

WAIVER OF THE WTO'S INTELLECTUAL PROPERTY RULES (TRIPS): AN INDISPENSABLE TOOL TO FIGHT THE COVID-19 PANDEMIC.



This is part of a Global Trade Watch series on the TRIPS Waiver.

Waiver of WTO Protections for Big Pharma Will Help U.S. Economic Recovery and Boost U.S. Employment

*Geopolitical Gains for China and Russia if the United States
Continues to Block the COVID-19 Emergency WTO TRIPS Waiver*

U.S. economic and geopolitical interests are being damaged every week that the Biden administration does not reverse the Trump administration blockage of the emergency COVID-19 waiver of certain World Trade Organization (WTO) intellectual property (IP) rules. More than 100 nations believe the waiver is vital for them to gain access to needed supplies of COVID-19 vaccines and treatments. Under current production trends, with a few vaccine originator firms controlling if and how much vaccine is made, few people in developing countries will have access to vaccines [until 2022](#). Those in the world's poorest countries may have to wait [until 2024](#) for mass immunization, if it happens at all. The dire shortage of vaccines has no end in sight. As we enter the second quarter, about [one billion doses](#) have been produced in 2021. We need 10 to 12 billion to reach global herd immunity. And we will need far more if, like flu vaccines, they must be repeated or require booster shots.

Had the Trump administration not blocked the waiver of WTO "Trade Related Aspects of Intellectual Property" (TRIPS) rules starting last October, perhaps more than the [28% to 42%](#) of people in low- and lower-middle- income countries now projected to get vaccines in 2021 would have had a greater chance for access. Instead, the reality is that the pandemic will continue largely unmitigated in these countries, which have more than three quarters of the world's population, for the foreseeable future.

As support for the waiver grows, Big Pharma's latest redirect effort is to reframe the COVID vaccine and treatments debate as a U.S. v. China fight, when in reality the lineup is 100 nations supporting a waiver versus a few WTO members opposing. Given the lack of access to COVID-19 vaccines and treatments in most of the developing world poses dire health and economic threats to the United States and people worldwide, namely of the emergence of a vaccine-resistant or more lethal or infectious variant, pharmaceutical interests are trying to redirect the debate. Their latest U.S. argument is that the waiver would help China take "U.S. mRNA technology" and produce mRNA vaccines exploiting U.S. tech. The reality is that mRNA research has been done for decades in developing and developed nations all over the world and is not something that U.S. firms "own."

- China already has been developing its own [COVID-19 mRNA vaccine, one that can be stored at refrigerator temperature](#). Clinical trials on it started in late 2020. Three Chinese firms are building a manufacturing [plant for that vaccine](#). As well, BioNTech, which is the IP holder of the mRNA innovations underlying the Pfizer vaccine, already has a contract with Chinese Fosun Pharmaceuticals to [make the Pfizer/BioNTech mRNA vaccines in China](#).

- Research on the mRNA platform has been largely government-financed. The [U.S. National Institutes of Health even owns some of the IP underlying the Moderna vaccine](#), while BioNTech’s innovations (which Pfizer has licensed) were [supported by the German government](#) and also [EU funding](#). This research and that undertaken in China and other nations has been widely shared in academic journals. The government-funded scientists already are building off of each other’s work.

U.S. economic and geopolitical interests are strengthened, not undermined by U.S. support for the temporary COVID-19 WTO TRIPS waiver.

A TRIPS waiver will boost, not cost U.S. jobs or undermine U.S. economic interests. The market for COVID-19 vaccines is literally the entire world. Even with technology transfer via a TRIPS waiver, any successful vaccine maker stands to [profit handsomely](#). It is critical to understand that waiving WTO rules does not prevent governments from paying royalties or providing other compensation for research and development costs, data rights and trade secret resources under national laws. There simply is not, and in the medium term will not be, sufficient production capacity to manufacture the volume of vaccines and other COVID-19 treatments needed worldwide. And the U.S. pharmaceutical interests opposing the waiver have shown no interest in massively scaling up here and hiring more U.S. workers to produce the needed billions of vaccines doses for export to developing countries. In fact, the vaccine originators are [blocking](#) manufacture and supply for sales they can’t and won’t make in low- and middle-income countries by refusing to enter into licensing agreements for production that would be made available on a cost or low-profit basis. They’re not focused on global coverage, but on sales in profitable markets.

Consider the [Pfizer investor relations VP](#) who recently announced plans to *shift production* next year to produce boosters for sale to rich nations and at much higher prices, while most people in poor nations have not had a first shot. That shift towards boosters for rich countries will only exacerbate the dire shortage of vaccines with no end in sight. As we enter the second quarter, about [one billion doses](#) have been produced in 2021. We need 10 to 12 billion to reach global herd immunity. And we will need far more if, like flu vaccines, they must be repeated or require booster shots. Global [economic losses of \\$9.2 trillion](#) in 2021 are projected under the current scenario of few people in developing nations being vaccinated according to a study issued by the International Chamber of Commerce. Wealthy countries like the United States would bear nearly half of that hit. A [recent Oxfam report](#) gauges that the United States could lose up to \$2,700 per person in household spending in 2021, which is \$1,300 more than the recent stimulus check. Overall, the U.S. could lose as much as \$1.3 trillion in GDP as its share of the cost of vaccine inequality. [This economic loss resulting from failure to vaccinate the world would mean fewer jobs and lower wages for Americans as well as resurgent risks of infection with vaccine-resistant variants.](#)

Another Pharma redirect revolves around attempts to recruit industry lobbyists to oppose the waiver, claiming that it somehow would harm actors, musicians and filmmakers. This may be useful to distract from the threats posed by Pharma monopoly control of COVID-19 vaccine manufacturing, but is without merit. The [initial proposal](#) tabled by South Africa and India clearly is designed to exclude copyright that pertains to entertainment – films and musical recording. Instead of only relying on the language already limiting the scope of the waiver to COVID-19 “prevention, containment or treatment,” the text additionally includes a clause carving out entertainment interests: “The waiver in paragraph 1 shall not apply to the protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations under Article 14 of the TRIPS Agreement.” However, if the scope of the carveout excludes any of the entertainment interests, that is precisely the sort of issue that could be address if the United States would simply agree to engage in textual negotiations.

The Biden administration is rightly focused on helping communities here most at risk of infection and death – particularly Black, Brown and Indigenous communities – but is viewed worldwide as leading the opposition to a

waiver that African, Asian and Latin American countries mainly populated by people of color have determined is essential to protect their people. Especially after the United States was the main obstacle in the late 1990s to an HIV/AIDS WTO TRIPS waiver, the U.S role as leader of the COVID-19 waiver opposition is toxic. Millions of people in Africa and across the developing world were ravaged and died needlessly of AIDS, and economies lost decades of progress because U.S. opposition delayed the eventual clarification of TRIPS “flexibilities” in 2001 that made it possible for people in poor nations to get the medications that had made HIV a chronic, treatable disease in rich nations.

U.S. vaccine makers Pfizer and Moderna have refused partnerships with many qualified developing country producers, while China and Russia are widely sharing their vaccines and have become the go-to for developing countries. Pharma’s claims that developing nation firms don’t have technical knowledge or skills to produce vaccines based on these new technologies is wrong and racist. Global South firms obviously can make COVID-19 vaccines, because they ARE right now. But only under contract if originators allow it and with originators retaining control over how much is made and where it can be sold and at what price. For instance, J&J decided that 91% of vaccines that South African firm Aspen contract manufactures must be sold in the EU. Only 9% can be sold in South Africa. The only way to control COVID-19 is to build global production capacity: That is why more than 100 WTO member nations now support a waiver. The Trump administration led the EU, UK, Australia, Switzerland, and a handful of other nations to block negotiations on the proposal. The anti-waiver nations are among the few with enough advanced vaccine purchases to fully cover their populations and even more. The nations seeking the waiver are among the many worldwide that have no or limited vaccine supplies and that, under current production trends, are not expected to be able to vaccinate their populations until 2022-2024, if ever. Meanwhile, Chinese Sinovac and Sinopharm vaccines and Russia’s Sputnik-5 vaccine are becoming the go-to options for countries around the developing world. The Chinese and Russian companies, probably compelled by their governments, have engaged in [significant tech and know-how transfer](#) and partnerships with firms all over the world. But this is not an optimal solution, even just from a global health perspective. Recently, [a top Chinese official admitted that vaccines developed in China have low levels of effectiveness against the disease](#), which means that the millions of people being inoculated with them could still contract the virus with the associated risks of generating variants that could make their way to the United States.

Around the world, there is growing fury about grotesque vaccine inequities between and within countries target with geopolitical implications as China and Russia engage in “vaccine diplomacy” and widely share technology while U.S. firms refuse and the U.S. government blocks 100 nations’ efforts to help themselves. This scenario fuels an anti-democratic, [anti-West narrative](#) from [authoritarian governments](#) framed on greed, nationalism and human rights abuses of a U.S. government putting pharma corporations ahead of the lives and livelihoods of billions of people. No matter that this is next-level cynical coming from China and Russia, it has powerful appeal in nations where Chinese and Russian vaccines are the only hope to be safe from COVID-19 and for economies to recover while the U.S. government is seen as actively blocking access to the COVID-19 vaccines and treatments that can now protect Americans.

Reversing Trump’s blockage of the WTO TRIPS waiver is a prime opportunity for the Biden administration to differentiate itself from Trump’s “America First” xenophobia and isolation. By summer’s end, most U.S. residents will be vaccinated. It is not tenable that the United States is simultaneously blocking 100 other WTO members from being able to do what they think is necessary to try to get their populations vaccinated *by next year*. Alternatively, the Biden administration would be lauded in nations worldwide and celebrated by its own political base, which supports the waiver, by announcing it would no longer block the commencement of negotiations on a TRIPS waiver. Agreeing to textual negotiations would allow the U.S. government to address whatever concerns it may have by negotiating specific waiver terms. This would remove IP obstacles to the needed production of much greater

volumes of COVID-19 vaccines, treatments and diagnostic tests, which is essential to U.S. residents being safe from COVID-19 and our economy reviving, as well as the health and economic recovery for the world.

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