

IVIA ELECTRONIC TRANSMISSION

May 19, 2021

The Honorable Gina M. Raimondo
Secretary
United States Department of Commerce
1401 Constitution Ave. N.W.
Washington, D.C. 20230

The Honorable Katherine C. Tai
United States Trade Representative
600 17th St. N.W.
Washington, D.C. 20508

Dear Secretary Raimondo and Ambassador Tai:

We write you today regarding President Biden’s disastrous decision to support the waiver of the Trade-Related Aspects of Intellectual Property Rights or TRIPS agreement in relation to the prevention, containment, or treatment of COVID-19. The waiver, which is not limited to vaccines, will do nothing to end this global pandemic. Instead, it would undermine the extraordinary global response that has achieved historically remarkable results in record time and our nation’s global leadership in the technologies, medicines, and treatments of the future.

Intellectual property rights provide the legal basis for our innovation and creative economy. Simply put, strong intellectual property rights are why the United States leads the world in IP intensive industries like the life sciences, biopharmaceuticals, precision medicine, and diagnostics. As we work to meet the challenge of the COVID-19 pandemic, this leadership has benefited our country and the world. As you both know, last year America’s innovative biopharmaceutical companies developed life-saving vaccines. These companies spent substantial sums to develop these treatments and, as of this writing, have produced billions of vaccine doses for the world. Their innovation, ingenuity, and commitment to global health is responsible for the dramatic decline in the pandemic we are seeing both in America and across the globe.

Unfortunately, almost immediately after these vaccines were proven to work, China and other countries which regularly steal American intellectual property—like India and South Africa—began urging the World Trade Organization to grant a TRIPS waiver. These nations are falsely claiming that granting such a waiver would speed the development of new vaccine capacity. Nothing could be further from the truth.

The reason why there are not enough vaccine doses at this time is simple: the supply chain lacks the technological capacity. Vaccine production is a complex technical and logistical process, with limited technical resources (e.g., skilled scientists and technicians at companies). At best, all President Biden’s giveaway to China and India and others will do is foster uncoordinated vaccine nationalism, as countries jump in to try to coerce technology transfer and manufacturing locally. At worst, this action will provide a boost to the Chinese Communist Party’s “vaccine diplomacy”

and enable Beijing to undercut American leadership on vaccine distribution throughout the developing world.

It is not surprising that China, India, and South Africa want to steal our intellectual property and medical technology. What is surprising is that an *American* president, especially one who claims to be a “jobs” president, would force American companies to give their medical technology and manufacturing processes to foreign adversaries like China. Simply put, the Biden Administration’s support for a TRIPS waiver puts America’s interests last and China’s interests first.

Our concerns with the Administration’s decision are serious, and the American people deserve to understand exactly how President Biden reached this conclusion. Accordingly, and in order to help us better understand this decision to support intellectual property theft and forced technological transfer, we ask that you answer the following questions by no later than June 19, 2021:

1. Will you provide and describe a list of all meetings with foreign officials where the TRIPS waiver was discussed? Specifically, did anyone in the Administration speak with any Chinese, Indian, or South African officials regarding the TRIPS waiver and, if so, what were the contents of those discussions?
 - a. Did President Xi ask that the Administration grant a waiver when he spoke with President Biden in March?
 - b. Did the Administration coordinate its decision to negotiate a waiver with key allies including the United Kingdom, Germany and the European Union?
2. As you both know, the proposed TRIPS waiver merely *allows* member nations to waive domestic IP protections and enforcement. Does the Biden Administration plan on waiving American intellectual property laws? Does the Biden Administration plan on waiving domestic intellectual property enforcement, including enforcement against intellectual property and trade secret theft?
 - a. Under this scenario, what would happen if a Chinese national is found to have stolen trade secrets? Under the waiver, if adopted, would they not be prosecuted? And, what of the Chinese nationals currently being prosecuted? Would those cases now be dropped?
 - b. How would this be implemented -- would private citizens be denied their ability to protect or enforce intellectual property rights in U.S. courts?
 - c. Does this Administration plan to merely ignore its obligations at the World Intellectual Property Organization?
3. Please quantify how many countries have ever used the TRIPS flexibilities since 2001, including the TRIPS amendment on compulsory licensing for export.
4. Was the Biden Administration’s support for a TRIPS waiver premised on China, Russia, South Africa, India, or any other nation state supporting other foreign policy priorities of the Administration? Specifically, was support for a TRIPS waiver predicated on foreign countries supporting any of the Administration’s international climate priorities?

5. Does the Administration plan on making any additional intellectual property concessions to foreign nations?
6. What evidence did the Administration rely on to conclude that IP was a barrier to vaccine manufacturing and that the benefits of waiving IP protections outweighed the potential costs, which include, but are not limited to: diminished incentives for investment, increased supply chain competition, and the ability for manufacturers to negotiate voluntary licenses?
7. What impact will the TRIPS waiver have on America's domestic intellectual property industries, specifically biopharmaceutical manufacturing? Biopharmaceutical manufacturing provides good-paying jobs for hundreds of thousands of American workers, whose livelihoods will be adversely impacted by this decision. What will you do to support these workers and how do you reconcile this decision with the Administration's desire to be a "jobs" presidency?
8. What impact will this decision have on the long-term health of our nation's innovation economy? Do you believe this decision will detrimentally impact America's continued leadership in biopharmaceutical innovation?
9. Does the Administration intend to replicate this action with other vaccines or biotechnologies in the future, such as treatments for malaria, Alzheimer's, or Parkinson's that are currently in development? Have you considered how this decision will adversely affect the financing of future vaccines due to the lack of confidence in this Administration to defend American intellectual property protections?
10. Does the Administration plan to submit the text of any waiver to TRIPS that it negotiates at the WTO to Congress for approval? Will the Administration commit to respecting the role of legislative branch and refrain from unilaterally overriding or amending the terms of a Congressionally-approved agreement without approval from Congress?

Thank you for your prompt attention to this matter. We look forward to your responses and we hope you will advocate a reversal of this disastrous policy to President Biden. If you have any questions, please do not hesitate to contact us.

Sincerely,

Tom Cotton
United States Senator

Thom Tillis
United States Senator

Chuck Grassley
United States Senator

Mike Crapo
United States Senator

James Lankford
United States Senator

Mike Lee
United States Senator

Joni K. Ernst
United States Senator

Ben Sasse
United States Senator

Dan Sullivan
United States Senator

Kevin Cramer
United States Senator

Todd Young
United States Senator

Richard Burr
United States Senator

Rodger Wicker
United States Senator

Marsha Blackburn
United States Senator

cc: The Honorable Joseph R. Biden
President of the United States
1600 Pennsylvania Avenue NW
Washington, D.C. 20500