Minutes of the meeting:

At the request of Médecins Sans Frontières Access Campaign (MSF), together with Human Rights Watch (HRW) and Health Action International (HAI) (together – NGOs), the Commission had a follow up discussion to a meeting held in July 2021 on the ongoing negotiations in the WTO on the proposed TRIPS waiver in relation to COVID-related technologies. The NGOs are concerned about the lack of progress on the TRIPS waiver in the WTO. They are currently focusing their efforts on the therapeutics for the treatment of COVID-19. There are 3 different products, mainly monoclonal antibodies, that are recommended and could be used successfully, but they remain expensive and inaccessible in most low and middle income countries. All of these products are protected by several patents in different stages. The companies holding the patents are Sanofi, Roche and Regeneron. In addition, the most promising treatment at the moment is the new Merck product – an antiviral that is easy to produce, use and could completely change the situation.

The Commission enquired about the actual bottlenecks that prevent the production of these innovative therapeutics. We understand from the experience with vaccines that intellectual property may be just one relevant aspect. The view of the NGOs is that patents prevent the scaling of production due to the complex landscape (pending applications, granted patents, secondary patents). The NGOs confirmed that Merck’s product is not yet approved or recommended for use. Merck concluded licensing agreements with 5-6 companies located in India. It is a small molecule product that is easy to reproduce and more companies globally would be able to do so. The antibodies are more complex biologic products and therefore more difficult to reproduce. The patent holders should share the knowledge as well as the necessary biologic material for the reproduction of the product.

The Commission asked if there is any information on the use of compulsory licensing if patents are in fact a barrier to the ramping up of production of these new products. At the WTO, the EU has proposed a solution based on facilitating compulsory licensing since we are
The NGOs considered that compulsory licensing frameworks could be improved, but only in medium to long term. A temporary waiver of TRIPS obligations would give the necessary space that certain countries may need. As an advantage vis à vis compulsory licensing, the NGOs believe that a waiver gives legal certainty and prevents legal action by the pharma companies. The Commission enquired about the necessity to implement the waiver on a domestic level. NGOs consider that this could be done on the basis of the emergency powers of governments. The compulsory licensing reform should be undertaken both at the TRIPS and domestic level.

The NGOs enquired about the state of play of the discussions at the WTO and whether there is support for the EU approach. The Commission explained that discussions are very difficult since the positions remain entrenched. We are convinced that a solution on the basis of compulsory licensing could be agreed upon. A number of WTO members which support the waiver have different views on the scope and the modalities. Finally, both sides exchanged on the ongoing projects in Africa and the EU support to those projects.

The meeting was closed with an agreement to maintain contacts as the situation develops, in particular with regard to the therapeutics against COVID.

**Topics: COVID Vaccins**

**TRN:**

Médecins Sans Frontières International - 928308827208-10

Health Action International (HAI) - 44361352681-84

Human Rights Watch - 56362448807-46

**Invitation:** Ares(2021)6271629

**Participants:**

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- HRW, EU Advocacy Officer
- HRW, Director of Crisis Advocacy,
- HRW, Associate Director, Business and Human Rights division
- MSF Access Campaign, EU Advisor,
- MSF Access Campaign, Senior legal advisor

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