

## Trade and health: WTO response to the COVID-19 pandemic

The COVID-19 pandemic represents an unprecedented disruption to the global economy and world trade, as production and consumption have been impacted across the globe. Since the pandemic outbreak, WTO members have been working on a holistic approach in formulating a multilateral response to COVID-19 which takes into account the exceptional character of the current crisis – in terms of the loss of human lives and the economic and social challenges.

### Discussions facilitated by Ambassador Walker

Discussions facilitated over the past few months by Ambassador David Walker of New Zealand have highlighted the importance of a meaningful and credible outcome on this issue. Ambassador Walker has worked closely with members through different configurations and has led a solutions-oriented, text-based discussion.

To this end, a framework has been proposed which would guide the WTO's work and help to render the multilateral trading system more resilient and better prepared for future crises.

Several specific elements that could be covered by the framework have been identified. These include issues relating to trade facilitation, export restrictions, regulatory coherence, transparency and monitoring, scaling-up of production and distribution on essential goods, services and crisis preparedness and resiliency, and coordination with relevant stakeholders, including international organizations and the private sector.

The framework could enable members to better leverage the knowledge generated by the networks established by Director-General Ngozi Okonjo-Iweala to coordinate efforts among relevant international organizations, development agencies, civil society and businesses and to better harness the WTO Secretariat's work in support of the members.

Some proponents of a framework for future preparedness suggest that it should be developed within the existing mandate and institutional structure of the WTO, with a process for coordination of work undertaken. As proposed by several delegations, the framework should set out clear timeframes, with shorter timelines for reports and stock-taking for work on the immediate COVID-19 response, which should be the initial focus.

Many delegations have taken the view that any outcome would be a political declaration and not a new legal instrument seeking to alter existing rights and obligations under the WTO agreements.

A large number of delegations have attached high priority to a meaningful outcome on the use of export restrictions and prohibitions, which have had a severe impact on the availability of essential products needed to combat the pandemic, also disrupting global supply chains and hampering the collective ability to increase global production of essential products, such as vaccines. Discussions in that context have underscored the importance of clearly affirming members' political resolve to keep markets open and commit to the use of export restrictions only as a last resort.

In the areas of trade facilitation, regulatory coherence and cooperation, and tariffs, members have stressed the importance of experience sharing as it can help identify best practices and prepare recommendations or guidelines. This work could be continued in regular WTO bodies, such as the Trade Facilitation Committee, the Technical Barriers to Trade (TBT) Committee, and the Market Access Committee.

Many members have called for further work in the WTO to address regulatory bottlenecks affecting production and supply of essential medical goods, i.e. by simplifying regulatory procedures and promoting the sharing of regulatory dossiers and data.

Delegations have acknowledged that tariff reduction or elimination can help facilitate access to essential products during a pandemic, whether on a temporary or permanent basis. In order to address tariffs, the [papers on vaccine inputs tariffs and bottlenecks on critical COVID-19 products](https://www.wto.org/english/news_e/news21_e/covid_08oct21_e.html) ([https://www.wto.org/english/news\\_e/news21\\_e/covid\\_08oct21\\_e.html](https://www.wto.org/english/news_e/news21_e/covid_08oct21_e.html)) prepared by the Secretariat can be useful reference tools.

On the role of services trade, discussions have underscored the importance of facilitating the international operation of services suppliers involved in the production and distribution of vaccines and other medical products in sectors such as logistics, transport and distribution.

The need for better coordination and coherence, transparency and up-to-date information in response to the pandemic has also emerged as a clear priority for members. Members have called for a reaffirmation of the commitment to timely and comprehensive notifications, for exploring gaps in the existing notification procedures and for seeking solutions to improve the scope of the Secretariat's available information.

Members have recognized and expressed support for the WTO Director-General's contribution to making the WTO part of an integrated global response to the pandemic. Continuing and intensifying the collaboration with other international organizations through initiatives such as the [Multilateral Leaders' Task Force on COVID-19](https://www.covid19taskforce.com/en/programs/task-force-on-covid-19-vaccines) (<https://www.covid19taskforce.com/en/programs/task-force-on-covid-19-vaccines>) led by the heads of the International Monetary Fund, World Bank Group, World Health Organization and World Trade Organization has been encouraged.

### Timely and accurate information

One of the most effective means of addressing this crisis is through timely, accurate information. This is why the WTO created a [dedicated page](https://www.wto.org/english/tratop_e/covid19_e/covid19_e.html) ([https://www.wto.org/english/tratop\\_e/covid19\\_e/covid19\\_e.html](https://www.wto.org/english/tratop_e/covid19_e/covid19_e.html)) on its website. It provides up-to-the minute trade-related information including relevant notifications by WTO members, the impact the virus has had on exports and imports and how WTO activities have been affected by the pandemic.

The WTO has also been monitoring COVID-19 related trade-restricting and facilitating measures imposed by the Group of 20 leading economies (G20) as well as the WTO membership as a whole through its biannual trade monitoring reports.

According to the [Director-General's annual overview report on trade-related developments](https://www.wto.org/english/news_e/news21_e/trdev_09dec21_e.htm) ([https://www.wto.org/english/news\\_e/news21\\_e/trdev\\_09dec21\\_e.htm](https://www.wto.org/english/news_e/news21_e/trdev_09dec21_e.htm)) issued on 10 December 2021, WTO members have showed restraint in the imposition of new trade-restrictive measures related to COVID-19 and have continued to roll back restrictions adopted earlier in the pandemic.

### TRIPS Council

In parallel to the process facilitated by Ambassador Walker, members have been seeking convergence on how best to use the global intellectual property (IP) system to tackle COVID-19 in the context of the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS).

#### Waiver request

Over the past year, members have engaged in discussions based on various texts. On 15-16 October 2020, India and South Africa introduced at the TRIPS Council document [IP/C/W/669](https://www.wto.org/english/press/p/20201016_ipc_w669.htm) requesting a waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19. The proposal has since been co-sponsored by the delegations of Kenya, Eswatini, Mozambique, Pakistan, Bolivia, Venezuela, Mongolia, Zimbabwe, Egypt, the African Group, the LDC Group, the Maldives, Fiji, Namibia, Vanuatu, Indonesia and Jordan.

Since the introduction of the document, discussions have taken place in various formal and informal TRIPS Council meetings. Delegations have exchanged views, asked questions, sought clarifications and provided replies, clarifications, and information on the waiver request. On 21 May 2021, the co-sponsors issued a revised proposal which was circulated in document [IP/C/W/669/Rev.1](https://www.wto.org/english/press/p/20210521_ipc_w669_rev1.htm) and on 29 September 2021 they circulated a summary of their interventions in document [IP/C/W/684](https://www.wto.org/english/press/p/20210929_ipc_w684.htm).

In the course of discussions on the revised waiver proposal, delegations have held focused discussions on the topics of scope, both from the perspective of products and of IP rights, on duration, implementation and the protection of undisclosed information.

All delegations remain committed to the common goal of providing timely and secure access to high-quality, safe, efficacious and affordable vaccines and medicines for all, but discussions have shown that disagreement persists on the fundamental question of whether a waiver is the appropriate and most effective way to address the shortage and inequitable distribution of and access to vaccines and other COVID-related products.

#### EU proposal

In addition, a proposal ([IP/C/W/681](#)) for a draft General Council declaration on the TRIPS Agreement and Public Health in the circumstances of a pandemic, issued by the European Union, has also been discussed in meetings since its circulation on 21 June 2021.

The European Union proposal, which is backed by other developed country members, calls for limiting export restrictions, supporting the expansion of production, and facilitating the use of current compulsory licensing provisions in the TRIPS Agreement, particularly by clarifying that the requirement to negotiate with the right holder of the vaccine patent does not apply in urgent situations such as a pandemic, among other issues.

While recognizing that intellectual property rights (IPRs) should not stand in the way of deploying and creating capacity, or of ensuring equitable access to vaccines and therapeutics, several developed and developing members have cautioned that this can be attained while maintaining IP as the basis for incentivizing investment in innovation, and for licensing technology transfer, so that members can effectively fight new strains of COVID-19 and any future diseases and pandemics. Some are particularly concerned that waiving IP rights might undermine the existing efforts and arrangements for large scale production of vaccines that rely, in part, on the IP system.

### State of play

Since the General Council held on 7 October 2021, members have held intense contacts in various configurations. Some members have noted encouraging exchanges at small group discussions and bilateral meetings which have helped to identify points of convergence on how to provide a common IP response to COVID-19. Others have said that further conversations that move the TRIPS Council towards evidence-based and pragmatic solutions should guide their discussions at this critical juncture.

At a meeting of the TRIPS Council on 18 November, members formally adopted an oral status report for the General Council on 22-23 November indicating that the TRIPS Council has not yet completed its consideration of the revised waiver request. The TRIPS Council will therefore continue its consideration, including through small-group consultations and informal open-ended meetings, and report back to the 12th Ministerial Conference (MC12) as stipulated in [Article IX.3 of the Marrakesh Agreement](#). In addition, the TRIPS Council will also continue in the same manner its consideration of the other related proposals by members.

This means the TRIPS Council remains in session so that it can continue to provide a forum for delegations to provide transparency on their ongoing talks, and to adopt any elements or solutions they may have found.

### Non-violation and situation complaints

WTO members have agreed on a draft ministerial decision on so-called non-violation and situation complaints (NVSCs) in the area of intellectual property (IP). The decision is expected to be adopted at MC12.

Under the draft decision, the TRIPS Council would be asked to continue its discussions on this issue and to make recommendations to the 13th WTO Ministerial Conference. In the meantime, members would refrain from bringing such cases to the dispute settlement system.

Non-violation and situation complaints refer to whether and under what conditions members should be able to bring WTO dispute complaints where they consider that another member's action, or a particular situation, has deprived them of an expected advantage under the TRIPS Agreement, even though no obligation under the Agreement has been violated.

To date, only a dozen WTO dispute settlement proceedings have been initiated which involve non-violation complaints. None of those non-violation complaints have been successful.

Under [Article 64.2 \(https://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_07\\_e.htm\)](#), of the TRIPS Agreement, a "moratorium" was established prohibiting non-violation complaints on IP rights for the first five years after the establishment of the WTO (i.e. 1995–99), after which members were to make recommendations to the Ministerial Conference, the WTO's highest decision-making body, for approval. This moratorium has been extended a number of times since, from one Ministerial Conference to the next.

Members have historically differed on whether such non-violation cases are feasible in intellectual property. Some delegations consider non-violation complaints essential to maintaining the proper balance of rights and obligations also within the TRIPS Agreement by helping to ensure that legitimate obligations are not circumvented or avoided. Others believe there is no place for the application of non-violation complaints in intellectual property because of the nature of the TRIPS Agreement and the legal insecurity and curtailment of flexibilities that could ensue, and thus favour their complete ban in the TRIPS area.

The draft decision on "TRIPS non-violation and situation complaints" for the Ministerial Conference says:

"We take note of the work done by the Council for Trade-Related Aspects of Intellectual Property Rights pursuant to the General Council Decision of 10 December 2019 on "TRIPS Non-Violation and Situation Complaints" (WT/L/1080), and direct it to continue its examination of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 and make recommendations to the 13th Ministerial Conference. It is agreed that, in the meantime, Members will not initiate such complaints under the TRIPS Agreement."