

# Tech Transfer for European SMEs in China

MATIAS ZUBIMENDI  
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**CHINA**  
IP SME HELPDESK





# China IPR SME Helpdesk

**ABOUT US**

# Helpdesk Free Services

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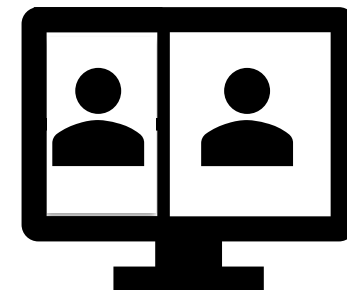


*https://ec.europa.eu/ip-helpdesk*

## Guides & Factsheets



## One-on-one Consultation Sessions



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WWW.CHINA-IPRHELPDESK.EU

## IP Factsheet: Mainland China



**1. THE FACTS: Business in Mainland China for EU Companies**  
Key INDUSTRY SECTORS

**2. IPR in Mainland China for SMEs: BACKGROUND**  
Intellectual Property Rights for SMEs: Why is this RELEVANT to you?  
How does Mainland China's IP legal framework compare to INTERNATIONAL STANDARDS?

**3. IP Rights in Mainland China THE BASICS**  
A. Copyright  
B. Patents  
C. Trade Marks  
D. Geographical Indications (GIs)  
E. Trade Secrets

**4. Using CUSTOMS to block counterfeits**

**5. Enforcing your IP**  
Administrative actions  
Civil Litigation  
Criminal Prosecution

**6. RELATED LINKS and Additional Information**

Co-funded by:  
  
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**1. THE FACTS: Business in Mainland China for EU Companies**  
(Source: DG Trade)



473.4  
299.9  
173.5

**SIZE of Market:**

- EU exports to Mainland China: EUR 173.5 billion
- EU imports from Mainland China: EUR 299.9 billion
- Total trade in goods: EUR 473.4 billion

› Mainland China is the EU's second largest trading partner, after the USA.  
› The EU is China's largest trading partner.

**Key INDUSTRY SECTORS:**

- › EU exports to Mainland China are dominated by machinery and equipment, motor vehicles, aircraft, and chemicals.
- › Mainland China's key export items to the EU include machinery and equipment, footwear and clothing, furniture and lamps, and toys.

# Protecting Your Trade Secrets in China

Prevention is the key to protection.



## WHAT EXACTLY CAN BE A TRADE SECRET

SOMETHING THAT

- 1 is not publicly known
- 2 has commercial value
- 3 you took measures to keep secret

expressions of ideas

know-hows, manufacturing or design techniques

status of products or services under development

valuable business information, lists, cost and price information

**TRADE SECRETS**

## KEEP IT SECRET, KEEP IT SAFE

It is important to remember that once trade secrets become publicly known, they can no longer be protected as trade secrets.



**CONFIDENTIAL**

### DON'T FORGET YOUR EMPLOYEES

- Limit access and copying rights to the personnel who actually need it.
- Require all employees to sign an employment agreement with strict confidentiality provisions.
- Be sure to hold exit-interviews and have them return documents, materials, computers, and files.
- Establish an internal management system for trade secrets. Training and clear written guidelines are essential.

## DEALING WITH THIRD PARTIES

Business dealings or negotiations with third parties, potential partners, suppliers, contractors, licensees, or customers

**monitor** your partners, suppliers or licensees to make sure they are complying with your trade secrets protection policy

<https://eu.europa.eu/ip-helpdesk>

# MATIAS ZUBIMENDI

## IP BUSINESS ADVISOR

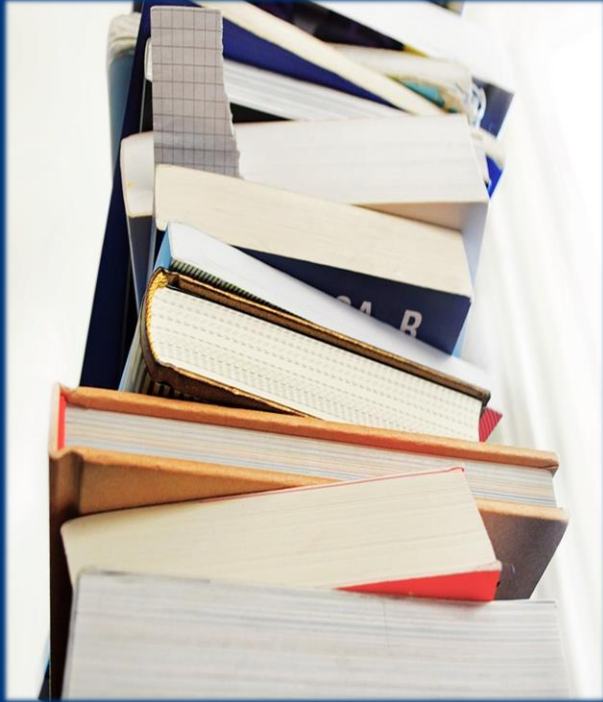
matias.zubimendi@china-iprhelpdesk.eu

Mr. Matias Zubimendi is the IP Business Advisor at China IP SME Helpdesk in Beijing, where he advises European SMEs on intellectual property rights matters.

Mr. Zubimendi holds a Master's degree in Chinese Civil and Commercial Law from Peking University and one Master's degree in Intellectual Property Law from Austral University. He has worked on IP-related matters in China and Latin America and is fluent in Spanish and English.

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# 01 | Intellectual Property Rights

## IPR Invention patents

- Innovative products
- Innovative processes

## IPR Utility models

Functional aspects of a product

## IPR Design patents

Aesthetic aspects of a product

## IPR Trade marks

Signs that distinguish products from competitors

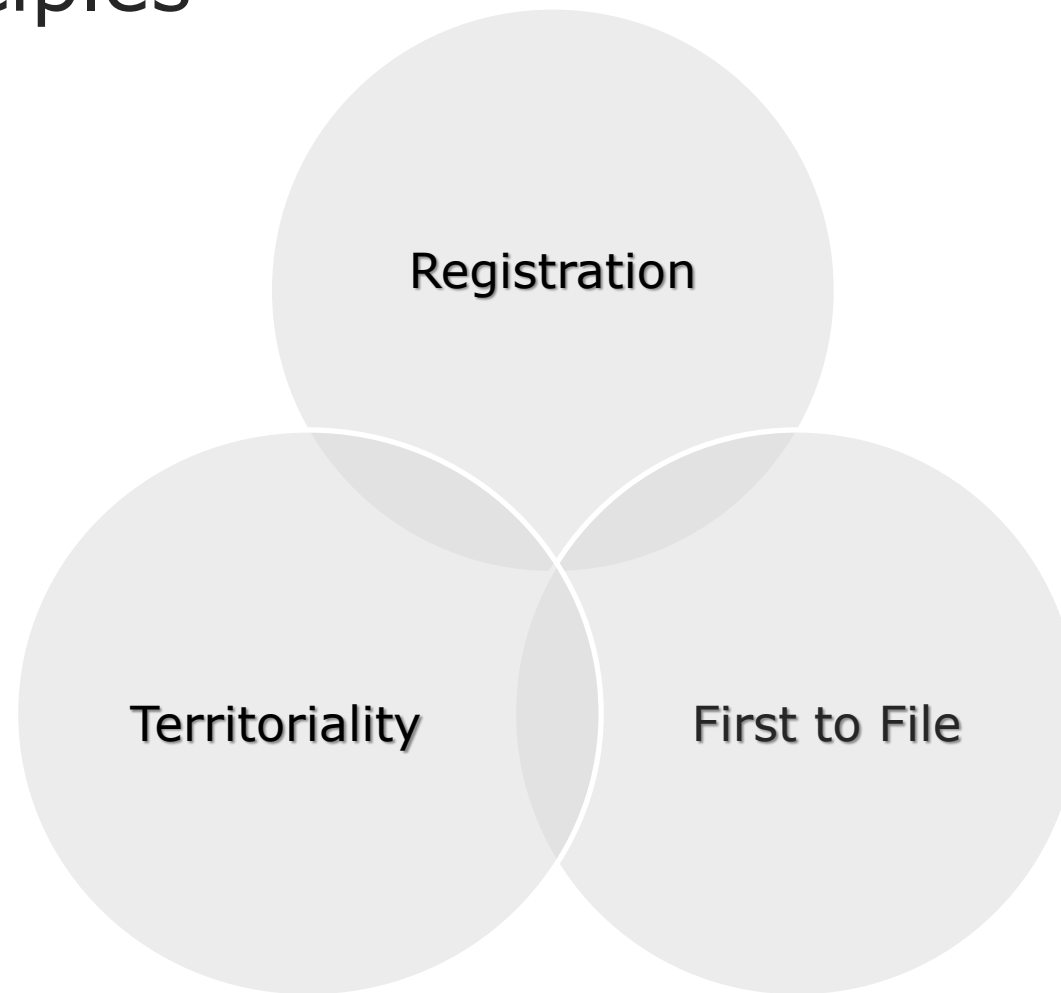
## IPR Copyright

Expression of an idea

## IPR Trade secret

Information that is not known by competitors, has commercial value and is kept protected

## 02 | Main principles





# 03

## Introduction to technology transfer

### – Basics



#### 3.1

#### Definition

- What exactly is technology transfer?
- What is being transferred?

#### 3.3

#### Types of technology

- Emerging technologies
- Innovative technologies
- Established technologies

#### 3.2

#### Ways technology is transferred

- Consulting
- Graduating students
- Collaborative research
- Patenting and licensing
- Service and outreach
- Spin-off companies
  - Joint Ventures

# 04

## Rules for technology transfer in China

- Relevant laws



### 4.1

#### Foreign Investment Law

- 2020

### 4.3

#### Regulation on the Administration of the Import and Export of Technologies (TIER) - 2019

### 4.2

#### New rules

- National treatment
- Investment protection
- Investment administration
- Legal liability

### 4.4

#### Company type modifications rules

- Wholly Foreign-owned Enterprises (WFOE)
- Joint Ventures (JV)

# 05

## Bureaucracy

– Avoid bureaucracy from stealing your IP

### 5.1

#### Technology Import and Export Catalogues

- Catalogue for Prohibited and Restricted Technology Imports
- Catalogue for Prohibited and Restricted Technology Exports

### 5.2

#### How can we classify the technologies?

- Freely importable
- Restricted
- Prohibited

### 5.3

#### Procedures to obtain permission



#### Check both Catalogues

- Do those Catalogues have the same content?
- What happens if I imported a technology and improved it, can I export it back?

# 05

## Bureaucracy – more in China



### 5.4

#### Negative Lists for Foreign Investment

- What are they?
- Does the content match the Import-Export Catalogues?

### 5.5

#### Types of foreign investments

- Free to invest
- Restricted
- Prohibited

### 5.6

#### Main concerns for SMEs

- What kind of restrictions?
- What happens if we tried to import a technology that is included in the Negative List?

### 5.7

#### Encouraged Industries Catalogue

- What is it?
- What kind of benefits does it bring?

# 06 | Study your business partner

## 6.1

### How to study a Chinese business partner?

- Meetings
- National Enterprise Credit Information Publicity System (NECIPS)
- Contact public institutions
- Embassies
- Chambers of Commerce

## 6.2

### What can I learn from NECIPS?

- Legal representative
- Capital
- Business type / scope
- Sanctions
- Shareholders



<http://www.gsxt.gov.cn/index.html>

# 07 | Trade Secrets

– Keep your secrets secret

## 7.1

### Requirements

- Non-public information
- Providing a competitive advantage
- Kept confidential by its holder



*If there is no registration, how do I transfer them?*

## 7.2

### Measures of protection

- Physical measures: clearly mark documents as confidential, introduce access restrictions and tracing systems
- Technology measures: Blockchain, encrypted communications
- Contractual measures: confidentiality agreements.
- Training the personnel
- Court injunctions

# 08

## Contracts

– Principal clauses of a Joint Venture



Nature of the relationship



Control issues and decision making



Company type and share



Improvements – ownership



Parties' contributions

- Employees
- Improvements done only by the Chinese side



Sharing

- Profits
- Liability
- Risks
- Taxes / fees

# 08

## Contracts

– Principal clauses of a license



### Territory

- Parallel exports



### Control

- Need of approval before sales/export
  - Quality/quantity control



### Duration



### Damages



### Content – licensed IPR

- Trade secret – Know-how



### Conflict resolution methods



### Royalties



### Return of documentation



# 08

## Contracts

– Principal clauses of a license agreement



### Limitations

- Improvements
- Sub-licenses – exclusivity
- No competence
- Reverse engineering



### Confidentiality

- NDA?
- NNN



*Tips for licenses*

*to sub-contractors*

*→ Modular production*

# 09

## Enforcement

- How to react efficiently?

### 9.1

I spotted an infringement, what should I do?

- Look for a lawyer
- Collect evidence
- Decide your jurisdiction

### 9.2

What are the possible jurisdictions?

- Regular commercial courts
- Internet courts
- Criminal courts

### 9.3

What should I analyse when choosing the jurisdiction?

- What do I want to achieve? Solve the problem or be compensated?
- How much money do I want to spend?
- How many infringers do I have?
- How much do I know about the infringer?
- How much evidence do I have?

### 9.4

I was contacted by a law firm already, should I go with them?

The price of not having a good lawyer

# 10 | Takeaway messages



- ✓ Register your IP in advance
- ✓ Protect your unregistered inventions with trade secrets
- ✓ Combine the different IPRs to protect your business



- ✓ Study your potential business partners
- ✓ Study the laws and bureaucracy involved in your sector
- ✓ Contact the public institutions to better understand the market



- ✓ Contact the China IP SME Helpdesk ***question@china-iprhelpdesk.eu***

Questions?

**HELPLINE**

*free, fast & confidential*

**3** <sup>working</sup>  
*days*

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Your feedback is very valuable info for us.

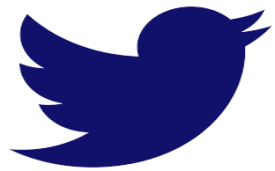
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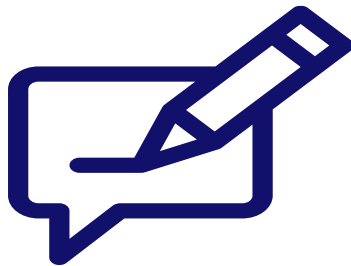
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