

MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND

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Group of Negotiations on Services

NOTE ON THE MEETING OF 22-25 MARCH 1988

1. The Group of Negotiations on Services (GNS) held its thirteenth meeting on 22, 23, 24 and 25 March 1988 under the Chairmanship of Ambassador F. Jaramillo (Colombia).

2. As indicated in airgram GATT/AIR/2569, the agenda contained the five elements listed in the programme for the initial phase of negotiations. The Chairman suggested that the Group address the two communications which had been circulated in documents MTN.GNS/W/32 and 33 before discussing the five elements set out in the agenda.

3. The member who had circulated MTN.GNS/W/33 said that the main purpose was to facilitate an analysis of the approach that might be taken in dealing with development in a possible multilateral framework for services. His delegation wanted to focus on the elements that need to be treated more extensively. With regard to national policy objectives, the communication proposed (a) a methodology for the framework agreement; and (b) how national policy objectives could be treated in a way that they were not affected by obligations under the multilateral framework or sectoral disciplines. It should be clearly established whether such objectives were to be defined independently or whether they should represent a common understanding among the parties to the agreement. Developing countries should enjoy some latitude in fixing their policy objectives at the sectoral level. The concept of development and the way in which it was included in the multilateral agreement was a matter of great importance. The multilateral framework should provide flexibility for developing countries and should not prevent them from regulating services activities in the future. Such provisions for developing countries must not be confused with emergency measures. The document also contained a number of suggestions on how to deal with problems that might arise for developing countries from possible regulations governing trade in services. His delegation believed that the multilateral framework could not confine developing countries to a rôle of passive importers and therefore a number of the suggestions in the submission were made with the intention of ensuring developing countries a growing share in services trade.

4. Some of the ideas in the submission were also aimed at improving the export capacity of developing countries and securing preferential access to developed country markets. The question of how to deal with capital flows that would arise out of a progressive liberalization of trade in services was also addressed. His delegation also considered it important to stress the link between trade in services and transfer of technology and to discuss restrictive business practices and transnational corporations. On

definition, two options were presented, the first was technically oriented, and the second linked to procedural matters. Each option supported the idea that a decision should be taken on this question. His delegation had proposed uniform treatment guaranteeing non-discrimination among foreign suppliers. This would mean that once the level of access had been established, it would be uniform, without prejudice to whatever might follow from the application of development concepts. Finally, his delegation was convinced that liberalization of trade in services was a long-term objective which would be attained only in accordance with the limitations imposed by the realities of specific sectors of that trade.

5. The member who had circulated the communication in MTN.GNS/W/32 said that trade in services was taking place on a large and expanding scale without multilateral rules or norms. There were international treaties and agreements that addressed different services sectors, but they rarely dealt with trade in services. There existed close interlinkages between trade in goods and trade in services and many services were part and parcel of exports of goods. At the same time equipment was frequently exported as part of sales of services.

6. An important question was whether countries could gain from common rules for trade in services. The tentative answer of his delegation was affirmative. It was quite clear that empirical information on trade in services was less than satisfactory and that a number of conceptual problems existed. These problems were also present in the goods sector, but the situation was more pronounced in trade in services. On the other hand, precise operational definitions and crystal clear concepts alone would not solve the problems. While clarity would help in the assessment of the implications of different proposals, the main issues arose from political considerations. Although general discussion of principles would necessarily be abstract, the picture would become more concrete at the sectoral level. While it was neither necessary nor possible to gather all possible information on statistics, definitions and concepts before developing general and sectoral rules, the problems of inadequate information and the absence of a consensus on concepts would have implications for both the method and direction of work. While most participants still had a lot of homework to do with respect to services, it could be presumed that most participants agreed that liberalization of trade in goods had served them well. Liberalization of trade in services, or rather its possible consequences, raised sensitive issues in particular sectors. But that did not mean that the potential welfare gains did not exist. Referring to the concepts of liberalization, regulation and harmonization, he said that liberalization and deregulation did not have the same meaning. Liberalization meant facilitating and promoting trade across borders and the stimulation of international competition. Sometimes this could only be achieved by dismantling regulations which hampered foreign competition. But there was no need to change non-discriminatory government regulations and provisions if these were found necessary to protect national welfare, cultural values, consumer safety or ethical standards. Furthermore, each

government would have to make an assessment of the potential gains from liberalizing trade in different services sectors. If one was to judge from the experience of harmonizing technical standards for goods, it was in the area of harmonization where the gains were to be made for trade in services. When looking at technical barriers to trade, technical standards very often varied because they were the result of independent national decisions taken many years ago without regard to the future implications for international trade.

7. Referring to the relationship between trade in services and goods, he said that while GATT today was locked into the manufactured goods sector, this "zone" was becoming a smaller part of total international trade. Extending the coverage of multilateral discipline to a wider area could be very beneficial even for countries which saw their comparative advantage in the field of manufactured goods. Several countries were losing their competitive edge in a number of traditional goods sectors. If they expanded their exports of services it would be easier to restructure and reduce production in goods such as steel and clothing. Such a development would benefit exporters of these products, as they could increase export to countries that had reduced their production.

8. He said that the approach had to be gradual, and as countries needed time to assess the situation before undertaking firm commitments to liberalize trade in services, there should be few obligations at the outset. His delegation wanted to achieve the widest possible participation from the start and a framework agreement signed by as many countries as possible. His delegation had developed a proposal with two layers and several options, i.e. a general framework or "umbrella" agreement, and sectoral agreements related to the general framework. All members of the multilateral agreement may not participate in the sectoral agreements. The proposed framework was comprehensive and contained a number of important principles. But signing the agreement would entail few obligations. Many of the principles of the general framework, and all commitments to liberalize trade in accordance with certain rules, would enter into force only when a country signed a sectoral agreement, and then only for that sector. It was difficult to foresee whether particular principles would apply in all sectors. One would have to discuss whether, for example, safeguards and subsidies could be included in the general framework or only in specific sectoral agreements. He stressed that the paper was an open proposal reflecting the present stage of thinking which would greatly benefit from comments. Ideas concerning the relation between the general framework and the sectoral agreements would need to be refined. Regarding development, he said that, since these ideas should be developed further, he was interested to hear the views from countries more directly concerned. It was difficult to include operational provisions which could serve as a basis for action in the general framework, since the resulting implications for future sectoral agreements could not be foreseen. Concrete discussion on development could only take place in specific sectors. Finally, the paper had not dealt with the relation between existing international agreements and possible new agreements.

9. Several members stated that the two communications represented very positive contributions to the discussions of the Group. One member said that the comments made by the previous speaker coincided with the way in which his authorities saw the negotiations. They supported a gradual approach to achieving results, the widest possible participation in a general framework, and the need for a single coherent legal system. He would only add that in his view the multilateral framework should comprise general and sectoral provisions.

10. One member noted that, although the discussion paper in MTN.GNS/W/32 was a valuable contribution, it did not move forward the discussion on statistics and definitions. The problem of definitions had to be dealt with because of its implications for coverage. This was not to suggest that there needed to be clear agreement on the definitional issue before work could proceed in other areas. The examination of all five elements could proceed in parallel. As regards the structure proposed for the general framework agreement, the emphasis given to the development issue seemed to be significantly less than in the Ministerial Declaration. He said that dealing with development in a protocol of accession would not be acceptable. There was a clear need for specific provisions on development and special and differential treatment within the general framework. In this respect, his delegation appreciated very much the concept of development presented in MTN.GNS/W/33. On the principles listed for inclusion in the general framework, some of the terms used would require elaboration, e.g. the meaning of "reasonable level of transparency". The relationship between primary and secondary transparency requirements should be clarified, i.e. what was to be the jurisdiction of the general framework over the sectoral agreements. He wondered what would be the rôle of an executive body of the general framework agreement which could not take decisions that in any way altered the rights and obligations derived from specific sectoral/activity agreements. Although it did not seem desirable to embark on elaborate discussions of "post framework" negotiations, he pointed out that it was necessary to be very clear about the relationship between the framework and the sectoral procedures. He noted that the concepts of national treatment and safeguards had been reserved for inclusion at the sectoral level rather than in the general framework. Given their importance, these concepts should be included in the general framework as well.

11. One member said that the documents under discussion were complementary rather than opposing papers. Referring to MTN.GNS/W/33, he said that national policy objectives reflecting legitimate needs had to be duly considered, and that laws and regulations pursuing such national objectives should not be questioned. However, once the Group had arrived at a consensus as regards the future rules and regulations, the commitments undertaken would have to be respected by all countries. As regards the concept of development, he said that it could not be formulated in a better way than it was done in the paper. His delegation agreed fully with the view that development went beyond mere economic growth and included integration into the world economy. It was often forgotten that integration

was not only a question of becoming more open to the outside environment, but it was also a question of the outside environment being friendly in terms of trade policy treatment, transfer of technology, rules and regulations relating to exports, etc. In this context, the discussion paper referred to export promotion and facilitation of imports from developing countries, joint actions between developing and developed countries, transfer of technology and restrictive business practices. His delegation believed that differential and more favourable treatment should be granted on the basis of the level of economic development of the country demanding such a treatment. Regarding the concept of uniform treatment, he said that it would apply to foreign suppliers and not embrace national treatment. Referring to MTN.GNS/W/32, he felt that the elimination of the barriers would be a process, whose first stage would have to be achieved at the time of the signature of the agreement. As regards structure, his delegation envisaged an umbrella agreement and sectoral agreements. Participation in the framework should be as universal as possible. As regards sectoral agreements, the number of signatories might vary according to the particularities of the specific sectors. Concerning the relation between the umbrella agreement and the sectoral agreements, the specific sectoral rules would have to complement, and be compatible with, the general rules. His delegation welcomed the suggestion made concerning the institutional forum. While the sectoral agreements might have their own institutional arrangements, these should be located within the framework of the general forum or the executive body in charge of the general agreement. As regards the principles to be included in the general framework, transparency should be not only a means to monitor compliance with obligations undertaken, but also a means to facilitate trade by increasing predictability and security for all participants. Regarding non-discrimination and m.f.n. treatment, his delegation agreed with the paper that all benefits exchanged among one or several signatories would have to be exchanged automatically and immediately with all other signatories. With respect to standstill, he was of the opinion that due attention should be paid to development needs, in particular to infant industries. Consultation and dispute settlement should also form part of the multilateral framework. Concerning the legal nature of the umbrella agreement, he said that it had to be broad enough to facilitate acceptance by the widest possible number of countries. At the same time, the rules would have to meet the criteria of law and not remain simply solemn principles of aspiration. As regards other concepts, such as national treatment, safeguards and subsidies, his delegation supported the idea that these concepts would have to be examined in the light of the particularities of the given sectors. Finally, regarding the relation between the multilateral framework and the sectoral agreements, the GNS was facing the alternative between parallel and sequential work in terms of the negotiating process. There was no need to take a decision at this stage. However, it was important to remain flexible with regard to the general and the sectoral approach.

12. One member said that he shared the observation in MTN.GNS/W/32 that progressive liberalization should be attained gradually. Gradualism required, however, at least one caveat, in the sense that the degree of

effort to attain liberalization would have to be more intense than at the time of the establishment of the GATT. Regarding the relationship between the framework principles and those of a sectoral nature, the dilemma was how to draw up coherent rules. Some of the ideas put forward in the paper had emphasized procedural aspects rather than substantive provisions and their direct effect on progressive liberalization was rather limited. The basic question was whether the suggestions for sectoral understandings could easily be applied to all services sectors. Matters like national treatment, commercial presence, investment and mobility of key personnel were common to all services sectors. It was important that there were obligations which would facilitate progressive liberalization. His delegation would submit a paper at the next meeting relating to modalities and the issue of sectoral versus a general agreement. Document MTN.GNS/W/33 presented new ideas concerning national policy objectives and development. In his view, it was not the aim of the negotiations to force countries to remove laws or regulations, but at the same time, there was no doubt that a certain degree of national sovereignty was on the negotiating table. National laws and regulations would have to be reviewed in so far as they restricted services trade. Concerning development, he shared the view that it was necessary to allow developing countries to have an independent decision-making capacity regarding trade in services, and to ensure them a larger share and better integration in that trade. With respect to export promotion, he said that some rules should be devised to take into account subsidies and some clarification was required as to what was meant by capital flows. The promotion of joint ventures was very important in services trade. Finally, on transfer of technology and rules of conduct for transnational corporations, he said that the discussion had been unbalanced and further consideration was required. There were rights and obligations that a foreign provider of a service should have when he entered a market. These entailed fundamental obligations which dealt with fairness and development.

13. One member welcomed the submission in MTN.GNS/W/33 and said his delegation would revert to it at a later stage. Regarding MTN.GNS/W/32, he said that it suggested a step-by-step approach which his delegation believed to be realistic and useful. He supported the idea of the general framework being an umbrella agreement. In parallel, sector-specific agreements could be concluded which were consistent with the general principles of the framework agreement. The submission also allowed flexibility as to the commitments to be incorporated in sector agreements. The suggestion to include national treatment first in sector-specific agreements and in the general agreement only at a later stage was a good one. His delegation was concerned that the paper envisaged only limited membership in sector-specific agreements and that emphasis was put on commercial presence while movement of man power was only narrowly reflected. Manpower as a production factor should be dealt with in the general framework. Clarification was required as to the meaning of legitimate national regulatory objectives and on commercial presence and its relation to the right of establishment.

14. One member said that it was unclear which measures proposed in MTN.GNS/W/33 were going to be the driving force for expansion of trade in services and economic growth of all trading partners. Although some measures were proposed which could facilitate the growth of exports of services from developing countries, his delegation had some difficulties in identifying measures relevant for all trading partners. He welcomed the inclusion into the multilateral framework of the general principle that laws and regulations to achieve national policy objectives were not to be questioned. He asked what particular provisions the authors of the document had in mind when they referred to the necessity of considering provisions allowing developing countries to adopt measures to regulate certain services activities relating to economic development. Referring to the idea that developing countries should be granted suitable latitude to put into practice all policy instruments required to facilitate the export of services, he asked how and by whom that could be done. He wondered also how a provision on transfer of technology could be included in the multilateral framework and how it would relate to the mandates of the GNS and the Negotiating Group on Trade-Related Aspects of Intellectual Property Rights. Clarification was needed on the principle of equality of opportunity of market access.

15. One member, in a preliminary comment on MTN.GNS/W/32, said that he understood the intention of the authors was to secure as wide a membership as possible by including principles with few obligations in the general framework. He underlined that another approach could consist of establishing a general framework with as many principles as possible, and sector agreements, with exceptions or derogations from the general framework in the light of the specificities of each sector. He said that since it was not expected that the improvement of statistics would be completed within the time frame of the negotiations, it should not be regarded as an essential precondition for the negotiations in trade in services. Regarding the relation between existing international disciplines and arrangements and the general framework, his view was that they could supplement each other.

16. One member noted that MTN.GNS/W/32 shared very largely the views concerning the similarities and differences between the goods and the services sector expressed in the paper circulated by his delegation in MTN.GNS/W/30. He was also encouraged to see the insistence on the need for a multilateral framework. His delegation agreed with the suggestions on transparency and on some of the other principles. He had noted, however, that no differentiation was made between non-discrimination and m.f.n.; they were linked but not identical. The proposal was not very ambitious from the point of view of principles and commitments as certain important elements were to be included only in the preamble. Many issues were also relegated for being taken up at a secondary level. His delegation could agree to a secondary level that would guarantee the evolutionary nature of liberalization and more dynamism in the régime applied to traded services. He welcomed the ideas expressed in MTN.GNS/W/33. On national policy objectives, the paper went one step further than the Punta del Este Declaration since the multilateral framework would be subordinate to the

national regulations whose objectives and form could not be touched. With regard to uniform treatment, he had noted that non-discrimination was separated from national treatment and he wondered whether this also meant that the m.f.n. clause was separated from the rest. A most useful element was the treatment of development within the multilateral framework. In this regard, the paper seemed to take up the method used in the context of the GATT and introduced some twenty years after GATT's entry into force. This led to the separation of the contracting parties into two categories of countries, which was very regrettable. One should try to include all countries and the treatment given to them from the outset in the multilateral framework. The problems relating to development could be taken into consideration by formulating principles which would be applicable to all, but by modifying their implementation to the degree necessary.

17. One member saw development as a process which went beyond having a larger share in trade. For his delegation, development meant the structural changes in the economy of a developing country as set out in that country's development policy objectives. The framework should facilitate such structural changes. Development should be seen as a dynamic process which was taking place in a dynamic trade environment.

18. One member said that in his view document MTN.GNS/W/33 was a carefully balanced paper. A number of concrete elements were well presented from the point of view of the developing countries. In his view, it was essential that policies regarding the services sector be determined at the national level. It was necessary to include guarantees for possible advantages derived from integration agreements among developing countries. Procedures for progressive implementation were also necessary in order to allow parties to adjust their national provisions gradually. Regarding document MTN.GNS/W/32, whose general trend he considered positive, he said that development considerations could not be covered by the preamble alone as it was not legally binding. Notions concerning development should not be presented as exceptions, but as elements to be fully integrated into the main part of the framework agreement.

19. One member said that, according to MTN.GNS/W/33, the multilateral framework would establish procedures for parties to define their national policy objectives and that a clause would allow developing countries to avail themselves of a second option of defining policies at the sectoral level. Regarding the imports by developing countries of services as inputs for the subsequent export of services, he asked whether developing countries would be allowed to select suppliers without violating the m.f.n. principle. With respect to regulating the flow of foreign exchange generated by specific projects connected with trade in services, he wondered whether developing countries would have the right to adopt foreign exchange controls for their imports of services. Another question was whether the proposed executive body in taking decisions would refer to the sectoral or general rules.

20. The member who had circulated MTN.GNS/W/32, responding to the comments made, said that the general framework proposed in the paper contained requirements for transparency, non-discrimination, consultations and dispute settlement, and a commitment to minimum regulatory measures. It also provided a basis for the gradual development of rules in an area where no multilateral rules presently existed. As regards the sequential approach, while it would seem that a general framework had to be ready for signature before sectoral agreements could be signed, the general framework and sectoral agreements should be negotiated in parallel. In the paper his delegation had tried to come to grips with the relation between the general framework and sectors. His delegation had taken this approach earlier in document MTN.GNS/W/1. While members of the general framework agreement could not take decisions that would effect rights and obligations negotiated at a sectoral level, it seemed clear that there should be an institutional link between the general framework and the sectoral agreements. It would also be important to set up in advance certain principles that all sectoral agreements would have to adhere to. One way of dealing with this could be to include all principles in the general framework and to allow further elaboration in the sectoral agreements. Principles mentioned in the discussion, such as national treatment, safeguards, transparency and non-discrimination would have to be further developed. For example, the discussion paper opened the possibility for the signatories of a sectoral agreement to go further than the level of obligations established in the general framework. Regarding the concept of development, his delegation expected that the establishment of multilateral rules would enable many countries to participate in the rapidly expanding international trade in services. It was not possible to create a multilateral trading system that would guarantee a certain type of development in participating countries. The more liberal trading system would provide opportunities for all participants, and it was up to each participant to seize these opportunities.

21. The member who had circulated the submission in MTN.GNS/W/33, said that he appreciated the goodwill which had been expressed regarding the paper. He said that it was hoped that progressive liberalization could be attained through the disciplines introduced in the sectoral agreements, which would have to be compatible with the principles of the framework agreement. There was a clear link between national policy objectives and progressive implementation. National policy objectives could be defined autonomously by each party when they acceded to the agreement. Another way of proceeding would be to define indicative common guidelines which would be taken into account in the definition of national policy objectives. A question was whether a deadline should be set to allow countries to adjust their measures which were inconsistent with the provisions of the framework agreement. Countries should have the possibility of defining national policy objectives also at a sectoral level. Regarding the concept of development, the document tried to include all processes related to development such as services production, external services trade, financial flows, cooperation, transfer of technology and joint ventures. Regarding definitions, his

delegation had felt it appropriate to leave this issue open and to give simply a list of those sectors or practices which should be negotiated on a sector-by-sector basis.

22. Commenting on MTN.GNS/W/32, one member said that she fully agreed with the conclusions of the member who had circulated the document. She was not sure, however, that her delegation would arrive at the same result as regards the possible structure of the framework agreement. Wide participation should be achieved through a balance of rights and obligations to ensure that the benefits accruing to signatories were real and worthy of the effort of joining the agreement. In the submission, rights and obligations had been kept to a low level to achieve wide participation in the multilateral framework. She appreciated the overall approach but considered that the basic question that remained to be answered was where the line should be drawn between general and sectoral obligations. The main concern of her delegation was that an attempt had been made to suggest an approach which would allow signatories to accept a framework agreement without any real improvement in their regulatory trading systems. Her delegation would prefer a stronger framework agreement which allowed for progressive liberalization across a broad range of sectors and activities. Signatories should aim to reach that goal through a gradual process of bringing sectoral rules into alignment with the general principles and disciplines. She had difficulty in agreeing with the conclusions in the paper that many general principles might not be applicable in all services sectors. An investigation carried out by her delegation suggested that broad principles were applicable across a wide range of sectors. It was therefore her view that a wide range of general principles, including national treatment, should be taken up in the framework agreement even if they were not fully adhered to from the outset. Regarding standstill, she said that more than a best endeavour approach was needed in order to prevent the introduction of new trade restrictive measures and also to assist in the gradual process of alignment. Finally, she said that while some delegations had suggested an approach based on appropriate and inappropriate regulations, her delegation considered that the basic principles should be such as to ensure that the impact on trade was minimal.

23. Turning to document MTN.GNS/W/33, she said that the development aspect was most important. Regarding national policy objectives, she saw a possible contradiction in the paper between the Ministerial mandate and the statement that national laws and regulations would be respected. The policy objectives themselves should not be questioned, but the way in which these objectives were achieved should have a minimum impact on trade. Regarding development, she said that one should not repeat the mistakes of the past. The notions presented in the paper might lead to possible inconsistencies between uniform treatment to avoid discrimination between foreign suppliers and preferences for developing countries for imported inputs for the subsequent export of services. Her delegation would have difficulty accepting permanent and wide-ranging exceptions from general principles and rules which would not be in the long-term interest of the developing

countries themselves. Policies designed to foster economic development should not impede the capacity to export. Her delegation supported the possibility of gradually bringing national regulations into conformity with the general rules and disciplines of the framework agreement. Development objectives should be drawn up on the basis of each country's own national development interests and in order to get a clearer idea of national development interests, countries should explore all services sectors of potential interest and assess their priorities.

24. One member said that it was important to aim at securing universality of membership in the framework agreement. However, some proposals did not sufficiently stress this aspect. Regarding document MTN.GNS/W/32, he referred to the idea that membership in the sector agreements would almost certainly not include all the members of the umbrella agreement. In his view, this approach did not conform with the notion of universality and, therefore, his delegation did not support it. Concerning development, he said that this was a fundamental part of the Ministerial Declaration and concerned all countries. Document MTN.GNS/W/33 was the first paper which dealt with the development of developing countries. As concerns national policy objectives, he supported the view in the paper that they were sacro-sanct. Clarification was needed on the meaning of the suitable latitude for developing countries to put into practice all policy instruments to facilitate the export of services. He supported also the view that it would be necessary to ensure developing countries suitable access to technology.

25. Referring to document MTN.GNS/W/33, one member said that he welcomed the suggestions on the concept of development compatibility. He said that respecting national policy objectives was not necessarily the same as respecting the laws and regulations which implemented those objectives. It had been agreed at Punta del Este to respect national policy objectives, but not to respect all laws and regulations. It was possible that a good objective could be badly implemented. He agreed with another speaker that it was the impact on trade of the laws and regulations that was important. In his view, one could distinguish between three classes of regulations: firstly, those which did not impact on trade and where there was no room for negotiating them within the multilateral framework. Secondly, those designed to achieve agreed national policy objectives and did impact negatively on trade. It was necessary to reduce their negative effects on trade through negotiations. Thirdly, those with the specific objective of having a negative impact on trade. The aim should clearly be to remove these regulations. The assumption was that participants agreed collectively on the objective of liberalizing trade, and, therefore, this collective objective would become also a national policy objective. Regarding definitions, he noted that two choices were suggested, one to work on a technical definition applying to all sectors across-the-board, and the other to reach agreement on the type of services trade to be included in the framework. Regarding development, the ideas advanced in MTN.GNS/W/33 would be studied in detail with a view to reacting constructively to them in the future meetings. The main criterion would be whether the proposed solutions

were compatible with liberalization and expansion of trade. Regarding the notion of uniform treatment, it seemed to him that the proposed idea was very close to concepts like non-discrimination and m.f.n. In this context he considered it useful to establish a glossary of terms in order to avoid misunderstandings arising from the use of unclear terms in the discussions.

26. Referring to document MTN.GNS/W/33, he appreciated the comparison with the GATT, which was described as the basic framework on trade rules and disciplines and an effective platform for progressive trade liberalization. He also agreed on the need for both general and sectoral rules. The paper suggested that the general framework should not imply a commitment to undertake measures in any specific area. If this meant that the major liberalization measures would come gradually at a later stage, he would agree. But his delegation expected that certain serious commitments would have to be undertaken at the time of signing of the agreement. He agreed that regulations should not impose restrictions on services trade beyond those required to meet legitimate national policy objectives. On definitions, he agreed that the framework would cover both cross-border trade and commercial presence. Also, the interpretation of transparency was very similar to that of his delegation. He could also support the idea that there should be periodic packages of negotiated liberalization measures. On standstill, he would like to see it more binding than suggested in the paper. With respect to the relation between the general and the sectoral agreements, he would prefer to wait until the Group had examined the sectoral applicability of the concepts. He agreed that the general and sectoral rules should be compatible. Any exception should be explicitly identified by the Group. It was unclear how the general commitments suggested in the paper would contribute specifically to the goal of development. He assumed that the countries which had submitted the paper were open-minded and prepared to integrate suggestions dealing with development issues into their own ideas. As regards achieving broad participation in the agreement, he said that while participants would consider an agreement successful if they found the balance between expected benefits and commitments to be positive, substantial benefits could not be expected unless substantial commitments were made. His delegation did not equate substantial commitments with low participation. He hoped that major benefits, and hence a very broad participation, would be achieved.

27. With reference to document MTN.GNS/W/32, one member said that his delegation was satisfied that an attempt was made to achieve the greatest possible participation in the multilateral framework as well as in the possible sectoral agreements. Like other participants, he felt that it was important to strike a balance between rights and obligations. As regards development, he was concerned that participants might be thinking in terms of differential and more favourable treatment and not necessarily in terms of general clauses of an operative type. He was also concerned that development considerations were only to be included in the preamble. Referring to document MTN.GNS/W/33, he expressed his appreciation for the specific proposals on development. His delegation felt that transfer of technology, restrictive business practices and the conduct of transnational

enterprises were matters of great concern which should go beyond the traditional concept of development and form part of the general rules applicable to all signatories. He agreed with a previous speaker that development went beyond mere economic growth, involved active participation in trade and concerned the impact of the negotiations on domestic development. Regarding national policy objectives, their respect was an issue of primordial importance for developing countries. His delegation did not think that one could establish whether laws and regulations were legitimate or illegitimate. As far as his delegation was concerned, all laws and regulations were legitimate but were open to negotiations in those cases where one could achieve a policy objective by making certain adjustments through negotiations. Regarding uniform treatment and the element of protection, he said that protection was not an illicit practice but one which had to be made transparent.

28. One member, referring to document MTN.GNS/W/32, said that comprehensive membership in the multilateral framework was important. Regarding institutional arrangements, it seemed logical that the structure should be compatible with the GATT. As concerned the relationship between the multilateral and the sectoral agreements, it was important to reserve the possibility of an eventual cross-sectoral trade-off. Referring to document MTN.GNS/W/33, she felt that it was very important to have as many contributions as possible from developing countries on how to deal with development. In her view, the concept of development should be situated within the framework and not figure as an afterthought. Various countries had a different paradigm of development in mind and, therefore, its treatment in the framework would necessarily differ. Her delegation had some difficulties with the suggestions in the paper on regulations and national policy objectives. Some clarification was necessary as to the sacro-sanct nature of laws and regulations and the respect of policy objectives. She was pleased to note that both imports and exports of services were taken into account in development, and she pointed out that although her country was a net services importer, it was interested in liberalization of services trade. Clarification was needed on the idea that the developing countries should be allowed to adopt short-term measures to enable them to import services which could serve as inputs for services exports. It was also unclear as to whether the paper envisaged balancing trade for each service import and export. Clarification was also needed on the meaning of uniform treatment, i.e. whether reference was made to m.f.n. or equivalent treatment for foreign suppliers, and whether the balance in the treatment of factors of production referred to capital, labour, technical know-how and information. Regarding transparency, she said this was an important principle which was more than a means of monitoring compliance and in itself could have a beneficial result leading to the expansion of trade.

29. One member, referring to document MTN.GNS/W/33, said that the paper introduced new ideas concerning development. He was interested in exploring further the concept of uniform treatment and he welcomed the emphasis that the paper placed on transparency. Regarding development, he noted that some

of the concerns expressed applied to both developed and developing countries which had small services sectors and which had the ambition to enlarge their share of world trade in services or to improve the integration of their services industries into the global market. He endorsed the idea that the multilateral framework, whose principle objective was to establish permanent rules and principles for services trade, should contain elements which were flexible enough to allow developing countries to adapt to changing needs and circumstances. The principles and rules of an agreement were the armoury of countries which had less market power than their trading partners. In his view, one should not modify or soften the principles and rules to accommodate the special treatment of any of the participants. The mechanisms, however, were another case. In his view, developing countries were rightly expecting special differences to be recognized. Some of the particular suggestions made in the paper opened up a number of areas for further discussions. For example, his delegation would like to examine further any particular proposal which might be brought forward on the facilitation of exports from developing countries or on the access of developing countries to regional integration agreements. In each case, however, such mechanisms should be consistent with other objectives of the framework agreement and should be based, as suggested in the paper, on the flexible implementation of those principles. Regarding MTN.GNS/W/32, he noted that the paper should be considered as a model for discussion rather than as a consolidated negotiating position. He agreed that liberalization of trade in services should be progressive and that the framework should play a rôle in liberalizing services trade similar to that which the GATT had played in goods trade. In this regard, it would be expected to maintain a minimum number of principles and rules which would apply to future regulations and on the basis of which an exchange of concessions would take place. He also agreed that the framework should cover both cross-border and establishment trade. One should also aim at the broadest possible membership of a framework agreement. Turning to the areas where his delegation might have a different view on the degree to which obligations relating to liberalization were to be contained within the framework agreement, he said that the framework model proposed only a relatively light level of obligations which related to non-discrimination and transparency. However, he agreed with those participants who had said that the paper did not give enough weight to the equally important principle of national treatment or to the value of horizontal rules on subsidies and standstill. His delegation had envisaged a more binding provision than the one which had been suggested. The reason why national treatment had been omitted from the paper, although it had been proposed for later inclusion in sectoral agreements, was that it was considered too difficult to apply uniformly across a wide range of sectors. In his view, this was not an argument for leaving national treatment out of the framework altogether. It would be necessary to find some practical means to implement such principles, including possibly some flexibility on the period of implementation or on the number of sectors to which they would initially apply. Another reason for not including certain principles might be related to the wish for broadest possible membership. The inclusion of many specific obligations could raise the threshold cost of membership to a point where many countries

would be unwilling to join. In his view, participants could take courage from the terms of the Ministerial Declaration which was an ambitious document. The Group should not assume at this stage that Ministers wanted participants to qualify the objectives in the Declaration to avoid taking hard decisions or making changes to policies.

30. One member said that MTN.GNS/W/32 had concentrated on institutional mechanisms. He found it difficult to judge at this stage the wisdom of such an approach since the Group had not yet dealt with the nature of the services transactions that the framework agreement would cover and it was difficult to comment on the relationship between the framework and sectoral agreements. One should also approach with great caution the nature of obligations which would apply in different ways depending on the services sectors and transactions covered. Regarding standstill, he said that one should decide first on the nature of the standstill commitment before referring to its implementation on a best endeavours basis or otherwise. Referring to document MTN.GNS/W/33, he said that he subscribed to the ideas concerning national policy objectives. He questioned the extent to which parties to the multilateral agreement would be able to judge the appropriateness of national laws and regulations. This issue was closely related to the nature of the services transactions to be covered. Regarding transparency, he agreed that the real value of transparency lay in the fact that it was an instrument which provided clarity of application and that obligations in this respect should only concern the provision of information relating to the commitments covered by the framework. Regarding the concept of development, he said that views expressed by some delegations that the welfare of the world economy could be advanced through the integration of new sectors into the multilateral trading system, such as agriculture and services, and that such integration would provide a higher degree of balance within the system, did not necessarily correspond with the understanding of what economic development meant for a number of participants. The integration of new sectors into the multilateral system as proposed would entail freezing of comparative advantage with regard to the production of certain services.

31. One member, referring to MTN.GNS/W/32, said that most of the five elements of the negotiating programme were scarcely, if at all, dealt with in the paper. Development was simply discarded by suggesting that it be put in the preamble, just to give satisfaction to developing countries, with no practical effect at all. She agreed with a previous speaker that the preamble was the only place where development concepts should not be put. The concepts of progressive liberalization and transparency were dealt with in detail but the respect for the policy objectives of national legislation was not mentioned. There was just a reference to legitimate national regulatory objectives which seemed to be a different concept. The major difficulty with the idea of a possible general framework was that it simply put aside such important elements as definition and coverage. It would therefore constitute an agreement on the unknown. Terms such as "all services sectors" or "whole sphere of services" were too large for her

delegation. In order to consider the possibility of joining any agreement, clear definitions were needed on the coverage of the general framework. This would eliminate the impression of committing oneself to a blank cheque.

32. One member, referring to MTN.GNS/W/32, said that he appreciated the tentativeness of the approach outlined in the discussion paper. He had, however, some difficulties as the paper dealt only with structural and institutional issues and did not add anything to the discussion of the substantive content of definitions, coverage, concepts and principles. He also had some difficulty with the paper which proposed three types of arrangement: a general framework, a sectoral framework and an activity-specific framework. There was a possibility that this approach affected adversely the basic elements of the Ministerial Declaration. Part of this could be related to the reasoning given in the general considerations presented in the introductory part of the paper, which he did not share. In his view, one should not start with the presumption that the GATT type of approach had essentially led to the liberalization of trade in the interest of all its members. His delegation wished to see that the same history did not repeat itself in regard to trade in services. He was also of the view that the tradability of services was not a matter to be determined by the institutional forum referred to in the paper. One should first define what was trade in services and then devise appropriate principles, concepts, structures and institutions. It was clear that there was no controversy and confusion in regard to the definition of trade in goods when GATT was created. Nobody visualized that trade in goods would include manufacture within the national borders. No thesis was put forward that in order to facilitate trade one would need to establish production facilities. This type of confusion needed to be removed in the context of trade in services in order to start with the elaboration of principles, concepts, structures and institutions. Furthermore, the paper gave the impression that the concept of development, which was the central element in the Ministerial Declaration, had not only been reduced to the periphery, but the process implied was contrary to the objective of development. According to the paper, development had to be included by way of protocols of accession; it followed that developing countries would be barred from being initial signatories. This was contrary to the objective of the Ministerial Declaration since developing countries would have to negotiate their development requirements with the members of the agreement before joining it. In his view, the concept of development should not be an appendix, but integrated in the basic framework of rules and principles.

33. The member who had circulated MTN.GNS/W/33 said that his paper had been a modest and constructive attempt to take up the challenge of making concrete proposals with respect to development. In his view, while growth, development and the expansion of trade should take priority over liberalization, all three objectives could be included. His country, which was a developing country, had tried to establish a bridge and enter these negotiations, convinced that one should, as soon as possible, agree on a framework since it was greatly needed by international trade. There were

many differences between the various papers which had been put forward, but there was common ground as well. In MTN.GNS/W/32 and 33, there were many divergencies, but there was the same approach to the possibility of achieving a result in the negotiations. The main purpose of his paper had been to attempt to outline what could be the provisions for a framework and sectoral agreements so as to facilitate development objectives and to achieve the objectives of production, export, import and cooperation, including the transfer of technology, which touched upon the fundamental interests of developing countries.

34. He added countries would not adopt common national policies but would negotiate regulations designed to achieve their respective national policy objectives. Nobody was going to negotiate the essence of national policy objectives, but countries would be negotiating about laws and regulations to expand and liberalize trade in services. Countries would negotiate a reduction of barriers which had a negative impact on trade. National policies would be linked to laws and regulations in the context of uniform treatment. The framework agreement and the sectoral agreements should be coherent and supplementary. The first main objective was to achieve a framework agreement and the second objective was a complementary one, that is expansion and liberalization through sectoral agreements. What was not in the framework agreement would find its place in the sectoral agreements. He believed that it should soon be possible to lay down the basic principles of the framework agreement and to expand and liberalize services in the light of the interests of developing countries and the fundamental objectives of growth and development.

35. The member which had circulated MTN.GNS/W/32 said that he agreed that there was not necessarily a relation between a low level of rights and obligations and a wide membership. It could be that a high level of rights and obligations would attract a wide membership. It was also clear that this issue of rights and obligations was related to the development issue. Regarding the modalities for negotiations, the crucial issue was the kind of concessions a contracting party would need to make in order to enjoy m.f.n. across all sectors or for specific sectors. If the threshold was low in the sense that one undertook few commitments to liberalize, then there might be few incentives to go further on the part of many participants. If the threshold was high, there might be few participants. The approach of his delegation to this issue had been to establish two levels of rights and obligations. The relationship between the general framework and the sectoral agreements formed the crucial part of the paper. The signatories to the framework agreement could not take decisions to change the rights and obligations of parties to sectoral agreements. By signing the framework, a country made a commitment to participate actively in negotiations which would cover possible exchanges of concessions across the board. In his view, the Group was establishing the basis for negotiations which would continue for a long time but it was possible that these would be a significant round of concessions as part of the results of the Uruguay Round. Concerning the interpretation that his delegation had come to the conclusion that if a principle was not universally applicable, it

should be treated in the sectoral part of the agreement, this was not necessarily the case. There were several possibilities for dealing with these principles. One possibility would be to include a principle in the general framework and then allow a number of exceptions to that principle in the sectoral agreements. He agreed that many of the principles which had been put tentatively in the sectoral part, would have to appear in all sectoral agreements. In that sense, they were universal. Another possibility would be to establish the principle in the framework and require the principle to be further elaborated in all sectoral agreements. The concern of his delegation was that, if one decided in advance that a principle should be included only in the framework, one might end up with the principle in the framework which would be watered down to such an extent that it would be practically useless. Referring to the view that the idea of minimum impact on trade was not clearly defined, he said that he was not sure whether it was possible to define it clearly. One possibility might be to follow the practice of the General Agreement where panels could deepen the meaning of certain GATT principles. As concerns national treatment, it would be necessary to see to what extent the full principle, or part of it, could go into the general framework and whether other parts should be further elaborated in the sectoral agreements. Regarding the need for definitions and concepts, he said that although one could not work out all conceivable definitions and concepts on trade in services, some work had to be done at the present stage of the negotiations. Regarding the reference in the paper to the notion of non-traded services which would become tradable internationally, he said that the proposal was to look at barriers which existed in order to make it possible for the non-traded services to become tradable in the future. Regarding the proposal made by one delegation, that a step-by-step approach be adopted and that one should deal first with concepts, principles, and structural issues and then with institutional issues, he said that his delegation would find it difficult to adopt a strictly step-by-step approach, e.g. completing the work on definitions and concepts before clarifying all the principles. Regarding development, he said that he agreed that development meant more than growth and would probably include structural changes and distribution of income and wealth. The issue was what could be the contribution of a multilateral trading system to the development of each participant. In this respect, he shared the views of another delegation about the strict application of universal rules which was in the interest of all small trading partners. A multilateral trading system, by definition, was a system of common rules based on rights and obligations for all parties, which could not be tailored to specific social and economic objectives of each participant. Such a multilateral system could give opportunities for increased participation in international trade which would, in turn, mean increased growth and improved possibilities to reach social and economic objectives which would be defined by each country.

36. The Chairman concluded the discussion on the two submissions in MTN.GNS/W/32 and 33 and opened the discussion on the five elements as set out in the agenda.

37. On Definitional and Statistical Issues, the Chairman recalled his earlier comment made on discussions in the Group (paragraph 3 of MTN.GNS/11) that 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. It was also 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. Finally, the GATT Secretariat should be ready to reproduce or synthesize sectoral statistical information available in different organizations. It had been furthermore suggested that technical assistance was needed for developing countries to improve their services statistics which were in many instance very incomplete. To this end, available statistical information should be shared among all participants. In this context, the Chairman mentioned that efforts were being made to set up a UNCTC/UNSO project for the improvement of services statistics in developing countries. The GATT secretariat had also maintained contacts with the experts working in the Voorburg Group and with UNCTAD.

38. One member said that, although work within international organizations to improve statistical information was needed, essential help to understand the issues had to come from national delegations. Those countries which had submitted proposals or would submit proposals in the future should fill the gap. The Chairman recalled that national contributions dealing with statistical information had been received from Australia, Brazil, Canada, the European Communities and the United States, and circulated to the members of the Group.

39. One member said that he had taken note of the Chairman's statement that contacts were being developed with international organizations. He also took note of the projects which were now under way in various international organizations. However, in his view, it would be necessary to take into consideration the fact that certain countries were more advanced in the collection of statistics than others. It was necessary to envisage a meeting of experts from countries participating in the Group to deal with statistics, for the purpose of exchanging views in order to understand better the nature of the problem in the context of negotiations.

40. One member said that the basic question was whether to have experts talk about the improvement of statistics in the Group. He questioned the usefulness of this, since he thought that this Group was not a body capable of resolving highly technical problems relating to statistics. He said that this should be done within those international organizations which currently deal with this subject matter.

41. One member said that trade in goods was not defined in GATT since a definition was not needed. International trade, which encompassed both goods and trade in services, could be defined as the exchange of goods and services across national borders in return for payment. This definition

could include a product, either a good or a service, a payment and the concept of national borders. Like services, some goods needed to be produced at the time of consumption, but it was difficult to agree that producers of goods had a claim to a right of commercial presence in the export market. Furthermore, he had some difficulty in understanding the scope of the definition presented in document MTN.GNS/W/32 which referred to the "whole sphere of services" to be covered by the general framework. One question was whether this definition also covered labour services, establishment and investment. Document MTN.GNS/W/33 put forward the options of having a conceptual definition based on a common understanding of trade in services or resolving the issue of definition through the sectoral coverage. He had some difficulty with the second option which introduced an executive body whose rôle was unclear.

42. Responding to these comments, the representative responsible for MTN.GNS/W/33 said that they had introduced two different options for definitions. First, one would agree on a definition and see whether establishment was included or not, up to what point the criteria of transactions was applied, how far it was to be extended, and if this definition was compatible or not with international agreements already in existence. With regard to the second option, if the Group was not in a position to agree on a clear-cut definition, one would leave for a later stage the application of rules and principles of the agreement by identifying sectors, e.g. in an open-ended annex, to which such rules and disciplines would be applied. In addition, if there were proposals concerning various sectors to be included in the negotiations, some kind of mechanism should be set up in order to decide whether such sectors were to be included in the multilateral framework.

43. One member said that only activities which were associated with the direct sale of services by enterprises or individuals residing in a country to enterprises or individuals in another country should be included. Services transactions between enterprises or individuals established in the same country were considered domestic transactions. The absence of broad and sufficiently detailed statistical information on trade in services was an obstacle to economic analysis, and therefore to the identification of barriers to trade expansion, and the quantification of the negotiating interests at stake. The improvement of statistical information was a preliminary and essential step.

44. One member recalled what his delegation had said on previous occasions; the definition should include all services and labour activities which went across national borders. For his delegation this definition excluded any possibility of negotiating foreign direct investment and right of establishment. He was, however, interested in negotiating labour services - not only skilled labour but all types. Another member said that the Group had to deepen its understanding of definitions and statistics so that they knew what they were negotiating and what would be the implication of their obligations under the agreement.

45. One member said that MTN.GNS/W/32 specified that the sector agreements should cover commercial presence and/or establishment to the extent such rules affected trade in services. This approach did not explain how the delegation which had submitted the paper intended to pursue the question of definitions, except by way of relegating the issue to a later stage when participants would discuss the sector agreements. This approach was not scientifically satisfying and, with regard to the negotiations, not adequate from the point of view of those participants attempting to ascertain the implications of what was being negotiated. As regards document MTN.GNS/W/33, he said that the formulation of the first option was too wide and left open the possibility of replacing the word trade by the word transaction. The reference to other agreements created problems, since existing agreements were not necessarily confined to trade in services. Therefore, the first option really stretched the Ministerial Declaration too far. The second option, which dispensed with the need for any definition, was even more unsatisfactory, since it was close to the approach included in document MTN.GNS/W/32. This approach, would be analytically unsatisfactory and would not offer participants the possibility of assessing the balance of benefits. He suggested that the Chairman, with the help of the secretariat, prepare an informal paper on definitions which would reflect all the views, opinions and approaches that had been expressed in the discussions in the Group so far, whether they had been put forward in the specific proposals or discussion papers or in the course of various statements attributable or otherwise made by different delegations. He hoped that the presentation of these views and opinions would be made in such a manner as to bring up the issues, the inconsistencies and all the questions that remained unresolved. This was an opportunity to look at the question of definitions with the seriousness and priority that this question deserved in the course of the work in this Group.

46. One member said that the discussion in the Group had demonstrated that there were different types of international transactions that fell under the heading of trade in services. Since the relevance of these transactions varied from one sector to another, the sectoral coverage of the agreement would be determined, at least in part, by agreement on definition. The following types of international transactions in services could be distinguished on the assumption that country A exported and country B imported services. (i) Production was wholly in country A, by residents of country A. Consumption was wholly in country B by residents of country B. The vehicle of trade was communications. Both information and payments crossed frontiers, e.g. information services. (ii) Production was principally in country A, by residents of country A. Consumption was in country A by residents of country B. Both consumers and payments crossed frontiers, e.g. hotel services. (iii) Production was by residents of country A, consumption was by residents of country B, production and consumption took place in delocalized fashion. Payments crossed frontiers, e.g. international transport. (iv) Production was conjointly by residents of more than one country, and consumption was by residents of one country. Payments might or might not cross frontiers and part of the production did, e.g. telecommunications. (v) Production was by residents of country A, partly during their temporary presence in country B. Consumption was in

country B by residents of country B. Payments and the producer's personnel crossed frontiers, e.g. consultancy services. (vi) Production was partly in country A, partly in country B through some form of permanent commercial presence. Consumption was in country B by its residents. Payments crossed frontiers, e.g. representative offices, franchizing. (vii) Production was partly in country A, but mostly in country B through a permanent presence other than a subsidiary. Consumption was in country B by its residents. Payments for services did not cross frontiers, although profits from them did, e.g. branch banking. (viii) Production was partly in country A, but mostly in country B, facilitated by the temporary presence in country B of the producer's employees from country A. Payments crossed frontiers, e.g. construction. (ix) Production was wholly in country B by a producer normally resident in country A. Consumption was by residents of country B in that country. Only the producer, but no payments for the service crossed frontiers. But the producer might use his earnings to make transfer to country A, e.g. hairdressers, doctors, lawyers. (x) Production was by a subsidiary of a producer from country A, located in country B. Consumption was by residents of country B in that country. Capital crossed the frontier, but before the transaction took place. Payments for the service did not cross the frontier. But the subsidiary's earnings might be remitted as income to country A. (xi) Production by a producer in country B might be accompanied by the purchase of know-how from a producer in country A. Consumption was in and by residents of country B. Payments for the service did not cross frontiers. But know-how and the payments for it did, e.g. licencing of a services business. In conclusion, this member said that this categorization was intended to give some structure to the possible definitions mentioned in the Group. His delegation would at a later stage form a view on which of these transactions ought to be covered.

47. One member noted that the previous presentation had shown that there existed a very wide range of services transactions and that not all required a commercial presence of providers. Regarding MTN.GNS/W/33, he said that the two options for a definition were not real alternatives, since the preferred position was to start with the first option, that is, to work on a technical definition and to sort out the various issues which might be involved. The second alternative was the pragmatic solution of an open-ended annex in case the Group could not agree on a meaningful definition. The definition in document MTN.GNS/W/32 did not add much to the discussion, and it was also unclear how the proponents had come to the conclusion that the sector and activity agreements should cover commercial presence and/or establishment. Another member commented that the list presented by the previous speaker could still be expanded. He said that this Group was talking of trade which had an inevitable time dimension and that was a factor that the previous speaker did not mention at all. Another member referred to one of the types of international transactions in services where production was by a subsidiary of a producer from country A which was located in country B. Consumption was by residents of country B. Capital crossed the border before the transaction took place, but payments for the service did not cross the border. In his view, this type of transaction could not be described as trade and was a clear case of

investment. There was no product and no payment crossing the border, only capital before the transaction took place. In addition, it had been made clear that the subsidiary's earnings might be remitted as income to country A. He related this case to the time-frame referred to by a previous speaker, i.e. a payment for the product would have to be transferred within a certain time frame. Reacting to these comments, the member who had identified the eleven types of international transactions, said that there were ten which would not conform to the definition that the previous speaker had referred to. Referring to document MTN.GNS/W/29, he said that the definition of trade in services should be such as to embrace all those transactions which are necessary in order to achieve effective market access in a sector.

48. One member commented that there was a practical consideration; in many countries, it was required for a firm to establish in order to provide a service. If this Group was to cover solely cross-border activities, a number of important services sectors and activities would be left out. In addition, some services were produced at the place of consumption, e.g. consultancy services. This had very practical commercial implications for a service provider's ability to compete, and is why his delegation regarded trade in services as including more than cross-border sales. He supported the proposal made by a previous speaker that the Secretariat should prepare a background note on definitions of trade in services for the consideration of the Group.

49. One member asked whether it was possible to arrive at a definition in the abstract, or whether the definition would follow from the determination of the sectors to be included. A related question was whether this Group could draw up an exhaustive list of transactions governing all sectors or whether it should examine the sectoral coverage and decide on the types of transactions. With respect to the purpose of a definition, he said that one needed a precise list of transactions at a later stage for dispute settlement purposes. A dispute could arise on whether certain transactions could be classified as trade in services. Another member supported the view that the definition should not depend solely on the nature of the services. The definition would have to depend also on the nature of the multilateral framework.

50. One member, referring to MTN.GNS/W/29 and MTN.GNS/W/32, said that an attempt was made by some delegations to draw a distinction between establishment and commercial presence. In his view, it would be useful to hear how they saw the distinction in order to better appreciate their approach to the definition of trade in services. In his own view a distinction between the concepts was not tenable. Another member said that the multilateral framework should include mobility of manpower on an m.f.n. basis.

51. One member said that for both establishment and commercial presence it was necessary for investment to take place. In the case of pure establishment there was the ability and the authority on the part of the

subsidiary or the branch to produce a service within a host country. With commercial presence the service was in fact produced in the supplier country. Therefore, presence was defined as the ability to have an office which would market and facilitate the sale of the service produced abroad. Another member shared the view of the previous speaker. He added that national treatment meant the right to produce and supply services and be treated in the same manner as domestic producers and providers of services. Some restriction on the possibilities to produce services might be applied when considering establishment. Referring to the document circulated by his delegation, i.e. MTN.GNS/W/32, he indicated that it was not correct to consider that the paper left the question of definition to the sectoral stage. It was clear from the paper, for example, that there was a need to arrive at some agreement on definition in order to identify the transparency requirements included in the general framework. Another member said that he saw the definition as covering those transactions which required effective access to a market. Effective access would sometimes require commercial presence. There were a number of different types of commercial presence ranging from the temporary presence of individuals and production facilities to a more permanent presence. For example, a representative office was not a subsidiary, although he would regard both as being covered by commercial presence. Regarding establishment, it could be said that if a producer was to be permanently present in a market, he had to establish. It was not said in MTN.GNS/W/29 that there should be a right of establishment across the board. Where an establishment was necessary to obtain effective market access, this should not be considered a "right". His delegation would, however, wish to have the possibility to negotiate it. Another member said that, while it was true that some sectors needed to have a minimum form of commercial presence or establishment, this was not required for all sectors, e.g. telematics services. Participants should think of the practical implications of concepts which had a universal application across all sectors. He agreed that commercial presence and establishment could be related to national treatment. Commercial presence and establishment dealt with the possibility of producing in a given market, while national treatment could be seen as the terms and conditions under which production was allowed, with a possible differentiation between home and foreign suppliers. One could see a possibility for commercial presence or establishment for certain services providers where national treatment was not provided.

52. The Chairman said that the Group should take note of the statements made, that the Secretariat would pay attention to statistical issues as set out in his introductory statement on this item and that the Group would revert to this item at a later stage in the light of further information before it. Furthermore, the Secretariat would prepare a background note on definition of trade in services, as well as a glossary of terms for the consideration of the Group and possible discussion at the next meeting. It was so agreed.

53. On Broad concepts on which principles and rules for trade in services, including possible disciplines for individual sectors, might be based, one member said that her authorities were working on a services proposal which

she hoped would be made available to the Group in the near future. The aim of this proposal was to elaborate a structure and a mechanism which would facilitate the progressive liberalization of trade in services on as wide a front as possible, while ensuring flexibility with respect to the differences in national policy objectives and stages of development. Regarding the negotiating process, she said that regulatory measures that only affected foreign services providers could not readily be distinguished from other regulatory measures. Also, while the protection of domestic industries might in many cases produce economic inefficiencies, such protection would not be eliminated overnight. Further, benefits from the negotiations should be available to each participant in the negotiating process. Finally, the heterogeneity of the services activities, and also of the economic interests of the participants themselves, should be recognized by the Group. This suggested that, in order to have successful negotiations, it was important to devise a structure that took into account the diversity of national priorities and different levels of development. Any proposal should be sufficiently comprehensive and flexible to allow interested parties to participate meaningfully and to the fullest extent possible in the agreement. Accordingly, one should not exclude from consideration a priori any trade liberalizing concepts, sectors or factor flows. An agreement would need to include at least three basic elements: principles of liberalization, rules and an exchange of concessions.

54. She said that the principles which would guide the negotiations would establish the institutional and procedural context in which the exchange and the enforcement of concessions could take place. A fundamental task in services trade liberalization would be to make restrictions on trade in services and related factor flows public and potentially negotiable. A mandatory transparency rule would be used to build an information base on measures and practices affecting trade in services as well as those affecting the relevant factor flows. All countries that wished to participate would submit information on their own current measures and practices that affected foreign suppliers. Participants would cross-notify each other's measures and practices. Together these measures would provide a snapshot of the situation as of a particular point in time. The transparency rule would provide the essential connection between the trade liberalizing principles and the exchange of concessions. It was difficult to imagine how contracting parties that did not satisfy the transparency requirement could meaningfully participate in other aspects of the services agreement. After all, in the goods area, tariff schedules had long been freely published. She said that most-favoured-nation treatment was a cornerstone of the GATT and it should form part of any agreement on services. Although the exchange of concessions might be negotiated bilaterally or plurilaterally, the benefits of the concessions should be extended to all those participants which accepted the agreed obligations. The exchange of concessions would be the key mechanism for the progressive liberalization of services trade. This part of the agreement should set out precisely defined obligations that would be supported by a dispute settlement mechanism. Taken as a whole, the concessions should provide each party to the agreement with a mutually acceptable package. The concessions

could, for example, contain a commitment to liberalize by removing a barrier, or a binding of the current application of a measure. Thus, countries with more open systems could receive credits for their current levels of openness. It would probably be most effective to conduct various rounds of negotiations over time in which the participants would exchange concessions as a package. This approach would provide an impetus to the liberalization process and help to ensure that concessions were exchanged on an m.f.n. basis. In conclusion, the basic elements of the proposal were: (1) a set of trade liberalizing principles that would be used to guide the negotiations; (2) mandatory rules, including requirements concerning transparency and m.f.n. treatment, that would establish the procedural and institutional basis for the exchange and the enforcement of concessions among parties to the services agreement; and (3) an exchange of concessions within which the participants would carry out most of their substantive liberalizing steps.

55. One member, referring to the concept of mandatory transparency, asked whether there was a link between national treatment, mandatory rules on transparency, an m.f.n. clause and the exchange of concessions. In his view, mandatory transparency would mean that participants in an agreement would be obliged to formally notify all the existing regulations and practices regarding services. He questioned whether it implied that those regulations and practices, which were not in compliance with the m.f.n. clause and national treatment, should be adjusted to conform to these concepts. Regarding the status of national treatment as opposed to the concepts of transparency and m.f.n., one member commented that national treatment was not a binding principle which would be operative immediately after signature of the agreement. The two principles which were to be operative were the exchange of concessions on an m.f.n. basis and the transparency requirements that outlined the régime under which services were regulated within the national jurisdiction. In the phase of exchange of concessions, there might be three different situations. First, a country might agree to bind an existing measure which would no longer be restrictive. Second, a country might agree to make a concession to remove a restrictive measure which would come into conformity with agreed principles, such as national treatment. Third, a country might retain the measure and not bind it to make it less restrictive.

56. Referring to the concept of standstill as contained in MTN.GNS/W/32, one member said that a standstill commitment would be an unbalanced way to deal with the present situation, since developed countries had extensively regulated the traditional as well as the new technologically advanced services sectors. As a result, there was a de facto asymmetry in the positions of developing and developed countries. Furthermore, she said that, following the mandate established in the Punta del Este Declaration, negotiations on trade in services should be carried out under the aegis of development and it could not be accepted that the liberalization of trade in services per se be considered as the objective of the negotiations. The progressive liberalization of trade in services might occur if and when it did not conflict with the objective of growth and development. Rules should

ensure that the basic conditions for development were met, and should not be temporary exceptions to general principles of a permanent character. The specificity of services transactions meant that concepts like national treatment, as applied to trade in goods, could not be applied to cross-border trade in services, and it was necessary to keep in mind that for trade in goods the object of international rules was the product and not the producer. The framework agreement on trade in services should contain concepts adapted to the specific nature of services transactions which would permit the entry of new countries into the international services market. To make the expansion of trade in services compatible with the promotion of economic growth and development it would be necessary to ensure that developing countries could maintain the compatibility of progressive liberalization and the development of their domestic services industries. The multilateral framework should also guarantee the access of developing countries to high-technology services on an equitable basis. The notion of liberalization should not be confounded with that of deregulation. The political objective which inspired national laws and regulations on services should be respected, and therefore the instruments to control foreign trade should remain in the hands of national authorities. It was necessary to adopt provisions to reduce the risk of market disorganization, and the most appropriate means would be determined by the obligations established in the multilateral agreement and by the concessions negotiated under its auspices. It was not clear how concessions in the services sector would be measured and negotiated.

57. One member said that MTN.GNS/W/32 did not contain much that could be included in the multilateral framework to achieve the objective of development. He was concerned by the equation in the document between provisions for economic development and special and differential treatment. In his view, economic development should provide means and ways to enhance the process of development in developing countries, while special and differentiated treatment was more a derogation to a given system, providing a certain degree of flexibility in assuming obligations. Referring to MTN.GNS/W/33, he said that some of the interesting ideas on development dealt with the results of development rather than with the process of development itself. A fundamental question was how trade in services could help development. Developing countries should endeavour to achieve benefits from both imports and exports of services. As far as exports were concerned, one question was what sectors would provide developing countries with a bigger share of the market and how to provide assurance for developing countries of an adequate level of market access in the developed countries. Developing countries should enjoy some degree of flexibility in order to maximize their benefits from imported services. A distinction could be made between producer services and consumer services, as each kind of services had a different impact on the process of development. The elaboration of rules in this area could help achieve a balance between rights and obligations, since developing countries did not enjoy a wide comparative advantage in the production and export of services. In order to maximize the benefits of imports and to improve export supply capacity, it was also necessary to examine the transfer of technology, development of human resources and restrictive business practices.

58. One member said that while transparency and liberalization assisted in the development of developing countries, certain participants referred to liberalization as the only objective and not as just one of the objectives of the negotiations. Referring to MTN.GNS/W/24, he asked whether liberalization would not increase the price of services instead of reducing them. He also asked whether liberalization would give a competitive push so that local consumers would use the services with the most developed technologies and at the lowest possible prices. Finally, he asked what would be the main contribution of the negotiations to the development of developing countries and whether trade liberalization would assist them in their development.

59. One member, referring to some of the concepts in MTN.GNS/W/32, said that the benefit of the m.f.n. concept to the participants in the general framework was not clear to his delegation. If the m.f.n. concept at the sector or activity level had to be confined to those participants who had accepted higher commitments, it was unclear what the m.f.n. benefit would be for those participating in the general agreement. This approach was too cautious a view of the application of the m.f.n. concept in any multilateral framework. Regarding standstill, he wondered whether it had to be included in a multilateral framework, since a multilateral framework as such should result in a set of rules and principles which themselves should constitute the benchmark for the members of the agreement. This was separate from the fact that the rules and principles should not give unbalanced advantages to those countries which had developed their national regulations. Regarding safeguards, he said that, since the concept had been flagged but not developed, it was difficult to appreciate its meaning. The paper only indicated that it would be difficult to incorporate this concept in the general framework, since it would have to be applied differently in different sectors. Proponents of MTN.GNS/W/32 should develop their ideas in a more concrete manner, to ascertain the implications for specific sectors such as financial services.

60. On Coverage of the multilateral framework for trade in services, one member requested clarification of the meaning of the phrase "whole sphere of services" referred to in MTN.GNS/W/32. One member said that it would be helpful to get answers to the invitation at the last meeting for those countries which had submitted proposals to indicate which sectors they had in mind in order to better appreciate how some of the proposed concepts would operate in practice (paragraph 52 of MTN.GNS/13). He also asked whether reference to key personnel in that paper meant that other forms of labour mobility were excluded. One member said that the multilateral framework should cover, not only cross-border services, but also services accompanying temporary factor movement. His country was interested in seeing temporary manpower services, such as construction, maintenance and repair, engineering and medical services, covered by the multilateral framework. Another member said that it would be helpful to hear ideas about the types of activities or the groups of sectors that countries thought should be covered by the multilateral agreement. In his view, if one wanted to reach a successful completion of the negotiations, one should see if a

mix of sectors could meet the interests of countries at various levels of development. In practice it meant that the agreement had to cover some high technology services sectors, some medium technology sectors and some labour intensive sectors.

61. On Existing international disciplines and arrangements, the Chairman said that it had been suggested that more detailed information than that contained in MTN.GNS/W/16 was required on certain aspects of existing disciplines and arrangements.

62. After intensive discussions, the Group decided that a set of questions accompanied by a letter be sent to three international organizations - the International Telecommunication Union (ITU), the International Civil Aviation Organization (ICAO) and the United Nations Conference on Trade and Development (UNCTAD) regarding the Liner Code - in order to obtain more complete relevant information. It was also proposed that the Chairman would meet personally with the heads of these organizations in order to provide them with any clarifications they might need concerning the purpose of the questions and the nature of the requested information. In addition, a representative of each of the three organizations would be invited to attend the next meeting of the Group with a view to responding to any further questions and providing specific clarifications as considered necessary as a follow-up to the replies to the questions. The Chairman's intention was for the written replies from the organizations to be distributed by the secretariat to member countries in advance of the next meeting of the Group. It was so agreed. A number of delegations suggested that the Group should pursue and expand its contacts with other international organizations.

63. 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, one member, referring to MTN.GNS/W/32, said that the abuse of dominant market positions was one of the principal obstacles to the expansion of trade in services. This was particularly due to the distortions it caused to the structure of prices and to the restrictions it imposed on the access of new participants to the market. The negotiation of a multilateral framework agreement should aim at correcting this situation through the establishment of principles and rules to inhibit, inter alia, predatory behaviour towards competitors, abusive use of intellectual property rights, discriminatory price practices, mergers, associations or other forms of acquiring control with a view to reaching a dominant market position, the imposition of conditions to supply services, market sharing agreements and other measures that affected international competition and could have negative consequences for international trade in services and for participation of developing countries in that trade.

64. One member raised the question of how participants would define dominant positions and referred to monopolies being established by regulation and market sharing arrangements such as the ones introduced in the United Nations Conference Code of Conduct for Liner Conferences. His

government was working on a list of perceived obstacles which might be ready by the end of the year. He was of the opinion that the best way to deal with barriers was to provide specific examples.

65. One member noted that this element referred to measures and practices contributing to or limiting the expansion of trade in services, and not to perceived obstacles. Another member said that no measures could be considered restrictive per se, and it had to be considered in relation to the purpose it was intended to serve. It could be restrictive from the point of view of one country but promote the expansion of trade in the view of another country. This was particularly important if the initial distribution of the market share was inequitable.

66. In concluding, the Chairman said that the next meeting would be held on 17-20 May 1988 with the same agenda. For this meeting, the Secretariat would circulate a background note on definition of trade in services, a note on a glossary of terms and, as available, the written replies from the international organizations concerned.