

# A Comparison Of Trade Secret Laws in Asia

BY WILLIAM F. JACIER\*



*Protection of trade secrets depends on laws in relevant nations; here is how national laws compare.*

**T**he treatment of trade secrets in licensing agreements depends on the nature and scope of protection afforded by the laws of the relevant nation. Most nations will enforce the specific terms of a licensing contract if the agreement conforms with the law. An important consideration is the extent to which the laws protect trade secrets before or after a license agreement.

Comprehensive knowledge of various nations' trade secret protection is important when information is used or licensed internationally. An understanding of the comparisons of the trade secret laws of the United States and the major Asian nations will avoid premature loss of rights and aid in maximizing a return on the information.

A comparative trade secrets law chart is provided as an appendix. The chart covers different provisions of trade secrets law for the United States, North American Free Trade Agreement (NAFTA), General Agreement on Trade and Tariffs/Trade Related Aspects of Intellectual Property Rights (GATT/TRIPS), and various Asian nations including Korea, China, Japan, Malaysia, Singapore, Hong Kong, Taiwan and the Philippines.

## GENERAL TRADE SECRET PROTECTION

Determining the source of various nations' trade secret laws is the first step in defining the type of information that can be licensed as a trade secret. The increasing importance of trade secret protection is shown by the fact that many

Asian nations have recently enacted trade secret laws. China enacted a trade secret law in 1993.<sup>1</sup> Japan's new trade secrets law came into effect on June 15, 1993.<sup>2</sup> In Korea, the Unfair Competition Prevention Act was modified to include trade secret protection on December 23, 1992.<sup>3</sup>

Further, trade secrets protection in Asia will continue to change. In 1996, Taiwan enacted its first trade secret statute.<sup>4</sup> The recent and continuing creation of trade secrets laws demonstrate the importance Asian nations now attach to the protection and licensing of information.

Hong Kong, Malaysia and Singapore rely on the common law for the protection of trade secrets.<sup>5</sup> Reliance on the common law by these countries is a result of their common British heritage. Britain, like its former colonies, relies on the common law to protect trade secrets.<sup>6</sup>

Some Asian nations have not yet realized the importance of comprehensive trade secret protection. As of 1994, laws in the Philippines did not exist that specifically protected trade secrets.<sup>7</sup> In the Philippines, contract and fiduciary relationship laws provided some protection for secret information. Taiwan's contract and fiduciary laws also provided some protection for secret information. Additionally, Taiwan's anti-trust laws do specifically prohibit acquiring technical secrets by coercion, bribery or improper means.<sup>8</sup> However, the anti-trust statute does not define technical secrets. Technology owners and licensors should examine the laws of the relevant countries very closely before entering into a licensing agreement.

Recent change is also reflected in multilateral treaties. NAFTA and GATT/TRIPS both provide for trade

secret protection. NAFTA does not bind Asian countries but does provide a frame of reference to current trends in trade secret protection throughout the world. GATT/TRIPS may have an effect on laws in various Asian nations as well as the rest of the world, but has not yet been ratified by many nations including the United States. While neither treaty comprehensively covers trade secrets, both provide some specific trade secret protection provisions. These treaties have not been analyzed by the courts, so it is unclear exactly how broad of a change either treaty will have in the member nations.

## SPECIFIC TRADE SECRET PROVISIONS

### Common Provisions

Understanding Asian protection of trade secrets is made easier by a certain amount of uniformity. By definition, many aspects of trade secrets protection in the Asian nations are the same as in the United States. Some differences may exist, and should be dealt with on a case-by-case basis. The accompanying chart compares the general provisions of trade secrets laws. The annotation of the chart reveals the similarity between certain provisions for all of the nations.

Due to their common heritage, the common law that has developed in Hong Kong, Malaysia and Singapore is very similar. Until recently, Malaysian final appeals were to a court in the United Kingdom. Hong Kong law is in a state of change. In the past, final appeals

\*Boris Hays, Glenn & Lingo, Chicago, Illinois, paper presented at IES Korea Conference in Seoul, Korea, March 1997.

**COMPARISON OF TRADE SECRET LAWS FOR  
UNITED STATES AND ASIAN NATIONS**

PROVISION	United States	China	Japan	Korea	Malaysia	Singapore	Hong Kong	Taiwan	Philippines	Thailand	GAFT	Page
Nomely required	No	No	No	No	No	No	No					
Absolute secrecy required	No	No	No	No	No	No	No				No	No
Relative secrecy required	Yes	Yes	Yes	Yes	Yes	Yes	Yes				Yes	Yes
Technical information protected	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes				
Business information protected	Yes	Yes	Yes	Some	No	No	No	Yes				
Patentable information protected	Yes	Yes	Yes		Yes	Yes	Yes	Yes				
Unpatentable information protected	Yes	No	Yes		Yes	Yes	Yes	Yes				
Unlimited life	Yes	No	Yes		Yes	Yes		Yes			Yes	
Protection against reverse engineering	No	No	No	No			No	No				
Protection against disclosure by courts	No	Yes	China Yes	China Yes	Yes	Yes	Yes	China Yes			China Yes	China Yes
Protection against disclosure by other entities	No	Yes	China Yes	China Yes	Yes	Yes	Yes	China Yes				
Protection against independent development	No	No	No	No	No	No	No	No				
Enforcement of summary	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes			
Royalties after info becomes public	Yes	Yes	No				Yes					
Penal sanctions	Yes	Yes	Yes	Yes	Yes		Yes					
Financial sanctions	Yes	Yes	Yes	Yes	Yes		Yes	Yes			Yes	Yes
Actual damages	Yes	Yes	Yes	Yes	No	No	Yes	Yes			Yes	
Punitive damages	Maybe	No	No	No				Yes				
Attorney fees	Maybe	Maybe	Limited	Limited	Yes	No	Yes				Yes	
Criminal penalties	Maybe	No	No	Limited	No	No	No	Limited	Limited	No	No	
Contract law protection	Yes	No	No	No	Yes	Yes	Yes	No	No			

in Hong Kong were to a extent in the United Kingdom. Additionally, Malaysia statutorily enacted the 1996 United Kingdom common law as Malaysian common law. Except for a few statutes not directly dealing with trade secrets, the common law of Singapore is the same as for Malaysia.<sup>17</sup> Therefore, the trade secrets law in Hong Kong, Malaysia and Singapore are generally interchangeable.

Regardless of heritage, many trade secret provisions are common for all nations. An owner of information does not have to be the first person to possess that information to have a trade secret. Therefore, novelty is not required by the Asian nations listed in the chart.

The nations with trade secrets commonly require relative secrecy, but not absolute secrecy. The information cannot be "generally" known in the applicable field. Both NAFTA and GATT explicitly follow this common trade secrets provision.

Furthermore, the trade secrets laws of these Asian countries protect technical information like blueprints, processes of manufacturing and formulations. However, the protection of business information is not uniform.

Additionally, Asian nations' trade secrets laws commonly provide the protection of either patentable or non-patentable information. Unlike patent protection, trade secret laws commonly provide that trade secrets may exist for an unlimited time. Only disclosure to the public will end the life of a trade secret. Furthermore, unlike patent protection, trade secrets do not protect against another person's development of the same information. Reverse engineering, dismantling a product to determine how it was built, is allowed by Asian nations with trade secret laws.

As an alternative to trade secrets law or as an additional level of information protection, all the Asian nations under consideration address contracts. Some Asian nations have specific legislations relating to technology transfer.<sup>18</sup> Any technology license should address the requirements created by the related technology transfer legislation.

Additionally, certain limitations on contract rights vary from nation to nation and should be understood before a license agreement is completed.

#### Provisions That Vary by Nation

Understanding the differences in trade secret protection between various nations will aid in preparing the proper license. Some trade secret provisions apply to some Asian nations and not in others. Trade secret definitions, misappropriation, remedies, contract and criminal provisions vary from nation to nation. Therefore, trade secret laws in any nation should be closely examined.

In the case of the definition of trade secrets, only protection of business information varies substantially from nation to nation. Protecting business information as a trade secret has also received varied degrees of acceptance in the United States. Generally, the nations that have recently enacted trade secrets statutes, China, Japan, Korea and Taiwan, provide for protection of business information such as mailing lists, discount lists and methods of doing business. The scope of Korea's protection of business information may be different from the other Asian nations. Korean trade secrets law protects "managerial" information used in business activities.<sup>19</sup> To cover business information, China protects "operational" information as a trade secret.<sup>20</sup> Additionally, Taiwan's earliest statute protects trade secrets concerning production and "sales" information.<sup>21</sup>

However, Malaysia, Singapore and Hong Kong do not protect business information under trade secret law. The law of "confidences" may be used to protect business information in these nations. The common law of confidences protects business information from disclosure by employees like the United States' fiduciary law.<sup>22</sup>

Concerning misappropriation of trade secrets, protection against third-party use or disclosure also receives varied protection. Where a third party obtains a trade secret from a misappropriator and uses or

discloses the trade secret, nations use different levels of third-party intent to hold the third party guilty of trade secret misappropriation. Nations also place different emphasis on the intent necessary to hold a third party liable after good-faith acquisition upon receipt of a prior misappropriation.

Many in the United States will hold a third party liable even if the initial trade secret use or disclosure was innocent. The third party becomes liable for misappropriation if he or she knew or should have known that the subsequent use of technology violated trade secret rights. Like those states, Malaysia, Singapore and Hong Kong, similarly protect trade secret owners from innocent third-party misappropriation.

However, some nations require a higher degree of culpability by a third party. Japan, Taiwan and Korea require a third party to be grossly negligent in not knowing the information used or disclosed is a trade secret of another. A third party must have unconsciously not known of the prior misappropriation. This higher level of culpability is used to prevent the trade secret laws from discouraging beneficial transactions, exchanging information. Misappropriation will occur if the information is used or disclosed in violation of a contractual obligation.<sup>23</sup>

Both NAFTA and GATT-TRE's explicitly deal with the acquisition of a trade secret by a third party. The third party will be liable if grossly negligent in not knowing the trade secret was improperly acquired.<sup>24</sup> However, neither treaty addresses the situation where a trade secret was acquired in good faith, but then the acquirer is notified of a prior improper acquisition.

China takes a mid-ground approach. China allows a third party liability if the third party was negligent in not knowing of a prior improper appropriation or negligent in not knowing of improper appropriation after acquisition of the trade secret.<sup>25</sup>

In both Korea and Japan, trade secret protection against third party use or disclosure is greatly limited

by an exception. If a third party is not generally negligent in not knowing about a prior misappropriation while acquiring a trade secret in a transaction, then the third party can use and disclose the trade secret according to the rights acquired in the transaction.<sup>16</sup> In other words, if a third party acquires a trade secret in good faith in a transaction, the third party may continue to use the trade secret according to the rights granted by the transaction. The exception actually defeats the rule preventing use and disclosure of a trade secret where the third party is grossly negligent in not knowing subsequent to acquiring the trade secret about a prior misappropriation. Notice of misappropriation to a third party user may have little impact. The only limitation on the exception is that a "transaction" must have occurred, which includes licensing or sale of trade secret rights.<sup>17</sup> However, a transaction does not include the hiring of another's employee.<sup>18</sup> The purpose of this post-acquisition third party user exception is to preserve the reliability and stability of transactions involving technical or business information.

Contractual rights also vary between different Asian nations. Specifically, some nations allow royalty payments for the use of trade secrets to continue contractually after the trade secret information becomes public. Some states in the United States and Hong Kong both allow continuing royalties.

In China, statutes dictate that obligations of confidentiality, cease most information is publically disclosed.<sup>19</sup> The rules do not state whether royalties must continue to be paid. However, the Ministry of Foreign Trade and Economic Cooperation interprets the law to require continued royalty payments under a contract after public disclosure of a secret.

Under Japan's statute laws, a trade secret license royalty provisions that lasts beyond public disclosure of the trade secret is highly likely to be considered an unfair business practice.<sup>20</sup> However, as long as the trade secret entered the public domain through no fault of the licensee, the royalties may con-

tinue for a short period of time post public disclosure. Therefore, the royalty payment schedule should receive heightened consideration when licensing in Japan.

#### Harbing Trade Secret Remedies

Another broad area of trade secret protection variation is remedies. The availability of imposition of actual damages, punitive damages and attorney's fees varies from nation to nation.

Injunctions are the only remedy for violation of trade secret rights common to the nations listed on the chart. Most nations will permanently enjoin a party from using or disclosing another's trade secrets. Even CAFTA-TRIPS and NAFTA provide for permanent injunctions. Additionally, most nations provide some form of penalization instruction.

Actual damages are allowed by most Asian nations. If a trade secret is improperly taken, then the damages resulting from the taking are collectable by the owner of the trade secret.<sup>21</sup> Generally, in Asia, damages are based on the market value of the information. If a trade secret owner would not have licensed the information, then the owner's lost profits provide compensation. However, if compensation from market value or lost profits cannot be proven, then the owner may receive an accounting of the misappropriator's profits. The trade secret owner is also entitled to have his business credit restored.

Malaysia and Singapore do not allow a trade secret owner to collect damages.<sup>22</sup> Equity courts are responsible for the protection of trade secrets in these two nations. These equity courts rely on British common law at a date prior to the United Kingdom's statutory Damages Legal Cases Act. Therefore, the equity courts of Malaysia and Singapore do not have jurisdiction to grant damages. However, like other Asian nations, damages are available under a breach of contract or tort theory of recovery.

Current Hong Kong law varies from that of Singapore and Malaysia in that one Hong Kong adopted more recent British laws allowing the collection of actual damages

for trade secret misappropriation.

Besides actual damages, Asian nations also vary from the law in most states in the United States by not allowing punitive damages. The majority of states within the United States allow punitive damages, but others do not. Further, the United States' Uniform Trade Secrets Act, now law in 42 states in some form, statutorily allows punitive damages for willful and malicious misappropriation. Up to ten times compensatory damages may be awarded. Additionally, some other states that have not enacted the Uniform Trade Secrets Act award punitive damages. However, China, Japan and Korea do not allow punitive damages.

Additionally, some states in the United States and Asian nations may allow punitive damages based on breach of contract in conjunction with a tort violation. The level of tort jurisdiction should be restricted closely to maximize protection and collection of damages for misappropriation or breach of a license agreement.

Taiwan's Trade Secret Act allows punitive damages up to three times actual damages.

#### Attorney Fees Awards

Attorney fees as a form of damages also receives varied protection. Malaysia, Singapore and current Hong Kong law allow recovery of attorney fees under the traditional "British" rule. Some states in the United States grant attorney fees awards. The United States' Uniform Trade Secrets Act grants attorney fees for willful and malicious misappropriation or for a bad-faith claim of trade secret misappropriation. Further, NAFTA provides that a court shall have the authority to award attorney fees to an intellectual property right owner.<sup>23</sup>

The law in China is silent on whether a winning party should be awarded attorney fees. The general practice is that each party bears its own attorney fees regardless of a lawsuit's outcome. However, in some recent intellectual property cases, the courts have ordered obligees to pay the plaintiff's attorney

ney fees. Therefore, attorney fees might be collectible in China.

Japan allows collection of reasonable attorney fees for an injury in tort.<sup>17</sup> Injuries from trade secret misappropriation are recoverable based on tort. However, the "reasonable" amount awarded by the courts is not necessarily linked to the attorney fees incurred by the injured party. Attorney fee calculations are normally 20% of the misappropriation damages. It is often the case that the attorney fees awarded by the court are far less than the fees actually paid by the injured party.

#### Criminal Law Provisions

Some Asian nations<sup>18</sup> provide trade secret misappropriation protection through the criminal law while others do not. Many states within the United States have statutes making it a crime to misappropriate a trade secret. In addition, the Economic Espionage Act of 1996 became the first federal law in the U.S. to make it a crime to steal trade secrets. The Espionage Act also makes it a crime to assist non-U.S. governments or agencies to steal trade secrets. Additionally, theft-of-property statutes will often provide governmental protection from trade secret misappropriation. Anyone found guilty will face possible jail time and substantial fines.

China specifically outlawed trade secret misappropriation in the new Law for Countering Unfair Competition. Article 20 empowers the relevant authorities to impose fines and to order a misappropriator to desist from any violation of the law. Additionally, the law allows a trade secret owner to request government investigation and resolution. A trade secret owner is even allowed to request an appeal of the government's resolution with eventual resort to a civil court.

Moving along the spectrum of criminal protection, Korea has criminal sanctions for the theft of trade secrets. Only "special production technology" disclosed for the purposes of export enrichment or to cause harm to the trade secret owner are protected by the government.<sup>19</sup> Imprisonment of three years or less and a fine are provided

for misappropriation.

Taiwan provides limited criminal protection. Under Article 317 of the Taiwan Criminal Code, a person required by law or contract to keep information secret that he knows due to his occupation, may not disclose the secret. The punishment for violation of the criminal law is less than a year in jail or a fine.

The Philippines law also provides limited criminal protection. Also like Taiwan, the Philippines made it illegal for an employer to disclose the secrets of an employee.<sup>20</sup>

Japan, Malaysia and Singapore tend to not protect trade secrets through criminal penalties. Additionally, NAFTA and GATT/TRIPS provide that a party to the agreement "may" provide for criminal penalties for protection of trade secrets, but does not require criminal sanctions.<sup>21</sup>

Understanding criminal and civil trade secret protection on a general level is important, but complete knowledge about a nation's trade secrets laws will further aid in the use and licensing of technology. Therefore, close attention should be paid to all the relevant laws of a nation before undertaking any licensing activities in that nation.

#### Provisions in the Treatment of Technology Licenses

Relevant laws governing the licensing of technology vary from country to country. By way of example, many nations require government approval of certain trade secret licenses.<sup>22</sup> Licenses in Korea will be examined by the Fair Trade Commission. The U.S. customs law rules of contract are used to interpret Korean licenses.<sup>23</sup> Usually, subject matter, the amount of royalties, or the duration of the license determine whether government approval is necessary.

While no specific trade secrets law exists in the Philippines, laws regulating the transfer of technology do exist. Royalties for technology use may not last beyond a 10-year period, and no automatic renewal provision is allowed. Therefore, the laws of the Philippines should be examined closely before licensing a trade secret on a long-term basis.

Korean "Guidelines and Types of Unfair Trade Acts in International Contracts" sets forth some limitations in technology licensing that are not accepted by advanced countries.<sup>24</sup>

In China, a number of licensing regulations may have a potentially costly impact. Article 8 of the Regulations on Administration of Technology-Introduction Contracts provides that, unless specially approved by the government, the term of a license shall not exceed 10 years. Article 9 provides that a contract shall not contain, without special approval, a clause that prohibits the use of licensed technology after expiration of the contracts. Chinese law also dictates that confidentiality obligations cease on expiration unless special approval is obtained.<sup>25</sup> Therefore, protection of secret information by contract in China may result in eventual public disclosure and a license free to use the information without royalty payments. However, due to complaints by many foreign trade secret potential licensors, the regulations may have been amended.

Korean law also limited the term of trade secret license agreements to 10 years.<sup>26</sup> In 1991, the law was changed to remove government authority to impose limited durations. However, in practice, the government agencies involved may still seek to enforce a duration limit.<sup>27</sup>

A former regulation in Korea allowed licensees to use trade secrets after expiration of the license.<sup>28</sup> Only patents or copyright rights protected the information. However, the new Korean Guidelines allow restrictions on the use of trade secrets after the license unless the know-how is already available to the public.<sup>29</sup>

A significant problem for protecting trade secrets exists in Japan. Trials and hearings regarding trade secrets are held in courtrooms open to the public.<sup>30</sup> There is no procedure for sealing the records or issuing protective orders. Therefore, trade secret litigation in Japan may disclose to the world the very secrets which need protection.

Korea and Taiwan also have public trade secrets trials, allowing

public disclosure of a trade secret.<sup>17</sup> While trade secret rights exist in these countries, the possibility of disclosure during a suit drastically reduces the use of legal actions to enforce trade secrets.

NAFTA and GATT/TRIPS have some provisions that specifically delineate the amount of protection available within member countries. Both treaties provide for the protection of pharmaceutical or agricultural product information submitted to a government for marketing approval.<sup>18</sup> The members must protect against unfair commercial use of the information submitted and shall protect against disclosure unless necessary to protect the public. NAFTA goes even further by requiring a reasonable amount of time to pass before another entity may rely on the information submitted for its own product approval. Finally, NAFTA limits protection of trade secrets by allowing a member to require that a trade secret must be physically evidenced by documents, drawings, means or in other ways.<sup>19</sup>

## CONCLUSION

The laws governing the protection and licensing of trade secrets varies from nation to nation. Many Asian nations provide comprehensive protection for technical and even business information. Usually, the protection provided is comparable to the protection provided in the United States.

There are some Asian nations which do not provide any comprehensive protection for trade secrets. Information learned in these nations must be carefully guarded and protected by contract.

Even in nations providing comprehensive protection, minor variations from nation to nation exist. Additionally, the practical consequences of any actions in a foreign nation based on cultural differences must always be considered. Therefore, lawyers subject to an Asian nation's laws must be drafted and handled with a proper understanding of the nation's relevant laws and practical differences.

Due to the increasing importance of technology and licensing, many

Asian nations are looking to protect rights in technology through new trade secret laws. The above-noted secret changes allowing more limited protection of trade secrets makes it vital to know about the laws concerning the protection and licensing of trade secrets in various nations. Specific nations' provisions must always be examined to maximize protection of the licensed technology.

## REFERENCES

1. Official implementation began on December 1, 1993. Chikawa, *A Preliminary Analysis of China's Business Secret Protection System*, China Patent & Trademark 34 (1994).
2. Kazuo Matsuo, *Japan, Worldwide Trade Secrets Law* 4 (1993).
3. James A. Brunker, *International Protection of Trade Secrets*, *Disclosures in the 1990s* 10 (Springer-Verlag, 1990).
4. *Trade Secret Systems Act* (1996).
5. *Japan Patent and Trademark Office*, *Worldwide Trade Secrets Law* 4 (1993).
6. Feng Wang and Norman Koppelman, *Malaysia, Worldwide Trade Secrets Law* 4 (1993).
7. Personal communication on Singapore with Norman Koppelman at (212) 633-1400.
8. James Brunker, *United Kingdom, Worldwide Trade Secrets Law* 4 (1993).
9. Lorna Pataki-Agapan and Troy A. Latta, *The Philippines, Worldwide Trade Secrets Law* 4 (1993); Jennifer Lee and Michael S. Hinton, *Taiwan, Worldwide Trade Secrets Law* 4 (1993).
10. *The Fair Trade Law*, Article 19(2) (Taiwan, *Worldwide Trade Secrets Law* 4 (1993)). This common statute was used to create the information listed in the Comparison chart.
11. Personal communication with Norman Koppelman, author of *Malaysia, Worldwide Trade Secrets Law* and author of an as yet unpublished chapter on Singapore, *Worldwide Trade Secrets*, in *Int. Int'l. Comp'n of Sec'y in 1996*, Singapore was part of Malaysia.
12. The information provided on the Comparison chart for Singapore was taken from the information for Malaysia. The only distinction concerns the information protection statutory law in Malaysia states the availability of injunctions.
13. *The Philippines, Taiwan, China and Korea Trade Agreements on the Licensing of Information*, *See generally*, *Worldwide Trade Secrets Law*.
14. *Young Shin Ichi, Korea, Worldwide Trade Secrets Law* 4 (1993) (Y).
15. *Japan*, note 1, at 40.
16. *Japan*, note 1, at 40.
17. *Malaysia, Worldwide Trade Secrets Law* 4 (1993) (M) and Feng Wang, *Worldwide Trade Secrets Law* 4 (1993).
18. *United Competition Protection Law, Article 37-40* (Japan); *United Competition Protection Act, Article 2*, paragraph 2 (2) (Korea).
19. *GATT/TRIPS, Section 7, Article 39(2)* in (1) NAFTA, Article 1704 (Protection of

"in a limited context to protect commercial practices") in trade treaties, appropriate acquisition includes "the acquisition of undisclosed information by (third parties) who know, or who ought to be regarded as knowing, that such (proprietary) practices were involved in the acquisition."

20. *Japan*, note 1, at 40.
21. *United Competition Protection Law*, Article 11, paragraph 1 (Japan); *United Competition Protection Act*, Article 12, paragraph 1 (Korea).
22. *Republic of Korea, Basic Act on the Protection of Competition Protection Law in the Republic of Korea*, 9 (the Korea L.) 78, 40 (1989).
23. *Id.*
24. Implementing Rules for the Regulation and Administration of Technology Information.
25. *Japan*, note 1, at (2) (1993).
26. Taiwan's anti-trust law allows for damages by civil suit.
27. *Malaysia, Worldwide Trade Secrets Law* (1993) (M) (personal communication with Norman Koppelman) (Singapore).
28. NAFTA, Article 1704, (M).
29. Personal communication with Norman Koppelman at July 13, 1994.
30. *United Competition Protection Act, Article 2*, paragraph 1, item 1.
31. *Philippines, Revised Patent Act* (Act No. 1793), Article 36(2).
32. NAFTA, Article 1707 (in GATT/TRIPS, Article 4).
33. *Philippines, Taiwan, China, and Korea, See generally*, *Worldwide Trade Secrets Law*.
34. P.S. Chung, *Taiwan Patent and Trademark Licensing*, 21 (1990).
35. These guidelines adapt some recommendations of EUNCTAD, see P.S. Chung, *Id.* These rules have the same administrative approach, protection, limitations with challenge of validity of the licensed patents, prohibit after the termination of intellectual property rights, exclusive dealing clauses, transfer of rights, restrictions on improvement, price fixing, restrictions on improvement, types of agreements, export restrictions, and other provisions. *Id.*
36. Article 13 of the Implementing Rules.
37. *Young Shin Ichi, Korea, Worldwide Trade Secrets Law* 4 (1993) (Y).
38. *Id.*
39. *Back Ichi-Chung, Technology Licensing in Korea*, *Malaysia, Philippines, China or Trade Secret Protection Act*, 34 *East Asian Int'l. Reports* 61 (1992); *USA Guidelines Article 7, Section 4*.
40. P.S. Chung, note 1, *Id.* at p. 36; *See New Guidelines Article 3, Section 10* effective since December 25, 1992.
41. *Japan*, note 1, at 34-35.
42. *Id.* at 25, 26. While not applying to Asian countries, NAFTA specifically calls for "disclosure providing a means to identify and protect confidential information" in the civil protection of trade secrets, Article 1705 (M).
43. GATT/TRIPS, Article 39(2); NAFTA, Article 1704 (2).
44. Article 1711 (2).