

Are Multi-Lateral IP Treaties a thing of the past?







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- Coalition building is a fundamental value
- Multilateralism matters

"nothing is agreed until everything is agreed" **aka**the "single undertaking" rule

The WTO's Appellate Body does not have the quorum required as of December 10, 2018 when the terms of two of the remaining three Judges ended, effectively depriving the WTO of its ability to resolve international trade disputes. The last sitting Judge's term expired on November 30, 2020.

"The WTO no longer guarantees access to mandatory, two-tier, independent and impartial trade dispute resolution. This is a clear violation of the WTO's agreements".

European commission. Cited April 21, 2022.



From 2000 onwards there has been a growing tendency towards bilateral treaties between intergovernmental organizations like the EU and countries and regions outside of the EU which include IPRs.



Economist Jim O'Neill of Goldman Sachs creates the term "BRIC" believing the collective economies of Brazil, Russia, India/Bharat, and China would dominate global growth by 2050.



June 16, 2009 Russia Inaugural "BRIC" Summit



Brazil

Russia

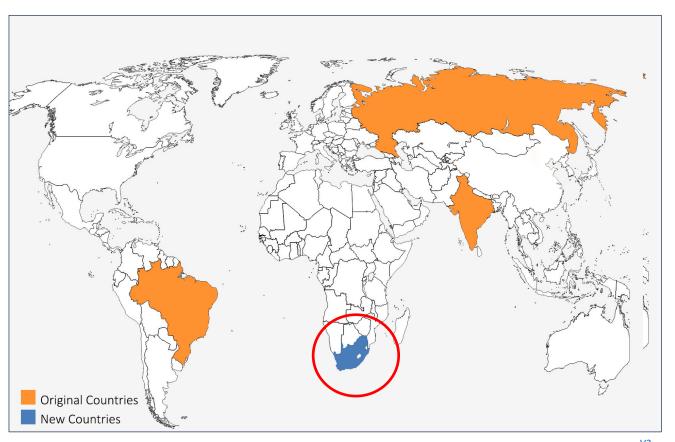
India/Bharat

China



April 16, 2010 - Brasilia, Brazil 2nd BRICS Summit





Brazil

Russia

India/Bharat

China

South Africa



WHY?

Interest in shoring up economic and trade mechanisms outside the "Western" framework.





June 2022 - Beijing, China



Waiting in the wings 19 countries participate in an expanded BRICS format

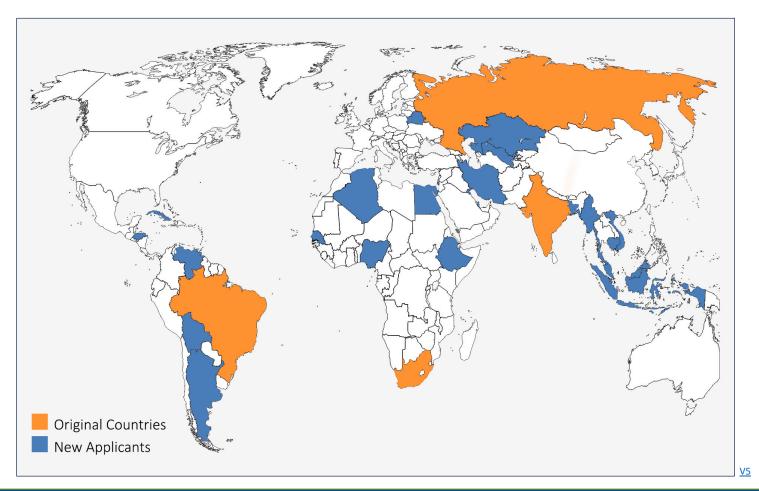


Algerian President, Abdelmadjid Tebboune BRICS Summit, Beijing, June 2022





June 2022/2023 BRICS 24 new applicant countries



Argentina Bahrain Bangladesh Belarus **Bolivia** Cambodia Cuba Egypt Ethiopia Fiji **Honduras** Indonesia Iran Kazakhstan Kuwait Malaysia Nigeria **Palestine** Senegal **Thailand** Uzbekistan Venezuela Vietnam

Algeria



2023 – UN predicts the world economy will grow 2.3% in 2023



BRICS:

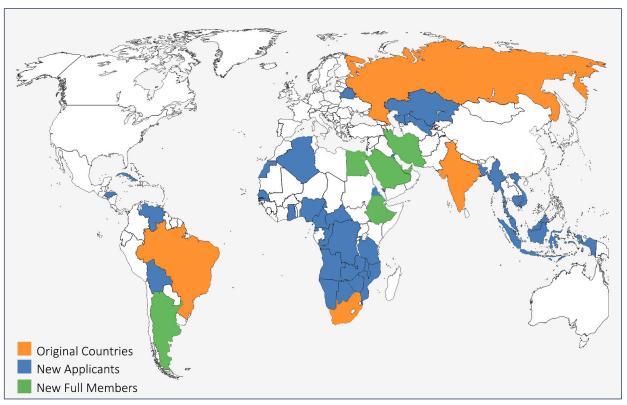
- Comprises: the world's largest countries by population, area, GDP, and GDP PPP
- 26.7% of the land surface
- 41.5% of the population
- 26.6% of the nominal GDP (market rate of all goods/services produced)
- China leads with respect to GDP PPP (based on purchasing power parity

 the value of goods/services produced in the country with respect to
 the USD.)



BRICS+ August 2023 - 15th Summit

Invited: African Union, Arab Maghreb Union, Organisation of Islamic Cooperation, United Nations, ASEAN + 34 countries.



Algeria Indonesia
Angola Iran
Argentina Malawi
Bangladesh Macedonia
Belarus Namibia
Bolivia Nigeria
Botswana Palestine

Cameroon Sahrawi Arab Democratic

Central African Republic

China Congo Cuba

DR Congo Egypt Ethiopia

Equatorial Guinea

Eritrea Ghana Republic São Tomé and Principe Saudi Arabia

Senegal

South Senegal

Tanzania

United Arab Emirates

Zambia Zimbabwe

<u>V6</u>



BRICS+6 – January 1, 2024



Effective January 1, 2024

Brazil

Russia

India/Bharat

China

South Africa

Argentina

Egypt

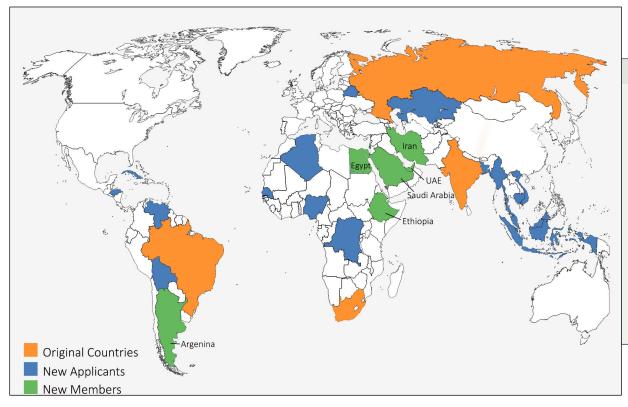
Ethiopia

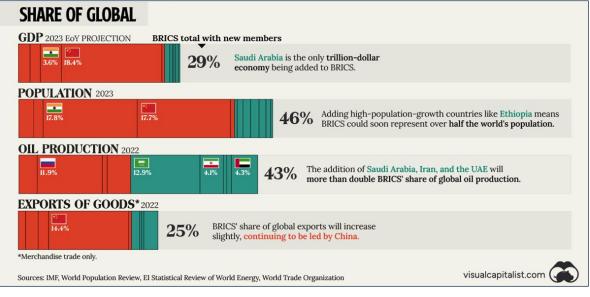
Iran

Saudi Arabia

United Arab Emirates







V7, Live link:

https://www.visualcapitalist.com/visualizing-the-brics-expansion-in-4-charts/



G7 + G20 – "The West versus The



| Rest"? |
|--------|
|--------|

| Argentina * | |
|---|--|
| Australia Brazil * Canada China * France Germany India/Bharat * Indonesia Italy | Mexico Russia * Saudi Arabia * South Africa * South Korea Turkey United Kingdom United States European Union African Union * Denotes members of both G20 8 |
| | Argentina * Australia Brazil * Canada China * France Germany India/Bharat * Indonesia Italy Japan |

★ Denotes members of both G20 & BRICS+6





<u>V9</u>

EU & UK (and Brexit...)

- regional intergovernmental organisation
 - EU enters into trade negotiations





EAEU - May 29, 2014



EAEU Trademark and Appellation of Origin Treaty(in force since April 26, 2021)

Armenia (January 2, 2015)
Belarus (January 1, 2015)
Kazakhstan (January 1, 2015)
Kyrgyzstan (August 12, 2015)
Russia (January 1, 2015)



<u>V10</u>







Trade Marks (Madrid)

- UK (1995)
- EU (2004)
- 26 of the current 27 EU Member States



<u>V10</u>

Designs (Hague)

- UK (13 June 2018)
- EU (1 January 2008)
- 19 of the 27 current EU Member States:

| Belgium Bulgaria Croatia Denmark Estonia Finland France | Germany Greece Hungary Italy Latvia Lithuania Luxembourg | Netherlands Poland Romania Slovenia Spain |
|---|--|---|
|---|--|---|



Appellations of Origin (Lisbon)

| Territory | Lisbon Agreement | Stockholm Act | Geneva Act |
|----------------|---------------------|------------------|-------------------|
| Bulgaria | ✓ | √ | × |
| Czech Republic | ✓ | ✓ | ✓ |
| France | ✓ | √ | ✓ |
| Hungary | ✓ | ✓ | ✓ |
| Italy | ✓ | √ | × |
| Portugal | ✓ | ✓ | × |
| Slovakia | ✓ | ✓ | × |
| EU | × | × | √ (FEBRUARY 2020) |





And the importance of cheese....







Latin America + The Caribbean





33 Countries or territories

Antigua and Barbuda

Argentina Bahamas

Barbados

Belize

Brazil Bolivia

Chile

Colombia

Costa Rica

Cuba

Dominica

Dominican Republic

El Salvador Ecuador

Haiti

Honduras

Grenada

Guatemala

Guyana

Jamaica

Mexico

Nicaragua

Panama

Paraguay

Peru

Saint Kitts and Nevis

Saint Lucia

St. Vincent and Grenadines

Suriname

Trinidad and Tobago

Uruguay Venezuela

<u>V11</u>



Latin America: Are Multi-Lateral IP Treaties a Thing of the Past?

NO... but there are challenges



CAN

The Andean Community of Nations (former Andean Pact)

| Membe | rs: |
|-------|-----|
|-------|-----|

Bolivia Colombia

- '

Ecuador

Peru

Associate Members:

Argentina

Brazil

Chile

Paraguay

Uruguay

Observers:

Panama

Mexico

Spain





CAN

- Decision 486 September 14, 2000
- In force December 1, 2000
- IPR system of the Andean Community
- Incorporates the requirements of TRIPS (Paris Convention)

Court of Justice of the Andean Community (TJCA)



MERCOSUR

Members:

Argentina

Brazil

Paraguay

Uruguay

Associate Members:

Bolivia

Chile

Colombia

Ecuador

Guiana

Suriname





MERCOSUR Harmonization of IPRs, Gls, and Marks

Protocols discussed but <u>NOT</u> ratified by all member states therefore <u>NOT</u> enacted.





UNASUR

Long-term goal: creation of a continental free trade zone, requiring rules on IP rights.

Members: Argentina Guyana

Bolivia Paraguay

Brazil Peru

Chile Suriname

Colombia Uruguay

Ecuador Venezuela



21st Open Forum London, England 4-7 October 2023

ALADI (replacing ALALC)

Members: Argentina Ecuador

Brazil Mexico

Bolivia Paraguay

Chile Peru

Colombia Uruguay

Cuba Venezuela

* Less important regionally than UNASUR



Latin America & The Caribbean: The Main Regional Agreements



Madrid Members:

Antigua and Barbuda

Belize

Brazil

Chile

Colombia

Cuba

Jamaica

Mexico

Trinidad & Tobago

https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=B&bo_id=20

- Multiclass system for national filings still pending
- Perceived inequities:

national trademark applicants and registrants must appoint a legal representative in the country

VS.

holders of International registrations need only appoint a representative when there is the need to submit a petition to the BTO

- Non-traditional marks and slogans.
- "Dead wood" implementation of a "no use" declaration has been implemented.

Madrid and the PCT in Latin America



YES? WHY?

NO? WHY NOT?

Latin America and Caribbean



PCT – 23 Members

Barbados Dominican Republic Nicaragua

Belize El Salvador Panama

Brazil Ecuador Peru

Chile Grenada Saint Kitts and Nevis

Colombia Guatemala Saint Lucia

Costa Rica Honduras Saint Vincent + The

Cuba Jamaica Grenadines

Dominica Mexico Trinidad and Tobago

Latin America and Caribbean

PCT

Countries hesitating to become members:

Argentina

Bolivia

Venezuela

Guyana

Uruguay

Paraguay

Etc..

- Issues in the region
- Future Developments





June 28, 2019 Latin America Mercosur and European Union



EU + Argentina, Brazil, Paraguay, Uruguay

EU negotiating bilaterally beginning in 2000

Gls: wines, Spirits, beers and food products and protection of names of traditional Mercosur Products.

- Cachaca (Brazilian spirit)
- Mendoza (Argentina wine)
- Bilateral agreement recognizes that the vast majority of companies in EU & Mercosur are small and medium-sized enterprises (SMEs)



Country Scale History Population + diversity

Distinguishing features of China?

- Economic system
- Desire and efficiency in advancing innovation
- Adaptability





Internationally China joins WIPO in 1980...



- December 19, 1984 TRIPs (came into force on January 01, 1995) adopted in China on December 11, 2001
- Madrid in 1989 most designated Madrid member since 2012
- PCT became a PCT contracting state on January 01, 1994, becomes top filer in 2019
- May 5, 2022 China joined Hague system; "Apostille Convention" will become effective in China on November 07, 2023
- July 2014 WIPO opens a dedicated China office in Beijing



The Importance of China as a WIPO Signatory



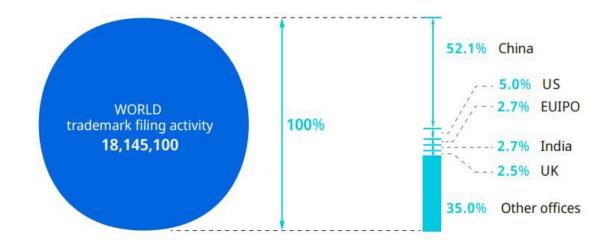
China leads the world in IP applications (WIPO 2022)

Patents 46.6%

Trademarks 52.1%

Designs 53.2%

Gls 9,000 Gls (2021), up 6.8% on the previous year



EUIPO is the European Union Intellectual Property Office. Source: WIPO Statistics Database, September 2022.

Nationally China 1980...2023



- 2008 Launch of Chinas national IP strategy.
- Amends the Trademark Law 4 times...
- Adopts the concept of punitive damages and malicious infringement
- TM 5 (Trademark 5)
- Outline for Building a Strong Intellectual
 Property Country 2021-2035" in September 2021





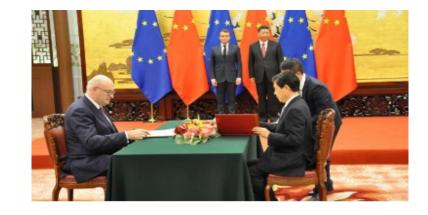
Regionally China + The ASEAN community





ASEAN IP Rights Action Plan 2016-2025 CHINA-ASEAN Cooperation and Development Forum on Combating Infringement and Counterfeiting in Guangxi Province on July 18, 2023

Exploration and Promotion of Internationalization Process of GIs



China 2023 looking forward...

- Diversity
- Vitality
- Globalisation

Senegal

Somalia

Sudan

Togo

Tunisia

Uganda

Zambia

Zimbabwe

Tanzania

Seychelles

Sierra Leone

South Africa

South Sudan





Algeria Gabon Angola Gambia Benin Ghana Botswana Guinea **Burkina Faso** Guinea-Bissau Burundi Kenia Cabo Verde Lesotho Cameroon Libya Central African Liberia Republic Madagascar Chad Mali Comoros Malawi Congo Mauritania Côte d'Ivoire **Mauritius** Djibouti Marocco Mozambique Egypt Eritrea Namibia Eswatini Niger Ethiopia Nigeria **Equatorial Guinea** Rwanda

Sao Tome & Principe

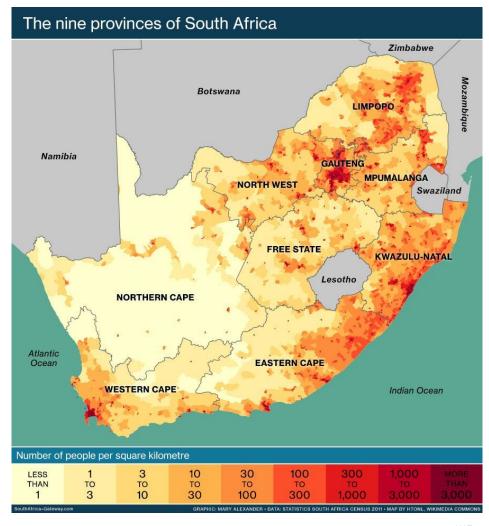
DR Congo

IP Protection in Africa



- African Union AU
- Majority of AU member states have national IP laws
- ARIPO African Regional Intellectual Property Organization
- OAPI African Intellectual Property Organization
- PAIPO Pan-African Intellectual Property Office.
 Adopted in 2016 but yet to come in force
- WIPO
- AfCFTA 2018 New opportunity for intra-African trade, including IP

AfCFTA + South Africa





The Potential of AfCFTA



1.4 BILLION people in 54 countries (excluding Eritrea)



Real GDP growth @ 3.8% <u>above</u> Global average of 3.4%



Diversified Economies



18 African countries projected to experience growth rates > 5% in 2023 and that number of countries will increase to 22 in 2024



Africa includes 5 of the world's fastest growing economies: Benin, Ivory Coast, Ethiopia, Rwanda, and Tanzania

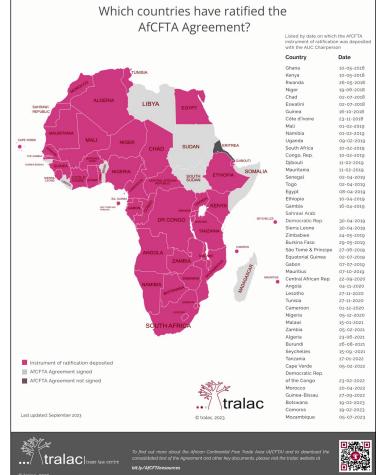


The African Continental Free Trade Agreement (AfCFTA) 2018 (46 of 54)

21st Open Forum London, England 4-7 October 2023



- Effective January 1, 2021, entered into force May 2022
- Purpose: create a single market similar to the EU
- 3 protocols including an IPR Protocol
- Phase 1: goods, services, rules of origin
- Phase 2: investment, competition policy + **IPRs** included
- Octobr 7, 2022 AfCFTA Secretarial launched ACFTA Guided Trade Initiative





AfCFTA IPR Protocol

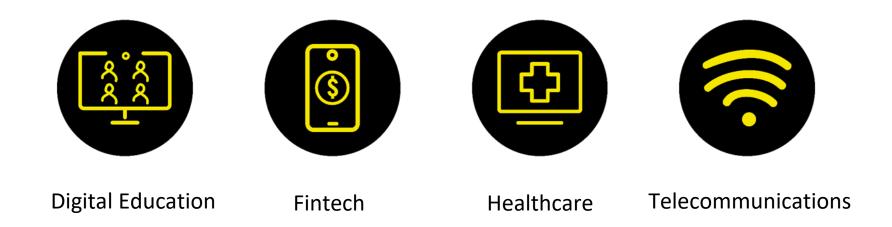


Negotiations are ongoing

"The IPR Protocol can serve as a catalyst for technology transfer, technology diffusion and the economic transformation of Africa's economy from one that is primarily resource-based, to one that is driven by knowledge information and ideas"

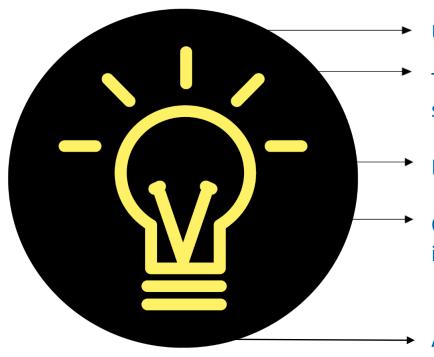
Secretary-General of the African Continental Free Trade Area (AfCFTA) Mr. Wamkele Mene

Africa's potential in trending sectors for IP and investment:



The Promise: IPRs and 90% of the Value of S+P 500 companies

IP Rights in AfCFTA



Ultimate goal – all African economies will be highly developed

Technology transfer and unhindered movement of goods and services

Extended markets for IP owners to earn income

Opportunities for least developed countries to learn from inventions and products from more developed ones,

Awareness that large percentage of businesses are SMEs



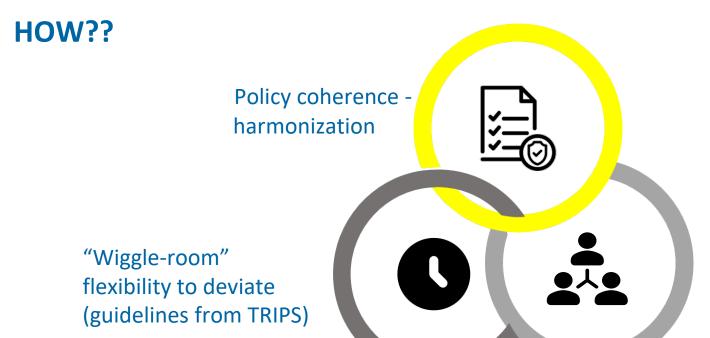
Risks?

Exposure of these IP assets in markets where creators have minimal controls . . . MUST have universal standards for protection, as enshrined in TRIPS



Effective Implementation of AfCFTA?

Balancing the needs of countries at different stages of economic and IP development + maintaining their engagement + interest in these systems:



Central dispute resolution body legislation backed by effective administration = effective protection of IP

Challenges to AfCTFA

1. War, drought, famine, poverty, health, education issues....

2. Diverse Legal Systems

3. Varying Development Levels

4. Capacity / infrastructure Constraints

5. Lack of
Awareness of
protections avail
able

6. Cultural and Traditional Knowledge 7. Global vs. Regional Obligations

8. Technical Complexity

9. Lack of Enforcement Mechanisms

10. Political and Policy Priorities

11. Resistance to Change

12. Negotiation and Consensus Building

13. Post-COVID Disillusionment

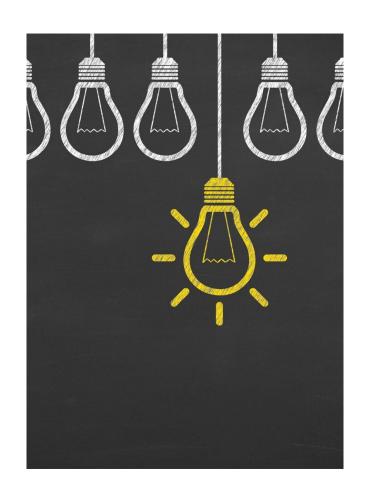
14. CulturalDiversity across54 countries



Benefits of AfCFTA to African IP?



- Acceleration of Harmonization and alignment
- Stronger bargaining power WIPO
- Collective negotiation power
- Common development goals which resonate with WIPO'S objectives
- Influence over global IP agenda
- Capacity building and collaboration
- BRICS+6 (August 2023)
- G20+AU (September 9, 2023)





How Does the IP World Contribute to AfCFTA?



- Organizations like FICPI, AIPPI, INTA etc. to engage with WIPO and Regional and National offices;
- WIPO technical support to National Offices;
- Practitioners continue to drive awareness of IP matters both domestically and internationally
- Pro-bono support of SMEs, etc...

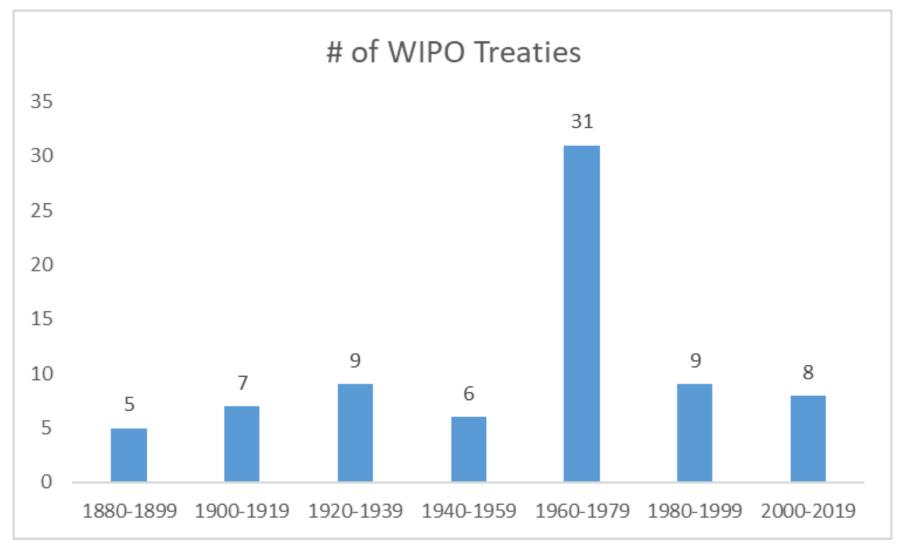




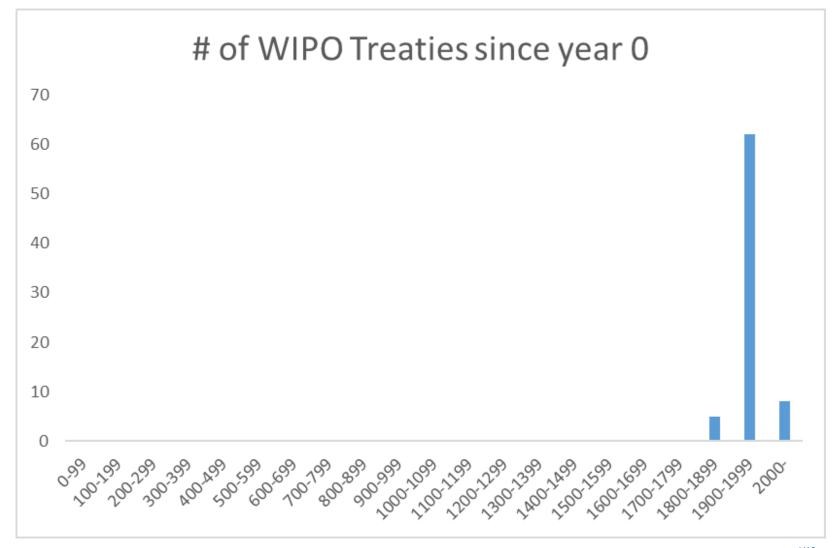
Have multilateral IP treaties become a thing of the past?



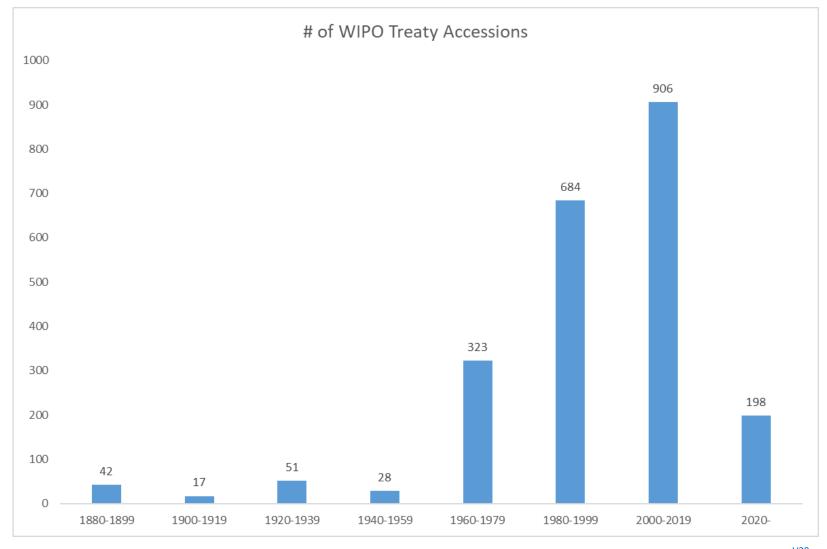






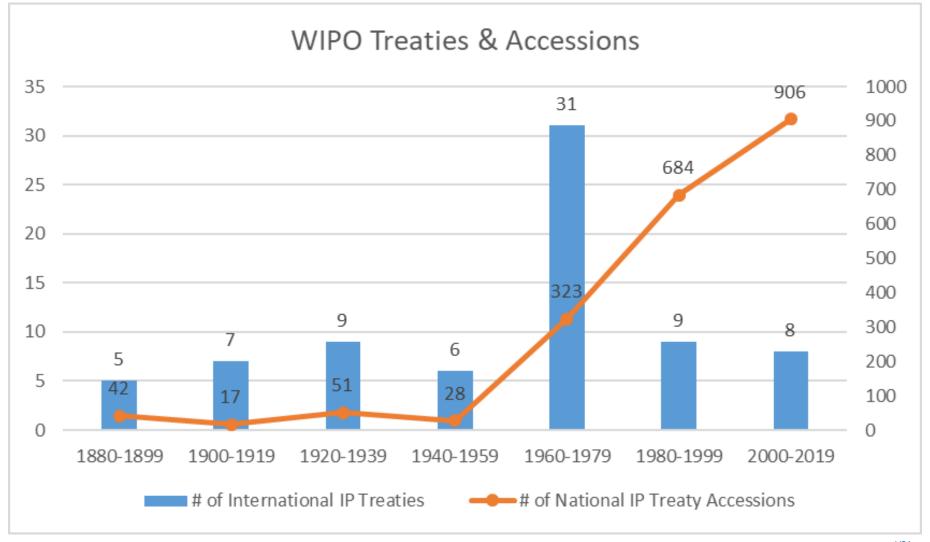




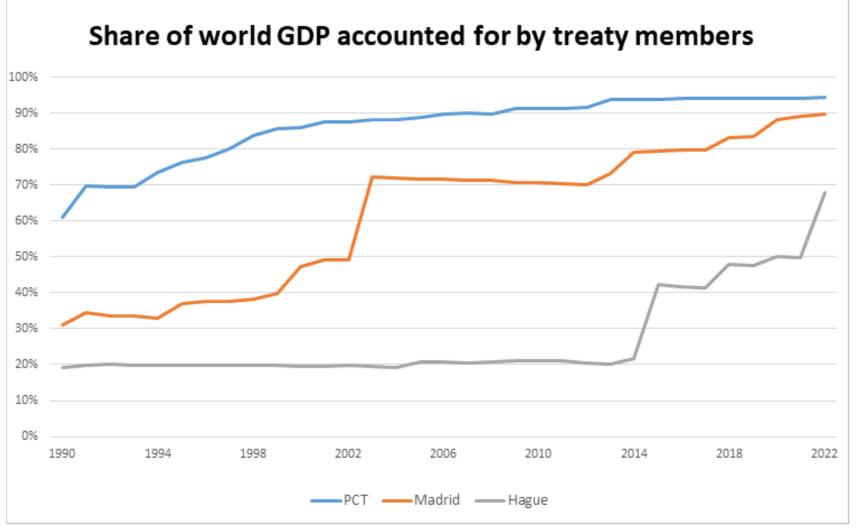


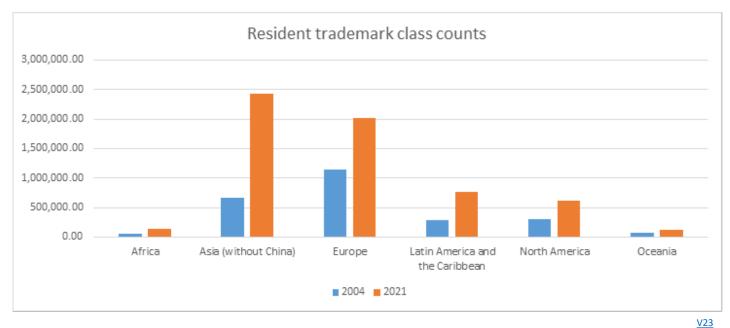


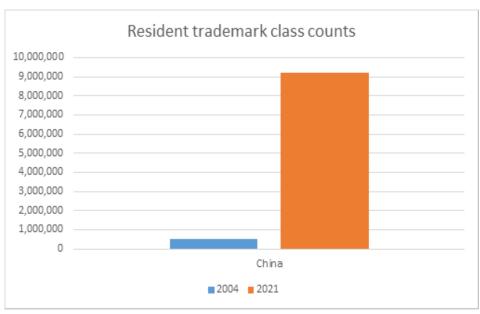












<u>V24</u>





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