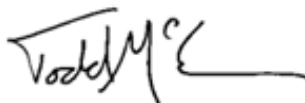


Investigation No. 332-596

Comments Regarding the U.S. International Trade Commission's Investigation No. 332- *COVID-19*

Diagnostics and Therapeutics, Supply, Demand, and TRIPS Agreement Flexibilities

Submitted by Todd McCracken, President & CEO, National Small Business Association

A handwritten signature in black ink, appearing to read "Todd McCracken". The signature is stylized and cursive, with a long horizontal line extending from the end.

Not Confidential

May 4, 2023

Lisa R. Barton

Secretary to the Commission

U.S. International Trade Commission

Office of the Secretary Staff

500 E Street SW

Washington, DC 20436

Comments regarding the U.S. International Trade Commission's investigation into COVID-19

Diagnostics and Therapeutics and TRIPS Agreement Flexibilities

Investigation No. 332-596

Submitted by Todd McCracken, President & CEO, National Small Business Association

Dear Secretary Barton,

I appreciate the opportunity to comment on the World Trade Organization's investigation into the merits of expanding the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Waiver to COVID-19 diagnostics and treatments.

My name is Todd McCracken, and I am President and CEO of the National Small Business Association (NSBA). The NSBA is the nation's oldest bipartisan organization advocating for small businesses. For the last 85 years, our association has worked to ensure the needs and interests of small businesses are understood by government officials and recognized in their decision-making. We currently serve over 65,000 members across nearly every industry in all 50 states.

America's small businesses find themselves at a crossroads. Although many feel more secure than they were one or two years ago, we are facing some significant challenges: improbably high inflation, a tightened credit market, and a labor market that makes growth nearly impossible.

After a very turbulent two years under the COVID-19 pandemic and now economic contractions, the stakes for small business have never been higher. That's why, on behalf of NSBA members, I write in opposition to expanding the TRIPS waiver.

Small businesses around the country are concerned that the TRIPS waiver expansion will further erode the intellectual property protections that are the lifeblood of America's small businesses and their ability to innovate, create jobs, and fuel the economy.

Small businesses are innovators. When it comes to patents, small businesses file more than 14 times more patents than large businesses and universities. They also employ roughly 40 percent of America's scientists and engineers.¹

Intellectual property is the bedrock of innovation. Creating a groundbreaking product or technology is risky. After all, there's no guarantee that good ideas will materialize into tangible products for American consumers. Protecting the intellectual property (IP) of novel ideas – and inventors' rights to commercialize those ideas – ensures investors are rewarded for taking risks. Without IP protections, there would be few incentives to invest into researching and developing new products and technologies.

IP is especially important for small businesses. Many of these businesses lack significant amounts of overhead capital and financial resources; they rely on stable investing environments to stay afloat and continue their work. According to our 2023 economic report, more than one third of small businesses are

struggling to obtain adequate financing in the current economy. Concerningly, this is the highest this indicator has been in 15 years.²

Expanding the TRIPS waiver would substantially undermine IP protections. Many of the companies responsible for COVID-19 vaccines, therapeutics, and diagnostics diverted resources from other endeavors in order to find solutions to end the pandemic as quickly as possible. Instead of rewarding their actions – and the substantial amount of time and money invested in creating their products – the TRIPS waiver allows their foreign competitors to benefit off the backs of American scientists and researchers. If WTO Members can do this to the innovators responsible for ending the COVID-19 pandemic, there's nothing preventing them from allowing this theft in the green energy, manufacturing, or textile industries, to name a few examples. This misguided precedent has the capacity to drastically limit American innovation.

This waiver expansion will penalize small businesses in the biotech space – especially the ones that were on the frontlines of developing COVID-19 therapeutics. Small-and-medium sized biotech firms account for more than half of the COVID-19 therapeutics research and development programs globally.³ By further eroding critical IP protections in this space, expanding the TRIPS waiver could result in massive disruptions, delays, or fully shutdown many of these critical programs.

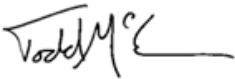
Every industry – not just the biopharmaceutical industry – will feel ripple effects from this new precedent. Undermining IP protections means investors will not be rewarded for betting on potentially groundbreaking ideas. Instead, they will have fewer incentives to risk money and time on innovative products. This is true across fields -- from biotech to manufacturing and even technology to agriculture and more. Without ample investment, engineers, scientists, and researchers alike may not have the financial means to explore groundbreaking ideas or products. The innovation pipeline stops churning.

Small businesses will face unique consequences from the TRIPS waiver expansion. As it stands without the expansion, one third of small businesses believe they will experience no growth this year – the bleakest outlook in almost a decade. And a quarter of small businesses lack confidence in the future of their business.⁴ Creating any further investment uncertainty by stripping back critical IP protections will only hurt American small businesses already struggling to stay afloat.

American workers will also be impacted. Small businesses employ more than 61.7 million workers – or more than 46 percent of all employees in the private sector.⁵ All of these employees could face job uncertainty should World Trade Organization (WTO) Members expand the TRIPS waiver and create more uncertainty on Main Street.

As the world turns the corner and emerges from the depths of the COVID-19 pandemic, we find ourselves once again at an inflection point for small businesses in the American, and global, economy. Lawmakers and regulatory bodies should pursue actions to support and strengthen these critical innovators in these hard times, not think of ways to further threaten the IP that is so vital to their survival.

Sincerely,



Todd McCracken

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