

Uncovering Trade Secrets: An Empirical Approach to Trade Secrets

Mark Schultz

Associate Professor, Southern Illinois University School of Law
Carbondale, IL

Co-author: Douglas C. Lippoldt, Organisation for Economic Co-operation and Development (OECD)

This paper presents a groundbreaking quantitative index of the stringency of protection of trade secrets worldwide, the Trade Secrets Protection Index (TSPI). The TSPI was created by taking stock of trade secret protection in over thirty countries for the period since 1985. The paper was co-authored with Douglas Lippoldt, of the Organisation for Economic Co-operation and Development (OECD), as part of project commissioned by the OECD. The TSPI makes a significant contribution to understanding trade secrets worldwide. It provides a detailed examination of the many factors comprising trade secret law, allowing for side-by-side comparisons as well as numerical measurements by means of the index scores. The paper finds that trade secret laws worldwide have grown more stringent and that many aspects of protection have converged during the period studied. However, many more substantial dissimilarities remain. For example, differences are particularly pronounced in evidence gathering and discovery, protection of trade secrets during litigation, technology transfer requirements and the effectiveness of legal systems with respect to enforcement. This diversity is reflected in the wide range of scores in the Trade Secrets Protection Index. The TSPI has allowed for research regarding relationships between the stringency of trade secret protection and key indicators of innovation and international economic activity. The results have proven interesting and likely will be cleared for public presentation at the time of the conference. Further details of the methodology and additional country data can be found in the background paper provided in Phase I of the trade secrets project [TAD/TC/WP(2013)21/FINAL, OECD Trade Policy Paper No. 162], available at <http://bit.ly/1kphjG>.

Biography: Senior Scholar & Co-Director of Academic Programs, Center for the Protection of Intellectual Property. George Mason University School of Law, Associate Professor, Southern Illinois University Law School

Email: mschultz@siu.edu

Schultz