

The protection prescribed for pharmaceutical patents under the TRIPS Agreement and its impact on facing epidemics in developing countries .

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Abstract:

The TRIPS Agreement is one of the most important agreements of the World Trade Organization, given the system it has adopted for protecting intellectual property rights in general, and pharmaceutical patents in particular.

Recently, many questions have been raised about the legal protection granted to pharmaceutical patents under the TRIPS Agreement. This protection has been extended in a manner that no longer guarantees even the minimum standards of balance between the rights of patent holders, on the one hand, and the rights of those who need to benefit from them in developing countries, on the other. This is especially true given the dominance of global pharmaceutical companies in the pharmaceutical market and their disregard for basic public health considerations. This has been exemplified by the outbreak of the novel coronavirus.

This study addresses the issue of the strict protection stipulated in the TRIPS Agreement and its impact on developing countries in confronting the repercussions of the coronavirus, in terms of their ability to access medicines, vaccines, and medical equipment.

Introduction

The provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) are an explicit response to one of the most important demands made by developed, technology-exporting countries against their developing counterparts, the primary and permanent importers of this technology.

Globally, developing countries generally lack a stable technological base that would enable them to achieve their internal goals, primarily the spread of prosperity and the promotion of economic and social development for their people. They also lack, on the external (international) level, the ability to cope with fierce global competition in various essential manufacturing fields, particularly those related to the pharmaceutical industry.

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It is noteworthy that the legal protection granted to pharmaceutical patents under the TRIPS Agreement has recently expanded in a manner that no longer guarantees even the minimum standards of balance between the rights of patent holders, on the one hand, and the rights of those who need to benefit from them, especially in developing countries, on the other. This is in light of the insistence of developed countries, represented by their major companies that control the pharmaceutical market, on thwarting any attempt by their developing counterparts to adapt the protection system to meet their urgent needs to benefit from these patents, especially in emergency situations and severe epidemics.

The provisions of the TRIPS Agreement—particularly those regulating patents in the pharmaceutical industry—are of interest to all countries worldwide, as they provide protection for the latter by imposing a number of obligations on ratifying countries. However, they also create significant difficulties in obtaining medicines, especially during epidemics, which infringes on the human right to health, particularly in developing countries. With the outbreak of the COVID-19 pandemic in early 2020, these countries faced significant difficulties in obtaining medical supplies to combat this epidemic, given their limited scientific and industrial capabilities in this field. Meanwhile, competition intensified among major pharmaceutical companies in the developed world to dominate innovations to control the spread of this epidemic by discovering appropriate treatments and vaccines. This competition, under the protection of intellectual property rights in pharmaceutical industries enshrined in the TRIPS Agreement, was met with almost complete disregard for the public interest, which requires preserving public health in such exceptional circumstances.

Based on the above, this research paper attempts to address a key problem:

How can developing countries confront the effects of the COVID-19 pandemic given the protection imposed by the TRIPS Agreement on pharmaceutical patents?

This problem stems from a number of sub-questions, including:

What are the foundations established by TRIPS for the protection of pharmaceutical patents, and to what extent do they take into account public health?

What are the most significant obstacles facing developing countries in accessing COVID-19 treatments and vaccines? And how can they be mitigated or overcome? What then is the fate of developing countries' right to health and access to medicine in light of the restrictions imposed by the

TRIPS Agreement regarding established means of protection, especially in light of the continued evolution and resurgence of the virus?

To answer this problem and the questions arising from it, **we have developed the following methodological plan:**

First: Pharmaceutical Patents in the TRIPS Agreement: Between Protection and Public Health

The TRIPS Agreement has contributed to providing protection for patents in the pharmaceutical industry, imposing new provisions and rules that member states must adhere to and incorporate into their domestic laws to ensure adequate legal protection for innovations, most of which originate from developed countries¹. However, this protection has had a significant impact on public health globally, as we will explain in the following two sections:

1. Pharmaceutical Patent Protection in the TRIPS Agreement

The TRIPS Agreement has adopted a special system that differs from that used in other international agreements in the field of intellectual property. This system is primarily based on including pharmaceutical products within the scope of pharmaceutical patents as a means of protecting the pharmaceutical industry². TRIPS is an extension of the 1883 Paris Convention for the Protection of Industrial Property and the 1886 Berne Convention for the Protection of Literary and Artistic Works, as amended in 1986. It derives its provisions from these two agreements, while expanding the scope of protection to meet the demands of developed countries, so that protection extends beyond the product itself. To include the method of manufacturing, regardless of the technological field to which it belongs, and whether the product is imported or local.³

In general, we will discuss the general framework of protection granted by the TRIPS Agreement to pharmaceutical patents through the following two sections:

¹ Dr. Muhammad Habhab, "The Impact of the Patent System in International Laws and Agreements on the Right to Access Medicine," an article published in the Journal of the Kuwait International Law School, Year 8, Issue 2, Serial No. 30, Shawwal-Dhu al-Qi'dah 1441 AH - June 2020, p. 362.

² Ben Laamer Walid, "The Legal System of the Pharmaceutical Industry in Algerian Law and the TRIPS Agreement," PhD thesis in Law, Specialization: Industrial Property, Faculty of Law and Political Science, University of Batna 1, 2019-2020, p. 263.

³ Article 27/1 of the TRIPS Agreement - the Agreement on Trade-Related Aspects of Intellectual Property Rights, concluded in Marrakesh, Morocco, on April 16, 1993, within the framework of the World Trade Organization.

1.1. Scope of Protection for Pharmaceutical Patents in the TRIPS Agreement

The scope of legal protection granted to pharmaceutical patents under the TRIPS Agreement is determined as follows:

1.1.1. Generic Protection for Pharmaceutical Patents in the TRIPS Agreement

Generic protection for pharmaceutical patents means protection of the latter, regardless of its type, whether it concerns the final product itself, its manufacturing method, or new uses for medicines.¹ The TRIPS Agreement has expanded the scope of protection in this regard, as previously mentioned, by permitting the granting of patents for any invention, whether a product or an industrial process, in all fields of technology. Thus, we have two types of pharmaceutical patents that must be distinguished according to the TRIPS Agreement: a new pharmaceutical product patent and an industrial process patent.

1.1.1.1. New Pharmaceutical Product Patent

This refers to the discovery of a previously unexisting physical object with characteristics that distinguish it from similar objects, such that it cannot be confused with similar products, such as the invention of a new drug that treats cancer.²

A new product patent allows its owner to enjoy a number of exclusive rights throughout the protection period³, provided that the invention is absolutely novel, in accordance with Article 27/1 of the Convention.

1.1.1.2 Process Patent

A patent is granted for an innovation that does not relate to the production of something new, but rather to an industrial method or means not previously used

¹ Rama Khaled Joudeh, The Impact of Industrial Intellectual Property Laws on the Pharmaceutical Industry - A Comparative Study, a thesis to fulfill the requirements for a Master's degree in Private Law, College of Graduate Studies, An-Najah National University, Nablus, Palestine, 2017, p. 36.

² Ben Ayad Jalila, "The Impact of the TRIPS Agreement on Industry in Developing Countries," an article published in the Journal of Public Administration, Law, and Development, University of Boumerdes, Algeria, Volume 2, Issue (1), 2021, p. 38.

³ Article 28/1/a, b of the TRIPS Agreement states the following: "A patent gives its owner the following rights: (a) When the subject of the patent is a tangible product, the right to prevent third parties who have not obtained his consent from making, using, offering for sale, selling, or importing that product for these purposes. (b) When the subject of the patent is an industrial process, the right to prevent third parties who have not obtained his consent from actually using the process, including: using, offering for sale, selling, or importing at least the product directly obtained by that process."

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to achieve a known result, or relates to a new application of industrial methods previously known to mankind.

Here, the invention results in the creation of a new method for producing something previously invented. The patent is granted to the discoverer of the new method, who enjoys the necessary protection, independently of the rights of the patent holder who discovered the invention (the pharmaceutical product) that was discovered using a method different from this new method.¹

We also note that the TRIPS Agreement makes its provisions regarding the expansion of pharmaceutical patents, as previously mentioned, binding on member states whose domestic laws exclude pharmaceutical, chemical, or food inventions from the scope of patent protection, or restrict patent protection to inventions related to manufacturing processes rather than products. These states must amend their domestic laws to comply with TRIPS provisions in this regard.²

It should also be noted that the above agreement—in derogation from the general rules of proof—granted the pharmaceutical patent for an industrial process a special status by shifting the burden of proof from the plaintiff to the defendant in civil lawsuits related to infringement of this type of patent, granting judges discretion in this regard in cases where this is required.³

Some experts⁴ justify the equality established by the agreement regarding the granting of patents for pharmaceutical products and manufacturing processes with the following justifications:

- Protecting pharmaceutical companies from the risk of infringement of intellectual property rights, such as imitation without any financial compensation.

- The deceptive figures and statements that pharmaceutical companies have continued to make since the 1970s, regarding the exorbitant costs required to discover a new drug.

- The tremendous technological development that has led to radical changes in the industrial environment, as the pharmaceutical industry has become entirely

¹ Sharifa Qarash, "The Impact of the Implementation of the TRIPS Agreement on Pharmaceutical Patents," an article published in the Journal of Studies and Research, Arab Journal of Humanities and Social Sciences, University of Djelfa, Algeria, Volume 11, Issue 2, June 2019, Year 11, p. 672.

² See the text of Article 8 of the same agreement.

³ See the text of Article 34/1 of the aforementioned TRIPS Agreement.

⁴ same reference

technology-based, facilitating the illegal imitation of biological inventions and the plant species used in their manufacture.¹

1.1.2. Personal and Territorial Scope of Protection

This scope is determined in the TRIPS Agreement based on the "principle of equal treatment for pharmaceutical patents," meaning that equal treatment is guaranteed for all patents without discrimination between national patents and patents of foreign nationals, meaning only nationals of WTO member states.

Equal treatment is also guaranteed for all inventions, whether developed within or outside the territory of the country, such that there may be no discrimination in the exclusive rights and privileges granted between national and foreign pharmaceutical inventions within the territory of the granting country.²

1.1.3. Timeframe of Protection

In accordance with the principle of equality and non-discrimination from the perspective of the agreement, the latter has set a minimum period for pharmaceutical patent protection of no less than twenty years from the date of filing the patent application.³ This period is not limited to this, as pharmaceutical companies may exploit—before the expiration of the protection period—their monopoly over the product and/or its manufacturing process by seeking to extend the period by reformulating the drug's form or slightly modifying its composition or manufacturing process to obtain a new protection period.⁴

1.2. Protection of Undisclosed Pharmaceutical Information (Trade Secrets)

The TRIPS Agreement specifically protects undisclosed information, as explicitly stated in Article 39: "...Member countries shall protect confidential information in accordance with paragraph 2 and data provided to governments or governmental bodies in accordance with paragraph 3..."

Undisclosed information can be defined as: "The set of commercial, financial, administrative, and technical information possessed by a business or used in the conduct of its business, which has economic value due to its confidentiality and current or potential effectiveness, and which is difficult for third parties to

¹ Dr. Muhammad Habhab, op. cit., p. 369.

² Hossam El-Din El-Saghir, "The International Protection of Industrial Property Rights: From the Paris Convention to the TRIPS Agreement," WIPO National Training Seminar on Intellectual Property for Egyptian Diplomats, World Intellectual Property Organization and the Institute of Previous Studies, Cairo, 2007, p. 16.

³ See the text of Article 33 of the aforementioned TRIPS Agreement.

⁴ Dr. Muhammad Habhab, op. cit., p. 370.

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access lawfully due to reasonable efforts made by its owners, under the circumstances, to maintain its confidentiality."¹

A distinction should be made between the aforementioned undisclosed pharmaceutical information and information related to pharmaceutical patents, which are protected under patents, in terms of the scope and duration of protection, the obligation to disclose, and the exclusive right to each:

1.2.1. In terms of the scope and duration of protection

In this context, undisclosed pharmaceutical information enjoys a more comprehensive and broader scope than pharmaceutical patents. Specific and precise patent conditions are set, while confidentiality and economic value are sufficient to protect undisclosed information.²

We also find that the protection of undisclosed information is not limited to a specific period, as it continues as long as the information remains confidential and has not been disclosed to others. The term of patent protection is generally set at 20 years from the filing date of the relevant application.

1.2.2. In terms of the obligation to disclose

The TRIPS Agreement protects the owners of undisclosed information by requiring them to keep it confidential and not disclose it. It also allows them to prevent others from using it in a manner that violates fair commercial practices without their consent³. It requires member countries to protect data required for marketing approval of pharmaceuticals or agricultural chemical products from disclosure unless necessary to protect the public or unless measures are taken to prevent illegal commercial use.⁴

On the other hand, the owner of a pharmaceutical patent is required to disclose the secret of their invention to obtain a pharmaceutical patent and benefit from exclusive rights.

1.2.3 In terms of exclusive rights

The owner of a pharmaceutical patent enjoys an exclusive right that guarantees them the right to prevent others from using their patent, even if they have obtained the information legally. They may not exploit the patent without the owner's permission under any circumstances.⁵

¹ Rama Khaled Gouda, op. cit, p. 50.

² Rama Khaled Gouda, the same reference, p. 51.

³ See Article 39/2 of the aforementioned TRIPS Agreement.

⁴ See Article 39/3 of the same agreement.

⁵ Hassan Nasr Abu Al-Fotouh Farid, Protection of Intellectual Property Rights in the Pharmaceutical Industry under the TRIPS Agreement and Egyptian Law No. 82 of 2002, Mansoura, Egypt, 2006, p. 162.

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The exclusive right of the owner of undisclosed pharmaceutical information includes preventing its exploitation only if it was obtained illegally (without their consent or in a manner that contravenes fair commercial practices). Protection does not extend to the opposite case.¹

2. The Relationship Between the TRIPS Agreement and Public Health

The relationship between public health and the TRIPS Agreement is defined by the protection the latter provides to pharmaceutical patents and everything related to the pharmaceutical industry, and the implications of this protection for the right to access medicine and, consequently, the right to health, as we will explain below:

2.1. The decline of the right to access to medicines under the TRIPS framework

The right to health can be summarized in two words: prevention and treatment, and they can only be achieved through access to medicines². The right to health is characterized by four dimensions: non-discrimination, physical access to medicines and security, access to information, and affordability.³

The World Trade Organization's interest in the right to health is evident in the provisions of the TRIPS Agreement, including its provisions regarding the protection of pharmaceutical industries at the international level. This has created significant difficulties in accessing essential medicines⁴, due to the dominance of large corporations that do not take into account the suffering of patients unable to obtain medicines due to poverty, illness, and financial inability. This was confirmed by the United Nations Development Conference, which stated: "Approximately two billion people in the world suffer from inadequate or no access to essential medicines and vaccines."⁵

In contrast, proponents of this protection granted by the agreement offer arguments to justify it, most notably that strict protection of the pharmaceutical industry is necessary to ensure access to medicines for all, including developing countries. The higher the threshold for imposing fees on drug users, the more it will allow manufacturers to improve their pharmaceutical products, by funding

¹ Rama Khaled Gouda, op. cit, p. 52.

² Dr. Muhammad Habhab, op. cit, p. 361.

³ Rama Khaled Gouda, op. cit, p. 98.

⁴ Dr. Samira Amarouche, Dispute Settlement in the World Trade Organization and its Impact on the Principle of Sovereignty, First Edition, Al-Wafaa Legal Library, Alexandria, 2017, p. 385

⁵ See also: UNCTAD Secretariat, Memorandum on the Role of Competition in the Pharmaceutical Sector and its Benefits to Consumers, United Nations Conference on Trade and Development, Geneva, 2015, p. 3.

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scientific research and stimulating creativity, which increases innovation. They also argue that strengthening the protection of pharmaceutical patents in developing countries cannot be ignored, as this will divert companies in developed countries from conducting research on anti-epidemic drugs prevalent in these countries.¹

However, the practical reality confirms that the strong protection provided by the TRIPS Agreement would undermine all aspects of the right to health. Its implementation would reinforce socially based discrimination between those who can afford medicine and those who cannot², as is the case for residents of least developed countries, where the established protection increases the inability to bear the costs of treatment. Conversely, a large number of patients would have access to essential medicines at lower prices in the form of what are known as **"generic drugs."**³

Based on the above, while major pharmaceutical companies insist on their right to protect their innovations by earning significant profits for their innovation efforts and covering the costs of scientific research, developing countries continually raise the issue of patents being the direct cause of the high prices of imported medicines and, consequently, the negative impact on healthcare, given the 20-year period required for the use of pharmaceutical patents under TRIPS.⁴ Despite TRIPS' attempts to provide some flexibility to assist developing and least developed countries, as contained in Articles 30 and 31, respectively, and primarily focused on exceptions to patent rights, parallel imports, and compulsory licensing, it has also been surrounded by a set of restrictions that, in the view of developing countries, constitute another obstacle to their access to generic medicines.⁵

¹ Dr. Samira Amarouche, op. cit., p. 386.

² Rama Khaled Gouda, op. cit, p. 98

³ Generic drugs or alternative drugs are exact copies of original drugs, containing the same composition and pharmaceutical form as the original drugs, as well as the same therapeutic properties, but differing in price and cost. A generic drug cannot be manufactured or marketed until 20 years have passed since the original drug was on the market, at which point it becomes public property. At this point, any recognized pharmaceutical company can obtain a license to manufacture it, changing its original name and maintaining its original formula. For more information, see: Bou Betra Tariq, "Pharmaceutical Patents under the TRIPS Agreement," an article published in the Journal of Human Sciences, University of the Brothers Mentouri, Constantine, Issue 48, December 2017, Volume B, pp. 149-159, p. 154.

⁴ Dr. Samira Amarouche, op. cit., p. 387.

⁵ same reference, p. 388.

2.2 The Doha Declaration and the Issue of Public Health

During the Ministerial Conference held by the World Trade Organization from November 9-14, 2001 in Doha, the issue of medicine dominated the discussions. After arduous negotiations between developing and developed countries, led by the United States, the outcome was the issuance of the "Doha Declaration on the TRIPS Agreement and Public Health" on November 14, 2001.

2.2.1. The Most Important Outcomes of the Doha Declaration

The most important outcomes reached by the Doha Declaration are the following:

- * Granting a great deal of flexibility regarding the issue of compulsory licenses, as the Declaration recognizes the freedom of each Member State to grant them and to determine the grounds for granting them, in accordance with Paragraph 5(b) thereof. This implies that developing countries are permitted to benefit from licenses related to public health and related matters, such as medical devices, equipment, etc.

- * Adding more flexibility to states of emergency and urgent situations with regard to public health through Paragraph 5(c) of the Declaration, which states: "...each Member shall have the right to determine what constitutes a public health emergency." National, or any other extremely urgent circumstances, provided that public health crises, including those related to HIV/AIDS, tuberculosis, malaria, and other medicines, can constitute a national emergency or other extremely urgent circumstances.

- * Initiate work to find solutions for countries that lack or have weak pharmaceutical manufacturing capabilities due to their inability to benefit from compulsory licensing provisions. Countries that lack sufficient domestic production capacity will be unable to grant compulsory licenses for local production or the import of medicines, forcing them to request original copies of expensive medicines (in accordance with the condition stipulated in Article 31/f of the Agreement). This prompted these countries to request, at the Doha Conference, that they be granted the possibility of issuing a compulsory license to a product in a third country with production capabilities (a foreign supplier). However, the issue remained unresolved due to this condition¹. Paragraph 6 of the Doha Declaration merely mandated the TRIPS Council to work to find a rapid solution to this problem.

¹ Walid Ben Laamer, Amal Bouhental, "The Impact of the TRIPS Agreement on Promoting Pharmaceutical Technology Transfer," an article published in the Journal of Al-Baheth for Academic Studies, Faculty of Law, University of Batna 1, Volume 7, Issue 1, January 2020, p. 90.

2.2.2. Evaluation of the Doha Declaration

A close reading of the Doha Declaration reveals the following observations:

- Limiting the granting of compulsory licenses to exceptional circumstances related to the spread of epidemics or the declaration of a national emergency, in other words, once again restricting the scope of granting these licenses. Practical reality confirms this observation. Despite the United States' endorsement of the Doha Declaration, it has not changed its trade policy. Rather, it has increased its control to impose the highest possible levels of pharmaceutical patent protection on developing countries, exploiting this exclusive limitation regarding the granting of licenses in emergency situations for commercial and competitive purposes¹, a phenomenon that has occurred during the spread of the COVID-19 pandemic.
- The problem of developing countries benefiting from the manufacture of generic drugs remains, especially given the continued neglect of developed countries to enable their developing counterparts to improve public health and transfer pharmaceutical technology, in addition to the dominance of pharmaceutical companies and their influence over the governments of developed countries.
- Since the Doha Conference, there has been a significant increase in the incidence of intractable epidemics, along with a rise in the number of infected people and the inability to obtain necessary healthcare, such as AIDS, cancer, tuberculosis, malaria, and, most recently, the COVID-19 pandemic.

Second: Developing Countries' Response to the COVID-19 Pandemic Under the Protections Granted to Pharmaceutical Industries Under TRIPS

With the rapid spread of the novel coronavirus around the world, the issue of balancing the protection of pharmaceutical patents and the right of countries worldwide to access the means to confront this pandemic in a fair and equal manner—with respect for public health considerations—has resurfaced forcefully in international relations. This issue concerns the protection of human life by ensuring access to medicines, equipment, and vaccines, amidst numerous obstacles, particularly for developing countries. We will attempt to clarify this in the following:

1. Developing Countries' Path to Obtaining the Treatment and Medical Equipment Needed to Combat COVID-19

Most developing countries, including Algeria, initially confronted the COVID-19 pandemic by resorting to quarantine measures and imposing social

¹ Dr. Samira Amarouche, op. cit., p. 392

distancing. However, as the virus swept across various regions of the world, its astonishing speed of spread and transmission, and the significant increase in the number of infections¹, it was necessary to seek appropriate treatment. These countries were confronted with the provisions of the TRIPS Agreement on Trade-Related Aspects of ... It is noteworthy that since the beginning of the pandemic, there has been an accelerated movement by many global manufacturers to monopolize intellectual property rights over certain products that could be used to treat the coronavirus, while continuing to pursue secret and monopolistic deals that prevent developing countries from benefiting from these medicines. In early 2020, some scientific studies indicated the potential use of **Remdesivir**, a drug produced and developed by the American company **Gilead Sciences**, to treat the Ebola virus².

The company concluded an exclusive bilateral licensing agreement for the promising drug and filed several patent applications for it in several countries. However, it has not been marketed. This attempt to exclude half the world's population from benefiting from competition in the production of generic drugs, which would guarantee a lower price for the treatment.

In January 2020, Chinese researchers at the Wuhan Institute of Virology filed a patent for the use of **Remdesivir** to treat the coronavirus, but the application was criticized because it came before trials had begun confirming its effectiveness in treating the virus.³

Faced with this rush to control the COVID-19 drug market by developed countries and their companies, most developing countries continue to struggle with the scale of human losses and the fear of the collapse of their fragile health systems, especially with this occurring even in some developed countries like Italy. Meanwhile, some developing countries, including Algeria, have resorted to using chloroquine, a drug whose patent protection period has expired and which is now permitted to be manufactured and sold by all pharmaceutical industry specialists.⁴

¹ Walid Ben Laamer, Amal Bouhental, op. cit., p. 91.

² On February 8, 2022, the number of infected people reached 317,056 (412 million), and the number of deaths reached 17,341 (5.8 million). Quoted from: World Health Organization, "Coronavirus: Map of the Epidemic and Latest Recorded Figures," February 10, 2022, available at: [bbc.com/arabic/topics/cyx5kw2wxwzt](https://www.bbc.com/arabic/topics/cyx5kw2wxwzt)

³ Mohamed Chekrin, Hakim Boujtou, "Developing Countries Facing Health Crises in Light of the TRIPS Agreement - The Case of the COVID-19 Pandemic," an article published in the Journal of Strategy and Development, Faculty of Economics, Business and Management Sciences, University of Mostaganem, Volume 11, Issue 4, July 2021, p. 106.

⁴ same reference, p. 106 107.

Amid these developments, developing countries continue their efforts to universalize access to medicines.

Ahead of the World Trade Organization talks in October 2020, India and South Africa submitted a historic request to waive certain intellectual property rights during the COVID-19 pandemic. In this regard, Médecins Sans Frontières (MSF) called on all governments around the world to support this courageous¹ step and extend it to other tools and technologies, including masks and ventilators. **Dr. Sidney Wong**, co-executive director of the MSF Access Campaign, stated: “Not even a global pandemic can prevent pharmaceutical companies from pursuing their business as usual. Countries need to use every means available to ensure that COVID-19 products are available and affordable to everyone who needs them.”

This move, put forward by India and South Africa, could allow the world to avoid a repeat of the tragedy of the HIV epidemic 20 years ago, when monopolization of life-saving treatments left people in wealthy countries without access to antiretroviral drugs while millions in developing countries were left to die².

We note that at the last meeting of the WTO TRIPS Council, held on October 15 and 16, 2020, 99 countries welcomed the request submitted by India and South Africa. Unfortunately, it did not receive the support of many wealthy countries, such as the United States, the United Kingdom, Japan, Canada, Brazil, Australia, Norway, Switzerland, and the European Union.

2. Developing Countries Compete to Develop and Obtain a Coronavirus Vaccine

With the spread of the novel coronavirus, research and development companies and laboratories began working to develop a vaccine for the pandemic, which they did. The World Health Organization (WHO) approved several vaccines based on the Emergency Use Authorization protocol. The global mass vaccination program began in early December 2020 and continues to this day, with the number of vaccine doses required being updated.

¹ Saidi Ben Yahya, “The Role of Compulsory Licenses in Combating Epidemics, ‘Corona’ as a Model,” an article published in the Algerian Journal of Law and Political Science, University Center 4 Ahmed Ben Yahya El Ouencharissi, Tissemsilt, Algeria, Volume 5, Issue 3 Special (2020), p. 165.

² Doctors Without Borders, “Governments Should Support the Suspension of Patents and Monopolistic Practices During the COVID-19 Pandemic,” February 13, 2022, press release, November 20, 2020, available online.

[msf.org/ar/Doctors-without-Frontiers-Demands-Suspension-of-Patents-for-COVID-19-Drug-and-Vaccine-During-Pandemic](https://www.msf.org/ar/Doctors-without-Frontiers-Demands-Suspension-of-Patents-for-COVID-19-Drug-and-Vaccine-During-Pandemic)

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Similarly, controversy over intellectual property rights for coronavirus vaccines has been growing since late last year and is increasing daily, especially with vaccine companies unable to produce sufficient numbers, in addition to the significant gap between rich, developing, and poor countries regarding ensuring mass access to the vaccine.¹

The aforementioned request submitted by India and South Africa included a proposal to waive some provisions of the TRIPS Agreement regarding patents on coronavirus vaccines for a period determined by the organization, to ensure the vaccination of the majority of the world's population.²

This decision likely failed to gain approval from the WHO General Council, which relies on consensus in issuing its decisions.

Developing countries supporting this proposal justify their position of suspending intellectual property rights for COVID-19 vaccines based on several facts, including:³

- The need to address the global disparity in vaccine distribution between rich and developing countries. It is estimated that one in four people in rich countries has received a COVID-19 vaccine, compared to one in over 500 people in poor countries.
- The TRIPS patent protection system was designed to protect scientific innovations from unfair competition for a limited period, not for use in emergency situations. This applies to the situation of the COVID-19 pandemic, which is not a commercial competition, but rather an emergency that has transcended national borders and become global, requiring concerted efforts to confront it as a global crisis, in accordance with Paragraph 5/c of the aforementioned Doha Declaration.
- Vaccine companies have received government financial support amounting to approximately \$19 billion between January and September of last year, allowing them to continue their research and cover their expenses, free from financial pressure on developing countries in exchange for access to the vaccine.

¹ Doctors Without Borders, same reference.

² Future Center for Advanced Research and Studies, "The Controversy over the Copyright of COVID-19 Vaccines...Are There Fair Solutions?", Abu Dhabi, April 29, 2021, accessed February 13, 2022, available at: msf.org/ar/Doctors-without-Borders-Demands-Suspension-of-Patent-for-COVID-19-Drug-and-Vaccine-During-the-Pandemic

³ Future Center for Advanced Research and Studies, same reference.

Conclusion:

In conclusion, we can emphasize that the outbreak of the novel coronavirus has re-emphasized the issue of protecting intellectual property rights, and pharmaceutical patents in particular, as one of the most significant obstacles facing developing countries in accessing necessary treatment, medical equipment, and antiviral vaccines. **This has led to the following consequences:**

- The protection system adopted by TRIPS perpetuates the dominance of global pharmaceutical companies and their pursuit of wealth accumulation at the expense of preserving human lives. This is evidenced by the latter's position during the outbreak of the coronavirus pandemic, where they focused on continuing their monopoly and prioritizing their commercial interests over the requirements of protecting public health and confronting global crises.

- Given the continued economic, scientific, and even political weakness of developing countries, they will remain subject to clinical trials for various epidemics and incurable diseases, making it impossible to obtain appropriate treatments.

- While many developing countries have made significant strides in manufacturing generic drugs to counter the monopoly of TRIPS and pharmaceutical companies and provide medicines to their citizens at an affordable price, Arab countries continue to lag behind and are subject to the repercussions of the agreement's stringent protectionism. **The recommendations we can draw at the end of this research are:**

- The need for developing countries, including Algeria, to encourage scientific research, raise the level of scientists and inventors, and open the way for them to innovate and obtain important patents.

- Developing countries must intensify their efforts by focusing on their right to utilize the flexibilities available in the agreement, as well as work collectively to utilize the provisions of the agreement related to public health, states of emergency, and global crises to their advantage in confronting the repercussions of the coronavirus pandemic.

- Finally, in light of the ongoing debate over the issue of suspending the exclusive protection of intellectual property rights for treatments, vaccines, and medical equipment related to the coronavirus pandemic, and with the increase in infections worldwide, efforts must be intensified to achieve the eradication of the virus before it mutates in a way that makes it impossible to contain and combat with current vaccines.

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