

CorA-Frühjahrstagung 2014: Lieferketten unter Kontrolle? Nachweise von Sozialstandards

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Contribution:

“The Broader Picture: Which political processes and initiatives exist in neighbouring countries to improve compliance with and control of social standards? What can be learned from them?”

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The Netherlands

“Social labelling” and Sustainable Procurement Policies in the Netherlands

What role does or could the Dutch government have in guaranteeing the reliability of “social” labels? The Dutch government does not interfere directly, and does not have any policy assuring the quality of labels to consumers. In the Netherlands there is no initiative like the Kompas Nachhaltigkeit. Nor is there any consistent demand from the public or politicians for the government to provide such assurance.

The Dutch government works on supply chain related CSR in various areas. Some of these activities have have considerable impact on labels and labelling. These are the most relevant areas of work of the government:

- Company transparency benchmark for csr reporting
- Sustainable Public Procurement (SPP)
- Co-creation of and financial support for csr-related organisations like MVO Nederland and IDH (Sustainable Trade Initiative)
- Policy: companies can get financial support for international trade and investment if they follow OECD guidelines
- Sector specific action, such as workplace safety in garments in Bangladesh.
- Promoting “Living Wage” as a csr standard and a certification criterion.

Two of these issues, namely Sustainable Public Procurement (SPP) and IDH, have most direct effect on labels and labelling, and we will have a closer look at them.

1. The autor has been involved with the design of the Netherlands SPP policy (“social crieteria”) as external consultant.

1. What does the Dutch SPP look like?

The Netherlands defined its Sustainable Procurement Policies (SSP) for purchases by public authorities in 2009², after a long and intense process of preparation.

Policy elements:

- The SPP regards environmental and “social” (=labour rights and other human rights) aspects. Environmental criteria are product specific. For “social criteria” there is a different approach, which is generic (the same for all products), and it focusses on international supply chains. In this paper we speak about “social” aspects of SSP only.
- ILO's fundamental rights at work (re. discrimination, child labour, freedom of association/collective bargaining and forced labour) are the basic criteria for SPP. Other ILO standards such as wages, health & safety and hours of work, which are commonly part of certification systems, were left out. This was done for feasibility considerations. However, for specific products the government can add additional criteria, such as the three mentioned, other human rights related issues as well as fair trade requirements³. Supplementary criteria come into play mostly if a specific risk is identified for the sector, or if supply sustainability initiatives are working with such issues (for example: fair trade certification is in place).
- Business (suppliers) is accountable. When subscribing to a tender suppliers must make a risk analysis regarding violation of social criteria in their supply chain. If no risk, they must motivate this, and react at any time on possible alerts and signals from the broader society.
- If there is a risk, they can join a *recognised supply chain initiative*⁴. The membership thereof will be considered as sufficient proof that the supplier pays due attention to violated criteria. The Dutch government has recognised the following supply chain initiatives:
 - Fair Flowers Fair Plants - for flowers and plants;
 - Fair Wear Foundation - garments;
 - Social Accountability International - all products;
 - Max Havelaar label - food, flowers, cotton, cosmetics & personal care;
 - Union for Ethical BioTrade - food, cosmetics, pharmaceutical products, decoration;
 - UTZ Certified - coffee, tea, cocoa, palm oil;
 - Rainforest Alliance - food, forestry, tourism.
- If there is a risk, and there is no recognised supply chain initiative, or the supplier does not wish to join such initiative, “the supplier is expected to make a reasonable endeavour to ensure that the standards are adhered to, which may involve [...] acting to minimise any identified risks and exclude unacceptable practices. A supplier should take account of *alerts*

2. The SPP is summarized in English in the “WRITTEN STATEMENT BY THE MINISTER OF HOUSING, SPATIAL PLANNING AND THE ENVIRONMENT, THE MINISTER OF SOCIAL AFFAIRS AND EMPLOYMENT, AND THE MINISTER FOR DEVELOPMENT COOPERATION”. 30-196 No. 82.

3. For coffee, work wear, tea, cocoa and flowers supplementary criteria apply, regarding wages, hours of work, work place safety, fair conditions of trade and pre-financing. Pianoo, Factsheet Sociale Voorwaarden, 2013, <http://www.pianoo.nl/document/4676/factsheet-normen>.

4. <http://www.rijksoverheid.nl/onderwerpen/inkopen-door-het-rijk/maatschappelijk-verantwoord-inkopen-door-het-rijk/voldoen-aan-sociale-voorwaarden>

from the community. Where unacceptable practices are actually observed, the supplier is required to take *urgent action*. Furthermore, either in connection with each contract or in its annual (social) report, the supplier should subsequently *report the action* undertaken to manage the supply chain risk.” (Written Statement by the Minister...)

- SPP only applies to large contracts, larger than the EU threshold value for public procurement (133.000 Euro for goods). The motive is not wanting to excessively increase the administrative burden of companies.
- SPP is obligatory for purchases by the national government. Lower authorities are recommended to follow this policy, and there is a “gentlemen's agreement” about this; however it is important to note that they have relative autonomy on this issue.

It is important to note that the policy takes as a point of departure that the businesses are accountable for what happens in their supply chains. They are expected to develop the necessary tools for monitoring, re-mediation and reporting. In this sense the policy leans on private initiatives for supply chain sustainability, such as initiatives for support and certification. The Dutch government's role is limited to setting the social criteria and defining the minimum quality requirements for “recognised initiatives”, among other things. The requirements for recognition are: a. Multi-stakeholder governance, b. defend fundamental ILO labour standards, c. reliable verification procedures, d. public reporting.⁵

The requirement for suppliers/importing companies to “make a reasonable endeavour” if there is a risk, to monitor, guarantee improvement and to report, can be a challenging task for individual companies, for which they are often not equipped. However, it is fully in line with the UN “Ruggie Principles”, in particular with the “corporate duty to respect human rights”. But in fact this requirement should not encourage importers to take individual action, such as auditing their suppliers, certainly not if they have no expertise. The requirement is expected to act in the first place as a stimulus for businesses to engage in sector wide supply chain sustainability programs. After all, the elimination of human rights abuses normally does require long term sector-wide strategies for change.

2. IDH

IDH was created as an initiative of the Dutch government, with involvement of business and civil society; it is based in Utrecht/Netherlands. “With a €130 million co-funding grant from the Dutch, Swiss and Danish Governments, IDH runs public-private, pre-competitive market transformation programs in 18 sectors”.⁶ IDH works in international supply chains which are most vulnerable to labour standards and other violations. IDH often prioritises volume over depth of impact. While that is an issue for debate (see also conclusion/recommendation 5), the good thing is that the results of the programs are in many cases measured in terms of volume of certified product, or number of certified producers. In this way IDH promotes both support and certification, which are absolute necessities for the official SPP (social aspects) to work.

5. For the full wording of the requirements: WRITTEN STATEMENT BY THE MINISTER, p. 5.

6. IDH website

The Dutch Ministry of Foreign Affairs dedicates substantial financial resources to IDH. While support for IDH has been increased, the Ministry's support for development agencies and direct support for supply chain initiatives have been diminished over the last decade. As a consequence there has been a shift from support to multi-stakeholder initiatives, like the Fair Wear Foundation, to support to supply chain partnership projects. Partners would normally include IDH, multinationals and sector associations, and besides any type of civil organisation. However, the significant trend is that campaigning NGO's and trade unions are much less part of the governance structures than before. These projects aim at "making the supply chain sustainable", and as long as they keep a low profile in public claims to sustainability, there is not an pressing need for (broad) multi-stakeholder governance of the projects. Certification is normally done by external international certifiers such as Utz, SAI, BCSI and even FI. However the point to note here, is that the Dutch government diminished its involvement with high quality MSI labelling. One exception should be mentioned: there is special budget for fair trade (labelling).

3. How did SPP work and how can it be improved?

The "social criteria" of SSP have been in force for a few years. An evaluation by the government is planned for 2014, unfortunately later than the publishing date of this paper. Research institute Somo has published a report about how the social criteria have been handled in the procurement procedures⁷. They have investigated 25 tenders in certain sectors and in a certain period (Jan-Oct 2013). The report concludes that 10 out of 25 tenders do not even mention social criteria. A spokesperson of the Ministry of Foreign Affairs - one of the responsible ministries for SSP - did not contest this conclusion, but pointed out that if tenders by the national government would have been reviewed separately, the outcome for that section would have shown more positive result⁸. This is because SPP is obligatory for buyers of the national government, and not for lower governments buyers.

A very crucial success factor of SSP is the education, motivation and political control over the public buying departments. According to the Somo study in *most* cases the guidelines for applying social criteria in tenders are not being followed. Examples of what Somo found in the tenders:

1. requiring a specific certificate/label (instead of the underlying criteria)
2. including criteria in the supplier qualifications, product requirements or award criteria, while they should included in contract performance requirements.
3. including other criteria than those recommended in SSP.
4. requiring full compliance instead of process compliance.

Some of the resulting trade contracts could be successfully contested in court. However, the fact that this has hardly happened, is another sign that sustainable purchasing is not yet a professional business: the ones who lost tenders are often not even aware of the fact that the contract awarding could be contested. Much education for public buyers is needed, just as political control. But many

7. Toetsing van het Nederlands beleid op duurzaam inkopen . De toepassing van de Sociale Voorwaarden . SOMO Paper - Maart 2014 . http://somo.nl/publications-nl/Publication_4043-nl/.

8. Interview with Mr. L. Van der Burg, Ministry of Foreign Affairs, 28-3-2014.

responsible administrators also lack insight and knowledge.

The Somo research does not cover impact on the ground. However there should be no doubt that if the tendering process is not in line with the guidelines, it is also not tuned to the reality of the factory, plantation and quarry, and very little positive impact can be expected. The coming up evaluation of the SSP policy by the government could shed more light on the impact.

Working towards respect for human rights takes time and requires the commitment of various stakeholders. Moreover, for social change to become permanent, it needs to be rooted in local culture, business practice and law. That is why SSP policies should aim at long term processes (often longer than the time span of purchasing contracts), and work with supply chain initiatives for sustainability. Leaving aside urgent cases that are intolerable, the basic requirement regarding any human right is that the responsible managers make sure that they duly work toward gradual, long-lasting solutions; such solutions are often sector-wide. This process oriented approach is compatible with “contract performance requirements” (as opposed to supplier selection criteria and product specification in tenders).

In this context it is worth mentioning that social audits at producer factories and plantations are almost always a pure waste of money, and they result in unreliable monitoring, if such audits are not somehow tied up with structural processes and supply chain initiatives.

Good monitoring and certification are important, especially when related to initiatives for structural change. When setting the scope and the depth of certification systems, for example when the government defines minimum requirements for “recognised initiatives/labels”, it may be wise to not strive for the most stringent criteria, meaning not the highest standards (living wage, ft price) and not the heaviest systems of monitoring (third party, as opposed to simple membership requirements of an initiative, thus second part control). In the first place, high requirements will dis-encourage weak sectors to get started. Secondly this opens the possibility for individual buyers (communities, ministries, etc.) to set their requirements at the level they wish (main stream or fair trade, for example). This freedom of choice will keep sustainable buying on the agenda of any public institution, such as community councils. And it opens the possibility for buyers to tune in with processes in the economic sector at stake.

4. New EU policies

The European Council has issued new directives on public procurement. A new element is that public buyers are now allowed to use labels as a form of proof of compliance in the technical specifications, the award criteria or the contract performance conditions⁹. The good thing is that labelling supply chain initiatives get more recognition in EU PPS policy, and another good thing is that suppliers are confronted with social criteria early in the tendering process. Furthermore, there is now less chance that contracts which use technical specification and award criteria for social criteria will fall through in court. However, the much needed process approach towards better compliance still makes the performance

9. Directive PE-CO S 74/13 on public procurement and repealing Directive 2004/18/EC, in particular paragraph 43. www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/140975.pdf

conditions the best contractual vehicle for the inclusion of social criteria in tenders.

Another implication of the new directive is that fair trade criteria can be used, and that a Fair Trade label can be accepted as proof of compliance.

Important concerns which the Dutch government had when the SPP policy was announced in 2009, such as concern about the recognition of initiatives, proportionality, administrative burden and how to deal with the process approach, have become less of a concern, now that the new EU Directive is in place. This should only be a reasons for the Netherlands to keep its SSP policy in place, and for other governments to adopt similar policies.

5. Conclusions and recommendations

1. The Dutch government does not have any direct interference with the quality of labeling, nor is there a consistent call from society to do so. However, in its policies regarding SPP and support for IDH the government does have impact on labelling.
2. The SSP policy of the Netherlands Government is an adequate tool for sustainable public procurement, which other countries should consider to adopt. Some positive aspects are: process approach to social change, requiring business to take responsibility and to act regarding human rights violations in their supply chains. Importantly, the Dutch government has “recognised” labeling initiatives as of providers of proof of compliance in public tendering.
3. Implementation of the policy in the first 5 years was not satisfactory. Sustainable procurement is often not practised by lower governments. The process is often not handled professionally: the guidelines are not followed, and as a consequence effective action on the ground would not follow.
4. The highest priority should be to enforce implementation of SPP:
 - Make SPP obligatory in all levels of public administration.
 - Educate buyers and responsible administrators on the need for SPP, and on effective procedures to be followed.
 - Support supply chain initiatives. If in a certain economic sector there is no relevant initiative or process on the ground, it is better for the government to invest there-in, than to make any sustainability requirements in purchasing.
5. The government's support for IDH contributed significantly to creating supply chain programs for sustainability. That makes makes SPP more viable, just as the fact that certified products and producers are an outcome of the programs. However, today, the Dutch government is less involved with quality certification schemes than before.

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