

The Daily Dish

Playing Politics With The Future

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Eakinomics: Playing Politics With The Future

This past week the Biden Administration announced that it will support a request by India and South Africa that the World Trade Organization (WTO) suspend certain intellectual property (IP) protections for COVID-19 vaccines and related products.

There is no rational defense of this move.

Taken at face value, the decision means that the developers of the miraculous COVID-19 vaccines will be unable to reap any return for overseas sales. This is dreadful economic policy that should have been obvious. After all, even the founding fathers understood this. That's why Section 8 of Article 1 reads: "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

The full story is laid out by Chris Holt and Tom Lee in their primer on the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). There are really four key points. India and South Africa requested the waiver on the grounds that the patent protection is slowing access to the vaccines in their countries, and the developed world more generally. Unfortunately, this is demonstrably untrue. The problem is that there is no additional manufacturing capacity, and the Biden Administration knows it. Holt and Lee note that White House Chief of Staff Ron Klain has argued "really, manufacturing is the biggest problem."

Second, even if lack of access to the IP was slowing things down, the waiver process itself is so slow that it will be months before it could be granted and, correspondingly, long before other countries could begin to produce vaccines. And production will take time as well. Waiving TRIPS is not a quick fix for getting vaccines to developing countries, and vaccine producers are already donating millions of doses to the global cause.

Third, within TRIPS there is a provision for compulsory licensing. Specifically, “Foreign manufacturers are free to ask a patentee for a voluntary licensing agreement to manufacture a product.” This takes time, and the patentee can ultimately refuse. If so, a compulsory license can be issued by the national government to produce the drug without the patentee’s permission.

Fourth, the waiver is overly broad. “Under the broad language of the proposed TRIPS waiver, any drugs that have use for patients with COVID-19, including those that predate the pandemic, could lose patent protection. Thus, a foreign company could produce a specific drug under the auspices of COVID-19 but sell it for another disease. Moreover, the foreign company would not have to provide any financial compensation to the company from whom they took the IP. The proposal’s language is so broad that other patented medical products beyond pharmaceutical drugs such as masks, non-pharmaceutical chemical compounds, and respirators would also be subject to the waiver.”

In the end, this is grandstanding politics that accomplishes nothing real in the fight against COVID19, and it comes at the price of setting a horrific precedent in undercutting the protection of IP and the incentives to innovate.