

# The Rio Tinto Case and China's Drive to Guard Secrets

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**I**n early July, Shanghai police arrested the general manager of Rio Tinto's iron ore operations in China, Hu Shitai (Stern Hu), and three of his colleagues on charges of "prying into China's state secrets." When the arrests were ratified two months later, the charges had been reduced to "the crime of violating business secrets." Despite foreign criticism of the arrests, it's undeniable that the evidence obtained from Rio Tinto's computers was substantial. It included a large amount of sensitive data on China's iron and steel industry, including turnover days for stocks of raw materials, the average cost of imported ore, the unit profit per ton of steel, the unit consumption of pig steel and other financial data. Also included were production plans, the proportions of the different ingredients in Chinese steelmaking and the companies' purchasing plans. With this information, Rio Tinto was able to defeat the collective negotiations of China's steel companies and force them to pay a much higher price for iron ore. The resulting economic damage was immense. According to authorized Chinese media reports and public data,<sup>1</sup> in the past six years Chinese steel compa-

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nies have overpaid RMB 700 billion due to near-extortionist prices for imported iron ore. This amount is more than double the entire profit of the Chinese steel industry during this period. In 2008, the revenue of economically developed Jiangsu province was RMB 273.1 billion (second only to Guangdong province); thus, to equal this RMB 700 billion overpayment, the 70 million people of Jiangsu province would have to work 2.5 years!

According to reports, Rio Tinto employees met with 16 representatives from iron and steel enterprises before negotiations with the China Iron and Steel Association (CISA). In addition, it often had “friendly contact” with the representatives and reportedly bribed some of them.<sup>2</sup> While the national economic security element of Rio Tinto’s actions are more severe, they are cut from the same cloth as recent bribery cases involving Lucent, Siemens and the Ministry of Commerce’s department head, Guo Jingyi, as well as low-priced exports of rare metals by some state-owned enterprises (SOE).<sup>3</sup> These are not individual cases, but merely the tip of the iceberg. These crimes reflect the “loss of control” in the supervision of SOEs. The harm done to national economic security and interests by the divulgence of such information is extremely great and in the end, is borne by state finances and consumers—all at a time when China is still struggling to raise the level of peoples’ livelihood.

#### A LEAKY BARREL OF SECRETS

During the long and arduous war era and the subsequent struggle to consolidate power, the Communist Party formed a tradition of secrecy, with particular emphasis on restricting political, military and diplomatic information. As China’s economy grew in the reform era, the government recognized the growing importance of economic and industry secrets and responded with the 1988 *Law for the Protection of State Secrets*. This law states that “the secrets of the developing national economy and society” are included in the protective scope of state secrets. In 1997, the Central Committee of the Communist Party further emphasized this sector with its decision on *The Strengthening of Protecting Secrets Under New Circumstances*, specifically requiring “the effective protection of state secrets in economic and technological and scientific areas.” The central government and various departments have since continued to formulate new stipulations and regulations on the scope of protecting economic secrets; however, these secrets have not received the importance and standing that they should have. While the rules were firmly put in place, the responsibility for oversight and enforcement was never clarified. The protection of secrets failed to follow the nation’s shift in focus to “guaranteeing security, guaranteeing development.”

Many of the problems related to oversight of sensitive economic data stem from the sweeping changes in China’s economy over the last thirty years. In the course of reform, economic regulating bodies were transformed into trade associations and their abilities to regulate and control key state enterprises were progressively weakened. The newly established State-owned Assets Supervision and Administration

Commission, which served as state capital financiers, mainly kept watch over the increase in interest on state capital. The department for protecting secrets (*baomiju*) lacked manpower and could only focus its energies on administrative units of the party and government and work units producing scientific research for the military. This left no resources to devote to SOEs, at a time when they were especially tempted to behave as “economic animals.”

Today, China still lacks a department with sufficient oversight authority over economic secrets, and individual enterprises do not recognize the economic value of restricting sensitive data. Those companies that do understand often fail to recognize what information should be protected and how to go about it. Thus, information that is already widely known outside of China and unnecessary to protect is restricted from the domestic media with a pretense of great seriousness. Meanwhile, extremely valuable confidential information related to industry and national economic security is regularly leaked to the outside world.

#### PLUGGING THE HOLES

As China’s economy will soon pass Japan’s to become the second largest in the world, the protection of trade sensitive data in the industrial pillars is becoming increasingly important to national security and the welfare of China’s citizens. In many ways, the protection of these secrets will have a greater effect on the average citizen than defense or diplomatic secrets. If, for instance, the price of imported iron ore rises suddenly, it will bring with it rises in the prices of products for which steel is an essential raw material. This includes cars, homes, personal electronics and even cooking utensils, along with a vast array of other products in related industries. The nation’s financial administration and the citizens will be left with the bill. If China leaves its enterprises to guard their own secrets and fend for themselves, these industries will collapse at the first blow. Therefore, it is important for the nation to recognize that economic secrets are a cornerstone of its overall competitive strength, and that the government should serve as the protectors and convoys of industry.

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*Economic secrets are the cornerstone of a nation’s competitive strength.*

Thus, China needs to redesign its laws and administrative responsibilities from the top levels for the protection of economic secrets. This can begin with the early institution of a Chinese *Economic Espionage Act*, which would increase supervision over the registration of foreign businesses and their agents, aid investigations into increasingly rampant economic espionage activities and increase the strength of punishments for violations. As for the *Guarding of Secrets Law* and the *Regulation on the Scope of Guarding Secrets*, which are currently being revised, on one hand, they should comply with the trend towards open information and eliminate the old, sweepingly broad prescriptions of confidentiality and the vague terminology that has compli-

cated operation in the past. They should reduce the scope of the guarding of secrets, implement a system for determining the need for confidentiality and prevent the abuse of the right to declare things secret. On the other hand, the law should be informed by the reality that all countries are increasing their ability to steal secrets while better protecting their own. Also, it should be noted that other countries' laws and penalties regarding the theft of sensitive data are becoming increasingly severe. Learning from the repeated failures of large SOEs' attempts at overseas mergers and acquisitions, the State-owned Assets Supervision and Administration Commission, Ministry of Commerce and industrial management departments (trade associations) should draw lessons from the vigilance with which Western countries' governments guard their national economic security and scrutinize foreign enterprises.

Those cases of economic espionage that do occur should be cracked and tried promptly, with punishment doled out and losses recovered as quickly as possible. Just as the United States and European countries do, China should maintain vigilance in counterespionage and guarding secrets, by investigating and prosecuting every offense, imposing heavy punishments and using public exposure. Like other leading economies, it should do these things without being too worried about the process becoming "politicized" or the possible "international repercussions." This approach can be seen in Western countries' so-called "espionage cases" involving scholars of Chinese descent and Chinese exchange students. With their insistence on national security and interests being paramount, **these countries think it is better to make erroneous arrests followed by apologies and compensation than lower their guard.**

It is the duty of the Bureau of State Secrets Protection to take the lead in coordinating the functions involved in carrying out the management work in guarding economic secrets. **In the case of the steel industry, it will be responsible for drawing cooperation from the numerous steel enterprises that have had their interests crushed by Rio Tinto. Across all key industries, it will be responsible for dividing and coordinating the work between related departments and creating specialized counterintelligence teams for SOEs. A lesson can be drawn from the tax administration's strategy of appointing personnel to oversee individual specific enterprises. This mechanism should enter into the economic territory of all professions' large, focal-point SOEs and carry out administrative tasks such as education, training and professional guidance, as well as supervisory tasks such as inspections, the appraisal of secrecy levels, the determination of criminal cases and the administration of penalties. When an enterprise divulges an important secret or secrets are stolen, in addition to the high-level management of the enterprise, the cadre's neglect or dereliction of duty in guarding the secrets should also be promptly investigated and punished. Only in this way can the importance of protecting secrets be brought to the public's attention and the risks of spying and secret stealing be cut to the lowest level.**

China has entered the high period of the international trade espionage war, with

the threat to important economic intelligence and national economic security steadily increasing. The Rio Tinto case has reflected the systemic flaws in China's protection of economic secrets. By placing greater official emphasis on the protection of secrets, encouraging SOEs to value such protection and implementing new legal measures, China can ease the threat it faces from international economic espionage. 🌐

## NOTES

- <sup>1</sup> Deng Yuwen, "What is Reflected by Rio Tinto Case?" *China Youth Daily*, July 7, 2009.
- <sup>2</sup> Huang Hui, "The Warning of the Rio Tinto Case," *Property Rights Guide*, no. 9 (2009).
- <sup>3</sup> "Business Bribery: Who Makes Multinational Corporations Crazy?" *Bandao Newspaper*, Sept. 1, 2009.