The Draft TRIPS Waiver

Why in news?

The draft TRIPS waiver is being criticised for it represents a significant climb down from the original proposal of India and South Africa.

What is the background of this draft?

- In 2020, India and South Africa demanded that key provisions of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement of WTO be temporarily waived.
- The idea was to give countries the legal room to circumvent patent, trademark, and trade secret protections in the WTO Agreement on TRIPS in order to scale up production and export of critical vaccines and medications in the battle against COVID-19.
- **Objectives of the proposal**
    - To promote adequate supplies
    - To promote affordable pricing
    - To further equitable distribution of Covid vaccine, medicines, and tests
- The developed world, especially the European Union (EU), kept delaying this comprehensive vision.

To know more about India's proposal, click here

What are the major concerns with the draft text?

- **Coverage-** The draft waiver includes only COVID-19 vaccines and not other COVID-19 medical products.
- This defeats the purpose of the TRIPS waiver, which was to ensure cheaper and faster availability of drugs.
- **IP rights-** The draft waiver proposes to waive only patents and not other IP rights.
- India's original stand was that all IP rights, not just patents, be waived.
- **Issue of patents-** The draft waiver allows countries to limit the exclusive rights conferred on patent holders under the TRIPS agreement through the use of Article 31, which permits the issuance of compulsory licenses.
- The draft waiver allows countries to export any proportion of vaccines to eligible countries from the earlier flexibility that allowed predominantly for the domestic market.
- However, this waiver is subject to several notification requirements that will increase the transaction costs and may prevent countries from using the system.
    - Eligible members should prevent re-exportation of COVID-19 vaccines that they have imported.
    - The eligible countries which issue a compulsory license for COVID-19 vaccines have to notify the WTO about the authorised entity, the quantities, duration, and the list of countries to which the vaccines are being exported.
- **Authorisation**- Article 31(a) of the TRIPS agreement requires that permission for compulsory licenses shall be considered on a product-by-product basis.

- But now the draft waiver clarifies that a single authorisation may be given to use the subject matter of multiple patents necessary for the production and supply of COVID-19 medicines.
- **Universality-** Only those developing countries that exported less than 10% of world exports of COVID-19 vaccine doses in 2021 are covered for exportation and importation.
- There is no mention of least developed countries.
- **Trade secrets**- The draft waives the obligation of a member to protect unrevealed information submitted before a drug regulator to claim marketing approval.
- But it is silent on overcoming the challenges posed by protection to other trade secrets covered under TRIPS.
- **India's pharma industry**- The draft is protectionist in nature as it reserves to Big Pharma all developed country markets and China.
- Capable Indian vaccine manufacturers will not be able to sell to approximately 50% of the global population, whereas northern monopolists will be free to sell anywhere and everywhere.
- India won't be the 'pharmacy of the world' but it will only be a minor player to some low and middle-income countries.

What do the concerns of the draft waiver signify?

- **History repeating itself**- In the aftermath of the HIV/AIDS crisis in Africa, the WTO adopted a decision in 2003 waiving certain TRIPS obligations to increase the accessibility of medicines.
- However, the waiver was subject to stringent requirements that led to ineffective use of the waiver.
- **Profit over public health**- The developed countries serving the interests of their pharmaceutical firms are all set to win once again, over the public health concerns of humanity.
- **WTO's credibility-** This will further reduce the WTO's relevance and credibility.

References

1. https://www.thehindu.com/todays-paper/tp-opinion/profit-over-public-health/article65265972.ece
2. https://theprint.in/opinion/us-eu-draft-to-amend-indias-trips-waiver-proposal-shows-west-hypocrisy-at-its-best/885184/

Quick facts

Trade Related Aspects of Intellectual Property Rights (TRIPS)

- TRIPS came into force in 1995, as part of the agreement that established the World Trade Organization (WTO).
- TRIPS agreement was negotiated during the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1986–1994.
- The TRIPS Agreement is also described as a "**Berne and Paris-plus**" Agreement.
- It establishes minimum standards for 7 forms of intellectual property- trademarks, copyrights, geographical indications, patents, industrial designs, layout designs for integrated circuits,

and undisclosed information or trade secrets.

- It is applicable to all WTO members.
- TRIPS Agreement lays down the permissible exceptions and limitations for balancing the interests of intellectual property with the interests of public health and economic development.
- The TRIPS Council is responsible for administering and monitoring the operation of the TRIPS Agreement.

