

La version française suivra

November 26, 2020

The Right Honourable Justin Trudeau, Prime Minister of Canada
The Honourable Mary Ng, Minister of Small Business, Export Promotion and International Trade
The Honourable Navdeep Bains, Minister of Innovation, Science and Industry
The Honourable Patty Hajdu, Minister of Health
Mr. Stephen de Boer, Ambassador of Canada to the World Trade Organization

Re: Proposed TRIPS Waiver for COVID-19 Related Health Products and Technologies

Dear Prime Minister, Ministers, and Ambassador:

We are writing to urge the Canadian government to support the WTO proposal from South Africa and India, co-sponsored by Kenya, Eswatini, Mozambique and Pakistan, for a “Waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19.” The proposed temporary waiver, to be in force only until the WHO declares the pandemic over, will not affect the protection of intellectual property rights embedded in the TRIPS Agreement. It will, however, enable the WTO’s 160-plus member governments to make as rapid use as possible of the knowledge generated by COVID-19 research without facing the risk of a TRIPS trade dispute.

Canada has opposed this waiver twice when it was discussed at the TRIPS Council. It will go forward once more to the TRIPS Council on December 10th, and then to the WTO General Council meeting on December 17th. We urge Canada to reverse its position on this issue and publicly support, and encourage other WTO member countries to support, the TRIPS waiver.

Intellectual property rights are not the only impediment to equitable access for all to COVID-19 treatments, vaccines, and medical supplies. But it is well documented that existing TRIPS obligations that create patent monopolies and exclusive control over data and other information impose significant barriers to the rapid development of and affordable access to vaccines, diagnostics and treatment. Existing TRIPS flexibilities for compulsory licensing and parallel importing are important, but insufficient given the scale and urgency of the crisis. Compulsory licensing operates on a country-by-country, product-by-product basis and is too slow to be effective. Parallel importing requirements are even more cumbersome.

The Canadian government recognized this itself with its COVID-19 legislation, Bill C-13, which authorized the temporary suspension of patents and trade secrets to respond to supply shortages and to protect public health. The proposed TRIPS waiver would guarantee similar flexibility to all WTO member countries. This is particularly pertinent with regard to COVID-19 vaccines, the discovery of which has been supported through billions of dollars in direct public financing and governments’ contributions to the COVAX Advance Market Commitment reward mechanism. As such, the products of such research should be considered essential public goods, available to all everywhere at no cost.

Canada in its own bilateral pre-purchase agreements has secured enough potentially safe and effective vaccines to immunize each Canadian ten times over. It can afford to do this. Most low- and middle-income countries cannot and will rely on low- or no-cost vaccine distribution through the COVAX AMC facility. Canada has generously provided this facility with \$243 million to purchase vaccines for this purpose. The facility, however, will only be able to provide a limited number of vaccines to eligible low- and middle-income countries, and will not reserve purchase of vaccines that are priced above US \$21.20 per dose. This could prevent acquisition of one or both of the two presently leading vaccine candidates (Pfizer/BioNTech and Moderna) unless these companies offer their products below the COVAX facility threshold price.

The TRIPS waiver can help to overcome any such pricing barriers by removing TRIPS impediments to the rapid production of lower-cost generic or biosimilar products. This is why the waiver is supported by the Director-General of the WHO, UNAIDS, many past and present international health leaders, and over a hundred health civil society organizations globally.

We reiterate: The proposed waiver does not jeopardize the protection of intellectual property rights embedded in the TRIPS Agreement, except and for a limited time only those that apply to COVID-19 products. The waiver is not, in itself, the sole means by which access for all to effective COVID-19 diagnostics, treatments, equipment, and vaccines will be achieved. But it is a fundamentally important tool for doing so. The waiver is supported by the WHO because it is legitimate and required for protection of public health.

We urge the Government of Canada to act in solidarity with the most vulnerable countries and people and prioritise public health over trade interests. We call upon the Canadian government to demonstrate leadership and commitment to Canadian values of equity, solidarity, and commitment to a shared global future by supporting the waiver when it is next discussed at the TRIPS Council on December 10th, and when it comes before the WTO General Council on December 17th.

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26 novembre 2020

Le très honorable Justin Trudeau, Premier ministre du Canada

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L'honorable Navdeep Bains, Ministre de l'innovation, des sciences et de l'industrie

L'honorable Patty Hajdu, Ministre de la santé

M. Stephen de Boer, Ambassadeur du Canada auprès de l'Organisation mondiale du commerce

Re : Proposition de dérogation aux ADPIC pour les produits et technologies de santé liés au COVID-19

Monsieur le Premier ministre, Messieurs les ministres et Monsieur l'Ambassadeur,

Nous vous écrivons pour demander instamment au gouvernement canadien de soutenir la proposition de l'Afrique du Sud et de l'Inde, co-parrainée par le Kenya, l'Eswatini, le Mozambique et le Pakistan, à l'OMC pour une "dérogation à certaines dispositions de l'accord sur les ADPIC pour la prévention, le confinement et le traitement du COVID-19". La dérogation temporaire proposée, qui ne sera en vigueur que jusqu'à ce que l'OMS déclare la fin de la pandémie, n'affectera pas la protection des droits de propriété intellectuelle prévue par l'accord sur les ADPIC. Elle permettra toutefois à plus de 160 gouvernements membres de l'OMC d'utiliser aussi rapidement que possible les connaissances générées par la recherche sur COVID-19 sans courir le risque d'un différend commercial au titre de l'accord sur les ADPIC.

Le Canada s'est opposé à deux reprises à cette dérogation lors de sa discussion au Conseil des ADPIC. Elle sera à nouveau soumise au Conseil des ADPIC le 10 décembre, puis au Conseil général de l'OMC le 17 décembre. Nous prions instamment au Canada de revenir sur sa position sur cette question, de soutenir publiquement, et d'encourager les autres pays membres de l'OMC à soutenir la dérogation aux ADPIC.

Les droits de propriété intellectuelle ne sont pas le seul obstacle à un accès équitable pour tous aux traitements COVID-19, aux vaccins et aux fournitures médicales. Mais il est bien documenté que les obligations ADPIC existantes qui créent des monopoles de brevets et un contrôle exclusif sur les données et autres informations imposent des obstacles importants au développement rapide et à l'accès abordable aux vaccins, aux diagnostics et aux traitements. Les flexibilités existantes des ADPIC en matière de licences obligatoires et d'importations parallèles sont importantes, mais insuffisantes compte tenu de l'ampleur et de l'urgence de la crise. Les licences obligatoires fonctionnent pays par pays, produit par produit, et sont trop lentes pour être efficaces. Les exigences en matière d'importation parallèle sont encore plus lourdes.

Le gouvernement canadien l'a lui-même reconnu avec sa législation COVID-19, le projet de loi C-13, qui a autorisé la suspension temporaire des brevets et des secrets commerciaux pour répondre aux pénuries d'approvisionnement et protéger la santé publique. La dérogation proposée aux ADPIC garantirait une flexibilité similaire à tous les pays membres de l'OMC. Ceci est particulièrement pertinent en ce qui concerne les vaccins COVID-19, dont la découverte a été soutenue par des milliards de dollars de

financement public direct et par les contributions des gouvernements au mécanisme de récompense de la garantie de marché de COVAX. À ce titre, les produits de cette recherche devraient être considérés comme des biens publics essentiels, accessibles à tous et partout sans frais.

Dans ses propres accords bilatéraux de préachat, le Canada a garanti suffisamment de vaccins potentiellement sûrs et efficaces pour immuniser dix fois chaque Canadien. Il peut se permettre de le faire. La plupart des pays à faible et moyen revenu ne peuvent pas se le permettre et compteront sur une distribution de vaccins à faible coût ou sans frais, par le biais de la garantie de marché de COVAX. Le Canada a généreusement fourni 243 millions de dollars à cette installation pour l'achat de vaccins. Toutefois, cette dernière ne pourra fournir qu'un nombre limité de vaccins aux pays à faible et moyen revenu éligibles et ne réservera pas l'achat de vaccins dont le prix est supérieur à 21,20 dollars américains par dose. Cela pourrait empêcher l'acquisition de l'un ou des deux principaux candidats vaccins actuels (Pfizer/BioNTech et Moderna), à moins que ces sociétés ne proposent leurs produits à un prix inférieur au prix seuil de l'installation COVAX.

La dérogation ADPIC peut aider à surmonter ces obstacles en matière de prix en supprimant les entraves à la production rapide de produits génériques ou biosimilaires à moindre coût. C'est pourquoi la dérogation est soutenue par le directeur général de l'OMS, l'ONUSIDA, de nombreux responsables internationaux de la santé, passés et présents, et plus d'une centaine d'organisations de la société civile du secteur de la santé dans le monde.

Nous réitérons : La dérogation proposée ne compromet pas la protection des droits de propriété intellectuelle inscrits dans l'accord sur les ADPIC, à l'exception de ceux qui s'appliquent aux produits COVID-19, et ce pour une durée limitée. La dérogation n'est pas, en soi, le seul moyen d'assurer l'accès de tous à des diagnostics, des traitements, des équipements et des vaccins COVID-19 efficaces. Mais c'est un outil fondamentalement important pour y parvenir. La dérogation est soutenue par l'OMS parce qu'elle est légitime et nécessaire pour la protection de la santé publique.

Nous exhortons au gouvernement du Canada d'agir en solidarité avec les pays et les personnes les plus vulnérables et de donner la priorité à la santé publique plutôt qu'aux intérêts commerciaux. Nous demandons au gouvernement canadien de faire preuve de leadership et d'engagement envers les valeurs canadiennes d'équité, de solidarité et d'engagement envers un avenir mondial partagé en soutenant la dérogation lors de sa prochaine discussion au Conseil des ADPIC le 10 décembre, et lorsqu'elle sera présentée au Conseil général de l'OMC le 17 décembre.

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This open letter was reviewed, endorsed, and signed by 102 leaders in global health from across Canada, including researchers, distinguished scholars, graduate students, health professionals, and non-governmental organizations.

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