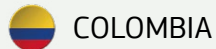
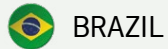


TRADE SECRETS FACTSHEET



<p>What is a Trade Secret?</p>	<p>Any confidential commercial or industrial information that confers a competitive advantage to a company. More specifically, any undisclosed information that a natural person or a legal entity legitimately holds, which may be used in any productive, industrial or commercial activity and it is capable of being passed on to a third party shall be considered a business secret. This protection mechanism is particularly useful to protect those inventions which are not patentable (i.e. it does not meet the minimum requirements or the subject matter is not eligible for protection).</p>
<p>What can be protected?</p>	<p>Any confidential business information, such as:</p> <ul style="list-style-type: none"> • Technical skills, inventions: A glass blowing technique that can produce more units in the same period of time; the time and speed at which you have to beat a mixture for a sponge cake; a quality control system that reduces the margin of error and is quicker than other systems. • Commercial information: The design of a stock management system and its implementation; marketing plans; distribution methods, consumer profiles, advertising strategies, list of suppliers and customers; export plans or activities.
<p>Requirements</p>	<ol style="list-style-type: none"> 1. Information should be a secret, which means, it cannot be generally known nor easily accessible by those companies or individuals in the relevant sector; 2. Information must have commercial value, or at least potential commercial value. 3. The holder should take reasonable steps to keep the information a secret.
<p>Duration</p>	<p>As long as it is kept secret.</p>
<p>Pros & cons</p>	<p>According to WIPO, some of the advantages of trade secrets are that they do not expire with time (patents last in general for up to 20 years), do not incur registration costs (see below) and have immediate effect. However, trade secrets do not provide the exclusive right to exclude third parties from making commercial use of it. For example, if a third party through reverse engineering reaches the same result, the owner of the trade secret cannot stop the use of that information.</p> <p>Note that, even though trade secrets and patents are usually seen as alternative means of protection, they can actually be combined for an invention and associated know how (e.g. protecting different aspects, such as the product and the method to obtain the product) or for different innovations (e.g. the product and the way to commercialise it).</p>

<p>Patent vs Trade Secret</p>	<p>Patent</p> <ol style="list-style-type: none"> 1. Restrictions on patent eligibility 2. Limited duration: Generally, 20 years from the filing date 3. Provides an exclusive right; therefore, it can protect reverse-engineerable inventions 4. Protection requires national patent approval 5. Expensive: Registration costs per country (territorial principle*) 6. Wide range of exploitation options: Sale, license, cross-licenses... 7. Secure protection 	<p>Trade Secret</p> <ol style="list-style-type: none"> 1. Unrestricted subject matter 2. Unlimited duration: as long as it is secret 3. Vulnerable to reverse engineering 4. Can take immediate effect in any part of the world 5. Inexpensive: the necessary costs of maintaining the secrecy
<p>Protection measures: Security checklist</p>	<p>There are many ways which you can secure trade secrets. Each company can decide which method they prefer depending on availability of budget and resources, as well as the type of trade secret.</p> <ul style="list-style-type: none"> • Identify any key, valuable, confidential business information in your company • Develop a trade secret protection policy for your company: Design and implement the policy by limiting the number of employees with access to the information, training them and closely monitoring its compliance, among other measures. • Sign non-disclosure agreements with employees and any third party (e.g. partners or suppliers) who have access to trade secret information. Moreover, mark the confidential documents including a notice identifying the legal owner and informing the confidential nature of the document. • Make use of technical measures, such as password protection, procedures for tracking relevant documents and network security measures. • Restrict access to documents containing trade secret information, as for instance, store them in an isolated area. 	
<p>Cost</p>	<p>The costs will depend on the complexity of the measures as well as on the number of people that know the information (e.g. technological protection measures or Non-Disclosure Agreement's drafting).</p>	

<p>Scope / Remedies</p>	<p>The owner of a trade secret is entitled to take legal action against those who access the information illegally. In short, an industrial secret shall be considered to have been acquired by means contrary to fair trade practices where such acquisition is the result of industrial espionage, breach of contract or other obligations, breach of trust, breach of a duty of secrecy, or inducement to breach.</p> <p>In particular, in most Latin American countries, the owner of the trade secret can request:</p> <ul style="list-style-type: none">• Damages for breach of confidential information (use and/or disclosure).• Cessation of all acts that constitute the infringement.• Seizure of infringing products.• Withdrawal from commercial channels of all infringing products. <p>Case-law on trade secrets is rather rare in the countries under analysis. From the gathered data, no case-law emerged with reference to injunctions requested by trade secrets holders in connection with criminal law proceedings.</p>
<p>Defences</p>	<ul style="list-style-type: none">• Failure to comply with statutory requirements, for example, the owner did not take sufficient measures to protect the trade secret.• The protected information had already fallen into the public domain.• The confidential information was obtained by legal means, such as reverse engineering or independent creation.

	Argentina	Brazil	Chile	Mexico	Peru	Colombia
Applicable Law	<p>TRIPS Agreement</p> <p>Law 24,766, on Confidential Information. Paris Convention: Article 10 bis.</p> <p>Decree 150/92: articles 3 and 5. Text Ordered by decree 1890/92 and 177/93.</p>	<p>TRIPS Agreement</p> <p>Brazilian Industrial Property Law Federal Law No. 9,279/1996.</p>	<p>TRIPS Agreement.</p> <p>Industrial Property Law 19.039.</p>	<p>TRIPS Agreement</p> <p>Article 82 of the Mexican Industrial Property Law.</p> <p>Labour Law.</p> <p>Federal Criminal Code.</p> <p>Civil Law.</p>	<p>TRIPS Agreement</p> <p>Legislative Decree 1044</p> <p>Legislative Decree 1075</p> <p>Articles 260 - 266 of Decision 486 (Andean Community).</p>	<p>TRIPS Agreement.</p> <p>Articles 260 – 266 of Decision 486 (Andean Community).</p> <p>Unfair Competition Law 256.</p> <p>Criminal Law 599.</p>

Country IP Factsheets

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Further information

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[Trade secrets in Argentina](#)



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Luxembourg: Publications Office of the European Union, 2020

Print ISBN 978-92-9202-590-8 doi: 10.2826/645006 EA-03-19-564-EN-C
PDF ISBN 978-92-9202-589-2 doi: 10.2826/113455 EA-03-19-564-EN-N

Last update November 2019



Publications Office
of the European Union

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