

COVID-19 Vaccine Global Intellectual Property Policy

Policy position recommendation

1. The CMA encourages the Government of Canada to participate in the global dialogue, led by the World Health Organization, the World Intellectual Property Organization, and the World Trade Organization, to identify and advance solutions to increase COVID-19 vaccine production and equitable distribution.
2. The CMA encourages the Government of Canada to support a temporary intellectual property (IP) waiver for COVID-19 vaccines as an important strategy to increase vaccine supply and distribution in low- and middle-income countries.
3. The CMA supports bolstering global equity via an IP waiver for COVID-19 vaccines, greater support for COVID-19 Vaccines Global Access (COVAX), and the administration of third doses in limited circumstances per NACI's recommendation.
4. Every country must have equitable access to vaccines globally. The CMA recognizes that equitable global vaccine access and distribution is both a valuable public health tool and necessary to ensure that all countries meet their international obligations.

A. Rationale

- In the context of a global health crisis, the current voluntary licensing system is imbalanced, prioritizing economic interests over the public interest and cannot be relied upon to achieve global health equity. Vaccine inequity could have a lasting and profound impact on socio-economic recovery in middle- and low-income countries who do not have a sufficient supply of vaccines. A global crisis needs a global approach and sharing of resources.
- As the vaccination rate rises in Canada, Canada is well-positioned to contribute to ensuring that all residents of all countries achieve the highest levels of protection as soon as possible. Global cooperation to facilitate access to and distribution of vaccines is both a matter of social justice, international solidarity, and a pragmatic response to ending the pandemic

globally. Even if we solely appeal to self-interest, the greater protection globally helps to reduce spread of variants that can compromise the protection of vaccines.

- An intellectual property (IP) waiver would maximize vaccine manufacturing and distribution in middle- and low-income countries. Alongside Canada's commitment to other programs such as COVAX and administering third doses in limited circumstances, supporting an IP waiver would help advance global health equity compared to other global IP licensing options.
- In the context of the proposed CMA policy position in support of third doses in limited circumstances, taking the strongest position on IP waiver would demonstrate CMA's commitment to global health equity.

B. Background

There are three proposed approaches to COVID vaccine intellectual property (IP):

1. Voluntary licensing of IP (mechanism currently in place)
2. Compulsory licensing of IP (specifically patents)
3. IP waiver (a broader waiver of IP rights that includes patents and technological know-how)

Compulsory licensing of IP or a full waiver would be achieved through international consensus at the World Trade Organization's (WTO) Council for Trade-Related Intellectual Property Rights (TRIPS).

Voluntary license (initially supported by many European countries)

- The normal licensing regime, where licenses are issued by the holder of the COVID vaccine IP rights, subject conditions such as payments to the rights holder, pricing, standards, and the market where the product can be sold
- Pharmaceutical companies and some countries argue there is no spare vaccine production capacity; that compulsory licensing or waivers would not increase production; and that sharing valuable intellectual property will stifle future investment and innovation
- Others argue that there is spare manufacturing capacity in developing countries; that pharmaceutical companies and some countries are making this argument to prioritize their own economic interests; and that pharmaceutical companies have already been able to recoup their research and development investment
- Some argue that relying on this approach and vaccine donations through COVAX perpetuate a harmful relationship of philanthropy and dependence between developing and developed countries

Compulsory License (currently supported by Canada and some other developed countries, now including many European countries)

- Allows for vaccine patents (but not other forms of IP) to be licensed to a local manufacturer
- Would be issued by a national government, primarily for domestic manufacture and distribution
- Does not usually allow for export to other developing countries, although there is a special compulsory licensing system that allows for export (some argue it is too logistically cumbersome and complex to be effective)
- Because of these potential export and production barriers, this approach is unlikely to maximize global distribution
- There is more precedence for compulsory licensing than for IP waivers, such compulsory licensing to address the HIV/AIDS crisis
- Some claim that Canada's and other developing countries' support for this approach is a stonewalling tactic to prevent a broader IP waiver
- Canada's support of this more limited option and reluctance to support IP waiver may be motivated by a concern for jeopardizing their relationship with vaccine developers and their goal of maintaining a domestic supply of vaccines

Intellectual Property (IP) Waiver (requested by many middle- and low-income countries; currently supported by the US)

- Allows for time-limited access to a broader range of IP than patents, notably technological know-how, and the IP related to other medical products, devices, equipment and materials and components that would facilitate the manufacture and distribution of vaccines
- Maximizes developing countries' abilities to manufacture vaccine (all a country's manufacturing capacity could be used, whereas under compulsory licensing, usually only one manufacturer is granted a license)
- Enhances the ability of developing countries with vaccine manufacturing capacity to distribute, export and import vaccines
- Proponents argue this broader IP waiver is information necessary to enable manufacturers to rapidly expand vaccine manufacture
- Some argue that in the context of a quickly moving global pandemic where almost the entire global population should be immunized and given the risks variants pose, that the more aggressive IP waiver approach is justified to avoid unnecessary deaths as compared to past crises where the compulsory license approach was used.
- Some argue the waiver is the most equitable approach from a global perspective
- Technological know-how is usually considered a trade secret that holds considerable value. Holders of COVID vaccine IP argue that giving up know how is a significant loss of IP that does not justify the potential gain.

- While proponents of an IP waiver acknowledge a broad IP waiver would affect profits for vaccine IP holders, they argue that a time-limited waiver is reasonable in the context of a global health crisis because the global IP system's underlying goals are based not only on preserving economic interests but balancing them with broader public interests and because there is no evidence to suggest it would dismantle the IP system or compromise research and innovation.
- Proponents argue that an IP waiver in the global public interest is justified in part because significant public funding has been provided to COVID vaccine developers.

Approved by the CMA Board of Directors Oct 2021

References

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