EU-Thailand Newsletter

May 2023/ Vol. 1

Anti-Coercion Instrument: the next addition to the EU's trade toolbox

The European Parliament (EP) and the European Council reached a political agreement (28 March) on a new instrument that will attempt to deter third countries from using economic coercion against EU Member States. The instrument, which is **expected to be adopted after Summer**, will allow the imposition of WTO-compatible countermeasures on countries using coercion to force them to negotiate the withdrawal of those coercive measures.

Once the instrument is in place, **any Member State or the Commission will be able to trigger the process** when they believe coercion is taking place. During the **first phase**, the Commission will have three months to **investigate** and conclude if this is the case or not. Then, the Council will have two months to endorse the Commission's findings by Qualified Majority Voting – 55% of Member States, representing at least 65% of the EU population. If it does, a **second phase** starts, where the **Commission opens negotiations with the third country** while in parallel a **decision is made on an array of countermeasures** should there be no agreed resolution. Such countermeasures may include customs duties, suspension of market authorisations, removal of intellectual property protections and public procurement concessions, or introduction of export controls. This second phase cannot last longer than six months, and can take place at the same time as **European solidarity mechanisms** to help the Member States cope with coercion.

The main target of this instrument will be China after **Beijing's trade retaliation against Lithuania** following the opening of a Taiwanese de facto embassy in Vilnius in November 2021. **Trump's return to the White House could see the US fall foul**, as his administration's threats to use section 301 to prevent EU countries from levying taxes on digital services was a contributory factor in the EU's decision to develop this instrument.

Forced labour ban proposal: state of play and impact on Thailand

The EP is in the process of finalising its position on the Commission's Proposal to prohibit products made with forced labour circulating in the Single Market. In order to make it WTO-compatible, **this legislation will apply to all countries and products** – including Member States – with enforcement responsibility falling on National Competent Authorities (NCAs) and Customs.

According to the Commission's proposal, a two-stage investigative process is foreseen, with (1) a **preliminary phase** where NCAs are responsible for requesting and assessing information from economic actors, and (2) **an investigative phase** during which all the information available is examined. If the NCA identifies a suspected violation, the economic operator under investigation has to implement measures to ensure the eradication of forced labour in its supply chain. NCAs are empowered to perform inspections, **including in third countries**, subject to **consent from both the economic operator and the affected country.** To prevent non-cooperation of third parties thwarting any investigation, the proposal allows **NCAs to come to a decision based on best available facts**, with consequently a lower burden of proof. The **EP will try to reinforce the Commission's proposal** by ensuring the application of the regulation across the full spectrum of the value chain, harmonising it with the Corporate Sustainability Due Diligence Directive – also in the pipeline – and reversing the burden of proof when there is evidence of systemic forced labour by region or sector.

The unnamed target is **China in general and Xinjiang in particular**, with allegations of systemic forced labour in the province. Exports from Xinjiang to the EU have been growing rapidly in recent years, with a 34% increase in 2022 over 2021. **Solar panels and lithium batteries** are the main products. Beyond Xinjiang, **Thailand's fishing industry may also be at the spotlight**, as some claim Bangkok is reneging on its commitments under the International Labour Organisation (ILO) Work in Fishing Convention. Recent reports like that of forced labour in a clothing factory in Mae Sot[1] will not help.

European carmakers eye Indonesia, incentives to finalise FTA talks pile up

Indonesia is rich in raw materials key to the manufacture of electric vehicles (EV), such as nickel and bauxite. Jakarta's decision to restrict exports of these minerals and build instead an end-to-end EV domestic supply chain seems to be paying off with **investment from the industry's major players.** US' Ford and Tesla are looking both for local partners and to woo Jakarta, and EU industry is now following suit with **Volkswagen planning to build an EV battery ecosystem in Indonesia.**

European investment in Indonesia will be simpler and easier when the EU-Indonesia FTA is finalised and ratified. Europe's automotive industry is pushing hard. Yet, it remains controversial with **the environmental impact of the extraction, refining and processing of raw materials** – with one example being the management of toxic wastes derived from the High-Pressure Acid Leach (HPAL) process, used in Indonesia to extract nickel and cobalt.

There are lessons to be learnt here for Bangkok on the basis of the Indonesian experience on how to attract European investment and facilitate joint ventures with domestic companies. This could multiply the benefits in terms of jobs, economic output, and infrastructure improvement as well as research and investment opportunities.

* * * * *

[1] https://www.theguardian.com/business/2022/dec/18/workers-in-thailand-who-made-ff-jeans-for-tesco-trapped-in-effective-forced-labour