



A Tri-Annual Publication

RESEARCH SPECTRA

Print ISSN: 2394 - 9805
Online ISSN: 2455 - 0256

An International Multidisciplinary Peer-Reviewed / Refereed Journal

Print ISSN: 2394-9805

Online ISSN: 2455-0256

Volume - V, Issue No. 1-2
(January - August, 2024)

Copyright © Research Spectra

Paper Code

No. - RSV0511-207

Anup Kumar Jha

Assistant Professor,
Department of Economics,
Patliputra University, Patna

Brajesh Pati Tripathi

Professor, Department of
Economics, Patliputra
University, Patna &
Registrar, KSD Sanskrit
University, Darbhanga

Government Procurement and FTAs: Scope, Contours and India's Perspective

Anup Kumar Jha

Assistant Professor, Department of Economics, Patliputra University,
Patna

Brajesh Pati Tripathi

Professor, Department of Economics, Patliputra University, Patna &
Registrar, KSD Sanskrit University, Darbhanga

Introduction

Government procurement, often known as public procurement, encompasses the acquisition of commodities, supplies, services, construction and public works by government departments and organizations. Put simply, it typically mirrors the buying actions of government entities at all levels, including those managed by the government or in the public sector. Public spending frequently constitutes a significant component of a government's overall budget, typically amounting to around 10-15% of the country's Gross Domestic Product (GDP).¹

This allocation of funds holds considerable influence over the purchasing capacity within domestic markets. In numerous emerging markets and developing economies,

¹ https://unctad.org/system/files/official-document/edmmisc232add27_en.pdf

it serves as a crucial developmental instrument to foster and attain socio-economic goals. Strategic techniques such as boosting local purchasing, directing spending towards locally produced items and domestic companies, and giving preference to local suppliers over international ones in procurement contracts are commonly employed in many economies to support the development of small and medium-sized local enterprises. Public procurement is essential for the efficient and successful functioning of public companies and governments. However, the implementation of specific rules and regulations is highly significant in terms of promoting free trade of products and services.

Ensuring transparency in government procurement practices and standards is crucial in the realm of international trade, particularly for industrialized nations. Developed nations have made significant efforts to emphasize the perceived advantages that poorer countries can get by participating in a multilateral government procurement agreement. Effective utilization of public procurement practices can help manage public expenditures by improving the efficiency of public resource allocation. This, in turn, can indirectly contribute to poverty reduction through the provision of public services in areas such as health, education, and infrastructure. Enhancing transparency in procurement methods can serve as a mechanism to combat corruption and enhance the overall quality of governance in the public sector.²

In light of the above, this study examines the role of Government Procurement as a regulatory restriction and trade barrier, which is a key factor influencing trade from the demand side. The chapter analyses the existing literature on government procurement and places it in the context of Free Trade Agreements (FTAs). Next, we analyse the market size of general practitioners in certain countries, namely India, UAE, UK, EU, USA, Australia, and Canada. The next section examines the extent and boundaries of government procurement and proceeds to emphasize the challenges encountered by developing nations in World Trade Organization (WTO) government procurement, while also

² [FTA 07 Procurement r4.qxd \(actalliance.eu\)](#)

expressing India's viewpoint on the matter. The chapter provides a summary of the articles related to Government Procurement found in the trade agreements between India and the UK. For the purpose of this analysis, the provisions from the UK-Vietnam agreement have been used as the foundation. A comparative analysis has been conducted, considering the relationship between the UK and Japan, as well as the relationship between the UK and Korea.

I. Government Procurement and Free Trade: The Theory

Public procurement is acknowledged as a means of enhancing the efficiency and effectiveness of public expenditure from an economic standpoint. Furthermore, governments are increasingly recognizing the need of achieving broader policy goals, such as fostering innovation, sustainability, social inclusivity, and supporting small and medium-sized firms (SMEs), through their public procurement policies (OECD 2019).

Government procurement policies have been employed by numerous economies as a strategic tool for development over the years. In response to economic hardship and in an effort to mitigate the impact of the global economic crisis, numerous economies have increasingly utilized public procurement as a component of their fiscal stimulus and relief measures. The prevalence of domestic bias in procurement policies has been present, but the renewed and heightened use of home/domestic bias in procurement measures, particularly in the fiscal stimulus response to crises, has caught the attention of trade policy makers. They are concerned that public procurement is being misused as a behind-the-border measure or non-trade barrier. Procurement policies and rules favouring domestic and local suppliers is usually recognised as biased and discriminatory and may constitute an important barrier to trade and to international competition. Consequently, procurement is emerging as a crucial domain in trade discussions, both on a multilateral and bilateral scale. Given the increasing intricacy, the field of public procurement must address a wide array of concerns. In addition to meeting the criteria of fairness, equity, and transparency, it is necessary for them to manage the delicate balance

between (1) conflicting socioeconomic goals, (2) the economic interests of the nation, and (3) global competition, as mandated by regional and international trade agreements.

Policy makers have long utilized public procurement as a means to bolster small and medium-sized enterprises (SMEs) and micro, small, and medium enterprises (MSMEs), as well as to stimulate industries in certain regions (Evenett and Hoekman, 2005). Government procurement strategies have also been employed to prioritize and support marginalized and disadvantaged groups in society (Arrowsmith, 2003). The economic rationale against implementing protectionist policies in public procurement is that it results in diminished value for money, redirects national resources towards less productive industries, and discourages efficiency in the overall economy. Consequently, the costs are expected to outweigh the benefits (Arrowsmith, 1998).

Several studies have examined the characteristics and manifestations of discrimination and home-bias in public procurement regulations. Discrimination in procurement laws that favor local industry can take various forms, including explicit measures such as "preferential price margin" and "domestic content requirements." Additionally, there may be latent prejudices that are not formally specified in legislation but nonetheless exist (Arozamena et. al. 2021, Ssenoga 2006, Trionfetti 2000). According to data from Global Trade Alert (GTA), an average of 56 new discriminatory measures in government procurement were implemented per year from 2009 to 2018. Certain laws can function as obstacles to particular types of services trade, such as discrimination against foreign enterprises, even if they have already established a commercial presence in the country through direct investment (Evenett and Hoekman, 2013). The literature has presented evidence and explanations for the home-bias phenomenon in public procurement. This is supported by studies conducted by Hoekman and Mavroidis (1997), Trionfetti (2000), Evenett and Shingal (2006), Laffont and Tirole (1991), Hu (2023) and Naegelen and Mougeot (1998).

Amidst the financial crises, many governments took action to assist their own economies by implementing stimulus programs. Some of these programs were contingent upon domestic preferences in public procurement, as noted by the OECD in 2015 and Evenett in 2009. Nevertheless, this measure is not limited to the crisis period, as it continued to increase even after the crisis. The source of this information is the Global Trade Alert report from 2017. Simultaneously, economic research indicates that the existence of local preferences, also known as home bias, distorts international specialization and resource allocation, thereby impacting prices, trade flows, and national income (Lowinger 1976, Miyagiwa 1991, and Trionfetti 2001). Moreover, according to theoretical literature, home bias can have a significant distorting effect when there are obstacles to competition in domestic markets that hinder firms from entering (Evenett and Hoekman, 2005).

The empirical studies conducted by Kutlina-Dimitrova and Lakatos (2016), Shingal (2015), Rickard and Kono (2014), Brühlhart and Trionfetti (2004) and (2001), and Trionfetti (2000) offer evidence supporting the existence of local preferences in government procurement. These studies also focus on identifying the factors that drive cross-border public procurement. The recent emergence of economic modelling has allowed for the analysis of the impact of liberalization of public procurement markets. Recent quantifications conducted by Kutlina-Dimitrova (2017) and Dixon et al. (2017) demonstrate that there are significant advantages to be gained from expanding the range and extent of the GPA.

The primary objective of negotiating disciplines on government procurement policy in international trade agreements has typically been to facilitate market access (Hoekman, 2015). Attempts to expand access to public procurement markets have been ongoing for some time. As the potential inefficiencies imposed by preference regimes have become well comprehended, governments have engaged in negotiations to tackle the matter (Fronk, 2015). Recent study by Hoekman et.al. 2021 analyzes the relationship between public procurement regimes and trade policy responses during the COVID-19 pandemic and finds

that there is a positive correlation between the attributes of pre-crisis public procurement regulation and the trade policy measures imposed during the initial months of the COVID-19 pandemic. Factors such as government effectiveness, membership in the WTO's Government Procurement Agreement, number of designated national procurement authorities, and OECD membership influence trade policy measures.

In the light of the above literature, it can be said that public procurement is key economic activity. The importance of public procurement in the context of trade policy has grown over time, especially as traditional trade barriers have decreased. The next section examines the market size of government procurement particular to each country, which represents untapped potential waiting to be utilized.

II. Country-Specific Market Size of Government Procurement

Given the importance of public procurement as strategic and developmental tool in many economies and the rising issue of discriminatory procurement acting as non-trade barrier affecting international specialisation and trade flows highlighted in the preceding section, it is pertinent to assess the size of government procurement market. This section presents a broad outlook on the size of GP market for some major economies.

India

India has chosen not to become a signatory to the Government Procurement Agreement under the World Trade Organization (WTO) framework. This decision is motivated by India's desire to maintain its ability to employ public procurement processes to achieve its development requirements, without being restricted by international agreements. In 2017, the Indian government implemented a policy that granted priority to domestic suppliers of products and services in government procurement. The purpose of this was to promote the 'Make in India' campaign, facilitate increased investment and knowledge transfer into domestic industries and manufacturing, and consequently stimulate local job growth and support small businesses. Subsequently, an

order was issued that imposed restrictions or exclusions on enterprises from countries where Indian suppliers are not permitted to engage or compete in government procurement bids in India.

The projected proportion of public procurement in India's GDP ranges from 20 to 22 percent. With the Indian economy reaching a size of USD 2.7 trillion in 2019, the yearly public procurement amounts to USD 500 billion³. Central Public Sector Enterprises (CPSEs) play a significant role in the procurement of works, goods, and services for the public sector. (*Table 3*)

Australia

AusTender is a costless procurement information system managed by the Australian Government. During the 2019-20 period, a total of 81,174 contracts were made available on AusTender, with a cumulative value of \$53.9 billion⁴ (*Table 2*). The Commonwealth Procurement Rules (CPRs) serve as the fundamental regulations for all Commonwealth procurements and dictate the manner in which organizations carry out their own procedures. Commonwealth entities are obligated to disclose several types of information on AusTender. This includes information about planned procurements, open calls for tender, standing offer agreements, and details of awarded contracts.

The Australian Government has demonstrated its dedication to sustainable procurement practices through the 14 December 2020 CPRs, which supersede the 20 April 2019 CPRs. This commitment highlights the significance of timely payment to suppliers, particularly for small businesses. Additionally, the updated CPRs incorporate a new Appendix A exemption⁵ that permits the direct engagement of a Small and Medium Enterprise for procurements amounting to \$200,000 or less. Additionally, a table is included that outlines both these modifications and other smaller adjustments in Australia's Public Procurement⁶. Regarding the Procurement Threshold in 2019-20, the majority of

³ <https://pib.gov.in/PressReleasePage.aspx?PRID=1586546>

⁴ <https://www.finance.gov.au/government/procurement>

⁵ <https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules-appendix>

⁶ https://www.finance.gov.au/sites/default/files/2020-12/Table-changes-CPRs-14_December_2020.pdf

contracts (94.0%) were below \$1 million in terms of volume, amounting to 76,342 contracts. On the other hand, a small number of high-value contracts (0.4% by volume), totalling 337 contracts, accounted for 52.4% of the total value of contracts issued, which amounted to \$28.3 billion⁷.

United Arab Emirates

The United Arab Emirates (UAE) is a prominent and robust economy in the Middle East, boasting a total GDP of USD 746,350 million⁸. The Gross National Income (GNI) per Capita⁹ in the United Arab Emirates (UAE) is USD 43,480 million. The country is ranked 34th on the Human Development Index, with a score of 0.86. The market size of public procurement in the UAE is equivalent to 15% of the country's GDP, amounting to around USD 111,952 million (as shown in Table 2). The UAE government entities adhere to a just and transparent procedure for the process of tendering and granting contracts¹⁰. Every invitation to bid is publicly disclosed and is accompanied by a concise set of parameters that bidders are required to adhere to. It is important to note that registration in the corresponding eProcurement system is a prerequisite for participating in government contract bidding.

Advanced procurement system of the UAE Federal Government:

The Ministry of Finance (MoF) has established an advanced procurement system that includes a comprehensive list of purchases to be made by MoF, as well as other ministries and federal institutions. This technology enables entities to publicly declare the initiation of procurement processes and solicit offers from interested parties. Sellers have the ability to submit offers and monitor their progress. Subsequently, entities have the ability to publicly declare the allocation of contracts. Furthermore, there is the tenders and auctions system that can be utilized to carry out auctions in a comparable manner. The

⁷ <https://www.finance.gov.au/government/procurement/statistics-australian-government-procurement-contracts->

⁸ As per IMF 2019 Estimate, based on Purchasing Power Parity (PPP) basis

⁹ Gross National Income

¹⁰ (TendersOnTime, n.d.)

procurement, tenders, and auctions systems facilitate transparent purchasing processes for businesses, resulting in reduced financial and administrative expenses. This is achieved by pre-screening and approving suppliers before their participation in tenders, auctions, and bids.¹¹

United Kingdom

The UK Public Procurement market is the largest in the entire European Union, with an impressive value of 350 billion Pound Sterling. This value has been computed using the average of 15% of the GDP of 2.3 trillion GBP, as estimated¹² by the IMF in 2019 (Table 2). Since the 1970s, the EU has implemented rules to guarantee an open and competitive public procurement market, ensuring equitable and fair treatment of providers.

The regulation of public procurement in the United Kingdom is overseen by three specific regulations: the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016¹³ and the Utilities Contracts Regulations 2016. The Public Procurement (Amendment etc.) (EU Exit) legislation 2020¹⁴ were enacted on 19 November 2020 to guarantee that the UK procurement legislation would be in line with the transitional arrangements on public procurement as outlined in the ratified Withdrawal Agreement¹⁵. The amendments to the UK procurement legislation will not have any impact on any existing procurement procedure that started before the end of the transition period at 11 pm GMT on 31 December 2020, as stated in the Schedule to the EU Exit legislation. Furthermore, any changes made to the EU Exit Regulations will not have an effect on the ongoing procurement process.

The EU Exit Regulations mandate that procuring organizations must now issue notices on the UK e-notification service, Find a Tender (FTS), instead of the

¹¹ (Government tendering and awarding, n.d.)

¹² <https://www.tendersontime.com/united-kingdom-tenders/>

¹³ <https://www.gov.uk/guidance/public-sector-procurement-policy>

¹⁴ <https://www.legislation.gov.uk/ukdsi/2020/9780348212952>

¹⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf

Official Journal of the European Union (OJEU). The EU Exit Regulations modify particular EU references within the legislation¹⁶.

Under the Utilities Contracts Regulations 2016, the exemptions from market regulations that were previously approved by the European Commission will still be valid for specific contracts in the electricity, oil, and gas industries. As a member of the EU, the UK had access-commitments to GPA procurement and its suppliers benefited from access-opportunities due to its EU membership. Following Brexit, the UK has become an independent participant in the GPA. Therefore, suppliers from the UK will maintain their ability to participate in international public procurement opportunities, while suppliers from countries that are part of the Government Procurement Agreement (GPA) will still be able to access the majority of high-value public procurement contracts in the UK.

The European Union

According to the European Commission (2019), the public procurement market in the EU is highly accessible to competition from around the world. Nevertheless, European enterprises do not consistently have equitable opportunities to enter public procurement markets beyond the European Union (European Commission, 2019). A significant number of nations are hesitant to allow international competition in their public procurement sectors. This disparity in market conditions between EU enterprises and other entities produces an imbalanced and unfair competitive environment, so restricting the potential for company growth and expansion in these areas (European Commission, 2019).

However, in 2019, Government procurement, also known as public procurement in the European Union, made up more than 14% of its Gross Domestic Product (GDP) according to the European Commission (2019). The EU member countries that ranked highest in terms of their overall performance in government procurement among all EU member countries are Croatia,

¹⁶ <https://www.pinsentmasons.com/out-law/guides/a-short-guide-public-procurement-post-brexit-uk>

Denmark, Estonia, Finland, Iceland, Latvia, Liechtenstein, Lithuania, Norway, Sweden, and the United Kingdom. Their performance was assessed based on competition, transparency, and market access, which are the fundamental principles of effective government procurement (European Commission, 2019).

According to the European Commission (2019), the value of public procurement of goods and services in the European Union (EU) was anticipated to be around EUR 2 trillion in 2017, which is around 13.3% of the EU's Gross Domestic Product (GDP). This information can be seen in Table 2. In 2017, foreign companies were awarded contracts worth about EUR 4.6 billion under procurement mode 1¹⁷, as reported by the official Tenders Electronic Daily (TED)¹⁸ database (Cernat & Dimitrova, 2020).

Foreign corporations, through their EU subsidiaries, were awarded government contracts totalling EUR 27 billion, in addition to mode 1 contracts. The values are derived from the overall size of the EU procurement market that exceeds a certain threshold, taking into consideration the proportion of mode 2¹⁹ procurement, which constitutes 20.4% of the total market (Cernat & Dimitrova, 2020). Conversely, the European Union's calculations for mode 3²⁰ procurement indicate that around EUR 18 billion worth of products and services were supplied by foreign vendors to EU public agencies indirectly in 2017. This statistic is derived by calculating the proportion of procurement that is allocated to foreign enterprises through subcontracting, consortia, and wholesales (Cernat & Dimitrova, 2020). Hence, the aggregate worth of public contracts granted by European Union public agencies, whether directly or indirectly, to foreign companies reaches almost EUR 50 billion, as reported in 2017 (Cernat & Dimitrova, 2020).

¹⁷ Refers to direct cross-border international procurement i.e. when a foreign company submits and wins a public contract 'from abroad'.

¹⁸ The European public procurement journal

¹⁹ Refers to the commercial presence procurement i.e. when a domestic subsidiary of a foreign company 'locally' wins a public contract.

²⁰ Refers to Value-added indirect international procurement i.e. when a foreign company indirectly participates in a bid by providing intermediate goods and services.

The United States of America

Various nations, including the United States, have made pledges under the World Trade Organization's Government Procurement Agreement (GPA) and Free Trade Agreements (FTAs) to provide international suppliers access to their government procurement opportunities. These commitments establish a procedural framework for government procurement that includes standards on transparency and non-discrimination. These agreements have potentially expanded the federal procurement market by an estimated \$4.4 trillion, allowing international enterprises to participate. This creates new opportunities for American businesses in overseas markets and allows foreign businesses to compete for U.S. government contracts.²¹

The US Federal Government spent a total of USD 597 billion into contracts for fiscal year 2019.

Canada

The monetary levels at which government procurement contracts become subject to free trade agreements differ depending on the specific agreement. Typically, Canada and its trading partners indicate their limits in either U.S. Dollars or Special Drawing Rights (SDRs), which are a type of reserve currency established and managed by the International Monetary Fund (IMF). Table 1 displays the specific monetary limits in Canadian dollars that apply from January 1, 2020 to December 31, 2021.

Table 1: Government Procurement Thresholds in Canada's Free Trade Agreements for 2020-2021

Trade Partner	Year of Entry into Force	Government Procurement Threshold (Values in USD)		
		Goods	Services	Construction

²¹ GAO-16-727, INTERNATIONAL TRADE: Government Procurement Agreements Contain Similar Provisions, but Market Access Commitments Vary

Chile	2019 ²²	1,08,400	1,08,400	91,00,000
Columbia	2011	1,08,400	1,08,400	91,00,000
CPTPP	2018	2,38,000	2,38,000	91,00,000
European Union	2017 ²³	2,38,000	2,38,000	91,00,000
Honduras	2014	1,08,400	1,08,400	91,00,000
Korea	2015	100,00	1,00,000	91,00,000
Panama	2013	1,08,400	1,08,400	91,00,000
Peru	2009	1,73,900	1,73,900	91,00,000
Ukraine	2017	2,38,000	2,38,000	91,00,000
United Kingdom		2,38,000	2,38,000	91,00,000
WTO Government Procurement Agreement	2014	2,38,000	2,38,000	91,00,000

Source: (Government of Canada, 2021)

Table 2: Summary of Country-wise Market Share in GP

Country	Year	GP Market Size	GP share in GDP
India	2019	USD 500 billion	20-22%
Australia	2019-20	USD 53.9 billion	Not available

²² The trade agreement was modernized in 2019

²³ Provisional Application

Country	Year	GP Market Size	GP share in GDP
Canada	Not available	Not available	Not available
European Union	2017	EUR 2 trillion	13.3%
United Arab Emirates	2019	111,952 million	15%
United Kingdom	2019	350 billion GBP ²⁴	15%
United States of America	2019	USD 597 billion	Not Available

Source: (Government of Canada, 2021)

III. Government Procurement: Scope and Contours

India's Perspective on Government Procurement

Government procurement in India is decentralized and governed by several legislation, including sector-specific provisions and procurement provisions implemented by the states. The General Financial Rules (GFRs) serve as the primary legislation governing government procurement across all sectors. India has chosen not to sign the Government Procurement Agreement under the World Trade Organization (WTO) framework. This decision is motivated by India's desire to maintain its ability to employ public procurement processes to achieve its development requirements, without being restricted by international agreements. In 2017, the Indian government implemented a policy that granted priority to domestic suppliers of products and services in government procurement. The purpose of this was to promote the 'Make in India' campaign, facilitate increased investment and knowledge transfer into domestic industries, and consequently, stimulate local job growth and support small businesses. Subsequently, an order was issued that limits or prohibits enterprises from countries where Indian suppliers are not permitted to engage

²⁴ GBP-Great Britain Pound

or compete in government procurement, from participating in public procurement bids in India.

Issues faced by Developing Countries in WTO GPA

Developing nations are requesting clarification on several articles and definitions of the World Trade Organization's Government Procurement Agreement (WTO GPA). For instance, it was stated that the word 'Governmental Purposes' has not been clearly defined. The EU includes state utilities as commercial operations inside its public procurement law, but emerging economies like Brazil and Mexico exclude them from public procurement law as they are considered private organizations. There were also uncertainties surrounding the expected value of procurement. An analysis has determined that the Special & Differential treatment (S&DT) rules under the WTO GPA do not provide poor countries with preferential market access. Instead, they simply grant the right to such access, which must be negotiated and navigated through a complex series of conditions and requirements.

Status of indigenous and foreign suppliers in Public Procurement²⁵

In response to the WTO's questions on government procurement services, the Indian government has affirmed that domestic bidders are given equal treatment as foreign bidders, and the deciding factor for the user department is the final price offered. These departments do not show a clear bias towards indigenous products over international ones in their procurement practices, except for the stated policy of favouring the public sector when government agencies have their own Public Sector Enterprises (PSEs), and the preference for the Micro, Small, and Medium Enterprises (MSME) sector. Although India is not a member of the WTO GPA, foreign providers have same opportunities as their Indian competitors in the market.

UK's perspective on Government Procurement²⁶

²⁵ Collusion in Public Procurement, CAG

https://cag.gov.in/uploads/research_paper/RES-3-COLLUSIONS-05ebe256895d734-92064367.pdf

²⁶ [Transforming Public Procurement \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

The UK Government has suggested modifications to the procurement system for public sector contracts in the UK. The suggestions represent a significant departure from the European procurement systems after Brexit. The suggestions are outlined in a green paper titled "Transforming Public Procurement" that was issued on December 15, 2020.

The Green Paper presents a range of suggestions for discussion that aim to influence the long-term direction of public procurement in the United Kingdom. The primary objective of the suggestions is to expedite and streamline procurement processes, achieve cost-effectiveness, and provide small businesses, charities, and social enterprises with the chance to introduce innovative approaches in public service delivery.

Current Regime

The present legal framework in the UK is based on EU law and consists of the following regulations: Public Contracts Regulations 2015, Utilities Contracts Regulations 2016, Concessions Contract Regulations 2016, and Defence and Security Public Contracts Regulations 2011. Additional miscellaneous UK regulatory provisions, which may sometimes overlap, also apply to public procurement. An example of such restrictions is the NHS procurement regulations.

Green Paper Proposal

- Proposal to streamline the existing regulatory framework into a unified set of regulations tailored to the UK market and its specific sectoral needs.
- Implementation of a simplified regulatory framework to decrease intricacy and eliminate redundant requirements.
- The formulation of national plans and priorities for procurement, which will be outlined in periodic policy announcements.
- The UK will adopt a new procurement strategy after joining the WTO Agreement on Government Procurement (GPA). This would allow

British companies to compete for public sector contracts abroad, while simultaneously granting overseas suppliers the opportunity to bid for UK public sector contracts.

The United Kingdom shall maintain its adherence to its procurement commitments as stipulated in existing international Free Trade Agreements (FTAs). The UK intends to engage in negotiations with trade partners such as the US, Japan, and Australia to establish agreements that will support and advance the UK's interests in fair and transparent cross-border trade in public procurement. These agreements will also allow the UK to make changes to its own public procurement system.

Since India faces certain sensitivities in this sector, the Chapter on Government procurement is not very elaborate. The following are the main aspects of India's trade agreements with Japan and Korea.

The India-Japan Comprehensive Economic Partnership Agreement (CEPA) acknowledges the significance of government procurement in facilitating the growth of production and commerce, hence fostering economic growth and employment. The focus is on guaranteeing transparency in government procurement measures, in compliance with national laws and regulations. The Parties will exchange information at the national level, in accordance with their respective laws and regulations, regarding their government procurement laws, regulations, policies, and practices. This exchange of information will be conducted in English and in a timely manner. Additionally, any reforms to their existing government procurement regimes will also be shared.

The India-Korea Comprehensive Economic Partnership Agreement (CEPA) acknowledges the significance of government procurement in their individual economies. The text mentions cooperation in the following areas. The objectives of this initiative are to encourage the sharing of information and perspectives on government procurement policies and regulatory framework; to share accumulated knowledge, experience, and information; to facilitate the exchange

of knowledge, experience, and information on e-Procurement; and to designate contact points for information exchange.

Table 3 below summarizes the articles pertaining to Government Procurement as present under India and UK's trade agreements. For the purpose of this analysis, the articles under the UK-Vietnam have been taken as the base. A comparison has been drawn taking into consideration UK-Japan and UK-Korea.

Table 3: Comparison of UK's FTA

UK-Vietnam FTA	UK-Japan CEPA	UK-Korea FTA
<i>Chapter 9 Government Procurement</i>		
Article 9.1 Definitions	Not Present	Not Present
Article 9.2 Scope and Coverage	Not Present	Present, Not Similar Article 9.2 Scope and coverage 1. The procurement covered by this Chapter shall be all procurement covered by each Party's Annexes to the GPA 1994 and any note attached thereto, including their amendments or replacements. 2. For the purposes of this Agreement, build-operate-transfer contracts (hereinafter referred to as 'BOT contracts') and public works concessions, as defined in Annex 9, shall be subject to Annex 9.
Article 9.3 Security and General Exceptions	Not Present	

UK-Vietnam FTA	UK-Japan CEPA	UK-Korea FTA
Article 9.4 General Principles	Not Present	Not Present, General Provisions under the agreement are given. The Parties reaffirm their rights and obligations under the Agreement on Government Procurement contained in Annex 4 to the WTO Agreement (hereinafter referred to as the 'GPA 1994') and their interest in further expanding bilateral trading opportunities in each Party's government procurement market.
Article 9.5 Information on the Procurement System	Not Present	Not Present
Article 9.6 Notices	Not Present	Not Present
Article 9.7 Conditions for Participation	Present, Similar. A procuring entity of a Party shall not exclude a supplier established in the other Party from participating in a tendering procedure on the basis of a legal requirement according to which the supplier must be: (a) a natural person; or (b) a legal person. This provision does not apply to procurement	Not Present

UK-Vietnam FTA		UK-Japan CEPA	UK-Korea FTA
		within the scope of the Act on Promotion of Private Finance Initiative of Japan (Law No. 117 of 1999).	
Article Qualification Suppliers	9.8 of	Present, Similar In order to be allowed to submit a tender in view of a procurement for construction work in Japan, a supplier established in the United Kingdom is required to undergo a Business Evaluation under the Construction Business Law of Japan	Not Present
Article 9.9 Technical Specifications		Present, Dissimilar If a procuring entity applies environment-friendly technical specifications as set out for environmental labels or as defined by relevant laws	Not Present

UK-Vietnam FTA	UK-Japan CEPA	UK-Korea FTA
	and regulations in force within the United Kingdom or Japan, each Party shall ensure that those specifications are: (a) appropriate to define the characteristics of the goods or services that are the object of the contract; (b) based on objectively verifiable and non-discriminatory criteria; and (c) accessible to all interested suppliers.	
Article 9.10 Market Consultations	Not Present	Not Present
Article 9.11 Tender Documentation	Not Present	Not Present
Article 9.12 Time Periods	Not Present	Not Present
Article 9.13 Negotiations	Not Present	Not Present
Article 9.14 Limited Tendering	Present, Similar but the name of Article is different - Selective	Not Present

UK-Vietnam FTA	UK-Japan CEPA	UK-Korea FTA
	Tendering (Article 10.7)	
Article 9.15 Electronic Auctions	Not Present	Not Present
Article 9.16 Treatment of Tenders and Awarding of Contracts	Present, Similar	Not Present
Article 9.17 Post-Award Information	Not Present	Not Present
Article 9.18 Disclosure of Information	Not Present	Present, Not Similar Article 9.3 Government Procurement Working Group The Working Group on Government Procurement established pursuant to Article 15.3.1 (Working Groups) shall meet, as mutually agreed or upon request of a Party, to exchange information relating to government procurement and Build-Operate Transfer (BOT) contracts or public works concessions opportunities in each Party
Article 9.19 Domestic Review	Present, Similar	Not Present
Article 9.20 Modification and Rectification Coverage	Present, Similar In the case of intended rectifications, the Party shall notify the other Party in writing every two years, in line with the cycle of	Not Present

UK-Vietnam FTA	UK-Japan CEPA	UK-Korea FTA
	<p>notifications provided for in the Decision of the Committee on Government Procurement on Notification Requirements. If the Party objects to the intended modification or rectification, or to the proposed compensatory adjustment, the Parties shall seek to resolve the issue through consultations. If no agreement between the Parties is reached within 150 days from the date of receipt of the notification of the objection, the Party intending to modify or rectify its commitments may have recourse to dispute settlement</p>	
Article 9.21 Cooperation	Present, Similar	Not Present
Article 9.22 Future	Not Present	Not Present

UK-Vietnam FTA	UK-Japan CEPA	UK-Korea FTA
Negotiations		
Article 9.23 Committee on Investment, Services, Electronic Commerce and Government Procurement	Present, Similar but the name of the Article in different-Committee on Government Procurement (Article 10.16)	Present, Not similar Article 9.3 Government Procurement Working Group The Working Group on Government Procurement established pursuant to Article 15.3.1 (Working Groups) shall meet, as mutually agreed or upon request of a Party, to: (a) consider issues regarding government procurement and BOT contracts or public works concessions that are referred to it by a Party; (b) exchange information relating to the government procurement and BOT contracts or public works concessions opportunities in each Party; and (c) discuss any other matters related to the operation of this Chapter.

Source: Author's Analysis

EU and UK have increasingly focussed on building deep trade agreements over the recent decade. For the sake of increasingly coverage Box 1 given below presents social value considerations in UK FTAs

Box 1: Social Value Considerations in UK's FTAs

A. WTO GPA

The General Notes (Annex 7 of the GPA) mentions exceptions relating to:

- Procurement of agricultural products for agricultural support programmes and human feeding programmes (e.g. food aid including urgent relief aid)
- Procurement for the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time.

- Procurement by procuring entities covered under Central and Sub-Central level in connection with activities in the fields of drinking water, energy, transport and the postal sector, unless covered under Annex on 'Other Entities.

However, the Social Value Model in procurement has not been mentioned as an exception.

B. UK-Australia FTA

Social considerations find mention in UK's FTAs twice in the GP text as given below (*detailed Article in Annexure 1*):

1. Article 16.17 on Environmental, Social and Labour Considerations

It allows Parties to take into account environmental, social and labour considerations given they are:

- Based on objectively verifiable criteria,
- Non-discriminatory in nature
- Indicated in the notice of intended procurement or tender documentation.

It also states that the Parties may also take appropriate measures to ensure compliance with its obligations in such areas provided they are non-discriminatory

2. Article 16.22 on Cooperation

Endeavours that the Parties cooperate on matters that include exchanging experiences and information, such as regulatory frameworks and best practices, including on the use and adoption of measures to promote environmental, social and labour considerations in government procurement;

The General Notes (Section G of UK's Schedule given in Annexure 16A) does not mention the Social Value Model in procurement (*detailed in Annexure 2*).

C. UK-Japan FTA

1. Article 10.10 on Environmental conditions (*Annexure 3*)

Allows Procuring entities to lay down environmental conditions relating to the performance of procurement, provided they are:

- Compatible with the rules as per the Chapter on GP

- Indicated in the notice of intended procurement or in another notice used as a notice of intended procurement or tender documentation

The Social Value Model is not mentioned in UK's Schedule.

Source: Excerpted from Various UK FTAs

Conclusion

This paper examined the previously unexplored role of Government Procurement as a significant factor influencing trade. It serves as both a regulatory constraint and a barrier in the context of international trade. We analysed the magnitude of the government procurement markets and their ongoing transformations. The existence of home-bias in government procurements indicates that the size of the market is an even more significant factor. Procuring goods and services primarily from domestic and local suppliers at home might impact trade patterns and international specialization. This preference for local suppliers has been growing in recent years. The existence of numerous procurement regulations, standards, and procedures provided by multiple entities has led to issues of openness, accountability, competition, and efficiency in public procurement. An analysis was conducted on the scope and contours of government procurement, which included an examination of the challenges encountered by developing nations in the World Trade Organization's Government Procurement Agreement (WTO GPA). Additionally, India's viewpoint on government procurement was considered. To comprehend the impact of deep trade agreements on reducing the bias, we analysed the articles related to Government Procurement in the trade agreements between India and the UK. Trade agreements are crucial for governments to enhance the efficacy of their procurement policies as a means of growth and to minimize the bias towards domestic markets. Moreover, the simultaneous removal of investment obstacles alongside trade agreements

enhances the effectiveness of these agreements in reducing discriminatory practices.²⁷

References

- Arrowsmith, Sue. 2003. *Government Procurement in the World Trade Organisation*. London: Kluwer Law International.
- Arrowsmith, Sue. 1998. "Towards a multilateral agreement on transparency in government procurement", *International and Comparative Law Quarterly*, 47.
- Arozamena, L. Ganuza, J. and W, Federico. 2021. "Renegotiation and Discrimination in Symmetric Procurement Auctions", *Barcelona GSE Working Paper Series*, WP no 1275, July
- Brühlhart, M. and Trionfetti, F. 2001. "Industrial specialisation and public procurement: theory and empirical evidence", *Journal of Economic Integration*, Vol. 16, pp. 106-127.
- Brühlhart, M. and Trionfetti, F. 2004. "Public expenditure, international specialisation and agglomeration", *European Economic Review*, Vol. 48, pp. 851-881.
- Cernat, Lucian & Kutlina-Dimitrova, Zornitsa, 2020. "Public Procurement - How open is the European Union to US firms and beyond?," CEPS Papers 26698, *Centre for European Policy Studies*.
- Dixon, P. B., M.T. Rimmer and P.G. Waschik. 2017. "Macro, Industry and Regional Effects of Buy America(n) Program: USAGE Simulations", *Center of Policy Studies (CoPS)*, Working Paper No. G-271 (April), Victoria University.
- Evenett, S. 2009. 'The emerging contours of crisis-era protectionism', in: *Broken promises: a G-20 Summit report by Global Trade Alert*, London, pp. 15-24.
- Evenett, S. and B. Hoekman. 2013. "International Disciplines on Government Procurement," in A. Lukauskas, R. Stern and G. Zanini (eds.), *Handbook of Trade Policy for Development*. Oxford: Oxford University Press
- Evenett, S. and Shingal A. 2006. "Monitoring Implementation: Japan and the WTO Agreement on Government Procurement", in *Economic Development & Multilateral Trade Cooperation*, Oxford University Press and the World Bank.

²⁷ The authors gratefully acknowledge Late Prof. Ram Upendra Das, Former Head, CRT, Department of Commerce, New Delhi and Former Fellow, Research and Information System for Developing Countries (RIS), Ministry of External Affairs, New Delhi for his invaluable suggestions and discussions on the themes discussed in this paper. Their insightful discussions and constructive feedback during the author association with him played a pivotal role in shaping the development of this paper.

- Evenett, S, and Bernard Hoekman. 2005. "Government Procurement: Market Access, Transparency, and Multilateral Trade Rules," *European Journal of Political Economy*.
- Fronk, J. 2015. "Do Procurement Agreements Work?" mimeo Harvard University.
- Hoekman, B., Shingal, A., Eknath, V., & Ereshchenko, V. 2021. "COVID-19, public procurement regimes and trade policy", *The World Economy*
- Hoekman, B. 2015. "Trade Agreements and International Cooperation on Public Procurement Regulation," mimeo.
- Hoekman, B.M. and P.C. Mavroidis (eds.). 1997. "Law and Policy in Public Purchasing", Michigan Press, Ann Arbor, MI.
- Hoekman, Bernard and Petros C. Mavroidis (eds.). 1997. *Policy in Public Purchasing: The WTO Agreement on Government Procurement*, Ann Arbor: University of Michigan Press
- Hu Chenyue. 2023. "What explains equity home bias? Theory and evidence at the sector level", *European Economic Review*, Volume 160, Nov, 104585
- Kutlina-Dimitrova, Z., & Lakatos, C. 2016. "Determinants of direct cross-border public procurement in EU Member States", *Review of World Economics*, 152(3), 501–528.
- Kutlina-Dimitrova, Zornitsa. 2017. Can we put a price on extending the scope of the GPA? First quantitative assessment. DG TRADE Chief Economist Notes. 26.
- Laffont, J.J & Jean Tirole. 1991. "Auction Design and Favouritism". *International Journal of Industrial Organization*, 9: 9-42.
- Lowinger, T. 1976. "Discrimination in government procurement of foreign goods in the US and western Europe", *Southern Economic Journal*, Vol. 42, pp. 451-460.
- Miyagiwa, K. 1991. "Oligopoly and discriminatory government procurement policy", *American Economic Review*, Vol. 81, pp. 1321-1328.
- Naegelen, F., & Mougeot, M. 1998. "Discriminatory Public Procurement Policy and Cost Reduction Incentives", *Journal of Public Economics*, 67, 349-367
- OECD. 2015. "Emerging policy issues: localization barriers to trade, Trade and Agriculture Directorate", Working Party of the Trade Committee, TAD/TC/WP (2014)17/FINAL.
- OECD. 2019. "Reforming Public Procurement: Progress in Implementing the 2015 OECD Recommendation", *OECD Public Governance Reviews*, OECD Publishing, Paris

- Rickard, S. and Kono, D. 2014. "Think globally, buy locally: international agreements and government procurement", *The Review of International Organizations*, Vol. 9, No 3, Springer, pp. 333-352.
- Shingal, A. 2015. "Econometric analyses of home bias in government procurement", *Review of International Economics*, 23(1), 188-219.
- Ssennoga, F. 2006. "Examining discriminatory procurement practices in developing countries", *Journal of Public Procurement*, Vol 6, Issue 3, 218-249
- Trionfetti, F. 2000. "Discriminatory public procurement and international trade", *The World Economy*, Vol. 23, pp. 57-76.
- Trionfetti, F. 2001. "Public procurement, market integration, and income inequalities", *Review of International Economics*, Vol. 9, pp. 29-41.

