



Conservatives
for
Property Rights

May 2, 2023

The Honorable Lisa R. Barton
Secretary
U.S. International Trade Commission
500 E Street, S.W.
Washington, DC 20436

RE: USITC Investigation No. 332-596, COVID-19 Diagnostics and Therapeutics: Supply, Demand, and TRIPS Agreement Flexibilities

Dear Secretary Barton:

Conservatives for Property Rights (CPR) writes in response to the International Trade Commission's (ITC) Investigation No. 332-596 regarding COVID-19 diagnostics and therapeutics and the TRIPS Agreement. CPR is a coalition of organizations that advocates for rights of private property in all its forms—physical, personal, and intellectual.

We have grave concerns about the dangerous precedent set by the United States' 2022 support for waiving TRIPS intellectual property (IP) minimum protections for COVID-19 vaccines. Moreover, CPR regards the proposed expansion of the TRIPS waiver for COVID-19 diagnostics and therapeutics as only heightening the dangers to future biomedical innovation, which depends heavily on secure, reliable IP to spur innovation and foster collaboration.

Patents and other forms of intellectual property were central in enabling many years of private ingenuity and investment that led to the rapid creation of safe, effective vaccines that have dramatically reduced COVID cases, hospitalizations, and deaths in the United States and around the world. Likewise, IP is central in fostering private ingenuity, investment, and development of safe, effective COVID therapeutics and diagnostics. In many nations, ample supplies of COVID vaccines, therapeutics, and diagnostics are available and COVID-19 is endemic, like the flu.

The Biden administration's unfortunate decision to back a World Trade Organization (WTO) effort led by South Africa and India (both of which have weak IP protections)¹ to waive TRIPS Agreement protections for COVID-19-related intellectual property contrasts with previous bipartisan administrations that advanced respecting property rights around the globe, leading to adoption of TRIPS. Waiving WTO countries' TRIPS Agreement obligations to protect IP related to COVID-19 was and continues to be misguided and dangerous. It set a reckless precedent for foreign expropriation of U.S. companies' IP; approving the proposed expansion would only

¹ https://www.valueingenuity.com/wp-content/uploads/2023/02/GIPC_IPIndex2023_FullReport.pdf

further hinder innovation and make future waivers easier. Future waivers could extend to all innovative technologies, including green technology, 5G wireless technology, artificial intelligence, quantum computing, aerospace, other aspects of biopharmaceuticals, medical technology, and robotics. Reducing TRIPS protections harms the United States and American technological leaders the most.

Contrary to assertions of waiver proponents, IP has not and is not keeping COVID vaccines from poorer countries or their populations. Rather, IP made the extraordinarily fast worldwide response possible. Millions of vaccine doses quickly reached those nations that sought them. For a variety of reasons, the medicines have either not been distributed in-country or not been administered. The reason lies in domestic challenges, such as shortcomings in health systems, lack of transportation and distribution infrastructure, lack of storage for ultracold medicines, security and criminal vulnerabilities, corruption, as well as those nations' trade and regulatory barriers. The TRIPS IP waiver has done nothing to put shots in arms or deliver vaccines to people in less developed countries.

Freeing WTO countries from having to protect IP rights enables nations' stealing U.S. patented COVID inventions. And not only are patents at risk, but also secure rights in copyrights, trade secrets, industrial designs, and proprietary materials. The current waiver and looming potential expanded TRIPS waiver cause great uncertainty, threatening billions of private dollars of risk capital investment and cutting-edge biomedical innovation over the intermediate and long term. The lost returns on investment defund the research and development crucial for improvements in safety and efficacy and for future breakthroughs. This unravels U.S. innovation infrastructure critical for U.S. competitiveness, which reduces the quality of our health system and puts patients in greater harm.

U.S. capitulation on TRIPS puts American innovators' property in the hands of copyist countries such as India and adversaries such as China. The TRIPS waiver aids adversaries and competitors in surpassing the United States as the world's innovation leader in emerging technologies. It gives China, Russia, and other nations sensitive, crucial knowledge about mRNA technology that holds many applications. The TRIPS waiver gives China access to the platform for creating high-quality, high-value biologic vaccines and therapies for many viruses and diseases, such as cancer vaccines.

Rogue nations can weaponize the WTO waiver to force tech transfer by U.S. inventors. This carries critical ramifications over time, including negative impacts on U.S. trade balances. The United States presently enjoys a trade surplus in IP licensing revenue. Waiving TRIPS contributes to more foreign competition in global markets for products of affected IP. Both the volume and the quality of foreign competitors' products will displace U.S. product sales. Weakened TRIPS will lead to reduced U.S. licensing revenues, thus adding to a worsened overall trade deficit.

Further, the current TRIPS waiver jeopardizes not only U.S. economic and national security in this manner, it puts at risk U.S. jobs in a leading sector of our innovation economy. Waiver of TRIPS obligations effectively creates jobs in competitor countries, including the most aggressive ones.

In closing, CPR urges the commission to give particular weight to the aspects of COVID IP and the TRIPS waiver discussed above: American innovation, U.S. economic welfare, our industrial competitiveness, and America's best interests. We appreciate the commission's consideration of our input on this very important matter.

Sincerely,

James Edwards
Executive Director
Conservatives for Property Rights

Seton Motley
President
Less Government

James L. Martin
Founder/Chairman
60 Plus Association

Rick Manning
President
Americans for Limited Government

Matthew Kandrach
President
Consumer Action for a Strong Economy

David Williams
President
Taxpayers Protection Alliance

Ed Martin
President
Phyllis Schlafly Eagles

Kevin L. Kearns
President
U.S. Business & Industry Council

Ashley Baker
Director of Public Policy
The Committee for Justice

Saulius "Saul" Anuzis
President
60 Plus Association

Bob Carlstrom
President
AMAC Action

Jeffrey Mazzella
President
Center for Individual Freedom

Dick Patten
President
American Business Defense Council