

A GLOBAL INITIATIVE TOWARDS SUSTAINABLE PUBLIC PROCUREMENTS

Ms. I.D.R.Palliyaarachchi
Department of Private and Comparative Law,
Faculty of Law, University of Colombo, Sri Lanka
Email: rangikaid@gmail.com Tel: +94772258307

ABSTRACT

The increased global population and the resultant demands on limited resources have given rise to internal as well as external conflicts which have caused loss of lives and property around the world. A brief survey of human history would indicate the impact and influence of limited resources on human behaviour. Even with the advancements in science and technology, the issues relating to limited resources and unlimited demand would remain to be addressed in years to come. And the ability to provide a solution to such issue would be pivotal in securing peace and stability across the globe. Sustainable use of limited resources has been identified as one way in which this issue may be addressed and the government procurements with 10 to 15% of GDP in developed countries, and up to 20% in developing countries, accounts for a substantial part of the global economy, thus, requiring the application of the concept of sustainable public procurement. The Plurilateral Agreement on Government Procurement (GPA) entered into force in 1996 can be considered as one of the major global initiative to address the issue of government procurements. The formal adoption of the Decision on the Outcomes of the Negotiations under Article XXIV:7 of the Agreement on Government Procurement (GPA/113) in 2012 resulted in the agreement to initiate a future Work Programme on Sustainable Procurement, upon entry into force of the revised Agreement. This paper is an attempt to identify and analyse the underlying considerations and concepts which must form the necessary basis for a global initiative towards sustainable procurement within the GPA framework with special reference to the "green public procurement". It is further expected to identify the possibility of transferring the experiences gathered at regional and local level as to sustainable public procurement into global level.

Keywords: public contracts, green government procurements

INTRODUCTION

It is a well-accepted norm that the limited resources available on Planet Earth are not sufficient to fulfil the unlimited wants of mankind. This basic norm not only illustrates the behaviour of mankind but also the behaviour of markets. A brief overview as to the human history would be sufficient to understand how human evolution had been influenced by this basic norm. The early realisation of this norm by the powerful nations starting from 15th Century resulted in their quest to pursue the notion of colonisation. The human history is a clear indication of how unlimited wants of mankind can ultimately result in fulfilment of such desire by making use of power or force, if and when, necessary. Therefore, the limited nature of the available resources is a factor which will have to be considered when formulating the policies for peace and security in the world. The effective and efficient use of limited resources in a sustainable manner would be one way in which the issues as to limited resources should be addressed. If such policies are to be effective in a globalized era, the utilisation of limited resources in an optimum manner would have to be addressed in a global context as opposed to formulation of isolated principles by individual nations.

Government Procurement (GP) with 10 to 15% of Gross Domestic Product (GDP) in developed countries, and up to 20% in developing countries, account for a substantial part of the global economy. (Marrakech Task Force on Sustainable Public Procurement led by Switzerland, 2011). The impact of procurement of this nature is pivotal as it involves the procurement of simple items like pens, stationary to infrastructure, capital equipment etc. The amount of resources which will be used by government entities constitutes a substantial part of the utilisation of resources by individual nations. Due to the importance attached to the issue of GP, the World Trade Organisation (WTO) has taken the initiative to include GP within the scope of trade actions which are covered within the mandate of WTO by the enactment of the Plurilateral Agreement on Government Procurement (GPA), which entered into force in 1996. Subsequent to further negotiations re GPA, the 1994 version of the GPA was revised in 2012 (hereinafter referred to as the 'Revised Agreement'). The Revised Agreement contains specific direction to initiate a future Work Programme on Sustainable Procurement, upon entry into force of the revised Agreement.

With a strong conviction that sustainable use of limited resources is one of the effective ways in securing world peace and order, this paper is an attempt to study the concept of Green Government Procurement (GGP); a major component in the Sustainable Government Procurement (SGP) process, within the existing framework of the WTO on public procurement. The First Part of this paper will be a general discussion as to the concepts of SGP and GGP. Such a discussion will be followed by an analysis of the principle provisions and underlying concepts of the GPA and the Revised Agreement. In the Second Part of this paper, it is intended to discuss the possibility of introducing GGP as cornerstone in the Revised Agreement and the possibility of reconciling the GGP with other basic principles of "best value for money", "non-discrimination" and "transparency". The Third Part of this paper will deal with the proposed recommendations based on local and regional experiences, which are important to be taken into account in formulating a global initiative to be introduced by the WTO future Work Programme on Sustainable Procurement.

PART ONE

GOVERNMENT PROCUREMENT (GP), SUSTAINABLE GOVERNMENT PROCUREMENT (SGP) AND GREEN GOVERNMENT PROCUREMENT (GGP)

With the development of the modern welfare state, the activities of the state within the economy of a given country have been increased. In order to give effect to such activities, governments are required to procure goods and services like a normal consumer. The use of different terminology to convey this idea is quite apparent in the literature. Lloyd & McCue (2004) stated that "in government organizations, many different terms are used when referring to the buying function, from "public procurement" to "purchasing," "contracting," or "acquisition," and many other variations."(p.2). However, for the purposes of this paper the word "Government Procurement" (GP)¹ will be attributed the same definition as appears in the EU Asia Inter University Network for Teaching and Research in Public Procurement Regulations, as "the government's activity of purchasing the goods and services which it needs to carry out its functions". (The EU Asia Inter University Network for Teaching and Research in Public Procurement Regulations, 2010,p.1).

Due to the sheer volume of goods and services which fall within the GP process, the importance of such procurements by the government and the impact that it will have on both domestic and international trade, GPs are no longer perceived as merely a 'clerical routine.' (Thai,2001) It requires the strategic planning and implementation of such process by the professionals in the area with a long term vision as to the future.

GP is a process initiated with the one or more of the following objectives; Value for money, integrity, accountability, equal opportunities and equal treatment for providers, fair treatment of providers, efficient implementation of industrial, social and environmental policies ("horizontal policies") in procurement, opening up of public markets to international trade and efficiency in the procurement process. (The EU Asia Inter University Network for Teaching and Research in Public Procurement Regulations, 2010,p.4).

Therefore, it is clear that the GP process has been long identified as a method not limited to buying goods or services required but as a tool in giving effect to other policies of the government. These policies, which are generally referred to as secondary or horizontal policies of procurement, usually include social and environmental aspects of procurements. (Arrowsmith, 2010).

The ability to attain horizontal policies via GP has been further facilitated by the well-known principle of sustainable development, which requires that the GP must be conducted in a manner which will ensure the compliance with sustainable principles. Therefore, the concept of Sustainable Government Procurement has been identified as a mechanism which can be adopted in order to address both of these issues. As per the guidelines provided by the Department for Environment, Food and Rural Affairs, United Kingdom, SGP² should consider "the environmental, social and economic consequences of design; non-renewable material use; manufacture and production methods; logistics; service delivery; use; operation; maintenance; reuse; recycling options; disposal; and suppliers' capabilities to address these consequences throughout the supply chain." (Department for Environment, Food and Rural Affairs, United Kingdom, 2006.p.10)

Thus, it is clear that the SGP is a wider concept which involves both social as well as environmental aspects.

Green Government Procurement on the other hand is only an aspect of the SGP which simply denotes that environmental considerations are needed to be taken into account within the procurement process. European Commission's Communication in 2008, defines GGP as "a process whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured." (European Commission's Communication, 2008, p.4)

It is important to identify the WTO framework on public procurement, within which the above discussed principles would be analysed in this paper. It is important to note that there has been various instruments and measures³ which have introduced environmental considerations as a basic element in GP procurement process. Due to the restricted nature of the study taken, the focus of this paper would be limited to the WTO framework on GP.

THE PLURILATERAL AGREEMENT ON GOVERNMENT PROCUREMENT (GPA)

The World Trade Organisation (WTO) is an international organisation established with the prime aim of liberalising and facilitating international trade. The WTO Agreements⁴ are at the heart of WTO⁵ and it is through these agreements the basic principles of WTO are implemented.

¹ Government Procurement (GP) are also known as "public procurements;," "public contracts"

² Department for Environment, Food and Rural Affairs, United Kingdom defined the phrase SGP as "a process whereby public organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation but also to society and the economy while minimizing damage to the environment." (Department for Environment, Food and Rural Affairs, United Kingdom, 2006)

³ The European Union Procurement Regime, UNICITRAL Model Law on Procurement of Goods, North American Free Trade Agreement (NAFTA), Asia Pacific Economic Corporation Forum (APEC), Common Market for Eastern and Southern Africa (COMESA), The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

⁴ The General Agreement on Tariffs and Trade (GATT), The Trade-Related Aspects of Intellectual Property Rights (TRIPS)

⁵ World Trade Organisation ,http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm [Retrieved on 19 February 2013]

GPA is one of those agreements which have been developed within the WTO framework with a special reference to government procurements and it includes rules for the procurement behaviour of governments. It is important to note that GPA is a plurilateral agreement where only those member states (Parties) that have acceded to the agreement would be bound by GPA. Currently, forty-two WTO members are covered by the WTO Agreement on Government Procurement. (World Trade Organisation, 2013)

The Tokyo Round of Trade Negotiations resulted in the first Agreement on Government Procurement, which was signed in 1979. The amended version of the same came into force in 1988 and was again amended as a result of the negotiations taken in parallel with the Uruguay Round. The revised text of the GPA was signed in Marrakesh on 15th April 1994 and GPA was entered into force on 1st January 1996. (World Trade Organisation-General overview of WTO work on government procurement, 2013).

Article XXIV:7(b). of the GPA emphasizes the commitment of the Parties to the agreement towards further negotiations. On 15 December 2011, as a result of such negotiations, an agreement on the outcomes of the re-negotiation of the Revised Agreement was reached and such agreement was formally adopted on 30 March 2012. Upon the acceptance by the Parties to the GPA, the Revised Agreement would come into force. (World Trade Organisation-The re-negotiation of the Agreement on Government Procurement, 2013).

The underlying principles upon which the GPA and the Revised Agreement based on are non-discrimination, transparency and fair competition. Articles III:1(a),(b) and Article III:2 are the main Articles which deal with the non-discrimination aspect of the GPA. As per these Articles, it is important for the Parties to GPA to accord to the products, services and suppliers of any other Party to the Agreement treatment “no less favourable” than they give to their domestic products, services and suppliers⁶ and Parties may not discriminate among goods, services and suppliers of other Parties.⁷

In addition, each Party is required to ensure that its entities do not treat domestic suppliers differently on the basis of a greater or lesser degree of foreign affiliation or ownership as well as to ensure that its entities do not discriminate against domestic suppliers because their good or service is produced in the territory of another Party⁸. The use of offsets⁹ are expressly prohibited under the GPA¹⁰. But developing countries have been given an opportunity to negotiate at the time of accession to the GPA for the conditional use of offsets¹¹, provided these are used only for the qualification to participate in the procurement process and not as criteria for awarding contracts.¹²

The Agreement also places considerable emphasis on procedures for providing transparency¹³ of laws and regulations. (Article XVII) (World Trade Organisation-General overview of WTO work on government procurement, 2013). Transparency requirements are further highlighted by the “integrity” element included into the Revised Agreement. Transparency prevents indirect discrimination and it would reveal any corrupt practices behind government procurement processes. Furthermore, it will ensure fair competition by allowing anyone who is interested to be included in the government procurement process. Articles of GPA ensure the fair competition¹⁴ in government procurement process by eliminating any discrimination between foreign and local suppliers and thereby facilitate the international trade by unhindered access granted to the foreign suppliers in to the domestic markets.

PART TWO

The “best value for money”, “non-discrimination” and “transparency” are the basic principles upon which the GPA and the Revised Agreement are built on. All these principles are aimed towards ensuring the WTO vision of liberalisation of international trade and allowing the foreign suppliers to have free market access to local markets. Therefore, in this light it is important to consider the main research question in this paper: whether the GGP (which is a component of the SGP) can be included within this list of basic principles upon which the GP processes is to be governed. The answer to this research question would necessarily base on the nature of the cornerstone principles which are the basis of GPA or Revised Agreement within the WTO framework. Furthermore, the compatibility of the GGP with the abovementioned principles will also have to be considered in this regard.

Upon the outcome and the findings of the study, it is possible to answer the main research question in affirmative and such answer has been reached based on the following considerations illustrated below:

- General trend towards the adaptation of Sustainable Development (SD) /SGP/GGP as visible in the WTO framework.

⁶ Articles III:1(a) of GPA, Article IV(1) (a) of the Revised Agreement

⁷ Articles III:1(b) of GPA, Article IV(1) (b) of the Revised Agreement

⁸ (Article III:2). Of GPA. Article IV(2) of the Revised Agreement

⁹ These include measures to encourage local development or improve the balance-of-payments accounts by means of domestic content, licensing of technology, investment requirements, counter-trade or similar requirements

¹⁰ Article XVI of GPA ,Article IV(6) of the Revised Agreement

¹¹ Article V of GPA ,Article V of the Revised Agreement

¹² World Trade Organisation- Overview of the Agreement on Government Procurement

http://www.wto.org/english/tratop_e/gproc_e/gpa_overview_e.htm [Retrieved on 19 February 2013]

¹³ Article XVII of GPA, Article XVI of the Protocol Amending the Agreement

¹⁴ Article XIX, Article VI(4), Article VII(2), Article X(1) of GPA, Article X(5), Article XII(1), Article XVII of the Revised Agreement

- The positive attitude towards the adaptation of GGP as visible in the existing articles of GPA/Revised Agreement
- The practical benefits of adapting GGP as a cornerstone principle
- The ability to promote the principles of "best value for money", "non-discrimination" and "transparency" by the adaptation of the concept of GGP
- Positive experiences as to the application of GGP at the local and regional level

GENERAL TREND TOWARDS THE ADAPTATION OF SUSTAINABLE DEVELOPMENT (SD) /SGP/GGP AS VISIBLE IN THE WTO FRAMEWORK

It is important to be aware that, one of the major difficulties in adopting environmental considerations into the GPA/Revised Agreement and the GP process is the affiliation of such agreement has with WTO. The WTO is the main international organisation dealing with international trade. The WTO framework has been identified as inappropriate for the implementation of the "green" considerations due to its economic orientation and the strong emphasis on economic benefits. But it is quite possible to witness a general trend towards recognising the importance of Sustainable Development (SD) GP/GGP within the WTO framework. As the GP process is mainly focused towards the procurement of goods and services via international markets, the recognition of the concept of SD within the WTO framework is important in giving effect to GGP at the international sphere.

Among the goals¹⁵ are to be realised by the WTO, "*the optimal use of the world's resources in accordance with the objective of sustainable development*", has also been recognised as an important objective.

The environmental considerations have emerged during the last few decades as an important factor to be addressed both by the national and the international community. The gravity of natural disasters, the implications of natural phenomenon, climate change, over consumption etc. have been an eye opener for humankind to realise the gravity of the actions that they engage. The realisation that limited natural resources which the Planet Earth is blessed with is not going to survive forever, if it is to be consumed in this manner, has resulted in the development of the concept of sustainable development. The economic development which was advocated as the goal to be achieved by any nations has been replaced by the concept of sustainable development.

It is being stated that the concept of sustainable development is a vague one with over 200 definitions of it available worldwide. (Thornton and Beckwith, 1997). The most widely accepted definition, which appeared in the Brundtland Report in 1987 defines sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". In general, following are considered as the basic principles of sustainable development: the intergenerational equity, the sustainable use of natural resources, the equitable use of natural resources and the integration of environmental protection and economic development. (Thornton and Beckwith, 1997)

Since then, the concept of sustainable development has been integrated into number of international and regional instruments.¹⁶ The United Nations Conference on Sustainable Development - or Rio+20 - took place in Rio de Janeiro, Brazil on 20-22 June 2012 and the outcome document clearly emphasises the commitment of the members of the General Assembly "*to sustainable development and to ensuring the promotion of an economically, socially and environmentally sustainable future for our planet and for present and future generations*" (United Nations Sustainable Knowledge Platform, 2012). And today, it can be safely asserted that the concept of sustainable development is an integral part of the principles which constitute the modern international law.

Furthermore, in 1994, a Committee on Trade and Environment (CTE) was established following the adoption of a Ministerial Decision on Trade and Environment. This forum was initiated by the WTO to deal with issues related to trade and environment. (World Trade Organisation, 2013)

The decision taken to initiate a future Work Programme on Sustainable Procurement also indicates the Parties recognition as to the importance of giving effect to GGP within the WTO framework on GP. Though, the mandate of the future Work Programme on Sustainable Procurement seems to be having a very limited scope, the initiative itself is a clear identification as to the possibility of accommodating environmental and social considerations within the WTO frame work.

¹⁵Preamble of the WTO Charter- "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 re-spective needs and concerns at different levels of economic development".

¹⁶ 1989: Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal ("Basel Convention")

1992: Agenda 21

1992: Framework Convention on Climate Change (UNFCCC)

1992: Protocol on Biosafety to the Convention on Biological Diversity ("Cartagena Protocol")

1994: Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa

1997: Protocol to the UNFCCC ("Kyoto Protocol")

2000: Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and Their Disposal to the Basel Convention ("Basel Protocol")

2002: Johannesburg Declaration on Sustainable Development

Therefore, it is quite evident that there is a clear recognition within the WTO system that integration of environmental considerations into the economic process is pivotal in achieving sustainable development. Therefore, as an international organisation which is committed towards the protection of environment, WTO would be one of the best forums in which to address the environmental aspects of the sustainable development concerns. (World Trade Organisation, 2013 -understanding the WTO -what we stand for)

THE POSITIVE ATTITUDE TOWARDS THE ADAPTATION OF GGP AS VISIBLE IN THE EXISTING ARTICLES OF GPA/REVISED AGREEMENT

At the outset, it is important to note that the GPA or the Revised Agreement do not contain any express recognition as to SGP or GGP. But two instruments contain certain provision which have given effect to the principles of SGP and GGP.

Article III of the Revised Agreement¹⁷ specifies the general exceptions regarding the application of the principles of the Revised Agreement. As per such Article, Parties to the Revised Agreement are entitled to “impose or enforce measures: necessary to protect public morals, order or safety, human, animal or plant life or health or intellectual property; or relating to the products or services of handicapped persons, of philanthropic institutions or of prison labour.”

The Revised Agreement includes certain provisions which have been included with the intention of ensuring GGP. Article X of the Revised Agreement which deals with Technical Specifications and Tender Documentation in its Sub clause 6 provides that 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*”.

Furthermore, Sub clause 9 of the Article X of the Revised Agreement provides that “the evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, *environmental characteristics* and terms of delivery.”

These provisions in the Revised Agreement to a limited extent have recognised the GGP. And the Annexes, which provide the extent of duties and obligations undertaken by the Parties to the GPA clearly indicates that these provisions have been used by the Parties to give effect to GGP practices.

The possibility of adopting environmental considerations within the WTO framework and the GPA/Revised Agreement clearly indicate the opportunity available for recognising and incorporating environmental considerations in to GP process. But, it is quite clear from the above discussion that the environmental concerns are to be addressed only within the principles of “best value for money” “international trade obligations”, “non-discrimination” and “transparency”. It goes without saying that if the environmental concerns appear to be contrary to these principles, such considerations will not be given effect. Therefore, it is important to consider whether it would be possible to recognise environmental considerations not merely as exceptions or qualifications to the general rule, but as a cornerstone of GPA/Revised Agreement.

In this paper it is argued that the GGP is possible to be identified as a cornerstone of the GPA/Revised Agreement. And such assertion is made based on the following assertions.

Firstly, the practical benefits of adapting GGP as a cornerstone principle is not a hindrance to free international trade, but it can be a facilitating factor to ensure effective, efficient and productive trade practices. The benefits of adopting environmental considerations into the procurement process can be summarized as follows:

- The overall contribution of the governments around the world as to the GDP of such countries makes such procurements pivotal in encouraging the development of greener products and to reduce the environmental impact of such activities;
- GGP can provide an early market for innovative solutions, and in this way Government can help the private sector to develop sustainable technologies that can compete in the expanding global market for low-carbon, resource-efficient goods and services. (Rolfstam, 2012);¹⁸
- Public sector purchasing can improve the market position of environmentally preferable products and services;
- Protection of environmental assets and scarce financial resources;
- GGP ensure that the governments are associated with the highest possible standards; (Arrowsmith, 2010)
- Influencing positive environmental and social practices in areas where other forms of regulation may not be effective or efficient; (Semple, 2012).
- Sustainable public procurement would be a way in which the Good Governance may be achieved; and
- Public procurement is one method by which sustainable development objectives can be delivered (Marrakech Task Force on Sustainable Public Procurement led by Switzerland,2011).

¹⁷ Article XXIII of the GPA

¹⁸ United States following a 1993 Executive Order which required that the federal government purchase only Energy Star computer equipment. Until then, such energy efficiency technologies had only been applied to laptop computers. The US government being the largest purchaser of computers worldwide, the Executive Order led to an overarching market transformation. By the end of the nineties, Energy Star computer equipment dominated the market. Moreover, this sparked the market development of other Energy Star products, which today include thousands of product categories. Stricter Energy Star energy-efficiency specifications became effective in July 2007. (United Nations,2008)

Secondly, the ability of GGP to promote the principles of "best value for money", "non-discrimination" and "transparency" by the adaptation of the concept of GGP, is another factor which would highlight the importance of accepting environmental considerations as a cornerstone principle in GPA/Revised Agreement.

The "best value for money", "non-discrimination" and "transparency" are the principles upon which the GPA/Revised Agreement are built on. All these principles are aimed towards ensuring the liberalisation of international trade and allowing the market access to local markets. The environmental considerations have been generally recognised as factors which will adversely affect the free trade activities. Therefore, it is necessary to identify whether environmental considerations are compatible with the above-mentioned policies.

The principle that trade activities need to ultimately deliver "best value for money", may preclude environmental considerations being taken into account when ascertaining the price of a given product. This is due to the fact that the environmental considerations can be costly and that it would have an adverse impact on the price to be presented by a given supplier. But it is important to note that the "price" has been replaced by the notion of "overall cost" which must be taken in to account when ascertaining the value of a given service or product. The social and environmental cost of a given product is a reality which will have to be borne by someone in the society. Life circle cost is an important aspect which must form the basis for the cost analysis in a GP process. Introduction of such a cost analysis will only reflect the real costs involved. The emphasis on green products in GP would act as an impulse towards innovation which would ultimately result in innovative methods of production. Given that environmental considerations will have to be addressed during the GP process, the GGP would ensure that the considerable part of the GDP is environmentally accounted for in a given country.

It has been further noted that some "greener" products and services are less costly in terms of their use, maintenance and disposal despite higher upfront investment costs. (United Nations,2008).Unsustainable procurement is not good stewardship of taxpayers' money as the economic burden of such measure will have to be borne by taxpayers. (Department for Environment, Food and Rural Affairs United Kingdom,2006)

The non-discriminatory principles of the WTO framework on government procurement provides that a "country should not discriminate between its trading partners and it should not discriminate between its own and foreign products, services or nationals". A possible argument against the recognition of environmental considerations has been its potentiality to be utilised as a protectionist method. It can be argued that the environmental considerations may be used by the countries to justify the discriminatory practices aimed towards certain suppliers, specifically the foreign parties. But it is important to note that the environmental considerations are possible to be included into the GP process as umbrella criteria which are applicable irrespective of the nature of the supplier. van Asselt, H. (2003) argues that the environmental benefit as appear in one product will result in distinguishing it from another product thereby reducing the risk of being discriminatory.

The general adaptation of environmental considerations without any exemptions into the GP process would ensure the integrity and transparency of such process. The major concern in this regard is the ability to include environmental concerns which might result in discretion of nations which will in turn limit the competition. But the government initiative for GGP will ensure innovations in a given area which would further the competition.

The United Nations Conference on Sustainable Development (Rio+20) contains following principles regarding trade which necessarily requires a harmonisation of environmental and other principles of WTO framework on government procurement.

"281. We reaffirm that international trade is an engine for development and sustained economic growth, and also reaffirm the critical role that a universal, rules-based, open, non-discriminatory and equitable multilateral trading system, as well as meaningful trade liberalization, can play in stimulating economic growth and development worldwide, thereby benefiting all countries at all stages of development, as they advance towards sustainable development. In this context, we remain focused on achieving progress in addressing a set of important issues, such as, inter alia, trade-distorting subsidies and trade in environmental goods and services.

282. We urge the members of WTO to redouble their efforts to achieve an ambitious, balanced and development-oriented conclusion to the Doha Development Agenda, while respecting the principles of transparency, inclusiveness and consensual decision-making, with a view to strengthening the multilateral trading system. In order to effectively participate in the work programme of WTO and fully realize trade opportunities, developing countries need the assistance and enhanced cooperation of all relevant stakeholders".(United Nations Sustainable Knowledge Platform, 2012)

Finally, the positive experiences as to the application of GGP at the local¹⁹ and regional level encourage the identification of environmental considerations as a cornerstone in GPA/Revised Agreement.

¹⁹Japan -The 2000 Law on Promoting Green Purchasing makes it compulsory for government institutions to implement green procurement, while encouraging local authorities, private companies and individuals to make efforts for purchasing environmentally sound products and services. (United Nations,2008).

Republic of Korea -The Act on the Promotion of the Purchase of Environment-Friendly Products, passed in 2005 requires public agencies at national and local levels to publish green procurement policies and implementation plans, carry out the latter, and report results. (United Nations,2008).

The two directive²⁰ adopted by the Council and the European Parliament in 2004 replaced the previous directives and have introduced simple and effective version of the European legislation on public procurement. (European Commission, 2013). The 2004 directives are special in nature as they contain specific reference to the possibility of including environmental considerations in the contract award process. In December 2011, the European Commission published its proposals for legislation replacing the 2004 Directives (United Nations,2008).

Based on such measure, in Europe, a large number of cities apply environmental criteria in the purchase of electricity, food, furniture, IT equipment, cleaning products, paper, construction, timber and transport.(United Nations,2008).

As per the report published by the United Nations in 2008

By early 2007, 9 out of 26 EU member-states had adopted national SPP or 'Green' action plans, 5 had drafted a national action plan but it had not yet been adopted, and 2 were in the process of preparing one. In Austria, Denmark, Finland, Germany, Netherlands, Sweden and the UK, 40 to 70% of all tenders published on Tenders Electronic Daily incorporated some environmental criteria, although in the remaining 18 countries, this figure was below 30%.

PART THREE

RECOMMENDATIONS

Base on the above discussion, the following policy recommendations are suggested in furtherance of adopting environmental considerations into the GP process. The future Work Programme on Sustainable Procurement in its discussion as to the sustainable development considerations should emphasis on the following recommendations when dealing with environmental considerations.

- It is important that the future Work Programme on Sustainable Procurement would attempt to take a broader approach than merely indicating environmental aspects as technical specifications. It is important for such a forum to ascertain how environmental concerns can be imbedded into the rights and duties arising from the Revised Agreement. Such integration must be not aimed towards different stages of the procurement process, but rather as one of the cornerstones in the Revised Agreement as to GPs.
- Transparency and participation must be increased to include a broader group of stakeholders in the development of the principles of GGP (van Asselt, H., 2003).
- Asian countries need to be encouraged to be part of the Revised Agreement
- The experiences gathered by Free Trade Agreements with GGP requirements need to be examined closely to promote the accession to the Revised Agreement.

(Hsu, 2006)

- The experience of the EU as illustrated in its proposed legislation of 2011 would have to be closely examined. (Semple, 2012).
- Study of other WTO instruments which provides for the regulation of GGP (Anderson and Arrowsmith, 2011)

CONCLUSION

The impact of adopting GGP on an economy of a given country, though, difficult to be ascertained in the short run, would be vital in the long run as the future of the human kind is depended on the decisions that are taken today and such decision need to be taken with an eye to future. GGP as a concept not only facilitate the international trade but also it will ensure the expansion of international trade. Therefore, it is important for all the stakeholders to be aware of the impact of simple procurement and realise the bearing it will have on the whole world. The future Work Programme on Sustainable Development, an important and timely initiative, must strive hard to go beyond the limited mandate and make it an opportunity to integrate and give effect to the concept of GGP within the WTO framework on government procurement.

REFERENCES

- Anderson, R.D. and Arrowsmith, S.(2011).The WTO regime on government procurement: Past, present and future .In S. Arrowsmith and R.D. Anderson, (Ed.) *The WTO regime on government procurement: Challenge and reform* (pp.3-58) . Cambridge, United Kingdom: Cambridge University Press.
- Arrowsmith, S. (2010). Horizontal policies in public procurement: A taxonomy. *Journal of Public Procurement*, 10(2), 149-186. Retrieved from <http://www.nottingham.ac.uk/pprg/documentsarchive/fulltextarticles/suetaxonomyofhorizontalpolicies.pdf>
- Department for Environment, Food and Rural Affairs United Kingdom. (2006) *Procuring the Future* .Retrieved from <http://archive.defra.gov.uk/sustainable/government/documents/full-document.pdf>
- European Commission.(2013) Environment-Green Public Procurement. Retrieved from http://ec.europa.eu/environment/gpp/index_en.htm[Retrieved on 19 February 2013]

²⁰ Directive 2004/18/EC covers public works contracts, public supply contracts and public service contracts. Directive 2004/17/EC covers the procurement procedures of entities operating in the water, energy, transport and postal services sectors

- European Commission's Communication. (2008). *Public procurement for a better environment*. Retrieved from <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0400:FIN:EN:PDF>
- Hsu, Locknie.,(2006) *Government procurement: A view from Asia*. Retrieved from SSRN: <http://ssrn.com/abstract=1019737>
- Lloyd, R. E., & McCue, C. P. (2004). What is Public Procurement? Definitional Problems and Implications. *International Public Procurement Conference*, Fort Lauderdale.
- Marrakech Task Force on Sustainable Public Procurement led by Switzerland. (2011). *Activity Report -May 2011*. Retrieved from <http://www.pnuma.org/eficienciarecursos/6a%20Reunion%20de%20Expertos%20CPS/Presentaciones/S4-WG3/Key%20documents%20and%20publications/Marrakech%20Task%20Force%20on%20SPP/MTFonSPPReportCSD19FINAL.pdf>
- Rolfstam, M. (2012). *Understanding public procurement of innovation: Definitions, innovation types and interaction modes*. (February 26, 2012). Retrieved from SSRN: <http://ssrn.com/abstract=2011488> or <http://dx.doi.org/10.2139/ssrn.2011488>
- Semple, A. (2012). Reform of the EU Procurement Directives and WTO GPA: Forward steps for sustainability?. Available at SSRN 2089357.
- Thai K.V. (2001) Public Procurement Re-Examined. *Journal of Public Procurement*, Volume 1, Issue 1, 9-50. Retrieved from <http://ippa.org/jopp/download/vol1/Thai.pdf>
- The EU Asia Inter University Network for Teaching and Research in Public Procurement Regulations.(2010) *Public Procurement Regulations; An Introduction*. Retrieved from <http://www.nottingham.ac.uk/pprg/documentsarchive/asialinkmaterials/publicprocurementregulationintroduction.pdf>
- Thornton, J., & Beckwith, S., (1997). *Environmental law*. London. England: Sweet & Maxwell Limited
- United Nations, (2008). *Public procurement as a tool for promoting more sustainable consumption and production patterns*. Retrieved from http://esa.un.org/marrakechprocess/pdf/InnovationBriefs_no5.pdf
- United Nations Sustainable Knowledge Platform. (2012). *Future We Want - Outcome document*. Retrieved from <http://sustainabledevelopment.un.org/index.php?menu=1298>
- van Asselt, H. (2003). Green government procurement and the WTO. *Institute for Environmental Studies, Amsterdam*. Retrieved from http://www.sustainable-procurement.org/fileadmin/files/Other_publications/wto-gpa_environment.pdf
- World Commission on Environment and Development. (1987). *Our common future* Retrieved from http://conspect.nl/pdf/Our_Common_Future-Brundtland_Report_1987.pdf
- World Trade Organisation. (2013). *General overview of WTO work on government procurement*. Retrieved from http://www.wto.org/english/tratop_e/gproc_e/overview_e.htm [Retrieved on 19 February 2013]
- World Trade Organisation. (2013). *The re-negotiation of the Agreement on Government Procurement* .Retrieved from http://www.wto.org/english/tratop_e/gproc_e/negotiations_e.htm [Retrieved on 19 February 2013]
- World Trade Organisation. (2013) *UNDERSTANDING THE WTO -What we stand for*. Retrieved from http://www.wto.org/english/thewto_e/whatis_e/what_stand_for_e.htm
- World Trade Organisation Committee on Government Procurement (2012). "Decision on the Outcomes of the Negotiations under Article XXIV: 7 of the Agreement on Government Procurement" (GPA/113). [Online]. Retrieved from <http://docsonline.wto.org/imrd/directdoc.asp?DDFDdocuments/t/PLURI/GPA/113.doc>