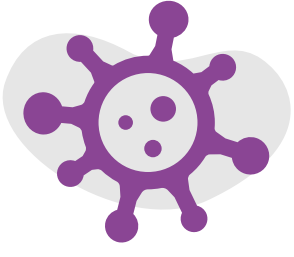


**COVID-19:**  
**GOOD INTENTIONS  
DO NOT GUARANTEE  
VACCINES  
AND TREATMENTS  
FOR EVERYONE**

*22 JUNE 2020*



COVID-19: GOOD INTENTIONS DO NOT GUARANTEE  
VACCINES AND TREATMENTS FOR EVERYONE



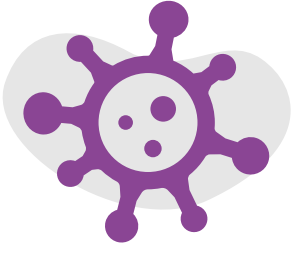
Health technologies should be considered global public goods and this should not only apply to technologies to fight the health crisis that started with COVID-19. WHO appeals to the good will and solidarity of governments and companies, but big pharmaceuticals, which have hedge funds among their most important shareholders, see this as “nonsense”.

On Friday 29th of May, **C-TAP was launched.**<sup>www</sup> This is a solidarity platform in charge of collecting data, know-how, and intellectual property works on new and existing health products, with the capacity of taking care of the needs that derive from COVID-19 pandemic. The platform was created with the purpose of “offering global public goods to all humanity”. The Pool was first proposed by Costa Rica to the **World Health Organization (WHO)**<sup>www</sup> at the beginning of the pandemic and it has the support of many countries.

Those who disagree with the initiative are the big pharmaceutical companies that are already developing medicines and vaccines: the very day of the launching of the initiative they claimed it was **“nonsense”, in an article published in The Telegraph**<sup>www</sup> “I think IP is a fundamental part of our industry and if you don’t protect IP, then essentially there is no incentive for anybody to innovate.” Those were the words of Pascal Soriot, chief executive of AstraZeneca, who has partnered with Oxford University to develop and distribute a potential vaccine against COVID-19 and received millions in funding from the UK government.

The principle centred in voluntary cooperation among governments and companies was set in **the Resolution of the Seventy-third World Health Assembly of the WHO,**<sup>www</sup> which took place on the week before the launching of C-TAP. In this resolution, Member States are called “to collaborate to promote both private sector and government-funded research and development, including open innovation, across all relevant domains, on measures necessary to contain and end the COVID-19 pandemic.”

The resolution also calls for the universal, timely and equitable access to, and fair distribution of, all quality, safe and affordable essential health technologies



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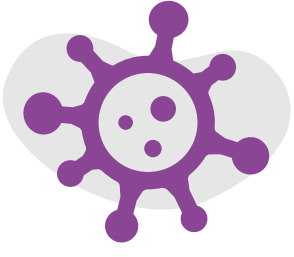


and products that are required in the response to the COVID-19 pandemic as a global priority, and the “urgent” removal of unjustified obstacles thereto. In particular, the provisions of the **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)**<sup>www</sup> and the flexibilities within the Doha Declaration on the TRIPS Agreement and Public Health.

However, even if the WHO is the conducting and coordinating authority in international health matters, its recommendations are not binding, whereas the **World Trade Organization’s provisions (WTO)**<sup>www</sup> are so.

That is why desirable international solidarity and cooperation in emergency situations like this one, are at risk of remaining just good intentions. “WTO rules commercial exchanges among States and sets global rules of intellectual property that currently govern the model of technology research and development. This has meant a concentration of monopolies that limit access to health technology and services, for most of the world’s population,” explained Lorena Di Giano, Executive Director of Fundación GEP.

Since the WTO was created, there is a new framework: for 25 years it has been ruling on intellectual property in a way that benefits pharmaceutical companies, restrains health policies that can be adopted by States (even denying human rights) and it has restrained industrial development in less developed countries. “It is the market who defines health needs, favouring profit instead of health priorities”, says Di Giano, who is a lawyer specialized in intellectual property.



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## LICENSES AND SOVEREIGNTY

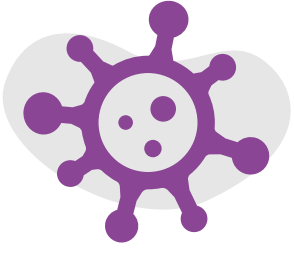
The TRIPS Agreement also includes legal instruments known as flexibilities. States can invoke them to avoid abusive behaviour and monopolies, especially in situations like the current one. These include patent oppositions (when filed applications do not meet the criteria established by local legislation in order to grant such patent) or compulsory and governmental licenses, which have nothing to do with the voluntary licenses promoted by the WHO.

As its name indicates, licenses of non-commercial public use help governments use the patented product non-profitably or in non-commercial activities, such as public research. In turn, compulsory licensing is when a government allows someone else to import, produce and commercialize the patented products. Compulsory licensing also allows governments to produce, import, and locally purchase diagnosis equipment, vaccines or patented medicines, especially when they are indispensable products.

“A voluntary system only contributes to maintain the status quo. If that is the case, companies will go back to the previous practices”, Di Giano says with concern and warns that the pandemic “is an opportunity to change the medical technology system, in failure today: it is not producing new technology, but a lot of patents on already existing products, even those under public domain.”

That is the case, for instance, of the combination of antiretrovirals lopinavir/ritonavir, used today to treat COVID-19. It is in public domain in Argentina, thanks to the actions of the local industry and the civil society, in which Fundación GEP had a fundamental role. Unfortunately, this is not the case in every State. Abbot, the laboratory that originally developed it, was granted the first patent on the drug in the late 1980s. Since then, it has been filing patents on different aspects of the same product and even today it has existing patent protection, which extends the monopoly until 2030.

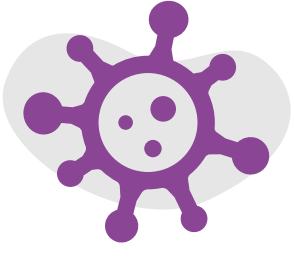
“In order to avoid this kind of restrictions for most of the world’s population, it is necessary to modify the regulations on intellectual property that rule



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the R+D model, since it has been proved for decades that it does not promote innovation, rather it boosts speculation, lucrative behaviour and monopoly,” were the words of José María Di Bello, President of Fundación GEP. This was taken into account at the general assembly of the WHO, conducted by **The South Centre**,<sup>[www.](#)</sup> an intergovernmental organization for developing countries. Its proposal was that all drugs, diagnosis equipment, vaccines and other medical products, existing or potential, related to the treatment of COVID-19, be considered as global public goods. “A new model must be designed under the auspices of the WHO and implemented through mechanisms already provided for in the Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property,” reads **the document.**<sup>[www.](#)</sup>



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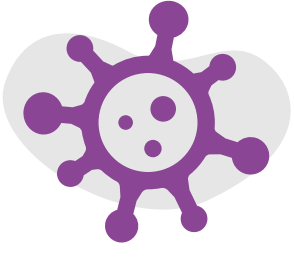
# HEALTH IS NOT MERCHANDISE

For years, epidemiologists have been warning on the risk of a pandemic like the current one, but they were not paid attention to. Similarly, world experts have been warning for a long time on human rights violation, restraints to States' sovereignty and global deaths because of an intellectual property system imposed by the WTO, reinforced through free trade and investment agreements. They continue to be ignored.

In 2012, after a decade of complaints, the [Global Commission on HIV and the Law](#), recognizes in chapter 6 that drug donations do not offer sustainable solutions and they leave the underlying problems unresolved, and recommends: “the WTO Members must suspend TRIPS as it relates to essential pharmaceutical products for low- and middle-income countries.” That is how the [High-Level Panel on Access to Medicines](#) understood this issue in 2015, and used the document as basis for the debate (in which Lorena Di Giano participated as a member of the [Expert Advisory Group](#)) and panel's [final report](#).

“From Fundación GEP we agree with and support the idea that it is necessary to eliminate medical technologies from the TRIPS agreement as the only way of taking these commodities out of market logic so they can be available to attend their original purpose at the time of their development: preserving the life and health of all people.” Claimed Di Giano, and suggested to implement section 19 from the letter of constitution of the WHO, that states that “The Health Assembly shall have authority to adopt conventions or agreements with respect to any matter within the competence of the Organization”; and resuming the initiatives of the Consultative Expert Working Group of the WHO, present in the recommendations of the Global Commission on HIV and the Law, among which are innovation prize funds, a binding international treaty on R&D and open source drug discovery.

COVID-19 pandemic is one more proof that multilateralism is in crisis. Striving to re-establish the system of global governance of the United Nations is



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urgent. Otherwise, the health of millions of people will remain neglected, because the only incentive of pharmaceutical corporations is the one of the hedge funds that seek maximum profit, and who are only interested in saving lives in the countries that can pay the abusive and monopoly prices imposed to their developments and investments.” claimed Di Bello, and concluded: “no good volunteer global action will succeed in allowing the access of the world’s population to treatments and vaccines against COVID-19. The only guarantee that health is free for everyone is that medicines and all medical technologies stop being considered merchandise and be what they really are: a public good. It is the States’ responsibility to guarantee investment in research and development. Collective health must be a top priority.”

