



# MARKETING MANAGEMENT IN CHINA:

WEEK 10:

# PROTECTING INTELLECTUAL PROPERTY (IP) IN CHINA

**OCEAN UNIVERSITY OF CHINA**

**25<sup>th</sup> INTL. CHINESE BUSINESS PROGRAM**

**Marketing Lecture Series**

*Rainer Appel*

Wednesday, 13:30-15:20 & 15:30-17:20

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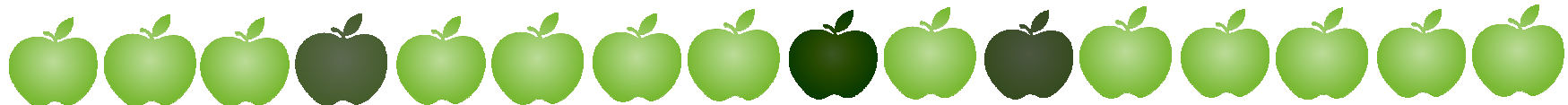
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# Disclaimer

- The vast majority of Chinese business partners / employees are honest and a pleasure to deal with.
- Unfortunately in a market as massive and competitive as China, IP is often a casualty.
- This presentation is not meant to condemn local business partners / employees / competitors.
- On the contrary it is designed to help (potential) buyers and/or market entrants protecting themselves from the few bad apples in the bunch.



# Definition

- **Intellectual property (IP)** is a number of distinct types of legal monopolies over creations of the mind, both artistic and commercial, and the corresponding fields of law.  
Under intellectual property law, owners are granted certain exclusive rights to a variety of intangible assets, such as musical, literary, and artistic works; discoveries and inventions; and words, phrases, symbols, and designs.  
Common types of intellectual property include **copyrights, trademarks, patents, industrial design rights** and **trade secrets** in some jurisdictions.

*Source: wikipedia.org*

# Note

- For the purpose of this program I want to expand IPR in particular around trade secrets, since they are often neglected in discussions about IP, thus including also other sensitive information such as export value, shipping destination, customer and end user identity, volume and market value of goods shipped (latter items are particularly important when it comes to sourcing from China).

# Bureaucrats

## Laws, regulations

- **Trademark Law of the People's Republic of China:**
  - [http://www.sipo.gov.cn/sipo\\_English/laws/relatedlaws/200804/t20080416\\_380361.html](http://www.sipo.gov.cn/sipo_English/laws/relatedlaws/200804/t20080416_380361.html)
- **Patent Law of the People's Republic of China:**
  - [http://www.sipo.gov.cn/sipo\\_English/laws/lawsregulations/200804/t20080416\\_380327.html](http://www.sipo.gov.cn/sipo_English/laws/lawsregulations/200804/t20080416_380327.html)
- **Copyright Law of the People's Republic of China:**
  - [http://www.sipo.gov.cn/sipo\\_English/laws/relatedlaws/200804/t20080416\\_380362.html](http://www.sipo.gov.cn/sipo_English/laws/relatedlaws/200804/t20080416_380362.html)
- **Law Against Unfair Competition of the People's Republic of China:**
  - [http://www.sipo.gov.cn/sipo\\_English/laws/relatedlaws/200804/t20080416\\_380359.html](http://www.sipo.gov.cn/sipo_English/laws/relatedlaws/200804/t20080416_380359.html)

## Legislative and controlling bodies

- **SAIC: State Administration for Industry and Commerce:**
  - <http://www.saic.gov.cn/english/>
- **NCAC: National Copyright Administration of China:**
  - <http://www.ncac.gov.cn/>
- **SIPO: State Intellectual Property Office:**
  - [http://www.sipo.gov.cn/sipo\\_English/](http://www.sipo.gov.cn/sipo_English/)
    - Website in English, easy to understand, video tutorials, etc. -- **highly recommended!!**

# IPR violation in China in global comparison

Top 25 High and Low Piracy Rates (PC software)

HIGHEST PIRACY		LOWEST PIRACY	
Georgia	95%	United States	20%
Bangladesh	92%	Japan	21%
Armenia	92%	Luxembourg	21%
Zimbabwe	92%	New Zealand	22%
Sri Lanka	90%	Austria	24%
Azerbaijan	90%	Belgium	25%
Moldova	90%	Denmark	25%
Yemen	89%	Sweden	25%
Libya	87%	Switzerland	25%
Pakistan	86%	Australia	26%
Venezuela	86%	Finland	26%
Indonesia	85%	Germany	27%
Vietnam	85%	United Kingdom	27%
Iraq	85%	Netherlands	28%
Ukraine	84%	Norway	28%
Algeria	84%	Israel	32%
Montenegro	83%	Canada	32%
Paraguay	83%	Ireland	34%
Cameroon	83%	South Africa	35%
Nigeria	83%	Singapore	36%
Zambia	82%	UAE	36%
Bolivia	81%	Czech Republic	38%
Guatemala	81%	Taiwan	39%
China	80%	Reunion	40%
El Salvador	80%	France	41%

Recent Piracy Rates in Asia (PC software)

	2008	2007	2006	2005	2004
<b>Asia Pacific</b>					
Australia	26%	28%	29%	31%	32%
Bangladesh	92%	92%	92%	—	—
Brunei	68%	67%	—	—	—
China	80%	82%	82%	86%	90%
Hong Kong	48%	51%	53%	54%	52%
India	68%	69%	71%	72%	74%
Indonesia	85%	84%	85%	87%	87%
Japan	21%	23%	25%	28%	28%
Malaysia	59%	59%	60%	60%	61%
New Zealand	22%	22%	22%	23%	23%
Pakistan	86%	84%	86%	86%	82%
Philippines	69%	69%	71%	71%	71%
Singapore	36%	37%	39%	40%	42%
South Korea	43%	43%	45%	46%	46%
Sri Lanka	90%	90%	90%	—	—
Taiwan	39%	40%	41%	43%	43%
Thailand	76%	78%	80%	80%	79%
Vietnam	85%	85%	88%	90%	92%
Other AP	91%	91%	86%	82%	76%
<b>TOTAL AP</b>	<b>61%</b>	<b>59%</b>	<b>55%</b>	<b>54%</b>	<b>53%</b>

Source: 6th annual BAS-IDC global software 08 Piracy Study

# Forms of IPR violation

- Internal theft
  - From supplier or employee into competitor
- Illegal use of brand, patent, design
- Going direct without you
- Extra shifts with your tooling to sell to others

# Example 1: Extra Shifts in the Laiyang Textile Factory

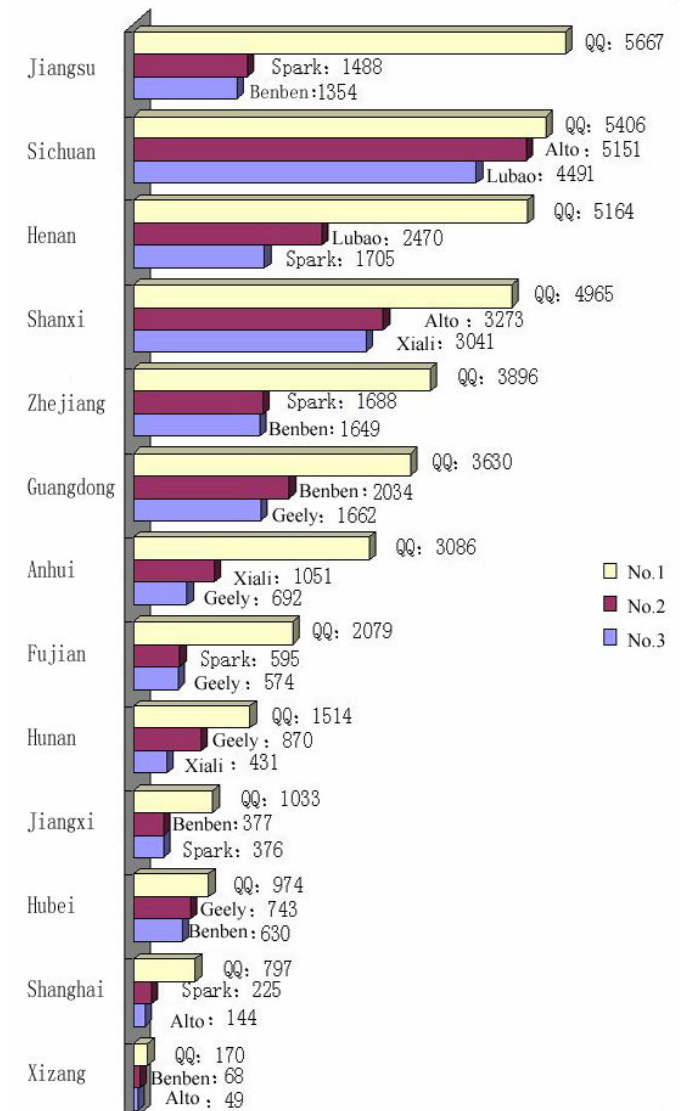
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# Example 2: Chery QQ vs. Chevrolet Spark, Daewoo Matiz

< image >

¥26,000

¥20,000



# Other examples

< images >



Junjie/Zunchi, 1.6L\1.8L\2.0L

长/宽/高(mm) 4648/1800/1450 发动机型式 4G63S4M

变速器型式 四档自动 排量(毫升) 1997

最大功率(KW) 95/6000 最大扭矩(Nm) 173/4500

油耗(L/100km) 6.5(80km/h), ≤8.5(90km/h) 轴距(mm) 2790

## Pricing

1.6MT: **¥85,800**

1.8MT: **¥95,800**

2.0AT: **¥116,800**

## **STANDARD SPECIFICATIONS:**

- Power Sun Roof, Power Windows, Power Side Mirrors
- Automatic 4 Shifts Transmission
- Automatic Air-Conditioner
- Anti-theft System to Engine + Baby Lock + Inertia Switch
- Central Door Lock with Functional Remote Control Unit
- Four-Cylinder/16 Valve Engine
- ABS/EBD/EDC
- Genuine Leather Seats with Peach Wood Finish
- Four Air Bags
- Upper Engine Apron
- Power Seat with Heating Function (Driver's Side)
- Metallic Body (Not Fiber)
- Anti-Dazzle Inner Rear View Mirror
- Engine Type: Mitsubishi 4G63S4M
- Aluminum Alloy Wheels 205/55R16
- Reverse Radar (Parking Sensor)
- CD/Radio + 8 Loudspeakers
- < 8.5 Liters Fuel Consumption Rate Per 100km
- Fuel Tank Capacity = 75 Liters
- Multi-Links Helical Spring Independent Suspension System

# Other examples

## What's in a Name?

Some Chinese companies have adopted names that sound similar to their foreign competitors

CHINESE BRAND	OVERSEAS BRAND	BUSINESS
Hongda	Honda	Motorcycles
Chery	Chevy	Automobiles
Wumart	Wal-Mart	Retail chain
Roewe	Rover	Automobiles
Redberry	BlackBerry	Mobile-email device
Baidupedia	Wikipedia	Online encyclopedia
Baidu Space	MySpace	Homepage hosting
Shanghai Xingbake	Starbucks; Xingbake	Coffee

5 MB email account / month: ¥6

*Source: Wall Street Journal*

## Factors contributing to product piracy

- Strength of IP protection in a country
  - Law making
  - Law enforcement → NCA/NDA useless
- Non-adherence to the law
- Cultural differences
- Availability of pirated products
- Size of companies
- Strength of industry

# The Culture factor

- Mindset:
  - Intangibles less valueable
  - Taking advantage of loopholes is good thing  
→ 36 stratagems
  - Copying honors the master (e.g. paintings)
  - Personality: enterprenurial, risk-taking, gambling
    - Whatever-it-takes mentality
- Education
  - Memorization vs. problem solving
  - Business & trading vs. science & engineering
- Communism
  - 1949: patent law was abolished
  - State owned invention rights
  - → mentality of public vs. private knowledge
- Confucionism
  - Letigation is taboo; dispute resolution through guanxi

# The Legal factor

- Legislature:
  - Patent and trademark laws less strict
  - IRP only introduced recently
  - FTR vs. FTM
- Law enforcement
  - Law is often not enforced
  - Law is often not adhered to
    - Laws and contracts are rather seen as vague guidelines, rather than something to be strictly followed
  - → Secrecy is very common, even in private life
    - → Example case: spies at Hongkong fair
  - Penalties are often negotiable („it's just a game.“)
  - Jurisdiction
  - Litigation is avoided
    - Example case: Yantai car incident

# The other factors

- Availability of pirated products
  - Many pirated factories are currently or formerly SOEs
- Size of companies
  - Many privately owned Chinese companies are rather small and family run
  - Ask yourself:
    - Who is more likely to install pirated software: Small or large companies?
    - Have you ever used pirated software?
    - How about your last employer / your university?
- Strength of industry
  - Example: The Pirate Bay ([thepiratebay.org](http://thepiratebay.org))
    - In USA partially blocked in 2009 but still accessible
      - IFPI (International Federation of the Phonographic Industry), Electronic Frontier Foundation
    - In Denmark blocked in **2008**, now pending
    - In Ireland blocked in **2009**
      - Irish Recorded Music Association
    - In Italy blocked in **2008**, later re-opened, now pending
      - Italian Federation against Musical Piracy
    - In The Netherlands blocked in **2009**, now pending
      - BREIN,
    - In China blocked since 2005
      - → **is China so advanced in terms of IPR ?**

# Remedies against product piracy

- Expect to be copied
  - See it as a game (less legal, more physical)
- Register TM or patent ASAP, even if you do not plan to use soon
  - → FTR vs. FTM
- Make your products less of a target for pirates
  - Do not price them too far above market prices
  - Make them difficult to copy
    - E.g. by incorporating high level of training and support
  - Separate functions and technology
    - E.g. have supplier manufacture hardware and you the software
- Become a higher risk target for potential pirates
  - Have strong presence in China
  - Try to build strong brand image
  - Mark components with your logo or serial no.

# Trademark application – a practical example (1)

- Where in Qingdao?
  - South Fuzhou Rd

*< map >*

## Remedies against product piracy (2)

- Snoop around / run a tight ship (*esp. with tangibles*)
  - Hire private investigators
  - Check your tangible assets frequently
    - Warehouse, tooling room, showroom or sample room
  - Use metal detectors
- Limit access to technology, e.g. through compartmentalization (*esp. with intangibles*)
  - Keep sensitive information in restricted areas
  - Conduct random security checks on information handling
  - Use surveillance equipment or firewalls
- NCA/NDA
  - Have every supplier/employee sign them
  - Create awareness
  - Contracts: **KISS** (don't use a 50-page NDA)
  - Get each clause confirmed separately

# Remedies against product piracy (3)

- When requesting quotes (RFQ)
  - Spread it around at component level
  - RFQ with a “representative” product
  - Know who you are dealing with BEFORE RFQ
    - Avoid “bad” trading companies
  - Scrub blue prints and samples

**Why? Trade show = R&D dept. !!!**
- Conduct due diligence on potential partners
- Audit your partners/suppliers regularly
  - *# of components delivered = # of products sold*
- Align interests
  - E.g. through equity stakes in suppliers
  - Paying employees with options/shares
- Withhold your most innovative products
  - Instead introduce
    - Lower-margin products, or
    - more mature products

# Remedies against product piracy (4)

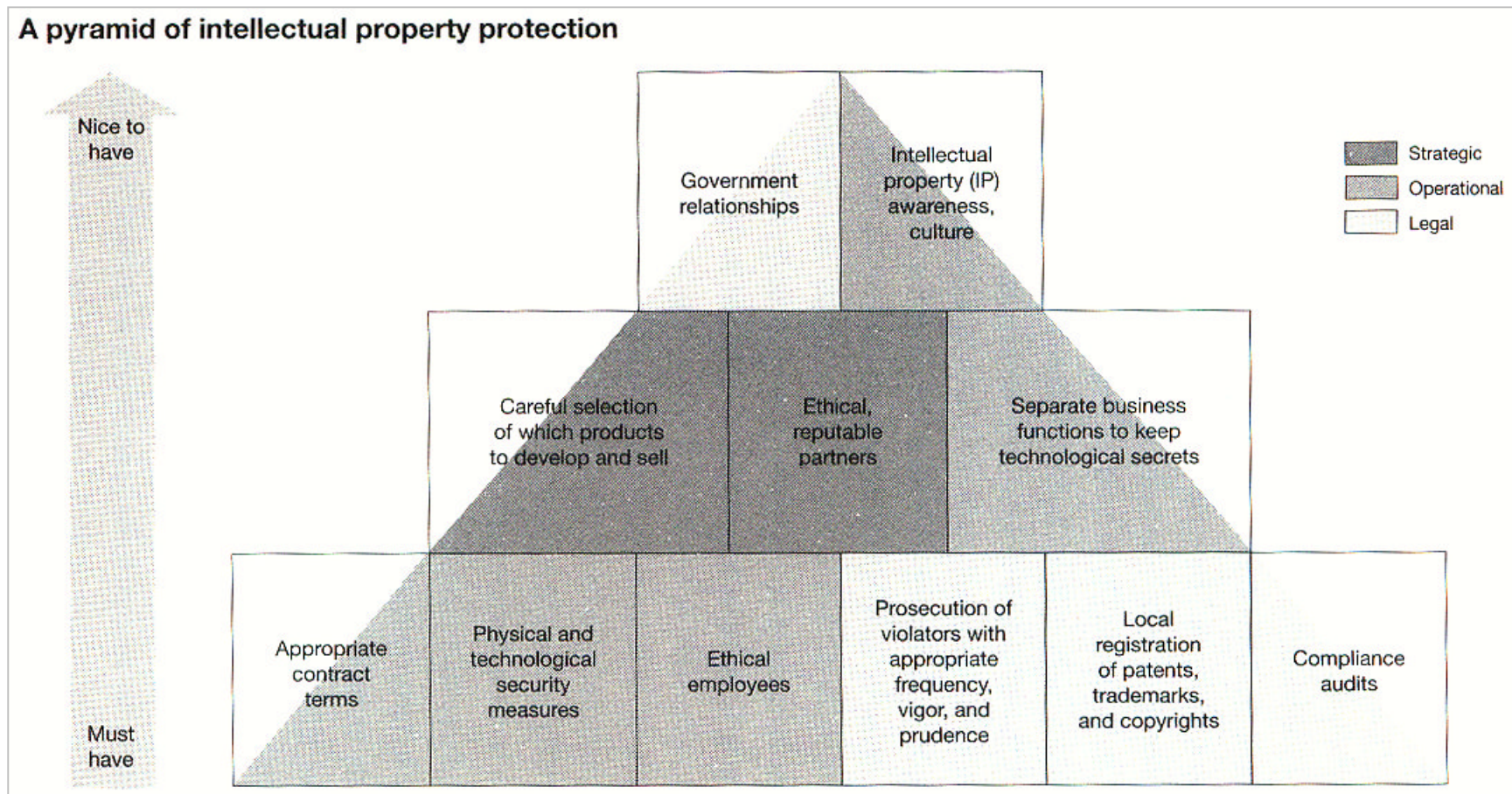
- Recruit ethical employees based on
  - **Personality**
    - Personality tests; look for trust and loyalty (GaoKao score; IQ test)
  - **Intelligence**
    - Don't confuse perfect English skills with high IQ or competency
  - **Age**
    - The younger, the less former exposure to unethical behavior
  - **Gender**
    - Women in general more loyal and more ethical

Foreign enterprises with operations in China have found that Chinese women are typically more adaptable and more loyal than male employees, and those who have studied English generally speak it much better than males with the same educational background.

Foreign companies already in China and those proposing to go there would be well advised to make sure that their employee-mix favors the female side.

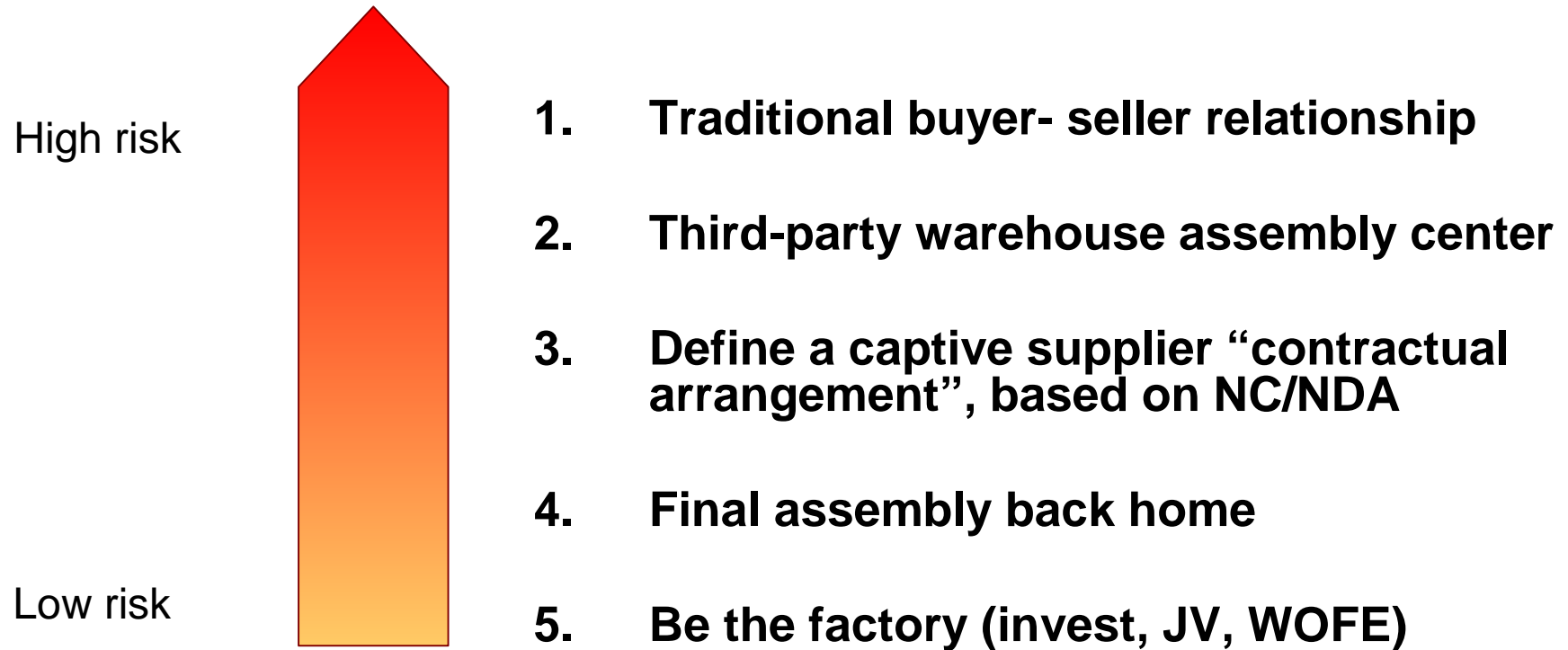
# Remedies against product piracy (5)

- Build guanxi with government



# Options for sourcing from China and risks involved

**Protection = control = integration of supply chain**





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