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Statement : Leaked Proposal on COVID Medicines Waiver Helps No One But Floundering WTO

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WASHINGTON, DC — According to Politico EU, a supposed “compromise” has emerged from the “quad” negotiations among the United States, European Union and waiver sponsors India and South Africa around the waiver of World Trade Organization (WTO) intellectual property rights for COVID-19 products. Melinda St. Louis, director of Public Citizen’s Global Trade Watch division, issued the following statement :

« The WTO has delayed action for two years, when it should have removed all its constraints on COVID medicines and medical tool production on day one. Now a new WTO proposal would fail to advance global access to COVID-related health technologies and may actually mark a setback from existing rules. As reported, this proposal would help no one but the floundering WTO and should be rejected. »Among its key limitations : the proposal appears to cover only vaccines (not tests and treatments), cover only patents (not other important intellectual property barriers), be limited geographically, and further undermine current WTO flexibilities for compulsory licenses.

« No doubt some at the WTO are feeling pressure to make a deal on the waiver before the WTO Ministerial scheduled for the week of June 13, but it would be a mistake for WTO members to prematurely agree to a weakened waiver that provides political cover to the U.S. and EU while not making any meaningful difference in increasing access to vaccines, tests, and treatments. No waiver is better than a weak waiver designed solely to save face. »The text is not yet available, but reports indicate this proposal represents the worst elements of both the U.S. and EU positions. This must not be accepted by WTO members."

Worst of the U.S. Position : The proposal is for vaccines only, excluding tests and treatments.

The longstanding U.S. position to support a waiver for vaccines only, excluding the tests and therapeutics, is shameful, particularly as President Biden recently lauded testing and treatment as key tools in fighting the pandemic at this stage.

The new proposal only covers vaccines, with tests and treatments to be considered six months after the proposal is agreed, if it is agreed. Given the already seventeen-month delay since the waiver was introduced, it is irresponsible to suggest further delay for tests and therapeutics, as we know that testing and therapeutics are desperately needed now, and with the WTO’s track record, would likely never happen. Civil society organizations — including Doctors Without Borders, Health GAP, and the Association of Flight Attendants, among many others — have made clear they “strongly disagree with any effort to limit the waiver to one health technology only.” Precisely which therapeutics that Americans can access should people in the Global South be denied ?

Worst of the U.S. Position : The proposal limits the waiver's geographic scope.

The U.S. had also reportedly suggested limiting the geographic scope of the waiver, which would only further limit the ability to scale up manufacturing all over the world. This demand was apparently agreed, as the proposal now on offer would only apply to developing countries that contributed less than 10 % of the world's exports of COVID-19 vaccine doses in 2021.

Worst of the EU Position : The proposal is for patents only, ignoring other forms of IP.

The European Union has been the primary obstacle to progress on the waiver, even though many of its member states support the proposal, and the European Parliament has approved three formal calls for a comprehensive waiver. The EU's position had been to basically restate existing WTO flexibilities on patents that almost every WTO member already has, while requiring additional conditionalities. The Politico story that broke the news of the proposal mentions patents repeatedly, but not the other categories of intellectual property addressed in the original waiver proposal : copyright, trade secrets, undisclosed data and industrial design. Many key COVID-19 vaccines and medicines are protected by thorny thickets of intertwined IP protection, not just a patent or two. If the proposal is for patents only, it is extremely disappointing that the U.S. caved on its longstanding position to support the waiver for all categories of IP (at least for vaccines).

Worst of the EU Position : The proposal has little new to offer.

Any proposal that follows the EU position is worse than no action at all, because it could further undermine current WTO rules that already allow governments to issue compulsory licenses. The need for far greater, not less, freedom to make and use medicines in a global health crisis like the COVID-19 pandemic is precisely why more than 100 countries have supported the waiver as introduced by India and South Africa.

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P.-S.

- Public Citizen. March 15, 2022 : <https://www.citizen.org/news/statement-leaked-proposal-on-covid-medicines-waiver-helps-no-one-but-floundering-wto/>