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## IP Factsheet: Mainland China

**CHINA IPR  
SME HELPDESK**



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## 1

● THE FACTS: Business in Mainland China for EU Companies (Source: [DG Trade](#))**SIZE of Market :**

- EU exports to Mainland China: EUR 210 billion
  - EU imports from Mainland China: EUR 394 billion
  - Total trade in goods: **EUR 604 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.



## IP TIPS and WATCH-OUTS in Mainland China

- IP laws are territorial, meaning that IP is enforceable in China only upon valid domestic registration.
- China applies a 'first-to-file system' for IP registrations meaning that the first entity or individual who registers rights to an innovation or creation will hold those rights, irrelevant of the original user.
- There are several key differences between Chinese and European IP laws that are important to understand in order to efficiently manage your intellectual property in China. To find out more see our ['Guide on Intellectual Property Systems: China/Europe Comparison'](#).

## 2. IPR in Mainland China for SMEs: BACKGROUND

### Intellectual Property Rights for SMEs: Why is this RELEVANT to you?

Intellectual Property (IP), as an intangible asset, is a key factor in the competitiveness of your business in the global economy. IP is a primary method for securing a return on investment in innovation and is particularly relevant to Small and Medium-sized Enterprises (SMEs) as they internationalise their business to areas such as Mainland China. Although SMEs often have limited time and resources, it is important to be aware of how IP can be valuable to your business. Not only a way to help you protect your innovations from competitors, IP assets can also be an important source of cash-flow for SMEs through licensing deals or IP sales, as well as a significant pull-factor when attracting investors.

SMEs are businesses which have fewer than 250 employees and turnover of less than EUR 50 million or balance sheet total of less than EUR 43 million.

SMEs represent 99% of all enterprises in the EU, and account for about 70% of jobs. Their flexibility and growth potential is seen as a major motor of future innovation and job creation, which is pivotal for the prosperity and economic competitiveness of Europe as a whole.

IPR infringement is one of the most common concerns for businesses when dealing with countries across Asia, and its impact on your company could be substantial. It can lead to loss of business, revenue, reputation and competitive advantage, which affects SMEs both abroad and in their core domestic markets.

### **How does Mainland China's IP legal framework compare to INTERNATIONAL STANDARDS?**

Following entry into the World Trade Organisation (WTO) in 2001, China has developed a comprehensive system

of IP laws that generally match international standards. In addition, China is also party to major international agreements regarding intellectual property rights, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Paris Convention for the Protection of Industrial Property, and the Madrid Protocol concerning the international registration of marks, among others.



## **3. IP Rights in Mainland China THE BASICS**

### **A. Copyrights**

#### **WHAT are Copyrights?**

Copyright is a right enjoyed by the author or creator of an original work, his/her successors or assigned licensees. It includes 'moral rights' which are personal and cannot be waived, licensed or transferred, and 'economic rights' which give you the exclusive right to exploit the work for economic gain, including the right to reproduce, distribute, perform and use other means to exploit the work. Copyright protects only the tangible expression of an idea (a 'work'), not the idea itself.

#### **Copyrights in Mainland China: What you need to know**

Most types of creative works protectable by copyright in Europe are protectable by copyright in China. Traditional types of creative works such as books, music, recordings, plays, films, physical art works, etc., enjoy copyright protection in China. Other works such as works of choreography, acrobatics, calligraphy, quyi (a traditional Chinese performance art form), and databases also enjoy copyright protection in China. The basic principle for copyright eligibility is that the work be original and reproducible. Industrial and graphic designs, software, applied art, architectural designs can also be protected by copyright.

Copyright can form an important part of IP protection strategies, both as a main protection for content, and as a supplementary tool to enforce alongside other IP rights, such as design patents or trademarks.

It is also important to determine the ownership of the copyright of a work. Unless stated otherwise in a contract,

the rights will be held by the creator (determined by the name on the work) of the work rather than the employer.

#### **How LONG does legal protection in last?**

Copyright is an automatic right in China that arises as soon as an original work is created and in most cases even when a work has been created outside of China. The period of protection for the moral right of publication and economic rights, or the right to exploit the work for economic gain, is generally 50 years from the date of creation or publication, or in the case of individuals, the lifetime of the author plus 50 years. The protection period for all other moral rights such as the right of attribution of authorship, the right of publication of the work to the public, the right to alter the work, and the right to preserve the integrity of the work lasts forever.

#### **HOW do I register?**

There is no requirement to register a copyright in order for it to be enforceable in China; however, the enforcement process is made much easier with a registered copyright and therefore voluntary registration of copyrights to valuable works in the system is recommended.

#### **Application**

Copyright registration in China is administered by the Copyright Protection Centre of China (CPCC). Applicants must complete the copyright registration application form and send the application materials to CPCC. The CPCC will then review the application materials, determine the application fee, and notify the applicant. After the applicant pays the fee, they will receive a notice of receipt of payment and notice of application acceptance. Once accepted, the examination takes approximately





30 working days to complete, at which time a Copyright Registration Certificate is issued.

An applicant may create a user account on <http://www.ccopyright.com.cn>, complete the copyright registration application form online, then print and sign/seal the form. Applicants must submit by mail the completed application form, the identification documents of the applicant, any documents of copyright ownership such as commission, succession, license, or assignment agreements, samples of the work, and a brief description of the work to the CPCC. The brief description of the work should describe the creative intent embodied in the work, the process by which the work was created, that the work is original, able to be reproduced, and meets the legal requirements of a protectable tangible expression.

Applications for copyright registration are usually completed within 30 working days after the CPCC accepts the application or if supplemental materials are required, within 30 days of receipt of the supplemental materials. However, registration may be delayed if registration fees are not paid within 10 days of receipt of the notice for payment.

Applications shall be filed at the **Copyright Protection Centre of China:**

Address: 3F, West Block, Yonghe Plaza, No. 28, Andingmen East Street, Dongcheng District, Beijing, China (10007)

Tel: (8610) 68003887

Fax: (8610) 68003945

Website: [www.ccopyright.com](http://www.ccopyright.com)

#### **WHO can register?**

The author of the work, either as a legal entity (i.e. a company) or an individual. Copyright holders may apply

directly for copyright registration or entrust an agent to apply on their behalf. Foreign companies with no legal presence in China must register through an agent. Where an agent is used, the agent must additionally submit his or her identification documents and a power of attorney from the copyright holder.

#### **Which LANGUAGES can I use?**

Applications must be filed in Mandarin Chinese.

#### **How much does it COST?**

Registration application fees vary depending on the type of work. There are separate fees for changes, amendments, cancellations, additional certificates, etc. There are no periodic fees for maintaining a copyright registration. The fees shown in the chart below are official fees. Agents will charge additional agency fees.



Type of work	Fees (RMB) per work	Notes
Written, oral work	100 for 100 words or less 150 for 100-5,000 words 200 for 5,001-10,000 words 300 for more than 10,000 words	Series of works in consultation
Music	300 for lyrics 200 for songs	100 for each additional work for serial works
Dramatic works, dance works, acrobatic works, works of art, photographs	300	100 for each additional work for serial works
Engineering designs, product designs, maps, schematic diagrams, model works	500	100 for each additional work for serial works
Architectural works	1,500	100 for each additional work for serial works
Filmography	2,000	100 for each additional work for serial works
Work created in a way similar to cinematography	200 for ultra-short <1 minute 300 for 1-5 minutes 400 for 5-10 minutes 800 for 10-25 minutes 1,000 for 25-45 minutes 2,000 for more than 45 minutes 100 / TV series	50 for each additional work for serial works 50 for each additional work for serial works 100 for each additional work for serial works 200 for each additional work for serial works 300 for each additional work for serial works 400 for each additional work for serial works
Compilations (including multimedia compilations)	2,000	100 for each additional work for serial works
Computer software - archive fee for source code	250 per software 120 for 100 pages of code	2 for each additional page over 100
Other works	2,000	100 for each additional work for serial works



### Copyrights WATCH-OUTS in Mainland China

Although copyright is an automatic right in China, recordal of copyright can provide valuable proof of ownership which is useful in settling disputes efficiently, especially in the case of infringement on e-commerce platforms. Therefore we recommend registering your valuable copyrights.





## B. Patents

### WHAT are Patents?

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. A patent prevents an invention from being commercially made, used, distributed or sold without the patent owner's consent. The patent system in Mainland China includes the following kinds: invention patents, Utility Models (UMs) and design patents.

**Patents in Mainland China: What you need to know**  
Chinese patent law covers three distinct areas:

#### a) Invention Patents

An invention patent is granted for new technical solutions or improvements to a product or process, provided that the technical solutions have a practical applicability. To be patentable an invention must be 'novel' and must not have been previously patented or disclosed to the public overseas or in China (except for within 12 months in a country which is a member of the Paris Convention, see below).

#### b) Utility Model Patents

UMs are very similar to invention patents, though UMs only protect products with new shape or structural physical features. Additionally UMs are only subject to a simple formal examination of the application before being approved. On the other hand invention patents must pass the far more rigorous 'substantive examination' which questions the novelty and proposed application of the technology. This means that UMs are granted more quickly but the term of protection is shorter. A common practice under the Chinese system is the parallel filing of a UM and an invention patent, followed by the abandonment of the UM once the invention patent is officially granted. This way, the applicant can benefit from the earlier patent protection granted by the UM, as well as the longer term protection granted by the invention patent (once eventually approved). These parallel applications must be filed on the same day, and both must be accompanied by a declaration that a parallel filing was made. However, because the grounds for invalidation for invention patents and UMs are the same if an invention patent is found to be invalid, the corresponding UM will be invalid as well. To see more on the comparison between UMs and invention patents see our 'Guide on Patent Protection in China'.

#### c) Design Patents

An application for a design patent includes any of the following external features of a product: i) the shape of a product; ii) the pattern of a product; iii) the shape and pattern of a product; iv) the shape and colour of a product; v) the shape, pattern and colour thereof.

#### How LONG does legal protection last?

Invention patents are valid for 20 years and are normally granted within 3 to 5 years. UM and design patents are both valid for 10 years and normally granted within 1 year.

Note that protection starts from the date of publication of the grant in the Patent Gazette and not from the application date.

#### HOW do I register?

There are three ways to file a patent:

- File a patent application in China directly with the China National Intellectual Property Administration (CNIPA). Foreign applicants must use a local patent agency to handle the filing of a patent. Foreign Invested Enterprises (FIE) however, can apply for patents in China without an attorney but this is not generally recommended.
- File a patent application first in a foreign country (must be a Member State of the Paris Convention, such as EU countries), and then file a patent application in China within 12 months for invention patents and UMs, and 6 months for designs, claiming the priority date of the first application.
- File a patent application under the Patent Cooperation Treaty (PCT), selecting China as one of the designated states. A PCT application can be filed with the European Patent Office (EPO) or any national patent office within the EU. The applicant then has to initiate the 'national phase', i.e. the procedure with CNIPA, no later than 30 months from the priority date.

Applications shall be filed with the **China National Intellectual Property Administration**:

Address: 6 Xi Tu Cheng Road, Ji Men Bridge,  
Hai Dian District, Beijing, China  
Telephone: (86-10) 62 01 32 76 (general);  
(86-10) 62 08 55 77 (PCT matters)  
Fax: (86-10) 62 01 96 15 (general);  
(86-10) 62 01 94 51 (PCT matters)  
Website: <http://english.cnipa.gov.cn/>

**WHO can register?**

Both legal entities and individuals can file a patent application. A foreign company with legal presence in China can apply directly while foreign companies without legal address can file via a patent agent.

**Which LANGUAGES can I use?**

The applications must be filed in written or electronic form in Chinese.

**How much does it COST?**

Patent filings include filing fees and annuity payments (annual fee paid to CNIPA), plus additional costs for patent agents or attorneys.

The administrative costs to be paid to CNIPA are:

**Filing fees**

	Application fee (RMB)	Examination fee (RMB)	Surcharge (RMB)
<b>Invention Patent</b>	900	2,500	Surcharge for claims in excess of 10: 150 (per claim) Surcharge for specification in excess of 30 pages: 50 (per page) Surcharge for specification in excess of 300 pages: 100 (per page)
<b>Utility Model</b>	500	No	Surcharge for claims in excess of 10: 150 (per claim) Surcharge for specification in excess of 30 pages: 50 (per page) Surcharge for specification in excess of 300 pages: 100 (per page)
<b>Design Patent</b>	500	No	Surcharge for claims in excess of 10: 150 (per claim) Surcharge for specification in excess of 30 pages: 50 (per page) Surcharge for specification in excess of 300 pages: 100 (per page)

**Annuity payments**

Annuity payments must be made to the CNIPA within a month before the anniversary of the grant of the patent. For invention patents, if they have not been granted by the end of the second year of application then a maintenance fee must be paid in the third and subsequent years until the patent is granted. The following table provides a guide to the amounts required for annuity payments for invention patents:

Year	1-3	4-6	7-9	10-12	13-15	16-20
<b>Invention (RMB)</b>	900	1,200	2,000	4,000	6,000	8,000

The following table provides a guide to the amounts required for annuity payments for UMs and design patents:

Year	1-3	4-5	6-8	9-10
<b>Utility Model (RMB)</b>	600	900	1,200	2,000
<b>Design (RMB)</b>	600	900	1,200	2,000

**Patents WATCH-OUTS in Mainland China**

A Europe-registered patent has no legal effect in China.

It is crucial to apply for patent protection in China for each and every innovation, even if the launch of the respective product on the Chinese market is not yet scheduled.

One important requirement for all patentable innovations is that they must be 'new', i.e., not known to the public in any country before the patent application is filed.

The success of a patent often relies on the skill of the patent attorney to outline the scope of the patent to provide adequate protection from competitors on the market and to ensure it is not easily invalidated. If a party wishes to file a patent application in a foreign country first for an invention that is made in China, it must apply to CNIPA for a 'confidentiality examination' (Art. 20 Chinese Patent Law). If there are two patent applications filed for the same innovation, the patent is granted to the party who filed first.



## C. Trade Marks

### WHAT are Trade Marks?

A trade mark is a sign that serves the specific and primary purpose of identifying the goods or services of a producer, thus allowing the consumers to distinguish goods or services of one producer from those of another. The sign may be composed of words, devices, letters, numerals, three-dimensional signs (shapes), combinations of colours or any combinations of the above. Following revisions to China's Trade Mark Law on 1 May 2014, sounds are now also registrable as trade marks in China, (after the revised Trade Mark Law was enacted on 1 May 2014).

### Trade Marks in Mainland China: What you need to know

In order to be eligible for registration, a trade mark must:

- be legal - it must not be identical or similar to the name or flag of a State, international organisations, have discriminative or offensive content, or consist of exaggerated and fraudulent advertising etc;
- be distinctive - the signs must be capable of distinguishing the goods/services of one company from those of another;
- not be functional - this requirement applies, in particular, to three-dimensional shapes that cannot be registered as trade marks if they too closely resemble the goods/services they represent, exist in order to achieve a certain technical effect, give greater value to the product than the goods/services themselves.

Prior to filing applicants should confirm that a mark has not been used before. The official trademark database of the China National Intellectual Property Administration Trade Mark Office (TMO) is available [online](#) and can be easily used to search existing trade marks. Please see our '[How to Conduct a Trade Mark Search](#)' guide. Also, prior to filing, applicants should ensure themselves that the mark they want to register is not a well known mark.

When filing a trade mark, products and services are classified into 45 product and service classes according to the Nice Classification. China is unique in further dividing these classes into sub-classes. Products in the same sub-class are often treated as identical or similar. It is important when registering a trade mark in China that the registration covers products and services in each of the sub-classes that may be relevant to your business. It is good practice to register products and services in each sub-class that makes up a class, even if the products and services in a sub-class are only marginally related to your business. This will prevent competitors or infringers from registering an identical or similar mark in the sub-class and using the mark to undermine the brand.

It is also highly recommended to register a Chinese version of a foreign trade mark for a more tailored market strategy for the

Chinese market. If there is no existing Chinese character name for a foreign brand, it is very likely that one will be adopted by local consumers, and not necessarily with the right connotations or image that the foreign company would wish to convey. Choosing a Chinese trade mark equivalent is particularly important because not only the meaning, but also the sound, tone and even look of the Chinese characters chosen for a trade mark name can affect the brand's reputation. There are commonly three ways to choose a Chinese trade mark name: a) Literal translation - a useful when the trade mark has a distinctive meaning; b) Phonetic translation - involves creating a Chinese character name that sounds like the trade mark in the original language; c) Combine a literal and phonetic translation - the best trade marks are those that sound the same and also make reference to a defining characteristic of the brand or have a positive meaning in Chinese culture.

Note that registrations in Chinese characters and in western alphabets are two separate registrations.

Enforcement through courts or the State Administration for Market Regulation (SAMR) are both possible, and cancellation and opposition actions can be brought directly for the CNIPA for registered trade marks or those in the process of being registered respectively. Where the total value of infringing goods reaches RMB 50,000 the infringer may also be subject to criminal charges which is often a more effective deterrent from further infringement. The most appropriate enforcement method will depend upon the facts of the specific case.

### How LONG does legal protection last?

Trade mark registrations last 10 years from the date the right is granted and are renewable indefinitely.

### HOW do I register?

A trade mark can be registered through the 'national' or 'international' system and can only be effectively protected in China once it has been registered for that territory.

#### National Registration System

Applications should be filed with the Trade Mark Office of CNIPA, and may be filed in person, by mail or online. The examination of applications takes approximately nine months or less. The status of the application can be monitored online via the public Trade Mark Office of CNIPA database.

Foreign applicants without residency or place of business in China are required to submit trade mark applications to the Trade Mark Office of CNIPA through a local Chinese trade mark agent. Registrations must be made in Chinese (Mandarin).

#### International Registration System

The international registration system is available under the Madrid Protocol through WIPO. Both China and all Member States

of the European Union are party to the Madrid Protocol<sup>1</sup>. Under the Madrid Protocol, the application for extension to China is based either on the trade mark application or registration. A trade mark agent will file your applications with the national trade mark office in the home country of the applicant, which then passes the application to WIPO. The international application should be filed in English, French or Spanish. Upon receipt of the application, WIPO will conduct a formality examination and will notify all Madrid Protocol members in which the applicant wishes to obtain protection. If, within eighteen months from the notification no objections are made, the trade mark will be registered. However, if there are objections raised a local Chinese trade mark agent should be hired to handle the case. Renewals and modifications will also be handled through the international system.

It is recommended to request the Trade Mark Office of CNIPA to issue a certificate of an international trade mark registration valid in China. Such a certificate is a necessary evidence of your right for the purpose of enforcement actions.

Registrations in Chinese characters will not be accepted by the WIPO.

#### **Trade Mark Office of China National Intellectual Property Administration :**

<sup>1</sup> NB. Malta is not part of the Madrid Protocol, however Maltese companies can extend the application through the Office for Harmonization in the Internal Market (OHIM).

Website: <http://wcjs.sbj.cnipa.gov.cn/>

#### **World Intellectual Property Office:**

Address: 34 Chemin des Colombettes – CH 1211 Geneva, Switzerland

Tel: +41 22 338 9111

Fax: +41 22 733 5428

Website: <http://www.wipo.int/portal/en/index.html>

#### **WHO can register?**

Both legal entities and individuals can apply for trade mark registration.

#### **Which LANGUAGES can I use?**

Application must be filed in Chinese language (Mandarin) for domestic registration. International registrations can be filed in English, French or Spanish.

#### **How much does it COST?**

The cost for domestic registration with the Trade Mark Office of CNIPA and excluding legal representation fees is RMB 300 (EUR 43) (excluding lawyer fees) for one class, covering up to 10 items of goods/services. An extra RMB 30 (EUR 4) is charged per additional item. Filing a trademark application in Mainland China generally costs EUR 500- 700 and upwards, depending on the lawyer/agent fees.

For the schedule of fees for International Registrations, please see: <http://www.wipo.int/madrid/en/fees/>

### **Trade Marks WATCH-OUTS in Mainland China**

For trade mark registrations in Mainland China, the Nice Classification applies but China also divides the goods and services into sub-classes.

Foreign language trade marks and trade marks in Chinese language require two separate registrations.

In the case of 'trade mark hijacking' there are a number of avenues to tackle this. If there is evidence that the mark was registered in bad faith, parties can apply to the CNIPA to oppose or cancel the trade mark. Where bad faith is difficult to prove, consider buying back the trade mark using a Chinese law firm to negotiate on your behalf. In some cases, using a Chinese lawyer may allow you to buy it back cheaper than by going directly to the seller yourself.

If you are manufacturing in China it is advisable to register your trade marks even if you are not selling domestically, as a bad faith registration in China could lead to your goods being seized by Chinese customs when exporting.

## **D. Geographical Indications (GIs)**

### **WHAT are GIs?**

GIs according to the Chinese trademark law:

GIs refer to the signs that signify the place of origin of the goods in respect of which the signs are used, their specific quality,

reputation or other features as mainly decided by the natural or cultural factors of the regions.

GIs according to the Administration of Market Regulation (the AMR, formerly handled by AQSIQ):

GIs that can be registered at the AMR are 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 the region upon examination and approval. These products of include:

- (1) those grown or cultivated in the region; and
- (2) those made, wholly or partially, of the raw materials from the region and produced or processed with the particular techniques in the region.

An agreement concluded between China and the EU in late 2019 - to be ratified in 2020 - is set to provide protection for 100 European GIs. The full list of marks protected is available on the [European Commission website](#).

#### **GIs in Mainland China: What you need to know**

GIs in China can be protected in a number of ways: A. directly with the CNIPA as a GI, B. under the trade mark law and C. by registration at AMR. Registration under the trade mark law is a must, as registration with AMR has not yet resulted in many successful applications. However, since the number of successful applicants is rising, we also suggest registration of your GI at AMR, since this guarantees the most possible protection for your GI in China.

#### **A. Registration of the GI with CNIPA**

Since the amendment to the 'Measures for the Protection of Products Bearing Foreign Geographical Indicators' in 2019 it has been possible to file a GI directly with the CNIPA. If the European GI is already registered in Europe and is still under protection in Europe, the GI organization may consider this option. A successfully filed application can serve as the basis for administrative and legal actions against infringement.

Under the Chinese Trade Mark Law, GIs can be registered as certification marks or collective marks by the GI organisation of that region at the Trade Mark Office of China National Intellectual Property Administration.

A collective mark is for signs that are registered in the name of bodies, associations or other organisations, which can be used by the organisation's members to indicate their membership. A society, an association or any other organisation applying for the registration of a GI as a collective mark must be composed of members from the region indicated by the GI.

Certification marks are for signs that are controlled by organisations capable of supervising some 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.

Check with your specific GI organisation if the GI that you use for your product is already registered in China. Your GI organisation is the organisation that regulates your specific geographical indication.

The name or mark that can be filed for registration as a collective or certification mark, may be a name of the region indicated by the geographic indication, or any other visual sign capable of indicating that the goods originate from the region. However, if the chosen name or sign resembles State names, national flags or national emblems, consent need to be given by the relevant country's government.

It is important to think about the Chinese translation of your GI. Due to the difference between the Chinese language and the various EU languages, the Chinese consumers language will likely find a Chinese word for your GI that resembles the sound of your GI or is a literal translation of your GI in Chinese. The Chinese name is normally more popular and acceptable for Chinese consumers. Therefore, it is important to think carefully about the Chinese name matching your GI.

After the GI has been registered as a collective/certification mark, and presuming your products meet the regulated conditions for use, you may request authorisation to become a member of the organisation holding the GI. Once accepted, the organisation will issue you a Collective/Certification Mark Use Permit.

However, if you are not a member of the organisation but do have justification to use the GI, under Chinese law you shall not be forbidden to use the geographical indication by the organisation. This can be the case if you are entitled to use the GI because your product legitimately falls under the GI in your GI region.

#### **B. Registration of the GI at the AMR**

EU GIs can also be registered at the AMR by your GI organisation. As the AMR system in practice exists next to the Trade Mark system, the benefit of registration of the GI by your GI organisation is that your GI will have the maximum protection possible in China. Although China does not yet have clear implementing regulations for foreign GIs, in practice, several EU GIs have been registered at the AMR in China as a result of negotiations between the EU and Chinese governments. The current list of 100 GIs agreed through negotiations in 2019 is set to be expanded to a further 175 GIs four years after entry into force of the new GIs (expected by the end of 2020). We advise you to urge your GI organisation to try and register the GI with recommendations and supporting documents from your country's ministry of agriculture and/or local government at AMR.

#### **How LONG does legal protection last?**

GI protection as a trade mark lasts 10 years from the date the right is granted and are renewable indefinitely.

GI protection at AMR is indefinite.

**HOW do I register?***Certification mark/collective mark*

An application for a collective or certificate mark needs to specify that the application is for a collective mark or a certification mark. It needs to be submitted in Chinese by a Chinese trade mark agent (that represents the geographical indication organisation) to the Trade Mark Office of CNIPA. Only GIs that are legally protected in the country of origin and are regulated there by the same GI organisation, can be registered by that GI organisation at the Trade Mark Office of CNIPA.

**Trade Mark Office of China National Intellectual Property Administration**

Website: <http://wcjs.sbj.cnipa.gov.cn/>

Urge your GI organisation to try and register the GI with recommendations and supporting documents from your country's ministry of agriculture and/or local government at AMR. This includes a proposal from your country's ministry of agriculture and/or local government for defining the limits of the place of origin of the product of a geographical indication,

and a document from your country's ministry of agriculture and/or local government establishing the application organisation or designating an association or enterprise as an applicant. Other documents the GI organisation needs to provide are documentary material proving the GI product and documents with regard to the technical standards of the GI product.

**WHO can register?**

Only your GI organisation can register a certification mark or a collective mark. Your GI organisation, with help from your country's ministry of agriculture and/or local government, can apply for registration for GI protection at AMR.

**Which LANGUAGES can I use?**

Applications must be filed in Chinese.

**How much does it COST?**

The basic government filing fee for collective trade mark registration in Mainland China is CNY 1,500 (approximately EUR 193) and the total registration fee is EUR 900 – 1100 and upwards.

Fees for applying for registration of the GI at AMR for foreigners are not public.

**Geographical Indication WATCH-OUTS in Mainland China**

A European GI is not enforceable in China unless it is also registered there with CNIPA.

GIs can only be registered in China by your GI organisation (the organisation that regulates the legally protected GI in the country of origin).

Urge your GI organisation to register for a certification mark or a collective mark at the CNIPA as soon as possible.

A successful registration of a European GI with CNIPA can be used as the basis of administrative complaints and litigation.

**E. Trade Secrets****WHAT are Trade Secrets?**

In China, a trade secret is any non-public information with actual or potential commercial value which is guarded by confidentiality measures. In order for the information to be a trade secret, it must a) be non-public - it must not be known by the general public or by competitors; (b) have actual or potential commercial value - it must give the owner a competitive advantage or be capable of generating economic benefit; and (c) guarded by confidentiality measures - the owner must take reasonable measures to protect the

confidentiality of the information. It is information that your competitors would want to know and would give them a commercial advantage. Trade secrets may include: recipes or formulas, know-how, the status of products or services under development, valuable business information such as customer lists, cost and price information, suppliers and contractors, contract terms, marketing strategy and plans, etc.

**Trade Secrets in Mainland China: What you need to know**

China, like most other countries, provides a legal framework for the protection of trade secrets, and the law provides for remedies in the event that your trade secrets



are unlawfully disclosed.

Unlike some other forms of IP rights such as patents and copyrights that have a finite term, trade secrets can theoretically enjoy an infinite term of protection so long as the trade secret remains just that – a secret. However, once the information becomes public information, it no longer enjoys any legal protection. As a result, prevention is the golden rule when it comes to protecting your trade secrets because once the secret is out, there is usually very little that can be done.

Keeping trade secrets safe involves using a combination of physical, technical, and contractual barriers.

All existing and new employees should be required to sign an employment contract that includes non-disclosure or confidentiality provisions, which will enable you to avoid the typical occurrence of theft by an employee leaving the company for a competitor.

Your trade secrets protection policy should also address the protocol to be followed when dealing with third parties. Generally, you should insist that both parties sign a mutual non-disclosure agreement before any discussions begin or documents are transferred. After the negotiations have reached a certain stage, both parties should enter into a Memorandum of Understanding (MOU) outlining the structure of the deal, what information will be shared, and the respective non-disclosure obligations of both parties.

Finally, once an agreement has been reached, the final agreement should identify who owns what information, what information was exchanged, and the respective non-disclosure obligations of both parties. Even after an agreement is signed, it is important to make sure you continue to monitor your partners, suppliers or licensees to make sure they are complying with your trade secrets protection policy.

Litigation is the primary means by which you can pursue a

remedy for the misappropriation of your trade secrets in China. If you are successful, the court can order the infringer to pay you damages of one to five times the actual cost of infringement, or where this is difficult to calculate, up to RMB 5 million in statutory damages, and to stop using the trade secret.

In addition to litigation through the court system China, unlike many other countries, also provides for administrative enforcement in trade secret cases. Instead of a court, an application is made to the local AMR (formerly known as AIC) which is empowered to carry out the enforcement action. It is possible to stop the sale of products manufactured using your trade secret and to obtain administrative penalties against the infringer ranging from RMB 10,000 to RMB 100,000. However, in practice, it can be difficult to get the AMR to accept cases, particularly if complex technology is involved. The administrative channel may be appropriate for simpler cases involving non-technological trade secrets that are easy to explain to the officials concerned.

Theft of trade secrets is also a crime in China if the loss to the injured party is significant, which involves a loss of more than RMB 500,000. Infringers may be fined and/or imprisoned for up to three years, or in very serious cases, such as those involving a loss of more than RMB 2.5 million, for up to seven years. If you believe the theft of your trade secrets constitutes a crime, you can also inform the local Public Security Bureau who can then decide whether or not to conduct a criminal investigation.

For more information see the Helpdesk's guide '[Protecting Your Trade Secrets in China](#)'.

### **How LONG does legal protection last?**

Trade secrets can theoretically enjoy an infinite term of protection so long as they remain secret.

## **Trade Secrets WATCH-OUTS in Mainland China**

Identify and catalogue your trade secrets.

Document trade secret protection measures you take, in case of a dispute later on.

Implement a trade secret protection policy within your company, making sure your employees understand your expectations.

Consider non-disclosure agreements before entering into negotiations with third parties.

Prevention is the key to protection. More often than not, once a trade secret is disclosed, the damage is already done and it is often very difficult to recover its value, even if you succeed in litigation.

## 4. Using CUSTOMS to block counterfeits

### WHAT are Customs?

The General Administration of Customs (GAC) is an administrative agency within the government of the People's Republic of China. China Customs have the authority to protect IP rights by confiscating infringing goods and imposing fines on infringers. If the infringement of IP rights exceeds a certain threshold, then the customs authorities will also arrange for criminal proceedings to be brought against the infringing party.

### Customs in Mainland China: What you need to know

Unlike Europe, China has both imports and exports Customs controls, which have the authority to seize IP infringing goods. IP rights can be recorded with the GAC in Beijing. Although it is not compulsory to record IP rights at the GAC in order to apply to local customs for enforcement proceedings, it is beneficial for a company moving goods in and out of China, because if IP rights are registered with customs then customs have the power to detain at will any suspected infringing consignment of goods. In addition, local customs offices are more proactive when rights have been recorded with the GAC mainly because the recordal provides customs officials with easy access to internal IP databases and makes it easier for them to determine whether goods passing through customs are genuine or counterfeit. Recordal of rights also facilitates the process of commencing customs enforcement proceedings. Given that the recordal of IP rights with the GAC is inexpensive and straightforward, recording with the GAC is recommended.

In case you have not recorded your IP with Customs, you can still enforce your rights through a direct application to Customs, regarded as Protection on Request. The Protection on Request refers to the measures taken by the Customs to detain the goods that are suspected of infringement at the request of an IPR holder when such goods are being imported or exported. An IPR holder can apply to the Customs at the place of entry or exit for detainment of goods, it is not required to have had the IPR in question with the GAC<sup>2</sup>.

Always remember to inform GAC of any changes to the recordal such as assignment to another party (i.e. change of owner), licensing, cancellation of the right, etc. Registered users of the GAC system allows the applicant to update by himself the information about the legal user (the system will save the updated records automatically) after the registration

is approved. Therefore, the applicant may skip this step by clicking "Quit and Enter the Next Step".

### WHAT can be registered?

Trade marks, patents (including patents for invention, utility model and design patents) and copyrights are the types of IP rights that can be recorded with the GAC. Separate applications need to be filed for separate IP rights. Only IP already registered in China can be recorded with the GAC.

### How LONG does legal protection last?

Recordal lasts 10 years or the duration of the IP (whichever is shorter). During this time we recommend you maintain contact with key ports. Renewal of customs recordal can be filed six months prior to expiration.

### HOW do I register?

The GAC operates an English-language online system for one-stop services for IPR protection with the following modules: protection, registration, bond and search. The website is available at: <http://english.customs.gov.cn/>. Companies can register online by creating a new account.

To record IP with the customs authorities, the following documents shall be submitted:

- A copy of your business registration certificate (including a Chinese translation)
- A copy of the trade mark certificate (China registration)
- Information regarding related licences (Customs do not want to withhold legitimate goods), photos of the goods and their packaging
- A power of attorney in the name of the agent responsible for the registration process, if one is used.
- A fee of CNY 800.

In addition, IP right holders can also register information about infringers that they may have collected independently, such as names, company names, contact details, etc. If the holder of a trade mark rights has detailed knowledge of specific deliveries of goods, the holder can inform the customs authorities, who shall then examine the delivery in question.

<sup>2</sup> <http://english.customs.gov.cn/zscqbbh/main.html-page=01.htm>





After all documents have been submitted, approval takes approximately 30 days.

Consult the GAC one-stop services portal for detailed information and step by step procedure in English for patents, trade marks and copyrights.

**WHO can register?**

Only IP rights holders or their authorised agents can register, licensees cannot. Companies registered in China can apply to GAC directly or entrust a domestic attorney to handle the registration. Companies without a registered China office must use an authorised domestic attorney.

**Which LANGUAGES can I use?**

The official website of the GAC is available in Chinese and English and recordal can only be made in Chinese language (Mandarin). The Helpdesk has provided a translated step by step guide on '[How to Record Trade Marks with Customs in China](#)' through the GAC website.

**How much does it COST?**

The fees for recordal are RMB 800 for each right i.e. you only need to register your trade mark once although it appears on a range of products.

**Customs WATCH-OUTS in Mainland China**

The recording IP rights at customs in China is helpful to trigger ex-officio actions of customs to stop the export or import of infringing products and thereby preventing counterfeit versions of your goods from entering the international market. In order for the customs authorities to make proper and quick decisions when checking goods passing the borders, IP right holders should maintain close contact with the customs authorities.





## 5. ENFORCEMENT of rights

If your IP assets are being infringed, there are four main avenues of enforcement which you can consider: a) administrative actions; b) civil litigation; c) criminal prosecution; and d) customs seizures (see Part 4 above). In many cases however private mediation via legal professionals is also very effective and should be considered as a viable option.

### Administrative actions

Some administrative bodies are empowered to take actions against companies infringing intellectual property rights. These bodies between them have the power to:

- Raid defendants' premises and to seize and destroy infringing items;
- Impose injunctions to force the infringing party to desist; and
- Levy fines on the infringing party for trade marks infringement, copyright infringement and counterfeiting patent certificates (but not patent infringement).

Administrative actions offer a relatively fast and cost-effective way to deal with trade mark and copyright infringements and to gather evidence for patent infringements. They are

generally called upon in trade mark cases, while the main use of an administrative action in a patent infringement case or complicated copyright case is to obtain evidence. Note that compensation for damages cannot be awarded by administrative bodies.

A right holder wishing to file an administrative action will need to instruct a lawyer to file evidence about the existence and ownership of the right (i.e. the IPR certificate and identification of right holder, plus Powers of Attorney to enable the lawyer to act) as well as evidence of the infringement (the evidence required varies; it might simply be an investigator's report or it might be a sample purchase of a counterfeit product). Your lawyer will provide further details if you decide to pursue this type of action.

The key Chinese administrative bodies are the Intellectual Property Offices (IPOs), the Administrations for Market Regulation (AMRs), and the Copyright Office.

### Civil Litigation

Civil litigation is equivalent to a court case in Europe. The usual remedies sought are injunctions, damages, delivery and/or destruction (of tools/products). A civil action will generally take six to 12 months from the issuance of proceedings until the handing down of the judgment.



When preparing for a civil action, the IP owner should bear in mind that documentary evidence (for example, a copy of a website showing infringing goods for sale) must be notarised, and documents from overseas (for example, the claimant's power of attorney to its Chinese counsel) must be notarised and legalised. Any evidence which is not notarised might not be taken into account by a Chinese judge, and therefore evidence such as witness statements, attorneys' statements and investigative agents' reports do not carry much weight in Chinese courts.

The ideal list of primary evidence of infringing activity is as follows:

1. A sample purchase with an official receipt. This should have been infringer's witnessed by a notary public, an online purchase witnessed by a notary can also be used; and
2. Notarised copies of those websites showing the offers of sale if the infringing goods are being advertised on the internet.

Claimants can apply for remedies such as an injunction, delivery and/or destruction of products, and damages. Damages can be calculated based on the defendant's profits, the IP owner's loss, a reasonable royalty rate or statutory damages. In the absence of any of the above the judge will award statutory damages of up to RMB 500,000 for copyright cases; five million for trade mark cases and one

million for patent cases (this should raise to five million with amendments to the Patent Law in 2020. It should be noted that the average award is much lower than the limit for statutory damages.)

It is also possible to combine administrative actions with civil litigation.

### **Criminal Prosecution**

There are three methods of bringing criminal sanctions:

- IP owner reports to the Public Security Bureau (PSB);
- An administrative agency transfers its case to a criminal agency when it comes to suspect the damage inflicted by the defendant exceeds certain thresholds; or
- IP owners and trade secret owners A trade mark owner can choose to file a criminal lawsuit with the court known as a private prosecution.

The first two approaches are common whilst the final approach is less so because claimants have no compulsory powers to obtain evidence, unlike the authorities.

The PSB has sole discretion on whether to accept a criminal case both when it has been reported by an IP owner or transferred from an administrative agency. If the PSB accepts the case then it will begin proceedings by collecting evidence.



Once it has sufficient evidence it will pass the case to the prosecution agency which assesses whether the case may proceed to trial or not.

The prosecution agency presents the case at trial. The court will decide liability and the appropriate sentence. Punishment may include imprisonment of up to seven years and/or penalties. It is important to bear in mind that the IP owner

cannot recover damages through this process, but of course a favourable ruling would be a valuable deterrent to potential future infringers.

Criminal sanctions are only used in relation to patents where the counterfeiting of the patent certificates themselves has taken place. Such actions are rare; criminal proceedings are more common in relation to trade mark and copyright infringements.

### **Enforcement WATCH-OUTS in Mainland China**

Register your intellectual property rights. Unless you have registered your rights you have almost no basis for enforcement in China.

When you identify infringement, enforce your rights. If you build a reputation for being litigious then companies will be less likely to infringe your rights in the future. The resources required to achieve such a reputation depend on the extent of the infringement.

Administrative enforcement is filed before specialized administrations and it is fast, cheap and reasonably efficient. Companies can obtain confiscation and/or destruction of the infringing goods as well as fines, but no damages are awarded.

Civil litigation is filed before the People's courts - it is advisable for difficult cases and it is more time consuming and expensive compared to the administrative enforcement but compensation can be awarded.



## 6. RELATED LINKS and Additional Information

China IPR SME Helpdesk – [www.china-iprhelpdesk.eu](http://www.china-iprhelpdesk.eu)

World Intellectual Property Organization (WIPO) – <http://www.wipo.int/portal/en/index.html>

Intellectual Property Offices – <http://english.cnipa.gov.cn/>

China Trademark Office – <http://wcjs.sbj.cnipa.gov.cn/> (English and Chinese)

Copyright Office – <http://www.ncac.gov.cn>

Administration for Market Regulation (AMR) – <http://www.samr.gov.cn/> (Chinese only)

Public Security Bureau – <http://www.mps.gov.cn/n16/index.html>

General Administration of Customs of the P.R.C – <http://english.customs.gov.cn/>



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## IP Factsheet: Mainland China

Download Guide



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**TRAINING** The Helpdesk arranges training on China IPR protection and enforcement across Europe and China, tailored to the needs of SMEs.

**MATERIALS** Helpdesk business-focused guides and training materials on China IPR issues are all downloadable from the online portal.

**ONLINE SERVICES** Our multi-lingual online portal (www.china-iprhelpdesk.eu) provides easy access to Helpdesk guides, case studies, E-learning modules, event information and webinars.

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<sup>1</sup>The language offer will depend on the specific service and experts' availability.

If you have any queries on how to protect your Intellectual Property in China contact our Helpdesk service:

If you want more information on additional free services offered by the Helpdesk contact the coordination team:

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