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Working Paper The WTO Council on Trade Aspects of Intellectual Property Rights (TAP Cuncil) monitors the implementation of the Agreement on Trade Aspects of Intellectual Property Rights (TRIPS agreement), provide a forum in which WTO members may consult on intellectual property issues and carry out the specific responsibilities assigned to the Council in the TRIPS Agreement. The TRIPS Agreement establishes minimum standards of protection for copyright and related rights, trademarks, geographical indications (GIs), industrial designs, patents, integrated circuit layout projects and undisclosed information. The TRIPS Agreement also lays down minimum standards for the application of intellectual property rights (IPR) through civil actions for infringement, border actions and, at least in the area of copyright piracy and counterfeiting of trademarks, in criminal proceedings. The TRIPS agreement is important for the interests of the United States and has provided considerable benefits for US industries and individuals, from those who own patents to those who benefit from the technology transferred under license. The TRIPS Agreement was negotiated by the United States and other developed countries, as well as developing countries, such as Argentina, Brazil, China, India, Mexico, South Africa, and Uruguay. In Buenos Aires science and technology policy and management. Originally trained both as a lawyer and as an economist, he made a specialty of technology and intellectual property rights. A former public official (he was State Under-Secretary for Information and Development, 1984-89, and the official delegate of the Argentinean Government to GATT and WIPO during the negotiations on intellectual property rights) also acted as an advisor to many international and regional organisations, including UNCTAD, UNIDO, WHO, FAO, ECLA, the Inter-American Bank for Development and the Secretariat of the Convention on Biological Diversity. He was also a visiting professor at various universities in Latin America, Spain and Italy. Author of several books and articles in international journals on technology and intellectual property issues, including intellectual property rights, the WTO and developing countries: the TRIPS Agreement and policy options (Zed and Third World Network, 2000). Professor Nagesh Kumar is Director General of the Research and Information System (RIS) for non-aligned countries and other developing countries, New Delhi. From 1993 to 1998, Dr Kumar has exercised the faculty of the United Nations University Institute of New Technologies (UN/INTECH), Maastricht, the Netherlands, and has directed his research programme on FDI and technology transfers in developing countries. He also worked as a consultant The World Bank, UNDP, UNCTAD, UNIDO, UN-ESCAP, ILO, among others. He graduated with a PhD in Economics from Delhi School of Economics, University of He received the First Exit Bank of India Award for Research on International Trade in 1989 and a GDN Medal from the Government of India in 1997. His research interests include trade and economic development and regional economic cooperation, among others. His recent books include Globalization, Foreign Direct Investment and Technology Transfer: Impact on Prospects for Developing Countries (Routeledge, 1998) and Globalization and the Quality of Foreign Direct Investment (OUP, 2002). JavaScript seems to be disabled in your browser. For the best experience on our site, be sure to turn on Javascript in your browser. On May 5, 2021, U.S. Trade Representative (USTR) Katherine Tai announced that the United States will support the „128;AA~::~~::AAA that was introduced at the World Trade Organization (WTO) in October 2020 by the governments of India and South Africa. The announcement came as a surprise to many, as it represents a reversal of the strong stance the United States has taken on patents and other intellectual property issues since at least the Reagan Administration. As such, the move was encouraged by advocates of greater access to medicines around the world, while the biopharmaceutical industry, along with the governments of Germany and France, warned of the dire economic consequences that could result from the elimination of patents on critical medical technologies. But what exactly does the US support for this renunciation of global IP mean, and what are its likely effects? The WTO is the treaty organization under which the main international agreement on intellectual property was adopted in 1995 – the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The TRIPS Agreement requires WTO Member States to enact laws protecting various forms of intellectual property, including patents, copyrights and trade secrets, and to impose minimum levels of protection for these rights (e.g. a 20-year patent term). If a country is found to be in breach of the TRIPS Agreement, another WTO member state, or an injured private company, may lodge a complaint with the WTO itself or sue the country in court. Although the WTO itself does not have the power to impose sanctions for breaches of agreements, and finding of liability by a WTO panel is generally regarded as a justification for the imposition of trade sanctions by a third party, the TRIPS Agreement provides that the WTO members must investigate and settle any dispute between them relating to the interpretation, application or enforcement of the TRIPS Agreement. However, the TRIPS Agreement also includes provisions to ensure that the patent holder is paid an adequate remuneration. This practice is called “mandatory licensing”. In 2001, a group of states adopted the Additional Doha Declaration which allows States to grant compulsory licenses for exporting pharmaceutical products to meet public health needs in other countries. Over the past 30 years, countries including India, South Africa, Brazil and Thailand have issued mandatory patent licenses under these TRIPS flexibility to increase local supplies of HIV/AIDS drugs, cancer and heart disease. In most cases, the United States and other Western States have opposed these measures. From March 2020, countries including Chile, Ecuador, Canada, Germany, France and Israel have issued, or seriously considered, mandatory licenses and access measures to address the emerging COVID-19 pandemic. Indonesia and Brazil have more recently adopted such measures. Then, in October, governments of South Africa and India demanded that the WTO give a waiver to provide that countries are not considered to violate the TRIPS for suspension, in their countries, the application of patents, copyrights, industrial designs and trade secrets “in relation to prevention, containment or treatment of COVID-19.” In fact, in the event of adoption, the waiver would prevent other WTO Member States from bringing business challenges against these countries to the WTO. The proposed waiver of the WTO is remarkable because it would expand the existing mandatory licensing flexibility TRIPS beyond patents by authorizing mandatory copyright licenses, industrial designs and commercial secrets for any use related to COVID-19. This expansion is considered critical because vaccines are complex biological products that often require the use of patented technology and know-how. Without a waiver, the threat of legal action could deter companies from sharing their knowledge and expertise, which could hinder the development of effective treatments and vaccines. The waiver would also provide a mechanism for the WTO to enforce the protection for COVID-19 technology to do so without violating the TRIPS agreement and incur international trade sanctions. This country could also, presumably, charge that foreign companies to reveal their own production and to test information to local producers with a mandatory license. The details of this disclosure requirement, and any compensation payable to the author of the information, should be processed in any waiver is possibly adopted by the WTO, but the prospect of a mandatory commercial secret transfer - something that would be unprecedented in the international arena - is potentially significant. At the moment, Brazil is the only important country that has proposed this regime, although the passage of a waiver of the WTO could encourage other countries to do so. The affirmation indicates that the United States will negotiate the WTO for a broadly acceptable waiver of ip rights for covid and, if this waiver is approved by the WTO, the United States will not pursue commercial sanctions against countries which issue covid-related licenses. However, this commitment would have little effect on producers of vaccines from the United States who do not themselves have material operations abroad. The authority of a state over a private company is effective only to the extent that the company has activity within the state. Only the US government could require a US-based company to disclose its trade secrets, and the prospect of this event is slim. It is one thing that the United States of America agrees not to seek sanctions against other countries that impose compulsory licensing regimes of COVID-19, but something very different for the United States to issue a compulsory licensing order of its own. Such a move would be a significant departure from the current policy of the US, which has been to support the TRIPS agreement and to oppose any measures that would undermine the TRIPS system. The TRIPS agreement is a key pillar of the global intellectual property regime that includes both patents and trade secrets. In the end, the impact of a WTO IP waiver on international supplies of vaccines will largely depend on how other countries elect to implement mandatory licensing rules based on waiver, and whether they can actually request the transfer of production information, testing and safety reserved for local producers. Ultimately, the threat of such government action could encourage companies to engage in voluntary knowledge transfer to alleviate the global supply shortage, which could be the greatest benefit of the WTO's IP waiver. After all, even if a company is legally obliged to share its proprietary trade secrets and production know-how with others, there are countless ways to delay and subvert the actual transfer of knowledge. In practice, more effective technology sharing programs are supported by voluntary rather than government compulsion. However, US support for an international surrender to IP is an important gesture towards global cooperation at a time of crisis. It represents a significant reversal of the previous US policy in both Republican and Democratic administrations, which have roundly condemned the mandatory IP license in many circumstances. As such, the USTR declaration should be applauded.

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