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November 18, 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:

I am writing to urge the Canadian government to support the WTO proposal from South Africa and India 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.

I realize that 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 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 operate on a country-by-country, product-by-product basis and are 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, authorizing 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 direct public financing and governments' advanced market commitments. As such, the products of such research should be considered essential public goods, available to all everywhere at no cost.

Canada in its own advanced market commitments 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 scores of health civil society organizations globally.

I 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 treatments and vaccines will be achieved. But it is a fundamentally important tool for doing so.

I urge the Government of Canada to support the Waiver when it is next discussed at the TRIPS Council.

Sincerely,



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