

# **Frequently Asked Questions on the IPI measure restricting the access of economic operators and medical devices originating in the People's Republic of China to the European Union public procurement market for medical devices**

*The information provided in these FAQ is for general information purpose only and does not constitute legal advice. Users are strongly encouraged to consult the legal texts and guidelines relevant to the application of this measure as published in the Official Journal of the European Union.*

## **1. How and when should contracting authorities and contracting entities apply this IPI measure?**

The IPI Regulation provides in its Article 6(4) that an IPI measure only applies to public procurement procedures with an estimated value above a threshold to be determined by the Commission in light of the results of the investigation and consultations. In the specific case of the IPI measure regarding the public procurement market of medical devices, that estimated value is equal to or above EUR 5 000 000 net of VAT for goods and services.

The relevant estimated values of the contracts should be calculated in accordance with Article 8 of Directive 2014/23/EU, Article 5 of Directive 2014/24/EU and Article 16 of Directive 2014/25/EU, regarding, respectively, the public procurement procedures covered by such directives.

As this IPI measure is in the form of the exclusion of bidders, it should be applied at the stage of evaluation of the selection criteria.

## **2. Do contracting authorities need a correspondence table between CN/HS codes and CPV codes in order to determine the scope of an IPI measure?**

Public procurement contracts in the EU are classified using the Common Procurement Vocabulary (CPV). This is accessible in the following link: <https://ted.europa.eu/en/simap/cpv>

Public procurement officials work on the basis of CPV codes and therefore, the scope of the IPI measure is specified in the implementing Regulation using the CPV codes. While there is no official corresponding table between CN/HS and CPV codes, we recommend consulting the annex to the Notice of Initiation for an indicative list of HS codes.

## **3. How to determine the origin of an economic operator?**

For the purposes of the application of the IPI Regulation, the origin of an economic operator should be determined as follows:

- In case an economic operator is a natural person, its origin is the country of which the person is a national or where that person has a right of permanent residence.

- In case an economic operator is a legal person, its origin is the country where the legal person is constituted or otherwise organised, provided that the legal person is engaged in substantive business operations in that territory.

The criterion of substantive business operations serves to avoid potential circumvention of any IPI measure through the creation, by natural or legal persons originating in a country subject to an IPI measure, of shell or letterbox companies in the territory of a country other than the country subject to an IPI measure. For more information:

[https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023XC0221\(02\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023XC0221(02))

#### **4. How to determine of the origin of a good?**

For the purposes of the IPI Regulation, the origin of goods supplied in the execution of a public procurement contract should be determined based on the non-preferential rules of origin, which are laid down in the Union Customs Code ('UCC'), as further specified by the relevant provisions of Commission Delegated Regulation (EU) 2015/2446 ('UCC-DA').

In essence, non-preferential rules of origin are used to determine the country of origin of goods for the application of the most-favoured nation treatment (MFN) (i.e. Union standard tariff treatment), but also for the implementation of a number of commercial policy measures such as anti-dumping and countervailing duties, trade embargoes, safeguard measures and quantitative restrictions or tariff quotas. They are also used for trade statistics, public tenders and origin marking. The Union applies its own set of non-preferential rules of origin provisions, which may be different from those of any other third country.

For more information:

[https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023XC0221\(02\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023XC0221(02))

#### **5. How to apply the obligation under Article 8 of the IPI Regulation for the winning bidder not to exceed 50% of the total value of the contract originating in the People's Republic of China?**

With respect to tenders covered by the IPI measure, pursuant to Article 8(1) of the IPI Regulation contracting authorities and contracting entities are required to include in public procurement documents the following obligations on successful tenderers:

- (a) not to subcontract more than 50 % of the total value of the contract to economic operators originating in PRC;
- (b) to ensure that goods supplied or provided in the execution of the contract and originating in the PRC which is subject to the IPI measure represent no more than 50 % of the total value of the contract, irrespective of whether such goods are supplied or provided directly by the successful tenderer or by a subcontractor.

For the purpose of this Article, goods are defined as the goods referred to in the subject-matter of a public procurement procedure and in the specifications of the relevant contract. These origin

requirements do not cover any input, material or ingredient incorporated in the supplied goods. Consequently, materials, goods and components to be incorporated into or to form part of the procured goods do not fall under this threshold requirement. For example, if the procurement concerns Magnetic Resonance Imaging (MRI) devices, contracting authorities do not have to check the origin of different electronic components of such devices to calculate the 50 % value threshold. Such components can be of any origin. What is legally required is to verify the origin of the MRI devices that are the object of the procurement contract and ensure that at least 50 % of the contract value of the MRI devices procured for the purpose of each specific procurement contract originates in a country other than the People's Republic of China.

**6. *When do you have to apply the IPI measure for a framework contract or a Dynamic Purchasing System?***

The IPI measure shall apply only to public procurement procedures launched between its entry into force and its expiry, withdrawal or suspension.

With respect to framework contracts, the IPI measure shall be applied only once at the award of the framework contract. The IPI measure does not apply to contracts that may be awarded, based on an existing framework agreement concluded prior to the entry into force of the IPI measure.

**7. *How do contracting authorities report the application of the IPI measure in TED through the new e-form?***

The IPI Regulation provides in its Article 13(2) that contracting authorities and contracting entities shall report to the Commission through the Tenders Electronic Daily (TED) about the application of IPI measures, as part of the information on contract awards. Such report will include, for each relevant procedure, information on the application of IPI measures, the number of tenders received from third countries subject to the relevant IPI measure, the number of tenders for which the exclusion of the tender was applied and, if applicable, any specific exceptions from the IPI measure. New forms have been elaborated to report on IPI measures. More information can be found in the link below.

[https://code.europa.eu/eproc/eforms/docs/-/blob/main/guides/gde\\_002\\_ipi.md?ref\\_type=heads](https://code.europa.eu/eproc/eforms/docs/-/blob/main/guides/gde_002_ipi.md?ref_type=heads)

**8. *Where can I find information on the status of third country bidders regarding the access to the public procurement market including for the IPI measure in force?***

The Commission has made publicly available on its website a procurement tool called "Procurement4Buyers". This tool contains, inter alia, information for contracting authorities and contracting entities in the European Union on when they must restrict the participation of foreign bidders in public procurement procedures in accordance with IPI measures. The tool is available at this link:

<https://webgate.ec.europa.eu/procurementbuyers/#/procurementlocation>

**9. *Is there a list of IPI measures in force and ongoing investigations available online such as the one used for TDI?***

All IPI investigations are listed on the following website: [https://policy.trade.ec.europa.eu/help-exporters-and-importers/accessing-markets/public-procurement/international-procurement-instrument\\_en](https://policy.trade.ec.europa.eu/help-exporters-and-importers/accessing-markets/public-procurement/international-procurement-instrument_en)

Notices of initiation, investigation reports and Commission implementing regulations imposing IPI measures are published in the Official Journal of the European Union.

**10. *When a contract notice published in TED refers to several CPV codes including a CPV code covered by the IPI measure and other CPV codes which are not covered by the IPI measure, which code shall be considered by contracting authorities to determine if the contract is covered by the IPI measure?***

The application of the IPI measure to a given tender is defined by the main CPV code. If the main CPV code of the tender falls under the scope of the IPI measure, i.e. CPV codes from 3310000-1 to 33199000-1 as defined in Regulation (EC) 2195/2012, the IPI measure shall apply.