

Third INB Meeting

5 – 7 December 2022

WTO Secretariat Intervention

- The WTO Secretariat presents its compliments to the INB Co-Chairs and Bureau and appreciates the opportunity to provide input to the Conceptual Zero Draft of an international pandemic instrument. These comments are delivered under the WTO Secretariat's own responsibility and are without prejudice to the positions of WTO Members or to their rights and obligations under the WTO.
- The WTO Secretariat fully acknowledges that the determination of substantive elements to be included in the instrument is the sole prerogative of WHO Member States. This said, while this input does not attempt to be comprehensive, the INB might find useful the following factual observations and questions for clarification regarding selected elements of the INB's Conceptual Zero Draft:
 - As noted in the WTO Secretariat's second open submission to the INB of 22 September, at the WTO's 12th Ministerial Conference in June 2022, Ministers adopted two instruments as the WTO's Pandemic Response with potential direct bearing on the work of the INB. First, the [Ministerial Declaration on the WTO Response to the COVID-19 Pandemic and Preparedness for Future Pandemics](#) calls for building effective solutions to respond to future pandemics and tasks relevant WTO bodies to address a wide range of trade-related elements some of which are also covered in the Conceptual Zero Draft. It also mandates the WTO to work with the WHO and other international organizations on an international pandemic response. Second, the WTO [Ministerial Decision on the TRIPS Agreement](#) creates an additional avenue for eligible developing country Members to diversify and expand COVID-19 vaccine production. It comprises a targeted waiver of a restrictive condition for the use of a patent-protected invention without authorization of the right holder, as well as clarifications of a number of key TRIPS provisions, precisely geared to address specific potential IP obstacles to diversified vaccine production and supply that were identified by WTO Members.
 - As those outcomes are not referred to in the outline for now, consideration might be given to the inclusion of a cross-reference to the WTO's Pandemic Response in the preambular section of the international pandemic instrument to supplement and complement the references already provided in paragraphs 35–37 of the outline to the [Doha Declaration on the TRIPS Agreement and Public Health of 2001](#) and to TRIPS flexibilities. This could also help foster synergies and complementarity with the work undertaken by WTO Members in areas for which the WTO is competent.

- In a similar vein, we note the explicit recognition in Article 2(1) that the instrument "shall not affect the rights and obligations of any Party deriving from other existing international instruments and shall respect the competencies of other organizations (...)." Given the potential overlap of trade-related elements in the international pandemic instrument with areas covered by a range of [WTO agreements](#), this recognition is helpful.
- That said, with respect to the relationship of an international pandemic instrument with existing agreements, we note the value of clarifying the intended scope and the practical implications of the reference, in Article 2(3), to "other organizations" and "appropriate steps" to be taken to "avoid duplication and promote synergies, compatibility and coherence". Mapping out what such "appropriate steps" might consist of and considering how to preserve coherence could be practically useful, particularly in the implementation phase: the instrument is likely to include areas or activities that fall within the competence of the WTO; for its part, the WTO's Pandemic Declaration expressly notes "the importance of the WTO working, along with the World Health Organization and other international organizations, on an international pandemic response."
- Also, regarding Article 2, it could be useful to clarify the implications of Article 2(4), in particular concerning the manner in which an international pandemic instrument may prevail over subsequent bilateral or multilateral instruments as regards "issues relevant or additional to it."
- Turning to Article 6 on global supply chain and logistics networks, we note that paragraph 23 of the WTO's [Pandemic Declaration](#) underscores "the importance of understanding how WTO rules have supported Members during the COVID-19 pandemic, and their role in future pandemics." It also calls for expeditiously building effective solutions with regard to a wide range of issues covered by [WTO agreements](#) to respond to future pandemics, including export restrictions. A cross-reference to paragraph 23 of the [Pandemic Declaration](#) could usefully be considered in Article 6.
- Regarding Article 7, the call for measures to support time-bound waivers of intellectual property rights that are a barrier to manufacturing pandemic response products may raise questions as to the range of measures – under both international and domestic laws, and by governments or by right holders - that may be encompassed under this term. In practice, given the effect of Article 2, some such measures may need to be clarified vis-à-vis the WTO TRIPS Agreement, for those contracting parties that are also WTO Members. Furthermore, with respect to the qualifying phrase of Article 7.2(iv), we recall an extended debate among WTO Members concerning the extent to which IPRs have been a barrier to manufacturing and more equitably distributing pandemic response products.

- Also with respect to Article 7, we further note that [Article 66.2 of the TRIPS Agreement](#) establishes a positive obligation on developed country Members of the WTO to provide incentives to enterprises and institutions in their territories to promote and encourage technology transfer to least developed country (LDC) Members. A cross-reference to WTO's work on technology transfer to LDC Members and to [Article 66.2](#) might therefore be useful in the context of incentivizing voluntary transfer of technology and know-how through collaborative initiatives and multilateral mechanisms.
- I will now turn to a number of elements in the Conceptual Zero Draft which are complementary with ongoing work at the WTO. This is the case, for example, as regards strengthening regulatory authorities referred to in Article 7(b). The [Agreement on Technical Barriers to Trade](#) and the [Agreement on the Application of Sanitary and Phytosanitary Measures](#) promote regulatory harmonization and coherence through international standards, as well as regulatory capacity-building through improving national quality infrastructure in developing countries.
- Provisions addressing transfer of technology and know-how consistent with the international legal framework also complement efforts at the WTO to promote the diversification of manufacturing capacity.
- As the lessons learned from the pandemic have demonstrated, transparency is one of the important cornerstones of pandemic preparedness and response. As transparency, including with respect to measures taken during a pandemic, is a guiding principle of the WTO, we recognize this common thread in the Conceptual Zero Draft. Together with transparency provisions in other [WTO agreements](#), the [TBT](#) and [SPS Agreements](#) require early notification of draft measures and an opportunity for stakeholders to comment on proposed measures, in line with the whole-of-government, whole-of-society approach that is promoted by principle 6 in Article 4.
- To conclude, let me also say that we very much appreciate the many elements of the draft outline that recognize the critical role of international collaboration and coordination, in particular, the support for trilateral cooperation between WHO, WIPO and the WTO in Article 7.

The WTO Secretariat remains at the disposal of the INB and would be pleased to provide any additional factual information. We are also available to provide assistance to individual governments on trade-related matters upon request.
