

DISCUSSION OF THE SECOND MEETING OF THE ANDEAN COUNTRIES-UNITED KINGDOM INTELLECTUAL PROPERTY SUB-COMMITTEE

ECUADOR HOSTED VIRTUALLY, 6 JULY 2023

The second meeting of the Andean Countries-United Kingdom Intellectual Property Sub-Committee took place on 6 July 2023 via videoconference.

1. Greetings and opening remarks

The Ecuadorian chair welcomed UK and Andean colleagues, emphasizing that this space is a valuable opportunity to strengthen our ties, share experiences and work together in the promotion and protection of intellectual property rights, which are fundamental for economic growth, innovation and the progress of our countries. The UK and Andean countries welcomed and reiterated the chairs' comments.

2. Approval of Agenda

The agenda was adopted by all Parties.

3. IP legislation updates

Update from Ecuador:

In the area of industrial property, Ecuador showed the progress made, emphasizing that these were reforms applied in 2021 to the Comprehensive Organic Criminal Code (COIP) and the Organic Code of the Social Economy of Knowledge (COESCCI), which allowed the National Services of Customs to file *ex officio* actions. Likewise, there has been a significant number of border measures with a substantial increase in recent years, from 50 in 2021, 186 in 2022, and 114 so far in 2023. It was also indicated that the most commonly detained goods are electronic products.

Regarding Copyright and Related Rights, Ecuador indicated that the effects of the regulatory reforms have been the same, while indicating that Ecuador is complying with the commitments acquired by the UK, Ecuador's regulations have evolved to comply with international commitments. For example, Ecuador is collaborating with Japan to implement the Marrakesh Treaty. It was indicated that border measures have grown from 9 in 2021, to 79 in 2022, and so far in 2023 this number has risen to 48.

Finally, in relation to plant varieties, Ecuador pointed out that it is a Party to the UPOV '78 Convention and, at the Andean level, to Decision No 345. SENADI is responsible for the registration of enforcement procedures. The registrations with the highest incidence are of crops and in terms of ownership by nationality, the first place belongs to the Netherlands. In March 2023, Technical Standard for the Registration of License Contracts was published, its objective is to: Regulate the procedure for the registration of plant variety license contracts with the National Service of Intellectual Rights.

SENADI presented important improvements in this area, among them: Publication of information on protected plant varieties and those in the process of protection; Channels of assistance and free-of-charge

advice plant variety matters; Management for the designation of scholarships for UPOV virtual courses for SMEs in the floriculture sector; Intellectual property workshop plan for the floriculture sector; Management to implement fee discounts for SMEs (which applies only for Ecuador).

In this regard, United Kingdom asked if the rates for obtaining plant species for SMEs apply only to nationals. Ecuador confirmed that the discount rate applies only to national SMEs, as they must have the unique SME registry, which is an Ecuadorian registry.

Update from Colombia:

The delegate of Colombia presented the National Development Plan (Global Life Power - Act 2294 / 2023), stating that it is the formal and legal instrument by means of which the government's objectives are outlined, allowing for the subsequent evaluation of its management. In the area of intellectual property, the main objectives are: Strengthening the recognition and protection of traditional knowledge and cultural expressions; Harnessing and use of IP of public entities; Production and marketing of products with appellations of origin, collective marks and other distinctive signs; Boosting IP and technology monitoring services for MSMEs, all with the objective of, Increase investment in research and development (R&D), narrow technology gaps and update the regulatory framework for research and innovation in order to upgrade the productive sector, allowing the evolution towards a knowledge economy.

The articles of Law 2294 of 2023 related to IP were presented. In the first place, article 107 seeks to regulate the commercial exploitation of intangible goods, which must be destined to the promotion of creative industries; article 161 seeks a strengthening of internal capacities for the production and importation of medicines; article 169 seeks cost recovery rate of Copyrights and Related Rights; article 170 seeks Intellectual property rights (transfer of PI rights to research projects); article 171 seeks the democratization of science through access to information financed with public resources, through scientific information systems; article 225 seeks the Strengthening the institutional framework for the science, technology and innovation sector; article 226 seeks to solve challenges associated with economic, social, environmental, peace and territorial development; and finally article 258 R&D Investment Framework.

Update from Peru:

Peru explained its legislation updates issued after the last intellectual property subcommittee:

- Law 31497, published on 21 June 2022, which aims to simplify the registration, renewal and protection of trademarks and other industrial property elements.
- Law 31724, published on 10 April 2023, which aims to promote the registration of distinctive signs by reducing the value of the application fee for micro and small enterprises.
- Resolution N° 000042-2023/PRE-INDECOPI, issued on 25 May 2023, which aims to approve the modification of Indecopi's TUPA (Single Text of Administrative Procedures held before Indecopi) and, therefore, includes the reduction of the value of the application fee established by Law 31724.

Regarding the ratification of multilateral agreements, Peru ratified the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications and the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, both of

them entered into force on 18 October 2022. Also, the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks was ratified, which will enter into force on 18 July 2024.

Finally, Peru provided information regarding its new virtual platform for trademark registration, which was launched in September 2022. It facilitates the registration of trademarks and other distinctive signs and allows obtaining digitally all the information needed for the procedures.

Update from the United Kingdom:

The UK delegate began with a presentation of the IPR exhaustion regime, which came into force on January 2021. This ensures that parallel imports into the UK from the European Economic Area may continue. The UK continues to consider what its future IP exhaustion regime should be and will make an announcement on this matter in due course.

In relation to streaming music UK noted that there's a wide ranging work programme on music streaming. This has included working with music industry experts to develop and agree commitments for industry action on two areas: recording and use of metadata in streaming, to ensure creators are accurately credited and paid when their music is streamed, and improving transparency in licensing and royalty chains to give creators a better awareness and understanding of how their music is licensed on streaming services. Finally, another working group was created in the sector, focused on remuneration of creators.

As for well-known marks: The Trade Marks (Amendment) Regulations 2022 came into force in December 2022. The Regulations, amongst other things, extend the right of a proprietor of a well-known trade mark to restrain the use in the UK of a trade mark which is identical or similar to the well-known mark irrespective of whether the goods or services are identical with, similar to or dissimilar to those for which the well-known mark is protected.

Concerning the designs review: The UK IPO is reviewing its designs system to make sure it remains fit for the future. A call for views and design survey were published in early 2022, and the UK Government's response to the call for views was published on July 12, 2022. It set out a number of next steps, including a consultation on changes to the design system.

UK also informed that it has developed an IP Education Framework to build the IP skills across all levels of education, which is supported by a range of freely available e-learning resources and tools. In parallel, the UK is working with universities and research institutions to help them think more strategically about IP and its maximization.

In respect to SMEs: The IPO's business policy interventions focus on helping businesses make informed decisions about their IP assets to maximize their value. To achieve this, the UK IPO runs seminars, and workshops, attends national events, and offers free digital resources. It also financially supports selected innovative, high-growth potential SMEs to protect and manage their IP, through the IP audit and IP Access (extended IP audit).

4. GI updates

Update from Ecuador:

The Denomination of origin for Miske, was recognized in October 2021 by the National Service of Intellectual Rights -SENADI- after a four-year process. Miske is a distillate of agave, and according to Art. 209, Ecuador officially requests the recognition of this new Protected Denomination of Origin, the country will proceed with the formal application.

The United Kingdom requested that all parties work together to elaborate collaborate a process map to add GIs/DOs under the trade agreement.

Ecuador expressed its concern about the time required for the approval and recognition of the PDO's already presented, and it would like to establish voluntary commitments within the framework of the agreement to speed up the processes. Ecuador has maintained an important exchange of information.

In this matter, the United Kingdom stated that the applications received from the Andean countries are at an advanced stage in their approval for the recognition of Geographical Indications. The UK also stated that they are processing, all 14 ongoing applications as a direct application to the UK GI Scheme and should therefore be subject to further scrutiny. **A technical meeting will be organized to clarify how UK implemented their commitment for the pending GI applications the status and final steps for approval of the applications.**

The UK highlighted there is a distinction between direct applications and trade agreement applications. The new GI that Ecuador wants to incorporate would be processed via the trade route. This would involve a reduced opposition period (2 months).

For the Andean pending applications, the United Kingdom has stated that it is difficult to establish a timeline as this is dependent on amendments to the GI specifications that the UK has advised. After these specifications are amended, the GIs can enter into the opposition period (3 months).

Ecuador stated it has taken time to gather the information due to the high level of detail, and information has already been sent corresponding to the pending processes.

The UK stated in the case of Miske, which will enter under the Trade Agreement, if the application meets the requirements of the UK GI scheme then it will proceed to a 2 month opposition period.

Peru mentioned that there is a misunderstanding about the status of the pending applications since the commitment in the continuity agreement between United Kingdom and the Andean did not stated any change in the treatment of the pending applications, therefore these applications should be evaluated under the terms of the Agreement, giving continuity to the previous processes of the pending applications submitted under the EU - Andean Countries Agreement and not consider them as direct applications. The UK noted that they are treating these applications [had been sent to them] as direct applications and suggested that the parties were diverging on interpretation of the Joint Declaration.

The Andean countries emphasized the need for a follow-up meeting to clarify the understanding of the UK, and discuss the status of the Andean pending applications.

Ecuador, Colombia and Peru would like to understand better the procedure of recognition of PDOS under the Agreement.

Update from Colombia:

Colombia thanked the United Kingdom for the inclusion of a precision in the documentation concerning the Bocadillo Veleño GIs/DOs.

Colombia also asked the United Kingdom what steps should be taken in the event that it was necessary to present modifications to the GIs/DOs recognised by the United Kingdom.

The United Kingdom indicated that modifications must be presented in the Subcommittee.

Finally Colombia expressed concern about the time it has taken for the process of recognition of Colombian GIs/DOs, due to the constant requests for information from the UK authorities regarding Colombian GIs/DOs, which sometimes go beyond the act of protection in Colombia.

For this reason, the United Kingdom was asked whether it has the same understanding as the Andean countries regarding the application of the agreement on this point.

Update from Peru:

Peru highlighted the concern about the status of their 6 pending applications, since they consider these applications should be evaluated under the terms of the Agreement, as a continuity to the previous processes initiated under the EU – Andean Countries Agreement, and not be consider as direct applications.

The United Kingdom mentioned that the applications are already at an advanced stage and are close to be finalize if final amendments are concluded by Peru. However, Peru mentioned that the United Kingdom has requested technical information that does not correspond to applications that should be evaluated under the terms of the Agreement, not being only minor amendments; therefore, Peru does not consider that the procedures for the recognition of its pending applications are close to being finalized.

The United Kingdom will propose dates for a bilateral technical meeting with the Andean countries to clarify the procedure for the recognition of geographical indications.

Update from the United Kingdom:

The United Kingdom request information from Colombia and Peru about the process that the UK has to undergo to request a modification of the GI registries to include Northern Ireland as a beneficiary of protection of Irish Whisky and Irish Cream.

Colombia indicates that the process must be carried out in accordance with the provisions of the legal system or regulations in force in Colombia. According to the aforementioned, firstly, it is indicated that the

modification request must be submitted by the right holder of the GI registration, i.e. the party entitled to request the modification. Finally, the procedural steps of the modification request were described.

The United Kingdom also asked Peru about the required to make a modification of a geographical indication. Peru highlighted that the protection of Irish Whisky and Irish Cream was granted in accordance of the information provided by the EU at that moment, and what corresponds is the modification of the registries, so that Northern Ireland can be recognized as the co-owner of said GIs. Peru explained there were two possible solutions that the UK can assess but none of these alternatives depend on Indecopi but on the action of third parties, so it is not possible to ensure positive results since it will depend on the course of the procedures.

The two alternatives are: i) submission of an application for registration modification that should be submitted by the current owner of the GI, requesting to add Northern Ireland as co-owner; and ii) a claiming action submitted by Northern Ireland requesting to be included as the co-owner of the said GIs. In both cases support documentation must be presented.

The United Kingdom requested all this information to be sent by email. Peru agreed to submit the requested information.

Regarding status update on the status of geographical indications in the Andean countries.

Under the commercial agreement, the scrutiny of new applications for recognition of geographical indications would be shorter and the opposition period would be two months and not three months as is the case under the direct route. Ecuador asked if Andean countries can use UK PDO seals, in this matter UK indicates that all GIs recognized by the UK will be able to use the UK recognition seals.

For more detail around the procedure and use of GI/PDO seals the UK agreed to inform by email. The UK also agreed to propose dates for the technical GI discussion before the Trade Committee of 19th of July.

5. Other issues of interest of the Parties

Neither party has previously raised points of interest here.

However, Peru took the floor and asked regarding the seals of geographical indications, appellations of origin and traditional specialties guaranteed, which the UK mentioned in its presentation, if it was feasible that the Andean GIs that have protection before the UK can also be use them?

UK collects these comments from Peru and will provide an answer on where and when they can use them next.

Colombia clarified the process for modification of GIs and confirmed Colombia does not have a contentious procedure for this.

The UK indicate that all GIs recognized by the UK will be able to use the UK recognition seals. Peru asked where they can be downloaded to be used and the UK answered that they will send all the information by email on where and when they can use them.

Also, UK asks about compulsory licenses for HIV treatment in Colombia, they would like to know more about this topic in addition, the United Kingdom asked if previous approaches had been made to the patent holders.

Colombia indicates the current status of the procedure initiated by Resolution 881 of 2 June 2023. Colombia mentioned that the figure of other use without authorization of the right holder are enshrined in the TRIPS Agreement, the Doha declaration. In addition, it is indicated that it has a regional regulation within the framework of the Andean Community -CAN- and it is also regulated in the Colombian legal system. Colombia expresses that it is committed to carrying out the process following and complying the aforementioned regulations.

Regarding the consultation on whether previous approaches had been made to the patent holders. It was mentioned that approaches were made to the patent holders without any results. It was also mentioned that with regard to the molecules that are the object of the procedure, there is currently only voluntary licensing in Colombia for use in children, not for use in adults, circumstance that does not solve the problems of access that exist in the country.

The UK requested that Colombia send these details in writing, which Colombia agreed.

6. Closing remarks

The delegations expressed mutual gratitude for the productive and informative meeting, noting that they look forward to further engagements.

Colombia: The delegations of the countries were thanked for the fruitful day. The topic related to the doubts of the Andean countries regarding the recognition of geographical indications is highlighted. Remains attentive to the meeting to clarify the doubts related to this issue.

Peru: They are waiting to know the proposed dates from the UK for the GI meeting and to receive the links to download the GI seals. They hope to reach a solution soon for the pending GI issues.

The United Kingdom: UK reiterates constructive participation to advance the implementation of IP in trade relations. We continue to work with our Andean colleagues.

Annex 1: Attendee list

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United Kingdom	Aisha Gleadhall	Department for Business and Trade	
United Kingdom	Laimonas Gedgaudas	Department for Business and Trade	
United Kingdom	Melissa Roberts	Department for Business and Trade	
United Kingdom	Anthony Gilmore	Department for Business and Trade	
United Kingdom	Andrea Perez	Foreign, Commonwealth and Development Office	
United Kingdom	Toby Elliott	Department for the Environment, Food and Rural Affairs.	
United Kingdom	Leah Kennett	Intellectual Property Office	
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