

Review Article

The New EU-US Joint Catalogue of Best Practices on Green Public Procurement: A Breakthrough in International Dialogue on Sustainability and an Opportunity for the WTO Committee on Government Procurement to Move Forward

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Abstract

In April 2024, the European Union (EU) and the United States (US) jointly issued an extensive “Catalogue” of perceived best practices for promoting green public procurement (GPP) drawn from experience in their respective jurisdictions. The Catalogue provides an extremely useful compendium of best practices and related initiatives for the promotion of GPP, responding effectively to the urgent need to increase the uptake of GPP as a tool to promote environmental sustainability and to help mitigate and adapt to climate change. Additionally, the EU-US Catalogue is linked to and can be of major assistance in carrying forward the Work Programme on Sustainable Procurement of the WTO Committee on Government Procurement, an important dialogue currently under way. This review article summarizes and reflects upon the content of the Catalogue. The breadth of coverage of the document is striking—in addition to covering four distinct stages of the procurement process (strategic planning, pre-procurement, the procurement itself and the post-contract award stage), the examples cited range from relatively standard goods procurement to the provision of public transport services through to building construction and a government-wide contract for IT and related infrastructure in an EU member state. The tools, approaches and innovations relating to the promotion of GPP that are set out in the Catalogue are equally diverse and impressive. At the same time, the Catalogue has its own limitations and has not resolved important questions that are discussed

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in the article. Overall, the Catalogue represents an encouraging step forward and an important basis on which to build.

I. Introduction

In April 2024, the European Union (EU) and the United States (US) jointly issued an extensive “Catalogue” of perceived best practices for promoting green public procurement (GPP) drawn from experience in their respective jurisdictions (“EU-US Joint Catalogue of Best Practices on Green Public Procurement” or “the Catalogue”).¹ The Catalogue was developed by a joint Working Group on Climate and Clean Technology under the auspices of the EU-US Trade and Technology Council (TTC). Its avowed aim is “to identify and present key policies, actions and best practices used in the field of green public procurement that can inspire policymakers and government entities to increase the use of green public procurement practices and thereby accelerate the wide deployment of green goods, services and technologies in the public sector.”² It is part of a broad and impressive package of outcomes/initiatives sponsored by the TTC covering multiple topics under each of the rubrics of “Advancing Transatlantic Leadership on Critical and Emerging Technologies,” “Promoting Sustainability and New Opportunities for Trade and Investment,” “Trade, Security, and Economic Prosperity” and “Defending Human Rights and Values in a Changing Geopolitical Digital Environment.”³ Both the Catalogue and the package as a whole are a testament to the efforts of the two jurisdictions’ representatives and offer fresh hope for Transatlantic leadership on related issues.

The EU-US Catalogue is of interest for multiple reasons. First, by itself, the Catalogue (as is intended) provides an extremely useful compendium of best practices and related initiatives for the promotion of Green Public Procurement (GPP). This responds to the urgent and increasingly recognised need to increase the uptake of GPP as a tool to promote environmental sustainability and to help to mitigate and adapt to climate change.⁴ While various related reference documents are available to assist in this process,⁵ the EU-US Catalogue provides exceptionally broad coverage of related practices. Furthermore, it will be encouraging for other countries to see and reflect upon the diverse set of measures that are currently being implemented by these two jurisdictions.

Second, by enhancing mutual understanding between the two jurisdictions, the release of the Catalogue seems likely to help reduce Transatlantic trade tensions in this area, at least for a time. While recent US legislation including the Infrastructure Investment and Jobs Act⁶ and the Inflation Reduction Act⁷ clearly embody major progress toward greater emphasis on sustainability and climate change mitigation in US public policy, their emphasis on “Buy American” and US sourcing requirements has raised concerns for US trade partners.⁸ While these concerns extend beyond the domain of public procurement policies per

¹ See EU-US Trade and Technology Council Working Group 2—Climate and Clean Tech, Joint EU-US Catalogue of Best Practices on Green Public Procurement (the EU-US Catalogue), <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/4ed7eb8e-690a-4347-975f-6e48e851365a/details?download=true>. A useful precis is provided in Jean Heilman Grier, “EU-US Best Practices for Green Public Procurement” (22 April 2024), *Perspectives on Trade*, <https://trade.djaghe.com/us-eu-best-practices-for-green-public-procurement/>.

² EU-US Catalogue.

³ See European Commission, “Joint Statement EU-US Trade and Technology Council of 4–5 April 2024 in Leuven, Belgium” (5 April 2024), https://ec.europa.eu/commission/presscorner/detail/en/statement_24_1828.

⁴ See, e.g. Steven L. Schooner, “No Time to Waste: Embracing Sustainable Procurement to Mitigate the Accelerating Climate Crisis” (2021) 61 *Contract Management* 24, and references cited therein; see also World Economic Forum, in collaboration with the Boston Consulting Group for the Mission Possible Partnership, White Paper, *Green Public Procurement: Catalysing the Net-Zero Economy* (2022).

⁵ See, to mention just a few of many possible reference materials, European Commission, “GPP Training Toolkit” (2022), https://ec.europa.eu/environment/gpp/toolkit_en.htm; International Labour Office, “Green Business Booklet” (2017); United Nations Environment Programme, “Sustainable Public Procurement: How to ‘Wake the Sleeping Giant’—Introducing the United Nations Environment Programme’s Approach” (2021); and United States Environmental Protection Agency, “Greening Government Procurement” (22 November 2023), <https://www.epa.gov/contracts/greening-government-procurement>.

⁶ Infrastructure Investment and Jobs Act, text available at: <https://www.congress.gov/bill/117th-congress/house-bill/3684/text>.

⁷ Inflation Reduction Act, text available at: <https://www.congress.gov/bill/117th-congress/house-bill/5376/text>.

⁸ See, Jean Heilman Grier, “Domestic Content Requirements: Contrasting Treatment” (3 May 2023), *Perspectives on Trade*, <https://trade.djaghe.com/domestic-content-requirements-contrasting-treatment/> and G.H. Hanson and M.J. Slaughter, “How Commerce Can Save the Climate: The Case for a Green Free Trade Agreement” (March/April 2023) *Foreign Affairs*.

se,⁹ concerns regarding the latter are an important part of the picture. As an example of such concerns surfacing internationally, in a discussion that took place at the annual formal meeting of the World Trade Organization (WTO) Committee on Government Procurement in November 2023:

... a number of delegations raised concerns about how the United States had been implementing its ‘Build America, Buy America Act’ (BABA Act), which is part of the US Infrastructure Investment and Jobs Act. In particular, these delegations raised concerns about the recent guidance issued by the US Office of Management and Budget, which in their view fails to ensure compliance with the United States’ obligations under the [2012 text of the WTO Agreement on Government Procurement, or ‘GPA 2012’]. The United States rejected the concerns raised, referring to the publication in October 2023 by the Office of Management and Budget of a supplementary memorandum that provides guidance on consistency with international agreements.¹⁰

While neither the new Catalogue nor the broader package of initiatives announced by the TTC is likely to resolve this divergence of perspectives altogether, they show clearly that the EU and the US are working hard to promote mutual understanding and can potentially serve as a basis for further progress.¹¹ Importantly, also, the Catalogue states baldly that:

At all stages of the procurement process, measures relating to green public procurement procedures must be prepared, adopted, and applied in a manner consistent with the Parties’ international procurement obligations, such as the World Trade Organization (WTO) Agreement on Government Procurement (GPA).¹²

While the recitation of this principle by itself may not answer all relevant questions, the mutual reaffirmation of it by the two jurisdictions is to be welcomed.

Third, the EU-US Catalogue is linked to and can be of major assistance in carrying forward the Work Programme on Sustainable Public Procurement of the WTO Committee on Government Procurement,¹³ an important dialogue under way under the auspices of the Committee.¹⁴ The latter grew out of the negotiations to revise the GPA that culminated in 2012¹⁵ and is part of a package of such programmes adopted at that time to explore and potentially develop consensus on issues related to the implementation of the revised Agreement and/or its future evolution.¹⁶ Specifically, the Work Programme on Sustainable

⁹ For example, the role of industrial subsidies is another matter of paramount concern. See Hanson and Slaughter, “How Commerce Can Save the Climate: The Case for a Green Free Trade Agreement” (March/April 2023) *Foreign Affairs*.

¹⁰ WTO, Report (2023) of the Committee on Government Procurement, GPA/AR/6. It is noted that the concerns articulated in the Committee were not strictly limited to the “green” aspects of US public procurement policies; rather, they also appear to encompass non-sustainability focused aspects of procurement covered by the BABA Act.

¹¹ See related discussion in Part III, below.

¹² EU-US Catalogue, p.2.

¹³ See Committee on Government Procurement, “Decision On A Work Programme on Sustainable Procurement,” in Decision of the Committee on Government Procurement of 30 March 2012 (Annex E to Appendix 2 of GPA/113 (2 April 2012), <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/PLURI/GPA/113.pdf&Open=True>), reproduced in World Trade Organization, Agreement on Government Procurement 2012 and related WTO legal texts, “Decision On A Work Programme on Sustainable Procurement”, pp.86–87.

¹⁴ See, for pertinent background, Robert D. Anderson, Antonella Salgueiro, Steven L. Schooner and Marc Steiner, “Deploying the WTO Agreement on Government Procurement (GPA) to Enhance Sustainability and Accelerate Climate Change Mitigation” (2023) 32(5) P.P.L.R. 223, 233–235; and Jean Heilman Grier, “US-EU Green Public Procurement Initiative” (15 June 2023).

¹⁵ See World Trade Organization, “Adoption of the Results of the Negotiations under Article XXIV:7 of the Agreement on Government Procurement, Following Their Verification and Review, As Required by the Ministerial Decision of 15 December 2011 (GPA/113)” (2 April 2012), <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/PLURI/GPA/113.pdf&Open=True>. Related commentary is provided in Robert D. Anderson, “The Conclusion of the Renegotiation of the WTO Agreement on Government Procurement: What it Means for the Agreement and for the World Economy” (2012) 21 P.P.L.R. 83; Robert D. Anderson, Steven Schooner and Collin Swan, “Feature Comment: The WTO’s Revised Government Procurement Agreement: An Important Milestone Toward Greater Market Access and Transparency in Global Public Procurement Markets” (2012) 54 *The Government Contractor* 1, 1–6; and Jean Heilman Grier, *The International Procurement System: Liberalization & Protectionism* (Dalston Press of Djanghe LLC, 2022).

¹⁶ See World Trade Organization, Agreement on Government Procurement 2012 and related WTO legal texts, “Decision On A Work Programme on Sustainable Procurement”, pp.78–92; and, for related commentary, Anderson, , “The Conclusion of the Renegotiation of the WTO Agreement on Government Procurement: What it Means for the Agreement and for the World Economy” (2012) 21 P.P.L.R. 83 and Anderson, “Deploying the WTO Agreement on Government Procurement (GPA) to Enhance Sustainability and Accelerate Climate Change Mitigation” (2023) 32(5) P.P.L.R. 223.

Procurement is mandated to undertake a systematic review of the objectives of sustainable procurement; of the ways in which the concept of sustainable procurement is integrated into national and sub-national procurement policies; of the ways in which sustainable procurement can be practiced in a manner consistent with the principle of “best value for money”; and of the ways in which sustainable procurement can be practiced in a manner consistent with Parties’ international trade obligations.¹⁷ Furthermore, pursuant to the Work Programme, the Committee is directed to identify measures and policies that it considers to be sustainable procurement practiced in a manner consistent with the principle of “best value for money” and with Parties’ international trade obligations and prepare a report that lists the best practices of the measures and policies.¹⁸

The potential import of the new EU-US Catalogue of Best Practices on Green Public Procurement for related work in the WTO has been specifically affirmed by the two Parties. In a previous communication, the EU-US TTC specifically envisaged a further joint EU-US initiative on GPP policies based on the current catalogue that would “deepen the commonalities of the respective public procurement approaches” with the aim of “contributing to achieving our climate ambitions” and could “inform discussions within the WTO Agreement on Government Procurement.”¹⁹

To be sure, the EU-US Catalogue has its own limitations and has certainly not resolved all relevant questions, even in the relatively narrow domain of Transatlantic differences regarding GPP.²⁰ Further work will be needed to address these. Moreover, clearly the current Transatlantic differences regarding trade and technology have diverse broader dimensions, for example concerning the role of subsidies and the treatment of data (some of which are addressed or at least helpfully illuminated by broader aspects of the TTC package²¹). Despite all this, the Catalogue represents an encouraging step forward and an important basis on which to build.

This article reviews the content of the new EU-US Joint Catalogue and considers related possibilities. Part II examines the Catalogue’s content. Part III sets out related observations and identifies possible next steps. Part IV provides brief concluding remarks.

II. Content of the EU-US Joint Catalogue

The Catalogue provides examples of best practices across all stages of the public procurement process, from strategic planning through “pre-procurement” (advance preparation for specific procurements), the procurement stage (including qualification of suppliers, preparation of technical specifications, award criteria, and contract terms) and finally the post-contract award stage. For each stage, it offers a brief introductory comment and provides examples of initiatives, policies, and measures that have been implemented in the two jurisdictions. Both the short explanatory commentaries and the examples cited are helpful and will be of interest to all readers following these issues.

In general, the Catalogue includes more examples drawn from the EU’s experience than from that of the US. As Grier suggests, this reflects the fact that the EU examples “are drawn from a broader base. They include the 27 member states, as well as subcentral entities such as cities in the EU. In contrast, the

¹⁷ World Trade Organization, Agreement on Government Procurement 2012 and related WTO legal texts, “Decision on A Work Programme on Sustainable Procurement”, pp.86–87.

¹⁸ World Trade Organization, Agreement on Government Procurement 2012 and related WTO legal texts, “Decision on A Work Programme on Sustainable Procurement”, p.87.

¹⁹ See “Transatlantic Initiative on Sustainable Trade” work programme in “Joint Statement EU-US Trade and Technology Council of 31 May 2023 in Lulea, Sweden”, Annex 1 (31 May 2023), https://ec.europa.eu/commission/presscorner/detail/en/statement_23_2992. See also, Grier, “US-EU Green Public Procurement Initiative” (15 June 2023).

²⁰ See Part III, below.

²¹ See, e.g. the discussions on “Advancing Transatlantic Leadership on Critical and Emerging Technologies” and “Promoting Sustainability and New Opportunities for Trade and Investment” in “Joint Statement EU-US Trade and Technology Council of 4–5 April 2024 in Leuven, Belgium” (5 April 2024).

US best practices are limited to actions of the federal government. Adding US state actions and practices could provide a fuller picture of public sector actions in the US.²²

(1) Strategic planning stage

The EU-US Catalogue rightly (in our view) gives significant attention to the potential contribution of “strategic planning” and related policy initiatives and statements. As it observes:

... an ambitious GPP strategy with clear goals and concrete preparatory actions can have a major impact on reinforcing the environmental impact of procurements. [Related initiatives] can take the form of multi-annual GPP action plans that ensure that procurement planning is aligned with green policy priorities, or the definition of appropriate GPP requirements, targets, and capacity-building measures. ... strategic planning efforts not only better prepare public procurement officials to adopt sustainable procurement practices, but [also provide] a strong signal to the marketplace about upcoming public sector demand for green products and services.²³

The foregoing is consistent with observations in multiple other international sources.²⁴

As a first example of a pertinent initiative from the EU, the Catalogue references the National Action Plans (NAPs) that it has encouraged EU Member States to adopt, with the goal of directing at least 50% of public procurement across the EU to GPP. It notes that, to date, almost all EU Member States have drafted and published such NAPs. Typically, the plans contain an assessment of the existing situation and set “buying green” targets for the next three years, specifying the measures that will be taken to achieve them.²⁵

As a second example from the EU, the Catalogue notes several examples of green procurement strategies that have been adopted by local and regional authorities that are more ambitious than EU targets or respective NAPs. For example, it points out that Copenhagen increased the level of ambition of its green procurement plan to align with its goal of becoming the first carbon-neutral capital by 2025 (much earlier than the EU target to become climate-neutral by 2050). It notes that Helsinki, Amsterdam, and Paris have adopted clean vehicle procurement strategies that exceed the minimum requirements set by the EU Clean Vehicles Directive and their country’s NAP targets for clean vehicles.²⁶

As a third example from the EU, the Catalogue references the EU’s “Green Deal” policy which sets out actions to be reflected in public procurement in the fields of transport, energy, nature preservation and pollution. It notes that, to meet the EU’s energy and climate targets by 2030, EU Member States are required to establish ten-year integrated national energy and climate plans (NECPs) for the period from 2021 to 2030.²⁷

As a fourth example drawn from EU experience and practice, the Catalogue references the professionalization of procurement staff and the provision of easy-to-use tools for buying green. In this context, it cites: (i) the EU’s Green Procurement Toolkit, which provides guidance on how public buyers can buy green in line with public procurement rules;²⁸ (ii) the EU GPP helpdesk, which supports public buyers in EU Member States; (iii) the ready-made GPP criteria that procurers can use to include green requirements in their public tender documents;²⁹ (iv) the EU’s Life Cycle Costing (LCC) tools that help

²² Grier, “EU-US Best Practices for Green Public Procurement” (22 April 2024).

²³ See the EU-US Catalogue, p.4.

²⁴ See, e.g. European Commission, “GPP Training Toolkit” (2022); International Labour Office, “Green Business Booklet” (2017); United Nations Environment Programme, “Sustainable Public Procurement: How to ‘Wake the Sleeping Giant’—Introducing the United Nations Environment Programme’s Approach” (2021); and United States Environmental Protection Agency, “Greening Government Procurement” (22 November 2023).

²⁵ See the EU-US Catalogue, p.4.

²⁶ See the EU-US Catalogue, p.5.

²⁷ See the EU-US Catalogue, p. 6.

²⁸ See European Commission, “Green Public Procurement Toolkit”, https://ec.europa.eu/environment/gpp/toolkit_en.htm.

²⁹ See European Commission, “Green Public Procurement Toolkit”.

public procurers to employ LCC in specific sectors;³⁰ (v) an EU Ecolabel Product catalogue that enables procuring agencies to easily identify products and services that meet the EU’s Ecolabel requirements;³¹ and other initiatives.

As a final example drawn from the EU’s practice and experience, the Catalogue notes the possibility of fostering synergies with digital transformation strategies. With this aim, two initiatives were launched in 2021: the “Declaration on A Green and Digital Transformation”, which commits the EU’s member states to make GPP the default option in their national digital transition programmes; and the European Green Digital Coalition”, which brings together EU Member States, ITC companies and the European Commission to invest in developing and deploying greener solutions.³²

Concerning relevant elements of US experience, the Catalogue highlights the importance of the “ambitious action plans and targets for green public procurement” that have been adopted recently at the federal level. Specifically, it references Executive Order 14057 on catalysing American clean energy industries and jobs and a linked “Federal Sustainability Plan” that outlines “an ambitious path to achieve net-zero emissions across Federal operations by 2050. Under the Plan, all US federal agencies are required to draft and submit Sustainability Plans and Climate Action Plans that describe steps the agency can take regarding preparing facilities and operations for the impact of climate change.³³ The Catalogue indicates, further, that:

the [US] Federal Government will transition its infrastructure to zero-emission vehicles (ZEVs) and buildings, powered by carbon pollution-free electricity (CFE). It also will transform its operations to develop a net-zero supply chain, require Federal agencies to set goals to reduce greenhouse gas (GHG) emissions, and partner with leading domestic and international organizations to accelerate progress. By leveraging its power of procurement, the Federal Government will accelerate the country’s transition to a clean energy economy and create well-paying union jobs during the process.³⁴

As a second example drawn from US practice, similarly to its coverage of the EU, the Catalogue highlights the role of “professionalisation of procurement staff and [the provision of] easy-to-use tools for buying green.” In this connection, it illustrates the following initiatives:

- Multiple training programs that have been developed for procurement professionals to enable them to understand how to successfully integrate climate considerations into the acquisition lifecycle;
- An “Acquisition Advisory Committee to Address [the] Climate Crisis and Increase Sustainability” that has been launched by the General Services Administration (GSA);
- A “GreenBuy Award Program” of the Department of Energy (DOE) that recognizes DOE sites for excellence in “green purchasing” that extends beyond minimum compliance requirements;³⁵ and
- a “Sustainable Procurement Program” (SPP) organized by the Environment, Safety & Occupational Health Network and Information Exchange (DENIX) of the US Department of Defense to increase the purchase of environmentally preferable products and services in accordance with federally-mandated “green” procurement preference programs.³⁶

³⁰ See European Commission, “Life-cycle costing”, <https://ec.europa.eu/environment/gpp/cc.htm>.

³¹ See European Commission “EU Ecolabel—Guiding your sustainable choices”, <http://ec.europa.eu/ecat/>.

³² See, for additional background, European Green Digital Coalition, available at: <https://www.greendigitalcoalition.eu/>.

³³ See Office of the Federal Chief Sustainability Officer, “Federal Sustainability Plan”, <https://www.sustainability.gov/federalsustainabilityplan/index.html>.

³⁴ See EU-US Catalogue, p.8.

³⁵ See US Department of Energy, “GreenBuy Award Program □ Fiscal Year 2023”, <https://sfool.gov/Content/attachments/DOE-GreenBuyAwdGuide-FY2023.docx>.

³⁶ See Denix, “Welcome to the Sustainable Procurement Program”, <https://www.denix.osd.mil/spp/>.

(2) Pre-procurement stage

Similarly, the EU-US Catalogue devotes significant attention to activities undertaken at the “pre-procurement” stage of government contracting. As it notes:

A number of activities can be undertaken during the preparation of a specific procurement project to facilitate the implementation of sustainability considerations and the maximize the potential achievement of sustainability goals.³⁷

As a first example drawn from the EU’s experience, the Catalogue references the importance of “Identifying user needs as green outcomes based on an assessment of the environmental risks”. Here, the Catalogue mentions specific actions taken by Norway to lower emissions associated with public ferry services, where a crucial success factor was that the user needs were formulated in terms of the green outcomes the procurers wanted to achieve.

As a second example drawn from EU practice, the Catalogue references the importance of “Early market dialogue” in order to “identify and understand the solutions that are available or under development on the market, how the market can respond to the stated green goals and what are the environmental risks associated to the procurement”.³⁸ Here, it references, as one such effort, an initiative of NUTEK (the precursor of the current Swedish Energy Agency), in which:

Open market consultations with industry were organised to clarify what level of innovation could realistically be achieved by suppliers in a set timeframe for deployment, and how large the purchase volume had to be to incentivise industry to make the necessary investments to bring these innovations to the market.³⁹

Further, as the Catalogue observes:

Bringing these technologies to the market created energy savings that reduced Sweden’s dependency on nuclear energy by 15%. The current Swedish Energy Agency continued the same approach of leading by example through market dialogues followed by procuring a critical mass of new, green solutions. As a result, Sweden is one of the leading countries in Europe in the energy transition.⁴⁰

As a third example of best practices drawn from EU experience, the Catalogue references the “Joining [of] forces with other procurers to use ... collective green purchasing power. Here, it cites the “Circular and Fair ICT Pact (CFIT)” as “an international partnership of public buyers that was set up in June 2021 by the Netherlands and Belgium to accelerate circularity, fairness and sustainability in the Information and Communications Technology sector.” As a fourth example, it cites “procuring research and development to challenge industry to bring innovative green solutions to the market.” Here, it references various Norwegian projects for carbon capture and storage facilities. Apparently, the EU is exploring different avenues, particularly for industrial decarbonisation, by collaborating with its European Environment Agency (EEA) partners to reduce CO2 emissions from energy-intensive industries.⁴¹

With regard to examples drawn from US practice, and broadly consistent with EU experience, the Catalogue emphasises the importance of “setting climate protection levels, criteria, and design decisions early in the project.” Here, it cites two specific illustrations:

- A standardised framework for conducting a sustainability analysis developed by the US Department of Defense (DOD), entitled “Sustainability Analysis Guidance: Integrating

³⁷ See the EU-US Catalogue, p.11.

³⁸ See the EU-US Catalogue, p.11.

³⁹ See the EU-US Catalogue, p.12.

⁴⁰ See the EU-US Catalogue, p.12.

⁴¹ See the EU-US Catalogue, p.13.

Sustainability into Acquisition Using Life Cycle Assessment.” The framework envisions five specific elements for conducting a sustainability analysis, including: (i) Defining the scope of the analysis; (ii) development of a Life Cycle Inventory; (iii) the estimation of life-cycle costs; (iv) the estimation of life cycle impacts; and (v) the synthesising of results; and

- A joint project of the US General Services Administration (GSA) and the Department of Transportation (DOT) to incorporate climate change considerations into building design and renovation processes for the US DOT Volpe Exchange Project in Cambridge, Massachusetts. Pursuant to this project, the GSA and DOT “collaborated to proactively include considerations from the building’s shape, structure, orientation, floor, and office layouts to building materials, mechanical systems, and furnishings, which all contribute to the new facility’s sustainability and climate resiliency.”⁴²

Additional US best practices relate to supplier engagement⁴³ and entering into joint agency Memoranda of Understanding (MoUs).⁴⁴

(3) *Procurement stage*

As would be expected, the new Catalogue includes an important section on the actual procurement stage of the government acquisition process. It gives attention separately to three distinct elements of this stage, namely: (i) the qualification of suppliers; (ii) technical specifications and award criteria; and (iii) contractual terms. The following outlines the key examples provided regarding each of these.

a. Qualification of suppliers, including pre-qualification

With respect to examples drawn from EU experience, the Catalogue highlights how contracting authorities can rely on the EU public procurement directives to exclude, where warranted, a supplier from a procurement based on criteria related to environmental considerations. Possible grounds for exclusion include non-compliance with applicable national, EU or international environmental laws; grave professional misconduct which renders integrity questionable; significant/persistent deficiencies in performance of substantive requirement under prior contract which led to termination or comparable sanctions; and misrepresentation of any of the above or inability to submit supporting documents. The directives also allow exclusion for violation of a limited list of international environmental conventions.⁴⁵ The mentioned exclusion criteria are subject to a maximum exclusionary period of three years and, even in the presence of an exclusion criteria, firms can demonstrate ability to “self-clean” to participate in the procedure.

Concerning relevant US experience, the Catalogue notes the 2021 Presidential Executive Order (EO) on Climate-Related Financial Risk which proposes changes to federal procurement that would require major suppliers to disclose emissions related information.⁴⁶ The EO requires relevant procurement authorities to consider amending the Federal Acquisition Regulation (FAR) to require major federal suppliers to publicly disclose greenhouse gases (GHG) emissions and climate-related financial risk and to set science-based reduction targets. Also, it seeks to ensure that major federal agency procurements minimise the risk of climate change, e.g. by requiring the social cost of GHG emissions to be considered in

⁴² See the EU-US Catalogue, p.15.

⁴³ For example, through the participation of the GSA in CDP Supply Chain.

⁴⁴ See, US Department of Defence, “DOD, GSA Sign MOU to Bring More Environmental Innovators to Federal Marketplace” (22 March 2023), <https://www.defense.gov/News/Releases/Release/Article/3337358/dod-gsa-sign-mou-to-bring-more-environmental-innovators-to-federal-marketplace/>.

⁴⁵ See The Vienna Convention on the ozone layer, the Basel Convention on hazardous waste, the Stockholm Convention on persistent organic pollutants, and the PIC Convention (hazardous chemicals/pesticides).

⁴⁶ See The White House, “Executive Order on Climate-Related Financial Risk” (20 May 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/20/executive-order-on-climate-related-financial-risk/>.

procurement decisions and, where appropriate and feasible, give preference to bids and proposals from suppliers with a lower social cost of GHG emissions.

In addition, the US General Services Administration (GSA) has released a “Green Procurement Compilation” (GPC),⁴⁷ a comprehensive green purchasing resource designed for federal contracting personnel and program managers which identifies applicable US federal green purchasing requirements and consolidates and organizes information from federal environmental programs in one place. Complementing this initiative, the SFTool Product Search⁴⁸ allows an easy product search for green procurement, where buyers, project teams, subcontractors, distributors, and suppliers can find—free of charge—specific products that comply with the category rules set out in the Green Procurement Compilation (GPC) to simplify procurement, documentation, and reporting.

b. Technical specifications and award criteria

Technical specifications describe important parameters of a particular procurement to potential suppliers and provide measurable requirements against which tenders will be evaluated. As the Catalogue notes, “environmental considerations can be woven into the technical specifications provided they are not discriminatory and are described in terms of performance and functional requirements, rather than design or descriptive characteristics”. This appears to be fully consistent with and even to build upon a related clarification introduced in the relevant article of the GPA 2012.⁴⁹

Regarding award criteria, the Catalogue elaborates on how the evaluation of submitted bids may also include environmental aspects by way of applying the best price-quality ratio (the most advantageous tender, the most economically advantageous tender, or “best value”), rather than the lowest price, as the overall evaluation criteria. The Life-Cycle-Cost (LCC) approach can also impact across the whole life cycle of the object of the procurement.

As examples of the successful inclusion of green considerations in technical specifications and/or award criteria in the EU, the Catalogue notes, *inter alia*, the following:

- *Technical specifications in procuring information and communications technology (ICT) workplace hardware*: the Ministry of Economic Affairs and Climate Policy of the Netherlands implemented energy and climate-related requirements in the tender specification for its government-wide procurement for Information and Communications Technology goods, which has led in 2021 to a 17% CO₂ reduction compared to 1990.⁵⁰
- *Use of eco-design criteria and energy labels across different sectors*: the EU legislation for energy labels and eco-design is estimated to bring energy savings of approximately 130 million tonnes of oil equivalent (Mtoe) by 2030.⁵¹
- *Establishing a requirement for minimum energy and environment sustainability criteria in procurement*: Italy pioneered the implementation of minimum energy and environmental sustainability criteria (MEC) in its public procurement. This mandates Italian public buyers to integrate MEC requirements into technical specifications, contract clauses, and award criteria when evaluating the most economically advantageous tenders.⁵²
- *Use of GPP criteria and ecolabels when procuring office supplies*: the Hungarian Public Procurement and Supply Directorate-General has applied GPP criteria in big framework

⁴⁷ See US General Services Administration, “Green Procurement Compilation”, <https://www.gsa.gov/governmentwide-initiatives/federal-highperformance-green-buildings/resource-library/sustainable-acquisition/green-procurement-compilation/>.

⁴⁸ See SFTool website, available at: <https://sftool.ecomedes.com/>.

⁴⁹ See GPA 2012 art.X:6.

⁵⁰ See the EU-US Catalogue, p.21.

⁵¹ See European Commission, “Ecodesign and Energy Label”, https://commission.europa.eu/energy-climate-change-environment/standards-tools-and-labels/products-labelling-rules-and-requirements/energy-label-and-ecodesign/about_en#Energylabels.

⁵² See the EU-US Catalogue, p.23.

agreements for office paper and supplies since 2010, e.g. tenderers were required to provide office paper, envelopes and paper arch files made from 100% recycled fibres; products were required to bear the EU Ecolabel or other type I eco-labels directly related to paper production; and paper had to be elemental chlorine-free (ECF) or totally chlorine-free (TCF).⁵³

- *Use of circular economy requirements in tender specifications for buildings*: a major public developer in the Strasbourg region of France, issued a tender aimed at boosting the reutilisation of recycled building materials. The reclamation targets were expressed both in the tender specifications and in the award criteria.⁵⁴

Similarly, with regard to relevant examples drawn from US experience, the Catalogue notes that federal contracting authorities have integrated GPP considerations into both contract specifications and award criteria. Concerning the former, the GSA Federal Acquisition Council (FAC) reviews all major contracts to ensure climate resilience clauses and requirements are included prior to issuance of Requests for Proposals (RFPs). Regarding the latter, the GSA required vendors on the Alliant 2 governmentwide IT solutions contract to submit sustainable practices and impact disclosures outlining how they measured and reduced greenhouse gas emissions associated with the services provided.⁵⁵ Additionally, the US Federal Government has developed a number of tools and resources to guide contracting authorities to manage climate risks in federal supply chains, including the SFTools frameworks on “Managing Climate Risks to Federal Supply Chain” and “Responsible Business Conduct”, Guidelines for Energy Management, and a “Green Power Locator”, which helps locate providers of renewable electricity by state.⁵⁶

c. Contract terms

As the Catalogue rightly notes:

Contract clauses are a key instrument to turn the environmental commitments within a supplier’s offer (technical specifications and also those scored in the award criteria) into contractual obligations. Contract clauses can also require the contractor to execute its duties in a specific, environmentally friendly manner. These types of clauses may include requirements on use, reuse, recycling and disposal of packaging, efficient use of energy and water, training of the staff performing the contract in energy savings, and preventing environmentally harmful behaviours.⁵⁷

Furthermore, appropriate contract terms are vital to establish appropriate monitoring, control and ex-post accountability mechanisms for the contract.⁵⁸

With regard to related best practices in the EU, the Catalogue highlights the European Eco-Management and Audit Scheme (EMAS) developed by the European Commission. EMAS is a tool that public buyers are encouraged to use in contractual clauses to ensure that suppliers implement a certified environmental management system during the implementation of a contract. This and other examples on the use of contract clauses are illustrated in the procurement of pharmaceuticals in Sweden. Here, Country Councils include different type of clauses that commit suppliers to, for example, implement an environmental management system; to provide own environmental information for the products subject for the procurement; and to implement environmental routines to be carried out in the supply chain.⁵⁹

Regarding US practice, as the Catalogue notes, the Federal Acquisition Regulation (FAR) requires that 95% of all new contract actions include sustainability requirements and provide for specific contract

⁵³ See the EU-US Catalogue, p.23.

⁵⁴ See the EU-US Catalogue, p.24.

⁵⁵ See Boxes on Climate Risk Management Requirements and the Alliant 2 government acquisition program, the EU-US Catalogue, p.25.

⁵⁶ See the EU-US Catalogue, p.26.

⁵⁷ See the EU-US Catalogue, p.26.

⁵⁸ See the EU-US Catalogue, p.26.

⁵⁹ See the EU-US Catalogue, p.26.

clauses that procuring officials use in solicitations. For example, Federal regulations foresee that federal agencies shall advance sustainable acquisition by ensuring that 95% of new contract actions for the supply of products and for the acquisition of services (including construction) require that the products meet certain sustainable criteria. Additionally, the US' Department of Transportation, design, and construction contracts for new buildings include language to specify that architects and civil engineers evaluate strategies and materials to reduce climate change risk.

(4) Post-contract award stage

At this fourth stage, experience both in the EU and in the US highlights the need to establish follow-up activities after the contract has been signed in order to ensure that the stipulated deliverables meet the defined environmental requirements. This includes, for example, monitoring the implementation of the contract through verification mechanisms that are based on clear performance indicators to ensure the efficiency and effectiveness of the different GPP targets. Monitoring can also include the collection and reporting of green procurement statistics.

In the EU, noteworthy examples include setting key performance indicator (KPI) and requesting supplier reports as contract performance verification mechanisms as well as requiring independent third parties to implement environmental audits. For instance, in the electronics sector, public buyers in the EU often appoint independent third parties to audit their contractors, not only to check during contract implementation whether the contractor is respecting the environmental requirements of the contract but also to actively work with contractors on continuously improving their environmental performance.⁶⁰

With regard to US experience, the Catalogue stresses the importance of tracking government-wide performance data on sustainable procurement. It notes, for example, that the Federal Government is the largest energy consumer in the nation, and that by increasing the efficiency of federal operations, federal agencies cut waste and reduce impacts on the environment. To demonstrate effectiveness and track progress in meeting some of the federal government's GPP goals, federal agencies are required to submit an annual scorecard on their compliance with sustainability targets and report this data to the federal procurement data system (FPDS). Some of the targets that the federal government tracks data on include facility energy efficiency; identification of efficiency measures/investment; renewable energy; water efficiency; high-performance sustainable buildings; fleet management; GHG emissions; and sustainable acquisition.⁶¹

III. Observations and possible next steps

Taking stock of the above, the EU-US Joint Catalogue of Best Practices on Green Public Procurement constitutes a rich and inspiring compendium of examples of actions, initiatives and measures taken by the two jurisdictions to promote GPP in recent years. The breadth of coverage of the document is striking—in addition to covering the four distinct stages of the procurement process that have been noted (strategic planning, pre-procurement, the procurement itself and the post-contract award stage), the examples cited range from relatively standard goods procurement (e.g. office supplies procurement in Hungary) to the provision of public ferry and other transport services to building construction (e.g. the US Volpe Exchange Project) and a government-wide contract for IT and related infrastructure in the Netherlands.

Furthermore, the tools, approaches and innovations relating to the promotion of GPP that are set out in the Catalogue are equally diverse—they encompass ambitious action plans and strategies; the professionalisation of procurement workforces (rightly emphasized at multiple points); synergies with digital transformation efforts; the use of early market dialogue to define procurement needs; joint procurement to increase green purchasing power; the design of technical specifications and award criteria;

⁶⁰ See the EU-US Catalogue, p.30.

⁶¹ See the EU-US Catalogue, p.31.

the use of eco- and other labels; the careful drafting of contractual terms to ensure good performance; the appropriate use of key performance indicators (KPIs) and the systematic scoring of annual sustainability targets and achievements. All told, a great deal of information is provided in a relatively short (34-page) document, with additional information on most examples provided at linked websites. All advocates and followers of progress in this policy area will find inspiration in it.

At the same time, and as already noted, the Catalogue has its own limitations and has not resolved important questions:

- First, while the Catalogue presents a plethora of examples of relevant practices, no overall criteria or unifying (horizontal) principles are presented for the evaluation of such practices. Similarly, with a few exceptions, little evidence is provided regarding the ultimate effectiveness of the particular practices highlighted (e.g. in reducing carbon emissions; restoring degraded ecosystems; shifting to clean transport (clean vehicles, boats, railroads, air traffic); reducing the environmental footprint of public healthcare systems; promoting sustainable food production and consumption; and other dimensions of sustainability that are (usefully) profiled in the introduction to the document.⁶² Admittedly, the latter would be a “tall order”. Nonetheless, this means that, while the Catalogue offers a great deal of stimulating “food for thought” (which is already an important contribution), it does not actually answer the question of what truly are the *best* practices for advancing GPP that are available to governments in the current economic and policy environment.
- Second, little guidance is provided as to possible tradeoffs between the advancement of sustainability or climate change resilience/adaptation objectives and the maintenance of relatively free and undistorted trade and competition in public procurement markets. Indeed, the Catalogue does not meaningfully address this question, apart from the vital and useful statement, cited in Part I of this note, that “... measures relating to green public procurement procedures must be prepared, adopted, and applied in a manner consistent with the Parties’ international procurement obligations, such as the World Trade Organization (WTO) Agreement on Government Procurement (GPA).”⁶³ While it is entirely understandable that the two jurisdictions were not in a position to provide detailed related guidance on this sensitive matter at this time, it seems inevitable that further consideration will have to be given to it in due course. Indeed, this is part of what the mandate of the GPA Work Programme on Sustainable Procurement asks them (and the other GPA Parties) to do.
- Third, other related analytical issues also are not addressed. For example, issues concerning the integration of Micro, Small and Medium-sized Enterprises (MSMEs) are overlooked, including, for instance, possible issues in adopting green considerations into their own production and sourcing. To ensure their ultimate success, it is important that GPP-related measures taken by governments create opportunities for a broad array of market participants, and not just large enterprises. MSMEs are particularly vulnerable, given their resource limitations as compared to larger enterprises and the expectation that they will have to adapt their products and production processes to meet higher environmental standards.

With regard to next steps, as noted in Part I, in an earlier communication, the EU and the US indicated that the two partners envisioned to launch, at a subsequent TTC meeting, a “joint EU-US initiative on green public procurement policies”. The initiative [would] build upon the joint catalogue of best practices and related consultations which are foreseen with stakeholders. Its avowed aim is “to deepen the commonalities of [the two jurisdictions’] respective public procurement approaches with the aim of

⁶² See the EU-US Catalogue, p.1.

⁶³ See the EU-US Catalogue, p.2.

contributing to achieving our climate ambitions”. That announcement noted specifically that “this initiative could also inform discussions within the WTO Agreement on Government Procurement”.⁶⁴

Without artificially inflating expectations, two related possibilities can be easily identified. First, the EU-US Catalogue can be referred for consideration as an input to the work of the WTO Committee on Government Procurement, pursuant to its Work Programme on Sustainable Procurement. This seems consistent with the original intention, as reflected in the above-cited communication from the TTC. Second, other GPA Parties could be invited to contribute to an expanded version of the document.⁶⁵ While this might not, by itself, satisfy the deeper aim of the Work Programme—namely, to identify measures and policies that the Committee considers to be sustainable procurement practiced in a manner consistent with the principle of “best value for money” and with Parties’ international trade obligations—it would, at the very least, continue the process of international dialogue to which the EU-US Catalogue has already contributed so usefully.

IV. Concluding remarks

This article has reviewed the new “Catalogue” of perceived best practices for promoting green public procurement (GPP) that was jointly released by the EU and the US in April of this year. The Catalogue was developed by a joint Working Group on Climate and Clean Technology under the auspices of the EU-US Trade and Technology Council. Its avowed aim is “to identify and present key policies, actions and best practices used in the field of green public procurement that can inspire policymakers and government entities to increase the use of green public procurement practices and thereby accelerate the wide deployment of green goods, services and technologies in the public sector.”⁶⁶ It is part of a broad and impressive package of outcomes/initiatives sponsored by the TTC covering multiple related topics.

As we have observed, the EU-US Catalogue is of interest for multiple reasons. First, by itself, the Catalogue provides an extremely useful compendium of best practices and related initiatives for the promotion of GPP. Second, by enhancing mutual understanding between the two jurisdictions, the release of the Catalogue seems likely to help reduce Transatlantic trade tensions in this area, at least for a time. Third, the EU-US Catalogue is linked to and can be of major assistance in carrying forward the Work Programme on Sustainable Public Procurement of the WTO Committee on Government Procurement, an important dialogue under way under the auspices of the Committee.

As we have discussed, while the EU-US Catalogue is to be enthusiastically welcomed, it has its own limitations and has certainly not resolved all relevant questions, even in the relatively narrow domain of Transatlantic differences regarding GPP. Further work will be needed to address these. Moreover, clearly, current Transatlantic differences regarding trade and technology have diverse broader dimensions, for example concerning the role of subsidies and the treatment of data. Despite all this, the Catalogue represents an encouraging step forward and an important basis on which to build.

⁶⁴ World Trade Organization, Agreement on Government Procurement 2012 and related WTO legal texts, “Decision on a Work Programme on Sustainable Procurement”, p.87

⁶⁵ See also Grier, “EU-US Best Practices for Green Public Procurement” (22 April 2024).

⁶⁶ See the EU-US Catalogue.