



# **中国商业秘密保护的法制历史及保护现状** **Development of Law on Trade Secret** **Protection in China**

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# 演讲提要 Outline

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# I 商业秘密保护战略的战略意义

## Significance of Strategy for Trade Secret Protection

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中国商业秘密保护法制的发展，1993年《反不正当竞争法》是一个里程碑。  
*Anti- unjust Competition Law* in 1993 is a milestone in trade secret protection in China.

此前的商业秘密法律保护，无论在概念上还是认定标准以及处罚程度上均较比混乱。诸如在概念上技术诀窍、专有技术、非专利技术的混用等等。

There was lots of confussion in the definition, standard and punishment of trade secret protection, for example the mixed use of such terms as technical know-how, patent technology and non-patent technology.



# I 商业秘密保护战略的战略意义

## Significance of Strategy for Trade Secret Protection

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《反法》发布后，开始了全面的统一。《反法》不仅确立了以工商行政管理部门为核心的行政保护，同时也奠定了民事保护和刑事保护的法制基础。

The legal system of trade secret protection started to integrated since the promulgation of *the Anti- Unjust Competition Law*. It not only set clear administrative protection by relevant authorities, but also laid a foundation for civil protection and criminal protection.

今天的中国已成为了世界第2大经济实体。这一成就是在国际经济舞台上公平竞争的必然结果，是中国法制有效运作的必然结果，也是中国执法人员严格执法维持市场健康秩序的必然结果。

China today has become World' s second largest economy. This achievement is resulted from fair competition in the international economic arena, from the effective operation of China' s legal system, and from strict law enforcement.



# I 商业秘密保护战略的战略意义

## Significance of Strategy for Trade Secret Protection

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商业秘密保护的“中国模式”：

规范接轨、主动出击、行政前卫、司法断后、综合治理、全程联动、查案引领、战略推进。

“The Chinese Model” for Trade Secret Protection:

Integrating with international standards; taking the initiative; administrative methods, judicial methods, comprehensive management; case study as basis; and strategic promotion.



## II 中国商业秘密保护的法制历史

### History of Law on Trade Secret Protection in China

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商业秘密是一种市场竞争的法宝，是一种重要的无形资产，也是一种特殊的知识产权。

Trade secret is a magic key for competition in the market, an important intangible asset, and a special kind of intellectual property rights.

在我国，从法律上给予保护，还是改革开放以后。

In China, trade secret was legally protected since the reform and opening up policy.



## II 中国商业秘密保护的法制历史

### History of Law on Trade Secret Protection in China

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- 1980年的《中华人民共和国中外合资经营企业所得税实施细则》  
• *Regulation on Joint Ventures Income Tax of People's Republic of China in 1980*
  
- 1986年《民法通则》  
• *General Rules of Civil Law in 1986*  
• 技术合同法规定了“非专利技术”  
• Non-patent technology in *Technology Contract Law*
  
- 1991年《中华人民共和国民事诉讼法》  
• *Civil Procedure Law in 1991*
  
- 1992年《中美知识产权谅解备忘录》  
• *Sino-US Memorandum of Understanding on Intellectual Property in 1992*
  
- 1993实行的《中华人民共和国反不正当竞争法》  
• *Anti-unjust Competition Law in 1993*



## II 中国商业秘密保护的法制历史

### History of Law on Trade Secret Protection in China

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- 1994年的中华人民共和国劳动法及2007年的劳动合同法
- *Labor Law of 1994 and Labor Contract Law in 2007*
  
- 1993年7月《科技进步法》
- *Science and Technology (S&T) Progress Law in 1993*
  
- 1988年9月《保守国家秘密法》
- *The Law on Guarding State Secret in 1988*
  
- 《中华人民共和国商业银行法》
- *Commercial Banking Law of the People's Republic of China*
  
- 1999年修订的《中华人民共和国刑法》
- *Criminal Law revised in 1999*
  
- 大量的地方法规、部门规章和司法解释：
- a number of local statutes, departmental regulations and judicial interpretations



### III 商业秘密是市场竞争的“暗器”

## Trade Secret---Hidden Weapons in Competition

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在日渐激烈的市场竞争中，商业秘密就是知识产权创新竞争中的“暗器”。  
In the increasingly fierce market competition, trade secret is a hidden weapon of the intellectual property innovation game.

商业秘密这种暗器式的知识产权，还有一个显著特点，即自我管理和自我保护。  
As a hidden weapon, trade secret has two features---self-management and self-protection.



## IV 商业秘密保护执法仍需加强

### Strengthen Law Enforcement concerning Trade Secret Protection

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商业秘密的法律概念是不为公众所知悉、能为权利人带来经济利益并经权利人采取保密措施的技术信息和经营信息。

A trade secret is information that:

- is not generally known to the public;
- confers some sort of economic benefit on its holder (where this benefit must derive *specifically* from its not being generally known, not just from the value of the information itself);
- is the subject of reasonable efforts to maintain its secrecy.



本律师在实践中对商业秘密保护特性有如下体会：  
Therefore, trade secret protection has the following features:

- 1.存在的不稳定性  
Instability of existence
- 2.权利的非排他性  
Non-exclusion of rights
- 3.表现形式的多样性  
Diversity of forms
- 4.保护手段的自我有效性  
Self-effectiveness of protection methods.

## IV 商业秘密保护执法仍需加强

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#### 1. 存在的不稳定性

##### Instability of existence

专利、版权以及商标权都有十分严格的时间概念。而商业秘密信息产生的时间概念比较模糊（仅与公开信息对比时有意义）

Unlike patent, copyright and trademark, there isn' t a clear time for the birth of trade secret.



## IV 商业秘密保护执法仍需加强

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#### 2.权利的非排他性

##### **Non-exclusion of rights**

法律上的所有权具有排他性，一个主体合法享有了（包括共有），其他主体就不得享有，专利即是如此。但商业秘密不同

Legally, ownership is exclusive. When one subject enjoys ownership of one thing according to law, other subjects have no right to the thing. Patent is an example. However, trade secret is different.



## IV 商业秘密保护执法仍需加强

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#### 3.表现形式的多样性

##### Diversity of forms

商业秘密的法定表现形式为信息，包括经营方面和技术方面的信息，这个范围是非常宽泛的,种类形式不一。

Legal manifestation of trade secret is information, including business information and technology information. It covered very broad range and is consisted with varied forms.



## IV 商业秘密保护执法仍需加强

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#### 4. 保护手段的自我有效性

##### **Self-effectiveness of protection methods.**

商业秘密法律存在的另一个基本条件，就是权利人采取了保密措施。在我国的实践中，许多保密措施往往流于形式，或针对性不强。

Another basic condition for trade secrets is that the holder of trade secret has taken confidentiality measures. In legal practice of China, many confidentiality measures turn out to be a mere formality without a targeted and efficient approach.



# 中国商业秘密保护的法制历史及保护现状

## Development of Law on Trade Secret Protection in China



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谢谢

Thank You~