

The New Opportunities for the Intellectual Property Rights Under the Economic and Trade Agreement Between the Government of P.R.C. and the government of U.S.

- Based on the Perspective of Trade Secrets Protection



Economic and Trade disputes between China and the United States have evolved since March 2018. On January 1, 2020, China and the United States signed the first phase of the Economic and Trade Agreement between the Government of the People's Republic of China and the Government of the United States of America ("the Agreement"). The agreement contains a preamble and eight chapters, including intellectual property, technology transfer, trade in food and agricultural products, financial services, macroeconomic policies and exchange rate matters and transparency, expanding trade, bilateral evaluation and dispute resolution, and the final provisions.

The U.S. President Donald Trump's set tariffs and other trade barriers on China and alleged China to make changes about the world trade rules on March 2, 2018, which was considered as the biggest trade war. Strengthening the protection of intellectual property is in line with the needs of trade development

between China and the United States and helps the two countries' economies become conducive, standardized and harmonious.

Nowadays, China's economy is progressively transforming from an important consumer of intellectual property products to an important intellectual property producer. It is necessary and important to strengthen intellectual property protection which contributes to China's future knowledge-based, science and technology-based and high-value-added economic development. Also, it is interrelated with China's goal of building an innovative country, innovative enterprises and promoting high-quality economy. Hopefully, the agreement will benefit the intellectual property products for the business environment in China soon.

The Intellectual Property System, Chapter I of the Agreement, including 11 provisions of China-U.S. intellectual property cooperation which contains general obligations, trade secrets and confidential business information, pharmaceutical-related intellectual property rights, patents, piracy and counterfeiting on e-commerce platforms, geographical indications, manufacture and export of pirated and counterfeit goods, bad-faith trademarks, bilateral cooperation on intellectual property protection and implementation. China and the United States signed this agreement, voluntarily abiding by the provisions of the agreement which helps establish the basic principles and obligations of intellectual property cooperation.

Both sides fulfill the principles of intellectual property protection and enforcement of fairness, adequacy and effectiveness. Also, both sides have the basic obligation to ensure fair and equitable market access to persons of the other Party that rely upon intellectual property protection.

In the field of trade secrets and confidential business information, the agreement firstly defines the confidential business information and shows the scope of actors liable for trade secret misappropriation. It emphasizes all natural or legal persons can be subject to liability for trade secret misappropriation. “Operators” stands for all natural persons, groups of persons and legal persons, which means operators are widely protected under this agreement.

Secondly, it tells the scope of prohibited acts subject to liability for trade secret and misappropriation provides full coverage for methods of trade secret theft. Then it lists some violation acts which should be regulated.

Thirdly, it lays down the burden-shifting in a civil proceeding. The breakthrough in this provision is to ease the burden of proof for the holder of a trade secret . Only the holder of a trade secret provides prima facie evidence, including circumstantial evidence, the burden of proof is transferred to the defendant. Intellectual property is a kind of intangible property. If the plaintiff is strictly required to provide a complete and sufficient burden of proof, it will not be conducive for the holder of a trade secret to defend their rights. Thus, it cannot be a convenient and effective method against infringers.

Fourthly, the two sides have provisional measures to prevent the use of trade secrets.

Fifthly, it regulates the threshold for initiating criminal enforcement. The parties shall eliminate any requirement that the holder of a trade secret establishes actual loss as a prerequisite to initiation if a criminal investigation for misappropriation of a trade secret. The two sides agree to make appropriate criminal procedures and penalties to address willful trade secret misappropriation. It highlights violations of trade secrets through theft, fraud,

physical or electronic intrusion for illegal purposes, as well as unauthorized or improper use of computer systems.

Sixthly, government authorities may not disclose trade secrets and confidential business information without authorization. By restricting the possible intervention of public power in trade secrets, the complete rights of natural and legal persons of trade secrets are going to be strengthened. The disclosure of trade secrets is prohibited without authorization.

China's intellectual property legislation is rooted in China's actual development, absorbing international conventions and international intellectual property protection advanced experience, the level of legislation has always been in line with international standards. The protection of intellectual property cannot be separated from the protection of the rule of laws. The domestic intellectual laws cover copyright law, patent law, trademark law, administrative regulations, local regulations, autonomous regulations and individual regulations, administrative regulations and judicial interpretations. As a super country in manufacture industry, China has been transferring to be an innovative country day by day. The signing of the agreement promotes the development of domestic intellectual property which is cooperated and supervised by the United States which is seen as the world's biggest economic power. In the short term, strong trade secret protection will limit the product development of some domestic enterprises to some extent. In the long run, China is the world's leading economy, small and medium-sized enterprises are booming. The protection of intellectual property will benefit the small and middle-size enterprises to grow bigger. The protection will inspire and enhance the enterprises' innovation which could finally contribute to their products and service. On the other hand, the legislation of trademark rights, patents and

copyrights will be practiced and improved effectively. The global economy is developing in an integrated manner, and the economic development of China and the United States is interdependent. The economic development is not only the growth of domestic transactions but also the development of foreign trade. Both China and the United States recognized the importance of bilateral economic and trade relations, and both sides have a consistent goal and interest in the protection of intellectual property which is a lucky thing for the world economy. The protection of trade secrets has laid the foundation for the higher degree of protection of intellectual property rights between China and the United States. The signing of the agreement will standardize the international order of intellectual property protection, promote free trade between the two countries, and revitalize the global trading system.



To promote the development of global trade and take a place in the new round of the competition for a knowledge economy, China has stepped up efforts to protect intellectual property with the determination to encourage domestic enterprises to research and design independently, promoting the transformation of manufacturing industries into knowledge-based economy industries. This decision is not only beneficial

to China and the people but also a commitment from a responsible and big country to the world. We, the Chinese nation, attach great importance to the protection of intellectual property.