NATIONAL TAXPAYERS UNION

Issue Brief

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The U.S. Can Make It Easier for Pharmaceutical Companies to Invest in America, While Retaining a Robust Global Supply Chain

As the Chinese government faces scrutiny for its early and ongoing roles in the COVID-19 (coronavirus) pandemic, some lawmakers and Trump administration officials have sought to address safety and security concerns with U.S. imports of Chinese pharmaceutical products and active pharmaceutical ingredients (APIs).

For example, Sen. Marco Rubio (R-FL) teamed up with Sens. Elizabeth Warren (D-MA), Chris Murphy (D-CT), Tim Kaine (D-VA), and Kevin Cramer (R-ND) on a bill that would ensure strict Department of Veterans Affairs "Buy American" rules that were recently rejected by a U.S. court are put back into place. Sen. Tom Cotton (R-AR) and Rep. Mike Gallagher (R-WI) have a bill to "[p]rohibit pharmaceutical purchases from China or products with active pharmaceutical ingredients created in China" over the next two years. The requirements

Key Facts:

- **It is possible to scrutinize China's role in the COVID-19 pandemic without destroying the global supply chains America depends on for pharmaceutical access and innovation.**
- **"Buy American" mandates would be destructive at a time when the country most needs free trade - a better direction for the Trump administration is to suspend tariffs.**
- **Lawmakers can make broad-based changes to the tax code that incentivize domestic research, development, and manufacturing when the time comes for economic stimulus.**

would even apply to APIs only available in China after 2024. The Trump administration, for its part, under the influence of White House trade adviser Peter Navarro, wants "to tighten 'Buy American' laws so federal agencies are required to purchase American-made pharmaceuticals and medical equipment."

Unfortunately, all of these ideas risk upending a supply chain that plays a critical role in America's world-leading biopharmaceutical innovation. This innovation not only ensures that Americans enjoy access to treatments and cures for countless diseases, but also supports thousands of jobs across the country and efficient and effective free trade with allies around the globe.

As NTU Foundation's Bryan Riley pointed out in March:

> "According to U.S. International Trade Commission data, China supplied 1.221 percent of U.S. pharmaceutical imports in 2019.
>
> Buy American restrictions could mainly hit U.S. allies, who are the main suppliers of pharmaceutical imports."

Now, there are a limited number of drugs whose APIs the U.S. sources exclusively from China - three of the World Health Organization's (WHO) 370 essential medicines, to be precise. Further, it seems perfectly reasonable for the U.S. government to study supply chain risks, as instructed by Congress in the recently passed CARES Act. But warnings that the U.S. is disproportionately dependent on China for its drugs and APIs are unsupported at best, as Eric Boehm expertly outlines here in *Reason*.

We think it's possible to scrutinize China's role in the current pandemic and protect U.S. patients against politically motivated shortages in medical imports from China, all *without* punishing the patients, doctors, businesses, and public agencies that rely on free trade with American allies like Ireland, Germany, Switzerland, Italy, and India. Here are just a few ideas:

First and foremost, suspend tariffs on medical products that help the U.S. fight the pandemic. NTU Foundation's Bryan Riley also has more on this, pointing out that Sens. Pat Toomey (R-PA) and Tom Carper (D-DE) have joined forces to press the Trump administration to suspend its "tariffs on products identified by manufacturers as necessary inputs for the production of critical medical supplies." Same with House Ways and Means Committee Chairman Richard Neal (D-MA). This is a bipartisan push on Capitol Hill, and the administration should listen to lawmakers.

Enact broad-based changes to the tax code that make it less expensive for pharmaceutical innovators to onshore their production to the U.S. The Trump administration is reportedly considering a few significant tax changes in a future economic stimulus bill, including 1) extending beyond 2022 the full and immediate expensing provision for short-term assets passed in the Tax Cuts and Jobs Act (TCJA), and 2) expanding full and immediate expensing to structures - both NTU priorities. The Trump administration is not the only stakeholder supportive of such a measure. In a recent blueprint for policymakers, the Association for Accessible Medicines (AAM, which represents generic drug manufacturers) recommended providing "full expensing for the construction of new factories built to move production from overseas to the United States." Rep. Chip Roy (R-TX) recently introduced legislation that would treat "non-residential real property purchases" by medical supply and pharmaceutical companies as 20-year property, instead of 39-year property, which would effectively allow these companies to fully and immediately expense those investments. These changes should apply to all businesses, not just businesses in one industry, but Roy's legislation takes tax policy in the right direction.

Correct the TCJA's mistreatment of research and development (R&D) costs. NTU Foundation's Nicole Kaeding has a full explainer on this issue here, but the gist is this: the TCJA included a provision that changes the treatment of U.S. businesses' R&D costs from full and immediate expensing, the correct treatment, to five-year amortization starting in 2022. This pending change to the tax code will make it less profitable for businesses to invest in R&D here in the U.S. and would, as Kaeding puts it, "[mean] less innovation and new technologies for the U.S. economy, leading to lower levels of productivity, lower wages, and a smaller economy." Congress should consider correcting this change, and the Trump administration is reportedly also considering asking for such a change in a forthcoming stimulus package.

Relax or repeal outdated regulations that inhibit pharmaceutical R&D and approval in the U.S. We're encouraged to see FDA relax its regulatory approval process and issue emergency use authorizations (EUAs) for products and devices that offer safe and promising treatments or tests for COVID-19. As the public health and economic emergencies subside, both Congress and federal agencies should take a close look at which relaxed or suspended regulations should stay and which should be permanently disposed of. Rep. Roy has new legislation, The Coronavirus Regulatory Repeal Act, that would put the burden on Congress and federal agencies to *stop* a regulation from being permanently disposed of, rather than the other way around. We think this is a promising and fresh way of thinking in Washington.

Last but not least, enhance the global supply chain rather than hampering it. Any legislative or executive measures pursuing accountability from China should not lead to the U.S. taking a sledgehammer to its trade relationships with allies across the world. AAM has an intriguing idea on this front, an "International Pharmaceutical Supply Chain Agreement" that would "negotiate a plurilateral agreement with U.S. allies to promote a cooperative approach to securing the U.S. supply chain." Guarding against China's political posture towards the U.S. does not require damaging free trade principles with our partners in the EU, Asia, and elsewhere.

In other words, Congress and the administration have a path forward to achieve the best of both worlds: scrutinizing China for its role in the pandemic and reducing America's reliance on Chinese imports of pharmaceuticals *without* jeopardizing the much larger, much broader global supply chain for drugs and APIs. Most importantly, all of the above can be achieved without a harmful Buy American mandate.

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