TRIPS-Plus Provisions and Access to Technologies:

Implications for the Trans-Pacific Partnership

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Outline

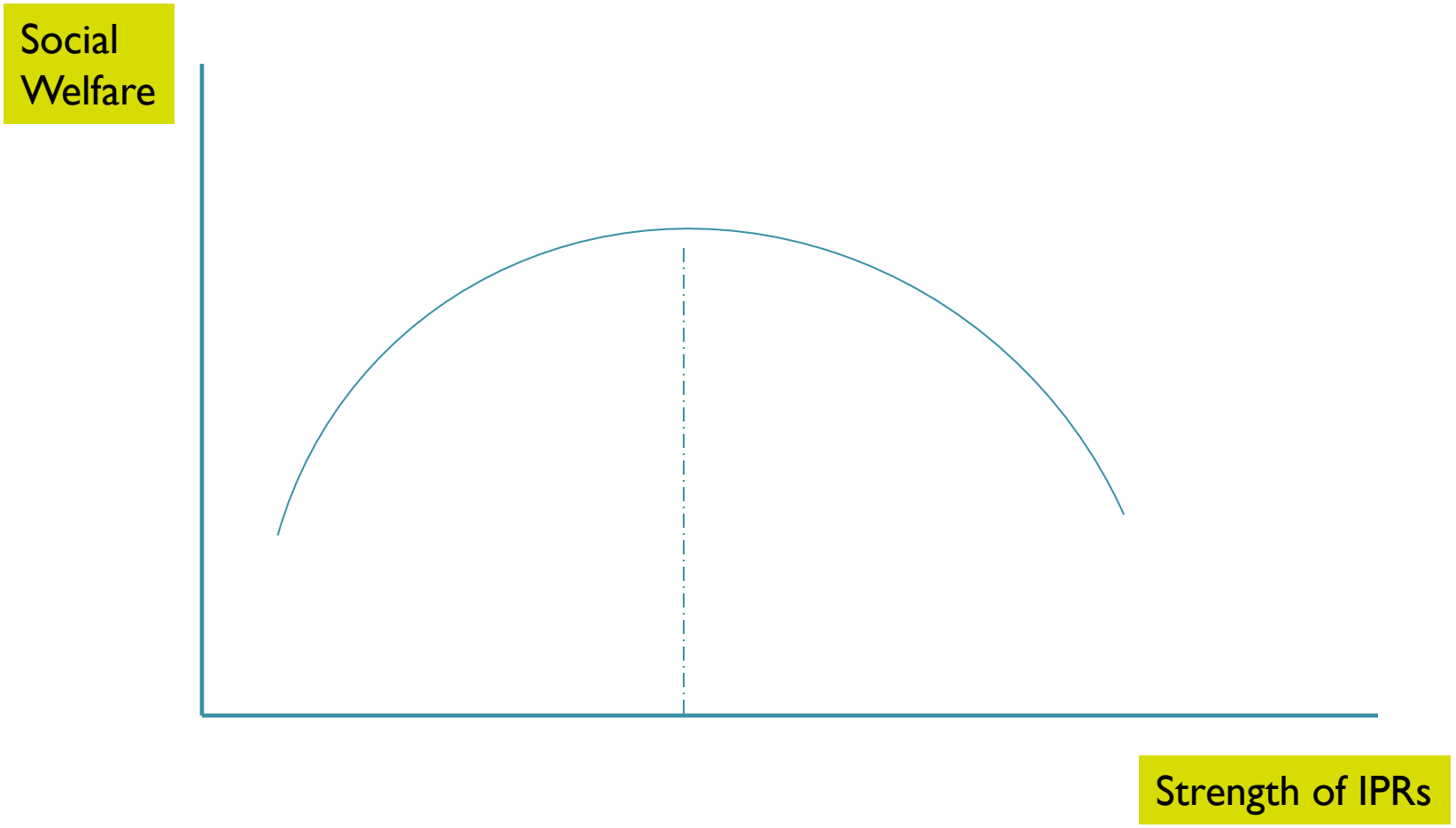
- Notion of Optimal IPRs
- IPRs and Technology Transfer
  - Previous Research
- TRIPS-Plus Free Trade Agreements (FTA)
  - Impact on Technology Transfer
- Implications for FTAs

I. Optimal IPRs

- Costs and Benefits
- IPRs solve a missing market problem
  - Public Goods (Knowledge is non-rival and non-excludable)
- Tradeoff
  - Limited Competition, Monopoly Pricing, and Higher Cost of R&D for follow-on inventors

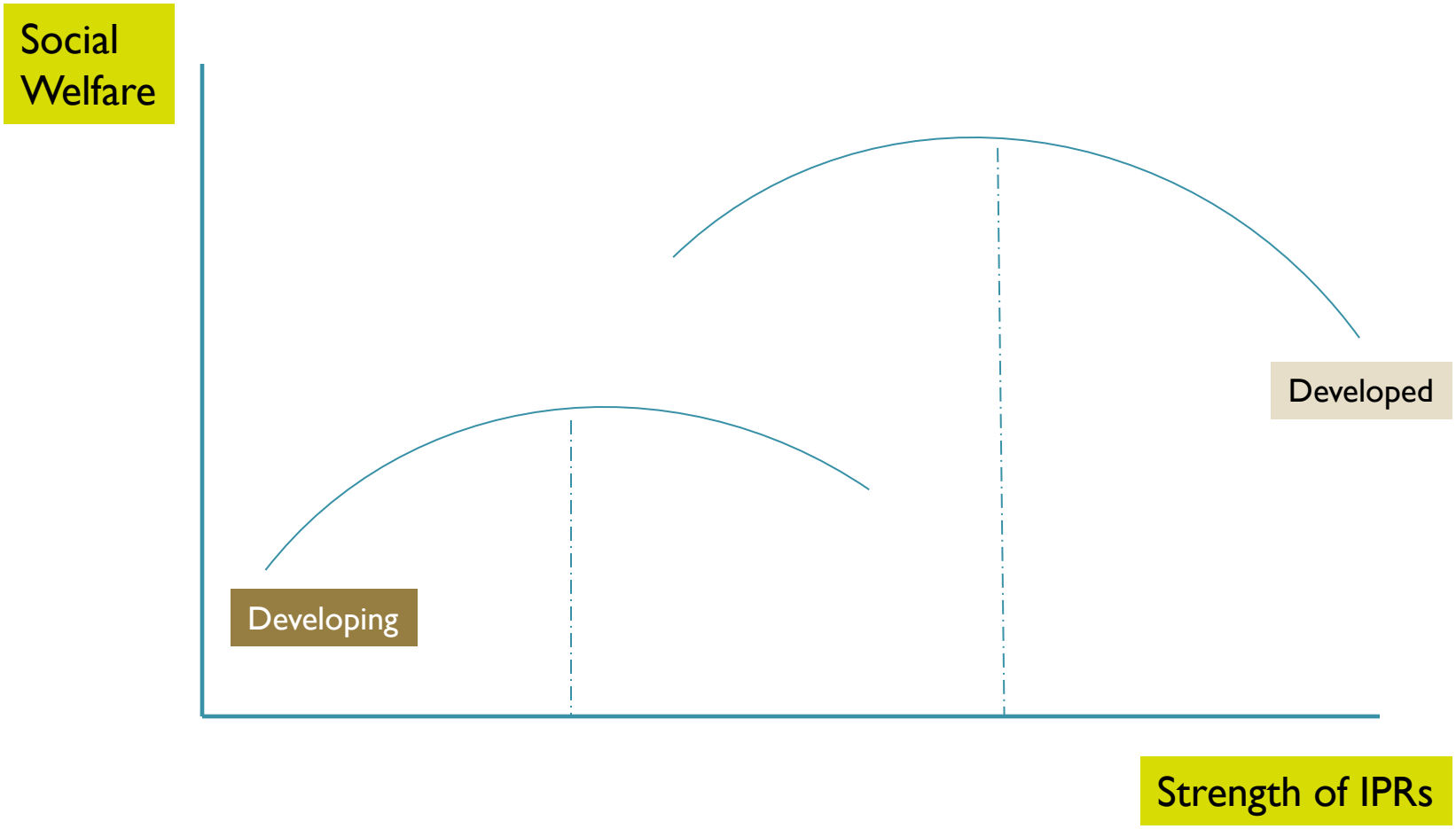
I. Optimal IPRs

- Conventional View



I. Optimal IPRs

- Grossman & Lai (2004), Kim, Lee, Park, and Choo (2012)



II. IPRs and Technology Transfer

- Will stronger IPRs enhance access to new products & processes via Exports, FDI, and Licensing by Developed Countries?
  - [Key Premise of TRIPS]
- Ambiguous: Market Expansion effect and Market Power effect of IPRs
- Again, non-linear relationship between IPRs and Tech Transfer

II. IPRs and Technology Transfer

- Net effect (i.e., market expansion vs. market power effect) depends on size of market and imitative capacities of host

- Volume and Composition effects
  - Ownership, Location, and Internalization (OLI)
    - IPR increases associated with sequencing: exports $\Rightarrow$ FDI $\Rightarrow$ arms-length licensing
  - Matters for knowledge diffusion, employment, capacity to satisfy demand

II. IPRs and Technology Transfer

- Empirical Evidence*
  - Level and mode of tech transfer respond to IPRs. Effects vary by industry, type of intangible asset, and level of economic development of host country
  - Conditional on other factors (human capital, wages, market size, taxes, governance, …)
  - Presence of Alternative Means of Appropriation
- Caveats
  - IPR has a nonlinear (inverted-U) effect. Thus, it is conducive to tech transfer in South if we raise levels from 'zero'
  - We don't observe internal market competition, pricing strategies, and distribution of sales (access for the poor).

* *See Park and Lippoldt (2012), forthcoming in Hall et al. (eds.) for a survey*

III. TRIPS-Plus FTAs

- Raise strength of IPRs in developing country partner(s)
  - Controversy: whether they push IP strength beyond the "optimal" level.
  - Market power would then dominate any market expansion effects of IPR on inward technology diffusion.

- Selected previous studies
  - *International Intellectual Property Institute* (2011)
  - *Oxfam International* (2007)
  - Collins-Chase (2008) *U Penn Law Review*, Lindstrom (2010) *NYU Law Review*

III. TRIPS-Plus FTAs

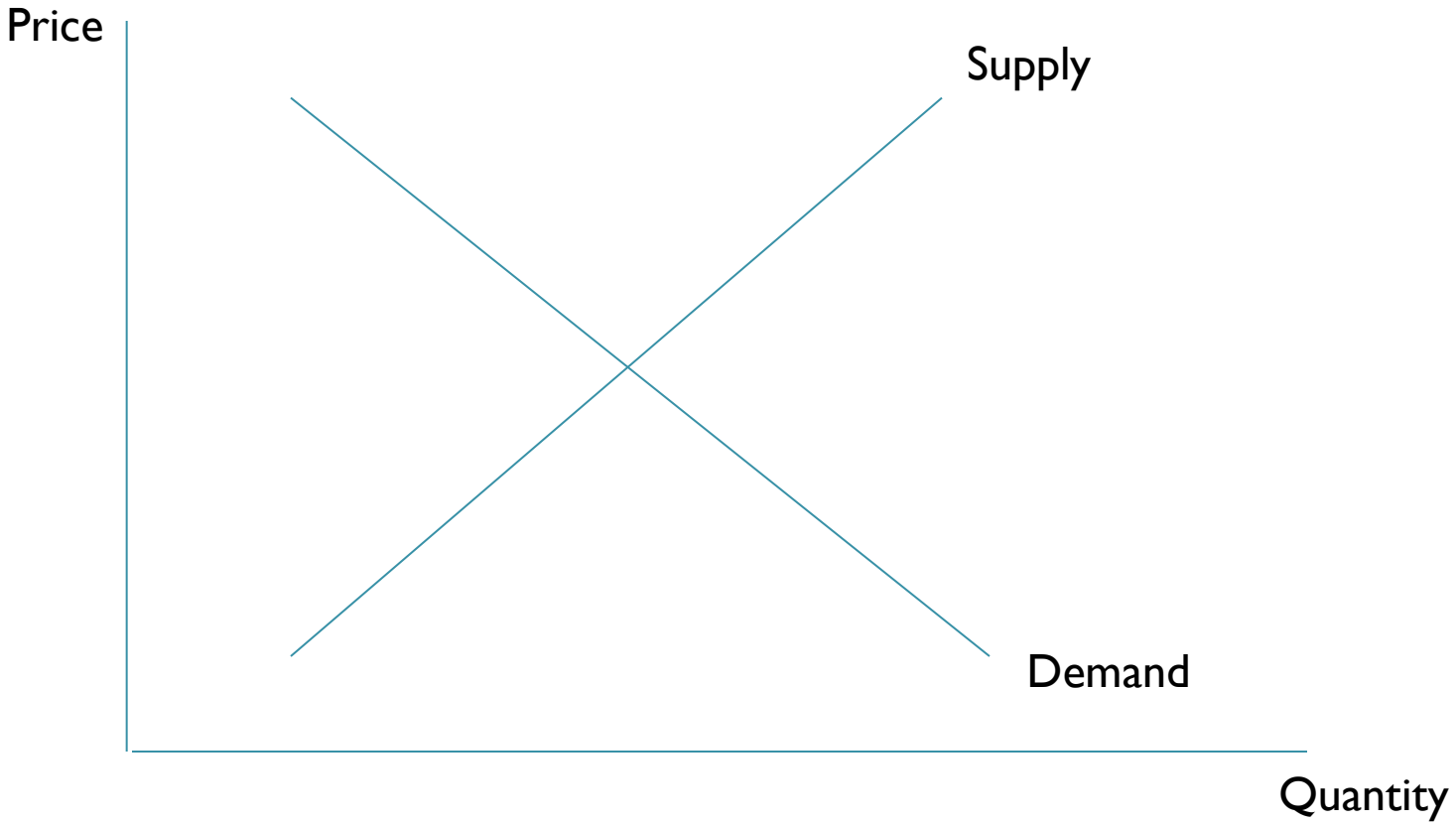
- Sample IPR Provisions
  - Broader Scope
    (e.g., new uses found for a drug)
  - Data Exclusivity
    (e.g., extend period of protection for test data)
  - Patent linkage
    (e.g., register generics only after a patent expires)
  - Limits on compulsory licensing
    (e.g., for national emergencies or anticompetitive abuses)
  - Limits on parallel imports
    (e.g. arbitrage: access to cheaper sources)
  - Requirement to join conventions not required by TRIPS (e.g. PCT, WCT, WPPT, Brussels Convention)

III. TRIPS-Plus FTAs

- These provisions offset flexibility in TRIPS
- Likely to raise the strength of local IPRs above the level appropriate for their stage of economic development.
- If so, adoption of TRIPS-Plus would enhance market power of patent holders and producers
  - Reduced Supply and Increased Prices
- A Question is "Why"?
  - *What might be the underlying drivers behind developed countries' push for TRIPS-Plus FTAs?*

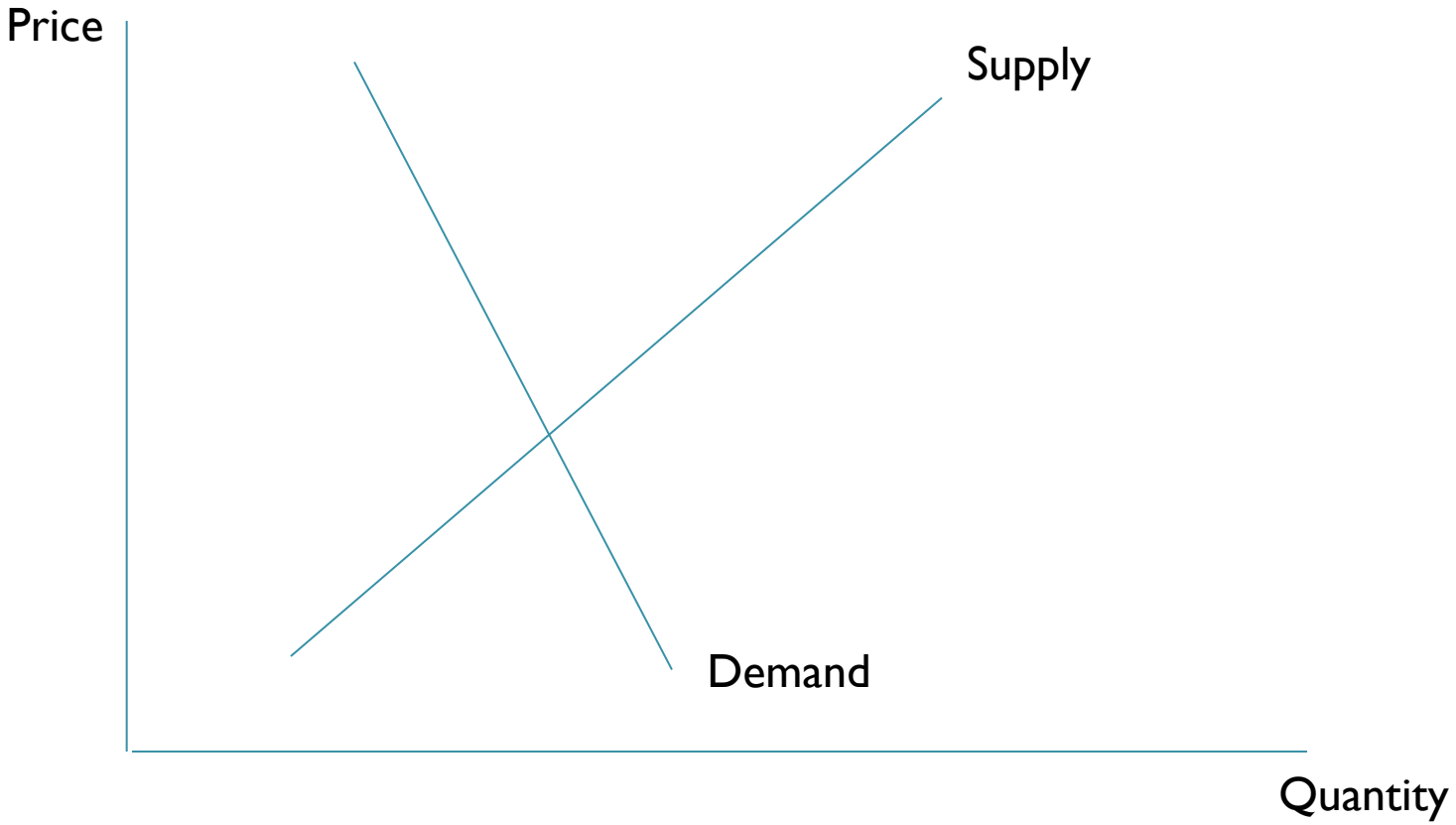
Economics 101

- Normal Market



Economics 101

- Medicines



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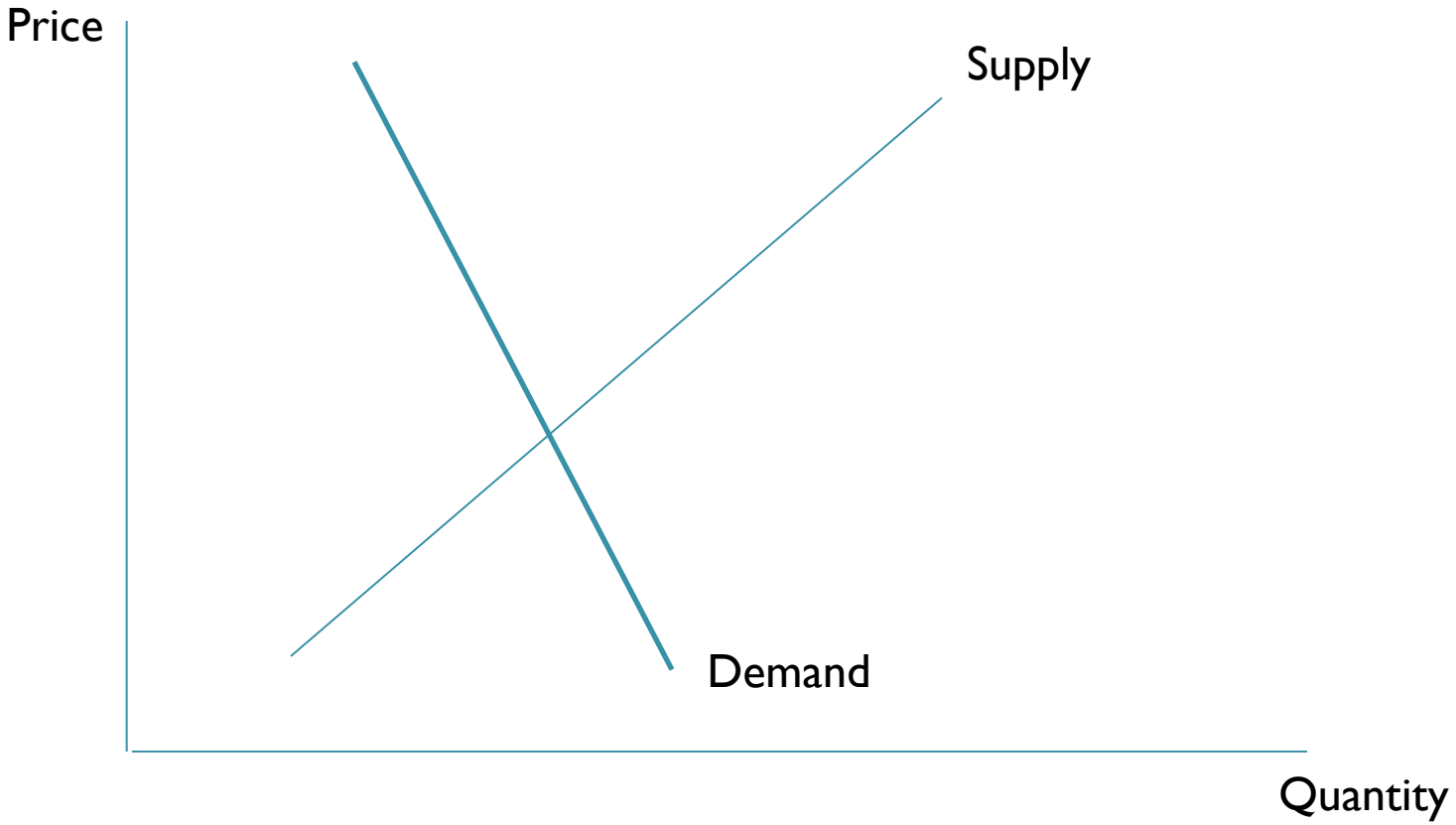

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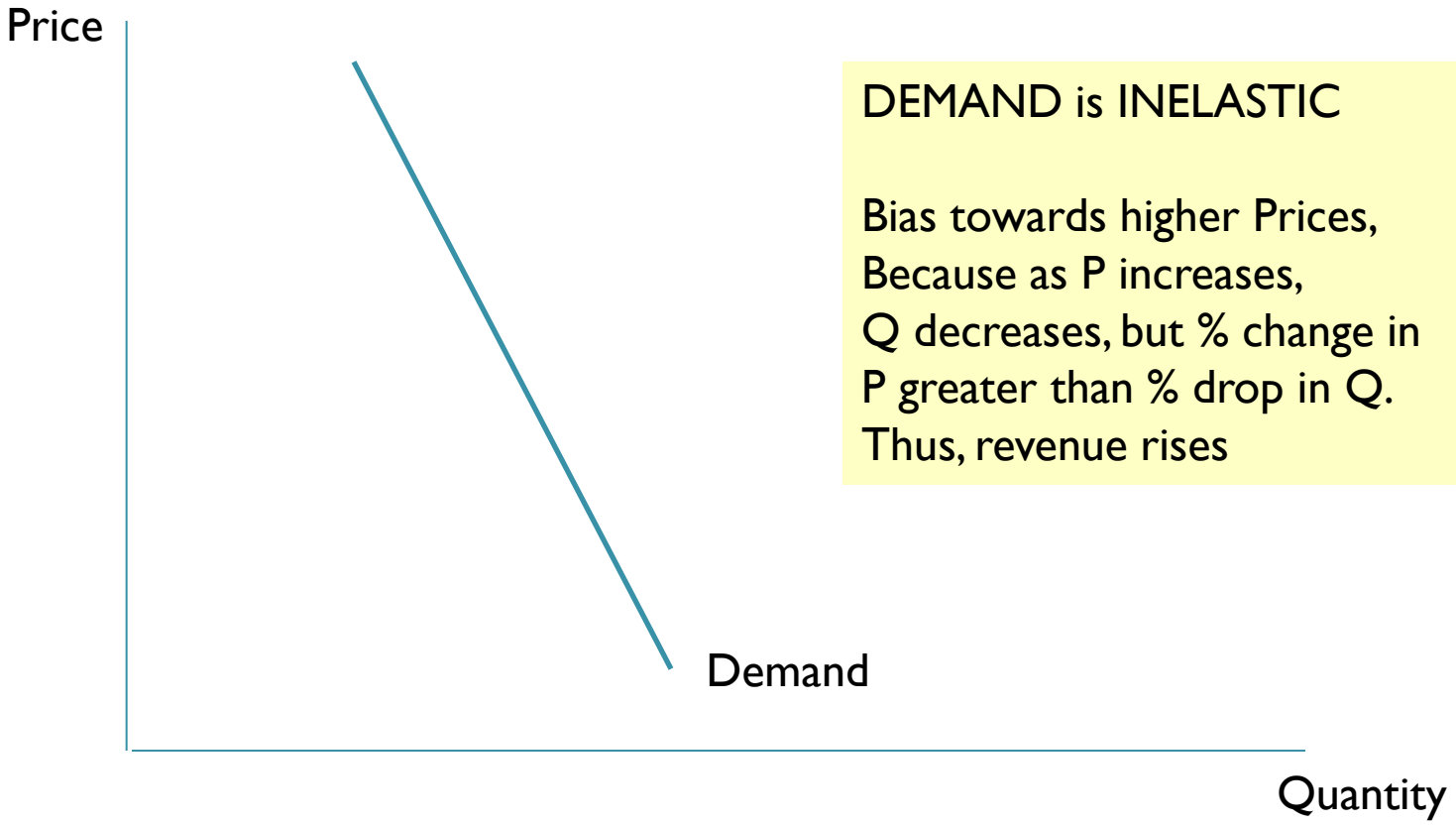
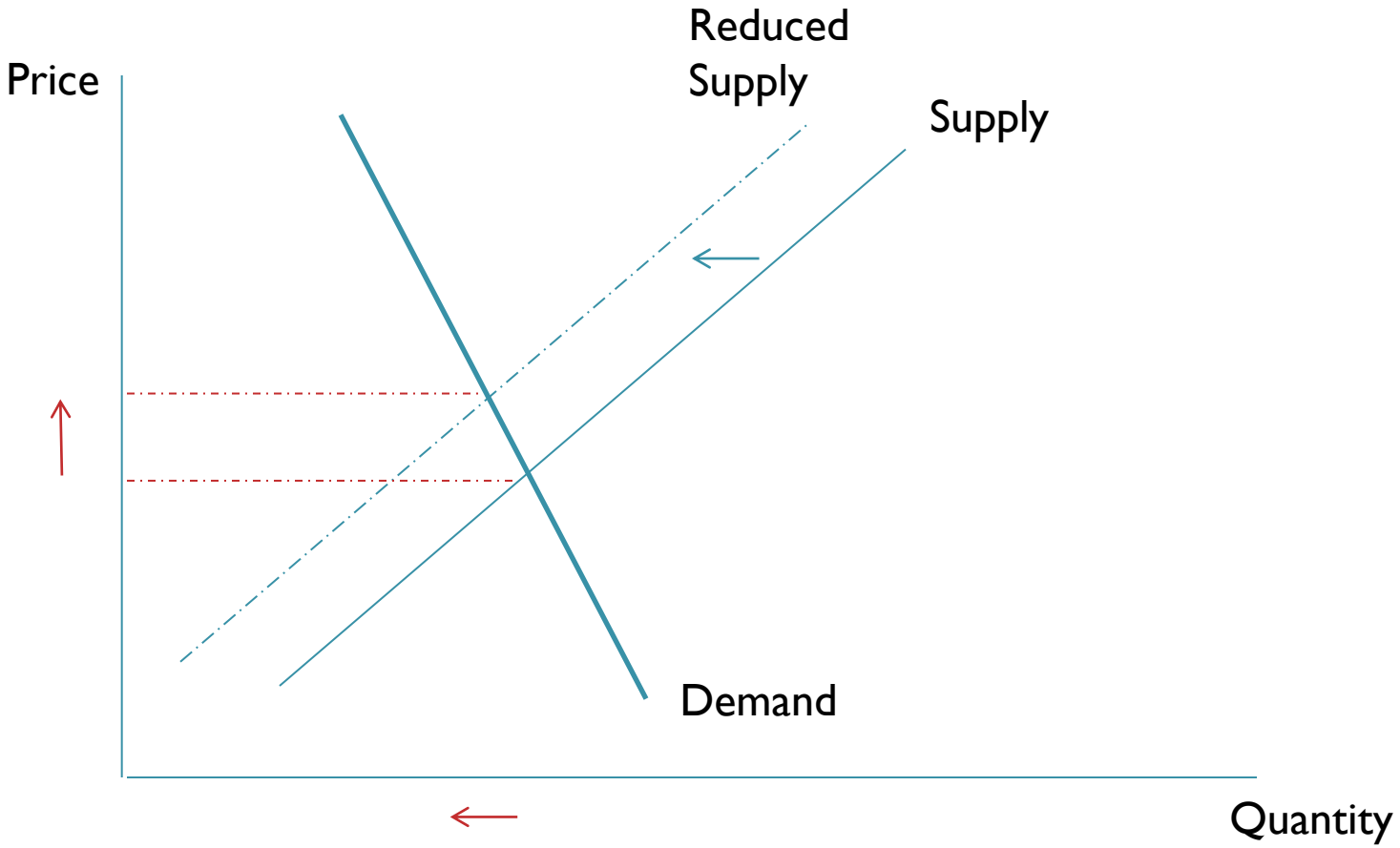


DEMAND is INELASTIC

Bias towards higher Prices,
Because as P increases,
Q decreases, but % change in P greater than % drop in Q.
Thus, revenue rises

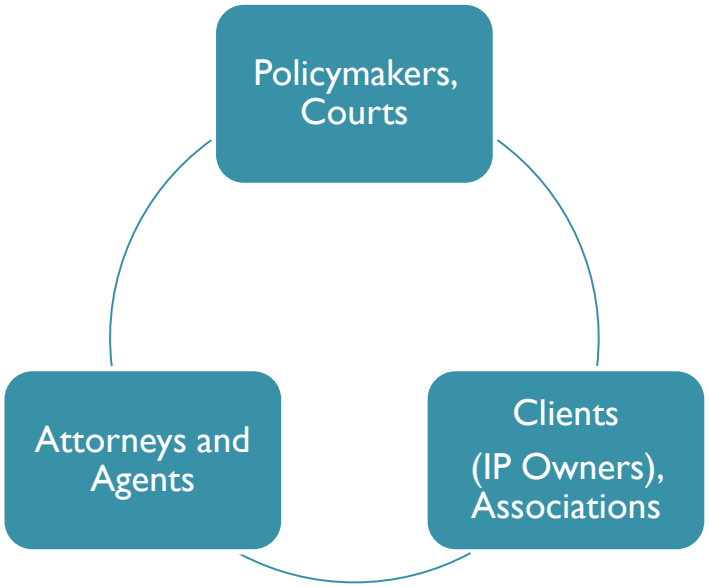
Economics 101

- Medicines



Public Choice 101

- Special Interests, Regulatory Capture, and Revolving Door
- IP is a highly, complex subject.



Public Choice 101

- Thus, TRIPS-Plus provisions maximize private welfare, not social welfare.
- Markets require property rights, rule of law, price flexibility.
- Public sector failures can distort markets.

IV. Implications for FTAs

- Important to preserve TRIPS flexibilities
  - Compulsory licensing for insufficient working within a reasonable period of time.
  - Research Exemptions.

- TRIPS-Plus provisions not vital to dynamic incentives for Northern private sector innovation.
  - Drug costs recouped from developed country markets
  - Patent protection isn't the only (or even main) determinant of innovation.
  - Role of public sector R&D in "essential" goods.