



Committee on Government Procurement

**KEY TAKE-AWAYS FROM THE COMMITTEE'S SYMPOSIUM
ON SUSTAINABLE PROCUREMENT**

HELD IN THE CENTRE WILLIAM RAPPARD (WTO HEADQUARTERS), GENEVA, ROOM W,
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Report by the Secretariat

The Symposium was organised by the Secretariat at the Committee's request, for the benefit of GPA Parties and Observers, in furtherance of the Committee's agreed Work Programme on Sustainable Procurement (see GPA/113, Annex E of Appendix 2, p. 444). It featured contributions from diverse non-governmental experts in addition to national experts and representatives of other international organizations.¹

In the course of its meeting subsequent to the Symposium (on 23 February), the Committee requested that the Secretariat prepare a report on "Key Take-aways" from the Symposium (see Summary of the Informal Discussion on the Committee's agreed Work Programmes, to be circulated). This comprises the requested report.

As was made clear also at the Symposium, **all views expressed during the proceedings and/or in this report are the personal responsibility of the individual speakers to whom they are attributed and are strictly without prejudice to the views, interests or positions of WTO Members and Observers on related issues.**

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¹ The programme, presentations and bios of the speakers of the Symposium on Sustainable Procurement are available at: https://www.wto.org/english/tratop_e/gproc_e/gp_symp_22feb17_e.htm.

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DEPUTY DIRECTOR-GENERAL, MR XIAOZHUN YI, OPENING REMARKS

Distinguished participants, ladies and gentlemen,

Good morning. It is my pleasure to welcome you to the World Trade Organization (WTO) for today's Symposium on Sustainability in Government Procurement. I know that some of the speakers and others present travelled a long way to be here. I certainly appreciate the efforts that have been made in organizing this event.

The importance of today's topic will, I expect, be obvious to all participants: sustainability is, by definition, vital to protect the Earth on which we live and breathe and which nourishes us in countless ways. It is, therefore, also essential to the health and well-being of our human societies. Conversely, government procurement is a key sector and policy area in which WTO Members can and, increasingly, do seek to promote sustainability, including in its environmental and, for many countries, its social dimensions. It is, therefore, logical and important to examine the ways in which sustainability and government procurement activities can support and reinforce each other. Equally important is that this be done in ways that are consistent with international trade obligations and with the principle of value for money in public procurement.

I have looked carefully at the programme and the list of speakers is extremely interesting. The discussion is organized around **three sets of questions** that have been identified by the Parties to the Agreement on Government Procurement (GPA). These are:

- What is sustainable procurement and what are its main objectives?
- What are the key practices of sustainable procurement and how can sustainability be incorporated into the different stages of procurement?
- How are sustainability measures in procurement processes practiced in a manner consistent with both the principle of "best-value for money" and with international trade obligations?

These questions seem to be precisely the right ones on which to focus in light of the Committee's Decision regarding the content of its Work Programme on Sustainable Procurement. By making possible a full and thoughtful exploration of these questions with the input of outside experts, the Symposium will provide an essential contribution to the Committee's Work Programme on this topic.

Just so that there is no misunderstanding, I would like to clarify the nature of the activity today. This is not a formal or even an informal meeting of the Committee on Government Procurement. That will occur tomorrow, when the GPA Parties themselves will meet and will no doubt want to reflect on the discussions today and on next steps in the Committee's work in this and other areas. Today is a day for direct input to the Committee's work from outside experts and, most of all, for free discussion between the experts, Committee delegates, and other persons present. To facilitate this, it must be clearly understood that all views expressed during the proceedings are the personal responsibility of the individual speakers, and are strictly without prejudice to the views, interests or positions of WTO Members and Observers on any related topics.

Before closing, I would like to mention another reason why the discussion at the Symposium today is important and useful. Today, there are many misconceptions about the nature and objectives of the international trading system. There are some who feel that it exists only to support export promotion and is or should be indifferent to other public policy objectives. If one looks, though, at the Preamble to the Marrakesh Agreement Establishing the World Trade Organization, one sees clearly a reference to **"the optimal use of the world's resources in accordance with the objective of sustainable development"**, as an over-arching goal of the system. The discussions today will, I hope, be approached in this spirit.

Thanks to all of you for your interest and commitment. I am sure that the day's discussions will be worth your while.

1 SESSION 1: WHAT IS SUSTAINABLE PROCUREMENT AND WHAT ARE ITS MAIN OBJECTIVES?

Sustainable Public Procurement (SPP) is gaining momentum globally. This Session examines relevant issues including the role of life-cycle costing, moving from acquisition cost to total (global) costs; and opportunities for achieving social, environmental and economic objectives, including through best practices at the domestic level where public procurement is ultimately implemented. It includes several recommendations that are worth pondering, for example, regarding the setting of mandatory targets, minimum green criteria and the importance of good policy and legislative frameworks.

*Nadine Nickner, Session Chair and Deputy Director,
Government Procurement, Trade and Environment Division, Global Affairs Canada*

1.1 Mark Hidson, Deputy Regional Director, International Council for Local Environmental Initiatives (ICLEI) Europe and Global Director, ICLEI's Sustainable Procurement Centre - "Approaches to sustainable procurement: objectives, illustrative practices and emerging trends – a European perspective"

Mr Hidson began his presentation by highlighting that the importance of sustainable procurement (previously sometimes referenced as "eco-procurement") in achieving sustainable development has been recognized for many years. His own organization, the International Council for Local Environmental Initiatives (ICLEI)² was established in 1996.

He emphasized that sustainable public procurement (SPP) or green public procurement (GPP)³ can play an important role in achieving diverse policy objectives, including:

- contributing to environmental and sustainability goals;
- achieving social goals, e.g. by improving working conditions;
- improving financial efficiency by decreasing costs;
- driving innovation by bringing to market new products, which meet environmental requirements (as public procurement is a demand side policy);
- boosting supply chain competitiveness through the establishment of market dialogue; and
- demonstrating political commitment by taking sustainability issues seriously.

He noted that the legal framework for GPP in the EU is voluntary in many respects. The Public Procurement Directive adopted in 2014 (transposed in 2016) includes important elements relating to SPP.⁴ In particular, the Directive allows for environmental, social and innovative considerations, including on production processes, life-cycle costing⁵, environmental and social labels, and social requirements.

² ICLEI is a local government membership organization with around 1,500 partners worldwide (see <http://www.iclei.org/>).

³ At least 10 terms to explain similar sustainability goals exist. In Europe, the main terms used are: green public procurement (GPP) and sustainable public procurement (SPP). GPP was introduced by the European Commission in 2008 and set the target of 50% of tendering procedures to be green by 2010; and SPP emerged from the UK SPP task force in 2006. Both terms focus on the social, environmental and economic impacts arising from public procurement. The former focuses more on the environmental aspects and the latter on environmental, social and economic aspects.

⁴ Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014L0024>.

⁵ Life-cycle costing looks not only at the purchase price but also at usage and disposal costs, as each of these contribute to the total cost of ownership. For example, green products can be cheaper in the long-run because of their life-cycle cost. In his view, the application of the life-cycle approach remains challenging due

Important mandatory elements of the EU framework on SPP, according to Mr Hidson, include:

- The Energy Star Regulation (Regulation No. 106/2008)⁶, which requires central governments to purchase IT equipment which meets minimum energy requirements;
- The Clean Vehicles Directive (2009/33/EC)⁷, which requires considering the operation of energy and the environmental impact of procured vehicles;
- The Energy Performance of Buildings Directive (2010/31/EU)⁸, which requires EU member States to set national goals to improve energy efficiency; and
- Energy Efficiency Directive (2012/27/EU)⁹, which sets mandatory requirements for the renovation of public buildings; and renting of new buildings.

According to Mr Hidson, approximately twenty EU member States have GPP National Action Plans and at least four more are currently developing their plans. Some of them, such as Austria, the Netherlands and the UK have gone further by setting mandatory GPP requirements for the procurement of certain goods and services.

A number of "soft measures" are also relevant:

- The Buying Green handbook by the EU Commission and the ICLEI, which explains the existing framework for SPP implementation and gives operational guidance¹⁰;
- The ICLEI Procura+ Manual¹¹, which gives: (i) detailed guidance on how to set up a programme within a local governmental public authority; and (ii) an outline of the relevant parts of the EU Directive on public procurement;
- The EU 20+ criteria establishes criteria ranging from cleaning products to waste water infrastructures¹²;
- The Sustainable Procurement Platform¹³, which has around 800 resources on criteria, guidance, strategies, case studies, and news related to the SPP; and
- The ICLEI Procura+ Network, which provides support for public authorities and creates a platform for collaboration.

In Mr Hidson's view, cities like Barcelona, Rome and Venelles (France) show that the established framework and legislation work. For example, Barcelona has invested in greening certain public services; and has adopted mandatory sustainability criteria for the procurement of vehicles, electricity, food and catering. He said that some local governments go further and transition their public procurement processes from a linear approach¹⁴ to a circular approach. Contrary to the linear approach, where procuring entities assess efficiency of only the purchase, usage and disposition stages; in the circular approach, procuring entities assess costs and benefits over the whole government procurement life-cycle, taking into consideration environmental factors. The

to its complexity. As foreseen in the 2014 Public Procurement Directive, it is expected that new tools providing guidance on this topic will be developed in the next 10 years.

⁶ Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:039:0001:0007:EN:PDF>.

⁷ Available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009L0033>.

⁸ Available at: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32010L0031>.

⁹ Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0001:0056:en:PDF>.

¹⁰ Available at: <http://ec.europa.eu/environment/gpp/pdf/Buying-Green-Handbook-3rd-Edition.pdf>.

¹¹ Available at: http://www.procuraplus.org/fileadmin/user_upload/Manual/Procuraplus_Manual_Third_Edition.pdf.

¹² These criteria can be core or comprehensive. Core criteria are established for products that prevail on the market and can be easily included into the procurement process. Comprehensive criteria are more advanced.

¹³ Available at: <http://www.sustainable-procurement.org/>.

¹⁴ In the linear approach the sustainability criteria could be set in all of the stages of the product life-cycle: purchase (purchase price), usage (usage costs) and disposal (disposal costs).

circular approach includes the following relevant stages: (i) design and manufacture (raw materials, material processing); (ii) supplier (delivery); (iii) public authority (use, maintenance); (iv) repair and reuse; and (v) material recovery (energy recovery, landfill).

Mr Hidson noted the following additional points concerning SPP implementation:

- E-procurement can be a very useful tool as it can help to facilitate and track the use of SPP¹⁵;
- Professionalization of the procuring staff is vital. Public procurement should not be seen merely as an administrative function; rather, it is a challenging and multi-faceted responsibility, that requires training and human development to enable better use of pre-procurement; market dialogue skills¹⁶; and better contract management;
- Joint procurement can be useful in maximizing the purchasing power of relevant entities¹⁷; and
- Verification is essential to assess whether the procuring entity gets an energy efficient and/or sustainable product.

In concluding, Mr Hidson made the following observations:

- In his view, the EU has an effective framework for SPP, which has already shown many significant results;
- Some EU Member states/local governments are moving further and setting mandatory SPP requirements or implement a circular approach for SPP; and
- Soft measures are helpful, but mandatory measures are vital to the effective implementation of SPP.

1.2 Farid Yaker, Programme Officer, United Nations Environment (UNEP) - "Sustainable public procurement (SPP): objectives, illustrative practices and emerging trends, drawing on the SPP work of UNEP and on the 2016 Global SPP Review"

Mr Yaker, in his presentation, shared the UNEP's experience in promoting sustainable public procurement at both the national and international levels. At the national level, the UNEP assists 16 developing and emerging economies to establish and implement SPP policies. The highest demand is from Latin American countries, which are followed by a number of Asian, Eastern European and African countries.

The Guidelines of the UN Environment SPP Approach¹⁸ are implemented through the following steps: (i) launch of the project and governance structure; (ii) status assessment, legal review, prioritization, and market analysis; (iii) SPP Policy and Action Plan; and (iv) SPP implementation. This approach incorporates the lessons drawn from the testing of the Marrakesh Task Force Approach to SPP that UN Environment rolled out in seven pilot countries from 2009 to 2012.

UN Environment also acts in the global framework of the 10YFP¹⁹ Sustainable Public Procurement Programme adopted at the Rio+20 Conference. The programme promotes international cooperation aimed at shifting towards sustainable consumption and production (SCP) patterns in

¹⁵ For example, by identifying contracts with SPP elements; choosing from relevant criteria and contract terms; evaluating performance against chosen criteria; applying life-cycle costing; generating reports on specific criteria or objectives.

¹⁶ The dialogue between local governments and businesses is highly important for the successful implementation of the circular approach.

¹⁷ Joint procurement is mentioned in the EU Directive. It has already been implemented at the regional level in the EU. In his view, cross border joint procurement, particularly of innovative green products, is very important.

¹⁸ Available at: <http://www.scpclearinghouse.org/sites/default/files/10yfp-spp-guidelines.pdf>.

¹⁹ 10YFP is the 10-year framework of programmes on sustainable consumption and production patterns aimed at enhancing international cooperation to accelerate the shift towards sustainable consumption and production (SCP) in both developed and developing countries.

both developed and developing countries.²⁰ The 10YFP SPP Programme sets the following objectives:

- Improving knowledge on SPP and its effectiveness as a tool to promote greener economies and sustainable development; and
- Supporting the implementation of SPP on the ground in order to provide better access to capacity building resources and improved coordination between SPP stakeholders.

Different working groups are established to develop recommendations in relation to SPP. The Revised 10YFP SPP Programme for 2016-2017 work plan includes:

- Implementation of SPP on the ground, including SPP tender implementation and impact monitoring;
- Assessment of implementation and impacts, including: (i) targeting measurement of target 12.7 of the Sustainable Development Goals (SDG)²¹; and (ii) promoting SPP best practices;
- Identifying obstacles and promoting innovative solutions, including SMEs participation in SPP; and
- Collaborating with the private sector, including promotion of supply chains' sustainability.

The 10YFP SPP Programme has a number of outputs for measuring/communicating SPP benefits, and monitoring SPP implementation, including: (i) using Product Service System (PSS) to enhance SPP – technical report (2015); (ii) SPP Principles (2015); (iii) pre-study on the sustainability of supply chains (2014); and (iv) SPP: A Global review 2013-2016 (a snapshot of SPP implementation).²²

Continuing, Mr Yaker said that SPP can promote sustainable development across different dimensions, including: (1) the environmental dimension (e.g. climate adaptation and resource optimization); (2) the social dimension (e.g. human rights, occupational health and safety); and (3) the economic dimension (e.g. innovation research/investment, value for money and open competition). SPP can also be a driving force to ensure sustainable consumption and production patterns (SDG 12) and facilitate progress in the development agenda. However, there remain many challenges to be addressed, including the perception that SPP is more expensive, that there is a lack of information, knowledge and technical capacities, etc.

Strong drivers and enabling factors for SPP implementation include, *inter alia*, policy commitment/goals/action plans; strong political leadership; and mandatory SPP legislation. In brief, a strong and enabling political and legal framework is a key factor allowing the use of public procurement as a strategic instrument.

²⁰ As of February 2017, the Programme has 102 partner organizations and 10 individual experts, who have broad geographical distribution and institutional diversity (e.g. it includes governments; NGOs; experts, etc.). Additional information can be found at: "<http://www.unep.org/10yfp/programmes/sustainable-public-procurement>".

²¹ SDG 12 "Responsible consumption and production": Ensure sustainable consumption and production patterns; Target 12.7: Promote public procurement practices that are sustainable in accordance with national policies and priorities; Indicator 12.7.1 Number of countries implementing sustainable public procurement policies and action plans. For additional information of the SDGs, see <http://www.un.org/sustainabledevelopment/sustainable-development-goals/>.

²² Additional information on the publications from the 10YFP Programme is available at: <http://www.unep.org/10yfp/knowledge-resources/publications>.

Current challenges for SPP

Mr Yaker mentioned the following as key priorities for further policy development and advocacy:

- Promoting life-cycle costing: (a) to consider the real value of externalities over the entire life-cycle²³; (b) to reduce prices for more sustainable goods compared to conventional items. Life-cycle costs are planned to be included in the guidance document of ISO 20400²⁴;
- Greening the whole supply chain: to work only on the government level is not enough; and
- Coordination of public and private organizations (institutional purchasing) as they are in a position to demand transparency into the upstream and downstream impacts of goods and services, and incorporate sustainability criteria into purchasing decisions at a scale that can shift markets.

Summary observations

Concluding, Mr Yaker made the following points:

- SPP needs a strong political framework: governments should move towards a strategic use of public procurement as an instrument to achieve policy goals;
- SPP needs an enabling legal framework: both international regulatory instruments (such as the Paris Agreement on Climate Change and Montreal Protocol on Substances that Deplete the Ozone Layer) and national/regional instruments facilitate the process. National policies need to provide a coherent policy framework to promote and allow the inclusion of sustainability issues in government procurement (not only establishing a SPP Plan);
- SPP can be much more effective when used simultaneously with other non-procurement tools and instruments, including ecolabelling schemes; education to sustainable consumption, etc.;
- When the framework is established, training and provision of information is necessary to build expertise;
- Peer collaboration and coordination with the market are important components to maximize efficiency; and
- Monitoring of the different tested and implemented strategies is important.

1.3 Christopher Browne, Chief Procurement Officer, World Bank - "SPP in the work of the World Bank: objectives and emerging perspectives"²⁵

Mr Browne discussed the role of SPP in the World Bank's related work, highlighting objectives and emerging perspectives. He also noted the increasing convergence and scope for synergies in the work of the World Bank and the WTO on public procurement issues.

The World Bank works with 172 countries delivering 1800 projects with a value around USD 80 billion. Seventy-five per cent of its projects are large infrastructure works in the transport,

²³ To move from the "acquisition cost" to "total cost of ownership" and then to the "global cost". Factors in costs incurred by society as a whole, including negative externalities throughout the value chain (CO2 and ODS emissions, impacts on health, labour conditions), or positive externalities (increased know how, technologies, etc.) over the entire life-cycle.

²⁴ Subsequent to the Symposium, the ISO 20400 (the first international standard for sustainable procurement) was launched at the end of April 2017 by the International Standards Organization. Available at: <https://www.iso.org/standard/63026.html>. See also <https://www.iso.org/news/Ref2178.html>.

²⁵ Mr Browne could not be physically present for the Symposium; however, he provided a stimulating video presentation which is available at: <https://www.youtube.com/watch?v=ZJeYd-81IFA&feature=youtu.be>.

water and energy sectors. In July 2016, the Bank launched a new procurement framework developed with business, civil society and governments. The inclusion of SPP was one of the most controversial issues during the development process. The views among stakeholders were very divergent on how far the World Bank should go to support additional sustainable factors as it has already set a very high standard in the application of sustainable development to project selection, design and implementation.

The Bank's approach to sustainability encompasses both social and environmental aspects. Each project that it undertakes is assessed in relation to both sets of criteria. Minimum requirements are set in terms of project design, management, specifications and the protections necessary for people and environment, including health and safety, human rights, access to healthcare, HIV prevention, energy efficiency, and recruitment of local labour. In addition to these project specific factors, the World Bank has a standard procurement document for works, which at minimum already mandates many sustainability factors (e.g. work recommendations (e.g. relating to working hours and pay), unionization rights, and quality).

In the course of recent consultations, some World Bank stakeholders raised the concern that inclusion of sustainability criteria in Bank-promoted procurement processes might favour developed countries as they have more experience working with SPP – for example, regarding environmental certifications. Developed country stakeholders, on the contrary, believe that SPP is inherent to the World Bank's activities and critical to any development projects. In particular, the application of life-cycle procurement in the final decision-making process was considered very important.

After a long debate, it was agreed that additional SPP criteria during procurement processes are permitted, but on a non-mandatory basis. Therefore, in the World Bank procurement system, the application of SPP allows governments to include further economic, social and environmental criteria in pre-qualification, specification, evaluation or as part of a post-award key performance indicator requirement.

To promote understanding, the World Bank has published SPP guidance²⁶ on how to identify risks and opportunities, and how these issues may be turned into measurable criteria. As part of the programme to build procurement capacity, the World Bank also includes SPP analysis and application within its wider appraisal of procurement systems. When needed, the World Bank provides support to implement SPP practices.

The World Bank works with other development banks and international organizations, including the WTO Secretariat, to ensure, as far as possible, that consistent policy advice is given on what good procurement is and on the measuring of value for money (life-cycle cost). Mr Browne believes that if considerations in all countries were based on the life-cycle cost approach; this would be a huge step forward in the application of SPP decision-making.

With respect to the Agreement on Government Procurement (GPA), he said that the Agreement sets a useful and appropriate standard of good public procurement practices worldwide. A key innovation in the World Bank's new Procurement Framework is that there is now more likelihood that the Bank will permit a country to apply its own procurement rules for Bank projects, if the country implementing the project is a GPA Party. In those circumstances, the Bank has less of a need to assess the legal framework for government procurement, the policy, and the compliance systems at the country level for GPA Parties, as it trusts the GPA accession process.

The World Bank focuses on how the rules are applied at the project level and the capability of the organization to deliver financed projects. As part of the appraisal of the implementing agency, this also includes the application and treatment of SPP.

In concluding, Mr Browne said that the World Bank welcomes, very much, the GPA Parties' interest in sustainable public procurement, in addition to the entry into force of the revised GPA. He and his colleagues would be interested to see further consideration by the Committee on how SPP could be implemented in public procurement processes as governed by the GPA (even if on a non-mandatory basis).

²⁶ Available at: "<http://pubdocs.worldbank.org/en/788731479395390605/Sustainable-Procurement-Guidance-FINAL.pdf>".

1.4 Questions and Answers/Comments Session

1. A question was posed regarding the scope for value-enhancing trade in relation to sustainable (including green) products. Some countries, especially developing countries, have nascent industries that are developing sustainable products; may therefore be hesitant to open their markets to foreign competition in the short term. Such opening could, however, help to drive innovation domestically and encourage the growth of local suppliers providing sustainable products. How might the WTO/relevant countries work with developing countries to encourage the potential adoption of international sustainable technologies, services and goods, for mutual benefit?

In response:

- Mr Yaker referred to the specific case of Morocco, which first implemented a prioritization programme for the products that could be provided domestically. In this context, locally produced organic products that could be supplied to canteens, schools and hospitals were prioritized. A similar approach had been implemented in Colombia, where domestic organic coffee was prioritized. Such an approach could help local suppliers and have environmental benefits. In his view, domestic producers generally have natural advantages; and commercial opportunities should be created in a manner that does not distort trade. Continuing, he said that this should be seen as a global problem that is broader than the public procurement field. In this context, he called for global measures addressing this issue more generally and linked it to the necessary transfer of technologies by using, e.g. the Paris Agreement.
- Mr Hidson, based on his experience in South America and Africa, suggested that investors could work initially with domestic suppliers to assess how they can work together in relevant markets. Such collaboration could bring mutually beneficial outcomes (e.g. foreign investors can bring technologies and local suppliers can have a better knowledge of the domestic market environment).

2. Another question was posed regarding the meaning of the expression "social public procurement". The environmental dimension of sustainable public procurement (also known as "green public procurement") is generally well understood. It would be useful to understand better what is implied by the "social" dimension.

In response:

- Mr Hidson stressed that delineating the concept of "social public procurement" is one of the biggest issues at the moment, also within the EU. In his view, it can be looked at on two different levels: within the EU and outside the EU. At the EU level, it comprises issues like: (i) including disadvantaged groups at the national and regional levels; (ii) encouraging social enterprises; and (iii) paying attention to the working and living conditions within the EU. The EU Commission has addressed the issue in its "Buying Social Handbook", published around five years ago (the publication is in the process of being updated).²⁷ At the international level, it relates to "fair trade" issues – e.g., issues concerning the role of child labour in the production of different products or services like clothing.
- Mr Yaker said that social public procurement is a concern for both developing and developed countries. For example, the US was, in a way, one of the first jurisdictions to promote social public procurement, with its Small Business Act, by supporting or allowing certain disadvantage groups to access public procurement. Another example relates to South Africa, where social public procurement is implemented to promote black business empowerment. More generally, implementation of relevant ILO Conventions in public procurement processes represents an important contribution to social procurement by helping to ensure that suppliers pay fair wages and give benefits to the workers. Audit and verification of labour and production conditions are important,

and should be conducted on a broad basis, not only on the level of the individual enterprises.

3. In the course of the first session, it was observed that mandatory SPP measures were important. At which level(s) should such mandatory SPP rules/requirements be implemented? Should it be a top-down or a bottom-up approach?

In response:

- Mr Hidson stressed that this was a difficult question and it depends on the various contextual factors. For example, in the EU, recent progress was achieved only when mandatory SPP requirements were implemented. Initially, the general regulatory framework was sufficient for relevant initiatives. However, further progress had required mandatory measures with respect to specific products and services groups. In his view, SPP initiatives should follow a top-down approach, even if they are not perfect. Most public authorities and individuals will not implement it, unless there is some legislation.

4. Pursuing a point made by Mr Hidson, a question was posed as to the measures needed to achieve professionalization of procurement workforces. In the questioner's view, greater attention to resources for human and institutional capacity building was critical to improving procurement systems globally.

In response:

- Mr Hidson suggested that public procurement should be more widely covered in Master's courses and in organizations like the Chartered Institute of Procurement and Supply (CIPS). His organization, ICLEI, worked with Germany to develop a dedicated one-year programme. Professionalization should be seen as a "generational goal", as time is required before the desired effects can be seen. The ICLEI contributes to addressing this problem by providing training. He stressed that it is not only about education, and it includes elements like marketing research at the pre-procurement phase. In his view, it is equally important to develop a sustainable public procurement framework at the central government level and/or at the local government levels (including for hospitals and schools).
- Mr Yaker added that the following elements could be useful in implementing SPP: (i) the use of e-procurement; (ii) framework agreements; (iii) and peer-to-peer learning. He agreed that public procurement is no longer just an administrative function, but also a strategic tool to achieve policy objectives which requires effective training and support.

2 SESSION 2: WHAT ARE THE KEY PRACTICES OF SUSTAINABLE PROCUREMENT AND HOW CAN SUSTAINABILITY BE INCORPORATED INTO THE DIFFERENT STAGES OF PROCUREMENT?

Sustainability in government procurement needs to be understood not merely at a conceptual or macro level but also with respect to specific steps and modalities in individual procurements. Accordingly, this Session looks at two particular issues: the key practices of sustainable procurement, and how sustainability can be incorporated into the different stages of procurement at both the domestic and international levels.

John Newham, Session Chair, Deputy Permanent Representative (Ireland) and Chairman of the WTO Committee on Government Procurement

2.1 Paul Eggimann, Head of the Specialist Group on Sustainable Construction in the Coordination Group for Construction and Property Services (KBOB), Switzerland - "Key sustainable procurement practices at the domestic level – a practitioner's view"

Mr Eggimann, in his presentation, explained how SPP is implemented in Switzerland and, in particular, by the specialized group on Sustainable Construction, within the Coordination Group for Construction and Property Services (KBOB). In his view, there are three main conditions for

successful SPP implementation: willingness; knowledge; and monitoring/reporting. With respect to each of these, he mentioned the following aspects regarding Switzerland's experience:

Willingness

Switzerland's Sustainable Development Strategy 2016-2019 established an obligation for public procurement to be sustainable. Public procurement in Switzerland is conducted at different levels: federal, cantonal, cities/towns and municipal levels. All levels are coordinated by the KBOB, which provides applicable recommendations. For example, the KBOB has provided the following recommendations:

- Recommendation on sustainable procurement of wood, which requires the identification of wood in accordance with a specially established standard or with the Forest Stewardship Council certification (FSC) and Programme for the Endorsement of Forest Certification (PEFC); and
- Recommendation on concrete to be made from recycled granulates (sustainability in contracts for building planners and for building services).

The KBOB also provides ecobalance data on materials which will be used in construction and provides life-cycle assessment data in construction by looking at quality.

Knowledge - Communication with labels

Labels are a simple way to communicate the different standards that they embody. If all the labels were put together, it would be possible to make a standard for sustainable construction. Different criteria (related to society, environment and economy) are put together and create a performance code (in the scale between 1 and 6). A procuring entity can request construction buildings to meet the requested grade. Procurers can also ask for compliance with the EU Regulations regarding energy labelling of lighting products and eco-design requirements for lighting products.

In the case of centralized procurement in Switzerland, ecobalance for different types of papers is used. Distinction between the four different types of papers is based on price, greenhouse gas emission, and environmental impacts.

Monitoring and Reporting

This is aimed at checking whether the KBOB recommendations are used in submissions. A submission is considered "sustainable" if the KBOB recommendations are followed.

The KBOB attaches clear importance to all three aspects as tools for the promotion of sustainable procurement.

2.2 Jason Pearson, Executive Director, US Sustainable Purchasing Leadership Council (SPLC) - "Key sustainable procurement practices at the domestic level – case studies from the United States"²⁸

Mr Pearson's presentation was based on the experience of the US Sustainable Purchasing Leadership Council (SPLC).²⁹ The Council was founded in 2013 with more than 30 public and private organizations from different sectors, academics and civil society. Today it is a broad coalition with 165 members (including some companies from the Global 500, e.g. Lockheed Martin and Microsoft, and some large government buyers, e.g. US General Services Administration and the State of California). The purchasing organizations, both in the private and public sectors, represent over USD 200 billion in spending. These organizations share recognition of the environmental, social and economic consequences of purchasing. Members also recognize that it is an opportunity to use economic influence to advance the environmental, social and market values. It is a USD 10 trillion (spent annually in the US) signal to be sent to global supply chains to

²⁸ Mr Pearson could not join personally during the Symposium, however, he provided an audio presentation which is available at: <https://www.youtube.com/watch?v=1-cN97cdyq&feature=youtu.be>.

²⁹ More information is available at: <https://www.sustainablepurchasing.org/>.

express the will to have goods and services which are socially, environmentally and economically sustainable.

However, there is a collective challenge to realize this opportunity. A shared approach to sustainable purchasing is missing and it creates market inefficiency. Purchasers lack access to shared resources to act strategically and avoid duplication of effort. As a result, suppliers face conflicting market signals as they seek to differentiate their offerings. In his view, the solution to this challenge includes a shared program to provide a framework for leadership action and align market innovation.

SPLC supports collective action and market innovation. For example, SPLC has a case study library which collects more than 80 examples of sustainable purchasing initiatives from a variety of organizations. In addition, the organization annually conducts a Leadership Award Event, which analyses case studies submitted both from members and non-members.

Mr Pearson highlighted the following trends relevant to strategic sustainable purchasing:

1 - Convergence

Purchasing decisions may positively or negatively influence natural, social and economic systems in various ways. Currently, a number of organizations of all sizes are embracing the inclusive view of sustainable purchasing. They recognize that a sustainable purchasing strategy should include all of the environmental, social and economic priorities and be coordinated in a holistic way. One of the reasons why convergence is happening is the increasing recognition by the investor-community that for many companies their great social, environmental and ethical risks are in their supply chains.

2 - Strategic Prioritization

In the SPLC's 2014 Guidance for Leadership and Sustainable Purchasing³⁰, prioritization is emphasized as a key to leadership. The SPLC encourages its members to establish as a foundation for their sustainable purchasing strategy *priorities that offer the greatest opportunity to improve their overall sustainability*. Typically, the following two parallel and related lines of inquiry will be relevant: "What do we buy, and why does it matter?" and "From whom do we buy, and why does it matter?".

3 - Structured Strategic Processes to Achieve Breakthrough Performance

In the 2014 Guidance, SPLC introduced the concept of a strategy cycle for the types of structured strategic processes which organizations are using to achieve breakthrough performance. Many organizations are choosing to undertake these structured strategic processes because they stimulate dialogue within the organization on the broadest range of solutions and strategies for achieving sustainable purchasing goals. They include, for instance, *demand reduction strategies* like efficiency process change, behaviour change, and standardization, as well as *supplier oriented strategies* like supplier engagement, supplier accountability, outsourcing, insourcing, and servicing, etc. Performance breakthroughs are maximized when some of the strategies are put together as an integrated cross-functional process.

4 - Supplier Engagement

Some of the SPLC's members have strong commitments to use SMEs as suppliers. As an example, Lockheed Martin worked with its payments departments to take payments down to 14 days for SMEs (initially from 60 or 90 days). There are also initiatives establishing supplier engagement programmes, which include: (i) sustainability assessments; (ii) workshops; (iii) subsidized training programmes; and (iv) an awards programme where a company acts as a mentor to its suppliers. In addition, SPLC hosts a Supplier Development Working Group through which members work together to share best practices and resources, which can be used in enhancing their suppliers' sustainability capacity.

³⁰ Available at: <https://www.sustainablepurchasing.org/guidance/>.

5 - Supplier Assessment

SPLC supports this theme through the Supplier Assessment Working Group (SAWG), which is charged with helping SPLC members identify the best resources for guiding and assisting their suppliers' sustainability performance. For example, at the product level, the SAWG can help purchasing organizations to identify relevant ecolabels or standards. SPLC can also help monitor the sustainability performance of a supplier as a whole by developing a number of resources. It may include the application of the ESG (environmental, social and government) rating products to sustainable procurement, and a report from the Committee on Supplier Rating.

6 - Radical Transparency

Increasingly radical supply chain transparency is promoted by advocacy organizations to expose abuses of environmental and human rights in supply chains, connecting the relevant practices to individual suppliers and purchasers.

7 - Collective Action

There is a growing trend towards collective action of purchasers across public and private sectors and in collaboration with civil society. SPLC is one example of this. Others include the Sustainability Consortium, the Consumer Goods Forums, the RE 100 Initiative (which brings together the most influential companies committed to 100% renewable power), Practice GreenHealth, and the newly formed Renewable Energy Buyers Alliance, etc.

Mr Pearson said that the Sustainable Development Goals provide an important framework for collective/global action.³¹ Importantly, many of these organizations use the SDGs to communicate and link their work with that of other organizations.

In concluding, Mr Pearson said that these seven trends represent a fundamental shift in the thinking of public and private sector organizations to influence the supply chain and seize the opportunities that SPP can offer.

2.3 Sandra Hamilton, Social Procurement Advisor & Canada's First Social MBA - "Procurement strategy: the importance of people in a people, planet, profit approach to sustainable government procurement"

In her presentation, Ms Hamilton talked about SPP and the complementary, yet different, roles that governments and businesses play in society. She said that public procurement should reflect the way society lives and breathes its values. The GPA sets the bar and positively influences government procurement chapters in free trade agreements. In her view, SPP includes economic and social values, in addition to environmental values.

Continuing, she shared her experience working with many procurement projects, including the 2010 Vancouver Olympic Games, which were the first Olympics in history to include social criteria in the sustainability strategy. For example, the floral contracts used in connection with the games not only required a competitive price and floral capability but also required that the vendor provided tangible community benefits (e.g. to train marginalized women to become florists).

She posited that, of the biggest threats to world trade, prosperity and well-being, a key one is inequality. Together with precarious work and income instability, inequality leads to an increase in family stress and poverty, adding an unacceptable burden of increased social and health costs to the taxpayer. She noted that Canada and Europe are working together to advance CETA, but with a cautionary message that to succeed, wider social benefits must be achieved from the economy.

Social public procurement offers a responsive and proactive tool whereby governments can signal to the market the type of supply chain partnerships that will be encouraged and rewarded in public-sector contracts. It has been described as a "Golden thread" capable of pulling together many diverse interests. SPP is achieved by shifting demand and broadening the definition of value; and by breaking down silos and rewarding socially responsible behaviour.

³¹ See above note 21.

She observed that Canada has the second largest non-profit sector in the world (after the Netherlands). One in ten people work in the non-profit sector, which accounts for 8% of GDP. While business is becoming more social and the non-profit sector is becoming more businesslike – building linkages and breaking down the barriers between these sectors makes good social and economic sense. Social public procurement is the tool that can make this happen.

Meaning of Social Public Procurement

Identifying different dimensions of social public procurement, she said that it encompasses:

- *Our responsibility to one another.* In particular: protecting people and improving lives; promoting social inclusion, equality, community benefit; and stimulating inclusive economic development;
- *A more strategic and proactive approach,* which requires policy makers and procuring entities to stop and think;
- *Asking new questions,* such as: is this a high or low social value opportunity? What are the potential positive and negative social impacts of this procurement? How can this contract improve lives and enhance society?
- *Inspiring new conversations among diverse actors;* and
- *Paying special attention to the pre-procurement (i.e., the advance planning) stage.* She said, further, that pre-procurement is where "the magic happens" – i.e. the most transformative steps are planned/taken.

Continuing, Ms Hamilton said that:

- Sustainability may be incorporated into the different stages of public procurement by, for example:
 - reviewing and aligning with existing policies and goals. SPP can be used as a tool to support and amplify existing strategies and policies (e.g. economic development, social services, health, and infrastructure planning);
 - reviewing annual procurement plans;
 - focusing on the highest social value opportunities;
 - identifying and engaging knowledgeable intermediaries;
 - designing procurement strategy; and
 - considering procurement mechanisms to achieve sustainable outcomes.
- The most common goals being pursued by the public-sector surround employment, with the aims of reducing poverty, providing skills training and work opportunities for people facing barriers to employment. To achieve these goals, a combination of mechanisms is used. They include: (i) social audits; (ii) social pre-qualifications; (iii) project specific commitments; and (iv) award criteria (developing rewards that target hiring or diversification of supply chain partnerships – such as the inclusion of social enterprises).
- When working with communities, business groups and governments, Sandra has developed a matrix to help identify a match between individual procurements and relevant social value objectives. The matrix also helps people understand the difference of working above and below thresholds. Not every procurement is a match for each social value outcome; therefore procurement strategies must be developed on a case-by-case basis. Three words matter in this regard: *Are we Rewarding, Re-Scoping or Restructuring* to achieve the desired objectives?

Highlighting Critical Success Factors for Sustainability

She said that the SPP success factors include: (i) a supportive regulatory framework; (ii) engaged leadership; (iii) alignment of strategic objectives and existing policies; (iv) peer to peer communities of practice; (v) building a culture of continuous improvement; and (vi) communication and collaboration between internal departments and external markets.

Key Lessons learned:

Based on her experience of working with SPP issues, Ms Hamilton highlighted the following lessons learned:

- Build the strategy for sustainability into the public procurement process at an early stage;
- Identify knowledgeable intermediaries: employment organizations and social value advisory panels (industry supported pilot collaborations);
- Set targets and measures;
- Run an open, transparent, and competitive process, consistent with relevant legal standards; and
- Adopt and apply tangible, non-discriminatory evaluation criteria.

International agreements can promote, rather than impede, sustainable outcomes. Currently, Ms Hamilton is engaged in developing a CETA-compliant Social Value Infrastructure Pilot that can be used as a template for governments to achieve more social value through infrastructure contracts. In her view, CETA provides Canada and the EU with an excellent opportunity to educate relevant public sector buyers on socially sustainable public procurement and how to better leverage taxpayer funded contracts to achieve key public policy goals. These goals should be focused specifically on designing a process that creates work opportunities and skills training for people facing barriers to employment. The development of a standardized process could significantly simplify SPP implementation by public sector buyers, and ensure a certain degree of harmonization of SPP processes across different regions.

SPP Myths and Tensions

Ms Hamilton also referenced several myths, as she sees them, in relation to sustainability. For example, she said that it is wrong to suggest that SPP: (i) is a code for local protectionism; (ii) is illegal - the regulations have to change first; (iii) can only happen under thresholds; and/or (iv) is only a support system for social enterprise.

She acknowledged, nonetheless, a number of tensions/outstanding questions – for example:

- Should SPP be prescriptive, descriptive or have a menu of options?;
- Should local, ownership type or social impact be rewarded?;
- Should set asides and offsets be used?;
- Should a standardized national approach be used? If so, does it remain responsive to the needs of the different communities? At the same time, we should bear in mind that evaluation without some standardization is difficult; and
- Should there be a way to reward performance and inter-government, financial transfers for positive social outcomes? Should a compensation model be considered if local governments start to create solutions and cost savings for different levels of national governments?

Recommendations

In terms of *recommendations for further evolution of the GPA and/or related guidance*, she referenced language that:

- Supports governments setting a leadership example, by encouraging governments to move from being price takers to market influencers and market movers;
- Encourages public procurement strategy that aligns and supports the UN Sustainable Development Goals; ILO Decent Work Initiative; and ISO Sustainable Procurement Leadership Principles;
- Clearly grants permission to members by providing examples of how to better leverage public procurement to achieve key public policy goals; and
- Moves beyond the principle of "Do No Harm" to proactively "Doing Some Good".

In concluding, she said that, if the GPA Parties manage to implement the above-mentioned recommendations, they will be recognized as global leaders setting the gold standard for public procurement that acknowledges and promotes people/social values.

2.4 János Bertok, Head of Division, Public Sector Integrity, Public Governance and Territorial Development Directorate, Organisation for Economic Cooperation and Development (OECD) Secretariat - "OECD work relating to sustainable procurement practices"

Mr Bertok began his presentation by noting that the Organisation for Economic Co-operation and Development (OECD) works with around 35 developed country members and a number of key developing partners. The OECD supports evidence-based dialogue in the area of government procurement through an extensive database.

He suggested that public procurement matters, a great deal, for sustainability. Among the OECD members, government procurement represents around 12-13% of GDP and carries a huge potential for social and economic transformation. He referenced the 2015 OECD Recommendations on Public Procurement³², which are in line with the revised GPA rules and the UNCITRAL Model Law. It has 12 integrated principles designed to ensure the strategic and holistic use of public procurement. The principles include, for example: transparency, integrity, access, balance, participation, efficiency, e-procurement, capacity, evaluation, risk management, accountability and integration. The recommendations also provide relevant guidance for their application.

As previously mentioned by other speakers, Mr Bertok also considers that one of the biggest challenges in the area of government procurement concerns capacity-building and professionalization. The OECD tries to help in meeting related challenges through activities aimed, *inter alia*, at:

- Establishing key performance indicators to support, where appropriate, standardization and best practices;
- Supporting strategic use of government procurement (e.g. green, SME, innovation);
- Publishing reports on innovation, which identify trends and major constraints faced by countries, and provide a framework to stimulate innovation through public procurement³³;
- Facilitating involvement of SMEs (this is a priority for the next two years);
- Publishing the Government at a Glance Report³⁴ every two years, which provides data on different instruments, including e-procurement; and

³² Available at: <http://www.oecd.org/gov/ethics/OECD-Recommendation-on-Public-Procurement.pdf>.

³³ See, for example, Embracing Innovation in Government – Global Trends, February 2017, available at: <https://www.oecd.org/gov/innovative-government/embracing-innovation-in-government.pdf>.

- Establishing assessment tools, such as the Methodology for Assessing Procurement Systems (MAPS).

Good Practices Encouraged by the OECD:

The three main dimensions of the OECD's work in the SPP field are: (i) sustainability and strategic public procurement; (ii) sustainability and diagnostics - the Methodology for Assessing Procurement Systems (MAPS); and (iii) sustainability and infrastructure investment.

Good Practice 1 - Sustainability and Strategic Public Procurement

In the last four years, OECD members have increasingly used government procurement to achieve broader policy objectives, such as green public procurement, support to SMEs and the procurement of innovative goods and services. This trend is also accelerating.

As stated in the principle V of the 2015 OECD Recommendation on Public Procurement "Secondary policy objectives (e.g. Sustainability) should be balanced against the primary procurement objective". In this regard, the good practices emerging from the procurement community include: (i) an evaluation of whether public procurement is the best option to pursue sustainability; (ii) the development of a strategy; and (iii) and assessment of the impact of the resulting actions.

Good Practice 2 – Sustainability and Diagnostics - the Methodology for Assessing Procurement Systems (MAPS)

Evidence shows that OECD members use public procurement to pursue secondary policy objectives.³⁵ It is important to measure results of such strategic use public procurement. The OECD Methodology for Assessing Procurement Systems (MAPS)³⁶ could be a useful tool in this regard. From being merely a development finance tool, MAPS is now becoming a universal reform tool. MAPS is used by more than 90 countries and international financial institutions, and is linked to new international standards, e.g. the 2015 OECD Public Procurement Recommendation. MAPS is also linked to the Sustainable Development Goals. In particular,

- MAPS Indicator 3(a) refers to SDG Target 12.7: "Promote public procurement practices that are *sustainable*, in accordance with national policies and priorities".³⁷
- MAPS Indicators 5, 6, 8, 12, 13 refer to SDG Target 16.6: "Develop effective, accountable and transparent *institutions* at all levels".

Good Practice 3 - Sustainability and Infrastructure

In concluding, Mr Bertok discussed two concrete examples of SPP in infrastructure and said that there are two main visions for building sustainable infrastructure (i.e. requirements-based and competition-based approaches). To illustrate the requirements-based approach, he referred to the construction of a new airport for Mexico City, which mainstreamed sustainability. In this specific case, Mexico opted for sustainable financial instruments – i.e. by using "green bonds" (USD 2 billion) to finance construction that has to follow specific environmental performance criteria. The other approach (i.e. competition-based) was illustrated with the construction of a new Highway A6 in Almere, Netherlands. In that case, the Netherlands have used technical specifications, MEAT, CO2 performance ladder and Life-cycle Cost Analysis tools with Environmental Cost Indicator (ECI) to choose the greenest offer.

³⁴ Available at: <http://www.oecd.org/gov/govtaglance.htm>.

³⁵ For instance: (i) to boost green objectives (69% of the OECD members); (ii) to stimulate innovative goods and services (42% of the OECD members); and (iii) to help SMEs (19% of the OECD members).

³⁶ Available at: "<http://www.oecd.org/qov/ethics/benchmarking-assessment-methodology-public-procurement-systems.htm>".

³⁷ See above note 21.

2.5 Questions and Answers/Comments Session

1. The following question was posed: at which stage is it most challenging to integrate sustainability criteria and what can be done to address these challenges?

In response:

- Ms Hamilton stressed that to be effective, integration of SPP elements needs to be considered as early as possible in the public procurement process. The later in the process it is considered, the more difficult it will be to achieve related goals.
- Mr Hidson added that many sustainability objectives might be included in technical specifications in relation to simple products such as paper.
- Mr Bertok echoed the previous speakers and said that SPP should start with a strategy. The OECD contributed to this by encouraging the transformation of government procurement from an administrative process to a strategic tool.

2. More information was requested on the OECD's data collection on green public procurement.

Responding, Mr Bertok commented that not only the OECD, but all countries are facing difficulties to get data. The OECD has two criteria: what is relevant and what is credible. This is still work in progress and is certainly becoming more feasible with e-procurement.

3. Pursuing the discussion, it was noted that achieving best-value for money might be treated as the primary objective of government procurement and, in that context, secondary objectives might be considered. For example, in the case of green public procurement, it could be promoted through a life-cycle cost approach and the procured products could be both environmentally friendly and cheap. In some other cases, however, such as the promotion of SMEs, it may not be that easy to demonstrate how the primary and secondary objectives can be reconciled. The following question was posed: how Parties can ensure that the achievement of the secondary objectives (e.g. promotion of SMEs or other types of businesses) is compatible with the principles of non-discrimination and open trade that are defended under the GPA?

In response:

- Mr Bertok explained that the OECD is a community which brings together various perspectives, including from the Competition Committee and the Economic Policy Committee. Recently there has been a discussion about the revision of product market regulation, a very specific regulation, which has a huge impact. It was discussed how public procurement might be mainstreamed in this regard. This discussion suggested that the competition perspective is still dominant.
- Mr Eggimann mentioned that the key is to develop an evaluation system, at the implementation stage (with a good set of indicators) that takes into account all relevant aspects/issues.
- Ms Hamilton emphasized that when she designs projects, she makes sure that no trade agreements are contravened. A decision tree is one of the transparent ways of doing that. It is important to identify whether the project in question is of high or low social value opportunity. Some projects such as some civil infrastructure projects are very mechanical and the social value opportunity is low. In other cases with high social value opportunity, collaboration with intermediary agencies, which are often non-profit organizations, is possible. If social aspects are included in the evaluation criteria, they should provide equal opportunities for all participants.

4. A question was posed regarding the following hypothetical situation. Bids for a construction project come from different suppliers and different countries and all of them include a social component. Instead of committing to social advancement in the country where the project takes place, they commit to do the same in their own market. How would this be evaluated? Additionally, assume that some of the countries have indicated the ability for procuring entities to target low employed or unemployed groups. How would it be evaluated if you have foreign suppliers indicating underemployment? Every party has different views on what is disadvantaged.

In response:

- Ms Hamilton stated that if a specific procurement has high social value potential, disadvantaged people would be attracted. In her view, disadvantaged means anyone who is facing a barrier or is currently unemployed. If we want to have more inclusive economies (e.g. not only hiring people who look like you), it is important to start breaking down some of the barriers. The criteria specifying such inclusiveness should be irrespective to the geographical location. If it is a low social value opportunity, then ethical practices and the hiring diversity within the company should be looked at. A social audit process can be used to make sure that government procurement is not driving parts of the population into poverty and that the taxpayer funding system is not used to create more problems.

Regarding a common definition of "disadvantaged", Ms Hamilton said that she has spent much time trying to find an exact definition without succeeding. In her view, the spirit of the language in trade agreements suggests that we are trying to give opportunities to people facing economic barriers and living in poverty, e.g. to immigrants, women, and people with language barriers, etc. What can be done to reach out to such people? It is important to ensure that companies working in our supply chains are helping to build the society we want to live in.

- Mr Eggimann added that, in his view, WTO standards encourage free flow of goods, money and people. In this context, it should not matter if an unemployed person is from another country. In his experience, these standards are applied to all companies irrespective of their origins. Companies working in Switzerland are subject to some social standards. For example, it includes standards aiming at integrating a certain percent of disadvantaged people (such standards are not specially connected to bid submissions).
- Mr Bertok said that one approach is to focus on relevant constraints. For example, SMEs are facing capacity and administrative barriers/problems related to e.g. cash flows or the use of e-procurement. Addressing these issues is not necessarily about the so-called positive discrimination and SME preferences; rather, it is about understanding the nature of the constraints and how to address them in relation to SMEs. In his view, these are all level-playing field issues.
- Mr Hidson added that there are various ways to measure and prove inclusion of social components. For example, the prohibition of breaching environmental or social law might be included in the selection criteria, and the following components might be assessed: (i) evidence of human and technical resources; (ii) experience and references; (iii) education and professional qualifications of staff; and (iv) supply chain tracking systems.

5. It was observed that, in his presentation, Mr Bertok of the OECD Secretariat did not specifically refer to the social dimension of SPP. Does it mean that the OECD members are not interested in this aspect of SPP or it is something to be done in the future?

- In response, Mr Bertok said that the OECD has planned to discuss public procurement at the Global Forum on Responsible Business Conduct to be held in June 2017. It is planned that one of the sessions will be dedicated to the relationship between public and private suppliers, with the aim of mainstreaming the social dimension of public procurement.

3 SESSION 3: HOW ARE SUSTAINABILITY MEASURES IN PROCUREMENT PROCESSES PRACTICED IN A MANNER CONSISTENT WITH BOTH THE PRINCIPLE OF "BEST-VALUE FOR MONEY" AND INTERNATIONAL TRADE OBLIGATIONS?

The revised GPA explicitly reflects, in its substantive provisions, the values of environmental conservation and the protection of natural resources. Moreover, as WTO DDG Yi reminded us in his opening remarks, sustainable development is incorporated, as an overarching goal, in the Preamble to the Marrakesh Agreement Establishing the WTO. In this context, the present session is intended to further clarify and explore the relationship between the GPA's principles and sustainability objectives and concerns.

Robert Anderson, Session Chair and Team Leader for Government Procurement and Competition Policy in the WTO Secretariat

3.1 Judge Marc Steiner, Swiss Federal Administrative Court - "SPP, best-value for money and international trade obligations: the GPA as a model Agreement"

Judge Steiner, in his presentation, discussed the nature of the revised GPA, including in relation to sustainability issues, and its differences vis-à-vis the 1994 GPA, also highlighting related developments regarding EU legislation. He made the following observations:

- The 2012 revised GPA is a completely different mindset compared to the 1994 GPA as it is a part of the coherent legal order and part of the global international public law framework.
- The 1994 GPA was conceived principally as a market access tool. The approach of the legal analysis of the 1994 GPA doctrine suggests that public procurement regulation should not be used for political aims because it distorts markets and competition, destroys the pure logic of market access, economy and pricing.
- The 2012 GPA, on the contrary, established a different framework, which addresses explicitly issues such as good governance and corruption. It aims to balance the traditional goals of public procurement with the new public purposes pursued. Green public procurement is now explicitly endorsed in provisions related to technical specifications and award criteria. There is still "constructive ambiguity" concerning social aspects. However, if social aspects are not mentioned, it does *not* mean that they are forbidden so long as they are implemented consistently with the Agreement's fundamental principles.

Relevance of the 2014 EU Public Procurement Reform

- Judge Steiner suggested that the WTO and the EU views regarding the nature of public procurement changed in parallel. In the 1990s, the EU followed the approach established in the 1994 GPA. However, recently, the EU has framed public procurement in a new way. The 2014 EU Directive aims at a strategic use of public procurement to pursue societal goals.³⁸ The European Court of Justice (CJEU) gave an interpretation that public procurement is not only about money, it is also about quality; and emissions can also be a part of the quality. For example, in the *Max Havelaar* case the CJEU allowed social award criteria.³⁹ There is a general understanding that it is also in line with the revised GPA.
- The CJEU stated that if there is an obligation in EU law to orient ourselves towards sustainable development, public procurement regulation cannot be interpreted as not allowing pursuing these goals and purposes. This was a breakthrough both for

³⁸ Public procurement plays a key role in the Europe 2020 strategy [...] for smart, sustainable and inclusive growth ("Europe 2020"), as one of the market-based instruments to be used to achieve smart, sustainable and inclusive growth while ensuring the most efficient use of public funds (Recital 2 of the Directive 2014/24/EU), available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014L0024>.

³⁹ See Commission v Netherlands (C-368/10 of 10 May 2012) (The "Dutch Coffee" case). Available at: <http://curia.europa.eu/juris/liste.jsf?num=C-368/10>; http://ec.europa.eu/environment/gpp/case_law_en.htm.

environmental and social values. For instance, the CJEU mentioned that "Coffee which has been unfairly marketed leaves a sour taste."

- The EU established that application of the Directive should be in conformity with the GPA.⁴⁰ Therefore, framing and applying EU law in relation to sustainability issues are in a sense interpreting the GPA.
- Currently, Switzerland is experiencing the same change. It is reforming Swiss public procurement law by including the purpose, *inter alia*, to ensure that public resources are sustainably used from the economic, environmental and social perspectives.

Regulatory density of the GPA as a key argument regarding its interpretation

- Continuing, Judge Steiner observed that the revised GPA has low regulatory density; it is more flexible and open-minded compared to the full-fledged national legislation implementing the clear-cut policy view on the understanding of legal and economic concepts of public procurement (such as the EU).
- He noted that there is not much doctrine on the revised GPA; some lawyers still follow the 1994 GPA logic, failing to consider that the revised GPA brought paradigmatic change in the interpretation of public procurement objectives and those of the GPA.
- Sustainability is no longer only two-fold, including economy and green procurement; it is three-fold as social aspects represent a further significant objective. Even traditional economic considerations recognize the importance and validity of life-cycle costing.

The GPA is not about regulating private consumer choice, but about the public consumer choice itself

- Concluding, Judge Steiner suggested that, compared to classical WTO law, the GPA formula provides more policy space; it constitutes a *lex specialis* compared to the ordinary treatment of PPMs (processes and production methods) as the GPA does not deal with measures such as an import ban or a trade sanction in the general WTO context. The GPA is not about regulating private consumer choice but it is about public consumer choice itself.

3.2 Lidia Capparelli, Consip (the central purchasing body of Italy) - "SPP practices – consistency with the principle of "best-value for money": national perspectives/experiences"

Ms Capparelli, in her presentation, shared the experience of Italy in relation with the implementation of green public procurement and the challenges the Italian purchasing body faced. Following the entering into force of the EU Directive, green public procurement became mandatory in Italy. In 2017, Italy is expected to spend around EUR 20 billion on green public procurement.

Ms Capparelli noted that public procurement is often approached from a life-cycle perspective in Italy. In this context, public procurement plans should be updated on a regular basis and technical specifications and award criteria should be designed based on feedback from the market. Means of proof, such as labelling requirements, are important elements to take into account during the procurement process, as they help to lower risks.

⁴⁰ Recital 7 of Directive 2004/18/EC, available at "<http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32004L0018>".

In her presentation, Ms Capparelli provided three specific examples of market analysis in which life-cycle considerations figured importantly:

- **Lighting illumination: High Pressure Sodium (HPS) versus Light Emitting Diode (LED)**

Ms Capparelli suggested that assessing only technical parameters of alternative lighting technologies might not adequately reflect and distinguish all life cycle costs and, consequently, might limit the scope of products during the public procurement process. She suggested that, to be technologically neutral, technical parameters on the whole service should be assessed: (i) the ratio between the whole efficiency of the luminaire and the reference efficiency; and (ii) the ratio between the power density of the installation and the reference power density.

- **Printing Technologies : Laser Versus Ink Jet**

Laser and Ink jet printers have different levels of emissions. To assess these levels of emissions, technical criteria were selected from ecolabels.

- **Food Services: Organic Versus Conventional**

The food supply chain is very complex and includes: production; processing; distribution; access and consumption. Production is the most important phase as it involves economic (food procurement, labour and other costs), environmental (about 30% of the global greenhouse gases) and health aspects.

At the moment, quality/price ratio is used as a green award criterion to balance different elements in the production cycle. Instead of quality/price ratio, life-cycle costing could be used. However, it is not possible to implement the complex life-cycle costing methodology as there is no mechanism to monetize both environmental and health damages.

Concluding her presentation, Ms Capparelli emphasized her agreement with the importance of professionalizing the procurement function, given the importance of social choices involved.

3.3 David LePage, Principal, Accelerating Social Impact (ASI CCC) - "Canada SPP practices – consistency with the Parties' international trade obligations: a perspective from Canada"

Mr LePage, in his presentation, shared his personal experience working with SPP in a variety of contexts. He highlighted the extent of challenges and opportunities under the current regime and addressed the issue of how social policies that are implemented and consistent with international trade obligations can generate the best outcomes for all concerned.

To begin with, he addressed the question of why we look at SPP within trade agreements, including the GPA. To answer this question, it is important to go back to a basic point of building healthy communities. Healthy communities have multiple capitals, including: social, human, physical, economic and cultural. In his view, to establish a healthy community, it is important to create a market place that includes social purchasing and social enterprise suppliers.⁴¹ This can be achieved with both trade agreements and public policies that encourage and support the creation of healthy communities.

Continuing, he noted that the issues need to be addressed on both the supply and the demand sides of markets. Social enterprises represent the supply side; sustainable purchasing represents the demand side. The role of trade agreements is to act as a regulatory and influencing factor in that supply chain relationship. Currently, on the supply side, social enterprises increase their capacity and potential impacts; and on the demand side, sustainable purchasing is rising globally.

⁴¹ Canada's Ministry of Innovation, Science and Economic Development established the following definition for social enterprise: an enterprise that seeks to achieve social, cultural or environmental aims through the sale of goods and services. The social enterprise can be for-profit or not-for-profit but the majority of net profits must be directed to a social objective with limited distribution to shareholders and owners.

A key challenge: ensuring effective coordination of the demand and supply sides

Mr LePage noted that:

- The current market place was built 20 years ago on the basis of the traditional economic model. The trade agreements of that era reflected the framework and behaviour of an old economic and purchasing paradigm, rather than the current focus on "best-value for money". The financial value was still separated from social value. The older agreements still included many exemptions that could be used in favour of SPP (thresholds, purchase from non-profits), but they were not often used.
- Ambiguity and lack of understanding of trade agreements can result in a "chilling effect" on social purchasing and community benefit development.

Emerging opportunities

Carrying forward his theme, Mr LePage suggested that:

- The social enterprise sector is an emerging and high growth area. There is a shift in defining SMEs: the focus is not only on their size, but on their contribution to the community: job growth, and local economic development.
- In Canada, supportive public policy for social enterprise is emerging at the federal, provincial and municipal levels. Still, it is only a reflection of what is happening internationally, but such public policy motivates and influences the development of social-purpose businesses. In the emerging purchasing model, purchasers with social value supply chains create a community value, therefore creating a shift from merely economic to community output.
- If SPP represents an opportunity to provide more value to the organization, then the next generation of trade agreements will have to recognize, encourage and facilitate social enterprise opportunities along with sustainable purchasing outcomes. This will create a social value market place which will then result in healthy communities. The draft of ISO 20400 is aimed to contribute to these opportunities.⁴²

3.4 Questions and Answers/Comments Session

1. It was noted that the revised GPA included, in its Article XXII:7, a mandate for eventual future negotiations to improve the Agreement, reduce existing discriminatory measures and further extend coverage. In that context, the question was posed as to whether the current GPA is permissive enough to enhance SPP or are further amendments warranted? What else might be done?

In response:

- Judge Steiner recalled that the revised GPA provides explicit authority for green procurement, but is mainly silent in relation to social public procurement (effectively creating, in his view, a situation of constructive ambiguity). There are different possible options. First, to provide legal certainty and interpretation of the revised GPA, the EU approach for interpretation of fair trade (for instance, in the *Max Havelaar* case) might be relevant. Second, if the WTO and/or the international legal community are reluctant to accept the first option, then it is more likely that another revision of the GPA, which would provide for legal certainty, is needed. Third, it might also be possible to establish a Committee interpretative document without launching another revision of the GPA.
- Mr LePage pointed out that there are risks involved in letting the courts make public policy. Responding, Judge Steiner stressed that it is inevitable that courts/domestic authorities/dispute settlement panels will make policy choices, especially considering the limited regulatory density of the GPA.

⁴² See above note 24.

- Mr LePage recalled that the revised GPA of 2012 had included explicit authority for green public procurement; the same approach might be taken for social public procurement, in a future negotiation. Social public procurement is a developing concept, emerging from the combination of relevant court's decisions and some very progressive policies. He stressed that courts may play a role, but if there is no political leadership, change will not happen.
- Mr Hidson said that, at this stage, guidance could help as it is one of the steps in the process of changing relevant national legislation. For instance, the clarification of some issues provided by the EU in 2004 was a step in the right direction as people became more open when the Directive was revised in 2014.
- Ms Capparelli added that while developing new guidelines on SPP, it is important to consider whole life-cycle methodology or, if this is not possible, to use at the minimum the total cost of ownership.

2. A clarification was sought from Mr Steiner regarding the option of an interpretative declaration relating to sustainability issues vis-à-vis the GPA. Would it follow the EU approach? Or would it be more like an explanatory tool on what the provisions in the GPA are and what kind of flexibility they provide?

In response:

- Judge Steiner highlighted that the whole life-cycle approach to public procurement could not be fully specified at the GPA level; more detailed legislation at the level of individual Parties would be needed. However, some interpretative guidance to explicitly endorse social aspects might be useful. The fact that nothing is written in the revised GPA does not mean that social procurement is impossible; it means that a balance must be struck between the primary goals of public procurement (such as market access, transparency, fostering competition, equal treatment of bidders) and the social issues. Different social aspects might be subject to an assessment of their contradiction with the classical rationale of the GPA.
- Continuing, Mr Steiner stressed that one of the most important developments in EU public procurement regulation involved moving from the lowest price to best-price-quality ratio. This perfectly illustrates the limited regulatory density and large degree of policy space provided by the GPA as the Agreement itself makes clear that it is up to the GPA Parties to decide on whether to apply the best price-quality ratio or the lowest price. In the new framework, it is easier to defend quality advantages compared to price advantages because this is the logic of the new system.

3. Pursuing a question from the first session⁴³, views were requested as to how sustainable public procurement might potentially be used to show the benefits of the GPA in developing countries.

In response:

- Judge Steiner pointed out that the present Symposium had itself effectively highlighted the significant advantages of the revised GPA and the scope for implementing sustainability-sensitive public choices under the Agreement. In his view, what would not be effective would be the mindset of the 1990s (i.e., the old focus on about trade, competition and money and nothing else). However, the revised GPA is a minimum set of rules, which are open to different concepts of economic policies. An advertisement campaign based on this approach would have credibility.
- Mr LePage suggested looking at the trade agreements, including the GPA, as impacting principally on the demand side of the market. When the demand side intends to create social value, the supply side responds as the demand side drives the benefits. The GPA has the potential to give guidance in terms of how the demand side (the existing

⁴³ See above question 1 of session 1.4.

spending of government) can be used to create that impact in developing countries and to meet the social challenges in their own countries. Mr Steiner added that this corresponds very much to the new World Bank approach, as presented by Mr Browne in session 1.3.

- Mr Hidson commented on the demand side issue and said that in the EU, this work has been ongoing for 20 years and it was expected that the demand side would push the market. However, this did not happen as quickly as initially expected. The demand side has a role, but in Europe, SPP really started to happen when it became mandatory. Mr LePage clarified that, in his view, the demand side includes both the legislative and public policy helping to drive private sector to look at solutions that include social values.
- Ms Capparelli pointed out that it is important to enhance understanding of what SPP is by e.g. defining guidelines, giving some practical instruments, and promoting a scientific analysis based on a life-cycle costs approach. This could already make a big difference.

4 CONCLUSION OF THE SYMPOSIUM AND SUMMARY OF POSSIBLE TAKE-AWAYS

In concluding the Symposium, several delegations in addition to the Secretariat and other Session Chairs expressed their warm thanks to the speakers for their stimulating and informative presentations and responses to the questions posed. While reiterating that it would be for the Committee, in its regular sessions, to determine next steps and/or future initiatives, certainly, the discussion had identified interesting possibilities and provided very significant food for thought.

Possible take-aways:

When requesting the preparation of this report, the Committee asked specifically that the Secretariat identify **possible take-aways from the discussion**. Responding to this request, and subject to Parties' views, the following points are noted for consideration:

- The concept of sustainability has different dimensions, and can have different meanings in different jurisdictions. For a number of the speakers, it encompasses, at a minimum: (i) protection of the environment; (ii) social dimensions (e.g. human rights and/or working conditions and proactive measures to support the participation of particular social groups); and (iii) economic opportunities (e.g. innovation research/investment, open competition, supply chain competitiveness and the promotion of small businesses);
- Sustainability objectives are already reflected, at least in particular respects, in the procurement systems of most if not all GPA Parties. Moreover, in the view of several of the speakers, important sustainability objectives can already be implemented in full compliance with the core GPA principles of non-discrimination, transparency and procedural fairness;
- In the view of several of the speakers, already, the revised GPA adopted in 2012 and now in force provides significant scope for appropriate reflection of sustainability considerations in procurements covered by the Agreement. This is particularly clear with respect to environmental or "green" policy objectives. It is, certainly, less explicit in regard to the "social" aspects of sustainability though these are implicitly covered, in the view of some speakers;
- In acknowledging (at least in some respects) the importance and validity of sustainability objectives in relation to public procurement policy, the GPA is embracing a shared perspective with other important multilateral instruments, including the UN Sustainable Development Goals (SDGs) and the new World Bank Procurement Framework. Of course, the objective of sustainable development is also highlighted in the Preamble to the Marrakesh Agreement Establishing the WTO;
- Sustainable public procurement (SPP) is considered by several of the speakers to be a strategic tool, regarding which prioritization and assessment are important at every stage of a procurement process. Life-cycle costing is an obvious step that is already

being implemented by many countries. Decisions taken early in the process will have the most impact;

- All speakers considered that advancing sustainability through public procurement policy requires action at multiple levels (i.e., the GPA is only a part of the story and a great deal will depend on actions taken (or not) at the national and/or local levels).
 - In the event that Parties wish to proceed with a further elaboration and/or endorsement of the importance and legitimacy of sustainability objectives within the GPA framework, several options were identified, including the following:
 - i. Working, in their capacities as individual Parties, to implement sustainability objectives using the policy space already provided in the 2012 Agreement;
 - ii. At the level of the Committee, issuing a decision, statement or interpretive tool clarifying the scope for implementation of sustainability objectives under the Agreement; and/or
 - iii. If agreeable, taking up the possibility of a further amendment or amendments to the Agreement to more explicitly reflect, in the Agreement, the social in addition to the environmental dimensions of sustainability.
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