



THE UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON

November 8, 2021

The Honorable Thom Tillis
United States Senate
113 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Tillis:

Thank you for your letter regarding the proposal by India and South Africa to waive certain provisions of the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in relation to prevention, containment, or treatment of COVID-19.

The Administration believes strongly in intellectual property protections, but in service of ending this pandemic, supports a waiver of those protections for COVID-19 vaccines. We are facilitating discussions at the WTO in an effort to foster consensus among its 164 members.

As part of rebuilding U.S. alliances, the Biden-Harris Administration is exploring every avenue to coordinate with the global community and is evaluating the efficacy of proposals in multilateral fora, including the WTO, by their true potential to save lives, end this pandemic, and respond to the next one. USTR has been actively engaging with our trading partners on a range of issues, including discussing the proposed waiver to certain provisions of the TRIPS Agreement for the COVID-19 pandemic. USTR has worked to improve transparency, including through meeting readouts. For example, the readouts for the meetings with the Indian Commerce Minister and the South African Trade Minister noted discussion on the proposed waiver.

As you may know, a waiver would suspend for a limited period of time certain obligations for WTO Members under the TRIPS Agreement. Changing U.S. law is the domain of Congress. As for other countries' usage of TRIPS flexibilities, the Biden-Harris Administration respects a trading partner's right to protect public health and, in particular, to promote access to medicines for all. With respect to the system set forth in TRIPS Article 31bis and the Annex to the TRIPS Agreement, we are aware of one special export license that has been exercised. The license was used by a Canadian company to ship an AIDS therapy drug to Rwanda.

The Biden-Harris Administration's support for a TRIPS waiver was not predicated on foreign countries supporting any supplemental priorities. The decision to support a waiver of IP protections for COVID-19 vaccines reflects the extraordinary circumstances of this pandemic.

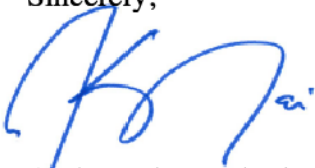
As to the Administration's process, starting in mid-April, USTR began consultations, including on issues related to manufacturing capacity, with interested parties: labor organizations, civil society, public health advocates, public health experts both inside and outside of the government, and vaccine manufacturers themselves. USTR will continue to ramp up efforts to work with the private sector and other partners to expand vaccine manufacturing and distribution around the world.

The Administration believes strongly in intellectual property (IP) protections, biopharmaceutical innovation, and the importance of safeguarding American innovation from illicit acquisition. The decision to support a waiver of IP protections for COVID-19 vaccines reflects the extraordinary circumstances of this pandemic. Some companies have responded to the extraordinary circumstances posed by the pandemic by waiving, or by pledging not to enforce, their intellectual property rights. The need for increased vaccine production does not adversely affect American pharmaceutical workers.

We are committed to continuing to work with World Trade Organization members and will be clear-eyed about potential risks as we enter text-based negotiations. Finally, I am committed to keeping Congress fully informed of developments in the process in the WTO.

Thank you again for your letter, and please do not hesitate to contact me if you would like to discuss this or other issues in the future.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. Tai', is positioned above the printed name.

Ambassador Katherine Tai