BOOMING BUSINESS AND THE RESULTING TRADE SECRETS: HOW THE INCREASE IN UNITED STATES AND EUROPEAN UNION TRADE LED TO RESULTING TRADE SECRETS DIRECTIVES AND THE DOMINATION OF THE INTELLECTUAL PROPERTY FIELD

Jordana Balsam[†]

TABLE OF CONTENTS

† Notes Editor for the International Comparative, Policy & Ethics Law Review, and Juris Doctor Candidate at the Benjamin N. Cardozo School of Law (May 2019); B.A. Tulane University (May 2015). I would like to thank the entire board and staff editors of the ICPELR for their assistance and feedback regarding this note, with a special thank you to my fellow executive board members, Alexandra Columbo and Rachel Behar. To my parents, Felice and Joseph, and to Sheri and Emma, I would not be where I am without your never-ending support, encouragement and love; I am so grateful for you. Thank you for everything.

I. INTRODUCTION

On May 11, 2016, President Barack Obama signed into law the Defend Trade Secrets Act of 2016 ("DTSA"), which established a federal civil cause of action for trade secret misappropriation relating to any product or service used in, or intended for use in, interstate or foreign commerce.[1] The new law applies to trade secret misappropriation "for which any act occurs on or after [May 11, 2016]."[2] Before the DTSA was enacted, civil trade secret misappropriation in the United States was governed solely by state law, with forty-eight of fifty states having enacted variations of the Uniform Trade Secrets Act ("UTSA").[3] State trade secret laws are not preempted by the DTSA and therefore remain in full effect. However, the enactment of the DTSA grants those claiming to have trade secrets the option of proceeding under federal law, in federal courts, when interstate or foreign commerce is implicated by the misappropriation.[4]

On June 8, 2016, the European Parliament Council adopted the Trade Secrets Directive ("TSD") that aims to standardize the national laws in European Union ("E.U.") countries following a proposal from the European Commission; these laws would protect against the unlawful acquisition, disclosure and use of trade secrets. The TSD harmonizes the definition of trade secrets in accordance with existing international standards that are binding.[5] It also defines the relevant forms of misappropriation and clarifies that reverse engineering and parallel innovation must be guaranteed, given that trade secrets are not a form of exclusive intellectual property right.[6]

Without establishing criminal sanctions, the proposal harmonizes the civil means through which victims of trade secret misappropriation can seek protection. This includes: stopping the unlawful use and further disclosure of misappropriated trade secrets, the removal from the market of goods that have been manufactured on the basis of a trade secret that

---

1 Linda K. Stevens, *President Obama Signs Defend Trade Secrets Act*, AM. BAR ASS'N (May 13, 2016), https://www.americanbar.org/groups/litigation/committees/intellectual-property/practice/2016/president-obama-signs-defend-trade-secrets-act.

2 18 U.S.C. § 1836 (2012).

3 Brian Ankenbrandt, Thorsten Vormann & Richard Hertling, *Comparing U.S. and EU Trade Secrets Laws*, TRANS-ATLANTIC BUS. COUNCIL 3 (June 30, 2016), http://www.transatlanticbusiness.org/wp-content/uploads/2016/07/US-EU-Trade-Secret-Comparison-30-June-2016.pdf.

4 *Id*.

5 *Trade Secrets*, EURO. COMM'N, http://ec.europa.eu/growth/industry/intellectual-property/trade-secrets_en (last visited Dec. 11, 2018).

6 *Id.*

have been illegally acquired, and the right to compensation for the damages caused by the unlawful use or disclosure of the misappropriated trade secret.[7]

With both trade secrets directives having been proposed to their respective governments within a month of each other, one must wonder why, now of all times, the U.S. and the E.U. have decided to initiate these new laws. This Note addresses the possibility that with the increase of international trade coming out of the U.S. and entering Europe, corporations doing business both internationally and domestically prefer trade secrets over patents with regards to intellectual property.

Of the main four types of intellectual property rights (copyright, trademark, trade secrets and patents),[8] only two protect information: trade secrets and patents.[9] Patents offer strong protection with the federal government backing up the company for at least twenty years.[10] They protect information by sharing detailed outlines and information regarding the company's information, in return for a limited monopoly and the guarantee that no other person or company will use that information for their own gain.[11] Trade secrets protect information in a weaker manner than a patent, but they avoid disclosure and have no expiration date to them.[12] Additionally, trade secrets cost nothing to obtain, which is a significant advantage over patents, which can cost upwards of thousands, if not hundreds of thousands, of dollars to obtain.[13]

II. OPTION OF A PATENT OR A TRADE SECRET

As stated above, the only intellectual property rights that protect information are patents and trade secrets.[14] Both of these safeguard useful and innovative inventions. A patent is an intellectual property right issued to the inventor by the federal government that confers to them a twenty year right that excludes others from using, making or selling their invention, so long as the inventor provides an extremely detailed description of their invention that is available on a publicly written

7 *Id*.

8 *Trade Secret Policy*, U.S. PAT. & TRADEMARK OFF. (Dec. 5, 2017), https://www.uspto.gov/patents-getting-started/international-protection/trade-secret-policy.

9 R. Mark Halligan, *Trade Secrets v. Patents: The New Calculus*, LANDSLIDE, July–Aug. 2010, at 1.

10 Andrew A. Schwartz, *The Corporate Preference for Trade Secret*, 74 OHIO ST. L.J. 623, 624 (2013) [hereinafter Schwartz, *The Corporate Preference for Trade Secret*].

11 *See* Halligan, *supra* note 9.

12 *See* Schwartz, *The Corporate Preference for Trade Secret*, *supra* note 10.

13 *Id*.

14 *See* Halligan, *supra* note 9.

document.[15] On the other hand, a trade secret is an intellectual property right that is recognized under state law for information that is considered valuable and is kept hidden from public record and from competitors.[16] "Trade secret" is defined by the UTSA as:

> information, including a formula, pattern, compilation, program, device, method, technique, or process, that:
> - Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
> - Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[17]

Both patents and trade secrets offer legal protection for new inventions, but each offers such protection in differing ways with benefits and disadvantages to each.

A. Patents vs. Trade Secrets

A patent grants the holder the exclusive right to exclude others from copying, creating, using and selling the patented innovation for the duration of the patent.[18] In order to have something patented, it must be of patentable matter, have non-obviousness, be of use, novel and have enablement.[19] If a person or company is found to have infringed on the right of the patent holder, a court can award damages to the patent holder in a manner adequate to the infringement, sometimes up to three times the amount found or assessed.[20]

In order to obtain a patent, an application must be submitted to the U.S. Patent and Trademark Office, where the application is evaluated by an examiner to make sure it not only meets the restrictions, but that it is clear and concise in its description so that not only the examiner would

---

15 Andrew A. Schwartz, *The Patent Office Meets the Poison Pill: Why Legal Methods Cannot Be Patented*, 20 HARV. J. L. & TECH. 333, 336–37 (2007) [hereinafter Schwartz, *The Patent Office Meets the Poison Pill*].

16 Halligan, *supra* note 9.

17 *Trade Secret*, CORNELL U. LEGAL INFO. INST., https://www.law.cornell.edu/wex/trade_secret (last visited Jan. 4, 2019) [hereinafter *Trade Secret*].

18 *Patent*, CORNELL U. LEGAL INFO. INST., https://www.law.cornell.edu/wex/patent (last visited Jan. 4, 2019) [hereinafter *Patent*].

19 *Id*.

20 35 U.S.C. § 284 (2012).

understand it, but those knowledgeable in the area concerning the type of patent would understand it.[21]

Article I of the U.S. Constitution states that Congress shall have the right to "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors, the exclusive Right to their respective Writings and Discoveries."[22] This constitutional right creates a federal fixed term of twenty years for inventors to have a monopoly over their patents starting from the day the patent is filed.[23]

There are two main policy goals behind granting patents to their inventors. The first, as stated in Article I, is to promote and further the breakthroughs in science and technology by offering exclusivity over it with the federal protected twenty-year term.[24] Without such a reward, it has been argued that innovation will decrease dramatically, or not be productive at all.[25] The secondary goal of the federal patent system is to increase the knowledge and power of others.[26] Everything that is in creation now was built from something that had previously existed. If inventors do not share their knowledge and their inventions, then it would be a slower process to reach the same level of innovation that we have with the current patent system. With this system and the reward of the monopoly offered to the mind behind the invention, inventors are more likely to come forward and make their knowledge public, so even if others cannot steal or use the inventors work for their own use for twenty years, other minds can possibly start attempting to further build upon the current invention.[27]

The types of intellectual property that can be protected by a trade secret are virtually unlimited and include subjects that can even be patented.[28] These can range from lists and consumer feedback to industrial inventions. There is no formal application one must fill out in order to protect their trade secret. However, just as with the patent, there

---

21 *General Information Concerning Patents*, U.S. PAT. & TRADEMARK OFF. (Oct. 2015), https://www.uspto.gov/patents-getting-started/general-information-concerning-patents [hereinafter *General Information Concerning Patents*].

22 U.S. CONST. art. I, § 8, cl. 8.

23 *See General Information Concerning Patents, supra* note 21.

24 Mark A. Lemley, *An Empirical Study of the Twenty-Year Patent Term*, 22 AIPLA Q.J. 369, 372-76 (1994).

25 Schwartz, *The Patent Office Meets the Poison Pill*, *supra* note 15, at 339.

26 *Id*.

27 *Trade Secret*, *supra* note 17.

28 Schwartz, *The Patent Office Meets the Poison Pill*, *supra* note 15, at 339.

are certain requirements that must be fulfilled in order for their trade secret to qualify as such.[29]

There are three essential elements to a trade secret claim asserted in a court of law. The first is that the subject matter involved must qualify for the type of protection offered to trade secrets, that information must be the information seeking trade secret protection, and the information cannot be known to the general public.[30] Secondly, the person or entity that holds the information constituting a trade secret must provide irrefutable evidence that reasonable precautions were taken to prevent this secret information from being disclosed or known by those outside of the entity.[31] The final element is that if another person or entity use[s] or obtain[s] the trade secret, the original holder must prove that the information was obtained wrongfully, and that the information was misappropriated by the opposing entity.[32]

There have been many cases where the meanings of the terms "reasonable precautions" and "wrongfully obtained" were in dispute, where the meaning of "reasonable precautions" appears to be the most frequently litigated issue of the two. What constitutes "reasonable precautions" varies from case to case, but generally, non-disclosure agreements, password protected documents, encryption created by the entity and keeping the trade secret on a "need to know" basis are accepted, appropriate measures.[33]

If a trade secret is obtained wrongfully or by "improper means," despite the precautions set forth to protect it, the state's trade secret laws will come into effect to assist the original holder in order to enjoin the misappropriating party from selling or disclosing the secret, or using it for themselves.[34] "Improper means" include actions such as theft, breach of contract, bribery, espionage and other such wrongful or illegal behavior.[35]

In addition to the state trade secret law as one of the main line of defense against misappropriation of a trade secret, the federal government may get involved if the wrongfully obtained trade secret is used to benefit a foreign government or foreign agency.[36] In such a situation, the

---

29 *Trade Secret*, *supra* note 17.

30 *Id*.

31 *Id*.

32 *Id*.

33 DARIN W. SNYDER & DAVID S. ALMELING, KEEPING SECRETS: A PRACTICAL INTRODUCTION TO TRADE SECRET LAW AND STRATEGY 10-11 (2012).

34 *See* RESTATEMENT (FIRST) OF TORTS § 757 (AM. LAW INST. 1939).

35 *Trade Secret*, *supra*, note 17.

36 18 U.S.C. § 1831(a) (2012).

government can bring an action against the alleged person or entity who stole the trade secret pursuant to the Economic Espionage Act of 1996.[37]

Despite the federal and state protection of trade secrets against those who wrongfully obtain them, there is no legal protection against someone that obtains the trade secret fairly and legally.[38] This may be done by reverse engineering a product; if the final production is publicly available and there are no stipulations about inspecting the product, then a trade secret about the design and structure of the product is available to the public to use for their own gain.[39] Once a trade secret has been released, there is no way for it to be retracted, and it is no longer a secret.[40]

Of course, if the secret is kept, then trade secret law offers protection in perpetuity, as previously stated, with state and federal trade secret laws.[41] Instead of a patent, which is has legal protection for a pre-determined term, a trade secret does not have an end date as to when the protection is lifted.[42] So long as the information constituting a trade secret is not revealed and kept a secret, it has perpetual protection.[43] In conclusion, if a trade secret is kept by the entity or person who created it and it is not discovered honestly and legally by others, then the trade secret holder will have a "legal monopoly" over it forever.[44]

Unlike patent law, trade secrets have no obligation to be disclosed to the public.[45] Due to this, trade secret law does not encourage public dissemination of knowledge like the way patent law does. Even though it might be beneficial to the entity and the public if that information were shared, keeping the information to oneself is beneficial in its own way.

Unlike patents, which must fulfill all five policy purposes as previously mentioned, to be considered to receive patent certification, trade secrets do not need to.[46] They only need to fulfill one: the first policy of patent law, which is the encouragement of innovation.[47] Since trade secret protection offers perpetual protection, if the secret is kept, the

---

37 *Id.* § 1832.

38 *See* RESTATEMENT (FIRST) OF TORTS § 757.

39 *Id.*

40 FMC Corp. v. Taiwan Tainan Giant Indus. Co., 730 F.2d 61, 63 (2d Cir. 1984) ("A trade secret once lost is, of course, lost forever.").

41 *See* RESTATEMENT (FIRST) OF TORTS § 757.

42 *See, e.g., Trade Secret, supra* note 17.

43 United States v. Dubilier Condenser Corp., 289 U.S. 178, 186 (1933) (those who "keep [their] invention secret" may "reap its fruits indefinitely").

44 Am. Dirigold Corp. v. Dirigold Metals Corp., 125 F.2d 446 (6th Cir. 1942) (noting that trade secret protection offers a "perpetual monopoly").

45 Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470, 490 (1974).

46 *See Patent*, *supra* note 18.

47 *Kewanee Oil Co.*, 416 U.S. at 481.

holder or entity who has the trade secret stands to make a considerable amount of money if the trade secret is successful and is geared for public consumption.[48] The possibility of having a legal monopoly over something that could potentially generate a great deal of income gives an incentive to inventors and designers to conceptualize and create a high-quality invention. This seems to fall along the lines of the first of the policies that underline patent law: encouragement of innovation.[49]

B. Patents and Trade Secrets Both Serve Public and Private Interests

Patents and trade secrets, although separate in their fundamental components, both serve the public interest in their respective ways. However, proponents for both have come up with a myriad of ways as to why the other is worse for business and society. Issues that can arise when one tries to obtain a patent include: patent thickets, patent trolls, and tying up a potential patent.[50] Those who oppose trade secrets claim that since they are not disclosed to the public, they create an impression of deceit and clandestine information.[51] These are subjective opinions; this Note has discussed both the benefits and dilemmas caused by patents and trade secrets in length and the conclusion is that public interest can either be served or disserved by either form of intellectual property.

Critics of trade secrets have stated the public is served better with patents, as information about that invention are disclosed, despite the twenty-year limit on the monopoly, and then it is made public property. On the other hand, trade secrets can be kept a secret, concealing innovative advancements for what could possibly be forever.[52] By concealing a trade secret, it can be argued that that hinders any improvement or innovation that could be done to the invention to enhance it and create a more superior machine.

Indeed, in 1974 in *Kewanee Oil Co. v. Bicron Corp.*, the Supreme Court was asked to hold that federal patent laws preempted state trade secret laws based on the idea that trade secret's perpetuity and undisclosed information directly "conflicts with the Patent Laws, which have as a purpose the objective of obtaining public disclosure after a

48 *Id.*

49 *See Patent*, *supra* note 18.

50 ADAM B. JAFFE AND JOSH LERNER, INNOVATION AND ITS DISCONTENTS: HOW OUR BROKEN PATENT SYSTEM IS ENDANGERING INNOVATION AND PROGRESS, AND WHAT TO DO ABOUT IT 56-77 (3rd ed. 2007).

51 Halligan, *supra* note 9, at 2.

52 J. Jonas Anderson, *Secret Inventions*, 26 BERKELEY TECH. L.J. 917, 924 (2011).

limited period of time."[53] The Court ultimately held that "the extension of trade secret protection to clearly patentable inventions does not conflict with the patent policy of disclosure," thus emphasizing that trade secrets and patent laws can both exist, with neither superseding the other.[54] Despite this result, scholars and courts have continuously purported that patents are more preferable than trade secrets when it comes to the issue of public policy and what is in the best interest for the public.[55]

That being said, there has been an increasing amount of literature that states that patent law is not the preferred intellectual property route; many claim that trade secrets also advance public interest.[56] For instance, the nondisclosure of trade secrets to the public does not hinder them as much as one would think; by concealing information and having a legal monopoly over it, holder's encourage the innovative to continue to innovate and invent and not only discover the trade secret, but build from it and make it better.[57] Trade secrecy gives the creator of that information the right to restrict others from using it, but it also restricts them from deriving supra-competitive profits from it.[58]

Steering away from public policy and public benefits, trade secrets also give the inventor a personal incentive to keep the information a trade secret. This is just like how the trade secret has perpetuity, as does the cash flow and income that come from consumption of that information, or product the trade secret is protecting.[59] Additionally, while trade secrets cannot be disclosed to the public, trade secrets can be shared among business partners, the board of directors of an entity, and trusted employees, all of whom could fine-tune the trade secret; they also have more of an incentive to keep the information a secret because if it becomes available for public consumption, then they stand to lose substantial financial intake.[60]

---

53 *Kewanee Oil Co.*, 416 U.S. at 485.

54 *Id*. at 491.

55 Anderson, *supra* note 52, at 919.

56 *Id.* at 961.

57 *Kewanee Oil Co.*, 416 U.S. at 485 ("trade secrecy, like patents, is another form of incentive to innovation").

58 Anderson, *supra* note 52, at 937.

59 *Id.* at 960.

60 Lemley, *supra* note 24, at 960.

III. THE EUROPEAN UNION AND THE UNITED STATES' RECENT TRADE SECRETS DIRECTIVE IMPLEMENTATIONS

A. The European Union

The E.U. is a collective group of twenty-eight countries operating as a collaborative political and economic block.[61] After the devastation of World War II, a desire grew amongst many European political entities since the war had decimated much of the economy and physical land in Europe.[62] In 1950, the European Coal and Steel Community ("ECSC") was founded, consisting of only six members: Belgium, France, Germany, Italy, Luxembourg and the Netherlands.[63] Under the Treaty of Rome in 1957, the ECSC became the European Community ("EC"); the focus of the newly-founded EC was a common agricultural policy as well as the elimination of customs barriers.[64] From 1958 until as recently as 2013, many other European countries have joined the EC, which became the E.U. in 2004.[65] The countries that joined the initial six countries include: Denmark, Ireland, the United Kingdom, Greece, Portugal, Spain, Austria, Finland, Sweden, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Bulgaria, Romania and Croatia.[66]

Some of the goals of the E.U. are to:

> offer freedom, security and justice without internal borders, have sustainable development based on balanced economic growth and price stability, a highly competitive market economy with full employment and social progress, enhance economic, social and territorial cohesion and solidarity among member countries and environmental protection, and promote scientific and technological progress.[67]

For the purpose of this Note, we will only be focusing on these goals and how they relate to our analysis.

---

61 *European Union*, INVESTOPEDIA (Jan. 15, 2019), https://www.investopedia.com/terms/e/europeanunion.asp.

62 *Id*.

63 *Id*.

64 *Id*.

65 *About the E.U.: Countries*, EUROPEAN UNION, https://europa.eu/european-union/about-eu/countries_en (last updated Dec. 7, 2018).

66 *Id*.

67 *Goals and Values of the EU*, EUROPEAN UNION, https://europa.eu/european-union/about-eu/eu-in-brief_en (last updated July 4, 2018).

The E.U.'s main sources of income include contributions from member countries from taxes, import duties on products from outside the E.U. and fines imposed when businesses fail to comply with E.U. rules.[68] The budget the E.U. has for its member countries is decided several years before it is enacted, including the size of the budget and how it is to be allocated.[69] The E.U. budget also helps support economic growth and job creation.[70] Under the Cohesion Policy, the budget funds investment to help bridge economic gaps between E.U. countries and regions.[71] The Cohesion Policy of the E.U., sometimes referred to as the Regional Policy, is a policy with the purpose of improving the economic well-being of areas in the E.U. and also to avoid regional disparities.[72] Over one third of the E.U.'s budget is deferred to this policy, which aims to remove economic, social and territorial disparities across the E.U.; additionally, it assists in restructuring declining industrial areas.[73] In doing so, E.U. regional policy is geared towards making regions more competitive, fostering economic growth, and creating new jobs.

1. The European Union Trade Secrets Directive

Despite collaborating in terms of economic and social growth and joint progress in innovation, there some areas of the law across different countries, that have disparities, and vague definitions of policies. One of those areas is intellectual property law, specifically trade secrets. Less than half of E.U. member states have an explicit and definite legal definition that explains what a trade secret is.[74] "It's no surprise, therefore, that the ways in which trade secrets are defined and treated varies considerably between the E.U.'s member states."[75] For example, in Denmark, trade secrets have a clear statutory definition and have legal means of protection.[76] However, in the U.K., definitions and ways of

68 *How is the EU Funded?,* EUROPEAN UNION, https://europa.eu/european-union/about-eu/money/revenue-income_en (last updated Nov. 28, 2018).

69 *Id.*

70 *Id.*

71 *Id.*

72 *Regional Policy,* EUROPEAN UNION, https://europa.eu/european-union/topics/regional-policy_en (last updated Jan. 16, 2019).

73 *Id.*

74 James Froud & David Samuels, *Trade Secrets Directive: Its Effect and the Impact of Brexit*, IP WATCHDOG (Jan. 19, 2017), http://www.ipwatchdog.com/2017/01/19/trade-secrets-directive-effect-impact-brexit/id=76685.

75 *Id.*

76 Jørgen Kjergaard Madsen, *Doing Business in Denmark*, THOMSON REUTERS UK: PRACTICAL LAW (Feb. 1, 2015), https://uk.practicallaw.thomsonreuters.com/8-501-0226.

protecting trade secrets have evolved from case law; no Parliament decisions have been made to clearly define trade secrets, meaning further development and evolution of trade secrets law in the U.K. is likely.[77] At the very end of the spectrum, Belgium does not have any case law or statutes explaining what a trade secret is, or any sort of legal protection it can garner from the Belgian government.[78]

These inconsistencies in trade secrets have made it increasingly difficult for companies to conduct business in the E.U. If a company cannot guarantee how their information will be protected, if it even will be protected, it is incredibly difficult to strategize and adopt measures to protect secrets and information pertinent to the way their business operates and conducts itself.

Therefore, on June 8, 2016, following a proposal from the European Commission, the European Parliament and Council agreed to adopt a new directive that aims to standardize the national laws in the member countries of the E.U. regarding the use of trade secrets, as well as unlawful acquisition and disclosure.[79] This new Trade Secrets Directive ("Directive") will integrate the definition of a trade secret with the existing international standards.[80] The Directive explicitly states a trade secret is such if

> (a) it is secret in the sense that it is not . . . generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
>
> (b) it has commercial value because it is secret; [and]
>
> (c) it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.[81]

Additionally, the Directive clearly defines the relevant forms of misappropriation as well as clarifies that reverse engineering and parallel innovation will be guaranteed to be investigated if it is believed to have been taken from the original inventor.[82] Since reverse engineering is one of the ways trade secrets can be revealed, and since trade secrets are not

---

77 Froud & Samuels, *supra* note 74.

78 *Id*.

79 Directive 2016/943, of the European Parliament and of the Council of 8 June 2016 on the Protection of Undisclosed Know-How and Business Information (Trade Secrets) Against Their Unlawful Acquisition, Use and Disclosure, 2016 O.J. (L 157) 1.

80 EURO. COMM'N, *supra* note 5.

81 Directive 2016/943, *supra* note 79, at 9.

82 *Id.* at 4.

an exclusive form of intellectual property, this stipulation is an incredibly important part of the Directive.

The Directive will level the playing field between companies, inventors, researchers and entrepreneurs in the internal market.[83] This gives the E.U. a more balanced and clearer legal framework which will discourage unfair competition and help encourage collaborative innovation, which will in turn lead to the generous sharing of valuable "know-how" knowledge to make the E.U. a stronger and more competitive economic region.[84]

The Directive does not establish any criminal sanctions; therefore, without these sanctions, the proposal will harmonize civil means by which alleged victims of trade secret misappropriation can seek protection and damages.[85] Some ways they can do so and stop the unlawful use and further disclosure of their secrets and information is by removing the market from goods that have been designed and manufactured based on their secret and the right of compensation for damages caused by the unlawful use or disclosure of the misappropriated trade secret.[86]

However, some critics have argued that the TSD was adopted with insufficient safeguards for political rights, claiming it creates "excessive secrecy and information control rights for businesses, getting dangerously close to creating a property right for confidential information where secrecy could become the legal norm and freedom of access, use and publication the exception."[87] The "protections" on the confidentiality of trade secrets during legal proceedings (Article 9)[88] also risk damaging the rights of defense during a court case if interpreted too narrowly by judges.[89]

These dissidents further claim that this makes "defending the safeguards obtained in the text, for journalists, employees, unionists and

---

83 *Internal Market*, EUR-LEX, http://eur-lex.europa.eu/summary/chapter/internal_market.html?root_default=SUM_1_CODED%3D24 (last visited Jan. 5, 2019) ("The internal market of the EU is a single market in which free movement of goods, services capital and persons is assured and in which citizens are free to live, work, study and do business.").

84 EURO. COMM'N, *supra* note 5.

85 *Id*.

86 *Id.*; *see generally* Directive 2016/943, *supra* note 79.

87 Rodolphe Baron & Martin Pigeon, *Adapting the EU Directive on Trade Secrets 'Protection' into National Law*, CORPORATE EUROPE OBSERVATORY 4 (2017), https://corporateeurope.org/sites/default/files/attachments/trade_secrets_protection_directive_-_a_transposition_briefing.pdf.

88 Directive 2016/943, *supra* note 79, at 12.

89 EURO. COMM'N, *supra*, note 5.

whistleblowers in particular, and using existing possibilities of damage control, all the more important. The integrity and translations of Articles 1 (scope), 2 (definitions), 3 (lawful acquisitions), and 5 (exceptions) in particular must be watched with utmost care."[90]

Despite these challenges, by June 9, 2018, all E.U. member countries must bring into force the laws and legislation, as well as administrative provisions, necessary to comply with the Directive.

B. The United States Trade Secrets Directive

On May 11, 2016, President Barack Obama signed into law the first federal civil trade secrets law,[91] the Defend Trade Secrets Act ("DTSA"),[92] which is also an amendment to the Economic Espionage Act of 1996.[93] Under the DTSA, trade secrets are granted the same type of federal protection given to other forms of intellectual property, such as patents, trademarks and copyrights.[94]

Although trade secret misappropriation has been long recognized as a federal crime subject to criminal prosecution in a federal court, victims of such misappropriation have lacked a federal civil claim.[95] Now, the DTSA creates a federal civil claim for misappropriation, and victims of trade secrets misappropriation have more extensive and immediate remedies, such as: compensatory damages, punitive damages, injunctive relief and, in certain situations, attorney fees and costs.[96]

Due to the nationwide scope of the DTSA, the power of the federal courts will be with the plaintiffs at all stages of the litigation process: the beginning of the case regarding service of process, discovery, and enforcement, such as nationwide enforcement of judgments and interlocutory injunction orders.[97]

Plaintiffs may bring a DTSA claim in either state or federal court.[98] Furthermore, the DTSA does not preempt existing state law, which allows plaintiffs to have more options regarding what claims they wish to bring and where they choose to bring them.[99]

---

90 Baron & Pigeon, *supra* note 87, at 4.

91 Stevens, *supra* note 1.

92 18 U.S.C. § 1836 (2012).

93 Stevens, *supra* note 1.

94 *Id.*

95 *Id.*

96 *Id.*

97 *Id.*

98 *Id.*

99 *Id.*

That being said, the DTSA does not usurp the UTSA.[100] Most of the DTSA's remedies and definitions have been taken from the UTSA. Since almost all U.S. states have enacted the UTSA, case law interpreting the UTSA is still relevant for DTSA cases, especially if plaintiffs choose to bring their suit in state court.[101]

Unlike the UTSA, the DTSA added that the Commerce Clause[102] Trade secrets must be "related to" a product or service in interstate commerce in order for a plaintiff to bring a suit under the DTSA in either state or federal court.[103] The Civil Seizure provision of the DTSA, which allows a plaintiff to petition a court for an order of ex-parte "seizure of property necessary to prevent the propagation or dissemination" of the subject of trade secrets, is similar to the Lanham Act regarding trademark registration and trademark protection,[104] but is more stringent.[105] However, this scenario is limited to extraordinary cases.

C. Similarities Between the Trade Secrets Directive and Defense Trade Secrets Act

Interestingly enough, the DTSA and TSD were implemented in their respective countries within one month of each other almost to the day. The DTSA was enacted on May 11, 2016 and the TSD was adopted on June 8, 2016.[106] Given the timing, one should take note of similarities between both of these legislations.

The U.S.'s DTSA and E.U.'s TSD define "trade secret" using extremely similar language, as noted in the chart below (bolding,

---

100 *Trade Secret*, *supra* note 17 ("The Uniform Trade Secrets Act (UTSA) was published by the Uniform Law Commission (ULC) in 1979 and amended in 1985. This uniform act was enacted in an effort to provide some sort of legal framework to better protect trade secrets for United States companies operating in multiple states. The UTSA aims to bring together standards and remedies for misappropriation of trade secrets in common law on a state-by-state basis. As of May 2013, 47 states, the District of Columbia, Puerto Rico and the U.S Virgin Islands have enacted the UTSA.").

101 18 U.S.C. § 1836(f) (2012).

102 U.S. CONST. art. I, § 8, cl. 8; *see also Commerce Clause*, CORNELL L. SCH., https://www.law.cornell.edu/wex/commerce_clause (last visited Jan. 23, 2019) ("The Commerce Clause refers to Article 1, Section 8, Clause 3 of the U.S. Constitution, which gives Congress the power 'to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.'").

103 18 U.S.C. § 1836 (2012).

104 Lanham Act, 15 U.S.C. §§ 1051-1127 (2012). The Lanham Act of 1946 "provides for a national system of trademark registration and protects the owner of a federally registered mark against the use of similar marks if such use is likely to result in consumer confusion, or if the dilution of a famous mark is likely to occur." *Lanham Act*, CORNELL L. SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/lanham_act ((last visited Jan. 23, 2019).

105 18 U.S.C. § 1836(b)(2) (2016).

106 Froud & Samuels, *supra* note 74; *see also* EURO. COMM'N, *supra* note 5.

italicization and underling used by author to note distinctions between the two acts):[107]

United States Defense Trade Secrets Act	European Union Trade Secrets Directive
"[T]he term 'trade secret' means all forms and types of financial, business, scientific, technical, economic, or engineering information, . . . whether tangible or intangible, and whether or how stored, compiled, or memorialized … if— **the owner thereof has taken reasonable measures to keep such information secret;** and (B) the information *derives independent economic value, actual or potential*, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information[.]"[108]	"[The term] 'trade secret' means information which meets all of the following requirements: (a) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question; (b) *it has commercial value because it is secret*; (c) **it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret**[.]"[109]

In terms of misappropriation by acquisition, both the DTSA and TSD similarly define it with requiring an acquisition of another's trade secret by improper or unlawful means.[110] Both definitions of improper and unlawful means are also similar in that the DTSA defines improper means to include various unlawful acts, including: theft, bribery, misrepresentation, breach of a duty of confidentiality, and espionage. Additionally, the TSD defines unlawful acquisition to include accessing, appropriating or copying recorded trade secret information without authorization.[111] Finally, the TSD has a "catch-all" provision that makes

107 Brian Ankenbrandt & Thorsten Vormann, *Comparing U.S. and EU Trade Secret Laws an Analysis Prepared for TABC's Intellectual Property Working Group*, TRANS-ATLANTIC BUS. COUNCIL (2016), http://www.transatlanticbusiness.org/wp-content/uploads/2016/07/US-EU-Trade-Secret-Comparison-30-June-2016.pdf.

108 18 U.S.C. §1839(3) (2012).

109 Directive 2016/943, *supra* note 79.

110 18 U.S.C. § 1839(5)(a) (2012); *see also* Directive 2016/943, *supra* note 79.

111 18 U.S.C. § 1839(6) (2012); *see also* Directive 2016/943, *supra* note 79.

any other conduct unlawful that is "considered contrary to honest commercial practices."[112]

With regards to lawful appropriation of a trade secret, both the TSD and the DTSA establish that independent discovery and reverse engineering should not give rise to misappropriation liability. The DTSA states that the term "improper means" does not include "reverse engineering, independent derivation, or any other lawful means of acquisition."[113] The TSD states an acquisition of a trade secret is lawful if it is obtained by "independent discovery or creation" and "observation, study, disassembly or testing of a product or object that has been made available to the public or that is lawfully in the possession of the acquirer of the information who is free from any legally valid duty to limit the acquisition of the trade secret."[114]

IV. GLOBALIZATION OF TRADE SECRET PROTECTION

With such similarities between the DTSA and the TSD, as well as the enactment of such legislation in a close time frame, it is clear that trade secret protection is not just confined to either country. These initiatives allow trade secrets owners a larger scope—and geographically broader—of protection than they have had in the past. The European Public Health Alliance ("EPHA") stated that the context of the proposed E.U. TSD "is strongly supported by multinational companies" and made a point that industry coalitions in the E.U. and U.S. had been lobbying for similar proposed trade secrets legislation in the U.S. Congress before the U.S. introduced the DTSA.[115]

Intellectual property is needed internationally in today's technologically advanced society, as software companies, pharmaceutical industries, and high-tech companies all call upon patents to protect their information.[116] The digital world is becoming a stronger and more prominent presence in not only business, but in daily lives regarding marketing, piracy and counterfeiting.[117]

---

112 Directive 2016/943, *supra* note 79.

113 18 U.S.C. § 1839(6) (2012).

114 Directive 2016/943, *supra* note 79.

115 Daniel P. Hart, *Opposition Emerges to EU Trade Secrets Directive*, SEYFARTH SHAW: TRADING SECRETS BLOG (Feb. 23, 2015), https://www.tradesecretslaw.com/2015/02/articles/trade-secrets/opposition-emerges-to-eu-trade-secrets-directive.

116 Seth Fiegerman, *In tech, patents are trophies—and these companies are dominating*, CNN, (JUNE 19, 2018), https://money.cnn.com/2018/06/19/technology/tech-patents/index.html

117 *See* Katherine Linton, *The Importance of Trade Secrets: New Directions in International Trade Policy Making and Empirical Research*, 2016 J. INT'L. COMMERCE & ECON. 1, 3 (2016).

However, the type of intellectual property international business' care about the most, overwhelmingly seem to be trade secrets,[118] which James Pooley calls "the other IP right."[119] Surveys from different-sized firms across a variety of industries in the U.S. and other developed countries have rated trade secrets as "very important" over all other types of intellectual protection.[120] In 2014, the U.S. International Trade Commission surveyed more than seven thousand U.S firms in order to study the economic effect of India's trade policies and business operations.[121] This study indicated that fifty-six percent of internationally-engaged firms stated that trade secrets were "very important," compared to only forty-eight percent for trademarks and thirty-seven percent for patents.[122] Additionally, sectors such as chemical manufacturing and information and communication technology—areas generally considered to be patent intensive—all answered that trade secrets were "more important" than patents.[123]

Industry	Trade secrets	Patents	Trademarks	Copyrights
All industries	58.3	48.3	43.5	27.4
Manufacturing	62.1	55.9	50.1	26.1
Chemicals	69.7	67.6	54.4	26.1
Machinery	53.0	48.2	41.5	21.9
Computer and electronic Products	70.6	64.3	49.9	34.4
Transportation Equipment	47.8	42.8	38.5	22.1
Nonmanufacturing	54.3	40.1	36.5	28.7
Information	63.6	44.1	57.2	50.9
Professional, scientific and technical services	49.9	42.1	20.3	20.3

Source: NSF and NCSES, *BRDIS: 2012,* October 2015, Tables 53-57.

Table 1: Percentage of U.S. firms that consider different IP types "very important," selected industry sectors

A. Influence of Trade Secrets on International Policy Creation

As the importance of trade secrets becomes increasingly understood, they have become a focal point in the ever-growing domestic and international policy making.[124] Trade secret laws have been strengthened

118 *Id.*

119 James Pooley, *Trade Secrets: The Other IP Right*, WORLD INTELL. PROP. ORG. MAG., June 2013, at 2.

120 Linton, *supra* note 117, at 2.

121 Id at 2.

122 *Id.* at 144.

123 Trade, Investment, and Industrial Policies in India: Effects on the U.S. Economy, USITC Pub. 4501, Inv. No. 332-543 (Dec. 2014).

124 Linton, *supra* note 117, at 2.

in the U.S. and Europe through their respective directives. The Trans-Pacific Partnership Agreement ("TPP") includes protections stronger than the minimum protections set forth by the World Trade Organization's Trade-Related Aspects of Intellectual Property Rights ("TRIPS") and bilateral trade agreements.[125] The TPP requires parties to provide protections from misappropriation, including state-owned entities, as well as criminal procedures and penalties in certain circumstances.[126]

Faisal Santiago wrote,

> Economic growth today, is inseparable from the rile of business people in running their business activities. Running the business, the principals experience a lot of very rapid changes from the traditional implementation of moving towards a highly dynamic technology. The role of information technology and globalization is a sign of business activity that is inevitable. All companies will run the business strictly to maintain the business continuity.[127]

Santiago opined that protection of trade secrets will be one of the main determinative factors in attracting foreign investors and corporations to enter into trade and business with other countries, as well as being the deciding factor for the frequency of international trade itself.[128]

B. International Trade by the Numbers

The issue of trade secret protection and globalization correlates strongly to international trade because international trade is closely related to trade secret protection itself.[129] Businesses are entitled to the protection of all information they possess that belong to trade secrets relating to import-export activities they engage in, and this largely involves information regarding marketing methods and international customer and consumer lists.[130]

---

125 Kevin Granville, *What is TPP? Behind the Trade Deal That Died*, N.Y. TIMES (Jan. 23, 2017), https://www.nytimes.com/interactive/2016/business/tpp-explained-what-is-trans-pacific-partnership.html.

126 *Id.*

127 Faisal Santiago, *Trade Secret Protection in a Globalization Era*, 20 EUR. RES. STUD. J. 66, 66-76 (2017) (discussing the protection of trade secrets in a global era, focusing on Europe and the United States).

128 *Id.*

129 Santiago, *supra* note 127.

130 *Id.*

The TPP seems to suggest that trade agreements involving the U.S. are more focused on past trade secret protections. According to a June 2017 Congressional Research Service Report, the U.S. is the largest direct investor and trader abroad, and the largest recipient of foreign direct investment in the world.[131] Although some analysts argue that the U.S.' direct investment and trade abroad reduces U.S exports, and thus shifts jobs overseas, U.S data indicates that foreign investment apparently stimulates intrafirm trade.[132] "Intra-firm trade consists of trade between parent companies of a compiling country with their affiliates abroad and trade of affiliates under foreign control in this compiling country with their foreign parent group."[133] This type of trade is characterized by observing two factors: (1) the trade between a U.S. parent company and their foreign affiliates or subsidiaries; and (2) the U.S. affiliates of foreign firms and their parent companies.[134]

In 2014, total U.S. trades amounted to $1.6 trillion in exports and $2.3 trillion in imports.[135] Of those amounts, trades occurring between U.S. parent companies and foreign affiliates, which are identified as multinational companies ("MNCs"),[136] accounted for $315 billion in both exports and imports, while affiliates of foreign firms operating in the U.S. accounted for $189 billion in exports and $521 billion in imports.

131 JAMES K. JACKSON, CONG. RESEARCH SERV., RS21118, U.S. DIRECT INVESTMENT ABROAD: TRENDS AND CURRENT ISSUES (2017).

132 *Intra-Firm Trade*, OECD GLOSSARY OF STATISTICAL TERMS (July 23, 2007), https://stats.oecd.org/glossary/detail.asp?ID=7262.

133 *Id.*

134 Jackson, *supra* note 131, at 4.

135 Supra note 131, at 5.

136 "Multi-national companies" are defined as when 40% of a company's workforce is stationed outside their headquarters, most commonly in internationally.

C. Recent History of United States and European Investment and Trade

Exports		Imports	
Total U.S. Exports	$1,632.6	Total U.S. Imports	$2,294.6
By U.S. Parents	802.4	To U.S. Parents	929.8
To Foreign Affiliates	314.3	From Foreign Affiliates	315.4
To Others	488.0	From Others	614,348
By Foreign Affiliates	425.2	To Foreign Affiliates	723,858
To Foreign Parent	188.7	From Foreign Parent	521,106
To Others	236.5	From Others	202,752
By Others	405,081	From Others	687,328
Intra MNC Exports:	$502,981 (30.8%)	Intra MNC Imports:	$836,520 (35%)

Source: Department of Commerce.

Table 2: United States Intrafirm Trade 2014 ($ in billions)

U.S. investments in developed countries increased after the mid-1990s. The U.S. Direct Investment Abroad experienced a major shift from developing countries to the richest developed countries. Many of the richest countries in the developed world are located in Europe, such as: Ireland, Iceland, the Netherlands, Switzerland, Norway, and Luxembourg.[137] The U.S. has traditionally been the E.U.'s major trading partner; after peaking in 2006, E.U. and U.S. trade decreased significantly following the global financial and economic turmoil at the end of 2008.[138] Recovering in 2012, trade and imports and exports increased, leading E.U. exports to the U.S to be the largest share at 87.1 percent.[139]

D. The Reversal of Popularity Between Patents and Trade Secrets

According to EuroStat, manufactured goods accounted for the largest share of E.U. exports to the U.S.[140] Machinery and transport equipment were the most traded products between the E.U. and the U.S.[141] Chemicals, mineral fuels, and similarly related materials were ranked the highest in terms of items exported by the E.U. to the U.S.[142] The most common imports from the U.S. to the E.U. were medical and

137 Lisa Marie Segarra, *These Are the Richest Countries in the World*, FORTUNE (Nov. 17, 2017), http://fortune.com/2017/11/17/richest-country-in-the-world.

138 Gilberto Gambini, Radoslav Istatkov & Riina Kerner, *USA-EU International Trade and Investment Statistics,* EUROSTAT (Feb. 2015), http://ec.europa.eu/eurostat/statistics-explained/index.php/USA-EU_-_international_trade_and_investment_statistics.

139 *Id.*

140 *Id.*

141 *Id.*

142 *Id.*

pharmaceutical products, followed closely by power-generating machinery and equipment.[143]

When the Transatlantic Trade and Investment Partnership ("TTIP") was launched in 2013, negotiations between the E.U. and U.S. increased regarding trade and investment by reducing and, on occasion, eliminating barriers that posed a hurdle regarding transatlantic trade and investment, whether it was tariffs on a farm or manufactured products or restrictions on foreign service providers.[144] During this time, U.S. and E.U. production of manufactured goods began to increase again after the economic downfall in 2008 began to taper off. Foreign direct investment stocks in the U.S more than doubled between 2004 and 2012, and the U.S.' FDI stocks in the E.U. doubled as well.[145] The E.U. began importing manufactured goods from the U.S. in record numbers.

Year	E.U. Imports	E.U. Exports	Balance
2014	209.3	311.6	102.2
2015	249.3	371.3	122.0
2016	246.8	362.0	115.3

Table 3: Trade in Goods 2014-2016 (Amount in billions of euros) [146]

Traditionally, many manufactured items such as machinery, mechanical equipment, pharmaceuticals, and chemical related goods, have the items most commonly patented by the U.S. Patent and Trademark Office.[147] The first act in organizing laws regarding patents in the U.S. occurred on April 10, 1790, with the passing of the first Patent Act of the U.S. Congress; the act was titled "An Act to promote the progress of useful Arts."[148] On July 31, 1790, Samuel Hopkins was granted the first U.S. patent for potassium carbonate.[149] Not long after, the first Patent Office was established in 1802.[150] During the Industrial Revolution in Britain and the U.S. in the early to mid-nineteenth centuries, patents proved to be extremely desirable in the ever-growing

143 *Id.*

144 *Id.*

145 *Id.*

146 *Trade Policy Countries and Regions: United States*, EURO. COMM'N, http://ec.europa.eu/trade/policy/countries-and-regions/countries/united-states (last updated Apr. 16, 2018) [hereinafter *Trade Policy*].

147 *General Information Concerning Patents*, *supra* note 21.

148 *A Bill to Promote the Progress of the Useful Arts*, NAT'L ARCHIVES: FOUNDERS ONLINE, https://founders.archives.gov/documents/Jefferson/01-22-02-0322 (last visited Feb. 1, 2018).

149 M. Frumkin, *The Origin of Patents*, 3 J. PAT. OFF. SOC'Y 143 (1945).

150 TIME LIFE BOOKS, INVENTIVE GENIUS 76 (1991).

and fast-paced industry, and patents soon became the dominating form of intellectual property in the U.S.[151] Trade secret law did not even appear in the U.S. until 1837 in the case of *Vickery v. Welch*.[152]

This is not to say that trade secrets were not a popular form of intellectual property; companies which began to create products in the late-nineteenth to early-twentieth century—such as Coca-Cola and Heinz—used trade secrets over patents to protect their work.[153] Additionally, the Restatement of Torts, Restatement the Second of Torts and eventually, the UTSA began elaborating on trade secrets and what should be done to protect them moving into the late twentieth century.[154]

That being said, trade secrets have always appeared to take more of a back seat to patents when it comes to protecting intellectual property, especially in the E.U. where many countries had extremely vague definitions of trade secrets and had very low protection at all.[155] However, with the resurgence of trade between the E.U. and the U.S. and the goods being used in this trade, it is interesting to note that the goods traded have been patented more in the past,[156] yet the U.S. and the E.U. both put forth trade secrets directives in their respective countries recently, and have not proposed or initiated uniform patent laws for their respective countries. All of this recent trade and respective directives from the U.S. and the E.U. raises the question if the surge of trade and business between the E.U. and the U.S. prompted both entities to realize trade secrets are the dominant form of intellectual property and create a common system to protect such secrets.

IV. ANALYSIS AND CONCLUSION

This Note finds that the evidence of the increase in European and American trade, along with the increase in the importing and exporting of manufactured goods such as machinery and pharmaceuticals, bolster this Note's assertion that the trade secrets directives, implemented by both the E.U. and the U.S., are a direct result of the increase of trade between these two nations. These directives have thus made trade secrets the more dominant form of intellectual property over patents.

---

151 *See* Rufus Pollock, *The Importance of Patents for Innovation in the Industrial Revolution* RUFUSPOLLOCK.COM (Apr. 2004), https://rufuspollock.com/papers/patents_and_ir.html.

152 Lemley, *supra* note 24, at 76.

153 Ernie Linek, *A Brief History of Trade Secrets Part 1*, BIOPROCESS INT'L, Oct. 2004, at 20.

154 *Id.* at 2.

155 *See* Froud & Samuels, *supra* note 74.

156 *See General Information Concerning Patents*, *supra* note 21.

The E.U. and the U.S. have "the most integrated economic relationship" in the world, along with "the largest bilateral trade and investment relationship."[157] The investments that the E.U. and the U.S. are involved in are a powerhouse of economic stimulation, "contributing to growth and jobs on both sides of the Atlantic."[158] Additionally, this "transatlantic relationship defines the shape of the global economy as a whole[;] the E.U. or the U.S. is the least investment and trade partner for almost every other countries involved in the global economy."[159] Together, the "E.U. and the United States economies account" for "a third of world trade flows" and almost "half the entire world GDP."[160]

In 2013, the E.U. and the U.S. initiated negotiations on the TTIP in order to revise the already in place stipulations.[161] However, despite fifteen rounds of discussion, the negotiations ended without a formal conclusion, due to the change of administration in Washington.[162] At the present time, there is no indication when the negotiations will resume, despite the need for a stronger transatlantic trade and investment relationship.

With so much transatlantic trade and economic growth occurring between the U.S. and the E.U.,[163] it would be unwise to disregard the economic and trade events that have been occurring in the last decade or so, that could have affected the policy changes in the E.U. and U.S. regarding their respective trade secrets directives. The consistent economic and trade increase between these nations, as well as the attempt to enhance the TTIP[164] eventually seemed to bring both the E.U. and the U.S. to propose and enact the TSD[165] and the DTSA,[166] respectively.

Evidence aforementioned in this Note lays the foundation for the preceding analysis, and additionally, the fact that these directives were implemented within a month of each other is further proof that trade between the E.U. and the U.S. is likely to continue increasing, thus creating a move universal way of accepting trade secrets laws and persecuting those attempting to steal them.[167]

---

157 *See Trade Policy*, *supra* at note 146.

158 *Id.*

159 *Id.*

160 *See id.*

161 *See id.*

162 *See id.*

163 *See id.*

164 *See id.*

165 *See* Directive 2016/943, *supra* note 79.

166 18 U.S.C. § 1836 (201).

167 *See, e.g.*, EURO. COMM'N, *supra* note 5; Stevens, *supra* note 1.

In conclusion, it is this author's belief that the trade secrets directives stemmed from a direct result of the E.U. and the U.S. trade and investments, and those directives have reinforced trade secrets as the dominant form of intellectual property.