

Recommendations for Strengthening Trade Secret Protection in China

September 2013

Executive Summary

- Trade secrets have increasingly become a critical component of companies' intellectual property (IP) portfolios in China alongside more visible forms of intellectual property, such as patents and trademarks. According to respondents of the US-China Business Council (USCBC) 2013 member company survey, 40 percent of respondents selected trade secrets as the IP of most concern.
- In response to such views, Chinese government agencies have paid greater attention to trade secrets, gradually prioritizing trade secrets on the domestic IP agenda and increasing engagement with their international counterparts.
- But insufficient trade secret protection hampers the growth and development of companies, products, and technologies that use such trade secrets.
- Further progress can be made to increase the recognition by Chinese government agencies, companies, and citizens that trade secrets hold the same property rights as other forms of IP.
- Additional steps to improve China's legal environment for, and protection of, trade secrets would promote the growth and success of enterprises in China and around the world.
- Based on ongoing conversations with members, USCBC has compiled a detailed summary of the trade secret-related challenges that companies face as well as constructive recommendations to improve trade secret protection.
- Some of the challenges that companies face in trade secrets parallel challenges that they face in other areas of IP, such as value thresholds that can inhibit companies from using criminal channels to pursue trade secret enforcement and low administrative fines and court damages that encourage IP-infringing behavior by companies and individuals.
- In this paper, USCBC focuses on six trade secret challenges with concrete recommendations to address each of the following areas of concern:
 - A fragmented legal framework;
 - Questions about trade secret disclosure during government licensing and regulatory processes;
 - Limited government and judicial experience;
 - The high evidentiary burden faced by plaintiffs in court cases;
 - Limited use of relevant and potentially useful judicial procedures; and
 - Insufficient information about relevant judicial procedures and practices.

Trade secrets – confidential technical or business information that is not known to the public and has economic benefits for the rights-holder – are an important piece of a company's overall portfolio of proprietary technology and information. Strong recognition and protection of trade secrets can significantly benefit the development of both domestic and foreign companies operating in China.

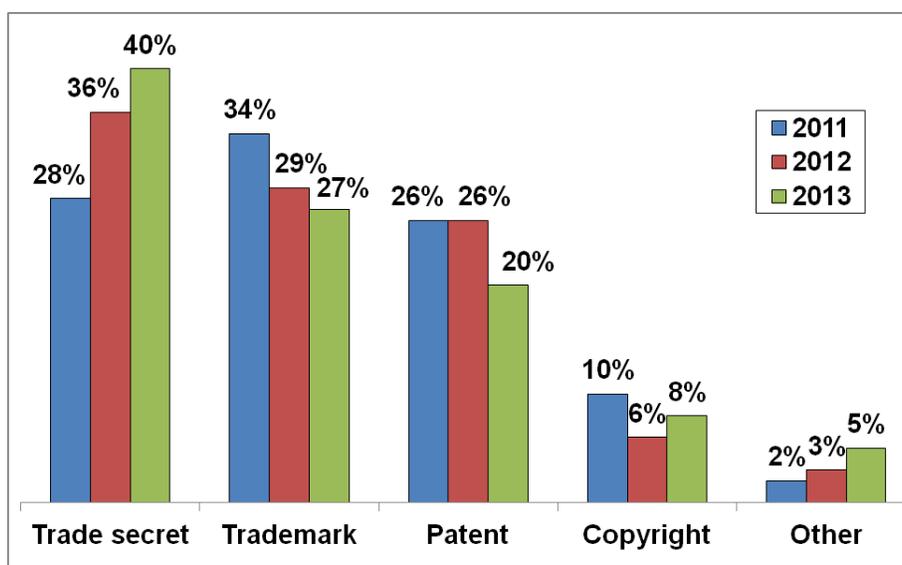
Recognizing the value of stronger trade secret protection, the Chinese government has recently paid greater attention to trade secrets and increased their engagement with their international counterparts. The [2013 priorities for the high-level State Council Leading Group on Combating Intellectual Property Rights \(IPR\)](#)

[Infringement and Sales of Counterfeit Goods \(IPR leading group\)](#), released in May 2013, specifically includes the need to strengthen trade secret enforcement. In May 2012, a group of leading Chinese judges – including current Supreme People’s Court IPR Tribunal Chief Judge Kong Xiangjun – [published a book](#) that discusses China’s efforts to promote judicial protection of trade secrets and Chinese views of the most significant challenges the country faces in boosting trade secret protection. The US-China Business Council (USCBC) recognizes and appreciates these important developments.

Such government actions reflect a growing understanding within the Chinese government about the negative consequences of insufficient trade secrets protection. If a company is unable to protect its trade secrets and thus cannot economically benefit from products and technologies that depend on them, it weakens the company’s the incentive to develop and use new technologies in China. A lack of trade secret protection can also lead the company to withhold its latest, most advanced technologies from China. Both factors can severely limit the products and technologies available to Chinese consumers and businesses, thus hampering China’s innovation development.

In today’s increasingly competitive commercial landscape, companies are paying greater attention to trade secret protection. Trade secrets became the IP of greatest concern for the first time in the USCBC 2012 member company survey, and have only become more of a concern since then. According to respondents to the 2013 member company survey, 40 percent of respondents selected trade secrets as the intellectual property of most concern. Trade secrets ranked ahead of trademarks (27 percent), patents (20 percent), and copyrights (8 percent). As a result of this growing concern, trade secret protection has become an increasingly prominent part of bilateral discussions on IPR issues. For example, at the [July 2013 Strategic and Economic Dialogue](#), the United States and China agreed to share information about trade secret enforcement – an important step forward for building a constructive dialogue.

Table 1: Type of IP Infringement of Greatest Concern



Source: USCBC member company surveys (2011, 2012, and 2013)

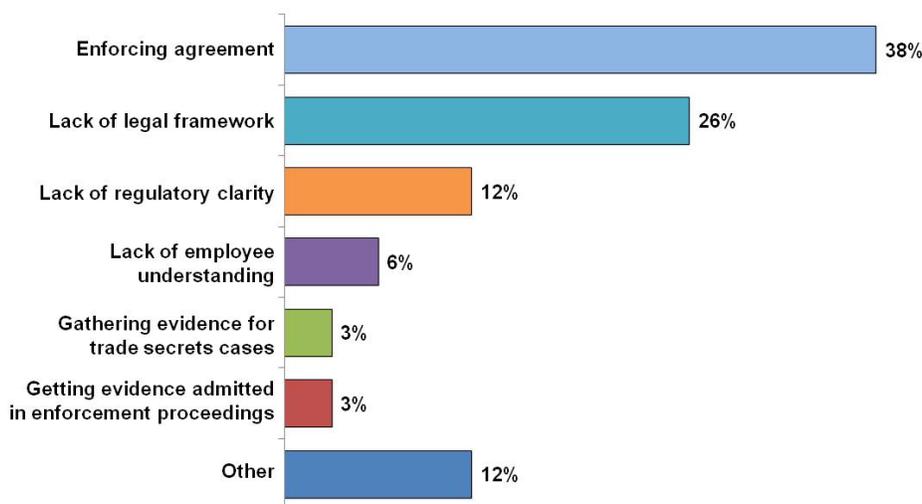
USCBC is pleased that there is greater interest in improving China’s legal framework and implementation of trade secret protection. Doing so would promote the growth and success of enterprises in China and around the world. Over the past eighteen months, USCBC has engaged in active conversations with companies from a variety of sectors on their views of trade secrets, including company views of the legal and enforcement environment and best practices that companies use to proactively protect trade secrets. This report is designed

to provide a detailed summary of the challenges that companies face on trade secret issues, as well as constructive recommendations for how to make concrete progress on protecting trade secrets.

Challenges and Recommendations

Companies appreciate the growing attention that the Chinese government is paying to trade secret protection, and look forward to progress on specific challenges they face in fully protecting their trade secrets, proprietary technology, and confidential information in China. In USCBC’s 2013 member company survey, the largest number of companies ranked “enforcing agreements” as their primary concern related to trade secret protection (38 percent). “Enforcing agreements” can include but is not limited to confidentiality, non-disclosure, and licensing agreements. Concerns were also raised about the legal framework (26 percent), a lack of regulatory clarity (12 percent), lack of employee understanding (6 percent), evidence-gathering for trade secret cases (3 percent), and getting evidence admitted in enforcement proceedings (an additional 3 percent). Companies noted that they typically face several of these concerns at the same time, with one company noting, “It is impossible to pick one [top concern with trade secrets]. These are all very significant concerns.”

Table 2: What Aspect of Trade Secret Protection in China Is of Greatest Concern?



Source: USCBC 2013 Member Company Survey

In this paper, USCBC will focus on six challenges that companies face specific to trade secrets: a fragmented legal framework for trade secrets, questions about protection of trade secrets collected during government regulatory processes, limited government experience with trade secrets, the high evidentiary burden that plaintiffs face during trade secret cases, limited use of judicial procedures that would promote trade secret protection, and insufficient information about judicial procedures and practices related to trade secret protection. For each of these challenges, this report describes not only what the challenge is and why it is problematic, but also makes concrete recommendations to address the challenges.

Challenge 1: Fragmented legal framework for trade secrets

Unlike many other countries, such as the United States, Russia, and South Korea, China lacks a national, unified trade secrets law and instead protects trade secrets through a series of laws and regulations. The most important trade secret-related regulatory document is the 1993 Anti-Unfair Competition Law (AUCL), but aspects of trade secret protection are included in laws such as the Contract Law, Labor Contract Law, Company Law, Labor Law, and the Criminal Law, as well as regulations such as the 1998 Provisions Regarding the Prohibition of Trade Secret Infringement and judicial documents such as the 2007 Interpretation on Certain Issues Related to the Application of Law in Trials of Civil Cases Involving Unfair Competition.

China's fragmented legal framework creates challenges for all stakeholders in trying to protect trade secrets, making it difficult for regulators and companies alike to understand the scope of trade secret protection. Such a legal framework is also difficult to update easily, since a change to one aspect of trade secret regulation may require changes to several other laws and regulations. This creates disincentives for officials to update China's trade secret regime despite the fact that trade secret enforcement is evolving rapidly, making it easier for the legal framework to become outdated.

Many Chinese and foreign experts have discussed the benefits of creating a unified trade secret law, and these calls have been increasing as Chinese government agencies and businesses have become more cognizant of the importance of trade secrets. For example, trade secret protection and the lack of a clear trade secret law were among topics discussed during the March 2013 meetings of the National People's Congress (China's national legislature) and the Chinese People's Political Consultative Conference (CPPCC) (a high-level deliberative body that discusses social, economic, and legal issues). These meetings included a specific [recommendation by Ying Yong, chief judge of the Shanghai Higher People's Court](#), for a unified trade secret law and calls for improvements to trade secret regulations and enforcement by CPPCC delegates such as [Zhu Jianmin](#) and [Wang Xin](#). However, there are currently no indications that Chinese officials plan to draft a unified trade secrets law, or even to revise China's existing trade secrets laws, such as the 20-year-old AUCL.

Recommendations

- Launch substantive work to draft a unified Trade Secret Law that would incorporate and expand upon trade secret-related provisions in the AUCL, Labor Contract Law, Company Law, Criminal Law, and other laws and regulations (see also Challenge 5).
 - Actively consult with foreign and domestic stakeholders – including PRC government agencies, foreign and domestic companies, and foreign and domestic experts – through the drafting process to ensure the best possible law with the broadest support.
 - Add the drafting of a unified Trade Secret Law to the State Intellectual Property Office's 2014 National IPR Strategy action plan and the National People's Congress's 2014 legislative plan.
- As an interim option, prioritize revisions to the AUCL to improve China's efforts to adequately and fully protect trade secrets. Ensure that provisions to fully protect trade secrets are included in efforts to revise other laws, such as the Criminal Law.

Challenge 2: Questions about trade secret disclosure during government licensing and regulatory processes;

As a normal part of its regulatory responsibilities, Chinese government agencies collect significant amounts of data from companies about their business, operational practices, products, and services. Such data can be requested during a variety of government approval processes, including investment approvals, product registrations, environmental impact assessments, and business licensing. Requests can include information about company structure and operations, employee information and hiring practices, work safety procedures, manufacturing technologies and processes, product details and testing results. US companies recognize that government data collection is a necessary part of those agencies' regulatory responsibilities, and generally seek to cooperate with government agencies wherever possible.

However, some of the information that government agencies request – such as company operating conditions, manufacturing process details, product formulas, or some types of product information – touch on trade secrets and other proprietary information that are core to the competitiveness of these companies and as such are carefully protected. Should this information fall into the hands of their competitors, companies would be harmed both financially and competitively. Company concerns about releasing this information are exacerbated by the expert panel review process that is required in some regulatory processes, as these expert panel reviews often expose a company's trade secret information to individuals who are employees or former employees of competitors. While companies want to comply fully with local regulations, they are also careful about providing such sensitive information and seek to strike an appropriate balance to meet both goals.

In other jurisdictions, governments and businesses have engaged in constructive dialogue about this balance, leading many governments to institute procedures to increase transparency about the need and value of collecting company and product data. For example, many developed and developing countries – including the

United Kingdom, New Zealand, Russia, and Mexico—have adopted a regulatory impact analysis (RIA) approach that requires government agencies to analyze the impact of both proposed and existing regulations on various stakeholders (including companies). Many governments also provide clear and specific ramifications for government officials that purposefully or accidentally disclose sensitive regulatory data to best protect against trade secret leakage.

Such steps allow governments to collect the data they need while also ensuring the proper balance that encourages companies to provide necessary data and to plan for the data they need to provide. These reforms would also provide important assurances to both Chinese and foreign companies that the data they provide will be fully protected over the long term, enabling them to more easily and smoothly work with government regulators to promote optimal regulatory outcomes.

Recommendations

- Increase transparency in, and actively engage with government and industry stakeholders on, China's current policies and practices to determine what regulatory data is collected, how it is used, and what steps are taken and implemented to protect that data after its collection. These dialogues can build on existing dialogues that touch on regulatory data protection in specific sectors.
- Exchange views with industry to arrive at a better understanding of and define what counts as "essential" information from both the regulator and company perspective. Consider adopting international best practices to assess new and existing regulations, such as RIAs, to ensure that any Chinese regulations that propose collecting information from companies fully consider whether such information is necessary to carry out the required regulatory goals, and how collecting such information might impact companies.
- Draft and consistently enforce State Council regulations that require government officials—and those acting in a government capacity, such as expert panelists—to keep confidential for a reasonable time period all data collected during regulatory reviews and product approvals and outline specific consequences when such provisions are violated.
- Continue and expand work proposed by Premier Li Keqiang and the State Council to simplify and streamline administrative licensing and approval processes to limit unnecessary administrative approvals and decrease opportunities for trade secrets leakage. In doing so, we encourage the Chinese government to limit agencies of jurisdiction to those that are absolutely essential, and require agencies to closely coordinate the information they collect and to limit it only to information that is truly necessary for project approval.

Challenge 3: Limited government and judicial experience with trade secrets

Despite the growing attention paid to trade secrets, Chinese government officials still have limited experience in dealing with these issues. Much of this is due to the small number of trade secrets cases that are brought to administrative and judicial bodies. Trade secret cases still represent a very small proportion of IP enforcement cases, giving officials fewer opportunities to become familiar with these types of cases. For example, according to the Supreme People's Court 2012 White Paper on IPR protection (available online in [English](#) and [Chinese](#)), of the 7,684 criminal cases that found IP infringement in 2012, only 43 (less than 1 percent) were trade secret cases. The white paper did not report trade secret civil cases, but of the nearly 85,000 new civil cases accepted related to intellectual property, anti-unfair competition cases (a category that includes trade secrets as well as several other types of cases) numbered only 1,123 (just over 1 percent).

Trade secret cases present enforcement officials with particular challenges, as trade secrets differ significantly from other forms of IP. Unlike patents and trademarks, trade secrets are not formally registered with government authorities, meaning that officials dealing with trade secret cases do not have a formal written document to prove that a company holds a purported trade secret. Additionally, the legal definition of trade secrets in China (as in most jurisdictions) is written to cover a wide variety of possible information, including formulas, blueprints, product designs, manufacturing processes, customer lists, sales strategies, and management techniques. This adds considerable complexity to trade secret cases that may not exist for other types of IP cases.

These factors mean that Chinese officials are still actively learning how to effectively regulate trade secrets, and that many officials and judges do not yet have much experience with or a full understanding about how to handle trade secret cases. Further steps to elevate trade secrets on the domestic IP agenda and to help educate Chinese government officials and judges about trade secrets would greatly benefit China's efforts to promote a robust trade secret enforcement environment.

Recommendations

- Make trade secrets a priority for the IPR Leading Group and its constituent agencies by formally adding trade secret protection as a consistent work item in the group's quarterly workplans and encouraging agencies to prioritize trade secret education and protection in agency workplans, legislative agendas, and enforcement campaigns.
- Release judicial guidance from the Supreme People's Court related to trade secrets, including:
 - A judicial interpretation specifically focused on trade secret cases, building on the broader 2007 *Interpretation on Certain Issues Related to the Application of Law in Trials of Civil Cases Involving Unfair Competition*, to educate provincial judges on the proper handling of trade secrets cases (see also Challenge 4 and 6); and
 - A set of model cases related to different aspects of trade secret protection for provincial courts to follow in adjudicating trade secret cases.
- Strengthen training and information-sharing on trade secrets through varying means, including workshops and training programs with national and local government and judicial agencies. Such workshops can include what types of information may constitute trade secrets, proper handling of trade secret cases, and international best practices for trade secret cases.
 - Consider working with outside stakeholders – including international organizations, foreign governments, industry associations, non-profit organizations, and companies – to implement such training programs.

Challenge 4: High evidentiary burdens faced by plaintiffs in trade secret cases

Companies seeking to protect their trade secrets in China often face a practical problem: collecting and using evidence to prove trade secret infringement. A potential plaintiff in a trade secret civil case must spend the time and resources to accomplish several tasks. The plaintiff must prove that the infringed information meets the definition of a trade secret; prove that the defendant is using information that is substantially similar to the trade secret; and be able to clearly document when and how that information was obtained illegally by the defendant using internal sources. Each of these steps requires significant time and resources.

In addition, this task is complicated by a number of important features of trade secret enforcement in China, including:

- *De facto* requirements for a company seeking police help to launch a trade secret criminal investigation to essentially prove the case by gathering and presenting a full set of evidence before approaching police, as local police are often reluctant to accept trade secrets cases without such clear evidence;
- Practices that limit a plaintiff's ability to use evidence collected by private investigators in civil trials;
- Provisions that place the burden of proof in trade secret civil trials on the plaintiff and do not explicitly allow it to be shifted to the defendant, despite some judicial opinions (December 2011 Supreme People's Court *Opinions from the Supreme People's Court of China on Giving Full Play to the Functional Role of Intellectual Property Trials*) that appear open to the option of shifting the burden of proof to the defendant under specific circumstances;
- Regulations that require clear evidence of the instance of trade secret infringement, as opposed to "common sense" tests used in the United States and other countries that allow judges to find trade secret infringement when it is a reasonable inference based on other evidence;
- Judicial practices that limit the admissibility of non-documentary evidence such as witness testimony in trade secrets cases; and
- Civil procedures in some courts that require purported trade secrets to be first certified as such by outside expert panels.

These challenges often discourage companies from bringing trade secret enforcement cases in China, with a number of negative effects for China's own economic and legal development. First, for those companies that decide to pursue trade secret enforcement in China, these challenges drastically increases the cost, leaving the company with fewer resources to devote to important tasks such as product development and process innovation. Second, they cut the number of trade secret cases that enforcement officials and courts see, which limits opportunities for these officials to learn the most effective means to manage these cases. Finally, these challenges foster a broad perception that trade secret enforcement is difficult in China, discouraging companies from bringing their products, services, and know-how to China, which prevents Chinese consumers and businesses from having access to the latest technologies.

Additionally, this evidentiary burden is complicated due to a lack of clear information about how such evidence will be protected during and after a judicial trial. Trade secrets, by their very definition, are information unknown to the public, yet must be proven (and thus revealed) in the context of a judicial trial. Yet there is little judicial guidance regarding the protection of trade secrets disclosed during civil trials. In 2010, the Jiangsu Higher People's Court released the [Trial Guidelines for Handling Trade Secret Infringement Cases](#) stating that all parties involved in a trade secrets trial, including third-party expert panelists, must sign a guarantee letter to the court not to disclose or use trade secrets disclosed during the trial. However, there are no similar guidelines at the national level, and no clear obligations for courts to maintain confidentiality for confidential information disclosed during the trial unless the verdict is in favor of the plaintiff. Thus, unless a plaintiff is fairly sure that they will prevail in a trade secrets case, they often determine that the risk of further trade secret exposure outweighs the possible benefit of a favorable verdict.

Recommendations

- Release judicial guidance from the Supreme People's Court (see Challenges 3 and 6) – building on language in Section 5 of the December 2011 Supreme People's Court *Opinions from the Supreme People's Court of China on Giving Full Play to the Functional Role of Intellectual Property Trials* – that would categorically permit the plaintiff to shift the burden of proof to the defendant once the plaintiff can legally establish:
 - That it owns the trade secret in question;
 - That the defendant had access to that trade secret; and
 - That the defendant's product, service, or internal operations are substantially similar to the plaintiff's.
- Actively encourage judges handling trade secret cases to admit and consider a broader array of evidence in trade secret cases, specifically non-documentary evidence such as witness testimony, that would better allow plaintiffs to prove trade secret infringement. Offer guidance or education on best practices for admitting and using such evidence.
- Encourage courts to admit and consider evidence collected by qualified private investigators, including IP investigative firms and forensic computer experts, with appropriate procedures to ensure the validity of such information.
- Encourage judges at all levels to use greater leeway in applying "common sense" tests, such as the doctrine of "inevitable disclosure," which allows courts to find trade secret infringement even in cases with limited documentary evidence based on the presumption that the defendant could not proceed with current actions or operations without having misappropriated the plaintiff's trade secret. Such tests, which are in line with international judicial practices, would allow courts to find trade secret infringement even in cases where the direct act of trade secret infringement cannot be formally documented.
- Engage with judges and industry experts to understand the challenges that companies and courts face in protecting trade secrets and other confidential company information disclosed during civil trials to lower the risk of disclosure and to ensure that trade secrets holders have greater confidence in the courts as a viable channel for protecting trade secrets.
- Actively engage with stakeholders, including domestic and international legal and industry experts, to develop a set of rules to determine the credibility of non-documentary evidence in trade secrets and other types of IP cases.

Challenge 5: Limited use of relevant and potentially useful judicial procedures

China's laws and regulations include a number of key judicial procedures that are relevant to potential trade secret cases and are used effectively in other jurisdictions. For example, preliminary injunctions in trade secret cases permit plaintiffs to prevent a defendant from further using or benefiting from a stolen trade secret before a final ruling is issued, based on a reasonable likelihood of finding trade secret misappropriation. Such injunctions can prevent further financial losses stemming from trade secret theft, but are particularly important in trade secret cases because they can limit the likelihood of further trade secret dissemination. The very definition of a trade secret depends on its secrecy: once a trade secret is publicly disclosed, it is no longer eligible to be considered a trade secret. Thus, preliminary injunctions could be particularly powerful in enforcing trade secrets rights.

Evidence preservation orders—court rulings that require a defendant to preserve and turn evidence over to the court—can also be an effective tool in trade secret cases. A plaintiff must apply to the court for such an order, and may be required to post a bond with the court. Though use of evidence preservation orders in trade secrets cases to date has been limited, this tool has been used increasingly for companies in other types of civil IP cases, and could alleviate the high evidentiary burden that companies face (see Challenge 4).

Unlike other forms of IP—such as patent, trademarks, and copyrights—there is no clear legal provision that explicitly gives plaintiffs in trade secrets cases the option of using such orders. However, recent developments indicate that preliminary injunctions may be a more viable option going forward. Article 100 of the revised Civil Procedure Law, which went into effect on January 1, 2013, permits plaintiffs in civil cases—including trade secrets cases—to apply for preliminary injunctions and evidence preservation orders. In August 2013, [the Shanghai No. 1 Intermediate Court cited the Civil Procedure Law in granting US pharmaceutical company Eli Lilly and Co. a preliminary injunction](#) in their trade secret case against a former employee. While this decision reflects judicial views in only one court and does not set any formal legal precedent for other jurisdictions, it points to the possibility of greater use of these tools for plaintiffs in trade secrets cases. Greater comfort with such orders, and increased use by Chinese courts at all levels, would tangibly contribute to China's efforts to improve the environment for trade secret enforcement.

Recommendations

- Revise China's current legal framework for trade secrets (see Challenge 1) to explicitly include evidence preservation orders and preliminary injunctions for trade secrets.
- Actively encourage courts at all levels to make greater use of evidence preservation orders and preliminary injunctions in trade secrets cases, when plaintiff applications meet appropriate requirements under Chinese law.
 - Consider using the August 2013 Shanghai case involving Eli Lilly as a model case, to be circulated to provincial courts as an example of a trade secrets case with a successful preliminary injunction.

Challenge 6: Insufficient information about relevant judicial procedures and practices

Many companies use agreements with their employees—including non-compete and non-disclosure agreements—as an important tool to protect against trade secret misappropriation or infringement. Recent changes to the legal framework governing such agreements, including the 2008 implementation of the new Labor Contract Law, have raised questions for many companies about how best to structure and implement such agreements to ensure their enforceability. While some companies have indicated that they expect no problems with their current agreements, others have reported inconsistencies between court rulings in different jurisdictions, and still have questions about their ability to enforce these agreements through Chinese courts. Providing further information and guidance to both courts and potential plaintiffs about the process and outcomes of such cases would considerably help to alleviate potential questions and would better ensure that companies drafting these agreements do so within the scope of the Labor Contract Law and other relevant regulations.

Companies also have questions in trying to understand another important piece of China's trade secret regime: expert panels used in civil trade secrets cases. These experts often play an important role in trade secrets cases, assessing the technical aspects of trade secrets claims, but it is not always clear to the parties in a given case how these experts are qualified and selected. Questions also arise about potential conflicts of interest for experts, and what requirements and procedures might exist for experts to withdraw from a case due to a conflict of interest. Company experience indicates that the answers to these questions may differ from province to province. Providing more transparent information about the rules governing certification, selection, use, and operating conduct for these expert panels – and standardizing these rules between different local jurisdictions – would improve the quality and efficiency of trade secret cases.

Recommendations

- Release judicial guidance from the Supreme People's Court (see Challenges 3 and 4) that would provide clear, useful information to court officials, plaintiffs, and defendants about the proper judicial handling of cases involving trade secrets disputes involving non-disclosure agreements and confidentiality agreements. Such guidance could include a judicial opinion, a batch of model cases, or both.
- Work with provincial courts to provide clear information to court officials, industry and the public via a judicial notice, public seminars, or other means about the rules governing certification, selection, use, and operating conduct for expert panels, including obligations for experts to withdraw from considering a particular case based on a conflict of interest.
 - Increase standardization of such rules across provinces through SPC guidance and promoting greater information sharing among provincial court officials.

Conclusion

Intellectual property protection is an important foundation of China's efforts to upgrade its economy and promote the growth and development of innovative sectors. Recent reforms clearly show that the Chinese government is aware of this need, and has taken many of the necessary steps to improve the IP legal framework and boost intellectual property enforcement. Yet much of this progress has been targeted at traditional forms of IP – patents, trademarks, and copyrights.

Some of the challenges that companies face in protecting trade secrets parallel challenges that they face in protecting other types of IP, including low administrative fines and court damages, the challenge of persuading local enforcement officials to tackle difficult cases, judicial procedures that do not include a discovery process, and high criminal thresholds that can inhibit companies from using criminal channels to pursue trade secret enforcement. These areas present more general challenges to IP protection, and would require broader structural reforms that are addressed in other USCBC reports on China's IPR environment (see, for example, USCBC's May 2013 [IPR Review and Recommendations](#)). The recent surge in attention to trade secrets, nevertheless, shows the continuing challenge that companies face in trying to protect trade secrets.

The unique challenges that companies face in seeking to protect their trade secrets are wide-ranging – related to the legal framework, structural barriers to robust trade secret protection, and judicial practices. Many of these concerns require joint efforts by government agencies and companies. For example, a considerable amount of trade secrets theft stems from incidents of misappropriation caused by current or former employees. This can be addressed by companies, government agencies, and other stakeholders conducting educational initiatives to promote the importance of preserving the confidential nature of this type of information. Steps to address these challenges would thus necessitate a range of actions, including changes to existing laws and regulations, new policies and practices, and better information on a number of key topics. Such reforms would significantly advance China's trade secrets regime and encourage more companies to develop, use, and protect trade secrets in China.