



GSIPA2M

GLOBAL SUMMIT ON INTELLECTUAL PROPERTY
& ACCESS TO MEDICINES: PATHWAYS TO ACCESS
15-17 January 2018 MARRAKECH - MOROCCO



TRIPS AND ACCESS TO MEDICINES IN AFRICA NOTHING TO SEE HERE?

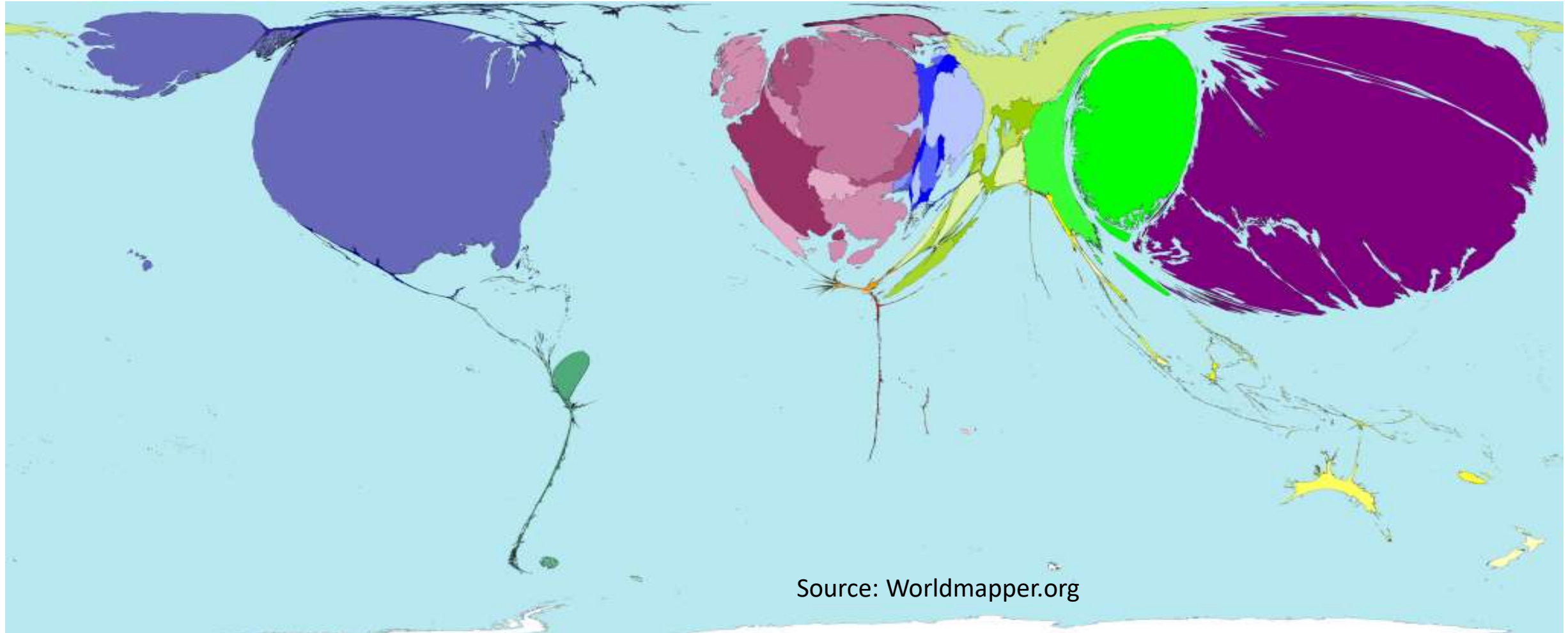
ALLAN MALECHE

EXECUTIVE DIRECTOR KELIN KENYA & BOARD MEMBER
DEVELOPING COUNTRY NGO CONSTITUENCY OF THE
GLOBAL FUND BOARD

Outline of presentation

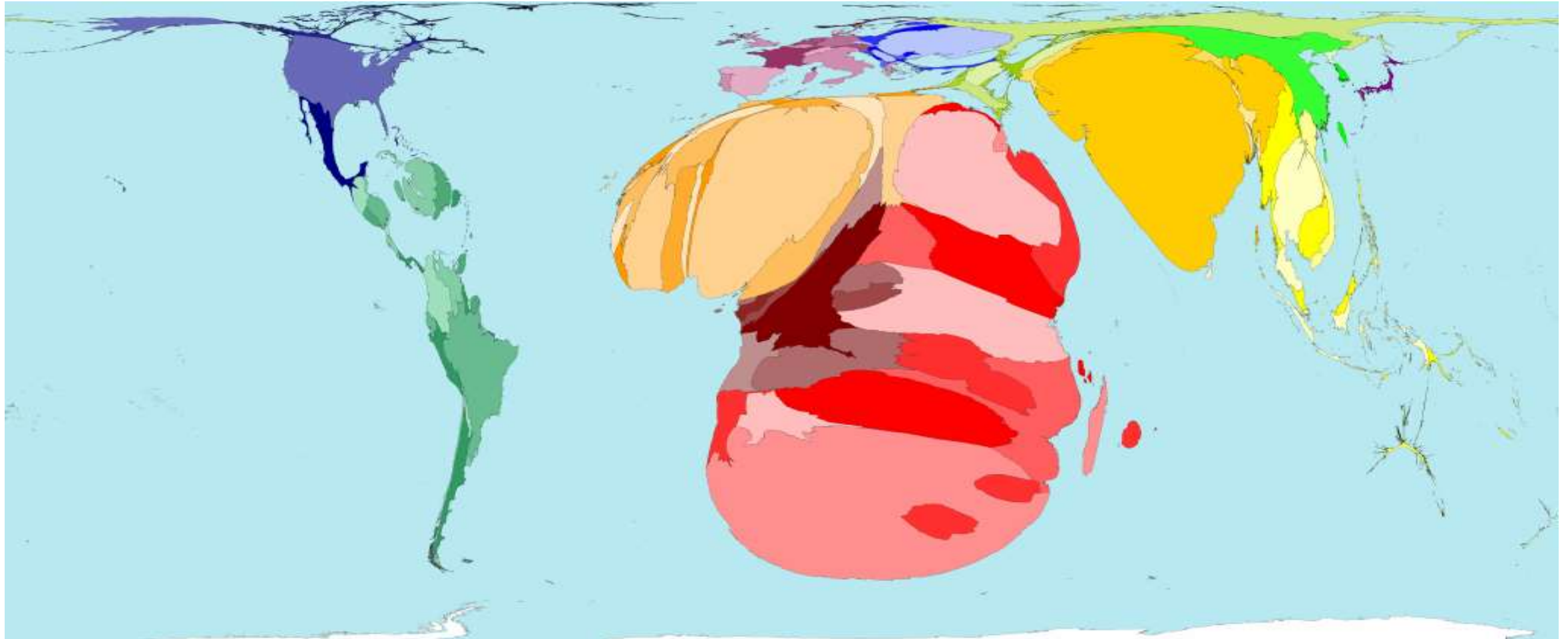
- Who benefits from IP protection and who needs health technologies
- Why TRIPS & Access to medicine remains relevant for Africa
- Early examples of use of TRIPS flexibilities in Africa
- Why we should remain concerned
- What do we need to look out for
- Resources and references

Who benefits from IP protection?



Source: Worldmapper.org

Who needs access to health technologies?



Why TRIPS & Access to medicine remains relevant for Africa



- Multiple health challenges affect African countries
- Leading causes of death are preventable or treatable (Malaria, TB...)
- Resource constraints with regard to public & out of pocket expenses
- Some countries in the region are transitioning from eligibility of Global health financing programmes such as the Global Fund & GAVI
- Such countries are expected to increase domestic resources for health while paying high prices for medicines, vaccines and medical technologies

Why TRIPS & Access to medicine remains relevant for Africa

- Most countries in the region have made commitments at various levels to protect pharmaceutical intellectual property rights
- 19 sub-Saharan African countries are members of the African Regional Intellectual Property Organisation (ARIPO)
- Important public health TRIPS flexibilities are yet to be included in the Harare protocol or the national laws of ARIPO member states
- The African Union Commission Pharmaceutical Manufacturing plan emphasizes need to invest in local and regional manufacturing companies
- Most countries have adopted the SDGs and have committed towards achieving UHC.

Early examples of use of TRIPS flexibilities in Africa

Country	Example	Effect
Rwanda	Use of the August 30 th mechanism allowing domestic companies to produce generic products under patent protection	Rwanda was the first WTO member to use this in 2007 with the aim of importing ARVS that were part of fixed combination dose
South Africa	Amendment of patent act in 2002 in order to introduce Bolar type provision as well as other amendments	Made it possible for generic competitors to work the invention prior to expiration of the patent in order to prepare for regulatory approval
Kenya	Amendment of patent law to allow for parallel importation of medicines from anywhere in the world (Clause 37 Kenya IP regulations)	The amendments permit the country to import a medicine placed on the market by a generic company if no domestic patent protection existed

July 23
2006

GADO

FIND
SOMETHING ELSE
TO COVER
YOURSELF...

Big Drug Companies

Intellectual Property
Act

A clause that would
have raised the cost
of ARVs by
1,000 Per cent

AIDS
ACTIVISTS

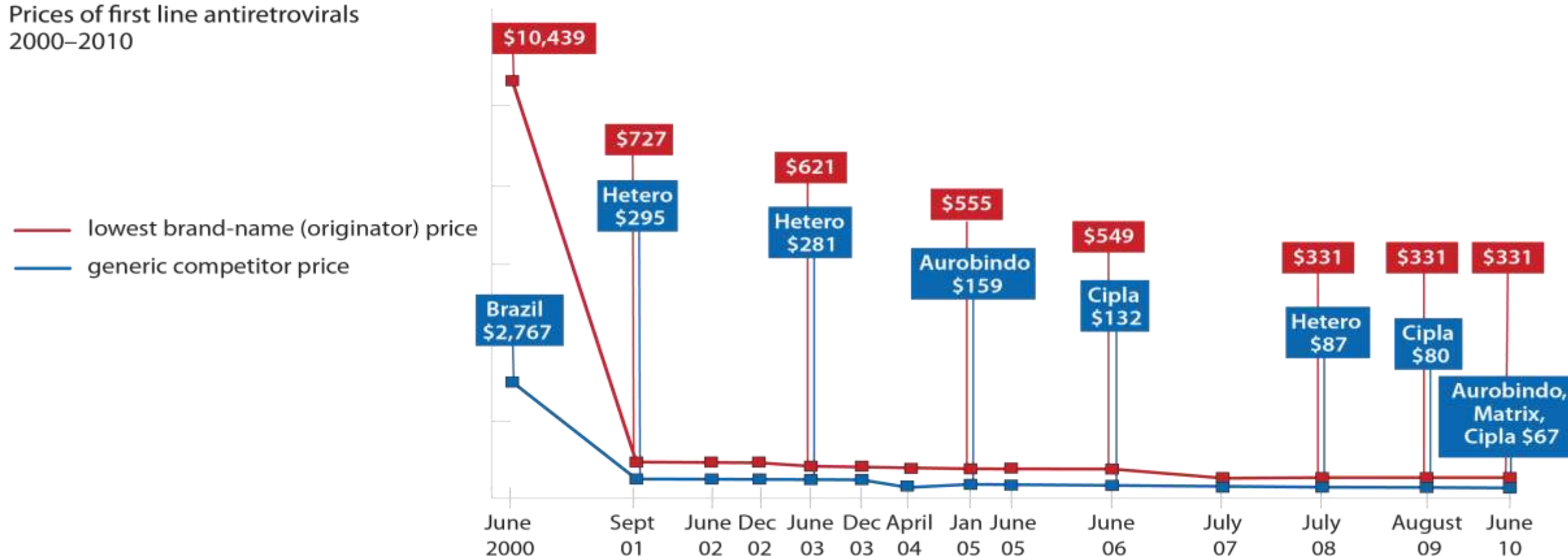
PROFIT



Impact of generic competition

GENERIC COMPETITION: MAKING ARVs AFFORDABLE

Prices of first line antiretrovirals
 2000–2010



Source: Médecins Sans Frontières (MSF), *Untangling the Web of Antiretroviral Price Reductions (UTW)*, 14th edition, July 2011.

Source: MSF (2010), *Untangling the Web of Antiretroviral Price Reductions*, 13th ed.

Why we should remain concerned

- Patent examination process that don't take into account public health considerations into examination of patent applications
- Counterfeit laws and polices that feature definitions including generic medicines in the same scope as counterfeits and allow use of criminal sanctions on patent infringement (East Africa regional and national laws)
- Free Trade Agreements that include clauses that further limit use of TRIPS flexibilities. (US-Morocco- FTA signed on 15th June 2004)
- TRIPS + TRIPS+ TRIPS+ even with the LDC extension on pharmaceuticals till 2033

Patentability criteria are important for countries with significant manufacturing capacity

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New Local Pharmaceutical Plant Expected To Enhance Access To Drugs In Kenya

12/01/2018 BY JUSTUS WANZALA FOR INTELLECTUAL PROPERTY WATCH — [LEAVE A COMMENT](#)

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Kenya's pharmaceutical products manufacturing sector is hopeful it will experience significant growth after the Square Pharmaceuticals Ltd (SPL) of Bangladesh commissioned a US\$ 75 million plant in the East African nation this week. IA reminder: this story, like all of our stories, is



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Packing my bags to go to #Marrakech - th birthplace of the #TRIPS agreement - to a #GSIPA2M @ITPCglobal



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What do we need to do?

- We have to keep an eye on anticounterfeit laws and policies
- We have to encourage the use of competition law and policies in Lower Middle Income settings to increase access to affordable health technologies
- Enhancing the role of patent officers and examiners to provide guidance of how public health considerations into the examination of patent applications
- ARIPO members need to push for implementation of the recommendations from the final outcome document on the High level meeting on promoting policy coherence on health technology innovation and access in ARIPO region

Resources and references

- [Good Practice Guide: Improving Access to Treatment with Flexibilities in TRIPS](#)
- [Using competition law to promote access to health technologies](#)
- [Anti-counterfeiting laws and access to essential medicines in East and Southern Africa](#)
- Final High level meeting report on promoting policy coherence on health technology innovation and access in ARIPO region



Thank you

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