

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

**RESTRICTED**

**MTN.GNS/W/43/Rev.1**

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**Group of Negotiations on Services**

**GLOSSARY OF TERMS/  
INVENTORY OF CONCEPTS AND POINTS IN DISCUSSION**

**Revision**

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#### Introductory note

This document contains a revision of document MTN.GNS/W/43 in the light of the comments made in the meeting of the GNS of 18-22 July 1988. It contains a compilation of terms and expressions that have been discussed in the GNS, on which different views have been expressed, and on which a common understanding would appear important in the context of the negotiations. These terms and expressions are presented in alphabetical order, except where two or more of them are sufficiently closely related to require treatment in one place. The inclusion of a particular term in the document, however, implies no judgement that it may be appropriately incorporated in any agreement resulting from the negotiations. This revised version contains a number of terms and expressions which were not dealt with in the original document.

The procedure that has been followed in the document is first to list summaries of statements and submissions by participants in the GNS that set out specific ideas in relation to each of the terms and expressions. Each of the statements is identified on the basis of the summary records of the various GNS meetings or the relevant country submissions, and it is possible that not all statements related to a particular term have been listed. The numbering of the paragraphs reflecting the statements by participants does not imply priority or hierarchy and is used only for ease of reference.

Following the summaries of the statements on submissions, the secretariat has tried (i) to identify to the extent possible the principal points addressed in the discussions and submissions in the GNS and the basic concepts to which these discussions and submissions refer, and (ii) to indicate other points which may also be given consideration in order to arrive at common understandings on matters covered by these terms and expressions in the context of the negotiating process.

The document has been revised entirely on the responsibility of the secretariat which stands ready to adjust the text on the basis of further suggestions for additions, deletions, amendments or corrections.

I. ACROSS-THE-BORDER-TRADE (Sales of services where the service itself crosses the border)

Statements by Participants in the GNS:

1. Trade in services means international trade (i.e. trade in services that takes place across national frontiers) and not internal trade, much less production and distribution of services within the national borders. [W/4, para.11]
2. International trade in services is any service or labour activity across national borders to provide satisfaction to the needs of the recipient or consumer other than the satisfaction provided by physical goods (although they might be incorporated in physical goods), or to furnish an input for a producer of goods and/or services other than physical inputs (although the former might be incorporated in the latter). [W/31, para.6]

Principal points and basic concepts addressed in the discussion and submissions:

The basic concept is that across-the-border trade in services shares the traditional attributes of trade in goods where services are provided by a producer in the exporting country to a consumer in the importing country and where the service itself crosses the border.

The main points relating to across-the-border trade where the service itself crosses the border have been dealt with in Secretariat paper MTN.GNS/W/38/Rev.1.

The following points may also be given consideration:

- (i) Would a definition of trade in services that includes only cross-border sales of services (where the service itself crosses the border) be sufficiently broad to achieve the negotiating objectives?
- (ii) if only cross-border trade would be covered, what would be the implications in terms of the treatment of the various service sectors?
- (iii) can labour flows be subsumed under a definition of trade in services when trade in services is defined to include only cross-border services transactions where the service itself crosses the border?

(See also Secretariat paper MTN.GNS/W/38/Rev.1.)

II. TRADE IN SERVICES (definition, coverage and scope)

(a) Definition

A full discussion of the definition of trade in services which serves the purpose of the discussion in the GNS can be found in MTN.GNS/W/38/Rev.1.

(b) Coverage and scope

Statements by participants in the GNS:

International Trade in Services

1. International trade in services is any service or labour activity across national borders to provide satisfaction to the needs of the recipient or consumer other than the satisfaction provided by physical goods (although they might be incorporated in physical goods), or to furnish an input for a producer of goods and/or services other than physical inputs (although the former might be incorporated in the latter). The importation of producer services and of labour adds value to national goods and services in an intangible manner. [GNS/12, para.6]
2. Trade in services means international trade, and not internal trade, much less the whole series of operations involving investment, production and distribution of services within national borders. [W/4, para.11]
3. The definition of trade in services covers those transactions which require effective access to a market. Effective access would sometimes require commercial presence. There are a number of different types of commercial presence ranging from the temporary presence of individuals and production facilities to a more permanent presence. [GNS/14, para.51]
4. Trade in services includes not only cross-border sales of services, but also situations where a service could only be provided to customers in a foreign country on the basis of a physical presence in that country of the provider of the service. [GNS/8, para.7]
5. To define international trade in services it is necessary to look at the various ways in which services could be provided to customers abroad, e.g. through a commercial presence for the purpose of delivering a service in the receiving country, through temporary access to a foreign country for the purpose of delivering consulting services or through a telecommunications network. [GNS/8, para.11]

6. 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 an agreement from the outset? The dilemma posed by the coverage question is that it is 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. [GNS/16, para.52]
7. The interests of developing countries have to be recognized and that if the agreement is to find broad support, the coverage has to balance the interests of developed and developing countries. Trade in services negotiations would require delegations to look at the issues which lay somewhere between full investment rights and full labour mobility rights. This issue still remains to be addressed. [GNS/12, para.37]

#### International Service Transactions

8. International service transactions are activities which are associated with the direct sale of services by enterprises or individuals residing in a country to enterprises or individuals in another country. Services transactions between enterprises or individuals established in the same country are considered domestic transactions. [GNS/14, para.43]
9. Some international services transactions cover cross-border transactions of information data, voice and images, contractual agreements for the transmission of intellectual property, technology and other services, and the movement of consumers and producers. [GNS/7, para.25]
10. The following types of international transaction in services are identified generally: sale of the services transported across borders; delivery of service by a seller staying temporarily in an importing country, and service transactions through the establishment of enterprises, investment in a service enterprise already established, or commercial link with an established service enterprise. [W/18, p.3]
11. The Ministers have spoken of trade in services, i.e. trade in services that takes place across national frontiers, and not in terms of any service or any kind of service transaction. [W/4, para.11, GNS/15, para.65]

12. Services transactions are transfers of intangible benefits, another dimension being the payment for the service. However, it is difficult to distinguish between an international and an internal transaction in services, e.g. when a service producer goes to a foreign country to produce and deliver a service and expends the income earned from that transaction in that country, both the transfer of the intangible benefit and the payment for the service have taken place in the foreign country. However, if the producer of the service repatriates his earnings it could be said that an international service transaction had taken place. [GNS/8, para.13]

#### Tradeable Services

13. Tradeable services cover both cross-border trade and establishment in order to achieve effective market access. There is no need for an illustrative list of types of transactions for each sector since such a list would have the potential of restricting future trade not covered in it. [GNS/13, para.21]
14. Regarding the definition of trade in services, although it is essential that all internationally tradeable services be included in the agreement, there is a need for a balance of sectoral coverage to respond to the interests of all participants, including developing countries. [GNS/13, para.43]
15. Although the final coverage would have to emerge from the negotiations, the GNS should address all tradeable services. [GNS/7, para.32]
16. Most of the discussion in regard to mechanisms and principles is not meaningful unless it is related to the definition and coverage of the agreement. A key question is what internationally tradeable services would cover. [GNS/13, para.33]
17. Concerning coverage, definition, and the idea that all internationally tradeable services be included, trade in services should strike a balance so as to cover sectors of interest to all countries, particularly developing countries. The multilateral framework should cover those services sectors in which the developing countries had a comparative advantage, in particular labour-intensive services. [GNS/13, para.28; GNS/7, para.9]



18. Possible criteria for the inclusion of particular services in the multilateral framework: trade volume, degree of necessity of multilateral action, and existing international disciplines and arrangements. Any tradeable services and in particular services involving a temporary relocation of labour should be included. [GNS/8, para.39]

Principal points and basic concepts addressed in the discussion and submissions:

- (i) The basic concept is that the scope of the future framework on trade in services will depend upon what is ultimately agreed to constitute trade in services for the purposes of these negotiations.
- (ii) The definition of trade in services that extends beyond the cross-border movement of a service to the movement of producers (or of factors of production) and consumers across borders would have implications for the nature and scope of application of the future framework agreement.
- (iii) There is a linkage between the definition of trade in services and sectoral coverage.
- (iv) It is difficult to distinguish between an international and internal service transaction.

A number of other points have already been listed in Secretariat paper MTN.GNS/W/38/Rev.1.

The following points may also be given consideration:

- (i) How can the approach of defining trade in services in accordance with certain characteristics of the services transactions (generic approach) be reconciled with that of defining trade in services through sectoral coverage?
- (ii) What would be the criteria for distinguishing between an international and internal service transaction?

(See also Secretariat paper MTN.GNS/W/38/Rev.1.)

### III. DEVELOPMENT OF DEVELOPING COUNTRIES

#### Statements by Participants in the GNS:

##### (i) Development concept

1. The concept of economic development should be an integral part of the framework agreement and of the sectoral agreements that may be negotiated, and not a series of waivers, exceptions or "special treatment". This demands 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. [W/42, p.1; GNS/16, para.50]
2. For a developing country the concept of "development" goes far beyond mere economic growth: it must reflect not only quantitative progress but also active participation in trade. It is therefore necessary not only to establish and determine the elements which would allow developing countries to have an independent decision-making capacity regarding issues relating to trade in services, but also to ensure those countries a larger share and better integration, in that trade, and the security and capability to adapt to new circumstances in international trade. [W/33, p.3]
3. Development is a process which goes beyond having a larger share in trade and refers to the structural changes in the economy of a developing country as set out in that country's development objectives. The framework should facilitate such structural changes. [GNS/14, para.17]
4. Each developing country should define for itself the content of the concept of development which suggests a concept of national definition of development, reflecting differences in the economic structures and policies of different countries. A guiding principle for implementation would be to find concepts compatible with the expansion of trade which is the central aim of the framework. [W/29, pp.6-7]
5. A fundamental question is how trade in services could help development. Developing countries should endeavour to achieve benefits from both imports and exports of services. In order to maximize the benefits of imports and to improve export supply capacity, it is also necessary to examine the transfer of technology, development of human resources and restrictive business practices. [GNS/14, para.57]

6. Economic development should provide means and ways to enhance the process of development in developing countries, while special and differentiated treatment is more a derogation to a given system, providing a certain degree of flexibility in assuming obligations. [GNS/14, para.57]
7. Unless each developing country benefits by increasing productivity and capital formation, and the creation of interlinkages among the different sectors of the economy, its development could be retarded even though output as conventionally measured increased. GATT experience may be helpful, for instance in respect of "special and differential treatment" and of the provisions in a number of articles relating to economic development of economies at early stages of development. [W/28, paras.9,10]
8. The establishment of multilateral rules will enable many countries to participate in the rapidly expanding international trade in services. It is not possible to create a multilateral trading system that would guarantee a certain type of development in participating countries. [GNS/14, para.20]

(ii) Implementation of the development concept

9. Development compatibility refers to provisions to complement market forces and envisages four main concepts: preferential liberalization of market access for services of particular interest to developing countries; preference for development-promoting forms of trade; exporters' behavioural obligations; comparative advantage reinforcement programme. [W/29, p.6, etc.]
10. Liberalization of services trade can contribute to the development of developing countries by providing cheaper and more advanced technology and by enabling them to achieve a higher level of service capability not only for their own economies but also for their export potential. [GNS/11, para.30]
11. What is unclear is whether the process of liberalization per se necessarily favours the development of indigenous service industries and, in turn, that of the economy as a whole. Liberalization can further be expected to impact negatively upon the balance of payments. It is 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 are likely to be unequal partners in liberalization. From a developing country point of view, the key requirement is one of time - time in which to develop a viable indigenous service industry and to gradually expose it to international market forces. [GNS/16, para.74]

12. Necessary measures to achieve the goal of the development of developing countries include: establishing the principle of relative reciprocity in recognition of the fact that there could not be equal treatment among unequal parties; that services in which developing countries are competitive (i.e. labour-intensive services and labour as such), should be the subject of negotiations; that negotiations should not include the right of establishment or commercial presence of direct foreign investment; 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; unconditional and unrestricted application of m.f.n. treatment to developing countries; the granting of preferences in sectoral agreement negotiations of interest to developing countries; 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. [GNS/16, para.50]
13. Implementation of the concept of development requires action in the following areas: first, developing countries should be granted suitable latitude to put into practice all policy instruments required to facilitate the export of services; second, measures by developed countries to facilitate imports of services from developing countries should also be encouraged, e.g. the extension of the prohibition on protection within an integration arrangement among developed countries to exporting developing countries; third, the developing countries' need to adopt ad hoc, short-term measures to enable services to be imported as inputs for the subsequent export of similar or different services should be taken into account; fourth, developing countries, in their natural situation as recipients (importers), should be able to realize the foreign-exchange balances of specific projects connected with trade in services, and have the power to regulate part of the flow of foreign exchange generated by that trade; fifth, joint ventures between developing and developed countries should be promoted; sixth, it will be necessary to ensure suitable access to technology, and that trade in services is accompanied by undertakings for the transfer of technology. Furthermore, rules must be drawn up to ensure that legislation relating to intellectual property does not impose monopoly rights over the transfer of technology. [W/33, pp.4-5]

Principal points and basic concepts addressed in the discussion and submissions:

- (i) Developing countries should draw benefits from the future framework agreement. To this end the concept of development should form an integral part of the future framework agreement.
- (ii) For the needs of development to be met, it is necessary to introduce notions which go beyond that of development flowing automatically from liberalization of trade in services.
- (iii) Development of developing countries is a nationally determined concept which goes beyond economic growth.
- (iv) Differing assessments could be made as to the relationship between the process of development and the expansion of trade in services through progressive liberalization.

The following points may also be given consideration:

- (i) What specific concepts and provisions are required to ensure that the concept of development forms an integral part of the future framework agreement and has an effective operational content?
- (ii) If the content of the concept of development is to be determined by each developing country individually, how can this be made operational in the context of the future framework agreement, bearing in mind the overall objectives of the negotiations?
- (iii) What are the elements affecting the relationship between the process of development of developing countries and the expansion of trade through progressive liberalization which need to be further explored?

IV. ESTABLISHMENT/COMMERCIAL PRESENCE (Sales of services which include factor flows across the border and where the service itself does not necessarily cross the border)

Statements by Participants in the GNS:

1. The framework should apply to the cross-border movement of services as well as to the establishment of foreign branches and subsidiaries for purposes of producing or delivering the service within the host country. [W/24, p.3]

2. Commercial presence ranges from temporary presence of individuals (e.g. a representative office) and production facilities to a more permanent presence (e.g. a subsidiary). If a producer is to be permanently present in a market, he has to establish although this should not be considered a right. [GNS/14, para.51]
3. For both establishment and commercial presence it is necessary for investment to take place. In the case of pure establishment there is the ability and the authority on the part of the subsidiary or the branch to produce a service within a host country. With commercial presence the service is in fact produced in the supplier country. Therefore, presence is defined as the ability to have an office which would market and facilitate the sale of the service produced abroad. [GNS/14, para.51]
4. There is nothing in the Punta del Este Declaration related to the so-called right of establishment or commercial presence which implies foreign direct investment flows. [W/25, p.3]
5. 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. [GNS/16, para.67]
6. There cannot be an automatic right of establishment from the outset but establishment-related issues cannot be excluded from GNS deliberations. [GNS/16, para.69]
7. It would seem difficult to attain fair and equitable access to new technologies, and the growth of production and employment without establishment which is the general means of providing services. [GNS/16, para.57]

Principal points and main concepts addressed in the discussion and submissions:

The main points relating to establishment and commercial presence have been dealt with in Secretariat paper MTN.GNS/W/38/Rev.1.

The basic concept of establishment and commercial presence implies that services transactions are being carried out on the basis of physical proximity between producer and consumer and the service is not being transported or otherwise provided across the border. It implies the movement of production factors at least temporarily across the border.

The following points may also be given consideration:

- (i) Can a distinction be made between establishment and commercial presence?
- (ii) Can any specific ideas or criteria be tied to establishment or commercial presence?
- (iii) If establishment and commercial presence are acceptable, could movement of labour also be provided for?
- (iv) To what extent would establishment and commercial presence contribute more to expansion of trade and growth than just cross-border trade?

A number of other points have already been listed in Secretariat paper MTN.GNS/W/38/Rev.1.

V. EXCEPTIONS/ESCAPE CLAUSES/SAFEGUARDS

Statements by Participants in the GNS:

- 1. Temporary escape clauses to cover market disruption, balance of payments difficulties, and national security considerations should be provided, but with limits on the action which may be based on them. [W/29, p.7]
- 2. An escape clause for a services agreement would have a different content to the similar GATT provisions. [GNS/13, para.21]
- 3. General exceptions under Article XX as well as security exceptions under Article XXI seem to be basically applicable to trade in services. [GNS/10, para.11]
- 4. Exceptions refer to provisions allowing the parties to adopt or enforce measures to protect public morals, to protect human, animal or plant life or health or to secure compliance with laws or regulations that are not inconsistent with the agreement. The general exceptions should not allow parties to use such measures to circumvent their commitments with disguised restrictive measures. [W/39, para.16]
- 5. The framework should include a number of exceptions for developing countries - not to be identified with "special treatment" for them. The exceptions should allow the possibility for these countries to regulate new services or traditional services whose transportability has been enhanced by the new technologies. [W/25, p.6]

6. Permanent exceptions: description of conditions that would allow signatories to exempt certain regulations/policies governing services activities, otherwise covered, from the purview of the agreement. Such conditions might include national security considerations, prevention of disorder or crime, etc., and should be kept to a minimum. [W/46, p.4]
7. One could envisage elaborating a clause regarding the staging over time of any unexpected effects of new commitments deriving either directly from the multilateral framework or from agreements concluded under its auspices, and likewise provisions concerning measures tolerated in the event of difficulties of a structural character. [W/45, p.5]
8. It is necessary to examine the safeguards on trade in services with due heed to the disciplines of GATT on safeguard, and taking into account the special characteristics of trade in services and the result of the examination in GNG. [W/40, p.5]
9. It is evident that an adequate discussion has not yet taken place as to the essential requirement in any agreement on trade in services of protecting the growth of services in the developing world from instant competition. There is an essential need for initial protection for infant services in the developing countries. [GNS/12, para.46]
10. There is a need for a safeguard mechanism in order to protect the objectives of national security and promotion of infant industries, and for dealing with consumer protection. [GNS/7, para.9]
11. Attention also had to be paid to how a clause allowing restrictions to safeguard the balance of payments could operate. [GNS/13, para.21]
12. Elements to be provided for a multilateral framework should include emergency measures (e.g. balance of payments). [W/33, p.7]
13. One would have to discuss whether, for example, safeguards could be included in the general framework or only in specific sectoral agreements. [GNS/14, para.8]



Principal points and basic concepts addressed in the discussion and submissions:

- (i) The basic concept is that there should be a provision for escape clauses and exceptions introduced in the future framework arrangement, which permit governments under clearly specified circumstances to safeguard certain overriding national interests.
- (ii) In the area of trade in services exceptions should specify the agreed conditions under which departures from otherwise binding rules and commitments are permitted. Escape clauses should be designed to allow temporary derogations from the accepted obligations under agreed conditions.

The following point may also be given consideration:

While provisions for exceptions and escape clauses exist for trade in goods, how can such provisions be formulated in a future framework agreement to respond to the special characteristics of trade in services?

VI. EXISTING INTERNATIONAL ARRANGEMENTS AND DISCIPLINES

Statements by Participants in the GNS:

- 1. A provision in a possible framework agreement would consist of a description of the relationship of the agreement to existing international agreements and conventions covering individual services sectors. [W/46, p.4]
- 2. Concerning how other disciplines would relate to an eventual agreement on trade in services, views range 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. The exercise in the GNS should not imply ab initio that a country's obligations and participation in other agreements would be ultimately subject to what was finally agreed upon in this Group. It is important to consider whether the Group is working in an international legal vacuum or in a given legal environment where certain areas have not yet been covered. [GNS/16, para.95]
- 3. Discussions with international organizations are of limited value to the extent that they do 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. [GNS/16, para.96]

4. The framework has to take account of the existing international disciplines and instruments, and the GNS has to analyse the degree to which these disciplines and agreements contribute to the creation of a favourable environment for the promotion of economic growth and development. Some of these disciplines and instruments might shed some light on the way in which the GNS could proceed with respect to general concepts. In fact, the principles on which a number of disciplines and instruments that already exist or are being negotiated are based, are not necessarily the same as those "borrowed" from the General Agreement. [GNS/12, para.7]
5. It is important and relevant to have other international organizations participate in the deliberations of the GNS. It is 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. Technology transfers and restrictive business practices are relevant issues in the context of development, which the Group should give consideration to, utilizing related work already undertaken in both UNCTAD and UNCTC. [GNS/16, para.95]
6. It is neither feasible nor desirable to launch on the exercise in this Group of a new framework, in disregard of what already existed in different sectors of services. It is not the case that the outcome of these negotiations would automatically abrogate or supersede these arrangements. On the contrary, the outcome would have to be compatible with obligations in these existing agreements and arrangements. It would be useful, in the further work, to evaluate the importance of such arrangements for the promotion of growth and development and to examine the principles and rules in these arrangements with a view to exploring alternative approaches or models which might be more appropriate to the mandate. [GNS/12, para.16]
7. A point for consideration is the relationship of existing multilateral and bilateral agreements to the framework agreement. One way to go about this is to look at it in the context of the grandfathering of existing measures. It is not suggested that the existing multilateral sectoral agreements should be considered in the context of the proposed multilateral framework agreement. However, where they set standards, any future agreement may have to take account of them. [GNS/13, para.5]
8. The existing agreements would have to be subjected to the contractual obligations under the multilateral framework, if they maintained or endorsed measures affecting adversely trade in services. [GNS/10, para.40]

9. The future multilateral framework would have to be compatible with existing agreements. Either the multilateral framework would be built around the existing agreements or the existing agreements would have to be adapted to the new multilateral framework. [GNS/8, para.43]
10. The international organizations which have taken part in the meeting have much relevance with respect to the question of liberalization and development. ICAO has a very wide competence in this respect. Many economic aspects are within the competence of ITU and some particular resolutions bear directly upon development, but which are not binding provisions on development in the eventual services agreement. As concerns the UNCTAD Liner Conference Code of Conduct, development is the main function of such a Code. [GNS/16, para.95]
11. The representative of ICAO had traced the lack of progress in liberalization back to the lack of reciprocity undertakings in the Chicago Convention. This lack of guarantee on reciprocal concessions could be avoided in the GNS through a multi-sectoral package. Regarding ITU, what exists relating to the promotion of development in that organization's instruments is in the form of resolutions and it should be in the interest of the GNS to provide instead for legally binding rules relating to development. As concerns the Liner Conference Code, consumers should also be considered when one refers to the Code as development-oriented. [GNS/16, para.95]

Principal points and basic concepts addressed in the discussion and submissions:

- (i) In negotiating the future framework agreement, account should be taken of relevant existing international arrangements and disciplines from the point of view of compatibility, purposes and objectives served, and modalities for achieving them.
- (ii) A number of the concepts under consideration in the GNS are utilized in existing arrangements and disciplines in a sector-specific manner and would most likely need to be given a different meaning in the context of the future multilateral arrangement for trade in services.

The following points may also be given consideration:

- (i) To what extent are provisions in relevant existing international arrangements and disciplines related to the objectives of the negotiations on trade in services?

- (ii) What provisions are required in services sectors covered by existing international arrangements and disciplines in terms of a future framework agreement or sectoral disciplines?
- (iii) How should the question of compatibility between existing international arrangement disciplines and the future framework agreement be dealt with?

## VII. MARKET ACCESS

### Statements by Participants in the GNS:

1. Access to services markets is typically controlled by non-tariff measures which are entrenched in domestic regulatory frameworks. The services framework agreement will deal both with access barriers and with other measures which impede the liberalization or expansion of services trade. It must be acknowledged that in some services sectors participants in an agreement might not wish to completely open a market because of the nature of the market or because of national policy objectives. [W/12, paras.19,20,22]
2. The issue of market access must be addressed in the context of various rules for establishment or commercial presence affecting market conditions for services. [W/26, p.2]
3. The practical scope of the agreement would be determined by the exchange of specific market access undertakings and of trade liberalization measures. The undertakings could potentially be related to any measure used to inhibit trade in services. [W/39, para.21]
4. Specific situations relating to the concept of market access include, but are not limited to: access to local distribution networks, access to local firms and personnel, e.g. on a contractual basis, direct access of foreign service producers to domestic customers, access to licences and other operating authorizations, right to use brand names. [W/24, pp.5-6]
5. 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. [GNS/16, para.93]
6. Market access: a provision describing the types of market access (e.g. cross-border, agencies, establishment, non-establishment) that may be negotiated or available under the agreement. This provision might also contain a model mechanism

(e.g. an "open-season" provision) for the negotiation of market access agreements and include mechanisms to encourage progressive liberalization. Additional access to markets would be an expectation of the agreement rather than a right, and it may be subject to a degree of reciprocity. [W/46, p.3]

7. Preservation of market access: a commitment to maintain a balance of rights, obligations and benefits, to offer equivalent alternative concessions if current market access rights in a given activity are made more restrictive and to consult with interested parties in advance of their introduction. This provision would stand in the place of a binding commitment under the GATT. [W/46, p.3]

Principal points and basic concepts addressed in the discussion and submissions:

- (i) The basic concept concerning market access is the opportunity for producers to sell a service in a foreign market which is affected by entry barriers and/or the special requirements relating to the sale of services abroad.
- (ii) The content of any market access provision will be largely determined by the interpretation given to such terms as establishment and commercial presence.
- (iii) The notion of maintaining an equivalent or existing level of market access will be relevant where a concession or commitment needs to be withdrawn.

The following points may also be given consideration:

- (i) Would it be necessary to reach an understanding on the various types of market access concessions and commitments which should be provided for in the future framework agreement?
- (ii) What is the basis on which commitments and concessions on market access may be applied?

(See also Reciprocity and MFN treatment.)

VIII. MOST-FAVOURED-NATION (m.f.n.) TREATMENT

Statements by Participants in the GNS:

(i) Unconditional m.f.n.

1. M.f.n. treatment is the cornerstone of the GATT and would need to become a corresponding key element of any agreement on services, i.e. although the exchange of concessions (whether commitments on existing measures or on future measures) would generally be negotiated bilaterally or plurilaterally, the concessions would be implemented on an m.f.n. basis to all parties to the trade in services agreement. [W/39, para.14]
2. M.f.n. treatment (non-discrimination): the benefits accruing from the framework (including those agreed to bilaterally between participating countries) are equally accorded to all participating countries on an unconditional basis. The participating countries may reserve the application of m.f.n. to the reciprocal international arrangements and the reciprocal measures stipulated by national laws and regulations. [W/40, p.3]
3. Unconditional m.f.n. treatment means that all benefits or privileges exchanged among signatories of the multilateral framework would be extended automatically and immediately to all signatories of the multilateral framework. [W/32, para.6, GNS/14, para.11, W/24, para.4]
4. Unconditional m.f.n. treatment means that all benefits or privileges are automatically and immediately extended to third-parties participating in the framework. This principle would also have to be included in the sector specific regulations or subsidiary understandings. [GNS/9, para.33]
5. M.f.n. implies the automatic extension of benefits or concessions to other participating countries, while non-discrimination does not provide for such an automatic extension. [GNS/16, para.45]
6. M.f.n. treatment is a tool designed to achieve non-discrimination among foreign suppliers. [GNS/16, para.76]
7. M.f.n. is the instrument for a dynamic process and is controlled by a very large number of participants, whereas non-discrimination is controlled or can be invoked by the participant who has been discriminated against. The concept, therefore, has a more static character. [GNS/16, para.93]

(ii) Conditional

8. If the m.f.n. concept at the sector or activity level has to be confined to those participants who have accepted higher commitments, it is unclear what the m.f.n. benefit will be for those participating in the general agreement. [GNS/14, para.59]
9. The most-favoured-nation provision 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. [GNS/16, para.77]

(iii) Optional m.f.n.

10. Optional m.f.n. means that any third country which deemed it desirable and advantageous would obtain the right to become a party to the agreement, which would thus become applicable to it. The country or countries concerned would in exchange have to offer a counterpart that is formally identical to that furnished by the country or countries parties to the initial agreement. [W/30, p.4]

Principal points and basic concepts addressed in the discussion and submissions:

- (i) The basic concept concerns the nature of the obligations and the mechanism that is needed to ensure that the benefits accruing from the future framework agreement will be extended to the other participating countries.
- (ii) It is necessary to determine for the purposes of the negotiations whether an m.f.n. provision should form part of the final framework agreement. The options discussed would include unconditional, conditional and optional m.f.n. treatment.

The following points may also be given consideration:

- (i) What mechanism should be adopted to determine how the benefits of improved market access accruing from the future framework agreement will be extended among participating countries?
- (ii) What would be the implications of the various forms of m.f.n. treatment for the nature of the arrangements that may be negotiated, for the participation in these arrangements, and for the achievement of the objectives of the negotiations?

IX. NATIONAL TREATMENT

Statements by Participants in the GNS:

1. National treatment means that laws and regulations do not discriminate against actual or potential foreign service suppliers as compared with existing domestic suppliers. [W/29, p.5]
2. National treatment should generally require that foreign service providers receive treatment no less favourable in like circumstances than that accorded to domestic service providers with respect to government measures affecting the service sector in question. The national treatment concept should recognize the inseparability between the service provider and the service itself. [W/24, p.5]
3. The primary objective of national treatment is to prevent discrimination against foreign service providers as compared with their domestic counterparts. National treatment does not imply an obligation to grant unconditional access to the domestic market but it means that once access is granted, treatment in terms of laws, regulations and administrative practices should be no less favourable for the foreign service provider than it was for a domestic provider offering a like service. [GNS/15, para.40]
4. Imported services, foreign service enterprises and sellers, and the agents are accorded treatment no less favourable than that accorded to like domestic services, domestic services enterprises and sellers. [W/40, para.3]
5. National treatment in the services context might not necessarily mean identical treatment but rather equal or equitable treatment taking into account legitimate national policy objectives such as those of national security. [W/26, p.4]
6. National treatment means that domestic and imported services and labour would receive the same treatment but it does not apply to producers or sellers of those services, that is, to foreign direct investment in services. [W/25, p.3]
7. Concepts like national treatment, as applied to trade in goods, cannot be applied to cross-border trade in services as there is no barrier at the border of the same kind as a customs tariff which could be imposed on all services. [W/34, p.3]
8. The treatment applicable to foreign services and suppliers admitted to the national market will be identical or equivalent to that applied to comparable national services or suppliers. [W/45, p.3]



9. National treatment is an obligation to give foreign suppliers of services and/or their products treatment no less favourable than that granted to domestic suppliers and/or their products in like circumstances in terms of laws, regulations and administrative practices. National treatment would be applicable only once market access has been granted and taken up. (Note: both the non-discrimination rule and the national treatment rule will apply to investment regulations unless specific exceptions are sought.) [W/46, p.2]
10. In the context of trade in services, national treatment should be seen only as a yardstick and not as a basic obligation. [GNS/10, para.13]

Principal points and basic concepts addressed in the discussion and submissions:

- (i) The basic concept of a national treatment provision is to prevent discrimination between domestic and foreign service providers. This would mean that under relevant national laws and regulations, foreign service providers would be accorded treatment no less favourable than that accorded to domestic service providers in like circumstances.
- (ii) Given the special characteristics of services trade, the implications of a national treatment provision would differ from those in the case of trade in goods and also depend upon the agreement to be reached in the GNS on what is meant by trade in services.
- (iii) The national treatment provision would also have different implications depending upon the services sector concerned.
- (iv) National treatment does not necessarily result in unconditional or improved access to national markets. Rather it should result in equitable treatment for foreign service providers in terms of national laws regulations and administrative practices once market access is granted.

The following points may also be given consideration:

- (i) How could a national treatment provision be formulated to take into account the particular nature and characteristics of services trade?
- (ii) Could a national treatment provision be formulated in a general way so as to be applicable to all trade in services, or would it be necessary to devise national treatment provisions on a sector-by-sector basis?

X. NEGOTIATING TECHNIQUES

Statements by Participants in the GNS:

1. There are two approaches to the drafting of the general framework itself. One approach is to make it an enforceable arrangement by incorporating all the principles and rules which must be enforced in the general framework. The other approach is to make the general framework serve only as a standard model for specific sectoral agreements, and make the sectoral agreements enforceable. [W/40, p.2]
2. Rather than attempt to make rules (or exceptions) for every sector, a framework agreement should make strong rules of general application [as 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. [GNS/16, para.52]
3. The establishment of the framework of principles is the first priority for negotiation with a clear statement of the m.f.n. and national treatment aspects to ensure equitable treatment for all parties. [GNS/15, paras.27, 43]
4. A framework agreement should be negotiated as a fully multilateral agreement and any supplementary agreements that were negotiated would have to respect a set of multilaterally determined disciplines. The issue would then be how tightly should the sectoral agreements be multilaterally circumscribed. It should result in a rule-based system which did not allow decisions to be taken on the basis of "power politics". [GNS/15, paras.51, 52]
5. One approach (MTN.GNS/W/39) is based on the exchange of specific market access undertakings and trade liberalization measures. The basic negotiating mechanism for the removal of restrictions is a request/offer system which might not be the best way to achieve comparable levels of market access in different sectors. It could lead too much to the idea of equal concessions by all partners but the GNS should not go into mechanisms requiring equal concessions from unequal partners or from countries which had regulatory systems with very different degrees of restrictiveness. [GNS/15, paras.44, 52]
6. Comparable market access in all countries may be achieved by periodic packages of negotiated liberalization measures, the multilateral nature of the liberalization being ensured through the m.f.n. principle. [W/29, p.5]

7. MTN.GNS/W/37 proposes a three-phase approach: 1. establishment of a multilateral framework containing principles, concepts and disciplines for trade in services. 2. the drawing up of a list of sectors that would be the subject of negotiation; anonymous notification to the GATT Secretariat which would then compile a consolidated list. 3. implementation of the framework and the sectoral provisions with a view to liberalizing trade in services. [W/37, paras.3-17, GNS/15, para.27]
8. There are two parts to the proposal (MTN.GNS/W/39): 1. a possible structure for a framework agreement, consisting of a set of principles for trade liberalization, rules relating to transparency, non-discrimination, etc., institutional arrangements to ensure enforcement and surveillance and an exchange of specific market access undertakings. 2. a process of negotiations that would lead to trade liberalization, requiring the collection of a body of information on barriers to trade in services and an agreement on the negotiation procedures. [W/39, paras.6,24-26; GNS/15, para.28]
9. The approach in MTN.GNS/W/46 builds on the creation of strong rules of general application alongside a balance of rights and obligations and market access benefits. Such a balance would be established through an initial listing, in the form of schedules, by each individual member country, of national regulations to be excluded from the coverage of the agreement and market access undertakings. An "open-season" procedure is suggested as the mechanism for the certification of proposed exceptions and for the scheduling of concessions. Through this procedure, which would control regular rounds of plurilateral negotiations, the schedules of exclusions would be shortened and the market access undertakings expanded. The market access agreement would initially be negotiated bilaterally with the benefit being made available to all members on a non-discriminating basis. [GNS/16, para.52]
10. Another approach in MTN.GNS/W/45 envisages the use of an "optional most-favoured-nation" arrangement under which bilateral or plurilateral services agreements - negotiated with reference to some overall principles - could be extended to third parties upon request. The plan envisages the application of the principles of access to markets, non-discrimination and national treatment which would constitute guidelines for participants in rules applying to domestic regulations and as rules for negotiation of agreements. [GNS/16, para.51; W/45, pp.2-4]
11. The liberalizing approach has to be gradual, and as countries need time to assess the situation before undertaking firm commitments to liberalize trade in services, there should be few obligations at the outset. In order to achieve the widest

possible participation from the start and a framework agreement signed by as many countries as possible, a proposal is suggested with two layers and several options, e.g. a general framework or "umbrella" agreement, and sectoral agreements related to the general framework. All members of the multilateral agreement may not participate in the sectoral agreements. The proposed framework is comprehensive and contains a number of important principles, but signing the agreement would entail few obligations. Many of the principles of the general framework, and all commitments to liberalize trade in accordance with certain rules, would enter into force only when a country signed a sectoral agreement, and then only for that sector. It is difficult to foresee whether particular principles would apply in all sectors or whether safeguards and subsidies could be included in the general framework or only in specific sectoral agreements. [GNS/14, para.8]

Principal points and basic concepts addressed in the discussion and submissions:

- (i) It will be necessary to reach agreement on a possible structure for the future framework agreement and on the nature of the commitments and disciplines to be established.
- (ii) One possibility would be a framework agreement containing strong rules and disciplines of general application which should be sufficiently specific to permit their application at the sectoral level.
- (iii) Another possibility could be a general framework which contains principles and rules of general application and, in addition to this general agreement, there could be complementary sectoral agreements that would apply to the various sectors to be covered as an outcome of the negotiations.
- (iv) There could be a number of approaches to meeting the objective of expansion of trade in services through progressive liberalization; a number of techniques for achieving expansion of trade in services through progressive liberalization have been proposed.

The following points may also be given consideration:

- (i) What should be the relationship between the multilateral framework containing rules, principles and procedures of general applicability and sectoral undertakings?



- (ii) In the light of the proposals that have been put forward, by which means could the objective of expansion of trade in services through progressive liberalization be best achieved?

## XI. NEGOTIABLE AND NON-NEGOTIABLE REGULATIONS

### Statements by Participants in the GNS:

1. Non-negotiable regulations are regulations which do not impact on trade and on which no further action should be taken pursuant to the agreement. These regulations should be regarded as appropriate. Negotiable regulations in turn are those which should be regarded as inappropriate: first, regulations which are designed to achieve agreed national policy objectives and impact negatively on trade, it being necessary to reduce their effect on trade through negotiations; second, regulations with the specific objective of having a negative impact on trade, the aim being to remove these regulations. [GNS/14, para.25, W/29, p.4]
2. The regulations committee is a permanent body which would have the task of distinguishing between appropriate and inappropriate (non-negotiable and negotiable) regulations. Appropriate rules would have to be developed to define the role of the committee and to ensure practicable procedures. [W/29, p.4]
3. Regarding the notion of appropriate regulation, it is doubtful that an international body such as a regulations committee could reach any consensus. [GNS/13, para.22]
4. It is not clear whether the regulations committee is a negotiating body for bilateral bargaining purposes, an independent judicial body, or the first stage of a dispute settlement mechanism. [GNS/13, para.39]
5. It is not feasible to establish whether laws and regulations are legitimate or illegitimate. All laws are legitimate but are open to negotiations in those cases where one can achieve a policy objective by making certain adjustments through negotiations. [GNS/14, para.27]
6. It would be very difficult to accept a judgement on the appropriateness or not of national regulations which might give rise to preoccupations about the possibility of interfering in the national decision-making process. [GNS/13/Corr.1, para.37]
7. There is no warrant in the mandate for starting an open-ended scrutiny of all national regulations in services and subjecting them to multilateral determination of their appropriateness or legitimacy. All such regulations, by definition, are appropriate and legitimate. [W/4, para.9]

8. A more preferable concept to appropriate regulation as the central mechanism is to have a general principle according to which governments should ensure that regulations implemented to achieve policy objectives should have a minimal impact on trade. [GNS/13, para.30]

Principal points and basic concepts addressed in the discussion and submissions:

- (i) The basic concept relates to the possibility of identifying regulations which have a negative impact on trade with a view to eliminating them or their effects on trade, without calling into question the continued existence of those regulations which are determined to be essential for the implementation of national objectives or which do not have a significant impact on trade.
- (ii) There is a distinction to be made between determining which national regulations are negotiable, and subjecting all national regulations to international scrutiny.
- (iii) Regulations implemented to achieve policy objectives should have a minimal impact on trade.

The following point may also be given consideration:

What could be the basis on which a decision could be taken as to which national regulations are negotiable or non-negotiable?

XII. NON-DISCRIMINATION

Statements by Participants in the GNS:

1. Any regulations which discriminate on grounds of nationality between different foreign suppliers of services could be regarded a priori as inappropriate. [W/29, para.5]
2. The principles of non-discrimination and m.f.n. treatment are not identical. M.f.n. treatment is the most widely used legal device or technique for implementing the principle of non-discrimination or equal treatment, a technique that could clearly be used in the field of trade in services. [GNS/11, para.25]
3. The m.f.n. clause implies that an advantage given to one party should be given equally to all. Conversely, non-discrimination means that no one should be disadvantaged in a way that others are not. [GNS/10, para.20]

4. Conditions of access and of competition will not be deliberately less favourable for one or more foreign services or suppliers than for other comparable foreign services or suppliers. [W/45, p.2]
5. Discriminatory trade agreements are those in which one or more countries provide benefits to, or impose obligations on, certain trading partners that are not applicable to all trading partners. [W/12, para.4]
6. There exist essentially two types of discrimination: discrimination between foreign suppliers (which is countered by the traditional m.f.n. principle), and discrimination between foreign and domestic suppliers (which is countered by the national treatment clause). Both m.f.n. and national treatment should be considered to be key concepts in the efforts to promote growth in trade in services. [GNS/11, para.9]
7. Non-discrimination is a principle of fairness in trade regulation which should be apparent as well as real to have effect; that is, regulations should be seen to be non-discriminatory if they were to have broadly based agreement. The purpose of the agreement would be to reduce or eliminate restrictions not in conformity with the principles. The sorts of discriminatory regulations that would be eliminated could be those which restricted or favoured the import of services by means of quotas, licensing or preferential access. [GNS/10, para.18]
8. A non-discrimination provision could enter into force in either a prospective or retrospective manner. The former scenario involves 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. [GNS/26, para.75]

Principal points and basic concepts addressed in the discussion and submissions:

- (i) The basic concept of non-discrimination implies that a trade restricting measure in services should not apply to a trading partner if it does not apply to all other trading partners.
- (ii) For the purpose of the negotiations a distinction should be drawn between non-discrimination and m.f.n. treatment.



The following points may also be given consideration:

- (i) What could be the appropriate means of ensuring non-discriminatory treatment among participants in the future framework agreement?
- (ii) Once the framework agreement has entered into force, should the requirement of non-discrimination apply to existing measures or only to future measures?

XIII. PROGRESSIVE LIBERALIZATION

Statements by Participants in the GNS:

1. Liberalization means facilitating and promoting trade across borders and the stimulation of international competition. Sometimes this can only be achieved by dismantling regulations which hamper foreign competition, although liberalization and deregulation do not have the same meaning. [GNS/14, para.6]
2. The principal instrument leading to increasing international competition will be progressive liberalization of market access. It will be necessary to balance the progressive liberalization of market access with the respect for policy objectives and thus with a concept of appropriate regulation, which recognizes that some regulation in many service sectors must be accepted as necessary or desirable, and that the policy objectives which lead governments to regulate services' activities must be respected. [W/29, p.6]
3. Progressive liberalization will provide a more competitive environment within all service markets, enabling local consumers to utilize services bearing the most advanced technology with the lowest possible prices. [W/24, p.3]
4. Nowhere has the mandate put forward liberalization per se as the aim of the negotiations. The reference to liberalization has been qualified by the adjective "progressive" and the whole phrase has been mentioned only as one of the conditions for expansion of trade. [W/4, para.7]
5. Nowhere has progressive liberalization been equated with dismantlement of national regulations. The only reference to national laws and regulations [in the mandate] is with the express purpose of ensuring that any multilateral framework that may emerge shall have to respect the policy objectives of such laws and regulations. It is only in so far as such laws and regulations impinge on cross-border trade in services that one could visualize consideration of how and to what extent they affect expansion of trade. [W/4, paras.8, 10]

6. Progressive liberalization in GATT has been achieved through the "binding" of tariff concessions on individual products, and through rules which prohibit or curtail the use of non-tariff measures. No hard and fast conclusions can yet be drawn as to whether the GATT approaches are applicable to services. [W/28, p.6]
7. The set of principles and rules to be agreed should respect the national policy objectives contained in the laws and regulations which countries apply to the services sector. Furthermore, it is necessary to promote the economic growth of all countries and the development of developing countries through the expansion of trade in services. Consequently, progressive liberalization evolves gradually as the above-mentioned objectives are fulfilled. Liberalization of trade in services will take place according to the limitations imposed by the realities existing in specific sectors of that trade. [W/33, p.2]

Principal points and basic concepts addressed in the discussion and submissions:

- (i) The basic concept relates to the rôle of progressive liberalization as a means of achieving the objectives of the Punta del Este Declaration. It means the gradual improvement of market access through the reduction or possible elimination of negotiable barriers to trade in services.
- (ii) Progressive liberalization is a means of increasing international competition and is not to be equated with the simple dismantlement of national regulations.

The following points may also be given consideration:

- (i) What is the means whereby expansion of trade in services through progressive liberalization could best be achieved?
- (ii) What means are to be devised to assure that national policy objectives are not negatively affected through the liberalization process?

(See also Negotiating Techniques and Negotiable and Non-negotiable Regulations.)

#### XIV. RECIPROCITY/RELATIVE RECIPROCITY

##### Statements by Participants in the GNS:

##### (i) Reciprocity

1. The term reciprocal refers to the traditional term in the GATT sense of an overall set of benefits among countries. [GNS/15, para.59]
2. An agreement on trade in services would need to involve benefits for and contributions from all its participants. [W/39, p.3]
3. Once an agreement on services is established, the resulting expansion of market access might be subject to a degree of reciprocity. Countries which have entered their exceptions on schedules and are interested in trading reductions in the scope of their respective schedules might wish to do so on a reciprocal basis. [GNS/16, para.75]
4. Developing countries cannot accept reciprocity unless they give up their own services development and economic development in general. Reciprocity should not be expected from developing countries. This principle should be worked out from the very beginning through different concepts but exceptions to developing countries should not be contemplated after the rules had been adopted. [GNS/12, para.32]

##### (ii) Relative reciprocity

5. Relative reciprocity, a concept yet to be defined includes elements such as the development, financial and trade needs of each developing contracting party to the eventual agreement. It recognizes the fact that there cannot be equal treatment among unequal partners. [W/25, p.5]
6. Relative reciprocity implies that participants should not expect developing countries to grant concessions incompatible with their own development needs. In the case of developing countries, existing laws and regulations, especially those which promoted services sectors, should not be deemed barriers to trade. [GNS/16, para.63]
7. It is fully acceptable if relative reciprocity is intended to mean that the contribution of different participants should be commensurate with their level of development. [GNS/16, para.69]

8. If relative reciprocity is meant to describe an agreement in which some degree of asymmetry in commitments by contracting parties is envisaged, then this poses 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 is in fact the key to finding the basis for a framework agreement. [GNS/16, para.75]
9. Relative reciprocity can be considered within the context of a system of reservations where it is recognized that some countries will have a longer list than others. But if it entails the notion of market shares as inspired by the UNCTAD Liner Code, the Group would be taking a significant step backwards: the notion of equity in this situation would simply lead to inefficiencies. [GNS/16, para.57]

Principal points and basic concepts addressed in the discussion and submissions:

- (i) The basic concept relates to the notion of reciprocity as a means of achieving a balanced outcome in terms of the benefits from the process of negotiations.
- (ii) The concept of relative reciprocity is yet to be defined. Based on the notion that there cannot be equal treatment among unequal partners, the approach could be that the contribution of participants should be commensurate with their level of development.

The following point may also be given consideration:

If the concept of reciprocity is introduced into the future framework agreement, what form should it take?

XV. RESPECT FOR NATIONAL POLICY OBJECTIVES

Statements by Participants in the GNS:

1. The framework should recognize the sovereign right of every country to regulate its service industries but at the same time must ensure against the adoption or application of measures whose purpose or effect is restrictive or distortive of trade. [W/24, p.2]

2. The multilateral framework should include the general principle that laws and regulations which pursue national policy objectives are not to be questioned. [W/33, p.2]
3. Regarding national policy objectives, a possible contradiction existed in the paper (MTN.GNS/W/33) between the Ministerial mandate and the statement that national laws and regulations would be respected. The policy objectives themselves should not be questioned, but the way in which these objectives were achieved should have a minimum impact on trade. [GNS/16, para.23]
4. The national laws and regulations applying to services are, in developing countries particularly, for the most part, intended to apply to intra-border activities and transactions. It is because of this that their policy objectives have to be not only taken for granted but fully respected when we are considering the question of trade in services. It is only in so far as such laws and regulations impinge on cross-border trade in services that one could visualize consideration of how and, to what extent, they affect expansion of trade. It is possible that existence of such laws and regulations makes for expansion of trade rather than restricting it. [W/4, para.10]
5. The Punta del Este Declaration did not ask delegations to question the appropriateness of national regulations. It merely gave a clear indication that the policy objectives of national laws and regulations were to be respected. This was quite different from a process in which national regulations are examined with respect to their legitimacy or appropriateness. [GNS/13, para.32]
6. It is not possible to sign an agreement which provided for no discipline whatsoever on what governments wished to do for policy purposes. While Ministers had agreed that the objectives of national regulations should be respected, there was no question of them having agreed that no existing regulations should be looked at. Refusing to look at existing regulations means refusing to look at the possibility that policy objectives might be realized with alternative regulations with less impact on trade. [GNS/13, para.42]
7. An example of an acceptable policy objective is the preservation or the creation of cultural identity. Meeting such objectives could lead to regulations which do not provide for national treatment and which could discriminate against foreign providers of cultural services. Television programmes are a case where national treatment could be in conflict with national policy objectives. Further examples of acceptable policy objectives are the maintenance of safety standards and consumer protection. [GNS/13, para.41]

Principal points and basic concepts addressed in the discussion and submissions:

- (i) The basic concept is to allow for the maintenance of existing national laws and regulations deemed necessary to pursue nationally determined policy goals.
- (ii) Bearing in mind that national policy objectives are to be respected, what may be done about the examination of national regulations from the point of view of their impact on international trade in services.

The following point may also be given consideration:

How is it possible to reconcile the objective of progressive liberalization of trade in services with the respect for national policy objectives?

XVI. RESTRICTIVE BUSINESS PRACTICES

Statements by Participants in the GNS:

- 1. Measures which restrain and distort international competition and could have negative consequences for international trade in services include predatory behaviour towards competitors, abusive use of intellectual property rights, discriminatory price practices, mergers, associations or other forms of acquiring control with a view to reaching a dominant market position, the imposition of conditions to supply services, and market sharing agreements. [W/34, p.5]
- 2. There are recognized restrictive business practices of transnational corporations (TNCs) which amount to serious barriers to trade. Without developing appropriate concepts and provisions to remove such practices and control and moderate the role of TNCs, a framework for expansion of trade might ultimately become a framework for growth of transnational corporations rather than for development of developing countries. [W/4, para.18]
- 3. The idea of preservation of international competition is acceptable to the extent that it covers firms with dominant positions. [GNS/13, para.39]

Principal points and basic concepts addressed in the discussion and submissions:

The basic concept is that access to markets should not be limited nor competition in trade in services otherwise unduly restricted through the practices of private business enterprises.

The treatment of state monopolies has also been raised in this context.

The following point may also be given consideration:

In the context of any provisions on competition in the future framework agreement, would it be appropriate to introduce in the future framework agreement provisions relating to restrictive business practices of private operators?

XVII. RULES ON COMPETITION

Statements by Participants in the GNS:

1. Since the general principles call for the exercise of open competition consistent with the relevant multilateral provisions, it would be desirable to establish rules concerning: (a) the application to trade in services of provisions of the type of those of the General Agreement in regard to subsidies and anti-dumping measures, and likewise rules on technical barriers to trade; (b) state monopolies, which should neither be established nor modified in such a way as to withdraw all or part of trade in services from the coverage of the present multilateral framework. [W/45, pp.4-5]
2. On issues and policies relating to technology transfer and intellectual property rights, 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 to state monopolies, but also to private ones. [GNS/16, para.79]
3. Progressive liberalization of market access will be the principal instrument leading to increasing international competition. It may not, however, always be sufficient to safeguard its maintenance. The right of a country to resort to dispute settlement procedures in the case of an impairment of its benefits as a result of a breach of these principles by a

company should be recognized. Such a procedure might also provide for the suspension of certain obligations of the injured party (Competition escape clause). In addition, the agreement could contain provisions to promote fair competition including perhaps restrictions of competitive distortions. [W/29, p.6]

4. Competition rules should include a commitment not to introduce or increase trade-distorting subsidies for services activities and an acknowledgement that this undertaking applies to both production and export subsidies affecting trade in services. There should also be a provision to encourage rollback of subsidies. [W/46, p.3]
5. The framework should not interfere with a government's sovereignty to provide a service by way of a monopoly. It should however oblige the monopoly entity to provide its service to foreign-based users on a non-discriminatory basis with respect to price, quality and quantity. [W/24, p.7]
6. Monopolies: rules specifying the conditions applicable to the operation of state-owned or state-sanctioned monopolies, including the cases where they compete with other firms in the provision of some services. These rules could entail an obligation on them to treat foreign services and service suppliers no less favourably than local services and service suppliers, rules requiring government-owned and state trading enterprises engaged in services trade to act in a manner consistent with the principles of the agreement, and rules limiting the use of monopoly revenues to subsidize activities in competition with non-monopoly service providers. [W/46, p.3]

Principal points and basic concepts addressed in the discussion and submissions:

There is a need to include in the future framework provisions relating to practices which distort international competition as well as provisions to promote competition.

The following points may also be given consideration:

- (i) What should be the content of such rules on competition?
- (ii) Should such provisions deal both with measures maintained by governments and with those introduced by private operators?



### XVIII. STANDSTILL

#### Statements by Participants in the GNS:

1. Under the framework there should be agreement by countries to avoid adopting new restrictive measures on foreign service providers and to apply the framework to the greatest extent possible to existing measures. [W/24, p.3]
2. A standstill commitment would be an unbalanced way to deal with the present situation, since developed countries had extensively regulated the traditional as well as the new technologically advanced services sectors. As a result, there is a de facto asymmetry in the positions of developing and developed countries. [GNS/14, para.56]
3. [In the Punta del Este mandate] Ministers left out any reference to standstill for they knew that there was no "benchmark" with reference to which one could "standstill" nor any identified field of reference to which standstill could apply. [W/4, para.6]
4. Regarding standstill on barriers to imports of services from developing countries by the developed countries as from the Mid-Term Review in December, it is to be asked what would exactly be subject to such a freeze and how transparency would be applied. [GNS/16, para.66]
5. It is to be asked whether standstill has to be included in a multilateral framework, since a multilateral framework as such should result in a set of rules and principles which themselves should constitute the benchmark for the members of the agreement. This is separate from the fact that the rules and principles should not give unbalanced advantages to those countries which have developed their national regulations. [GNS/14, para.59]
6. Developed countries have extensively regulated all services sectors, traditional as well as advanced. National regulations in developing countries cover almost exclusively the traditional services sectors. Because of this asymmetry it was difficult to conceive a standstill commitment. Equitable solutions must correct the absence of symmetry in trade in services between developing and developed countries. [GNS/7, para.19]
7. Regarding standstill, it is important to remember that the regulations in the industrialized countries were not comparable with regulations in the developing countries. An obligation of standstill which would be equal on all would be basically unequal; the Group would have to examine the concept of

standstill while relating it to the concept of development. Nothing should be agreed to in this Group which would go against the basic concept of development. [GNS/13, para.33]

8. It was premature at this stage to go into details concerning specific mechanisms. However, his authorities would propose a standstill on measures inconsistent with the agreement, and binding of existing measures to the extent possible. [GNS/11, para.30]
9. The path towards progressive liberalization could involve a standstill, the goal being enhanced economic development for all parties to the agreement, while respecting the policy objectives of national laws and regulations. [GNS/7, para.10]
10. In order to ensure steady progress towards liberalization, there could be an obligation of standstill with respect to new regulations similar to, or comparable with, those already identified as inappropriate. Careful consideration should be given to the fact that developed countries would have had more time to introduce restrictive regulations and that it would be unfair to those countries which had not yet introduced such regulations to call for a standstill. [GNS/29, para.5; GNS/13, para.43]

Principal points and basic concepts addressed in the discussion and submissions:

The following points may also be given consideration:

XIX. TECHNOLOGY TRANSFER

Statements by Participants in the GNS:

1. For the transfer of technology, a mandatory international arrangement should be negotiated, including consideration of the obligations of the sectors and their home government. [GNS/16, para.55]
2. Provision should be made for the fact that the diversification and growth of trade in services for developing countries is closely linked with the process of transfer of technology. Thus, it will be necessary to ensure suitable access to technology, and that trade in services is accompanied by undertakings for the transfer of technology. Furthermore, rules must be drawn up to ensure that legislation relating to intellectual property does not impose monopoly rights over the transfer of technology. [W/33, p.5]

3. In the context of technology transfer what is: (i) the exact meaning of fair and equitable access to new technologies; (ii) concretely intended through such an access; and (iii) who would decide on its meaning in practice. [GNS/16, para.64]
4. What constituted a fair and equitable access to new technologies could perhaps be monitored in the context of the periodic reviews [which document MTN.GNS/W/40 had envisaged.] [GNS/16, para.77]
5. It is hard to imagine how an agreement that does not facilitate the transfer of technology can be deemed successful. [GNS/16, para.75]
6. The question of transfer of technology is important for the negotiations but a distinction should be drawn between the concerns of the Group and those related to the Code of Conduct on the Transfer of Technology, which had a long history; the reproduction of which should be avoided in the GNS. [GNS/16, para.66]

Principal points and basic concepts addressed in the discussion and submissions:

The basic concept is that developing countries would benefit if progressive liberalization of trade in services was to be accompanied by a process of transfer of technology.

The following point may also be given consideration:

If it is considered appropriate to incorporate special provisions in the future framework agreement which would facilitate the process of transfer of technology to developing countries, what would be the content of such provisions?

XX. TRANSPARENCY

Statements by Participants in the GNS:

1. The general objective of including obligations on transparency in a services framework agreement is to ensure that government measures affecting service industries are developed and maintained in a clear and predictable manner and that information on such measures is readily accessible and is made known to all interested parties on an equal basis. [W/24, p.3]

2. The concept of transparency could apply as an obligation with respect to all national regulations affecting the supply of services by foreign suppliers. This would require rules on the publication of such regulations including the prior publication of new regulations, and a principle of minimum discretionary powers for regulatory authorities. [W/29, para.6]
3. Transparency implies that everyone, foreign governments and national and foreign companies alike, should be aware of the obstacles to trade in services, still to be defined, introduced by regulations in this field. [W/25, para.4]
4. Transparency is a means of monitoring compliance with obligations under the multilateral framework. [W/33, p.7]
5. Greater transparency in the regulatory process is a way of reducing the negative impact of regulation on international service transactions while recognizing each country's need to regulate domestically. It can be viewed both as an ancillary concept in services trade liberalization and as an important liberalizing principle in its own right. [W/13, p.2]
6. Transparency entails notifications and multilateral surveillance. It also entails the opportunity for all participants to be party to, or to be fully informed of, proposed regulatory changes in such a way that any negative impact on international trade of such proposed changes could, through consultation, be minimized while still achieving their domestic regulatory objectives. [W/28, para.7]
7. Transparency should go beyond the more traditional GATT notification process and include the publication of proposed regulations and the possibility for comment on the part of interested parties. [GNS/16, para.37]
8. Transparency implies that measures affecting trade in services should be made public in principle but who will determine which measures affect and which do not affect trade in services? [GNS/16, para.42]
9. Transparency is a requirement to make available, upon request, in published form to signatories of the agreement all laws and regulations relevant to trade in a given services sector. Provision for public comment on proposed regulations before they are adopted may be required, as well as some course of redress or review if they are deemed to be misapplied. [W/46, p.3]

Principal points and basic concepts addressed in the discussion and submissions:

The basic concept relates to the availability of relevant information regarding regulations and practices affecting trade in services and services transactions in the context of a multilateral agreement on services.

The following points may also be given consideration:

- (i) What are the specific requirements of information in relation to the adequacy of such information?
- (ii) What is the feasibility of supplying such information?