



The 3rd Trade Specialised Committee on Intellectual Property under the EU-UK Trade and Cooperation Agreement

London 23 October 2023
13:30 - 17:00 (BST) / 14:30 - 18:00 (CEST)
(London and via videoconference)

Minutes

1. Opening remarks and adoption of the agenda

The Co-Chairs initiated the meeting by stating its objectives, particularly focusing on the discussion of recent developments in Intellectual Property (IP) in each jurisdiction since the previous Specialised Committee. The UK noted their aim for a positive and constructive relationship with the EU, based on the full respect of the rules and procedures under the Trade and Cooperation Agreement (TCA) and through positive dialogue in the Trade Specialised Committees. The EU acknowledged recent and emerging challenges, such as the health crisis (COVID 19), digital security, and artificial intelligence (AI). The EU noted their commitment to building a positive relationship between the EU and the UK, addressing various areas of mutual interest, as well as collaborate at the World Trade Organisation (WTO) and other appropriate forums.

The Co-Chairs adopted the agenda as published.

2. Exchange on IP enforcement activities

The EU provided information on customs enforcement of IP at EU borders, presenting data on seized counterfeit goods. The UK noted an interest in understanding the trends and patterns. The EU noted that comprehensive analysis would take time. The EU inquired about the UK's seizure data, to which the UK noted work is on-going. Both sides agreed that continuing the exchange of information on the flows of counterfeit goods would be useful.

The UK provided an update on the progress of implementing the IP Counter-Infringement Strategy 2022-2027, focusing on key areas such as the intelligence hub in the Intellectual Property Office (IPO), coordination with partners, and staff secondments in external enforcement agencies. Efforts in awareness campaigns, law enforcement training, and funding for the Police Intellectual Property Crime Unit (PIPCU), and work on self-storage were noted. The EU noted an interest in counterfeit medicines, and the UK clarified the involvement of the Medicines and Healthcare products Regulatory Agency (MHRA) and offered to facilitate further discussions at the next Trade Specialised Committee (TSC) meeting.



3. Policy and legislative developments

Parties discussed the designs framework in their jurisdictions. The EU outlined its review, focusing on accessibility, affordability, and harmonisation of design protection, including spare parts. Trialogues are scheduled for November, aiming to conclude in early 2024. The UK provided a brief update on its ongoing review of UK designs, with policy development still in progress and plans for a stakeholder consultation in 2024. Both parties agreed to share further updates at the next TSC meeting.

The EU provided updates on the adoption of legislation protecting Craft and Industrial Geographical Indications. They discussed the application procedure, rationale for changes, and timelines. The publication date is set for October 27th, with entry into force in November, followed by implementation expected in 2025. The UK noted their interest in this legislation.

The EU presented on the EU Patents package, covering various aspects. They outlined proposed changes to the Supplementary Protection Certificate (SPC) system and discussed timelines, indicating that the legislative process may take time. The EU also presented the proposed legislation on Compulsory Licensing (CL), which aims to supplement crisis management measures. The UK queried the possibility of a dual system (EU-level and national), which the EU confirmed.

Lastly, the EU provided an overview of Standard Essential Patents (SEPs), focusing on areas including transparency and cost mitigation. The EU noted that the legislative procedure had begun following the proposals published in April. The UK stated their intention to conclude their evidential analysis on SEPs by year-end and seek ministerial steers to potentially undertake a public consultation during 2024. The EU asked to be kept informed. The UK proposed the possibility of further technical discussions on the matter. The EU agreed to consider this request if both sides considered this beneficial in the future.

The UK provided a factual overview of the legislation concerning Retained EU law, stating that only minor amendments were being sought in relation to IP. The EU noted an interest in legislation related to the Exhaustion of IP rights but took note that there was no progress on the UK side for the moment. The UK confirmed that known EU legislation would be classified as Assimilated Law, effective by the end of 2023, with limited powers remaining for smaller/technical changes until 2026.

The UK discussed its work on AI, focusing on challenges related to generative AI and IP. They mentioned participation in international discussions on AI, along with published guidance on patent exclusion practices for AI technologies. The UK had initiated an internal programme and was working on a Code of Practice for Copyright and AI. The UK invited the EU to discuss the Draft Code of Practice at a working level. The EU inquired about changes related to the UK's Text and Data Mining exception, to which the UK responded that no changes were currently planned. Interest in this area was acknowledged by both parties.



4. Any other business

During this agenda item, the UK raised two points while the EU requested one additional item.

The first point addressed the draft Memorandum of Understanding (MoU) discussed between the UK IPO and EUIPO. The UK acknowledged progress but noted some challenges, relating to enforcement provisions. They noted their aims in concluding the MoU for cooperation and mutual benefit. The EU supported the conclusion of an MoU but indicated that the EUIPO had limited possibilities to cooperate on enforcement matters. Both sides noted their intent to explore cooperation opportunities and resolve the MoU soon.

The second point focused on private copying levies, where the UK raised concerns about eligibility for UK right holders to receive shares of revenues from some EU collective management organisations (CMOs). Both parties appreciated ongoing dialogue and agreed to continue discussions.

Lastly, the EU requested details on rules regarding EU representatives for trade mark attorneys and address for service in UK trade mark proceedings. The UK clarified no nationality restrictions for representatives, but mentioned restrictions on the address for service, providing an overview of changing requirements and agreeing to share guidance.

5. Conclusion

The Co-Chairs acknowledged the constructive and comprehensive discussions on various issues and noted the shared points of interest in this area. They discussed the upcoming meeting of the Trade Specialised Committee on IP and agreed to share the materials presented during the proceedings. The EU looked forward to hosting the next meeting in a year's time.



Annex 1: Agenda, as agreed/published, of the 3rd Trade Specialised Committee on Intellectual Property under the EU-UK Trade and Cooperation Agreement

1. Opening remarks
2. Exchange on IP enforcement activities
3. Policy Review (policy developments and legislative developments)
4. AOB
5. Conclusion

Annex 2: Participants of the 3rd meeting of the Trade Specialised Committee on Intellectual Property.

UK Delegation

- UK Co-chair of the Specialised Committee on Intellectual Property.
- UK Government Officials from the IPO and Foreign, Commonwealth & Development Office.
- Devolved Government Officials.
- UK Mission to the European Union Officials.

EU Delegation

- EU Co-chair of the Specialised Committee on Intellectual Property.
- European Commission Officials.
- Delegation of the European Union to the UK Officials.
- Representatives of EU Member States.