

## **Title: Reform the TRIPS Flexibilities to Better Tackle Public Health Crisis**

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### **Abstract:**

Entering the third year with Covid-19, the access to Covid-related pharmaceutical products and technologies remains to be imbalanced. One of the reasons for such an imbalance is that the WTO TRIPS based intellectual property (IP) framework is unable to provide adequate mechanisms to channel the access to and scaling up of life-saving pharmaceutical products and technologies, particularly for the less developed countries.

The paper aims to explore whether the existing TRIPS flexibilities for exclusive IP rights, affirmed in the Doha Declaration, have effectively removed IP barriers for access to essential pharmaceutical products and technologies and evaluates whether such flexibilities have maintained a right balance between IP protection and the societal interest in public health. The objectives of the paper are threefold. It identifies the gaps between the TRIPS provisions and national practice, discusses possible solutions involving compulsory licence and waiver, and recommends codes of best practice for countries to adopt in the future. With doctrinal legal analysis and a social-legal approach, the paper takes up the view of IP as a complex adaptive system with a particular focus on patents and know-how. It examines the current IP laws and the proposals for reform by developing countries like India, Brazil and South Africa. It further analyses the reasons leading to a (un)successful implementation of a national IP system with flexibilities offered by TRIPS, with consideration of social, legal, and economic factors.

The paper is divided into five chapters. Chapter I reviews the legal aspects of the public health crisis caused by Covid and revisits the theory of balance of interests. Chapter II reviews the international IP framework and conducts a case study of the selected jurisdictions when establishing and implementing a TRIPS-compliant framework that accommodates their

national healthcare needs. Chapter III analyzes the TRIPS flexibilities and compares the proposal for a waiver with the compulsory license about their feasibility and effectiveness in dealing with large-scale public health crises. Chapter IV proposes a model that can be adopted by less developed countries to better tackle public health crises. Chapter V provides conclusions.