

# TRADE SECRETS: AN INTERNATIONAL PERSPECTIVE ON THEIR PROTECTION AND TIPS TO MITIGATE DISCLOSURE RISK

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There have been a number of recent prominent examples of the unauthorised use of trade secrets by employees or former employees of large businesses.

In November 2021, pharmaceutical giant Pfizer sued a 'soon to be former' employee for allegedly uploading more than 12,000 files, including 'confidential Pfizer documents' to a personal Google Drive account and to personal devices.

In March 2021, Apple sued its former materials lead, alleging that he had sold Apple's trade secrets to the media in exchange for favourable coverage of his new startup business.

These examples highlight two key points. First, action to protect trade secrets is often the only legal recourse available to protect a company's valuable intangible assets. Second, even companies as large and technologically-sophisticated as Pfizer and Apple - both presumably with state of the art procedures and policies for incoming and departing employees - are not immune from unauthorised disclosure of their trade secrets. It is a risk faced by all companies, large and small.

The extent and pace of collaboration, both between companies and between their employees, has accelerated in recent years, resulting in an increase in the exchange of information. The increasing digitisation of collaborative work efforts (particularly since the commencement of the COVID-19 pandemic) has also increased the speed and ease with which such information can be disseminated. In this climate, the protection of trade secrets is vital to businesses across a range of industry sectors.

In this article we outline what trade secrets are, before providing an international perspective on the approach to protection of trade secrets in Australia, the United Kingdom and the United States (U.S.). We also provide some [practical tips for managing trade secret risks](#).

## WHAT ARE TRADE SECRETS?

Trade secrets are a somewhat amorphous legal concept. They are generally recognised as a class of confidential information that is commercial in nature. A trade secret must be something more than a mere goal, purpose or possibility.<sup>1</sup> However, a novel way of achieving a goal or purpose may be a trade secret. To be classed as a trade secret, information must have some commercial value to the confider, such that its disclosure to a competitor would be liable to cause the confider real harm.<sup>2</sup>

*The Trade Secrets (Enforcement, etc.) Regulations 2018* (UK), which implement EU Directive 2016/943, define a trade secret as information which:

- *'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;*
- *Has commercial value because it is secret; and*
- *Has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.'*

While the law of breach of confidence protects a broad range of information (including trade secrets, personal confidences and government secrets), trade secrets are of particular value to businesses because of their commercial character.

Perhaps the two most famous examples of trade secrets are the recipe for Coca-Cola and the blend of eleven herbs and spices in Kentucky Fried Chicken. In legal jurisprudence, the classic example of a trade secret is a business' customer list.<sup>3</sup> However, pricing structures,<sup>4</sup> industrial manufacturing processes,<sup>5</sup> data concerning the manufacture, analysis, formulation, quality control, distribution and sales of drugs,<sup>6</sup> supply chain models,<sup>7</sup> software source code<sup>8</sup> and recipes for the preparation of food<sup>9</sup> have all been found by Courts to be capable of protection as trade secrets. In fact, trade secrets are an open-ended concept that could conceivably encompass all kinds of information.

Trade secrets regimes often pick up the 'gaps' left by other forms of intellectual property protection. For example, customer lists, to the extent they comprise raw data, are unlikely to be protected by copyright in most jurisdictions. Industrial manufacturing processes, while capable of patent protection, may be difficult to enforce under the patent system, particularly where the processes used by a competitor cannot be determined from their end products or other publically available information. Moreover, maintaining the confidence of such processes may provide a business with a longer period of exclusivity than the 20-year monopoly provided by the patent regime.

In other cases, trade secrets protection may supplement other forms of intellectual property. For example, the copying of a business' proprietary software by a former employee might amount to both an infringing reproduction of the copyright in the source code, as well as a breach of confidence, to the extent that the source code is confidential.

In practice, most businesses protect their intangible assets through a combination of trade secrets and other forms of intellectual property protection.

## PROTECTION OF TRADE SECRETS IN AUSTRALIA

There is no statutory regime for the protection of trade secrets in Australia. Instead, trade secrets are protected by the equitable doctrine of breach of confidence.

In order to succeed in an action for breach of confidence under Australian law, a plaintiff must show:<sup>10</sup>

1. That the information in question can be identified with specificity;

2. That the information has the necessary quality of confidentiality (and is not, for example, common or public knowledge, or properly considered the 'know-how' of an employee);
3. The information was received by the defendant in such circumstances as to import an obligation of confidence;
4. There has been an actual or threatened misuse of the information; and
5. That the misuse resulted (or will result) in the plaintiff suffering damage.

In relation to the third element, an obligation of confidence will arise where the recipient knew, or a reasonable person in the position of the recipient would have known, that the information was received by them in confidence.<sup>11</sup> The obligation also extends to information obtained incidentally or surreptitiously - that is, where the recipient knew or ought to have known that they should not have had the information at all.<sup>12</sup>

The circumstances imposing an obligation of confidence are a question of fact to be determined on a case-by-case basis.

### **The Springboard Doctrine**

Australian authorities have recognised a principle known as the 'springboard doctrine.' That is, a person who has received information in confidence is not allowed to use it as a 'springboard' to gain a competitive advantage over the person who provided the information, or to put themselves in a position more favourable than would have been achieved from the use of publically available information and the recipient's own independent skill and ingenuity.<sup>13</sup> Notably, even if a confidential solution is not used directly by the recipient, a breach of confidence will still arise if the knowledge of the confidential solution enabled the recipient to bring its own solution to market more quickly.<sup>14</sup>

The springboard doctrine frequently arises in a product development context and highlights the importance of implementing independent design processes and 'clean room' development environments (as discussed further below).

### **Know-How vs Trade Secrets**

There is an important distinction between 'know-how' acquired by an employee of the business, which they are entitled to use for advancement in their chosen career even after departing their employment, and the trade secrets of their (former) employer. While the latter is protectable in an action for breach of confidence, the former is not.

The distinction reflects the tension between the protection of intellectual property rights (in this case, an employer's confidential information) and the public interest in free and open competition and allowing employees to use their acquired skills and knowledge.

Courts have acknowledged that the distinction between know-how and trade secrets is somewhat elusive.<sup>15</sup> The test for separating the two is a little circular: a trade secret (as distinct from know-how) is information which may form part of an employee's stock of knowledge but which "a person of ordinary honesty and intelligence would recognise was the property of [their] old employer."<sup>16</sup>

The following factors may be helpful in distinguishing know-how from trade secrets:

- Information that an employee has learned and committed to memory in the ordinary course of their employment is more likely to be considered know how;<sup>17</sup>
- Conversely, information that is recorded in a written document (which is taken by the former employee to their new place of employment) is more likely to be considered a trade secret;<sup>18</sup>
- Information obtained surreptitiously will likely amount to a trade secret;<sup>19</sup>
- On the other hand, information that an employee has obtained in good faith in the course of their employment is more likely to be know-how;<sup>20</sup>
- Information that is complex, intricate, or took significant time and effort to independently ascertain is more likely to amount to a trade secret;
- By way of example, in *RLA Polymers Pty Ltd v Nexus Adhesives Pty Ltd* (2011) 280 ALR 125:
  - The types of ingredients used in the manufacture of a flooring adhesive (polymers, resin, a solvent, thickeners, fillers, biocide, pH adjusters and other additives) were found to be know-how;
  - By contrast, the specific brands of ingredients and the weights and relative percentages in which they were present in a particular product were found to constitute a trade secret.<sup>21</sup>

While Australian courts have recognised that businesses do have a legitimate interest in restricting the use of know-how imparted on their former employees, courts have held that this interest is more appropriately protected by contractual restraint of trade provisions, which are subject to geographic and temporal limitations, rather than under the law of breach of confidence.<sup>22</sup>

## Remedies

If successful in an action for breach of confidence, a plaintiff is entitled to damages, or alternatively an account of profits and injunctive relief - for example, orders restricting the defendant's use of confidential information.

In Australia, courts typically grant final injunctive relief to a successful litigant as a matter of course. Unlike other jurisdictions, there are no additional thresholds that a plaintiff must cross to obtain such relief - such as establishing that the proposed injunction would not have any unduly anti-competitive effects or otherwise hurt the public interest.

Trade secrets may also be protected contractually - for example through confidentiality provisions in employment agreements, collaboration agreements or non-disclosure agreements. Where this occurs, the confider of the trade secrets will have an action for breach of contract, in addition to any underlying action for breach of confidence in equity.

## Limitation Period

As an equitable cause of action, breach of confidence is not subject to an express limitation period in most Australian jurisdictions.<sup>23</sup> However, in practice, courts may apply the limitation period of an analogous cause of action<sup>24</sup> - for example, the 6-year limitation period applicable to claims in tort or for breach of contract.<sup>25</sup>

## PROTECTION OF TRADE SECRETS IN THE UNITED KINGDOM

In the UK, there are two parallel regimes which exist to protect trade secrets, namely:

- The equitable doctrine of breach of confidence (which is generally aligned with the law in Australia discussed above); and
- The Trade Secrets Regulations, which implemented the EU Trade Secrets Directive in the UK in 2018.<sup>26</sup>

There is a large degree of crossover between the Trade Secrets Regulations and the common law of breach of confidence in the UK. However, the Trade Secrets Regulations explicitly confirm that where wider protection exists under UK law, an owner of trade secrets can rely on those additional protections.<sup>27</sup>

Under the Trade Secrets Regulations, trade secrets are infringed through unlawful acquisition, use or disclosure.<sup>28</sup> It is noteworthy that each of the three acts alone can give rise to an infringement and as such it is possible for an infringement to occur even if the trade secrets were acquired lawfully if their subsequent use or disclosure would be unlawful.

The court may grant all the usual remedies available to a UK court in response to an infringement of the Trade Secrets Regulations, including monetary damages.<sup>29</sup> The Trade Secrets Regulations also specifically mention interim and final measures.<sup>30</sup>

Interim measures include orders for:

- The cessation of, or (as the case may be) the prohibition of, the use or disclosure of the trade secret on a provisional basis;
- The prohibition of the production, offering, placing on the market or use of infringing goods, or the importation, export or storage of infringing goods for those purposes; and
- The seizure or delivery up of the suspected infringing goods, including imported goods, so as to prevent the goods entering into, or circulating on, the market.

Under the Trade Secrets Regulations, 'infringing goods' are goods, the design, functioning, production process, marketing, or a characteristic of which significantly benefits from a trade secret unlawfully acquired, used or disclosed.<sup>31</sup>

Interim measures can be sought through *ex parte* hearings but in England and Wales they will only be granted in exceptional cases, such as if there is a real concern that the infringer may seek to dispose of evidence.

Final measures include orders for:

- The cessation of, or (as the case may be) the prohibition of, the use or disclosure of the trade secret;
- The prohibition of the production, offering, placing on the market or use of infringing goods, or the importation, export or storage of infringing goods for those purposes;
- The adoption of corrective measures with regard to infringing goods, including where appropriate: (i) recall of the infringing goods from the market; (ii) depriving the infringing goods of their infringing quality; and (iii) destruction of the infringing goods or their withdrawal from the market, provided that the withdrawal does not undermine the protection of the trade secret in question; and

- The destruction of all or part of any document, object, material, substance or electronic file containing or embodying the trade secret, or where appropriate, the delivery up to the applicant of all or part of that document, object, material, substance or electronic file.

An injured party can also seek a monetary award under the Trade Secrets Regulations if the infringer knew or ought to have known that unlawful acquisition, use or disclosure of a trade secret was being engaged in.<sup>32</sup> The monetary damages will be appropriate to the actual prejudice suffered as a result of the unlawful acquisition, use or disclosure of the trade secret. The court will consider the negative economic consequences, including any lost profits, which the trade secret holder has suffered, and any unfair profits made by the infringer, and elements other than economic factors, including the moral prejudice caused to the trade secret holder by the unlawful acquisition, use or disclosure of the trade secret.<sup>33</sup>

However, any monetary compensation must not exceed the amount of royalties or fees which would have been due, had the infringer obtained a licence to use the trade secret in question.<sup>34</sup>

Under the Trade Secrets Regulations, there is a 6-year limitation period in England, whilst there is no such limitation for an action for equitable breach of confidence.<sup>35</sup>

## **PROTECTION OF TRADE SECRETS IN THE U.S.**

Until recently, trade secret protection in the U.S. was primarily provided by state courts under state law. However, in May 2016, the U.S. federal government passed the Defend Trade Secrets Act of 2016 (DTSA), which gives businesses recourse to pursue damages for trade secret misappropriation at the federal level.

## **WHAT IS A TRADE SECRET IN THE U.S.?**

Under the DTSA, a “trade secret” means “all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing.”<sup>36</sup> It is important to note that even though information may fall squarely within one of the enumerated forms or types of trade secrets, this does not automatically afford the information protection as a trade secret. For example, “a customer list of readily ascertainable names and addresses will not be protected as a trade secret.”<sup>37</sup> Further, companies must “derive independent economic value, actual or potential, from the information not being generally known to another person who can obtain economic value from the disclosure or use of the information.”<sup>38</sup> This means, for example, a customer list that is sufficiently “secret,” yet fails to hold economic value may not be protected as a trade secret.

The trade secret owner must also “take reasonable measures to keep such information secret.”<sup>39</sup> Determining what constitutes a reasonable measure is a delicate balance between the costs of the precaution and the benefits, because obtaining economic benefit from a trade secret requires, at times, select disclosure of that trade secret.<sup>40</sup> As explained in *Rockwell Graphic*, which concerned part drawings used to manufacture replacement parts:

On the one hand, the more the owner of the trade secret spends on preventing the secret from leaking out, the more he demonstrates that the secret has real value deserving of legal protection, that he really was hurt as a



result of the misappropriation of it, and that there really was misappropriation. On the other hand, the more he spends, the higher his costs. The costs can be indirect as well as direct. The more Rockwell restricts access to its drawings, either by its engineers or by the vendors, the harder it will be for either group to do the work expected of it. Suppose Rockwell forbids any copying of its drawings. Then a team of engineers would have to share a single drawing, perhaps by passing it around or by working in the same room, huddled over the drawing. And how would a vendor be able to make a piece part—would Rockwell have to bring all that work in house? Such reconfigurations of patterns of work and production are far from costless; and therefore perfect security is not optimum security.<sup>41</sup>

After balancing the appropriate factors and deciding whether information should be treated as a trade secret, companies are responsible for policing the use and disclosure of their trade secrets.

## HOW DO YOU PROTECT A TRADE SECRET IN THE U.S.?

The DTSA defines “misappropriation” of a trade secret in two different ways. First, misappropriation can be the “acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means.”<sup>42</sup> Second, misappropriation can also mean that, without consent, the trade secret was disclosed or used by a person who:

6. Used improper means to acquire knowledge of the trade secret;
7. Knew or had reason to know at the time of disclosure or use that the trade secret was acquired by improper means; or
8. Knew or had reason to know before a material change in position that the trade secret is a trade secret and was acquired by accident or mistake.<sup>43</sup>

To protect a trade secret under the DTSA, a trade secret owner may sue a person allegedly misappropriating a trade secret in a civil action in federal district court. However, in order for trade secret owners to have a chance at a suitable remedy, they must be diligent and timely in filing a complaint because the DTSA sets forth a statute of limitations prohibiting recovery for misappropriation later than “3 years after the date on which the misappropriation with respect to which the action would relate is discovered or by the exercise of reasonable diligence should have been discovered.”<sup>44</sup>

If within the statute of limitations period, a company determines that it owns a trade secret and suspects that the trade secret has been misappropriated, the DTSA affords three explicit methods of recovery.

First, the Attorney General may pursue injunctive relief or the trade secret owner can seek injunctive relief with the court.<sup>45</sup>

Second, the DTSA allows for civil seizure of “property necessary to prevent the propagation or dissemination of the trade secret that is the subject of the [civil] action.”<sup>46</sup> The civil seizure remedy is based on the premise that “an immediate and irreparable injury will occur if such seizure is not ordered [and] the harm to the applicant of denying the application [for seizure] outweighs the harm to the legitimate interests of the person against whom seizure would be ordered of granting the application and substantially outweighs the harm to any third parties who may be harmed by such seizure.”<sup>47</sup>

Lastly, the DTSA provides pecuniary remedies traditionally sought defending intellectual property rights, such as patent rights in patent litigation. A damages award may include actual loss, unjust enrichment, and has a potential for reasonable royalties in lieu of other monetary damages.<sup>48</sup> In extraordinary circumstances in which the trade secret is willfully and maliciously misappropriated, a court may award exemplary damages in an amount not more than two times the amount of the damages awarded for actual loss, unjust enrichment, or per reasonable royalty.<sup>49</sup>

## EXAMPLES AND CASE STUDIES

### Pfizer

In November 2021, Pfizer filed a lawsuit against employee Chun Xiao Li, alleging she stole trade secrets relating to Cominarty, the company's COVID-19 vaccine, as well as avelumab and elranatamab - monoclonal antibody treatments for cancer. The Court documents alleged that Ms Li uploaded over 12,000 documents to a private Google Drive account, then resigned after the company began investigating her behaviour. According to Pfizer, Ms Li was intending to join a competitor, Xencor, following her resignation. Ms Li is also alleged to have presented a 'decoy laptop' for Pfizer's inspection, following her resignation. Shortly after proceedings were commenced, Pfizer and Ms Li reached an agreement whereby Pfizer's solicitors were permitted to review Ms Li's computers and online accounts for Pfizer's confidential information. Following the inspection, Pfizer and Li filed a joint motion to dismiss the case, without detailing reasons.

### Apple

In March 2021, Apple commenced proceedings against its former materials lead, Simon Lancaster, in the US District Court for the Northern District of California. According to Apple's complaint, Lancaster used his seniority to access sensitive documents outside the scope of his employment. These documents contained trade secrets of Apple relating to unreleased hardware, unannounced feature changes and future product announcements. Lancaster shared these trade secrets with a media correspondent, who then published them in a series of articles, citing a "source" at Apple. According to Apple, Lancaster did this to obtain favourable media coverage of a startup in which he was an investor.

Lancaster, for his part, denied abusing his position or disseminating Apple's trade secrets. Lancaster said that he communicated with a reporter regarding issues at Apple he considered to be of public concern.

Apple and Lancaster reached a settlement, which was approved by the Court in November 2022. As part of the settlement, Lancaster is required to pay an undisclosed sum to Apple and is restrained from disclosing, communicating, transferring, discussing, or using any confidential information of Apple without its authorization.

## FOOTNOTES

9. *Secton Pty Ltd (t/as BWN Industries) v Delawood Pty Ltd* (1991) 21 IPR 136; Halsbury's Laws of Australia [240-562]
10. *Lansing Linde Ltd v Kerr* [1991]; (1990) 21 IPR 529 at 536 per Staughton LJ
11. See, for example *Robb v Green* [1895] 2 QB 315; *NP Generations Pty Ltd v Feneley* (2001) 80 SASR 151 (regarding a list of details of owners of properties on the 'rental roll' of a real estate agency)



12. *Faccenda Chicken Ltd v Fowler* [1987] Ch 117 at 127
13. *RLA Polymers Pty Ltd v Nexus Adhesives Pty Ltd* (2011) 280 ALR 125 (the formulation of flooring adhesives - found to be protectable as trade secrets); *CF Commercial Plastics Ltd v Vincent* [1965] 1 QB 623 (manufacturing process of PVC sheeting - found to be 'know-how')
14. *Pfizer Pty Ltd & Department of Health, Housing & Community Services, Re* (1993) 30 ALD 647
15. *Woolworths Ltd v Olson* (2004) 184 FLR 121
16. *Cordover and Australian Electoral Commission* [2015] AATA 956
17. *Chenel Pty Ltd v Rayner* (1994) 28 IPR 638 (a recipe for the preparation of salad was found to be capable of constituting confidential information in an application for interlocutory relief)
18. *Smith Kline & French Laboratories (Aust) Ltd v Secretary, Dept of Community Services and Health* (1990) 95 ALR 87 at 102; *Optus Networks Pty Ltd v Telstra Corporation Ltd* (2010) 265 ALR 281
19. *Smith Kline & French Laboratories (Aust) Ltd v Secretary, Dept of Community Services and Health* (1990) 95 ALR 87 at 111 to 114
20. *Ibid*
21. See *Dart Industries Inc v David Bryar & Associates Pty Ltd* (1997) 38 IPR 389 at 408-409; *Sports Data Pty Ltd v Prozone Sports Australia* (2014) 316 ALR 475 at [126]; *RLA Polymers Pty Ltd v Nexus Adhesives Pty Ltd* (2011) 280 ALR 125 at [70] to [75]
22. See *RLA Polymers Pty Ltd v Nexus Adhesives Pty Ltd* (2011) 280 ALR 125 at [173]
23. See *Maggbury Pty Ltd v Hafele Australia Pty Ltd* (2001) 210 CLR 181 at [106]; *GlaxoSmithKline Australia Pty Ltd v Ritchie (No 2)* (2009) 22 VR 482 at [29]
24. *GlaxoSmithKline Australia Pty Ltd v Ritchie* (2008) 77 IPR 306 at [50]; *RLA Polymers Pty Ltd v Nexus Adhesives Pty Ltd* (2011) 280 ALR 125 at [59]
25. *Ormonoid Roofing & Asphalts Ltd v Bitumenoids Ltd* (1930) 31 SR (NSW) 347
26. *Ibid*
27. *Robb v Green* [1895] 2 QB 1 at 13; *Mid-City Skin Cancer & Laser Centre Pty Ltd v Zahedi-Anarak* (2006) 67 NSWLR 569 at [148]; *Smartways Logistics Holdings Pty Ltd v O'Sullivan* [2020] NSWSC 189 at [137]-[139]
28. *Ibid*
29. at [132]
30. See, for example, *GlaxoSmithKline Australia Pty Ltd v Ritchie (No 2)* (2009) 22 VR 482 at [29]
31. The exception being Western Australia - see *Limitation Act 2005* (WA) s 13, which prescribes a 6 year general limitation period that expressly applies to equitable causes of action. However, s 27 of the act displaces that provision if equity would apply another provision by analogy

32. See, for example, *Lewis Securities Ltd (In Liq) v Carter* [2018] NSWCA 118 at [29] to [36]
33. See *Limitation of Actions Act 1958* (Vic) s 5(a)
34. the *Trade Secrets (Enforcement, etc) Regulations 2018* (SI 2018/597) which implemented Directive (EU) 2016/943. Although the UK has now left the European Union, the Trade Secret Regulations remain in force
35. Regulation 3(2) of the Trade Secret Regulations
36. Regulation 3(1) of the Trade Secret Regulations
37. Regulations 3(2) and (3) of the Trade Secret Regulations
38. Regulation 11 and 14 of the Trade Secret Regulations
39. Regulation 2 of the Trade Secret Regulations
40. Regulation 17(1) of the Trade Secret Regulations
41. Regulation 17(3) of the Trade Secret Regulations
42. Regulation 16(2) of the Trade Secret Regulations
43. Section 36(1) Limitation Act 1980 (UK)
44. 18 U.S.C § 1839(3). The DTSA sought consistency with the Uniform Trade Secrets Act (“UTSA”) — the model law on which most states structure their trade secret misappropriation statutes
45. *Metallurgical Indus. Inc. v. Fourtek, Inc.*, 790 F.2d 1195, 1199 (5th Cir. 1986)
46. 18 U.S.C § 1839(3)(B)
47. 18 U.S.C § 1839(3)(A)
48. *Rockwell Graphic Sys., Inc. v. DEV Indus., Inc.*, 925 F.2d 174, 179 (7th Cir. 1991)
49. *Rockwell Graphic Sys., Inc. v. DEV Indus., Inc.*, 925 F.2d 174, 179–80 (7th Cir. 1991)
50. 18 U.S.C. § 1839(5)(A)
51. 18 U.S.C. § 1839(5)(B). The DTSA defines “improper means” to (A) include theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means; and (B) not include reverse engineering, independent derivation, or any other lawful means of acquisition.” 18 U.S.C. § 1839(6)
52. 18 U.S.C. § 1836(d)
53. 18 U.S.C. § 1836(a); 18 U.S.C. § 1836(b)(3)(A)
54. 18 U.S.C. § 1836(b)(2)(A)(i)
55. 18 U.S.C. § 1836(b)(2)(A)(ii)(II)–(III)
56. 18 U.S.C. § 1836(b)(3)(B)

57. 18 U.S.C. § 1836(b)(3)(C).

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