

The World Trade Organization Is Threatening Vaccine Equity And Climate Goals



Jayati Ghosh - Photo:
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The huge COVID-19 vaccine supply gap between rich and poor countries exposes the deadly problem of intellectual property (IP) rights and the dangerous monopoly power of Big Pharma. It also exposes in glaring terms the failures of the entire system of global trading rules regulated by the World Trade Organization (WTO). In this exclusive interview for *Truthout*, Jayati Ghosh, one of the world's leading development economists, dissects the question of intellectual property rights relating to vaccines and argues that the WTO is a vehicle for international imperialism. Ghosh taught economics at Jawaharlal Nehru University, New Delhi, for nearly 35 years, and has been professor of economics at the University of Massachusetts at Amherst since 2021. This year, the United Nations named her to be on the High-Level Advisory Board on Economics and Social Affairs.

C.J. Polychroniou: The COVID-19 health disaster brought to the surface a multitude of issues, problems and faults associated with the workings of a capitalist world, not least of which are the rules of the WTO overintellectual property rights relating to vaccines. What are the facts and the myths behind

WTO's intellectual property rules?

Jayati Ghosh: Intellectual property is governed at the global level by a World Trade Organization treaty called the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement. This agreement was itself the result of active corporate lobbying: [Susan Sell has provided a detailed and devastating account](#) of how 12 powerful men from pharma, software and entertainment effectively lobbied to make the U.S. government insist on inclusion of this agreement in the set of agreements negotiated at the Uruguay Round of GATT (General Agreement on Tariffs and Trade), which was signed in 1994. The TRIPS agreement intervened in legal systems of all member countries, by putting the burden of proof on the accused rather than the accuser, adopting a much looser definition of “invention” that allowed much more private control of knowledge, and then by making all the rules much stricter and more stringent so that it became much easier to claim infringement. This effectively grants a monopoly over knowledge that companies can use to limit production and increase their own market power. Over the past decades, this has become a major limitation on the dissemination of knowledge and technology for the common good, and essentially benefited large companies who now hold most of the IP rights in the world.

Patents and other intellectual property rules are usually seen as providing a necessary financial reward for invention/innovation, without which technological change would either not occur or be more limited. The pharma industry argues that costs of developing new drugs are very high and there are high risks involved, because the drugs may not succeed even after years of effort, and so they must be granted property rights over this knowledge and be allowed to charge high prices thereafter.

But actually, pharma companies typically only do the “last mile” research for most drugs, vaccines and therapeutics: the bulk of the research — not just the basic science, but also more advanced discoveries that enable breakthroughs — is publicly funded. Big companies increasingly just acquire promising compounds and other knowledge from labs and smaller companies that benefit from public investments. Pharma companies in the U.S., for example, have [spent relatively little on R&D](#) — much less than they spend on advertising and marketing, and a small fraction of what they pay out to shareholders or spend in share buybacks designed to increase stock prices.

In addition, in the specific case of COVID-19 vaccines, big pharma companies not only [benefited from prior publicly funded research](#) and reduced costs of clinical testing because of more unpaid volunteers for trials, they received massive subsidies from governments that have mostly covered their R&D costs. In the U.S. alone, the [six major vaccine companies received over \\$12 billion in public subsidies](#); other rich-country governments also provided subsidies to these companies for developing these vaccines. Yet the companies were granted exclusive rights over this knowledge, which they are now using to limit supply and keep prices high even as the global pandemic rages on in the developing world.

Consider the AstraZeneca vaccine, developed by a publicly funded lab in Oxford University. The original distribution model was for an open-license platform, designed to make the vaccine freely available for any manufacturer. However, the Gates Foundation, which had donated \$750 million to Oxford for health-related research, persuaded the university to sign [an exclusive vaccine deal with AstraZeneca](#) that gave the pharmaceutical giant sole rights. The company promised not to make profits on the vaccine during the pandemic, but because of the competition for doses and opacity in contracts, the [range of reported prices of vaccines is vast](#), from \$2.19 to as much as \$40 per dose. The major pharma companies producing COVID-19 vaccines are already estimating massive super-profits in 2021 because of the artificially created shortage [effected by the] control over knowledge.

In October 2020, South Africa and India proposed a waiver of IP rights for COVID-19 vaccines. In an unexpected but welcome move, the Biden administration also backed the waiver and encouraged other countries to do the same on account of some extraordinary circumstances at play. The move has now received support from over 120 countries, but it has been opposed by pharmaceutical companies. Should the waiver be temporary, or apply permanently to all private patents on technologies, knowledge and vaccines related to COVID-19 and vital medicines?

India and South Africa requested the WTO to allow all countries to choose to neither grant nor enforce patents and other IP related to COVID-19 drugs, vaccines, diagnostics, and other technologies for the duration of the pandemic, until global herd immunity is achieved. This waiver would apply only to COVID-19-related vaccines, drugs and treatments; it does not mean a waiver from all TRIPS obligations. They could also more easily collaborate in research and

development, technology transfer, manufacturing, scaling up and supplying COVID-19 tools.

This is a very limited demand, which develops the argument already in the TRIPS agreement that intellectual property rules can be waived “in exceptional circumstances.” All it does is to protect countries from having trade-dispute mechanisms brought against them by rich country governments in the WTO — it does not ensure the transfer of the required knowledge, for which further measures are required: for example, by governments forcing the companies that benefited from public subsidies to share their technology with other producers.

Some argue that the TRIPS agreement already contains a clause on compulsory licensing by countries that do have production capacity that provides flexibility on patents. But this is too limited in scope and time-consuming, since it must be done item-by-item between companies, and could then be subject to disputes in the WTO.

Even this very limited demand is being fought tooth-and-nail by pharma companies (and consequently by some rich country governments). It is good news that President Biden has dropped U.S. opposition to this waiver, but several European governments with big pharma companies are still opposing it. This is surprising, because such suspension would also benefit their own populations if it made available more vaccines quickly, and larger supply would reduce costs of additional vaccines, making them cheaper for governments and taxpayers across the world, with hopes of finally bringing the pandemic under control.

This is a system that is broken and needs to be fixed urgently. The only beneficiaries are big pharma companies — people across the world suffer, and so do other businesses, as economic activity cannot recover as long as the virus continues to spread and destroy lives and livelihoods. The current demand for a waiver applies only to this pandemic, but it is clear that the entire system of health-related innovation, which is really subsidized and funded by the public, must be restructured to make sure that it operates for public benefit across the world. Otherwise, future health threats will also be hard to combat collectively. Even the recent report of the UN Secretary General’s [High-Level Panel on Access to Medicines](#) had recommended that governments increase their own investment in health-related innovations and ensure wider access to the outcomes by preventing privatization of the knowledge.

What about trade secrets as a class of protected right for intellectual property rights holders? Should they also be suspended?

The current proposal in the WTO correctly asks for a waiver on all intellectual property related to preventive, diagnostic and treatment tools, because many of the restrictions in supply come from other IP rights like those for industrial design and trade secrets.

For example, it has been estimated that there are around 64 different IP rights involved in the production of the mRNA vaccines, which have been licensed to Moderna and Pfizer — but new producers would then have to also apply for all of these licenses. A waiver would solve that problem. But, I repeat that the TRIPS waiver is only a first step. It does not ensure that the requisite knowledge will be shared — for that, further pressure needs to be applied by governments to the concerned companies.

It has been argued that WTO rules restrict the policy space of developing countries in particular. How so, and does world trade really need the World Trade Organization?

The TRIPS agreement is a particularly extreme example of how the WTO rules affect the policy space of developing countries, but it is by no means the only one. Many agreements of the WTO operate to restrict development policies of countries, including many of the strategies that were adopted by the rich countries when they were at earlier stages of development. Most industrialized countries protected their “infant industries,” from the U.K. in the 16th and 17th centuries, the U.S. in the 18th and 19th century, and Germany in the 19th century, to Japan, South Korea, and most recently, China in the 20th century. Yet most of the policies they adopted are no longer permitted by the WTO and its various agreements.

Even concerns like preventing hunger and ensuring food security for a poor population are under threat. When India sought to implement a National Food Security Act that would ensure access to minimum food grain provision among the poor population by procuring this from farmers and selling at a slightly subsidized price to poor households, it immediately faced a dispute against it in the WTO brought by the U.S. government. This dispute relied on detailed wording in the WTO Agreement on Agriculture, which prevents this even though it allows

the U.S. to spend many times that amount in providing food stamps to its own poor population. India had to struggle to obtain a “Peace Clause” to allow it to continue its public food distribution program, but the dispute still hangs over it.

Similarly, developed countries keep demanding that developing countries also reduce their carbon emissions (even though their per capita emissions are tiny compared to those of the Global North). But when they try to promote renewable energy by providing subsidies, they once again face cases in the WTO. Both China and India have had to deal with disputes brought by the WTO against the subsidies they have provided to solar and wind energy producers. So even globally desirable environmental goals are threatened by the way that the WTO functions.

It is true that in an unequal world in which economic and geopolitical power is so unevenly distributed, multilateralism is always better than a situation in which the powerful players can pick on weaker countries individually. But the way in which the WTO has functioned raises serious questions about its ability to rectify these power imbalances. Instead, it has often been one of the various ways in which the international legal architecture operates to support imperialism.

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an anthology of interviews with Chomsky originally published at *Truthout* and collected by Haymarket Books (scheduled for publication in June 2021).