

Patent rights in the COVID age

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❖ 2007 study on the SARS outbreak in 2002-03:

“The presence of a large reservoir of SARS-CoV-like viruses in horseshoe bats, together with the culture of eating exotic mammals in southern China, is a time bomb.”

CHENG, Vincent C. C.; LAU, Susanna K. P.; WOO, Patrick C. Y. e YUE, Kwok Yung. Severe Acute Respiratory Syndrome Coronavirus as an Agent of Emerging and Reemerging Infection. *Clinical Microbiology Reviews*, v. 20, n. 4, p. 660–694, oct. 2007.

We were warned... (Prof. Gérman Velasquez – South Centre)

❖ How to deal with **underinvestment in research and development (R&D)** of pharmaceutical products to face large-scale virus outbreaks?

→ SHORT TERM SOLUTIONS:

1. **non-legislative mechanisms** to circumvent the exclusive right granted with a patent. Ex. adoption of voluntary licensing and broad sharing of technologies, an initiative led by Costa Rica in a **letter sent to the World Health Organization (WHO)** in March and, in the private sector, by *Open COVID Pledge*.

→ SHORT TERM SOLUTIONS:

2. laws authorizing compulsory licensing

-TRIPs and Brazilian Law 9.279/95, art. 71. In cases of national emergency or public interest, declared in an act of the Federal Executive Branch, as long as the patent holder or its licensee **does not meet this need**, a compulsory, **temporary and non-exclusive license** may be granted, *ex officio*, to exploitation of the patent, respecting the rights of the respective owner.

- **Brazilians Bills No. 1,320/20 and No. 1,462/20, Parliament (Lower House)** – **presume** the patent holder cannot meet the needs

Proposal put forward by **India and South Africa** in **October** calls on the W.T.O. to exempt member countries from enforcing some patents, trade secrets or pharmaceutical monopolies under the TRIPS



WORLD TRADE
ORGANIZATION

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**Council for Trade-Related Aspects of
Intellectual Property Rights**

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**WAIVER FROM CERTAIN PROVISIONS OF THE TRIPS AGREEMENT FOR THE PREVENTION,
CONTAINMENT AND TREATMENT OF COVID-19**

COMMUNICATION FROM INDIA AND SOUTH AFRICA

1. On 11 March 2020, the World Health Organization (WHO) declared the coronavirus disease 2019 (COVID-19) to be a global pandemic, after having announced a related public health emergency of international concern (PHEIC) on 30 January 2020.
2. The World Trade Organization (WTO) has cautioned that the "Pandemic represents an unprecedented disruption to the global economy and world trade, as production and consumption are scaled back across the globe".¹ We have witnessed a break down in global supply chains coupled with growing supply-demand gaps.
3. Given this present context of global emergency, it is important for WTO Members to work together to ensure that intellectual property rights such as patents, industrial designs, copyright and protection of undisclosed information do not create barriers to the timely access to affordable medical products including vaccines and medicines or to scaling-up of research, development, manufacturing

LONG TERM SOLUTIONS

- ❖ To recover the costs from investments in R&D, the pharmaceutical industry determines the **research priorities** based on **market demands**, which do not always cover all the population's health needs.
- ❖ **Justification for intellectual property rights, from the economic theory perspective:** IP creates **incentives** for market players to invest in research, despite the high costs, since the inventor is given the possibility of being rewarded for its social value. **IP eliminates a market failure.**

❖ Vaccines:

- have **high** fixed costs for R&D
- relatively **low** manufacturing costs
- governments are in a strong position to obtain vaccines at a price that will cover **manufacturing costs**, not R&D costs
- time consistency problem: demand may be insufficient in normal times

❖ Vaccines generate **positive externalities** for society (such as the social benefit of being immunized by the vaccine). Society benefits more from an innovation than the payoff that the inventor will get (**private returns**), which generates a **market failure** and consequent **underinvestment** in this field of R&D.

Opinion

We Knew Disease X Was Coming. It's Here Now.

We need to stop what drives mass epidemics rather than just respond to individual diseases.

By **Peter Daszak**

Mr. Daszak is a disease ecologist.

Feb. 27, 2020



NEW HEALTH RESEARCH FUNDING MODELS

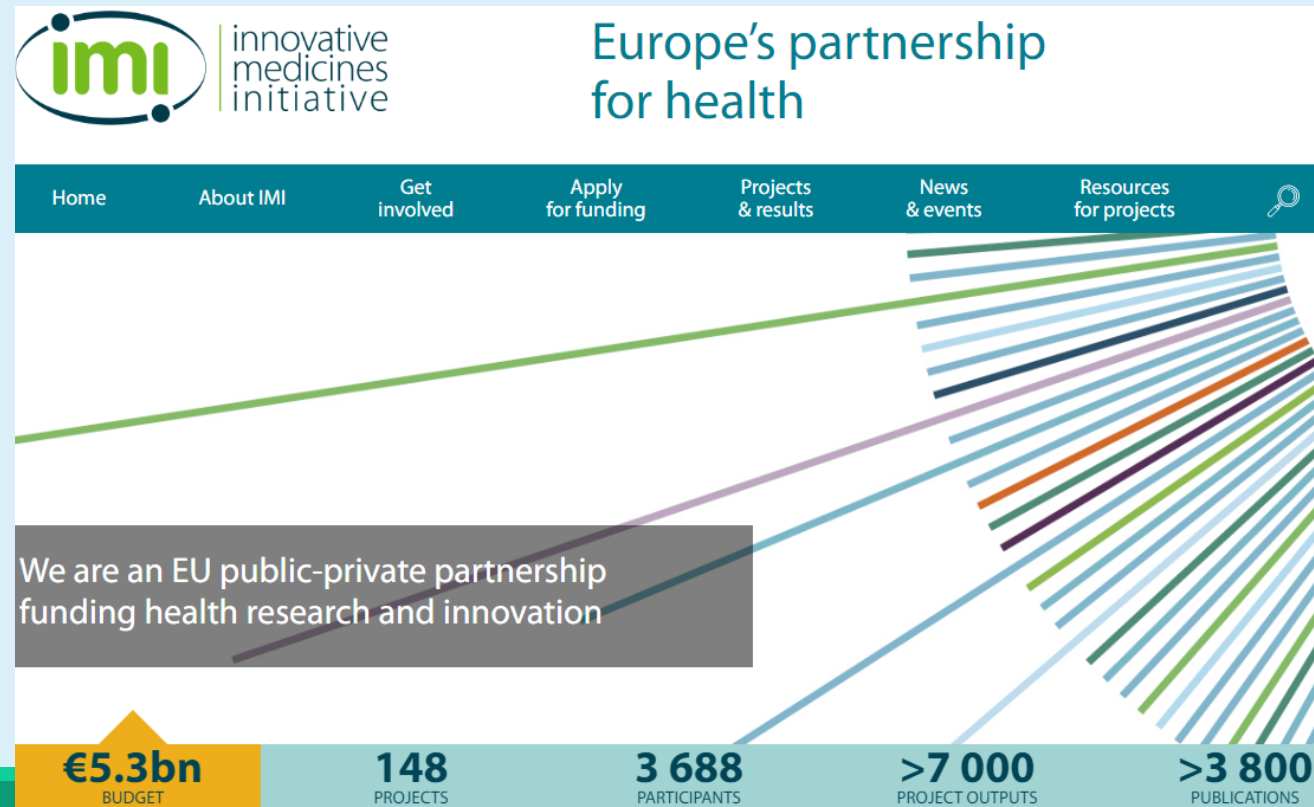
Proposals:

- (i) **setting research priorities** in the pharmaceutical industry's R&D needs.
For ex. virus outbreaks

OPINION | We Knew Disease X Was Coming. It's Here Now.

As Covid-19 strikes today and a spate of other pathogens are ready to emerge in the future, we continue to butt up against nature. Scientists estimate that there are 1.67 million unknown viruses of the type that have previously emerged in people. Discovering and sequencing them should be a priority — a simple case of “know your enemy.” In the aftermath of SARS, research on coronaviruses

(ii) Engage companies to do more research on vaccines and price them reasonably (i.e., close to production costs). It takes advantage of the skills that the sector has to develop the technology and bring it to the market, its manufacturing infrastructure, databases and employees. – For ex. **Public private partnerships**



(iii) facilitate the **coordination of public and philanthropic funders**, so that they gain space in the face of private initiative.

They are not under pressure to generate continuous revenue growth and to raise the price of medicines.

(iv) **strengthen national health research systems**, capable of developing and manufacturing medicines on their own. In Brazil there is a large public park of laboratories. For ex. Farmanguinhos.

Both aim to **reduce the dependence** of R&D on the private market's own incentives.



BEST SCIENCE FOR THE MOST NEGLECTED

We develop lifesaving medicines for people with neglected diseases around the world

Since 2003, the Drugs for Neglected Diseases *initiative* has developed 8 treatments for 5 deadly diseases, saving millions of lives.

❖ Evidence that market failures matter a lot:

- Today, vaccine developers are working with **unexpected speed** since the first genome sequence of the Covid-19 was released in January.
- **Fast acceleration of public and private funding**
- Millions, if not billions, of people **demand access to it**, and a significant fraction of consumers **are willing to pay a higher price** than the manufacturing cost
- Furthermore, most market failures related to R&D have disappeared as well.

❖ **Conclusion: Obvious progresses in public health, but some persistent failures:** The need to **reformulate the current pharmaceutical R&D model**, to **reduce the dependence** of R&D on the private market's own incentives.

Obrigada!
Gracias!

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