

IND0012 - Chartered Institute of Patent Attorneys

1. The Chartered Institute of Patent Attorneys (CIPA) is the professional and examining body for patent attorneys in the UK, representing virtually all the 2,500 registered patent attorneys in the UK, whether in industry or in private practice. CIPA is the largest intellectual property membership organisation in the UK with a total membership over 4,000, including judges, barristers, trainee patent attorneys and other professionals with an interest in intellectual property (IP). CIPA represents the views of the profession to policy makers at national, European and international level, with representatives sitting on a range of influential policy bodies and working groups in the UK and overseas.

*How do you evaluate the Government's Negotiating Objectives (Outline Approach) and initial economic scoping assessment included in the Government's strategic approach? Are the UK Government's aims sufficiently ambitious? **If you represent a sector, we would be interested to hear about any objectives your sector would like to see achieved. What should UK negotiators be aiming for on tariffs, rules of origin, services, digital trade, intellectual property, mutual recognition and mobility?***

2. We are wholehearted advocates of this Government's free trade ambitions and aspirations for the UK to become a leader in global trade policy. New markets represent new opportunities for our members, as well as the chance to grow the footprint of UK plc's strategic strengths around the world. CIPA has been pleased to submit evidence to various inquiries on CPTPP, Australia and New Zealand – and have been delighted to build a collaborative, positive relationship with Government in these areas.
3. In relation to India, CIPA members have a developed understanding of the Indian Intellectual Property sector, having frequently engaged in the Indian IP environment and with IP professionals there. Their activity in regard to India includes assisting clients (and sometimes employers) to develop global IP strategies, including for India, obtaining IP protection in India for their clients, and acting on instructions from attorneys in India to assist Indian companies in obtaining protection in the UK. In India, CIPA members are also involved in developing and implementing commercialisation and enforcement strategies for IP rights and in reviewing the impact of IP rights held by third parties on the plans and strategies of their clients for new products.
4. **India does not have a modern IP system that functions to a high standard.**
5. This is a significant difference for the UK's negotiators to consider in discussions with India regarding a possible future FTA. Compared with the negotiations already in progress with countries such as Australia, New Zealand and the US, India has a comparatively less well developed IP system.

6. The Indian system is arguably not even compliant with the minimum standards set by the WTO's agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Problems exist at multiple levels in the Indian IP environment. There are examples of important types of protection not being available, e.g. data exclusivity. There are also examples of Indian law containing specific provisions designed to create additional hurdles for obtaining protection, e.g. relating to pharmaceutical inventions. In other areas, such as enforcement, the written law may appear acceptable, but it is not applied effectively in practice.
7. The UK should not be put in the position of appearing to endorse in any way the current lack of meaningful protection for IP in India. The inadequacies of the Indian IP system must be addressed if there is to be an IP chapter in a trade agreement between the UK and India.
8. **If it is not possible to persuade India to adopt acceptable levels of IP protection and enforcement, CIPA believes that it would be better not to include an IP chapter in a trade agreement.**
9. We have highlighted some particularly problematic areas of the Indian IP environment below to further explain this position, with a view to the impact this would have on IP and UK businesses. We would welcome the opportunity for further discussions.

Enforcement of IP rights

10. Without requiring India to adopt a number of acceptable levels of IP protection, there could be issues in the enforcement of IP rights. Our members report severe difficulty in enforcing IP rights of all types in India. In part, this is simply due to courts being overburdened, in spite of the best efforts of those employed in the system. However, in some areas, there appear to be systematic biases against enforcing IP, notably in pharma/ healthcare technologies. Although the court system may appear to be adequate on paper, it does not operate effectively in practice. Litigants suffer excessive delays, bureaucracy and in some technology areas, it is almost impossible to enforce IP rights. Even where a litigant does succeed in getting a decision that their IP is infringed, we have multiple reports of the Indian courts being unwilling to grant injunctions. In the few cases where an injunction is obtained, it is difficult to bring it into effect in a meaningful way. For example, frequently another infringer will spring up, nearby and involving the same people or close associates and relatives of those individuals, to resume the infringing activities within a matter of days leaving the rights holder back at square one.

Patents

11. In some fields, it is extremely difficult to get applications through the Indian Patent Office to grant. To a certain extent, this may simply be due to a shortage of trained examiners. However, in other areas, there appears to be a strategy to set up additional hurdles and barriers to prevent

patents from being obtained. For example, in pharmaceuticals, there is in practice

an additional hurdle to patentability, contrary to TRIPS. This requirement (Article 3d) is interpreted very broadly, such that new active entities are often considered to be derivatives of previous active entities and therefore excluded from patentability, when in fact they are new active substances. This is economically significant given the UK's strength in life sciences.

12. Another major problem is the stringent requirements for working patents in India and the severe consequences for not complying. While this may appear to the uninitiated to be merely a bureaucratic inconvenience, in practice, it causes real difficulties. It is not easy to determine exactly which patents are worked in complex multi-component products or methods and when that working commences. It appears that the system has been set up primarily to promote compulsory licensing. Other countries do not have similar requirements.

Trade Marks, Designs and Copyrights

13. Our members' concerns in these areas are primarily around lack of speed in procedures and in enforcement. See our comments above.

Data exclusivity/ patent term extensions

14. India does not provide any meaningful regulatory data exclusivity protection for pharmaceuticals, nor does it provide extensions (such as supplementary protection certificates) to compensate for regulatory delays. The lack of these types of protection is significant for biotechnology and pharmaceutical products and again, appears part of a deliberate strategy to limit the intellectual property protection in these areas compared with international norms.

Summary

15. In summary, it is currently difficult to obtain meaningful IP protection and even harder to enforce it effectively in the vast majority of cases in India. This is a problem for the UK as an innovative economy and for UK businesses.
16. A related difficulty is that UK businesses wishing to commercialise their innovations in India, are compelled to share the details with local players, due to the Indian government's requirements around company ownership or joint ventures. If the relationship subsequently breaks down, the UK business is then faced with the almost insurmountable hurdles for enforcing IP as mentioned above. CIPA believes this is another part of the eco-system that is set up to favour local Indian businesses at the expense of those from other countries. This must be addressed holistically.

17. CIPA participates in regular conversations with the DIT and the UK IPO and we have raised these issues in virtual meetings. We hope to continue our close collaboration with Government and stand ready to assist as negotiations proceed.

IND0013 - Which?

Summary

1. It is important that the government ensures that consumer interests are at the heart of trade negotiations with India. Our in-depth consumer research and engagement through our National Trade Conversation has found that people would welcome trade negotiations that help to deliver greater choice and lower prices, but they expect the government to prioritise maintaining key protections, including food and product standards, data protection and environmental protection. They also think that trade deals should deliver meaningful benefits for people across the whole of the UK.
2. As the UK begins negotiations with India, the UK government should clearly establish the importance of consumer interests as part of any agreement by the inclusion of a consumer chapter within any deals. This would reinforce the consumer interests within individual chapters and build upon the consumer protection chapter that the UK has secured in the agreement in principle with New Zealand.
3. The government has made welcome commitments in line with the priorities our research has identified within its strategic approach, including not compromising on our high environmental protection, animal welfare and food standards. But negotiations with India will be complex. The UK and India have very different regulatory and policy contexts. The UK will be seeking to secure reductions in tariffs in order to benefit exporters across a range of sectors as well as focusing on investment.
4. Sixty per cent of Indian exports to the UK are already tariff-free, but only 3% of UK exports to India are. The UK government therefore needs to ensure that it does not 'trade away' important standards or protections, for example through provisions relating to regulatory equivalence, conformity assessment or recognition of international standards that offer a lower level of protection, in order to achieve its objectives.

Introduction

5. Which? welcomes the opportunity to submit evidence to the International Agreements Committee's inquiry into trade negotiations with India, following the publication of the UK Government's negotiating objectives.
6. A trade deal with India could offer many opportunities for businesses and for consumers, but the two countries will begin negotiations from different starting points - both in terms of their regulatory landscape and domestic priorities, as well as in terms of their respective tariff and non-tariff barriers to trade that will be on the table in negotiations. Sixty per cent of

Indian exports to the UK are already tariff-free, but only 3% of UK exports to India are, for example.

7. Against this backdrop, it is essential that the UK promotes consumer interests and stands up for consumer priorities as part of the negotiations. As with our previous evidence to the Committee's inquiries, we have drawn on our unique, in-depth public dialogues, the National Trade Conversation, to assess the government's negotiating objectives set out within its strategic approach against what we know matters most to consumers.

Reflecting consumer priorities

8. In 2020 Which? conducted the 'National Trade Conversation' (NTC) – a series of public dialogues around the UK, with people from a wide range of backgrounds, to understand in greater depth what mattered most to people about trade deals when they had a detailed understanding of the issues that could be part of the negotiations – including greater access to a range of goods and services¹.
9. The Conversation took place in Northern England, the East Coast of Scotland, Northern Ireland, South Wales and Southern England. Over five virtual workshops people learned about what we trade, how trade deals are negotiated and what the key issues are for the government's priority trade deals. After much debate and questioning, four issues emerged as the overall priorities for most of the people who took part. These four issues were identified as priorities by the majority of participants across all of the locations after hearing a wide range of evidence and in-depth discussions:
 - Maintain health and safety standards for food and products
 - Maintain data security regulations that protect consumers' digital rights
 - Protect the environment
 - Help address regional inequalities by protecting and promoting jobs, skills and industries across the UK.
10. Four core principles also underpinned the way that people explained what mattered most to them:
 - Fairness and trade for good
 - Longevity – deals that are future-proofed
 - Deals should represent the whole of the UK
 - Transparency in trade negotiations.
11. Which? reconvened some participants a year on from the NTC in a multiday online research community to understand their views on the development of the government's approach since the first conversation,

¹ <https://www.which.co.uk/policy/euexit/6731/nationaltradeconversation>

and to see if their priorities had shifted¹. Which? also supplemented this deliberative research with a survey² in June 2021 that was representative

of the UK population to find out people's views on how trade negotiations were progressing and what they considered to be most important. This new research reinforced the importance of the four priorities and in the case of environmental protection, showed that people felt even more strongly that the government needed to ensure trade deals supported efforts to tackle climate change.

Importance of a consumer chapter

12. The government's strategic approach emphasises the benefits that trade negotiations with India could bring in terms of improving choice and value for UK consumers. It suggests for example that through removal of tariffs manufacturers will be able to save costs by accessing cheaper parts for their products and that UK consumers would benefit from improvements in the variety and affordability of available products.
13. This will be particularly important for consumers facing the current cost of living crisis. But our consumer research shows that people do not expect lower prices and greater choice to come at the expense of standards and consumer protection. It is positive that the government states in its strategic approach that one of its overall objectives is to *"Ensure high standards and protections for UK consumers and workers and build on our existing international obligations. This will include not compromising on our high environmental protection, animal welfare and food standards, as well as maintaining our right to regulate in the public interest"*. We discuss this in more detail below.
14. It is often all too easy for trade negotiators to view consumer interests in simple terms and a more traditional view that trade benefits consumers through greater choice and lower prices, but as our research highlights, consumer interests and values that they expect to be included within trade deals are much broader than this - including health, data and environmental protections, as well as cross-border consumer protections.
15. We very much welcomed the inclusion of a specific consumer protection chapter within the UK-New Zealand Agreement in Principle, which signalled the importance of consumer interests in trade. This chapter is important in that it sets out clear expectations around implementation of consumer rights and protection legislation, but also recognises the importance of cross-border consumer protections, regulatory cooperation

¹ <https://www.which.co.uk/policy/euexit/8502/consumer-priorities>

² Yonder, on behalf of Which?, surveyed 3,263 UK adults online between 23rd and 24th June 2021. Data was weighted to be representative of the UK population by age, gender, region, social grade,

and access to redress. Similar provisions have also been included within the UK-Australia free trade agreement.

16. Given the nature of cross-border trade, including digital trade, it is important that any agreement (or agreements with India) clearly establish the importance of strong consumer protections and the need for cooperation between authorities on consumer protection issues and

tenure and work status. We boosted the number of respondents from the devolved nations to ensure we had a large (500+) sample for each.