

Research Article

Negotiating the TRIPS Waiver Proposal: India's Strategy in the WTO to Tackle COVID-19 Pandemic

Ari Camila Puspa Devi¹

¹ *Faculty of Social and Political Sciences, Universitas Gadjah Mada, Indonesia
aricamila00@mail.ugm.ac.id*

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Abstract

This research examines India's negotiation strategy on the proposal to waive the TRIPS Agreement (TRIPS waiver) at the WTO to deal with COVID-19. India, along with South Africa, submitted the TRIPS waiver proposal in response to the disparity of available medicines between developing and developed countries during the COVID-19 pandemic in 2020. India has played an important role in proposing TRIPS waiver in 2020. India's historical legacy to the birth of TRIPS flexibility during the Uruguay Round 1989 and the Doha Declaration on TRIPS and Public Health during the Doha Round 2001, making it interesting to observe the dynamics of negotiation and strategies used to include the TRIPS waiver in the Ministerial Conference 12. This research demonstrates that India has failed to use mixed-distributive strategy during the negotiation and then it shifts to apply integrative strategy due to the Quadrilateral type of negotiation, tight deadline affected by negotiation deadlock, and pressure of green room negotiation during the TRIPS waiver negotiation. The research utilizes the concepts of distributive and integrative strategy, as well as the dual concern model, to identify India's strategy and elaborate transformation. This research aims to contribute to the discussion of how developing countries like India navigate multilateral trade negotiation in WTO amidst contested interest between the Global North and South and elaborating strategy used during the process of negotiation.

Keywords: India; Negotiation Strategy; North-South Relation; TRIPS Waiver; World Trade Organization

Introduction

This research examines the dynamics of India's negotiation strategy in fighting for the proposal to exempt the Trade Associated Aspect of Intellectual Property Rights Agreement (TRIPS), which was later referred to as the TRIPS waiver, in response to the COVID-19 pandemic. The main focus of this research is the issue of the extent to which the negotiation efforts carried out by India as the main sponsor of the TRIPS waiver proposal at the World Trade Organization (WTO) were successful. Exempting TRIPS during the COVID-19 pandemic is considered a way to curb the challenge of production and distribution inequality of diagnostic equipment and technology, medicines, and COVID-19 vaccines between developed and developing countries during the COVID-19 pandemic. This negotiation obviously attracted various responses from states' rejection, claiming

that TRIPS Agreement flexibility in the form of compulsory licensing¹ and parallel import² could be utilized by WTO member countries in dealing with the pandemic.

It is interesting to see India as the focus of this study because of its historical background, domestic condition and foreign policy orientation. Firstly, India had a long history of advocating accessible and affordable vaccine for developing and least developed countries. This effort had been demonstrated since the initiation of TRIPS flexibility provision in the TRIPS Agreement negotiation during the Uruguay Round in 1989 (Ganesa, 2015). It was followed by the initiation of the Doha Declaration on TRIPS and Public Health at the Doha Round in 2001 to provide more flexibilities and exemptions in the agreement (Narlikar and Odell, 2006). Other than that, research conducted by Kumar (2022) showed that domestically, India had strong capacity to produce cheap generic drugs and vaccines in which ranked eight and four, in term of value and volume respectively since 1988 to 2020. Nonetheless, India was relatively low amid the global vaccine suppliers during COVID-19 outbreak due to domestic use. Despite that this situation hinder the export orientation of India, as of May 2022, India had been recorded to administer 1.9 billion doses of vaccines for its population, in which among the fastest in the world despite its huge populations that utilize both national and international production (Jha et al., 2023). Later, it could also be seen in the India's interest on Global Health Diplomacy and Vaccine Diplomacy agenda to provide assistance to the neighboring countries and created the nuance of trustworthy country and at the same time boosted the local production notably from local companies such as Bharat Biotech, Serum Institute of India, Cipla and Dr. Reddy Laboratories. In this case, TRIPS waiver proposal played an integral role in boosting India's role in solving global issue on the one hand, and extending its market on the other hand (Chattu et al., 2023; Junior et al., 2022).

Therefore, discussion about India's ability to carry out negotiation in international multilateral forum, namely WTO, raising TRIPS waiver proposal is important. Especially amid the existing provision of compulsory licensing and parallel import provision in TRIPS Agreement that has been successfully proposed by India in Uruguay Round and Doha Round negotiation. Furthermore, the current literature discussing about TRIPS waiver are mainly focusing on the reasons behind TRIPS waiver necessity to be advocated (Wu and Khazin, 2020; Thambisetty et al., 2022). To examine and analyze the objective of this paper, the author raises question on what negotiation strategy is used by India during the proposal of TRIPS waiver provision in the WTO. This question will be answered by exploring the dynamic negotiation process in the WTO, utilizing the available data of WTO negotiation documents, India's government official statement, journalism report during negotiation, and other relevant secondary data. This research applies two research frameworks to interpret strategies used by developing countries in multilateral forum named "distributive and integrative strategy in multilateral trade negotiations" (Odell, 2006) and "the concept of the dual concern model" (Pruitt and Carnevale, 1993) to understand India's interest and limitation and how it affects the strategy used to solve the problem.

Literature Review

The birth of WTO as a multilateral trade organization in 1995 showed the negotiation dynamics of developed and developing countries on difficult trade matters, for example trade related aspects on intellectual property rights. Maskus (2000) argued that developing countries were willing to accept this new concept of protection to guarantee market access in developed countries especially in agriculture and textile in exchange of stricter protection on intellectual property rights (IPR). Under the non-binding forum named General Agreement on Tariffs and Trade (GATT), IPR protection was very limited. Under the GATT, the protection covered provision

¹ A compulsory licensing is a permit granted by the government to a third party to produce patented product, in this case medicinal products, without the consent of the patent holder (WTO, n.d.(a))

² Parallel import can be understood as the importation of products from one country carried out by a third party in another country, thus the third party can distribute the product outside the distribution network of the authorized distributor in that region (WTO, n.d.(b))

containing geographical indications. While outside of GATT, some provision covered industrial property and protection of literary and artistic work, under the Paris Convention 1883 and the Berne Convention 1886 respectively (Taubman, 2015). Later, in the Uruguay Round in 1986—the negotiation round on the making of WTO—the issue gained its momentum for developed countries to set up stricter protection for incentivizing innovation.

The adoption of TRIPS Agreement changed the way world perceived IPR. TRIPS Agreement reached the next level of protection, which covers the subject matter of copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout-design of integrated circuits, protected of undisclosed information, and control of anti-competitive practices in contractual licenses. All of these issues are mainly brought by developed country that set all of these standards to protect their industries. It then forced developing countries and least developed countries negotiations to adopt the provision with little understanding of the consequence of IPR protection to their domestic condition. They adopted TRIPS that include limited exemption in compulsory licensing—aspect raised by India in the table of negotiation.

The end of 20th until the beginning of 21st century had brought different challenges to developing countries. The emerging epidemic or pandemic outbreak or disease that mostly happened in developing countries has exacerbate the inequal access to medicines for developing countries. The world started to question on how humanitarian issue can go hand in hand with the TRIPS Agreement, especially for developing countries. Many scholars had done research the negative consequences of IPR monopolization for public health and how it affected developing countries very poorly, drawing from the case of bird flu, influenza, HIV/AIDS, Ebola, and SARS outbreak (Elbe, 2018; Price-Smith & Huang as cited in Cooper & Kirton, 2009; Kamradt-Scott as cited in Cooper & Kirton, 2009). Some scholars raising the issue of how protection can outweigh the humanitarian value of providing cheap and accessible public health goods for the countries in need (Valbona, 2009; Zacher & Keefe, 2008). Because of this issue, India and other developing countries demanded to extend the scope of flexibilities in order to allow government in developing country procuring medicines and vaccines through parallel importation and led the adoption of Doha Declaration on TRIPS and Public Health back in 2003 (Narlikar and Odell, 2006).

In regard to this, some scholars started to study on how outcome of trade negotiation can be generated. The study of developing country negotiations in multilateral trade negotiations were developed as an alternative to the dominant discourse of power distribution among countries for explaining the outcomes of multilateral negotiations (Drahos, 2003; Drahos, 2007; Odell & Sell as cited in Odell 2006; Narlikar & Odell as cited in Odell, 2006). Research conducted by Odell (2006) and Hein and Kohlmorgen (cited in MacLean, Brown, and Fourie, 2009) showed that India has put strategic move to maximize the outcome of negotiation in fighting over right to access to medicine and vaccine during emergency. India played a critical role in this initiative. As a successful developing country in strengthening their domestic companies, organizing developing countries, working with non-profit organizations to amplify concern by the major developing countries altogether.

The recent COVID-19 pandemic demonstrated the importance of accessible vaccine and medicine for all. India had been taking effort to fight for it. To date, literature discussing Indian case with a focus on issues related to the COVID-19 pandemic have focused on the reasons why it is critical to advocate for an IPR waiver during the COVID-19 pandemic (Wu & Khazin, 2020; Thambisetty et al., 2021) and India's role in providing a new alternative approach to the COVID-19 pandemic cases (Chattu et al., 2021; Zarocostas, 2021). Therefore, this research aims to engage the negotiation aspects of TRIPS Waiver proposal advocated by India and how it contributes to tackle COVID-19 pandemic. This research elaborates more the negotiation process and strategy used by India in proposing TRIPS waiver in WTO negotiation.

Methods

This research is conducted in qualitative research with a case-based approach. This paper focuses on the TRIPS waiver negotiations by India at the WTO multilateral forum in response to the COVID-19 pandemic. Apart from that, the research seeks to understand the process of negotiation in the WTO and engaged it with the concept of strategies used by developing countries in multilateral forum named “distributive and integrative strategy in multilateral trade negotiations” (Odell, 2006) and understanding India’s interest and limitation utilizing the concept of “the dual concern model” (Pruitt and Carnevale, 1993). Both of the concepts are essential to analyze parties’ interests and reasons behind every concession and interpret the strategy or factors that help to solve issues during negotiations.

The two conceptual frameworks are used to help the author determine the variables used in multilateral negotiation. The variables offered in the concepts of distributive strategy and integrative strategy include coalition design, the form of strategy, and bounded rationality, which emphasize the influence of subjective perspective among negotiators. These variables will be the basis of the research analysis carried out, not only focusing on coalition formation but also the selection of strategies to attract the role of non-state actors in strengthening the bargaining power of developing countries during negotiations. This conceptual foundation is useful to help understand the actions taken by India. However, on this conceptual basis, the question of under what conditions a change in position and strategy is carried out by a negotiator cannot yet be explained. Therefore, the author uses a second conceptual basis, namely “the dual concern model,” to help elaborate the dynamics of this context. This concept is in line with the previous concept because, by recognizing the condition of negotiators in bounded rationality, changes in negotiating positions can be influenced by subjective rationality regarding the actions of other parties. In addition, this concept also recognizes the existence of two strategic tendencies—distributive and integrative—that can be used during negotiations.

To answer the research questions, the data collection method used is literature study. The literature study is taken from information sources in the form of literature discussing the TRIPS Agreement and public health, official institutional reports such as official press releases from the Ministry of Commerce and Industry, the Department of Commerce India, the United States Trade Representative, official documents or text-based WTO negotiations, and statements on the Permanent Mission of India Geneva page to find out India's position in the negotiations taking place at the WTO. In addition, literatures are also taken from World Health Organization (WHO) reports and other secondary data sources, such as several journalism report from the Third World Network and Global Health Files online pages, to overcome the author's limited access to the dynamics of direct negotiations at the WTO.

Result and Analysis

The scope of the negotiations is derived from the WTO's multilateral level. The author finds that India has failed to use mixed-distributive strategy during the negotiation and then it shifted to apply integrative strategy due to the Quadrilateral type of negotiation, tight deadline affected by negotiation deadlock, and pressure of green room negotiation during the TRIPS waiver negotiation. The timeline of TRIPS waiver discussions in the WTO is suggested below to give a complete view of the dynamics of Indian negotiations.

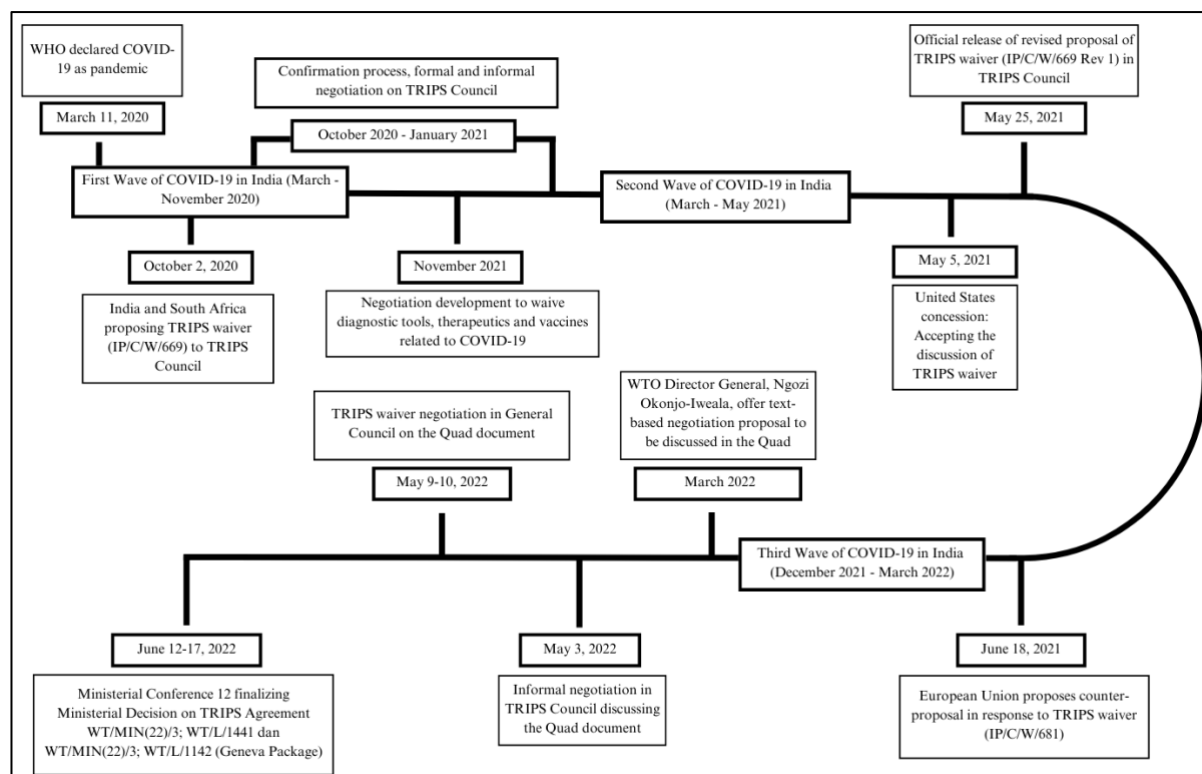


Figure 1. Timeline of India's negotiation in WTO

Source: Data is compiled by author from WTO document database (WTO, n. d.(c)) and Third World Network (n.d.(a)).

Beginning of Negotiation phase: India's Implementation of the Distributive Strategy

In the initial phase of negotiation, India's use of distributive strategy in the WTO due to strong support of cosponsors and non-governmental organization in raising the TRIPS waiver issue. This process can be traced back in October 2020, India introduced for the first time a TRIPS waiver proposal aimed at addressing the issue of global vaccination disparity. IPRs surrounding vaccines were viewed as a major roadblock to the development and production of COVID-19 vaccines, causing the gap in vaccination rates between developed and developing nations. The IP/C/W/669 proposal, submitted to the TRIPS Council as a joint effort with South Africa, comprised demands for the suspension of TRIPS Agreement Part II Sections 1, 4, 5, and 7, which govern copyright, industrial designs, patents, and the protection of confidential information or trade secrets relating to the COVID-19 vaccine. This demonstrated India's clear position of removing all IPR restrictions for COVID-19 vaccines.

However, India revised the proposal in May 2021 due to other sponsoring countries' interest to attain cheaper products essentials to face new outbreak wave, not limited to vaccines. The new plan made a significant adjustment for suspending the TRIPS Agreement for vaccines, diagnostic technology, and pharmaceuticals, covering more products than the initial proposal. Nonetheless, when this revised proposal was released, it was seen as the status quo in the position of the opposing parties' demands, namely the United States (US) and the European Union (EU), that TRIPS flexibility in the form of compulsory licensing and parallel imports was able to bridge the interests of the sponsoring country and the pharmaceutical industry. Despite considerable criticism from opposition countries, the amended proposal sent a clear message to the opposition that India and other co-sponsoring countries would remain unaltered intact for equal global public health.

Even though extending demands may appear to be a contending tactic, the nature of this strategy itself is “threatening,” India can carry out this capability because of the nature of WTO negotiation, which allows for coalition formation. Coalition formation is thought to be capable of overcoming the unequal bargaining strength between poor and wealthy countries in WTO trade negotiations. Forming a coalition of developing countries at the WTO is difficult given the diversity of their economic conditions. However, the pandemic’s emergency conditions, as well as the high level of pledging support from civil society organizations, have an impact on determining preferences and setting pressure on developing countries to approve the ideas submitted to the WTO.

Co-Sponsor Coalitions and Non-State Actors Networked Influence

The dynamics of India’s proposal to the TRIPS Council paint a clearer picture of how this idea received widespread support from most developing countries. This can be seen in India’s strong participation in promoting this issue to other countries through informal communication. Aside from that, its deliberate move in bringing this problem to the WTO has ramifications for significant non-governmental organization participations which help spread and attract mass attention to the TRIPS waiver.

The proposal was initially raised by India on October 12, 2020, at an informal meeting of the trade committee and the head of the Indian delegation at the WTO, alongside discussions on other trade concerns such as agriculture and the viability of the WTO DSB. As word circulated about India’s submission of the TRIPS waiver request to the WTO and the growing interest in the matter among governments and non-governmental groups, India utilized an informal communication session at the TRIPS Council Session on October 16, 2020, to underline its demands. India demonstrated the substance of the plan, together with South Africa, as one of the essential alternatives for dealing with the pandemic as a global problem (India. PMIG, n.d.). In this informal communication, India clarified the arguments offered by opposition countries for rejecting the TRIPS waiver. First, the Indian delegation emphasized how, in recent months, IPR has become a serious barrier in growing equipment production to combat the spread of COVID-19. Second, in comparison to the amount of public funds provided to increase health capacity during the COVID-19 pandemic, the monopoly rights granted to firms and investors are morally wrong. This is demonstrated by pharmaceutical companies’ passive and lacking engagement in voluntary joint cooperation such as WHO’s COVID-19 Technology Access Pool (C-TAP) and the Access to COVID-19 Tools Accelerator (ACT-Accelerator).

It is important to note that the network of non-state actors played a significant role in strengthening the coalition’s stance during the negotiation process and information exchange in the TRIPS Council. A network of non-state actors is actively involved in the reframing process, which is based on ethical arguments. The idea that “stealing intellectual property is a wrong action” sought to be transformed into “protection of intellectual property that results in high human death rates for the profit of a handful of pharmaceutical industries is inhumane.” MSF, UNAIDS, WHO, Amnesty International, Oxfam, the Third World Network (TWN), and over 400 other civil society organizations are participating in campaigns for unequal access to health owing to intellectual property protection during the COVID-19 pandemic (TWN, n.d.(b)). In its statement, Amnesty International (2020) expressed disappointment with the failure of global solidarity due to vaccine nationalism in developed countries such as US, UK, and EU member countries to secure vaccine supplies for their populations. Furthermore, the narrative of “vaccine apartheid” was employed to reframe the issue (Stiglitz & Wallach, 2022). This network used several reframing methods to demonstrate that pharmaceutical corporations associated with their supportive government have failed to see human rights as more than profits (Labonte & Johri, 2020; TWN, 2021(a)).

From November to December 2020, India’s efforts to gain support from developing countries were bolstered by the increased advocacy help of non-state actor networks in pressing the opposition with its narrative. The exchange of empirical evidence highlighted the reality of obstacles faced by countries in producing

technological equipment, medicines, and vaccines as a result of IPR protection carried out by the pharmaceutical industry during the COVID-19 outbreak. India and South Africa, along with Kenya and Eswatini, intervened at an informal meeting in November 2020 citing the difficulty of implementing TRIPS flexibility at the national level. Other than that, the presentation of empirical research from global solidarity was projected to fail in collecting 2 billion vaccine doses in 2021, and funding for the ACT Accelerator and COVAX Advance Market Commitment only reaches 15%; thus, WHO estimated that the pandemic would last longer if these funds were not immediately met (WHO, 2020). The gathering of empirical evidence was a crucial move in providing a realistic image for countries opposed to the TRIPS waiver, which prefer to adopt policies based on the reality on the ground—evidence-based policy. These activities helped India establish a coalition of developing countries.

India conducted this information exchange on a regular basis through informal communication at the WTO. Following these two informal meetings, the number of developing nations supporting the TRIPS waiver proposal rose, including countries that intervened in TRIPS Council meetings to emphasize how IPR often thwarts efforts to “prioritize human health and safety.” Bolivia, Sri Lanka, Chad, Egypt, Indonesia, Mauritius, Venezuela, Jamaica, and other African, Caribbean, and Pacific Group (ACP Group) countries were willing to cosponsor the proposal in December 2020. These countries, along with India, were known to have participated in providing comprehensive studies to answer questions from the opposition via communication papers.

Despite significant support during numerous informal meetings held throughout the TRIPS Council, the opposition remained firm in their rejection of the TRIPS waiver. TWN (2020) stated that the many concerns posed by the US, EU, Japan, Switzerland, and Brazil over the TRIPS waiver frequently impeded discussions from achieving the best results. The Indian panel, represented by the Ambassador and Permanent Representative of India to the WTO, Brajendra Navnit, at the meeting “High-Level Dialogue on TRIPS Waiver: If Not Now, Then When?” in 2020 organized by the TWN, Health Action International, MSF Access Campaign, Public Citizen, and Public Eye, viewed the process of exchanging information carried out during WTO negotiations as normal way of interaction in negotiation. As a result, the proposing parties should try to provide clarification and answer questions as well as convinced the opposition to ensure that the negotiation process could progress and eventually an agreement could be reached. Navnit (as cited in TWN, 2020) expressed that, in the midst of a serious pandemic crisis, the opposition’s approach was not just designed for checking and clarification, but also meant to be used to slowing down the negotiating process—delaying tactics. In order to produce a fast agreement, these countries always strove to re-confirm several topics, such as duration, the querying developing countries’ manufacturing capabilities, the knowledge transfer procedure, and the applicability of voluntary licensing.

Until May 4, 2021, when the revised TRIPS waiver proposal (IP/C/W/669 Rev 1) was officially submitted to the WTO to modify the earlier proposal, India has received support from 60 cosponsoring nations (Médecins Sans Frontières, 2023). Furthermore, Amnesty International (2021) reported that 100 out of 164 countries approved the proposed idea. The coalition of developing and least-developed countries agreed that intellectual property contributes to unequal access to treatment and health technology to combat COVID-19; consequently, intellectual property suspension can lessen the existing inequities. Consequently, in order to demonstrate global solidarity and multilateral collaboration, an agreement in the WTO had to be reached as soon as possible by committing to text-based negotiations. According to the revised proposal, the coalition’s demand was quite broad, namely the suspension of copyrights, industrial designs, patents, and trade secrets for materials, components, methods, and tools used in the manufacture of diagnostic technology, medicines, vaccines, medical devices, and personal protective equipment for COVID-19, and was valid for at least three years after the agreement.

What India accomplished with the coalition during the TRIPS Council series is a sort of distributive approach implementation. Despite objections from opposing countries to the TRIPS waiver and threats in the form of delaying tactics, this strategy is fully reflected in the changes to the proposal submitted. The way coalitions of developing countries and networks of civil society organizations seek to expand their demands and influence

the views of opponents reflects a distributive strategy. This information exchange method is imperative because it allows them to draw developing countries' coalition's limitations. Involving a network of non-governmental groups and forming coalitions with a big number of members increases India's bargaining power and credibility in exerting pressure on the opposition. It demonstrates that India and its coalition are unwilling to make concessions by sticking up into their commitment to certain demands. This heightened negotiating strength indicates that India and its alliance will continue to advocate for TRIPS waivers until the opposition countries agree to move forward with text-based negotiations and cease stalling the TRIPS waiver discussion. This could be observed in how the US position changed profoundly in May 2021, when it began to allow conversations about the TRIPS waiver.

US Concession

The coalition's strategy of establishing networks with non-state actors resulted in a shift in the US perspective. An information exchange was conducted in order to find out the parties' common ground. On April 2020, ten members of the United States Senate wrote to President Joe Biden, urging him not to postpone discussions on the TRIPS waiver (Sanders, 2021). Furthermore, according to Public Citizen (2021), a petition had been signed by 2 million people, 60% of whom are American citizens, more than 170 state leaders and Nobel laureates, more than 400 US civil society organizations, and 250 international organizations.

Simultaneously, with the huge support from civil society for the TRIPS waiver initiative, India undertook political movements to exert some political pressure on the United States. Taranjit Singh Sandhu, an Indian diplomat, and Nomaindiya Cathleen Mfeketo, a South African diplomat, both visited Capitol Hill to meet with US policymakers (The Economic Times, 2021). Furthermore, India's Minister of Trade and Industry, Piyush Goyal, held a virtual meeting with the United States Trade Representative (USTR), Katherine Tai, to emphasize the importance of temporarily suspending intellectual property as a manifestation of the global response during the pandemic (USTR, 2021).

Integrative Strategy: Reaching the Problem-Solving

In the next phase of negotiation, India started to use integrative strategy in the negotiation due to deadlock in the negotiation, the quadrilateral forum, and the tighten deadline, as well as the application of green room negotiation method. All of these aspects are discussed below.

The Biden administration's shift from initially rejecting TRIPS waiver to then supporting the TRIPS waiver gave hope for negotiations to commence at the text-based negotiation stage. According to Navnit (TWN, 2021(b)), the text-based negotiation style was adopted to provide transparency of negotiation progress to activists and civil society organizations, as well as to create solution-oriented negotiations. It is critical for both proposing and opposing parties to enter this negotiation phase in order to evaluate the extent to which an agreement—particularly clarity regarding the substance of the agreement—could be reached.

However, it may be argued that this prospect was still hampered by the interests of one of the key parties who has not consented to the waiver, notably the EU. It should be recalled that when the US declared its support for the TRIPS waiver, the EU showed no signs to follow. According to Furlong, Aarup, and Horti's (2022) investigation, the US supportive stance actually put some pressure on the EU and Switzerland because the suspension of IPR became "more likely possible" and "gaining momentum." Even the EU Commission considered the US changing position as a "huge risk" as well as a "great danger" for the EU if the US decided to suspend all IPRs for vaccines in the future.

Faced with this dire situation, the EU replied with a defensive distributive policy to again confirm its position. In June 2021, the EU presented a counter-proposal to the WTO confirming the use of TRIPS flexibility in the COVID-19 pandemic and the EU's commitment to implement its promise. According to Wemos (2022), the plan indicated at least three items. First, all EU members agreed that COVID-19 is a national emergency, allowing compulsory licensing to be used. Second, the EU continued to demand pharmaceutical industries to be adequately compensated. Third, the EU permitted parallel imports but it still required prior notification from the exporting country.

According to the MSF Access Campaign (2021), the foregoing requested exclusively apply to the suspension of patent rights for vaccines and medicines. The EU position is merely a reiteration of TRIPS Agreement paragraphs 31 and 31bis. By proposing this proposal, the EU attempts to divert the subject of the initial TRIPS waiver and, once again, uses delaying tactics to stall the negotiations. Furthermore, the complexity of substantive concessions with the opposition, as well as the subsequent outbreak of the omicron variant of COVID-19, has created a new challenge for the ongoing negotiations. This problem necessitated the postponement of MC12, which had been scheduled to take place from December 2021 to June 2022 (Patnaik, 2022). Nevertheless, the Indian concession took place during this time.

Negotiations lasted almost a year and produced no significant conclusions affects reorientation on India's demands. Despite massive opposition from the EU, India attempted to capitalize on US concessions. Navnit, as stated in Permanent Mission of India Geneva (PMIG) (India. PMIG, 2021) underlined that India's goal in this phase was to prevent opposition blockage and reached an agreement that could accommodate both supporters and opponents. He assessed that the process took a long time because of the repetition of questions asked by opposition countries, which tend to buy time to find a solution to the ever-shifting issue (TWN, 2021(b)). Since the TRIPS waiver petition was presented in October 2020, the Indian delegation had conducted nine formal and informal talks until May 2021. The talks around this time centered on themes such as the necessity, feasibility, and effectiveness of suspension, thus affecting the slow pace of negotiation. the appearance of a document known as "the Quad Document" indicates that India mitigates this issue by decreasing its demands. This effort seems to be India's way to solve the prolonged deadlock of negotiation that has resulting nothing in more than 1.5 years.

The Quad and Major Concessions

After one and a half years of stagnation at the TRIPS Council, in May 2022, WTO Director General Ngozi-Onkonjo Iweala and Deputy Director General Anabel-Gonzalez convened a limited meeting known as "the Quad" group negotiation. The Quad consisted of US, EU, India, and South Africa. Despite the fact that the nature of the negotiations was highly debated, a variety of issues were significantly agreed in the negotiations. The suggestion proposed in the discussions, according to the WTO (2022), was fairly practical problem-solving strategy to clarify how countries can renounce patent rights for COVID-19 vaccines in the current situation. However, leaked documents revealing the deals reached by the four countries showed that the agreement was far from the original TRIPS waiver ideals, namely to temporarily eliminate four types of IPR monopolies that impede rapid response to the pandemic.

Aside from concerns about the sort of intellectual property being suspended, this agreement is also problematic in terms of which nations have the authority to apply the TRIPS waiver. This agreement indicates an attempt to exclude countries that have exported 10% of COVID-19 vaccines during the pandemic. Data showed by WTO-IMF COVID-19 Vaccine Trade Tracker (WTO, n.d.(d)) indicated that China had exceeded this maximum limit as of December 2021. Furthermore, the agreement requires every country to notify all patents utilized in the development of vaccines with WIPO assistance prior to utilization. This document was later used as discussion material in MC12. The concessions made during the negotiations, which ultimately resulted in a "win-win solution" between India's coalitions and the opposition, are illustrated below.

Table 1. Concession Throughout the WTO Negotiation

No	Demand	India's Initial Demand	The Quad Negotiation Document	MC12 Negotiation Agreement
1.	Scope	COVID-19 vaccine, diagnostic tools and therapeutic products	COVID-19 vaccine	COVID-19 vaccine
2.	Subject matter	Copyright, industrial design, patent, and undisclosed information	Patent	Patent
3.	Meaning of subject matter		<i>Patented subject matter</i> (either products or technological processes that have been patented, or amidst the process of application)	<i>Subject matter of a patent</i> (either products or technological processes that have a clear patent status)
4.	Duration	No initial provision	3 or 5 years	5 years
5.	Country Eligibility	Prioritizing developing countries and least-developed countries	Countries that do not pass the 10% threshold of global vaccine exports	Developed countries opt out of the provision
6.	Distribution	Products under the provision are allowed to be exported	Anti-diversion regulation (export is not allowed under this provision)	Exports are allowed for humanitarian assistance and non-profit purposes
7.	Transparency 1	Notification process that does not overburden developing countries	Pre-shipment notification (comprehensive notification on total quantity, duration, name, and address before shipment)	A loose interpretation of "as soon as possible after the information available"
8.	Transparency 2	Any reporting method that does not overburden developing countries	Prior report on lists of all patents used in production	The report is not mandatory before shipment and is guided by WIPO
9.	Dispute Settlement	Enforcement cannot be disputed	The agreement is enforceable on WTO DSB through non-violation and	Enforcement cannot be disputed

			situational complaint	
10.	Structural factors in WTO		The role of the WTO DG as the initiator of the Quad document	Developing country's coalition concession

Source: Data is compiled by author from WTO documents i.e. IP/C/W/669 and IP/C/W/669 Rev.1, IP/C/W/688, Ministerial Decision on TRIPS Agreement WT/MIN(22)/30; WT/L/1441 and WT/MIN(22)/31; WT/L/1142.

The above text-based negotiation, as analyzed, only led India and the coalition to suspend intellectual property for the COVID-19 vaccine's patent. The absence of US concessions for diagnostic tools and medicines, as well as the EU advocating limitations on patents, make negotiations exceptionally difficult. The opposition's willingness to enter the text-based negotiation phase is an advantage for India and its coalition. India succeeded in renegotiating the contents of the Quad agreement, such as the anti-diversion policy and pre-shipment notification, which were demanded by the EU.

For that matter, India's response to the deal was quite ambivalent. India's Minister of Commerce and Industry, Piyush Goyal mentioned that the focus on diagnostic technology and medicines needs to be considered in MC12 negotiations as vaccines have lost their relevance for India (India. PIB Delhi, 2022). Cited from The Economic Times (2022), he also emphasized that an agreement must still be reached and the coalition cannot negate the existing momentum due to concessions made by opposition countries, especially when other developing countries have not been able to meet the availability of COVID-19 vaccines. India's demands in the form of the scope of negotiations, namely diagnostic tools and medicines, which were the "heart" of the previous negotiation, need to be reconsidered by India and the coalition. In regards to this, countries agreed to cease diagnostic tools and medicines and temporarily suspend the discussion for 6 months after MC12 is carried out. Accordingly, by witnessing this concession, India agreed on the results of the MC12 negotiation along with adjustments that have been adapted from the previous Quad document. Therefore, the negotiation could pass TRIPS waiver as part of the Geneva Package under the Ministerial Decision on TRIPS Agreement WT/MIN(22)/30; WT/L/1441 and WT/MIN(22)/31; WT/L/1142.

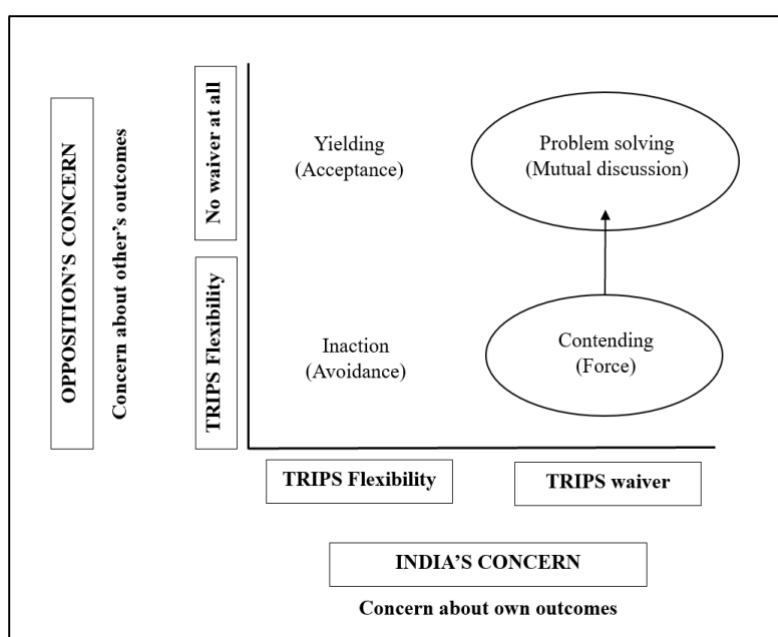


Figure 2. Illustration of India's Negotiation Strategy Throughout WTO Multilateral Negotiation
 Source: Adapted from Pruitt and Robin' the dual concern model in negotiation (as cited in Pruitt & Carnevale, 1998).

This figure illustrates the changing demands of both parties and how it affects the negotiation strategy to solve problem. It demonstrates that when both side of negotiators have high demands or stringent interest, yet still deliberately examine about the other party's strategy, both of them must take concession to achieve progress in negotiation. During the initial phase of negotiation, the situation reflected by the high expectations for the outcome of the negotiations from the India's side, the supporter of TRIPS Waiver (as shown in the Figure 2 horizontal axis, labeled as "TRIPS Waiver" meaning India's interest on TRIPS waiver approval). The US concession gave some hope that the agreement were possible to be reached by the developing and developed countries (as shown in the Figure 2 vertical axis, labeled as the opposition's interest as a pro-"TRIPS Flexibility"). However, this effort was thwarted by the EU, which refused to suspend the existing IPR provision, resulting in negotiations stalling due to its delaying tactics. This phase shows that competing efforts—contending/force strategy—cannot be carried out for quite a long time, by the coalition of developing countries. Thus, amid the momentum of the negotiation's position change by the US, India chose an integrative strategy to create conditions for problem-solving (as shown in the Figure 2, the arrow line from "contending" to "problem solving" strategy).

This strategy pushed India to renegotiate its position and interests. This decision was taken by India in response to the actions of the opposition, which wanted to make concessions. Not long after the Quad negotiations and the proposal issued by the WTO DG, the two parties agreed to sit together to discuss the new waiver document. The concessions that have been created were: 1) the EU and the US agreed to suspend the TRIPS Agreement for vaccines and 2) India and the coalition had to reduce the scope of its demands for the MC 12 Agreement. The use of an integrative strategy to create conditions for problem-solving is successful in bringing progress in the negotiations, even though India has to bear the consequences of its concessions as the outcomes are not as high as the initial demands.

Time Pressure and the Green Room Negotiation

Aside from obtaining concessions during the negotiation, two important factors influence India's strategic interactions are deadlines and "green room" negotiations. Moreover, it is also important to consider the negotiation structure in multilateral forums where consensus-based decision-making occurred and shaped the final agreement of the TRIPS waiver negotiations as position shifted inside the coalition of developing countries itself which determined the final results of text-based negotiations. Furthermore, the role of the WTO DG created final momentum to compromise both parties.

Given the time required to ensure that the TRIPS waiver was included in the Geneva Package MC12, India agreed to accept some substantive limitations included in the "new" text-based negotiation proposal. India has spent more than 1.5 years fostering information exchange to persuade opposition countries through various WTO settings, which eventually led to an impasse at the TRIPS Council. Following that, India worked with co-sponsoring countries and civil society organizations to conduct comprehensive studies and campaigns, particularly in the Western hemisphere. Nonetheless, the structure of WTO negotiations, which require consensus from all parties, compelled India, as the negotiating leader, and its coalition to reach an agreement or not at all. The risk of bringing nothing home was greater than the projected benefits from prolonging the negotiation with no guarantee the developed countries would concede anymore.

In the context of the MC12 negotiations, the final phase of negotiations was characterized as the "take-it-or-leave-it" phase. India's demand to include the TRIPS waiver agreement in the Geneva Package or not at all has certainly impacted India's negotiator on understanding the prospects of the negotiation. In this case, the

influence of the WTO DG cannot be ignored in encouraging India to immediately determine to achieve concessions. By issuing documents to be used as discussion material in the Quad negotiations, efforts to bridge the interests of the opposition and supporting countries become important for the role of the WTO DG. It suggests that deadline pressures affected negotiator's range of limitations and their willingness to meet demand.

Besides, the use of green room negotiations is not profitable for India. Despite its notable tactic widely applied during the Uruguay Round, the same pattern of small group consultation inside the negotiation room in this negotiation which resulted in the documents that deemed to solve the longstanding unresolved issue—promoted by powerful developed countries of WTO DG as a broker—seems to exist in TRIPS Waiver negotiation judging from the timeline of the quadrilateral negotiation. In this case, the superpower had had the document ready and presented as the outcome where the opposing party forced to accept.

This condition reflected in March 2022, the US Chamber of Commerce met with the EU Commission along with the US pharmaceutical lobby groups PhRMA, BIO, Pfizer, Eli Lilly, and MSD, and then followed by Europe pharmaceutical industry lobbyist to discuss whether suspending TRIPS would harm research and innovation in the long run. This factor produced the relatively high bargaining power of the EU compared to India which has opposite interest with the giant pharmaceutical industry.

Quadrilateral negotiations with text-based negotiations written by Ngozi-Okonjo Iweala and Anabel-Gonzalez have emphasized a middle way that can be agreed upon by the coalition of the US and EU as the opposition and the supporting coalition of India and South Africa. Likewise, the countries that are part of this coalition accepted this decision to reach an agreement which resulted in the adoption of Geneva Package MC12 in June 2022. Taking into account these conditions, where the opposition countries agreed to provide some leeway for IPR protection, India and the coalition responded by making concessions as well. This practice aligns with the nuance where the "green room" negotiation could potentially be the "black room" negotiation which disadvantage developing country.

Conclusion

This study raises the issue of India's negotiation strategy for the TRIPS waiver proposal addressing disparities in COVID-19 treatment and medical equipment procurement in a trade multilateral organization. By observing the dynamics of negotiations, this study discovers that India has faced failure in utilizing the mixed-distributive strategy during the negotiation and then to maximize the gain of the negotiation, India shifts to apply integrative strategy due to the Quadrilateral type of negotiation, tight deadline affected by negotiation deadlock, and pressure of green room negotiation during the TRIPS waiver negotiation. This research also shows quite distinct gap between the Global North's interest and the Global South's interest in international trade covering public health issue.

When conducting this research, the author encounters certain challenges that resulted in this research's limitations. The author acknowledges the difficulty of utilizing research methods such as interviews, focus group discussion, or survey with the government officials to better understand the complex atmosphere of the negotiation. Yet, these limitations have been mitigated by focusing in online written official statements, proposal and WTO negotiation documents, and journalism products reporting the events. Given this situation, the author highly suggests additional studies with improvements in data collection methods.

Aside from technical constraints, the author focuses on strategic interactions between India and the opposing countries to explore the dynamics of negotiations on the TRIPS waiver proposal. It therefore dismisses India's domestic contestation which may play an important role in India's decision-making. This constraint came as a result of the author's choice of conceptual framework, which focuses on strategic interactions that take into

account both negotiating parties' subjective preferences. As a result, further research can explore this perspective to add different perspective on the issue.

This paper contributes to the interpretative research on international trade negotiation strategy by analyzing the negotiating methods used by developing countries. This study adds to Odell's (2006) discussion that, when explaining international political economy, elements outside the negotiation process—such as the distribution of power among countries, the involvement of domestic institutions, and so on—are frequently seen as shaping a negotiated agreement. This hypothesis is provided as an alternate explanation in which observations made during negotiations play a significant effect on the result of a deal (Odell, 2006). In line with Odell's approach, the author does not aim to negate the importance of power relations in international trade but rather enriches a new perspective in North-South relation covering international trade negotiation. As a result, this study has advanced research in the fields of negotiation analysis and political-economic phenomena at the international level held by developing country.

To conclude, conflicting issues of intellectual property and public health is possible to be challenged in international forums by forming coalition to prioritize the Global South needs. The author fully urges future research that focuses on developing countries, non-state actors, and others who are underrepresented in international political economy and links them to negotiation analysis. Furthermore, the next research might concentrate on how TRIPS waiver negotiation affects long-term prospects for the transfer of technology and knowledge to the Global South. Non only to enrich the global health discourse, but also how international trade can shape a just and equitable trade governance.

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Authors Biography

Ari Camila Puspa Devi holds a Bachelor's degree in International Relations from Universitas Gadjah Mada, with a concentration in International Political Economy and Development. Her current research interests include trade and development, regional and multilateral trade cooperation, and gender issues, particularly within the Indonesian context. She is passionate about contributing to inclusive policy solutions. Ari can be contacted via aricamila00@mail.ugm.ac.id.