



The Hon. Dan Tehan
Minister for Trade, Tourism and Investment
Parliament House
Canberra
Cc Ministers and Shadow Ministers and Spokespersons for Trade, Health and Pacific Affairs

Re: Ensuring a broad and effective intellectual property waiver on COVID-19 vaccines, tests and treatments

Dear Mr Tehan,

Thank you for your response to our letter of November 26, 2021, regarding Australia's support of a TRIPs waiver, to which you replied on February 23, 2022.

You may know that after 18 months of talks, a [document](#) has been published proposing a compromise on the TRIPs waiver reached between the United States (US), the European Union (EU), South Africa and India at the World Trade Organisation (WTO).

In our view the document is a small step forward, in the sense that it acknowledges that some WTO patent rules need to change. However we do not believe it will address the inequity resulting in [only 4% of people in low-income countries](#) having had two vaccine doses, and even less access to treatments and tests. The proposal is limited to vaccines, only includes patents and not other forms of intellectual property which are essential to expand production, and excludes many countries, including potentially a large number of developing countries that most need to utilise it.

Treatments and tests are essential for managing this stage of the pandemic, but remain [protected](#) by patents and other WTO intellectual property rules. In the compromise proposal, however, treatments and tests will only be considered after another six months' delay. This could mean another lengthy negotiation period with even further delays. This would be especially damaging to Pacific Island countries, who are facing the Omicron variants of the pandemic with adequate access to vaccines, treatments, tests and equipment.

Under WTO intellectual property rules, a few pharmaceutical companies control the supplies and prices of these lifesaving products, and have sold most vaccines and treatments to rich countries, [making tens of billions in revenue](#) from products [developed with government funding](#). These companies have [lobbied](#) a few governments to oppose the TRIPs waiver.

The original [proposal](#) from India and South Africa, supported by 100 of 164 WTO member governments, would temporarily waive WTO rules for all intellectual property monopolies on COVID-19 vaccines, treatments and tests. This would enable a vast increase in production at affordable prices that is needed to triple-vaccinate the world, treat those with the disease, and prevent the spread of new variants. This has been strongly opposed by the EU, while the US has supported a waiver for vaccines only.

A very serious flaw of the compromise proposal is that only WTO Members that are developing countries (and that have exported less than 10% of world exports of COVID-19 vaccine doses in 2021) would be eligible to use the waiver to manufacture vaccines or to import vaccines made using the waiver. This restricted scope not only excludes high-income countries like Australia, along with China (a big exporter of vaccines), it potentially excludes developing countries that are not WTO members (such as many of the Pacific Island countries in our region), along with countries like Brazil which have voluntarily given up their developing country status at the WTO. Least developed countries seem also to have been inadvertently excluded, by the definition of developing countries.

The compromise proposal is not yet agreed as it must be approved by the WTO Intellectual Property Rights Council and the WTO General Council, and may also be considered by the proposed WTO Ministerial Meeting if it goes ahead on June 13, 2022.

We welcome the acknowledgement in the current proposal that some WTO patent rules need to change, and clauses that allow governments more scope to act through executive orders than under current rules.

However, we believe that more specific changes to the proposal are needed to ensure that global access to vaccines, treatments and tests is achieved in practice.

We note that in September last year your government publicly supported the waiver, but did not wish to sponsor it. You have said that your government has acted as an honest broker between different parties.

Now that specific proposals are being considered, we ask you to reaffirm government support for the waiver and to support the following practical changes that could improve the proposal and enable expanded global production of vaccines, tests and treatments to save millions of lives:

1. The waiver should apply to all products needed to prevent, treat, and contain COVID-19, including vaccines, treatments, diagnostic tests, medical devices and personal protective equipment.
2. The waiver should apply to all forms of intellectual property that are needed for production, including patents, trade secrets, data protection, manufacturing know-how, quality control protocols, equipment specifications and operating instructions.
3. All WTO member countries should be able to use the waiver to manufacture and import COVID-19 health products and technologies and should also be able to export them to low and middle-income countries that are not WTO members.
4. Conditions in the proposal that are more onerous than current WTO provisions should be removed. For example, instead of obtaining a blanket authorization for all patents for a particular vaccine, there is a requirement to list each individual patent, which for multi-patent products is a complex and time-consuming process. There is also a requirement to list very detailed information in advance about which companies will make the vaccines, the

quantities that will be made, and which countries they will be supplied to, even though such information may not be available at the beginning of the process. The waiver should ease rather than add to such rules.

5. We ask that in the discussion of the broader statement on the WTO response to COVID-19 and future pandemics, that the government support proposals to enable comprehensive waivers based on the points above to come into force when pandemics are declared by the WHO, so as to avoid the long delays which have cost so many lives during the current pandemic.
6. In the longer term the Australian government should support WHO proposals that vaccines, treatments and other pandemic-related products should be treated as [global public goods](#) available to all. This will be part of the process to draft and negotiate a convention, agreement or other international instrument under the Constitution of the [World Health Organization](#) to strengthen pandemic prevention, preparedness and response.

We request a meeting with you to discuss these issues, and we look forward to your response.

Yours sincerely



Dr Patricia Ranald

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Convenor, Australian Fair Trade and Investment Network (AFTINET), on behalf of the following organisations:

ActionAid Australia
Australian Council of Trade Unions (ACTU)
Australian Catholic Bishops Conference Office for Justice, Ecology and Peace
Australian Fair Trade and Investment Network (AFTINET)
Amnesty International Australia
Friends of the Earth Australia
Médecins Sans Frontières/Doctors Without Borders (MSF) Australia
Oxfam Australia
Public Health Association of Australia (PHAA)
Public Services International (PSI)
The Salvation Army
St Columban Mission Centre, Peace Ecology and Justice Office
Sum of Us
Uniting Church in Australia, Synod of Victoria and Tasmania