

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNS/11

30 November 1987

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**Group of Negotiations on Services**

NOTE ON THE MEETING OF 3-5 NOVEMBER 1987

1. The Group of Negotiations on Services (GNS) held its tenth meeting on 3, 4 and 5 November 1987 under the Chairmanship of Ambassador F. Jaramillo (Colombia).
2. As proposed in the airgram GATT/AIR/2495, the GNS discussed separately each of the five elements listed in the programme for the initial phase of negotiations (MTN.GNS/5). The Chairman also recalled that this meeting was the last one before the December meeting where the Group, as agreed, would take stock of the work done so far and determine how to carry forward the negotiating programme. He invited members to advance proposals or suggestions which might facilitate the task of the GNS at its December meeting.
3. On Definitional and Statistical Issues, two communications from the European Communities (MTN.GNS/W/22 and 23) relating to statistical work on trade in services were before the Group. The Chairman recalled that at the last meeting the following four points on statistics had emerged. First, as concerning the availability of information and its improvement, it would be useful to have more national submissions of the kind already presented by some participants. This should help some other participants, particularly developing countries, to see how they could develop and process statistics relating to services transactions. Second, there was need for further contacts with international organizations covering particular services sectors to establish what statistical information was available. These contacts should be undertaken by the GATT secretariat. Third, it was necessary to keep abreast of work done in other international organizations to improve services statistics and to ensure that the needs of the GNS could be made known. In this connection, attempts could be made to ensure that information was available on a more disaggregated basis. Fourth, the GATT secretariat should be ready to reproduce or synthesise sectoral statistical information available in different organizations.
4. The member who had circulated the two communications on statistics said that the one on External Trade in Services (MTN.GNS/W/23) covered services transactions up to the year 1984. The document already required up-dating, which was an indication of the difficulty of obtaining precise data. It contained more detailed data than the IMF overall classification since it covered also sea and air transport. The other document (MTN.GNS/W/22), which was a presentation of on-going work of the EC Statistical Office, showed how far work had gone on the improvement of the nomenclature.

5. One member said that more work needed to be done (i) to have a better theoretical understanding of the rôle of services in economies at different stages of development, (ii) to avoid having to treat services as a residual item, (iii) to further disaggregate services statistics and better distinguish between services and goods (e.g., in the construction industry), (iv) to define sectors more precisely (perhaps based on an improved International Standard Industrial Classification), (v) to disaggregate data on trade in services along geographical lines, (vi) to establish the inter-linkages between the services sectors and the other sectors (by an improved input-output matrix), and (vii) to identify services both as an input and output of the production cycle.

6. Some members said that developing countries should be informed about the results of meetings on statistical issues which were held in other fora and where they did not participate. They stressed also that developing countries needed technical support from the GATT secretariat and from other organizations. This question should be addressed in connection with the stocktaking exercise.

6. On Broad Concepts on which Principles and Rules for Trade in Services, including Possible Disciplines for Individual Sectors, might be based, the Chairman recalled that at the last meeting views had been expressed with regard to national treatment, non-discrimination and transparency on the basis of communications from members of the Group (MTN.GNS/W/12, 13 and 18). He drew attention to new communications by participants entitled respectively "Concepts for a Framework Agreement in Services" (MTN.GNS/W/24), "General Objectives and Concepts of Relevance to a Framework Agreement on Trade in Services" (MTN.GNS/W/26), "Preliminary Comments on Non-Discrimination, National Treatment and Transparency" (MTN.GNS/W/25), and "The Uruguay Round and Trade in Services" (MTN.GNS/W/28). He said that participants should keep in mind that discussions so far had shown that an interrelationship existed between the various concepts and elements and that, while for practical purposes these proposals were taken up under the element of broad concepts, they might very well be relevant also in the discussion of definitional or other issues.

7. The member who had circulated the communication on the "Concepts for a Framework Agreement in Services" (MTN.GNS/W/24) said that his authorities had presented their proposal in an effort to give more focus to the discussions on a framework of rules and principles on trade in services. In the view of his authorities the framework should be legally binding with disciplinary procedures similar to those contained in GATT Articles XXII and XXIII. Progressive liberalization, consistent with the Ministerial Declaration, should take into account the fact that countries regulated services in many different ways. In this process of liberalization due regard had to be given to national sovereignty. The proposal envisaged a two-tier hierarchy; that is one tier of principles constituting the general framework and a second tier of sectoral understandings that would go beyond the principles of the general framework. The sectoral understandings would

form a part of the overall understanding on services that would be reached at the end of the Uruguay Round. The idea was a combination of a general framework with binding rules and disciplines, containing themselves a degree of liberalization, and sectoral understandings which would further liberalize specific sectors. It was also recognized that it might not be possible for each country which decided to subscribe to the general framework to commit itself to the sectoral understandings. Participation in the latter would also depend on what was decided with respect to the coverage of the general framework. Some flexibility would have to be provided in this respect but certain minimum commitments would have to be fulfilled by all participants. There could also be a provision for non-application if a signatory determined that another country (which had accepted a number of sector-specific understandings) was no longer fulfilling its rights and obligations. The concepts of the general framework should include transparency, non-discrimination and national treatment with particular emphasis on access to local distribution networks, local firms and personnel, customers, licenses and the right to use brand names. The notion of minimum access was also important in these cases where regulators deliberately limited the number of suppliers in a particular market. The proposal also envisaged disciplines for state-sanctioned monopolies to treat foreign service providers on a non-discriminatory basis, rules on subsidies and accreditation procedures concerning minimum standards of professional competence. There were two areas which were not covered in the proposal and which should be taken into account in the future debate; namely exchange controls which had a direct effect on services providers and the movement of labour across borders. Each of these areas was difficult to deal with. Immigration laws were based essentially on social and political concerns, while exchange control policies were often adopted for overall economic macro-policy objectives and did not necessarily relate to trade. The question was whether a trade-related forum could establish rules dealing with such matters. In their 1983 national study on trade in services his authorities had expressed a negative opinion in this respect.

8. The member who circulated a communication (MTN.GNS/W/25) containing preliminary comments said he hoped it would clarify the concepts of non-discrimination, national treatment and transparency as presented at the last meeting of the GNS. Referring to the earlier communication on non-discrimination (MTN.GNS/W/12), he said that his perception was that m.f.n. conditionality undermined the foundations of the international trading system for goods and services. Nothing in the Punta del Este Declaration related to right of establishment, commercial presence or other terms which implied foreign direct investment flows. However, if some members insisted on negotiating liberalization only for the international flows of the factor of production with which they were well endowed, it should be clear that flows of other factors, namely labour, should also be included. Among other things, his country was interested in the movement of migrant workers, off-shore transformation services, international subcontracting for manufacturing, maintenance and repair services, as well as construction services. For instance, in public works, his country would

be interested in foreign companies with international contracts being able to engage workers from their country of origin. Referring to other opinions expressed by some delegations, he noted that they had made their starting point reciprocity, a concept yet to be discussed in the GNS. This consideration led them to support conditional m.f.n. treatment and was the basis on which national treatment was, in their opinion, to be applied. For developing countries, the objective of the general framework should be to foster economic development. To contribute to this objective, access to services and labour markets abroad coupled with a transfer of technology (the backbone of the new services economy) should be enhanced. The general framework should also include a number of exceptions for the developing countries. These exceptions would be part of any sectoral agreements and should enable developing countries to benefit from unconditional m.f.n. treatment, transparency and national treatment. Also, new regulations could be required for balance-of-payments purposes.

9. One member said that the purpose of her communication (MTN.GNS/W/26) was to make a contribution of a general character to the discussion of some basic concepts in the framework agreement and not to state a negotiating position. The communication suggested how some traditional trade concepts could be related to trade in services. The communication did not attempt to give a full outline of an agreement. In her view, the concepts relevant to the general objective stated in the Punta del Este Declaration would have to be balanced against legitimate national policy objectives, which might not be the same in all sectors. There was also need for rules of a procedural nature, e.g., provisions for dispute settlement. As regards barriers, it should be recognized that there might be quite legitimate regulations affecting service markets. But even regulations which could, in principle, be considered as legitimate, should be tested against the principle of non-discrimination. There existed essentially two types of discrimination, one was discrimination between foreign suppliers (which was countered by the traditional m.f.n. principle), the other was discrimination between foreign and domestic suppliers (which was countered by the national treatment clause). Both m.f.n. and national treatment should be considered to be key concepts in the efforts to promote growth in trade in services. Transparency was essential for the prevention and settlement of trade disputes. It was a basic parameter in any trade agreement, particularly in the services sector, where information on regulations at national levels was far from complete. Such information was also necessary in order to establish the nature of market conditions. The member further supported that negotiations should cover certain establishment related impediments to trade.

10. One member said that the communications MTN.GNS/W/24 and MTN.GNS/W/25 provided useful reference points indicating the differences of opinion between industrialized and developing countries. The first communication clearly stated that the framework would be of benefit to every country regardless of its stage of economic development. The second communication said that developing countries were not yet convinced whether services liberalization would have positive effects on economic development. This

was one of the basic issues on which some common understanding was necessary. Concerning the communication in MTN.GNS/W/24 he said that at this stage, the proposals seemed too ambitious and perhaps unrealistic in the sense that many of the participants in the GNS would not commit themselves to such a general framework or its coverage. For example, in the case of transparency, it contained an obligation to notify other countries of certain categories of governmental measures affecting trade in services. If that obligation referred to measures affecting both entry and operations of the service producing entities in one country, it would in fact refer to almost all regulations in that country, depending on how widely this obligation was interpreted. Concerning national treatment, the communication recognized the importance of national policy objectives. However, depending on how national policy objectives were interpreted, these objectives could be considered to overrule national treatment. In his view the issues of labour mobility, foreign exchange controls and other macro-economic policy considerations were relevant to the discussions of the multilateral framework. Industrialized countries should be open-minded, as concerned the inclusion of specific sectors, particularly if they were to solicit a more active participation by the developing countries in the negotiations. Developing countries needed to determine what benefits they might gain from liberalization in the services area. If certain sectors of importance to them were to be excluded at this early stage of the negotiation they might lose interest in further participation.

11. One member said that in his view, it was preferable at the outset to formulate broad principles or rules of an economic nature, like for instance specialization based on comparative advantages, efficiency of the allocation of national and global resources, equity, competition and restraint of monopolistic or oligopolistic practices which might inhibit the functioning of "markets", economies of scale, etc. It could be assumed that these broad concepts, the application of which was not limited to trade in services, would promote economic growth and the development of developing countries by maximizing global welfare. In drawing up principles and rules and possible disciplines, other broad non-economic concepts, such as standards (health, safety, moral, etc.), national security, employment creation, distribution objectives and cultural aspects should be provided for. This approach would respect the policy objectives of national laws and regulations applying to services. A common identification was essential of the economic principles on which participants could base the "political" principles which might be incorporated into the framework, such as right of establishment, right of commercial presence, national treatment, reciprocity (and "relative" reciprocity in the case of less developed service sectors or less developed participants), transparency and exceptions. Specific rules and disciplines could follow from an agreement on the principles. These principles, rules and disciplines, applied through the multilateral framework and/or sector agreements, would create the necessary conditions for expansion of trade and promotion of growth and development of developing countries under conditions of transparency and progressive liberalization. At this stage the thrust and nature of the multilateral framework was not yet clear. He believed that the multilateral framework would be unbalanced, inequitable and

unworkable if it took into account only the interests of providers and not of users. This was especially so in new services sectors (such as telecommunications) which revolutionized the production process, but also in the case of unskilled labour and the traditional labour services. A major point that seemed to have emerged from the proposals circulated so far was that the approach to a multilateral framework was seen mainly from the perspective of providers. This approach would limit the benefits of the multilateral framework for the users and by extension, limit the benefits to providers in low skilled categories. Referring to the statement of a previous speaker, that labour mobility was controlled for social and political purposes, that exchange controls related to macro-economic issues and that it might prove difficult to negotiate in a trade forum matters connected with social and political objectives, he said that this situation was not unique to services and applied also to agriculture or other areas of the negotiations.

12. One member said that in his view, the multilateral framework should not aim at imposing a general liberalization by forcing countries to accept uniform types of behaviour. The framework should aim at offering to countries the possibility of liberalizing progressively their trade in services. It should also establish a number of criteria necessary to ensure such liberalization and it should exclude certain behaviour incompatible with the type of liberalization agreed upon. The framework could be a supplement to the General Agreement which itself had not forced immediate liberalization but had aimed at paving the way to the opening of tariff negotiations by setting the modalities and the legal conditions for undertakings. The underlying principles for this multilateral framework should be comparable and compatible with the GATT principles. This did not mean that one would simply extend the application of the GATT provisions, instruments and machinery to services. The nature of services would not allow for such an extension, because in the case of goods there was action at the border whilst in services intervention had to take place either at the level of production or delivery. It was also important to consider what was meant by favourable treatment in the case of services. A related issue was that barriers to trade in services were not, or only very seldom, quantifiable. Favourable treatment was very often based on a subjective assessment of trade barriers which depended on the general context at a given time in a specific country. Concerning the coverage of the framework, he said that the framework should in principle apply to all sectors. Work on the definition of trade in services should go in parallel with the negotiation of other elements. The framework should also contain some general rules on competition, anti-dumping and subsidies. Other provisions to be included should cover surveillance, including dispute settlement and possible sanctions, exceptions and safeguards.

13. Commenting on the communication in MTN.GNS/W/24, one member said that he supported the idea that a multilateral framework should be elaborated as soon as possible. The proposal offered one possible vision of the future framework. He asked whether paragraph 3 under "General Considerations" implied that the nature of the framework should be similar to Part II of the

General Agreement; whether it called for provisional application and implied the grandfathering of existing restrictions, or whether it meant rather a standstill agreement. If so, he wanted to be enlightened about the link between this paragraph and the preceding one, which called for progressive liberalization. Furthermore, with reference to paragraph 5, he asked whether the framework also covered commercial presence of personnel who would operate abroad temporarily, without establishing branches. Referring to the seven specific concepts enumerated in the paper, he said that they should not be considered as an exhaustive list since other concepts were equally important. In this connection, he recalled a paper circulated by his delegation (MTN.GNS/W/2) where ten possible concepts had been mentioned, including the treatment of developing countries, safeguards, secondary rights and obligations, and exceptions. Among these elements which were not mentioned in the communication under discussion, his delegation attached high importance to the concept dealing with the treatment of developing countries. The multilateral framework should bring tangible and concrete benefits to all developing countries who wished to take part in the agreement. Therefore some mechanism to ensure this aspect would have to be included. Regarding transparency, he pointed out that advance notification was not a new procedure in the GATT and that similar provisions worked well in the context of the Agreement on Technical Barriers to Trade. His delegation did not support the view that benefits of the framework agreement should not to be extended to non-signatories. Each country was free to extend the treatment it considered appropriate. Concerning the possibility for signatories to claim exceptions to the coverage of the agreement, his delegation was of the opinion that the multilateral framework could not be applied to all sectors without conditions, exceptions and derogations. With regard to the extent of these exceptions, he said that it would seem best to leave it to the negotiations to strike a balance among participants. The experience with the Code on Government Procurement had shown that only a few cases of non-application had arisen. Regarding national treatment, he did not see much difference from the ideas expressed on this subject in an earlier paper of his delegation (MTN.GNS/W/18). On State monopolies, he said that while he could support most of the ideas in the paper as a first step and in order to add an element of transparency, an inventory should be compiled on existing monopolies of participating countries. On subsidies, he said that an automatic application of GATT articles might be difficult. However, since these articles were the only ones available, they should be closely examined with a view to their possible application to services.

14. One member said that the communication in MTN.GNS/W/24, which contained most of the concepts relevant to a multilateral framework could be supported to a large extent by his authorities. In addition to the rules and principles mentioned, they would also like to see included provisions on burdensome regulations and on regional agreements. As regards national treatment, his authorities did not agree with the idea that in restricted markets there should always be at least some level of foreign participation. Although this might be desirable, he was not convinced that some level of foreign participation was always necessary. On subsidies, the rules in respect of goods were generally considered deficient and it would not make

sense to repeat in the services area the mistakes made when the GATT rules were drafted. In particular, the provisions on domestic subsidies needed tightening. With respect to the objective of development of developing countries, he said that a future multilateral framework itself could be regarded as a contribution to development by liberalizing services markets and expanding services trade. Developing countries' services exports were growing rapidly at around 27 per cent a year in current terms and both developing and developed countries had an important stake in reaching an agreement for the liberalization and expansion of services trade. Referring to the communication in MTN.GNS/W/25, the speaker did not agree with the argument that conditionality would undermine the potential value of a services agreement. Conditionality had a poor image in GATT, often being regarded as some sort of unfair imposition by the more powerful vis-à-vis the less powerful countries. But that need not be true. For both developed and developing countries, conditionality could have a more positive aspect. While his authorities endorsed a legally binding framework, he very much doubted whether they would be prepared to join a framework which would require them to accept certain obligations without receiving equivalent rights. Rights and obligations in a binding agreement had to be exchanged multilaterally rather than being merely ascertained unilaterally. The communication circulated earlier this year by his authorities on non-discrimination (MTN.GNS/W/12) emphasized that restrictions maintained in services markets after the adoption of a framework agreement should be applied in a non-discriminatory way. In particular, the economically less powerful countries had an essential interest in participating in the framework to ensure a balance between rights and obligations, including the right to non-discriminatory treatment.

15. One member, in a preliminary comment on the communication in MTN.GNS/W/24 said that the concepts presented were far from being exhaustive and that other concepts of equal importance needed to be considered. Referring to the communication in MTN.GNS/W/25, he said that in diagramme 2 on page 5 under the heading national treatment, services including labour were mentioned. He wondered whether this included also right of establishment.

16. One member said that the communication in MTN.GNS/W/24 drew together the concepts which had been discussed in the GNS, and helped to focus attention on the problems which lay before the members in developing a framework agreement. So far, only individual concepts had been discussed. The new proposal allowed members of the GNS to develop a clearer picture of the possible structure of a framework agreement and to understand better how linkages with separate disciplines over individual services sectors might operate. Her authorities were convinced that the best prospects for a fundamental liberalization and expansion of international trade in services lay in the comprehensive application of a wide range of the basic trade principles which had been developed in the GATT and which might be adapted to fit the circumstances of trade in services. In the forty years that members of the GATT had spent considering how to liberalize trade in goods, many lessons had been learnt for the discussions being held in the GNS.



There was now an opportunity to place trade in services on a fundamentally different and better footing than in the past or present. Two broad possible paths were starting to emerge as regards the possible shape of an agreement on trade in services. The first was to negotiate a framework agreement whose terms were sufficiently general to allow most, if not all, Group members to subscribe to it. This, however, would be likely to result in minimal obligations being placed on signatories and consequently few corresponding benefits. The focus would thus shift to sector-by-sector negotiations in the hope that a basis for significant expansion and liberalization of trade could be found there. Presumably, under this scenario, broader principles introduced through the sectoral negotiations could be taken into the framework agreement at some later date. The second path was to establish, from the outset, a framework agreement which in its provisions on transparency, national treatment, non-discrimination and other concepts, would provide a clear set of parameters for all of the sectors covered by it. For those prepared to accept its disciplines, such a framework would promise a significant liberalization in services trade. This would be in the interests of all participating countries and it was hoped that, in recognition of this self-interest, membership of such a framework agreement would be as broad as possible. Her country therefore favoured the second approach and considered that a series of sectoral negotiations against the background of a relatively weak framework agreement would be unlikely to result in a significant expansion and liberalization of trade. On the contrary, it might serve in fact to perpetuate many of the distortions and barriers to trade in services. If the framework was a relatively weak point of reference, the sectoral agreements which were likely to be difficult to negotiate, would tend to reflect narrow self-interest of individual participants rather than provide for the expansion of trade under conditions of transparency and progressive liberalization. As regards the relationship between the framework agreement and the sectoral arrangements, transitional arrangements might be required, but no exemptions should be made to the provisions of the framework agreement. Where a sectoral arrangement fell short of the provisions of the framework agreement, perhaps because of regulatory arrangements predating it, a timetable and a formula should be negotiated under which those provisions would be brought into line with the framework agreement. The framework agreement should include a standstill discipline, with the sectoral arrangements dealing with rollback where appropriate. Unless the negotiations resulted in a framework agreement which offered real scope for liberalization of trade in services, it was difficult to see how sectoral negotiations would lead to the kind of fundamental change which was necessary in this increasingly significant area of trade.

17. One member found it very difficult to agree with any of the concepts as presented in MTN.GNS/W/24. The approach taken in the paper assumed that there should be a kind of dichotomy and a sequence in the approach to the negotiations, i.e. that there was first a stage of a general agreement and then a stage of sectoral agreements. This approach did not follow from the mandate of the GNS and might add to the asymmetry already existing among participants. He said there was no reference to the objective of

development in the paper and the assumption that the availability of cheaper services through the opening of markets was going to bring about development of developing countries was not shared by his authorities. In his view the concept of development, which was the "criterion of criteria" for all the concepts, needed a more positive approach with more substantive content. In the paper, the assumption was that liberalization was the ultimate aim and that development was only a by-product. Referring to a view expressed by a previous speaker that the exports of services from developing countries were rising at a fast pace, he was interested to know what were the respective shares of developed and developing countries exports in total trade in services and the definition of services which had been used. Another question was what were the elements promoting such an expansion of developing countries' exports of services. Furthermore, in the paper, trade in services was confused with production, distribution, marketing and investment. His authorities had already pointed out earlier (MTN.GNS/W/4) that the GNS needed to define what was meant by trade in services. Some of the ideas in the paper went beyond the concepts in the General Agreement. He said that as regards transparency, the idea of a review of national legislation was revolutionary. The purpose of transparency was not to initiate a process of revision of national legislation. Regarding national treatment, he found that there might be a need for a modification in the approach because of national security and fiduciary considerations. He found it also difficult to relate to the GNS mandate the right to use brand names which was an issue relating to intellectual property rights. If the idea was that brand names promoted marketing, then this Group had to see what kind of provisions there existed in this regard in trade in goods. The right to use brand names did not necessarily lead to expansion of trade and to promotion of the development process. On the contrary, there had been cases where the use of foreign brand names had compromised the process of development of industries in developing countries. As regards the sovereign right of every country to regulate its service industries, it would not be appropriate to determine the legitimacy or the reasons for national regulations. Regarding subsidies, he said that the obligation to avoid domestic subsidies because of their possible injurious effect on service providers could lead to a situation where a national government in deciding on actions concerning the management of its national economy would in each case have to take into account possible or potential injury to foreigners. This would create some basic problems. Regarding dispute settlement, he said that GATT Articles XXII and XXIII did not foresee an element of modifying and revising national legislation and regulations which were within the sphere of economic sovereignty of any participating country. While the idea of opening markets and expanding trade through progressive liberalization was legitimate and consistent with the mandate of this Group, this mandate did not relate to the opening up of the economy.

18. One member said that the assumption on which the General Agreement was formulated was the maximization of global welfare through optimization of resource movement and the free trade which followed from that. The system was based on the unconditional m.f.n. principle. The GATT in its original inception based upon liberal economic principles did not envisage

conditionality. Conditional m.f.n. was not only second best, but the worst scenario for developing countries. Instead of trade creation there would be trade diversion. Not only would this be contrary to the sound economic principles of expanding trade and maximizing global welfare, it would run counter to the objectives of the Ministerial Declaration. For those reasons, one had to rule out from the very beginning conditional application of the m.f.n.

19. One member said that it would be useful if the secretariat compiled a checklist which would extract key elements from the various communications in order to facilitate a more organized discussion of the issues. He pointed out that there was some inherent tension between the notion of unconditional m.f.n. treatment and the notion of reciprocity. If unconditional non-discrimination was the aim of the negotiations, progress was only possible if everybody was prepared to make some kind of contribution. Commenting on the communication circulated in MTN.GNS/W/24 he supported the thrust of most of the points elaborated under "General Considerations". Referring to point 6, he said that his authorities were in favour of a broad scope for possible liberalization and would foresee negotiations in specific sectors involving exchange of concessions. He wondered what was meant by the notion of flexibility regarding the coverage. Concerning transparency, he expressed satisfaction with the approach taken in the document which was similar to the one taken by his authorities. Regarding non-discrimination, there was need for some further thinking on the concept of m.f.n. treatment and how it would work in practice. He asked how excessive exemptions would be determined and if non-application would apply to countries which wanted to exclude significant sectors from the agreement in the subsequent sectoral negotiations. It would be preferable to have exemptions clearly defined for certain purposes such as safety, public order or fiduciary requirements, thus avoiding the possibility of unilateral recourse. Regarding national treatment, more elaboration was necessary on the notion of "like circumstances" in relation to services. Also the issues of establishment and commercial presence needed further clarification.

20. One member said that it was not quite clear what was meant by extension of the benefits of the agreement unconditionally to all signatories, and by non-extension of the benefits to non-signatories. Since this appeared to imply some form of m.f.n. treatment among signatories, he wondered why it should be stated in the document. M.f.n. and nondiscrimination were back-to-back concepts, the one being about the equal application of the benefits to all parties, and the other being about the unequal application of a denial of benefits. These two concepts needed to be treated separately. Clarification was also needed with respect to the coverage and some other concepts such as freedom of movement in capital, free flow of information and transfer of technology. Clarification was also needed with respect to the relation between standstill in point 3 and the progressive and time-phased liberalization in point 4 of the "General Considerations". Regarding coverage, he said that some sectors should be excluded from the

start, such as telecommunications, shipping and civil aviation. A phased approach to the coverage might be possible, with some sectors identified in an earlier stage and others coming in at a later stage.

21. One member, while welcoming the general approach in MTN.GNS/W/24, said that her delegation could not fully agree with the paper on all points. On transparency, she said that, while her authorities were not opposed to consultations whenever regulations might potentially have an adverse impact on trade, such consultations should take place only when requested by another party, and not as a regular mechanism. On state monopolies, she felt it difficult to envisage a general obligation for compensation in case of introduction of new monopolies. This issue belonged to the dispute settlement mechanism. The aim of the negotiations should be to have an agreement covering all parties alike, even if there might be some differences at a sectoral level.

22. One member drew attention to his request made at the last GNS meeting (MTN.GNS/10, paragraph 30) that the delegations which had circulated the communications on national treatment, non-discrimination and transparency illustrate the application of these concepts to the provision of labour flows and labour-intensive services.

23. One member said that there were two basic factors which explained the reluctance of developing countries to participate in the programme of liberalization in trade in services. First, there was the question of economic sovereignty and the fear about foreign dominance in many services sectors. Second, there was the negative answer of most industrialized countries to the question whether national treatment would result in equivalent market access or entry into markets of industrialized countries. Regarding coverage, developing countries were not interested in participating in the process of negotiating a multilateral framework if they were not convinced that areas with direct benefits to them would be covered.

24. One member, whose full statement was circulated in MTN.GNS/W/27, recalled that the reluctance of developing countries to accept the idea of multilateral negotiations on trade in services was a natural reaction of less powerful countries whose structural weaknesses in terms of negotiating strength were compounded, in the case of trade in services, by a very limited knowledge of the issues proposed for discussion and by a lack of negotiating experience in this complex new field. Given these facts and the particular circumstance that certain countries already had in place a much more developed service industry, as well as a substantial amount of national regulations in all areas of services, it should be no surprise that developing countries, which did not find themselves in that privileged position, should have felt reluctant or even hostile to endorsing the proposed negotiations on trade in services. This reluctance had been partially overcome in Punta del Este. The Ministerial mandate established liberalization and transparency as conditions under which the objective of expansion of trade in services could be attained, provided that it did not conflict with the paramount objective of promoting economic growth and

development of participants individually. Some of the major difficulties concerned definitions, concepts, statistics and it would be difficult to agree on a framework without a previous agreement on the question of what services and trade in services actually consisted of. Although there had been long and interesting discussions about concepts like transparency, non-discrimination and national treatment in the meetings of the GNS, these did not lead to a consensual view. Concerning document MTN.GNS/W/24, the impression was that only one side of the views expressed in the GNS had been taken into account. This document did not reflect the fact that the expansion of trade in services and its progressive liberalization were not the ultimate aim, but a means of promoting economic growth of all trading partners and the development of developing countries. In addition, this document referred to all possible aspects of market access, which of course could apply only to those countries which were competitive in trade in services. Her delegation could not consider this document a solid basis for the elaboration of a multilateral framework, as such a basis should take into account the interests of all participants.

25. One member wondered whether transparency was a principle in itself, having its own value, or whether it was only a condition of, or a requirement for the implementation of other principles. Since the lack of transparency was indeed an obstacle to trade, one could agree with the view that transparency was a principle in itself. The essential elements of transparency were stability and predictability. His delegation, which supported the view that rules affecting trade in services should be published, was hesitant as regards the publication of so-called proposed rules. In some cases it was possible to publish legislation in advance, but in other cases this was legally and technically not feasible. Notification and consultation were legitimate considerations but they would have to be dealt with elsewhere. As regards the principle of non-discrimination or equal treatment, he underlined that it was his understanding that the framework agreement would be open for acceptance to all. The benefits resulting from it would have to be extended only to signatories in accordance with a generally recognized principle of international law. The principles and rules of the future framework should be formulated in such a manner that a universal adherence to the agreement was possible. He agreed with the view that the principles of non-discrimination and m.f.n. treatment were not identical. M.f.n. treatment was the most widely used legal device or technique for implementing the principle of non-discrimination or equal treatment. This technique could clearly be used also in the field of trade in services. The essential question was that any privilege, favour, or benefit, had to be accorded automatically and unconditionally to all beneficiaries of m.f.n. treatment. It should be made clear at this early stage of the work that there should be no exceptions. As regards national treatment the major problem was that if it was included in the framework as a generally applicable and legally binding principle, the acceptance of the general framework would become difficult for a large number of countries. In this respect, therefore, a more sectoral approach should be taken, i.e. in some sectoral arrangements the principle would be accepted, in other arrangements this would not be the case. Concerning the structural

relationship between the general framework and the sectoral arrangements, the framework agreement could be a kind of least common denominator, universally adopted, while the sectoral rules might supplement the general rules, imposing additional rights and obligations. He observed furthermore that m.f.n. and national treatment could not be put on the same footing. While m.f.n. was the cornerstone of the present GATT system, national treatment was a principle of secondary importance applicable only to products that were already in the country.

26. One member said that he could not agree with some of the arguments put forward in MTN.GNS/W/24, in particular with the simplistic view that the expansion of trade in services would in itself result in benefits for developing countries. It could not be said that development could be achieved simply by providing developing countries with a higher degree of market access to services in developed countries. Nor could it be said that for developing countries to derive benefits it was sufficient that they were provided with best quality service at the most competitive price. In order to provide benefits to developing countries, one would have to distinguish between producer services and consumer services. It would also be beneficial to improve the supply capacity of developing countries. This could happen by the interaction that could take place between foreign providers of services and domestic providers or by means of transfer of technology, human resource development and other policies and measures. Increased import of services into developing countries could lead to greater dependency which may not be conducive to economic development. Under point 2 of the "General Considerations" it was said that, on the one hand, the framework should recognize the sovereign right of every country to regulate its services industries and that, on the other hand, it must ensure against the adoption or application of measures whose purpose or effect was restrictive or distortive of trade. Point 4 cited the liberalization of trade in services as the objective of the negotiations, assuming that trade liberalization would automatically result in benefits to economic development. Point 5 did not mention the movement of persons. Point 6 implied a certain sequence in the work of this Group that was not envisaged, namely, that a general framework should be agreed at an early stage of the negotiations, and that sectoral agreements should be worked out later. Concerning transparency, he was of the opinion that this concept was only concerned with the provision of clear information. He agreed with other speakers that non-discrimination should be distinguished from m.f.n. treatment. Regarding national treatment, further clarification was needed in order to find out whether it could be applied without an element of protection. Lastly, all the proposals submitted so far were based more or less on a GATT Plus model and did not look at the experience gained in other multilateral agreements.

27. One member said that a distinction had to be drawn between m.f.n. treatment and non-discrimination. The m.f.n. treatment, often referred to as a principle, was nothing more than a machinery. The purpose of this machinery was to generalize the liberalization of trade. The question was whether this model could be transposed to trade in services. To find an answer, it was necessary to review the link between m.f.n. treatment and reciprocity. He had some hesitation about conditional m.f.n. treatment, if this meant that the benefit of this right should not only be paid for, but should be negotiated on a case-by-case basis.

28. One member said that, in his view, the communication in MTN.GNS/W/24 did not propose immediate full applicability of national treatment, but referred to a progressive process of liberalization. National treatment would emerge as the end result of this process. The proposal did not address the exact mechanism for progressive liberalization. On non-discrimination, at this stage, he could not share the view that some countries would not be in a position to apply the obligations of the framework agreement. The agreement would most likely contain a series of objectives to be reached later and obligations with respect to the mechanisms to achieve them. At this stage it did not seem evident that any country should have a problem of accepting that approach. His authorities were working on the assumption that the Group was negotiating an agreement which took into account the interests of all parties.

29. One member said that, in the communications in MTN.GNS/W/24 and MTN.GNS/W/26, reference was made to practices of monopoly entities. He wondered whether a mechanism was also envisaged for practices by entities other than State-sanctioned monopolies. He recalled that anti-competitive practices of non-State entities, such as private cartels, were equally distortive of trade. He wondered also about the implication of the proposed general framework for existing disciplines and arrangements and whether the abrogation of those disciplines and arrangements was intended as a result of the new multilateral framework. Furthermore, he was interested to know whether there existed any empirical evidence or historical experience that could substantiate the idea that national treatment would promote development.

30. Responding to various comments by delegations, the member who had circulated the communication in MTN.GNS/W/24 agreed that the expression "non-discrimination" was possibly a misnomer and that the concept to be referred to was m.f.n. His authorities were seeking the most universal participation possible, both in terms of countries participating and sectors covered. The agreement should promote liberalization, not mere transparency, consultation and exchange of information. But some countries might not be able to accept commitments in certain sectors. The importance of these exceptions would have to be judged in terms of the significance of the sector to the country's economy. There should be provisions for negotiations between countries on the exclusion or inclusion of specific sectors. Implementation of the concept of non-application would have to be decided individually by each country. For example, his country would grant rights to a country in a certain sector even if the other country did not offer his country corresponding benefits in that sector, providing that the other country offered significant benefits in other areas. It was not the intention of his authorities that, starting at the date of signature of the agreement, they would apply national treatment in every sector. Liberalization would be progressive over a set period of time. It was premature at this stage to go into details concerning specific mechanisms. However, his authorities would propose a standstill on measures inconsistent with the agreement, and binding of existing measures to the extent possible. The communication did not contain a specific proposal on development because

no conclusions had yet been reached on how this should best be addressed. It was however stated that liberalization of services trade would contribute to the development of developing countries by providing cheaper and more advanced technology and by enabling them to achieve a higher level of service capability not only for their own economies but also for their export potential. Concerning the various comments on transparency, he said that the proposal was not meant to give an international body the right to rule on proposed regulations. Rather it would allow countries to comment on proposed regulations during a set period of time. Once a regulation was in effect, it could be reviewed by international bodies. Regarding concerns expressed with respect to the inadequacy of existing rules on subsidies, he said that, although there were inadequacies, his authorities still believed that these rules could provide some guidance on distortive practices. On the question of brand names, he stated that it was not intended to deal with trade mark issues which were in the sphere of another organization, but merely to avoid abuse of tradeable brand names by service providers. As to the question of anti-competitive practices of private entities compared to state-run monopolies, he considered it necessary to examine first whether the anti-competitive provisions in the laws of individual countries were adequate. With regard to existing disciplines and arrangements, it might be necessary to test them against the new rules, in particular in the case of specific sectors.

31. On the Coverage of the Multilateral Framework for Trade in Services, one member, referring to his communication in MTN.GNS/W/28, said that the services to be covered by the multilateral framework were assumed to be those which would promote both growth and development. The criteria to be used in selecting the services products or sectors could be: share in international trade, importance for facilitating trade in goods, degree of governmental regulation or straight forward offers and requests. The service producers or sectors should also be important in the production process and contribute to increasing employment, capital formation and transformation of the economies of developing countries. Also services on the consumption side should be covered. The multilateral framework should be consistent with multilaterally agreed principles, rules and disciplines in the area of trade related investment measures and trade related intellectual property rights, e.g., right of establishment and access to intellectual property in the field of services. The coverage should take account of existing services related multilateral arrangements. Consideration should also be given to sectors covered by regulations at the national level, in bilateral, regional and international arrangements. As an example he mentioned the US/Canada Free Trade Agreement. It would appear that a multilateral framework would be expected to respect not only the policy objectives of national laws and regulations, but also the obligations entered into under any free trade agreement. The negotiating objectives allowed for the "elaboration of possible disciplines for individual sectors". This implied that it might not be possible to elaborate disciplines or even across-the-board rules. A start should therefore be made in consolidating or drawing up an inventory of the disciplines in



existing international arrangements. These should include those designed to regulate international markets even if those regulations were implemented at the national or regional level.

32. One member said that unless it was known what the agreement would cover, there was no reason to participate in the negotiations. Countries should know which possible benefits could be expected from the framework. He emphasized that labour services were of major interest to developing countries.

33. One member, referring to his statement circulated earlier (MTN.GNS/W/4, paragraph 14) where he said that trade in services should encompass free access of skilled and unskilled workers from the developing countries into the developed countries' markets, noted that the communication in MTN.GNS/W/24 did not mention these sectors. Another member asked what was the meaning of foreign services providers, whether that referred to a corporate or legal entity or personality, or whether it included also factors of production like labour.

34. The member who had circulated the communication in MTN.GNS/W/24 said that foreign services providers could be either a corporate entity or an individual person, but not a factor. This did not mean that the movement of factors was irrelevant. On coverage he said that he did not rule out a discussion on movement of labour but that all countries should be aware of the difficulties of dealing with the existing national legislation in their own country.

35. One member said that his authorities were considering measures to favour active participation of developing countries in the negotiations. Referring to a proposal made earlier that trade in services should encompass free access of workers from developing countries into the markets of developed countries, he wondered whether it was meant to limit labour movement to a one-way flow and exclude the movement of labour in the reverse direction. He also raised the question of whether the developing countries were prepared to consider labour flows. Another member pointed out that labour movement should mean skilled and unskilled labour, i.e. doctors as well as construction workers.

36. On Existing International Disciplines and Arrangements, it was considered that it might be useful to evaluate the importance of such existing arrangements for the promotion of economic growth and the development of developing countries, and to examine the principles and rules in these agreements also in the light of the broad concepts on which principles and rules for the multilateral framework might be based.

37. No specific views were expressed on Measures and Practices Contributing to or Limiting the Expansion of Trade in Services, Including Specifically any Barriers Perceived by Individual Participants, to which the Conditions of Transparency and Progressive Liberalization Might be Applicable.

38. In concluding, the Chairman said that the next meeting would be held on 14-15 December 1987. The meeting would concentrate mainly on the stocktaking exercise as requested by the programme for the Initial Phase of Negotiations (MTN.GNS/5), and how to carry forward the negotiating process. The Chairman would hold consultations on how to carry out the stocktaking exercise and on how to determine the modalities for technical support.