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**Trade Secrets Throughout the World**

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Editor

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Co-editors

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## Introduction to the 2025-2026 Edition

The 2025-2026 Edition of *Trade Secrets Throughout the World* includes important case law and statutory updates to several significant international jurisdictions, with fully revised and edited chapters concerning the laws of:

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TRADE SECRETS THROUGHOUT THE WORLD

- The United States of America

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**Melvin F. Jager** who passed away in the fall of 2022, was a distinguished member of both the Illinois and District of Columbia Bars. He engaged in the private practice of Intellectual Property Law continually since 1962, holding a Bachelor of Science degree and a Juris Doctor from the University of Illinois. His extensive experience encompassed litigation, prosecution, and consultation in patent, trademark, copyright, trade secret, licensing, and antitrust matters. As a respected expert witness in patent and trade secret matters, Melvin Jager also shared his knowledge as an Adjunct Professor of Law at the Northern Illinois University School of Law, John Marshall Law School, and the University of Illinois College of Law in Champaign-Urbana, Illinois. His lectures extended beyond the United States to the College of Law at the University of Victoria and at St. Peter's College at Oxford University in England. As a leader in his field, Melvin Jager served as past Chairman of the Council of the Patent, Trademark and Copyright Section of the Illinois Bar Association. He has addressed the annual conventions of the American Intellectual Property Law Association, the Litigation Section and the Patent Trademark and Copyright Section of the American Bar Association on Trade Secret Protection for Computer Software and Employer-Employee Relations. He has also lectured at the Annual John Marshall Law School Intellectual Property Institute on recent developments in trade secret law and to numerous bar associations in continuing legal education programs on trade secrets. He was also Chairman of the Trade Secrets programs sponsored by the Practising Law Institute. He also lectured on recent Trade Secret Law developments before the Licensing Executive Society ("LES"), the Southwest Legal Foundation and the Patent Resources Group. He has been a past Chairman of the Intellectual Property Litigation Committee of the Litigation Section of the American Bar Association, past president of LES USA and Canada, Past-President of the Licensing Executives Society International ("LESI"), Past-President of the Intellectual Property Law Association of Chicago, and a member of the American Law Institute. In 2007, he received the Gold Medal of LESI.

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Toby has also litigated trade mark and passing off claims before the High Court and Court of Appeal and his broader practice includes advising clients on product compliance and labelling issues in a variety of sectors.

Toby graduated from The University of Nottingham with a first class BSc in Physics and Philosophy. He also holds a Post Graduate Diploma in Intellectual Property Law and Practice from The University of Oxford in which he was awarded a distinction.

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Nick has received many professional accolades. He is ranked in Chambers Global and Chambers USA as a Band 1 Practitioner for Intellectual Property: Patent. The Legal 500 has described him as “a top-notch patent trial lawyer” and “an excellent strategic adviser,” who has “a unique understanding of the way people think and an ability to get a message across.” He has also been named a “National Litigation Star” for Intellectual Property by Benchmark Litigation, one of the Lawdragon “500 Leading Lawyers in America,” “Outstanding IP Litigator” by Managing Intellectual Property and an expert in patent law in the Guide to the World’s Leading Patent Practitioners and The Best Lawyers in America. He was recognized as one of IAM’s Global Leaders 2022.

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## **Introduction\***

### **International Enforcement of Trade Secret Rights**

The WTO/GATT Agreement, which was concluded on April 15, 1994, brought to closure the long running Uruguay Round of discussions and established the World Trade Organization (WTO). Annex C to the WTO/GATT Agreement is titled "Trade-Related Aspects of Intellectual Property Rights" and is referred to generally as the "TRIPS" Agreement. The purpose of the TRIPS Agreement is to improve and harmonize the protection afforded to intellectual property, including trade secrets, in and among the WTO's member states.

However, despite the ongoing implementation of the provisions of the TRIPS Agreement related to trade secret protection (e.g., trade secret laws have recently been promulgated in, *inter alia*, Korea, Thailand, Indonesia, and Taiwan), with the exception of the United States, the Member States of the European Union, and a limited number of other industrialized countries, trade secret protection internationally remains inconsistent. This is due, in part, to the fact that the transition provisions of the WTO/GATT Agreement (Article 65) permit varying compliance periods ranging from 5 to 10 years from the Agreement's effective date, depending on the level of a country's economic development.

In one sense, the current international scene is similar to that which exists in the United States, i.e., substantive standards varying among a large number of jurisdictions (i.e., the various states), with each having its own procedural rules as well. However, in the United States there has existed the harmonizing effect of the Restatement (First) of Torts, the Restatement (Third) of Unfair Competition, and the Uniform Trade Secrets Act, though they have not been interpreted and adopted in precisely the same way in all jurisdictions. The United States also benefited from a common legal tradition, a common language, and the Full Faith and Credit clause of the U.S. Constitution, all of which tend to mitigate the differences and make interstate

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\* This introduction was written by James Pooley and is derived from a paper written and presented by Mr. Pooley at a conference held in New York City entitled Trade Secrets, Information Security, and Industrial Espionage. Mr. Pooley is a shareholder in the law firm of Gray Cary Ware and Friedenrich located in Palo Alto, California. His permission to use this material is greatly appreciated.

transactions and litigation relatively predictable.

Until the adoption of the NAFTA and the TRIPS Agreement there was no such strong influences which were able to harmonize the laws protecting trade secret laws around the world. We will briefly examine the impact of those two treaties, which is potentially great, but with the emphasis on “potentially.” The wheels of change roll very slowly in matters of international trade, and for a complex set of reasons this has been especially true with regard to intellectual property issues. Cautious optimism is the appropriate attitude at this point in time.

While we wait for the day when all the signatories of the TRIPS Agreements have implemented uniform standards of trade secret protection and enforcement, we will continue to deal with a complex and dynamic set of trade secret protection rules (or lack thereof) which must be investigated and assessed in the context of each transaction and each potential dispute. That said, one can make some broad observations which should be useful in establishing context for some of the information which follows.

In addition to the United States, trade secret law is fairly well developed and predictable in the United Kingdom and in most jurisdictions (such as Canada, Australia, and Singapore, to name a few) which have borrowed from its jurisprudence and which employ a common law system of largely judge-made law. Enforcement is generally good in these jurisdictions, although discovery rights are not nearly so extensive as in the United States, an issue of some importance for trade secret plaintiffs (though some would say that more limited discovery may provide more of an advantage than impediment).

In the civil law systems of the continental European Member States of the EU (in which the judge or other judicial officer takes charge of collecting the evidence through a series of hearings) the standards covering trade secret protection are set primarily through statute and regulation, with much less emphasis on independent judicial interpretation. As a result, there are reasonably comprehensive rules governing the protection of confidential information. Discovery as we know it in the United States is virtually nonexistent, but remedies can be swift and effective if the necessary facts have been brought to light.

To understand the situation in most of Asia, one needs to appreciate that, with the exception of Singapore, the countries of that region do not share the historical western cultural bias towards the protection of intellectual property. For many Asian people the entire notion of “owning” ideas seems odd. Although the industrial revolution has by force overtaken this philosophical viewpoint, that does not mean it deserves no respect. We must remember this point when purporting to judge how far and fast the Asian nations have come in accommodating to the

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prevailing western view.

With that background, it can be said that until recently trade secret protection in Asia was a matter of private business dealings, i.e., the honesty and reliability of the contract partners, with the law intervening only in a relatively haphazard and unpredictable way. In the last decade international pressure (primarily from the U.S.) has wrought major change, as trade secret protection laws have been enacted in most major Asian countries. Enforcement remains a prickly issue, however, and varies considerably from one country to another, usually depending on the level of industrialization achieved.

In the developing nations of the world, intellectual property law is often seen as a primary means of continued economic domination by the industrialized countries. The rhetoric has been intense, directed mainly at patent rights and the developing countries' attempts to limit terms of protection and to grant compulsory licensing rights to domestic companies. In the field of pharmaceuticals, this campaign has been waged in the name of public health and the inability of poor people to afford the international "retail" price of proprietary formulations.

But in other areas, and broadly in relation to secret technology and know-how, the main theme has been the need to build domestic industries, and the frustration at remaining mired in their dependency on imports from the first world. Thus, what may seem to us as straightforward issues of protecting investments are to many others deeply political matters closely tied to other aspects of international trade and development. The effort at harmonizing Intellectual Property laws has gone on in this environment.

In spite of the challenges it is encouraging to note that a great deal of progress has been made in recent years, and that the institutional pressure remains strong to follow through on the promise of the TRIPS Agreement and bring us to a point where trade secret laws are reasonably similar with respect to scope and enforcement. In the meantime, the basic message to those dealing with trade secrets around the globe is this: do your homework and be careful about whom you trust.

### **Harmonization**

Until the ground breaking approach of the NAFTA treaty intellectual property issues in general, including trade secret laws, took a back seat to "larger" issues related to international trade. With the exception of the industrialized countries mentioned above, the scope of trade secret rights depended on what country you were in, what government was in power, and sometimes on whom you knew (or were willing to pay) in the lo-

cal government or business establishment.

In addition, investment in foreign manufacturing facilities in many cases was retarded by a fear of losing valuable secret technology, either because the local law did not provide reliable trade secret protection, or because under the applicable law it was possible that secrecy would be sacrificed because of the imposition of compulsory licenses and/or limited terms of protection.

Thankfully, the drag that this chaotic and self-defeating situation created for growth in world trade has been more widely recognized.

NAFTA and the TRIPS Agreement require fundamental reform designed to bring consistency and reliability to the cross-border protection of intellectual property. We will examine these treaties, which are still in their relatively early phases of implementation, below.

## **NAFTA**

On December 17, 1992, the United States, Mexico and Canada entered into a regional trading relationship by concluding the North American Free Trade Agreement (NAFTA). Directed primarily at eliminating tariff and other barriers to free trade on the North American continent, it also took aim at discontinuities in the level of protection for intellectual property, particularly trade secrets, mainly between Mexico, on the one hand, and Canada and the United States, on the other.

The first part of Article 1711 addresses protection against trade secret misappropriation. Trade secrets are defined under NAFTA in terms virtually identical to the Uniform Trade Secrets Act of the United States, expressing the three core elements of: (1) actual secrecy; (2) actual or potential value; backed by (3) reasonable protection efforts. The concepts of relative secrecy, and secrets consisting of combinations of known elements are both recognized.

The signatory countries are required to provide legal protection for qualifying secret information against unauthorized acquisition, disclosure or use “in a manner contrary to honest commercial practices.”<sup>1</sup> However, an exception is provided which allows a country to require that secrets be recorded in some fashion in order to be protected under the law. This is, in fact, a feature of Mexico’s trade secret law.

The definition of “contrary to honest commercial practices” as set forth in Article 1721 requires that a party know, or be “grossly

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<sup>1</sup> Note that this language may be construed as a limitation with respect to the type of activities which may be found to violate trade secret rights, thus offering a lower level of trade secret protection than that available under U.S. law.

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negligent” in failing to know, that the information in question was misappropriated. Arguably this creates a higher burden of proof for the plaintiff than is the case with the “know or should have known” criterion under U.S. trade secret law, and, therefore, provides a lower lever of protection.

The second aspect addressed by Article 1711 is the duration of trade secret protection. The treaty requires that secrets be granted potentially perpetual protection, and more generally proscribes any discriminatory or excessive limitations on the right to license trade secret information.

The third feature relating to trade secrets is a requirement that the signatory nations ensure confidentiality of information provided to government agencies pursuant to a review related the official approvals required for the manufacture and/or sale of a product in the country. Protection depends on the information having been developed with “considerable effort,” and there are exceptions to the secrecy obligation when disclosure “is necessary to protect the public.” However, these limitations are reasonable on their face and presumably will not be abused in practice. The use of information filed with an agency by anyone other than the entity submitting same must be prohibited for “a reasonable period” which will “normally” be at least five years.

Regarding enforcement, Article 1716 of NAFTA requires that “judicial authorities” in member countries have the power to order injunctive relief to prevent violation of intellectual property rights. Mexico has amended its Law on Industrial Property to meet this requirement.

### **The TRIPS Agreement**

As mentioned above, Annex C to the WTO/GATT Agreement of April 15 1994 (“Trade-Related Aspects of Intellectual Property Rights”) is referred to as the “TRIPS” Agreement. Given the number of signatory nations, and more importantly the number of countries that want to become members of the WTO, the terms of the TRIPS Agreement treaty probably present the best chance for the global harmonization of IP rights generally, and trade secret laws particularly.

As mentioned earlier, the transition provisions of the treaty (Article 65) permit varying periods for a member country to come into compliance depending on whether it is deemed either a “developing country” or in the “process of transformation” to a market economy (five years from the date of the entry into force of the Agreement establishing the WTO), or a “least developed country” (10 years). The benefits of becoming a member of the WTO are apparently sufficiently attractive to have caused a significant number of developing countries to amend their IP laws in order to comply, though it remains to be seen whether the

amended laws will be adequately enforced.

Article 39, paragraph 2, is the section that specifically covers the protection of trade secrets. Although Section 7 speaks in terms of “the protection of undisclosed information,” the rights protected are clearly related to what are generally known as trade secrets. As with the NAFTA treaty, the TRIPS Agreement recognizes the fundamental requirements of relative secrecy, value and reasonable steps to maintain secrecy. It also employs the same concept of actions “contrary to honest practices” to delineate acts which may constitute misappropriation. This concept is defined in a footnote as meaning “at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.”

As is the case with NAFTA, the inclusion of the phrase “contrary to honest practices” may imply a lower level of protection than that which is generally available under U.S. law as it potentially limits the type of activities which may violate trade secret rights. Moreover, Article 39 defines the element of “value” without the additional clarifying phrase “actual or potential.” Coverage for secrets which have not yet been commercialized, as well as coverage for “negative secrets” (e.g., information related to failed experiments), is a very important aspect of trade secrets law,<sup>2</sup> and it would significantly diminish the minimum level of protection required by the treaty if the wording of this section of Article 39 were to be interpreted too narrowly. Note that this is a problem that does not extend to NAFTA.

Article 39 also contains language, virtually identical to that found in Article 1711 of NAFTA, directed at assuring the confidentiality of information submitted to government agencies. Although there is no separate provision prohibiting national laws which would set an arbitrary time limit for secrecy, the same result seems to be implied by the language of paragraph 2, which requires member countries to protect undisclosed information “so long as” it meets the basic requirements of a trade secret.

Article 41 contains the primary provisions covering judicial enforcement. It requires that member nations provide remedies which are “fair and equitable” and which are not “unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.”

Other basics of due process, such as a written decision based only on the evidence, and the availability of appellate review, are mandated. These requirements are explained in Article 42, which guarantees written notice of claims, representation by counsel,

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<sup>2</sup> See Restatement (Third) of Unfair Competition § 39.

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and procedures to protect the confidentiality of information in litigation, “unless this would be contrary to existing constitutional requirements.” Article 43 requires the availability of subpoenas for evidence and permits summary judgment.

Broad judicially imposed injunctive relief, including orders barring importation of goods that “involve the infringement of an intellectual property right”<sup>3</sup> is provided by Article 44, so long as the defendant at least had “reasonable grounds to know” of the infringement (curiously, the “gross negligence” standard of Article 39 is not carried over). Paragraph 2 of Article 44 permits a royalty in lieu of injunction in limited circumstances.<sup>4</sup>

The right to recover compensatory damages is guaranteed in Article 45, which again is subject only to the limitation that the infringer knew “or had reasonable grounds to know” of the infringement. Awards may (according to national law and the discretion of the judicial authority) include costs and attorney’s fees, and statutory damages (without regard to the defendant’s knowledge of the infringement). Article 46 requires that the judiciary have the power to order seizure and sale of “goods that they have found to be infringing,” as well as equipment used in the production thereof, while Article 47 permits member countries to require an infringer to identify others who have been involved in infringing activity. Article 48 covers bonds and Article 49 addresses administrative procedures. Finally, Article 50 requires that judges be given the power to make provisional orders for the prevention of infringement and preservation of evidence.

Note that the NAFTA and TRIPS Agreement provisions discussed above are set forth in their entirety in § 1.10 & § 1.11, *infra*.

### **Political and Social Issues Affecting Trade Secret Protection Abroad**

As noted above, the legal regimes protecting trade secrets on a global basis has not yet been harmonized. Even where a country has introduced what looks like a familiar set of rules for the protection of confidential information, it is usually questionable whether those rules can, and will be, effectively enforced. In many countries of the world what businessmen in industrialized countries regard as strictly commercial issues may evoke the strongest of public policy concerns relating to employee rights, and political issues such as national economic dependency. Nev-

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<sup>3</sup> The broad wording of this provision is significant to trade secret rights, since the misappropriation may have occurred in the design or manufacture of goods. While the importation of those goods would not itself be an act of misappropriation, the property is recognized as having been tainted by the earlier act.

<sup>4</sup> This approach is similar to that provided in the Uniform Trade Secrets Act.

ertheless, business life goes on, and the increasingly global scope of commerce requires that many companies give serious thought to how their confidential information can travel overseas and remain confidential.<sup>5</sup>

Important trade secret questions arise when a company is forced to grant a license for the use of its technology in a foreign country to a local third party. For example, in some countries the price of establishing a business may be a requirement to either sell an interest in the business (sometimes a controlling interest) to a local citizen or corporation, or to form a partnership with local participants.

If a technology license is granted to such a business entity, and the technology package being licensed contains trade secrets, those trade secrets will be at risk both because they will be shared with the local partner(s) and because the laws of the situs country may provide that confidentiality covenants (including the nondisclosure provisions of licenses) may last no longer than a set number of years, following which the information may be used and disclosed by the recipient without restriction or compensation. This effectively puts an arbitrary time limit on the trade secrets subject to the license and the laws of the foreign country in question.

In addition to the foregoing, many countries regulate technology licenses as it is believed that they may potentially have an anti-competitive effect on their markets, usually as a result of the imposition of territorial and/or use restrictions on the licensee. Such clauses can be stricken by the government's reviewing authority, thereby significantly weakening the control the licensor has over the use of its trade secrets. Potential problems such as these should be considered before initiating business transactions that will involve technology transfer to a foreign country.

### **How to Protect Trade Secrets Abroad**

Given the complications and uncertainties involved in cross-border technology transactions, one obvious approach is simply to stay home, but that is usually not a realistic option for a thriving and growing business. Rather than avoid foreign entanglements altogether, a business may want to consider the following suggestions: by any company which produces material or products covered under the Export Administration Regulations of the

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<sup>5</sup> For some companies, there is also the issue of whether they can send their information overseas at all, without permission from the federal government. The subject of export controls is beyond the scope of this work, but should be considered by any company which produces material or products covered under the Export Administration Regulations of the Department of Commerce.

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Department of Commerce.

(1) Choose your markets carefully. Stay out of countries that do not appear to have a legal system that enforces confidentiality obligations.

(2) Choose your licensees carefully. Investigate their reputation, as well as their business relationships that may imperil the security of the company's data. If the information is extremely important, investigate their principals as well. And by the way, choose your investigators carefully.

(3) Institute a corporate program for the protection of confidential information and monitor it for compliance and effectiveness. The elements in (4) through (17) should be part of that information security program.

(4) Choose overseas employees (including employees of subsidiaries and affiliates) carefully. Do extensive background checks before hiring local managers, and supervise their work to be sure that they respect the need to keep information confidential.

(5) Have foreign employees, especially managers, sign written confidentiality agreements prior to commencing employment. Many foreign jurisdictions will be more willing to take a case in which the issue is one of breach of contract, as compared with a case involving a legally obscure and complicated implied-in-law obligation of confidentiality.

(6) Require licensees and business partners to enter into appropriate confidentiality agreements with their employees. Monitor compliance regularly.

(7) Provide only the type and amount of confidential information that is necessary to support the business relationship. Make sure that the people who are responsible for the overseas operations or transactions are sensitive to the issue of protection of confidential information and that they track carefully the information made available to employees and third parties and the use to which it is put.

(8) Specify by contract that the information can only be disclosed to a certain number of people, or to named persons.

(9) Specify by contract the security measures that must be taken in the foreign jurisdiction to protect the information. This relates to the protection of plant and office space, as well as supporting computer and telecommunications systems.

(10) Mark all sensitive documents with prominent confidentiality warnings. For especially important documents, use individually numbered copies and use special paper that cannot be copied.

(11) Don't talk about sensitive information over the telephone. Lines are tapped in some countries. Where possible, encrypt electronic communications.

(12) Have foreign offices "swept" for listening devices. Don't discuss confidential information in hotel rooms. Use an isolated

corner of a public place instead.

(13) Consider separating sensitive information into modules. Some companies have deliberately split their overseas manufacturing operations into pieces, each located in a different country, in order to reduce the temptation and the risk. Within any single affiliate or licensee, try to structure the relationship so that no single person has access to all the important data.

(14) Structure the transaction in such a way that the business partner(s) has an incentive to protect the joint enterprise's confidential information. Self interest is a powerful tool. At the level of day-to-day operations individual managers can be given incentives to maintain security.

(15) Make a serious effort to have U.S. law be the law of the contract and to contractually provide for dispute resolution in the United States. In the alternative, consider whether to require arbitration of disputes through an international organization.

(16) Include significant penalty clauses in contracts, with specific and high U.S. dollar amounts, to be triggered in the event of disclosure or misuse of trade secrets.

(17) Retain local counsel who have a good reputation in the local business community, as well as demonstrated expertise in the field of intellectual property, especially trade secret protection.

### **Litigation Strategies**

It may seem obvious, but it is worth emphasizing that the best place for U.S. companies to litigate is generally in the U.S. Even in situations in which the activity which is the subject of the legal dispute has gone on in a foreign jurisdiction where most of the witnesses are located, or in which the company's local manager would like to pursue local legal remedies, the better decision is often to take the case to a U.S. court or agency.

There are three main reasons. First, this is a familiar jurisdiction with familiar processes and outcomes. Second, remedies here are for the most part reasonably effective: plaintiffs can get discovery (frequently very important in trade secret cases, where many of the facts may be exclusively in the hands of the defendants); injunctions are available; and the case will usually be resolved within a reasonable amount of time. Third, and perhaps most important, a decision by a court or arbitral tribunal in the United States will be taken seriously by the other side in the dispute.

There are occasions when the possibility exists for parallel proceedings in the United States and the foreign situs, either because an action was started in the foreign court first, or because there are remedies or strategies which can be only be pursued in one or the other venue, not both. However, this dual track approach should be examined very closely, especially if the foreign

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proceeding has not yet been instituted. The pendency of a lawsuit overseas on a closely related matter may be sufficient reason for a U.S. court to stay part or all of the action here.<sup>6</sup> If the U.S. action is stayed, the trade secret plaintiff will likely lose the ability to get effective discovery.

### Procedural Issues

The threshold issue in most transnational litigation is personal jurisdiction. In many trade secret cases, the dispute arises between entities that in the process of negotiation had visited each other's home facilities. If in the process of coming to this country the defendant executed a nondisclosure agreement, jurisdiction most likely can be asserted here.<sup>7</sup>

Closely related to jurisdiction is service of process, which for the most part must be accomplished in accordance with the provisions of the Hague Service Convention.<sup>8</sup> However, service by letters rogatory pursuant to state statutory procedure may be sufficient.<sup>9</sup> Of course the preferred method is to serve personally the company's officer who is present in the U.S.<sup>10</sup> Discovery has already been mentioned as an important advantage with respect to proceeding in a U.S. court. In order to realize that advantage to the fullest, one has to be able to obtain discovery from foreign nationals. As to a defendant over whom personal jurisdiction has been established (and its overseas affiliates) that may not be too difficult since a U.S. court maintains the power to compel compliance with discovery orders against parties over which it exercises personal jurisdiction.<sup>11</sup> This may even apply to ordering discovery

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<sup>6</sup> See, e.g., *Mediterranean Enterprises, Inc. v. Ssangyong Corp.*, 708 F.2d 1458 (9th Cir. 1983) (affirming stay of entire action in favor of arbitration of some claims in Korea).

<sup>7</sup> See *Entek Corp. v. Southwest Pipe & Supply Co.*, 683 F. Supp. 1092 (N.D. Tex. 1988) (denying motion to quash as to foreign defendant that signed NDA, but granting as to defendant whose only connection with the U.S. was to send to the Patent and Trademark Office an assignment of patent application for recordation).

<sup>8</sup> Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 U.S.T. 361. Note that it is entirely proper for a foreign defendant to insist on compliance with the Hague Convention requirements for service even when it owns a subsidiary that is a U.S. corporation. *Sheets v. Yamaha Motors Corp., U.S.A.*, 891 F.2d 533, 13 U.S.P.Q.2d (BNA) 1637, 15 Fed. R. Serv. 3d 643 (5th Cir. 1990), reh'g denied, 897 F.2d 528 (5th Cir. 1990) (reversing Rule 11 sanctions).

<sup>9</sup> *General Environmental Science Corp. v. Horsfall*, 753 F.Supp. 664, 672 (N.D. Ohio 1990).

<sup>10</sup> *Apollo Technologies Corp. v. Centrosphere Industrial Corp.*, 805 F.Supp. 1157, 1189 (D.N.J.1992).

<sup>11</sup> *General Environmental Science Corp. v. Horsfall*, 136 F.R.D. 130 (N.D. Ohio 1991) (so long as the corporate party has practical control over the documents

methods overseas which are prohibited by the laws of the relevant foreign country.<sup>12</sup>

### **The International Trade Commission**

One option when defending against international misappropriation of secrets is to try to seal the U.S. border against the entry of products which have either been made by using the misappropriated trade secret(s) or which embody the misappropriated trade secret(s). This is accomplished through the offices of the International Trade Commission, under the authority of § 337 of the Tariff Act.<sup>13</sup> The major advantages of an ITC proceeding are speed (most investigations must be completed within one year)<sup>14</sup> and enforcement (an exclusion order will be enforced at all ports of entry into the U.S. by the Customs Service). Moreover, nationwide service of process is available for Commission subpoenas for document and deposition discovery.<sup>15</sup> Litigating trade secret cases at the International Trade Commission is discussed in detail in § A1.08.

Jurisdiction lies with the International Trade Commission to protect domestic markets against “unfair acts,” which includes intellectual property infringement in general, and trade secret misappropriation in particular.<sup>16</sup> However, there must be a causal link shown between the misappropriation and the act of importation. Unlike statutory claims for patent, copyright and trademark infringement, trade secret cases will be considered under the more stringent test of injury to a domestic industry which generally prevailed before the Omnibus Trade Act of 1988.<sup>17</sup>

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located abroad, it may enforceably be ordered to produce them).

<sup>12</sup> See *General Environmental Science Corp. v. Horsfall*, 753 F. Supp. 664 (N.D. Ohio 1990), related reference, 136 F.R.D. 130 (N.D. Ohio 1991), related reference, 141 F.R.D. 443 (N.D. Ohio 1992), related reference, 800 F. Supp. 1497 (N.D. Ohio 1992), *aff'd in part, vacated in part*, 25 F.3d 1048, R.I.C.O. Bus. Disp. Guide (CCH) P 8826 (6th Cir. 1994), on subsequent appeal, 53 F.3d 331 (6th Cir. 1995) and judgment vacated, 25 F.3d 1048, R.I.C.O. Bus. Disp. Guide (CCH) P 8826 (6th Cir. 1994) *supra* (French “blocking” statute unsuccessfully asserted as reason for refusal to respond to interrogatories or product documents).

<sup>13</sup> 19 U.S.C.A. § 1337.

<sup>14</sup> 19 U.S.C.A. § 1337(B)(1).

<sup>15</sup> 19 U.S.C.A. § 1333(b).

<sup>16</sup> See *In re Certain Apparatus for the Continuous Production of Copper Rod*, 206 U.S.P.Q. 138, 157-158 (I.T.C. 1979) (refusing, however, under the circumstances of the case, to issue an exclusion order and instead making a “cease and desist” order; see 19 U.S.C.A. § 1337(f)).

<sup>17</sup> See Gary Hnath & James Gould, “Litigating Trade Secret Cases at the International Trade Commission,” 19 AIPLA Q.J. 87 (1991), which provides a comprehensive treatment of the issues.

**The Provisions of NAFTA Relevant to Trade Secrets Article 1711: Trade Secrets**

1. Each Party shall provide the legal means for any person to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the person lawfully in control of the information in a manner contrary to honest commercial practices, in so far as:

(a) the information is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons that normally deal with the kind of information in question;

(b) the information has actual or potential commercial value because it is secret; and

(c) the person lawfully in control of the information has taken reasonable steps under the circumstances to keep it secret.

2. A Party may require that to qualify for protection a trade secret must be evidenced in documents, electronic or magnetic means, optical discs, microfilms, films, or other similar instruments.

3. No Party may limit the duration of protection for trade secrets, so long as the conditions in paragraph 1 exist.

4. No Party may discourage or impede the voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on such licenses, or conditions that dilute the value of the trade secrets.

5. If a Party requires, as a condition for approving the marketing of pharmaceutical or agricultural chemical products that utilize new chemical entities, the submission of undisclosed test or other data necessary to determine whether the use of such products is safe and effective, the Party shall protect against disclosure of the data of persons making such submissions, where the origination of such data involves considerable effort, except where the disclosure is necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.

6. Each Party shall provide that for data subject to paragraph 5 that are submitted to the Party after the date of entry into force of this Agreement, no person other than the person that submitted them may, without the latter's permission, rely on such data in support of an application for product approval during a reasonable period of time after their submission. For this purpose, a reasonable period shall normally mean not less than five years from the date on which the Party granted approval to the person that produced the data for approval to market its product, taking account of the nature of the data and the person's efforts and expenditures in producing them. Subject to this provi-

sion, there shall be no limitation on any Party to implement abbreviated approval procedures for such products on the basis of bioequivalence and bioavailability studies.

7. Where a Party relies upon a marketing approval granted by another Party, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied upon shall commence with the date of the first marketing approval relied upon.

**Article 1716: Provisional Measures**

1. Each Party shall provide that its judicial authorities shall have the authority to order prompt and effective provisional measures:

(a) to prevent an infringement of any intellectual property right, and in particular to prevent the date of entry into the channels of commerce in their jurisdiction of allegedly infringing goods, including measures to prevent the entry of imported goods at least immediately after customs clearance; and

(b) to preserve relevant evidence in regard to the alleged infringement.

2. Each Party shall provide that its judicial authorities shall have the authority to require any applicant for provisional measures to provide to the judicial authorities any evidence reasonably available to that applicant that the judicial authorities consider necessary to enable them to determine with a sufficient degree of certainty whether:

(a) the applicant is the right holder;

(b) the applicant's right is being infringed or such infringement is imminent; and

(c) any delay in the issuance of such measures is likely to cause irreparable harm to the right holder, or there is a demonstrable risk of evidence being destroyed.

Each Party shall provide that its judicial authorities shall have the authority to require the applicant to provide a security or equivalent assurance sufficient to protect the interests of the defendant and to prevent abuse.

3. Each Party shall provide that its competent authorities shall have the authority to require an applicant for provisional measures to provide other information necessary for the identification of the relevant goods by the authority that will execute the provisional measures.

4. Each Party shall provide that its judicial authorities shall have the authority to order provisional measures on an ex parte basis, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

5. Each Party shall provide that where provisional measures are adopted by that Party's judicial authorities on an ex parte

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basis:

(a) a person affected shall be given notice of those measures without delay but in any event no later than immediately after the execution of the measures;

(b) a defendant shall, upon request, have those measures reviewed by that Party's judicial authorities, for the purpose of deciding, within a reasonable period after notice of those measures is given, whether the measures shall be modified, revoked or confirmed, and shall be given an opportunity to be heard in the review proceedings.

6. Without prejudice to paragraph 5, each Party shall provide that, upon the request of the defendant, the Party's judicial authorities shall revoke or otherwise cease to apply the provisional measures taken on the basis of paragraphs 1 and 4 if proceedings leading to a decision on the merits are not initiated:

(a) within a reasonable period as determined by the judicial authority ordering the measures where the Party's domestic law so permits; or

(b) in the absence of such a determination, within a period of no more than 20 working days or 31 calendar days, whichever is longer.

7. Each Party shall provide that, where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where the judicial authorities subsequently find that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, on request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. Each Party shall provide that, where a provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set out in this Article.

### **Article 1721: Definitions**

For purposes of this Agreement:

confidential information includes trade secrets, privileged information and other materials exempted from disclosure under the Party's domestic law;

encrypted program-carrying satellite signal means a program-carrying satellite signal that is transmitted in a form whereby the aural or visual characteristics, or both, are modified or altered for the purpose of preventing the unauthorized reception by persons without the authorized equipment that is designed to eliminate the effects of such modification or alteration, of a program carried in that signal;

geographical indication means any indication that identifies a good as originating in the territory of a Party, or a region or local-

ity in that territory, where a particular quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

in a manner contrary to honest commercial practices means at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by other persons who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition;

intellectual property rights refers to copyright and related rights, trademark rights, patent rights, rights in layout designs of semiconductor integrated circuits, trade secret rights, plant breeders' rights, rights in geographical indications and industrial design rights;

nationals of another Party means, in respect of the relevant intellectual property right, persons who would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Geneva Convention (1971), the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961), the UPOV Convention (1978), the UPOV Convention (1991), or the Treaty on Intellectual Property in Respect of Integrated Circuits, as if each Party were a party to those Conventions, and with respect to intellectual property rights that are not the subject of these Conventions, "nationals of another Party" shall be understood to be at least individuals who are citizens or permanent residents of that Party and also includes any other natural person referred to in Annex 201.1;

public includes, with respect to rights of communication and performance of works provided for under Articles 11, 11bis(1) and 14(1)(ii) of the Berne Convention, with respect to dramatic, dramatico-musical, musical and cinematographic works, at least, any aggregation of individuals intended to be the object of, and capable of perceiving, communications or performances of works, regardless of whether they can do so at the same or different times or in the same or different places, provided that such an aggregation is larger than a family and its immediate circle of acquaintances or is not a group comprising a limited number of individuals having similarly close ties that has not been formed for the principal purpose of receiving such performances and communications of works; and

secondary uses of sound recordings means the use directly for broadcasting or for any other public communication of a sound recording.

## **The Provisions of TRIPS Relevant to Trade Secrets**

### **Article 39 - Undisclosed Information**

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1. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.

2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices<sup>18</sup> so long as such information:

(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) has commercial value because it is secret; and

(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilise new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

### **Article 40**

1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.

2. Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the

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<sup>18</sup> For the purpose of this provision, “a manner contrary to honest commercial practices” shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

light of the relevant laws and regulations of that Member.

3. Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting Member, and shall cooperate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member.

4. A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other Member under the same conditions as those foreseen in paragraph 3.

#### **Article 41**

1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.

4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning

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the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

### **Article 42 - Fair and Equitable Procedures**

Members shall make available to right holders<sup>19</sup> civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

### **Article 43 - Evidence**

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Member may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to provid-

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<sup>19</sup> For the purpose of this Part, the term “right holder” includes federations and associations having legal standing to assert such rights.

ing the parties an opportunity to be heard on the allegations or evidence.

#### **Article 44 - Injunctions**

1. The judicial authorities shall have the authority to order a party to desist from an infringement, inter alia to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members may limit the remedies available against such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with a Member's law, declaratory judgments and adequate compensation shall be available.

#### **Article 45 - Damages**

1. The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

#### **Article 46 - Other Remedies**

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional require-

## INTRODUCTION

ments, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

### **Article 47 - Right of Information**

Members may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

### **Article 48 - Indemnification of the Defendant**

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of that law.

### **Article 49 - Administrative Procedures**

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

### **Article 50 - Provisional Measures**

1. The judicial authorities shall have the authority to order prompt and effective provisional measures: (a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce

in their jurisdiction of goods, including imported goods immediately after customs clearance; (b) to preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Member's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

Old Information to be compared with the above information

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In most industrialized and industrializing countries the definition of protectable trade secret will usually include both technical and scientific information, and business information (such as strategic business plans and customer lists).

In most of the above described countries, trade secrets (unlike patents) do not have to be “novel” and do not require “an inventive step” to be protected under the law. To be protectable as a trade secret information generally must:

- (a) be considered by the owner to be secret and proprietary and subject to appropriate protective procedures;
- (b) be original and non-obvious, i.e., not generally known or readily ascertainable in the relevant trade or industry;
- (c) be concrete and not a mere abstract theory; and
- (d) have value, which is usually derived from its being kept secret.

Some countries also require that a trade secret actually be used by the owner in its trade or business to be protected.

Generally speaking, the following elements must be pleaded and proven if a plaintiff is to prevail in a trade secret misappropriation suit:

- (a) the existence of a protectable trade secret;
- (b) the disclosure of a trade secret pursuant to an oral or written agreement of confidentiality;
- (c) the use or disclosure of the trade secret in violation of the obligation of confidence; and injury to the owner of the trade secret which is a result of the unauthorized disclosure.

It should be noted that in some countries injunctions are not available against third parties in cases involving misappropriation of trade secrets. This means that if the person actually taking the trade secret reveals it to a third party, it may not be possible to get a court to issue an injunction enjoining use of the trade secret by such third party, particularly if the third party was unaware prior to the initiation of legal proceedings that the trade secret had been misappropriated.

With respect to most industrialized and industrializing countries it is, in principle, correct to state that:

- (a) Non-disclosure agreements are generally not considered to be illegal restraints of trade *per se*.
- (b) Covenants not to compete after the term of employment are generally considered to be potential illegal restraints of trade and must be carefully drafted to withstand judicial scrutiny. They will be strictly construed by the courts and the rights of the employer to protect its interests will be balanced against the employee’s right to gainful employment. An employer’s interest in protecting its trade secrets must be balanced by an employee’s right to be free to use his or her “general skills and experience” after employment. Time and territorial restraints must not be

seen to extend beyond an employer's legitimate needs. It should be noted that in some countries, such as Mexico, Malaysia, and India, covenants not to compete after the term of employment are considered invalid and unenforceable.

(c) An employee owes an implied duty of fidelity and confidentiality with respect to proprietary information even absent a written agreement. However, an employee must be aware that information being revealed is considered by the employer to be proprietary and confidential in order for this implied obligation of confidentiality to come into effect.

### **Acknowledgements and Disclaimer**

The purpose of this treatise is to give a detailed overview of the law of trade secrets in the countries that are covered. Due to the nature of trade secret protection, only local attorneys well versed in their country's intellectual property, unfair competition, and labor laws are able to adequately cover the subject. Therefore, each country chapter has been prepared by such an attorney. However, with a few exceptions, each chapter follows a uniform outline which ensures that readers will be able to quickly and easily access the desired information and that the essential topics are covered in each chapter.

Each Author and Contributor has exercised care in compiling the information he or she has presented. However, due to the countryspecific nature of the subject matter, neither the Editor nor the Publisher can assume responsibility for the accuracy of said information. Questions should be directed to the appropriate Author or Contributor.

In closing, I would like to thank the Authors and Contributors for the time, effort, and skill that went into the preparation of each chapter. I would also like to offer my sincere thanks to the staff of the Foreign and International Law Library of the Yale University School of Law, especially Daniel Wade and Liliane McClenning, for their help in completing this project.

Terrence F. MacLaren



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