



International Trade and Intellectual Property

Introduction

It's been a hugely busy year for the IP Federation and its Trade Working Group tracking and trying to influence the UK Government's efforts to secure new trade deals, and ensure that their IP provisions are, as far as possible, supportive of the needs of innovative industry. Since my report on international trade and IP in last year's *IP Federation Review 2021*, I would highlight the following key developments.

The IP Federation, through its Trade Working Group, continues to engage actively with, amongst others, the UK Government-DIT and IPO in particular, the CBI and overseas governments/business stakeholders in the sphere of international trade and IP. It is an unprecedented and intensely busy time, with different complex trade negotiations being undertaken at pace by the UK with different partners across the world. The IP Federation's sustained strong engagement and considered expert inputs in this area in support of the UK Government's objectives are, we believe, beginning to produce positive results at a crunch time. The strong trusted relationship we have built up with the Government – DIT, IPO is a great asset.

In the last year, the IP Federation has provided detailed strong submissions in writing to the UK Government in response, for example, to the DIT calls for inputs on (a) UK trade with India, and (b) the UK's free trade agreement (FTA) with the Gulf Co-operation Council (GCC). Further, in early September this year, the IP Federation responded robustly in writing to the UK Parliament's House of Commons International Trade Committee Inquiry Call for Evidence on UK Trade Negotiations: Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) Accession.

IP Federation's general principles: negotiating new free trade agreements (FTAs)

The IP Federation continues to urge the UK Government to adopt five general principles in negotiating all new FTAs.

The first is that there is a crucial relationship between world-leading innovation and a system of IP rights which is robust, balanced, understood, and enforceable. Secondly, the Government should have the ambition of exporting the UK's world-class IP system in all its FTAs. Thirdly, multilateral and bilateral trade agreements both have their place; some issues are better dealt with multilaterally than bilaterally. Fourthly, the value of existing agreements should not be undermined; in this regard, the IP Federation welcomes the Government's previous assurances, especially in relation to the UK's membership of the European Patent Convention (EPC). Finally, the UK should be active in the World Trade Organization and the World Intellectual Property Organization.

Update on CPTPP/FTAs

UK accession to CPTPP

The UK remains on track in completing its CPTPP accession objective by the end of this year, and has entered the final phase.

A number of countries are reportedly already in the CPTPP accession queue after the UK, including China, Taiwan, Ecuador, Costa Rica. There is interest in CPTPP accession apparently from the Philippines, Uruguay, and Thailand, too. This in practice likely means that the UK's prospect of getting reservations in the current CPTPP negotiations, if needed, will not be straightforward. Existing CPTPP member states will want to set a strong precedent with the UK to preserve their high, robust standards in any future CPTPP negotiations with other interested countries, China for example, who may wish to accede to the CPTPP.

Addressing IP provisions in CPTPP accession negotiations

The interaction between UK-CPTPP (based on existing CPTPP text) and bilateral negotiations involving CPTPP member states (including the signed ones in Australia, New Zealand, Japan and other ongoing ones such as in Canada, Mexico) covering different key areas such as intellectual property continues to be incredibly important.

In the context of the CPTPP accession negotiations, the IP Federation urges the UK Government to be robust: avoiding putting at risk UK membership of the EPC should be a priority. Reservations relating to provisions for a patent grace period (and extending patent term for patent office delays) as currently set out in the CPTPP should not be regarded as second-order UK demands to be set aside. Of course, there will be a number of issues of national interest which the Government will need to weigh. But a primary purpose of the IP system is to serve and support innovative business, and the terms of CPTPP accession should take full account of their impact on British industry.

It is not the concept of a grace period *per se* which is the problem. A properly formulated, internationally harmonised grace period, with suitable safeguards against misuse and to preserve legal certainty, is to be welcomed. The IP Federation is supporting efforts in Europe and internationally to achieve that goal. There may therefore be ways forward. One is that any application of the CPTPP grace period to the UK would be suspended pending global harmonisation of the grace period. This would not only address the risk posed to the UK's EPC membership, it would also pave the way for a truly effective international grace period regime which properly meets the needs of business.

UK-Australia FTA

This bilateral agreement, UK's first one negotiated from scratch since leaving the EU, was signed on 16 December 2021.

UK-New Zealand FTA

This bilateral agreement, UK's second one negotiated from scratch since leaving the EU, was signed on 28 February 2022.

Signing both of these agreements (Australia, New Zealand) furthers the UK's objective of joining the CPTPP. The IP provisions in both agreements (as signed) are compatible with the EPC. This is a specific area in which IP Federation provided strong support to the Government. Both of these agreements are going through the Parliamentary scrutiny process in their respective countries, so neither agreement is yet in force. We are monitoring progress.

UK-India FTA negotiations

Five rounds of negotiation have been completed at the time of writing. The UK and India together had originally committed to complete the majority of negotiations by Diwali-time this year (24 October 2022). This “deadline” has however passed. It remains to be seen how these negotiations progress, particularly bearing in mind the latest political developments.

What is clear to the IP Federation is that IP outcomes in India are not as favourable as in other major countries. For example, our businesses typically experience real challenges in securing patents in India and enforcing the rights there. The various real business IP-related challenges in India erode the value of UK innovations and the investment the UK government is making to focus on growing the UK as a global innovation hub. The UK-India FTA therefore provides a golden opportunity to deal with these challenges, to the mutual benefit of UK and India businesses. At the outset, the IP Federation has advocated for a strong, balanced and comprehensive IP Chapter in the FTA. At a minimum, we ask that the UK Government secure a trade agreement that commits the parties to work together to help India improve its IP regime.. Realistically, we accept that this work will take time, recognising fully its strategic importance to both countries (India, UK being the fifth and sixth largest economies in the world).

UK-GCC FTA negotiations

Round 1 of negotiations has been completed, to date. Detailed substantive negotiations (round 2) are expected to follow, soon. In its submissions, the IP Federation requests, *inter alia*, the UK Government to press vigorously for immediate reinstatement of the central GCC Patent Office system in place prior to January 2021; and in future for any changes to the system to be notified to business and properly consulted upon. More generally, we encourage the Government to have the ambition of exporting the UK’s world-class IP system to the GCC.

Other

It is obviously not possible to comment here on the full scale of UK trade negotiations currently being undertaken, or the IP Federation’s efforts to influence them. This is partly because of the breadth of the waterfront, but also because some of the IP Federation’s close engagement with Government is subject to NDA. We continue to monitor closely the landscape, including implementation of relevant trade agreements, such as the UK-EU trade and cooperation agreement.

We continue to follow the developments in regard to Canada and Mexico (amongst others). Through the CBI, we continue to advocate that substantial benefits with these trading partners can be delivered from using IP in the trade context, without relinquishing critical aspects of the UK’s existing and highly rated IP framework including its existing Treaty obligations. In the field of criminal sanctions for trade secret misuse, we continue to urge the Government to consult us if they are minded in negotiations with Canada and Mexico to adopt stronger criminal sanctions than those that currently exist in the UK.

Closing remarks

Having a world class IP ecosystem and improving IP frameworks in other countries to provide improved foreign market access to UK innovators and exporters will be central to the UK’s efforts to build a global Britain and shape a competitive, dynamic, and modern economy on the world stage. There are a number of complementary routes to achieving this goal, of which UK accession to the CPTPP is one. In pursuing its trade objectives (which the IP Federation continue to support strongly), the UK Government should be seeking a win-win outcome which delivers substantial benefits

without relinquishing key aspects of the UK's existing and highly rated IP framework, including its existing treaty obligations such as under the EPC and the Strasbourg Convention.

It is therefore critical that the UK Government is resolute in negotiating acceptable IP provisions in its CPTPP/FTA negotiations with its partners across the world. Failure to do so would lead to very serious consequences and undermine the Government's aspirations to make the UK a science and technology superpower and global innovation hub.

Dr Bobby Mukherjee – Chair of IP Federation Trade Working Group

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