

November 24, 2021

Honourable Mary Ng
Minister of International Trade, Export Promotion, Small Business and Economic Development
House of Commons,
Ottawa, Canada K1A 0A6
Email: mary.ng@parl.gc.ca

Dear Minister Ng:

We are writing regarding Canada's response to the formal proposal submitted by India and South Africa to the World Trade Organization (WTO) for a temporary waiver of the Agreement on Trade-Related Aspects of Intellectual Property Rights ([TRIPS Agreement](#)) in relation to products and technologies for the prevention, treatment or containment of COVID-19 ("the TRIPS waiver") (revised on 21 May 2021 ([IP/C/W/669/Rev.1](#))).

We were hoping that Canada by now would have announced its support for this proposal following recent discussions with other WTO members, and in anticipation of a decision on this matter at the upcoming Ministerial meeting scheduled for November 29th.

As you know, more than 100 WTO Members have expressed support for the TRIPS waiver, and more than 60 WTO Members have agreed to co-sponsor the proposal. The United States has supported the waiver as it applies to SARS-CoV-2 vaccines. However, Canada has to date declined to support the waiver proposal and, along with a few other WTO members, has prevented its adoption by consensus.

Minister, the consequences of a failure to adopt the TRIPS waiver could be millions of lives, both in those countries that have little or no access to necessary products and technologies and in countries such as Canada where residents continue to be vulnerable to new variants of COVID-19. It is widely affirmed by experts, including Canada's own Chief Public Health Officer, that an effective strategy to limit the spread of COVID-19, to help prevent the emergence of more transmissible or deadly variants, and to protect life and health in all countries is to ensure that vaccines are made widely available in all countries, not just in high-income countries. Prime Minister Trudeau has repeatedly stated this undisputed fact.

The UN Secretary General observed on September 22, 2021 at the [COVID-19 Global Summit](#) that high-income countries have administered 61 times more doses per inhabitant than low-income countries and just 3 percent of Africans have been vaccinated. He emphasized that low- and middle-income countries must be able to develop and access health technologies. On October 14, 2021 a number of UN human rights special procedures mandate holders issued a letter to Canada and other States that are refusing to support the TRIPS waiver, emphasizing in their [Communique](#) that: "States have a collective responsibility to use all available means to facilitate faster access to vaccines, including by introducing a temporary waiver of relevant intellectual property rights under [TRIPS], to ensure that protection of patents concerning the vaccines does not become a barriers to the effective enjoyment of the right to health."

UN human rights treaty monitoring bodies have also made it clear that a failure to support the TRIPS waiver would violate obligations under ratified international human rights treaties and other international human rights law. These include obligations of international co-operation to ensure rights to health and life, as summarized in the [Appendix](#). While the treaties themselves are not enforceable in Canadian courts, obstructing the adoption of the TRIPS waiver would, in our view, breach Canada's legal duty to perform these international human rights obligations in good faith, as required under the *Vienna Convention on the Law of Treaties*. We believe that obstructing the adoption of the TRIPS waiver would also violate the *Canadian Charter of Rights and Freedoms*, which must be interpreted in accordance with binding international human rights norms. It would violate the rights of vulnerable residents of Canada to life and security of the person under section 7 of the *Canadian Charter* and the rights of women, the elderly, persons with disabilities, Indigenous Peoples, Black people, other racialized persons, persons experiencing poverty and other groups protected under section 15 that are disproportionately affected.

These breaches of international law and of the *Canadian Charter* could be the basis of legal challenges in Canadian courts in co-ordination with similar litigation initiatives in several other countries that have failed to support the proposed waiver.

However, we remain confident that Canada and other WTO members will decide to support the TRIPS waiver at the upcoming Ministerial meeting and thereby avoid the need for any judicial review in domestic courts.

Thank you for your consideration of this urgent matter.

Sincerely,

cc:

Hon. David Lametti, Minister of Justice

Hon. Pablo Rodriguez, Minister of Heritage

Hon. Harjit Sajjan, Minister of International Development

Hon. Filomena Tassi, Minister of Public Services and Appropriations

Hon. Jean-Yves Duclos, Minister of Health

Organisations

Action Canada for Sexual Health and Rights
 Amnesty International Canada (English Branch)
 Canada Without Poverty
 Canadian Centre for Policy Alternatives
 Canadian Civil Liberties Association
 Canadian Federation of Nurses Unions
 Canadian Feminist Alliance for International Action (FAFIA)
 Canadian Health Coalition
 Cancer Alliance, South Africa
 Charter Committee On Poverty Issues (CCPI)
 Colour of Poverty - Colour of Change
 Cooperation Canada
 Council of Canadians - Le Conseil des Canadiens
 DAWN Canada
 ESCR-Net - International Network for Economic, Social and Cultural Rights
 Foundation for Integrative AIDS Research (FIAR) (United States)
 Friends of MediCare
 Global Citizen
 Heps Uganda
 HIV Legal Clinic Ontario (HALCO)
 HIV Legal Network
 Indigenous Disability Canada / British Columbia Aboriginal Network on Disability Society
 Inter Pares
 Madhira Institute (Kenya)
 Malawi Health Equity Network (MHEN)
 Mouvement Populaire pour la Santé (France)
 National Association of Women and the Law
 Nova Scotia Health Coalition
 OCASI - Ontario Council of Agencies Serving Immigrants
 ONE Campaign
 Oxfam Canada
 Oxfam Québec
 Partners In Health Canada
 People's Health Movement Canada
 People's Health Movement South Africa
 Plan International Canada
 President of the International Commission of Jurists, Canada
 Punjabi Community Health Services
 Results Canada
 SECTION27 (South Africa)
 Social Rights Advocacy Centre
 South Asian Legal Clinic of Ontario
 The Shift
 Trade Justice Network

University of Cape Town, Department of Public Health Medicine

Individuals

Alex Neve

Senior Fellow

Graduate School of Public and International Affairs, University of Ottawa

Anne-Emanuelle Birn

Professor

Antoinette Handley

Professor

University of Toronto

Arianna Schouten

Audrey R. Chapman

Professor of Medical Ethics

Barbara Cameron

Associate Professor

York University

Barbara Kaim

Blair Redlin

Bonnie Campbell

Professor Emeritus

Université du Québec à Montréal

Candice Sehoma

Advocacy Officer

Colin Soskolne, PhD

Daniel Grace

Associate Professor

University of Toronto

David Bock

Donna Mergler
Professor

Erica Di Ruggiero
Associate Professor
University of Toronto

Etienne Roy Grégoire
Professor
Université du Québec à Chicoutimi

Firoze Manji
Adj. Professor
Institute of African Studies, Carleton University, Ottawa

Gaëtane Gascon

Gavin Fridell
Canada Research Chair
Saint Mary's University

Gilles Duruflé
Independent consultant

Gordon Laxer

Jackie Dugard
Associate Professor
University of the Witwatersrand

Jan Akko Eleveld

Jeremy Snyder
Professor
Simon Fraser University

Jillian Clare Kohler
Professor
Leslie Dan Faculty of Pharmacy, University of Toronto

Joel Lexchin
Emergency department physician

University Health Network

Julia Smith
Assistant Professor
Simon Fraser University

Dr. Kate Tairyan, MD, MPH
Senior Lecturer, Director of Undergraduate Program
Faculty of Health Sciences, Simon Fraser University

Kathleen Ruff

Kim Elliott

Krishna Kumar
PHM AND JNU

Laurel Baldwin-Ragaven
Professor

Lilian Chenwi
Professor
University of the Witwatersrand School of Law

Lindsey Wagner, RN
Lisa Forman
Associate Professor
Canada Research Chair in Human Rights and Global Health Equity
University of Toronto

Marc-André Gagnon
Associate Professor
School of Public Policy and Administration, Carleton University

Margie Mendell
Professor Emerita
Concordia University

Dr. Marlise Richter

Martha Jackman
Professor,
Faculty of Law, University of Ottawa

Matiangai Sirleaf
Nathan Patz Professor of Law
University of Maryland School of Law

Maxwell Smith
Assistant Professor
Western University

Dr. Melissa Lev

Obiora Okafor
Professor

Paula Braitstein
Associate Professor
University of Toronto

Phyllis Orner

Richard Elliott, LLB, LLM
Health & human rights lawyer

Robert Armstrong

Ronald Labonte
Professor and Distinguished Research Chair
University of Ottawa

Roojin Habibi
Research Fellow and Lawyer
Global Strategy Lab,
Osgoode Hall Law School (York University)

Ruth Lopert
Adjunct Professor
George Washington University

Sandra Liebenberg
Distinguished Professor; HF Oppenheimer Chair in Human Rights Law
Stellenbosch University

Shelagh Day

Member of the Order of Canada,

Chair, Human Rights Committee, Canadian Feminist Alliance for International Action

Stephanie Nixon

Professor

University of Toronto

Stuart Trew

Senior Researcher

Canadian Centre for Policy Alternatives

Suzanne Aubry

Vincent Calderhead

Pink Larkin

Dr. Wolfgang Hein

Professor

German Institute For Global and Area Studies

Y.Y. Chen

Associate Professor

University of Ottawa, Faculty of Law