I. INTRODUCTION

Annual budgets for government procurement worldwide have been estimated by the Organisation for Economic Co-operation and Development (OECD) to run up to US$ 5 trillion.¹ Services represent a substantial part of this, accounting for nearly 60 percent of the total by value,² and are increasingly becoming the largest purchases made by governments, particularly so by those OECD Members that rely on outsourcing strategies. Outsourcing means that private firms are contracted to undertake activities that were previously done by government "in-house" employees.³ Services procurement is rapidly becoming the most significant proportion of trade, and therefore any discrimination in this area can create important trade barriers.

Nevertheless, this issue remains largely excluded from multilateral disciplines. The Agreement on Government Procurement (GPA) already covers services, but it is carried through to the World Trade Organization as only a plurilateral and not as a multilateral agreement.⁴ Whereas GPA signatories have access to a significant part of the services procurement market, countries that are not GPA signatories do not have a guaranteed access to these markets. Therefore, on a multilateral front, negotiations of government procurement remain on the agenda.

¹ The author may be contacted at: sypeng@mx.nthu.edu.tw; or via her Website, at: http://sypeng.myweb.hinet.net.
² A large share of these expenditures goes to essential infrastructure sectors, such as utilities, transport, education and health services. See Peter Eigen, Controlling Corruption: A Key to Development-Oriented Trade, in Mike Moore et al. (eds.), Doha and Beyond: The Future of the Multilateral Trading System 139 (2004).
This article concentrates on the services dimension of public procurement. It starts with an overview of the ongoing multilateral initiatives on government procurement, with particular attention on how the momentum of the negotiation has been affected by the “July Package”. The second part of the article discusses concrete examples provided in the communications from the European Communities, discussing the possibility to establish an Annex to the General Agreement on Trade in Services (GATS) on procedural rules for government procurement, and the feasibility to make specific commitments in GATS Schedules.

There are different points of view regarding the scope of the GATS Article XIII mandate. This particular ambiguity creates much confusion as to whether or not WTO Members should engage as soon as possible in meaningful debates leading to the establishment of disciplines on services procurement. The main purpose of this study is to explore the three fundamental questions on government procurement of services that must be negotiated multilaterally: “Is it applicable”; “Is it necessary”; and “Is it feasible”? Members are facing architectural challenges under the GATS in the context of services procurement. Towards the end of this article, I carry out a critical analysis of the questions as to what extent further disciplines are actually necessary under the GATS and if there are any technical problems with the proposed modality for the scheduling of specific government procurement commitments. And how will a possible procurement framework under GATS affect Members’ obligations under the GPA in respect of services? I conclude the paper by summarizing my main findings.

II. MULTILATERAL INITIATIVES FOR RULES OF GOVERNMENT PROCUREMENT IN SERVICES

A. “MULTILATERALIZING” THE GPA: THE WGTGP AND THE WPGR

The objective of the GPA, as indicated in its Preamble, is to contribute to the liberalization and expansion of world trade. Even though the GPA is a significant first step in establishing international disciplines on public procurement, it is limited in its domain, i.e. limited in membership and narrow in scope. Consequently, because the existing GPA is inadequate, how to “multilateralize” the GPA has become one of the targets of the WTO. So far, there have been two initiatives to develop multilateral rules—the Working Group on Transparency in Government Procurement (WGTGP) and the Working Party on GATS Rules (WPGR).

The 1996 WTO Ministerial Conference in Singapore established a Working Group on Transparency in Government Procurement to conduct a study on transparency in

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5 General Agreement on Trade in Services, done 15 April 1994, 33 I.L.M. 1167.
6 The GPA applies to any law, regulation, procedure or practice regarding any procurement by entities listed in Appendix 1 of the Agreement.