



TRIPS as a benchmark for subsequent norm

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

Three-step test

- originated in Art. 9.2 Berne Convention (reproduction right only)
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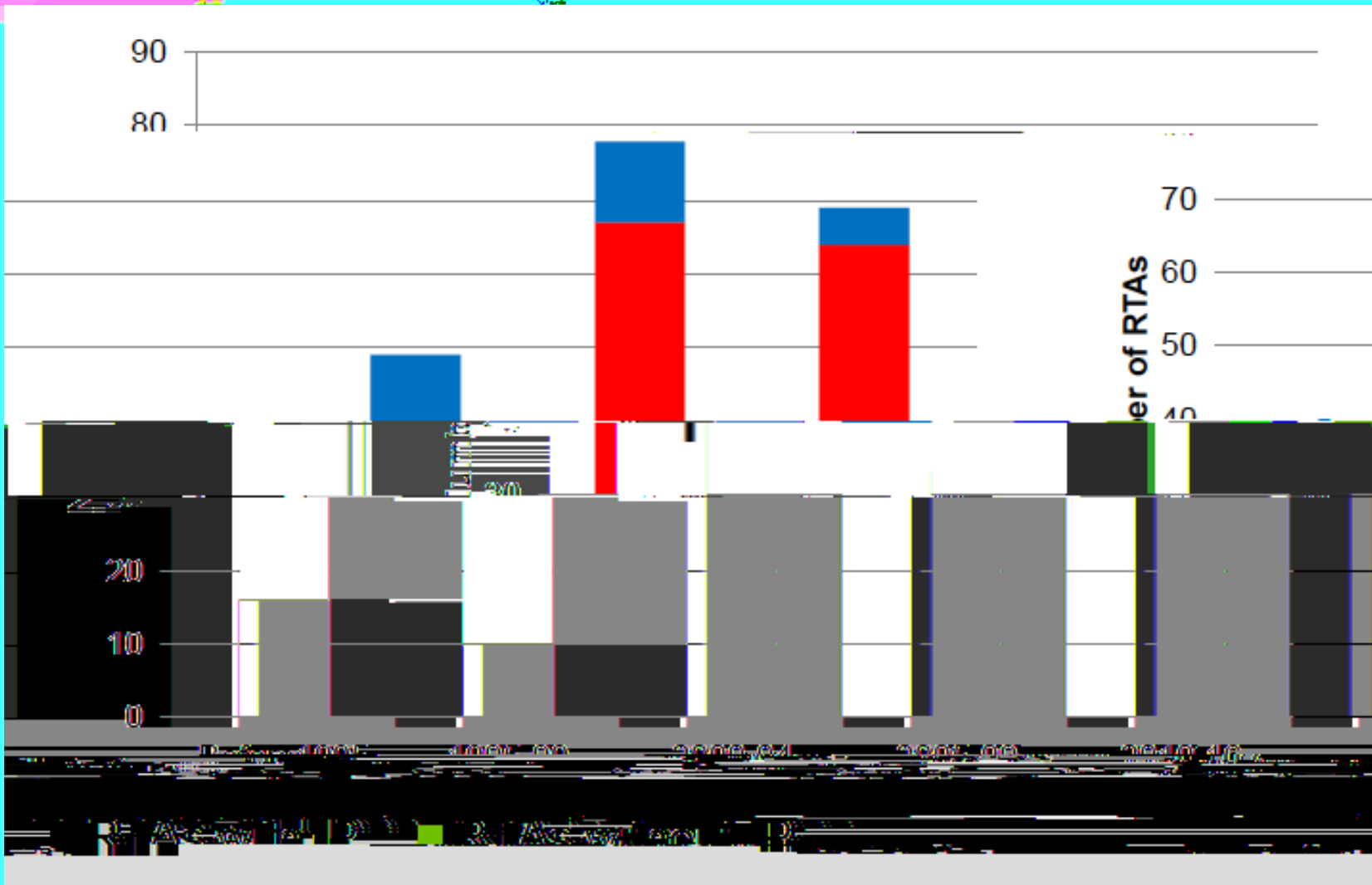
WTO rules: Most-favoured nation principle



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





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: ...

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

Conclusion



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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