

**GENERAL AGREEMENT ON
TARIFFS AND TRADE**

SERVICES

DRAFT MINUTES OF THE MEETING HELD ON 17 OCTOBER 1985

Chairman: Ambassador F. Jaramillo

1. The Chairman, referring to GATT/AIR/2213,, indicated that the national studies still to be discussed were those of Belgium, Australia and France, and also the appendix to the United States Study. He had been informed that the Belgian delegation would distribute a document containing answers to the questions which had been raised during the previous meeting. Concerning the documentation prepared by the secretariat, he recalled that during the previous meeting a number of delegations had reserved their comments on MDF/17, and he suggested that it would be appropriate to carry the examination of this aspect of the subject matter as far forward as possible at this meeting.

2. In introducing his country's national examination on services, the representative of France stated that the study covered three main topics. First, it contained general data on the rôle of services in the French domestic economy and in the foreign trade of France. In preparing this part of the study his authorities had encountered sizeable statistical difficulties. Thanks to the study their thinking on this issue had been improved and he hoped that in the future he would be able to make available more accurate data. In the second part of the study an attempt had been made to classify the main rules and principles applying to services in France. The third part of the study contained considerations regarding possible multilateral action in the field of services. He stated that France was strongly in favour of a multilateral approach in the framework of GATT, although this did not mean that existing principles for trade in goods could automatically be applied to services. At the end of the study a number of problems encountered by French service firms doing business abroad had been listed.

3. The representative of Argentina stated that he might want to revert to the French study at a future meeting, after his authorities had had the opportunity to study the document in greater depth. The representative of Brazil also needed more time to study the French submission, but meanwhile he wished to draw attention to paragraph 3.1.3 of the French study, where it was observed that the ways of thinking and the actual rules applicable to trade in goods were generally not applicable to services. In the same paragraph it was noted that the theory of comparative advantage could not be applied in areas where there was migration of factors of production. He asked the French representative whether he could provide a clarification as to the reasoning which had led to these important conclusions. The representative of Yugoslavia also expressed her delegation's interest for the French examination and reserved the right to revert to it at a later stage after more careful study.

4. The representative of France stated that the purpose of paragraph 3.1.3 of the study was to focus attention on the theoretical problem that some of the basic assumptions underlying the existing rules for trade in goods were not applicable to services. Therefore, a simple extension of theoretical hypotheses might lead to inappropriate practical results. To avoid logical inconsistencies, it would be necessary to reflect before envisaging, for example, the extension to services of the traditional negotiating techniques of reciprocal concessions based on quantitative assessments of expected benefits.

5. The representative of the United States noted that the French study addressed many of the problems in the field of services more frankly than some of the other studies which had been submitted. It focused attention on many important conceptual issues which were worth more detailed consideration. He also noted that by IMF figures, France was not the world's leading exporter of services. The representative of Switzerland also thought the study was of great interest in that it gave a general view of the problems in the field of services. In particular, part III of the study, concerning possible multilateral action, put the issues in much clearer focus than other national examinations, and as such it was an invitation to other delegations to reflect further along similar lines.

6. The representative of India expressed appreciation for the contents and structure of the French study and, drawing attention to paragraph 1.1 on definitions and statistics, he said this paragraph clearly illustrated the conceptual and statistical difficulties inherent in any attempt to deal with services as a whole. He believed that the discussion in the French study of the definitional and statistical problems in the field of services confirmed the view expressed during a previous meeting by his delegation, namely that the treatment of various services as a whole was more a matter of convenience than of common economic characteristics. He noted that, as mentioned in the French study, the classifications of services varied in time and space for numerous reasons. This was an important issue which should be taken into account in the deliberations of these meetings. It would be useful to consider whether the views presented in other national studies submitted so far were not at variance with the French approach. He reserved the right to revert to this issue in the future. Concerning the reference made to the participation of France in the drafting of OECD codes, he noted that MDF/17 did not contain any reference to these Codes and asked whether it would be possible to supplement the document in this respect. The Chairman noted that there was agreement to request the secretariat to prepare a summary of the provisions of these Codes.

7. The representative of Canada said that the definitional and statistical problems mentioned in the first part of the French study were familiar and since, in his oral presentation, the representative of France had indicated that his country was in favour of a multilateral approach in GATT on services, he concluded that these problems were not insurmountable.

8. The representative of Israel stated that, while it was true that the concept of services covered a wide range of heterogeneous activities, this also applied to goods. Moreover, in his view the range of producing activities to which the GATT applied was even more heterogeneous than the services sector. The close relationship between services and goods, and the necessity of dealing with services and goods in the same framework, were clearly brought out in the French study.

9. The representative of India, for his part, believed that the interdependence of services and goods was another complicating factor for the economic analysis of services, which had not yet been discussed in these meetings.

10. The representative of Japan felt that in some respects the conclusions drawn in the study were too definitive. He referred in particular to the alleged impossibility of imagining international negotiations on services symmetrical with earlier negotiations on goods. In his view the crux of the deliberations in these meetings was to determine to what extent negotiations on services could build on past experience in negotiations on goods, and to what extent new principles would be necessary.

11. In his reply to the various comments made, the representative of France stated that in his country's study his authorities had raised a number of important issues without necessarily being in a position to give all the answers. He referred in particular to the problem of the interdependence between services and goods, discussed by the representative of Israel and India. Regarding possible negotiations on services he said that at present there was no multilateral agreement on services and since GATT had experience in negotiating on trade in goods, it seemed a good thing to negotiate on services in GATT, while taking into account the specificity of services. The word GATT was not mentioned in the French national study but the study was clearly meant to be a contribution to current talks on services in GATT.

12. Commenting on the remarks made concerning the complexity of defining services the representative of the United States recalled that some delegations had taken the position that the question of definition and coverage could be settled only at the end of the current process of deliberations. While recognizing the difficulties involved, he nevertheless thought that some parameters could be delineated for the purpose of discussions. For example, one could focus on tradeable aspects of services, segregate out capital flows and investment questions, and concentrate on what could be done in this area.

13. The representative of India recalled that it had been agreed earlier to set aside the question of the definition of services, to go ahead with the discussion of issues raised in the various national examinations and to revert to the problem of definition at the end of this process. Now that an attempt was being made to wrap up this exercise, it was necessary to take into account the fact that definitional aspects remained unaddressed to any great length. When it came to thinking about superimposing a framework on services, one could not go on dealing with nebulous ideas. Therefore, at some point or other, an appropriate way would have to be found to deal with definitions. He had found the French study useful in pointing to the problem.

14. The representative of the European Community felt one should not overestimate the importance of having a precise definition of services. He referred to GATT Article XVI which left the concept of subsidies undefined. This example showed that it was possible to negotiate and reach agreement in the absence of a precise definition.

15. The representative of India replied that the example of subsidies was not very relevant in this context, since a party affected by subsidies would not need to have a precise definition of subsidies to know that it was

suffering injury from subsidization. However, in the area of services the issue of definition was particularly important as some views had been expressed that, in view of the lack of common economic characteristics of the various service activities, it would be impossible to deal with services at a multilateral level.

16. The Chairman noted that the French national study had given rise to a useful exchange of views and he now invited comments on the national examination by Australia.

17. The representative of the European Community referred to paragraph 56 of the Australian national study containing information on special taxation concessions to the Australian shipping industry. He asked whether the aim of this practice which he assimilated to a subsidy, was to enlarge the market share of the Australian national shipping line and whether the Australian representative considered this practice to be reasonable. He also asked whether the Australian representative considered this practice an example of the kinds of issues that would have to be dealt with in future talks on liberalization of services.

18. The representative of Australia stated that the aim of the legislation on taxation concessions was simply to make the Australian shipping industry more efficient, but not to enlarge its market share as such. He would, however, seek more information on this measure and revert to it at a future meeting. In response to a number of questions raised by the representative of Canada during the previous meeting, he supplied the following information. With regard to statistics on the breakdown between private and public services he would give the representative of Canada, the secretariat and any interested representative a copy of a document containing the relevant information. With respect to the standards of the Australian Broadcasting Tribunal on imported advertising material and on the contents of programmes he said that, as far as programmes were concerned, he was not in a position to give a clear answer: as a result of a recent High Court decision his government was now in the process of preparing new legislation. Once the legislation would have been passed by Parliament and proclaimed, he would make available a copy of the new legislation to interested delegations. With regard to advertising, his government was committed to the development of an Australian film industry, and it required advertisements to be made in Australia or by Australian crews because this work provided regular, day-to-day employment for people involved in the film industry who operated on rather unusual work schedules. Regarding the treatment of the sixteen foreign banks which recently had been invited to establish operations in Australia, he said that no controls or restrictions would be applied to these foreign banks which were not applied to Australian banks. However, for prudential reasons, all new banks (whether Australian or foreign) were required to maintain, during their formative period, a slightly higher capital ratio than the established banks. This higher capital requirement would be reviewed in the light of the bank's operational experience, including experience in building a stable deposit base and a diversified portfolio of assets. Regarding the decision to invite sixteen foreign banks he said that his authorities had considered that the number of foreign banks would have to be limited in view of the relatively small size of the Australian financial system. It had been considered that unlimited entry of foreign banks would have disrupted the stability of the Australian banking

system. He also said that, in general, all proposals by foreign interests to establish a new Australian business (including a bank) coming within the scope of Australia's foreign investment policy that were approved by the government, were normally subject to a requirement limiting the proportion of foreign interest-bearing debt. In the case of banks and other financial institutions this ratio was normally set at a maximum of 6:1; for all other businesses the maximum ratio was 3:1. In reply to the question whether foreign-owned vessels could be granted licences for coastal shipping, he said that, under section 288 of the Navigation Act of 1912, foreign-owned vessels might be granted licences to engage in Australian interstate coastal shipping. Licences were normally issued for twelve months and could be renewed on application. Licensed vessels were subject to the coasting trade provisions of the Navigation Act which included the payment of Australian award wages and compliance with Australian manning, crew accommodation and safety standards. The Navigation Act also provided for the issue of single voyage permits for unlicensed vessels to engage in coasting trade, but only if licensed vessels were unavailable or if services were inadequate, and the Australian Minister for Transport was satisfied that it would be in the public interest. As of September 1985, 100 vessels were licensed to operate on the Australian coast, 23 single voyage permits had been granted in 1984-1985 for the carriage of cargo. Concerning the reasons for the restrictions on ownership of pharmacies, he stated that the current State regulations on ownership of pharmacies had been enacted in the late 1930's and early 1940's following representations by the pharmacy industry, which comprised in the main independent owner-operated chemists. The main reasons why these regulations had been enacted were the claimed disruptive impact and loss of professionalism due to a growing involvement in pharmacy by retail departments and chain stores and the imminent entry into the market of a major UK corporate pharmacy. Further details on Australian regulations bearing on retail pharmacy could be gained from a recent report of the Bureau of Industry Economics entitled: "Retail Pharmacy in Australia". Finally, in response to the question of the representative of the European Community concerning the treatment of subsidies in any negotiations on services, he said that until agreement had been reached to negotiate on services in GATT, it was difficult to answer this question.

19. The representative of France asked whether there was a special theoretical reason why the question of foreign investment had been treated as a separate issue in the Australian study. He also inquired whether there were cases in which Australian regulations on foreign investment were not applied as a result of bilateral agreements between Australia and third countries. Finally, as he had noted that many service sectors in Australia were regulated by local governments, he inquired whether the Australian constitution provided for local governments to take into account international commitments made by the Federal Government.

20. The representative of Australia replied that the separate treatment of investment in his country's study was a matter of convenience. With respect to the other two questions he would seek further legal advice.

21. The Chairman then invited comments on Appendix IV to the United States national examination, circulated at the last meeting.

22. The representative of Australia stated that several items in the Appendix contained incorrect information. With regard to insurance, contrary to what was alleged on page 17 of the Appendix, foreign direct investors were

permitted to establish new insurance business (direct insurance or reinsurance) in Australia. Such establishment was subject to certain conditions. Thus, proposals by foreign investors to establish new insurance business in Australia would have to show substantial net economic benefits to Australia, or where these net economic benefits were small, would have to involve an effective partnership between Australian interests and the foreign investor in the ownership and control of the business concerned. As to the exemption of government insurance offices from the application of the solvency provisions of the Insurance Act of 1973, he said that section 51 (XIV) of the Australian Constitution precluded the Commonwealth or Federal Government from making laws with respect to State insurance confined within the limits of the State concerned. In any event, since the State Governments guaranteed the liabilities of State Government Insurance Offices (SGIO's), a requirement that those organizations comply with the solvency provisions of the Insurance Act, which applied to private insurers authorized to operate in Australia and were designed to protect policy holders, would do nothing to enhance consumer protection. The SGIO's did however provide statistical information to the Insurance Commissioner on a voluntary basis. Private insurers had sought amendment of the Insurance Act to cover the inter-state operations of SGIO's but the Commonwealth had not seen sufficient justification for such a move in view of the lack of any increased consumer protection, the difficulty in separating out such activities from SGIO's intra-state operations, and the absence of any concrete proof that the existing exclusion conferred a measurable comparative advantage. Any perceived advantage would appear to stem predominantly from their relationship with their respective State governments (e.g. with respect to the insurance business of State authorities). With regard to motion pictures (page 28 of the Appendix) he recalled that the Australian government was committed to the development of an Australian film industry. State governments provided financial assistance to producers but no concessions. He said he could make available to the United States representative more detailed information on the Australian taxation régime for the film industry. No quotas or impediments, other than normal censorship requirements were imposed by Australia on overseas films. Such films could compete in the market place alongside Australian films. Regarding the Australian regulations on imports of software (page 33 of the Appendix) he denied that Australia's software industry was highly protected by excessive taxation on licensing fees and royalties. A sales tax of 20 per cent was applied irrespective of the origin of the product and this tax was applied only on the media, not on the intellectual component. The sales tax on the imported software was based on the value of the media, plus the import duty of 20 per cent, plus a notional wholesale margin of 20 per cent of the value of the media. However, since the value of the media was usually less than 2 per cent of the value of the package, the sales tax differential between domestic and imported software was insignificant and could not be considered protectionist. Regarding air transportation (page 38 of Appendix IV) he said it was common practice worldwide that governments provide guarantees to state-owned business undertakings. Further, in regard to the question of landing charges, he said that all international carriers were charged equally and that no preference was given to the national carrier. Not only did Qantas pay its charges, but its contributions comprised some 45 per cent of all revenue collected from international carriers operating in Australia. There had been no increase in air navigation charges for the international

sector since 1976. Charges for that sector had actually been reduced by 5 per cent in 1981. With respect to shipping (page 42 of Appendix IV) he said that departmental liner cargoes - both imports and exports - would first have to be offered to Australian shipowners for carriage in Australian ships where they could provide a reasonably competitive service at normal conference rates. If no competitive service could be provided by Australian shipowners the cargoes could be offered for carriage on other ships. This policy applied to liner cargoes only, and affected less than 1 per cent of Australia's total liner cargo imports and exports.

23. The representative of the European Community stated that Appendix IV was very useful in giving an insight as to what the United States, and in particular the United States' private sector, perceived to be barriers to trade in services. It was clear, of course, that the list was not only illustrative but also subjective. A considerable number of items listed for EC member States were incorrect. Many concerned measures which were applied in a non-discriminatory manner to domestic and foreign firms and which were legitimate expressions of national and Community policy goals. Such items would not be amenable to trade liberalization negotiations.

24. The representative of Brazil stated it was not clear whether the Appendix represented the views of the United States' private sector or the views of the United States government. He asked the representative of the United States to make a clear distinction between obstacles to trade in services and obstacles relating to foreign investment. In his view many of the measures listed in the Appendix concerned foreign investment in services sectors and not trade in services as such. He pointed to the selective nature of the list and asked which criteria had been used in its compilation. He further inquired whether other delegations, in particular delegations of countries in favour of multilateral action on services, would be in a position to submit similar lists and suggested that the secretariat could perhaps make a synopsis of such material.

25. The representative of India agreed with the comments of the representative of the European Community regarding the subjective nature of the Appendix. He enquired how the Appendix should be taken into account in the work of the meeting. Without lengthy and detailed discussion of the individual items it would be difficult to reflect the Appendix in the records.

26. The representative of Japan found the Appendix very interesting for methodological reasons. With regard to its contents he noted some errors concerning Japan. In general, Japanese regulations in the field of services were non-discriminatory and non-protectionist. The representative of Switzerland said that, while generally the information in the Appendix on measures taken by his government was more or less correct, the wording was sometimes incorrect and too simple.

27. The representative of the Republic of Korea was surprised to find his country mentioned in so many places in the Appendix. The Appendix was a subjective list, and in the absence of an agreed definition of services it was not appropriate at this time to discuss this type of document. At a later stage, when agreement on a definition of services would have been

reached, the secretariat could be requested to prepare an objective summary of obstacles to trade in services which could serve as a basis for future discussion.

28. The representative of Israel stated the Appendix was a valuable document although certain items were missing. His own country was mentioned only twice and there was no reference to United States regulations on services. A document with a broader coverage would allow a clearer view of the problems in this area.

29. The representative of Yugoslavia said a clarification was necessary concerning the status of the Appendix in the context of the meetings on services; one could not negotiate on the basis of what one country perceived to be the main problems in this area.

30. The representative of Egypt stated the Appendix was interesting but selective and illustrative. The document was helpful in providing a view of the complexity of the issue of services. He encouraged the United States to make the list more comprehensive and said it would be useful if other delegations submitted similar lists. The secretariat had, however, no rôle to play in this regard. Rather, the lists of obstacles encountered by service firms doing business abroad could be appended to the national studies. He also asked whether his view was correct that most of the issues mentioned in the Appendix to the United States study concerned denial of national treatment to foreign firms, rather than discrimination between different foreign suppliers.

31. The representative of Pakistan recalled that in 1982 the United States had made available similar documentation in an informal manner. He shared the views expressed by a number of other representatives concerning the subjective nature of the concept of restriction. He noted that Pakistan was mentioned only two or three times and enquired whether he could infer from this that Pakistan maintained no restrictions in other sectors. He advised the United States to check the information contained in the Appendix on the basis of the latest regulations. He would also appreciate if the United States could provide information on its own restrictions in the areas covered by the Appendix.

32. The representative of Argentina shared the view expressed by a number of other representatives that the Appendix to the United States study was a subjective document. Nevertheless the document was useful in the current process of exchange of information. He emphasized that a distinction should be made between barriers and regulations and laws. He reserved the right to make further comments on the Appendix at a later stage, in particular regarding the references to measures taken by his country.

33. The representative of the United States said the Appendix was based on information provided by the United States private sector which had been checked by the United States government. As a result, many of the items initially mentioned by the private sector had been eliminated. The United States would be grateful for further corrections to the information contained in the Appendix. The list would be updated periodically; some items would be dropped and others would be included. He said that any exercise of this kind was by its nature subjective. Regarding the distinction between trade

problems and investment problems he stated that such distinction was not easy to make. Nevertheless it was clear that the Appendix included items which generally were considered to be investment issues. This had been done deliberately so as to give an idea of the main problems. However, the United States was not seeking negotiations on all the issues mentioned in the Appendix. He stated that the inclusion of an item in the Appendix was not based on any quantitative criteria. In his view, exchange of information on obstacles in specific services was part of the process of arriving at an acceptable definition. Regarding notification by the United States of its own restrictions, he said that it was not usual in GATT for countries to do so. He said it was up to other delegations to notify restrictions on services applied by the United States. Finally, he said that many regulations on the face of it were not discriminatory but were often implemented in a manner detrimental to foreign firms. He encouraged other delegations to undertake a similar exercise. In reply to the representative of Egypt, he said the majority of the issues mentioned in the Appendix concerned differential treatment between foreign producers of services and domestic firms. Such differential treatment could occur even in cases in which measures were applied which technically were in conformity with the national treatment principle.

34. The representative of the Republic of Korea noted that so far the exchange of information on services had been limited to a discussion of studies in which countries had provided information on their own regulations. The Appendix to the United States study contained information on other countries' measures and therefore represented a novel element. He asked how this would affect the future work of the meeting.

35. The representative of Brazil felt that this type of document was a necessary contribution to the exchange of information on services. The information provided in the Appendix should constitute an essential part of the national study of any contracting party which felt there was a need for multilateral action on services. Such information could help to determine whether there was a need for such action, by providing a basis on which those who were in favour could argue their case.

36. The Chairman concurred with the representative of Brazil, and invited the meeting to turn to the information contained in document MDF/17 and Addenda.

37. The representative of India said that the document reflected a certain degree of completeness in dealing with the work of other relevant international organizations. This work was distinct from the exchange of information based on national studies, and the document should therefore best stand on its own. Care should be taken not to confuse the two elements. Referring to specific aspects of MDF/17 he noted that UNCTAD had done some work on various services sectors, notably shipping, insurance, transfer of technology and financing related to trade. This work had led to the negotiation of certain instruments, particularly in the areas of maritime transport and transfer of technology. The question which had been raised previously was how delegations which supported a multilateral approach to services as a whole viewed the specific areas on which work had already been conducted by other international organizations, and where international or multilateral treaties or agreements already existed. This was a subject on

which no substantive discussions had yet been held. His delegation was aware that the rôle of development in the context of the services sector was an important one, and that UNCTAD had also done some work in this area, specifically in document TD/B/1008 which dealt with services in the development process. UNCTAD had also studied the rôle of new services such as accounting, advertising, marketing, telecommunications and telematics in developing countries, as well as the problem of strengthening and refining the data base. All this showed that UNCTAD was already seriously addressing itself to some of the concerns delegations were considering in these meetings and it was useful to keep this fact in perspective. Therefore, his delegation felt that UNCTAD had a significant rôle to play and that the on-going work in that organization could help to clarify some of the issues which these meetings had not yet discussed. Referring to the work done by the United Nations Centre on Transnational Corporations (UNCTC), he recalled that other delegations had also noted in the context of their national studies the rôle of transnational corporations in services sectors. In this context, his delegation was interested to reflect on the question of restrictive business practices in services and how these could be addressed, i.e. either by sector or through a combined approach. On page 18 of MDF/17, the UNCTC report on the shipping industry referred to the fact that control over transport made it possible to set freight rates and hence prices to the exporting countries, which might or might not correspond to arm's length prices and thereby affected the distribution of benefits between the exporting countries and the transnational corporations. This practice was clearly possible when transnational corporations used company-owned vessels or the services of independent shipowners with whom they had long-standing relationships. On page 21, the UNCTC report on advertising noted that in general regulation was more common in developed than in developing countries and that perhaps as many as six out of ten developing countries had no consumer protection laws at all. Many of these countries did not have the resources or the experience to design and administer standards of the kind found in the developed countries. Moreover, developing countries might find it difficult to carry out regulations enacted. On page 24, the UNCTC report on tourism stressed that one important issue with regard to the potential involvement of transnational corporations in the tourism industry of countries was the package of policy instruments needed to ensure that their participation was compatible with over-all goals of economic development. On page 29, the UNCTC report on transnational data flows mentioned that, for the developing countries in particular, the concerns raised by such flows included their implications for the international division of labour, the capacity of the developing countries to establish their own telematics and transborder data flow facilities, the competitiveness of domestic corporations of host countries, the bargaining position of host countries vis-à-vis transnational corporations and even issues relating to national sovereignty. On page 31, the report noted that more needed to be known about the effects of transborder data flows on the relation between host (especially developing) countries and transnational corporations. Referring to the work done by the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), the representative of India drew attention to the ECLAC report which pointed out that a Latin American work programme should take into account the fact that it was advisable in an initial stage to divide up the discussions on services on the basis of specific industries. In addition, services, by their very multifaceted nature, normally comprised activities subject to a variety of regulations whose purpose was generally to

neutralize any possible negative effects that such activities might have on other socio-economic goals set by countries. Another ECLAC report, presenting conclusions of a seminar on international trade in services, stated that there was agreement that most of the principles of the General Agreement on Tariffs and Trade were not applicable to international transactions in services, and that provisions such as those on most-favoured-nation treatment, national treatment, and the right of establishment should not and could not be extended to an area as complex and heterogeneous as services. Concerning the work done by the Secretariat of the Latin American Economic System (SELA), one report mentioned on page 82 stated that UNCTAD, whose central purpose related to development problems and services, should play a more important rôle in analysing and discussing the sundry ramifications of services and development. The same report noted that GATT was conceived for the sole purpose of regulating trade in goods and, therefore, had no competence in the area of services.

38. The representative of the European Community said that document MDF/17 and Addenda represented a balanced contribution to the exchange of information among contracting parties, which complemented the information available in the analytical summary. He found the document very interesting in its totality since it discussed issues and raised questions which had not been given major treatment in the national studies so far submitted. This applied in particular to the presentation of the work done by the UNCTC, ECLAC and SELA which gave detailed information about interests of developing countries. On the other hand, it would be a mistake to think that all the points mentioned in document MDF/17 were of particular interest to developing countries only. Many of the points raised were of general interest, for example the rôle of transnational corporations, the dependence of countries on large foreign companies, the problems which might arise if an international market did not have a competitive structure. On the question of the work of the International Monetary Fund, the document pointed out that a working party was working on the problem of the statistical discrepancy in the world current account balances. This work was in fact part of on-going work towards the improvement of statistics on trade in services. Referring to section (g) of the report of ECLAC on page 63, he said that this section gave a false impression of the situation. Because there were no tariffs on the trade in services, all obstacles to trade in services were non-tariff barriers, and these were almost always caused by national regulations. However, not all obstacles which had been identified in the national examinations were due to regulations dealing with non-trade policy. Some of them were clearly protectionist regulations designed to have an impact on trade and as such would enter into the normal terminology of trade barriers. On the other hand, he agreed that some regulations were perfectly legitimate expressions of the efforts of countries to reach to socio-economic goals which they had set for themselves. In that sense, the representative of the European Community could associate himself with those who said that not all regulations should be treated as obstacles. Not all countries which had circulated an examination of course interpreted obstacles in the same way. With regard to the work of SELA, he agreed that the rôle of services in the development process was important and should be taken into account. With reference to the International Telecommunications Union (ITU), he pointed to the report "The Missing Link" on page 85 which stated that information flows were part of the infrastructure of the world economy. He underlined the importance of the idea that data flows using telecommunications were helping

to make more services internationally tradeable and that one should think of this aspect of telecommunications at the same time as looking at telecommunications as an individual service sector. On MDF/17 in general, he said it showed that the work of a large number of international organizations dealing in some way with services had to do with aspects of services which were either technical, (for example, the ITU setting telecommunications regulations), or in any case partial (for example, UNCTAD concentrating in specific sectors or subjects). The International Civil Aviation Organization had something to say about trade in international air transport, but perhaps a lot more about safety regulations and standards. He concluded that there existed a multiplicity of international organizations, all having a very partial rôle and that a large part of international transactions in services were not subject to international regulations and did not fall under the work programme of any international organization. The European Community had indicated in its examination and in its contributions made in these meetings that there existed an international legal vacuum, resulting not exclusively but to a large extent from the fact that world trade in services took place without an international regulatory framework. This point was confirmed by MDF/17.

39. The representative of the United States said that document MDF/17 was useful although the discussion of the work done by UNCTAD as reflected in document TD/B/1008 was somewhat brief. Of all the sections contained in document MDF/17, the one dealing with the work by the International Trade Centre UNCTAD/GATT was the most interesting, as it presented an objective analysis of commercial activities in technical consultancy services and gave a good perspective of the statistical difficulties of developing countries. Although considerable analytical work had also been done by the UNCTC, most of its documents dealt with issues from a singular perspective based on almost conspiratorial assumptions about the activities of firms from industrialized countries in developing countries. As long as this attitude prevailed, limited benefits could result from the UNCTC studies. Concerning the general contribution of the international organizations to this dialogue on services, there was no question that there was a multiplicity of them dealing with various aspects of services, and probably the only one which had dealt with the subject in its entirety was UNCTAD. The question was that, although it was important to have useful analytical work on services, there was a great deal of frustration over the difficulties of doing business in foreign countries and the absence of any meaningful international disciplines. The international regulatory environment could best be described as a state of anarchy, which permitted developed and developing countries alike to adopt regulations based solely upon their sovereign objectives and not taking into account what might be an international norm. In this context, the whole discussion of GATT competence was an academic one. There were exceptions like the ICAO which was a structured framework permitting bilateral civil aviation understandings, the ITU which was providing for recommendations in the field of technical telecommunications standards or the UNCTAD Convention on a Code of Conduct for Liner Conferences, the unfortunate effect of which, however, was to cartelize shipping trade. What was relevant, nonetheless was the long-term contribution which all these international organizations could make, and in this regard it was clear that apart from doing analytical work, the scope of their activities was very limited.

40. The representative of India said that discussions on services seemed to focus on two main areas: right of establishment and access to markets. It remained unclear what was the trade element in services. In this connection, he drew attention to the views expressed by the head of his delegation at the Special Session of the CONTRACTING PARTIES, where the representative of India had pointed out that it was not possible to obliterate the fundamental difference between goods and services simply by adding the word "trade" to the word "services". Problems of goods and commodities moving across borders were different from the problems related to services sectors such as banking and insurance. In many developing countries, the banking system was nationalized and banks were part of the instruments used by governments for achieving their socio-economic goals and for implementing wider economic policies. His authorities did not accept that it was open to third countries to indicate what form socio-economic goals and wider economic policies should take and how these should be regulated. Moreover, developing countries were just about to enter into certain services sectors and government support and participation, protection and preferences were necessary. Some of the countries which were now seeking the establishment of an international régime on services had themselves, freely and fully, had recourse to these practices to promote their own services sectors. It was only after having themselves reached a certain level of development that these countries were propagating ideas of liberalization and a GATT-like approach. He stated that it was not yet clear how this approach, which was supported by a number of delegations participating in the meetings, could take into account the existence of fora, some with wider representation than the GATT, which were fully competent to deal with all aspects of particular services. For example, he recalled that the head of his delegation at the Special Session of the CONTRACTING PARTIES had also said that ITU was a specialized agency with a full mandate to deal with all aspects of telecommunications including trade. As long as it was not possible to establish some common characteristics in all services sectors, and to show that these common characteristics were significant enough to bring them within the umbrella of an overall multilateral agreement, it was not correct to say that the specialized organizations mentioned in document MDF/17 had only a partial rôle in addressing these questions. These organizations were fully competent, their competence had not been questioned and they had not been found wanting in the areas where they were discharging their responsibilities. Concerning the fact that obstacles were of a non-tariff nature, mentioned by the representative of the European Community, he said that his authorities had maintained that since services were not subject to tariffs they were less amenable to treatment under rules such as those of the General Agreement, which dealt basically with tariffs. In addition, obstacles of a non-tariff nature related to access and to right of establishment, but it had not yet been established that they were obstacles to trade. The tradeable element of services had first to be brought out clearly and secondly it should be demonstrated that this specific aspect of services was being affected.

41. The representative of Brazil said that his delegation shared the views expressed by other delegations about the usefulness of document MDF/17 in the context of the exchange of information. As a Latin American and developing country, Brazil had been particularly interested in the report on the

contributions of ECLAC and SELA. Commenting the point made by the representative of the European Community that not all developed countries interpreted obstacles in the same way, he noted that in the absence of international disciplines, obstacles strictly speaking could not be considered illegitimate. On the question of foreign participation in services sectors, which was often by way of investment in services facilities rather than trade, he pointed to the SELA study which stated that unlike goods, services production and consumption were usually simultaneous operations; since services were consumed at the moment they were provided, in most cases the fact of providing or selling services implied the presence of a person or enterprise providing the services. Therefore, when this presence was not temporary, the services, from the point of view of the country in which they were provided, involved investment and not trade. Finally, he noted that certain services issues were not exclusively of interest to developing countries. On page 79 of MDF/17, the SELA study was quoted as referring to the existence of a general tendency, both in developed and developing countries, to consider, for reasons of public interest or national security, that services in general and certain services in particular should be subject to regulation and surveillance, and that certain activities should be reserved for the government or the nationals of the countries concerned. The same idea had been expressed on page 37 of the national examination by France, which noted that certain services had a tradeable value and production cost that was extremely low in comparison to their strategic importance, and it therefore did not seem possible to conceive of an international division of labour that would leave the quasi-monopoly of such services to a few countries.

42. The representative of the European Community referred to the point raised by the representative of India concerning obstacles relating to establishment and to access. His view was that obstacles related primarily to access and in this respect, it could be said that all obstacles to trade in goods related to access to foreign markets as well, and that liberalization of trade was always about access to markets. It was also true that in certain services sectors access to a market implied activities which were specific to services and less common in goods. For example, this could mean a temporary movement of personnel abroad to sell a service. These elements were characteristic of many international services activities. However, the point should be made that this also happened in the case of international trade in goods. Major capital equipment was very often sold together with installation and maintenance services which were performed by personnel from the exporting country. Thus, although the right of establishing a commercial presence in a foreign country had a greater rôle to play in certain services than in goods, this was probably more a matter of degree rather than of nature. On the question of the legitimacy of national regulations in the absence of international disciplines, raised by the representative of Brazil, he said this was precisely a situation which pleaded in favour of negotiations to set up international rules in order to be able to distinguish which perceived obstacles should be regarded as subject to liberalization and which should be regarded as legitimate national rules not subject to liberalization.

43. The representative of the United States said that a process could be devised to determine which regulations and which services activities could be

appropriately subjected to international disciplines. One important point was that countries which believed their trade was affected by regulations should have at least a precise understanding of why a particular regulation existed which prohibited a foreign services activity from taking place inside the borders of the host country. This was a very complicated question and a great deal of sensitivities were involved, but one should not just accept without discussion any and all arguments that such measures were being maintained for sovereign socio-economic reasons. Regarding the ITU, he noted that the organization had produced useful technical recommendations or standards, but had never looked at trade in telecommunications. This was not a question of competence, but simply of lack of motivation. This was also the case of a number of other international organizations.

44. The representative of India made the point that the ITU provided a forum where countries met to discuss all relevant issues. He did not know that the limited nature of the competence of such organizations had ever proved to be an obstacle to their effective functioning. He was of the opinion that the ITU had full competence and a mandate to deal with all aspects related to international telecommunications. If there were any problems being experienced, the proper forum to deal with them would be the ITU in the first place. Any discussion outside the ITU should only take place if it had first been shown that this organization was unable to handle these issues. On the question of the rôle of services in the national economy, there were a number of aspects which were dealt with in a number of international organizations, particularly, UNCTAD, which took a broad view of these issues. The fact remained that unless these meetings confined themselves to talking about trade in services, they might be carried away into a discussion which did not have parameters of any kind. It was important, to try and distinguish between establishment and tradeable aspects of services and, where sovereign national interests were involved in individual services sectors, to ask the question: who is to be the judge and arbitrator of these interests, and are there any objective criteria on which to base a judgement of this kind?

45. The representative of Pakistan asked for some clarification on the comments made by the representative of the United States regarding the UNCTAD Convention on a Code of Conduct for Liner Conferences and its cartellization effects. Document MDF/17 showed that in many other services sectors the rôle of transnational corporations, which operated as a kind of cartel, was prominent. In pure conceptual terms, he wondered whether the representative of the United States was looking for some de-cartellization of services sectors. Even in the case of trade in goods, cartels existed at an international level and therefore restrictive business practices were a problem. In textiles, for example, a study prepared by UNCTAD showed that international trade was dominated by a few companies. On the question of the difficulties pointed out by the representative of India regarding the definition of the tradeability aspects of services, he said that he endorsed these remarks and asked whether some approaches had already been suggested on this issue.

46. The representative of the United States said that in his view there were no economic circumstances where cartels created an acceptable environment. As to the UNCTAD Code, the specific problem with the Code itself related to its cargo-sharing provisions which could prevent establishing a healthy competitive shipping industry globally and were obviously also important from

the standpoint of the cost of exports. The United States themselves had a bilateral understanding with the Brazilian government which provided for 50-50 cargo sharing between a United States shipping company and a Brazilian shipping company; this had resulted in exceedingly high freight rates being applied by the two countries as compared with rates applied by shipping companies of countries which did not have such an understanding. There were, of course, elements in the United States which were of the opinion that the UNCTAD Code was perfectly alright as it ensured them a participation in shipping trade which they could not obtain in a more competitive environment. From the United States administration's point of view, however, the Code was undesirable and any similar arrangements in other areas would be equally undesirable. The disturbing fact about the Code was also that it had entered into force only recently, and his authorities were concerned that it should not be used as a model.

47. The Chairman then invited comments on his draft report to the Forty-First Session of the CONTRACTING PARTIES, which had been circulated to all contracting parties in advance of the meeting.

48. The representative of India, supported by the representatives of Argentina, Brazil, Egypt, Pakistan, Uruguay and Yugoslavia, stressed that no conclusions had been reached in the exchange of information and that there was not even a common understanding on the issues raised in the analytical summary of national examinations prepared by the secretariat (MDF/7/Rev.2). He therefore felt that it would be inappropriate and misleading to present a report which did not clearly distinguish between the views of different delegations. In addition, he felt it was inappropriate to include a section on multilateral action in the report, as this question could only be considered by the CONTRACTING PARTIES themselves. Generally speaking, given the state of the discussions in the context of the exchange of information, his view was that a short, factual report such as the Chairman had made to the Council in July 1985, was all that was needed and justified at this stage. The representative of Brazil proposed that the secretariat be asked to prepare, on its own responsibility, a document setting out in tabular form the main points made by different delegations on various issues. He said this document could in fact substitute for the full report presently envisaged by the Chairman.

49. The representative of Canada, the European Community, Japan, Sweden, Switzerland and the United States recalled that it had been agreed previously that the Chairman would report on issues raised in the exchange of information, and in their view the report should cover all aspects of issues raised in national examinations and in the discussions which had taken place.

50. After some discussion, the Chairman proposed to hold informal consultations with interested delegations on the content of the report and to submit a new draft for consideration at the next meeting on services, to be held in mid-November. He noted that there was agreement to ask the secretariat to propose, on its own responsibility, a separate document along the lines suggested by Brazil.