

Consultations on CPTPP and FTAs with USA, Australia and New Zealand

1. The IP Federation represents the views of UK Industry, in both IP policy and practice matters within the EU, the UK, and internationally. Its membership comprises the innovative and influential companies listed at the end of this paper. It has wide experience of how the IP law, including patent litigation, works in practice in the UK, Europe, and internationally.
2. The Department for International Trade (DIT) has launched public [consultations](#) on trade negotiations with the USA, Australia and New Zealand, and on potential accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). The deadline for responses is **26 October 2018**.
3. This paper sets out the IP Federation's views on the proposals of the DIT (insofar as they concern intellectual property rights) (i) to seek to accede to the CPTPP, and (ii) to begin negotiating free trade agreements (FTAs) with the USA, Australia and New Zealand.
4. The members of the IP Federation have interests not only in non-intellectual-property aspects of the DIT proposals referred to in 3. above but also in the EU withdrawal agreements and in the "rollovers" of EU-country X FTAs into UK-country X FTAs. These interests may be of greater importance than the purely IP matters discussed here.

Comments on CPTPP

5. Some of the provisions of CPTPP as they stand, for example the provision requiring a grace period, appear to be incompatible with the European Patent Convention (EPC) and the Unified Patent Court (UPC). Further, there are ongoing discussions at an international level aiming to agree a harmonised form of grace period. We would therefore support negotiation of a "carve-out" in the CPTPP to address this apparent incompatibility or, at least, deferment of any obligation to introduce one.
6. CPTPP Article 18.78, para 2 requires that contracting states should implement criminal provisions for infringement of rights in trade secrets. Present UK law provides (like the CPTPP in Article 18.77) for criminal penalties for trademark counterfeiting, registered design piracy, and copyright piracy, but not for infringement of other intellectual property rights such as patents and trade secrets. We would therefore urge HMG to understand precisely any commitments to introducing criminal penalties outside trademark counterfeiting, registered design piracy, and copyright piracy (whether under Article 18.78 CPTPP or under other provisions

including suspended ones), and to negotiate a carve-out sufficient to prevent abuse. (Existing UK laws on computer crime and the like could be relevant.)

Comments on UK-USA, UK-Australia and UK-New Zealand free trade agreements

7. It is likely that these countries will suggest provisions in an FTA closely aligned to those in the CPTPP, and so the considerations above also apply to such agreements.
8. There should be no extension to the general requirement for national treatment already provided for under Article 3 of TRIPS, so that (for instance) the present arrangements for unregistered design right under SI 1989 Nos 1100 and 1294 would be undisturbed.
9. Exhaustion is an extremely complex area, and will interact with any agreement between the UK and the EU27, and it ought to be left out of trade agreements.

Closing remarks

10. The IP Federation is at the disposal of the Department for International Trade if further information is required on any of the above.

IP Federation
26 October 2018



IP Federation members 2018

The IP Federation represents the views of UK industry in both IPR policy and practice matters within the EU, the UK and internationally. Its membership comprises the innovative and influential companies listed below. The CBI, although not a member, is represented on the Federation Council, and the Council is supported by a number of leading law firms which attend its meetings as observers. It is listed on the joint Transparency Register of the European Parliament and the Commission with identity No. 83549331760-12.

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