## I Law

#### Intellectual property rights cannot be discriminated on the basis of field, or place of invention

WTO <https://www.wto.org/english/docs_e/legal_e/27-trips_04c_e.htm>, Article 27.1, Section 5 on patents, World trade Organization, WTO, Part II — Standards concerning the availability, scope and use of Intellectual Property Rights

Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. [(5)](https://www.wto.org/english/docs_e/legal_e/27-trips_04c_e.htm#fnt-5) Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

#### The WTO’s appellate body no longer exists to mediate disputes, without immediate buy in by states, and no mechanism to make disobedient states obey, the system collapses

Horton, 08/3, Lessons from Trump’s assault on the World Trade Organization, https://www.chathamhouse.org/2021/08/lessons-trumps-assault-world-trade-organization, Chatham House – International Affairs Think Tank, Communications Manager; Project Lead, Common Futures Conversations

The WTO is unique amongst international institutions because it has a powerful enforcement mechanism – the dispute settlement system. However, the fundamental vulnerability is that if powerful states like the US and others won’t participate in the system and be bound by its rules, they quickly risk becoming irrelevant. And that’s the situation we’re in right now with the appellate body crisis, where, without a functioning mechanism to ensure that WTO rules are enforced, the entire system of global trade rules risk collapsing. Ironically, the United States has been the leader of the liberal trading order for the past 70 years, but since Trump, it has become its leading saboteur.

#### cA major country operating outside WTO consensus wrecks global trade norms

Bacchus 20 [James Bacchus, member of the Herbert A. Stiefel Center for Trade Policy Studies, the Distinguished University Professor of Global Affairs and director of the Center for Global Economic and Environmental Opportunity at the University of Central Florida, 12-16-2020, "An Unnecessary Proposal: A WTO Waiver of Intellectual Property Rights for COVID-19 Vaccines," Cato Institute, [https://www.cato.org/free-trade-bulletin/unnecessary-proposal-wto-waiver-intellectual-property-rights-covid-19-vaccines]/Kankee](https://www.cato.org/free-trade-bulletin/unnecessary-proposal-wto-waiver-intellectual-property-rights-covid-19-vaccines%5d/Kankee)

In a sign of their increasing frustration with global efforts to ensure that all people everywhere will have access to COVID-19 vaccines, several developing countries have asked other members of the World Trade Organization (WTO) to join them in a sweeping waiver of the intellectual property (IP) rights relating to those vaccines. Their waiver request raises anew the recurring debate within the WTO over the right balance between the protection of IP rights and access in poorer countries to urgently needed medicines. But the last thing the WTO needs is another debate over perceived trade obstacles to public health. Unless WTO members reach a consensus, the multilateral trading system may be further complicated by a delay like that in resolving the two‐​decades‐​old dispute between developed and developing countries over the compulsory licensing and generic distribution of HIV/AIDS drugs. A new and contentious “North‐​South” political struggle definitely would not be in the interest of the developed countries, the developing countries, the pharmaceutical companies, or the WTO. Certainly it would not be in the interest of the victims and potential victims of COVID-19. Background 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 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 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 One WTO delegate, from the United Kingdom, described it as “an extreme measure to address an unproven problem.”4 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 In the absence of a consensus, WTO members have decided to postpone further discussion of the proposed waiver until early 2021. Balancing IP Rights and Access to Medicines Not New to WTO This waiver controversy comes nearly two decades after the end of the long battle in the multilateral trading system over access to HIV/AIDS drugs. At the height of the HIV/AIDS crisis at the turn of the century, numerous countries, including especially those from sub‐​Saharan Africa, could not afford the high‐​priced HIV/AIDS drugs patented by pharmaceutical companies in developed countries. Having spent billions of dollars on developing the drugs, the patent holders resisted lowering their prices. The credibility of the companies, the countries that supported them, and the WTO itself were all damaged by an extended controversy over whether patent rights should take precedence over providing affordable medicines for people afflicted by a lethal disease. Article 8 of the WTO Agreement on the Trade‐​Related Aspects of Intellectual Property Rights (the TRIPS Agreement) provides that WTO members “may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health … provided that such measures are consistent with the provisions of this Agreement.” In similar vein, Article 7 of the TRIPS Agreement provides that the “protection and enforcement of intellectual property rights” shall be “in a manner conducive to social and economic welfare.”6 It can be maintained that these two WTO IP rules are significantly capacious to include any reasonable health measures that a WTO member may take during a health emergency, such as a pandemic. Yet there was doubt among the members during the HIV/AIDS crisis about the precise reach of these provisions. As Jennifer Hillman of the Council on Foreign Relations observed, ordinarily the “inherent tension between the protection of intellectual property and the need to make and distribute affordable medicines” is “resolved through licensing, which allows a patent holder to permit others to make or trade the protected product—usually at a price and with some supervision from the patent holder to ensure control.”7 But, in public health emergencies, it may be impossible to obtain a license. In such cases, “compulsory licenses” can be issued to local manufacturers, authorizing them to make patented products or use patented processes even though they do not have the permission of the patent holders.8

#### Without all states buy in, we risk WW3

Hopewell and Horton 08-03 [Kristen Hopewell Associate Professor and Canada Research Chair in Global Policy at the University of British Columbia, and Ben Horton, Communications Manager; Project Lead, Common Futures Conversations, 08-03-2021, "Lessons from Trump’s assault on the World Trade Organization," Chatham House – International Affairs Think Tank, https://www.chathamhouse.org/2021/08/lessons-trumps-assault-world-trade-organization]/Kankee

What has this episode revealed about the strength of multilateral institutions such as the WTO, in the face of spoiling tactics from major powers? The WTO is unique amongst international institutions because it has a powerful enforcement mechanism – the dispute settlement system. However, the fundamental vulnerability is that if powerful states like the US and others won’t participate in the system and be bound by its rules, they quickly risk becoming irrelevant. And that’s the situation we’re in right now with the appellate body crisis, where, without a functioning mechanism to ensure that WTO rules are enforced, the entire system of global trade rules risk collapsing. Ironically, the United States has been the leader of the liberal trading order for the past 70 years, but since Trump, it has become its leading saboteur. What are the implications of a permanent collapse of the international trading system? The very real danger from such a breakdown is a return to what we saw in the 1930s. In response to the outbreak of the Great Depression, you had countries imposing trade barriers, blocking imports from other state, and a general escalation of tit-for-tat protectionism. This response wound up not only exacerbating the effects of the depression itself but has also been credited by some as paving the way for the outbreak of the second world war. The reason why institutions like the WTO were created in the first place was to prevent a recurrence of the 1930s protectionist trade spiral. The danger now – if those rules become meaningless and unenforceable – is the institutional foundations of postwar economic prosperity could unravel, throwing us back into economic chaos and potentially political disorder. What does the WTO’s future look like under new director-general Dr Okonjo-Iweala?

## BioTech

#### **U.S dominance over biotech now BUT Misguided policy cedes control to China.**

Gupta 6/11 [“As Washington Ties Pharma's Hands, China Is Leaping Ahead.”, Gaurav Gupta, *Opinion | America Risks Ceding Its Biotech Dominance to China | Barron's*, Barrons, 11 June 2021, www.barrons.com/articles/as-washington-ties-pharmas-hands-china-is-leaping-ahead-51623438808., *Gaurav Gupta, a physician, is the founder of the biotechnology investment firm Ascendant BioCapital.]//Lex AKu*

There should be no doubt that we are living at the dawn of a golden age of biomedical innovation. The American scientific engine that produced Covid-19 vaccines in record time was fueled by a convergence of advances in genomics, biomarkers, data science, and manufacturing years in the making. The first Food and Drug Administration approvals of a host of new product formats—oligonucleotide, bispecific, oncolytic virus, CAR-T, and lentivirus/AAV—all took place within the last decade. These represent an unprecedented expansion of the armamentarium that physicians have at their disposal to treat and cure disease. In the last few years, 47% of all new medicines were invented by U.S. biopharma companies, with homegrown startups driving the majority of innovation. The bulk of the remainder were developed by foreign companies specifically for the U.S. market. An indirect benefit of these trends is that most novel therapeutics undergo clinical development and early commercial launch here in the U.S. The rest of the world understands that the American patient has earlier and broader access to groundbreaking therapies via these mechanisms. Indeed, the past decade is filled with examples of medical “firsts” for American patients: the first cure for Hepatitis C, the first gene therapy for blindness, the first immunotherapy for cancer. Future rewards will be greater still if we preserve our current system of incentivizing and protecting The remarkable innovation capacity of our biopharmaceutical industry ought to be a source of national pride. Yet while “Made in America” is the global standard for medicines in development today, misguided policy risks ceding our scientific prowess to other countries in the future. This is particularly true in the case of China, where biotechnology has become a strategic pillar for the health of its people and economy. From 2016 to 2020, the market capitalization of all Chinese biopharma companies increased exponentially from $1 billion to over $200 billion. China saw over $28 billion invested in its life sciences sector in 2020, double the previous year’s amount. Returns on China’s investment are already arriving. The FDA approved a drug developed in China for the first time ever in 2019. While China’s innovation capacity currently remains behind America’s, my experiences as a biopharma professional make it clear they are doing everything they can to catch up and catch up fast. In fact, when I speak to Chinese biotechnology executives, they boast that they can run clinical trials faster than their U.S. counterparts. The danger of misguided policies that disincentivize pharmaceutical innovation in the U.S. is effectively driving that same innovation to China. If we close off the market in the U.S. at the same time that China is opening its market to innovative new products, then we will see companies choose to first launch impactful novel medicines in China, based on clinical trials conducted in China. Because the FDA rarely accepts data generated entirely outside the U.S., this relocation of research capacity will negatively affect Americans’ access to cutting-edge therapies. The biotechnology field is advancing rapidly. Promising technologies such as targeted protein degradation and gene editing are perhaps not far from being developed into impactful medicines, and the U.S. risks these technologies being mastered by Chinese companies.

#### pThe plan chills American biomed innovation and cedes control to China.

Paulsen 7/9 [ERIK PAULSEN: We can save the world with our vaccines — without surrendering our IP to China," Bakersfield Californian, https://www.bakersfield.com/opinion/erik-paulsen-we-can-save-the-world-with-our-vaccines-without-surrendering-our-ip-to/article\_b0b87692-df61-11eb-9a13-d7fa02eefaee.html]//Lex AKu

The Biden administration gave Beijing a gift when it endorsed a petition before the World Trade Organization to force the American developers of Covid-19 vaccines and therapeutics to relinquish their intellectual property rights to these medicines. The Chinese government seeks to take over in biotech, a sector where U.S. innovators lead. Biotech is included in its “Made in China 2025” plan, which lists 10 sectors that China aims to dominate. The government intends to force anyone doing business in China in those spheres to hand over know-how. Surrendering IP protections on biomedical technology has dire consequences. Foremost, it guts the foundation of biomedical innovation, which takes huge investments spanning many years to bear fruit. IP protections assure innovators that they can recover those investments and make a profit. Losing IP protection would have a chilling effect on investments in the sector. Equally injurious to America, the IP waiver would allow China to become a biotech powerhouse by piggybacking on American innovation. A waiver on IP for Covid-19 vaccines would accelerate the timeline for “Made in China 2025.” The mRNA technology, which undergirds the Pfizer-BioNTech and Moderna vaccines has uses beyond this pandemic. It has the potential to take on cancers and other diseases. With the waiver, China and others will be emboldened to use the once-proprietary mRNA know-how for broader research and applications. Is this in America’s interest? Mark Cohen, an expert on Chinese IP theft, recently told the Washington Post that the waiver would deliver “a competitive advantage to countries that are increasingly viewed as our adversaries, at taxpayer expense.” Beyond the damage that an mRNA giveaway will inflict on US R&D investments, the waiver sends a signal that America could agree to force American innovators to part with trade secrets every time there’s a global crisis. That attitude will arrest biopharmaceutical innovation. Small biotech firms spearhead 70 percent of the R&D pipeline, relying heavily on private investors to fund that work. If investors know that innovators may have to give away their discoveries in a global crisis, they’ll deploy their money elsewhere. That’ll make it even harder to draw the R&D investments needed to address infectious diseases, including drug-resistant infections and viruses. America is benefitting greatly from the early access to COVID-19 treatments and vaccines, saving lives and speeding economic recovery. Preserving U.S. leadership in biomedical innovation includes preserving the incentives that helped make it the world’s leader. A final downside of the waiver is the ability for American firms to find a cure for the next pandemic. Among the greatest threats is bacteria resistant to our current arsenal of antibiotics that becomes a pandemic-inducing superbug. Already, the market for new antimicrobials is broken. Only a handful of biotechs have them in development, and many have gone bankrupt trying to commercialize one. “A lot of people have rightly said we need to start thinking about preparing for the next pandemic now,” noted Craig Garthwaite, a healthcare-business professor at Northwestern University. “Suspending IP for vaccine manufacturers would send exactly the wrong signal for the future.” For the sake of patients everywhere, American IP rights must stay protected. It’s the only way to keep China at bay and American innovators at work.

#### Biotech leadership key to future military primacy.

Moore 21 [(Scott Moore is a political scientist and administrator at the University of Pennsylvania and the author of a forthcoming book, “How China Shapes the Future,” on China’s role in public goods and emerging technologies.) 8-8-2021, "In Biotech, the Industry of the Future, the U.S. Is Way Ahead of China," Lawfare, https://www.lawfareblog.com/biotech-industry-future-us-way-ahead-china]//Lex AKu

A continuing refrain from Washington in recent years has been that the United States is falling behind China in the development of critical emerging technologies. In some fields, this may be true. But not in biotechnology. To be sure, China’s biotech sector is growing at a torrid pace, and some of its firms are becoming leaders in certain areas, such as cancer treatment. Yet the U.S. retains a dominant position in research, development and commercialization, accounting for almost half of all biotech patents filed from 1999 to 2013. The triumph of its biotechnology industry during the coronavirus pandemic, producing two highly effective vaccines using an entirely new approach based on messenger RNA, and in record time, shows that the U.S.’s competitive edge in biotechnology remains largely intact. And that has important implications as Washington gears up for a sustained period of geopolitical competition with Beijing. Biotech is such a critical area for technological competition between the U.S. and China because it is transforming fields from medicine to military power. The great advances of the 19th century, like chemical fertilizers, resulted from mastering chemistry. In the 20th century, mastery of physics led to nuclear energy—and, more ominously, nuclear weapons. In the 21st century, biology offers a similar mix of peril and promise. This was illustrated dramatically by the award of the 2020 Nobel Prize for the discovery of an enzyme system known as CRISPR-Cas9, which allows an organism’s genomes to be edited with high precision. It is a transformational breakthrough. But while CRISPR shows great promise in the development of new cures for long-untreatable diseases, it could also lead to a whole new generation of deadly bioweapons. That’s a prospect that increasingly alarms U.S. intelligence officials. In 2016, then-Director of National Intelligence James Clapper warned Congress that “[r]esearch in genome editing conducted by countries with different regulatory or ethical standards than those of western countries probably increases the risk of the creation of potentially harmful biological agents or products.” Although Clapper didn’t name specific countries, it soon became clear that he was referring mainly to China. Four years later, his successor, John Ratcliffe, issued a far more pointed warning that “China has even conducted human testing on members of the People’s Liberation Army in hope of developing soldiers with biologically enhanced capabilities. There are no ethical boundaries to Beijing’s pursuit of power.” Such capabilities are almost certainly only speculative—but they underscore why biotech leadership is so important for national security as well as economic competitiveness. Beijing has long envied the United States’s dominant position in biotechnology and spent heavily to overtake it. Biotech has been a priority sector for state investment since the 1980s, and by one estimate Beijing had poured some $100 billion into the sector by 2018. Nowhere did it lavish more attention or invest more of its propaganda power than in developing a coronavirus vaccine. State media have spent months crowing that “China is working around the clock for breakthroughs in COVID-19 vaccines.” Yet despite this push, China’s vaccine program quickly took on a Potemkin air. In February 2020, barely two months after the onset of the pandemic and after a supposedly crash vaccine effort, a military doctor stood in front of a Chinese flag to receive what was billed as an experimental vaccine dose but was widely suspected to be a staged photo op. Now, having spent months talking up its two primary vaccine candidates to developing countries like Brazil and Indonesia, both of which have entered into purchase agreements with Chinese biotech firms, Chinese officials face severe mistrust among their nation’s overseas partners. For China’s leaders, the disappointing returns on their big bet on biotechnology look likely to cause them more headaches at home as well as abroad—there are already signs that affluent Chinese place more trust in foreign-developed coronavirus vaccines than the homegrown ones produced at such great expense. For U.S. officials, though, China’s relative underperformance in vaccine development presents an opportunity to reassert the United States’s leadership in biotechnology and public health and bolster the nation’s depleted soft power in the process. The Biden administration has already signaled it will reengage in multilateral bodies such as the World Health Organization. Yet the U.S. shouldn’t stop there. Washington should begin thinking now about how to emulate the success of the President’s Emergency Plan for AIDS Relief (PEPFAR)—which, though imperfect, is widely regarded as one of the most successful single public health interventions in history—to address growing disparities in access to coronavirus vaccines between countries. At the moment, vaccine supplies are controlled largely by rich countries, creating the risk of moral and public health failure if the gap persists. While COVID-19, the respiratory disease caused by the novel coronavirus, differs in many respects from AIDS, PEPFAR combined research, prevention, and access to therapeutics. Developing a comparable institutional structure to close the coronavirus vaccine access gap is the right thing to do—but it would also go a long way to restoring America’s battered global reputation. At the same time, the United States can’t afford to rest on its laurels in biotechnology, or any other field. Aside from China, other nations like Singapore and Israel have also invested heavily to develop their biotechnology sectors, with Israel in particular giving rise to a thriving biotech industry. U.S. public investment in basic scientific research and development has meanwhile been on the decline for decades, and there are worrying signs that America’s once world-beating innovation ecosystem is less productive, and less entrepreneurial, than it once was. Despite strengths in translational research, moreover, the frontiers of biology increasingly sit at the intersection with other disciplines like computer science, meaning that funding agencies, universities and other organizations need to break down disciplinary silos. Boosting support for biotechnology research, while reforming how that money is used, will go a long way toward shoring up the United States’s leading position in the global biotech sector. The U.S. biotechnology sector also faces other threats, not least growing espionage and intellectual property theft by foreign actors, especially those linked to China. Several high-profile cases brought by the U.S. Department of Justice’s China Initiative have involved biotechnology researchers, and American biotech firms have been top targets for cyber theft and intrusion. Sustained outreach to researchers and research institutions is critical to preventing such theft. But efforts to clamp down on the threats posed by espionage and intellectual property theft can easily go too far and must preserve the researcher mobility and data-sharing that is essential to doing cutting-edge science. Beyond its shores, the United States should work with its partners and allies to enhance export controls on dual-use biotechnology—used for both peaceful and military gain—especially DNA templates. Many forms of genetic material and synthetic biology products are already subject to U.S. export controls, but gaps remain, and screening for genetic sequence orders relies primarily on voluntary regulation by biotech firms. Better coordinating export controls among major economies and U.S. allies can dramatically reduce the risk of sophisticated bioweapons development in the decades to come.

#### hHeg solves arms races, land grabs, rogue states, and great power war.

Brands 18 [Hal, Henry Kissinger Distinguished Professor at Johns Hopkins University's School of Advanced International Studies and a senior fellow at the Center for Strategic and Budgetary Assessments." American Grand Strategy in the Age of Trump." Page 129-133]

Since World War II, the United States has had a military second to none. Since the Cold War, America has committed to having overwhelming military primacy. The idea, as George W. Bush declared in 2002, that America must possess “strengths beyond challenge” has featured in every major U.S. strategy document for a quarter century; it has also been reflected in concrete terms.6 From the early 1990s, for example, the United States consistently accounted for around 35 to 45 percent of world defense spending and maintained peerless global power-projection capabilities.7 Perhaps more important, U.S. primacy was also unrivaled in key overseas strategic regions—Europe, East Asia, the Middle East. From thrashing Saddam Hussein’s million-man Iraqi military during Operation Desert Storm, to deploying—with impunity—two carrier strike groups off Taiwan during the China-Taiwan crisis of 1995– 96, Washington has been able to project military power superior to anything a regional rival could employ even on its own geopolitical doorstep. This military dominance has constituted the hard-power backbone of an ambitious global strategy. After the Cold War, U.S. policymakers committed to averting a return to the unstable multipolarity of earlier eras, and to perpetuating the more favorable unipolar order. They committed to building on the successes of the postwar era by further advancing liberal political values and an open international economy, and to suppressing international scourges such as rogue states, nuclear proliferation, and catastrophic terrorism. And because they recognized that military force remained the ultima ratio regum, they understood the centrality of military preponderance. Washington would need the military power necessary to underwrite worldwide alliance commitments. It would have to preserve substantial overmatch versus any potential great-power rival. It must be able to answer the sharpest challenges to the international system, such as Saddam’s invasion of Kuwait in 1990 or jihadist extremism after 9/11. Finally, because prevailing global norms generally reflect hard-power realities, America would need the superiority to assure that its own values remained ascendant. It was impolitic to say that U.S. strategy and the international order required “strengths beyond challenge,” but it was not at all inaccurate. American primacy, moreover, was eminently affordable. At the height of the Cold War, the United States spent over 12 percent of GDP on defense. Since the mid-1990s, the number has usually been between 3 and 4 percent.8 In a historically favorable international environment, Washington could enjoy primacy—and its geopolitical fruits—on the cheap. Yet U.S. strategy also heeded, at least until recently, the fact that there was a limit to how cheaply that primacy could be had. The American military did shrink significantly during the 1990s, but U.S. officials understood that if Washington cut back too far, its primacy would erode to a point where it ceased to deliver its geopolitical benefits. Alliances would lose credibility; the stability of key regions would be eroded; rivals would be emboldened; international crises would go unaddressed. American primacy was thus like a reasonably priced insurance policy. It required nontrivial expenditures, but protected against far costlier outcomes.9 Washington paid its insurance premiums for two decades after the Cold War. But more recently American primacy and strategic solvency have been imperiled. THE DARKENING HORIZON For most of the post–Cold War era, the international system was— by historical standards—remarkably benign. Dangers existed, and as the terrorist attacks of September 11, 2001, demonstrated, they could manifest with horrific effect. But for two decades after the Soviet collapse, the world was characterized by remarkably low levels of great-power competition, high levels of security in key theaters such as Europe and East Asia, and the comparative weakness of those “rogue” actors—Iran, Iraq, North Korea, al-Qaeda—who most aggressively challenged American power. During the 1990s, some observers even spoke of a “strategic pause,” the idea being that the end of the Cold War had afforded the United States a respite from normal levels of geopolitical danger and competition. Now, however, the strategic horizon is darkening, due to four factors. First, great-power military competition is back. The world’s two leading authoritarian powers—China and Russia—are seeking regional hegemony, contesting global norms such as nonaggression and freedom of navigation, and developing the military punch to underwrite these ambitions. Notwithstanding severe economic and demographic problems, Russia has conducted a major military modernization emphasizing nuclear weapons, high-end conventional capabilities, and rapid-deployment and special operations forces— and utilized many of these capabilities in conflicts in Ukraine and Syria.10 China, meanwhile, has carried out a buildup of historic proportions, with constant-dollar defense outlays rising from US$26 billion in 1995 to US$226 billion in 2016.11 Ominously, these expenditures have funded development of power-projection and antiaccess/area denial (A2/AD) tools necessary to threaten China’s neighbors and complicate U.S. intervention on their behalf. Washington has grown accustomed to having a generational military lead; Russian and Chinese modernization efforts are now creating a far more competitive environment. Second, the international outlaws are no longer so weak. North Korea’s conventional forces have atrophied, but it has amassed a growing nuclear arsenal and is developing an intercontinental delivery capability that will soon allow it to threaten not just America’s regional allies but also the continental United States.12 Iran remains a nuclear threshold state, one that continues to develop ballistic missiles and A2/AD capabilities while employing sectarian and proxy forces across the Middle East. The Islamic State, for its part, is headed for defeat, but has displayed military capabilities unprecedented for any terrorist group, and shown that counterterrorism will continue to place significant operational demands on U.S. forces whether in this context or in others. Rogue actors have long preoccupied American planners, but the rogues are now more capable than at any time in decades. Third, the democratization of technology has allowed more actors to contest American superiority in dangerous ways. The spread of antisatellite and cyberwarfare capabilities; the proliferation of man-portable air defense systems and ballistic missiles; the increasing availability of key elements of the precision-strike complex— these phenomena have had a military leveling effect by giving weaker actors capabilities which were formerly unique to technologically advanced states. As such technologies “proliferate worldwide,” Air Force Chief of Staff General David Goldfein commented in 2016, “the technology and capability gaps between America and our adversaries are closing dangerously fast.”13 Indeed, as these capabilities spread, fourth-generation systems (such as F-15s and F-16s) may provide decreasing utility against even non-great-power competitors, and far more fifth-generation capabilities may be needed to perpetuate American overmatch. Finally, the number of challenges has multiplied. During the 1990s and early 2000s, Washington faced rogue states and jihadist extremism—but not intense great-power rivalry. America faced conflicts in the Middle East—but East Asia and Europe were comparatively secure. Now, the old threats still exist—but the more permissive conditions have vanished. The United States confronts rogue states, lethal jihadist organizations, and great-power competition; there are severe challenges in all three Eurasian theaters. “I don’t recall a time when we have been confronted with a more diverse array of threats, whether it’s the nation state threats posed by Russia and China and particularly their substantial nuclear capabilities, or non-nation states of the likes of ISIL, Al Qaida, etc.,” Director of National Intelligence James Clapper commented in 2016. Trends in the strategic landscape constituted a veritable “litany of doom.”14 The United States thus faces not just more significant, but also more numerous, challenges to its military dominance than it has for at least a quarter century.

## T - Reduce

#### Interpretation: Reduce means unconditional and permanent – the aff is a suspension.

Reynolds 59 – Judge (In the Matter of Doris A. Montesani, Petitioner, v. Arthur Levitt, as Comptroller of the State of New York, et al., Respondents [NO NUMBER IN ORIGINAL] Supreme Court of New York, Appellate Division, Third Department 9 A.D.2d 51; 189 N.Y.S.2d 695; 1959 N.Y. App. Div. LEXIS 7391 August 13, 1959, lexis)

Section 83's counterpart with regard to nondisability pensioners, section 84, prescribes a reduction only if the pensioner should again take a public job. The disability pensioner is penalized if he takes any type of employment. The reason for the difference, of course, is that in one case the only reason pension benefits are available is because the pensioner is considered incapable of gainful employment, while in the other he has fully completed his "tour" and is considered as having earned his reward with almost no strings attached. It would be manifestly unfair to the ordinary retiree to accord the disability retiree the benefits of the System to which they both belong when the latter is otherwise capable of earning a living and had not fulfilled his service obligation. If it were to be held that withholdings under section 83 were payable whenever the pensioner died or stopped his other employment the whole purpose of the provision would be defeated, i.e., the System might just as well have continued payments during the other employment since it must later pay it anyway.  [\*\*\*13]  The section says "reduced", does not say that monthly payments shall be temporarily suspended; it says that the pension itself shall be reduced. The plain dictionary meaning of the word is to diminish, lower or degrade. The word "reduce" seems adequately to indicate permanency.

#### Violation: TRIPS waiver is temporary, their normal means ev proves, says 3 years

Green 5/6 [Andrew Green (Devex Contributing Reporter based in Berlin, his coverage focuses primarily on health and human rights and he has previously worked as Voice of America's South Sudan bureau chief and the Center for Public Integrity's web editor). “US backs waiver for intellectual property rights for COVID-19 vaccines”. Devex. 06 May 2021. Accessed 7/31/2021. <https://www.devex.com/news/us-backs-waiver-for-intellectual-property-rights-for-covid-19-vaccines-99847> //Xu]

In a stunning reversal, U.S. President Joe Biden’s administration came out in favor of waiving intellectual property protections for COVID-19 vaccines Wednesday. The move follows months of U.S. opposition that began under former President Donald Trump to a proposal from South Africa and India to temporarily set aside intellectual property rights around products that would protect, contain, and treat COVID-19. Its supporters have argued that the proposal, first tabled at the World Trade Organization in October and now backed by more than 100 countries, is necessary to expand vaccine production and overcome global shortages.

#### Vote neg:

#### 1] Limits and ground– their model allows affs to defend anything from pandemics to Biden’s presidency— there's no universal DA since it’s impossible to know the timeframe when there won’t be IP— that explodes neg prep and leads to random timeframe of the week affs which makes cutting stable neg links impossible — limits key to reciprocal engagement since they create a caselist for neg prep (innovation, collaboration, econ, ptx: all core neg literature thrown away)

#### 2] Precision o/w – anything else justifies the aff arbitrarily jettisoning words in the resolution at their whim which decks negative ground and preparation because the aff is no longer bounded by the resolution.

#### 3] TVA – defend the advantage to a whole rez timeframe. We don’t prevent new FWs, mechanisms, or advantages. PICs don’t solve – our model allows you to specify countries and medicines.

#### Fairness- consittutive of comp activites, args presume

#### Edu- funded ny schools

#### DTD- dta illogical, time skew

#### No RVI’s- illogical, baiting

#### CI – intervention, race to bottom , collapses

## 1NC – T

#### **Interp – “medicines” treat or cure, whereas vaccines prevent – o/w on specificity since it’s about the COVID vaccine**

Vecchio 7/22 (Christopher Vecchio, [CFA, Senior Strategist,], 7-22-2021, “Delta Variant Concerns Won't Cripple Markets, US Economy“, DailyFX, accessed: 8-9-2021, https://www.dailyfx.com/forex/video/daily\_news\_report/2021/07/22/market-minutes-delta-variant-concerns-wont-cripple-markets-us-economy.html) ajs

Let’s stick to the facts. The COVID-19 vaccines are not medicines, which by definition “treat or cure diseases.” Vaccines “help prevent diseases,” an important distinction. Why does this matter? Because data coming out of some of the world’s developed economies with high adult vaccination rates suggest that the vaccines are working as intended: tail-risks have been reducedv, with hospitalizations and deaths falling relative to the recent spike in infections (which have been occurring primarily among the unvaccinated at this point). Put another way, vaccines are like a Kevlar vest for the immune system; while they don’t make you bulletproof, they dramatically increase the odds of surviving an adverse event.

#### Vaccines are medical interventions – not medicines

Elbe 10 (Stefan Elbe, [director of the Centre for Global Health Policy and a professor of international relations at the University of Sussex. He is the author of Strategic Implications of HIV/AIDS, Security and Global Health, and Virus Alert: Security, Governmentality, and the AIDS Pandemic.], 5-3-2010, “Security and Global Health” Polity Press, accessed: 8-9-2021, https://books.google.com/books?id=PKMoMJrSsksC) ajs

Yet here too we must be careful not to overlook other types of medical intervention simultaneously pursued by the 'social' arm of modern medicine at the population level. Vaccines in particular continue to be particularly important medical interventions that repeatedly surface in a variety of different health security delib- erations. Strictly speaking, vaccines are not medicines because they consist of small concentrations of disease-causing microbes (or their derivatives) used to enhance a person's immuno-response to a future infection. As a public health measure, vaccines have therefore also been largely sidelined in the existing medicalization literature. Yet, generally speaking, vaccines too can be considered as medical inter- ventions. That is certainly how the World Health Organization views them, pointing out that 'vaccines are among the most important medical interventions for reducing illness and deaths' available today (WHO 2009a). Whereas pills and other therapies mark the tools of clinical medicine, vaccines play a crucial part in the arsenal of 'social' medicine and public health. Developing and rolling out of new vaccines against a range of current (and future) diseases therefore represents further evidence of how the rise of health security is also encouraging security to be practised through the introduction of new medical interventions in society.

#### Violation – The aff defends vaccines—every card in their aff and their solvency advocate specifically calls for their patents to be waived. If they win plan text in a vacuum vote neg on presumption since they can’t solve any of their internal links about vaccine access.

#### Vote neg for limits – expanding the topic to preventative treatment or medical interventions allows anything from surgery to medical devices to education strategies or mosquito repellent to prevent malaria. Destroys core generics like innovation which are exclusive to disease curing – core of the topic is about proprietary information.

# Case

## Pandemics

#### Protecting vaccine intellectual property is key to stopping the spread of COVID-19

**Pitts, 6/9** (Posted By: Jacqueline Pitts, a writer for the Bottom Line News, 6/9/2021, accessed on 6/28/2021, The Bottom Line, "Vaccine intellectual property must be protected, Kentucky business community says | The Bottom Line", https://kychamberbottomline.com/2021/06/09/vaccine-intellectual-property-must-be-protected-kentucky-business-community-says/)

As President Joe Biden backs **waiving intellectual property (IP) protections for COVID-19 vaccines**, the Kentucky Chamber has expressed opposition to this policy stating it **sets a harmful precedent and stifles innovation.** President Biden came out in favor of a World Trade Organization (WTO) proposal in May that would waive certain intellectual property protections around COVID-19 vaccines. The proposal would reveal proprietary information held by companies designing the shots such as Pfizer. The WTO policy seeks to give away the intellectual property of companies who have produced an effective product in an attempt to boost production and address distribution issues across the globe. However, the Kentucky Chamber believes waiving IP protections **would not increase access to the COVID-19 vaccine** because it would **not solve** issues such as **limited manufacturing capacity, limited access to raw materials, and limited technical expertise** with this specific vaccine. Instead, waiving IP protections would have the **negative effect of undermining the type of risk-taking and innovation necessary to create vaccines like the COVID-19 vaccine. Protection of intellectual property** was a **key driver in** the **rapid development of COVID vaccines,** and the U.S. should support protecting IP as it has done in the past. Waiving IP protections **could negatively affect the creation of future life-saving pharmaceuticals.**

#### IPR hasn’t harmed access – manufacturing capacity alt cause

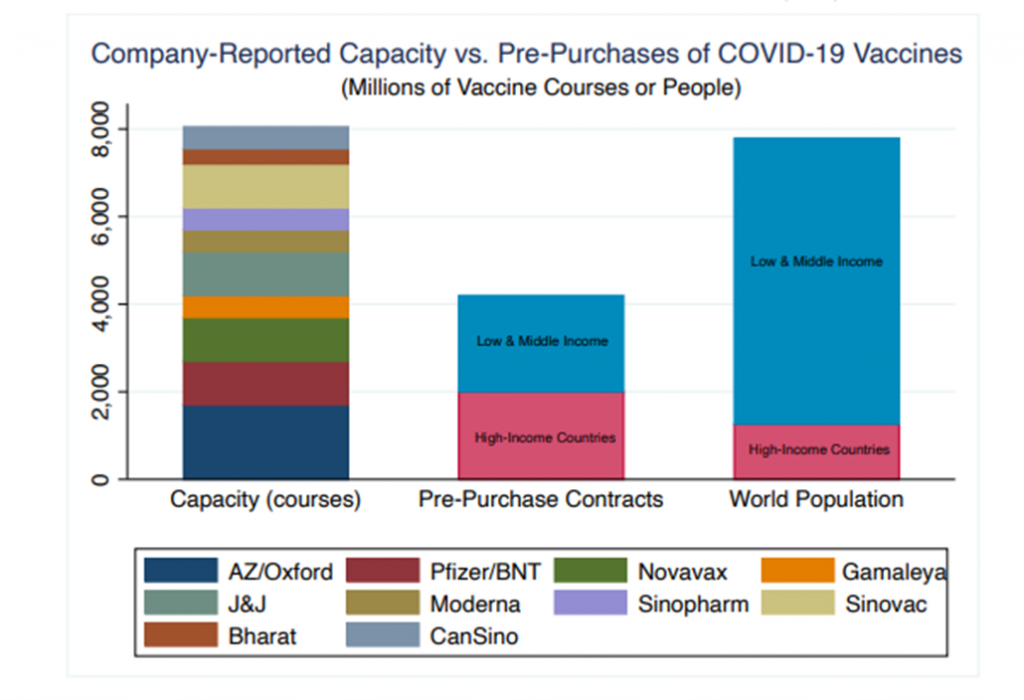
Mercurio 2/12 (Bryan Mercurio, [Simon F.S. Li Professor of Law at the Chinese University of Hong Kong (CUHK), having served as Associate Dean (Research) from 2010-14 and again from 2017-19. Professor Mercurio specialises in international economic law (IEL), with particular expertise in the intersection between trade law and intellectual property rights, free trade agreements, trade in services, dispute settlement and increasingly international investment law.], 2-12-2021, “WTO Waiver from Intellectual Property Protection for COVID-19 Vaccines and Treatments: A Critical Review“, No Publication, accessed: 8-8-2021, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3789820) ajs

2. Intellectual property rights have not hampered access to COVID-19 vaccines A WTO waiver is an extreme measure which should only be used when existing WTO obligations prove inadequate. This was the case in relation to the compulsory licencing provisions under Article 31 of the TRIPS Agreement, which essentially precluded Members with no or inadequate manufacturing capabilities from making use of the flexibility granted in the TRIPS Agreement. 25 This was also the case with the Kimberley Process, which attempts to eliminate trade in “conflict diamonds”. 26 Although the IP waiver proposal states that “there are several reports about intellectual property rights hindering or potentially hindering timely provisioning of affordable medical products to the patients”, 27 the sponsors did not provide further elaboration or evidence to support their declaration that “many countries especially developing countries may face institutional and legal difficulties when using flexibilities available [under the TRIPS Agreement]”. 28 Instead, many of the examples used by India and South Africa point to problems not with the TRIPS Agreement but rather to failures at the domestic level. As mentioned above, the WTO allowed for the importation of medicines under a compulsory licence in 2003, and yet many developing countries have yet to put in place any framework to allow their country to make use of the flexibility. 29 This is not an institutional problem of the international system but rather a problem at the country level. Two additional factors which make the proposed waiver unnecessary and potentially harmful. First, pharmaceutical companies are selling the vaccine at extremely reasonable rates and several announced plans for extensive not-for-profit sales.30 Although agreements between the pharmaceutical companies and governments are not publicly disclosed, the Belgian Secretary of State Eva De Bleeker temporarily made publicly available in a tweet the prices the EU is being charged by each manufacturer. The De Bleeker tweet indicated the European Commission negotiated price arrangements with six companies, with the range of spending between €1.78 and €18 per coronavirus vaccine dosage. Specific price per dose listed for each of the six vaccines was as follows: Oxford/AstraZeneca: (€1.78), Johnson & Johnson (€8.50), Sanofi/GSK (€7.56), CureVac (€10), BioNTech/Pfizer (€12) and Moderna (€18).31 While much as been made of the fact that South Africa agreed to purchase 1.5 million doses of the Oxford/AstraZeneca from the Serum Institute of India (SII) at a cost of €4.321 per dose,32 these criticisms are directed at the lack of transparency in pharmaceutical licenses and production contracts – an issue which would be wholly unaddressed by a waiver of IPRs. Moreover, while the disparity in pricing is concerning the overall per dosage rate South Africa is paying nevertheless represents value for money given the expected health and economic returns on investment. Despite the disparity in pricing between nations, the larger point remains that the industry has not only rapidly produced vaccines for the novel coronavirus but is making them available at unquestionably reasonable prices. Second, the proposed waiver will do nothing to address the problem of lack of capacity or the transfer of technology and goodwill . Pharmaceutical companies have not applied for patents in the majority of developing countries – in such countries, any manufacturer is free to produce and market the vaccine inside the territory of that country or to export the vaccine to other countries where patents have not been filed.33 Patents cannot be the problem in the countries where no patent applications have been filed, but the lack of production in such countries points to the real problem – these countries lack manufacturing capacity and capability. While advanced pharmaceutical companies will have the technology, know-how and readiness to manufacture, store and transport complex vaccine formulations, such factories and logistics exist in only a handful of countries.34 Regardless of whether an IP waiver is granted, the remaining countries will be left without enhanced vaccine access and still reliant on imported supplies. With prices for the vaccine already very low, it is doubtful that generic suppliers will be able to provide the vaccine at significantly lower prices. Under such a scenario, the benefit of the waiver would go not to the countries in need but to the generic supplier who would not need to pay the licence fee or royalty to the innovator. Thus, the waiver would simply serve to benefit advanced generic manufacturers, most of which are located in a handful of countries, including China and Brazil as well as (unsurprisingly) India and South Africa. Countries would perhaps be better off obtaining the vaccine from suppliers that have negotiated a voluntary licence from the patent holder, as such licences include provisions for the transfer of technology, know-how and ongoing quality assurance support.

#### The 1AC misdiagnoses the problem – the problem isn’t production of vaccines it’s the demand for them

Reed 21 (TRISTAN REED|JUNE 17, 2021, In the COVID-19 vaccine market, the problem has always been demand, n, ot supply, WorldBank Blogs, <https://blogs.worldbank.org/developmenttalk/covid-19-vaccine-market-problem-has-always-been-demand-not-supply)//ww> pbj

Some economies have now vaccinated more than half of their populations against COVID-19 and are reopening, while low- and middle-income economies still have limited access in the face of devastating outbreaks. Supply bottlenecks have been blamed. Though vaccine manufacturers report substantial capacity, essential vaccine manufacturing supplies like giant plastic bags and glass vials are hard to come by, understandably, as countries ordered more vaccines at one time than ever before. However, these supply-side challenges are overemphasized. The reason why low- and middle-income countries are not further along in their vaccination campaigns comes down to insufficient demand. As Ruchir Agarwal of the IMF and I show in a recent research paper, even though governments have substantial experience implementing vaccination campaigns and most individuals are not hesitant to take vaccines, governments did not commit to buy Covid-19 vaccines from manufacturers early enough (Figure 1). Figure 1: As of April 2021, despite available capacity for 10 vaccines showing effectiveness in Phase 3 trials, there were not enough advance purchases to cover the world’s population



#### Waiver greenlights counterfeit medicine – turns case.

Conrad 5-18 John Conrad 5-18-2021 "Waiving intellectual property rights is not in the best interests of patients" <https://archive.is/vsNXv#selection-5353.0-5364.0> (president and CEO of the Illinois Biotechnology Innovation Organization in Chicago.)//Elmer

The Biden's administration's support for India and South Africa's proposal before the World Trade Organization to temporarily waive anti-COVID vaccine patents to boost its supply will fuel the **development of counterfeit vaccines and weaken the already strained global supply chain**. The proposal will not increase the effective number of COVID-19 vaccines in India and other countries. The manufacturing standards to produce COVID-19 vaccines are **exceptionally complicated**; it is unlike any other manufacturing process. To ensure patient safety and efficacy, only manufacturers with the **proper facilities and training should produce the vaccine, and they are**. Allowing a temporary waiver that permits compulsory licensing to allow a manufacturer to export counterfeit vaccines will **cause confusion and endanger public health**. For example, between 60,000 and 80,000 children in Niger with fatal falciparum malaria were treated with a counterfeit vaccine containing incorrect active pharmaceutical ingredients, resulting in more than **100 fatal infections.** Beyond the patients impacted, counterfeit drugs erode public confidence in health care systems and the pharmaceutical industry. Vaccine hesitancy is a rampant threat that feeds off of the distribution of misinformation. Allowing the production of vaccines from improper manufacturing facilities further opens the door for antivaccine hacks to stoke the fear fueling **vaccine hesitance**.

#### 1] Be extremely skeptical of the brink or uniqueness for this – COVID has happened for nearly two years and we have yet to see a great power conflict.

## WTO Cred

### No impact

#### 1] No Brink Scenario – no explanations of conflicts/tensions that are escalating now.

#### 2] Trade wars don’t go to hot wars

**Dayen 17**, New Republic contributor (David “Trump Is Signaling a Trade War, but It’s Not as Disastrous as You May Think”, https://www.thenation.com/article/trump-is-signaling-a-trade-war-but-its-not-as-disastrous-as-you-may-think/)

Can Trump enact tariffs on his own? Though it would appear to contradict the Origination Clause of the Constitution, Congress has delegated that authority in enough pieces of legislation that Trump could probably raise import duties unilaterally. But what would be the practical effect? Hard-core free traders paint a picture of cataclysm. Tariffs will launch trade wars, increase prices, and destroy the economy. This is all hard-wired into the pro-globalization worldview. Thomas Friedman once famously admitted that he wrote a column supporting a free-trade agreement with Central America without knowing a thing about it: “I just knew two words: free trade,” he told an audience. Presumably the opposite is true for Friedman: He sees one word, “tariff,” and immediately screams in horror. Oddly, many of those same proponents of free trade favor a policy that looks very much like a tariff. The Republican corporate-tax revamp includes something called a border-adjustment tax, which would impose a 20 percent tax on imports while eliminating a tax on exports. Like with tariffs, the goal appears to be to encourage domestic production. In fact, the tax would be much higher than the 5-10 percent tariff being floated. (It also might be illegal under the current global trade regime.) Supporters of border adjustment, particularly economists, argue that it will end up trade neutral, because the exchange rate will fluctuate in response to the tax. In other words, though the tax would make American-made goods more attractive, the value of the dollar would increase, leveling that out. Few of these economists seem to carry over the same analysis to the effects of a tariff. I don’t understand why. There’s no reason to doubt the fact that, if Trump imposed an across-the-board tariff, the dollar would strengthen, thus nullifying the desired effect. Indeed, before Trump has even taken office, the dollar has risen to a 14-year high, in anticipation of a more protectionist stance. Incidentally, for all the one-off announcements by Trump (however factually challenged) about hundreds of jobs he has allegedly rescued here or there, this one development—the rise in the dollar—has likely caused the loss of hundreds of thousands of manufacturing jobs, under standard economic theory. Looked at this way, higher tariffs wouldn’t cause a recession (as Paul Krugman has acknowledged), but would be somewhat pointless, with currency exchanges shifting to account for any changes. Trade wars might temporarily reduce efficiency, as domestic supply chains would have to be rebuilt, but they’re unlikely to radically alter the balance of trade on their own. There are other variables here. Importers and exporters who have lived in a world of floating exchange rates for decades may be fairly nimble in adjusting to them. On the downside, Krugman explains that raising tariffs could inhibit capital flows, meaning that investors will place less money into US markets. You can see how that might reduce economic growth. But Jeff Spross points out that America currently has a problem with too much foreign money flowing in; reducing the flow could arguably make the economy more stable. Trump could also seek to prevent unlawful currency manipulation (not necessarily from China, but from other Asian nations) that artificially disadvantages US manufacturing. The real unknown here is what Trump would do with all that tariff revenue. The border adjustment tax at 20 percent is assumed to bring in $1 trillion over the 10-year budget window. So a tariff of even one-quarter or one-half that size would draw significant funds. What’s the plan for it? Would it get plowed into job-creating investments? Tax cuts for the wealthy? That’s a significant variable as well. We do know that the same pundits who confidently predicted that globalization would be a win-win policy for America repeatedly got it wrong. Those on the losing side saw their jobs shipped out and factories closed down, and weren’t given the kind of assistance needed to offset the disruption. So it’s worth being a little skeptical of the warnings coming from the same corners now. I don’t have a ton of faith in the Trump team to necessarily make their trade agenda work (especially as corporate interests will seek to co-opt the redesigned policies in ways even friendlier to their bottom line). And I think there are smarter ways to balance our trade deficit than a tariff strategy which will just run up against currency exchange rates. But the hysteria accompanying these tariffs (which wasn’t at all present when President Obama imposed his own tariffs on Chinese tires and steel) seems far beyond what little we can assume about the actual results of such a strategy.

#### 3] No DSB usage even if it’s credible.

Alavi 7 Amin Alavi 2007 “African Countries and the WTO’s Dispute Settlement Mechanism” <http://www.worldtradelaw.net/articles/alaviafrica.pdf> (PhD Researcher @ Danish Institute for International Studies)//Elmer

The passing of time has modified most observers’ earlier enthusiasm about the DSM.3 It has become clear that **the DSM has shortcomings**. These include some **conflicting deadlines** (better known as sequencing), a **weak enforcement mechanism**, **questionable quality of some of its rulings**, and the **possibility of prolonging disputes** (see, for example, Mavroidis et al., 1998). Increasingly too, the absence from the scene of a majority of developing countries, including the SSA ones, has also been acknowledged.4 One question that is now raised is whether or not the DSM has in fact been a success, and especially whether it represents a gain for developing countries. But this latter discussion is only now emerging and only a few observers have taken part in it. Furthermore, it does not yet constitute a distinct field of debate. The prime focus of academic commentary on the DSM remains on how it has been used, rather than why it has not been used. A majority of researchers working on the DSM do so from within the legal tradition and have studied it as a litigation process by analysing case law and the rulings. They implicitly regard the system as a success in allowing countries to settle their disagreements. However, the DSM is also a political process, and cases have important economic impacts. Recently, lawyers have been joined by economists and political scientists in analysing the DSM. Unlike the lawyers, these last two groups are interested in determining the conditions under which countries participate in the DSM, and the costs and benefits of this participation. A first set of observations from this source concerns possible relations between countries’ levels of engagement in the DSM, their shares and patterns of trade, and the retaliation opportunities that these provide (Bown and Hoekman, 2005; Horn et al., 1999; Nordstrom, 2005). The authors cited consider countries’ shares of world trade, numbers of traded products and numbers of trading partners as determinants of their participation. Their hypothesis is that ‘the probability of encountering disputable trade measures is proportional to the diversity of a country’s exports over products and partners, which means that larger and more diversified exporters would be expected to bring more complaints than smaller and less diversified exporters’ (Horn et al., 1999: ii). They find that the hypothesis ‘goes quite far toward predicting the actual pattern of complaints across countries’ (ibid.),5 especially when the cost of litigation is controlled for. However, they also find that the **G4 countries**6 are **overrepresented** **in the DSM**, relative to their positions with regard to these attributes.7 A second, related set of observations regards the negative consequences a case may have as a reason why small developing countries especially have not been active in the DSM. Examples of this are provided by Bown (2005), who develops a model to analyse a subset of disputes, namely, those dealing with issues of market access. He finds that lost market access and economic losses determine countries’ decisions to initiate cases. However, ‘several other **political** economy **factors affect the decision not to litigate** ... Other things being equal, adversely affected exporters are less likely to participate when they are involved in a preferential trade agreement with the respondent, when they **lack the capacity to retaliate** against the respondent by withdrawing trade concessions, **when they are poor or small**, and when they are particularly reliant on the respondent for bilateral assistance’ (ibid.: 291). Bown’s arguments partly recapitulate those of Hoekman and Mavroidis (2000) whose list of countries’ reasons for not initiating cases includes practising policies similar to those that a case tries to change, and fear of the political as well as economic impact of a case on bilateral relations with another state. A final set of observations from this literature focuses on biases and inequalities within and between institutions managing trade, including the WTO in general and the DSM in particular (Busch and Reinhardt, 2003; Shaffer, 2003). Here, the main problem identified is that the **DSM** (and the WTO) has **become too technically complex and demanding for** most **developing countries** to use effectively in the absence of adequate assistance. Underlying this is the observation that there is too much law and too little politics in the system. Proponents of this position link these observations to others concerning developing countries’ typically weak trade-policy infrastructures, their shortage of trained personnel, and their lack of knowledge about the system. This view is systematically elaborated by Hoekman and Mavroidis (2000), who present the overall dispute process in two stages – ‘upstream’, which is that part of the process before a case is officially brought before the DSM, and ‘downstream’, which is after a case has been officially initiated. During the first stage, a country’s trade-policy infrastructure plays the central role. It is here that information is gathered, analysed and transferred to the government, which then decides whether to pursue a case or not. Not only the existence but also the functioning of trade-policy infrastructures is critical for countries’ engagement in the system, according to Shaffer (2003). His study of the infrastructures of the US and the EU finds that an institutionalised linkage between private companies and officials is a key characteristic of the major users of the system. While under existing WTO rules only member states may initiate a case, this generally occurs on the basis of persuasion from private companies. This is facilitated where local private companies are strong and where the established infrastructure gives private companies a voice and the chance to lead their case informally through the initial stage.

#### 4] Zero historic compliance

Lida 4, Keisuke. "Is WTO Dispute Settlement Effective?." global governance 10.2 (2004): 207-225. (Prof. Pol. Sci. @ Aoyama Gakuin U)//Elmer

What is the overall track record of dispute resolution? This question, while simple, is not so easy to answer. It depends on the analyst's judgment as to what counts as a "satisfactory" outcome. I have tried to rely on the parties' assessment as much as possible. There aretwo main categories of satisfactory outcome: (1) the parties have implemented the WTO rulings, and (2) the parties have settled the dispute between themselves, with or without WTO adjudication. While the first type is relatively easy to track, the second category is not. Therefore, I have relied on the parties' notification to the WTO as to whether or not they have reached a mutually agreed solution. A third "possibly satisfactory" category is one in which the WTO found no wrongdoing on the part of the defendants, and hence no action was required. This could be considered a "successful" dispute outcome, at least from a legal point of view. All of these cases are classified as "resolved" in Figure 1. There are two classes of pending cases. One is the class of cases that are still going through the adjudication procedures or have gone through adjudication and are in the implementation stage. The WTO allows a "reasonable period of time" for implementation, which ranges from several months to a maximum of fifteen months. Anumber of cases are at this stage. This class is named "ongoing" in Figure 1. The second class of pending cases (denoted as "pending" in Figure 1) comprises those cases on which consultations have been heldwithout reaching concrete agreement. It is possible that some of these cases have actually been settled, but the parties have not notified the WTO of that fact, thereby making the interpretation of this class of cases difficult. Finally, there are a few cases for which the final result is not known. Figure 1 shows the classification of disputes according to these criteria. (10) The complaints are divided according to the year in which they were initially filed. This shows that during the first two to three years of dispute settlement, the WTO had a good track record, but from 1998 on, the number of possibly unsatisfactory outcomes increased. This may be partly due to the fact that not enough time has elapsed since the inception of disputes. This can be seen in the numberof "ongoing" cases since 1998. However, a majority of unresolved cases are so-called pending consultations cases, as seen in Figure 1. For this class of cases, especially those on which consultations were held in 1998 or 1999, it is hard to argue that the parties have not had enough time. I suspect that for a large proportion of cases in thiscategory, the complainants have all but abandoned the complaint, forone reason or another, but have not made this fact public. Based on this analysis, we could tentatively conclude that in the first few years of dispute settlement, the WTO performed well, whereas since 1998, it has not been working as smoothly.