



Virtual Symposium – 25 years of the TRIPS Agreement

# TRIPS as a benchmark for subsequent norm setting in international and bilateral treaties

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# Coherence of the international IP system



TRIPS Agreement forms part of a coherent international IP system:

- “upstream” coherence by incorporating WIPO Conventions and treaties
- “downstream” coherence with subsequent international instruments

# Coherence of the international IP system



## Three-step test

- originated in Art. 9.2 Berne Convention (reproduction right only)
- TRIPS Agreement Art. 13, Art. 17, Art. 26.2, Art. 30
- WCT Art. 10 and WPPT Art. 16

## Relationship between Trademarks and Geographical Indications

- TRIPS Art. 22-24 and dispute settlement cases DS174/DS290
- Article 13.1 of the Geneva Act of the Lisbon Agreement recognizes the balance found in TRIPS as interpreted by WTO disputes

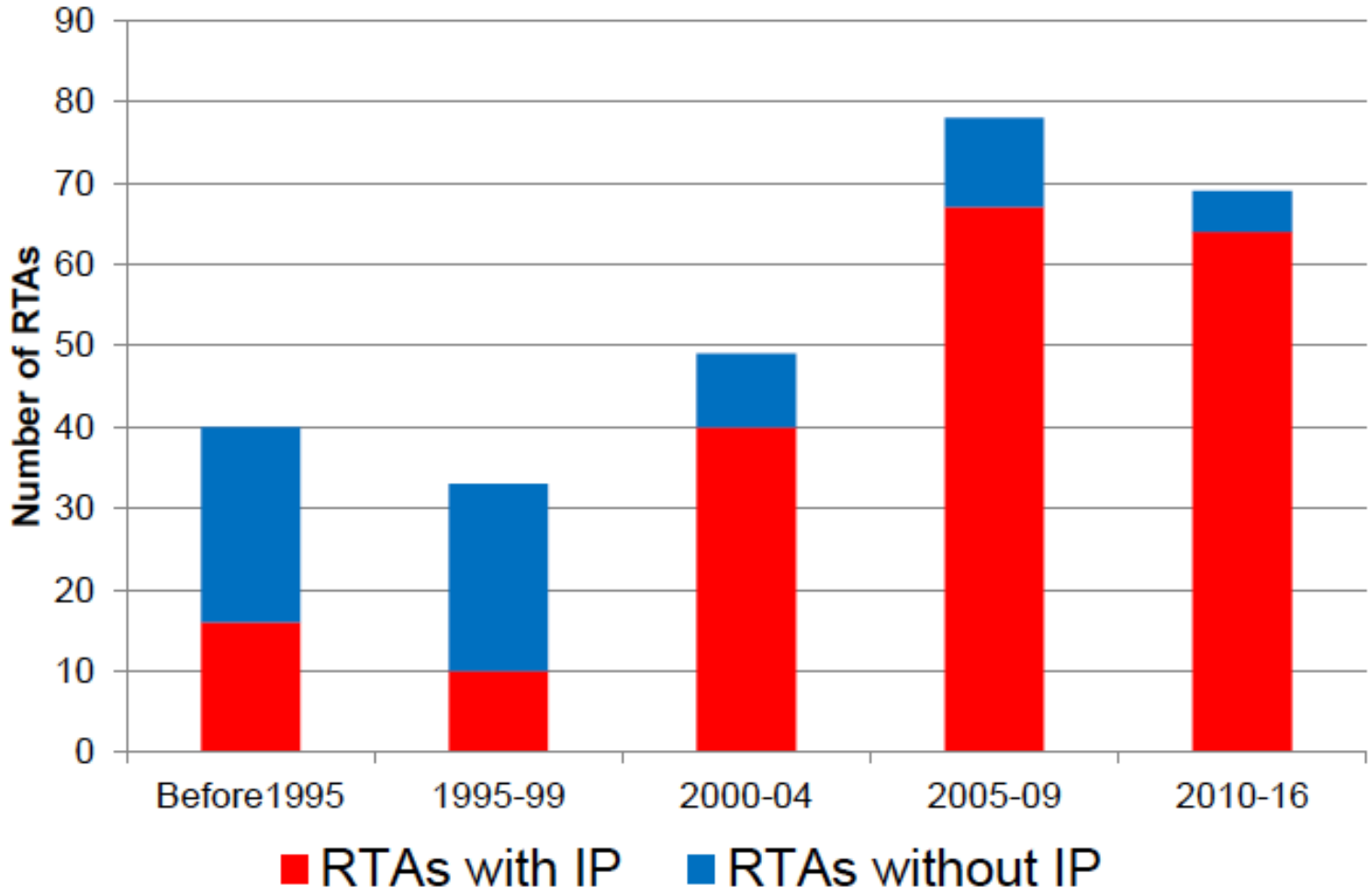
# WTO rules: Most-favoured nation principle



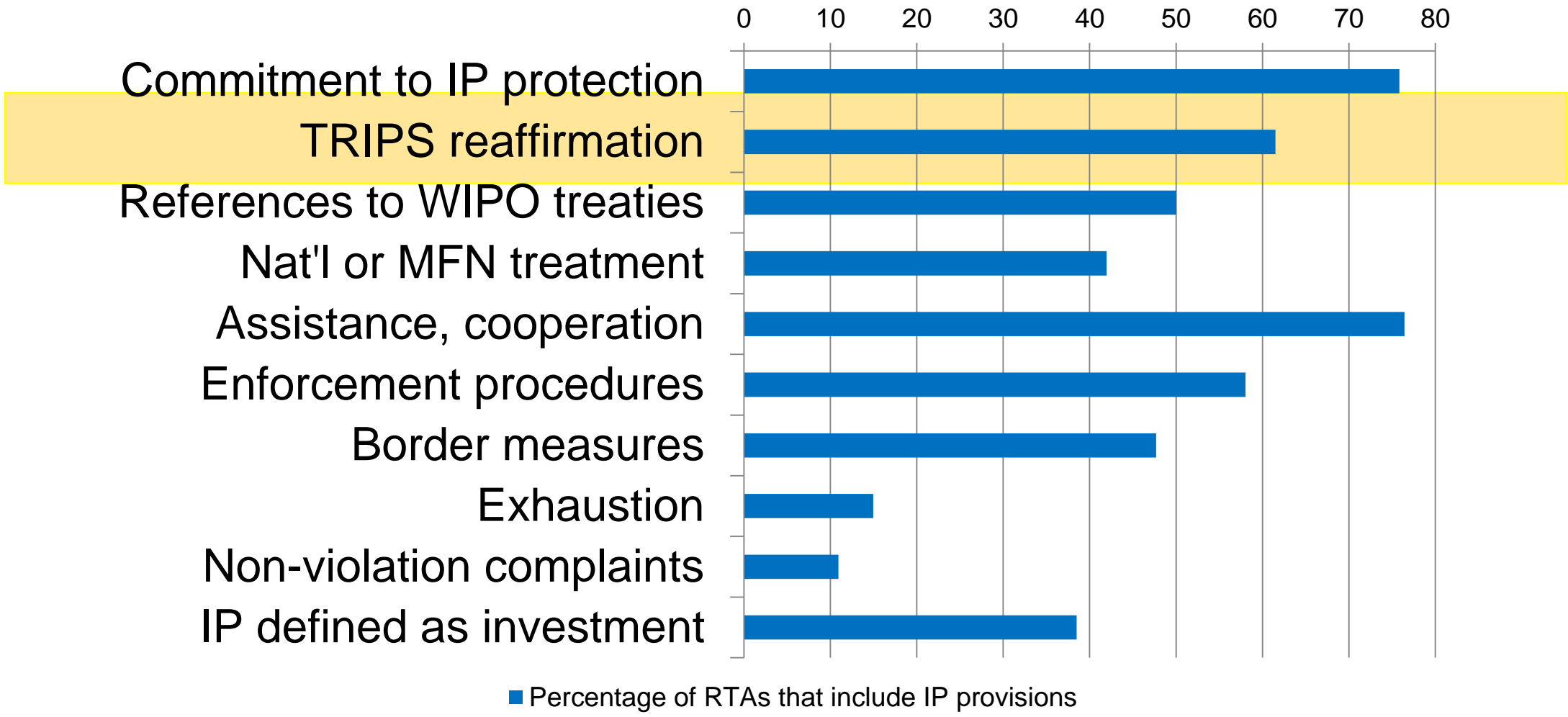
The MFN principle is established in:

- **Article I of GATT – Trade in Goods**
  - Exception for RTAs: Article XXIV
- **Article II of GATS – Trade in Services**
  - Exception for RTAs: Article V
- **Article 4 of TRIPS – Intellectual Property**
  - No general exception for RTAs

# IP content in RTAs



# RTAs containing general IP provisions



# Examples from FTAs and RTAs



## Republic of Korea – United States of America (KORUS FTA)

### ARTICLE 22.4: SCOPE OF APPLICATION

Except as otherwise provided in this Agreement or as the Parties otherwise agree, this Section shall apply ... or wherever a Party considers that: ...

(c) a benefit the Party could reasonably have expected to accrue to it under Chapter Two (National Treatment and Market Access for Goods), T... or **Eighteen (Intellectual Property Rights)(1)** is being nullified or impaired as a result of a measure that is not inconsistent with this Agreement, except that neither Party may invoke this subparagraph with respect to a benefit under Chapter Twelve (Cross-Border Trade in Services) or Eighteen (Intellectual Property Rights) if the measure is subject to an exception under Article 23.1 (General Exceptions).

**FN<sup>1</sup> Neither Party will invoke subparagraph (c) with respect to a measure affecting benefits under Chapter Eighteen (Intellectual Property Rights) during any period for which WTO Members have agreed not to initiate complaints of the type provided for under subparagraph 1(b) of Article XXIII of GATT 1994 under the TRIPS Agreement.**

# Examples from FTAs and RTAs



## REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT (RCEP)

### Article 11.3: Relation to Other Agreements

In relation to intellectual property, in the event of any inconsistency between a provision of this Chapter and a provision of the TRIPS Agreement, the latter shall prevail to the extent of such inconsistency.

### Article 11.8: The TRIPS Agreement and Public Health

1. The Parties reaffirm the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001. In particular, the Parties have reached the following understandings regarding this Chapter: ...





“... the reality of a multi-speed and multi-tiered world in which multilateralism, while being the highest expression of inclusiveness and legitimacy, is nevertheless the slowest solution.”

Francis Gurry  
Director-General of WIPO  
2014 acceptance speech

The TRIPS Agreement forms the central part of a coherent international IP system

- The solutions found in the TRIPS Agreement, and experiences from their application have informed subsequent international treaties
- The majority of bilateral/regional agreements on IP expressly situate themselves in the context of the multilateral IP system by reaffirming TRIPS, or recognizing its precedence
- The TRIPS regulatory framework, and many of its principles, is now confirmed and required by multiple legal instruments



# Thank you

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