

EU Commission's first IPI investigation finds unfair treatment for EU medical device makers in China's procurement market

On 14 January 2025, the European Commission (Commission) published the findings of its first investigation under the International Procurement Instrument (IPI) concerning the Chinese public procurement market for medical devices. Unsurprisingly, the findings confirm that EU medical device makers do not have fair access to procurement processes in China and may clear the path towards a decision limiting access of Chinese medical device makers to EU markets.

The role of the IPI

The IPI is a relatively new trade policy tool, aimed at achieving reciprocity by opening up third country public procurement and concession markets and improving EU market access opportunities ([see our client alert of June 2022](#)). It enables the Commission to investigate non-EU country measures and practices that appear to limit access for EU businesses to non-EU procurement markets, and to engage in consultations with the country concerned to eliminate or remedy identified measures and practices. If consultations fail, the Commission may ultimately adopt far-reaching IPI measures, including limiting access to EU procurement procedures.

April 2024: first IPI investigation into China's procurement market for medical devices

On 24 April 2024, the Commission launched its first IPI investigation into Chinese measures and practices in the public procurement market for medical devices ([see our client alert of April 2024](#)).

The Commission's preliminary view was that EU medical device makers may not have fair access to procurement processes in China.

January 2025: first IPI Report and Staff Working Document

On 14 January 2025, the Commission concluded its investigation and consultations with China and published its first [IPI Report](#). The report is accompanied by a [IPI Staff Working Document](#) detailing factual findings.

In its report, the Commission confirmed the existence and application of measures and practices (i) favouring the procurement of domestic medical devices and (ii) restricting the procurement of imported goods, including medical devices. Interestingly, the Report also criticised the conditions imposed in China's centralised procurement of medical devices which led to abnormally low bids that profit-oriented companies without State support would be unable to sustain in the longer term. This is remarkable, as it appears to be an attempt to introduce state aid-type considerations into the evaluation of third country procurement practices.

The Commission found that these restrictions affect all categories of medical devices and are applied across China. As

a result, it concluded that EU operators and products face a serious and recurrent impairment of access.

An apparently extensive dialogue with Chinese authorities did not result in a mutually satisfactory outcome. The Commission was not persuaded by Chinese claims that EU manufacturers had de facto access to the market as the domestic discriminatory measures would not be applied in practice. There was also no satisfactory explanation for the Commission's allegation that certain centralised, high volume procurement projects resulted in unsustainably low bids. Interestingly, China alluded to the fact that accession by China to the international Government Procurement Agreement could in the future address discriminatory access concerns more broadly.

Next steps

As discussions with China have not as yet resulted in any specific remedial action, the Commission will now assess whether it is in the EU interest ("based on an appreciation of all the various interests taken as a whole") to adopt IPI measures. Measures would restrict the access of Chinese medical device operators or products to the EU's public procurement or concession markets for five years (extendable by an additional five), in principle either by imposing a score adjustment on Chinese tenders or by excluding their tenders entirely.

In addition, if IPI measures are to be adopted, any successful tenderer (regardless of its origin) in public procurement procedures subject to an IPI measure would be prohibited from subcontracting more than 50% of the total value of a contract to Chinese suppliers and from providing goods or services originating in China that represent more than 50% of the total value of the awarded contract.

The broader context

Trade relations between the EU and China have been particularly tense in recent years, marked by retaliatory defensive measures and a concern on the part of the EU that EU and Chinese businesses are not competing on a level playing field.

While the EU has shown itself ready to restore the balance of opportunities for EU businesses by making use of its powers under both the EU Foreign Subsidies Regulation (FSR; intended to ensure a fair procurement market within the EU) and the IPI, much will turn on how it decides to approach the imposition of IPI measures in this case in the light of wider EU interests.

Certainly, the Commission appreciates that open market access would benefit both sides. President von der Leyen highlighted in Davos in January that the EU “must engage constructively with China – to find solutions in our mutual interest”. The need to balance wider EU considerations may mean that a resolution of the issues with China may still be

achievable, assuming that China sees value in taking remedial action. The EU’s leverage under the IPI may be limited, however, given the limited presence of Chinese medical device markers in Europe. China may well decide that opening up procurement markets to EU suppliers would on balance be against its own best interests.

Any IPI measures the EU could impose as a result may well be a bellwether of the EU’s willingness to make aggressive use of its toolkit in the context of its trading relationship with China. The recent announcement of a revision of EU public procurement law to introduce a European preference in certain strategic sectors suggests that the Commission will continue to take an assertive position and seek to increase its leverage vis-à-vis China.

VBB is a top-tier independent law firm headquartered in Brussels. Our expertise in trade and competition law, including trade anti-subsidy rules and the FSR, gives us a unique ability to advise on all IPI and FSR matters.

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