

TRIPs, Compulsory Licensing, and Retaliation:

**Implications for Access to Essential
Medicines in the Long Term**

Sheikh Shahnawaz

Monterey Institute of International Studies

<http://faculty.miis.edu/shahnawaz>

Presenter Disclosures

SHEIKH SHAHNAWAZ

(1) The following personal financial relationships with commercial interests relevant to this presentation existed during the past 12 months:

None.

What is the Issue?

- Trade is good, but...
- Is it hurting core public health objectives, like access to drugs?
- Pharmaceuticals are:
 - not typical of a commodity in international trade
 - essential to fight disease
 - intellectual property
- Covered by the TRIPs Agreement
- How can trade (TRIPs) help to improve access?

Trade-Related Aspects of Intellectual Property Rights (TRIPs): Overview

- Designed to protect intellectual property
- Grants monopoly to patent holder
- Desire lower prices, encourage innovation
- **Compulsory Licensing:** authorizing use of patented invention by producers other than the right-holder
- Doha Declaration: governments themselves determine grounds for issuing licenses
- Patent-holders concerned about leakage, competition

Method of Attack

- Two countries: *affected vs. host*
- Interaction between the two countries over the trade agreement as a repeated game
- Each government wants to maximize welfare
- Welfare depends on domestic and world prices
- Objective of interaction is to reach the most open trade regime enforceable

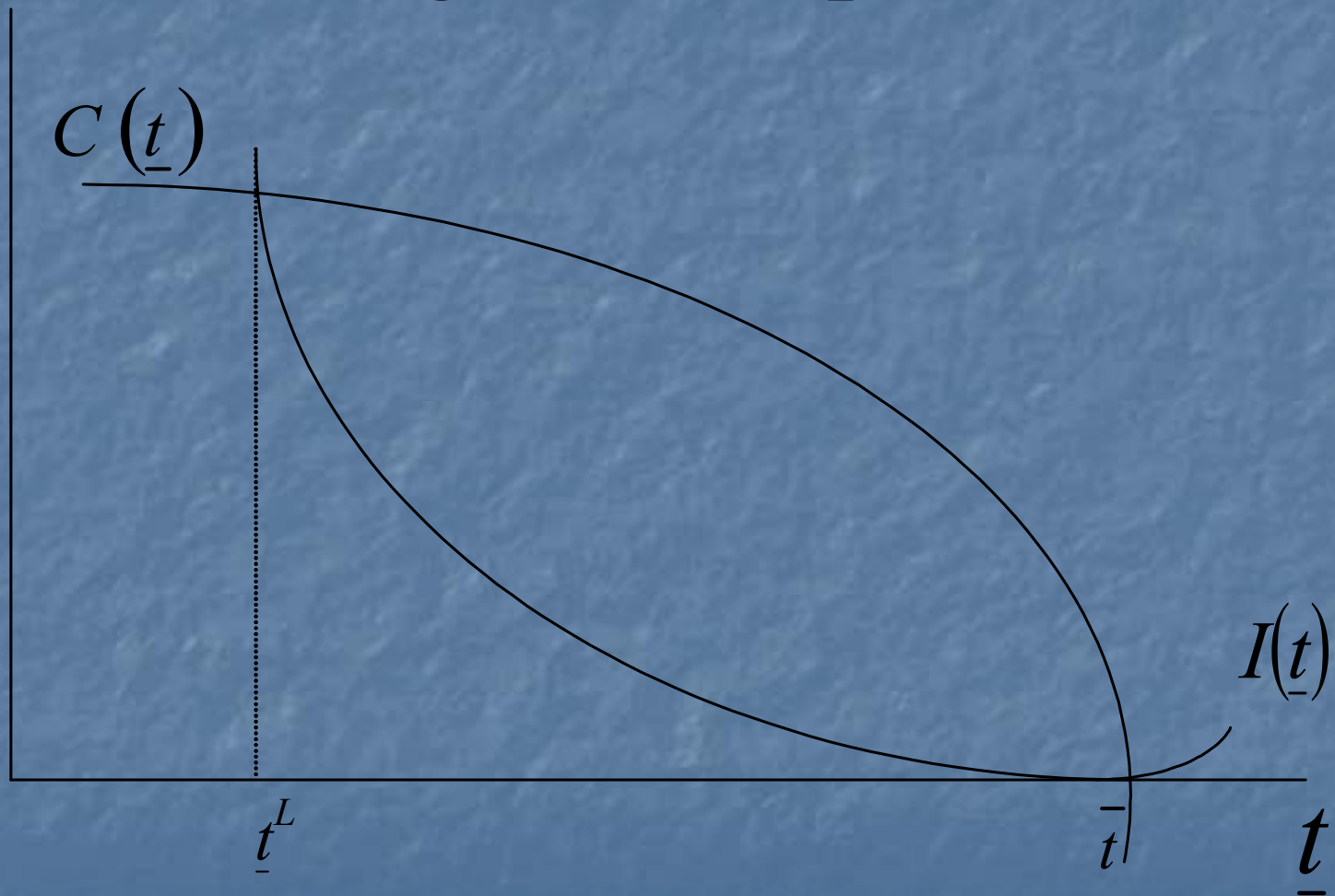
Method of Attack

- Affected country uses compulsory licensing as its policy instrument
- Host country policy uses its tariffs on imports from the affected country as policy instrument
- Trade agreement works if each country has little incentive to deviate from the agreement
- Therefore, consider these incentives

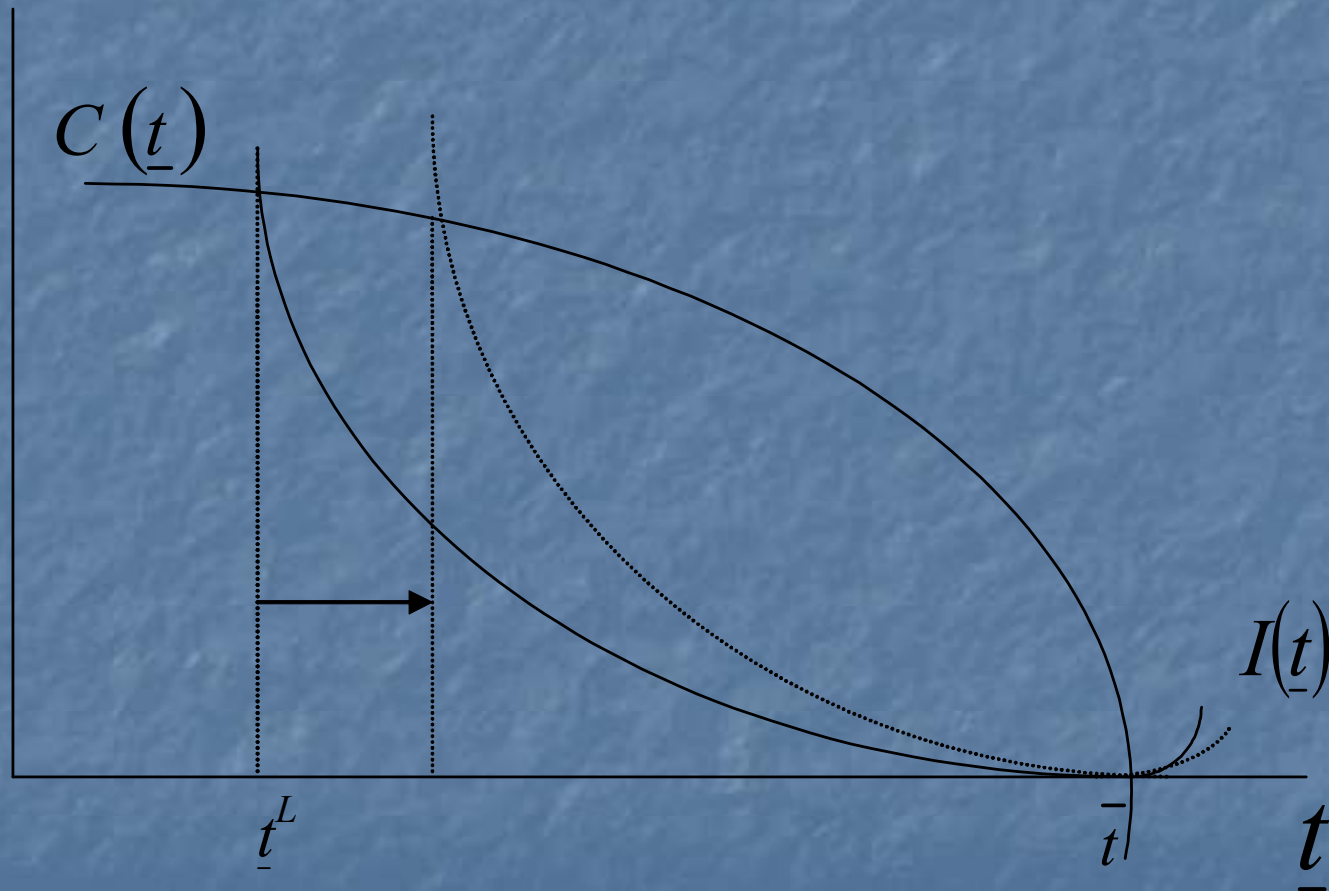
If There Were No Tomorrow...

- There is no threat of retaliation from the trading partner
- Affected country always issues compulsory license
- Host country levies high tariff on imports from affected country
- Trade agreement is not enforceable
- But threat of retaliation makes it enforceable

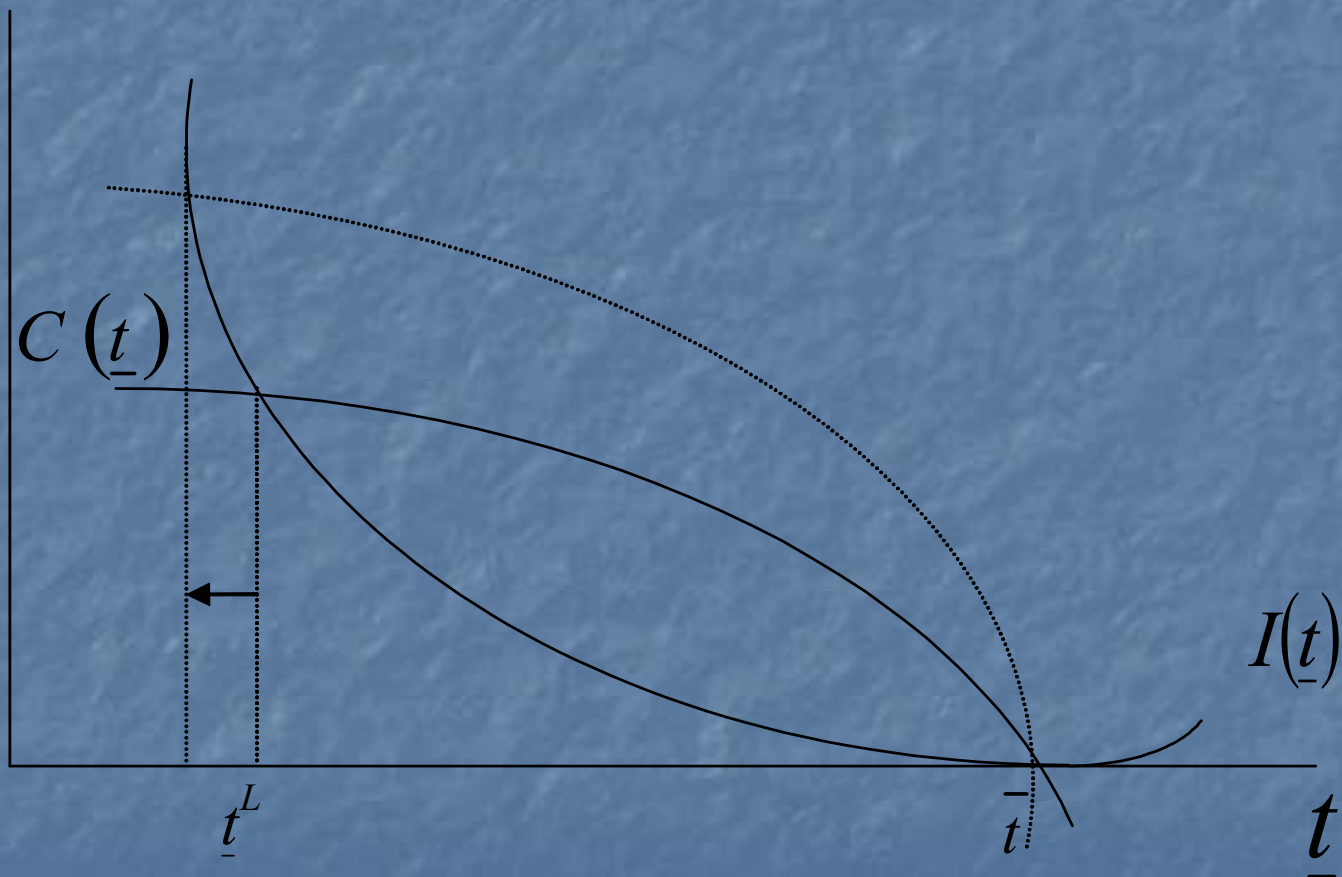
Cheating vs. Cooperation



Effect of a Disease Outbreak



Effect of a Lower Likelihood of Disease Outbreak



Implications of Disease Outbreak

- Incentive to break agreement is higher if the disease is particularly devastating → any viable agreement should incorporate flexibilities that allow affected countries to easily issue compulsory licenses
- In exchange, drug company gets royalties
- Level of royalties just needs to be high enough to compensate for the dislocated demand due to compulsory licensing, does not need to be a function of quantity produced under license
- Better enforcement to allay fears of drug companies

Implications of Better Health

- Easier to enforce agreement due to smaller chance of conflict
- Less of a need to issue compulsory licenses
- Associated with lower royalties when issued
- Lower barriers to trade, higher trade volume
- Unhealthy countries are more likely to break trade agreements → trade agreements must be designed to usher in liberalization gradually

Conclusions

- Any successful agreement needs to be:
 - extremely flexible: TRIPs flexibilities are a positive step
 - encourage gradual liberalization: pressuring LDCs into aggressive agreements would undermine trade
- Flexibilities point toward the need for a strong:
 - enforcement mechanism
 - dispute settlement mechanism