

Preserving commodity security in
the post-TRIPS world:
The role of Partners

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Partners in Population and Development

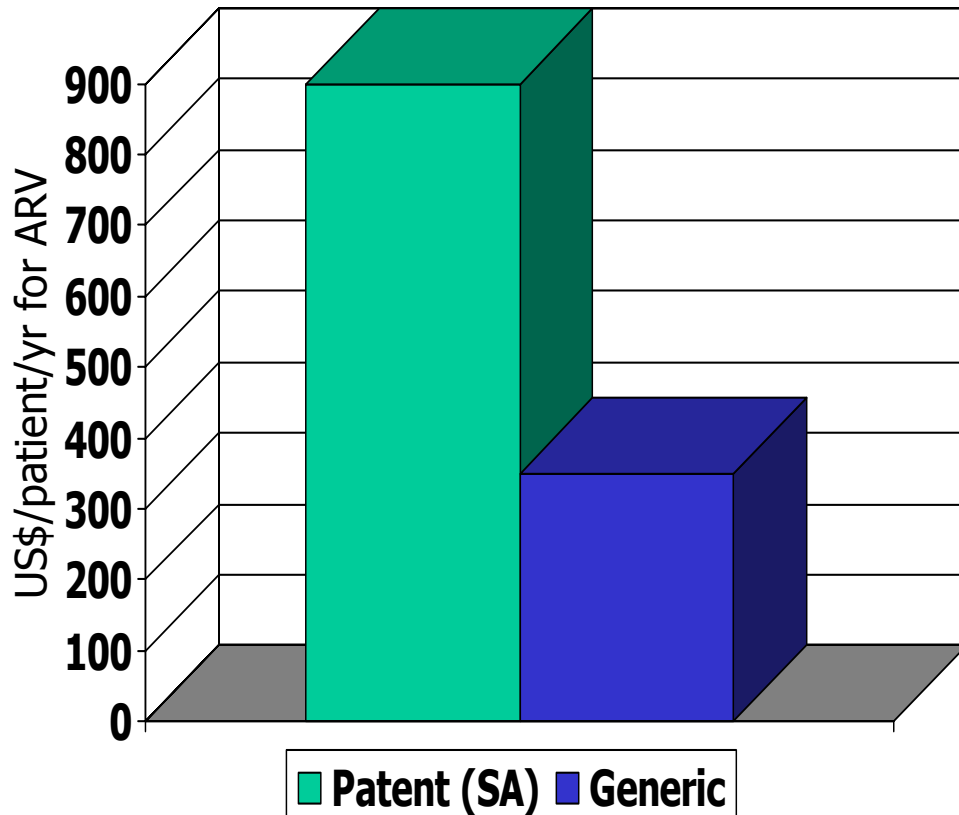
Technical Consultation, 13 June



The context

Why IPRs matter to Partners

- *Patients*



US\$1 million =

Current SA prices:

1110 lives saved

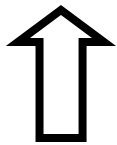
Generics:

2857 lives saved

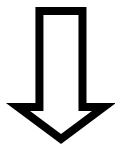
The context

Why IPRs matter to Partners

- *Commodity security/developmental*
- TRIPS =



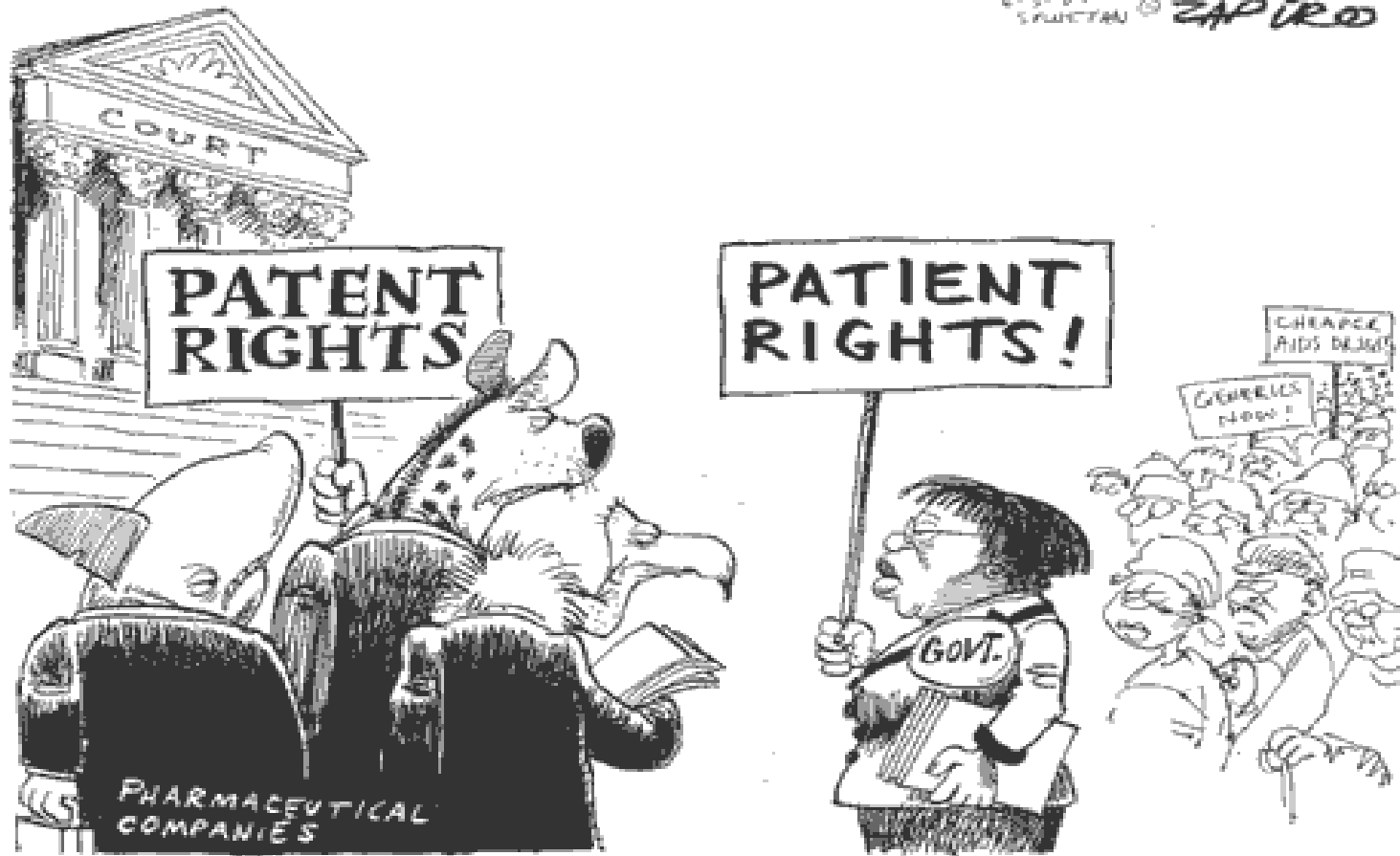
Income transfer from Southern consumers to Northern patent holders



Self-reliance in the South as local industry is squeezed out

The context

Why IPRs matter to Partners



The context

From choice to conformity: WTO

- WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
 - No discrimination between fields of technology
 - RH commodities treated same as CDs or hairdryers
 - 20 years of protection
- Most developing countries had to be compliant by 2000

TRIPS and health

Article 7 (Objectives)

- The protection and enforcement of intellectual property rights should *contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge* and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

TRIPS and health

Article 8.1 (Principles)

- Members may, in formulating or amending their laws and regulations, adopt measures *necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development*, provided that such measures are consistent with the provisions of this Agreement.

TRIPS and health

Article 8.2

- Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed *to prevent the abuse of intellectual property rights by right holders* or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

Preserving RH commodity security in the post-TRIPS world

- The role of Partners
 - 1) Development and promotion of South-South agenda at international level
 - 2) Implementation at national level

South-South collaboration

- ***Problem:*** Multinational companies (frequently through US and EU) have dictated terms
- ***Need:*** Strong, unified positions from developing countries:
 - Technical proposals at World Trade Organization
 - Focused advocacy at World Health Organization, World Intellectual Property Organization, and other UN bodies

South-South collaboration Exploiting TRIPS flexibility: WTO

- Promote interpretations of TRIPS:
 - Supporting broad readings of Article 31 (compulsory licensing) and allowing fast-track compulsory licensing provisions
 - Allowing non-producer countries to benefit from compulsory licensing
 - Expanding scope of patent exemptions to cover health needs (Article 30)
 - Avoiding restrictive readings of country obligations for the protection of health registration data (Article 39)

South-South collaboration Exploiting TRIPS flexibility: WTO

- Promote widespread adoption of parallel importation provisions and early working exceptions (“Bolar provisions”)
- Insist on a lengthening of transition periods and on a moratorium on Dispute Settlement Understanding cases against developing countries until impact of TRIPS becomes clearer
- Insist on fulfilment of obligation to transfer technology to least-developed countries (Article 66.2)

South-South collaboration Exploiting TRIPS flexibility: WHO/WIPO

- Request that WHO and/or WIPO examine:
 - The costs and resources required to maintain a patent system for medicines, in terms of examining patents and litigating claims
 - The consequences of developing countries not having the capacity to avoid overly broad, non-novel, or anticompetitive patents

South-South collaboration Exploiting TRIPS flexibility: WHO/WIPO

- Request that the WIPO prepare administrative models for examining patent validity and for compulsory licensing that will be workable in developing countries

Country-level initiatives

- Legislation:
 - Withstand pressure to forego TRIPS safeguards
 - Implement safeguards
 - Utilise safeguards
- Cooperation:
 - Ministries of Health/Welfare must articulate impact of IPR to Ministries of Trade

For more information

- MSF Access Campaign website:
 - www.accessmed-msf.org
- MSF International website:
 - www.msf.org
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