

## Taiwan's secrets require guarding

Written by Taipei Times Editorial  
Monday, 03 May 2021 06:23

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Several Democratic Progressive Party (DPP) legislators have proposed amendments to the Trade Secrets Act (商業秘密法), as the problem of Chinese firms poaching Taiwanese talent and stealing core technology poses a real and serious threat to Taiwan's national security. While the wording varies, the drafts focus on toughening penalties, defining industrial espionage and identifying hostile foreign forces.

At meetings of the legislature's Economics Committee over the past few weeks, the National Security Bureau and the Mainland Affairs Council have expressed broad backing for the legislators' drafts, but the Ministry of Economic Affairs appears reticent to amend the act, saying that it has been bolstered over the past few years and that breaches should be examined on a case-by-case basis.

On the surface, Taiwan does have the laws needed to protect companies' trade secrets and intellectual property rights, and the point, as suggested by the Ministry of Economic Affairs, is to promote enforcement of the laws. In a report to the legislature in late March, the ministry said that it had collaborated with the Ministry of Justice to detect about 20 Chinese firms illegally recruiting Taiwanese talent in the past few months, while the number of cases involving contraventions of the act had increased from 92 in 2016 to 160 last year.

As the conviction rate is low and punishments tend to be light, such collaboration is not enough to prevent China from stealing proprietary information and technology from Taiwan, but merely puts a spotlight on the local talent and technology that continue to make their way to China. For example, while the penalty for stealing trade secrets is five years in prison under the Trade Secrets Act, the penalty under the US' Economic Espionage Act is 10 years. Taiwan's courts are also more conservative and its judges tend to have a narrow definition of stealing trade secrets, leading to a conviction rate of only 10 percent.

There have been calls for breaches of the act to be fast-tracked through the justice system, as China's infiltration of the supply chain affects everything from stealing trade secrets to poaching talent. Beijing not only aims to damage Taiwan's economic interests, but also to weaken the nation politically, limiting its global competitiveness.

The DPP legislators seem to believe that high-tech secrets, such as semiconductor technology, should be given the same protection as national security secrets, similar to practices in the US

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or South Korea, but this raises new issues.

First, it would be difficult to define which core technologies required the same protection as national security secrets, and to achieve a balance between firms conducting business and the government controlling exports or authorizing technology transfers.

Second, if trade secrets were protected as national security secrets, any country that could potentially threaten Taiwan's leadership in industry would require government scrutiny, not just China.

Third, raising business secrets from an individual or corporate level to a national level would make it easier to stiffen the penalties for stealing trade secrets, but it would also raise the threshold of proof required, as well as the time needed to investigate trade secret cases.

Whether considered from a legal or a business point of view, the Trade Secrets Act is far from perfect. Given the international political and business environment, there is room for improvement.

Regardless of when or whether the lawmakers' draft amendments become law — Cabinet members and ministries have proposed further discussion on their wording — the government must protect Taiwan's national security and interests, whether by amending the Trade Secrets Act, the Act Governing Relations Between the People of the Taiwan Area and the Mainland Area (兩岸人民關係條例) or even the National Security Act (國家安全法).

Source: [Taipei Times - Editorials 2021/05/03](#)