

12 October 2021

Ambassador Han Peters

Embassy of the Netherlands to the Republic of South Africa

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**Fulfilling the commitment: COVID-19 intellectual property waiver for all medical tools**

Your Excellency,

We write to you as civil society organisations and affected community members working on access to medicines and social justice in South Africa to request that the government of the Netherlands immediately stop blocking the temporary waiver under the World Trade Organization's (WTO) Agreement on Trade-Related Intellectual Property Rights (TRIPS).<sup>1</sup> We also call on the Netherlands to work to change the position of the European Union (EU) to immediately stop blocking the TRIPS waiver in negotiations to enable its rapid adoption at the 12<sup>th</sup> Ministerial Conference of the WTO.

We continue to experience the unacceptable inequity of access to COVID-19 vaccines, treatments, diagnostics and other lifesaving medical tools in South Africa and note similar challenges reported by many other low- and middle-income countries (LMICs). Vaccine nationalism and hoarding by high-income countries (HICs) have jeopardised global solidarity and deepened inequity. Limited voluntary actions of pharmaceutical companies continue to exclude millions of people from securing reliable access to lifesaving medical tools. The temporary global mechanism for access to COVID-19 medical tools, namely the Access to COVID-19 Tools Accelerator (ACT-A), has failed to ensure equitable access and falls short of good governance, transparency and accountability in its operation.

Patents and other intellectual property held by companies such as Roche, Regeneron, Sanofi and Merck have created access blockages and restrictions to effective treatments recommended by the World Health Organization (WHO) or showing positive clinical trial results.<sup>2</sup> A major diagnostics company, Cepheid, chooses to charge high prices for their GeneXpert diagnostics system in LMICs and refuses to share or license their proprietary technologies to enable local manufacturers to produce these systems.<sup>3</sup> South Africa has established the first mRNA vaccine technology

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<sup>1</sup> WTO, [IP/C/W/669 Rev.](#)

transfer hub in collaboration with WHO to facilitate wider production and supply of COVID-19 mRNA vaccines by and for LMICs.<sup>4</sup> Unfortunately, none of the major mRNA vaccine developers have joined this initiative, and patents on mRNA vaccines secured by these developers are hindering prospective local production. Moderna has not applied for registration to supply its vaccine in South Africa but has already obtained South African patents related to the vaccine.

People in LMICs have contributed to breakthroughs in biomedical science during this pandemic. In addition to South Africa's supportive public policies and funding, thousands of South Africans have supported and participated in critical clinical trials leading to eventual medical innovations that can save lives around the world. However, these contributions have not ensured equitable and reliable access to the resulting COVID-19 medical tools. Instead we are forced to rely on HIC donations and major companies' minimal and delayed deliveries. Our right to produce and supply these urgently needed medical tools is denied. This is injustice. We demand change, not charity. We call on the Netherland government to join waiver-supporting countries to make the TRIPS waiver a reality, enabling greater self-reliance for South Africa and other LMICs.

We are deeply concerned that the EU is the main blockage in TRIPS waiver negotiations. This blockage continues despite an increasing number of individual EU member states expressing support for the waiver and a clear demand from the European Parliament for the EU to stop blocking the waiver negotiation.<sup>2,3</sup> Instead of engaging in text negotiations on the waiver, the EU has submitted a counterproposal that offers nothing new to help address the present pandemic challenges.<sup>4</sup> We do not understand how the EU can present such an unproductive counterproposal in the midst of a global pandemic. Nor do we understand why EU member states do not distance themselves from this approach. The EU's blockage comes in addition to actions by the EU that have contributed to deepening COVID-19 vaccine inequity. The EU has hoarded excess vaccines, denied responsibility to request that corporations share technologies, and continues to ignore the evidence of the need for a waiver to overcome the limitations of existing intellectual property rules.<sup>5</sup> We ask the Netherland as a major EU member state that continues to oppose the waiver proposal to change its position, joining other waiver-supporting EU members and working to change the EU position at the WTO.

The waiver negotiation has been delayed for over a year while the pandemic continues to affect millions of people, with more concerning variants of the virus putting even greater strain on already

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<sup>2</sup> Cue C. Sánchez promete donar 30 millones de vacunas y defiende el multilateralismo en un ambiente de tensión internacional en la ONU. El País. 2021 Sep 22. Available from: <https://elpais.com/espana/2021-09-23/sanchez-promete-donar-30-millones-de-vacunas-y-defiende-el-multilateralismo-en-un-ambiente-de-tension-internacional-en-la-onu.html>

<sup>3</sup> European Parliament resolution of 10 June 2021 on meeting the global COVID-19 challenge: effects of the waiver of the WTO TRIPS Agreement on COVID-19 vaccines, treatment, equipment and increasing production and manufacturing capacity in developing countries (2021/2692(RSP)). 2021. Available from: [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0283\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0283_EN.html)

<sup>4</sup> MSF. MSF analysis of EU communications to TRIPS Council on COVID-19 IP waiver proposal. 2021. Available from: <https://msfaccess.org/msf-analysis-eu-communications-trips-council-covid-19-ip-waiver-proposal>

<sup>5</sup> MSF. Briefing note: EU's hollow promises of global COVID-19 vaccine equity. 2021. Available from: [https://msfaccess.org/sites/default/files/2021-09/COVID19\\_BriefingNote\\_EU\\_hollow\\_promises\\_ENG\\_15.9.2021.PDF](https://msfaccess.org/sites/default/files/2021-09/COVID19_BriefingNote_EU_hollow_promises_ENG_15.9.2021.PDF)

overburdened public health systems. The world is watching now as the WTO Ministerial Conference is fast approaching. The waiver should be adopted with coverage for all lifesaving medical tools, not only vaccines, and with a duration that is sufficient to enable more production and supply to improve the pandemic response. The Netherland and the EU have an undeniable responsibility to act in true solidarity and stop blocking other countries' proposal which could save more lives.

Ahead of the WTO TRIPS Council formal meeting tomorrow, we sincerely request that the government of the Netherland stop opposing the TRIPS waiver and lead efforts to change the EU's position to stop blocking the waiver in the WTO negotiations.

A similar request has been sent to Ambassador Riina Kionka in the Delegation of EU to South Africa.

Sincerely,



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**Sign-ons:**

Cancer Alliance

Section 27

Africa Alliance

Peoples Health Movement - South Africa

Treatment Action Campaign

Health Justice initiative