

## **Signing of Government Procurement Agreement under World Trade Organization: Impact on Pakistan**

**<sup>1</sup>Ms. Rida Mukhtar Hussain, <sup>2</sup>Dr. Usman Quddus, <sup>3</sup>Ms. Kainat Bibi, <sup>4</sup>Aisha Sufian**

<sup>1</sup>International Islamic University, Islamabad, ridamukhtarhussain@gmail.com

<sup>2</sup>Assistant Professor, University of Swabi, usmanquddus1980@gmail.com

<sup>3</sup>Lecturer Law, University of Swabi, Kainatb903@gmail.com

<sup>4</sup>International Islamic University, Islamabad, ayeshahamza5862@gmail.com

### **Abstract**

Procurement deals with the process of attaining products and services in the course of running a business. Companies which carried out business are in basic need of soliciting purchase of goods or utilizing the services at a large level, procurement has been most commonly linked with business. Procurement runs on both sides of the business parties i.e. sellers or the buyers and in subsequence to that, any company can be part of procurement either as a buyer or a seller. The agreement of World Trade Organization (WTO) name as “Government Procurement Agreement” (GPA) promulgated on 6<sup>th</sup> April, 2014. Under the progressive approach of GPA, limited members of WTO are provided with a framework to regulate and ensure the competition, transparency and non-discrimination of procurements following the mark of integrity. The Qualitative research methodology is employed to examine the extent to which GPA has succeeded in controlling procurement discrimination in international market. This research aims to explore how GPA has worked so far to remove the procurement discrimination from the international market and to what extent it has succeeded, where its lacking, what are the factors that are causing hurdles in its efficient working and should Pakistan accede to it or not.

**Keywords:** Government Procurement Agreement, World Trade Organization, Pakistan Procurement law.

### **1.Introduction:**

Government procurement Agreement has significant impact both at international and national level. Procurement of products and services by government agencies on a national level offers critical inputs that allow governments to deliver public services and perform other activities. Procurement methods have a considerable impact on the efficiency with which public

funds are spent on public trust and governance in general.<sup>1</sup> An efficient government procurement system requires value for money, public access to information on government contracts, and equitable opportunities for suppliers to compete for government contracts.<sup>2</sup> During the 1990s, global trade volumes expanded at a rate of a few percent per year, double the rate of global GDP growth, but then slowed dramatically as the ratio of trade growth to the GDP growth decreased to 1.5 from 2001 to 2007, and then to unity after 2008. While there are various reasons for the slowdown, one of the most significant is a slower rate of trade liberalization after the extraordinary gains accomplished from the 1980s to the early 2000s.<sup>3</sup> Government procurement of goods and services is important to international trade flows because it comprises a large portion of a country's market for foreign suppliers. In this regard, the above-mentioned values of transparency and fair and effective competition are equally applicable in an international environment.<sup>4</sup>

A separate Article in the GPA handles developing country special and differential treatment, technical support, and capacity building. Following their accession to the Agreement, developing nations, for example, are allowed to keep specially negotiated offset schemes in their procurement process. In the tentatively agreed text for a revised Agreement, the special and differential treatment provisions have been clarified and, in some cases enlarged in order to make the Agreement more appealing and accessible to developing and least developed nations.<sup>5</sup> The GPA only applied to central government agencies and solely covered commodities procurement. It's Article IX of the Code, which recognizes that it's merely a beginning point. It allowed for future talks to broaden the scope of its coverage to include more business as well as some services and construction services.<sup>6</sup> The WTO GPA has benefited inter-OECD commerce in products and services, as well as outward foreign affiliate service sales. Due to the constraints in the GPA articles and rules, improved market access for foreign providers will not be attained immediately as a result of membership in the GPA.<sup>7</sup>

---

<sup>1</sup>Paul R.Schapper, João N.Veiga Malta, Diane L.Gilbert, "An analytical framework for the management and reform of public procurement", *Journal of Public Procurement* 6, no. 1(2006):1-26, <https://doi.org/10.1108/JOPP-06-01-02-2006-B001>.

<sup>2</sup>Japan-Measures Affecting Consumer Photographic Film and Paper - Panel Report - Action by the Dispute Settlement Body WT/DS44/5, Dated: April 23, 1998, Available at: <https://www.WorldTradeOrganization.org/English/tratope/dispute/cases/ds44e.htm>.

<sup>3</sup>Simon R.Croom, AlistairBrandon-Jones, "Key issues in e-procurement: Procurement implementation and operation in the public sector", *Journal of Public Procurement*5, no. 3(2005): 367-387, <https://doi.org/10.1108/JOPP-05-03-2005-B004>.

<sup>4</sup>Qi WangRenjie and ZhangJunqi Liu, "Intellectual efficiency of procurement: Uncovering the related factors in Chinese public authorities", *Journal of Purchasing and Supply Management* 26, no. 3, (2020): 26-37, <https://www.sciencedirect.com/science/article/pii/S1478409220300753>(accessed: December 8, 2020).

<sup>5</sup>Paul R.Schapper, "An analytical framework for the management and reform of public procurement", 3.

<sup>6</sup>The Government Procurement Agreement, Article IX.

<sup>7</sup>Simon J.Eventtand Bernard M.Hoekman, "Government procurement: market access, transparency, and multilateral trade rules", *European Journal of Political Economy* 21, no.1(2005):163-183,<https://www.sciencedirect.com/science/article/pii/S0176268004000023>(accessed: December 25,2020).

### 3.1. Government Procurement Agreement and Control of Trade Corruption:

Several basic concepts relevant to the prevention of corruption, non-discrimination, transparency, predictability, and prohibitions on arbitrary unilateral action are embodied in the WTO legal framework. Members upholding their WTO non-discrimination duties, so lowering the chances and motives for corruption in international transactions, can be considered as contributing positively to anti-corruption efforts. Because, while discrimination may not constitute a corrupt practice in and of itself, awarding government procurement contracts based on whether or not a bribe was paid rather than merits of the proposal is obviously antithetical to both the spirit and the standards of non-discrimination.<sup>8</sup> Transparency and open administration system is an important factor which reduces corruption and it also boost the accountability.<sup>9</sup> This anti-corruption is the best effort adopted in revised world trade organization text in 2014. Its signature parties have abandoned past legal caution and added measures that expressly identify the necessity to prevent corrupt activities.<sup>10</sup> In the preamble of WTO (Government Procurement Agreement, 2014) anti-corruption initiatives and governance challenges is highlighted. However preamble do not have binding effects, so these anti-corruption initiated is incorporated in Art.4. of the agreement.<sup>11</sup> All the signatory countries have legal capacity to hold accountable each other for violation of anti-corrupt practices. The Parties to the WTO GPA can also seek enforcement of Article IV (c) both at the WTO and in the courts.<sup>12</sup>

### 3.2. Government Procurement Agreement Article XVIII: Domestic Review Procedures:

The GPA includes a number of rules aimed at ensuring that government procurement bidding procedures in signatory nations are transparent, effective and fair. According to Article xviii of WTO GPA: “Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a supplier may challenge: a breach of the Agreement; or where the supplier does not have a right to challenge directly a breach of the Agreement under the domestic law of a Party, a failure to comply with a Party’s measures implementing this Agreement, arising in the context of a covered procurement, in which the supplier has, or has had, an interest.”<sup>13</sup>

---

<sup>8</sup>Krista NadakavukarenSchefer, MintewabGebreWoldesenbet, “The Revised Agreement on Government Procurement and Corruption”, *Journal of World Trade* 47,no.5(2013):1129 – 1161, <https://kluwer.lawonline.com/journalarticle/2013037>(accessed: December 18,2020).

<sup>9</sup>Hejing Chen and John Whalley, “The WTO Government Procurement Agreement and Its Impacts on Trade”, *The Economies of China and India* 3, no.1 (2017):93-117, <https://doi.org/10.1142/97898132207130004>.

<sup>10</sup>Irena Georgieva, *Using Transparency against Corruption in Public Procurement: A Comparative Analysis of the Transparency Rules and their Failure to Combat Corruption* (Bulgaria: Springer International Publishing AG, 2017), 38 ISBN: 978-3-319-51304-1.

<sup>11</sup>WTO, Government Procurement Agreement, 2014, Art.4.

<sup>12</sup> Krista NadakavukarenSchefer, “Will the WTO Finally Tackle Corruption in Public Purchasing? The Revised Agreement on Government Procurement”, *American Society of International Law* 17, no.11(2013):22-63, <https://onlinelibrary.wiley.com/doi/abs/10.1111/rego.12243>(accessed; December23, 2020).

<sup>13</sup> Robert D. Anderson, “Renewing The WTO Agreement On Government Procurement: Progress To Date and Ongoing Negotiations”, *Public Procurement Law Review* 6, no. 1(2007): 1-27, <https://www.researchgate.net/publication/228971668>

The mechanism of bid review is an important tool for national suppliers to self-police the procurement bidding process. It performs a number of key roles, including due process, the right to be heard, procurement officials' an agencies' responsibility, and the capacity to access the procurement file.<sup>14</sup> Overall, a robust bid challenge mechanism enhances the procurement process' reputation and lowers entrance barriers generated by a negative opinion of the process to combat corruption. The operation of an impartial and enforceable bid challenge system will be jeopardized if the local setting has poor rule of law or shaky governance mechanisms. However, if a privately initiated procurement; lawsuit claiming corruption appears unlikely to be resolved at the domestic level, the parties to the WTO GPA have the option of bringing any covered procurement issue to the WTO's State-to-State dispute settlement process.<sup>15</sup>

### **Settlement of Dispute under Government Procurement Agreement:**

The WTO GPA is a plurilateral agreement that exists outside of the WTO Covered Agreement, is a WTO party believes that another WTO GPA party is not complying with the Agreement's obligations, the general WTO dispute settlement mechanism also applies to the WTO GPA, as stated in Article XX. The effective functioning of the WTO and the maintenance of a proper balance between members' rights and obligations require the prompt resolution of situations in which a member believes that any benefits accruing to it directly or indirectly under the covered agreements are being harmed by measures taken by another member. Article XX of the WTO GPA lays out two legally enforceable channels for any WTO member to hold another WTO Member accountable for a restrictive action that nullifies or impairs the advantages that it entitled to under the WTO GPA. The violation claim is the most prevalent. This occurs when a government measures violates an existing legal obligation under the WTO, and another member government believes that any benefit accruing to it directly or indirectly under the WTO is being nullified or impaired, or that the achievement of WTO objectives is being hampered as a result of another member government's failure to carry out its obligations under the Agreement.<sup>16</sup>

While transparency was desirable in the GPA of 1994 in order to achieve liberalization and non-discrimination, the Revised GPA goes far further in acknowledging the significance of transparent measures in order to eliminate conflicts of interest and corrupt activities.<sup>17</sup> There were grounds under GPA 1994 for procurement organizations to reject tenders: on solvency and

---

<sup>14</sup>David S. Kassel, "Performance, Accountability, and the Debate over Rules", *The American Society for Public Administration* 68, no.2 (2008): 241-252, <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1540-6210.2007.00859.x>(accessed: January 2,2021).

<sup>15</sup>Won-Mog Choi, "The Present and Future of The Investor-State Dispute Settlement Paradigm", *Journal of International Economic Law*, Volume 10, Issue 3, September 2007, Pages 725-747, <https://doi.org/10.1093/jiel/jgm024>.

<sup>16</sup>Paul R.Schapper, João N.Veiga Malta, Diane L.Gilbert,"An analytical framework for the management and reform of public procurement", *Journal of Public Procurement* 6, no. 1(2006):1-26, <https://doi.Org/10.1108/JOPP-06-01-02-2006-B001>.

<sup>17</sup> Sue Arrowsmith, "Towards a Multilateral Agreement on Transparency in Government Procurement", *The International and Comparative Law Quarterly* 47, no. 4 (1998):793-816, <https://www.jstor.Org/stable/761545>(accessed: December 2,2020).

fraudulent disclosures. Four new reasons for exclusion were introduced to the Revised GPA text: To strengthen its governance measures, previous contract defects, significant crimes, professional misconduct and refusal to pay taxes have been included.<sup>18</sup>The broad ideas of attribution, breach, excuses and repercussions are the standard assumptions of State responsibility, upon which specific commitments of States are based.<sup>19</sup>

Government inaction to prevent corruption from happening within covered procurements may no longer be reasonably anticipated under the WTO GPA, after the introduction of rules requiring the parties to prohibit corrupt practices in procurement.<sup>20</sup> Indeed, the Panels in both the Japan Film and the EEC oil cases determined that a single measure could not be regarded predictable just because it was consistent with or a continuation of a previous general policy. That is just because a procurement system has been prone to corruption in the past does not mean it would be prone to corruption in the future under the WTO GPA.<sup>21</sup>

A complaining party whose advantages under these rules have been invalidated or hindered by another Member is required to file a complaint under the WTO GPA anti-corruption provisions. As a result, a particular regulation must confer clear benefits on member nations, and parties must be able to recognize the conduct of other countries that jeopardize those benefits.<sup>22</sup> This also necessitates sufficient detail to assess the value reduction in the benefit. Evidence that one or more transactions with particular values were lost by citizens of the complaining country to bribe-paying national of the offending country must accompany a complaint.<sup>23</sup>

### **3.3. Special and Differential Treatment For developing Countries:**

The preamble to the GPA acknowledges that developing nations' financial and trade development requirements, particularly those of the least developed countries (LDCs), must be taken into account, as stated in section 1.2. The operative portion of the Agreement (Article V:1) explains and specifies the financial and trade demands as goals:<sup>24</sup>

1. "Parties shall, in the implementation and administration of this Agreement, through the provisions set out in this Article, duly take into account the

---

<sup>18</sup>Roessler. Should principles of competition policy be incorporated into WTO law through non-violation complaints? *Journal of International Economic Law* 2, no.3 (1999): 413-421, <http://doi.org/10.1017/S152220222787>.

<sup>19</sup>Brownlie, *System of the Law of Nations: State Responsibility* (Oxford, UK: Clarendon Press, 1983), 132.

<sup>20</sup>Simon R.Croom, Alistair Brandon-Jones, "Key issues in e-procurement: Procurement implementation and operation in the public sector", *Journal of Public Procurement* 5, no. 3(2005): 367-387, <https://doi.org/10.1108/JOPP-05-03-2005-B004>.

<sup>21</sup>Panagiotis Delimatsis, *International Trade in Services and Domestic Regulations* (New York: US, Oxford University Press, 2007): 22.

<sup>22</sup>Simon J. Evenett and Bernard M. Hoekman, "Government procurement: market access, transparency, and multilateral trade rules", *European Journal of Political Economy* 21, no.1(2005):163-183, <https://www.sciencedirect.com/science/article/pii/S0176268004000023> (accessed: December 25, 2020).

<sup>23</sup>Dawar, Kamala, Transcending mercantilism: identifying the positive externalities from international public procurement agreements. *Public Procurement Law Review*, 25, no. 5(2016): 181 - 196, <http://sro.sussex.ac.uk/id/eprint/59839/9> (accessed: December 30, 2020).

<sup>24</sup> Government Procurement Agreement, Article V: 1.

development, financial and trade needs of developing countries, in particular least-developed countries”, in their need to:

- I. “Safeguard their balance-of-payments position and ensure a level of reserves adequate for the implementation of programmes of economic development.”
- II. “Promote the establishment or development of domestic industries including the development of small-scale and cottage industries in rural or backward areas; and economic development of other sectors of the economy.”
- III. “Support industrial units so long as they are wholly or substantially dependent on government procurement”.
- IV. “Encourage their economic development through regional or global arrangements among developing countries presented to the Ministerial Conference of the WTO (hereinafter referred to as the “WTO”) and not disapproved by it.”

The Agreement establishes clear criteria for general interpretation of GPA as such in the event of a dispute involving a developing nation by specifically identifying these goals. These factors used in the implementation of the provisions in operative paragraphs 4 and 5 of Article V that provide for unique and varied treatment for specific developing nations. Article V, paragraphs 2 and 3 establish general rules aimed at guiding the Parties when undertaking commitments falling under the GPA. Under Article V: 2:

“Each Party to the GPA shall, in the preparation and application of laws, regulations and procedures affecting government procurement, “facilitate” increased imports from developing countries.”

Additionally, Article V: 3 states,

“The parameters of Article V:1 shall be taken into account in the course of negotiations with respect to the procurement of developing countries covered by the GPA.”<sup>25</sup>

The paragraph goes on to say that developed countries must “strive” to include items and services of export interest to developing countries in their coverage list. These goals and general standards are supplemented by “operational” provisions that deal with three main kinds of special and differential treatment: Exemption from the Agreement’s national treatment provisions in the case of certain items, services, and business; Exclusion from the coverage lists or changes to the coverage lists; the second process, which is defined by Article V:5 allows a developing nation to get preferential treatment after the Agreement enters into effect by unilaterally changing its covering list. This may only be done in compliance with the GPA’s modification rules, which are outlined in Article XXIV, paragraph 6, and in light of the country’s development, financial, and trade needs.

---

<sup>25</sup> The Government Procurement (revised) Agreement 2004.

Article V:12 of the Agreement provides a provision that gives least developed nations parties preferential treatment for products or services originating in such countries. Furthermore, the GPA allows for the benefit of the Agreement to be extended to least developing nations that are not parties to the GPA with respect to products or services originating in these countries. In addition, Article V:13 requires each developed country to provide assistance for the promotion of tenders in LDCs, as well as to assist tenderers and suppliers in complying with technical regulations and standards relating to the products or services that are the subject of the planned procurement, upon request. The LDCs' special treatment clauses place stricter requirements on wealthier nations in terms of technical assistance.<sup>26</sup>

### **3.4. Developing Countries show Reluctance to Sign Government Procurement Agreement:**

In practice, poor and least-developed nations have shown a reluctance to sign on to the GPA. According to a UNCTAD research, there are various causes for this mindset. First, the customary requirements associated with government buying items or services, particularly in rich nations, are of such kind that merging countries find it difficult to participate. Rather than benefitting suppliers in other developing nations or LDCs, the opening up of developing countries' procurement sectors would more likely benefit suppliers in rich countries. To summarize, the economic gains of the GPA in terms of exports would be minor. Second, a potential alternative to the GPA is to establish regional government procurement markets, which would not need adherence to the GPA. Indeed, both inside developing nations and between developing and industrialized countries, government procurement discussions have played a significant part in regional integration projects. Third, membership does not provide significant benefits for developing nations in terms of increased efficiency in applying GPA regulations; although, given the widespread use of tenders, it is disputed whether the use of "offsets" at the time of accession may help to balance this scenario. Finally, the GPA does not apply to purchases made using help that is intended for these expenditures.<sup>27</sup>

### **3.5. Government Procurement in Pakistan:**

Pakistan over all government procurement in 2004 to 2005 was approx. Rs. 224 Billion and it rebounded 3.5 % in the year of 2021. Pakistan has suffering serious fiscal crises. On the other hand, is not signatory to the Government Procurement Agreement and has made no commitment to commence accession talks. Political sway over procurement decisions,

---

<sup>26</sup>Panagiotis Delimatsis, *International Trade in Services and Domestic Regulations* (New York: US, Oxford University Press, 2007): 22.

<sup>27</sup>Qi Wang Renjie and Zhang Junqi Liu, "Intellectual efficiency of procurement: Uncovering the related factors in Chinese public authorities", *Journal of Purchasing and Supply Management* 26, no. 3, (2020): 26-37, <https://www.sciencedirect.com/science/article/pii/S1478409220300753> (accessed: December 8, 2020).

allegations of official corruption, and lengthy bureaucratic decision-making processes have all been reported.<sup>28</sup>

The National Accountability Bureau in Pakistan is charged with investigating allegations of corruption.<sup>29</sup> Individual regional accountability bureaus in each of the country's four province capitals, as well as one in the federal area, complement its work. These accountability bodies are responsible in the reduction of corruption in public procurement.<sup>30</sup> If we talk about Domestic procurement legislation of Pakistan, it dates back to 1972 and was most recently revised in May 2002 when the Pakistani government formed the Public Procurement Regulatory Authority (PPRA) to improve procurement practices through enhanced transparency, accountability, and governance. The authority established precise public procurement guidelines in June 2004 that are compliant with international best practices and apply to all federal entities owned or controlled, with the exception of those relating to national security or the armed services (PPRA 2004). Work conducted for federal agencies, given through tenders that are publicly published or issued to registered suppliers, in compliance with the PPRA requirements.<sup>31</sup>

### 3.7.1 How Public Procurement Regulatory Authority was conceived?

Historically, three key tools governed governmental procurement in Pakistan:

- It generally covered Sale and purchase of commodities.
- The “West Pakistan Building & Roads Department Code” and regulate the construction projects and also hired consultants to achieved the goal.
- Federal government General Rules and delegation of financial power rules.

However, by the late 1990s, public procurement had become a crucial function of state institutions, as public procurement spending grew as a percentage of total government spending. The government of Pakistan is working to adopt legislation reforms in response of world bank assessments of Pakistan then procurement regime and the recommendations made on the basis of that study. In general, the World Bank's Country Procurement Assessment Report (CPAR) in 2000 concluded that procurement was characterized as a different system and procedure at the same time, lack of institutional capacity and also lacks human resources for the implementation of procedure. In this regard, the Government of Pakistan (GoP) established the Public Procurement Regulatory Authority (PPRA) on 15 May 2002 by promulgating Ordinance No.

---

<sup>28</sup>Ahmad Ghouri, “Democratizing Foreign Policy: Parliamentary Oversight of Treaty Ratification in Pakistan”, *Statute Law Review* 2, no.3(2019): 12-20, <https://doi.org/10.1093/slr/hmz023>.

<sup>29</sup>NAB, *NATIONAL ACCOUNTABILITY BUREAU Annual Report 2020*, (National Accountability Bureau, 2020), <https://nab.gov.pk/Downloads/NAB%20Annual%20Report%202020.pdf>

<sup>30</sup>Sue Arrowsmith, “Transparency in Government Procurement - The Objectives of Regulation and the Boundaries of the WORLD TRADE ORGANIZATION”, *Journal of World Trade* 37, no. 2 (2003) : 283-303, <https://heinonline.org/HOL/LandingPagehandle=hein.kluwer/jwt0037&div>(accessed: January 22, 2021).

<sup>31</sup>Rizwan U. Farooqui, Syed M. Ahmed and Sarosh H. Lodi, “Assessment of Pakistani Construction Industry Current Performance and the Way Forward”, *Journal for the Advancement of Performance Information and Value*, 1, no.1(2008): 22-45, <https://doi.org/10.37265/japiv.v1i1.122>.



XXII of 2002;<sup>32</sup> Public Procurement Rules (PPR) in 2004; Public Procurement Regulations in 2008 and Public Procurement Regulations for Consultancy Services in 2010. The Rules and Regulations, which are mostly based on worldwide best practices, apply to the federal government, state owned companies, and semi-autonomous organizations' procurement of products, works, and services. All the Provinces of Pakistan as well as special status regions like "GilgitBaltistan" and "Azad Jammu Kashmir"(AJK), established their own procurement authorities in compliance with the federal PPRA rules. In comparison, "the Sindh Public Procurement Rules" are most comprehensive and include an independent grievance redressal system as well as systematic work for "regulating public-private partnership (PPP) procurements". The Punjab Public Procurement Regulation Authority has adopted federal laws, while the KPK notified its own rules for the procurement purpose. Punjab PPRA also used e-procurement, which is a fascinating case study in terms of procurement machinery's future. Balochistan, on the other hand, has mostly followed the federal trend. Procurement Regulations have yet to be introduced in "Azad Jammu and Kashmir" and "Gilgit-Baltistan".<sup>33</sup>

### **Analysis of Public Procurement in Pakistan:**

Pakistan is spending over a trillion rupees in public procurement, which might be avoided if the procurement system was more effective and efficient.<sup>34</sup> Over the years, the system has remained mostly unchanged, and no significant progress has been made to improve its efficacy. PPRA rules have been amended a few times over the years, but no significant modifications have been made to the original ordinance or subsequent rules, so many problems and weaknesses persist despite the fact that the authority has been for nearly two decades. The lack of cohesion between the PPRA ordinance and rules is a prominent issue. While the rules must be consistent with and follow the spirit of the law, the PPRA ordinance<sup>35</sup> and regulations appear to be two texts operating on completely different frequencies. In several places, the ordinance has been drafted using ambiguous terminologies with just the most basic facts, including those that are unneeded, and it lacks necessary explanations on a number of fronts. The legislation also fails to address basic procurement principles, which are instead mentioned in the guidelines. The inclusion of procurement regulations in the code will not only enhance the ordinance's value but will also after a much-needed legal foundation and support for these ideals. Furthermore, the ordinance contains no regulatory concepts that the rules should follow. The legislation just established the procurement authority but does not describe the major procurement regime, which should have been included in the ordinance to enhance the PPRA regulations' foundation. Many aspects of the ordinance and laws have been left up to subjective interpretation, which is problematic for

---

<sup>32</sup>Public Procurement Regulatory Authority Ordinance No. XXII of 2002.

<sup>33</sup>Hussein, Saddam, and Muhammad ShaafiNajib. "Pakistan's Public Procurement Regime." *PIDE Knowledge*, 24, no. 5 (2021): 34–38. <https://doi.org/https://pide.org.pk/pdfpideresearch/kb-024-pakistans-public-procurement-regime.pdf>.

<sup>34</sup><https://www.finance.gov.pk/press>.

<sup>35</sup>The Public Procurement Regulatory Authority Ordinance, 2020.

any legal structure and guiding norms. This adds to the procurement framework's overall irregularity by generating a huge gap between the ordinance and the rules that follow. Outside of the PPRA regulation, no definition for corruption or fraudulent conduct has been established, nor has it been related to any specific corruption statutes. Due to lack of clarity on what constitutes corruption, this causes a significant roadblock and bottleneck in procurement operations. The PPRA Ordinance, rules, and regulations were mostly derived from "the World Bank (WB)"<sup>36</sup> and "Asian Development Bank (ADB) procurement guidelines"<sup>37</sup>. In fact, these publications are a condensed version of both the WB and ADB instructions. As a result, several definitions and explanatory comments have been removed, leaving more room for subjective interpretation. It appears that the job was rushed, or that loopholes were purposefully left for vested interests. Furthermore, mis-procurement as corrupt or fraudulent acts is not only difficult, but it also kills the efficiency and efficacy of the regulations because of lack of a clear definition of corruption. As a result, procurement officials will be hesitant to authorize procurements, and in the event that they do, the time costs associated with such procurements will rise in order to assure strict adherence to the regulations, which are not well-defined. The acquisition of services follows the same methods as the procurement of goods, with the exception that services require additional technical negotiations. Except for procurement linked to national security, defense forces, or intellectual property disclosure, the Federal Government owns or controls all procuring agencies. Contracting with a single vendor base on company-specific standards has been phased out. All procurement opportunities worth more than Rs. 40,000 (\$675) must be posted on the PPRA's website, and those worth more than Rs. 1 million (\$16,860) must also be advertised in print. In addition, for procurements above Rs. 10 million (\$168,600), an "integrity pact" must be made between the procuring agency and the vendors or contactors. While there are no "buy national" laws in Pakistan, the government does not invite private tenders for crude oil transportation. The state-owned Pakistan National Shipping Corporation is responsible for all crude oil transportation. Transparency international has been monitoring the implementation of Pakistan's public procurement rules since 2004 and has been consulted on contracts awarded by the City of Karachi, Pakistan Steel, Pakistan Telecommunication Company Ltd., and the Sindh Province ministry of irrigation and Power. The findings of Transparency International point to improved governance with the potential for long term improvement.<sup>38</sup>

Corruption in the form of bribery is one of the critical factor in Pakistan which is the great hurdle in development of country as well as in law enforcement, procurement and delivery of public services.<sup>39</sup> Over the last 50 years, Pakistan has been dominated by political turmoil and insecurity, with repeated regime changes and unrest. Between 1990 and 1999, the same two

---

<sup>36</sup><http://worldbank.org/en/projects-operations/products-and-services/brief/procurement-policies-and-guidance>.

<sup>37</sup><https://www.adb.org/documents/procurement-guidelines>

<sup>38</sup>Muhammad AliNoor, Malik M.A.Khalfan, TayyabMaqsood, "The role of procurement practices in effective implementation of infrastructure projects in Pakistan", *International Journal of Managing Projects in Business* 6, no. 4(2013):802-826. <https://doi.org/10.1108/IJMPB-03-2012-0005>.

<sup>39</sup>OECD, *Preventing Corruption in Public Procurement*, (Organisation for Economic Co-operation and Development, 2016), <https://www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf>.

political leaders led four different democratically elected administrations. Each administration was either sacked or overthrown, typically as a result of claims of power abuse and corruption. In Pakistan, the public procurement process is one example of where corruption was present. Public finance is spending on the manufacturing of low quality goods which are the result of corruption. In public procurement work, corrupt persons try to recover their bribe money by increasing prices, receiving payment on uncompleted projects and also manufactured low quality product by the use of inferior raw material. Corruption also abolished competition and also limit the market access. Companies are increasingly demanding more fairness in public procurement procedures, which is unsurprising. As a result, expenses are inflated, and quality suffers. In principle, Pakistani law allows for free and competitive bidding when it comes to granting government contracts. Government spending and decisions, on the other hand, are not usually made public.<sup>40</sup> In 1992/93, Pakistan's merchandise exports accounted for 13% of GDP, while merchandise imports accounted for 19%. In 2018, exports account for 8% of GDP, while imports accounts for 19.75%, which does not show significant changes. In year of 2020-2021 economy is recorded as 3.94% and trade deficit stood at \$31.076 billion.<sup>41</sup> The European Union is Pakistan's greatest trading partner in both exports and imports, accounting for about 30% of total trade, followed by the United States, Japan, and Hong Kong, all of which are GPA signatories.<sup>42</sup>

### **3.6. Conclusion:**

The potential effects of the GPA on commerce among contracting parties are discussed in this article. The GPA has a favorable influence on bilateral goods and services trade, albeit the amount of the impact varies depending on the type of trade. In order to encourage international trade, the GPA focused on market access rights for foreign suppliers and should evaluate the features of services as opposed to products. The Agreement on Government Procurement is consistent with and emphasis the fact that, despite their obvious mutual goal of ensuing good government structure and processes, procurement reform and anti-corruption activities have typically taken paths. However, in recent years, a more sophisticated web of regulatory instruments and tools has been in place to generate global public goods and integrate sound procurement practices into broader anti-corruption initiative, which could be enforced through the WTO GPA provisions in the WTO's dispute settlement mechanism. This supports the argument that international public procurement agreements have development implications beyond market access goals.

---

<sup>40</sup>Paul R.Schapper, João N.Veiga Malta, Diane L.Gilbert, "An analytical framework for the management and reform of public procurement", *Journal of Public Procurement* 6, no. 1(2006):1-26, <https://doi.org/10.1108/JOPP-06-01-02-2006-B001>.

<sup>41</sup>[https://www.pbs.gov.pk/sites/default/files/external\\_trade/annual\\_analytical\\_report\\_on\\_external\\_trade\\_statistics\\_of\\_pakistan\\_2020-21](https://www.pbs.gov.pk/sites/default/files/external_trade/annual_analytical_report_on_external_trade_statistics_of_pakistan_2020-21)

<sup>42</sup>Council of General Agreement on Tariffs and Trade, *Trade Policy Review Mechanism Pakistan* C/RM/S/50 Dated: November 4, 1994. Government of Pakistan, 63, <https://www.WorldTradeOrganization.org/gattdocs/English/SULPDF/91820131> (accessed: January 12, 2020).

The goals of changes in national procurement regimes were to promote competition, transparency, and better value for money. As a result, the GPA's contribution should be considered in more than just terms of easing international market access. Other key international mechanisms and work in this area, such as "the United Nations Convention against Corruption", "the UNICTRAL Model Law on Procurement", relevant "World Bank guidelines", and "the OECD's work on corruption prevention", are all reinforced by the WTO's efforts. With the expanding international focus on good governance and the growing acknowledgment of the role of efficient and competitive procurement regimes to development and progress, this activity is gaining in relevance. The future entrance of China, Saudi Arabia, and other emerging nations to the Agreement, as required by their respective WTO accession protocols, will broaden membership and hence increase the importance of the Agreement as a tool for international economic policy. Public procurement was recognized as one of the sectors in Pakistan that needed special attention in this study.

### **Bibliography:**

- Adlung, Rudolf. "Public Services and the GATS", *Journal of International Economic Law* 9, no. 2 (2006): 455–485. <https://doi.org/10.1093/jiel/jgl010>.
- Ahnlid, Anders. "Comparing GATT and GATS: Regime Creation under and after Hegemony", *Review of International Political Economy* 3, no. 1 (1996): 65-94. <https://www.jstor.org/stable/4177174>.
- Altinger, Laura. and Enders, Alice. *The Scope and Depth of GATS Commitments* (London: UK, Blackwell Publishers Ltd, 1996).
- Anderson Robert D. and Anna Muller, Caroline. "The revised WTO agreement on government procurement (Gpa): Key design features and significance for global trade and development", *Journal of International Law* 48, no.2 (2017): 949-1007. <https://www.law.georgetown.edu/international-law-journal/wp-content/uploads/sites/21/2018/05/48-4>.
- Anderson, Robert D., Locatelli, Claudia. Müller, Anna Caroline. and Pelletier, Philippe. WTO, Economic Research and Statistics Division, WTO Working Paper ERSD-2014-21, last modified: 18 November 2014, 7, [https://www.WTO.org/english/res\\_e/reser\\_e/ersd201421](https://www.WTO.org/english/res_e/reser_e/ersd201421).
- Anderson, Robert D., Schooner, Steven L. and Swan, Collin D. "The WTO 's Revised Government Procurement Agreement - An Important Milestone Toward Greater Market Access and Transparency in Global Public Procurement Markets", *he Government Contractor*, 54, no. 1(2012):61-78. <https://ssrn.com/abstract=1984216>.
- Arrowsmith, Sue. "Towards a Multilateral Agreement on Transparency in Government Procurement", *The International and Comparative Law Quarterly* 47, no. 4 (1998):793-816. <https://www.jstor.org/stable/761545>(accessed: December 21,2020).

- Blouin, Chantal. The WTO Agreement on Basic Telecommunications: a reevaluation, *Telecommunications Policy* 24, no. 2 (2000): 135-142. <https://www.science-direct.com/science/article/pii/S0308596199000798>.
- Brownlie, *System of the Law of Nations: State Responsibility* (Oxford, UK: Clarendon Press, 1983)
- Casavola, Hilde Caroli. “The WTO and the EU: Exploring the Relationship Between Public Procurement Regulatory Systems”, *Global Administrative Law and EU Administrative Law* 5, no.11 (2011):293-320.<https://www.researchgate.net/publication/226429040>.
- Cassady, Jerrell. “Self-Reported GPA and SAT: A Methodological Note”, *Practical Assessment, Research, and Evaluation* 7, no. 11(2000): 23-55.doi: <https://doi.org/10.7275/5hym-y754>.
- Choi, Won-Mog.“The Present and Future of The Investor-State Dispute Settlement Paradigm”, *Journal of International Economic Law*, Volume 10, Issue 3, September 2007, Pages 725–747, <https://doi.org/10.1093/jiel/jgm024>.
- Congressional Research Service, Informing the legislative debate since 1914, Updated January 14, 2021.
- Croom, Simon R. and Jones, Alistair Brandon. “Key issues in e-procurement: Procurement implementation and operation in the public sector”, *Journal of Public Procurement* 5, no. 3(2005):367-387 <https://doi.org/10.1108/JOPP-05-03-2005-B004>.
- Croom,Simon R. Jones, Alistair Brandon. “Key issues in e-procurement: Procurement implementation and operation in the public sector”, *Journal of Public Procurement* 5, no. 3(2005): 367-387. <https://doi.org/10.1108/JOPP-05-03-2005-B004>.
- Dawar, Kamala. “The WTO Government Procurement Agreement: The Most-Favoured Nation Principle, the GATS and Regionalism”, *Legal Issues of Economic Integration* 42, no.3 (2015): 257-280. <https://www.researchgate.net/publication/284550270>.
- Dawar, Kamala. “The WTO Government Procurement Agreement: The Most-Favoured Nation Principle, the GATS and Regionalism”, *Legal Issues of Economic Integration* 42, no.3(2015): 257-280. <https://www.researchgate.net/publication/284550270>.
- Delimatsis,Panagiotis. *International Trade in Services and Domestic Regulations* (New York: US, Oxford University Press, 2007).
- Evenett, Simon J. and Hoekman,Bernard M. “Government procurement: market access, transparency, and multilateral trade rules”, *European Journal of Political Economy* 21, no.1 (2005):163-183, <https://www.science-direct.com/science/article/pii/S0176268004000023>.
- Farooqui,Rizwan U. Ahmed, Syed Muhammad. and Lodi,Sarosh H. “Assessment of Pakistani Construction Industry Current Performance and the Way Forward”, *Journal for the Advancement of Performance Information and Value*, 1, no.1(2008): 22-45. <https://doi.org/10.37265/japiv.v1i1.122>.
- Georgieva, Irena. Using Transparency against Corruption in Public Procurement: A Comparative Analysis of the Transparency Rules and their Failure to Combat Corruption (Bulgaria: Springer International Publishing AG, 2017).

- Georgopoulos, Aris., Hoekman, Bernard M. and Mavroidis, Petros C. *The Internationalization of Government Procurement Regulation* (UK: Oxford University Press, 2017).
- Ghouri, Ahmad. "Democratizing Foreign Policy: Parliamentary Oversight of Treaty Ratification in Pakistan", *Statute Law Review* 2, no.3 (2019): 12-20. <https://doi.org/10.1093/slr/hmz023>.
- Grundke, Robert. and Moser, Christoph. "Hidden protectionism? Evidence from non-tariff barriers to trade in the United States", *Journal of International Economics* 11, no.7 (2019): 143-157. <https://www.sciencedirect.com/science/article/pii/S0022199618304604>.
- Haveman, Jon. and Thursby, Jerry G. "The Impact of Tariff and Non-Tariff Barriers to Trade in Agricultural Commodities: A Disaggregated Approach", Purdue CIBER Working Papers. Paper 143, Dated: March 20, 2007, <http://docs.lib.purdue.edu/ciberwp>.
- Hejing, Chen John Whalley. "The WTO government procurement agreement and its impacts on trade" *national bureau of economic research Massachusetts Avenue Cambridge*, no. MA 02138, dated: August 20, 2011, <http://www.nber.org/papers/w17365>.
- Hoekman, Bernard. and Mavroidis, Petros C. "MFN Clubs and Scheduling Additional Commitments in the GATT: Learning from the GATS", *European Journal of International Law*, 28, no.2 (2017): 387-407. <https://academic.oup.com/ejil/article/28/2/387/3933329>.
- Jackson, Professor Howell. *Financial Services Liberalization in the WTO* (London, UK: Harvard Law School press, 2000).
- Japan - Measures Affecting Consumer Photographic Film and Paper - Panel Report - Action by the Dispute Settlement Body WT/DS44/5, Dated: April 23, 1998, Available at: <https://www.WTO.org/English/tratope/dispute/cases/ds44e.htm>.
- Kassel, David S. "Performance, Accountability, and the Debate over Rules", *The American Society for Public Administration* 68, no.2 (2008): 241-252. <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1540-6210.2007.00859>.
- Keohane, Robert O. "Reciprocity in International Relations", *International Trade Organization* 40, no. 1 (1986): 1-27. <https://www.jstor.org/stable/2706740>.
- Korea - Measures Affecting Government Procurement - Panel Report - Action by the Dispute Settlement Body WT/DS163/7 | Dated: November 6, 2000. Available at: [www.WTO.org.com](http://www.WTO.org.com).
- Krajewski, Markus. "Public Services and Trade Liberalization: Mapping the Legal Framework", *Journal of International Economic Law*, 6, no. 2 (2003): 341-367. <https://doi.org/10.1093/jiel/6.2.341>.
- Kunicová, Jana. and Ackerman, Susan Rose. "Electoral Rules and Constitutional Structures as Constraints on Corruption", *British Journal of Political Science* 35, no. 4 (2005): 573-606. <https://www.jstor.org/stable/4092413>.

- Lacoste, Sylvie M. Competition and framework contracts in industrial customer-supplier relationships, *Qualitative Market Research* 17, no.1 (2014): 43-57. <https://doi.org/10.1108/QMR-01-2012-0006>.
- Mansfield, Edward., Milner, Helen., and Rosendorff, Peter. “Free to Trade: Democracies, Autocracies, and International Trade”, *American Political Science Review* 94, no. 2, (2000): 305–321. <https://www.cambridge.org/core/0DE0FF40192F1BB6021E115ADB992199>.
- Marchetti, Juan A. and Roy, Martin. “The TISA Initiative: An Overview of Market Access Issues”, *Journal of World Trade* 48, no. 4 (2014): 683 – 728, <https://kluwerlawonline.com/48.4/TRAD2014022> (accessed: October 28, 2020).
- Moore, Mike. *Doha and Beyond: The Future of the Multilateral trading System* (Cambridge: UK, Cambridge University Press, 2004), 6.
- Mosoti, Victor. “The WTO Agreement on Government procurement: A Necessary Evil In The Legal strategy For Development In The Poor World?”, *Journal of International Economic Law*, 25, no.2 (2014): 595. <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1243>.
- Noor, Muhammad Ali. Khalfan, Malik M. A. Maqsood, Tayyab. “The role of procurement practices in effective implementation of infrastructure projects in Pakistan”, *International Journal of Managing Projects in Business* 6, no. 4(2013):802-826. <https://doi.org/10.1108/IJMPB-03-2012-0005>.
- Onur Taş, Bedri Kamil. “Does the WTO government Procurement Agreement Deliver What It Promises?”, Access to European Union Open Data Portal <https://data.europa.eu/euodp/en/data/dataset/ted-csv>.
- Peng, Shinyi. “Multilateral Disciplines on Services Procurement Architectural Challenges under the GATS”, *Journal of World Investment and Trade* 7, no.6 (2006):975–996. <https://brill.Com/view/journals/jwit/7/6/article-p975>.
- Ray, Edward John. Tariff and Nontariff Barriers to Trade in the United States and Abroad, *The Review of Economics and Statistics* 63, No. 2 (1981):161-168, <https://www.jstor.Org/stable/1924086>.
- Reich, Arie. “The New Text Of The Agreement on government Procurement: An Analysis and Assessment”, *Journal of International Economic Law* 12, no.4(2009) 989–1022. doi:10.1093/jiel/jgp037.
- Renjie, Qi Wang. and Junqi Liu, Zhang. “Intellectual efficiency of procurement: Uncovering the related factors in Chinese public authorities”, *Journal of Purchasing and Supply Management* 26, no. 3, (2020): 26-37. <https://www.sciencedirect.com/science/article/pii/S1478409220300753>.
- Renjie, Qi Wang. and Junqi Liu, Zhang. “Intellectual efficiency of procurement: Uncovering the related factors in Chinese public authorities”, *Journal of Purchasing and Supply Management* 26, no. 3, (2020): 26-37. <https://www.sciencedirect.com/science/article/pii/S1478409220300753>.

- Rickard, Stephanie J. and Kono, Daniel Y. “Think globally, buy locally: International agreements and government procurement” *Journal of Economic Literature* 6, no.2 (2013): 2-3. <https://ideas.repec.org/j/H57.html>.
- Roessler. Should principles of competition policy be incorporated into WTO law through non-violation complaints? *Journal of International Economic Law* 2, no.3 (1999): 413-421. <http://doi.23331/22787>.
- Rowlinson, Steve. *Procurement Systems: A Guid to Best Practice in Construction* (New York, London: New Fetter Lane Spoon, 1999).
- Schapper, Paul R. Veiga Malta,Joao N. Gilbert, Diane L. “An analytical framework for the management and reform of public procurement”, *Journal of Public Procurement* 6, no. 1(2006):1-26. <https://doi.Org/10.1108 /JOPP-06-01-02-2006-B001>.
- Schefer,KristaNadakavukaren. andWoldesenbet,MintewabGebre. “The Revised Agreement on Government Procurement and Corruption”, *Journal of World Trade* 47, no. 5(2013):1129 – 1161. <https://kluwer law online .com/journal article/2013037>.
- Yukins, Christopher R. “GPA Accession: Lessons Learned on the Strengths and Weaknesses of the WTO Government Procurement Agreement”, *Trade, Law and Development* 7, no.1(2015): 88-119. <https:// scholarship. /law.gw>