

approach since it gives effect to its purpose by bestowing market power in the form of a temporary monopoly on those holding patents. It is a well-known result of both economic theory and empirical research that monopolies result in economic inefficiencies (e.g., higher prices and reduced output) compared to competitive markets. Accordingly, to justify bestowing market power on particular firms requires not only a good reason for doing so (in this case stimulating additional research and development) but also the absence of a better alternative instrument (e.g., using subsidies or tax incentives to stimulate research).

In a world where governments typically face fiscal pressures, the market distortions resulting from patent protection tend to be seen as the lesser evil.<sup>12</sup> Nonetheless, this still leaves patent protection subject to an empirical test of whether the dynamic gains to society from research and development that is stimulated by the prospect of obtaining a legal monopoly for an extended period (20 years in the case of TRIPS) outweighs the static costs (which include the costs of implementing a regulatory structure to administer the grant and enforcement of the monopoly regime, insofar as the latter are not fully defrayed by user fees).

Given the complex considerations, in order to achieve optimal outcomes, nations must carefully calibrate the length of time for which the ability to obtain monopoly rents is conferred, balancing the potential gains in terms of greater incentives for research against the costs. Since there is no reason to expect that a balance that works for one industry in one country (e.g., health-related products in the United States) will be equally appropriate for other industries or other countries (e.g., food-related products in large population developing countries such as India or China), the deployment of this technique in an

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<sup>12</sup> As was pointed out at the conference, the distortions include as well those due to the use of patents to block innovation by others.