2021 Hackathon Submission

Covid-19 Emergency Agreement

Team UBA

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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.

Our team addresses as a substantive issue the need for a "third way" -as expressed by the WTO Director-General- in the controversy surrounding the shortage of COVID-19 vaccines in developing countries ("DCs") and least developed countries ("LDCs"). While around 75 countries would have been able to start with vaccination, there would be approximately 115 countries, mainly DSs and LDCs, that would be completely deprived of vaccines. The main reasons for such constraints are the insufficient production volumes, the long distances between the manufacturing companies and the destination countries, logistic and distribution costs as well as transportation and storage conditions needed to ensure efficient conservation and delivery of the vaccines.

This issue has had multiple consequences: (i) the exclusion of countries with lower incomes from access to COVID 19 vaccines due to expected escalating prices; (ii) the prolongation of the pandemic and the economic recovery, specially from lower income countries; (iii) the threat of another global trade contraction and disruption as in 2020.

As a possible solution to address this situation, India and South Africa followed by other WTO Members proposed a temporary waiver of certain intellectual property ("IP") rights and obligations contained in the TRIPS Agreement. Nevertheless, the political considerations and private interests at stake make it unlikely to reach consensus among the developed countries. Additionally, the proposal would not be a feasible solution since the lack of know-how or manufacturing capacity in the DCs and LDCs would not be solved.

Our team considers that this demands Public-Private Partnerships ("PPPs") that encourages widespread technology transfer to enable the expansion of the manufacturing capacity in other countries.

An interesting resource is the COVAX funding project that promotes a global risk-sharing mechanism for pooled procurement and equitable distribution of COVID-19 vaccines worldwide. This project has proven to be successful in terms of global support and participation in the fight against COVID-19 of many relevant public and private actors but it has still a lot of work to do to accomplish the main goal. The project has a limited production capacity and delivery volumes. Our proposal aims to enhance cooperation between COVAX and WTO in order to use the productive and unprecedented global network COVAX was able to build as well as of the technical expertise of its members by enhancing its efficiency with a legal initiative.

Finally, we believe that the WTO is the right place to address the issue due to its well-known reputation as a global forum for multilateral negotiations. Furthemore, it provides transparent rules on market access between countries and adequate protection of IP rights, that facilitate technology transfers and foster R&D as well as innovation investments on vaccines to potential mutation of the virus. Last but not least, WTO rules offer the possibility to execute plurilateral agreements between WTO members and provide a foreseeable dispute settlement mechanism

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.

COVID-19 Emergency Agreement

The participating Members,

Recognizing that COVID-19 represents a major threat to global public health and that its elimination is contingent on high vaccination rates.

Accepting that access to COVID-19 vaccines by developing and least-developed countries has been limited and that such nations are incapable of producing vaccines by their own means.

Acknowledging that public-private partnerships are key mechanisms to fund and promote research, development and manufacturing of COVID-19 vaccines.

Agree as follows,

1. Participating Members shall - individually or jointly - enter into Public-Private Partnerships ("PPPs") with pharmaceutical companies with the exclusive purpose of manufacturing COVID-19 vaccines to supply developed and least-developed countries. The PPPs Committee, which is hereby established, shall be in charge of drafting the terms of the PPPs' contracts.

2. The selection of private companies shall be made by a tendering procedure, conducted by the PPPs Committee.

3. Participating Members must guarantee (i) the protection of industrial property rights, in accordance with TRIPS; (ii) a reasonable return on the investments; and (iii) the free transfer of returns or investments related to PPPs contracts.

4. Any dispute concerning the application of this agreement shall be settled in accordance with the provisions of article 25 DSU.

Question #3

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

Our proposal is the adoption of a COVID-19 Emergency Agreement (EA-COVID): a treaty that provides a legal framework to encourage PPPs aimed at manufacturing Covid-19 vaccines in DCs and LDCs.

This agreement would create rights and obligations among the parties on a non-MFN basis, to avoid the difficulties related to the decision-making process of the WTO. It would be outside the WTO's framework but the mechanism envisaged for Annex 4 instruments could be applied if consensus is reached.

The rights envisaged in the agreement would represent a "safety net" for pharmaceutical enterprises, and would encourage them to submit bids to tender procedures in order to be awarded PPPs contracts to use installed capacity in LDCs. That capacity would be immediately made available to start production in specific regions (Central America, South America, Africa, Middle East). This would reduce the costs and time required for the installation of affiliated pharmaceutical companies, as well as logistical, distribution and conservation costs.

It would be composed by four main sections:

1) rights and obligations: hosting countries would guarantee a reasonable return on investments and the free, unconditional transfer of investments and funds related to the PPPs contracts and the confidentiality of the information and data transfered. Additionally, hosting nations are entitled to offer tax exemptions to participating companies. The movement of persons and goods strictly related to the vaccine production and the removal of regulatory obstacles will be guaranteed as well.

The EA-COVID would set forth obligations to comply with the stock compromised and to supply with high priority DCs and LDCs markets.

2) the possibility of entering into two different types of PPPs contracts between:

a) pharmaceutical companies and a private actor or a State that already has installed productive capacity for vaccine manufacturing.

b) pharmaceutical companies and a State's consortium (formed by States of the same region that join efforts to reach monetary, human and infrastructural capacity). The pharmaceutical company would operate in the territory of the State of the consortium that provides the infrastructure but the product distribution would benefit every state part of the consortium.

The agreement could be a result of direct bilateral negotiation or a brief public tender process.

In the latter case, the PPP Committee -composed by COVAX and the receiving party representatives- would publish the call for bids, determine the technical requirements (according to the capacity of the receiving party), conduct the tender process and award the manufacturing capacity based on price and feasibility of production. The final agreement would be drafted by the PPP Committee and signed by the awarded pharmaceutical bidder and hosting party.

3)dispute settlement mechanism: the parties could resort to the arbitration procedure set forth in article 25 of the DSU. In order to be an effective alternative to panel proceedings (to avoid the concerns and difficulties regarding the SDB and AB), this section of the EA-COVID introduces a plurilateral arbitration agreement with a detailed description of formal requirements for bringing a dispute to arbitration, applicable rules, arbitrators appointment procedure, remedies, etc.