# 1AC – WTO IPP

## COVID-19

#### **There’s a huge and dangerous inequality in vaccination rates.**

Lynch, 21

Lynch, David J. “Poor Countries’ Struggles amid Vaccines Shortfall Threaten Greater Instability, Migration and Disease.” Washington Post, The Washington Post, 29 June 2021, www.washingtonpost.com/us-policy/2021/06/29/global-economy-pandemic/. Accessed 9 July 2021.

Even as millions of Americans enjoy a post-pandemic boom, fresh covid-19 outbreaks in the developing world are undermining economic recovery and fueling political unrest. Sluggish vaccination campaigns stand between the world’s poorest nations and the resumption of normal life, casting a shadow over a global rebound that is otherwise shaping up as the most impressive in 80 years, according to the World Bank. The United States and other rich nations have promised to deliver 1 billion vaccines to governments in Africa, Asia and Latin America. But 18 months after the pandemic began, there is no agreed plan or timetable for inoculating perhaps half of the people on the planet. Now, amid the spread of the highly infectious delta variant, and as finance ministers from the Group of 20 prepare to meet next week, the issue is gaining new urgency. In Africa, which is suffering the world’s fastest-rising covid caseload, less than 1 percent of the adult population has been vaccinated and South Africa, Rwanda and Uganda all have reimposed restrictions on activity. Latin America is reeling as covid deaths soar in Brazil, Argentina and Colombia. And in South Asia, India’s nearly 1.4 billion people will not reach herd immunity until October 2022, says Bank of America Merrill Lynch. A failure to accelerate vaccinations could allow the virus to mutate into more deadly forms, leaving lasting wounds on dozens of economies, preventing for years a complete restoration of global travel and ultimately threatening Americans’ health. By aggravating societal cleavages, disparities in the pandemic response between rich and poor nations also could spur political instability and unauthorized migration, including along the southern U.S. border, experts warn. “The virus is still raging across the planet, and we don’t have the vaccines. This is the greatest priority right now,” said Achim Steiner, administrator of the United Nations Development Program. “ … If this economic crisis paralyzes the ability of state institutions to stand up crisis response, organize vaccination supply chains and provide recovery stimulus packages that can help the economies to recover, we will actually see a political crisis on the back of the economic crisis.”

#### **Factories are ready to make hundreds of millions of vaccines, but patents won’t allow them to.**

Cheng and Hinnant, 21

Cheng, Maria and Hinnant, Lori. “Countries Urge Drug Companies to Share Vaccine Know-How.” AP NEWS, Associated Press, 20 Apr. 2021, apnews.com/article/drug-companies-called-share-vaccine-info-22d92afbc3ea9ed519be007f8887bcf6.

In an industrial neighborhood on the outskirts of Bangladesh’s largest city lies a factory with gleaming new equipment imported from Germany, its immaculate hallways lined with hermetically sealed rooms. It is operating at just a quarter of its capacity. It is one of three factories that The Associated Press found on three continents whose owners say they could start producing hundreds of millions of COVID-19 vaccines on short notice if only they had the blueprints and technical know-how. But that knowledge belongs to the large pharmaceutical companies who have produced the first three vaccines authorized by countries including Britain, the European Union and the U.S. — Pfizer, Moderna and AstraZeneca. The factories are all still awaiting responses. Across Africa and Southeast Asia, governments and aid groups, as well as the World Health Organization, are calling on pharmaceutical companies to share their patent information more broadly to meet a yawning global shortfall in a pandemic that already has claimed over 2.5 million lives. Pharmaceutical companies that took taxpayer money from the U.S. or Europe to develop inoculations at unprecedented speed say they are negotiating contracts and exclusive licensing deals with producers on a case-by-case basis because they need to protect their intellectual property and ensure safety. Critics say this piecemeal approach is too slow at a time of urgent need to stop the virus before it mutates into even deadlier forms. WHO called for vaccine manufacturers to share their know-how to “dramatically increase the global supply.” “If that can be done, then immediately overnight every continent will have dozens of companies who would be able to produce these vaccines,” said Abdul Muktadir, whose Incepta plant in Bangladesh already makes vaccines against hepatitis, flu, meningitis, rabies, tetanus and measles. All over the world, the supply of coronavirus vaccines is falling far short of demand, and the limited amount available is going to rich countries. Nearly 80% of the vaccines so far have been administered in just 10 countries, according to WHO. More than 210 countries and territories with 2.5 billion people hadn’t received a single shot as of last week. The deal-by-deal approach also means that some poorer countries end up paying more for the same vaccine than richer countries. South Africa, Mexico, Brazil and Uganda all pay different amounts per dose for the AstraZeneca vaccine — and more than governments in the European Union, according to studies and publicly available documents. AstraZeneca said the price of the vaccine will differ depending on local production costs and how much countries order. “What we see today is a stampede, a survival of the fittest approach, where those with the deepest pockets, with the sharpest elbows are grabbing what is there and leaving others to die,” said Winnie Byanyima, executive director of UNAIDS. In South Africa, home to the world’s most worrisome COVID-19 variant, the Biovac factory has said for weeks that it’s in negotiations with an unnamed manufacturer with no contract to show for it. And in Denmark, the Bavarian Nordic factory has capacity to spare and the ability to make more than 200 million doses but is also waiting for word from the producer of a licensed coronavirus vaccine. Governments and health experts offer two potential solutions to the vaccine shortage: One, supported by WHO, is a patent pool modeled after a platform set up for HIV, tuberculosis and hepatitis treatments for voluntary sharing of technology, intellectual property and data. But no company has offered to share its data. The other, a proposal to suspend intellectual property rights during the pandemic, has been blocked in the World Trade Organization by the United States and Europe, home to the companies responsible for creating coronavirus vaccines. That drive has the support of at least 119 countries and the African Union but is adamantly opposed by vaccine makers. Advocates of sharing vaccine blueprints argue that, unlike with most drugs, taxpayers paid billions to develop vaccines that could help end the world’s biggest public health emergency in living memory. “People are literally dying because we cannot agree on intellectual property rights,” said Mustaqeem De Gama, a South African diplomat involved in the WTO discussions. Paul Fehlner, the chief legal officer for biotech company Axcella and a supporter of the WHO patent pool board, said governments that poured billions of dollars into developing vaccines and treatments should have demanded more from the companies they were financing from the beginning. “A condition of taking taxpayer money is not treating them as dupes,” he said. Last month, Dr. Anthony Fauci, the leading pandemic expert in the United States, said all options need to be on the table, including improving production capacity in the developing world and working with pharmaceuticals to relax their patents. “Rich countries, ourselves included, have a moral responsibility when you have a global outbreak like this,” Fauci said. “We’ve got to get the entire world vaccinated, not just our own country.” It’s hard to know exactly how much more vaccine could be made worldwide if intellectual property restrictions were lifted. But Suhaib Siddiqi, former director of chemistry at Moderna, said with the blueprint and technical advice, a modern factory should be able to get vaccine production going in at most three to four months. “In my opinion, the vaccine belongs to the public,” said Siddiqi. “Any company which has experience synthesizing molecules should be able to do it.”

#### Reducing IP protections is vital to reduce vaccine inequality—empirics disprove all pro-patent arguments.

Kumar, 21

(Rajeesh, Associate Fellow Manohar Parrikar Institute for Defence Studies and Analysis, https://www.idsa.in/issuebrief/wto-trips-waiver-covid-vaccine-rkumar-120721)

In October 2020, India and South Africa had submitted a proposal to the World Trade Organization (WTO), suggesting a waiver of certain provisions of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement for the “prevention, containment and treatment of COVID-19”. The proposal seeks the waiver of “the implementation, application, and enforcement of sections 1, 4, 5 and 7 of part II of the TRIPS agreement”, which are stipulations referring to copyright, industrial design, patents, and undisclosed information (trade secrets).1 The proponents of the proposal argue that a waiver will enable timely and equitable access to affordable health products and technologies, including vaccines. Though many member countries had supported and co-sponsored the proposal, a small but influential group of countries, mainly Australia, Canada, the European Union (EU), Japan, the United Kingdom (UK) and the United States (US), opposed it. They argued that existing exceptions under the TRIPS Agreement are sufficient to address the concerns mentioned in the proposal. This resulted in sidelining of the waiver proposal for months. However, on 5 May 2021, the Joseph Biden administration announced its support for waiving intellectual property protections for COVID-19 vaccines.2 It was a significant step towards breaking the seven-month gridlock, and led to many more countries modifying their position on the waiver proposal. On 25 May 2021, the co-sponsors of the waiver proposal submitted a revised proposal that specified the scope of the waiver as applying to “health products and technologies” and also added a section on the proposed duration of the waiver, i.e., three years.3 At present, more than 100 countries, including the US and China support this proposal. The principal opponent of the waiver is the EU and in June 2021, it submitted an alternative proposal to the TRIPS Council, which requested to keep TRIPS’ provisions intact and focused on compulsory licensing and removing vaccine export restrictions to address the concerns raised by India and South Africa.4 The EU proposal also stated that the TRIPS Agreement does not prevent countries from taking measures to protect public health.5 At the meeting of the TRIPS Council on 8–9 June 2021, the member states agreed to text-based negotiations focusing on two proposals tabled by members. The members also decided to hold a series of meetings till the end of July 2021 to take stock of the text-based negotiations. However, the latest developments show that the waiver discussions hit a hurdle due to a split between the developed and developing countries over the negotiation text. This brief discusses how TRIPS becomes a barrier to the equitable access of COVID-19 vaccines. It also examines how a waiver will help India in its fight against COVID-19 at home and abroad. TRIPS and its Exceptions TRIPS, a comprehensive multilateral agreement on Intellectual Property (IP), was an outcome of the Uruguay Round (1986–94) of negotiations of the General Agreement on Tariffs and Trade (GATT). The Agreement came into force on 1 January 1995 and offers a minimum standard of protection for Intellectual Property Rights (IPR).6 In WTO, IPR are divided into two main categories. First, copyright and related rights (Articles 9 to 14, Part II of the TRIPS Agreement). Second, industrial property that includes trademarks, geographical indications, industrial designs, patents, integrated circuit layout designs, and undisclosed information (Articles 15 to 38, Part II of the TRIPS Agreement).7 Article IX.3 and IX.4 of the Marrakesh Agreement Establishing the WTO deals with TRIPS waivers. Article IX.3 says that in “exceptional circumstances” the Ministerial Conference may waive off an obligation imposed on WTO member countries.8 Such a decision requires the support of three-fourths of the WTO membership. According to Article IX.4, any waiver granted for more than one year will be reviewed by the Ministerial Conference. Based on the annual review, the Conference may extend, modify, or terminate the waiver. The TRIPS Agreement provides some flexibility primarily in the form of compulsory licensing and research exceptions through Articles 30 and 31. While Article 30 permits WTO members to make limited exceptions to patent rights, Article 31 provides a detailed exception, provided certain conditions are met. Compulsory licensing is the process of granting a license by a government to use a patent without the patent holder's consent. Article 31 permits granting compulsory license under circumstances such as “national emergencies”, “other circumstances of extreme urgency”, “public noncommercial use”, or against “anti-competitive” practices.9 In addition to these original waivers, the Declaration on the TRIPS Agreement and Public Health, adopted at the 2001 Doha Ministerial Meeting, also recognises some exceptions, for instance, in situations of a public health emergency, member countries have the freedom to determine the grounds upon which compulsory licenses are granted. Similarly, under Article 66.1, the least developed countries (LDCs) are given waivers for implementing TRIPS on pharmaceuticals till 1 January 2033. COVID-19 and TRIPS Waiver Two significant factors rekindled the debate on TRIPS waiver for essential medical products—first, vaccine inequity, and second, the insufficiency of existing waiver provisions in fighting the COVID-19 pandemic. COVID-19 is an exceptional circumstance, and equitable global access to the vaccine is necessary to bring the pandemic under control. However, the world is witnessing quite the reverse, i.e., vaccine nationalism. Vaccine nationalism is “my nation first” approach to securing and stockpiling vaccines before making them available in other countries. A TRIPS waiver would be instrumental in addressing the growing inequality in the production, distribution, and pricing of the COVID-19 vaccines. Vaccine Inequity According to Duke Global Health Innovation Center, which monitors COVID-19 vaccine purchases, rich nations representing just 14 per cent of the world population have bought up to 53 per cent of the most promising vaccines so far. As of 4 July 2021, the high-income countries (HICs) purchased more than half (6.16 billion) vaccine doses sold globally. At the same time, the low-income countries (LICs) received only 0.3 per cent of the vaccines produced. The low and middle-income countries (LMICs), which account for 81 per cent of the global adult population, purchased 33 per cent, and COVAX (COVID-19 Vaccines Global Access) has received 13 per cent.10 Many HICs bought enough doses to vaccinate their populations several times over. For instance, Canada procured 10.45 doses per person, while the UK, EU and the US procured 8.18, 6.89, and 4.60 doses per inhabitant, respectively.11 Source:“Tracking COVID-19 Vaccine Purchases Across the Globe”, Duke Global Health Innovation Center, Updated 9 July 2021. Consequently, there is a significant disparity between HICs and LICs in vaccine administration as well. As of 8 July 2021, 3.32 billion vaccine doses had been administered globally.12 Nonetheless, only one per cent of people in LICs have been given at least one dose. While in HICs almost one in four people have received the vaccine, in LICs, it is one in more than 500. The World Health Organization (WHO) notes that about 90 per cent of African countries will miss the September target to vaccinate at least 10 per cent of their populations as a third wave looms on the continent.13 South Africa, the most affected African country, for instance, has vaccinated less than two per cent of its population of about 59 million. This is in contrast with the US where almost 47.5 per cent of the population of more than 330 million has been fully vaccinated. In Sub-Saharan Africa, vaccine rollout remains the slowest in the world. According to the International Monetary Fund (IMF), at current rates, by the end of 2021, a massive global inequity will continue to exist, with Africa still experiencing meagre vaccination rates while other parts of the world move much closer to complete vaccination.14 This vaccine inequity is not only morally indefensible but also clinically counter-productive. If this situation prevails, LICs could be waiting until 2025 for vaccinating half of their people. Allowing most of the world’s population to go unvaccinated will also spawn new virus mutations, more contagious viruses leading to a steep rise in COVID-19 cases. Such a scenario could cause twice as many deaths as against distributing them globally, on a priority basis. Preventing this humanitarian catastrophe requires removing all barriers to the production and distribution of vaccines. TRIPS is one such barrier that prevents vaccine production in LMICs and hence its equitable distribution. TRIPS: Barrier to Equitable Health Care Access The opponents of the waiver proposal argue that IPR are not a significant barrier to equitable access to health care, and existing TRIPS flexibilities are sufficient to address the COVID-19 pandemic. However, history suggests the contrary. For instance, when South Africa passed the Medicines and Related Substances Act of 1997 to address the HIV/AIDS public health crisis, nearly 40 of world’s largest and influential pharma companies took the South African government to court over the violation of TRIPS. The Act, which invoked the compulsory licensing provision, allowed South Africa to produce affordable generic drugs.15 The Big Pharma also lobbied developed countries, particularly the US, to put bilateral trade sanctions against South Africa.16 Similarly, when Indian company Cipla decided to provide generic antiretrovirals (ARVs) to the African market at a lower cost, Big Pharma retaliated through patent litigations in Indian and international trade courts and branded Indian drug companies as thieves.17 Another instance was when Swiss company Roche initiated patent infringement proceedings against Cipla’s decision to launch a generic version of cancer drug, “erlotinib”. Though the Delhi High Court initially dismissed Roche's appeal by citing “public interest” and “affordability of medicines,” the continued to pressure the generic pharma companies over IPR. 18 Likewise, Pfizer’s aggressive patenting strategy prevented South Korea in developing pneumonia vaccines for children.19 A recent document by Médecins Sans Frontières (MSF), or Doctors Without Borders, highlights various instances of how IP hinders manufacturing and supply of diagnostics, medical equipment, treatments and vaccines during the COVID-19 pandemic. For instance, during the peak of the COVID-19 first wave in Europe, Roche rejected a request from the Netherlands to release the recipe of key chemical reagents needed to increase the production of diagnostic kits. Another example was patent holders threatening producers of 3D printing ventilators with patent infringement lawsuits in Italy.20 The MSF also found that patents pose a severe threat to access to affordable versions of newer vaccines.21 Source:“COVID-19 Vaccine R&D Investments”, Global Health Centre, Graduate Institute, Geneva, Updated 9 July 2021. The opponents of the TRIPS waiver also argue that IP is the incentive for innovation and if it is undermined, future innovation will suffer. However, most of the COVID-19 medical innovations, particularly vaccines, are developed with public financing assistance. Governments spent billions of dollars for COVID-19 vaccine research. Notably, out of $6.1 billion in investment tracked up to July 2021, 98.12 per cent was public funding.22 The US and Germany are the largest investors in vaccine R&D with $2.2 billion and $1.5 billion funding. Source:“COVID-19 Vaccine R&D Investments”, Global Health Centre, Graduate Institute, Geneva, Updated 9 July 2021. Private companies received 94.6 per cent of this funding; Moderna received the highest $956.3 million and Janssen $910.6 million. Moreover, governments also invested $50.9 billion for advance purchase agreements (APAs) as an incentive for vaccine development. A recent IMF working paper also notes that public research institutions were a key driver of the COVID-19 R&D effort—accounting for 70 per cent of all COVID-19 clinical trials globally.23 The argument is that vaccines are developed with the support of substantial public financing, hence there is a public right to the scientific achievements. Moreover, private companies reaped billions in profits from COVID-19 vaccines. Source: Katharina Buchholz, “COVID-19 Vaccines Lift Pharma Company Profits”, Statista, 17 May 2021. One could argue that since the US, Germany and other HICs are spending money, their citizens are entitled to get vaccines first, hence vaccine nationalism is morally defensible. Nonetheless, it is not the case. The TRIPS Agreement includes several provisions which mandates promotion of technology transfer from developed countries to LDCs. For instance, Article 7 states that "the protection and enforcement of IP rights should contribute to the promotion of technological innovation and the transfer and dissemination of technology, to the mutual advantage of producers and users of technical knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations."24 Similarly, Article 66.2 also mandates the developed countries to transfer technologies to LDCs to enable them to create a sound and viable technological base. The LMICs opened their markets and amended domestic patent laws favouring developing countries’ products against this promise of technology transfer. Another argument against the proposed TRIPS waiver is that a waiver would not increase the manufacturing of COVID-19 vaccines. Indeed, one of the significant factors contributing to vaccine inequity is the lack of manufacturing capacity in the global south. Further, a TRIPS waiver will not automatically translate into improved manufacturing capacity. However, a waiver would be the first but essential step to increase manufacturing capacity worldwide. For instance, to export COVID-19 vaccine-related products, countries need to ensure that there are no IP restrictions at both ends – exporting and importing. The market for vaccine materials includes consumables, single-use reactors bags, filters, culture media, and vaccine ingredients. Export blockages on raw materials, equipment and finished products harm the overall output of the vaccine supply chain. If there is no TRIPS restriction, more governments and companies will invest in repurposing their facilities. Similarly, the arguments such as that no other manufacturers can carry out the complex manufacturing process of COVID-19 vaccines and generic manufacturing as that would jeopardise quality, have also been proven wrong in the past. For instance, in the early 1990s, when Indian company Shantha Biotechnics approached a Western firm for a technology transfer of Hepatitis B vaccine, the firm responded that “India cannot afford such high technology vaccines… And even if you can afford to buy the technology, your scientists cannot understand recombinant technology in the least.”25 Later, Shantha Biotechnics developed its own vaccine at $1 per dose, and the UNICEF (United Nations Children’s Emergency Fund) mass inoculation programme uses this vaccine against Hepatitis B. In 2009, Shantha sold over 120 million doses of vaccines globally. India also produces high-quality generic drugs for HIV/AIDS and cancer treatment and markets them across the globe. Now, a couple of Indian companies are in the last stage of producing mRNA (Messenger RNA) vaccines.26 Similarly, Bangladesh and Indonesia claimed that they could manufacture millions of COVID-19 vaccine doses a year if pharmaceutical companies share the know-how.27 Recently, Vietnam also said that the country could satisfy COVID-19 vaccine production requirements once it obtains vaccine patents.28 Countries like the United Arab Emirates (UAE), Turkey, Cuba, Brazil, Argentina and South Korea have the capacity to produce high-quality vaccines but lack technologies and know-how. However, Africa, Egypt, Morocco, Senegal, South Africa and Tunisia have limited manufacturing capacities, which could also produce COVID-19 vaccines after repurposing. Moreover, COVID-19 vaccine IPR runs across the entire value chain – vaccine development, production, use, etc. A mere patent waiver may not be enough to address the issues related to its production and distribution. What is more important here is to share the technical know-how and information such as trade secrets. Therefore, the existing TRIPS flexibilities, such as compulsory and voluntary licensing, are insufficient to address this crisis. Further, compulsory licensing and the domestic legal procedures it requires is cumbersome and not expedient in a public health crisis like the COVID-19 pandemic.

#### To end the pandemic, people in LICs need to be vaccinated. If we don’t fix the vaccine inequality, millions more will die.

Clendaniel, 21

Clendaniel, Morgan. “Why Global Herd Immunity Is out of Reach: 99% of People in Poor Countries Are Unvaccinated.” Fast Company, Fast Company, 5 July 2021, www.fastcompany.com/90652213/why-global-herd-immunity-is-out-of-reach-99-of-people-in-poor-countries-are-unvaccinated.

Public health experts estimate that approximately 70% of the world’s 7.9 billion people must be fully vaccinated to end the COVID-19 pandemic. As of June 21, 2021, 10.04% of the global population had been fully vaccinated, nearly all of them in rich countries. Only 0.9% of people in low-income countries have received at least one dose. I am a scholar of global health who specializes in health care inequities. Using a data set on vaccine distribution compiled by the Global Health Innovation Center’s Launch and Scale Speedometer at Duke University in the United States, I analyzed what the global vaccine access gap means for the world. Supply is not the main reason some countries are able to vaccinate their populations while others experience severe disease outbreaks—distribution is. Many rich countries pursued a strategy of overbuying COVID-19 vaccine doses in advance. My analyses demonstrate that the U.S., for example, has procured 1.2 billion COVID-19 vaccine doses, or 3.7 doses per person. Canada has ordered 381 million doses; every Canadian could be vaccinated five times over with the two doses needed. Overall, countries representing just one-seventh of the world’s population had reserved more than half of all vaccines available by June 2021. That has made it very difficult for the remaining countries to procure doses, either directly or through COVAX, the global initiative created to enable low- to middle-income countries equitable access to COVID-19 vaccines. Last year, researchers at Northeastern University modeled two vaccine rollout strategies. Their numerical simulations found that 61% of deaths worldwide would have been averted if countries cooperated to implement an equitable global vaccine distribution plan, compared with only 33% if high-income countries got the vaccines first. Put briefly, when countries cooperate, COVID-19 deaths drop by approximately in half.

## WTO Collapse

#### COVID vaccine debate will kill the WTO

Meyer, 21

(David, Senior Writer, https://fortune.com/2021/06/18/wto-covid-vaccines-patents-waiver-south-africa-trips/)

The World Trade Organization knows all about crises. Former U.S. President Donald Trump threw a wrench into its core function of resolving trade disputes—a blocker that President Joe Biden has not yet removed—and there is widespread dissatisfaction over the fairness of the global trade rulebook. The 164-country organization, under the fresh leadership of Nigeria's Ngozi Okonjo-Iweala, has a lot to fix. However, one crisis is more pressing than the others: the battle over COVID-19 vaccines, and whether the protection of their patents and other intellectual property should be temporarily lifted to boost production and end the pandemic sooner rather than later. According to some of those pushing for the waiver—which was originally proposed last year by India and South Africa—the WTO's future rests on what happens next. "The credibility of the WTO will depend on its ability to find a meaningful outcome on this issue that truly ramps-up and diversifies production," says Xolelwa Mlumbi-Peter, South Africa's ambassador to the WTO. "Final nail in the coffin" The Geneva-based WTO isn't an organization with power, as such—it's a framework within which countries make big decisions about trade, generally by consensus. It's supposed to be the forum where disputes get settled, because all its members have signed up to the same rules. And one of its most important rulebooks is the Agreement on Trade-Related Aspects of Intellectual Property Rights, or TRIPS, which sprang to life alongside the WTO in 1995. The WTO's founding agreement allows for rules to be waived in exceptional circumstances, and indeed: this has happened before its members agreed in 2003 to waive TRIPS obligations that were blocking the importation of cheap, generic drugs into developing countries that lack manufacturing capacity. (That waiver was effectively made permanent in 2017.) Consensus is the key here. Although the failure to reach consensus on a waiver could be overcome with a 75% supermajority vote by the WTO's membership, this would be an unprecedented and seismic event. In the case of the COVID-19 vaccine IP waiver, it would mean standing up to the European Union, and Germany in particular, as well as countries such as Canada and the U.K.—the U.S. recently flipped from opposing the idea of a waiver to supporting it, as did France. It's a dispute between countries, but the result will be on the WTO as a whole, say waiver advocates. "If, in the face of one of humanity's greatest challenges in a century, the WTO functionally becomes an obstacle as in contrast to part of the solution, I think it could be the final nail in the coffin" for the organization, says Lori Wallach, the founder of Public Citizen's Global Trade Watch, a U.S. campaigning group that focuses on the WTO and trade agreements. "If the TRIPS waiver is successful, and people see the WTO as being part of the solution—saving lives and livelihoods—it could create goodwill and momentum to address what are still daunting structural problems." Those problems are legion. Reform needs Top of the list is the WTO's Appellate Body, which hears appeals in members' trade disputes. It's a pivotal part of the international trade system, but Trump—incensed at decisions taken against the U.S. —blocked appointments to its seven-strong panel as judges retired. The body became completely paralyzed at the end of 2019, when two judges' terms ended and the panel no longer had the three-judge quorum it needs to rule on appeals. Anyone who hoped the advent of the Biden administration would change matters was disappointed earlier this year when the U.S. rejected a European proposal to fill the vacancies. "The United States continues to have systemic concerns with the appellate body," it said. "As members know, the United States has raised and explained its systemic concerns for more than 16 years and across multiple U.S. administrations." At her confirmation hearing in February, current U.S. Trade Representative Katherine Tai reiterated those concerns—she said the appellate body had "overstepped its authority and erred in interpreting WTO agreements in a number of cases, to the detriment of the United States and other WTO members," and accused it of dragging its heels in settling disputes. "Reforms are needed to ensure that the underlying causes of such problems do not resurface," Tai said. "While the U.S. [has] been engaging [with the WTO] it hasn't indicated it would move quickly on allowing appointments to the Appellate Body," says Bryan Mercurio, an economic-law professor at the Chinese University of Hong Kong, who opposes the vaccine waiver. "This is not a good sign. In terms of WTO governance, it's a much more important step than supporting negotiations on an [intellectual property] waiver." It's not just the U.S. that wants to see reform at the WTO. In a major policy document published in February, the EU said negotiations had failed to modernize the organization's rules, the dispute-resolution system was broken, the monitoring of countries' trade policies was ineffective, and—crucially—"the trade relationship between the U.S. and China, two of the three largest WTO members, is currently largely managed outside WTO disciplines." China is one of the key problems here. It became a WTO member in 2001 but, although this entailed significant liberalization of the Chinese economy, it did not become a full market economy. As the European Commission put it in February: "The level at which China has opened its markets does not correspond to its weight in the global economy, and the state continues to exert a decisive influence on China's economic environment with consequent competitive distortions that cannot be sufficiently addressed by current WTO rules." "China is operating from what it sees as a position of strength, so it will not be bullied into agreeing to changes which it sees as not in its interests," says Mercurio. China is at loggerheads with the U.S., the EU and others over numerous trade-related issues. Its rivals don't like its policy of demanding that Chinese citizens' data is stored on Chinese soil, nor do they approve of how foreign investors often have to partner with Chinese firms to access the country's market, in a way that leads to the transfer of technological knowhow. They also oppose China's industrial subsidies. Mercurio thinks China may agree to reforms on some of these issues, particularly regarding subsidies, but "only if it is offered something in return." All these problems won't go away if the WTO manages to come up with a TRIPS waiver for COVID-19 vaccines and medical supplies, Wallach concedes. "But," she adds, "the will and the good faith to tackle these challenges is increased enormously if the WTO has the experience of being part of the solution, not just an obstacle." Wallach points to a statement released earlier this month by Asia Pacific Economic Cooperation (APEC) trade ministers, which called for urgent discussions on the waiver. "The WTO must demonstrate that global trade rules can help address the human catastrophe of the COVID-19 pandemic and facilitate the recovery," the statement read in its section about WTO reform. Okonjo-Iweala's role The WTO's new director general, whose route to the top was unblocked in early 2021 with the demise of the Trump administration, is certainly keen to fix the problems that contributed to the early departure of her predecessor, Brazil's Robert Azevedo. "We must act now to get all our ambassadors to the table to negotiate a text" on the issue of an IP waiver for COVID vaccines, Ngozi Okonjo-Iweala, director general of the World Trade Organization, has said. Dursun Aydemir—Anadolu/Bloomberg/Getty Images Earlier this week, when the U.S. and EU agreed a five-year ceasefire in a long-running dispute over Boeing and Airbus aircraft subsidies, Okonjo-Iweala tweeted: "With political will, we can solve even the most intractable problems." However, Mercurio is skeptical about her stewardship having much of an effect on the WTO's reform process. "Upon taking [over she] stated it was time for delegations to speak to each other and not simply past each other, but at the recent General Counsel meeting delegations simply read prepared statements in what some have described as the worst meeting ever," he says. "On the other hand, Ngozi is very much someone who will actively seek solutions to problems, and in this way different to her predecessor. If the role of mediator is welcomed, she could have an impact not in starting discussions but in getting deals over the finish line." A spokesperson for the WTO Secretariat declined to offer comment on Mlumbi-Peter and Wallach's suggestions that the organization's credibility rests on the vaccine patent waiver issue, but pointed to a May speech in which Okonjo-Iweala said the WTO could help tackle vaccine supply chain monitoring and transparency, helping manufacturers scale up production, and creating a more geographically diversified manufacturing base. In her speech, the WTO chief also said members "must address issues related to technology transfer, knowhow and intellectual property," including the waiver proposal. "We must act now to get all our ambassadors to the table to negotiate a text," she said.

#### The WTO reduces war through peace dividends, interdependence, and rule of law

Baldwin and Nakotomi, 15

(Richard Baldwin, professor of international economics at the Graduate Institute of International and Development Studies in Geneva, Michitaka, Consulting Fellow at the Research Institute of Economy, Trade and Industry (RIETI) and a Special Adviser to the Japan External Trade Organization (JETRO). <https://cepr.org/sites/default/files/policy_insights/PolicyInsight84.pdf>, July)

The WTO, and the GATT before it, has been one the planet’s precious public goods. The multilateral cooperation supports and encourages trade, which, in turn, fosters peace and rising living standards worldwide. The idea that trade fosters peace was famously expounded by Montesquieu in the 18th century: “The natural effect of commerce is to bring peace. Two nations that negotiate between themselves become reciprocally dependent, if one has an interest in buying and the other in selling. And all unions are based on mutual needs.” 2 Put simply, sellers have little interest in attacking their buyers. Perhaps the most obvious example is how bourgeoning trade between France and Germany flipped the switch from a war-pattern to a peace-pattern. After fighting three increasingly horrifying wars from 1870 to 1945, the French and the Germans are now locked in one of the most intense commercial interactions in the world. At a personal level, this has brought millions of French and Germans into frequent, direct contact. French work for German companies and vice versa, and French firms are excellent customers for German firms and vice versa. The idea that going to war to, for example, would switch the nationality of AlsaceLorraine once again is now insanity. International commerce makes Franco-German war into a ‘mutually assured destruction’ situation. When it comes to why flourishing trade is synonymous with rising living standards, there is little mystery. Trade allows the market’s efficiency enhancing mechanisms to play out on a broader scale. With access to larger markets on the export side and a wider range of high-quality, reasonably prices goods and services on the import side, trade allows nations to allocate resources to where they can be most productive. This enables countries to achieve greater scale and agglomeration economies that are, in turn, pro-innovation, pro-productivity, and pro-growth. Open trade also generates an imperative to innovate. As the Bhagwati-Sutherland Report put it: “Exposed to Japanese car manufacturers’ competition, Detroit car makers recognised that their system of vertical integration was less efficient than a competitive supply chain model. European farmers respond to developing world agricultural imports by moving out of bulk commodities and into boutique and specialist farm goods and foods. India’s car industry has been transformed by external competition to the extent that the worlds’ smallest and cheapest car – the Tata Nano - is a world class Indian innovation”.3 Trade, in other words, is a classic example of winwin cooperation. When all cooperate, all can win. Creating a common interest in multilateral cooperation The GATT promoted such win-win multilateral cooperation by setting up what political scientists refer to as a ‘regime’ – a collection of principles, norms, rules, and procedures around which the expectations of nations and interest groups converged. The result is what could be called the GATT/WTO ‘code of good conduct’. The code fostered a pattern of cooperation which fostered economic success (see Box 1 for a brief description of the code). The resulting economic success was nothing short of spectacular. As the GATT’s mutual-liberalisation process started working its magic, exports of manufactured goods boomed. This made it easy to view the GATT as good for exports, industry, and growth. But the really useful outcome – as far as cooperation is concerned – is the fact that manufactured exports grew two and a half times faster than manufacturing output. This made it very easy to portray multilateral cooperation as win-win. One just could not say that the ‘your’ exports were ‘stealing’ demand from ‘my’ producers. Quite the contrary, export sales around the world were outstripping production growth by a wide margin (Figure 1). All cooperated and all won. Economic success shifts mind sets This success produced a historic shift in the mindset of global political, business, and labour leaders. Recall that in the decades before the GATT, the received wisdom was that a nation should raise protection to protect its industry. Free trade was for starry-eyed idealists; unilateral protection was the savvy way to boost national industry and incomes. All this changed in the 1950s and 1960s. Mutual opening became the winning way; unilateral closing came to be viewed as a failed dogma of olden days. This manifest economic success launched a selfreinforcing cycle. Booming trade and incomes strengthened GATT members’ belief that following the code of conduct was good policy from a purely nationalistic perspective. The cycle spiralled ever higher as the code continued to produce progressive, mutually advantageous trade opening decade after decade. Perhaps even more important than this sea-change in policymakers’ minds was the shift in the thinking and expectations of political pressure groups inside each member. As nations and interest groups came to expect that the rules would be respected, they adopted behaviours that conformed to the rules – thus making rule-compliance almost automatic. Despite trade conflicts being common, the code and the win-win outcomes created a common interest among GATT members in defending multilateral cooperation. It is a precious ‘public good’ for world trade and, more generally, for world peace; multilateral cooperation on anything is a rare commodity these days. More generally, the GATT/WTO has raised respect for the rule of law in the international context almost universally. It is one part of the foundation that supports respect for the concept of international law. Creation of strong dispute settlement mechanism and prohibition of unilateral measures in the WTO further reinforced it. The GATT/WTO is the leading – and probably the only – example of a multilateral and nearuniversal framework of rules and law.

#### The WTO is crucial to make global trade equitable and reduce poverty

Narlikar, 18

(AMRITA NARLIKAR is President of the GIGA German Institute of Global and Area Studies and a professor at the University of Hamburg. <https://www.foreignaffairs.com/articles/2018-03-05/trade-war-poor>, 3-5)

Recurrent deadlocks have plagued the Doha negotiations since their launch in 2001, damaging the credibility of the organization that oversees this unfortunate negotiation process. The WTO’s Ministerial Conference in Nairobi in 2015, which coincided with the 20th anniversary of the WTO’s founding, should have been a moment for celebration. Instead, it turned out to be an embarrassment: for the first time the Ministerial Declaration reflected not consensus but fundamental division over whether even to reaffirm the Doha mandates, which had sought to launch an ambitious round of multilateral trade liberalization with a close eye on development issues. At its Ministerial Conference in Buenos Aires, in 2017, the WTO sank to a new low: this conference was unprecedented in its failure to even produce a Ministerial Declaration. The WTO seems to be whimpering its way to an inglorious end. And if the global trading mechanism does indeed collapse, the consequences will be adverse for all parties, but especially so for the poorest of the world. PUNISHING DEVELOPING COUNTRIES AND THE POOREST PEOPLE In 2010, the Millennium Development Goals reached one of its targets, of cutting extreme poverty by half. The most important factor that contributed to this achievement was economic growth in many developing countries, especially China and India. Although such growth was fueled by several factors, one critical driver was international trade. Extensive research shows that the countries and regions that harnessed the opportunities afforded by low tariffs and open markets did particularly well, aided as they were by a reliable system of enforceable trade rules—all negotiated, monitored, and implemented under the auspices of the WTO. Still, between 600 million and 700 million people currently live under $1.90 per day and are concentrated in middle-income and lower-income developing countries. For instance, 4.5 percent of Brazilians live below the extreme poverty line, six percent do in India, and 34 and 42 percent do in Afghanistan and Nigeria. Much work still has to be done to address the concerns of the poor worldwide, and a minimal step toward this would be to ensure continued market access for developing countries and to maintain the predictability of tariff and non-tariff barriers. If the WTO collapses, rich countries would easily be able to crank up tariffs against poorer countries, while introducing many other protectionist measures to discourage imports. Developing countries, which have experienced growth through exports, and have adapted their production chains to export markets, would be hit hard. A decline in their exports would directly affect their producers and workers in the affected industries, resulting in losses for poor people who can least afford such losses. The costs, moreover, would go beyond the immediate job losses and price hikes in basic goods. The first fundamental benefit that poor countries derive from the WTO is that they get a relatively level playing field for negotiating with more powerful countries. Outside the WTO, in bilateral and regional settings, it is much easier to coerce countries into accepting harsh terms in a trade deal, such as through stringent environmental and labor standards that they would find virtually impossible to meet. In contrast, the institutional setting of the WTO offers developing countries some indispensable advantages. Formally, all members in the WTO have one vote each (very different from voting procedures at the UN Security Council and the International Monetary Fund). This is a powerful equalization tool, which is rendered all the more potent by the fact that consensus-based decision-making allows even the smallest and weakest player de jure veto power. Informally, having an audience within the institution, and a range of partners to work with, enables poor countries to form coalitions with like-minded states. Some powerful coalitions have emerged over the years, which have allowed poor and middle-income countries to band together (sometimes also with developed countries) to punch considerably above their weight in the Doha negotiations. One example is the G-33. It began as a coalition of 33 developing countries including China, India, Indonesia, Nigeria, Pakistan, and others, but now comprises 47 members and has managed to resist calls for greater market opening for agricultural products in developing economies. The G-20, a coalition led by Brazil, China, and India at the time of its founding, which now includes 23 developing countries, has demanded more ambitious market opening for agricultural products in developed country markets. Without the WTO, developing countries would have neither the institutional rules to protect them nor the support of coalitions to enhance their bargaining power. The second important benefit that developing countries derive from the WTO is its Dispute Settlement Mechanism (DSM), which allows members to take another member “to court” over violating trade rules. In the event a judgment is made, the WTO can then authorize retaliatory measures against the responding party. Even though there are several deterrents that might make poor countries reluctant to make use of this facility (including the fact that bringing a dispute against a rich country requires extensive technical and legal know-how, and low-income countries sometimes lack the resources and capacity to initiate a case), the figures show considerable learning and growing effectiveness on their part. While the United States and the European Union have been the most avid users of the DSM (they have brought 115 and 97 cases, respectively, since 1995), many large developing countries have also frequently lodged complaints. China, for example, has brought 15 cases; India, 23; and Brazil, 31. Nor should one assume that the DSM has been the stomping ground of only developed countries and rising powers.

## Future Pandemics

#### The plan creates a new goldilocks patent law that exempts pandemics.

Lindsey, 21

(Brink, <https://www.brookings.edu/blog/up-front/2021/06/03/why-intellectual-property-and-pandemics-dont-mix/>, 6-3)

Waiving patent protections is certainly no panacea. What is needed most urgently is a massive drive of technology transfer, capacity expansion, and supply line coordination to bring vaccine supply in line with global demand. Dispensing with patents in no way obviates the need for governments to fund and oversee this effort. Although focusing on these immediate constraints is vital, we cannot confine our attention to the short term. First of all, the COVID-19 pandemic is far from over. Although Americans can now see the light at the end of the tunnel thanks to the rapid rollout of vaccines, most of the world isn’t so lucky. The virus is currently raging in India and throughout South America, overwhelming health care systems and inflicting suffering and loss on a horrific scale. And consider the fact that Australia, which has been successful in suppressing the virus, recently announced it was sticking to plans to keep its borders closed until mid-2022. Criticisms of the TRIPS waiver that focus only on the next few months are therefore short-sighted: this pandemic could well drag on long enough for elimination of patent restrictions to enable new vaccine producers to make a positive difference. Furthermore, and probably even more important, this is almost certainly not the last pandemic we will face. Urbanization, the spread of factory-farming methods, and globalization all combine to increase the odds that a new virus will make the jump from animals to humans and then spread rapidly around the world. Prior to the current pandemic, the 21st century already saw outbreaks of SARS, H1N1, MERS, and Ebola. Everything we do and learn in the current crisis should be viewed from the perspective of getting ready for next time. THE NATURE OF THE PATENT BARGAIN When we take the longer view, we can see a fundamental mismatch between the policy design of intellectual property protection and the policy requirements of effective pandemic response. Although patent law, properly restrained, constitutes one important element of a well-designed national innovation system, the way it goes about encouraging technological progress is singularly ill-suited to the emergency conditions of a pandemic or other public health crisis. Securing a TRIPS waiver for COVID-19 vaccines and treatments would thus establish a salutary precedent that, in emergencies of this kind, governments should employ other, more direct means to incentivize the development of new drugs.

#### Another pandemic WILL happen.

MacKenzie, 21

Published on September 7, 2021, “Stopping the Next Pandemic: How Covid-19 Can Help Us Save Humanity,” by Debora MacKenzie. Debora MacKenzie has been covering emerging diseases for more than 30 years as a science journalist for outlets like New Scientist magazine. She has been reporting on COVID-19 from the start, and she was among the first journalists to suggest that it could become a pandemic. From SARs to rabies and Ebola to AIDs, she's been on the frontline in reporting on how pandemics form, why they spread, and how to stop them throughout her career. In addition to infectious disease, she also specializes in reporting on the science of complexity and social organization. Before becoming a journalist, she worked as a biomedical researcher.

Second, this pandemic won’t be the last one. There are simply too many potentially pandemic germs out there to predict which will emerge next. But before Covid-19 happened, we knew coronaviruses were among the leading possibilities: they were on a WHO watch list. Even with such warnings, we didn’t do enough preparatory work on drugs and vaccines for coronaviruses like Covid-19 to allow us to easily adapt and produce them now—and we still haven’t for many other viruses that pose a threat, including some real nightmares we will meet in Chapter 2. We need to do that now. We also need to do some serious pandemic planning for when the next one happens. The Center for Health Security at the Johns Hopkins Bloomberg School of Public Health was among the institutions already trying to do that before Covid. Among other efforts, they were running computer simulations of hypothetical pandemics as a training exercise for public officials. A month before the first clusters of unusual pneumonia were recognized in Wuhan, they ran one called Event 201, starring a fictitious virus that was nearly a dead ringer for Covid-19. I can think of few better illustrations of how we knew this was coming. Let me emphasize that this was a total coincidence: this was a what-if scenario playing out in a computer model of US society, featuring a made- up virus. They chose a coronavirus for the simulation because we knew these viruses were a threat, and also to show how disruptive even a relatively mild virus can be. They succeeded. The result of the simulation was what we started living out just a few months later: overwhelmed health care, disrupted global supply chains, needless death, economic dislocation. And a table full of officials from government and industry sitting there, saying*, If this were to happen, there’s not much my sector/department/office could do.* Turned out many of them were right. And the people who wrote that simulation were going easy on the officials—maybe so they’d sit through the entire afternoon and not be so horrified that they’d quietly slip out at the coffee break, trying to forget what they’d seen. There are much worse viruses out there that could trigger a pandemic that would kill more people at younger ages. It will not be much comfort to those who have lost or will lose loved ones to Covid-19, but so far, believe it or not, we’ve been lucky. In addition, what almost no one realized before Covid-19 happened—I don’t know how many realize it now—was what a pandemic could do to our complex, just in-time society, and that economic domino effects would cascade through our tightly coupled global support networks. What we need to remember, though, is that we will have another pandemic. And it could be worse. So we have to do better—and we can. The hard-earned good news is that Covid-19 has shown us what we need to do. We cannot let a virus catch our interconnected global community this stupidly flat-footed again. We cannot let it break those interconnections either, at least not all of them. If this pandemic teaches us anything, it is that up against a contagious disease, we are all in this together. One big early lesson was that no country can really seal off their borders anymore or go it alone. Our society is global; our risk is global; our response and our cooperation must be global.

#### A temporary TRIPS waiver creates a precedent for early action and for LICs to be able to produce their own medicines—saving lives.

Berger, 21

Berger, Miriam. “Global Vaccine Inequality Runs Deep. Some Countries Say Intellectual Property Rights Are Part of the Problem.” Washington Post, The Washington Post, 20 Feb. 2021, www.washingtonpost.com/world/2021/02/20/poor-countries-arent-getting-vaccines-waiving-intellectual-property-rights-could-help/.

On the other side are South Africa and India, leading the charge on behalf of the vast number of countries without any — or a limited supply of — vaccine doses and other equipment for fighting the virus. They argue that the rest of the world cannot keep waiting for the lifesaving shots, which Western countries have monopolized by buying up existing supplies and pre-purchasing future rounds. Given the gravity of the global public health crisis, the latter camp wants to resort to an emergency waiver mechanism, whereby the intellectual property rights for making vaccines and related medical supplies would be temporarily suspended, which in theory would lead to production and distribution ramping up more equitably in factories worldwide. It’s a hyper-technical issue — turning on interpretation of TRIPS, the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights — and it’s heavy in symbolism for developing countries increasingly alarmed by a race to vaccinate that is stacked against them. In the immediate term, waiving intellectual property rights alone cannot fix the problem of vaccine inequities and shortages. But, drawing on lessons learned during the HIV/AIDS crisis, experts said it could have far-reaching implications by preventing subsequent scarcities and sending a signal now about the imperative of collective action. “Developing countries are already fed up with what they perceive as the selfishness of the West buying up all of the demand and [that] they’ve got to get to the back to the queue,” said David Fidler, adjunct senior fellow for cybersecurity and global health at the Council on Foreign Relations. Now, he said, “they are having these sort of ridiculous conversations at the WTO about how to deal with this debacle for humanity.” Meanwhile, he added, “inequitable vaccine access is just going to get worse.” Anthony S. Fauci, President Biden’s chief medical adviser on the coronavirus, told a virtual World Health Organization briefing Monday that the impasse is “a very sensitive issue but an issue that I think really does need to be addressed.” Citing compromises that countries and companies reached during the AIDS epidemic, he expressed support for similar action but not for any specific proposal. “I’m not sure exactly what the model will be, but I think at least we do have some precedent that you can make arrangements with companies that would allow them both to maintain a considerable amount of profit at the same time that areas of the world that don’t have resources can share in a way that would be lifesaving to literally millions of people,” he said. When the WTO was formed in 1995, public health experts worried that many of the global agency’s agreements would empower private companies and ultimately harm public health. Over time, various sides largely worked out their differences, Fidler said, except when it came to intellectual property, which he called a “a festering sore.” That sore proved lethal during the HIV/AIDS crisis. By the 1990s, antiviral drugs were available to combat infections, but restrictions on production because of patent rules kept them far too expensive for most infected people in sub-Saharan Africa to access. In 2001, a deal was finally reached. Called the Doha Declaration, it clarified “that the TRIPS Agreement does not and should not prevent member governments from acting to protect public health,” according to the WTO. The amendments specified that countries could seek compulsory licensing — a way for a government to waive intellectual property rights without the patent owner’s consent — in cases of national or other extreme emergencies. It also laid out mechanisms for the companies to still receive compensation. The Doha Declaration helped lower the cost of lifesaving HIV/AIDS medications for the hardest-hit victims. Along with the President’s Emergency Plan for AIDS Relief (PEPFAR), a U.S. program that was passed in 2003, these collective actions started to turn the tide on a treatable disease upending the lives of millions of people in less wealthy countries. The WTO’s action set a precedent, said Yuan Qiong Hu, legal adviser for the Doctors Without Borders Access Campaign, which is advocating for the WTO coronavirus waiver. But countries with the power to enact change acted too late for too many, dragging their feet on lowering prices. “If they took action earlier, it could have been even better. We could have maybe saved more lives,” she said. “It’s purely a matter of political will to recognize the challenges.” The coronavirus pandemic, unlike the AIDS epidemic, is not centered in low-income countries. Rather, it’s affecting all countries simultaneously scrambling for the same resources. That’s why Mustaqeem De Gama, an intellectual property expert and South Africa’s WTO representative, said it’s time for the global trade agency to act to ensure that “inappropriate use of intellectual property” doesn’t lead to “an artificial scarcity of supply.” TRIPS, he said, recognizes that every country has the right “to ensure that its citizens have access to necessary medicines, equipment and technology that will address covid-19.” He said a WTO waiver would reinforce that principle and allow countries to prepare to start their own production rather than having to wait until richer countries fill their vaccine orders first. “The ability to pay shouldn’t be the determinant for access,” Hu said. WTO action instead could “allow countries to prepare to produce and share resources.”

## Plan

#### Member nations of the World Trade Organization ought to reduce intellectual property protections for medicines by implementing a waiver from certain provisions of the TRIPS Agreement for the prevention, containment, and treatment of COVID-19.

#### The aff plan is to implement the patent waiver proposed by India and South Africa.

#### Communication from India and South Africa to the WTO, 20

(WAIVER FROM CERTAIN PROVISIONS OF THE TRIPS AGREEMENT FOR THE PREVENTION, CONTAINMENT AND TREATMENT OF COVID-19 <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669.pdf&Open=True>, 10-2)

An effective response to COVID-19 pandemic requires rapid access to affordable medical products including diagnostic kits, medical masks, other personal protective equipment and ventilators, as well as vaccines and medicines for the prevention and treatment of patients in dire need. 6. The outbreak has led to a swift increase in global demand with many countries facing acute shortages, constraining the ability to effectively respond to the outbreak. Shortages of these products has put the lives of health and other essential workers at risk and led to many avoidable deaths. It is also threatening to prolong the COVID-19 pandemic. The longer the current global crisis persist, the greater the socio-economic fallout, making it imperative and urgent to collaborate internationally to rapidly contain the outbreak. 7. As new diagnostics, therapeutics and vaccines for COVID-19 are developed, there are significant concerns, how these will be made available promptly, in sufficient quantities and at affordable price to meet global demand. Critical shortages in medical products have also put at grave risk patients suffering from other communicable and non-communicable diseases. 8. To meet the growing supply-demand gap, several countries have initiated domestic production of medical products and/or are modifying existing medical products for the treatment of COVID-19 patients. The rapid scaling up of manufacturing globally is an obvious crucial solution to address the timely availability and affordability of medical products to all countries in need. 9. There are several reports about intellectual property rights hindering or potentially hindering timely provisioning of affordable medical products to the patients.3 It is also reported that some WTO Members have carried out urgent legal amendments to their national patent laws to expedite the process of issuing compulsory/government use licenses. 10. Beyond patents, other intellectual property rights may also pose a barrier, with limited options to overcome those barriers. In addition, many countries especially developing countries may face institutional and legal difficulties when using flexibilities available in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). A particular concern for countries with insufficient or no manufacturing capacity are the requirements of Article 31bis and consequently the cumbersome and lengthy process for the import and export of pharmaceutical products. 11. Internationally, there is an urgent call for global solidarity, and the unhindered global sharing of technology and know-how in order that rapid responses for the handling of COVID-19 can be put in place on a real time basis. 12. In these exceptional circumstances, we request that the Council for TRIPS recommends, as early as possible, to the General Council a waiver from the implementation, application and enforcement of Sections 1, 4, 5, and 7 of Part II of the TRIPS Agreement in relation to prevention, containment or treatment of COVID-19. 13. The waiver should continue until widespread vaccination is in place globally, and the majority of the world's population has developed immunity hence we propose an initial duration of [x] years from the date of the adoption of the waiver. 14. We request that the Council for TRIPS urgently recommends to the General Council adoption of the annexed decision text.

The entire waiver proposal: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669R1.pdf&Open=True>

#### The proposal suspends parts of TRIPS and applies to multiple types of IP that have to do with COVID.

Kang et al, 21

Kang, H. Y., Thambiesetty, S., Bosse, J. (2021, May 7). TRIPS waiver: there’s more to the story than vaccine patents. The Conversation. <https://theconversation.com/trips-waiver-theres-more-to-the-story-than-vaccine-patents-160502> Dr Hyo Yoon Kang's research interests are in intellectual property, knowledge techniques, transmissions and practices, construction of values and valuation practices, novelty and creativity, and hermeneutic/post-hermeneutic approaches to the study of law. She has a cross-disciplinary training and professional background in law, history of sciences, and science and technology studies. Prior to joining Kent Law School, she was an Assistant Professor of Science Studies at the University of Lucerne, Switzerland and a postdoctoral research fellow at the Max Planck Institute for the History of Science, Berlin. She earned a PhD in Law at the European University Institute, Florence, with a thesis which explored the implications of human gene patenting on the legal concept of human personhood. She read Government and Law at the London School of Economics and Political Science and also graduated there with a Distinction from the Masters of Laws (LLM) programme.

The US has announced its limited support for the “Trips waiver”, a proposal to suspend intellectual property protections for products and technologies needed for the fight against COVID-19, including vaccines, for the duration of the pandemic. This would involve a temporary suspension of certain rules set out in the Trips agreement, the intellectual property treaty of the World Trade Organization (WTO). The waiver was first proposed by India and South Africa – two countries with robust generic pharmaceutical manufacturing capacity – in October 2020 as one important tool to address availability of COVID-19 vaccines, diagnostic tools and therapeutic treatments. For seven months, the proposal has made little progress due to opposition from the US, the EU, Switzerland, the UK, Japan and others. The surprise announcement garnered a positive response in many quarters, and was soon echoed worldwide, with the EU, New Zealand and France expressing more willingness to negotiate. Yet the US is the centre of attention because its statement is such a big departure from its previous antagonism towards other countries’ public health measures that affect intellectual property rights. For example in 1996, it threatened to impose sanctions on Brazil for reforming patent laws to improve access to AIDS medication. Given this history, and intense lobbying from the pharmaceutical sector, the US support for the Trips waiver was for many a welcome surprise. Support for the waiver, and the latest US Trade Representative report indicating that the US will respect the right to grant compulsory licenses consistent with the the Trips agreement, may give all trading partners, not just developing countries, the confidence to boldly use those powers to improve the supply of COVID-19 vaccines without fear of trade retaliation. But aspects of the US announcement are more narrow in scope than the original proposal. The initial proposal would cover all technologies for the detection, prevention, treatment and response to COVID-19, while the US statement limits its support for waiving intellectual property rights in vaccines only. While vaccines are the centre of attention right now, the broader proposal would address the limited supply of therapeutics, like Baricitinib or Redemsivir, or diagnostics, like reagents for COVID test kits. Nevertheless, the US support could help bring the Trips waiver to the next stage of “text-based negotiations”. There is now hope that formal negotiations can start addressing outstanding issues, such as how long the waiver would last, and whether anything more than vaccines may be covered. As the Trips waiver gained public attention, many have referred to the measure as a “patent waiver”. This has obscured other intellectual property rights which are included in the original proposed Trips waiver: copyright, trade secrets, and designs – not just patents. Patents certainly deserve a lot of attention: the manufacturing and supply of one product, especially complex biologics like COVID-19 vaccines, is often governed by multiple patents, which may be owned by different entities. But trade secrets, which protect different kinds of exclusive information, including data gathered during the regulatory approval process, and tacit know-how are also essential for manufacturing and producing vaccines. Providing incentives to share or reveal trade secrets, information covered by non-disclosure agreements, as well as regulatory submissions, such as clinical trial data, would not only spur competition. It would also provide the basis for further innovation. This was seen in the case of Shantha Biotechnic’s development of a hepatitis B vaccine for Indian domestic supply, which used yeast instead of the traditional bacterial system, allowing production of a low-cost Indian vaccine which went on to become the mainstay of a global vaccination drive led by Unicef. Some of the COVID-19 vaccines on offer – those developed by BioNTech and Moderna – use mRNA, a relatively novel technology that has only recently been produced in large numbers. Many countries may not yet have the means or know-how to produce them domestically. The WHO has set up a mRNA technology transfer hub to provide a mechanism to share the technology globally, but none of the current vaccine manufacturers have yet offered their help or expertise to this initiative.

## Framework - Util

#### The standard is maximizing expected well-being.

**My Value for the debate is utilitarianism. Util is a moral system where the rightness or wrongness of an action is judged by the outcome it produces. This is the best system for debating government actions for 3 reasons:**

**1. State actor—states are not moral individuals so they can’t have Kantian intent.**

**2. Topic specific- debates about the WTO and patents inevitably regress to consequences—the patents are moral or immoral because of their ability to help or hurt the world.**

**3. Relational wording- Member nations in the resolution is plural, this implies we are debating about how the international community should be shaped and not what an individual’s moral obligations may be.**

#### Governments must use util since they can’t focus on every individual rights violation

Goodin, 95

Robert, 1995, Philosopher of Political Theory, Public Policy, and Applied Ethics. Utilitarianism as a Public Philosophy, Cambridge University Press, pg. 26-27

The great advantage of utilitarianism as a guide to public conduct is that it avoids gratuitous sacrifices, it ensures as best we are able to ensure in the uncertain world of public policy-making that policies are sensitive to people’s interests or desires or preferences. The great failing of more deontological theories, applied to those realms, is that they fixate upon duties done for the sake of duty rather than for the sake of any good that is done by doing one’s duty. Perhaps it is permissible (perhaps it is even proper) for private individuals in the course of their personal affairs to fetishize duties done for their own sake. It would be a mistake for public officials to do likewise, not least because it is impossible. The fixation on motives makes absolutely no sense in the public realm, and might make precious little sense in the private one even, as Chapter 3 shows. The reason public action is required at all arises from the inability of uncoordinated individual action to achieve certain morally desirable ends. Individuals are rightly excused from pursuing those ends. The inability is real; the excuses, perfectly valid. But libertarians are right in their diagnosis, wrong in their prescription. That is the message of Chapter 2. The same thing that makes those excuses valid at the individual level – the same thing that relieves individuals of responsibility – makes it morally incumbent upon individuals to organize themselves into collective units that are capable of acting where they as isolated individuals are not. When they organize themselves into these collective units, those collective deliberations inevitably take place under very different circumstances and their conclusions inevitably take very different forms. Individuals are morally required to operate in that collective manner, in certain crucial respects. But they are practically circumscribed in how they can operate, in their collective mode. And those special constraints characterizing the public sphere of decision-making give rise to the special circumstances that make utilitarianism peculiarly apt for public policy-making, in ways set out more fully in Chapter 4. Government house utilitarianism thus understood is, I would argue, a uniquely defensible public philosophy.