



Trade, Supply Chains and ISDS Risks

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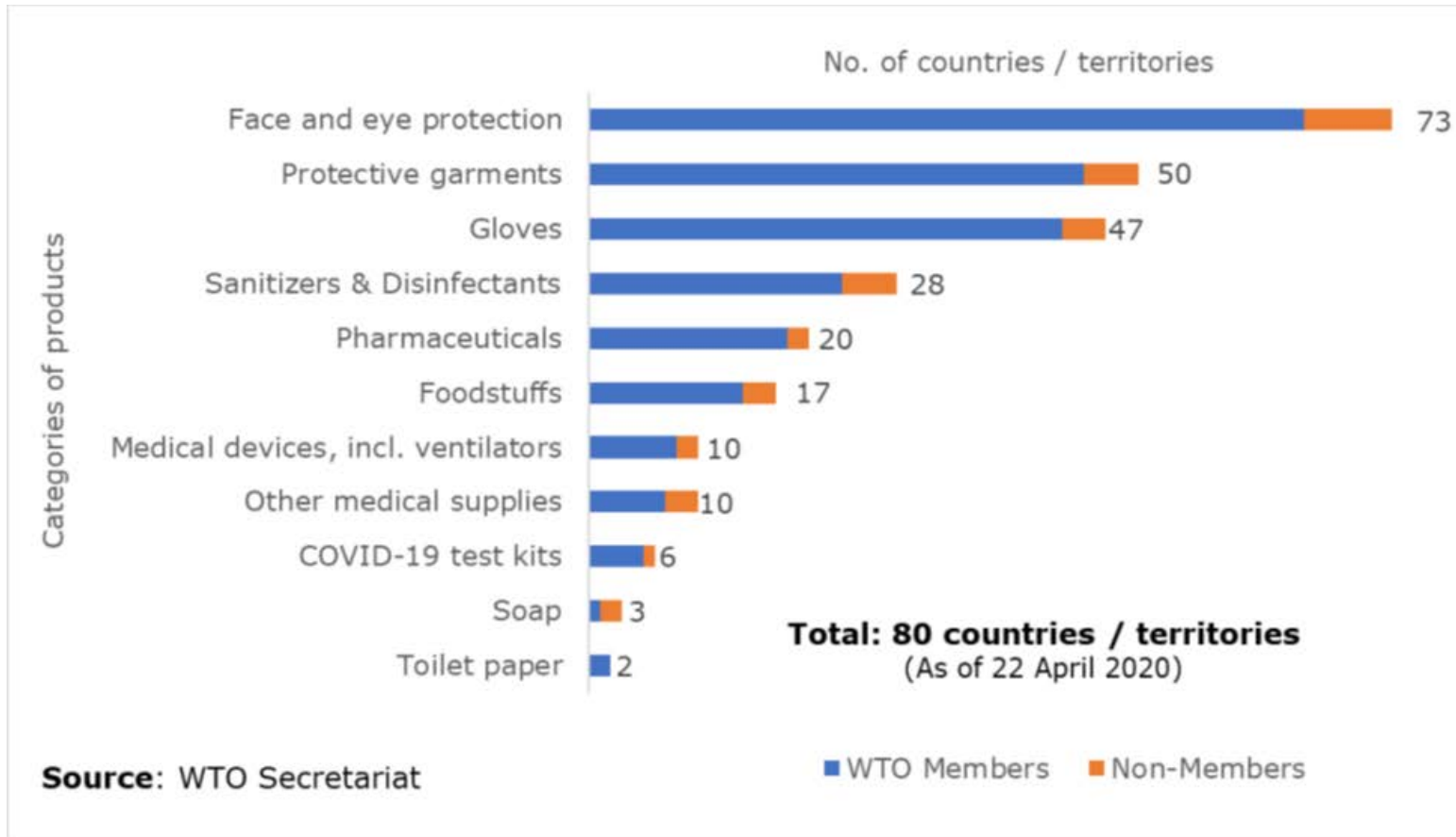
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WTO Notifications



- Members determine necessities to protect health and social welfare
- 256 new COVID-19 trade-related notifications (mid-May)
- 147 to increase trade (imports)
- 109 to restrict trade (exports)
 - Many since repealed
- Restrictions must be temporary, non-discriminatory, relieve critical shortages
- Could lead to deterioration in medical product global supply chains

TRIPS and intellectual property rights

Notifications:

1. Temporary suspension of admin procedures
2. New admin procedures to speed up patent filing
3. Make publicly available patent landscape data
4. New measures to speed-up compulsory licensing



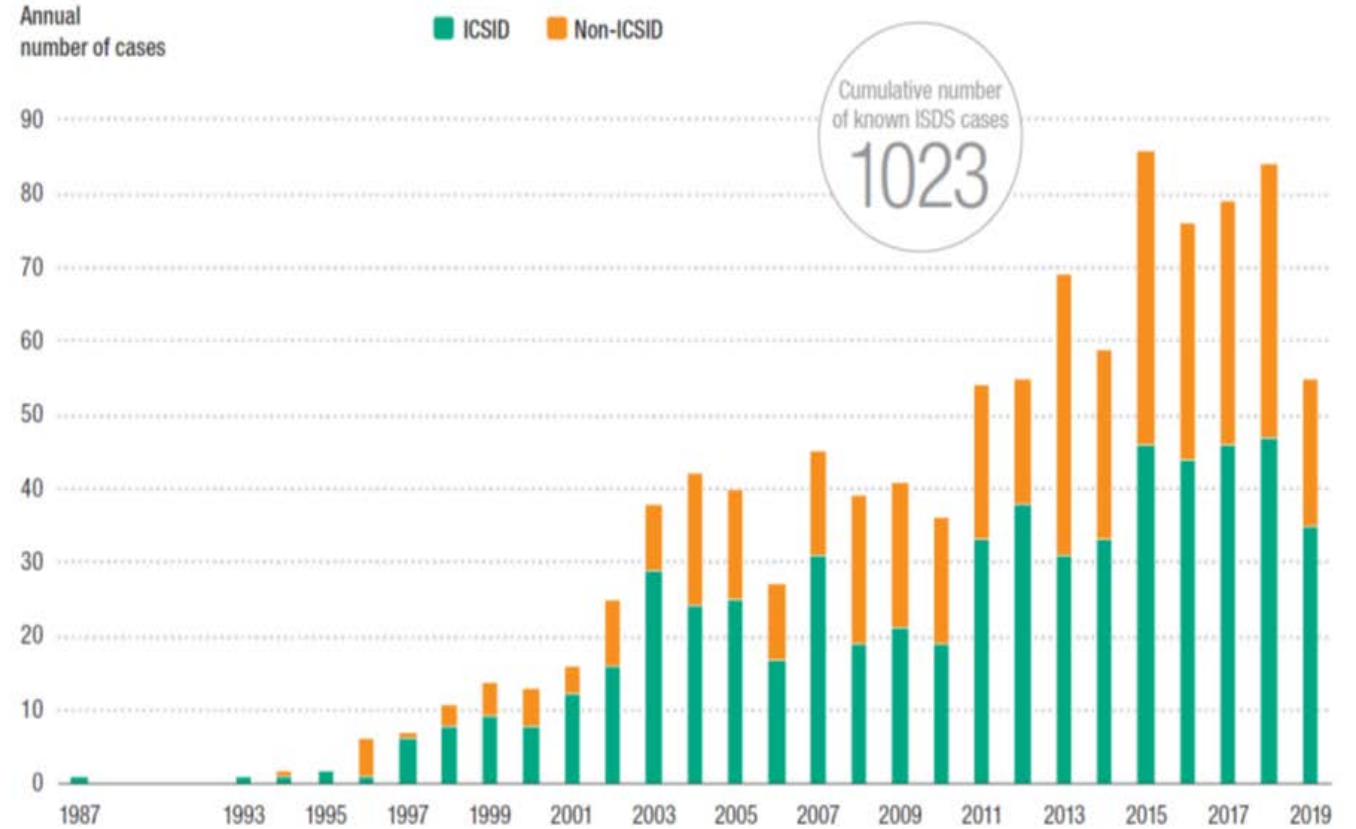
International Investment Agreements

- Bilateral and in regional trade agreements
- Allows foreign investors to sue governments before arbitration panels
- Few agreements until the 1990s, with over 2600 still in force
- Criticisms: expansive interpretation, little transparency, no appeals, conflicts of interest, size of awards, profits for investment lawyers



Key IIA Provisions

- National treatment
- Most favoured nation
- Full protection and security
- No direct expropriation
- *No indirect expropriation*
- *Fair and equitable treatment*
- Free transfer of capital



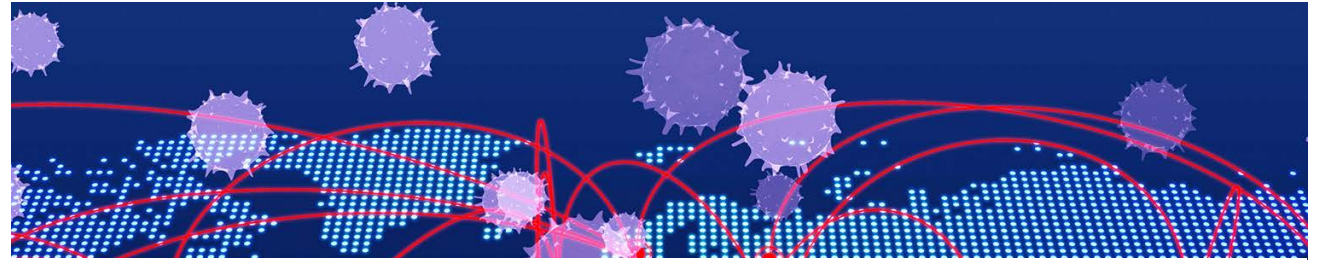
Pandemic Responses at ISDS Risk

- Travel bans/restrictions
- Requisitioning hotels/facilities
- Mandating supply production
- Reducing/suspending payments (rent, mortgages, utilities)
- Regulating prices of essential goods
- Tax measures affecting value of foreign investment
- Lockdowns affecting FDI related businesses
- Failures to prevent social unrest affecting value of foreign investment

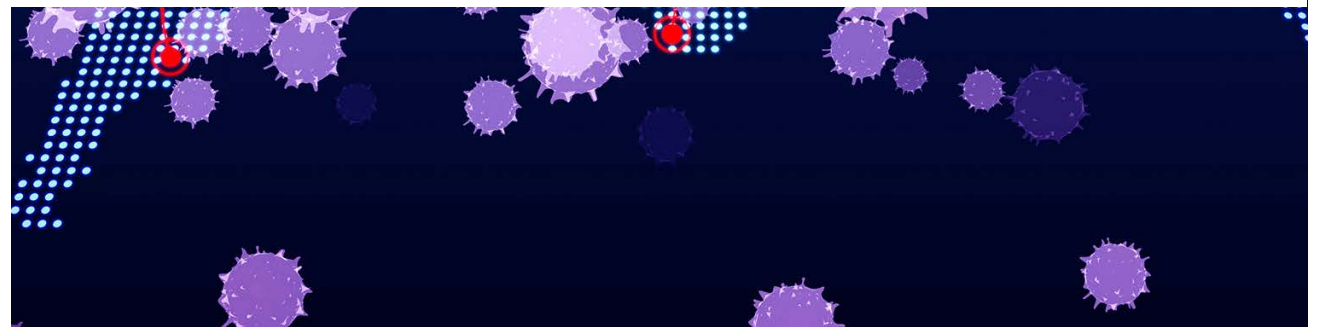


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“The lack of clarity of how vague treaty standards will apply to COVID-19 measures, and the fact that no tribunal is bound by a previous decision, may incentivize lawyers and third-party funders to speculate by bringing multiple claims challenging similar measures across the globe”



HOW TO PROTECT YOURSELF AND OTHERS FROM CORONAVIRUS



DO NOT TOUCH YOUR
FACE WITH YOUR HANDS



WEARING MASK



CLEAN YOUR HANDS OFTEN



USE A HAND SANITIZER



COVER COUGHS
AND SNEEZES



KEEP DISTANCE

Protecting Responses from ISDS

- Force majeure
- Necessity
- Distress
- Police powers
- Exceptions
- Withdraw consent
- Terminate IIAs
- Intergovernmental declaration exempting ISDS related to pandemic
- Remove/reform ISDS in new treaties