EU launches WTO case against China’s unfair technology transfers

Commissioner for Trade Cecilia **Malmström** said: *“Technological innovation and know-how is the bedrock of our knowledge-based economy. It’s what keeps our companies competitive in the global market and supports hundreds of thousands of jobs across Europe. We cannot let any country force our companies to surrender this hard-earned knowledge at its border. This is against international rules that we have all agreed upon in the WTO. If the main players don’t stick to the rulebook, the whole system might collapse.”*

European companies coming to China are forced to grant ownership or usage rights of their technology to domestic Chinese entities and are deprived of the ability to freely negotiate market-based terms in technology transfer agreements.

This is at odds with the basic rights that companies should be enjoying under the WTO rules and disciplines, in particular under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

The case initiated today by the EU targets specific provisions under the Chinese regulation on import and export of technologies (known as “TIER”) and the regulation on Chinese-foreign equity joint ventures (known as “JV Regulation”) that discriminate against non-Chinese companies and treat them worse than domestic ones.

These provisions violate WTO obligations to treat foreign companies on an equal footing with domestic ones, and to protect intellectual property like patents and undisclosed business information.

If consultations requested today do not reach a satisfactory solution within 60 days, the EU will be able to request that WTO sets up a panel to rule on the matter.

While the EU’s request is similar to the one brought recently to the WTO by the US, it also identifies further potential violations of WTO rules.

For More Information

EU submission to the WTO

WTO dispute settlement in a nutshell

EU trade policy and intellectual property

EU trade relations with China

EIOPA expects insurance undertakings to avoid instruments banned or restricted by ESMA

Today, the European Insurance and Occupational Pensions Authority (EIOPA) published a statement on consumer detriment resulting from policyholder exposure to contracts for differences (CFDs) and binary options. Considering potential future risks to policyholders, EIOPA expects insurance undertakings to avoid as possible direct underlyings of insurance-based investment products, instruments for which the European Securities and Markets Authority (ESMA) has issued a ban or restriction. In general, uses of product intervention powers in one sector should never be circumvented by repacking the instruments that have been banned or restricted for offer in another sector.

At this juncture, there is no evidence of direct policyholder exposure to CFDs or binary options, whilst the possibility of such policyholder exposure to CFDs or binary options developing seems not highly probable. However, EIOPA’s experience has been that unexpected and complex risks have increasingly been offered as potential units within unit-linked contract raising supervisory concerns. For this reason, EIOPA remains cautious on the matter.

Within its remit, EIOPA will use the available powers and measures to ensure the integrity, transparency, efficiency, and orderly functioning of financial markets and that customers’ interests are adequately protected throughout the European Union. Specifically, EIOPA and National Competent Authorities will continue to monitor the market for insurance-based investment products, including those providing direct exposure to complex and risky underlyings, in view of whether other restrictions or bans should be necessary.

Background

The European Securities and Markets Authority (ESMA) adopted temporary product intervention measures on the provision of contracts for differences (CFDs) and binary options to retail investors in the European Union. These intervention measures include a prohibition on marketing, distribution or sale of binary options as well as several restrictions on marketing, distribution or sale of CFDs to retail investors. The measures have been published in the Official Journal of the European Union on 1 June 2018.

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ESMA publishes Q&As in relation the temporary product intervention measures

The overall Q&As on ESMA's temporary product intervention measures on the marketing, distribution or sale of CFDs and Binary options to retail clients provides answers to practical questions in relation to:

- Existing contracts;
- Payments;
- Margin close-out protection;
- Aggregate liability;
- Monetary benefits;
- Binary options;
- CFDs referencing futures
- Guaranteed stop loss orders

The purpose of this Q&A is to promote common supervisory approaches and practices in the application of ESMA's temporary product intervention measures in relation to the marketing, distribution or sale of CFDs and Binary options to retail clients. It aims at market participants.

ESMA will continue to monitor this Q&A on ESMA's temporary product intervention measures on the marketing, distribution or sale of CFDs and Binary options to retail clients in the coming months and will review and update them where required.