



**General Council
1-2 and 4 March 2021**

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MINUTES OF MEETING

HELD IN VIRTUAL FORMAT ON 1-2 AND 4 MARCH 2021

Chairperson: H.E. Dr. David Walker (New Zealand)

[...]

Subjects discussed²:

6 TRIPS COUNCIL MATTERS

6.1 STATUS REPORT ON THE CONSIDERATIONS BY THE TRIPS COUNCIL ON THE "PROPOSAL FOR A WAIVER FROM CERTAIN PROVISIONS OF THE TRIPS AGREEMENT FOR THE PREVENTION, CONTAINMENT AND TREATMENT OF COVID-19" (IP/C/W/669) – STATEMENT BY THE CHAIR OF THE COUNCIL FOR TRIPS

6.1. The **Chairman** noted that the item related to a status report by the TRIPS Council Chair on the "Proposal for a Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19" in document IP/C/W/669 and its addenda. Since the December meeting, he understood that the Council for TRIPS had considered the request again at its informal and formal meetings in January and February. He therefore invited Ambassador Mlumbi-Peter to provide a status report on the Council's consideration of the matter.

6.2. Ambassador Xolelwa Mlumbi-Peter (South Africa), **Chair of the TRIPS Council**, reported that, at the meeting of the TRIPS Council on 15-16 October 2020, India and South Africa had introduced document IP/C/W/669, requesting a waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19, which had been circulated on 2 October 2020 and had since been co-sponsored by the delegations of Kenya, Eswatini, Mozambique, Pakistan, Plurinational State of Bolivia, Bolivarian Republic of Venezuela, Mongolia, Zimbabwe, Egypt, the African Group and the LDC Group. The Council had continued its discussions under that agenda item at informal meetings on 20 November and 3 December, as well as at its resumed meeting on 10 December 2020. Following the status report to the General Council on 16-17 December 2020, the Council had continued its consideration of the waiver request at informal meetings on 19 January and 4 February 2021, and at its formal meeting on 23 February 2021.

² The proposed agenda was circulated in document WT/GC/W/820.

6.3. At those meetings, delegations had highlighted the common goal of providing timely and secure access to high-quality, safe, efficacious and affordable vaccines and medicines for all. Delegations had exchanged views, had asked questions, had sought clarifications and had provided replies, clarifications and information, including through documents IP/C/W/670, IP/C/W/671, IP/C/W/672, IP/C/W/673 and IP/C/W/674, on the waiver request but could not reach consensus, including on whether it was appropriate to move to text-based negotiations. Delegations had indicated a need for further discussions on the waiver request and views exchanged by delegations.

6.4. That meant that the TRIPS Council had not yet completed its consideration of the waiver request. The TRIPS Council would therefore continue its consideration of the waiver request and report back to the General Council as stipulated in Article IX:3 of the Marrakesh Agreement.

6.5. The **Chairman** thanked Ambassador Mlumbi-Peter for her report on the discussions in the TRIPS Council, and as had just been heard, the TRIPS Council would continue to work on that matter.

6.6. The representative of **Vanuatu, on behalf of the Pacific Group**, associated with the statements by the ACP and the LDC Group. All countries were affected by COVID-19 including many small developing countries like Vanuatu that were import dependent and did not have the capacity to produce vaccines and medical supplies and equipment to contain and treat the virus. While understanding that intellectual property rights granted legal certainty to support innovation, Members should also ensure that intellectual property rights did not become the barrier to equitable access to vaccines and essential supplies and equipment at affordable prices. The Pacific Group therefore encouraged all Members to engage constructively on the proposal to find a balanced way forward to safeguarding intellectual property rights and ensuring affordable access for essential supplies to combat the pandemic.

6.7. The representative of the **Republic of Korea** reiterated that, in order to effectively respond to COVID-19, the international community should make utmost efforts to ensure the equitable access to vaccines, diagnostics and effective treatments for all in a timely manner. To do so, Members should ramp up the production and distribution of vaccines and essential medicines. In that vein, Korea welcomed that many countries had recently decided to increase contribution to the COVAX Facility. Korea had also contributed USD 10 million to COVAX AMC.

6.8. The existing IP framework had enabled current international collaboration. In order to ensure the sustainability of such collaboration, Members should be cautious to strike the balance between the protection of IP rights and the promotion of public health. Korea was concerned that COVID-19 could not be the last pandemic known to humanity. For that reason, Members should cautiously safeguard the IP system for constant innovation. Although Members had not reached an agreement yet, the exchange and discussions had not been wasted. Korea found the detailed discussions extremely useful and Members should continue to explore a possible landing zone. Korea looked forward to having further constructive discussions on the proposal.

6.9. The representative of **Morocco** recognized the fundamental role of research and development in the deployment of new, innovative and effective health technologies. In most cases, development was undertaken by private sector companies, paid for by substantial financial investments, as well as public funding, and should be rightly recognized and encouraged. Nevertheless, in the particular context of the COVID-19 pandemic and in the light of the common challenges faced, the international community should not remain indifferent. It had a duty and responsibility to play its part in trying to curb the crisis and, in particular, to avoid that apparently impending moral failure.

6.10. Faced with such a crisis, and so that the WTO would not be remembered for posterity for that potential collective moral failure, intellectual property should not pose an obstacle to the humanistic values that should prevail over any other priority in such circumstances. As a multilateral organization responsible for international trade, the WTO should seize that opportunity to assert its relevance and strengthen its credibility at the global level, in particular, by implementing, for as long as necessary, the relevant temporary adjustments to meet the current challenges. With that in mind, Members should combine their efforts to respond to the shortages of tools to tackle COVID-19, including vaccines, by allowing the optimal use of all the means of production available around the world and consequently subscribing, in a tangible manner, to an equitable global distribution of those tools, in particular, to the most vulnerable.

6.11. The representative of **Pakistan** recalled that the Chair had said that the appointment of Dr. Ngozi Okonjo-Iweala marked the beginning of a new chapter for the WTO – one that Members hoped would be remembered for the contribution the WTO made to living up to the objectives of the Marrakesh Agreement in achieving sustainable development, full employment and raised standards of living for the poorest of the world. Pakistan was confident that, through Dr. Ngozi's stewardship, Members could fulfil that responsibility effectively.

6.12. Pakistan recalled all its previous statements on the issue in the General Council and the TRIPS Council at the formal and informal meetings. That was the most important issue confronting the globe at that time. The pandemic continued unabated with new mutant strains being reported regularly. Supply constraints of COVID-19 vaccines were becoming more acute even in developed countries. On top of that, vaccine hoarding had become pronounced in countries that had developed the vaccines. Poor countries on the other end of the spectrum were faced with the possibility of having extremely limited access to vaccines even by 2024. Calls from the WHO, UNAIDS and other civil society organizations were getting louder for a global public vaccine as well as calls from senior members of Parliaments and religious groups in advanced countries including country heads to allow the waiver in order to make the vaccine available to everyone across the globe.

6.13. It was concerning to note from a report the previous day that one country that had developed a vaccine nine months ago had chosen instead to go with large pharmaceutical companies. Such reports, unfortunately, confirmed its fears that it had been voicing in the General Council and the TRIPS Council that the vaccine would become subject to monopolistic profiteering of large pharmaceutical companies at the cost of human lives. The Director-General of the WHO had described that situation as a catastrophic moral failure.

6.14. The current pandemic required collective global action to tackle IP barriers at a more comprehensive level. Members had been discussing the waiver proposal in great detail for the last several months. Pakistan thanked all delegations who had engaged on the subject and it was happy that the co-sponsorship had grown significantly. As custodians of the world trading order, no Member would like to be known for saving fish but not human lives. It was time for them to put their heads together and engage at a deeper level on the text of the proposal and find a solution to that problem.

6.15. Members had just heard the announcement of the MC12 date and venue. Given the present situation of vaccination across the globe, that would present various challenges to organize MC12 successfully. Either Members would have to make sure enough vaccines were sent out to vaccinate all potential delegates who would visit Geneva or they would have to make those who had been vaccinated as their delegates. Alternatively, they could even need two halls in Geneva during MC12 – one for the vaccinated and another for the non-vaccinated. Pakistan left the Members with those thoughts to visualize as they thought about MC12, vaccines and the pandemic.

6.16. The representative of **Bangladesh** was encouraged by the introductory statement by Dr. Ngozi Okonjo-Iweala that day. She had taken over the charge at a critical juncture of the global trade body. Bangladesh looked forward to working with her and extended its full cooperation to her in Members' collective journey to strengthen the WTO, an important pillar of the global economic infrastructure, so that they could achieve a rules-based, fair and transparent multilateral trade regime that benefited them all.

6.17. Bangladesh associated with the statement by the LDC Group. The LDC Group, including Bangladesh, had been pleased to co-sponsor the draft submission pioneered jointly by India and South Africa. Bangladesh had earlier stated that a threat to public health in one society was a threat to every society. That could not be overstated. The COVID-19 pandemic had severely impacted everyone. No country – rich or poor, developed or developing – had been spared. As Members strived to fight the virus, they should join hands and rise above narrow national interest.

6.18. It was time for Members to guarantee access to effective vaccines, diagnostics and therapeutics against the virus, by all, for all. The scientific advances made against the virus thus far should be shared with all nations without any condition and make them accessible and affordable following the principles of equity and solidarity. TRIPS or any other regulatory framework should not be brought as a hindrance to the transfer of technological know-how in fighting the deadly virus. Members should refrain from exploiting the situation for profit during the most severe health crisis in modern history. As such, Bangladesh requested Members to favourably consider the proposal.

6.19. The representative of **Nigeria** said that it was no news that COVID-19 had adversely affected lives and livelihood globally especially in developing and least developed countries that were disproportionately impacted. Currently, the heart-breaking news for almost all developing countries was that they had no choice but to wait helplessly to access lifesaving vaccines because high-income countries had procured all existing vaccines and those yet to be produced thereby rendering COVAX handicapped. What was needed to save the world was rapid access by every country to affordable diagnostics, therapeutics and vaccines to combat COVID-19. It was however highly unlikely that that could be achieved under the current circumstances when Members were in a race against time to save millions of lives while faced with huge and ever-increasing supply-demand gap. The solution therefore rested in their ability to ramp up production of diagnostics, therapeutics and vaccines especially in developing countries.

6.20. Certain provisions of the TRIPS Agreement constituted barriers to ramping up of production in developing countries and existing limited and restrictive voluntary licenses had not helped the situation. Furthermore, the flexibilities of TRIPS Article 31 and 31bis were not sufficient given that they were not designed to address the challenge of global health emergencies such as that posed by the COVID-19 pandemic. There was also the issue of insufficient or no manufacturing capacity occasioned by technological gap and lack of technical know-how. It was for those reasons that the need for an agreement by the General Council on 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 could not be overemphasized.

6.21. Members had a shared responsibility to work together to ensure that intellectual property rights did not create barriers to the scaling-up of research, development, manufacturing and supply of medical products essential to combat COVID-19. It was in that light that Nigeria had co-sponsored the proposal. The importance of the proposal could not be overemphasized as millions of lives globally continued to be at risk due to the pandemic. Indeed, no one was safe until everyone was safe. Nigeria therefore called on all Members to support the proposal. Nigeria thanked Members of the European Parliament (MEPs) as well as Civil Society organizations in the United States and around the globe who were sympathetic to the plight of developing countries in the current COVID-19 situation and had called on Members to support the proposal.

6.22. The representative of **Mozambique** noted that, although recognizing the challenging times facing the global community and the organization, Mozambique was confident that under the leadership of the Dr. Ngozi Okonjo-Iweala and a positive engagement and contribution of every Member, success would be achieved. Mozambique thanked all Deputy Directors-General, the Chair of the General Council, the Secretariat and all Members for the continuous work and engagement throughout the transitional period, clearly showing the commitment to advance WTO work. Mozambique associated with statements by the LDC Group, the African Group and the ACP including on natural disasters and trade and on WTO Accessions.

6.23. On the agenda item in discussion, Mozambique thanked the TRIPS Council Chair for the report that described the status of the work of the Council on the submission for a Waiver on Certain Provisions of the TRIPS Agreement by India and South Africa, to which Mozambique, along with many others, was a co-sponsor. Mozambique reiterated gratitude for the initiative and commended the Chair on the way she had been facilitating the discussions on the issue. Mozambique recognized Members' continuous engagement to advance the proposal and agreed with the suggestions put forward to advance to a text-based discussion with the aim of achieving convergence.

6.24. Mozambique, like many LDCs, SVEs and some developing countries, faced limitations including on its capacity to produce medical goods and equipment and vaccines that could ensure prevention, treatment and elimination of COVID-19. The submission for a Waiver on Certain Provisions of the TRIPS Agreement with a view to contain, prevent and eliminate COVID-19, if acceptable and collectively agreed, would enable countries like Mozambique to benefit from the results of the massive production that would be able to be carried out. More countries could therefore be given an opportunity to also engage in the production thus contributing to the much needed ramping up of supply of COVID-19 vaccines.

6.25. Those would ensure wider availability, reduction on costs and an equitable and speedy distribution of vaccines. The centuries old tale suggesting that one should not give fish to a hungry man seeking fish but instead to teach and give him conditions to learn how to fish was important and applicable in the current context. The COVID-19 pandemic called for a collective, simultaneous

and rapid response. The more countries were provided with the capacity to massively produce all the necessary tools to respond to the COVID-19 crisis, the better the world would be in equipping itself to urgently eliminate COVID-19.

6.26. The representative of **Jamaica, on behalf of the ACP**, thanked Ambassador Xolelwa Mlumbi-Peter for her report and her sterling performance as Chair of the TRIPS Council. The ACP Group endorsed the public health objectives of the proposal which was to ensure that their people had affordable access to medicines, vaccines and other items required to prevent, treat and contain the virus. The proposal came during the most devastating health crisis in their lifetime. The COVID-19 pandemic was unprecedented and had caused major disruptions socially and economically. While all countries had been significantly impacted by the pandemic, the capacity of developing countries and LDCs to respond to the multidimensional crisis was severely constrained by already stretched public finances and fragile healthcare systems. The WTO had an important role to play in global initiatives to preserve the health and save the lives of millions of people across the globe.

6.27. The ACP Group was encouraged by the robust discussions and exchanges on the proposal and called for the continuation of discussions with the same vigour in different formats so as to find an outcome as soon as possible in the interest of humanity. Some of its members were already co-sponsors. The ACP Group was consulting on the proposal internally with a view to constructively engage in those discussions. The Group thanked the co-sponsors for their hard work and invited other Members to engage constructively with a view to finding a landing zone. In order to move to such a landing zone, the ACP Group would support a move to text-based discussions. That seemed to be the most effective way to tailor the waiver to a consensus approach without being tied up in a continuous evidentiary loop. The health and lives of people should always be their priority and the ACP Group was confident that WTO Members were capable of delivering for and on behalf of their people in those most difficult times.

6.28. The representative of **South Africa** associated with the statements by the ACP and the African Group. South Africa thanked the Chair of the TRIPS Council for the status report that she had just presented and congratulated her for the able and even-handed manner in which she had steered the work of the TRIPS Council. The report rendered an impartial and factual update on discussions held thus far. As apparent from the status report, co-sponsors had provided various clarifications and written replies to address issues and questions raised by other Members in various formats, including in formal and informal meetings of the TRIPS Council, small group meetings and bilateral meetings. It was apparent that Members had not yet reached consensus on the matter, therefore the co-sponsors, which now included both the African Group and the LDC Group, were in favour of moving to text-based discussions based on Article IX:3 of the Marrakesh Agreement.

6.29. As the Director-General had pointed out, Members did not have time. In order to save lives, that issue should be addressed in the shortest possible timeframe. Based on current estimates, it was unlikely that enough vaccines would be manufactured in 2021 or even 2022 to meet the global demand or to achieve global population immunity. The Director-General had emphasized that the normal capacity of production stood at 3.5 billion doses and manufactures currently sought to produce at least 10 billion, the global need was likely to be greater than 10 billion doses, given that the world population was 8 billion, and generally 2 doses were required, and with mutations emerging, populations would require to be revaccinated.

6.30. In previous interventions, South Africa had emphasized that unused spare capacity existed in the developing world which should be accessed in order to ramp up production in the shortest possible time. Attempts should be made to engage and allow all possible producers across the world to scale up production. A deal-by-deal approach had not worked and had further marginalized poor countries. Meanwhile, richer countries were ordering enough vaccines to inoculate their entire populations several times over leading to unacceptable vaccine hoarding and vaccine nationalism.

6.31. What the co-sponsors were proposing was a limited and a temporary Waiver that would provide countries with the policy space needed to collaborate in research and development, manufacturing, scaling up and supplying COVID-19 tools which were currently in short-supply. The Waiver was an instrument that was provided for in the WTO legal framework and was part of its legal toolbox. They had indicated their flexibility to engage on the scope and timeframe for the application of the Waiver and were ready to engage in constructive text-based discussions with Members towards a solution. The world could not afford any more delays. That should be the most

urgent priority for the WTO. History would judge them harshly should they fail to provide a credible response to the crisis. The time to act was now.

6.32. The co-sponsors had repeatedly commended Members for their generous financial contributions to international collaborative mechanisms such as COVAX. 180 countries including 90 self-financing upper middle-and-high income countries and 92 low-and-middle income countries were participating in COVAX. However, it was quite evident that COVAX had not yet secured sufficient funding for an adequate number of vaccines to reach its goal of 20% coverage for all participating countries in 2021. That posed a challenge for many countries that primarily relied entirely or largely on COVAX to secure access to vaccines. Focusing on the immediate needs of dozens of poor countries was a priority and South Africa looked forward to working with the Director-General and other Members to achieve that goal by passing the waiver as soon as possible. Only truly global and inclusive solutions would save lives. The Waiver was the only possible way to address universal, equitable and timely access to life-saving medical products, including vaccines, diagnostics and therapeutics. That would allow Members to control the pandemic, save lives and start to address economic reconstruction and resilience.

6.33. The representative of **Egypt** associated with the statement by the African Group. Egypt had stated in the last TNC meeting that in order for the WTO to remain relevant, it should actively contribute to the global response to the current global crisis due to the unprecedented challenges posed by the COVID-19 pandemic especially in developing and least developed countries in addition to laying the groundwork for a fair and equitable global economic recovery. A few days ago, the UN Secretary-General had stated that the progress on vaccination had been widely uneven and unfair with just ten countries having administered 75% of all COVID-19 vaccines while more than 130 countries had not yet received a signal dose.

6.34. That statement together with what had just been mentioned by Dr. Ngozi Okonjo-Iweala indicated the urgency of reaching a decision on the Waiver Proposal as soon as possible. Members could not continue to ignore the severity of the current crisis. Egypt therefore urged all Members to constructively engage in text-based negotiations in the TRIPS Council to reach consensus on the Waiver to prove that the WTO could contribute to addressing that unprecedented crisis and help to build the resilience of its Members to respond to similar global crisis in the future. Egypt, together with an increasing number of co-sponsors of the proposal, would continue outreach efforts to convince all Members to support the waiver in order to help in putting an end to the pandemic.

6.35. The representative of **Indonesia** said that, in the current global health crisis, the right to access to health was equal to the right to life. The proposal and its subsequent discussions had further clarified the close and sometimes difficult relation between the TRIPS Agreement and Public Health. While the TRIPS Agreement provided flexibilities for Members such as compulsory licensing, such flexibilities did not provide an adequate response in ensuring equitable access for medical products during a global pandemic.

6.36. The proposal provided a concrete solution for ramping up the production of medical products including vaccines which would help maximize manufacturing capacity for vaccines on a global scale with a limited period of time. Vaccine nationalism had posed as an obstacle for equitable access to vaccines. At the same time, Members would not escape the danger of the COVID-19 pandemic and its economic impact if they did not address it simultaneously in every corner of the world. Addressing supply scarcity was of paramount importance for Indonesia. Members had the tools in their hands. It was time for them to deliver.

6.37. The representative of **Mauritius, on behalf of the African Group**, had taken good note of the report of the TRIPS Council Chair and thanked her for her diligent work and the professional manner in which she had conducted the work of the TRIPS Council throughout the year. The African Group recalled that the current pandemic was unprecedented with, over a year later, many other countries still confining or re-confining to be able to face it.

6.38. The deprivation for much needed vaccines would only result in the non-inoculated segments further constituting fertile ground for endless variants of the virus. If Members took that into national perspective, how certain countries became safe and others remained unsafe, they would end up with acute fiscal and budgetary pressure on vulnerable economies, disruption of production and supply of goods and a risk of distorted markets or even collapse – in general, a global downturn again. The

African Group did not think anybody would like to see that and that everybody was working towards a situation where they could all be safe.

6.39. On 19 February, the African Group had informed of its decision to co-sponsor the WTO proposal for a Waiver from Certain Provisions on the TRIPS Agreement. The African Group had noted the many calls from various quarters that opposition of the TRIPS Waiver could further exacerbate a north-south divide. The African Group did not wish that. Many of the countries in the African Group were small. They were countries which once they had done their discussion on the WTO they would go to the Human Rights Council and start debating there – including on the right to health.

6.40. So once while the African Group agreed that there could be some obstacles on the way of granting the Waiver, Members needed to discuss all of those and should find that balance between intellectual property issues that were raised and other issues such as the right to health. The African Group was not against intellectual property or preserving of intellectual property. But Members needed to try and find exceptional and conciliatory measures in difficult circumstances. That was why the African Group would support any shift to text-based negotiations as from now.

6.41. The representative of the **Philippines** expressed its appreciation to the Chair of the TRIPS Council for her tireless effort and dedication in shepherding discussions on the proposed TRIPS Waiver – an issue of transcendental importance to the entire Membership as the world struggled to defeat the COVID-19 global pandemic. As with many delegations, and even groups outside the WTO, the Philippines had been following with keen interest the rich and enlightening exchanges of views and arguments for and against the proposed TRIPS Waiver.

6.42. Given the wide differences, the Philippines concurred with the recommendation to continue discussions at the TRIPS Council on the proposed waiver. Such discussions would eventually feed into the broader conversation on the role of trade, and more specifically, intellectual property, in combatting global pandemics such as COVID-19, and hopefully, reach a tipping point on the issue as an essential component of an effective and comprehensive multilateral response of the WTO to the COVID-19 pandemic.

6.43. The representative of **China** thanked the TRIPS Council Chair for her hard work in steering the consultations on the Waiver Proposal and supported the status report she had just delivered. Recognizing that the WTO should play its role in finding a common solution to timely and equitable access to COVID-19 vaccines, the Waiver Proposal provided Members with a good starting point for discussions on how to achieve that common objective. China would continue to actively engage in further discussions in whatever format the TRIPS Council Chair deemed necessary and urged Members to show maximum flexibility to address the concerns raised by the proponents.

6.44. China attached great importance to the accessibility and affordability of COVID-19 vaccines among developing Members. China was committed to making COVID-19 vaccines global public goods and had made best efforts to honour that commitment. For example, China had joined COVAX and had decided to provide 10 million doses of Chinese vaccines to meet the urgent demand of developing Members. In the meantime, through bilateral channel, China had exported vaccines to 22 countries and had provided vaccine aid to 53 developing countries. Just as the Director-General had pointed out, supply constraints and vaccine nationalism helped no one since no one was safe until everyone was safe. China would continue to work with all parties to tackle the production deficit and distribution deficit of vaccines and strengthening their global solidarity in the fight against the pandemic.

6.45. The representative of **Zimbabwe** associated with the statements by the co-sponsors of the proposal for a Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of Covid-19. Zimbabwe, as a co-sponsor, commended the recent decision by the African Union Heads of State and Government to support the Waiver Proposal and noted that the African Group had recently joined as a co-sponsor together with the LDC Group. The recent groundswell of support by Members was an indication on the importance of the issue in providing a global solution to the COVID-19 pandemic.

6.46. Zimbabwe thanked the Chair of the TRIPS Council, Ambassador Xolelwa Mlumbi-Peter, for the report she had provided which highlighted the factual status of the deliberations. Zimbabwe regretted that, since October 2020, when the proposal had first been discussed, Members had been unable to

reach consensus. Zimbabwe, along with other co-sponsors, reiterated the call and invitation for Members to commence text-based discussions which would accommodate the interests of all and looked forward to constructively engage in the TRIPS Council.

6.47. The representative of **Cameroon** commended Ambassador Xolelwa Mlumbi-Peter, Chair of the TRIPS Council, for her report and associated with the statements the African Group and the ACP. No one was safe until everyone was safe. Members were witnessing a depictable drama wherein each party expected to secure itself from the COVID-19 pandemic while leaving others without the necessary therapeutic tools and vaccines to stop the spread of the virus. To date, more than 2.5 million people had lost their lives due to COVID-19 and, despite commendable efforts by all governments and medical staff, nobody could predict how many more lives should be claimed by the pandemic. But Cameroon was sure of Members' capacity in reducing the surge of the disease and in saving lives by making vaccines and therapeutic affordable to all. That should be their main objective above any other legitimate consideration.

6.48. Cameroon welcomed the various multilateral initiatives in favour of access to vaccines, drugs and medical equipment necessary for the fight against COVID-19. Cameroon reaffirmed its attachment to the principles embedded in intellectual property rights but stressed that the enjoyment of said rights was not necessarily in danger if the States agreed to provide them with specific exemptions. Needless to say, those exemptions would not completely solve the difficulties encountered in accessing vaccines, drugs and medical equipment but would only mitigate them.

6.49. Moreover, no measure whatsoever would provide a complete answer and would be a panacea. The world would need a set of measures that would provide satisfactory solutions to the pandemic. That was why Cameroon joined the proposals made by the African Group, South Africa, India and others. At the same time, Cameroon expressed openness to the subjects listed under Items 9 and 11 of the agenda and invited Members to give them appropriate consideration. Cameroon commended all Members which had expressed solidarity with the proposal and supported access to vaccines as well as the provision of TRIPS flexibilities to combat the pandemic. Cameroon stood ready to work constructively with all Members to achieve early consensus on those matters.

6.50. The representative of **Australia** welcomed Dr. Ngozi Okonjo-Iweala and had heard her message on the high expectations she placed on Members – which Australia heard loud and clear. Australia thanked the TRIPS Council Chair for the status update on the proposed waiver of TRIPS Agreement obligations. Australia recognized the importance of recent discussions at the TRIPS Council and had engaged carefully in those discussions. Australia had focused on listening to and understanding the concerns of the proponents of the Waiver.

6.51. Australia was pleased that Members were united on the need to support equitable, widespread and timely access to COVID-19 health products including vaccines and had jointly recognized the immense scale of the health and economic challenge presented. As many had already noted, there was a very significant challenge on the scale up of manufacturing. Australia looked forward to further discussions on finding genuine, practical means of assisting the scaling up manufacturing. Australia wanted to work with all Members to determine how best the multilateral IP system could play its part in maximizing the production of and equitable access to COVID-19 vaccines.

6.52. The representative of **Chile** noted that the arrival and appointment of Dr. Ngozi Okonjo-Iweala ushered in renewed hope at the WTO. Before her arrival, the world had been leaving the WTO behind. Members had been worried about that but it was true and they should do something to move forward. As Dr. Ngozi had mentioned earlier, Members should change the way of interacting between themselves. They had to be responsible for the citizens that they were serving. Opposition had clearly been expressed at the General Council in December and in the TRIPS Council discussions.

6.53. Some important aspects should be taken into consideration in the succeeding discussions on the matter. Chile recalled that the only way of coming to a result was through consensus. Given the nature of the issue under discussion, Members had to participate constructively in the consultations and the next meetings of the TRIPS Council. Neither the WTO nor the TRIPS Agreement were guilty of the pandemic – and they were not guilty for the lack of production of vaccines and other essential medical supplies and equipment. The WTO was a forum and the TRIPS Agreement had the main objective of reducing obstacles to international trade. Members should not forget that they had the

responsibility on the matter. In their next discussions, they should therefore seek constructive solutions within the current IP system.

6.54. In all discussions on the issue, Chile had observed the absence of the pharmaceutical companies. They were in the best position to give factual and concrete information on the potential for manufacturing of vaccines at the international level and the concrete challenges that had to be addressed to be able to increase their production. The problem had many dimensions. Members should not simplify the problem by solely focusing on the IP aspect. It was therefore appropriate to tap onto the experience of the Director-General and to establish a constructive dialogue with the pharmaceutical industry and try and find concrete solutions to increase the output of vaccines at a global level. Chile called on Members to participate in a responsible and constructive way in the future dialogue on the issue. Now more than ever, Members should be careful when promising things to their people. Members needed to clearly know beforehand what they were going to do and what they could deliver for them.

6.55. The representative of **Turkey** said that IPRs on one hand stimulated research and development, innovation and new technologies. In that sense, they were also instrumental in the fight against major health crisis. On the other, affordable, secure and uninterrupted access to medical supplies was, now more than ever, important. Members should shoulder that responsibility together. The WTO should play its part in assisting the global community's efforts to curb the current pandemic. Members needed to find a third way, a concrete solution without harming the IP rights and their significant implications in other areas. But they should act urgently because human life was at stake.

6.56. The representative of **Switzerland** was delighted to be working with Dr. Ngozi Okonjo-Iweala and congratulated her again on her appointment. As noted in the report, Members shared a common objective which was to guarantee global, equitable and rapid access to medical products including vaccines. Nevertheless, opinions differed as to the approach required to meet that common objective. Switzerland stood ready to continue discussing that important matter and to enter into talks based on probative and concrete elements in the appropriate forum – the TRIPS Council.

6.57. The representative of **New Zealand** shared the ambition of other Members to ensure that vital COVID-19 products could move freely and were readily available when they were needed. Members should ensure that COVID-19 recovery did not lock in harmful trade policy responses. To that end, New Zealand looked forward to further and constructive collaboration at the WTO including to better understand the scope and likely effects of the request for a TRIPS Waiver. New Zealand also shared the sentiment raised by others that Members must show their stakeholders, businesses, frontline workers and communities that trade policy could support and facilitate supply chains and response to public health emergencies.

6.58. The representative of **Japan** appreciated the report made by the TRIPS Council Chair and her efforts to convene several sessions to discuss the waiver proposal. Japan considered it important to aim at leaving no one behind in achieving Universal Health Coverage in responding to COVID-19. Japan had been proactively contributing to multilateral schemes such as the ACT Accelerator and the COVAX Advance Market Commitment. In particular, at the recent ACT Accelerator Fourth Facilitation Council, the Government of Japan had increased its commitment and had contributed USD 200 million in total to the COVAX AMC.

6.59. Further, Japan was going to contribute to the Global Fund, and the Medicines Patent Pool through Unitaid for promoting the distribution of medical products. Japan was convinced that those efforts were practical and effective for achieving timely, fair and equitable access to medical products and remained committed to combatting COVID-19 and future unknown pandemics. In case of specific challenges which Members were facing in procuring COVID-19 vaccines, therapeutics, diagnostics and other medical products, Japan was always willing to have an evidence-based discussion.

6.60. The representative of the **Central African Republic** noted that, at the end of the previous century, intellectual property monopolies on HIV treatments had meant that people living with HIV in Africa, Asia and Latin America had received access to life saving antiretroviral therapies 10 years later than those living with HIV in developed countries who had immediate access to those same therapies. That delay had led to millions of needless deaths between the end of the 1990s and the

mid-2000s before the patent related barriers had eventually been removed to make generic HIV medicines available.

6.61. Through the pandemic, Members had once again witnessed how structural inequalities were impeding efforts to guarantee the timely availability of medicines, vaccines and other tools required for the management of COVID-19 in developing countries. Against the backdrop of the global COVID-19 crisis, the TRIPS flexibilities such as compulsory and voluntary licensing, which had already been difficult to implement under normal circumstances, were even more complex to bring into operation since other intellectual property rights were at stake, thereby preventing technology transfer and large scale production for developing countries.

6.62. The opponents of the Waiver used COVAX to ease their conscience but Members could see how there were not enough vaccines available to ensure equitable and timely access for all. As they held these discussions, the only people receiving vaccines were those in rich countries that were home to a quarter of the global population. People in poor countries were being hit harder by the exceptional health crisis and the economic, social and psychological repercussions that it was having on an entire generation. It would be a moral error to continue with business as usual which benefitted the bilateral agreements prioritizing rich countries.

6.63. The WTO trade rules should not be an advantage for some and a barrier for others. The WHO COVID-19 Technology Access Pool project provided a framework for the transparent transfer of technology and intellectual property in order to facilitate the large scale production of medicines, diagnostics and vaccines for developing countries. Unfortunately, that project was being shunned by pharmaceutical companies which preferred to use restrictive bilateral licences that did not allow for large scale production. However, C-TAP, together with the TRIPS Waiver, would facilitate the transfer of technology and knowhow and scale up local production for people in developing countries. Therefore, the immediate removal of all intellectual property barriers would not only provide legal security and considerable freedom of action, but would also have a bearing on the credibility of the organization and pharmaceutical companies.

6.64. For almost a year, the entire global civilian population had been making sacrifices in solidarity with the most vulnerable among them. The world had applauded health workers for the care given to their loved ones affected by COVID-19. Today, the solidarity that they were calling for entailed a fair division of the sacrifices already made by the entire population. Africa had been especially affected by the delay in HIV treatment. Millions of lives had been sacrificed on the altar of the profits of pharmaceutical multinationals. Millions of children had lost their parents at a young age because of the unjust nature of the current trade rules. Every life mattered, whether that person was rich or poor. Members should urgently conduct negotiations on the content of the texts that would regulate the Waiver.

6.65. The representative of **India** thanked the TRIPS Council Chair for her leadership and the status report which reflected the developments that had taken place since the last report to the General Council in December 2020. India thanked and welcomed all the co-sponsors including the African Group and the LDC Group. The Proposal reflected the voice of 57 Members with many more supporting from the floor since its introduction in October 2020. Through the documents mentioned in the Chair's report, the proponents had answered all the questions posed in various sessions of the TRIPS Council and had presented evidence regarding the intellectual property barriers that continued to hinder an effective response to the COVID-19 pandemic.

6.66. In a recent study, it had been estimated that the global economy stood to lose as much as USD 9.2 trillion if the international community failed to ensure developing economy access to COVID-19 vaccines. The study showed that advanced economies even if they vaccinated all of their citizens would remain at risk of a sluggish recovery with a drag on GDP if infection continued to spread unabated in emerging markets.

6.67. Three months after the emergence of successful vaccines, the global vaccination scenario still looked grim. The UN Secretary-General in his recent press briefing had noted that the progress on vaccinations had been wildly uneven and unfair and that more than 130 countries had not received a single dose. He warned that if the virus was allowed to spread like wildfire in the global south, it would mutate again and again and that it could prolong the pandemic significantly, enabling the virus to come back to plague the global north. To slow down the ability of the virus to infect new

people and mutate further, Members needed true vaccine internationalism and the TRIPS Waiver was an effective and pragmatic way to achieve it.

6.68. On its part, India had supplied 37 million vaccine doses to 35 countries and UN Health workers as of 1 March 2021 under the Vaccine Maitri – Vaccine Friendship Initiative. 39 more countries would be supplied in the coming days ranging from Europe, North America, Latin America and the Caribbean to Africa, Southeast Asia and the Pacific Islands. India had also gifted 200,000 doses for the UN Peacekeepers. The UN Secretary-General had stated that India had been a global leader in pandemic response efforts. Despite scarce resources and a population of more than 1.3 billion, India was doing its bit towards equitable delivery of vaccines. If the existing global manufacturing capacity could be used for mass manufacturing by providing legal certainty to manufacturers over use of COVID-related IP, which was the chief objective of the Waiver, then humanity could accelerate the fight to win over the virus.

6.69. India responded to few of the repeated arguments. The delegations that opposed the temporary Waiver Proposal had argued on one hand that the Waiver, if granted, would not result in augmenting the manufacturing capacity and, on the other, they argued that the Waiver would impact the commercial interests of existing IP holders as a lot of manufacturing could come into play without agreement with the IP holders. India would like to understand the dichotomy that "if the Waiver would not lead to increase in manufacturing capacity, meaning, no new manufacturers would enter into production of COVID-19 products even with the proposed Waiver in place, then how would the commercial interests of existing IP holders be impacted?" On the other hand, "if manufacturing was going to increase significantly and thereby impacting commercial interests of IP right holders, then were they not agreeing that the final objective in the present scenario was to increase manufacturing?"

6.70. Some Members had questioned whether the Waiver was a proportional response to the pandemic. Since the outbreak of the pandemic, almost every country had implemented or was still implementing lockdown in some form or another to curtail the spread of COVID-19. That did not mean that authorities had been against the principle of "right to freedom of movement". Governments worldwide had introduced fiscal packages to the tune of billions of US dollars to help the recovery of ailing economies. That did not mean that they had deviated from their stated objective of fiscal consolidation towards fiscal profligacy. In the same light, the temporary Waiver from certain provisions of the TRIPS Agreement by following due process did not mean that the co-sponsors were against the principle of intellectual property rights. Members should not forget that research and innovation during that period had been spearheaded by massive public funding, expedited regulatory approvals and global collaboration. The global community had resorted to exceptional measures in the exceptional circumstances of the COVID-19 pandemic, and the Waiver should be seen in similar vein.

6.71. Globally, governments had intervened to suspend air transport and restrict mobility in order to prevent the spread of COVID-19. Sectors like civil aviation, travel and tourism, hospitality, small businesses including MSMEs continued to be severely impacted by such state interventions. Globally, trade in travel services had been down by 68% in the third quarter of 2020 as compared to the same period in 2019. Trade in transport services had also declined by 24% over the same period. Those sectors were also important for the global economy, for growth and for employment. Certainly, governments were not against the interest of those sectors. India would like to know why commercial interests of only few companies were so sacrosanct. If it was to preserve incentives to innovate, then such commercial loss, to the tune of a few tens of billions of USD maximum, could always be compensated by further incentives through pooling of public funding and global coordination. On the other hand, one percent improvement in global GDP from the baseline scenario would give USD 850 billion worth of global output. Therefore, an outcome on the Waiver would not only help in saving valuable human lives but would also give a comforting signal to boost the consumer confidence in the economy and would accelerate the recovery of world trade and global GDP.

6.72. Another repeatedly flagged by some opponents concerned the possibility of the TRIPS Waiver proposal coming in the way of the COVAX Facility. The temporary waiver of certain provisions of the TRIPS Agreement was only going to aid in meeting the final objective of COVAX. India understood that COVAX was a demand side initiative. It did not address supply side constraints. If Members did not address supply side issues then they would not be able to increase the production of vaccines. The Waiver would help the COVAX mechanism by augmenting the manufacturing capacity globally.

6.73. Members could not continue to engage in endless discussions while millions of lives and livelihoods were lost to the COVID-19 pandemic. The world needed concerted efforts by all Members to ensure that the WTO made a meaningful contribution to defeat COVID-19 and to prove that the WTO could indeed deliver in crisis situations. The proponents were ready to engage in good faith and to have frank discussions on the text of the Waiver, relating to both its duration and scope, in order to operationalize the Waiver in the shortest possible time. Moving to a text-based negotiation could appear to be yielding from the high moral ground of being the sole protectors of IP rights for some Members but not doing so meant a willingness to stand by a poor choice, devoid of ground realities and just opposite to what was the need of the hour. India urged Members to reach consensus on the Waiver Proposal to ramp up production for the cause of truly ensuring fair, equitable and affordable access to COVID-19 products in a timely manner. India hoped that the Proposal would reach a common landing zone and not suffer the repeated blocking of text-based negotiations.

6.74. The representative of **Tanzania** associated with the statement by the African Group and the ACP and welcomed Dr. Ngozi Okonjo-Iweala on her first General Council meeting as Director-General. Tanzania thanked the Chair of the TRIPS Council for her report and noted that it had previously expressed in the TRIPS Council and the General Council its desire for the adoption of the proposed waiver due to its importance and relevance in the fight against the imminent threat to Members' public health systems. The prevailing exceptional circumstance Members were in and the justification provided by the proponents and co-sponsors at the TRIPS Council and the General Council sufficed for the General Council to adopt the Proposed Waiver without further delay. Governments, civil society and many other stakeholders across the world had expressed similar concern for which a serious consideration was desired in order for the WTO to remain relevant.

6.75. The representative of **Norway** said that, in listening to the statement of Dr. Ngozi Okonjo-Iweala, Norway made the same observation as Jamaica that she had hit the ground running. Norway assured Dr. Ngozi that it would do its best to keep up with her pace. Norway thanked the TRIPS Council Chair for having facilitated discussions on that important topic and for having secured consensus for the report to the General Council. Norway agreed that nobody was safe until everybody was safe. Members were working hard to make that happen through various international cooperative efforts. Norway had listened carefully to the views expressed by Members in both formal and informal settings and had taken note of statements from proponents that they were willing to discuss scope and duration of the Waiver. Norway considered that engagement to be promising and hoped that Members could continue their deliberations in a constructive mode.

6.76. The representative of **Singapore** assured Dr. Ngozi Okonjo-Iweala of Singapore's commitment to work closely with her and her team to strengthen the WTO. Singapore welcomed the status report delivered by the TRIPS Council Chair and appreciated her continuing efforts to advance evidence-based discussions on the issue as well as Members' flexibility to reach consensus on the proposal. Members remained committed to work towards the common goal of protecting public health and mitigating the effects of the COVID-19 pandemic through ensuring timely and equitable access to diagnostics, vaccines and treatment. Members should achieve that objective in accordance with the agreed rules of the multilateral trading system. Access to COVID-19 diagnostics, vaccines and treatment was a multifaceted and complex issue. It was not productive to reduce it to one dimension. Given the multidimensional challenges in producing or ramping up production of vaccines, Members should adopt a more holistic approach that did not simply focus on IP rights but rather addressed all the challenges so that they could collectively work to get vaccines into the arms of their people.

6.77. The representative of **Namibia** associated with the statement by the African Group. Numerous known challenges affected Members especially developing and least-developed countries to fully utilize flexibilities under the TRIPS Agreement which, with the current pandemic, posed an even greater threat to humanity. Equitable access to medicines and vaccines for all was a priority. Namibia therefore underscored the importance of implementing a waiver as proposed by India and South Africa. In addition, Namibia supported a call to move the discussion to text-based negotiations with a view to achieve a balanced outcome of the Waiver on Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19.

6.78. The representative of **Cuba** said that it was an honour and a privilege to work with Dr. Ngozi Okonjo-Iweala in the organization and reiterated Cuba's intention to cooperate in every way possible to help her meet the organization's mandate and fulfil her duties as Director-General. Cuba commended the TRIPS Council Chair for her efforts in facilitating discussions on the TRIPS Waiver

Proposal. Her report showed the progress Members had made in the discussions thus far. Members were yet to reach consensus but Cuba saw in those debates that they shared common goals.

6.79. The goal and vision that should lead Members' conversations was access to health – one of the fundamental human rights. That included timely and equitable access to health services. Cuba had a free, high quality and universal healthcare system which guaranteed the right to health of all Cubans. While Cuba had had COVID-19 cases in its population, its system had allowed it to stand up and to have some positive outcomes in the context of the COVID-19 pandemic. If Members were to slow the spread of the pandemic, it was urgent for them to ensure international cooperation to accelerate and scale up the production of vaccines and essential medical supplies and equipment to ensure the protection of everyone in all parts of the world.

6.80. Cuba had put forward vaccine candidates for COVID-19 which was currently in clinical trials – thanks to Cuban scientific research and the excellent work of the scientists and despite all of the difficulties that came with the economic, financial embargo practiced against Cuba by the United States. The world could only move forward if Members set aside their differences and had a common response to the challenges they faced. The developing world would continue to extend its cooperation and solidarity in the fight against the pandemic.

6.81. The representative of **Chad, on behalf of the LDCs**, had co-sponsored the Waiver Proposal and supported the report and efforts of the TRIPS Council Chair. The LDC Group urged Members to work with the proponents to solve the matter as many lives were at stake. Members should stop the trend of vaccine nationalism that appeared to be on the rise. A pandemic with a global impact of that proportion required no one to be left behind in terms of access to lifesaving and protective vaccines.

6.82. The representative of **Gabon** associated with the statements by the ACP and the African Group. Gabon supported the request for a Waiver by India and South Africa and commended the TRIPS Council Chair for her work in that regard. The request aimed at effectively addressing the COVID-19 pandemic on a global scale. Such a Waiver would contribute to the work Members were doing to ensure that the multilateral trading system could bring coordinated, effective and equitable response to the global health crisis by allowing to strengthen global production chains of diagnostics, vaccines and other products used to treat COVID-19. The multilateral trading system had an extraordinary opportunity before it to show its relevance.

6.83. The current pandemic was having a very strong impact on the world – slowing economies which could be fatal to many countries. It was clear that if Members were to stop the crisis and save the global economy, access to vaccines should be seen as a common good. In fact, if Members were to effectively fight the pandemic, international cooperation was not an option but a right and a duty. Members should take measures which would overcome the problems with delivery and stock which were faced by most of the countries that were beginning their vaccine programmes. Gabon invited the General Council to enter into a constructive debate on that matter.

6.84. The representative of **Malaysia** underscored the importance of timely access to affordable diagnostics, therapeutics, vaccines and other medical products in order to effectively contain the spread of COVID-19. Many delegations had expressed their interest in global cooperation. The fight against the global pandemic, which was taking so many lives and badly hitting economies, required enhanced international cooperation and worldwide solidarity. With that in mind, Malaysia welcomed discussions and engagement on the Waiver Proposal thus far. In view of the pressing global need to prevent, contain and treat COVID-19, Malaysia stressed the importance of undertaking all measures necessary to facilitate the supply of essential medicines and equipment - enhancing their accessibility and affordability. Malaysia looked forward to advancing meaningful discussions in that area.

6.85. The representative of **Cambodia** associated with the statement by the LDC Group. The COVID-19 pandemic had affected many sectors especially those related to health. LDCs were facing a lot of challenges during that period further worsening their capacity constraints including on acquiring sufficient vaccines and medicines. Cambodia encouraged all Members to explore all possibilities to ensure that developing and LDC Members would be able to access affordable COVID-19 treatments, vaccines and related medicines. The proposal for a Waiver from Certain Provisions of the TRIPS Agreement would contribute and assist Members to resolve those challenges and constraints they faced in that regard. Cambodia therefore encouraged Members to positively

consider and support the Proposed Waiver and reach consensus. Cambodia thanked Members and international organizations including the WHO for working closely with it to prevent the spread of the virus as well as China, India and others for providing vaccines.

6.86. The representative of **Canada** supported the status report and was pleased that Members were able to reach agreement on a way forward on that important discussion to which Canada remained committed. Canada looked forward to resuming constructive discussions at the TRIPS Council meeting on 10-11 March. Canada acknowledged the continued and devastating impact of COVID-19 for countries around the world and recognized that the procurement of COVID-19 diagnostics, therapeutics, vaccines and equipment had been and remained extremely challenging including in view of production capacity.

6.87. Members had the ability to make use of the interpretation framework and the concrete consensus-based tools under the TRIPS Agreement to address any IP related public health challenges that could arise Members' response to COVID-19 and remained fully open to exchanging their own experiences and hearing about concrete challenges faced by Members in that area. Canada had not rejected from consideration and remained fully open to discussing any concrete trade-related IP challenges faced by Members in relation to COVID-19 and any demonstrated inability of the TRIPS Agreement's flexibilities to address those challenges so that they could discuss what approach or approaches would address the concerns of Members in a consensus-based manner.

6.88. The **Chairman** said that Members had had another rich and interesting discussion which showed the importance they attached to the issue. He encouraged all Members to remain positively engaged in the further discussions in the TRIPS Council which would take place next week. He again thanked the TRIPS Council Chair for her status report and, as was heard earlier, the TRIPS Council would report back to the General Council in line with Article IX:3 of the Marrakesh Agreement.

6.89. The General Council **took note** of the TRIPS Council Chair's report and of the statements. [...]