



GSP Plus: UNCAC Compliance

Supported by



GSP Plus: UNCAC Compliance

Sara Javed

Introduction

International compliance laws are becoming challenging for companies in supply chain including importers, exporters and indenters. Foreign companies are increasingly complying with international laws including Foreign Corrupt Practice Act (FCPA), UK Bribery Act, Brazilian Clean Company Act etc. and significantly penalising the counter-parts for non-compliance.

The issues of corporate governance, corruption and non-compliance have affected the Pakistani businesses. In 2014, Walt Disney banned imports from Pakistan on account of poor governance standards and stripped the country of \$200 million exports of textile products.¹

The issue of compliance has become more sensitive after the GSP+ award, which requires the country to implement and fulfil WTO's 27 conventions pertaining to human rights, labour rights, environment, narcotics, corruption etc. for continuation of this facility till 2017.

However, even after a year, Pakistan is facing challenges in complying with the international standards. And GSP Plus status for the country is under threat for non-compliance².

Given the stagnant export performance for last few years, Pakistani businessmen cannot afford to be penalised or completely ban due to non-compliance of international standards and laws.

This paper will provide an overview of GSP Schemes and post GSP+ status of Pakistan in terms of trade and compliance. The responsibility of complying with conventions mostly falls under the government domain. However, UNCAC outlined various measures that can be taken by private sector to fulfil the criteria. Thus, this paper will focus on the role of private sector in compliance of UNCAC and discuss ratification and implementation status of UN Convention against Corruption (UNCAC). It will also highlight few examples of non-compliance for providing awareness to the trading community and educate why to avoid those practices that can adversely affect their businesses.

¹ <http://www.dawn.com/news/1097357>, <http://tribune.com.pk/story/650581/export-products-walt-disney-may-stop-sourcing-goods-from-pakistan/>, http://www.business-standard.com/article/news-ani/walt-disney-bans-import-from-pakistan-over-failure-to-improve-governance-standards-114040400777_1.html,

² <http://tribune.com.pk/story/985964/word-of-caution-pakistans-gsp-plus-status-could-be-under-threat-says-eu/>, <http://www.thenews.com.pk/print/59181-pakistan-at-risk-of-losing-gsp-plus-status-for-noncompliance>,

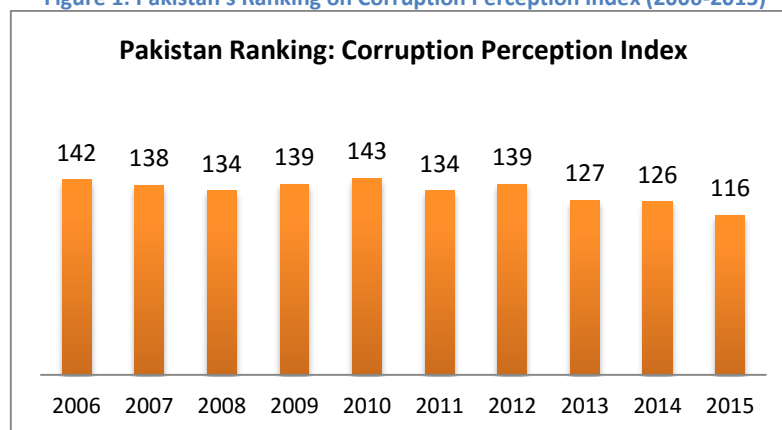
Pakistan: International Rankings

International ranking serves as a barometer of country's health on fundamental factors for investors and international firms. This section will give snapshot of Pakistan's recent rankings on corruption and transparency and indicate any significant upward or downward movements. This will then help in assessing how these challenges affect the Pakistani firms in international markets.

Corruption Perception Index

In 2015, Pakistan ranked 117 out of 167 countries on Corruption Perception Index (CPI) by Transparency International. For last two years, Pakistan showed improvement in terms of ranking. In 2014, the country score improved for the first time since CPI first published in 1995 and it ranked at 127 out of 177 countries.

Figure 1: Pakistan's Ranking on Corruption Perception Index (2006-2015)



Source: Transparency International

Global Corruption Barometer

Improvement in CPI is a positive sign for Pakistan; however, corruption remains a significant problem in public opinion. According to Global Corruption Barometer 2013³, 54 percent respondents believe that over the last few years the level of corruption has increased significantly. Moreover, 75 percent people think it is an alarming and serious problem in public sector. People believe that government is not making fruitful efforts in combating the corruption especially in public sector (52% respondents).

Global Competitiveness Report

Corruption has shaken the confidence of investors to do business in the country. International companies are concerned about regular encounters of bribery and other malpractices.

³ Global Corruption Barometer is the only worldwide public opinion survey on views and experience of corruption. It is conducted by Transparency International. For more details, <https://www.transparency.org/gcb2013/country/?country=pakistan>

According to Global Competitiveness Report (2014-15), inefficient government bureaucracy together with high-levels of corruption presents significant barriers to business in Pakistan.

Enterprise Survey

Enterprise Survey 2013 showed 68 percent firms consider corruption as a major constraint. Firms are expected to bribe from getting utilities to secure government contracts. The table showed the top five situations where firms are expected to engage in such transactions. According to response, 88% firms indicate that they are expected to provide gifts to secure government contracts, followed by 58% responses to bribe for getting electrical connections. Other situation where most firms are expected to provide special incentive are for getting operating licences, water connection and construction permits.

Table 1: Top Five Responses on Enterprise Survey

S. No	Indicators	Percentage
1.	Firms expected to give gifts to secure government contract	88.2
2.	Firms expected to give gifts to get an electrical connection	57.8
3.	Firms expected to give gifts to get an operating license	31.0
4.	Firms expected to give gifts to get a water connection	30.9
5.	Firms expected to give gifts to get a construction permit	28.7

Source: Enterprise Survey 2013

Enabling Trade Index

Enabling Trade Index (ETI) measures the fundamental factors that govern nation's ability to benefit from trade. Out of 138 countries, Pakistan ranked at 114 in 2014 index. The index scores country on the following sub-indexes:

- **Market Access:** It measures the extent and complexity of a country's tariff regime, as well as tariff barriers faced and preferences enjoyed by country's exporters in foreign market.
- **Border Administration:** It assesses the quality, transparency and efficiency of border administration of a country.
- **Infrastructure:** It assesses the availability and quality of transport infrastructure, and associated services to facilitate the movements of goods within the country and across border.
- **Operating Environment:** It measures the quality of key institutional factors impacting the business of importers and exporters active in a country.

Table 2: Enabling Trade Index-Sub-Index Rankings

S. No.	Sub Index	Ranking
1.	Enabling Trade Index	114
2.	Market Access	133
3.	Boarder Administration	72
4.	Infrastructure	94
5.	Operating Environment	116

Source: Enterprise Trade Index 2014

Generalised Scheme of Preference

In Dec 2013, Pakistan was awarded Generalised Scheme of Preference (GSP) Status. As a result of this, Pakistan's exports were given preferential treatment and allowed to enter the EU markets at very low tariff rates. However, to enjoy this status, the country is required to ratify 27 conventions and fulfil certain monitoring requirements. The conventions are related to human and labour right, the environment and good governance.

This section will briefly introduce the GSP schemes, GSP+ and its current status in Pakistan, and 27 conventions.

GSP Schemes

The EU's "Generalised Scheme of Preferences" (GSP) allows developing countries to pay less or no duties on their exports to the EU. This gives them vital access to EU markets and contributes to their economic growth.

There are three main variants (arrangements) of the GSP Scheme:⁴

- **General GSP:** This scheme offers generous tariff reductions of 66% of all EU tariff line to developing countries. Practically, this means partial or entire removal of tariffs on two thirds of all product categories.
- **GSP+:** This scheme gives enhanced preferences mean full removal of tariffs on essentially the same 66% product categories as those covered by the general arrangement. These are granted to countries which ratify and implement core international conventions relating to human and labour rights, environment and good governance.
- **Everything but Arm (EBA):** It is the arrangement for least developed countries (LDCs), which grants duty-free and quota-free access to all products, except for arms and ammunitions.

GSP Plus

GSP+ is an incentive based mechanism. It requires the countries to ratify and implement the relevant conventions. To qualify for GSP+, a country must fulfil the following criterion:

1. Must be considered 'vulnerable'. A vulnerable country means;
 - a. A country is not classified by the World Bank as a high-income or upper-middle income country for three consecutive years.
 - b. The imports of the country to EU are heavily concentrated in few products, the 7 largest section of country's GSP –covered imports constitute more than 75% in value of its total GSP covered imports.

⁴ <http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/>

- c. The value of imports to EU is low; its GSP covered imports into EU represent less than 2% in value of EU's total GSP covered imports from all GSP beneficiaries.
2. Must ratify 27 core international conventions in the fields of human and labour right, the environment and good governance
3. Must bind to following undertakings;
 - a. Maintain and effectively implement the 27 conventions
 - b. Accept the reporting requirements and monitoring imposed by these conventions
 - c. Accept and cooperate with the EU monitoring procedures

Pakistan was awarded the GSP+ Status on 1st January, 2014, granting Pakistani products a duty free access to European market till 2017. Pakistan fulfilled the criteria mentioned above as;

1. Pakistan's share of total GSP imports is 1.6 percent which is 2 percent of the EU's imports from all GSP beneficiaries.
2. Pakistan's seven largest GSP sections accounted for 94.6 percent of its total GSP – covered exports.⁵

GSP+ was considered a positive sign for Pakistan's falling exports. According to study conducted by Pakistan Business Council, the maximum possible imports by EU from Pakistan were projected at about \$ 7.7 billion for 2016⁶. Many other studies indicated that GSP+ status would benefit Pakistan significantly and exports will increase by more than \$ 1 billion and textile industry will earn profits more than Rs. 1 trillion per year.⁷

Trade with EU

EU is one of the largest trading partners of Pakistan with 25% share in Pakistan's total export followed by USA (12%), China (9%) and UAE (8%). In 2014, Pakistan's exports to EU amounted for EUR 5.5 billion (approximately \$6.17 billion)⁸, which is an increase of 22 percent over 2013. Over 70 percent of Pakistan's export to EU comprise of textile and clothing.

Around 87% of the Pakistan's exports to EU are eligible for GSP plus. The status is especially beneficial for the textile and clothing industry. The status allows Pakistan's top export products including bed and tailored linen, denim trousers and leather apparel enter the EU market duty free and avoids the normal MFN duty rate of 12%. As a result, the textile exports from Pakistan after GSP Plus has increased positively by 82% in 2014 , from EUR 2 billion in 2013 to EUR 3.7 billion in 2014⁹ (approximately \$2.24 billion in 2013 to \$4.15 billion)¹⁰.

⁵ Dr. Hafiz Pasha, GSP and Labour Standard

⁶ http://pbc.org.pk/wp-content/uploads/2014/06/Road_Map_-_Final_PDF.pdf

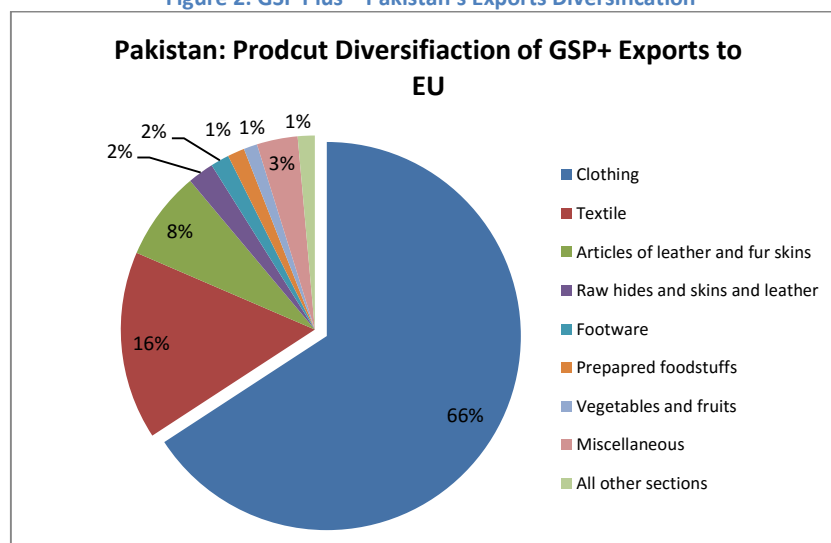
⁷ <http://www.dawn.com/news/1072051>

⁸ The figures are converted using the exchange rate on 22nd Feb, 2016. 1 EUR = 1.12 USD

⁹ http://trade.ec.europa.eu/doclib/docs/2016/january/tradoc_154178.pdf

¹⁰ The figures are converted using the exchange rate on 22nd Feb, 2016. 1 EUR = 1.12 USD

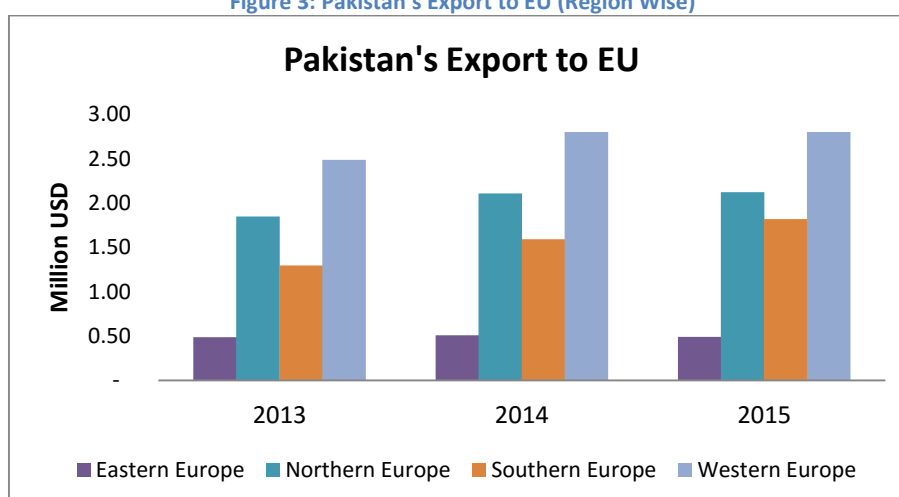
Figure 2: GSP Plus – Pakistan's Exports Diversification



Source:

In 2013, Pakistan's exports to EU recorded at \$6.1 billion which increased by 12.65% and reached to \$7 billion in 2014. The exports significantly increased from southern and western Europe.

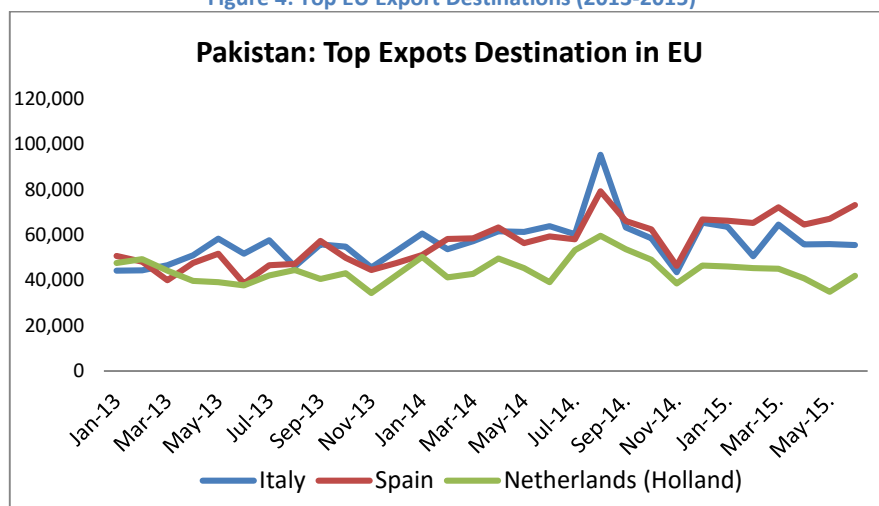
Figure 3: Pakistan's Export to EU (Region Wise)



Source: State Bank of Pakistan

Top exporting destination for Pakistan included Italy, Spain and Netherlands (Holland). The highest increase for exports to Italy was noted in Nov-Dec 2014 by 33.4 % (Nov 14: \$43.6 million to Dec 14: \$65.5 million). Similar is the case for Spain which showed an increase of 30.59% for same months (Nov 14: \$46.4 million to Dec 14: \$66.2 million). In case of Netherlands, exports increased from \$39.2 million to \$53.2 million in Jun-July 2014 (an increase of 26.37 percent)

Figure 4: Top EU Export Destinations (2013-2015)



Source: State Bank of Pakistan

GSP + Conventions

In order to keep GPS+ status, Pakistan is required to ratify and effectively implement 27 core international conventions on human rights, environmental protection and good governance. The conventions fall under the scope of different ministries. Details of responsibility for each convention are given below:

Table 3: Ministry with Relevant International Convention Cluster

S.No	Name of Ministry	Convention
1.	Ministry of Foreign Affairs	1. Convention on the Prevention and Punishment of the Crime of Genocide (1948)
2.	Ministry of Climate Change	1. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 2. Montreal Protocol on Substances that deplete the Ozone Layer (1987) 3. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989) 4. Convention on Biological Diversity (1992) 5. The United Nations Framework Convention on Climate Change (1992) 6. Cartagena Protocol on Bio safety (2000) 7. Stockholm Convention on Persistent Organic Pollutants (2001) 8. Kyoto Protocol to the United Nations Framework Convention on Climate Change (1998)
3.	Ministry of Law, Justice and Human Rights	1. International Convention on the Elimination of All Forms of Racial Discrimination (1965)[CERD] 2. International Covenant on Civil and Political Rights (1966) [ICCPR] 3. International Covenant on Economic Social and Cultural Rights (1966) [ICESCR] 4. Convention on the Elimination of All Forms of Discrimination Against Women (1979) [CEDAW] 5. Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984) [CAT]

		6. Convention on the Rights of the Child (1989)[CRC]
4.	Ministry of Interior and Narcotics Control	<ol style="list-style-type: none"> 1. United Nations Single Convention on Narcotic Drugs (1961) 2. United Nations Convention on Psychotropic Substances (1971) 3. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
5.	Ministry of Interior	1. United Nations Convention against Corruption (2004)
6.	Ministry of Human Resources Development	<ol style="list-style-type: none"> 1. Convention Concerning Forced or Compulsory Labour, No. 29 (1930) 2. Convention Concerning Freedom of Association and Protection of the Right to Organize No. 87 (1948) 3. Convention Concerning the Application of Principles of the Right to Organize and to Bargain Collectively, No. 98 (1949) 4. Convention Concerning Equal Remuneration of Men and Women Workers or /work of Equal Value, No. 100 (1951) 5. Convention Concerning the Abolition of forced Labour No. 105 (1951) 6. Convention Concerning Respect of Employment and Occupation No. 111 (1958) 7. Convention Minimum Age for Admission to employment. No.138 (1973) 8. Convention Concerning Prohibition and Immediate Action for the Elimination of the worst forms of Child Labour No.182 (1999).

Source: Ministry of Commerce

UN Convention against Corruption (UNCAC)

The responsibility of ratifying and implementation of conventions related to labour laws, human rights and environmental protection mostly falls under the government domain. Private sector have limited role in compliance of these conventions.

UN Conventions against Corruption is one of the conventions where private sector can play a significant role. While Ministry of Interior and National Accountability Bureau are mostly responsible for this convention, many articles of the convention are specifically address to private sector where they can ensure that Pakistan comply while doing business with international firms.

For the purpose of this paper, we will focus only on ‘UN Convention against Corruption’ and discuss where private sector can play an important role and how non-compliance is affecting Pakistani businesses.

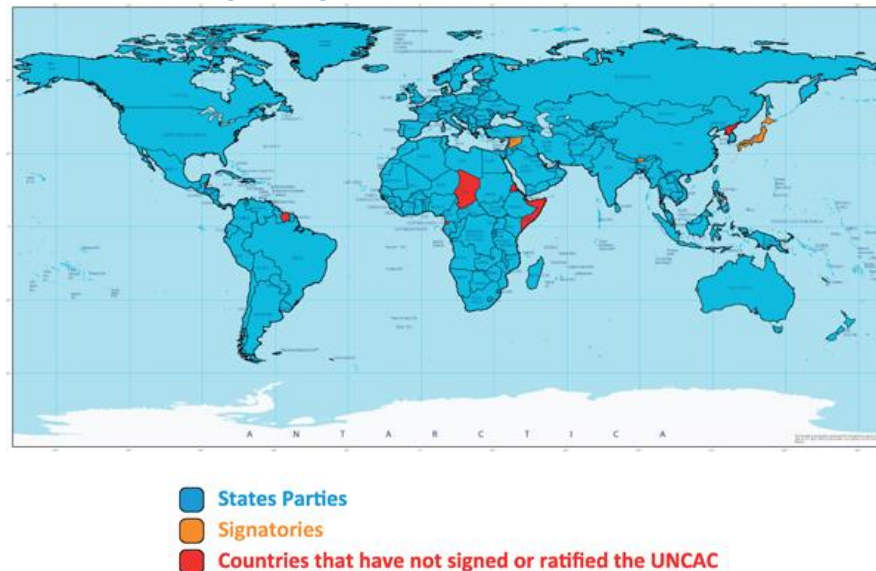
Introduction: Salient Features

The UN Convention against Corruption was promulgated in 2003 and entered into force in 2005 with the following aims;

- (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;

- (b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- (c) To promote integrity, accountability and proper management of public affairs and public property

Figure 5: Signatories and State Parties of UNCAC



As of 1st December, 2015, there are 140 signatories and 178 parties to this convention. The main features of the conventions are¹¹:

1. Prevention

One of the main features of Convention is 'prevention' which highlight various measures that can be adopted both by public and private sectors. These include model preventive policies such as establishment of anticorruption bodies and enhanced transparency in election campaigns, public recruitments and public finance. The convention also calls for community – based organisations to enhance transparency and raise awareness regarding measures to prevent corruption.

Article 12 of the chapter II of convention highlights the preventive measures for private sector. It requires the private sector to enhance accounting and auditing standards in the private sector and where appropriate provide effective administrative or criminal penalties for failure to comply with such measures.

2. Criminalization

The convention requires the country to comprehensive criminal offences code to cover various aspects of corruption. It emphasize beyond from the traditional corruption practices such as

¹¹ <https://www.unodc.org/unodc/en/treaties/CAC/convention-highlights.html> ,
<http://www.u4.no/publications/uncac-in-a-nutshell-a-quick-guide-to-the-united-nations-convention-against-corruption-for-embassy-and-donor-agency-staff/>

bribery, embezzlements of public fund to use of influence and concealment of corruption practices. The convention also deals with the problematic areas of private-sector corruption.

Articles 21 and 22 of chapter III address the issues of 'Bribery in private sector' and 'Embezzlement of property in the private sector' respectively. These articles require private sector to adopt legislative measures to establish criminal offences for offering or acceptance of undue advantage and embezzlement in economic, commercial or financial transaction.

3. International Cooperation

Countries are bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders. Countries are also required to undertake measures which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption.

Article 39 of chapter IV focused on 'cooperation between national authorities and the private sector' and encourages private sector to take measures for cooperation between national investigation authorities and private sector for activities which are offence in accordance with the convention.

4. Asset Recovery

A fundamental principle of the convention is the right to recovery of public assets. It lays the framework for countries to adopt both their civil and criminal law in order to facilitate tracing, freezing, forfeiting, and returning funds obtained through corrupt activities.

Pakistan: UNCAC and Post GSP+ Compliance

The Convention was signed by Pakistan on 9th December, 2003 and was ratified on 31st August, 2007 with Pakistan. Pakistan nominated National Accountability Bureau as the will develop and implement anti-corruption measures in the country and cooperate at international level.

Pakistan is following three acts to domestically control corruption, namely: Pakistan Penal Code of 1860 (PPC), The Prevention of Corruption Act of 1947 (PCA) and The National Accountability Ordinance of 199 (NAO).

Post GSP+, Pakistan experienced a rocky road. On one hand, Ministry of Commerce claimed that the scheme has proved to be a resounding success for Pakistan given the progress on account of better trade performance¹². On the other hand, many news reports emerged warning that Pakistan might lose GSP+ status on account of non-compliance to 27 conventions.

The EU published first compliance report on 28th January, 2016 covering the status of ratification of the relevant conventions, the compliance with reporting obligations, and the status of effective implementation.

¹² <http://www.dawn.com/news/1072051>

According to the report, Pakistan has made some progress in strengthening the National Accountability Bureau (NAB) to implement the commitments under this convention. However, the challenges are still considerable and the UNCAC review for Pakistan is currently under progress, thus the first compliance report does not provide any summary or conclusion on corruption convention.

It is important to understand that the GSP+ preferences can be withdrawn partially or fully if the government fails to meet its commitments on enforcing the required conventions. If, after investigation, the EU is convinced that the binding commitments are not met, it can temporarily withdraw the GSP+ concessions.¹³

GSP+ was taken away from Sri Lanka in 2010 due to non-effective implementation of certain human rights conventions. GSP concessions were also withdrawn from Belarus and Myanmar on the grounds of serious and systematic violation of labour rights.

Box: Non-Compliance: Few Corruption Cases in 2014-15

Case 1: Walt Disney Banned Import from Pakistan

Walt Disney, a leading US company, banned all textile imports from Pakistan due to non-satisfactory 'good governance standards'. The decision was based on a report by World Bank that assesses countries on how they are governed using matrices of accountability, corruption, violence etc. According to Bob Chapek – President of Disney Consumer Products, 'After much thought and discussion, we felt this was the most responsible way to manage the challenges associated with our supply chains'. **As a result, Pakistan is stripped off of \$200 million exports of textile products.**

Case 2: Kanati, a Canadian company, pulled out over supply chain issues

Similar to Walt Disney case, a leading Canadian men's wear company, Kanati, pulled out of Pakistan due to corruption, delays and supply chain issues.

Kanati also placed Pakistan in a list of banned countries to accept as a supplier. According to Liam Massaubi - co-founder of the company, "As an organization that serves clients globally, we just can't afford the disruption and down-time in Pakistan. Our clients depend on a fast and reliable service. We can no longer wait and hope for improvements in Pakistan. We recognize when it is time to cut losses and move on. There are added benefits of a domestic manufacturing approach where we are able to control all of the variables, which we cannot do in Pakistan."

Case 3: U.S. Gun Manufacturer fined for bribing Pakistani Police:

The U.S. Securities and Exchange Commission charged Smith & Wesson Holding Corporation for violation of Foreign Corrupt Practices Act (FPCA). The employees and representative of

¹³ Dr. Hafiz Pasha

U.S. based company made improper payments while trying to win contract to supply firearm products.

According to SEC's order, Smith & Wesson retained a third-party agent in Pakistan in 2008 to help the company obtain a deal to sell firearms to a Pakistani police department. Smith & Wesson officials authorized the agent to provide more than \$11,000 worth of guns to Pakistani police officials as gifts, and then make additional cash payments. Smith & Wesson ultimately won a contract to sell 548 pistols to the Pakistani police for a profit of \$107,852.

Conclusion and Recommendation

Implementation of Relevant Articles of UNCAC

Most of the businesses are unaware of the relevant articles and clauses of UNCAC conventions. The first and the foremost step private sector can take is to understand their role in prevention and monitoring of corruption vis-à-vis UNCAC convention. As mentioned above, articles 12, 21, 22 and 39 directly address the private sector and outline various ways in which the corruption can be combat through effective systems within the organisations.

Transparency in Business Transactions

To ensure integrity in business transaction, firms should adopt transparent financial, communication and monitoring procedures. To win the confidence of international trading partners, it will be beneficial if firms follow international standards on accounting, auditing and ethics.

Training: Corporate Compliance & Supply Chain Management

Many firms in Pakistan, which enter the international markets, are unaware of the compliance requirements. It is necessary to create awareness among vendors, exporters, importers about the relevant compliance procedures and requirements. In addition, as the trading world is evolving into supply chains, Pakistani firms need to equip themselves with effective supply chain management skills. It is necessary to develop code of ethics and compliance procedures for all the relevant parties in supply chain so that corruption can be prevented at all levels.

Public – Private Committee

To fulfil the GSP+ requirement, it is necessary to harmonise the efforts of both public and private sector. UNCAC falls under the domain of the Ministry of Interior, whereas, the focal government organisation nominated for all internal coordination is National Accountability Bureau. It is currently not clear how the overlapping between federal and provincial government will be address. Private sector, to effectively ratify this convention, should focus on cooperation between authorities and private sector so that Pakistani firms can benefit from GSP+ with minimum effect of corruption.