

# South Centre Conference

20 years after TRIPS- options for  
developing countries

March 11, 2015

# TRIPS (1994) entry into force

- Developing countries: January 2000
- Pharmaceutical patents: January 2005 (e.g. India, Egypt)
- LDCs: transition period (July 2021/2016)

# Impact of TRIPS on legislation

- Developed countries: some adjustments (e.g. USA, Canada, Japan)
- Developing countries: massive changes (e.g. patents for pharmaceuticals, 20 years patent term, test data),

# TRIPS disputes

Copyright	13	
GIs	4	
Trademarks	10	
Patents/Test data	11	IND (2),ARG(2),BRA,PAK
Enforcement	3	China

# Economic impact: TRIPS promises

- Foreign direct investment
- Innovation
- Transfer of technology (licensing)

# Evidence on TRIPS impact

- Growing evidence on TRIPS impact...
- **Mani, S., & In Nelson, R. R. (2013). **TRIPS compliance**, national patent regimes and innovation: Evidence and experience from developing countries, Edward Elgar**

# India-pharmaceuticals

- TRIPS has not promoted more R&D to develop new drugs
- TRIPS may have accelerated R&D related to improvement of medicines, but ‘in the absence of TRIPS, such activities would still have been undertaken. With larger domestic operations, Indian companies...would have had access to larger resources and would have been better placed to undertake such research (p. 108)

# India-technology transfer

- ...TRIPS compliance does not appear to have increased technology transfer agreements on a large scale as predicted (p. 89)



# Thai automotive industry

- ...the stronger patent regime
- had light or no obvious impacts on the extent and nature of knowledge transfer between TNCs and local part suppliers, and between universities/public research institutes and firms
- forced local latecomer firms to develop their own technological capacity 'to circumvent difficulties partly generated by such regime'
- P. 164-165

# FDI-R&D

- Previous studies in this area have been quick to attribute the changes in these dependent variables (increased FDI, R&D, etc.) to a strengthening of the patent regime. However, based on the four country case studies, we found very little evidence for such optimism with respect to TRIPS compliance (p. 235)

# GLOBAL COMMISSION ON HIV AND THE LAW (UNDP)

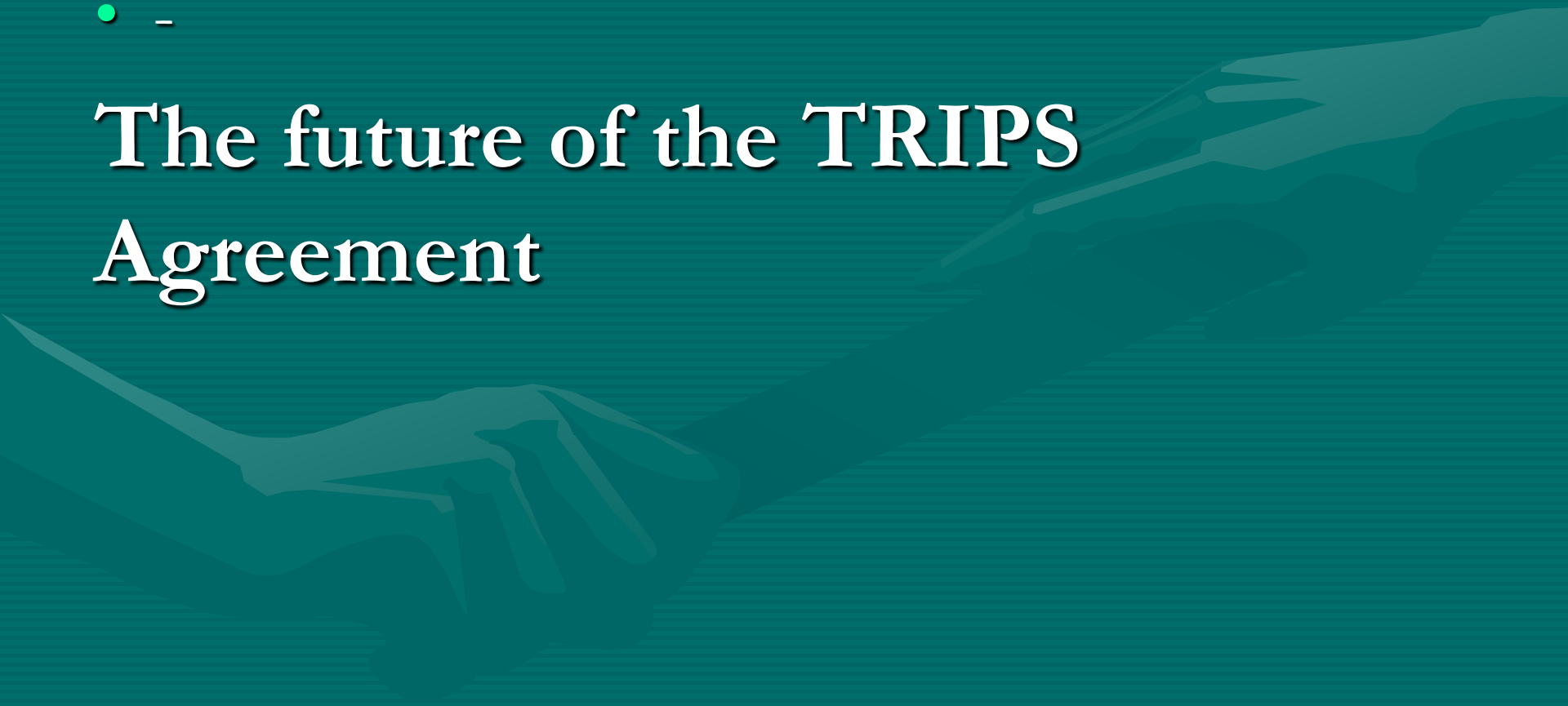
- IP protection is supposed to provide an incentive for innovation but experience has shown that the current laws are failing to promote innovation that serves the medical needs of the poor. The fallout from these regulations—in particular the TRIPS framework- has exposed the central role of excessive IP protections in exacerbating the lack of access to HIV treatment and other essential medicines (p. 8).

# High prices for medicines

- 14 ARV molecules in 34 low- and middle-income countries: 70% higher than generics in combinations with at least one patented drug
- Thailand-patents led to prices 144-206% higher than for generic anti-cancer drugs
- Hepatitis C (U\$S 84.000; U\$S 2000 in Egypt)

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# The future of the TRIPS Agreement



# Pending issues

- Compulsory licenses amendment (art. 31 *bis*; (53 approvals)
- Geographical indications
- LDCs-transition period for pharmaceuticals
- Protection of biological materials- art. 27.3(b)

# Ministerial Doha Declaration

- We instruct the Council for TRIPS... to examine, inter alia, the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore...(para. 19)

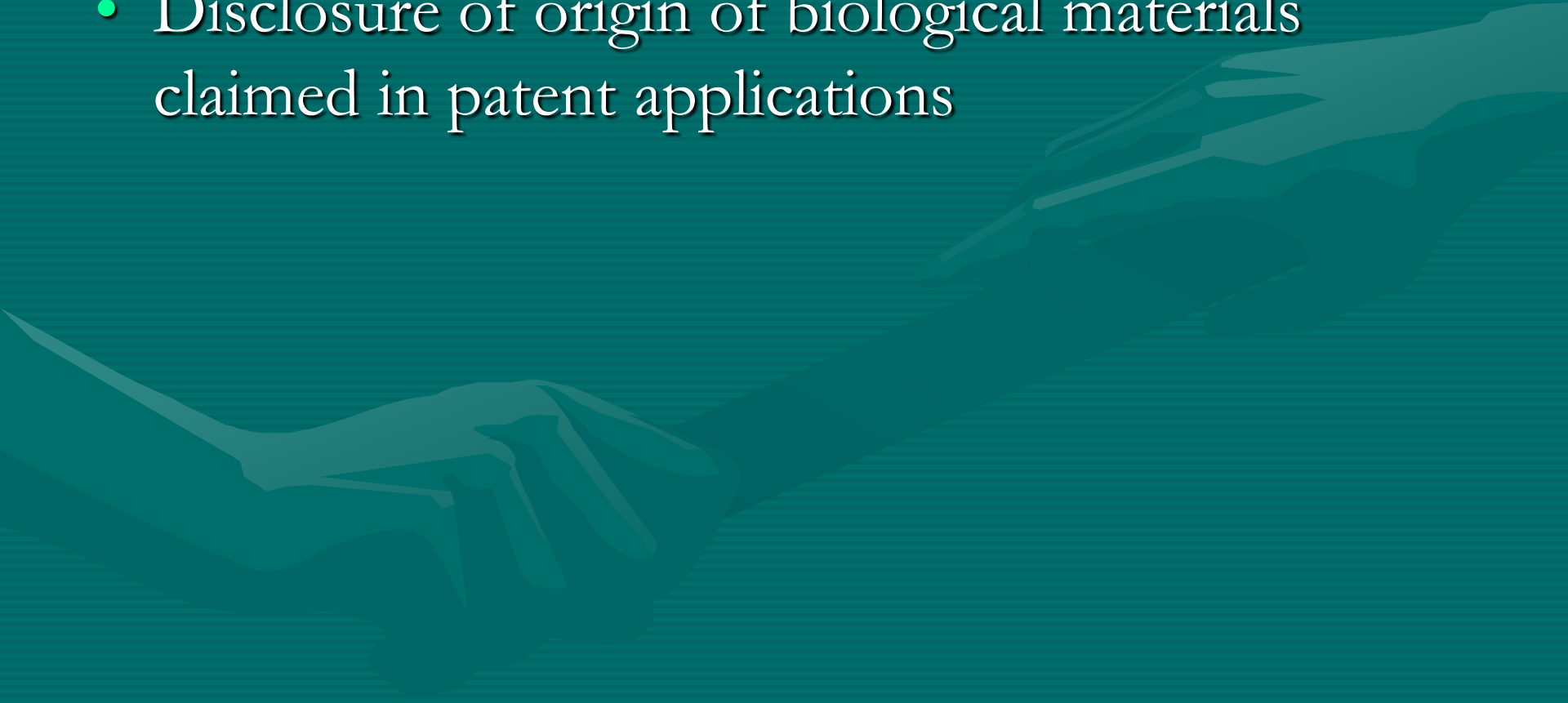
# Bolivia's proposal

- ...prohibit the patenting of all life forms, including plants and animals and parts thereof, gene sequences, micro-organisms as well as all processes including biological, microbiological and non-biological processes for the production of life forms and parts thereof...



# Developing countries/LDCs proposal

- Disclosure of origin of biological materials claimed in patent applications



# Ecuador's proposal

- *Contribution of Intellectual Property to Facilitating the Transfer of Environmentally Rational Technology'*
- Declaration: "nothing in the TRIPS Agreement can minimize or impair the flexibilities provided for in that Agreement, nor prevent or limit Members taking measures they consider necessary to protect their population from the effects of climate change and to make use of "environmentally sound technologies".
- Review of articles 31 and 33

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- What role for the TRIPS Council?
  - Can the TRIPS Agreement be reviewed to respond to developing countries interests and concerns?

# Social Forum-Geneva, 2015

- The global IPR regime has to be reviewed... There should be an option for countries, or at least developing countries, to opt for an exemption to patents for medicines and other essential health technologies.
- **SF recommendation: abolish all patent systems for medicines necessary for the life of people in developing countries**

# Abolishing patents

In general, public policy should aim to decrease patent monopolies gradually but surely, and the ultimate goal should be the abolition of patents. After six decades of further study since Machlup's testimony in 1958 has failed to find evidence that patents promote the common good, it is surely time to reassess his conclusion that it would be irresponsible to abolish the patent system.

- The Case Against Patents, Michele Boldrin and David K. Levine, *Journal of Economic Perspectives*—Volume 27, Number 1—Winter 2013—Pages 3–22

# GLOBAL COMMISSION ON HIV AND THE LAW (UNDP)

- The Un secretary-General must convene a neutral, high-level body to review and assess proposals and recommend a new intellectual property regime for pharmaceutical products. ...Pending this review, the WTO members must suspend TRIPs as it relates to essential pharmaceutical products for low- and middle-income countries (p. 85)