



DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia

Trademark in the F&B Industry in China What Your Business Need to Know

Lorena Miera Ruiz

Shanghai – May 13, 2019

www.dezshira.com



Table of Contents

- **Chinese IP Regulatory Environment**
 - Regulatory Changes

- **Trademark Protection in China**
 - Trademark Registration
 - Trademark Strategy
 - Trademark's Protection in E-commerce

- **Other Key Considerations**
 - Products Labelling in China
 - The Foreign Investment Catalogue and F&B

Dezan Shira & Associates



Numbers

1992

Dezan Shira's establishment

300+

Our team of legal, tax, accounting and audit professionals

2,000+

Multinational clients that have already chosen us

80+

Countries served by our professional services

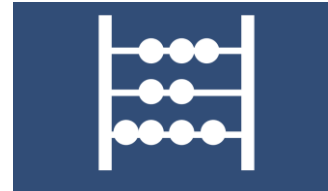
24

Our offices in China, India, Vietnam, Singapore, liaison offices in Italy, the United States and Germany, and alliance offices in Indonesia, Malaysia, the Philippines, and Thailand.

Services Suite



Pre-Investment and Entry
Strategy Advisory



Accounting, Payroll, and
Treasury



Corporate and Tax
Structuring



Tax and Compliance



Cross-border
Transactional Support



Employment law and HR



Audit Financial Review,
Due Diligence



ERP and Financial
System Advisory

Chinese IP Regulatory Environment



Regulatory Changes



Recent Regulatory Changes

International pressure together with the recent trade war with US has speed up the reforms in Chinese Intellectual Property related laws and regulations.

New Foreign Investment Law (March 2019)

Amendments to
the Trademark
Law (April 2019)

Amendments to
the Law Against
Unfair Competition
(April 2019)

Amendments to
the Administrative
Licensing Law
(April 2019)

Trademark Law



More severe actions against **counterfeits**



Sanctions against malicious trademark lawsuits



Heavier penalties against trademark **squatters**

Law Against Unfair Competition



Trade information
regarded as trade secret



Broader meaning for
“misappropriation”



Any legal entity or individual are
subject to the Law



Higher **damages**

Administrative Licensing Law



Explicit **prohibition** of disclosing trade secrets in licensing proceedings



Applications has the right to file an **objection**



No license application should be conditioned by technology transfer

Trademark Protection in China



Trademark Registration



Trademarks



= word mark



Nokia Tune



Coming Up with a Trademark in China

Literal translation

e.g. Apple chose the Chinese word 'ping guo' (苹果), which is Chinese for 'apple' (computers).



Phonetic Translation

e.g:

- 'McDonald's': 'Mai Dang Lao' (麦当劳)
- 'Audi': 'Ao Di' (奥迪)
- 'Siemens': 'Xi Men Zi' (西门子)



Combination

Coca-Cola settled with 'Ke Kou Ke Le' (可口可乐): 'tasty and joy'.



Filing a Trademark in China



Select an agent/ firm and make as many applications needed for each class of goods or services



Government fee ~100 USD per application for 10 **sub classes** of goods or services



Duration: 9 to 18 months

Search

Application

Formal
examination

Substantial
examination

Prelim*
approval

Registration

Some Classes to Choose from

Most frequently used in the F&B industry



Cl. 1
additives for F&B



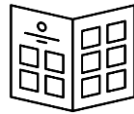
Cl. 2
coloring additives
for F&B



Cl. 5
baby food,
infant formula



Cl. 6
tin and other metal
food containers



Cl. 9
publications or
ads for “modern services”



Cl. 16
other publications
and flyers



Cl. 18
shopping bags



Cl. 29
meat, fish, poultry and
game, preserved, frozen,
dried & cooked fruits, etc.



Cl. 30
coffee, tea, cocoa,
instant coffee; rice, tapioca,
flour, bread, honey, etc.



Cl. 31
unprocessed agricultural,
aquaculture, horticultural
and forestry products, etc.



Cl. 32
beers, mineral water, non-
alcoholic beverages,
juices, syrups, etc.



Cl. 35
advertising, organization
for exhibitions, marketing,
etc.



Cl. 39
transportation, packaging,
travel arrangements, etc.



Cl. 40
materials treatment,
food processing



Cl. 43
F&B catering, temporary
accommodation, etc.

Trademark Strategy



So, why bother with IPRs?

A bit of IP awareness favors:



Attractiveness
towards
investors



Competitiveness



Return on
investment

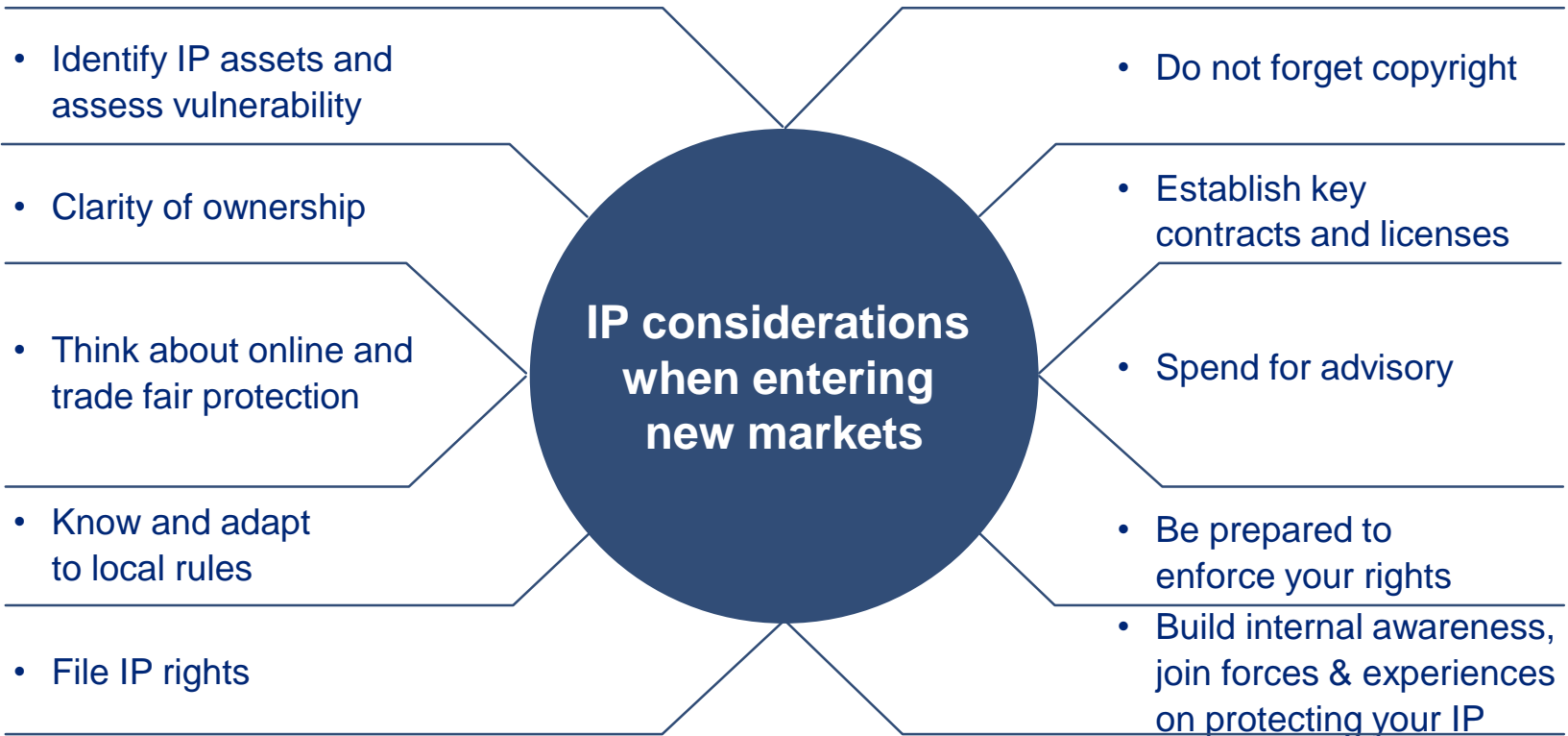


Cash-flow
source



Grants
Exclusivity

How Things Go Right



How Things Go Wrong

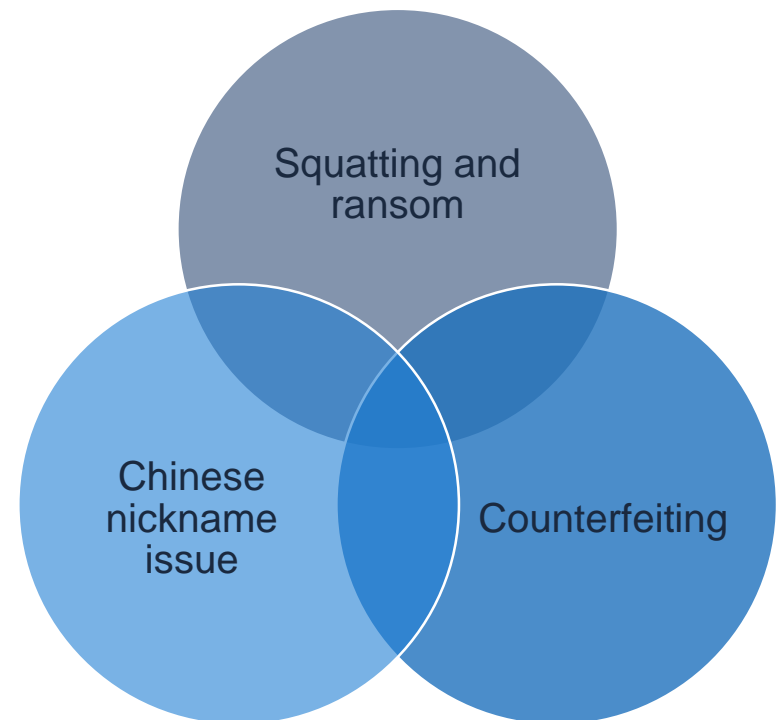
Because of **your** fault:

- Negligence (lazy? fear of spending?)
- Bad management at trade fairs giving samples and brochures?
- Bad brand protection at home and abroad;
- Presumption of being a well-known TM in China, “too”!

Not because of your fault:

- Squatting of TMs and domain names (cybersquatting);

What could happen to your trademark in China:

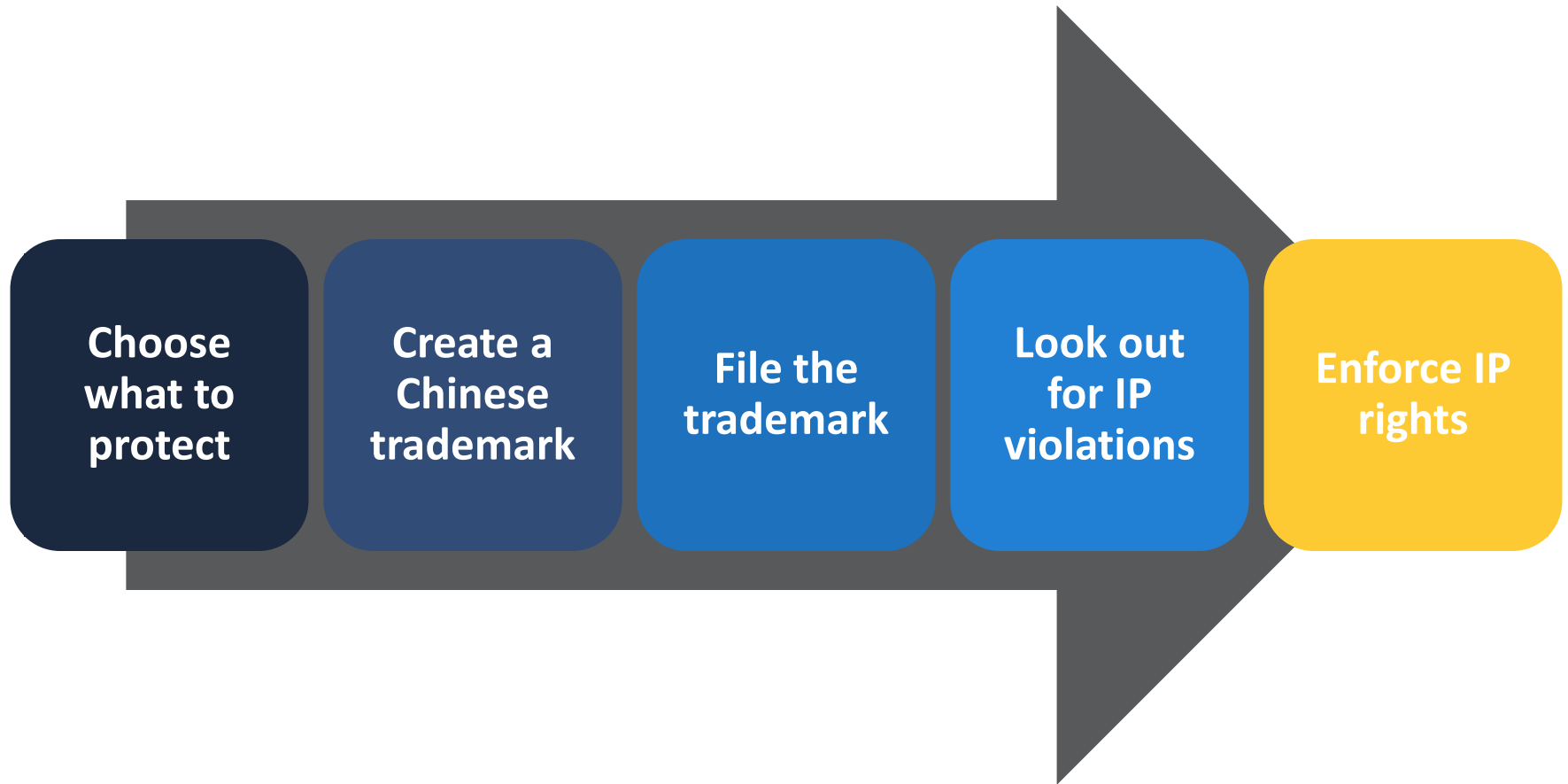


Consequences of poor IP portfolio management

Loss of

- Business
- Revenue
- Reputation
- Competitive advantage

To Know and Do in China



Trademark's Protection in E-commerce



Planning on selling on-line?

All Alibaba and JD platforms require a Cl. 35 registration;

- Class 35 is also always advisable when/if you have a trading company (aka FICE) in China, because “import and export agencies” are required to have filed for WFOEs who carry out their own customs clearance;
- “Printed matters” relates to labeling, hence filing in class 16 is suggested;



AliExpress



淘宝网
Taobao.com



一淘
etao.com

聚划算
- juhuasuan.com -
品质团购每一天

支付宝
Alipay.com



JD.COM 京东

On-line protection

Submit a Complaint

If you are intellectual property rights owner or authorized agent and believe certain product listings on Alibaba.com platforms infringe upon you or your client's intellectual property rights, please sign-in to AliProtect to submit a complaint. Via AliProtect, you can submit copyright, patent and trademark infringement claims.

Respond to a Complaint

If you are an Alibaba.com member and have received a notice about an alleged infringement, please sign-in to AliProtect to respond to the complaint. Via AliProtect, you can inquire about claim details, remove alleged infringing listings or submit a counter-notification to refute a complaint.


[System Overview and Dispute Process](#)

Submit a Complaint **Respond to a Complaint**

User ID (Email):

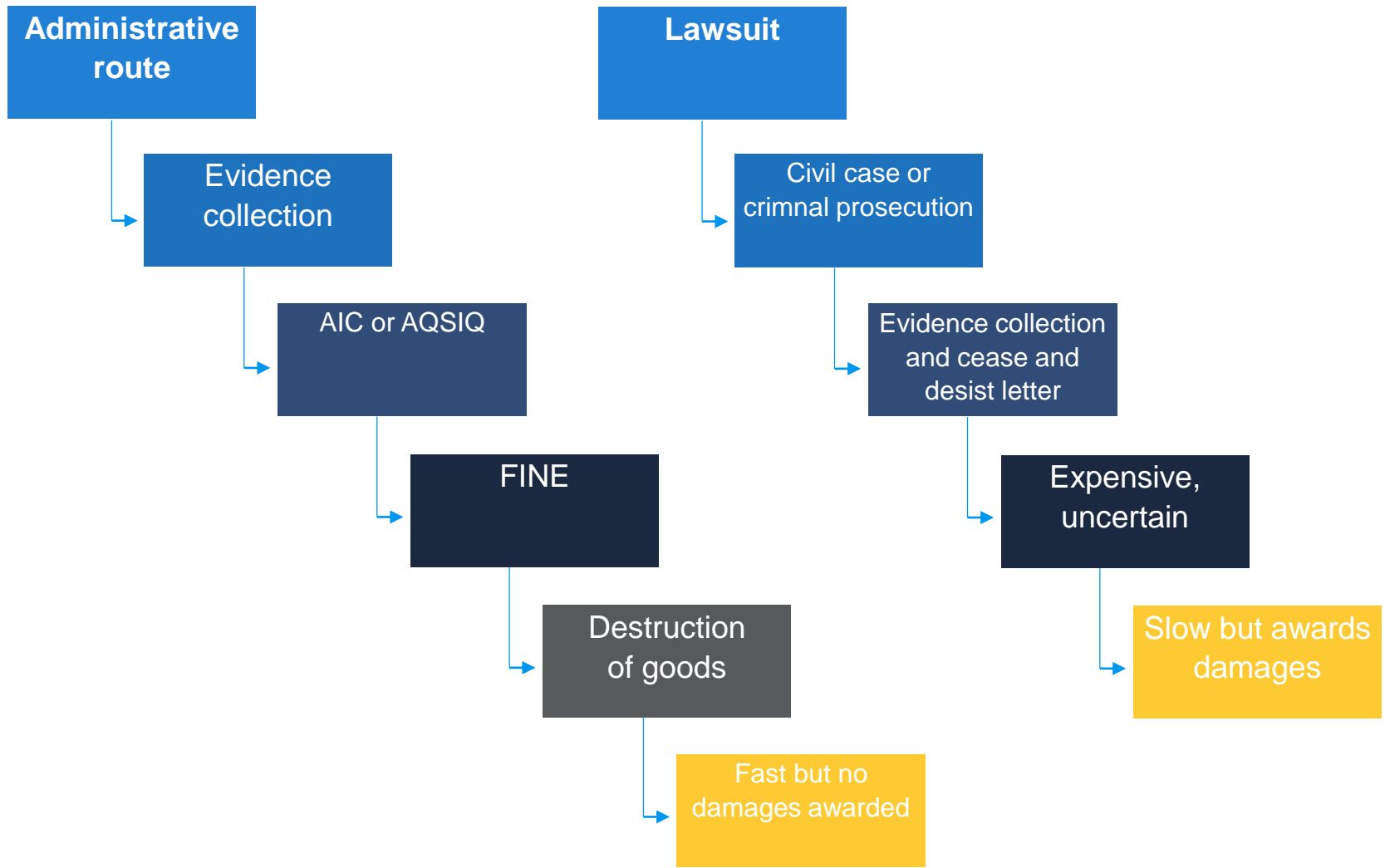
Password:
[Forgot your password?](#)

Verification code:



Create User Account"/>

Enforcement



Customs Protection

ON REQUEST

Detention of goods suspected of infringement of an IPR holder who applied to the Regulations.

- Customs detain but do not inspect the goods
- The IPR holder needs to file a suit while goods are detained

PASSIVE PROTECTION

EX OFFICIO

Provided the IP is registered with GACC, there will be detention of goods plus:

- Custom suspends clearance
- Informs IP holder
- Detains goods on request of IP holder
- Impose fines and investigates further

PRO-ACTIVE PROTECTION



Other Key Considerations



Products **Labelling** to China



Label Compliance



Labels in **simplified Chinese** characters to complete the Customs clearance.

The general rules of the labelling of pre-packaged food, **GB7718-2011**:

Imported food will face a largely different consumer-type: a culturally-sensitive approach to packaging and general appearance may go a long way in China.

Standard name of foodstuff;

- List of ingredients as percentage;
- Name and address of manufactures, local agent, or distributor;
- Production date, best before, end date, and guidance for storage;
- Country of origin;
- Quality grade;
- Code of national standard/industry standard for the production; and
- Special contents, if any.

Labeling

美芝新烘焙咸味扁桃仁
净含量: 28g

营养成分表

项目	每份28g (本包装含1份)	NRV%
能量	712kJ	9%
脂肪	15g	23%
饱和脂肪酸	1g	5%
反式脂肪酸	0g	0%
胆固醇	0mg	0%
钠	110mg	5%
碳水化合物	6g	2%
膳食纤维	3g	12%
糖	1g	
蛋白质	6mg	
维生素A		0%
钙		8%
维生素C		0%
铁		6%

配料: 扁桃仁; 植物油(含有以下一种或多
种: 花生油、菜油、葵花籽油/或大豆油); 盐
贮存方法: 即存在阴凉干燥处, 避免阳光直射
生产商: Wholesome Life Products, Inc.
进口商: 上海上益食品进出口有限公司
地址: 上海市浦东新区张杨路1328号2401室
电话: 021-68417198
传真: 021-68417199
网址: www.aymifood.com
原产地: 美国

ITEM #: 00504

8 53871 00504 5

**SALTED
ALMONDS**

NET WT. 1oz (28.35 g)

Nutrition Facts

Serving Size: (28g)
Servings Per Container About 1

Amount Per Serving		
Calories 170	Calories from Fat 130	
		% Daily Value*
Total Fat 15g		23%
Saturated Fat 1g		5%
Trans Fat 0g		
Cholesterol 0mg		0%
Sodium 110mg		5%
Total Carbohydrate 6g		2%
Dietary Fiber 3g		12%
Sugars 1g		
Protein 6g		
Vitamin A 0%	• Vitamin C 0%	
Calcium 8%	• Iron 6%	

* Percent Daily Values (DV) are based on a 2,000 calorie diet.

INGREDIENTS: ALMONDS, CANOLA OIL, SALT.

Wholesome Life Products, Inc.
San Dimas, CA 91773
www.WholesomeLifeProductsInc.com
PRODUCT OF USA

A Certificate of **Food Labeling Verification**
will also be released if the labels have met requirements.

“Bio” – Organic Food

China **refuses** to recognize international standards for organic food, and imposes national standards *although it is member of the Codex Alimentarius (a voluntary WHO-based food safety standard-setting committee);*

For every product meeting the GB/T 19630.1-19630.4 requirements, the green seal can be used;

1-year validity

Applies to the product rather than the producer.



The Foreign Investment Catalogue and F&B



Foreign Investment Guidance Catalogue

MofCOM-issued document regulating fully foreign or participated investments in PRC into:

- **Encouraged, restricted, prohibited**
- **What is not listed is permitted**
- **In FTZs: negative list – this contains economic sectors either prohibited or restricted to foreign investment and is shrinking year on year (there are plans for extending the negative list system to the whole country, not only FTZs).**
- **Relating to food, the 2015 Catalogue included the following (relevant for f&b):**
 - **Encouraged:**
 - Seeding systems, dev and production of edible oil, condiments;
 - Production and development of techniques for biological greens and organic greens;
 - Development and production for infant’s food, for the elderly and “healthy” products;
 - Development and production for natural food additives and natural aromas;
 - Development and building of new machinery for processing and storage of agricultural produce;
 - **Restricted:**
 - Processing of soy bean oil, peanuts oil, cotton oil, tea oil, sunflower oil, palm oil and other edible oils (JV needed here!); rice processing, flour, raw sugar, enhanced corn processing;
 - **Prohibited:**
 - Development, cultivation, seeding and production of materials relevant traditional and rare Chinese food varieties;
 - Selecting of GM varieties, cattle, fish and seeds productions which are GM;
 - Deep water fishery within Chinese maritime territories or anyway under Chinese jurisdiction (...).



Lorena Miera Ruiz

Senior Associate,
International Business Advisory

Email: lorena.miera@dezshira.com

Tel.: (+86) 21 6358 8686 ext. 6214



Scan this QR code

Visit our mobile page and
get the latest updates investors
news and resources with us



DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia



Global Offices

CHINA

Beijing
beijing@dezshira.com

Hangzhou
hangzhou@dezshira.com

Shenzhen
shenzhen@dezshira.com

Dalian
dalian@dezshira.com

Ningbo
ningbo@dezshira.com

Suzhou
suzhou@dezshira.com

Dongguan
dongguan@dezshira.com

Qingdao
qingdao@dezshira.com

Tianjin
tianjin@dezshira.com

Guangzhou
guangzhou@dezshira.com

Shanghai
shanghai@dezshira.com

Zhongshan
zhongshan@dezshira.com

HONG KONG

hongkong@dezshira.com

INDONESIA

indonesia@dezshira.com

SINGAPORE

singapore@dezshira.com

INDIA

Delhi
delhi@dezshira.com

Mumbai
mumbai@dezshira.com

VIETNAM

Hanoi
hanoi@dezshira.com

Ho Chi Minh City
hcmc@dezshira.com

DEZAN SHIRA ASIAN ALLIANCE MEMBERS

Malaysia
malaysia@dezshira.com

The Philippines
philippines@dezshira.com

Thailand
thailand@dezshira.com

DEZAN SHIRA LIAISON OFFICES

Germany
germandesk@dezshira.com

Italy
italiandesk@dezshira.com

United States
usa@dezshira.com



For more information, please visit www.dezshira.com



DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia



Scan this QR code

Visit our mobile page and
get the latest updates investors
news and resources with us