



GLOBAL CONTEXT: IP & HEALTHCARE

**LESSONS FROM THE COVID-19 PANDEMIC
FOR AFRICA'S HEALTHCARE SECTOR**

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**SOUTH AFRICAN
RESEARCH CHAIR:**

Intellectual Property,
Innovation and Development

PHARMACEUTICALS & MEDICAL EQUIPMENT : COVID-19

PANDEMIC RELATED NEEDS

- COVID-19 vaccines,
- Diagnostics,
- treatments and
- Protective Personal Equipment (PPE)
- PRE-EXISTING NEEDS
- Neglected diseases [malaria]
- HIV/AIDS
- non-communicable diseases (NCDs)

IP RIGHTS

- Are IP laws suitable?
- Several other relevant factors, but this update is limited to recent global developments to provide context for the session and seed ideas for the role of the AfCFTA IP Protocol

IP & PHARMACEUTICALS

Trademarks :
e.g. Tivicay

TM ®

Trade secrets

Design: bottle
& cap



Patents : API &
excipients

Copyright :
package insert

©

CONTEXT: IP GOVERNANCE FRAMEWORK

1

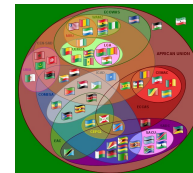
Global



WORLD TRADE
ORGANIZATION

2

Sub-regional
Regional



Continental Free
Trade Area (CFTA)

3

National *territorial

AU Level

- *Continental Strategy on GIs*, (2017)
- Statute of the Pan-African IP Organisation (PAIPO) (2006)
- Model Law for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources, (2000)

REC level

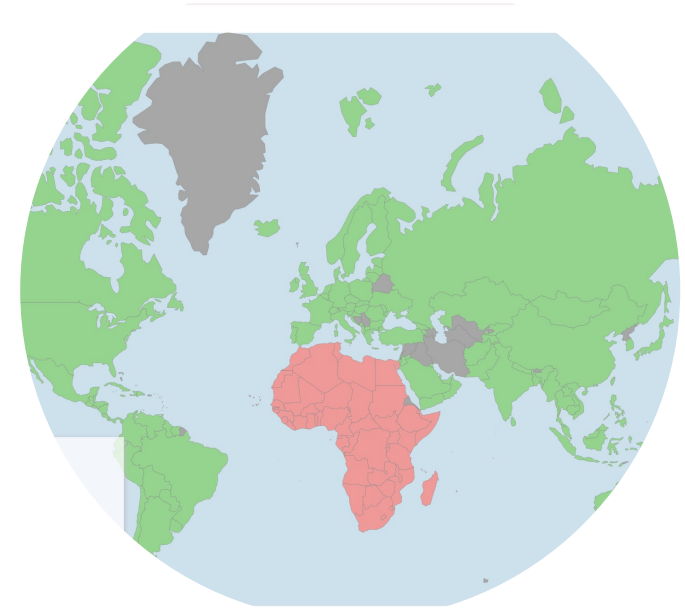
- **COMESA** Regional Policy on IP rights and Cultural Industries
- **EAC** Regional IP Policy on the Utilization of Public Health-Related WTO-TRIPS Flexibilities (2018)
- **ECOWAS** TRIPS Policy & Guidelines, 2012
- **SADC** draft Regional Framework and Guidelines on IPR, 2018
- **COMESA-EAC-SADC Tripartite FTA** – phase 2: IP

ARIPO [harmonized]	OAPI [unified]
Protocols on Patents, Industrial Designs and Utility Models (1982); Trademarks (1993); Protection of Traditional Knowledge and Folklore (2010); Protection of New Varieties of Plants (2015); Policy Framework on Access and Benefit Sharing Arising from the Use of Genetic Resources (2016); Guidelines for the Domestication of the Marrakesh Treaty (2016); Agenda on Copyright and Related Rights (2017); Model Law on Copyright & related rights (2019); Guideline to Audio-visual contracts (2020)	Bangui Agreement of 1977 and its protocols (I – X) (revised 2015, revised text to come into force 14 November 2020)
National level	Laws & institutions

SUB-REGIONAL & REGIONAL

AU MEMBER STATES PARTICIPATION AT GLOBAL LEVEL

- Individual member states are party to various agreements (<http://ref.scielo.org/2pznk4>)
- Often subscribe to 'common positions' in negotiations as the African Group at WIPO and WTO
 - https://www.wto.org/english/tratop_e/dda_e/groups_by_country_e.htm
- Relevance: African positions at global and other levels ought to cohere (policy coherence)
- AfCFTA IP Protocol presents an opportunity to craft co-operation in IP founded on relevant, responsive and coherent positions
- Therefore, the African Group position on the TRIPS Waiver Proposal is relevant



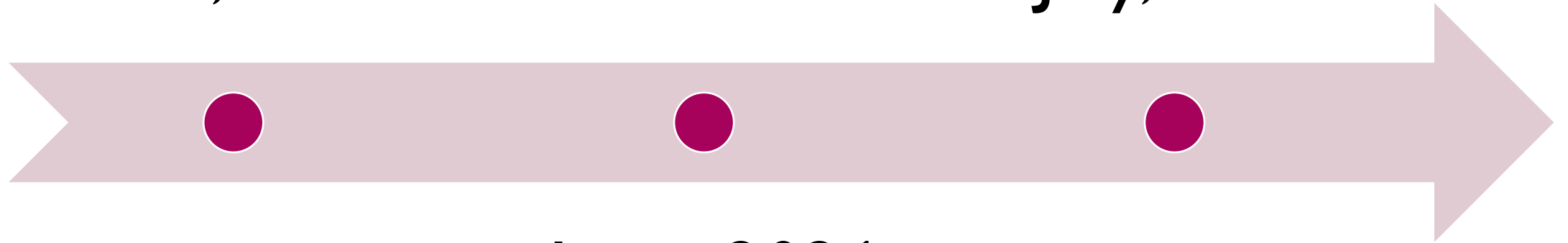
TRIPS WAIVER PROPOSAL

- Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement)
- Binding on WTO member states
- Regulates copyright and related rights; trademarks ; geographical indications including appellations of origin; industrial designs; patents including the protection of new varieties of plants; the layout-designs of integrated circuits; and undisclosed information including trade secrets and test data.

TEXT PROPOSALS

Oct, 2020

July, 2021



June, 2021

PROPOSAL, 2020

12. In these exceptional circumstances, we request that the Council for TRIPS recommends, as early as possible, to the General Council a waiver from the implementation, application and enforcement of Sections 1, 4, 5, and 7 of Part II of the TRIPS Agreement in relation to prevention, containment or treatment of COVID-19.

13. The waiver should continue until widespread vaccination is in place globally, and the majority of the world's population has developed immunity hence we propose an initial duration of [x] years from the date of the adoption of the waiver.

14. We request that the Council for TRIPS urgently recommends to the General Council adoption of the annexed decision text.

- Introduced by India and South Africa, 15-16 October 2020 [IP/C/W/669](#)
- Copyright and related rights, Industrial designs, Patents and Protection of undisclosed information
- co-sponsored by the delegations of Kenya, Eswatini, Mozambique, Pakistan, Bolivia, Venezuela, Mongolia, Zimbabwe, Egypt, the African Group, the Least Developed Countries Group, the Maldives, Fiji, Namibia, Vanuatu, Indonesia and Jordan.

**DECISION ON THE REPORT ON THE AFRICAN UNION
RESPONSE ON COVID-19 PANDEMIC IN AFRICA**
Doc. Assembly/AU/5(XXXIV)

The Assembly,

1. **TAKES NOTE** of the Report of the Executive Council on the Report on COVID-19 Pandemic in Africa and the recommendations therein;
2. **EXPRESSES** deep appreciation to H.E. Mr Matamela Cyril Ramaphosa, President of the Republic of South Africa, Chairperson of the African Union, and the members of the Bureau of the Assembly of the African Union: H.E. Félix Tshisekedi, President of the Democratic Republic of Congo, H.E. Abdel Fattah el-Sisi, President of the Arab Republic of Egypt, H.E. Uhuru Kenyatta, President of the Republic of Kenya, and H.E. Ibrahim Boubacar Keita, President of the Republic of Mali, for providing exemplary, timely, focused and effective leadership to Africa's response to COVID-19;
3. **COMMENDS** the Chairperson of the AU Commission, Members of the AU Commission and Staff of the African Union for the support they have provided to the Bureau of the Assembly and for implementing the decisions of the AU Policy Organs on Africa's coordinated response to the COVID-19 pandemic;
4. **ACKNOWLEDGES** the notable achievements of the African Union in response to the pandemic, including the implementation of the Africa Joint Continental Strategy for Covid-19, the establishment of the African Union Covid-19 Response Fund, the formation of an African Medicines Supplies Platform; the Partnership to Accelerate Covid-19 Testing, the appointment of African Union Special Envoys for Covid-19 Response, and the invaluable work of the newly established African Vaccines Acquisition Task Team;
5. **COMMENDS** the efforts of African Heads of State and Government whose timely actions led to a major boost in the prevention and control of the Covid-19 pandemic in Africa;
6. **WELCOMES** the contributions by AU Member States, Partners and other Organisations which contributed to the AU response to the Covid-19 pandemic and **CALLS UPON** other Member States and Partners to provide support;
7. **ACKNOWLEDGES** the efforts of the Ministers responsible for Health, Finance and Transport, and all other stakeholders in their roles to respond to the COVID-19 pandemic;
8. **EXPRESSES SUPPORT** on the need for equitable and timely, access to the COVID-19 vaccine to all AU Member States which will require the African Vaccine Acquisition Task Team (AVATT) to ensure at least 60% of the Continent's population is vaccinated;

9. **EMPHASISES** the need for universal, equitable and timely access to affordable medical products amongst others, diagnostic kits, vaccines, personal protective equipment and ventilators for a rapid and effective response to the COVID-19 pandemic;
10. Acknowledging the urgent need for continued AU's engagement with partners to mobilise support for Africa's efforts in the fight against COVID-19 pandemic, **FURTHER DECIDES**, as proposed by the Chairperson of the Union, H.E. President Felix Tshisekedi, to appoint H.E. President Matamela Cyril Ramaphosa as the African Union Champion for the COVID-19 response;
11. **NOTING** that, in the light of the foregoing, exceptional circumstances exist justifying a waiver from the obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) specifically for the prevention, containment and treatment of COVID-19;
12. **DECIDES** to support the proposed WTO Waiver from certain provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19 as contained in WTO Document IP/C/W/669;
13. **URGES** Member States to take all necessary action to deal with the ramification of the COVID-19 pandemic with regards to ending violence against women and girls in Africa.

REVISED PROPOSAL, 2021



WORLD TRADE
ORGANIZATION

IP/C/W/669/Rev.1

25 May 2021

(21-4307)

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Council for Trade-Related Aspects of
Intellectual Property Rights

Original: English

WAIVER FROM CERTAIN PROVISIONS OF THE TRIPS AGREEMENT FOR THE PREVENTION, CONTAINMENT AND TREATMENT OF COVID-19

REVISED DECISION TEXT

COMMUNICATION FROM THE AFRICAN GROUP, THE PLURINATIONAL STATE OF BOLIVIA,
EGYPT, ESWATINI, FIJI, INDIA, INDONESIA, KENYA, THE LDC GROUP, MALDIVES,
MOZAMBIQUE, MONGOLIA, NAMIBIA, PAKISTAN, SOUTH AFRICA, VANUATU,
THE BOLIVARIAN REPUBLIC OF VENEZUELA AND ZIMBABWE

By means of a communication dated 21 May 2021, the following document is circulated at the request of the delegations of the African Group, the Plurinational State of Bolivia, Egypt, Eswatini, Fiji, India, Indonesia, Kenya, the LDC Group, Maldives, Mozambique, Mongolia, Namibia, Pakistan, South Africa, Vanuatu, the Bolivarian Republic of Venezuela and Zimbabwe.

- Preamble : mutations and uncertainty
- Para 1: "health products and technologies" as the prevention, treatment or containment of COVID-19
- Text: duration –revision after 1st year and annually thereafter
- IP/C/W/669/Rev.1 introduced at a formal TRIPS Council meeting on 8-9 June.

EU PROPOSAL, 2021

- a proposal for a draft General Council declaration on the TRIPS Agreement and Public Health in the circumstances of a pandemic ([IP/C/W/681](#)) - European Union June 21, 2021
- NOT A WAIVER - limiting export restrictions, supporting the expansion of vaccine 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.

NEXT STEPS

TRIPS

20 JULY 2021

TRIPS Council agrees to continue discussions on IP response to COVID-19

At a meeting of the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS) on 20 July 2021, WTO members agreed to continue consideration of the proposal for a temporary waiver of certain TRIPS obligations in response to COVID-19 and other related proposals. Members approved a status report which they tasked the chair to deliver at the General Council at its next meeting on 27-28 July.



IMPLICATIONS

- negotiations may start in September 2021 = almost a year since the proposal was tabled and very divergent positions are still evident – **no global solution on the horizon**
- African states have an opportunity to provide IP policy and legislative guidance on how to use existing patent laws & introduce appropriate reforms to meet healthcare needs
- **IP Protocol can consolidate and provide policy coherence**
 - RECs have led on some of these aspects e.g.
 - EAC, Regional Intellectual Property Policy on the Utilisation of Public Health-Related WTO-TRIPS Flexibilities and the Approximation of National Intellectual Property Legislation (2013)
 - The two African IP organisations have significant legislative and policy making influence in their member states, how can the AfCFTA IP Protocol consolidate this?
- **National, sub-regional & regional action is imperative**

THANK YOU!



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Intellectual Property,
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