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VIA ELECTRONIC TRANSMISSION

April 16, 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:

I write you today in my capacity as the Ranking Member of the Senate Judiciary Committee Subcommittee on Intellectual Property. I write specifically regarding a disastrous proposal by India and South Africa to waive the Trade-Related Aspects of Intellectual Property Rights or TRIPS agreement in relation to prevention, containment, or treatment of COVID-19.

I am concerned the Biden Administration is being urged to support this broad and open-ended waiver in the mistaken belief that it will promote broader access to vaccines needed to halt the spread of this terrible pandemic. The waiver, which is not limited to vaccines, would do nothing of the sort. Rather, it would undermine the extraordinary global response that has achieved historically remarkable results in record time and undermine 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. Of the more than 800 global development projects to create vaccines, treatments and diagnostics launched around the world, approximately half were generated from the United States and, significantly, about three-quarters are from small- and medium-sized enterprises.

A disastrous TRIPS waiver can do nothing to speed the development of new capacity, which requires the active cooperative involvement of the vaccine originator companies, which need to transfer not just patents but specific know-how. This is a complex technical and logistical process, with limited technical resources (e.g., skilled scientists and technicians at companies),

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that is best coordinated collectively. A TRIPS waiver would foster uncoordinated vaccine nationalism, as countries jump in to try to coerce technology transfer and manufacturing locally. Companies could not possibly comply with all the potential mutually contradictory requests, nor would it be an efficient means of creating new global manufacturing capacity.

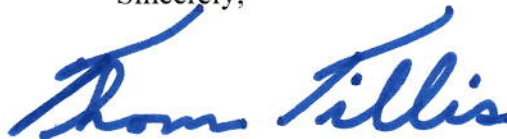
Equally as important, this proposed waiver is not “limited”. It contains no time or technology limits and it does not require governments to consult in advance with companies nor compensate them. Any such limits are non-enforceable in any case, since the waiver exempts countries from WTO dispute settlement. This means that foreign nations—nations which did not invest in the research and development of revolutionary vaccines and treatments—can demand any technology with the loosest connection to COVID without recourse.

The waiver’s main concrete impact would therefore be to legitimate the transfer of American technologies to foreign competitors. China and India, for example, lag in or totally lack in the development of mRNA technologies and applications. The waiver, without limits on scope, creates an uncontestable opportunity for them to demand such technology transfers. These technologies are not just used for COVID vaccines. Their transfer would allow for the creation of entire industries in these countries that will compete with American companies in the development of cutting-edge health care technologies.

This competition would be allowed without any compensation to the American innovators and, with the explicit acquiescence of our government, make it virtually impossible to undo them in any future trade negotiations over intellectual property rights. As much as we have protested forced technology transfer and outright intellectual property theft in recent years, it makes no sense for the Biden Administration to support the disastrous waiver of all intellectual property rules that would allow our foreign competitors to gain free and unfettered access to our most advanced technologies. That is hardly the worker-centric, job-centric trade policy the President has advocated and promised to hardworking taxpayers.

For all these reasons, I ask that you oppose any and all efforts aimed at waiving intellectual property rights. You must continue the longstanding, bipartisan American policy of supporting strong intellectual property rights. America’s innovation economy is depending on you to support the continued enforcement of the TRIPS agreement. Thank you for your attention to this matter. I look forward to your response, and I hope that I can count on your support in this matter.

Sincerely,



Thom Tillis
Ranking Member
Subcommittee on Intellectual Property