

**WORLD TRADE ORGANISATION (WTO)  
Council for Trade-Related Aspects of  
Intellectual Property Rights (TRIPS Council)**

**AIPPI's position paper on the waiver for certain provisions of the TRIPS  
agreement for the prevention, containment and treatment of COVID-19  
proposed by some countries within the WTO.**

**12 May 2021**

AIPPI submits the following position relating to the above captioned topic, which is of paramount relevance to the matters our Association daily deals with. This position paper has been prepared by AIPPI's Standing Committees on TRIPs and Pharma and has been approved by the AIPPI Bureau.

**A. INTRODUCTION TO AIPPI**

AIPPI, the International Association for the Protection of Intellectual Property, was founded in 1897, and is dedicated to the development, improvement, and legal protection of intellectual property. The acronym of the organization was derived from its name in French: *Association Internationale pour la Protection de la Propriété Intellectuelle*. AIPPI is a non-affiliated, non-profit, politically neutral organization headquartered in Switzerland, having over 8,000 members representing over 130 countries. The members of AIPPI include lawyers, attorneys, and agents working across all fields of intellectual property in corporate and private practice throughout the world, as well as academics, judges, government officials and other persons interested in intellectual property. AIPPI is organized into 68 National and 2 Regional Groups.

The objective of AIPPI is to improve and promote the protection of intellectual property at both national and international levels. It does this by studying and comparing existing and proposed laws and policies relating to intellectual property and working with both government and non-government organizations for the development, expansion and improvement of international and regional treaties and agreements, and national laws.

**B. POSITION POINTS**

1. AIPPI is aware of the proposal submitted before the WTO TRIPS Council on 2 October 2020, and subsequently sponsored by other WTO members, on a waiver from certain provisions of the TRIPS Agreement for the prevention, containment, and treatment of COVID-19. The main proposition in this proposal is to waive obligations of WTO members to implement or apply Section 1 (copyright and related rights), Section 4 (industrial designs), Section 5 (patents) and Section 7 (protection of undisclosed information) of Part II of the TRIPS Agreement or to enforce these Sections under Part III of the Agreement, in relation to prevention, containment or treatment of COVID-19, for an undetermined time, subject to yearly review until the waiver can be terminated in accordance with the provisions of paragraph 4 of Article IX of the WTO Agreement.

2. AIPPI shares the concerns raised by the waiver proponents and co-sponsors, and echoed by other WTO members, international organisations, and the public opinion with respect to the challenges posed by the current pandemic to a plurality of aspects of the world's society and economy. Moreover, our Association applauds the calls for an active commitment to a comprehensive, global approach that leverages the entire multilateral trading system in place to support the research, development, manufacturing, and distribution of safe and effective COVID-19 diagnostics, equipment, therapeutics, and vaccines.
3. We agree with the WTO General Director's view<sup>1</sup> that the WTO is a logical forum for discussion aimed to find a way forward on the issues mentioned above.
4. The protection of intellectual property rights through the TRIPS Agreement is at the core of the WTO, setting out minimum standards of intellectual property protection. Said Agreement is often described as one of the three "pillars" of the WTO; the other two being trade in goods (the traditional domain of the GATT) and trade in services<sup>2</sup>. A point of view from a WTO member overlooking the relevance of intellectual property would be incompatible with said member joining the Organisation. Accordingly, we opine that the role and importance of intellectual property rights in world trade is not only well known to WTO members but should be encouraged and promoted by the same. In this respect, AIPPI Pharma, Biotechnology and TRIPS Standing Committees published on February 19, 2018 a position paper "*in response to the United Nations Secretary-General's High Level Panel Report of the United Nations Secretary-General's High Level Panel on Access to Medicines*"<sup>3</sup> and on March 11, 2020 a "*Position Paper on the Role of Patents in Development*"<sup>4</sup>.
5. We assert that intellectual property rights should not be viewed *a priori* by any WTO member as a barrier to the development, manufacturing, distribution and provision of supplies and services of any kind. To the contrary, according to Article 7 of the TRIPS Agreement (Objectives)<sup>5</sup>, the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations. The Doha Declaration on the TRIPS Agreement and Public Health<sup>6</sup> indicates that the TRIPS Agreement is to be part of the wider national and international effort to address public health problems.
6. AIPPI is not aware of evidence that intellectual property rights constitute a barrier for accessibility of COVID-19 related medicines and technologies. In the opinion of AIPPI, waiving TRIPS provisions would negatively impact the framework established to reach the objectives mentioned above on both a medium and a long-term basis. AIPPI also urges WTO members to recognize how intellectual property rights have contributed to the advancement of science and to innovations in medicine and public health. The recently developed COVID-19 vaccines and therapeutics were discovered based on years of research supported by intellectual property rights.
7. AIPPI supports the TRIPS Agreement and the flexibilities it provides to WTO members as well as the freedom to determine the appropriate method of implementing the provisions of the agreement within the members' own legal systems (Article 1.1). Among said flexibilities are those of Article 31, 31bis, the Doha Declaration on the TRIPS Agreement and Public Health<sup>7</sup>, as well as those aimed to permit developing and least-

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<sup>1</sup> [https://www.wto.org/english/news\\_e/spno\\_e/spno7\\_e.htm](https://www.wto.org/english/news_e/spno_e/spno7_e.htm)

<sup>2</sup> [https://www.wto.org/english/tratop\\_e/trips\\_e/tripfq\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/tripfq_e.htm)

<sup>3</sup> <https://aippi.soutron.net/Portal/DownloadImageFile.ashx?objectId=8335>

<sup>4</sup> <https://aippi.soutron.net/Portal/DownloadImageFile.ashx?objectId=>

<sup>5</sup> [https://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_03\\_e.htm](https://www.wto.org/english/docs_e/legal_e/27-trips_03_e.htm)

<sup>6</sup> [https://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_trips\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm)

<sup>7</sup> *Idem*

developed countries to use transition period extensions to implement TRIPS-compatible norms<sup>8</sup> in a manner that enables them to pursue their own public policies, either in specific fields like access to pharmaceutical products<sup>9</sup> or protection of their biodiversity, or more generally, in establishing macroeconomic institutional conditions that support economic development.

8. Consistent with our support for the flexibilities addressed above, our Association has passed resolutions in our annual congresses of years 1956, 1957, 1958, and 1960, on “*Restrictions of the rights of the patentee for reasons of public interest*”<sup>10</sup>, and in year 2008, a resolution entitled “*The impact of public health issues on exclusive patent rights*”<sup>11</sup>. We hereby reiterate our support for the right of WTO members to utilize the flexibilities already provided by the TRIPS agreement to protect public health under Article 8 of the Agreement and encourage them to implement functional domestic legal frameworks enabling them swiftly to do so.
9. To ensure legal predictability as well as the effectiveness of the requested legal changes, AIPPI believes that the execution, the implementation and the consequent effects of a waiver in various legal systems should be appropriately assessed before any change or waiver is effected.
10. We trust that the discussions being held at the WTO TRIPS Council will (1) find an appropriate global approach to contribute to solving the problems posed by the current pandemic, while (2) balancing the right of all to have access to health services and supplies with other stakeholders’ rights and (3) safeguarding, with a long-term view, the system that has proven effective in nurturing innovation and enabled the world to achieve a stage of technological development advanced enough successfully to develop, produce and deploy multiple state-of-the-art responses to pressing global challenges in record time, as we all have recently witnessed.

Respectfully submitted,

**International Association for the Protection of Intellectual Property (AIPPI)**

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<sup>8</sup> *Extension of the transition period under Article 66.1 for least developed country members:*  
<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/64.pdf&Open=True>

<sup>9</sup> *Extension of the transition period under article 66.1 of the TRIPs agreement for least developed country members for certain obligations with respect to pharmaceutical products:*  
<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/73.pdf&Open=True>

<sup>10</sup> <https://www.aippi.fr/upload/Q1%20-%2089%20rs3english.pdf>

<sup>11</sup> <https://aippi.soutron.net/Portal/DownloadImageFile.ashx?objectId=8062>