

State of Play in Sustainable Public Procurement

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About the project

This project is an initiative of the International Institute for Sustainable Development (IISD), and was executed in partnership with The Energy Resources Institute (TERI) in India. It was funded by the IISD Innovation Fund, which provides IISD researchers with intellectual venture capital to develop new ideas and push the boundaries of innovation with a flexibility that is typically not present in conventional funding mechanisms.

Scope

The scope of this project encompasses a global review of international and national Sustainable Public Procurement (SPP) initiatives and an ensuing analysis of:

- legal instruments within the multilateral and regional trade regimes and the bilateral investment regime;
- national legal and policy frameworks in certain countries;
- SPP initiatives at the regional, national and local levels across Asia, the EU, South America and Africa;
- necessary conditions for the implementation of SPP programs in emerging and developing economies; and
- options for continued work by IISD and TERI to enable SPP in emerging and developing economies.

This study combines the findings from desk research, telephone interviews and meetings with SPP proponents and leaders in the international SPP debate. The project team also attended the bi-annual meeting of the Marrakech Task Force on SPP in Italy, March 2007.

The project team

The project was lead by Oshani Perera at IISD with Nupur Chowdhury and Anandajith Goswami at TERI. The project team are grateful to: Mark Halle, Head of the IISD Trade, Investment and Subsidies Program, and Ligia Noronha, Director of Resources and Global Security of TERI, for their guidance; Pratik Ghosh for his contributions linked to TERI Business Council for Sustainable Development; Sara Rose Carswell and Clarita Martinet-Fay at IISD for administering this project; and Shyam Sunder Nayar at TERI for formatting this report, and Michelle French at IISD for formatting and editing this report.

**PART 1: Findings and recommendations for facilitating
Sustainable Public Procurement in emerging and developing
economies**

CHAPTER 1: Research observations on current practice in Sustainable Public Procurement

The chapter discusses key observations on Sustainable Public Procurement made by this project. They are based on a review of:

- a. four international and 35 national programs on SPP;
- b. the Agreement of Government Procurement of the World Trade Organization;
- c. selected regional and bilateral trade agreements and bilateral investment treaties;
- d. national legal frameworks on SPP in Brazil, China, India and the European Union;
- e. several SPP tools and guidance materials that are widely used and referenced in the SPP debate at the international level; and
- f. consultations with leading SPP proponents across the world.

Overarching observations on Sustainable Public Procurement

National programs on SPP are, to a great extent, being implemented in OECD member states

Most national SPP programs are in place in OECD member states, including: the EU, U.S., Canada, Australia, New Zealand and Japan. From the emerging BRIC nations, Brazil, China and India have developed legal frameworks on SPP, which at the time of writing are being accompanied by starter SPP efforts in Brazil and China. National SPP programs in developing countries are few and far between.

Leadership by local governments

Activities on SPP by local governments are, on the other hand, in abundance in both developed and developing states. The project came across more than a hundred examples of local government SPP projects focussing on an array of strategies to purchase environmentally- and socially-preferable alternatives in selected product and service groups. One reason for such widespread activity is that as procurement is increasingly decentralized, local authorities are having more decision-making power on how their budgets are spent. In addition, at this level of government, the benefits of SPP programs are almost immediate as they contribute very visibly to both the local environment and economy.

National laws and policies are an important prerequisite

National laws and policies provide the all-important prerequisite for SPP. Without such a framework, SPP will have no legitimacy as the subject of strategies and actions plans that are rolled out across the entire public sector.

The current legal framework in most developing countries researched in this study do not include comprehensive legislation or policy on SPP. In addition, there appear to be a multiplicity of regulatory agencies overseeing the management of procurement at federal, state and municipal levels. Efforts made by certain municipalities or within individual public sector organizations therefore remain disparate.

Use of sector-specific SPP programs to support national sustainable development priorities

Sector-specific policies on SPP are few and far between across the globe. Where they do exist, they appear to have been developed to support governmental efforts to address national resource consumption issues. For example, in Brazil and in Germany, the procurement directives mandating the use of certified wood and eco-label products were the result of each national government's ability to link certification standards and eco-labels with their own procurement plans. Similarly in the U.K., Austria, Mexico and many other EU Member States, governments have strategically used

procurement to further their objectives of attaining a high level of energy efficiency within government infrastructure. These examples highlight an important aspect of SPP—that it could be an instrument for establishing and developing linkages between diverse policies and programs on sustainable development.

Changing the procurement mindset from “the best value for money” to the best value across the project/product life-cycle

Laws and policies alone are insufficient to bring about change in the traditional procurement mindset that is based on “the best value for money” rather than the best value across the project/product life-cycle—full-life costing. SPP implementation needs to be integrated into procurement processes through the establishment of environmental, social and economic objectives at each stage of the procurement process/cycle: establishing the need to procure; setting specifications; developing pre-qualification questionnaires; developing award criteria for evaluation tenders and making award decisions; developing contracts; and monitoring contracts.

Over 300 tools on SPP

A wide variety of SPP guidance materials prevail. In March 2007, the Marrakech Task Force conducted a survey on SPP tools. It identified over 300 tools, including guidelines, handbooks, databases, software, etc. This is not surprising given that each national and local SPP appears to have developed their unique set of tailor-made tools to suit the local context. These materials can be categorized as follows:

- a. awareness-raising and training tools for procurers and professionals working in procurement;
- b. tools to provide information on the environment and social characteristics of products and services (catalogues, software, databases, help lines etc.);
- c. labels and standards that certify the environmental and social attributes of products and services; and
- d. life-cycle assessment tools that provide for full-life costing and the inclusion of externalities.

Emphasis on identifying environmentally- and socially-preferable alternatives and increasing public sector capabilities in full-life costing

National focus on SPP is moving from awareness-raising and compilation tools/guidelines to:

- a. identifying environmentally- and socially-preferable alternatives. Most SPP efforts have developed a strong focus on international and national standards, eco-labels and life-cycle analyses to enable procurers to make the most appropriate decisions; and
- b. increasing the capacities of public sector procurers, financial planners and accountants in full-cost accounting to include externalities and highlight the medium- and long-term cost-savings made possible by designing for the environment.

Climate change features on all SPP programs

Mitigating the impacts of climate change is high on the agenda of SPP initiatives: all programs include components on energy efficiency, and to a lesser extent, lower carbon vehicles, transport, renewable energy sources, sustainable urban planning and building design. Strategies for low-carbon economies are likely to continue to drive SPP in the future.

Increased focus on transparency across the procurement process/cycle

There is also an increasing focus on transparency at all stages of the procurement process, and combating corruption on the awarding of contracts. This is especially true in Africa (and also in

Asia and South America) where procurement is being increasingly decentralized in order to achieve increased efficiency, lower costs, increased transparency and fewer opportunities for corruption. It is also hoped that decentralized procurement practices will provide for improved information dissemination on SPP. In addition, public procurement, the world over, is today being organized electronically, and this is reported to have greatly facilitated transparency. It also enables stakeholders to be better informed on procurement processes and aware of criteria and the contents of bids.

Prioritizing frequent and significant areas of spending

Priorities for SPP appear—rightly—to have been focused on frequent and significant areas of spending. These products and services include transport, construction of buildings, food, paper and printing, information and communication technologies, furniture, uniforms and textiles, cleaning, landscaping and waste management. There are, however, some areas of high spending, such as construction and maintenance of utilities and healthcare services, that have received little attention.

More emphasis on environmental sustainability

The focus to date on SPP has been, primarily, on environmentally-preferable alternatives, with the social sustainability agenda now getting off the ground. Amongst the more recent developments, the EU Parliament has passed a resolution to increase the public procurement of fair trade products, and the European Commission and the European Fair Trade Association have published a guidebook on fair trade choices for public procurement.

Opportunities for continued improvement in prevailing SPP programs

Significant efforts are being made to exchange information on SPP between OECD member states and developing countries, and this must be strengthened. For example, sustained efforts have been made within the ASEAN Framework to enable regular information exchange, expert consultation and establish a tracking service to highlight the development and application of SPP standards and conditions in developed countries. The Marrakech Task Force on SPP is another example, as it works to facilitate SPP in partner developing nations. These are important means to build awareness among developing countries on the mechanisms for and best practices of SPP. Such an exchange can also help flatten the learning curve of developing countries by highlighting the feasibility of SPP and building the knowledge and confidence of regulatory authorities to enable them to implement SPP programs that address the environmental and social challenges of each country.

SPP programs have focused almost exclusively on raising awareness and developing tools for sustainable procurement. Certainly the focus is now shifting from information to performance, with many national programs establishing performance targets and objectives. But no prevailing effort appears to be sufficiently mature and robust to realize the systematic embedding of environmental and social elements into the procurement process. Neither do they require disclosure and reporting (though the U.K. National Action Plan for Sustainable Procurement includes disclosure in 2008). Despite the large volumes of SPP guidance materials on the market, there appears to be disbelief about the feasibility of sustainable procurement. Procurers continue to grapple with SPP thinking, from setting specifications, to establishing award criteria, to monitoring contracts. Difficulties also arise during the selection of the best environmental and social alternatives, which are based on product or performance-based characteristics. For example, should paper with recycled content be given preference over paper from sustainably managed forests? Should organic and “fair trade” produce from overseas be favoured over those produced locally? Should solar water heaters be given preference over efficient biofuel water-heating technologies?

Given the need to include environmental and social criteria in SPP in a non-discriminatory manner, procurers have to draw a distinction between the environmental impact of a product and those linked to the process in which it is produced. The debate continues in SPP circles on the extent to which production-process impacts can be factored into specifications and award criteria. This project is of the opinion that there does not appear to be legal constraints (in all the procurement regimes studies) for the use of production process-related elements in SPP.

One avenue to increase SPP expertise is to increase stakeholder participation in procurement processes. As national programs in Finland and the U.K. demonstrate, multistakeholder input can be very valuable in appreciating the complexities involved in SPP and implementing strategies and systems to meet prevailing procurement patterns. In addition, the perspectives of private sector players, who have been working on improving environmental and social performance in supply chains for almost a decade, can be of interest.

As procurement is often decentralized across national and local governments and even outsourced, current practice points out that providing SPP efforts with a “home” and an “owner” is essential. None of the SPP program leaders or proponents interviewed were able to identify who had ultimate managerial responsibility for the program, as duties and tasks were dispersed across a number of designations and government bodies.

The higher capital costs usually linked to sustainable alternatives is perhaps the most critical obstacle in SPP. Obtaining the “best value for money” is an important principle in public procurement, and unless there is explicit provision for considering the financial gains of environmental alternatives (though improved durability and lower operating costs) over the lifetime of a product, service or development, decisions will continue to be based on upfront costs and immediate benefits.

The organization and time-frames applied to setting budgets are also posing challenges. For example, accounting procedures, multi-year budget frameworks that allow temporal flexibility to carry-over or borrow-against-the-future are important to enable SPP. In terms of organization, there is the issue of split responsibilities for capital and operating costs. While procurement contracting is the responsibility of one agency, budgets are controlled by another and the use and maintenance of the product/service/development belongs to yet another. As the benefits of SPP accrue during the project life and at its end disposal, those bearing the capital costs may not be the first to realize the benefits of sustainable alternatives.

SPP proponents also believe that in order to embed SPP into procurement practices, it must be accompanied by an organization-wide (and even a government-wide) environmental management and social responsibility effort. Moreover, they also believe that widespread reforms in public expenditure management and budgeting will be needed if SPP and full-life costing are to be used as standard procedures in public finance.

There are also concerns that in some cases, SPP can prevent the market proliferation of sustainable alternatives. For example, if SPP-demand for product A results in an increase to its retail price, this will discourage other purchasers from selecting it, who will then end up buying a less environmentally-preferable alternative. The end result then is the “crowding out” of product A, which is exactly the opposite of what SPP strives to achieve. However, some procurers believe that “crowding out” is a temporary occurrence and prices will fall and demand increase again in the medium term. Other proponents of SPP also argue that “crowding out” will not be a risk if SPP programs focus on introducing new inventions in the market and then leave further development to market forces.

CHAPTER 2: Conditions for enabling Sustainable Public Procurement in emerging and developing economies

This section explores the necessary conditions for developing and implementing SPP programs in emerging and developing economies. As in Chapter 1, it draws on the “lessons learned” by over 35 international and national procurement programs and their enabling legislative frameworks, as well as interviews with leaders of the international SPP debate that were conducted during the course of this project.

A dedicated SPP legal and/or policy framework umbrella is a plus

A national legislative and/or policy framework on environment or sustainable procurement appears to be invaluable in setting up, lending legitimacy to and ensuring follow up of SPP initiatives. As demonstrated in the SPP efforts of the U.K., Norway, Denmark, Australia and Austria, when this overall framework is supported by management responsibility early on in the design process, it further underscores the legitimacy of the program and provides clear directives and expectations to policy-makers and procurers alike.

Nevertheless, the drivers of SPP could originate from other instruments of policy-making such as national sustainable development action plans, green house gas mitigation efforts, initiatives to increase the uptake of environmental technologies and efforts to promote products/services from minority suppliers. SPP programs in Germany, Austria, France and Switzerland reflect such origins and influences, cutting across traditional governance and budgetary structures. Such policy linkages are important in leveraging both the legislative framework and the results of one initiative to support another. It also indicates that a completely new and dedicated legislative regime is not a prerequisite for implementing SPP.

That said, it must be noted that the full potential of SPP and full-life costing can only be realized if it is backed by the appropriate legal framework. Therefore, at the onset, SPP efforts could well be targeted on prevailing environmental and social policy frameworks and programs for their implementation. For further development and expansion however, a dedicated legal- or policy-backing is critical to give SPP efforts the legitimacy needed to break through and become embedded into the traditional thinking and financing that is commonplace in public sector procurement.

Who owns sustainable procurement in a decentralized procurement structure?

As governments across the world work towards increasing efficiency and transparency in their procedures and processes, procurement is being decentralized across national, regional and local government hierarchies. This gives individual departments and local governments the desired flexibility to decide how their budgets are spent and hence, increases opportunities to enlighten procurers and policy-makers to integrate environmental and social elements into the procurement process.

However, decentralization makes it difficult to assign responsibility in terms of rolling out a national sustainable procurement action plan and integrate elements of sustainability into established procurement processes. As the national program in the U.K. aptly demonstrates, key government offices and organizations need to be entrusted with the responsibility of making sustainable procurement a reality. Decentralization also means that a large number of procurers are being empowered to make decisions on procurement. This makes a case for national policies and plans on SPP, which provides the much needed legitimacy, framework and direction for SPP to be rolled out across the public sector in a systematic manner.

Moving from raising awareness to “learning by doing”

While early SPP efforts were based on raising awareness and awareness-raising tools such as guidelines and training materials, today they are gradually giving way to programs that explore how environmental and social considerations can be integrated into public procurement processes. This project recommends that future work in SPP be approached somewhat differently. Sustainable development is now an established agenda in all countries. The private sector is already in the

process of improving environmental and social conditions in their value chains, which stretch across national boundaries and industry sectors. Hence, the concept of “purchasing environmentally- and socially-preferable goods and services” is not new, even though sustainable procurement by the public sector is almost unheard of at the level of national government in many countries.

This project recommends that new initiatives to enable SPP could focus on, firstly, identifying the appropriate sustainable development policy frameworks that would lend legitimacy to pilot SPP efforts, and secondly, working with selected public sector organizations to launch pilot procurement efforts to demonstrate theory in practice. These pilot projects are likely to provide procurers and stakeholders with important learning experiences which can then be expanded into wider public sector programs to suit specific national contexts.

Starting with areas of high and priority spend

As with all programs to improve environmental and social performance, identifying the best place to start is critical to ensure cost-savings and other environmental and social gains are realized as early as possible. To this end, it is important that public sector organizations first identify their areas—high and priority spend—and then select the best areas to start.

In developing countries and BRIC, this challenge is possibly doubled as areas of high priority spend may need to be merged with reforms related to preventing corruption and ensuring transparency across the public sector. For the implementation of SPP would inevitably raise concerns over transparency. It may therefore be prudent to focus pilot initiatives on sectors that have traditionally been associated with higher standards of transparency and public disclosure requirements, which in turn could increase market confidence and ensure minimal downstream ambiguities and difficulties during the project.

Targets, indicators, reporting and related uncertainties

SPP is about integrating environmental and social criteria into public procurement processes and decisions. Environmental and social criteria must therefore be considered throughout the procurement process, especially when establishing the need to procure, setting specifications, developing pre-qualification questionnaires, establishing award criteria for the evaluation of tenders and making award decisions, and finally, in the developing and monitoring of contracts. In addition, to promote greater accountability and comparison across public institutions, procurers also need to be provided with objectives and targets against which performance can be monitored and ultimately, publicly disclosed.

This is however, easier said than done. Establishing procurement objectives and targets, which in turn need to be based on methodologies for establishing the most appropriate environmental and social alternatives, is not a simple task. These decisions are based on life-cycle assessments and full-cost accounting which are unfamiliar to procurers at large. Hence they will require additional expert advice on interpreting and using such data in procurement processes.

Appreciating the trade-off between product and performance criteria in selecting sustainable alternatives

Appreciating the comparative environmental and social friendliness of products and services is an important consideration in SPP. Comparative advantage is determined through either product-related criteria or criteria related to performance. Product criteria stipulate the design or composition of a product, whereas performance criteria specify performance aspects such as levels of energy efficiency or increased recyclability or longer user life, etc. In targeting outcomes during the user life of products, performance-based criteria promote innovation and enable bidding companies to develop creative strategies to attain the level of performance being requested. Product-based criteria, on the other hand, do not spur sustainable design improvement to the same extent, though it does involve a lesser degree of uncertainty and risk. SPP requires that policy-makers and procurers appreciate the trade-off between these selection criteria. Here again, life-cycle thinking and full-life accounting will be required to make the most appropriate decisions.

Multistakeholder collaboration to optimize SPP efforts

The public sector does not procure in a vacuum. Indeed the business case for SPP rests on the argument that as governments spend over 45 to 65 per cent of their budgets—which amounts to 13 to 17 per cent of the GDP of OECD countries—on procurement, they have the potential to trigger the demand for sustainable goods and services and send the right signals to the market that sustainable development is a national economic priority. In many countries, the private sector and NGOs are likely to be ahead of the public sector in purchasing environmentally- and socially-preferable goods and services and in improving environmental and social performance in supply chains. A multistakeholder approach in the development and implementation of SPP programs is therefore of immense value.

More concerted research on best practices

While case studies on SPP efforts by national and local governments abound, this project finds that almost none of them provide insight into the methodologies used for integrating environmental and social criteria in procurement procedures and decisions. Nor is there sufficient understanding of integrating full-life costing in the public sector budgetary processes that is typical of medium and larger procurement projects.

How can the need to procure be best assessed? How can environmental and social elements be integrated into specifications and award criteria in a non-discriminatory manner? How can environmental performance be monitored in procurement contracts during the life and at the closure of a contract? The global SPP debate will greatly benefit from systematic research on good practices that provide insights into the diverse options for SPP planning and implementation. One example of such an effort being made at the regional level is the ASEAN, which has established a dedicated Internet portal on information exchange between the EU and its Member States on technical standards used to implement SPP.

Targeted training programs for procurers and policy-makers

Training programs need to be designed for public sector procurers and be targeted at building expertise in integrating product- and performance-related criteria into the procurement process: evaluating procurement needs, determining specifications and award criteria, drafting and monitoring contracts, as well as evaluating outcomes. These are the critical points in the procurement process for sustainability improvements, and the most practical elements about which procurers can dialogue with policy-makers and bidding companies on not only the most sustainable alternative, but also the “most economically advantageous” one.

Reduce public sector budgetary and financial barriers by providing for whole-life costing

As SPP experiences across the EU and Scandinavia indicate, sustainable procurement is frequently impeded due to a lack of capital to pay the premiums for environmentally- and socially-preferable alternatives. Public budgetary and financial mechanisms could be biased against sustainable products, for the lowest purchase price is often favoured against those with higher capital costs but reduced operating costs, which make them the most cost-effective option over the lifetime of the product or service being procured. There is also a general perception that sustainable alternatives are more expensive, and this discourages procurers from investigating further.

In terms of organization, there is also the issue of split responsibilities for capital and operating costs. It is not uncommon that procurement contracting is the responsibility of one agency, budgets are controlled by another agency, and the use and maintenance of the product/service/development belongs to yet another agency. As the benefits of environmentally- and socially-preferable alternatives usually accrue during the user-phase and end-of-life-disposal of a product/service/development, those bearing capital costs may not be the first to realize the benefits of sustainable alternatives.

Whole-life costing—or life-cycle costing—can be used to redress these difficulties, but only if such thinking is encouraged as part of budgetary reform. A 2004 OECD study on green public procurement (GPP) points out that medium- and longer-term reforms involving the application of

life-cycle costing and accrual accounting have supported the wider application of SPP across the public sector in selected countries.

Furthermore, whole-life costing will enable the SPP agenda to move from rhetoric to action in obtaining the “best value for taxpayers’ money” by awarding procurement contracts on the “most economically advanced tender.” This ideally includes some consideration for environmental and social impacts across the product/contract life-cycle.

Reducing the costs involved in rolling out SPP programs

Obtaining data to evaluate the best environmental and social alternative, and the costs involved in generating data, is potentially the biggest obstacle in enabling SPP. The SPP efforts in OECD countries demonstrate that given the high costs involved in life-cycle analyses and the roll-out of whole-life costing across public sector accounting procedures, there is a tendency to work on narrow product criteria or rely heavily on eco-labels that could reduce these costs. While this approach would certainly get SPP efforts up and running, the program may lack the experience and robustness required to develop and expand across areas of high and priority spend. SPP therefore needs to be developed based on a mix of existing life-cycle data, eco-labels and new life-cycle research.

Part 2: Research results

CHAPTER 3: An introduction to Sustainable Public Procurement

What is Sustainable Public Procurement?

Procurement refers to the process used by an organization to enter into supplier contracts for the purchase of goods and services. It is not limited to the purchasing processes of governments and the public sector, but is widely used to refer to the purchasing procedures of all organizations, including private enterprise. The term “public procurement” however, narrows the scope down to the processes used by governments and public sector organizations to purchase goods, services and commission infrastructure developments.

When it comes to Sustainable Public Procurement however, there appears to be no consensus on its definition. In most cases it refers to the inclusion of environmental, economic and social criteria in the procurement of goods, services and works by public sector organizations. It is also used as a synonym for “green procurement,” which essentially is the process by which public sector organizations purchase environmentally-preferable alternatives.

Another important component of this debate is the question of competency to define “sustainable procurement.” Trade commentators, who have supported the application of non-discrimination principles and the adoption of transparency requirements within the trade regime, lean towards an international definition of sustainable procurement with clear standards and application procedures that negate discrimination. However, there exists considerable difference between countries in terms of environmental, social and economic priorities, and this makes a case for the national determination of sustainable procurement, conditioned by stringent transparency requirements. A case could also be made to further decentralize this competence to regulatory authorities at the local level, where requirements are actually implemented. This is clearly based on the principle of subsidiarity, which recognizes that decision-making should be as localized as possible to the level where decisions have the most direct impact.

Given these ambiguities, the project team interpreted Sustainable Public Procurement to be laws, policies and practices to integrate sustainability—economic, social and environmental—risks into public procurement processes and decisions.

This project also supports the definition of Sustainable Public Procurement used by the U.K. Task Force for Sustainable Procurement:

Sustainable Procurement is a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment. Sustainable Procurement should consider the environmental, social and economic consequences of: design; non-renewable material use; manufacture and production methods; logistics; service delivery; use; operation; maintenance; reuse; recycling options; disposal; and suppliers’ capabilities to address these consequences throughout the supply chain.¹

What do governments buy?

Government procurement can be typically classified into three types of spending:

- the procurement of goods and supplies, which include paper, ICT equipment, furniture, food and beverage, etc. These items can be purchased outright, or in the case of ICT equipment, leased or rented as required;
- the procurement of services, which includes the products or minor works that are needed to deliver a service; and
- the contracting of works, building construction and infrastructure development.

1 “Procuring for the Future: Sustainable Procurement Action Plan,” Recommendations from the Sustainable Procurement Task Force, U.K. Department of Environment, Food and Rural Affairs, 2006.

Procurement principles

There is no global harmonized methodology for procurement, and procedures can differ from country to country and from national governments to state-owned enterprises to local governments. Amidst this diversity, however, are two underlying principles, “value for money” and “transparency and anti-corruption.”

The World Bank makes the following recommendations on public procurement processes:

- processes need to streamline administrative formalities and minimize the costs and time involved therein;
- value of money;
- equal opportunity to all suppliers in the country or region providing the funds;
- transparency in the process, specifications and award criteria; and
- a dispute resolution mechanism to enable suppliers to challenge the award in court or another independent body.

How does the public sector procure?

Most public procurement is carried as competitive tendering (or bidding), for which three procedures are commonplace:

- a. open (or unlimited) tenders under which all suppliers may submit a tender;
- b. limited tendering where bids are invited only from a short-list of suppliers that are individually contacted by the tenderer; and
- c. selective tendering which is open to a pre-determined group of suppliers.

When it comes to award procedures, the most formal and transparent would be when the contract is awarded based on the written bids and award criteria that is included in the tender. However, in many instances negotiated procedures are used by the tenderers and the applicants, with subsequent suppliers being asked to submit requests for proposals and requests for quotations. In terms of the procurement contract, it can be either a fixed price or cost reimbursement. A fixed price contract sets an amount for the fulfillment of the contract, and the onus is on the suppliers to control costs and increase efficiency to maximize profits. A cost reimbursement contract provides payments for costs incurred up to a pre-determined ceiling. These two contract types offer some variations in terms of price adjustments and incentives, which are important considerations for implementing sustainable procurement. These and other mechanisms to enable sustainable procurement will be discussed in the proceeding chapters.

The business case for sustainable procurement

Imagine a very large diverse business that buys for 12 billion pounds and employs over 6 million people. Now imagine a government that is committed to sustainable development. The business and that government are one and the same. Yes too often, the business side of government—the service provision, the purchasing, and the employment fails to reflect the policy goals of the government. The result—a movement that misses opportunities to lead by example to achieve its goals. Bringing together the business and the policy arms of the government is what sustainable procurement is all about.

Sir Nevelle Simms, head of the U.K. Task Force for
Sustainable Procurement, 1997

There is a lot of momentum for governments to review how and what they buy, for their substantial buying power can have important implications on the delivery of national sustainable development goals and on stimulating markets for sustainable products and services.

The public sector on average spends 45 to 65 per cent of their budgets on public procurement, which amounts to between 13 to 17 per cent of the GDP of OECD nations. In the EU, this percentage is 16 per cent of GDP; 14 per cent in the U.K.; and 20 per cent in Japan. These percentages are likely to be higher in developing countries and, given the trend to decentralize public spending, larger proportion of public procurement are expected to fall under the jurisdictions of regional and local public authorities and publicly-owned companies. For example, in Denmark, publicly-owned companies now account for over 45 per cent of total government purchases, while sub-national bodies account for 23 per cent.

Implementing sustainable procurement may also entail a review of existing procurement procedures, which will bring to light opportunities for time, efficiency and transparency improvements. Such improvements are not limited to changes in procedures, and could include methodologies for setting specifications, determining award criteria, and drafting contracts.

In many cases, selecting environmentally- and socially-beneficial alternatives can achieve substantial cost savings and increase operating efficiency in the longer-term. Whole-life costing methodologies will show that the increased efficiency and lowered operating costs realized by using environmental technologies and design for the environment (DfE) solutions, can largely outweigh the higher capital spending required at the outset. This is an important consideration in public procurement, the need to ensure the “best value” for the taxpayer. While the integration of whole-life costing into procurement processes may still be in its infancy, the onus is on the public sector to provide leadership in this area.

SPP also has the potential to stimulate markets for green, clean and more equitable products and services. If SPP can spur sustainable design by increasing the competitive edge of its inventions and improvements, this will greatly facilitate their wider commercialization and distribution.

Furthermore, SPP will provide other actors in the economy with a demonstration of why and how these products and technologies can be used.

Sustainable procurement will also reward sustainable enterprise by sending the economy a signal that there is a consistent demand for sustainable goods and services. This will enable businesses to realize economies of scale and reduce product costs and plan even a wider distribution of sustainable alternatives. In the U.S., Canada, Germany and Austria, the public sector demand for energy efficient ICT equipment, sustainable timber and sustainable agricultural produce are believed to have increased the markets for these products by over 25 per cent.

Markets for environmental services and technologies are on the rise, on average by nine to 17 per cent per year in OECD nations and BRIC. Businesses need to compete in these new markets and SPP has the potential and indeed, the responsibility, to support market preparedness and competitiveness in these areas.

If governments want to develop safer, prosperous and equitable societies and reduced environmental and social risks, the public sector needs to lead by example. The private sector has been working on sustainable design and supply chain management for over a decade. The onus is now on the public sector to “walk the talk.”

As concerns about climate change, environment degradation and social inequality hit headlines, public appreciation for sustainable development is rising, and will continue to do so in the years ahead. SPPS provides governments with a valuable showcase to demonstrate their commitment to sustainable development and enhance public image and reputation.

Chapter 4: The legal framework on sustainable procurement

The rationale for this section exists in the understanding that there is a clear disjuncture between voluntary procurement networks and legal frameworks mandating procurement at the international, national and sub-national levels. However, this disjuncture does not mean an absence of linkages; in reality, there exist significant linkages between voluntary procurement networks and legal frameworks. In a few cases, one has influenced or triggered the development of the other. These linkages, therefore, reflect the unique circumstances and contexts of the application of such programs and also help identify the best methodologies for their application. In this section, we analyse three levels of legal frameworks on sustainable procurement; that is, at the multilateral, bilateral and national levels. In the first case, the discussion is limited to the Agreement on Government Procurement (AGP), one of the plurilateral agreements to the World Trade Organization (WTO). This is the only plurilateral agreement that addresses the issue of government procurement (though not specifically sustainable procurement). Secondly, we study the role of (a selection of²) regional and bilateral trade agreements and investment treaties in enabling sustainable procurement. Thirdly, the national legal frameworks for specific jurisdictions like India, Mexico, South Africa, the EU and Brazil will be discussed *vis-à-vis* their impact on sustainable procurement.

Agreement on government procurement

The AGP is one of the plurilateral agreements of the WTO. This means that it is not mandatory for all the WTO Members States to become party to the agreement. Of the 150 Members States, only 28 are party to the AGP. Thus, for those Members States that are not party to the AGP, procurement is not governed by the AGP. The two basic aims of the AGP include promoting transparency in procurement and ensuring the application of the principle of non-discrimination by way of national treatment and most-favoured nation principles.³

The AGP does not directly address the issue of sustainability in public procurement. However, the recital to the preamble of the WTO Agreement⁴ does include an explicit reference to the goal of sustainable development. Considering that the AGP operates within the larger framework of the WTO Agreement, the contention that sustainable procurement practices would principally be legally valid within the ambit of AGP can be persuasively argued.

The part on the technical specifications within the AGP is most relevant in this context.⁵ It makes a direct reference to the “processes and methods of production.” Therefore, it clearly alludes to environmental specifications. Furthermore, it also suggests that the technical regulations mandated by the procurement authorities should be based on performance rather than on descriptive characteristics.⁶ It, therefore, quite clearly provides for taking into consideration the environmental performance of products within such technical regulations. However, all technical regulations have to measure up to the standard of review wherein “they shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to trade.” As a form of guidance for the adoption of technical regulations, the AGP strongly emphasizes the adoption of international standards and regulations⁷ within national regulations on procurement. In this context, the adoption of sustainable procurement criteria, which is based on International Labour Organization (ILO) standards for instance, carry the presumption of validity and, therefore, are able to withstand the “unnecessary obstacle to trade” test in the case of a challenge within the dispute settlement mechanism.

The general exceptions to the agreement also allows members to derogate from their commitments, on the grounds of security, the protection of public morals, and most significantly, the protection of “human, animal or plant life or health.” This article mirrors Article XX (b) exceptions in the

² The selection was based on certain key factors like scope and relevance of the agreement with a special focus on South East Asia.

³ Article III(1) of the Agreement on Government Procurement.

⁴ Recital to the Marrakech Agreement Establishing the World Trade Organization states: “recognizing that their relations in the field of...optimal use of the world’s resources in accordance with the objective of sustainable development.”

⁵ Article VI of the Agreement on Government Procurement.

⁶ Article VI.2(a) of the Agreement on Government Procurement. See Kunzlik, P., 2003, “International Procurement Regimes and the Scope for the Inclusion of Environmental Factors in Public Procurement,” in *The Environmental Performance of Public Procurement*, OECD Report.

⁷ Article VI.2(b) of the Agreement on Government Procurement.

1994 General Agreement for Tariff and Trade (GATT) and therefore reflects the expansive ambit under which it has been interpreted.⁸ Thus, environmental specifications that are adopted with the purpose of securing public health and the protection of the environment are seen to fall within this exception which is, therefore, not in violation of the commitments of members under the agreement. The general exceptions articles can be differentiated from Article XX on one crucial ground, that is, it does not import the necessity or the proportionality test—that of the measures having to be justified on the grounds of being the “least trade restrictive.” This gives countries more flexibility in terms of adopting regulatory measures in procurement for the protection of the environment, for instance, which do not have to conform to the standards of being “least trade restrictive,” unlike under the general exceptions measures adopted within the ambit of GATT. Another way to avoid a challenge on the grounds of a violation of non-discrimination in implementing sustainable procurement conditionalities is to use the negative listing methodology to limit the coverage of the AGP. Legal scholars like McCrudden have discussed this avenue, (and that of the flexibility in conforming to the thresholds), citing the example of countries like the U.S., Japan and Korea that have negotiated specific exceptions and therefore have the right to implement sustainable procurement policies.⁹

Thus, in conclusion, one clearly sees that the AGP does envisage procurement practices that differentiate on the basis of process and production methods and on the basis of their performance. Thus, AGP quite clearly enables environmental and social standards that form a part of sustainable procurement to be implemented within the policies of the member states. Overall, it would seem that there are no impediments for parties to the AGP to adopt sustainable procurement standards and practices within their procurement frameworks, as long as they are conditioned by the fact that they are non-discriminatory in their application and impact. Furthermore, the members have to ensure that sustainable procurement practices are adopted in a transparent manner.

*Regional and bilateral trade agreements*¹⁰

Regional and bilateral trade agreements have become an important area for the development of international legal mechanisms to regulate procurement, primarily because government procurement is excluded from the single undertaking which was negotiated during the Uruguay round of GATT negotiations. This reflects opposition from developing countries to opening up government procurement sectors to international competition. The exclusion of this avenue means that regional and bilateral trade agreements have become the foremost vehicle for propounding the liberalization of government procurement within countries.

In the case of the North American Free Trade Agreement (NAFTA), government procurement is one of the sectors in which members have made commitments. The commitments made essentially relate to the application of principles of non-discrimination and transparency requirements. The technical regulation section reflects similar provisions under the AGP. There is also a section on general exceptions dealing with “the protection of human, animal or plant life or health,” which enables member states to adopt sustainable procurement measures. Thus, though the NAFTA does not have any provision expressly recognizing sustainable procurement practices, it does not prevent member countries from adopting such practices.

The Association of South-East Asian Nations (ASEAN) has been one of the long-standing partnership associations to collaborate in a number of areas, including security, economy and socio-cultural. The immediate aim of agreements like the ASEAN Free Trade Area (AFTA), the ASEAN Framework Agreement on Services (AFAS) and the ASEAN Investment Area (AIA) has been to ensure a level of economic cooperation by way of the gradual reduction of tariffs on the lines of a preferential trading arrangement amongst member states. However, it is expected with the consolidation of economic cooperation within traditional areas that there will be a focus on newly developing areas such as government procurement. One such landmark development in this area

⁸ Refer to the AB Decision U.S.–Import Prohibition of Certain Shrimp and Shrimp Products; WT/DS58/AB/R and WT/DS61/AB/R, EC–Asbestos Case. This argument has been forwarded by Joost Pauwelyn.

⁹ McCrudden, C. 2004, “Using Public Procurement to Achieve Social Outcomes,” *Natural Resources Forum*. Vol. 28(4):257–267. Also see “Legal Aspects of Sustainable Public Procurement: Alternative Approaches to Limiting Legal Risks in the Drafting of Contracts – A Summary,” Paper presented by Christopher McCrudden at the Marrakech Taskforce Meeting on Sustainable Procurement in Turin, March 2007.

¹⁰ The selection in this section reflects to an extent an emphasis on South-East Asia and other large trading arrangements that cover North–South trade.

has been the Trans-Regional EU–ASEAN Trade Initiative. This is an important step with regard to green public procurement between the EU–ASEAN countries with the purpose of enhancing trade and investment relations between both regions in green products, with a special emphasis on electrical and electronic equipment. One such collaboration in this field includes the setting up of the Asia Trust Fund, with the aim of facilitating the quick delivery of short-term trade-related technical assistance (TRTA) in the procurement of green products in response to an immediate need identified by a national government or regional organization like ASEAN. Specific projects financed by the trust fund include “Support to Malaysian Enterprises on Compliance with Green Procurement Policies and Guidelines in the EU.” Thus, the ASEAN has essentially focused on capacity-building issues relating sustainable procurement, emphasizing the training procurement officials of member countries and identifying certain sectors for future procurement initiatives. This kind of an approach is a well-measured response to member countries that are wary of undertaking commitments on sustainable procurement because they don’t have the wherewithal to put such commitments into practice.

Asia-Pacific Economic Cooperation (APEC) is an intergovernmental organization that facilitates economic growth, cooperation, trade and investment in the Asia-Pacific region. It operates by the way of non-binding commitments on tariff reductions for goods and services and in other sectors. APEC adopted non-binding principles on government procurement in 2006. The Government Procurement Expert Group (GPEG) was formed to review and monitor developments on government procurement in the WTO. The key focus of GPEG has been on maintaining transparency and introducing new technology for the purpose of checking corruption in government procurement practices. It has also adopted a transparency and anti-corruption workplan that specifically aims to mitigate corruption in procurement practices in APEC. One of the various agencies within APEC is the Energy Standards Information System (ESIS), which is an information network about appliance and equipment energy standards and regulations. The ESIS has been actively advocating green procuring practices by linking its activities with the International Green Purchasing Network (IGPN), which specializes in the promotion of green purchasing around the world. This is an important mechanism since—unlike the WTO or other regional trade organizations—APEC does not operate on basis-binding commitments. Thus, voluntary cooperation with specialized agencies of green purchasing is an important step in forwarding the agenda on sustainable procurement within member states.

The Agreement on SAFTA (South Asia Free Trade Area) is a side agreement to the South Asian Association for Regional Cooperation (SAARC), and ultimately envisages setting up a customs area. Article 1 of the SAFTA highlights direct trade measures as measures conducive to promoting the mutual trade of contracting parties such as long- and medium-term contracts containing import and supply commitments in respect to specific products, buy-back arrangements, state trading operations and government and public procurement. Thus Article 1 mentions public procurement practices. Article 8 of the SAFTA addresses issues including: the harmonization of standards; reciprocal recognition of tests and the accreditation of testing laboratories of contracting states; and the certification of products. So one could link Article 8 to Article 1 and could conclude that testing, harmonization of standards and certification of products could be followed in government and in the public procurement of goods as mentioned in Article 1. Article 1 mentions public and government procurement under trade practices. The testing and harmonization of standards could be done to attain environmental norms relative to goods procured.

The Cotonou Agreement is a partnership agreement between African Caribbean and Pacific (ACP) countries and the EU, which aims to provide development cooperation to the ACP countries. Sustainable and equitable development, poverty eradication and good governance are amongst the key objectives of the agreement. Articles 33, 61 and 67 specifically address the subject of public procurement. Article 33 relates to institutional development and capacity building and addresses the reform and modernization of public procurement procedures. Article 61 pledges budgetary support for procurement that is open and transparent. Article 67 on structural adjustment deals with transparency and procedures for public procurement and procurement decisions based on price/quality considerations. These are significant provisions and do not *prima facie* deal with and address sustainable procurement issues. However, considering the fact that the EU has been especially active at the regional level in pursuing sustainable procurement or green procurement policies, such provisions provide direct avenues for influencing policy-making within the ACP

countries, especially in the context of development cooperation, which is financed directly by the EU.

Bilateral investment treaties

The bilateral investment treaties were also examined as part of this study, since there was a view that bilateral investment treaties could have an impact on procurement *per se*: first by way of investor and investment protection, which is guaranteed under such treaties; and second, because they usually provide better treatment than the national investors within a jurisdiction. The study, however, found that procurement was never included explicitly within the terms of the agreement. Nevertheless, provisions for several investment treaties are interpreted in a manner so as to negate nationality requirements for entities willing to bid for procurement tenders or contracts. The details of the findings are discussed in Annexure 2 of this study. The more important question which then arises is whether undertaking bilateral commitments on investment would preclude the procurement agencies from applying environmental or social criteria in procuring goods. This is an important consideration since, to reiterate, most investment treaties do guarantee better concessions and rights of protection to foreign investors in comparison to the domestic investor, and this guarantee could pose a legal impediment to the application of new rules for procurement, which may have a negative impact on the investment or the investor. This is an important research question that came up during this study and which should be explored further.

National legal frameworks

Mexico¹¹

Article 134 of the Mexican Constitution provides the primary legal basis for government procurement, and it establishes that the public purchase of goods and services must, in general, be undertaken through public tenders by way of sealed offers. The Law on Public Procurement and Works (LAOP) of December 30th, 1993 is the seminal legislation that defines government procurement as including state expenditures on and execution, preservation, maintenance and control of goods, services and construction services contracted by federal government entities, (ministries, administrative departments, decentralized agencies and government enterprises). The lowest price is the determinative factor in the awarding of contracts among the bids that meet the specific technical requirements. The invitation to the tender provides the bidding conditions and specifies the criteria to be applied in the evaluation of the tenders. The NAFTA and Mexico's free trade agreements with Bolivia, Costa Rica, Colombia and Venezuela (G-3) contain provisions on transparency and non-discrimination requirements on government procurement. The authorities have noted that those agreements were gradually extending international disciplines and transparency to a growing proportion of Mexico's government purchases.¹² Thus, the legal framework of government procurement in Mexico does not make any special provision for sustainable procurement nationally.

Not surprisingly, the push for sustainable, or more precisely, green procurement has come from another sector, that of energy efficiency in Mexico. The National Commission for Energy Conservation (CONAE) has developed and implemented a series of projects with the aim of helping government agencies at all levels to use energy more efficiently, through energy audits and retrofits, training and, most importantly, by purchasing energy-efficient products. This is an important initiative of the government since it not only formulates plans for reducing energy consumption but also emphasizes training government personnel in the implementation, standardization and procurement of energy-efficient products.

¹¹ Part of the information in this section has been sourced from document WT/WT/IPR/S/29, September 2nd 1997, submitted to the WTO Secretariat by Mexico as part of the Trade Policy Review Mechanism, with added input.

¹² SECOFI (1996), p. 81–2.

Brazil¹³

Article 37 of the Brazilian Constitution provides the basic framework on public procurement, and states that in general, public works, purchases and services should be contracted through a public tendering process. The relevant regulation is established in Law No. 8666 of June 21st 1993, as amended by Law No. 8883 of June 8th 1994; presidential vetoes affecting the latter were still pending in the Brazilian Congress in early 1996. In mid-1996, the federal government was preparing a draft bill modifying the provisions in Law No. 8666; to this date, no decision has been made yet on whether the bill would amend or replace such a law. Government procurement of telecommunications and informatic goods and services is exempt from the general procurement rules; instead, such procurement is governed by Decree No. 1070. The decree reflects a procurement policy that seeks to use the government's purchasing power to promote domestic products and services. The policy applies to procurement by the federal government and related agencies, such as state enterprises (for example, PETROBRAS, ELECTROBRAS, and the TELEBRAS System) and federal universities. Products covered include: computers, peripheral units, telecommunication equipment, micro-electronics, software and related services. Procurement procedures for such items involve a three-stage screening process to select proposals according to the following sequence: (i) the best combination of price and technology; (ii) the lowest price; and (iii) criteria defined in Decree 1070. Thus, the legal framework does not address the issue of sustainable procurement.

Nevertheless, as in Mexico, drivers for sustainable procurement have been essentially a result of international environmental commitments undertaken by Brazil and also to some extent as a response to domestic resource utilization issues. Thus the Presidential Decree 2.783/98 provides for a blanket ban on ozone-depleting substances, affecting both private and public procurement. Another such instance is the Governor's Decree of 2005 in the city of Sao Paulo, prohibiting the purchase of illegal wood from the Amazon and established border control measures for illegal wood. The purchase of illegally-cut Amazon wood is prohibited without the necessary certification, for both public and private procurement purposes in the city. Most importantly, currently a draft amendment to the National Procurement Law has been slowly making progress in the Brazilian Congress. This draft amendment includes Article 3, which explicitly states the need to respect environmental sustainability as a general principle of public procurement. Environmental protection has been included as a criterion for the selection of products and services, and compliance is a prerequisite for the participation in bids. When the amendment finally comes into place, it would diametrically change the current procurement practices and would go a long way in paving the way for the adoption of sustainable procurement practices within the government.

India¹⁴

India's policies on government procurement are based on general principles laid down in the revised General Financial Rules 2005¹⁵ of the Ministry of Finance. At the state level, it is the State General Financial Policy that governs the government procurement policy. In most states, the policy followed is modelled on the old General Financial Rules of the Government of India.¹⁶ It is difficult to determine total procurement as it is undertaken both by the central purchasing agency, the Directorate General of Supplies and Disposals, and by a number of ministries such as railways, public works and defence. Although there is no separate Indian legislation for government procurement, rules for all government purchases are subject to guidelines established by the Department of Supply and must be consistent with the government's General Financial Rules. The process of procurement is carried out by inviting tenders. To increase transparency in its bidding procedures, the Indian government completed the development of standard bidding documents based on the World Bank's procurement guidelines, 1995/96, in July 1997. India has also adapted

¹³ Part of the information in this section has been sourced from document WT/WT/TPR/S/21, October 4th, 1996, submitted to the WTO Secretariat by Brazil as part of the Trade Policy Review Mechanism, with added inputs.

¹⁴ Part of the information in this section has been sourced from document WT/WT/TPR/S/33, July 1997, submitted to the WTO Secretariat by India as part of the Trade Policy Review Mechanism, with added input.

¹⁵ http://finmin.nic.in/the_ministry/dept_expenditure/GFRS/GFR2005.pdf.

¹⁶ Presentation made by Mr M. P. Gupta at the National Seminar on Government Procurement, May 2006, New Delhi. See

<http://www.unctadindia.org/displaymore.asp?Gr=&chkey=&subitemkey=771&itemid=378&subchnm=Past&subchkey=56&chname=Events>.

to Indian conditions, the World Bank's standard bidding document for the procurement of goods, works, supply and installation and pharmaceuticals and vaccines, and has finalized national competitive bidding documents for use in World Bank-funded projects in India. The India-specific standard bidding documents are also expected to be used in contract/procurement manuals for government ministers and departments.

The Indian government, under these rules also provides for a specialized system of reservations for khadi¹⁷ and handloom sectors and some specific products from the small-scale sector. Rule 144 of the General Financial Rules, provides that:

The central government, through administrative instructions, has reserved all items of hand-spun and hand-woven textiles (khadi goods) for exclusive purchase from KVIC.¹⁸ It has also reserved all items of handloom textiles required by central government departments for exclusive purchase from KVIC and/or the notified handloom units of ACASH.¹⁹ The central government has also reserved some items for purchase from registered small-scale industrial units. The central departments or ministries are to make their purchases for such reserved goods and items from such units as per the instructions issued by the central government in this regard.

This is a reflection of the primary policy of the government to provide for financial and infrastructural support to the handloom and the small-scale sectors. Both these sectors, however, are rated highly in terms of social performance, since they employ a high percentage of labour and are arguably sustainable in terms of their energy usage. This kind of a reservation system therefore has a positive impact on sustainable procurement by the Indian government.

Similar to the findings of the study with reference to Brazil, in India too, energy conservation is set to become one of the driving forces in augmenting the agenda of sustainable procurement within the government. Section 14(b) of the Energy Conservation Act, 2001, provides for a process of notification of standards of energy efficiency by the Bureau of Energy Efficiency (BEE), a statutory body set up under the Ministry of Power, which empowers BEE to "prohibit manufacture or sale or purchase or import of equipment or appliance specified under clause (b) unless such equipment or appliance conforms to energy consumption standards." This provides for a clear regulatory mandate for BEE to facilitate and oversee public procurement with an aim to conform to energy-efficiency standards, which it aims not to formulate.

China²⁰

There is no specific legislation on sustainable procurement in China. However, the ninth recital of the Law of Public Purchasing states that, "the public purchase should be helpful for the national economy and the objective of social development, including the protection of the environment, the support to those underdeveloped and minority districts, the promotion to small enterprises, etc." The explanation about "protection of environment" is that "the public purchase should be propitious to the environment improvement of the produce process, and the government should purchase the production according with the appeal of environment protection. It means that the public purchasing cannot buy the production from the corporation which results in negative environmental externalities. The public purchase should consider the request of environment protection, give those regular firms more benefits, promote and support them for a further development through the commercial chance of public purchase." The Chinese government makes the "Project of Constructing an Environmentally-friendly Society" an important content of "11th Five Programming." It has passed a series of policy documents to promote the work of green public purchase.

The state department has issued several opinions to "accelerate the development of circulatory economy" in 2005 (authorized number: [2005] No. 22). In this issue, the fifth important part states that, "in the segment of consumption, we should encourage a new method which is good for the resource saving and environment protecting, and make a promotion for those using productions with energy-efficiency labelling, energy-saving or water-saving labelling certification, environment

¹⁷ Khadi refers to Indian hand-spun and hand-woven cloth and muslin, made by skilled artisans in rural India.

¹⁸ The Khadi Village Industries Commission.

¹⁹ The Association of Corporations and Apex Societies of Handlooms.

²⁰ Information supplied by Environmental Certification Center of SEPA, China.

labelling, green-food labelling and organic-food labelling, reduce the use of over-packed and one-off productions. Governmental institutions should implement the Green Public Purchase.” The state department issued a decision to “put the scientific and developmental viewpoint into effect of reinforcing environment protection in February 2006, in this issue, the ninth clause emphasized on the development of circulatory economy” said “in the segment of consumption, we should emphasize the environment-friendly consumption method, implement the environment labelling, the environment certification and the Green Public Purchase System, consummate the using of system of recycle resource.”

China has developed its Green Public Purchasing work in some districts. The local finance departments unite the local environmental protection departments to promote a series of official documents about Green Public Purchasing in these districts, including a list of products, the guideline of purchase and some other standard documents as well as local management regulations. “Green Olympic” is an important topic of the 2008 Olympic Games; it has become a point of international foci. One of the significant elements of “Green Olympic” is purchasing environmentally-friendly products and services, which is a good chance and platform for the Chinese government to examine the effort of green public purchase. The Beijing Olympic Committee has already published a book—*The Guideline of Green Purchase* and put it into practice. In 2008, the Olympic Games in Beijing will use more environmentally-friendly products than ever. Several similar initiatives have been implemented at the level of the provincial government. For example, the finance and environmental protection departments in Qingdao have published a list of environmentally-preferable products for procurement by all local government organizations. In addition, the public purchasing Web site of the Qingdao environment protection department contains additional data based on environmentally-preferable alternatives. Another example is the 2004 eco-city ordinance of Guiyang, the capital city of Guizhou province. The 25th clause in the ordinance requires that governments at every level make an effort to encourage green consumption, develop a green market system actively, generalize green purchasing and socially-sustaining consumption and advocate and develop modest consumption. Furthermore, every budget in 2006 should include provisions for green public purchasing to stimulate markets for environmentally-preferable products.

South Africa

The State Tender Board Act, 1968, established the State Tender Board. This is the primary agency for the regulation of government procurement in South Africa. The next rung under the State Board is the provincial tender boards, which are responsible for government procurement at the provincial level. Preference is given to larger and well-established entrepreneurs. Public sector utilities such as Transnet and Eskom generally follow the procurement policy of the boards and sometimes assess grants based on local content requirements.²¹

In the context of sustainable procurement, the Department of Environment Affairs has adopted a Preferential Procurement Policy under the Preferential Procurement Policy Framework Act, 2000. It focuses on internalizing energy-efficient, sustainable-consumption and local-development requirements within the government procurement framework. It is essentially an instrument for targeted procurement pursuant to the requirement of Act 108 of the Constitution. The act focuses on the promotion of domestic industries, especially medium, small and micro enterprises and those owned by previously disadvantaged groups. On the environmental side, the act gives special attention to the promotion of domestic industries, especially renewable energy and clean energy development. Specific programs have been developed on the Eco Responsible Procurement Guidance as part of the Durban Green Procurement Programme. This policy essentially attempts to bring into play the different strands of energy efficiency, sustainable consumption and local development within the government procurement framework without explicitly stating the sustainability benefits of such procurement initiatives.

In the context of sustainable procurement, South Africa has a broad-based Black Economic Empowerment Act, 2003, which promotes black economic empowerment through income generation by employing people from the black community in procurement activities. The act aims

21 WT/TPR/S/34, April 6th 1998.

to create equality in society by promoting employment amongst the black people. This adds to the social dimension of the sustainability of procurement activities. The act requires that the “Black Economic Empowerment Advisory Council,” decides on the codes of good practice in procurement activities. The council also gives advice to the government on black economic empowerment, reviews the progress of black economic empowerment and helps in the implementation of charters on black economic empowerment. Through these functions, the council adds to the sustainability dimension of “public procurement.”

European Union

The EU has one of the most comprehensive legal framework on green procurement. Before discussing the various aspects of this framework it is imperative to reserve a comment on the nature of the framework itself. The essential agenda at the EU level on sustainable procurement is exclusively focused on environmental criteria and quite explicitly deals with “green procurement.” This is in contrast to developing countries like South Africa and India, wherein sustainable procurement, though not explicitly stated, does seem to include social aspects like the social development of disadvantaged groups.

The legal framework on green procurement in the EU is primarily based on two directives, that is Directive 2004/18 and 2004/17. While the former focuses on general coordination between different kinds of contracting methodologies, the latter focuses on specific sectors like water, energy, transport and postal services. The applications of these directives are conditioned on the fulfillment of a certain threshold of the estimated value of the contract. These directives are essentially based on the European Court of Justice (ECJ) jurisprudence in the Helsinki BUS²² and the Wienstrom²³ cases. In both these cases, the European Court of Justice accepted the imposition of environmental conditions within procurement, provided they were based on objective criteria. At the overarching level, the concept of “sustainable development” was expressly included in the Amsterdam Treaty in 1997. The EU Sustainable Development Strategy was also adopted at the Gothenburg European Council in 2001,²⁴ making it mandatory to take into consideration environmental objectives in economy policy-making and in adopting a balancing of objectives, giving due weight to environmental considerations.

The Sixth Environmental Action Programme (2001) identified a number of areas in which critical intervention was required, like climate change, the protection of nature and biodiversity, environment and health and quality of life, managing natural resources, and tackling waste. The communication on Integrated Product Policy (IPP) that was adopted in June 2003 “advocates life-cycle thinking, in order to take appropriate action at the problem stages in the life-cycle. The objective is to avoid shunting the environmental impact from one phase of the life-cycle to another. On the public consumer side, the IPP communication underlines the importance of Green Public Procurement.”²⁵ Under this initiative, the following actions were taken:

- a. determining the extent of greener public procurement in the EU;²⁶
- b. encouraging Member States to develop action plans for the greening of public procurement, which could be made publicly available; and
- c. bringing out a practical handbook for public authorities, and developing a product-group database and a green public procurement (GPP) Web site.

In January 2004, the EU issued its Communication on Stimulating Technologies for Sustainable Development: an Environmental Technologies Action Plan (ETAP) in which public procurement was identified as one of the strategic tools for boosting the demand and application of environmental technologies within the EU. Thus, overall there have been significant investments in setting up the groundwork for mainstreaming green procurement options within the procurement

²² Judgment of the Court of Justice in Case C-513/99.

²³ Judgment of the Court of Justice in Case C-448/01.

²⁴ COM (2001) 264 final.

²⁵ See http://ec.europa.eu/environment/gpp/eu_policy_framework_en.htm.

²⁶ This lead to the publication report by the ICLEI in 2003.

framework of the Union. It has also made several efforts to establish linkages with other ongoing initiatives like that of the ETAP.

Conclusion

In this part we make certain general remarks pertaining to the scope, efficacy and differences between national jurisdictions and their impact on sustainable procurement.

- a. At the multilateral and regional levels, there is no strategic legal framework that is focused on sustainable procurement. Most international agreements and associations have made efforts to enable transparency within the government procurement framework. However, by being silent on the issue of sustainable procurement, it does create some ambiguity as to the legal validity and the scope of policy flexibility available domestically to develop and implement such policies. This ambiguity in the short run could have a negative impact on governments taking up such policies as they would be unsure whether such steps would violate their international obligations. There is, therefore, a need to clarify the international legal framework.
- b. There exists a multiplicity of approaches to enable a sustainable procurement framework within countries. Some countries have been using procurement policies to further social and other development policies. However, most of these policies are uncoordinated and lack sectoral linkages; therefore, failing to leverage their full potential. Thus, there is a need to coordinate these initiatives under the umbrella of sustainable procurement. This also implies that sustainable procurement would to an extent have to be customized towards local conditions and prioritized in terms of the social criteria which it addresses.
- c. Also significantly, most definitions of sustainable procurement generally include both environmental and social criteria, (with the exception of the EU, which focuses solely on “green procurement”). However, these definitions are broad in scope and leave room for procurement agencies to fashion rules which best suit their objectives. In that sense, the legal framework for sustainable procurement is not a mandatory framework. This is based also on the understanding that such laws would have to be necessarily wide-ranging in order to provide for differences in product characteristics and other specifics, which would need to be addressed at the procurement-agency level. This is indeed a challenge, which the law would have to address at some stage.

CHAPTER 5: International and national programs on Sustainable Public Procurement

Integrating sustainability criteria into the procurement process

When commencing research on national and international Sustainable Public Procurement programs, the priorities were not only intended to identify such efforts but also to assess the extent to which they are embedded into the typical stages of procurement processes. Procurement in the public sector is typically conducted as follows:

- a. establish the need to procure;
- b. advertise tender;
- c. deadline for applicants to return the Pre-Qualification Questionnaire;
- d. evaluation of Pre-Qualification Questionnaire and short-listing of suppliers;
- e. issue invitation to tender;
- f. deadlines for the receipt of tenders;
- g. evaluate tenders;
- h. suppliers' clarifications;
- i. make award decisions and notify award details;
- j. award contract;
- k. commence contract;
- l. monitor contract; and
- m. close of contract.

This project finds that the wider-debate on SPP is focused mainly on:

- enabling legal and policy framework; and
- the use of standards and eco-labels to identify products and services that are environmentally and socially preferable.

There is very little information on how SPP is integrated into procurement processes. This may be because SPP is a relatively new area of activity and a few more years of experience is needed for such data to be generated. The first real efforts on national SPP began in the mid/late 1990s in the EU and U.S.). Several SPP proponents—who were interviewed in the course of this project—confirmed this assumption and further stated that the challenges of SPP are yet to be fully understood.

Given this gap in information, this chapter will present short summaries of each of the international and national SPP programs identified through this project. More detailed descriptions of these programs can be found in Annexure 1 and Annexure 2.

International Sustainable Public Procurement programs

At the international level, five major SPP programs are summarized in the table below. A detailed description of these programs can be found in Annexure 2.

This list is not exhaustive, but it includes all the international initiatives that appear to be influencing the global SPP debate.

	Name of program	Organization leading the program	Short description of program
1	The Marrakech Task Force on Sustainable	Government of Switzerland, Federal	This is a voluntary initiative that aims to support the implementation

	Public Procurement	Office for the Environment (FOEN)	of Sustainable Public Procurement by developing tools and capacity building in developed and developing countries. It builds into the 10 year Framework on Sustainable Production and Consumption of the United Nations Environment Programme (UNEP). Members of the task force include the U.K., China, Brazil, Argentina and Norway.
2	The International Green Purchasing Network (IGPN)	International Network for public sector and private sector organizations working on sustainable procurement. The IPGN Secretariat is based in Tokyo.	IGPN promotes green purchasing by providing a platform for networking, exchange and collaboration for international organizations, local authorities and NGOs active in sustainable procurement. The main activities of the network are research, training and capacity building, and the developments of tools and guidelines on sustainable procurement.
3	The Local Governments for Sustainability (ICLEI)	An association of over 475 local governments and national and regional local governments' organizations that have made a commitment to sustainable development.	ICLEI operates two major programs on sustainable procurement in Europe: the <i>"Buy it Green"-Network (BIG-Net)</i> and in the <i>Procura+ Campaign</i> . The <i>BIG-NET</i> coordinates European sustainable procurement initiatives and promotes cooperation amongst local authorities in Europe. The <i>Procura+ Campaign</i> helps public authorities across Europe implement SPP and promote their achievements.
4	North American Green Purchasing Initiative (NAPGI)	NAPGI is established at the Commission for Environmental Cooperation in Canada. The Steering Committee is made up of major groups and agencies working with green purchasing in North America.	The initiative maintains a list of: ongoing green purchasing activities; creates a unified voice to engage manufacturers, purchasers, politicians, the media and the general public; develops and maintains a database of supporting tools and policies; and conducts research on sustainable purchasing.
5	European Union Green Purchasing Programme		The EU has adopted a range of legal and policy instruments to enable "green public procurement" in all Member States. <u>The Legal Framework:</u> In 2004, the Council and the European Parliament adopted two directives aimed at clarifying, simplifying and modernizing existing

		<p>European legislation on public procurement. These are namely:</p> <ul style="list-style-type: none"> • Directive 2004/18 on the coordination of procedures for the awarding of public works contracts, public supply contracts and public service contracts (“classical” directive focussed on contracting authorities); and • Directive 2004/17 on the coordination of procurement procedures of entities operating in the water, energy, transport and postal services sectors (“special sectors” directive focussed on contracting entities). <p>These Directives provide clarification on the following areas that were hitherto unclear in providing guidance on integrating environmental considerations into procurement procedures: determining the “subject matter;” definition of technical specifications; using eco-labels in specifications in a non-discriminatory manner; developing criteria for selecting tenderers; establishing conditions for the exclusion of tenderers from the selection process; integrating environment concerns and the need to ensure the “best value for money” in award criteria; and assuring environmental performance during the contract.</p> <p>The policy framework: A number of green procurement program initiatives have launched under the 2001 EU 6th Environmental Action Plan. The renewed EU Sustainable Development Strategy of June 2006 commits Member States to achieve a level of green public procurement equal to that currently achieved by the best performing Member States in 2010.</p>
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National programs on sustainable procurement

This project identified 34 national programs on SPP which are listed in the table below. Again, this list is not exhaustive, but it includes all national programs that have an electronic presence. Several

proponents of these programs were also interviewed as a part of this project. A detailed description of these programs can be found in Annexure 2.

	Name of country	Short description of program
	OECD member states	
1	Switzerland	<p>Sustainable public procurement is identified as a part of the national sustainable development strategy.</p> <p>Procurement targets have been established which are based on reducing environmental and social risk assessment across the product life-cycle. Countries of origin, and a list of “risk countries” has been compiled.</p> <p>Procurement staff is provided with training on sustainable procurement.</p> <p>Mechanisms are in place for each administration to monitor and audit their performance in meeting procurement targets, though there is no requirement for performance disclosure.</p>
2	Austria	<p>The Austrian Procurement Act makes provisions for environmental targets and standards to be included in tender specifications and award criteria. The act also states conditions under which social responsibility elements can be included. These are based on compliance with national and international labour and consumer protection laws.</p> <p>Each administration is also required to provide training on sustainable procurement to all procurement staff.</p> <p>There are no provisions for performance monitoring and reporting.</p>
3	Belgium	Several government agencies at the national and provincial level have developed an organization-specific sustainable procurement policy and strategy. Some have proceeded to include objectives and targets.
4	Finland	<p>Interest in sustainable procurement began in 2005 though a multistakeholder working group set up by the Ministry of Trade and the Ministry of the Environment. While the primary focus of the working group was to promote broad-based thinking on design for the environment and promote the uptake of environmental technologies, the working group also proceeded to make proposals to the government suggesting that SPP would be an important boost to the wider commercialization of low-impact products.</p> <p>This saw the birth of the national program on sustainable procurement, which is working to establish procurement criteria for a range of products. The national procurement program is to be implemented by 2010.</p>
5	France	<p>There are two important triggers for sustainable procurement in France. First the National Sustainable Development Strategy (2003), which identifies targets for Sustainable Public Procurement. Second, the integration of an environment charter into the national constitution in 2005. That same year, public procurement tenders relating to timber and energy products were reported to have included, for the first time, specifications on sustainable forestry and energy efficiency.</p> <p>National procurement legislation already contains regulations for “green” and sustainable procurement in some sectors. This is currently being expanded to include a range of other products and services.</p>
6	The Netherlands	Sustainable public procurement falls under the jurisdiction of the Ministry of Economic Affairs. Commencing with the procurement

		<p>of organic foods, energy-efficient appliances and sustainable clothing, ambitious targets have been established for all government departments:</p> <ul style="list-style-type: none"> -100 per cent of procurement by central government departments and their agencies should be based on environmentally- and socially-preferable alternatives by 2010; and -50 per cent of procurement by local governments should be based on environmentally- and socially-preferable alternatives by 2012.
7	Norway	<p>Norway was one of the first countries to embark on the green procurement journey, with the establishment of GRIP the Norwegian Foundation for Sustainable Consumption and Production, by the Ministry of Environment in 1993. The 2005–2009 Green Procurement Programme of GRIP, includes “providing advice on how environmental criteria can be formulated in tender documents, especially within the legal framework of public procurement.” This legal framework, the Norwegian National Act on Public Procurement (2001), makes provisions for environmental considerations in procurement decisions. The program places particular emphasis on the following products and services: cars and mobility; buildings and tenancy agreements; textiles; paper and printing services; PCs and information technology; and net-based conferencing and collaboration.</p> <p>GRIP is also entrusted with the mandate of networking across the Norwegian government, as each agency/administration is responsible for its procurement processes.</p>
8	Denmark	<p>In 1995, the Ministry of Environment put forward a sustainable procurement action plan for all federal administrations. A year later, legislation was passed to require all central government institutions and government-owned companies to develop and implement an action plan to consider environmental aspects together with price and quality in procurement decisions. In 1999, the Ministry of Environment entered into a voluntary agreement with regional and local authorities to implement green procurement efforts and give environmental aspects the same consideration as price and quality in procurement decisions.</p> <p>Environmental criteria are also integrated into the national procurement services offered by National Procurement Ltd. to its government authorities.</p> <p>Since 2000, the Danish Environment Protection Agency has also offered subsidies to smaller municipalities to encourage collaboration in green procurement.</p>
9	Sweden	<p>The Swedish facility and guidelines for environment procurement, the EKU-instrument, was first developed by the Swedish state, local authorities and county councils and with some participation from the Swedish business sector under the umbrella of the Committee for Ecologically Sustainable Procurement, established in 1998. The initial mandate of this committee was to develop specific guidelines and methods for the use of environmental criteria in public procurement for different product groups. Subsequently, the committee was also asked to develop a Web-based instrument for the Swedish public sector and the EKU instrument was developed. At present, it contains guidance on 18 product categories.</p> <p>In January 2003, the Swedish government delegated the responsibility for the EKU-instrument to the Swedish Environmental Management Council (SEMCO), which is a joint initiative of the Swedish state, the Swedish Association of Local</p>

		<p>Authorities, the Swedish Federation of County Councils and the Confederation of Swedish Enterprises. The council is responsible for improving and developing the EKV-instrument to widen its relevance to the private sector.</p> <p>The Swedish Environment Protection Agency is reported to have provided the Swedish State with a blueprint for a national action plan for sustainable procurement, which at the time of writing is awaiting a response.</p>
10	Canada	<p>The impetus for sustainable procurement is provided in the 2007–2009 Canada Sustainable Development Strategy, which makes several commitments under the Greening of Government Operations. These include government-wide targets and common performance measures for green procurement, with an emphasis on the procurement of low carbon products and services.</p> <p>To oversee the implementation of the sustainable procurement commitments, the DG-level interdepartmental Sustainable Development in Government Operations’ (SDGO) Green Procurement Task Group (GPTG) has been set up to develop a federal green procurement strategy to assist it in implementation. The Greening of Government Operations sustainable procurement Web site hosts a range of tools and case studies on procurement. Playing a central role in enabling these efforts is the Canada Environment Choice Programme.</p>
11	U.S.	<p>Environmentally Preferable Purchasing (EPP) is a federal-wide program of the U.S. Environment Protection Agency (EPA) that encourages and assists executive agencies in the purchasing of environmentally-preferable products and services. The EPP program was established by EPA in response to President Clinton’s 1998 Executive Order 13101 on Greening the Government through Waste Prevention, Recycling and Federal Acquisition.</p> <p>The EPP program serves as a clearinghouse for information and tools to enable Executive agencies to purchase environmentally-preferable products and services. EPP’s audience is not limited to the federal government. The U.S. EPA reports that state and local governments as well as the private sector have used the services of the program.</p> <p>The EPP Web site hosts a range on guidance materials as well as Web-based catalogues and databases on environmentally-preferable products, and lists examples of eco-labels that test and certify environmental suitability. Amongst the eco-labels listed are the U.S. EPA’s Energy Star Programs and the Comprehensive Product Guidelines.</p>
12	Australia	<p>States have direct responsibility for executing sustainable procurement and are in varying stages of developing green procurement policies, institutionalizing sustainable procurement objectives and implementing strategies to meet these goals. That said, each state has developed policies on environmental procurement and guidelines and Web tools to increase awareness and expertise on low-impact alternatives. State procurement boards have also been engaged in various capacities, including advising procuring authorities on the environmental attributes of products and integrating performance targets on water, material and energy efficiency into procurement decision-making.</p> <p>Several states have also included environmental standards into supplier pre-qualification schemes and listings.</p> <p>Integral to the efforts of states is Good Environmental Choice</p>

		Australia, the eco-label of the Australian Environmental Labelling Association Inc., which tests and certifies that a product is environmentally preferable.
13	New Zealand	<p>While there is no express provision for sustainable procurement in the New Zealand Procurement Policy and the New Zealand Mandatory Rules for Procurement by Government, sustainable procurement is promoted under a mix of policy and voluntary instruments.</p> <p>The most significant is the “Govt3” network/program run by the Ministry of Environment for government agencies to improve sustainable procurement and environment management. The objective is to allow agencies to share experiences in providing advice on the implementation of the government’s sustainability policies. As of June 2nd 2006, 47 agencies have formally signed up to Govt3 membership. The Govt3 program also engages in less formal partnerships with sustainability leaders in the wider public and private sectors.</p> <p>Govt3 focuses on sustainable procurement across the following areas: energy efficiency, recycling/waste minimization, buildings, transport and office consumables and equipment. The program has also published guides and databases on environmentally-preferable alternatives.</p> <p>Other efforts include the New Zealand Government National Energy Efficiency and Conservation Strategy (2001) and a New Zealand Waste Strategy (2002), which set specific targets for procurement.</p> <p>Of particular interest in the National Energy Efficiency and Conservation Strategy sets is the target of 15 per cent to improve energy efficiency over five years in the central government. The Energy Efficiency and Conservation Authority (EECA), the principal body responsible for delivering the strategy, provides assistance to purchasing agencies under its Energy Wise Government program. EECA provides partial funding for energy audits of buildings and vehicle fleets, and low-cost loans to finance the purchase of energy-efficient equipment. Eco-efficient vehicle purchasing guidelines were published in 2003.</p> <p>The New Zealand Ministry of Environment also encourages that procurement managers and staff familiarize themselves with environmental quality assurance schemes, especially the government-endorsed Environmental Choice New Zealand, and the ISO 14000 series. The project team has observed that there is a strong emphasis on Environmental Choice New Zealand in procurement specifications.</p> <p>The New Zealand government also expects its agencies to take all reasonable steps to ensure that timber and timber products procured, including tropical timber, are from legally-logged and sustainably-managed sources. The recommended sustainable forestry accreditation scheme is the Forest Stewardship Council.</p>
14	Japan	<p>The Japan Green Purchasing Law in 2000 requires all government bodies including federal, cities, prefectures, towns and villages to develop a green purchasing policy, implement a green purchasing system and publish a summary of green purchasing records on an annual basis. At the time of enactment, there were 101 items targeted for green procurement. These included paper, office supplies, furniture, electrical appliances, office equipment, lighting, vehicles, uniforms, building materials and products and services involved in</p>

		<p>public works. Since then, this list has been expanded to over 150 items. The environmental criteria and specifications for each of these items are published and updated by the Japan Ministry of Environment.</p> <p>The Japan Green Purchasing network includes private sector firms (such as Matsushita Electronics, Sony, NEC, Shin-Nihon Seitetsu, and Tokyo Gas), more than 355 government authorities, consumer associations and NGOs. The total membership of the network presently stands at 2,643. The network promotes sustainable procurement/purchasing in government and the private sector, develops tools to enable green procurement, and conducts research on design for the environment. Specifications have been published for over 30 product groups and an annual data book is published with summaries of research.</p>
15	U.K.	<p>The U.K. Government's 2005 Sustainable Development Strategy set out to make the U.K. a leader of sustainable procurement in the EU by 2009.</p> <p>Acknowledging that the continuation of current efforts would not be sufficient to reach this goal, the Secretary of State for the Environment, Food and Rural Affairs (DEFRA) and the Chief Secretary to the Treasury established a multistakeholder task force to develop an action plan for sustainable procurement. Members of the task force included major suppliers to the government, NGOs, trade unions, major public procurers and the U.K. Sustainable Development Commission.</p> <p>After having conducted a benchmark study on EU procurement efforts and those of individual EU Member States, the task force commissioned further research to establish how best triple bottom line aspects could be mainstreamed in procurement processes and decision-making. The task force also drew on the findings of reports by the National Audit Office, the Environmental Audit Committee and others and presented a National Action Plan to develop sustainable procurement across all central authorities in the U.K. The action plan made six key recommendations (see Annexure 2 for details), and designed a flexible framework for continued improvement and a mechanism to identify areas of high priority spend.</p> <p>The response of the U.K. government to the action plan includes: robust mechanisms to embed sustainable procurement into procurement processes; the identification of positions of responsibility for sustainable procurement; the assignment of mechanisms to deal with budgetary consideration based on whole-cost accounting and set-out objectives; and targets for sustainable procurement.</p>
16	Germany	<p>The Federal Waste Law requires federal purchasers to investigate aspects related to recycling, product life and durability when drafting procurement specifications.</p> <p>The federal government also has a policy to procure sustainable timber and integrate a design for the consideration of the environment into the procurement and renovation of buildings. "Blauer-engel" is the national eco-label of Germany.</p>
	ASIA	
17	China	<p>The 9th of the Law of Public Purchasing in China stipulates that public procurement should promote social development, the protection of the environment, support for underdeveloped and minority districts and the promotion of medium- and small-</p>

		enterprises. This law is reported to be widely interpreted to imply that public procurers should not purchase goods and services that have been produced through processes and products that cause unacceptable environmental damage. To enable its enforcement, the Environmental State Environment Protection Agency (SEPA) and the Ministry of Finance have published environmental criteria listings for 14 product groups including office equipment, furniture, buildings materials and interior decorating materials. China has also developed a series of Green Public Purchasing networks at the provincial and district levels. Membership includes the local finance departments, local environment protection departments and other government offices. Also promoting the SPP agenda is the “Green Olympics” banner of the 2008 Olympic Games to be held in Beijing.
18	South Korea	Korea has the Act on the Promotion of the Purchase of Environment-friendly Products, which encourages environment-friendly product purchasing to prevent the wasteful use of resources and environmental pollution, and to contribute to sustainable developments in the domestic economy. The act highlights procurement by public agencies like national government agencies, local governments and government invested institutions to which the Government Invested Institution Management Basic Act applies, and other agencies designated by the Presidential Decree. Articles 3 and 4 of the Act lay down responsibilities and basic plans to encourage the purchase of eco-friendly products. The act also clearly spells out the monitoring process of a “sustainable procurement track record” by various responsible agencies. There is an emphasis on e-procurement of eco-friendly products in South Korea.
18	South East Asia (Malaysia, Indonesia, Japan)	Malaysia, Indonesia and Japan have taken proactive measures as far as “Sustainable Procurement Policy” in government procurement is concerned. Most of these countries do not have a federal legislation acting as umbrella legislation guiding all government procurement. The way it has worked in these countries is through the partnership of the government with certain organizations who have worked proactively in sustainable procurement. In this regard, the Green Productivity Association of Malaysia has been quite successful. This association has promoted green productivity through better environmental management systems, the adoption of green procurement standards and laying down guidelines for green purchasing. The Japanese government has facilitated green purchase by private players through awarding companies for green procurement practices, as noted above.
	AFRICA	
19	Mozambique	There is an emphasis on curbing corruption in procurement activities with provisions in criminal law. New innovative techniques have been introduced for green procurement on a turnkey basis. Transparency has been introduced into procurement activities through efficient licensing and custom procedures.
20	Malawi	In Malawi, significant emphasis has been laid on the conservation of environmental resources in the procurement process of goods, in construction activities and in providing services. A procurement code inspired by the UNICTRAL Model Law has been drafted and a procurement law on the procurement of goods, in construction activities and in providing services was enacted on August 1 st , 2003. The procurement code and law emphasize green procurement practices in order to address the point of conservation of

		<p>environmental resource and environmental degradation. In order to increase transparency in the procurement process, various initiatives like e-procurement have been implemented. The selection of bidders is done through a short listing of a registration list and negotiations regarding the selection are based on clear guidelines. The process of submission of tenders is also being published in international media to increase transparency. Transparency has been introduced in the system by the efficient functioning of the customs department where the staff members are familiar with shipping and trade documents. Good governance practices have been introduced to create sustainability in procurement practices. In order to check corruption in procurement practices, the flow of funds for procurement practices is monitored so that the funds are not channelled to finance activities like money laundering and terrorism. The procurement profession as a job, which often hinges on the sustainability aspect of procurement practices, is not given a high social status. One of the reasons behind this could be the low pay associated with it.</p>
21	Tanzania	<p>In Tanzania, a large emphasis has been placed on corruption mitigation to bring sustainability into procurement practices. In Tanzania a “Public Procurement Act” has been enacted to combat corruption as a part of a “National Anti-corruption Strategy and Action Plan.” Large emphasis has been placed on bringing transparency into procurement practices. This has been done through the enforcement of existing rules on advertising, pre-qualification, submission and the opening of bids, and the use of appropriate evaluation criteria through regular audits and the application of effective sanctions.</p>
22	Ghana	<p>In Ghana, actions have been taken to mitigate corruption in the procurement process and bring sustainability into the procurement process. The Ghana Anti-corruption Coalition (GACC) aims to advocate for strengthening the Serious Fraud Office and the Commission for Human Rights. The GACC also aims to pay greater attention to civic education in order to combat corruption in procurement practices. There has also been a focus on strengthening all institutions of the government in order to infuse greater accountability and transparency into the system of public procurement. However, there is a lack of government anti-corruption measures, and a social perception exists that the level of corruption in public procurement is still high as the same bureaucrats remain, despite changes in government.</p>
23	South Africa	<p>In South Africa, a well-drafted policy exists with regard to sustainable consumption practices promoting environmentally-sound purchasing practices. The preferential Procurement Policy Framework Act of 2000 mentions green procurement practices. The sustainability of procurement practices has been increased through local economic development and job opportunities for disadvantaged groups. However, a significant policy-oriented legislative effort has been initiated in South Africa with regard to sustainable waste recycling processes in procurement activities. There has also been an emphasis on packaging goods through a larger focus on the packaging of wastes like plastic bags. Recycling initiatives as a part of procurement practices are also a part of the paper and pulp industry with a significant emphasis on the mitigation of environmental degradation. Procurement practices with an emphasis on recycling activities have been operating at various levels like consumers (retailers), collectors (municipalities), waste</p>

		processors (private sector companies, informal sector), brokers (buying and selling recyclable materials), end-use markets (where the purchase of recovered materials take place to produce new feedstock), waste disposal (private sector, municipalities), policy-makers (different government departments), NGOs, communities and research groups. Recycling activities as a part of the procurement process have brought in transparency (through environmental management processes bringing transparency into decision-making and accountability through equity in resource access, the polluter pays principle and full-cost accounting). The Department of Environmental Affairs and Tourism (DEAT) has been developing a Waste Information System (a centralized database) in all procurement activities for bringing in greater transparency. DEAT has also been considering sustainable green procurement activities with regard to the soccer World Cup of 2010. ²⁷ It is already carrying out the practice of information dissemination in procurement activities to bring in greater transparency. In South Africa, there is a broad-based “Black Economic Empowerment Act, 2003,” which aims to establish a legal framework for the promotion of black economic empowerment by way of a larger participation of the black people in the economy, the enhancement of access to resources, infrastructure, finance and skills training. The act makes reference to the establishment of an “Economic Empowerment Advisory Council,” which could advise on codes of good practice, which includes qualification criteria for procurement. This entails that in the process of sustainable procurement, preference could be given to black people in order to enhance their employment opportunities, which could contribute towards the “sustainable development” of the black community. Moreover, charters have been laid out in sectors like mining, which highlight procurement practices and their linkages to black economic empowerment. ²⁸
24	Kenya	The procurement practices of Kenya encompass elements of good governance like transparency, accountability, open and effective competition (through the operation of a market-based system), fair dealings, non-discrimination and the principle of efficiency in value-for-money. Along with good governance in public procurement, the fair conduct of procurement and mechanisms for procurement scrutiny have been introduced. In order to bring in transparency, an e-procurement Web site-based communication system will facilitate the placement of tender.
25	Zambia	Corruption mitigation has been emphasized in procurement activities to infuse greater sustainability in the procurement process. Negotiation practices in procurement have often led to corruption practices in procurement activities, which have to be addressed by an efficient governance framework. The registration systems in cases of purchases from short-listed firms for procurement have been misused, which has affected the transparency and accountability of the procurement framework of Zambia.
26	Cameroon	Cameroon’s procurement practices lack transparency in governance systems for procurement activities. The presence of corruption has to be mitigated to bring in larger sustainability in procurement practices.
27	Benin	In Benin, corruption mitigation has been targeted to bring

²⁷ E-mail communication with Jonathon Hanks, Incite Sustainability.

²⁸ Telephone conversation with Jonathan Hanks, Incite Sustainability.

		sustainability into the procurement process. Along with that, transparency in the system has been increased to create sustainability in the procurement process. An emphasis has been placed on strengthening the governance framework for procurement in future through the Procurement Action Plan along with the enforcement of stringent measures against corruption.
28	Morocco	The governance framework of procurement in Morocco has been improved by the new decree number 2–98–482, which has strengthened the legal and regulatory framework for central and local government procurement. The decree has brought transparency in procurement by establishing the conditions and methods of procurement as well as the provisions governing supervision and management. The new decree has been widely published to infuse transparency in procurement activities amongst public and private sectors.
29	Gambia	In Gambia, corruption reduction has been a major challenge in infusing sustainability into the procurement process. The Public Procurement Regulation dealing with procurement practices in Gambia has allowed access to information regarding procurement. Sections 35 and 36 of the Gambia Procurement Act, 2001, require the procuring organization to publish details of contract awards and participants of the bidding process, which has created transparency in the procurement system. The aim of the procurement system has been to move towards e-procurement in order to bring more transparency and hence greater sustainability into the procurement process.
30	Brazil	“Amazon Friendly Cities” is one of the initiatives of Greenpeace, under which Brazilian cities like Campina, Botucatu, Manaus, Piracicaba and Rio De Janeiro have all signed a charter mandating the adoption of sustainable procurement practices within the sector of timber procurement. Amongst public sector initiatives, PROCEL, has been by far the most successful in terms of channelling procurement funds with the aim of achieving energy efficiency. Private sector support has also been forthcoming for market initiatives like the Bovespa Corporate Sustainability Index (ISE), which indirectly impacts on sustainability aspects of procurement.

Local government programs on sustainable procurement

This project finds that a large number of local authorities, municipalities and town councils in both OECD member states and in developing countries are implementing SPP programs with some success. While the baseline incentives for these could well be national policies on sustainable development and (to a lesser extent sustainable procurement), it is noteworthy that most of these programs do not appear to be specifically linked to them. Rather, they are the result of dynamic international procurement networks and proactive leadership at the local level. Furthermore, as procurement is increasingly decentralized (and even outsourced) local governments are having more say on how they spend their budgets. Bureaucracy at this level is also much lower and reporting hierarchies much smaller. This makes decision-making and follow-up easier, and hence, “new ideas” (such as SPP), are easier to implement. One visionary procurer could make all the difference.

In the case of Africa and indeed the developing world, the call for greater transparency and efficiency in governance frameworks may also be quite an unsuspected driver of SPP at the local level. As decentralization has been carried out in order to allow for the more efficient and transparent allocation of funds for sustainable development, it may inadvertently provide the framework for more democratic and transparent decision-making, which is a great bonus for SPP.

Local governments are also closer to “local suppliers” and hence, the “low hanging” SPP options such as “local sourcing” are easy to implement. At this level of government, there is also an imminent need to contribute to the local economy and promote local social cohesion, and SPP provides an important showcase for such work.

Local governments have also been very successful at networking, sharing experiences and even pooling resources to tender collectively. Similarly, they have also developed important relationships with local stakeholders including local businesses, suppliers and civil society groups, which add even more momentum and purpose to SPPs.

Research observations and overall conclusions

The study shows the steady development of SPP implementation frameworks within developed countries. However this development has largely been limited to the legal and policy framework. The necessary systems for the operation of SPP are still in initial stages. Nevertheless, there is clear consensus across the spectrum of this debate that SPP is not only an important policy objective but is indeed a tool for achieving sustainable development. This consensus is an important prerequisite for the successful and full-scale adoption of SPP, even though in developing countries the debate is yet to begin.

SPP frameworks are also being used to further policy objectives ranging from poverty alleviation, to the economic development of backward regions and other socio-economic objectives. It is therefore ironic that the cost of the goods and services continues to remain the single important, applicable criterion for procurers. The challenge therefore is to establish an economic case for full-life costing that includes the costs of externalities. There is also the need to enlighten procurers and policy-makers that sustainable procurement does not necessarily mean opting for a more expensive product/service, but alternatives that will mean less impacts and increased cost-savings in the medium and longer term.

In the context of local government SPP initiatives, efforts should be directed towards capturing the incremental benefits of such initiatives. For example:

- to enable these initiatives to expand and realize their full triple-bottom-line benefits, a clear government policy or directive on SPP would be of immense value. This would validate SPP as a government priority and help embed it in procurement practices;
- continued emphasis on transparency in the tendering process at the local level is crucial to establish trust and confidence between procurers and suppliers. This is particularly important as procurement procedures and interactions between stakeholders tend to be less formal at the local level; and
- providing for a SPP clearing house at the national level would facilitate information exchange and networking across government divisions and hierarchies.

In most developing countries, government bureaucracies are poorly resourced and are relatively slow moving. In such instances, SPP efforts at the local level can be used to provide the initial momentum and build the case for SPP across the public sector. However, local government action cannot be considered as a substitute for laws, policies and action plans at the national level. For SPP will only serve as a real trigger for sustainable production and consumption if it is systematically rolled out across the public sector with well-designated responsibilities, incentives, objectives and targets. Such a system will require ample access to information on, and amply support for, information and technical expertise on full-life costing and life-cycle assessment.

CHAPTER 6: Guidance materials and tools on Sustainable Public Procurement

Sustainable Public Procurement strategies, at the international, national or local level, appear to often be accompanied by the development of “program-specific” guidelines and tools. The Marrakech Task Force on Sustainable Public Procurement has identified over 300 guidelines and tools on SPP around the world.

This section provides a review of a few materials that the project team considers the most widely used at the global level.

Buying green! A handbook on environmental public procurement, ISBN 92-894-8117-x, © European Communities, 2004

The EU handbook gives an overview of necessary steps of green procurement. It assesses training needs, ensuring access to environmental information with a prioritization on greening procurement practices. The handbook highlights the nature of procurement, the different stages of the public procurement procedure and the importance of assessing the real needs of procurement. The handbook emphasizes the need for a definition of the subject matter, along with the technical specifications of the contract. In this regard, the handbook mentions the specifications of the eco-labels and the need for purchasing decisions to be based on production and process methods. The handbook mentions the methods of supplier selection, as well as the methods of selecting service providers and contractors. In this regard, the criterion of exclusion is also mentioned. The handbook states that—companies that have acted against environmental legislation or regulations could be excluded if it is affecting their professional conduct. In terms of technical capacity, the past experience and professional qualifications of personnel with regard to green procurement is an important criteria. In order to check whether tenderers can perform the environmental management measures prescribed by the contract, contracting authorities may ask them to demonstrate their technical capacity to do so. One of the other criteria is environmental management systems, which can serve as a (non-exclusive) means of proof for that technical capacity. The handbook highlights the award-management system in offering awards for sustainable procurement based on criteria, which are:

- linked to the subject-matter of the contract;
- do not confer unrestricted freedom of choice on the contracting authority;
- are expressly mentioned in the contract notice and tender documents; and
- comply with the fundamental principles of EU law.

The handbook also highlights the contract performance clauses, which include the following:

- contract clauses can be used to include environmental considerations at the performance stage;
- the contracting authority can specify the way the goods are to be supplied and even the method of transport; and
- the contractor is obliged to respect all the performance clauses in the contract.

References

Buying green! A handbook on environmental public procurement. ISBN 92-894-8117-x, © European Communities, 2004.

The Procura+ Manual: A guide to cost-effective Sustainable Public Procurement

The ICLEI *Procura Manual* provides clear and simple advice on how to implement sustainable procurement in a public authority—no matter what size or level of experience.

It presents the implementation model and purchasing criteria developed for *Procura+*, ICLEI's sustainable procurement campaign. The manual highlights why sustainable procurement is smart procurement and why it is essential to undertake sustainable procurement by addressing the benefits of sustainable procurement. The manual also addresses the potential of public procurement by addressing the direct and market impact of public procurement, which drives innovation in the field of sustainable procurement. The manual also highlights the various challenges of sustainable procurement practices. The manual addresses the following questions:

- how to integrate sustainability into procurement?
- what costs are involved in sustainable procurement?
- how does one manage sustainable procurement?
- what are the criteria of purchase and how are they monitored?
- what is the purpose, benefits and aims of the *Procura+* campaign?
- what are the environmental criteria in the tendering process?
- what are the basic principles of tendering?
- what are the selection criteria of the candidates?
- what are the selection criteria of awarding contracts?
- how are contract performance clauses defined?
- what are the benefits of joint procurement?
- what are the various *Procura+* milestones? and
- what are the various procurement targets and how are they achieved?

References

www.procuraplus.org.

The Procura+ Manual: A guide to cost-effective sustainable public procurement, 2nd edition. Publisher: ICLEI – Local Governments for Sustainability, European Secretariat, Gino Van Begin (responsible).
Editor: Simon Clement, ICLEI European Secretariat, Sustainable Procurement Team.

The Environmental Performance of Public Procurement: Issues of policy coherence, organization for economic cooperation and development, 2003

The OECD document contains background reports on the assessment of greener public purchasing programs as well as their linkages with public expenditure management. The document gives a broad overview of the increased use and implementation of greener public purchasing policies, the economic and environmental implications of public procurement, greener public purchasing policies and the wider economy along with other environmental policy instruments, general public purchasing policies and an integrated approach towards greener policy through green public purchase procurement policies. The questions which are addressed while dealing with greener public purchase policies are:

- what and how much is purchased by the government?
- what are the direct and indirect impacts of green public purchase?
- what is the GPP program and what are the policy-design considerations of the green public procurement program?
- what is the environmental effectiveness and cost effectiveness of the GPP?
- what is the overall picture of budget systems and public procurement in OECD countries?

- what are the cost structures of green and brown procurement and their environmental implications?
- what are the implications of budget systems and procurement practices for the environmental characteristics of public procurement?
- what are the specific financial tools for the improvement of environmental characteristics of public procurement?
- what are the legal dimensions of greener public purchasing? and
- what do the national procurement regimes cover and what is the scope of inclusion of environmental factors into public procurement?

References

The Environmental Performance of Public Procurement: Issues of policy coherence, organization for economic cooperation and development, 2003.

Procuring the Future, Sustainable Procurement National Action Plan: Recommendations from the sustainable procurement task force, 2006

The U.K. government's 2005 Sustainable Development Strategy set out the ambitious goal to make the U.K. a leader in EU sustainable procurement by 2009. The strategy recognized that this was important in moving towards a more sustainable economy. Firstly, because the public sector spends about 13 per cent of its GDP on goods, services, works and utilities and is capable of stimulating the market for more sustainable goods and services. Secondly, because only with government leadership can the consumption patterns of business and consumers be shifted onto a more sustainable path. Acknowledging that simply continuing with current efforts would leave the U.K. short of that goal, the Secretary of State for the Environment, Food and Rural Affairs and the Chief Secretary to the Treasury established a business-led Task Force under the chairmanship of Sir Neville Simms to devise a National Action Plan to deliver the U.K. objective. The Task Force's membership was drawn from business—both major suppliers to government and representatives of best private sector practice; non-governmental organizations; trade unions; professional bodies; major public sector procurers and the Sustainable Development Commission. The remit of the Task Force was to focus on the social, economic and environmental dimensions of public procurement. It analysed evidence, drew on experience and best practices elsewhere and commissioned research to show how the U.K. could become a leader in sustainable procurement. It concluded that for the U.K. to reach this goal, a systematic effort to mainstream sustainable procurement was required. The Task Force concluded there would be significant benefits from doing this: better stewardship of taxpayers' money; environmental and social benefits; public sector support for innovation and encouragement for more environment-friendly technologies. Risk would be better managed; concerns about upfront costs would be mitigated through waste reduction and there would be better information about purchasing patterns and improved supplier relationships and management. All these elements of sustainable procurement are, at the same time, simply examples of good procurement practices. The Task Force drew on the findings of reports by the National Audit Office, Environmental Audit Committee and others, as well as its own research to analyse the key barriers to sustainable procurement and presented a National Action Plan for overcoming them. The plan makes six key recommendations, underpinned by three building blocks for sustainable procurement and details the actions which must be taken with milestones for getting started and clear target dates for the future.

References

Procuring the Future, Sustainable Procurement National Action Plan: Recommendations from the sustainable procurement task force, published by Department for Environment, Food and Rural Affairs, June 2006.

This handbook is broken down into Part I, which is meant to be a “global introduction” to procurement. Part II is further subdivided into three country chapters: Indonesia, Malaysia and Pakistan. Each of these chapters includes descriptions of the legal and historical context of corruption in public contracting in their specific countries as well as the various steps that have been taken to work against it. The handbook deals with: an analysis of the problem of corruption in public procurement; anti-corruption strategies and initiatives in public procurement; collaborative tools (involving governments, companies and civil society) to prevent or reduce corruption; and ways of reducing corruption in public procurement.

The handbook analyses the various forms of corruption like Bribes, Facilitation Payments and also the framework in which it can exist *viz.* cartel, structural (planned corruption) and situational (unplanned corruption). The handbook also analyses how corruption can occur in the entire cycle of public procurement *viz.* needs assessment phase/demand determination; preparation phase and process design; contractor selection and award phase; contract implementation; and final accounting and audit. The handbook identifies the following as corruption risks, which are:

- the investment or purchase is unnecessary. Demand is induced so that a particular company can make a deal but is of little or no value to the society;
- instead of systematic leak detection or grid-loss reduction (both of which offer little reward), new capacity is installed (which offers bribe potential);
- the investment is economically unjustified or environmentally damaging;
- goods or services that are needed are over-estimated to favour a particular provider;
- old political favours or kickbacks are paid by including a “tagged” contract in the budget (budget for a contract with a “certain,” pre-arranged contractor);
- conflicts of interest (revolving doors) are left unmanaged and decision-makers decide on the need for contracts that impact their old employers;
- bidding documents or terms of reference are designed to favour a particular provider so that in fact, competition is not possible (or restricted);
- goods or services needed are over- or under-estimated to favour a particular bidder;
- the unnecessary complexity of bidding documents or terms of reference is used to create confusion to hide corrupt behaviour and make monitoring difficult;
- design consultants prepare a design that favours a particular bidder; and
- grounds for direct contracting are abused.

Among the most important areas of increased risk are:

- limited or restricted access to information;
- abuse of exceptions to open public bidding;
- limited or ineffective control and monitoring within the contracting process and particularly during the contract implementation phase; and
- deficiencies and lack of transparency during the budget phase.

The report broadly identifies the various actors in the corrupt deals *viz.* bidders, contractors, sub-contractors, consultants, agents, other middlemen, consultants, joint venture partners and subsidiaries. The report deals with the economic impact, environmental impact and health impact of corruption in public procurement practices. The report highlights the points of action during the

needs assessment phase of public procurement. The report covers each phase of the procurement process and the points of action in each phase of the procurement process. The report also covers the legislative regulations in the form of UNCITRAL and the Government Procurement Agreement of 1996 in the WTO. But the report does not cover the issue of transparency in relation to sustainable procurement, which has been a point of discussion as a part of the Singapore issues. The stake of the developing countries with regard to sustainable procurement in the Doha Round has not been covered in the report, which, if covered, would add a larger transnational dimension to the issue of transparency in public procurement. The report also covers country-wise (Indonesia, Malaysia and Pakistan) public procurement initiatives and details some of the specific features of Sustainable Public Procurement policies, which include:

- the evaluation and selection of a bidder (based on certain principles like low-cost principles);
- the time-frame of the bidding process and the completion process time of the procurement activity;
- estimates and mechanism of valuation of bid prices;
- the effects of various adjustment processes during bidding like correction of errors;
- the determination of contract price;
- the time-frame of tender opening;
- the role of integrity pact;
- various methods of procurement;
- the promotion of public procurement at the local level through the use of mass media;
- the use of mass media in checking corruption and bringing transparency into the public procurement process;
- monitoring the process of public procurement;
- risk factors of public procurement;
- the use of e-procurement to reduce corruption; and
- collaborative tools for preventing corruption in public procurement practices.

References

Handbook for Curbing Corruption in Public Procurement, published by Transparency International, © Transparency International 2006.

Annexure 1: Description of international programs on Sustainable Public Procurement

This section provides an overview of international programs on Sustainable Public Procurement (SPP). They have been developed as intergovernmental initiatives, multistakeholder purchasing networks and as legal and policy frameworks for SPP across countries.

The Marrakech Task Force on sustainable procurement

The Marrakech Task Force (MTF) is an international voluntary initiative lead by the Swiss Government to promote and support the implementation of Sustainable Public Procurement by developing tools and capacity building in both developed and developing countries. It builds on the 10-year Framework on Sustainable Production and Consumption of the United Nations Environment Programme (UNEP).

The current activities of the MTF include the development of a procurement assessment tool, conducting pilot projects on sustainable procurement in emerging and developing economies and facilitating dialogue and collaboration between sustainable procurement advocates and their stakeholders.

The Web site is at <http://www.uneptie.org/pc/sustain/10year/taskforce.htm>.

The International Green Purchasing Network

The International Green Purchasing Network (IGPN) promotes green purchasing around the world by providing a platform for networking, exchange and collaboration for international organizations, local authorities and NGOs active in sustainable procurement. The main activities of the network include:

- researching and publishing best practices and trends on green purchasing at the global level;
- organizing workshops to promote and increase capacities on green purchasing;
- organizing the annual international green purchasing conference, the 2006 conference was held in China; and
- collaborating with stakeholders on the development of green purchasing tools and guidelines.

The IGPN Secretariat is based in Tokyo. The Web site features an overview of national sustainable procurement legislation, other cross-country networks on procurement and a news archives. The Web site is at <http://www.igpn.org>.

The Local Governments for Sustainability (ICLEI)

The Local Governments for Sustainability (ICLEI) is an international association of local governments and national and regional local-government organizations that have made a commitment to sustainable development. More than 475 cities, towns, counties and their associations worldwide comprise ICLEI's growing membership. ICLEI works with these and hundreds of other local governments through international performance-based, results-oriented campaigns and programs.

ICLEI operates two major programs on sustainable procurement in Europe: the "*Buy it Green*"-*Network (BIG-Net)* and in the *Procura+ Campaign*. This said, ICLEI also conducts several other programs that also contribute to enabling local governments to buy sustainable goods and services. The *BIG-NET*, established in 2001, coordinates and promotes cooperation on sustainable procurement initiatives amongst local authorities in Europe. The rationale for this project is as follows: in Europe, local authorities take the lead in developing sustainable-procurement initiatives and as a result, have developed substantial expertise. Therefore, it would be very appropriate to

coordinate their activities further and bring about even more improvements. Many of these initiatives are also implemented in isolation, and *BIG-NET* provides an all-important platform for networking at the local level.

Established in 2005, the *Procura+ Campaign* is designed to help support public authorities across Europe in implementing sustainable procurement and helping to promote their achievements. *Procura+* is managed as a membership campaign for public authorities, who by joining have access to advice, information and networking services. At present, *Procura+* has members from Spain, Italy, Switzerland, Portugal, Denmark and the U.K. The *Procura+ Manual* contains guidance for setting up, implementing and monitoring and reporting on sustainable procurement. It is reviewed in Annexure 5 of this report.

The *Procura+* Web site features a range of tools, publications and case studies to support sustainable procurement. Of particular interest is the:

- Energy Efficient Procurement, The DEEP Toolkit, which contains tools for tackling energy efficiency through procurement;
- the Buy Fair Guide, A Guide to the purchasing of fair trade products in public procurement; and
- the Procurement Scorecard (xls), a simple tool to help public authorities keep track of their sustainable procurement activities.

References

<http://www.iclei-europe.org/index.php?id=procurement>.

<http://www.iclei-europe.org/index.php?id=procurement>.

North American Green Purchasing Initiative

The North American Green Purchasing Initiative (NAGPI) Steering Committee is made up of major groups and agencies working with green purchasing in North America. NAGPI is housed at the Commission for Environmental Cooperation, Canada. The initiative maintains a list of ongoing green purchasing activities, creates a unified voice to engage manufacturers, purchasers, politicians, the media and the general public, develops and maintains a database of supporting tools and procurement policies used across North America and identifies research needs (such as the need to better quantify the environmental benefits of green purchasing), seeks funding to address those needs, facilitates the development of common marketing language beneficial to all and has organized campaigns to improve the performance of specific commodity areas.

The Web site features environmental legislation impacting procurement, case studies, databases and good practices across North America. It also provides information on grants available for SPP programs.

References

http://www.ccc.org/programs_projects/trade_envIRON_econ/nagpi/about.cfm?varlan=english.

European Union

The EU has adopted a range of legal and policy instruments to enable “green public procurement” in all Member States.

The Legal Framework

In 2004, the Council and the European Parliament adopted two directives aimed at clarifying, simplifying and modernizing existing European legislation on public procurement. These are namely:

- Directive 2004/18 on the coordination of procedures for the awarding of public works contracts, public supply contracts and public service contracts (“classical” directive focussed on contracting authorities); and

- Directive 2004/17 on the coordination of procurement procedures of entities operating in the water, energy, transport and postal services sectors (“special sectors” directive focussed on contracting entities).

These directives provide clarification on areas that were hitherto unclear in providing guidance on integrating environment considerations into procurement procedures.

1. Determining the “subject matter” – the directives suggest that the most transparent way of introducing environmental considerations into a public procurement procedure is at the beginning, when the subject of the purchase is defined.
2. Definition of technical specifications – the directives set out several options for including environmental aspects into specifications. Firstly, contracting authorities are encouraged to include environmental-performance standards and request environmentally-friendly production methods, (provided that these are apt to define the subject matter of the contract). Secondly, it is recommended that environmental impacts across the life-cycle of the product or service under tender be considered. Thirdly, contracting authorities have the option of setting technical specifications in terms of performance or functional requirements, allowing tenderers to propose/develop innovative solutions. For example, a tender for an environmentally-friendly heating system for a building may rather specify a constant day-time temperature than set detailed and complex technical specifications. This allows suppliers to propose a range of options.
3. Using eco-labels – the new public procurement directives explicitly state that performance or functional requirements can be taken from specifications of European, international and national eco-labels, provided a series of conditions are met: the criteria have to be appropriate for defining the characteristics of the product; the eco-label criteria must have been established through stakeholder consultation and on the basis of scientific information; and the labelling schemes have to be accessible to products and services of a similar category (non-discriminatory). While this gives purchasing authorities the mandate to recognise eco-labels as proof of environmental conformity with specifications, they are also required to accept other means of proof such as a technical dossier from the manufacturer. Note that purchasing authorities can therefore never require tenderers to be registered under an eco-labelling scheme, because that would be discriminatory.
4. Criteria for selecting tenderers – this refers to obtaining assurance that the tenderers have the necessary financial and technical competence for performing the contract, which includes the environmental dimensions of the product or service under tender. For example, authorities awarding a waste treatment contract can insist that bidders demonstrate their capacity to use environmentally-sound waste treatment methods.

In certain service or works contracts, the contracting authority can ask bidders to demonstrate their capacity to apply environmental management measures for the duration of a service contract. In such cases, registration under the EU’s Eco-Management and Audit Scheme (EMAS), or under a

comparable environmental management scheme (for example, EN/ISO 14001), should be recognized as sufficient proof of compliance. However, registration under an environmental management scheme is not the only possible means of proof; contracting authorities also need to ask for other evidence and records to demonstrate environmental performance.

It must be noted that this option is not open for goods tenders as environmental management measures do not have a direct impact on the environmental characteristics of products. Rather, the implementation of environmental management systems suggests that the process in which the products were produced was resource efficient and involved a lower output of wastes. This has no direct bearing on the quality and composition of the product being tendered.

5. The rationale for excluding tenderers from being selected – the directives explicitly state that grounds for excluding bidders from selection processes relate to the bidder and not to the performance of the contract. These concerns include the bidding company's compliance with tax, social security and environmental legislation, its track record in previous tenders, etc.
6. Integrating environmental concerns and the need to ensure the “best value for money” in award criteria – the directives encourage the selection of the “the economically most advantageous bid,” which includes price along with environmental features. This enables contracting authorities to integrate environmental aspects at the final stages of the procurement process.
7. Assuring environmental performance during the contract – performance clauses of a contract may also include environmental considerations. Acceptable environmental clauses must be non-discriminatory, objectively verifiable and related to technical specifications and/or selection criteria. They also have to be made known to bidders from the start of the procurement procedure. All bidders should in principle, be able to comply with them after conclusion of the contract. For example, it would not be permissible to ask the successful bidder to be registered under an environmental management scheme, because the related registration procedures can be lengthy; not all bidders would, at the time of the commencement and conclusion of the contract, be able to comply completely with this process. On the other hand, it would be permissible to ask that the successful bidder transport the goods supplied by rail and not by truck.

The policy framework

A number of green procurement program initiatives have launched under the 2001 EU's 6th Environmental Action Plan. These include the following:

1. Communication on Integrated Product Policy–IPP (June 2003), which advocates life-cycle thinking in public procurement. It encouraged each Member State to develop and publish, by the end of 2006, a national action plan for integrating environmental criteria into public procurement. A “Handbook on Green Public Procurement” has been published (and revised in 2007) to provide Member States with guidance and information.

2. Communication on Stimulating Technologies for Sustainable Development is an Environmental Technologies Action Plan (January 2004). In this communication, the European Commission reaffirms its ambition for the EU to become a world leader in environmental technology. Public procurement is mentioned as an important vehicle for boosting the uptake of environmental technologies.
3. Facing the Challenge (November 2004) – Report of the High Level Group on the revision of the Lisbon Strategy for growth and employment: This report recommended that national and local authorities draft action plans by the end of 2006 to “green” their public procurement with a particular focus on renewable energy technology and fuels. The Commission is also facilitating the dissemination of best practices among Member States and public authorities.
4. Communication Report on the implementation of the Environmental Technologies Action Plan in 2004 (January 2005). This report reaffirms the European Commission’s need to adopt national action plans for introducing environmental technologies. These plans are required to establish objectives and benchmarks for enhancing green public procurement as well as guidance and practical tools for public procurers.
5. Council Recommendation on the broad economic policy guidelines of the Member States and the Community (2005–2008) (July 2005). This recommendation suggests that Member States should take measures to encourage cross-border knowledge transfer and public procurement of innovative products and services.
6. The Renewed EU Sustainable Development Strategy of June 2006. This strategy commits Member States to achieve a level of green public procurement equal to that currently achieved by the best performing Member States by 2010.

References

http://ec.europa.eu/environment/index_en.htm.

Annexure 2: Description of national programs on Sustainable Public Procurement

This section provides a short overview of all the national SPP programs identified by this project. The discussion begins with the national programs of OECD member states followed by national programs in Africa, Asia and South America.

SPP programs in the OECD

Switzerland

Sustainable Public Procurement is identified as a part of Switzerland's national sustainable development strategy. Procurement targets have been established that are based on reducing environmental and social risk assessment across the product life-cycle. This includes countries of origin. Also, a list of "risk countries" has been compiled.

Procurement staff is provided with training on sustainable procurement. Mechanisms are also in place for each administration to monitor and audit their performance in meeting procurement targets, though there is no requirement for performance disclosure.

The work of the Ecological and Market Interest Community (CIEM) appears to be an important force in Swiss sustainable procurement initiatives. It works to support the inclusion of environmental criteria in tender specifications and the inclusion of environment and life-cycle performance (in addition to value for money) in awarding tenders. As this network includes civil servants from all levels of the Swiss national administration, i.e., from the community, federal and cantonal levels, its outreach appears to be far from negligible.

That said, there is no legal obligation relative to sustainable procurement at the federal level; tenders are to be awarded on "value for money." Nor does the Purchasing Commission of the Confederation, the national coordinating body for procurement, have a specific mandate on sustainability. The commission's mandate mainly pertains to ensuring cohesion and coordination in procurement policies, tendering processes, contracts with suppliers and the application of the stipulated tariffs and fees across the federation.

References

Interviews with BAFU, Swiss State Department for Environment, Agriculture, Energy and Communications and OFCL – *Office fédéral des constructions et de la logistique*.

<http://www.igoeb.ch>.

<http://www.gimap.admin.ch>.

Germany

The Federal Waste Law requires federal purchasers to investigate aspects related to recycling, product life and durability when drafting procurement specifications. The federal government also has a policy to procure sustainable timber and integrate design for environmental consideration into the procurement and renovation of buildings.

The federal government has developed a handbook and maintains a Web site on green purchasing. "Blauer-engel" is the national eco-label of Germany.

References

Direct Communication, Eco-Labels and Market Access Division, GTZ.

Austria

The Austrian Procurement Act makes provisions for environmental performance targets and standards to include in tender specifications. The act also states conditions under which procurement decisions can also include social performance targets and standards, which are drawn from national and international labour and consumer-protection laws.

The act is implemented through national guidelines on environmental procurement, which are maintained, implemented and monitored by a dedicated government division. Each administration is also required to provide training on sustainable procurement to all staff involved with procurement. There are no provisions for performance monitoring and reporting.

Procurement Service Austria had developed “Check It,” a Web-based criteria catalogue that provides templates, databases and model specifications for nine priority products including paper, cleaning supplies and furniture. Procurement Service Austria also supports procurement projects managed by other public institutions.

The Ministry of Agriculture and Forestry, Environment and Water Management also funds “Procurement Service Austria,” which serves as a one-stop-shop for expertise on sustainable procurement. This service researches environmental attributes based on life-cycle performance, provides training, publishes a sustainable procurement newsletter and operates a hotline on sustainable procurement. This service is managed by the Inter University Research Centre for Technology, Work and Culture.

The research also yields several examples of sustainable procurement by local governments in Austria.

References

The Inter University Research Centre for Technology, Work and Culture, www.oekeeinkauf.at.

Belgium

In Belgium, though several initiatives on sustainable procurement were identified, the project team was not able to establish if there are concrete linkages between them.

Several government authorities at the national and provincial level each developed their own sustainable procurement policies and strategies, some of which include performance-related objectives and targets. Some authorities report that standards for environmental procurement are coordinated at the federal level, but the project team could not identify such a division or body. Several authorities also report on sustainable development and environmental-procurement training provisions for procurement professionals. The Secretary of State for Energy and Sustainable Development publishes an online product catalogue for government procurement professionals, “*Guide des Achats Durables*.”

In 2006, the Interdepartmental Commission on Sustainable Development formed a working group on sustainable procurement, which involves procurement professionals from federal and provincial administrations. This working group is designed to consider best practices in sustainable procurement across the country and to develop a guidebook that embeds sustainable considerations into every stage of the procurement process.

The research also yields several examples of sustainable procurement by local governments in Belgium.

Finland

Interest in sustainable procurement in Finland was initiated in 2005 by the KULTU Committee, a multistakeholder working group put together by the ministries of trade and the environment. While the primary focus on the working group involved studying and promoting cradle to cradle design and increasing the uptake of environmental technologies, the working group also made several proposals, suggesting that government authorities could be the all-important trigger to boost markets for these low-impact products.

This saw the birth of the national program on sustainable procurement, which is working to establish procurement designs for environmental criteria for a range of products. A resource centre has also been established to develop further guidance materials on sustainable procurement and to serve as a clearing house for best practices. The national procurement program is to be implemented by 2010. Research also yields several examples of sustainable procurement activities by local governments in Finland.

France

There are two important triggers for sustainable procurement in France. Firstly, there is the national sustainable development strategy, established in 2003, which identifies targets for Sustainable Public Procurement. Secondly, the integration of an environment charter into the national constitution in 2005. The same year, public procurement tenders relating to timber and energy products are reported to have included, for the first time, specifications on sustainable forestry and energy efficiency, (the project team could however, find no evidence to support this claim). Web sites supported by the Ministry of Environment and the Ministry of Finance offer a number of guidebooks and interactive tools on sustainable procurement that provide guidance on the selection of “best environmental alternatives.” The responsibility for the use and application of these tools lies with each individual administration. The Ministry of Finance has also opened an inter-administration procurement program to enable all government administrations to share expertise and tender collectively for more sustainable products and services.

Of note, is that national procurement legislation already contains regulations for “green” and sustainable procurement in some sectors. This is currently being expanded to include a wider range of industry sectors. The research also yields several examples of sustainable procurement by local governments in France.

The Netherlands

The responsibility for the transposition of EU procurement directives into national law lies with the Ministry of Economic Affairs, also oversees the integration of sustainable procurement into prevailing procurement processes. To this end, commencing with the procurement of organic foods, energy-efficient appliances and sustainable clothing, ambitious targets have been established for all government departments:

- 100 per cent of procurement by central government departments and their agencies should be based on environmentally- and socially-preferable alternatives by 2010; and
- 50 per cent of procurement by local governments will be based on environmentally- and socially-preferable alternatives by 2012.

The Ministry of Economic Affairs also supports a sustainable product database to the procurement of sustainable goods, services and works. At the time of writing, the database contains environmental and social specifications for 17 product groups.

There has also been increasing consolidation and collaboration between the two main government procurement networks which, in 2005, were amalgamated into one body: NEVI Publiek. This is expected to give greater impetus to improving networking, embedding procurement into budget cycles and improve procurement efficiency at large. The research also yields several examples of sustainable procurement by local governments in the Netherlands.

Norway

Norway was one of the first countries to embark on the green procurement journey, with the establishment of the Norwegian Foundation for Sustainable Consumption and Production (GRIP), by the Ministry of Environment in 1993. The GRIP manual of green procurement was published a year later, which outlined a management system to integrate environmental criteria into procurement; perhaps the first of its kind.

The 2005–2009 Green Procurement Programme of GRIP includes a range of online tools, guidelines and newsletters to supplement its core activity: “providing advice on how environmental criteria can be formulated in tender documents, especially within the legal framework of public procurement.” This legal framework is the Norwegian National Act on Public Procurement (2001), which makes provisions for environmental considerations into procurement decisions. The program places particular emphasis on the following products and services: cars and mobility, buildings and tenancy agreements, textiles, paper and printing services, PCs and information technology, net-based conferencing and collaboration.

GRIP is also entrusted with the mandate of networking across the Norwegian government, as each administration is responsible for its procurement processes.

Denmark

Sustainable procurement was initiated in Denmark in 1995 by the Ministry of Environment, which put forward a sustainable procurement action plan for all federal administrations. A year later, legislation was passed to require all central government institutions and government-owned companies to develop and implement an action plan to consider environmental aspects together with price and quality in procurement decisions. In 1999, the Ministry of Environment entered into a voluntary agreement with regional and local authorities to implement green procurement efforts and give environmental aspects the same consideration as price and quality in procurement decisions.

Environmental criteria are also integrated into the national procurement services offered by National Procurement Ltd. to its government authorities. This agency also maintains a series of Web-based tools and catalogues on environmentally-preferable alternatives.

Since 2000, the Danish Environment Protection Agency has also offered subsidies to smaller municipalities to encourage collaboration in green procurement. These subsidies are reported to contribute towards the costs incurred in training procurement staff and the use of external consultants to implement green procurement action plans. In 2004, the Danish EPA also undertook a survey on green procurement initiatives across national, regional and local government authorities to benchmark performance.

Sweden

The Swedish facility and guidelines for environmental procurement, *the EKU-instrument*, was first developed by the Swedish state, local authorities and county councils and with some participation from the Swedish business sector under the umbrella of the Committee for Ecologically Sustainable Procurement, established in 1998. The initial mandate of this committee was to develop specific guidelines and methods for the use of environmental criteria in public procurement for different product groups. Subsequently, the committee was also asked to develop a Web-based instrument for the Swedish public sector and the *EKU instrument* was developed. At present, it contains guidance on 18 product categories.

In January, 2003 the Swedish government delegated the responsibility for the *EKU Instrument* to the Swedish Environmental Management Council (SEMCO), which is a joint initiative of the Swedish state, the Swedish Association of Local Authorities, the Swedish Federation of County Councils and the Confederation of Swedish Enterprises. The council is responsible for improving and developing the EKU-instrument to widen its applicability to the private sector.

The Swedish Environment Protection Agency is reported to have provided the Swedish state with a blueprint for a national action plan for sustainable procurement, which at the time of writing is awaiting response.

References

<http://www.eku.nu/eng/history.asp>.

Canada

The impetus for sustainable procurement is provided in the 2007–2009 Canada Sustainable Development Strategy, which makes the following commitments on greening government operations, which include sustainable procurement.

The federal sustainable development goals include a set of government-wide targets developed as part of a results-oriented approach to the greening of government operations under an initiative led by Public Works and Government Services Canada, together with Environment Canada and Treasury Board of Canada Secretariat.

A set of government-wide targets and common performance measures was developed in the following three priority areas: building energy (energy efficiency in federal buildings); vehicle fleets; and green procurement.

Departments and agencies are expected to commit to the government-wide targets for the three priority areas and use the specifically identified performance measures, where appropriate to the nature of their operations.

These measures demonstrate the government's commitment to leading by example on environmental stewardship initiative.

To oversee the implementation of the sustainable procurement commitments detailed above, the DG-level interdepartmental Sustainable Development in Government Operations (SDGO) Green Procurement Task Group (GPTG) has been set up to:

- develop a Federal Green Procurement Strategy;
- assist departments and agencies with implementing the Treasury Board Secretariat Green Procurement Policy when it comes into effect; and
- share general practices.

The greening of government operations sustainable procurement Web site hosts a range of tools and case studies on procurement.

Playing a central role in enabling these efforts is the Canada Environment Choice Program. This eco-labelling program tests and certifies that a product is environmentally preferable. If the project meets the environmental standards criteria on lower environmental impact along its life-cycle, the manufacturer is allowed to place the Canada Environment Choice EcoLogo on the product.

Also of note is that federal departments are responsible for deciding on the criteria to be used in purchasing goods and services, including environmental characteristics. Public Works and Government Services Canada (PWGSC), as a common service agency, is only responsible for the contracting of goods and services on behalf of client departments. PWGSC is also responsible for facilitating client department purchases such as through the establishment of standing offers.

Within the framework of the greening of government operations, two pilot programs, the Federal Buildings Initiative and green power pilots were launched in the late 1990s.

The first to be launched was the Federal Buildings Initiative. This program, which is lead and implemented by Natural Resources Canada, is designed to help federal departments and agencies design, build and renovate their buildings to be more efficient in the use of materials, water and energy. To date, the program has been implemented by over 10 federal departments and involves over 6,500 buildings/facilities across Canada. The project represents a private-sector investment of US\$123 million.

The procurement of "green power" was lead by two federal departments, Natural Resources Canada and Environment Canada, which tendered to purchase 100 per cent of energy renewable sources in 1977. While the department for Public Works and Government Services Canada launched the tender and developed the associated contracts, the tender was managed and negotiated directly by Environment Canada and Natural Resources Canada. One of the specifications was that the energy supplies were awarded the EcoLogo certification for green power under Canada's Environmental Choice Program. Building on the success on this initiative, in 2000, the Canadian government announced an expansion of the procurement of renewable energy.

References

http://www.ec.gc.ca/sd-dd_consult/SDS2007/c2_e.htm#s2_1_1.

<http://www.ec.gc.ca>.

<http://www.environmentalchoice.com>.

<http://www.greeninggovernment.gc.ca/default.asp?lang=En&nav=4FC04148-11>.

U.S.

Environmentally Preferable Purchasing (EPP) is a federal-wide program of the U.S. Environment Protection Agency (EPA) that encourages and assists executive agencies in the purchasing of environmentally-preferable products and services. The EPP program was established by EPA in response to former President Clinton's 1998 Executive Order 13101 on Greening the Government through Waste Prevention, Recycling and Federal Acquisition. EO 13101 supersedes the 1993 Executive Order 12873 but retains a similar requirement for EPA to develop guidance to "address environmentally-preferable purchasing." EO 13101 and Section 23.704 of the Federal Acquisition

Regulation (FAR) require executive agencies to identify and purchase environmentally-preferable products and services.

The primary purpose of EPP program is to help executive agencies prevent waste and pollution by considering environmental impacts along with price and performance and other traditional factors when deciding what to buy.

The EPP program serves as a clearinghouse for information and tools to enable executive agencies to purchase environmentally-preferable products and services. EPP's audience is not limited to the federal government. The U.S. EPA reports that state and local governments as well as the private sector have used the services of the program.

The EPP Web site hosts a range on guidance materials as well as Web-based catalogues and databases on environmentally-preferable products, and lists examples of eco-labels that test and certify environmental suitability. Amongst the eco-labels listed are the U.S. EPA's Energy Star program and the Comprehensive Product Guidelines.

The U.S. EPA's Energy Star is a voluntary partnership program to increase energy efficiency in office equipment. The Comprehensive Procurement Guideline (CPG) program is part of EPA's continuing effort to promote the use of materials recovered from solid waste. Buying recycled-content ensures that the materials collected in recycling programs will be used again in the manufacture of new products. The CPG program is authorized by Congress under the Resource Conservation and Recovery Act (RCRA) and Executive Order 13101. Under this program, the U.S. EPA is required to designate products that are or can be made with recovered materials, and to recommend practices for buying these products. Once a product is designated, procuring agencies are required to purchase it with the highest recovered material content-level practicable.

References

<http://www.epa.gov/oppt/epp/pubs/about/about.htm>.

Australia

In Australia, states have direct responsibility for executing all public services, which include procurement and sustainable procurement. As discussed in the 2004 State Review of Green Procurement in Australia, states are in varying stages of developing green procurement policy, institutionalizing sustainable procurement objectives and implementing strategies to meet these goals.

That said, each state has developed policies on environmental procurement and guidelines and Web tools to increase awareness and expertise on low-impact alternatives. The state procurement boards have also been engaged in various capacities, including advising procuring authorities on the environmental attribute of products, and integrating performance targets on water, material and energy efficiency into procurement decision-making.

Several states have also included environmental standards into supplier pre-qualification schemes and listings.

Integral to the efforts of states in the Good Environmental Choice Australia, is the eco-label of the Australian Environmental Labelling Association Inc., which tests and certifies that a product is environmentally preferable. If the project meets the environmental-standards criteria on lower environmental impact along its life-cycle, the manufacturer is allowed to place the Environmental Choice Australia logo on the product. Certification by Good Environmental Choice Australia is often a consideration in green procurement decisions.

References

2004 State Review of Green Procurement in Australia.

Direct communication with the Australian Environmental Labelling Association Inc.

New Zealand

While there is no express provision for sustainable procurement in the New Zealand Procurement Policy (currently under revision) and the New Zealand Mandatory Rules for Procurement by Government (which is based on, but not limited to, New Zealand's treaty obligations under the

Trans-Pacific Strategic Economic Partnership), sustainable procurement is promoted under a mix of policy and voluntary instruments, which are described below.

The most significant is the “*Govt3*” network/program run by the Ministry of Environment for government agencies to improve sustainable procurement and environmental management. The objective is to allow agencies to share experiences in providing advice on the implementation of the government’s sustainability policies, such as the Sustainable Development Program of Action (SDPOA), the National Energy Efficiency and Conservation Strategy (NEECS), the Climate Change Program and the NZ Waste Strategy. As of June 2nd 2006, 47 agencies have formally signed up to *Govt3* membership. The *Govt3* program also engages in less formal partnerships with sustainability leaders in the wider public and private sectors. *Govt3* focuses on sustainable procurement across the following areas: energy efficiency, recycling/waste minimization, buildings, transport and office consumables and equipment. The program has also published guides and databases on environmentally-preferable alternatives.

Other noteworthy efforts include the New Zealand Government National Energy Efficiency and Conservation Strategy (2001) and a New Zealand Waste Strategy (2002). While these efforts set national targets for energy and resource efficiency in all sectors, government agencies set specific targets that are expected to take into account their procurement in ways that are consistent with the value for money.

Of particular interest in the National Energy Efficiency and Conservation Strategy sets is a target of 15 per cent for improvements in energy efficiency over five years in the central government. The Energy Efficiency and Conservation Authority (EECA), the principal body responsible for delivering the strategy, provides assistance to purchasing agencies under its *Energy Wise* government program. EECA provides partial funding for the energy audit of buildings and vehicle fleets, and low-cost loans to finance the purchase of energy-efficient equipment. Eco-efficient vehicle-purchasing guidelines were published in 2003.

The following advice on procurement is also provided on the procurement Web site of the New Zealand government:

Information sent to suppliers should include a statement of the agency’s approach to compliance with the Government’s environmental policies. Consideration should be given to developing appropriate standard clauses for tender and contract documentation. These could include requests for documentation on environmental impacts such as accreditations obtained, sustainable production practices, energy efficiency, recycled content, durability and reuse options, hazardous material content, and end-of-life disposal provisions. Unless specifically requested, such resource impact information is not likely to be included in offers to supply.

The NZISO may be able to assist in seeking environmentally friendly goods.

The New Zealand Ministry of Environment also encourages procurement managers and staff to familiarize themselves with environmental quality-assurance schemes, especially the government-endorsed Environmental Choice New Zealand, and the ISO 14000 series. The project team has observed that there is a strong emphasis on Environmental Choice New Zealand in procurement specifications.

The New Zealand government also expects its agencies to take all reasonable steps to ensure that timber and timber products procured, including tropical timber, are from legally-logged and sustainably-managed sources. The recommended sustainable forestry accreditation scheme is the Forest Stewardship Council.

Japan

Japan is a leader in the move to sustainable procurement with the enactment of the Japan Green Purchasing Law in 2000. This requires all government bodies including federal, cities, prefectures, towns and villages to develop a green purchasing policy, implement a green purchasing system and publish a summary of green purchasing records on an annual basis. At the time of enactment, there were 101 items targeted for green procurement. These items include paper, office supplies, furniture, electrical appliances, office equipment, lighting, vehicles, uniforms, building materials and products and services involved in public works. Since then, this list has been expanded to over 150

items. The environmental criteria and specifications for each of these items are published and updated by the Japan Ministry of Environment.

The impacts of the green purchasing law are reported to be significant. All government authorities are reported to be active green procurers and a 2002 survey on the demand for green products found that government procurement increased demand for green products by around 30 per cent on average and by over 50 per cent for certain product categories.

Another important initiative that adds impetus to sustainable procurement in Japan is the Japan Green Purchasing network, which was established way back in 1996. It includes major private sector firms (such as Matsushita Electronics, Sony, NEC, Shin-Nihon Seitetsu and Tokyo Gas), more than 355 government authorities, consumer associations and NGOs. The total membership of the network presently stands at 2,643.

This network promotes sustainable procurement/purchasing in the government and private sector, develops tools to enable green procurement and conducts research on design for the environment. Specifications have been published for over 30 product groups and an annual data book is published with summaries of research.

References

<http://www.jemai.or.jp/english>.

http://www.jemai.or.jp/english/dfe/pdf/20_1.pdf.

<http://www.env.go.jp/en/laws/policy/green/index.html>.

<http://www.gpn.jp>.

United Kingdom

The U.K. government's 2005 Sustainable Development Strategy set out the goal to make the U.K. a leader in sustainable procurement in the EU by 2009.

Acknowledging that the continuation of current efforts would not be sufficient to reach this goal, the Secretary of State for the Environment, Food and Rural Affairs (DEFRA) and the Chief Secretary to the Treasury established a multistakeholder task force to develop an action plan for sustainable procurement. Members of the task force included major suppliers to the government, NGOs, trade unions, major public procurers and the U.K. Sustainable Development Commission. After having conducted a benchmark study on EU procurement efforts and those of individual EU Member States, the task force commission did further research to establish how best triple-bottom-line aspects could be mainstreamed in procurement processes and decision-making. The task force also drew on the findings of reports by the National Audit Office, the Environmental Audit Committee and others and presented a National Action Plan to develop sustainable procurement across all central authorities in the U.K.

The action plan made six key recommendations:

- lead by example – the need to designate leadership and responsibility and provide incentives for sustainable procurement;
- set clear priorities – rationalize the significant number of sometimes-competing sustainability policies into a clear framework for sustainable procurement;
- raise the bar – existing minimum standards for environment and social performance should be enforced and extended throughout the public sector and further standards should be developed for priority areas of spending;
- remove barriers posed by budgetary considerations – as whole-life costing is not integrated into procurement decisions, higher costs linked to environmental designs that enable cost reductions during the operational phases of projects are being overlooked in capital budgets (as these represent costs savings in operational and management budgets). The task force also found uncertainty among procurement staff about how to account for non-

monetary benefits in procurement decisions that are typically based on value for money;
and

- capture opportunities afforded through sustainable procurement to improve dialogue and communication with suppliers to provide the right market signals to spur innovative design for the environment and sustainable production.

The task force also provided building blocks for implementation:

- a flexible framework to enable public sector organizations to make continuous improvements in sustained procurement;
- prioritization of spending – a mechanism to identify areas of spending to focus attention;
and
- tool kits – the need to identify a sustainable procurement delivery team to develop a specialized tool kit to implement the action plan.

The response of the U.K. government to the action plan was published in March 2007. It contains robust mechanisms to embed sustainable procurement into procurement processes, identifies positions of responsibility for sustainable procurement, assigns mechanisms to deal with budgetary considerations based on whole-cost accounting and sets out objectives and targets for sustainable procurement. The full details of the U.K. Sustainable Procurement Action Plan are at:
<http://www.sustainable-development.gov.U.K./publications/pdf/sustainableProcurementActionPlan.pdf>.

Resources

<http://www.sustainable-development.gov.U.K./index.asp>.

<http://www.sustainable-development.gov.U.K./government/task-forces/procurement/index.htm>.

SPP programs in Africa

Mozambique

In Mozambique, with regard to the sustainability of public procurement practices, the existing system allows for and facilitates the introduction of new and innovative techniques and contracting practices for green procurement on a turnkey basis. Measures are also being taken to curb corruption in public practices. Anti-corruption bodies are involved in curbing corruption. Comprehensive reforms and regional initiatives have been carried out in the civil services and judiciary to curb corruption in procurement practices. There are provisions in the criminal law to check corruption in public procurement. In order to increase transparency in procurement practices, efficient licensing and custom procedures have been implemented with accurate records of all communications with bidders.

References

Mozambique, Country Procurement Report, World Bank

<http://www.siteresources.worldbank.org/INTPROCUREMENT/Resources/CountrySystemsProcurement>.

http://www.wds.worldbank.org/.../WDSP/IB/2003/08/23/000094946_03081404004342/Rendered/PDF

[F/multi0page.pdf](http://www.siteresources.worldbank.org/INTPROCUREMENT/Resources/CountrySystemsProcurement).

<http://www.siteresources.worldbank.org/INTPROCUREMENT/Resources/CountrySystemsProcurement>.

<http://www.ireep.org/documents/WORLD&20BANK%20REPORT-ENGLISH.pdf>.

<http://www.icgfm.org/downloads/2004miami/Wynn.pdf>.

Malawi

In Malawi, significant emphasis has been given to the conservation of environmental resources in the procurement process of goods, in construction activities and in providing services. A procurement code has been drafted. A procurement law was enacted on August 1st, 2003, inspired by the UNICTRAL Model Law on the procurement of goods, construction and services. The procurement code and law emphasize green procurement practices in order to address the conservation of environmental resources and check environmental degradation. In order to increase transparency in the procurement process, various initiatives like e-procurement have been implemented. Selection of bidders is done through short listings of a registration list, and the negotiations regarding the selection are based on clear guidelines. The process of the submission of tenders is also being published in international media to increase transparency. Two-stage tendering has increased transparency by correcting discrepancies in cases where it is not feasible to define fully the technical and contractual aspects of procurement.

Good governance practices have been introduced to create sustainability in procurement practices. In order to check corruption in procurement practices, the flow of funds for procurement practices is monitored so that the funds are not channelled to finance activities like money laundering and terrorism. Transparency has been introduced in the system by the efficient functioning of the customs department where staff members are familiar with shipping and trade documents. The procurement profession, which often hinges on the sustainability aspect of procurement practices, is not given a high social status. One of the reasons behind this could be the low pay associated with it.

References

- Malawi, Country Procurement Assessment Report (CPAR), vol. II, Details and Annexes
World Bank.
http://www.wds.worldbank.org/.../WDSP/IB/2003/08/23/000094946_03081404004342/Rendered/PDF/multi0page.pdf.
<http://www.siteresources.worldbank.org/INTPROCUREMENT/Resources/CountrySystemsProcurement>.
<http://www.ireep.org/documents/WORLD%20BANK%20REPORT-ENGLISH.pdf>.
http://www.eca.eu.int/audit_reports/special_reports/docs/2005/rs02_05en.pdf.
<http://www.icgfm.org/downloads/2004miami/Wynn.pdf>.

Tanzania

In Tanzania, greater emphasis has been laid on corruption mitigation to bring sustainability into procurement practices. In Tanzania a “Public Procurement Act” has been enacted to combat corruption as a part of a “National Anti-Corruption Strategy and Action Plan.” Emphasis has also been placed on bringing transparency into procurement practices. This has been done through the enforcement of existing rules on advertising, pre-qualification, submission and opening bids and the use of appropriate evaluation criteria through regular audits and the application of effective sanctions. However, there is a need to address existing weaknesses in the advertisement of tenders and the centralization of the media for the advertisement of tenders and awards in order to bring greater transparency into the system.

References

- 2003, Tanzania Country Procurement Assessment Report (CPAR), Executive Summary
[Operational Quality and Knowledge Services, Africa Region]
World Bank
http://www.wds.worldbank.org/.../WDSP/IB/2003/08/23/000094946_03081404004342/Rendered/PDF/multi0page.pdf.
<http://www.siteresources.worldbank.org/INTPROCUREMENT/Resources/CountrySystemsProcurement>.
<http://www.ireep.org/documents/WORLD%20BANK%20REPORT-ENGLISH.pdf>.
<http://www.iema.net>, last accessed on January 1st, 2007.
<http://www.icgfm.org/downloads/2004miami/Wynn.pdf>, last accessed on January 1st, 2007.

Ghana

In Ghana, actions have been taken to mitigate corruption in the procurement process to bring in sustainability. The Ghana Anti-Corruption Coalition (GACC) aims to advocate for strengthening the Serious Fraud Office, Commission for Human Rights with reference to the mitigation of corruption practices. The GACC also aims to pay greater attention to civic education in order to combat corruption in procurement practices. There has also been a focus on strengthening all institutions of the government in order to infuse greater accountability and transparency into the system of public procurement. However there is a lack of government anti-corruption measures. As well, a social perception exists that the level of corruption in public procurement is still high, as the same bureaucrats remain despite changes in government. Press however, play an important role in informing the public about allegations of corruption in public procurement, which has created greater accountability and transparency in procurement activities.

References

2003, Ghana Country Procurement Assessment Report – 2003, Main Report, Vol. 2, June 2003 [Ghana Country Department, Africa Region]

World Bank

http://www.wds.worldbank.org/.../WDSP/IB/2003/08/23/000094946_03081404004342/Rendered/PDF/multi0page.pdf.

<http://www.siteresources.worldbank.org/INTPROCUREMENT/Resources/CountrySystemsProcurement>.

<http://www.ireep.org/documents/WORLD%20BANK%20REPORT-ENGLISH.pdf>.

http://www.ecomod.net/conferences/middle_east_2005/middle_east_2005_papers/Dodini.pdf.

<http://www.icgfm.org/downloads/2004miami/Wynn.pdf>.

South Africa

In South Africa, a well-drafted policy exists with regard to sustainable consumption practices promoting environmentally-sound purchasing practices. The preferential Procurement Policy Framework Act of 2000 mentions green procurement practices. The sustainability of the procurement practices has been enhanced through local economic development and increased job opportunities for disadvantaged groups. However, a significant policy-oriented, legislative effort has been initiated in South Africa with regard to sustainable waste recycling processes in procurement activities. These include Environmental Management Policy, the National Environmental Management Act, Integrated Pollution and Waste Policy, and National Waste Management Strategy. Part of these sustainable procurement activities involve awareness-building in environmental practices like recycling products that are procured.

There has also been emphasis on the packaging of goods through a larger focus on the packaging of wastes like plastic bags. Recycling initiatives as part of procurement practices are also a part of the pulp and paper industry, with a significant emphasis on mitigating environmental degradation. The procurement practices, with an emphasis on recycling activities, have been operating at various levels like consumers (such as retailers), collectors (such as municipalities), waste processors (such as private sector companies and the informal sector), brokers (buying and selling recyclable materials), end-use markets (where the purchase of recovered materials takes place to produce new feedstock), waste disposal (private sector, municipalities), policy-makers (different government departments), NGOs, community and research groups. The objectives of the recycling activities in procurement include: job creation, the reduction of pollution and conservation of natural resources, energy conservation in manufacturing sectors, litter abatement, and the reduction of the waste stream. Recycling activities as a part of procurement have brought in transparency, (through environmental management processes bringing transparency into decision-making, accountability through equity in resource access, the polluter pays principle and full-cost accounting).

The Department of Environmental Affairs and Tourism (DEAT) has been developing a Waste Information System (a centralized database) in all procurement activities for bringing in greater transparency. DEAT has also been considering sustainable green procurement activities with regard

to the soccer World Cup of 2010.²⁹ It has already been carrying out the practice of information dissemination in procurement activities to bring in greater transparency. In South Africa, there is a broad-based “Black Economic Empowerment Act, 2003,” which aims to establish a legal framework for the promotion of the economic empowerment of black people through greater economic participation, enhanced access to resources, infrastructure, finance and skills training. The act mentions the establishment of an “Economic Empowerment Advisory Council,” which can advise on codes of good practice that include qualification criteria for preferential purposes for procurement. This entails in the process of sustainable procurement those preferences that would be given to black people in order to enhance their employment opportunities, which contributes towards the “sustainable development” of the black community.

References

2002, Lao PDR, Country Procurement Assessment Report, [Report No. 25334-LA], South Asia and Mongolia Country Unit, East Asia and Pacific Region, World Bank Publication.

International Cooperation and the Reform of Public Procurement Policies, Simon J. Evenett, University of St. Gallen and CEPR, Bernard M. Hoekman, World Bank and CEPR, August 2005
http://www.wds.worldbank.org/.../WDSP/IB/2003/08/23/000094946_03081404004342/Rendered/PDF/multi0page.pdf.

<http://www.siteresources.worldbank.org/INTPROCUREMENT/Resources/CountrySystemsProcurement>.

<http://www.ireep.org/documents/WORLD%20BANK%20REPORT-ENGLISH.pdf>

<http://www.cips.org>.

<http://www.icgfm.org/downloads/2004miami/Wynn.pdf>.

<http://www.thedti.gov.za/bee/bee.htm>.

<http://www.dti.gov.za/bee/beecharter.htm>.

<http://www.empowerdex.co.za/content>.

Department of Environmental Affairs and Tourism, Programme For the Implementation of the National Waste Management Strategy, Starter Document for Waste Recycling: A Framework for Sustainable Post Consumer Recycling in South Africa, Final Draft, May 2000.

Kenya

Kenya’s procurement practices encompass elements of good governance like transparency, accountability, open and effective competition (through the operation of a market-based system), fair dealing, non-discrimination and the value-for-money principle of efficiency. Along with this, good governance in public procurement, fair conduct of procurement and mechanisms for scrutiny of procurements have also been introduced. In order to bring in transparency, e-procurement facilities have been thought of for future implementation through a Web site-based communications system which facilitates the placement of tender.

References

World Bank. 2002, *Lao PDR, Country Procurement Assessment Report*. South Asia and Mongolia Country Unit, East Asia and Pacific Region.

Zambia

In Zambia, corruption mitigation has been emphasized in procurement activities to infuse greater sustainability in the procurement process. Negotiation practices in procurement have often led to corruption practices in procurement activities, which have to be addressed by an efficient governance framework. The registration system in case of purchases from short-listed firms for procurement has been misused, which has affected the transparency and accountability of the procurement framework of Zambia.

²⁹ Communication with Jonathon Hanks, Incite Sustainability; Ms. Joanne Yawitch; Deputy Director General: Environmental Quality & Protection.

References

<http://www.siteresources.worldbank.org/INTPROCUREMENT/Resources/CountrySystemsProcurement>.
http://www.wds.worldbank.org/.../WDSP/IB/2003/08/23/000094946_03081404004342/Rendered/PDF/multi0page.pdf.
<http://www.siteresources.worldbank.org/INTPROCUREMENT/Resources/CountrySystemsProcurement>.
<http://www.ireep.org/documents/WORLD%20BANK%20REPORT-ENGLISH.pdf>.
http://www.upload.pls.ramboll.dk/eng/ServicesAndProjects/InternationalDevelopment/PubAdm_References.pdf.
<http://www.cips.org>.
<http://www.icgfm.org/downloads/2004miami/Wynn.pdf>.

Cameroon

The procurement practices lack transparency in the governance system for procurement activities. The presence of corruption has to be mitigated to bring larger sustainability into procurement practices.

References

Country Procurement Assessment Report © 2005 International Monetary Fund June 2005, IMF Country Report No. 05/189, Cameroon: Ex Post Assessment of Longer-Term Program Engagement.
http://www.wds.worldbank.org/.../WDSP/IB/2003/08/23/000094946_03081404004342/Rendered/PDF/multi0page.pdf.
<http://www.siteresources.worldbank.org/INTPROCUREMENT/Resources/CountrySystemsProcurement>.
<http://www.ireep.org/documents/WORLD%20BANK%20REPORT-ENGLISH.pdf>.
<http://www.cips.org>.

Benin

In Benin, corruption mitigation has been targeted to bring sustainability into the procurement process. Along with this, transparency in the system has been increased to create sustainability in the procurement process. Emphasis has been laid on strengthening the governance framework for procurement in future through the Procurement Action Plan, along with the enforcement of stringent measures against corruption.

References

Report No. 29656-BEN, BENIN, Enhancing the effectiveness of public spending – A Review of Three Sectors, December 20, 2004, Human Development II, Country Department 13, Africa Region, Document of the World Bank.
Country Procurement Assessment Report of Benin
http://www.wds.worldbank.org/.../WDSP/IB/2003/08/23/000094946_03081404004342/Rendered/PDF/multi0page.pdf.
<http://www.siteresources.worldbank.org/INTPROCUREMENT/Resources/CountrySystemsProcurement>.
<http://www.ireep.org/documents/WORLD%20BANK%20REPORT-ENGLISH.pdf>.
<http://www.cips.org>.

Morocco

The governance framework of procurement in Morocco has been improved by new decree number 2 – 98 – 482, which has strengthened the legal and regulatory framework for central and local government procurement. The decree has brought in transparency in procurement by establishing the conditions and methods of procurement as well as provisions governing supervision and management. The new decree has been widely published to infuse transparency in procurement activities amongst public and private sectors.

References

Kingdom of Morocco, Country Procurement Assessment Report (CPAR), (prepared by Maurice Gress), Middle East and North Africa Region, World Bank.
http://www.wds.worldbank.org/.../WDSP/IB/2003/08/23/000094946_03081404004342/Rendered/PDF/multi0page.pdf.
<http://www.siteresources.worldbank.org/INTPROCUREMENT/Resources/CountrySystemsProcurement>.
<http://www.ireep.org/documents/WORLD%20BANK%20REPORT-ENGLISH.pdf>.
<http://www.cips.org>.

Gambia

In Gambia, corruption reduction has been a major challenge in influencing sustainability in the procurement process. The Public Procurement Regulation dealing with procurement practices in Gambia has allowed access to information regarding procurement. Sections 35 and 36 of the Gambia Procurement Act, 2001, requires the procuring organization to publish details of the contract award and the participants in the bidding process, which has created transparency in the procurement system. The aim of the procurement system has been to move towards e-procurement in order to enhance transparency, and hence greater sustainability in the procurement process.

References

The Republic of the Gambia, Country Financial Accountability Assessment, June 2003, Africa Region, Operational Quality and Knowledge Services Unit, Financial Management.
Republic of the Gambia, Entrepreneurship Promotion And Microfinance, Development Project, Appraisal Report, Department of Social And Human Development OSHD, August 2006.
http://www.wds.worldbank.org/.../WDSP/IB/2003/08/23/000094946_03081404004342/Rendered/PDF/multi0page.pdf.
<http://www.siteresources.worldbank.org/INTPROCUREMENT/Resources/CountrySystemsProcurement>.
<http://www.ireep.org/documents/WORLD%20BANK%20REPORT-ENGLISH.pdf>.
<http://www.cips.org>.

SPP programs Asia

China

Though there is no express legislation to promote SPP, the 9th Law of Public Purchasing, in China stipulates that public procurement should promote social development, the protection of the environment, support underdeveloped and minority districts and promote medium and small enterprises. This law is reported to be widely interpreted to imply that public procurers should not purchase goods and services that have been produced through processes and products that cause unacceptable environmental damage. To enable its enforcement, the State Environment Protection Agency (SEPA) and the Ministry of Finance have published environmental-criteria listings for 14 product groups, including office equipment, furniture, building materials and interior-decorating materials.

The Chinese government has also included SPP in the “Project of Constructing an Environmentally-friendly Society” and have established a series of policy documents to promote the work of green public purchasing.

China has also developed a series of green public purchasing networks at the provincial and district levels. Membership includes the local finance departments and local environment protection departments and other government offices. These networks have produced guidelines and environment-product criteria to promote SPP.

Also promoting the SPP agenda is the “Green Olympics” banner of the 2008 Olympic Games to be held in Beijing. “Green Olympics” promotes the purchase of environmentally-friendly products and services, which is now acting as the flagship SPP effort across China. The Beijing Olympic Committee has already published a green purchasing guide and has pledged that the 2008 Games will be the greenest yet.

References

Source of information on this section: State Environment Protection Agency (SEPA).

Korea

Korea has the Act on the Promotion of the Purchase of Environmentally-friendly Products, which aims to prevent the wasteful use of resources and environmental pollution, and contributes to sustainable development in the domestic economy by encouraging environmentally-friendly product purchasing.

The act mentions procurement by public agencies like national government agencies, local governments and government-invested institutions to which the Government Invested Institution Management Basic Act applies, and other agencies designated by the Presidential Decree. The act lays down various responsibilities to encourage the purchase of eco-products by heads of public agencies, businesses and citizens. The act also mentions the basic plan to encourage the purchase of eco-products through policy directions and the targeting of items for eco-products and the monitoring of procurement track records to increase accountability. The act mentions the formation of a committee under the aegis of the Ministry of Environment to encourage the purchase of eco-products. According to the act: “the Ministry of Environment” and the head of a relevant central administrative agency may request the administrator of a public procurement service to take necessary measures, such as strengthening the government’s e-procurement system for eco-products, (which enhances transparency in procurement activities) and expanding the designation of eco-products as excellent quality products subject to procurement. According to the act, the government should provide: (1) information to encourage the purchase of eco-product (creating transparency in procurement activities); (2) support for the engagement of professional human resources to encourage the purchase of eco-products (the creation of social criteria for greater sustainability of procurement processes); (3) support for the domestic or overseas sale of eco-products (the creation of environmental and economic criteria for greater sustainability in procurement activities); (4) support for the attainment of certificates related to domestic or foreign eco-products (the creation of environmental protection for the sustainability of procurement practices); and (5) support for other matters required to encourage the purchase of eco-products (environmental protection for the sustainability of procurement practices).

References

Act on the Promotion of the Purchase of Environment-friendly Products (Korea Green Procurement Law).

<http://www.igpn.org/news/Conference%20Report.pdf>.

<http://www.un.org/esa/sustdev/sdissues/consumption/procurement/hyunjunggg.pdf>.

Malaysia

In Malaysia, there is no federal legislation guiding sustainable procurement. However, the government partners with various organizations to work towards green procurement. The Green Productivity Association of Malaysia has been proactively working towards infusing greater transparency in the procurement process through the Environmental Management Information System. This system provides a database of sustainable procurement practices that promote environmental protection. In Malaysia, green procurement standards and guidelines for green purchasing are in place for procurement activities relating to paper, office equipment, stationary and vehicles. There is an absence of legislation at the federal level highlighting the green practices of ISO 14000 certification for procured goods, which could promote greater sustainability in procurement activities. There is also an absence of legislation at the federal level highlighting life-

cycle assessment of final products and materials in order to create greater environmental sustainability in procurement activities.

References

www.apo-tokyo.org/gp/e_publi/survey_gpp/malaysia_case_studies.pdf.

4. SPP programs in South America

Brazil

International environmental obligations and domestic resource issues have been the two primary drivers of sustainable procurement in Brazil. Under the former, Brazil has passed the Presidential Decree 2.783/98, ruling on the use of ozone-depleting substances. It also enforces a Blanket Ban and affects both public and private procurement, since ozone-depleting items are banned in pursuance to international obligations under the Montreal Protocol. As a response to eliminating the illegal mining of wood from the Amazon rain forest, the government implemented a certification system to track and regulate mining in the Amazon. In order to market such a certification system, the government made it mandatory to buy only certified wood in government procurement schemes. This is supported by voluntary initiatives like Amazon-friendly Cities, coordinated by Greenpeace, which aims to influence individual city municipalities in the adoption of sustainable procurement policies. Under this initiative, the cities of Campina, Botucatu, Manaus, Piracicaba and Rio De Janeiro have or are in the process of adopting legislation to regulate the illegal timber trade and also adopt procurement practices at city hall—for buying timber from legally- and well-managed forests (FSC-certified timber).

There have also been significant developments at the local level, with cities like Rio De Janeiro and Sao Paulo adopting sectoral decrees relative to GM food and civil construction respectively, in terms of procuring goods and services with a view to ensure environmental sustainability. There have also been voluntary initiatives taken within public-sector utilities like that of Procel, which was established in 1985. The program is managed by the national electric utility, Eletrobras (Centrais Eletricas Brasileiras). PROCEL funded a recent study of savings potential in the government sector. It estimated that, with an investment of around US\$150 million, retrofitting 5,000 major government buildings in Brazil could save around 1,000 GWh/yr of a total electricity-use of 7,100 GWh/year (four per cent of national electricity use). Within the government sector, retrofit investments have been targeted to public buildings and street lighting. PROCEL is working with the local distribution utility in Brasilia, CEB, to stimulate retrofits of major ministry buildings and other government facilities. CEB has started a serious DSM program due to an overloaded distribution grid and rapid demand growth in Brasilia. PROCEL is providing US\$100,000/year in core grants, plus leveraging US\$1.25 million in low-interest loans to retrofit 16 major ministry buildings in Brasilia. This project is to be implemented in 1997, using third-party Energy Service Companies (ESCOs). A pilot project in the Federal Ministry of Mines and Energy building reduced lighting electricity use by 60 per cent (mainly from delamping), and is saving an estimated 700 MWh/year. There is a low-interest loan fund used within the electricity sector, known as the RGR, which is starting to be tapped by PROCEL for major energy-efficiency projects, including the retrofit of public buildings. Third-party financing for retrofits is planned at the state level, but beyond a few projects has not yet occurred on a significant scale. However, there is an interest in third-party financing among banks and a growing number of ESCOs. A few state governments, including Sao Paulo and Bahia, have established energy efficiency programs for public buildings; although to date these programs have involved mainly audits and technical studies rather than actual retrofits. In addition to CEB in Brasilia, distribution utilities in two other states are starting projects to retrofit state-owned public buildings. One component of a recent energy-efficiency loan request, A-16 from PROCEL and Eletrobras to the World Bank includes a proposed US\$6.9 million project to retrofit 28 public office buildings and 12 public hospitals in Salvador, Bahia, by underwriting a loan from Eletrobras to the state of Bahia. The estimated energy savings is 1,6 GWh/yr.

Other significant voluntary initiatives include the Bovespa Corporate Sustainability Index (ISE) that was launched in December 2005 by the Sao Paulo Stock Exchange.

The Bovespa Corporate Sustainability Index (*Índice de Sustentabilidade Empresarial* – ISE) is the first index tracking the economic, financial, corporate governance, environmental and social performance of leading companies listed in the São Paulo Stock Exchange. The index will include up to 40 companies that seek excellence in managing sustainability. By rewarding companies that deliver solid economic results and incorporate environmental, social and corporate governance elements into their business model, the ISE will encourage other firms to follow this example.

References

<http://www.ces.fgvsp.br/index.cfm?fuseaction=content&IDassunto=62&IDsubAssunto=139&IDidioma=2> (Contact: Mario Monzoni or Gladis Ribeiro at: phone: +55 (11) 32813410+ 55 (11) 32813342; and e-mail: ces@fgvsp.br).

Gavin Edwards, Greenpeace International forests campaign co-ordinator, (m) +31 652 391429 (in the Amazon).

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Mexico

The primary policy on government procurement is the Industrial Policy and Foreign Trade Programme (PPICE). This essentially calls for the participation of national industries in government procurement. The legislation does not provide for a quantitative preference regime for national suppliers to the detriment of foreign suppliers, since suppliers have to fulfill nationality requirements. Mexico, being a party to the NAFTA, is also in the process of adopting international disciplines on transparency to a steadily increasing proportion of its government procurement. There is no overall policy on sustainable procurement. However efforts have been made within specific sectors. For instance, the energy-efficiency program of the government led by CONAE (National Commission for Energy Conservation) has targeted procurement as one of the key mechanisms in achieving energy efficiency.

References

WT/TPR/S/29, 2 September 1997.

Market Leadership by Example: Government Sector Energy Efficiency in Developing Countries, <http://www.pepsonline.org/publications/Market%20Leadership%20by%20Example.pdf>.

Annexure 3: Analysis of public procurement-related provisions in trade and investment agreements

Research observations in trade agreements

This table provides an analysis of the provisions within specific regional trade and economic cooperation agreements within Asia addressing government procurement in terms of their nature and scope relative to the duties and obligations mandated for member states.

Name of the Agreement	Salient Features
India-Singapore Comprehensive Economic Cooperation Agreement (CECA)	<p>The objective of Article 1 states that transparency, predictable and facilitative investment pertaining to public procurement could be linked.</p> <p>Article 7.20 of the CECA deals with government procurement with regard to “trade in services,” which mentions that “Articles 7.3 and 7.4 shall not apply to laws, regulations or requirements governing procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.”</p> <p>Article 7.2.1 mentions that with regard to government procurement, such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination against the other party, or a disguised restriction on trade in services. Government procurement practices could not prevent the adoption or enforcement by either party of the measures that are: necessary to protect public morals or to maintain public order necessary to protect human, animal or plant life or health; and necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this chapter. This includes those in relation to:</p> <ul style="list-style-type: none"> (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts; (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of the confidentiality of individual records and accounts; and (iii) safety.
APEC	<p>APEC’s non-binding principles on government procurement were announced in 2006.</p> <p>The Government Procurement Expert Group (GPEG) has been formed, which reviews and monitors developments on government procurement in the WTO.</p> <p>GPEG has a key focus on maintaining transparency introducing new technology with a focus on checking corruption in government procurement practices.</p> <p>GPEG and the IPEG have agreed to share information on areas of mutual interest and explore areas of cooperation on the issue of property rights and public procurement.</p> <p>GPEG will further develop its Web site to improve its usefulness and accessibility to the business community.</p>

	<p>GPEG has a transparency and anti-corruption workplan which specifically deals with mitigation of corruption in procurement practices in APEC.</p>
ASEAN	<p>Trans-Regional EU-ASEAN Trade Initiative (TREATT) is an important step with regard to green public procurement between EU-ASEAN countries with the purpose of enhancing trade and investment relations between both regions in green products with a special emphasis on electrical and electronic equipment.</p> <p>The Asia Trust Fund has been set up to provide quick delivery of short-term, trade-related technical assistance (TRTA) in the procurement of green products, in response to an immediate need identified by a national government or regional organization like ASEAN.</p> <p>The Asia Trust Fund assumed implementation in July 2004 with a budget of five million Euros, co-financed by the European Commission and International Trade Centre (ITC).</p> <p>Asia Trust Fund looks at best practices in procurement and supply chain management to ensure the cost-effective use of resources and together with ITC, successfully bid for funding to implement the project on “Support to Malaysian Enterprises on Compliance with Green Procurement Policies and Guidelines in the EU.”</p> <p>In Japan, Japan External Trade Organization (JETRO) is taking initiative in the green procurement of electronic goods and has established cooperation with the EU.</p> <p>In Malaysia, Malaysian government procurement expressly favours local suppliers of goods and services through specified preferences and informal local-content policies. In addition, selected state-owned enterprises are required to follow similar practices. Such preferences provide assistance to the favoured firms; but by increasing the costs of procuring goods and services to the government and state-owned enterprises, they impair economic efficiency. However, despite these preferences, foreign partners have been awarded a large share of government contracts.</p> <p>Through the state ownership of enterprises, the government is involved not just in the procurement of goods, services and inputs, but also in their supply. In order to foster economic efficiency, however, some state-owned firms are allowed greater autonomy, including freedom from public procurement regulations, while others have been privatized. Privatization has made a significant contribution to economic growth and public revenue. Foreign investors have been invited to participate in some privatization exercises, while they have also been allowed to invest in Malaysian-listed companies up to a maximum of 25 per cent of equity. Malaysia has a semi-decentralized approach to procurement and ministries conduct their own procurement according to government-wide legislation and procedures. Procurement procedures vary depending on the size of the contract. The Government Procurement Management Division of the Finance Ministry undertakes open local tenders for goods in common use throughout the government (for</p>

	<p>example, office supplies). Government agencies (federal and state) are then required to purchase those goods from the winner of these contracts.</p> <p>Malaysia's procurement policy also requires that a minimum percentage of government procurement contracts, depending on their value, are awarded to "Bhumiputera" businesses or business enterprises run and controlled by the Malay people (to the exclusion of the Chinese, Indians etc.).</p>
SAFTA	<p>Article 1 of SAFTA highlights Direct Trade Measures as measures conducive to promoting the mutual trade of contracting.</p> <p>States such as long- and medium-term contracts contain import and supply commitments in respect to specific products, buy-back arrangements, state trading operations and government and public procurement.</p> <p>Article 3 of SAFTA states that SAFTA should be governed by the principles according to which the contracting states should affirm to their rights and obligations with respect to each other under the Marrakech Agreement, establishing the World Trade Organization and other Treaties/Agreements to which such contracting states are signatories. This clearly puts an emphasis on environmental considerations.</p> <p>Article 8 of SAFTA makes mention of the harmonization of standards, the reciprocal recognition of tests and the accreditation of testing laboratories of contracting states, and the certification of products. So one could link Article 8 to Article 1 and Article 3 and conclude that testing, the harmonization of standards and the certification of products, could be followed in the government's public procurement of goods as mentioned in Article 1, which mentions public and government procurement under direct trade. The testing and harmonization of these standards could be done to attain environmental norms in the goods procured.</p>

Matrix approach towards an analysis of procurement in all regional trade agreements

This matrix attempts to provide an overall comparative analysis of the coverage of regional trade agreements on procurement specifically, and on certain other aspects which may impact on procurement standards and criteria.

Name of the Agreement	Government Procurement	Investment	Competition Policy	Dispute Settlement/ Trade Facilitation	Environmental Procurement	Capacity Building & Technology Transfer
Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Cooperation Between the	No	No	No	No	No	No

Name of the Agreement	Government Procurement	Investment	Competition Policy	Dispute Settlement/ Trade Facilitation	Environmental Procurement	Capacity Building & Technology Transfer
Association of Southeast Asian Nations and the People's Republic of China						
ASEAN Framework Agreement on Services	No	No	No	No	No	No
ASEAN Free Trade Area (AFTA)	No	No	No	No	No	No
ASEAN-Japan Comprehensive Economic Partnership	No	No	No	No/Yes	No	Yes/No
Agreement on Trade in Goods Under the Framework Agreement on Comprehensive Economic Cooperation Among the Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea	No	No	No	Yes/No	No	No
ASEAN-ANZCERTA Free Trade Agreement	No	No	No	No/No	No	No
Framework Agreement on Comprehensive Economic Cooperation Between the	No	Yes	No	No/No	No	No

Name of the Agreement	Government Procurement	Investment	Competition Policy	Dispute Settlement/ Trade Facilitation	Environmental Procurement	Capacity Building & Technology Transfer
Association of South-East Asian Nations and the People's Republic of China						
ASEAN-India Framework Agreement on Comprehensive Economic Cooperation	No	Yes	No	No/Yes	Yes	No
Framework Agreement on Comprehensive Economic Cooperation Among the Governments of the Member Countries of the Association of the Southeast Asian Nations and the Republic of Korea	No	Yes	No	Yes/No	No	Yes/No
Bhutan-India Free Trade Agreement	No	No	No	No	No	No
Bay of Bengal Initiative for Multi-sectoral Technical and Economic Cooperation	No	Yes	No	No/Yes	No	No
Mainland and Hong Kong Closer Economic Partnership Agreement	No	No	No	No/Yes	No	No
China-Korea Free Trade	No	No	No	No	No	No

Name of the Agreement	Government Procurement	Investment	Competition Policy	Dispute Settlement/ Trade Facilitation	Environmental Procurement	Capacity Building & Technology Transfer
Agreement						
Mainland and Macao Closer Economic Partnership Agreement	No	No	No	No/Yes	No	No
China-Niger Economic and Technological Cooperation Agreement	No	No	No	No	No	No
Free Trade Agreement Between the Government of the People's Republic of China and the Government of the Islamic Republic of Pakistan	No	Yes	No	Yes/Yes	No	No
India-Afghanistan Preferential Trade Agreement	No	No	No	No	No	No
Trade Agreement Between India and Bangladesh	No	No	No	No	No	No
Indo-Nepal Treaty of Trade	No	No	No	No	No	No
Free Trade Agreement Between the Republic of India and the Democratic Socialist Republic of Sri Lanka	No	No	No	Yes/No	No	No
India-Thailand Framework	No	Yes	No	No/Yes	No	No

Name of the Agreement	Government Procurement	Investment	Competition Policy	Dispute Settlement/ Trade Facilitation	Environmental Procurement	Capacity Building & Technology Transfer
Agreement for Establishing a Free Trade Agreement						
Japan-Indonesia Economic Partnership Agreement	No	No	No	No	No	No
Japan-Korea Free Trade Agreement	No	No	No	No	No	No
Japan-Malaysia Economic Partnership Agreement	No	Yes	Yes	Yes/No	No	No
Agreement Between Japan and the Republic of the Philippines for an Economic Partnership	Yes	Yes	Yes	Yes	No	Yes
Agreement Between Japan and the Republic of Singapore for a New-Age Economic Partnership	Yes	Yes	Yes	Yes	No	No
Japan-Thailand Economic Partnership Agreement	No	Yes	Yes	Yes/No	No	No
Korea-India Comprehensive Economic Partnership Agreement	No	No	No	No	No	No
Free Trade Agreement Between the Government of	Yes	Yes	No	Yes/Yes	No	Yes/No

Name of the Agreement	Government Procurement	Investment	Competition Policy	Dispute Settlement/ Trade Facilitation	Environmental Procurement	Capacity Building & Technology Transfer
the Republic of Korea and the Government of the Republic of Singapore						
Lao PDR- Thailand Preferential Trading Arrangement	No	No	No	No	No	No
Malaysia-Korea Free Trade Agreement	No	No	No	No	No	No
Agreement on the Early Harvest Program for the Free Trade Agreement Between the Government of Malaysia and the Government of the Islamic Republic of Pakistan	No	No	No	No	No	No
Free Trade Agreement Between the Islamic Republic of Pakistan and the Democratic Socialist Republic of Sri Lanka	No	No	No	Yes/No	No	No
South Asian Free Trade Area	Yes	Yes	Yes	Yes	No	No
Singapore-Pakistan Free Trade Agreement	No	No	No	No	No	No
Singapore-Sri	No	No	No	No	No	No

Name of the Agreement	Government Procurement	Investment	Competition Policy	Dispute Settlement/ Trade Facilitation	Environmental Procurement	Capacity Building & Technology Transfer
Lanka Comprehensive Economic Partnership Agreement						
South Pacific Regional Trade and Economic Co-operation Agreement	No	No	No	Yes	No	Yes/No

Matrix of the bilateral investment treaties between India and other countries

This matrix highlights the scope and coverage of the legal regime within India's specific bilateral investment treaties and discusses the possibility of their impact on government procurement.

	Name of the Agreement	Procurement	Environmental/ Sustainability Obligations	Comments
	Agreement Between the Government of Australia and the Government of the Republic of India on the Promotion and Protection of Investments (February 26 th , 1999)	<p>No express provision, however the definition of "investment" includes: "business concessions and any other rights required conducting economic activity and having economic value conferred by law or under a contract..." This could include procurement contracts or tenders.</p> <p>These investments, (also retroactively), are protected by the application of non-discrimination clauses. However there is an overall obligation of the interpretation of this provision "in accordance with national laws of contracting parties where investment is made," which essentially limits the application. However this would not be a limitation in countries where there are no legally-mandated limitations on procurement.</p>	None	<p>Also liberalizes the regime for Mode IV – trade in services, (liberalizing the travel regime for trained personnel in connection with the investment)</p> <p>Transparency provision only limited to public accessibility clause</p> <p>Blanket exception clause "essential security interest"</p> <p>Dual "in accordance with" requirements with the agreement and the respective laws of the countries</p>
2.	Agreement Between the Government of the	No express provision. However, investment includes	None	No transparency provision

	Republic of Austria and the Government of the Republic of India for the Promotion and Protection of Investments (January 31 st , 2001)	“claims to money that have been given in order to create a financial value or claims to any performance having a financial value.” This could include procurement contracts or tenders “in accordance with national laws of contracting parties where investment is made,” which essentially limits the application.		
3.	Agreement Between the Government of the Republic of Croatia and the Government of the Republic of India for the Promotion and Reciprocal Protection of Investments (May 4 th , 2001)	No express provision. However, investment includes “rights to engage in economic and commercial activities conferred by law and by virtue of a contract.” This could include procurement contracts or tenders “in accordance with national laws of contracting parties where investment is made.” This essentially limits the application.	None	No transparency provision Application of MFN and NT to investments and obligation to accord investments the treatment most favourable—either by way of application of NT or under MFN, (this is a far-reaching clause for granting of most favourable treatment to investment)—could possibly negate the application of the conformity rule as specified “in accordance with...” Further as is specified “except as otherwise provided in the agreement—all investments shall be in accordance with national laws” Supremacy of the agreement provisions over national laws <i>vis-à-vis</i> investments
4.	Agreement Between the Czech Republic and the Republic of India for the Promotion and Protection of Investments (October 11 th , 1996)	No express provision. However, investment includes “rights under business concessions and licenses conferred by law...” This could include procurement contracts or tenders	None	No transparency provision Partial liberalization of Mode IV. Also liberalizes the regime for Mode IV – trade in services, (liberalizing the travel regime for trained personnel in connection with the investment)
5.	Agreement	No express	None	No transparency provision

	Between the Government of the Republic of India and the Government of the Kingdom of Denmark Concerning the Promotion and Reciprocal Protection of Investments (September 6 th , 1995)	<p>provision. However, investment includes “concessions or other rights conferred by law or contract.” This could include procurement contracts or tenders.</p> <p>There is no conformity clause to national laws: <i>subject to the provisions of this agreement</i>, all investments shall be governed by the laws in force in the territory of the contracting party in which such investments are made (supremacy clause favouring the agreement).</p> <p>These investments, (also retroactively), are protected by the application of non-discrimination clauses.</p>		<p>Rights of admission of investment, including establishment of representative offices, partial liberalization of Mode III – commercial presence regime trade in services, (liberalizing the regime for establishment of commercial presence in connection with the investment)</p> <p>Protection of investment against discriminatory measures and <i>unreasonable</i>³⁰ measures</p> <p>Application of MFN and NT to investments and obligation to accord to investors more favourable treatment—either by way of application of NT or under MFN, (this is a far-reaching clause for granting of most favourable treatment to the investor)</p>
6.	Agreement Between the Government of the Arab Republic of Egypt and the Government of the Republic of India for the Promotion and Reciprocal Protection of Investments (April 9 th , 1997)	No express provision. However, investment includes “concessions or other rights conferred by law or contract.” This could include procurement contracts or tenders.	None	<p>No transparency requirement</p> <p>Liberalizes the regime for Mode IV – trade in services, (liberalizing the travel regime for trained personnel in connection with the investment)</p>
7.	Agreement Between the	None	None	No transparency requirement

³⁰ Emphasis added. Threshold for legal proof of un-reasonability much lower and can be challenged for reasons of administrative oversight and overt discrimination or for favouring local suppliers—as is usually the case in government-procurement schemes.

	Government of the Republic of India and the Government of the Republic of Ghana for the Reciprocal Promotion and Protection of Investment (June 23 rd , 2000)			Liberalizes the regime for Mode IV – trade in services, (liberalizing the travel regime for trained personnel in connection with the investment)
8.	Agreement Between the Republic of Hungary and the Republic of India for the Promotion and Protection of Investments (November 3 rd , 2003)	No express provision. However, investment includes “any right or business concessions conferred by law or under contract and any licenses pursuant to law.” This could include procurement contracts or tenders.	None	No transparency provision Application of MFN and NT to investments and obligation to accord to investors more favourable treatment—either by way of application of NT or under MFN, (this is a far-reaching clause for the granting of most favourable treatment to the investor) Liberalizes the regime for Mode IV – trade in services, (liberalizing the travel regime for trained personnel in connection with the investment)
9.	Agreement Between the Government of the Republic of Mauritius and the Government of the Republic of India for the Promotion and Protection of Investment (June 20 th , 2000)	None	None	Liberalizes the regime for Mode IV – trade in services, (liberalizing the travel regime for trained personnel in connection with the investment) No transparency provision
10.	Agreement Between the Government of the Republic of Indonesia and the Government of the	None	None	Liberalizes the regime for Mode IV – trade in services, (liberalizing the travel regime for trained personnel in connection with the investment) No transparency provision

	Republic of India for the Promotion and Protection of Investment (February 8 th , 1999)			
11.	Agreement Between the Government of the Republic of Kazakhstan and the Government of the Republic of India for the Promotion and Reciprocal Protection of Investments (December 16 th , 1991)	None	None	<p>Liberalizes the regime for Mode IV – trade in services, (liberalizing the travel regime for trained personnel in connection with investment)</p> <p>No transparency provision</p>
12.	Agreement Between the Government of the Republic of Korea and Government of the Republic of India on the Promotion and Protection of Investment (February 26 th , 1996)	No express provision. However, investment includes “business concessions or any other rights conferred by law or under contract and any licenses pursuant to law.” This could include procurement contracts or tenders.	None	<p>No transparency provision</p> <p>Application of MFN and NT to investments and obligation to accord to investments the treatment most favourable—either by way of application of NT or under MFN, (this is a far-reaching clause for the granting of most favourable treatment to investment)</p>
13.	Agreement Between the Republic of India and the Kingdom of the Netherlands for the Promotion and Protection of Investments (Not Available)	No express provision. However, investment includes “rights granted under law or under contract.” This could include procurement contracts or tenders.	None	<p>No transparency provision</p> <p>Investment also includes indirect investment through companies fully owned by the investors—nationals of the contracting parties</p> <p>All investment shall, subject to this agreement, be governed by the laws in force in the territory of the contracting party in which such investments are made</p>
14.	Agreement Between the	None	None	Liberalizes the regime for Mode IV – trade in services, (liberalizing the

	Government of the Sultanate of Oman and the Government of the Republic of India on the Promotion and Protection of Investment (April 2 nd , 1997)			travel regime for trained personnel in connection with the investment) No transparency provision
15.	Agreement Between the Government of the Democratic Socialist Republic of Sri Lanka and the Government of the Republic of India on the Promotion and Protection of Investment (January 22 nd , 1997)	None	None	No transparency provision Liberalizes the regime for Mode IV – trade in services, (liberalizing the travel regime for trained personnel in connection with the investment)
16.	Agreement Between the Government of the Kingdom of Sweden and the Government of the Republic of India Concerning the Promotion and Reciprocal Protection of Investments (July 4 th , 2000)	None expressly. However, investment includes “other rights required to conduct economic activity conferred by law or under contract.” This could include procurement contracts or tenders.	None	No transparency provision Liberalizes the regime for Mode IV – trade in services, (liberalizing the travel regime for trained personnel in connection with the investment also includes family members)
17.	Agreement Between the Government of the Kingdom of Thailand and	None	None	No transparency provision Liberalizes the regime for Mode IV – trade in services, (liberalizing the travel regime for trained personnel in connection with the investment)

	the Government of the Republic of India for the Promotion and Protection of Investments (July 13 th , 2001)			
18.	Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India for the Promotion and Protection of Investments (March 14 th , 1994)	None		No transparency provision

Annexure 4: Sustainable public procurement leaders and proponents interviewed during this project

List of organizations and persons interviewed

The table below presents a list of organizations that were contacted and/or interviewed within the scope of this project.

Name	Organizations
John Atherton	International Council on Mining and Metals, U.K.
Herma Jose Blauherst	Netherlands Ministry of the Interior and Kingdom Relations, The Netherlands
Liz Cross	British Telecom, U.K.
Keith Gallagher	Terrachoice, Canada
Lila Feisee	Biotechnology Industry Association, U.S.
Rafae Fernandez de Alarconazon	Telefonica, Spain and South America
Mark Hidson	The Local Governments for Sustainability (ICLEI)
Phillip Kristensen	Federal Office for the Environment, Switzerland (FOEN)
Un-named	Shell, U.K./Netherlands
Jan Willem Scheijgrond	Hewlett Packard Company, Europe
Tom Lloyd-Smith	DEFRA, U.K.
Cerecela Stancu	Landcare Research, New Zealand
Issabella Marras	UNEP, France
Barbara Morton	DEFRA/Action Sustainability, U.K.
Francois Perry	Alcatel, France
Katherine Quinteros	DEFRA, U.K.
Wim Wallart	Balfour Beatty, Netherlands/Europe
Luke Warren	International Petroleum Industry Environmental Conservation Association (IPIECA)
Mario Monzoni	Centre for Sustainability Studies, Brazil
Gavin Edwards	Greenpeace International, Brazil
Laura Valente de Macedo	ICLEI-LACS, Brazil
Professor Carlos Formoso	Federal University of Rio Grande do Sul, Brazil
José Augusto A.K. Pinto de Abreu	Environmental Consultant, Brazil
Allan Milhomens	Ministry of Environment, Brazil
Luciana Coelho Marques	Ecolodges Programme, Brazil
Alfredo Lobo	Ministry of Development, Industry and Foreign Trade, Brazil
Jonathon Hanks	Incite Sustainability, Cape Town, South Africa
Joanne Yawitch	Deputy Director General: Environmental Quality & Protection, Department of Environmental Affairs and Tourism, South Africa
Lee Kiyau Loo	Secretary General, Green Productivity Association, Malaysia
Prabir Sengupta	Distinguished Fellow, TERI (Former Secretary, Ministry of Commerce, India)
Pratik Ghosh	Associate Fellow, TERI WBCSD (Coordinator, TERI WBCSD)