Waiving vaccine patents?

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'These extraordinary times and circumstances call for extraordinary measures': with this statement, the US Trade Representative announced her support for the temporary waiver of IP protections on the COVID-19 vaccine in the framework of the World Trade Organisation (WTO). The problem is that the measures needed must not only be extraordinary, but they must also work. Saving lives is, by all means, more important than any corporate profit. However, the ultimate goal is not to suppress profit but to maximise global vaccine production. Thus, the question is whether patent deregulation is the best way to achieve this and, if not, what alternatives are open to the international community.

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Waiving patent protection, even if temporarily, does not guarantee a short-term increase in vaccine production for three reasons. First, a list of ingredients is not enough to produce vaccines. In a vaccine the product is the process, and it is a complex process: there is no point in producing a messenger RNA if the right lipids to shield it are not produced, or if it fails to stabilise. Each stage of the production process is vital and a single mistake can ruin everything. If it were easy, pharmaceutical giants like Sanofi or Merck would not have failed to produce their vaccines. Moreover, mass production requires sophisticated supply logistics with many scarce raw materials in a global value chain.

Secondly, know-how and safety are crucial for vaccine production, and they are not easy to pass on. Should scientists from Pfizer, Moderna and AstraZeneca be forced to travel to other countries and teach them how to produce vaccines? Should vaccines from new producers be administered without undergoing lengthy clinical trials, simply because they are based on manufacturing methods that seem to work? Having seen what happened with the AstraZeneca and Janssen vaccines, is this the best way to maintain vaccine confidence?

Third, the pandemic is not over as there will be new dangerous mutations and further threats. In order to deal with them, innovation must be encouraged. Governments have contributed financially to research, but only partly, and in emergencies the rules of the game must be flexible. However, it is imperative not to lose sight of the medium-term outcomes and incentives: if receiving public funds means losing the entire profits of research, who will accept them in the future? This remains valid for all innovations.

So, what is the alternative? Doing nothing is not an option, as global vaccination is a top priority. The WTO's Director-General, the Nigerian Ngozi Okonjo-Iweala, has proposed a third way through the negotiation with pharmaceutical companies to facilitate the voluntary licensing of vaccines to all companies capable of producing them, but following processes already guaranteed to be safe and in accordance with intellectual property laws (thus preserving the incentive to innovate). If licensing fails to provide reasonable prices or is unjustifiably obstructed, pressure will have to be brought to bear on pharmaceutical companies. The US position may, in substance, be a credible way to exert pressure. At the same time, although it is imperative to reform the production capacities of many countries, more funds must be provided so that the poorest countries have access to vaccines on favourable terms, thus expanding the COVAX initiative.

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It is curious that after banning the export of vaccines and accumulating large unused surpluses, the US now presents itself as the leader of the movement to waive patents using the WTO. Meanwhile, the EU –which has been far more generous in not halting exports (including those to traditional US partners such as Israel and Canada), has supported the COVAX initiative from the start and always defended the WTO– is now fingered as the 'bad guy' and presented as reluctantly agreeing to discuss the issue.

The EU must make it clear that vaccination is a global public good and no effort should be spared to accelerate the process. But at the same time it must avoid undermining the incentive for innovation, a key issue in a knowledge economy such as the one it seeks to support through the Recovery Fund. This can be achieved in a multilateral negotiating framework that does not exclude pharmaceutical companies (whose profits should be taxed reasonably). The Union has the power and legitimacy to press for reasonable prices for vaccines and for their manufacturing licences and provide resources to accelerate their global procurement and distribution. But it must explain itself well: it cannot afford to be accused of blocking a substantial increase in production in the short-term that is not guaranteed by the forced liberalisation of COVID-19 vaccine patents.