

MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND

RESTRICTED

MTN.GNS/16

8 August 1988

Special Distribution

---

Group of Negotiations on Services

NOTE ON THE MEETING OF 18 - 22 JULY 1988

1. The Group of Negotiations on Services (GNS) held its fifteenth meeting from 18 to 22 July 1988 under the Chairmanship of Ambassador F. Jaramillo (Colombia).

2. As indicated in airgram GATT/AIR/2630, Item 2.2 of the agenda contained the five elements listed in the programme for the initial phase of the negotiations. Concerning the element "Existing International Disciplines and Arrangements", the Chairman recalled that at the last meeting of the GNS the Group had before it the replies to the questionnaires which had been sent to ICAO, ITU and UNCTAD. Representatives of these organizations were also present. During the course of the discussion a number of delegations had indicated that they had had insufficient time to study in detail the responses to the questionnaires. The Group therefore had agreed that representatives of ICAO, ITU and UNCTAD be again present at this meeting to respond to questions. The Chairman suggested to start the proceedings by addressing Item 2.2 of the agenda. He welcomed the representatives of ICAO, ITU and UNCTAD and invited them to take the floor.

3. The representative of ICAO thanked the Chairman and the members of the GNS for reinviting his organization to take part in the Group's deliberations. Upon return from the last GNS meeting he had presented to the ICAO Council a report on the ways in which civil aviation issues were discussed in the GNS. The Council had expressed its appreciation for the constructive approach taken by the GNS and had instructed ICAO's Secretariat to co-operate with the GNS with regard to its need for any additional information so that the air transport system - and ICAO's rôle in it - were properly taken into account in the Group's work.

4. A member speaking on behalf of a group of countries recalled that the GNS was looking, from a multilateral point of view, at ways in which a worldwide liberalization of trade in services could be brought about. At the same time, some delegations had discussed the possibility of achieving in some sectors a form of liberalization that was essentially plurilateral in character, involving a smaller number of countries rather than all of them. He asked the ICAO representative the extent to which such multi- and plurilateral liberalization exercises would be compatible with existing ICAO rules. Alternatively, what rules were needed to make such arrangements ICAO compatible? For instance, if two countries were prepared to offer to third country airlines, as a liberalizing concession in a

services agreement, access to the routes between the two countries, would this be compatible with the Chicago Convention? Similarly, if a larger group of countries were prepared to mutually liberalize their routes by granting free access only to airlines from countries within the Group, would this be compatible with existing ICAO rules?

5. The representative of ICAO indicated that the organization's legal instruments were amenable to plurilateral or multilateral arrangements. The particular bilateral test case mentioned was compatible with existing ICAO rules and would no doubt be welcomed by third country airlines interested in gaining access to such routes. However, given that most of the bilateral agreements were essentially reciprocal in nature, it was perhaps unrealistic to expect them to engage in unilateral liberalizing concessions. The second scenario could be regarded as a more practical possibility. Under existing ICAO rules, countries could conduct plurilateral liberalization exercises while legitimately denying airlines from non-participating countries the benefits of resulting agreements. Although worldwide multilateralism of commercial rights in civil aviation was still being considered by the ICAO - there was in fact one resolution encouraging the organization to pursue its efforts in this area - it remained a complex issue which continued to meet strong resistance in some parts of the world. However, as had been illustrated by the various scenarios which had just been discussed, liberalization remained an option which some countries could chose to pursue.

6. One member speaking on behalf of a group of countries was encouraged by the fact that several sorts of liberalization exercises seemed compatible with the Chicago Convention. The comments made by the ICAO representative concerning a unilateral liberalization exercise were well founded if looked upon solely from the point of view of the airline industry. However, once a broader definition of reciprocity was adopted, i.e. once the possibility of inter-sectoral concessions within an overall services compact was admonished, it became possible to view even unilateral attempts at liberalization in a different light. From a negotiation point of view, the key question therefore was whether a country obtained sufficient concessions in the services area as a whole to justify conceding concessions in particular service sectors. With regard to the concept of transparency, it was important to recall that it had a number of different meanings. For some delegations, it related to the need for government regulations affecting the providers of services to be transparent. Others had suggested the need for provisions covering the transparency of operators in the market. In this context, were there particular provisions in the Chicago Convention or in the operations of ICAO for ensuring and obtaining transparency as regards the ways in which the airlines operated, particularly with regard to the determination of fares on particular routes.

7. The representative of ICAO acknowledged that the concept of transparency had caused some difficulties at the time of responding to the questionnaire. However, with the help of the GATT secretariat, the ICAO now had a better understanding of its meaning in the context of the GNS. The ICAO felt that it was possible to apply the principle of transparency to the aviation sector and, in particular, to the determination of air fares. The setting of air fares was a function which governmental authorities typically delegated to their carriers. So far, it appeared that the carriers had been broadly successful in establishing fare levels around the world. Bearing in mind that fares could never be completely identical - owing to movements in exchange rates, differences in local costs and in sale conditions, etc. - evidence of transparency was nonetheless provided by the observed tendency for routes between two given points to have quite similar fare structures. Moreover, the airlines were continuously searching for instruments which could secure the complete equality of fares. A further attempt by ICAO and its member countries to inject more transparency into the aviation field was provided by the recently published Digest of Bilateral Air Transport Agreements which contained codified summaries of the main provisions of bilateral agreements which member governments, in accordance with the Chicago Convention and with the partial exception of some confidential agreements, had to file with ICAO. So far, more than 1,200 bilateral agreements had been filed. Having collected this information, the ICAO had analysed it and presented it to member countries in a computerized form as well as in the form of the Digest. This exercise provided member countries with blueprints to use when entering into bilateral agreements and promoted a greater degree of transparency as far as the drafting of such agreements was concerned.

8. The member speaking on behalf of a group of countries said he was intrigued by the existence of confidential agreements. He said that if the GNS were to accept (a notion that was currently far from being accepted) that member countries could negotiate agreements among themselves, these would most certainly be expected to be fully transparent. Could the representative of ICAO provide more information on these confidential agreements? What types of agreements were they and how did the ICAO go about its task of monitoring their compatibility with the Chicago Convention? The ICAO representative was further asked whether transparency applied to tariff structures, particularly as concerned the level of fares actually paid.

9. The ICAO representative replied that so-called confidential agreements had never been expected to be filed with the ICAO. There were instances in which confidential agreements of a plurilateral nature had been concluded but for the most part such agreements tended to be reached bilaterally. For example, problems of excess demand on particular routes often prompted the airlines to reroute their extra load of passengers via a third country carrier which might have excess capacity on that particular route. This "helping hand" was sometimes offered in return for a given percentage of

the fare applying to the route. Airlines entering into such agreements were usually intent on keeping them confidential. The airlines might also wish to keep confidential some provisions of agreements involving the pooling of services. Agreements on the application of special fares between two countries could also contain - for reasons of commercial secrecy - elements of confidentiality. So far as concerned the monitoring of bilateral agreements, be they confidential or not, the ICAO was not responsible for verifying whether member countries fulfilled their bilateral agreements. Rather, ICAO's rôle consisted of providing the framework in which agreements between member countries could be established. As to the question of fares actually paid, this was an area in which the ICAO carried out considerable research. For instance, the ICAO published a circular on Regional Differences in Fares, Rates and Costs for International Air Transport in which these differences - and the reasons for them - were both documented and analysed. Similarly, the ICAO published a Survey of International Air Transport Fares and Rates which was of special interest to those interested in the level of fares as well as in the possibility of making them more transparent. Mention was also made of ICAO's Manual on the Establishment of International Air Carrier Tariffs which provided guidance to member countries on the establishment of fares. The ICAO representative did not elaborate further on this comprehensive documentation but indicated his willingness to make it available to the GNS were the need to arise.

10. One member asked whether there were special and differential treatment provisions for developing countries in existing bilateral or plurilateral agreements under ICAO or if they were envisaged in discussions of future liberalization exercises. Moreover, had ICAO devoted particular attention to the technical consequences of a more liberal civil aviation regime? The worldwide expansion of air travel raised a host of problems - such as the adequacy of existing routes, overcrowding in particular airports, etc. - which required a certain degree of planning and concerted action. In this context, the rerouting of passengers via third country intermediates could be of relevance to some countries in assessing a liberalization agreement. On the issue of transparency, it was recalled that some airlines could exert significant influence on the flow of traffic by granting margins on ticket sales by travel agents. The involvement of various commercial agents in the air travel business raised problems which were worthy of further consideration.

11. One member asked how the concept of national treatment was given effect in the Chicago Convention. Was the concept made operational chiefly in the context of bilateral agreements under ICAO and, if so, did it apply to all agreements? If, moreover, that had been the intention, had it been realized? Alternatively, if the concept of national treatment was not universally adopted in bilateral agreements, would an exception have to be filed with ICAO as provided by Article XXXVIII of the Chicago Convention? Finally, could the representative of ICAO provide some insight into the

reasons which had prompted ICAO's Council to establish policies and guidance material for the implementation of national treatment in bilateral agreements?

12. As concerned the issue of special and differential treatment for developing countries in existing bilateral or plurilateral agreements, the representative of ICAO indicated that he was unaware of any agreement which explicitly took into account the fact that one of the contracting parties was a developing country. Most bilateral agreements reached under the aegis of ICAO were concluded on the basis of reciprocity and were unlikely to contain special clauses, with the exception of instances where one country willingly expressed a desire to provide technical assistance under the terms of an agreement. The same was true of most plurilateral agreements. ICAO did not turn a blind eye to the development needs of the developing countries. In fact, it recognized the need for and had been implementing, various forms of technical assistance. He noted, however, that the concept of preferential treatment had not yet surfaced in the context of current arrangements, nor had it been considered in discussions of future liberalizing exercises. The question of traffic rights was closely related to that of freedom of the air which had been discussed in the preceding GNS meeting. It was recalled that the so-called "fifth freedom" allowed an airline to carry traffic between points outside its country of registration. In practice, agreements of this sort were fairly common and often helped to resolve the problems of overcrowding on some routes. Such agreements, however, were not achieved automatically but were subject to commercial arrangements among the countries of registration and those between which the air traffic was to be carried. Such arrangements were typically negotiated as package deals. The representative of ICAO acknowledged that some travel agents were prepared to offer air fares at deep discounts but added that it was safe to assume that behind such deals were airlines intent on offering even lower prices. Travel agents were unlikely to offer such discounts without seeking some degree of compensation from the airlines. These so-called "bucket-shop" fares did not conform with the fares negotiated by the international airlines. Such practices, moreover, used to be considered as serious deviations from accepted rules - deviations which were punishable by IATA. Faced by the worldwide liberalization of air traffic and the concomitant proliferation of bargain fares, IATA had dismantled its control mechanisms in this area and ICAO had decided to involve itself no longer in matters pertaining to the enforcement of agreements on fares.

13. One member stated that it was important to address the numerous technical considerations which were raised by air traffic liberalization and recalled the need to reconcile such considerations with the economic and trade dimensions which were embedded in liberalization exercises. The representative of ICAO agreed that liberalization and technical matters went hand-in-hand. Indeed, the greatly expanded volume of air traffic which had recently been witnessed worldwide posed very serious obstacles to the orderly functioning of the civil aviation industry. ICAO was greatly

preoccupied by these problems, although it could not provide a simple, ready-made solution. However, work was proceeding on these and related issues, both in ICAO and in various regional fora. As to the application of national treatment in the context of the Chicago Convention, the representative of ICAO indicated that national treatment clauses were mainly encountered in bilateral agreements. Although a detailed analysis would require some time, use could nonetheless be made of ICAO's Digest of Bilateral Agreements with a view to analysing quickly particular country cases. National treatment clauses were not found in all bilateral agreements and countries which had chosen not to apply the concept of national treatment in their national civil aviation policies had in some instances filed exceptions with ICAO. This was partly why ICAO's Council had found it necessary to establish policies and guidance material for member states on this matter. The Council's decision, however, related more generally to its willingness to improve and supplement the organization's guidance efforts vis-à-vis the contracting states with a view to ensuring that the articles of the Chicago Convention were more fully applied and respected.

14. One member requested more information on the efforts currently being deployed by ICAO to further the aim of worldwide liberalization in the civil aviation industry. The representative of ICAO replied that there were some highly noticeable trends in various regions of the world pointing to the further liberalization of civil aviation. ICAO's rôle in this respect had to be considered in a somewhat different light: while favouring the negotiation of multilateral arrangements, it had never pronounced itself on the issues of liberalization or restrictive practices. Rather, ICAO's rôle consisted of monitoring existing arrangements and advising member countries on the various options they could pursue with regard to their civil aviation policies. Efforts at bringing about worldwide liberalization in the area of civil aviation - as well as resistance to them - could only be associated with individual states or regional country groupings.

15. Before responding to questions from members of the GNS, the representative of the ITU spoke briefly of the nature of statistics collected by his organization which appeared to be of relevance to the Group's work. He first described the data contained in the Union's Yearbook of Common Carrier Telecommunication Statistics. The data appearing in the Yearbook fell into two categories: firstly, the size of telecommunication systems, traffic and staff and, secondly, demographic, economic and financial information. Statistics provided under the first category included those relating to the telephone and telex services of various countries and covered such items as numbers of subscriber lines and volumes of traffic. As regarded international traffic volumes, only aggregate volumes of outgoing traffic were provided. Information provided under the second category included that relating to aggregate incomes

generated by different telecommunication services. Mention was also made of ITU's Table of International Telex Relations and Traffic. Published annually, it provides information on outgoing traffic in changeable minutes for each relation on which various countries' telex calls are established. The ITU representative also drew attention to ITU Books of the CCITT and CCIR World and Regional Plan Committees. These books and their supplements - published every four years (with the supplements appearing two years after the publication of the corresponding books) - provide information on outgoing telephone, telegraph and telex traffic on major international routes. Considerable information was further provided in the ITU's Economic Studies at the National Level in the Field of Telecommunications. These publications contained statistical information on such items as telephone density and percentage of telephone equipment covered by local production. Mention was finally made of the statistical information contained in the work of the International Consultative Committees. The ITU representative indicated that further details on these various statistical sources could be provided in written form if members of the GNS deemed it necessary.

16. One member referred to the responses given by the ITU on matters relating to development and drew particular attention to the reference to Opinion No. 2 of the Nairobi Plenipotentiary Conference which the ITU had made in its answer to question 3 of the questionnaire. He asked whether the ITU's mandate did or could in future envisage certain obligations on the part of member countries geared towards the promotion of development of developing countries in the telecommunications sector.

17. The ITU representative indicated that the reply to question 7 had listed a number of provisions contained in both the organization's Convention and in other legal texts which clearly stipulated ITU's responsibilities with regard to the promotion of development of telecommunications in developing countries. While ITU's Convention imposed various obligations on member countries, it did not to the best of his knowledge contain provisions as specific as those appearing in the Opinion of the Nairobi Plenipotentiary Conference which called upon member countries to grant preferential treatment to developing countries. He requested, however, the opportunity to have this information verified in the ITU.

18. The same member sought some clarifications on the nature of opinions formulated in plenipotentiary conferences such as those held in Nairobi. Were such opinions mere recommendations or did they represent conclusions of a more binding nature which all participating countries might have reached? Moreover, was provision 154 of the ITU's Convention - which called for the special needs of developing countries to be taken into account with regard to the use of radio frequencies and the orbit - of a binding nature?

19. The ITU representative recalled the hierarchy of norms applying in the organization. ITU's response to question 2 had made reference to the provisions contained in the Convention but had not referred to the Union's body of Administrative Regulations. Provisions of both these instruments were obligatory in nature and came first in the hierarchy of norms. They were followed, in turn, by resolutions of conferences and recommendations of international consultative committees, which by themselves were not of a legally binding character on members, and by recommendations and opinions of conferences, which were essentially of a persuasive - as opposed to mandatory - nature. On the question pertaining to provision 154 of the ITU Convention, it was noted that, while mandatory in nature, the obligation to take into account the special needs of developing countries in the use of radio frequencies and the orbit did not necessarily entail the granting of preferential treatment to the latter group of countries.

20. The same member requested more information on the precise scope of the ITU's mandate. In its reply (MTN.GNS/W/36/Add.1) to the questionnaire, the ITU had stated that its responsibility chiefly related to the telecommunication transport function, but added that some elements associated with international trade in telecommunication services also fell within the purview of the organization's mandate. At the same time, it was noted that rapid technological developments had somewhat blurred the distinction between the transport and information processing functions. Against this background, was it right to assume that all transactions relating to the telecommunication transport function - be they economic or technical in nature - fell squarely within the scope of the ITU's mandate?

21. The ITU representative said that it was difficult to provide a clear-cut answer to the latter question as it involved a fair degree of interpretation of the precise nature of ITU's mandate as it related to the telecommunication transport function. It was clear, on the one hand, that the establishment of regulations applicable to the telecommunication transport function fell clearly within the ITU's mandate. Similarly, one could argue that technical and operating questions, as well as tariff principles, were also well within the Union's mandate. There was considerably less clarity, on the other hand, in areas related to the various concepts, such as national treatment or transparency, which were being discussed in the GNS. For this reason, the ITU representative preferred not to give a definitive answer at this juncture.

22. The same member suggested that the issue of the scope of ITU's mandate - and the degree to which it encompassed all aspects, both technical and economic, of the telecommunication transport function - could be treated separately from that of the relevance for the telecommunications sector of the concepts being discussed in the GNS.

23. The ITU representative felt that the precise meaning of so-called "economic aspects" of the telecommunication transport function was somewhat unclear. Some economic aspects could indeed be considered as falling



squarely within the purview of the Union's mandate, both in the context of its regulation making activities and in that of the various recommendations made through the work of the international consultative committees. However, when viewed in their totality, such economic aspects took on a more ambiguous meaning. He recalled that while the ITU was fully empowered to regulate the telecommunication transport function, it was not concerned - except under special circumstances - with regulating the contents of telecommunications. The ITU representative indicated that the ITU Secretariat would gladly address this issue in greater detail were the GNS to find it of use to its work.

24. One member representing a group of countries noted that while the ITU mandate certainly encompassed the telecommunication transport function, it probably did not regulate every aspect relating to that function. For this reason, there would not necessarily be an incompatibility between the ITU's mandate and other international agreements aimed at regulating some aspects of telecommunication sector not currently covered by the ITU Convention. Similarly, since not all economic aspects of telecommunications were covered under the current ITU framework - for instance, the relationship between telecommunications and other economic activities - other agreements aiming at providing rules to govern this relationship would not necessarily conflict with the operations of the ITU.

25. The ITU representative acknowledged that, just as the GATT did not regulate all matters concerning world trade, the ITU did not regulate every single aspect related to the telecommunications sector. It was worth recalling, however, that the ITU was in the business of regulating relations in which the telecommunications activities of member countries impinged upon each other. As such, it was involved in matters such as international telecommunications or the use of radio frequencies and the orbit whose impacts were universal in character. As to the relationship between telecommunications and other economic activities, it was true that the ITU was not directly involved in the regulation of many services employing the telecommunication transport function but in which telecommunications were a key ingredient. It was somewhat unclear, however, how other international agreements made outside the ITU could deal with certain telecommunications issues while leaving others to the ITU. Although this was an interesting question in theory, it remained one which could not be so readily answered in practice and which should be the subject of further in-depth study.

26. One member requested more information on Resolution 24 of the Nairobi Plenipotentiary Conference which dealt with telecommunication infrastructure and socio-economic development and which the ITU had made reference to in its response to question 7. He added that the ITU's response had appeared to suggest that the Union was concerned not merely by the economic content of telecommunication activities but also by their socio-economic and developmental dimensions.

27. The ITU representative indicated that Resolution 24 had called on the ITU to continue to highlight, through its various studies, the importance of telecommunications in the socio-economic development process with a view to making telecommunication development a key agenda item in national planning policies. Studies undertaken prior to the adoption of the Resolution, as well as those continued afterwards, had clearly documented the benefits - both direct and indirect - flowing from a well-developed telecommunication infrastructure.

28. The Chairman thanked the representatives of UNCTAD, ICAO and ITU for their willingness to respond to supplementary questions from members of the GNS. Their participation in the deliberations of the Group had been most useful and informative and had provided important input into the work of the GNS. The Chairman turned to Item 2.2 of the agenda and opened the discussion on submissions before the Group including those circulated since the last meeting of the Group. He invited comments on three documents, MTN.GNS/W/37, MTN.GNS/W/39 and MTN.GNS/W/40, which had been presented at the last meeting of the GNS.

29. One member, representing a group of countries and commenting on MTN.GNS/W/37, noted that the authors seemed to have a preference for a rule-based as opposed to a concession-based approach. He recalled this was also the preference of his own delegation and should be complemented with as wide a coverage as possible. Although he was sceptical as to whether the three phases presented in the paper could be achieved by the end of the Uruguay Round, he agreed with the authors on the way to organize work. He said his delegation would prefer, however, to follow a working hypothesis on rules and other elements to be contained in a framework agreement. This working hypothesis should be elaborated and then tested as to its applicability to existing regulations and perceived barriers. In this process, many procedures could apply, including the anonymous notification of sectors suggested in MTN.GNS/W/37 or the open notification of individual barriers in MTN.GNS/W/39. He pointed out that his delegation had advocated an open-ended approach where no aspect of trade in services was excluded ab initio, and the types of barriers encountered in such trade would be determined through an analysis of perceived barriers. This analysis could furthermore play a rôle in arriving at an operational approach to deal with cross-sectoral and specific sector problems as well as contributing to increased precision in defining rules and principles. He expressed concern that the approach outlined in MTN.GNS/W/37 might not provide for a wide sectoral coverage, particularly if one intended to maintain the time table set for completion of the Uruguay Round. Regarding definitions, he said that defining the boundaries of each sector could prove to be very problematic since it was becoming increasingly difficult to draw clear lines between services sectors. He recalled that his delegation had expressed a preference for open-ended horizontal approaches where the need for definitions might be less prominent. As concerned reservations, he warned that they could create obstacles to further negotiations right at

the starting point. He stressed that an alternative approach could be the one outlined in his delegation's previous submission (MTN.GNS/W/32) where emphasis had been placed on an initial analysis of the possible formulation of the principles at the sectoral or sub-sectoral level. He said that this approach should give rise to clear formulations on a consensus basis and not to excessive reservations. The procedure would involve a compilation of perceived barriers to trade and should be followed by a comparison of various formulations of principles to be incorporated in a general framework agreement. Whenever it was found that principles could not be formulated in identical terms for different cases, the elaboration of a principle should follow either a least common denominator approach or a high level of ambition combined with interpretative notes or exceptions. This should accomplish the testing of both general and more specific rules and principles. On the elaboration of principles, he concluded that his delegation and the delegation presenting the paper seemed to agree on the desirability of formulating general principles and testing them on the sectoral level. They differed, however, on how to accomplish these goals. Regarding the MFN principle, he sought clarification as to how it would apply in the case where a country made a reservation according to paragraph 10 of the paper in a sector where that country together with a limited number of other countries had already achieved a certain level of liberalization. He also indicated that any impediment to trade in services not covered by initial commitments would be open for later negotiations. However, he stressed that there was a variety of reasons as to why immediate elimination of trade-distorting measures was infeasible, owing to either the possibility of gradual adjustment to the rules of an agreement or to the existence of exceptions based on important national policy objectives.

30. Regarding MTN.GNS/W/39, the same member appreciated the fact that the paper attempted to find a realistic approach towards sweeping commitments in complex areas such as national treatment. He also appreciated the attempt to set out a working hypothesis as it could represent an important tangible achievement for the Mid-Term Review. He found that the four elements of paragraph 6 of the submission were a good basis for discussions on a working hypothesis, and agreed that the word "principles" referred to long-term negotiating aims. Also, he agreed that an analysis of all regulations in vacuo would represent a cumbersome procedure and suggested that an analysis of perceived barriers would be a more practical approach. Although, he appreciated the idea that there should be no attempt at the outset to constrain the scope of the agreement, he was not convinced that a request/offers approach would be sufficient to determine coverage. He feared that it would result in a patchwork agreement and that it would provide for little transparency on the whole since it would make it relatively difficult to get a comprehensive picture of the scope of the agreement. It would also be difficult to implement in practice since exporters would always have to check individual country lists of concessions in order to find out the rules of the game in each market. He

recalled that his delegation had advocated a general rule on transparency on an MFN basis applicable to all trade in services. He said that the analysis of barriers his delegation proposed for during the first rule-making phase would include the determination of the types of barriers. Countries applying such barriers would not be identified, but the perceived barriers could be indicative of the main areas of controversy or those where problems would be unlikely. Regarding monopolies, he noted that the authors suggested a case-by-case approach as to the degree of openness, and enquired whether the possibility of eventually negotiating more general rules of behaviour for monopolies had been rejected. On MFN, he shared the view of another member that MFN commitments that were too strict might be counterproductive in the long run. He asked whether on market access undertakings, the member in question would consider discussing the types of concessions listed in the context of more generally applicable rules. Such rules could be included in the framework itself with sectoral annotations or directly into sectoral undertakings.

31. Regarding document MTN.GNS/W/40, one member said that it covered some comprehensive elements in what constituted a "short-cut" to a potential framework on services trade. Both the issues of principles and of scope of coverage were dealt with in the paper and should be subject to in-depth discussion. He emphasized that his delegation was also of the opinion that an enforceable general agreement with principles, regulations and supplementary sectoral agreements was the most acceptable and efficient approach for a framework on trade in services. Regarding national treatment, he commented that his delegation had no difficulties with the definition advanced in (3)(i) of the submission, but drew attention to the "condition" imposed on national treatment in (3)(ii). This related to existing discriminatory measures and to the proposal for the reduction of such measures. He also noted that under "coverage", the paper introduced the idea of placing reservations on the application of certain principles. Stressing that his delegation placed a great deal of importance on national treatment, he sought clarification as to what the exact relationship would be between national treatment and the notion of placing reservations on principles. He also requested further explanation regarding the application of MFN treatment. Specifically, he wanted to know when conditional MFN could be applied and what the legal grounds for its application would be.

32. Another member representing a group of countries also enquired about the application of MFN, this time referring to the fact that the application could be reserved to "reciprocal international arrangements and the reciprocal measures stipulated by laws and regulations". He also requested some clarification regarding the idea of periodical (e.g. every three years) reviews of the framework and how extensive the review would be. He pointed out that for his delegation, only some parts of the arrangement should be subject to review, whereas other parts should stay unchanged. He also referred to section 4 of the submission, "Relationship

between the General Framework and the Sectoral Agreements", to express sympathy for the way it was drafted and asked for examples to be given of cases where the general principles might not apply to sectoral arrangements.

33. One member said that the most worrisome feature of the submission was the fact that it was exclusively inspired by the text of the General Agreement and took no account of the many reservations expressed primarily by developing countries regarding the application to trade in services of rules and principles devised for trade in goods. She stressed the fact that specific references were made in the document to particular provisions of the GATT (such as subsidies, state enterprises, safeguards) and recalled that it had been precisely the "special characteristics of trade in services" which had made it impossible to treat the subject within the GATT framework in the first place. She said the Punta del Este Declaration called for an innovative arrangement where the liberalization of trade in services would be compatible with the goal of promoting economic growth and development. She emphasized that the best way to make progress in the GNS should be through an in-depth examination of what the member submitting the discussion paper recognized as the "special characteristics of trade in services". She added that this was implicit in the content of the GNS agenda and had not yet, by any means, been fully addressed.

34. One member said that the two approaches to the drafting of the general framework mentioned in the paper were not necessarily mutually exclusive and that he could envisage the possibility of having an enforceable general framework as well as enforceable sectoral agreements. He noted that the paper seemed to put forward this idea as well, and brought attention to the fact that in the same section of the paper - "Relationship between the General Framework and the Sectoral Agreement" - the idea was put forward that sectoral agreements should take precedence over those of the general framework. He said that the acceptability of this approach would depend on what was put into the sectoral agreements as well as the general framework, and that he envisaged certain fundamentals in the general framework which would not be overridden by sectoral provisions. Referring to the section on MFN treatment, the member expressed concern that the possibility of reserving the application of MFN to both reciprocal international arrangements and measures stipulated by national laws and regulations could be construed to mean that MFN could be waived. He suggested that this issue required cautious examination, so as to ensure that exceptions to MFN were few and far between. As concerned the section on national treatment, he said that existing laws seemed to take precedence over new commitments and that when taken in conjunction with the proposed approach to MFN, this seemed to suggest the grandfathering of existing laws and regulations. He expressed doubts as to whether this should form the basis of the Group's approach. Finally, in relation to "Special and Differential Treatment of

Developing Countries", the member said that his delegation regarded such treatment as very important, and that it should become an integral part of a future agreement.

35. One member said that his delegation generally endorsed the rules and principles advanced in the paper and said that he shared some of the concerns on non-discrimination and reciprocity mentioned previously. He had additional concerns relating to the subsidy and safeguard provisions. He pointed out that in the sections relating to both of these provisions mention had been made of the "special characteristics of trade in services" and he wondered how these characteristics would be reflected when dealing with subsidies. He added that the commitment, as stated in the document, to "curb the trade distorting effect of subsidies" was not strong enough since the elimination of such effects was what was required. He also asked whether taking into account the special characteristics of trade in services would imply a more successful formulation of safeguard provisions than had been the case in the area of goods trade. Finally, he endorsed the approach suggested in the "Evolving Arrangement" section of the paper and echoed other members' views that the mechanisms presented in the proposal were quite crucial for the success of an evolving agreement. He found the idea of continuing reduction of restrictions through further rounds of negotiations of particular value.

36. One member found the submission to be a "useful checklist" of relevant elements for the negotiations. He said that he perceived that the two approaches described in the paper for the drafting of the general framework - namely, an enforceable general agreement and/or enforceable sectoral agreements based on a "standard model" general framework - did not constitute an exhaustive enumeration, and that this was confirmed by his own delegation's contribution (MTN.GNS/W/39). Regarding transparency, he hoped that rendering public relevant measures affecting trade in services would not only be feasible in principle but also in practice. He shared the concerns of other members regarding MFN treatment and interpreted national treatment, as stated in the paper, to be basically a standstill commitment and not a mechanism for liberalization per se. Even though he acknowledged the mention of "reduction and elimination" of measures under item (ii) of "National Treatment", he was still not clear on whether this would happen in this Round or later. Regarding section 1(4), "Special and Differential Treatment of Developing Countries", the member enquired why, in view of the reference in the Punta del Este Declaration to "development", had special and differential treatment been selected as the relevant approach. He also echoed the concerns of another member regarding subsidies and safeguards. He agreed to the relevance of additional rounds of negotiations and trusted that careful consideration would be given to liberalization and improved access in the envisaged periodical review, even though no explicit mention had been made of these concepts in the section "Evolving Arrangement". On coverage, he sought clarification on the possibility of reserving the application of principles contained in the framework. Regarding point 3(1), "Mechanism for Enforcement", he found the

idea of refraining from restrictive or distorting measures during the negotiation to be analogous to a standstill commitment during the negotiations, but saw a problem in how to determine what such measures would be during this period. Finally, he shared the concerns expressed by other members on the proposed precedence of the provisions of sectoral agreements over those of the general framework.

37. One member welcomed the submission and said that it provided the elements of a framework for trade in services. He acknowledged the mention of the two different approaches to the drafting of an agreement and noted that it seemed to be the case that the member in question had opted so far for the approach which would have enforceable rules and sectoral arrangements. Regarding transparency, he noted that no mention had been made beyond the more traditional GATT notification process and enquired whether consideration had been - or would be - given to the publication of proposed regulations and to the possibility for comment on the part of interested parties. He shared previously expressed concerns on the issue of national treatment but sought clarification on whether items (5), (6), (7), (8), (9) and (11) were intended only to be "examined" or discussed, and did not yet reveal any major decision as to the elements which the member would like to see included in an eventual agreement. Regarding section 3, "Mechanism for Enforcement", he enquired whether the standstill proposed would go into effect at the time an agreement was reached and signed by the participating parties. The standstill could be achieved through the acceptance of the provisions of the agreement at the time of adoption, if the appropriate disciplines were written into the arrangement. With respect to section 4, "The Relationship between the General Framework and the Sectoral Agreements", he noted that the approach suggested allowed for separate sectoral arrangements and wanted to know if the member in question would consider two main possibilities: first, the possibility of annotations to the general framework which clarified its application to specific sectors; second, the possibility of allowing for sectoral understandings and principles in addition to those provided under the general framework.

38. Another member representing a group of countries found MTN.GNS/W/40 to be a useful checklist. He said that while the paper had mentioned the need for further examination, it had given few indications as to how this should be undertaken. In view of its numerous references to GATT provisions, the paper had brought out the relevance of GATT compatibility for an agreement on trade in services. He contended that the reasoning behind the submission was similar to that of his delegation on central concepts such as transparency, MFN, regional and local governments, regional economic integration, periodic reviews and further rounds of negotiations. He also indicated that the authors of MTN.GNS/W/40 seemed to recognize, as his own delegation had, the need for additional sectoral arrangements. Regarding national treatment, he said that the approach presented in the discussion paper went further than that which his own delegation had taken in the absence of more complete knowledge of the sectoral implications of the

concept. He also sought clarification on whether the reduction and elimination mentioned in section (ii) of "National Treatment" referred to discriminatory treatment or to restrictive regulations as such. He said that this distinction was closely related to the important one between national treatment and market access and that, as another member had said, his delegation favoured trade liberalization as opposed to across-the-board grandfathering of existing laws and regulations which section 3(ii) of MTN.GNS/W/40 appeared to imply. Regarding coverage, the member found a great similarity between the paper at hand and MTN.GNS/W/37 and warned of the risk of ending up with a very narrow scope in the final agreement. Finally, he joined with others in endorsing the relevance of agreeing on a framework of an evolving nature which would in effect provide for future trade liberalization.

39. One member said that when speaking of expansion of trade and trade liberalization, an important element in these negotiations was "development" as reflected in previous submissions. He pointed out that not only was the improvement of trade in services statistics and further research on trade in services and development-related issues important, but also the possibility of additional provisions necessary to address the needs of developing countries. His concern related to whether the delegation responsible for MTN.GNS/W/40 would be in a position to commit itself to an agreement promoting the access of developing countries to modern technology and to the international information data network.

40. One member said that he agreed with the authors of MTN.GNS/W/40 that the instrument to be agreed upon should be more than a "standard model" for sectoral arrangements, and should in effect "frame" these arrangements. He said this appeared to be the choice the member in question had made, even though no commitment had yet been undertaken. In that respect, he was interested in knowing more specifically the meaning of the submission's last sentence where it was stated that sectoral provisions took precedence over general provisions. His particular concern related to whether this "precedence" implied that some sectoral arrangements could be completely independent from the general framework, and even in the case where they could not, whether they could still take precedence over the general framework on certain relevant principles to be applied. Regarding the possibility of periodical reviews of the agreement, he agreed that it went hand-in-hand with an evolving arrangement but showed concern as to what their implications would be for the security of acquired rights and the stability of the multilateral regime. He drew attention to the fact that perhaps by adapting the agreement to technological and even trade innovations one could modify the whole scope of rights and obligations. If that was not the intention, he wondered how one could avoid it. Finally, as concerned section 1(2), "Most Favoured Nation Treatment (Non-Discrimination)", he asked whether the member in question felt that non-discrimination equalled most-favoured-nation treatment and requested further explanation if that was indeed the case. If that was not the case,



he wanted to know why the member had not given a more detailed attention to the relationship between non-discrimination and most-favoured-nation treatment.

41. One member noted that elements 1, 3 and 4 of a previous paper by the authors of MTN.GNS/W/40 (i.e. MTN.GNS/W/2), which related to definitional and statistical issues, coverage, existing international disciplines and arrangements, had not been touched upon in the present contribution and asked how they would be dealt with. He also noted that the structure of the present paper followed closely item 2 of the earlier paper ("broad concepts"), reflecting a great similarity with the General Agreement. He brought attention to the fact that the treatment of development was inadequate to the extent that it was only dealt with in the context of special and differential treatment, once again closely following the GATT model. He said that Part II of the Punta del Este Declaration had not spoken of such a treatment but, much more broadly, of the expansion of trade for the promotion of development. He also expressed concern about the qualification presented in various elements of the discussion paper relating to the need to take into account the results of examinations in the Group of Negotiations on Goods (GNG). He said that one needed to be very cautious in establishing such linkages since they would only create difficulties in the progress of the work of the GNS. As to the repeated references to the "special characteristics of trade in services", he said that it would be very useful to hear about the implications of such characteristics for concepts and principles. He noted that one of the main purposes of the negotiations was to see how these special characteristics were perceived by each member and how they should be dealt with in the fulfilment of the mandate. He recognized that this task was a most difficult one. Indeed, to be able to talk about the characteristics of services, one needed to know what types of traded services were under consideration. He noted that this was touched briefly upon under section 2, "coverage", where it was stated that agreement should be reached in this round on the service sectors to be covered. He asked whether this should be construed to mean that a framework could only be agreed upon once there had been agreement on its sectoral coverage. Regarding national treatment, he pointed out that the paper had been quite specific in terms of certain categories of services, foreign services enterprises, sellers and agents and in proposing that national treatment be applied to them. He noted that this formulation seemed to leave out labour services, thus already excluding certain sectors without the achievement of agreement on the sectors to be covered as proposed under section 2, "coverage".

42. One member welcomed submission MTN.GNS/W/40. Concerning transparency, the paper stated that measures affecting trade in services should be made public in principle but who, the member asked, would determine which measures affected and which did not affect trade in services? He said his delegation had for some time stressed the need for a definition of measures affecting trade in services as the Group still did not know exactly what they were. Regarding most-favoured-nation (MFN) treatment, the member

requested clarification on an apparent contradiction. He understood the first sentence to mean that the advantages stemming from the framework agreement would be accorded to all participating countries on an unconditional basis. The following sentence, however, said that participating countries could reserve the application of MFN to the reciprocal international arrangements and the reciprocal measures stipulated by national laws and regulations. Concerning national treatment, the member said that MTN.GNS/W/40 referred to the discriminatory effects of existing measures. As far as his delegation was concerned, one could not speak of discrimination within a country itself but only at the frontier or between different countries.

43. Another member noted that MTN.GNS/W/40 set out two approaches to the structure of a framework agreement and concentrated on incorporating all the principles and rules to be enforced in the general framework. Her delegation endorsed the notion of a soundly based framework agreement with broad coverage and generally applicable principles. She also endorsed the structure of the paper which was based on GATT-type principles while recognizing that there were differences in the ways the principles could be applied. She expressed concern about the reference to the special characteristics of trade in services and hoped it did not mean that there would be so many exceptions for different sectors to be covered that the general principles and rules outlined in MTN.GNS/W/40 would become irrelevant. Her delegation supported an evolving agreement including some form of rollback or progressive liberalization and wanted clarification on whether there was any suggestion of permanent exceptions to the agreement. On coverage, she understood that the document advocated some form of negative list or reservations and asked what criteria would be used to decide which sectors would be classified as "difficult" as referred to in the document. Concerning national treatment, she asked how the issues of market access and investment related to national treatment as expressed in the paper.

44. One member noted the conciseness of submission MTN.GNS/W/40 but also its vagueness on certain points. His delegation had been struck by the assimilation of the two principles of MFN treatment and non-discrimination, although the general trend in the GNS was to dissociate the two concepts as had been done in the secretariat Glossary. Regarding special and differential treatment, he noted that an attempt had been made to draw a curtain on the concept of development which, however, should determine the whole of the Group's approach to the multilateral framework. Furthermore, he deplored the tendency to stick too closely to trade in goods and the fact that services was virgin territory could not justify such a strict adherence. The member also asked whether in reaching an enforceable agreement the country submitting MTN.GNS/W/40 was in favour of a "rigid" framework agreement which included all the rules and principles.

45. Another member welcomed submission MTN.GNS/W/40 as a useful check-list of ideas which represented priorities from the viewpoint of the delegation tabling the document. He noted that the basic idea in the proposal was to

make the framework agreement an enforceable arrangement, and in this regard the question arose how far obligations and rights would be included at the general rather than at the sectoral level. Without first clarifying the types of transactions involved and the question of sectoral coverage, his delegation was not in favour of trying to draw a clear line between rules in the framework agreement and rules at the sectoral level. The member noted that document MTN.GNS/W/40 put forward the concepts of MFN and non-discrimination as being synonymous although they represented two different things: MFN implied the automatic extension of benefits or concessions to other participating countries, while non-discrimination did not provide for such an automatic extension. Concerning special and differential treatment, he noted that it was a matter of devising exceptions or certain flexibilities in undertaking obligations. He agreed with the point made in MTN.GNS/W/40 that further examination was required to ascertain what provisions were necessary to address the needs of developing countries and their economic development objectives rather than providing special and differential treatment. The member stressed that there was no conceptual link between the GNG and the GNS because what the GNG was required to do was simply assure the effective application of the special and differential treatment principle in the course of the negotiations, whereas the GNS was involved in a completely different exercise. On coverage, he noted that the document said that in concluding the framework, the participating countries also needed to agree on coverage. He suggested that the question of coverage should be addressed at a much earlier stage as it would be difficult to agree on rules and anticipate their impacts unless the sectors to which they would apply were known. In addition to the elements addressed in submission MTN.GNS/W/40, he noted that other points which had to be dealt with were absent from the paper, notably respect for national policy objectives, and the conditions which should be attached to the progressive liberalization of trade in services such as requirements designed for the behaviour of service suppliers to developing country markets.

46. One member pointed out that submission MTN.GNS/W/40 contained many references to GATT Articles and noted that his delegation reserved judgement on whether this was the right way to go about these negotiations. He said the Group was more or less starting from scratch but this did not mean that it could not examine various ideas which could be relevant such as the three sectoral agreements (i.e. ICAO, ITU and UNCTAD Liner Code) discussed earlier at this meeting. Concerning the many references in the document to the special characteristics of trade in services, his delegation considered that one of those characteristics was their heterogeneity, making it difficult to assume automatically that one set of principles could cover all the sectors which could be negotiated in the GNS. Turning to the question of the framework approaches outlined in the document, he emphasized the need to consider a variety of approaches to reach the final objective of the negotiations. The approach advocated in the paper implied that the coverage of trade in services could be limited after agreement on an overall framework of enforceable rules and

principles. He asked where that would leave the framework agreement in a legal sense, if certain sectors were not covered by the general rules and principles, and assumed that the last paragraph of document MTN.GNS/W/40 stated the relationship between the framework and sectoral agreements. Regarding the question of special and differential treatment, his delegation shared the concerns of other GNS members that the concepts of special and differential treatment and development seemed to be used interchangeably in the document. His delegation wanted the concept of development to be an integral part of any framework agreement and not introduced as an exception to a set of rules and principles.

47. Another member, in referring to the principles and rules outlined in document MTN.GNS/W/40, and in particular to the special and differential treatment of developing countries, imagined that the country which submitted the proposal was thinking of the modalities and mechanisms to enforce the special and differential treatment principle. He further said that in the GATT one knew the limitations of attempts to enforce this principle and asked the delegation which had submitted MTN.GNS/W/40 to clarify their ideas on how to enforce the special and differential treatment principle. The member then asked whether the reservations mentioned in the proposal should be understood in terms of exceptions, or whether they were intended to carry some other meanings.

48. The member who had submitted MTN.GNS/W/40 said his delegation would return to the detailed questions and made two general points. First, the paper was not simply a check-list of suggestions for discussion but was intended to cover the essential elements to be included in a framework agreement and the mechanisms needed for its implementation. In that sense, his delegation had "crossed the bridge". Second, with regard to the Mid-Term Review, there should be a genuine consensus about the basic elements of a general framework, and he thought his delegation would be in a position to present more concrete ideas on the respective elements in the autumn. Further, in the context of the Mid-Term Review, the GNS should agree on the scheduling of the negotiations for the remaining two years.

49. While continuing with Item 2.2 of the agenda, the Chairman drew the Group's attention to three new submissions which had been circulated since the last meeting: MTN.GNS/W/42, MTN.GNS/W/45 and MTN.GNS/W/46. He said that after the presentation of these submissions by the countries concerned, he would invite general comments.

50. The member who had submitted MTN.GNS/W/42 said that the achievement of the goal of the Punta del Este Declaration concerning the development of developing countries demanded the fulfilment of certain secondary objectives: (1) sustained growth of production and productivity of the services sector in developing countries; (2) sustained growth of employment in the services sector in those countries; (3) improvement of the international competitiveness of goods and services produced by developing countries; (4) sustained growth of exports of services; and

(5) fair and equitable access to new technologies generated or distributed internationally by the services sector. In order to reach these goals the following ten measures would be necessary: (1) to establish the principle of relative reciprocity in recognition of the fact that there could not be equal treatment among unequal parties; (2) that services in which developing countries were competitive (i.e. labour-intensive services and labour as such), should be the subject of negotiations; (3) that negotiations should not include the right of establishment or commercial presence of direct foreign investment; (4) that developed countries should undertake not to impose any further restrictions on imports of services from developing countries as from the Mid-Term Review meeting; (5) that for developing countries the following should not be considered barriers to trade in services: (i) laws and regulations already in existence relating to new services or the greater transportability of traditional services; (ii) laws and regulations concerning direct foreign investment; (iii) equal treatment for services, whether domestic or imported, which did not include direct foreign investment; (iv) non-discrimination among foreign international suppliers of services which did not include domestic suppliers; (6) unconditional and unrestricted application of MFN treatment to developing countries; (7) the granting of preferences in sectoral agreement negotiations of interest to developing countries; (8) analysis of ways and means to speed up the transfer of technology from developed to developing countries and further study of the relevance of the UNCTAD code of conduct; (9) that the framework agreement and sectoral agreement should reflect the fact that one of the main national policy objectives of developing countries' laws and regulations was their economic development; and (10) that sectoral agreements that could be established should be independent of each other and of the results of the negotiations on goods.

51. The member who had submitted MTN.GNS/W/45 noted that the multilateral framework could not simply be an ensemble of independent concepts, but should be made up of coherent elements. His delegation's submission was based on the main elements of the Punta del Este Declaration, namely the elaboration of a multilateral framework with the aim of promoting expansion of trade in services through progressive liberalization while respecting national policy objectives. The structure of the multilateral framework was set out under the following headings in the submission: principles, rules for autonomous behaviour, rules for negotiation of agreements, rules for competition, safeguards, institutional provisions, dispute settlement and transitional provisions. The submission had referred to three principles: access to markets, non-discrimination and national treatment, all of which went hand-in-hand. With regard to the rôle played by these principles, the member said they should be applied as rapidly and as comprehensively as possible, but warned that it would be counter-productive to envisage their immediate and complete application. Their application would begin when the multilateral framework came into effect and would constitute guidelines for participants at two different levels: first, as rules for autonomous behaviour applying to domestic regulations and, second, as rules for negotiation of agreements. The system was not a

return to bilateralism, but the idea was to create a multilateral law with rights to enter into the agreements signed among contracting parties with certain prior conditions. Turning to the future, the member said the Group should try to reach agreement on the main direction to be given to future GNS negotiations. He then referred to three points at the end of document MTN.GNS/W/45 where it would be appropriate to reach rapid agreement: first, the need to establish a multilateral framework to foster expansion of trade in services and its progressive liberalization; second, that the framework should allow for full application of the principles after completion of the Uruguay Round; and third, that progress should be made both at the domestic level of laws and regulations and internationally when it came to contractual agreements between participants.

52. The member who had submitted MTN.GNS/W/46 said the paper was an outline of a framework agreement, and was not submitted for further drafting by the Group. It illustrated how the various concepts and rules discussed so far in the GNS could be reflected in an eventual agreement which would have three parts: objectives and scope, obligations and benefits, and institutional provisions. The member said that the diversity of the services sector and national policies that affected services trade gave rise to fundamental questions concerning "rules-based" liberalization which the GNS had yet to address. That included: how service regulations of member countries would be affected; how liberalization and transparency would be given effect in concessions exchanged between members of the agreement; and how an overall reciprocal balance could be struck between members. He said the problem could be summarized as the "coverage problem": what service trade would be covered by the agreement or what exclusions or exceptions (either service-specific or generic) would different countries seek in order to permit them to join the agreement from the outset? The dilemma posed by the coverage question was that it was too complex to legislate in detail but far too important, given the diversity of the services sector, to leave undecided or at the unfettered discretion of individual signatories. He suggested that a solution to the dilemma lay in allowing the diversity of the sectors and of national interests to work for the GNS rather than against it. Rather than attempting to make rules (or exceptions) for every sector, the member recommended making strong rules of general application such as those illustrated in MTN.GNS/W/46. Within the framework created by those rules, individual member countries should be allowed, but not on an unrestricted basis, to find their own balance between obligations and rights and between market access concessions made and received. He added that a mechanism for the notification of proposed exceptions and for the scheduling of concessions was needed. It was important that the mechanism should guarantee the transparency of the process, contribute to progressive liberalization and operate within the framework of the general rules and principles with the benefit of access to dispute settlement procedures. In his delegation's outline, an "open-season" procedure was suggested which would consist at the outset of a regular round of plurilateral negotiations on national schedules comprising two parts: a schedule of exceptions and a schedule of

market access agreements. The former would list those services to which some of the principles and rules of the agreement would not apply. These would be subject to subsequent negotiations with a view to progressively reducing barriers and maintaining an equitable balance of rights and obligations among participants under the agreement. The second part of the schedule comprised market access agreements which would initially be negotiated bilaterally with the benefits being made available to all members on a non-discriminating basis. These agreements would entail the application of all of the principles of the agreement (including national treatment) to the service which was the subject of the access agreement, unless a specific exception was obtained. The member stressed that any such market access agreements were by nature exceptions to the agreement's underlying premise: namely, that it would embrace all markets in all sectors.

53. One member commented that MTN.GNS/W/42 was a positive document, and many of the views it contained coincided with those of her delegation. These included the non-inclusion of investment and of rights of establishment in the multilateral framework, agreement that the domestic legislation of developing countries should not be deemed a trade barrier, the idea that developing countries should establish their own development priorities, the application of an unconditional MFN clause among developing countries and the independence of these negotiations from those on goods. She said that the paper was a sound proposal requiring careful consideration when the GNS came to negotiate and adopt a multilateral framework.

54. Another member also regarded MTN.GNS/W/42 as a very positive contribution to the Group's work and said his delegation agreed with the objectives cited in the paper, and in particular, regarding the sustained growth of production, productivity and employment in the service sectors of developing countries. His delegation also welcomed the mention of access to new technologies, an idea which needed further examination in the GNS, and looked positively at the so-called "ten commandments" or decalogue of principles contained in document MTN.GNS/W/42, including the establishment of the principle of relative reciprocity. There was a need to examine the question of how to improve developing country competitiveness in the world market for services, and the related question of restrictive business practices. In a preliminary comment regarding MTN.GNS/W/46, he had noted this was an illustrative outline of a framework agreement and was not intended for drafting purposes. Regarding development, he asked what the meaning was of "provision consistent with the rules and principles of the Agreement, for the economic development needs of developing countries". He said that this appeared to mean that after the rules and principles of the agreement had been established, something relating to development would be inserted as an afterthought. He would be disappointed if the submission addressed the question of development in this manner as it was one of the corner-stones on which any agreement should be constructed. The member noted that his delegation would give more detailed consideration to MTN.GNS/W/46 and also to MTN.GNS/W/45.

55. One member commented that MTN.GNS/W/42 came as a "fresh breath" in the atmosphere of the GNS, and that the decalogue was a contribution of great value to the Group's discussions. The development objective was elaborated in the five specific objectives listed in the paper and amounted to a laudable attempt to give concrete expression to what was meant by development objectives. Turning to the ten principles, the member noted that they were a clear and concrete contribution as to how the negotiations could be orientated towards the goal of development. He said the fundamental principle that there could not be equal treatment among unequal partners corresponded to the facts of this negotiation and should be enshrined in any multilateral framework that emerged. He said relative reciprocity was a traditional term and asked whether the concept of "preferential opportunity" would not be more appropriate. The preferential opportunity principle, which had been recognized in the context of the Code of Conduct of the Liner Conferences', was important in order to take care of the existing inequality among participants. A second approach would be to specify a target share of a particular services trade sector for developing countries. He said there were such targets for developing countries in international negotiations regarding industrial production in UNIDO, and that they could be appropriate in the context of a multilateral framework for trade in services. Third, in dealing with the inequality between participants, he referred to obligations which could be assumed by service operators and their home governments with regard to technology and finance. Referring to the point made in MTN.GNS/W/42 on a code of conduct for the transfer of technology in the area of services, the member noted that there was a strong view in the GNS that a mandatory international arrangement should be negotiated, and it was appropriate to consider the obligations of the operators and their home governments in regard to transfers of technology. Turning to the point in the document that each developing country was the best judge of how to best serve its development interests, the member said that a clear recognition of this principle would solve a number of conflicts in the GNS, and that it should be the cornerstone of what was done regarding either sectoral coverage or the extent of obligations of developing countries. Finally, he suggested that the principle of preferential regional arrangements for trade in services among developing countries was another element which could be added to the principles listed in paragraph 6 of document MTN.GNS/W/42.

56. One member noted that in MTN.GNS/W/45 reference had been made to the development concept in speaking of lists of sectors which developing countries were not expected to negotiate if these were deemed incompatible with their development needs. In MTN.GNS/W/46, the development concept was contained in the principles in a very general manner. The member recalled that his delegation's proposal (MTN.GNS/W/33) had stressed that the concept of development should form an integral component of any multilateral framework on services. He stated that his delegation's full agreement with the country submitting MTN.GNS/W/42 and underlined the importance of its analysis of what could constitute the concept of development. Another member agreed with the view expressed in MTN.GNS/W/42 that the concept of



economic development should be an integral part of a multilateral framework agreement from the outset. Concerning the principles, he said his delegation was supportive of the proposals contained in paragraph 6, particularly those pertaining to the principle of relative reciprocity, as well as to the exclusion of the right of establishment.

57. One member welcomed MTN.GNS/W/42 as a creative attempt to address the question of development, and said he subscribed fully to the five objectives spelled out in the paper. Regarding the ten proposals, he said some were useful while others were not. He noted, first, that relative reciprocity still had to be defined, and his delegation had considered relative reciprocity within the context of a system of reservations where it was recognized that some countries would have a longer list than others. But if relative reciprocity entailed the notion of market shares as inspired by the UNCTAD Liner Code, the Group would be taking a significant step backwards in parcelling out market shares as had happened in agriculture, steel and textiles. The notion of equity in this situation would simply lead to inefficiencies. Second, referring to the proposed exclusion of the right of establishment which was the general means of providing services, the member asked how it would be possible to attain fair and equitable access to new technologies, and the growth of production and employment without establishment. Third, referring to the point in paragraph 6(e) of MTN.GNS/W/42 on what should not be considered as barriers to trade, the delegate said the issue concerned the ability to write a blank cheque to countries regarding the introduction of new regulations in the future without any disciplines. A framework that would grant a blank cheque was not a means of fulfilling a positive development principle. Fourth, the proposal of sectoral agreements giving preference to developing country exports appeared to be inconsistent with the five objectives. Turning to submissions MTN.GNS/W/45 and MTN.GNS/W/46, the same member noted that these submissions went into the issue of how a "living" framework could be established. MTN.GNS/W/45 was characterized by the notion of optional MFN which the member understood as meaning that the principles of a liberalizing framework were best achieved by bilateral understandings binding between the two countries and yet open to other countries in a position to subscribe to them. In contrast, MTN.GNS/W/46 contained a description of a traditional GATT process where a principal supplier led a negotiation which frequently became a bilateral or plurilateral process and where the object of the negotiation was to apply the understanding on a MFN basis (i.e. there would be no bindings except insofar as they affected all the signatories). At the heart of this process, the objective of MFN amongst signatories had to be achieved. Bilateral understandings that became binding between two countries such as the recent US-Canada understanding tended to go against what was being attempted in the GNS.

58. Another member agreed with the development objectives set forth in MTN.GNS/W/42 and supported the principles laid out in the submission. In his delegation's view, what counted first and foremost was the principle of a balance of rights and obligations which could be struck to some extent by

including in a framework agreement labour flows and those services sectors in which developing countries had some comparative advantage. The principle of protecting infant industries from immediate competition had been expressed clearly in document MTN.GNS/W/42 and should find its due place in a framework agreement. The concept of relative reciprocity which related to the inequality between participants needed to be studied carefully and included as one of the basic principles of a multilateral agreement. These were some of the modalities or mechanisms for enforcing special and preferential treatment in favour of developing countries as outlined in document MTN.GNS/W/40, although his delegation would not include these principles under the heading of special and differential treatment but rather under that of development of developing countries.

59. One member welcomed MTN.GNS/W/42, agreed with the view that the concept of development should be integrated in a conceptual framework and not treated in isolation, and supported the objectives stated in the paper. He could not imagine that any country participating in the GNS would not subscribe to these objectives which were of particular importance to developing countries. Regarding the decalogue, there were a number of problems: for example, what was meant by the principle of relative reciprocity? The list of what should not be considered barriers to trade in services was close to a blank cheque and seemed to contradict the stated objectives of development. On the point that negotiations should exclude investments but include labour, the member noted that the optional MFN concept as put forward by his delegation covered the problem. Those countries that wished to include labour in some cases and investments in other cases could do so and no country would be compelled to adhere to the agreement if such concessions seemed premature or impossible to grant. Regarding the possible layout of a multilateral framework agreement as contained in MTN.GNS/W/46, the member suggested that in relation to market access, the proposed mechanism was very close to the optional MFN mechanism, i.e. concessions would be negotiated in the future with an open-season procedure bilaterally or plurilaterally and on the basis of a certain degree of reciprocity. Extending the agreement to third parties would be done only on the condition of the granting of a counterpart equivalent to that granted to each other by the initial parties to the agreement. In this regard, the member asked whether he had interpreted MTN.GNS/W/46 correctly.

60. Another member responded to the comment that his proposed notion of preferential opportunity had been characterized as a backward step comparable to the arrangement in textiles. In textiles and steel, he said that the sustained growth of developing countries' exports was being restrained and this was the opposite of what was being put forward in MTN.GNS/W/42 as one of the objectives, namely the sustained growth of developing country exports. If that objective was acceptable, then the GNS had to find ways of giving preferential opportunity, for example, by allowing developing countries to increase their market shares, which was

the only objective test of having reached sustained growth of exports of services in the world market. Without an objective test, the aim of development would remain a pious hope or an empty principle.

61. One member noted that the approach outlined in document MTN.GNS/W/45 built on reciprocal exchanges and felt that it would not create an inherently liberalizing framework for trade in services. The concept in his own delegation's proposal (MTN.GNS/W/46) was that the agreement would provide binding commitments across all sectors, and there would then be lists of exceptions which countries could state. In addition there could be agreements identifying specialized market access but such arrangements would have to apply to a small and not a large part of the trade. The approach outlined in MTN.GNS/W/45 was the obverse, and started from the standpoint that only a small part of trade was to be negotiated and expanded.

62. Another member welcomed document MTN.GNS/W/42 and commented on three issues. First, as concerned the relation between technology transfers and investment, the common understanding of the most efficient way of acquiring technical know-how was on the job training. His delegation wanted to know what other possibilities existed for countries to receive the benefits of technology transfer. Second, he noted that his delegation did not want the question of labour flows to be limited to inflows into the markets of developed countries only. Third, he recalled that the right of establishment was a critical element to be negotiated in the GNS, one which affected both the definition of trade in services and the question of coverage.

63. Regarding document MTN.GNS/W/42, one member said the paper had very useful parts on modalities and ways of setting up sectoral agreements within a framework agreement as well as an interesting emphasis on the concept of development. He also shared the view that such a concept should form an integral part of an eventual framework and sectoral agreements on trade in services and that it should not simply be the object of a series of waivers and exceptions as in current GATT fashion. He expressed agreement with the authors of the paper as to the relevance of relative reciprocity and attempted to define it as participants not expecting developing countries to grant concessions incompatible with their own development needs. He said that in the case of developing countries, existing laws and regulations, especially those which promoted services sectors, should not be deemed barriers to trade. He stressed that developed countries should grant unconditional MFN treatment to the developing countries and even differential treatment whenever necessary for developing countries to achieve a greater diversification of their services exports. He said that measures should be planned to accelerate the transfer to developing countries of modern technology which would help them improve both their production and exports of services. He felt that those services in which developing countries were competitive should be

included in an eventual agreement but that rights of establishment and other investment in services should be excluded from it. He also found relevant the proposal that developed countries should refrain, from the Montreal meeting onwards, from imposing additional restrictions on imports from developing countries. He suggested that this should be considered for adoption at the Ministerial Meeting. Regarding MTN.GNS/W/45, he found it to be also a very interesting contribution to the work of the Group but regretted that the concept of development played such a marginal rôle in the paper.

64. One member said that regarding the objectives stated in MTN.GNS/W/42, he would like to know (i) the exact meaning of fair and equitable access to new technologies; (ii) what was concretely intended through such an access; and (iii) who would decide on its meaning in practice. As concerned the principle of relative reciprocity (item 6(a)), he could understand relativity in certain cases but stressed that the volume of reservations as well as their duration should be reasonable. Referring to an earlier comment, he could see the concepts of market share or of preferential opportunity as long-term political objectives to be pursued but nothing beyond that. Specifically, on the share of trade being goals for developing country participation, he found it difficult to accept such an approach since it contradicted the concept of efficiency. Regarding the idea that "there cannot be equal treatment among unequal parties" (item 6(a)), he could see in principle the relevance of considering the different development stages involved in economic growth but stressed that in actual practice the Group should be addressing the issue on an equal situation-equal treatment or different case-different treatment basis as previously suggested by another member. He pointed out that his delegation had a fundamental difference with the authors of the paper regarding labour mobility to the extent that he rejected the idea that labour per se was a service. On the possibility of unconditional most-favoured-nation treatment to developing countries (item 6(f)), he enquired whether the authors of the paper envisaged that possibility being extended also to developing countries which did not sign a particular sectoral agreement.

65. One member found MTN.GNS/W/42 to be a constructive contribution. He supported both the idea contained in paragraph 2 of the paper that development should form an integral part of the framework agreement as well as the secondary objectives stated in paragraph 4. Regarding the list of measures to adopt to implement the objectives (paragraph 6), he conceded that possibly many aspects mentioned could be featured in an eventual schedule of exceptions or reservations relating to the participants' different levels of development. Another member appreciated the emphasis given in MTN.GNS/W/42 to the concept of development. He said that his delegation had always supported the inclusion of such a concept as an integral part of an agreement on services. He noted that the paper set out the format of the concept without making it at the same time exhaustive. Regarding the five objectives (item 4), he particularly liked the emphasis

put on the growth of new producer services and on the access to new technologies. As concerned the ten measures to implement the objectives, he found the ninth measure which put forth that each country should be the only party to determine its own development needs and the way to fulfil these needs of particular relevance. He agreed that the concept of relative reciprocity (item 6(a)) seemed to introduce some confusion between the concepts of non-reciprocity and of special and differential treatment. He asked for clarification on this point. Regarding MTN.GNS/W/45, the member agreed that it was essential that the final agreement should have a truly multilateral character. He also sought clarification as to whether the points described in the last section of the paper should be agreed upon by the time of the Ministerial Meeting in December. Regarding MTN.GNS/W/46, he found it to be an interesting inventory of issues to consider and looked forward to further proposals on concrete measures.

66. One member noted that emphasis in MTN.GNS/W/42 had been laid on the need to include development as an integral part of an eventual agreement and not simply through waivers and exceptions. He assumed that general derogations were not regarded as a good idea by the authors. Regarding the five objectives (item 4), he understood them to be the authors' view of the rôle of services in development. He agreed that these objectives would go hand-in-hand with the recognition that each country was the best judge of its own development strategy (item 6(i)) but cautioned against an overly broad treatment of development by the Group. Clearly, the concept needed to be treated in other fora, both bilaterally and multilaterally. Within the Group, however, it should apply to the trade policy aspects of services transactions with a view towards a trade in services agreement. With respect to relative reciprocity, he said that the issue of equal/unequal treatment was not necessarily a new issue as this had been evident in general GATT practice. He also said that the approach to relative reciprocity suggested by another member where market shares would be set up for different services activities would seem to be retrogressive. Regarding coverage considerations (item 6(b)), he re-stated his delegation's view that the broadest scope of sectors should be sought. He conceded that trade in services included elements which were absent in trade in goods, such as the need for factor movements in some cases. Although this would imply some labour movements, he cautioned against considerations of labour movements generally as opposed to labour movements involved in the delivery of specific services. Conversely, he stressed the need for the inclusion of some forms of capital movements and enquired whether the reluctance to negotiate on the right of establishment applied only to the inclusion at the outset of the negotiations of a principle stipulating automatic access to a particular market. As concerned a standstill on barriers to imports of services from developing countries by the developed countries as from the Mid-Term Review in December, he enquired what would exactly be subject to such a freeze and how transparency would be applied. In relation to the issue of barriers to trade in services (item 6(e)), he interpreted the four sub-items to be where the authors would like to be at the end of the negotiations and

stressed the relevance of accepting that each country was sovereign in setting up its own policy objectives. He recalled that his delegation had put forward the idea of national schedules in addition to rules and principles as one way of adequately dealing with the particularities of distinct national conditions. In connection with the possibility of unconditional MFN treatment for developing countries (item 6(f)), he re-emphasized a previous statement that all participants should make a contribution both to the general principles as well as to liberalization and access commitments. He interpreted that the preference sought for liberalization of services exported by developing countries (item 6(g)) did not necessarily imply some preferential scheme for services, but instead that it simply denoted the willingness to ensure that sectors or activities of interest to the authors were included in the final coverage. Regarding the question of transfer of technology (item 6(h)), he recognized its importance for the negotiations but drew a distinction between the related concerns of the Group and the concerns related to the Code of Conduct on the Transfer of Technology. He said that the Code had a long history, the reproduction of which should be avoided in the GNS. Finally, he asked whether the independence of the eventual sectoral agreements implied completely self-contained arrangements and, if so, whether that would indeed constitute a good approach. In reacting to a point raised by another member representing a group of countries, he stressed that his delegation did not have a preference for having no general principles in an agreement. In fact, he could easily envisage certain general principles as providing the "floor" and perhaps several "stories" on which to build the agreement.

67. One member said that the five objectives in MTN.GNS/W/42 were interesting and clearly needed to be pursued. She agreed that the GATT model of special and differential treatment should not be followed but was concerned that the section on measures to achieve the five objectives (item 6) led to exceptions and special treatment, even if this treatment was to be an integral part of the agreement from the outset and not simply added on at a later stage. Regarding relative reciprocity (item 6(a)), she also found it necessary to be more precise on the meaning of the term. For example, should it imply a balance of precise concessions within sectors or a more qualitative approach of reciprocity within an exchange of concessions? Perhaps it would go beyond even that. As concerned labour services (item 6(b)), she thought the consideration of labour should not extend too far in which case it would go beyond trade policy concerns. Labour services, however, could be the subject of negotiations. Conversely, establishment or commercial presence should be negotiated and there should be no a priori exclusion of related aspects. She said agreement could involve a compromise between different aspects of both types of factor movements. She also suggested that consideration should be given to the fact that developing countries might profit more from the inclusion of services transactions involving establishment/commercial presence in an eventual agreement than from merely cross-border trade. She also shared some concerns with other members, namely on how equal treatment

in section 6(a) (relative reciprocity) was to be compatible with its usage in section 6(e)(iii) (barriers to trade in services). Finally, she said that she also saw some problems with a too narrow approach such as the self-contained sectoral agreements (item 6(j)) since small developed countries and developing countries in general might not gain much from it. Overall she found the paper to be looking only at one side of the question and enquired, in light of the ten measures proposed in it, what would be the positive contribution developing countries would be prepared to make towards a compromise agreement on trade in services. Regarding MTN.GNS/W/45, she noted that the proposal seemed to be based on the idea of highly conditional MFN with a network of bilateral and plurilateral agreements. It started small but had no broad parameters which would gradually guide progressive liberalization in the future. She appreciated the listing of principles but was still unsure as to how the proposed structure would fit together. She said there was an evident unevenness in the expression of degrees of obligations. Relating this problem to the suggested dispute settlement procedure, she enquired what obligations would there be under a multilateral framework to which this dispute settlement would apply if relevant principles would at most only provide a general orientation. Overall, she said that the paper was extremely unclear as to the coverage of the agreement, leading one to believe that the only relevant coverage would be the one achieved through negotiations of sectoral, bilateral or plurilateral agreements. She also brought attention to the treatment of non-discrimination where conditions of access should not be deliberately less favourable. She enquired whether this would then allow for unintentional discrimination. She also enquired whether the section on Rules for Autonomous Behaviour (section II.3) constituted a weaker undertaking than a full standstill commitment. Finally, she said that the idea of leaving national policies and practices intact would not follow the Punta del Este Declaration and would in effect remove the multilateral dimension supposedly intended in the paper. Regarding MTN.GNS/W/46, she found it to be a very useful tool which could provide a blueprint for an eventual trade in services agreement. She asked for clarification or elaboration on how the "open season" suggested in the context of market access would relate to the free rider problem. Regarding the achievement of market access, she noted that according to the paper further access was to be agreed through subsequent rounds of negotiations. She said that the formulation seemed rather complex, involving mainly three steps: first, the gaining of market access through the provisions of the agreement itself; second, market access that may be negotiated from a country's list of reserved sectors or sub-sectors and to which general provisions would apply once it was achieved; third, more limited market access also negotiated out of a country's list of reservations but to which certain principles would not apply in full. She said her delegation would be prepared to endorse such an approach where firm principles would apply but time would be allowed for countries to negotiate them. On reciprocity, she sought clarification as to whether its meaning under "market access" would approach the one adopted in another member's submission, where the

main motivation was to ensure a contribution on the part of participants. Regarding transparency, she noted that there was no reference to notification of measures and enquired whether this was intended to be achieved solely through the elaboration of the list of reservations. Also, she wanted to know if non-reserved sectoral services transactions could be subject to dispute settlement procedures. Finally, concerning subsidies, she expressed appreciation about the reference made to them in the paper but would like to see more than simply an encouragement for their rollback in an eventual agreement.

68. Commenting on MTN.GNS/W/42, one member said his delegation fully endorsed the objectives set out in the paper, particularly those relating to the growth of production and productivity, the growth of exports, the improvement of competitiveness, and the fair and equitable access to new technologies. As regards the ten measures for achieving the five objectives, he stressed that they represented a new stage on the work of the GNS, as the concept of development had now been exposed in its full complexity and its promotion would become one of the central issues in the deliberations of the Group. He also found that the use of the term relative reciprocity was somewhat inadequate and endorsed the term suggested by another member - preferential opportunity. He stressed that the basic idea to be conveyed by these terms should be the idea of preferential treatment for countries with lower levels of economic development. He also stressed that this idea should not be equated with the concept of differential and more favourable treatment and brought attention to the important question of how to measure and determine economic inequality. For example, should the criteria be based on objective economic data to determine the overall level of development of a particular country, or should the criteria be limited to the particularities of specific services sectors in specific countries? Finally, he regarded paragraph 6(a) as a general principle and all other measures in section 6 as the tools with which to realize this general principle. He linked the emphasis put on the need to include labour-intensive services (item 6(b)) to the proposal that preference be given to the liberalization of services exported by developing countries (item 6(g)). He said that for an equitable balance of interests and concessions to be attained, sectors where countries with lower levels of development had a competitive edge could not be excluded. This could conceivably be one way of granting preferential opportunities to certain countries. As concerned transfers of technology, he endorsed the facilitation of the transfer from developed countries to countries with a lower level of development even though he also interpreted the task of the Group to be different from that which the UNCTAD Code of Conduct on the Transfer of Technology had addressed. He reminded the participants that the liberalization of barriers to services trade and the integration of countries with a lower level of development in the world trading system were not one-way streets. Indeed, restrictions should be identified and eliminated at both ends of the street. Finally, he conceded that one way



to promote the objective of growth and development could be to allow for numerous exceptions and reservations on the part of countries with lower levels of development.

69. One member representing a group of countries said that MTN.GNS/W/45 left some doubts regarding the concept of optional MFN treatment. Specifically, he was unsure whether the concept was truly multilateral in character and whether its optional nature was only theoretical or would in fact work in practice. Regarding MTN.GNS/W/42, the member found that the paper had elements which were of varying relevance to the work of the GNS. Of least relevance was the idea of negotiating on general labour movements (item 6(b)), since it was his conviction that no participants would really consider that possibility seriously. Regarding the right of establishment (item 6(c)) he said he could see that potentially there could be no automatic right of establishment from the outset. However, he could not see establishment-related issues being excluded from the deliberations of the GNS. As concerned the mention of the Code of Conduct on Transfer of Technology (item 6(h)), he said that the ten years of negotiations for the Code should not be repeated in the GNS and he did not even consider the GNS adequate for a closer examination of the Code itself. Another "least relevant" measure was that relating to barriers to trade in services (item 6(e)). He said that the Ministers had not agreed at Punta del Este not to examine regulations but to do so while respecting the national policy objectives underlying such regulations. On issues which had more relevance for the GNS, he said that if relative reciprocity was intended to mean that the contribution of different participants should be commensurate with their level of development, his delegation was prepared to fully accept the concept. Likewise, he understood the logic of advocating the need for concrete measures to implement the various objectives. On the measure of liberalizing first sectors where developing countries had an export interest, he found it to be remarkably like the expression of what another member had put forth as preferential opportunity and called for further exploration of the matter. Regarding the transfer of technology (item 6(h)), he would accept examining ways and means to speed up such transfers and said that the transfer of know-how could conceivably be stimulated through establishment as a way of providing services. Finally, he noted that equal treatment and non-discrimination (items 6(e)(iii) and (iv)) were indeed very important concepts in the liberalization process. His only question sought clarification of the measure relating to the independence of sectoral agreements (item 6(j)). Regarding MTN.GNS/W/46, he found little to disagree with but noted the existence of a number of gaps. For instance, there was nothing on how to implement the respect of national policy objectives nor on rules and principles which would especially focus on the promotion of economic development. Also, there was no provision on how to maintain competitive conditions once a market was liberalized, nor on the establishment of safeguards. Regarding non-discrimination, he asked for clarification on the meaning of prospective and retrospective application. As concerned market access, he noted that additional market access would be subject to a degree of

reciprocity and enquired whether that should be construed meaning the same as relative reciprocity. On transparency, he sought clarification on whether public comment was indeed only supposed to be allowed on regulations and not laws. On sectoral agreements, he asked for confirmation as to whether the member in question had not envisaged any place at all for sectoral agreements. As to the possibility of revision of the agreement, he enquired what exactly would be subjected to review. Finally, he appreciated the inclusion in the paper of government procurement concerns.

70. One member sought clarification on market access and its preservation as set out in MTN.GNS/W/46. He enquired whether it would be correct to interpret market access to be a provision dealing with undertakings related to existing measures perceived as barriers. He also enquired whether the preservation of market access was a provision similar to Article XXVIII of the GATT whereby the removal of some bound measures should be subject to a dispute settlement mechanism. On the issue of permanent exceptions, he asked whether the delegation in question would consider the possibility of including a provision which permitted regulations based on the stated conditions (national security, prevention of disorder or crime, etc.), but which provided for their implementation in as least a restrictive manner as possible. He found this of relevance since it would create the possibility of setting up a committee to examine the true character of relevant regulations. On sectoral coverage, he wanted to know whether, notwithstanding the diversity of sectors and the manner of scheduling national commitments, the authors contemplated a finite list of sectors from which all countries would work or whether they were somehow scheduled in the form of specific commitments. Regarding MTN.GNS/W/45, he had a question on what was meant by the process of binding an understanding. To the extent that the paper talked about principles of a general orientation, it was not clear whether the authors referred to binding principles or to a classic framework giving general guidance for the negotiations. Similarly, he wondered about the significance of autonomous evolution of national legislation and enquired what exactly would be the relationship between autonomous legislation and legislation which was guided by international agreements? In response to the enquires of another member regarding the submission of his delegation at the last meeting (MTN.GNS/W/37), he said that his delegation could indeed see the value of subjecting specific aspects of the framework to sectoral tests. He also could not envisage reaching final agreement on a framework or a comprehensive set of principles without testing such principles on a sector-by-sector basis. Accordingly, he stressed that he could only envisage the possibility of achieving a political commitment which would provide guidance to future negotiations by the Mid-Term Review. Also, he said he still had reservations on the idea of separate sectoral agreements which could potentially be in competition with a general framework or set of rules. He emphasized that his approach involved an extensive framework covering a wide range of sectors with a lesser emphasis on sectoral understandings but with the flexibility of sectoral annotations. Finally, regarding the

question of coverage and the reference to the anonymous notification procedure proposed in the previous meeting of the GNS, he stressed that the members of the Group needed to come forward with the coverage they wanted.

71. One member pointed out that the Group needed to know more about the markets and the market operators in services so that governments could better know how to formulate rules and disciplines to ensure fair competition among operators from countries at different stages of economic development. Regarding MTN.GNS/W/45, he noted that no emphasis had been placed on development even though considerable attention had been devoted to rules for competition. On non-discrimination, he noted that the paper had contended that the conditions of access and competition should be non-discriminatory. Referring to paragraph 2 of MTN.GNS/W/42, he emphasized the relevance of capital accumulation to development. He also placed emphasis on the relevance of external payments and the creation of effective and efficient services infrastructure for overall economic development. He stressed that without an adequate infrastructure, many new services could not be traded. He pointed out that fair and equitable access to new technologies (item 4(e)) should be seen as implying that not merely the provision of the right of establishment of a network in a territorial space was of relevance in the GNS but also the right of access into the network, especially for countries with a lower level of economic development. Regarding factor movements, he did not see the relevance of distinguishing between high-skilled and low-skilled labour, just as distinguishing among different types of goods was not crucial in goods trade. He suggested that if factor movements were to be included in an eventual agreement, it could be useful for the Group to look into the dispute settlement experience of the Centre for the Settlement of International Investment Disputes. With regard to equal treatment for services (item 6(e)(iii)), he did not see how domestic and imported services could be treated equally. He said that even within the domestic economy, incentives varied according to products or activities and he sought clarification on what exactly was intended in such a broad formulation.

72. One member speaking for a group of countries welcomed MTN.GNS/W/45 and said he agreed with its main thrust, namely that the framework of an agreement on trade in services should be truly multilateral in character and provide for both the expansion and further liberalization of trade beyond the Uruguay Round. The submission had also usefully emphasized the need for GATT compatibility. He said that the objectives of MTN.GNS/W/42 outlined in paragraph 4 were of a rather universal character and could probably be embraced by all governments. The concept of relative reciprocity was thought-provoking and a more detailed discussion of the concept was required. Clarifications were also sought on paragraph 6(i), which appeared to suggest that an agreement might not be equally binding for all signatories. Was this to be interpreted as providing exemptions from commitments negotiated under the framework? As regards MTN.GNS/W/46, in the section dealing with market access, the submission had correctly

emphasized the need to achieve a rules-based system to govern a framework agreement on services. What, however, did the authors have in mind when, in discussing market access, they spoke of the need for an open season provision? The authors had also usefully highlighted and recalled the trade distorting effects of subsidies. This was an important issue to keep in mind when negotiating disciplines on subsidies under a framework agreement. Ideas contained in the submission concerning economic integration arrangements were similarly welcomed. The member agreed that rules were needed to govern the ability of two or more signatories to liberalize trade in services more rapidly among themselves. The present submission, which foresaw the application of waiver procedures in such cases, differed quite markedly on this point. He suggested the usefulness of reflecting further upon these differences of approach. The member concluded by saying that the submission had treated the issue of sectoral arrangements - and the way in which they could fit into a framework agreement - in a rather cursory manner. More deliberation of this issue therefore appeared warranted.

73. Another member limited his comments to MTN.GNS/W/42 and the concept of development. It was essential that the concept of economic development form an integral part of any framework agreement on trade in services. This went against the view that a full liberalization of trade in services could in itself foster economic development. While indicating that his delegation did not share fully the latter point of view, he added that it could not be rejected outright either. Indeed, as the relative openness of his own country's services economy had shown, exposure to market forces could contribute to the development of some service activities. What was unclear, however, was whether the process of liberalization per se necessarily favoured the development of indigenous service industries and, in turn, that of the economy as a whole. Liberalization could further be expected to impact negatively upon the balance of payments. It was thus important for developing countries to weigh carefully the balance of costs and benefits stemming from liberalization. So long as their key services sectors remained somewhat underdeveloped relative to those in developed countries, the developing countries were likely to be unequal partners in liberalization. For this reason, the member's delegation subscribed to the notion, contained in paragraph 6(a) of MTN.GNS/W/42, of relative reciprocity. It was unfair, however, to liken the concept of relative reciprocity to a blank cheque. The submission had made clear that so-called perpetual infant industry arguments were not credible. At the same time, it was worth recalling that even in advanced industrial countries some mature service industries continued to enjoy the benefits of infant industry treatment. From a developing country point of view, the key requirement was one of time - time in which to develop a viable indigenous service industry and to gradually expose it to international market forces.

74. One member suggested that numerous parallels could be drawn between the views expressed in MTN.GNS/W/45 and those contained in other, possibly more orthodox, submissions. For instance, in providing a complete outline

of a possible framework agreement, MTN.GNS/W/46 had started from the very same premise, namely that rather than engaging in an overly abstract and academic exercise, the GNS had to provide a coherent body of elements to fit into a multilateral agreement. Views on the need to negotiate - be it on a bilateral or plurilateral basis - market access were also fully shared, as were those calling for the implementation of the principles of national treatment and most-favoured-nation/ non-discrimination. The submission (i.e. MTN.GNS/W/46) had not, however, provided any clues as to how a non-discrimination clause would in practice be applied. For the authors of MTN.GNS/W/45, the MFN clause would be immediately applied to all concessions, be they negotiated or granted autonomously. Despite these similarities, the member noted that he had some difficulties with various elements contained in MTN.GNS/W/46. The authors appeared to have had some difficulty in reconciling the contradiction which stemmed from the need for a framework agreement to be simultaneously rigorous in content and flexible in application. Various attempts at overcoming this contradiction had been made in MTN.GNS/W/46, ranging from limitations on the scope of the framework agreement to the application of schedules similar to those applying to trade in goods. These solutions were felt to be neither clear-cut nor convincing. For one, the approach taken was overly general in character and wrongly established a link between obligations and benefits. Secondly, the approach appeared to suggest the need for an a priori limitation of the scope of application of the framework. The document paper had not made sufficiently clear the range of sectors (such as financial services) or issues (such as labour mobility or investments related to services) to be covered under a framework agreement. One ended up therefore with an agreement of limited scope and in which some countries made concessions on the basis of reciprocity while others remained mere beneficiaries. In contrast, the authors of MTN.GNS/W/45 had emphasized the need for three principles - non-discrimination, national treatment and market access - to come into effect immediately. These principles constituted obligations which the member countries would be compelled to abide by in designing their trade policies. Moreover, to avoid the contradiction to which reference had been made, the rate of adoption of the framework agreement would in large measure be left to each contracting party. Finally, although limits were placed on the conditions of access, the final results of the negotiations would be available to all member countries. The benefits of a framework agreement, however, would not be automatically extended to all signatories, but only to those subjecting themselves to its obligations. The member responded briefly to questions which had been raised on MTN.GNS/W/45. First, on non-discrimination, he recalled that it was important that no autonomous legislation or contract be permitted to be deliberately less favourable to one country as compared to another. Second, as regarded the rules of competition, the authors of MTN.GNS/W/45 hoped that the rules applying to trade in services could be the same as those already contained in the General Agreement so as to prevent governments from intervening with the free play of competition in markets. Finally, on the issue of GATT compatibility, it was important to bear in mind that all of the instrumentalities developed in the GATT

framework did not necessarily apply to trade in services given that restrictions on such trade only took the form of non-tariff measures. The compatibility with GATT which should be sought in a future framework agreement on services would in all likelihood relate more to substance than to form.

75. As regards MTN.GNS/W/45, one member felt that it did not provide an adequate basis upon which to build an agreement on trade in services. Concerning MTN.GNS/W/42, it had shown quite usefully that it was perhaps time for the GNS to focus more pointedly on the manner in which a framework agreement to liberalize trade in services should operate. Turning to particular aspects of MTN.GNS/W/42, he was, like others, unsure of the precise meaning of the concept of relative reciprocity. If relative reciprocity was meant to describe an agreement in which some degree of asymmetry in commitments by contracting parties was envisaged, then this posed few problems and could be provided for under a framework agreement. Acknowledging the need for all parties to achieve - upon entering into an agreement - a balance of concessions and benefits was in fact the key to finding the basis for a framework agreement. The member had no objection in principle to the inclusion of labour services in the framework, having long admonished the need to include all factors of production related to international service transactions. The notion that the negotiations should not address the issue of the right of establishment also needed to be qualified. An agreement on trade in services would certainly need to include this issue, although this right might not in all instances be bestowed automatically but rather built up over time. The member sought additional clarification on the list of exemptions which the authors envisaged and noted that he failed to comprehend the distinction between old and new services. It was hard to imagine, finally, how an agreement that did not facilitate the transfer of technology could be deemed successful. The member said that the various comments which had been made on MTN.GNS/W/46 could be seen as falling into two broad categories. The first related to the submission's conceptual underpinnings. It was important to recall that the paper had not been submitted for final drafting but rather as a blueprint. On the question of sectoral coverage, the member said that so as to avoid, in the limited time-frame provided under the Uruguay Round, the danger of drafting an agreement that would be no more than an umbrella for a series of exceptions, it was crucial to agree on a framework which applied to all services activities. Sectoral agreements would not be ruled out, but it was deemed preferable to aim for an all-encompassing framework while dealing with the issue of protecting countries' initial positions through the implementation of schedules of exceptions. On the issue of market access, the views expressed in MTN.GNS/W/46 differed quite significantly from those advanced by the authors of MTN.GNS/W/45. From the perspective of his delegation, the existence of market access would constitute the premise of an agreement. Among the exceptions which could be listed, two types had been envisaged. First, particular policies - as opposed to sectors - could be exempted. Examples of these had been listed in the annex to MTN.GNS/W/46. The member

acknowledged that there were some sectors in which restrictions on market access would be maintained. Agreements on these issues could be negotiated among countries and be listed in schedules, but would remain virtual exceptions from the general principle of total market access. This approach was therefore the obverse of that contained in MTN.GNS/W/45. Regarding the ways in which market access could be increased over time, his delegation envisaged a gradualist approach in which an agreement would at first notionally establish market access and then lead to negotiations over the removal of exceptions. The preservation of market access would be achieved through the application of a binding mechanism similar to that contained in GATT's Article XXVIII. An open-season provision referred to a technique that was somewhat similar to that in use when the GATT was first drafted and which called upon contracting parties to periodically review the schedule of provisions with a view to increasing market access on the basis of a balanced and plurilateral negotiation. Concerning the notion of degree of reciprocity contained in the market access section of MTN.GNS/W/46, it was recalled that once an agreement on services was established, the resulting expansion of market access might be subject to a degree of reciprocity. Countries which had entered their exceptions on schedules and were interested in trading reductions in the scope of their respective schedules might wish to do so on a reciprocal basis. The member then responded to other questions which he described as more general in character. He recalled, firstly, that a non-discrimination provision could enter into force in either a prospective or retrospective manner. The former scenario involved the grandfathering of existing measures regarded as incompatible with the non-discrimination provision while, in the latter case, all existing measures deemed incompatible with the standards of the agreement would be listed in schedules as exceptions to be negotiated away over time. He emphasized that his delegation had a distinct preference for the latter approach. As to the reasons why little reference had been made in MTN.GNS/W/46 to respect for national policy objectives, the member acknowledged the political importance of the issue and agreed that it was an essential ingredient of the mandate, but was not fully convinced that it needed to be reflected as a principle. Rather, it represented an issue which could be outlined within the objectives of an agreement. As to the development component, he recalled that his delegation subscribed to the view - expressed by many - that it should be built into the agreement. On the issue of transparency, he had no objection in principle to extending the requirement for public comment to proposed national laws. Regarding possible provisions relating to the revision of the agreement, he emphasized that in an area as path-breaking as services, there would inevitably be a need to address areas which had not been initially covered under the terms of the agreement.

76. One member, in replying to the various comments which had been made on document MTN.GNS/W/40, said that these fell into three categories: first, issues which were generic in nature; second, issues which the submission had not touched upon; and third, issues of a more general nature. Starting with generic issues, the member noted that several questions had

been raised with regard to the idea of an evolving arrangement. He indicated that his delegation intended to maintain an approach based on rules and concessions and felt that the permanent exceptions which some delegations had called for were unlikely to be changed in the context of periodic reviews. As to the measures which would be subject to an evolving arrangement, he did not envisage exceptions such as those provided for under Articles XX and XXI of the GATT. Several members had expressed the fear that the coverage of a possible agreement on services could narrow considerably in scope if the set of rules and principles adopted were overly stringent. While sharing some of these concerns, the member noted that the evolving character of the proposed arrangement should be able to permit both an expansion in coverage and the maintenance of strong disciplines. As to existing laws and regulations - and the advisability of grandfathering them - he felt that they should be subject to negotiations. Concerning the relationship between existing discriminatory practices and negotiations over reservations, it was suggested that negotiations on reservations should be completed prior to agreeing on a multilateral framework. So far as the issue of GATT compatibility was concerned, it was wrong to view document MTN.GNS/W/40 as merely suggesting the possibility of applying the existing GATT framework to trade in services. The document had inferred the need for an agreement on services to be linked to that governing trade in goods in a conceptual sense and did not preclude the possibility of changing or improving the current framework to enhance its relevance with regard to trade in services. On the question of the relative benefits of sectoral versus general framework approaches, the member confessed that his delegation had not envisaged a long list of sectoral arrangements. Rather, the framework agreement should be sufficiently encompassing in structure so as to enable more difficult issues or sectors to be gradually covered. This approach called for the application of a certain degree of relativity and could be likened to the sectoral annotation approach which had been considered in MTN.GNS/W/37. He agreed that the concept of development should form an integral part of the agreement but was unsure as to how it could be made operational. The reference in document MTN.GNS/W/40 to special and differential treatment for developing countries did not necessarily imply the need for applying Part IV of the General Agreement to trade in services. On transparency, the member said that his delegation was open-minded on the need for notification and publication procedures in the case of significantly distorting measures. There were, however, practical elements such as administrative burdens which had to be kept in mind when evaluating proposals in this area. The member then addressed the various comments about issues on which document MTN.GNS/W/40 had remained silent. The document had not, for instance, dealt with definitional issues, partly for reasons of analytical difficulty but also for reasons which stemmed from the belief that, in practical terms, a system based on national treatment could be made operational while circumventing most - if not all - definitional problems. On coverage, the document had flagged the idea of attempting to specify its scope by means of sectoral coverage negotiations. Moreover, while the submission had not dealt directly with the issue of



labour, its treatment of sellers of services could be seen as extending to labour-intensive services. The member acknowledged the lack of reference to national regulations but added that this could be adequately addressed through either schedules of exceptions or negotiations on reservations. Similarly, as to the lack of reference to market access, the member stated that his delegation regarded this concept as much broader, one which signatories could quite reasonably expect to achieve by applying principles such as national treatment, non-discrimination and most-favoured-nation treatment. Addressing, thirdly, specific enquiries relating to MTN.GNS/W/40, the member noted that there appeared to be some confusion over the precise meaning of non-discrimination and most-favoured-nation treatment. In the view of his delegation, MFN treatment was a tool designed to achieve non-discrimination among foreign suppliers. As concerned who would assess the restrictiveness of trade-distorting practices, he thought that it should a priori be the country against whom the measure was applied. This assessment could, however, be challenged under the framework agreement by way of a dispute settlement procedure.

77. The member responsible for document MTN.GNS/W/42 said that as regards the concept of relative reciprocity, every member of the GNS seemed to have a different understanding of its meaning. It was increasingly recognized, however, that the concept was not the same as special and differential treatment. For example, the delegation which had submitted document MTN/GNS/W/45 had referred to situations in which the contracting parties would not expect schedules from developing countries that were incompatible with development requirements and objectives. Similarly, several delegations had in the course of the current deliberations acknowledged the need to ensure - through various means - a better distribution of the benefits stemming from the negotiations. The concept of relative reciprocity had to be accommodated in ways which went beyond the provisions contained in Part IV of the GATT. Various delegations had emphasized the closeness of the links between rights of establishment, foreign direct investment and technology transfers. Although few would dispute the existence of such links, it was important to bear in mind that while foreign direct investment could contribute to the achievement of national policy objectives, granting rights of establishment could not in itself guarantee their achievement. Countries might therefore legitimately wish to reserve the right to ensure - through national legislations - that foreign direct investment did effectively contribute to the achievement of domestic policy objectives. It was surprising that some delegations, when addressing the question of the movement of production factors, appeared to focus solely on the right of establishment to the detriment of the issue of labour mobility. Given that developed countries already accounted for some 80 per cent of international trade in services, the member's delegation could not accept the notion that the issue of labour mobility be, ab initio, removed from the agenda of a framework agreement. As far as the most-favoured-nation provision was concerned, the member's delegation felt that it should be extended to all developing countries irrespective of the degree to which they were covered by sectoral agreements. However, the

signatories of the framework agreement would be expected to negotiate those sectoral elements of interest to them. Several delegations had quite rightly pointed out that the eighth element listed in MTN.GNS/W/42 had introduced an element of confusion between the issue of technology transfers and UNCTAD's Code of Conduct. The intention of the member's delegation had been simply to refer to an instrument that had been discussed and negotiated for some time with a view to promoting transfers of technology. The essence of the point being made was that a framework agreement on trade in services had to facilitate such transfers to the developing countries. The member indicated the readiness of his delegation to consider any alternative routes to achieve this end. The ninth element was not a blank cheque and tied in closely with the concept of relative reciprocity. It seemed beyond debate that every developing country should be the best judge of how to achieve its development objectives. At the same time, the authors of MTN.GNS/W/42 had recalled the need for the contracting parties to respect all commitments entered into during the course of the negotiations, as such commitments could be expected to further - and not hamper - the development prospects of the developing countries. Although the point had not been made in MTN.GNS/W/42, the member fully agreed with the idea that a framework agreement on services should facilitate the establishment of an appropriate services infrastructure in the developing countries. Finally, on the question of who would judge what constituted a fair and equitable access to new technologies, it could perhaps be monitored in the context of the periodic reviews which document MTN.GNS/W/40 had envisaged.

78. One member said that the second part of MTN.GNS/W/46 took up the issue of non-discrimination and appeared to define it as most-favoured-nation treatment. His delegation took the view that obligations of this kind had to extend to arrangements made between signatories and non-signatories. His delegation had also related the comments made under this sub-heading to the issue of economic integration arrangements and sought additional clarification on exactly what was considered as being covered under the various headings. His delegation subscribed to the view that the results of bilateral and plurilateral market access negotiations should apply on an MFN basis. The member sought additional clarification on the prospective or retrospective application of non-discrimination and, in particular, on how it related to standstill and rollback. The authors of MTN.GNS/W/46 had established a clear distinction between national treatment and market access. The member's delegation had envisaged that under certain definitions of national treatment, all aspects of market access could be included. He added that his delegation welcomed the idea of providing opportunities in future rounds or seasons for further access negotiations and presumably for negotiations on other elements of trade in services. On transparency, he said it would be useful to get a better feel for the views which various delegations took regarding the need for public comment on national laws and regulations. He indicated that his delegation agreed to the inclusion of government procurement in relation to services and was relatively open as to the means to employ. The member felt that

MTN.GNS/W/46 had not dealt explicitly with the questions of nullification and impairment. Beyond the issue of a narrow application of the agreement or of adjudicating the use of exceptions, he asked whether the authors of MTN.GNS/W/46 felt that an agreement should contain specific provisions in this area. Similarly, was the submission's section on non-application designed to deal with problems of safeguards, retaliation or compensation? As to negotiating market access, the member had a good deal of sympathy for an approach which, within the framework created by the rules, allowed individual countries to find their own balance of obligations and benefits, while circumventing to a large extent the problem of sectoral agreements. This approach should be distinguished, however, from that contained in MTN.GNS/W/37, which essentially envisaged a general application/rules-driven agreement to which a list of reservations would be attached. Yet another proposal, put forward in MTN.GNS/W/45, suggested the need for rules of general application and for negotiations among a limited number of countries (with concessions being granted) which other countries could subsequently buy into. The latter approach appeared to run into the rather serious difficulty of not being truly multilateral in character. He recalled that his delegation took the view that negotiations should start by dealing with impediments to trade in services while simultaneously devising a series of principles and rules of general application. Negotiations aimed at dismantling barriers to trade in services would then provide for additional obligations to be set out in national schedules. He noted, finally, that while the national schedules envisaged by the authors of MTN.GNS/W/39 attempted to describe more fully the regimes of the countries involved, document MTN.GNS/W/46 appeared to list exemptions and specific concessions.

79. One member recalled that two-thirds of the world's population shared in less than 20 per cent of international service transactions. Economic development could only be achieved through a substantial diversification of economic activities in developing countries and, in particular, through a growth in their share of world services transactions. Concepts such as those contained in MTN.GNS/W/33 and MTN.GNS/W/42 were therefore of particular relevance in this regard. The member stated that all agreements entered into with regard to the liberalization of market access should be unconditionally extended to developing countries, including those relating to economic integration arrangements. Another possibility would be for developing countries to conclude regional agreements of a bilateral or plurilateral nature whose benefits would not be extended to other member countries. The member questioned whether the notion of rights of establishment, which appeared to admonish the need for the complete mobility of capital, was as encompassing in the area of labour movements. The authors of MTN.GNS/W/42 had rightly emphasized the vital rôle played by national investment policies in the development process. For this reason, rights of establishment should not, as some delegations had suggested, necessarily be granted automatically. Similarly, on issues and policies relating to technology transfers and intellectual property rights, the authors of MTN.GNS/W/33 had emphasized that the current negotiations should

not lead to monopolistic situations in which the preservation of certain rights stood in the way of international competition, and, therefore, of the objective of economic diversification in the developing countries. Moreover, it should be recalled that the issue of monopolies did not relate solely, as some delegations had seemed to suggest, to state monopolies, but also to private ones.

80. One member referred to the distinction between traditional and new services. While a number of traditional services had been qualitatively enhanced by the introduction of high technology, there was a wide range of activities resulting from the marriage of computers and telecommunications which were completely new in character. He pointed out that there had been acceptance in the GNS that it should be for each developing country to determine what its development objectives and priorities were. Developing countries could not be expected to formulate their development objectives merely to ensure their compatibility with the rules and principles of a framework agreement on services. He said that rather than lumping the whole of services sectors together, focusing on the existence of discrete, separate and identifiable services transactions would greatly facilitate the application of the kinds of disciplines which some delegations had in mind. This became particularly relevant when considering whether the negotiations should aim at either establishing a global regulatory framework in which whole sectors would be governed by a common set of rules and principles or, alternatively, applying traditional GATT parameters to trade in services. The adoption of the latter route would require the identification - as it had for trade in goods - of discrete, individually traded services.

81. The member responsible for MTN.GNS/W/46 said that as regards the paper's treatment of non-discrimination and its relationship to the section dealing with economic integration arrangements, MFN obligations would apply to all signatories in relation to any advantage they would be prepared to offer to other signatories either as a result of a unilateral opening of markets or in the context of trade negotiations. Economic integration arrangements were seen as contravening this non-discrimination/MFN approach. As in the current GATT framework, an agreement on trade in services had to contain clear provisions stipulating the conditions under which signatories to the agreement might enter into economic integration arrangements. On the issue of the prospective or retrospective entry into force of a non-discrimination provision, the member indicated that an agreement that was applied prospectively would not affect existing laws, rules and regulations. This meant that the bulk of national legislation which signatories to the agreement had in place would actually be grandfathered. The authors of MTN.GNS/W/46 did, however, foresee instances in which non-discrimination could possibly be made retrospective. Where signatories already had non-discriminatory regimes in place, this might in fact be considerably less problematic than some delegations had perhaps surmised. Concerning consultation and dispute settlement, there was clearly a need to devote more attention to the nature of the dispute

settlement procedures which would be called upon to govern the framework agreement. She agreed that many of these consultation and dispute settlement provisions might need to cover more than simply nullification and impairment. Regarding the provision on non-application described in MTN.GNS/W/46, she indicated that her delegation tended to view it more in line with what had been suggested in document MTN.GNS/W/37, but saw provisions on safeguards and on other issues relating to dispute settlement as worthy of further elaboration.

82. The Chairman returned to Item 2.2 of the agenda. He referred to a paper prepared by the secretariat entitled an Overview of References to Certain Topics in Government Submissions According to the Five Elements (in MTN.GNS/W/44). He recalled that the intention was for this document to assist the GNS by relating the submission to the five elements on the agenda. He said that it was purely a reference paper. The Chairman noted that there were three other papers before the Group: the first was a paper on GNS and Statistics (MTN.GNS/W/41) containing information on work being carried out in various international fora in the area of service statistics. There was a revised version of the paper on Definitions (MTN.GNS/W/38/Rev.1) and, finally, a Draft Glossary of Terms (MTN.GNS/W/43). The Chairman said these documents were drawn up under the secretariat's own responsibility and were not intended to be final documents. The secretariat had indicated that it was ready to adjust the documents on the basis of suggestions for additions, deletions or corrections.

83. The Chairman then invited comments on the subject of statistics saying that the relevant references were to be found on page 2 of the Overview document. One member welcomed the secretariat note MTN.GNS/W/41 as a comprehensive guide on statistics to sources and to current activities underway in different organizations. He then addressed two specific questions to the secretariat: the first related to the shares, both current and in terms of a time trend, of different participants in services trade flows. The second related to a profile of the degree of concentration in terms of the providers of services in those flows. The section in MTN.GNS/W/41 on sector-specific statistics mentioned information which had become available as a result of interactions with the three international organizations as well as of other non-computerized (sector-specific) statistical information being collected by the GATT secretariat. The member asked if information was available after contact with the organizations, what kind of detail was available and how soon it could be made available. The secretariat representative replied that the secretariat had requested information from the three international organizations on the share of trade which could be assigned to each of the member countries. Written responses had been received from ICAO and UNCTAD while ITU had chosen to respond verbally at the beginning of the current GNS session. The secretariat was in a position to make available the information provided by ICAO and UNCTAD which related to the share of trade. Concerning the non-computerized information, the secretariat had

been in contact with a number of organizations which dealt with various sectoral activities. At this preliminary stage, the sectoral information seemed incomplete and not fully consistent across organizations. Nevertheless, some piecemeal information was available on a time-series basis. He thought that in due course this information could be made available by the secretariat. It would be helpful if the secretariat had a clearer idea of which specific sectors were involved or whether only information on the share of trade was required. The member thanked the secretariat for the information provided and asked whether it was possible to know which sectors it was compiling information on. He said he was interested in information that went beyond country shares and would like to have statistics concerning the degree of concentration of the providers of services. The member wanted to know whether the secretariat could throw some light on the availability of information on that subject. The secretariat representative responded that if what was meant by the degree of concentration was the share of national markets held by individual companies, at this stage the secretariat did not have that information. It would, however, look into the possibilities of obtaining it on a sectoral basis. Concerning the sectoral information, he noted that the secretariat had limited itself to the sectors covered by the fourteen organizations which had been referred to in the earlier examination.

84. Another member said she missed a further elaboration of the issue of definitions in document MTN.GNS/W/40 and expressed the same regret about all proposals containing outlines of frameworks for trade in services. Definitions were the first element in the Group's negotiating plan and the GNS had not yet come to grips with this issue. Her delegation had previously stated that it was difficult for them to consider any rules and much less a framework proposal in the abstract without knowing to what it should apply. Another member responded to the comment made on the absence of a definitional and statistical section in document MTN.GNS/W/40. He said definitional questions could be dealt with pragmatically by way of negotiations on sectoral coverage. On statistics, his delegation's paper included a proposal calling for developed countries to offer statistical support to developing countries. One member representing a group of countries stressed the importance of the subject of statistics and noted that much work was needed to improve the state of services statistics. The secretariat paper (MTN.GNS/W/41) showed that there was more going on than he realized. He considered that the secretariat's liaison rôle with respect to this statistical work should be continued so that those working on the subject knew what was going on in the GNS, and also that the Group was kept informed of any new developments. Following these general remarks on the secretariat paper, the member commented on the data situation in telecommunications and concluded that the data on international telecommunications did not really say anything about trade. Concerning the secretariat's efforts to collect data on specific sectors, the member asked which sectors were concerned and asked the secretariat, as useful background information, to provide the Group with a list of sectors on which it was collecting data. Another member said that document

MTN.GNS/W/41 had pointed out four statistical classification systems either available or under development and he agreed that the first two, the Balance of Payments (BOP) and the System of National Accounts (SNA) approaches were of little direct use for the GNS whereas the International Standard Industrial Classification (ISIC) and Central Product Classification (CPC) systems were more relevant. He further noted that there were a number of fora using these systems and would appreciate being kept up to date by the secretariat on this work, possibly in a follow-up paper. He further proposed that the secretariat prepare an annex to MTN.GNS/W/41 to outline the sectoral or even product breakdown for each classification system in terms of what was currently available and what could be expected in the future.

85. In commenting on document MTN.GNS/W/41, one member noted that the paper recognized that there were, as every country realized, still profound inadequacies in the data collection process. Over time he hoped that one would have the degree of specificity in services statistics so as to make them more credible, but did not consider that this was possible during the course of the Uruguay Round. Another member pointed out that among the fourteen organizations mentioned earlier, there was no reference to the International Bureau of Informatics (IBI) and suggested that this organization also be included for getting whatever available information on informatics flows. Data on trade flows and the degree of concentration were useful even at this stage of the GNS discussions. Such data would be necessary, particularly for developing countries, to see the trade picture more clearly and concretely. In responding to earlier questions on statistics, the representative of the secretariat said that the information supplied to the secretariat by the international organizations (ICAO and ITU) was now available to members of the Group. He emphasized that the secretariat was in the process of improving its access to existing information but not in that of collecting source information. He said that information on concentration ratios was not available in the secretariat, but that the secretariat was prepared to contact relevant international organizations and request their assistance in this area. As to the sectoral activities covered in the work of the secretariat, he said that it was confined to the fourteen international organizations originally contacted (MTN.GNS/W/5). He pointed out that the statistics available in these organizations constituted a mixture of sector-specific information (e.g. ICAO) as well as cross-sectoral information (e.g. UNSO and IMF).

86. The Chairman opened the discussion on Definitions and said the references to the relevant submissions could be found on page 2 of the Overview document. One member representing a group of countries commented on the revised secretariat paper (MTN.GNS/W/38/Rev.1) by saying it was now rather less of a descriptive document and more of an analytical one which picked up arguments in the GNS and posed questions to which the Group would have to find answers in order to make progress. Three points illustrated the general thesis: first, regarding the reference in the paper to sales of services including factor flows across the border (page 7,

paragraph iv), this broader interpretation of trade could under appropriate conditions contribute to the economic growth and development of developing countries, e.g. in finance, technology and human skills. Second, the member cited the following questions in the paper: "in what circumstances can considerations related to service activities where factors of production move across borders be treated as issues involving international trade rather than investment? Is a distinction between trade in services and investment in services meaningful?" (page 7, paragraph i) and suggested that "in the circumstances of the GNS" was an answer to the first part. Regarding the second question, he said that the distinction could be meaningful in academic terms but the GNS discussions had demonstrated that the distinction was not meaningful if the Group intended to respect the mandate it had been given at Punta del Este. Third, he noted that at one point (page 9, paragraph v) the paper asked whether the movement of labour should be tied to particular projects or to the performance of particular activities and said that it was a question which should be explored. The negotiations would not be about the movement of all labour as such but would have to be rather narrower, and the idea of tying it to particular projects or activities seemed a useful path to explore. Finally, as to whether there should be a time element concerning labour flows and flows of capital (page 9, paragraph vi), the member requested clarification from the secretariat on what constituted the time element in flows of capital. Another member considered the list of questions in the revised secretariat Definitions paper a good basis for debate in the GNS. He then requested clarification on a statement in the paper which said that the operation of certain factors may differ from sector to sector (page 10).

87. One member noted that in the secretariat paper (MTN.GNS/W/38/Rev.1), it was asked: "can labour flows be subsumed under a definition of trade in services when trade in services was defined to include only cross-border services where the service itself crosses the border?" (page 5, paragraph (ii)). His delegation insisted on answering "yes" as a way of making progress and achieving a balance in the negotiations. He then referred to a further question formulated in the paper: "if only cross-border trade would be covered, what would be the implications in terms of the treatment of the various service sectors?" (page 5, paragraph iv) and said that this would have to be examined sector by sector and service by service as the GNS moved ahead. Another member noted that the Definitions paper tried to characterize the elements which would constitute a definition of trade in services, including the time element and the conditions necessary for ensuring the supply of the service. Thinking only in terms of the time dimension without specificity of purpose created problems in broadening the definition. It was necessary to emphasize, apart from the limited duration character of a service trade transaction, that it was also a discrete, "one-shot" kind of transaction. Second, too broad an interpretation of the element of the presence of foreign suppliers in order to ensure the efficient supply of a service could lead the Group into areas which were far beyond the trade transaction. In commenting on other parts of the paper, the member cited the following question: "if only



cross-border trade would be covered, what would be the implications in terms of the treatment of the various service sectors?" (page 5, paragraph (iv)) and said the question was unnecessary. The GNS was dealing with international trade in services and it was not necessary to consider the implications of a broader hypothesis which tried to include under "trade" what was not trade. He then referred to whether a distinction between trade in services and investment in services was meaningful (page 8) and said that a more even formulation would have distinguished trade from investment or migration of labour. Some participants in the GNS had ruled out labour movement and the analogue of that was ruling out any flow of capital. Finally, he said that the conclusion of the paper, which concerned the interrelationship between coverage and definitions questions could be looked at differently. Some participants considered that the question of definitions could be solved through the coverage question, whereas his delegation was of the view that the question of definitions should be solved first. He suggested that the existence of both views could be recognized more explicitly in the paper's conclusion. Another member noted that in the final section of the paper there was a viewpoint put forward which saw a clear linkage between definition and coverage. Her delegation preferred an agreement with the broadest possible coverage as this was the best way of ensuring that there would be no question of winners and losers but only a "win-win situation" through expanded and liberalized trade. Rather than approaching the question of definitions and sectors through either a list of sectors or a general but inflexible definition of trade in services, she suggested instead nominating types of transactions to be covered. The secretariat paper was felt to have indicated a number of possibilities in that regard.

83. The secretariat representative noted that the Definitions paper had not attempted to do more than list the points which the secretariat saw as arising from the statements on the subject made in the Group and identify what kinds of questions arose. In this process, the secretariat had preferred to err on the side of posing too many - rather than too few - questions. The secretariat paper, which was no more than an input into the discussion, should lead the Group itself to define what were the critical questions. Turning to the specific points raised in the discussion, he made the following comments: first, concerning the relevance of referring to a time element in flows of capital, it seemed legitimate for the secretariat to enquire whether, in the same way that a time element was conceivable in relation to labour flows, an element of temporariness could be relevant to flows of capital. The point referred to the distinction in the paper (page 8, paragraphs ii and iii) between local presence and establishment, if such a distinction was feasible and meaningful, and whether it was possible to envisage a type of local presence which was not of a permanent character e.g. an insurance agent crossing the border to sell a certain type of insurance service. Second, concerning the observation in the paper that certain factors could operate differently from sector to sector (page 10), the secretariat had primarily had in mind that local presence or establishment could have a different rôle to play

when it came to certain services such as insurance or banking as compared to certain others, such as telecommunications. Third, regarding the question of whether labour flows could be subsumed under a definition of trade in services when trade in services was defined to include only cross-border service transactions where the service itself crossed the border (page 5, paragraph ii), he noted that it was a matter of nomenclature whether one described the movement of labour across a border as a labour flow or as a service. If the movement of labour was the movement of a factor of production, then the definition of trade in services as comprising only the movement of a service across the border invited some reflection. Finally, the point had been made that at this stage, the GNS was concerned with an attempt to look at what an appropriate definition would be; what this implied in terms of the treatment of particular sectors was a matter requiring separate and perhaps later consideration. He then drew the Group's attention to the suggestion in the paper (pages 9-10) that it was not feasible to discuss the question of definition in isolation from the consideration of other factors such as coverage of sectors.

89. One member speaking on behalf of a group of countries noted that his delegation would like to see the secretariat undertake this type of work on a number of different topics in the negotiations as there was a need for this kind of analytical work to be provided to the GNS. Another member speaking on behalf of a group of countries recalled that another delegate had said that if the Group ruled out of the negotiations ab initio labour movements as such, then ab initio all movements of capital should be ruled out also. He said that while it was unrealistic to think that the negotiations would deal with all labour movements or all capital movements, his delegation had suggested that there were some elements of both capital and labour movements which should be looked at when necessary to provide services abroad. Another member noted that regarding the discussion of the movements of capital and labour, the Group had to bear in mind the temporal factor which should apply to labour and to capital movements, sectoral differences, the goals of national policies and the treatment of the development concept. One member said he did not believe it was necessary to have a definition agreed to before deciding what the disciplines would be but considered it critical to debate, in parallel, what a definition would be. In response to the view that the Group could not arrive at an agreed definition until it had been tested against various sectors, he considered it possible to arrive at a generally governing definition in the framework that was not binding on every sector. Regarding the inclusion of investment and the movement of labour, he noted that there was a lack of transparency in each country concerning, for example, rules which restricted investment. He said that in order to sharpen the debate, there should be more of a contribution by each country as to why and in which sectors it had regimes limiting foreign investment opportunities. Concerning labour mobility, he said that immigration rules which restricted labour flows had to be taken into account and suggested that each participating country should notify the GNS of its immigration practices.

90. Another member noted that the GNS had to deal with matters other than trade in order to achieve the objectives of the Ministerial mandate. The Group had to look at the movement of capital, of key personnel and the conditions of economic development. The definitional approach taken in the secretariat paper MTN.GNS/W/38 (i.e. "the definition of trade in services should include all those transactions which are necessary to achieve effective market access in certain service sectors", page 6, paragraph i) presented an efficient way of determining the scope of the agreement without confining the GNS narrowly to a definition of services trade. It also provided some limits to the scope of the agreement so that it did not overreach itself by attempting to legislate on elements of policies (other than trade policies) where it was inappropriate to do so. Concerning the question of the time element of labour and capital flows, he asked what time frames meant when referring to capital flows and said he could not think of a temporary capital flow which should be dealt with in a services trade agreement. Finally, on coverage, the member suggested that in any agreement, the Group had to be ready to meet the trade interests and concerns of all potential partners, and participants should not try to meet their national objectives by entirely excluding certain sectors from the agreement. One member noted that the coverage of the framework should be as broad as possible and suggested that as liberalization would be a gradual process and not a one-step operation, each step would extend liberalization sectorally and in terms of transactions. Another member noted that the implications for the symmetrical movement of capital had to be examined in terms of labour movement being some temporary discharge of a service with the clear stipulation of labour returning to the exporting country. The discussion of labour and capital movements was sometimes too global; to make it more specific it was necessary to consider criteria such as specificity of purpose, limited duration, and eventual return and how such criteria could be applied in a symmetrical and just manner. Finally, he noted that whether the personnel was key for the rendering of the service would be determined by the provider of the service. One member asked whether in the revised secretariat Definitions paper the term "appropriate conditions" (page 7, paragraph iv) was a matter for negotiations in the GNS or could it be subsumed under issues such as respect for policy objectives and/or development objectives and requirements. The idea suggested in paragraph (iv) was that the Group was not aiming at the dismantling of regulations, but defining what would be appropriate conditions. Regarding the term "appropriate conditions" in the same paragraph, another member representing a group of countries suggested it was up to developing countries to suggest what the conditions could be under which trade contributed to the transfer of resources such as finance, technology and human skills to developing countries.

91. The Chairman invited comments on the next element of Broad Concepts and drew the attention of the Group to pages 2 and 3 of the Overview document. One member stated that among the principles and rules to be applied in the framework were non-discrimination, unconditional MFN, special and differential treatment for developing countries including the

granting of relative reciprocity, transparency, and mechanisms for consultation and dispute settlement. Other principles and rules applicable in the case of goods, such as national treatment, could not be applied to trans-border trade in services as there were no border barriers as in the case of goods. Furthermore, national treatment excluded the possibility of protection of local producers of services. The concept of development should be one of the fundamental elements of a framework and not invoked to obtain waivers from general rules and principles. The framework should ensure protection for infant service industries by not obliging developing countries to grant national treatment to foreign suppliers of services.

92. One member representing a group of countries said that he hoped the secretariat's draft Glossary of Terms (MTN.GNS/W/43) could be continually revised, expanded and brought up to date to serve as a continuing tool in the GNS. The document, which restricted itself to statements by participants, to a short remark on the basic concept under reference and to comments, could be built upon and expanded. The remarks on the "basic concept referred to" and the "comments" were found to be interesting but this part of the structure could be considerably more extensive and analytical by identifying, for example, differences and contradictions between the ideas of different delegations under the same heading. The member wanted more emphasis given to genuine analysis to identify convergent and divergent ideas of delegations. To illustrate how the document could be expanded and up-dated, the member made the following specific suggestions: (i) the section on development could be expanded in the light of the present GNS discussion. Under this heading two basic comments were suggested which were not so much comments on the basic concepts as tentative conclusions on the basis of the discussion. He suggested that the Group would increasingly need to draw such tentative conclusions in order to make progress; (ii) concerning market access, the first statement referred to (page 8) was about the concept of comparable market access. His delegation had introduced it in the context of a negotiating mechanism within a process of progressive liberalization and he thought it did not fit into that chapter. He suggested that a chapter on negotiating techniques and on how progressive liberalization was to be implemented could now be drafted; (iii) concerning the MFN section, he noted that the whole area of MFN and non-discrimination was perhaps the best example of an area where the secretariat should start to point out contradictions in statements by delegations; (iv) national treatment, in the sense of what it was and what it was not, was one question which was discussed in the Glossary. But the purpose of a concept of national treatment in a services agreement was less discussed. The Group had spent considerable time discussing the question of whether an obligation to give national treatment was needed and, if so, whether it could be implemented progressively, and alternatively whether national treatment should be considered as a criterion for judging whether a regulation or measure should be negotiable. He was disappointed not to find that distinction reflected in the chapter in the sense of analysing the potential place of the national treatment and its rôle in a services agreement; (v) a large part of the section on negotiable and non-negotiable regulations had been

based on concepts introduced by his delegation but he noted that the last word had not been spoken on this subject; (vi) the basic concept relating to progressive liberalization (page 17) had been very well expressed and it was important for the Group to accept what was suggested: that progressive liberalization was not to be equated with the simple dismantlement of national regulations. There was more room for discussion on how exactly the GNS should approach national regulations; (vii) the section on reciprocity could be lengthened in the next version because the concept of relative reciprocity now deserved a section to itself; (viii) the chapter on respect for national policy objectives needed more attention as his delegation considered that the basic concept (referred to on page 19) should be amended from maintenance of national laws and regulations to maintenance of certain existing national laws and regulations; (ix) restrictive business practices differed from many of the other chapter headings because it addressed an issue rather than a principle. The member agreed that both could be addressed but stressed that it was necessary to bring out more clearly in the next version of the paper the distinction between the issues which had to be dealt with, the principles which could be invoked for dealing with them and the rules which could be based on those principles. In conclusion, he noted a number of chapter headings which could be added: the concepts of negotiating techniques and relative reciprocity; the issue of transfers of technology and its relevance to the objectives of the negotiations (bearing mind that the concepts for dealing with it had not yet been found); and the whole question of standstill which was the insurance policy of the progressive liberalization exercise. The latter could be linked to the discussion of schedules in the agreement, temporary exceptions, bindings and positive market access contributions.

93. Another member noted that there was a suggestion in MTN.GNS/W/40 to take the results of the work in the GNG into account in the GNS and her delegation could not agree with this. She welcomed the approach to transparency, including publication and responses to enquiries which could be more acceptable than any kind of previewed submission of proposed national legislation. An extension of the national treatment principle was perhaps possible for imported services (i.e. cross-border trade) but this was not obvious particularly when the moment of importation was not clear. Her delegation could not envisage how enterprises, sellers and agents could be the object of such treatment. On special and differential treatment, she noted what seemed to be an offer to provide technical assistance to developing countries regarding matters such as improvement of statistics in services trade and relevant research. This was a precondition for her country's acceptance of any obligation on trade in services and could not be conceived of as the outcome of a future agreement. There was a clear need for precise rules to enhance the productive and export capacity of services industries in the developing countries complemented by some form of guaranteed access to developed country markets. Equally important were the questions of access to technology on an equitable basis and the entry of newcomers into markets which often showed a remarkable tendency for

concentration. Another member was not sure whether the Glossary of Terms (MTN.GNS/W/43) was intended to serve as an inventory of ideas mentioned under the agenda item of broad concepts or to have a wider purpose. He wanted to make a clear distinction between the purpose of a glossary and the purpose of an inventory of the principles and concepts mentioned so far in the Group. A glossary had a very specific purpose and perhaps the GNS should confine itself to that purpose rather than allowing the Glossary to blossom into a philosophy. Second, he noted that the concept of development had been discussed at some length at this meeting. Reference had been made to other relevant concepts such as the transfer of technology which would promote development in the context of a possible multilateral framework. There seemed to be a more or less unanimous perception in the GNS that it was necessary to find appropriate modalities to see what could be done through the multilateral framework to promote development through the transfer of technology within the context of the trade in services negotiations. The member stressed that if there were parallel initiatives which would inhibit transfers of technology to the developing countries or create situations which increased the incidence of monopolistic possession of technology, then whatever would be done in the GNS to promote technology transfers would have been preempted. He hoped that such contradictions would not persist as the Uruguay Round proceeded. One member welcomed the Glossary of Terms and suggested that it be up-dated and revised. First, concerning the basic concept referring to market access (page 9), his delegation believed that the market access concept should grant a set of rights and obligations, in principle equal for everyone competing in a market, and give the same competitive opportunities to everyone. Second, MFN was the instrument for a dynamic process and was controlled by a very large number of participants, whereas non-discrimination was controlled or could be invoked by the participant who had been discriminated against. The concept, therefore, had a more static character. Third, he suggested as new terms in the Glossary the secretariat could include safeguards and competition rules. Another member noted that the Glossary was a useful document in that it contrasted various delegations' thoughts on concepts such as MFN and non-discrimination. On that subject, another delegate stressed that there was a basic difference between the two concepts. The concept of MFN was the automatic extension of advantage, while the principle of non-discrimination was of a more static nature.

94. The Chairman then moved to the next item on the agenda, Coverage, and drew attention to the references to submission on page 3 of the Overview document. One member noted that there seemed to be no acceptable methodology to determine what the coverage would be for an eventual agreement on services. He emphasized the need for continual consultation among members and with the Chairman keeping the Mid-Term Review in mind. He said that without clearer ideas on the universe of sectors envisaged by the participants, it should be very difficult to make the progress necessary to begin the closer examination of individual sectors. One member agreed with the previous member on the need for clearer understandings on sectoral coverage since the Group would soon be testing

various ideas against the reality of services. He expressed hope that one would soon know better the sectors/transactions which participants were interested in seeing on the negotiating task. One member re-stated a previous concern that it should be very difficult to agree on principles in the abstract, and that it was necessary for her delegation to know to what sectors a particular principle would apply before agreeing to its relevance. Another member said his delegation attached great importance to the question of how principles and sectors related to each other. However, he cautioned against devoting too much time to answering such a question and said that one should not be bogged down by the issue, particularly in view of the time available before the Mid-Term Review. One member representing a group of countries said that he could understand some delegations not wanting to commit themselves yet on specific elements of an eventual agreement without knowing the specific sectors covered by the agreement. However, he did not see the lack of clarity on coverage as a major obstacle for the elaboration of preliminary views on what the main structure and concepts of an eventual agreement might be. He also distinguished this sectoral concern from the concern about the applicability of concepts to specific sectors. Here, he stressed that the sectoral "test" was of utmost relevance but said that it should suffice to look at concepts which applied to a wide range of important sectors. The list of sectors in that respect did not need to be too extensive.

95. The Chairman opened discussion on the next element, existing international disciplines and arrangements, and drew the attention of the members to page 3 of the Overview document. One member stressed the importance and relevance of having other international organizations participate in the deliberations of the GNS. She said that it was becoming clearer that one should not rely too much on GATT disciplines for services trade and that no member would be satisfied with a treatment of development as set out in Part IV of the General Agreement. She also mentioned that technology transfers and restrictive business practices were relevant issues in the context of development, and that the Group should give consideration to utilizing related work already undertaken in both UNCTAD and UNCTC. One member brought attention to the question of how other disciplines would relate to an eventual agreement on trade in services. He pointed out that views varied in that respect, ranging from the potential superiority of the agreement originating in the GNS over other arrangements to the full compatibility between the GNS product and other existing disciplines. He reiterated the view that the exercise undertaken in the GNS should in no way imply ab initio that his delegation's obligations and participation in other arrangements would be ultimately subject to what was finally agreed upon in this Group. He also would like to see some mention of this aspect in the secretariat's Glossary of Terms. Conceivably, this could be contained in an item which would consider whether the Group was working on the hypothesis of the existence of an international legal vacuum or whether it was working in a given legal environment where certain areas had not yet been covered. One member said that the relationship between the evolving agreement on trade in services and other existing disciplines should in no way be conflicting.

96. One member added that it could be very useful to establish contact with other international organizations perhaps by means of a questionnaire as previously done in the GNS. He noted the International Labour Office (ILO) could be of particular relevance in that respect. A member speaking on behalf of a group of countries said that he found previous discussions with international organizations to be of a limited value to the extent that they did not provide the Group with convincing mechanisms for the progressive liberalization of trade in services nor for the promotion of the development of developing countries. He enquired what arrangement or agreement of the ILO should the GNS refer to when contacting the ILO. The member said that the ILO should have many international understandings of relevance to the work of the GNS. He suggested that through the questionnaire itself the ILO could inform the Group of what were the pertinent aspects of its history and work to the deliberations of the GNS. The member who asked about the reference of ILO said he was not at all satisfied with the answer provided. He said to be able to contact the ILO, one should know specifically what legal instrument one would request the ILO's clarifications on. One member did not share the conclusion of another member that the international organizations which had taken part in the meeting had no relevance with respect to the question of liberalization and development. He said that ICAO, for example, had a very wide competence in this respect. He pointed out that many economic aspects were within the competence of ITU and that some particular resolutions bore directly upon development. He conceded that these were not binding and that the GNS could do better by establishing legally binding provisions on development in the eventual services agreement. As concerned the UNCTAD Liner Conference Code of Conduct, he said development was the main function of such a Code. Finally, he agreed that the ILO could be of great relevance to the work of the GNS but also thought one needed to be more specific in approaching the organization. Other organizations could be contacted such as the International Air Transport Association (IATA) or the IBI. The member representing a group of countries recalled that the representative of ICAO had traced the lack of progress in liberalization back to the lack of reciprocity undertakings in the Chicago Convention. He stressed that this lack of guarantee on reciprocal concessions could be avoided in the GNS through a multi-sectoral package. Regarding ITU, he agreed that what existed relating to the promotion of development in that organization's instruments was in the form of resolutions and that it should be in the interest of the GNS to provide instead for legally binding rules relating to development. As concerned the Liner Conference Code, he said that consumers should also be considered when one referred to the Code as development-oriented. One member, in reacting to the question of establishing a closer contact with other international organizations, said that the time available to the Group was finite and careful consideration should be given as to how to use it towards the resolution of more pressing elements. He said he could understand the concern of the member who suggested contacting the ILO but did not see it as feasible considering the schedule ahead of the GNS.



97. One member, in view of the upcoming meeting of the TNC, made some general comments on the five elements of the agenda. He acknowledged the difficulties involved in defining trade in services. He pointed out that right of establishment went beyond other cross-border concerns and asked what positive impact the provision of services such as banking through establishment in the local market could have in a developing economy. Specifically, he wished to know what leverage would a developing country have to constrain the withdrawal of an established banking institution or the coercion of host governments through the reduction of needed services to a bare minimum. Regarding insurance, he pointed out that it could often be provided across borders as could other services. Another member said that an open world economic system could only be maintained if major trading powers did not impede or obstruct prompt adjustment to changes in economic conditions and in patterns of demand as well as advances in technology and shifts in comparative advantage. He was still convinced that the best way to guarantee this was through negotiations in many multilateral fora where governments could express their economic interests, thus contributing to a clearer picture of the way to promote the growth of the world economy as a whole. In that context, he saw merit in the suggestion that the ILO should be contacted. One member noted that the discussion related to existing international disciplines and arrangements went beyond what the agenda had originally indicated. He said that from a practical point of view more consideration should be given to the sectoral applicability of concepts. He also did not see the value of contacting other international organizations, especially in the very general way proposed for the ILO.

98. The Chairman said that insofar as the proposal regarding the ILO was concerned, he would hold further consultations to see how some decision could be taken on the matter. He then introduced the fifth element of agenda Item 2.2, Measures and Practices Contributing to or Limiting the Expansion of Trade in Services, and referred to the references to be found in the secretariat document MTN.GNS/W/44, page 3. There were no comments on this agenda item.

99. The Chairman then said that from the very intensive and useful discussions during this meeting of the GNS, it had emerged that there were now a number of concepts and principles on the table which were of major importance for further efforts in trying to come to grips with the main issues relating to trade in services. He believed that all members accepted the need to push ahead with efforts to develop and deepen the understanding of these concepts and principles. At the same time, he considered that members also recognized that actual agreement on concepts and principles would be difficult before examining their application in relation to specific sectors. He thought, further, that there was a general feeling that the secretariat should produce for the next meeting a revised version of the Glossary by adding to and amending it in the light of the discussion at this meeting in such a way that it would amount in practice to an inventory of the main concepts and principles that had been

addressed in the GNS. At the same time, the inventory could usefully focus, to the extent possible, on the convergences and differences of views expressed in the course of the discussions. The Chairman suggested that with a view to being in a position to present to Ministers for the meeting in Montreal a positive picture of the efforts undertaken so far in the GNS, the Group should concentrate its attention in the immediate future on some of the issues in the list of concepts and principles which appeared to be of key importance: i.e. national treatment/progressive liberalization/expansion of trade; development objective; and movement of factors. He also noted that all the elements in the submissions and the work programme remained before the Group.

100. One member considered the remarks of the Chairman to be very opportune and thought that it would be useful to indicate how he understood them as part of a consistent approach. He said that the agreed elements remained and continued to inform the discussions as in the past. He said that the principles and concepts had been referred to by the Chairman in a very broad way and the Draft Glossary itself was very broad. He thought that what the Chairman said gave a more comprehensive meaning to the Glossary. He also said that the principles and concepts had been treated in a somewhat narrow fashion in the discussion of the elements and that the approach now being proposed by the Chairman was more comprehensive. The member noted that he had not had the opportunity to comment on the Draft Glossary, but intended to communicate through the Chairman certain specific comments to the secretariat to make the Glossary as comprehensive as possible. Concerning the Inventory of Concepts and Principles, his understanding was that it would take a broad rather than a narrow approach in terms of dealing only with principles like MFN, non-discrimination or national treatment. He added that elements included in the Glossary would also have to be kept in view when constructing the Inventory. As far as the application of those elements, principles and concepts to the specific sectors was concerned, he agreed with the Chairman that it was necessary to deepen the understanding of the Group by testing the elements, principles and concepts of the Inventory against the reality of trade in services rather than dealing with them in the very general and abstract way as in the past. He thought this would be a step forward, as the Group would know more about the specific transactions and specific sectors that the participants had in mind for the coverage of the multilateral framework on trade in services.

101. Insofar as focusing on the specific issues mentioned by the Chairman was concerned, he reiterated that a broad approach was very valid. That is, the objective of growth and development (and particularly development) needed to be focused upon to see how these elements, principles and concepts and approaches bore upon, contributed to, or did not contribute to the objective of development. Such a focus would enhance the Group's understanding. He said that the questions of national treatment, progressive liberalization and expansion of trade, had been placed in one basket by the Chairman. He, however, considered the expansion of trade to

be the central concept, with progressive liberalization and transparency appearing as conditions under which such expansion should take place. He thought this area was important because trade expansion was visualized as the main instrument with which development and growth were to be promoted. In focusing on the issue of expansion of trade, due attention should be given to how the principles and concepts would assist this process. The movement of factors referred to by the Chairman would enter as part of the reality of trade in terms of transactions and sectors. He said he would like to look upon the approach in this coherent and broad way and not in terms of a specific focus on one or two elements such as national treatment or movement of factors. He concluded by saying that this was his understanding of the Chairman's summing-up and he hoped it was consonant with what the Chairman had intended.

102. The Chairman said that if there were no further comments, the GNS would take note of what had just been said. He then turned to the agenda item on Other Business and recalled that, as he had said at the beginning of the meeting, he intended to raise the question of the programme of meetings for the rest of the year. He said that after having held consultations, he would like to propose the next meeting for 19-23 September followed by a meeting from 31 October to 4 November 1988. The meeting of 31 October to 4 November would be mainly reserved to see what type of documentation could be prepared with the Mid-Term Review in mind and what could go from the GNS to the TNC for the Montreal meeting. He intended to maintain the possibility of having a short meeting (of not more than half a day) in the second half of November should this prove to be essential for the purpose of coming to a final decision on the documentation needed for Montreal.

103. Before closing the meeting, the Chairman said that he would like to suggest that for the meeting of the Trade Negotiations Committee to be held next week he would present to the TNC an oral report under his own responsibility.

104. The Chairman then adjourned the meeting.