

REQUESTING THE PRESIDENT TO TRANSMIT CERTAIN INFORMATION TO THE HOUSE OF REPRESENTATIVES RELATING TO A WAIVER OF INTELLECTUAL PROPERTY COMMITMENTS UNDER THE WORLD TRADE ORGANIZATION AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

SEPTEMBER 28, 2022.—Referred to the House Calendar and ordered to be printed

Mr. NEAL, from the Committee on Ways and Means,
 submitted the following

ADVERSE REPORT

together with

DISSENTING VIEWS

[To accompany H. Res. 1285]

The Committee on Ways and Means, to whom was referred the resolution (H. Res. 1285) requesting the President to transmit certain information to the House of Representatives relating to a waiver of intellectual property commitments under the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights, having considered the same, report unfavorably thereon without amendment and recommend that the resolution not be agreed to.

CONTENTS

	Page
I. SUMMARY AND BACKGROUND	2
A. Purpose and Summary	2
B. Background and Need for Legislation	2
C. Legislative History	3
II. EXPLANATION OF THE BILL	3
III. VOTES OF THE COMMITTEE	3
IV. BUDGET EFFECTS OF THE BILL	4
A. Committee Estimate of Budgetary Effects	4
B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority	4
C. Cost Estimate Prepared by the Congressional Budget Office	4
V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE	4
A. Committee Oversight Findings and Recommendations	4
B. Statement of General Performance Goals and Objectives	5
C. Information Relating to Unfunded Mandates	5

D. Advisory Committee Statement	5
E. Applicability to Legislative Branch	5
F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits	5
G. Hearings	5
VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED	5
VII. DISSENTING VIEWS	6

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

H. Res. 1285 requests the President to transmit certain information to the House of Representatives relating to a waiver of intellectual property commitments under the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights.

B. BACKGROUND AND NEED FOR LEGISLATION

H. Res. 1285 was introduced by Representative Smith of Nebraska on July 26, 2022. H. Res. 1285 is a resolution of inquiry which is a means used by the House to obtain certain factual information from the Executive Branch. Under clause 7 of rule XIII, a resolution of inquiry is subject to a motion to discharge from committee if the resolution is not reported by the committee to which it was referred within 14 legislative days of its introduction. Accordingly, the Committee on Ways and Means scheduled a markup of H. Res. 1285 within the 14-day period.

Since the beginning of the COVID-19 pandemic, numerous civil society groups and many emerging economy Members of the World Trade Organization (WTO) have pressed for accommodations to intellectual property rules for COVID-19 vaccines. To facilitate the end of the COVID-19 pandemic, the United States Trade Representative (USTR) worked with U.S. trading partners to ensure that trade rules support the global response to the pandemic. These efforts included a waiver of intellectual property protections for COVID-19 vaccines. In this regard, the Committee notes that all WTO Members agreed to the waiver during the WTO’s 12th Ministerial Conference. Specifically, the June 17, 2022 Ministerial Decision (Ministerial Decision) on the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) authorizes certain developing country WTO Members to use the subject matter of a patent required for the production and supply of COVID-19 vaccines without the consent of the right holder to the extent necessary to address the COVID-19 pandemic, in accordance with the provisions of Article 31 of the TRIPS Agreement, as clarified and waived in paragraphs 2 to 6 of the Ministerial Decision. Paragraph 6 of the Ministerial Decision provides that eligible WTO developing countries can apply the provisions of the decision for 5 years. Paragraph 8 of the Ministerial Decision provides that no later than six months from the date of the decision WTO Members will decide on its extension to cover the production and supply of COVID-19 diagnostics and therapeutics. As is acknowledged by H. Res. 1285, China has made a binding commitment not to avail itself of the Ministerial Decision.

The Committee notes that the Biden Administration believes strongly in intellectual property protections. In the service of end-

ing the COVID–19 pandemic, however, the administration worked with WTO Members to craft a temporary waiver for COVID–19 vaccines. According to the Biden Administration, the waiver will facilitate the global health recovery needed to make possible a robust global economic recovery. For these reasons the Committee reported H. Res. 1285 adversely.

C. LEGISLATIVE HISTORY

Background

H. Res. 1285 was introduced on July 26, 2022 date by Reps. Smith (Nebraska) and Brady and was referred to the Committee on Ways and Means.

Committee hearings

The committee held no hearings on H. Res. 1285.

Committee action

The Committee on Ways and Means marked up H. Res. 1285 on September 20, 2022, and ordered the bill reported adversely (with a quorum being present) by a record vote.

II. EXPLANATION OF THE BILL

H. Res. 1285 directs the President to transmit to the House of Representatives, not later than 14 days after the date of the adoption of the resolution, copies of all documents, memoranda, advisory legal opinions, notes from meetings, audio recordings, records (including telephone and electronic mail records), correspondence, or other communications, or any portion of any such communications, to the extent that any such one or more items are within the possession of the President, that demonstrate the following:

1) that the waiver of intellectual property commitments under the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter “TRIPS waiver”) that was agreed to on June 17, 2022, will increase the global supply and delivery of COVID–19 vaccines;

2) the extent to which COVID–19 vaccines have been destroyed due to their expiration and the period during which this occurred;

3) that the proposed expansion of the TRIPS waiver to cover intellectual property related to diagnostics and therapeutics (hereinafter “proposed TRIPS waiver expansion”) will increase the global supply and delivery of COVID–19 diagnostics or therapeutics;

4) that the TRIPS waiver or the proposed TRIPS waiver expansion will accelerate the end of the COVID–19 pandemic; and

5) that the People’s Republic of China will not obtain access to patents or other intellectual property related to COVID–19 vaccines, diagnostics, or therapeutics, even if China is expressly excluded from the TRIPS waiver or the proposed TRIPS waiver expansion.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made con-

cerning the vote of the Committee on Ways and Means in its consideration of H. Res. 1285.

H. Res. 1285 was ordered adversely reported to the House of Representatives by a vote of 23 yeas and 17 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Doggett	X	.....	.....	Mr. Brady .....	.....	X	.....
Mr. Thompson	X	.....	.....	Mr. Buchanan .....	.....	X	.....
Mr. Larson	X	.....	.....	Mr. Smith (NE) .....	.....	X	.....
Mr. Blumenauer	X	.....	.....	Mr. Kelly .....	.....	X	.....
Mr. Kind	X	.....	.....	Mr. Smith (MO) .....	.....	X	.....
Mr. Pascrell	X	.....	.....	Mr. Rice .....	.....	X	.....
Mr. Davis	X	.....	.....	Mr. Schweikert .....	.....	X	.....
Ms. Sánchez	X	.....	.....	Mr. LaHood .....	.....	X	.....
Mr. Higgins	X	.....	.....	Dr. Wenstrup .....	.....	X	.....
Ms. Sewell .....	.....	.....	.....	Mr. Arrington .....	.....	X	.....
Ms. DelBene	X	.....	.....	Dr. Ferguson .....	.....	X	.....
Ms. Chu	X	.....	.....	Mr. Estes .....	.....	X	.....
Ms. Moore	X	.....	.....	Mr. Smucker .....	.....	X	.....
Mr. Kildee	X	.....	.....	Mr. Hern .....	.....	X	.....
Mr. Boyle	X	.....	.....	Mrs. Miller .....	.....	X	.....
Mr. Beyer	X	.....	.....	Dr. Murphy .....	.....	X	.....
Mr. Evans	X	.....	.....	Mr. Kustoff .....	.....	X	.....
Mr. Schneider	X	.....	.....	.....	.....	.....	.....
Mr. Suozzi	X	.....	.....	.....	.....	.....	.....
Mr. Panetta	X	.....	.....	.....	.....	.....	.....
Ms. Murphy .....	.....	.....	.....	.....	.....	.....	.....
Mr. Gomez	X	.....	.....	.....	.....	.....	.....
Mr. Horsford	X	.....	.....	.....	.....	.....	.....
Ms. Plaskett	X	.....	.....	.....	.....	.....	.....
Chairman Neal	X	.....	.....	.....	.....	.....	.....
Totals	23	.....	.....	Totals .....	.....	17	.....

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

Clause 3(d) of rule XIII of the Rules of the House of Representatives is inapplicable.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee advises that the Congressional Budget Office did not provide a cost estimate of the resolution.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee

made findings and recommendations that are reflected in this report.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill does not authorize funding, so no statement of general performance goals and objectives is required.

C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by the bill.

E. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the bill does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(2) of the Congressional Accountability Act.

F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. HEARINGS

In relation to compliance with clause 3(c)(6) of rule XIII of the Rules of the House of Representatives, the Committee states that no hearings were held on this resolution.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that H. Res. 1285 does not make any changes to existing law.

VII. DISSENTING VIEWS

Committee Republicans strongly oppose the Committee's action of unfavorably reporting H. Res. 1285, Resolution of inquiry requesting the President to transmit certain information to the House of Representatives relating to a waiver of intellectual property commitments under the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (herein after referred to as "TRIPS waiver").

Congressional oversight is one of the most important responsibilities of the U.S. Congress, and Resolutions of Inquiry (ROIs) are one of the methods used by the U.S. House of Representatives to obtain information from the executive branch. ROIs simply demand that the administration turn over basic information to Congress. This information is critical because it allows the Congress to ensure the executive branch's compliance with congressional intent; evaluate program performance; prevent the executive branch's encroachment on the legislative branch's powers; assess an agency's ability to manage and carry out program objectives; and acquire information from the executive branch that can inform policymaking.

Moreover, Congressional Republicans have repeatedly sought information from the Administration about the expected and actual impact of these policies. Transparency is essential because it promotes accountability and provides information for the Congress and Americans about what the federal government is doing. Despite the Biden Administration stating that President Biden would "bring transparency and truth back to the government to share the truth, even when it's hard to hear," the Administration has ignored the need for congressional oversight and completely failed on its promise. The American people deserve to know how their government works and we will hold the Biden Administration accountable for its disastrous policies.

This ROI seeks information showing that the Biden Administration is doing due diligence on the TRIPS waiver. On June 17, 2022, the Administration capitulated to the demands of some of the U.S.' most disruptive trading partners at the World Trade Organization (WTO) Ministerial Conference by accepting a deal that weakened longstanding rules protecting intellectual property rights. The WTO TRIPS Agreement establishes certain minimum intellectual property (IP) standards. In May 2021, the Biden Administration announced in "service of ending this pandemic," it would support a "limited" waiver of U.S. rights under the TRIPS Agreement, exclusively related to COVID-19 vaccines.

The Biden Administration waived America's IP rights on vaccines for five years, with the possibility of an extension. Again, contrary to its claims to Congress, the Biden Administration also agreed to initiate discussions to expand the scope of the waiver beyond vaccines to medical diagnostics and therapeutics, an immense

category of products with diverse applications, many of which are unrelated to COVID-19. This decision undermines America's innovators who developed the world's most effective vaccines, as well as the workers manufacturing these vaccines, and potentially exposes them to firms in China that have been trying to steal U.S. mRNA research. In fact, the Administration agreed to language that "encourages" China to opt-out from using the waiver and is willing to take China's word that it will not use the waiver.

Committee Republicans first expressed their opposition to the TRIPS waiver in April 2021, and Members of Congress repeatedly asked the U.S. Trade Representative, via both letters and questions during Congressional hearings, for any evidence that waiving American innovators' IP rights would improve vaccine access. In addition, Members of Congress introduced the Protecting American Innovation Act, which among other things would require substantial analysis of the health and national security effects of a TRIPS waiver and would confirm that any TRIPS waiver requires approval by Congress. More than a year later, the Biden Administration has yet to provide an answer or analysis of the effects of the waiver. It is disappointing that Committee Democrats have blocked this request for information on an issue of such great importance that all Americans should expect the Administration to consult frequently and substantively with Congress and stakeholders.

KEVIN BRADY,
Ranking Member.
ADRIAN SMITH.

