

# 2021 September/ October Topic Analysis

Resolved: The member nations of the World Trade Organization ought to reduce intellectual property protections for medicines.

## Definitions:

**Member Nations of the World Trade Organization:** According to its website, the World Trade Organization (WTO) currently has 164 member countries. You can find a full list of countries [here](#). The countries who are not a part of the WTO are: Aruba, Eritrea, Kiribati, Kosovo, Marshall Islands, Micronesia, Monaco, Nauru, North Korea, Palau, the Palestinian Territories, San Marino, Sint Maarten, and Tuvalu.

**Ought:** As our friends at Merriam Webster remind us, [ought](#) is used to express duty or obligation. In this resolution, ought can be used to help justify the framework for each side by looking at the moral obligation member countries have to global health and how that interacts with the obligation they have to companies that exist within member countries.

**Reduce:** A general definition of reduce can be found [here](#). It is worth noting here that the resolution does not call for a specific type of reduction in protections and does not specify what the brightline is for how much IPPs would need to be reduced in the affirmative world. While this may not be an issue in every debate, it would be beneficial for debaters to think through how they are interpreting that word within their case and prepare specific justifications for their interpretation, in the event that their opponents have a different interpretation.

**Intellectual property protections (IPP) for Medicines:** A general explanation of the four different types of intellectual property protections can be found [on this website](#). There will be further elaboration in the Background Information section of this analysis that outlines specifically what IPPs are within the WTO and how they apply to medicines. It would be beneficial to look over the WTO's page on [Medical Technologies](#). Debaters can also read up on the [WTOs Pharma Agreement](#).

## Background Information

Before we dive into the specific arguments on this topic, it is important to situate ourselves around what the World Trade Organization is, and how intellectual property protections have

been utilized to, [in the words of the WTO](#), “strike a balance between the long term social objective of providing incentives for future inventions and creation, and the short term objective of allowing people to use existing inventions and creations.”

#### *A Quick History on the World Trade Organization (WTO)*

The World Trade Organization was established in 1995. Prior to the WTO, the GATT (General Agreement on Tariffs and Trade) was the organization that negotiated multilateral trade deals in order to lower trade barriers between member countries. The GATT was created after World War 2 and the negotiations that were established within that organization remain the foundation for the World Trade Organization.

[According to its website](#), “The WTO’s overriding objective is to help trade flow smoothly, freely and predictably. It does this by: administering trade agreements; acting as a forum for trade negotiations; settling trade disputes; reviewing national trade policies; building the trade capacity of developing economies; (and) cooperating with other international organizations.” With 164 member countries and a hand in 98% of the trade that occurs worldwide, the policies that the WTO creates have the potential to substantially influence the flow of goods between countries.

As with most international organizations, the WTO has faced criticism over the years. The WTO has [compiled a list](#) of these criticisms, along with their responses, on their website. Many of these criticisms specifically look at how the World Trade Organization fails to support member states with developing economies in the same way that they support wealthier nations and how some of the policies perpetuated by the WTO have adverse impacts on the environment.

#### *A Primer on Intellectual Property Protections (TRIPS)*

Within the World Trade Organization’s policies, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), is likely what most debates on this topic will likely center around. TRIPS was negotiated during the late 80’s and attempted to expand the understanding of trade beyond physical goods and instead evaluated how ideas, creativity, and innovation functioned as something that could be traded. According to the WTO, the basis of intellectual property protections is that “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.” The goal of TRIPS was to unify the way that intellectual property protections were established and enforced between countries. You can read more about the WTOs take on IPP and the history of TRIPS [here](#).

An important bit of historical context regarding how TRIPS protections and public health have intersected can be found by reading about the [decisions made](#) regarding the patents for HIV/AIDs treatments in the late 90's/early 2000s. Understanding the limitations and interpretations of TRIPS can help debaters to better unpack how the WTO has tried to [balance the competing interests](#) of promoting access to life saving medications with protecting the rights of those who own the patents.

### *Responding to Covid-19*

As Covid-19 continues to devastate countries around the globe, the TRIPS Agreement has faced significant pushback from those who believe these protections should be waived in order to allow all countries access to [Covid vaccine patents](#). In October of 2020, India and South Africa proposed a waiver that would allow countries to suspend IPP rights for the duration of the Covid-19 Pandemic. The United States has [announced its support](#) for a waiver in this specific instance but there are several countries with larger economies who have not shared this support. A more detailed overview can be found [here](#).

By examining this situation, we can see one of the main areas of clash in the debate about IPP for medicine play out as countries decide whether global public health and the need to quickly respond to a crisis outweigh the rights of individual organizations regarding their intellectual property. It is worth noting that the resolution calls for a reduction in protections across the board and not just in a time of public health crisis; however, many of the arguments that we see unfolding on both sides of the waiver debate will likely become important avenues for debaters to explore on this topic.

### *Further Reading:*

[3 thoughts on "Criticisms of WTO"](#)

[Reforming the World Trade Organization](#)

[Trump and Democrats Should Stop Bashing the World Trade Organization](#)

[Critics of the WTO's Environmental Standards Need to Rethink the Organization's Mandate](#)

[The TRIPS Waiver as a recognition of public health concerns in the WTO \(Chapter 2\) - Incentives for Global Public Health](#)

[Why the TRIPS Waiver Objections Don't Add Up](#)

## Affirmative Arguments

### Solving for Pandemics

One of the ways in which this topic is most relevant to current events is the implications that TRIPS and Intellectual property protections have for [public health in the context of Covid-19](#). This closely mirrors the argument made by India and South Africa in the context of the TRIPS waivers that were requested in late 2020. Countries that have the production capacity but not the licensing rights to manufacture vaccinations are incapacitated by intellectual property protections. This argument would assert that being able to quickly vaccinate a population is critical to curbing the overall spread of a pandemic and can prevent new variants from emerging. Reducing intellectual property protections would give countries, particularly those with developing economies, a way to more efficiently and effectively respond to emerging health crises.

It is important to note that reducing IPPs does not solve for many of the reasons for low vaccination rates: [vaccine hesitancy](#) and [weak infrastructure for vaccine roll outs](#) are two of many potential factors that can slow the rate of vaccinations; however, without the right to produce vaccines, countries have no chance at solving for pandemics. The implications can be detrimental on a global scale as variants can increase the amount of [breakthrough cases](#) across vaccinated populations.

[Why intellectual property and pandemics don't mix](#)

[US backs waiving patent protections for Covid vaccines, citing global health crisis](#)

[Five reasons why COVID herd immunity is probably impossible](#)

[Activists, drug groups in waiver war over COVID-19 shot patents](#)

[The next pandemic is already coming, unless humans change how we interact with wildlife, scientists say](#)

[Curb risky wildlife trade before the next pandemic hits](#)

[Stopping the next one: What could the next pandemic be?](#)

[Coronavirus: This is not the last pandemic](#)

[COVID-19 vaccinations finally starting to stem pandemic's tide in US: Analysis](#)

[How fast can vaccines solve India's COVID-19 crisis? It's complicated.](#)

## Cumulative Innovation Leads to Better Medicines

One argument for reducing IPP protections is that having [intellectual property protections can dampen innovation](#). There is [research that suggests](#) that quality innovation comes from ideas that are circulated and that IPP laws can have a detrimental impact on the way that ideas are strengthened. Whether companies were directly collaborating with each other or simply building off of and improving blueprints, making more information accessible can lead to better products and more innovative advancements that have the potential to benefit everyone. By reducing IPP, the World Trade Organization could give countries an avenue to build off of the medical advancements that already exist, rather than having countries spend valuable time and capital finding new ways to get to the same product.

Because innovation is an argument that will likely be popular on the negative side as well, a contention in this area has the potential for a lot of clash. It is worth noting that there is a multibillion-dollar pharmaceutical industry that has a clear incentive to advocate for more intellectual property protections. While there are valid arguments on both sides, debaters who are interested in this avenue of argumentation should pay close attention to the sources used in their cards. It would also be beneficial for debaters who would like to run this argument to practice weighing links to innovation on either side.

[Drug companies should drop their patents and collaborate to fight coronavirus](#)

[Recombinant Uncertainty in Technological Search | Management Science](#)

[Prima facie reasons to question enclosed intellectual property regimes and favor open-source regimes for germplasm](#)

[Patent system often stifles the innovation it was designed to encourage](#)

[Patents and Cumulative Innovation: Causal Evidence from the Courts](#)

[Collaborative Mechanisms for Intellectual Property Management in the Life Sciences](#)

## Closing Equity Gaps in Medical Treatment

This argument is fairly straightforward and expands on several of the arguments made regarding Covid-19. There is a [well-documented inequity](#) between the wealthiest countries in the WTO and those who have the smallest economies or highest rates of poverty. Wealthier countries own a disproportionate number of patents on medicines and so the argument can be made that they benefit disproportionately from the IPP laws. While intellectual property protections are, of course, not the sole cause of inequity when it comes to accessing medications, they do contribute to the [high costs of pharmaceuticals](#) and the limited ability some countries have to manufacture necessary medications. The WTO has a [history of extending waivers](#) to countries that meet a certain economic threshold but inequalities in medical access exist beyond these definitions. By reducing the intellectual property protections

around medicines across the board, the WTO would be able to address accessibility in a way that was more inclusive and comprehensive.

Teams running this argument may need to have a nuanced approach to debating solvency. While reducing patent protections would not solve all of the root causes of inequality, it would create a comparatively better world. For teams debating in more traditional circuits, this type of argumentation can fit well under a framework that includes utilitarianism or cosmopolitanism. Debaters looking to run this argument should explore how improving access to medications can function as a prerequisite to accessing many of the impacts that exist on the negative. In addition, because debaters running this argument will likely face responses that offer alternative ways that the WTO and other organizations are looking improve equity in access to medications, debaters may find it helpful to research the current system in place for TRIPS flexibilities and how this system falls short for countries with emerging economies.

[WTO | intellectual property \(TRIPS\) - TRIPS and public health](#)

[The role of intellectual property rights on access to medicines in the WHO African region: 25 years after the TRIPS agreement](#)

[Unequal Vaccine Distribution Self-Defeating, World Health Organization Chief Tells Economic and Social Council's Special Ministerial Meeting | Meetings Coverage and Press Releases](#)

[A New Commitment for Vaccine Equity and Defeating the Pandemic](#)

[Innovative Approaches to Increase Access to Medicines in Developing Countries](#)

[Inequalities in access to medical care by income in developed countries](#)

## Restructuring Capitalist Power Dynamics

Another likely popular affirmative argument would be to explore the ways that capitalism, pharmaceutical companies, and intellectual property protections intersect. Intellectual property protections exist, in many ways, to serve capitalistic ends. The [pharmaceutical industry has a track record](#) of expanding profits without serving the best interest of the consumers or the global community. For example, strategic [patenting](#) is used to hinder the production of generics and, while the practice is criticized by many, it is generally legal for companies to do. The current system reinforces many of the ways [that capitalism can undermine societal welfare](#). There are many variations of this argument. Debaters can argue that the current intellectual property protections give too much power to for-profit entities at the expense of public good. Debaters could also argue that the World Trade Organization should reduce intellectual property protections because that capitalism itself should be rejected, whether symbolically or in actuality. There is decades of research documenting this problem but also a lot of specific uniqueness because of the impacts that Covid-19 has had.

[We Need to Take On Drug Companies' Abuse of the Patent System](#)

[Corona Capitalism: some of the companies cashing in on the crisis, from Bezos to Big Pharma](#)

[The Crisis of Capitalism and the Marketisation of Health Care: the Implications for Public Health Professionals](#)

## Additional Affirmative Reading

[Vaccines should end the pandemic, despite the variants, say experts](#)

[India's COVID-19 Crisis Is the World's Crisis](#)

[Vaccination Is Making America Forget a Basic Pandemic Rule](#)

[Pharmaceutical price regulation and its impact on drug innovation: mitigating the trade-offs](#)

[South Africa, India strongly rebut arguments against TRIPS waiver](#)

[Access to Drugs at Risk: Securing Access to Medicines for Least Developed Countries](#)

[Are Patents Impeding Medical Care and Innovation?](#)

## Negative Arguments

### Disincentivizing Innovation

One of the more popular arguments around intellectual property protections is that it [incentivizes the creation and production of innovative new drugs](#). Many of the links to this argument are similar to those on price controls; however, debaters should be sure to find unique links to the WTO and TRIPS rather than rely on back files from related topics. There is also a significant amount of literature specifically looking at why [patents are key to innovation](#). To access many of the impacts in this contention, debaters will need to prove how decreasing IPPs will directly impact the profits of companies who develop the medicines or how patents provide a unique incentive for companies to innovate.

Some debaters may argue that developing new medicines [costs a significant amount](#) in R&D. Companies find the amount of risk acceptable because it trades off with the potential profits if they are able to develop and license a drug that works. By removing the protections that companies have on their pharmaceutical patents, there will be less incentive to take the risk of developing a new treatment and, as a result, [less overall innovation](#). Similarly, decreasing IPPs might drive some investors out of the pharmaceutical industry and would make it more difficult for researchers to secure capital.

[An Unnecessary Proposal: A WTO Waiver of Intellectual Property Rights for COVID-19 Vaccines](#)  
[Ten Ways IP Has Enabled Innovations That Have Helped Sustain the World Through the Pandemic](#)  
[How patents encourage innovation in technological development and deployment](#)  
[Why intellectual property rights matter for COVID-19](#)  
[The US Biopharmaceutical Industry: Perspectives on Future Growth and The Factors That Will Drive It](#)  
[Pharmaceutical Companies Need Longer Patents to Fund Innovation](#)  
[Healthcare innovation main driver of European patent applications in 2020](#)

### Protecting Small Businesses

Intellectual property protections can help small businesses to [build their value](#) as an organization. Without these protections, smaller and mid-sized companies who develop innovative treatments can simply be out produced by larger manufacturers who have access to their intellectual property. [This research](#) looks at the relationships between Intellectual Property Rights and innovation in SMEs (Small and Medium Enterprises) in India. Having Intellectual Property Rights also incentivizes larger companies to partner with small firms to complete research. Debaters can explore how large corporations may be more likely to engage in predatory practices in a world with fewer patent protections. [Research has shown](#) that small



startups are responsible for up to two thirds of new medication and there are some who have voiced concern that reducing patent protections would scare away investors from these small firms and lead to many of these biotech firms shutting down.

It is worth noting that one aspect of this topic that will be more challenging is that there is not a stable definition of what “reduced IPP for medicines” looks like. It will be important for debaters to practice how to resolve different interpretations of what a reduction would look like and to have specific justifications for any definition they are defending, particularly when evaluating the implications of how reduced protections will affect the relationships between companies. It is also important that debaters differentiate between WTO protections and the regulations that companies may need to follow within their own country.

[Joint EUIPO/EPO IP Contribution Report](#)

[Ambassador Shea: Statement at the WTO on Intellectual Property and Innovation](#)

[In an increasingly hot biotech market, protecting IP is key](#)

[Intellectual property rights and their role in the start-up bioeconomy – a success story?](#)

[Biotech firms on the shoulders of giants](#)

## Reducing Protections are Comparatively Worse than Other Options

Debaters can acknowledge that there are tensions between intellectual property protections and human rights but argue that a blanket reduction of protections would do more harm than good. Right now, there are [protections that are built into the TRIPS](#) agreement that aim to [protect the most economically vulnerable](#) and allow for countries to address a need in an emergent health situation. This system is arguably better, as it allows for countries within the WTO to make decisions that are reflexive to the situation without unnecessarily undermining the rights of those who hold the patents. Debaters looking to explore this argument could argue that it is better to use and improve the systems that exist right now than to reduce protections as a way to attempt to solve the issue.

There are some who argue that reducing protections would make it more difficult for countries to settle disputes and would lead to more confusion and less equitable enforcement of the protections that are left. Debaters can research how a different set of protections might impact the ways that countries share information with each other or how they resolve disputes. It will also be important to review how some of the systems currently in place, [such as compulsory licensing](#), function and could provide sufficient protections when needed.

[The TRIPS Agreement and Covid-19 Information](#)

[The IP Waiver for COVID-19: Bad Policy, Bad Precedent](#)

[US Frustration at WTO Boils Over](#)

[If the Devil of the WTO IP Waiver Is in the Details, What Are the Details?](#)

[Compulsory Licensing: A Cure for Distributing the Cure? | Center for Strategic and International Studies](#)

## **Reducing Protections Undercuts Individual Rights Without Addressing Root Accessibility Issues**

One argument that debaters on the negative can explore is that reducing intellectual property protections opens the door to violate the rights individuals have to their ideas and creative designs without actually addressing the root causes of healthcare inaccessibility. The World Trade Organization has specified the minimum [rights that are protected](#) through TRIPS. Most of the research behind affirmative arguments does not specify that individuals are not due these rights and instead highlights either why access to healthcare outweighs. The argument above explored alternatives to a blanket reduction in protections that would be able to provide more comprehensive solvency. This argument seeks to break down the ability of reducing protections to actually provide access to economically vulnerable populations.

The resolution specifies that the WTO should reduce protections for medicines; however, many medications rely on [different technologies](#), which are often also patented, in order to be produced. In addition, it may rely on [specific raw materials](#), which are not necessarily available. Having access to the license to create a vaccine does not guarantee that the country will have access to the technology and supplies needed to actually produce that medicine. This becomes dangerous when companies are able to enter the market with medicines that are [not as effective](#). This argument would agree that health inequities must be solved but would assert that removing protections would be insufficient and lead to more harm in the long run.

[Waiving IP Rights During Times of COVID: A 'False Good Idea'](#)

[intellectual property \(TRIPS\)](#)

[Three Crises and One Waiver](#)

[WTO Waiver from Intellectual Property Protection for COVID-19 Vaccines and Treatments: A Critical Review](#)

[STAT: "Waiver of patent rights on Covid vaccines may be mostly symbolic, for now"](#)

## **Additional Negative Reading**

[Capitalist Solution to a Globalist Pandemic - WSJ](#)

[Why intellectual property rights matter for COVID-19](#)

[Why the TRIPS waiver is unlikely to solve India's Covid-19 vaccine shortage](#)

[Protecting Intellectual Property Rights in the Pharmaceutical Industry](#)

[Evolving IPR strategies in Pharmaceutical industry](#)

[False Promises II: The Continuing Gap Between China's WTO Commitments and Its Practices](#)

<https://www.washingtonpost.com/outlook/2021/03/15/vaccine-coronavirus-patents-waive-global-equity/>

## Additional Reading

[WTO | Intellectual property \(TRIPS\)](#)

[The TRIPS Agreement: Patent Protection for Pharmaceuticals \(Chapter 4\) - Access to Medicines](#)

[Tripping over Trips and the Global HIV/AIDS Epidemic: Legislation and Political Decisions in Brazil and the United States](#)

[Intellectual property and COVID-19 medicines: why a WTO waiver may not be enough](#)

[US backs TRIPS waiver: More to the story than just vaccine patents](#)

[What India needs to get through its covid crisis](#)

[Perspectives on access to medicines and IP rights](#)

[Intellectual property and access to medicines](#)

[WTO | Intellectual property \(TRIPS\) - fact sheet](#)

[Drug Innovation: When Patents Work](#)

[Patently Unfair: The Tensions Between Human Rights and Intellectual Property Protection](#)

[WTO | intellectual property \(TRIPS\) - TRIPS and public health: Compulsory licensing of pharmaceuticals and TRIPS](#)

[Patents and Medicine: The Relationship Between TRIPS and Human Right to Health](#)

[Developing Nations Push for Covid-19 Vaccines Without the Patents](#)

[Industry fights over global vaccine patents are just warming up](#)

[The Impact of China's Policies on Global Biopharmaceutical Industry Innovation](#)

[Global Dimensions of Intellectual Property Rights in Science and Technology](#)

[COVID-19 and Vaccine Equity: What Can the WTO Contribute?](#)

[The WTO's survival hinges on the COVID-19 vaccine patent debate, waiver advocates warn](#)

[What if the US can't create consensus around a WTO vaccine waiver? A review of the options](#)

[Intellectual Property Rights and Access to Medicines: International Trade Issues](#)