

Intellectual Property in Free Trade Agreements

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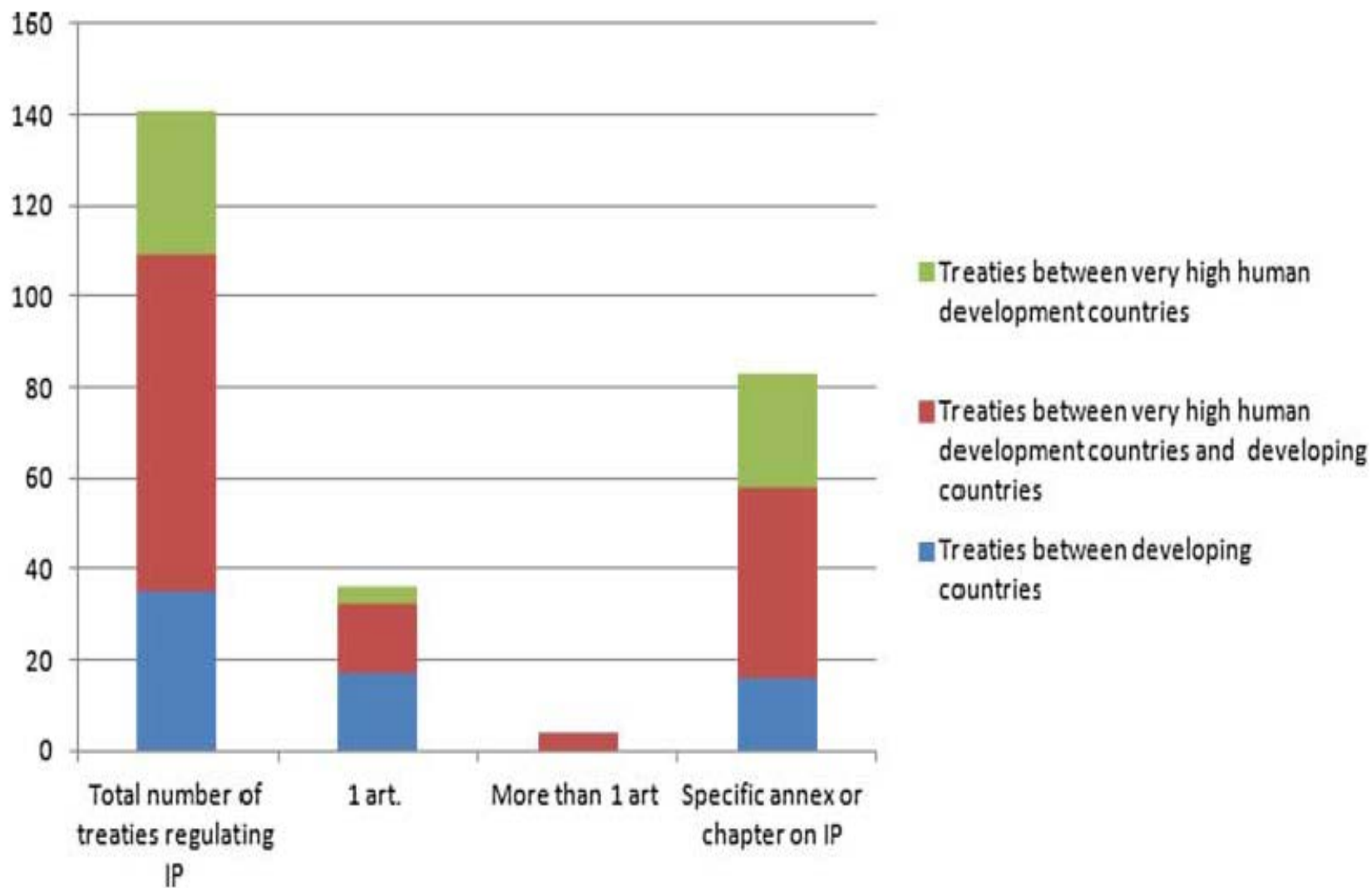
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Outline

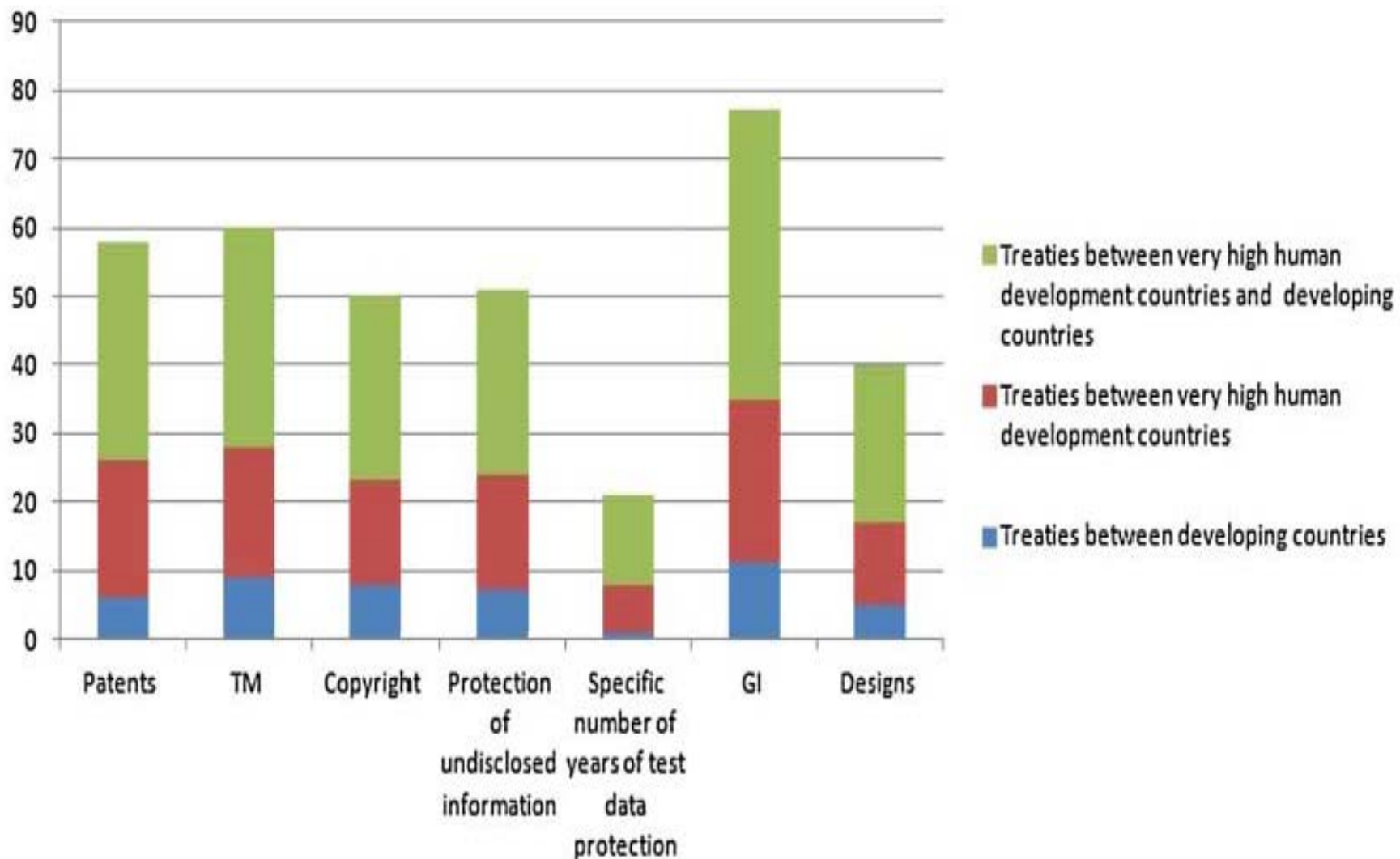
- Intellectual property and FTAs generally
- Current treatment in FTAs
- Trends for the future

Trade & Intellectual Property

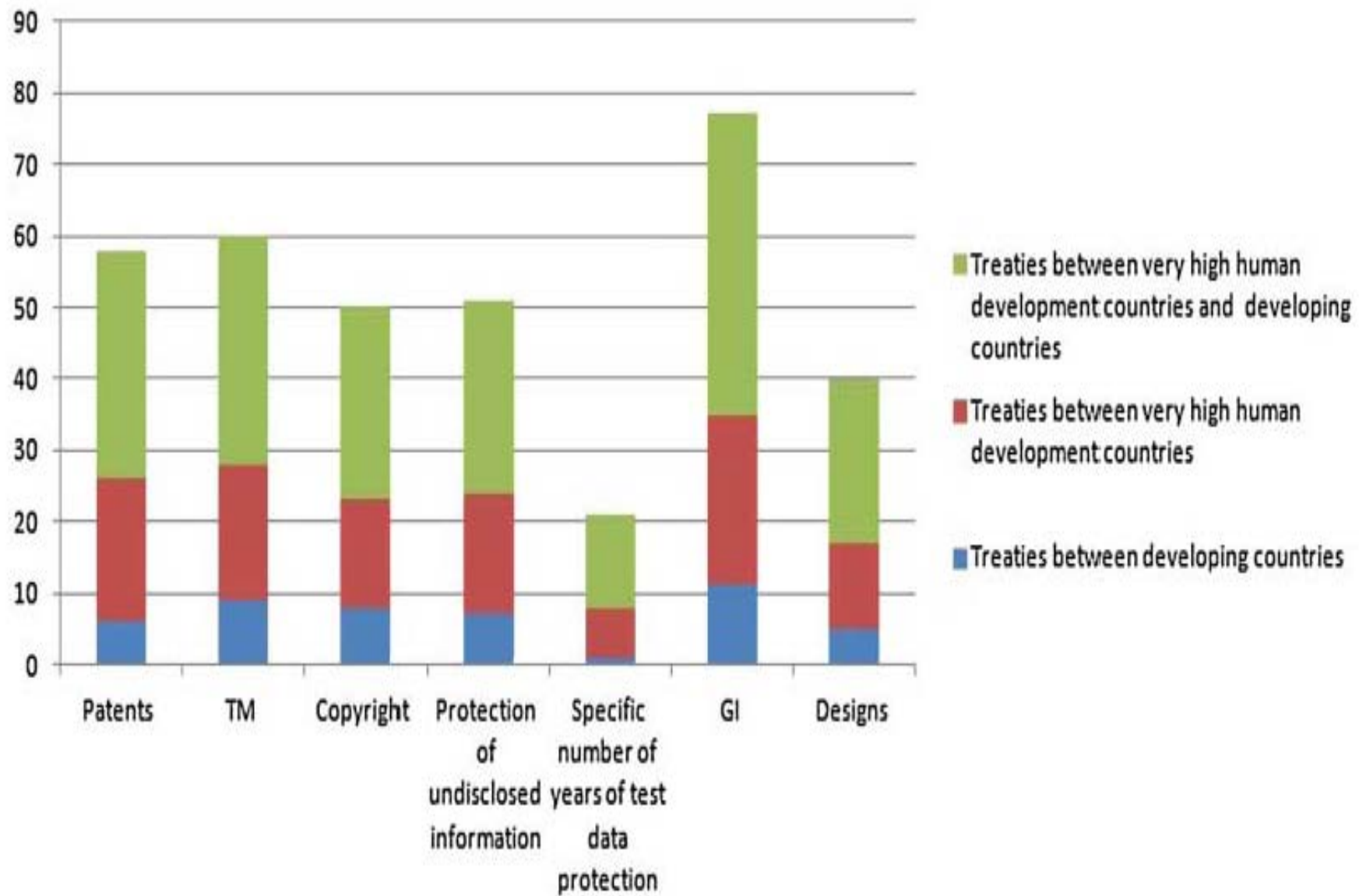
- Different from tariffs, subsidies & other trade barriers
- Initial roots in enforcement, preventing theft
- Exchange for market access & investment, tech transfer
- Role evolving to cover emerging technologies and facilitate new IP-intensive business models
- US, EU FTAs are important means by which that evolution and IP standards are rising worldwide
- IP provisions in PTAs between emerging market countries remain modest



Serbu (2013)



Serbu (2013)



Serbu (2013)

U.S. Mandate



- Trade Act 2015, replacing 2002 version
- Ensure accelerated & full implementation of TRIPS, especially on enforcement
- Any U.S. agreement governing IP rights should reflect a standard similar to that found in US law
- Keep pace with tech changes
- Prevent theft and ensure equitable, non-discriminatory access
- Foster innovation & access to medicines

IP & US Trade Policy

- World Trade Organization – TRIPS Agreement, TRIPS Council, dispute settlement, accession
- Special “301” – 1974 Trade Act, requires USTR to identify annually countries that deny adequate and fair protection for IP
- Trade Diplomacy – bilateral consultation mechanisms, regional initiatives, technical assistance
- Trade Preference programs – require adequate & effective IP protection in beneficiary countries
- Free Trade Agreements – Most Favored Nation & National Treatment



Evolution of U.S. FTAs on IP

- U.S.-Israel Agreement (1985): 1 paragraph
- NAFTA (1994): 4 pages
- U.S.-Chile FTA (2004): 32 pages
- Trans-Pacific Partnership (2015): 74 pages, 5 annexes, 13 side letters



Topics in U.S. FTAs

- General provisions (international agreements, transparency)
- Trademarks/Geographical Indications
- Copyrights and related rights
- Patents
- Regulated Products (data exclusivity)
- Trade Secrets
- Trend to include provisions attempting to better balance competing interests on pharmaceuticals and copyright

	Israel	NAFTA	Jordan	Chile	Singapore	CAFTA-DR	Australia	Morocco	Bahrain	Oman	Peru	Colombia	Panama	Republic of Korea	TPP
<i>Date in Force:</i>			12/2001	1/2004	1/2004	9/2005-2009	1/2005	1/2006	1/2006	1/2009	4/2006-2009	5/2012	10/2012	3/2012	TBD
Patent Term Extension			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Patents for New Uses			✓				✓	✓	✓	✓				✓	✓
Patent Linkage			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Data Protection			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Data Protection for New Uses				✓			✓	✓	✓	✓				✓	✓
Data Exclusivity for Biologics															✓
Count:	0/6	0/6	4/6	4/6	3/6	3/6	5/6	5/6	5/6	5/6	3/6	3/6	3/6	5/6	6/6

Example of Accommodations

- Malaysia – 4.5 years to implement for patent linkage; 5 years to implement data protection*
- Brunei – Data protection subject to same guarantee as Malaysia
- Peru – 5 years to implement data protection, 10 years to implement data exclusivity for biologics
- Vietnam – Up to 18 years to implement data protection and data exclusivity for biologics
- Guarantees of public health flexibilities

Future Focus

- IP provisions in non-U.S., EU agreements remain modest, when does this start to change for emerging market countries?
- Enforcement remains a concern, but may not be focus of FTAs
- Greater focus on IP challenges important to GVCs and shared production models:
 - localization requirements
 - trade secrets
 - State-owned enterprises
- Digital trade and balancing its competing interests

Thank you!

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