



CHINESE TAIPEI – MEASURE RELATING TO INVESTMENTS IN OFFSHORE WIND INSTALLATIONS

REQUEST FOR CONSULTATIONS BY THE EUROPEAN UNION

The following communication, dated 26 July 2024, from the delegation of the European Union to the delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu ("Chinese Taipei") pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), Article 8 of the Agreement on Trade-Related Investment Measures ("TRIMs Agreement"), and Article XXII:1 of the General Agreement on Trade in Services ("GATS"), with respect to Chinese Taipei's measure relating to local content requirements in investments in off-shore wind installations.

1. THE MEASURE AT ISSUE

Chinese Taipei has put in place an energy transition plan to change its underlying fuel mix into 20% of electricity generated by renewable sources, 30% from coal, and 50% from natural gas by 2025. With this objective, it started in 2013 to develop offshore wind generation capabilities via capacity allocation rounds. In each round, investors are bidding to develop offshore windfarms up to the maximum allocated generation capacity.

Three allocations rounds have been launched so far. The third one, in the course of which Chinese Taipei intends to allocate 15 GW in total through consecutive auctions (so called "phases") up to 2030, was initiated on 24 July 2021. The first auction under the third round – "phase 3.1" – took place in 2023, awarding a total of 3GW of capacity. On 23 November 2023, Chinese Taipei announced the selection mechanism for the second auction under round 3 – "phase 3.2" –, offering up to 3GW of capacity. The application window to participate in the auction of phase 3.2 closed on 10 April 2024. The projects are envisaged to be commissioned between 2028 and 2029.

The measure at issue, including its adoption, maintenance, application and administration by Chinese Taipei, consists in the localisation requirements included in the governance framework of phase 3.2 and in particular:

- requiring developers to commit, in their auction bids, to a minimum degree of "localisation" (i.e. local content) to be eligible to participate in the auction;
- using the degree of localisation committed by bidders as a tiebreaker in the award procedure, meaning that out of two or more otherwise equivalent bids, the bid with the highest degree of localisation is favoured; and
- contractually binding successful bidders to achieving the committed degree of localisation during the implementation and operation of their windfarm projects, and subjecting them to contractual penalties if the committed degree of localisation is not achieved.

2. LEGAL AND OTHER INSTRUMENTS RELEVANT TO THE MEASURE AT ISSUE

The measure at issue is put in place, evidenced by, implemented and administered through, *inter alia*, the following legal and other instruments, considered alone and in any combination, as well as through their practical application by the relevant authorities:

- Electricity Act¹,
- Registration Rules for Electricity Industry²,
- Renewable Energy Development Act³,
- Regulations governing the Establishment of Renewable Energy Power Generation Facilities⁴,
- Press note: Ministry of Economic Affairs ("MoEA") announces the selection mechanism for the second phase of zonal development, inviting outstanding developers to move forward together⁵,
- MoEA Order No.11258025270: Directions for Allocating Installed Capacity of Offshore Wind Potential Zones⁶,
- MoEA Announcement: Announcement of Industrial Relevance Policies for Offshore Wind Power Zonal Development (Phase 2: Applicable to those Completed and Connected in 2028-2029)⁷,
- Offshore Wind Power Zonal Development (Phase II) Industrial Relevance Policy (Industrial Development Administration, MoEA)⁸,
- Offshore Wind Power Zonal Development Phase II Capacity Allocation Plan (Industrial Relevance Execution Plan) - Writing instructions⁹,
- MoEA Announcement: Offshore Wind Power Zonal Development Contract Template (Phase 2: Completed and Connected in 2028-2029)¹⁰,
- Offshore Wind Power Zonal Development Contract (Phase 2: Completion of Grid Connection in 2028 to 2029) – Contract template (MoEA)¹¹,

¹ 電業法 as amended on 28 June 2023;
<https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=J0030011>.

² 電業登記規則, as amended on 21 June 2023;
<https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=J0030012>.

³ 再生能源發展條例 as amended on 21 June 2023;
<https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=J0130032>.

⁴ 再生能源發電設備設置管理辦法, as last amended on 4 January 2024;
<https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=J0130041>.

⁵ 經濟部公告區塊開發第2期選商機制, 遴選優秀開發業者一起再向前行, published on 23 November 2023;
https://www.moeaea.gov.tw/ECW/populace/news/News.aspx?kind=1&menu_id=41&news_id=33615.

⁶ 離岸風力發電區塊開發場址容量分配作業要點, published on 23 November 2023;
https://www.moeaea.gov.tw/ECW/populace/news/wHandNews_File.ashx?file_id=27805.

⁷ 經濟部公告：公告本部離岸風力發電區塊開發產業關聯政策(第二期：中華民國一百一十七年及一百一十八年完工併聯者適用), published on 19 December 2023;
<https://www.ida.gov.tw/ctrl?PRO=policy.rwdPolicyView&id=11981>.

⁸ 離岸風力發電區塊開發(第二期)產業關聯政策, published on 19 December 2023;
<https://www.ida.gov.tw/ctrl?PRO=filepath.DownloadFile&f=policy&t=f&id=10546>.

⁹ 離岸風力發電區塊開發容量分配計畫書(產業關聯執行方案)撰寫說明, published on 19 December 2023;
<https://www.ida.gov.tw/ctrl?PRO=filepath.DownloadFile&f=policy&t=f&id=10547>.

¹⁰ 經濟部公告離岸風力發電區塊開發契約書範本, published on 16 January 2024;
https://www.moeaea.gov.tw/ecw/populace/Law/Content.aspx?menu_id=26308.

¹¹ 離岸風力發電區塊開發契約書(契約範本), published on 16 January 2024;
https://www.moeaea.gov.tw/ECW/main/Law/wHandEditorFile.ashx?file_id=13067.

- Any other instruments through which Chinese Taipei implements and administers the measure at issue, including letters, circulars or other documents whereby requests are made, decisions are communicated and/or instructions are imparted; whether between Chinese Taipei authorities or to individual or groups of companies directly or indirectly involved in phase 3.2 for offshore wind energy generation projects, as described above.

This Request also covers any annexes, appendixes, attachments or schedules to the instruments listed above, as well as any amendments, supplements, replacements, renewals, extensions, implementing measures or any other related measures.

3. LEGAL BASIS FOR THE COMPLAINT

The measure at issue appears to be inconsistent with Chinese Taipei's obligations under GATT 1994, the TRIMs Agreement, and GATS, in particular as regards:

- Article III:4 of GATT 1994, inasmuch as the measure at issue requires and incentivises applicants to commit to using, and in case they are successful in the auction, to effectively use, a significant level of Chinese Taipei domestic products in their windfarm projects, thereby according less favourable treatment to imported products than to like domestic products;
- Article 2.1 of the TRIMs Agreement, inasmuch as the measure at issue requires and incentivises EU investors to commit to using, and in case they are successful in the auction, to effectively use, a significant level of Chinese Taipei domestic products in their windfarm projects, thereby constituting a trade related investment measure inconsistent with the national treatment obligation provided for in Article III:4 of GATT 1994; and
- Article XVII of GATS, inasmuch as the measure at issue requires and incentivises applicants to commit to using, and in case they are successful in the auction, to effectively use, a significant level of Chinese Taipei domestic content, including in the context of the supply of certain services, thereby according less favourable treatment to foreign services than to like domestic services.

The measure identified in this Request appears to nullify or impair the benefits accruing to the European Union directly or indirectly under the covered agreements. The European Union reserves the right to address additional measures and claims, including under other provisions of the covered agreements, regarding the above matters during the course of the consultations.

The European Union looks forward to receiving Chinese Taipei's reply to this request and expresses its readiness to consider a mutually convenient date and place for the consultations.
