



## Buying Fair Trade – European Model on Fair Trade Public Procurement

many cases a simple invoice is sufficient (without a formal contract). The contracting authority is free to purchase any supply or service by choice.

### Direct purchase is intended for:

- **De-minimis (extremely low value) purchases**, where the cost of a formal tender procedure is not in proportion to the value of the contract, **and**
- **a single purchase of a supply or service which is not regularly used, and which does not derive from a framework agreement** (e.g., the supply of promotional Fair Trade T-shirts or bags for one single event only). The “direct purchase” procedure is intended for single purchases. If repeated purchases are intended during a certain time frame, a framework agreement should be signed. Splitting purchases in lots with the only purpose of avoiding a formal procedure is not allowed.

### 2. “Quotation” procedure

Some Member States laws provide for a “quotation procedure” for contracts of low value. The contracting authority seeks a minimum number (usually 3-5) of quotes from market participants. No national-wide publication or formal procedures are required, and no complex drafting of technical specifications. Usually some kind of paper trail is required to demonstrate that several quotes have been sought.

### 3. “Adapted” procedure

Other Member States give a broad margin of discretion as to the type of procedure to be followed. Adapted procedures are the procedures with specific or exceptional regimes that can exist in national procurement laws in certain Member States.

### 4. Tendering procedures<sup>20</sup>

In some Member States, an additional intermediary national threshold is introduced. Purchases above this national threshold (but below the EU Directives threshold) may need to follow a “national” tendering procedure, different from the tendering procedure as defined by the EU Directives. As the “national” tendering procedures vary (if any) from country to country, they are not described in this document.

Furthermore, in some Member States, national legislation may require tenders below the EU Directives thresholds to follow a tendering procedure similar or identical to the ones defined by the EU Directives. In such case, the three models described below generally apply. However, depending on the concerned Member State, there may be some differences in the details and procedures.

It is therefore important to check the applicable national and regional procurement legislation before proceeding.

*“Below EU Directives’ thresholds, Member States have national purchasing procedures that vary from country to country. General EU principles of transparency, objectivity and non-discrimination must be respected in all cases.”*



20. Which do not fall under EU Directives’s scope and are define by the different EU Member States procurement laws



## B. Fair Trade in procedures under the EU Directives' scope

For large purchases with values<sup>21</sup> above the EU Directives' thresholds<sup>22</sup>, it is necessary to follow a tendering procedure in accordance with the EU Directives.

### Key phases of tendering procedure

**The 'subject matter'** of a contract is about what product, service or work you want to procure. This process of determination will generally result in a basic description of the product, service or work. When defining the subject matter of a contract, contracting authorities have great freedom to choose what they wish to procure.



**The 'technical specifications'** describe the contract to the market so that companies can decide whether it is of interest to them. They provide measurable requirements against which tenders can be evaluated such as quality levels, environmental performance levels, use of the product, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods and conformity assessment procedures. They constitute minimum compliance criteria. They must be linked to the subject matter of the contract. Offers not complying with the technical specifications need to be rejected unless the contracting authority has, in an explicit way, accepted variants diverging from the required concept.

**"Contract performance conditions"** are used to specify how a contract must be carried out. They need to be related to performance of the contract, transparent and non-discriminatory.

**"Awarding"** the contract is the last stage in the procurement procedure. At that stage, the contracting authority evaluates the quality of the tenders (the offers) that complies with the minimum requirements set out in the technical specifications and contract performance conditions in the contract documentation. Among such offers that each fulfill the requirements of the procurement procedure, contracting authorities shall base the award of public contracts either on:

- various criteria linked to the subject-matter of the public contract in question when the award is made to the most economically advantageous tender;

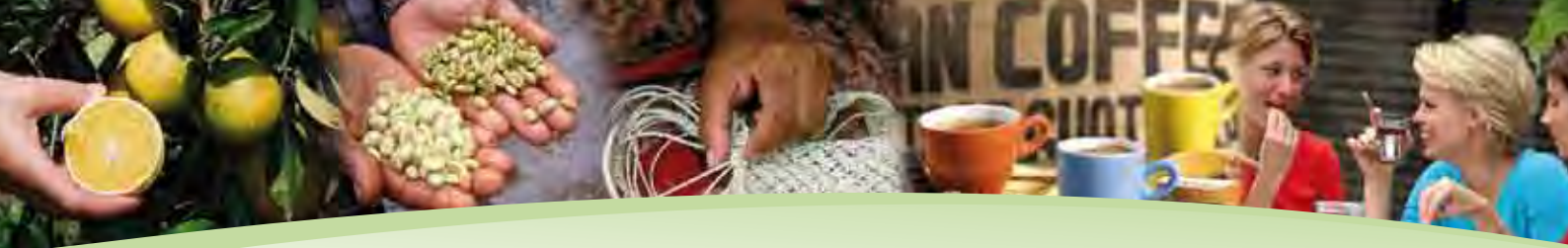
**or on**

- the lowest price only.

Below you will find three general models we can suggest to include Fair Trade in tendering procedures abiding by the EU Directives' rules.

21. The different legal methods to determine the value of a tender are set by the Article 9 of Directive 2004/18/EC

22. See footnote 17



## Buying Fair Trade – European Model on Fair Trade Public Procurement

### Basic model - The Use of Variants

If contracting authorities wish to buy Fair Trade products but have concerns such as availability or additional cost of Fair Trade products, an option is to ask the potential bidders to submit variants. This is only possible when the award is done on the basis of the most economically advantageous tender (not on the lowest price only)<sup>23</sup>. In this situation, the contracting authority develops a set of minimal technical specifications which will apply to all offers. Additional Fair Trade criteria will be added to the technical specification for the Fair Trade variant offer only. When the bids are received, the authority can easily compare all offers. Nevertheless, it is the less efficient approach when the aim of the contracting authority is to give preference to Fair Trade, as Fair Trade criteria will not be a minimum requirement, and will not be part of the criteria taken into account to compare the offers.

In order to be able to accept variants, the contracting authority needs to indicate in advance in the tender documents (indication in the contract notice is mandatory) that variants will be accepted, the minimum specifications that have to be met, as well as specific requirements for presenting variants in bids (e.g. requiring a separate envelope indicating variant).

### Conservative model (as recommended by the European Commission) – The inclusion of social criteria in contract performance clauses

To complement the European Commission guide “Buying Green”, the European Commission will issue by the end of 2010 the guide “Buying social: A guide to taking account of social considerations in public procurement” with the goal to give guidance to contracting authorities in Europe on how to introduce social considerations in public procurement. It will be a non-binding document and it does not constitute an official interpretation of EU law (this is only prerogative of the courts, and ultimately the Court of Justice of the European Union).

The “Buying social” guide is expected to include a section on the use of social labels and its implication for ethical trade, where the EC will state, at the outset, that requiring products to bear a specific label is prohibited, as it is regarded as an unfair restriction of competition.

The European Commission is also expected to elaborate<sup>24</sup> on the rather theoretical distinction between technical specifications (that should be linked to the characteristics of the product or its production

23. As stated in Article 24 of Directive 2004/18/EC

24. Accordingly to the position it expressed in the Communication from the European Commission of 5 May 2009: *Contributing to Sustainable Development: The role of Fair Trade and nongovernmental trade-related sustainability assurance schemes* (com (2009) 215 final)

### Example - Basic model

**Subject matter/title:** Contract for supply of Product, with possibility of Fair Trade product, or equivalent as a variant

**Specifications:** (*List of minimum requirements*) In addition to the minimum requirements to be met with any tender, variant bids must as well fulfill the following Fair Trade requirements:

**(List Fair Trade criteria here)**

The presentation of this bid must be submitted in a separate envelope.

**Verification:** (*regarding Fair Trade requirements*) Products carrying a Fair-trade label (Fairtrade Labelling Organizations International), or imported and distributed by Fair Trade Organizations (World Fair Trade Organization certification system) will be presumed to comply (or “will be considered valid ways of proof”). Compliance may also be proved by any other appropriate means.<sup>1</sup>

**Sanctions:** (*regarding Fair Trade requirements*) If non-compliance becomes apparent during the duration of the contract, the contracting authority reserves the right to impose a penalty (state percentage) and/or to withdraw from the contract.

1. A concrete example of such a verification for Fair Trade criteria can be found in the point 7 of the “Circulaire relative aux achats publics durables dans les communes” of 15 April 2008 of the Gouvernement of the Region Bruxelles-Capitale, available on:  
<http://www.ejustice.just.fgov.be/cgi/api2.pl?lg=fr&pd=2008-04-15&numac=2008031166>



process) and the performance clauses (that should be related to the execution of the contract). In the EC view, certain ethical criteria, because they are not directly linked to the characteristics of the products or the production process, cannot be included in the technical specifications.

*Many contracting authorities refer in the contract performance clauses to the core conventions of the International Labour Organization (ILO). Fair Trade certification systems are one of the ways to prove compliance with these ILO conventions.*

The EC is also expected to remind that contract performance clauses have to comply with the rules set out in Article 26 and in Recital 33 of Directive 2004/18/EC. According to those rules, contract performance conditions can set social and environmental requirements provided that these are compatible with Community law, are non-discriminatory, and are indicated in the contract notice or in the specifications. Tenderers must still be able to prove by any other means deemed appropriate that their products comply with the required specifications.

### Progressive model – A comprehensive and practical approach to Fair Trade tendering

Many contracting authorities across Europe refer to Fair Trade in several phases of the tendering process, in a comprehensive approach to Fair Trade tendering.

#### ----- The subject matter of the contract

Many contracting authorities directly mention Fair Trade in the subject matter of the tender. It enhances the transparency on what is expected for bidders. A possible wording could be “purchase of Fair Trade product or equivalent”, with further description of Fair Trade criteria and verification in the requirements of the contract (see below). We believe this to be a sound tendering procedure similar to what is done in green procurement<sup>25</sup>. It is accepted by certain public authorities and courts across the European Union but it cannot be excluded that other authorities, courts or the European Commission might reject such an approach.

#### ----- The requirements of the contract

In practice, technical specifications and performance clauses are most often merged together in the same document laying down the requirements of the contract. This document often includes several subdivisions (such as article, sections, points etc.) that describe the different requirements of the contracting authorities. For more clarity towards the bidders, contracting authorities often define their requirements regarding Fair Trade in the same point, regardless of whether those expectations concern the characteristics of the products and production process or the execution of the contract. The differences between the former and the latter can be sometimes difficult to make at a practical level.



#### Example Conservative model

**Technical specifications:** “Fair Trade environmental pillar” to be listed here

**Performance clauses:** “Fair Trade economic and social pillars” to be listed here

**Verification:** Products carrying a Fairtrade label (Fairtrade Labeling Organizations International), or imported and distributed by Fair Trade Organizations (World Fair Trade Organization certification system) will be presumed to comply (or “will be considered valid ways of proof”). Compliance may also be proved by any other appropriate means.

**Sanctions:** If non-compliance becomes apparent during the duration of the contract, the contracting authority reserves the right to impose a penalty (state percentage) or to withdraw from the contract.

25. European Commission, *Buying Green: A handbook on environmental public procurement*, 2004



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Both the subject matter and requirements of the contract concerning Fair Trade should be clear, objective, and transparent referring the criteria relating to the products as well as the evaluation scheme whether or not and to what extent the criteria have been met. We would advise at this stage to avoid referring to specific Fair Trade labels as a criterion, as this could be seen as restrictive of market access. It is important to clearly define Fair Trade in accordance with EU rules on transparency and non-discrimination. Instead, we advise to describe in detail, the social, economic and environmental requirements expected by the contracting authority to be fulfilled by the tendered product.

### Examples - Progressive model (Corresponding case studies can be found on the attached cd-rom)

#### i. Supply contract

**Subject matter/title:** Supply of Fair Trade product, or equivalent

**Requirements of the contract:** All Fair Trade products supplied must be produced according to the following parameters: [\(List Fair Trade criteria here\)](#)

**Verification:** Products carrying a Fairtrade label (Fairtrade Labeling Organizations International), or imported and distributed by Fair Trade Organizations (World Fair Trade Organization certification system) will be presumed to comply (or “will be considered valid ways of proof”). Compliance may also be proved by any other appropriate means.

**Sanctions:** If non-compliance becomes apparent during the duration of the contract, the contracting authority reserves the right to impose a penalty (state percentage) or to withdraw from the contract.

**Note:** If contracting authority wishes to purchase only a percentage of the Fair Trade product, it should be clearly stated in the subject matter what percentage will be Fair Trade and the technical specifications, verification and sanctions for the Fair Trade product should be as mentioned above for the Fair Trade product.

#### ii. Mixed Contract - Service Contract including supplies<sup>1</sup>

**Subject matter/title:** Contract for catering services including the provision of Fair Trade products, or equivalent

**Requirements of the contract:** All of the following Fair Trade products (e.g., coffee, tea, chocolate, tropical fruit, etc.) must be produced according to the following parameters: [\(List Fair Trade criteria here\)](#)

**Verification:** Products carrying a Fairtrade label (Fairtrade Labelling Organizations International), or imported and distributed by Fair Trade Organizations (World Fair Trade Organization certification system) will be presumed to comply (or “will be considered valid ways of proof”). Compliance may also be proved by any other appropriate means.

**Sanction:** If non-compliance becomes apparent during the duration of the contract, the contracting authority reserves the right to impose a penalty (state percentage) or to withdraw from the contract.

#### iii. Mixed contract including supplies and service of awareness-raising activities

Another way to procure Fair Trade products is to link them with awareness raising activities on Fair Trade and the issues it tries to address. As we referred in the organizational strategy above, it is also a good idea to include awareness-raising activities in order to impact on changing consumer behaviour.

**Subject matter/title:** Contract for Fair Trade products, or equivalent, with awareness-raising activities on Fair Trade.

**Requirements of the contract:** All Fair Trade product supplied must be produced according to the following parameters: [\(List Fair Trade criteria here\)](#)

In addition, the supplier must also provide for x awareness-raising sessions on Fair Trade as follows:

- x 2 hour sessions for staff
- x 2 hour sessions for the general public

**Verification:** Products carrying a Fairtrade label (Fairtrade Labelling Organizations International), or imported and distributed by Fair Trade Organizations (World Fair Trade Organization certification system) will be presumed to comply (or “will be considered valid ways of proof”). Compliance may also be proved by any other appropriate means.

**Sanctions:** If non-compliance becomes apparent during the duration of the contract, the contracting authority reserves the right to impose a penalty (state percentage) or to withdraw from the contract.

1. The way of qualifying mixed contracts is defined in the article 22 of the Directive 2004/18/EC



#### ----- The awarding phase of the contract

The EU Directives allow contracting authorities to take into account either the lowest price only, or the most economically advantageous tender including without limitation the product price and other criteria directly linked to the subject-matter of the procurement in the award phase. Article 53 of Directive 2004/18/EC makes a non-exhaustive list of the possible award criteria, that mixes characteristics of the products as well as aspects related to the execution of the contract. It includes social characteristics, and we believe this to be a sound way to give preference to Fair Trade products, when Fair Trade criteria have not already been set as minimum requirements. This can be accepted by certain public authorities and courts across the European Union but it cannot be excluded that other authorities or courts or the European Commission might reject such an approach.

There are different ways to include award criteria (other than the price only) into a tendering procedure. A very common one is to use an evaluation scheme attributing “points” to different criteria found relevant.



#### Example

**Award criteria:** The tender will be awarded to the most economically advantageous offer, evaluated as follows<sup>1</sup>:

- **Compliance with Fair Trade criteria (List Fair Trade criteria here):** 30 pts (out of 100)
- **Price and other relevant criteria:** 70 pts (out of 100)

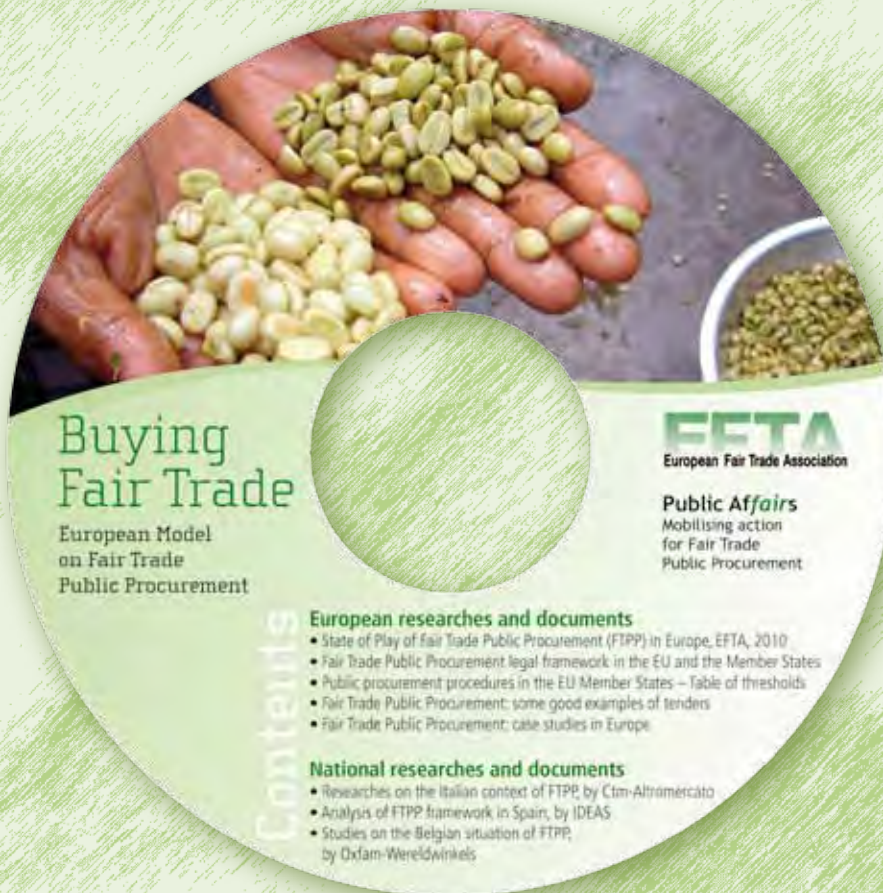
1. This is only an example. Illustrations of the use of Fair Trade as awarding criteria can be found on the attached cd-rom in “Fair Trade Public Procurement: case studies in Europe”

#### COPYRIGHT PICTURES

Front page – “Hands with coffee beans”: Fairtrade Sweden  
 ■ “Coffee beans”: Max Havelaar Netherlands ■ “Coffee cups”: Max Havelaar Netherlands ■ “Coffee in the office”: Max Havelaar Netherlands — Page 2 – “Cotton woman”: Max Havelaar France — Page 3 – “Smiling producer”: Oxfam-Wereldwinkels — Page 4 – “Banana producer”: Max Havelaar France ■ “Tea consumers I”: Max Havelaar Netherlands — Page 5 – “Fair Trade products”: Fairtrade

Sweden ■ “Fair Trade lemon juice”: Max Havelaar Netherlands — Page 6 – “Fair Trade awareness-raising”: Fairtrade Gemeente — Page 7 – “Cacao producer”: Max Havelaar France ■ “Smiling coffee woman”: Max Havelaar France — Page 9 – “Cotton hands”: Frederic Raevens — Page 10 – “Chocolate”: Max Havelaar France — Page 12 – “European Commission”: EFTA — Page 14 – “Tea consumers II”: Max Havelaar Netherlands — Header left page – “Mango workers”: Max Havelaar

Belgium ■ “Cotton women”: Max Havelaar France ■ “Smiling flower producer”: Fairtrade Austria ■ “Coffee producer”: Max Havelaar France — Header right page – “Lemon tree”: Max Havelaar France ■ “Hands with coffee beans”: Fairtrade Sweden ■ “Handicraft”: Corr The Jute Works, Bangladesh ■ “Coffee cups”: Max Havelaar Netherlands ■ “Tea consumers II”: Max Havelaar Netherlands — Cover page (back) – “Mango workers”: Max Havelaar Belgium

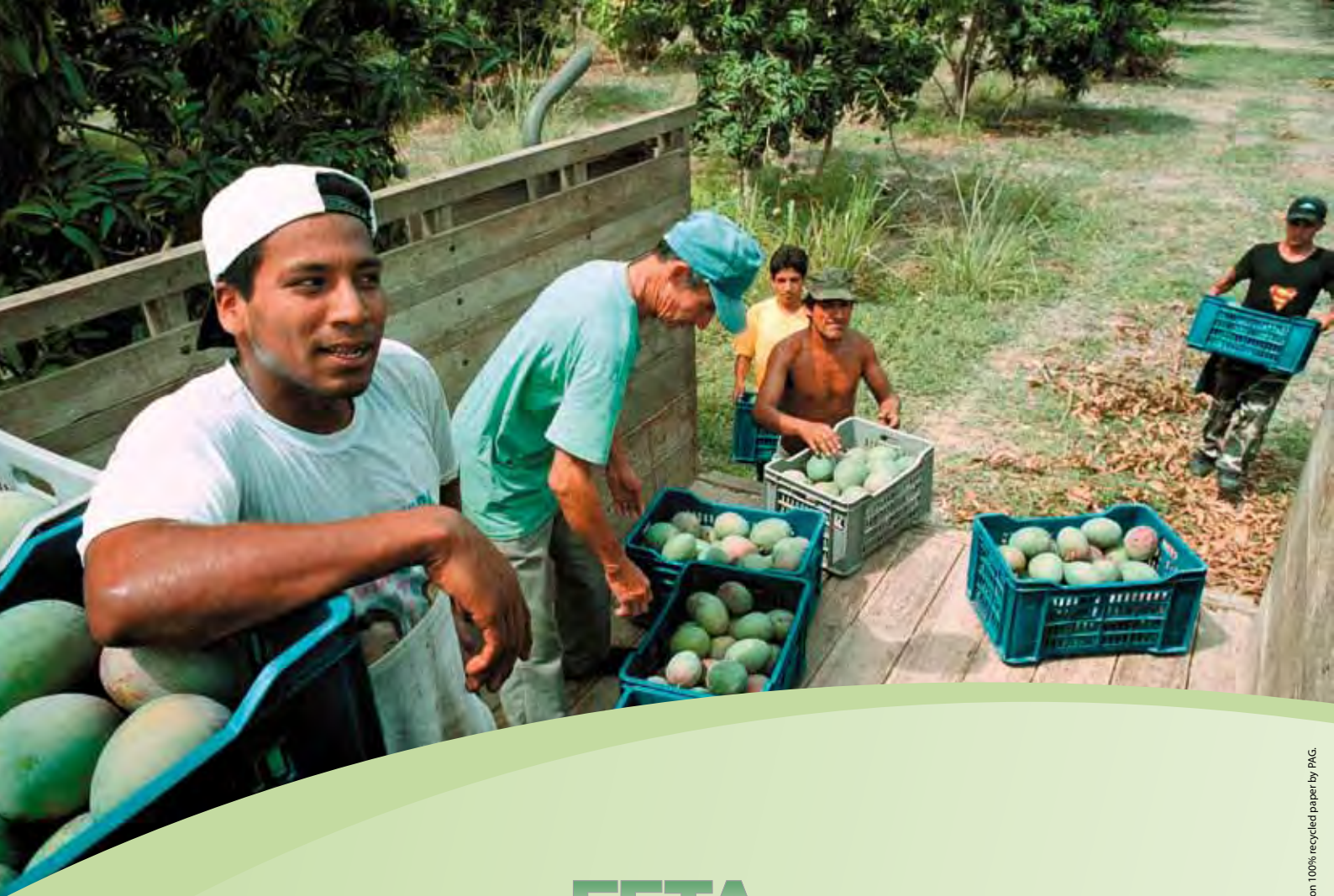


## Further information

If you are interested in learning more about Fair Trade Public Procurement, are interested in including Fair Trade to your procurement policy and would like to find partners/assistance, please visit our website at [www.eftafairtrade.org/observatory](http://www.eftafairtrade.org/observatory) or email [fair-procura@eftafairtrade.org](mailto:fair-procura@eftafairtrade.org)

You can also learn more by visiting the following websites:

World Fair Trade Organization (WFTO) – [www.wfto.com](http://www.wfto.com)  
 Fairtrade Labelling Organizations International (FLO) – [www.fairtrade.net](http://www.fairtrade.net)  
 European Fair Trade Association (EFTA) – [www.eftafairtrade.org](http://www.eftafairtrade.org)  
 CTM-Altromercato – [www.altromercato.it/en](http://www.altromercato.it/en)  
 IDEAS – [www.ideas.coop](http://www.ideas.coop) and [www.comrapublicaetica.org](http://www.comrapublicaetica.org)  
 Oxfam-Wereldwinkels – [www.oww.be](http://www.oww.be) and [www.publicaffairs.be](http://www.publicaffairs.be)  
 ICLEI – [www.iclei-europe.org](http://www.iclei-europe.org) and [www.buyfair.org](http://www.buyfair.org)  
 Fair Trade Advocacy Office (FTAO) – [www.fairtrade-advocacy.org](http://www.fairtrade-advocacy.org)  
 Fairtrade Towns - [www.fairtradetowns.org](http://www.fairtradetowns.org)  
 Local authorities for Fair Trade - [www.localauthoritiesforfairtrade.org](http://www.localauthoritiesforfairtrade.org)



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