

30 March 2022

## AN OPEN CALL TO MINISTER PATEL AND THE GOVERNMENT OF SOUTH AFRICA

--FROM ORGANISATIONS IN SOUTH AFRICA ON THE 'LEAKED' WTO-EU-US TEXT (TRIPS WAIVER)

### *NO DEAL IS BETTER THAN A BAD DEAL*

- **MINISTER PATEL –DO NOT ACCEPT THE “CRUMBS” THAT THE PRESIDENT PRESCIENTLY WARNED AGAINST**
- **MINISTER PATEL - DO NOT CAPITULATE TO US/EU BULLYING ON THE TRIPS COVID-19 WAIVER NEGOTIATIONS**

We are civil society groups and individuals in South Africa.

We learned through media leaks that a few days ago, the WTO secretariat, European Union (EU), and United States (US) proposed a considerably weaker text as a solution to global health inequity during a pandemic. As currently articulated, the draft text does not provide a meaningful solution to barriers presented by intellectual property (IP) that impede access, sharing of data, and technology on COVID-19 medical products. This comes some 17 months after the governments of South Africa and India boldly proposed a temporary TRIPS WAIVER on IP rules for COVID-19 technologies to save lives in the global south.

We ask our government not to be bullied by the EU and US and not agree to the proposals contained in the leaked text because:

1. *It will create a negative precedent for the global south.*
2. *It does not address the substantive proposal of the TRIPS WAIVER, first placed on the table by South Africa and India in October 2020.*<sup>1</sup>

Academics, researchers, civic groups, economists have all written to the President of South Africa in the past days, emphasising that the leaked text is a step in the wrong direction. If accepted by Minister Patel, it will amount to a concession to powerful vested interests.<sup>2</sup>

### **Why does it matter?**

1. The South African government and the negotiating team have played a critical and leading role in bringing together over 100 member countries of the WTO to support such a waiver, and engaged the opposition from rich countries with reasoned arguments.
2. President Ramaphosa, at the time also Chairperson of the African Union (AU), demonstrated strong leadership as a champion of the waiver.
3. As recently as 18 February 2022, President Ramaphosa stated at the AU – EU Summit that Africa would still be getting the “crumbs from the table” of the West, without the waiver.

That’s exactly what the leaked text is – “crumbs” – and it is unacceptable in March 2022, as it was in February 2022 and throughout 2021. Therefore, we urge Minister Ebrahim Patel to listen to the President’s warnings and **reject this flawed deal.**

**The context of inequity:** The unofficial death toll from Covid-19 stands at 20 million deaths, with countless socio-economic losses and harms caused by not vaccinating the global south quickly enough. All this while, the

<sup>1</sup> In October 2020, South Africa and India made a proposal at the World Trade Organisation (WTO) to waive certain of its rules to enable many more manufacturers to produce related medical technologies including vaccines, testing kits and treatment / medicines to end the COVID-19 pandemic. This is because the pharmaceutical companies that manufacture vaccines ordinarily refuse to share knowledge, recipes and other information to enable more manufacturers to increase the production of key life-saving technologies.

<sup>2</sup> Southern Africa-affiliated academics and researchers have addressed a [letter](#) to President Ramaphosa and Nobel laureate economist Joseph Stiglitz and economist Jayati Ghosh have similarly co-authored a [letter](#).

EU and US, especially, have shamefully dragged these discussions out for almost a year and a half, and obstructed finding consensus on the waiver in order to protect their billion-dollar pharmaceutical industries. This is the primary reason that resource-poor countries in Africa and elsewhere have managed to vaccinate only a fraction of their populations (under 15% in Africa) –because of limited supplies and refusal to share knowledge by the major pharmaceutical companies.

The original October 2020 TRIPS Waiver proposal led by South Africa and India offered hope to countries with constrained resources and access. It would have enabled expanded manufacture in the global south and delivered timely supplies of affordable vaccines, testing kits, and treatments/medicines. But that hope is in danger of being quashed. The leaked text shows that despite the talk of “solidarity” and “global health equity” during the early days of this pandemic, the US, EU, and other rich countries are making virtually no concessions but demanding onerous and extensive conditions and restrictions on what technologies are covered. They limit the countries and geographies that can benefit, effectively eliminating certain low- and middle-income countries from the proposed scheme. This will unfairly discriminate against countries such as Brazil, China and others and reduce supplies for global distribution.

#### The ‘leaked text’:

1. **The leaked text contains proposals that are very narrow, and it focuses only on vaccine patents (not all IP restrictions):**
  - This particular strategy is that of the US and EU, advocating for such a narrowing all along.
    - It leaves in place other IP obstacles such as ‘confidential information’ or ‘trade secrets’, so that the ability to access data on manufacturing and technical process to manufacture life-saving vaccines in the global south is considerably delayed.
    - This could hamstring the vaccine technology transfer hubs being set up with the support of the World Health Organisation (WHO) and several developing countries and expose them to legal risks including IP related infringement litigation, delaying access further.
  
2. **The leaked text covers vaccines only, not diagnostics and treatments:**
  - This limitation, insisted upon by the United States, makes no public health sense in the current pandemic response.
    - People contracting COVID-19 in rich countries are already being treated with therapeutics for severe disease and new antiviral medicines for mild and moderate illness, while South Africa and other countries are at the mercy of Big Pharma for voluntary licenses to remove IP barriers.
    - In South Africa, we experienced shortages of PCR test cartridges at the height of the first wave because supplies were prioritised for the US market - local laboratories were prevented from making the reagents by IP barriers.
    - The leaked text says that these technologies will be ‘considered’ for possible inclusion – BUT only after ‘6 months’. **The WTO has dragged its feet for 17 months**, so we have little confidence that negotiations on treatment and testing will be finalised within an expedited period. Current vaccine apartheid will be followed by a divide so huge that humanitarian groups have warned about “treatment apartheid” too.
  
3. **The leaked text includes onerous TRIPS + conditions for compulsory licensing**
  - These conditions are NOT even required by the TRIPS Agreement, thus creating a dangerous precedent for this pandemic and others to follow.
    - The requirement to provide a ‘list of all patents on the product over which a compulsory license would operate.’ Listing all “necessary” patents is tricky and time-consuming as multinational corporations may continue filing new patent claims related to the same technologies or products. Often the full patent landscape is not visible.

- In the name of ‘transparency’, details about the authorised entities, duration of the authorisation, quantities, and destinations of exportation covered in the requirements will place unnecessary procedural burdens for countries seeking to use this remedy’.

4. **The process being followed is worrying:**

- The desire to steamroll WTO members – particularly in the global south - into accepting a bad deal poses grave danger to their solidarity, by sowing confusion and divisions. This will make it extremely difficult to oppose the agendas of high-income countries backing their powerful pharmaceutical and other industries during the WTO ‘Ministerial Conference 12’ scheduled for later this year.
- South Africa and other countries in the Global South should not be pressured to hastily accept the proposed settlement as contained in the leaked text. The WTO Director-General herself stated on 16 March 2022: “not all the details of the compromise have been ironed out,” – so why the indecent haste to wrap up these negotiations around a flawed and limiting text without an open debate among all WTO members and civil society groups, academics and researchers?

5. **A negative precedent for the future:**

- The negative precedent set by a bad “compromise” text could thwart future efforts to reach more meaningful IP reforms needed to address future pandemic risks and the persistent market failures of monopoly control over what key health technologies should ultimately be: **global public goods**.

*The leaked text represents the interests of the rich countries and their billion-dollar pharmaceutical industries and must be rejected.*

- The original TRIPS WAIVER proposal is what we have advocated for, over the past 17 months – it has the support of 67 co-sponsors and 100 countries.
- The South African government has provided global leadership on this matter until now, earning the respect of millions of people around the world who lack the power to stand up to the bullying of wealthy governments and pharmaceutical companies. Please, do not lose that integrity by capitulating: We must refuse the ‘crumbs’ being offered by the EU and US. Every second counts, as case numbers rise, and the death toll mounts.

**Therefore, as civil society groups in South Africa we call on Minister Patel and our government to:**

- NOT endorse this **very bad deal** – we should not be bullied by the interests of the EU and US.
- Insist that the negotiations on the text do not sideline other global south countries, as the precedent that sets, is to favour rich nations.

*We cannot wait any longer for life saving vaccines, testing and treatment -*

*Minister Patel: Do the right thing, Do not let us down: No deal is better than a bad deal!*

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- FROM ORGANISATIONS AND INDIVIDUALS IN SOUTH AFRICA ON THE 'LEAKED' WTO-EU-US TEXT  
(TRIPS WAIVER)

SIGNATURE LIST

Organisations

1. *Health Justice Initiative*
2. *Active Citizens Movement KZN*
3. *African Alliance*
4. *People's Health Movement – SA*
5. *Section 27*
6. *Treatment Action Campaign TAC*
7. *AIDC*
8. *Amandla Kabuntu*
9. *Amnesty International SA (Durban group)*
10. *Angels of Hope*
11. *Asijiki Coalition*
12. *Breast Health Foundation*
13. *Cancer Alliance*
14. *Centre for Applied Legal Studies CALS*
15. *Frontline AIDS South Africa*
16. *GNP +- South Africa*
17. *Institute for Economic Justice IEJ*
18. *Just Associates JASS*
19. *Kgethoentle Productions*
20. *Khulumani Support Group*
21. *Lawyers for Human Rights LHR*
22. *Legal Resources Centre LRC*
23. *Women's Legal Centre*
24. *Open Secrets*
25. *Phoenix Settlement Trust*
26. *Public Service Accountability Monitor PSAM*
27. *Southern African Alcohol Policy Alliance South Africa SAAPA*
28. *TEASA*
29. *Triangle Project*
30. *Trust for Community Outreach and Education TCOE*
31. *Western Cape Forum for Intellectual Disability*
32. *Womaniko*
33. *Zero Waste Association of South Africa*

**Individuals**

1. *Fatima Hassan / HJI*
2. *Prof Yousuf Vawda*
3. *Tian Johnson / African Alliance*
4. *Ela Gandhi*
5. *Phumi Mtetwa / JASS*
6. *Dr Dale McKinley*
7. *Trish Hanekom*
8. *Janet Love*
9. *Dr Shuaib Manjra*
10. *Prof Brook K. Baker / UKZN Health Global Access Project*
11. *Prof Franziska Sucker / University of Witwatersrand*
12. *Prof Leslie London*
13. *Salome Meyer / Cancer Alliance*
14. *Prof Kelly Gillespie*
15. *Prof Francois Venter / University of the Witwatersrand*
16. *Dr Tracey Naledi / Public health Specialist*
17. *Rev. Alan Storey*
18. *Rasigan Maharajh*
19. *Jens Pedersen*
20. *Eunice David*
21. *Marlise Richter / HJI*
22. *Peggy Pillay*
23. *Linda Greeff / Cancer Alliance*
24. *Erlene Anderson*
25. *Ismael Bhoja*
26. *Ashwin Singh*
27. *Sershan Naidoo*
28. *Prof Ames Dhai*
29. *Paddy Padayachy / ACM*
30. *Dr Tasneem Vally*
31. *Mahomed Faruk Mahomed / SAMA*
32. *Devan Pillay*
33. *Dr A K Jeewa*
34. *Shabir Ballim*
35. *N M PATEL*
36. *Sungaree Pather*
37. *Vanessa September*
38. *Rags Govender*
39. *Lubna Nadvi*
40. *Hannetjie Venter*
41. *P Thomson*
42. *Dr Mark Human/ SAMA*
43. *Ayub Mayet*
44. *C Taylor*
45. *Lallie Moodley*
46. *Firdoze Bulbulia*
47. *Kreesen Naicker*
48. *Mark Howard*
49. *Ronell Lambert*
50. *Leanne Jennifer de Jager*

50. *Riaz Lachman*
51. *Sharmaine Steyn*
52. *Frances 'HC'*
53. *Yanga Nokhepheyi*
54. *Heather Collins*
55. *Dr AF van Wyk*
56. *Bafana Khumalo*
57. *Yasmin Adam*
58. *Trevor Mantshoane*
59. *Njabulo S*
60. *Robert Venter*
61. *Laurie Gaum*
62. *Teresa Swart*
63. *S Sankar*
64. *J Kruuse*
65. *Dr Arabang Letebele*
66. *Lauren Paremoer / PHM – SA*
67. *Elroy Paulus*
68. *Hersheela Narsee*
69. *Devina. Perumal*
70. *Shree Sanathan Dharam Suthsungh Sabha*
71. *Roshan koobla*
72. *Melanie Alperstein*
73. *'MELANI'*
74. *GB Narsee*
75. *Peter Cooper*
76. *Denise Cooper*
77. *Gugulethu LAAGBV*
78. *Michael Marchant*
79. *Kerry Reiche*
80. *Tshepo Makhadi*
81. *Nikki Schaay*
82. *Gitanjali Pather*
83. *Linda Cooper*
84. *Prof Susan Goldstein*
85. *Mxolisi Mnyaka*
86. *Denise Nicholson*
87. *Wim Vandavelde / GNP+*
88. *Carmen Oltmann*
89. *Emily Gairbairn*
90. *Vidhu Vedalankar*
91. *Irna Senekal*
92. *Andile Nyemnezi*
93. *Dimitri Selibas*
94. *Gabriel Hoosain Khan*
95. *Farida Patel*
96. *Angela James*
97. *Santie Wolvaardt*
98. *Teresa Swart*

99. *Garth Alperstein*
100. *Mark Weinberg*
101. *Dr C Koobair*
102. *Dr Kalavati Patel*
103. *Tabitha Paine*
104. *Rehad Desai*
105. *Bridget Mcilroy*
106. *Crystal de Jager*
107. *Aslam Fataar*
108. *Dr Nimi Hoffmann*
109. *'Carol'*
110. *Barbara Steinhausen*
111. *Jacobus Hosea Gouws*
112. *Dolly Jacobs*
113. *Joff van Tonder*
114. *Koketso Moeti / amandla.mobi*
115. *Terna Gyuse*
116. *Bulelwa Faltein / SACWF*
117. *Ian Couper / Ukwanda Centre for Rural Health*
118. *Shaamela Cassiem*
119. *Sandhiya Singh*
120. *Cheryl-Lyn Selman / IEJ*
121. *Religions for Peace South Africa*
122. *Baone Twala*
123. *Ivor Phillips*
124. *Gilad Isaacs / IEJ*
125. *Sharon Ekambaram*
126. *Annelise van der N*
127. *Randy Sibrán*
128. *Francois Kruger*
129. *Lindie Nel*
130. *Johan Wiegand*
131. *Carol Cragg / PHM*
132. *Hendrik Pelzer*
133. *Moirá Levy / Institute for African Alternatives*
- 134. *Hilary Albutt***