

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

March 30, 2022

Dear President Biden:

The undersigned leaders of U.S. health, human rights, consumer and faith organizations write to express our deep concern with the alternative to a waiver of World Trade Organization (WTO) intellectual property (IP) barriers that recently leaked. Your goal of saving lives worldwide from the ravages of COVID-19 will not be furthered by accepting this text, which would in practice be worse than the status quo with respect to global access to lifesaving vaccines and treatments.

In May 2021, you called for a waiver of “intellectual property” barriers to support global production of COVID-19 vaccines. This leaked text, in contrast, would impose *new* conditions limiting the *existing* WTO rules that now allow countries to issue compulsory licenses for patented products.

The leaked text facilitated (and presumably prepared) by the WTO Secretariate codifies the lowest-common denominator of issues that have deadlocked WTO “TRIPS waiver” negotiations: European Union opposition to waiving WTO IP barriers and U.S. insistence that any text be limited to vaccines. India and South Africa have not agreed to the leaked text.

This text is just another rehash of the EU’s efforts to thwart the very concept of a waiver, despite support for it by almost all other WTO nations. The text restates existing WTO rules that have proved unsuitable for boosting COVID-19 supplies as if they were new, and then imposes burdensome new conditions on nations seeking to use the existing flexibilities.

This text, which leading South African academics call “misleading” in a letter asking their president to reject it, also focusses only on patents. As Indian civil society groups note in a letter urging their Prime Minister to reject the text, it leaves in place IP barriers related to trade secrets and undisclosed data that can impede the expansion of vaccine production.

Even if these problems were remedied, this text does not apply to diagnostic tests and treatments.

When you announced support for a TRIPS waiver for vaccines, you called it an extraordinary measure to counter an extraordinary threat. Since then, the advent of highly effective anti-viral and monoclonal antibody treatments provide new life-saving tools, particularly given waning vaccine immunity. You said in your State of the Union address that an important way forward to counter COVID is “test to treat.” Yet we understand that the U.S. government continues to oppose removal of WTO IP barriers to boost access to life-saving treatments and tests for the rest of the world. This is not only unconscionable, it can severely undermine nations’ ability to manage and contain future outbreaks, leaving the world vulnerable to the continual rise of new COVID-19 variants.

The leaked text’s exclusion of some countries further undermines the ability to scale-up production and distribution of COVID-19 medications around the world even were the relevant IP barriers waived across vaccines, tests, and treatments.

In sum, this text would not achieve any of the goals of the promised TRIPS waiver that a large majority of the world's governments, including yours, and public health and faith leaders, have demanded. But it would establish dangerous new precedents limiting use of the existing, limited TRIPS flexibilities. This includes new obligations to identify all relevant patents implicated in authorization orders despite this information not being readily available and having to notify the WTO of authorized entities, receiving nations, quantities, and more. None of this is now required to use the existing WTO flexibilities that this text restates.

That is why South African and Indian academic and civil society leaders consider adoption of this text to be worse than the already problematic WTO status quo.

We urge you to insist on an actual waiver of the full range of IP barriers and end the U.S. refusal to include treatments and diagnostic tests. We urge you to insist on the removal of all TRIPS-plus measures, including patent-listing and WTO notification requirements.

If adopted as-is, this text, while continuing to privilege Big Pharma monopolies and profits, would continue to deny access to lifesaving COVID-19 vaccines and treatments to millions around the world. Thus, absent major improvements, we urge you to reject this text.

Sincerely,

Carrie Teicher
Acting Executive Director
**Doctors Without Borders/Médicins Sans
Frontières (MSF)**

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