



International Trade and Intellectual Property

The UK's departure from the European Union provides the opportunity for the negotiation of new international free trade agreements with trade partners around the world. In July 2018 the UK Government Department for International Trade (DIT) launched four separate 14-week public consultations on trade negotiations with the US, Australia, and New Zealand, and on potential accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). The IP Federation responded to those consultations in October 2018 - IP Federation policy paper PP 6/18.

With the subsequent withdrawal of the UK from the European Union (EU) on 31 January 2020, the UK's focus on securing exciting new trading deals with many nations and regions, including the US, Canada, Japan, the EU, Australia, New Zealand and the CPTPP, has intensified.

Stakeholder Engagement in IP and Trade

The IP Federation has invested considerable effort in engaging positively with the UK Government and other stakeholders on the IP aspects of international free trade agreement negotiations. The IP Federation has established a Trade Working Group to drive activity in this area and to concentrate expertise in support of its objectives. In particular, the IP Federation advocates for the best suite of trade deals on IP for UK plc.

Update on Free Trade Negotiations

At the time of writing, the UK is currently undertaking negotiations at pace in parallel with the US, EU, Australia and New Zealand, and others, having recently signed an agreement with Japan. Just as it is important to look at the opportunities afforded by each of these individually, it is important not to look at each of these in isolation. This is because different states will have different domestic laws and priorities that may give rise to conflicting demands faced by the UK in different negotiations.

Five rounds of negotiations took place between the UK and US before the US presidential election, and we can only speculate on the implications of the outcome of the election for any trade deal. In parallel, the outcome of EU-UK trade negotiations remains open. The IP chapter of the UK-Japan agreement builds on the EU-Japan Economic Partnership Agreement, and it seems likely that no domestic IP legislative changes will be needed as a result (which is welcomed by the IP Federation). The UK-Japan trade deal may be a positive step to the UK joining the CPTPP. Good progress is also being made in negotiations with Australia with a second round (including 40 negotiating sessions) recently concluded, while negotiations with New Zealand commenced with a first round in July 2020.

Intellectual Property (IP) Trade Issues

IP provisions are almost universal in trade agreements. Setting agreed standards for IP rights directly reduces trade barriers and boosts competitiveness and prosperity.

The UK is one of the most innovative and creative nations in the world. Strengths of the UK's existing IP infrastructure are widely recognised. Optimising the IP ecosystem in its trade agreements is therefore vital for the UK if its businesses are to continue to attract investment, generate and exploit new ideas, and compete successfully.

In the context of the current trade negotiations, the IP Federation has already identified a raft of IP trade issues covering a wide range of areas. The IP Federation's position is constantly under review by its membership in respect of IP trade issues, and the IP Federation has already made substantial contributions on questions of policy, as set out below.

The IP Federation, working closely with the Chartered Institute of Patent Attorneys (CIPA), jointly commissioned a report from Mr Tony Clayton, formerly Chief Economist of the UK Intellectual Property Office, on the European Patent Convention (EPC) and its impact on the UK economy and innovation. This is a substantial and cogent piece of research and analysis which supports strongly the Government's negotiating objective that trade deals must remain consistent with the UK's existing international treaty obligations, including its continued participation in the EPC.

The IP Federation is confident that mutually beneficial outcomes can be achieved from trade agreements with different trading partners without relinquishing critical aspects of the UK's existing and highly rated IP framework, including its existing treaty obligations. In particular, no measures in the free trade agreement negotiations should be contemplated unless manifestly EPC-compliant.

Some IP legal provisions work best when applied globally. These include grace period for patents and patent term adjustment for patent office delays. The IP Federation believes these topics are best addressed not in bilateral or even plurilateral trade agreements but in multilateral fora such as WIPO or the Group known as B+. We therefore endorse the approach taken in the UK-Japan agreement (at Art. 14.38.4) which reflects this position.

The IP Federation recognises that the negotiation of new trade agreements presents opportunities to seek alignment of IP standards of trading partners that meet, as a minimum, those of the UK. Securing agreement of trading partners to introduce standards of IP at least as high as those of the UK will improve access to markets for/exports by UK innovators. For example, the IP Federation seeks a strengthening of provisions relating to legal privilege for IP practitioners in the UK and the recognition of these rights in the US. Further, the IP Federation believes that parties should harmonise to the highest standards between them on regulatory data protection.

The IP Federation also continues to urge the UK Government to understand precisely any commitments to introducing criminal penalties outside trademark counterfeiting, registered design piracy, and copyright piracy, and remains strongly opposed to criminal sanctions in the designs area.

What Next?

To optimise the outcome of trade negotiations, the IP Federation remains actively engaged and positively committed in support of the Government's objectives in this key area. The profound global challenges posed by the Covid-19 pandemic make successful outcomes from trade negotiations even more important.

Dr Bobby Mukherjee, Chair of the IP Federation Trade Working Group