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THESIS TITLE

THE ROLE OF CHINA IN FOSTERING SPP AT HOME AND ON THE GLOBAL
STAGE COMPARED TO THE EU: A STUDY OF THE OLYMPIC GAMES

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Abstract

This thesis discusses the power of Sustainable Public Procurement ((hereinafter: SPP) to pursue economic, environmental, and social benefits, thus, its capability to promote sustainable development goals (SDGs) in the EU and China through the case study: global mega-event Olympic Games. This thesis examines the regulation of sustainable public procurement in the EU and China and specific SPP policies in the context of the Olympic Games procurement.

The EU, as a developed economy, makes an enormous effort to promote SDGs or EU goals by public procurement. As the biggest developing country, China has recognized the power of public procurement to promote SDGs and its national goals. However, thanks to the different economic development stages, the EU and China are committed to pursuing the different SPP policies. The aim of this thesis is to look into the role of China in fostering SPP at home and on the global stage compared to the EU.

This thesis will preliminarily provide an understanding of the relationship between the concept of sustainable development and public procurement as a whole from the international perspective, its definition, theoretical mechanism, and the specific scope of SPP policies. Then, the relationship between Olympic Games and sustainable development will be examined in order to delve into the role SPP plays in pursuing SDGs subsequently. Furthermore, this thesis explores the EU and Chinese public procurement legal framework and SPP implementation policies in four specific Olympic Games (2006 TORINO, 2008 BEIJING, 2012 LONDON, and 2022 BEIJING -ZHANGJIAKOU) by a comparative legal research method.

This thesis argues that the EU has a strong ambition and makes a tremendous effort in pursuing SDGs by public procurement. Particularly, the EU public procurement legal regime integrates the LCC analysis into the public procurement process through the adoption of labels and certificates and incorporates environmental and social externality costs into the procurement process. However, Chinese public procurement legal

regimes still have two basic laws (GPL and BL) segmentation and lag behind in some implementing approaches. China is reforming its public procurement legal regime by introducing performance-based management to consider the LCC methods. In addition, this thesis argues how china makes a contribution to achieving its poverty alleviation and its environmental commitment by public procurement.

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List of Abbreviations

UN: United Nations

WTO: World Trade Organization

GPA: Government Procurement Agreement

EU: European Union

CJEU: Court of Justice of the European Union

ILO: International Labour Organization

EMAS: The Eco-Management and Audit Scheme

FLO: The Fair-trade Labelling Organisation

GPP: Green Public Procurement

SPP: Sustainable Public Procurement

ISO: The International Organisation for Standardisation

LCC: Life-cycle costing

SCP: The Sustainable Consumption and Production

SIP: The Sustainable Industrial Policy

SDGs: Sustainable Development Goals

BL: Bidding Law

GPL: Government Procurement Law

OECD: Organization for Economic Co-operation and Development

GDP: Gross Domestic Product

WCED: the World Commission on Environment and Development

SMEs: Small Medium Enterprises

10YFP: the 10-Years Framework Programme

MDGs: Millennium Development Goals

IPP: Integrated Product Policy

NAPs: National Action Plans

IOC: International Olympic Committee

NOCs: National Olympic Committees

YOGOC: Youth Olympic Games Organising Committees
LOGOC: the Organising Committee of London Olympic Games
UNEP: The United Nations Environment Programme
UNOPs: United Nations Office for Project Services
NSDS: National Sustainable Development Strategy
UNCED: the United Nations Conference on Environment and Development
SC: the Chinese State Council
MOF: Ministry of Finance/
NDRC: National Development and Reform Commission
MTF: the Marrakech Task Force
MEE: the Ministry of Ecology and Environment
MOST: Ministry of Science and Technology
EPREL: European Product Registry for Energy Labelling
TOROC: Torino Olympic Committee
BOCOG: Beijing Organizing Committee
ELS: Chinese Environmental Labeling System
ESC: Chinese Energy Saving Certification System
SRPP: Socially responsible public procurement
CSR: Corporate Social Responsibility
ICSAMR: the Information Center of the State Administration for Market Regulation
MIIT: Ministry of Industry and Information Technology
MOC: Ministry of Ecology and Environment
MOC: Ministry of Commerce

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Chapter 1: Introduction

1. Introduction

1.1 Public Procurement as One Tool for Pursuing Public Policy

Public procurement is the process whereby public sectors buy the goods, works, and services that public authorities need from the market.¹ The term "procurement" could be used, on the one hand, in a broad sense to refer to the whole life cycle from planning procurement need, technical specification, award procedure, contract execution, contract management, and contractual termination. On the other hand, public procurement also can be used in a narrow sense to cover the procedure leading up to the award and conclusion of the contract.² "public procurement" is widely used in legislative documents and academic research in European Union (EU).³ The term "government procurement" is well discussed generally.⁴ Government procurement activities in China are subject to Government Procurement Law (GPL) and Bidding Law (BL). This thesis will use the term "public procurement."

¹ Arrowsmith Sue and Kunzlik Peter, "Public Procurement and Horizontal Policies in EC Law: General Principles," in *Social and Environmental Policies in EC Procurement Law New Directives*, eds. Sue Arrowsmith and Peter Kunzlik (New York: Cambridge University Press, 2009), 551.

² Sue Arrowsmith, *The Law of Public and Utilities Procurement Regulation in the EU and UK. Volume 1* (London: Sweet & Maxwell, 2014), p. 1.

³ Generally see: Martin Trybus, Roberto Caranta, and Gunilla Edelstam, eds. *EU Public Contract Law: Public Procurement and Beyond* (Bruylant Rue des Minimes, 2013), 566; Grith Ølykke and Albert Sanchez-Graells, eds., *Reformation or Deformation of the EU Public Procurement Rules* (Edward Elgar Publishing Limited, 2016), 438; Bovis Christopher, ed., *EU Public Procurement Law* (Edward Elgar Publishing Limited, 2013), 510.

⁴ Generally see: Cao Fuguo and Wang Ping, "The New Chinese Government Procurement Law," *Public Procurement Law Review*, 2002, 2. P133-p139; Cao Fuguo, "Building up SME Programmes in Government Procurement in China: Legal Structure, Recent Developments and the Way Forward towards the WTO-GPA," *Public Procurement Law Review*, 2013, 6. P211-P224; Kong JiangQing, "Chinese Law and Practice on Government Procurement in the Context of China's WTO Accession," *Public Procurement Law Review*, 2002, 4. P201-P214; Wang Ping, "China's Evolving Legal Framework on Public Procurement," *Public Procurement Law Review* 2004, 6. P285-P318; Cao Fuguo, "Developments in China: The Regulations Implementing the Chinese Government Procurement Law, and Progress towards GPA Accession," *Public Procurement Law Review*, 2006, 6. P205-P213; Ren Ke, "The Use and Regulation of Framework Agreements under the Chinese Government Procurement System," *Public Procurement Law Review*, 2019, 2. P42-P58; Brent Doberstein Yong Genga, "Greening Government Procurement in Developing Countries: Building Capacity in China," *Journal of Environmental Management* (2008): 932-938; Yuhua Qiao and Conghu Wang, "Issues and Challenges in Implementing China's Green Public Procurement Program," *Journal of Environmental Protection*, no. 08 (2011): 1034-1045; Qinghua Zhu, Yong Geng, and Joseph Sarkis, "Motivating Green Public Procurement in China: An Individual Level Perspective," *Journal of Environmental Management* (2013): 85-95.

Public procurement represents approximately 12% of gross domestic product (GDP) and 29% of total government expenditures in the Organization for Economic Co-operation and Development (OECD) countries.⁵ Under the EU, over 250 000 public authorities spend around 14% of GDP (around Euro 2 trillion per year) on the purchase of services, works, and supplies per year.⁶ As a potential emerging public procurement market, China's government procurement accounts for 12% of its fiscal expenditures and 3.1% of its GDP up to 2016, and it decreased to 10% of its fiscal expenditures and leaps to 3.3% of its GDP in 2019.⁷ State-owned enterprises' purchasing goods, works, and services are regarded as public procurement from the OECD point of view.⁸ However, The procurement activities of state-owned enterprises are not subject to GPL in China. These aggregation estimates showcase considerable differences between countries. Nevertheless, the most obvious point is that public procurement constitutes a significant proportion of the economy in worldwide markets. Therefore, governments can take advantage of the vast public purchasing power to pursue some specific goals.

When it comes to arguing the primary goal of public procurement, public sectors aim to acquire goods, services and works efficiently and effectively by respecting open competition, fairness, and anti-discrimination principles in the procurement process. Whether national, supranational, or international, procurement rules generally define the principal policy objectives or "primary" aims of public purchasing power as including (a) the achievement of value for money ("efficiency"); (b) non-discrimination between tenderers, open competition, and fairness.⁹ However, governments have

⁵ Economic Co-operation and Development (OECD), "SMEs in Public Procurement: Practices and Strategies for Shared Benefits," 2018.

⁶ Internal Market, Industry, Entrepreneurship and SMEs: Public Procurement. Public authorities refer to government departments or local authorities. At https://ec.europa.eu/growth/single-market/public-procurement_en. [Accessed October 23, 2019].

⁷ Directorate-General for External Policies, European Parliament, Kamala Dawar, "Openness of Public Procurement Markets in Key Third Countries," 2017. P12.

[http://www.europarl.europa.eu/RegData/etudes/STUD/2017/603840/EXPO_STU\(2017\)603840_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/603840/EXPO_STU(2017)603840_EN.pdf).

[Accessed October 23, 2019];

http://www.gov.cn/xinwen/2020-08/27/content_5537854.htm#:~:text=%E8%B4%A2%E6%94%BF%E9%83%A8%E7%BD%91%E7%AB%99-,2

[019%E5%B9%B4%E5%85%A8%E5%9B%BD%E6%94%BF%E5%BA%9C%E9%87%87%E8%B4%AD%E8%A7%84%E6%A8%A1%E4%B8%BA33067.0%E4%BA%BF%E5%85%83,%E7%9A%848.1%25%E5%92%8C91.9%25%E3%80%82.](http://www.gov.cn/xinwen/2020-08/27/content_5537854.htm#:~:text=%E8%B4%A2%E6%94%BF%E9%83%A8%E7%BD%91%E7%AB%99-,2)

⁸ Silvia Appelt and Fernando Galindo-Rueda. Economic Co-operation and Development (OECD) Report, "Measuring the Link between Public Procurement and Innovation," 2016.

⁹ Olga Martin-Ortega and Claire Methven O'Brien, "Advancing Respect for Labour Rights Globally through Public Procurement," *Politics and Governance* 5, no. 4 (2017): 69–79. P70.

sometimes sought to use public purchasing to promote "secondary" or "horizontal"¹⁰ policy objectives, that is, economic, environmental, and social considerations that are not necessarily connected with the procurement's "functional" or "primary" goals but in coordination with sustainable development goals or national policies.

Traditionally, purchasing power is regarded as a crucial policy tool to promote specific industrial development, especially national domestic industries. The policy measures include bans on foreign participation in public procurement markets, set-asides of any part of the market for domestic industry, price preferences for domestic products or firms, and preferential treatment for domestic firms in issuing invitations to tender to aim to promote national industrial development, improving competition in international trade.¹¹ In addition, public procurement is also seen as an effective instrument to pursue specific national policies related to promoting Small Medium Enterprises (SMEs) and innovative technologies.¹² With respect to environmental and social issues, public sectors are concerned with climate change, environmental protection, human rights, labor rights, reducing poverty and regional economic disparities (China), etc.¹³ So, even though the horizontal or secondary goals focus on

¹⁰ Martin Trybus, "Sustainability and Value for Money: Social and Environmental Considerations in United Kingdom Public Procurement Law," P259-296. in *The Law of Green and Social Procurement in Europe*, eds. Roberto Caranta and Martin Trybus, (Copenhagen: DJØF Publishing Copenhagen, 2010), 330; Olga Martin-Ortega and Claire Methven O'Brien, "Advancing Respect for Labour Rights Globally through Public Procurement," *Politics and Governance* 5, no. 4 (2017): 69–79; Arrowsmith and Kunzlik, "Public Procurement and Horizontal Policies in EC Law: General Principle." P9-55. in "*Social and Environmental Policies in EC Procurement Law New Directives and New Directions*," eds. Sue Arrowsmith and Peter Kunzlik, (Cambridge University Press, 2009), 551.

¹¹ Sue Arrowsmith, *The Law of Public and Utilities Procurement Regulation in the EU and UK. Volume 2* (London: Sweet & Maxwell, 2017), P735. Sue Arrowsmith argues, thanks to Industrial Policies has been consistently ruled by the CJEU to hinder trade and not to be capable of justification. Thus the free movement rules very substantially restrict the power of national authorities to use procurement as a tool of industrial development.

¹² Jani Saastamoinen, Helen Reijonen, and Timo Tammi, "Should SMEs Pursue Public Procurement to Improve Innovative Performance?," *Technovation* 69 (January 1, 2018): 2–14; Jianlin Chen, "Challenges in Designing Public Procurement Linkages: A Case Study of SMEs Preference in China's Government Procurement," *UCLA Pacific Basin Law Journal* 30 (2013): 1–38; Economic Co-operation and Development (OECD), "SMEs in Public Procurement: Practices and Strategies for Shared Benefits," 2018.

¹³ Sergio Alvarez and Agustín Rubicon, "Carbon Footprint in Green Public Procurement: A Case Study in the Services Sector," *Journal of Cleaner Production* 93 (2015): 159–166; B. Martinez Romera and R. Caranta, "EU Public Procurement Law: Purchasing Beyond Price in the Age of Climate Change," *European Procurement & Public Private Partnership Law Review* 12, no. 3 (2017): 281–292; Opi Outhwaite and Olga Martin-ortega, "Human Rights in Global Supply Chains : Corporate Social Responsibility and Public Procurement in the European Union Human Rights in Global Supply Chains : Corporate Social Responsibility and Public Procurement in the European Union," n.d., 1–29.

https://www.researchgate.net/publication/315697965_Human_rights_in_global_supply_chains_corporate_social_responsibility_and_public_procurement_in_the_European_Union; Ragnhild Lunner, "Human Rights in Public Procurement Protecting Them Properly?," *European Procurement & Public Private Partnership Law Review* 13, no. 3 (2018): 198–206.

dealing with similar issues relating to economic, environmental, and social considerations in order to pursue sustainable development goals and national policies, they are distinguished from state to state and public sectors to sectors and carry out the policy prioritization in the different countries' public procurement rules. Policy preferences in public procurement rules have been referred to in different countries by many scholarships, mainly in the EU, as horizontal or secondary policies, including a series of economic (industrial), environmental, and social policies in public procurement.

As Sue Arrowsmith states, the term "secondary policy" is problematic. The most pressing reason she states: *"the distinction between 'primary' and 'secondary' policies in procurement is far from clear-cut since it 'assumes the prior existence of decisions concerning the levels of purchasing, and the goods and services to be acquired [which] may themselves be influenced by considerations apart from the acquisition of goods and services to fulfill a specified function.'* For example, a state may choose to implement public infrastructure projects not merely because of the desire for the infrastructure itself but also because of its potential to boost national employment."¹⁴ She argued that the term "secondary policy" may carry the connotation that such policy is of secondary importance to other matters, and/or is of limited importance. So, it implies that, to some extent, the government can also pursue the goals, such as stimulating domestic economic development, reducing the unemployed rate, and some specific national policies by developing large physical infrastructures as one huge public purchasing power in the market.

And, in some cases, the government considers the social goals equally important or equal status with other public policies. Christopher McCrudden explored social policy in the public procurement market where the government does not just purchase goods, services, but in a way where the government buys social justice in the procurement process. His research does not distinguish the procurement linkages as "horizontal" and "secondary" policy. While, according to the procurement linkages' role

¹⁴ Social and Environmental Policies in EC Procurement Law New Directives and New Directions, ed. Sue Arrowsmith and Peter Kunzlik (New York: Cambridge University Press, 2009), 551, P13-14.

in the subject matter of the governmental contract, in the sense of buying social justice (social policies), the government is regarded as the consumer.¹⁵ In another sense of requiring social justice, the government is considered to be the regulator, and the requirements relating to "social justice" in procurement contracts are recognized as "secondary" considerations.¹⁶

From Roberto Caranta's position, these different considerations relating to the environment, social policy have traditionally been labeled as secondary considerations in opposition to the best value for money being the primary objective, even though the terms horizontal policy was the suggested alternative.¹⁷ Moreover, he also admits that sustainable public procurement (SPP) has become a term of art.¹⁸ Therefore, even if the differences in broadening the definition of the utilization of environmental, social, political-economic, and socio-economic consideration, the fundamental principle of those policies considerations are not radically different, that is, the primary aiming to pursue "sustainable development."

As the name implies, SPP entails the sustainable development perspective on public procurement, whereby economic, environmental and social aspects of development are considered holistically. SPP is thus an amalgamation of sustainable development and public procurement, referring to the consideration of environmental, social, and economic aspects in the public procurement process.¹⁹ SPP encompasses social, environmental, and economic matters and, in a broad interpretation, the participation of Small Medium Enterprises (SMEs) and innovation in public procurement processes.²⁰

¹⁵ Buying Social Justice. Equality, Government Procurement,& Legal Change, ed. Christopher McCrudden (New York: Oxford University Press Inc., 2007, 680). P538-566.

¹⁶ Buying Social Justice. Equality, Government Procurement,& Legal Change, ed. Christopher McCrudden (New York: Oxford University Press Inc., 2007, 680). P538-566.

¹⁷ Roberto Caranta. Chapter 7. Sustainable Procurement. In 'EU Public Contract Law: Public Procurement and Beyond. Eds. Martin Trybus, Roberto Caranta, Jean-bernard Auby (Bruylant 13, 2013), P165-190.

¹⁸ Trybus, "Sustainability and Value for Money: Social and Environmental Considerations in United Kingdom Public Procurement Law," 2010.

¹⁹ Lina Wedin Hansson and Susanna Johansson, "Institutional Incentives for Sustainable Public Procurement: A Case Study of Sustainability Considerations in the Swedish Contracting Sector," *Public Procurement Law Review*, 2017, 17.

²⁰ D C Dragos and B Neamtu, "Sustainable Public Procurement in the Eu: Experiences and Prospects," in Francois Lichere, Roberto Caranta, Steen Treumer (eds) *Novelties in the 2014 Directive on Public Procurement* (DJOPublishing, 2016).

There are mutually beneficial relationships between SMEs and sustainability criteria in public procurement: SMEs can benefit economically from a greater focus on sustainability in public procurement, whilst subjecting SMEs to sustainability criteria can greatly impact critical environmental objectives. Even though these objectives have often been considered to be contradictory (with a perception that stringent sustainability requirements are a barrier to SMEs), we will see that they are complementary: while SMEs have a high potential to boost the use of sustainable public procurement if they are provided with the right tools, sustainability criteria can be an advantage to increase SMEs' participation in public tendering.²¹ Moreover, SMEs are also expected to connect with social policy, for example, set-sides to sheltered workshops, give price preference to SMEs, contain technical specifications equipment available to disabled people, fair wages, and healthy work conditions in contract compliance and so on.

Concerning human rights in public procurement, in the beginning, social policies were rooted in and had an inescapable connection with the industrial policies. As Christopher McCrudden stated, the goals which government procurement wants to achieve are not just national industry policies, but the complicated socio-economic, political goals, for instance, stimulating the economic activity, remedying regional disparities, and helping to realize the special social policy, including the reduction of unemployment, fair wages in the public contract, disabled labor issue, and the labor clause and so on.²² In his view, industry policy in public procurement compromises the goals (stimulating economic activity and remedying regional disparities) does not mean just protecting the national industry against foreign competition and improving the competitiveness of certain industrial sectors. But the special social policy trade-offs also foster the creation of jobs to relieve unemployment, promote fair labor conditions, and promote the increased utilization of disabled people in employment.

So, the primary function of public procurement is seen as the acquisition of public

²¹ Dacian C. Dragos and Bogdana Neamtu, "The Role of SMEs in Promoting Sustainable Procurement," in *Sustainable Public Procurement Under EU Law: New Perspectives on the State as Stakeholder*, ed. Beate Sjaafjell and Anja Wiesbrock (Cambridge University Press, 2016), 160–181.

²² Christopher McCrudden, *Buying Social Justice. Equality, Government Procurement, & Legal Change*, (New York: Oxford University Press Inc., 2007, 680). P25-62.

goods and services through marketization from private sectors by "value for money" efficiently and effectively related to the principles: anti-discrimination, open competition, and fairness. Thanks to the purchasing power and the pursuit of good governance of public sectors, public procurement is regarded as a policy tool for increasingly pursuing a number of international and national goals. And the importance of the function as the secondary and horizontal policy has been attached to sustainable development goals, environmental protection, climate change, and human rights at the international, regional, and national level, as has been argued.

1.2 Sustainable Development Evolution and Public Procurement

Sustainable Development is derived from the notion of "sustainability." As an ideal initiative, sustainability has gained a status comparable to that of democracy, freedom, and justice: it is universally desired, differently understood, complex in scope, extremely difficult to establish.²³ While sustainability remains an ideal value, sustainable development has been accepted not only by the international community but by regional organizations and countries as a guiding concept over the years and the golden rule of our civilization in the 21st century.²⁴ It usually comprises three dimensions – economic, social/equity, and environmental. Sustainable development requires governments and organizations to consider their operations' social, economic, and environmental aspects, with no single aspect dominating.²⁵ Thus, there is one question: how do public bodies commit to achieving humanity's sustainable development?

In the international community, the term "sustainable development" came into the public arena in 1980 when the International Union for the Conservation of Nature and Natural Resources presented the World Conservation Strategy. It was not until 1987 when the World Commission on Environment and Development (WCED) published its

²³ Voigt Christina (ed), *Sustainable Development As a Principle of International Law: Resolving Measures and WTO Law*, (Koninklijke Brill NV, Leiden, Netherlands, 2009). 453.

²⁴ Michael Decleris, "The Law of Sustainable Development: General Principles," Report Produced for the European Commission (Luxembourg: Office for Official Publications of the European Communities, 2000). 146.

²⁵ "Sustainable Public Procurement Implementation Guidelines: Introducing UNEP's Approach," 2012. 80.

report, Our Common Future being well known, "The Brundtland Report," that the links between the social, economic, and environmental dimensions were explicitly expressed.²⁶ The most comprehensive definition accepted of sustainable development is that "humanity has the ability to make sustainable development to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs."²⁷

The UN Member States unanimously adopted the Millennium Declaration at the Millennium Summit, leading to the elaboration of eight Millennium Development Goals (MDGs) to reduce extreme poverty by 2015 in September 2000 at UN Headquarters in New York. At the United Nations Conference on Sustainable Development (Rio+20) in Rio de Janeiro, Brazil, in June 2012, Member States adopted the outcome document "The Future We Want" in which they decided, *inter alia*, to launch a process to develop a set of SDGs to build upon the MDGs, including ecological protection, climate change, eradication poverty, gender equity, reduced inequality, industry and innovation and so on.²⁸

Meanwhile, in order to accelerate the shift towards sustainable consumption and production, the 10-Years Framework Programme (10YFP) was launched, responding to the 2002 Johannesburg Plan of Implementation.²⁹ As one of the 10YFP programs, sustainable public procurement is dedicated to creating and maintaining a significant hub for exchange and cooperation, driving the implementation of SPP worldwide in the post-2012 development agenda.³⁰ Subsequently, The One Planet network of the United Nations Environment Programme (UNEP), established in 2014, was formed to implement the commitment of the 10YFP. And it is to be recognized as the lead mechanism to support and accelerate the shift to sustainable consumption and production patterns,

²⁶ Baker Susan (ed), *Sustainable Development*, (Routledge, Taylor & Francis Group, 2006), P18.

²⁷ United Nations. "Report of the World Commission on Environment and Development Our Common Future," 1987.

²⁸ Sustainable Development Goals. <https://sustainabledevelopment.un.org/sdgs>.

²⁹ United Nations Environment Programme Report. "Sustainable Public Procurement: A Global Review," 2013. 78.

³⁰ A/CONF.216/L.1. The Future We Want. Paragraph 226: It is adopted the 10-year framework of programmes on sustainable consumption and production patterns, as contained in document A/CONF.216/5, and highlight that the programmes included in the 10-year framework are voluntary; The A/CONF.216/5. Letter dated 18 June 2012 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General of the United Nations Conference on Sustainable Development. http://www.unep.fr/scp/pdf/10YFP_english.pdf.

becoming the leading implementation mechanism for Goal 12 of the 2030 Agenda for Sustainable Development adopted in 2015.³¹ SPP is concerned at the UN level and is mainstreamed in public procurement, and best practices are widely shared and promoted at the regional, national, and local level through UNEP leveraged the expertise of its public procurement network and the One Planet SPP Programme partners to develop the methodology for the indicators.³²

In addition, in the relationship between sustainable development and international law, because of the publication of the Brundtland Report, sustainable development has gained a considerable amount of attention from the international community, especially having a significant influence on international trade law.³³ As a judge on the International Court of Justice from 2003 until 2012, Bruno Simma admitted and claimed that one of the most important legal questions arising from the dynamic of international socio-political reality constitutes the central theoretical theme underlying the relationship between international law and sustainable development.³⁴ Firstly, the emergence of ideas relating to at least two pressing global problems, environmental degradation and poverty eradication, is concerned by international organizations or national goals.³⁵ Secondly, justifying the principle of sustainable development in international trade law is supported and enforced by numerous international "practices" instances.³⁶ In terms of public procurement legal rules, World Trade Organization (WTO) - Government Procurement Agreement (GPA) as a vital multilateral trade agreement is inevitably influenced by sustainable development.

The pursuit of Sustainable development/SDGs influence public procurement

³¹ <https://www.un.org/development/desa/disabilities/envision2030.html>; <https://www.unep.org/explore-topics/resource-efficiency/what-we-do/one-planet-network>; <https://www.oneplanetnetwork.org/programmes/sustainable-public-procurement/about>.

³² United Nations Environment Programme (UNEP), "Sustainable Public Procurement How to 'Wake the Sleeping Giant,'" 2021, 101. P18.

³³ Voigt Christina (ed), *Sustainable Development As a Principle of International Law: Resolving Conflicts between Climate Measures and WTO Law*, vol. 66 (Koninklijke Brill NV, Leiden, Netherlands, 2009) 453; Schrijver Nico and Weiss Friedl, eds., *International Law and Sustainable Development: Principle and Practice* (Koninklijke Brill NV, Leiden, The Netherlands Brill, 2004) 750.

³⁴ Nico and Friedl, *International Law and Sustainable Development: Principle and Practice* (Koninklijke Brill NV, Leiden, Netherlands, 2004) 750.

³⁵ Nico and Friedl, *International Law and Sustainable Development: Principle and Practice* (Koninklijke Brill NV, Leiden, Netherlands, 2004) 750.

³⁶ Nico and Friedl, *International Law and Sustainable Development: Principle and Practice* (Koninklijke Brill NV, Leiden, Netherlands, 2004) 750.

regulation at the international level. The choice of preferential public policies has been reflected in public procurement practices at the international level. The WTO's GPA primary focus is indeed set on guaranteeing a transparent and non-discriminatory procurement regime, ensuring the best value for money by opening up government procurement to international competition.

However, WTO does not overlook the integration of sustainable development/SDGs into its system. The WTO proposed a group of important elements of the 2011-2012 negotiating package as "working programs," including "*the Work Program to promote the use of sustainable procurement practices, consistent with the Agreement*," "*Work Program to consider best practices with respect to measures and policies that the Parties use to support the participation of small and medium-sized enterprises (SMEs) in government procurement*," and "*Work Programme on safety standards in international procurement*," in 2012 as the Protocol of Amendment to revise the Government Procurement Agreement (GPA).³⁷

A Revised GPA text was adopted seeking to encourage broader acceptance by introducing environmental and social policy linkages. It explicitly provides for the possibility to address environmental considerations via technical specifications and award criteria: Article X (6) of the new text authorizes technical specifications which "promote the conservation of natural resources or protect the environment," while the indicative list of evaluation criteria in Article X (9) now includes environmental characteristics.³⁸

Indeed, the issue of sustainable considerations in public procurement practices

³⁷ Initiation of Work Programme on Sustainable Procurement: At the first meeting of the Committee after the entry into force of the Protocol of Amendment to the Existing (1994) Agreement, the Committee shall initiate a Work Programme on Sustainable Procurement. The work programme shall examine topics that include: (a) the objectives of sustainable procurement; (b) the ways in which the concept of sustainable procurement is integrated into national and sub-national procurement policies; (c) the ways in which sustainable procurement can be practiced in a manner consistent with the principle of "best value for money"; and (d) the ways in which sustainable procurement can be practiced in a manner consistent with Parties' international trade obligations. Annex C, E, G to Appendix 2 of the Decision on the Outcomes of the Negotiations Under Article XXIV:7 of the Agreement on Government Procurement, adopted on 30 March 2012 (GPA/113, p. 439, 444). <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=O:/PLURI/GPA/113.pdf&Open=True>.

³⁸ International Learning Lab on Public Procurement and Human Rights, "Public Procurement and Human Rights: A Survey of Twenty Jurisdictions," 2016. 2016. 104. <https://www.hrprocurementlab.org/wp-content/uploads/2016/06/Public-Procurement-and-Human-Rights-A-Survey-of-Twenty-Jurisdictions-Final.pdf>.

related to climate change and environmental protection is highly typical, as in light of the Paris Agreement reached among the Parties to the United National Framework Agreement.³⁹ However, the GPA has an important role in achieving the commitment to "leave no one behind" as a key feature of the discussions on the post-2015 agenda and the United Nations' Sustainable Development Goals (SDGs), for example, measures such as the improvement of public health delivery systems and the building of resilient infrastructure as underpinnings of global development, prosperity, and poverty alleviation.⁴⁰

In addition, the interest of the EU in sustainable development grew in parallel with the initiative of the United Nations on the same issue, which culminated in the World Conference of Rio (1992) on the Protection of Environment and Sustainable Development.⁴¹ Under the title "Towards Sustainability," the Fifth European Action Plan on the Protection of the Environment and Sustainable Development formed the environmental agenda underpinning the two principles. Firstly, the integration of the environmental dimension in all major policy areas is a key factor. Secondly, only by replacing the command-and-control approach with shared responsibility between the various actors (governments, industry, and the public) can commitment to agreed measures.⁴²

In the subsequent years, in 2003, the European Commission, in its Communication on Integrated Product Policy (IPP), encouraged the Member States to draw up publicly available National Action Plans (NAPs) for greening their public procurement. By permitting the use of innovative market-based instruments to offset economic impacts, the multilateral efforts to combat environmental degradation and climate change provide an extraordinary opportunity to examine the economy-environment conflict.⁴³

³⁹ Robert Anderson and Anna Caroline Müller, "The Revised WTO Agreement on Government Procurement (GPA): Key Design Features and Significance for Global Trade and Development," *Georgetown Journal of International Law* 48, no. 4 (2017): 949–1007. P971.

⁴⁰ Anderson and Müller. "The Revised WTO Agreement on Government Procurement (GPA): Key Design Features and Significance for Global Trade and Development," P997, 1005.

⁴¹ Decleris, Michael. *The Law of Sustainable Development: General Principles*. A report produced for the European Commission. 2000. 143.

⁴² European Commission. *The Fifth Environmental Plan Programme*. <https://ec.europa.eu/environment/archives/action-programme/5th.htm>.

⁴³ Decleris, Michael. *The Law of Sustainable Development: General Principles*. A report produced for the European Commission. 2000. 143.

Then in the European Commission Communication *Integrated Product Policy (IPP)- Building on Environmental Life cycle thinking [com(2003) 302 final]*, it states that public procurement internalizes environmental externalities into the price of a product so that its environmental impacts are accurately reflected in the price and make sure price signals give incentives for the continuous environmental improvement of products throughout the life cycle.⁴⁴

The Commission *Green Paper on the modernization of EU public procurement policy towards a more efficient European Procurement Market* talks of 'complementary objectives, in a way, putting sustainability on the same footing as other objectives.'⁴⁵ A specific part of the 2011 Green Paper is dedicated to what is referred to as the strategic use of public procurement. The purpose here is to allow procurers to make better use of public procurement in support of common societal goals.⁴⁶

Next to the objective of increasing the simplicity and flexibility of EU public procurement law, a major aim of the 2014 Procurement Directives of the EU is to enlarge the possibilities for using public procurement in support of broader social and environmental goals.⁴⁷ The EU commission has defined public procurement as a strategic policy instrument to achieve sustainability and as an essential contribution to the achievement of the EU's goal of smart, sustainable, and inclusive growth.⁴⁸

In the EU, even if public procurement legislation is less concerned with what public bodies buy than how they buy it, public procurement is subject to general principles derived from the EU treaties and to the specific rules set out in the Directives. EU procurement legislation focused on procedures (including remedies), the so-called 'how to buy.'⁴⁹ In the decades, EU procurement legislation has added new ones focus on

⁴⁴ "COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT *Integrated Product Policy Building on Environmental Life-Cycle Thinking*.COM(2003)302 Final," 2003, <http://europa.eu.int/comm/environment/ipp/ippsum.pdf>.

⁴⁵ "Green Paper on the Modernization of EU Public Procurement Policy: Towards a More Efficient European Procurement Market.," COM(2011)15 Final. 56.

⁴⁶ Roberto Caranta. Chapter 7. Sustainable Procurement. In 'EU Public Contract Law: Public Procurement and Beyond. Eds. Martin Trybus, Roberto Caranta, Jean-bernard Auby (Bruylant 13, 2013), P165-190.

⁴⁷ European Commission, Proposal for a directive on public procurement, COM (2011) 896 final, 2011.

⁴⁸ Europe 2020: a strategy for smart, sustainable and inclusive growth, COM (2010) final.

⁴⁹ E.g. Recital 2 of Directive 2004/18/EC lists the Treaty principles ruling award of public procurement and then declares that "for public contracts above a certain value, it is advisable to draw up provisions of Community coordination of national procedures for the award of such contracts which are based on these principles so as to ensure the effects of them and to guarantee the opening-up of public procurement to

the substance of what is bought (what to buy). On top of the provisions in the secondary EU legislation giving indications as to how and what to buy, there are a number of documents issued by the Commission and aimed at both clarifying and promoting sustainable procurement.⁵⁰

Thanks to public procurement being paid attention in the UN SDGs 12, sustainable public procurement (SPP) has become an established concept without any authoritative definition.⁵¹ The EU's definition is along these lines. SPP is a process by which public authorities seek to achieve the appropriate balance between the three pillars of sustainable development - economic, social, and environmental - when procuring goods, services, or works at all stages of the project.⁵² The EU has made an extraordinary effort, legislation reform, policies modernization, and coherence, to promote SPP.

In China, with the global wave of sustainable development after the United Nations Conference on Human Environment held in Stockholm in 1972, environmental pollution, energy depletion, and socio-economic issues caused by dramatic economic growth in China, China has attached importance to environmental issues and taken actions to deal with the equilibrium between environment and economy since the 1970s. In 1983, China announced environmental protection as one of the two basic national policies and emphasized that environmental issues were as urgent as population problems. In 1992, The Chinese official policy paper *Ten Strategic Policies on Environment and Development* stipulated that China would adopt the sustainable development strategy. As a result, Environmental protection with sustainable development policy is regarded as a primary National Strategy in China.⁵³

People's living environment and ecological environment shall be protected and improved in Article 26 of the Constitution Law of the People's Republic of China. The

competition". In Roberto Caranta. Chapter 7. Sustainable Procurement. In 'EU Public Contract Law: Public Procurement and Beyond. Eds. Martin Trybus, Roberto Caranta, Jean-bernard Auby (Bruylant 13, 2013), P165-190.

⁵⁰ Roberto Caranta. Chapter 7. Sustainable Procurement. In 'EU Public Contract Law: Public Procurement and Beyond. Eds. Martin Trybus, Roberto Caranta, Jean-bernard Auby (Bruylant 13, 2013), P165-190.

⁵¹ Sjaafjell Beate and Wiesbrock Anja, "Why Should Public Procurement be about Sustainability?" Sjaafjell Beate and Wiesbrock Anja (eds). Sustainable Public Procurement Under EU Law: New Perspectives on the State as Stakeholder (Cambridge University Press, 2016), 270.

⁵² Green and Sustainable Public Procurement. https://ec.europa.eu/environment/gpp/versus_en.htm.

⁵³ Kun min Zhang and Zong guo Wen, "Review and Challenges of Policies of Environmental Protection and Sustainable Development in China," Journal of Environmental Management, no. 4, 2008: 1249–1261.

Significant development is that the Ecological Civilization has been put down into the preamble of Constitution Law and requires the harmonization and sustainable development among Material Civilization (in terms of economic development), Social Civilization (mainly in relation to the protection of human dignity and human rights), and Ecological Civilization (environmental protection and environmental right).⁵⁴ So far, in order to commit to environmental protection, Chinese policymakers and lawmakers have set up a series of environmental laws, regulations, and policies. China has constituted a relatively comprehensive environmental legal regime.

As China's public procurement market, after the reform and openness of the economy (national policy issued by Deng Xiaoping), China transformed the development model from the central planning to market-orientated. Chinese Government starts to establish its public procurement system in the 1990s. In 1999, the first procurement legislation (Bidding Law) was enacted. Afterward, the Government Procurement Law and the Clean Production Promotion Law were enacted in 2002. As a result of this fact, China's public procurement market is currently still subject to two different but overlapping basic laws: the Bidding Law and the Government Procurement Law.⁵⁵

With regard to the economic, environmental, and social policies, Government Procurement Law (GPL) lays down the principle for protecting the environment, supporting the underdeveloped regions and ethnic minority regions, promoting the development of small, medium-sized enterprises (SMEs), etc.⁵⁶ GPL has a conceptual breadth and magnitude that goes far beyond environmental protection, economic development in rural and ethnic national minority districts, social policy for the specific disadvantaged group in China.

Apart from these two main public procurement laws, the public procurement legal framework is covered by a series of laws, regulations, and administrative orders. Importantly, the Ministry of Finance (MOF) and the former State Environmental

⁵⁴ 张翔, “环境宪法的新发展及其规范解释,” 法学家, 2018, 10.

⁵⁵ Benjamin Denjean et al., “Green Public Procurement in China: Quantifying the Benefits,” (Report by International Institute for Sustainable Development). 2015. 44.

⁵⁶ Article 9. Government Procurement Law.

Protection Administration (now the Ministry of Environmental Protection, MEP) jointly issued *Notice on the Implementation of Environmental Labelling Products in Government Procurement* and *Notice on Implementation of Mandatory Energy-Saving Products in Government Procurement*, and government procurement "List for Environmental Labelling Products and Energy-Saving Products," from October 2006. These two administrative orders mark the Chinese Governmental Green Procurement (GGP). Two labels systems have been updated regularly to 2019. Subsequently, China reformed these two labels systems in 2019. Also, China has laid down a series of administrative orders aiming at the national policy of alleviating poverty by government procurement since 2019.

So, China does not clarify the definition of SPP yet. As it has been shown, China considers public procurement as a policy tool for achieving its national policies in environmental protection, social responsibility, economic development in less developed regions and SMEs. These China's national goals are consistent with the sustainable development goals and the commitment to climate change. China is a crucial participant of the UN-led initiative "One Planet Network," which is mandated by the UN member states and supports the implementation of Sustainable Development Goal (SDG) 12 - sustainable public procurement as the key measure for sustainable consumption and production transition.

1.3 Role of Sustainable Development and Olympic Games

In recent decades, the relationship between sustainable development and the Olympics games has been recognized as an attractor. As the world mega-event, the Olympics are a platform that can be used to enact positive economic, environmental, and social outcomes if appropriately managed. As the IOC report *Sustainability Through Sport* puts, "*sport presents broad opportunities to promote environmental awareness, capacity building, and far-reaching actions for environmental, social, and economic development across society. It can also be a means of achieving peace and reconciliation as a fundamental prerequisite for sustainability principles to be shared*

and applied. Here, the Olympic Movement plays a key role."⁵⁷

Due to considering sustainable development through the Olympic Movement, stakeholders, such as International Olympic Committee (IOC); National Olympic Committees (NOCs); Olympic Games and Youth Olympic Games Organising Committees (OCOGs and YOGOCs); corporate sponsors; Suppliers of Olympic works, goods, and services, non-governmental organizations (NGOs) and the public at large, have the significant role in the preparation process in the Olympic Games. The IOC is positioned as the critical leader in the Olympic Movement. And it aims to take a proactive and leadership role on sustainability and ensures all aspects of the planning and staging of the Olympic Games, engages and assists Olympic Movement stakeholders in integrating sustainability within their own organizations and operations.⁵⁸ Then, the IOC coordinates with other non-government organizations and national Olympic Committees to deliver sustainable public policies.

Environmental issues moved into the political mainstream at the 1992 UN Conference on Environment and Development (UNCED) in Rio, the Earth Summit. Afterward, the concern for environmental issues became the third pillar of Olympism at the Centennial Olympic Congress in 1994. As the Olympic Charter stated, *'to encourage and support a responsible concern for environmental issues, promote sustainable development in sport, and require that the Olympic Games be held accordingly.'*⁵⁹ The 1994 winter games at Lillehammer were the first to consider environmental factors explicitly, such as venue built where possible with local materials, ski runs redesigned to avoid having an impact on virgin forests, and spectators using millions of recyclable plates and utensils.⁶⁰ Henceforth, environmental protection was adopted as one of the fundamental objectives of the Olympic movement, and the Olympics' potential to play an active part in the promotion of sustainable development was officially recognized.⁶¹

⁵⁷ IOC Commission for Sport and Environment, "Sustainability Through Sport," 2012.

⁵⁸ International Olympic Committee (IOC), "sustainability Essentials: A Series of Practical Guides for the Olympic Movement," 2014.

⁵⁹ International Olympic Committee (IOC), Olympic Charter, Chapter 1, Rule 2, P13.

⁶⁰ IOC Commission for Sport and Environment, "Sustainability Through Sport," 2012, P39.

⁶¹ Stefanie Beyer, "The Green Olympic Movement: Beijing 20081," Chinese Journal of International Law 5, no. 2

The Olympic Movement's Agenda 21 in June 1999 in Seoul was endorsed by the Entire Olympic Movement at the Third World Conference on sport and environment in Rio in October 1999, attached importance to the socio-economic status dimension. In other words, the Olympic Games are committed to pursuing social and economic development alongside protecting the environment and natural resources. As the Olympic Movement's Agenda claimed, the action plans should take account of the fight against poverty and encourage the integration of disadvantaged groups as well, for example, the recognition and promotion of indigenous groups, combating the violations of human rights of young people, and women, and so on.⁶²

In *the Olympic agenda 2020: IOC Sustainability Strategy* issued in 2017, the IOC laid down a series of five sustainable focus work areas and nine sustainable objectives. The five areas are: (1) *infrastructure and Natural Sites*, (2) *sourcing of products and services takes account of environmental and social impact*, (3) *mobility solutions and freight operations are environmentally and socially responsible*, (4) *working conditions of employees and volunteers and workforce exemplifies diversity, inclusivity, and gender equality, etc.*, (5) *climate Management of direct and indirect greenhouse gas emissions associated with the Olympic Movement's activities and adaptation to the consequences of climate change*.⁶³ Sourcing of products and services considering environmental and social impact is seen as a significant initiative in *IOC Sustainability Strategy*.

Torino Olympic Committee (TOROC) applied an environmental management system that, for the first time in the Olympic Games, gained International Standardization Organization (ISO) 14001 Environmental Management Certification and European Union Eco-Management and Audit Scheme (EMAS) registration. TOROC drew up a guidance document on EMAS implementation in sporting events at the European Commission's request.⁶⁴ TOROC developed the HECTOR (Heritage

(2006): 423–440.

⁶² IOC Sport and Environment Commission, "Olympic Movement's Agenda 21: Sport for Sustainable Development," 1999.

⁶³ International Olympic Committee (IOC), "IOC Sustainability Strategy," 2017, P5.

⁶⁴ European Commission document. Greening the Torino Winter Olympics : an EU success story. https://ec.europa.eu/commission/presscorner/detail/en/IP_06_26.

Climate Torino) project to analyze every aspect of the Olympic Games, including transport infrastructure, hospitality facilities, waste, and sustainable event management.⁶⁵

Subsequently, in the 2008 Beijing summer Olympic Games, the Beijing Organizing Committee (BOCOG) set three guiding principles: Green Olympics, High-tech Olympics, and People's Olympics.⁶⁶ During the preparatory period for the Games, Beijing made notable efforts in the following environmental areas: air quality, energy, transportation, water environment, ecological conservation and construction, industrial pollution, and solid waste management.⁶⁷ Moreover, BOCOG also adopted the ISO 14001 certification audit system in 2005. ISO 14001 environmental management systems were established in all Olympic construction sites.⁶⁸ Potential contractors were asked to comply with existing environmental laws and regulations, green labels and take care of their environmental impact.⁶⁹

In the 2012 London Summer Olympic Games, the sustainability concerns are comprised of a number of environmental, economic, and social measures. The sustainability themes included climate change, waste, biodiversity, social inclusion, and healthy living.⁷⁰ So as to social inclusion and healthy living, the Organising Committee of London Olympic Games (LOGOC) take appropriate measures to encourage communities from the six strands of diversity (disabled people and non-disabled people, young and old, men and women, every race, every sexual orientation, gender identity, and belief), achieve an equalities step-change in construction sector employment, promote supplier diversity and maximize opportunities for local and UK minority-owned businesses and social enterprises to benefit, and commit to establishing and maintaining the highest possible standards for health, safety and welfare.⁷¹ In addition to implementing ISO 14001 environmental and sustainability management system

⁶⁵ IOC Commission for Sport and Environment, "Sustainability Through Sport," 2012, P42.

⁶⁶ Beijing Organising Committee for Olympic, "Preparation for the Games: New Beijing Great Olympics," *Official Report of the Beijing 2008 Olympics Games*, 2007.

⁶⁷ Gregory R. Carmichael, Soon-Chang, and Etc., "Independent Environmental Assessment-Beijing 2008 Olympic Games," 2008.

⁶⁸ Carmichael and Soon-Chang. P96.

⁶⁹ Carmichael and Soon-Chang. P114.

⁷⁰ LOCOG, "London 2012 Sustainability Report," 2011.

⁷¹ London Organising Committee of Olympic Games, "London 2012 Sustainability Plan," 2009.

registering with EMAS or taking steps towards managing their environmental impact through other initiatives such as BS 8555,⁷² LOCOG applied to ISO 20121:2012 event sustainability management system.⁷³ The development of a number of sustainability tools, standards, and approaches aimed specifically at the events sector to ensure sustainable development in the 2012 Olympic games.

In order to institutionalize the sustainable policy measures and implementing tools, IOC has built up Olympic Games knowledge Management System to provide a database including a series of technical requirement documents, planning materials, standard tools to assist hosting cities to achieve sustainable development goals after 2000 Sydney Olympic games.⁷⁴ After that, all hosting cities are required to carry out the implementing plan relating to sustainable policies and issue sustainable reports and guides.

At the international level, the IOC cooperates with non-governmental institutions and National Olympics Committees to enact a considerable number of documents, which include *Sport, Environment and Sustainable Development Guide in 2005*, *Sustainability through Sport in 2012*, *Olympic Agenda 2020 (the IOC's new strategic roadmap) with sustainability as one of its three pillars in 2014*, *IOC sustainability strategy (the Olympic agenda 2030)*, *Legacy Strategic Approach Moving Forward*, and *Sustainability essentials in 2017*, *IOC supplies code in 2018*, and *Olympic Games guide on sustainable sourcing in 2019*.

The Olympic games are identified as an extraordinary opportunity and practice to pursue sustainable development goals in the operation process.⁷⁵ There is a widening

⁷² "London 2012 Pre-Games Sustainability Plan," 2012. BS 8555 Environmental management systems: Guide to the phased implementation of an environmental management system including the use of environmental performance evaluation.

⁷³ ISO 20121 is a management system standard that has been designed to help organisations in the events industry improve the sustainability of their event related activities, products and services. ISO 20121 is based on the earlier British Standard called 'BS 8901 Specification for a Sustainability Management System for Events' which was first developed in 2007. Due to the high level interest in BS 8901, it was decided to create an international version of the standard to coincide with the London 2012 Olympics. <http://www.iso20121.org/>.

⁷⁴ 冯雅男, 孙葆丽, "冬季奥运会可持续发展研究及对北京 2022 年冬奥会的启示," 沈阳体育学院学报 第 36 卷第 5 期 (2017): 1-8.

⁷⁵ The IOC believes in the potential of sport to help achieve eleven of the sustainable development goals (SDGs) established by this UN Agenda 2030: Ensuring healthy lives and promote well-being for all at all ages (SDG 3); Ensure inclusive and quality education for all (SDG 4); Achieve gender equality and empower all women and girls (SDG 5); Promote inclusive and sustainable economic growth, employment and decent work for all (SDG 8); Make cities and human settlements inclusive, safe, resilient and sustainable (SDG 11); Ensure sustainable consumption

range of sustainable objectives, tools in environmental, economic (mainly aiming to promote the local economy and employment, the small-medium entities (SMEs) run by women, indigenous groups, minority, and disadvantaged people, and social issues. Alongside the in-depth development of sustainable practices in the Olympic games, it is worth noting that procurement or sourcing has been recognized as a significant part of the whole life cycle from the ex-ante Olympic Games to the post-games.

1.4 Role of Sustainable Public Procurement and Olympic Games

The term sustainable sourcing is used to purchase Olympic venues, goods, and services. The concept of sourcing more sustainably is not new. Many businesses and sectors have been focusing on environmental and social issues in supply chains for several decades, as to using sourcing activities to meet organizational needs (e.g., products, services) in a way that also results in positive social, environmental, ethical, and economic outcomes.

Suppliers for the Olympic Games are encouraged to take appropriate steps to integrate the relevant requirements of the IOC Supplier Code into their business management practices. IOC Supplier Code is regarded as the supplier's responsibility to meet the IOC's standards in environmental protection, human rights, and ILO worker rights within their supply chain.⁷⁶

In Olympic Games guide of sustainable sourcing issued in 2019, it contains: *(1) how the organization can reduce its impact on society by doing more with less, such as questioning if a purchase is really needed, challenging excessive specifications, renting an item, or buying a service instead of a product; (2) how items are made and sourced, what they are made from, their lifetime use and eventual disposal; (3) how items will be delivered as efficiently as possible with optimal use of packaging that can be reused or recycled; and (4) how people in supply chain communities will be treated and*

and production patterns (SDG 12); Take urgent actions to combat climate change and its impacts (SDG 13); Conserve and sustainably use marine resources and protect and promote the use of terrestrial ecosystems (SDG 14 & 15); and Promote peaceful and inclusive societies for sustainable development (SDG 16). <https://www.olympic.org/cooperation-with-the-un>.

⁷⁶ IOC supplies Code. <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/IOC/What-We-Do/celebrate-olympic-games/Sustainability/Spheres/IOC-Supplier-Code-Final.pdf>.

*ensuring human rights are upheld and respected.*⁷⁷

Olympic Games are recognized as drivers and active initiatives to promote sustainable development. Sustainable procurement has a critical impact on achieving SDGs for the Olympic Games as the international mega-event. The most important reason is that the procurement activities of Olympic Games, especially the Olympic venues and villages, Olympic relevant products and services, rely on public funding, namely, the taxpayer's money of hosting country or cities. Olympic procurement is subject to hosting countries' national public procurement law. Meanwhile, Olympic procurement also is required to comply with environmental and social standards related to IOC's mission.

In the context of Olympic procurement, Olympic Games lay down their own sustainable standards related to environmental and social aspects, human rights in a series of IOC sustainability guidelines. "isomorphism" that individual efforts to deal rationally with uncertainty and constraint often lead, in the aggregate, to "homogeneity in structure, culture, and output."⁷⁸ There can be found a series of similarities in sustainable standards, tools, including implementing international ISO standards, eco-labels, and the life cycle analysis requirement. With reference to the Olympic Games, The similarities and homogeneity in SPP policies, technical standards by IOC have been disseminated to national procurement policies and hosting countries.

In terms of specific Olympic games in different hosting countries, the Torino Winter Olympic Games are the first to adopt green procurement and take environmental considerations into the procurement process. TOROC developed environmental criteria for all the critical categories of the supply chain. Suppliers were required to apply for TOROC environmental specifications applicable to green procurement in the tender process.⁷⁹ In addition, green procurement is that suppliers of goods and services were

⁷⁷ Olympic Games Guide on Sustainable Sourcing, 2019,116. P13.

⁷⁸ Delmas, M. & Blass, V., 2010. Measuring Corporate Environmental Performance: the Trade-Off of Sustainability Ratings. Business Strategy and the Environment, Volume 19, pp. 245-260; Natalie Ashton, the M.A. Degree Thesis of the University of Ottawa. Learning to be Green: A Study of the Olympic Games, 2016, 68. P23.

⁷⁹ University of Studies of Turin – Faculty of Economics, “Corporate Social Responsibility in Sport Torino 2006 Olympic Winter Games,” accessed May 22, 2019, http://www.crrconference.org/Previous_conferences/downloads/2006cappatopennaziopaperfinal.pdf.

selected also considering the ecological quality of products. 40% of the purchases of the Organising Committee were made respecting environmental criteria, from economical light bulbs to paper and low-energy-consumption office equipment, many of the products bear the European Eco-Label in the Report *Corporate Social Responsibility in Sport – Torino 2006 Olympic Winter Games*. Furthermore, TOROC selected ISO 14001 certified suppliers for office equipment and cleaning services and purchased electrical energy from renewable sources to light its offices.⁸⁰ Moreover, it is the first time implementing a life-cycle approach in the Olympic Games.⁸¹

In order to contribute to the commitment of the "Green Olympics," BOCOG applied a series of procurement policies considering the environmental element in purchasing Olympics goods and services. Because of the implementation of green procurement in acquiring construction materials, in designing the facilities, and in providing services, BOCOG issued *the Olympic Project Environmental Protection Guidelines, the Beijing Olympic Hotel Environment Protection Guideline, the Beijing Olympic Organizing Committee Green Office Guideline and the Olympic Project Building Guidelines*, all of these documents playing an essential role in preventing pollution in designing and using Olympic stadiums.⁸² Regulations including *BOCOG Regulations on Goods Purchase and BOCOG Regulations on Games-time Procurement* were issued concerning government procurement, bid and tender, control of large-sum expenditure.

Additionally, there is another slogan, so-called "high-tech Olympics," about the Beijing Olympic Games. Over 20 new technologies were adopted to improve low energy consumption features of the village buildings, including solar heating, solar hot water, solar thermoelectric cogeneration, optical pipes, LED and other green lighting technologies, and double-layer hollow LOW-E glass for the exterior windows. With these technical devices, the buildings in the village use only 3.3 percent of the energy

⁸⁰ University of Studies of Turin – Faculty of Economics, "Corporate Social Responsibility in Sport Torino 2006 Olympic Winter Games," accessed May 22, 2019, http://www.crrconference.org/Previous_conferences/downloads/2006cappatopennaziopaperfinal.pdf.

⁸¹ European Commission. Greening the Torino Winter Olympics : an EU success story. https://ec.europa.eu/commission/presscorner/detail/en/IP_06_26.

⁸² Qiao and Wang, Issues and Challenges in Implementing China's Green Public Procurement Program. *Journal of Environmental Protection*, 2011, 1034-1045. P1039.

consumed in conventional constructions and save energy by 147,000 kilowatt-hours annually.⁸³ To some degree, that technological innovation has been helpful for the green goals in Olympic Games. Thus, there is another possibility to pursue innovation through procurement and achieve the green goal simultaneously ecological innovation, environmental-friendly innovation, and save-energy innovation.

In the 2012 London Olympic Games, LOCOG emphasizes value-for-money in the Olympic procurement process compared to the previous Olympic games. Value-for-money does not mean lowering ambitions to achieve the lowest cost, but economic viability (and the added value that can be achieved through sustainable procurement) be seen as an integral part of overall sustainability.⁸⁴ Besides, LOCOG has tried to encourage and stimulate the local economy and small-medium entities through procurement activities. More than 70 percent of suppliers are micro, small, and medium-sized enterprises, providing 26 percent by value of our procurement program.⁸⁵ In order to institutionalize the sustainable procurement process, LOCOG issued two procurement guides, *LOCOG Sustainable Sourcing Code* and *London 2012 Olympic and Paralympic Sustainable Procurement for Construction Projects*.

As to the hosting countries in the EU and China, there is no question to what extent the Olympic Games achieve Olympism and Olympic mission. The ultimate sustainable development goals, the public procurement legal regimes in the EU and China have played a critical role. They should be attached importance in the future Olympic games, for example, the XXIV Olympic Winter Games in 2022 Beijing-Zhangjiakou and XXV Olympic Winter Games in 2026 Milano Cortina.

2. Aims of Study and Research Questions

Firstly, as has been argued, the evolution of sustainable development has been dynamic over decades. Given sustainable development integrating into national development goals, different governments prioritize different factors and adopt

⁸³ Official Report of the Beijing 2008 Olympic Games: Preparation for the Games. 2008, 326. P246.

⁸⁴ LOCOG, "London 2012 Sustainability Plan," 2012, 104. P13.

⁸⁵ London 2012 Post-Games Sustainability Report, 2012. 70.

corresponding policy preferences in line with their own socio-economic development stage. Secondly, integrating sustainability into the public procurement process and Olympic procurement activities is a dynamic process that is never perfect yet. Thirdly, the procurement activities of the Olympic Games are very complex and encompass a part of public procurement subject to the legal regime under the specific hosting cities. Both IOC and hosting cities regard the Olympic Games as a driver for promoting SDGs or national public goals. Currently, there is very little academic literature addressing the procurement of Olympic Games when Olympic Games play a critical role in promoting SDGs. On the other hand, because the Olympic Games are held in different countries every four years, without a doubt, Olympic procurement is influenced by the specific legal system.

The EU, as a developed economy, makes an enormous effort to promote SDGs or EU goals by public procurement. As the biggest developing country, China has recognized the power of public procurement to promote SDGs and national goals. Moreover, there are many EU cities as the hosting cities of the Olympic Games. China has held one Summer Olympic Games in 2008 and will organize the Winter Olympic Games in 2022.

The comparative research contributes to exploring the implementation of SPP under the different legal regimes and how different public procurement legal frameworks play a role in the procurement activities mega-event (Olympic Games) for pursuing SDGs and national goals. Moreover, this thesis also explores the potential that China has not just adopted and adapted international best practices but contributed decisively to their development. So, this thesis aims to look into the role of China in fostering SPP at home and on the global stage.

Thus, this thesis engages three specific questions. Firstly, what is sustainable public procurement? This thesis answers it from two aspects: one related to SPP definition, mechanism, and policy tools from the international perspective; the second is related to comparative law between the EU and China. Secondly, what can be learned about the space and scope for SPP from comparing China and the EU public

procurement legal frameworks and implementation rules, specifically according to the case study (Olympic Games)? Thirdly, in order to achieve the aim of the study, the last question explores the role China plays in fostering sustainable development in the domestic and international markets.

3. Methodology

In order to analyze the public procurement legal system in the EU and China relating to the environmental, social, and economic policies in the procurement process, this thesis relies upon the doctrinal research method, so-called "black-letter" research, which provides systematic research of the rules governing a particular legal category, analyses the relationship between rules, examines areas of difficulty and, perhaps, predicts future developments.⁸⁶ In terms of the research questions detailed, which is how the public procurement legal regimes are evolved in the context of political commitment, the socio-economic environment in the EU and China, and how the current public procurement legal system is applied at present in the EU and China. This thesis will explore the legislation, including the European Union treaties, the public procurement directives, sector laws, and soft laws in the EU, and the counterpart Chinese public procurement legal system.

Besides, it is necessary to clarify that the EU as a political and economic union is comprised of a series of institutions, mainly the four important institutions including European Parliament directly-elected EU body with legislative, supervisory, and budgetary responsibilities, European Council determining the general political direction and priorities of the European Union, Council of the European Union expressing the voice of EU member governments, adopting EU laws and coordinating EU policies, Court of Justice of the European Union (CJEU) ensuring EU law is interpreted and applied the same in every EU country, and ensuring countries and EU

⁸⁶ Michael Pendleton, "Rejecting the Dominance of Empirical Legal Scholarship--A Better Way of Choosing, Researching and Writing a Scholarly Article," in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law*, (Edinburgh University Press, 1990), 231-252.

institutions abide by EU law.⁸⁷ The People's Republic of China (RPC) operates as a unitary national state where legislation emanates from central Beijing to which sub-national units of governments must adhere.⁸⁸ The laws enacted by the centralized government fail to anticipate the possibility that certain sustainable development interests might diverge sharply from those of the economic interests for sub-national government in some cases and create a major obstacle to strict enforcement of both national and local public procurement legislation, not only because of different local regulations and rules but also because of discretionary application of the law from region to region.⁸⁹ This thesis explores the EU public procurement legislation rather than any specific member states and Chinese government procurement legal regime. Thanks to the double-line public procurement law pattern, two government departments regulate the public procurement system, MOF and NDRC, in the Chinese centralized government public procurement legislation.

Meanwhile, this thesis exerts a comparative legal research method, which was not so much the solution in one jurisdiction as to how the functionally equivalent need was perceived and addressed in another jurisdiction.⁹⁰ Comparative law research facilitates understanding the operation of legal systems and their impact on public policy formulation in an era of global interdependence.⁹¹ In this sense, this thesis engages in the two work sections, on the one hand, the comparative legal research in the EU and China, on the other hand, the procurement policies among the different Olympics Games, including but not limited to Olympic Games sustainable development work papers, procurement guides.

In addition to the theoretical research and comparative analysis methods, this thesis also engages in a case study of procurement activity in the Olympic Games, which is

⁸⁷ The website of European Union. https://europa.eu/european-union/about-eu/institutions-bodies_en.

⁸⁸ William C. Jones, Lester Ross, and Mitchell A. Silk, "Environmental Law and Policy in the People's Republic of China," *The Journal of Asian Studies*, no. 3 (2006), 617.

⁸⁹ Sun, "Lessons From China's WTO Accession Negotiations: A Look at Likely Implementation Problems Ahead." 185-217. in Nico, Schrijver; Friedl, Weiss, eds. *International Law and Sustainable Development: Principle and Practice*. (Koninklijke Brill NV, Leiden, Netherlands. 2004) 750.

⁹⁰ Michael Pendleton, "Rejecting the Dominance of Empirical Legal Scholarship-A Better Way of Choosing, Researching and Writing a Scholarly Article," in Mike McConville and Wing Hong Chui (eds), *Second Research Methods for Law*, (Edinburgh University Press, 2017), 330.

⁹¹ McConville and Chui, "Introduction and Overview." 1-17. in *Research Methods for Law*, ed. Mike McConville and Wing Hong Chui, (Edinburgh University Press, 2017), 330.

committed to the best sustainable development practices and aims to develop the highest adoption of sustainable procurement policies. Thus, there are two points that this thesis wants to explore: firstly, to what extent sustainable procurement policies could achieve the Olympic Games' sustainable development goals? Secondly and importantly, whether the SPP legal system could be coordinated to the Olympic sustainable procurement guide or not, to what extent public procurement legal regimes can provide legal free space or discretionary authority to implement sustainable policies of Olympic Games in the EU and China.

4. The roadmap of the research

This thesis will contain seven chapters. Chapter one consists of background which premises the relationship between sustainable development and public procurement and how is the evolution of SPP. Chapter one also elucidates the aim of the study, research questions, and roadmap.

Chapter two: *Coordination of Sustainable Development and Public Procurement: What is Sustainable Public Procurement?* This chapter looks into what is sustainable public procurement by coordination of sustainable development and public procurement from the global perspective. First, chapter two explores the definition from the global perspective on individual international and regional institutions and national level. Second, this chapter examines the theoretical mechanism of SPP by (1) in the context of good governance, market mechanism, and sustainable development; (2) the balance among economic, environmental, and social factors from the horizontal perspective; (3) value for money, Life-cycle analysis and sustainable supply chain from the vertical perspective. Third, chapter two focuses on answering the scope of SPP from the three dimensions: economic, environmental, and social factors.

Chapter three: *Sustainable Public Procurement in the Context of the Olympic Games: What role do the International Organizations and National Procurement Policies play in Olympic Procurement?* The main objective of this chapter is to examine the evolution of sustainable development under the Olympic Movement. And it has to

be answered what the Olympic procurement is and how sustainable Olympic procurement is exercised under the different public procurement legal frameworks.

Chapter four: *The Sustainable Strategies under the Chinese Government Procurement System*. It is necessary to examine the sustainable development principle integrated into the Chinese public procurement legal system. It will also examine the state quo of the Chinese public procurement market, the public procurement legal framework, including the double-line public procurement law (Chinese government procurement Law and Bidding Law), the administrative regulations enacted by the Chinese centralized government state council, the administrative department regulations down to regulations issued by state council (mainly MOF and NDRC). Subsequently, it explores the SPP policies in China, the implementation methods, social procurement (the initiatives of eradicating poverty, promoting undeveloped national minority region economy by public procurement, improving the employment opportunities to disadvantaged people). The latest reform proposal of the Chinese government procurement law will be examined in this chapter.

Chapter five: *Sustainable Public Procurement under the EU Legal System*. This chapter analyzes the regulatory mechanism of sustainable public procurement (SPP) under the EU law, which focuses on the environmental goals and the implementation approach, including social goals, innovation policy, and SMEs comprehensively. And this chapter examines the value for money and the life cycle analysis integrating into the SPP policy under the EU public procurement legal framework.

Chapter six: *Sustainable Public Procurement Implementation In The EU and China With the Olympic Games As The Case Study*. This chapter looks into the sustainable procurement implementation of the Olympic Games in the 2006 Torino winter Olympic Games, 2012 London Summer Olympic Games, 2008 Beijing summer Olympic Games, and 2022 Beijing-Zhangjiajie winter Olympic Games. And it aims to explore sustainable procurement implementation and to what extent the public procurement legal regime plays a role in promoting sustainable Olympic procurement in specific hosting cities. Moreover, How the hosting cities emphasize the specific sustainable

goals related to economic, environmental, and social issues in the background of their public procurement legal system.

Chapter seven: *The Constraints, Challenges, Advantages, and Contributions of Chinese Public Procurement compared to EU SPP*. Chapter seven aims to examine the constraints, challenges, advantages, and contributions of Chinese public procurement by comparing with the EU public procurement legal system and the good practices in the Olympic games.

Chapter 2: Coordination of Sustainable Development and Public

Procurement: What is Sustainable Public Procurement?

1. Introduction

For a long time, public procurement has been seen as a useful tool by taking advantage of purchasing power to accomplish some specific public goals. Thus, public bodies are encouraged to buy goods, services, and works in a way by which it could boost local economic development, reduce environmental footprint, and gain social benefits sustainably and harmoniously.

Currently, the approach achieving environmental ("green public procurement") and social ("social procurement" or "social responsibility public procurement") objectives via public purchasing have been acknowledged and been used widely not only in the law-make and policy-make layers but also in empirical and practical experiences around the world. With the evolution of the conception of Sustainable Development (SD) and the promotion of Sustainable Development Goals (SDGs), seemingly, the combination term "Sustainable Public Procurement (SPP)" with SD/SDGs and public procurement has been put in the center of the stage and is drawing the more and more attention.

Based on the treaty, conventions, and soft law about public procurement existing at the international level, there are also many guidelines, policies, and international standards regarding environmental protection and human rights issued by different international organizations. To a large extent, those mentioned have a significant impact on the relationship between SD and Public Procurement both in global (not only guidelines but also procurement policies of specific international organizations), regional (for example, EU), National, and local levels.

Thanks to the complication of SPP from its definition, scopes, the specific implementation tools at international, regional, national, and local levels, there has been a large number of discussions from many points of perception to implement SPP in

different jurisprudence effectively and efficiently. It is worth rethinking and exploring the most crucial question of the ultimate objective and core elements in SPP.

So, what exactly is sustainable public procurement? First and foremost, in section 2, this chapter explores the definition and mechanism of SPP. In other words, what elements affect the connotation of SPP in a broad background instead of narrowing on individual international and regional institutions, specific countries, and jurisprudences. Secondly, in section 3, from economic, environmental, and social aspects, this chapter illuminates the scope of SPP, that is to say, to what extent the measures taken are regarded as SPP generally. Lastly, it makes a conclusion.

2. Definition and Mechanism

2.1 Definition

2.1.1 UN system

the UN system is also a major buyer at the global stage. Given the scale of its procurement activities, the UN has the potential to motivate markets to innovate and contribute to achieving global goals within its existing legislative framework and procurement guiding principles. In *United Nations Procurement Manual (REF. NO.: DOS/2020.9)*, The UN has been encouraged to integrate sustainable development practices into its procurement operations in support of the sustainable development agenda. Sustainable procurement is seen as incorporating the social, economic, and environmental principles of sustainable development in support of SDG 12 and target 12.7 into the procurement activities.⁹²

⁹² Department of Operational Support Office of Supply Chain Management Procurement Division “United Nations Procurement Manual,” 2020, 287. <https://www.un.org/Depts/ptd/about-us/procurement-manual>. P156. Integrating the economic dimension of the sustainable agenda means to strive for the best value for money and, in particular, the whole life costs of a product or service, as well as for wider support for economic development; Considering its environmental dimension is to strive for reduction of the negative environmental impact a product or service has over its whole life-cycle, including issues such as water, land and air pollution, waste generation and disposal options, environmental risks from wastewater and hazardous waste, and greenhouse gas emissions that contribute to climate change, preservation of natural ecosystems, waste reduction and management, and air and water pollution; The social dimension of the sustainable agenda considers the promotion of human rights, elimination of child labour, fair labour conditions, gender equality, and wider ethical issues in the supply chain. For instance, to enable the implementation of the Convention on the Rights of Persons with Disabilities, as well as the achievement of the Sustainable

In the *Procurement Manual of the United Nations Office for Project Services (UNOPS) (Revision 6.1, 2019)*, Sustainable procurement (SP) is the practice of integrating requirements, specifications, and criteria that are compatible with and in favor of the protection of the environment, social progress and the support of economic development, primarily by seeking resource efficiency, improving the quality of products and services and ultimately optimizing costs.⁹³ The market influence of SP can be used as a strategic signal to advance further positive action on a wide range of sustainability issues, and policy objectives including, but are not limited to: the protection of labor rights, mitigation of adverse environmental impacts, poverty eradication, support for local development, and the achievement of the Sustainable Development Goals.⁹⁴ The important reasons for implementing SPP include a) enhanced risk management; b) innovation; c) long-term development of markets; d) alignment with Sustainable Development Goals and 2030 Agenda.⁹⁵

In addition, In 2011, four organizations in the UN system drafted "*Buying for a Better World. A Guide for Sustainable Procurement for the UN System*,"⁹⁶ SPP is recognized as one important aspect of sustainability. SPP considers public procurement's economic, social/labor, and environmental consequences in all its stages.⁹⁷

All these Guides also explain how to apply sustainability principles at each stage of the procurement process, namely procurement planning, requirement definition,

Development Goals, the United Nations Disability Inclusion Strategy calls for specific action to raise the standards of the United Nations performance on disability inclusion across its operations, such as the inclusion of accessibility considerations into relevant procurement activities.

⁹³ United Nations Office for Project Services. "Procurement Manual of UNOPS," 2019, 188. www.unops.org. P161.

⁹⁴ United Nations Office for Project Services. "Procurement Manual of UNOPS," 2019, 188. www.unops.org. P161.

⁹⁵ United Nations Office for Project Services. "Procurement Manual of UNOPS," 2019, 188. www.unops.org. P162.

⁹⁶ These international organisations are: i) the United Nations Environmental Programme (UNEP), whose mission is to 'provide leadership and encourage partnership in caring for the environment by inspiring, informing, and enabling nations and peoples to improve their quality of life without compromising that of future generations'; ii) the UN Office for Project Services (UNOPS) which is the central resource for the UN system in procurement and contract management, including civil works and infrastructures; iii) the International Labour Organisation (ILO) which is 'responsible for drawing up and overseeing international labour standards'; and iv) the ITC-ILO which is the training centre for ILO with a large campus in Turin (Italy) and a unit devoting to sustainable development and governance focusing, among other aspects, on public procurement.

⁹⁷ Whereas the social and labour factors include 'recognizing equality and diversity, observing core labour standards, ensuring fair working conditions, increasing employment and skills, developing local communities and their physical infrastructure', the environmental factors include 'natural resource use and water scarcity, emissions to air, climate change and biodiversity over the whole product life cycle'. the United Nations Environment Programme. "Buying for a Better World: A Guide on Sustainable Procurement for the UN System," 2011, 76. https://www.unep.org/areas/public/downloads/BFABW_Final_web.pdf. P13.

sourcing, evaluation, and contract management.⁹⁸ Also, procurement principles form the foundation for the guiding principles of public procurement, including a), Best value for money; b), Fairness, integrity, and transparency; c), Effective competition; d) The best interest of UNOPS and its partners (Best Interest of the United Nations).⁹⁹ Undertaking procurement in the interest of UN (UNOPS and its partners) means carrying out procurement activities in a manner that best enables UNOPS and its partners to reach the general and specific objectives of the project agreements in compliance with applicable procurement procedures.¹⁰⁰ Sustainable procurement is clearly in the best interest of United Nations organizations since it supports the alignment of procurement to their mandate and to their specific project objectives while ensuring value and efficiency are achieved.¹⁰¹

In summary, as has been noticed, SPP in the UN system is defined from the SDGs and the three dimensions: economic, social progress, and environmental consideration. The key point is that SPP makes an effort in the harmonization of economic development, social progress, and environmental protection, given UN and its partners as the major market participant globally. However, High-Level Committee on Management Procurement Network (HLCM-PN) identify sustainable procurement indicators by analyzing eight volunteering UN Organizations in 157 real-life tenders. The indicators are categorized as 17 aspects based on each pillar of sustainable development: environmental, social, and economic aspects.¹⁰² In doing so, benchmarking and measuring SP implementation based on quantifiable indicators play

⁹⁸ The United Nations Environment Programme. "Buying for a Better World: A Guide on Sustainable Procurement for the UN System," 2011, 76. https://www.ungm.org/Areas/Public/Downloads/BFABW_Final_web.pdf. P33; United Nations Office for Project Services. "Procurement Manual of UNOPS," 2019, 188. www.unops.org. P163-P166; Department of Operational Support Office of Supply Chain Management Procurement Division "United Nations Procurement Manual," 2020, 287. <https://www.un.org/Depts/ptd/about-us/procurement-manual>. P41.

⁹⁹ United Nations Office for Project Services. "Procurement Manual of UNOPS," 2019, 188. P14; Department of Operational Support Office of Supply Chain Management Procurement Division "United Nations Procurement Manual," 2020, 287. P11-P13.

¹⁰⁰ Department of Operational Support Office of Supply Chain Management Procurement Division "United Nations Procurement Manual," 2020, 287. P16.

¹⁰¹ Department of Operational Support Office of Supply Chain Management Procurement Division "United Nations Procurement Manual," 2020, 287. P16.

¹⁰² The indicators include 1); Prevention of pollution; 2), Sustainable resource use; 3), Climate change mitigation and adaptation; 4), Protection of the environment, biodiversity and restoration of natural habitats; 5), Human rights and Labour issues; 6), Inclusion of persons with disabilities; 7), Gender issues; 8), Social health and well-being; 9), Whole life cycle cost; 10), Local communities and SMEs; 11); Promoting sustainability throughout the supply chain; Generic additional indicators.

<https://www.ungm.org/Shared/KnowledgeCenter/Pages/SustainableProcurementIndicatorProject>.

an important role in creating a common framework among UN agencies.

2.1.2 UNEP as the major driver for sustainable public procurement

Besides the procurement activities of the UN (as one major buyer) and working to recast its own consumption method following SPP principles, the UN is involved in encouraging and helping the implementation of SPP and sharing sustainable procurement experience in developed and developing countries. The UN Environment Programme (UNEP) is the leading UN organization working on SPP and sustainability issues.

A leading early initiative was in the framework of the Marrakech Process, a global multi-stakeholder process to support the implementation of SCP. The process responds to the Johannesburg Plan of Implementation (World Summit on Sustainable Development 2002) call to support the regional and national initiatives to accelerate the shift towards SCP patterns. The first meeting took place in Marrakech, Morocco, in June 2003, hence the name of the process. In 2005 an international Task Force on SPP was launched at the initiative of the Swiss government in the framework of the Marrakech Process. It created an approach for implementing SPP in both developed and developing countries, known as the Marrakech Task Force (MTF) Approach to SPP. The mandate of the MTF on SPP ended in 2011, and UNEP is now the custodian of the MTF Approach to sustainable public procurement.¹⁰³

In 2012 UNEP published the *Sustainable Public Procurement Implementation Guidelines*. SPP practices are based on practical experience in applying the MTF on SPP approach in a number of countries.¹⁰⁴ In addition, sustainable procurement (SP) is defined as a process whereby organizations 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 organization, but also to society and the economy,

¹⁰³ <https://www.unep.org/explore-topics/resource-efficiency/what-we-do/sustainable-public-procurement-initiative>.

¹⁰⁴ United Nations Environment Programme (UNEP). "Sustainable Public Procurement Implementation Guidelines: Introducing UNEP's Approach."

whilst minimizing damage to the environment in this guideline.¹⁰⁵

UNEP has launched the 10YFP initiative at the Rio+20 UN Conference on Sustainable Development in 2012, aiming to enhance international cooperation to accelerate the shift towards sustainable consumption and production (SCP) in both developed and developing countries.¹⁰⁶ The SPP Programme of the 10YFP was launched on 1 April 2014. It brings together a number of governments, local authorities, the business sector, and civil society from around the world that are interested in collectively promoting the supply and demand of sustainable products through SPP.¹⁰⁷ UNEP published its second *Global Review of Sustainable Public Procurement*, examining the state of SPP policies and practices undertaken by national governments worldwide in the previous five years based on research conducted between 2015 and 2016 among 41 national governments and more than 200 SPP stakeholders in 2017.¹⁰⁸ SPP is acknowledged as the umbrella term including green purchasing (green public procurement), environmentally preferable purchasing, or socially responsible procurement.¹⁰⁹

The 2030 Agenda for Sustainable Development, adopted by all the United Nations Member States in 2015, seeks to build on 17 Sustainable Development Goals (SDGs) and 169 targets.¹¹⁰ Within the framework of the Sustainable Development Goals (SDGs), there is an opportunity to provide and promote such a measure, and the 10YFP Sustainable Public Procurement Programme will work collaboratively with its partners to generate a measurement framework for the SDG 12.7 - promoting public procurement practices that are sustainable and aligned with national policies and priorities.¹¹¹

¹⁰⁵ United Nations Environment Programme (UNEP). "Sustainable Public Procurement Implementation Guidelines: Introducing UNEP's Approach," 2012. P7.

¹⁰⁶ <https://www.unep.org/explore-topics/resource-efficiency/what-we-do/one-planet-network/10yfp-10-year-framework-programmes>.

¹⁰⁷ United Nations Environment Programme (UNEP). "Global Review of Sustainable Public Procurement," 2017, <http://wedocs.unep.org/handle/20.500.11822/20919>. P2.

¹⁰⁸ United Nations Environment Programme (UNEP). "Global Review of Sustainable Public Procurement," 2017, <http://wedocs.unep.org/handle/20.500.11822/20919>.

¹⁰⁹ United Nations Environment Programme (UNEP). "Global Review of Sustainable Public Procurement," 2017, <http://wedocs.unep.org/handle/20.500.11822/20919>. P1.

¹¹⁰ <https://www.unep.org/explore-topics/resource-efficiency/what-we-do/sustainable-public-procurement/sdg-127-target-and>.

¹¹¹ United Nations Environment Programme (UNEP). "Global Review of Sustainable Public Procurement," 2017,

As stated in the *Global Review of Sustainable Public Procurement* in 2017, Although SPP is understood mainly from the three dimensions: economic development, environmental concerns, and social progress, the scope of SPP is widening to include multiple sustainability objectives increasingly.

SPP policies are still most commonly associated with environmental concerns, but a broader scope is progressively being adopted. Public and private procurers increasingly support the idea that sustainable procurement is about more than just purchasing more environmentally friendly products. Most national governments that participated in this study have SPP commitments that cover both environmental and socio-economic issues. Some governments, particularly in Asia, focus exclusively on environmental issues and are not yet considering the socio-economic dimension. However, others prioritize an impressive range of socio-economic and ethical issues in addition to focusing on the environment. As in 2013, energy conservation continues to be a top priority globally, along with resource efficiency and climate change mitigation. Among the main socio-economic issue areas, diversity and equality have grown in prominence compared to 2013. This suggests evolution from a focus on the social issues most closely tied to economic performance, such as employment and business development, towards the inclusion of human well-being and social justice issues.¹¹²

2.1.3 OECD's effort on SPP

The 2015 recommendation of the OECD Working Party on Leading Practitioners on Public Procurement (LPP) refers to public procurement as a tool to deliver what are (still often) called secondary policy objectives such as sustainable green growth, the development of small and medium-sized enterprises, innovation, standards for responsible business conduct or broader industrial policy objectives.¹¹³ And, the new 2018 OECD-MAPS (Methodology for Assessing Procurement Systems) has been defined itself as a universal tool to catalyze and accelerate the implementation of modern, efficient, sustainable, and more inclusive public procurement systems in all countries.¹¹⁴ In light of the methodology for assessing procurement systems, value for

<http://wedocs.unep.org/handle/20.500.11822/20919>. P56.

¹¹² United Nations Environment Programme (UNEP). "Global Review of Sustainable Public Procurement," 2017, <http://wedocs.unep.org/handle/20.500.11822/20919>. PIX.

¹¹³ <https://www.iisd.org/articles/how-implement-strategic-smart-sustainable-public-procurement>.

¹¹⁴ Organisation for Economic Co-operation and Development (OECD). "Methodology for Assessing Procurement Systems (MAPS)," 2018, <https://www.oecd.org/gov/public-procurement/Methodology-Assessment-Procurement->

money reflects the basic goal of every procurement system, providing the required goods, works, and services in an economical, efficient, effective, and sustainable way.¹¹⁵ Good governance includes the reflection of horizontal procurement goals, policy considerations, and integrity principles on the way public procurement is conducted and how reforms to procurement are implemented.¹¹⁶

The new version of MAPS in 2018 is timely in the wake of the Sustainable Development Goals (SDGs) launch. MAPS is related to Goal 12, which calls for the promotion of sustainable procurement practices in line with national priorities and policies.¹¹⁷ According to the direct reference of SPP in MAPS sub-indicator 3(a), SPP is incorporated in programs that are part of the country's sustainable development strategy, and their objectives should be consistent with the objectives of public procurement, such as economy, efficiency, and transparency.¹¹⁸

In addition, as the indicators of OECD-MAPS assessing public procurement system, horizontal policy goals are the crucial considerations for assessing SPP.

Any of a variety of objectives of an economic, environmental and social nature (such as sustainable green growth, the development of small and medium-sized enterprises, innovation, standards for responsible business conduct or broader industrial policy objectives), which governments increasingly pursue through use of procurement as a policy lever (sometimes referred to as "secondary" policies, in contrast with the so-called "primary" objectives of delivering goods and services in a timely, economical and efficient manner).¹¹⁹

In addition, the use of public procurement to boost innovation is still a new policy field in the public sector. In *Public Procurement for Innovation: Good Practices and*

System-Revised-Draft-July-2016.pdf0.

¹¹⁵ Organisation for Economic Co-operation and Development (OECD). "Methodology for Assessing Procurement Systems (MAPS)," 2018, <https://www.oecd.org/gov/public-procurement/Methodology-Assessment-Procurement-System-Revised-Draft-July-2016.pdf0>. Foreword.

¹¹⁶ Organisation for Economic Co-operation and Development (OECD). "Methodology for Assessing Procurement Systems (MAPS)," 2018, <https://www.oecd.org/gov/public-procurement/Methodology-Assessment-Procurement-System-Revised-Draft-July-2016.pdf0>. Foreword.

¹¹⁷ Organisation for Economic Co-operation and Development (OECD). "Methodology for Assessing Procurement Systems (MAPS)," 2018, <https://www.oecd.org/gov/public-procurement/Methodology-Assessment-Procurement-System-Revised-Draft-July-2016.pdf0>. P2.

¹¹⁸ Organisation for Economic Co-operation and Development (OECD). "Methodology for Assessing Procurement Systems (MAPS)," 2018, <https://www.oecd.org/gov/public-procurement/Methodology-Assessment-Procurement-System-Revised-Draft-July-2016.pdf0>. P33.

¹¹⁹ Organisation for Economic Cooperation and Development (OECD). "Methodology for Assessing Procurement Systems (MAPS)," 2018, <https://www.oecd.org/gov/public-procurement/Methodology-Assessment-Procurement-System-Revised-Draft-July-2016.pdf0>. P77.

Strategies published by OECD in 2017, Public procurement for innovation is defined as any kind of public procurement practice (pre-commercial or commercial) intended to stimulate innovation through research and development the market uptake of innovative products and services (following the approach of the European Research Area and Innovation Committee).¹²⁰

2.1.4 International Olympic committee and sustainable procurement

In 2019, the International Olympic Committee (IOC) drew up Olympic Games Guide on Sustainable Sourcing to help OCOGs meet the IOC's sustainable sourcing requirements and expectations and move towards a more consistent and sustainable approach to sourcing goods and services for the Games. As this guideline states, the term 'sourcing' is favored in the context of the Olympic Games compared to procurement. Sourcing is the process (which may be formal or informal) by which goods and services are identified and then bought or acquired from partners, licensees, and suppliers, including branded merchandise, gifts, and give-aways, sole supplier deals, and sponsorship.¹²¹ Sustainable sourcing is about using sourcing activities to meet organizational needs (e.g., products, services) to result in positive social, environmental, ethical, and economic outcomes.¹²²

In addition, IOC is also a major buyer. IOC established *IOC Supplier Code* outlining the IOC's minimal requirements from its suppliers – defined as any third party providing or intending to provide goods and services to the IOC. This Code requires that the IOC follows a responsible sourcing approach by which the sourcing of products and services is carried out with environmental, social, and ethical issues in mind.¹²³

In *IOC supplier Code*, environmental, social, and ethical issues include human rights (UN Guiding Principles on Business and Human Rights), ILO labor standards

¹²⁰ OECD, *Public Procurement for Innovation: Good Practices and Strategies*, 2017, 184. <https://doi.org/10.1787/9789264265820-en>. P18.

¹²¹ International Olympic Committee (IOC). "Olympic Games Guide on Sustainable Sourcing," 2019. 116. www.olympic.org. P14.

¹²² International Olympic Committee (IOC). "Olympic Games Guide on Sustainable Sourcing," 2019. 116. www.olympic.org. P13.

¹²³ International Olympic Committee (IOC). "IOC Supplier Code," 2018. 6.

(forced labor, child labor, freedom of association and effective recognition of the right to collective bargaining, discrimination, harassment, and abuse, health and safety, wages, benefits, and terms of employment, working hours), and environmental considerations.¹²⁴

2.1.5 ISO 20400: sustainable procurement guidance

ISO 20400 is aimed at organizations of all sizes, in both the public and private sectors, as it applies to virtually every purchasing decision from office supplies and caterers to energy, providers, building materials, and more. SPP is defined as the process of making purchasing decisions that meet an organization's needs for goods and services in a way that benefits not only the organization but society as a whole while minimizing its impact on the environment, also ensuring that the working conditions of its suppliers' employees are decent, the products or services purchased are sustainable, where possible, and that socio-economic issues, such as inequality and poverty, are addressed.¹²⁵

2.2 SPP Mechanism

2.2.1 SPP in the context of good governance, market mechanism, and sustainable development

The concept of good governance is subject to many interpretations by different international organizations, for example, the UN, OECD, World Bank, European Commission. There is no "one-size-fits-all" concept of good governance. Good governance refers to government management in a manner that is essentially free of abuse and corruption and with due regard for the rule of law.¹²⁶ The eight characteristics, which are participation, transparency, the rule of law, responsiveness, consensus-

¹²⁴ International Olympic Committee (IOC). "IOC Supplier Code," 2018.

¹²⁵ https://www.iso.org/files/live/sites/isoorg/files/store/en/ISO%2020400_Sustainable_procur.pdf.

¹²⁶ Organisation for Economic Cooperation and Development (OECD). "Methodology for Assessing Procurement Systems (MAPS)," 2018, <https://www.oecd.org/gov/public-procurement/Methodology-Assessment-Procurement-System-Revised-Draft-July-2016.pdf>. P77.

oriented, equity and inclusiveness, effectiveness and efficiency, and accountability, have affected international, national, and local law-making, policy-making, and decision-making processes by which those are implemented.¹²⁷ Except for those eight core characteristics, openness, consistency, and coherence in policy formation, the needs of people are also recognized.¹²⁸

The rule of law is the overarching principle. It is ubiquitous that international, regional, and national laws and non-binding documents are increasingly incorporating references to sustainable development, for example, WTO-GPA, a series of UN conventions, EU treaties, the international organization policy documents, and the constitutionalization of SD in national law.¹²⁹ The two characteristics: equity and inclusive, needs of people show and require human rights, which is one pillar of sustainable development. The concept of effectiveness and efficiency in good governance also covers the sustainable use of natural resources and the protection of the environment. Participation can be understood in two aspects. On the one hand, individuals should participate in the sustainable development process in the public and private sectors. On the other hand, all groups without discriminating nationality, ethnicity, gender, sex-orientation, disabled, should be encouraged to have a decent life and enjoy development rights, human dignity.¹³⁰

The global development model has been changing in three different periods: emphasizing pure economic growth before the 1980s, focusing on environmental issues from the 1980s to 2000, and the 2030 SDGs Agenda after 2015.¹³¹ The global

¹²⁷ United Nations Economic and Social Commission for Asia and the Pacific, "What is good governance?". Available from <http://www.unescap.org/sites/default/files/good-governance.pdf>.

¹²⁸ Good governance is the respect for the rule of law, openness, transparency and accountability to democratic institutions; fairness and equity in dealings with citizens, including mechanisms for consultation and participation; efficient, effective services; clear, transparent and applicable laws and regulations; consistency and coherence in policy formation; and high standards of ethical behaviour. OECD <http://www.oecd.org/>; Transparency, responsibility, accountability, participation and responsiveness to the needs of people. Commission on Human Rights <http://www.unhchr.ch/>.

¹²⁹ Voigt Christina, "Origins and Development of the Concept of Sustainable Development in International Law," in Voigt Christina (ed) Sustainable Development As a Principle of International Law: Resolving Measures and WTO Law, (Koninklijke Brill NV, Leiden, Netherlands, 2008).

¹³⁰ Article 1, The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. Article 3, (1): The human person is the central subject of development and should be the active participant and beneficiary of the right to development. in United Nations. Declaration on the Right to Development. Adopted by General Assembly resolution 41/128 of 4 December 1986. <https://www.ohchr.org/en/professionalinterest/pages/righttodevelopment.aspx>.

¹³¹ Lyad Dhaoui, "Good Governance for Sustainable Development," 2019. <https://mpira.ub.uni->

development model has shifted focus from the model of economic growth to the new model of sustainable development.¹³² SDGs as an ultimate pursuit for human beings, the principles of good governance guarantee its achievement in the process, even though it is not "one-size-fits-all."

Procurement activity is a process in which public bodies buy goods from private market participants. Public procurement is a field where the principles of both public and private law are relevant. Good governance has an all-around impact on public procurement. From the rule of law perspective, good governance requires to be fair, equitable, transparent, competitive and cost-effective in a measurable, quantifiable and verifiable manner.¹³³ Public procurement is a fundamental and integral part of governance and the public financial system.¹³⁴ The principles of good governance have been embedded into the public procurement legal systems. Increasingly, national governments and supranational organizations view public procurement as a means of bringing about social and economic reform and promoting trade and foreign investment. Thus, the environmental and social considerations also have been seen as legal elements in the public procurement legal framework. When it comes to the relationship between good governance and public procurement, public procurement is regarded as a pillar of good governance.¹³⁵

2.2.2 Balance among economic, environmental, and social factors from the horizontal perspective

The primary objective of procurement is seen to be the purchase on competitive terms of a product, work, or service satisfying a particular functional need by

[muenchen.de/92544/1/MPRA_paper_92544.pdf](https://www.muenchen.de/92544/1/MPRA_paper_92544.pdf).

¹³² Ilija Stojanović, Jovo Ateljević, and R. Stevan Stević, "Good Governance As a Tool of Sustainable Development," *European Journal of Sustainable Development*, no. 4 (2016): 558–73, <https://doi.org/10.14207/ejsd.2016.v5n4p558>.

¹³³ Ron Watermeyer, "Linking Development Deliverables to Public Sector Contracts," in Travis K. Taylor and Murat A. Yulek (eds), *Designing Public Procurement Policy in Developing Countries: How to Foster Technology Transfer and Industrialization in the Global Economy*, (Springer, 2012), 141–157.

¹³⁴ Organization for Economic Cooperation and Development (OECD). *OECD Global Forum on Governance: Fighting Corruption and Promoting Integrity in Public Procurement*. https://www.oecd-ilibrary.org/governance/fighting-corruption-and-promoting-integrity-in-public-procurement_9789264014008-en.

¹³⁵ Wendy Phillips, Nigel Caldwell, and Guy Callender, "Public Procurement: A Pillar of Good Governance?" in Louise Knight, Christine Harland, Jan Telgen (eds), *Public Procurement: International Cases and Commentary*, (Routledge, 2007), 138–149.

maximizing economy and efficiency, promoting competition among suppliers and contractors, providing for the fair and equitable treatment of all suppliers and contractors, achieving transparency, and value for money.¹³⁶ On the one hand, this functional need is satisfied in a way by which it requires openness, transparency, competitiveness, anti-discrimination, and value for money. On the other hand, it could form a large market driving power to facilitate specific industrial development, supporting small-medium enterprises (SMEs), innovative industries, and domestic firms. At some point, some environmental considerations in public procurement are connected to industrial policies hand in hand, particularly ecological, environmental-friendly, and energy-conservative technologies. It can help to further a new industrial revolution by introducing cleaner production, pollution prevention processes, and cleaner technologies.¹³⁷ Those have been seen as economic/industrial policies in public procurement.¹³⁸ Also, economic/industrial policies are of the most importance. Thus, public procurement's "tool" characteristic has been confirmed and applied over decades.

However, in addition to economic/industrial policies, environmental and social policies have been implemented in the international and national public procurement practices. In the debates between primary and non-primary objective perspectives, economic/industrial policies are seen as the primary goal.¹³⁹ The economic/industrial policies could be understood in two aspects. First, from protecting the market-based economy, public bodies must make a purchasing choice in a transparent, open, anti-discriminative, competitive way in the procurement process.¹⁴⁰ Second, in light of the national industry protectionism, public procurement is used to protect the national

¹³⁶ Sue Arrowsmith and Peter Kunzlik, "Public Procurement and Horizontal Policies in EC Law: General Principle," in Sue Arrowsmith and Peter Kunzlik (eds), *Social and Environmental Policies in EC Procurement Law New Directives and New Directions*, (New York: Cambridge University Press, 2009), 9–55. P13.

¹³⁷ United Nations Environment Programme (UNEP), *Sustainable Public Procurement: A Global Review, Final Report*, 2013.78.P49.

¹³⁸ Sue Arrowsmith, *The Law of Public and Utilities Procurement Regulation in the EU and UK. Volume 2* (London: Sweet & Maxwell, 2017).

¹³⁹ Olga Martin-Ortega and Claire Methven O'Brien, "Advancing Respect for Labour Rights Globally through Public Procurement," *Politics and Governance* 5, no. 4 (2017): 69–79.

¹⁴⁰ National, supranational or international, procurement rules generally define the principal policy objectives or "primary" aims of public buying as including: a) the achievement of value for money ("efficiency"); b) non-discrimination between tenderers; and c) open competition. Olga Martin-Ortega and Claire Methven O'Brien, "Advancing Respect for Labour Rights Globally through Public Procurement," *Politics and Governance* 5, no. 4 (2017): 69–79.

industries, supporting the economy of less-developed regions and specific industries government subsidies.¹⁴¹

However, with the wave of globalization, free trade is encouraged. Public procurement is a crucial part of global business. In order to eliminate international trade barriers and facilitate the free flow of goods and services, WTO-GPA aims to open the members' internal public procurement market through constraining discriminative national administrative and regulatory measures.¹⁴² Moreover, the global supply chain has shaped widely from upstream to downstream in different countries. Notably, the vehicle, electronics, apparel industries, and supply chains are globally pervasive. The "sweat factory" term triggers the cooperate social responsibility considerations in the supply chain, especially the basic labor rights, prohibiting child, bonded, and forced labor, and requiring safety and healthy workplace conditions. The UN Guiding Principles on Business and Human Rights stress that public procurement creates unique opportunities to promote awareness of and respect for human rights.¹⁴³

Thus, public bodies attempt to achieve environmental and social goals except for the function goal in public procurement. To some extent, a series of specific terms about public procurement policies, for example, "secondary consideration," "horizontal policies," "strategic procurement," "sustainable procurement," react to the policies evolution in the public procurement legal framework.¹⁴⁴ This is particularly reflected in the history of EU public procurement policies. It will be detailed in the chapter about

¹⁴¹ Sue Arrowsmith, *The Law of Public and Utilities Procurement Regulation in the EU and UK*. Volume 1 (London: Sweet & Maxwell, 2014).

¹⁴² Trade barriers in public procurement are embodied in a wide range of administrative and regulatory measures. The introduction of international procurement disciplines will inevitably put significant constraints on national regulatory autonomy. A common approach of many procurement regimes is to set out general principles of non-discrimination as well as detailed procedural rules to ensure transparency. Both such general principles and detailed transparency requirements may potentially affect states' ability to implement national policies. Lili Jiang, "Developing Multilateral Rules on Government Procurement: The Value of Soft Law," in Arrowsmith Sue and Robert D Anderson (eds), *The WTO Regime on Government Procurement: Challenge and Reform*, (Cambridge University Press, 2011), 719–746. P731.

¹⁴³ United Nations Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect, and Remedy" Framework (UNGPs)*, HR/PUB/11/04, UNGP 6, Commentary (2011).

¹⁴⁴ From "secondary considerations" in the 2004 Directives, the need to include social and environmental considerations in public tendering procedures has led to the coining of new terms, much more powerful and all-encompassing, such as "horizontal policies", "sustainable procurement" or even "strategic procurement". We can state that with the new 2014 Directives, the sustainability paradigm is almost taking over the realm of public procurement, and it is marketed as a major "selling point" of the new legislation. Mario E. Comba, "Variations in the Scope of the New EU Public Procurement Directives of 2014: Efficiency in Public Spending and a Major Role of the Approximation of Laws," in Francosi Lichere, Roberto Caranta, and Steen Treumer (eds), *Modernising Public Procurement: The New Directive*, (Djøf Publishing, 2014), 29–48.

the EU public procurement.

In the context of the UN sustainable development goals, international and national procurement policies coherently encompass the economic, environmental, and social considerations. From a series of international organizations initiatives, UNEP sustainable public procurement initiatives, guidelines, UN Guiding Principles on Business and Human Rights, UN Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work are coherent with sustainable development. At the regional level, the EU Commission emphasizes that all policies at the national and subnational level need to contribute coherently to achieve the Sustainable Development Goals.¹⁴⁵ It shows the shift is moving towards the equilibrium between the economic, environmental, and social policies.

2.2.3 Value for money, Life-cycle analysis, and sustainable supply chain from the vertical perspective

There are some different arguments in relation to life-cycle analysis and supply chain as to value for money. Value for money is seen as the primary objective and the most important economic consideration, aiming to pursue efficiency, in contrast to non-economic considerations (horizontal policies).¹⁴⁶ Furthermore, some scholars insist that value for money as one of the principal objectives differs from the other policies typically labeled "secondary" or "horizontal."¹⁴⁷ Other policies include social, environmental, or other objectives, such as local or national industrial and economic development, which are not necessarily connected with a procurement's functional objective of obtaining services and products at the best value for money.¹⁴⁸

However, the totally opposite argument showcases that better value for taxpayers'

¹⁴⁵ Commission Communication, A global partnership. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=comnat%3ACOM_2015_0419_FIN.

¹⁴⁶ Sue and Peter, "Public Procurement and Horizontal Policies in EC Law: General Principle." P30.

¹⁴⁷ Claire Methven O'Brien and Olga Martin-Ortega, "Discretion, Divergence, Paradox: Public and Private Supply Chain Standards on Human Rights," 189-211. P198. in Sanja Bogojevic, Xavier Groussot, and Jorgen Hettne (eds), *Discretion in EU Public Procurement Law*, vol. 9 (Bloomsbury Publishing Plc, 2019).

¹⁴⁸ Claire Methven, O'Brien and Olga Martin-Ortega, "Discretion, Divergence, Paradox: Public and Private Supply Chain Standards on Human Rights," 189-211. P198. in *Discretion in EU Public Procurement Law*, ed. Sanja Bogojevic, Xavier Groussot, and Jorgen Hettne, vol. 9 (Bloomsbury Publishing Plc, 2019).

money is delivered when life cycle costing or "whole life value thinking" is applied at all levels of resource allocation, from the material substance, manufacturing, distributing, consuming, and disposal.¹⁴⁹ The life cycle cost (LCC) methodology is integrated into the value for money criteria to uptake sustainable options.¹⁵⁰ Particularly, in the product specification, the goal of the tender is to achieve value for money, where environmental or social specifications are included.¹⁵¹

The European Commission has provided examples to accomplish the consideration of all factors of the production process, provision, or trading, even where such elements do not form part of the material substance of the product and assessing value for money on the basis of environmental aspects.¹⁵² Regarding the perceived price premium of procuring more environmentally friendly goods and services, one must consider that purchase price is just one of the cost elements in the process of procuring, owning, and disposal.¹⁵³ Value for money across the life cycle implies considering all the costs (environmental externality) incurred during the life cycle of product, service, or works.¹⁵⁴ Public procurement strives towards value for money across the life-cycle and seeks to minimize negative environmental and social externalities.¹⁵⁵

Given the globalization of the supply chain, the effective implementation of clear and sustainable objectives in trade practices has become a priority.¹⁵⁶ A global wave of

¹⁴⁹ Requel Carvalho, "Life-Cycle Costing in the Member States: Does the Tool Meet Its Goals?," in Marta Andhov, Roberto Caranta, and Anja Wiesbrock (eds), *Cost and EU Public Procurement Law: Life Cycle Costing for Sustainability*, (Routledge, 2019) 36–65. P53.

¹⁵⁰ Requel Carvalho, "Life-Cycle Costing in the Member States: Does the Tool Meet Its Goals?" P59.

¹⁵¹ Marta Andhov, Caranta, and Wies, "The European Union Law of Life-Cycle Costing." 81-100. P85.

¹⁵² Commission, 'Public Procurement Reform Factsheet No. 7: Green Public Procurement' (n88) 1-2. In Jason J. Czarnezki. Ph.D thesis. Uppsala University. *Green Public Procurement Legal Instruments for Promoting Environmental Interests in the United States and European Union*. 188.

¹⁵³ Best value for money not only measures the cost of goods and services, but also takes into account factors such as quality, efficiency, effectiveness and fitness for purpose. Protection of the environment can be one of these factors and can therefore act as an equal consideration amongst others for the award of the contract . *Buying Green! - A Handbook on Green Public Procurement*, 2016, available at <http://ec.europa.eu/environment/gpp/pdf/Buying-Green-Handbook-3rd-Edition.pdf>.

¹⁵⁴ Laura Turley and Oshani Perera, "Implementing Sustainable Public Procurement in South Africa: Where to Start," (The report of International Institute for Sustainable Development), 2014. 63 . P11.

¹⁵⁵ The value for money principle is defined as "the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought". The most fundamental ingredient of the VfM principle is the concept of whole life costing. The second most important ingredient of the VfM principle is specification compliance. Christopher Bovis, "Building Social Value in Public Procurement," *European Procurement & Public Private Partnership Law Review* 10, no. 4 (2015): 227–230; Laura Turley and Oshani Perera, "Implementing Sustainable Public Procurement in South Africa: Where to Start." 63. P34.

¹⁵⁶ Maria Anna Corvaglia, "Public Procurement and Private Standards: Ensuring Sustainability under the WTO Agreement on Government Procurement," *Journal of International Economic Law*, no. 3 (2016): 607–627.

initiatives has sought to promote responsible and sustainable global value chains, where human rights are respected and risks to human rights pre-emptively assessed and addressed as a critical contribution to achieving sustainable development.¹⁵⁷ LCC can be used to move the environment from an externality or indirect cost in the environment, health, and safety (EHS) units of the actors in the value chain to considerations as a direct, manufacturing, and liability issue, and, under appropriate conditions, an asset.¹⁵⁸

3. The Scopes of Sustainable Public Procurement

3.1 Economic Considerations

3.1.1 Competition as the fundamental principle

Given that public procurement expenditures constitute a tremendous part of GDP in the world, it is recognized as a "public buyer power" that could affect the private market by sourcing goods, services, and works.¹⁵⁹ The chief characteristic of public procurement is the interrelation of the "public" and "private" sectors. Importantly, thanks to the interaction of government bodies and private markets, the economic reality of the markets where public procurement activities take place is of importance in understanding the competition principle in the public procurement market.¹⁶⁰

Firstly, it is admitted that the general conception of the public market should be specified and classified along with the public procurement taxonomy.¹⁶¹ Except for some public procurement types, especially defense procurement, medical and education

¹⁵⁷ Jason J Czarnecki, "EU and US Discretion in Public Procurement Law: The Role of Eco-Labels and Life-Cycle Costing," in Sanja Bogojević, Xavier Groussot and Jörgen Hettne (eds), *Discretion in EU Public Procurement Law*, (Hart Publishing 2018) 211-248;

¹⁵⁸ Hunkeler D. and Rebitzer G, "Life Cycle Costing – Paving the Road to Sustainable Development? (Editorial)," *The Internal Journal of Life Cycle Assessment*, 8 (2) 109-110 (2003).

¹⁵⁹ The goods, services, and works mainly include even buying paper clips, commissioning major projects for the construction of hospitals, schools or offices, or procuring multimillion-pound IT and communications systems, cleaning products and services, electrical and electronic equipment used in the health care sector, data centres, server rooms and cloud services, waste water infrastructure and so on. https://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm; Arrowsmith and Kunzlik, "Public Procurement and Horizontal Policies in EC Law: General Principle." P9.

¹⁶⁰ Albert Sánchez Graells, "Foundations and Principles: The Economic and Legal Basics of Public Procurement and Competition Law," in *Public Procurement and the EU Competition Rules*, ed. Albert Sánchez Graells, Second editions (Oxford: Hart Publishing Ltd, 2015), 570, P37.

¹⁶¹ Albert Sánchez Graells, "An Economic Approach to Public Procurement and Competition." in Albert Sánchez Graells (ed), *Public Procurement and the EU Competition Rules*, (Oxford: Hart Publishing Ltd, 2015). P39-51.

service, requiring national security, political issues, and public order and interest, a large part of public procurement taking place in regular or private markets cannot be overlooked.¹⁶² The public purchaser/buyer sources a great variety of goods, services, and works that are also acquired by private buyers (such as companies and consumers).¹⁶³ In doing so, public bodies as an economic and liberal market participator, the cost-effective and best value for money are referred to as public procurement goals.¹⁶⁴ Thus, the attainment of the value for money and cost-effective goals requires developing a pro-competitive public procurement system that avoids publicly generated distortions of competition.¹⁶⁵ Indeed, guaranteeing free and open competition in the public procurement arena has generally become a fundamental legal principle.¹⁶⁶

Secondly, thanks to the complexity of public procurement and the nature of the buyer market as it is mentioned, it could be analyzed from two aspects. On the one hand, public buyers aggregate purchasing power to cause market distortion, for example, barriers to access public demand imposing certain standards not frequently used in the market, increasing transaction costs—amongst other potential distortions. Those generate a direct negative impact on market competition dynamics and impose an efficiency loss on society.¹⁶⁷ On the other hand, the market-like theory of public procurement and purchasing autonomy of public bodies compared to private buyers is recognized.

Thirdly, As the role government played in public procurement, not only the public

¹⁶² Albert Sánchez Graells, “Foundations and Principles: The Economic and Legal Basics of Public Procurement and Competition Law.” P39.

¹⁶³ Albert Sánchez Graells, “Foundations and Principles: The Economic and Legal Basics of Public Procurement and Competition Law.” P37.

¹⁶⁴ Albert Sánchez Graells, “Foundations and Principles: The Economic and Legal Basics of Public Procurement and Competition Law.” P105-109.

¹⁶⁵ Albert Sánchez Graells, “Foundations and Principles: The Economic and Legal Basics of Public Procurement and Competition Law.” P105-109.

¹⁶⁶ WTO-GPA principle: detailed procedural requirements regarding the procurement process designed to ensure that covered procurement under the Agreement is carried out in a transparent and competitive manner that does not discriminate against the goods, services or suppliers of other parties. https://www.wto.org/english/tratop_e/gproc_e/gpa_1994_e.htm; art 18(1) of EU Directive 2014/24: The design of the procurement shall not be made with the intention of excluding it from the scope of this Directive or of artificially narrowing competition. Competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain economic operators. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024&from=IT>. It is submitted that the competition is also the basic principle in some international organizations procurement policies, for example, Multilateral Development Banks, Public Procurement Model Law on United Nations Commission on International Trade Law, the public procurement recommendations and policies on OECD.

¹⁶⁷ Albert Sánchez Graells, “An Economic Approach to Public Procurement and Competition.” P63.

bodies are referred to as pure "purchasers" based on the agency model,¹⁶⁸ but also these are seen as the market "regulators"¹⁶⁹ on the basis of "gatekeepers" or "administrators" of business opportunities theory.¹⁷⁰ On the one hand, the economic consideration, for example, the best value for money and cost-effective analysis, is the primary goal in public procurement. On the other hand, public buyers could be seen as being entrusted with the task of providing fair or equal access to work paid by the taxpayer and public buyers could seem to be entrusted with spreading contract opportunities according to non-market requirements, such as the pursuit of environmental, industrial, social policies.¹⁷¹

Thus, in order to protect the interest of the taxpayer and spend public expenditures efficiently and effectively, competition in public procurement generally yields better economic outcomes and improves the conditions in which the public buyer sources goods and services in the market.¹⁷² Consequently, as the importance of economic considerations in public procurement regulation grows, competition requirements gain relevance.¹⁷³ Throughout the history of public procurement, competition constitutes one of the basic foundations of current public procurement regulations in the EU legal regime under the EU internal market.¹⁷⁴ With the trend of global trade liberalization, the crucial objective of WTO-GPA is to open the global government procurement market. WTO-GPA requires Parties to create a transparent and openly competitive government procurement system and treat foreign competitors without discrimination to open up government procurement to international competition amongst themselves.¹⁷⁵

¹⁶⁸ Trepte Peter (ed), *Regulating Procurement: Understanding the Ends and Means of Public Procurement Regulation*, (Oxford University Press, 2004); Albert Sánchez Graells (ed), *Public Procurement and the EU Competition Rules*, (Oxford: Hart Publishing Ltd, 2015), 570.

¹⁶⁹ McCrudden, Christopher. *Buying Social Justice. Equality, Government Procurement, & Legal Change*, (New York: Oxford University Press Inc., 2007).

¹⁷⁰ Graells, "An Economic Approach to Public Procurement and Competition." P58.

¹⁷¹ Graells, "An Economic Approach to Public Procurement and Competition." P58.

¹⁷² Graells, "An Economic Approach to Public Procurement and Competition." P106.

¹⁷³ Graells, "Basic of Competition and Public Procurement Regulation." P106.

¹⁷⁴ Grith Skovgaard Ølykke and Albert Sanchez-Graells Law, *Reformation or Deformation of the EU Public Procurement Rules*, (Edward Elgar Publishing Limited, 2016); Grith Skovgaard Ølykke and Albert Sanchez-Graells (eds), *Reformation or Deformation of the EU Public Procurement Rules*, (Edward Elgar Publishing Limited, 2016).

¹⁷⁵ Caroline Nicholas, "Work of UNCITRAL on Government Procurement: Purpose, Objectives and Complementarity with the Work of the WTO," in *The WTO Regime on Government Procurement: Challenge and Reform*, ed. Arrowsmith Sue and Robert D Anderson (Cambridge University Press, 2011), 719–46. P483.

3.1.2 Connection between industrial and social consideration: SMEs, disadvantaged groups employment, affirmative action, and poverty elimination

Public procurement is seen as a mechanism of government economic intervention by altering long-term incentives and competitive dynamics among public contractors.¹⁷⁶ So, generally, it is used for protecting domestic industrial development and specific national industry. Significantly, the protection policies happen in a global economic crisis because governments do "buying national" policies to revitalize the national economy and protect their citizens. From the national macro-economic policies through government intervention (visible hand), public procurement is seen as an instrument to implement national industrial policy.¹⁷⁷

In this case, after the 2008 global financial crisis, America carried out "buy America" policies by the American Recovery and Reinvestment Act and the US Small Business Administration in 2009.¹⁷⁸ The "buy national" policy is also implemented in the government procurement market in China.¹⁷⁹ In the context of the EU, the only legal objective for the Public Procurement Directives is the development of the internal market, through three main means: the prohibition of discrimination, the requirement of transparency in order to prevent discrimination, and the removal of restrictions on the access to the market finally.¹⁸⁰ EU public procurement legal framework aims to build the anti-discriminative internal market in the EU. However, on the basis of free market and trade liberalization in the EU, the member states continue to retain discretion in the way in which they manage their public purchasing, albeit within the expanding limits of the directives.¹⁸¹ Member States pursue a variety of more strategic

¹⁷⁶ Graells, "An Economic Approach to Public Procurement and Competition." P62.

¹⁷⁷ Sue Arrowsmith, *The Law of Public and Utilities Procurement Regulation in the EU and UK*. Volume 2 (London: Sweet & Maxwell, 2017), P735.

¹⁷⁸ Joshua I. Schwartz, Procurement in times of crisis: lessons from US government procurement in three episodes of 'crisis' in the twenty-first century. P773. In Sue Arrowsmith Robert D. Anderson (eds), *The WTO Regime on Government Procurement: Challenge and Reform*, (Cambridge University Press, 2011), P803-829.

¹⁷⁹ Ping Wang, "Accession to the Agreement on Government Procurement: The Case of China." in Sue Arrowsmith Robert D. Anderson (eds), *The WTO Regime on Government Procurement: Challenge and Reform*, (Cambridge University Press, 2011), P92-116.

¹⁸⁰ Mario E. Comba, "Variations in the Scope of the New EU Public Procurement Directives of 2014: Efficiency in Public Spending and a Major Role of the Approximation of Laws." In François Lichère, Roberto Caranta and Steen Treumer (eds.), *Modernising public procurement : the new Directive*, (Copenhagen, Denmark, DJØF Publishing, 2014), P42.

¹⁸¹ Graells, *Public Procurement and EU Competition Rules*, 2015. P VIII.

procurement policies aligned to national objectives, such as promoting SMEs or enhanced environmentally friendly procurement.

Nevertheless, it is well-recognized that trade protectionism could hurt the free flows of goods and hurt economic prosperity. As a crucial international government procurement treaty, the aim of the WTO-GPA is to build free trade and fair competition among treaty parties.¹⁸² Furthermore, the UNCITRAL model law of public procurement seeks to facilitate international trade by harmonizing national law on procurement based on the main principles of transparency and competition.¹⁸³

Trade liberalism priority makes us think about why supporting SMEs should be implemented? The first relates to the advantages for the procuring entity and the overall public procurement process. Justifications of these advantages focus on SMEs' capacity for innovation as smaller firms can be more dynamic and inventive than larger, established economic actors.¹⁸⁴ This consideration is also based on the value-for-money and cost-effective objectives and reduction red-tape of the procurement process.¹⁸⁵ SMEs are also conducive to the potential increase in the amount and quality of competition for public contracts as new SME players enter the market offering better products and services.¹⁸⁶

Secondly, public authorities consider local economic development from an economic perspective, emphasizing the advantages of SMEs participating in the procurement market benefits society and local people. Economic activity at the local level is strengthened, which in turn leads to job creation and underprivileged groups'

¹⁸² As regards procurement, the GPA addresses the harmonization of procurement law with the express aim of opening up markets to international competition by preventing Parties from discriminating against suppliers from other Parties, and applying rules of transparency and open competition in procurement. Caroline Nicholas, "Work of UNCITRAL on Government Procurement: Purpose, Objectives and Complementarity with the Work of the WTO." P731, In Sue Arrowsmith Robert D. Anderson (eds), *The WTO Regime on Government Procurement: Challenge and Reform*, (Cambridge University Press, 2011) P746-742.

¹⁸³ The United Nations Commission on International Trade Law ('UNCITRAL') is the main legal body of the United Nations system in the field of international trade law, with a general mandate to further the progressive harmonization and unification of the law of international trade, through the issuing of conventions and model laws, cooperation with other international organizations and technical assistance. Nicholas, "Work of UNCITRAL on Government Procurement: Purpose, Objectives and Complementarity with the Work of the WTO." P731.

¹⁸⁴ Arrowsmith and Kunzlik, "Public Procurement and Horizontal Policies in EC Law: General Principle." P346.

¹⁸⁵ Abby Semple, "The Link to the Subject Matter: A Glass Ceiling for Sustainable Public Contracts?," in *Sustainable Public Procurement Under EU Law: New Perspectives on the State as Stakeholder*, ed. Beate Sjaafjell and Anja Wiesbrock (Cambridge University Press, 2016), P160-181.

¹⁸⁶ Nicholas Hatzis, "The Legality of SME Development Policies under EC Procurement Law," P346. In Sue Arrowsmith, Sue Arrowsmith (eds), *Social and Environmental Policies in EC Procurement Law*, (Cambridge University Press, 2009,) P345-368.

employment. Ultimately, this is thought to revitalize the local economy and promote social and economic cohesion.¹⁸⁷

In addition, from the social cooperate responsibility perspective,¹⁸⁸ discussion of CSR might seem to be simply the old debate about the proper role of government and the limits of the market dressed in new clothes.¹⁸⁹ Thanks to the attribute of flexibility and efficiency, the development and promotion of SMEs contribute to social inclusion and cooperate social responsibility, for example, pursuing poverty elimination, equal rights protection (women, disabled people), indigenous and aboriginal people in undeveloped regions. There are many practical cases, such as set-asides for women as the owner of SMEs in the US, black people as the owners of SMEs in South Africa, aboriginal people as SMEs in Malaysia and Canada, and their price subsidy policy for SMEs hiring 25% of its employees in China.

In developing countries, for instance, in order to protect Bumiputera's (the indigenous group) interest in Malaysia, Bumiputera-owned SMEs are preferenced in specific public procurement activities.¹⁹⁰ After the collapse of apartheid in South Africa, procurement was seen as one of the regulatory techniques to be used to redress the effects of institutional discrimination and inequality, for example, supporting black-owned small businesses.¹⁹¹ In China, government procurement policies to support indigenous innovation, national ethnic, especially the SMEs in Xinjiang, Ningxia, Inner Mongolia, Tibet, and so on (except for the most prominent ethnic group Han), under the Government Procurement Law Regime.¹⁹² Besides, public contracts give

¹⁸⁷ Nicholas Hatzis, "The Legality of SME Development Policies under EC Procurement Law," P346. In Sue Arrowsmith, Sue Arrowsmith (eds), *Social and Environmental Policies in EC Procurement Law*, (Cambridge University Press, 2009,) P345-368. P346.

¹⁸⁸ CSR refers to business responsiveness to social agendas in its behavior and to the performance of these responsibilities. In J Moon, 'Government as a Driver of Corporate Social Responsibility', ICCSR Research Paper Series, No 20, 2004.

¹⁸⁹ Christopher McCrudden, "Changing Approach to Procurement Linkages in the Community and Beyond," in *Buying Social Justice: Equality, Government Procurement Legal Change*, ed. Christopher McCrudden (New York: Oxford University Press Inc., 2007), 680. P366.

¹⁹⁰ McCrudden, "European Public Procurement Law and Equality Linkages: Government as Consumre, Government as Regulator." P239.

¹⁹¹ Christopher McCrudden, "Using Public Procurement to Achieve Social Outcomes," *Natural Resources Forum* 28, no. 4 (2004): 257–267.

¹⁹² Jianlin Chen, "Challenges in Designing Public Procurement Linkages: A Case Study of SMEs Preference in China's Government Procurement," *UCLA Pacific Basin Law Journal* 30 (2013): 1–38.

preference to SMEs encouraging disabled people employment.¹⁹³ Aiming at reducing poverty in China, the policy-makers carried out support and gave price subsidies to the goods manufactured by SMEs in the poverty-stricken area in new government regulation issued by MOF in 2019.¹⁹⁴

In developed countries, the USA implements affirmative action, which came to encompass a wide variety of proactive measures seeking to achieve greater equality for the disadvantaged group, especially affirmative action in employment in government contracts.¹⁹⁵ Afterward, affirmative action requirements were extended to benefit women in employment under federal government contracts and ensure that women's small businesses would also secure a proportion of government contracts.¹⁹⁶ In Canada, a contracting policy notice was issued on aboriginal business procurement policy and incentives, which formally notified federal departments and agencies that the government had approved a strategy to promote indigenous business development through the federal government procurement process.¹⁹⁷ At the EU level, one of the major concerns that the notion of equality brings to mind in the context of the EU public procurement regime is the under-representation of SMEs participating in above-EU threshold public procurement – a fact long acknowledged by the Commission.¹⁹⁸ The significant implication is stressed that public procurement plays a role in corporate social responsibility and responsible business conduct by the Commission.¹⁹⁹ SMEs are explicitly positioned as producers of social value in social procurement frameworks in terms of local economic diversity and affirmative action.²⁰⁰ The 2014 new public procurement packages encourage access to public procurement for SMEs and ensure

¹⁹³ The regulation of promoting disabled people employment by government procurement. http://www.ccg.gov.cn/zcfg/mof/201709/t20170904_8787205.htm.

¹⁹⁴ The policy of promoting reduction poverty by government procurement. http://www.ccg.gov.cn/zcfg/mof/201906/t20190604_12199146.htm.

¹⁹⁵ McCrudden, "Using Public Procurement to Achieve Social Outcomes." P260.

¹⁹⁶ McCrudden, "Using Public Procurement to Achieve Social Outcomes." P261.

¹⁹⁷ McCrudden, "Using Public Procurement to Achieve Social Outcomes." P262.

¹⁹⁸ Antoinette Calleja, "On Public-Private Partnership: A European Theory of a Socially Just Alternative," in Hartmut Behr and Yannis A. Stivachtis (eds), *Unleashing Social Justice through EU Public Procurement*, (Routledge, 2016), 251. P207.

¹⁹⁹ Corporate Social Responsibility and Responsible Business Conduct https://ec.europa.eu/growth/industry/sustainability/corporate-social-responsibility_en.

²⁰⁰ Josephine Barraket, Robyn Keast, Craig Furneaux, "Institutional and Resource Enablers of Social Procurement," in Josephine Barraket, Robyn Keast, Craig Furneaux (eds), *Social Procurement and New Public Governance* (Routledge, 2016), 169. P58.

better use of public procurement in support of common societal goals.²⁰¹

In short, as mentioned, promoting SMEs with other public objectives is a complicated issue in different international, regional, national, and local law-makers and policy-makers. Even though there are a variety of social policies with SMEs programs to achieve SDGs in many different countries, it is clear that: (1) SMEs play a significant role in public procurement to pursue social goals; (2) it is interrelated among SMEs, public procurement, and sustainable development (environmental, economic, and social considerations), which should be considered in an integrated approach. It is submitted that SMEs have been seen as an important tool for promoting economic development and social inclusion in different law-making and policy-making.

3.1.3 Public procurement and innovation policies: innovation-oriented public procurement (PPI)

From the distinction between "public bodies as purchaser or consumer" and "public bodies as the regulators," Sue Arrowsmith contends that the distinction is complicated and controversial (especially in the EU internal market) to define the horizontal policies in the public procurement market.²⁰² Public procurement rests on the role of public bodies as the "purchaser" function by which public bodies decide "what to buy" (the subject matter of the public contract) and "how to buy" (the procurement process).

In the function of "public bodies as the purchaser," public bodies could choose and decide to buy innovation-friendly goods on the basis of the purchasing power autonomy, of which the taxonomy of procurement policies is in the scope of the contract awarded performance.²⁰³ Taking advantage of the purchasing autonomy, public procurement, as the large scale demand-side, has been seen as an important potential instrument of innovation policy.²⁰⁴ In this regard, procurement might also act as an incentive for

²⁰¹ Abby Semple, "The Link to the Subject Matter: A Glass Ceiling for Sustainable Public Contracts?" The University of Oslo as part of the European Law Conference 2014, 18

²⁰² Arrowsmith and Kunzlik, "Public Procurement and Horizontal Policies in EC Law: General Principle." P21-P29.

²⁰³ Sue Arrowsmith, "A Taxonomy of Horizontal Policies in Public Procurement," in Sue Arrowsmith, Sue Arrowsmith (eds), *Social and Environmental Policies in EC Procurement Law*, (Cambridge University Press, 2009).

²⁰⁴ Luke Georghiou et al., "Policy Instruments for Public Procurement of Innovation: Choice, Design and

developers of new technologies and may 'legitimize' product standards, creating new markets or expanding existing ones, thereby easing adoption and diffusion.²⁰⁵

In the function of "public bodies as the regulators," measures are not limited to contract performance but are also directed at suppliers' behavior outside the contract performance. On the one hand, this function is concerned with the permit/non-permit policies (fair labor/fairtrade label for suppliers and excluding ones who violate environment and human rights law) in the EU.²⁰⁶ Moreover, public bodies have taken actions to link procurement with achieving status equality goals, even when status equality is not the subject matter of the contract (disability and technical specifications, set-asides for shelter workshops, and so on).²⁰⁷ On the other hand, some procedural guarantees are helping for innovation policies in the EU public procurement legal regime. EU public procurement for innovation policy includes the options to use functional criteria as variants, add quality considerations in technical specifications and award criteria, and more easily have recourse to the competitive dialogue, using a new procedure designed for innovative projects.²⁰⁸

As was analyzed above, the trend has shifted from the supply-side, ensuring government (regulator) making an effort to innovate for the private sector to the demand-side (both roles in purchaser and regulator) supporting innovation prominently.²⁰⁹ In innovation-friendly policies, a growing interest in using public procurement to spur innovation and development in many countries has been witnessed.²¹⁰

Assessment," *Technological Forecasting and Social Change* 86 (2014): 1–12.

²⁰⁵ Elvira Uyerra et al., "Public Procurement, Innovation and Industrial Policy: Rationales, Roles, Capabilities and Implementation," *Research Policy*, no. 1, 2020.

²⁰⁶ Arrowsmith and Kunzlik, "Public Procurement and Horizontal Policies in EC Law: General Principle." P27.

²⁰⁷ McCrudden, "European Public Procurement Law and Equality Linkages: Government as Consumer, Government as Regulator." P557.

²⁰⁸ Miguel Angel Bernal Ángel Bernal Blay, "The Strategic Use of Public Procurement in Support of Innovation," *European Procurement & Public Private Partnership Law Review (EPPPL)*, no. 9 (2014): 1–10.

²⁰⁹ OECD, *Public Procurement for Innovation: Good Practices and Strategies*, 2017, 184. P16.

²¹⁰ Diverse countries from Asia to North America and from Europe to South America have started to develop new and explicit policies that place public procurement into service for innovation and development. Such initiatives include the European Commission's (EC) Lead Market Initiative and pre-commercial public procurement-related activities; numerous new initiatives in the EU member countries; the New Directions for Innovation, Competitiveness and Productivity program in Australia with a highlighted role for public procurement; the Indigenous Innovation Policy initiative in China; and industrial policy initiatives using public procurement in Brazil. These are only a few examples of recent policy initiatives that are based on the idea of public procurement of innovation. Veiko Lember, Rainer Kattel, and Tarmo Kalvet (eds), *Procurement, Innovation, and Policies: International Perspectives*, (Springer-Verlag Berlin Heidelberg, 2014), 309.

Moreover, firstly, the shift reflects a general perception that traditional supply-side policies – despite refinements in their design over recent decades – have not been able to bring innovation performance and productivity to desired levels.²¹¹ To some extent, using public procurement to promote innovation policies also fosters the innovation industries to develop the economy. Through emphasizing the role public bodies played in industries and innovation policies, PPI is an indispensable part of sustainable public procurement, especially in economic consideration in the context of the SDGs 2030 agenda globally.

Secondly, SMEs have been drawn more attention in public procurement and technological fields. Some scholars have explored what role SMEs play in innovative public procurement.²¹² Even though firms with more significant resources have a better capability of bringing innovations to the market and reaping greater rewards from them, public procurement, as an important demand-side market, is expected to promote innovation of SMEs and stimulate the innovative potentials.

In many countries, a series of government policies and initiatives are implemented to encourage innovative SMEs in public procurement. In the EU, in order to the achievement of the EU's goal of smart, sustainable, and inclusive growth, making public procurement work for innovation, green growth, and social inclusion was launched after 2010.²¹³ The PPI actions in the EU are aimed to indirectly help innovative SMEs by giving them an opportunity to field a lead customer and thus bring their innovations faster to the market and obtain a faster return on investments.²¹⁴ In the OECD, some 26% of responding countries developed a stand-alone action plan,

²¹¹ OECD. Demand-side Innovation Policies. 5. 2011. <http://www.oecd.org/innovation/inn/48081293.pdf>. P9.

²¹² Max Rolfstam, “Promoting SMEs As Suppliers in Public Procurement : Would It Lead to Promoting SMEs as Suppliers in Public Procurement : Would It Lead to Innovation ?,” <https://doi.org/10.2139/ssrn.3147388>; Jani Saastamoinen, Helen Reijonen, and Timo Tammi, “Should SMEs Pursue Public Procurement to Improve Innovative Performance?,” *Technovation* 2018, 1–14; Jakob Edler and Luke Georghiou, “Public Procurement and Innovation-Resurrecting the Demand Side,” *Research Policy*, no. 7 (September 2007): 949–963; Uyarra et al., “Public Procurement, Innovation and Industrial Policy: Rationales, Roles, Capabilities and Implementation.” *Research Policy*, 2020, 1-11; Leif Hommen and Max Rolfstam, “Public Procurement And Innovation: Towards A Taxonomy,” *Journal Of Public Procurement*, vol. 9, 2009; Christine Harland et al., “Implementing Government Policy in Supply Chains: An International Coproduction Study of Public Procurement,” *Journal of Supply Chain Management* 55, no. 2 (2019): 6–25. Georghiou et al., “Policy Instruments for Public Procurement of Innovation: Choice, Design and Assessment.” *Technological Forecasting and Social Change*. 2014. 1-12.

²¹³ Europe 2020: a strategy for smart, sustainable and inclusive growth, COM (2010) 2010 final.

²¹⁴ European Commission, *Public Procurement as a Driver of Innovation in SMEs and Public Services, Guidebook Series: How to Support SME Policy from Structural Funds*, 2014.

sometimes focused on specific sectors; 24% reported that the action plan is part of the country's general innovation or procurement strategy.²¹⁵ As the biggest developing country, China implemented a series of Indigenous Innovation Policies, requiring the purchasing of certain high-technology (high-tech) products whose intellectual property (IP) is owned or registered in China.²¹⁶ The Chinese government announced explicitly in the National Program (2006-2020) to utilize innovation-oriented public procurement (IOPP) to spur 'endogenous innovation,' following which related government agencies have taken many actions.²¹⁷

3.2 Environmental Considerations

As a demand-side purchasing power, public procurement power is an essential driver towards environmentally friendly purchasing. The environmental consideration in the public procurement process has been developed a series of national initiatives in many countries. The actions taking environmental requirements into account are named "green public procurement (GPP)," "buying green," and "environment-friendly procurement" in academic literature. The ultimate goal is to transform unsustainable consumption and production patterns and environmental protection through the public procurement market.

The core connotation of GPP relies on integrating environmental criteria and requirements for public products, services, and public infrastructures. The explicit definition of GPP in the European Commission's Communication is that "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."²¹⁸ GPP is considered an important instrument for achieving climate change, resource use, and

²¹⁵ OECD, *Public Procurement for Innovation: Good Practices and Strategies*. 2017, 184. P28.

²¹⁶ S James Boumil, "China's Indigenous Innovation Policies Under the TRIPS and GPA Agreements and Alternatives for Promoting Economic Growth," *Chicago Journal of International Law*, no. 2 (2012): 755–781.

²¹⁷ Yanchao Li, "Public Procurement as a Demand-Side Innovation Policy Tool in China - a National Level Case Study, Paper to be presented at the DRUID, 2011.

²¹⁸ European Commission, *Public Procurement for a Better Environment*, Brussels, 16.7.2008; COM(2008)400 Final.

sustainable production and consumption in exercising public purchasing power.²¹⁹ The OECD claimed that GPP contributes to national and international environmental objectives and that it is a major driver for innovation and a vehicle for economic growth.²²⁰

GPP is dedicated to reducing environmental implications and could contribute to integrating other public policies, for example, from the environmental perspective to develop green innovation (why and how to synthesize and link the concepts of GPP and innovation).²²¹ In other words, there is a series of arrangements, for example, (1) institutionalizing green criteria and innovation (the uptake of eco-label standards); (2) interpretation of value-for-money in life cycle analysis through considering environmental cost in public procurement; (3) environmental-friendly supply chain.

3.2.1 Synthesis and Linkage Between GPP and Innovation

Firstly, the sustainable consumption and production (SCP) pattern has been seen as a new and environmental-friendly economic development model from the economic development stage analysis. SCP pattern refers to "the use of services and related products, which respond to basic needs and bring a better quality of life while minimizing the use of natural resources and toxic materials as well as the emissions of waste and pollutants over the life cycle of the service or product so as not to jeopardize the needs of future generations."²²²

Afterward, "circular economy," "eco-innovation," "green economy," and "ecological economy" have drawn much attention by different international and national law and policies makers.²²³ Public procurement (demand-side market) is a

²¹⁹ European Commission (2016). *Buying green! A handbook on green public procurement*, 3rd edition.

²²⁰ OECD (2013). *Mapping out good practices for promoting green public procurement*, OECD meeting of Leading Practitioners on Public Procurement, 11–12, 2, 2013, Paris, OECD Conference Centre.

²²¹ Mowery, D.C., R. Nelson and B. Martin, "Technology policy and global warming: Why new policy models are needed (or why putting new wine in old bottles won't work)," *Research Policy*, Vol. 39, No. 8, 2011, 1011-1023; Wenjuan Cheng et al., "Green Public Procurement, Missing Concepts, and Future Trends – A Critical Review," *Journal of Cleaner Production*, 2018, 770–784.

²²² United Nations Environment and Development. <https://www.unenvironment.org/explore-topics/resource-efficiency/what-we-do/sustainable-consumption-and-production-policies>.

²²³ Patrick Schroeder, Kartika Anggraeni, and Uwe Weber, "The Relevance of Circular Economy Practices to the Sustainable Development Goals," *Journal of Industrial Ecology*, no. 1, 2019, 77–95; Ming-lang Tseng et al., "Resources, Conservation & Recycling Circular Economy Enables Sustainable Consumption and Production in Multi-Level Supply Chain System," *Resources, Conservation & Recycling*, 2020; OECD. "Promoting Sustainable

powerful driver and instrument to stimulate and incentivize these initiatives and actions. Furthermore, GPP is specifically implemented to contribute to more sustainable consumption and production.²²⁴ GPP is implemented through specific environmental selection criteria and requirements for triggering innovative technologies applied in some industrial sectors by the demand-pull effect. In the long run, GPP is a bridge between public bodies and the private sector through the market, which could promote the circular economy by a series of institutionalized arrangements.

Secondly, from the environmental governance's perspective, thanks to the purchasing of products or services having a lower impact on the environment over their whole life cycle, GPP involves the integration of environmental issues into purchasing decisions based on price, performance, and quality. It means the purchasing decision is decided not only by the purchase cost but also by considering the maintenance cost, environmental externalities cost, disposal cost, and so on. Moreover, the environmental performance of the goods, services, and works, especially the infrastructure and construction projects, is considered in the contract implementation process. The life Cycle Costs (LCC), including the extraction of raw materials used to make goods, production and manufacturing, packaging, distribution, use, and disposal, are introduced in some sectors voluntarily. GPP, which can employ LCC tools, attempts to serve as an effective environmental regulatory tool and alternative form of environmental governance beyond the traditional public law model.²²⁵

Lastly, environmental innovation (Eco-innovation) aims at gaining environmental benefits by innovation technologies implemented in industrial development.²²⁶ In the background of the initiative of SCP pattern, GPP could stimulate Research & Development (R&D) and the eco-innovation technologies employed in specific industry sectors, which, as the demand-pull instrument, dedicates to the pursuit of the circular and low-carbon economy. This process, conducted by integrating

Consumption: Good Practices in OECD Countries,” 2008, 62.

²²⁴ Vera Zipperer, “Green Public Procurement and the Innovation Activities of Firms,” SSRN Electronic Journal, 2019, 28.

²²⁵ Jason J. Czarneski. Ph.D. thesis. Uppsala University. Green Public Procurement Legal Instruments for Promoting Environmental Interests in the United States and European Union, 2020, 188.

²²⁶ Klaus Rennings, “Redefining Innovation — Eco-Innovation Research and the Contribution from Ecological Economics,” *Ecological Economics* 32 (2000): 319–332.

environmental requirement/ecological goal and innovation, is called eco-innovation or sustainability-oriented innovation.²²⁷ Therefore, eco-innovation procurement is interacted in taking green/environmental requirements and innovative methods/technologies into consideration. In other words, GPP could, to some extent, incentivize the innovative approach exercised in the market. On the contrary, innovative public procurement (PPI) also could result in green technologies that generate energy conservation, reducing carbon footprint and environmental degradation, mitigating climate change.

3.2.2 Environmental standards and standardization

Making reference to standards in tenders can help stimulate competition among suppliers to meet (or exceed) them and result in a wider range of sustainable/optimal environmental performance. The environmental standards, eco-labels, and certifications have drawn attention to stimulate both public authorities and the private sector to seek environmental responsibility in the procurement market. Furthermore, with the definition of GPP above-mentioned, the procurement process should be obligated to reduce environmental impact, at best, to gain environmental benefits throughout their life cycle. As regards the core objective (environmental factor) of GPP, environmental standards play a crucial role in implementing GPP. It is acknowledged that standards provide important information about the goods, services, and sophisticated works (construction projects, infrastructures) on the suppliers and guidance alongside the procurement process. That information is very comprehensive and includes different aspects and classifications.

On the one hand, the environmental factors are considered in energy efficiency, pollution gas/noise emissions/thresholds, biodiversity, and ecosystem protection. On the other hand, from the lens of standards classification, Environmental standardization is classified from effect-based, technology-based, information-based, human health-

²²⁷ Johanna Klewitz and Erik G. Hansen, "Sustainability-Oriented Innovation of SMEs: A Systematic Review," *Journal of Cleaner Production*, 2014, 57–75.

based, market-based.²²⁸ Besides, environmental management-based standardization can certify organizational qualifications, either for public procurement agencies or procurers themselves or potential suppliers, such as International Organization Standardization (ISO) 14001 and Eco-Management and Audit Scheme (EMAS). Producers may request this standardization for contractor qualifications to signify environmental performance serving as pre-qualification selecting for successful suppliers.

Firstly, even though there is a large volume of different types of environmental standards at the international, regional, national, and local levels, standardization has been seen as a trend. It is noted that a series of standards are regulated by the international standardization organization (ISO). ISO 14024 (Type I) claims are based on criteria set by a third party and are multi-issue based on the product's life cycle impacts. The awarding body may be either a governmental organization or a private non-commercial entity.²²⁹ Examples include the EU Eco-label, Nordic Swan and German Blue Angel, Chinese Green Product Label, and Energy Conservation Label. Those labels are based on the product information and different product categories, for example, the environmental influence on society and containing the toxic substances to human bodies.

Secondly, eco-innovation also should be given creativity room to innovative technologies aiming to promote in public procurement. ISO 14021 (Type II) claims are based on self-declarations by manufacturers or retailers, for example, made from x% recycled material.²³⁰ ISO/TR 14025 (Type III) claims consist of quantified product information based on life cycle impacts. These impacts are presented in a form that facilitates the comparison of a set of parameters between products.²³¹ Those two types

²²⁸ Jason J. Czarnecki. Ph.D. thesis. Uppsala University. Green Public Procurement Legal Instruments for Promoting Environmental Interests in the United States and European Union, 2020, 188. P29-P33.

²²⁹ Charles Allison and Anthea Carter, "Study on Different Types of Environmental Labelling (ISO Type II and III Labels): Proposal for an Environmental Labelling Strategy," *Report Prepared by ERM Consultants for DG Environment, Brussels*, 2000.

²³⁰ Charles Allison and Anthea Carter, "Study on Different Types of Environmental Labelling (ISO Type II and III Labels): Proposal for an Environmental Labelling Strategy," *Report Prepared by ERM Consultants for DG Environment, Brussels*, 2000.

²³¹ Charles Allison and Anthea Carter, "Study on Different Types of Environmental Labelling (ISO Type II and III Labels): Proposal for an Environmental Labelling Strategy," *Report Prepared by ERM Consultants for DG Environment, Brussels*, 2000.

of standardizations suit the significant environmental impact and a high actual or potential consumer concern level. Type III is suited to purchases by businesses or public bodies at best. To some extent, those two types of standardizations stimulate private companies to explore eco-innovation. The eco-innovation process contributes to the new technologies applied in negotiation in public procurement procedures or market consultation.

Thirdly, ISO 14001/EMAS (environmental management system) standard requires that an organization manages its "indirect" environmental aspects and continually improves the environmental performance linked to them. So, the environmental performance of suppliers and products purchased by a public authority represents a key aspect, which public organizations can strongly influence their purchasing decisions and actions. ISO 14001/EMAS is regarded as the key determinant and a facilitator for the adoption of GPP practices by the whole life cycle.

3.3 Social Considerations

Public procurement is a critical lever with the power to influence conditions in global supply chains in support of sustainable development. As large-scale consumers of goods, public buyers hold significant leverage over the behavior of brands and retailers in global supply chains. Public bodies tend to use their discretion to promote social issues through public procurement, for example, the protection of unprivileged groups, inequality, poverty, and fundamental labor rights abuses, and so on. These are defined as human rights issues. Shared Development Rights are the consensus by the United Nations Declaration on the Right to Development. The new 2030 Agenda for Sustainable Development also includes public procurement targets as part of the drive towards sustainable production and consumption, decent work, and more inclusive economies.

It is observed that international organizations and international agreements have played a crucial role in promoting social issues resolved by public procurement activities. Public procurement can promote more sustainable and respectful practices

with regard to human rights on the part of tenderers while giving public administrations a protective, supervisory role for these fundamental rights recognized in legal texts of the highest order. UN Guiding Principles on business and human rights highlight the clear link with public procurement procedures.²³² These principles and initiatives such as the Global Compact on Corporate Social Responsibility (or the Global Compact), various International Labor Organization (ILO) declarations for protecting labor rights, and European Commission green papers and communications in this regard constitute an international standard with recognized influence and, consequently, significant potential impact to public procurement. Sustainable procurement certification (ISO 20400), issued by ISO in 2017, is based on a variety of social considerations/human rights regulated in the International Bill of Human Rights and the core human rights instruments in line with UN Guiding Principles on Business and Human Rights.²³³ ISO 20400 is an instrument utilized not only by private sectors (manufacturers, suppliers) but also by public bodies, which could encourage a sustainable supply chain by incentivizing public procurement.

In this context of public procurement acts as a tool to eliminate human rights abuses, not only there is a series of international, regional, national regulations and policies guidances to regulate the way in which public procurement should implement, but also some states in the EU carried out a variety of National Action Plan in relation to taking social considerations into public procurement.²³⁴ According to the Netherlands' National Action Plans (NAPs) to implement the UNGPs on Business and Human Rights, its national sustainable procurement policy requires respect for human rights as part of the "social conditions" applicable to all central government since 1 January 2013.²³⁵

²³² UN principles on business and human rights highlight. https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

²³³ International Organization for Standardization (ISO), "International Standard 20400- Sustainable Procurement — Guidance" 2017, 62.

²³⁴ The 2011 Communication invited "...Member States to develop, by the end of 2012, national plans for the implementation of the UN Guiding Principles." National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks), DIHR and ICAR, June 2014, <https://www.business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans/icar-dihr-national-action-plans-project>;

²³⁵ Martin-Ortega and O'Brien, "Advancing Respect for Labour Rights Globally through Public Procurement."

There is another severe issue - poverty eradication - drawing massive attention around the world. It is also connected to the 2030 sustainable development agenda, no poverty, zero hunger, and good health and well-being. Poverty in the EU is a real problem, and its reduction is one of the key targets of the Europe 2020 strategy.²³⁶ The strategy highlights a social inclusion target that is based on a combination of three indicators of poverty and exclusion. Indirect and direct measures of poverty and social exclusion are taken into consideration. Public procurement has the potential to serve "aims and objectives stipulated in the European treaties, such as social cohesion, combating long-term unemployment, and, finally, the achievement of acceptable standards of living."²³⁷ Since the 18th Communist Party of China (CPC) National Congress in late 2012, poverty alleviation has been included in the "Five-Sphere Integrated Plan" and the "Four-pronged Comprehensive Strategy."²³⁸ The Chinese government has devoted itself to "targeted poverty alleviation action"-a critical strategic step to reduce poverty in 2015.²³⁹ The two specific government procurement policies supporting poverty reduction were carried out in 2019.²⁴⁰

As has been argued above, the scope of social considerations seems to be very complicated and intertwined with many aspects. States/governments have been endowed with international and domestic obligations to respect, protect, and promote human rights. The state/government's duty to protect human rights extends to protecting rights-holders within the state's jurisdiction from the harmful actions by third parties, including corporations and suppliers to the government.²⁴¹ This justifies the social

Politics and Governance, 2017, 69-79.

²³⁶ EUROPE 2020: A strategy for smart, sustainable and inclusive growth. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>.

²³⁷ Antoinette Calleja, "The Request for Poverty Reduction - Putting Public Procurement Law into Perspective," in *Unleashing Social Justice through EU Public Procurement*, ed. Hartmut Behr and Yannis A. Stivachtis (Routledge, 2016), <https://doi.org/10.4324/9781315680095>. P122.

²³⁸ UNDP, Policy Study on the challenges and responses to poverty reduction in china's new stage. 2011, 166. <https://www.undp.org/content/dam/china/docs/Publications/UNDP-CH-PR-Publications-Policy-Study-on-the-Challenge-Responses-toPR-inChina-Newstage.pdf>.

²³⁹ Tan Xuewen;Li Jing. The Thoughts of Precision-Targeted Poverty Alleviation: A Study of its Deepening through Practice. Chinese Rural Economy, 09, 2017.

²⁴⁰ Notice on government procurement policies to support poverty alleviation. http://www.ccp.gov.cn/zcfg/mof/201906/t20190604_12199146.htm; Notice on the Implementation Action for Government Procurement to Agricultural and By-products in Poor Areas. http://www.ccp.gov.cn/zcfg/mof/201908/t20190820_12715770.htm.

²⁴¹ Olga Martin-Ortega and Claire Methven O'Brien, "Public Procurement and Human Rights: Interrogating The Role of The States As Buyers," in Olga Martin-Ortega and Claire Methven O'Brien (eds), *Public Procurement and Human Rights: Opportunities, Risks, and Dilemmas for the States as Buyers*, (Edward Elgar Publishing Limited. 2019), 247.

considerations in public procurement. Socially responsible public procurement (SRPP) described by the European Commission report takes into account one or more social considerations. It includes employment opportunities, decent work, compliance with social and labor rights, social inclusion (including persons with disabilities), equal opportunities, accessibility design for all, taking account of sustainability criteria, including ethical trade issues, and wider voluntary compliance with corporate social responsibility (CSR).²⁴² But, those social considerations must be taken into account while complying with the principles of fair competition and transparency. Accordingly, social considerations are based on a series of international agreements and international organizations' policies, national human rights law, and basic human rights constitutionalized in constitutional law.

4. Conclusion

To answer what SPP is is not easy. This chapter explored the policy implementation and choices of SPP from the definition of sustainable development generally. SPP is a complex and hybrid policy. SPP acts in a middle space between public law and good governance in the environment and social issues, for example, utilizing public purchasing power to promote environmental protection and social equity by stimulating private sector participation. SPP exists in an intermediate space between traditional environmental mandates and the innovative way in which it could motivate industry, suppliers, and consumers to participate actively. Public procurement is a useful tool to interact good governance approach and sustainable development goals.

Goals achieved by public procurement, such as market integration objectives, national and local economic development, industry and innovation policies, promoting SMEs, environmental protection, and social issues resolved, have been discussed and explored by a large number of scholars. Public procurement policies have been categorized as and argued "primary," and "secondary," "horizontal" policies. For a long

P8.

²⁴² European Commission, "Buying Social. A Guide to Taking Account of Social Considerations in Public Procurement," 2010, 56. <https://doi.org/10.2767/18977>.

time, especially some crucial national industries' development and innovation policies (seen as the economic factor), public bodies put them in the "primary" position. However, with the definition and nature of SPP, the strict perception of the hierarchy between so-called primary and other public objectives should be transcended. SPP is a balancing tool among economic, environmental, and social objectives and not of choosing either economic efficiency or environmental protection and social development.²⁴³ Nevertheless, some basic principles, for example, competition, openness, transparency, and anti-discrimination, are seen as the overarching objective in any procurement process.

²⁴³ Olga Martin-Ortega and Claire Methven O'Brien, "Public Procurement and Human Rights: Interrogating The Role of The States As Buyers," in Olga Martin-Ortega and Claire Methven O'Brien (eds), *Public Procurement and Human Rights: Opportunities, Risks, and Dilemmas for the States as Buyers*, (Edward Elgar Publishing Limited. 2019), 247. P17.

Chapter 3: Sustainable Public Procurement in the Context of the Olympic Games: What role do the International Organizations and National Procurement Policies play in Olympic Procurement?

1. Introduction

The growth and increasing interests of the Olympic Games have resulted in enormous attention paid to the academic community. After the inclusion in the Olympic Charter of a provision underlining the necessity of preserving environmental protection in 1996, the environmental concern became the third pillar of Olympism.²⁴⁴ Since then, environmental protection was encouraged to consider the whole process of the Olympic Games. Particularly, environmental issues first surfaced in the planning and construction of the Olympic Winter Games in Lillehammer, Norway, in 1994.²⁴⁵ Environmental factor was considered in the planning and construction of Olympic venues for the first time. Afterward, in the procurement of Olympic goods, services, and works (especially Olympic venues, villages), environmental issues have become an indispensable factor in the Olympic Games.

However, a series of policies in the Olympic Games, such as sustainability strategy, environmental issues, and social goals, have been evolved increasingly from International Sports Federations (IFs) and National Olympic Committees (NOCs) signed the Earth Pledge in the Barcelona Games (XXV Olympiad) in 1992. IOC follows in the UN agencies' footsteps, in cooperation with the United Nations (UN) system and other international organizations (for example, ISO, ILO), to calibrate its policies. Especially, the Olympic Agenda 2020 encouraged to include sustainability in its procurement of goods and services and events organization (meetings, conferences, etc.)

²⁴⁴ Olympic Charter, Chapter 1, Rule 2, Paragraph 13. the role of the IOC is to encourage and support a responsible concern for environmental issues, to promote sustainable development in sport and to require that the Olympic Games are held accordingly.

²⁴⁵ IOC Commission for Sport and Environment, "Sustainability Through Sport."

in 2014. International organizations deeply influence the Olympic initiatives and programs. Thus, it should be admitted that sustainable considerations in the Olympic procurements have a global base.

Until 2018, the International Olympic Committee (IOC) applied *the IOC Suppliers Code*, which uses its influence to promote higher environmental and social responsibility levels across its supply chain. Then, in 2019, IOC issued *the Olympic Games Guide on Sustainable Sourcing*, which lays down a framework for the sustainable purchasing of the Olympic goods, facilities, services, and works in the process of the Olympic Games. These two Olympic procurement guidelines show that procurement activity plays a significant role in preparing for the Olympic Games. The procurement procedures, environmental standards, social considerations, and economic influences have been attached to importance by IOC and other key stakeholders.

Thanks to the Olympic Games' complex management and institutional structures, the Organising Committees for the Olympic Games (OCOG) are mainly responsible for the procurement and supply of Olympic goods, services, and works. On the one hand, the Olympic procurement activities are obliged to comply with the sustainable strategy in IOC's "*Olympic Agenda 2020*," "*IOC Sustainability Strategy*," and a series of policy guidelines laid down by the IOC family, aiming to achieve the missions and goals pursued by Olympic Movement and IOC. On the other hand, owing to the Olympic Games held in the specific host city, the Olympic procurements are required to comply with the national and local procurement policies in conformity with the condition of local economic development, environmental protection, and social goals.

As was shown above, it has to be answered what the Olympic procurement is and how sustainable Olympic procurement is exercised under the different public procurement legal frameworks. So, it should be explored to what extent and how Olympic procurement is affected by a series of international organizations (IOs).

2. Background

2.1 Evolution of Sustainable Development in the Olympic Movement

2.1.1 Olympic Movement Agenda 21

After the UN Conference on Environment and Development (UNCED), otherwise known as "Earth Summit" in Rio de Janeiro in 1992, also named "UN Agenda 21" during the Barcelona Games (XXV Olympiad), IFs and NOCs signed the Earth Pledge, committing to making the Earth a safe place. Environmental consideration is the top priority in the process of the Olympic games. The Winter Olympic Games in Lillehammer 1994 took a pioneering approach to use locally sourced, biodegradable, and recycled materials, massively reducing the Games' environmental impact and carbon footprint. The Olympic medals were made primarily of natural, locally sourced granite, while the Olympic torches were made using recycled glass mixed with concrete. 70 percent of the 20,000 information signs used at the Games were made from recycled paper. Meanwhile, all of the plates and eating utensils used were biodegradable.²⁴⁶ The 1994 Winter Olympic Games are widely seen as the first "White Green Games," as they were the first to embrace sound environmental and sustainability practices, laying the foundations for the development of Olympic environmental standards. From that time on, environmental consideration has been paid more attention to by the hosting Olympic Games, requiring the environmental measure from the bidding stage. Green Olympic Games is becoming a global consensus and a common goal.

According to the working document *Olympic Movement's Agenda 21: Sports for Sustainable Development in 1999*, sustainable development could be integrated into governing bodies and policies of the Olympic Games. The action program for sustainable development is built on three objectives: (1) improving social-economic conditions, (2) conservation and management of resources for sustainable development,

²⁴⁶ Legacy Of Lillehammer 1994 Shines Bright 25 Year. <https://www.olympic.org/news/legacy-of-lillehammer-1994-shines-bright-25-years-on>.

(3) strengthening the role of major groups.²⁴⁷ It is noted that social-economic considerations are attached to the importance except for considering the environment as one of the three pillars in Olympism. As the leading governing organization, IOC is required to strengthen the stronger cooperation with other IOs for sustainable development goals (SDGs).

Olympic Movement's Agenda 21 is regarded as a guide in the management and procurement activities, especially the sustainable development objectives. The sustainable development (economic, environmental, and social) considerations are included in the graph below.

Economic-social	Combating exclusion (the fight against poverty; integration of disadvantaged groups) Changing unsustainable consumption patterns Condemn and combat the violations of human rights of which young people are particularly likely to be victims Recognition and promotion of indigenous populations The use of local materials and resources for Olympic equipment and structures (national factors)
Environmental	Economize energy expenditure The durable and safe construction materials for infrastructures Efficient waster management Renewable resources and energy supplies Protection conservation of countryside and biodiversity Environment-friendly techniques and promoting the new-technologies Water management Management of hazardous products, waste, and pollutions

The IOC started international cooperation with the United Nations Environmental Programme (UNEP). The environmental issue had a significant impact on hosting the Olympic Games. There is no question that the institutional objectives influence all

²⁴⁷ IOC Sport and Environment Commission, "Olympic Movement's Agenda 21: Sport for Sustainable Development," *Olympic Movement's Agenda 21*, 1999, <https://stillmed.olympic.org/media/DocumentLibrary/OlympicOrg/Documents/Olympism-in-Action/Environment/Olympic-Movement-s-Agenda-21.pdf>
http://www.olympic.org/Documents/Reports/EN/en%7B_%7Dreport%7B_%7D300.pdf.

aspects of the preparation of the Olympic Games, inevitably including Olympic procurement activities. The sustainable development initiative in the Olympic Movement Agenda 21 is a starting point. The Olympic Games consider economic-social considerations, such as protecting unprivileged groups, human rights, indigenous population involvement, etc. These organizational goals justify supporting a series of SMEs in relating to indigenous-owned, women-owned, and exclude suppliers violating basic human rights, etc.

2.1.2 Olympic Agenda 2020

In the dynamic process of SD in *the Olympic Agenda 2020*, there are some changes and evolutions in many aspects. Firstly, it admitted that there is no "one size fits all solution" for the sustainability of the Olympic games. The new philosophy and principle in the bidding process, "diversity," provides the opportunity for host countries and cities to strive for very different development goals and start from very different points of development.²⁴⁸ Sustainability is one of the three pillars of Olympic Agenda 2020 – the IOC's strategic roadmap – alongside credibility and youth.²⁴⁹

Based on the commitment of international cooperation required by Olympic Movement Agenda 21, a series of programs established in subsequent Olympic Games strengthen the international cooperation and respect the specialties. The IOC launched the Olympic Games Knowledge Services (OGKS) platform to ensure the effective sharing of acquired knowledge in 2002. All organizing and candidate cities have access to the collective wisdom of past games with the transfer of knowledge from past organizing committees to those following.²⁵⁰ This program aims to inform the subsequent hosting cities about the specific hosting experience and knowledge and includes sustainable management in many aspects, such as sustainable considerations

²⁴⁸ International Olympic Committee, "Olympic Agenda 2020," *127th IOC Session*, 2014. http://www.olympic.org/documents/olympic_agenda_2020/olympic_agenda_2020-20-20_recommendations-eng.pdf. P3.

²⁴⁹ "IOC Sustainability Strategy," 2017, <https://www.pret.co.uk/en-gb/sustainability-strategy>.

²⁵⁰ IOC Commission for Sport and Environment, "Sustainability Through Sport.", 103, 2012. P17; Peter Horton and Dwight H. Zakus, "How Green Will My (Lea) Valley Be? Olympic Aspirations: Rhetoric or Reality," *International Journal of the History of Sport*, 2010, 2677–2709;

in the Olympic process, sustainable procurement policies, international standards compliance, etc. As noted, the specific hosting cities are subject to their own Olympic procurement guides and policies on the basis of some international organizations' strategies in environmental and social issues, international agreements, regional agreements, and national laws.

The 2000 Sydney summer Games, which sought the label 'green,' and started the cooperation with environmental Non-Governmental Organisations (NGOs), in doing so, was the first Games to be audited throughout by Greenpeace who issued a detailed and fairly positive report.²⁵¹ Afterward, the 2004 Athens summer Games were also audited, both by Greenpeace and the World Wild Found (WWF), according to the Sydney benchmark and experiences. The 2006 Winter Turin Games developed an Environmental Management System (EMS) in conformity with ISO (independent NGO) standard 14001:1996 and with the EMAS Regulation (Eco-Management and Audit Scheme) of the European Commission (EC Regulation no.761/2001), two distinct voluntary systems capable of promoting continuous improvement in the environmental performance of an organization.²⁵²

London 2012 was the catalyst for this new international standard specifically aimed at the events sector. Event Sustainability Management Systems (ISO 20121) provides the framework for identifying the potentially negative social, economic, and environmental impacts of events by removing or reducing them and capitalizing on more positive impacts through improved planning and processes.²⁵³

Secondly, The IOC takes a more proactive position and leadership role with regard to sustainability and ensures that it is included in all aspects of the planning and staging of the Olympic Games.²⁵⁴ However, specific hosting cities also carry out their own procurement policies in conformity with their national legal procurement policies and

²⁵¹ Research commissioned by the London Assembly from the London East Research Institute of the University of East London, "A Lasting Legacy for London? Assessing the Legacy of the Olympic Games and Paralympic Games Barcelona • Atlanta • Sydney • Athens," 2007. P11.

²⁵² Cappato and Pennazio, "Corporate Social Responsibility in Sport Torino 2006 Olympic Winter Games."

²⁵³ LOCOG, "London 2012 Post-Games Sustainability Report: A Legacy of Change," 70, 2012.

²⁵⁴ The IOC to invite potential candidate cities to present an Olympic project that best matches their sports, economic, social and environmental long- term planning needs. International Olympic Committee, "Olympic Agenda 2020." P9.

the IOC institutional goals. The 2006 Torino Winter Olympics Organising Committee (TOROC) was subject to the EU regulations and policies, rigorously applying these EU standards and tools from planning to execution at the Olympic sites.²⁵⁵ It required green procurement in compliance with EU green criteria and eco-label. Besides, the 2008 Beijing Summer Olympic Games laid down two crucial procurement policies, *Beijing Olympic Organizing Committee (BOCOG) Regulations on Good Purchase* and *BOCOG Regulations on Games-time Procurement*, which identified environmental protection as a significant consideration.²⁵⁶ The procurement policies are implemented in the 2012 London Games; for example, *the London 2012 Olympic and Paralympic Games (the legacy): Sustainable Procurement for Construction Projects*²⁵⁷ and *London Sustainable Sourcing Code*.²⁵⁸

Thirdly, in line with the cost-reducing in hosting Olympic games, the maximum use of existing facilities and temporary and demountable venues where no long-term venue legacy needs to exist or can be justified.²⁵⁹ To a greater extent, this initiative could reduce repetitive and unnecessary construction and infrastructure relating to the Olympic Games. From the perspective of value-for-money and the whole life cycle cost, procurement bodies take the step to consider buying needs and take actions from needs assessment throughout tendering until contract management.²⁶⁰ Therefore, this initiative making full use of existing facilities is a start point for sustainable Olympic procurement by reducing unnecessary construction. Life Cycle Assessment (LCA) is a useful tool for procurement bodies in reducing unnecessary costs and giving scale to social and environmental practices integrated within a new approach to managing mega-events, which leave behind the Olympic legacies for society.

Fourthly, the Olympic Games move from pure sports-based to event-based

²⁵⁵ “Greening the Torino Winter Olympics: An EU Success Story,” 2006. <http://old.europe.bg/htmls/page.php?id=4231&category=5&translation=en>.

²⁵⁶ Olympic, “Preparation for the Games: New Beijing Great Olympics.”

²⁵⁷ Department for Environment Food & Rural Affairs, “London 2012 Olympic and Paralympic Games. The Legacy: Sustainable Procurement for Construction Projects. A Guide,” no. July (2013): 1–19,

²⁵⁸ London Organizing Committee of the Olympic Games and Paralympic Games. “LOCOG Sustainable Sourcing Code,” 2011.

²⁵⁹ International Olympic Committee, “Olympic Agenda 2020.”

²⁶⁰ OECD, *Implementing the OECD Principles for Integrity in Public Procurement: Progress since 2008*, OECD Public Governance Reviews, 2013.

programs. Events are gatherings of people for a purpose, for example, cultural (music, exhibit), political, sports, etc. Olympic Games are referred to as sports mega-event because of the local community's economic, social, and environmental implications. Hosting mega-events, such as the Olympic Games, has become an instrument of urban regeneration, boosting economic development, promoting sustainable tourism, reducing environmental pollution and social exclusion.²⁶¹

Whilst the environmental impact of both 'day to day' sports mega-event and organizations' own processes has received attention, mega-events (Olympic Games) attempt to be 'green,' potentially reducing to impact upon local ecosystems, utilizing reserves of irreplaceable natural capital, and contributing to carbon emissions related to climate change, etc.²⁶² As to social inclusion and responsibility, the 2010 Winter Vancouver Olympic Games established the policy specifying 37 promises and 14 categories (Employment and Training, Housing, Civil Liberties, etc.) intended to ensure the wide distribution of games benefits while protecting vulnerable people and communities from negative impacts.²⁶³

Sustainable development/sustainability has become increasingly integrated into the objectives of hosting mega-events, particularly in the Olympic games.²⁶⁴ Sustainable Event Management (ISO 20121), developed in the London Olympic Games, aims to be the potential model examples of the harmonious balance between human activity, resource use, environmental impact, and positive social outcomes. Sustainable procurement is an essential part of a series of measurements in sustainable event management by auditing human rights abuses, unfair labor practices, environmental

²⁶¹ Rob Vanwynsberghe, Björn Surborg, and Elvin Wyly, "When the Games Come to Town: Neoliberalism, Mega-Events and Social Inclusion in the Vancouver 2010 Winter Olympic Games," *International Journal of Urban and Regional Research*, no. 6, 2013, 2074–2093; Egidio Dansero and Matteo Puttilli, "Mega-Events Tourism Legacies: The Case of the Torino 2006 Winter Olympic Games - a Territorialisation Approach," *Leisure Studies* 29, no. 3 (2010): 321–341; Lynn Minnaert, "An Olympic Legacy for All? The Non-Infrastructural Outcomes of the Olympic Games for Socially Excluded Groups (Atlanta 1996-Beijing 2008)," *Tourism Management*, no. 2, 2012, 361–370.

²⁶² Andrea Collins, Calvin Jones, and Max Munday, "Assessing the Environmental Impacts of Mega Sporting Events: Two Options?" *Tourism Management*, no. 6, 2009, 828–837.

²⁶³ Vanwynsberghe, Surborg, and Wyly, "When the Games Come to Town: Neoliberalism, Mega-Events and Social Inclusion in the Vancouver 2010 Winter Olympic Games;" The vancouver organizing committee. "Sustainability Report Vancouver 2010," 2010.

²⁶⁴ C. Michael Hall, "Sustainable Mega-Events: Beyond the Myth of Balanced Approaches to Mega-Event Sustainability," *Event Management*, no. 2, 2012, 119–131.

pollution, and degradation through procurement decisions.²⁶⁵

2.1.3 Olympic Agenda 2020: IOC Sustainability Strategy

Since sustainability became to be referred to as one of the pillars of Olympic Agenda 2020, Sport, especially mega sport-event like the Olympic Games, is seen as an enabler of sustainable development by UN agencies. The UN General Assembly confirmed the critical role that sport plays in supporting the UN 2030 Agenda for sustainable development and the UN's 17 Sustainable Development Goals (SDGs).²⁶⁶ The missions of the Olympic Movement are aligned with a number of SDGs, for example, ending poverty, combatting climate change, fighting injustice and inequality, and many other aspirations for a better, more sustainable world.²⁶⁷ The IOC Executive Board approved the IOC Sustainability Strategy in 2016, which established the comprehensive and detailed sustainable roadmap and main sustainable commitment in the Olympic Games.

In the context of the *Olympic Agenda 2020: IOC Sustainability Strategy*, the sustainable strategy has been promoted and detailed from five focus areas. The five focus areas are comprised: infrastructure and natural sites, sourcing and resource management, mobility, workforce, and climate.

Infrastructure and natural sites

Scope: Development and operation of indoor and outdoor sites wherever sports activities take place, including support and administrative infrastructures, such as non-competition venues at the Olympic Games and offices of the Olympic Movement's organizations.

Strategic Intents for 2030: (1) Use of existing infrastructure is maximized, and temporary and demountable venues are used where no long-term venue legacy need exists or can be justified; (2) If built, infrastructure is viable and has a

²⁶⁵ "London 2012 Post-Games Sustainability Report: A Legacy of Change;" Meegan Jones (ed), "Sustainable Event Management: A Practical Guide," (Routledge, 2018).

²⁶⁶ UN 2030 Agenda for Sustainable Development, paragraph 37: "Sport is also an important enabler of sustainable development. We recognize the growing contribution of sport to the realization of development and peace in its promotion of tolerance and respect and the contributions it makes to the empowerment of women and of young people, individuals and communities as well as to health, education and social inclusion objectives." <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>.

²⁶⁷ "IOC Sustainability Strategy." 2017, 54. P18.

minimal environmental footprint; (3) Sites have a net positive impact on local communities; (4) Protected natural areas and urban green spaces are promoted; (5) Protected cultural areas; (6) Sites conserve water resources and protect water quality.

Sourcing and resource management

Scope: Sourcing of products and services by organizations within the Olympic Movement and management of material resources over their lifecycle.

Strategic Intents for 2030: (1) Sourcing of products and services takes account of environmental and social impacts; (2) Products and materials are treated as valuable resources, and their lifecycle is optimized.

Mobility

Scope: Mobility of people and goods associated with the Olympic Movement's activities at the local and global scale.

Strategic Intents for 2030: (1) Mobility solutions are environmentally and socially responsible; (2) Freight operations are environmentally and socially responsible; (3) Sustainable tourism is promoted.

Workforce

Scope: Working conditions and opportunities offered to employees, volunteers, and contractors of the Olympic Movement.

Strategic Intents for 2030: (1) Working conditions of employees and volunteers are safe and healthy, and active lifestyles are promoted; (2) Workforce exemplifies diversity, inclusivity, and gender equality; (3) Educational and skills development opportunities are offered to young professionals; (4) Working conditions across the supply chain comply with applicable local, regional and national legislation and international agreements and protocols.

Climate

Scope: Management of direct and indirect greenhouse gas emissions associated with the Olympic Movement's activities and adaptation to the consequences of climate change.

Strategic Intents for 2030: (1) Effective carbon reduction strategies are in place for operations and events and are aligned with the objectives of the Paris Agreement on climate change; (2) Adaptation to the consequences of climate change is taken into account in the planning of sports facilities and events.²⁶⁸

²⁶⁸ “IOC Sustainability Strategy.” 2017, 54. P18.

2.2 Implications for Olympic Procurement

2.2.1 IOC as an International Non-Government Organization

International Organizations (IOs) have different taxonomy and types based on the specific mission. The classification depends on either political, military, economic, financial, human rights, and environmental aspects, or cooperation between states (Inter-Governmental Organizations) and non-states (International Non-Governmental Organizations).²⁶⁹ Various types of organizations carry out different types of procurement. On the one hand, in terms of the indirect procurement²⁷⁰ of IOs, the distinction is made between (a) organizations that operate by means of a loose-knit regulatory system and leave some autonomy to states, (b) those that adopt a maximalist option according to which the main source of procurement regulation is the organization itself, and (c) those that 'lend' their procurement rules to states with few or no national procurement rules.²⁷¹ On the other hand, direct procurement by IOs is referred to as the procurement activities launched by IOs and private parties as suppliers of goods, services, or works within the inner organizations.²⁷²

It is possible to detect, on the one hand, the existence of a link between procurement, its volumes, the rules establishing its principles and governing its procedures, and on the other, the nature of the international organizations.²⁷³ Based on the criterion of

²⁶⁹ Bob Reinalda (ed), *Routledge Handbook of International Organization*, (Routledge, 2013); Barkin, J, Samuel (ed), *International Organization: Theories and Institutions*, (Palgrave Macmillan, 2013).

²⁷⁰ Indirect Procurement by IOs includes (1) Indirect Procurement through Letter of Assist: the political agreement between the international organization and the state generally leaves the latter much room for discretion. In this case, the subject matter of regulation is the procurement carried out by states. (2) Indirect Procurement through NEX (National Execution) and Loan Agreements: The NEX procedures and the procedures of financial institutions are, in contrast, examples of hybrid regulation. In these cases, there is an agreement between the organization and the state for the implementation of a project or a programme. (3) Indirect Procurement through Agreements between International Organizations: It is based on an agreement between international organizations. From a regulatory point of view, this hypothesis does not pose complex problems as usually the organizations agree to undertake the procurement, following the procurement rules of one or other of the organizations that are party to the agreement. (4) Indirect Procurement through Private Parties: It is based on a contract between the organization and a private party – which is entrusted with the exercise of a function. On the basis of this, the private party can in turn conclude contracts with other private subjects. Procurement by International Organizations. A Global Administrative Law Perspective, University Printing House, 483. 2019. P22-P29.

²⁷¹ Elisabetta Morlino, “4.2.2 Indirect Procurement,” in Elisabetta Morlino (ed), *Procurement by International Organizations. A Global Administrative Law Perspective*, (United Kingdom: University Printing House, 2019), 483. In Morlino, Elisabetta (ed), Procurement by International Organizations. A Global Administrative Law Perspective, (University Printing House, 2019), 483. P104-105.

²⁷² Morlino, Procurement by International Organizations. A Global Administrative Law Perspective. P21.

²⁷³ Morlino, “4.2.2 Indirect Procurement.” Procurement by International Organizations. A Global Administrative

membership, a distinction may be made between International Government Organizations (IGOs) and International Non-Government Organizations (INGOs). INGOs are private subjects that perform public utility functions by integrating and sometimes replacing the activity of the IGOs.²⁷⁴ Morlino stated that this distinction leads to an important consequence with regard to its procurement activities: it is the subjective nature of the organization, rather than the nature of the function performed, that determines the application of public or private rules to procurement.²⁷⁵

Because they perform a function of public utility, INGOs, like any other private subject, comply with the transparency rules required at the domestic level to ensure the proper management of private funds and with the rules on competition imposed by the law and generally applicable to private subjects.²⁷⁶ The INGOs do not have an obligation to abide by national public procurement rules generally.

IOC is an independent, not-for-profit, and not-government international organization, and entirely privately funded and generates revenue through several programs, including the sale of broadcasting rights, the Olympic partner program, and the IOC official supplier and licensing program.²⁷⁷ To no small extent, the nature of IOC is private and self-sufficient, but also not-for-profit and public utility function after all. IOC is responsible for the sport mega-event organization and leads to a series of preparation work and distribution of rights and obligations for stakeholders.

According to the classifications of two procurement types of IOs: indirect procurement and direct procurement, Olympic procurement is unlikely to be defined as indirect or direct procurement. However, IOC drafts its own procurement rules and policies in line with its organization's missions and goals for guiding Olympic procurement. Before implementing the IOC Supplier Code in 2018 and the Olympic Games Guide on Sustainable Sourcing in 2019, there is no specific procurement guidance but including the sustainable requirements and putting forward the

Law Perspective. P35.

²⁷⁴ Morlino, Procurement by International Organizations. A Global Administrative Law Perspective. P36.

²⁷⁵ Morlino, Procurement by International Organizations. A Global Administrative Law Perspective. P36.

²⁷⁶ Morlino, Procurement by International Organizations. A Global Administrative Law Perspective. P37.

²⁷⁷ "IOC Sustainability Strategy." 2017. P22.

procurement function in *the IOC sustainability strategy*. However, *IOC Supplier Code* in 2018 only stresses the environmental, labor, and ethic requirements for the supplier in the procurement process. *The Olympic Games Guide on Sustainable Sourcing* in 2019 sets up the engagement of sustainable considerations into the whole cycle of the Olympic sourcing process, including but not limited to procurement. Also, the *Sustainable Sourcing Guide* learns the experience of previous Olympic Games.

2.2.2 Missions and goals of IOC

The Olympic Charter indicates that "*The goal of Olympism is to place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity. The goal of the Olympic Movement is to contribute to building a peaceful and better world by educating youth through sport practiced in accordance with Olympism and its values. The mission of the IOC is to promote Olympism throughout the world and to lead the Olympic Movement.*" As showcased in the Olympic Charter (similar to the fundamental "constitutional" law of states), IOC is the leader who promotes Olympism emphasizing harmonious and sustainable development by the Olympic Movement.

The goals of the Olympic games are understood from the fundamental principles of Olympism. First and foremost, the philosophy containing Olympism includes social responsibility, harmonious development of humankind, human rights, anti-discrimination based on race, color, sex, sexual orientation, language, religion, political or other opinions, national or social origin, property, birth, etc.²⁷⁸ Then, the Olympism demonstrated by the Olympic Movement is the concerted, organized, universal, and permanent action under the supreme authority of the IOC and all individuals and entities who are inspired by the values of Olympism. The goals of IOC are reflected in the missions of the Olympic Games regulated in the Olympic Charter. With the development of cooperation with UN SDGs, IOC aims to achieve its missions in

²⁷⁸ International Olympic Committee, "Olympic Charter," Olympic Charter (2019 edition), 106. <https://doi.org/10.1080/01436597.2016.1177455>.

coordination with sustainable development goals.

Many international initiatives/commitments led by international organizations aim to pursue some specific political and security, economic and financial, social and environmental objectives, etc. International organizations are referred to as the instrument, which manages these global issues.²⁷⁹ In the long history of humankind, numerous forms of such events have evolved for particular purposes. The most dramatic mega-sports event is the Olympic Games, considered the world's foremost sports competition with more than 200 nations participating.²⁸⁰

As a mega-sports event producing a considerable influence in many aspects, the Olympic Games affect the hosting city, even the hosting countries politically, socially, culturally, economically, technologically. Infrastructure, high-end technologies relating to the Olympic Games, to a large extent, promote local economic development and innovation. Sports mega-events incentive for the local economy, environment, and society has significantly paid attention to the international, regional, and local communities. *The 2007 EU White Paper on Sport* states that sports events, especially the Olympic Games, are a growing social and economic phenomenon that makes an important contribution to the European Union's strategic objectives of solidarity and prosperity.²⁸¹ Besides the environmental issue, local biodiversity, efficient materials, pollution reduction, and recycling natural resources are considered.

Notably, no single international organization, big or small, can avoid some degree of procurement, thus a critical common thread of international organization practice regardless of their identity or function.²⁸² The pivotal goal of both procurement by national governments and international organizations is to achieve the primary objective: the needs of administrative (internal)/organizations function and policies (external) goals.

With policies supporting a series of secondary objectives in the national public

²⁷⁹ Barkin, *International Organization: Theories and Institutions*.

²⁸⁰ Olympic Games. <https://www.britannica.com/sports/Olympic-Games/Women-and-the-Olympic-Games>.

²⁸¹ White Paper on Sport {SEC(2007) 932} {SEC(2007) 934} {SEC(2007) 935} {SEC(2007) 936} /* COM/2007/0391 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52007DC0391>.

²⁸² Morlino, Procurement by International Organizations. A Global Administrative Law Perspective.

procurement market in many countries, the initiatives pursuing "secondary" and "horizontal" objectives are referred to as green public procurement, socially responsible public procurement, strategic public procurement, innovative public procurement, and sustainable public procurement aiming to exercise environmental, social, innovative considerations in the procurement process. Correspondently, the procurement activities by international organizations are encouraged to pursue international organization missions and goals, mainly in terms of public interests and international benefits, for example, in environmental, social, human rights, education, and healthcare aspects, etc., in the background of achieving the primary function of procuring goods, services, and works.

In other words, when it comes to discussing the procurement for the Olympic Games purchasing goods, services, and works from the market to satisfy its function and primary needs, The goals of Olympic procurement are anticipated to pursue the secondary or horizontal goals as well. These goals are included in IOC's missions and goals, which interact with the SDGs and comprise environmental, social considerations deployed by *the IOC sustainability strategy* and *sustainable essentials guideline* issued by IOC.

In addition to IOC, the Olympic Movement also encompasses the Organising Committees for the Olympic Games ("OCOGs"), the national associations, clubs, and persons belonging to the IFs and NOCs, whose interests constitute a fundamental element of the Olympic Movement's action.²⁸³ Thanks to the integrating structures by these Olympic management departments, it implies that Olympic procurement is affected or monitored by different level organizations.

In the context of the fundamental principles of Olympism, the sustainable development approach is the only way to convey the spirit of Olympism. Sustainability is becoming to be a core strategy in all aspects of the Olympic Games. SD is associated with "Olympic Legacy," including a series of aspects, for example, economic issues (financial legacies such as jobs, tourism, funding, hosting opportunities, and marketing),

²⁸³ International Olympic Committee, Olympic Charter. Olympic Charter. P15.

environmental issues (environmentally friendly architecture and engineering, policy, and education), social issue (social progress, health, human rights, etc.).²⁸⁴ Olympic procurement in the preparation process is an important bridge and tool that helps achieve the Olympic legacy's positive outcomes. The missions and goals of the Olympic games have a significant impact on Olympic games policies.

2.3 Position of Sustainable Procurement in Mega-Event

From the relationship between sustainable development value and global governance, the most important actors in global governance for sustainability are national governments, United Nations agencies, socially responsible corporations, IGOs, INGOs, collective movements, and scientific and epistemic communities.²⁸⁵ *The Future We Want* - the outcome document of Rio+20 - recognizes that the active participation of all these actors can contribute to sustainable development and calls for continuing and strengthening existing partnerships and creating new ones. The dominant meaning of public-private cooperation continues to signify a beneficial process, namely the formation of coalitions of public and private actors leading to the realization of universal goals, sustainable development.²⁸⁶

Given that the pursuit of the positive consequences of global governance, good governance represents the positive aspect and is a trend globally. Good governance, referring to "a set of qualitative characteristics relating to processes of rule-making and policy-making and their institutional foundations, is taken into account in the management process, especially for IOs. Good governance encapsulates values, such as enhanced participation, transparency, accountability, public access to information, combat corruption, and secure both basic human rights and the rule of law."²⁸⁷ Thanks to the shared values - good governance – pursued by civil society from international to

²⁸⁴ Becca Leopkey and Milena M. Parent, "Olympic Games Legacy: From General Benefits to Sustainable Long-Term Legacy," *International Journal of the History of Sport*, no. 6, 2012, 924–943.

²⁸⁵ Alberto Martinelli, "Global Governance and Sustainable Development," *World Social Science Report 2013*, 2013, 467–472.

²⁸⁶ Catiaratti Grego, "UN-Business Partnership," in Thomas G. Weiss and Rorden Wilkinson (eds), *International Organization and Global Governance*, (Routledge, 2014), 309–321, P309.

²⁸⁷ Lyad Dhaoui, "Good Governance for Sustainable Development," 2019.

local communities and from society to individuals, not only do IGOs and governments participate in establishing and implementing sustainable development aiming at social responsibility, environmental initiatives, and human rights, but also INGOs and private sector take responsibility sustainable development for the society. Furthermore, Civil society associations have also arguably furthered innovation in the core vocabulary of global governance by promoting labels such as "fair trade," "human security," "sustainable development," and "global public goods."²⁸⁸

There are a series of international conventions and incentives for cooperating social responsibility (CSR), including the OECD's guidelines for responsible business conduct, sustainability reporting guidelines, *the United Nations Global Compact on CSR*. With the commercial activities between different market actors (private, public, and international organizations) and social responsibility taken up by organizations (no matter whether international or local, big or small), the notion of good governance has now spread to other types of organizations outside the corporate world (public bodies, associations, etc.), partly due to the emergence of new international standards specifically addressing the Social Responsibility of Organizations (SRO).²⁸⁹ The most important of these standards is ISO 26000, a non-certification standard that defines social responsibility as "an organization's contribution to sustainable development which takes the form of a willingness by the organization to accept responsibility for the impacts of its decisions and activities on society and on the environment and to report these impacts."²⁹⁰

Sustainable procurement is a critical way in which events consider sustainable factors in procurement processes, supply chain management for systematically addressing their negative social, economic, and environmental impacts. Especially for mega-event sustainable procurement, some environmental, social management systems, including sustainable considerations, have been established, for example, the most

²⁸⁸ Jan Aart Scholte, "Civil Society and NGOs." in Thomas G. Weiss and Rorden Wilkinson (eds), *International Organization and Global Governance*, (Routledge, 2014), 323-334, P330.

²⁸⁹ Emmanuel Bayle, "Olympic Social Responsibility: A Challenge for the Future," *Sport in Society*, no. 6 (2016), 752-766.

²⁹⁰ Bayle. "Olympic Social Responsibility: A Challenge for the Future."

important ones, including ISO 14000 environmental management system, ISO 20121 event sustainability management, ISO 26000 social responsibility guidance, and ISO 20400 sustainable procurement certification.²⁹¹ The ISO 20400 defines the principles of sustainable procurement, including accountability, transparency, respect for human rights and ethical behavior, and highlights critical considerations, such as risk management and priority setting, covering various stages of the procurement process, outlining the steps required to integrate social responsibility into the purchasing function.²⁹²

The step-by-step guide to sustainable institutional procurement has evolved and been implemented by four stages:²⁹³

(1) Verification of needs and projects: Visualise and review the objectives, function, and benefits of the product or service to be procured; Evaluate whether the purchase is necessary by considering previous specifications that are more appropriate to the needs of the institution.

(2) Mapping of social and environmental impacts and the creation of procurement attributes: After confirming the need for the procurement, it is necessary to look for ways in which the decision causes the least possible social and environmental impact. It is up to the procurement team to consider the product or service in terms of its life cycle, contemplating the environmental and social impacts, from the extraction of raw materials, via the production stage, up to disposal. Procurement entities also analyze legislation and self-regulation to comprehend the sustainable procurement practices inherent to that particular product and service. Also, procurement entities design the technical specification, respond to the product's attributes or characteristics, minimum performance levels (energy efficiency, reduced carbon emission), production processes, supply process (organic system, certified wood, energy use, procurement of local labor).

²⁹¹ ISO 20400 provides guidelines for integrating sustainability into an organization's procurement processes. Aimed at tomanagers and directors of the purchasing function, it covers the political and strategic aspects of the purchasing process, namely how to align procurement with an organization's goals and objectives and create a culture of sustainability.

²⁹² Sustainable Procurement. https://www.iso.org/files/live/sites/isoorg/files/store/en/ISO%2020400_Sustainable_procur.pdf.

²⁹³ Luciana Stocco BetiolGabriela AlemMario Monzoni, Sustainable Procurement & Major Events: Life Cycle Assessment as a Tool for Consumer Choices, (Programa Gestão Pública e Cidadania, 2015), 71. P43.

(3) **Market Consultation:** It is necessary to verify suppliers that can meet the demand for low-impact products, organize public meetings or consultations with the market, publish bid books that show interest in products, services and work with sustainability attributes.

(4) **Procurement:** Transform sustainability attributes that consider the social and environmental impact and risks of the product's life cycle into technical specifications that will be included in the elaboration of the bid notice, and to also include these attributes in the approval and qualification of the supplier and contractual obligations.

Procurement is seen as an essential instrument to pursue inclusive, sustainable, and circular development for human beings. As to the procurement activities in terms of mega-events, especially the Olympic Games, not only through the declaration and pursuit of Sustainability Agenda in policies missions of IOC but also through the "green Olympic,"²⁹⁴ "Green, High-tech and People's Olympics,"²⁹⁵ or other similar mottos in a large number of the hosting countries and cities, sustainable procurement has been recognized as a production and consumption pattern for public and private sectors around the world.

2.4 Olympic Legacy: the Positive Outcomes of the Olympic Procurement

The Olympic Legacy is defined as the result of the Olympic vision. It encompasses all the tangible and intangible long-term benefits initiated or accelerated by hosting the Olympic Games/sports events for people, cities/territories, and the Olympic Movement" in the IOC guide document *Legacy Strategic Approach* in 2017.²⁹⁶ This guide aims to promote the Olympic legacy approach based on *the Olympic Charter* and the recommendations of *Olympic Agenda 2020*. These recommendations cover the

²⁹⁴ Environment issue has become the third pillar of the Olympic movement since 1990s after 1994 Winter Olympic Games.

²⁹⁵ Beijing Olympic Action Plan. Overall Strategic Concept.
<http://www.ebeijing.gov.cn/Government/reports/t923616.htm>.

²⁹⁶ Olympic legacy comes from the implementation of a vision which originates from the alignment of the Olympic Movement core vision of "building a better world through sport" with the vision of a city (or a territory) of what a "better world through sport." "Olympic Games Legacy Strategic Approach Moving Forward," 2017, https://www.olympic.org/-/media/DocumentLibrary/OlympicOrg/Documents/Olympic-Legacy/IOC_Legacy_Strategy_Full_version.pdf?la=en&hash=0BCD9D4723539CDC8495FE1AE6AC562BCBD AF316.

various ways in which the IOC intends to encourage further, support, monitor, and promote legacy in partnership with its stakeholders. Importantly, Olympic Games leave a legacy for people, cities/territories by building infrastructure, stadiums, and social-inclusive initiatives through sports.

However, legacy is recognized as the long-term benefits or outcomes of putting the Olympic Movement vision into practice. In contrast, sustainability refers to the strategies and processes applied in decision-making to maximize positive impacts and minimize negative consequences in the social, economic, and environmental spheres.

The Expected long-term benefits from the Olympic Games are comprised of:²⁹⁷

*(1) **Organized sports development:** Enhanced support to athletes; New generation of elite-level athletes; Competitive sports development (from local up to national teams); Organised grassroots sports development (sports initiation, clubs, etc.); Broad fan base for less known sports and events; Improved efficiency of the organized sports system (federations, support, and governing bodies); Enhanced skills of coaches, sports physicians or other specialists; New/upgraded sports venues used for training and competition; High-performance training centers; Sports equipment.*

*(2) **Social development through sport:** Health and well-being benefits from the practice of recreational sport and physical activity; Olympic values and sport as a tool for education; Peace-building and international cooperation; Gender and inclusiveness (minorities, people with disabilities, LGBT, etc.)*

*(3) **Human skill, networks, and innovation:** New generation of talent in different fields (technology, law, architecture, project management, the arts, etc.); Human skills and soft skills (leadership; exposure to other cultures and languages; client-focused mindset; etc.); and technical skills (sports management, media, broadcasting, event management, tourism, and hospitality); New networks: volunteers; diplomatic connections; staff; Innovation in different fields (materials, technologies, business models, management, sports entrepreneurship).*

*(4) **Cultural and creative development:** Intangible cultural heritage of Olympism; Increased visibility of national culture; New design, brand and visual identity; Artistic activities (music, visual arts, etc.) developed through*

²⁹⁷ International Olympic Committee (IOC). "Olympic Games Legacy Strategic Approach Moving Forward." 2017. 51. P17.

the ceremonies and Cultural Olympiad program; New cultural assets for the city/country (iconic buildings, cultural institutions, etc.)

*(5) **Urban development:** Transport and mobility infrastructure development (extension of a metro or train system, airport upgrade, more walkable and cyclable cities); Basic urban infrastructure (housing, water, sanitation, solid waste disposal, healthcare, and other public amenities); Advanced urban services and infrastructure (technology, telecommunications, smart city grids, smart buildings, etc.); Upgraded/new venues for multiple social/economic uses.*

*(6) **Environment enhancement:** Air and water quality; Transition to low-carbon technologies and processes; Open-air leisure areas and greenspace; Biodiversity protection and restoration; Innovative environmental management solutions; Enhanced sustainability and environmental awareness.*

*(7) **Economic value and brand equity:** Increased global profile and visibility of city/territory; Tourism and event industry development; Fiscally responsible long-term investments; Competitiveness of economic sectors impacted by the Olympic Games and other activities from the Olympic Movement; New business/economic sector development; Enhanced Olympic Movement brand equity.*

With the Olympic legacy recognized by the IOC, the tangible legacies are mainly referred to the infrastructure projects including Olympic games venues and villages, roads and the public transportation system, other urban infrastructure constructions, and improvement of innovative industries and economic sectors in host cities.²⁹⁸ Also, intangible legacies are quite complicated. They encompass a series of "soft" capacities and influences, which include education, culture protection (natural and historical heritages), city image, social benefits (improving local employment, socially excluded group engagement), and potential economic benefits (tourism economy).²⁹⁹

As defined in the IOC *Olympic Legacy Guideline*, legacy is recognized as the long-term benefits or positive outcomes remaining for the local community and hosting city

²⁹⁸ Shalini Samuel and Wendy Stubbs, "Green Olympics, Green Legacies? An Exploration of the Environmental Legacies of the Olympic Games," *International Review for the Sociology of Sport*, no. 4 (2013): 485–504.

²⁹⁹ Lynn Minnaert, "An Olympic Legacy for All? The Non-Infrastructural Outcomes of the Olympic Games for Socially Excluded Groups (Atlanta 1996-Beijing 2008)," *Tourism Management*, no. 2, 2012, 361–370; Vanwynsberghe, Surborg, and Wily, "When the Games Come to Town: Neoliberalism, Mega-Events and Social Inclusion in the Vancouver 2010 Winter Olympic Games."

after finishing the Olympic games. The intangible and tangible include long-term economic, environmental, and social benefits. Undeniably, the acquisition of goods, services, and infrastructure construction significantly impact the local economy/economic transformation/industry development, environment, and social issues potentially. The common pursuit of Olympic legacy and sustainable procurement promotes economic, environmental, and social benefits. The only difference is that the former emphasizes the legacy for local or human beings, while the latter stresses the implementation of sustainable considerations, standards, procurement procedures, and sustainable management, etc.

The tourism legacy has been seen as the significant Olympic legacy, both tangible (Olympic venues and urban infrastructure, for example, drinking water and sewage systems, road, etc.) and intangible (the city brand effect, the potential tourist revenue). While it could not be recognized as the direct procurement goals and impacts of stakeholders in the Olympic Games, the outcomes of the Olympic legacy cause the long-term positive legacy (intangible and tangible)-tourism legacy. New business/economic sector and innovation – other important economic outcomes produced by procurement activities – promote the development of sport-related industries, innovative sectors, even high-tech centers.³⁰⁰ The infrastructures of local urban development may promote innovative and high-tech for environment-friendly and energy-saving materials.³⁰¹

Environmental legacy includes a series of green programs, for example, the Olympic park, and natural sites, biodiversity protection, waste disposal, sewage system, etc. It is worth noting that innovative industrial sectors concerning the Olympic goods and services could boost some economic sectors and promote the use of environmental-friendly products.

With regards to social legacy, *the IOC Legacy Strategy Approach* focuses on the

³⁰⁰ The most inspiration case is the initiative of Big Data Center built in one hosting city of 2022 Winter Olympic Games in Zhang jiakou. The Ski special town built around Beijing aims to promoting tourism.

³⁰¹ Department for Environment Food & Rural Affairs, “London 2012 Olympic and Paralympic Games. The Legacy: Sustainable Procurement for Construction Projects. A Guide;” Commission for a Sustainable London 2012, *Procuring the Games: A Review of LOCOG's Procurement*, 2010, http://www.cs london.org/wp-content/uploads/downloads/2010/01/2010_LOCOG_Procurement_Review.pdf;

social benefits for marginal (disabled, young, poverty, unemployment, etc.) groups and basic human rights. The Olympic sports mega-event could provide skills, employment, and sport participation opportunities among the social benefits for socially excluded groups.³⁰² For instance, the 2010 Vancouver Olympic Games laid down social inclusion and responsibility, including employment and training programs in VANOC's Legacy Plan.³⁰³ It is also admitted that the effects on employment, tourism, and transportation systems are the other long-term heritages in most Olympic Games.³⁰⁴ That is to say, through Cooperate Social Responsibility (CSR) with business and supply chain in the Olympic Games, the sustainability strategy in Olympic procurement is the crucial instrument to achieve the social legacy.

Another important Olympic legacy is the program supporting small-medium enterprises (SMEs). This program provides equal business opportunities to SMEs, especially run by aboriginal people (in Vancouver Olympic),³⁰⁵ veterans, ethnic minority groups, women, and disabled people (in London Olympic).³⁰⁶ The procurement strategy promoting SMEs, on the one hand, is a practical approach to developing the local economy and providing more employment opportunities to the local community; on the other hand, it is also an approach supporting the unprivileged people. Notably, the CompeteFor model, used as the mechanism for all public sector procurement in London Olympic, establishes legitimacy with a broader business constituency, including SMEs and firms owned by ethnic minority groups, women, and disabled people.³⁰⁷ Over 70 percent of contracts awarded through the CompeteFor program have gone to SMEs, with over 34 percent of awards going to businesses based

³⁰² Minnaert, "An Olympic Legacy for All? The Non-Infrastructural Outcomes of the Olympic Games for Socially Excluded Groups (Atlanta 1996-Beijing 2008)."

³⁰³ "Sustainability Report Vancouver 2010 Sustainability Report," 2010.

³⁰⁴ Cappato and Pennazio, "Corporate Social Responsibility in Sport Torino 2006 Olympic Winter Games." P23.

³⁰⁵ The Aboriginal Procurement Strategy was developed by VANOC to optimize opportunities through 2010 procurement activities — both for Aboriginal businesses and those that strongly supported the Aboriginal community. It included a number of procedures that were built into VANOC's purchasing processes. These procedures and related tools were used to source goods and services from suppliers with policies and programs that aligned strongly with VANOC's own Aboriginal participation and sustainability objectives. "Sustainability Report Vancouver 2010 Sustainability Report," 2010.

³⁰⁶ David Smallbone et al., "Procurement and Supplier Diversity in the 2012 Olympics," *Human Rights*, no. May (2012).

³⁰⁷ David Smallbone et al., Procurement and Supplier Diversity in the 2012 Olympics, International Council for Small Business Conference at Seoul: South Korea, 2009.

in London (local entities).³⁰⁸ CompeteFor registration, creating a business base that is 'fit to compete' for public contracts, is seen as a legitimate constructing tool - an Olympic legacy for subsequent e-procurement platforms, producing positive implications.³⁰⁹

To a large extent, this intelligent sustainability framework in the Olympic Games, reflecting the core values of "whole life cycle" and "value-for-money," interacts with the Olympic legacy. In order to minimize negative environmental impacts produced during the construction process of infrastructure projects, the environmental externality cost is required to be integrated into the whole life cycle cost in the supply chain. The environmental-friendly materials and high technologies are made full use of in the construction process. On the one hand, the use of an innovative approach promotes the environmental-friendly Olympic legacy. Using an innovative approach is value for money and can provide incentives for some new industrial sectors in the long term. On the other hand, sustainable consideration aims at protecting the natural site and biodiversity, especially the sports events of the winter Olympics in a fragile natural environment. Olympic venues are required to consider the environmental factor from the choice of the site (reducing the environmental implication to local), the planning, construction, to maintenance or disposal after post-game in the end.

The most significant impact is that abandoned Olympic venues and facilities are reduced. A large number of Olympic venues are deserted in the history of hosting the Olympic Games, for example, some venues, villages, and facilities in Bobsleigh Track, Sarajevo, 1984 Winter Olympics, Olympic Village, Athens, 2004 Summer Olympics Venue, etc.³¹⁰ Lots of Olympic infrastructure legacies are wasted because of an unsustainable approach. To use the taxpayer's money wisely and reduce resource waste, "value for money" in Olympic venues is advocated, such as the use of temporary, demountable venues and removable facilities, the maximum use of existing facilities,

³⁰⁸ LOCOG, "London 2012 Sustainability Report." April 2011. P100.

³⁰⁹ David Smallbone et al., Procurement and Supplier Diversity in the 2012 Olympics, International Council for Small Business Conference at Seoul: South Korea, 2009.

³¹⁰ Abandoned Olympic Venues From Around The World Or Why It's The Biggest Waste Of Money Ever https://www.boredpanda.com/abandoned-olympic-venues/?utm_source=google&utm_medium=organic&utm_campaign=organic.

and sports venues for some regular sports events.

In order to achieve a positive Olympic legacy, sustainable procurement also is seen as a useful tool by taking into sustainable considerations and management into the Olympic procurement process. *IOC sustainability strategy, sustainability essentials* focus on the principles, approach, means, scales, and requirements for participating stakeholders. Procurement, incorporating Olympic Games characteristics (*sustainable sourcing code for Olympic Games*), is the most crucial factor for a strategic sustainability framework, which leads to Olympic sustainable procurement (sourcing) to be paid more attention. In the end, the Olympic legacy, including tangible and intangible benefits and relating to economic, environmental, and social issues, aims to potential positive outcomes based on the different specialties and specific hosting cities.

3. What is the Olympic Games Procurement?

As far as public procurement is concerned, it is continuing to evolve both conceptually and organizationally. The pursuit of "do more with less" at all levels of government has become dominant since the 1990s. The ultimate goal is "optimizing public expenditure" and value for money. There are a series of mechanisms regulating public procurement activities to pursue this ultimate goal, including national economic interests, the principles of fairness, equity, and transparency, maintaining an overarching focus on maximizing competition and level playing field, secondary or horizontal goals (environmental, soc-economic, innovation).

With the acknowledgment and recognition of the purchasing power of international organizations, the public procurement mechanisms transmit or influence the procurement policy-making of IOs. As argued in section 2, the procurement policies could be affected by the nature of IOs (IGOs and INGOs) and procurement types between direct procurement (corporate procurement policy regulating goods, services, and construction of operations by IOs) and indirect procurement. The procurement policies are similar to principles (open competition, non-discrimination, equality, value for money), contract awards, sustainable requirements, etc.

As IOs group, there are procedural differences in implementing procurement contracts as reported by the organizations in UN systems.³¹¹ The procurement manuals contain similar policy principles, including, for example, open participation, competition, fair and equitable treatment, value for money and lowest acceptable bid, avoidance of conflict of interest, transparency, and accountability.³¹² As to sustainable considerations required by the *UN Supplier Code of Conduct*, the environmental requirements and human rights issues are embedded in the supply chain of the UN system. There are a series of international conventions and treaties, such as the Global Compact, International Labour Conventions, Recommendations by ILO, environmental requirements, and ethical conduct in anti-corruption.³¹³

Another crucial purchasing power in relation to Multi-Development Banks (MDBs), particularly the representative bank (World Bank), with regard to corporate procurement policy, is expected to abide by the highest ethical, legal, and moral standards in all business relationships for the vendor. The Bank Group integrates socially responsible suppliers into its supply chain through its corporate procurement practices as a socially responsible organization. In order to increase the development and awareness of environmentally responsible procurement (ERP), the acquisitions of goods and services ensure that, wherever possible, specifications are written to provide for the expanded use of environmentally preferred products such as durable, reusable, energy-efficient, low-pollution.³¹⁴

Among the indirect procurement methods of MDBs, International Competitive Bidding (ICB) is to provide all eligible prospective bidders with timely and adequate notification of a borrower's requirements and an equal opportunity to bid for the required goods, works, and non-consulting services. The other methods of procurement can be used when the ICB would not be the most economical and efficient method of procurement. The other methods are deemed more appropriate, or in the case of Limited

³¹¹ Muhammad Yussuf, "Procurement Practices within the United Nations System," 2004, 38. P16. http://www.unjju.org/data/reports/2004/en2004_9.pdf.

³¹² Muhammad Yussuf, "Procurement Practices within the United Nations System," 2004, 38. P16.

³¹³ the UN Supplier Code of Conduct. <https://www.ungm.org/Public/CodeOfConduct>.

³¹⁴ Corporate Procurement Policy Summary for Vendors Doing Business with the World Bank Group. <http://pubdocs.worldbank.org/en/496441507809952444/CorporateProcurementPolicySummary.pdf>.

International Bidding (LIB), where the bank has agreed to the use of the public procurement system of the borrower country.³¹⁵ In the different procurement methods and the use of the public procurement system of the borrower country, the core procurement principles—fit for purpose, value for money, integrity, and economy—are required to be abided by.³¹⁶

In order to govern sustainable procurement for World Bank Investment Project Financing (IPF), *Sustainable Procurement Guidance* was issued in 2016, which carries out the method of introducing sustainable procurement into the project procurement projects in borrower countries, for example, strategic assessment, pre/post requirements, contract awards, and contract management, life cycle cost tool, etc.³¹⁷

Moreover, the UN drafted a guide titled *Buying for a better world: A guide for sustainable procurement for the UN system*, which aims to provide (1) concrete and valid arguments for the UN to engage in SP; (2) guidance on the integration of sustainable development principles in the UN procurement cycle.³¹⁸ Yet, the Guide also provides recommendations on developing sustainable procurement action plans in international organizations, Multi-Development Banks, states, including the international Task Force on Sustainable Public Procurement in the framework of the Marrakech process, sustainable public procurement of UNEP program.³¹⁹ Public procurement is seen as an "overall process of acquiring goods, civil works, and services which includes all functions from the identification of needs, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration through the end of a services' contract or the useful life of an asset."³²⁰

Sustainable procurement starts to deploy from mapping sustainability impacts throughout the life cycle, procurement plan (market analysis), requirement definition,

³¹⁵ The World Bank, "Guidelines - Procurement of Goods, Works and Non-Consulting Services Under IBRD Loans and IDA Credits & Grants by World Bank Borrowers," 2014.

³¹⁶ Procurement Guidance, "Sustainable Procurement in World Bank," July (2016).

³¹⁷ Procurement Guidance, "Sustainable Procurement in World Bank," July (2016).

³¹⁸ <https://www.oneplanetnetwork.org/resource/buying-better-world-guide-sustainable-procurement-un-system>.

³¹⁹ UNEP, "Buying for a Better World: A Guide on Sustainable Procurement for the UN System," 2011, 76; Sustainable Public Procurement of UNEP program. <https://www.unenvironment.org/fr/node/1549>.

³²⁰ United Nations Development Programme (UNDP) 2007. Contract, Asset and Procurement Management User Guide. Available at <http://content.undp.org/go/userguide/cap/procurement/?lang=en#top>.

sourcing, evaluation, and contract management in the UN system.³²¹ In the new procurement manual (Revision 6.1 - 2019) for United Nations Office for Project Services (UNOPs), the procurement policies are not big different from public procurement in national states in procurement principles, procurement process and procedures, evaluation of submissions, tender awards, and contracts management in the whole life cycle of the procurement process.³²² This procurement guideline also aims to assess the ethical conduct of vendors (suppliers) in sustainable procurement and emergency procurement, particularly the procedures, strategic planning in emergency procurement in response to emergency public security incidents.

Therefore, as the experiences of sustainable procurement in both direct procurement and indirect procurement of international organizations have shown, different international organizations have played and are playing a role in shaping sustainability (environmental, social) with procurement practices.³²³ The role they play involves not only the drafting of international treaties and hard law but also the use of soft law language by developing recommendations, guidelines, best practices, as well as by providing technical assistance and training to procurement authorities.³²⁴ These are instances of soft legal integration, which are presently quite at the core of global administrative law's much more general development.³²⁵

Hosting Olympic Games involves a series of stakeholders, including international organizations (IOC is the most relevant actor), the national central government department, the local government, and the NOCOGs (in coordination with IOC with national and local governments). The Olympic procurement is different from the procurement by international organizations. In the following subsection, the Olympic

³²¹ UNEP, "Buying for a Better World: A Guide on Sustainable Procurement for the UN System," 2011, 76; Sustainable Public Procurement of UNEP program. <https://www.unenvironment.org/fr/node/1549>.

³²² United Nations Office for Project Services (UNOPs). "Procurement Manual of Procurement Group," 2019. 188. www.unops.org.

³²³ Roberto Caranta, "Helping Public Procurement Go Green: The Role of International Organisations," *European Procurement & Public Private Partnership Law Review* 8, no. 1 (2013): 49–54; Roberto Caranta; Carol Cravero, Sustainability and Public Procurement in Annamaria La Chimia; Peter Treppe (eds), *Public Procurement and Tied Effectiveness: A Roadmap under Construction* (Bloomsbury Publishing PLC. 2019), 416.

³²⁴ Roberto Caranta, "Helping Public Procurement Go Green: The Role of International Organisations," *European Procurement & Public Private Partnership Law Review* 8, no. 1 (2013): 49–54.

³²⁵ Roberto Caranta; Carol Cravero, Sustainability and Public Procurement in Annamaria La Chimia; Peter Treppe (eds), *Public Procurement and Tied Effectiveness: A Roadmap under Construction*, (Bloomsbury Publishing PLC. 2019), 416.

procurement is analyzed comprehensively (international and national levels).

3.1 Olympic Games Procurement

When it comes to Olympic procurement, it is crucial to make clear the nature, the budget source, and the scope of procurement activity of the Olympic games. The Olympic Movement encompasses a number of organizations, athletes, and other persons and the IOC, including the IFs, the NOCs, and the OCOGs. All of these organizations play a specific role in relation to the Olympic procurement activities, especially IOC, the NOCs, and OCOGs.

With regard to the procurement budget of the Olympic games, the revenues provided by the games should be considered. Because the IOC is a non-profit organization, 90 percent of the revenues from the Games go straight back into sports and athlete development. In total, around USD 2.5 billion is put towards the staging of the Olympic Games to ease the financial burden on the host cities.³²⁶ Many financial agreements are drawn up far ahead of the staging of the Games to help host cities as it allows them to plan their budgets more efficiently.³²⁷

As to the Olympic Partner Programme (TOP), support from the business community is crucial to the staging of the Games and the operations of every organization within the Olympic Movement, including funding, technical services, and products. Through their support, Olympic partners provide the foundation for the staging of the Olympic Games, including the multinational companies providing products, services, technology, expertise, and staff deployment.³²⁸

Besides, in order to promote the local economy, under the direction of the International Olympic Committee (IOC), the national OCOGs manage their own complementary commercial programs to manage the staging of the Games. Contracts

³²⁶ From Athens 2004 to Rio 2016 (Summer Games), and from Salt Lake City 2002 to PyeongChang 2018, the IOC has increased its contribution towards the success of the Games by 60 percent, allocating a total of USD 1.53 billion for Rio 2016 and USD 887 million for PyeongChang 2018. A considerable sum is also put towards the cost of staging the Youth Olympic Games every two years.
Olympic Funding. <https://www.olympic.org/funding>.

³²⁷ Eleni Theodoraki (ed). *Olympic Event Organization*. (Butterworth-Heinemann; 1st edition, 2007), 208.

³²⁸ The Olympic Partner Programme (TOP). <https://www.olympic.org/partners>.

are negotiated directly by the national OCOGs and are generally limited to the four-year Games period, including Olympic Games sponsorship and suppliers programs (non-competing product categories to the TOP Partners), Olympic Games ticketing programs, Olympic Games licensing programs.³²⁹

Olympic marketing programs managed by the NOCs include National Olympic sponsorship and suppliers programs that operate within the home country of the NOC, National Olympic licensing programs. The TOP program provides each worldwide Olympic partner with exclusive global marketing rights and opportunities within a designated product or service category, including the partnership with the IOC, all active NOCs, OCOGs.³³⁰

General Olympic goods, services, and works consist of three parts, (1) commercial programs from the private sector by sponsorship, (2) revenues from the quasi-public sector (IOC), (3) public financial budget from hosting countries. The TOP program provides some Olympic goods and services through a series of private firms, such as broadcasting, ticketing, domestic sponsoring, licensing, etc. Some of the rights and interests of partners, sponsors, and suppliers include (1) authorizing Olympic symbols and mascots to specific partners; (2) Exclusive rights to promote certain products or services; (3) Games-time services such as accommodation, venue access pass, tickets for the Opening and Closing Ceremonies and competition sessions, and use of the Sponsorship Hospitality Centre; (4) Privilege of purchasing the rights to run Games-time. Private companies provide some Olympic goods and services through IOC selling broadcasting, Olympic brand licensing, and so on.³³¹ Generally, these programs are not considered public procurement.

In terms of the urban infrastructures, for example, public transportation, water system, garbage disposal, sewage treatment, Olympic venues, villages, and accommodations, these are referred to as public expenditures of governments of the host countries. These procurement programs are required to implement the national

³²⁹ The Olympic Partner Programme (TOP). <https://www.olympic.org/partners>.

³³⁰ Eleni Theodoraki (ed). *Olympic Event Organization*. Butterworth-Heinemann, Linacre House, Jordan Hill, Oxford, UK (2008), 193. P62.

³³¹ *Preparation for the Games: New Beijing Great Olympics*. 2007. 326. P72.

public procurement legal framework.

Apart from the national legislation applicable to the operations of the Athens Organizing Committee for the Olympic Games (ATHOC) and due to the fact that Greece is a member state of the EU, ATHOC, as a state-owned organization, has been obliged to abide by the European legislation as well. This also involved the observance of the EU procurement rules, as stated in the EU Directives 93/36/EEC on public supply contracts, 92/50/EEC on public service contracts, and 93/37/EEC on public works contracts.³³² Therefore, with the evolution of the EU public procurement directives from 1993 Directives to 2004, two public procurement Directives, and to 2014 three public procurement and concession Directives, the national public procurement legal framework has evolved alongside the EU. These evolutions must have an impact on the subsequent Olympic games in EU member states, for example, the 2006 Torino winter Olympic games and the 2012 London summer Olympic games.

In almost every case, the OCOG must work with the central and local government departments to modify existing laws or create new laws/regulations/policies to protect the OCOG in the areas of risk, brand protection, venue use, etc.³³³ In addition to these aspects, another crucial aspect is the governance and management of Olympic procurement in relation to the international, regional, and national legal framework. Therefore, the Olympic procurement showcases its characteristics based on its complex nature.

3.2 Characteristics of Olympic Procurement

3.2.1 Autonomy

In view of the nature of the association, neither the IOC nor any of its member organizations have any liability for each other's acts or omissions. Each member organization is a separate and independent legal entity operating under various countries. The protection of the autonomy of the movement is linked to the IOC's

³³² Eleni Theodoraki (ed). *Olympic Event Organization*. (Butterworth-Heinemann; 1st edition, 2007), 208 P100.

³³³ Eleni Theodoraki (ed). *Olympic Event Organization*. (Butterworth-Heinemann; 1st edition, 2007), 208. P99.

monopoly and power that allow it to exercise pressure on its various member sports organizations to remain autonomous.³³⁴

Thanks to the autonomy of these international or member organizations concerning managing, governing, and organizing the staging of the Olympic games, the missions and goals argued above must have a significant impact on the Olympic procurement. With the autonomy of IOC, a series of guidelines and documents are drafted in implementing the Olympic movement's missions and goals. The Olympic procurement is also required to comply with the Olympic value in the Olympic Charter, the missions, and goals in sustainability guides. Moreover, the acquisition of Olympic goods, services, and infrastructures, to some extent, is different from the pure government procurement activities purchased by government bodies.

The Olympic Games Guide on Sustainable Sourcing has distinguished the sourcing and procurement relating to the Olympic games. **Sourcing & Procurement:** Terminology can often be confusing and may not be particularly well defined: this includes the terms 'sourcing' and 'procurement.' Some consider sourcing and procurement to be different; some view them as the same.³³⁵ For the characteristics of the Olympic goods and services, the term 'sourcing' is favored in *The Olympic Games Guide on Sustainable Sourcing*. It is the process (which may be formal or informal) by which products and services are identified and then bought or acquired from partners, licensees, and suppliers. So the sourcing includes branded merchandise, gifts, and giveaways, sole supplier deals, and sponsorship, which span the whole cycle from identification of needs to negotiating, managing, monitoring contracts/agreements for goods and services through to when the products or services are no longer needed. It also includes planning, defining strategy, specifications, and processes for selecting suppliers/partners.³³⁶ So, in a broad sense, sourcing is the concept that not only means procurement on the basis of procedures but also includes reselling, licensing, sponsorship, and franchising. *The Olympic Games Guide on Sustainable Sourcing*

³³⁴ Eleni Theodoraki (ed). Olympic Event Organization. (Butterworth-Heinemann; 1st edition, 2007), 208. P99.

³³⁵ International Olympic Committee (IOC) "Olympic Games Guide on Sustainable Sourcing," 2019, 116. www.olympic.org. P14.

³³⁶ International Olympic Committee. *The Olympic Games Guide on Sustainable Sourcing*. 2019. 116. P14.

integrates sustainability into the whole activities of the Olympic Games. Without a doubt, Olympic procurement can not be excluded from implementing the sustainability principle. But the autonomy, as one important characteristic, makes the Olympic procurement also consider the sustainable goals or of IOC or mission of IOC in adopting sustainable policies.

For instance, the BOCOG is a non-profit public institution established for meeting economic and social development needs and providing public welfare services and public interests through registration in accordance with Chinese civil law.³³⁷ The term "government procurement," as defined in GPL, referred to the purchasing of goods, works, and services within the centralized procurement catalog³³⁸ by all level national government departments, public institutions, and bodies using public fiscal funds and complied in accordance with law or the value of goods, construction or services exceeds the respective prescribed procurement thresholds. (Art 2 of GPL).

Therefore, on the one hand, BOCOG has to comply with the Olympism, missions, and goals established by IOC, a series of sustainability strategy guides in the preparation of staging of the Olympic Games. On the other hand, BOCOG, as a national public institution under Chinese law, is obliged to abide by the Chinese legal framework in relation to public procurement. Nevertheless, in order to coordinate with the specialty of the Olympic procurement management, the BOCOG Logistics Department working with Beijing's local finance department, formulated a series of rules and regulations about Olympic procurement, for example, *BOCOG Regulations on Goods Purchase*, *BOCOG Regulations on Games-time Procurement*.³³⁹ All these Olympic Games procurement guidelines are in line with Chinese government procurement rules.

Thanks to the autonomy of OCOGs, it is a regular way for OCOGs in hosting countries to establish specific Olympic procurement policies regulating sport-event

³³⁷ Beijing Organizing Committee of Olympic Games. <https://www.beijing2022.cn/cn/aboutus/organisation.htm>; Civil Code of the People's Republic of China. <https://en.pkulaw.cn/display.aspx?id=743bd7d871769deebdfb&lib=law>.

³³⁸ Procurement in China can be carried out through two different methods. In the centralized variant, the procurement role is delegated to public procurement centralized procurement catalog (CPC) are published by provincial centres (PPCs), while in decentralized procurement, the buyers do the procurement themselves. CPC is published by centralized government. http://www.gov.cn/zhengce/content/2020-01/07/content_5467214.htm.

³³⁹ Beijing Organizing Committee of Olympic Games (BOCOG) "Preparation for the Games: New Beijing Great Olympics." 2007. 326. P148.

procurement. A series of procurement programs relating to "green" can be observed in many previous hosting countries. The green procurement initiatives require that about 40% of the purchases of the Organising Committee were made respecting environmental criteria in the 2006 Torino winter Olympic games. Even the environmental standards, certificates, and environmental management systems are created according to the Olympic equipment and facilities. In the 2012 London summer Olympic games, a series of Olympic procurement policies were drafted to govern the specific Olympic games, *London 2012 Olympic and Paralympic Games The Legacy: Sustainable Procurement for Construction Projects*, *LOCOG Sustainable Sourcing Code*. In the forthcoming 2022 winter Olympic games in Beijing-Zhangjiakou, on the basis of the experience of the 2008 Olympic games and knowledge of other hosting countries, the BOCOG also established *The Sustainable Procurement Guidelines*.

Therefore, the autonomy of Olympic procurement is embodied in three factors. Firstly, because of the status of IOC as the leader, owner, and non-profit organization, the Olympic procurement is influenced by Olympism, the missions and goals of IOC. Secondly, the complicated conditions of participating stakeholders for the Olympic games, the national sustainable development goals have a crucial impact on Olympic procurement policies concerning the acquisition of Olympic goods, services, and infrastructures. Thirdly, as to the Olympic games referred to as sport-event or mega-event, the preparation of Olympic games is affected by the international treaties, agreements, certificates, and standards relating to human rights, environment, etc.

The autonomy of the Olympic Games is also reflected in Host City Contract (HCC), including principles, which defines the relationship between the IOC, the host City, the host National Olympic Committee (NOC), and the OCOG and outlines the key legal, commercial, organizational, reporting and financial obligations; operational requirements, which defines the specific obligations of the host city, the NOC and the OCOG in relation to the different areas necessary for the successful staging of the Olympic Games.³⁴⁰ HCC regulates the rights and obligations of all participating

³⁴⁰ Olympic Games Guide on Sustainable Procurement. 2019. 116.

stakeholders.

All in all, the IOC expects its member organizations to follow its guidance or face significant pressure and even expulsion from the Olympic Movement.³⁴¹ The autonomy of Olympic procurement allows the IOC to lay down the sustainable goals in line with the Olympic mission.

3.2.2 Sustainability

Nowadays, sustainability has become a buzzword in many aspects. The Sustainable Development Goals (SDGs), also known as the Global Goals, were adopted by all United Nations Member States in 2015 as a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity by 2030.³⁴² There are also a series of initiatives to promote sustainable development in global affairs. With the sustainable consumption and production (SCP) initiative in the 10-year framework of program (10YFP) adopted at the Rio+20 Conference, the sustainable procurement, not only at the international level (UN system, other international organizations, MDBs, etc.) but also in regional level (e.g., the EU) and national level (countries), has become a trend to transform the unsustainable economic patterns in developed and developing countries. For example, the development models, circular economy and sustainable economy, have been proposed. The sustainable initiative in public procurement is referred to as a useful tool to promote the circular economy both in developed and developing countries.

It is worth noting that the National Sustainable Development Strategy (NSDS) was proposed in the 1992 Agenda 21 (§ 8.7), where countries were called upon to integrate economic, social, and environmental objectives into one strategically focused blueprint for action national level.³⁴³ When incorporating the 2030 Agenda for sustainable development and its 17 SDGs into a national context, although countries do not

³⁴¹ Eleni Theodoraki (ed). Olympic Event Organization. (Butterworth-Heinemann; 1st edition, 2007), 208. P99.

³⁴² Sustainable Development Goals. <https://www.undp.org/content/undp/en/home/sustainable-development-goals.html>.

³⁴³ National Sustainable Development Strategies (NSDS). <https://sustainabledevelopment.un.org/topics/nationalsustainabledevelopmentstrategies#:~:text=It%20defined%20National%20Sustainable%20Development.call%20for%20an%20institutional%20change>.

necessarily label them as NSDS, all the underlying core principles are deeply embedded in the national implementation of SDGs worldwide.³⁴⁴

IOC has developed a series of sustainable development plans and policies requiring the hosting countries to follow the sustainable development principle in line with the Olympism and the missions of the Olympic Movement. On the other hand, the sustainable event has formed a pattern that pursues sustainable development goals in preparation for staging the games in event management, such as environmental, social responsibility management, event sustainability management, and sustainable procurement. There have existed the international ISO 14001, ISO 12021, ISO 26000, and ISO 20400.

Therefore, sustainable development is reflected in Olympic procurement from the three levels of sustainable development requirement, international, national, Olympic games as a mega-event. On the basis of pursuing sustainable development goals, the goals or objectives of Olympic sustainable procurement are embodied in the missions and goals of the IOC and Olympic Movement and the secondary or horizontal objectives of hosting countries and cities in economic, environmental, social issues.

Nevertheless, it is also admitted that thanks to the different economic development in specific hosting countries, the different jurisdiction, and the different administrative systems, the Olympic procurement policies in different countries have changed in sustainable policies. In addition, as time goes by, sustainable policies are evolving in economic, environmental, and social aspects with the evolution of international agreements, treaties, regional legal agreements, and national legal frameworks. Thus, in order to look into this evolution and development of Olympic sustainable procurement in different hosting countries, this thesis aims to explore the function of Olympic procurement in sustainable development by choosing the two different jurisdictions: the EU (public procurement directives as a top regional agreement regulated EU member states) and China, four terms Olympic games: 2006 Torino, 2012 London, 2008 Beijing, and 2022 Beijing-Zhangjiakou.

³⁴⁴ Voluntary National Reviews Database. <https://sustainabledevelopment.un.org/vnrs/>.

3.3 Scope of Olympic Games Procurement

Staging any event involves the significant provision of labor and consumption of resources in terms of materials and equipment for building, fitting-out and dressing venues, use of sports equipment, event production, food and beverage, energy, water, clothing, paper, merchandise, technology services, logistics, and accommodation.³⁴⁵ The urban infrastructures are an important procurement part in hosting countries, particularly the host cities. Goods and services generally comprise a substantial portion of the total organizational expenditure and account for the financial budgets in states.

Thanks to the conception of the Olympic sourcing, it is the process (which may be formal or informal) by which goods and services are identified and then bought or acquired from partners, licensees, and suppliers, including branded merchandise, gifts, and giveaways, sole supplier deals, and sponsorship.³⁴⁶ Therefore, *the Olympic games guide for sustainable sourcing* requires the sustainability strategy in Olympic procurement, not in the narrow scope of public procurement but the three parts, including sponsorship partners, licensees, and suppliers submitted by procurement procedures similar to public procurement procedures.

In terms of the definition of public procurement generally in international agreements (WTO-GPA),³⁴⁷ UNCITRAL model law on public procurement,³⁴⁸ public procurement definition in the regional treaty (mainly the EU, OECD),³⁴⁹ the specific

³⁴⁵ Olympic Games Guide on Sustainable Procurement. 2019. 116. P14.

³⁴⁶ Olympic Games Guide on Sustainable Procurement. 2019. 116. P14.

³⁴⁷ Procuring entity means an entity covered under a Party's Annex 1, 2 or 3 to Appendix I. For the purposes of this Agreement, covered procurement means procurement for governmental purposes: of (a): goods, services, or any combination thereof: (1) as specified in each Party's annexes to Appendix I; and (2) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale; (b): by any contractual means, including: purchase; lease; and rental or hire purchase, with or without an option to buy; (c): for which the value, as estimated in accordance with paragraphs 6 through 8, equals or exceeds the relevant threshold specified in a Party's annexes to Appendix I, at the time of publication of a notice in accordance with Article VII; (d): by a procuring entity; and (e): that is not otherwise excluded from coverage in paragraph 3 or a Party's annexes to Appendix I. https://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.htm.

³⁴⁸ "Procuring entity" means: Option I: (i) Any governmental department, agency, organ or other unit, or any subdivision or multiplicity thereof, that engages in procurement, except ...; [and]. Option II: (i) Any department, agency, organ or other unit, or any subdivision or multiplicity thereof, of the [Government] [other term used to refer to the national Government of the enacting State] that engages in procurement, except ...; [and]; (ii) [The enacting State may insert in this subparagraph and, if necessary, in subsequent subparagraphs other entities or enterprises, or categories thereof, to be included in the definition of "procuring entity"]. <https://www.uncitral.org/pdf/english/texts/procurem/ml-procurement-2011/2011-Model-Law-on-Public-Procurement-e.pdf>.

³⁴⁹ Public procurement refers to the process by which public authorities, such as government departments or local

national laws in public procurement (China),³⁵⁰ public procurement is referred to as the acquisition of goods, services, and works (construction, infrastructures) purchased by public authorities. Regulations governing public procurement activities include procurement procedures, evaluation of tenders, procurement standards, contract management, compliant systems, etc. Compared to the coverage of Olympic procurement, it comprises Olympic goods, services, and works, including Olympic venues, villages, athletes accommodations, urban infrastructures, etc. The coverage structures of the Olympic games are very similar to the procurement coverages in the national government departments as well. Nevertheless, in accordance with the autonomy of procurement activities defined by IOC, the Olympic goods, services are provided by other approaches, including licensing, sponsorship which are submitted in the procedures authorized by IOC. Exception for the specializing methods authorized by IOC, other suppliers of Olympic goods, and services are subjected to the procurement regulations of host countries and cities in compliance with the guides of IOC.

4. Sustainable Procurement Policies in the Olympic Games

With sustainability incorporated into the Olympic procurement process, sustainable procurement policies have paid more attention in recent years. Therefore, there has been a dynamic evolution and development in sustainable development, public procurement, and sustainable procurement in recent decades. Thanks to the characteristics of the Olympic Games, procurement policies have been affected both at the international and national levels. In the context of these two factors, sustainable Olympic procurement is

authorities, purchase work, goods or services from companies. To create a level playing field for all businesses across Europe, EU law sets out minimum harmonised public procurement rules. https://ec.europa.eu/info/policies/public-procurement_en#:~:text=Public%20procurement%20refers%20to%20the.minimum%20harmonised%20public%20procurement%20rules.

³⁵⁰ Article 2 of Chinese Government Procurement Law. The present law shall be applicable to the government procurement carried out within the territory of the People's Republic of China. The term "government procurement" as mentioned in the present law refers to the procurement of goods, projects and services within the lawfully made centralized procurement lists or above the procurement limits by the state organs, public institutions and bodies with public fiscal funds. <http://en.pkulaw.cn/display.aspx?id=3f79bd559eac7453bdfb&lib=law&SearchKeyword=&SearchCKeyword=%d5%fe%b8%ac%b2%c9%b9%ba%b7%a8>.

carried out by the OCOGs in hosting countries on the basis of the national public procurement legal framework. In addition, OCOGs also establish their own sustainable procurement policies in cooperation with the experiences in previous hosting countries.

As to the sustainable Olympic procurement, it was not until 2019 that IOC issued the *Olympic Games Guide on Sustainable Sourcing* that lay down the sustainable policies in Olympic procurement. This guide aims to regulate sustainable procurement procedures, standards, and management in the Olympic procurement process. It defines sustainable sourcing and sustainable procurement. The Olympic procurement is enlarged from seller & purchaser in one layer business to supply chain. It is about using sourcing activities to meet organizational needs (e.g., products, services) to result in positive social, environmental, ethical, and economic outcomes. This procurement management means giving due consideration to: (1) how the organization can reduce its impact on society by doing more with less, such as questioning if a purchase is needed, challenging excessive specifications, renting an item, or buying a service instead of a product; (2) how items are made and sourced, what they are made from, their lifetime use and eventual disposal; (3) how items will be delivered as efficiently as possible with optimal use of packaging that can be reused or recycled; (4) how people in supply chain communities will be treated, ensuring that human rights are upheld and respected. Economic, environmental, and social sustainability is relevant to the whole life cycle analysis (LCA). The whole LCA in the Olympic Games can be explained in two layers: the LCA in products from materials, producing, disposals, on the other hand, the LCA from the definition of procurement needs to contract management in the procurement process.

This guide is an instrument that structures the sustainability strategy in Olympic procurement from four steps: setting sustainable sourcing priorities, identifying sustainable sourcing requirements, managing sustainable sourcing, and communicating sustainable sourcing efforts. The OCOG, in cooperation with other government departments at central and local levels, develops a sustainable sourcing strategy fitting into the economic development, environmental and social conditions of host countries.

First, it is necessary to look at the organization holistically to identify: which goods and services the OCOG will prioritize when implementing its sustainable sourcing strategy. Social, environmental, ethical, or economic issues will be tackled when deciding on sustainable sourcing requirements. Second, requirements need to be developed for the priority categories and associated sustainable sourcing issues identified in the previous step. There is no one size fits all approach to this, and many options will be available. Third, the procurement department of OCOG decides the approaches embedding sustainability into contracts, finalizing the procurement specifications, identifying suppliers/partners/tenders, the evaluation methods for suppliers/partners/tenders, and managing the performance of suppliers/partners/tenders. Fourth, Olympic procurement reflects the complex relationship of stakeholders of the Olympic games. Sustainable procurement (sourcing) efforts need to be communicated to key stakeholders, including the IOC, the International Paralympic Committee (IPC), IFs/NOCs, NGOs, governments. National OCOG is crucial in implementing sustainable procurement in cooperation with all key stakeholders.

5. Conclusion

As argued, there is no doubt that sustainable Olympic procurement is upgraded with the evolution of international conventions, agreements, and guidelines in sustainable development. Firstly, sustainable development has been incorporated into international law as a legal principle. The initiatives relating to sustainable development, for example, 10YFP, SCP, circular economy pattern, SPP, SCRP, and GPP internationally and nationally, have a significant impact on public procurement reform concerning sustainable procurement at international, regional, and national layers.

Sustainability is the global consensus admitted by international and national layers, the procurement strategy at different levels, for example, IOs, MDBs, national governments. Public procurement strategy in various procuring entities is consistent with the sustainable procurement strategy, especially in economic (support to the SMEs and promoting local employment), environmental, and social issues. There is no

question that the initiatives, agreements, treaties, guidelines, etc., in the international community are consistent with sustainable development strategy and SDGs.

The IOC also has laid down a series of guides, including *IOC Sustainability Strategy*, *Sustainability Through Sport*, *Olympic Movement's Agenda 21: Sport for Sustainable Development*, etc., consistent with sustainable development strategy. The sustainable Olympic procurement policies are different from one hosting country to another. Sustainable supply is a strategy ensuring the most efficient use of public funds and achieving secondary and horizontal objectives of any public body. It has come into being a pattern adopted by specific OCOGs to implement sustainable procurement policies, which are required to comply with the national public procurement legal framework and a series of international agreements, conventions, treaties, and standards. The objectives minimize the environmental and social effects in sports mega-event through the hosting games, interact with the secondary or horizontal public procurement objectives in hosting countries, the missions and goals (Olympism: building a better world for this world) of IOC and Olympic Movement.

The EU has developed *the EU 2020 Strategy for Smart, Sustainable, and Inclusive Growth*. The green, modernized, smart public procurement is referred to as the market-based instrument to develop a horizontal approach to industrial policy combining different public policies.³⁵¹ Many of China's most pressing domestic policy priorities - chief among them poverty alleviation and pollution control - are highly aligned with the goals set in the 2030 Agenda (SDGs), and China has a vested interest in achieving permanent and continuous improvements in these areas.³⁵²

In China, government procurement as a useful tool has a significant impact on eliminating poverty, promoting social equity, and strengthening environmental protection through issuing some procurement guidelines for central and local government procurement concerning public policies regulated by a series of departments of the Chinese central government, for example, the Ministry of Finance

³⁵¹ "EURO 2020: A European Strategy for Smart, Sustainable and Inclusive Growth [Brussels, 3.3.2010 COM(2010)2020]," 2010, [http://ec.europa.eu/eu2020/pdf/COMPLET_EN_BARROSO007- Europe 2020 - EN version.pdf](http://ec.europa.eu/eu2020/pdf/COMPLET_EN_BARROSO007-Europe_2020-EN_version.pdf).

³⁵² China and SDGs of UN. <https://www.conference-board.org/ChinaSustainabilityGoals/>.

(MOF), National Development and Reform Commission (NDRC), Ministry of Environment (MOE), Ministry of Industry and Information (MII), etc. Furthermore, in 2019, the Chinese government has promoted the reform of the acquisition of green and energy-saving products in compulsory and priority government procurement lists, which aim to strengthen green public procurement management in china.

However, the procurement strategies carried out by procurement laws, regulations, policies, and initiatives in different countries are different in economic, environmental, and social responsibility issues. In order to look into the role national public procurement regulations play in Olympic procurement in specific hosting countries, this thesis will focus on the implementation of public procurement regimes in the EU and China in the next chapters.

Chapter 4: Sustainable Strategies under Chinese Government

Procurement System

1. Introduction

Over the decades, Sustainable Development has become a global goal pursued by international, national, public, and private, etc., actors in response to a dramatic challenge in which modern development practices in all fields are leading to worldwide environmental and social crises since the early 1970s. Sustainability has been taken into consideration by international and regional agreements, treaties, conventions, and soft laws (guides, certificates, and standardizations). At the national level, national governments have been required or encouraged to incorporate sustainable development into their national strategies and legal frameworks.

In China, the government established its public procurement system in the late 1990s. The Chinese government procurement value reached 3586.14 billion yuan, an increase of 11.7% over last year, accounting for 10.5% of the national fiscal expenditure and 4% of GDP, respectively, in 2018.³⁵³ Given the booming rise of Chinese GDP in the decade, China has increasingly recognized government procurement's influence in promoting sustainable development goals. This chapter explores how sustainable development goals are pursued under the Chinese public procurement legal system.

³⁵³ Government Procurement Date of Ministry of Finance (MOF).
http://www.ccg.gov.cn/jdjc/fxyj/201909/t20190904_12826216.htm.

2. Chinese National Development Strategies

2.1 Chinese National Strategies

2.1.1 National Sustainable Development Strategy

Since the *Our Common Future*, also known as the Brundtland Report, Sustainable Development has been paid attention globally and been evolved through a series of UN conferences, decisions, and documents for decades after 1987. Importantly, the National Sustainable Development Strategy (NSDS) was proposed in 1992 in Agenda 21 (§ 8.7), where countries were called upon to strategically integrate economic, social, and environmental objectives into their National Development Plan. Every country needs to determine, for itself, how best to approach the preparation and implementation of its national sustainable development strategy depending upon the prevailing political, historical-cultural, ecological circumstances. So, the specific countries should be based on a thorough assessment of their current situation and initiatives.

In response to the global sustainable development initiative, China took action concerning the needs and measures for a large number of developing countries in the context of the undeveloped economy and environmental deterioration status quo. Being the biggest developing country, China organized *the Conference on Ministers of Environment and Development for Developing Countries*, participated in 41 developing countries, and passed *Beijing Ministerial Declaration on Environment and Development* in 1991. It is agreed that environmental protection and sustainable development are a matter of common concern to humankind, which requires effective action by the international community and global cooperation. Nonetheless, it also stresses that poverty is the root of environmental issues in developing countries. Stable economic growth and sustainable economic development strengthening the capacity to protect their natural environment are the ultimate approaches to changing the vicious circle of environmental degradation and poverty.³⁵⁴

³⁵⁴ Beijing Ministerial Declaration on Environment and Development. <http://www.nwccw.gov.cn/2017->

The Chinese State Council formulated and promulgated the *China Agenda 21* in 1994 after the United Nations Conference on Environment and Development (UNCED) adopted *Agenda 21* in 1992. It states that the Chinese government takes action to strengthen legislation and detail measures in implementing sustainable development and in coordination and cooperation with international communities. The Chinese National Sustainable Development strategy is supposed to promote sustainable development in economic, environmental, and social aspects.

China Agenda 21 states the relationship of economic development, social equality, and environmental protection. Economic development is the necessary guarantee for eliminating poverty, improving people's life quality, and developing the circular economy of clean, green energy and production. It still stressed that reducing poverty and shared prosperity are China's most important social issues. It requires environmental protection to be integrated into the Chinese national economic plan, policies, and administrative management; establish an effective legal and regulatory framework; use of economic tools and market and other incentive measures.³⁵⁵ In 1996, sustainable development, identified as an essential national development strategy, was embedded in the "Ninth Five-Year Plan" of the National Economic and Social Development by the Fourth Session of the Eighth National People's Congress.³⁵⁶ Since then, sustainable development in China began to transform the international value consensus to the Chinese government work plans, the legal system, policies, organizational management, etc.³⁵⁷ Accordingly, the Chinese national sustainable development strategy is based on its economic development stage, social characteristics in accordance with the Five Year Plan for National Economic and Social Development every five years.³⁵⁸

In the context of the basic guiding principle compatible with specific national conditions in China, the Chinese government establishes Five-Year Plans, which carry

04/06/content_146963.htm.

³⁵⁵ China Agenda 21. <https://www.un.org/zh/documents/treaty/files/21stcentury.shtml>.

³⁵⁶ 卢炯星, "可持续发展战略与我国环境资源立法的完善," 法商研究 2 (2000): 17-22.

³⁵⁷ 中国科学院可持续发展战略研究组. "2012 年中国可持续发展战略报告: 全球视野下的中国可持续发展," 2012. http://www.imde.cas.cn/mtjj_2015/201206/P020120602540784746075.pdf.

³⁵⁸ 朱文远, "可持续发展战略: 中国 21 世纪发展的必然选择," 中国发展 1 (2001): 5-10.

out a national economic plan in compliance with national strategies. In 2003, the Third Plenary Session of the Sixteenth Central Committee of the Communist Party of China put forward to "*adhere to the principle of putting people first, establish a comprehensive, coordinated, and sustainable development value, and promote the comprehensive development of the economy, society, and people.*"³⁵⁹ At the same time, the State Council released a "*Program of Action for Sustainable Development in the Early 21st Century*" in 2004, which further clarifies the objectives, basic principles, key areas, and safeguards of implementing the sustainable development strategy in the early 21st century.³⁶⁰ China began implementing "total control" measures for major pollutants and laid down "*China's National Plan to Address Climate Change*" and other legal and policy documents.

After the UN 2030 Agenda for Sustainable Development was adopted by 193 countries containing 17 Sustainable Development Goals (SDGs) and 169 sub-goals in 2015, the United Nations Development Summit advocated that all countries and stakeholders work together to eradicate poverty and pursue environmental protection. China took the lead in formulating the "*G20 Action Plan for the Implementation of the 2030 Agenda for Sustainable Development*" at the Hangzhou G20 Summit in 2016. Subsequently, China issued *the National Plan to Implement the 2030 Agenda for Sustainable Development* at the United Nations Headquarters in New York and proposed a specific package of national measures, including establishing an innovative demonstration zone for the national sustainable development plan.³⁶¹

The Chinese National Plan to Implement the 2030 Agenda for Sustainable Development involves improving the government procurement policy related to economic and social goals. The Chinese National Plan also aims to optimize the

³⁵⁹ 黄晶, "从 21 世纪议程到 2030 议程: 中国可持续发展战略实施历程回顾," 可持续发展经济导刊, 2019, 14-16.

³⁶⁰ 中国 21 世纪初可持续发展行动纲要. <https://www.fmprc.gov.cn/ce/cgkhh/chn/jmwl/zgjxs/t116566.htm>.

³⁶¹ 中国落实 2030 年可持续发展议程国别方案提纲. <https://www.fmprc.gov.cn/web/zyxw/W020161012709956344295.pdf>.

In 12. 2016, the State Council issued the "China 2030 Sustainable Development Agenda Innovation Demonstration Zone Construction Plan", proposing to build about 10 national sustainable development agenda innovation demonstration zones during the "Thirteenth Five-Year Plan" period, creating large-scale replicable Sustainable development model. 国务院关于印发中国落实 2030 年可持续发展议程创新示范区建设方案的通知,国发 [2016] 69. http://www.gov.cn/zhengce/content/2016-12/13/content_5147412.htm.

government's green procurement policy and expand the scale of green government procurement. By 2020, China initially establishes the green government procurement standards and system covering environmental protection, energy saving, water saving, recycling, low carbon, and resource regeneration and encourages small and medium enterprises to participate in the government procurement market.³⁶²

2.1.2 Development Right as the Basic Human Rights

At the international law level, in 1969, Development Right was proposed for the first time in *the Right to Development of Undeveloped Countries Report* by the Algerian Justice and Peace Commission. In 1977, the United Nations Human Rights Commission adopted a resolution calling for the right to development to be recognized as a fundamental human right. In 1979, it reaffirmed that development rights are treated as fundamental human rights collectively and individually. In the same year, the General Assembly adopted resolution 34/46, adopting this initiative. The 41st Session of the UN General Assembly adopted *the Declaration on the Right to Development* in 1986, which systematically elaborated on the development right and called for promoting the completion of development for developing countries and less developed countries.

The Declaration on the Right to Development states that the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development in which all human rights and fundamental freedoms can be fully realized.³⁶³ Afterward, the development right was reconfirmed in *the Vienna Declaration and Programme of Action* by the Second World Conference on Human Rights held in Vienna in 1993, which indicated that alleviation and eventual elimination of poverty must remain a high priority for the international community.³⁶⁴

³⁶² 中国落实2030年可持续发展议程国别方案提纲。
<https://www.fmprc.gov.cn/web/zyxw/W020161012709956344295.pdf>.

³⁶³ Declaration on the Right to Development adopted by General Assembly resolution 41/128 of 4 December 1986.
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/RightToDevelopment.aspx>.

³⁶⁴ The existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights; its immediate alleviation and eventual elimination must remain a high priority for the international community. Vienna

In China, the Information Office of the State Council published the White Paper on "*Human Rights in China*" in 1991, as the first Chinese official report, which emphasized that the right to subsistence and development rights are the priority need in the background of the preliminary stage of Reform and Opening-up since the 1990s.³⁶⁵ The *Beijing Declaration* also announced that development rights as a basic human right were proposed in the infancy in China for the first time.

Development is the paramount pursuit for China.³⁶⁶ Since the 1990s, Chinese scholars have argued that development right is identified as one basic human right.³⁶⁷ Firstly, national economic development is seen as the necessity of the right to subsistence for all people. In order to achieve the right to subsistence and development rights, the Chinese government must target reducing poverty as the first national goal.³⁶⁸ Secondly, the traditional right to subsistence has been changed from enjoying life safety and existence and basic political rights to rights, including protecting health, economic, social, and cultural benefits, etc.³⁶⁹ Thirdly, in the dynamic process, development right is evolving in the context of the current national development in the economic and social status quo.³⁷⁰ Fourthly, the development right aims at harmonious and inclusive development and a people-oriented right, which does not base on economic development, but on the development rights in education, healthcare, culture, and other social benefits. The ultimate goal is to obtain a decent life and achieve social equality. Last but not least, even though, at the international community level, development rights should not be just regarded as one political privilege by developing countries and less developed countries, it is the integration rights collectively and

Declaration and Programme of Action adopted by the World Conference on Human Rights in Vienna on 25 June 1993. <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>.

³⁶⁵ 柳华文,黄振威,“以人民为中心的人权发展新理念探析,”*人权*(2019):29-43; 矫波,“可持续发展与生存权,”*政法论坛*3(2002):59-60; 杨庚,“论生存权与发展权是首要人权,”*首都师范大学学报(社会科学版)*4(1994):45-51.; 何颖,“发展权:人权实现与发展的保障,”*新视野*5(2008):18-20; 宋才发,“中国公民人权的法治保障探讨,”*湖北民族学院学报(哲学社会科学版)*35, no. 6(2017):123-129;

³⁶⁶ The founder (Deng Xiaoping) of China's Reform and Opening-up stated this theory in 1990s.

³⁶⁷ 汪习根,“发展权法理探析,”*法学研究*58, no. 58(1999):99-104; 张爱宁,“发展权与环境权的冲突与平衡:中国的实践,”*人权*, no. 58(2017):22-33; 杨庚,“论生存权与发展权是首要人权,”*首都师范大学学报(社会科学版)*,(1994):45-51.

³⁶⁸ 何颖,“发展权:人权实现与发展的保障.”

³⁶⁹ 柳华文,黄振威,“以人民为中心的人权发展新理念探析.”何颖,“发展权:人权实现与发展的保障.”

³⁷⁰ 何颖,“发展权:人权实现与发展的保障.”

individually.³⁷¹

It is not only understood that developing and less developed countries are entitled to enjoy basic development rights (from the economic development perspective) at the international level, but also for specific groups in domestic countries, including indigenous and aboriginal people, unprivileged people, ethnic minorities, etc.³⁷² From the individual perspective, governments are obligated to promote development rights from national development strategies, economic plans, policies, state institutional arrangements, the legal system, etc.³⁷³

China advocates the right to development in international fora and is the primary driver and promoter. In 2016, the Information Office of the State Council published the white paper *"The Value, Practice, and Contribution of the Right to Development in China,"* which stressed that China is willing to share development experiences and contribute to global economic development and human rights in cooperation with the international community.³⁷⁴ It emphasized that the right to subsistence and development are the primary human rights, and poverty is the biggest obstacle to realizing human rights.³⁷⁵ In 2017, the UN Human Rights Council passed a resolution on *"Contribution of Development Right to the Enjoyment of All Human Rights"* proposed by China, which introduced the value of "development" in all aspects promoting human rights" into the international human rights system for the first time.³⁷⁶

2.1.3 Theory of "Clear Waters and the Green Mountains are as Good as Mountains of Gold and Silver."

In 2015, the theory of "Persisting in Clear Waters and the Green Mountains being

³⁷¹ 朱炎生, "发展权的演变与实现途径: 略论发展中国家争取发展的人权," 厦门大学学报 (哲学社会科学版), (2001): 111-118; 戴晓旭, "发展权的再界定: 功能, 实现与价值" 人权, 2, (2020).

³⁷² 李晓定, "论民族区域发展权的宪法保护," 吉首大学学报 (社会科学版) 33, no. 6 (2012): 164-72.

³⁷³ 柳华文, 黄振威, "以人民为中心的人权发展新理念探析."

³⁷⁴ 国务院新闻办公室, 《发展权: 中国的理念, 实践与贡献》, http://www.gov.cn/zhengce/2016-12/01/content_5141177.htm.

³⁷⁵ 国务院新闻办公室, 《发展权: 中国的理念, 实践与贡献》, http://www.gov.cn/zhengce/2016-12/01/content_5141177.htm.

³⁷⁶ 联合国人权理事会历史上第一次通过发展促进人权决议. http://www.gov.cn/xinwen/2017-06/23/content_5204684.htm.

the Golden Mountain and Silver Mountain" as the guiding ideology for promoting the construction of ecological civilization in China was proposed by the *Opinions on Accelerating the Construction of Ecological Civilization* of the Chinese central Government.³⁷⁷ In 2016, The United Nations Environment Program released the report "*Clear Waters and the Green Mountains being the Golden Mountain and Silver Mountain: China's Ecological Civilization Strategy and Action*" during the United Nations Environment Second Conference. This report elaborated on the guiding principles, policy measures, and action values to introduce Chinese practices and experiences to the international community, particularly for developing and less undeveloped countries.³⁷⁸

The basic guiding principles include three aspects. Firstly, natural resources and energy conservation are prioritized and consistent with sustainable economic and social development strategies. Secondly, adherence to the approach of green, circular, and low-carbon development, economic and social development must be based on the efficient recycling of resources and the strict protection of the ecological environment in order to form the industrial structure and production method that conserve resources and protect the environment. Thirdly, given the decisive role the market mechanism plays in allocating resources in economic development and the role government plays in the market, innovation power is treated as an important driver in green and circular development, which strengthens the leading role of scientific and technological innovation.

The goal of the ecological civilization (China's national strategies emphasizing environmental protection) is that significant progress will be made in building a resource-saving and environment-friendly society by 2020. The action values of ecological civilization are promoted in the nation, where the capability of ecological

³⁷⁷ Opinions of the State Council on Accelerating the Ecological Civilization Construction. http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=7ca3e285623035afbdfb&keyword=%e5%85%b3%e4%ba%8e%e5%8a%a0%e5%bf%ab%e6%8e%a8%e8%bf%9b%e7%94%9f%e6%80%81%20%e6%96%87%e6%98%8e%e5%bb%ba%e8%ae%be%e7%9a%84%e6%84%8f%e8%a7%81&EncodingName=&Search_Mode=like&Search_IsTitle=0.

³⁷⁸ 联合国环境规划署在第二届联合国环境大会期间发布“绿水青山就是金山银山：中国生态文明战略与行动”报告。 http://www.prcee.org/zyhd/201605/t20160528_440020.html.

civilization is committed to a well-off society in an all-around way.

In order to alleviate the contradiction between economic development and environmental pollution, it is necessary to build an industrial structure with high technological production methods aiming at low resource consumption and low environmental pollution, and accelerate the promotion of green production methods, significantly and effectively reduce the resource and environmental costs in economic development. The market mechanism should play a decisive role in developing green technologies and industries. The circular economy is seen as an important driver to transform into the green development model.

2.1.4 National Strategy of Innovation-Driven Development

The Outline of the National Medium and Long-term Science and Technology Development Plan (2006-2020) was issued in 2006. Supporting indigenous innovation products by government procurement was proposed for the first time, including establishing a coordination mechanism for government procurement of independent innovation products, the implementation of first purchase policy for important high-tech equipment and products with independent intellectual property rights developed by domestic enterprises, supporting the formation of technical standards through government procurement. The Outline is a strategic document in the central government.³⁷⁹

The 18th National Congress proposed the strategy of innovation-driven development in 2013. Afterward, the *National Strategy of Innovation-Driven Development Outline* was issued in 2016. It stressed that scientific and technological innovation is a strategic pillar for boosting social productivity and overall national strength, which must be placed at the core of the country's development strategies.³⁸⁰

According to the Outline, innovation-driven development stresses that innovation should become the primary driver of development, combined with the national system,

³⁷⁹ 国家中长期科学和技术发展规划纲要（2006—2020年）。
http://www.gov.cn/gongbao/content/2006/content_240244.htm.

³⁸⁰ 国家创新驱动发展战略纲要。http://www.gov.cn/zhengce/2016-05/19/content_5074812.htm.

management, business model, etc. So, the Chinese government improves the legal environment to protect innovation and intellectual property, accelerates the legislation process, revises the regulatory documents that do not meet the innovation orientation, abolishes the regulations restricting innovation, and builds a comprehensive and sophisticated legal guarantee system.³⁸¹

2.2 How do Chinese National Strategies Affect the Chinese Legal System?

Due to adopting the legislative approach to promoting the implementation of the Chinese national sustainable development strategy by China's Agenda 21, the Chinese government aimed to reform the Chinese legal system to be adapted to sustainable development strategy. Firstly, China incorporated the market mechanism into the legal system, especially the laws that regulated the market economy. Secondly, the Chinese government needs to evolve and reform the Chinese legal system in line with international legislation and practices in formulating sustainable development-related legislation and technical rules and standards in the wave of globalization. Thirdly, China adopts domestic legislation and national action plan by transforming international laws, treaties, agreements, guidelines, and standards. Fourthly, China strengthens the legislation at the local level, regulations, and administrative documents in coordination with laws enacted by the national people's congress.

Since establishing the sustainable development legislation principle in China Agenda 21, China has started to follow international laws to adjust its legal system, especially concerning sustainable development. Thanks to sustainable development involving environmental protection, natural resource, social responsibility, and economic policies, sustainable development legislation showcases that these aspects interact with the Chinese legal system.³⁸² Sustainable development must be implemented by transforming from theory or value to practice, from slogan to actual action through sustainable legislation. As China's supreme and all-around guidance,

³⁸¹ 国家创新驱动发展战略纲要. http://www.gov.cn/zhengce/2016-05/19/content_5074812.htm.

³⁸² 杨解君, 张治宇, 王宇清. 可持续发展与行政法关系研究. 法律出版社, 北京, 2008, 383. P33.

these national strategies have influenced China's economic development plan, legislation system, and public governance.

2.3 Government Procurement Market Influenced by National Strategies

2.3.1 The first stage (1992-1999)

With the progress of Reform and Opening-Up promoted by Deng Xiaoping administration increasingly, the Chinese government procurement market started to open to the free market and introduce the market mechanism to buy products and services from private sectors in the first pilot municipal government Shanghai in 1996. Chinese government got rid of the Soviet-model command economy under the influence of Marxist-Leninism and began to incorporate market mechanisms into government procurement activities.³⁸³ The procurement scale in the open competitive procedure was about 3.1 billion yuan in 1998 and expanded to about 13 billion yuan in 1999.³⁸⁴ In 2000, 32.8 billion yuan worth of goods, services, and works were procured through open bidding, resulting in some 3.28 billion yuan savings.³⁸⁵ Procurement of goods, services, and works accounted for 67 percent, 23 percent, and 10 percent, respectively, of all government procurements in 2000. Most purchases involved vehicles, computers, and photocopiers.³⁸⁶

The mid-1990s saw the Chinese government importing modern western government procurement techniques. In this regard, local governments took the lead and modeled their procurement after western-style practices.³⁸⁷ Shanghai was the first to experiment with new government procurement techniques. In the 1990s, the Chinese government procurement market was rapidly growing. Thanks to the open bidding and

³⁸³ Kong JiangQing, "Chinese Law and Practice on Government Procurement in the Context of China's WTO Accession," *Public Procurement Law Review* 4 (2002): 201–214.

³⁸⁴ 提高认识, 加快我国政府采购制度建设步伐. http://www.ccg.gov.cn/zcwj/201310/t20131029_3590382.htm.

³⁸⁵ JiangQing, "Chinese Law and Practice on Government Procurement in the Context of China's WTO Accession."

³⁸⁶ JiangQing, "Chinese Law and Practice on Government Procurement in the Context of China's WTO Accession."

³⁸⁷ Shanghai was first to experiment with the new techniques. In 1995, the Shanghai Municipal People's Government adopted, *inter alia*, the World Bank Guidelines for Procurement under IBRD (International Bank for Reconstruction and Development) Loans and IDA (International Development Association) Credits for government procurement in purchasing equipment with special government budgetary funds. Kong JiangQing, "Chinese Law and Practice on Government Procurement in the Context of China's WTO Accession," *Public Procurement Law Review* 4 (2002): 201–214.

competitive procedures used in government procurement activities, the first law related to open bidding procedure: Bidding Law, was enacted in 1999 in China.

During this stage, China introduced the market mechanism into government procurement activities. "Government procurement" was a new concept for Chinese central and local governmental departments. However, China tried to learn foreign legislative and practice experiences on the basis of actual Chinese conditions in the 1990s and tried to engage itself in globalization. In this period, the Chinese public procurement market started to introduce open competition and free-market mechanisms increasingly. However, it did not involve environmental and economic-social goals related to the national sustainable development strategy.

2.3.2 The second stage (2000-2007)

China's WTO accession in 2001 was a major step for China's integration into global trade and for the further internationalization of the WTO trading system. China started to facilitate the domestic legal system to adjust the market mechanism in order to integrate global trade and international rules. On the one hand, as the largest developing country with the rapid development of the manufacturing industry, China has been facing serious environmental pollution and the danger of depleting some of its natural resources since the 1990s. On the other hand, in view of the fact that green trade barriers and blue trade barriers (labor rights and other human rights) have increasingly become new types of non-tariff trade barriers, the implementation of corporate social responsibility is undoubtedly an excellent strategy to break these trade barriers for the Chinese companies.³⁸⁸

In addition, China committed to improving environmental protection and human rights by establishing a series of top national strategy documents and national development plans. Although the first bidding law related to public procurement was enacted in the 1990s, the Chinese government realized the importance and necessity of using public procurement to protect its environment and promote corporate social

³⁸⁸ 刘芳雄, "企业社会责任, 公共政策与中国政府的非立法选择," 求索 3 (2009): 117-119.

responsibility and sustainable development.³⁸⁹

In 2002, the *Chinese Government Procurement Law* was enacted, which initially formed the Chinese public procurement legal system. After enacting the Chinese government procurement law, China abolished a series of administrative documents authorized by MOF in the 1990s. Another important law (*Promoting Clean Production Law*) related to environmental protection and industrial policy was enacted and entered into effect in 2003 but was amended in 2012. Chinese governments at all levels are encouraged to prioritize purchasing products that are conducive to the protection of the environment and resources, including saving energy, saving water, making recycled utilization of wastes, etc.³⁹⁰ Since then, China started the two-lines public procurement law system: Bidding Law and Government Procurement Law.

In 2004, China began the green government procurement program to respond to the emergence of the scientific development concept that emphasizes "people-oriented" and "a comprehensive, coordinated and sustainable development."³⁹¹ The Ministry of Finance (MOF) and the National Development and Reform Commission (NDRC) issued the "*Implementation Opinions on Government Procurement of Energy-saving Products*," which promoted energy conservation and environmental protection by government procurement and marked the start of the green procurement system in China.

In order to promote the circular economy, *Opinions of the State Council on Speeding up the Development of Circular Economy* as Regulatory Documents of the State Council was issued in 2005. This Opinion stated that the energy-efficient, water-saving, and environmentally-friendly certified products are called on taking into consideration in priority by the government procurement directory. Afterward, the Ministry of Finance and the State Environmental Protection Administration issued the

³⁸⁹ Qiao Yuhua and Wang Conghu, "China Green Public Procurement Program: Issues and Challenges in Its Implementation," *Journal of Environmental Protection* 02(08), 2011.

³⁹⁰ Law of the People's Republic of China on Promoting Clean Production. <http://en.pkulaw.cn/Display.aspx?LookType=1&Lib=law&Cgid=40272&Id=2388&SearchKeyword=&SearchKeyword=&paycode=>.

³⁹¹ M. Ju, L. Zhang, L. Zhan, H. Ren and Z. Yang, "Public Green Procurement in China: Development Course, Program Management and Technical Methods, Sustainable Public Procurement in Urban Administration in China: An Action under Europe Aid's SWITCH-Asian Program Paper," No. 02-EN/CH, 2009.

Opinions on the Implementation of Government Procurement of Environmentally Labeled Products in 2006, and the General Office of the State Council issued the *Notice on Establishing a System for Mandatory Government Procurement of Energy-saving Products* in 2007. China has established compulsory procurement based on the government procurement list of energy-saving products and the priority procurement system based on environmentally-friendly products.

During this period, China started to explicitly pursue environmental targets by government procurement. Although government procurement law stipulated the goals of one fundamental principle in Article 9, it lacked detailed implementing procedures and measures. However, Article 87 authorizes a certain extent of legislative competence to the state council. State Council can establish a series of regulations, administrative orders, guidelines, etc. So, the horizontal policies (environmental, social, and economic goals) were a new tool in China.

2.3.3 The third stage (2008-2018)

With the circular economy model promoted, China enacted the *Circular Economy Promotion Law of the People's Republic of China* in 2008 and amended it in 2018. It stresses that government procurement policy is targeted to the development of the circular economy. Entities and individuals purchasing goods with funds from public finance shall prefer energy-saving, water-saving, material-saving, environment-friendly, and recycled products.³⁹² The people's governments at or above the county level are required to implement government procurement policies to promote the circular economy.

From 2008, public procurement policies related to sustainable development goals entered a new era. On the one hand, the first time negotiation to join the GPA was marked with China's commitment to meet the requirement of the WTO-GPA in 2007.³⁹³ China is inclined to reform and evolve its government procurement legal system to

³⁹² Circular Economy Promotion Law of the People's Republic of China (2018 Amendment). <http://en.pkulaw.cn/display.aspx?cgid=86e0348ef0b62b74bdfb&lib=law>.

³⁹³ Qiao Yuhua and Wang Conghu, "China Green Public Procurement Program: Issues and Challenges in Its Implementation." P9.

adapt to the international public procurement market. As it does so, it reformed its Government Procurement Law, which was amended in 2014, and the implementing regulations came into effect in early 2015. Afterward, the Bidding Law was amended and entered into effect in 2017.

As to the two important primary laws (GPL and BL), this legislative amendment aims to make these two laws consistent. However, as to the horizontal government procurement policies, GPL exists the fundamental principle, while BL is silent. It is noted that China passed a number of regulations, administrative documents, and orders to strengthen the legal compatibility of any horizontal policy objectives promoting environmental protection, SMEs, social goals. The specific horizontal policies are subject to a series of particular regulations authorized by the Chinese State Council, administrative documents, and Orders by departments of the State Council.

In terms of GPP, since the green government procurement program was initiated in 2004, the financial budgets and expenditure on GPP have been increasing annually. Until 2019, China has published 22 government procurement lists of environmentally labeled products and 24 government procurement lists of energy-saving products, respectively (Chinese central government updates the list per year).³⁹⁴ Till 2018, in terms of energy-saving and environmentally-friendly product government procurement, National compulsory and priority purchases of energy-saving products are 165.38 RMB billion, accounting for 90.1% in buying the same product type. National priority purchases of environmental labeling products are 164.74 RMB billion, accounting for 90.2% in the same product type.³⁹⁵

In order to transform the principle clause (Art. 9) in GPL, China implemented *the Interim Measures for Promoting the Development of Small and Medium-sized Enterprises through Government Procurement* issued by the MOF and the Ministry of Industry and Information Technology (MIIT) in 2011. China amended *the Promotion of Small and Medium-Sized Enterprises Law* in 2017 and came into effect in 2018,

³⁹⁴ <http://www.ccg.gov.cn/jnhb/jnhbqd/hbqd/>.

³⁹⁵ Government Procurement Date of Ministry of Finance (MOF). http://www.ccg.gov.cn/jdjc/fxyj/201909/t20190904_12826216.htm.

which justifies preferential policies for government procurement in respect of SMEs in primary law. Until 2018, The amount of public contracts awarded to SMEs was RMB 2748.86 billion, accounting for 76.7 percent in the government procurement market, and the amount of contracts awarded to Micro enterprises was 1,194.1 RMB billion, accounting for 43.4% in public contracts awarded to SMEs.³⁹⁶

China implemented the *Notice on the government procurement policy for promoting the employment of persons with disabilities* issued by the Ministry of Finance, Ministry of Civil Affairs, China Disabled Persons' Federation in 2017.³⁹⁷ Supporting disabled people by government procurement is still based on promoting the employment of the disabled group and giving the reserved contract (set-aside) to SMEs, providing a percentage of employment for disabled people.

2.3.4 The reform stage (2019-present)

With the development of ELPs and ESPs since 2005, there are a series of disadvantages to implementing the lists in GPP. The operation mechanism of the list system is that firstly government procurement, except for state-owned enterprises,³⁹⁸ purchases the products based on the product name, specification model, product brand, certificate approved attached in the two lists. Secondly, the products have to be updated every two years in accordance with the update of some changes in the specification model and other variations, which causes too much red tape both for public purchasers and firms. Secondly, the first-term list contained no more than 100 types of products and 28 pages.³⁹⁹ By 2018, the lists had included thousands of products and more than 7000 pages, which required many procurement officials to look for the relevant products in the two lists.

To some extent, in order to simplify workload and on the condition of lack of professional procurement knowledge, the lists system breeds corruption in the

³⁹⁶ Statistics from MOF. http://www.ccgp.gov.cn/jdjc/fxyj/201909/t20190904_12826216.htm.

³⁹⁷ 关于促进残疾人就业政府采购政策的通知. http://www.ccgp.gov.cn/zcfg/mof/201709/t20170904_8787205.htm.

³⁹⁸ http://www.ccgp.gov.cn/zcfg/mof/201311/t20131113_3591927.htm.

³⁹⁹ <http://download.ccgp.gov.cn/jnhb/jn/1/caiku2004185attach.pdf>.

procurement process quickly. Thirdly, on account of cumbersome certification procedures and the high cost of certification, the incentivization of private firms has been suppressed. The EPLs and ESPs system encountered implementation difficulties.⁴⁰⁰

In order to simplify the implementation mechanism for government procurement of energy-saving (and water-saving) products and environmentally-labeled products and optimize the market environment for suppliers to participate in government procurement activities, the ELPs and ESPs were abolished since 2019. According to the product's performance of energy conservation and environmental protection, industrial technical level, and the level of market maturity, China determined the product categories for government priority and compulsory procurement replacing product lists. The MOF, the NDRC, and the Ministry of Environment (MOE) issued the relevant standards and specifications jointly in 2019.⁴⁰¹

Regarding social issues, the Notice on using government procurement policies to support poverty alleviation and the Notice on Implementation Plan for Government Procurement of Agricultural Products in impoverished and undeveloped Areas was released by the MOF, Poverty Alleviation Office the State Council in 2019.⁴⁰²

Socially responsible government procurement in China is implemented on the basis of China's social reality and characteristics. Although China, as the biggest developing and emerging country, has developed to the second-largest economic entity, it still has enormous economic development differences between eastern developed regions and central-western undeveloped areas, between urban and rural regions. Besides, most minority ethnic groups dwell in Western provinces, such as Tibet,

⁴⁰⁰ Although entering ELPs and ESPs is free, the certification before entering the list is expensive. An automobile company reported that they spend more than 1 million yuan on these two certifications each year, and each car costs 20,000 to 30,000 yuan. There are also unacceptable cumbersome procedures and long certification cycles. <http://zfcg.czt.zj.gov.cn/theory/2019-02-25/12806.html>.

⁴⁰¹ 财政部、发展改革委、生态环境部、市场监管总局关于调整优化节能产品、环境标志产品政府采购执行机制的通知. http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=2430cca6f9039fb9bdfb&keyword=%e5%85%b3%e4%ba%8e%e8%b0%83%e6%95%b4%e4%bc%98%e5%8c%96%e8%8a%82%e8%83%bd%e4%ba%a7%e5%93%81%e3%80%81%e7%8e%af%e5%a2%83%e6%a0%87%e5%bf%97%e4%ba%a7%e5%93%81%e6%94%bf%e5%ba%9c%e9%87%87&EncodingName=&Search_Mode=accurate&Search_IsTitle=0.

⁴⁰² 关于印发《政府采购贫困地区农副产品实施方案》的通知. http://www.gov.cn/zhengce/zhengceku/2019-11/13/content_5451637.htm; 关于运用政府采购政策支持脱贫攻坚的通知. http://www.ccp.gov.cn/zcfg/mof/201906/t20190604_12199146.htm.

Xinjiang, Qinghai, Gansu, Yunnan, Guangxi, etc. There are a large number of poor citizens in rural and western provinces. Secondly, the *Outline of China's Rural Poverty Alleviation and Development* issued by the state council in 2019 admitted that poverty alleviation is the long-term historical task for the Chinese government, especially in rural and undeveloped regions, and is still going on. The *Outline of China's Rural Poverty Alleviation and Development (2011-2020)* emphasizes the benefits of disabled people, women, and children in impoverished conditions. Given the alleviation poverty campaign and the rise of the government procurement scale, government procurement is seen as an effective tool to alleviate the poverty problem.

3. Overview of Chinese Public Procurement Legal System

3.1 Chinese Public Procurement Legal Framework

3.1.1 Purchasers Subject to GPL

The purchasers subject to GPL are comprised of (1) government departments at all levels (central government, provinces, municipalities, and counties); (2) public institutions (education, hospitals, cultural, and physical); (3) social Organizations;⁴⁰³ on the condition of using fiscal funds to purchase goods, projects, and services that are within the centralized procurement catalog established by law or above the procurement quota standard.⁴⁰⁴ Moreover, Fiscal funds are referred to as funds included in budget management. Fiscal funds used as the source of loan repayment are regarded as fiscal funds too. When government departments, public institutions, and social organizations use fiscal and non-financial funds, the GPL and its relevant regulations are applied to the parts purchased with fiscal funds. If fiscal funds and non-financial funds cannot be separated, the GPL and its regulations are applied without reserve.⁴⁰⁵

⁴⁰³ The social organization that has the qualifications for a legal person and is established for non-profit purposes such as public welfare or the common interests of members based on the common wishes of members. It is registered and established according to law and obtains the status of a social organization legal person. Article 90 of Civil Code of People's Republic of China.

⁴⁰⁴ Article 2 of government procurement law.

⁴⁰⁵ Article 2 of regulation on the implementation of government procurement law.

3.1.2 Bidding Procedure Subject to BL

All construction projects by bidding procedure are subject to bidding law.⁴⁰⁶ Furthermore, Three types of construction projects have to adopt the bidding procedure according to BL: (1) large-scale infrastructure, public utilities, and other projects related to the public social interest and public safety; (2) projects wholly or partly invested with state-owned funds or state-financed; (3) projects using loans and aid funds from international organizations or foreign governments.⁴⁰⁷

3.1.3 Conclusion

In general, the Chinese public procurement legal framework is regarded as the two-lines (dual system) since enacting two national laws: government procurement law and bidding law.⁴⁰⁸ The coverage of the government procurement law is defined as the nature of the procuring entity and the source of funds. The concept of government procurement is defined as state organs, public entities, and organizations at all levels using fiscal funds to purchase goods, services, and works within the centralized procurement catalog established in accordance with the law or above the quota standard.⁴⁰⁹ By contrast, the bidding law governs all tendering activities in China publicly or privately, in which its effective coverage is mainly restricted to the procurement of construction works and ancillary goods and services based on tendering procedures defined by the nature of the procured projects and the involvement of tendering procedures.⁴¹⁰ Thus, the two national prime laws co-exist and constitute the legal foundation of public procurement.

However, works purchased by government procurement, public utilities purchased

⁴⁰⁶ Article 2 of bidding law.

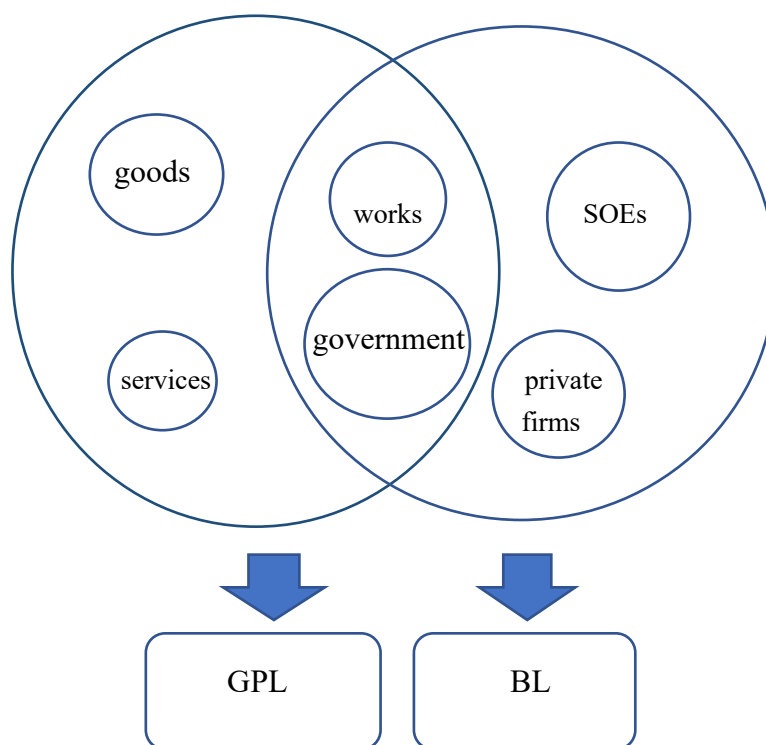
⁴⁰⁷ Article 3 of bidding law.

⁴⁰⁸ P. Wang, and X. Zhang, *Chinese Public Procurement Law: An Introductory Textbook* (Nottingham: The EU Asia Inter University Network for Teaching and Research in Public Procurement Regulation, 2010); F. Cao and P. Wang, "The New Chinese Government Procurement Law," *Public Procurement Law Review*, 2002, 133;; R. Rothery, "China's Legal Framework for Public Procurement," *Journal of Public Procurement*, 2003, 370; Ren Ke, "The Use and Regulation of Framework Agreements under the Chinese Government Procurement System," *Public Procurement Law Review* (2019): 42–58.

⁴⁰⁹ Article 2 of government procurement law.

⁴¹⁰ Article 2 of Bidding law.

by state-owned enterprises, and private sectors adopted by bidding procedures are subject to the bidding law and its regulation on the implementation of bidding law.⁴¹¹ So, the works procurement is ambiguous under the dual national law system. Apart from two basic public procurement laws, China also has laid down a series of administrative regulations and orders issued by the state council and the MOF to clarify the different types of procurement. Particularly, although the horizontal procurement policy has been required to be the principle in government procurement law and regulation on the Implementation of GPL, it still needs to be made clear in different types of procurement and the procedures.



3.2 The Purchasing Coverage of the Dual System of Public Procurement

3.2.1 Goods, services Purchased by Bidding Procedure

Thanks to the stipulation in Article 83 in the regulation on the implementation of bidding law, goods, services purchased by bidding procedures are subject to government procurement law and its administrative regulations. Thus, goods and

⁴¹¹ Ke, “The Use and Regulation of Framework Agreements under the Chinese Government Procurement System.”

services purchased by the bidding procedure are subject to the government procurement law under the government procurement system. According to GPL and Regulation on the Implementation of GPL, *Administration Measures of Bidding for the Government Procurement of Goods and Services* was enacted in 2004 and revised in 2017, which regulates the tendering procedures of purchasing goods and services. Purchasers have to buy the goods and services based on the catalog of government procurement issued by MOF.⁴¹²

Purchasers are required to implement horizontal procurement policies in the bidding procedures for procuring goods and services, such as energy conservation, environmental protection, support for underdeveloped areas and ethnic minority areas, and promotion of the development of SMEs.⁴¹³

As to the procurement needs, firstly, purchasers should do market research based on the technological market level, supply, and price level, then confirms its procurement needs reasonably. The procurement needs document reported must include the function and objectives of goods and services, the horizontal procurement goals.⁴¹⁴ In addition, the procurement needs are required to constitute (1) national standards, industry standards, local standards, or other standards and norms; (2) the quality, safety, technical specifications, physical characteristics, and other requirements; (3) acceptance standard of goods and services purchased.⁴¹⁵

Secondly, the content of pre-qualification documents and bidding documents shall not violate laws, administrative regulations, mandatory standards, government procurement horizontal policies, or violate the principles of openness and transparency, fair competition, fairness, and good faith.⁴¹⁶ The pre-qualification documents require the information of the applicant's eligibility requirements, qualification review standards, and qualification review methods.⁴¹⁷ The content of bidding documents

⁴¹² Article 7 of Measures for the Administration of Bidding for the Government Procurement of Goods and Services (2017 Revision).

⁴¹³ Article 5 of Administration Measures of Bidding for the Government Procurement of Goods and Services.

⁴¹⁴ Article 10 of Administration Measures of Bidding for the Government Procurement of Goods and Services.

⁴¹⁵ Article 11 of Administration Measures of Bidding for the Government Procurement of Goods and Services.

⁴¹⁶ Article 25 of Administration Measures of Bidding for the Government Procurement of Goods and Services.

⁴¹⁷ Article 21 of Administration Measures of Bidding for the Government Procurement of Goods and Services.

comprises (1) qualification and credit certification documents that the bidder should submit; (2) credentials and valid documents proved of in order to implement horizontal procurement policies; (3) technical specifications, quantity, service standards, acceptance, and other requirements of procurement items, including any attachments, drawings, etc.; (4) bid evaluation methods, criteria and invalidity conditions of bidding.⁴¹⁸

Thirdly, award methods are comprised of the lowest bid price method and comprehensive scoring method.⁴¹⁹ The lowest bid price means that the criteria meet all the substantive requirements of the bidding documents, and the bidder with the lowest bid price is the successful bidder. The goods and services that have uniform technological requirements adopt the lowest-price method. The lowest price is referred to as the price deducted by adopting a horizontal procurement policy in deducting price discounts of SMEs.⁴²⁰ It does not require price discounts for environmental considerations or externalities prices. The comprehensive scoring method refers to the bid evaluation method in which the bidding criteria meet all the substantive requirements of the bidding documents, and the bidder with the highest evaluation score is the bid-winning candidate according to the quantitative indicators of evaluation factors. The adjusted price is used to calculate the bid evaluation benchmark price and bid quotation to implement the horizontal procurement policy.⁴²¹

3.2.2 Goods, Services, Works Purchased by Non-Bidding Procedures

MOF issued the Administration Measures of Government Procurement by No-Bid Procurement Methods. Non-bid procurement methods include competitive negotiation, single-source procurement, and inquiry procurement. The procurement by non-bid procedure comprises: (1) goods and services that are within the centralized procurement catalog formulated in accordance with the law and do not meet the public bidding

⁴¹⁸ Article 20 of Administration Measures of Bidding for the Government Procurement of Goods and Services.

⁴¹⁹ Article 53 of Administration Measures of Bidding for the Government Procurement of Goods and Services.

⁴²⁰ Article 54 of Administration Measures of Bidding for the Government Procurement of Goods and Services.

⁴²¹ Article 55 of Administration Measures of Bidding for the Government Procurement of Goods and Services.

amount standard; (2) goods and services outside of the centralized procurement catalog established in accordance with the law, above the procurement quota standard, and below the public bidding amount standard; (3) goods and services that meet the public bidding amount standard and are approved for non-public bidding; (4) works other than construction projects that must be tendered in accordance with bidding law and its implementing regulations.⁴²²

Firstly, as to the competitive negotiation procedure, the negotiating document is required to contain the procurement needs, the qualification requirements for the candidates, the award criteria of successful candidates, etc.⁴²³ In addition, the competition negotiation procedure is implemented (1) where there is no supplier bid or no qualified bid, or the re-bidding fails to be established; (2) the technology is complex, or the product nature is special, and the detailed specifications or specific requirements cannot be determined; (3) reasons that are not foreseeable by the purchaser and urgent needs of users happened without delay by purchasers; (4) the total price cannot be calculated in advance due to reasons, such as the time and quantity of artwork procurement; (5) patents, know-how, or services cannot be determined in advance.⁴²⁴ It can be seen that competition negotiation procedure is adopted in five particular conditions.

Secondly, the single-source procurement purchased goods, services, and works from specific suppliers, happens on the three conditions: the procurement can only be purchased from the only supplier; unforeseen emergencies occur and cannot be purchased from other suppliers; it is necessary to continue to purchase from the original supplier, and the total amount of additional purchase funds does not exceed 10% of the original contract purchase amount because of ensuring the consistency of the original procurement items or the requirements of the service package.⁴²⁵

Thirdly, the procurement of goods with uniform specifications and standards, sufficient spot sources of goods, and small price changes are purchased in accordance

⁴²² Article 3 of Administration Measures of Government Procurement by No-Bid Procurement Methods.

⁴²³ Article 11 of Administration Measures of Government Procurement by No-Bid Procurement Methods.

⁴²⁴ Article 27 of Administration Measures of Government Procurement by No-Bid Procurement Methods.

⁴²⁵ Article 31 of government procurement law.

with this law by means of inquiry.⁴²⁶ The technical specification and service requirements related to the inquiry procedure comply with the relevant laws, administrative regulations, and government horizontal procurement policies.⁴²⁷

Thanks to the particularity of these two procurement methods, the implementation of the horizontal policy is very flexible. There is not a requirement for award criteria for these two procurement methods. Thus, the horizontal procurement policies adopted are up to the specific situation.

3.2.3 Works, Goods, and Services of the Construction Projects Purchased by Tendering Procedure

The construction project mentioned in Article 3 of the bidding law refers to the construction and construction-related goods and services.⁴²⁸ Meanwhile, the works and the goods and services affiliated to works purchased by open tendering and restricted tendering are subject to bidding law and the regulation on the Implementation of BL.⁴²⁹ The works and the goods and services affiliated to works purchased by other procedures are subject to government procurement law and its regulation on GPL implementation.⁴³⁰ Although, to a large extent, the bidding procedure stipulated by *Regulation on the Implementation of BL* is different from the bidding procedure in *Administration Measures of Bidding for the Government Procurement of Goods and Services*, MOF supervises the implementation of horizontal procurement policies for construction projects through a bidding procedure.⁴³¹

Because the bidding law stipulates that the works purchased by government procurement are subject to the supervision of MOF in the implementation of horizontal procurement policies, the bidding law system is silent to the construction projects of state-owned enterprises. They are not required to implement horizontal procurement policies in the bidding law system. However, thanks to the *Regulation on Energy*

⁴²⁶ Article 32 of government procurement law.

⁴²⁷ Article 44 of Administration measures of government procurement by non-bid procurement methods.

⁴²⁸ Article 2 of Regulation on the implementation of bidding law.

⁴²⁹ Article 7 of regulation on the implementation of government procurement law.

⁴³⁰ Article 7 of regulation on the implementation of government procurement law.

⁴³¹ Article 4 of regulation on the implementation of bidding law.

Conservation in Civil Buildings issued in 2008, all civil buildings, including state-owned enterprises procurement, are subject to the saving-energy requirement.

As to the award methods and criteria, the bidding documents constitute all substantive requirements, including the technical requirements, the criteria for reviewing the qualifications of bidders, bidding quotation requirements, bid evaluation standards, and the main terms of the proposed contract.⁴³² When the technological requirements and standards of the bidding project are required to abide by specific laws, regulations, and orders, the bid inviting party shall put forward corresponding requirements in the bidding documents.⁴³³ The successful candidates are required to (1) meet the comprehensive evaluation standards specified in the bidding documents; (2) meet the substantive requirements of the bidding documents, and the evaluated bid price is the lowest except for the bid price lower than the cost. The comprehensive evaluation method and lowest price method are allowed. However, the environmental factors or other sustainable development aspects are not compulsory factors in the bidding process.⁴³⁴ The sustainable development goals pursued by construction projects procurement are uncertain except for the clarified state technological standards containing environmental and energy-saving standards.

3.3 Government Departments Related to Government Procurement

The government procurement law lays down the principle - the realization of the state's public policy goals for economic and social development, including protecting the environment, supporting the underdeveloped regions and the regions of ethnic minority groups, and promoting small and medium-sized enterprises, etc. Article 9 stipulates the environmental and social-economic policies in the Chinese public procurement system. Although public procurement policies related to environmental and societal-economic goals are justified in the legal system, government procurement law lacks the detailed implementing provisions in GPL. Government procurement law

⁴³² Article 19 of bidding law.

⁴³³ Article 19 of bidding law.

⁴³⁴ Article 41 of bidding law.

regulates that the State Council establishes the specific enforcement for implementing the clauses through administrative regulations.⁴³⁵

Firstly, according to the national economic and social development policies, the MOF of the state council, in conjunction with other ministries of the state council, formulate horizontal government procurement policies, such as achieving environmental protection through procurement requirements standards, reserved procurement shares, price subsidy, and priority procurement; the economic development of underdeveloped areas and ethnic minority areas, and the development of SMEs.⁴³⁶ Thus, MOF and the relevant departments were responsible for issuing the ELPs and ESPs updated every two years since 2004. However, the ELPs and ESPs systems are replaced by environmental and energy-saving product categories systems. Moreover, other procurement policies have been stipulated by MOF in conjunction with other ministries, especially NDRC and Ministry of Environment (MOE), in accordance with the national economic and social goals, such as the eradication poverty campaign, innovation policy, SMEs, etc.

Secondly, the goods and services purchased by non-open bidding procedures are adopted on these criteria: (1) above the standard of public bidding amount; (2) compliance with the qualified requirements of restricted bidding, competition negotiation, single-resource, and inquiry procurement stipulated in GPL; (3) in order to implement horizontal procurement policies; (4) approved by MOF.⁴³⁷ On the one hand, this stipulation ensures the non-open bidding procedure in strict conditions, which is conducive to the fair of procurement procedures.

The dual system is not only applied at the legal level, such as the respective implementing regulations: Regulation on the implementation of the government procurement law and regulation on the implementation of the bidding law, but also the governing departments of the state council. MOF authorizes government procurement supervision and management responsibilities. NDRC governs and coordinates national

⁴³⁵ Article 87 of government procurement law.

⁴³⁶ Article 6 of regulation on the implementation of government procurement law.

⁴³⁷ Article 23 of regulation on the implementation of government procurement law.

tendering and bidding work with other government departments of the state council. A series of detailed procurement procedures and orders of horizontal procurement policies are subject to MOF and NDRC jointly.

3.4 Conclusion

Although the public procurement legal system is built on two basic laws: GPL and BL, China's government procurement law is the result of the lawmaker transplanting a large number of experiences from outside (good practices and legislations experiences from other countries and international organizations).⁴³⁸ In order to adjust for the optimizations of law enforcement, legislation technique granting the interpretation rights and administrative authority to the national state council (top central government department owning administrative regulations maker).⁴³⁹

As to the horizontal procurement goals, in the Chinese public procurement legal system, the public goals, including industrial (supporting specific sectors), environmental (green and energy-saving), social (eliminating poverty and vulnerable groups), on the one hand, are subject to two laws system(BL and GPL) and a series of administrative regulations laid down by state council, administrative rules authorized by the ministries and commissions under state council, notices, decisions, orders, guidelines regulated by Chinese central government. In addition, national strategies mentioned in part 2 have a significant impact on implementing horizontal policies consistent with the Chinese National Development Strategies by a series of administrative regulations, government decisions, notices, rules, orders, and guidelines at the specific period. To a large extent, this legislation technique method is conducive to the implementation and adjusting of procurement policies in a flexible way and provides enough room to learn and transplant practical experiences.

However, given the double-line legislative model, including BL and GPL and a large volume of inferior legislations, exists in China's legal system, to what extent does

⁴³⁸ 肖北庚,“政府采购法制之发展路径: 补正还是重构,” 现代法学 32, no. 2 (2010): 16–26. P17.

⁴³⁹ Article 87: The specific steps and measures for the implementation of the present law shall be provided by the State Council. Chinese Government Procurement Law.

it affect the promotion and implementation of sustainable procurement policies in China.

4. How are sustainable considerations factored in the Chinese Public Procurement Legal Framework?

4.1 Green Public Procurement

4.1.1 Adjusting and Optimizing the Implementation Mechanism for Government Procurement of Energy-saving Products and Environmentally Labeled Products (2019 issued)⁴⁴⁰

In order to improve green government procurement policies, simplify government procurement implementation mechanisms for energy-saving (water-saving) products and environmentally-labeled products, and optimize the market environment for suppliers to participate in the government procurement market, China reformed the GGP mechanism through the departmental regulatory document of the state council.

Firstly, China has started to implement product category lists management for government procurement of energy-saving products and environmentally labeled products since 2019. MOF and NDRC determine the product categories for government priority, compulsory procurement, and relevant standards and specifications according to the energy-saving and environmental protection performance, technical level, and market maturity. Afterward, MOF published the *List of Government Procurement product category of Energy-saving Products* and the *List of Government Procurement product category of environmentally-labeled Products* in 2019. The lists are comprised of the category of products, for example, computers and monitors, toilets and urinals, sanitary tapware, etc., instead of each product produced by firms with a specific specification model. The categories granted the certificate can participate in government procurement activities.

Secondly, according to the development status of certification agencies, the state administration of market supervision and relevant departments in the state council will

⁴⁴⁰ http://www.cccp.gov.cn/zcfg/mof/201902/t20190213_11628855.htm.

gradually increase the number of agencies implementing certification of energy-saving products and environmentally labeled products. In order to regulate certification agencies, *Expanding the Scope of Institutions Participating in the Certification of Energy-Saving Products and Environmental Labeling Products Purchased by the Government* was issued in 2019, which establishes a credit supervision mechanism for certification agencies to prevent illegal certification activities.⁴⁴¹

Thirdly, the state administration for market Regulation organizes the establishment of an information platform for certification of energy-saving products and environmental labeling products. Certification agencies must establish a sound data sharing mechanism and provide relevant information to the platform in a timely manner, ensuring transparency.

Fourthly, for the product categories that have been included in the list, the purchasers can put forward higher requirements for saving resources and protecting the environment according to procurement needs and give priority to qualified products that meet the requirements. For product categories not included in the list, purchasers are encouraged to comprehensively consider factors such as energy-saving, water-saving, environmental protection, recycling, low carbon, regeneration, and organic. And the purchasers take consideration of national standards, industry standards, or industrial group standards into the procurement requirements. This arrangement provides discretion for purchasers to consider new green technologies and encourages the development of green innovation.

4.1.2 Energy conservation Regulation for public entities (2017 Amendment)

According to this regulation, public entities are encouraged to comply with compulsory or preferential procurement in energy-saving and environmental protection. (Article 18). The regulation also requires that the state council and provincial governments prioritize those products and equipment with attestation environmental certificate and the centralized procurement Catalogue taking into energy-saving and environmental-label products preferentially consideration. (Article 19). The purchasers

⁴⁴¹ http://www.ccg.gov.cn/zcfg/bwfile/201904/t20190403_11853998.htm.

are subject to punishment measures (fines and warnings) from government procurement supervision and management department in infringement of implementing compulsory procurement or priority procurement policies of energy-saving and environmental-label products (Article 38). The energy management contract introduced in 2010 will be detailed hereunder.

It is noted that "public entities," as referred to in this regulation, are defined as state agencies, institutions, and organizations that use fiscal funds in whole or in part (Article 2).

4.1.3 Regulation on energy conservation in civil Buildings (2008)

The civil buildings mentioned in this regulation refer to residential buildings, commercial buildings, office buildings of state agencies, and other public buildings such as service industry, education, health (referred to as public utilities), etc. (Article 2). The supervised department established the mandatory energy-saving standard for civil building (Article 7). Especially, Renewable energy such as solar, geothermal energy is encouraged in the new construction of building and re-building through tax incentives (Article 4). Any participating parties are punished for revocating the qualification certificate or stopping three months to one year without applying the mandatory energy-saving standard (Article 44).

The owners of office buildings and large public buildings of state agencies are required to install and use energy-saving equipment by evaluating the energy utilization efficiency of the buildings (Article 21). The construction sector is required to select suitable renewable energy for heating, cooling, lighting, and hot water supply, etc.; the design sector is required to design in accordance with the relevant technologies standards for the use of renewable energy; the construction of renewable energy utilization facilities are designed, constructed and inspected simultaneously with the main construction of the buildings (Article 20).

4.1.4 Energy Management Contract

The administrative order of *implementing the energy management contract and promoting the development of the energy-saving service industry* was formulated by

NDRC in 2010. Energy management contract provides users with one-stop services, such as energy audit, engineering design, equipment, and raw material purchase, project construction, energy-saving effect monitoring, equipment maintenance, and management according to signing energy-saving service contracts with purchasers. The energy management contract was first considered in the *Central Budget Unit 2013-2014 Central Government Procurement Catalog and Standard* as the service for government procurement for the first time in 2012. It aims to strengthen energy-saving for public entities in energy efficiency, reducing greenhouse gas emissions, and protecting the global environment. The projects and service provisions of the energy management contract are defined in *the General Principles of technologies in Energy Management Contract (GB/T24915-2010)*.

Although the energy management contract has been seen as a central government procurement contract, it was a very new concept for the Chinese market. Few enterprises and public entities participated in this industry (just for tender information related to EMC in 2013). In order to promote energy management contracts for public entities, Shenzhen issued the *Shenzhen Municipal Public Institutions Energy Management Contract Implementation Plan* in 2012, which makes energy management contracts the main way for public institutions to implement energy-saving transformation.⁴⁴² The comprehensive scoring method is the only project review method for selecting the optimal energy-saving retrofit plan in public entities. The Project monitor is carried out by a third party (private monitor institutions).

Shenzhen's public entities have successfully implemented 393 energy management contract projects, saving 470 million yuan in financial investment and saving nearly 100 million kWh of electricity annually by 2019.⁴⁴³ With the energy management contract implemented successfully in Shenzhen locally, the Shenzhen model in saving energy and adopting new technology is popularized in China increasingly for public entities.

Firstly, The advanced aspects of the Shenzhen model are embodied in promoting

⁴⁴² 深圳市公共机构合同能源管理实施方案. <http://www.sz-ecpi.com/index/info/name/Policy/id/8.html>.

⁴⁴³ http://www.ggj.gov.cn/gzdt/gjgzdt/hqzsz/zgjghq/2018/201804/201907/t20190726_28421.htm.

innovative technologies, such as taking the comprehensive energy-saving rate as the core indicator of bidding procurement and guiding enterprises to use new technologies and new innovative products actively. Secondly, performance management in comprehensive saving water, electricity, and gas, etc., are built according to Energy Saving Target Responsibility Letter and accountability system. Thirdly, the unified bidding template for energy management contracts is established in comprehensive energy-saving and single-item energy-saving bidding templates. Fourthly, the open tender method is publicly emphasized for public entities' energy management contracts.

4.2 Social Responsibility Public Procurement

4.2.1 Notice on using government procurement policies to support poverty alleviation (issued 2019)⁴⁴⁴ and Notice on Issuing the Implementation Plan for Government Procurement of Agricultural Products in Poor Areas (issued 2019)⁴⁴⁵

The Agricultural and sideline products: Governments (budget units at all levels) are encouraged the purchase agricultural and sideline products in poverty-stricken areas through priority procurement and procurement reservation. Agricultural and sideline products in poverty-stricken regions refer to the products produced by enterprises, farmers' professional cooperatives, and family farms registered in 832 poverty-stricken national counties.

Property services provided by property companies for hiring poor personnel: where governments (budget units at all levels) use financial funds to purchase property services, if conditions permit, the property service companies registered in 832 poverty-stricken counties are provided set-asides and reserved contracts. In the case of poor staff registered to exceed 30 percent in the property service companies, competitive negotiation and single-source methods are adopted.

MOF and the poverty alleviation office of the state council are authorized to build the online sales platform, which provides efficient and convenient production and

⁴⁴⁴ http://www.ccg.gov.cn/zcfg/mof/201906/t20190604_12199146.htm.

⁴⁴⁵ http://www.ccg.gov.cn/zcfg/mof/201908/t20190820_12715770.htm.

marketing channels for agricultural and sideline products in poor areas. Each budget unit in charge reports the specific proportions of agricultural products reserved to the finance and poverty alleviation departments at the same level. The financial and poverty alleviation departments at all levels will regularly collect statistics and report the procurement of agricultural products and property services in poor areas.

Poverty Alleviation 832 Platform was built to help registered enterprises, cooperatives, and family farms in 832 poverty-stricken counties to sell agricultural and sideline products. The purchasers registered in this platform are comprised of the budgetary units of state at all levels, trade union organizations, public sectors (the staff canteen of hospitals and universities), state-owned enterprises, etc.⁴⁴⁶ This platform was launched on 17 October 2019 and started to run on 1 January 2020. It is worth noting that these registered suppliers mainly are small-micro enterprises and family farms.

4.2.2 Notice on the government procurement policy for promoting the employment of persons with disabilities (issued 2017)

In accordance with GPL and the disability protection law, government procurement is considered to be an important policy tool to promote the protection of disabled people. Companies that hire a certain percentage of disabled people are regarded as SMEs and small-micro enterprises. The procurement policies supporting SMEs are applied for small companies that hire disabled people, such as reserved procurement shares and price deductions in procurement procedures, etc. The size of purchases from welfare companies for disabled people counts in the statistical data of purchases for the total procurement size from SMEs.

The companies that have hired a certain percentage of disabled people are seen as welfare companies for disabled people. It has to meet five requirements to enjoy the government procurement policy. Firstly, the number of disabled persons placed in the firm shall account for no less than 25% (including 25%) and shall not be less than 10 (including ten people). Secondly, companies sign the labor contract for more than one year (including one year) with each disabled person hired in accordance with the laws.

⁴⁴⁶ Poverty Alleviation 832 Platform. <https://www.fupin832.com/index.html>.

Thirdly, for each disabled person to be placed, social insurance premiums such as a basic pension, medical, unemployment, work injury, and maternity insurance have been paid totally. Fourthly, each disabled person is paid a monthly salary not lower than the monthly minimum wage approved by the provincial people's government where the companies are located. Fifthly, these companies provide goods, services, and projects undertaken by themselves or goods, services, and projects provided by other welfare companies for the disabled (excluding goods using registered trademarks of normal companies).

For products of welfare companies for the disabled people that meet the requirements, the centralized procurement agency can directly adopt the preference policy in framework agreements, calling designated-provider procurement (Dingdian Caigou), agreement procurement (Xieyi Gonghuo) in china.⁴⁴⁷

4.2.3 Notice on government procurement supporting prison enterprises (2014)

According to *Notice on government procurement supporting prison enterprises* issued by MOF and Ministry of Justice (MOJ) jointly in 2014, government procurement is the main tool to support prison firms and provide criminals and drug addicts with long-term and reliable jobs. On accounting for employees' special status in prison enterprises, innate market competitive disadvantage, etc., prison enterprises mostly produce labor-intensive and low-technology content products in China. The prison enterprises are regarded as micro, small, and medium firms engaged in government procurement procedures.

Moreover, particularly in uniform procurement for polices, doctors, kids in school, etc., the procurement budget is required to reserve 30% or above to prison enterprises exclusively. In principle, the test or exam paper printing for civil servants, enrollment, certificate, and qualification examinations organized by government departments at or above the provincial level are required to uniquely award contracts to qualified prison

⁴⁴⁷ There is no uniform definition of framework agreements in China. Various terms are used in practice to refer to framework agreements or similar procurement methods, including designated-provider procurement (Dingdian Caigou), agreement procurement (Xieyi Gonghuo), agreement and designated-provider procurement (Xieyi Gonghuo). The term "framework agreements" (Kuangjia Xieyi) in china is the most commonly used among them. Ke Ren, "The Use and Regulation of Framework Agreements under the Chinese Government Procurement System," *Public Procurement Law Review* 2 (2019): 42–58.

enterprises. In government procurement of free textbooks for compulsory education and skill training institutions, the procurement percentage is confirmed according to the conditions of prison companies qualified without requiring the minimum and maximum percentage.

4.3 Supporting Small-Medium Enterprises (SMEs)

4.3.1 The Interim Administrative Measures of supporting SMEs (2011, MOF, NO. 181) and Measures Administration Measures of Government Procurement Supporting SMEs (2020, MOF, NO. 46)

In December 2020, the new supporting SMEs administrative order – *Measures Administration Measures of Government Procurement Supporting SMEs* – was published by MOF and the Ministry of Industry and Information (MII). Meanwhile, *The Interim Administrative Measures of supporting SMEs (2011, MOF, NO. 181)* was abolished after the enactment of MOF, NO. 46 from January 2021. MOF, NO. 46 updates and improves the specific measures in MOF, NO. 181 in supporting SMEs standards (the definition of SMEs who can be supported by government procurement); set-asides; and price subsidy. Importantly, when public sectors implement supporting SMEs by government procurement, they have to consider SMEs in the stage of formulating procurement needs in the MOF, NO. 46.

4.3.1.1 Definition of SMEs

SMEs for government procurement is defined as various enterprises that simultaneously satisfy the following two conditions: (1) they satisfy the classification criteria for SMEs; (2) they supply government goods manufactured by themselves or other SMEs or provide services or works of their own. Goods for this purpose do not include those with registered trademarks of large enterprises. If small and micro-enterprises provide goods manufactured by medium-sized enterprises, they are regarded as medium-sized enterprises. The categorization standards for SMEs are formulated by relevant departments of the State Council based on indicators: enterprise employees, operating income, and total assets, etc.

In addition, MOF, NO. 46 emphasizes the exceptional circumstances in SMEs' definition in order to protect fair competition. First, entities are not considered SMEs when they have direct and indirect holding shares and manage relationships with large enterprises. Second, the self-employed business also can be seen as SMEs in government procurement activities. This policy benefits the purchasing agricultural products run by self-employed people in the less-developed rural areas.

4.3.1.2 Set-asides

The Interim Measure requires the authorities in charge of departmental budget-making to strengthen their budgeting work for government procurement, formulate specific procurement plans, and determine the specific projects of their departments targeted at SMEs. 30% of the government procurement budget is reserved for SMEs. Of this 30%, at least 60% is reserved for small and micro-enterprises. This quota may be varied and reduced in accordance with the requirements of government operations and public service needs, i.e., a government procuring authority may set aside a lower proportion of the government procurement budget for SMEs on account of operational needs. When the purchaser or procurement agency organizes procurement activities, it shall indicate in the bidding documents, negotiation documents, and inquiry documents that the bidding is specifically for procurement by small and medium-sized enterprises or small and micro-enterprises.

In addition, in order to increase the share of SMEs in government procurement activities, MOF, NO. 46 stipulates that 100% of goods and services (values) less than 2 million RMB and works (values) less than 4 million RMB in government procurement activities should be subject to supporting SMEs policy. For the procurement of goods and services exceeding 2 million RMB and works projects exceeding 4 million RMB, 30% of the total budget is reserved for small and medium-sized enterprises. The proportion of micro-enterprises is not less than 60% in the procurement budget.

4.3.1.3 Price subsidy

For procurement contracts that are not reserved for SMEs, small and micro enterprises enjoy a 6-10% price deduction from their submitted bid. The relevant

procuring authority/agent decides the precise discount depending on the case concerned. In addition, small and micro-sized enterprises also enjoy a 2-3% price deduction when participating in a bidding consortium.

As to the subsidy policy, MOF, NO 46 emphasizes that price subsidy is used only for the procurement projects where set-sides are not applied. The public purchaser and procurement agency deal with SMEs with the price deduction of 6%-10% for goods and services (3%-5% for engineering works) in the awarding assessment procedure.

4.3.1.4 Privilege to consortia participated by SMEs

(A) Mixed consortium

Large and medium-sized enterprises and other natural persons, legal persons, or other organizations to set up a consortium with SMEs to bid for the government contracts can not be set aside in the government procurement. In addition, large-and medium-sized enterprises and other natural persons, legal persons, or other organizations that take part in the consortium may not have an investment relationship with the participating SMEs. When the share of the value for small and micro-sized enterprises accounts for more than 30% of the total contract value under the consortium agreement, the consortium may be privileged with a price deduction of 2-3% for goods and services and 1-2% for works at bid evaluation.

(B) SMEs consortium

For the consortium that participated in all SMEs, the consortium is deemed to be seen as a small and micro-sized enterprise. It enjoys all the privileges of SMEs, including taking part in the set-aside program and being granted a 6-10% price reduction at bid evaluation as a small and micro-sized enterprise.

(C) Subcontracting

Public authorities are encouraged to permit the large-sized enterprises awarded government contracts to subcontract to SMEs. The amount of subcontracting by large-scale enterprises to SMEs is included in the statistical amount of procurement for SMEs contracts won through the preferential measures, such as the set-asides program or price deduction. The situations subcontracting from a small or micro-sized enterprise to a

large or medium-sized enterprise or from a medium-sized enterprise to a large-sized enterprise are entitled to enjoy supporting SMEs' policies.

However, as to the construction projects subject to bidding law and its regulation, the successful candidate of bidding subcontract to others in accordance with the clauses and the consent of tenderers on the basis of (1) subcontract part of the non-subject and non-critical works; (2) the legal entities who accept the subcontract meet the corresponding qualifications in technologies and other requirements; (3) the parts of subcontract are prohibited from being subcontracted again.⁴⁴⁸

As to the goods, services, and works purchased by non-bidding procedures, even though the successful candidates of government contracts are permitted to contract on condition of consent of tenderers, there are no further stipulations related to qualified requirements, the scope of subcontracts, etc.⁴⁴⁹ It seems that public entities are given powerful discretion in subcontracting.

4.3.2 The Notice on the Categorization of Small-medium Enterprises (2011)

The Notice on the Categorization of Small-medium Enterprises jointly was issued by the Ministry of Industry and Information Technology (MIIT), National Statistic Bureau, National Development and Reform Commission (NDRC) in 2011. For the first time, it classifies SMEs into small, medium, or micro-sized enterprises based on the number of employees, operating income, total assets, and other industry-specific characteristics.

The enterprises are divided into 15 industrial categories with an additional catch-all provision for non-specified industries. There are different size variations in the number of employees, operating income, and assets across industrial categories. However, due to the current lack of an authoritative classification body in China, the Interim Measures rely on the self-declaratory mechanism for SME classification. SMEs participating in government procurement are required to confirm their SME status via a standard declaration form. The declaration form provides for legal liability for fraud

⁴⁴⁸ Article 48 of Bidding Law; Article 59, 76 of Regulation on bidding law; Article 35 of Administrative measures of bidding for government procurement of goods and services.

⁴⁴⁹ Article 48 of Government procurement law.

declaration.

The Notice on the Categorization of SMEs stipulates that the standards are revised in the appropriate way by the MIIT, the National Bureau of Statistics, and relevant departments in accordance with the revisions of the guiding of *Industrial Classification of the National Economy and the Development*.

4.3.3 Regulation on Guaranteeing Payments for Small and Medium-sized Enterprises (2020)

Regulation on guaranteeing payments for SMEs was passed by the state council in July 2020 and came into effect in September 2020. It intends to strengthen the support of SMEs in payment, particularly in public procurement projects.

Firstly, the contracting authorities are comprised of government departments at all levels, public institutions, and large enterprises.⁴⁵⁰ Large-scale enterprises are referred to as ones except for micro, small, and medium enterprises based on the categorization of SMEs. It seems to include state-owned and private large-scale enterprises.

Secondly, the goods, works, and services purchased by government departments and public institutions shall make payments within 30 days from the date of delivery; if it is otherwise agreed in the contract, the payment period shall not exceed 60 days.⁴⁵¹ The financial fund used for purchasing from SMEs is required to execute based on budgetary management, and the projects invested by the government and public institutions are restricted to the advance-fund construction by SMEs.⁴⁵² The goods works and services purchased by large-scale enterprises reasonably make on payment terms and make timely payments in accordance with industry norms and trading habits.⁴⁵³

Thirdly, in order to promote the attestation of SMEs classification, an enterprise-scale type web-based test platform is required to be established based on the categorization of small-medium enterprises stipulated by the state council.⁴⁵⁴

⁴⁵⁰ Article 2, 3 of Regulation on guaranteeing payments for small and medium-sized enterprises.

⁴⁵¹ Article 8 of Regulation on guaranteeing for small and medium-sized enterprises.

⁴⁵² Article 7 of Regulation on Guaranteeing Payments for Small and Medium-sized Enterprises.

⁴⁵³ Article 8 of Regulation on Guaranteeing Payments for Small and Medium-sized Enterprises.

⁴⁵⁴ Article 23 of Regulation on Guaranteeing Payments for Small and Medium-sized Enterprises.

Meanwhile, the timely payment of SMEs is considered to the SME development environmental assessment and business environment assessment aimed to promote anti-discrimination and competition principles.⁴⁵⁵

4.4 Innovation-Orientated Public Procurement

4.4.1 Overview

The Chinese government announced explicitly in the National Scientific and Technology Program (2006-2020) the will to utilize innovation-orientated public procurement to spur indigenous innovation, following which governments took many actions. In 2007, the Ministry of Finance issued a series of administrative documents that promote innovative national capability and innovative-driven industries by government procurement. These administrative documents included the *Administrative Measures on the Government Procurement Budget for Independent Innovation Products*, *Measures for Evaluation of Government Procurement of Independent Innovation Products*, and the *Measures for the Administration of Government Procurement Contracts for Independent Innovation Products*. In order to implement the indigenous products procuring by the government procurement conveniently, the Order, jointly released by MOF, Ministry of Science and Technology (MOST), and NDRC, established *the catalog of indigenous innovation products* eligible for preferential treatment in tenders governed by the GPL in 2009.

However, China's government procurement policy encouraging indigenous independent innovation has attracted the attention of the international community, such as the EU and the US, who claimed that this policy violates anti-discrimination and equity principles and cause foreign enterprises invested in China from EU and America compulsory intellectual property transfer to Chinese enterprises. A series of reports related to the Chinese government procurement market was issued by the European Union Chamber of Commerce, the American Chamber of Commerce, and the US-

⁴⁵⁵ Article 22 of Regulation on Guaranteeing Payments for Small and Medium-sized Enterprises.

China Business Council.⁴⁵⁶ When the catalog of indigenous products for government procurement was announced in late 2009, *China's National Indigenous Innovation Product catalog* raised serious concerns among the international business community, especially for the foreign-invested enterprises with technological advantages.

Afterward, to respond to the commitment to de-link China's indigenous innovation policies from its government procurement, the Chinese government stated that all foreign investment enterprises are treated equally with local Chinese companies to identify innovative products purchased by government procurement and protect intellectual property rights.⁴⁵⁷ The General Office of the State Council issued the *Notice on cancellation of the Relevant Documents relevant to Providing Government Procurement Preferences to Innovative Policies* in 2011.⁴⁵⁸ It required that supervising departments pertinent to central government and local governments cancel the implementation of the measures linked to the innovation policy and the request of preferential government procurement in the government regulatory documents. The indigenous innovation products failed before they started. The State Council re-issued the same government order to cancel the preferential prices and measurements linked to indigenous innovation policies in 2016.⁴⁵⁹

4.4.2 Implementation Measures for the First Purchase and Order of Innovative Products and Services in Shanghai (2017)

Since the cancellation of link government procurement with indigenous

⁴⁵⁶ The European Union Chamber of Commerce. "Public Procurement in China: European Business Experiences Competing for Public Contracts in China," 2011. 54. <https://www.publictendering.com/pdf/PPStudyENFinal.pdf>.

⁴⁵⁷ In 2011, the China previous president Jintao Hu met US President Barack Obama in white house and made this promise. <http://rs.chineseembassy.org/chn/xwdt/t788407.htm>.

⁴⁵⁸ 甄德云, 曹富国. 政府采购促进自主创新正当其时. http://www.ccg.gov.cn/lsw/201905/t20190521_12111032.htm; 财政部关于停止执行《自主创新产品政府采购预算管理办法》等三个文件的通知(财库[2011]85号). http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=2ec897ef8eaa8f13bdfb&keyword=%e8%87%aa%e4%b8%bb%e5%88%9b%e6%96%b0%e4%ba%a7%e5%93%81%e6%94%bf%e5%ba%9c%e9%87%87%e8%b4%ad%e9%a2%84%20%e7%ac%97%e7%ac%a1%e7%90%86%e5%8a%9e%e6%b3%95&EncodingName=&Search_Mode=like&Search_IsTitle=0.

⁴⁵⁹ 国务院办公厅关于进一步开展创新政策与提供政府采购优惠挂钩相关文件清理工作的通知. http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=9b5a5de688e43411bdfb&keyword=%e6%94%bf%e5%ba%9c%e9%87%87%e8%b4%ad%e4%b8%8e%e5%88%9b%e6%96%b0&EncodingName=&Search_Mode=like&Search_IsTitle=0.

innovation products policy, the municipal government, for example, in Shanghai, Shenzhen, Beijing, and Zhuhai have been exploring the appropriate innovation policy in coordination with international government procurement rules. In 2017, the financial department of Shanghai issued *Implementation Measures for the First Purchase and Order of Innovative Products*.

The first purchase policy is defined as that public purchasers buy new innovative products, especially energy-saving and green technologies, on the market based on the recommended catalog of innovative products. If the goods or services purchased belong to the innovative products in the recommended catalog and are irreplaceable patents and proprietary technologies, the single-source method is encouraged.

Order policy means that government procurement encourages research and development (R&D) to promote cutting-edge technologies. Public sectors adopt competitive negotiation, competitive consultative procurement methods, and single-source to choose private research institutions or firms. Government procurement contracts are forbidden to subcontract to other suppliers. There is a big difference between competitive negotiation and competitive consultative procurement methods. In *Administrative Measures on Non-bidding Procurement Methods for Government Procurement* (MOF Order 74), Competitive negotiation A means the procurement method that the negotiation team negotiates with qualified candidates required to submit response documents and final quotations in accordance with the requirements of the negotiation documents (Article 2). In *Interim Measures for the Administration of Competitive Consultative Procurement Methods for Government Procurement* (MOF Order 214), Public entities choose the competitive consultative procurement methods in procurement activities when they get through in these circumstances: (1) purchasing services; (2) complex technologies and undetailed technological specifications or unspecific requirements; (3) the total price cannot be calculated in advance due to uncertain time and quantity of artwork procurement, patents, know-how, or services that cannot be determined; (4) R&D with insufficient market competition, and scientific and technological achievements transformation projects that need to get government

support (Article 3).

4.4.3 Challenges and the way forward

As has been mentioned, the indigenous products policy, to some extent, causes worries about discriminating against foreign-invested enterprises in China. China's IOPP policy (indigenous products) seems to be another version of domestic (buy-national) purchase. The buy-national policy is acknowledged in the GPL. But there are exceptional circumstances: (1) the goods, projects, or services are not available through domestic enterprises or cannot be obtained at reasonable commercial conditions; (2) procured for use outside of China; (3) specific stipulations of other laws and administrative regulations.⁴⁶⁰ Meanwhile, the definition of domestic goods and services is subject to the regulations enacted by the state council.⁴⁶¹ From the state council's action related to IOPP, China compromises under political pressure to a certain extent. However, on the other, the abolition of indigenous innovation showcases a positive effort to open the government procurement market, even it is only for foreign-invested enterprises.

In addition, the China Government Procurement Law does not contain relevant provisions for improving innovation development explicitly. Chinese government stressed its intention to establish a government procurement system that complies with international rules and laws in the *Outline of the National Strategy of Innovation-Driven Development* issued in 2016.⁴⁶² Innovation policy pursued by government procurement has been paid attention. It is noted that the reform of the green government procurement program in 2019 has an impact on improving ecological and green innovation. Moreover, for the products not in the categories list, purchasers are encouraged to consider national standards, industry-standard, and organization standards in order to promote new technology.⁴⁶³

⁴⁶⁰ Article 10 of government procurement law.

⁴⁶¹ Article 10 of government procurement law.

⁴⁶² Outline of the National Strategy of Innovation-Driven Development .
<http://www.lcrc.org.cn/zhzsk/zcfg/gwgb/gwywj/201801/P020180110557547697363.pdf>.

⁴⁶³ 财政部 发展改革委 生态环境部 市场监管总局 关于调整优化节能产品、环境标志产品政府采购执行机制

The Chinese State Council laid down the *Opinions of the State Council on Several Policies and Measures for Vigorously Advancing the widespread Entrepreneurship and Innovation* in 2015. As one of the central regulatory documents, this opinion emphasizes that government procurement is required to play a significant role in supporting innovation development and improving government procurement policies to promote the development of SMEs.⁴⁶⁴ Even though the innovation policy in conjunction with promoting SMEs is considered a promising tool, it remains to see how China implements IOPP in the government procurement market in the future.

Under the negotiation of GPA accession, China has been making an effort to adjust to international rules, especially the IOPP. China learns to promote the extension of procurement to the non-competitive R&D stage, adopt R&D procurement, small business innovation plans, similar to the pre-commercial method adopted in the 2014 EU Public Procurement Directive. On the other hand, the whole cost associated with the environmental externalities of innovative products and green standardization in the EU experience have attracted attention in the Chinese academia and discussion.⁴⁶⁵

4.5 The Implication of Other Laws to Government Procurement

4.5.1 Overview of news laws, regulations, and administrative orders

4.5.1.1 the Foreign Investment Law (2020)

On 15 March 2019, the National People's Congress of the People's Republic of China (PRC) approved the Foreign Investment Law of the PRC, which comes into force on 1 January 2020. *The Foreign Investment Law* will become the first unified legislative instrument governing foreign investment, replacing the three previous regulations, including *Regulation on Wholly Foreign-Owned Enterprises*, *Regulation on Chinese-*

的通知. http://www.ccg.gov.cn/zcfg/mof/201902/t20190213_11628855.htm.

⁴⁶⁴ Opinions of the State Council on Several Policies and Measures for Vigorously Advancing the world spread Entrepreneurship and Innovation. http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=ad97281ff6925626bdfb&keyword=&EncodingName=&Search_Mode=like&Search_IsTitle=0.

⁴⁶⁵ 胡海鹏, 袁永, 康捷, “符合国际规则的政府采购促进科技创新研究,” 科技管理研究, no. 6 (2020): 63–68.

Foreign Equity Joint Ventures, and Regulation on Chinese-Foreign Contractual Joint Ventures.

Article 16 of the new *Foreign Investment Law* stipulates that the state guarantees foreign-invested enterprises' participation through fair competition in government procurement activities according to the law. Goods manufactured by foreign-invested enterprises in China shall be treated equally in government procurement.

4.5.1.2 Regulation for Implementing the Foreign Investment Law (2020)

Article 15 of the Regulation for Implementing the Foreign Investment Law is dedicated that purchasers and procurement agencies of government procurement at all levels shall not apply differential or discriminatory treatment to foreign-invested enterprises in terms of government procurement information release, supplier qualification determination, qualification review, and bid evaluation standards; are prohibited from being treated suppliers on the basis of ownership, organizational, equity structural, and the investor's country, the brand of products and services differently from domestic enterprises. Article 16 stresses that Foreign-invested enterprises may, in accordance with the GPL and its implementation regulations, raise inquiries and questions to purchasers and procurement agencies regarding government procurement activities and to the government procurement supervision and management department Complaint.

4.5.1.3 Regulation on Optimizing the Business Environment (2020)

Article 13 of the Regulation on Optimizing the Business Environment stipulates that bidding and government procurement shall be open, transparent, fair, and market entities of various ownership systems and different regions shall be treated equally in accordance with the law and shall not be restricted or excluded by unreasonable conditions or the origin of the product.

4.5.1.4 Notice of Promoting Fair Competition in Public Procurement and Optimizing Business Environment by MOF (2019)

Firstly, the order re-claims the abolishing regulations, administrative orders, and practical measures that hinder fair competition in government procurement in ten aspects enumerated in government procurement. Secondly, the Electronic government procurement platform is established and shares data with the public resource trading platform to build unified technical standards and data specifications to improve the feasibility and convenience of suppliers participating in government procurement activities, especially for SMEs. Thirdly purchasers and centralized purchasing agencies are required to disclose procurement information, such as procurement items, procurement content and demand overview, the budget amount, estimated procurement time, etc.

4.5.2 Conclusion

China started to initiate GPA accession negotiations by the end of 2007.⁴⁶⁶ The negotiations maintain two parts: scope of market opening and domestic legal adjustment.⁴⁶⁷ In the background of GPA accession negotiations, the reform and improvement of the Chinese public procurement legal system is the most significant concern to adjust to international government procurement rules and pursue public procurement policies without breach of GPA basic principles, especially anti-discrimination and open-competition, etc.

In the GPA accession negotiation, China insists on its right to use offsets, which are only available to acceding developing countries in a transitional period, even in the seventh GPA offer. In practice, technology transfer is used as one form of offset in China, which has attracted a significant amount of international criticism. However, concerns are raised that the new law comprises a general and brief pronouncement on complex issues without details on how they would be actually carried out. It is unknown if the

⁴⁶⁶ 世界贸易组织政府采购协议(GPA). <http://www.ccgp.gov.cn/wtogpa/>.

⁴⁶⁷ 世界贸易组织政府采购协议(GPA). <http://www.ccgp.gov.cn/wtogpa/>.

foreign investment law changes China's attitude on offsets, thus facilitating GPA compliance to some extent, although it covers foreign-invested enterprises only. However, the foreign investment law and its regulation, which aims to strengthen foreign investors' intellectual property protection, deserve to be paid attention to. The implications in the enactment of FDI law and its regulations have influenced the participating Chinese government procurement of foreign-invested enterprises and tried to create market competition in horizontal procurement policies, especially in innovation, ecological technologies, etc.

The emphasis on fair competition and anti-discrimination for all types of market enterprises implies that environmental and social goals are pursued by Chinese government procurement without in breach of fair competition and anti-discrimination principle in the procurement process. The information-sharing platform is seen as a tool to strengthen fair competition for all different kinds of suppliers. Transparency is stressed to create a level playing field and the effective implementation of technical standards and certificates in environmental and social goals (832 poverty-stricken enterprises platform).

5. Latest Reform of the Chinese Public Procurement Legal System

According to the need to achieve reform of government functions and streamline administration, delegate government power, and optimize the business environment, China launched the BL reform in Report on the Work of the Government and GPL law reform in *the Plan for the Deepening the Reform of Government Procurement System* in 2019. Subsequently, China issued the BL of Revision Draft for Public Comment in Dec.2019 and GPL of Revision Draft for Public Comment in Dec.2020. With the 7th bid for China to join the Government Procurement Agreement (GPA) submitted in Oct. 2019, China aims to expand international trade and open the public procurement market. Negotiations for joining GPA are divided into two aspects: one is bid negotiation, which clarifies the opening scope for China joining GPA; the second is the legal adjustment

of how china's relevant government procurement laws are coordinated with the GPA rules.⁴⁶⁸ China started to initiate the second wave of public procurement legal system reform in 2020. The reform agenda has been discussed in Chinese academia and public procurement professionals since two revised drafts were announced (BL and GPL). The concern about the reform focuses on the three points below in the BL and GPL.

5.1 The coordination and combination of the BL and the GPL

Since China enacted the BL law in 2000 and the GPL law in 2003, the conflict and combination between the BL and the GPL have always been a hot topic in Chinese academia. China implements a two-line public procurement law model, which lays down bidding law by legislating bidding procedures among government procurement law rather than the unified legislation model adopted pervasively in the international community.⁴⁶⁹

In general, there are two points about the relationship between BL and GPL: firstly, GPL has endowed the full understanding for the concept of "government procurement" integrating works (construction projects) purchasing from government sectors; secondly, the procurement objects of GPL are comprised of consumer items such as goods and related services required by the government for public management and service to the public without goods, works (construction projects), and related services for investment purposes.⁴⁷⁰ Under the two-line model legislation model, most Chinese scholars explain the difference of law enforcement for BL and GPL from the applying subjects of these two laws, the legal acts (purchasing activities in GPL and bidding procedure in BL), legal liabilities, regulatory power (NDRC for BL and MOF for GPL), the purpose of the legislation.⁴⁷¹

It is well-acknowledged that the most significant controversial point is purchasing

⁴⁶⁸ 我国向世界贸易组织提交《中国政府采购国情报告》(2020年更新版). http://www.ccp.gov.cn/news/202006/t20200603_14406348.htm.

⁴⁶⁹ 何红锋,“《政府采购法》与《招标投标法》的关系,”中国政府采购,2002,12-14.

⁴⁷⁰ 曹富国,“公共采购法视野下‘两法’关系之协调与区别立法,”国家行政学院学报,2012,76-81.

⁴⁷¹ 何红锋,“《政府采购法》与《招标投标法》的关系,”中国政府采购,2002,12-14;曹富国,“公共采购法视野下‘两法’关系之协调与区别立法,”国家行政学院学报,2012,76-81;吕汉阳,张笑寒,“也谈《招标投标法》与《政府采购法》的关系,”招标与投标,2014,21-23.

works from government sectors and funding. The bidding procedures of purchasing works from the government are subject to BL; however, other aspects of bidding procedures in all government procurement, including works purchasing, are bound by GPL. BL is referred to as procedural law, and GPL law is referred to as substantial law.⁴⁷² Moreover, BL can supplement the legal loophole of GPL in procurement scope exceeding the centralized government procurement catalog and procurement quota.⁴⁷³ So, from these apparent differences between BL and GPL, two scholars clearly support the two-line model and state that BL and GPL should not be combined rather than coordinating and adjusting the application of two laws.⁴⁷⁴ However, Cao Fu Guo states that legislative reform can adopt either the single code legislative model or the two-line legislative model, but the application of the law must be guaranteed to be certain and uniform in the context of the two-line system.⁴⁷⁵ BL is treated as the special law regulating works from the government, and GPL is seen as the general or basic law.⁴⁷⁶

However, the disadvantages and disfunction also are inescapable for this two-line law model. One scholar (Yu An) also claims that BL lacks the application system of public policies in works (construction projects), such as the innovation policy, the protection of domestic national industries, environmental protection, saving energy, etc.⁴⁷⁷ Also, the allocation of regulatory power is very distinct in the BL and GPL. MOF is endowed with statutory supervision power in GPL; however, BL establishes a sophisticated regulatory power system: centralized supervision power (NDRC) supplemented by decentralized supervision of various departments in charge of transportation, train, airport, construction, ICT, and water departments.⁴⁷⁸ In order to coordinate and adjust the conflict between BL and GPL in these aspects, China has revised these two basic public procurement laws (BL in 2017 and GPL in 2014) and

⁴⁷² 吕汉阳, 张笑寒, “也谈《招标投标法》与《政府采购法》的关系,” 招标与投标, 2014, 21–23.

⁴⁷³ 于安, “招标投标法与政府采购法不宜合并,” 中国招标, 2007, 6–7. The mutual supplement of Article 3 in BL and Article 2 in GPL.

⁴⁷⁴ 吕汉阳, 张笑寒, “也谈《招标投标法》与《政府采购法》的关系,” 招标与投标, 2014, 21–23; 于安, “招标投标法与政府采购法不宜合并,” 中国招标, 2007, 6–7.

⁴⁷⁵ 曹富国, “公共采购法视野下‘两法’关系之协调与区别立法.” P81.

⁴⁷⁶ 曹富国, “公共采购法视野下‘两法’关系之协调与区别立法.” P81.

⁴⁷⁷ 于安, “论加入 GPA 与我国政府采购的制度改革,” 国际关系学院学报 (2007 年增刊), (2007): 3–8.

⁴⁷⁸ 曹富国, “公共采购法视野下‘两法’关系之协调与区别立法.” P78.

laid down inferior laws and government orders conforming to superordinate laws, as argued in chapter 4.

Since *the Deepening Reform of Government Procurement National Scheme* put forward the government procurement legal system as the top-level initiative in Nov. 2018, the current revised drafts of the two laws have been formulated. The government procurement legislative model has once again become very prominent in theory and practice for three reasons: modernization and simplification of legislative principles, the establishment of a Chinese financial and budget management system, and the need to join GPA. Xiao Bei Geng claims that China should adopt the single legislative model, which requires that GPL is seen as the basic law and integrate the bidding procedure into GPL.⁴⁷⁹ Furthermore, the legislative modernization reform depends on legislation transformation according to scientific and democratic legislation principles instead of legislative empiricism based on individual specifications and specific rules patching.⁴⁸⁰

Thus, the single legislative model has become very popular and dominant because of the transformation and modernization reform for the Chinese public procurement system.⁴⁸¹ So far, Although some proposals call for keeping BL as the special law and GPL as the general law, mitigating the conflict of two laws is imperative and crucial.⁴⁸² But, it is well recognized by most scholars that the modernized Chinese public procurement legal system should be built in coordination with international public procurement rules, and it has become mainstream.⁴⁸³ During the Top National Two Sessions (the National People's Congress and the Chinese People's Political Consultative Conference) in Mar. 2020, *the Proposal on Joining the World Trade*

⁴⁷⁹ 肖北庚,“政府采购法律现代化演进应走体系化路径,”中国政府采购,2020,12-14.

⁴⁸⁰ 肖北庚,“政府采购法律现代化演进应走体系化路径,”中国政府采购,2020,12-14.

⁴⁸¹ 毛林繁,“谈《招标投标法》与《政府采购法》两法合一,”招标与投标 6, no. 8 (2018): 7-11. 肖北庚,“走向现代采购法制,”中国政府采购,2019,17-19. 肖北庚,“政府采购法制之发展路径: 补正还是重构.” Beigeng, “政府采购法律现代化演进应走体系化路径.”

⁴⁸² 汪才华,“《招标投标法》和《政府采购法》两法合一: 法律之构想,”招投标与管理,2012,9-11. 于安,“对政府采购的再认识,”中国政府采购,2019,9-10. 吕汉阳,张笑寒,“也谈《招标投标法》与《政府采购法》的关系.” 曹富国,“公共采购法视野下‘两法’关系之协调与区别立法.”

⁴⁸³ 姜爱华: 两法融合已成为政采制度改革急需解决的议题. http://www.ccp.gov.cn/zjgd/202007/t20200721_14690060.htm. 赵宏瑞:“两法合一”是深化政采制度改革的顶层设. http://www.ccp.gov.cn/zjgd/202007/t20200721_14690035.htm. 肖北庚,“政府采购法律现代化演进应走体系化路径.” 肖北庚,“政府采购法制现代转型之逻辑基点与制度重构,”湖南师范大学社会科学学报,2020. An,“对政府采购的再认识.”

Organization's Government Procurement Agreement brought the legislative concern of "two laws into one" by the Chinese Democratic League (participating parties similar to the parties out of power in western democratic countries).⁴⁸⁴ Under the 7th negotiation for joining GPA, the modernized reform is becoming very pressing.

According to the national reform scheme (2018), the purpose of modernized and systematic reform rests on clarifying purchasing entities' duties in identifying procurement needs and budget management, building reasonable and scientific procurement procedures, sound procurement policies, etc.⁴⁸⁵ The performance-based government procurement system is a sign of the modernization of the government procurement system in the national reform scheme.⁴⁸⁶ In recent years, China has conducted critical explorations on transforming performance-oriented reform in the Chinese government procurement system. It also can be seen that the principle of performance-oriented procurement is required in the Draft revision of the Public Procurement Law. It seems that performance management has become an important concern in the reform of the Chinese government procurement system. Performance-oriented procurement mechanism, whose goals include optimal cost-effectiveness (economic factor) and sound procurement policies (environment, social aspect, sustainable development, human rights), is the cornerstone of the government procurement legal system's modernized transformation.⁴⁸⁷

5.2 Procurement Performance-Oriented (Based) Reform

Performance-based public procurement has become a major concern of many government and international organizations. The most significant step in performance-based public procurement is issuing "*Methodology for Assessing Procurement Systems (MAPS)*" by OECD in 2004. In 2014, the European Commission issued *Action Plan on*

⁴⁸⁴ 民盟中央：尽早加入世界贸易组织《政府采购协定》。
http://www.ccgp.gov.cn/wtogpa/news/202005/t20200529_14375534.htm.

⁴⁸⁵ 肖北庚，“政府采购法制现代转型之逻辑基点与制度重构。” P47.

⁴⁸⁶ 构建绩效型政府采购制度的初步设想。http://www.ccgp.gov.cn/lsw/201911/t20191125_13409688.htm.

⁴⁸⁷ 构建绩效型政府采购制度的初步设想。http://www.ccgp.gov.cn/lsw/201911/t20191125_13409688.htm. 肖北庚，“走向现代采购法制。”肖北庚，“政府采购法制现代转型之逻辑基点与制度重构。”

Public Procurement 2014, which sets out a series of initiatives aimed at helping EU countries improve the performance of both administrations and beneficiaries in applying public procurement for EU investments during the 2014–2020 programming period.⁴⁸⁸

Performance-Oriented (Based) Contracting (PBC) in public procurement is widely accepted as a useful tool for efficiently utilizing public resources.⁴⁸⁹ Performance-oriented (based) procurement as the potential of public procurement to pursue circular economy also is seen as a useful tool for promoting circular procurement by integrating environmental consideration.⁴⁹⁰

The government procurement fund is essentially the fiscal expenditure under China's modern budget system.⁴⁹¹ Public procurement has a strategic responsibility that can play a pivotal role in public expenditure management, improving good governance, enhancing economic development, and other objectives (environmental protection, social goals, innovation capability, etc.) within countries and the international community. Public procurement is to spend taxpayers' money to obtain goods and services needed to meet the government's operations and provide public services to society. In order to achieve the national goals and other organizational objectives more efficiently and effectively, public sectors have started using performance-oriented (based) contracting (PBC) for their procurement process.⁴⁹²

Performance-oriented (based) procurement dealing with what the goods or the facilities are required to do or what the services provided are expected to achieve as the optimal results, focuses on the outputs and outcomes, which are needed to be measured and clearly defined in terms of the results achieved instead of the procedure.⁴⁹³ The conceptualized characteristics of Performance-based procurement (logistics) include:

⁴⁸⁸ Khi V.Thai, “Global Public Procurement Theories And Practices: An introduction,” in Thai Khi V (ed), *Public Administration, Governance and Globalization*, (Springer International Publishing, 2017), 342. P6.

⁴⁸⁹ Baynesagn Asfaw Ambaw and Jan Telgen, “The Practice of Performance-Based Contracting in Developing Countries’ Public Procurement: The Case of Ethiopia,” *Journal Of Public Procurement*, no. 3 (2017), 402–431.

⁴⁹⁰ Katriina Alhola et al., “Exploiting the Potential of Public Procurement: Opportunities for Circular Economy,” *Journal of Industrial Ecology* 23, no. 1 (2019): 96–109.

⁴⁹¹ 肖北庚, “政府采购法制现代转型之逻辑基点与制度重构.” P48.

⁴⁹² Ambaw and Telgen, “The Practice of Performance-Based Contracting in Developing Countries’ Public Procurement: The Case of Ethiopia.” P403.

⁴⁹³ Baynesagn Asfaw Ambaw, Ph.D thesis, “Performance-Based Contracting in Public Procurement of Developing Countries” (the University of Twente, 2017). 225. P50.

pay for results; payments for results drive behavior; high responsibility to the contractor; cooperative relationships (closer cooperation with private sector companies, result-oriented); the outcome as the value-in-use for the customer(s)/purchasers (stronger focus on "value for money"); (pay-for-performance).⁴⁹⁴

Government procurement law is referred to as part of the budget law system in China. The implementation of budget performance management has become the core concern of the modern financial system. Implementing comprehensive performance evaluation of government procurement funds based on the nature of public fiscal expenditures has become an indispensable mechanism of modern fiscal systems.⁴⁹⁵ Consequently, the performance-oriented is seen as the crucial mission of radical reform and transformation from emphasizing procedural compliance to considering procedural compliance and optimal performance outcomes in China.⁴⁹⁶

The State Council issued the *Opinions on Comprehensive Implementation of Budget Performance Management*, aiming to improve government governance capability and build the modernized government governance system in Sep. 2018.⁴⁹⁷ This government opinion directly incorporated the government procurement legal system into the modern fiscal budget system reform and overall planning. The Chinese government procurement system's goal and principles are encouraged to move from emphasizing economic efficiency (the purchasing lowest price) and fair competition to value for money considering a series of factors not only purchasing price but also whole cost, quality, etc.⁴⁹⁸

In order to fully implement budget performance management and establish a scientific and reasonable performance evaluation management system of government expenditure, the MOF carried out the *Measures for the Management of Public*

⁴⁹⁴ F C Kleeman, A Glas, and M Essig, "Public Procurement through Performance Based Logistics," *Journal of Public Procurement*, no. 2 (2012): 151–188. P153, 155; Ambaw and Telgen, "The Practice of Performance-Based Contracting in Developing Countries' Public Procurement: The Case of Ethiopia." P407.

⁴⁹⁵ 肖北庚, "政府采购法制现代转型之逻辑基点与制度重构." P48-49.

⁴⁹⁶ 构建绩效型政府采购制度的初步设想. http://www.ccp.gov.cn/lsw/201911/t20191125_13409688.htm.

⁴⁹⁷ 中共中央 国务院关于全面实施预算绩效管理的意见.

http://www.gov.cn/zhengce/2018-09/25/content_5325315.htm.

⁴⁹⁸ 肖北庚, "走向现代采购法制." P17.

Expenditure Performance Evaluation in Mar. 2020.⁴⁹⁹ According to the Measures, performance-oriented government procurement requires purchasing budgets on the basis of measurable and qualitative factors, such as quantity, quality, timeliness, cost-effectiveness analysis, economic benefits, social responsibility, ecological and environmental protection, sustainable development impacts, etc.⁵⁰⁰ With the initiative and reform mission in the 2018 national public procurement reform scheme, it is obvious that procurement performance-oriented based on budget or fiscal expenditure performance management is the key expectation for restructuring and modernizing the Chinese public procurement system.⁵⁰¹ Then, the key points of reform in the Chinese public procurement system focus on attempts derived from the performance mechanism on the basis of modern fiscal reform.

Firstly, Since the *Opinions on Comprehensive Implementation of Budget Performance Management* and the *Measures for the Management of Public Expenditure Performance Evaluation* are issued, the Government procurement performance management system is encouraged to be implemented in Chinese government activities. The principle and goals focus on the direct output and effect of government procurement budget funds and the realization of government procurement policy goals; at the same time, not only the fairness, economic, efficiency, and effectiveness considerations (value for money), but also ecological, social benefits, sustainability consideration.⁵⁰² On the one hand, performance in the procurement process challenges the lowest cost method. But performance-oriented (based) procurement in China focuses on value for money based on a series of factors (environmental policy, innovation policy, supporting SMEs, and poverty reduction).⁵⁰³ On the other, the performance government procurement model is embodied in the procurement process's whole life cycle from the need confirmation to contract

⁴⁹⁹ 关于印发《项目支出绩效评价管理办法》的通知(财预〔2020〕10号). http://www.gov.cn/zhengce/zhengceku/2020-03/02/content_5485586.htm.

⁵⁰⁰ 对我国政府采购绩效管理的基本思考. http://www.ccp.gov.cn/lsw/202010/t20201013_15220549.htm.

⁵⁰¹ 姜爱华, 李镛辰, “基于物有所值理念改进我国政府采购预算绩效管理的思考,” 中国政府采购, 2019, 64-67. 肖北庚, “政府采购法制现代转型之逻辑基点与制度重构,” 对我国政府采购绩效管理的基本思考. http://www.ccp.gov.cn/lsw/202010/t20201013_15220549.htm.

⁵⁰² 对我国政府采购绩效管理的基本思考. http://www.ccp.gov.cn/lsw/202010/t20201013_15220549.htm.

⁵⁰³ 姜爱华, 李镛辰, “基于物有所值理念改进我国政府采购预算绩效管理的思考,” P66.

implementation and auditing.⁵⁰⁴ Thus, the performance-oriented (based) mechanism determines the economic efficiency (value for money), public policies, sustainable development integrated into the whole life cycle of procurement activities.

Secondly, thanks to the full implementation of budget performance management based on the modernized fiscal system, the current BL and GPL emphasize the legal enforcement of fiscal expenditures and government purchasing funding on protecting fair competition (anti-corruption) and economic efficiency (the lowest price) by procedural control. However, procedural compliance mechanisms ignore the pursuit of government procurement funding's substantive value (value for money and policy function).⁵⁰⁵ Thus, the performance outcome should be integrated into the procurement process from the beginning of the procurement process: drawing up the procurement budget and needing confirmation. Purchasing entities determine procurement needs based on departmental budget performance targets.

It is worth noting that the performance-oriented reform has been emphasized as a fundamental principle with openness and transparency, fair competition, fairness, honesty, and credibility in the 2020 revised draft of Chinese government procurement law. Performance management must be integrated into the purchasing need confirmation, budgeting, procurement plan, procurement procedures, contract management, and auditing system. Moreover, the contract price is encouraged to adopt the performance incentive model, in which purchasing entities can implement a flexible price on the basis of the supplier's performance, including the quality of goods, projects, and services; technological innovation, resource-saving, achieving economic and social benefits.

Thirdly, the confirmation of procurement needs rests on performance management mechanisms in coordination with procurement budgets, procurement policies, and market surveys in the 2020 revised draft of Chinese government procurement law.⁵⁰⁶ The procurement needs are required to include functions or goals of the procurement

⁵⁰⁴ 对我国政府采购绩效管理的基本思考. http://www.ccp.gov.cn/lsw/202010/t20201013_15220549.htm.

⁵⁰⁵ 肖北庚, “走向现代采购法制.” P18.

⁵⁰⁶ Article 34 of 2020 Revised Draft of Chinese Government Procurement Law.

entities, government procurement policies, national standards, industry standards, local standards, or other standards that need to be implemented for the purchase target.⁵⁰⁷ Obviously, the public policies related to the environment, innovation, energy-saving, social responsibility, etc., are seen as important considerations in government procurement's ultimate performance evaluation.

Although the 2020 revised draft of the Chinese government procurement law is still in the legislative review stage, China passed *Measures for the Administration of Government Procurement Needs* (MOF, NO.22, 2021) on 30 April 2021 and will implement them in July 2021. The procurement policies supporting innovation, green development, and SMEs are considered indispensable in formulating procurement needs and plans (Art 6, 7, 12). In the qualification stage, the supplier qualification and assessment criteria must include government procurement policies related to innovation, green development, SMEs, etc. (Art 14). The whole Life-cycle Cost is considered as one criterion in the bidding review process (Art 21).

Currently, as the complex and long-term contracts, the public-private partnership (PPP) has adopted the strict performance management integrated public policy objectives into procurement needs and requirements and considers procurement quality, price, efficiency, and policy functions to evaluate government procurement fiscal expenditures with performance evaluation.⁵⁰⁸ In *the Measures for the Administration of Government Procurement Needs* (MOF, NO.22, 2021), The feasibility study report for PPP is required to conduct the procurement needs survey, including technique requirements, business requirements, and government procurement policy, and compulsory national standards, etc. (Art 6, 7, 11).

Even though the 2019 revised draft Chinese bidding law does not put performance management in place, the technical specifications related to ecological protection, natural resource-saving, energy-saving, and supporting innovation are clearly encouraged in the bidding process.⁵⁰⁹ Furthermore, purchasing entities can also require

⁵⁰⁷ Article 36 of 2020 Revised Draft of Chinese Government Procurement Law.

⁵⁰⁸ 肖北庚, "政府采购法制现代转型之逻辑基点与制度重构." P51.

⁵⁰⁹ Article 21 of 2019 Revised Draft of Chinese Bidding Law.

clear and specific requirements related to the bidding document's environmental policies.⁵¹⁰

Thus, while sustainable development is not mentioned in these two public procurement laws, the performance management and evaluation specify secondary or horizontal policies related to the environment, social responsibility, and innovation except to economic factors. In fact, the economic factors include economic efficiency (fair competition and transparency) and the lowest price and value for money and supporting specific industries (domestic firms and innovation industries). Thus, the reform and adoption of public procurement policies in the Chinese government procurement system are supposed to be a significant concern.

5.3 The Optimization of Public Procurement Policies

5.3.1 Public procurement policies in two Revised Public Procurement Laws: GPL and BL

Firstly, achieving economic and social development goals laid down in Art. 28, including resource-saving, environmental protection, improving innovation and technological development, promoting SMEs, supporting underdeveloped and poverty-stricken minor ethnic groups regions, helping disadvantaged groups, etc. Compared to public policies as one fundamental principle in the current GPL, the 2020 revised GPL establishes quite detailed public procurement policies and specifies resource-saving, supporting domestic industries, SMEs, innovation, and disadvantaged groups.⁵¹¹ In addition, in the 2019 revised draft BL, the bidding procedure is required to abide by compulsory national standards related to advanced technical specifications, particularly in resourcing saving and green technologies. And, the recommended national, local, and industrial standards are encouraged to promote advanced and innovative technologies, resourcing-saving, eco-environmental protection, etc.⁵¹²

⁵¹⁰ Article 21 of 2019 Revised Draft of Chinese Bidding Law.

⁵¹¹ Article 28 of 2020 Revised Draft Chinese Government Law.

⁵¹² Article 21 of 2019 Revised Draft Chinese Bidding Law.

Secondly, the whole life cycle analysis is introduced in the procurement process by integrating public policies into the whole process: budget preparation and performance, purchasing needs confirmation, procurement plan, procurement methods selection, contract awarding (procurement project review), contract performance, and procurement policy implementation report (audit system).⁵¹³ In the procurement plan, subcontracting is determined in accordance with the government procurement policy requirements, such as supporting innovation and promoting the development of small and medium-sized enterprises.⁵¹⁴ For the first time, the whole life cycle cost in government procurement is required in Measures for the Administration of Government Procurement Needs (China's administrative order issued by the MOF in 2020).

Thirdly, the MOF is authorized to lay down public policy tools as the top government procurement supervision and administration department.⁵¹⁵ These tools include first purchasing and ordering innovative goods, reserving procurement shares, procurement requirements standards (such as environmental goods list and energy-saving goods list of government procurement), preferences policies in awarding evaluation process, priority procurement, and encouraging subcontracting.⁵¹⁶ The first purchasing and ordering of innovative goods are regulated in the Chinese government procurement system for the first time, also does not force public sectors to purchase independent Chinese and indigenous products. It also includes innovative products from foreign-invested firms in China. It is coordinated to the two legislation principles: foreign-invested firms participating in government procurement through fair competition and equal treatment with domestically produced products and services.⁵¹⁷

The "two laws into one" proposal integrating bidding law into government procurement law is dominant in academic and professional fields. However, another reform scheme that acknowledges the existence of BL as the specific law and sees

⁵¹³ Article 31, 32 of 2020 Revised Draft Chinese Government Law.

⁵¹⁴ Article 39 of 2020 Revised Draft of Chinese Government Procurement Law.

⁵¹⁵ Article 30 of 2020 Revised Draft of Chinese Government Procurement Law.

⁵¹⁶ Article 30 of 2020 Revised Draft of Chinese Government Procurement Law. First purchasing and ordering innovative goods means that public (government) sectors are required to buy the innovative products developed by research institutions and private firms through original innovation, integrated innovation, and re-innovation, but the products are put on the market for the first time.

⁵¹⁷ 于安, "对政府采购的再认识." P10.

government procurement law as basic law seems to be feasible.⁵¹⁸ GPL continues to be seen as the budget law system. From the budget performance management's perspective, the public policies related to the environment, innovation, SMEs, and social responsibility are considered as the most important factors in the performance outcomes in the 2020 revised draft of Chinese government procurement law. Moreover, BL is still regarded as procedural law focusing on bidding and tender procedure. The technical specifications are emphasized to require the compulsory (or volunteer) national, local, and industrial standards in environmental protection, resource-saving, and innovative technologies.

However, from the budget management of public expenditure's perspective, government investment funds, sovereign wealth funds, public-private partnership (PPP), government purchase services are required to implement performance evaluation in the *2020 Measures for the Management of Public Expenditure Performance Evaluation*. Thus, the construction of the large-scale infrastructure and procurement from state-owned entities is also subject to performance evaluation, which includes project output's quantity, quality, timeliness, cost, and economic, social, ecological, and sustainable impact. That is, price is not the only factor of the procurement projects through the bidding procedure but the non-cost factors, particularly sustainable considerations.

In addition, the large-scale infrastructure projects and procurement from the government investment fund, PPP projects investment fund, and state-owned capital operating budget expenditure, to a large extent, are seen as government procurement and also are subject to BL. The procurement of construction projects meeting the required scale standard must abide by the bidding procedure, for example, projects using state-owned funds/financed in whole or in part and projects using loans and aid funds from international organizations or foreign governments.⁵¹⁹

As to the procurement of infrastructure and public utilities, *Measures for the Administration of Concession for Infrastructure and Public Utilities* as central

⁵¹⁸ 何红锋, “应当建立统一的《政府采购法》,” 中国政府采购, 2019, 20–21.

⁵¹⁹ Article 3 of 2019 Revised Draft Chinese Bidding Law.

government orders were enacted jointly by specific departments of China's state council in 2015. It aims to encourage and guide social (private) investors' participation in the construction and operation of infrastructure and public utilities.⁵²⁰ The provisions of infrastructure and public utilities concerning public security and interest that have to adopt bidding procedures were abolished in the 2019 revised draft Chinese bidding law.⁵²¹ It is essential to understand that BL, as the procedural law, ensures fair competition and efficiency in using fiscal funds. Thus, it is unlikely that China currently abolishes BL and adopts "two laws into one" reform scheme.

5.3.2 Coordination of the Chinese Public Procurement System (Laws, Regulations, Administrative Orders)

As has been argued, China is trying to build an integrated and systematic public legal procurement framework that contains two laws (BL and GPL), administrative regulations (enacted by Chinese state council), administrative orders (laid down by departments of the Chinese state council), provincial and municipal's administrative orders (applied in specific provinces and cities). Thanks to the absence of specific and detailed horizontal or secondary policies in current Chinese government procurement law, the procurement policies are dispersed in a series of lower-level laws, such as administrative regulations and orders. Since 2005, the 2020 Chinese public procurement reform has integrated procurement policies into basic laws with the development of procurement policies. Performance management related to sustainable impact is seen as the most critical factor.

There is a trend that China takes advantage of procurement policies for achieving national sustainable development goals in each Five-Plan scheme. Green procurement policies have been the first and most important tools through green and energy-saving lists since 2005. In 2019, China abolished the two lists system and developed a modern green products system, which has been improving so far. The ultimate objective is to

⁵²⁰ Article 1 of Measures for the Administration of Concession for Infrastructure and Public Utilities.

⁵²¹ Article 3 of 2019 Revised Draft Chinese Bidding Law.

expand green procurement and promote the green economy. In addition, from the social responsibility perspective, government procurement is referred to as an effective tool in China's national poverty alleviation program. Undoubtedly, government procurement has played a significant role in alleviating extreme poverty in China.⁵²² And China also has laid down the anti-poverty procurement policies in 2019, and the poverty reduction program by procurement policy is becoming an important initiative. Furthermore, innovation procurement is considered as the simplified principle in the 2020 revised draft of government procurement law. That is, the innovation policy is integrated into the whole government procurement system.

6. Conclusion

The examination within this chapter has also demonstrated that China has undertaken reform, and the main motivations for reform have always been unification, simplification, and modernization of the legal and institutional framework on public procurement in conjunction with sustainable development goals and national policies. Chinese public procurement law (both GPL and BL) focuses on awarding procedures and procurement methods, less attention on the pre-procurement period (procurement needs and plans, market research) and post-procurement period (contract performance, monitoring, and audit). However, China's latest reform is awareness of performance-oriented procurement and modernizes its public procurement institutionalized mechanism.

China sets out public policies related to specific national goals as the fundamental principles in parallel with anti-discrimination, competition, and fairness in China's GPL. China stipulates the detailed and implementing approaches of specific public policies by administrative regulations and orders. This legislative model endows

⁵²² The successful implementation of China's targeted poverty alleviation program, culminating in lifting out of poverty the last of the 89.6 million rural poor identified in 2014, is a remarkable accomplishment in 2020. Many of them were living in the most remote regions of the country, cut off by distance and arduous topography from the benefits of the rapid economic growth that helped reduce poverty elsewhere in the country. This achievement is a major contribution to global efforts to advance progress on SDG 1, to end all forms of poverty everywhere, and especially on target 1.1, eliminating extreme income poverty. <https://www.cn.undp.org/content/china/en/home/ourperspective/ourperspectivearticles/2020/ending-poverty-on-road-to-a-better-future.html>.

government discretion in implementing sustainable policies. Indeed, China has its own sustainable public procurement mechanism related to its own economic development needs and national goals related to SDGs.

However, China is reluctant to adopt a series of international and NGO environmental and social standards (ISO, ILO, fairtrade) or maintain a prudent stand to the application of these sustainable standards by incorporating these standards into its national standardization system. Surely, as China's WTO-GPA accession negotiations proceed, China is conscious of modernizing its public procurement law and system in parallel with international public procurement rules (GPA and UNCITRAL model law). Particularly, with China cooperating with UNEP -SPP Program, China also adopts some sustainable procurement mechanisms and performance-oriented vision in its latest public procurement reform.

Chapter 5: Sustainable Public Procurement under the EU Legal

System

1. Introduction

Under one single market referring to the EU as one territory without any internal borders or other regulatory obstacles to the free movement of goods and services, public procurement is one fundamental pillar of the EU internal market. How the EU public procurement regime promotes environmental and social goals without prejudice to the principle of fair competition and anti-discrimination in the internal market is an important topic in recent decades.

Many regulatory approaches exist in promoting environmental protection and social goals, for example, prohibiting violation of human rights, encouraging more environmentally friendly and fair trade behaviors among procurers and consumers in the mandatory and voluntary way by public law and private law. With the reform of adopting three new revised and modernized directives on public procurement in 2014, their express aims include enabling "procurers to make better use of public procurement to support common societal goals."

This chapter analyzes the regulatory mechanism of SPP under the EU law, which focuses on the sustainable goals and the implementation approach, including social goals, innovation policy, and SMEs comprehensively. Significantly, the tools and innovative mechanisms are the most deserving points for the EU internal public procurement market in the EU law and the practical experiences.

2. What are the Sustainable Considerations in the EU?

Sustainable development is a global objective. The European Union has a crucial role in bringing about sustainable development within Europe and the wider global stage,

where widespread international action is required. The EU is trying its best to do a fairly good job of balancing its environmental protection, economic objectives, and sustainable development. It can be seen as a result of the post-Lisbon commitment in the EU treaties to enshrine the balance in economic growth, environmental protection, unemployment, combating discrimination, and scientific advance in establishing the EU internal market for free movement for persons, capital, goods, and services.⁵²³

The EU's implementation of policy and activities must take into consideration horizontal elements including environmental protection requirements, societal goals including the fight against social exclusion and discrimination, the eradication of poverty, human rights such as social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child with a view to promoting sustainable development.⁵²⁴ Sustainable development is an overarching strategic initiative written in the EU constitutional treaties. These rules are further elaborated in other provisions of the TFEU, forming the basis for secondary legislation and case law. It is noted that the EU treaties are comprised of the legal fundamentals of sustainable development.

The European Commission conducted a series of initiatives and proposes. In 2001-2010, *Communication from the Commission A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development* was launched to identify and develop actions to enable the EU to achieve sustainable development goals (SDGs), and all policies must have sustainable development as their core concern.⁵²⁵ Predominantly, environmental issues, including climate change and clean energy, sustainable transport, sustainable consumption & production, or the conservation and management of natural resources, were concerned. Green public procurement (GPP)

⁵²³ Art 3 (3) of TEU stipulates, "the Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance;" Article 8 of TFEU; Article 9; Article 10; Article 11; Article 26 of TFEU.

⁵²⁴ Article 3 (3), (5) of TEU; Article 9, 11, 191, 192, 193, 208 of TFEU. Article 37 of Charter of Fundamental Rights (EUCFR).

⁵²⁵ European Commission. A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development. [Brussels, 15.5.2001. COM(2001)264 final]. P6.
https://ec.europa.eu/regional_policy/archive/innovation/pdf/library/strategy_sustdev_en.pdf.

was acknowledged to be a better use of favoring environmentally-friendly products and stimulating faster uptake of new, safer, cleaner technologies.⁵²⁶ Combating poverty and social exclusion was referred to as one of the six biggest challenges in front of the EU. The proposes admitted that not too much action was taken in this regard.⁵²⁷

However, the sustainable development strategy is dynamic in the international community and in the specific regions and countries, such as the EU, even in different member states, along with economic development. In terms of the EU sustainable development policy, the external dimension of sustainable development (SD) has been factored into EU internal policy-making and through the integration of SDGs in EU's internal policies on guiding principles for SD adopted by the European Council of June 2005. A set of *Sustainable Development Indicators* improved and developed further in cooperation with the Member States in line with the UN SDGs.⁵²⁸

With the EU 2020 (issued in 2010) goals of smart, sustainable, and inclusive growth, a series of ambitious initiatives are proposed to pursue by 2020. The integrated horizontal approach to industrial policy combining different policy instruments, including "smart" regulations, modernized public procurement, the formulation of rules and standardization set in green, energy, and fair trade for promoting transparency and competition, promoting SMEs, have been committed and emphasized.⁵²⁹ For "green technologies," "low-carbon," and "bio-economy," etc., public procurement is also referred to as one a significant demand-side instrument to pursue such initiatives.⁵³⁰ In terms of inclusive growth, the societal goal is not just involved in a simplified employment rate (helping unemployed people), but a high level of employment, investing in skills, fighting poverty, and modernizing labor markets (related to working time, health and safety at workplace, and labor rights) training and building a cohesive society.⁵³¹

⁵²⁶ Ibid 3. P7.

⁵²⁷ Ibid 3. P10.

⁵²⁸ Monitoring of the EU Sustainable Development Strategy. https://ec.europa.eu/environment/sustainable-development/strategy/monitoring/index_en.htm.

⁵²⁹ "EURO 2020: A European Strategy for Smart, Sustainable and Inclusive Growth [Brussels,3.3.2010. COM(2010)2020]," 2010, [http://ec.europa.eu/eu2020/pdf/COMPLET_EN_BARROSO007 - Europe 2020 - EN version.pdf](http://ec.europa.eu/eu2020/pdf/COMPLET_EN_BARROSO007_-_Europe_2020_-_EN_version.pdf).

⁵³⁰ Ibid 7.

⁵³¹ Ibid 7.

As regards environmental ambitions, EU's Seventh Environment Action Programme (EAP), a political agreement in June 2013, sets out the nine overarching priority objectives of the EU's environmental policy up to 2020 in natural capital, turning into a resource-efficient, green, and competitive low-carbon economy, etc.⁵³² It turns out to be the new environmentalism that promotes the integration of environmental and economic aims by policy coherence of integrating environmental requirements and considerations into other policies.⁵³³

In addition, the 2030 climate & energy framework adopted in 2014 requires the EU environmental policies to achieve key targets in greenhouse gas emissions, renewable energy, and the improvement of energy efficiency by 2030. The orientation leading to low-carbon technologies, research & development (R&D), innovation, the industrialization of supply chains for new technologies is expected by the cost-efficiency approach and undistorted competition.⁵³⁴ The EU's research and innovation policy efforts to support the post-2020 climate and energy framework are also available for increased funds in financial instruments, public-private partnerships, and SME projects.⁵³⁵ It is also admitted that public procurement is crucial to driving innovation for further growth in Europe in Recital 95 of 2014/24/EU.

As far as the political and economic commitment proposed by the European Commission, public procurement is seen as one significant demand-side and market-based instrument to pursue the environmental, social, economic, and innovation policies by EU lawmakers and policymakers. However, speaking is easier than doing. Although the reason (why) and conception (what) are figured out, the action (how) is the most important process whereby actions are taken to achieve sustainable development goals. Here are two crucial aspects concerned: one, the inner essence of sustainable development is the balance of economic development, environment

⁵³² Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet.' <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013D1386>.

⁵³³ Semple, "The Link to the Subject Matter: A Glass Ceiling for Sustainable Public Contracts?" P26.

⁵³⁴ European Commission, "A Policy Framework for Climate and Energy in the Period from 2020 to 2030," 2014. COM(2014) 15 Final. P3.

⁵³⁵ Abby Semple, "The Link to the Subject Matter: A Glass Ceiling for Sustainable Public Contracts?." P15.

protection, and the achievement of societal goals and values; two, what sustainable considerations can be integrated into the procurement process by regulatory tools.

There are two questions to be concerned in the context of policy coherence for promoting sustainable development in the EU internal market. Firstly, how do contract authorities deal with balancing environmental and social criteria in the procurement process also without breach of complete competition, anti-discrimination, and transparency as the fundamental principles to pursue value-for-money and functional goals (economic)? Secondly, with respect to SMEs and innovation as two important features in the EU, what are SMEs and innovation policy's potentials to contribute to sustainable public procurement, and how do they interact in the procurement process?

3. Regulatory Principles under EU Treaties, EU Procurement Directives, and Sector Regulations

It is no doubt that the EU internal market rules are now based on very different interests in economic benefits as well public interests such as environmental and societal concerns. The internal market rules are clearly expressed in Article 114(3) TFEU - the most important legal basis for the development of the internal market - which claims that the European Commission establishes its proposals regarding new internal market legislation taking into account health, safety, environmental protection, and consumer protection. The European Parliament and the Council seek to achieve this objective by establishing specific regulations within their respective powers. The Directives and the regulations adopted under Article 114 do not merely foster the free movement of goods and services within the EU internal market but are intended to ensure a high level of economic aims, public interests, and public health.⁵³⁶

The EU public procurement market's economic activities are governed by a complex system of different levels of constitutional EU treaties, EU procurement directives, sector regulations, and the European Commission's guides with unique

⁵³⁶ Jorgen Hettne, "Sustainable Public Procurement and the Single Market: Is There a Conflict of Interest?," *European Procurement & Public Private Partnership Law Review* 8, no. 1 (2013): 31–40. P35.

regulatory characteristics. As the constitutional laws, the EU treaties stipulate the fundamental regulatory principles to regulate the economic activity under the internal market by balancing the negative and positive obligations.⁵³⁷ As a matter of primary EU law, those drawing up and implementing EU economic, environmental, and societal policies have a legal duty to balance the EU's environmental, societal and economic goals with the ultimate objective of achieving a highly competitive social market economy, at the same time, as a high level of environmental protection and societal goals.⁵³⁸

The core of the EU regulatory framework of public procurement is subject to the 'negative obligations' of non-discrimination established in the Treaty on the Functioning of the European Union (TFEU) and to the overarching principles of transparency and competition in the provisions of TFEU governing the fundamental freedoms in the EU internal market.⁵³⁹ Meanwhile, the positive obligations seen as broad sustainable development goals, such as environmental protection, social policies of employment promotion, equality protection, and proactive support of disadvantaged people and minorities, are set out by the constitutional EU treaties and a series of regulations.

In addition to the constitutional EU treaties related to fundamental principles and procurement directives governing public contracts, a wide range of secondary legislation has been adopted at the EU level in the fields of environmental protection, sustainable development, energy, climate change, social inclusion, and equalities under the EU internal market.

As to the mandatory requirement for some specific public entities, Directive 2018/2002 amending Directive 2012/27/EU on energy efficiency requires minimum energy efficiency standards to be included for the central government in the procurement of supplies, services, and works, targeting substantial cost reductions and

⁵³⁷ Maria Anna Corvaglia, "The EU Public Procurement Framework: The Internal Market and Socially Responsible Procurement," in ed. Maria Anna Corvaglia (eds), *Public Procurement and Labour Rights: Towards Coherence in International Instruments of Procurement Regulation*, (Hart Publishing, 2017), 153–192. P154.

⁵³⁸ Semple, "The Link to the Subject Matter: A Glass Ceiling for Sustainable Public Contracts?" P24.

⁵³⁹ Corvaglia, "The EU Public Procurement Framework: The Internal Market and Socially Responsible Procurement." P154.

the extension to the energy savings obligation in end-use.⁵⁴⁰ The new energy labeling regulation 2017/1369 was adopted, reintroducing the original A-G scale for future labels and establishing a common product registry database (European Product Registry for Energy Labelling (EPREL)) to support market surveillance.⁵⁴¹ Energy labeling requirements are already in force for several products. The Commission will continuously adopt delegated regulations for energy labeling in parallel with the adoption of the Eco-design regulations. Also, for the EU 2019/2015 for light sources supplement EU 2017/1369, suppliers (manufacturers, importers, or authorized representatives) need to register their appliances, which require an energy label in the EPREL platform, before selling them on the European market.⁵⁴²

In terms of another energy-efficiency labeling program for office equipment, EU Regulation NO 174/2013, known as the energy star program, which expired on 20 February 2018, was a voluntary energy labeling scheme adopted jointly between the United States and the European Union to coordinate energy labeling of office equipment and promote the manufacture of energy-efficient equipment. The energy star program made great contributions to the Union's energy-efficiency targets in Directive 2012/27/EU, which establishes a set of binding measures to help the EU reach its 20% energy efficiency target by 2020.⁵⁴³ And it was coordinated with the mandatory EU energy labeling rules and voluntary schemes the EU Ecolabel regulation NO 66/2010 award scheme. In addition, there are a large number of energy-efficient products regulations, such as air conditioners, domestic ovens, and range hoods, electrical lamps, and luminaires, household dishwashers, household refrigerating appliances, household tumble driers, local space heaters, welding equipment, etc. such 28 product groups in

⁵⁴⁰ Energy efficiency directive.

https://ec.europa.eu/energy/topics/energy-efficiency/targets-directive-and-rules/energy-efficiency-directive_en#:~:text=In%202018%2C%20as%20part%20of,2030%20of%20at%20least%2032.5%25.

⁵⁴¹ European Parliament and The Council Of The European Union, "REGULATION (EU) 2017/1369 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 4 July 2017 Setting a Framework for Energy Labelling and Repealing Directive 2010/30/EU," *Official Journal of the European Union*, 2017, 1–22, https://doi.org/http://eur-lex.europa.eu/pri/en/oj/dat/2003/l_285/l_28520031101en00330037.pdf.

⁵⁴² <https://www.eceec.org/ecodesign/Energy-labelling-directive/#:~:text=As%20of%201%20January%202019,them%20on%20the%20European%20market..>

⁵⁴³ Energy efficiency directive.

https://ec.europa.eu/energy/topics/energy-efficiency/targets-directive-and-rules/energy-efficiency-directive_en#:~:text=In%202018%2C%20as%20part%20of,2030%20of%20at%20least%2032.5%25.

eco-labeling and eco-design rules.⁵⁴⁴

Another important certification regulation is EU Eco-management and Audit Scheme (EMAS) Regulation No 1221/2009, a premium management instrument developed by the European Commission for companies and other organizations to evaluate, report, and improve their environmental performance. Apart from energy efficiency labeling, ecolabel, EMAS regulations, there are a series of environmental directives such as clean vehicles directive EU 2019/1161,⁵⁴⁵ Regulation EU 2019/631,⁵⁴⁶ renewable energy directive EU 2018/2001, energy performance of buildings directive EU 2018/844, 2018 waste framework directive, timber regulation related to wood and paper products (EU) No 995/2010.⁵⁴⁷

As to a series of directives and regulations related to societal goals, Working Time Directive, 2003/88/EC stipulates the right to fair working conditions in a healthy, safe, and well-adapted work environment and data protection, a limit to weekly working hours, and other fundamental labor rights.⁵⁴⁸ Directive 89/391/EEC (health and safety of workers at work) guarantees minimum safety and health requirements throughout Europe while the Member States are allowed to maintain or establish more stringent measures; the rules must be observed in contracts' execution.⁵⁴⁹

Directive 2000/78/EC (Equal treatment in employment and occupation) set out the general framework to ensure equal treatment of individuals in the EU at the workplace regardless of their religion, belief, disability, age, and sexual orientation. And rights of disabled persons in the 2010/48/EC (Rights of Persons with Disabilities) must be reflected in the choice of means of communication, technical specifications, award

⁵⁴⁴ List of energy efficient products Regulations: by product group. https://ec.europa.eu/energy/topics/energy-efficiency/energy-efficient-products/list-regulations-product-groups-energy-efficient-products_en.

⁵⁴⁵ Directive (EU) 2019/1161 of the European Parliament and of the Council of 20 June 2019 amending Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles.

⁵⁴⁶ Regulation (EU) 2019/631 of the European Parliament and of the Council of 17 April 2019 setting CO2 emission performance standards for new passenger cars and for new light commercial vehicles, and repealing Regulations (EC) No 443/2009 and (EU) No 510/2011.

⁵⁴⁷ REGULATION (EU) No 995/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2010, laying down the obligations of operators who place timber and timber products on the market. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:295:0023:0034:EN:PDF>.

⁵⁴⁸ Working Conditions - Working Time Directive. <https://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205>.

⁵⁴⁹ Health and safety at work. <https://ec.europa.eu/social/main.jsp?catId=148#:~:text=Directive%2089%2F391%2FEEC%2C,or%20establish%20more%20stringent%20measures..>

criteria, and contract performance conditions.⁵⁵⁰ Also, in order to make sure equality, the EU has adopted Directives related to anti-discrimination on the grounds of sex, race, or ethnic origin. For example, Directive 2004/113/EC equal treatment between men and women in the access to and supply of goods and services; Directive 2006/54/EC equal treatment for men and women in employment and occupation, including social security schemes; Directive 2000/43/EC against discrimination on the grounds of race and ethnic origin, etc.

As claimed in recital 1 in new public sector directive 2014/24/EU: *the award of public contracts by or on behalf of Member States' authorities has to comply with the principles of the TFEU, and in particular, the free movement of goods, freedom of establishment and the freedom to provide services, as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality, and transparency.* The procurement Directives integrate the EU Treaty provisions with positive and negative obligations and more detailed provisions in the entire procurement process.

As put in Article 18 of 2014/24/EU, these negative and positive obligations are balanced on the reasonable equilibrium: treating economic operators equally and without discrimination, competition without unduly favoring or disadvantaging certain economic operators, applicable obligations in the fields of environmental, social, and labor law established by Union law, national law, collective agreements or by the international environmental, social and labor law provisions listed in Annex X. Moreover, in order to protect full competition, the recital 103 of the 2014 public sector Directive requires that exclusion should be mandatory in cases where the contracting authority has established that *the abnormally low price or costs proposed results from non-compliance with mandatory Union law or national law compatible with it in the fields of social, labor or environmental law or international labor law provisions.*

A large number of second regulations have represented the main limitation on the

⁵⁵⁰ Recital 7 of 2010/48/EC. Both the Community and its Member States have competence in the fields covered by the UN Convention. The Community and the Member States should therefore become Contracting Parties to it, so that together they can fulfil the obligations laid down by the UN Convention and exercise the rights invested in them, in situations of mixed competence in a coherent manner; 2000/78/EC.

achievement of strategic policies in procurement activities, while the Directives have guaranteed various possibilities for the inclusion of strategic considerations in procurement contracts. Nevertheless, the EU procurement regime is organized in a multi-layered system of Treaty provisions and specific Directives, but it is also continuously shaped by the jurisprudence of the Court of Justice of the European Union (CJEU) as case law.⁵⁵¹

So far, the potential of sustainable considerations and public procurement are not only subject to the overall value of these EU treaties, secondary regulations, and the Directives and its effectiveness, but also depends to a large extent on the two variables of national implementing measures and national and European practice, both by the procurement authorities and in case law.⁵⁵² In one of its latest formulations, the Court has emphasized that "the main objective of EU law rules in the field of public contracts is the free movement of goods and services and the opening-up of undistorted competition in all the Member States."⁵⁵³ The Court has also recently stressed that "the EU rules on public procurement were adopted in pursuance of the establishment of a single market, the purpose of which is to ensure freedom of movement and eliminate restrictions on competition."⁵⁵⁴

When it comes to balancing negative obligations ensuring the one single EU market and positive obligations achieving sustainable development by considering environmental and social policies, discretion underpinning EU public procurement regimes has a decisive impact on pursuing strategic goals without violating the overriding principle set out in TFEU. Within the EU public procurement framework, Member States may exercise discretion in two types of situations: when the state and its contracting authorities implement the Public Procurement Directive (legislative

⁵⁵¹ Corvaglia, "The EU Public Procurement Framework: The Internal Market and Socially Responsible Procurement." P154.

⁵⁵² Semple, "The Link to the Subject Matter: A Glass Ceiling for Sustainable Public Contracts?" P242.

⁵⁵³ Case C-553/15 *Undis Servizi*, EU:C:2016:935, para 28 (emphasis added). In Xavier Groussot, Jorgen Hettne, Sanja Bogojevic, "The Age of Discretion: Understanding the Scope and Limits of Discretion in EU Public Procurement Law," in Sanja Bogojevic, Xavier Groussot, and Jorgen Hettne (eds), *Discretion in EU Public Procurement Law*, (Bloomsbury Publishing Plc, 2019), 3–18.

⁵⁵⁴ Case C-144/17 *Lloyd's of London*, EU:C:2018:78, para 33 (emphasis added). In Albert Sanchez-Graells, "Some Reflections on the 'Artificial Narrowing of Competition' as a Check on Executive Discretion in Public Procurement," in Sanja Bogojevic, Xavier Groussot, and Jorgen Hettne (eds), *Discretion in EU Public Procurement Law*, (Bloomsbury Publishing Plc, 2019), 79–98.

discretion); and when they rely on EU law, including the Public Procurement Directive, to pursue social or environmental interests, and thereby derogate from the economic freedoms protected by the Treaty (administrative discretion).⁵⁵⁵

Discretion in EU law relates to the regulatory power allocation between the EU and its Member States, which, when reviewed judicially, rests heavily upon proportionality assessments.⁵⁵⁶ Proportionality is one core principle to balancing economic aims and freedom with environmental and societal goals to a great extent at the discretion of the Member States and contracting authorities to apply social criteria at the different procurement process stages.⁵⁵⁷ the CJEU asserts that the concept of public policy may vary from one country to another and from one period to another, meaning that it provides the possibility for the Member States to rely on so-called "cultural discretion."⁵⁵⁸ Thus, Member States may be afforded wide discretion in pursuing specific public policies or sustainable development goals.

Yet EU-style sustainable development value is dynamic with the international community and its economic development. In the past years, its prioritization of sustainable development has seen the shift in political, legislative, and policy towards integrating economic, environmental, and social concerns, even by the innovative clean and green technologies developing economic development. The CJEU is a critical forum in setting the legal boundaries of the EU's economic and public interests interface. Its role as a non-majoritarian, independent, and politically insulated institution focused on interpreting and upholding the EU Treaties is thrown into sharp relief.⁵⁵⁹ While the case law is still rapidly developing, the CJEU has demonstrated itself to be a constitutionalist actor who is serious about the requirement to achieve real, substantive integration of environmental protection requirements into the EU's economic policies, as required by Article 11 TFEU.⁵⁶⁰

⁵⁵⁵ Czarnezki, "EU and US Discretion in Public Procurement Law: The Role of Eco-Labels and Life-Cycle Costing."

⁵⁵⁶ Czarnezki. P5.

⁵⁵⁷ Corvaglia, "The EU Public Procurement Framework: The Internal Market and Socially Responsible Procurement." P170; Semple, "The Link to the Subject Matter: A Glass Ceiling for Sustainable Public Contracts?" P78.

⁵⁵⁸ Czarnezki, "EU and US Discretion in Public Procurement Law: The Role of Eco-Labels and Life-Cycle Costing." P8.

⁵⁵⁹ Semple, "The Link to the Subject Matter: A Glass Ceiling for Sustainable Public Contracts?" P48.

⁵⁶⁰ Suzanne Kingston, "The Uneasy Relationship between EU Environmental and Economic Policies: The Role of the Court of Justice." In Beate Sjøfjell, Anja Wiesbrock (eds), Sustainable Public Procurement under EU Law: New

Since the European Court of Justice's 1988 judgment in *Beentjes* recognizing the possibility to include social criteria in public procurement, the case law and legislation on references to social and environmental concerns in this area have evolved substantially. The EU procurement directives and EU case law progressively made way for integrating social and environmental considerations in procurement with the interpretations and decisions of case law.⁵⁶¹

The legislation can be seen as consolidating – and at times overtaking – the acquisition of the case-law of the CJEU, which has much contributed to enabling sustainable public procurement in 2014 Public Procurement Directives.⁵⁶² The flexibility and modernization of the EU public procurement regulatory regime are reflected in significant case law developments, in particular, case law on the definition of contracting authorities, the use of award procedures and award criteria, and the possibility for contracting authorities to use environmental and social considerations as criteria for the award of public contracts, and the sustainable considerations in the performance of public contracts.⁵⁶³

With the strategic public procurement action promoted in the EU, the sustainable public procurement (SPP), green public procurement (GPP), socially responsible public procurement (SRPP), and public procurement innovation (PPI) are concerned in many EU member states and are implemented under the EU public procurement legal regime.⁵⁶⁴ Strategic public procurement is an umbrella term encompassing public procurement that is used as a policy tool and therefore includes considerations other than solely economic ones.⁵⁶⁵ Although Strategic public procurement is not addressed formally in the text of Directive 2014/24/EU, it is encapsulated in its recital 2, which refers to the key role to be played by public procurement in achieving the Europe 2020

Perspectives on the State as Stakeholder, (Cambridge University Press, 2015), 23-49. P48.

⁵⁶¹ Marc Martens and Stanislas de Margerie, “The Link to the Subject-Matter of the Contract in Green and Social Procurement,” *European Procurement & Public Private Partnership Law Review*, no. 1 (2013): 8–18, P8.

⁵⁶² Marta Andhov, Roberto Caranta, and Anjabrock Wies, “The European Union Law of Life-Cycle Costing,” in Marta Andhov, Roberto Caranta, and Anja Wiesbrock (eds), *Cost and EU Public Procurement Law: Life Cycle Costing for Sustainability*, (Routledge, 2019), 20–36, P21.

⁵⁶³ Czarnezki, “EU and US Discretion in Public Procurement Law: The Role of Eco-Labels and Life-Cycle Costing.”

⁵⁶⁴ Commission, “Study on ‘Strategic Use of Public Procurement in Promoting Green , Social and Innovation Policies.’”

⁵⁶⁵ European Commission, ‘Strategic Public Procurement: Facilitating Green, Inclusive and Innovative Growth,’ 2017.

strategy for smart, sustainable, and inclusive growth.

However, how to balance the economic goal as the primary function with the environmental, social, and innovation issues as the secondary or horizontal goals is paid attention to a lot. Notably, in the 2014 public procurement Directive, value-for-money is endowed in the new connotation "assessing value for money on the basis of other factors than solely the price or remuneration," including conditions of delivery and payment, aspects of after-sale service (e.g., the extent of advisory and replacement services) or environmental or social aspects in recital 93. It is clarified that the procurement price is based on the whole life cycle analysis rather than just the purchasing price. Value for money is viewed as the primary objective in opposition to different considerations relating to the environment, social policy, and SMEs – or at least the first two –traditionally being considered secondary considerations.⁵⁶⁶

4. Value for Money and Horizontal Policies Related to Environmental, Social, and Innovation under the EU Public Procurement Regime

Traditionally, public procurement aims to ensure that public funds are spent economically efficiently and guarantee the best value for money for the public buyer. A gradual change in evaluating successful procurement took place in both the private and the public sectors. From a price-only criterion for measuring success, decisions shifted to a multi-criteria approach where various dimensions of quality and price are considered. The most common way to express such a shift is to say that procurement should deliver "best value for money." Pursuing BVM requires careful procurement design and planning, as well as monitoring, in all the three main procurement phases: that is, "before" a procurement contract is awarded, "at" the time, and "after" the contract is awarded.⁵⁶⁷ On the one hand, efficient procurement and best value for money do not achieve the lowest price alone, also including environmental and social impacts

⁵⁶⁶ Roberto Caranta, "Sustainable Procurement," 2013. P166.

⁵⁶⁷ Nicola Dimitri, "Best Value for Money in Procurement," Working Paper in Maastricht school of Management. 2012, P5.

or external costs.⁵⁶⁸ On the other hand, the pursuit of value for money is considered in the whole procurement process, not just the award phase.

A rather lengthy definition of sustainable public procurement (SPP) is used by the United Nations Environment Programme (UNEP, 2012), which sees SPP as a "process whereby organizations 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 organization, but also to society and the economy, whilst minimizing damage to the environment."

At the EU level, the European Commission defines GPP that "public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life-cycle compared to goods, services and works with the same primary function that would otherwise be procured."⁵⁶⁹ The broader concept of SPP defined by European Commission implicates that "public authorities seek to achieve the appropriate balance between the three pillars of sustainable development - economic, social and environmental - when procuring goods, services or works at all stages of the project."⁵⁷⁰

While the value for money is not mentioned in the European Commission's definition, it increasingly gets more attention after inserting environmental and social concerns into the public procurement process. Value for money requires an economical way that is the lowest price and considers the environmental and social impact in the whole life cycle of the production process or supply chain. The different definition of SPP or GPP has shown that SPP's extent and nature vary greatly across regions and countries. It is relevant to examine these variations' mechanisms by "having to do more with less" in the whole life cycle so that SPP's full potential can be used and more value for money is achieved.

⁵⁶⁸ Carol Cravero, "Socially Responsible Public Procurement and Set-Asides: A Comparative Analysis of the US, Canada and the EU," *Arctic Review on Law and Politics*, 2017, 174–192.

⁵⁶⁹ "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Public Procurement for a Better Environment. [COM(2008)400 Final]," 2008, <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=528&ArticleID=5748&l=en>.

⁵⁷⁰ https://ec.europa.eu/environment/gpp/versus_en.htm.

The European Commission Green Paper on the *modernization of EU public procurement policy: Towards a more efficient European Procurement Market* in 2011 attaches importance to public spending efficiency, including the best value for money as the first complementary objective.⁵⁷¹ A specific part of the 2011 Green Paper is dedicated to what is referred to as 'strategic use of public procurement (achieving sustainable development and societal goals).' The overall idea is that these complementary objectives may reinforce one another, for instance, 'by moving the focus from the lowest initial price to the lowest life-cycle cost.'⁵⁷²

The *Proposal on the new public procurement Directive of the European Parliament and of the Council (COM(2011) 896)* specifies that one of the two main goals of the proposal is to "increase the efficiency of public spending to ensure the best possible procurement outcomes in terms of value for money," and "how the contracting authorities may contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring that they can obtain the best value for money for their contracts."⁵⁷³ It is implied that certain horizontal policies in the context of the sustainability agenda are defined within the legal limits of European Union (EU) public procurement law and are perceived to be generally in line with the value for money and efficient procurement objectives increasingly.⁵⁷⁴

Reform of the EU rules on Public Procurement of 2014 brought about numerous changes, additions, and updates of previous rules in order to increase flexibility in terms of procedural issues in accordance with the so-called "strategic public procurement" comprising green, social, innovative public procurement and SMEs.⁵⁷⁵ The new legal framework's declared goal is to make rules more straightforward and efficient for public purchasers and companies while still looking for the best value for money, transparency,

⁵⁷¹ Roberto Caranta, "Sustainable Procurement," 2013. P166.

⁵⁷² Roberto Caranta, "Sustainable Procurement," 2013. P167.

⁵⁷³ "Directive of the European Parliament and of the Council on Public Procurement," 2011, http://ridum.umanizales.edu.co:8080/jspui/bitstream/6789/377/4/Muñoz_Zapata_Adriana_Patricia_Artículo_2011.pdf. P2, P15.

⁵⁷⁴ Martin Trybus, "Sustainability and Value for Money: Social and Environmental Considerations in United Kingdom Public Procurement Law," in Roberto Caranta and Martin Trybus (eds.), *The Law of Green and Social Procurement in Europe* (Djøf Publishing: Copenhagen, 2010) 259-297.

⁵⁷⁵ European Commission, "Strategic Public Procurement: Facilitating Green, Inclusive and Innovative Growth," *European Procurement & Public Private Partnership Law Review* 12, no. 3 (2017): 219-223, <https://doi.org/10.21552/eppl/2017/3/5>.

and competition.⁵⁷⁶ The instrumental use of public procurement and value for money in further detail is underlined in recital 91 of 2014/24/EU, which state that the new Directive aims at clarifying "how the contracting authorities can contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring that they can obtain the best value for money for their contracts."

As to incorporating sustainability considerations into the whole life cycle for public procurement to achieve value for money (VFM), it can be seen that VFM is pursued at the beginning of the procurement process from the design of procurement need, technical specifications, selective criteria, award criteria, and to the end of the contract performance.⁵⁷⁷ The *Buying Green! – A Handbook on green public procurement*, adopted in 2004 and revised the third edition in 2016, is concrete guidance to help contracting authorities choose goods and services with a lower environmental impact. It explains how environmental considerations can be included at each stage of the procurement process, offers examples from the practice of contracting authorities in the different EU Member States, and goes even further by including sector-specific green procurement approaches (buildings, food, and catering services, electricity and timber).⁵⁷⁸

On the other hand, the contracting authorities aim to achieve VFM and cost-efficiency by considering the life cycle cost containing environmental and social impacts and costs in the production process of goods and supplying services and works. Article 93 of 2014/24/EU clarifies that "it remains possible to assess value for money on the basis of other factors than solely the price or remuneration.

Depending on the service or product concerned, such factors could, for instance, include conditions of delivery and payment, aspects of after-sale service (e.g., the extent of advisory and replacement services), or environmental or social

⁵⁷⁶ D C Dragos and B Neamtu, "Sustainable Public Procurement in the Eu: Experiences and Prospects," in Francois Lichere, Roberto Caranta, Steen Treumer (eds) *Novelties in the 2014 Directive on Public Procurement*, (DJOPublishing, 2016).

⁵⁷⁷ *Ibid* 37. Dragos and Neamtu.

⁵⁷⁸ https://ec.europa.eu/environment/gpp/buying_handbook_en.htm.

aspects (e.g., whether books were stamped on recycled paper or paper from sustainable timber, the cost imputed to environmental externalities or whether the social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract has been furthered).⁵⁷⁹

It implies that value for money is connected with sustainable considerations integrated into the procurement process and life cycle analysis. And it indicates that VFM is viewed as one basic principle consistent with the traditional market principles set out in TFEU in the EU public procurement regime clearly.

In 2008, the Commission issued a "*Communication on Public Procurement for a Better Environment*" (European Commission, 2008). In an attempt to avoid market distortions and reduced competition, which could arise as a result of differing national GPP criteria, the Commission proposed two types of criteria based on a life-cycle approach and scientific evidence.⁵⁸⁰ The "core criteria" address the key environmental impacts and are suitable for use by any contracting authority across the Member States. They are designed to be used with minimum additional verification effort or cost increases. The "comprehensive criteria" aim at the best environmental products available on the market. They may require additional verification effort or a slight increase in cost compared to other products with the same functionality. The common GPP criteria have already been established for a series of product and service groups (until now, 20 groups) to facilitate the inclusion of green requirements in public tender documents.⁵⁸¹ The GPP criteria are considered in all public procurement procedures and also the process-oriented, being formulated as minimum technical specifications that all bids have to comply with, as environmental award criteria, stimulating additional environmental performance without being mandatory and therefore without

⁵⁷⁹ Article 93 of 2014/24/EU.

⁵⁸⁰ European Commission, "Public Procurement for a Better Environment [COM(2008)400 Final]," 2008. P5.

⁵⁸¹ EU GPP criteria. https://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm.

foreclosing the market for products not reaching the proposed level of performance.⁵⁸²
As COM (2008) 400 final claimed that

*"Criteria will be based on a life cycle approach. Examples of potential sources of future GPP criteria are: the EU Ecolabel criteria; the Energy Star energy efficiency requirements for office equipment; the environmental performance benchmarks which will be developed under the implementing measures in the framework of a revised Eco-design Directive; the proposed methodology for internalizing external costs in the proposal for a Directive on the promotion of clean and energy-efficient vehicles and the proposed sustainability criteria for biofuels and bioliquids in the proposal for a Directive on the promotion of the use of energy from renewable sources."*⁵⁸³

In addition, the *Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan (2008)* noted that set ambitious standards throughout the Internal Market reinforce information to consumers through a more coherent and simplified labeling framework.⁵⁸⁴ In order to achieve European harmonized standards, consistent and reliable data and methods are required to assess the overall environmental performance of products. It also indicates that international standards are concerns with the liberalization trade of environmentally-friendly goods and services. The impact retailers and consumers had in the supply chains to reduce the environmental footprint and promote more sustainable products were recognized. Increasingly, promoting sustainability through due diligence in public supply chains is attached importance, such as environmental concerns and human rights in supply chains.⁵⁸⁵

The 2015 EU Action Plan for the Circular Economy has established a concrete and ambitious program of action that will help to 'close the loop' of product life cycles.⁵⁸⁶

⁵⁸² Public procurement for a better environment (COM(2008) 400 final). P5.

⁵⁸³ Public procurement for a better environment (COM(2008) 400 final). P6.

⁵⁸⁴ "COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan," 2008, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008DC0397&from=EN>.

⁵⁸⁵ Albert Sanchez-Graelles. Public procurement and "core" human rights: a sketch of the European Union legal framework.P96-P115. In Olga Martin-Ortega and Claire Methven O'Brien (eds), *Public procurement and human rights: Opportunity, risks and dilemmas for the state as buyers*, (Edward Elgar Publishing, Inc. 2019). P247.

⁵⁸⁶ European Commission. A new Circular Economy Action Plan For a cleaner and more competitive Europe (COM(2015) 614 final). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0614>.

This plan recognizes public procurement as a key driver in the transition towards the circular economy, and it sets out several actions which the European Commission will take to facilitate the integration of circular economy principles in GPP.⁵⁸⁷ This process is defined as circular procurement in which public authorities purchase works, goods, or services that seek to contribute to closed energy and material loops within supply chains whilst minimizing, and in the best case avoiding negative environmental impacts and waste creation across their whole life-cycle. It is not significantly different from the initiative of integrating environmental considerations into the procurement process. Afterward, the European Commission updated the EU New Circular Economy Plan in 2020, which emphasizes co-operating with industry to progressively develop harmonized systems to track and manage information on substances along supply chains.⁵⁸⁸ However, it is also admitted that attention to public supply chains and the role and responsibilities of public buyers towards those in their supply chain is recent.⁵⁸⁹

The EU GPP initiative, including a couple of products and services, is seen as neoliberalism acting not only in a middle space between public law and private governance in the environmental field but also in an intermediate space between traditional public environmental mandates and neoliberal reliance on consumers and industry to make the appropriate choices.⁵⁹⁰ On the one hand, public authorities are encouraged to consider environmental concerns in the procurement process by a series of voluntary methods and calculating environmental externalities cost into the whole cost. On the other hand, the environmental consideration extent to environmental management of the manufacturers and organizations, and even in the different stages of the procurement process increasingly.

In addition, CSR is generally company-led, but public authorities can play a

⁵⁸⁷ European Commission. Public Procurement for a Circular Economy: Good Practice and Guidance. https://ec.europa.eu/environment/gpp/pdf/Public_procurement_circular_economy_brochure.pdf.

⁵⁸⁸ European Commission. A new Circular Economy Action Plan For a cleaner and more competitive Europe (COM(2020) 98 final). 20. P14.

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0098&from=EN>.

⁵⁸⁹ Marta Andhov et al., "Sustainability Through Public Procurement: The Way Forward – Reform Proposals," *SSRN Electronic Journal*, 2020, <https://doi.org/10.2139/ssrn.3589168>.

⁵⁹⁰ Jason J. Czarnecki, Ph.D thesis, "Green Public Procurement: Legal Instruments for Promoting Environmental Interests in the United States and European Union" (Uppsala University, 2019), <https://doi.org/10.2139/ssrn.3504676>. P17.

supporting role through a smart mix of voluntary policy measures and, where necessary, complementary regulation. Creating public "demand," and therefore a new market, for socially responsible corporations is, without a doubt, an important step in promoting CSR. The European Commission promotes CSR in the EU and encourages enterprises to adhere to international guidelines and principles. Relevant EU policies are built on an agenda for action to emphasize the importance of national and sub-national CSR policies, better align European and global approaches to CSR, etc.⁵⁹¹ CSR promoted by public procurement is consistent with SPP. There is a legal basis for including requirements in public procurement that suppliers respect social responsibility from human rights instruments, sustainable procurement instruments, and public procurement instruments in international, supranational/ regional, and national laws and guidance in the EU.⁵⁹²

The guidance on *Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement*, issued by the European Commission, defined the link between public procurement and CSR as "socially responsible public procurement (SRPP)," which means procurement operations that take into account one or more of the following social considerations: employment opportunities, decent work, compliance with social and labor rights, social inclusion (including persons with disabilities), equal opportunities, accessibility design for all, taking account of sustainability criteria, including ethical trade issues and wider voluntary compliance with corporate social responsibility (CSR), while observing the principles enshrined in the Treaty for the European Union (TFEU) and the Procurement Directives.⁵⁹³

The European Parliament, in its 2018 resolution on the public procurement strategy package, stresses that "it is important for contracting authorities to consider the full life-cycle of products, including their impact on the environment, in their purchasing decisions, and points out that 'SRPP must take into account supply chains and the risks

⁵⁹¹ European Commission. "EU Strategy on Corporate Social Responsibility: EU Best Practices," 2013. <https://www.switchtogreen.eu/?p=1188>.

⁵⁹² Daniel Morris, "Driving Change Through Public Procurement: A Toolkit on Human Rights for Procurement Policy Makers and Practitioners," 2020. <https://globalnaps.org/issue/public-procurement/>.

⁵⁹³ Commission, "Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement." P7.

associated with modern-day slavery, social dumping, and human rights violations."⁵⁹⁴

As the *Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights: Overview of Progress (SWD(2019)143 final)* claimed, SPP is recognized to encourage socially and environmentally friendly business conduct by the European Commission. GPP and SRPP in public purchasing can create additional market opportunities for sustainable products, promote supply chain due diligence, and encourage the market to shift towards more environmentally friendly and socially responsible solutions.⁵⁹⁵ However, some insufficiencies and problems related to SPP exist in the EU. Such as, 55% of procurement procedures still use the lowest price as the only award criterion.⁵⁹⁶ Most economically advantageous tenders on the basis of a cost-effectiveness approach, which may include social, environmental, innovative, accessibility, or other qualitative criteria, are still underused.⁵⁹⁷ SMEs win only 45% of the value of public contracts above EU thresholds - directly or as joint bidders or subcontractors, clearly below their weight in the economy.⁵⁹⁸

The European Commission continues to provide support and guidance to achieve fully operational public procurement systems before engaging further into mainstreaming green, social, and innovative criteria.⁵⁹⁹ Some targeted approaches are specially developed in a couple of priority sectors, for example, promoting value-based healthcare procurement, building information modeling, and life-cycle thinking approaches to support the procurement of sustainable public buildings or the European catalog of ICT standards for the public procurement.⁶⁰⁰

Remarkably, as innovation is becoming one goal of public procurement, GPP is

⁵⁹⁴ Laurens Ankersmit, "The Contribution of EU Public Procurement Law to Corporate Social Responsibility," *European Law Journal*, 2019, 18. P2.

⁵⁹⁵ European Commission. "Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights: Overview of Progress (SWD(2019)143 Final)," 2019, 64.

⁵⁹⁶ European Commission. "Making Public Procurement work in and for Europe (COM(2017) 572 final)," 2017, 14. https://ec.europa.eu/commission/priorities/jobs-growth-and-investment/investment-plan_en. P5.

⁵⁹⁷ European Commission. "Making Public Procurement work in and for Europe (COM(2017) 572 final)," 2017, 14. https://ec.europa.eu/commission/priorities/jobs-growth-and-investment/investment-plan_en. P5.

⁵⁹⁸ European Commission. A new Circular Economy Action Plan For a cleaner and more competitive Europe (COM(2015) 614 final). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0614>.

⁵⁹⁹ European Commission. A new Circular Economy Action Plan For a cleaner and more competitive Europe (COM(2015) 614 final). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0614>. P8.

⁶⁰⁰ European Commission. A new Circular Economy Action Plan For a cleaner and more competitive Europe (COM(2020) 98 final). 20. P14. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0098&from=EN>.

seen as a strong stimulus for eco-innovation. In 2020, The European Commission published new voluntary EU GPP criteria for data centers, server rooms, and cloud services in ICT products and services. The new criteria include both core and comprehensive environmental criteria, verifiable and encompassing the whole life cycle (design, use, and end-of-life).⁶⁰¹ Moreover, new guidance on the green procurement of textiles offers advice across the different procurement phases, from pre-procurement, including assessment needs, assessment of potential environmental impacts, and market survey and consultation to post-procurement, including monitoring of contract compliance, evaluation of performance.⁶⁰²

Fair Trade has been repeatedly recognized by the EU's institutions as a key tool for sustainable development, poverty reduction, and human rights, especially in agricultural supply. With promoting human rights into the supply chain and raising the awareness of producers and consumers, the Fair Trade movement is made up of individuals, organizations, and networks that share a common vision of a world in which justice, equity, and sustainable development were paid attention since 2004.⁶⁰³ In 2004, the EU adopted the "*Agricultural Commodity Chains, Dependence and Poverty - A proposal for an EU's Action Plan*" with a specific reference to the Fair Trade movement, which has been setting the trend for a more socio-economically responsible trade.⁶⁰⁴ The *Contributing to Sustainable Development: The role of Fair Trade and non-governmental trade-related sustainability assurance schemes (COM (2009) 215 final)* emphasized that public procurement adopt fair trade in their procurement policies.⁶⁰⁵

The fair trade criteria include a fair producer price, part payments to be made in advance, conditions of production respecting the eight International Labour

⁶⁰¹ Green Public Procurement. https://ec.europa.eu/environment/gpp/index_en.htm.

⁶⁰² EU Green Public Procurement (GPP) Criteria for Textile Products and Services Guidance. https://ec.europa.eu/environment/gpp/pdf/200406_JRC120265_eu_green_public_procurement_criteria_for_textile_products_and_services_guidance_document.pdf.

⁶⁰³ Alice Sinigaglia and Sergi Corbalán, "EU Trade and Development Policies : How Has Fair Trade Been Used as a Tool to Achieve Sustainability for People and Planet?," 2004, 193–201.

⁶⁰⁴ Vladislav B Sotirovi, "The Fair Trade Movement and the European Union," Open Journal of Social Science Research, 2014, 127–132.

⁶⁰⁵ European Commission "Contributing to Sustainable Development: The Role of Fair Trade and Non-Governmental Trade-Related Sustainability Assurance Schemes.COM(2009)215 Final.," 2009, 20. P8.

Organization (ILO) core conventions, respect for environment protection, human rights, and in particular, women's and children's rights and respect for traditional production methods which promote economic and social development, etc.⁶⁰⁶ In the procurement process, the Fair Trade label is used only to those relevant to the subject matter of their purchase. Contracting authorities must always allow bidders to prove compliance with these standards by using Fair Trade labels or other means of proof.⁶⁰⁷ The CJEU judgment in *Max Havelaar* confirmed this reasoning by upholding the reference to organic production methods as an award criterion and extended it to social externalities by upholding the right of contracting authorities to refer to fair trade. The adoption of fair trade also relies on life-cycle thinking by incorporating environmental and ethnic concerns into the procurement process.

EU Ecolabels program is voluntary, shows the environmental impacts of a product to the consumer, preferably based on LCC considerations, and is verified by a third party.⁶⁰⁸ The criteria are revised to reflect technical innovation, such as the evolution of materials, production processes, emission reduction, and market changes.⁶⁰⁹ The labeling method that constitutes the environmental impact of the production process is a simplified way for participators of procurement activities to consider the LCC in the procurement decision. Under Art. 43 of Directive 2014/24/EU, contracting authorities can incorporate specific environmental, social, or other characteristics into the technical specifications, the award criteria, or the contract performance conditions by requiring a specific label as means of proof. Even it does not put the limit on the EU label tools.

With the environmental life cycle thinking promoted by the *European Commission COM(2003) 302*, Life cycle cost (LCC) considers a product's life-cycle. It aims for a reduction of its cumulative environmental impacts - from the "cradle to the grave."⁶¹⁰

⁶⁰⁶ European Commission "Contributing to Sustainable Development: The Role of Fair Trade and Non-Governmental Trade-Related Sustainability Assurance Schemes.COM(2009)215 Final.," 2009, 20. P6.

⁶⁰⁷ European Commission "Contributing to Sustainable Development: The Role of Fair Trade and Non-Governmental Trade-Related Sustainability Assurance Schemes.COM(2009)215 Final.," 2009, 20. P9.

⁶⁰⁸ Matgorzata Koszewska, "The Role of Ecolabels in Criteria of Life-Cycle Criteria:The Case of Textile and Clothing Products," in Marta Andhov, Roberto Caranta, and Anja Wiesbrock (eds), *Cost and EU Public Procurement Law: Life Cycle Costing for Sustainability*, (Routledge, 2019), 123–158, P158.

⁶⁰⁹ Ecolabel Product Groups and Criteria. <https://ec.europa.eu/environment/ecolabel/products-groups-and-criteria.html>.

⁶¹⁰ "COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT Integrated Product Policy Building on Environmental Life-Cycle Thinking.COM(2003)302 Final."

Getting the prices is reasonable through internalizing environmental externalities into the price of a product so that its environmental impacts are accurately reflected in the price.⁶¹¹ As to the social concerns and human rights presented in the cost of products and services, the environmental life cycle cost (E-LCC) is confirmed to consider in Article 68 of the Public Sector Directive, but the social life cycle cost (S-LCC) is not clear in detail.⁶¹²

However, it does not mean that contracting authorities cannot incorporate human rights into their LCC methodologies. As Recital 96 puts it, the feasibility of establishing a common methodology on social life cycle costing should be examined, considering existing methodologies, such as the Guidelines for Social Life Cycle Assessment of Products adopted within the United Nations Environment Programme framework. The new Directives give greater prominence and potentials to LCC to calculate costs, including environmental and social externalities. The realization that every actor is embedded in a chain of activities has led to the development of notions such as supply chains, life cycles, and extended producer responsibility.⁶¹³

In the *Life Cycle Costing: State of the art report (EU 2017)*, the life cycle costs of a particular procurement item can be considered in acquisition costs, transport costs, installation costs, operating and maintenance costs, disposal costs, and residual value.⁶¹⁴ However, a study in 2012 shows that the most commonly used criterion was still the purchasing cost (64%), followed by a mix of the latter and LCC or Total Cost of Ownership (30%); and finally, by the predominant use of LCC/Total Cost of Ownership (6%) in the EU 27 member states.⁶¹⁵ It is admitted that there are a series of challenges to the adoption of LCC methodology into the procurement process, such as

⁶¹¹ Ibid 34. P8.

⁶¹² Article 68 (1) of the Public Sector Directive. Costs, borne by the contracting authority or other users, such as: costs relating to acquisition; costs of use, such as consumption of energy and other resources; maintenance costs; end of life costs, such as collection and recycling costs. costs imputed to environmental externalities linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified; such costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

⁶¹³ Semple, "The Link to the Subject Matter: A Glass Ceiling for Sustainable Public Contracts?" P118.

⁶¹⁴ "Life Cycle Costing State of the Art Report," SPP Regions (Sustainable Public Procurement Regions) Project Consortium, 2017, funded from the European Union's Horizon 2020 research and innovation programme .

⁶¹⁵ "Life Cycle Costing State of the Art Report," SPP Regions (Sustainable Public Procurement Regions) Project Consortium, 2017, funded from the European Union's Horizon 2020 research and innovation programme. P15.

the complexity of environmental issues, availability of data, and professional knowledge of public purchasers.

Life-cycle and life-cycle costing are defined clearly in Art.2 and Art.68 of Directive 2014/24/EU. The Directive encourages LCC's use during the awarding phase as a tool to get the "most economically advantageous tender" on the sole basis of the best price-quality ratio. Moreover, It is noted that the technical specifications drawn up by public purchasers need to allow public procurement to be open to competition as well as to achieve objectives of sustainability, including those drawn up on the basis of performance criteria linked to the life cycle in the preamble 74 of Directive 2014/24/EU. In 2020, the European Commission developed a series of sector-specific LCC calculation tools to facilitate LCC use amongst public procurers, including vending machines, imaging equipment, computers and monitors, indoor and outdoor lighting.⁶¹⁶ Moreover, public procurement cases related to LCC have made efforts in some specific sectors, for example, vehicle procurement and IT infrastructure in France, lighting, and ICT products in Denmark and the Netherlands.⁶¹⁷

In the context of *the Renewed Agenda for Research and Innovation*, the Commission put forward in October 2018 an initiative to carry out procurement more efficiently in a modern and sustainable manner to encourage public buyers of goods and services to use public procurement tools to stimulate innovation.⁶¹⁸ The objective of spending taxpayers' money well is connected with the best-added value in terms of quality, cost-efficiency, environmental and social impact, and whether it brings opportunities for the suppliers' market.⁶¹⁹

In the context of the EU, *Guidance on Innovation Procurement (COM(2018) 3051 Final)* embraces a wide-ranging view. "Innovation procurement" refers to any procurement that has one or both of the following aspects: buying the process of innovation - research and development services - with (partial) outcomes; buying the

⁶¹⁶ Life-cycle costing. <https://ec.europa.eu/environment/gpp/lcc.htm>.

⁶¹⁷ "Life Cycle Costing State of the Art Report," SPP Regions (Sustainable Public Procurement Regions) Project Consortium, 2017, funded from the European Union's Horizon 2020 research and innovation programme. P18-P22.

⁶¹⁸ Commission advises public buyers on how to capitalize innovation . https://ec.europa.eu/growth/content/commission-advises-public-buyers-how-capitalise-innovation_en.

⁶¹⁹ European Commission "Guidance on Innovation Procurement (COM(2018) 3051 Final)," 2018.

outcomes of innovation created by others.⁶²⁰ The mandate for innovation procurement has to make clear that innovation is both a key driver of sustainable growth to which public buying power can substantially contribute and an important means of enhancing value for money of achieving various policy goals.⁶²¹ Public procurement for innovation (PPI) opens the door to higher quality and more efficient solutions through value environmental and social benefits, better cost-effectiveness, and new business opportunities for enterprises.⁶²²

On the one hand, one way of improving the situation in which various barriers hamper innovation could consist of wider use of the innovation partnerships procedure. This tool, whereby market players are invited to bring innovative solutions, has been set up by the 2014 directives to meet the specificities of innovation procurement, increase legal certainty, and reduce inherent innovation risks.⁶²³ On the other hand, Innovation procurement addresses, including how to best integrate the demand-side function for social innovation and social entrepreneurship, setting common functional accessibility requirements for disabled and older persons proposed by the proposed European Accessibility Act.⁶²⁴ SMEs are seen as one key factor for job creation, growth, and innovation, but they still have difficulties finding access to procurement, both within the EU and in international markets. The 2014 directives include measures that should facilitate companies' access, including SMEs to public procurement, also cross-border.

The EU procurement regime is updated significantly in the period from 2004 to 2014 in terms of the increased importance placed on green, social and innovative considerations in public procurement processes, shifting from the limited scope in the text of 2004 Directives (environmental and social issues) to innovation and SMEs as well as environmental and social issues being supported clearly. Their importance is

⁶²⁰ European Commission “Guidance on Innovation Procurement (COM(2018) 3051 Final),” 2018. P8.

⁶²¹ European Commission “Guidance on Innovation Procurement (COM(2018) 3051 Final),” 2018. P13.

⁶²² European Commission “Guidance on Innovation Procurement (COM(2018) 3051 Final),” 2018.

⁶²³ European Commission. “Making Public Procurement work in and for Europe (COM(2017) 572 final),” 2017, 14. https://ec.europa.eu/commission/priorities/jobs-growth-and-investment/investment-plan_en. P5.

⁶²⁴ European Commission. “Making Public Procurement work in and for Europe (COM(2017) 572 final),” 2017, 14. https://ec.europa.eu/commission/priorities/jobs-growth-and-investment/investment-plan_en. P8.

emphasized even further in 2014 Directives.

5. Conclusion

In summary, the EU regulations of public procurement are anchored to respect for the free movement provisions in the EU Treaties, and, for this reason, it is necessarily subject to the obligation to respect the fundamental EU constitutional principles of equality, competition, anti-discrimination, and proportionality.⁶²⁵ Under these constitutional principles in the EU, the best value for money as one principle is also attached importance in the public procurement process in the EU. The contracting authorities are encouraged to protect the environment and sustainable development whilst ensuring that they can obtain the best value for money for their contracts. Therefore, it is very important to achieve the best value for money in accordance with basic constitutional principles in one single market in the EU. As defined in the European Commission, the best value for money is defined as the optimum combination of whole-life cost and quality to meet the end user's requirements, not necessarily accepting only the cheapest offer. It implies that the environmental, social, and other strategic considerations are required in the procurement process consistent with the LCC methodology.

Firstly, common principles related to anti-discrimination and equality are understood from two-layers perceptions.⁶²⁶ On the one hand, contracts are required to award on the basis of objective criteria that ensure compliance with the principles of non-discrimination and equal treatment. On the other, anti-discrimination and equality related to environmental and social concerns are taken into consideration in the public procurement process as sustainable and social values, and labor policies have been gradually incorporated over the history of EU integration.⁶²⁷

Secondly, The EU law on LCC methodology – and more generally on SPP – is very

⁶²⁵ Christopher Bovis, 'Developing Public Procurement Regulation: Jurisprudence and Its Influence on Law Making' (2006), *Common Market Law Review* 461.

⁶²⁶ Corvaglia, "The EU Public Procurement Framework: The Internal Market and Socially Responsible Procurement."

⁶²⁷ *Ibid* 39. P162.

much about striking this balance between non-discrimination among the EU economic operators on the one hand and pursuing environmental and social consideration by monetizing and internalizing into life-cycle on the other hand.⁶²⁸ The EU tries to harmonize a number of rules that are primarily intended to eliminate trade barriers within the internal market and establish common safety standards for products and services, protect human rights, and achieve societal goals into the supply chain in the EU internal market.⁶²⁹ Thanks to public procurement as one market-based and neoliberalism tool, the competition, which is a concept based upon economic freedom that is concerned with competitive equality, is the only market participating way for economic operators to achieve "value for money" both on a voluntary basis such as ecolabel, fair trade label, and other standardization and as mandated by EU sectoral legislation.⁶³⁰ These toolboxes at the national, EU, and international levels play a significant role in attaining strategic goals by calculating LCC and implying value for money.

Thirdly, The principle of proportionality represents a 'normative standard' that requires a reasonable link between the societal goals and the administrative and legislative measures—necessary and appropriate—used to achieve sustainable goals.⁶³¹ As the procurement principles, Article 18 of the public sector directive claims that Contracting authorities shall treat economic operators equally and without discrimination and act transparently and proportionately. The regulatory principles require the function of public procurement that equally reflects the importance of balancing economic, social, and environmental factors at all procurement procedures.

The modernization of the public procurement regime became a pressing target in order to integrate horizontal policies into public procurement decisions to achieve the EU 2020 objectives through "how to buy" and "what to buy" appropriately.⁶³² It is

⁶²⁸ Marta Andhov, Caranta, and Wies, "The European Union Law of Life-Cycle Costing." P21.

⁶²⁹ Hettne, "Sustainable Public Procurement and the Single Market:Is There a Conflict of Interest?" P32.

⁶³⁰ Peter Kunzlik (ed). "Neoliberalism and the European Union public procurement regime," (Cambridge Yearbook of European Legal Studies, Cambridge University Press, 2013).

⁶³¹ Corvaglia, "The EU Public Procurement Framework: The Internal Market and Socially Responsible Procurement." P170-172.

⁶³² European Commission, "Green Paper on the Modernization of EU Public Procurement Policy Towards a More Efficient European Procurement Market," [Brussels,27.1.2011 COM(2011)15 Final].

implied that public procurement regulation, as the significant pillar of the EU internal market, aims to balance the function goal "value for money," environmental and social goals in regulatory principles (competition, anti-discrimination, equality, and transparency) under EU treaties. The EU, leading towards adopting the 2014 Public Procurement Directives, provides an overview of the public procurement process's main elements where broader environmental and social concerns are integrated to be feasible, simplicity, and modernization.⁶³³

⁶³³ European Commission, Proposal for a directive on public procurement, COM (2011) 896. final, 20 December 2011, P2.

Chapter 6: Sustainable Public Procurement Implementation in the EU and China with the Olympic Games as the Case Study

1. Introduction

Once a city has won an Olympic bid that is subsequently endorsed by the NOC, the committee's structural foundations determine the structural setup of the future National OCOG in hosting countries. In countries where the private sector is well established, significant activity related to hosting the event is undertaken by the private sector. On the contrary, in countries where the public sector is predominant in the city's governance, then the OCOG is more likely to resemble and be perceived as a government department branch.

Understandably, the Olympic Games' successful holding depends on the cooperation and coordination from various stakeholders comprising IOC, national central government, and local government. As has been argued in chapter 3, the Olympic Games are subject to the Olympic Charter and guidelines issued by IOC. Nevertheless, according to the different hosting locations in specific countries, the Olympic Games' procurement activities are bound to comply with the national law and policies.

The organization of the Olympic Games can have multiple impacts on a hosting city or region in physical, economic, environmental, social, cultural, and political factors by stimulating local economic development, infrastructure investments, improving local employment, environmental awareness, and the city's international profile for the booming tourism industry. Such mega-events greatly impact (and leave an important legacy to) the host city and region. The hosting of the Olympic Games is acknowledged as the catalyst of national sustainable development strategy, in particular, through the sustainable procurement activity during the period of preparation of hosting to promote the improvement in economic, environmental, and social aspects and leave

the sustainable legacy for the hosting country and region.

This chapter looks into the sustainable procurement implementation of the Olympic Games in some EU member states (at the relevant time) and China, in particular, the hosting in 2006 Torino winter Olympic Games, 2012 London Summer Olympic Games, 2008 Beijing summer Olympic Games, and 2022 Beijing-Zhangjiajie winter Olympic Games. And it aims to explore sustainable procurement implementation and to what extent the public procurement legal regime plays a role in promoting sustainable Olympic procurement in specific hosting cities. Moreover, How the hosting cities emphasize the specific sustainable goals related to economic, environmental, and social issues in the background of their public procurement legal system.

2. 2006 Torino Winter Olympic Games

After the 2002 World Summit on Sustainable Development of Johannesburg and the 2003 Milan Conference on Climate Change, the 2006 Torino Olympic Games aimed to work in collaboration with public institutions to realize sustainable development and international environmental commitment (the Kyoto Protocol).⁶³⁴ Particularly, climate change and environmental issues were paid more attention. Torino Olympics were characterized by a structured sustainability strategy, which is useful in analyzing and discussing the contribution (sustainable legacy) to territorial development for hosting areas related to the organization of the event. In the context of the Olympic Games offering a unique opportunity to promote and disseminate sustainability values, the organizing committees have gradually embedded the concept of sustainable development in the Games by adopting tools and instruments to integrate the protection of the environment, social solidarity, and economic well-being.⁶³⁵

Given that the committee's structural foundation and governance depend on the base of the legal system in the specific hosting cities, it is worth noting to explore the nature

⁶³⁴ Egidio Dansero et al., "Olympic Games, Conflicts and Social Movements: The Case of Torino 2006," *Mega-Events and Civil Societies*, June (2008): 1-27. https://doi.org/10.1057/9780230359185_10. P10.

⁶³⁵ Marco Frey, Fabio Iraldo, and Michela Melis, "The Impact of Wide-Scale Sport Events on Local Development: An Assessment of the XXth Torino Olympics Through the Sustainability Report," *SSRN Electronic Journal*, April (2008), <https://doi.org/10.2139/ssrn.1117967>. P4.

of the Torino committee and agency related to the preparation of the 2006 Torino Olympic Games and the sustainable development policies. To a large extent, these two factors significantly impact sustainable procurement implementation. Moreover, the governance of the host city's organizing committee and the financing sources determine the role the public procurement legal regime plays in Olympic sustainable procurement.

2.1 Governance Model of the Torino Winter Olympic Games

First and foremost, as was showcased in chapter 3, the budget for the Olympic Games may be distinguished into two broad categories: (1) the founding from IOC and the revenues from hosting the Olympics; (2) the investment, especially for infrastructure from host central or local government. It is noted that except for the fundamental role played by the public sector in the host country, the private sector also gets involved in the delivery of the Olympic Games by providing sponsorship, other value in kind, and/or contracted services.⁶³⁶ Turin chose the mixed model (both private and public), with a clear prevalence of private funding for organizational expenses and a clear prevalence of public funding for investments, in which most of the funding came from the Italian national government, the two major local governments including the Region of Piedmont and the City of Torino.⁶³⁷

Secondly, the official authorities were the standard institutions, including the IOC, directed and masterminded the whole procedure and awarded the organization of the XX Winter Games jointly to CONI (Italian National Olympic Committee) and the city of Turin; TOROC, the Local Organising Committee for the Olympic Games (OCOG). TOROC is a private, non-profit foundation that was set up in December 1999 to organize the Torino 2006 Olympic and Paralympic Winter Games, implementing and observing provisions contained in Olympic Charter and in the Host City Contract.⁶³⁸

⁶³⁶ Eleni Theodoraki, *Olympic Event Organization*, First (Butterworth-Heinemann, Elsevier, 2007), 193. <https://doi.org/10.1016/B978-0-7506-3560-8.50001-9>. Pxiv.

⁶³⁷ Piervincenzo Bondonio and Nadia Campaniello, "Torino 2006: An Organisational and Economic Overview," 2006, 25. <http://scholar.google.com/scholar?hl=en&btnG=Search&q=intitle:TORINO+2006++AN+ORGANISATIONAL+AND+ECONOMIC#0>. P8.

⁶³⁸ "Sustainability Report Torino 2006," 2006. 212. P21.

Funding for the committee's activities came from sponsoring companies, the sale of television rights, revenues from ticket sales, licensing product rights, and the sale of services and products during and after the Games.⁶³⁹

Thirdly, to raise the required investments, in compliance with the contractual obligations of CONI and the host city, the Italian government, with Law 285/2000, was later amended with law. 43/2003, founded the *Agenzia Torino 2006*, a public body with the dual function of acting as the general contractor and responsibility for the timely completion of the planned works.⁶⁴⁰ This law financed the works, defined certain limited changes to standard procedures for public works in order to complete the plans, and authorized an environmental impact analysis, never carried out before in Italy, involving local bodies.⁶⁴¹ Moreover, according to the Italian Law 285/2000, TOROC as a private organization by Host City contract - a kind of 'local representative' of the IOC (non-profit international organization) has the power to head the Italian public body indicating the 'Agenzia Torino 2006' what and where to build.⁶⁴²

Fourthly, the funds were spent, in order of priority, on-road infrastructures (46.34%), sports facilities (29.61%), housing, offices, and commercial sites (23.69%), and environmental infrastructures (0.34%). Sixty-five percent of total funding was distributed by the Law 285/00, while the remaining 35% by Torino City Council (3.5%), Region of Piedmont (2%), CIPE (the interdepartmental committee for economic planning: 3.5%), ANAS (the national public corporation of roads: 5%), ATIVA (the Torino-Aosta Valley highway corporation: 5%), SITAF (the Italian corporation for the Frejus tunnel: 7%), ARPA (the regional public agency in charge of environmental prevention and protection: 1%), private investors (6%), and other expenses of Agenzia Torino 2006 (2%).⁶⁴³ The public sector played a major part in financing the 2006 Torino Winter Olympic Games. It is absolutely evident that the establishment of specialist

⁶³⁹ Eleni Theodoraki, *Olympic Event Organization*, First (Butterworth-Heinemann, Elsevier, 2007), 193. <https://doi.org/10.1016/B978-0-7506-3560-8.50001-9>.

⁶⁴⁰ Bondonio and Campaniello, "Torino 2006: An Organisational and Economic Overview." P8.

⁶⁴¹ Bondonio and Campaniello, "Torino 2006: An Organisational and Economic Overview." P8.

⁶⁴² Eleni Theodoraki, *Olympic Event Organization*, First (Butterworth-Heinemann, Elsevier, 2007), 193. <https://doi.org/10.1016/B978-0-7506-3560-8.50001-9>. P171.

⁶⁴³ Bondonio and Campaniello, "Torino 2006: An Organisational and Economic Overview." P16.

bodies like 'Agenzia Torino 2006' to build Turin facilities is from public funds and, in essence, taxpayers' money.

2.2 Green Procurement Policies

Firstly, regarding voluntary activities, a voluntary environmental project related to procurement carried out by TOROC aimed to promote a sustainable pursuit of its local economic partners. Through the green procurement project, suppliers of goods and services were selected, also considering the ecological quality of products.⁶⁴⁴ 40% of the purchases of the Organising Committee were made respecting environmental criteria: from light bulbs to paper and low-energy-consumption office equipment, many of the products bear the European Eco-Label.⁶⁴⁵ The project also led to a partnership at the local level by signing an agreement to promote the green procurement system within public authorities and local economic actors.⁶⁴⁶

Secondly, to make business partners related to sponsors aware of the issues of sustainability in the staging of the Games and to enhance the policies and actions taken, TOROC launched the Sponsors and Sustainability Programme, which meet the requirements of green procurement criteria as defined by TOROC, through creating or distributing products within the Olympic scope, presenting documentation certifying one's own commitments in the environmental and social fields.⁶⁴⁷

Thirdly, TOROC obtained Eco-Management and Audit Scheme (EMAS) registration at the planning and construction stages for the 29 sites hosting the Games, including the training sites and Torino Olympic Village, and adopted the ISO 14001 environmental management system.⁶⁴⁸ Eight municipalities registered with EMAS and twelve accommodation structures were granted the Eco-label in the valleys. In addition, according to the Italian law 285/00, TOROC had to adopt the SEA (Strategic

⁶⁴⁴ Cappato and Pennazio, "Corporate Social Responsibility in Sport Torino 2006 Olympic Winter Games." P21.

⁶⁴⁵ Alice Cappato and Vittorio Pennazio, "Corporate Social Responsibility in Sport Torino 2006 Olympic Winter Games," P21.

⁶⁴⁶ Frey, Iraldo, and Melis, "The Impact of Wide-Scale Sport Events on Local Development: An Assessment of the XXth Torino Olympics Through the Sustainability Report." P22.

⁶⁴⁷ Alice Cappato and Vittorio Pennazio, "Corporate Social Responsibility in Sport Torino 2006 Olympic Winter Games," P14.

⁶⁴⁸ Dansero et al., "Olympic Games, Conflicts and Social Movements: The Case of Torino 2006." P10.

Environmental Assessment) procedures in its overall project management methodology and must therefore keep all the environmental variables related to preparation for the Olympic Games under control, carry out the project environmental monitoring plan, draw up regular environmental reports, and verify the compliance of projects and building sites with required environmental performances.⁶⁴⁹

Given that environmental protection is one of Torino's main objectives in the Candidature Files and the Official Report for Torino 2006, the environmental factor was seen as the overriding policy in the whole life-cycle preparation of 2006 Torino Olympic. As a result, the products, consumables, and services provided for Olympic games have to be selected on the basis of their environmental performance; at the same time, actions will be taken so that sponsors can adopt behaviors oriented to sustainability. Even the supplier or business partners of sponsors were encouraged to be green; to a large extent, it stimulates the procurement system's green supply chain.

2.3 Social Responsibility Procurement

With respect to social consideration, solidarity initiatives across the region were supported by TOROC. There is only one project that focuses on socially excluded groups. In cooperation with local social services, substance abuse units, and rehabilitation officers in prisons, managed by Arcobaleno (Italian for 'Rainbow'), the Transistor Project is a recycling service for PCs, printers, and videos.⁶⁵⁰ Arcobaleno is a social co-operative that provides socially excluded persons with learning and employment opportunities in the sorting and recycling industry.

Moreover, TOROC initiated Play Fair at the Olympic Campaign, the requirements of which focus on these three points: protect workers' rights as one of the fundamental principles of the Olympic Charter and its Code of Ethics; include in every commercial contract a clause that will oblige Olympic partners to respect the fundamental rights of

⁶⁴⁹ Philippe Furrer, "Sustainable Olympic Games A Dream or a Reality?," *Political Science*, 2002, <https://doi.org/10.1080/00221325.1978.10533330>. P14.

⁶⁵⁰ Lynn Minnaert, "An Olympic Legacy for All? The Non-Infrastructural Outcomes of the Olympic Games for Socially Excluded Groups (Atlanta 1996-Beijing 2008)," *Tourism Management*, no. 2 (2012): 361–370, <https://doi.org/10.1016/j.tourman.2011.04.005>. P367.

workers along the entire supply chain; establish a specific committee to audit the accuracy of any claim of the violation.⁶⁵¹

2.4 Torino Sustainable Olympic Procurement under EU Public Procurement Legal Framework

Apart from the Italian national legislation applicable on the operations of TOROC and due to the fact that Italy is a member state of the EU, the procurement activities were obliged to abide by the European public procurement legislation as well. As has been discussed in relation to the governance structures of the organizing committee, the Agenzia Torino 2006 in charge of public contracts, and Olympic funding sources, there is no doubt that Olympic procurement is binding to the public procurement law.

During the period from the starting preparation of the Torino Olympic Games in 1999 to the holding game in 2006, the procurement activities involved the application of the EU procurement rules in the EU Directives 93/36/EEC on public supply contracts, 92/50/EEC on public service contracts, and 93/37/EEC on public works contracts. Public Procurement Directives (2004/18/E.C. and 2004/17/E.C.) were transposed into national public procurement laws of the Member States by January 31, 2006. Under the 2006 Winter Olympic Games preparation background, the previous EU public procurement rules were still applicable.

The *1996 Commission's Green Paper on Public Procurement* stated the Union's public procurement policy's objective is to achieve fair and open competition.⁶⁵² In addition, it is paid attention how the correct application of public procurement law can be pursued while implementing other Community policies, in particular with regard to policy on small and medium-sized enterprises (SMEs), standardization, social policy, environmental policy, and access to other countries' procurement markets around 2000

⁶⁵¹ This international project refers to a report by Oxford Committee for Famine Relief (Oxfam) and the Clean Clothes Campaign, denouncing companies that produce sports goods in developing countries using unacceptable practices that harm both workers and the environment. Cappato and Pennazio, "Corporate Social Responsibility in Sport Torino 2006 Olympic Winter Games." P15.

⁶⁵² "Public Procurement in the European Union: Exploring the Way Forward (COM(96)583 Final)," 1996, <https://doi.org/10.1057/9780230501447>. P3.

in the EU.⁶⁵³

The 2004 Directives are seen as an integral part of the Commission's 2000 Work Programme, which pledges to modernize and simplify the relevant legislation for the completion of the internal market and at the same time implement the Lisbon European Council's call for economic reform within the internal market.⁶⁵⁴ Moreover, the 2004 Public Sector Directive clarifies how contracting authorities may contribute to the protection of the environment and the promotion of sustainable development whilst ensuring fairness and competition in the award of public contracts.

On the one hand, as public procurement started to be considered a potential tool to promote environmental and social policies and the internal economic reform around the 2000s, the EU intended to integrate environmental and social policies into public procurement legal regimes. On the other, given the fact that sustainable development has been paid attention to by the international community since 1992, the commitment to promote sustainable development was made at the international, national, or individual levels. The hosting of the 2006 Olympic Games had a significant impact on pursuing sustainable development by integrating environmental and social policies into the organization, procurement activities, governance structures, which aims to leave the sustainable "Olympic Legacy" in post-games.

The sustainability issue in the process of the 2006 winter Olympic games has been experienced in its most complicated parameters, particularly in procurement activities. When it comes to discussing the sustainable development goals in hosting Olympic games, it is noted that IOC's mission and the policy goals pursued by hosting cities are entwined together. To some degree, the policy goals at the national level are also get affected by the EU.

Under the OGGI (Olympic Games Global Impact) setting of indicators to measure the economic, social, and environmental impact of the Games on the host region from the period preceding the selection of the city to two years after the event itself,

⁶⁵³ "Public Procurement in the European Union: Exploring the Way Forward (COM(96)583 Final)," 1996, <https://doi.org/10.1057/9780230501447>. P2.

⁶⁵⁴ Bovis Christopher, "The New Public Procurement Regime," in Bovis Christopher (ed), *EU Public Procurement Law* (Edward Elgar Publishing Limited, 2007), 510. P145.

environmental tools applied dramatically, especially the environmental considerations in procurement stages. The adoption of the Strategic Environmental Assessment (SEA) and the Eco-Management and Audit Scheme (EMAS) was particularly devoted to incorporating environmental indicators into the whole life cycle.

3. Beijing 2008 Summer Olympic Games

It is not denied that due to China's rapid economic growth, the country, in fact, has faced severe environmental problems since the 1990s. A dramatically increased demand for energy, water, and land has led to a depletion of natural resources, triggering a range of secondary impacts, such as desertification, flooding, and species loss. Pollution levels in China's major cities were among the highest on earth from the 1980s to the 1990s when China started to carry out the National Reform and Opening-UP Policy and open its market. Since the beginning of the 2000s, the Chinese government has started transforming pollution-based to the sustainability-based economic development model. As argued in chapter 4, sustainable development has gradually incorporated Chinese national development plans and the legal system, especially incorporated environmental considerations into national economic development plans. Particularly, since China Agenda 21 was promulgated by China State Council in 1994, the greening economic development model is treated as the most important agenda because of the dramatic environmental problems.

With the adoption of the Olympic Movement's Agenda 21 in 1999, the IOC reaffirmed the Olympic Movement's commitments to environmental protection and sustainable development, thus making the environment a key component of the modern Olympic spirit. Since 2000, sustainability seems to have gained a solid place in the Olympics' design and operation and other global mega-events.⁶⁵⁵ Sustainability was also behind the election of Beijing to host the 2008 Olympic Games.

China's ambitions to stage the Olympics started in the late 1980s, basically in the

⁶⁵⁵ Arthur P.J. Mol, "Sustainability as Global Attractor: The Greening of the 2008 Beijing Olympics," *Global Networks*, no. 4 (2010), 510–528, <https://doi.org/10.1111/j.1471-0374.2010.00289.x>. P511.

hope of increasing its international prestige, building an image of national strength and unity, using the Olympics as a development engine. On the one hand, the mega-event of Beijing's Olympics reflects China's ambition to transform its international image, especially its environmental profile. On the other, the Beijing Olympic Game as a transformation engine that needs a huge amount of investment in many economic aspects, it can promote an eco-innovative economic development model by introducing global standards and benchmarks for urban development; bringing in foreign technology and expertise; raising environmental awareness; changing political priorities and domestic and foreign investments, and triggering institutional innovations by hosting Olympic Games.

In July 2001, the outgoing International Olympic Committee president, Juan Antonio Samaranch, clinched China's persevering efforts to host the Olympic Games by declaring that the 29th Olympiad in 2008 was awarded to the city of Beijing. Beijing 2008 gave full expression to the Olympic ideals and Olympic spirit through promoting the idea of harmonious development in line with the three concepts formulated in bidding for the Games, "Green Olympics, High-tech Olympics, and People's Olympics."⁶⁵⁶

On the one hand, The Beijing Olympic Hosting Bid frankly acknowledged Beijing's pre-existing environmental problems, especially the city's air-quality challenges caused by considerably high levels of sulfur dioxide and nitrogen oxide resulting from the city's dependence on coal use and the increasing increase number of vehicles. On the other hand, given the Olympic Games' characteristics in almost eight or six years from its successful bid and post-games period, environmental impact is a significant factor in the preparation of the Beijing Olympic Games.

Not only the domestic factors, for example, many backward technologies and industrial plants still operating, limited investment in environmental protection, on-going environmental deterioration, but also the international concerns were all recognized by the Chinese government. Environmental protection was a pressing

⁶⁵⁶ Olympic, "Preparation for the Games: New Beijing Great Olympics." P9.

agenda the Chinese government faced at the turn of the millennium.⁶⁵⁷ The Beijing bid committee presented a comprehensive plan on sustainable development covering the areas of venue construction, transportation, pollution control, and waste management. Beijing Olympic Games are regarded as one opportunity to inspire, facilitate, and spread further environmental improvements in Beijing and wider China. Greening was the most important feature of the Beijing Olympic Games.⁶⁵⁸

3.1 Governance Model of the Beijing Summer Olympic Game

3.1.1 2008 Beijing Organising Committee for the Olympic Games

Beijing won the 2008 Olympic bid in 2001, and to some extent, China was still affected by the planned economic model at that time. The marketing and privatization reform started in 2001 when China officially joined the WTO. Thus, the Olympic Games as an engine to drive the large-scale urban transformation and investment of the Chinese government's radical improvement of environmental protection, the state-owned capitalist regime had played a significant role in hosting the 2008 Beijing Olympic Games.⁶⁵⁹ In addition, the characteristic of the Chinese system is centrally organized, with a great degree of power nested at the top.⁶⁶⁰ It would be relatively easy for the Chinese central government to conduct the relevant policy levers in pursuing the green Olympics.

The Beijing Organising Committee for the Olympic Games (BOCOG) of the XXIX Olympiad (BOCOG) was established in 2001. BOCOG sets the goals and concepts for the Games in Beijing by undertaking legal affairs in the preparation, and conducting effective coordination with IOC, the Chinese central government, and hosting local municipality government, all of which are vital for preparing for and

⁶⁵⁷ Mol, "Sustainability as Global Attractor: The Greening of the 2008 Beijing Olympics." P518.

⁶⁵⁸ Chongfang Ma et al., "Opportunities and Challenges by 2008 Beijing Olympic Games: Energy and Transportation," *Fifth EU-China Energy Cooperation Conference*, 2008, 1–20; Mol, "Sustainability as Global Attractor: The Greening of the 2008 Beijing Olympics."

⁶⁵⁹ Anne-Marie Broudehoux, "Civilizing Beijing: Social Beautification, Civility and Citizenship at the 2008 Olympics," in Graeme Hayes and John Karamichas (eds), *Olympic Games, Mega-Events and Civil Societies: Globalization, Environment, Resistance*, (Palgrave Macmillan, 2012), 298, <https://doi.org/10.1080/09644016.2012.724224>.

⁶⁶⁰ Chris Chan, "Beijing 2008: Greening the Games?," 2008. P18.

hosting "a high-level Olympic Games with distinguishing features." Particularly, the decision-making of BOCOG (Executive Board) was composed of the president, vice-presidents, executive president, executive vice-presidents, and executive members. Board members mainly were senior officials from the Beijing Municipal Government, the General Administration of Sport of China, and relevant departments of the Chinese Central Government. Other members include Olympic scholars, experts from fields of education, culture, and science and technology, prominent entrepreneurs, and public figures.

As the function, the members, and structures of BOCOG showed, it is defined as a public institution under the Chinese civil code, which refers to the public service organizations that are established by the state organs or other organizations by using the state-owned assets for the purpose of engaging in activities of education, science, technology, culture, and hygiene.⁶⁶¹ BOCOG was responsible for managing the preparation process in collaboration with IOC, other international organizations, concerned government departments, and other relevant sectors. BOCOG was endowed with decision-making power, project management, supervision, finance arrangement, logistics, and venue management, etc. The finance department working with government counterparts did charge budgets program; supervision of logistics and procurement; financial management, and risk control.⁶⁶²

3.1.2 Beijing's Olympic Action Plan

BOCOG released the Beijing Olympic Action Plan in cooperation with the Beijing Municipal Government in 2002, which includes three focuses: venues and facilities for the Olympic Games, ecological environment and city infrastructure, and Social development.⁶⁶³ Several targets of the Beijing environmental protection program, which was developed by the Municipal Government for the period 1996-2015, were

⁶⁶¹ Beijing Organizing Committee of Olympic Games (BOCOG). (<https://www.beijing2022.cn/cn/aboutus/organisation.htm>; Article 87 of Chinese Civil Code (2020); Article 2 of Interim Regulation on the Registration of Public Institutions.

⁶⁶² Official Report of the Beijing 2008 Olympics Games, "Preparation for the Games: New Beijing Great Olympics." P4.

⁶⁶³ Official Report of the Beijing 2008 Olympics Games, "Preparation for the Games: New Beijing Great Olympics."

integrated into the bid with accelerated deadlines.⁶⁶⁴ The targets in clean energy, air quality, industries in waste and water, ecosystem, and cutting-edge environmental technologies, originally scheduled to be achieved in 2010, were moved forward to 2008, the year of the Games.⁶⁶⁵

The actions were taken to use natural resource-efficient, non-polluting, and recyclable materials for facilities and equipment; preservation during the construction of Olympic venues of indigenous vegetation and ecological ecosystems; promotion of public transportation and clean fuel vehicles in the Olympic transport system. According to UNEP's report, Beijing set aside a total investment of US \$12.2 billion for green initiatives: \$ 5.6 billion from 1998 to 2002 and \$ 6.6 billion from 2003 through 2007; from 1998-2007, spending a total of \$15.7 billion on environmental initiatives.⁶⁶⁶ Beijing made notable efforts during the preparatory period for the Games in order to promote environmental protection.

It is not doubtful that the 2008 Beijing Olympic games made a significant contribution to China's solution of environmental problems. However, it is still criticized to be an agenda that focused on improving China's image in the eyes of the international community and was treated as, first and foremost, a political act and assertion.⁶⁶⁷ The positive social influences are the encouragement of grassroots sports, the shaping of national identity, the growth in environmental awareness, and increased sports participation among the young.⁶⁶⁸ It also brought about some negative influences, such as the price of land, homes, and home rentals rocketed around the Games. It is hard to gauge to what extent these initiatives reached socially excluded groups and poverty-reduction-oriented programs.⁶⁶⁹

⁶⁶⁴ Carmichael and Soon-Chang, "Independent Environmental Assessment-Beijing 2008 Olympic Games." P13.

⁶⁶⁵ Gregory R. Carmichael and Soon-Chang, "Independent Environmental Assessment-Beijing 2008 Olympic Games," 2008, http://www.unep.org/pdf/BEIJING_REPORT_COMPLETE.pdf. P13.

⁶⁶⁶ Jin Liyan, "Residents' Perceptions of Environmental Impacts of the 2008 Beijing Green Olympic Games" (2010). P34.

⁶⁶⁷ Minnaert, "An Olympic Legacy for All? The Non-Infrastructural Outcomes of the Olympic Games for Socially Excluded Groups (Atlanta 1996-Beijing 2008)."

⁶⁶⁸ Minnaert, "An Olympic Legacy for All? The Non-Infrastructural Outcomes of the Olympic Games for Socially Excluded Groups (Atlanta 1996-Beijing 2008)."

⁶⁶⁹ Minnaert, "An Olympic Legacy for All? The Non-Infrastructural Outcomes of the Olympic Games for Socially Excluded Groups (Atlanta 1996-Beijing 2008)." P368.

3.2 Olympic Procurement Policies and Chinese Government Procurement Legal Framework

3.2.1 Olympic Procurement Policies

The Beijing action plan was seen as the guiding document for all aspects and carried out in the preparatory period: initial preparation from December 2001 to June 2003; construction and implementation from July 2003 to June 2006; operation and adjustment from July 2006 to the opening of the Games. The attention was paid to the "Olympic legacy," the conception of "sustainability," urban infrastructure and transformation, tourism management, etc., in much academic literature. Olympic procurement activities always play a significant role in achieving sustainable development goals. What sustainable development goals and the degree of sustainability pursue in Olympic games rest with the implementation of the sustainable procurement policies in the life cycle of preparation of the Olympic Games.

In 2002, the Supervision Commission of BOCOG formulated the Supervision Commission's Work Plan for the XXIX Olympiad Games, covering major issues such as financial management, material management, marketing, and procurement. In addition, the Beijing local government played a joint role in supervising and auditing the venue construction. For example, the Beijing Municipality 2008 Engineering Construction Headquarters supervised venue owners in line with the Letter of Responsibility in Beijing Olympic Venue Construction. The State-owned Assets Supervision & Administration Commission and the Beijing Municipality 2008 Engineering Construction Headquarters signed the Letter of Responsibility in Beijing Olympic Venue Construction with project contractors to regulate project quality and construction safety.

The procurement activities include the construction of venues, the procurement of sports equipment, furniture and electric appliances, and other office materials. The Chinese Central Government approved the revised Outlines for Constructing the Beijing 2008 Olympic Venues and Facilities and the Beijing Olympic Venue Plan. On

a centralized basis with a view to guaranteeing efficient utilization of Olympic assets and funds, Beijing Olympic Logistics practiced material planning, procurement, allocation, distribution, and disposal. The Logistics Department worked out documents such as *BOCOG Regulations on Goods Purchase*, *BOCOG Regulations on Games-time Procurement* to regulate procurement activities.

As to the Olympic venues, of the 31 sports venues planned, 12 need to be newly built, 11 expanded, and 8 temporary venues totally.⁶⁷⁰ Moreover, the city will construct 59 training venues, a media village, news centers, and an Olympic Village of 70,000 square kilometers in size.⁶⁷¹ Work on Olympic venue construction started in December 2001. Tender and bid for venue design and construction were completed, and construction of the Beijing Olympic venues and facilities commenced in 2003. the Guidelines for Olympic Construction Design, formulating bidding procedures and technical standards for Olympic venue construction, organizing the review of venue designs, and Cooperating with the 2008 Engineering Headquarters to supervise construction preparations were carried out by the Construction & Environment Department of BOCOG. The energy-saving, water-saving, eco-friendly materials are required to design, construct, and build Olympic venues and other non-competition function venues.⁶⁷²

BOCOG established a working group composed of members from its relevant departments in terms of sports equipment procurement. The working group was responsible for selecting sports equipment suppliers and making purchases. From the whole life cycle of the procurement process, the equipment procurement included setting the overall procurement plan and budget, selecting sports equipment suppliers, conducting follow-up market research, reviewing the budget, placing orders, effecting purchase, monitoring equipment performance through test events. The environmental management guidelines were implemented and the construction materials corresponded

⁶⁷⁰ Olympic, "Preparation for the Games: New Beijing Great Olympics." P27-28.

⁶⁷¹ Stefanie Beyer, "The Green Olympic Movement: Beijing 20081," *Chinese Journal of International Law*, no. 2 (2006): 423–440, <https://doi.org/10.1093/chinesejil/jml018>. P436.

⁶⁷² Carmichael and Soon-Chang, "Independent Environmental Assessment-Beijing 2008 Olympic Games." P97-P98.

to the set requirements.⁶⁷³ The BOCOG worked with the Construction and Environment Department to verify that potential suppliers complied with environmental law and regulation, giving preference to companies with ISO 14001 or similar standards certification.⁶⁷⁴ In addition, ISO 14001 compliant systems were established in all Olympic construction sites in multi-level management organizations too.⁶⁷⁵

3.2.2 The implications for Chinese Government Procurement Legal Framework

In order to achieve the green Olympic Games, China was aware of the huge lack of legislation, particularly in bid and tender for large infrastructure, the procurement law, and environment, etc. before the winning of the bid, National People's Congress (China's top legislature) enacted the Bidding law and put into effect on January 1, 2000 and government procurement law on June 29, 2002. In addition, the environmental initiative was not only incorporated into the supply of government procurement activities but also into the production side by encouraging government procurement purchasing energy and water-saving products. The promotion of the Clean Production Law was enacted and implemented in 2002 too.

Given the green Olympic procurement experiences, green suppliers, items, services, and ISO standards were adopted in the procurement process. Ministerial Regulation for Implementation of Government Procurement for Energy Conservation Products and Ministerial Regulation of Government Procurement for Environmental labeled products were adopted in 2004 and 2006.⁶⁷⁶

With the booming of infrastructure and civil mega-projects during the preparation of the Beijing Olympic Games, Beijing Municipal People's Congress (Beijing's top legislature) and the Beijing Municipal Government strove to improve laws and regulations related to the legal environment in building infrastructures by concession. Beijing Municipal Infrastructure Concession Regulation was passed on December 1.

⁶⁷³ Carmichael and Soon-Chang, "Independent Environmental Assessment-Beijing 2008 Olympic Games." P96.

⁶⁷⁴ Carmichael and Soon-Chang, "Independent Environmental Assessment-Beijing 2008 Olympic Games." P113.

⁶⁷⁵ Carmichael and Soon-Chang, "Independent Environmental Assessment-Beijing 2008 Olympic Games." P96.

⁶⁷⁶ 中国环境标志产品政府采购清单 <http://www.ccgp.gov.cn/jnhb/jnhbqd/hbqd/>; 中国节能标志产品政府采购清单 <http://www.ccgp.gov.cn/jnhb/jnhbqd/>.

2005 and was brought into force on March 1, 2006.⁶⁷⁷

Legislative activities triggered by the Beijing Olympic Games included those that were directly related to the Games in many areas. Olympic legislations were conducted to adhere to China's laws and regulations and Beijing's commitment to the Host City Contract and the conventions and norms established in the Olympic Charter and during the previous Olympic Games. The hosting of the Beijing Olympic Games contributes to the flaws of legislation in environmental protection, government procurement, such as Promotion of Clean Production Law (2002 Enactment; 2012 Amendment), Energy Conservation Law (1997 Enactment; 2007, 2016 Amendment; 2018 Latest Amendment), Promotion of Circular Economy Law (2008 Enactment; 2018 Amendment), Bidding Law (2000 Enactment; 2017 Amendment), Government Procurement Law (2002 Enactment; 2014 Amendment).

4. London 2012 Summer Olympic Games

4.1 Overview of London 2012 Summer Olympic Games

London won the right to host the 2012 Olympic and Paralympic Games in 2005 with the commitment to set new standards of sustainability and hosting the 'Greenest Games' ever and to leave a lasting legacy.⁶⁷⁸ London Olympic Games' focus is on generating a physical legacy by restoring derelict areas, utilizing temporary structures and sustainable design, implementing a low-carbon game, and engaging with all participants for environmental and social goals.

The London 2012 Sustainability Plan, published in November 2007, sets out how London put sustainability at the heart of its bid for the 2012 Games and that it remains central to the vision for 2012.⁶⁷⁹ It has five principal themes: climate change, waste, biodiversity and ecology, inclusion, and healthy living. The plan has a program-wide

⁶⁷⁷ 北京市城市基础设施特许经营条例
http://www.bjrd.gov.cn/rdzl/dfxfgk/dfxfg/202101/t20210106_2200157.html.

⁶⁷⁸ "Learning Legacy: Lessons Learned from the London 2012 Games Construction Project," 2011. 27.
<http://orca.cf.ac.uk/97021/>.

⁶⁷⁹ <http://www.london2012.com/documents/locog-publications/london-2012-sustainability-plan.pdf>.

commitment to sustainability across all venues and Games-related activities. In addition, the overall sustainability vision for the Games and legacy, roles and responsibilities, organizational capacity to achieve sustainable outcomes, and coordination between organizations was recognized as the first task in the Governance Review established by the Commission for a Sustainable London 2012 (CSL) which was an independent body providing on-going sustainability assurance of all aspects of Games developments, the event itself, and the legacy transformation of the Olympic Park.⁶⁸⁰ This is demonstrated in the collaboration between the London Organizing Committee of Olympic Games (BOCOG), select local NGOs (CSL), and Olympic Delivery Authority (ODA), and the active role of monitoring from the preparation phase of the Olympic games through to implementation.⁶⁸¹ It can be observed that most scholars pay attention and examine the 2012 London Olympic Games from the governance, corporate social responsibility (CSR), sustainable strategy, policy framework, lasting sustainable legacy for London, and environmental legacies.⁶⁸²

Olympic procurement has been paid attention to achieving sustainable development goals clearly before the 2012 London Olympic Games. Procurement policy is identified as an area requiring action that cuts across all five key sustainability themes that form the plan's basis in the London Olympic Games too.⁶⁸³ The sustainable considerations integrate into the London Olympic procurement preparation process rest on a series of factors, such as the budget management system, the classification and nature of Olympic procurement, and government agencies relevant to procurement activities. Next, it is necessary to explore the governance system and procurement

⁶⁸⁰ Gary Cox, "Sustaining a Legacy - from Sydney 2000's Environmental Guidelines to the Commission for a Sustainable London 2012," *Australian Planner*, no. 3 (2012), 203–214, <https://doi.org/10.1080/07293682.2012.706961>. P204.

⁶⁸¹ Shalini Samuel and Wendy Stubbs, "Green Olympics, Green Legacies? An Exploration of the Environmental Legacies of the Olympic Games," *International Review for the Sociology of Sport*, no. 4 (2013), 485–504, <https://doi.org/10.1177/1012690212444576>.

⁶⁸² Paul Toyne, "London 2012-Winning the Olympic 'Green' Medal," in Gavin Poynter and Iain MacRury (eds), *Olympic Cities: 2012 and the Remaking of London*, (Ashgate Publishing Company, 2009), 19; Gary Cox, "Sustaining a Legacy - from Sydney 2000's Environmental Guidelines to the Commission for a Sustainable London 2012," *Australian Planner*, no. 3, (2012), 203–214, <https://doi.org/10.1080/07293682.2012.706961>; Mathew Dowling, Leigh Robinson, and Marvin Washington, "Taking Advantage of the London 2012 Olympic Games: Corporate Social Responsibility through Sport Partnerships," *European Sport Management Quarterly*, no. 3, (2013), 269–292, <https://doi.org/10.1080/16184742.2013.774039>.

⁶⁸³ Commission for a Sustainable London 2012, "Procuring the Games: A Review of LOCOG's Procurement," January 2010 (2010), http://www.cs london.org/wp-content/uploads/downloads/2010/01/2010_LOCOG_Procurement_Review.pdf.

policies related to sustainable considerations.

4.2 Governance System of the London Olympic Games

A wide array of stakeholders are tasked with delivering sustainability and legacy, but the principal accountability lies with LOCOG and ODA.⁶⁸⁴ LOCOG organized, publicized, and staged the 2012 London Games in coordination with IOC and was responsible for delivering the Olympic goods and services dependent on its sponsors, suppliers, and licensees.⁶⁸⁵ In addition, the ODA is the delivery body in charge of creating the Olympic infrastructures, such as venues, facilities and infrastructure, and transport.⁶⁸⁶

As to the nature of these two bodies, the ODA is a public body accountable to the Secretary of State for Culture, Media and Sport and funded through council tax, national lottery, and regeneration funding.⁶⁸⁷ Whereas LOCOG is a private body limited by guarantee, London Olympic Games raise the vast majority of the funding from the sale of tickets and merchandise, sponsorship, broadcasting revenues, and contributions from the International Olympic Committee.⁶⁸⁸

The ODA has played an extremely prominent role to date, as it has been responsible for the demolition, remediation, design, and construction work on the Olympic Park and other new permanent installations for the 2012 Games. ODA established the procurement guide - the legacy: sustainable procurement for

⁶⁸⁴ Led by the Department for Culture, Media and Sport (DCMS), as the lead London 2012 Government Department, Government proactively sought to ensure that its priorities were reflected in plans for the Games. Departments like DCMS, the Department for Environment, Food and Rural Affairs (Defra), the Department for Communities and Local Government (DCLG), the Department for Business, Innovation and Skills (BIS) and the Department for Transport (DfT) together with other agencies (such as the Environment Agency, The Royal Parks and the Waste and Resources Action Programme (WRAP)) played a vital part in setting an ambitious but achievable set of goals. Department for Environment Food & Rural Affairs, "London 2012 Olympic and Paralympic Games. The Legacy: Sustainable Procurement for Construction Projects. A Guide," July (2013): 1–19, <https://doi.org/Publisher:>., Available on www.gov.uk/defra.

⁶⁸⁵ Toyne, "London 2012-Winning the Olympic 'Green' Medal;" Phil Cumming, David Stubbs, and Gerry Walsh, "Sustainable Procurement – the London 2012 Olympic Games and Paralympic Games," 2012. P2.

⁶⁸⁶ Toyne, "London 2012-Winning the Olympic 'Green' Medal." P235.

⁶⁸⁷ "London 2012 Pre-Games Sustainability Plan," 2012. 338. https://library.olympic.org/Default/doc/SYRACUSE/47340/sustainability-report-london-2012-london-organizing-committee-for-the-olympic-and-paralympic-games?_lg=en-GB. P14.

⁶⁸⁸ "London 2012 Pre-Games Sustainability Plan." 338. https://library.olympic.org/Default/doc/SYRACUSE/47340/sustainability-report-london-2012-london-organizing-committee-for-the-olympic-and-paralympic-games?_lg=en-GB. P14.

construction projects. ODA integrates sustainability into its procurement policy and puts a sustainability team and partners with developing project management processes to integrate sustainability objectives into the supply chain.⁶⁸⁹

Unlike its sister organization, LOCOG was mainly responsible for the staging period and was not subject to EU public procurement rules because of its private finance.⁶⁹⁰ However, an explicit commitment to sustainable procurement was made in the London 2012 Candidature File. It was also obliged by the Joint Venture Agreement to operate a fair and competitive procurement process with due regard to environmental, social, and ethical considerations.⁶⁹¹

Thus, the 2012 London Olympic Games are based on the whole governance system established by CSL, providing external governance, internal decision-making governed by the auditing structure that comprises the Olympic Board together with the boards of stakeholder organizations. They aimed to deliver the sustainability objectives through measures, such as incorporating sustainability principles into the day-to-day management of LOCOG and ODA's construction projects and working closely with the London municipal government, nations, and regions, central government British Olympic Authority, IOC. Sustainable procurement is recognized as one significant factor for clearly achieving a sustainable Olympic legacy in 2012 London. Below, the specific sustainable policies will be explored.

4.3 Sustainable Procurement Policies

As analyzed, the procurement activities are mainly under the LOCOG and ODA. LOCOG's procurement activity involves hundreds of individual purchases from a wide range of suppliers and licensees in a short but intensive period. The sourcing and procurement of products and services are probably one of the most significant areas in

⁶⁸⁹ Department for Environment Food & Rural Affairs, "London 2012 Olympic and Paralympic Games. The Legacy: Sustainable Procurement for Construction Projects. A Guide." P6.

⁶⁹⁰ Cumming, Stubbs, and Walsh, "Sustainable Procurement – the London 2012 Olympic Games and Paralympic Games." P2.

⁶⁹¹ Cumming, Stubbs, and Walsh, "Sustainable Procurement – the London 2012 Olympic Games and Paralympic Games." P2.

which LOCOG can make a difference in sustainability performance.⁶⁹² Sustainable Sourcing Code related to LOCOG inspired change amongst the suppliers, sponsors, and licensees, who see sourcing sustainably as the business advantage. As to the construction product manufacturers, contractors, and designers on the Games governed by ODA, the ODA integrated sustainability into its procurement policy using its purchasing power to support sustainable development in London and the implementation of the ODA's Sustainable Development Strategy.⁶⁹³

Both LOCOG and ODA took sustainability into account as an integral part of the definition of value for money, according to the balanced scorecard expanding the evaluation criteria beyond the traditional themes of cost for ODA procurement policies, on the other, marked bids red, amber or green against specific sustainability requirements set out in the tender documents for LOCOG procurement policies.⁶⁹⁴ As to LOCOG procurement policies, value for money placed a high priority on environmental, social, and ethical issues when procuring products and services for the Games and doing business with responsible suppliers and licensees; companies.⁶⁹⁵ And value for money in ODA procurement policies included the factors including costs (program cost, project cost, and contract cost), delivery time, safety & security, equalities & inclusion, environment, and quality & functionality.⁶⁹⁶

The value for money incorporated into sustainable considerations and the 2012 Olympic games embedded sustainability in its approach and adopted different tools suited to the supply chains involved. The ODA adopted the project management system reporting sustainability Key Performance Indicators (KPIs) to integrate sustainability objectives into the supply chain. It also identified and used low-impact responsibly sourced products and materials and ensured good supply chain management in

⁶⁹² LOCOG, "London 2012 Sustainability Report." P36.

⁶⁹³ N. Paterson, "Learning Legacy. Lessons Learned from the London 2012 Construction Project. Development and Use of BREEAM for Olympic Park Venues," *London 2012 Learning Legacy*, 2011, 27. <http://learninglegacy.independent.gov.uk/themes/health-and-safety/research-summaries.php>. P4.

⁶⁹⁴ Department for Environment Food & Rural Affairs, "London 2012 Olympic and Paralympic Games. The Legacy: Sustainable Procurement for Construction Projects. A Guide." 2012. 22. P12.

⁶⁹⁵ "LOCOG Sustainable Sourcing Code." P5.

⁶⁹⁶ Department for Environment Food & Rural Affairs, "London 2012 Olympic and Paralympic Games. The Legacy: Sustainable Procurement for Construction Projects. A Guide." 2012. 22. P13.

procurement policy. Besides, a sustainable supply chain was laid down from the pre-procurement, tender specifications, pre-qualification, award, and contract stages to get the best suppliers and manufacturers.⁶⁹⁷ Similarly, the sustainable sourcing code for LOCOG was applied via the tendering process in their business and supply chain, which are in the entire network of suppliers, factories, warehouses, distribution centers, and retailers that participate in the production process from raw materials to finished products.⁶⁹⁸

4.3.1 Environmental considerations

According to the five principal themes, climate change, waste, biodiversity and ecology, inclusion, and healthy living, there is no doubt that environmental factors must be considered in the preparation process. Innovative solutions as a critical strategy for green technologies in the supply chain were delivered in ODA's tender process. Tenderers were asked to ensure that they either met or exceeded the following targets: a minimum construction material of at least 20 percent recycled content; use energy-efficient, low emissions vehicles on-site, low carbon use in construction projects, and innovative design and products, etc.⁶⁹⁹

On the other, the international certificates and standards were adopted in the procurement process of LOCOG. For example, LOCOG encouraged procuring timber and timber products certified forest Stewardship Council (FSC) scheme, printed materials registered EU Eco-Management and Audit Scheme (EMAS), ISO 14001, or British Standard (BS 8555). Besides, products carrying a certification mark related to sustainability, such as those certified by a member of Fairtrade Labelling Organizations International (FLO), the Soil Association Organic Certification, the Rainforest Alliance, or other appropriate standards, where they represent value for money, were required in the London Olympic Games procurement process.⁷⁰⁰

⁶⁹⁷ Department for Environment Food & Rural Affairs, "London 2012 Olympic and Paralympic Games. The Legacy: Sustainable Procurement for Construction Projects. A Guide." P9.

⁶⁹⁸ "LOCOG Sustainable Sourcing Code."

⁶⁹⁹ Department for Environment Food & Rural Affairs, "London 2012 Olympic and Paralympic Games. The Legacy: Sustainable Procurement for Construction Projects. A Guide." P17.

⁷⁰⁰ LOCOG Sustainable Sourcing Code."

It is worth noting that London 2012 was the inspiration for British Standard (BS 8901), which received a high level of interest internationally.⁷⁰¹ Subsequently, ISO created an international version of the standard, ISO 20121, the first fully certifiable International Sustainability Management System standard. ISO 20121 describes the building blocks of a management system that will help any event-related organization to a) continue to be financially successful, b) become more socially responsible, and c) reduce its environmental footprint.⁷⁰² ISO 20121 applies to all types and sizes of organizations involved in the events industry, from caterers, lighting and sound engineers, security companies, stage builders, and venues to independent event organizers and corporate and public-sector event teams.⁷⁰³

4.3.2 Social considerations

One of the motivations for organizing the 2012 London Olympic Games is the ambition to regenerate the Lower Lea Valley, which was a deprived area of East London located some 13 kilometers from the center of London by bringing communities together and acting as a catalyst for profound social and economic change.⁷⁰⁴ Thus, this ambition resulted in a series of initiatives requiring social considerations to integrate into LOCOG and ODA's procurement process.

Firstly, The ODA published its Inclusive Design Strategy in June 2008, which set out the framework for how the Olympic Park will be designed and constructed to be inclusive for people of all cultures, faiths, and ages and accessible to disabled people.⁷⁰⁵ Secondly, Diversity and Inclusion bring opportunities for under-represented groups in the construction industry, including women, Black, Asian, and minority ethnic (BAME), and disabled people, which is an explicit requirement of the LOCOG Sustainable

⁷⁰¹ Maria Konstantaki, "Environmental Sustainability of Olympic Games," *Journal on Tourism & Sustainability*, no. 2 (2018), 12.

⁷⁰² www.iso20121.org.

⁷⁰³ www.iso20121.org.

⁷⁰⁴ Cox, "Sustaining a Legacy - from Sydney 2000's Environmental Guidelines to the Commission for a Sustainable London 2012." P208.

⁷⁰⁵ LOCOG, "London 2012 Sustainability Plan," December 2008, <http://learninglegacy.independent.gov.uk/documents/pdfs/sustainability/1-cp-london-2012-sustainability-plan-2nd-edition.pdf>.

Sourcing Code.⁷⁰⁶ Thirdly, the suppliers and licensees meet the Ethical Trading Initiative (ETI) Base Code provisions, including consideration of local initiatives such as the London Living Wage where relevant.⁷⁰⁷ Fourthly, all suppliers of services and products must be actively involved in working safely to mitigate health and safety risks and report accidents and hazards to LOCOG.⁷⁰⁸

In terms of SMEs, the CompeteForBusiness brokerage system launched in January 2008 now has more than 42,000 suppliers registered, of which more than 29,500 were small companies with less than 50 employees and 30,000 were based outside of London.⁷⁰⁹ In addition, a Business Opportunities Network was developed to ensure that UK businesses and social enterprises can benefit from contracting and sub-contacting opportunities and build networks and skills that will ensure a sustainable legacy for UK businesses.⁷¹⁰ Particularly, ODA intended to work with contractors to open up supply chain opportunities for smaller businesses and those owned by women, BAME, and disabled people in a transparent, fair, and open way.

5. Beijing-Zhangjiakou Winter Olympic Games (2022)

Firstly, the idea of 'co-ordinately developing mass sport and elite sport' and the idea of 'using the 2022 Games to get a population of 300 million in China to play winter sports, are promoted in the promotion plan of mass winter sports (2016-2020) issued by China General Administration Sports (GAS). Compared to the policy goal of 'using the opportunity of the 2008 Olympics to promote Beijing urban transformation and solving environmental issues,' the ambition for the 2022 Winter Olympics was relatively detailed and significant in developing mass sport (people-oriented) had not been explicitly addressed when the 2008 Olympics were hosted.

Secondly, the 2022 Olympics-related plan was singled out as a priority, outlined in a specific section in the 13th Five-Year Plan from 2015 to 2020 (the top-level economic

⁷⁰⁶ LOCOG, "London 2012 Sustainability Report." April 2011.

⁷⁰⁷ "LOCOG Sustainable Sourcing Code."

⁷⁰⁸ "LOCOG Sustainable Sourcing Code."

⁷⁰⁹ LOCOG, "London 2012 Sustainability Plan," December 2008.

⁷¹⁰ LOCOG, "London 2012 Sustainability Plan," December 2008.

and social development of the Chinese central government), which encourages the development of sports industries by 2022 Olympic.⁷¹¹ The 2022 Winter Olympic legacy plan (including urban infrastructure, sports industries, culture, and social goals) has for the first time been linked with a broader agenda – the National Strategy of Coordinated Development for the Beijing-Tianjin-Hebei Region – by introducing the program of 'the Beijing-Zhangjiakou Sport, Culture, and Tourism Belt' (Beijing 2022 Olympic Winter Games Bid Committee, 2014).⁷¹² Compared to Beijing and Tianjin, Zhangjiakou, a city of Hebei province, has a relatively weak economic development level. The development goals in national and regional plans in innovation industries and green technologies are required for the 2022 Winter Olympic Games and promote sustainable regional development in Beijing-Tianjin-Hebei economic zone. In addition, the 2022 Winter Olympic Games follow the UN 2030 SDGs.⁷¹³

Thirdly, from the started point of the planning Olympic legacy integrated into the whole life cycle of the Olympic games, on the one hand, "green, inclusive, open, and clean 2022 Beijing Olympic" incorporate sustainable development, green, and shared values into the whole life cycle of the preparation process in pre-game time, the game time, and the post-game.⁷¹⁴ On the other hand, the Olympic legacy planning maximizes the integration of international, national, and local development strategies and urban planning.⁷¹⁵ *The Legacy Plan of the Olympic and Paralympic Winter Games* issued in 2017 states that the 2022 Olympic Games fully use procurement and material management as one of the five important fields to achieve a sustainable Olympic legacy.⁷¹⁶

⁷¹¹ The 13th Five-Year Plan. <https://www.cma.org.cn/attachment/2016322/1458614099605.pdf>.

⁷¹² The Outline of the Plan for Coordinated Development for the Beijing-Tianjin-Hebei Region. Beijing: Central Financial and Economic Affairs Commission.

⁷¹³ Wang Yue and Sun Baoli, "Legacy of Beijing 2022 Winter Olympic Games in the Sustainable Development Perspective," *Journal of Beijing Sport University*, 2019, 42-49. P46.

⁷¹⁴ Yue and Baoli. "Legacy of Beijing 2022 Winter Olympic Games in the Sustainable Development Perspective," P44.

⁷¹⁵ Yue and Baoli, "Legacy of Beijing 2022 Winter Olympic Games in the Sustainable Development Perspective." P46.

⁷¹⁶ The Legacy Plan of the Olympic and Paralympic Winter Games Beijing 2022. <https://stillmedab.olympic.org/media/Document%20Library/OlympicOrg/News/2019/02/Beijing2022-Legacy-Plan.pdf>.

5.1 Sustainable Actions

According to *Beijing 2022 Olympic and Paralympic Winter Games Sustainability Plan*, The Beijing 2022 Games is a landmark event for China, and the Games preparations will strongly contribute to the country's implementation of the UN 2030 Agenda for Sustainable Development.⁷¹⁷ Given sustainable development goals integrated into the 2022 Beijing Olympic games clearly, the sustainable actions are implemented in Olympic venues, environment (ecology and low-carbon), sustainable procurement, infrastructure (urban regeneration), industrial development, and human development.⁷¹⁸

The concept of sustainable procurement, which integrates the concept and requirements of sustainability into the Beijing 2022 procurement process, is put forward clearly.⁷¹⁹ The 2022 Beijing organizing committee Olympic games (BOCOG) formulates and implements the venue sustainability guide and sustainable procurement guide (sustainable sourcing guide) for the Games, which will become a blueprint for future events in China.⁷²⁰ Beijing 2022's sustainability team will be involved in the procurement and sourcing process by specifying each procurement project's sustainable requirements and standards and monitoring adherence to its sustainability requirements of major procurement projects. Through this approach, China aims to achieve higher environmental and social responsibility levels across the world value chain and supply chain by Olympic procurement.

5.2 The Governance of Beijing Winter Olympic Games

The central government and local governments of Beijing Municipality, Hebei Province, and Zhangjiakou city attach great importance to the Games preparations. The

⁷¹⁷ "Beijing 2022 Olympic and Paralympic Winter Games Sustainability Plan," 2020.

<http://www.olympiccities.org/wp-content/uploads/2020/05/Beijing-2022-Releases-Sustainability-Plan.pdf>.

⁷¹⁸ "Beijing 2022 Olympic and Paralympic Winter Games Sustainability Plan," 2020.
<https://www.beijing2022.cn/a/20200515/003205.htm>.

⁷¹⁹ "Beijing 2022 Olympic and Paralympic Winter Games Sustainability Plan."
<https://www.beijing2022.cn/a/20200515/003205.htm>.

⁷²⁰ "Beijing 2022 Olympic and Paralympic Winter Games Sustainability Plan."
<https://www.beijing2022.cn/a/20200515/003205.htm>.

central and local governments work with the 2022 Beijing Organizing Committee of Olympic Games (BOCOG) to formulate and implement the sustainability strategy. Beijing 2022 Steering Committee leads BOCOG and hosting cities governments, including government departments of Beijing municipality, Heibei province, and Zhangjiakou city. 2022 BOCOG is an independent public institution that obtained financial funds, which is seen as the public sector in China's civil law, government procurement law.

BOCOG works closely with other stakeholders such as non-governmental organizations, social organizations, the general public, and private enterprises to advance the work on various fronts in preparing for the sustainable Beijing Olympic Games and sustainable Olympic Legacy. The Beijing Olympic Games' governance shows that procurement activities in the preparation process are subject to the Chinese government procurement legal system and play a crucial role in achieving a sustainable Olympic legacy for locals.

5.3 How do the 2022 Beijing Olympic Games Interact with Environmental, Social, and Economic Goals?

5.3.1 Environmental goals and innovation technologies

"Green, inclusive, open, and clean" value as the top national development value is prioritized in the 14th Five National Plan from 2020-2025 too. It shows that Olympic values are consistent with the national goals in the 13th and 14th national five plan. Environmental commitment (Low-carbon, ecological harmonization) is treated as the overarching policy, especially through technologies and innovation and developing a green economy. China has made a big difference in cleaning energy, materials, Artificial Intelligence (AI), and 5G in the recent decade.⁷²¹ Particularly, in the fight against climate change, China has also shown its determination at the UN General Assembly in 2020 that China will aim to hit peak carbon emissions before 2030 and reach carbon

⁷²¹ 13th Five year national plan. <https://www.cma.org.cn/attachment/2016322/1458614099605.pdf>. 14th five year national plan. http://www2.hnsyu.net/fzghc/fzgh/202011/t20201102_104410.html.

neutrality by 2060.⁷²²

The Beijing 2022 Winter Olympics Bid Report states that Beijing fully implements a carbon management plan, construction of low-carbon communities, and new energy vehicles.⁷²³ Hydrogen Fuel Cell Vehicle's adoption and procurement in Olympic shuttle buses enable the booming of new cleaning energy vehicles.⁷²⁴ As the pilot project, the Agenda of the Promotion and Application of New Energy Vehicles in Hebei Province in 2019 proposed to promote the application of 35,500 new energy vehicles (standard vehicles) throughout the province and the full coverage of new energy vehicles in the core area of the 2022 Winter Olympics, especially taking advantage of government procurement.⁷²⁵ Furthermore, Energy-saving and eco-friendly technologies and products will be applied in venue construction and renovation. The environmental management system will focus on energy conservation, low-carbon energy, solid waste, and waste-water treatment.⁷²⁶

5.3.2 Social goals and poverty reduction

In September 2015, at the United Nations summits, world leaders adopted the 2030 Agenda for Sustainable Development, listing 17 sustainable development goals (SDGs). Countries have been mobilized to end all forms of poverty and fight inequalities while ensuring that no one is left behind. China has set meaningful goals to eliminate extreme poverty by 2020 in the 13th Five-Year Plan (2015-2020).⁷²⁷ The poverty reduction approaches in china include government, society, regions, urban and rural districts, targeted poverty alleviation, ecological poverty alleviation, technological poverty alleviation, etc.⁷²⁸ Until 2020, China achieved extreme poverty elimination by targeted poverty alleviation policy, especially in poverty-stricken areas and less-developed rural

⁷²² 'Enhance solidarity' to fight COVID-19, Chinese President urges, also pledges carbon neutrality by 2060. <https://news.un.org/en/story/2020/09/1073052>.

⁷²³ 戴丽. 申办 2022 年冬奥会我国承诺可持续发展 [J]. 节能与环保, 2015(2): 34 – 35.

⁷²⁴ 冬奥会氢能经济“蛋糕”有多大? <https://www.china5e.com/news/news-1089680-1.html>.

⁷²⁵ 河北前 8 月推广 3 万辆新能源汽车提前完成年度任务. <http://m.caigou2003.com/show.php?classid=32&id=4525028&style=0&bclassid=18&cid=32&cpage=0>.

⁷²⁶ "Beijing 2022 Olympic and Paralympic Winter Games Sustainability Plan," 2020. <https://www.beijing2022.cn/a/20200515/003205.htm>.

⁷²⁷ 中国财政科学研究院. 中国扶贫可持续筹资报告. www.cn.undp.org.

⁷²⁸ China's Poverty Alleviation Database. <https://www.jianpincn.com/>.

districts, to the sustainable development goals that no one is left behind.⁷²⁹ Poverty reduction is regarded as a top national strategy by establishing a series of national policies according to the "the development and subsistence rights are the basic human rights."

The 2022 Beijing Winter Olympic games engage with Chinese poverty alleviation policy by guiding the Winter Olympics construction project to solve local poverty and poverty alleviation through consumption in preparation for the Winter Olympics.⁷³⁰ It aims to showcase the Chinese miracle and Chinese experience by the 2022 Beijing Olympic Games. By the way, Government procurement is also seen as an important tool to achieve poverty reduction in China. The two government procurement policy orders issued by the central government started to be implemented in 2019, such as government procurement policies to support poverty alleviation and plans for government procurement of agricultural products in poor areas. Beijing establishes the Beijing municipal leading group's office for poverty reduction, cooperating and assisting those who work with the 2022 BOCOG in poverty reduction.⁷³¹

5.3.3 Economic goals and the industrial revolution

In recent decades, innovation strategy in Chinese industrial development and economic development has paid the most attention. China put forth Notice of the State Council on Issuing "Made in China 2025" in 2015. It aims to put China on a new path to industrialization, emphasizing innovation, expanded use of new-generation information technology, intelligent manufacturing, consolidation of the industrial base, integration of industrial processes and systems, and a robust multilayer talent development structure.⁷³²

The 2022 Beijing Winter Olympics is seen as a promoter, which encourages the

⁷²⁹ 亚洲减贫报告 (2019) . <http://www.boaoforum.org/u/cms/www/201909/24155554c163.pdf>.

⁷³⁰ 市扶贫支援办领导到北京冬奥组委对接扶贫工作. http://fpzy.beijing.gov.cn/zwx/gongzuodongtai/202008/t20200803_1970339.html.

⁷³¹ 北京市扶贫协作和支援合作工作领导小组办公室. <http://fpzy.beijing.gov.cn/>.

⁷³² 国务院关于印发《中国制造 2025》的通知. http://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm.

application of innovative technologies in the construction venues the preparation process.⁷³³ At the end of 2020, the core competition zone has completed 5G signal full coverage, and the first 5G high-speed train between Beijing and Zhangjiakou operated in 2020.⁷³⁴ Apart from information technologies (IT), green technologies and low carbon are required in the 2022 winter Olympic Games' whole life cycle, for example, the construction of Olympic venues, transportation, materials management, etc.

5.4 Beijing Winter Olympic Procurement Policy and Chinese Government Procurement Legal Framework

The Beijing Winter Olympic Sourcing Guide formulates (1) integrating sustainability goals into all project management teams and supply chains; (2) establishing sustainable procurement process from confirmation procurement needs, procurement budgets, marketing consultancy, potential suppliers interview, the choice of procurement procedures, qualification review of bidders, the sustainable requirements of assessing bidder, the awarding of contractors, contract performance and supplier audits, the disposal and post-games management.⁷³⁵

In addition, the Olympic procurement process's sustainable criteria include prohibiting corruption, equal competition, intellectual property protection, respecting fundamental human rights (prohibiting the suppliers abused human rights), and environmental requirements.⁷³⁶ Moreover, the international standards are taken into account the whole life cycle of the Beijing Winter Olympic Games, for example, ISO 20121 (Mega-Events Sustainability Management System) and ISO 14001 (Environmental Management System), ISO 26000 (Social Responsibility Guideline), and UNGC (United Nations Global Compact).⁷³⁷ With respect to procurement coverage

⁷³³ 大批科技成果助力北京冬奥会. http://www.news.cn/sports/2021-11/18/c_1128077884.htm.

⁷³⁴ 今年年底前张家口冬奥赛事核心区等将实现5G信号全覆盖. <https://www.beijing2022.cn/a/20200514/018373.htm>.

⁷³⁵ 2022 Beijing Winter Olympic Games Sourcing. The information get from the interview with officials in 2022 Beijing steering committee; 北京2022年冬奥会和冬残奥会可持续性政策. <https://www.beijing2022.cn/a/20161230/030509.htm>; <https://www.beijing2022.cn/a/20200409/007348.htm>.

⁷³⁶ 2022 Beijing Winter Olympic Games Sourcing. <https://www.beijing2022.cn/a/20200409/007348.htm>.

⁷³⁷ 北京2022年冬奥会和冬残奥会可持续性政策. <https://www.beijing2022.cn/a/20161230/030509.htm>.

subject to the sustainable sourcing code, all kinds of organizations and enterprises that provide goods, projects (works), and services for the Beijing 2022 Winter Olympics are bound by this sustainable sourcing guide.⁷³⁸

Sustainable Sourcing Guide is considered as the overarching principle in the whole life cycle of the Olympic preparation process. The Olympic sustainable procurement policy adopts the highest commitment in coordination with international standards (UN and ISO). The poverty alleviation by Olympic is a very dramatic accomplishment and lead by example as "Chinese experience."⁷³⁹

This Beijing Olympic Games experience contributes to the promotion of sustainable policy in the Chinese government procurement market, especially the Chinese procurement officials' professional knowledge in both central and local government. By the way, Olympic procurement policy can be seen as the pilot project as a mega-event in the application of sustainable policy, which can be promoted in the whole Chinese government procurement market. Particularly, the reform of green government procurement lists in 2019 shows the determination to advance environmental consideration. Also, poverty alleviation as one social goal has become a Chinese miracle in using government procurement policy to pursue human development and equality.

6. Conclusion

This chapter explores the sustainable procurement policies in the mega-event Olympic Games (2006 Turin, 2008 Beijing, 2012 London, and 2022 Beijing-Zhangjiakou) in two major economies (China and EU). Undoubtedly, sustainability is the core pursuit for these four Olympic Games by taking advantage of the Olympic economy to foster locals' environmental, social, and economic interests and legacy.

The Olympic procurement policies have been particularly important since

⁷³⁸ <https://www.beijing2022.cn/a/20200409/007348.htm>.

⁷³⁹ Action 9: Promote Human Development. Adhere to the people-oriented principle, offer personnel training, create jobs and business opportunities for local residents, alleviate local poverty, and align the Beijing 2022 Games with regional human development. "Beijing 2022 Olympic and Paralympic Winter Games Sustainability Plan," 2020. <http://www.olympiccities.org/wp-content/uploads/2020/05/Beijing-2022-Releases-Sustainability-Plan.pdf>.

establishing the 2019 Olympic Games Guide on Sustainable Sourcing and the 2018 IOC Supplier Code. For the 2006 Torino Olympic and 2012 London Olympic, the hosting government adopts the dual-model in the organizing committee and department in charge of procurement activities. TOROC and LOCOG have defined the private entities in coordination with the supply activity in sponsorship, licenses, and contracts in the organization's operation and preparation process. Agenzia Torino 2006 and Olympic Delivery Authority (ODA) 2012 - the public bodies - were responsible for the construction projects for Olympic Venues, villages, and other facilities. However, the 2022 BOCOG is the same as the governance model and organization operation in the 2008 Olympics as the public sector. The nature of the public sector determines the public procurement legal system's implementation in the Olympic procurement process.

Nevertheless, all these four Olympic Games established their specific procurement policies by adopting, creating, and implementing innovative environmental and sustainable standards and eco-labels (2006 Torino, 2008 Beijing, and 2012 London), unprivileged groups friendly policies (2012 London and 2022 Beijing-Zhangjiakou), labor rights, and workplace safety (2012 London and 2022 Beijing-Zhangjiakou), and poverty reduction policies (2022 Beijing Olympic). To a large extent, because of the high expectations in sustainability, the Olympic procurement policies are more advanced and well-rounded than public procurement policies, mostly in these four hosting countries.

Although procurement policies in the preparation process are the crucial tools for achieving "sustainable Olympic," "sustainable Olympic legacy," and "sustainable implication," they were going through a process from environmental consideration in 2006 and 2008 to ecological, economic, innovation, and social (human rights) policies in 2012 and 2022. Sustainable Olympics procurement policies must relate to the Olympic Mission of IOC and interact with national sustainable development strategies. Exception for environmental commitment being a global concern, innovative technologies development, innovation industries, labor rights, unprivileged groups, anti-poverty agendas is also increasingly emphasized in procurement activities.

Chapter 7: Constraints, Challenges, Advantages, and Contributions of Chinese Public Procurement Compared to EU SPP

1. Introduction

Over the decades, there has been an impressive trend of taking advantage of public procurement power to pursue sustainable development goals worldwide. The function of public procurement policies shifts from emphasizing economic goals and environmental consideration towards valuing ecological protection, green technologies, innovative industrials, social inclusion, and human rights, etc., in China and the EU. SPP becomes an effective mechanism or good governance model for public entities by encouraging and stimulating private sectors in achieving their specific Sustainable Development Goals. There have currently been a large number of policy instruments in environmental standards, social labels, and innovative tools in life cycle cost analysis (environmental and social factors) developed in the international community and some specific countries.

Although sustainable development is becoming a shared value and goal for all countries, it is no doubt that countries weigh different policy goals according to their national sustainable development strategies. On the other hand, the choice of policy tools also rests on the stage of economic development. The EU, as an important developed economic entity, has built a quite sophisticated public procurement legal system promoting economic, environmental, and social considerations under the EU sustainable development strategies. Compared to the EU, China started establishing the Chinese public procurement legal system in 2000. And public procurement policy promoting environmental protection was attached importance in 2006. Through the preparation process for the 2008 Beijing Olympic Games, China learned from the advanced environmental standards, labels, and procurement policies from the previous Olympic host countries, particularly 2006 Torino in Italy.

Since 2008, according to Chinese national sustainable development strategies and the Five-Year Plan, China has tried to improve its public procurement legal framework and taken advantage of procurement policies to encourage environmental protection, green technologies, independent innovation, SMEs, and anti-poverty agenda. So far, China has carried out the Chinese public procurement legal system's reform, including GPL reform in 2014 and BL reform in 2017. This chapter aims at the constraints, challenges, advantages, and contributions for China itself and examines the role China (Chinese public procurement market) plays in the international community.

2. Environmental Policies

Although the latest reform in green procurement lists aims to promote flexibility and modernization, it still does not change the institutionalized mechanism. On the one hand, although China's green government procurement system shifts from the product list to product categories lists, it still rests on the product-related mechanism. On the other hand, the green procurement lists still need to rely on China's certification system that attests to the green factors in environmental protection and energy-saving for products. The list's product categories are obliged to acquire China's environmental labeling (Ten Rings) and Energy Conservation Certification.

As argued, the *Notice on Adjusting and Optimizing the Implementation Mechanism for Government Procurement of Energy-saving Products and Environmentally Labeled Products* (MOF NO. 9, 2019) changed the products list system, which just allows public sectors to buy the products produced by specific firms certified by two certification agencies. It modernizes and simplifies the products categories system, which officially certifies the products made by any firms certified by expanded certification agencies. In addition, this administrative order also points that public sectors are not restricted by environmental labeling (Ten Rings) and Energy Conservation Certification. Although this Notice gives the Chinese public sectors more autonomy in adopting environmental standards, it does not specify the scope and categories of other standards and certifications. This unclear model makes the application of environmental and green

standards a challenge.

On the other hand, the Ten Rings and energy conservation certification mainly focus on some specific products. The products certified by Ten Rings and energy conservation are far from satisfying the green government needs. China established the *Measures for the Administration of the Use of Green Product certification* in May 2019 and built the China Green Product Mark Certification Information Platform, including the accreditation (Green Tree) in express packaging, plastic products, cleaning products, textile products, and building products, etc.⁷⁴⁰ Given the expansion of the scope in green government procurement, China also expands the application of environmental and green certification and standards. As confirmed in this administrative Notice, it is evident that the Chinese central government encourages the stricter green requirements in government procurement and the promotion and application of green certificated products (Green Tree). It seems that China is trying to establish a high expectation of green government procurement policy in top central government.

However, it is unclear to simplify the application of environmental labeling (Ten Rings), Energy Conservation Certification, and Green products certification (Green Tree). Or Chinese central government wants to make Ten Rings labeling and Energy Conservation Certification products the compulsory procurement, but the Green Tree certification products the higher and voluntary standards. It still remains to be seen the implementation in the future.

China has implemented GPP for more than a decade since 2006. The GPP performance in recent years is inadequate, which restricts GPP from better exerting its advantages in ecology and sustainability.⁷⁴¹ The conceptual cognition of GPP under the Chinese public procurement legal system is deficient. There is not an explicit definition of GPP. In China, the implementation approach is mainly two lists system, as argued. Even the ongoing Chinese government procurement law reform acknowledges the performance-oriented procurement considering public policy (environmental

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http://gkml.samr.gov.cn/nsjg/rzjgs/201905/t20190507_293448.html;
<http://www.chinagreenproduct.cn/GPIA/front>.

⁷⁴¹ Junqi Liu et al., "Improving the Green Public Procurement Performance of Chinese Local Governments: From the Perspective of Officials' Knowledge," *Journal of Purchasing and Supply Management*, no. 3 (2019), 1–13.

protection, SMEs, poverty reduction, etc.). Performance management rests on the procurement process from creating procurement needs, procurement plans, and procurement contracts based on performance goals. Despite the fact that performance requirements imply the life-cycle consideration from the establishment of procurement need to procurement contract, the ongoing Chinese government procurement law is silent and unclear on selecting suppliers, awarding criteria, and bidding procedures. Nevertheless, the Chinese two lists system shows that the products that required Ten Rings labels and energy conservation certification in the two lists are qualified to be selected in the bidding procedures.

In practice, the Chinese government procurement tender document is mainly required to consider public policies in environmental protection, supporting SMEs, welfare social enterprises for protecting disabled people, and supporting anti-poverty programs from the government procurement programs in Guizhou and Hubei province, and Guangzhou city.⁷⁴² In Hubei's Video image sharing, networking, access platform upgrade procurement project, ISO 14001 environmental management certification, ISO9001 quality management is the required awarding factor in the evaluation procedure.⁷⁴³ In Guizhou tender document, after selecting the candidate suppliers, EPLs and ECLs also are considered the awarding factors and can acquire discounting price.⁷⁴⁴ In Guangzhou tender document, except for ISO 14001 environmental management certification and ISO9001 quality management, the Occupational Health and Safety Management System is also seen as one important awarding factor in the awarding procedure.⁷⁴⁵ Although China's public procurement legal system is quite ambiguous in implementing the GPP tool, China has much more discretion, and free space in taking advantage of international, national, and industrial standards in the life cycle of procurement procedures from procurement needs to selecting candidates,

⁷⁴² Guizhou province. <http://guizhou.chinatax.gov.cn/xxgk/zfcg/201807/W020190219433442813236.pdf>; Guangzhou. <http://rsj.gz.gov.cn/attachment/0/61/61048/2405658.pdf>; Hubei province. https://d1tzzns6d79su2.cloudfront.net/uploads/embedded_file/21404ed499f105829da10ebd649e689d649d555b1230f59e4bed60dea86e561c/40760874-dbb5-45fe-8856-f5b9c1e8c2ae.pdf.

⁷⁴³ Hubei province. https://d1tzzns6d79su2.cloudfront.net/uploads/embedded_file/21404ed499f105829da10ebd649e689d649d555b1230f59e4bed60dea86e561c/40760874-dbb5-45fe-8856-f5b9c1e8c2ae.pdf.

⁷⁴⁴ Guizhou province. <http://guizhou.chinatax.gov.cn/xxgk/zfcg/201807/W020190219433442813236.pdf>.

⁷⁴⁵ Guangzhou. <http://rsj.gz.gov.cn/attachment/0/61/61048/2405658.pdf>.

awarding assessment.

Compared to the concept of GPP in the EU, GPP is the procurement process that the government adopts to encourage enterprises to implement environmentally friendly design and manufacturing to reduce the environmental impact of a purchased product throughout its life-cycle.⁷⁴⁶ From *the Buying green! A handbook on green public procurement* (EU 2016),⁷⁴⁷ the process-oriented GPP is understood from two aspects. One is to cover all public procurement procedures, above and below the thresholds defined by the European public procurement Directives in a broad sense from defining the contract requirements, selecting and excluding tenderers, awarding a contract, contract performance monitor, and auditor. Another is understood from the life cycle analysis, including the cost of environmental externalities. The purchasing prices include purchasing costs (production, delivery, installation), operating costs (energy, fuel, and water use, spares, and maintenance), and end-of-life costs (decommissioning or disposal) during the lifetime of products. The EU green procurement was tied to a nuanced understanding of the different requirements by which contracting authorities may set in a procedure, the four different kinds of criteria being: 1) Technical specifications, 2) Selection criteria (i.e., exclusion and suitability criteria), 3) Award criteria, and 4) Contract performance clauses.⁷⁴⁸ In each procurement stage, the EU considers green and social factors from different aspects, technical specifications from environmental characteristics, or by reference to technical specifications and national, EU, and other standards accompanied by the words "or equivalent;" selection criteria from environmental law compliance used as a qualitative selection criterion and compliance with quality assurance standards and environmental management standards (the ISO 14000 series, EMAS, other relevant certificates;) award criteria from the new life-cycle costing approach; and contract performance as the post-award stage from the

⁷⁴⁶ "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Public Procurement for a Better Environment [Brussels, 16.7.2008 COM(2008)400 Final]," 2008, <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=528&ArticleID=5748&l=en>.

⁷⁴⁷ "Buying Green! A Handbook on Green Public Procurement," 2016, <https://doi.org/10.2779/246106>.

⁷⁴⁸ Hanna Schebesta, "EU Green Public Procurement Policy: Modernisation Package, Eco-Labeling and Framing Measures," in Sarah Schoenmaekers, Wouter Devroe, and Niels Philipsen (eds), *State Aid and Public Procurement in the European Union*, (Intersentia, 2014), 129–145.

implementation of measures for (...) the protection of the environment or animal welfare, and environmental conventions listed in Annex X of 2014 Public Sector Directive.⁷⁴⁹ EU law establishes a quite detailed framed implementation measure in each stage of procurement procedures. The development and usage of labels are intrinsically linked to the distinction of the different types of procurement criteria listed above and a deep controversy on how they can be used during procurement procedures to advance environmental concerns.⁷⁵⁰

On the other hand, the ongoing Chinese government procurement law reform still adopts the two bidding evaluation methods: the lowest price evaluation method and the comprehensive valuation method considering the factors such as price, quality, performance ability, and public policy. Compared to the EU, Public procurement procedures under the Directives used either price or the most economically advantageous tender (the "MEAT") as award criteria. China and the EU generally implement two similar award criteria in the award procedure. However, China does not mention or just is silent to the life-cycle analysis and costs of purchasing goods (works/services) in the procurement process. That is to say, the LCC methodology is not very clear and mandatory factors in the award criteria of Chinese government procurement.

A particular novelty of Directive 2014/24/EU is that the MEAT can be defined on the basis of life-cycle costing, which is a holistic approach to costs (costs imputed to environmental externalities linked to the product, service, or works during its life cycle), covering the acquisition, use, maintenance, and end of life phases of purchases.⁷⁵¹ Under the new EU Directive proposal, LCC will no longer be restricted to MEAT;

⁷⁴⁹ Schebesta. Annex X lists the following Conventions: ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise; ILO Convention 98 on the Right to Organise and Collective Bargaining; ILO Convention 29 on Forced Labour; ILO Convention 105 on the Abolition of Forced Labour; ILO Convention 138 on Minimum Age; ILO Convention 111 on Discrimination (Employment and Occupation); ILO Convention 100 on Equal Remuneration; ILO Convention 182 on Worst Forms of Child Labour; Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer; Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention); Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention); and the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10 September 1998, and its 3 regional Protocols.

⁷⁵⁰ Schebesta. P134; Bogdana Neamtu and Dacian C Dragos, "Sustainable Public Procurement: The Use of Eco-Labels," *European Procurement & Public Private Partnership Law Review*, no. 2 (2015), 92–101.

⁷⁵¹ Schebesta, "EU Green Public Procurement Policy: Modernisation Package, Eco-Labeling and Framing Measures."

consequently, the lowest cost criteria will enable resorting to LCC as well (Article 66).⁷⁵² The proposal makes LCC a central piece of sustainable public procurement, detailing its features and encouraging contracting authorities to make use of it (Article 67).⁷⁵³ Under the EU public procurement directive, Life-cycle costing methodology incorporating environmental externalities includes the cost of greenhouse gas emissions and other pollutant emissions, and other climate change mitigation costs (Article 68).

Of course, as to the LCC methodology, the 2014 Public Sector Directive suggests that the EU hopes to come up with a common EU LCC method. The European Commission has developed the SMART-SPP LCC, emissions Online Tool, and several projects (SENSE EU project, and the European Commission initiatives for Product Environmental Footprint and Organization Environmental Footprint) looking to help public authorities calculate the life-cycle costs and emissions (CO₂, NO_x, SO₂, NMHC, and PM) of different products, work, and services to assist in procurement decision-making.⁷⁵⁴ Effective GPP also requires LCC tools that are easily implemented, life-cycle incorporation into eco-labels, and standardization in LCC methods and data transfer.⁷⁵⁵

As to the content (information and data) and classification of labels under the EU, "label" means any document, certificate, or attestation confirming that the works, products, services, processes, or procedures in question meet certain requirements (Article 2). Although, Labels can be the specific means of proof that the works, services, or supplies correspond to the required characteristics in environmental, social, and others (Article 43), social labels covering issues such as human and workers' rights, ban of child labor, etc. is more limited since there are not many labeling schemes or international organizations as it happens with eco-labels.⁷⁵⁶ The very important case (Case C-368/10 Commission v Netherlands (fair trade coffee)), where the contracting

⁷⁵² D. Dragos and B. Neamtu, "Sustainable Public Procurement: Life-Cycle Costing in the New EU Directive Proposal," *European Procurement & Public Private Partnership Law Review* 8, no. 1 (2013): 1–16, P4.

⁷⁵³ Dragos and Neamtu. P4.

⁷⁵⁴ Jason J. Czarnezki. Ph.D. thesis. Uppsala University. Green Public Procurement Legal Instruments for Promoting Environmental Interests in the United States and European Union, 2020, 188. P159.

⁷⁵⁵ Jason J Czarnezki, "EU and US Discretion in Public Procurement Law: The Role of Eco-Labels and Life-Cycle Costing," in Sanja Bogojevic, Xavier Groussot, and Jorgen Hettne (eds), *Discretion in EU Public Procurement Law*, (Bloomsbury Publishing Plc, 2019), 211–248.

⁷⁵⁶ Neamtu and Dragos, "Sustainable Public Procurement: The Use of Eco-Labels." P5.

authority sought to acquire fair trade and organic supplies for its vending machines, dealt with social implications governing the management of the product. In the call for tenders of the Dutch Coffee case, the contracting authority specified that the tenders should be evaluated both on the basis of qualitative and environmental criteria and on the basis of price, also under suitability conditions/minimum conditions, with regard to quality conditions, and requiring that the supplier should fulfill the criteria of sustainable purchasing and socially responsible businesses.⁷⁵⁷

The EU has already developed environmental externality costing models as part of existing directives and through LCC calculating tools.⁷⁵⁸ The Clean Vehicles Directive allocates a monetary value to several types of emission - carbon dioxide (CO₂), nitrogen oxides (NO_x), non-methane hydrocarbons (NMHC), and particulate matter [PM].⁷⁵⁹ The uptake of environmental LCC methodologies depends on the actual development of methodologies used by contracting authorities.⁷⁶⁰ Meaningful LCC analysis is dependent on comprehensive data on the costs of the complex interaction between a product and the environment.⁷⁶¹ Even though Article 68 of the EU New directive is silent on social aspects, the social LCC does not mean that contracting authorities cannot incorporate them in their LCC methodologies. Social-LCC will still have to meet the same requirements as laid down in Article 68, with "objectivity" and "monetization" probably going to present significant challenges.⁷⁶²

Fairtrade has been given more attention to the EU public procurement policy as a complicated and integrated concept.⁷⁶³ Since the Lisbon Treaty (2009), promoting "free and fair trade" has explicitly become one of the objectives of the European Union's (EU) relations with the wider world. The EU's Trade for All strategy (2015) emphasizes the

⁷⁵⁷ Neamtu and Dragos. P8.

⁷⁵⁸ Neamtu and Dragos.

⁷⁵⁹ European Commission, *Buying Green! A Handbook on Green Public Procurement*, 2nd ed (Publications Office of the European Union 2011) 42, 44–45.

⁷⁶⁰ Neamtu and Dragos.

⁷⁶¹ Marta Andhov, Roberto Caranta, and Anjabrock Wies, "The European Union Law of Life-Cycle Costing," in Marta Andhov, Roberto Caranta, and Anja Wiesbrock (eds), *Cost and EU Public Procurement Law: Life Cycle Costing for Sustainability*, (Routledge, 2019), 20–36, <https://doi.org/10.4324/9780429060045>. P32.

⁷⁶² Marta Andhov, Caranta, and Wies. P33.

⁷⁶³ Deborah Martens and Jan Orbie, "The European Union and Fair Trade: Hands Off?" in Sangeeta Khorana and María García (eds), *Handbook on the EU and International Trade*, (Cheltenham: Edward Elgar Publishing Limited, 2018), 281–295. P290.

need for a value-based trade policy referring to promoting sustainable development, human rights, and good governance through trade. It seems that the implication and definition of the EU's position in Fairtrade and how it has evolved. In general, the EU deals with the concept of Fairtrade in the "hands-off" approach in regulated-based and market-based aspects from the promotion of CSR policies, responsible business conduct, sustainable development and trade, and environmental, labor, and human rights throughout their entire supply chains.⁷⁶⁴ The EU has developed several initiatives to address the negative consequences of specific products and supply chains (supply-chain specific EU initiatives: Forest Law Enforcement, Governance and Trade (FLEGT) and ILO) based on a mix of policies (trade, development, internal market, and environment) and approaches (trade conditionality, reporting obligations, multi-stakeholder dialogue) and aim at improving social, environmental and human rights causes.⁷⁶⁵ In addition, the EU also promotes the Fairtrade public procurement initiative (FTPP) by the EU Fairtrade Association, a toolkit for fairtrade and EU public procurement in the World Fair Trade Organization (WFTO)-EU.⁷⁶⁶ The EU seems willing to create a supportive environment for the advancement of fair trade.⁷⁶⁷ The tendering procedure of Case C-368/10 Commission v. the Netherlands procuring coffee machines and the products necessary to make them function (coffee, tea, sugar, milk, cups), make it mandatory that those products bear the Max Havelaar label - a private label that observes the rules of the Fair Trade Labelling Organisation.⁷⁶⁸ Fairtrade covering factors such as creating opportunities for economically disadvantaged producers, paying a fair price, gender equity, working conditions, child labor, the environment, and trade relations are also connected with social-LCC and have tried to be implemented in the EU public procurement market.

In addition, Life-cycle costing data incorporated into the EU Eco-labels used to

⁷⁶⁴ Martens and Orbie. P284; 292.

⁷⁶⁵ Martens and Orbie. P290; 291.

⁷⁶⁶ <http://www.european-fair-trade-association.org/observatory/index.php/en/fairtrade/>; <https://wfto-europe.org/>; <https://wfto-europe.org/wp-content/uploads/2021/04/public-procurement-for-sustainable-enterprises.pdf>.

⁷⁶⁷ Martens and Orbie, "The European Union and Fair Trade: Hands Off?" P290.

⁷⁶⁸ Dragos and Neamtu, "Sustainable Public Procurement: Life-Cycle Costing in the New EU Directive Proposal." P9; Isabel Borges, "Safeguarding Human Rights through Public Procurement Law: Recent Developments in Norway," *Public Procurement Law Review*, 2018, 1–23.

provide verification of technical specification (Article 43 in the New Directives), for example, examples of this type of label including the EU Ecolabel (flower), the Nordic Swan, the Blue Angel, and other "equivalent" labels and standardization.⁷⁶⁹ Again, such "national" labels can be referred to in the procurement process under the 2014 Public Sector Directive so long as products and services meet the equivalent standards without the labels being considered.⁷⁷⁰

So, Life-cycle costing data have to be incorporated into labels and as part of a large-scale GPP implementation plan created by public law in the EU. A diffuse network of public institutions and private firms are taking the lead in putting life-cycle costing methodologies and eco-labels into practice.⁷⁷¹ EU implements a liberal approach in adopting LCC methodologies in environmental and social externalities costs by incorporating LCC data into Eco-labels, labeling, standardization, and thirty-party scheme in international, EU, and member states "national" equivalent ones.

As argued, China has tried to confirm the performance-oriented government procurement since implementing *the Measures for the Administration of Government Procurement Demand* issued by MOF (MOF, 2021, NO. 22). It will be enacted on 1 July 2021. The concept of "full life cycle cost" appears in Chinese government procurement laws and regulations (Article 21) for the first time.⁷⁷² Government Procurement requires the supplier to provide the design, solution, operational plan to consider full life cycle cost by clarifying the service life and requiring the supplier to report the full life cycle costs such as installation and commissioning costs, energy management during use, and waste disposal (Article 21). The full life cycle is seen as one factor in the awarding assessment procedure (Article 21). Compared to the EU, the

⁷⁶⁹ "Buying Green! A Handbook on Green Public Procurement." P16; R. Lunner, "Human Rights in Public Procurement Protecting Them Properly?" *European Procurement & Public Private Partnership Law Review*, no. 3 (2018), 198–206, P3.

⁷⁷⁰ Jason J. Czarnezki. Ph.D. thesis. Uppsala University. Green Public Procurement Legal Instruments for Promoting Environmental Interests in the United States and European Union, 2020, 188. P165.

⁷⁷¹ Czarnezki, "Green Public Procurement: Legal Instruments for Promoting Environmental Interests in the United States and European Union." P166.

⁷⁷² Purchasing projects need to be provided by the supplier with a design, solution, operation plan, If the purchaser states it is necessary to consider the full life cycle cost, the service life can be clarified and the supplier is required to report installation and commissioning costs, energy management during use, waste disposal, etc. Life cycle cost as a factor to be considered in the review. <http://www.gov.cn/zhengce/zhengceku/2021-05/10/5605643/files/d52d466b60564cc9803016f10098392b.pdf>.

Chinese government procurement legal system promotes performance-oriented procurement under the principle emphasizing the maximization of value and the best performance of public funds expenditure in two aspects: ensuring the maintenance of products, projects, and other follow-up services to minimize the total cost of the product, project or service throughout its life cycle, thereby maximizing the value of financial expenditures; achieving economic and social policy goals, such as supporting SMEs, protecting the environment, encouraging innovation, and promoting social stability. However, it does not clarify the implementation of life cycle cost in the specific procurement procedure except for considering life cycle costing in the awarding procedure.

Although China's government procurement legal system is silent to the life cycle analysis and sustainable supply chain promoted by public purchasing power, China also makes an effort to promote green supply chain and manufacturing by issuing Enterprises Green procurement Guideline (2014). The green procurement chain encourages environmental protection and resources conservation throughout the process of the firms from product design to raw material procurement, production, transportation, storage, sales, use, and disposal in the upstream and downstream supply relationship (article 2).⁷⁷³ This guideline also carried out the exclusion criteria in firms' procurement chain for the firms which violate the *Measures for Enterprise Environmental Credit Evaluation (Trial)*, environmental laws, and National or local pollutant discharge standards. However, this guideline focuses on the procurement process for all enterprises, including private and state-owned firms, without mentioning the Chinese government procurement's stimulus policy by Chinese government procurement.

China's environmental and green labels mechanism unifying the definition and appraisal methods of green products is based on full life cycle analysis from resource allocation (pre-production), production, sale, use, and disposition and also requires implementing a unified list of appraisal standards and certification catalog of green

⁷⁷³ http://www.mee.gov.cn/gkml/hbb/gwy/201412/t20141226_293493.htm.

products based on state standards, industrial standards, group standards.⁷⁷⁴ Although the 2019 China's GPP reform promotes flexibility in the implementation of green standards certification mechanism by expanding the labeling, not just the national standards but also encouraging the international and industrial standards, China's GPP still emphasizes the China Environmental Labeling System (ELS) and the China Energy Saving Certification System (ESC) procurement lists mechanism mainly (even the products list transformation to categories list).

3. Social Policies

As has been argued, China's poverty reduction programme has been a national policy until now. Until 2021, the achievements of China's anti-poverty programme reflect in the adjustment of the official poverty line, changes in the rural poor population, improvements in living conditions, infrastructure and public services in rural areas, etc.⁷⁷⁵ China's success in poverty reduction is the result of sustaining rapid economic growth and the implementation of large-scale, long-lasting, Government-led poverty alleviation strategies over the past 40 years.⁷⁷⁶ There are a series of anti-poverty initiatives in China under China's national poverty eradication policy, such as targeted poverty alleviation, consumption poverty alleviation, and green poverty alleviation.⁷⁷⁷ Government procurement is seen as one strategical tool for promoting poverty alleviation in China.⁷⁷⁸

⁷⁷⁴ Opinions of the General Office of the State Council on Developing a Unified Standard, Certification and Identification System of Green Products (2016). [http://en.pkulaw.cn/Display.aspx?LookType=1&Lib=law&Cgid=285981&Id=25771&SearchKeyword=&SearchCKeyword=%b9%fa%ce%fl%od4%ba%b0%ec%b9%ab%cc%fc%b9%od8%od3%da%bd%a8%oc1%a2%cd%b3%od2%bb%b5%oc4%20%20%c2%cc%oc9%ab%b2%fa%oc6%b7%b1%ea%od7%bc%a1%a2%oc8%cf%od6%a4%a1%a2%b1%oca%ca%b6%oc%e5%cf%b5%b5%oc4%od2%e2%bc%fb&paycode=.](http://en.pkulaw.cn/Display.aspx?LookType=1&Lib=law&Cgid=285981&Id=25771&SearchKeyword=&SearchCKeyword=%b9%fa%ce%fl%od4%ba%b0%ec%b9%ab%cc%fc%b9%od8%od3%da%bd%a8%oc1%a2%cd%b3%od2%bb%b5%oc4%20%20%c2%cc%oc9%ab%b2%fa%oc6%b7%b1%ea%od7%bc%a1%a2%oc8%cf%od6%a4%a1%a2%b1%oca%ca%b6%oc%e5%cf%b5%b5%oc4%od2%e2%bc%fb&paycode=)

⁷⁷⁵ Liu, Mingyue; Feng, Xiaolong; Wang, Sangui, China's poverty alleviation over the last 40 years: successes and challenges*. The Australian of Agricultural and Resource Economics, 2019, PP 209-228.

⁷⁷⁶ Liu, Mingyue; Feng, Xiaolong; Wang, Sangui, China's poverty alleviation over the last 40 years: successes and challenges*. The Australian of Agricultural and Resource Economics, 2019, PP 209-228.

⁷⁷⁷ 孙文久, 夏添, “中国扶贫战略与 2020 年后相对贫困线划定,” 中国农村经济, 2019, 1–16; 马海涛, 王晨. 基于供给侧的精准扶贫财政政策研究. 当代农村财经, 2016; 国务院办公厅关于深入开展消费扶贫助力打赢脱贫攻坚战的指导意见. http://www.gov.cn/gongbao/content/2019/content_5361792.htm.

⁷⁷⁸ 赵亮. 构建以政府采购支持消费扶贫政策长效机制的探索与思考. 收藏. 2019; 杨园园, 刘彦随, 张紫雯. 基于典型调查的精准扶贫政策创新及建议. 中国科学院院刊, 2016; 王洁. 创新“扶贫”赋能——浙江省举办“互联网+ 政府采购”创新促进大会. 中国政府采购, 2019; 丁会芬, 孟彬. 我国政府采购制度及其变革吁求. 广西政法管理干部学院学报, 2019; 张晓红. 构建政府采购监督机制的相关配套措施. 经济研究参考. 2007.

It can be seen that many Chinese provinces or some cities have issued their own government procurement promoting poverty alleviation policy and action adjusting their own social and economic development status since the administrative order (MOF, 2019, NO. 27) was issued by the central government in 2019.⁷⁷⁹ Significantly, the developed eastern provinces and cities support the agricultural by-products in the outlying poverty-stricken areas. With national rural revitalization promoted in 2021, China established Central Rural Revitalization Bureau for fostering economic development in China's central and western regions, particularly the ethnic minority underdeveloped areas. By the way, the Chinese central government issued a *Notice on the use of government procurement policies to support the revitalization of rural industries* (MOF, 2021, NO.19), which stipulates that government procurement promote rural regeneration not only by reserving shares to purchase agricultural and sideline products from poverty alleviation areas but also by adjusting and optimizing government procurement policies to support industrial development in poverty areas in order to build a new development pattern with the domestic cycle from production, all stages of the industrial chain, to consumption.⁷⁸⁰

Compared to the social public procurement policies in China, the EU focuses on the role public procurement plays in promoting human rights, including the ECHR (the European Convention on Human Rights), the Charter of Fundamental Rights of the European Union, UNGPs (The UN Framework and Guiding Principles on Business and Human Rights), human rights standards more broadly, as well as the "human rights-based approach to development,"⁷⁸¹ demanding the new EU CSR policy that emerges fully respects all human rights, in the approach.⁷⁸² In 2019, the EU updated its social policy in the public procurement making process along three interlinked fronts in CSR, Responsible Business Conduct (OECD), UN Guiding Principles on Business and

⁷⁷⁹ <http://www.ccg.gov.cn/specialtopic/tpgj/dfxd/index.htm>.

⁷⁸⁰ http://gks.mof.gov.cn/guizhangzhidu/202105/t20210508_3698368.htm.

⁷⁸¹ EU Foreign Affairs Council, Conclusions on a rights-based approach to development cooperation, encompassing all human rights.

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142682.pdf.

⁷⁸² Claire Methven O'Brien, "Essential Services, Public Procurement and Human Rights in Europe," *SSRN Electronic Journal*, 2015, P14.

Human Rights (UNGPs), sustainability, and the implementation of the UN 2030 Agenda for Sustainable Development.⁷⁸³ Given the overlaps between CSR/RBC, the SDGs, and UNGPs, the Commission has taken a holistic and integrated approach focused on practical action, irrespective of whether it is labeled 'CSR,' 'RBC,' 'Business and Human Rights,' 'SDG' or all four together, while at the same time recognizing the differences in focus between those agendas.⁷⁸⁴ Given the different economic and social development levels in the EU member states, they concern business and human rights national action plans (NAPs) in many different aspects, to some extent, addressing human rights by public procurement.⁷⁸⁵ The themes covered by the latest human rights NAPs of the EU Member States and the UK show racism, gender, minorities, vulnerable persons, justice, integrity, and the environment.⁷⁸⁶

Although thanks to the developed economic status of the EU, poverty is not a very prominent social issue in the EU, the promotion of social inclusion, in particular through the reduction of poverty, is written in the EU's agenda (Europe's 2020 strategy for smart and sustainable growth targets 20 million fewer people being at risk of poverty by 2020).⁷⁸⁷ Combating poverty is seen as one aspect of human rights and human dignity under the EU single market.⁷⁸⁸ At the same time, disappointingly, the emergence of the current global pandemic outbreak in December 2019 as the biggest "black swan" incident, COVID-19, has so far been a threat to the worldwide community. The increase in the unemployment rate reached more than 10% at the end of 2020 in return for 5.2% seen in 2019 globally.⁷⁸⁹ Poverty and inequality are potentially increasing right across Europe, with poor workers losing as much as 16.2% of income and social cohesion

⁷⁸³ "Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights: Overview of Progress," 2019, 64. Brussels, 20.3.2019 SWD(2019) 143 final. <https://ec.europa.eu/docsroom/documents/34482>.

⁷⁸⁴ "Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights: Overview of Progress," 2019, 64. Brussels, 20.3.2019 SWD(2019) 143 final. <https://ec.europa.eu/docsroom/documents/34482>. P5.

⁷⁸⁵ <https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/national-action-plans>.

⁷⁸⁶ "National Human Rights Action Plans in the EU: Practices, Experiences and Lessons Learned for More Systematic Working Methods on Human Rights," 2019. 1-32. P7.

⁷⁸⁷ "Europe 2020: A European Strategy for Smart, Sustainable and Inclusive Growth [Brussels, 3.3.2010 COM(2010)2020]," 2010, 37. P3.

⁷⁸⁸ Methven O'Brien, "Essential Services, Public Procurement and Human Rights in Europe." Antoinette Calleja, "The Request for Poverty Reduction - Putting Public Procurement Law into Perspective," in Hartmut Behr and Yannis A. Stivachtis (eds), *Unleashing Social Justice through EU Public Procurement*, (Routledge, 2016).

⁷⁸⁹ Mohamed Buheji et al., "The Extent of COVID-19 Pandemic Socio-Economic Impact on Global Poverty. A Global Integrative Multidisciplinary Review," *American Journal of Economics*, no. 4 (2020), 213–224.

between countries also being damaged by pandemic lockdown measures during the pandemic time until now.⁷⁹⁰ According to data from the European Trade Union Confederation (ETUC), at least one million people lost their jobs in two weeks; that number could be far higher considering many European workers work as freelancers and workers without contracts.⁷⁹¹ COVID-19 pandemic worsened the world's capacity to eliminate poverty and make a large population return to poverty globally because of the economic shutdown.⁷⁹²

Public procurement plays a vital role in medical equipment, such as disinfectants, masks, gloves, medicines, ventilators, and other essential items in containing the new coronavirus outbreak. The EU carried out a *Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis* deactivating procurement rules in order to deal with unforeseeable and extremely urgent circumstances.⁷⁹³ With the re-assess and re-build period of COVID-19 in different countries, public procurement actively contributes to the recovery of the economy and society.⁷⁹⁴ The magnitude of such public spending and the quest to curb COVID-19's reversal of decades-long progress in fighting poverty justify the need to consider public procurement and trade policy as levers for sustainable development.⁷⁹⁵ The EU Council adopted the *Council Conclusions: Public Investment through Public Procurement: Sustainable Recovery and Rebooting of a Resilient EU Economy* centered on how efficient public procurement rules and practices, combined with increased public spending, can accelerate economic recovery from the COVID-19 crisis, lead to a sustainable and more resilient EU economy and achieve multiple goals due to the vast amount of public money spent on these contracts.⁷⁹⁶ These goals include

⁷⁹⁰ Juan C. Palomino, Juan G. Rodríguez, and Raquel Sebastian, "Wage Inequality and Poverty Effects of Lockdown and Social Distancing in Europe," *European Economic Review* (2020): 1–25.

⁷⁹¹ Buheji et al., "The Extent of COVID-19 Pandemic Socio-Economic Impact on Global Poverty. A Global Integrative Multidisciplinary Review." P220.

⁷⁹² Buheji et al. P217.

⁷⁹³ Albert Sanchez-Graells, "Procurement in the Time of COVID-19," *Northern Ireland Legal Quarterly*, no. 1 (2020), 81–87.

⁷⁹⁴ OECD, "Public Procurement and Infrastructure Governance: Initial Policy Responses to the Coronavirus (COVID-19) Crisis," 2020, <http://www.oecd.org/coronavirus/policy-responses/public-procurement-and-infrastructure-governance-initial-policy-responses-to-the-coronavirus-covid-19-crisis-c0ab0a96/%0Ahttp://www.wcoomd.org/>. P3.

⁷⁹⁵ <https://unctad.org/news/sustainable-public-procurement-can-help-us-build-back-better-after-covid-19>.

⁷⁹⁶ <https://www.consilium.europa.eu/fr/press/press-releases/2020/11/25/streamlining-public-procurement-within->

appropriate and feasible, mandatory field areas, such as green, socially responsible, and innovative public procurement.⁷⁹⁷

The European Commission launched a series of programs to promote a high level of quality and sustainable employment, guaranteeing adequate and decent social protection, combating social exclusion and poverty, and improving working conditions.⁷⁹⁸ Public procurement is just one of the policy tools. Under the EU's new public procurement directive, employment and occupation contribute to social integration in society and are key elements in guaranteeing equal opportunities for all (recital 36). Sheltered workshops and other social businesses whose main aim are to support the social and professional integration or reintegration of disabled and disadvantaged persons, such as the unemployed, members of disadvantaged minorities, or otherwise socially marginalized groups (recital 36). In addition, the EU, as the status of the biggest developed economic entities, also uses various policy tools at EU's disposal (ODA, EU's trade policy instruments (notably Free Trade Agreements, Economic Partnership Agreements, and unilateral trade preferences), the External Investment Plan and blending facilities, etc.) to increase their overall impact on growth and poverty reduction in developing countries.⁷⁹⁹

Within the EU single market and member states, human rights, social values, SRPP with public procurement concerned by law/policy-makers are comprised of especially International Labour Organisation (ILO) standards on forced and child labor, discrimination in employment, collective bargaining, and equal pay, the benefits of disabled people, prohibition business with contractors with criminal behaviors such as fraud, corruption, trafficking and exploitation of human beings (bonded labor, forced labor, and child labor).⁸⁰⁰ The poverty or extreme poverty issue was not a prominent

[the-eu-for-more-efficient-public-spending/](#).

⁷⁹⁷ General Secretariat of the Council, "Council Conclusions: Public Investment through Public Procurement: Sustainable Recovery and Reboosting of a Resilient EU Economy," 2020, 11. P6.

⁷⁹⁸ "Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights: Overview of Progress," 2019, 64. Brussels, 20.3.2019 SWD(2019) 143 final. <https://ec.europa.eu/docsroom/documents/34482>. P34.

⁷⁹⁹ "Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights: Overview of Progress," 2019, 1-64. P52.

⁸⁰⁰ Rachel Bleetman and Alex Metcalfe, "NEW MODELS OF PUBLIC PROCUREMENT: A TOOL FOR SUSTAINABLE," 2020, 50. P34.

concern or hardly mentioned as the social responsibility goals within the EU single market. The EU misses its poverty targets because the Lisbon Strategy's key 'at risk of poverty' indicator and the Europe 2020 'at risk of poverty' or social exclusion' indicator essentially measure income inequality relative poverty, not absolute poverty.⁸⁰¹

The EU has been suspicious of set-asides because they discriminate among economic operators and are therefore contrary to full and open competition. Specific set-asides were provided timidly at first and only for sheltered workshops and later extended to businesses whose main aim is to employ not just disabled workers but for any disadvantaged person.⁸⁰²

From the previous discussion, Poverty alleviation is China's basic and prominent national policy. As the largest developing country in the world, with a population of 1.4 billion, China has a fragile foundation in economic and social development, uneven economic development between the urban areas and rural areas, and has been plagued by extreme poverty for a long time. China has completed the arduous task of eradicating absolute poverty in 2021. Nevertheless, China's social progress index is just 66.12 in the global rankings at a pretty low level in 2020.

China's objective situation determines the priority of public procurement supporting poverty reduction policy. On the other hand, thanks to Han Chinese (91.6%) and 55 ethnic minority groups (8.4%), most ethnic minority groups live in remote mountainous areas in the less developed west, southwest, and northwest. Supporting ethnic groups and policies for joint development and prosperity of all ethnic groups is the top national policy written in China's constitution law. Moreover, supporting less developed regions, particularly ethnic minority group gathering areas, is established in article 9 of GPL. China also adopts the set-aside policy, priority purchasing (subsidy), or targeted procurement⁸⁰³ for supporting specific groups (ethnic minority groups, poor

⁸⁰¹ Zsolt Darvas, "Why Is It So Hard to Reach the EU's Poverty Target?" *Social Indicators Research*, no. 3 (2019), 1081–1105. P1082.

⁸⁰² Carol Cravero, "Socially Responsible Public Procurement and Set-Asides: A Comparative Analysis of the US, Canada and the EU," *Arctic Review on Law and Politics*, (2017), 174–192, P183.

⁸⁰³ Targeted Procurement provides employment and business opportunities for marginalized / disadvantaged individuals and communities – referred to as the "Target Groups". It enables social objectives to be linked to procurement in a fair, transparent, equitable, competitive and cost effective manner. There is no a clear definition of targeted procurement yet. Targeted Procurement was developed in South Africa, where procurement is regulated by

individuals, and families at poverty risk) in government procurement. China also expands the social goals for supporting disabled people by set-asides policy or targeted procurement.

In addition, Although China eliminated extreme poverty and built a moderately prosperous society in all respects by 2020, China still suffers income inequality and distribution inequality because of China's unbalanced regional economic development and urban-rural development issue. Especially, resolving the massive poverty in China's rural areas and income and distribution inequality are urgent social problems. *Government procurement promoting the revitalization of rural industries* established in 2021 demonstrates that "hematopoietic" poverty alleviation combines rural industrial development (township and village enterprises and SMEs), poverty alleviation, and reducing rural-urban development unbalance by government procurement.

Recognition of public procurement as a means of influencing working conditions or labor rights in the supply chain is acknowledged in the EU public procurement legal system. The EU corporate social responsibility (CSR) agenda has attempted to rely on public procurement as a potential tool to advance human rights protection in the realm of corporate activity.⁸⁰⁴

Since the beginning of the country's transition to a market economy, the ILO has been providing assistance to the Chinese government and social partners in labor legislation, employment promotion, and social security reform. Currently, China has ratified 26 ILO conventions, in particular, the fundamental conventions, such as C100 - Equal Remuneration Convention, 1951 (No. 100), C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111), C138 - Minimum Age Convention, 1973 (No. 138), and C182 - Worst Forms of Child Labour Convention, 1999 (No. 182). Today, China is the world's second-largest economy and a global key trade partner. China is by far the largest producer of electronics goods and textile cloth manufacturers and exporters worldwide and plays a critical role in the global supply

that country's constitution. Ron Watermeyer, "The Use of Targeted Procurement as an Instrument of Poverty Alleviation and Job Creation in Infrastructure Projects," *Public Procurement Law Review*, no. 5 (2000), 226–250.
⁸⁰⁴ MARTIN-ORTEGA. P78.

chain.⁸⁰⁵

In the middle of a massive boom in urbanization, the nation has the largest construction building market in the world, accounting for 20% of all construction investment worldwide.⁸⁰⁶ Until now, China's GPL and BL have been silent about labor rights in the procurement process. Fortunately, China recognizes and concerns its social problem. In order to prevent payment of migrant workers from being in arrears, China issued a *Regulation on Ensuring Wage Payment to Migrant Workers* in May 2020. The firms are written into the list of disciplinary for dishonesty in wage arrears to migrant workers by restrictions in government funding, government procurement, bidding, financing loans, market access, tax incentives, etc.⁸⁰⁷ To some extent, this regulation issued by China's state council concerns labor rights with government procurement in China.

Public procurement as a vital policy tool that is indissolubly linked to national policies and social policies offers great potential in fulfilling national sustainable development goals. European treaty objectives such as social cohesion, combatting long-term unemployment, and achieving decent living standards are considered the "secondary" goals or "horizontal" policies pursued by the EU public procurement legal framework. On the one hand, as far as EU public procurement is utilized to promote Single Market objectives and seeks to promote the greatest good for the greatest number, the respect towards human dignity (from the poverty issue's perspective) at the very conceptual level is assigned subordinate status.⁸⁰⁸ On the other hand, the developed economic status of the EU determines that it would rather concern income inequality and workplace condition than the poverty issue.

China makes a choice in social policies promoted by public procurement, mainly through targeted procurement, set-asides, and priority purchase for specific groups. As

⁸⁰⁵ Olga MARTIN-ORTEGA, "Public Procurement as a Tool for the Protection and Promotion of Human Rights: A Study of Collaboration, Due Diligence and Leverage in the Electronics Industry," *Business and Human Rights Journal*, no. 1 (2018), 75–95. P80; <https://www.textileinfomedia.com/textile-industry-in-china>.

⁸⁰⁶ China Construction Market - Growth, Trends, and Forecast (2020-2025). <https://www.researchandmarkets.com/reports/5025238/china-construction-market-growth-trends-and>.

⁸⁰⁷ Article 48. Regulation on Ensuring Wage Payment to Migrant Workers. https://pkulaw.com/en_law/0ed5b30031afd62bbdfb.html.

⁸⁰⁸ Calleja, "The Request for Poverty Reduction - Putting Public Procurement Law into Perspective." P124.

to poverty reduction in rural areas, China focuses on government procurement supporting local featured agricultural products by building an E-platform in which family farms or small, medium, and micro agricultural enterprises can register in 832 impoverished counties in China.

The EU is in the upper of the supply chain. Except for various policy tools (EU's trade policy instruments) to increase their overall impact on growth and poverty reduction in developing countries, public procurement is also useful by exerting social externalities by referring to fair trade labels in the public procurement process. The objective of fair trade is to protect the more vulnerable people who are unable to protect themselves against poverty wages and inadequate working conditions.⁸⁰⁹ In western countries, consumers purchase products with a fairtrade certification scheme that seeks better prices, decent working conditions, local sustainability, and fair terms of trade for workers in the developing world. Around 90% of consumers recognize and know about fair trade products in the UK, whereas fair trade in China is a much smaller niche.⁸¹⁰ There is a long way for the Chinese government to nurture the awareness of purchasing fair trade products, in 2016, China made an effort to promote the fairtrade in some developed cities (Beijing, Shanghai, and Shenzhen), such as promoting Yunnan coffee, chestnut in Beijing planting professional cooperatives, tea, honey, and apple.⁸¹¹

According to China's Constitution and Farmers Professional Cooperatives Law, the Beijing Federation of Farmers' Professional Cooperatives initiated the "Beijing Cooperation Fair Trade Alliance" to promote this win-win trade method for consumers and producers in 2017.⁸¹² Given the low levels of exposure, awareness of Fairtrade and understanding of fair trade principles are low and fairtrade are available only in a handful of cities in China. The fairtrade social movement is mainly promoted among NGOs, farmers, and high-end consumer markets in some developed Chinese cities.

Compared to the EU and China experience, These are two methods for poverty

⁸⁰⁹ Marc Martens and Stanislas de Margerie, "The Link to the Subject-Matter of the Contract in Green and Social Procurement," *European Procurement & Public Private Partnership Law Review* 8, no. 1 (2013): 8–18. P14.

⁸¹⁰ Fair Trade & Organic: A Prosperous Perspective. <https://intrepidsourcing.com/trade-wiki/fair-organic-trade-a-prosperous-perspective/>.

⁸¹¹ 当 Fair Trade 遇上中国小农户. https://www.kepuchina.cn/zn/cycx/201910/t20191031_1142397.shtml.

⁸¹² 当 Fair Trade 遇上中国小农户. https://www.kepuchina.cn/zn/cycx/201910/t20191031_1142397.shtml.

reduction in agricultural and sideline products. One method that targeted procurement and set-asides for specific small and micro firms (professional farmer cooperatives, family farm firms, agricultural unions, etc.) certificated as the registered poverty reduction firms are very direct and simplified in China. Another method is internalizing the cost of workers' rights, safer working conditions, and fairer pay into the supply chain from the whole life cycle of planting, processing, and transporting products.

The fairtrade label can slowly enhance the competitiveness of products (public and private consumers) and cultivate private consumers' awareness by promoting public purchasers. In the long term, the fairtrade contributes to the reasonable social externalities of the supply chain by government purchasing. It is a good try to adopt the fairtrade label in Chinese government procurement.

4. Innovation Policies

As one of the main drivers of future growth, innovation was put at the center of the Europe 2020 strategy for smart, sustainable, and inclusive growth. In the EU, Public authorities should make the best strategic use of public procurement to support innovation. The new Directive on public procurement expressly points out under its recital 47 that "public procurement is fundamental to driving innovation" clearly by urging public authorities to make the best strategic use possible of public procurement to drive innovation.

The Directive also points to various specific measures to encourage innovation through public contracts, such as the existence of pre-commercial public procurement mechanisms, technical specifications in terms of functional and performance requirements ((Recital 74 and Article 42), innovation partnership (Article 31), considering innovation in the performance of public contracts (Article 70), innovation among the special norms for the adjudication of social services contracts (Article 76). The Public Procurement Directive 2014 has sought to avoid different interpretations of that concept in the Member States and, in doing so, has included a definition of the concept meaning the implementation of a new or significantly improved good, service,

or process, including but not limited to production, building or construction processes, a new marketing method, or a new organizational method in business practices, workplace organization or external relations inter alia with the purpose of helping to solve societal challenges or to support the Europe 2020 strategy for smart, sustainable and inclusive growth.⁸¹³

There are no clear innovations supported by government procurement policies in the Chinese GPL and BL (neither GPL nor BL laying out innovation policy). As has been argued, from 2007 to 2011, China enacted a series of administrative guidelines and orders mainly focusing on independent innovation and supporting domestic innovation firms in the central government and local government under the provincial and municipal level. As has discussed in chapter 4, these administrative guidelines and orders were canceled in 2011 because of the political pressure from the USA,

Nevertheless, the reform proposal of GPL in 2020 and BL in 2019 put forward the principle of innovation supported by public procurement. On the one hand, Chinese government procurement policies expand to include saving energy, supporting innovation, and protecting vulnerable people in the GPL (Article 28). Public authorities should take technological innovation, resource conservation, and early delivery to achieve economic and social benefits in the performance procedure by paying the contract price linked to the supplier's performance (Article 94). On the other hand, BL encourages reasonably setting requirements and conditions for supporting technological innovation, saving energy and resources, and ecological and environmental protection in the bidding documents (Article 21). Except for the general principle for supporting innovation policy in the GPL and BL, the *Opinions on Promoting the Development of National High-tech Industrial Development Zones* (SC, 2020, NO.7) lays out major innovative technologies, products, and services of technology-based SMEs by First purchasing and Order policies of public authorities and non-bidding procurement methods (single-source procurement and competitive negotiation) from specific high-end firms (SMEs).

⁸¹³ Miguel Angel Bernal Ángel Bernal Blay, "The Strategic Use of Public Procurement in Support of Innovation," *European Procurement & Public Private Partnership Law Review (EPPPL)*, no. 9 (2014): 1–10. P3.

In addition, there is a series of innovation policies in some developed provinces and cities (Guangdong, Zhejiang, Anhui, and Shanghai). The initial purchasing and ordering of innovative goods are seen as the most critical public procurement policy tool. Currently, the precise definition of "first purchasing" and "ordering" is confirmed in *Notice on 'Implementation Measures for the Government's First Purchase and Order of Innovative Products in Shanghai' (2017)*. Similar to the *Catalog of Independent Innovation Products for Government Procurement* (abolished in 2011), Shanghai lays down the Catalogue of Innovative Products in Shanghai. Currently, there have established four innovative products procurement lists (2018, 2019, 2020, and 2021). However, Shanghai's new innovative products catalog does not exclude the innovative products produced by foreign firms stipulated in the 2007 Independent Innovation Products catalog for Government Procurement (abolished in 2011).

The 2022 winter Beijing Olympic Games have been seen as a successful event for innovative technologies. Adopting innovative technologies in responding to COVID-19 can be seen as a sound "testing ground" for innovation government procurement policy. For example, the purchasing of robots is from Beijing and Shanghai's two SMEs by initial purchasing and ordering policy and even from Denmark's high-tech company. Particularly, it is worth noting that the Opinions of State Council on Promoting National High-tech Industrial Development Zone (Notice No.7) issued in 2020 emphasize the innovation government procurement policy by initial purchasing and ordering SMEs' products. In addition, the two hospitals also make use of Wise Information Technology of 120 (WIT 120) and 5G to build the WIT 120-equipped hospitals, which can apply telemedicine and distance treatment service.⁸¹⁴ There are many innovative technologies purchased by initially purchasing and ordering, for example, driverless delivery vehicles from Beijing White Rhino, AI robots from CloudMinds firm, nursing robots from research teams of Shanghai Jiaotong University, disinfecting robots from Blue Ocean Robotics of Denmark.⁸¹⁵

⁸¹⁴ <https://www2.deloitte.com/content/dam/Deloitte/cn/Documents/strategy/deloitte-cn-consulting-5g-assist-in-2019-ncov-zh-200304.pdf>.

⁸¹⁵ <https://digital-strategy.ec.europa.eu/en/news/danish-disinfection-robots-save-lives-fight-against-corona-virus>; http://www.gov.cn/xinwen/2020-04/04/content_5498968.htm.

In the choice and design of policy instruments for innovation, the EU has framework conditions (introduction of innovation-friendly regulations; simplification & easier access for tender procedure), organization & capabilities in some specific Member States (subsidy for additional costs of innovation procurement, training schemes, guidelines, good practice networks, and high-level strategies to embed innovation procurement), identification, specification & signaling of needs (pre-commercial procurement of R&D to develop & demonstrate solutions), and incentivizing innovative solutions in a couple of Member States (calls for tender requiring innovation; guaranteed purchase or certification of innovation; guaranteed price/tariff or price premium for innovation).⁸¹⁶ Under the innovation policies stipulated in the public procurement 2014 Directive, Member States implement specific innovation policies depending on their economy and government governance level after transposing EU Directives into national laws.

Despite the fact that China has not stipulated innovation government procurement policy in the basic public procurement laws (GPL and BL) compared to the 2014 EU public procurement Directives, China's reform proposal of GPL and BL has confirmed that innovation policy is one of the basic government procurement policies goals. There is no specific innovation definition and implementing measures in the Chinese public procurement laws. China's public procurement laws empower local governments' discretion in implementing innovation policies. The First Purchasing and Order is the most preferential policy choice by government purchasing power in China.

5. Conclusion

5.1 Sustainable procurement in Olympic Games as the Best Practices to EU and China

As stated in Chapters 3 and 5, Olympic sourcing is not the same as national public procurement completely. However, it still needs to be subject to national public procurement law when acquiring Olympic goods, services, and works. According to the

⁸¹⁶ Luke Georghiou et al., "Policy Instruments for Public Procurement of Innovation: Choice, Design and Assessment," *Technological Forecasting and Social Change* 86 (2014): 1–12, P4.

Host City Contract (HCC), IOC assesses sustainable development policy, especially host countries' environmental commitment. Also, the legal system is an important factor in assessment criteria.

In addition, according to the Olympic mission and IOC Sustainability Strategy, Olympic sourcing has to comply with the sustainable requirements. IOC Supplier Code and Sustainable Sourcing Guide of Olympic Games set out a number of international standardization and agreements related to environmental and human rights requirements. Extensive soft law guidance forms a valuable benchmark for the EU and China in promoting sustainable public procurement policies.

5.2 Life-Cycle Analysis: the important tool

As argued in chapters 2, 3, 5, 6, Both soft law of the Olympic Games and EU public procurement law stress the importance of life cycle analysis. Life cycle analysis includes the life cycle of the procurement process from procurement confirmation to contract performance, and the life cycle of products from raw materials to disposal—the EU attaches importance to labor rights. And, the EU also emphasizes the importance of a sustainable supply chain by public procurement. However, China's public procurement law currently does not pay attention to life cycle analysis. In the reform proposal of GPL, China proposes performance management and performance-oriented procurement from need confirmation to contract performance, and procurement policy related to environmental and social considerations are factored into procurement performance. In this regard, China's public procurement law also tries to concern life cycle analysis. But it still is far away to adopt life cycle analysis in China's government procurement.

5.3 prioritizing different public policies based on national goals and different economic stage

As discussed in chapters 3, 4, 5, the EU and China prioritize other policy preferences in various economic development stages. In particular, The EU and China

have different policy preferences of social responsibility. However, China pays more attention to poverty-reducing, rural revitalization, and migrant workers because of the huge unbalanced of regional economic development between urban and rural areas. The evolving nature of China's public procurement in modernization does not mean that it refuses to consider adopting labor rights or ILO rights in its law system. China can implement it by delegated legislation to lay down sustainable public procurement policies. Similarly, Innovation policy is not laid down in China's GPL. But China can establish administrative regulations or orders to promote innovation by public procurement in central or sub-central government.

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