China IP SME Helpdesk

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IP Factsheet: Mainland China

1. THE FACTS: Business in Mainland China for EU Companies

SIZE OF MARKET

- EU exports to Mainland China EU 175.5 billion
- EU imports from Mainland China EU 179 billion
- Mainland China is the EU's 5th 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 machines and equipment, motor vehicles, aircraft, and chemicals.
- Mainland China key export items to the EU include machinery and equipment, textiles and clothing, furniture and lamps, and food.

Protecting Your Trade Secrets in China

Prevention is the key to protection.

KEEP IT SECRET, KEEP IT SAFE
It is important to remember that once trade secrets become public is known, they can no longer be protected as trade secrets.

TRADE SECRETS
- Confidentiality
- Efficiency
- Development

DEALING WITH THIRD PARTIES
Business dealings with third parties, potential partners, existing customers, or new customers require due diligence throughout the business relationship.


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Mr. Matias Zubimendi is the IP Business Advisor at China IP SME Helpdesk, 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 as well as a Master’s degree in Intellectual Property Law from Austral University in cooperation with the World Intellectual Property Organisation. Mr. Zubimendi has a strong background in both business development and intellectual property rights protection, having previously worked as a China Business and Legal Consultant at Terragene, where he focused on business development and as a Director of Legal Affairs at Conquer Europe. Previously, he has also worked as a Patent and Trademark Attorney at Phoebus Abogados and Mazzeo & Canet, where he represented SMEs as well as Fortune 500 companies.

Mr. Zubimendi has given lectures at various conferences including the Ibero-American Conference on Chinese Studies and published several articles including *The legal protection of intangibles in the video games industry*. As a Professor Assistant, he has also given lectures on Commercial Law and Procedural law, while focusing on Copyright and AI in his research. Mr. Zubimendi is a native Spanish speaker fluent in English.
Geographical Indications
in China

- Matias Zubimendi
29 September 2021

Picture from global.chinadaily.com.cn
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Main principles

- Registration
- Territoriality
- First to File
Geographical indications
- Basics

What is a GI
- Agricultural products
- Foodstuffs
- Wines and spirits
- Handicrafts
- Industrial products

How it is shown?

Why are they protected?
- Quality & origin of products
- Good reputation
- Preventing from generic products
- Preventing from local competitors
Types of protection methods
- Worldwide and China

GI PROTECTION

**Marks**
- Collective marks
- Certification marks

**Business practices**

**Sui generis**
Types of protection methods

- European Union

GI PROTECTION

Protected designation of origin (PDO)

Protected geographical indication (PGI)

Traditional speciality guaranteed (TSG)
Requirements of GIs

Non-legal
- Identified quality – characteristics
- Quality – characteristics should be given by the origin
- Production is done in place of origin

Legal (China)
- Recognition in the country of origin
- Not prohibited by law (draft)
- Local recognition
GI protection in China

- Types of protection

Who can apply?

- GI organisation that regulates the GI in that country of origin
- Embassies?

Types of protection

- Collective trade marks
- Certification mark
- Product Quality and Characteristics Marking

Product Quality and Characteristics Marking

Cover products that originate from a particular geographical region with the quality, reputation or other characteristics substantially attributable to the natural and human factors of the region, and denominated with the name of the region upon examination and approval.
GI protection in China
- Types of protection

Collective trade marks

A sign registered in the name of bodies, associations or other organisations, which can be used by the organisation’s members to indicate their membership.

Certification marks

A sign controlled by organisations capable of supervising goods or services and used by entities or individual persons outside the organisation for their goods or services to certify the origin, material, mode of manufacture, quality or other characteristics of the goods or services.
What information will be requested?

- Product name.
- Scope of production area.
- Product description.
- Quality requirements, including quality characteristics such as production and processing technology and sensory, physical and chemical indicators.
- Description of the relevance between product quality characteristics and natural and human factors of the place of origin.
- Information on the local intellectual property management department as the management agency for the use of GIs.
- Information on testing institutions.
Application
- Overview of the steps (draft)

A. GI passes

A.1. Publication for oppositions

A.1.a No oppositions

A.1.b Oppositions

Substantial examination

Opposition should be solved (litigation)

Granted

Not granted

Appeal

B. GI does not pass

Appeal

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Prohibitions
- Non registrable GIs

**REASONS**

- The product or product name violates the law, social ethics or interferes with the public interest.
- The product name is only the generic name of the product.
- The product name is a registered trademark or an unregistered well-known trademark of others, which misleads the public.
- The product name is the same as the product name of the protected geographical indication, causing the public to misunderstand the geographical origin of the product.
- The name of the product is the same as the name of a plant variety or animal breeding, causing the public to misunderstand the geographic origin of the product.
- The product violates the requirements of safety, hygiene, or environmental protection and may cause harm to the environment, ecology, and resources.
- The protection of foreign geographical indication products has been revoked in the country or region to which it belongs.
Enforcing GIs
- GI protection in practice

Infringement
• GI clearly visible
• Style – “Style champagne”
• Reference – “Chinese champagne”
• GI in foreign language

Evidence collection
• Online
• Offline

Steps
• Monitoring
• Evidence collection
• Enforcement

Jurisdictions
• Administrative
• Litigation / arbitration
• Customs
EU – China Agreement on Geographical Indications

- Basics

GIs protected

- Automatic protection
  100 EU – 100 China
- Future protection (need registration process)
  175 EU – 175 China

GIs vs trade marks

Prohibition of the registration of a trade mark which consists of a geographical indication or its translation or transcription

Scope of protection

- Indicates or suggests that the goods in question originate in a geographical area.
- Use of a geographical indication identifying an identical or similar product.
- Wholly or partially homonymous geographical indications
- Expressions such as "kind", "type", "style", "imitation"
EU – China Agreement on Geographical Indications

- Danger

US – China agreement

- No protection to already registered trade marks
- No protection to generic terms

Second round of EU trade marks

- Registration process
- Can be invalidated by the laws

Which agreement will prevail?
Questions?

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Your feedback is very valuable info for us.
We appreciate if you could share your comments with us.