U.S. Chamber of Commerce

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September 15, 2022

The Honorable Gina Raimondo
Secretary of Commerce
Washington, DC 20230

The Honorable Katherine Tai
U.S. Trade Representative
Washington, DC 20508

Dear Secretary Raimondo and Ambassador Tai:

The U.S. Chamber of Commerce ("Chamber"), has serious concerns regarding the proposal to waive the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) beyond the scope agreed in June to include COVID-19 therapeutics and diagnostics. Doing so would undermine the U.S. manufacturing base, harm American workers, and erode the innovation ecosystem that enhances American prosperity.

The Chamber strongly supports the Biden administration's sustained efforts to cement the strength of the U.S. industrial base, cultivate critical workforce skills and the American jobs they support, and secure U.S. supply chains. We believe further prioritization of research and development ("R&D") funding, protection of intellectual property ("IP"), and fostering of the innovation ecosystem is also warranted.

Among recent initiatives, the Chamber was pleased to support the CHIPS and Science Act. Not only does this measure significantly enhance the attractiveness of the United States as an investment destination for cutting-edge semiconductor manufacturing, it also includes a historic increase in funding for basic research and R&D at the National Science Foundation, the Department of Commerce's Regional Technology Hubs, and the National Institute of Standards and Technology (NIST). In doing so, it "strengthens a strength" of the U.S. economy, namely, the innovation engine at the heart of American manufacturing.

U.S. public-private partnerships are a critical component of an innovation ecosystem that connects stakeholders at government agencies, research universities, scientific institutions, and private industry — including entrepreneurs, start-ups, and large-scale innovators and manufacturers. This ecosystem collectively advances knowledge, and develops, tests, and commercializes new technologies and their resulting products, be those semiconductors, military tools, digital applications, or medicines.

At the basic research stage, federal funding of science primes the pump. Nevertheless, private industry is by far the most significant contributor to overall U.S. R&D funding. According to the Congressional Research Service, industry accounts for 30 percent of investment in basic research (knowledge advancement), 55 percent on applied research (practical applications of knowledge), and 86 percent on development (testing and commercialization). Altogether, the private sector accounts for 71 percent of all U.S. R&D spending across these combined categories.[1]

Private sector investment relies on U.S. IP laws and supporting regulatory frameworks, such as the Bayh-Dole and Stevenson-Wydler Acts,[2] that reflect decades of bipartisan consensus. U.S. IP rights serve critical economic functions, acting as a guarantor of investment in long-term, high-risk, capital-intensive projects, and providing a vehicle for exchange of value, including technology transfer, among innovation ecosystem stakeholders.

Unfortunately, the strength of U.S. IP rights has not been widely matched overseas. Trading partners, especially in lower- and middle-income countries, have tended to view IP commitments as an unwelcome trade-off for access to wealthy markets rather than as a forward-looking investment in a knowledge economy infrastructure at home. Consequently, global IP standards remain weak.

This is a disadvantage in a global economy where productivity advances are increasingly driven by innovation, know-how, information flows, and data. It contributes to a deep global imbalance in innovative and creative output, as well as access to the same. The U.S. Chamber International IP Index notes, "[W]eak IP protection stymies long-term strategic aspirations around innovation and high-tech economic development."[3] In a weak global IP environment, forced technology transfer becomes the preferred method of gaining access to new technology.

The recent decision by the WTO to waive IP rights related to COVID-19 vaccines reflects the frustration of those who remain outside the innovation ecosystem and a cynical effort by some to appropriate innovations that are the fruit of others' investments. However, the diminishment of IP rights would only serve to reinforce the imbalance. While early U.S. support for a waiver signaled a willingness to endorse "extraordinary measures" amid a global health crisis, the waiver's realization came long after its ostensible purpose was mooted by a large and growing surplus of COVID-19 vaccine supplies.

The proposal for an expanded waiver now under consideration by WTO members further threatens U.S. leadership in biotechnology and other key sectors, including digital, green, and agricultural technology, by reinforcing a precedent for the ready expropriation of IP. As UN Secretary General António Guterres recently said, "[R]enewable energy technologies, such as battery storage, must be treated as essential and freely available global public goods."

We are confused by the administration's contradictory stance on this issue. On the one hand, the administration has prioritized domestic investment in cutting-edge technologies and innovative manufacturing. As President Biden frequently says: "'Make It in America' is no longer just a slogan; it's a reality in my administration," and the administration is rightly proud of the expansion of American manufacturing output and employment over the past 18 months. On the

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[1] Congressional Research Service: U.S. Research and Development Funding and Performance: Fact Sheet (Updated October 4, 2021), https://sgp.fas.org/crs/misc/R44307.pdf

[2] 35 U.S.C. § 200-209 and 15 U.S.C § 3710-3716, respectively

[3] U.S. Chamber International IP Index, 10th ed.: Statistical Annex, (February 2022), https://www.valueingenuity.com/wp-content/uploads/2022/04/GIPC_IPIndex2022_StatAnnex_v2-1.pdf

other hand, expanding the TRIPS waiver would undermine those investments by abrogating IP rights and expediting the transfer of U.S. innovative technologies to foreign governments.

International engagement and capacity building can strengthen global IP standards and expand participation in the innovation ecosystem. In initiatives such as the Indo-Pacific Economic Framework and other regional and bilateral undertakings, there is scope to engage allies in the development of an effective, shared knowledge economy infrastructure. With a solid IP foundation, many more countries will be positioned to participate effectively as full stakeholders in the innovation ecosystem that delivered COVID-19 vaccines, therapeutics, and diagnostics—and that will deliver the technological solutions to the problems of climate change, energy shortages, food equity, access to health, and a multitude of other challenges, seen and unforeseen.

We urge the Biden administration to oppose expansion of the TRIPS waiver and look forward to partnering with you across these various initiatives in the pursuit of real solutions. We welcome the opportunity to meet with you to discuss this subject at a time that is convenient.

Sincerely,

David Hirschmann
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Global Innovation Policy Center
U.S. Chamber of Commerce

Myron Brilliant
Executive Vice President and
Head of International Affairs
U.S. Chamber of Commerce