Lay

# 1AC

## Util Fw

I affirm the resolution, resolved: The member nations of the World Trade Organization ought to reduce intellectual property protections for medicines.

**Because the resolution involves international trade law, a notoriously complex topic, I would like to start this debate by offering the following definitions:**

**First, as financial analyst and writer Evan Tarver in 2021 explains**

Tarver, Evan. “How Best to Define the World Trade Organization (WTO).” *Investopedia*, Investopedia, 15 June 2021, www.investopedia.com/terms/w/wto.asp. // LHP PS

**Created in 1995**, **the World Trade Organization (WTO) is an international institution that oversees the global trade rules among nations**. It superseded the 1947 General Agreement on Tariffs and Trade (GATT) created in the wake of World War II. **The WTO is based on agreements signed by the majority of the world’s trading nations.** T**he main function of the organization is to help producers of goods and services, as well as exporters and importers, protect and manage their businesses. As of 2021, the WTO [with] has 164 member countries,** with Liberia and Afghanistan the most recent members, having joined in July 2016, and 25 “observer”countries and governments.

**Second, the World Intellectual Property Organization defines Intellectual Property As:**

“What Is Intellectual Property (Ip)?” *WIPO*, www.wipo.int/about-ip/en/. // LHP NP

**Intellectual property** (IP) **refers to creations of the mind**, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. **IP is protected in law** by, for example, patents, copyright and trademarks, **which enable people to earn recognition** or financial benefit **from what they invent** or create.

**Third, intellectual property for medicine is explained best by OXFAM AMERICA as**

**Intellectual property (IP) has different forms; in the case of access to medicines, we are talking about patents**. **Patents are a public policy instrument aimed at stimulating innovation. By providing a monopoly through a patent**—which gives inventors an economic advantage—governments seek to provide an incentive for R&D. At the same time, the public benefits from technological advancement.

**Fourth, Cambridge Dictionary defines reduce as, “to** [**become**](https://dictionary.cambridge.org/us/dictionary/english/become) **or to make something** [**become**](https://dictionary.cambridge.org/us/dictionary/english/become)[**smaller**](https://dictionary.cambridge.org/us/dictionary/english/small) **in** [**size**](https://dictionary.cambridge.org/us/dictionary/english/size)**,** [**amount**](https://dictionary.cambridge.org/us/dictionary/english/amount)**,** [**degree**](https://dictionary.cambridge.org/us/dictionary/english/degree)**,** [**importance**](https://dictionary.cambridge.org/us/dictionary/english/importance)**, etc.” This means that affirmative keeps intellectual property, however, it alters IP laws into a better form. Thus, the negative must prove that IP is good the way it exists in the status quo, and they cannot solely win by proving that IP is good generally.**

I Value Morality because ought in the resolution implies a moral obligation according to Meriam Webster https://www.google.com/search?q=merrium+webster+ought+definition&rlz=1C5GCEM\_enUS961US961&oq=merrium+webster+ought+definition&aqs=chrome.69i57j69i59j69i60l4j69i61l2.4985j0j7&sourceid=chrome&ie=UTF-8

The value criterion is to maximize well-being, prefer for the following reasons:

#### [1] It’s a lexical pre-requisite. Threats to bodily security and life preclude the ability for moral actors to effectively act upon other moral theories since they are in a constant state of crisis that inhibit the ideal moral conditions that allows them to be moral

#### [2] Consequences influence our decisions - we need to use consequences because what we intend to do is influenced by what we know will happen.

#### [3] Actor specificity - Every government policy benefits some and harms others which means side constrains freeze action because the WTO has no way to respond justly – the only fair way for WTO to resolve tradeoffs is to help the most people because that doesn't arbitrarily favor groups.

#### [4] Respect for human worth justifies utilitarianism -

Cummiskey 90 David Cummiskey 90, AssocProf/Phil @ U of Chicago, “Kantian Consequentiaism,”<http://www.jstor.org/stable/2381810>.

We must not obscure the issue by characterizing this type of case as the sacrifice of individuals for some abstract “social entity.” It is not a question of some persons having to bear the cost for some elusive “overall social good.” Instead, the question is whether some persons must bear the inescapable cost for the sake of other persons. Robert Nozick, for example, argues that “to use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has.” But why is this not equally true of all those whom we do not save through our failure to act? ***By emphasizing solely the one who must bear the cost if we act, we fail to*** sufficiently ***respect*** and take account of ***the many other*** separate ***persons***, each with only one life, ***who will bear the cost of our inaction***. In such a situation, what would a conscientious Kantian agent, an agent motivated by the unconditional value of rational beings, choose? A morally good agent recognizes that the basis of all particular duties is the principle that “rational nature exists as an end in itself”. Rational nature as such is the supreme objective end of all conduct. ***If*** one truly believes that ***all rational beings have an equal value, then the rational solution to such a dilemma involves maximally promoting the lives and liberties of as many rational beings as possible***. In order to avoid this conclusion, the non-consequentialist Kantian needs to justify agent-centered constraints. As we saw in chapter 1, however, even most Kantian deontologists recognize that agent-centered constraints require a non- value-based rationale. But we have seen that Kant’s normative theory is based on an unconditionally valuable end. How can a concern for the value of rational beings lead to a refusal to sacrifice rational beings even when this would prevent other more extensive losses of rational beings? If the moral law is based on the value of rational beings and their ends, then what is the rationale for prohibiting a moral agent from maximally promoting these two tiers of value? If I sacrifice some for the sake of others, I do not use them arbitrarily, and I do not deny the unconditional value of rational beings. ***Persons*** may ***have dignity***, that is, an unconditional and incomparable worth” ***that transcends any market value, but persons also have a fundamental equality that dictates that some must sometimes give way for the sake of others.*** The concept of the end-in-itself does not support the view that we may never force another to bear some cost in order to benefit others.

## Contention 1: Power Monopolies

The Trade-Related Aspects of Intellectual Property Rights [TRIPS] is the WTO treaty regarding intellectual property. It is a “base” for Intellectual Property Rights [IPRs]. TRIPS-plus are stricter provisions, not officially associated with TRIPS, that surpass the minimum provisions in TRIPS.

#### TRIPS-plus allows developed countries to have a power monopoly on the ability for poorer countries to obtain potentially lifesaving medicines and vaccines for COVID-19. Bacchus 20

Bacchus, James. “An Unnecessary Proposal: A WTO Waiver of Intellectual Property Rights for COVID-19 Vaccines.” *Cato.org*, Cato Institute, 16 Dec. 2020, www.cato.org/free-trade-bulletin/unnecessary-proposal-wto-waiver-intellectual-property-rights-covid-19-vaccines#does-novel-virus-present-novel-issues.

In early October 2020, India and South Africa asked the members of the WTO to waive protections in WTO rules for patents, copyrights, industrial designs, and undisclosed information (trade secrets) in relation to the “prevention, containment or treatment of COVID-19 … until widespread vaccination is in place globally, and the majority of the world’s population has developed immunity.”[1](https://www.cato.org/free-trade-bulletin/unnecessary-proposal-wto-waiver-intellectual-property-rights-covid-19-vaccines#_ednref1) India and South Africa want to give all WTO members freedom to refuse to grant or enforce patents and other IP rights relating to COVID-19 vaccines, drugs, diagnostics, and other technologies for the duration of the pandemic.

In requesting the waiver, India and South Africa have argued that “an effective response to the COVID-19 pandemic requires rapid access to affordable medical products including diagnostic kits, medical masks, other personal protective equipment and ventilators, as well as vaccines and medicines for the prevention and treatment of patients in dire need.” They have said that “as new diagnostics, therapeutics and vaccines for COVID-19 are developed, there are significant concerns, how these will be made available promptly, in sufficient quantities and at affordable prices to meet global demand.”[2](https://www.cato.org/free-trade-bulletin/unnecessary-proposal-wto-waiver-intellectual-property-rights-covid-19-vaccines#_ednref2)

Later in October, the members of the WTO failed to muster the required consensus to move forward with the proposed waiver. The European Union, the United States, the United Kingdom, and other developed countries opposed the waiver request.[3](https://www.cato.org/free-trade-bulletin/unnecessary-proposal-wto-waiver-intellectual-property-rights-covid-19-vaccines#_ednref3) One WTO delegate, from the United Kingdom, described it as “an extreme measure to address an unproven problem.”[4](https://www.cato.org/free-trade-bulletin/unnecessary-proposal-wto-waiver-intellectual-property-rights-covid-19-vaccines#_ednref4) A spokesperson for the European Union explained, “There is no evidence that intellectual property rights are a genuine barrier for accessibility of COVID‐​19‐​related medicines and technologies.”[5](https://www.cato.org/free-trade-bulletin/unnecessary-proposal-wto-waiver-intellectual-property-rights-covid-19-vaccines#_ednref5) In the absence of a consensus, WTO members have decided to postpone further discussion of the proposed waiver until early 2021.

#### Increased IP protections decrease accessibility and create monopolies, eliminating competition. This stops people from obtaining lifesaving medicines and vaccines and prevents economic stimulation. Islam et al 19

Islam, M.D., Kaplan, W.A., Trachtenberg, D. *et al.* Impacts of intellectual property provisions in trade treaties on access to medicine in low and middle income countries: a systematic review. *Global Health* **15,**88 (2019). https://doi.org/10.1186/s12992-019-0528-0

Our systematic literature review makes several contributions: First, the studies we have reviewed show that changes in IP policy due to the implementation of trade agreements are associated with changes in price, medicines expenditure and sales, consumer welfare, and ultimately the affordability, of medicines. The direction and magnitude of the effects differ between ex-ante and ex-post studies. Regarding prices and costs of medicines, ex-ante studies predict that prices and costs (primarily public expenditure) of medicines could increase several hundred percent due to the impact of various IP provisions such as increased patent enforcement, TRIP-plus and other provisions in various multilateral and bilateral agreements. These ex-ante studies confirm what the theory would say [35] i.e., that stronger IP monopoly rights would tend to eliminate competition and thus incur societal costs which are higher prices for IP products. On the other hand, empirical ex-post studies found at most a moderate increase in prices and costs of medicines due to the imposition of similarly heightened IP rules. There is, however, some consensus between ex-ante and ex-post studies that TRIPS-plus provisions relating to clinical data protection, rather than the imposition of more stringent patent rules, would cause a larger increase in prices and costs of medicines and lead to lower access to medicines. We note that extending the patent term may have an additionally important, but as-yet undifferentiated, impact since most data protection provisions are confined within the period of existing patent protection and are not additive to patent extensions. Second, the reported impacts of IP changes due to trade agreements on access to medicines seem clearly multifactorial. Duggan et al. [24] found an insignificant increase in medicine prices after patent law reform and argued that this might be because the existing generic producers are ‘grandfathered’ and continue to produce the generic medicines even after patent enforcement. This is because TRIPS does not require retroactive IP protection on pre-1994 medicines. Kyle and Qian [26] found that the existence of a patented molecule does not always block generic imitation, nor does the lack of patents always deter an originator from making a product available. They also pointed out that effects of IP may well be different depending on the size of the local generic sector, e.g., the impact in India with its large and robust generic medicine sector may be different as compared most other low and middle income countries. They asserted that the “... existence of IPs is neither necessary nor sufficient ...” for the launch of pharmaceutical innovations at the country level. This suggests substantial heterogeneity in the effects of IPs, both across countries and across medicines.

#### TRIPS-plus presupposes that lesser developed countries have access to healthcare infrastructure to produce their own drugs. Thus, limited IP protections in LDCs in the short term serve no risk to big pharma, as only little profit could be generated within a short time. Bonadio 21

Bonadio, Enrico. “World's Poorest Countries Allowed to Keep Copying Patent-Protected DrugsEn.” *The Conversation*, The Conversation, 23 Apr. 2021, theconversation.com/worlds-poorest-countries-allowed-to-keep-copying-patent-protected-drugs-50799.

It costs pharmaceuticals companies about [US$2.6 billioin](http://www.scientificamerican.com/article/cost-to-develop-new-pharmaceutical-drug-now-exceeds-2-5b/) to develop a new drug. If these companies were not allowed to protect their investment with patents, it is doubtful that any new drugs would be developed. So patents are an important incentive. But patent protection doesn’t work for poor countries. Intellectual property (IP) rights, like patents, aren’t an effective incentive in countries which have not reached an adequate level of economic development because they have no intellectual property to protect. IP rights might be effective over the long term, but only after a local and relatively strong pharmaceutical industry is developed. The exemption could be dropped once countries that have benefited from it have developed enough, and the industry reaches a self-sustaining size. Although building a home grown pharmaceuticals industry is not a requirement of the WTO waiver, a strong local industry would give poor countries direct access to much needed cheap medicines. The WTO’s transitional waiver makes sense. By temporarily allowing LDCs to ignore patents on drugs, it gives them time to develop their own pharmaceuticals industries. And we are already seeing evidence of this happening. According to the UN agencies, UNDP and UNAids, the proportion of people with HIV who are not receiving antiretrovirals reduced from [90% in 2006 to 63% in 2013](http://allafrica.com/stories/201511091872.html) thanks to the availability of drugs made by LDCs. Despite some criticisms, the WTO’s decision to extend the waiver should be praised. It seems fair and reasonable, and it doesn’t excessively jeopardise companies that make branded (non-generic) drugs. They don’t seem to lose much from missed royalties. Overall, the poorest countries account for less than 2% of the world’s gross domestic product and about 1% of global trade in goods. Not a big business opportunity for big pharma.

Overall, TRIPS-plus diminishes the competition that drives innovation and the economy and prevents people from obtaining lifesaving medicine. And, TRIPS + is not necessary for maintaining a profit for big pharma.

## Contention 2: Innovation

#### The WTO ought to reduce IP protections to TRIPS. All members of the WTO agreed to it, thus they should be willing to accept any results and lesser developed countries are given leeway time to adopt the policy. WTO

WTO. “World Trade Organization.” *WTO*, WTO, 15 Apr. 1994, www.wto.org/english/tratop\_e/trips\_e/tripfq\_e.htm.

All the WTO agreements (except for a couple of “[plurilateral](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm10_e.htm)” agreements) apply to all WTO members. The members each accepted all the agreements as a single package with a single signature — making it, in the jargon, a “single undertaking”. The TRIPS Agreement is part of that package. Therefore it applies to all WTO members. ([More on the single undertaking.](https://www.wto.org/english/tratop_e/trips_e/tripfq_e.htm#SingleUndertaking)) But the [agreement allows](https://www.wto.org/english/docs_e/legal_e/27-trips_08_e.htm) countries different periods of time to delay applying its provisions. These delays define the transition from before the agreement came into force (before 1 January 1995) until it is applied in member countries. The main transition periods are: Developed countries were granted a transition period of one year following the entry into force of the WTO Agreement, i.e. until 1 January 1996. Developing countries were allowed a further period of four years (i.e. to 1 January 2000) to apply the provisions of the agreement other than [Articles 3, 4 and 5](https://www.wto.org/english/docs_e/legal_e/27-trips_03_e.htm#art3) which deal with general principles such as non-discrimination. Transition economies, i.e. members in the process of transformation from centrally-planned into market economies, could also benefit from the same delay (also until 1 January 2000) if they met certain additional conditions. Least-developed countries were granted a longer transition period of a total of eleven years (until 1 January 2006), with the possibility of an extension. The transition period has been extended three times, and now runs until 1 July 2034, or until a member ceases to be an LDC, whichever comes first.

#### TRIPS increases innovation, encourages creativity, and equalizes the playing field. Willis 13

Willis, Ben. “The Arguments for and against the Trips Agreement.” *E-International Relations*, E-International Relations, 23 Dec. 2013, www.e-ir.info/2013/12/23/the-arguments-for-and-against-the-trips-agreement/.

Various wider benefits to society are said to accrue from the imposition of temporary monopolies and other limitations that result from private IPRs (WTO, 2008: 39; CIPR, 2002: 14-18). By instituting legal protection – tackling piracy and counterfeiting – the disclosure of new knowledge and creativity is encouraged, and the significant costs associated with the creative process (such as with research and development) can therefore be recouped and remuneration earned. Innovation is thus both rewarded and further promoted. The scope and reliability offered by a global IPR regime should not only stimulate domestic innovation, but the security offered to developed world patent holders and others can also encourage foreign direct investment, technology transfer and licensing, and the diffusion of knowledge to the developing world (Matthews, 2002: 108-111). TRIPS is therefore able to play a significant role in the overall promotion of trade and economic development.

The agreement also takes care to recognise the differing position of member states vis-à-vis their relative economic status, administrative capabilities, and technological base. As per other WTO agreements, developing countries were afforded special and differential treatment as detailed in Part VI of the agreement under ‘transitional arrangements’. While developed countries had to ensure compliance by 1 January 1996, developing and post-communist countries were instead allocated a further four years to achieve this (with another five years granted for new patents products). Under Article 66.1, least-developed countries (LDCs) were given until 2006 to enact TRIPS, with the possibility of further extensions; the 2001 Doha Declaration on TRIPS and Public Health has also subsequently allowed a further ten years for pharmaceutical products for LDCs (WTO, 2001). Article 66.2 meanwhile explicitly encourages technology transfer from developed states to the LDCs so as to assist in the establishment of a viable technological base, and Article 67 obliges developed countries to provide technical and financial assistance to facilitate implementation of the agreement.

A further advantage inherent within TRIPS is the ‘flexibility’ offered to all members in interpreting various articles of the agreement (Vandoren, 2001). Article 27.3, for example, allows members to exclude certain inventions and subject matter from patentability, and permits the protection of others – such as plant varieties – through compatible sui generis systems. The Doha Declaration reiterated that developing countries have the right to grant compulsory licences or allow parallel importing for pharmaceutical products under Article 31 to tackle ‘national emergencies or other circumstances of extreme urgency’ –  and that public health crises such as HIV/AIDS , malaria, and other epidemics can be declared as such (WTO, 2001).

Crucially, TRIPS also represents a significant improvement on previous IPR agreements in having considerable monitoring, enforcement, and dispute settlement capabilities (Matthews, 2002: 79-95). A TRIPS Council – comprising all WTO members – reviews national legislation and implementation of the agreement. Should serious disputes occur, any member may ultimately bring a case to the WTO’s Dispute Settlement Body, which has the power to issue punitive trade sanctions to ensure compliance. Successful cases launched by Ecuador and Brazil show that the dispute resolution mechanism works for both developed and developing countries alike (MIP, 2010). TRIPS is therefore seen by its supporters as representing an enforceable global system of IPR protection that plays an essential role in the modern global information society. By rewarding and encouraging innovation, it facilitates international trade, spurs economic growth, and enables technological progress and the dissemination of knowledge, ultimately benefiting both producers and users throughout the developed and developing world.

Open to cross

trips is 20 years, that sets a minimum amount of trade however, member nations have the ability to build upon that to provide stricter provsiosn to bilateral and multilateral agreemenst. Trips+ are not official provisions, they are what developed rich countries want that are exploiting poor countries.

# 1AR

Extend my fw of utilitarianism and line by line responses

1. It’s a prerequisite; threats to bodily security as pain hijacks any other framework, we cannot act if we are dead util preserves this
2. Consequences influence decision, you know what will happen because of your actions before you act
3. Actor spec; wto must use util calc or else they have infinite side constraints via the different agendas of member nations
4. People having rationality concedes equality and thus some lives must be traded for others, 2> 1

Extend contention 1

Bacchus 20, powerful countries prevented compulsory licensing of covid 19 medication

Islam et al 19, empirical evidence that increased ip leads to monopolies, reducing access to medicine

Bonadio 21 access improves HIV treatment without damaging profits in LCDs

bn

Extend contention 2

WTO, all member nations agreed to TRIPS and were given leeway to adopt it

Willis 13, trips incentivizes innovation, equalizes power positions, compulsory licensing is status quo, and international trade flourishes

On their framework of preserving distributive jsutice

1. Actor spec, all member nations of the WTO doesn’t mention freedom as a principle in their constitutions
2. They define libertarian freedoms arbitrarily, does their framework mean I have the right to drive drunk?
3. Individual action concedes util, people act to preserve their own pleasure
4. Util is the only way to measure impacts
5. Recognizing that individuals have rights concedes that they have worth, thus we should maximize worth

# A/Ts

## A/T Innovation

Nah bro, cus we incentivize smaller players to develop shit and

## AT Innovation DA

**No impact. Innovation for things like HIV didn’t have any solvency**

**Chaudhry 17** Faisal Chaudhry; Assistant Professor of Law & History; Hanley Institute Sustainability Scholar; 12-1-2017; Intellectual Property And The Global Crisis Of Non-Communicable Disease (December 1, 2017). North Carolina Journal Of Law And Technology, Vol. 19, No. 2, 2017, Available At Ssrn: Https://Ssrn.Com/Abstract=3192074"; accessed 7-30-2021; JPark

However, by implicitly envisioning access solely in terms of the availability to the world’s poor of treatments for conditions that only or primarily afflict them, we have allowed an otherwise remote possibility—of multinationals becoming altogether unable to deliver therapies to the market—as if it is acute. As with ostensibly context-free normative reasoning in general, the access incentivization dilemma has thus carried an inherent tendency to facilitate status quo arrangements and directions of movement in law and policy making. Indeed, it is because of this reason that this Article has eschewed simply taking a traditional path of a normative argument for or against drug patents. By highlighting how the legal and administrative conflict in the developing world has tracked the changing face of its public health crisis more closely than existing discussion in the developed world, it instead urges decision makers to capitalize on the dramatic natural experiment now unfolding before our eyes. **It is** thus crucial to see that there has never been a better way to gauge whether departing from a regime of strict IPR will really push us to the brink of a world without medicines. Indeed, as the one example of infectious disease drugs that are close in their economics to those for NCDs has already shown, **harmonizing away from strict patent rights has hardly prevented new forms of HIV/AIDS combination therapy from materializing.** In fact, **they have actually proliferated**—**much to the benefit of individuals in both the developing and developed world**. In the final analysis, therefore, this Article’s plea is for policy makers to ensure that the natural experiment that the NCD crisis has created comes to fruition. In so doing, **decision makers will be encouraging solutions that add to or even improve upon the best existing proposals for solving the ongoing drugs-for-the-developing world dilemma as it advances into its second generation of visibility.** This is because existing proposals have tended to focus on actions by international institutions subject to a great deal of internal inertia and political pressure from the major power holders within the international system than developing countries themselves face. Given the focus of these proposals, moreover, they also have the downside of tending to leave the supposed normative intractability of the access-incentivization dilemma intact. In contrast, the solutions this Article tracks are not only practical but also possibly more forceful insofar as they originate from initiatives that are already being implemented by ground level actors in the developing world. This Article has argued that it is those actors who have led the way in addressing the public health crises their countries face to reconsider the true ethical and economic burdens that remain if pharmaceutical patenting is the default. Of course, it may only be a coincidence that the shifting context of legal and administrative conflict in low and middle-income countries has ended up dovetailing with the unexpected popular support in high-income countries for renegotiating the terms of free trade liberalization. Yet, even so, law and policy makers would be remiss if they fail to see the great opportunity that exists within the seeming crisis the world order is now going through. As we garner better evidence about the consequences of deviating from strict IPR in the NCD drug context, we will only end up better positioned to rewrite the rules of our global innovation system in a way that makes sense for a twenty-first century that has moved well past its post-Cold War antecedents.

**Increased patent rights decrease innovation.**

**Wiens 15**

Wiens, Jacob(Jason Wiens is policy director in Entrepreneurship for the Ewing Marion Kauffman Foundation, where he leads the Foundation’s strategy to reduce barriers to entrepreneurship by improving public policy.) “How Intellectual Property Can Help or Hinder Innovation” Kauffman,6 April 15 <https://www.kauffman.org/resources/entrepreneurship-policy-digest/how-intellectual-property-can-help-or-hinder-innovation/>.

**Expansive patent rights make successive innovative activity more costly. Having to seek permission from all related patent holders bids up the cost of innovation.** Overly strong patent rights disproportionately benefit large firms. Larger firms are more likely to use patents to entrench their position in the market, as opposed to small- and medium-sized firms that are more likely to use patents to accumulate revenue and enhance their reputation.

**When patent rights are stronger, firms with intellectual assets are emboldened to threaten other inventors with litigation. For example, NPEs often** [**discourage innovation**](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1930272) **by more productive innovators.**

## AT Monopoly Good

**Monopolies restrict R&D research, stifle economic growth through reduced competition, Open Markets Institute**

Open Markets Institute. “Innovation & Monopoly.” *Open Markets Institute*, Open Markets Institute, www.openmarketsinstitute.org/learn/innovation-monopoly.

But **in the 1980s, these anti-monopoly and pro-innovation policies were dismantled on two fronts.** Politicians of both parties undermined anti-monopoly policy and [adopted](https://www.theatlantic.com/business/archive/2016/11/donald-trump-vs-big-business/507878/) laxer antitrust enforcement. Meanwhile, [**Congress passed laws and the Supreme Court decided several cases**](https://www.nber.org/papers/w7280.pdf) **that ultimately increased the powers afforded to patent monopolies. Federal courts also made several decisions during the 80s and 90s that extended patent protection to new industries, including software and biotech.** During these years, libertarian thinkers also advanced a new philosophy of innovation. In place of the traditional American belief that innovation is a function of political decisions striking a careful balance between monopoly and competition, libertarian thinkers argued that innovation is a natural creation of a free market. Influenced by Joseph Schumpeter, these **libertarians argued that monopolists would be the most innovative companies of all,** because they [could capture](http://progressivepolicy.org/wp-content/uploads/2011/12/12.2011-Mandel_Scale-and-Innovation-in-Todays-Economy.pdf) all of the profits from their new inventions without facing any competition. Moreover, they argued that even if monopolists did overcharge customers or crush rivals, they wouldn’t last long. “Creative destruction,” as Schumpeter called it, would ensure that big, anti-competitive incumbents would soon enough be crushed by small, inventive upstarts. The **today’s highly monopolized and slow growing economy belies this prediction** and theory behind it**. Over the last three decades, as industry has become** [**far more concentrated**](https://www.economist.com/news/briefing/21695385-profits-are-too-high-america-needs-giant-dose-competition-too-much-good-thing)**,** [**rates of new business formation**](https://www.washingtonpost.com/news/on-small-business/wp/2015/02/12/the-decline-of-american-entrepreneurship-in-five-charts/?utm_term=.e995e93be16f) **and** [**productivity growth**](https://www.imf.org/external/pubs/ft/wp/2015/wp15116.pdf) **have fallen to a fraction of the levels achieved between the 1940s and the early 1980s**. The economist Robert Gordon, a professor at Northwestern, [argues](https://www.nber.org/papers/w18315) that **most of our modern “innovations” do far less to promote material advancement than such inventions as refrigeration and the internal combustion engine.** Even libertarian economist like Tyler Cowen write of [“The Great Stagnation”](https://www.amazon.com/Great-Stagnation-Low-Hanging-Eventually-eSpecial-ebook/dp/B004H0M8QS) that has come over the American economy. Meanwhile, **dominant technology companies are increasingly using their monopoly profits not to invest in new research and development, but to acquire or bankrupt their competitors,** [**buy back stock**](https://money.cnn.com/2015/10/27/investing/stocks-dividends-buybacks-high-2016/)**,** [**hire lobbyists**](https://www.bloomberg.com/news/articles/2016-10-18/outspending-wall-street-2-to-1-silicon-valley-takes-washington)**, or simply** [**hoard cash**](https://money.cnn.com/2016/05/23/investing/apple-tech-giants-hoard-1-trillion-cash/)**.** Unlike the libertarian theory that “creative destruction” would unseat the country’s biggest monopolists, the same [four tech companies](https://www.economist.com/news/leaders/21567355-concern-about-clout-internet-giants-growing-antitrust-watchdogs-should-tread)—Google, Amazon, Facebook, and Apple—continue to dominate the country’s tech sector. **To regain the balance that led to so much innovation and broad prosperity during the mid-20th century, both patent and antitrust law must be reformed.**

# Extra cards

#### Trips Plus disproportionately causes developing countries to struggle and lose access to affordable medicines. Developed countries take advantage of developing countries and implement stricter IP Provisions than TRIPS.

**Access Campaign:** Access Campaign. Spotlight on: TRIPS, TRIPS Plus, and Doha. <https://msfaccess.org/spotlight-trips-trips-plus-and-doha>

Despite the Doha Declaration, in recent years, many developing countries have been coming under pressure to enact or implement even tougher or more restrictive conditions in their patent laws than are required by the TRIPS Agreement – these are known as ‘TRIPS plus’ provisions. **Countries** are by no means obliged by international law to do this, but many, **such as Brazil, China or Central American states have had no choice but to adopt these[TPP], as part of trade agreements with the U**nited **S**tates **or** the **E**uropean **U**nion**. These have a disastrous impact on access to medicines.** Common examples of TRIPS plus provisions include extending the term of a patent longer than the twenty-year minimum, or introducing provisions that limit the use of compulsory licences or that restrict generic competition. One of these provisions is known as data exclusivity. This refers to exclusive rights, granted over the pharmaceutical test data submitted by companies to drug regulatory authorities for obtain market authorisation. It means that information concerning a drug’s safety and efficacy is kept confidential for a period of, say, five or ten years. If a generic manufacturer wants to register a drug in that country, it is not allowed simply to show that their product is therapeutically equivalent to the originator product. Instead, it must either sit out the exclusivity period, or take the route of repeating lengthy clinical trials to demonstrate the safety and efficacy of the drug – trials that have already been undertaken. This happens even when the originator product is not patented. In other words, **data exclusivity is a backdoor way of preventing competition**, so that even when a medicine is not protected by a patent, a pharmaceutical company will receive a minimum period of market monopoly when artificially high prices can be charged. **Data exclusivity and other TRIPS plus provisions are frequently pushed as a part of free trade agreements between developed and developing countries.**

#### Jordan is one example where TRIPs-Plus negatively affected access to medicines, as a result of exploitative U.S. provisions:

Malpani 9, Malpani, Rohit. All costs, no benefits: how the US-Jordan free trade agreement affects access to medicines. [Online] Journal of Generic Medicines 2009

This report commissioned by Oxfam finds that the **impacts of the TRIPS-plus provisions of the Jordan-US trade agreement** **have negatively affected access to medicines in Jordan** in just the first five years following implementation. **Medicine prices increased 20%** and more than a quarter of the Ministry of Health’s budget was spent on medicine. **Data exclusivity** has **delayed the** introduction of **cheaper** generic **versions of 79% of medicines between 2002 and 2006. Prices of medicines** under data exclusivity **were up to 800% higher than in neighboring Egypt.**

#### Took this out cus point a already links to decreased access+plus this has no specific warrants---TRIPS plus provisions reduce access to HIV treatments in developing countries:

Pigoni 20; Pigoni, Alessandro. April, 19, 2020. “TRIPS-Plus Provisions and the Access to HIV Treatments in Developing Countries.” <https://www.e-ir.info/2020/04/19/trips-plus-provisions-and-the-access-to-hiv-treatments-in-developing-countries/>

Since its establishment a considerable body of literature has been published on the impact of the TRIPS agreement on public health, however, far too little attention has been paid to the fact that TRIPS-Plus provisions have a much more negative impact on the affordability of treatments for spreadable diseases such asthehuman immunodeficiency virus **(**HIV) that affects the lives of 37.9 million people(Unaids.org, 2019). Furthermore, a point that is worth stressing is that this exacerbating effect is disproportionally felt by the poorest communities living in developing countries that are more vulnerable to HIV spreading. In fact, “the vast majority of people living with HIV are located in low- and middle-income countries, with an estimated 68% in living in sub-Saharan Africa”. (Carlson, 2019).

Hence, the intent of this essay is to provide evidences that disclose that the inclusion of TRIPS-Plus provisions in recent trade agreements is a strategic move carried out by high-income countries to limit the generic competition in the pharmaceutical industry that represents for the global South because it further limits the possibilities of developing countries to obtain affordable medicines needed to face the epidemic of HIV. Therefore, in the first part, this essay will address the minimum global standard of intellectual property protection set by the 1995 TRIPS agreement with regards to patent regulations as well as theoretical arguments supporting the inclusion in recent trade agreements of stronger provisions on intellectual property. Subsequently, this essay will challenge these arguments by presenting evidence suggesting that **TRIPS-Plus provisions** are largely justified by profit-driven motives and that they **pose a serious threat to public health in developing countries because they reduce access to essential treatments for HIV** by delaying the entry of cheaper generics in domestic markets and causing significant price increases in medicines. This essay will conclude that the theoretical justifications in support of TRIPS-Plus provisions can be partially considered reasonable, however, once they are applied to the reality of international trade, they tend to disclose their shortcomings. Hence, the **inclusion of TRIPS-Plus provisions in recent trade negotiations serves** primarily as a strategic tool **in the hands of developed countries for avoiding competition** with cheaper generic drugs produced in developing countries**, however, this comes at the expense of developing countries’ ability to access affordable antiretroviral regimens for HIV treatments**.

#### --- this blocks--- TRIPS-plus provisions aren’t even effective in a vacuum, which means removing them would not hurt the economy – U.S. report proves

<https://www.usitc.gov/publications/332/pub5199.pdf>

The Commission finds that the effects of membership in RTAs with TRIPS-plus provisions are ambiguous. On the one hand, RTAs with TRIPS-plus provisions have a positive and statistically significant effect on members’ total trade across all sectors. However, such RTAs typically include other substantial tariff and nontariff commitments which can also increase trade. To further explore this issue, the Commission examined the effects of RTAs with TRIPS-plus provisions separately on trade in IPR-intensive sectors and non-IPR-intensive sectors. While RTAs with TRIPS-plus provisions are found to have a positive and statistically significant effect on trade in IPR-intensive sectors, they have a larger effect on non-IPRintensive sectors than on IPR-intensive sectors. 494 Thus, there is limited evidence of TRIPS-plus provisions actually increasing trade in IPR-intensive sectors**,** as other commitments in RTAs may be driving the positive effects on trade for both IPR-intensive and non-IPR-intensive sectors. As reflected in the literature**,** TRIPS has already increased trade in IPR-intensive sectors such that the additional effects of TRIPS-plus provisions may be relatively small.

#### TRIPS-plus is root cause of increased intellectual property protections in free trade agreements

**U.S. Int’l Trade Commission 06/2021** The United States International Trade Commission is an independent, bipartisan, quasi-judicial, federal agency of the United States that provides trade expertise to both the legislative and executive branches. United States International Trade Commission, https://www.usitc.gov/publications/332/pub5199.pdf

While the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) represents a milestone in the development of international IPR norms, it **[TRIPS] specifically reserves discretion for its members to implement “more extensive protection” than required by the agreement**.938 Reflecting this discretion, U.S. **FTAs** have grown in breadth and scope to incorporate IPR standards that exceed those in TRIPS (known as TRIPS-plus provisions), as described in chapter 2. Similarly, IPR provisions in RTAs involving the European Union (EU), the European Free Trade Association countries (Switzerland, Norway, Liechtenstein, and Iceland), and others have **expanded to include more TRIPS-plus provisions.**939 The literature documents increasing levels of IPR protection as countries have implemented the requirements of TRIPS, U.S. FTAs and other RTAs, and their own reforms. As a rough proxy for IPR protection, much of the literature has relied on an index of legislative patent protection, the GP Index created by Ginarte and Park (1997), which covers nearly all countries on a five-year basis beginning in 1960.940 Although the GP Index does not explore the reasons why countries have changed their levels of patent protection, the items measured by the index (patentability of different types of inventions membership in international treaties, the length of patent terms, enforcement mechanisms, and limitations on patent rights) overlap with TRIPS requirements. GP Index data show substantial increases in countries’ patent protection levels after the implementation of TRIPS.941 In USITC 2016, the Commission found that **increases in patent protections from 1995 to 2010 were larger for TRIPS members than nonmembers** and that the average increase was greater for TRIPS members with a U.S. FTA than for those without. These facts suggested that patent reforms correlated with participation in trade agreements during this period, with the caveat that the United States entered into FTAs with countries that may have been reforming their patent systems for other reasons.942 Since USITC 2016, researchers have begun to catalog all IPR provisions in RTAs (not just patent provisions), including TRIPS-plus provisions.943 For example, Morin and Surbeck (2020) identify and code **TRIPS-plus provisions in 126 RTAs signed between 1991 and 2016.**944 They find that the **most frequent types of TRIPS-plus provisions in RTAs are those related to patents, copyrights, and trademarks**. U.S. FTAs cover these topics, as well as enforcement, the protection of undisclosed information (trade secrets), and other IPR issues. By contrast, TRIPS-plus provisions that cover geographical indications are highly prominent in EU RTAs but occur much less frequently in other RTAs. 945

https://www.wto.org/english/thewto\_e/whatis\_e/tif\_e/agrm7\_e.htm

Intellectual property" refers to creations of the mind. These creations can take many different forms, such as artistic expressions, signs, symbols and names used in commerce, designs and inventions. Governments grant creators the right to prevent others from using their inventions, designs or other creations — and to use that right to negotiate payment in return for others using them. These are “intellectual property rights”. They take a number of forms. For example, books, paintings and films come under copyright; eligible inventions can be patented; brand names and product logos can be registered as trademarks; and so on. Governments grant creators these rights as an incentive to produce and spread ideas that will benefit society as a whole. The extent of protection and enforcement of these rights varied widely around the world; and as intellectual property became more important in trade, these differences became a source of tension in international economic relations. New internationally-agreed trade rules for intellectual property rights were seen as a way to introduce more order and predictability, and to settle disputes more systematically. The Uruguay Round achieved that. The WTO’s TRIPS Agreement is an attempt to narrow the gaps in the way these rights are protected and enforced around the world, and to bring them under common international rules. It establishes minimum standards of protection and enforcement that each government has to give to the intellectual property held by nationals of fellow WTO members. Under the TRIPS Agreement, WTO members have considerable scope to tailor their approaches to IP protection and enforcement in order to suit their needs and achieve public policy goals. The Agreement provides ample room for members to strike a balance between the long term benefits of incentivising innovation and the possible short term costs of limiting access to creations of the mind. Members can reduce short term costs through various mechanisms allowed under TRIPS provisions, such as exclusions or exceptions to intellectual property rights. And, when there are trade disputes over the application of the TRIPS Agreement, the WTO’s dispute settlement system is available.

Strongarming c1

https://www.nyulawglobal.org/globalex/TRIPS\_Compulsory\_Licensing1.html#\_edn69

In order to maximize their profits, companies across industries utilize differential pricing schemes, sometimes more generally referred as price discrimination. [68] The pharmaceutical industry is no exception and has engaged in differential pricing by segmenting the market based on political borders and income classes. [69] Under this practice, the poorest countries were offered the lowest prices within the range but failed to successfully deliver essential drugs to the people. [70] Since the Implementation Decision was adopted in 2003, the potential threat of compulsory licenses has moved companies to voluntarily make proactive efforts to realistically make their drugs accessible. Some have dramatically lowered prices while others have offered voluntary, royalty-free licenses. [71] And while governments have not yet issued compulsory licenses, Brazil, a middle-income country, has actively used it as a threat to negotiate lower prices for AIDS drugs. [72] In contrast, many still argue that the compulsory licensing provisions have not helped bring drugs to those in need. Some low-income nations like Thailand, Colombia, and South Africa have been pressured by powerful nations like the U.S. to adopt more rigorous intellectual property laws during free trade negotiations. [73] Other countries simply lack coordinated efforts within the government or found the application process to onerous. [74] In 2011, a research study collected all public instances of compulsory licenses being contemplated and found a drastic decline in compulsory licensing activity since 2006. [75] The emerging pattern tends to show that the leveraging capacity of compulsory licensing depends on the relative political strength of the licensing country. Considering the fact that most poor countries do not have political pull, it looks as though compulsory licensing and differential pricing negotiations in the near future will not make significant impact in improving access to medicine.

Intellectual Property (IP) provisions in free trade agreements (FTAs) ensure protection for the creation or invention of artistic works and goods, the creation or invention of which sometimes requires, as in the case of medicines, high sunk cost in the form of investment in research and development (R&D). Developing a new medicine requires large investment with high uncertainty. These R&D costs occur after a product patent is granted, which is typically very early in clinical development. IP provisions restrict the use and marketing of such goods and provide exclusive rights to the investors/creators to offset their sunk cost during clinical development [1]. This is to encourage more research and development (R&D) investment by the private sector to develop and invent new products [2]. Consequently, new or improved medicines are protected by patent and other IP provisions. However, this protection creates a monopoly market for these medicines. Since the demand for medicines is generally price and income inelastic, this allows the owner of the patented medicine to charge a very high price [3]. As a result, there is growing concern among health care and development practitioners that IP provisions in trade agreements may have serious consequences on at least the affordability and/or availability of medicines in low and middle-income countries [4–7]. Affordability and availability of medicines are key dimensions of “access”.

Our systematic literature review makes several contributions: First, the studies we have reviewed show that changes in IP policy due to the implementation of trade agreements are associated with changes in price, medicines expenditure and sales, consumer welfare, and ultimately the affordability, of medicines. The direction and magnitude of the effects differ between ex-ante and ex-post studies. Regarding prices and costs of medicines, ex-ante studies predict that prices and costs (primarily public expenditure) of medicines could increase several hundred percent due to the impact of various IP provisions such as increased patent enforcement, TRIP-plus and other provisions in various multilateral and bilateral agreements. These ex-ante studies confirm what the theory would say [35] i.e., that stronger IP monopoly rights would tend to eliminate competition and thus incur societal costs which are higher prices for IP products. On the other hand, empirical ex-post studies found at most a moderate increase in prices and costs of medicines due to the imposition of similarly heightened IP rules. There is, however, some consensus between ex-ante and ex-post studies that TRIPS-plus provisions relating to clinical data protection, rather than the imposition of more stringent patent rules, would cause a larger increase in prices and costs of medicines and lead to lower access to medicines. We note that extending the patent term may have an additionally important, but as-yet undifferentiated, impact since most data protection provisions are confined within the period of existing patent protection and are not additive to patent extensions. Second, the reported impacts of IP changes due to trade agreements on access to medicines seem clearly multifactorial. Duggan et al. [24] found an insignificant increase in medicine prices after patent law reform and argued that this might be because the existing generic producers are ‘grandfathered’ and continue to produce the generic medicines even after patent enforcement. This is because TRIPS does not require retroactive IP protection on pre-1994 medicines. Kyle and Qian [26] found that the existence of a patented molecule does not always block generic imitation, nor does the lack of patents always deter an originator from making a product available. They also pointed out that effects of IP may well be different depending on the size of the local generic sector, e.g., the impact in India with its large and robust generic medicine sector may be different as compared most other low and middle income countries. They asserted that the “... existence of IPs is neither necessary nor sufficient ...” for the launch of pharmaceutical innovations at the country level. This suggests substantial heterogeneity in the effects of IPs, both across countries and across medicines.

Many people lack access to medicines, particularly in low and middle income countries, even without any IP protection laws. Imposing IP protection laws or strengthening these laws as a result of trade agreements may further reduce the access to medicines. The magnitude of the effect on different outcome variables such as price, medicines expenditure and consumer welfare differ depending on a host of factors, most importantly domestic policies in place to counteract the potential negative effects on access. More studies are necessary to fill the gap in understanding the mechanisms through which changes in IP affect medicines access and which outcomes relevant to access are most effected by which type of changes in the IP.