Evolution and Development of China's Legal System for Trade Secret Protection

Cheng Yongshun, Wu Lijuan and Han Yuanmu

Trade secrets are an integral part of core competencies of companies and play an increasingly crucial role in the intellectual property protection system. Statistics indicate that among global technology companies, over 80% of critical technological information is protected as trade secret, rather than as patent. [1] The Research Report on the Protection of Trade Secrets in China (2014-2024) recently released by the Trade Secrets Professional Committee of the Chengdu Bar Association reveals an explosive growth in the number of trade secret cases in China in the past decade. The number of civil cases involving trade secrets substantially tripled from 2014 to 2024. Such a growth trend aligns closely with the macro context of economic transformation and upgrading, as well as intensifying industrial competition in China.

On 9 April 2025, the Shenzhen Intermediate People's Court issued the Guidelines for Management and Protection of Trade Secrets in Enterprises, which cover the entire process from research and development, production to operation, and provide feasible risk prevention and control suggestions based on studies of typical cases. On 13 August 2025, the Beijing Municipal People's Procuratorate also issued the Guidelines for Trade Secret Protection and Risk Prevention. Those judicial documents are aimed to summarize case-handling experience, respond to the needs of urban economic development, help enterprises promote their capabilities to manage risks related to trade secrets, and foster a better legal environment for technological innovations and industrial upgrading.

At the end of August 2025, in the trade secret case involving infringement of Hisilicon's chip technology by Zunpai Co. handled by Shanghai procuratorial authorities under the guidance of the Supreme People's Procuratorate (SPP), the first-instance judgment made by the Shanghai No. 3 Intermediate People's Court on 28 July 2025 officially came into effect since 14 defendants did not file appeals within the statutory time limit. The technical information involved in the case was valued as high as RMB 317 million so that the principal offender, whose actions were deemed the most severe, was sentenced to six years in prison, and all defendants collectively received fines totaling RMB 13.5 million. That case is regarded as a landmark in the protection of trade secrets related to domestic chip technology. The head of the SPP's Intellectual Property Prosecution Office highlighted that trade secrets are vital intellectual property rights in modern economic society, which have a bearing on not only the security of core and key technologies of enterprises, but also the high-quality development of China. In recent years, the procuratorial authorities have made continuous efforts to intensify the judicial protection of trade secrets, crack down on the crime involving trade secret infringement according to law and serve innovation and development under the rule of law. [2]

Such statistics and practices indicate that trade secrets, as an important carrier of enterprises' innovative achievements, have become a key element for enterprises to maintain their core competencies in fierce market competition, a vital strategic resource for enterprises to participate in international market competition, and even determine the survival of enterprises. Strengthening the protection of trade secrets is of great significance for safeguarding business operation and development, incentivizing innovation and creativity, and maintaining fair market competition.

However, there have always been controversies over the understanding of some fundamental issues related to trade secrets, both in theory and in practice, such as the nature of trade secrets, burden of proof, the role of judicial forensic opinions, the identification and function of "secret points" , as well as the sequence of handling criminal-civil intersection cases involving trade secrets, which result in the consequences that the outcomes of many disputes are unsatisfactory, and the rights and interests of trade secret owners cannot be adequately protected.

In order to clarify those fundamental issues, it is necessary to trace back to the legislative history of trade secrets in China, understand how the existing trade secret system was established and has gradually evolved and improved to its current state, which will also keep us stay true to the original aspiration in the future improvement and practice of the trade secret system, deal with disputes in a more reasonable and lawful manner, and thereby protect the legitimate rights and interests of trade secret owners more effectively.

I. From the beginning of the reform and opening-up to the enactment of the Anti-Unfair Competition Law in 1993

It is generally recognized that the Anti-Unfair Competition Law (hereinafter referred to as the AUCL), which came into force on 1 December 1993, marked the first time that China explicitly defined the concept of "trade secret" in legislation. Before that, provisions related to trade secrets, however, had already appeared in various forms of legal terms in several laws, administrative regulations and departmental rules.

1. Proprietary technology

The Decision of the Third Plenary Session of the 11th Central Committee of the Communist Party of China opened the prelude to China's reform and opening-up.

Article 5.1 of the Law on Sino-Foreign Equity Joint Ventures, which was issued and implemented on 1 July 1979, stipulates that "each party to an equity joint venture may contribute cash, physical goods, industrial property rights, etc., as its investment in the enterprise". It was the first time that industrial property rights had been recognized as a form of capital contribution in the Chinese laws.

Article 25 of the Implementing Regulations of the Law on Sino-Foreign Equity Joint Ventures (hereinafter referred to as the Implementation Regulations), which was issued and implemented on 20 September 1983, further specifies that "a joint venture may contribute capital in the form of currency, or may make capital contributions by way of valuation of buildings, factories, machinery and equipment or other materials, industrial property rights, proprietary technology, right to use a venue, etc." In addition to clarifying that "industrial property rights" may be used as a form of capital contribution through valuation, as mentioned in the Law on Sino-Foreign Equity Joint Ventures, the Implementation Regulations also put forward the concept of "proprietary technology" for the first time and recognized that it could also serve as a form of capital contribution. Regarding the scope of "industrial property rights", Article 29 of the Implementation Regulations stipulates that "when a foreign joint venture contributes capital in the form of industrial property rights or proprietary technology, it shall submit relevant materials concerning such industrial property rights or proprietary technology, including copies of the patent certificate or trademark registration certificate, and documents in relation to validity status, technical characteristics, practical value, basis for calculating the valuation, and the valuation agreement signed with the Chinese joint venture, as the attachments to the joint venture contract." In other words, the scope of industrial property rights mainly refers to patent and trademark. However, the Implementation Regulations do not provide a clear definition of "proprietary technology".

Article 2 of the Regulations on the Administration of Technology Import Contracts, which was issued and implemented on 24 May 1985, stipulates that the technology import covers: (1) the assignment or license of patent rights or other industrial property rights; (2) proprietary technology related to technological processes, formulas, product designs, quality control and management, presented in the form of drawings, technical data, technical specifications, etc.; and (3) technical services.

The Implementing Rules for the Regulations on the Administration of Technology Import Contracts, which was issued and implemented by the former Ministry of Foreign Economic Relations and Trade on 20 January 1988, clearly defined the concept of "proprietary technology" for the first time by means of defining the "contract for licensing proprietary technology". Specifically, "proprietary technology" refers to "technical knowledge related to the manufacturing of a certain product, the application of a certain process, as well as product designs, technological processes, formulas, quality control and management, which has not been disclosed and has not obtained legal protection by industrial property rights". Based on such definition, "proprietary technology" possesses certain characteristics of trade secrets.

2. Scientific and technological secret

On 7 November 1981, the State Council approved the Regulations on Confidentiality of Science and Technology formulated by the former State Science and Technology Commission (hereinafter referred to as the "former SSTC"), for the purpose of protecting China's scientific and technological secrets and safeguarding and promoting the socialist modernization construction of China. Article 2 thereof stipulates the scope of scientific and technological secrets, which includes: (1) inventions approved by China; (2) phased achievements that may develop into inventions; (3) other important scientific and technological research achievements that exist abroad but are kept confidential; (4) technical know-how and traditional processing techniques that do not exist abroad, or exist abroad but are kept confidential. Article 3 thereof classifies confidential scientific and technological projects into three levels: top secret, secret, and confidential. Judging from the relevant provisions, "scientific and technological secrets" include not only trade secrets in the traditional sense but also state secrets.

3. Other scientific and technological achievement

The General Principles of Civil Law, issued on 12 April 1986 and promulgated on 1 January 1987, stipulate in Article 97 (Right to Discoveries, Inventions, and Other Scientific and Technological Achievements) under Section 3 (Intellectual Property Rights) of Chapter V (Civil Rights) that citizens shall have the right to apply for and receive honorary certificates, bonuses, or other rewards for their inventions or other scientific and technological achievements. Pursuant to that provision, "right to other scientific and technological achievement" is a type of intellectual property rights in parallel to "right to discovery" and "right to invention", and is a civil right that citizens are entitled to enjoy according to law. As a catch-all term, "other scientific and technological achievement" has no further defined connotation in the General Principles of Civil Law. It is generally believed that any "scientific and technological achievement" that does not fall within the category of scientific discoveries or inventions may be included herein, such as the "proprietary technology" mentioned earlier.

4. Non-patented technological achievement

The Technology Contract Law, issued on 23 June 1987 and promulgated on 1 November 1987, divides technological achievements into two categories: "patented technological achievement" and "non-patented technological achievement". It also clearly stipulates the promotion and application of "non-patented technological achievement" made by state-owned enterprises and collective-owned enterprises, the principles of ownership and sharing of non-patented technological achievements, as well as the basic principles of conclusion, performance, and breach of non-patented technology transfer contract (which are among the four types of technology transfer contracts).

Subsequently, the Implementing Regulations of the Technology Contract Law, issued and promulgated by the former State Science and Technology Commission on 15 March 1989, interpret the relevant concepts in the Technology Contract Law. Article 3 thereof stipulates that "the term technological achievements as mentioned in the Technology Contract Law refers to technical solutions such as products, processes, materials and their improvements developed by using scientific and technological knowledge, information and experience". Article 6 thereof further clarifies that "non-patented technology" includes technological achievement that has not been applied for patent protection, technological achievement for which no patent right has been granted, and technological achievement that is not eligible for patent protection under the Patent Law.

5. Trade secret

Before the enactment of the AUCL in 1993, the term "trade secret" had already emerged. Its earliest appearance can be found in the Civil Procedure Law, which was issued and implemented on 9 April 1991. Article 120.2 thereof stipulates that cases involving trade secrets may be tried in camera if the parties request confidentiality. This marked the first time that the protection of trade secrets was established in procedural law.

On 17 January 1992, the Chinese and U. S. governments signed the Memorandum of Understanding on the Protection of Intellectual Property, stating that to effectively prevent unfair competition in accordance with Article 10*bis* of the Paris Convention for the Protection of Industrial Property, the Chinese government would prohibit others from disclosing, obtaining, or using trade secrets without the consent of the trade secret owner in a manner contrary to honest commercial practices, including obtaining, using or disclosing trade secrets when the third party knows or should have known that such conduct occurred in the process of obtaining such information. The competent department of the Chinese government would submit to the legislature a bill providing the level of protection specified in this Article before 1 July 1993, and would make utmost effort to pass and implement the bill before 1 January 1994. The signing of this Memorandum significantly promoted the enactment of the AUCL.

II. From the enactment of the AUCL in 1993 to the completion of the second revision to the AUCL in 2019

1. The 1993 AUCL, for the first time, clarified that trade secrets should be protected in substantive law

On 2 September 1993, the Standing Committee of the Eighth National People's Congress (NPC) deliberated and passed, at the third session, the AUCL, which came into force on 1 December of the same year. Judging from the timing of the AUCL's promulgation and implementation, the AUCL's promulgation was directly associated with the commitments made in the Sino - US Memorandum of Understanding on the Protection of Intellectual Property. Article 10 concerning "prohibition of trade secret infringement" of the 1993 AUCL explicitly stipulates that acts of trade secret infringement by business operators constitute unfair competition, for which they shall bear civil liability for damages and/or corresponding administrative liability.

According to Article 10 of the AUCL, acts of trade secret infringement include: any act of obtaining a trade secret from the right holder by theft, inducement, coercion, or any other illicit means; any act of disclosing, using, or allowing another person to use a trade secret obtained from the right holder by any means as specified in the preceding subparagraph; and any act of disclosing, using, or allowing another person to use a trade secret under its control in violation of an agreement or the requirements of the right holder for confidentiality of trade secrets. Where a third party knows or should have known an illegal act as specified in the preceding paragraph but still obtains, uses, or discloses the trade secret of another person, the third party shall be deemed to have infringed upon the trade secret. Furthermore, Article 10 also defines, in paragraph 3, the concept of "trade secret" as follows: for the purpose of this Law, "trade secret" refers to the technological and business information which is unknown to the public, capable of bringing economic benefits to the right holder and of practical applicability, and for which the right holder has taken confidentiality measures.

So far, the legal term "trade secret" has been clearly defined in the substantive law after its incorporation into the procedural law, i.e., the Civil Procedure Law. From the perspective of the principle that rights are stipulated by law and such role of the AUCL as the catch-all rules for specialized intellectual property laws such as the patent law, the trademark law and the copyright law, trade secret is not considered as statutory right, but rather an interest, and is protected mainly through prohibitive provisions, which place emphasis on the prohibition of trade secret infringement committed by others.

2. The TRIPS Agreement regulates "undisclosed information" under the category of "unfair competition"

On 15 April 1994, the member states signed the Agreement on Trade - Related Aspects of Intellectual Property Rights (TRIPS Agreement), which is one of the final 21 documents negotiated in the Uruguay Round under the General Agreement on Tariffs and Trade. The TRIPS Agreement entered into force on 1 January 1995 and is administered by the World Trade Organization (WTO) established simultaneously. Article 39 under Section 7 (Protection of Undisclosed Information) of the TRIPS Agreement reads as follow:

"1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* 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 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.

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."

This provision actually incorporates "protection of undisclosed information" (commonly understood as "trade secret") into the scope of prohibition of unfair competition, which serves as the minimum requirement for member states to protect "undisclosed information".

3. Frequent release of trade secret-related regulations between 1995 and 1998

After the 1993 AUCL which explicitly set forth provisions on the protection of trade secret, a series of laws, administrative regulations and rules, local regulations and governmental regulations, and judicial interpretations related to trade secret protection had been promulgated in succession between 1995 and 1998.

At the level of law, the Labor Law, which was promulgated on 1 January 1995 clearly specifies the employee's confidentiality obligations, i.e., the parties involved in a labor contract can reach agreements in their labor contracts on matters concerning the keeping of the commercial secrets of the employer. Where employees violate terms on secret-keeping matters agreed upon in the labour contracts, thereby causing economic losses to the employer, such employees shall be liable for compensation according to law. Article 219 on crime of trade secret infringement of the Criminal Law, which was promulgated on 1 October 1997, stipulates that whoever engages in any act that infringes upon trade secret and brings significant losses to persons having the rights to the trade secrets is to be sentenced to fixed-term imprisonment of not more than three years or criminal detention, and concurrently or independently a fine; or is to be sentenced to fixed-term imprisonment of not less than three years and not more than seven years and concurrently a fine, if the consequences are particularly serious. The definition of "any act that infringes upon trade secret" and the concept of "trade secret" are entirely adopted from the provisions of Article 10 of the 1993 AUCL. Consequently, in addition to the civil and administrative liability as stipulated in the AUCL, criminal liability shall also be imposed in cases where the consequences are serious.

At the same time, the Standing Committee of the Eighth NPC listed the Trade Secrets Protection Law in its legislative plan, assigning the drafting task to the former State Economic and Trade Commission (SETC) and other relevant departments while establishing a research and drafting group. In 1996, the panel of experts organized by the former SETC completed the Draft Outline for the Trade Secrets Protection Law (Draft for Discussion), comprising 34 articles in seven chapters. It was reported that in accordance with the NPC's legislative plan, the Trade Secrets Protection Law (Draft for Review), comprising 39 articles in five chapters, was being drafted in 1998.[3] However, it was ultimately not enacted into law due to considerable controversies that may arise from excessive protection of trade secrets.

At the level of judicial interpretation, the Supreme People's Court (SPC) released, on 2 April 1995, the Opinions on Several Issues Concerning the Proper Handling of Science and Technology Disputes (hereinafter referred to as the Opinions), which include 65 articles in 10 sections, wherein the provisions on the "legal protection of non-patented technological achievement" clearly state that non-patented technological achievement is entitled to be protected by laws and regulations such as the General Principles of Civil Law, the AUCL, the Technology Contract Law and its Implementing Regulations. The non-patented technological achievement shall meet the following conditions: they shall include technical solutions or know-how that contain technical knowledge, experience and information; they shall be kept confidential, which means they are not directly accessible through a public channel; they shall be of practical value, which means they can enable their owners to gain economic profits or competitive advantages; and the owners must have taken appropriate confidentiality measures and shall not provide them to others without an agreed confidentiality obligation. Such four conditions actually correspond to the constituent elements of trade secrets provided in the AUCL. Therefore, the "non-patented technological achievements" in the Opinions shall be understood as "trade secrets". The Opinions also clarify that the party involved in the technology contract that obtains the non-patented technological achievements of the other party based on the contractual relationship shall abide by the confidentiality obligation and the scope of use as stipulated in the contract. The employee's act of disclosing, providing or transferring the non-patented technological achievements, phased technological achievements or the product design drawings, formulas or manufacturing processes of its current or previous employer to others without authorization, of inducing others to steal or disclose the third party's non-patented technological achievements or product design drawings, formulas and manufacturing processes, of disclosing, using or transferring the other party's non-patented technological achievements in violation of agreement, and of obtaining, using, or transferring the others' non-patented technological achievements by other improper means constitute infringement of the right to use and to transfer the non-patented technological achievements.

Relevant administrative authorities also released a series of departmental regulations based on their own circumstances. For instance, on 6 January 1995, the former SSTC and the National Administration of State Secrets Protection issued the Provisions on Confidentiality of Science and Technology, and the Regulations on Confidentiality of Science and Technology (1981) were abolished. On 23 November 1995, the former State Administration for Industry and Commerce (SAIC) issued the Several Provisions on Prohibition of Acts of Trade Secret Infringement. On 2 July 1997, the former SETC issued the Notice of Strengthening the Protection of Trade Secrets in State-Owned Enterprises, and the former SSTC issued the Several Opinions on Strengthening the Management of Trade Secrets During the Mobility of Scientific and Technological Personnel. And on 12 June 1998, the former SAIC issued the Reply to the Issues Concerning the Constituent Elements of Trade Secrets.

To cooperate with the implementation of the AUCL, local governments have also issued their local laws and regulations and governmental rules. For instance, Beijing, Shanghai, Henan, Hainan, Sichuan, Jilin, Guangxi, Shanxi, Ningxia, Guizhou, Hebei, Chongqing, Hubei, and Heilongjiang issued the Anti-Unfair Competition Rules, while Jiangsu, Shandong, Liaoning and Tianjin issued the Measures for Implementing the AUCL. All of them contain contents in relation to trade secrets, and most of them are consistent with the provisions of the AUCL.

Furthermore, in May 1995, the research group from the Guangdong Talent Research Institute and Guangdong Science and Technology Commission finished the report regarding Legislative Research on Protection of Technical Secrets in Guangdong Province, stating that "Guangdong, as the first pilot zone in China for economic reform and opening-up, shall also take the lead in legislation and strive to serve as a model for promoting the protection of technical secrets in China". It proposed a framework for local legislation comprising 19 articles inclusive of general provisions, ownership of rights and interests, protection measures, infringement determination and legal liability. On 3 November 1995, the Regulations on the Protection of Technical Secrets of Enterprises in Shenzhen Special Economic Zone was promulgated, comprising 38 articles in 5 chapters, which is the first specialized local legislation regarding trade secret. Later in 1997, the Interim Regulations on Enterprise Confidentiality Management in Guangdong Province was promulgated, comprising 25 articles in 5 chapters, while the Zhuhai Municipal People's Congress passed the Regulations on the Protection of Technical Secrets of Enterprises in Zhuhai, comprising 34 articles in 5 chapters.

It can be concluded from the regulatory landscape during the period that the trade secret system in China is characterized by multiple tiers, fragmented oversight, and scattered legislation, the pattern of which still persists to this day.

4. From the promulgation of the Outline of the National Intellectual Property Strategy to the completion of the second revision of the AUCL

Following an intensive period of institutional rule-making, the legislation on trade secrets entered into a quiet phase. China launched the research on the national intellectual property strategy in 2005, and the former SAIC set up a special research team and released a research report. On 5 June 2008, the State Council issued the Outline of the National Intellectual Property Strategy, indicating that "[g]uide market entities to establish a trade secret management system according to law. Crack down on the acts of stealing other's trade secret according to law. Properly handle the relationships between trade secret protection and free career choice, as well as between non-compete restrictions for personnel with access to secrets and the rational flow of talents, so as to safeguard the legitimate rights and interests of employees." However, the legislation concerning trade secret was not on the schedule.

During that period, the relevant legislation was mainly manifested as follows: the Labor Contract Law promulgated on 1 January 2008 sets forth the employee's confidentiality obligations and non-compete obligations. Article 23 thereof stipulates that an employer may enter an agreement with its employees in the labor contract to require his employees to keep the trade secrets and matters relating to intellectual property of the employer confidential. For an employee who has the obligation of confidentiality, the employer and the employee may stipulate non-compete clauses in the labor contract or in the confidentiality agreement and come to an agreement that after the rescission or termination of the labor contract, the employee shall be provided with economic compensation on a monthly basis within the non-compete period. If the employee violates the non-compete agreement, it shall pay liquidated damages to the employer according to the agreement. The Labor Contract Law also clearly specifies the scope and duration of non-compete obligation, as well as the legal liabilities the employees shall bear for violating the confidentiality and non-compete obligations. In March 2010, the State-Owned Assets Supervision and Administration Commission (SASAC) issued the Interim Provisions on the Protection of Trade Secrets of Central State-Owned Enterprises, which consist of 34 articles in 6 chapters, with the objective of strengthening trade secret protection in central state-owned enterprises and preventing the interests of central state-owned enterprises from being infringed.

In the judicial field, on 8 December 2004, the SPC and the SPP jointly issued the Interpretation on Several Issues Concerning the Specific Application of Law in Handling Criminal Cases Involving Infringement of Intellectual Property Rights, in which the criteria for convicting the "crime of trade secret infringement" are quantified. On 1 January 2005, the SPC's Interpretation on Several Issues Concerning the Application of Law in the Trial of Disputes over Technology Contracts came into force, which contains provisions regarding the handling of disputes involving trade secrets in technology contracts and the resolution of disputes arising from contracts for the transfer of trade secrets. On 1 February 2007, the SPC's Interpretation on Several Issues Concerning the Application of Law in the Trial of Civil Cases Involving Unfair Competition, which is the first judicial interpretation on civil disputes over unfair competition, was put into effect, providing clarifications on the interpretation of certain terms in the AUCL and issues related to the application of the said law. In addition, judicial documents issued by local courts, such as the Opinions on Several Issues Concerning the Trial of Trade Secret Cases released by the High People's Court of Jiangsu Province on 3 February 2004, and the Minutes of the Symposium on the Trial of Disputes over Trade Secret Infringement issued by the High People's Court of Tianjin Municipality on 11 April 2007, were formulated based on the judicial practice, and are of significant value as a reference for the development and improvement of the legal system for trade secret protection.

The General Principles of the Civil Law, which came into force on 1 October 2017, classify trade secrets as a type of intellectual property rights that civil subjects may enjoy according to law. Such provision has thus triggered a debate over the nature of trade secrets—whether trade secret should be regarded as a right or an interest. Proponents of the view that trade secret is a right argue that in accordance with the principle that rights are stipulated by law, since the General Principles of the Civil Law identify trade secret as a type of intellectual property rights that civil subjects can enjoy according to law, trade secret can be regarded as a right on a par with patent, trademark, copyright, and the like. However, opponents contend that it is inappropriate to classify trade secret as a right, either from the perspective of the inherent characteristics of trade secret or from the origin and development of rules for trade secret protection, because the boundary of protection for trade secrets is not clear. Instead, it is more appropriate to treat trade secret as an interest which should be protected by means of right of prohibition.

On 4 November 2017, the first revision of the AUCL was completed after 24 years, and came into effect on 1 January 2018, wherein the revision of the provisions on trade secret protection includes: the acquisition of other's trade secret by means of "bribery" constitutes unfair competition, and a third party will be considered to have infringed a trade secret if the third party knows or should have known that the employee or ex-employee of the trade secret owner had infringed the trade secret; the definition of "trade secret" is further improved, i.e., "trade secret" in this Law means technical and operational information that is unknown to the public and of commercial value for which the right holder has taken corresponding confidentiality measures; and the amount of damages for infringement of trade secret has been significantly increased.

On 23 April 2019, the AUCL was amended for the second time. The second revision of the AUCL primarily involves provisions on trade secret, aiming to address the challenges posed to trade secret protection by the development of information technology. In addition to explicitly defining the act of obtaining other's trade secret by means of "electronic intrusion" constitutes unfair competition, the revised AUCL was also added with the provisions that "abetting, or inducing, or aiding a person into or in acquiring, disclosing, using, or allowing another person to use the trade secret of the right holder in violation of his or her non-disclosure obligation or the requirements of the right holder for keeping the trade secret confidential" constitutes unfair competition, and "other natural persons, legal persons and unincorporated organizations other than the business operators who commit the illegal acts listed in the preceding paragraph shall be deemed to have infringed upon trade secrets". Moreover, the upper limit of damages is further raised.

Meanwhile, the newly revised AUCL also sets forth definite provisions on the allocation of the burden of proof in disputes over trade secrets, providing that during the civil trial of cases concerning infringement of trade secret, where the *prima facie* evidence provided by the trade secret owner can prove that it has taken measures to keep its trade secret confidential and can reasonably indicate that the trade secret has been infringed, the accused infringer shall prove that the trade secret claimed by the right holder does not fall with the scope of trade secrets as provided in this Law. Where the trade secret owner provides *prima facie* evidence that can reasonably indicate the trade secret has been infringed and provides one of the following evidence, the accused infringer shall prove that there is no infringement of any trade secret: (1) there is evidence showing that the accused infringer has access to or opportunities to obtain the trade secret and the information used by the accused infringer is substantially identical to the secret; (2) there is evidence showing that the trade secret has been or has been at risk of being disclosed or used by the accused infringer; and (3) there is any other evidence showing that the trade secret has been infringed by the accused infringer.

III. Calls for enhancing trade secret protection have grown increasingly strong since 2020

In February 2018, China and the United States commenced economic and trade negotiations, which underwent thirteen rounds, wherein trade secret remained one of the key issues throughout the process.

On 15 January 2020, China and the United States signed the phase-one economic and trade agreement, which consists of nine chapters, wherein intellectual property is the first chapter, including 36 articles in 11 sections. The pivotal role of intellectual property in Sino-U.S. economic and trade relations is evident. Section B (Trade Secrets and Confidential Business Information), which includes 7 articles, is the section with the most provisions on intellectual property rights in the agreement. The provisions include (1) trade secret protection is a core element of optimizing the business environment, and efforts shall be made to ensure effective protection for trade secrets and confidential business information and effective enforcement against the misappropriation of such information; (2) confidential business information concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, business transactions, or logistics, customer information, inventories, or amount or source of any income, profits, losses, or expenditures of any person, natural or legal, or other information of commercial value, the disclosure of which is likely to have the effect of causing substantial harm to the competitive position of such person from which the information was obtained; (3) "operators" in trade secret misappropriation is defined to include all natural persons, groups of persons, and legal persons; and (4) the scope of prohibited acts subject to liability for trade secret misappropriation provides full coverage for methods of trade secret theft, especially: electronic intrusions; breach or inducement of a breach of duty not to disclose information that is secret or intended to be kept secret; and unauthorized disclosure or use that occurs after the acquisition of a trade secret under circumstances giving rise to a duty to protect the trade secret from disclosure or to limit the use of the trade secret. There are also other procedural provisions on the burden of proof, provisional measures, criminal protection, and protecting trade secrets and confidential business information from unauthorized disclosure by government authorities.

At the same time, trade secret-related legislation has been revitalizing in China.

At the level of law, the Civil Code, which came into force on 1 January 2021, continued the provision of the General Principles of the Civil Law regarding trade secrets as a type of intellectual property rights enjoyed by civil entities according to law, thereby further triggering the debates over the nature of trade secrets. Amendment (XI) to the Criminal Law, which came into force on 1 March 2021, revised the relevant provisions concerning "crime of infringing trade secrets" in accordance with amendments to the AUCL, so as to ensure consistency with the provisions of the AUCL. A new offense, "crime of sealing, spying, selling or illegally providing trade secrets to overseas entities", was newly introduced, providing that whoever steals, spies on, sells or illegally provides trade secrets to overseas institutions, organizations, or persons is to be sentenced to fixed-term imprisonment of not more than five years, and concurrently or independently a fine; or is to be sentenced to fixed-term imprisonment of not less than five years and concurrently a fine, if the consequences are particularly serious.

At the judicial level, the judicial interpretations and judicial policies of the SPC and the judicial documents of local courts have been frequently promulgated.

On 15 April 2020, the SPC issued the Opinions of Comprehensively Strengthening the Judicial Protection of Intellectual Property, putting highlight on strengthening the protection of trade secrets, including: to accurately delineate the boundaries between civil disputes and criminal offenses involving trade secret infringement; to reasonably apply the rule of the burden of proof in civil litigation to legally reduce the burden on rights holders when protecting their interests; to improve the criteria for identifying offenses involving trade secret infringement and standardize the scope of and method for calculating substantial losses, and allow reasonable remedial costs incurred to mitigate commercial damages or restore security to serve as a support for "causing substantial loss" or "causing particularly severe consequences" in criminal cases; to strengthen the protection of trade secrets such as confidential business information so as to safeguard fair competition among enterprises, facilitate reasonable talent mobility, and promote scientific and technological innovation; and to severely and strictly punish those who obtain trade secrets through illegal means such as theft, threat, inducement, and commit other crimes with significant social harm, so as to effectively leverage criminal penalties to deter and punish intellectual property crimes.

On 12 September 2020, the SPC released the Provisions on Several Issues Concerning the Application of Law in the Trial of Civil Cases Involving Infringement of Trade Secret, which is the specialized interpretation on civil disputes over infringement of trade secrets. On the same day, the SPC and the SPP released the Interpretation (III) on Several Issues Concerning the Specific Application of Law in Handling Criminal Cases Involving Infringement of Intellectual Property Rights, which further clarifies the criteria for identifying electronic intrusion, and the threshold for criminal liability under the offense of trade secret infringement.

On 22 April 2021, the SPC issued the Plan for the Judicial Protection of Intellectual Property Rights by the People's Courts (2021-2025), emphasizing the need to "strengthen the judicial protection of trade secret, reasonably determine the burden of proof of the parties according to law, and effectively curb trade secret infringement, and properly balance the trade secret protection and rational flow of talents, so that trade secrets can be protected according to law, while the legitimate rights and interests of employees in legitimate employment and entrepreneurship" may also be safeguarded.

On 29 October 2021, the SPC indicated in the Opinions on Strengthening Intellectual Property Trial Work in the New Era for Providing Powerful Judicial Services and Guarantees for Building an Intellectual Property Powerhouse that such efforts should be made to strengthen the protection of trade secrets and safeguard the innovative development of enterprises; to enhance judicial protection for technological secrets involving national security and interests according to law and severely punish acts of stealing and disclosing national scientific and technological secrets; to accurately delineate the boundaries between civil disputes and criminal offenses involving trade secret infringement and to refine the criteria for identifying criminal offenses involving trade secret infringement; to strengthen the protection of trade secrets during litigation, so as to effectively prevent "secondary disclosure" in litigation, as well as safeguard the right holders' lawful enforcement of rights; to properly balance trade secret protection and freedom of choosing employment, and non-compete restriction and rational flow of talents, so that while trade secrets are protected according to law, the legitimate rights of employees to employment and entrepreneurship can be safeguarded, the innovative development of enterprises can be guaranteed, and the rational flow of talents can be promoted. In addition, the courts and pocuratorates in Beijing, Jiangsu and Shenzhen have successively issued guidance documents related to trade secret.

At the level of administrative regulations and departmental rules, on 14 August 2020, the Ministry of Justice solicited public opinions on the Guiding Opinions on Strengthening the Protection of Trade Secrets and Confidential Business Information in the Administrative Licensing Process (Draft for Comments). On 4 September 2020, the State Administration for Market Regulation solicited public opinions on the Regulations on the Protection of Trade Secrets (Draft for Comments). On 28 October 2021, the State Council issued the National Plan for the Protection and Application of

Intellectual Property Rights During the 14th Five-Year Plan (No. Guo-fa 20/2021), clarifying "the improvement of intellectual property laws and regulations, including: to conduct foundational researches on intellectual property law, to coordinate the revision and improvement of the relevant laws and regulations such as the patent law, trademark law, copyright law, anti-monopoly law, law of scientific and technological progress and e-commerce law, and to strengthen legislation in areas such as geographical indication and trade secret, and formulate regulation on trade secret protection." In March 2025, the State Administration for Market Regulation deployed major legislative tasks for 2025, and listed the Regulations on the Protection of Trade Secrets in the key legislative projects for a second time after 3 years.

Additionally, since 2020, various local (provincial and municipal) laws, regulations and rules related to trade secret have been successively issued by Jilin, Shandong, Shanxi, Guizhou, Anhui, Jiangxi, Zhejiang, Shaanxi, Fujian, Guangdong, Shenzhen, Zhuhai, Wenzhou, Ningbo, Qingdao, which, to a certain extent, demonstrates increasingly prominent role of trade secret in economic development, the growing demand from enterprises for trade secret protection, and the rising calls for specialized legislation on trade secret.

Conclusion

By delving into the legal framework for trade secret protection in China, it can be seen that although there is no separate legislation on trade secrets in China, there are a large number of relevant laws, regulations, judicial interpretations, departmental regulations, local legislation, local regulations and policies, and local judicial policy documents, whose provisions cover a wide range of aspects, encompassing both substantive rules and procedural regulations.

On the whole, the rules seem to be comprehensive and specific. However, closer examination reveals significant overlap among various provisions, with some rules being ineffective or even contradictory, which thereby results in substantial difficulties for trade secret owners when seeking for effective protection. On the other hand, in spite of increasing calls for separate legislation on trade secrets, several fundamental issues still remain unresolved, such as the nature of trade secret and the similarities and differences between trade secret and other intellectual property rights, whether the objective of protection of trade secrets is aimed at protecting innovation or safeguarding fair competition, whether the focus of trade secret legislation or enforcement should be on rights protection or prohibition of unfair competition, how to identify the standards for trade secret protection (such as the allocation of the burden of proof). The authors deem that it is necessary to take in-depth research on these fundamental issues in relation to trade secrets in a bid to unify and clarity the rules for trade secrets in legislation, and meanwhile enable the China's trade secret system to truly and fully fulfill its intended role.

The authors' affiliations: Cheng Yongshun, the Intellectual Property Tribunal of the Beijing High People's Court (retired); Wu Lijuan, BIPI Consultant; and Han Yuanmu, School of Philosophy of Renmin University of China

---

* This article is based on Cheng Yongshun's speech at the Trade Secret Protection Frontier Seminar held by the Shenzhen Intellectual Property Research Association in April 2025.

[1] The Guidelines for Management and Rights Protection of Enterprises' Trade Secrets issued by the Shenzhen Intermediate People's Court.

[2] The first-instance judgment of the trade secret case involving infringement of chip technology bwtween Hisilicon and Zunpai took effect. Retrieved from http://www. xinhuanet. com / legal / 20250827 / e1b802c185ca46cfb1f68bbac6fc52de/c.html.

[3] China formulated the Trade Secrets Protection Law to protect the legitimate rights and interests of trade secret owners. *Commodity Prices in Guangxi, 8/1998*.

China Leads World in Generative AI Patents from 2014 to 2023

The United States and China are the two top global leaders in artificial intelligence (AI) development, and China has the most generative AI patents from 2014 to 2023, an AI expert said after the International Institute for Management Development (IMD) released its AI Maturity Index on 11 November 2025.

According to the second edition of the AI Maturity Index, which ranks companies on how effectively they have adopted AI to transform business strategies and operations, NVIDIA ranked top, with Microsoft and Alphabet following in second and third place.

Source: Xinhua