Public Citizen Post-hearing Comment re: Docket No. USTR-2024-0002, "Request for Comments on Promoting Supply Chain Resilience"

June 4, 2024

Public Citizen appreciates the opportunity to testify and provide this post-hearing comment on behalf of its more than 500,000 members and supporters. Public Citizen's Access to Medicines Program works with partners across the U.S. and around the world to make medicines available for all through tools in policy and law. Our post-hearing comment draws upon our experience providing technical assistance to health agencies and organizations in dozens of countries and rallying support for a more robust global response to the COVID-19 emergency.

We would like to expand on a few points raised in our oral testimony and in response to questions, namely the use of the Defense Production Act (DPA) and the benefits of encouraging greater domestic and global capacity.

The federal government used the DPA during the COVID-19 pandemic response, including to require businesses to prioritize contracts to ensure rapid supply of materials needed to produce vaccines and other medical tools and to expand domestic production capacity.[1]

As stated in our testimony, Public Citizen encourages use of the DPA to increase total global production. However, it is also important to be mindful of uses that may displace supply and risk complicating global supply chains.

In early 2021, there were allegations that the advancement of supply to U.S. manufacturers led to significant delays of production out of the Serum Institute of India and other manufacturers on whom the world was depending and waiting for vaccines.[2] While the history of this is somewhat contested, specifically regarding the relationship between DPA utilization and Serum Institute's supply challenges, it nonetheless underscores the sensitivity of increasing U.S. domestic production during global crises requiring global coordination. Notably, in response to these allegations, the Biden administration redirected vaccine raw materials, likely obtained via DPA-rated contracts, from AstraZeneca in the U.S. to the Serum Institute.[3] Shortly thereafter, the administration removed the DPA priority rating for three vaccines – those manufactured by AstraZeneca, Novavax, and Sanofi-GSK – which reportedly helped boost production from the Serum Institute and others.[4]

In response to a question about supply challenges during the COVID-19 pandemic, the panelist from the U.S. Chamber of Commerce called into question the usefulness of the DPA, citing industry wherewithal to increase production, just not to the extent that the surging demand required. We believe this characterization downplays the utility of the DPA and government intervention during crisis response. Indeed, the U.S. Government Accountability Office reported that companies that received DPA awards

[1] https://www.gao.gov/assets/gao-22-105380.pdf
[2] https://www.nytimes.com/2021/04/24/climate/inda-covid-vaccines.html
[3] https://www.whitehouse.gov/briefing-room/press-briefings/2021/04/26/background-press-call-by-senior-administration-officials-on-covid-19-in-india/
[4] https://www.imf.org/-/media/Files/News/Speech/2021/pandemic-proposal-update-aug23.ashx

generally stated that the use of the DPA gave them timely access to raw materials and supplies and helped them expand production faster than they could have on their own.[5] The DPA is a useful tool to increase global production, so long as its use does not merely place the U.S. first in line at the expense of the rest of the world. The DPA should be used to advance production of needed materials and transfer technology to build up production globally.[6] In our view, a more appropriate takeaway from this experience, which also applies to supply chain resiliency discussions, is that greater global capacity, combined with policies aimed at addressing the limitations of monopoly supply that slowed manufacturing scale-up during the pandemic, is needed to decrease likelihood of displaced supply and increase responsiveness.

The U.S. can support efforts to add capacity and supply worldwide by pursuing trade policies that are mindful of efforts to add and expand production, including policies that:

- **Support local procurement.** U.S. trade policy should support appropriate localization preferences that can encourage development and sustainability of local or regional industries. Governments must be able to invest in local industries, encouraging their development and lessening risk of supply chain shocks. The U.S. can also purchase and support global supply, for example, as PEPFAR aims to do in ongoing efforts to procure 15 million HIV tests produced in Africa by 2025 and shift two million patients on first-line antiretroviral treatments to African-produced products.[7]
- **Encourage a more open technology transfer and intellectual property environment.** We welcome steps USTR has already taken to open its IP approach, encouraging countries to pursue policies in response to local health needs.[8] U.S. trade policy should not impinge upon space for developing countries to pursue measures that support capacity expansion, including those policies and initiatives promoting technology transfer.

Public Citizen appreciates the opportunity to provide post-hearing comments. Thank you.

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[5] https://www.gao.gov/assets/gao-22-105380.pdf

[6] https://www.healthaffairs.org/content/forefront/sharing-knowledge-president-joe-biden-can-use-defense-production-act-end-pandemic

[7] https://www.whitehouse.gov/briefing-room/statements-releases/2024/03/29/fact-sheet-update-on-the-united-states-commitment-to-expanding-access-to-medicines-around-the-world-2/

[8] https://www.citizen.org/news/ustr-respects-fight-for-medicine-access-within-wto-rules/