



UiO • **PluriCourts** – The Legitimacy of the International Judiciary
University of Oslo

International trade and its agreements – times of change

Seminar on trade agreements and public health, Oslo, 4 May 2017

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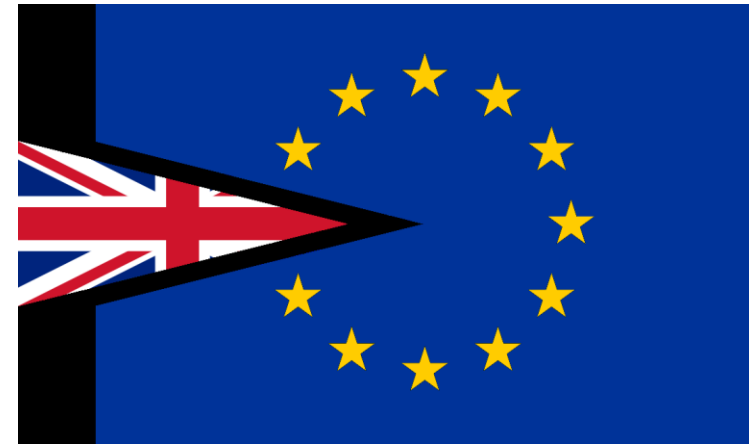
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A long list of current issues

- Brexit and US elections – isolationism? The end of «mega-regionals»
- Stalemate of the WTO Doha Round
- Increase in unilateralism
- Pressure for renegotiations
- Pressure on dispute settlement mechanisms
- Compliance
- Trade remedies
- Countermeasures
- «Trade and» – issues



Example: Outsourcing of IT services for health registries



- General Agreement on Trade in Services
 - Most favoured nation (art. II), but border trade, exemptions and free trade agreements
 - Domestic regulation (art. VI) – measures to be «administered in a reasonable, objective and impartial manner» + not undermine commitments
 - Monopolies (art. VIII) – duty to discipline exclusive service suppliers
 - Market access (art. XVI) – broad range of prohibitions depending on specific commitments
 - National treatment (art. XVII) – depending on specific commitments
 - General exceptions (art. XIV) – «necessary», public morals, human health

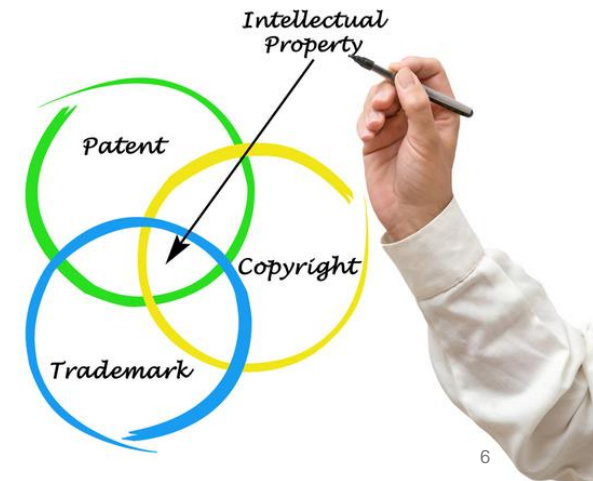


Outsourcing 2

- Government Procurement Agreement
 - «plurilateral», applicable to services, duty to implement in domestic legislation and domestic review procedures (art. XVIII)
 - Country-specific lists of institutions, thresholds and exceptions
 - Non-discrimination (art. IV)
 - Conditions of participation and qualification of suppliers (art. VIII and IX)
 - Technical specifications (art. X)
 - Limited tendering (art. XIII)
 - General exceptions (art. III) – similar to GATS but also «persons with disabilities» and «philatropic institutions»

Outsourcing 3

- TRIPS Agreement
 - Non-discrimination (arts. 3 and 4)
 - Copyrights – computer programs and compilation of data (art. 10)
 - Trademarks (arts. 15-21) – level of protection and Paris Convention
 - Patents (arts. 27-34) – including disciplines on compulsory licensing
 - General exception? (art. 8) provided «consistent with the provisions of this Agreement»



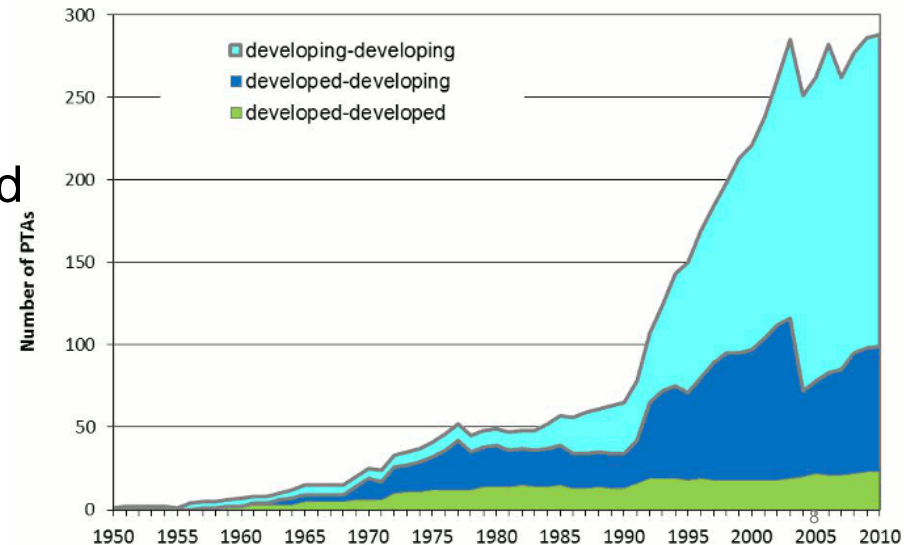
Underlying drivers – geographical scope

- Changes in production and consumption patterns
- Global institutions:
 - Avoid fragmentation,
 - Facilitate compliance through broad peer pressure,
 - Protect interests of «weak countries»
- Regionalism:
 - Regional integration,
 - Advance rule-making processes
- Bilateralism:
 - Improve bilateral relations,
 - Overcome specific challenges,
 - Prepare consensus at the regional or global level



Underlying drivers – subject matter

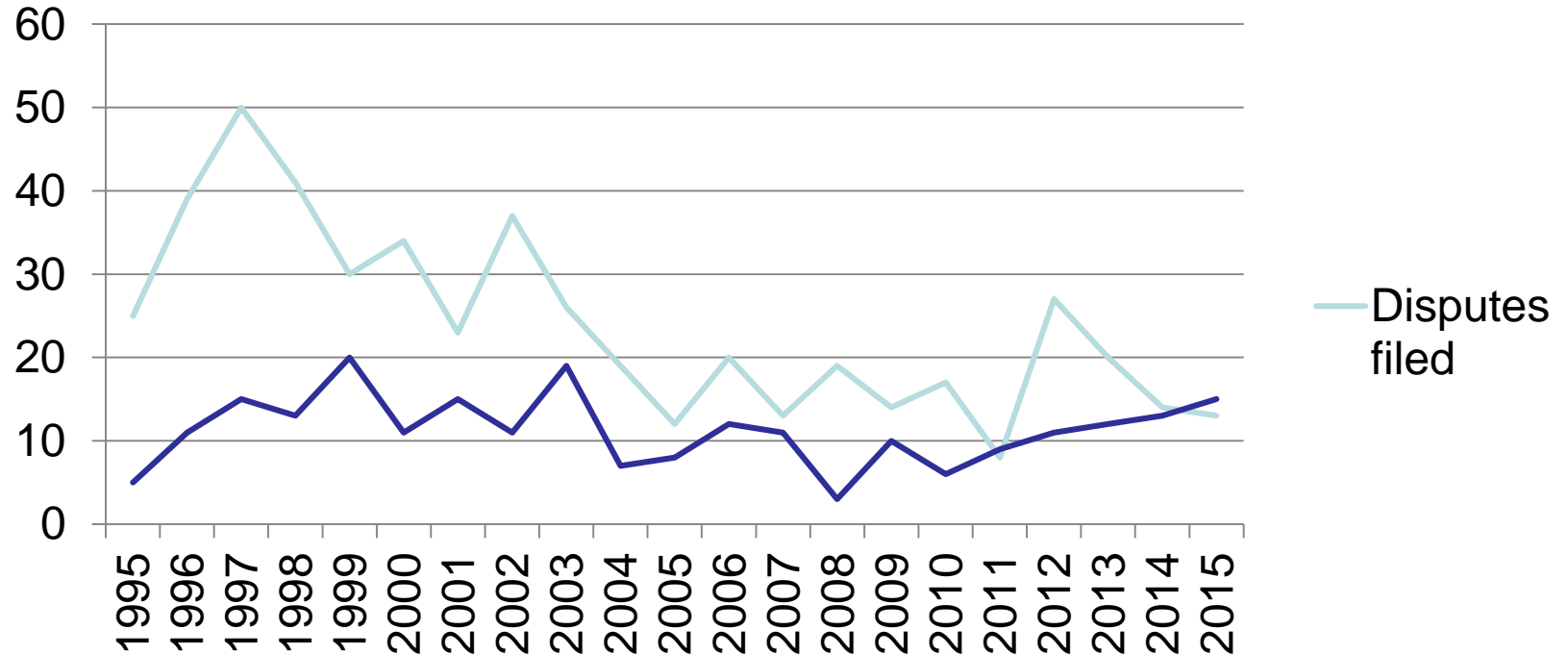
- Comprehensive
 - Package deals give participants selling points at home
 - Increase possibility of moving forward
 - Less politicized
- Semi-comprehensive
 - Ensure coherence of rules and institutional design
 - Overlaps with existing rules and institutions
- Issue specific
 - In-depth / advanced solutions
 - Technical issues



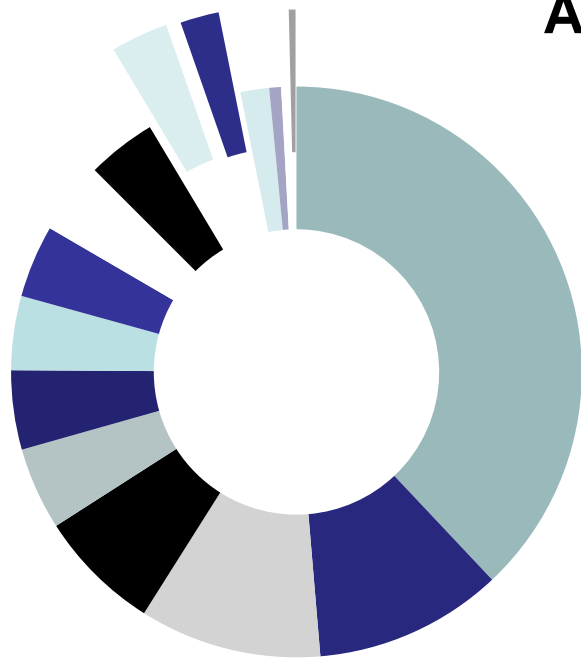
Long-term trends

- Further integration at the global level?
 - «Mega-regionalism»
 - Regionalism
 - Bilateralism
- Expanding into new subject areas?
 - Further developing the services regime
 - The issue of trade and investment
 - Developing country issues – agriculture
- Weakening of the DSM?
 - Controversies regarding (re)appointments
 - New modes of resolving disputes
 - Developing countries

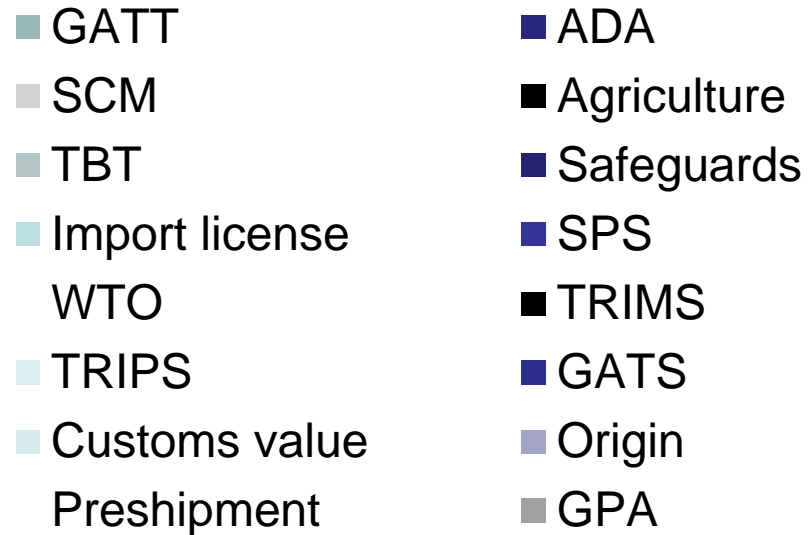
Number of cases initiated



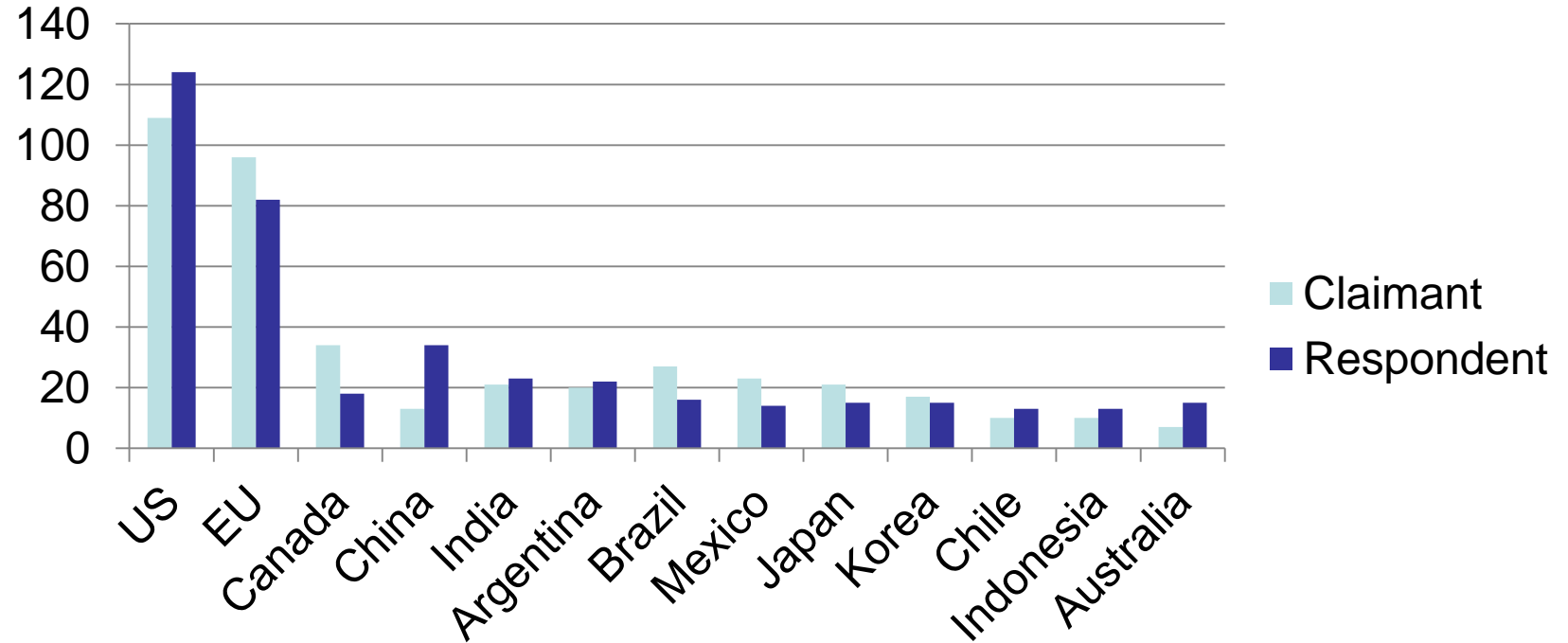
Types of claims



Agreements invoked



Which countries?



The «trade and» – issues

- Most important so far: environment, human rights, labour and health
- Have such issues gone away?
- Are such issues a main reason for the current standstill at the WTO?
- Are such issues likely to play any major role in the future development of the trade regime?