

G2 HACKATHON CHALLENGE

How to Make the WTO
Fit for Future Trade



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Geneva Trade
Platform

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2021 Hackathon Submission

Intellectual Property and Pandemics

Judiciary Square Traders

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Watch the Video



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Question #1

Define the substantive issue that your team is addressing, why it's a problem, and why your team believes the WTO is the right forum to address it.

Millions have died of COVID-19, but, while the end seems to be in sight for developed countries, many LDCs--where public health infrastructure is least equipped to hospitalize severe cases--will not reach herd immunity until 2023. The COVID-19 pandemic demonstrates the consequences of inequitable vaccine distribution and highlights the need for reforms to intellectual property rules at the WTO.

While the advent of economic globalization has brought new levels of prosperity for states, it has also increased the likelihood of global public health emergencies. Disease outbreaks that may have once remained geographically confined are more likely than ever to cross international borders--and these outbreaks threaten to fracture the international system and cause enormous human suffering. The COVID-19 pandemic is the latest example of how the same pathways that facilitate the movement of people, goods, and ideas transport pathogens that could bring the system tumbling down.

Despite this vulnerability, intellectual property protections hinder pandemic response in LDCs by blocking the development of generic vaccines. The expansion of international intellectual property structures since TRIPS and the Uruguay Round has deterred equitable vaccine distribution, creating an impediment to global pandemic response. Mass vaccination has proven the best way out of the COVID-19 crisis for the worst-hit populations--but only for wealthy countries that can afford to buy vaccines from pharmaceutical companies. While wealthy, developed countries have vaccinated significant portions of their populations and are progressing towards herd immunity, the developing world has relied on charity and political favor.

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These patterns of inequity are unsustainable. As new COVID-19 strains emerge, the imperative to vaccinate the world is clear. Until every country can provide vaccines to their populations, the possibility of a COVID-19 resurgence will remain. However, vaccine distribution by the world's great powers have prioritized political utility rather than equitable access or threat mitigation.

The core challenge to equitable vaccine distribution lies in reforming international intellectual property protections to better adjust to global health emergencies. The Doha Declaration affirmed that “the TRIPS Agreement does not and should not prevent members from taking measures to protect public health.” However, the intervening years have shown that this assurance is insufficient. The elevated risk of pandemics warrants affirmative measures to advance global medical equity.

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Question #2

Propose a specific treaty text, or more informal commitment/declaration text, that addresses either the concern or a particular, detailed aspect of it.

DECLARATION ON THE TRIPS AGREEMENT DURING A GLOBAL PANDEMIC

1. We recognize the need for developing countries to produce affordable, generic COVID-19 vaccines.
2. We affirm that the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement and the Declaration on the TRIPS Agreement and Public Health (The Doha Declaration) provide flexibilities that allow developing countries to manufacture generic vaccines using information otherwise protected under intellectual property rules.
3. In light of paragraph 4 of the The Doha Declaration and conditional upon the World Health Organization's declaration of global pandemic, we recognize these flexibilities to include:
 - i. Underscoring that during a global pandemic, consensus by the Council is not required to grant an LDC's suspension of TRIPS Agreement provisions.
 - ii. Each member has a right to grant a compulsory license if [X] percent of the funds for vaccine development and manufacture derives from governmental sources.
 - iii. Pursuant to Article 66.2, developed countries should establish pecuniary awards to incentivize pharmaceutical manufacturers to develop vaccines and subsequently waive intellectual property rights enforcement to facilitate technology transfer to developing countries.

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Question #3

Suggest a legal/technical or institutional way to implement your textual proposal within the broader WTO framework (500 words)

Amid a global health emergency, expedient solutions require global collaboration. Intellectual property rights should not hinder access to resources whose rapid dissemination is key to end a pandemic that affects all. Due to existing contrary policy considerations between developing and developed countries regarding appropriate steps for global inoculation, there is no path to consensus within the WTO to establish a treaty suspending intellectual property rights during a global pandemic. The Agreement on Trade-Related Aspects of Intellectual Property Rights creates a uniform system by which countries should respect each other's patents and copyright creations. The treaty mainly benefits research and development countries by providing enforcement protection of intellectual property. However, Article 66 of the Agreement provides flexibility for developing nations to suspend certain provisions of the Agreement for a 10-year period with the ability to extend with the Council for TRIPS's approval. Our Declaration highlights that this approval does not need to be by consensus. Article IX:1 of the WTO Agreement states "[t]he WTO shall continue the practice of decision-making by consensus followed under GATT 1947," however, the second sentence allows votes: "except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting."

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These suspensions provide flexibility to developing nations to take unilateral actions regarding intellectual property rights, under Article 66, in the face of their economic, financial and administrative constraints. The Declaration on the TRIPS Agreement and Public Health clarified when a nation may suspend intellectual property protections. When members are “taking measures to protect public health” they may invoke “the right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted” and the right to determine what “constitutes a national emergency.” As the Doha Declaration defined the types of flexibilities available to developing nations under the TRIPS Agreement, it did not impose new obligations on members that would have obligated a new treaty.

Likewise, we propose a Declaration similar to the Doha Declaration. While the Doha Declaration pertained to national emergencies, our declaration would apply to WHO-declared pandemics. Our proposal does not mandate members to take action and as such does not require full WTO member consensus. Our proposal reinforces TRIPS Article 66 flexibilities and ensures that a developing country’s unilateral actions in the face of this global pandemic is not regarded as a violation of the TRIPS Agreement.

Lastly, Article 66.2 of the TRIPS Agreement encourages developed states to promote technology transfers. Our Declaration encourages states to utilize pecuniary awards to incentivize pharmaceutical development for manufacturers who elect to waive enforcement of patents for vaccines developed in response to a WHO-designated pandemic disease. This incentive encourages technology transfers to developing countries and promotes research and innovation. Manufacturers that choose to waive intellectual property rights receive compensation from governments for resources expended during the vaccine development process. This is especially critical in a global pandemic where quick dissemination of vaccines protects the whole global supply chain.