

## **Ideas on the points of convergence on the TRIPS issues for discussion**

### **Objective**

Given the extraordinary circumstances of the COVID-19 pandemic and the difficulties that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector face with access to COVID-19 vaccines, it is important to ensure that the intellectual property system plays an enabling role in deploying existing capacity or creating new capacity for the production of COVID-19 vaccines and medicines.

In that regard, ensuring that all WTO Members can make effective use of the TRIPS Agreement is crucial and consequently a waiver with respect to certain requirements related to granting compulsory licenses for the production and export of COVID-related pharmaceutical products, allowing for their rapid supplies, could be considered. The objective would be to lift or simplify the key requirements related to exporting COVID-related pharmaceutical products under a compulsory license to the Members in need.

### **Form**

Decision of the Ministerial Conference in a waiver format, based on the precedent of a waiver adopted in the wake of the HIV/AIDS crisis in 2003, i.e. Decision of 30 August 2003 on the implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540).

### **Product Scope**

Pharmaceutical products, i.e. vaccines, diagnostics, therapeutics against COVID-19

Scope of the waiver-TRIPS provisions covered:

- Article 31(b) – prior negotiations with rights holders – to be waived
- Article 31(f) – requirement to supply predominantly the domestic market – to be waived.
- Article 31bis – mechanism for compulsory licenses for exports – to be waived, with conditions, e.g. on eligible importing Members, for discussion.
- Article 31(h) – remuneration – to be waived and replaced by specific rules on remuneration to support deliveries of the products at discounted prices.
- Article 28(1), 39 and Part III of the TRIPS Agreement – outside the scope of the waiver as the inclusion of these provisions is not required for the objective described above and would not be justified or proportionate.

Other aspects to be considered:

- Length: 3 years with a possibility of further extension if the General Council so decides (e.g. if the circumstances of the pandemic persist).
- Transparency: notification to the WTO of the measures taken and exports made.