MULTIDISCIPLINARY SCIENCE JOURNAL

RESEARCH ARTICLE
Published Online: February 2, 2026
https://doi.org/10.31893/multiscience.2026264

Intellectual property in the economic partnership agreement between Colombia and Japan

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Abstract Intellectual property rights (IPR) have become a central focus in the negotiation of international trade agreements, as they are a key instrument for both the protection of innovations and the governance of global value chains. In this context, Colombia has signed multiple treaties in which the inclusion of intellectual property chapters has been recurrent. This article analyzes, from a descriptive and documentary approach based on primary and secondary sources, the treatment of intellectual property in the Economic Partnership Agreement negotiated between Colombia and Japan. It employs a methodology that combines documentary review and specialized literature, defining official negotiation documents as primary sources. The results show that, unlike the agreements signed with the United States and the European Union, which are characterized by the adoption of "TRIPS-plus" standards and stricter requirements, the intellectual property chapter in the EPA with Japan was limited to general provisions, with an explicit reaffirmation of the multilateral commitments made within the framework of the World Intellectual Property Organization (WIPO) and the Agreement on Trade-Related Aspects of Intellectual Property Rights. It is concluded that Colombia's strategy sought to preserve margins of regulatory flexibility in the face of external demands, prioritizing a balance between the protection of intellectual property rights and national interests in public health, innovation, and technology transfer. This study contributes to the debate on how developing countries negotiate with advanced economies, highlighting the need to incorporate safeguards that ensure that international intellectual property commitments are aligned with sustainable development goals and regulatory autonomy.

Keywords: copyrights, trade agreement, diplomacy, integration, technology transfer

1. Introduction

There is a constant and evident relationship between Intellectual Property Rights (IPR) and commerce. The purpose of these rights is to provide legal protection to the owners of different creations, precisely to encourage the emergence of innovations and other results of human inventiveness, and to translate these inventions into new products, services, technologies, and other issues that boost world trade.

Also, trade agreements, both bilateral and multilateral, are presented as a means for the harmonization and standardization of intellectual property laws and enforcement mechanisms, seeking consistent protection for innovators and creatives. Intellectual property (IP) is an essential component in the negotiation process of free trade agreements (FTAs), and finalizing an agreement often depends on the success of negotiations regarding IP provisions. The content and purpose of intellectual property provisions in trade agreements vary across different agreement models, highlighting similarities and differences (Roffe, 2013).

Since the beginning of the 21st century, a new generation of trade agreements has been identified, where IP provisions have become more relevant. For example, these negotiation processes are used by the European Union as a means of influencing and transforming IP legislation in the countries with which it conducts negotiations (Nam, 2022); thus, bilateral association agreements between the EU and developing countries have played an important role in boosting the increase of IPR standards (El Said, 2007).

In this sense, this relationship is also perceived as an exercise of power between the parties in the Negotiation process, where the intellectual property rules of the countries with higher levels of negotiating power or producers of innovations subject to IPRs are imposed (Moniruzzaman, 2016).

Since the first five years of the 21st century, Colombia has initiated processes of negotiation of new generation trade agreements with territories of different latitudes and levels of development; the United States, Canada, the European Union, Japan, and Turkey, among others, and in these negotiations, the provisions related to Intellectual Property have been present.

 Received: June 25, 2025 | Accepted: September 5, 2025

Colombia has advanced a trade negotiation process with Japan, a developed country and generator of knowledge, technology, and innovations, and promoter of achieving harmonization on these provisions.

The object of study of this paper is intellectual property in general, and more particularly, it focuses on describing the intellectual property aspect negotiated by Colombia in the framework of the Economic Partnership Agreement (EPA) with Japan.

This paper is structured into two parts. The first part begins with a brief overview of the consolidation of the regulatory system of intellectual property rights. Then it addresses the application and general considerations of this issue in the context of Colombia.

The second part develops a brief section on the bilateral relations between Colombia and Japan, within the framework of the EPA between the two nations, to later address some considerations on the intellectual property chapter negotiated in said agreement.

The specific relevance of examining the intellectual property (IP) agreement between Colombia and Japan lies in Japan's prominent global role as a leading innovator and technology exporter. Understanding the details and implications of this Economic Partnership Agreement (EPA) offers critical insights into how developing countries, such as Colombia, navigate negotiations with technologically advanced economies. Additionally, analyzing this agreement contributes valuable knowledge about the strategies employed by Colombia to protect national interests related to technological transfer, public health concerns, and domestic innovation in the face of strong IP protection standards commonly advocated by developed nations.

2. Literature review

Regarding Intellectual Property Rights and their relationship in the negotiation processes of trade agreements, there is specialized literature that approaches it from different perspectives. A considerable group of literature emphasizes trade agreements between Western countries and Asian and developing countries: Moerland (2017), Morin and Cartwrigth (2020), Moniruzzaman (2016), another part of the literature studies the use of trade agreements as mechanisms to harmonize regulations on Intellectual Property Rights, especially by the United States and the European Union; El Said (2007), Puutio and Parisotto (2015), Roffe (2013), Maskus and Ridley (2016). For the specific case of Colombia concerning intellectual property in the negotiation processes of trade agreements, Von Braun (2012) reflects on the matter.

Roffe (2013) addresses IPRs in free trade agreements, emphasizing the demands of major countries and the participation of developing countries, evidencing the influence of the legislative models of major trading partners on the final agreements (Roffe, 2013). Major trading partners play a crucial role in shaping the final agreements, as they reflect their existing legislative models and perceptions on Intellectual Property issues. However, to different extents, it is observed that the IP concerns and demands of developing countries are considered in these agreements; the importance of these in the final agreement varies (Roffe, 2013).

In the same direction and specifically with the EU trade agreements with developing countries, Moerland (2017) examines the challenges in the negotiations that these countries face with the EU on Intellectual Property. The EU's strict IP rules conflict with the domestic policy priorities of developing countries, which are at a disadvantage in the negotiation process because of low bargaining power. These high EU standards prioritize the EU's competitiveness over its own development needs. Moerland goes on to State that there are no balanced provisions, safeguards, and incentives for technology transfer in the agreements offered to developing countries (Moerland, 2017).

Moniruzzaman (2016) addresses the political dynamics influencing the free trade negotiations between Malaysia and the United States concerning IPRs, recognizing the existence of tensions between political and economic priorities domestically on each side of the negotiation (Moniruzzaman, 2016). On the one hand, the United States seeks to enforce its respective IPR provisions in the agreement, which include stringent patent, copyright protection and trademark laws to secure the interests of creators and innovators, on the other hand, Malaysia prioritizes domestic interests, balancing economic and political considerations against external pressures on IPR (Moniruzzaman, 2016).

Authors such as El Said (2007) consider that multilateral initiatives for the harmonization of provisions for the protection of intellectual property have lost their validity and their promoters, the United States and the European Union, have reoriented these objectives towards bilateral processes, primarily through the negotiation of trade agreements. For El Said (2017), this change of strategy generates a loss of negotiating capacity and greater pressures for developing countries to incorporate higher levels of IPR protection, which in turn may affect the global intellectual property rights regime (El Said, 2007). Another effect is explored by Maskus and Ridley, for whom the provisions in these agreements with their inequities tend to expand imports to poorer economies and increase exports from middle-income countries, particularly of high intellectual property goods (Maskus & Ridley, 2016).

A driver for the search for harmonization of IPR provisions is technological progress and digitalization. This thesis was developed by Puutio and Parisotto (2015), for whom such harmonization is complex because of the diverse national interests, levels of development between the parties in a trade negotiation process, and disparities in the technological absorption capacity between countries. Although Free Trade Agreements allow for a flexible platform to establish IPR standards, this flexibility can generate challenges to achieve a balanced and uniform approach (Puutio & Parisotto, 2015).

Concerning Intellectual Property provisions in trade agreements advanced by Colombia Von Braun (2012) analyzes how domestic politics, in the negotiation process, influences intellectual property rights in the FTA with the United States; Domestic economic diplomacy and policy changes can have a significant impact on the integration of intellectual property rights in trade agreements (Von Braun, 2012). Von Braun agrees in identifying a defensive posture of developing countries, in this case Colombia, due to internal pressures and the impact of US policy changes in these negotiations (Von Braun, 2012). Developing countries such as Colombia tend to prioritize the protection of their infant industries from competition with more developed nations with which they are engaged in negotiation processes. Nations such as Colombia experience difficulties in integrating Intellectual Property Rights (IPR) that may favor developed countries in their legal frameworks. There is concern about the possible impact of strict intellectual property rights on public health and access to medicines (Von Braun, 2012).

While existing literature extensively addresses IP negotiations broadly, fewer studies explicitly connect these debates to Colombia's strategic positioning in global trade agreements. This paper aims to fill that gap by examining how Colombia has balanced international pressures and domestic policy objectives within the IP chapter of the EPA with Japan. Drawing on perspectives such as Roffe (2013) and Von Braun (2012), who highlight power asymmetries and domestic policy pressures, this study explicitly evaluates how Colombia managed negotiations, comparing the outcomes with agreements signed previously (e.g., with the US and EU), thus enriching the existing literature with a focused national perspective.

3. Materials and Methods

This work had a qualitative, descriptive, and documentary research approach. The first part of this work was structured based on secondary sources, with a bibliographical review of different academic works related to the object of study proposed here. Legal instruments of the Colombian legal system regarding intellectual property were also reviewed.

For the structuring of the second part, secondary sources were also used. The work consisted of reviewing the official documents of the negotiation rounds of the EPA between Colombia and Japan, published on the website of the Ministry of Commerce, Industry, and Tourism of Colombia. Moreover, to analyze the point of intellectual property in the agreement, a primary source was used. A semi-structured interview was conducted with Ms. Liliana Rocío Ariza, Chief Advisor of the Ministry of Commerce, Industry, and Tourism of Colombia, for the Intellectual Property chapter in the EPA between Colombia and Japan.

The semi-structured interview conducted with Ms. Liliana Rocío Ariza, Chief Advisor on intellectual property issues for the Colombian Ministry of Commerce, Industry, and Tourism, was strategically selected due to her direct involvement in the EPA negotiations with Japan. Her first-hand experience provided critical insights into negotiation dynamics, the rationale behind Colombia's positions, and specific outcomes of intellectual property provisions, ensuring the reliability and pertinence of the information presented in this research.

4. Conceptual approach. An approach from the international political economy

Intellectual property refers to the legal rights that protect the original creations and inventions of individuals, such as literary, artistic, and musical works, inventions, trademarks, and industrial designs. These rights grant creators exclusive rights over the use and exploitation of their creations for a specific period.

There are different forms of protection, such as copyrights, patents, trademarks, and design rights. Each country has its laws and regulations to protect and enforce intellectual property, i.e., the commitments that countries assume through agreements and treaties, in response to a harmonization process that tends to equalize the standard within the framework of a globalized economy.

In general terms, the question that runs through the intellectual property debate is who benefits from these rules, whether they promote and encourage innovation to protect those who develop the invention, or whether they represent a constraint for developing and less developed economies.

The study of intellectual property and the debates that revolve around it constitute a cross-cutting theme in various fields of study. They are the subject of legal affairs and economics. In international studies, the main approaches (although not exclusive) are related to the configuration of regimes at the multilateral or regional level.

This paper proposes an approach to the issue from the perspective of International Political Economy which deals with the analysis and explanation of the global economy based on the reciprocal interaction between the structures of the market and the State, i.e. how the actors are involved in the economic dispute, cooperate, and eventually agree on the rules on which economic activity develops.

The configuration of international agreements is one of the main topics of study in the study of IPE (Aggarwald & Dupont, 2017; Peixoto Batista, 2017; Zelicovich, 2018) and more specifically the issues related to intellectual property aspects, have attracted the attention of numerous authors who have focused both on the evolution of the multilateral negotiations and the development of regional or bilateral agreements (Richards, 2005; Schwartz, 2019; Sell, 2010).

The usefulness of IPE for the analysis of these cases lies in the motivations of its existence as a field of study. Among the questions that form part of its backbone is the vocation to understand the rationale behind a decision, why governments are willing to implement a given regulation, or agree on specific competencies with other governments. In other words, IPE goes

beyond the description of strategies, policies, and the evolution of the contemporary world economy and aspires to know how governments make decisions on economic policy and how they manage their external relations (Cohen, 2014; Oatley, 2019; Underhill, 2000).

In a preliminary analysis, what underlies the relevance of intellectual property is that, towards the end of the 20th century, it has taken on a much greater centrality in the global economy than at other times in history. The advent of the third industrial revolution, or revolution in information technology and telecommunications, promoted the emergence of a knowledge-intensive techno-productive paradigm, which displaces manufacturing as the primary source of value, leaving activities related to research and development, design, and process control, among others, as the activities that yield the highest profits.

The organization of production, trade, and investments under the articulation of global and regional value chains represents a qualitative change in the global economy (Dicken, 2018), where processes are functionally integrated and geographically dispersed. Likewise, new technologies make it possible to integrate services that were previously domestically marketed, which tends to modify the preferences of economic groups and their alliances concerning foreign economic policy.

Baldwin (2017) and Blanco (2020), argues that these transformations increase the complexity and interconnectedness of things that cross borders (sic), and with it a change of axis in trade policy, where it should no longer only govern for the administration of the entry or exit of products, but are oriented to a better functioning of value chains, i.e. the trade-investment-services and intellectual property nexus (p. 254).

In short, the transnationalization of the world economy and the integration of productive processes make intangible property more vulnerable. Thus, a company established in a specific territory of a host country will want to have regulations that protect its knowledge, just as governments, at different territorial scales, will want to take advantage of the potential benefits of an investment in sectors with a high intellectual content.

Under this configuration, IPE detects preferences regarding expected gains or losses, which translates into a dispute over how States position themselves in the face of an agreement that regulates a specific subject matter (Frieden et al., 2019; Lake, 2009). In general terms, the position of developed countries has been that of greater protection of intellectual property rights. In contrast, developing countries tend to favor more lax rules to facilitate the transfer of knowledge.

5. Results and Discussion

5.1. Evolution of the regulatory system of intellectual property rights

The 15th century statute of Venice was the starting point for the subsequent structuring of the regulatory system of intellectual property rights, which was nourished at the local and national level by this contribution and by the English regulation of the 17th century, and at the international level had its turning point with the Paris Convention for the Protection of Industrial Property of 1883 and the Berne Convention for the Protection of Literary and Artistic Works of 1886.

The degree of protection and enforcement of these rights varied in different countries around the world. As intellectual property became more important, these differences became a source of tension in international economic relations. The creation of an institution to establish agreed standards in this area became a necessity to bring greater order and predictability to world trade.

Thus, the accelerated pace of innovation and the growing integration of the world economy led, in 1967, to the creation of the International Intellectual Property Organization (WIPO), as a subsidiary body of the United Nations (UN). WIPO's objective is to promote and protect intellectual property rights worldwide through the establishment of international agreements that set minimum standards for the protection of intellectual property rights and facilitate the harmonization of national laws.

However, in the late 1970s and early 1980s, developed countries began to express criticism of the WIPO system, arguing that it was not adequately safeguarding the interests of their technology and broadcasting industries. The primary concern was that WIPO did not establish sufficient standards of protection and lacked mechanisms to ensure compliance with the obligations established in the conventions under its administration (Oñate, 2010). As evidence of the laxity with which the issue was treated, WIPO did not provide for a dispute settlement system, with the conventions lacking real effect if they were not translated into national laws and, in the latter case, even remaining at the mercy of the vagaries of domestic politics (de San Felix, 2007).

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS or TRIPs) within the framework of the Uruguay Round, which between 1986 and 1994 determined the creation of the World Trade Organization (WTO), was the most significant milestone in the regulation of intellectual property, unifying the regime for all signatory members. TRIPS represents, for the first time in history, the regulation of intellectual property explicitly and specifically for commercialization and represents a turning point in the way intellectual property rights are regulated globally.

In 2005, within the framework of the Doha Round and as an amendment to the TRIPS Agreement, the regulatory autonomy of States to qualify or limit the application of intellectual property rights for public health reasons was recognized. This relaxation stems from the disagreement among developing countries over issues related to access to medicines and

patents in the pharmaceutical industry. The amendment became effective in 2017, following approval by two-thirds of member countries.

The debate on patents in the field of public health was given new impetus in the context of the pandemic by India and South Africa's request for a waiver from specific provisions of the TRIPS Agreement for the prevention, containment, and treatment of HIV/AIDS-19. The proposal aimed to temporarily lift some of the obligations related to products and technologies such as vaccines, diagnostic tests, therapies or procedures, personal protective equipment, their materials or components, and their methods and means of manufacture.

At the time of drafting this article, the debate remains open even though the organization has set a deadline of December 2022 for reaching an agreement.

For Penrose (1974), the regulatory system of intellectual property rights has as its foundation the protection of the inventor, under a connotation of the natural right of property, which acts in the function and benefits of developed countries.

This thesis is indirectly supported by the work of Díaz (2006), in which the United States is considered to have shaped intellectual property regulations, at least in recent years. Díaz, analyzing the contributions of John Braithwaite and Peter Drahos (2000) and Ove Grandstan (2005), starts from the premise that at the beginning of the 1980s, there were four crucial transformations in intellectual property in the United States, which ended up impacting and conditioning the international regulatory framework in this area.

Mutter (2006), along the same lines, states that TRIPS intellectual property standards are unequal, since developed countries did not have to comply with the strict standards of protection that developing countries have today. As Sercovich (2008) states, without the formation of domestic capacities, little benefit can be derived by recipient countries, i.e., the scope and effectiveness of IPRs depend on the level of compliance with the global regime and the maturity of the innovation system at the national level.

This position was shared by the representatives of developing countries, who were not enthusiastic about including intellectual property in the multilateral negotiations (Roffe & Cruz, 2006). However, the fear of the sanctions they could face if they were not prepared for the new standards of protection, and the single undertaking system that implied accepting the entire WTO package to close the agreement, are the arguments on which the acceptance of developing and least developed countries is based, since they expected to make gains in the other areas negotiated (Oñate, 2010).

In short, the TRIPS Agreement established a harmonization scheme based on high minimum standards of protection applied to all WTO members, regardless of their level of development. Following the conclusion of the agreement, the positions of WTO member countries on the treatment of the issue continued to be far apart, while world trade underwent significant transformations. As a result, the multilateral sphere lost ground or found its limits.

To move forward on deeper obligations in line with the needs of 21st-century value chains, countries resort to bilateral or plurilateral treaties under TRIPS-plus disciplines. This means that they cover both activities aimed at increasing the level of protection beyond what is stipulated in the agreement, i.e., they create new obligations that imply the establishment of higher standards of protection.

Under this trend, the United States continues to exercise its hegemonic role through the signing of bilateral or regional free trade agreements. In Latin America, Diaz (2006) argues that, among the nine countries negotiating FTAs with the United States to increase trade, they were willing to negotiate, among other things, the strengthening of intellectual property rights regulation.

For example, Mutter mentions, in the negotiation of the FTA with Colombia, "the United States demanded compliance with requirements contemplated in a new version of the TRIPS treaty, called TRIPS plus, which was discarded from the international negotiations at the WTO because it was too strict for developing countries" (2006).

The demands on intellectual property have been so great on the part of the United States, as a result of its perception of loss of comparative advantages, that when this country announced its exit from the Trans-Pacific Partnership Agreement (TPP) in 2017, the other signatory countries agreed to remove twenty rules, of which eleven correspond to the intellectual property chapter, as they considered them complex in the areas of medicinal patents and copyrights in the digital sphere.

The bilateralization of intellectual property commitments is a symptom of the limitations of the WTO to reach deeper agreements and to adapt to changes in world trade, where intangibles represent an increasingly significant part of global exchanges.

5.2. Application of the intellectual property rights system in Colombia

Intellectual property in Colombia is based on a substantial right, based on the international treaties signed, the 1991 Political Constitution, the decisions of the Andean Community of Nations (CAN), and the laws, decrees, and directives of the State (Izquierdo & Palacio, 2011).

The first treaty ratified by Colombia, which developed matters related to intellectual property, was the Treaty of Friendship, Commerce, and Navigation, signed with the then German Empire in 1894. Subsequently, France signed the Convention on Industrial Property in 1904. From this period onwards, a series of accessions and ratifications to international conventions, agreements, and treaties began that developed, to a greater or lesser extent, specific chapters on intellectual

property. Graph 1 shows the number of international conventions ratified by Colombia in this area, highlighting, above all, that by the end of the Uruguay Round, Colombia had ratified 25 conventions, and subsequently, in a period of little more than twenty years, a total of 43, which is a sign of the same dynamics explained in the previous section, according to which the final stage of the 20th century was the most dynamic in the appearance of regulatory instruments about intellectual property rights (Figure 1).

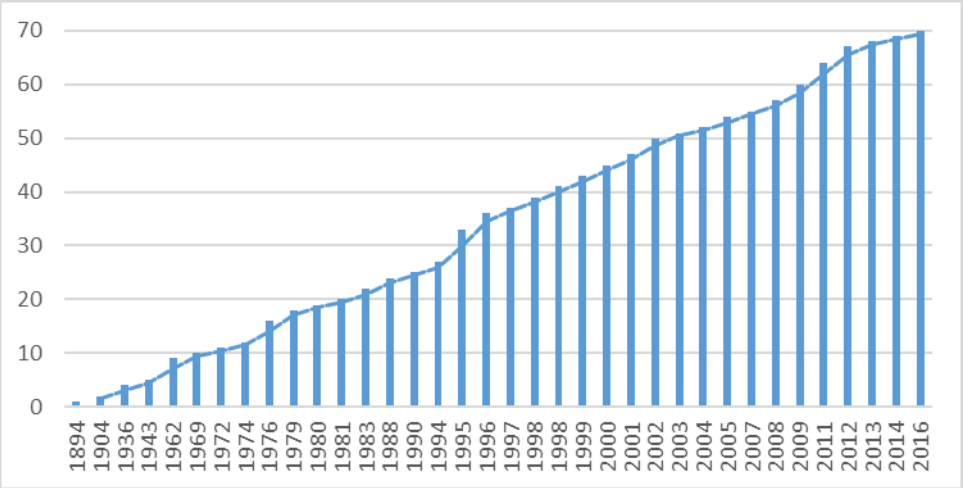

Figure 1 International conventions, agreements, and treaties related to Intellectual Property, ratified by Colombia, 1894-2016.
Source: Own elaboration with data from (WIPO, 2018).

Now, in national regulatory matters, the first decree about intellectual property rights was issued by the executive in 1971, which structured the country's commercial code and detailed aspects related to the enforcement of intellectual property, patents, and industrial property.

The development of legal regulatory mechanisms in Colombia was low until 1994. As shown in Figure 2, between 1971 and 1993, 14 legal instruments were passed in the country, including decrees, laws, and regulations. However, from the commitments agreed in the Uruguay Round. With the commitments acquired with the FTAs signed in recent years, in the period 1994 to 2017, 84 regulatory instruments on intellectual property rights were incorporated in the country, showing a significant increase.

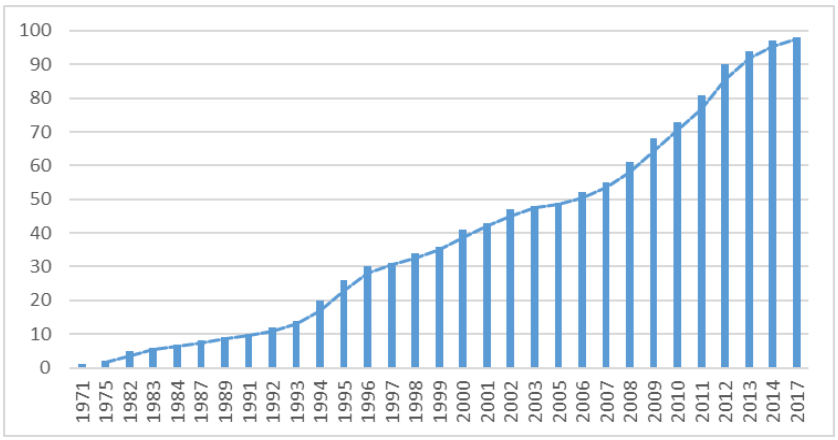

Figure 2 Decrees, laws, and regulations regarding Intellectual Property, ratified by Colombia, 1971-2017.
Source: Own elaboration with data from (WIPO, 2018).

Although Colombia has made progress in the achievement and protection of intellectual property, in the legislative and procedural field, Andrés Izquierdo and Gustavo Palacio (2011) state that the current level of protection in Colombia does not reach the level developed by the European Union and the United States.

5.3. The intellectual property item in the Colombia-Japan economic partnership agreement

Bilateral relations between Colombia and Japan were established in 1908, with the signing of the Treaty of Friendship and Pacific Navigability, and with the subsequent mutual establishment of embassies, first Japan in Bogota in 1934 and then Colombia in Tokyo in 1935. However, during the first half of the 20th century, due to international turbulence, the bilateral relationship had constant difficulties.

The most critical stage in bilateral relations took place in the context of World War II, when Colombia, under the auspices of the "good neighbor" policy of US President Franklin D. Roosevelt, broke off relations with Japan. This stage was overcome with the events of the Korean War, in which Colombia and Japan were on the same side, generating confidence again between the nations and resuming bilateral diplomatic relations, which were resumed with the complete reestablishment of relations in 1958.

In this context, from 1962 to 2023, Colombia and Japan have signed fifty bilateral agreements in various areas (Ministry of Foreign Affairs of Colombia, 2018) and maintain a trade exchange that exceeds 1.5 billion dollars International Trade Centre, 2023).

However, since the end of 2012, Colombia and Japan have formally initiated negotiations for an EPA. This type of agreement has been gaining ground for years. They contain the same aspects in trade matters that FTAs traditionally have but also seek to overcome them by adopting greater commitments in various areas, such as the intensification of international cooperation flows between the parties, environmental aspects, support for specific sectors, promotion of economic alliances, among others. In other words, the EPAs make explicit the development aspect between the parties.

It should be noted that Colombia recently entered this new generation of agreements with the signing of the EPA with the European Union. Apart from the controversial debates on the possible adverse effects, it is important to highlight the apparent differences of this agreement concerning the FTAs signed previously. This agreement with the European Union contains aspects aimed at encouraging greater capital and exchange of technology, knowledge, and experiences, provisions to promote the sustainable development of trade and investment, and respect for human rights as an essential element of this closer relationship (Delegation of the European Union in Colombia, 2013).

Regarding the EPA between Colombia and Japan, it is worth noting that thirteen rounds of negotiations, including two mini rounds and seven negotiation meetings, took place between 2012 and 2017. In this process, various areas such as trade and international cooperation were addressed, and the issue of intellectual property also had an important space (Ministry of Commerce, Industry and Tourism, 2018).

To be more specific, aspects of intellectual property were discussed in Rounds II, V, VI, VII, VIII, IX, and X. The aspects concerning these rounds are discussed below Table 1.

Table 1 Intellectual property aspects of the Colombia-Japan EPA rounds.

Round	Aspects to consider
II	The parties have not yet decided on the need to include an intellectual property chapter in the negotiation.
V	Interests in intellectual property matters were exchanged. Japan indicated its intention to have a reference to intellectual property issues within the EPA.
VI	Colombia expresses its interest in not having an intellectual property chapter in the EPA. The parties agree to review the agreements signed on this matter.
VII	The interests of the parties in intellectual property matters are discussed again. The best way to address it is discussed: general provisions with emphasis on cooperation or including specific provisions.
VIII	It was agreed to address the issue of intellectual property in general. Colombia includes intellectual property aspects related to the Doha Declaration.
IX	The inclusion of the aspects by Colombia in relation to the Doha declaration is questioned. Japan is consulting internally.
X	The chapter on intellectual property was closed, and it was agreed to include Colombia's proposal to address it with general provisions.

Source: Own elaboration with data from the negotiation rounds published by the Ministry of Commerce, Industry, and Tourism of Colombia (2018).

Now, in direct relation to intellectual property, Colombia and Japan agreed to include a relatively brief chapter in the EPA, under the proposal made by Colombia that it would have general provisions, provided that the reference to the Convention on Biological Diversity was included in the chapter on trade and sustainable development. On this point, the Advisor of the Ministry of Commerce, Industry and Tourism of Colombia for the Intellectual Property chapter in the EPA between Colombia and Japan, Liliana Ariza, maintains that the agreement with Japan on intellectual property does not have the magnitude that had, for example, the chapters on this subject in the FTAs with the United States or the European Union, since only general provisions were taken into account and of observance (2018).

A comparative analysis with Colombia's previously negotiated agreements highlights critical nuances within the Colombia-Japan EPA. Unlike the comprehensive and detailed IP chapters established in agreements with the United States and the European Union—which included extensive TRIPS-plus measures—general provisions and explicit reaffirmation of existing multilateral commitments characterize this EPA with Japan. This outcome suggests a deliberate Colombian strategy aimed at maintaining greater domestic flexibility, particularly on sensitive issues such as pharmaceutical patents and public health access, reflecting lessons learned from earlier negotiations. Moreover, Japan's internal pressures stemming from recent regional agreements, notably the Trans-Pacific Partnership (TPP), likely influenced its willingness to accept a less stringent IP chapter.

Considering the agreements already signed by Colombia and the context in which Japan found itself within the framework of the TPP negotiations, the result of the intellectual property chapter that was successfully closed and agreed upon was structured with the following considerations:

In the general provisions, it was agreed to reaffirm the multilateral agreements related to intellectual property, i.e., TRIPS and the agreements administered by WIPO. On the other hand, about the exceptions to such rights, reference was included in the Doha Declaration on Public Health.

From the above, it is clear what was agreed on the duration of pharmaceutical patents and copyrights, points for which allusion was made to TRIPS and WIPO agreements, without giving room for specific references or exceptions by any of the parties (Ariza, 2018).

Specific articles involving the use of international classification systems for trademarks and patents, transparency, and public awareness of the intellectual property system were also included (Ariza, 2018).

Additionally, the agreement includes a specific article on border measures, which is subject to the domestic legislation applicable in Colombia in this matter. At this point, it was necessary to clarify that the suspension of suspicious goods was limited solely and exclusively to copyright piracy and counterfeiting of trademarks or confusingly similar marks, by Decree 4540 of 2006. Likewise, the current regulations include an article on civil remedies related to these types of remedies.

An article on cooperation between the parties was also agreed, among others, for the exchange of joint information on intellectual property systems, and a Subcommittee on Intellectual Property was created for the implementation of the chapter and the discussion of issues related to this matter and related to the chapter.

In conclusion, agreement was reached on a general chapter, reaffirming the multilateral agreements on intellectual property and balanced concerning intellectual property rights and the exceptions and limitations thereto, while maintaining the reference to the Doha Declaration on public health.

6. Conclusions

The signing of the free trade agreement between Colombia and Japan, and specifically the chapter on intellectual property, represents a paradigmatic case study in North-South economic relations.

The analysis derived from international political economy establishes that negotiation corresponds to a process whereby the scope of intellectual property rights established at the multilateral level is not a sufficient guarantee for developed countries, which seek to deepen them through the establishment of trade agreements.

At the turn of the twentieth century, trade liberalization issues represented only part of the concerns of states when negotiating an agreement. Investment conditions and the protection of intellectual property are elementary factors in the governance of value chains and the establishment of transnational corporations.

The analysis provided offers several critical policy implications for future IP negotiations involving Colombia and similar developing nations. It underscores the importance of strategic flexibility and alignment of IP standards with national development objectives, especially regarding technology transfer, domestic innovation support, and public health safeguards. This study suggests that Colombia and other developing countries should prioritize incorporating explicit, balanced provisions that reflect their socio-economic realities and development priorities. Additionally, future negotiations should consistently include mechanisms for monitoring implementation, cooperation initiatives on technological capacities, and clearly defined exceptions aligned with national interests.

7. Declarations

7.1. Ethical considerations

Not applicable.

7.2. Use of artificial intelligence (AI)

The authors declare that no generative artificial intelligence (AI) tools were used in the preparation, analysis, or writing of this manuscript.

7.3. Conflict of Interest

The authors declare no conflicts of interest.

7.4. Funding

This research did not receive any financial support.

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