urgently needed to keep COVID-19 at bay, which is particularly important given the new, more easily transmissible variants that have arisen and may arise in the future. They do not and cannot, in and of themselves, secure the necessary increase in supply that is needed to ensure that all states can vaccinate sufficient proportions of their populations. The TRIPS waiver proposal does not in any way undermine ACT-A and COVAX, but rather complements them, by enabling a more rapid ramping up of global production.

Bilateral deals on vaccines and other products – which increased by 175 per cent¹ between October and December 2020 – not only benefit higher-income states at the expense of lower-income countries in terms of the availability of doses, but if contracted at high prices to the benefit of companies also undermine the ability of ACT-A and COVAX to secure doses to fulfil their mission.

¹ According to the Access to COVID-19 Tools (ACT) Accelerator.

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Contrary to the assertions of some states, the current intellectual property regime has failed to deliver the COVID-19 products in sufficient quantities to those who most need it in a timely fashion. It is the enabling environment provided by public funding, and international collaboration of individuals – scientists and others – that has clarified which treatments are effective and brought effective vaccines to the point of delivery in an unprecedented time. Indeed, there is [available evidence](#) that intellectual property rights have already hampered the distribution and access of products and treatments.

While some states claim that existing flexibilities in the TRIPS agreement are sufficient to overcome intellectual property barriers, it is clear that they are not suitable to meet the scale and urgency of the actions required. In practice, the flexibilities are onerous to implement, as they must be applied on a case-by-case basis, covering different aspects of intellectual property including patents, copyright, industrial design, and undisclosed information. To cover all aspects of numerous products will take far too long and consume needed energy and capacity of the public health response. As such, relying on the TRIPS flexibilities alone is unlikely to deliver the required immediate scale-up of production. The TRIPS waiver proposed will provide a framework within which many of such barriers can be eliminated.

It also is important to note that, if the proposal is adopted, it will be time-bound for a specified period. Additionally, states can choose not to implement its provisions, if they are able to fulfil their obligations around the right to health, while leaving other states free to use it to meet their own obligations.

As the Director General of the World Health Organization (WHO) said on 8 January, “Vaccine nationalism hurts us all and is self-defeating”. The WHO has [supported the Waiver Proposal](#), which has also been welcomed by a [group of UN independent human rights experts](#). The vast majority of low and middle income countries – whose populations face long months, if not years, before vaccines arrive – are also supportive.

The COVID-19 pandemic is not only a public health and economic crisis but also a human rights crisis. Engaging constructively in negotiations around the TRIPS Waiver Proposal, including any future text-based discussions, and removing objections to it to enable a consensus decision, would be a positive step in meeting states’ [human rights obligations](#). This step would ensure that intellectual property laws, policies and practices are not a barrier to the enjoyment of the highest attainable standard of health through the provision of COVID-19 health products for all people globally.

I look forward to your response, and would be grateful for an opportunity to discuss this matter further with relevant officials.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Colm O'Gorman', with a stylized flourish at the end.

Colm O’Gorman
Executive Director

Cc: Minister Stephen Donnelly TD, Minister for Health, Department of Health