

THE GEORGE WASHINGTON UNIVERSITY
GOVERNMENT PROCUREMENT LAW PROGRAM

JOINT U.S.-EU CATALOGUE OF BEST PRACTICES ON GREEN PUBLIC PROCUREMENT

FREE WEBINAR

May 13, 2024 – 9:00 Eastern US – 15:00 CET



Welcome

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- Recording and materials at **www.publicprocurementinternational.com** and recording at **GW Law Government Procurement Law Program YouTube** page
 - Audience Questions & Answers
 - Speakers' statements are in their personal capacities

Agenda

- Introductions
- Options in Green Procurement
- Review of Joint EU-US Catalogue
- New U.S. Rule on Green Procurement
- Assessment of Strategies
- Questions/Discussion
- Conclusion



Introductions

- **Kate Psillos** – Deputy Assistant U.S. Trade Representative for WTO and Multilateral Affairs, Office of the U.S. Trade Representative (Washington DC)
- **Lucian Cernat** – Head of Global Regulatory Cooperation and International Procurement Negotiations at the European Commission (Brussels)
- **Gian Luigi Albano** – Head of Division at Consip S.p.A., the National Central Purchasing Body, Italy; Research Fellow, Utrecht University Centre for Public Procurement (UUCePP); Adjunct Professor of Economics, LUISS Guido Carli (Rome)



Strategies for Environmental Sustainability

Planning

Contractor
Qualification

Eco-Label

Technical
Evaluation

Life-Cycle
Price



Steven L. Schooner

The joint catalogue reflects a common understanding on how “green public procurement” — public procurement grounded in environmental sustainability — can positively contribute to achieving shared environmental goals posed by climate change. The catalogue identifies **key policies, actions and best practices** in green public procurement, as part of a broader effort to use public procurement to “catalyze” reductions in the greenhouse gasses which cause global warming.



U.S.-EU Trade and Technology Council
Working Group on Climate and Clean Tech

**Joint U.S.-EU Catalogue of
Best Practices on Green Public
Procurement**

EU-U.S. Trade and Technology Council



- The catalogue was released as part of the [sixth ministerial meeting of the Trade and Technology Council \(“TTC”\)](#), which took place in Leuven, Belgium, on 4 and 5 April 2024. The meeting was co-chaired by European Commission Executive Vice President Margrethe Vestager, European Commission Executive Vice President Valdis Dombrovskis, United States Secretary of State Antony Blinken, United States Secretary of Commerce Gina Raimondo, and United States Trade Representative Katherine Tai, joined by European Commissioner Thierry Breton, and hosted by the Belgian Presidency of the Council of the European Union.
- The “EU-US Trade and Technology Council provides a **forum for the United States and European Union to coordinate approaches to key global trade, economic, and technology issues** and to deepen transatlantic trade and economic relations based on these shared values. It was established during the EU-US Summit on 15 June 2021 in Brussels.”



New U.S. Rule on Green Procurement 89 Fed. Reg. 30212 (Apr. 22, 2024)

- New clause FAR 52.223-23, Sustainable Products and Services (May 2024)
 - Requiring agencies must **procure sustainable products and services** “to the maximum extent practicable”
 - Applies to all procurements, including micro-purchases
 - Does not apply to weapon systems, or to contracts performed abroad
 - Requiring agency is to **list the required sustainable products and services in the solicitation**
 - **Agency may decide *not* to require sustainable goods or services** (FAR 23.103-.104) (and if so must prepare written justification) because of:
 - **Price** not reasonable (life-cycle cost assessment recommended but not mandatory)
 - **Performance** issues (e.g., mission demands, quality, “Buy American” and cybersecurity)
 - **Time** (cannot purchase competitively within a reasonable performance schedule)
 - Requiring agency **lists** sustainable products/services, **evaluates** and **enforces**
- Defines “sustainable products and services” to specify that **products and services must meet, e.g., the Environmental Protection Agency (EPA) Recommendations** of Specifications, Standards, and Ecolabels (“EPA Recommendations”) in effect as of **October 2023**
 - EPA Recommendations include 40+ ecolabels – [Ecolabel Index](#) reports 456 ecolabels worldwide
 - Compare [EPA Framework](#) for assessing ecolabel standards vs. [EU Procurement Directive Art. 53](#) / *Max Havelaar* (CJEU C-368-10)

Catalogue Demonstrates Parallel Developments – EU / US



Planning

- U.S. – “maximum extent practicable”
- EU – Member States’ National Action Plans



Contractor Qualification

- EU – Vendors can be excluded if violate environmental requirements
- US – Proposed rule: vendors that do not measure GHG = non-responsible



Eco-Labels

- US – New final rule follows EPA recommended eco-labels
- EU – Directive allows eco-labels



Technical Evaluation

- EU -- Member States incorporate environmental standards in evaluations
- US -- New rule encourages agencies to evaluate for sustainability



Life-Cycle Costs

- EU – EU publishes [Life-Cycle Costing tool](#)
- US -- New rule encourages agencies to evaluate life-cycle costs



U.S.-EU Trade and Technology Council
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**Joint U.S.-EU Catalogue of
Best Practices on Green Public
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Questions for Panelists

How was the joint catalogue developed?

Why was the joint catalogue prepared?

Who was involved?

What are the goals of the joint catalogue?

Could similar efforts be made in, for example, cybersecurity?

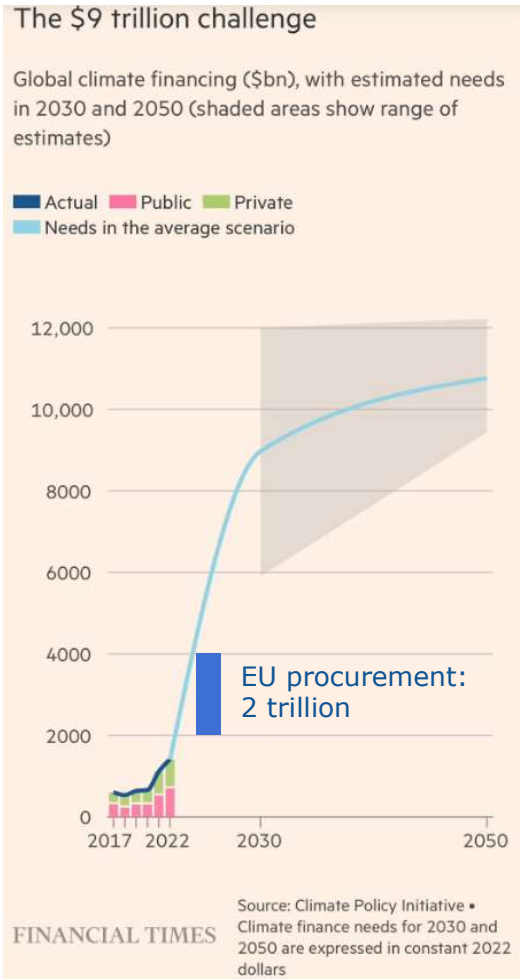
Green public procurement: how to make a difference

Lucian Cernat

Head of Global Regulatory Cooperation and Public Procurement
DG TRADE, European Commission

THE \$9 TRILLION CHALLENGE

Green procurement: how important?



- **Green procurement** is one of the most powerful driver for achieving our climate objectives
 - “greening” EU procurement means “greening” 14% of EU GDP
- Green procurement can affect environmental impact:
 - **Directly** – through improved environmental performance of goods, services and works bought by public authorities
 - **Indirectly** –using the market leverage to encourage companies to invest in cleaner products and services

EU AND NATIONAL SOLUTIONS

EU rules and the role of Member States



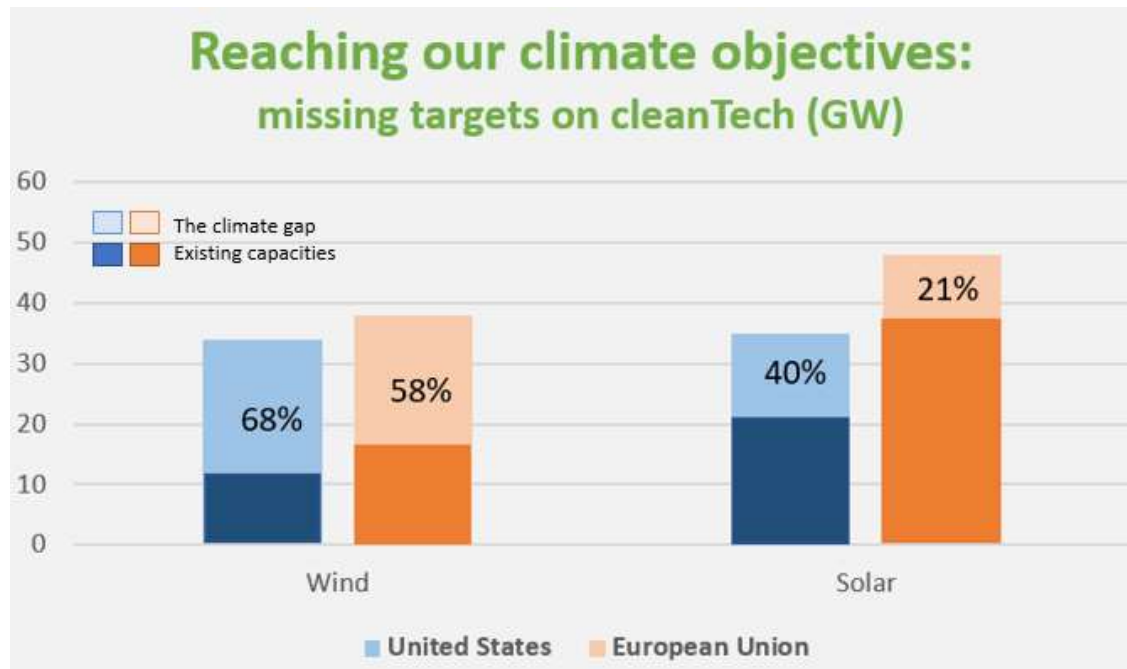
- *GPP is largely based on a set of voluntary instruments at EU level*
- *The European Commission (EC) has been developing **voluntary GPP criteria** for several product groups*
- *National authorities must ensure compliance with **environmental, social and labour law** under EU, national, international rules in the performance of the contract.*
- *But, now, also mandatory green procurement in sectoral legislation:*
 - **Clean Vehicles Directive**
 - **Net-Zero Industry Act**
 - **Regulation on Ecodesign for Sustainable Products**

Green procurement best practices: concrete examples

- ***Pre-procurement stage:***
 - Procuring research and development to challenge industry to bring innovative green
 - EU funding for carbon capture and storage facilities
- ***Strategic planning stage:***
 - National Action Plans: Denmark, Germany, Italy, France and Portugal have mandatory rules to apply green procurement for specific products
 - Transport: requirements on public buyers across Europe to buy minimum percentages of clean vehicles
- ***Procurement stage:***
 - Exclusion criteria for non-compliance with applicable environmental laws
 - Use of eco-design criteria and energy labels across different sectors (award criteria)
- ***Post-contract award:***
 - KPIs for suppliers as part of contract performance and verification mechanisms
 - Requiring independent third-party environmental audits

THE TRANSATLANTIC SOLUTION

No country can achieve its climate targets on its own!



Joint EU-U.S. Catalogue of Best Practices on Green Public Procurement

- *Result of the common effort under the TTC Working Group on Climate and Clean Tech*
- *Compilation of existing initiatives, policies and actions illustrated by specific examples*

Beyond the Joint Green Procurement Catalogue

US priorities

*“Congress should hold USTR and the Departments of State and Commerce accountable to **maintain high-level dialogue with European counterparts** to jointly advance shared values in emerging technologies and promote the rules-based economic order”*

EU-US common priorities

*“The Transatlantic Initiative on Sustainable Trade (TIST) is contributing to the creation of a stronger, more sustainable, and more resilient transatlantic marketplace and facilitating **environmentally responsible trade in goods and technologies.**”*

*“To boost our economic security, we continue to cooperate through the TTC to diversify **strategic supply chains, including solar panels, semiconductors, and critical raw materials,** and to reduce vulnerabilities.”*

How to promote international green procurement?

- *We have a financing gap, so we need to reduce the cost of green procurement*
- *We also need common, verifiable, and ambitious environmental criteria for green procurement*
- *How can we achieve this twin objective: smart RegCo!*
 - **Certification**
 - **Ecolabelling**
- *Two facilitation tools for transatlantic green procurement:*
 - Expanding the **1998 EU-US MRA to cleantech products**
 - Renewing the **EU-US bilateral MRA on ecolabelling (expired in 2018)**

Thank you!
Questions?

Green Procurement Challenges and Cooperation

Kate Psillos

Deputy Assistant USTR for WTO and Multilateral Affairs

Office of the U.S. Trade Representative

Challenges in Green Procurement

1. Training of Procurement Professionals

- As green procurement mandates require more agencies and levels of government to procure sustainable products and services, contracting officers are going to have to learn what that means for their solicitations and evaluations of contracts with sustainable criteria

2. Ensuring Compliance with new Green Procurement requirements

- This will continue to be a challenge as contractors are self-certifying some elements of compliance and they will need to ensure that they are not met with protests from competitors for inaccurate information

Competition in Green Procurement

- Procurement is often leveraged as a policy tool to accomplish multiple goals. Sustainable Procurement is just one of those goals but these requirements must also be implemented along with other procurement directives such as Buy American or compliance with international trade obligations under the Trade Agreements Act.
- Ensuring that Green Procurement initiatives in the transatlantic market place benefit suppliers in that market place – ensuring that the benefits of sustainable procurement requirements do not rely on sourcing from countries that do not provide the same benefits to U.S. suppliers

Transatlantic Cooperation on Green Procurement

- Since 2022, as part of the Trade and Technology Council (TTC), USTR and the European Commission have held over ten information exchanges between government experts on green procurement policies.
- This included a TTC event in January with stakeholders on “The Role of Green Procurement in the U.S. and EU”
- In April, the U.S. and EU issued our [Joint Catalogue of Best Practices on Green Public Procurement](#) as a reference for both policy makers and procurement professionals.

Multilateral Cooperation on Green Procurement

- The Joint Catalog published by the U.S. and EU can help inform work currently underway in the WTO Work program on Sustainable Procurement which includes all GPA parties.
- This work program looks to find way that GPA parties can work together on sustainable procurement initiatives and consider ways that sustainable procurement can be practiced consistent with international trade obligations in the WTO GPA.



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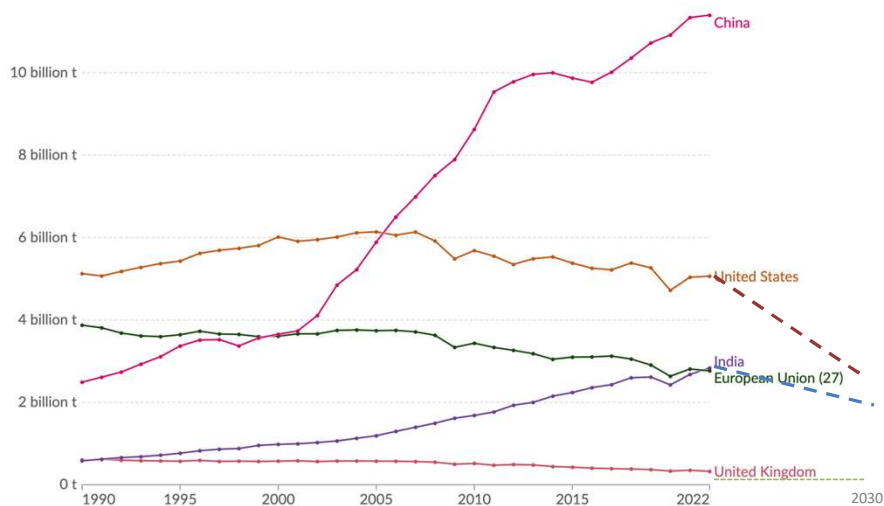
13 May 2024

An elephant and a mouse on a damaged skiff negotiating over how much weight each one should lose to avoid sinking. The elephant's proposal: 10 pounds each!

Annual CO₂ emissions

Carbon dioxide (CO₂) emissions from fossil fuels and industry¹. Land-use change is not included.

Our World
in Data



Data source: Global Carbon Budget (2023)

OurWorldInData.org/co2-and-greenhouse-gas-emissions | CC BY

1. Fossil emissions: Fossil emissions measure the quantity of carbon dioxide (CO₂) emitted from the burning of fossil fuels, and directly from industrial processes such as cement and steel production. Fossil CO₂ includes emissions from coal, oil, gas, flaring, cement, steel, and other industrial processes. Fossil emissions do not include land use change, deforestation, soils, or vegetation.

Applying the same EU logic (emissions in 2030 = 45% of 1990 level) the US should slash 2.76 billion t/year in the next 7 years (1990 level = 5.12 billion t; 2022 level = 5.06 billion t)

Striking the balance between regulation and incentives 1/2

- Minimum environmental criteria (MEC) and award criteria can provide the most appropriate balance between the **regulatory** and the **incentive** dimension of competitive tendering processes
- The **regulatory** (minimum standards-related) dimension mainly affects participation:
 - ✓ short-term effective
 - ✗ risky if badly handled
- The **incentive** (award criteria-related) dimension acts as a **pull mechanism** by informing the market where public buyers wish to go:
 - ✓ smoother and less disruptive (from the market viewpoint)
 - ✗ arguably incompatible with pressing objectives of CO2 reductions

Striking the balance between regulation and incentives 2/2

- ✓ Some degree of **demand aggregation** (i.e. mild centralization) is quintessential to correctly internalize the social value of lowering negative externalities (say, lower CO2 emissions), a not necessarily well-known concept in the PP community
- ✓ Fragmented procurement processes might pave the way for possibly (too) many heterogenous approaches to minimum environmental standards, award criteria etc....
- ✓ ...not to mention the *temptation of discretionary decisions in handling externalities-related decisions according to local preferences..*

- ✓ MEC and award criteria do work if they rely on *verifiable means of proof*
- ✓ Using internationally recognized labels or accredited labs for testing products needs competence (and care)

Sweeping the dust under the rug

- ➔ Magnitude of transaction costs
- ➔ *Quis custodiat ipsos custodes?* (“Who guards the guards themselves?”) (e.g., reliability of certification intermediaries, market power, ...)
- ➔ Short-term effects (e.g., supply-chain bottlenecks, market readiness, ...)
- ➔ Impact evaluation (say, if tomorrow morning all cars used by public bodies in the EU were to be ZEV what would be the net benefit in terms of CO2 emissions?)

Turning wishful thinking into action(s)...

- The Biden Administration issued Executive Order 14057 (the Order), and the accompanying *Federal Sustainability Plan*, in **December 2021** setting a range of goals to reduce emissions across federal procurement and operations. A key goal of the Order is for executive agencies to **transition their fleets to zero-emission vehicles (ZEV)**
- The Order requires all acquisitions of light-duty vehicles to be ZEVs by the end of fiscal year 2027; it requires **all vehicle acquisitions to be ZEVs by 2035**
- In July 2023, the Government Accountability Office released a report ([GAO-23-105350](#)) describing the first steps agencies subject to the Order have taken, or are planning to take, including preparing their federal workforce, assessing their fleets, and expanding their charging infrastructure

...and action uncovers problems (few want to hear)

Agencies reported two key challenges specifically related to the acquisition of vehicles:

1. Limited Vehicle Quantities Available (= market readiness)
2. Limited Vehicle Models Available (= market readiness)

Agencies affected by the Order have also begun to conduct site assessments at a limited number of facilities and have set annual charging equipment installation targets. Main problems:

1. Electrical Capacity Limitations (= infrastructures cannot be modified overnight)
2. Costs (= “there is no free lunch in the economy”)
3. Leased Space

Easy take-aways

1. **Market readiness** DOES matter (a lot!)
2. **Transborder cooperation** crucial to send as strong messages (=incentives) to the market as possible (“In nature nothing exists alone.” - Rachel Carson, Silent Spring - my thanks to the “3 Body Problem” Netflix series)
3. **Commitment** over the medium term (at least!) crucial to make the strong message above consistent over time

Questions and Discussion

- Do we see emerging means for *prioritizing* green procurement strategies?
- Do intergovernmental exchanges make it easier to identify better strategies?
- What role can trade negotiations play?
- Audience: Please type questions in “Q&A”



Conclusion

Video recording of today's session will be available on GW Law – Government Procurement Law YouTube Page & www.publicprocurementinternational.com