MULTILATERAL TRADE NEGOTIATIONS THE URUGUAY ROUND

RESTRICTED

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Group of Negotiations on Services

NOTE ON THE MEETING OF 19-23 SEPTEMBER 1988

1. The Group of Negotiations on Services (GNS) held its sixteenth meeting from 19 to 23 September 1988 under the Chairmanship of Ambassador F. Jaramillo (Columbia).

2. As indicated in airgram GATT/AIR/2666, the agenda contained the five elements listed in the programme for the initial phase of the negotiations. The Chairman noted that before the Ministerial meeting in Montreal at the beginning of December, the Group had only two meetings to carry out the necessary preparatory work in the GNS. It was against this background that the Group should address the questions of how to structure the discussions at the present meeting, and of how to proceed and what could be achieved for the Mid-Term Review. At this stage the Group had 46 W-papers on the table containing submissions, proposals and statements by delegations as well as information and conceptual background papers prepared by the secretariat. In addition, there were the summary records of the discussions held so far in the GNS. The Chairman drew the Group's attention to the observations he had made towards the close of the previous GNS meeting and in which he had raised the possibility of focusing the Group's further work, as well as to comments made in the same context by the representative of India. These observations and comments appeared in paragraphs 99 and 100/101 respectively of MTN.GNS/16. The Chairman said that he would continue informal consultations with delegations in order to get a clearer picture of what could be achieved in the time available on the basis of the work already done. Turning to the present meeting, the Chairman suggested that the meeting commence with a discussion of submissions before the Group, including those circulated since the last meeting.

Discussion on submissions before the Group, including those circulated since the last GNS meeting

3. The representative of Egypt, referring to the Chairman's summing up at the last meeting, supported the statement that "actual agreement on concepts and principles would be difficult before examining their application in relation to specific sectors". He further noted that the Chairman had identified a limited number of items on which the Group should devote its immediate attention, namely national treatment/progressive liberalization/expansion of trade, the development objective and the movement of production factors. His delegation considered that the Group's

discussions should also address other important concepts which were mentioned in the secretariat's revised glossary. His delegation did not fully concur with the selectivity reflected in the Chairman's statement but thought that the matter would be the object of further deliberations in the Group.

4. The representative of Sweden, speaking on behalf of the Nordic countries, referred to submission MTN.GNS/W/42 (Mexico) and noted that the general objectives stated in paragraph 4 of the document were generally shared by all countries but wondered whether they could become more than objectives. He asked whether any government could or would sign a guarantee for the growth of production, productivity and employment in the territories of other parties, let alone within its own territory. Could any government be expected to guarantee - or even ask of private enterprises within its territory to guarantee - that new technology be transferred to less knowledgeable enterprises in other countries, let alone to competing domestic enterprises? His delegation was convinced that this would not be possible for any country and that a rule-based system could not provide guarantees of this kind. In this context, he agreed with the authors of document MTN.GNS/W/42 that the notion of providing unlimited rights of establishment was too far-reaching an objective in the negotiations. The same applied to the issue of investments in general. There could be no absolute overall right of establishment, but since establishment was of importance to trade in services, it would have to be covered in the negotiations. According to information from enterprises in the Nordic countries, there were many cases where international trade in services was not possible without some form of commercial presence in the export market. Barriers of this kind constituted a major problem in international trade in services. On the other hand, through the rapid development of telecommunications, services have become increasingly tradeable via the telecommunications networks. It was worth recalling, moreover, that offering establishment opportunities in many cases could be preferable from an economic point of view for the receiving country. Arguments in favour of this line of thinking were: (i) establishment allowed for taxation in the receiving country to a greater extent than would probably be possible in the context of cross-border trade; (ii) establishment created jobs in the receiving country; (iii) foreign enterprises could, through establishment, be brought under the jurisdiction of the receiving country; (iv) through establishment, new technological knowledge was brought into the receiving country, thereby reversing the "brain drain"; (v) an established enterprise could often provide training facilities beneficial to the domestic work-force of the receiving country; (vi) the establishment of foreign enterprises could mean that new services could be made available at a lower cost than would otherwise be the case if an indigenous productive capacity would have to be nurtured from scratch. He noted that there seemed to be so many advantages to establishment that governments might even adopt policy measures that require establishment rather than attempt to limit it. Therefore the Group might also have to deal with the issue of the right of non-establishment or the right of free choice for the service provider. In parallel to what had just been said about establishment rights, there could

not be any absolute right of non-establishment. The issue was complex and could probably not be subject to any general solution applicable in an identical manner to all sectors or service transactions.

5. The same member noted that the extent to which temporary labour flows should be included in the future agreement was a complex issue for both the developed and developing countries. His delegation had expressed the view that opportunities for the movement of "key personnel", where necessary in order to provide a service in an export market, should be accepted to the extent possible. This concept was still quite vague and needed further elaboration. Delegations were still working in their respective capitals on the problem of defining the boundaries within which negotiations on this difficult issue could take place. The member recalled the importance of the standstill commitment in the GATT negotiations where an agreed basis existed on which to judge the effects of any new measures. The problem in the field of services was that the Group did not have any such agreement. There could be a number of quite legitimate reasons for introducing new regulatory measures both in developed and developing countries. A total ban on new measures of any kind, in the absence of agreed rules, would therefore hardly seem appropriate. The antipole of a standstill commitment was the possible application of a retroactive right of "grandfathering" and even the prospective "grandsoning" referred to in paragraph 6(e) of submission MTN.GNS/W/42. It was difficult to judge the nature of- and need for- such provisions before the Group knew the rules and principles to be applied under the future agreement. It hardly seemed appropriate at this stage to allow for a general "carte blanche" enabling any country or group of countries to disregard the rules and principles on which the Group might later agree to. There were no two countries with identical economic conditions and all members had a responsibility to seek an appropriate balance of benefits for participants in the negotiations. The agreement should promote the economic growth of all trading partners. Most economists claimed that protection was generally not the best way of promoting economic development. There might be specific problems for developing countries, however, and all members had to work towards appropriate solutions to solve those problems.

6. The representative of Mexico noted that document MTN.GNS/W/42 proposed five objectives to be attained through negotiations in the GNS. The objectives were justified as it was necessary for developing countries to take part in the scientific and technological revolution that was taking place in the services sector. Turning to the right of establishment, he agreed that such a right did not exist per se but felt that the issues of establishment and foreign investment should not be negotiated in the GNS. His delegation had nothing against foreign investment but wished to maintain the sovereign right of monitoring and controlling foreign investment in such a way that it would contribute to the attainment of development objectives. Regarding the reference by the previous speaker to an approach for developing countries to develop their own rules as they wished, he noted that his delegation was not advocating such an approach. What was being advocated was that in some very specific cases, such as new services where

developed countries had already established regulations, developing countries should be put on an equal regulatory footing. He agreed that there was no benchmark to measure standstill. However, it was obvious that developing countries exported very little in the way of services to developed countries and so it would be difficult to identify restrictions on such exports with a view to introducing standstill measures.

7. The representative of Korea considered that the movement of factors - capital, technology and labour - was one of the most important questions to be addressed by the GNS. His delegation viewed the liberalization of labour movement with the utmost importance although he recognized that the complete liberalization of labour movements could have disruptive effects in host countries. The cross-border movement of individuals, which could be called overseas employment or emigration, should be dealt with from a consular viewpoint. However, the framework should assure that the cross-border movement of employees of service exporting firms be considered as movement of production factors in trade in services.

8. The representative of the Philippines asked the representative of the Nordic countries what would happen to the investment regulations of receiving countries if the concept of establishment which required investment to take place was accepted? Would they be set aside with the acceptance of the right of establishment or would receiving countries have to undertake obligations regarding their current investment regulations? Would investment regulations be perceived as limiting the expansion of trade in services? Finally, would establishment-related issues cover investment regulations?

9. The representative of Sweden, speaking on behalf of the Nordic countries, noted that his delegation believed that establishment-related trade should be taken into account in the negotiations. This did not mean that national investment regulations should be set aside, for countries could retain the right to monitor foreign direct investment. This was an uncontroversial idea as it was part of most countries' industrial policies. Regarding the right of establishment, his delegation had wanted to convey that this should not be discussed in terms of a given absolute right but in terms of the possibility to establish in order for trade to take place.

10. The representative of Tanzania said that his delegation started with the assumption that the purpose of the negotiations was to assure additional net domestic capital formation to enhance the productivity of existing production or to provide the possibility for new production. A question worth addressing concerned the provision of services by skilled workers as well as semi-skilled workers moving across borders. His delegation had not yet perceived any real appreciation of the importance of these questions in the discussions so far.

11. The representative of Mexico, referring to international labour flows, noted that statistics were vague. Using the IMF statistics on migrants' transfers and workers' remittances (in SDRs), the following picture emerged.

Total OECD countries showed a favourable balance of 4780 million SDRs. Excluding from these results the OECD Mediterranean countries (except Italy), the balance became slightly negative at -5 million SDRs. Available statistics also showed that the developing countries as a group presented a deficit of some 5229 million SDRs. Even when the "imports" of Saudi Arabia, which imported considerable foreign labour, were removed, the total remained negative at 109 million SDRs. Concerning negotiations on labour movements, there were several options: first, movement of qualified and highly qualified labour could be included. Here developed countries had a clear competitive advantage insofar as they had money to train labour whereas from the developing countries tended to suffer from the effects of a brain-drain. Second, there was movement of labour working for a specific project in the field of services such as the construction of a dam in a foreign country. Third, there was movement of labour for a given period of time whether or not related to services; in this case labour could be considered an input to production (e.g. of manufactured goods). The fourth case was the movement of labour for an indefinite period of time. In exchange for the right of residence, developed countries should not require from developing countries the right of establishment for direct foreign investment. His delegation had never recognized the existence of such a right. In conclusion, taking into account the limited exports of labour from developing to developed countries, the issue of labour movements should be included in the negotiations on labour-intensive products.

12. The representative of Australia noted that a month ago the Prime Ministers of Australia and New Zealand had signed an agreement which represented an important step in the development of closer economic relations (CER) between those two countries. One element of this agreement which was pertinent to the discussions in the GNS was the Protocol on Services to the CER Agreement which the respective governments had circulated in document MTN.GNS/W/47. The services Protocol was an acknowledgement of the essential rôle which more liberal services exchanges would play in the development of Australian-New Zealand bilateral economic relations and in the promotion of free trade in goods which was to be achieved by July 1990. The agreement recognized that the trans-Tasman economy, like the global economy, was increasingly characterized by strong growth in services trade and, in that light, bound the two countries to specific free trade principles in their bilateral relationship. The agreement applied both to existing and future measures, guaranteed the conditions of access to each other's markets (including both market access and national treatment), and provided for further liberalization and an expansion of coverage in line with changes in respective domestic economic policies. Many of the trade liberalizing elements of the agreement could and should be reflected in the multilateral agreement on services which was being negotiated in the GNS. His delegation was confident that concepts such as national treatment, transparency and market access both for services and services providers were applicable in a multilateral context. It was evident that in a preferential agreement between two countries where the economies were very similar and already closely integrated, not all of the negotiating techniques or liberalizing procedures were readily translatable

into a multilateral m.f.n. context. However, despite the absence of an obligation to do so, Australia and New Zealand had ensured that nothing in this agreement restricted current or future access for third country services or services providers.

13. The representative of New Zealand stated that the services Protocol formed an integral part of the CER trade agreement between New Zealand and Australia. Both governments appreciated that liberalization of trade in services was already producing more flexible and cost-effective services markets within each economy, thereby greatly assisting trade in goods. New Zealand and Australia had been going through an unprecedented period of deregulation in sectors such as telecommunications and transport. One of the great advantages of the negative list approach adopted in the services Protocol was that it was possible to see at a glance what needed to be done to achieve total liberalization. In the inscription under the New Zealand section on telecommunications, for example, it had been noted that Telecom New Zealand had a statutory monopoly on the provision and operation of telecommunications networks. It had been noted, however, that the monopoly was to be removed as of 1 April 1989. From that date there would be a case for removing that particular inscription from the relevant part of the annex. Both Australia and New Zealand had produced a positive list of sixty or seventy services sectors by listing the main principles they agreed should apply including national treatment, market access, transparency, and then seeing how each principle corresponded to the particular services. Among the various principles outlined in the text of the agreement, national treatment implied that upon entry into the domestic market of the other country, a service supplier or the service itself would be treated in the same way as a domestic supplier in respect of domestic regulations and administrative procedures. Market access provided an important link with national treatment by ensuring that each country granted service providers of the other country the same access rights enjoyed by domestic service providers. There was also a commercial presence provision which specified that persons from each country could select their preferred form of commercial presence in the other market. A provision on monopolies applied to the services listed in the annex as temporary exemptions to the agreement and specified that the services of such monopolies should be made available to persons of the other country in respect of price, quality and quantity under transparent and non-discriminatory conditions.

14. Having drawn up this positive list, the governments of the two countries agreed that they would apply the principles of the agreement to all sectors and sub-sectors except where it was not possible to do so immediately. Consequently, the estimates of the services that were covered by the agreement ranged from 150 to 300 and those listed in the annex were all to be reviewed by the end of 1990. They would equally all be subject to the provision on m.f.n. treatment in respect of third parties and to the monopolies provision. In New Zealand, as in Australia, services accounted for about two-thirds of GDP and employed an even higher percentage of the work-force. This Protocol bound the two governments in respect of the deregulatory measures undertaken and thereby provided certainty not only for

suppliers of existing services but also for entrepreneurs developing new ones. The competitive environment being created would not only benefit service providers within the evolving single market but also those third parties trading from outside. The ANZCERTA Services Protocol was the second formal agreement on trade in services to be concluded, following the services chapter in the US/Canada FTA. The latter had provided a useful point of departure. Both agreements showed that what were previously only concepts being talked about could become reality and be applied in the market place.

15. The representative of the European Communities acknowledged the utility of the ANZCERTA Services Protocol and asked, first, about the extent to which the agreement could be described as an agreement to progressively liberalize trade in services. He wanted to know whether there would be actual liberalization when the agreement came into force. With respect to progressive liberalization during the lifetime of the agreement, he wanted confirmation that the only mechanism to bring about progressive liberalization was a simple review mechanism with no other procedures involved (e.g. exchange of concessions). His second question concerned the idea of a negative list excluding certain services or services regulations from the obligations of the agreement. If this was a negative list, was it strictly correct to assume that all services not specified in the annex were covered by the agreement? Did the agreement mean that a New Zealand company could now establish itself in Australia and offer waste disposal services in a small town? Was there some explicit or implicit exclusion of certain sectors normally regarded as local infrastructure services? In other words, what was the definition of the services covered by the Protocol?

16. The representative of the United States noted that in their services Protocol the Australian and New Zealand governments had carefully deliberated on a set of trade principles which were familiar ones. This agreement, and the one between the United States and Canada, underscored the fact that traditional trade principles were relevant to services and had practical value in facilitating attempts at opening markets. In this sense, the services Protocol provided a guide for the GNS. Concerning the negative list in the agreement, he asked whether services which were provided in a non-competitive manner (for example, by government employees) were included in the understanding? He also asked what the difference was between Articles 4 (on market access but apparently containing national treatment phraseology) and 5 (national treatment principle).

17. The representative of Japan welcomed the Protocol as it provided a challenging yardstick for deliberations in the GNS. The agreement was bilateral but it should not discriminate against third parties. He asked in what way the arrangement was designed to deal with factor movements or labour-intensive services. He also sought clarification of the thinking underlying the references in the negative list to coastal shipping and stevedoring as well as to "equivalent of local wages" and "industrial negotiations". Furthermore, he wanted to know how many months or years it took to negotiate the services agreement. The representative of Canada

asked for elaboration on what was actually covered under the commercial presence clause of the Services Protocol.

18. In response to the questions raised, the representative of New Zealand made the following points: (i) the services negotiations were conducted in three to four months from beginning to end; (ii) concerning the extent to which the agreement was designed to facilitate progressive liberalization, the major objective was to lock in the extent of deregulation that had occurred in both countries so that there would be no possibility in the future of introducing or reintroducing restrictions on trade in services; (iii) as to the question of the negative list, all services not specified in it were covered by the agreement; (iv) concerning the question on Articles 4 (market access) and 5 (national treatment), he said that one distinction in the application of the two principles was that national treatment applied to service operators once they had been permitted to enter the market of the other country; (v) regarding labour movements, there was freedom of movement of labour between Australia and New Zealand before the agreement was concluded; the agreement ensured, however, that the freedom of movements of labour and of other production factors would continue.

19. The representative of Australia emphasized that the agreement locked in trends of liberalization and deregulation which had been going on for two years. The services agreement needed to be seen in the context of the Australia-New Zealand free trade arrangements which rested on the premise that once entered into they were intended to move towards full and open markets and free trade. The services agreement was part of an institutional mechanism of change and review and, although not explicitly stated, the clear presumption was that the mechanisms applying in the ANZCERTA agreement also applied to the services agreement. After the agreement's review in December 1990, an effort would be made to further expand its scope. It was not considered necessary to have a definition of services in the agreement. Concerning the scope of the Protocol, it was stated that its provisions "shall apply subject to the foreign investment policies of the Member States". He pointed out, however, that both countries intended to seek to consider an investment agreement by 1990 which would be consistent with the scope of the agreement. The reference to commercial presence aimed at ensuring that the regulatory authorities would not introduce measures which would impede a decision to set up a commercial presence in the other country.

20. The representative of Egypt asked whether the foreign investment provision in Article 2 of the services Protocol implied the supremacy of national investment policies over provisions of the agreement. He further asked whether any future amendments to such policies would be automatically reflected in the application of the different provisions of the agreement. Concerning the review mechanism provided for in Article 20, he wanted to know whether it was intended to review anything relating to the settlement of disputes, even if this amounted to revising the negative list or amending some of the provisions contained in the Protocol.

21. The representative of Australia noted that Australia and New Zealand were seeking to harmonize their investment policies. The New Zealand government had a more open position on this matter than the Australian authorities. While Australia was open to foreign investment, there remained some sectoral exceptions as well as the standing right for a foreign investment review board to approve any foreign investment over a certain amount. Approval was granted automatically to foreign investors except for a few sectors where foreign ownership was restricted. Uranium mines and real estate holdings in Sydney were examples. The scenario envisaged by the negotiators was that as harmonization progressed, the provisions in Article 2 would become a "dead letter".

22. The representative of the European Communities sought some clarification on the practical effects of the national treatment obligation contained in the services agreement. If there were services sectors which were regulated differently in Australia and New Zealand, it was difficult to envisage how national treatment could be applied. For example, if a particular service could only be provided in Australia under certain regulatory conditions by the Australian company providing it, and if the same service could only be provided in New Zealand by a New Zealand company under different regulatory conditions, then the New Zealand company would not satisfy the Australian regulatory conditions and therefore would presumably not sell its service in Australia. It therefore could not receive national treatment. The question was whether that situation could arise and, if so, which took precedence: the national regulatory regime or the national treatment obligation in the agreement?

23. Referring to the Australia-New Zealand services Protocol, the representative of Singapore asked whether the concept of the right of establishment also encompassed that of investment and whether the foreign investment policy provisions of Article 2 referred to the exclusion of the establishment of services in conflict with national laws concerning public morality or security.

24. The representative of Australia, responding to the question on national treatment, said that the idea was to guarantee service providers of the one country access to the market of the other country on the same basis as to nationals of the other country. Therefore there needed to be a judgement of rough equivalence of treatment. It was not necessary for each country to have identical regulatory régimes but if a company felt it was not enjoying a comparable right of national treatment, it could go to its national authorities and seek to have them invoke the terms of the agreement. The agreement aimed less at harmonization than at establishment of comparable rights. Concerning the question raised by the representative of Singapore, he noted that the agreement intended to seek to ensure that the terms of Article 2 were subject to the provision of the basic right of establishment and not the other way round. In practical terms, most foreign investment decisions between the two countries would be guaranteed by this right rather than be diminished by the fact that one country's foreign investment policy could prevent the pure application of the right. The balance of the

agreement's operation was strongly in favour of open foreign investment policies and the trend was to extend that and encapsulate it later in the agreement. The representative of New Zealand added that Article 9 on licensing and certification recognized that, in the provision of professional services there could be different requirements between the two countries as there could be between different Australian states. The agreement tried to ensure that, whatever the requirements were, they did not stipulate that a service provider had to be either an Australian or New Zealand entity.

Elements

25. The Chairman turned to Item 2.2 of the agenda and opened the discussion on the five elements. In this context, he drew attention to a revised version of an earlier document prepared by the secretariat and entitled Overview of references to certain topics in government submissions according to the five elements (MTN.GNS/W/44/Rev.1). He recalled that the document was purely a reference paper to assist the process of discussion in the group. He noted that in accordance with a request of the Group, the secretariat had also revised and expanded the draft Glossary of Terms. The new document was in MTN.GNS/W/43/Rev.1 and was now entitled Glossary of Terms/Inventory of Concepts and Points in Discussion. The paper was designed to serve as a background document with a view to facilitating a fuller discussion of the elements than might otherwise be the case. The Chairman recalled that, as was indicated in the introduction to the document, it had been drawn up under the secretariat's own responsibility and was not intended to be a final document. It was also not intended to provide an exhaustive checklist of all the points that had been made in the discussions in the GNS, but to focus instead on the main concepts, terms and themes which had invited discussion. He added that the document would need continuous adaptation in line with the proceedings in the Group, noting that the secretariat had also indicated its readiness to adjust the document on the basis of suggestions for additions, deletions or corrections.

26. Before opening the floor to comments, the Chairman said that there was the need for the Group, in focusing the debate, to bear in mind what it wished to achieve for the Mid-Term Review in Montreal. In this context, he recalled the statement he had made at the end of the GNS meeting in July and which called on the Group to concentrate its attention in the immediate future on some of the issues in the list of concepts and principles which appeared to be of central importance, so as to be in a position to present to Ministers for the meeting in Montreal a positive picture of the efforts undertaken so far in the GNS. These issues were: national treatment/progressive liberalization/expansion of trade, the treatment of the development objective, and the movement of production factors. He then suggested that the discussion of the elements should deal first with statistical issues.

27. The representative of Yugoslavia suggested that the secretariat should complement its overview of references according to the five elements in

government submissions by preparing a paper overviewing references in the minutes of the GNS meetings. In addition, she suggested the usefulness, for the sake of clarity, of identifying the GNS members whose statements were recorded in the meetings' minutes. She also asked the secretariat to provide a list containing both the titles and codes of all GNS documents.

28. The representative of India recalled that the secretariat had, at the last GNS meeting, provided to interested members documentation which had been made available to it by the secretariats of various international organizations. He drew particular attention to the statistical information contained in Appendix 11 of the documentation made available by the ICAO on internationally scheduled passenger, freight and mail traffic. On the basis of rough calculations, he noted that the share of developing countries in internationally scheduled air traffic had risen from 11 per cent in 1975 to 17 per cent in 1985 and suggested the usefulness of reflecting more on the international environment which might have been responsible for such developments. So as to better grasp the dynamics of growth in such market shares, he asked whether concerned countries and/or international organizations should not be requested to shed further light on the observed trends. The rise in the market share held by the developing countries could also be observed in the area of international shipping traffic, including that - albeit on a smaller scale - of liner shipping. He noted that the observed trends in both international air and shipping traffic highlighted the central importance of statistics in guiding the work of the GNS and felt that the secretariat could play a key role in providing or estimating - though the development of proxy indicators - better and more detailed data on trends in international service transactions.

29. The representative of Yugoslavia recalled that her delegation felt that the availability of sound statistical information on trade in services was of great relevance to the negotiating process itself. She added that it would be useful if the secretariat indicated those services sectors on which it was gathering data so as to enable members of the GNS to access it. She recalled the usefulness of attempting to provide more statistical information on the supply of services and, in particular, on the market shares held by the main producers in various sectors and suggested that developed countries willing to provide technical assistance to developing countries in the area of data gathering could themselves submit to the GNS data on their own services sectors so as to gain a greater insight into the sources of growth and development of these sectors.

30. The representative of the United States supported the idea of identifying countries in the summary records of the GNS meetings. Responding to comments which had been made by the representative of India on statistical issues, he pointed out that although data on international transactions in both shipping and civil aviation were fairly reliable, the data were nowhere as reliable in most other services areas and could not be looked upon as providing grounds for firm conclusions as to the dynamics of growth and development in such sectors. Moreover, as regarded changes observed in various countries' shares of the civil aviation market, these

could be seen as resulting largely from bilateral negotiations as opposed to a multilateral framework. With regards to shipping, he recalled that - notwithstanding the adoption of the UNCTAD Liner Code - the international shipping market could still be characterized as fairly open. He agreed that obtaining meaningful data on trade and investment in services was a highly relevant exercise, but recalled that filling the current statistical gap was a longer term exercise. For this reason, rather than asking the secretariat to fill this gap, it would perhaps be more useful to ask it to provide an assessment - subjective as it may be - of the reliability of existing services data before attempting to compare and interpret figures.

31. The representative of India pointed out that it was precisely because the reasons for the growth in the relative market shares of developing countries in various services activities were unclear that further investigation was required. As regarded the civil aviation sector, for instance, it was worth ascertaining the degree to which the observed trends might be due to the existence (or non-existence) of multilateral disciplines before reaching any definitive conclusions on the relative merits of a bilateral versus multilateral framework to govern trade in services. Similarly, in the case of shipping, it was worth recalling that the market share of developing countries had increased precisely in that segment of the market - liner conference shipping - in which multilateral disciplines (UNCTAD Liner Code) were in place. He noted that the trends - and the environment shaping them - in other segments of the international shipping market were not as clear and solicited the secretariat's help in bridging the statistical gap in the sector. Moreover, he recalled that in sectors in which data were not readily available, attempts could be made, particularly by developed country members, at finding proxy indicators of developments in such sectors. Such a proposal had been made - and received rather favourably in the Group - more than a year ago. It was unclear, however, whether any work had proceeded on this issue in member countries. The representative of Egypt pointed to the link which negotiators should establish between data needs on trade in services and the evolving nature of a services agreement. The data to be collected should indeed be geared towards monitoring changes in countries' competitive positions with a view at facilitating the adoption - both in terms of scope and pace - of the obligations which an agreement are likely to contain. The representative of Brazil added his voice to those indicating the importance of statistical issues in the work of the GNS. He recalled that his delegation had highlighted, in MTN.GNS/W/21, the vital contribution which a reliable and comprehensive data base on trade in services could make to the negotiations but noted that many of the concerns which had been voiced in the submission had yet to be reflected in the secretariat's work. It was essential to move forward on this issue so as to make the Group's work less abstract and more practical.

32. The representative of the Secretariat observed that while the proposal to supplement MTN.GNS/W/44/Rev.1 with an overview of references to the five elements in the summary records of the GNS meetings could be implemented if the Group so desired, it might well render the document more cumbersome and

still more difficult to use. As to the proposal calling for identifying the names of delegations whose comments appear in the minutes, he recalled that the Group had thought it useful to avoid country references so as to promote a freer flow of exchanges in the GNS. Similarly, as regarded the provision of a list of GNS documents with their code numbers, the secretariat would respond speedily to such a request. Turning to the issue of statistics on trade in services, he pointed out that both the quality and the detail in which they were available varied greatly among various sectors. As had been discussed in previous meetings, what the secretariat could be expected to do was to collect, collate and organize the data from available sources for the purpose of the Group's work. The secretariat, however, was not in a position to produce new statistical information which was currently unavailable. Responding to a question which had been raised by the representative of Yugoslavia, he noted that the secretariat was not currently involved in collecting data on any particular set of sectors. It was, however, assessing the availability of existing data from various sources and seeking ways of securing access to such information. As to the possibility of using and/or developing proxy indicators where existing data was not readily available, he recalled that the secretariat's approach to date had been to concentrate on existing figures rather than seeking to estimate proxies.

33. The Chairman took note of the comments which had been made on the issue of statistics as well as to that of referring to country names in the minutes of the GNS meetings. He suggested that the Group address definitions, listed under agenda Item 2.2.

34. The representative of Yugoslavia thanked the secretariat for its revised paper dealing with definitions (MTN.GNS/W/38/Rev.1) but noted that her delegation was not, upon first impression, entirely satisfied with its contents as it failed to fully reflect the discussions which had taken place so far in the Group. In particular, she pointed out that the concept of development had not been linked closely enough to the definition of trade in services. There was therefore a need for the secretariat to identify and analyse the relevant elements of services trade which, pursuant to the mandate given to the GNS, could be seen as contributing to the economic development of developing countries. As the scope of the negotiations was likely to proceed from an agreed definition of what constitutes trade in services, it was especially important that the developmental dimension be adequately addressed in any subsequent revision of the secretariat's paper.

35. The representative of Egypt pointed out that it was most difficult, if not impossible, to devise principles and rules to govern trade in services without knowing to what economic activities these would apply. Agreeing to a definition of what constitutes trade in services is therefore of central importance to the negotiating process and to ensure that any agreed upon instruments and obligations are properly applied. As regards services trade, the simultaneity of provision and use that characterizes many transactions implies that any agreed definition, while focusing on trade, will also have to acknowledge the need for some degree of producer mobility.

It should be possible to come up with an agreed definition if the required producer mobility is subjected to certain specific criteria. He noted that three such criteria could be envisaged. The first of these would subject the mobility of a services provider to a time limit. In other words, the producer of a service would be entitled to remain in the export market only for the duration necessary to rendering his service. Time limits would apply to all service transactions but would vary across sectors depending on the nature and salient characteristics of the services provided. A second criteria would subject the payment of a services transaction to a time limit, with a view to both ensuring that payments made in return for services provided be transferred to the exporting country within a specified period of time, thus preserving the discrete nature of particular services transactions. A third and final criteria related to the specificity of purpose, and entailed that any producer movement in the context of trade in services should be made to relate to a specific transaction within specified time limits. He felt that such criteria could lay the basis of an agreed definition of trade in services both because it provided the required flexibility and permitted some degree of fine turning given the differences in the ways in which such criteria would apply in various services sectors.

36. The representative of the European Communities noted that despite its recent inclusion in the Glossary of Terms, the fact that the development concept had not been discussed as a separate item in the GNS might have prompted perceptions of neglect such as those voiced by the representative of Yugoslavia. He pointed out, however, that MTN.GNS/W/38/Rev.1 did contain an approach which explicitly recognized the need for a definition of trade in services to reflect the negotiating interests of all participating countries. This approach could be seen as necessarily implying that the negotiating objectives of developing countries - most of which undoubtedly involved the promotion of economic development - would need to be taken into account in agreeing to a definition. Beyond such interpretations, it was worth reflecting more on the ways in which an agreed definition could in practical terms contribute to the process of development in developing countries. In other words, what particular forms of trade might contribute most to attaining this objective? He pointed out that trade through establishment was one practical way for developing countries to secure transfers of know-how and of technology, an objective which many submissions in the GNS had identified as being of central importance to the success of the negotiations. As such, one could argue that a clear and positive linkage existed between the inclusion of the notion of establishment in an agreed definition of trade in services and the objective of promoting development. As regarded the comments made by the representative of Egypt, he agreed that it would be helpful to devise a set of objective criteria so as to reach a consensus on how to define trade in services. It was important, however, that the search for objective criteria be carried out bearing in mind the need for an agreed definition of trade in services to embody the appropriate balance of negotiating interests among participating countries. He added that given the great variance in the sectoral applicability of the criteria proposed by the representative of Egypt (for example, how would time limits apply to cross-border trade in insurance

services?), such criteria would have to be carefully scrutinized so as to assess their sectoral relevance.

37. The representative of Japan indicated that MTN.GNS/W/43/Rev.1 provided a balanced treatment of the various issues and concepts which were being considered in the GNS. The emphasis on balance was felt to be particularly noteworthy as regarded transparency, as both demand and supply-side arguments for achieving the required degree of transparency had been broached. He noted that the paper had also usefully pointed to the direction of future progress in the work of the Group, by highlighting those issues and concepts for which significant divergences remained while identifying those where a dearth of ideas prevailed. He suggested that the Group consider changing the document's name from "Glossary of Terms" to "Inventory of Points in Discussion and Possible Points for Further Discussion". This would permit the inclusion of discussions on various procedural aspects - namely how the envisaged mechanisms in the agreement would be made operational after 1990 - while giving the document a more forward-looking/evolution-oriented tone.

38. The representative of Korea responded to the comments made by the representative of the European Communities on the linkage between the definition of trade in services and development objectives. He agreed, based on his country's own experience, that investment (establishment-related trade) was the best way to secure technology transfers. He noted that while developing countries as a whole tended to be net importers of services, there were nonetheless a growing number of countries whose ability to export their services to the developed countries was restricted by a host of unilateral measures similar to those hampering trade in goods. While the definition of trade in services could in some instances be likened to that of trade in goods, it would also need to reflect some of the important differences (namely in terms of factor and production costs) that distinguish the former from the latter. He suggested that the price of services be calculated on the basis of reasonable criteria which negotiators would agree upon rather than be estimated by unilateral, self-serving methods. He added that there should be no restrictions on the access of developing countries' services exporters to developed country markets, particularly as regarded the required mobility of labour in providing particular services. The representative of the European Communities asked whether the Korean delegation felt that the GNS mandate included the progressive liberalization of trade in services among developing countries.

39. The representative of India indicated that one practical way of making development in the context of trade in services the substantive issue it deserved to be could be through the explicit recognition of regional and inter-regional preferential arrangements among developing countries. Rather than being exceptions to an agreed multilateral framework, the need for such arrangements should be admonished as one way of reducing the current asymmetry in flows of trade services between the developed and developing countries. Coming back to the revised version of the secretariat's paper on

definitions (MTN.GNS/W/38/Rev.1), he added his voice of appreciation for its balanced and more comprehensive treatment of the subject-matter. He felt, however, that inadequate attention had been given - in defining trade in services - to what he termed the discrete (i.e. one-shot) nature of services transactions. He noted that discreteness, a distinguishing character of the types of transactions which the current negotiations were about, had found some interesting echoes in the ideas put forward by the representative of Egypt. He added that the notion of discreteness could not be fully likened to that of temporariness but was perhaps more closely linked to that of specificity. More generally, he pointed out that the question of defining trade in services should be approached in terms of the characteristics of trade rather than on the basis of compromises in regard to the particular sectoral interests of negotiating parties. The latter approach was unlikely to yield a satisfactory definition and might run the danger of pre-empting discussions on the consistent set of rules and disciplines which a multilateral framework agreement should contain. Addressing some of the points contained in MTN.GNS/W/38/Rev.1, the representative of India pointed out, in response to a question raised on page 5, paragraph (iv), the importance of dealing with the issues of coverage and definition separately. This, he recalled, could be achieved by focusing on the characteristics of trade rather than on narrow sectoral interests. On the questions of factor/producer movements and of trade through establishment, discussed on pages 6-9, he noted, firstly, that the negotiations should aim at securing effective market access for traded, as opposed to all services. Distinctions to be made in the negotiations should relate to the degree of temporariness (i.e. duration) of discrete transactions rather than to the more or less permanent forms of presence (from commercial presence to outright establishment) required to deliver services. An acceptable definition of trade in services would indeed have to underline the central importance of temporariness. In other words, any definition aimed at securing forms of presence to promote the continuous production and distribution of services in host markets would not be compatible with the approach outlined above. As regarded, secondly, the notion of a "more efficient delivery of a service", referred to on page 7, paragraph (ii), he asked whether the criteria to be used in judging efficiency would be applied irrespectively of the various modes of delivery which governments might have preferred to adopt in particular services sectors (for example, postal services). Discussions of such issues appeared to go beyond the scope of the negotiating mandate. With regard, thirdly, to the link between factor mobility and development, alluded to on page 7, paragraph (iv), he pointed out that the non-provision of a foreign service might also in some cases be a condition or objective of development. Fourthly, as regarded the inclusion of labour and personnel in cross-border movements of production factors, referred to on page 9, paragraph (v), he observed that agreeing to a definition which focused on the characteristics of traded services lessened the relevance of discussing whether and how various forms of factor movements should be included and treated. He added that movements of capital and of labour should not be subjected to different standards but be treated in an equal/neutral fashion so as to avoid a scenario in which movements of the former would be viewed as somewhat more desirable and/or

less problematic than movements of the latter. He suggested, finally, the need for the secretariat to continue to revise its paper so as to reflect the ongoing and not fully consensual nature of the definitions exercise.

40. The representative of the European Communities suggested the usefulness of distinguishing between an academic exercise and the practical needs of bringing a negotiation to fruition. The key question confronting the GNS, therefore, was how to ensure that the mandate received at Punta del Este be satisfactorily achieved and not whether it was academically acceptable. While one of the characteristics of trade in goods could be seen as being its discrete nature, it was wholly unclear how one could characterize any service transaction in a like manner. One the contrary, continuity is by far the most salient characteristic of services transactions. For example, there are no such things as discrete insurance, banking, consulting or maintenance services, as all of them require producers and consumers to be continuously linked to each other. To the extent, therefore, that the production and consumption of services do not involve discrete transactions, it would seem fair to assume that trade in services cannot likewise be characterized by its discrete nature. Coming back to an earlier intervention of his, he observed that it was not irrelevant to link the issues of definition and of coverage, for if the agreed definition were to reduce the coverage of the agreement to a minimum, the GNS would have not then fulfilled the mandate given to it by Ministers at Punta del Este. As regarded, moreover, the issue of singling out movements of labour in discussing factor mobility, he recalled that by definition all movements of factors of production - including labour - were included in discussions under this heading. It was worth recalling, however, that all factors of production - capital, labour and know-how - had characteristics of their own. While academic economists might well wish to equate labour and capital in their modelling exercises, one could not wholly abstract from the complex web of regulations and policies governing the terms on which human beings, as labour inputs, moved across borders. This human element - absent in the cases of capital and know-how - thus conferred upon labour movements a specificity which the negotiators would have to take into account.

41. The representative of Egypt noted that while developing countries increasingly recognized that establishment-related trade and foreign direct investment were appropriate and useful means of transferring technology, they might still legitimately wish that an agreement on trade in services not contain provisions relating to establishment and maintain some degree of autonomy in setting national policies with regard to foreign investment.

42. The representative of the United States said that rather than attempting to derive a definition from the sectoral objectives of participating countries, it was essential to recognize the unique characteristics of particular services transactions. This could be achieved, inter alia, by focusing on how they are produced and consumed, on the reasons for regulating them, as well as the commercial realities shaping the environment in which they are traded. Agreeing to a new paradigm for trade in services will thus necessitate going into various kinds of new

activities, many of which involve the need for a producer to gain a foothold in the consuming country to deliver his service. Similarly, on the theme of development, it was important to recall that one of the surest ways of securing access to developed country markets for developing countries' services exports was precisely through regulatory changes with regard to establishment rights. Indeed, given the commercial realities relating to the ways in which services are provided, there was little hope for getting around the issue of establishment in the context of negotiations on trade in services.

43. The representative of Switzerland wondered whether in seeking to define trade in services, negotiations were not ab initio restricting the domain of a framework agreement aimed at governing the progressive liberalization of trade in services. It was indeed far from obvious whether from the point of view of the framework agreement's legal content - any agreed definition of trade in services was necessary. The case of the General Agreement, which did not proceed from an agreed definition of what constituted trade in goods, pointed to the importance for the Group to avoid becoming enmeshed in an overly cumbersome definitional exercise. However, he noted that the specific sectoral agreements to be reached under the framework agreement would have to contain very precise definitions of their scope of application. A certain degree of flexibility would have to be envisaged with regard to the mechanisms of the framework agreement so as to provide for the evolution of the various sectoral agreements it would encompass.

44. The representative of India observed that it was not a group of academics but members of the GNS that had decided to treat definitional issues as a separate item. It was therefore incumbent upon the Group to reach a consensus on this issue by discussing various approaches and formulations. He noted that the stated desire of the European Communities to achieve a wide and satisfactory degree of sectoral coverage posed no problems to his delegation but added that his delegation, like those of several other participating countries, did not feel that the negotiating mandate agreed upon at Punta del Este covered issues relating to investment in the context of trade in services. This distinction was, in his view, rather clear-cut and he surmised that the European Communities should have stated their objectives more clearly in this regard when the Declaration was being framed. Not surprisingly, therefore, his delegation's approach on definitions had proceeded squarely from its interpretation of the Declaration as applying to traded - as opposed to establishment-related services. As regarded, finally, the emphasis laid by the representative of the European Communities on the specificity of labour movements, he recalled the dangers made patently clear by the special treatment given to agriculture or textiles in GATT - of seeking to rule out, ab initio, certain issues or sectors in which particular groups of countries (the developing countries in the case of labour mobility) had distinct competitive advantages.

45. The representative of Korea said that his delegation attached particular importance to two areas of the negotiations: factor movements and

the treatment of development. With regard to the first issue, he acknowledged that the cross-border movement of production factors raised a host of delicate political, social and cultural problems. The complete liberalization of labour movements, for example, would likely create significant disruptions in host countries' labour markets and call into question national immigration policies. At the same time, the liberalization of capital movements might well exacerbate fears of excessive foreign economic dependence in host countries. For these reasons, his delegation felt that restrictions on the cross-border movements of production factors should apply in the context of an agreement to govern trade in services. Rather than disputing the relevance of issues such as factor movements or establishment rights, one of the principal tasks for the Group was to define the degree and acceptable forms of factor movements which are necessary for the efficient exportation of services. Similarly, with regard to development, negotiators should be looking for the appropriate modalities - in terms of national policy instruments - through which restrictions on the cross-border movements of production factors may lessen the political, social and cultural problems which are concomitant with the liberalization process.

46. The representative of the Secretariat offered some comments on the possibilities - suggested by some delegations - of further revisions to MTN.GNS/W/38/Rev.1. He recalled that the aim pursued by the secretariat in its definitions paper had been to assemble in a structured manner the views that had been expressed so far in the Group's discussions and to identify some issues worthy of further consideration. It was therefore up to delegations, on the basis of the paper, to determine the terms on which the discussions could go forward on these issues. He noted that in his own view further consideration of the definition question might best be achieved by drafting a note - not necessarily distinct from the minutes of the meeting - that fully reflected the discussion that the Group had just had. Attempting yet another revision at this stage might well take away from the focus of the discussion and impede the process of reaching a common understanding of the issues at hand. The secretariat paper, with all its inadequacies, should thus be seen as having served its intended purpose. He recalled that the secretariat paper had not meant to be an end in itself, but had merely aimed at stimulating and furthering the discussion.

47. In reacting to MTN.GNS/W/42 (Mexico), the representative of Romania qualified it as a constructive contribution to the definition of the development concept in the context of negotiations on trade in services. He said that development constituted one of the central issues in the deliberations of the Group and emphasized that his delegation also wished to see the concept treated as an integral part of the framework agreement and of the eventual sectoral agreements, and not as a derogation to the general applicable principles and rules as was the case in the GATT. To the extent that the Punta del Este Declaration had as one of its objectives the promotion of the development of developing countries, he envisaged as desirable the assurance of special and favourable treatment for the services exports of developing countries since equal treatment could not apply to

unequal partners. He mentioned the following as important objectives to be met in an eventual multilateral agreement: the development of the services sector in the developing countries; a growing participation of these countries in the world's production and trade of services; the reduction of the dichotomy in the level of development between developed and developing countries in the field of services. To achieve these objectives, he put forth six measures which should be followed. First, he said that the framework would have to respect the political objectives embodied in national developing country regulations instead of considering them as obstacles to trade in services. This should not be construed as a blank cheque but simply as the recognition of the legitimacy of developing country laws and regulations which aimed at making domestic services industries viable. Second, the framework should incorporate the concept of relative reciprocity whereby developing countries would not be expected to reciprocate concessions which were incompatible with their development needs. Third, developing countries should be allowed infant industry protection for some services sectors even if this would limit their ability to concede national treatment to foreign providers in those sectors. Infant industry protection, however, should be by definition temporary and not permanent. Fourth, the growth and diversification of services exports by developing countries should be facilitated through a formal recognition that developing countries could use any instrument of commercial policy to promote the exports of their services. Priority should also be given to the liberalization of sectors of special interest to developing countries along with an unconditional application of the m.f.n. principle and preferential treatment to exports originating in the developing world. Fifth, the framework should provide for technical and financial assistance to developing countries with a view to strengthening their services infrastructure and professional formation, especially in knowledge-intensive services. In that context, special attention should be paid to the transfer of technology under favourable conditions. Finally, the representative of Romania echoed the view - expressed by the representative of India - that the eventual framework should formally recognize the right of developing countries to embark on regional and inter-regional preferential arrangements for trading services among themselves.

48. The representative of Mexico, referring to the previous submission by his delegation in MTN.GNS/W/42, said that there seemed to be a consensus in the Group that the concept of relative reciprocity implied a lesser level of commitment by developing countries relative to developed countries so that the former group of countries would benefit relatively more and at a faster pace than the latter as a result of the GNS negotiations. He pointed out that relative reciprocity already existed in other international agreements and cited the General Agreement as an example. He said that according to a note of Annex I to Article XXXVI:8 of the General Agreement, developing countries were not expected to reciprocate concessions which were inconsistent with their individual development, financial and trade needs. This represented an addition to Article XXXVI:8 which simply stated that developed countries should not expect reciprocity for commitments made by them from developing countries. Tying reciprocity to the level of

development of developing countries thus transformed the concept of absolute reciprocity cited in Article XXXVI:8 into a concept of conditional or relative reciprocity. The concept furthermore did not restrict itself to the current round of negotiations but also to future negotiations involving new sectors or industries - e.g., the case of infant industries (GATT Article XVIII). As to the practical application of the concept, he said that relative reciprocity had not benefited developing countries more than developed countries for two main reasons: first, because of the lack of political will by developed countries, who had continued to maintain the greatest protectionist barriers for labour-intensive goods - i.e. those of special interest for developing countries; second, because of the limited scope of concessions which developing countries had been able to make to developed countries, given their small range of exportable goods. Since developing countries were only marginal suppliers of capital-intensive goods, the liberalization which had taken place to date had benefited developing countries relatively less than it had developed countries. He warned that the same phenomenon could be repeated in the field of services trade since developed countries often protected domestic services sectors which offered great export potential to developing countries. If such a situation persisted, even the application of non-reciprocity as in Part IV of the General Agreement would not suffice to provide a concrete basis for the negotiations and developing countries would once again miss out on the benefits. He cited the United Nations Convention on a Code of Conduct for Liner Conferences as another example of an agreement where the concepts of reciprocity and relative reciprocity appeared. He said that relative reciprocity was reflected in the 40-40-20 formula which established that only 20 percent of the freight and volume of traffic generated by trade between two member-states to the conference would be permitted to go to third-country shipping lines. Relative reciprocity was applied since countries, the lines of which were not in a position to cover the forty percent allotted to them by the conference, were in effect given the assurance of future market access for exports of shipping services. He said that idea of reserving access to international markets for those services which developing countries would be increasingly capable of providing in the future could be transposed to other services sectors, even if relative reciprocity were to take a different form than the 40-40-20 formula. He underscored that relative reciprocity should draw from both Part IV of the General Agreement and the United Nations Convention on a Code of Conduct for Liner Conferences. As such, it would provide for two things: (i) developing countries would receive more concessions than they would grant during the negotiations; (ii) developing countries would be reserved market access for their exports as these would become increasingly significant. Regarding the first point, the concept should be included in the framework agreement and apply directly to sectoral agreements which became the subject of negotiations. Also, it should be clear that, in keeping with the spirit of the Punta del Este Declaration, the least developed countries should not be expected to grant any concession at all in return for what they might be granted. Regarding the second point, it should be clear that the modalities of application would vary according to sectors even though the idea of reserving future market access for developing country exports should

permeate any agreed-upon modality. He also recalled the need to take into account the fact that developing countries did not yet possess legislation on various new services sectors which were already extensively regulated in developed countries. Provisions should be made to allow developing countries to achieve equality of conditions with developed countries with respect to the protection of such new services. He said that this provision had been envisaged in his delegation's submission which stated that existing laws and regulations concerning new services and the greater transportability of traditional services should not be considered barriers to trade in services.

49. The representative of Brazil said that the previous exchange of views regarding definitions and statistics had been very illuminating, bringing out the divergences which existed in the Group as to the precise scope of the ministerial mandate. She said that even though the mandate only referred to trade in services, she perceived some participants (and certainly the European Communities) to be willing to extend the negotiating mandate to encompass more than trade by including any type of service transactions. This was very worrisome to the extent that it went beyond what Ministers had agreed to at Punta del Este and constituted an attempt to include discussions on investment in the negotiations. She pointed out that her delegation did not agree that negotiating on services would necessarily imply negotiating on certain aspects of investment. If the discussion was restricted to trade in services as such, the risk of crossing the boundaries of the mandate would be minimal and controversy less likely. This was why the question of definitions was of paramount importance to her delegation as reflected in document MTN.GNS/W/34, where a more straightforward definition encompassing only services traded across borders, of a limited duration, and related to a specific operation, had been endorsed. She said that whereas Brazil regarded foreign investment to have played an important role in its development, the subordination of national laws on foreign investment to the multilateral surveillance of a framework agreement on trade in services would be hardly acceptable to her authorities. Referring to a comment made by the representative of Japan on the need to develop the glossary of terms as a document reflecting a common understanding of the Group, she cautioned against the haste with which some participants added to the meaning of some secretariat documents. She emphasized that the glossary should be simply an inventory of the concepts discussed in the Group, the contents of which should be the exclusive responsibility of the delegations which had made the quoted statements. It was never meant to serve as a basis for negotiations. Regarding the concept of national treatment, she reminded the Group that her delegation had on many occasions pointed to the difficulties involved in applying such a concept (paragraph 30 of MTN.GNS/W/3, page 3 of W/34, comments on W/39). The difficulty with the concept started with the definition adopted but it remained even if one adopted the most simple and restricted definition - i.e. cross-border trade. The difficulty in this case derived from the differences between merchandise and services trade: national treatment was applied to goods after these had been imported through customs duties or customs formalities. For services, there were no tariffs and customs formalities could not take place since it was very

difficult to establish the exact moment a service crossed a border. This was particularly the case of services delivered through advanced technological means. Regarding the Chairman's concluding remarks in the last meeting on the need to concentrate on the three issues of national treatment/expansion of trade/progressive liberalization, she said that she had expected that some sectoral "testing" of these concepts would have taken place in this meeting since that would have helped the Group to have a better understanding of the implications of their sectoral application. Furthermore, she did not agree with the remark of the Chairman if his intention had been to elevate national treatment to the status of an objective, as was the case in the Ministerial Declaration for expansion of trade and progressive liberalization.

50. The representative of Singapore said that the concept of national treatment to be agreed upon in the Group should be consistent with the intent and the spirit of the concept as contained in the General Agreement. National treatment was applied to goods after these had crossed the border. Once goods had crossed the border, tariffs could be applied to them as the General Agreement recognized the right of nations to give some protection to domestic producers - i.e. to impose an additional cost on foreign products. Once this protection/cost had been administered, national treatment would apply. He acknowledged that conventional goods barriers typically encountered in trade in goods were not as clearly present in trade in services since regulations relating to services were often not intended as barriers but as general directives for the conduct of certain services activities - e.g. banking regulations. However, he suggested that one could consider the combination of free entry and national treatment for a service activity analogous to a zero-tariff situation for a good. Anything less than that could potentially be subject to negotiation. He said that in the General Agreement some discriminatory application of regulations towards foreign providers was legitimate and that the extent to which such an application could be minimized should be subject to negotiation. He contended that this should apply to both tariff and non-tariff barriers. In the case of services, and particularly in the quest for a mechanism for the liberlization of services trade, the Group should consider linking the concept of national treatment to conditions of entry or, alternatively, combining the concept with that of exceptions. Finally, if a new paradigm were to be applied to the services negotiations and new concepts to be conceived, he said that perhaps these concepts should also be matters for negotiations.

51. The representative of Argentina agreed with the representative of Singapore that the concept of national treatment should be used as a reference point, even in the absence of tariffs which were replaced in the field of services by laws and regulations. He emphasized that the application of national treatment as in the traditional GATT sense would produce inconsistencies with respect to the objective of progressive liberalization. He noted that the convergences in the discussion so far had occurred increasingly on the issue of how national treatment should not be applied. He said that a strict application of national treatment could

entail immediate and strong adverse effects for an economy and emphasized that national treatment would not always necessarily imply liberalization (for example, strict national banking regulations). This was why national treatment should not necessarily be equated with an ideal situation and more attention be paid to the objective of liberalization as such. Finally, he stressed that the discussions on national treatment should be guided by the distinction between a strict application of national treatment as initially envisaged and the more restricted and progressive application which had been emanating from the discussions in the Group.

52. The representative of Egypt, said that as the representative of Canada had pointed out in a previous meeting, the objective of the glossary of terms was to clarify the terminology used by all participants in the discussions and to ensure that they all meant the same thing. He noted that not all statements made in the GNS appeared in the glossary since the document gathered only the main ideas expressed by the Group. He reacted unfavorably to the idea of transforming it into a list of items for consideration in the negotiations. One problem was that the different items were listed alphabetically in the document with no discrimination being applied as to what constituted an objective, a principle or a concept. He suggested that if this type of transformation were to take place, it should be done first by listing the objectives which the Group had set out to achieve and then list the principles and concepts which related to the objectives. He said that he had had a similar problem with the Chairman's concluding remarks at the last meeting where the suggestion had been made that three "new" elements should become the focus of future discussions in the GNS. With regard to relative reciprocity, he agreed with the representative of Mexico that the concept already had found some expression in the General Agreement itself. He noted that the concept conveyed not only the idea of reciprocity but that an element of differentiation was also built into it. Since the concept was so closely linked with the exercise of concession exchanges, he found it useful to distinguish between the application of relative reciprocity as a mechanism for the exchange of concessions and the application of other instruments to achieve the development objective. He agreed also with the representative of Mexico that relative reciprocity had not worked out in the GATT and cited as a further reason the fact that negotiating techniques were based on the concept of "principal supplier". He said that this concept had prevented developing countries from requesting concessions since they could not in most cases be considered a principal supplier - the prerequisite for the fulfilment of a request. In the case of services, the agreement should provide for more than that, ensuring access of developing country services exports to developed country markets. In this connection, the concept of "preferential market access opportunities" put forth by his delegation could prove useful. The important idea to keep in mind was that even if relative reciprocity were to guide the exchange of concessions for services, it was not going to remedy all the areas which had come to be considered problematic in applying GATT principles to trade in goods. Finally, he suggested that the treatment of the concept of relative reciprocity in the glossary be kept separate from that of reciprocity.

53. The representative of the European Communities agreed that there was not yet a consensus on how national treatment should be included in an eventual agreement on trade in services but stressed that it was essential to obtain clearer ideas of what the different delegations felt about the term. In the case of his delegation, a distinction was drawn between national treatment as an obligation and national treatment as a yardstick. Whereas in the former case, the concept was intended to prevent discrimination, in the letter it was to identify discrimination. He pointed out that the European Communities usually meant the second formulation whenever they applied the term. He also agreed with the representative of Singapore that free access to a market combined with national treatment to foreign services providers would be the equivalent of a zero-tariff combined with the application of national treatment in a GATT sense to goods. Just as there were no obligations under the GATT to attain a zero-tariff situation, there should be no such obligation in an eventual services agreement. The real obligation should be that participants be prepared to negotiate in the direction of free-market access and complete national treatment. As such, national treatment would function as a yardstick for trade in services much the same way as zero-tariff measure did.

54. The representative of India said that while comparing of the application of national treatment to trade in goods with that of trade in services was useful, it nonetheless failed to take account of some basic facts. First, he mentioned the relevance of factor endowments for goods trade, including the exertion of comparative advantages through specialization; this could not apply to services transactions involving the production of services within a country by foreign producers. Second, transport costs also represented a big barrier in the case of trade in goods and allowed for some differentiation between foreign and domestic products. Once again this fact did not apply to the case of a foreign producer providing a service in a host country. The provision of national treatment in such a case would go further than in the case of trade in goods since, unlike with a national producer of goods, a national services provider did not enjoy, ab initio advantages such as the absence of transport costs. He said that equating national treatment in services with a zero-tariff situation in goods did not do justice to the fact that those two basic economic ideas did not apply to services to begin with. He emphasized that this reality should be taken into account in national treatment since national producers of services (or providers) would be much more directly affected through a broad interpretation of national treatment than would be the case with goods where the concept applied to products rather than to producers. He suggested that this be included in the glossary of terms and pointed out that it should be useful to look also at factor endowments transport cost implications, as well as tariffs, quantitative restrictions and national taxation when formulating a working definition of infringement of national economic space for services as a governing principle. Regarding the glossary of terms, the representative of India requested that closer attention be given to the concept of market shares in international services transactions as an indicator of possible implications for development. He said that this could be done either in the context of the term development

or through a new heading in the document for the concept itself. In that connection, he stressed that there should be the same quality of treatment for all concepts in an eventual agreement. He was happy to see that some mention had been made of alternative approaches under "Existing International Arrangements and Disciplines" but suggested that perhaps the item could be treated in and of itself. Finally, he shared the view expressed by the representatives Brazil and Egypt that the concept of national treatment had been understood differently by different participants and that it should not therefore be assigned the same status as the objectives of progressive liberalization or development.

55. The representative of Switzerland, as regards the concept of optional m.f.n. treatment, said that the concept would represent a right which would be granted automatically to all participants in the agreed upon framework and not one which other participants could obtain once a framework agreement had been negotiated. He referred to the intervention of the representative of Egypt regarding negotiating rights under the General Agreement which were in terms of the concept of principal supplier and noted that negotiating rights under an eventual framework on services would necessarily go beyond such a concept. He alluded to the fact that with services even the determination of the principal supplier would be hampered by the absence of relevant statistical information. This was why his delegation felt strongly that closer attention should be given to the formulation of the m.f.n. principle as well as to other negotiating rights. In that context, he called attention to the emphasis placed by his delegation in documents MTN.GNS/W/30 and MTN.GNS/W/45, item II.4, on the duality obtaining between an eventual optional m.f.n. treatment and negotiating rights under special conditions.

56. The representative of the United States said that the debate on national treatment had revealed not only different interpretations but also different opinions and philosophies on what the principle could signify in the context of the GNS deliberations. He stressed that the principle was already applied widely to services transactions in practice. He endorsed some of the views expressed by the representative of Singapore but thought that granting national treatment to services would not necessarily result in a zero-tariff equivalent since domestic regulations could be very strict in their own right, thus representing effective tariff barrier equivalents. He felt that only by viewing national treatment as an operative part of an understanding (and not as something the Group should aim to attain) could the Ministerial objective of expansion of trade be fulfilled. Regarding the development of developing countries, he said that he would endorse the view expressed by the representative of Singapore that countries should be able to place reservations or exceptions to the application of national treatment in certain areas or, alternatively, request the application of a phase-in procedure for a national treatment obligation. He agreed with the representative of Mexico that relative reciprocity could be seen as implying that developing countries would be expected to make less onerous commitments than their developed country counterparts but stressed that the possibility of placing reservations should be directly related to the fulfilment of

development objectives. The difficult question in that connection should be to determine what could indeed be considered to be in place in the name of development. In the case of infant industries, for example, consideration should be given as to what would be the situation if access to a particular market were granted to foreign providers. A clear idea of the value of competition as well as of the role of foreign services, information and technology in the development of relatively stronger indigenous suppliers could help this consideration. He said that national treatment should therefore vary according to specific circumstances in different countries but did not accept that countries should unilaterally determine the circumstances in which national treatment might not apply. He observed that market shares would not be a useful measure to gauge when a country was ready to "graduate" and accept further obligations in the context of an evolving services regime. He also felt that any approach involving the concept of market shares worked against the ultimate economic dynamics intended for domestic markets, whether developing or developed, through an eventual framework on trade in services. National treatment should ultimately constitute an obligatory understanding even though it might provide for some flexibility. This flexibility would be in accordance with circumstances which made the applicability of national treatment infeasible and could be reflected in a process of scheduling commitments by individual countries.

57. The representative of the European Communities said that his delegation subscribed to the idea of establishing a link between the level of concessions made by a country and the level of its development. Provisions should be made in the agreement for an increasingly greater level of commitments on the part of countries at attaining higher levels of economic development. Relative reciprocity would have to be applied in each individual round of negotiations and not only in 1990 when the agreement would be concluded. He stressed the need for some objective indicators for judging the level of development of countries but doubted whether an objective system of criteria could be put in place for that purpose. He said that the indicators, as their name suggested, should be indicative and could be applied through a formal review process. "Objective indicators for judging the level of development" could become a heading of the glossary and as such could include the idea of market shares as one example. Finally, he commented on the contention by the representative of India that all principles should ultimately have the same legal status in the agreed-upon framework. He emphasized that he did not see the legal status as the most important factor in providing for a balanced outcome from the point of view of the original objectives. Achieving the objectives of the agreement in a balanced fashion could involve many types of provisions and not necessarily provisions of identical legal status. Thus, those instruments which ensured development should be given the same weight as those which ensured growth, for example, but that should not imply any strict formula as to what the legal status of those instruments should be. The important thing should be that the objectives of the agreement ultimately reflected a balanced outcome.

58. The representative of New Zealand said the glossary of terms could be very useful in assisting the Group with both the task of preparing a review of progress made as well as of identifying areas of convergence and divergence. She suggested that all participants should go through the document for themselves in an effort to delete and compress until a common position by the Group could be achieved. She mentioned the concept of relative reciprocity and of progressive liberalization as examples of the progress achieved in the negotiations. Progressive liberalization, for example, had been interpreted in different ways but there was agreement that the GATT-like principles could not be achieved overnight. Also, some form of exchange of concessions or time phasing to achieve improved access as well as to rollback inconsistencies with basic principles would need to take place both in the formulation of the framework agreement and in the subsequent conclusion of the Uruguay Round. She saw that the relevant material was all in place to be used in conjunction with the various national submissions for an analysis which should consist of identifying the progress made to date on what should be included in the framework agreement; identifying areas which should remain on the negotiating table with a view towards eventual inclusion; narrowing down the possible negotiating options to an absolute minimum (particularly as regards definitions); devoting attention to the question of procedures and setting a timetable for the remainder of the Round. She expressed concern that the previous debate on the concept of national treatment was somewhat mercantilist in tone and stressed that these negotiations should be viewed as an opportunity rather than a threat. The opportunity was that of long-term goals and the means to achieving them right from the outset. These goals were contained under the main headings of the glossary. As to the difference between objectives and principles, she said that principles should be regarded as negotiating objectives to be achieved over time whenever they could not be applied from the outset. She re-stated that the interests of all participants would be best served by a framework agreement which had the broadest coverage possible. This coverage should reflect a definition which would include as much factor movement (labour services and establishment) as possible. The framework agreement should include sound rules and principles which would apply to future regulations and to function as a yardstick for existing inconsistent regulations which should be in principle subject to negotiations. No derogations from basic principles should be allowed for any signatory other than reservations at the outset for structural adjustment reasons. Specific provisions for development should not constitute permanent exemptions and should be framed in a constructive rather than protective way. The aim of progressive liberalization should be achieved through a standstill. Negotiating leverage in services should come from the relative openness or the current regulatory environment of a particular economy. As to the sectoral applicability of concepts, she said that in her own delegation's research no evidence had been found to support the contention that general rules were normally inapplicable to varying sectors. She warned against devoting too much attention to sectoral specificity and suggested that other participants go through relevant concepts vis-à-vis their own existing domestic regulations. This exercise would increase the Group's understanding of how national treatment,

transparency, non-discrimination and other concepts related to real situations and how they needed to be refined. She said that progressive liberalization should imply greater market access. She also stressed that liberalization should be addressed separately from national treatment since the latter would only come into effect once market access had been granted. Thus, a provision ensuring to foreign suppliers operating conditions no less favourable than those applying to domestic suppliers should only be applicable after access to foreign services and services suppliers had been granted. As such, she did not see national treatment itself as a mechanism for progressive liberalization but saw the need to include it as a principle which should apply to future legislation, the main objective of which should be to negotiate away inconsistencies with the liberalization objective. Finally, she stressed that the results which the Group should be aiming at for the end of the negotiations should not be increases in protectionism but ways to lock in existing degrees of openness and to provide for further improvements through an ongoing process of negotiations.

59. The representative of Mexico suggested that a further improvement on the glossary of terms could be through the use of cross-references and cited the example of two references made in the glossary which constituted reactions to the previous submission of his delegation (item XIX, 3 and 6). He said that through cross-references to his delegation's submission the concerns raised by various delegations in their reactions could be best addressed. He said that new items could be included in the document and gave labour mobility and infant industry as suggestions for the next revision, considering the attention the Group had dedicated to these themes. He reminded participants that his proposal on relative reciprocity had included not only differentiation in the level of commitment according to the level of development attained by a particular country but also the idea of reserving shares of developed country market for the developing country's services exports. He said that without this dual emphasis he doubted whether that the final agreement would draw a large number of developing countries. In response to a concern of the representative of the European Communities, the representative of Mexico said that he had meant the application of relative reciprocity to transcend 1990 since, for one thing, it was very likely that by then most sectors would still be in need of further negotiations. He said that the only thing which should not change in the course of subsequent round of negotiations was the idea that there could be no equal treatment for unequal partners.

60. The representative of Canada said that the glossary of terms corresponded to the expectations of his delegation and constituted a very useful tool for the work of the Group.

61. The representative of Jamaica said that it was essential that the glossary of terms be regularly updated and suggested that it should include more than just those statements made in the Group which expressed conventional views on what constituted trade in services and how a trade in services regime should evolve. He disagreed with the representative of New Zealand that the Group was before a blank sheet in its work and mentioned

various bilateral agreements involving services transactions as examples to draw from. He pointed out that in the US/Canada Free Trade Agreement, for example, a formal separation was adopted between investment and trade in services. In that connection he said that the Group could also learn from the experience of the International Centre for the Settlement of Investment Disputes. He cited the Convention on international factoring financing and leasing example of an international agreement on services transactions having limited itself to cross-border transactions (the leaser and the leasee having different places of business). He said that bilateral agreements often provided for temporary presence (US/Canada), for non-discrimination between domestic and foreign - as well as between two foreign - services and services providers, and for exceptions to the national treatment principle such as in the case of cultural industries in the US/Canada FTA. He also found of relevance the emphasis some agreements had placed on the idea of rights and duties (instead of obligations) since this idea could have important implications for the question of the extra-territoriality of services providers. In that connection he said it was important to devote attention to the extent to which firms operating abroad would still be subject to the laws and regulations to which such firms home offices were subjected to. Finally, he suggested that the secretariat could undertake a survey of bilateral agreements relating to services transactions with a view to identifying concepts which might become relevant for inclusion in the glossary. The representative of Yugoslavia supported the idea of having the secretariat do a survey of relevant bilateral agreements as well as some of the OECD Codes. She objected to the idea that the glossary of terms should be anything more than a type of dictionary for the use of the Group.

62. The representative of New Zealand pointed out that the formulation of national treatment in the Australia-New Zealand Protocol on Trade in Services was exactly the same as that which appeared in the US/Canada FTA. The Protocol covered also the principle of market access which was absent in the US/Canada FTA. He maintained that the advent of these various agreements on services revealed a trend towards an intelligible application of some key concepts for liberalizing of trade in services.

63. The representative of Egypt said that the concept of national treatment would pose some problems if it were to be defined to imply equal treatment in like circumstances for foreign and domestic producers - as envisaged by the main proponents of the principle - in the context of trade in services. These problems would derive from the fact that developing countries often provided assistance to domestic industries to further promote their development through increased competitiveness and productivity. Also, considering the concerns expressed by many developing country participants that provision should be made for the facilitation of the transfer of technology and for the control of restrictive business practices, it was hard to envisage an agreement which did not provide for some element of differentiation between developing and developed countries whereby developing countries would be enabled to impose certain conditions on foreign suppliers. This would clearly run counter to the formulation of

national treatment envisaged by some participants. Despite the fact that national treatment was designed to achieve a higher level of liberalization, he recalled that the liberalization which interested the Group was supposed to be progressive. This implied that any concept or principle which would ultimately enhance the level of liberalization would have to be applied in a progressive way. In the context of the development of developing countries, this progressivity should be implemented in accordance with specific situations obtaining when these countries foresaw the need to employ certain instruments for development reasons. In light of these concerns, the representative of Egypt asked for clarification from the representative of the United States on how the suggestion that developing countries could be exempted from certain national treatment obligations could be made workable. In particular, he did not understand how the approach involving the facilitation of technology transfers and the control of restrictive business practices desired by some developing country participants could be made compatible with the approach of adopting national treatment but allowing for exceptions desired by some developed country participants.

64. The Chairman, in responding to a concern raised by some participants, said that in the final statement he had made at the end of the GNS meeting of 22 July 1988 he had not intended to convey that national treatment was to become an objective of the negotiation as were progressive liberalization and expansion of trade. His intention had simply been to list concepts and principles which appeared to be of key importance in the GNS and not to elevate national treatment to the status of an objective, nor to imply that considerable agreement had been reached on the concept.

65. Since there were no statements made on coverage, existing international disciplines and arrangements, and measures and practices, the Chairman concluded the discussion of item 2.2 of the agenda. As no matters were raised under other business, he proposed that the next meeting of the GNS take place from 31 October to 4 November 1988 with the same agenda as for the present meeting.