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TRADE ISSUES IN THE GREENING OF PUBLIC PURCHASING

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PREFACE

This document was presented to the Joint Session of Trade and Environment Experts as part of the OECD work programme on trade and environment. It was prepared by Dale Andrew of the Trade Directorate with input from Carlo Pessa of the Environment Directorate. The text is released as an unclassified document under the responsibility of the Secretary-General of the OECD with the aim of bringing information on this subject to the attention of a wider audience.

This study can also be found on the world wide web at <http://www.oecd.org/ech/docs/envi.htm>. It is also available in French.

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TRADE ISSUES IN THE GREENING OF PUBLIC PURCHASING

I. INTRODUCTION

In February 1996, the OECD Council adopted a recommendation on improving the environmental performance of government¹. As a follow-up, the OECD Pollution Prevention and Control Group (PPCG) organised a Green Goods conference; held in Biel/Bienne, Switzerland in 1997, it was devoted to Greener Public Purchasing. The conclusions identified by participants revolved around: (a) the potential of public purchasing as an effective policy instrument to contribute towards sustainable production and consumption, and (b) the challenges faced by policy makers in this area, *inter alia* to ensure compatibility between greener purchasing programmes and existing trade principles. A year later, in February 1998, the PPCG sponsored a workshop whose objective was to identify the regulatory/statutory issues; fiscal/budgeting mechanisms; information support tools; and management practices which could contribute to the practice of green purchasing. The report on the 1998 workshop can be found in ENV/EPOC/PPC(98)4.

This note, first discussed in the Joint Session in November 1997, also served as background for the 1998 workshop. It examines certain trade issues arising in the greening of public purchasing². Section I, following this Introduction, presents an overview of the ways in which greener public purchasing is developing in select OECD Member countries, based on work underway in the Environment Directorate. In Section II, three clusters of issues are explored where trade issues may arise at the interface of greener public purchasing initiatives and procurement rules. Finally, remarks are made in conclusion. An annex sets out a quick overview of the main principles and *modus operandi* of various sets of procurement rules - those for Japan, the United States, NAFTA, the EU and the plurilateral WTO Agreement on Government Procurement (GPA).

II. GREENER PUBLIC PURCHASING

Bottom-up and top-down initiatives in greener public purchasing

Public consumption in OECD countries ranges from 5 to 15 per cent of GDP and involves extremely diverse products and services. The potential for public purchasing decisions to affect the environment is therefore considerable. Due to its size, public procurement potentially plays a crucial role in supporting innovation in the area of environmentally preferable goods and services. For these reasons, the environmental effects of government operations are being increasingly scrutinised. In many instances, calls for the greening of government operations have resulted in changes in purchasing practices by local governments or in the formation of network organisations composed of local governments (e.g. the “Eco Maires”, initiative in France) with a view to exchanging information and exploring approaches to greener purchasing.

Switzerland constitutes an example of a country where the drive towards greener public purchasing is almost completely a “bottom-up” phenomenon, involving officials and purchasers from the federal, canton and municipal administrations. Greening of government initiatives in Switzerland have

taken the form of ad-hoc groups - supported by federal environmental authorities - for the exchange of information. For instance, since 1981, the Conference of Federal Building Organisations (KBOB), an ad-hoc group chaired by the Swiss Federal Buildings Office, co-ordinates the construction-related activities of all federal offices, particularly in areas such as purchasing, contracts, standards and quality assurance. In addition, the KBOB publishes practical information in order to stimulate greener decisions in the different phases of construction projects. Included in the group's reports, which are prepared in consultation with industrial partners, is information on paints, thermal insulation materials, green roofs, radon protection, as well as on the ecological assessment of construction elements and the environmental management of construction projects.

In contrast to Switzerland, some countries have followed "top-down" approaches to environmentally preferable public purchasing by developing comprehensive national policies in this area. For instance, in 1991, the Danish Ministry for Environment and Energy issued a "Strategy for the Promotion of Sustainable Product Procurement Policy", which was then followed by an "Action Plan for Sustainable Public Procurement Policy" three years later. The Action Plan requires state purchasing departments to incorporate environmental considerations into other contract award criteria, which usually include price, quality, and safety. State institutions, in turn, must formulate environmentally sound procurement policy before February 1996. Although the Action Plan covers all public purchasing activities, in practice it focuses on government purchases of 10 types of products, including office equipment and furniture, paper, cleaning agents, paints, lighting, organically grown foodstuff, and transportation equipment and cables.

Japan provides yet another example of a country where greener public purchasing has developed mainly in the context of overarching national policies. In June 1995, the Japanese government adopted an "Action Plan for Greening Government Operations", which is overseen and implemented by a Council of 23 agency and ministerial director generals.

Areas covered by the Action Plan include procurement and use of environmentally preferable goods and services, as well as environmental considerations regarding the construction and maintenance of governmental buildings. For each area covered, the Action Plan determines specific quantitative targets that government organisations must meet by the year 2000. The targets entail reductions in virgin pulp and paper consumption, energy and water use, waste volume, air and water pollutants, and waste deriving from construction. To attain the specified targets, the Action Plan recommends concrete actions, including procurement and use of: recycled materials (e.g. recycled paper); goods and raw materials with minimal environmental impacts (e.g. energy efficient office automation equipment, low-emission vehicles, energy efficient vending machines); and water-saving equipment. Regarding construction, the Action Plan promotes the installation and use of, *inter alia*, pollution treatment facilities, effective heat insulation materials, CFC-free air conditioners, and recycled construction materials in government buildings. The Action Plan requires ministries and government agencies to review their performance in 1997.

In the United States, there exists a wide array of programmes and initiatives aiming at encouraging the Federal Government to green its operations. For example, under the 1976 "Buy Recycled" Programme, the Environmental Protection Agency (EPA) establishes criteria to assist federal procuring agencies in identifying products for which they must develop affirmative procurement programmes. The list of designated products includes paper, engine coolants, retreaded tyres, traffic cones, yard trimmings compost, toner cartridges, and plastic trash bags. Thirty-six items in all have been designated as of 13 November 1997. More recently, a Presidential Executive Order gave rise to the Environmentally Preferable Purchasing programme, an EPA programme adopting a more comprehensive approach towards greener public purchasing. Specifically, the Environmentally Preferable Purchasing

programme is attempting to examine green products from a life cycle perspective (see below). Within this framework, a number of pilot projects have been initiated to apply these broader concepts to different product lines, including cleaning products, construction materials, latex wall paints and computer hardware. At the local and state government levels, the emphasis remains on purchases of products with recycled content and, primarily, recycled content paper though the trend is to go beyond single attribute criteria. Many states have substantially adopted the Presidential Executive Order.

Selected approaches to identifying greener products

The identification of greener products was perceived by participants to the “Green Goods IV: International Conference on Greener Public Purchasing” as a crucial aspect of greener public purchasing. At the same time, participants underscored the challenge posed by the identification of greener products, a process that requires the compilation of usually scarce information about the environmental characteristics of products. A wide array of approaches has thus emerged in an attempt to face this challenge.

“Single issue” approaches

Greener public purchasing initiatives based on “single issue” approaches use single criteria like energy efficiency or recycled content to guide the purchasing decisions of public authorities. For instance, Switzerland’s “E2000” initiative, developed for the federal energy saving programme, identifies electrical appliances with low energy consumption and sets maximum energy consumption criteria that are updated annually. The energy efficiency “target values” are determined in co-ordination with manufacturers and distributors. Austria, Denmark, Sweden and The Netherlands have recently adopted “Energy 2000” programmes, whose objectives are similar to those of the Swiss initiative. In the United States, EPA’s Energy Star programme developed voluntary standards for energy efficient computers, monitors, printers, fax machines, copiers, exit signs, appliances, heating and cooling products, and transformers. Energy Star forms part of a broader EPA initiative that aims at providing federal agencies with guidance as regards the development of pollution prevention strategies for their facilities.

Life cycle approach

Policy-makers have taken the view that single environmental criteria may not always provide a comprehensive view of a product’s environmental effects. This situation has led to the development of “life cycle assessments”, a concept which comprises efforts by the scientific community, with the support of public authorities and the private sector, to develop a tool for a reasonably objective examination of a product’s environmental impact along all stages of its life, including manufacturing, distribution, use and disposal. Such systematic assessment is also meant to assist decision-makers in comparing different available options with a view to obtaining desired environmental and economic objectives.

Box 1. The Environmentally Preferable Products Programme of Massachusetts

Over the last few years, the central purchasing office for the Commonwealth (state) of Massachusetts -- has worked to develop and implement an Environmentally Preferable Products (EPP) Programme. The EPP Programme forms part of the state's procurement policy, which is aimed at providing *best value* by developing criteria that measure factors beyond cost. It involves research on environmentally preferable products as well as periodic establishment of EPP purchasing goals. The Programme has been designed to assist the state's departments in their efforts to:

- minimise the environmental impacts due to manufacturing, utilisation or disposal of products purchased by the State or its contractors;
- encourage private sector development of more environmentally benign products and services by increasing demand for these products and services; and
- provide a model for other public, private and non-profit organisations to make environmental criteria a component of their purchasing decisions by testing, using and promoting the use of environmentally preferable products.

The Programme operates through "state-wide contracts" procured by the central agency and offering environmentally preferable goods and services ranging from office paper products, janitorial supplies and recycling bins, to paint, motor oil, traffic cones, toner cartridges, office panels and envelopes. Most are available at a value and quality comparable to non-environmentally preferable counterparts. A Procuring Department or municipality is able to choose an item or service identified under the state-wide contract without having to conduct a separate competitive procurement. State-wide contracts are currently being developed with a view to creating a "basket" of items, so that departments may "shop" for what they need in a quick way.

Some of the methods for promoting use of EPP products and services under the Programme include:

- when a Department seeks goods or services not designated as environmentally preferable, but has researched and identified an EPP meeting their needs and providing best value, they may specify EPP requirements in their tender documentation; alternatively, a Procuring Department may award additional points to suppliers offering EPPs, thereby giving them an additional advantage towards winning the contract;
- tenders may indicate that an EPP will be considered best value even when the price is greater than that of a non-EPP (recommended not to exceed 10 per cent);
- points may be awarded to bidders that use environmentally preferable products, services or engage in environmentally preferable practices as part of conducting their business;
- tenders may request bidders to submit information whenever possible to identify any and all environmental attributes of the product or services being procured, even when such attributes are not being required. Such information can be useful in preparing future calls for tender and determining appropriate specifications for EPPs.

The 1998 OECD GPP workshop noted that a critical factor in the success of this programme hinged on environmental specialists being integrated, i.e. working side by side procurement colleagues, in the central procurement agency's activities.

Source: The Commonwealth of Massachusetts, Procurement Policies and Procedures Handbook

Despite the numerous difficulties associated with operationalising the concept of life cycle assessment, some OECD Member countries are actively using it to complement alternative approaches to identifying environmentally preferable products. In the United States, for example, the EPA and the General Services Administration (GSA), the main supply agency for the United States Federal government, have developed a Commercial Cleaning Supplies Catalogue. The February 1996 edition of the Catalogue contains a matrix that lists information on seven environmental attributes for some of the products. The attributes are derived from the environmental impacts arising in the context of the products' life cycles. The Commercial Cleaning Supplies Catalogue contains hundreds of commercially available cleaning supplies, ranging from soaps and disinfectants to mops and buckets. Albeit differently, life cycle methods are also being used in Switzerland as a mechanism to integrate both qualitative and quantitative criteria into purchasing decisions. In Denmark, a number of environmental recommendations on different product groups are being developed based on a life cycle approach. Product groups covered include, *inter alia*, furniture, refrigerators, paints, and office equipment.

Box 2. Value for money: the UK approach to greener purchasing

As part of a far-reaching initiative aimed at greening government operations in the United Kingdom, the Department of the Environment, Transport and the Regions (DETR) released a *Green Guide for Buyers* in December 1997. Primarily designed for buyers in the DETR, the *Guide* is intended to be consistent with the consolidated guidelines on public procurement developed by the Treasury/DTI's (Department of Trade and Industry) Procurement Policy Unit. Other UK Departments are developing procurement guides along the lines of the *Green Guide*.

The *Green Guide*'s principles revolve around the concept of *value for money* -- which UK Ministers have identified as the focus of UK government procurement. Value for money in procurement is defined as the optimum combination of whole-life cost and quality to meet the user's (in this case, DETR's) requirements. In order to assist buyers in determining whether it is cost effective to invest in a more expensive product initially so as to reduce costs in the long run, the *Green Guide* identifies the following elements as components of *whole life costing*:

- *direct running costs*: e.g. energy, water and other resources used over the life time of the product or service;
- *indirect costs*: e.g. loading on cooling plant from buying energy inefficient equipment such as power-hungry information technology equipment;
- *administration costs*: e.g. overhead from buying hazardous products which require additional controls and special handling and disposal;
- *spending to save*: e.g. investing in higher levels of insulation to save energy and thus money in the future;
- *recyclability*: e.g. creating markets for waste by buying recycled products;
- *cost of disposal*: e.g. paying a premium at the outset to reduce waste, i.e. by choosing a product which is more durable, re-usable, recyclable, and that includes disposal costs or is free of hazardous materials requiring its disposal in a special way.

The *Green Guide*'s focus on value for money thus enables buyers to incorporate into their specifications for goods and services requirements and standards stemming from the Government's policy on the environment. *Contracts are awarded to the supplier whose product best achieves a balance between quality and whole life costing*. Accordingly, the procurement policy laid out in the *Green Guide* does not limit the selection process to those suppliers with environmental credentials or suppliers subscribing to voluntary codes of practice. Similarly, eco-labels are regarded as an additional source of information for the procurement officer, not as a pre-requisite for participation in government procurement.

Source: UK Department of the Environment, Transport and the Regions, *Green Guide for Buyers*, December 1997.

Table 1. Examples of products covered by selected greener public purchasing initiatives

Products or Product Types	Initiative
Canada:	
Cleaning products, compost, construction and demolition materials, energy efficient lighting products, engine oil, additives and synthetic oils, paints, paper, plastics, rubber, packaging	Ontario-based GIPPER ³ 's guidelines
Denmark:	
Office equipment, office furniture, writing and copying paper, cleaning agents, paints, lighting products, organically-grown foodstuff, transportation equipment, cables	Action Plan for a Sustainable Public Procurement Policy
Germany:	
Office equipment (paper, furniture, computers, copiers, printers, batteries); vehicles (cars, buses, trucks, motorbikes, tires, lubricants, fuels); construction and infrastructure materials (isolating materials, windows and window frames, paints and varnishes, materials for road-construction); gardening materials (pesticides, fertilisers, compost); heaters; sanitary equipment; pipes; cleaning products; refrigerators; dish-washers	Handbook on Environmentally-Sound Purchasing (published by the Federal Environmental Agency)
Japan:	
Recycled paper, fuels, office automation equipment, washing machines, room air conditioners, vehicles, automatic vending machines, pollution treatment equipment, construction materials	Action Plan for Greening Government Operations
Switzerland:	
Paints, thermal insulation materials, green roofs, radon protection	Practical information by the Conference of Federal Building Organisations (KBOB)
Electronic appliances	E2000 Program
Batteries, pipes for electric cables	Swiss Telecom PTT
Construction and civil engineering materials, vehicles, products for hospitals, cleaning products	Ecological Purchasing Project (Canton of Zurich)
United States:	
Paper, vehicular products, engine coolants, lubricating oils, tires, construction products, structural fibreboard, laminated paperboard, carpet, floor tiles, patio blocks, building insulation products, transportation products, traffic control cones, traffic barricades, park and recreation products, playground surfaces, running tracks, landscaping products, hydraulic mulch, yard trimmings compost, non-paper office products, office recycling containers, office waste receptacles, plastic desktop accessories, toner cartridges, binders, plastic trash bags	Buy-Recycled Program [Environmental Protection Agency (EPA)]
Office equipment (computers, monitors, printers, fax machines, copiers); exits signs, appliances	Energy Star (EPA)
Cleaning products, construction materials, latex wall paints, computer hardware	Environmentally Preferable Purchasing Program (pilot projects between EPA and other federal agencies)

Eco-labelling

Eco-labelling schemes represent another multiple-criteria approach to the selection of greener products. Among OECD members, Austria, Canada, the Czech Republic, France, Germany, Korea, the Netherlands, Spain, Sweden, Norway, Finland, Japan, and the European Union are operating eco-labelling programmes. Some of these countries, such as Canada, are also using eco-labels to guide public purchasing decisions. In Germany, Japan and Norway, purchasers are advised to incorporate the criteria underlying eco-labels into their purchasing decisions. In this way, products that have not been awarded eco-labels can still participate in a tender.³ Eco-labelling is expected to begin playing an important role in Denmark as from 1998, in light of the country's joining the Nordic Eco-label in an effort to supplement the EU label.

Guidebooks

With a view to assisting public procuring agencies in identifying environmentally preferable products, many OECD countries have produced guidebooks. In Germany, for instance, the Federal Environmental Agency has published a handbook providing information on product characteristics and their impact on the environment, as well as specific recommendations regarding the formulation of public tenders. The handbook covers areas such as office supplies and equipment (e.g. paper, furniture, computer hardware, printers); vehicles (e.g. cars, buses, trucks, fuels, lubricants); construction and infrastructure materials (windows and window frames, paints and varnishes; materials for roads); cleaning products; catering (e.g. refrigerators, dish washers); and waste.

In Canada, the Ontario-based GIPPER⁴ Committee, comprised of both Waste Management and Purchasing Representatives of the Federal, Provincial and Municipal levels of government, produces guidelines with a view to assisting public purchasing agencies to incorporate environmental considerations into their decisions. The guidelines focus on waste reduction. Product categories covered include cleaning products, compost, construction and demolition materials, energy efficient lighting products, lubricants, paint, paper, plastics and rubber.

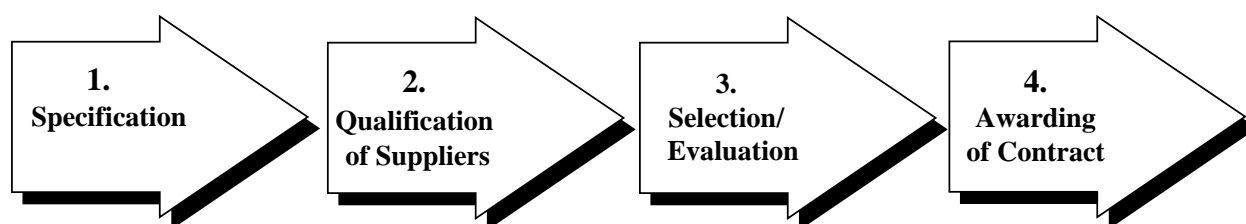
In 1996, the GRIP (Green in Practice) Centre, founded by the Norwegian Ministry of the Environment, published *GRIP Purchasing*, a guide designed to help professional purchasers to integrate eco-efficiency into every stage of the purchasing process. Accordingly, *GRIP Purchasing* focuses on life cycle costs and specification of performance in order to achieve a higher value added and less environmental damage through less pollution, waste and consumption of raw materials and energy. In collaboration with the Norwegian Furnishing Manufacturers' Association, professional buyers and leading Norwegian furniture manufacturers, GRIP is producing a supplement to *Grip Purchasing*, namely *GRIP's Advice to Purchasers of Office Furniture*.

III. NEXUS OF GREENER PUBLIC PURCHASING AND PROCUREMENT RULES

Introduction

Diagram 1 sets out the stages in the procurement process covering the tendering (or bidding) phases. At this level of generality, such a schematic representation may be considered fairly universal. Nonetheless, it should be recalled that important differences in procurement procedures exist between countries and even, within OECD countries, from one government agency to another.⁵ This section focuses on the initial steps of the procurement process during which 1) the exact nature of the goods is specified; 2) the list of qualified suppliers is drawn up and 3) offers are evaluated and the award criteria applied. For each of these stages in the procurement process, the discussion looks at: a) relevant provisions of the regional/plurilateral procurement rules (an overview of these rules appears in the Annex) in relation to emerging GPP practices and b) potential trade issues.

Early Stages in the Public Purchasing Process



- | | | | |
|---|--|---|---|
| <ul style="list-style-type: none"> • Market research and choice of product group | <ul style="list-style-type: none"> • Setting qualification criteria | <ul style="list-style-type: none"> • Selection of suppliers/ invitation to tender (in case of selective tendering) | <ul style="list-style-type: none"> • Negotiation |
| <ul style="list-style-type: none"> • Drawing up of tender documents: <ul style="list-style-type: none"> • general conditions • technical specifications | <ul style="list-style-type: none"> • Publication of conditions for participation • Invitation to participate | <ul style="list-style-type: none"> • Evaluation of offers | <ul style="list-style-type: none"> • Award • Making of (umbrella) agreement |
| <ul style="list-style-type: none"> • Volume | | | |

Specification of goods

a) Procurement rules

Specifying the technical characteristics of the goods to be procured is an essential part of any tendering operation. What can be specified, and in what manner, is laid down in the procurement rules. Such specifications *include* quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling; or the processes and methods for their production, etc. (GPA Article VI.1. or NAFTA, Article 1007).

The various procurement rules examined are all based on the concept of “technical specifications” which would appear to cover the environmental characteristics used to determine environmentally preferable products. This approach is consistent with the EU directives by the European Commission’s November 1996 Green Paper on procurement⁶. As for other technical specifications, such environmental specifications would need to be crafted in such a way as to avoid becoming, in the words of, e.g., the GPA, “unnecessary obstacles” to trade⁷. The text provides no definition as to what constitutes an unnecessary obstacle to international trade. Reference is made to certain objectives, conditioned by the use of terms such as “where appropriate”. For example, the second sub-paragraph of GPA Article VI. 2, states that , “where appropriate”, specifications be in terms of performance rather than design or descriptive characteristics

Procurement rules also seem to indicate a clear preference for the use of international standards (or European standards in the case of the Supplies Directive) in defining technical characteristics for procurement. However, this should be considered in conjunction with the terms “where appropriate”. Should even national technical regulations or standards not exist (which could well be the case for many environmental innovations), the public purchaser using other technical specifications – including demands for the product’s environmental performance -- in procurement documents would presumably remain bound by the obligation to avoid creating “unnecessary obstacles to international trade”.

b) Trade issues

What are the concerns that might be expressed with the specification of criteria for the greening of public purchasing? In this section possible trade issues are raised with respect to: (a) appropriateness of the criteria defining the characteristics of a green(er) product, including the process by which the criteria are designated; (b) use of eco-labels or of life cycle analysis underlying the granting of eco-labels, (c) extent and nature of environmental data requirements in tender documentation; (d) use of process and production method (PPM) requirements; (e) importance of distinguishing effects of mandatory and voluntary norms; (f) definition of appropriate standards⁸.

Appropriateness and setting of criteria for greener goods

At the 1996 Biel/Bienne Green Goods Conference it was found that product characteristics of greener goods have been mostly defined for the moment in terms of consumption externalities, that is requirements addressing a good during its use or disposal phases - but not during its production phase - e.g. maximum allowable electricity consumption levels. In principle, these should not give rise to any

particular trade concerns, on the condition that there are traditional means of ensuring full transparency and easy access to detailed information to all potential competitors - producers and exporters.

On the other hand, it is possible that the criteria could result in favouring domestic or regional producers. For example, a procurement officer might emphasise recycled content in the specifications for paper to be purchased. This decision might reflect domestic environmental conditions and preferences (for example the need to tackle booming landfill costs, a major issue for many local authorities). One practical effect of this could be to modify the conditions of competition against those firms (whether domestic or foreign) whose product has a high virgin paper content. In a situation where domestic producers were in fact predominantly based on recycled content and foreign firms supply products with a high virgin paper content (albeit managed sustainably) the latter could well find themselves disadvantaged. However, disparate impact of procurement criteria alone may not, in itself, demonstrate discrimination.

Some aspects of the debate concerning the establishment of criteria for the award of eco-labels appear relevant, including transparency in the decision-making process for such criteria. As a recent OECD study on eco-labels⁹ has emphasised, establishment of criteria for eco-labels tends to involve expert groups in which representatives of various interest groups draft eco-label criteria that are then sent out for public review. In principle, foreign producers may participate in the expert group, though in practice it was found they rarely do. The actual role played by comments and proposals submitted by outsiders in the final decision-making process was generally not an open process with little or no participation by foreign interests. Nevertheless, the study found no evidence of a systematic bias, or of trade distortions. However, no review has been undertaken of the decision-making process for establishing the criteria for identifying greener products, (or actual lists of such products), in the relatively recent green public purchasing programmes. It is not known how many have consultation mechanisms preceding the decision-making process.

Criteria underlying eco-labels and data collected

There are important elements that distinguish GPP from eco-labelling schemes. First of all, use of eco-labels to designate preferable products for public purchasing is not (yet) particularly widespread. However, several purchasing authorities have shown interest in designating the greener products with an existing eco-label, due to the relative ease of referring to such seals in handbooks, procurement guides, etc. This raises concerns about the possible over-reliance on eco-labels at the expense of objective consideration of underlying criteria. In cases where adherence to an eco-labelling scheme is specified as one of the criteria in tender documentation, the compliance costs associated with qualifying for the eco-label may be higher for foreign firms, especially for small and medium size enterprises, and producers in some developing countries. Greater difficulty in accessing information needed to comply with the eco-label, as well as the inability of producers -- notably those that are not vertically-integrated -- to ensure that the raw materials they use are produced in accordance with the criteria of the eco-label, may present further hurdles for the participation of foreign producers in a public tender. Increasingly, however, eco-labelling scheme authorities are ensuring fuller transparency of their systems, in particular by publishing the criteria behind awards of their labels, inter alia on websites.

In other cases where procuring entities had been attracted by eco-labels, they seem currently more inclined to use the eco-label's underlying criteria, and information gathered on the particular environmental reference points, rather than depend on the labels themselves. According to this manner of proceeding, the individual procurement officer would have at his or her disposal, the data on a series of criteria underlying the label, and decide which are of greatest importance in accordance with their needs.

In theory, such practice could have the effect of reducing the transparency of the procurement process, to the extent that bidders are uncertain as to what criteria will be relied on. It appears however that to date where administrations are using the eco-label's underlying criteria and information gathered on the particular environmental reference points, the situation has been more transparent than sole dependence on the labels themselves. The procurement officer having to hand the data on a series of criteria underlying the label can then decide which criteria are of greatest importance in accordance with the needs being addressed (e.g. local environmental priorities, such as the reduction of water consumption). The criteria would then be included in the tender specifications, thereby ensuring that bidders know which criteria are going to be relied on. Assuming such transparency in the use of the underlying criteria and corresponding data, this would, overall, tend to reduce potential trade impacts associated with the alternative all or nothing situation, i.e. in which an eco-label is granted or not granted.

In this context it is recalled that the WTO Committee on Trade and Environment stressed the importance of WTO Members following the provisions of the TBT Agreement and its Code of Good Practice, including those on transparency. It also underlined the particular importance of ensuring fair access of foreign producers to eco-labelling schemes/programmes¹⁰.

Requiring data on environmental indicators

To avoid accepting the inherent judgements made in awarding eco-labels, some authorities prefer to use the underlying criteria and information collected in the context of eco-labelling exercises. Some authorities in European countries active in the area of the greening of purchasing (GPP), for example, have suggested that in tender procedures, it should be possible for tender documentation to require potential suppliers to provide data on various aspects of environmental performance. Preference would then be given to the product with the highest environmental quality .

PPMs

Another aspect of the eco-labelling debate which has been discussed at length are questions with respect to the consistency with general trade rules and certain WTO Agreements, in particular the TBT Agreement and its Code of Good Practice, of the use of production-related criteria arising out of life cycle analysis and the treatment of processes and production methods (PPMs). This ground has been well covered in both the WTO Committee on Trade and Environment, as well as previous Joint Session papers on PPMs¹¹ and it is not intended to repeat that discussion here in depth.

The question rather is whether, in the specific case of government procurement, the situation is essentially the same or whether governments may have more freedom to specify PPMs, and in particular non-product related PPM requirements.

The 1995 OECD Report on trade and environment endorsed by the OECD Ministerial Council Meeting addressed at some length the matter of PPMs.¹² This statement recognises that in most cases, PPM-related requirements set by government regulations have exclusively domestic effects and do not cause friction with trade policy. Further, general trade rules, as well as the TBT and SPS Agreements, provide internationally agreed rules to minimise any adverse trade effects. Thus, when PPMs affect the characteristics of products, the environmental implications of these characteristics can be addressed within existing trade rules.

In the other hand, PPM-requirements addressing the environmental impact during the production process raises a key trade and environment issue, for which multilateral trade rules and disciplines make no provision and have been interpreted not to allow for import restrictions based on characteristics which are not physically embodied in the imported products and therefore do not impact on the environment in the importing country. In this context, the OECD report stated¹³ that “*To date, GATT dispute panels have concluded that the national treatment provisions of the GATT prohibit differentiation between otherwise “like products” on the basis of PPM-related requirements that do not change the physical characteristics of these products*¹⁴...”

If the above (very briefly) describes the *status quo* when the 1995 OECD Report to Ministers was drafted for the *general, multilateral* WTO trade rules and disciplines, there are several distinguishing features of the situation concerning the Agreement on Government Procurement. First of all, the GPA does not form part of the single undertaking package resulting from the Uruguay Round; it is thus a *plurilateral* Agreement, binding only WTO Members that are signatories to it. It also represents the principal text under the WTO dealing with government procurement, since other Agreements explicitly exclude government procurement questions, (cf. GATS Article XIII; TBT Agreement Article 1.4 and GATT Article III 8 on National Treatment). Further details of the GPA scope, coverage and operational modalities are included in the Annex to this note.

Substantively, GPA provisions on national treatment and non-discrimination (GPA Article III) are much more succinct than are the counterpart provisions in the GATT. GPA Article III(1) stipulates the obligation of each Party (to the GPA) to “...*provide immediately and unconditionally to the products, services and suppliers of other Parties offering products or services of the Parties, treatment no less favourable than: (a) that accorded to domestic products, services and suppliers and (b) that accorded to products, services and suppliers of any other Party.*”

Whereas GATT provisions, as well as the TBT and SPS Agreements, referred to in the 1995 OECD trade and environment report¹⁵ governing non-discrimination and national treatment rely on the concept of ‘like product’ *per se*, this term is absent from the GPA.

In addition to the absence in the GPA of the term of *like product*, differences between the general trade rules and the GPA concern wording on PPMs. GPA Article VI.1 uses language referring to technical specifications both in respect of specification of product characteristics and the process and production methods for their production. This differs from terminology, for example, in the TBT Agreement that refers to “product characteristics or *their related* processes and production methods”.¹⁶

In spite of these differences, the GPA contains the general qualification that the technical specifications, including the PPMs as referred to under GPA Article VI.1, are not to be “prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.”

In the light of the absence in the GPA of the term “*like product*”, its broader references to PPMs and the exclusion of government procurement-related purchasing specifications from the scope of the certain GATT articles and the TBT Agreement, questions about the relative degree of freedom available to GPA signatories would appear to arise..

Any possible consideration of greater freedom *vis-à-vis* other agreements should also be weighed against the overall objectives of the GPA, *inter alia*, of achieving greater liberalisation of world trade, avoiding protection for domestic products and discrimination among foreign products, promoting transparency and establishing procedures for further enforcement of provisions on government procurement.

For the moment there have not been any cases involving the relevant provisions of the GPA arbitrated under the dispute settlement mechanism in the WTO.

Addressing transport externalities in evaluating bids

With the increasing growth of freight, accompanying congestion, noise, accidents, local pollution and greenhouse-gas emission problems, several procurement units of public authorities, particularly in European municipalities, have been reflecting about how, in letting their own bids for tender, they might contribute to reducing negative environmental effects associated with goods transport, such as by according preferences for locally produced goods. Transport-intensity of goods has been the target of critiques on environmental grounds, which often is ipso facto transferred to international trade alleging that local production would be less polluting.

For example, a local municipality might argue that in its purchasing it should give a preference to local supplies by incorporating a supplementary cost factor based on distance the tendered good travelled -- this in order to reduce the chances of purchasing imported goods from a distant continent with the transport-associated external 'costs'. Would it be technically feasible, environmentally effective and compatible with trade rules to stipulate distance or other transport-related criteria in bids for tender?

Technically, this would be quite difficult to implement. For large standard commodities, transport costs are usually only a very small part of total costs and are rarely large enough to tip the balance in favour of a local product. In order to be of sufficient weight to influence a purchasing decision, the 'corrective factor' to be built in would have to be very large. Applying a coefficient based on the number of kilometres the good has travelled does not necessarily reflect harm done to the environment, since it would not reflect the transport mode used nor the exact transport conditions under a specific mode. A product sent in bulk by ship from a distant continent may not pollute any more than a locally produced good delivered by truck, as measured by air emissions, noise, or safety externalities. Different externalities associated with different modes of transport are not easy to compare and would be difficult to take into account with this approach. To be environmentally correct, the extra charges added on during a bid evaluation process would need to carefully reflect pricing of the externalities involved. One problem is that such prices are generally not available. Improving the access to public procurement markets by favouring certain modes of transport runs a certain risk of becoming discriminatory against countries with little choice for the delivery of goods in modes which are considered more environmentally friendly. What ever the legal view of the situation is, using distance as a criterion to discriminate against trade would represent a major departure from current interpretation of international trade rules and disciplines.

If sheer *distance* from market is not acceptable, what might be the validity of incorporating a supplementary cost factor assessing freight's damage to the global environment, such as CO₂ emissions? Would a measurement of CO₂ emissions in the transport mode(s) used to deliver the tendered good be a valid consideration for inclusion in evaluating bids or for 'correcting' prices tendered?

Integrating environmental externalities into a service, such as transport, associated with the purchase of a product raises a number of difficulties. As OECD members are increasingly moving to have domestic prices reflect transport externalities through taxes, regulations, etc., it would be difficult to 'correct' bid prices with a universal coefficient, since some jurisdictions would argue that the local and even international (CO₂) environmental externalities had already been reflected in their prices. Prices of petrol vary by a factor of four to five or more in OECD countries, with many of the higher cost countries levying taxes in the name of internalising social costs associated with transport. Having the procurement

entity adjust an emissions tax on imported goods according to the adequacy of internalisation of pollution costs, is far from an exact science and would be open to charges of discrimination.

Another approach, in view of the fact that transport is a service, which has been suggested to address environmental externalities associated with the transport of procured goods consists of separating the purchase of the goods from their delivery to the purchasing entity. The services aspect could in principle be covered by a separate contract, specifying technical attributes for the transport, which might include environmental specifications. While this is probably not particularly efficient from the point of view of a small entity purchasing everyday items and may also be viewed as running counter to trade facilitation, it has the advantage of addressing the transport question directly.

The 'trade friendliness' of such an approach would still depend in the first instance on the detailed manner in which the transparency, non-discrimination and national treatment principles are applied in bid and evaluation criteria. In this context, it may be noted that there have been no dispute settlement cases relating to provisions in the GATS regarding 'like service'. Another consideration here is the fact that the services sectoral classification list¹⁷ clearly separates Transport services (GATS Chapter 11) by mode -- e.g. rail transport (11.E.b.) is mutually exclusive from road transport/freight (11. F. b). Finally it is recalled that public procurement rules for services are still open to negotiation under the GATS.

On the other hand, one might seriously pose the question whether it is commercially feasible or efficient business practice to separate out the transport element from the purchase of goods. It is doubtful whether it would meet the requirements for the vast majority of local and sub-national public authorities. Perhaps in some limited cases, this is an avenue with potential for addressing certain environmental externalities associated with transport. Above all, it has the advantage of establishing a *direct* link between the service to be procured and the criteria used for the bid's technical specifications rather than factoring this aspect in *indirectly* in a way that could be easily abused.

Mandatory vs. voluntary standards

Eco-labels are market-based measures. A manufacturer's or distributor's decision to pursue certification for its product is voluntary. If pursued and granted and the seal placed on the product, consumers are also free to purchase the labelled product or another of their choice. From this point of view the market, including factors such as cost, price and quality, is the driving force on both the production and consumption sides.

On the other hand, a GPP programme is not necessarily of the same nature. In this case a public authority would devise guidance for its procurement officer on which products to purchase. Whether cast in the form of guidelines or appearing in a procurement handbook, the use of eco-labels or their underlying environmental criteria might be considered to fall somewhere between a mandatory regulation and a voluntary standard, having characteristics of both. Moving from eco-labelling as a voluntary instrument to the required inclusion of eco-labelling in a GPP will likely warrant giving greater attention to potential trade impacts. For this reason, the quality of the transparency becomes even more important in minimising potential trade effects. Thus, when attributes of the environmental labelling programme are being established, transparency considerations including the detailed information made public, the adequacy of notice period for interested stake-holders to react and provisions for taking comments into account are essential steps to ensure that domestic and foreign competitors are treated on the same basis. In the case where underlying criteria rather than the eco-label itself are being used, it is again important to ensure good quality transparency concerning the manner in which such underlying criteria are interpreted

and applied. And this would be in line with the importance attached to transparency of eco-labelling schemes found in the WTO CTE 1996 Report, already mentioned.

Which standards for innovative technologies?

The use of international or recognised national standards may be relevant only for a very limited number of green products, such as recycled paper. For a majority of environmental goods, including many of the off-the-shelf type, few standards exist that address more than a single attribute. In addition, many environmental goods involve innovative technologies for which standards do not yet exist. In such cases, specifying ready-made goods as green in a supplier's catalogue will not prove possible. For such innovations, it is important from the point of view of fostering competition and encouraging openness of markets, not to establish technical specifications with reference to a particular brand, design or supplier. And indeed this is discouraged by procurement rules (GPA Article VI 3). Where no standards have been set for a new product, and the number of firms producing the green good is limited, avoiding references to brands or designs becomes difficult. But keeping entry barriers low in order to allow new firms to compete is also in the interest of greening public purchasing.

Box 3. *IT Companies' advice on environmental requirements in public procurement*

In the autumn of 1995, *IT Companies*, a Swedish industry organisation of businesses developing, producing and selling information technology (IT) products and services, conducted an examination of procurement practices affecting their sector. *IT Companies* found, among other things, that requirements specified in procurement documentation were handled in non-uniform and arbitrary ways -- in part due to the trend towards decentralisation. In certain cases purchasers did not specify in tender documents the weighting to be given to the different requirements during the assessment phase. Producers found the exact significance of optional requirements difficult to grasp.

In order to assist suppliers and purchasers in arriving at a more efficient, consistent, knowledge-based and standardised approach to procurement, *IT Companies* issued advice and guidance, several points of which are of particular relevance to the discussion here:

- Public procurement is governed by Swedish law and the EC directives; the former is based on EU directives and allows environmental requirements to be taken into account in the assessment of tenders.
- Where no EU harmonisation exists, the purchaser is freer to make own, stricter requirements. However, such requirements may not operate as barriers to trade.
- Imprecise expressions like "environmentally friendly" should be avoided.
- It is not self evident which environmental requirements may be made. There are as yet no European Court judgements that define practices.
- The purchaser may refer to, or demand adherence to, criteria in specific certifications or eco-labels, but may not do so without adding "or equivalent".
- Both mandatory and voluntary requirements must be clearly stated as such; a referenced standard constitutes a binding requirement, while environmental requirements may be voluntary.
- The relative importance of the various requirements in assessing the tenders must be clear.

Source: IT Companies (formerly SITO) Environmental requirements in public procurement--advice and guidance, 1996

Qualification of suppliers

A second cluster of issues involves the potential specification of environmental requirements concerning the supplier. Some environmental policy makers have been attracted to the possibility of concentrating on a supplier's green credentials, in large part due to the many difficulties surrounding the choice and evaluation of criteria for greener products. It is felt that these difficulties might be avoided by shifting critical decisions back to those closer to the production and retail decisions. A commitment to a recognised environmental management system, such as ISO 14001 or EMAS, it is felt, would reflect an overall commitment by a potential supplying firm to higher environmental performance. Therefore public authorities would, in this manner, leave details on the choice of greener individual products to the firm, environmentally certified on the basis of having an internal management and audit system in place. It should be remembered in this context that EMS, whether ISO 14001 or EMAS, are standards on company *practices*. That is, having a certified management system does not necessarily mean that a company's *products* are necessarily "greener". From this point of view, specifying the qualification of suppliers may not be considered a sufficient condition for 'greening' procurement. It might therefore be a further criterion which procuring entities look at in combination with other criteria.

In Switzerland, a number of public purchasers give preference to companies that have or are implementing environmental management systems. In the United States the American Petroleum Institute is recommending a similar approach. The United States Departments of Energy and of Defense have been cited in a recent UNCTAD study as considering ISO 14001 certification as a condition for participation in government procurement bids.¹⁸ From a different perspective, a voluntary standard on Environmentally Responsible Procurement has been developed between the private sector and local, provincial and federal government in Canada. The standard provides generic indications on how to tackle the issue of greener purchasing.

a) *Procurement rules*

Procurement rules allow for *open* (all suppliers may participate), *selective* tendering procedures (open to qualified suppliers) and in certain cases, *restricted* - or *limited* - tendering (where suppliers are contacted individually). In establishing lists of qualified suppliers for selective tendering, procurement rules make allowance for maintaining minimum economic and technical conditions. For example GPA Article VIII refers to information necessary for establishing the financial, commercial and technical capacity of suppliers.

In the European context, the Commission's Green Paper states that the inclusion of environmental concerns would depend on the expertise required for specific contracts¹⁹. The Danish Competition Secretariat have expressed the opinion that the Supplies Directive prohibits requiring any information or statements in addition to those of importance to the tenderer's economic and professional capacity to perform the contract.

One commentator notes that the GPA -- unlike the European Supplies Directive -- does not impose any specific substantive criteria other than meeting minimum economic and technical conditions²⁰. Such criteria may be freely decided (as long as they are non-discriminatory) but must be "limited to those essential to ensure the firm's capability to fulfil the contract" (GPA Article VIII b). Could adherence to a (voluntary) environmental management system therefore be argued as constituting an essential condition to ensure fulfilment of the contract?

If the submission of information on technical capacity of suppliers can be required (on the condition that it be so equally from all qualified firms), the question then arises whether an environmental management (voluntary) standard could be considered to be one of the essential conditions for a firm to be placed on the purchasing entity's list of qualified suppliers.

b) Trade issues

If the procurement rules permit the requirement of an EMS, such as ISO 14001 or EMAS, in order to become a qualified supplier, then certification is a possible trade issue.

Questions of potential trade effects of certification arise if these are too expensive or difficult to obtain. Provided the non-discrimination clauses in various procurement rules are respected (e.g. allowing all interested suppliers the chance to submit a tender, even before they become qualified; annual updating of the supplier lists, etc.), any interested firm could make a decision to seek certification as a matter of routine cost in doing business with government. This would more clearly be the case if an international standard for the EMS were required. However, should national or regional standards and certification procedures be required by procurement entities, then the time and administrative procedures as well as cost involved, to meet requirements imposed by each purchasing entity could become a deterrent for any but the largest firms. Furthermore EMS implementation may vary considerably: while the voluntary EU Eco-audit and Management Scheme is rigorously site specific, and requires that a core set of environmental information be audited and publicly available. Thus EMAS certification must be obtained for each plant (currently limited to manufacturing facilities). On the other hand, certification of ISO 14001 environmental management systems only ensures that the management process is in place and is improving²¹. Here there may be a difference between EMAS, on the one hand, which has higher standards, including requirements to provide specific information and an independent audit, and ISO, on the other hand, where self-certification is foreseen as a possibility. This means that in the case of allowing self-certification (as for ISO), the cost factor would be less of a potential obstacle to trade (although it is recalled that business cost differentials are not *per se* considered violation of trade laws).

Environmental management systems are, in effect, voluntary standards. They address the organisational structure, including practices, processes, resources, and responsibilities, for implementing environmental management. The core elements of ISO 14001, as defined in a recent UNCTAD study²², include having an environmental policy, doing environmental planning implementation and operation, regular checking and corrective action and a management review. On the other hand, they do not involve the imposition of specific PPM criteria or requirements (e.g. emission standards), and they are not performance standards. The specific environmental criteria to be fulfilled depend on the regulatory requirements relevant to the site or country and the company's environmental policy and targets. Were the opportunity to sell to a public entity to be made conditional on the supplier complying with an EMS, this might be considered by some to amount to differential treatment of what are in fact "like products", (irrespective of whether it would amount to a non product related PPM). However, as previous discussion has suggested, it is a matter for consideration as to whether this is actually problematic under WTO provisions specifically related to government procurement. Account would need to be taken of, e.g. the terms of Article III.8 of the General Agreement and of the specific provisions of the GPA. Under the latter it seems clear that there is an obligation to avoid "unnecessary obstacles" to trade. Delegations may wish to reflect on whether this obligation alone would in fact preclude requiring compliance with an EMS. There may be a parallel here between making use of the underlying environmental label criteria rather than requiring an eco-label *per se*. Rather than requiring full certification under an EMS, tenders might make reference to specifying an EMS "or equivalent", that is organisational management structure which depends on the core elements of an EMS. The latter approach would nonetheless allow the seller the

possibility to have his claims verified by an internationally recognised organisation such as TÜV, Veritas, SGS, etc.

Evaluation of offers and award criteria

a) Procurement rules

Once the criteria for selection have been established and bids let, offers are evaluated and the question becomes: *who can do the job best?* Criteria for awarding the contract, while necessarily related to those set out in the tender documentation, present a further set of issues from those discussed above under Specification of goods. These revolve around the decision of the purchasing entity to use the “lowest” (price) tender or that based on the “most (economically) advantageous” offer, the two options found in the three plurilateral sets of procurement rules. (See in the Annex under *Contract award procedures*.)

Practices vary considerably in this area. In certain Member countries, price constitutes the principal criteria for awarding a contract. In this case, any environmental characteristics would have to be worked into the technical specifications in relatively great detail when establishing the tender documentation. (And one could imagine that, as for other technical specifications, these could be set as a series of *minimum* environmental demands.) Other countries are working to incorporate external costs into their financial systems used to determine overall “costs”, i.e. including environmental costs. Switzerland is developing a conversion factor for pricing energy costs, including externalities, in procurement options.

More interest has probably been shown in using the possibilities offered by the choice of the *most (economically) advantageous* offer option (the EU Supplies Directive (Article 26) and the GPA [Article XIII 4(b)]. While the details of such approaches are still being worked out, it would seem that this second option appears particularly attractive to environment policy makers working to green public purchasing. The main reason for this can be traced back to the element of flexibility offered by the “economic advantage” option, which allows costs derived from a product’s life cycle to be incorporated more easily into the appraisal of a specific bid. Increasingly, OECD Member countries are basing their procurement policies on this type of approach. Australia’s Commonwealth purchasing guidelines, for example, acknowledge that purchase price is only one cost factor for consideration. Accordingly, when assessing offers, the factors to consider should include the supplier’s capacity to meet the requirements, the availability of long term support, delivery and distribution arrangements and whole-of-life costs; i.e., installation, training, maintenance, running costs, changeover price, etc.

b) Trade issues

On the assumption that transparency and non-discrimination provisions are fully respected -- both between domestic and foreign suppliers and amongst foreign suppliers -- trade issues would not seem to arise. However, depending on whether the first or the second option for awarding of contracts is chosen, different concerns may emerge about the extent of trade effects arising from the greener purchasing practice.

Making a final procurement choice on the basis of *lowest price/tender*, means that the entity wishing to green such purchases will need to include the environmental characteristics as technical specifications. The decision may therefore be transparent, although the obligations associated with

technical specifications and discussed above (e.g. the choice of standard, particularly in the absence of an international standard or even a recognised national standard) are relevant. Such considerations could be all the more important, since, relative to the second, *most (economically) advantageous* option, using the lowest price/tender option would place the entire burden for greening on the technical specifications. Such specifications would therefore need to be drawn up in great detail since, in the end, price is the basis for award. It might therefore be that in practice international or even national norms could play only a relatively minor role when the detailed specifications were being drawn up, since such norms are not well developed at the present time. The actual outcome of using the *lowest price/tender* approach, relying on detailed specifications, might then be to elevate the importance of the environmental criteria relative to their importance using the *most (economically) advantageous* option. From the trade point of view, the more detailed the criteria, the more particular the care which must be exercised to ensure that these do not in practice become an unnecessary obstacle to trade by *de facto* allowing only a very few suppliers to bid.

**Box 4. GPP specifications -- situations covered by EU Directives
and fictitious examples in need of clarification**

Group I. Examples that fall within the EU Directives (above and below the application threshold)

- Reduction of waste, energy consumption and water pollution can be promoted by requesting 100 per cent recycled writing and copying paper
- Reduction of hazardous waste from incinerators can be promoted by requesting office articles without PVC, e.g. ring binders, pens, etc.
- Reduction of water pollution and toxic effects on aquatic organisms can be promoted by requesting cleaning agents without EDTA, NTA and certain surfactants, like LAS and APEO.
- Reduction of waste can be promoted by demanding products which are easy to repair and where spare parts are guaranteed to be supplied in future.
- Reduction of waste can be promoted by requesting refillable toner cassettes for office printers.
- Reduction of the depletion of the ozone layer can be promoted by requesting, e.g. refrigerators not containing CFC and HCFC.

Group II. Fictitious examples in need of clarification

Contracts falling below the thresholds for application of the Directives:

- Reduction of water pollution can be promoted by requesting textiles that are produced where the waste water is purified by at least biological and chemical treatment.
- Reduction of noise in the working environment can be promoted by demanding textiles that are produced at production facilities where the noise level is below a certain level, e.g. 85 dB(A)
- Reduction of water pollution can be promoted by demanding textile products where bleaching has taken place without the use of chlorine containing bleaching agents.

Contract conditions for supplies:

- Environmental issues can be pursued by requesting that successful tenders produce the products under an environmental management schemes, e.g. EMAS;
- Reduction in use of hazardous chemical can be promoted by requesting textiles be produced from cotton harvested without the prior use of defoliant;
- Reduction of waste and increase in recycling can be promoted by requesting successful tenderers to ensure materials in the products are labelled so they can be identified during waste handling and recycling.

Source: Reproduced from Denmark's reply to Question 20 of the Commission's Green Paper, January 1997

Reliance on the *most (economically) advantageous* option leaves flexibility to the purchaser to evaluate bids, subject to certain rules. Certain procurement rules (cf. EU Utilities Directives) provide that the basis for decision must be “objective” criteria. Similarly, GPA and NAFTA language refers to “specific evaluation criteria set forth...” (Article XIII: 4 and Article 1015, respectively). Procurement rules also require the procurement entity to provide an explanation, on request, about the characteristics and relevant advantages of the winning supplier.

In practice tenders can also rely on the use of “preference” criteria. That is, in addition to the basic, minimum or “hurdle” criteria, “preferences” are expressed for a range of qualitative factors (which could include environmental characteristics). The first set of requirements is necessary, but rarely sufficient to garner the final approval of the procurement entity. The second set of preference criteria are those which often become the crux of the decision for final awards. These provisions suggest that governments have a fair degree of latitude in the final choice of tender provided they are able, upon request from a losing supplier, to justify their choice on the basis of the criteria set forth in the tender documentation. Efforts currently underway in the EU are focused on bringing further discipline to the award criteria, which are relevant on how best to allow environmental characteristics to become a valid basis for purchasing decisions.

IV. CONCLUDING REMARKS

In many OECD Member countries greener public purchasing (GPP) programmes at central and sub-central levels promote the purchase by public authorities of environmentally preferable products. Determining what constitutes an ecologically preferable product is not a new challenge. Whether looking at ready-made off-the-shelf products, or at yet-to-be-designed products that require considerable capital investment, numerous initiatives have been developed over the last 20 years to provide appropriate solutions. Setting criteria for determining environmentally preferable *services* is also on the GPP agenda. Rules for public purchasing need to be able to address these and other realities as greener products and services become available in a variety of forms.

Procurement rules for public agencies in the OECD region - at national, regional and plurilateral level - share many features in common. They are based on the principles of non-discrimination among potential suppliers and fostering competition to obtain the lowest price and best product. However in practice the *principles* have not always produced the *results* intended and efforts are ongoing to improve both the rules and their implementation.

The analysis in this note would suggest that the existing plurilateral rules for government procurement were not crafted for the purposes of greening public purchasing. Nevertheless, while there are rules that apply to government purchasing, there is no evidence to suggest that they are an impediment to encouraging the purchase of environmentally preferred goods if that is what the public purchaser wants. The 1998 OECD Greener public purchasing workshop drew the conclusion that it is above all a matter of *interpreting* the procurement rules, while respecting the fundamental principles underlying them.

The *practice* of public purchasing has also been going through profound changes. Evolving procurement realities are diverse and probably becoming more so, but in many OECD countries the trend is towards decentralisation of purchasing decisions, including greater use of credit cards and privatising the purchasing service. With smaller contracts and more individuals involved, the situation is moving towards one not dissimilar to that of the private consumer faced with the choice of a range of products, some of which may be green(er). One consequence of the trend towards smaller contracts (which are

more often below the threshold value at which the procurement rules take effect) is that there may be greater latitude for the greening of purchasing. Another practical consequence of the trend towards smaller contacts and decentralised procurement is that it makes it much more difficult to implement a top down directive to green procurement activities. Nonetheless, most OECD members have national laws and purchasing regulations that are based on the same sort of principles. Whereas this tendency towards decentralisation and smaller contracts may be universal, large purchases, above contract thresholds, will continue to take place. For such large, centralised procurement, the manner in which green criteria will be designed and applied into the bidding process remain relevant to trade policy concerns.

The two basic options for evaluating a tender and then awarding contracts both appear to allow environmental criteria to be worked into tendering documentation. In the case of the first option of *lowest price/tender*, these would become technical specifications. Then the rules applying to allowable specifications become relevant, e.g. not creating 'unnecessary obstacles' to trade; according preference ("where appropriate") for international (or European) standards. The second, or *most (economically) advantageous*, option would appear to allow greater flexibility to specify environmental criteria in selecting the good, on the condition that the final choice can be justified on the basis of criteria appearing in the tender documentation.

Differing perspectives exist on the degree of such flexibility in the case of the EU Supplies Directive. Certain EU Member States are taking an activist attitude on this question by incorporating into tender documentation basic environmental specifications and if necessary a further expression of *preference* for environmental criteria. On the other hand, the Green Paper prepared by the Commission (DG XV) in November 1996 suggests that it will be necessary to "gauge an economic advantage" before incorporating environmental factors into the award criteria. In March 1998, the Services of the Commission²³ announced they were preparing a specific interpretative document on enabling optimum consideration of environmental protection in public procurement. More particularly guidance would examine how far -- within the existing public procurement regime -- it is possible to refer to European and national eco-labels or require suppliers to have an eco-audit system.

In general governments have appeared reticent to move in the direction of allowing PPM specifications; however, the consistency with trade rules in greening purchasing is an open question as this matter has not been tested in any cases. It would seem all the more important that consideration be given to questions about the extent of the latitude afforded to governments under WTO rules, the plurilateral GPA and regional grouping rules to apply differential treatment to products based on other than "like product" criteria. No court cases/panel disputes have been brought on the coverage of PPM-based technical specifications under the plurilateral procurement rules.

Questions, particularly by sub-central authorities and local municipalities, have arisen, about whether they may include transport-related specifications in tenders or limits on emissions for goods being delivered. This would raise numerous technical and trade policy problems. Purchasing transport as a service and specifying its characteristics is probably a 'trade friendlier' operation, but may be commercially feasible in only certain cases and could run counter to trade facilitation attempts.

Interest is strong in some quarters on qualifying suppliers by introducing, in line with existing rules, qualification criteria for an environmental management system, such as EMAS or ISO 14001. While in the most general sense, an EMS is concerned with the production side, this management certification is either site-specific or commits the certified firm to respecting environmental norms of the country in which it is operating and not those, e.g., of the importing country. A few OECD Member countries have indicated that EMS-type certification should not be posed as a condition for qualifying suppliers since, in their view, EMS are not clearly related to the environmental performance of companies

and do not necessarily therefore stimulate environmentally preferable business operations. Instead their preference goes to retain 'greener' criteria, which apply only to products.

In light of the current trend towards increased decentralisation of purchasing decisions, environmental policy makers are confronted with a similar challenge to that faced when aiming to convince individual private consumers to make environmentally preferable choices. This would appear to be the case particularly for much of off-the-shelf buying, which is not only increasingly decentralised but also left up to individual purchasing officers. Hence the use of eco-labels, or more particularly their underlying criteria, is receiving renewed attention.

Whereas this trend towards decentralisation and smaller contracts may be widespread, large purchases and orders for innovative products, green public purchasing would seem to have a great deal of latitude to operate within the existing procurement rules. Clarification is being worked out at European level. OECD Members are working also to accommodate the reality of greening initiatives, which are springing up at all levels of government. To the extent that these will take into account the *spirit* and the *principles* of transparent and competitive processes that underlie procurement and trade rules, the growing *practice* by public authorities of purchasing greener goods should not encounter serious obstacles.

ANNEX: GOVERNMENT PROCUREMENT RULES

This Annex describes a few select rules contained in national, regional and plurilateral approaches to government procurement. The procurement rules that appear most relevant to greener public purchasing fall broadly into the following three categories:

- **Coverage**, which includes the different forms of purchase (goods, work contracts, services, utilities) and the levels of government (central, sub-central) covered by each agreement, as well as the thresholds below which contracts are exempt from the rules.
- **Technical specifications**, which cover the rules on technical standards which purchasers need to indicate in the general contract documents and with which tenderers must comply.
- **Forms of tendering and contract award procedures**, which refer to the different forms of tendering (open, selective, limited) permitted by procurement provisions, as well as the criteria involved in awarding a contract.

A final paragraph describes the exception provisions in the plurilateral rules.

a) **Japan**

As a signatory to the WTO Agreement on Government Procurement (GPA), Japan is bound by the Agreement's provisions. Plurilateral public procurement rules in Japan are complemented by a series of voluntary measures adopted since 1985 with a view to enhancing transparency and non-discrimination in the public procurement process of the country. These voluntary measures are embodied in various action plans, most notably an Action Program and an Action Plan pertaining to construction contracts.

Coverage

The entities subjected by Japan to the provisions of the GPA include 31 state organs (listed in Annex I "Central Government Entities"), 47 prefectures and 12 cities (listed in Annex II "Sub-central Government Entities"), and 84 public corporations (listed in Annex III "Other Entities").

Under the voluntary measures adopted by Japan, coverage was expanded to encompass entities like public corporations, as well as specific sectors, including telecommunications products and services, medical technology products and services, computer products and services, super-computers and non-R&D satellites. The Action Program also lowered the thresholds determining the applicability of procurement rules to particular contracts.

Contract award procedures

Even though the signature of the 1979 GATT Code on government procurement did not require any amendment to the Japanese basic procurement statute (Accounts Law), various other laws specifying the details of government procurement were either amended or introduced in order to bring the Japanese public procurement system into compliance with GATT non-discrimination and transparency principles.

Japanese public procurement regulations provide for open, selective and limited tendering procedures. Open tendering procedures are preferred. Japanese procurement rules set out rather specific criteria that must be fulfilled by suppliers before qualifying for participation in a tendering process. The criteria usually include the supplier's business performance record in prior projects, its production and sales performance, the number of employees in the supplier's workforce and its scale of operations, and the supplier's capital structure, financial condition, and general state of affairs²⁴ (Grier 1995). Certain acts (e.g. intentional production of poor-quality goods or collusion) as well as certain conditions (e.g. bankruptcy) may lead to the disqualification of the supplier from the tendering process.

The criteria for awarding public contracts, as stated in Article 29 of the Accounts Law, is based mainly on price considerations. In cases where the tenderer submitting the lowest bid is unable to fulfil the terms of the contract or if awarding the contract to the lowest bid would disturb "the order of fair trade", the contracting entity must award the contract to the supplier with the second lowest-priced bid. In several sectors (e.g. construction), contracts may be awarded to the most advantageous tender in terms of price and other factors.

The liberalisation undergone by the Japanese public procurement market in recent years is significant, especially if viewed in the light of two features related to government procurement practices in the country. First is reliance, prior to 1980, on selective and especially limited tendering procedures. This practice usually gave rise to strong links between suppliers and contracting entities.

The second feature impacting public procurement practices in Japan is the highly decentralised nature of the country's procurement system. In part, this feature can be traced back to the prevalence of quasi-governmental corporations carrying out public policy in Japan. Despite their being "operative extensions of the central government", the central government usually has no control over their procurement policies. This situation, together with the fact that there exists no central procurement authority in Japan, translates into differences in the ways in which ministries, public corporations and other entities conduct procurement.

b) United States

Public procurement in the United States is governed by various national laws, including the Buy American Act (BAA) of 1933 and the Trade Agreements Act of 1979. The BAA's objective is to give preference to domestically-produced articles, materials or supplies "mined, produced or manufactured in the United States, except in cases where: (1) United States goods are not available in sufficient quantity and satisfactory quality; (2) the cost is unreasonable; or (3) it is inconsistent with the public interest to purchase United States articles, materials or supplies". The BAA only applies at the federal level and is waived for GPA signatories.

Currently, federal procurement procedures are being reorganised with a general move towards decentralisation. Whereas the two large military and non-military agencies continue to negotiate national

purchases with suppliers, individual procurement officers, even at the office bureau level, will make actual purchasing decisions. In fact, the Federal Acquisition Streamlining Act (FASA) of 1994 provides purchasing officers with considerable leeway to choose the language to be included in the solicitation. The most important caveats in this regard are: first, the requirement by the new rules that procurement officers acquire commercial products and services; and second, that they do so in a manner consistent with “customary commercial practice” (Federal Acquisition Regulation (FAR) 12.302).

The FAR, which provides the basic contracting guidance and implementing regulations used by federal agencies for buying products and services from the private sector, has also been modified in order to incorporate policies for the acquisition of environmentally preferable and energy-efficient products and services. The modifications, effective as of October 1997, institutionalise environmental purchasing considerations throughout the procurement and contracting process, thus reaching beyond recycled content requirements. For example, agencies are now required to “prepare product descriptions to achieve maximum practicable use of recovered materials, other materials that are environmentally preferable, and products that are energy-efficient.”²⁵ The new FAR text consolidates a number of environmental purchasing requirements previously issued in laws, executive orders and policy directives.

Coverage

As a signatory to the WTO GPA, the United States has made procurement by almost all federal executive agencies subject to the Agreement’s provisions, which also apply to 37 states, including such large states as California, Florida, New York and Texas.²⁶ Regarding product coverage, the United States has excluded items like motor vehicles, engine accessories, materials handling equipment, rope cable, chain and fittings, and medical and dental equipment and supplies, pursuant to the security exception contained in Article XXIII of the GPA. This exception applies only when the previous items are purchased by the Department of Defense if a national security issue applies.

Technical specifications

In formulating calls for tender, contracting entities must develop specifications in such manner as is necessary “to obtain full and open competition”. To this end, specifications must be stated in terms of:

1. function, so that a variety of products or services may qualify;
2. performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or
3. design requirements.

Contract award procedures

United States rules and regulations on public procurement contain detailed guidelines covering the entirety of the procurement process. Specifically, they require federal executive agencies to use competitive procedures when entering into a contract, so as to ensure “full and open competition”.²⁷ The rules also list exceptional circumstances under which contracting entities can recur to tendering procedures that differ from competitive procedures. For contracts not exceeding US\$ 100 000 contracting entities have recourse to simplified procedures as set out in the FAR.

To be awarded a contract, a source must be termed “responsible”. Responsible sources are contractors who have, *inter alia*: adequate financial resources to perform the contract; a satisfactory record of integrity and business ethics; and the necessary production, construction, and technical equipment and facilities. In principle, a contracting entity must award a contract “to the responsible source whose bid conforms to the solicitation and is most advantageous to the United States, considering only price and the other price-related factors included in the solicitation” (41 USC Sec. 253b). The solicitation must set out the relative importance assigned to factors such as the quality of the product or services to be provided, which usually include the technical capability, management capability, prior experience, and past performance of the offeror.

c) **The European Union**

The first EU directives on public procurement, adopted during the 1970s, aimed at increasing transparency and non-discrimination in the tendering procedures of Member States. The existing provisions were subsequently strengthened by four Directives, introduced as part of the single market programme: the Services Directive, the Supplies Directive, the Works Directive and the Utilities Directive.

Coverage

The four principal Directives governing public procurement in the EU cover procurement of services, public supplies, and public works contracts. Specifically, the Public Services Directive covers services like maintenance, telecommunications, insurance, banking, architectural and cleaning services. The procurement of goods and services by entities operating in the water, energy, transport and telecommunications sectors (the so-called “excluded” sectors) is covered by the Utilities Directive.

The EU Directives cover public purchases by central as well as regional or local authorities. Procurement in the sectors covered by the Utilities Directive also applies to many privatised as well as private utility companies. In order to reduce compliance costs for these companies, the Utilities Directive determines thresholds at a higher level than the rest of the Directives.

Technical specifications

EU public procurement rules require the use of European standards, or, in their absence, national standards. Contracting entities may depart from European standards only in limited circumstances, for instance when the use of European standards would oblige the contracting entity to acquire supplies incompatible with equipment already in use or would entail disproportionate costs or disproportionate technical difficulties (Article 8:3 (c) Supplies). Mention of goods of a specific make or source or of a particular process which have the effect of favouring or eliminating certain tenderers are permitted only in cases “where the contracting authorities are unable to give a description of the subject of the contract using specifications which are sufficiently precise and fully intelligible to all parties concerned.” In such cases, the tender documentation must include the words “or equivalent” (Article 8:6 Supplies).

Contract award procedures

The EU directives allow for three types of tendering procedures: open, selective, and limited. Suppliers wishing to be considered for a public supply contract - or wishing to be included in official lists of qualified suppliers - may be required to submit evidence of their technical, financial, and economic standing. The Supplies Directive explicitly requires that such evidence be in the form of administrative certificates, guarantees and records.

With a view to fostering transparency and non-discrimination, the EU directives also contain detailed guidelines regulating the various phases of the public purchasing process: submission, receipt and opening of tenders and awarding of contracts; negotiation; as well as obligations of entities concerned. In this context, the criteria for awarding a contract shall be:

1. either the lowest price only; or
2. when award is made to the most economically advantageous tender, various criteria according to the contract in question, e.g. price, delivery date, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, technical merit, after-sales service and technical assistance (Article 26 Supplies).

Negotiation is allowed only when the intent to negotiate has been indicated in the call for tender; or no tender is obviously the most advantageous in terms of the criteria specified in the invitation to bid.

d) The North American Free Trade Agreement

Chapter 10 of the NAFTA sets out the rules governing public procurement among the three NAFTA Parties. In general, the NAFTA extends the principles of transparency and non-discrimination to the public procurement procedures of its Members.

Coverage

Government procurement provisions of the NAFTA cover goods, services and public works contracts. As far as goods are concerned, exceptions to the Agreement's coverage include areas like shipbuilding, urban rail and transport equipment, and communications equipment. Exceptions in the area of services include transportation services, services relating to research and development, financial and related services, and utilities. Currently, entities covered by the NAFTA are central government agencies, but the Agreement envisages an extension of the coverage to all levels of government except local. With a view to reducing compliance costs for public enterprises, which are also covered by the Agreement, thresholds for the latter are set at a higher level than thresholds for central government.

Technical specifications

In order to ensure that contracting entities do not use technical specifications as trade barriers, the NAFTA favours, "where appropriate", the use of international standards or, when these are not available, national standards. Preference is also given to specifications prescribed in terms of performance criteria rather than design or descriptive characteristics. The NAFTA, like the EU Directives, allows technical standards to refer to a particular trademark or name, patent, design or type, specific origin or producer or supplier only in cases "where there is no sufficiently precise or intelligible

way of otherwise describing the procurement requirements". In such cases, the words "or equivalent" must be included in the tender documentation (Article 1007:3).

Contract award procedures

The NAFTA contains provisions regulating the use of open, selective and limited tendering. In the process of qualifying suppliers in a tendering procedure, Article 1009 of the NAFTA requires entities to limit the conditions for participation -- including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of whether a supplier meets those conditions -- to the conditions that are essential to the fulfilment of the contract.

The Agreement also contains detailed guidelines regarding tendering procedures, including, *inter alia*, the advertising of tenders, disciplines on contract negotiations, and information and review obligations of entities covered. These rules are designed to ensure transparency and non-discrimination during the public procurement process. With regard to the award of contracts, the NAFTA requires contracting entities to make the award to the supplier that has been determined to be fully capable of undertaking the contract and whose tender is either:

1. the lowest-priced tender; or
2. the tender determined to be the most advantageous in terms of the specific evaluation criteria set out in the notices or tender documentation (Article 1015:4).

As in the case of the EU, the NAFTA provides for negotiation where the purpose to do so has been indicated in the invitation bid or when no tender is the most advantageous. But unlike the EU Directives, the NAFTA limits the purpose of negotiation to identify "the strengths and weaknesses in the tenders" (Article 1014:2).

e) The WTO Agreement on Government Procurement (GPA)

The first focused effort to bring the procurement procedures of government entities under strengthened rules, on, e.g. non-discrimination and transparency occurred during the Tokyo Round of Trade Negotiations. The resulting Agreement on Government Procurement was signed in 1979 and entered into force in 1981. During the Uruguay Round, the Agreement was re-negotiated, and the revised version, signed in Marrakech on 15 April 1994, entered into force on 1 January 1996. The new Agreement is one of the "plurilateral" agreements included in Annex 4 to the Agreement Establishing the WTO, signifying that only some WTO Members are Parties to it²⁸.

Coverage

The WTO GPA covers goods, services and construction contracts. Concerning goods, all procurement is covered, unless specified in the Annex to the Agreement (negative-list approach). On the other hand, only services listed in the Annex are covered (positive-list approach). The entities subject to the rules of the Agreement are also listed in the Annexes. In contrast to its predecessor, which covered only central governments, the WTO GPA covers some sub-national governments and "other entities", a term encompassing certain public enterprises and companies granted special or exclusive rights by

government. The WTO GPA also determines threshold values below which contracts are exempt from provisions in the Agreement.

Technical specifications

As regards technical specifications, the WTO GPA encourages that these be based, where appropriate, on international standards where these exist. Preference is also given to performance standards, “where appropriate”²⁹ rather than design or descriptive standards. The WTO GPA also precludes references to “a particular trademark or trade name, patent, design or type, specific origin, producer or supplier, unless there is no way of describing the procurement requirements and provided that words such as “or equivalent” are included in the tender documentation” (Article VI).

Contract award procedures

The WTO GPA provides for open, selective, and limited methods of tendering. However, the GPA does not determine the specific form (administrative certificates, guarantees, records, etc.) which the qualifications required from suppliers must take. In this respect, the GPA, like the NAFTA, only requires that the conditions for participation in tendering procedures be limited to those which are essential (GPA, Article VIII; NAFTA, Article 1009).

As with the EU Directives and the NAFTA, the GPA specifies detailed rules for every step of the tendering process with a view to ensuring transparency and non-discrimination. Concerning negotiation, the WTO GPA contains basically the same provisions as the NAFTA. The GPA also follows regional approaches to public procurement in requiring that the contracting entity award the contract to “the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous” (Article XIII:4). As in the case of the EU and NAFTA, a “public interest” waiver qualifies the requirement.

f) Environmental protection exception provisions

In line with other trade agreements, e.g. GATT Article XX or GATS Article 14, the plurilateral procurement rules have an *environmental exception* provision (NAFTA, GPA), or a public policy clause which has been interpreted to apply to environmental protection (EU). For example, GPA Article XXIII:2 would allow a Party to impose or enforce measures “necessary to protect human, animal or plant life or health”³⁰, which were otherwise not necessarily in conformity with GPA provisions, “subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade”.

Table 2. Thresholds for public contracts

	Central government	Sub-central government entities	Public enterprise and other entities
NAFTA	G - \$ 50 000 S - \$ 50 000 W - \$ 6.5 m	The Agreement does not yet cover state and provincial procurement	G - \$ 250 000 S - \$ 250 000 W - \$ 8.5 m
EU	G - ECU 130 00 S - ECU 200 00 W - ECU 5 m	G - ECU 130 00 S - ECU 200 00 W - ECU 5 m	G – ECU 400-600 000 S – ECU 400 - 600 000 W - ECU 5 m
GPA 1996	G - SDR 130 000 S - SDR 130 000 W - SDR 5 m	Varies according to country; not all signatories' sub-central government entities are covered	Varies according to country

1. G = goods
2. S = services (except construction)
3. W = works

NOTES AND REFERENCES

1. OECD, C(96)39/FINAL (February 1996).
2. This note focuses on the purchase of goods. While some issues may be similar, other issues do arise in the case of services, (not least of which is the application of different WTO Agreements) which could be examined in a subsequent note.
3. Nor in the case Japan does the non-listing of products exclude their being purchased.
4. Governments Incorporating Procurement Policies to Eliminate Refuse (GIPPER).
5. For example, qualification of suppliers may not always be perceived as a distinct stage, necessarily following the setting of specifications. For example, in open tendering procedures, the procuring entity typically does not draw up a list of qualified suppliers prior to publishing its invitation for tenders. But for purposes of the discussion here, qualification of suppliers should be interpreted in its broadest sense, and is applicable both to 'selective' and 'open' tendering. In the case of selective tendering, bidders already belong to a qualified supplier list, that is they meet a set of minimal financial and organisational conditions. In the case of open tendering, verification of qualifications precedes evaluation of bids.
6. "Public Procurement in the European Union: exploring the Way Forward", European Commission DG XV, November 1996, point 5.49.
7. The term "unnecessary obstacle to international trade" is not defined or elaborated in the GPA. Compare this with the text in e.g. the TBT Agreement where it is provided in Article 2.2, "Parties Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, inter alia, national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, inter alia, available scientific and technical information, related processing technology or intended end uses of products." It should be noted that the TBT Agreement excludes government procurement-related purchasing specifications.
8. It should be noted that GPA Article XXIII.2 provides an exception similar to GATT Article XX (b) regarding measures necessary to protect human, animal or plant life or health. See also the final paragraph of the Annex to this note.
9. "Eco-labelling: actual effects of selected programmes", *OCDE/GD(97)105*. Available on website at <http://www.oecd.org/ech> under Trade and Environment, On-line documents.
10. Paragraph 185, WT/CTE/1, Report (1996) of the Committee on Trade and Environment.

11. "Processes and Production Methods (PPMs): conceptual framework and considerations on the use of PPM-based trade measures", *OCDE/GD(97)137*. Also available on Website: <http://www.oecd.org/ech>.
12. Paragraphs 50-66 in *Report on trade and environment to the OECD Council at Ministerial Level*, OCDE/GD(95)63. Available on website: <http://www.oecd.org/ech>.
13. *ibid.*
14. Some observers have noted that the situation may be evolving with the recent WTO Appellate Body's shrimp/turtle decision (*United States – Import prohibition of certain shrimp and shrimp products*, Report of the Appellate Body, WT/DS58/AB/R, 12 October 1998).
15. Paragraph 55. *op. cit.*
16. Similarly, NAFTA Chapter 10 provisions on government procurement appear to cover product-related PPMs. Article 1007 -- corresponding to GPA Article VI -- on Technical Specifications deals with coverage differently since the main text of the Article is silent on PPMs. However the corresponding definition Article 1025 defines a technical specification as a specification which lays down goods characteristics or *their related processes and production methods*, or services characteristics or their related operating methods, including the applicable administrative provisions (*italics added*). This a priori appears to be replicate the TBT language, rather than that used in the GPA.
17. Services Sectoral Classification List, MTN.GNS/W/120, 10 July 1991.
18. "Environmental Management Standards, particularly the ISO 14000 Series: trade and investment impacts on developing countries", *TD/B/COM.1/EM.4.2*, 18 August 1997, para 51.
19. European Commission DG XV, *op.cit.*, point 5.50, p. 42.
20. P. Didier, "The Uruguay Round Government Procurement Agreement: Implementation in the European Union" in Hoekman and Mavroidis, eds. *Law and Policies in Public Purchasing*, Univ. of Michigan Press, 1997 p.133.
21. For an in depth analysis of Environmental Management Systems, see ENV/EPOC/PPC(98)6/FINAL.
22. UNCTAD, *op. cit.*, page 5.
23. Commission of the European Communities, *Public Procurement in the European Union*, COM(1998)143 final, 11 March 1998, page 27.
24. J.H. Grier, "US-Japan Government Procurement Agreements", 14 *Wisconsin International Law Journal* 1: 3-66.
25. United States Environmental Protection Agency (EPA), *EPP Update*, Issue 2, November 1997, page 2.

26. Not all procurement at the state level is covered by the WTO GPA. For example, Florida, Illinois, Michigan, and New York exclude construction grade steel, coal, and motor vehicles.
27. The term “full and open competition” means that all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement. 41 USC Sec. 403.
28. Signatories to the 1996 GPA are Canada, the EU, Israel, Japan, Korea, Norway, Switzerland and the United States.
29. This wording is also found in the relevant section of the NAFTA.
30. Both Article XXIII of the WTO GPA and GATT Article XX refer to measures necessary to protect human, animal or plant life or health. However, GPA Article XXIII does not specifically refer to subject matter of GATT Article XX(g), viz. conservation of exhaustible natural resources.