

**FUNDING OPTIONS
FOR AGRICULTURAL
DEVELOPMENT:
THE CASE FOR
SPECIAL PURPOSE LEVIES**

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A. Introduction

The problem is a familiar one for a legislative consultant. You are drafting a law for a government agency, and they want to collect funds to cover the costs of providing certain services. To take a concrete example, a forestry agency wants to collect funds from the forest industry, to use for the purpose of reforestation. There is clearly a public interest in ensuring that trees felled in forestry operations are replaced, so it is important that funds collected for reforestation are applied to that purpose. Therefore, you look at setting up a special fund under the law, and providing for a levy to be collected from certain industry participants, paid into the fund, and then paid out of the fund for reforestation. Ideally, the funds would be “dedicated”, a term sometimes used to mean that the funds are kept separate, and can only be used for the purpose specified.¹

This seems simple enough, until you talk to the country’s Treasury officials. Their view is that levies and any other revenues collected by government agencies should go into the state’s “consolidated revenue”, so that all the funds available can be distributed among all the government agencies to provide services to the public in accordance with government priorities, under the normal budgetary processes. But, you ask, what if that means that funds collected for reforestation are not used for reforestation? Aren’t those funds collected on false pretences, with the result that the country’s forest resource may not be replaced? But, the Treasury officials reply, if every agency which collects revenue from economic activities can keep those funds for their own purposes, how are the “non-economic” sectors like education and health, police and courts, to be funded?

There is a genuine dilemma here: can the need to commit funds on an ongoing basis to pay for reforestation or any other special purpose be met, without undermining the government’s capacity to

pay for other public services? From the point of view of the agency concerned, it wants a reliable, ongoing stream of funds, collected from its sector of the economy to service particular needs of the sector. From the Treasury’s point of view, it will want to limit the number of special cases which receive such favourable treatment, so as to keep leakage of budget funds to a minimum.

In certain countries there has been a proliferation of such “special purpose levies” (SPLs) in recent years, and principles and guidelines have been developed to govern when such levies are acceptable. A surprising number of interesting issues arise, in balancing the needs of “dedicated funds” with the needs of “consolidated revenue”. The issues are of two main types –

- political: are levies for special purposes desirable or not? and
- operational: if they are desirable, what is the best way to provide for them?

An inquiry into their desirability asks in what circumstances and under what conditions are SPLs acceptable. What will be their impact on the country’s revenue system, and the ability to use taxation as a lever in controlling the economy? Secondly, what role might such levies play in influencing public attitudes and behaviour (e.g., pollution levies), in other words, as instruments for regulation? Thirdly, what is the impact of such levies on the delivery of basic services to the public (e.g., water supply)? Fourth, what impact do such levies have on public administration – for example, on accountability and transparency? Fifth, what will be their impact on markets, competition and trade, taking into account World Trade Organization concerns?

The other main concern with special purpose levies is the operational one: what is the best way of setting them up and administering them? In the first place, there are legal questions – are there any “competency” issues (the legal power to set up such a levy) – for example under a federal system, where there is a constitutional distribution of

¹ Another term used when funds are tied in this manner is “sequestered”.

taxation powers between different levels? Are there constitutional requirements for how funds can be legally appropriated? Next there are organisational questions: should a separate legal entity be established, to hold and administer the special fund into which the levies are paid? If so, what sort of entity would it be? with what membership, functions and powers? How would decisions be made – after consultation with stakeholders, by a majority vote, etc.? Third, there are financial questions: who pays the levy; how the levy is assessed and collected; are there to be any exemptions or rebates? how is the levy collected? is provision required for disbursement of the levy? Is it to be kept within a revolving fund? Finally, there are administrative aspects – record-keeping, provisions on accountability and transparency, notification and publicity, decentralisation of decision-making, and so on.

This paper will examine those issues, starting with some background information on the nature of SPLs and how they relate to other taxes and charges. An overview will then be provided of the most common SPLs found today – primary industry levies, forestry, fisheries, environmental and water levies, and then miscellaneous others. In order to analyse SPLs it is necessary to place them within their general funding context. For this purpose, the main aspects of special purpose funds are next considered – their organisation, sources of funds (including SPLs), how the funds are used and their oversight. Recent trends in the development of special purpose funding will be noted next, including international aspects such as under the WTO. Finally in this part of the paper, the arguments in favour of special funding arrangements and the arguments against will be presented. The paper concludes with a check-list of the political and operational issues which should be considered, when drafting legislation to set up and administer a special purpose levy.

As with many papers in the FAO Legal Papers Online series, the aim is to provide helpful information to government advisers on the main issues involved in

the subject, and the options available for arriving at workable results. The paper will not recommend an “ideal” law for setting up and administering SPLs, but instead will present the international experience and arguments for and against different approaches. While some general conclusions can be drawn, as always it is a matter of tailoring a law to suit the special needs and circumstances of the country concerned.

Terms used: Funding is a technical subject, with its own special terminology, and different countries use different terms for their financial institutions and arrangements. As far as possible, the paper avoids technical terms, and attempts to use English terms whose meanings are commonly understood. Thus, in this paper the government agency which controls the collection and allocation of public revenue is called the “Treasury”, money received as public revenue is paid into “consolidated revenue” and then paid out by “appropriations”. Certain terms, like “trust fund”, might have slightly different meanings between countries, but it is the substance of the concept which matters more than the term used. Also, opinions may vary over such questions as whether a levy is a “tax” or not, but such niceties of meaning are not the main concern of this paper.

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B. What is a special purpose levy?

(i) *The funding options*

There are two main aspects of any funding system – payments of funds in, and payments of funds out – and countries usually have strict requirements covering both aspects. The standard approach is to require that all revenues collected by government agencies are paid in to the Treasury as *consolidated revenue*, and payments are made out of consolidated revenue under *annual appropriation* laws, to meet commitments made in the budget. Under the budgetary process, the different government agencies all compete with each other for funds to meet their programs under the budgetary process, and funding commitments for the following year are made in accordance with the government's priorities. It is supposed to be an open and fair system, with the available funds being allocated to meet the most important needs. What it offers in terms of fairness and transparency, however, must be weighed against the uncertainty of annual funding. For this reason, agencies prefer to gain the added security of *permanent appropriations* from consolidated revenue.² In countries where these are available, an agency can be funded indefinitely, without the need to seek funding on an annual basis.

A greater level of security is also provided for an agency if some of the money, instead of certain payments being paid into consolidated revenue, they are paid into a *special fund*, which is only to be used for the agency's purposes.³ Payments into these special funds, sometimes called *trust funds*, can take a number of forms, including annual appropriations, permanent appropriations,

special taxes, duties and other levies, fees and charges, fines and penalties, grants, donations, foundations, endowments and other gifts. The law setting up the special fund will specify what payments are made into the fund, and what payments may be made out of the fund to cover the agency's needs.

From the above list of payment sources, those other than "special taxes, duties and other levies, fees and charges" can be dealt with quickly. While the other forms of payment into special funds may be important sources of funding, they are all relatively straightforward and raise no important political or legal issues which need to be addressed in this paper.

Thus –

- appropriations, whether annual or permanent, are the standard method for funding agencies;
- fines and penalties, in addition to their role as deterrents, are also standard sources of revenue, and they raise no legal issues of interest for present purposes;
- grants, donations and other types of gift are voluntary contributions, and therefore largely unproblematic.

What most of the above lack is the security of ongoing and reliable funding – i.e., payments which are compulsory, which rise and fall with the level of activity, and are legally committed to be spent on a particular service. It is the "special taxes, duties and other levies, fees and charges" where the interesting issues arise.

(ii) *Characteristics of a special purpose levy*

Having narrowed our field of inquiry to eliminate standard budgetary appropriations, penalties and voluntary contributions, we are left with the general field of taxes. It is necessary to narrow the focus further, to concentrate on the special field of special taxes, levies and other charges. A *tax* is generally regarded as a compulsory charge demanded by a public authority, which is not a payment for particular services.⁴ Taxation is the

² Permanent appropriations are not really permanent, for the law providing for them can always be amended or abolished. Their distinguishing feature is that the funding is ongoing, without requiring annual appropriations.

³ Sometimes such special funds are actually set up *within* consolidated revenue. But however they are set up, the main point is that special funds are "dedicated", so that they are retained for use only for the designated special purpose.

⁴ Fees for particular services are not usually regarded as taxes – see below in the text. The

age-old method by which governments raise funds for their needs, and the range of taxes is very wide, including income and property taxes, import and export duties, sales and value-added taxes, death duties and so on. A *levy* is a special form of tax, being a compulsory payment by a particular group, to fund a related public service. It differs from general taxes, in that it is paid by a particular group, for a particular service in which that group has an interest. But not all payments by particular groups for particular services are taxes, so it is necessary to look at them more closely.

As part of the movement for economic rationalism, governments around the world have adopted policies of *cost recovery*. The aim is to allow an agency to recover some or all of its operating costs by charging for its services. A major tool of cost recovery is the *user charge*. As the Treasury Board of Canada explains:

“Most people would agree with the principle that the general public should not bear all the costs of government services in cases where private parties derive a benefit for a service. User charging promotes an equitable approach to financing government programs by fairly charging individuals or organizations who receive services or are the focus of these programs.” (Canada 1997)

Further arguments are made in favour of user charges, as follows:

“External charging is a sound management tool that can foster good governance. By making departments and stakeholders aware of the full costs of products and services, the value and associated costs of rights and privileges granted and the value of access to, and use of government resources, departments can promote more effective and responsive service delivery and encourage sound stewardship of resources.” (Canada 2003)

User charges are not generally regarded as taxes, because “they are linked to specific benefits which are over and above those enjoyed by the general public.” (Canada 1997). In this sense, they are more like rents, fees or other charges for access to and use of public property. This approach concentrates on who benefits from the service which is provided – most services generate broad public benefits (*public goods*), but others benefit specific groups (*private goods*), so financing these through user charges is thought to be more equitable. (Canada 1995) A similar approach is taken in Australia, where an important legal distinction is made between a tax and a *fee for service*.⁵ The main distinguishing features of a fee for service in Australia are that a specific service is provided, the service is provided to the paying party, and the fee is proportionate to the cost of the service provided. (Australia 2000:12) Another term used in some jurisdictions for such payments is *management fees* – that is, fees collected by an agency to cover some or all of its costs of operation.

Whatever they are called – user charges, fees for service or management fees – these types of payments are not “compulsory” in the same way that taxes are. The public has a choice whether to use the particular service or not, and if they do choose to use the service they are required to contribute to payment for its cost. User charges are, however, similar to levies: they relate to a particular service, as do levies; they are usually proportionate to the cost of providing the service, as are most levies; only the members of the public who use the service are required to pay a user charge, and the same applies to levies. Because of these similarities, many of the issues which arise with special purpose levies also arise with user charges, but there is still something unique about special purpose levies. The main factor which distinguishes SPLs from user charges and other fees for services is that the “benefit” paid for is both a “private good” and a “public good”.

term cess is still used in some jurisdictions as a generic term for taxes, but such usage is becoming obsolete.

⁵ Under Australian law, all taxes must be paid into consolidated revenue. Fees for service, on the other hand, can be applied directly to payment for the costs of the service.

The point may be illustrated by returning to the reforestation levy mentioned in the Introduction. The forest industry participants who pay the levy are contributing to the sustainability of the forest resource. This is a public good, but also a private good for the industry participants, in that it helps to sustain their industry. It is like a user charge, in that the industry participants are being charged for their access to the forest resource. It is also like a fee for service, in that the levy is usually calculated on the basis of how much forest resource is used. Moreover, to the extent that some of the levy is used to cover costs involved in operating the Forestry Service, the reforestation levy is like a management fee. But because whoever wants to engage in the forest industry has to pay the levy, the levy is therefore a tax.

The next section of this paper will provide an overview of the most common kinds of SPLs found around the world today, but first it may be useful to look at some concerns which have been raised about the negative impact that SPLs can have, on a number of aspects of government.

(iii) *Impacts of special purpose levies*

When are SPLs acceptable, and what might be their negative impacts? In the above discussion of funding options, we saw that SPLs offer the advantage of a reliable source of funding, to pay for the ongoing provision of a particular service. With the increasing reliance on SPLs, governments have sought to lay down principles which must be followed by those seeking to take advantage of such reliable funding arrangements. As will be seen below, Australia has been a rich breeding-ground for SPLs, and in 1997 the Federal Government introduced a set of principles which any body proposing a new levy had to meet.

Drawing on privatisation concepts, a background paper explains:

“The economic rationale for governments to facilitate industry-wide levy funding of research, promotion and other industry programs rests in part on two propositions. First, the nature and

dispersal of program benefits are such that a private investor would not profit from supplying them. For example, the results of some research are widely applicable within the industry, but the benefits are not always *appropriable* by private investors. Second, levies represent a source of funds with low enforcement and collection costs, largely because industry participants recognise the benefits of cooperative behaviour.” (Australia 2001:6, emphasis added)

So there is a familiar cost-benefit analysis, but also a special justification is given for introducing a special purpose levy – what is referred to elsewhere in the principles as *market failure*:

“A primary role for government is the setting and enforcement of property rights and related institutions that will facilitate the efficient operation of commodity and resource markets. Where markets fail to provide socially desirable levels of a good, or do so but not cost effectively, there may be a case for other forms of government action”. (ibid.)

Examples given of market failure are industry research, and weed and pest control, where third parties benefit from the efforts of others without paying anything towards their costs. In such cases, so the argument goes, it may be acceptable for governments to intervene, and impose a levy on all industry participants to fund the research, pest and weed control, or whatever the benefit may be.

If market failure and cost effectiveness are positive arguments for introducing SPLs, on the negative side a number of disadvantages need to be considered. Perhaps the main one is inherent in their nature – by diverting funds from consolidated revenue, special purpose levies reduce the resources available to fund other public services, like health and education, through the annual budgetary process. The point was made in the Introduction that Treasury officials object to such “dedicated” funds, and they do so partly because of such a diversion of funds away from the “non-economic”

sectors of the economy, but also because they reduce the ability to use fiscal measures to achieve political ends.⁶ Government expenditure is a major lever used by governments to adjust the economy, and the more taxes that are “sequestered” from budget decision-making, the harder it is to influence the economy by budgetary measures.

On the other hand, politicians may appreciate the fact that SPLs are, in a sense, “hidden” taxes. Once introduced, such levies continue indefinitely, and governments are spared the public’s resentment at raising taxes. A related concern is that, as will be seen below, the imposition of such levies is often associated with setting up boards or other authorities, to administer the raising of the levy and its application to the special purpose concerned. In this way, government activities are shifted to such authorities, with possible consequences in a reduction of political responsibility for those activities. There are even concerns that such levies may create “perverse incentives”, whereby an authority is encouraged to promote harmful activities in order to increase its funding base. The more logging that occurs, the higher the reforestation levies that are paid.

The fact that funds from levies and charges are used to pay for a public service of some sort has both positive and negative aspects. An example of the former is the power given to local government authorities in United Kingdom to charge for certain services, the aim being to encourage them “to provide more wide-ranging and new and innovative services for their communities”. (United Kingdom 2003:5) Such services range from sports, recreation, parks and countryside facilities, to museums, galleries, theatres and concert halls, to low-cost housing. There is a negative aspect, however, in tying the provision of public services to payment of levies and other charges. It has been pointed out that many levies are, in effect, taxes on consumption, and are therefore “regressive” – i.e., people on low incomes

pay the same amount as high income-earners (Australia 2002:3).⁷ The regressive impact is greatest where essential goods such as water are involved. In South Africa, the trend towards imposing levies and other cost recovery measures is seen as producing a “crisis” of service delivery (McDonald and Pape 2002). In the United Kingdom, the climate change levy on domestic fuel is seen as “difficult to countenance”, when fuel poverty contributes to 30,000 extra winter deaths (United Kingdom 1999:2).

A further matter to be considered is the impact of SPLs on markets, competition and international trade. Trade is a complex subject, giving rise to much dispute in national and international forums. What is usually at issue is the trade preference given to one party or another, by an agency’s intervention in the market-place. Agencies imposing levies – or providing assistance programs – may be called on to justify them, on “public interest” grounds or as “justifiable” discrimination. The following examples of a levy and an assistance program indicate the issues involved.

By their nature, levies and other charges impose a cost on doing business, so governments will scrutinise such levies to ensure they can be justified. As an indication of the issues involved, the Australian Productivity Commission carried out an inquiry into assistance programs for the citrus industry, one of which involved the collection of a citrus levy for provision of various services to the industry. The levy funded the operations of a citrus marketing board and promotion committee, to provide services which “market failure” prevented the private sector from providing effectively. It was argued that the provision of fruit fly controls, promotion of citrus fruit, conduct of research and development and identification of export markets could all be justified on public benefit grounds, so the compulsory collection of levies was an acceptable intervention in the market-place (New South Wales, no date).

⁶ I am indebted to Adrian Whiteman of FAO’s Forestry Department for mentioning this additional point.

⁷ The Australian levies referred to here are imposed on milk and sugar, to fund dairy and sugar industry adjustment packages.

Under the influence of globalisation and pressures for trade liberalisation, assistance programs are regarded with suspicion – particularly if they breach non-discrimination principles. Of particular concern are measures aimed at protecting local producers from competition with foreign imports, but whether that is taking place is not always straightforward. In 2002, the Government of Brazil requested consultations under the WTO with the USA regarding an “equalising excise tax” imposed by the State of Florida on imported citrus products (Trade Policy Monitor 2003). Florida citrus producers pay a citrus fruit levy which is used for market promotion, and the purpose of the “equalising” tax was to make juice importers share in the cost of the State’s marketing programs from which they benefited. While this might seem reasonable, Brazil claimed that the tax was discriminatory as between imported and domestic products, contrary to the principles of the WTO.⁸ In June 2004, Brazil and the United States announced that they had reached a mutually agreed settlement to the dispute after the Governor of the State of Florida assented to amendments to section 601.155 of the Florida Citrus Code. The effect of the amendments is that it is no longer compulsory for citrus producers in Florida to pay the portion of the “equalising excise tax” that went directly into marketing campaigns for citrus.

The main point to note for present purposes is that levies on domestic goods to fund special services like market promotion and research usually impose a cost on local producers, and attempts to share that cost by taxing importers can run into challenge under the WTO principles.

⁸ This complicated matter was resolved by a Florida court finding that, in the circumstances of the case, market factors did not justify a special protection, leading to amendments to the State law. In other cases the discrimination is more obvious. The Export Development Board of Sri Lanka, for example, gave its full support to a proposed cess on the import of fruit and vegetables, where the express purpose of the tax was to assist local producers to compete with cheaper imports (Financial Times 2001).

The above are possible negative impacts of special purpose levies which need to be balanced against their attractions as a funding option. The next section of the paper will present an overview of the most common SPLs found around the world today.

C. Overview of special purpose levies

(i) Primary industry levies

Levies are commonly used in primary industry, to fund a wide range of activities, including –

- control of pests and diseases;
- conduct of research and development;
- provision of extension services;
- price stabilisation;
- market promotion;
- assistance programs for an industry sector – e.g., by provision of infrastructure facilities or industry restructuring.

Primary industry levies are probably the most common of all special purpose levies, accounting for up to half of the industry levy collections in some countries. The following are some examples.

In Papua New Guinea, statutory levies are collected in respect of the country’s main cash crops – coffee, cocoa, coconuts, palm oil and spices.⁹ There are different kinds of levies: e.g., coconuts are subject to a management levy, an industry levy (to be used for price stabilisation, as a credit facility and for investment promotion), a research cess and an extension levy. The levies are paid by different industry participants: e.g., only small-holder producers pay the oil palm levy, whereas for coffee, cocoa and spices the exporters are the ones levied, and in the case of coconuts both producers and exporters are levied. The

⁹ The operative laws are: *Coffee Industry Corporation (Statutory Functions and Powers) Act 1991*, *Cocoa Act Ch.388*, *Kokonias Industri Koperesen Act 2002*, *Oil Palm Industry Corporation Act 1992*, *Spice Industry Act 1989*.

levies are used for different purposes: for price stabilisation, research and development, extension services, small-holder assistance and market promotion. Each of the main crops has its own commodity board, whose costs in carrying out their regulatory functions (licensing of producers, processors, exporters, inspections, etc.) are covered – in whole or in part – out of the levies collected for each crop.

In India, the State of Andhra Pradesh enacted legislation providing for the collection of a cess to be used for rural development, in particular for the construction of roads and bridges, improvement of storage facilities and maintenance and strengthening of the public distribution system for paddy rice and cashewnuts.¹⁰ The 5% cess is payable on the value of paddy rice and cashewnuts purchased by government agencies from dealers, and is collected by deduction from amounts payable to the dealers.

The State of Queensland in Australia legislated to empower a committee to impose three levies on fruit and vegetable growers – a general levy, a promotion levy and a research and development levy.¹¹ The law requires that each levy be spent only on purpose for which it was raised – the general levy only in relation to administration, promotion, research and development; the promotion levy only in relation to promotion; and the research levy only in relation to research and development.

Two other primary industry levies in Australia, this time at the Federal level, are the dairy industry adjustment levy and the sugar industry levy.¹² In the former case, a levy of 11 cents per litre is collected on retail sales of milk, to fund assistance to the industry to adjust to deregulation. The levy is expected to raise Aus\$1.74 billion over eight years

from 2000. In the case of sugar, a levy of 3 cents per kilogram was imposed for five years on domestic sugar sales, to fund a Aus\$150 million “rescue package” for the industry. Notably, the Federal Opposition opposed the levy, maintaining that the Government should fund the assistance out of general revenue. Not unreasonably, perhaps, the Government was criticised for its heavy reliance on such levies (see below), which serve to “hide” the taxes concerned. As mentioned above, there are political advantages in using levies as an alternative to raising taxes.

(ii) Forestry levies

Forest funds are a common feature of forestry financing, and various levies are imposed on the industry as a source of income for the funds. In 2001, FAO produced “An Overview of National Forest Funds: Current Approaches and Future Opportunities” (FAO 2001). The two authors of that paper studied the national laws of forty-one countries around the world, looking at the organisation of forest funds, the sources of their income, the uses to which the funds are put and arrangements for oversight of the funds. They then set out the main arguments for and against forest funds, and discussed what their future roles might be. For their purposes, they define “forest funds” to mean funds which “exist for more than a single government budget cycle, segregating specific forestry-related revenues and earmarking them for investment in the forest sector” (ibid, iii).¹³

The FAO paper’s treatment of income sources for forest funds first makes the point that income may flow from multiple – or a restricted number – of sources, and that in most cases it is the former. Among the multiple sources are general revenue appropriations, income from Government forests (sales of forest products, etc.), forest-related taxes (e.g., taxes on forest harvesting and processing of forest products), fines, penalties and seizures, donations and grants. Among the uses of forest funds, the paper notes that a

¹⁰ *Andhra Pradesh Rural Development Act, 1996.*

¹¹ *Fruit Marketing (Committee of Direction Levies) Regulation 1992.*

¹² The operative dairy laws are: *Dairy Industry Adjustment Act 2000, Dairy Adjustment Levy (General) Act 2000.*

¹³ As mentioned below, this definition corresponds to the meaning of “special purpose levies” used in the present paper.

common use is support for government activities, including research and public education, forest extension programs and reforestation.

The arguments for and against forest funds set out in the paper will be examined below, but it should be mentioned here that a tax imposed on forest harvesting to pay for reforestation would be a “special purpose levy”, as that term is used in the present paper. An example of such an SPL is the tax on logs, wood-chips and other raw materials collected by the Indonesian Reforestation Fund, referred to in the FAO paper (*ibid.*, Appendix A:9). The fund may be spent on reforestation, plantation development and land rehabilitation.

Most of the forty-one laws included in the FAO study are recent, but the authors point out that national forest funds “are not new – in one form or another, they have long been a feature of the institutional landscape in various parts of the world.” (*ibid.*, 1). The United States Forest Service currently has 23 trust funds and special accounts, dating back to 1930. Whereas for many countries the benefits of dedicated forest funds are a relatively new experience, the US’s long experience of funding outside of the annual budget appropriation process has led to allegations of abuse, and calls for greater congressional oversight. In a report by the US Congressional Research Service, even the option of returning forest funding to annual appropriations was considered (United States 2000).

An unpublished UNDP-funded paper, prepared for the Government of Malawi in 2000, noted that new socio-political realities, including the implementation of liberal economic reforms (a shift to a free-market economy, privatisation of public assets and decentralisation), were changing the traditional roles of the state in the management of forests. Aid donors and new participants (NGOs, etc.) want funding mechanisms which will promote development objectives such as sustainable forest management and equitable benefit-sharing, and trust funds were being looked at to provide the necessary controls.

In Niger, FAO has assisted with a review of the forest revenue system, to see how fiscal policies can contribute to sustainable forest management (FAO 2001a). Niger has a fairly elaborate forest taxation system, with taxes applying to sales of fuelwood and non-wood forest products, ecotourism and hunting, forest product processing and foreign trade in forest products. The forest taxes are generally held in current accounts or special accounts of the public revenue department, thus allowing funds intended for the support of sustainable forest development “to be mobilised more easily than general funds in the public revenue department” (*ibid.*, 39). While the FAO article concludes that new funding arrangements should contribute to sustainable forest development, the main proposals for improvement lie in better planning and budgeting, greater efficiency of the tax system and better monitoring. Decentralisation of funding and decision-making is also seen as a factor which would contribute to improvements in forest management.¹⁴

(iii) Fisheries levies

As with forestry funds, the basic purpose of fisheries funds is reinvestment of some portion of fisheries revenue into management of the resource. In 2002, FAO prepared an overview of fisheries funds, modelled on the FAO forests funds overview referred to in the preceding section (FAO 2002). A study was made of the fisheries legislation in seventeen countries, where provision is made for dedication of part of the fisheries-related revenue for purposes of reinvestment into the sector.¹⁵

The main sources of the fisheries funds covered by the study were allocations from general revenue, income from fisheries management (e.g., fish breeding), fishery-related taxes, levies and fees, fines, penalties and seizures,

¹⁴ Niger introduced a new forest law in 2004.

¹⁵ In addition to statutory levies, funds for fisheries management and development are also provided under multilateral and bilateral fishing access agreements, e.g., the Treaty on Fisheries between Governments of Certain Pacific Island States and the Government of the United States of America.

donations and grants, and interest on loans, etc. The paper points out that sometimes the "tax" is rather a fee for service, the fund being used to ensure that the fee is spent on the particular service. An example is given of Iraq, where a service fee is imposed on wholesalers and retailers of fisheries produce, with the revenue being used to "breed aquatic life" to supply public waters¹⁶ (ibid, 7).

With respect to uses of fisheries funds, provision in the laws vary widely:

"Some funds are created for the specific purpose of protecting the marine habitat/environment of a limited geographical area. Others aim at encompassing all fisheries and aquatic-related tasks such as conservation, development, promotion, management and administration on a national and local level." (ibid, 9)

Some funds are used for investments in fisheries infrastructure, many are used for research and development, and others for market promotion.

There are also examples of non-legislated funding options, for example in Papua New Guinea. These are found in multilateral and bilateral fishing access agreements with other countries. A fund set aside to fund observer programmes and other funds such as a "project development fund" or "economic development fund" are created so that the government granted fishing access pays a specified sum into the fund to sponsor the specified activity or for fisheries development projects in general. An example of a multilateral access agreement that creates these funds is the *Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America* (between the US and Pacific Island Countries members of the

Pacific Forum Fisheries Agency).¹⁷ An example of a bilateral agreement that creates funds for establishing and maintaining observer programmes is the Agreement between Papua New Guinea and Korea for fishing access. The above types of funding options are interesting as they, inter alia, lead to the creation of innovative ways or institutions to administer the funds.

A common feature of the fisheries sector is not so much levies as subsidies. A recent FAO Fisheries Technical Paper analyses the debate on fisheries subsidies, and their contribution to over-fishing (FAO 2003). Subsidies play a role at the national and international level: to the degree that they stimulate fishing, they may increase national income; but they may interfere with international trade. It is this latter possibility which has brought fisheries subsidies under WTO scrutiny, via the Agreement on Subsidies and Countervailing Measures. Subsidies are highly controversial, and the FAO paper points out that even the definition of a "subsidy" is strongly contested, with "political realities" playing a role in determining its limits (ibid, 3).

The earlier FAO paper also mentions use of fisheries funds to promote private businesses, by direct financing, soft loans or guarantees. For example, the Philippines legislation establishes funds "for lending to qualified borrowers to finance the development of the fisheries industry", "to enhance the building and/or acquisition of fishing vessels", and to provide "soft loans which shall be extended to municipal fisherfolk and their organisations who will engage in aquaculture, and for the development of underdeveloped or under-utilised fishponds."¹⁸ (FAO 2002:12)

Meanwhile, a recent fisheries workshop held by FAO points again to the dilemma over whether funds should be provided by budget appropriations, or from special funds. The summary of the workshop's conclusions attempts to have "the best of both worlds":

¹⁶ *Fishing, Exploitation and Protection of Living Aquatic Species Law 1976*. Note that other countries (e.g., Australia) probably would not regard such a levy as a fee for service, because the service of restocking the fishery is not directly provided to the sellers of fish produce.

¹⁷ This treaty is available through FAOLEX at <http://faolex.fao.org/faolex/index.htm>.

¹⁸ *Philippine Fisheries Code 1998*.

“Through appropriate fiscal arrangements, fisheries can make a major contribution to Government budgets. This contribution should be first and foremost via the Treasury, which can then take appropriate allocation decisions. In this context, it is important however that sufficient resources are budgeted and delivered to enable the fishery management to be undertaken correctly, taking into consideration the potential of fisheries to the macro-economy, if they are well managed.” (FAO 2003a:19)

(iv) Environmental levies

“Environmental Funds (EFs) are increasingly important actors on the global scene.” So starts a recent IUCN article reviewing Environmental Funds, based on a Global Environment Facility (GEF) evaluation conducted in 1998 (IUCN, no date). The first EFs date from the early 1990s, but by 1997 there were forty-six, with eleven more in the process of being established and forty-five more proposed (ibid, 2). The article identified three main types of EF:

- funds with a mandate to support a full range of activities included in national environmental plans;
- funds which support the conservation of protected areas (“parks funds”);
- funds which make grants to others – typically NGOs and community groups – for conservation and/or sustainable development projects (“grants funds”) (ibid., 3).

Most EFs fall into the second and third types. A common source of funding has been debt-for-nature swaps, where debt relief and funding is given in return for specific environmental commitments. Grants from bilateral and multilateral donors are also a major source of funds, while national governments have contributed by introducing user fees and special taxes (ibid, 4).

In Central and Eastern Europe, securing funds for environmental protection is difficult. The main sources of funding are economic instruments for environmental protection – emission fees, waste

disposal charges, taxes on fuel, car tyres and batteries, etc., and fines for non-compliance. Foreign environmental investment and aid programs are other important sources of funds. In Bulgaria, the Czech Republic, Hungary, Poland and Slovakia funds are provided to municipalities, industrial enterprises and NGOs for environmental projects by way of grants, subsidies and loans on preferential terms (REC 2000).

In a 1998 paper reviewing the performance of environmental funds in economies in transition,¹⁹ the rationale for EFs is said to be to “induce environmental investments which would otherwise not take place”, because of environmental policy weaknesses or failure of financial markets (Cowi 1998:5). The policy weaknesses range from inadequate information on the extent and social costs of environmental damage, to poor enforcement of environmental regulations, to lack of emphasis on environmental issues in the budgetary process. The types of failures of financial markets which EFs are intended to address include constraints which delay the replacement of outdated and polluting technology, capacity constraints on municipalities which delay introduction of pollution abatement and control, and limited availability of finance for long-term investments in pollution control (ibid., 5-8). “The litmus test of environmental funds”, the authors say, “is whether they increase the speed of the development towards more efficient use of financial markets for environmental investments and towards more effective environmental policies; and whether they are eliminated when no longer needed.” (ibid, 9)

A resource document, prepared for the Fourth International Conference on Environmental Compliance and Enforcement held in Thailand in 1996, reviewed the funding mechanisms for such programs (Apogee Research, no date). The document notes that special funding mechanisms adapted to environmental compliance and enforcement rely on “key economic principles” over who should pay for

¹⁹ The term “economies in transition” refers to countries in Central and Eastern Europe.

environmental improvements and pollution control – namely, the “polluter pays principle” and the “beneficiary pays principle” (ibid.). Whereas under the former approach the polluter is seen as the primary accountable agent, the latter approach is that those who benefit from a cleaner environment should pay for this benefit. Examples of “polluter pays” mechanisms are fines and penalties for pollution offences, and targeted special taxes – e.g., on hazardous waste generation or resource consumption. Examples of “beneficiary pays” mechanisms are recreational fees (e.g., park entry fees) and targeted special taxes – e.g., on property-owners who benefit from a lake clean-up project (ibid.). The document has a table showing the funding mechanisms used in fifty-six countries. Taxes and fees are the most commonly used funding mechanisms.

An example of an early environmental measure is India's *Water (Prevention and Control of Pollution) Cess Act of 1977*. The purpose of the law is to impose a cess on certain water consumers, to provide funds to the Central and State pollution control boards. The targeted consumers are local authorities, and persons carrying on certain industries, which include some industrial uses of water and processing which results in water pollution. The Act also applies to use of water for “domestic purposes”. Different rates for the cess are prescribed depending on the use, provision is made for recording water use, and rebates apply where local authorities install sewage and effluent treatment plants. The water cess is paid into consolidated revenue, and apportioned among State governments to fund their pollution control boards.

As might be expected, the performance of EFs has been mixed. Among the achievements noted in the IUCN article were creation of new national parks, the generation of substantial funds for conservation, devolution of responsibility and decision-making about environmental priorities and programs to the local level, and the increased participation of civil society in environmental issues (IUCN, no date: 6-7). Environmental funds have had problems, however, related to institutional

capacity, program focus, governance, and financial and program management (ibid, 7-13). Their overall impact on the environment is “still not certain”, partly because “most EFs generate relatively small amounts of resources in relation to national needs for conservation and sustainable development.” (ibid, 13). The article concludes:

“Looking to the future, EF managers and designers will have to be creative in seeking ways beyond the conventional donor channels to finance their activities. There is considerable potential for EFs to raise funds domestically via ‘ecosystem service’ charges, user fees and dedicated taxes.” (ibid, 24)

(v) Water levies

While payments for water abstraction are mainly in the nature of “user charges”, the attempt is commonly made to use charging for water, particularly the extraction of groundwater, as a mechanism to influence the demand for water. Water charging is generally practised in combination with such regulatory mechanisms as water management plans and minimum flow requirements (FAO 2002a:154-55), and can be viewed as an aspect of environment protection. In England and Wales, for example, where water abstraction charging has a long history, charges are set at a level which enables the Environment Agency to cover its costs in performing its function as water custodian (ibid., 155).

In Mexico, too, water charging has the dual purpose of –

- providing funds for water resources management and development; and
- promoting a gradual shift in water use to higher-value priorities, and deterring water pollution (FAO 2001b:40).

Mexico illustrates the dilemma which can arise from a country's charging policy:

“Water subsidies in Mexico have traditionally been used to achieve specific socio-political objectives of food security, provision of clean

drinking water and increasing the income and health of the rural poor. While this in itself is commendable the total efficiency of water use in the country as a whole needs to be rationalized, in particular with respect to agricultural use.” (ibid, 41)

While it might be difficult to combine the social aims of cheaper water with the goals of water conservation, water charging policy can more easily be combined with environmental protection objectives. Based on the “polluter pays” principle (see above), many water control laws impose charges for the discharging of waste into water bodies (FAO 2002:155-56).

A recent trend has been to seek more rational use of water by adopting a free market approach. Trading in water rights (including abstraction and waste discharge permits) passes decision-making over water allocation and use from the public to the private sector, but most countries recognise that some regulation is still necessary, to avoid “unwelcome ‘third-party’ effects, such as effects on the environment, on the interests of the area from where water is taken for use in another area, on cultural values, on resource availability to meet priority requirements and, generally, on marginal groups.” (ibid, 154) As a basic necessity of life, and with its multiple uses, water involves a wide range of interests, and how its use is taxed will play an important role in mediating between those interests.

(vi) Miscellaneous other levies

Special purpose levies (SPLs) are taxes imposed on a particular group to fund a particular public service, so the range of possible levies is as wide as “groups” and “public services” can be. Perhaps the country where SPLs have been most expansively employed is Australia. Many of them are primary industry levies (about half of the total in Australia), but a 1999-2000 audit carried out by the Auditor-General listed fifteen non-primary industry levies (Australia 2000), and other levies that are unconnected with industry. The following lists some of the main ones:

- Medicare levy: A surcharge imposed on all taxpayers to fund the national universal health insurance scheme.
- Medical indemnity levy: A levy imposed on medical practitioners, to cover a blow-out in medical insurance liabilities.
- Aircraft noise levy: A levy imposed on operators of jet aircraft landing at Sydney and Adelaide Airports, to fund a noise amelioration program.
- Airport security levy: A levy imposed on air passengers to fund an airport security upgrade.
- Ansett levy: A levy imposed on air passengers to fund employee entitlements of a national airline (Ansett) which went into liquidation.
- Firearms buyback levy: A levy imposed on all taxpayers to fund compensation payable under a national firearms buyback scheme.
- Stevedoring levy: A levy imposed on the loading and unloading of containers and cars at wharves, to recover the costs of redundancy payments made to employees as part of reform of the stevedoring industry.
- Dairy industry adjustment levy: A levy of 11 cents per litre on retail sales of milk, to fund a dairy deregulation package.
- Sugar industry levy: A levy of 3 cents per kilogram on domestic sugar sales, to fund sugar industry reforms.
- Marine navigation levy: A levy paid by certain commercial vessels to recover the costs of the navigation aids network.
- Protection of the sea levy: A levy paid by certain commercial vessels to fund a national plan to combat pollution of the sea by oil.

As can be seen, the levies fund a wide range of special purposes – environmental protection, industry regulation and reform, public health, public safety and so on. It is difficult to see any common thread, and not surprisingly complaints are made that the Government is resorting to levies to avoid the public’s resentment over tax

increases.²⁰ Most of the levies listed above have finite lives, but others (e.g., the Medicare levy) are ongoing, and are the basis of the Australian Government's funding for these services. In such cases, the superiority of a levy – that it is ongoing, dedicated to the particular service and proportionate to the costs of providing that service – over annual budgetary appropriations is apparent. But that raises the general matter of arguments for and against special purpose levies, which will be canvassed below. First, however, consideration will be given to how SPLs fit into the general funding context, and this requires analysis of special funds themselves – their organisation, sources of income, uses to which they are put and their oversight. This will be followed by some observations on recent trends in the use of special funds and SPLs.

D. Main aspects of special purposes funds

The FAO Overview of National Forest Funds mentioned above found that forest funds vary with respect to their organisation, income sources, uses and oversight (FAO 2001:4-13). That paper reviewed the legislation of forty-one developed and developing countries across the globe, and its findings are applicable to special funds in general, not just to forest funds. To put special purpose levies in their wider funding context, the framework for analysis used in the FAO paper on forest funds will be followed below.²¹

(i) Organisation

Organisation of special funds can be divided into three categories –

- (a) Funds as accounting devices: These funds exist only as separate “special” accounts in the budget of the agency concerned. The fund has no independent legal powers and no special institutional structure behind it. Authority over the fund may be split between the technical agency concerned and the country's finance ministry.
- (b) Independent and quasi-independent funds: These funds are given a legal personality, possibly as a government-owned corporation, trust or charitable foundation. The government appoints the managers of the fund and supplies it with a stream of income, but the fund otherwise operates independently of the government.
- (c) Decentralised funds: These funds are structured in such a way that control of the money is shifted from the central to the regional or local office of the agency, or to local government or community-based organisations.

(ii) Income sources

There are nine main sources of income for special funds –

- (a) Basic pattern: multiple v. restricted number of sources: There are two broad classes of funds – those which can accept money from multiple and diverse sources (taxes, fees, fines, donations, etc.), and those funded from a single or restricted source.
- (b) General revenues: Laws will commonly provide for money to be placed into special funds from consolidated revenue. In some countries, the law may require that all taxation receipts must first be paid into consolidated revenue, from where appropriations are made for specific purposes. Such funds can be designed as endowments, foundations, trusts or revolving funds.
- (c) Income from government assets: This common model involves the re-investment of some portion of revenue from an asset (e.g., state forests) into a special fund. Examples in the case of forestry are

²⁰ A Research Note prepared for the Parliament of Australia in fact queried why some programs were funded by levies when “comparable programs” were funded “directly through the Budget” (Australia 2002: 3).

²¹ In the following treatment, for convenience material will be adopted and adapted from the FAO paper without specific referencing.

income from sales of forest produce, fees for admission to public forests or sale of seedlings from public nurseries.

- (d) Asset-related taxes, fees and levies: These include taxes on harvesting the asset, or on the sale or processing of its produce. Sometimes the tax is more in the nature of a fee for service, e.g., a fee imposed on fish wholesalers to fund fish breeding. Levies imposed on particular groups to fund special purposes (SPLs) are, of course, the main concern of the present paper.
- (e) Fines, penalties and seizures: Many laws provide that amounts collected during law enforcement go into a special fund. This can create an "institutional incentive" for stronger law enforcement.
- (f) Donations and grants: Many funds accept donations and grants. Donors may feel reassured that their donations will be spent on the intended use, if they are channelled through a fund. A fund may also provide better oversight than would be the case under general appropriations of revenue.
- (g) Income from fund-supported projects: Some funds earn income from projects they support, e.g., a share of income from community forestry projects which are managed with money from the fund.
- (h) Bonds and loans: The law may allow a fund to raise money by selling bonds to the public.
- (i) Fees and taxes not tied to exploitation of the asset: Such funds try to capture economic values of state assets which are not captured through the private market. Examples are tourist entry fees, hunting permits or payments for environmental services.

(iii) Uses

There are three main uses for special funds –

- (a) Support to government activities: Some laws simply state that the fund must be used for supporting general

government activities related to the asset concerned, but most are more specific as to uses. Common uses specified are asset administration, replacement of the asset, research and extension services, public education, market promotion, insect and disease control.

- (b) Private asset management: Some forest funds, for example, can be used to pay for private afforestation or reforestation, or for forest management planning.
- (c) Other private activity: Some funds can be used to make direct payments to local communities or NGOs, e.g., to support sustainable forest management.

(iv) Oversight

Fund legislation may create mechanisms to protect the "integrity" of the fund. These may include requirements for transparency, advisory boards, record-keeping and accounting, and regular auditing.

(v) Recent trends

In a 2002 publication looking at legal trends in agriculture and natural resource management, the FAO Legal Office identified "some overarching factors that have influenced the pace, nature and direction of legal reform more generally over the last ten years" (FAO 2002:4-5). These factors include greatly expanded environmental awareness, the collapse of communism, the movement towards privatisation, the acceleration of globalisation, a strengthening of regional co-operation, heightened appreciation of the importance of good governance, and an increasing emphasis on decentralisation across all sectors of government. All of these factors have had some impact on funding mechanisms, either in the type of activities for which special funding mechanisms are required, the sources of the funds, the way the funds are organised or arrangements for their overview.

The growth in the number of countries joining the World Trade Organization (WTO) has meant increased attention is

being given to matters like equivalence and non-discrimination, in scrutinising member-countries' legislation. Governments must be careful to ensure that the introduction of special purpose levies does not offend these principles. An example of the problem is the case mentioned above, where the Government of Brazil challenged an "equalising" tax imposed by the State of Florida on citrus imports, to make juice importers contribute to payment for the State's marketing programs. In that case, however, it was not the special purpose levy paid by the Florida citrus producers which was at issue, but the special tax imposed on importers.

Another international trend since the end of the "Cold War" has been the number of political, economic and social reforms undertaken in developing countries – abandonment of the one-party system of government, a shift to the free-market economy, privatisation of public assets and decentralisation of decision-making. In reviewing financial mechanisms for the Malawi forestry sector, an unpublished UNDP-funded paper noted that these new socio-political realities have set the stage for liberalism, engendering forestry sector policy re-orientation, institutional restructuring, new divisions of labour, new power relations, and new forest resource ownership patterns. The paper mentions the emergence of new funding structures in response to these reforms, and increasing use by aid donors of the trust fund mechanism instead of budgetary support, to achieve more participatory, responsive and accountable decision-making over forest management.

At a national level, the general trend has been for countries to expand the number of special funds – and the use of special purpose levies as a funding mechanism – to take advantage of the benefits of ongoing, reliable funding for particular services. But in the United States, where some of the oldest special funding mechanisms are found, they have attracted criticism *because* of their ongoing nature. A Report for the US Congress in 2000 raised concerns about the Knutson-Vandenberg Fund, which was established in 1930 to levy timber purchasers to provide funds for

reforestation. The activities being funded had over the years spread beyond reforestation, and options being considered to remedy the problem included abolition of permanent accounts, and their replacement with annual appropriations (United States 2000:5). The debate has now turned the full circle, so this might be a good point to review arguments for and against special purpose funds and levies.

E. Advantages and disadvantages

In the FAO overview of forest funds, the authors reviewed the long-running debate among policy-makers, foresters and economists over the advantages and disadvantages of such funds (FAO 2001:14-17). The arguments set out in that paper apply not just to funds set up for special purposes like forestry, but also to the imposition of SPLs to raise income for those funds. The present paper is mainly concerned with the options available for raising funds for special purposes, but issues relevant to that matter are also relevant to the general question of whether special funds are desirable. In the following analysis, the arguments set out in the FAO paper have been incorporated with conclusions which can be drawn from the foregoing examination of SPLs.²²

(i) *Common arguments in favour of special funding arrangements*

1. Special funds can help meet special needs for long-term investment: The great advantage of special funds is that they provide a reliable source of funding, which can be accessed relatively easily by the agency concerned. Many activities of government would benefit from ongoing funding arrangements of this nature. To take forestry as an example, because investment in

²² Again, in the following treatment, for convenience material will be adopted and adapted from the FAO paper without specific referencing.

sustainable forestry is a long-term proposition, a secure, sufficient and long-term source of finance is necessary. The forest sector also needs long-term investments in roads, equipment, research, training and other physical and human infrastructure. A dedicated fund, fed by earmarked forest revenue, is a practical way to meet this need.

2. Special funds can shield a sector against the fluctuations and unpredictability of national budgets: Certain activities of government require a steady source of funding, which does not have to be continually justified and which is protected from fickle political winds. Special purpose levies are usually proportionate to the level of activity concerned, and thus can be related closely to cost recovery.
 3. Special funds can help stimulate more effective management by government agencies: Dedicated funds can help reduce the “perverse incentive” effect, whereby agencies are punished for having unspent funds. An autonomous fund can avoid entrenched government structures and increase flexibility in resource management.
 4. Special funds may allow for greater oversight of spending: By isolating the special purpose funding from other funds, and by setting up a separate record-keeping system and requiring regular audits, a fund can make bureaucracies more accountable. Fund management can be structured to include a wide range of stakeholders.
 5. Special funding arrangements can be used as instruments for regulation: Environmental levies are commonly used to try to influence behaviour, for example under the “polluter pays” principle, where special levies target pollution. Water levies are also used to influence demand, and promote higher-value water uses.
 6. Special purpose levies usually have low collection and enforcement costs.
- (ii) Common arguments against special funding arrangements**
1. Special funds may trap capital in the sector: Dedicated funds may prevent countries from choosing a more beneficial avenue for investment (e.g., in industrial development rather than in reforestation).
 2. Special funds may prevent ideal allocation of government budgets: The ideal way to allocate government funds is to consider all programs according to their relative merits, and budget accordingly. Government money should be given to agencies on the basis of need and utility, not on the basis of the income they earn. Furthermore, diverting revenue to SPLs reduces the ability to use fiscal measures to adjust the economy.
 3. Special funds may transmit misleading economic signals to bureaucrats: If a fund draws its income from the sale of timber, for example, it gives the bureaucrat an incentive to promote such sales, and disregard other management objectives like flood control, clean water and so on. Funds may also promote inefficiency, in protecting the agency against the annual competition for funds.
 4. Special funds may invite corruption: Keeping money outside the normal budgetary oversight may increase the opportunities for corruption. Funds may also be administered by staff who lack the skills to oversee a large financial operation.
 5. Special purpose levies are often regressive: There is a risk that SPLs will disproportionately harm the poor, especially if applied to essential goods and services such as clean water supply.
 6. Special funds can have a negative impact on public administration: There is a tendency for politicians to avoid the scrutiny which normally

attaches to the raising of taxes by an over-use of SPLs. Being “hidden” taxes, they are lacking in transparency.

7. Special purpose levies can be problematic in a “free trade” environment.

F. Conclusion

So, having considered the funding options and where special purpose levies (SPLs) fit into them, having seen how governmental activities have been funded in a wide range of countries for many different purposes, and having reviewed the arguments for and against SPLs, it now remains to return to the two basic questions –

- the political question: when are SPLs desirable?
- the operational question: what is the best way to provide for them?

The paper will conclude by drawing together the international experience outlined in the foregoing treatment, and attempting to answer those two basic questions with a few simple conclusions.

(i) **When to have a special purpose levy**

1. There are two main **aspects** of any funding system –
 - (a) how payments are made in; and
 - (b) how payments are made out.
2. There are two main **principles** which seem to be generally accepted –
 - (a) regarding payments in, all income raised by the government should be paid into *consolidated revenue*, to be available to cover the costs of providing services to the public;
 - (b) regarding payments out, the costs of providing services to the public should be covered by way of *annual appropriations* from the budget.
3. To these general principles, however, a number of **exceptions** seem to be accepted. They can be divided into two broad classes –

- exceptions based on *equity*;
- exceptions based on *efficiency*.

4. Regarding payments in, exceptions based on equity rely on the argument that payment for the costs of particular services should be *concentrated*. Such payments are usually by way of –
 - user charges (also known as fees for service), where persons who receive the benefits of a specific service pay *directly* for the costs of providing that service;
 - *management fees*, where persons who receive the benefits of a specific service pay *indirectly* for the costs of providing that service.
5. Exceptions based on efficiency rely on the argument that payment for the costs of particular services should be *diluted*, i.e., spread across the community or part of it. Such payments are usually by way of –
 - *levies*, where a service *indirectly* benefits the whole community, but some members of the community benefit *directly* from the service, so the costs of providing that service are spread among them.
6. Regarding payments out, the argument here is based on *efficiency*. Where particular services require long-term investments, secure long-term funding is provided by way of –
 - *permanent appropriations*, where funds are provided from consolidated revenue on a continuous basis; or
 - *special funds, trust funds, endowments, etc.*, where funds are available on a continuous basis without the need for appropriations.
7. A *special purpose levy* is justified, therefore, when continuous funding is required for a particular service, and it is more efficient for payments for that service to be spread across the community – or that part of the community which benefits directly from the service.

(ii) How to provide for special purpose levies

1. There are two main **aspects** in operating a levy system –
 - (a) how the levy is collected; and
 - (b) how the levy is disbursed.
2. Regarding **collection** of the levy, the levy can either be –
 - (a) paid into *consolidated revenue*; or
 - (b) paid into a *special fund*.
3. If the levy is paid into consolidated revenue, no further provision is necessary regarding collection of the levy.
4. If the levy is paid into a special fund, further provision may be required for –
 - (a) creation of a legal entity which collects the levy, holds the levy fund and disburses payments from the fund;
 - (b) the membership (if any), functions and powers of that legal entity;
 - (c) how decisions are made by that legal entity;
 - (d) its accountability to the stakeholders involved.
5. Legal provision will also be required for –
 - (a) who pays the levy;
 - (b) how the levy is assessed;
 - (c) how the levy is imposed;
 - (d) any exemptions or rebates from the levy.
6. Legal provision may be required for financial matters, such as –
 - (a) how the levy is collected;
 - (b) issuing of receipts for levy payments;
 - (c) banking of levy receipts;
 - (d) debt recovery.
7. Regarding **disbursement** of the levy, legal provision may be required for –
 - (a) the purposes for which the levy fund may be disbursed;
 - (b) how disbursement is carried out;
 - (c) risk management.
8. Provision will be needed for the **management** of the levy, including for –
 - (a) administration, staff appointments and supervision;
 - (b) record-keeping and reporting;
 - (c) accountability and transparency;
 - (d) public awareness and notification of the levy;
 - (e) possibly decentralised operations.

How all these matters are addressed will vary between countries, and will depend on the particular institutional culture, administrative resources and other circumstances of the country concerned. As has been seen, funds can be drawn from many sources to cover the costs of particular governmental activities, but “special purpose levies” have their own particular character. This paper shows that they are part of a class of exceptions from the general principle that all government receipts and payments should be made through the annual budget. As special exceptions, it is important that certain principles should be followed in deciding when it is appropriate to introduce a special purpose levy, and how the implementing legislation should be drafted. This paper has attempted to sketch out what those guiding principles should be.

References

- Apogee Research (no date). *Financing Environmental Compliance and Enforcement Programs*, unpublished Technical Resource Document prepared by Tamar Henkin, Jennifer Bing and Karin DeMoors for the Fourth International Conference on Environmental Compliance and Enforcement, Chiang Mai, Thailand, 22-26 April, 1996.
- Australia 2000. *Management of Commonwealth Non-primary Industry Levies*, Australian National Audit Office, Canberra, Australia.
- Australia 2001. *Revised Levy Guidelines Applying to the Application of the Government's 12 Levy Principles*, Department of Agriculture, Fisheries and Forestry, Canberra, Australia.
- Australia 2002. *Special Levies: Taxes by Another Name*, Research Note No. 17, by Richard Webb, Department of the Parliamentary Library, Canberra, Australia.
- Canada 1995. *Cost Recovery and Statistics Canada*, Saskatchewan Bureau of Statistics, Canada.
- Canada 1997. *Cost Recovery*, Treasury Board of Canada Secretariat, Canada.
- Canada 2003. *External Charging Policy*, Treasury Board of Canada Secretariat, Canada.
- Cowi 1998. *Environmental Funds in Economies in Transition: An Efficient Environmental Financing Vehicle or a Dead End?*, unpublished presentation prepared by Michael Jacobsen, Claus H. Jorgensen and Jesper K. Pedersen for the World Congress of Environmental and Resource Economists, Venice, Italy, 25-27 June, 1998.
- FAO 2001. *An Overview of National Forest Funds: Current Approaches and Future Opportunities*, FAO Legal Paper Online #15, by Kenneth L. Rosenbaum and Jonathan M. Lindsay, FAO, Rome, Italy.
- FAO 2001a. *The Forest Revenue System and Government Expenditure on Forestry in Niger*, Working paper: FSFM/WP/05, by Garba Hamissou, FAO, Rome, Italy.
- FAO 2001b. *Water Rights Administration: Experience, issues and guidelines*, FAO Legislative Study 70, by Hector Garduno Velasco, FAO, Rome, Italy.
- FAO 2002. *Funds for Fisheries in National Fisheries Legislation*, unpublished paper by Henning O. Teigene, presented to the Seminar on Development of Vietnam's Management and Introduction of Vietnam's Fisheries Law", Hanoi, Vietnam, 24-26 September 2002.
- FAO 2002a. *Law and Sustainable Development Since Rio: Legal trends in agriculture and natural resource management*, FAO Legislative Study 73, FAO, Rome, Italy.
- FAO 2003. *Introducing Fisheries Subsidies*, FAO Fisheries Technical Paper 437, by William E. Schrank, FAO, Rome, Italy.
- FAO 2003a. *Report of the workshop and exchange of views on fiscal reforms for fisheries to promote growth, poverty eradication and sustainable management*, unpublished report on the international workshop on fiscal reform for fisheries, Rome, Italy, 13-15 October, 2003.
- Financial Times 2001. *Cess on fruits, vegetables mooted*, by Yohan Perera., www.dailymirror.lk/2003/07/31/ft/5.html
- IUCN (no date). *Environmental Funds: Lessons Learnt and Future Prospects*, by Ricardo Bayon, Carolyn Deere, Ruth Norris and Scott E. Smith, <http://economics.iucn.org>.

McDonald and Pape 2002. *Cost Recovery and the Crisis of Service Delivery in South Africa*, J. McDonald and J. Pape (eds.), www.hsrapublishers.co.za/books.

REC 2000. *Environmental protection funds*, www.rec.org/REC/Bulletin/Bull63/business.html.

Trade Policy Monitor 2003. *Florida-Brazil Citrus Case*, www.thunderlake.com/brazil_oj.html.

United Kingdom 1999. *Energy Efficiency*, Environmental Audit Committee Press Notice No. 24 of Session 1998-99, 22/07/1999, www.parliament.uk/commons/selcom89/eapnt24.htm.

United Kingdom 2003. *General Power for Best Value Authorities to Charge for Discretionary Services – Guidance on the Power in the Local Government Act 2003*, Office of the Deputy Prime Minister, London, UK.

United States 2000. *Forest Service Accountability in Administering Its Trust Funds*, CRS Report for Congress by Ross W. Gorte, Congressional Research Service, The Library of Congress, Washington, DC, USA.