

## *Outsourcing Trade Secret Misappropriation*

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When a foreign individual or company misappropriates the trade secrets of an American company, and the acts of misappropriation occur entirely outside of the United States, the trade secret law of the United States generally will not apply. This represents the principle of extraterritoriality, and identifies a major vulnerability for companies that choose to conduct operations or engage in other business abroad. In such situations, the substantive and procedural laws of another country are likely to define whether the allegedly misappropriated information is protected and has been misappropriated.

Indeed, the civil trade secret jurisprudence in the U.S. currently lacks a specific framework for determining when U.S. trade secret law will apply to misappropriation that has occurred on foreign soil. I will explore this void in the law, and compare how extraterritorial jurisdiction is addressed in other areas of intellectual property. Moreover, a recent Federal Circuit opinion provides an interesting enforcement alternative that appears to circumvent jurisdictional issues for U.S. companies.

Using section 337 of the Tariff Act of 1930 (a trade statute that protects United States industry from unfair foreign competition) the Federal Circuit upheld the International Trade Commission's decision to apply U.S. trade secret law to misappropriation that occurred in China. The Article will therefore further examine the significant implications of this new alternative. While it provides a welcome remedy to U.S. companies that have suffered misappropriation overseas, it nonetheless raises some interesting theoretical questions. Chief among these is whether the decision can be reconciled with existing principles of trade secret law and extraterritorial jurisdiction.