

Translation		
<p><i>The following is a translation of the “Sensitive Science and Technology Protection Bill” as proposed in Taiwan’s parliament, the Legislative Yuan, in May 2018. The bill aims to prevent the transfer of high technology – including that of US firms operating in Taiwan – to outside actors, notably mainland China, particularly in key industries such as semiconductors. The bill provides for up to seven years in prison or a \$1 million fine for leaks of sensitive technology. It would supplement Taiwan’s existing “Trade Secrets Protection Law,” which also prohibits unauthorized disclosure of cutting-edge commercial technology.</i></p>		
<p>Title General Notes on the Sensitive Science and Technology Protection Bill 敏感科技保護法草案總說明</p>		
<p>Sponsor Wang Ding-yu (王定宇), Democratic Progressive Party (民主進步黨; DPP), representing the 5th electoral district of Tainan City</p>		
<p>Source Proceedings of the 13th Meeting of the 5th Session of the 9th Legislative Yuan, 16 May 2018</p>		
<p><i>A softcopy of the Chinese source text is available at:</i> https://lci.ly.gov.tw/LyLCEW/agenda1/02/pdf/09/05/13/LCEWA01_090513_01173.pdf <i>US \$1 ≈ 30 New Taiwan Dollars (NT\$) as of 8 November 2019.</i></p>		
<p>Translation Date 8 November 2019</p>	<p>Translator Etcetera Language Group, Inc.</p>	<p>Editor Ben Murphy, CSET Translation Lead</p>

Proceedings of the 13th Meeting of the 5th Session of the 9th Legislative Yuan

Proceedings of the Legislative Yuan

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Legislative Yuan Overall No. 1021

Member’s Bill No. 22118

Subject: Wang Ding-yu (王定宇), member of this Legislative Yuan, along with 15 follow members, considers that China has been lending active support to its high-tech industries such as semiconductors, and besides poaching the talents of our technology firms and acquiring technology through mergers and acquisitions, it has also been stealing key technologies through various channels. Protecting the competitiveness of the key high-tech technologies of our country involves not only industrial development but also national security and interests. In addition, U.S. technology leaders such as Google, Microsoft, Amazon and IBM have announced that they have expanded their investment in Taiwan since the beginning of this year (2018). The current wave of investment in research and development by American companies will obviously involve a large number of trade secrets. However, in recent years Taiwan has witnessed repeated cases of theft of trade secrets by China. If our legal system is not stepped up to keep up with the pace of U.S. protection of its technologies, Taiwan will become a place where secret technologies get

leaked, and leading U.S. technology companies may even lose interest in investing here. As a result, Taiwan would not be able to enjoy the benefits of this investment. I believe that the current scope of the core sensitive science and technology of our country involves a wide spectrum of related fields, and is under the jurisdictions of many different authorities and agencies with differing goals. For the establishment and implementation of sensitive science and technology protection mechanisms, special legislation should be formulated for regulatory purposes. A "Draft Law on the Protection of Sensitive Science and Technology" is hereby proposed. Please give your consideration to this piece of draft legislation and send your comments and vote.

Member: Wang Ding-yu

Seconded by:

Chiu Tai-Yuan (邱泰源)	Chen Lai Su-mei (陳賴素美)
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General Notes on the Sensitive Science and Technology Protection Bill

China has been lending active support to its high-tech industries such as semiconductors, and besides poaching talent from our technology firms and acquiring technology through mergers and acquisitions, it has also been stealing key technologies through various channels. Protecting the competitiveness of the key high-tech technologies of our country involves not only industrial development but also national security and interests. In addition, U.S. technology leaders such as Google, Microsoft, Amazon and IBM have announced that they have expanded their investment in Taiwan since the beginning of this year (2018). The current wave of investment in research and development by American companies will obviously involve a large number of trade secrets. However, in recent years Taiwan has witnessed repeated cases of theft of trade secrets by China. If our legal system is not stepped up to keep up with the pace of U.S. protection of its technologies, Taiwan will become a place where secret technologies get leaked, and leading U.S. technology companies may even lose interest in investing here. As a result, Taiwan would not be able to enjoy the benefits of this investment. I believe that the current scope of the core sensitive science and technology of our country involves a wide spectrum of related fields, and is under the jurisdictions of many different authorities and agencies with differing goals. Even though our Trade Law and other regulations govern sensitive science and technology, in the face of the powerful military, diplomatic and economic threats from China that Taiwan (我國) faces, it is necessary to establish and implement sensitive science and technology protection mechanisms. Special legislation should be formulated for regulatory purposes. The following are the major points of the proposed Draft Law on the Protection of Sensitive Science and Technology:

1. Definition of sensitive science and technology (Article 2 of the bill);
2. Necessity of drawing up and amending sensitive science and technology projects and of their review at any time; the drawing up of sensitive science and technology projects

- should be published in the government gazette (Article 4 of the bill);
3. Sensitive science and technology shall not be exported or disclosed without the permission of the departments in charge of them (主管機關) (Article 5 of the bill);
 4. The departments in charge shall engage (dispatch) personnel, experts, professionals, scholars and industry figures from the relevant departments (institutions) to participate in the drawing up and review procedures (Article 7 of the bill);
 5. Set up confidentiality clauses and recusal clauses (Articles 8 to 10 of the bill);
 6. Penalties for exporting or disclosing sensitive science and technology without permission (Article 11 of the bill);
 7. Aggravated penalties will be imposed on those who knowingly take action to benefit the governments, institutions, or representatives of other countries or regions in violation of this law, and on those who intend to do so (Article 12 of the bill);
 8. The government should adopt regulatory measures for sensitive science and technology, and provide subsidies for R&D (Article 13 of the bill);
 9. If sensitive science and technology is illegally infringed upon, the right holder shall notify the department in charge of them; the department in charge of them shall coordinate the efforts by relevant agencies to help prevent further violations (Articles 14 and 15 of the bill);
 10. To clarify the relationship between this law and the relevant laws and regulations, the import and export of high-tech goods shall be handled in accordance with the current trade-related laws and regulations, and the integrity of the existing legal system shall be maintained (Article 17 of the bill);
 11. This draft concerns the import and export business of domestic manufacturers' high-tech products. It is still necessary to develop detailed provisions and enforcement matters, which should be supervised by the national legislature (國會). Therefore, new implementation rules should be enacted (Article 18 of the bill);
 12. Considering the amendments to this Law are related to the establishment of regulations, operating procedures, publicity, seminars, and so forth, there should be a buffer period; so, it is stipulated that the Executive Yuan should appoint the date of implementation. (Article 19 of the bill).

Bill on the Protection for Sensitive Science and Technology

Articles	Annotations
<p>Article 1 This Law is enacted for the purpose of protecting sensitive science and technology, enhancing our competitive advantage in science and technology and safeguarding national security and the public interest.</p>	<ol style="list-style-type: none"> 1. Discloses the purpose of this legislation. 2. According to the formulation of this Law, it is to establish a sensitive science and technology management mechanism to enhance our technological competitive advantage to ensure the security and interests of the country.

<p>Article 2 For the purposes of this Law, sensitive science and technology refers to scientific information of high sensitivity and distinctiveness with respect to significant impact on national security and the public interest beyond academic research, which meets the following requirements:</p> <ol style="list-style-type: none"> 1. Information that is generally not available to persons not involved; 2. Information with actual or potential economic value because of its secrecy; 3. The right holder has taken reasonable confidentiality measures. <p>Scientific information of high sensitivity and particularity in the preceding paragraph includes:</p> <p>Data, plans, edits, program devices (程式裝置), formulas, designs, prototypes, steps, processes, procedures, recipes, programs, or symbols.</p>	<p>arly defines the term “sensitive science and technology.”</p>
<p>Article 3 The department in charge of this Law is the Ministry of Science and Technology.</p> <p>Matters governed under this Law shall fall under the purview of the department in charge, and will be managed by departments with the appropriate purposes.</p>	<ol style="list-style-type: none"> 1. As the coordinating organ of national science and technology development affairs, the Ministry of Science and Technology shall be the department in charge for the purpose of this law according to paragraph 1. 2. Sensitive technology protection-related business may involve the duties of other relevant departments involved with the target business. Paragraph 2 shall define the matters in consultation with the relevant authorities of each purpose (such as the Ministry of the Interior, the Ministry of National Defense, the Ministry of Education, the Ministry of Economic Affairs, the Ministry of Transportation and Communications, and the Public Health Administration (衛生署), Atomic Energy Commission, and Agricultural Commission of the Executive Yuan).
<p>Article 4 The drawing up of sensitive science and technology projects and countries and</p>	<ol style="list-style-type: none"> 1. Paragraph 1 is made considering the needs of technological development. The relevant

<p>regions for export shall be based on the principle of ensuring national security and the public interest, and the principle of necessity. The department in charge shall regularly consult the relevant authorities and departments for review; if necessary, reviews shall be conducted at any time ex officio or by application.</p> <p>The department in charge shall formulate sensitive science and technology projects and countries and regions for export, and shall report to the Executive Yuan for approval, to be published by the government gazette; the same rules shall apply to amendments.</p> <p>The first sensitive science and technology project, country and region for export shall be sent to the Legislative Yuan for ratification within one month from the date of the announcement.</p>	<p>management tools should be based on the legislative purposes of this law, and the principle of necessity is necessary to ensure that sensitive science and technology projects are appropriate and reasonable, and should be regularly reviewed in line with the current situation.</p> <ol style="list-style-type: none"> 2. Paragraph 2 provides that sensitive science and technology projects shall be formulated or changed by the department in charge, and the consideration of sensitive science and technology projects shall have a great impact on the rights of the people. The regulations shall be approved by the Executive Yuan, to be announced by the relevant authorities and published in the government gazette. 3. The control of sensitive science and technology projects and countries and regions for export will have a great impact on the import and export of domestic manufacturers and the economy. In order to have a mechanism for supervision by the national legislature, it must be sent to the national legislature for confirmation after the announcement.
<p>Article 5 The sensitive science and technology announced by the department in charge shall not be exported or disclosed without the permission of the department in charge.</p>	<p>provides for the legal procedures for the export of sensitive science and technology or publication for the purposes of administration.</p>
<p>Article 6 If the applicant applies for permission according to the preceding paragraph, it shall be examined by the department in charge; if necessary, the applicant may be notified to attend a hearing.</p> <p>The examination under the preceding paragraph shall be completed within one month; if necessary, it may be extended for another month. If no decision is taken after that, it shall be deemed as permitted. If the examination is passed or deemed as permitted, the department in charge shall issue a permit; if the review fails, the competent authority shall attach a reason and</p>	<ol style="list-style-type: none"> 1. The first paragraph provides for the application or disclosure of sensitive science and technology, which shall be examined by the department in charge and, if necessary, the applicant shall be notified of the principle of participation. 2. The 2nd paragraph provides that, during the review period, and in accordance with the spirit of the Administrative Procedure Act (行政程序法), the results of the review shall be in writing and accompanied by reasons and remedies to fully protect the rights and interests of the people; the remaining specific details shall be

<p>specify the relief procedure for dissatisfaction with the result of the examination, and notify the applicant in writing.</p> <p>The time limit for the application of the permit, the procedures and other measures to be complied with in the preceding paragraph shall be prescribed by the department in charge.</p>	<p>regulated by the department in charge under the 3rd paragraph.</p>
<p>Article 7 The department in charge shall, in accordance with the provisions of Paragraph 2 of Article 4, formulate sensitive science and technology projects, countries and regions for export, and examine the application for licensing according to the 1st paragraph of the preceding article. It shall engage (dispatch) personnel, experts, scholars and industry figures from the relevant departments (institutions). Experts, scholars and industry figures should count for no less than two-thirds of the total number.</p>	<ol style="list-style-type: none"> 1. In order to formulate sensitive science and technology projects, countries and regions for export, and review application for licenses, it is provided that the department in charge should engage (dispatch) personnel, experts, scholars, and industry figures. 2. In order to make the sensitive technology protection mechanism more representative and credible, the total number of experts, scholars and industry professionals should not be less than two-thirds of the total number of review (inspection) personnel, and must be formed separately.
<p>Article 8 The personnel involved in handling sensitive science and technology permit applications shall protect the confidentiality of said applications.</p>	<p>is provided that those involved in handling sensitive science and technology permit applications shall be subject to confidentiality obligations, so as to avoid suspicions regarding the leakage of business opportunities arising from the application mechanism.</p>
<p>Article 9 Anyone who examines a permit application for sensitive science and technology may, in one of the following circumstances, recuse himself:</p> <ol style="list-style-type: none"> 1. The in-laws of the blood relatives or relatives three degrees removed for the person or his or her spouse, ex-spouse, parents, etc., or those who have had such relationship are the parties to the case. 2. The person or his or her spouse or former spouse have a relationship with the parties having a joint right holder or a joint obligor. 	<p>order to implement the principle of fairness, with reference to the provisions of Article 32 of the Administrative Procedure Act, it is necessary to clarify the circumstances for recusal for personnel who examine sensitive science and technology permit applications.</p>

<p>3. An agent or assistant who is or has been a party to the case.</p> <p>4. Was a witness and an expert for that case.</p>	
<p>Article 10 Anyone who examines a permit application for sensitive science and technology may, in one of the following circumstances, apply to the department in charge for recusal:</p> <ol style="list-style-type: none"> 1. There are situations as defined in the preceding article and no voluntary recusal. 2. There are specific facts, and it is enough to recognize that their administrative duties are abused. <p>If there is no voluntary recusal under the circumstances specified in the preceding paragraphs, and the parties do not apply for recusal, the department in charge shall order recusal under its authority.</p>	<p>th reference to the provisions of Paragraphs 1 and 5 of Article 33 of the Administrative Procedure Act, when the person who has examined the permit application for sensitive science and technology has a cause for recusal, the applicant's application shall stay clear of regulations of the department in charge ex officio in order implement the function of the recusal mechanism.</p>
<p>Article 11 Those in violation of the provisions of Article 5 and export or leak sensitive science and technology without permission shall be sentenced to fixed-term imprisonment of not more than seven years, criminal detention (拘役), or a fine of NT\$30 million [US\$1 million] or less.</p> <p>A representative of a legal person, a legal person or a natural person's agent, servant or other employee who commits the crime of the preceding paragraph for the execution of the business shall, in addition to penalizing the perpetrator, be fined for the legal person or the natural person. However, the legal person or natural person shall not be penalized if he or she made every effort to prevent the occurrence of the crime.</p>	<ol style="list-style-type: none"> 1. With reference to Article 119 of the Criminal Law and Article 27 of the Trade Law, the first paragraph clearly provides for penalties for the illegal export or disclosure of sensitive science and technology. <p>To supervise the legal person or natural person to perform due diligence and guidance to the employee or agent concerned, and to punish the legal person who commits the crime of carrying out the business for the second time, and to impose a fine on the legal person or natural person.</p>
<p>Article 12 Those who knowingly take action to benefit the governments, institutions, or representatives of other countries or regions and who commit the crimes under the preceding paragraph, or who intend to do so, shall be subject to increased punishment</p>	<p>king into account the legislative spirit and provisions of Article 183 of the U.S. Economic Espionage Act of 1996, it is stipulated that those who knowingly benefit foreign governments or entities and who violate the law to export or disclose sensitive</p>

<p>by one-half.</p>	<p>science and technology, or intend to, will have aggravated sentences.</p>
<p>Article 13 The government shall adopt management measures for sensitive science and technology; its regulatory measures shall conform to international norms.</p> <p>For the research and development of sensitive science and technology, the government shall grant subsidies; the subsidy rules are enacted by the central department in charge.</p>	<ol style="list-style-type: none"> 1. The first paragraph stipulates that the government should adopt regulatory measures for sensitive science and technology. The department in charge should formulate the basic principles of regulatory measures for the relevant authorities to participate in the establishment of the administrative mechanism. 2. Based on the principle of equity, the government should also support -- and support the development of -- sensitive science and technology that has a major impact on national security, in addition to controlling its disclosure, which is stipulated in the second paragraph. <p>The payment of the administration should be more appropriately authorized by the law. Therefore, in the second paragraph, the central department in charge shall formulate the subsidy rules.</p>
<p>Article 14 If a right holder discovers that his or her sensitive science and technology has been illegally infringed, which has caused any export or disclosure, he or she shall notify the relevant department in charge.</p>	<p>the sensitive science and technology are unlawfully infringed, the right holder shall be obliged to notify the relevant department in charge.</p>
<p>Article 15 In the event of illegal infringement of sensitive science and technology, when the technology is transferred or exported, the department in charge may coordinate with the relevant agencies to assist in the prevention of infringement and other measures.</p>	<p>levant agencies with similar goals may cooperate with the department in charge to assist in the necessary responses to unlawful infringement of sensitive science and technology, and to prevent subsequent possible damage in order to avoid further damages.</p>
<p>Article 16 In addition to the application of confidentiality measures in accordance with the provisions of the State Secrets Protection Law, sensitive scientific and technological related materials shall be kept confidential if they are not approved as state secrets; their confidentiality measures, decryption conditions and other measures of complying with the matter</p>	<p>sitive science and technology-related materials shall be kept confidential. Except for the provisions of the State Secrets Protection Law, if confidentiality is necessary even if no state secret is designated, confidentiality measures shall be established to facilitate compliance and to establish the authorization basis for the confidentiality measures.</p>

<p>shall be determined by the department in charge in consultation with the relevant target business.</p>	
<p>Article 17 The import and export of scientific and technological goods shall be handled in accordance with the Trade Law and other relevant laws and regulations.</p> <p>When the trade law and other relevant laws and regulations of the preceding paragraph are formulated or amended, the department in charge shall be consulted.</p>	<ol style="list-style-type: none"> 1. Existing regulations have full provisions for the import and export of scientific and technological goods. The first paragraph is still based on the Trade Law, the strategic high-tech import and export management measures, the implementation rules of the Trade Law, import management registration management methods, and regulations on import and export of optical disc manufacturing machines (光碟製造機), and other relevant regulations and methods. 2. The 2nd paragraph is provided for situations where relevant laws or regulations of the Trade Law are formulated, enacted or amended. In such cases, the department in charge of this Law shall be consulted to ensure that its legislative direction conforms to the sensitive science and technology protection policy. Thus, the second provision is made.
<p>Article 18 The implementation rules of this Law shall be prescribed by the central department in charge.</p>	<p>These provisions of this draft are related to the import and export business of domestic manufacturers' high-tech products. Details and enforcement matters are still necessary and should be supervised by the national legislature. The new implementation rules are formulated accordingly.</p>
<p>Article 19 The date of implementation of this Law shall be determined by the Executive Yuan.</p>	<p>Consideration should be given to the amendments to this Law, including the establishment of procedures for reviewing operations, promotion, seminars, etc. There should be a buffer period. Therefore, it is stipulated that the Executive Yuan should also determine the date of implementation.</p>