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Argentina, BRICS, and IP: present status

Santiago R. O'Connor, Managing Partner at O'Connor & Power, introduces the invitation for six new members to join the BRICS nations including his own, Argentina, and discusses the potential benefits of joining the bloc from an IP perspective.

The BRICS group is an alliance that emerges from five of the world's leading emerging economies: Brazil, Russia, India, China, and South Africa. Founded in 2006, its main goal is to promote economic and political cooperation among its members and challenge the dominance of Western economies in global financial institutions.

The history of the BRICS dates back to the first decade of the 21st century when these countries began to collaborate on economic and political issues. Its geopolitical impact has been considerable, accounting for more than 40% of the world's population and a significant percentage of global GDP.

At present, the BRICS group – originally Brazil, Russia, India, China, and South Africa – is going through a prominent political moment. At the recent summit in South Africa, the group formalized its invitation to six new members: Argentina, Saudi Arabia, Egypt, the United Arab Emirates, Ethiopia, and Iran.

The relevance of the BRICS in the global economy is undeniable. It accounts for 24% of global GDP, 16% of exports, and 15% of global imports of goods and services.

In addition, the five member countries of the bloc represent 30% of Argentina's export destinations.

Expanding the bloc from five to 11 members will create a group of impressive economic size.

An 11-member BRICS would take the bloc's share of the world's population from 41% to 46% in 2024, its share of global GDP measured in US dollars adjusted by purchasing power parity (PPP) from 33% to 38%, and its share of global goods exports from 20% to 23%. By contrast, the G7—comprising the US, Canada, France, Germany, Italy, Japan, and the UK—would still account for just 10% of the world's population, 29% of global GDP measured in PPP-adjusted US dollars and 29% of global goods exports.

Argentina's entry into the BRICS group of emerging economies was announced by President Alberto Fernández on August 24, 2023.



Santiago R. O'Connor

This decision marks a milestone in Argentina's foreign policy and opens a new scenario in which the country will be the protagonist of a common destiny in a block of great relevance.

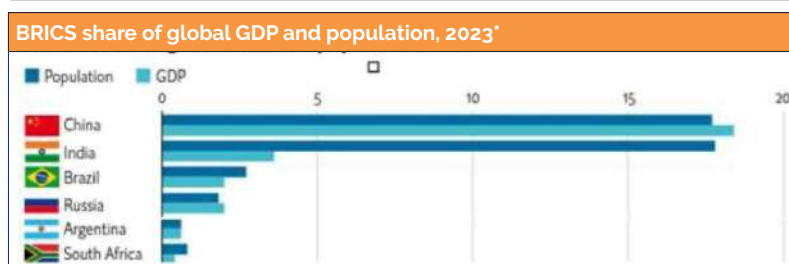
The most important data to understand the importance of this bloc can be assumed from the following topics:

- It is a geopolitical and financial reference.
- It currently represents 24% of global GDP.
- It accounts for 16% of world exports and 15% of world imports of goods and services.
- **The five countries that currently make up the BRICS account for 30% of Argentina's exports.**
- According to the FAO (Food and Agriculture Organization of the United Nations), the BRICS are the countries that are poised to lead the eradication of world hunger and poverty by 2030.

Figure 1

COUNTRY	GDP	POPULATION
ARGENTINA	641 million euros	45.8 million
BRAZIL	1.94 billion euros	216.4 million
RUSSIAN FEDERATION	2.06 billion euros	144.4 million
CHINA	19.3 billion euros	1.425 billion
INDIA	3.73 billion euros	1.428 billion
SOUTH AFRICA	399 million euros	60.4 million

Figure 2



Source: *EIU forecasts

In view of the above, it is important to analyze the main aspects of IP protection in each of the BRICS countries in order to determine how the protection of industrial and intellectual property matters shall be taken care of, particularly to effectively protect the intangible assets of foreign investors in this new bloc.

In connection with IP International Treaties, and focusing on Argentina, it is advisable to review which International agreements are in force in each of these countries, and which are not, in order to assess best practices for protecting trademarks, patents, copyright, industrial, and designs in a globalized world, and commerce, as not all of the countries are aligned (see table, right).

Argentina has an old and enhancing history in the ratification and effective use of international treaties, such as the Paris Convention, TRIPS, and the Berne Convention, and a large tradition in the handling of anti-counterfeiting policies through the federal courts, as well as the respect of notorious and famous trademarks.

However, there is a long debt in the process of ratification of one of the most important treaties, the Patent Cooperation Treaty (PCT) which has already been ratified by many Latin American countries, such as Brazil, Mexico, Chile, Colombia, Barbados, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Honduras, Nicaragua, Panama, and El Salvador.

Thus, it is urgent that the next government that shall take power in Argentina after the presidential election that shall take place next November 19, 2023, moves forward in the approval through Congress of the PCT.

The access by Argentina to the PCT shall give the country an important legal instrument not only for foreign investors to protect their patents in a more expedited and swift manner, but also for Argentine entrepreneurs and developers to expand their creations worldwide.

Argentina's internal laws, which have ratified the above-listed international treaties, are the following:

Berne Convention (Law N° 25.140); Treaty of Markakesh (Law N°27.061); Treaty of Nairobi (Law N° 23.207); Paris Convention (Law N° 17.011); Convention for the protection of producers of phonograms (Law N° 19.963); Rome Convention (Law N° 23.921); WIPO copyright treaty (WCT) (Law N° 25.140); WIPO performances and phonograms treaty (Law N° 25.140) Agreement on Trade-Related Aspects of Intellectual Property



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(TRIPS) (Law N° 24.425); Inter-American Convention on the Copyright of Literary, Scientific, and Artistic Fields (Law N° 14.186); American International Convention on Literary and Artistic Property (Law N° 13.585); Montevideo Treaty on Literary and Artistic Property (Law N° Ley 3.192).

The invitation for Argentina to join the BRICS is the start of a large and complicated process, and time and political developments shall determine if the same shall be a wise move in the IP scenario of Argentina in a fast-changing and challenging world.

Javier Milei is as from December 10, 2023 the new President in Argentina.

On December 22, 2023 the Argentine Government decided not to enter the BRICS according to the following letter:

MR. PRESIDENT,

I am pleased to write to you regarding the invitation to the Argentine Republic to join the BRICS Group decided at the Johannesburg Summit last August.

As you are aware, the foreign policy approach of the government over which I have presided over for a few days differs in many respects from that of the previous government. In this sense, some decisions taken by the previous administration will be reviewed. Among them is the creation of a specialized unit for the country's active participation in BRICS, as indicated by former President Alberto Fernández in his letter of September 4.

Figure 3

	China	India	Brazil	Russia	Argentina	South Africa
GDP (US\$ bn)	19,374	3,737	2,081	2,063	641	399
Population (m)	1425.7	1428.6	216.4	144.4	45.8	60.4
GDP per head (US\$)	13,589	2,616	9,616	14,287	13,996	6,606

Source: *EIU



In this regard, I would like to inform you that in this instance it is not considered appropriate for the Argentine Republic to join the BRICS as a full member as of January 1, 2024.

Notwithstanding this, I would like to stress my Government's commitment to intensifying bilateral ties with your country, in particular increasing trade and investment flows.

As I look forward to meeting with you, I take this opportunity to reiterate to you the assurances of my highest consideration.

Résumés

Santiago R. O'Connor is Managing Partner at O'Connor & Power in Buenos Aires, Argentina. With 40 years of experience in IP practice, he is an active member of INTA, ASIPI, ECTA, MARQUES, PTMG, and other local and international IP associations.

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TREATY	RATIFIED BY
BEIJING TREATY on Audiovisual Performances	China
BERNE CONVENTION for the Protection of Literary and Artistic Works	Argentina , Brazil, China, India, South Africa
BRUSSELS CONVENTION	Russian Federation
MADRID AGREEMENT for the suppression of false or misleading indications of source on products	Brazil
MARRAKESH TREATY to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled	Argentina , Brazil, China
NAIROBI TREATY on the Protection of the Olympic Symbol	Argentina , Brazil, Russian Federation, India
PARIS CONVENTION for the Protection of Industrial Property	Argentina , Brazil, China, Russian Federation, India, South Africa
PATENT LAW TREATY	Brazil
CONVENTION FOR THE PROTECTION OF PRODUCERS OF PHONOGRAMS against unauthorized reproduction of their phonograms	Argentina , Brazil, China, Russian Federation, India
ROME CONVENTION for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations	Argentina , Brazil, Russian Federation, India
SINGAPORE TREATY ON the law of trademarks	China, Russian Federation
TREATY ON THE LAW OF TRADEMARKS	China, Russian Federation, South Africa
WASHINGTON TREATY ON INTELLECTUAL PROPERTY in Respect of Integrated Circuits	China, India
WIPO COPYRIGHT TREATY (WCT)	Argentina , China, India, Russian Federation, South Africa
WIPO PERFORMANCES AND PHONOGRAMS TREATY	Argentina , China, India, Russian Federation, South Africa
BUDAPEST TREATY on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure	China, India, Russian Federation, South Africa
HAGUE AGREEMENT Concerning the International Registration of Industrial Designs	Brazil, China, Russian Federation
LISBON AGREEMENT for the Protection of Appellations of Origin and their International Registration	Russian Federation
MADRID AGREEMENT Concerning the International Registration of Marks	China, Russian Federation
PROTOCOL RELATING TO THE MADRID AGREEMENT Concerning the International Registration of Marks	Brazil, China, India, Russian Federation
PATENT COOPERATION TREATY (PCT)	Brazil, India, Russian Federation, South Africa
AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY (TRIPS)	Argentina , Brazil, China, Russian Federation, India, South Africa
AMERICAN INTERNATIONAL CONVENTION ON LITERARY AND ARTISTIC PROPERTY	Argentina , Brazil