

TRIPS waiver will not be easier process

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Why in news?

Recently U.S. declared its support for a temporary waiver of the TRIPS agreement for COVID-19 vaccines at the WTO.

Was any TRIPS waiver offered in the past?

- Aftermath the HIV/AIDS crisis in Africa in the 1990s, WTO adopted a decision in 2003 to waive certain TRIPS obligations.
- This is to ensure the increase in the accessibility of medicines in countries that lacked manufacturing capability and paved way for the export of medicines to such countries.
- However, this waiver was subject to several stringent requirements such:
 1. Drugs manufactured are to be exported to that nation only;
 2. Medicines should be easily identifiable through different colour, or shape;
 3. Only necessary amount required to meet the requirements of the importing country are to be manufactured;
 4. The importing country has to notify to the WTO's TRIPS Council etc;
- Such cumbersome requirements would not allowed any country to make an effective use of this waiver.

What will happen now?

- The U.S.'s support of the TRIPS waiver will cause other nations like Canada and the European Union to give up their opposition.
- Now the countries would now negotiate on the text of the waiver at the WTO.
- This negotiation will take time as WTO is consensus-based decision-making body and there are complex issues involved.
- Though U.S. will not block TRIPS waiver but it would defend the interests of its pharmaceutical corporations.

- Hence developing nations should be conscious to ensure that a repeat of 2003 does not happen.
- So, medicines useful in treating COVID-19 and other therapeutics must be also included in the waiver.

How to overcoming key obstacles?

- The waiver of IP protection does not impose a legal requirement on pharmaceutical companies to transfer or share technology.
- Individual countries may adopt coercive legal measures for a forced transfer of technology which could be draconian and counterproductive.
- Therefore, governments would have to be proactive in negotiating with pharmaceutical companies to transfer technology using various legal and policy tools including financial incentives.
- Finally, while a TRIPS waiver would enable countries to escape WTO obligations, it will not change the nature of domestic IP regulations.
- Hence, countries should start working towards making suitable changes in their domestic legal framework to operationalise and enforce the TRIPS waiver.
- Indian government can immediately put in place a team of IP lawyers who could study the various TRIPS waiver scenarios and recommend the changes to be made in the Indian legal framework.
- The waiver could work only if countries simultaneously address the non-IP bottlenecks and other logistical challenges.

Source: The Hindu