

## Rein in the vaccine nationalism, the profiteering.

**The WTO has a role in getting pharma firms and countries to treat vaccines and lifesaving medicines as a public good**



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It is illegal to hoard, for black marketing, essential goods in drought affected areas. Overcharging of commodities and services during any natural disaster is always a scandal. It is a crime against humanity to make a profit during any human tragedy. On the contrary, there is (and should be) empathy and concern about human suffering. Such solidarity is a recognition of the need to: prevent further damage and destruction, rescue and evacuate affected people to safer zones, and salvage belongings and meet their minimal survival needs. For this nobody is charged. Instead, it is considered as relief work which comes out profusely as charity; a humane gesture.

### **BUSINESS OUT OF SUFFERING**

The COVID-19 pandemic is also a human tragedy and needs global solidarity. It is definitely not a time to be doing business and making a fast buck. Making enormous profit out of a human tragedy is shameful. Unfortunately, such a sense of shame is missing in the international trade market. When economies crumbled in many countries, ecommerce and gadget based gaming business boomed. And in the novel corona virus pandemic, there are numerous examples of companies having made enormous profits in the supply of personal protective equipment and kits and ventilators. In a liberalised economy, there is a shocking silence in the global market trying to do business out of human suffering. Business lies in selling technologies around COVID19, the diagnostics, drugs and vaccine candidates. This is where organisations of the United Nations and global networks for people should come together in one voice. The World Health Assembly, in May 2020, in cognisance of the obstacles to equitable access to COVID19 technologies such as vaccines, diagnostics, medicines, PPE kits and machines, set up mechanisms to counter it. When the entire global population, estimated to be nearly eight billion people, is in need of a vaccine (still being tested and yet to be approved) then production at full capacity and supply to every country will take time.

### **MECHANISMS THAT CAN HELP**

We cannot allow the rich and the strong to grab everything first. The advance purchase agreements that some countries have negotiated with pharmaceutical companies exemplify such adverse trends. Such vaccine nationalism undermines equitable access to vaccines. There has to be prioritization for high risk groups in all countries, especially in the least developed, low and middle income nations. That framework has to be accepted by the global community without dispute. In this, the COVAX partnership is a mechanism for ensuring that.

GAVI, or the Global Alliance for Vaccine Initiative, was in existence during the pre COVID19 period to ensure the pooled procurement and equitable supply of lifesaving vaccines to low and middle income countries. It has been roped in for the COVID19 vaccine too.

Dr. Tedros Adhanom Ghebreyesus, the World Health Organization Director General, on June 13, exhorted member countries to treat COVID19 technologies as a “public good”. Obviously it fell on deaf ears as far as pharmaceutical companies were concerned. WHO’s idea of a “voluntary pool to collect patent rights, regulatory test data, and other information that could be shared for developing COVID19 therapies, vaccines, and diagnostics” was met with criticism. The CEO of Pfizer even qualified this as, “... I think it’s nonsense, and... it’s also dangerous.”

## GOVERNMENTS HAVE A PART

A public good is a common property of the nation and such goods are not excludable or there should not be any rivalries in dealing with it. If it is a public good, governments must step in to regulate its development, innovation, manufacture, sale, and supply ultimately to the public. If there is public financing for technology development, there is no scope for grant of patent protection. A public good cannot be submitted to the vagaries of market fluctuations of pricing dependent on demand supply dynamics. Governments should be the custodian of public goods.

If such an idealistic outcome does not materialise based on basic human rights for availability of accessible and affordable health care, then some regulation mandated by the UN General Assembly must be thought of.

The World Trade Organization (WTO) had raised concern over public health with regard to the non availability of patented drugs in sufficient quantity, and at affordable prices. Through the Paris Convention for the Protection of Industrial Property, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and the Doha Ministerial Conference declaration 2001, the WTO made provisions for compulsory licensing. This is a provision where the government intervenes when patent clauses regarding availability, reasonable pricing, local production and technology transfer are not met by the patent holder. Compulsory licensing is an “involuntary contract” issued by the national government between a “willing buyer” or local manufacturer and an “unwilling seller” or patent holder foreign company. Thailand and Brazil have done this. India utilised this provision for the first time on March 9, 2012 to grant licence to Natco Pharma Hyderabad against the will of patent owner Bayer, Germany, to manufacture Sorafenib tosylate, a lifesaving anticancer drug for kidney and liver tumours, with 97% cost reduction ([https:// bit.ly/368EW3S](https://bit.ly/368EW3S)). It is sold by Bayer under the brand name, Nexavar. This is an extreme step available with India if rich countries go for advance purchase and hoarding of a COVID19 vaccine produced in India by multinational pharma companies and deny India's supply needs.

COVID19 vaccine candidates are still in Phase 3 trials; regulatory approval and patent are still awaited. So, failure to comply with patent regulations as a reason for the issue of compulsory licence cannot be applied. Coercion to issue “voluntary licensing” to subsidiary companies in many developing countries such as India, Egypt, Thailand and Brazil by the patent holder is another option.

## A CHANCE TO ACT

Seizing the opportunity of the WTO itself mapping out key trade issues arising out of COVID19 vaccine and fostering dialogue, India and South Africa jointly sent out a communication, on October 2, 2020 to the IPR Council of the WTO for a waiver of the protection of copyright, design, trademarks and patent on COVID19 related technologies including vaccines. It is claimed that India's submission has the support of 43 members of the African group and 36 members of Least Developed countries group apart from South Asian Association for Regional Cooperation countries, Indonesia, Venezuela and Nicaragua. If this is decided favourably as a special case considering the unprecedented impact of the pandemic, it will set a precedent. A UN organization such as the WTO can wield influence on member nations to forgo trade profits for a humanitarian cause. Global campaigns through the media and civil society organizations can garner enough momentum to exert pressure on TRIPS. This is a pragmatic step for the time being. But having nothing less than vaccines and lifesaving medicines being treated as a public good must definitely be the long term goal.

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