Does Greening Public Procurement contravene Trade Laws?

Dutch researchers have investigated to what extent promoting the greening of public procurement complies with international and European trade laws. Their results show that, at European level and in the context of international trade law, legislative requirements do not hinder climate-friendly procurement, as long as public authorities clearly specify the products and services they intend to purchase. Overall, they suggest that green public procurement is a useful tool in the endeavour to mitigate climate change.

Public procurement appears to be one of the most important areas for environmental improvement, as public purchases account for 20% of the Gross Domestic Product in OECD countries. In the context of climate change mitigation, encouraging the greening of government procurement could help eliminate huge amounts of greenhouse gases. Several European studies have shown that if governments were to switch to more energy efficient computers, 830 thousand tonnes of CO₂ could be saved. In addition, if they were to switch to greener electricity sources, 60 million tonnes of CO₂ would be saved, which represents close to 20% of the greenhouse gas (GHG) reductions targets for the EU, as defined under the Kyoto Protocol.

However, when encouraging greener public procurement, concerns about the legality of this practice arise. Favouring green public procurement could discriminate against foreign suppliers, create distortions at international and EU levels and thereby may violate international and European trade and competition laws.

As part of the EU-funded RELIEF and CAT&E² projects, Dutch researchers have investigated to what extent the promotion of green public procurement could contravene international and European trade laws.

At international trade level, non-discrimination principle is one of the most important provisions of the Government Procurement Agreement (GPA). Public purchasing should not favour one or other national or foreign product, service or supplier. In addition, procurement procedures should be transparent and open. In some particular cases such as those of human and health and environmental protection, violation of these general GPA provisions can be justified. In the case of violation for environment related matters, the Kyoto Protocol, as well as scientific evidence of the consequences of climate change, could be arguments that governments may use to justify green procurement.

At European level, two Directives relating to public procurement entered into force in 2004.¹ These Directives explicitly mention that environmental considerations can be taken into account in public procurement. However, although eco-labels are referred to in tender specifications, the directives specify that only the underlying technical characteristics of products can be used as a specification.

The authors conclude that the huge potential of public procurement for reducing greenhouse gas emissions is well recognised. Because of its limited scope, they argue that the Government Procurement Agreement of the world trade organisation has little impact on greener public procurement practices. At European level, the researchers highlight that there are several possibilities for climate-friendly procurement decisions.

The researchers suggest that the social and environmental benefits of greenhouse gas emission reductions and innovation should be taken into account in public purchasing decisions. They also point out the usefulness of green procurement as a climate change mitigation measure.

¹More information on Green Public Procurement within the European Union is available at http://ec.europa.eu/environment/gpp/index_en.htm

²The projects RELIEF “Environmental Relief Potential of Urban Action on Avoidance and Detoxification of Waste Streams through Green Public Procurement” (http://www.iclei-europe.org/?relief) and CAT&E “Concerted Action on Trade and Environment” (http://www.cat-e.org) are supported by the European Commission

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