



Canada's International Trade Obligations: Barrier or opportunity for sustainable public procurement?

Unpacking Canada's WTO GPA
and CETA commitments in relation
to sustainable procurement

IISD REPORT



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Canada's International Trade Obligations: Barrier or opportunity for sustainable public procurement?

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1.0 Introduction and Background

Smart, strategic or sustainable public procurement (SPP) is about delivering the best value for money for taxpayers. This means buying goods, services and public works based not on the cheapest purchase price, but on the total cost over the product or service's lifetime. Life-cycle costing and total cost of ownership have become an important aspect of good public procurement. In addition, governments should be aware of the broader economic, social and environmental costs and benefits of their buying behaviour.

Representing an average of 15 per cent of the GDP of Organisation for Economic Co-operation and Development (OECD) countries, public procurement is an important driver of a low-carbon, inclusive and sustainable economy. Canada's procurement amounts to 13.44 per cent of GDP, according to the OECD (2017).

Public procurement has gained traction in recent years as an important tool for governments working toward strategic goals such as low-carbon economic development and innovation. To make full use of public procurement as a strategic driver, governments must change the way the procurement process works today. Procurers must be made more aware of their strategic function. Laws, policies, processes and practices need reform so procurers can do things differently. At its core, procurement needs to undergo a shift in focus from the lowest price to the best value. Many of those changes are well underway in many countries, including in Canada.

Imagine the following situation: A municipality makes a pledge to make all its buildings carbon neutral by 2050. To do so, it needs to invest in renovating its building stock using the most innovative energy efficient solutions available. Its procurement department has limited capacity to work through the complexities of the procurement process, and no expertise in energy efficiency. Municipal budgets are tight. Many local start-ups are developing innovative solutions for efficient, clean energy in infrastructure projects. However, there is legal uncertainty around whether and how the municipality can buy these innovative solutions. How can this municipality find the best value for money as it renovates the building stock to reduce energy consumption?

Despite the momentum around SPP, its implementation has proven difficult in situations like this one. Traditionally, procurers identify the following barriers to implementation (Casier, 2018; Casier & Wuennenberg, 2018; International Institute for Sustainable Development [IISD], 2015; OECD, 2015):

- Legal framework (national and international)
- Procurer skillsets
- Business case for sustainability
- Risk-averse mindset and absence of political will

This paper focuses on the legal framework as it relates to international trade agreements. Guidance covering the other barriers can be found in other materials, which (although not Canada specific) include recommendations, examples and tools from various jurisdictions to help make the business case. They also include advice on useful skillsets and capacities for procurement agencies hoping to support the shift towards SPP (Casier, Hermanus, Scholtz, & Wuennenberg, 2018; Casier & Wuennenberg, 2018; Clement, Watt, & Semple, 2016; IISD, 2015).

After this introduction, section 2 looks at the what, why and how of sustainable procurement. Section 3 discusses the scope, coverage and substantive obligations under the World Trade Organization Agreement on Government



Procurement (WTO GPA; WTO, 2012) and Comprehensive Economic and Trade Agreement (CETA) Chapter 19 (2016), and what they mean for implementing sustainable procurement. Section 4 discusses these obligations in the Canadian context and goes back to the example of the municipality from the introduction. Section 5 offers a set of recommended next steps for the implementation of sustainable procurement in Canada.

This report is based on desk research and interviews with Canadian procurers, policy-makers and international experts.

1.1 Canada and Public Procurement

Public procurement is first and foremost regulated by a legal framework. Different frameworks apply at federal, provincial, territorial and municipal levels, but the same principles are embedded across the board. Table 1 provides an overview of the key legislation and policies that apply to Canada's public procurement.

Table 1. Canada's key legislation and policies on public procurement

International and National Trade Agreements with Procurement Chapters	
International	World Trade Organization Agreement on Government Procurement (WTO GPA)
	Comprehensive Economic and Trade Agreement (CETA)
	North American Free Trade Agreement (NAFTA)—until renegotiated Canada–United States–Mexico Agreement (CUSMA) becomes effective
	Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)
	Canada–Chile Free Trade Agreement (CCFTA)
	Canada–Colombia Free Trade Agreement
	Canada–Honduras Free Trade Agreement
	Canada–Panama Free Trade Agreement
	Canada–Peru Free Trade Agreement
	Canada–Ukraine Free Trade Agreement
National	Canada Free Trade Agreement (CFTA)—former Internal Trade Agreement (ITA)
Federal Legislation	
	Financial Administration Act (1985)
	Department of Public Works and Government Services Canada Act (1996)
	Federal Accountability Act (2006)
	Government Contracts Regulations
	Procurement Ombudsman Regulations



Relevant Federal Policies

	Treasury Board Contracting Policy
	Standard Acquisition Clauses and Conditions Manual
	Code of Conduct for Procurement
	Ineligibility and Suspension Policy
	Supply Manual
	Greening Government Strategy
	Green Procurement Policy

Selected Examples of Sub-Federal Legislation and Policies (non-exhaustive)

Alberta	Public Works Act (2000)
British Columbia	Procurement Services Act (2003)
City of Toronto	Circular Economy Procurement Implementation Plan and Framework
Ontario	Broader Public Sector Accountability Act (2010)
	Directives by Management Board of Cabinet
Quebec	Act Respecting Contracting by Public Bodies (2018)

Source: Author's research; *International Comparative Legal Guides (ICLG)*, 2019.

Canada also has commitments related to public procurement under international trade agreements. Canada is party to the World Trade Organization's Agreement on Government Procurement (WTO GPA), a plurilateral agreement among mostly developed-country members of the WTO. Canada also has commitments under the Comprehensive Economic and Trade Agreement (CETA; Chapter 19), between Canada and the European Union (EU), and under the North American Free Trade Agreement (NAFTA; Chapter 10), between Canada, Mexico and the United States (U.S.).¹ Canada is also a member of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which entered into force on December 30, 2018.²

Canada has also liberalized a share of its procurement market under a range of bilateral trade agreements. Coverage is smaller in terms of entities, as well as the range of goods, services and public works covered. For some agreements, the thresholds are lower than CETA or the WTO GPA. However, the substantive provisions are largely the same as those under CETA and the WTO GPA, and the same logic of analysis will apply. They are therefore left out of the scope of this paper.³

¹ The NAFTA Agreement has been renegotiated to the Canada–United States–Mexico Agreement (CUSMA), which does not include a Canadian commitment on public procurement. When the CUSMA comes into force, the procurement market between the United States and Canada will be regulated by the WTO GPA, the one between Canada and Mexico will be regulated by the CPTPP. Therefore, we did not include further analysis of the NAFTA/CUSMA procurement sections.

² The CPTPP's Chapter 15 on Public Procurement mirrors the WTO GPA, and the Annex of Canada's commitments will not be discussed separately in this paper, because the legal reasoning on the scope for SPP under the CPTPP is the same as under the WTO GPA and CETA.

³ Canada–Chile Free Trade Agreement (CCFTA); Canada–Colombia Free Trade Agreement; Canada–Honduras Free Trade Agreement; Canada–Korea Free Trade Agreement; Canada–Panama Free Trade Agreement; Canada–Peru Free Trade Agreement (CPFTA); Canada–Ukraine Free Trade Agreement (CUFTA); the Canadian Free Trade Agreement (CFTA) between Canada and the provinces and territories, and the Internal Trade Agreement (ITA).



These international trade agreements apply in various ways to all levels of government. To advance sustainable public procurement, we must understand the limitations and opportunities under Canada's international trade commitments.

This paper explores the extent to which these international trade commitments could pose a barrier to sustainable procurement or, conversely, enable sustainability to take a more prominent role in the procurement process.

It includes examples of how sustainable public procurement already happens in Canada and in other jurisdictions in a manner compliant with international economic law.

Providing more legal certainty about what a procuring authority can do under international trade obligations is one way of addressing the aforementioned barriers.

Table 2 provides an overview of references to sustainable or green public procurement (SPP or GPP) in Canada's federal procurement framework. This table illustrates how Canada's existing procurement framework is open and encouraging to implementing sustainable procurement.



Table 2. References to sustainable and green procurement in the Canadian procurement framework

<p>Supply Manual (Government of Canada, 2018a)</p> <p>The Supply Manual contains all references to policies, procedures, directives and acts on public procurement. It is the guidance manual for all federal contractors. Various chapters include references to the Policy on Green Procurement, green procurement and sustainable development.</p>	<p><i>Chapter 1</i> includes the basic explanation of the Green Procurement Policy and cross-references to other sections in the Supply Manual that offer more detailed explanation. It also refers to an online course on green procurement that is required for all contracting officers. It explains that the Green Procurement Policy is set within the context of value for money and a life-cycle management approach. It requires the development of a green procurement strategy with targets and monitoring requirements.</p> <p><i>Chapter 2, section 2.20</i> requires PSPC to assist in identifying green requirements in a purchasing decision, and explains that “A key consideration is whether it is actually necessary to make the new purchase. Ultimately, avoiding a purchase will be the most environmentally preferable and economical option.” It refers to Annex 2.2 for detailed indicators to include in a value for money assessment.</p> <p><i>Annex 2.2: Green Procurement: Environmental Factors and Evaluation Indicators.</i> The annex includes a list of indicators that can be taken into account when assessing value for money, including operation costs, indirect costs, investing upfront to recover costs later, disposal arrangements, and others. The annex then lists a range of indicators to help develop evaluation criteria, such as environmental certifications, energy and resource efficiency, recycled content, environmental attributes of the suppliers (ISO certificates), and more.</p> <p><i>Chapter 3, section 3.65: Green Procurement Strategy</i> explains that “departments must consider opportunities to advance the protection of the environment and support sustainable development.” The strategy development section explicitly links green procurement to sustainable development.</p> <p><i>Chapter 3, section 3.140: Life-Cycle Costing.</i> This section explains how the application of total life cycle costing can be used to support green procurement</p> <p><i>Canadian Content Policy Annex 3.6</i> is relevant to our discussion of SPP, as it is the go-to policy for using procurement to support Canada’s industrial development in certain circumstances. The policy does not apply to procurement covered by the international trade agreements.</p> <p><i>Chapter 4, section 4.15.5: Green Procurement Requirements</i> cross-references with Annex 2.2 and restates the need for green procurement, as well as what it can include and where to find additional information to include in the solicitation process. “Contracting officers must consider green procurement in the preparation of solicitation documents and resulting contracts, including requests for standing offers and requests for supply arrangements, to ensure that environmental considerations, if appropriate, are addressed.”</p>
<p>Policy on Green Procurement (Government of Canada, 2006)</p>	<p>The Policy on Green Procurement requires that Deputy Heads of federal departments “... ensure their management control framework in support of procurement incorporates environmental performance considerations: from planning, identification and definition of requirements, acquisition, operation and maintenance to disposal of goods or closure activities of acquired services.”</p>



<p>Minister of Public Services and Procurement Mandate Letter (Trudeau, 2017)</p>	<p>“... increase the diversity of bidders on government contracts, in particular businesses owned or led by Canadians from under represented groups, such as women, Indigenous Peoples, persons with disabilities, and visible minorities...”</p> <p>“...to ensure we not only meet but exceed standards for accessibility, and environmental sustainability.”</p> <p>“Modernize procurement ... encourage greater competition, and include practices that support our economic policy goals, including innovation, as well as green and social procurement.”</p>
<p>Greening Government Strategy (Government of Canada, 2018b)</p>	<p>Includes a component on green procurement, with emphasis on greening the public building stock and fleet.</p>



2.0 A Brief What, Why and How of Sustainable Public Procurement

2.1 What is Sustainable Public Procurement?

Sustainable public procurement (SPP) has various definitions. IISD defines SPP as value for money across the life cycle of a good, service or infrastructure asset (IISD, 2015). This definition requires agencies to optimize across several criteria: financial viability, reduced impact on the environment and greenhouse gas emissions, and increased socioeconomic benefits. These balance points are not always easy to find. The products that are cheapest to buy may ultimately have a larger cost for the government and taxpayers. Often, these costs aren't apparent at the moment of purchase, but arise later in the product's life. This is why a life-cycle approach to procurement is so important.

The environmental, social and socioeconomic aspects of sustainability will be unpacked in further detail in the next section, since the legal implications vary.

Environmental sustainability—green procurement: buying products, infrastructure and services that have a low carbon footprint, reduce impacts on biodiversity, decrease greenhouse gas emissions, contribute to a healthier environment by reducing pollution and waste, and reduce pressure on natural resources.

Social sustainability—social procurement: buying products, infrastructure and services that take into account working conditions, gender equality and respect for human rights in their operations and production processes.

Socioeconomic sustainability—strategic procurement: buying from a specifically defined group to support the economic empowerment of that group, which might include small and medium-sized enterprises, women-owned businesses, Indigenous groups, businesses that employ disadvantaged groups, and social enterprises.

The Government of Canada in its Policy on Green Procurement uses the following definition: “Environmentally preferable goods and services are those that have a lesser or reduced impact on the environment over the life cycle of the good or service, when compared with competing goods or services serving the same purpose.” (Government of Canada, 2006).

2.2 Why is it Important to Look at Public Procurement?

On average, public procurement represents 15 per cent of a country's GDP (OECD, 2017). Therefore, its spending patterns have huge potential to incentivize more sustainable consumption and production. If there is a large and consistent demand for green and sustainable products, a supply will follow. This type of government support can be particularly important for new entrants to green markets, who may be struggling to bring down costs by producing at scale or through learning by doing. That is why it is so important to invest in getting public procurement right.

In recent years, developments at all levels of government have shown that the power of public procurement needs to be used in a smarter, more strategic way. The EU Public Procurement Directive (2014), the binding legal framework for public procurement in all EU Member states, is a result of this realization. It is also considered the international best practice for providing procurement agencies with the legal certainty they need to use public procurement to advance societal goals. The World Bank's new procurement framework (2016) is another example that embeds value for money and sustainability as core principles, demonstrating how worldwide procurement is



shifting away from a focus on the lowest price toward the best value. Other international organizations, national governments, cities and municipalities are following. The inclusion of sustainable procurement in the Sustainable Development Goals also gave a boost of confidence to procurement agencies that are considering using their public spending in a different way. Indeed, target 12.7 identifies public procurement as a lever for shifting sustainable consumption and production patterns.⁴

In 2017 the European Commission launched a Procurement Package to incentivize the transition toward strategic public procurement (see Box 1).

Box 1. The EU public procurement package: Taking the next step

Against the backdrop of the Investment Plan for Europe (“The Juncker Plan”), the EC’s Renewed Industrial Policy Strategy (2017d) and the EU Procurement Directive (2014), the European Commission (EC) launched a Public Procurement Package (2017a) to increase impact of public investment through procurement. The package consists of four areas of work:

- Priority areas for improvement: Many are related to improving access for small and medium enterprises (SMEs) to the procurement market, further digitalization, and buyer professionalization to help make procurement more strategic.
- Voluntary ex-ante assessments of large infrastructure projects (EC, 2017b): To assist project managers, the EC set up a helpdesk that provides answers about the complex regulatory framework of large projects. It aims to avoid uncertainties and delays, and to prevent legal issues from turning up later in the process. For example, when a public authority plans to construct new buildings, its project managers can ask questions about the appropriate procurement process, how to best set up a competitive dialogue or how to embed green and social considerations. When procurement plans are more concrete, they can be submitted via a notification system, and within three months the Commission will offer non-legally binding advice on whether the plans are compliant with EU regulations. Finally, as part of this area of work, the EC will provide for an online platform to exchange best practices and advice on the preparation of large infrastructure projects.
- A Recommendation⁵ on the professionalization of public buyers (EC, 2017c): The EC sent a strong signal to the Member States to invest in the capacities of their public procurers, and commits to facilitating the exchange of good practices. The Recommendation includes instructions to develop a long-term strategy and policy for public procurement that focuses on institutional reform to ensure the delivery of value for money to citizens. It also includes a section on human resource management and how to provide training programs for public procurement professionals. Finally, it emphasizes the need for supportive IT systems, tools and methodologies to facilitate good public procurement.
- Consultation and guidance on stimulating innovation through public procurement, focusing not only on an innovative outcome, but also on other procurement methods. For example, the EU launched the [procure2innovate](#) project in the aftermath of the Procurement Package communication to improve institutional support for innovation procurement and connect the various competence centres in Europe.

Through the EC’s innovation funds, such as Horizon2020, public agencies can apply for financial support to implement some aspects of this Procurement Package.

Sources: European Commission, 2017a, 2017b and 2017c.

⁴ For more references to the momentum on SPP, see <https://www.iisd.org/blog/how-implement-strategic-smart-sustainable-public-procurement>

⁵ A Recommendation is a non-binding legal instrument that the European Commission can use to encourage EU Member States to take action, in this case to develop strategic plans to professionalize the procurement workforce.



This package has boosted the importance of reforming public procurement in Europe. Canada could follow a similar model, in addition to funding ongoing initiatives such as the [Greening Government Fund](#), [Innovative Solutions Canada](#), [Innovations for Defence Excellence and Security \(IDEaS\)](#) and the [Build in Canada Innovation Program](#), which is being consolidated with Innovative Solutions Canada. Currently, few of these initiatives focus on professionalizing the procurement workforce or supporting the institutional reform required to make procurement a strategic government function.

2.3 How Could Procurement Help Drive a Sustainable, Low-Carbon Economy?

Scaling up the implementation of SPP requires various actions. While their implementation is country or agency specific, recurring themes in our research on barriers and enablers for SPP include the needs for legal and procedural certainty, procurer capacity and skills, and a business case for SPP. This paper focuses only on the need for legal and procedural certainty, specifically in international trade agreements.

For information and ideas on the other themes, we refer to other research that is not Canada specific, but includes recommendations, examples and tools for making the business case and expanding skillsets and capacities to support the shift towards SPP (Casier et al., 2018; Casier & Wuennenberg, 2018; IISD, 2015).



3.0 Unpacking Canada's International Trade Obligations in Relation to Sustainable Public Procurement

3.1 Scope and Coverage

Federal procurement in Canada is regulated through a Canadian legal framework using the Supply Manual (Government of Canada, 2018a) as the central guidance document. The Manual includes references to the internal and international trade agreements, and the bidding documents make subsequent reference to the applicable national and international rules (see Table 1).

Every procurement chapter of an international trade agreement includes detailed annexes with the thresholds, items and entities that are subject to the substantive rules of the agreement. Before looking at the relation between these substantive rules and sustainability, we need to dig into the details of these annexes to clarify the agreement's scope and coverage.

We must assess these thresholds, items and entities covered before becoming preoccupied with the potential friction between sustainability requirements in tender documents and the international agreements. Indeed, a significant portion of a country's procurement markets are not covered under these agreements. For that portion, the international agreements do not impose a barrier to SPP.

3.1.1 Thresholds

Table 3 summarizes the thresholds of Canada's commitments under the WTO GPA and CETA. The details of the scope and commitments can be found in Annexes 1 to 7 of the respective agreements.

**Table 3. Thresholds under WTO GPA and CETA**

WTO GPA				
Entities	Thresholds ⁶ (CAD)			Comments
	Goods	Services	Construction	
Annex 1: Central	237,000	237,700	9,100,000	Annex 1 lists the central government entities covered under the Agreement.
Annex 2: Sub-Central	649,100	649,100	9,100,000	<p>Sub-central entities include departments, ministries, agencies, commissions, boards and committees at the provincial level.</p> <p>Some provinces explicitly list the entities that are not covered. For example, Nova Scotia notes that the Emergency Health Services, a division under the Department of Health, is not covered (while the rest of the Department is).</p> <p>In other provinces, specific goods and services are excluded, no matter by which entity they are procured. For example, the Province of Quebec carves out any procurement of cultural or artistic goods and services and specifies that the Agreement does not apply to “any measure of Quebec adopted or maintained with respect to culture or cultural industries.”</p> <p>Notes to Annex 2 list some broader carve-outs from all of the sub-national entities. For example, it clarifies that the Agreement does not apply to preferences or restrictions on highway projects, to preferences or restrictions associated with programs promoting the development of distressed areas, or procurement intended to contribute to economic development within selected provinces.</p>
Annex 3: Other	649,100	649,100	9,100,000	“Other” includes entities such as the Canadian Post Corporation, Canadian Museum of Civilization, Canadian Museum of Nature, Canadian Tourism Commission, Defence Construction Ltd, National Capital Commission, National Gallery of Canada, National Museum of Science and Technology, Royal Canadian Mint, and Via Rail Canada Inc.

⁶ Conversion from Special Drawing Rights to Canadian Dollar is done per Treasury Board Contracting Policy 2017-6, available at: <https://www.canada.ca/en/treasury-board-secretariat/services/policy-notice/2017-6.html>



CETA

Entities	Thresholds ⁷ (CAD)			Comments
	Goods	Services	Construction	
Annex 19-1: Central	237,000	237,000	9,100,000	Annex 19-1 lists the central government entities covered by the Agreement. It includes roughly 20 entities, more than the WTO GPA.
Annex 19-2: Sub-central	365,700	365,700	9,100,000	Annex 19-2 includes all other entities listed under the WTO GPA Annex 2 and local, district or other forms of municipal government. It also lists school boards and publicly funded academic, health and social service entities under most provinces. Some provinces also explicitly list entities that are not covered. For examples, Province of Ontario does not cover energy agencies, Ontario Infrastructure and Lands Corporation, or municipal energy entities.
Annex 19-3: Other	649,100 (section A) 731,400 (section B)	649,100 (section A) 731,400 (section B)	9,100,000	Annex 19-3 includes all other entities listed under the WTO GPA Annex 3 and all federal and provincial Crown corporations, with a few provincial exceptions in the energy sector.

Source: Annexes 1, 2 and 3 of Canada's coverage schedules under the WTO GPA; annexes 1, 2 and 3 of CETA Chapter 19.⁸

3.1.2 Coverage of Goods, Services and Construction

Annex 4 of the WTO GPA and Annex 19-4 of CETA cover all goods, except those described in the Federal Supply Classification listed in these annexes.

In Annex 4 of the WTO GPA, that means the Department of National Defence, the Royal Canadian Mounted Police, the Department of Fisheries and Oceans for the Canadian Coast Guard, and provincial police forces. Annex 19-4 of CETA adds the Canadian Air Transport Security Authority to this list. The goods carve-outs for those entities relate mostly to transportation and infrastructure components.

Annex 19-4 of CETA includes a note for the Provinces of Ontario and Quebec related to the procurement of mass-transit vehicles and a permitted local content requirement in subcontracting. It also carves out a portion of the procurement of construction materials for highway construction and maintenance for the Province of Prince Edward Island, as well as some goods (Harmonized System list) for Hydro-Quebec and the Manitoba Hydro-Electric Board.

⁷ Conversion from Special Drawing Rights to Canadian Dollar is done per Supply Manual 2018 that refers to the Treasury Board Contracting Policy 2017-6.

⁸ Available at: https://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.htm and <http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/19.aspx?lang=eng>



Annex 5 of the WTO GPA and Annex 19-5 of CETA list all services covered under the respective agreements. The lists use the United Nations Provisional Central Product Classification (CPC codes). The Annexes distinguish between services covered for federal entities and sub-central entities. The notes to Annex 5 of the WTO GPA list explicit exceptions to covered services. Annex 19-5 of CETA takes the same approach, listing which CPC codes are covered for which entities and cross-referencing to Annexes 19-1, 19-2 and 19-3.

Annex 6 of the WTO GPA and Annex 19-6 of CETA provide a more specific overview of construction-related services. Annex 6 of the WTO GPA covers all construction services under Division 51 CPC classification, except dredging services and construction services procured by or on behalf of the federal Department of Transport. Annex 19-6 of CETA does not list such exceptions, but clarifies that certain service contracts are only bound by a limited set of substantive provisions. The note on Annex 19-6 of CETA details an additional set of requirements for dredging services regarding the origin of the equipment (predominantly European or Canadian) and the vessel's registration (Canadian or EU Member State, if granted a temporary licence). The note also lists a carve-out of construction services by the Manitoba Hydro-Electric Board, and includes an exception for the Province of Quebec that maintains Hydro-Quebec's right to provide favourable treatment to Canadian suppliers for contracts.

3.1.3 General Exceptions

Annex 7 of the WTO GPA and Annex 19-7 of CETA provide general notes on exceptions to and carve-outs from items listed under the other annexes, and these annexes reiterate certain exceptions to avoid ambiguity. For example, Annex 7 of the WTO GPA states that the Agreement does not apply to set-asides for small and minority-owned businesses. There is no such mention in Annex 19-7 of CETA.

Both annexes also provide guidance on the relationship between different legal instruments. For example, neither agreement applies to any measures adopted or maintained with respect to Indigenous peoples and does not affect any rights under section 35 of the Constitution Act, 1982.

3.1.4 Main Findings Related to Scope and Coverage

The coverage and scope of Canada's commitments under CETA is much larger than under the WTO GPA. CETA covers more entities, and the thresholds for goods and services procurement by sub-central entities is also lower than under the WTO GPA. CETA includes roughly 20 more central government entities and significantly more subnational entities, including most regional, local, district or other forms of municipal government, as well as all publicly funded academic, health and social-service entities.

The expansion in coverage of subnational entities under CETA has been heavily criticized. The main argument is that CETA reduces the opportunity to use procurement for societal goals, such as creating jobs, supporting local enterprises and addressing climate change, because it binds more entities (Sinclair, Trew, & Mertins-Kirkwood, 2014). Indeed, the coverage under CETA has increased, and in section 3.2 we will examine the extent to which it has helped or hindered the possibility of implementing sustainable procurement.

If a particular procurement process falls under the scope and coverage detailed in the respective Annexes, we will need to look at the substantive provisions of the agreement to determine whether there is friction between the international trade agreements and sustainable procurement.



3.2 Substantive Obligations

To determine the scope for SPP under the substantive rules of international trade agreements, we need to unpack the definition of SPP in more detail.

We can divide the discussion on SPP into three segments: green procurement, social procurement and socioeconomic procurement, which directs its public contracting efforts at specific societal groups. The most common references are to small and medium-sized enterprises (SMEs), women- or Indigenous-owned businesses, or social enterprises.

Environmental sustainability—green procurement: buying products, infrastructure and services that have a low carbon footprint, reduce impacts on biodiversity, decrease greenhouse gas emissions, contribute to a healthier environment by reducing pollution and waste, and reduce pressure on natural resources.

Social sustainability—social procurement: buying products, infrastructure and services that take into account working conditions, gender equality and respect for human rights in their operations and production processes.

Socioeconomic sustainability—strategic procurement: buying from a specifically defined group to support the economic empowerment of that group, which might include small and medium-sized enterprises, women-owned businesses, Indigenous groups, businesses that employ disadvantaged groups, and social enterprises.

The relevant substantive obligations under CETA and the WTO GPA are identical. The discussion below cites clauses from the WTO GPA. Table 4 provides the number of the identical articles under CETA.

3.2.1 WTO Preamble and Preamble to the GPA

*Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources **in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development** (WTO, 1994).*

*Recognizing that the procedural commitments under this Agreement should be *sufficiently flexible* to accommodate the specific circumstances of each Party (WTO GPA, 2012).*

The preambles emphasize the principle of sustainable development and the need for flexibility. The WTO Preamble helps interpreting the agreement's substantive provisions in light of the objective of sustainable development. The WTO GPA Preamble's emphasis on flexibility is important, as it gives Member countries the legitimate regulatory autonomy to use procurement as a strategic instrument for their development.

The GPA is a very principle-based agreement, embedding ideas such as good governance, transparency and value for money. These principles are the baseline for sustainable procurement.



3.2.2 WTO GPA Art IV General Principles

This article outlines the key principles for public procurement. Here, we will highlight the most important paragraphs that affect the implementation of sustainable procurement.

Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of any other Party and to the suppliers of any other Party offering the goods or services of any Party, treatment no less favourable than the treatment the Party, including its procuring entities, accords to:

- (a) domestic goods, services and suppliers; and
- (b) goods, services and suppliers of any other Party.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

- (a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or
- (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of any other Party.

The principle of non-discrimination is one of the cornerstones of international trade agreements, and is consequently enshrined in all procurement regulations as well. Discrimination based on the *origin* of products, services or suppliers is prohibited.

It is important to remember that these substantive provisions only apply when procurement falls within the scope and coverage of the agreement. Origin-based procurement (“buying local”) is permitted if it is below the threshold, if the procurement entity is not covered by the international rules, or if the exception is explicitly listed in the Annex. For example, CETA Annex 19.7 notes that measures that support procurement from Indigenous peoples and businesses, as well as the cultural industries in Quebec are exempt:

CETA 19.7 General Notes:

2. This Chapter does not apply to:

- (a) any measure adopted or maintained with respect to Aboriginal peoples, nor to set asides for aboriginal businesses; existing aboriginal or treaty rights of any of the Aboriginal peoples of Canada protected by section 35 of the Constitution Act, 1982 are not affected by this Chapter; and*
- (b) any measure adopted or maintained by Québec with respect to cultural industries (CETA, 2016;).*

Under the WTO GPA and CETA Chapter 19, the non-discrimination provision is limited to origin-based discrimination. The interpretation of non-discrimination provisions under other WTO agreements, such as GATT or GATS, is much broader (OECD, 2018b). For this paper, it is sufficient to note that the WTO GPA provides more flexibility than the usual interpretation of non-discrimination.⁹

⁹ This is different than under the GATT, where discrimination based on the process and production methods of like products under certain circumstances will also be regarded as a violation of the non-discrimination provision. These potential violations can then allegedly be justified under exception mechanisms such as GATT XX. For the purposes of this paper, it is sufficient to understand that such PPM-based discrimination is not prohibited under the WTO GPA. In this context, the WTO GPA is regarded as *lex specialis* (Steiner, 2015; Steiner, 2018a).



Today, the discussion around implementing SPP is dominated by ideas about how to use procurement more strategically: Can we use a share of the procurement market to support domestic industries? Can we use procurement to level the playing field and better integrate disadvantaged groups into the economy through public contracting? Can we demand environmental preferences in what we buy and from whom we buy it? Can we demand compliance with labour standards and workers' rights regulations, even if the goods and services come from abroad? These questions are often all posed in the same breath. However, to get a clear picture of what is possible under international trade rules, it is very important to treat them separately.

In relation to *socioeconomic procurement*, the non-discrimination provision causes tension. The non-discrimination principle under the WTO GPA prohibits origin-based discrimination. Procurement that explicitly or implicitly favours local suppliers in the tender procedure will be considered a breach. That means agencies can give no preference to domestic suppliers based on their being domestic.

Preferential treatment of certain groups based on characteristics other than origin is permitted, and in some cases even encouraged by promoting procurement as a strategic tool. Some of the often-used and permitted characteristics are SMEs, woman-owned businesses or social enterprises. However, those procurements should not be used to implicitly favour local suppliers.

Various mechanisms ensure that those groups are better represented in contracting with governments. These mechanisms include specific set-asides, the division of large procurement contracts into lots (something that is explicitly encouraged in the EU Public Procurement Directive), the use of e-procurement, and the creation of central purchasing bodies (OECD, 2018a).

Regarding *green or environmentally friendly procurement or social procurement*, the non-discrimination provision remains silent. This is not unusual; it is a principle that explains what is prohibited, not what is permitted. The endorsement of green procurement in other provisions of the WTO GPA (see below under Art X) supports the interpretation that it is within the realm of the WTO GPA to include preferences for green goods, services or suppliers.

The reference to *social procurement* is absent in the other provisions of the WTO GPA, and there are no grounds to believe that it would violate the non-discrimination principle under the WTO GPA. Semple (2017) suggests that the lack of any reference to social procurement may cause a chilling effect and risk-aversion for the idea of using procurement to demand compliance with labour rights or fair-trade conditions throughout the supply chain.

The WTO Working Program on Sustainable Procurement has discussed this potential room for ambiguity at length. The Key Take-Aways from the Committee's Symposium on Sustainable Procurement (WTO, 2017) suggest that green and social procurement are compatible with the non-discrimination provision, and that the precise way to integrate these procurement strategies is further into the tender procedure. This process is regulated under the provisions on the use of technical specifications (Art X), which I discuss in more detail below.

Discussions in the WTO GPA Committee confirm that the non-discrimination provision in the GPA leaves sufficient "constructive ambiguity" for countries to pursue their sustainability objectives, including the socioeconomic ones (IISD interviews, 2018; WTO, 2017).

These discussions often use the revised EU Public Procurement Directive (2014) as a best practice example of how more explicit references to green and social procurement provide more regulatory space for procurement agencies, and are in line with the provisions of the WTO GPA. Steiner (2015) argues that:

Past experience suggests that the framing and application of the EU public directives can have significant effects on the interpretation of the GPA. It is therefore a more or less educated guess that the policy space that can be used in order to foster green public procurement is growing.



The jurisprudence of the Court of Justice of the European Union in the Max Havelaar case¹⁰ confirmed that social procurement with the use of social award criteria is permitted. This interpretation can also influence the interpretation of the WTO GPA (Steiner, 2018a; Steiner, 2018b).

Prior to the signature of CETA, the EU and Canada adopted a Joint Interpretative Instrument that clarifies that environmental, social and labour-related criteria (among others) can be used in public procurement without violating the non-discrimination provision. This further underlines that there is no friction between green and social procurement and the non-discrimination provision under CETA. It also suggests that the WTO GPA non-discrimination provision can be understood in a similar manner.

CETA maintains the ability of procuring entities within the European Union and its Member States and Canada, in accordance with their respective legislation, to use environmental, social and labour-related criteria, such as the obligation to comply with and adhere to collective agreements, in procurement tenders. Canada and the European Union and its Member States will be able to use such criteria in their procurement in a way that is not discriminatory and does not constitute an unnecessary obstacle to international trade. They will be able to continue to do so under CETA (Joint Interpretative Instrument on the Comprehensive Economic and Trade Agreement between Canada and the European Union and its Member States, 2016).

Figure 1 shows a traffic-light version of what is prohibited, potentially permitted and permitted under the non-discrimination provision of the WTO GPA.

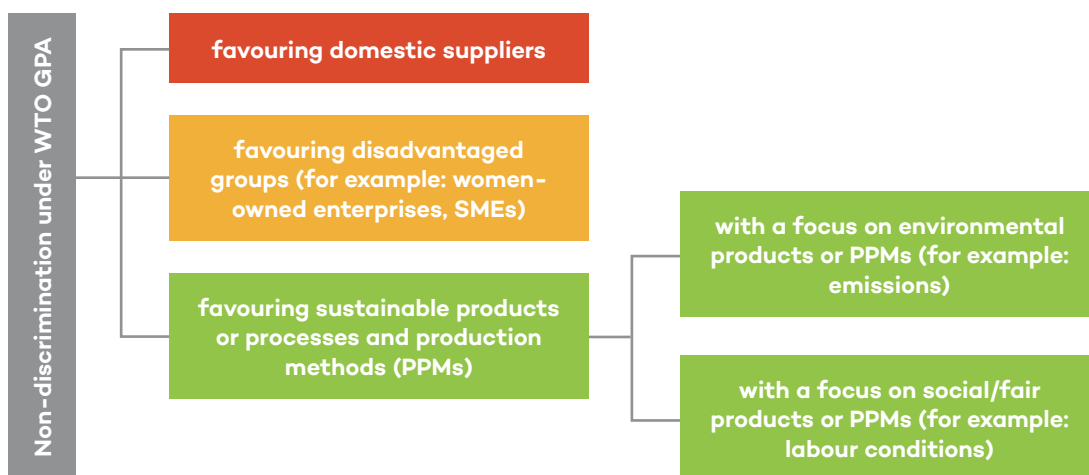


Figure 1. Interpretation of the non-discrimination provision under the WTO GPA

Conduct of Procurement

4. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:
- (a) is consistent with this Agreement, using methods such as open tendering, selective tendering and limited tendering;
 - (b) avoids conflicts of interest; and
 - (c) prevents corrupt practices.

¹⁰ Commission v Netherlands (C-368/10 of 10 May 2012). Available at: <http://curia.europa.eu/juris/liste.jsf?num=C-368/10&language=ENG>



A procurement process can prioritize transparency and impartiality by choosing tendering methods that can be open, selective or limited in competition, that avoid any conflict of interest, and that prevent corruption.

This paragraph and principles are important for sustainable procurement: procurers are not sustainability experts, but through diverse tendering methods they can engage with suppliers and learn more about the best technologies for their needs. This engagement can also help them write the tender documents. Of course, all of this engagement should be open, transparent and accessible to all interested suppliers. These principles are intended to protect suppliers from unfair procurement practices and help guarantee better value for money for citizens.

A good example of such market engagement is the way the City of Copenhagen procured organic and seasonal fruit and vegetables for the kitchens in its municipal facilities (schools, homes for the elderly, kindergartens, homes for socially disadvantaged groups; see Box 2).

Box 2. Market engagement for seasonal fruit and vegetables in the City of Copenhagen, Denmark

The City of Copenhagen engaged in a lengthy market engagement process for the framework contract to supply organic and seasonal fruits and vegetables to all municipal kitchens. The two-year contract, worth 3 million euros, was awarded to a Danish SME.

The process started with a thorough identification of needs: municipal kitchens wanted to offer fully cooked meals (instead of precooked) to better contribute to the “90 per cent of food served in municipalities is organic” target. The City added a “seasonality”²⁰ requirement to strengthen biodiversity in agriculture in Denmark and abroad. The cooks, who were closely involved in defining the subject of the tender, prioritized product variety. Therefore, the tender asked suppliers to create seasonal wheels to demonstrate how they would ensure a year-round supply of different varieties of the most common products.

Two Essential Market Engagements

The first market engagement consisted of a two-day online dialogue using a standard questionnaire and the chance to comment on the broad idea for the tender for one week. This process took place before the tender was issued. To ensure transparency and fairness, the City publicly shared all the notes and answers to questions.

The second engagement involved a Supplier Information Day held 10 days after the publication of the tender. On this day, the procurement agency answered questions and clarified details, including about why some suggestions from the first engagement were not included in the final tender. This increased confidence, especially among SMEs, to continue to engage in public contracting.

After awarding the tender, the procurement agency facilitated meetings between the cooks and the supplier to ensure both sides were aligned, monitor product quality, and let the cooks know whose products they would receive.

Tender Criteria

The criteria spelled out specific expectations about the sustainability of the food, such as product quality, minimum food requirements, labelling and organic certification.

Lessons Learned

- Market engagement with suppliers, the procurement agency and the end users was crucial. The EU Directive provides for these different procurement methods and explicitly allows this engagement. This is an important incentive.
- Technical criteria and market engagement can include a wealth of sustainability requirements and discussions on what is feasible and how it can be ensured through procurement.



- End users know how, when and where to give feedback on the products so suppliers are held accountable for their service.
- The contract was awarded to a local supplier after a rigorous process in which international suppliers also participated. Open competition was an important aspect of the process.

The procurement process falls under the EU Procurement Directive (2014), which makes it a good example for SPP in the context of international trade agreements. The WTO GPA does not detail various procurement methods as the EU Directive does, but it does refer to open tendering, selective tendering and limited tendering. The more general provisions of the WTO GPA allow it to encompass the more detailed EU Directive, as well as approaches from other countries (Semple, 2017). As previously mentioned, the WTO GPA is a principle-based agreement that allows GPA Members enough flexibility to design their own legal framework. There is little doubt that the EU Directive falls within the scope of the WTO GPA, or that it can be aligned with the obligations under the WTO GPA (Semple, 2017).

***"Seasonal" was defined in the tender documents as "seasonal in the country of origin of the product." Nothing in this tender procedure referred to buying local products, so this definition was important to ensure equal competitive opportunities for foreign suppliers.*

Source: IISD Interviews, 2018; Procura +, 2017

3.2.3 WTO GPA Art VII Notices

Notice of Planned Procurement

4. Procuring entities are encouraged to publish in the appropriate paper or electronic medium listed in Appendix III as early as possible in each fiscal year a notice regarding their future procurement plans (hereinafter referred to as "notice of planned procurement"). The notice of planned procurement should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.

This paragraph encourages procurement agencies to announce their procurement processes well ahead of time to allow suppliers to learn about them before the actual tendering processes. This is important for sustainable procurement: it is still relatively new for governments to ask for sustainability requirements (whether green, social or socioeconomic). Suppliers need to get used to such requests and have enough lead time to prepare and adjust for trends that might influence their production methods. The certainty that there will be a big buyer for a sustainable good or service also drives innovation in a supplier's production methods. Box 3 provides an overview of a few initiatives that help provide good and timely information to specific groups.



Box 3. Canada's initiatives on SMEs, women, innovation and procurement

Canada has various ongoing initiatives to make public procurement more inclusive and use it as a driver of innovation:

- The Office of Small and Medium Enterprises (OSME) in PSPC encourages SMEs to participate in public procurement and works specifically to reduce barriers, such as access to timely information. E-procurement and centralizing information are major improvements that facilitate SME access to the procurement market, an observation confirmed in large study by the OECD (OECD, 2018a). OSME also manages the Build in Canada Innovation Program (BCIP), which is specifically set up to link procurement with innovative goods and services in their late testing stages that are looking for a first buyer.
- Smart Procurement Approach (Public Works and Government Services Canada, n.d.): In November 2018, PSPC launched a one-year pilot project with the aim to encourage more women-owned or -led businesses to supply catering services in the Atlantic Region. The project will start by establishing a list of such suppliers (Public Works and Government Services Canada, 2018).

3.2.4 WTO GPA Art VIII Conditions for Participation

This provision outlines which conditions for participation can be imposed on suppliers, relative to their financial, legal, commercial and technical abilities. Art VIII includes a non-exhaustive list of evidence that procurement agencies can use to exclude suppliers, but the list does not mention compliance with environmental, social or labour laws. While that doesn't prevent this compliance from being used as grounds for exclusion, the lack of reference might make procurers hesitant to use it as an exclusion criterion (Semple, 2017).



3.2.5 WTO GPA Art X Technical Specifications and Tender Documentation

Article X Technical Specifications and Tender Documentation

Technical Specifications

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade.
2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, *where appropriate*:
 - (a) set out the technical specification in terms of *performance and functional requirements*, rather than design or descriptive characteristics; and
 - (b) *base the technical specification on international standards*, where such exist; otherwise, on national technical regulations, recognized national standards or building codes.
3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as “*or equivalent*” in the tender documentation.
4. A procuring entity shall *not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as “or equivalent” in the tender documentation.*
5. A procuring entity shall *not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.*
6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, *prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment* (emphasis added).

This provision includes one of the most important modifications of the Revised GPA (2012) compared to the previous version of the WTO GPA . It directly relates to sustainable procurement, since it explicitly:

1. encourages the use of *performance-based or functional specifications*, a useful way to make procurement more sustainable.
2. allows specifications related to the promotion of *conservation or protection of natural resources or to protect the environment*.
3. encourages specifications to be based on *international standards where they exist, or on national technical regulations, standards or building codes*.

All of these modifications are important to make procurement more sustainable, strategic and innovative. Let's examine each of these in more detail and explore examples of how these clauses offer opportunity for green, social and strategic procurement:

1. *Performance-based specifications* give suppliers more room to innovate and offer creative solutions to a need defined by the procuring agency (Casier et al., 2018; Douglas, 2017; Turley, Hug Silva, Benson, & Dominguez, 2014). Often, pre-procurement engagement or structured dialogue with suppliers can help clarify the need and the best way to define the specifications. The municipality of Eindhoven, in the Netherlands, used a performance-based approach with extensive market consultation to procure energy-efficient solutions for refurbishing municipal buildings (Box 4).



Box 4. Building refurbishment in Eindhoven, the Netherlands

In 2014, the municipality of Eindhoven planned to procure renovation services to improve the energy efficiency of its municipal buildings. The municipality decided to use a competitive dialogue procedure because it did not know how best to make the buildings more energy efficient. Staff also set up a series of pre-procurement activities to inform the tender specifications. They set up an online platform with a series of questions for suppliers and organized an in-person event for interested parties. These steps provided transparent information about the municipality's needs and the market's readiness for energy-efficient solutions. The event also led to the formation of consortia, groups of suppliers that prepared joint bids, which enabled SMEs to participate in procurement contracts where they would otherwise have been excluded due to the large scale.

From the start, the municipality did not require any specific technical solutions, technical minimum requirements, technical specifications, service solutions or financial models. The tender only included functional objectives and a list of tasks:

- Mandatory:
 - Renovation of the city tower
 - Reconstruction or refurbishment of city hall
 - Reconstruction or refurbishment of city office buildings and Van Abbe Museum
 - Maintenance of all seven buildings
 - Operation and maintenance of all buildings (energy management)
 - Innovation management (an business plan of how to bring in future innovations and solutions)
- Optional:
 - Reconstruction or refurbishment of other buildings
 - Delivery of energy, or energy and water
 - Operation and maintenance of all buildings (cleaning, security, catering, other)
 - Increase in "quality of life" in the city centre
 - Renting or leasing of the buildings

The evaluation methodology was based on the best-value procurement approach and used four award criteria:

- Scope of the offer (based on defined tasks) and its sustainability performance
- Opportunities for added value associated with the realization of project objectives
- Identified risks that are beyond the contractor's power of influence and the quality of proposed control measures
- Measurable competencies (at the individual level: key personnel) of the proposed implementation consortia for project implementation and contract execution.

The authority also defined further sub-criteria for the evaluation procedure. Bidding consortia were expected to respond to the four award criteria by preparing an integral plan as part of their offer, comprising a solid business case (using a life-cycle cost perspective for all suggested solutions) that would generate maximum value for money and provide the highest possible added value for the procuring authority's budget.

Using performance-based or functional specifications does not guarantee a more sustainable outcome. These specifications offer suppliers more space for innovation, but will only result in a sustainable outcome if they are focused on sustainability (e.g., resource efficiency; Turley et al., 2014).



Art X:5 potentially makes procurement agencies more risk-averse to undertaking pre-procurement market engagement, as it prohibits them from seeking advice from actors with a commercial interest to help them draft the technical specifications (Semple, 2017). However, it is important that this is only prohibited *in a manner that would preclude competition*. The Eindhoven example in Box 4 demonstrates that procurers can seek advice openly and transparently, without precluding competition.

2. Specifications related to the promotion of *conservation or protection of natural resources* can be used in tender documents. For frequently purchased goods, it can be helpful for the procurement agency to use a set of standardized criteria. The [EU GPP Criteria](#) offer a good baseline and can be adapted to the Canadian context. The criteria are available (in English and French) for a large range of products, services and infrastructure components. The Netherlands recently launched a new [online tool on sustainability criteria](#) and their impact for a select set of goods and infrastructure aspects.

The International Trade Center (ITC) developed a [database on sustainability standards and labels](#) for various product categories, as well as their availability per country (ITC, n.d.).

The criteria behind such standards and labels are often used to inform the development of technical specifications. They can be optional (rewarding sustainability compliance in the award process) or mandatory, depending on how ready the market is to deliver on sustainability requirements. Labels that demonstrate compliance with the specifications may be used as means of verification, as long as suppliers can also submit “equivalent” means of proof. This rule ensures fair competition (Corvaglia, 2016).

For example, furniture procurement in Canada requests the Greenguard certification (see Box 5). Many other examples can be found across jurisdictions, such as Hungary’s use of the FSC label during the procurement of recycled paper and stationary (OECD, 2015).

Box 5. Furniture procurement with preferential price margins for green criteria

In 2017 Public Works and Government Services Canada (now PSPC) launched a large tender for furniture. The contract, worth CAD\$752,437, was awarded to Teknion Furniture Systems LTD. The tender fell within the scope of Canada’s international trade obligations and is therefore an interesting case to consider. The tender sought to procure sustainable furniture by including sustainability requirements in the mandatory and optional technical specifications. It also included an installation requirement for the furniture that noted the suppliers were responsible for leaving no waste and packaging behind.

The mandatory technical specifications requested that all furniture be Greenguard certified (*or equivalent*). Greenguard provides specifications for products with low emissions of pollutants and aims to improve indoor air quality, among other goals.

In addition to this minimum criterion, the procurement process also incentivized suppliers to go further into their sustainability commitments. These optional criteria would reward suppliers for going beyond the minimum:

- Furniture offering a Greenguard Gold Certification or an equivalent certification would be offered a preferential margin for financial evaluation purposes only.
- Furniture offering Environmental Product Declarations (EPD) would be given a preferential margin for financial evaluation purposes only.

Section 4.1.2 on financial evaluation clarified that a preferential margin 7% would be applied for the additional Greenguard certification, and a margin of 3% for the EPD. The EPD must have been verified by a recognized third party and be compliant with ISO 14025 or its equivalent (Government of Canada, Public Works and Government Services Canada, 2017).



3. The specifications can rely on international standards, *where they exist*. These standards include significant scope for incorporating sustainability, both from a social and an environmental perspective, such as ISO standard 45001 on occupational health and safety or ISO standard 14000 on environmental management. The definition of an international standard under WTO law has been subject to discussion, including in WTO case law under the Agreement on Technical Barriers on Trade. For the purposes of this paper, standards that qualify as either international standards (e.g., ISO standards) or private standards (e.g., FSC label) can be used to inform and verify compliance with technical specifications, as long as “equivalent” means of proof can be submitted (Corvaglia, 2016).

For example, PSPC developed an annex that can be added to the tender documents for a supplier to demonstrate environmental commitment. One example of such a commitment is their adherence to the ISO 14000 Environmental Management Standard, although other means of proof will also be accepted (See Box 6). While in this case, the annex is intended as a voluntary measure that results in a price preference, a procurement agency can also choose to make it a mandatory requirement. This choice depends on where an agency wants to set the (minimum) bar for sustainability.



Box 6. Procurement with Annex E “Offeror’s Demonstration of Environmental Commitment”

Another way to stimulate suppliers to move toward green procurement is to apply a preferential price margin if they can demonstrate compliance with certain environmental commitments. To help, PSPC has prepared a special Annex E that can be added to the tender documents. These are the required environmental commitments and required proof:

#	Environmental Commitment	Yes	No	Required Document
E1	Have you implemented an environmental management system in your operations that includes a certification (e.g., ISO 14001, the Clé Verte environmental certification or other environmental management system recognized by a third party)?			A copy of your certification and a description of your environmental management system
E2	Have you implemented measures or programs (at least 3 measures and/or programs) for reducing energy consumption, for reducing water consumption, for reducing and managing solid waste (reuse, recycle and/or composting), for management of hazardous wastes, of halocarbons and/or interior air quality at your offices and/or branches?			Explain your concrete actions and/or provide your corporate plan. Additional supporting documents or photos can be requested.
E3	Are at least 5 of your vehicle maintenance products (cleaning products, oil, windshield washer, etc.) certified by a third party confirming a low environmental impact (e.g., Ecologo, GreenSeal, USDA BioPreferred or equivalent)?			Explanatory documents of products used. Proof of invoices in support.
E4	Are at least 2 of your products used for vehicle repairs (paints, metal components, etc.) certified by a third party confirming a low environmental impact (ex: Ecologo, GreenSeal, USDA BioPreferred or equivalent)?			Explanatory documents of products used. Proof of invoices in support.

Source: Government of Canada, Public Services and Procurement Canada (n.d).

Art X:6 pointedly references specifications for environmental protection. This is explicit encouragement for green procurement in the WTO GPA (Steiner, 2015; WTO, 2017). For social procurement, this encouragement is less explicit, potentially creating grounds for uncertainty (Semple, 2017). Nevertheless, criteria based on certificates and labels can refer to green as well as to social protection and workers’ conditions. International standards can be used for both green and social aspects. Finally, interpreting the same provision under CETA shows that the Joint Interpretative Instrument refers to social and labour-related criteria and adherence to collective agreements. This reference plays an important role in accepting social procurement, at a minimum in the Canada–EU procurement market.



3.2.6 WTO GPA Art XV Treatment of Tenders and Awarding of Contracts

Article XV Treatment of Tenders and Awarding of Contracts

Awarding of Contracts

4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation.

5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, *based solely on the evaluation criteria specified in the notices and tender documentation*, has submitted:

- (a) *the most advantageous tender*; or
- (b) where price is the sole criterion, the lowest price.

This article allows procurement agencies to award tenders based on the “most advantageous tender” rather than the lowest price. This is an important enabler and incentive for sustainable procurement because it encourages procurers to take a life-cycle approach. If we compare an LED lightbulb with an incandescent light bulb, the LED light bulb might be more expensive to buy, but it will also last longer and help reduce electricity consumption. Taking a life-cycle approach to the LED bulb will make it the cheaper option over time, but not at the initial moment of purchase. Procurement based on the most advantageous tender allows a procurement agency to choose the LED bulb and obtain better value for money.

When green or social criteria are included under the technical specifications (Art X), the award criteria specify how they will be considered. The most advantageous tender principle allows agencies to reward sustainability, even if there is a premium price on the product or service. Procurement authorities can choose to add a preferential price margin when bidders comply with green or social criteria, use a points-based system and attach a weighting system to various criteria, or make social or green criteria mandatory. What matters is that there is transparency in how the bids will be evaluated, and that this information is included in the tender documents.

Box 7 provides examples of optional or mandatory sustainability criteria that can be included in the tender requirements. When evaluating bids, procurement agencies can decide to reward the more sustainable option.



Box 7. Examples of sustainability criteria used in public procurement

Construction Wood in Canada

Some of the optional criteria currently used in Canadian procurement processes for construction wood include:

- Wood-based materials with FSC, SFI or CSA/PEFC certification are given a 10% preferential margin.
- Wood-based products that include a minimum of 10% recycled content are given a 5% preferential margin.

Functional Specifications for Low-Carbon Bicycle Lanes

A tender in the Netherlands incentivized the use of recycled materials and low-carbon solutions via:

- a) Reusing secondary products (concrete granulate and secondary sand) in concrete material (by percentage).
- b) Calculating a carbon dioxide footprint of concrete production (per m³) that includes emissions from the extraction stage and the production of all materials, storage and transport to the production site until the concrete mix is ready for transportation.

To demonstrate how performance on a and b are integrated into the award methodology, a table included in the tender explains how much monetary value can be deducted from the bidding price depending on the percentage of secondary materials used in the concrete mix. Another deduction can be earned based on the achieved level of carbon dioxide emissions.

Source: Provincie Noord Brabant, 2017.

Awarding contracts based on a life-cycle approach is at the centre of sustainable public procurement, as this strategy ensures the best value for money for taxpayers over the short and long term. Indeed, a life-cycle approach also ensures that future generations get the best value from buying decisions that are made today.

Canada's Green Procurement Policy (2006) already encourages the use of life-cycle costing and whole life cost. The National Roundtable on the Environment and the Economy (2012) also provides an overview of life-cycle approaches and examples adapted to the public sector.

Various life-cycle tools already exist. Some are tailored to specific products, such as the [EU Clean Vehicles life-cycle costing sheet](#) (EU Clean Fleets, n.d.). Others, such as those developed by Smart SPP (n.d.), can be used more broadly, as illustrated in Figure 2.



LCC & CO₂ - Calculation for Procurement Activities
 A user guide has been developed to help you use this tool. You can download it at www.smart-spp.eu.

General Information Input

Tender ID

Information to be specified by the procurer

Your location [country] → Currency

Planning horizon [years]

Discount rate (nominal) [%]

Inflation rate [%]

CO₂ emission factors

Information to be specified by the supplier

Product Offers	Product A	Product B	Product C	Product D	Product E
Personal offer ID <input type="text"/>					
Number of units to be purchased/leased <input type="text"/> [#]					
Lifespan <input type="text"/> [years]					

Life-cycle Costing (LCC) Information Input

Discount rate [%]

Inflation rate [%]

Acquisition Costs

Purchase price [0/unit]

or Specify annual investment costs >>

Installation costs for all units [0]

Initial one-off costs [0]

Operation Costs

Total operating costs per year [0/unit/year]

or Specify detailed operating costs >>

Maintenance Costs

Total maintenance costs per year [0/unit/year]

[Introduction](#) [General](#) [LCC_Diagrams](#) [CO2_Diagrams](#) [Tenders Evaluation](#) [Conversion Factors](#) [Glossary](#)

Figure 2. Excel-based LCC and carbon dioxide calculator for public procurers

Source: <http://www.smart-spp.eu/index.php?id=7633>

The Ministry of Infrastructure and Water Management (Rijkswaterstaat) of the Netherlands developed a life-cycle tool, DuboCalc, that quantifies the environmental impacts of infrastructure projects into a single aggregated number, the Environmental Cost Indicator (ECI). The lower the ECI, the lower the environmental impact of the infrastructure project. DuboCalc bases this calculation on the materials used during construction and energy consumption during the user phase. The impacts of the materials are based on third party-verified life-cycle assessments (LCA) for 11 environmental impact parameters (climate change, ozone layer depletion, toxicity, acidification, among others).

Prior to launching the tenders, the procuring entity defines the scope of the infrastructure project and uses DuboCalc to calculate the ECI of a reference project. It also defines a percentage of ECI reduction that will allow bidders to deduct a given amount from the bidding price. The monetary deduction that bidders can apply for a corresponding ECI reduction is information provided in the tender documents. The contract also includes a clause to enforce the commitment on the promised ECI reduction, with a financial penalty if the contractor does not meet the target. Both private and public parties have access to Dubocalc so they can calculate the ECI and plan how to best reduce it for a given project.

Dubocalc allows procurement agencies to operationalize the principle of the Most Economically Advantageous Tender (MEAT). In the background, Dubocalc runs a large database of LCAs of construction materials and technologies. If bidders want to use new materials that do not yet have the required LCA verification to be part of DuboCalc's database, they can still bid. If bidders with such materials are awarded the contract, they are required to submit an externally certified LCA prior to project implementation. In this way, DuboCalc tries to minimize market access barriers for innovative building materials (Casier & Wuennenberg, 2018, pp. 59-61; OECD, 2015; van Geldermalsen, 2013).

Before turning to the discussion of what each of these provisions mean for sustainable procurement in Canada, table 4 provides an overview of the legal provisions and their importance for SPP.

**Table 4. Summary of legal provisions and their importance for SPP**

WTO GPA	CETA	Importance for SPP
Preamble		Reinforces commitment to sustainability and transparency and emphasizes the need for flexibility based on country context
Art IV General Principles	Art 19.4	Non-discrimination is potentially problematic if countries want to favour procurement from specific societal groups and this preferential treatment is based on national origin.
Art VII Notices	Art 19.6 reflects the transparency and notices, but is more stringent than the WTO GPA with regard to establishing a single point of access to the procurement market.	Informing the market well in advance provides the necessary lead time for bidders to prepare for sustainability requirements in tenders.
Art X Technical Specifications and Tender Documentation	Art 19.9	<p>No technical specification or conformity assessment procedure may form an unnecessary obstacle to international trade.</p> <p>Where appropriate performance and functional specifications can be used</p> <p>Where appropriate specifications can be based on international standards</p> <p>Encouragement to use technical specifications to promote conservation or protection of natural resources and the environment (paragraph 6)</p> <p>Evaluation criteria can include environmental characteristics and terms of delivery (paragraph 9) – evaluation should not happen based on purchase price alone, but should take into account a lot of other criteria related to the qualities of a good or service in question.</p>
Art XV:5 Awarding of Contracts		Awarding contracts is possible based on the most advantageous tender, taking into account various aspects beyond the purchase price.
	Joint Interpretative Instrument paragraph 12.	Environmental, social and labour-related criteria can be used in a way that is not discriminatory or does not constitute an unnecessary obstacle to international trade.



4.0 Discussion

The implementation of green procurement in Canada is already incentivized through several legal and policy instruments: the Mandate letter to PSPC, released in January 2018 (Trudeau, 2017), and the Policy on Green Procurement (2006) both played important roles. These examples show the importance of hard and soft law instruments to help shift procurers' mindsets to include sustainability in tender documents (IISD Interviews, 2018). For social or strategic procurement, no such policy is available yet.

This paper demonstrates that the international trade agreements, which have increased in their scope and coverage of Canada's procurement market, emphasize the opportunities for implementing sustainable procurement at different stages of the procurement cycle. The paper also illustrates that the limit of what procurement authorities can do in terms of sustainable procurement lies within their interpretation of the non-discrimination provision. In the procurement chapters of trade agreements, the only prohibited discrimination is origin-based (explicit mentions of "buying local"). This analysis and the examples in this paper show that there is little uncertainty as to how sustainable procurement could be implemented to comply with Canada's international obligations.

To return to the example from the introduction: A municipality makes a pledge to make all its buildings carbon neutral by 2050. To do so, it needs to invest in renovating its building stock using the most innovative energy-efficient solutions available. Its procurement department has limited capacity to work through the complexities of the procurement process, and no expertise in energy efficiency. Municipal budgets are tight. Many local start-ups are developing innovative solutions for efficient, clean energy in infrastructure projects. However, there is legal uncertainty around whether and how the municipality can buy these innovative solutions. How can this municipality find the best value for money as it renovates the building stock to reduce energy consumption?

This analysis of the WTO GPA and CETA commitments demonstrates that they allow enough flexibility for new solution providers to enter the procurement market with innovative solutions for, in this case, building refurbishments. The references to environmental specifications; the flexibility of performance based specifications; awarding contracts on a life-cycle basis, rather than lowest-price criteria; and the emphasis on transparent and well-planned procurement strengthen the message that procurement agencies need to reform procurement and make it more strategic. For example, notices of planned procurement and e-procurement allow agencies to reach a much bigger group of bidders, including SMEs and local solution providers.

Environmental specifications and (international) standards, where appropriate, encourage procurement to be "green." Transparency and open competition are core good procurement principles in the international agreements, and they will encourage procurers to identify the best available option to reach environmental (or climate-related) targets.

Including references to workers' rights and fair labour conditions in procurement is not prohibited, but neither is it explicitly encouraged. Standards or labels, however, can include references to these aspects in addition to environmental criteria, and nothing prohibits procurers from using them (Steiner, 2018b).

It's possible to encourage the participation of specific economic actors (Indigenous communities, SMEs, women owned enterprises), within limits: reserving certain contracts or a share of public contracts for specific groups



is only possible if there is no origin-based discrimination, or if the specifics are mentioned as exceptions to the commitments Canada has made. While international trade agreements are often mentioned as a barrier to this method of public procurement, many contracts awarded to these groups fall below the thresholds of application of the WTO GPA or CETA (Osei-Lah, 2018). Furthermore, this analysis has shown that set-asides are possible when they are explicitly listed as exempt in the annexes or are not linked to national origin.

The Canadian clean tech sector, which comprises about 775 companies, consists largely of SMEs. Much of their business is export-oriented (Clean Energy Canada, 2017). This is a missed opportunity for Canada to boost the clean tech sector, local development, jobs and innovation, and at the same time benefit from the newest solutions to green public services and infrastructure. Canada does not foresee exemptions for set-asides for its clean tech sector under the WTO GPA or CETA, but it can take other actions to encourage clean tech SMEs to bid for public contracts, such as simplifying bureaucratic processes and improving payment cycles.

When the revised WTO GPA came into force (2012), WTO Members defined a series of Work Programmes on issues that Members deemed important, but on which they could not reach an overall agreement. One of them is on best practice measures and policies to support SME participation in public procurement. This Work Programme is still active and provides an important forum for discussion. There is mixed evidence on the effectiveness of set-asides (Anderson & Müller, 2017; WTO, 2017). However, governments can take a whole range of measures other than set-asides to support SME participation. In fact, SMEs report that their primary challenges with public contracts are the slow payment cycles and the bureaucratic processes around tender applications (OECD, 2018a). It is important that governments focus on the right instruments to solve these issues before, or at the minimum, along with, positive discrimination measures. Figure 3 provides an overview of the most important factors that facilitate SME access to the procurement market, and shows that there's a lot to be done before resorting to positive discrimination measures, which arguably may distort competition and prices.

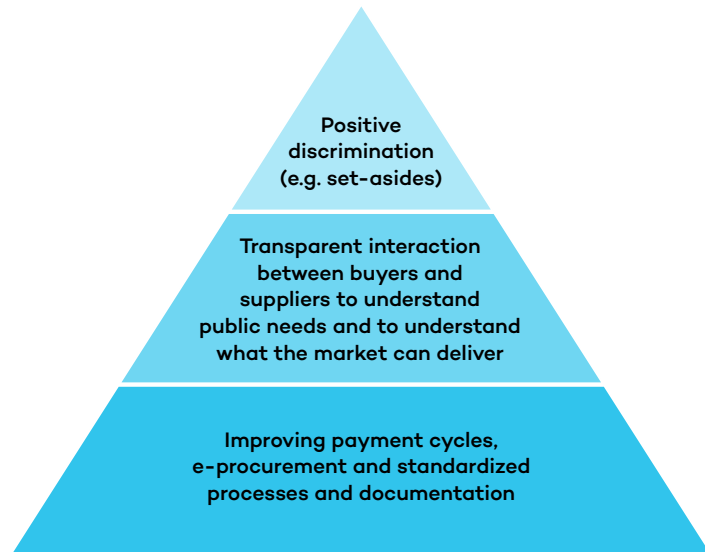


Figure 3. Factors that allow SMEs to gain better access to public procurement markets

The Canadian government can deploy or support many other instruments to encourage these new clean tech SMEs to participate in public contracts (OECD, 2018a). In our municipal example, it would be useful to undertake good market consultations, so the procuring authority is better informed about the possibility of new technologies. Bringing together large and smaller suppliers at a supplier event could encourage start-ups to participate in a bidder consortium. An online market consultation could also inform the procurer in a cost-effective way, facilitating access



for SMEs. Performance-based specifications targeting a specific reduction in energy consumption could further incentivize bidders to put forward the best solution.

Finally, driving innovation for low-carbon or clean tech technologies is a cross-cutting goal that can be achieved by ensuring tech companies have better access to the procurement market. To enable public procurement to scale up (almost) market-ready innovations, Canada needs to bring innovation into the public procurement process itself. The focus needs to be on involving public procurers early in the process and equipping them with the supporting tools and IT systems to carry out bid evaluations and contract monitoring based on the best value.

International trade agreements are not a barrier to innovative sustainable procurement, but procurers need to use the flexibility offered by these agreements, instead of *perceiving* them as a barrier. Bringing a wide variety of case studies to the discussion, exchanging best practices, tools and knowledge, and providing practical guidance will make it more appealing for procurers to take a different approach.



5.0 Recommendations

Based on the analysis above, the following recommendations can help address further barriers to implementing sustainable procurement in Canada.

- Develop a Procurement Package to *implement* sustainable procurement in Canada:
 - Develop a sustainable or social procurement guideline or policy for public entities on how to buy innovation and how to bring social aspects into the procurement cycle. This should serve as a complement to the Green Procurement Policy that already exists and is known to make procurers less risk averse to engaging in green procurement. A policy on social and innovative procurement can have the same impact, because it offers procurers more certainty.
 - Provide a one-stop shop for questions and consultations on how to use the best available sustainable technologies in the procurement of large infrastructure projects. This could be an online or offline service for public entities.
 - Build a platform or network for shared learning across procurement entities in Canada and feed into the existing international networks to enhance further learning (e.g., the Interamerican Network on Government Procurement, the OECD Leading Practitioners on Public Procurement, the One Planet Network and the WTO GPA Committee)
 - Professionalize the procurement function. This change is essential to support this effort, and it requires investment in human resources as well as in IT systems and tools to support them in their work. Collaboration with academic institutions could also help achieve this goal. The benefits of professionalizing the procurement function go well beyond implementing sustainable public procurement, and will also ensure better overall delivery of public services to citizens.
 - Invest in updates and enhancements to Canada's National Master Construction Specification (NMS) to support SSP objectives and life-cycle analysis.
 - Draw from international experience, such as in the EU, to design such a Procurement Package and implement strategic public procurement.
- Fund the execution of the Procurement Package. The Build in Canada Innovation Program and Innovative Solutions Canada can contribute to this piece. These important initiatives should not be limited to covering funding to buy innovation; they can also provide funding for the institutional reform necessary to make procurement more strategic.
- Accelerate the development of a national database on life-cycle assessments of construction materials. Working in collaboration with the construction sector and public procurers, the database developers would share information in a user-friendly and “procurement process”-friendly manner. Such a database could lead to the development of an Environmental Impact Calculator (e.g., Dubocalc) that could then be used in the Canadian context. A first step could be to focus on the impacts of greenhouse gases or carbon dioxide only, and then expand with other environmental impacts. A tool like this could also help operationalize [Canada's Climate Lens](#). The database could also be expanded to other areas of public spending (e.g., vehicles, office supplies, machinery and equipment, apparel).
- Set up or use existing brokers to bridge the gaps between procurement agencies, sustainability experts and suppliers. These brokers could encourage dialogue and partnerships for green and sustainable procurement between the public and private sector in a transparent manner. Such brokers could sit within or outside of government, and the dialogues they lead would always be based on the principles of fairness, openness and transparency.



References

- Anderson, R., & Müller, A. (2017). *The Revised Agreement on Government Procurement (GPA): Key design features and significance for global trade and development*. WTO Working Paper ERSD-2017-04. Retrieved from https://www.wto.org/english/res_e/reser_e/ersd201704_e.htm
- Casier, L. (2018). *Three Key Challenges to Innovative Public Procurement*. IISD. Retrieved from <https://www.iisd.org/blog/three-key-challenges-innovative-public-procurement>
- Casier, L., Hermanus, L., Scholtz, L., & Wuennenberg, L. (2018). *Moving towards performance-based procurement in the Western Cape. A guidebook for supply-chain managers and policy makers*. WWF South Africa. Retrieved from http://dtnac4dfluyw8.cloudfront.net/downloads/WWF_2018_Moving_towards_sustainable_performance_based_procurement_WC.pdf
- Casier, L., & Wuennenberg, L. (2018). *Low-carbon innovation for sustainable infrastructure: The role of public procurement*. i24C. Retrieved from http://i2-4c.eu/wp-content/uploads/2018/03/Low-Carbon-Innovation-for-Sustainable-Infrastructure-The-role-of-public-procurement_v2.2_web.pdf
- Clean Energy Canada. (2017). *The power of procurement. How governments can drive clean growth, cut carbon and create jobs*. Retrieved from https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/energy/energy-resources/The_Power_of_Procurement.pdf
- S., Watt, J., & Semple, A. (2016). *The Procura+ manual. A guide to implementing sustainable procurement*. 3rd edition. ICLEI. Retrieved from http://www.sppregions.eu/fileadmin/user_upload/Resources/Procuraplus_Manual_Third_Edition.pdf
- Corvaglia, M. A. (2016). Public procurement and private standards: Ensuring sustainability under the WTO Agreement on Government Procurement. *Journal of International Economic Law*, 19(3): 607.
- Douglas, A. (2017). *Performance/output-based specifications: Best practice report*. ICLEI – Local governments for sustainability, European Secretariat. SPP Regions. Retrieved from http://www.sppregions.eu/fileadmin/user_upload/Resources/POBS_Best_Practice_Report.pdf
- European Commission. (2017a). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Making public procurement work in and for Europe*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0572&qid=1545919499106&from=EN>
- European Commission. (2017b). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Helping investment through a voluntary ex-ante assessment of the procurement aspects for large infrastructure projects*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0573&qid=1545919499106&from=EN>
- European Commission. (2017c). *Commission Recommendation (EU) 2017/1805 of 3 October 2017 on the professionalisation of public procurement. Building an architecture for the professionalisation of public procurement*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017H1805&qid=1545919499106&from=EN>
- European Commission (2017d). *State of the Union 2017 – Industrial Policy Strategy: Investing in a smart, innovative and sustainable industry*. Retrieved from https://ec.europa.eu/growth/content/state-union-2017-%E2%80%93-industrial-policy-strategy-investing-smart-innovative-and-sustainable_en



- European Commission. DG Environment (n.d.) *EU GPP Criteria*. Retrieved from http://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm
- European Union Clean Fleets Project. (n.d.). Retrieved from <http://www.clean-fleets.eu/home/>
- ICLG. (2019). *Public Procurement 2019 Canada*. Retrieved from <https://iclg.com/practice-areas/public-procurement-laws-and-regulations/canada>
- IISD. (2015). *Implementing sustainable public procurement in Latin America and the Caribbean*. Handbook for the Inter-American Network on Government Procurement. IISD. Retrieved from <https://www.iisd.org/library/handbook-ingp-public-procurers-manual-para-agentes-de-compras-publicas-de-las-ricg>
- ITC. (n.d.). *Sustainability Standards Map*. Retrieved from <https://sustainabilitymap.org/standards?q=eyJzZWxlY3RlZENsaWVudCI6Ik5PIEFGRklMSUFUSU90In0%3D>
- National Round Table on the Environment and the Economy. (2012). *Life-cycle approaches for sustainable development*. Retrieved from <http://tcan.ca/sites/default/files/files/NRTEE%20reports/NRTEE-Canada's-Opportunity-Adopting-Life-Cycle-Approaches-for-Sustainable-Development.pdf>
- OECD. (2015). *Going green: Best practices for sustainable procurement*. Retrieved from http://www.oecd.org/gov/public-procurement/Going_Green_Best_Practices_for_Sustainable_Procurement.pdf
- OECD. (2017). *Government at a glance – 2017 edition: Public procurement*. Retrieved from <https://stats.oecd.org/Index.aspx?QueryId=78413>
- OECD. (2018a). *SMEs in public procurement. Practices and strategies for shared benefits*. Retrieved from https://www.oecd-ilibrary.org/governance/smes-in-public-procurement_9789264307476-en
- OECD. (2018b). *Greening regional trade agreements – Insights in areas of market access, TBT and SPS measures, services, and government procurement*.
- Osei-Lah, K. (2018). *Fostering Inclusive Trade, Sustainable Development and Mutual Welfare: Strategic Public Procurement as facilitator and SMEs as a vector*. WTO Advanced Global Workshop on Government Procurement, 14-18 September 2018.
- Procura + (2017). *Supplying seasonal and diverse organic fruit and vegetables*. Retrieved from http://www.procuraplus.org/fileadmin/user_upload/Procura_case_studies/Procuraplus_case_study_Copenhagen.pdf
- Procure2Innovate. (nd). *European Network of Competence Centres for Innovation Procurement*. Retrieved from <http://procure2innovate.eu/>
- Provincie Noord-Brabant. (2017). *Inschrijvingsleidraad Groot Onderhoud N272 Beek en Donk – Boxmeer*.
- Smart SPP. (n.d.). Retrieved from <http://www.smart-spp.eu/index.php?id=7633>
- Semple, A. (2017). *Socially Responsible Public Procurement Under EU Law and International Agreements: The GPA, CETA and the EU-Ukraine Deep and Comprehensive Free Trade Area*. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2970964
- Steiner, M. (2015). *The WTO Government Procurement Agreement: Assessing the scope for green procurement*. Retrieved from <https://www.ictsd.org/bridges-news/biores/news/the-wto-government-procurement-agreement-assessing-the-scope-for-green>



Steiner, M. (2018a). *SPP, best value for money and international trade obligations: the GPA as a model agreement*. WTO Advanced Global Workshop on Government Procurement, 14-18 September 2018.

Steiner, M. (2018b). *Sustainability – Mark Steiner, Swiss Federal Administrative Court*. WTO E-Campus. Retrieved from <https://www.youtube.com/watch?v=octF6enVfR8>

Sinclair, S., Trew, S. & Mertins-Kirkwood, H. (2014). *Making Sense of the CETA*. Canadian Centre for Policy Alternatives.

Turley, L., Hug Silva, M., Benson, S., & Dominguez, C. (2014). *Performance-based specifications: Exploring when they work and why*. IISD. Retrieved from <https://www.iisd.org/sites/default/files/publications/performance-based-speculations-exploring-when-they-work-and-why.pdf>

van Geldermalsen, L. A. (2013). *The Rijkswaterstaat approach: Green public procurement for infrastructure in the Netherlands*. Rijkswaterstaat GPO. Available at: http://www.gpp2020.eu/fileadmin/files/Training_materials/Training_reports_photos_etc/1_1_The_Rijkswaterstaat_Approach_version_2_nov_2013_.pdf

Watt S. & Semple, A. (2016). *The Procura+ manual. A guide to implementing sustainable procurement*. 3rd edition. ICLEI. Retrieved from http://www.sppregions.eu/fileadmin/user_upload/Resources/Procuraplus_Manual_Third_Edition.pdf

CANADIAN GOVERNMENT DOCUMENTS

Government of Canada. (2006). *Policy on Green Procurement*. Retrieved from <https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=32573>

Government of Canada. (2018a). *Supply Manual*. Retrieved from <https://buyandsell.gc.ca/policy-and-guidelines/Supply-Manual>

Government of Canada. (2018b). *Greening Government Strategy*. Retrieved from <https://www.canada.ca/en/treasury-board-secretariat/services/innovation/greening-government/strategy.html>

Government of Canada, Public Services and Procurement Canada (n.d.). Annex E “Offeror’s Demonstration of Environmental Commitment”.

Government of Canada, Public Works and Government Services Canada (n.d.). Smart Procurement Approach. Retrieved from <https://buyandsell.gc.ca/initiatives-and-programs/smart-procurement>

Government of Canada, Public Works and Government Services Canada (2017). Request for Proposal EF245-180440.

Government of Canada, Public Works and Government Services Canada. (2018). *Women-owned or -led business pilot for catering services in the Atlantic Region*. Retrieved from <https://buyandsell.gc.ca/women-owned-or-led-business-pilot-for-catering-services-in-the-atlantic-region>

Trudeau, J. (2017). Minister of Public Services and Procurement Mandate Letter. Retrieved from <https://pm.gc.ca/eng/minister-public-services-and-procurement-mandate-letter>



OTHER LEGAL DOCUMENTS

Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). (2018). *Chapter 15: Government procurement*. Retrieved from <https://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/tpp-ptp/text-texte/15.aspx?lang=eng>

Comprehensive Economic Trade Agreement. (2016). *Chapter 19: Government procurement*. Available at: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/19.aspx?lang=eng>

Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>

Joint Interpretative Instrument on the Comprehensive Economic and Trade Agreement between Canada and the European Union and its Member States. (2016). Retrieved from <http://data.consilium.europa.eu/doc/document/ST-13541-2016-INIT/en/pdf>

World Bank (2016). *New Procurement Framework and Regulations*. Retrieved from <http://www.worldbank.org/en/projects-operations/products-and-services/brief/procurement-new-framework#framework>

World Trade Organization. (1994). *Agreement establishing the World Trade Organization*. Retrieved from https://www.wto.org/english/docs_e/legal_e/04-wto.pdf

World Trade Organization. (2012). *Agreement on government procurement*. Retrieved from https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm

World Trade Organization. (2017). *Key take-aways from the Committee's Symposium on Sustainable Procurement*. Report by the Secretariat. GPA/W/341.

IISD INTERVIEWS (2018)

Consisted of interviews with: Nick Xenos and Malcolm Edwards (Treasury Board, Center for Greening Government); Michelle Brownlee and colleagues (Innovation Canada); Carlos Vanderloo and Julie Emond (Canadian Mission to the WTO); Nadine Nickner, Louise Burden Mucenski and Brock Euper (Global Affairs Canada); Sarah Petrean (Clean Energy Canada); Carlyne Blain, Michael Conway and Annick Champoux (Public Procurement and Services Canada); Bettina Bergman Madsen (City of Copenhagen) and several procurement officials at the WTO GPA Workshops that took place throughout 2018.

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