

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNS/26

17 November 1989

Special Distribution

Group of Negotiations on Services

NOTE ON THE MEETING OF 23-25 OCTOBER 1989

1. The Chairman welcomed delegations to the twenty-fourth meeting of the GNS. He drew attention to GATT/AIR/2860 circulated on 12 October 1989, which contained the proposed agenda for the meeting. He asked if any delegation wished to raise any matters under "Other Business". The Chairman indicated that under "Other Business", he would like to address the question of how to proceed in the negotiations after this meeting until the end of this year.

2. As concerns the organization of the meeting, he suggested that the Group start with Item 2.1 on the agenda. He intended first to give delegations which have made submissions since the last meeting in September an opportunity to present these to the Group. He proposed providing the possibility for participants to comment on the proposals introduced at the last meeting by New Zealand, Switzerland and Peru. He also proposed to provide an opportunity under Item 2.2 of the agenda to discuss any specific issues mentioned in the Montreal Declaration or arising from the discussions in the Group during the course of this year. He would invite views under Item 2.3 as to how our work towards the assembly of elements for a draft may be expedited and make some suggestions in this regard.

3. The Chairman then gave the floor to the representative of the United States and asked him to introduce the submission of his delegation in MTN.GNS/W/75 containing a proposal for an agreement on trade in services.

4. The representative of the United States said the U.S. had proposed a draft legal text in order to provide greater precision. An effort had been made to be as precise as possible, not only insofar as how the elements of the agreement were to be phrased, but also how they related to each other. He recognized that the legal language may not be as easily understandable as a conceptual document. The text, he said, contained provisions that constituted the first suggestion as to what might become the institutional apparatus of the framework. He recognized that this is something that did not have to be negotiated between now and the end of the year, so whether delegates wished to concentrate on institutional aspects was a question for them to decide. For instance, in the case of dispute settlement, he did not have a specific proposal. His government was willing to allow the process dealing with dispute settlement to work itself through, borrowing from what had been negotiated in the Uruguay Round negotiating group dealing with that particular issue. He said the most useful aspects of the U.S. text at this stage of the discussions pertained to the specific elements of the understanding and its structure. With respect to structure, he stressed that the U.S. had not decided whether or not this agreement should be part of the GATT or should be separate from the GATT.

5. As far as the U.S. was concerned, the framework and its principles would bind all parties and all sectors that they have included, except in those situations where they had taken reservations. His submission had limited those areas where reservations could be taken with respect to the market access provisions, the provision on national treatment and the provision on subsidies. The agreement automatically bound a country with respect to all these principles, except where that country had scheduled reservations or had otherwise excluded sectors in its initial commitment. That, he said, formed a very fundamental basis of the structure of the agreement.

6. With respect to coverage, the U.S. had in mind a universe of services sectors; something akin to that put forward by the GATT secretariat in its "indicative list" where essentially all commercially traded services would be included. That had advantages in the sense that it would exclude the kinds of activities everyone would regard as not a tradeable service, such as the activities of government bureaucrats and Foundations. A country would, however, have the option to exclude a service from the understanding - that was expressly provided in the coverage section of the proposed arrangement. A participant could, for example, have decided to include the sector of insurance, but for whatever reason, decided to exclude political risk insurance. He raised the question of situations where some countries have included a particular sector and other countries have not included the sector.

7. He then turned to what had been categorized as protocols. Protocols dealt strictly with those sectors covered by the understanding, where some countries entered into an understanding amongst themselves where further degrees of liberalization were possible. Whatever was stated had to be consistent with the principles of the framework and allow for further liberalization in a way that was beneficial for services trade as a whole. He mentioned the example of the harmonization of certain professional practices and accreditation standards. The representative of the United States then introduced the provision dealing with special sectoral agreements where countries had excluded the sector from the universal coverage. Those countries could enter into an understanding amongst themselves with respect to that particular sector. While he thought that separate sectoral arrangements would be exceptionally rare, it was necessary to allow for them, because if there was a consensus among a large number of countries not to include a particular sector, they might still wish to enter into an arrangement to liberalize trade in services to the extent possible in that sector. Annexes were the third element dealing with specific sectoral peculiarities. He flagged that the U.S. wished to have such an Annex for telecommunications. He did not foresee a proliferation of annexes, protocols or special agreements.

8. The representative of the U.S. then turned to Articles 4, 5, 6 and 7 relating to market access. These laid out the various forms which trade in services could take and to which a country would automatically be bound if it included a sector as part of the understanding. Article 4 dealt with establishment, Article 5 with the cross-border provision of services, and Article 6 with the temporary entry for services providers. The provision

governing establishment dealt with all features of establishment, leaving open to the individual whether they wished to produce the service within the country, whether they wished to simply have a representative office or an office attempting to facilitate a service produced in the host country. What was critical here was the choice a supplier had in providing a service. To the extent that a country felt that that choice could not be given for some sectors, it would have to enter a reservation to that effect. In the case of cross-border movement (i.e. Article 5), that included the cross-border movement of consumers as well as providers of services. According to Article 6.1, in applying laws in a manner that would facilitate temporary entry, national objectives should be taken into account. He indicated, however, that there should be negotiations with respect to the movement of persons with specific skills and on the basis according to which they should be allowed entry. Article 7 (dealing with licensing and certification) was a statement of purpose, because it used the word "should" insofar as encouraging certification requirements to relate principally to the competence and ability of persons to provide services. It would therefore not be a binding provision.

9. The national treatment provision (Article 8) was predicated, as in the case of the Montreal text, on the notion of being treated no less favourably once market access has been achieved. The national treatment provision applied after having crossed the border, establishing or sending the service by way of telecommunications. It was at that stage that national treatment applied, making it consistent with the principle of GATT Article III. According to Article 8.2, national treatment in a services' understanding would not mean identical treatment, but treatment that was equivalent in effect. In many cases foreign providers of services may be treated differently from the domestic providers, as long as this treatment was equivalent in effect. Articles 8.3 and 8.4 both reflected what was already in the GATT. Subsidies and government procurement should be dealt with directly rather than through the "back-door" of national treatment.

10. Article 9, related to the binding of all signatories to the agreement; the notion of extending m.f.n. treatment on the basis of having extended benefit to a non-signatory was not contained in Article 9 (Non-discrimination). Article 10 (Exclusive service providers and monopolies) dealt with the disciplines on either monopolies or oligopolies that were authorized or established by governments. This essentially required them to treat foreigners based in the country in a non-discriminatory manner. Also, in the case where there was competition in the provision of services, the monopoly when engaging in competition had to abide by certain rules. If a monopoly established after the entry into force of the Agreement, affecting the traditional firms engaged in competition, there had to be negotiations to reach agreement on the acceptable compensation to be paid. This provision did not suggest that the monopoly should be excluded or discouraged, as deciding whether monopolies were necessary was a matter within the sovereignty of each participant.

11. Regulation (Article 11) stressed the right to regulate in the case of all services, provided there was no nullification or impairment of the

benefits the understanding provided. Transparency (Article 12) included the publication or making public of decisions, regulations and administrative measures, the ability to provide advance comment by interested parties in the case of proposed regulations, the possibility for countries to notify any other country's regulation which they felt may be inconsistent with the understanding, and a provision for enquiry points.

12. Article 13, was entitled "Government Aid". Since the issue of what constituted a subsidy was being discussed in another negotiating group, the U.S. was leaving open the question of what was a subsidy, and therefore used the words "government aid". A fairly important provision for the U.S. was that government aid should not be granted if it injured the interest of a particular party.

13. Articles 14 and 15 dealt both with payments for services as well as safeguard measures on the basis of balance of payment difficulties. Article 14 was to discourage anything that would be other than prompt payments by entities doing business on a cross-border or establishment basis. Exchange controls, to the extent they were adopted, should be in conformity with the relevant provisions of the IMI. In the U.S. opinion was that the only kind of safeguard provision that should be foreseen should relate to balance of payments consideration; the U.S. did not see a basis for taking temporary safeguard measures along the lines of Article XIX as it was impossible to administer safeguards then when a service was provided by established providers. The exceptions section (Article 16) re-stated what was provided in the GATT with respect to the ability of countries to make exceptions. Article 18 would become a much more elaborate provision once a better idea emerged on the dispute settlement mechanism.

14. In the case of Article 20 (Acceptance and Accession), the U.S. preference was for Article 20.2, and participants could simply delete Article 20.3. Article 22 dealt with reservations. They may be time-bound or not time-bound. In some instances a government would not be capable of identifying the exact date when they would eliminate the specific provision that had led to the reservation. A country may elect to reserve with respect to one of the market access principles in its entirety (for example, it might reserve with regard to cross-border provision of a service for a particular sector). On the other hand, a government may limit their reservation to a specific law or a specific measure. Article 22.4 enabled additional commitments to be undertaken by governments, whether or not they were related to specific provisions of this understanding.

15. Article 28 was the Non-Application Provision; that is, because of the number of sectors a country had excluded, or the number of reservations it had taken, its overall commitment did not achieve the balance of rights and obligations that the agreement had to achieve. Finally, Article 29 related to the Denial of Benefit. It had a certain relationship to the rules of origin in the case of goods and to the benefits that a party could draw from being located in the territory of a signatory to the agreement.

16. The representative of the U.S. said that the only text pertaining to development was in the Preamble. While on the surface that may reflect some insensitivity on the part of the U.S. with respect to the treatment of developing countries, he wished to remind delegates that this was a legal and not a conceptual text. It was consistent with the concerns the U.S. has expressed for some time; that a provision along the lines of Part IV of the GATT was something that the U.S. would not accept. He stressed the flexibility built into the draft agreement, particularly with respect to the reservations and exclusions. This provided the possibility to allow reservations because of the stage of development. He subscribed to that basic principle but the question of how any such commitment would be built into a legal text needed further consideration.

17. The representative of Singapore in introducing his national submission (MTN.GNS/W/78) said that the most essential pre-requisite of a Services Agreement was that it should attract the widest possible participation. It should therefore contain provisions that would promote economic growth and the development of the developing countries. Hence its structure should contain built-in dynamism and flexibility so that the developing countries would find it economically worthwhile to participate. For example, the structure should permit participants to offer sectors/transactions that were commensurate with their level of development and national policy objectives. The corollary was that participants should have the right to select sectors or transactions for progressive liberalization, and not be compelled to include sectors which were incompatible with their national and developmental objectives.

18. He confirmed that there seemed to be broad acceptance that a Services Agreement would comprise a framework of concepts and principles that would govern the operation of progressive liberalization in sectors/transactions, leading to growth and development. In this respect, however, there was some divergence of opinion as to whether there should be separate sectoral agreements or just individual schedules of offers (or exceptions) that would collectively form at least initially the coverage of the Services Agreement. Irrespective of the two broad approaches, it was essential that there should be common understanding and agreement as to what would constitute the sectors or transactions. Lack of such clear understanding would give rise to dispute as to what was covered under a sector or an individual offer list. He added that pending the outcome of such a common understanding as well as agreement on concepts and principles to be incorporated in the framework, one could examine in a preliminary manner the possible types of the structure of a Services Agreement that could be adopted to fulfil the objectives outlined in paragraph 1 of MTN.GNS/W/78, particularly in the context of increasing participation of developing countries.

19. He said that the approach of a framework with agreed sectors sought to achieve, as an instant start, liberalization in agreed sectors, by applying to those sectors concepts/principles contained in the framework. There were, however, shortcomings: first, it would give undue advantage to the major markets. A minor participant was not likely to succeed in including sectors of its export interest. Second, there would be difficulty in

agreeing as to which of the framework concepts/principles would apply in specific sectors and how. There would be numerous exceptions and specific provisions governing each sector (e.g. telecommunications). Third, this approach would most likely leave out some major sectors like civil aviation and shipping. Finally, not many participants would be prepared to accede to such a Services Agreement (e.g. due to inclusion of sectors which they were not ready to open up for progressive liberalization).

20. An alternative approach suggested by some other delegations. The approach envisaged that each participant would make its initial offers of sectors/transactions, then further concessions could be exchanged through bilateral requests/offers. The final individual schedule of offers would be subject to the operation of framework concepts/principles, but with an indication of conditions of market entry (e.g. surcharges, number of foreign suppliers, etc.), specific exceptions, and any other operating conditions after market access was granted. Whatever did not appear in an individual offer schedule would not be open to progressive liberalization. The country offer schedules would be implemented on an m.f.n. basis. There should be a minimum threshold of individual initial commitments or offers.

21. He considered that this approach had the following advantages. It would be up to each participant to offer the sectors/transactions which could comply with the framework concepts/principles and at the same time be compatible with its national policy objectives. Further, a participant would enjoy market access as indicated in the offer-schedules of other participants as the individual schedules would be implemented on a m.f.n. basis; it would also achieve a balance of rights and obligations among all participants; when a participant had satisfied the minimum entry conditions, other participants could not invoke the right of non-application; it would provide a mechanism for subsequent rounds of negotiations. In the interim, progressive liberalization would be possible through further bilateral requests/offer negotiations, the results of which would be multilateralized.

22. He said that, obviously, there should be agreement as to what would constitute minimum initial commitments (i.e. for the purpose of accession to a services agreement). Some examples could be envisaged. First, a commitment to comply with the rules/principles as contained in an agreed multilateral framework for those sectors/transactions initially offered. In circumstances where the existing level of protection needed to be maintained, the developing country may bind at such an existing level, for a fixed period of time, for those sectors/transactions offered. For those participants which already maintained an open regime on international trade in services, special credits should be given to them. In addition, in exceptional circumstances such as serious balance-of-payment difficulties, a special time bound waiver could be granted subject to agreement by all other participants.

23. His delegation recognised that the structure of a services agreement could be a combination of the two broad approaches described above. It should not be precluded that subject to the agreement of all participants,

the framework concepts/principles could apply to a specific sector, e.g. tourism or construction.

24. As concerned the increasing participation of developing countries, the representative of Singapore said a services agreement should allow for flexibility that would permit the developing countries to develop their services capacity including the capacity to export services. It was therefore suggested that in their country offer schedules, the developing countries would have, inter alia, the following four facilities. First, they would have a longer time period to implement their offer schedules. Second, preferences for domestic service providers over external suppliers would be allowed. Third, government incentives to develop their domestic services should be permissible. And finally, there should be safeguard provisions against corporate practices of external service providers which might be detrimental to the development of domestic services in the developing countries.

25. The representative of the European Communities recalled that his delegation had tabled five papers this year: MTN.GNS/W/56 which, although principally addressing the issue of the sectoral examination had some relevant comments regarding the sectoral coverage of the framework; MTN.GNS/W/65 and MTN.GNS/W/66 relating respectively to transparency and progressive liberalization; and the two papers on definition and on non-discrimination (MTN.GNS/W/76 and MTN.GNS/W/77). These papers taken together constituted a consistent whole, giving a clear idea of the views of the Community on the draft framework. In relation to the U.S. proposal, he agreed that there were areas which were perhaps of more immediate interest to the GNS and areas which would be of particular interest at a later stage in the negotiating process. He referred in that respect to dispute settlement and the linkage of any agreement with the GATT.

26. On the document relating to definition (MTN.GNS/W/76), the representative of the EC said that the Community had consistently recognized that it was an important element of the approach to the draft framework in setting the outer limits of what the Group was trying to do. There were two elements: one element was sectoral coverage (the Community's view was reproduced in MTN.GNS/W/56) and the other was definition. He stressed that the goal of the GNS exercise was to liberalize trade in services, not to conduct an exercise in liberalization of investment per se. Nor was the GNS to indulge in an exercise of liberalization of labour movement per se. The immediate task was to liberalize trade in services and to the extent that it was relevant, the movement of personnel and capital. He said the EC wanted an agreement which would promote economic growth and development, therefore, a broad definition was needed.

27. He drew attention to the illustrative list in page 3 of the document which showed what was meant by the EC by commercial presence. This included, for example, franchising operations as these operations had an element of commercial presence, even though the actual method of franchising may or may not involve actual investment by the franchisor. Commercial presence was qualified by the reference to the fact that the

activity should be limited to the specific purpose for which access was granted. He considered that was important in relation to both commercial presence and the movement of personnel, and that there may be a need for some sectoral annotation in this respect. He wanted to make it clear that his delegation did not see the movement of unskilled labour as being an issue of trade in services; it was open to countries, if they so desired, to allow inward movement of unskilled labour, but for movement essential to the supply of services. He said then it was very difficult to justify the movement of unskilled labour in terms of being a factor which was not present in all markets. He then referred to the specific purpose for which the access was granted and underlined that the movement of personnel should be of limited duration or a discrete transaction.

28. In introducing the document on non-discrimination (MTN.GNS/W/77), he said the balance of rights and obligations was critical to the EC approach to the multilateral framework. It was a concept which had served the cause of multilateral liberalization of trade in goods very well and was one which should be established in the field of trade in services. The Montreal text confirmed the importance of this concepts. Every signatory would be expected to make some contribution to the liberalization process, but, on the other hand, the contribution should not necessarily be identical. This was clearly established in paragraph 7(b) of the Montreal text. A further concept which was important in the approach to the agreement was that of overall reciprocity. Again this had served well in the field of trade in goods where all participants were expected to make contributions which led to a mutually advantageous balance of benefits. He added that the document should also be read in common with the Community's text on the basis for the progressive liberalization process. They were different chapters of the same comprehensive approach. The starting point for non-discrimination was that liberalization commitments should be bound in the framework on a basis of unconditional m.f.n.

29. In the discussion of the applicability of concepts to sectors, it had emerged that there were modes of delivery where it was sometimes very difficult to be able to deliver the service and meet the requirement of domestic regulations. For example, in the insurance sector, the provision of insurance through a commercial presence where a corporate entity would be subject to the regulatory control of the importing country could ensure protection of consumers. The cross-border provision of insurance, was much more difficult to control, because the corporate entity was situated outside the country. In that case it was only possible to allow the cross-border provision of the service if the importing country was satisfied that there was adequate control at the exporting country end. In the area of professional services, where qualifications were particularly important to ensure that if a liberalization commitment was made on unconditional m.f.n. basis to all signatories, effective benefits could only be obtained to the extent that the requirements for provision of the service could be met. In that case, it might be necessary to undertake some form of harmonization or recognition of the standards of the supplying country. Therefore, there was a need for a multilateral surveillance.

30. The representative of the EC then turned to paragraph 3 which he considered to be the analogue to Article XXIV at the GATT. It referred to the comprehensive regional liberalization of the provision of services, the fullest example of which was the Community's single market. Other examples included the U.S./Canada agreement and the Australia/New Zealand agreement where liberalization of the provision of trade in services had been agreed mutually. The EC had suggested that just as in the GATT, under certain conditions, such regional liberalization could be encouraged providing it was not a barrier to liberalization on a wider basis. The EC had laid out broad criteria which any such liberalization effort should respect. Firstly, there should be broad sectoral coverage. Second, the EC expected to see a linkage between any regional liberalization agreement on services and a corresponding one on goods, be it a customs-union type or a free-trade agreement type. Third, this regional liberalization should not lead to greater barriers to the outside world. Therefore, the level of liberalization commitments undertaken in the context of the general framework should not be undermined by the internal liberalization among a limited number of signatories.

31. He said the EC had used the term non-application of commitments advisedly, referring to non-application of commitments rather than non-application of the agreement or the framework. There was value in a flexible provision which allowed non-application of certain commitments providing that non-application took place at the moment those commitments entered into force. There should be a rationale and explanation of why the level of commitment of another signatory was such that a particular country did not feel in a position to apply all of its commitments. The mechanism in the document had three important elements to it. First, there should be prior consultation so as to see if a solution could be reached with a reasonable time allowed for such consultation. Second, if non-application action was taken, it had to be notified at the latest at the moment when the commitment would otherwise enter into force. Third, a procedure for multilateral review at the request of the affected signatory should be established. A non-application provision should not be used frequently and would definitely be a last resort.

32. He made a final point on the origin of services supplied. It was almost axiomatic, he said, that if commitments were limited to services provided by certain other signatories, then it was useful to have a guideline to determine whether they came from these other signatories or not. The same was true in relation to regional liberalization agreements and perhaps also to the extent that there was a need for harmonization or mutual recognition agreements. This was something which the GNS would have to address during the course of next year.

33. The Chairman opened the floor to comments on the draft blueprint for a general agreement on trade in services (MTN.GNS/W/69) tabled by the Swiss delegation at the last meeting.

34. The representative of Mexico said that his delegation agreed with several of the elements contained in MTN.GNS/W/69. He noted that available statistics did not make it possible to establish the precise volumes of

trade which requests for sectoral negotiations would involve. He recalled that the Swiss proposal would allow participants to request the possibility of entering into negotiations with other participants without any prior conditions being established. He asked how the Swiss delegation envisaged GATS negotiations over market access to both proceed and prevail in sectors where multilateral arrangements already existed, noting that this might run contrary to the provisions contained in Article 30 of the Vienna Convention. Similarly, he wondered how bilateral agreements could be made to coexist with an Article XXIV type provision. He asked, moreover, whether sectoral agreements aimed at achieving more complementarity across national regulations would increase the tendency towards regulatory harmonization. If this were the case, his delegation would find it difficult to endorse a proposal of this kind; all the more so since progressive liberalization should not in his view be confused with international harmonization or deregulation. In regard to transparency, he noted that his delegation insisted on the need for contact points. This could complement the suggestion contained in MTN.GNS/W/69 for providing information following application. His delegation rejected calls for prior notification proceedings while endorsing calls for prompt notification once regulatory measures were enforced. He said that it was difficult to conceive of the ways and means for implementing proposals submitted on a reciprocal basis. He recalled that his delegation had in previous meetings indicated why a regulatory freeze was not a convenient approach to follow, noting that MTN.GNS/W/69 seemingly took the view that such commitments could be subject to counter-measures on the part of other participants. He asked how one could quantify the value of perceived regulatory violations and who would decide what types of counter-measures could be applicable. He recalled that the Mexican delegation felt that national treatment was an objective to be attained in the longer term, adding that the Swiss concept of equality of competitive opportunity could also be envisaged as a long-term objective. He said that it was important to determine who would decide whether commitments to equality of competitive opportunities had been achieved. As well, how could this be measured in quantitative terms? He wondered whether, in addition to national treatment considerations, other elements such as market access could be considered as legitimate objectives of public policy in regard, for instance, to safeguarding public morals. Finally, he sought further explanations on the safeguards provisions suggested in paragraph 3.2(d) of the Swiss proposal, with particular reference to cases where domestic service industries still faced the threat of serious injury after the expiry of the five year period envisaged in MTN.GNS/W/69.

35. The representative of Singapore asked the Swiss delegation how it envisaged to implement the results of bilateral, plurilateral or multilateral negotiations conducted outside a GATS. In regard to the heading on service subsidies and TRIMS in MTN.GNS/W/69, he sought additional clarification on the suggested incorporation into a GATS of results achieved in negotiations on trade-related investment measures. In addition, he wondered whether the suggestion to provide strict reporting and notification procedures for areas not fully subject to bindings under a GATS might not prove unduly burdensome from an administrative viewpoint.

36. The representative of Romania felt that MTN.GNS/W/69 neglected the development of developing countries, noting that the Swiss proposal did not contain specific developmental proposals but merely recognized that due account would have to be given to the level of development of participating countries. His delegation felt that development had to be a central feature of a framework agreement, adding that there was a need to provide a series of measures in favour of developing countries. Such measures could include infant industry provisions, the application of relative reciprocity in favour of developing countries, preferential market access opportunities for developing country service exports in developed country markets, the enhancement of sophisticated service technology transfers towards developing countries, the greater provision of technical assistance aimed at developing services infrastructures and at human resource training, as well as the acceptance of preferential arrangements among developing countries in the services area. He said that policy measures designed to protect infant service industries in developing countries should be considered as an acceptable derogation to the national treatment principle. He felt that the blanket application of national treatment by developing countries would only widen the competitive gaps between developed and developing countries in the area of services. He said that his delegation could not endorse the Swiss proposal for a limited application of m.f.n., noting that a framework agreement should be based on full and unconditional m.f.n. treatment, as was the case in Article I of the GATT. Finally, he noted that his delegation could not accept the idea that the existence of state monopolies would distort services trade. This, he felt, was an unfounded assessment, particularly as such monopolies operated on the basis of commercial criteria while respecting the principle of non-discrimination.

37. The representative of Sweden, on behalf of the Nordic countries, said that MTN.GNS/W/69 clearly outlined those problem areas that were still unsettled and provided an excellent check-list of issues. He said that the submission pointed to the great importance of a close link between GATS and GATT, adding that he would very much agree with the need for the greatest possible compatibility with GATT. He said that the Nordic countries had themselves underlined the importance of having one institutional locus for the multilateral trading system. The Swiss submission made the point that all signatories should have an initial level of commitment. He agreed that there should be a threshold of some sort as a condition for joining the agreement but asked what was meant in paragraph 2(a) of MTN.GNS/W/69 when it spoke of negotiating modalities for the initial level of commitments. He noted that the Swiss submission brought up the question of free trade areas and regional economic integration, adding that explicit provision should be made for such agreements. Similarly, criteria should govern their establishment, and barriers to trade vis-à-vis the outside world should not be raised. He said that the explicit link to agreements falling under Article XXIV of the GATT was interesting and would have to be studied carefully. In this respect, it seemed that the EC approach to free trade areas was very similar. Another aspect of the Swiss submission which the Nordic countries were very attracted by was the section on dispute prevention. He felt that it fitted very well with his own delegation's thinking on transparency and to phrase it in terms of dispute prevention

was an elegant way of putting it. He said that in the section on bindings it was indicated that a partial binding might not include non-discrimination. He understood that national treatment and m.f.n. were difficult in some circumstances, but non-discrimination as among foreign suppliers present in the market should be a fundamental principle that could be adhered to even in the absence of bindings on both national treatment and m.f.n. Another question related to Section B, paragraph 1(b)(iii) where it was said that the rules and disciplines of GATS shall also apply to the sectoral standard setting agreements. It appeared that this was in contradiction with the derogation from m.f.n. that was foreseen for the sectoral standard setting agreements since m.f.n. was in fact a principle of the agreement.

38. He said that the Swiss submission adopted an approach to progressive liberalization which could be regarded as broadly similar to previous submissions by the EC and Canada on that subject. Only when a service was bound under the agreement would the rules and disciplines apply. National treatment, which was the driving force in the U.S. draft, was rather an objective to be reached through successive negotiations or autonomous liberalization measures. The approach outlined in the Swiss submission did raise some questions though, in particular as to the nature of the "substantive rules and principles" and when they in fact became operational. He felt that signatories would seem to be in a position to exercise a rather large degree of discretion in terms of their substantive commitments when bindings were made under the agreement. The greatly varying degrees of obligations provided for in the different levels of bindings ran the risk of lacking lucidity and creating a system which was very difficult to overview. Undertaking concrete obligations involved an element of à la carte choice. His delegation understood the underlying rationale but felt that there were some risks involved. He suggested that substantive rules and principles instead of a fragmentation of bindings, could be divided into two groups; those of immediate and general applicability, and those to which commitments entailed far-reaching obligations.

39. The representative of Brazil said that MTN.GNS/W/69 contained many ideas which coincided with those of his delegation. His first comment was that it was somewhat premature to start discussing the modalities for implementing the results of the negotiations. He said that the sectoral examination had highlighted the difficulties involved in transposing rules and disciplines from other existing arrangements, noting that more time was required to determine whether and how existing rules should be transposed into a trade in services agreement. He asked the Swiss delegation to what extent it envisaged the examination of existing arrangements as an element to be further discussed in the Group. He agreed that selecting a few general obligations to be undertaken by participants was one way of ensuring a wide number of both signatories and covered sectors. It was essential to recognize the need to operate in stages, thereby making liberalization progressive. At the same time, it was important to secure a firm commitment on the part of countries to engage in a liberalizing process. In regard to transparency, he recalled the difficulties which his delegation had with prior notification procedures. The feasibility of such

an approach could be questioned, particularly in regard to differences in legislative practices across countries and in view of the administrative burden which such procedures might entail. He agreed that it was practically impossible to notify changes to all regulations, particularly in regard to local and other sub-national regulations. He asked the Swiss delegation how it envisaged developing countries would be treated insofar as their initial commitments were concerned, noting that a freeze or standstill of existing regulations was meaningless so long as developing countries did not have a better grasp of the precise implications of commitments under a framework agreement. He felt that MTN.GNS/W/69 did not spell out in sufficient detail the precise ways in which the adverse effects of laws, regulations and administrative practices would be tackled in the future. Would this be done on a request and offer basis? If that was the case, he wondered how the process of sectoral bindings could deal with the problem of reducing the adverse trade effects that might be identified either multilaterally or bilaterally.

40. The representative of Australia felt that the general approach of the Swiss proposal, which could be described as a positive list/building blocks approach, was not the preferred one in the view of his delegation. He recalled that Australia favoured a negative list approach which aimed at the outset for the broadest coverage possible with strong core principles to be included in a framework. This being said, his delegation found many aspects of MTN.GNS/W/69 quite attractive. He was concerned by the call for qualified m.f.n. treatment contained in the Swiss submission, recalling that his delegation had consistently argued in favour of full, unqualified non-discrimination with respect to obligations.

41. The representative of Hungary agreed with the Swiss proposal that services trade liberalization should be progressive both in terms of sectors covered but also in terms of entry conditions for foreign service providers. He also agreed with the idea of a universal coverage of service sectors and with that of general obligations. He felt that the notion of initial commitments was desirable, noting that one possible approach in this regard could be a regulatory freeze in some sectors. He disagreed with the Swiss proposal's treatment of m.f.n., noting that a qualified m.f.n. approach might considerably lessen the scope for cross-sectoral exchange of concessions, thereby diluting the agreement's balance of benefits and obligations for a possibly large number of countries. He said it was somewhat unclear how the general obligations outlined in paragraph 1(a) would be capable of giving effect to the commitments entered into under paragraph 1(a). He felt that the obligations, with the exception of that relating to transparency, did not appear to be trade liberalizing principles. He said that national treatment and m.f.n. should be considered as general obligations to be included under paragraph 1(b). He asked the Swiss delegation what it meant when it spoke of sector-related standards' setting agreements, noting that his delegation did not foresee the GATS involving itself in technical agreements such as those, for instance, governing international telecommunications rates. Similarly, in regard to standstill commitments on acceding to the agreement and to services of so-called "economic importance", he noted that opinions might differ greatly depending on whose interests were at stake - i.e. those of

the contracting party itself or those of its trading partners. On the issue of a package deal in paragraph 2(a)(ii) of the Swiss submission, he wondered whether for the negotiated number of selected commercially-tradeable services, the boundaries of a framework agreement might tend to be blurred, making it difficult to see how various obligations might be applicable. He felt that an agreement should guard against the possibility for sub-national entities to disregard the obligations entered into by national authorities as contracting parties, adding that there should not be, as appeared to be the case in MTN.GNS/W/69, various levels of obligations depending on countries' division of regulatory powers between central and local or regional governments. Finally, he said that his delegation had some concern with the idea of "overcoming systemic differences in achieving mutually compatible competitive conditions", noting that this language appeared to suggest the possibilities of going beyond reciprocity in negotiating further undertakings.

42. The representative of the United States said that whereas the Swiss submission contained a positive list approach in which nothing was bound unless scheduled, the U.S. proposal operated on the basis that only reservations to an agreement could be scheduled. He stressed that both countries' proposals were not conceptually apart in regard to the potential outcome of the negotiations, one example being the degree of bindings available under an agreement. He felt, nonetheless, that there were an insufficient number of provisions in MTN.GNS/W/69 aimed at securing the degree of trade expansion which the Group hoped to achieve. He asked where the Swiss delegation stood on the issue of establishment in relation to services trade, noting that an establishment provision in the framework had to be distinguished from what might ultimately be reflected in individual country schedules. He said that if countries decided for themselves what their obligations should be in regard to establishment, one might then find unilateral descriptions of what trade expansion should be. To counter such a risk, he felt that there was a need for a common set of principles that provided meaningful rules for liberalization. On the issue of cartels and state monopolies, he said that his delegation was concerned by the idea of establishing minimal rules of competition. He doubted whether the GNS could ever referee the highly complex area of competition rules as administered by individual countries. He felt that the importance of competition rules should be underlined but was doubtful as to whether they should be subject to consultation and dispute settlement. He said that his delegation, like others, did not understand the notion of "further undertakings" as envisaged in MTN.GNS/W/69. On the issue of progressive liberalization, he wondered how the Swiss delegation envisaged concrete undertakings to be reached. He felt that while it was conceivable that trade liberalization could be secured through a bilateral negotiation between two countries, it would still have to be subjected to the multilateral dynamic emerging from the GNS process.

43. The representative of Canada agreed that a contractual obligation in regard to progressive liberalization was an essential element of an agreement. He was somewhat unclear, however, as to the modalities for entering into further negotiations as envisaged in MTN.GNS/W/69. He said

that the Swiss submission did not spell out sufficiently clearly what rules and disciplines would apply to any undertakings entered into by countries on a bilateral or plurilateral basis. On notification and transparency, he wondered what kind of reciprocity was being envisaged in regard to provisions for prior notification and advance commentary on domestic regulations. He said that the Swiss delegation appeared to deal with development matters - mostly through phasing provisions - by referring to so-called "special circumstances". With regard to coverage, he agreed that the framework should apply to the universe of commercial services but noted that his delegation sought to provide more precision on the issue of definition in any framework agreement. He felt that the EC submission in MTN.GNS/W/76 provided a useful start in that direction. On the question of the relationship between GATT and GATS, he stressed that a number of interlinkages between goods and services which can be observed in markets could have a bearing on the Group's work. He recalled that there should be appropriate contributions by all parties as part of the outcome of the Uruguay Round, including some degree of trade liberalization to be achieved as part of the Round. His delegation felt that the Swiss submission did not appear to provide for any liberalization in the current Round. He agreed with the notion of initial levels of commitments, noting that these should be seen as a form of binding which went beyond a mere "best endeavours" approach. His delegation was rather puzzled as to why substantive rules and principles were included only at this stage of the proceedings, noting that the most important principles and rules outlined in the sections 3 and 3.1 of MTN.GNS/W/69 should be included from the outset as binding obligations under a framework agreement. His delegation was also puzzled by the notion of further undertakings and sought further clarifications on the issues of cartels and monopolies. He wondered in particular whether the notion of offset arrangements could be likened to a countervail. He noted that exceptions only related to national treatment and said that his delegation was not fully clear as to the difference between segmental and partial bindings in section 3.3 of MTN.GNS/W/69. He sought similar clarifications in regard to safeguards.

44. The representative of Korea agreed with the idea that market access and national treatment provisions should be extended to services to the extent that these are bound. He said that an important question before the Group related to the modalities for achieving an initial level of commitment by the end of the Uruguay Round. Such modalities should be discussed taking into account the circumstances, policy objectives and levels of existing regulations in individual countries. He asked the Swiss delegation what it really implied when it spoke of a list of services falling under the initial level of commitments. In addition, he asked whether those selected services used for defining initial levels of commitments would be subject to standstill rules. He wondered, thirdly, whether standards setting agreements should be concluded for all commercial services sectors or for certain qualified sectors only. Fourthly, he sought additional information and, if possible, some practical examples in regard to so-called "further undertakings". Finally, with regard to transparency, he said that his delegation was not prepared to support the Swiss proposal in regard to prior notification procedures.

45. The representative of Japan felt that in aiming at a wide scope of coverage so as to avoid a priori exclusions, the Swiss submission had offered the Group useful food for thought. He felt that the Swiss submission was somewhat vague on the issue of whether progressive liberalization would actually start during the course of the Round, noting that his delegation was adamant that such a process should begin during the current round of negotiations. He sought further clarifications on the issue of initial commitments, as well as on that of effective market access. As the Group proceeded to draft, in legal language, the elements of a possible framework agreement, it was important to have a much clearer understanding of the precise meaning of market access and of progressive liberalization. Finally, in regard to the conditional application of m.f.n., and to regional integration arrangements, he felt that further studies were warranted and agreed with the Swiss paper when it said that regional economic integration should not constitute a disguised restriction to international trade.

46. The representative of Argentina said that the Swiss submission was quite similar to the idea which his delegation had of the general features of a framework agreement for trade in services. He felt that the Swiss proposal was a sufficiently progressive one in regard to the pace of liberalization and introduced the required flexibility with which to conclude a successful negotiation. He said that the adoption of a positive list approach would lead to an agreement with two levels of negotiations. At one level, transparency provisions would affect all services without exclusions as to sectors and/or transactions. At another level, negotiations would affect all services disciplines which countries would incorporate in their schedules of concessions. While it was still early to discuss the possible relationship between GATT and a future services agreement, he felt that the Swiss delegation had been wise to raise an issue which Group members would need to think about in a more focused way fairly soon. He noted that the Swiss submission appeared to suggest that it was possible to negotiate not only market access but also how services could actually be provided. He asked whether his delegation's understanding was correct, noting that such an approach coincided with the views of his delegation concerning the need for flexibility in regard to the ways in which services may be supplied. He sought further clarifications on the issue of standards setting agreements as well as on that of contractual obligations to undertake a liberalization process. He wondered whether it was realistic, or even possible, for a country to contractually oblige itself to undertake a liberalization process. Another point requiring clarification in MTN.GNS/W/69 was that of services negotiations in other fora. He noted that the Swiss proposal made only very indirect references to the issue of development under the guise of "special circumstances". He believed that this resulted not so much from a lack of willingness on the part of the Swiss delegation to engage in meaningful discussions on the issue as to a desire to see developing countries themselves address the issue in a substantive manner. He was unclear as to the legal differences between a "freeze", as described in MTN.GNS/W/69, and what might simply be called concessions granted in national schedules. He wondered whether distinguishing between them served any useful purpose if neither could be altered by contractual obligations.

Finally, on the issue of safeguards for possible balance of payments reasons, he felt that this was an overriding need which had to be accommodated in a framework agreement. He recalled that once liberalization was underway, some countries - particularly developing countries - would face an increase in services imports which might create payments difficulties. Balance-of-payments safeguards should thus be of interest to all participating countries.

47. The representative of Yugoslavia felt that while MTN.GNS/W/69 contained a number of ideas which could prove useful for the Group's future work, it nonetheless omitted a number of issues which Ministers agreed both at the Punta del Este and Montreal meetings were relevant for arriving at a framework agreement. This was particularly the case in regard to the development of developing countries and their increasing participation in world services trade. She felt that this was also true of the regulatory situation, particularly in the case of new services where often little or no regulation existed in developed and developing countries alike. She was unclear as to precise implications of the regulatory freeze suggested in the Swiss proposal given the asymmetries which often obtained between the regulatory regimes of developed and developing countries. She felt that the GNS did not have enough time at its disposal before the end of the Round to engage itself in a process of exchanging binding concessions. One simply needed to be realistic in this regard. Her delegation could not agree with the idea of a qualified m.f.n. clause, noting that one of the main objectives of the negotiations was to develop multilateral disciplines and not to engage in a parallel process of bilateral and/or plurilateral negotiations on a sectoral basis. On the future relationship between the GATT and a possible services agreement, she recalled that her delegation was still keen to maintain goods and services negotiations on separate tracks. She agreed that more detailed discussions were required on the issue of services trade liberalization and regional economic integration agreements, recalling that the latter agreements should promote rather than hinder the prospects of trade expansion in the services area. She felt that the Swiss proposal lacked a proper definition of trade in services and hoped that this crucial issue could be addressed in future Group discussions. Her delegation agreed with the Swiss proposal over the need for universal coverage with no a priori exclusions of sectors and/or transactions.

48. The representative of India said that his delegation shared the basic philosophy contained in MTN.GNS/W/69. He said that his delegation's approach would consist of selecting well defined general obligations to be observed in the process of liberalization, such as transparency, m.f.n., non-discrimination or national treatment. As to the question of applying such principles to particular sectors or of undertaking initial levels of commitments before the Uruguay Round was completed, he said that his delegation kept an open mind but would welcome a thorough discussion of these matters in the Group's upcoming meetings. His delegation agreed with the Swiss proposal to start the process of liberalization by entering into commitments in good faith and with a view to a process of longer-term liberalization of services sectors. He agreed that no sector should be excluded on an a priori basis from the future liberalization process but

said that for the framework to be effective and to avoid future disputes, it was essential to have a clear definition of trade in services. He therefore disagreed with the Swiss view that there was no need at the present juncture to attempt to define commercially-traded services. In addition, to a proper definition, his delegation felt that the coverage of the framework should also be discussed with a view to determining how liberalization would take place in the sectors that are chosen in future. He felt that the Swiss view on initial levels of commitments did not take into account the special circumstances of developing countries. In particular, the notion that there should be a complete freeze of existing regulations in selected sectors of economic importance was not a feasible proposition in the view of his delegation, for there were many countries, particularly developing countries, where this might not be possible. Alternatives would thus have to be devised as to the modalities of liberalization. He said that his delegation subscribed to the principle of national treatment once market access had been granted and entry conditions satisfactorily fulfilled. He noted that such conditions could include some degree of preferential treatment for domestic service providers so as to enable infant industries in developing countries to compete with foreign providers. He said that his delegation found it difficult to accept the idea of qualified m.f.n. treatment, noting that m.f.n. should rather be applied unconditionally. With regard to transparency, his delegation, like many others, could not subscribe to the view that changes to - or new - laws and regulations should be subject to consultations and prior notification. India would ensure that its laws and regulations were in conformity with the international commitments it might enter into in a services agreement. If any contracting party felt that in some respect a country had departed from its international commitments, there should be other remedies than prior notification and advance commentary to rectify such situations. On safeguards, he found it difficult to agree with the view that safeguard measures should only be justified within a period of five years after liberalization took effect. Such time limits were not suitable in the case of developing countries which needed to enhance the competitive abilities of infant service providers. Safeguards for balance-of-payments reasons should be unqualified, at least in the case of developing countries. With regard to commitments for progressive liberalization and effective market access, he felt that such considerations should not be compared solely to foreign service providers, adding that it might be necessary to provide support to domestic service providers so as to ensure that they could compete at par with foreign providers. Finally, he said that the institutional relationship between the GATT and a possible GATS should be discussed at the end of the negotiating round.

49. The representative of Israel said that a framework agreement should in the view of his delegation include as many sectors as possible. It therefore welcomed the universal coverage envisaged in MTN.GNS/W/69. His delegation did, however, share some concerns on the lack of a proper definition of trade in services in the Swiss proposal, adding that an attempt at defining services trade for the purposes of a framework should be made. His delegation supported the broadest possible participation to a framework agreement. He agreed with other delegations that the Swiss

proposal lacked an adequate discussion of development matters. His delegation also had problems with the idea of limiting participation by talking of mutually compatible competition conditions and qualified m.f.n. treatment. He asked the Swiss delegation what it meant by the notion of seeking negotiations in sectors of important interest, wondering why it had used the qualifier "important".

50. He sought further clarifications on the possibility, envisaged in MTN.GNS/W/69, of services negotiations taking place outside the GATT system on a bilateral, plurilateral or multilateral basis, noting that such parallel negotiations could introduce some confusion. His delegation felt that services negotiations should take place squarely within the confines of the framework agreement, be bound and of benefit to all participants. With regard to the initial level of commitments, he felt that it was somewhat unclear how such a level could be determined. Similarly, he asked for more details on the precise ways of securing a freeze. He said that his delegation felt that m.f.n. should be granted unconditionally. On the issue of national treatment and the principle of equality of opportunity following a panel report, he felt that the Swiss proposal was attractive, noting however that more time was required for reflecting on it. He said that such an approach might yield greater flexibility in attempting to apply national treatment in practice. With regard to regional economic integration, he recalled that the GATT's Article XXIV spoke not of regional economic integration but of economic integration more broadly, suggesting that such an approach should perhaps be envisaged in a framework agreement on services. His delegation was somewhat confused about the degree of bindings available, particularly in regard to so-called partial bindings. It was difficult to accept the idea of seeing some principles not covered by bindings; there should be no derogations to basic framework principles. On safeguards, more work was necessary on the nature of domestic injury arising from a services agreement as well as on that of structural adjustment before devising specific safeguards provisions.

51. The representative of New Zealand said that her delegation subscribed to a universal coverage of sectors to which a number of general obligations would apply. Similarly, the contractual obligation to negotiate in order to achieve progressive liberalization was an interesting proposal. Her delegation could also subscribe to the idea of entering into binding commitments over market access through bilateral or plurilateral negotiations which should be multilateralized. There were, nonetheless, a number of areas where the views of her delegation contrasted those of the Swiss delegation's, particularly in regard to the nature and extent of the applicability of general rules and obligations. She felt that general rules did not extend much beyond transparency in MTN.GNS/W/69, noting that this was not sufficient. She shared the doubts exposed by a number of delegations over the feasibility of bringing under the aegis of a GATS a number of methods for liberalizing trade in services. She equally shared the questions which had been raised in regard to standards setting agreements, and asked in particular how the rules and disciplines of a services agreement could apply to the latter agreements. She was unsure as to what the suggested prevalence of the framework agreement over sectoral agreements in regard to market access actually meant in practice and asked

how market access could be measured or defined in these circumstances. Switzerland's overall approach was essentially sectoral in nature. This, she felt, could limit the prospects for meaningful cross-sectoral trade-offs or concessions. She was equally unsure how such an approach tied in with the notion of an initial freeze in selected sectors, noting that, as currently drafted, the paper appeared to suggest that such a freeze would not be uniform in coverage for all signatories. Such an approach might run the risk of locking in the status quo at fairly different levels of protection across countries. On the proposed package deal approach to defining an initial level of commitment, she expressed doubts as to the feasibility of achieving agreement amongst all signatories to make the same commitments in a given sector. In the section on bindings in MTN.GNS/W/69, she said that it seemed as though not all of the rules of the agreement would apply in all cases of bindings and sought further clarification on what would need to be spelled out in a binding. She expressed concern over the idea of qualified m.f.n. and wondered whether the presence of alternative forms of m.f.n. suggested the need for them to be spelled out in each binding. Similar concerns could be expressed in regard to all general principles to be included in a framework agreement. She felt that the flexibility of bindings, in combination with the need to establish the scope of a binding, added to the complexity and diffuse nature of the agreement seemingly envisaged by the Swiss delegation. She agreed with the representative of the Nordic countries that, in view of this complexity, the Swiss proposal was difficult to overview and feared that the operational modalities envisaged in the proposal might result in an agreement which was broad neither in coverage nor in participation in a true multilateral sense.

52. The representative of the European Communities felt that the approach followed in MTN.GNS/W/69 was not incompatible with that followed by his delegation, although it was arguably less ambitious in terms of the specific level of commitment which it was looking for both at the end of the Uruguay Round and beyond. He was unsure how the idea of an obligation to enter into negotiations in good faith could in practice represent more than a best endeavours clause and wondered if such an approach could prove legally meaningful. He agreed with some of the points made in the communication such as the need for a rule regarding regional economic integration. His delegation also agreed that national treatment should not be regarded as an automatic obligation on signatories, and that it should not be applied on a different basis than market access obligations, involving as much of a binding commitment as other rules and principles of the agreement. He stressed that a provision relating to transparency should not imply notification procedures which were infeasible in practice. He agreed that an initial level of commitment should be envisaged for signatories of the agreement but would strongly oppose formulations which allowed for signatories to accede to the agreement by simply notifying sectors of interest. He found the description of the different degrees of bindings available as modalities of progressive liberalization to be illustrative but failed to understand how the principle of m.f.n. could be applied only partially. As to the obligation of sub-national entities, he found the formulation in the communication - item 1(c)(i) - to be too weak.

Finally, countries should have the right - and not the obligation - to put competition laws and regulations in place.

53. The representative of Japan stressed his agreement with the notion of initial level of commitments and requested some clarification as to what the Swiss delegation had in mind when it advocated that negotiations in international fora other than the GATT should be devoted to standard-setting operations.

54. The representative of Peru said that the communication from Switzerland provided for two essential elements in the agreement: progressivity and flexibility. Institutional issues should be given due attention as they were very important. Similarly, development-related issues required further consideration as they appeared only implicitly in the communication. Regarding transparency, he re-emphasized that his delegation had serious reservations relating to the notion of prior notification and comment. He agreed with the notion of initial level of commitments as long as such a level was determined taking due account of the level of development of individual signatories. A provision regarding regional economic integration and free trade areas should be of special relevance to trade in services.

55. The representative of Jamaica said that the absence of an agreed upon universe of traded services or of a definition of trade in services constituted a major shortcoming in the communication from Switzerland. An approach which relied on a definition of trade in services being achieved according to the willingness to offer and accept concessions by signatories rather than on an objectively agreed yardstick could be difficult to manage. In particular, the absence of an agreed definition would complicate the implementation of autonomous liberalization by signatories. The suggestion that notifications of laws and regulations should be addressed to the GATT secretariat might be prejudging the outcome of negotiations on the institutional relationship between the services agreement and the General Agreement. He requested clarification on the principle of qualified m.f.n. and on how negotiations in fora other than the GATT should limit themselves to standard-setting operations. In the context of a provision on the initial level of commitment by signatories, he stressed that in accordance with the paragraph on regulatory situation in the Montreal text, developing countries should not be expected to freeze their regulations and to refrain from steps reducing present levels of market access. Such a freeze would not only affect the level of existing market access but it would also deny developing countries a certain level of protection for their services industries. Developed countries had been able to develop their own industries through the protection afforded by their regulatory systems and developing countries should not be denied the same option by signing the framework agreement. The treatment of development in the communication was limited to the possibility of a slower phasing-in of obligations by developing countries, a possibility which should not suffice to induce many of these countries to sign the agreement.

56. The representative of Bangladesh said that in accordance with the Montreal text, particular account should be taken of the serious difficulty

of the least-developed countries in accepting negotiated commitments. This intention should be reflected in all of the main elements of the framework agreement. In that context, he suggested that the delegations of Switzerland and the United States consider revising their communications so as to include specific modalities through which special treatment could be rendered to the least-developed countries.

57. The representative of Morocco appreciated the flexibility evident in the communication from Switzerland as it facilitated a wide subscription to the agreement. His delegation accepted the formulation of transparency and unconditional m.f.n. but still was considering the extent to which it could accept the formulation of national treatment. Regarding the paragraph on initial level of commitment, he endorsed the views expressed by the representative of Jamaica as to why a freeze would need to be qualified in its application to developing countries. He stressed that for the negotiations to be successful a precise definition of trade in services and tradeable services should be attempted and not - as stated in the communication - be left open to future developments. Regional economic integration and free trade areas should not constitute and/or impose obstacles to international trade in services but should in fact attempt to promote such trade. As to the institutional relationship between the agreement and the GATT, it was too premature to know it in detail as the structure and outline of the agreement on trade in services was still to be negotiated and agreed upon.

58. The representative of Nigeria said that a definition of trade in services was essential in the work of the GNS. He agreed with others that the notion of prior notification was infeasible in many respects. The application of market access and national treatment should not preclude the granting of incentives to domestic service providers aimed at upgrading domestic services capacities. Finally, he sought clarification on the different degrees of bindings set out in the communication.

59. The representative of Switzerland said that the communication from his delegation was not conceived as a full picture of the outcome of the negotiations but rather as an input into the negotiating process. The text was not in the form of a legal draft but his delegation had appreciated the efforts of other delegations in providing legal texts. It was ambitious in the sense that it aimed at the broadest possible sectoral coverage and government subscription under a set of general rules and principles. In response to a number of concerns raised regarding standard-setting agreements, he said that it was widely recognized that various international bodies were specialized in certain aspects of services transactions. Even though such bodies usually did not have trade liberalization as their mandate, the possibility should not be ruled out that market access questions might be introduced in their deliberations at some point. It was the view of his delegation that at that point market access principles agreed upon in the GATT system should apply. There were also many aspects of international services transactions which could be successfully dealt with in fora other than the GATT system such as the harmonization of professional standards and/or mutual recognition procedures. Clearly, it would be difficult for countries who had

negotiated such harmonization and/or mutual recognition procedures to extend them widely, on an m.f.n. basis, to countries which had not taken part in the same negotiations. Qualified m.f.n., as proposed in the communication, was very relevant in that context, as it would enable countries to subscribe to the framework agreement from the outset while leaving open the possibility to extend m.f.n. benefits more widely in the future.

60. As to immediately applicable commitments, he said that the communication set out three possibilities: a requirement for the accession to the agreement comprising individual lists of services sectors/transactions to be liberalized; a freeze of present levels of market access; and, a package deal involving a negotiated number of selected services to be liberalized. A freeze would be a step towards a binding, in effect constituting the first measure countries could undertake before binding market access commitments. Under the freeze, countries would continue to be free to adapt their regulations with a view to providing for the development of their services industries. The only thing they would not be able to change would be the degree of market access accorded to other parties of the agreement. Changes should, however, be justified and should not have an adverse effect on trade in services. Compensatory mechanisms should be devised for cases where such an adverse effect did materialise. A freeze would imply that existing levels of protection would remain in place but that they could not become higher and render market access more difficult. The binding constituted the principal mechanism through which liberalization was undertaken.

61. Regarding the institutional relationship between the agreement and the GATT, his delegation had thought appropriate to raise the issue at this stage of the negotiations. As to definitions, it had not been the intention of his delegation to avoid the issue but to approach it in a pragmatic manner through bindings relating to market access commitments. On regional economic integration and free trade areas, his delegation had intended to demonstrate their appreciation of Article XXIV of the GATT as a means to deal with the issue in the context of trade in services. Regarding the different degrees of bindings, he said that they were intended as a means to reflect the various degrees of commitment trading partners were likely to have among themselves and not as a means to achieve liberalization through an "a la carte" approach. Partial bindings were intended for situations when countries could not, for practical reasons, grant full treatment in terms of certain substantive rules and principles such as m.f.n./non-discrimination and national treatment. It would be difficult, for example, to envisage the granting of m.f.n. treatment to foreign banks by a country whose banking sector was saturated in terms of number of banks already present in the market. Sub-ceiling bindings were intended for countries which already granted a certain level of market access and wished to bind such a level. The provision on further undertakings was intended to address the specificities of the banking and financial sector while recognizing the existence of important systemic differences which had a bearing on competitive conditions. In the context of such differences, liberalization principles such as national treatment and non-discrimination might fail to achieve competitive market access and

a fair balance between individual liberalization efforts. While regulatory frameworks were not to be questioned, one should aim at solutions in which the various actors in the financial arena were free to choose a mix of activities allowing for the exertion of their respective competitive advantages. The provision on further undertakings was in that sense closely related to the notion of annexes set out in the communication from the United States. Regarding safeguards, access restrictions could be envisaged in the event of actual or immediate threat of injury to a domestic industry. However, such restrictions would only be justified within a period of five years from when the liberalization took effect. Safeguard measures could also be applied in order to facilitate structural adjustment or in relation to the balance-of-payments situation of signatories.

62. The representative of Switzerland said that the participation of developing countries was an important element in the Montreal text. The Swiss submission proposed explicitly that provisions allowing a phasing-in of obligations should be made available for developing countries. Switzerland could agree to different time schedules, to different initial levels of commitments and to different transitional periods of phasing-in of obligations linked to bindings. This would give the possibility to take account of each country's concerns individually.

63. The Chairman opened the floor to comments on the submissions tabled at the last meeting by New Zealand (MTN.GNS/W/72) and Peru (MTN.GNS/W/74), as well as to comment on submissions tabled since then by the U.S., the European Communities and Singapore.

64. The representative of Mexico noted that the New Zealand proposal referred to access to distribution channels and information networks but not to the increasing participation of developing countries as contained in the Montreal declaration, e.g. the need to include in the agreement provisions that would facilitate effective access to markets in sectors of interest to them. Explicitly or implicitly, developing countries were being treated as a special case. In general the proposals by Switzerland, New Zealand, the European Communities and Canada excluded from the negotiations sectors of export interest to developing countries despite what was said in the Montreal text. Unless there was an explicit recognition, for example, by including labour intensive service sectors in the negotiations, the GNS would be contradicting what was said at Montreal about coverage which was supposed to permit a balance of interests for all participants. One element common to all the submissions was the idea of a freeze of rules and regulations with regard to their effects on trade in services. The main problem concerned the lack of symmetry due to the different degree of development in countries' legislations. He not only foresaw that the asymmetries would continue but that they might increase. Some countries such as Mexico were involved in an intense process of modernization and liberalization of the productive apparatus as well as of services legislation in an effort to make all economic activity more efficient. He noted that in all four proposals there was either an implicit or an explicit definition of trade in services which had not yet been agreed in the negotiating group and until there was some symmetry

between the interests of developed and developing countries there could not be any agreement on this matter. Referring to the communication from Canada on progressive liberalization contained in document MTN.GNS/W/63, he agreed that some obligations could be adopted immediately, others in the longer term. Concerning the regimes applied by various countries not having the same level of openings, he noted that other liberalization measures should be adopted so as to have a balance between the rights and duties of each of them. This should include a relative opening regarding productive factors in the developing and developed countries. In his view developing countries had greater openness to direct foreign investment than developed countries had towards labour. Regarding positive and negative listings of measures applied to international trade in national schedules, he found it difficult to apply a negative listing as this implied a thorough revision of all legislation which could affect trade in services. The difficulty of the task depended to a great extent on the definition that was adopted on trade in services. The negative list would be a bottomless pit because of progress in new technologies which in the future would allow for an ever growing number of services which at the moment could not be traded. The GNS was not in a position before the end of the Round to decide on all the measures that should be included in the negative list, a point which also applied to the New Zealand proposal on reservations. He found interesting the Canadian proposal to exchange bindings and extend these to other partners through the m.f.n. clause. However, whether this could be applied depended on what Canada meant by the paragraph relating to fundamental principles and norms including inter alia transparency, m.f.n., access to markets, national treatment. The Canadian delegation seemed to consider that these elements would be granted progressively to participants in the framework agreement by the country that granted the concession. Was this the case or, once the concession was automatically granted, would national treatment be automatically granted? Turning to the European Communities document contained in MTN.GNS/W/66 on progressive liberalization, he agreed that certain principles and norms of the agreement could be applied right from the entry into force of the agreement such as dispute settlement, transparency, safeguards and institutional provisions. However, he considered what was contained in paragraph A.2 (regarding the granting of national treatment immediately after the initial commitment was undertaken) was contradictory to the Montreal text and was not progressive liberalization. This could have negative effects on the participation of developing countries. His delegation considered that national treatment was a long term aim within the process of effective access to markets through progressive liberalization. Finally, did the Community (in paragraph D.2) mean by adequate participation some kind of reciprocity by the developing countries?

65. The representative of Singapore addressed the New Zealand proposal and noted that in paragraph 6, New Zealand did not favour seeking to negotiate an agreed definition of trade in services but in paragraph 7 proceeded to list a number of transactions which seemed to border on such a definition. Regarding paragraph 4, which referred to a schedule of bindings and a schedule of reservations, he asked whether in the latter case the phrase "to which the obligations of the framework could not be immediately

applied" meant all or some of the obligations; if this referred to all obligations then this seemed to be a more or less permanent exceptions list. The question was what about those areas which lay between reservations and bindings? What obligations would apply in these areas? Regarding the reference in paragraph 13 to immigration and investment, it was not clear how these were to be looked upon as they were concepts outside the GATT rules; moreover he wanted to know more about their relationship to temporary or permanent establishment as stated in paragraph 7. Concerning paragraph 20 on a schedule of concessions, he was not clear about what sort of concessions could go "beyond the provisions of the GATS". Did this imply a special agreement outside the coverage of the GATS?

66. The representative of Poland said he wanted to comment on the proposals by Switzerland, New Zealand and Peru. Concerning the structure of the future agreement, he said that the services agreement should consist of one framework addressing the whole universe of commercially tradeable services plus sectoral arrangements, annotations or annexes to address the issue of sectoral specificity. It was impossible to have a viable agreement without taking sectoral specificities into account. Regarding definition and coverage, the Swiss paper seemed to suggest that it was not necessary to define the notion of trade in services but to leave it to future developments. New Zealand wanted to address all internationally traded services with some initial reservations. For Poland, definition was not a very vital element because, in proceeding pragmatically, it was not necessary to have an academic definition but to have something to address the scope of the future agreement such as the general skeleton definition agreed at Montreal. This included both movement of services, customers and factors of production including investment and labour. Noting the earlier comment by the EC that they would like to exclude unskilled labour from the definition, he said that when a service was rendered on a contract basis, and the contract included the provision of unskilled labour, then his delegation might think of including unskilled labour in certain circumstances. What was needed therefore was a skeleton plus pragmatic sector by sector inclusions in order to know the scope and coverage of the agreement. The next element concerned the development concept. The Swiss idea of autonomous liberalization resembled a kind of GSP scheme for services on a unilateral basis. The concept of a transitional period for phasing-in needed discussion and it was not clear to him how New Zealand wanted to address that issue. The problem of the increasing participation of developing countries should be addressed in the future agreement because it would be unusual to have equal rights and obligations among unequal partners. Commercial presence was an important concept which should be related to particular sectors and conditions; as commercial presence in telecommunications, say, meant something different than in banking or transportation. Regarding foreign direct investment there were similarly sectoral differences which had to be taken into account. On the problem of safeguards and exceptions, which were extensively treated in the Peruvian paper, he noted that the Swiss paper presented an interesting concept of the safeguard clause in respect of market access to facilitate commitment of participants; also mentioned were safeguard clauses on access restrictions applied to new entrants, on the facilitation of structural

adjustment, on balance of payments etc, as well as exceptions for legitimate public policy objectives. New Zealand did not address the subject in a detailed manner but suggested that exceptions should go down to even sub-sectoral levels pinpointing the certain types of legislation involved. For his delegation exceptions and safeguards should be connected with very specific conditions under which they would be applied. It was not sufficient merely to apply safeguard measures for balance of payments reasons but it should be specifically stated under what conditions these measures might be used. He therefore preferred a legal text on the lines of the U.S. proposal as far as detail was concerned. However, he could immediately accept reasons for exceptions such as national security, cultural policy, etc., in relation to particular sectors. On existing international arrangements, the Swiss paper addressed the concept of sectoral arrangements and the problem of progressive liberalization through inclusion of certain sectors in the future agreement. New Zealand mentioned existing international arrangements in the sense of inscribing certain sectors on countries' reservations schedules. If they appeared on the reservations schedule of all countries and there was an existing international arrangement in force, there was a suggestion that the sector might be excluded from the agreement. Thus, there was a concept of exclusions while the Swiss paper dealt with inclusions. His delegation had not yet decided the best way to proceed in order to pay respect to existing arrangements. Concerning market access, the Swiss paper argued that GATS should legally prevail over subsequent sectoral agreements with respect to market access; furthermore, this matter was important in the context of initial levels of commitment. For his delegation, market access and national treatment were the elements of effective market access and both should go together irrespective of the difficulties in addressing the issue. Market access should be related to the aims of national policies and to the mode of delivery of the service, and should also be addressed with some sectoral specificity. The m.f.n. principle appeared in qualified form in the Swiss paper while there was unconditional m.f.n. in the New Zealand proposal to which his delegation subscribed. Regarding migration of labour, he said that the Swiss paper mentioned this in terms of bindings in the context of production factors, while in the New Zealand paper it was included in a schedule of reservations which were pertinent to immigration legislation. For his delegation, the issue was related to the problem of the movement of one factor of production, namely labour, and thus matters of work permits and visas were important in the execution of certain contracts for services and should be addressed in the negotiations in a specific manner. National treatment meant equality of opportunity in the Swiss paper which suggested that regulations did not need to be identical; what mattered was the effect. For New Zealand it was an important element expressed in terms of the classical formula for national treatment. For Poland, it was one of the elements of effective market access and was an important matter which should be addressed. Progressive liberalization was a concept which should be included in the framework agreement and should be addressed both by sector and by measure. Regarding national legislation he was bothered by the reference in the Swiss paper to achieving mutually compatible competition conditions by overcoming systemic differences. He thought that competition rules and national legislation in general might be the matter for certain agreements but, primarily, were

matters falling under the sovereign right of any country. It was up to individual countries to decide whether they wanted to subordinate their legislation to international arrangements. This was a difficult issue and should not be executed in a manner which undermined the right of countries to apply certain types of regulation. He agreed that transparency was another key element but for his delegation the concept of prior notification was neither a pragmatic nor a viable procedure. Poland opted mainly for publication, and access to information with some notification procedures when legislation was enforced or should be enforced but without the prior notification and prior negotiation mechanism.

67. The representative of Colombia referred to the proposal by Singapore and said that the first paragraph reflected the spirit and the letter of the Punta del Este Declaration concerning the growth and development of developing countries within the context of trade in services. It rightly underscored that the structure of the possible agreement should be sufficiently dynamic and flexible to enable developing countries to choose the sectors or transactions that could be negotiated for gradual liberalization on the basis of their national development objectives. For this to take place, participants had to define together those sectors or transactions that could be included in a negotiation but taking, as essential parameters, the respect of national policy objectives of rules, laws and regulations applicable to services. In addition it was necessary to consider the work carried out by international bodies working in this area and, as a priority, the economic facts and circumstances in world trade in services in order to be able to assess the benefits which would accrue to all participants. The framework described by Singapore in paragraphs 8 and 9 was a good foundation for giving impetus to the GNS discussions. Paragraph 12 had the merit of developing some aspects of the increasing participation of developing countries in services trade, calling attention in particular to the work carried out by other bodies.

68. In commenting on the New Zealand paper, the representative of Korea said that the national treatment proposal suggested that once market access was available, foreign suppliers would be automatically accorded treatment no less favourable than domestic providers in the same market. His delegation considered that national treatment could not be granted to foreign providers of services in domestic markets simply because market entry had been accorded. The supply of services by foreign providers should be regulated in accordance with national policy objectives. In the Korean view, the imported products differed completely from the permitted foreign services supplier. The supply of services by foreign suppliers should be subject to a set of conditions different from those accorded to domestic suppliers. It might be proper that national treatment be extended progressively through schedules of bindings. Turning to the idea of reservations, he said that a schedule of reservations would outline service activities or sub-sectors which were temporary exceptions to certain provisions of the agreement. However, allowing time for structural adjustment and taking national policy objectives into account, reservations should be allowed to remain in place for a sufficient time period. In paragraph 12 of the proposal it was suggested that certain forms of access restrictions should be restricted to a surcharge or a limit on the number

of foreign suppliers. He considered that this idea ran counter to the spirit of the GNS mandate set at Punta del Este and Montreal. The development objective of developing countries should be given sufficient consideration: if market access was to be restricted solely by surcharges and limits on the number of foreign suppliers, the result would be highly detrimental to the interests of developing countries, particularly those with a fragile industrial base and low levels of development in the services area. Importing countries had to be allowed to impose a certain level of conditions covering such issues as technology transfer, preferred mode of delivery, movement of production factors and the activities of service providers in the importing market.

69. The representative of Pakistan sought clarification on the definition and coverage of the agreement, on transparency and on the issue of safeguards. Regarding the first point, what the framework agreement referred to, he noted that the Swiss submission had not attempted to define the notion of commercial services at this stage but had chosen to leave the matter open to future developments. In his view this would create ambiguity which should be avoided because it was essential for the GNS to have a good idea of the subject of the Group's talks. In this regard he was not sure whether the proposals by New Zealand, the European Communities and the United States were talking about the same thing as agreed at Montreal. In the New Zealand paper, for instance, in paragraph 7 a definition was attempted which would include the cross-border movement of payments, of consumers, of providers and access to and use of domestic distribution systems and telecommunications networks, and establishment, temporary or permanent, of a branch, subsidiary or other form of commercial presence. But all this was qualified by one caveat: that all such movement was necessary for effective distribution, production, and marketing, sale or delivery of a service. The question arose of how the necessity would be determined. Who was going to decide what was necessary for effective distribution and production? The same idea was contained although in a different form in the EC submission (document MTN.GNS/W/76) which referred to the concept of essentiality. Again, who would determine this notion and on what basis? In the United States submission, the concept of establishment (Article 4) was not qualified as to whether it was temporary or permanent. Regarding the concept of temporary entry for services providers (Article 6) on the other hand, this was qualified as being temporary. In his delegation's view, the agreement had to relate to different service sectors which should take into account the interests of all participants which included services which could be provided by movement of factors of production including labour. He sought clarification from the countries that had made the submissions, whether they included in their scheme "movement of factors of production" including labour. The submissions had in common that concerning the movement of service providers i.e. labour, they were putting in a caveat which was that such providers should be essential for the provision of the service. Again, who was going to decide this and on what basis? Regarding the question of transparency, he was concerned about the ideas included in the U.S. and Swiss submissions on prior notification of laws and regulations. In his country's system, he did not consider it possible to enter into such a an obligation. Furthermore, referring to Article 12.1 of the U.S.

submission, he did not consider it possible to provide all judicial decisions. He could however envisage the provision of information which was available in different countries through publication. On the question of safeguards, he drew attention to the U.S. submission where, in relation to short-term restrictions for balance-of-payments purposes, Article 15 placed so many qualifications on the application of such restrictions that it went far beyond what was currently included in the GATT. If all the qualifications were included in their present formulation, it would be extremely difficult for many developing countries to participate in the agreement in a meaningful way. Finally, regarding coverage, he asked the U.S. delegation to explain the rationale behind the distinction between measures covered and services covered by the agreement.

70. The representative of India said he would make general comments relating to what he considered to be important elements for a multilateral framework on services. Before doing so he read out a quotation from a United Nations' document on Foreign Direct Investment and Transnational corporations in services published in 1989 which dealt with the issue of the reason for regulated control in the services sector. "There are various reasons why the regulation of services is so stringent and prevalent, both in developed and developing countries, the main one being the crucial role played by services in the process and patterns of economic development. This role includes the provision of basic infrastructure for providing various interlinkages having strategic significance for economic development. Clearly, the performance of the services sector is crucial to economic growth in general. Moreover, it is a role which is often undertaken under conditions of public or private monopoly and in markets which are imperfect in promoting allocative efficiency. In particular, those services which involve the use of networks, public utilities and telecommunications, are often characterized by natural monopolies, that is situations in which a few or even a single producer can exploit the economies of scope or skill. Apart from these basic reasons, there are a number of other broad concerns which motivate regulations and policies affecting the area in services in developed and developing countries alike. These include public order and national security, cultural identity, consumer protection, prudential supervision, balance-of-payments considerations, natural monopolies, development objectives including the promotion of indigenous industries."

71. The representative of India said the services sector was crucial to growth and economic development, particularly for developing countries, where the services sector was yet to make even an infant industry presence. The status of services industries in developing countries was in almost a primitive stage at the present moment. The second fundamental point to keep in mind was the unequal nature of the international services market where the degree of difference between industrialized and developing countries was much more acute than in the case of the goods sector. Third, increasingly the services sector was dominated, particularly in the case of the industrialized countries, by the capital and technology that was needed in order to reach economies of scale and competitiveness in the world markets. Developing countries were still at a great disadvantage vis-à-vis the availability of capital for developing their services sector

and access to technology. It was only in labour intensive services - by which was meant any sector where skilled, unskilled or semi-skilled personnel were needed - that developing countries were in a position to offer some kind of competitive presence in the market. He referred to these basic features of the international services market because this should influence the way the Group structured a multilateral framework agreement on services if it was to have some meaning for the developing countries. The representative from Singapore had rightly emphasized the point that the services framework should have the widest possible participation, by which he meant that developing countries should be in a position to increasingly participate in this market. The GNS should not create a situation where this process would be stunted or where the process would become extremely difficult to achieve in a reasonable period of time. Those elements of the Montreal text which emphasized the concept of increasing participation of developing countries, and the balance of interests for all participants in the multilateral framework, should be observed in letter and spirit. He considered that the discussions in the Group were proceeding without sufficient thought being given to these elements of the Montreal text. He then listed eight elements which were important for developing country participation in the multilateral framework: (i) increasing participation of developing countries; (ii) appropriate flexibility for individual developing countries for opening fewer sector or liberalization of fewer types of transactions in line with the developmental situation; (iii) progressive liberalization of trade in services with due respect for national policy objectives; (iv) balance of interest for all participants; (v) sectors of export interest to developing countries; (vi) right of developing countries to introduce new regulations consistent with the commitments under the multilateral framework; (vii) symmetry in the flows of labour and capital in the definition of services; and (viii) market access being conditional to the incoming foreign service being consistent with the national development priorities and objectives. He then asked how the GNS could translate this into precise elements in a multilateral framework?

72. The same speaker said that there were two crucial issues to be considered, namely, first, the strengthening of domestic services capacity; second, increasing the export earnings from the services sector. First, the infant industry protection argument applied much more validly for the services sector than for the goods sector. At least in the case of the goods sector, the developing country producer produced a good which was acceptable to the purchaser; he could establish his competitiveness in the market within a reasonable period of time. Unfortunately, the nature and characteristic of the services sector was such that first of all the services provider had to establish his reputation and credibility before his services were accepted. Therefore, the degree and length of time of protection that was normally required for an infant service industry was much longer than required for goods producing industries. Therefore, for strengthening the domestic services capacity it was imperative that developing countries were able, either to exclude certain sectors - where they could develop their domestic services capacity - for a reasonable period of time. Developing country participation could be ensured by having a multilateral framework which applied the same rules and

disciplines for everyone, but used time-limited derogation of five, ten or fifteen years. Probably certain sectors might have to be excluded for sufficiently longer periods of time from foreign competition. The word "foreign" had been removed before the word "competition" when talking of effective market access because it was possible that a developing country might first provide strong internal competition within its own market amongst its own domestic service providers, the competitive nature of which would give them the confidence to compete with the foreign service providers. In other words, it was possible to gradually have increased competition, increased deregulation for domestic service providers, before deregulating for foreigners. This was happening in the goods sector and this could happen with even greater force in the services sector. Second, the framework had to provide for developing countries giving preferences and other forms of support for domestic service providers vis-à-vis foreign service providers. This should not be brought under the discipline of subsidies which the Swiss paper talked about or for that matter any other discipline. This was because in order to strengthen the domestic services capacity, it might be possible that entry be given for a foreign service provider but at the same time, the domestic service provider might be accorded preferences. The foreign service provider and the domestic service provider might be operating in the domestic market, but the domestic service provider might be supported by the government. So the preferences to be given - whether in the form of financial support, differential tax treatment, a surcharge on the foreign service provider, or limiting the number of foreign service providers - the multilateral framework should not limit the freedom of the developing countries to do so. In so doing, the developed countries had nothing to lose because the nature of the international market was such that even with all the kinds of support that can be given by developing country governments, it was not possible that they would be able to topple foreign service providers, but it would provide competition and strengthening of the domestic services capacity in a much more meaningful fashion. National treatment fundamentally meant that domestic service providers and foreign service providers were given equal treatment in the market. But the equality of treatment would be subject to any such special preferential support that developing countries might provide for their own service providers. A third way by which developing countries could strengthen their domestic services capacity was related to the anti-competitive and restrictive practices followed by the transnational corporations. These had a negative effect on the growth of domestic industries, and in particular services industries. It was important that even if the multilateral framework was unable to come to grips with this problem, developing countries should be able to, either through their own regulatory system, or in terms of the operating conditions that they stipulated to eliminate the anti-competitive or restrictive practices of foreign service providers.

73. The Indian representative then noted that his delegation was not opposed to the principle of market access, but two aspects would have to be borne in mind. First, it should be possible to give certain preferential and supportive treatment to domestic service providers and even limit foreign participation as necessary, depending upon the sector which was being opened up. Having done that, where the market access was provided,

developing countries should be free to set operating conditions which will align the incoming foreign service with the national development priorities and objectives. These operating conditions should not be interpreted as impinging on national treatment, a concept which his government believed in. In fact, India's entire legal system was based on the concept of national treatment, but national treatment subject to the conditions stipulated for the incoming foreign services. In that respect, he supported the statement made by the representative of Korea, that national treatment cannot be automatic as soon as market access was granted, but would be subject to whatever conditions were put with regard to the incoming foreign service. With regard to definition, the Montreal text itself had used certain definitions for trade in services. His delegation wanted to emphasize the aspect of symmetry as between the flow of labour and the other factors of production. In the documents put forward by New Zealand, the EC and others, this symmetry was being disturbed. He felt that as long as there was asymmetry in the definition with regard to the flow of capital and the flow of labour, developing countries would not have fair treatment. Therefore, his delegation was unable to accept any definition of trade in services which brought in this kind of asymmetry. The second point was that the EC and New Zealand documents indicated that a services agreement was not a framework for investment nor for immigration: he accepted that proposition. But when it was said that commercial presence meant the automatic right to establish wholly-owned subsidiaries and joint ventures, then indirectly on an automatic right for foreign direct investment was being claimed. That the right of commercial presence, if it was essential, would be subject to such national regulations that might be in force with regard to foreign ownership or with regard to the kind of transactions that could take place, was an element to be added. But as the papers were on the table, he had the uneasy feeling that the right to foreign direct investment was automatically being slipped into the definition of commercial presence. This was an aspect which needed careful consideration. He said he was not saying that there could not be these forms of commercial presence: for example, all foreign banks operated in India as branches; branch operation was common in shipping and in civil aviation. It was up to the country concerned to decide whether it would have a wholly-owned subsidiary bank, a joint venture bank, a branch bank or whatever. It should be according to the national regulations and national regulatory framework, and not by virtue of a multilateral framework saying that because for delivery of a service commercial presence was essential, the form of that commercial presence would be chosen by the foreign service provider. With regard to the progressive liberalization of trade in services and with regard to appropriate flexibility for developing countries for opening fewer sectors, there were useful proposals on the table. The ability of developing countries to open sectors for foreign presence should be compatible with their own national developmental objectives. The choice should be left to the developing country to decide which sector it could open up and at what point of time, and to decide on the nature of the operating conditions that were necessary in order to achieve a fair balance in the framework. Second, when market access was given, it could be stipulated that market access had to be accompanied by a transfer of technology agreement which would be monitored by the developing country to see that the incoming foreign service was a carrier of

technology and that technology was being effectively transferred. It was possible that the incoming foreign service provider might be asked to undertake building up the export capacity of the service. He said that the multilateral framework that is being addressed should have a proper balance between the interests of developing countries and those of industrialized countries. The Group should not overlook the extreme asymmetries in the international services market where developing countries were not even in an infant stage. There should not be a framework where the partners to the framework were so completely unequal and the agreement so lopsided that the developing countries would not be able to benefit from it.

74. The representative of Hungary noted that the New Zealand paper spoke against the idea of a list of services. He agreed that there could be problems with a reference list of sectors but depending on its character and legal status these could be overcome. On the other hand, if there was no minimum indicative list of commercially traded services with the possibility of adding new commercial services as they came into being, then he foresaw problems for the definition of the scope of obligations such as the problem of transparency applying to which sectors. Regarding definition, paragraph 7 gave a list of transactions as a possible basis for definition, an approach with which he was in agreement. Regarding the concept of market access (paragraph 10), he agreed that full market access would not be an automatic right under the agreement but should be realised progressively. The question was what would be the mechanism for this progressive liberalization. New Zealand was on the side of a negative list approach, i.e. through reservations of measures which were not in line with the rules and obligations of the framework agreement. His delegation did not yet have a final position on this question but he saw problems with this approach. The level and scope of regulations were quite different among countries and he was not sure whether and how the reservation approach could be made into a practicable solution. The idea of reservations presupposed that a regulation was already in place and a country reserved certain kinds of treatment regarding the regulation. But there were large numbers of countries in which some sectors were not as yet at all regulated and thus such a reservation system, even with a grace period as foreseen by New Zealand, might be questionable. His country was in the process of transforming into a market economy which included the introduction of a large number of regulations for sectors which did not exist in practice. For example, securities trade did not exist previously but in the coming period this activity, along with others would be regulated by new measures. The position of the United States which would require an immediate reservation would be even more difficult to consider. Concerning the New Zealand proposal for acceptable forms of access restrictions, he noted that this was based on the approach for trade in goods, i.e. a tariff-like surcharge and a QR-like restriction on the number of foreign service suppliers. In some cases this might be a viable solution but he was not sure whether this was a full solution for overcoming problems associated with national treatment. In particular the question arose as to how the two possibilities would be applicable to trade through established providers. Surcharges were only applicable for cross-border trade while restrictions concerned new entrants but not suppliers already established in the market. On the issue of investment,

New Zealand made a somewhat artificial differentiation between establishment or commercial presence on the one hand and foreign investment on the other. He could not see how the foreign investment regulations of a country would not be caught up in obligations concerning commercial presence. Furthermore, concerning the issue of a balance of rights and obligations, he agreed that there should be some level of initial commitment by all participants. There was also the issue of non-application which was addressed in paragraph 15 of the New Zealand paper which should be clearly defined in transparent and multilaterally supervised conditions.

75. Turning to the paper by Peru, he noted there was a three fold division of possible exceptions and safeguards measures; general and permanent exceptions posed no problems for his delegation. However, he had questions regarding the third group because under temporary derogations, for instance, he saw protection of the environment as important but he was not sure how it was possible to have temporary safeguards for such matters. The second group posed a major problem as, according to the Peruvian approach, balance-of-payments protection would be open to only a limited group of countries, i.e. the developing countries. Such a restrictive approach was not acceptable.

76. The representative of Australia supported the general thrust of the New Zealand submission particularly in regard to its comprehensive coverage and its focus on making strong rules of general application concerning non-discrimination, national treatment and transparency. The points made in relation to the guiding principles, structure and coverage (paragraphs 2-6) should allow individual countries to find their own balance in services covered by the agreement's obligations. Regarding reservations, he favoured the New Zealand approach, which was also reflected in the U.S. paper, particularly the narrowing of the reservations, i.e. that reservations could be made against certain provisions for specific services activities or sub-sectors. That additional flexibility would enable countries, both developing and developed, to take on initially a greater commitment in terms of coverage than might otherwise be the case. He was concerned by the proposed use of a surcharge although as a general principle he supported the concept of seeking to tariffy access barriers. But he did see major practical problems in trying to draw the analogy between what New Zealand was suggesting by way of a surcharge for services trade and the question of tariff equivalents in the goods trade context.

77. Turning to the United States submission, he called the proposal far-reaching and ambitious. His delegation firmly believed in the need for an agreement which had universal coverage. He welcomed the U.S. approach which provided for all services to be covered. Any suggestion that the coverage would be narrowed down would cause concern. The agreement should not merely be prospective in application. Australia wanted it to apply to all measures both new and existing. He welcomed the U.S. approach regarding the definition of the scope of the agreement. The establishment of clear obligations was another of those criteria which were necessary if there was to be a durable and successful agreement and the

U.S. approach, which sought to establish such clear obligations, was a positive step. In common with New Zealand, the U.S. text provided comprehensive obligations with respect to national treatment and he agreed that the agreement should provide for national treatment to go hand in hand with market access obligations. The U.S. reservations model provided for the progressive application of national treatment for cases where circumstances in particular sectors of a country's market required that application of full national treatment was not possible at the time a service was inscribed in that country's schedule and market access in the sector was bound. It was not just developing countries which would need to make reservations with respect to national treatment but many, if not most, developed countries would have some areas where they would find difficulty in fully applying national treatment without reservations at the outset of the agreement. However, successive application would be achieved over time through further rounds of negotiations in a dynamic setting where the number of sectors could be progressively enlarged where full national treatment was applied. This approach to reservations had a great deal to commend it. The U.S. model also provided similar flexibility in making allowance for progressive application of full market access. His preferred approach was that market access was an area which should be subject to negotiation rather than be automatic, but he shared the U.S. objective of achieving secure, effective market access through the agreement and he recognized that the U.S. text contained a suitable element of flexibility. The text also had a fairly standard provision on non-discrimination which provided for extension of benefits to signatories on an m.f.n. basis. However, the structure of the obligations that the U.S. envisaged had the danger of nullifying the obligations to provide m.f.n. benefits across a range of key service sectors. He was concerned by the provision for exclusions of certain sectors by countries, combined with the possibility of negotiation of special agreements in these sectors. He believed that the possibility this opened up for participants, who had excluded certain sectors, to enter into special agreements, which might be completely at odds with the principles and rules applying in other sectors under the agreement, could lead to considerable distortion in those sectors. The unhappy experience with agriculture should make participants cautious about any future agreement allowing for any special agreements. He was puzzled by the omission in the U.S. text of a provision to cover economic integration arrangements. The transparency approaches in both the New Zealand and U.S. texts were probably a little ambitious. He noted that New Zealand made allowance for a provision on subsidies which he endorsed, but in respect of the U.S. text he thought it possible to look at a somewhat more ambitious subsidies clause and his delegation would have preferred to see an outright ban of export subsidies.

78. The representative of Yugoslavia said that there were many elements in the New Zealand submission that could be used in assembling the draft framework. She agreed that there should be stages of negotiations. The main problem, however, with all developed country proposals, was that they swept under the carpet all that had been said on the principle of increasing participation of developing countries. Developed countries should try to incorporate the development aspect as an integral part of every element. Regarding the preparation of the secretariat paper on this

subject, she suggested that what had been said in this GNS session should also be included in the paper. She proposed that the framework rules should respect governmental measures aimed, for example, at better integration in international services trade, at sustained growth of production and productivity of services, use of human resources or increased growth of employment, fair and equal access to new technology, structural adjustment, and recognition of regional and inter-regional preferential arrangements among developing countries. Regarding transparency, there should be some time limit for developing countries if obligations extended beyond publication to notification or enquiry points. The market access provisions in the New Zealand paper did not take into account the asymmetry between developing and developed countries regarding market access and regulatory situations.

79. The representative of Brazil said he was concerned about the pace of the discussion regarding the submissions. There were many submissions which were being dealt with perhaps too quickly and he was worried about the outcome of the discussion. It was important to keep the comments on, and analysis of, the submissions in the right perspective, i.e. that of the Montreal text which should be the specific reference text. In that sense he supported the eight points made by India regarding how developing country concerns could be built into the structure of the framework. The first framework that the GNS was trying to agree on could very well be successful if its principles (such as definitions, exceptions, national policy objectives, balance of interests and benefits, m.f.n., and symmetry relating, for example, to labour and capital flows) could be applied indiscriminately to every country. For a second or later framework, there could be consideration of other principles that bore on the discriminatory aspects of international services trade in respect of national treatment, market access and progressive liberalization.

80. The representative of the European Communities, in making general comments on the United States proposal said there had been movement by the United States away from a rather rigid approach regarding issues such as coverage and reservations. There were, however, some surprising omissions concerning development and regional economic integration. The New Zealand proposal drew very heavily on GATT practice and he wondered whether it took fully into account the reality of services trade. He was also concerned about the distinction that had been made between different modes of delivery and about the idea of acceptable forms of access restrictions. The Canadian approach on progressive liberalization had similarities to the Community approach, starting from a binding of existing regimes and then proposing further measures of liberalization. It was a partial proposal which was perhaps short on specific mechanisms and he hoped that it was an erroneous impression that everything seemed to be left to bilateral negotiations. Regarding the Singapore paper, he was unclear as to whether there was a real negotiating dynamic in the process and as to whether the request and offer approach was the best way to proceed in this respect. On the issues of definition and coverage, it was interesting to note in the U.S. paper the distinction between the universe of services and the areas where specific liberalization commitments would be made. The Community was committed to a comprehensive agreement and the idea of special agreements,

which were outside the control of the overall framework, was one about which the Community had strong reservations. On transparency, the Community was unconvinced of the need for prior notification and prior comment. This was administratively complex and in a number of countries posed constitutional problems. However, comments made about enquiry points, particularly in the U.S. proposal, were worth pursuing. Regarding progressive liberalization, there were a number of similarities between all the proposals which had put forward ideas on schedules of bindings, on some form of initial commitment based on some element of binding of existing regimes, and on additional commitments with the view to achieving effective market access. The U.S. and Swiss proposals in this respect were in need of clarification and expansion. The U.S. proposal was still based on the concept of an obligation to cover market access and national treatment, where reservations were negotiable but not explicitly temporary which meant there was not an obligation of totally free trade. As he understood it, the U.S. was talking about freer trade. The Community had never considered that free trade could be achieved in the multilateral process; rather, it was interested in achieving the highest possible level of liberalization. The U.S. approach did not meet the Community's desire to have an across-the-board initial level of commitments covering all the sectors covered by the agreement. The implicit standstill involved in the reservations approach would only cover services not excluded by a signatory in its schedule. The United States approach to annexes was in many respects similar to the Community view on sectoral annotations. Regarding the New Zealand proposal, he thought that the idea that certain limitations on market access were acceptable, but that others were not, was in conflict with the basis of the Montreal text about reducing the adverse trade effects of regulations. The clear distinction made between market access and national treatment (the latter being an automatic obligation in every case) was difficult to match with the reality of trade in services. Turning to m.f.n./non-discrimination, he considered that Article 9 of the United States proposal amounted to slightly less than Article I of the GATT. He requested clarification from New Zealand as whether it had followed the GATT or the United States line in this respect. He noted that the United States did not allow any reservation on the m.f.n./non-discrimination provision whereas in the Switzerland paper this was a rule which was progressively implemented along with others. There was also a certain convergence at least in terms of objective between U.S. ideas on protocols and the Community's proposals on non-discrimination regarding regulations, standards and qualifications although it was necessary to discuss the mechanisms more fully. The issue was not one of providing m.f.n. benefits, but how in practice they could be applied in areas where standards, qualifications and regulations made that difficult. The idea of special agreements proposed by the United States was one the Community did not like. As he understood it, both New Zealand and the United States did not foresee provisions for regional free trade agreements to which his delegation attached importance. On the issue of a non-application provision, it was necessary to define the conditions of operation. On monopolies, he did not see problems in the approach advocated by the United States and he favoured the general idea that abuse of monopolies should be avoided. Regarding obligations for subnational entities, the U.S. proposal was better than that of Switzerland.

81. The same speaker then took the opportunity to reply to questions and comments made on the Community's proposals. Mexico had asked regarding what was meant by the statement that national treatment and similar types of obligation would be implemented by a signatory immediately in relation to the initial commitment, and progressively as the signatory took on liberalization commitments and bindings. In response, he noted that an initial liberalization commitment would relate to an undertaking not to introduce new measures which would move in the opposite direction to the rules and principles of the framework. It was a progressive concept based on a starting point which was the first liberalization commitment and from which signatories could not move backwards. In the Community's progressive liberalization paper, commitments related to the partial elimination of measures might, to the extent provided for in the framework, be qualified by conditions aimed at promoting development. The Community had not come up with specific suggestions and was prepared to be open in that respect, although such qualifications could not be such as to give a blank cheque to the country involved to behave as it liked without any real commitment to liberalization. Regarding the meaning of adequate participation of developing countries, he said that participation was the important word and that all signatories should contribute and participate in the framework agreement. Pakistan had questioned the Community approach to defining trade in services and had said that there were too many caveats. On the question of who decided what was "essential" in regard to the movement of personnel, the EC representative noted that it was implicit in the concept of a sectoral annotation that this would be multilaterally agreed. He underlined that there was a difference between the definition of the scope of the agreement and the actual liberalization commitments which would be taken on; liberalization in any sector would be progressive and did not necessarily cover all forms of trade. Hungary had considered that the Community was making an artificial distinction between investment and commercial presence; in response, he noted that the Community had underlined that the services agreement should not seek to be an agreement which liberalized all labour movement or all investment. It was seeking liberalization of the labour movement and the investment which related to the transactions covered by the definition and the scope of the agreement. Regarding labour movement, he said there might be occasions when movement of personnel was a discrete transaction, e.g. a project based movement; movement could also be of a limited duration although this could be anything from three days to three years or more but it was clear that the Community was not talking about the permanent movement of personnel. In response to the suggestion by Poland that there was a need for establishment or commercial presence which varied from sector to sector, he said that there was a need for commercial presence for the provision of services in almost every sector. Regarding the suggestion that the Community had proposed an automatic right to foreign direct investment, he reiterated that liberalization was progressive and would not necessarily cover all forms of trade. In response to the Indian intervention, he did not know what was meant by the idea of the temporary exclusion of sectors. He said that the point had been well made that competition was not simply foreign competition but he did not think that when the GNS was talking about effective market access it was talking about anything but foreign competition.

82. The representative of Japan referred to paragraph 9 of the New Zealand paper which said that when market access was available then national treatment started to be operative. In Japan's view, national treatment was a basic obligation which would contribute greatly to securing market access, whether market access had been rendered or not. Turning to paragraph 13 of the same text, which talked of investment and immigration policy, he joined other delegates in seeking clarification as to what this paragraph actually meant. Regarding paragraph 19 dealing with the exchange of concessions, he sought clarification as to how cross-sectoral concessions could be assessed in trying to achieve a fair exchange of concessions. Regarding sectoral annexes, he guessed that these were thought of as exceptional cases and could only be formulated to supplement the framework agreement itself. Paragraph 19 also mentioned of not establishing a separate legal instrument for individual sectors and he wanted to know how this notion could accommodate a hypothetical case in which it would be difficult to have the framework agreement apply to a particular sector. Paragraph 20 talked of negotiating rights and he was interested to know the criteria for determining such rights. He then turned to the United States proposal and said his delegation could basically agree with the thrust of this text but sought clarification on certain points. Reference to development only appeared in the preamble and he thought it necessary to accommodate the various concerns of developing countries in some way or other. Regarding Article 3.3, he wanted to know how the mechanism for special agreements would work. The aim of the negotiations was to include all sectors without exceptions but regarding separate agreements, was it possible to recognize a separate agreement based upon the general framework agreement and thereby have all sectors covered under the umbrella of the Uruguay Round. He wanted to know what was meant by the reference in Article 8 to public telecommunications transport networks. His delegation would have difficulties with the notion of prior consultation as a legal obligation as mentioned in Article 12. Finally, he also wanted to know how this legal document related to existing bilateral or multilateral arrangements for the parties concerned.

83. The representative of the United States referred to the New Zealand paper and endorsed its concept as a rule-based understanding. One of the basic concerns of his delegation was that the GNS might end up with nothing but objectives at the end of the negotiation. It was thus necessary to have a threshold or a minimum level of commitments or downpayments. Regarding sectoral coverage, the GNS should consider the notion of having a universe of sectors. In connection with reservations, his delegation had not indicated a grace period, such as the one indicated by New Zealand, although it was well worth considering if one took into account the time countries needed to go through their regulations and laws and examine those which might be inconsistent with the framework. He found the approach to reservations in paragraph 18 interesting. For instance, a country could reserve with respect to national treatment if that became necessary. Paragraph 12 which established the equivalent of GATT-type protection, in the form of a surcharge or restriction on the number of suppliers, was not really comparable with the GATT because there were not many border taxes or surcharges for services. As the GNS was dealing generally with regulatory regimes, the advantages of such a surcharge were not clear; to a certain

extent it might also encourage countries to think about a surcharge for a sector that otherwise was not regulated. Turning to the Singapore document, the United States representative was concerned by the distinction made between undertaking a set of disciplines involving sector by sector understandings and the process of negotiating schedules and bindings. He did not, however, see the ultimate agreement being a reflection of a group of sector understandings. The notion of having procedural disciplines overall and substantive disciplines for individual sectors would undermine the purpose of trying to achieve an expansion of services trade. As this would make it relatively easy for any country, regardless of its size, to effectively veto a sector. The alternative that his delegation had proposed in the way of a universe of sectors could be a more flexible provision and would make it impossible for any country to veto a particular sector. He was not certain if Singapore was envisaging a set of rules and principles that went beyond procedural rules such as transparency and m.f.n. treatment. Finally, regarding the four elements listed under the development heading, he found the first one - the ability to implement over a longer period of time - acceptable and indeed reflected in the U.S. proposal. The second - providing preferences for domestic over foreign suppliers - deserved clarification. If government procurement preferences were being referred to, the question was whether they could be negotiated in some way. In any event, however, an across the board preference would cause problems. The issue of permitting government incentives to develop domestic services was generally acceptable but his delegation would want to know what those incentives were, and whether they would be applied in such a way as to discourage the participation for foreign service providers. Regarding safeguard measures and the activities of corporations, he wanted to know what this idea meant. Turning to the submission by Peru, he considered that there were situations where safeguards could be taken for balance of payments reasons. These had been delineated in some detail in the United States proposal. Concern had been expressed in the GATT Articles group, about the use of the balance of payments provision in the GATT in general. It had become a convenient excuse to take safeguard action which should be based in a transparent way on Article XIX. Peru's proposal did reflect a degree of responsiveness to that sensitivity. He did not see an Article XIX type of temporary safeguard measure appropriate in the case of services owing to the fact that so much of services were provided by suppliers based within the host country and therefore the action taken would be almost impossible to administer. Turning to the Canadian proposal on progressive liberalization he stressed that while progressive liberalization meant liberalization over time, some liberalization should take place during the period of the Uruguay Round. He then asked, regarding the idea of a freeze with respect to existing measures, whether there would be an across the board freeze with respect to all measures taken regardless of what the bindings of a particular country were. He also requested clarification of what Canada had described as the formula approach. Turning to the European Community paper on m.f.n. and non-discrimination, he said he was trying to match what had been said on the harmonization of standards with what had been proposed in the U.S. paper concerning the idea of protocols which dealt with sectors already bound by the provisions and for which there would be additional obligations. The language on regional integration was interesting and he

wanted to know whether the EC would sign such an understanding as the Community or as twelve member states. The absence of such a provision in the U.S. proposal was due to the fact that his delegation did not have the right legal language for such a provision at this time. On paragraph 4 dealing with non-application, he was concerned that the principle of overall reciprocity would be undermined. In the U.S. paradigm, the best way of achieving the greatest degree of liberalization in an understanding was to recognize that in some instances a country would be extending a benefit to another country in a particular sector even though the latter country did not extend any benefit of that sector to the former. The reason was that this country had made a sufficiently broad number of concessions overall, which was the tradition in which liberalization had been achieved in the GATT. Finally, on the definition paper he noted that the difficulty with the term "essential suppliers" was whether this referred to essential in the context of the knowledge to perform the service that was critical, or whether it referred to other, more subjective, factors such as the ability of someone to be competitive by supplying individuals or capital of their own as the only way of competing and having the lowest price. In the case of labour mobility, he was thinking more in terms of the skills that individual service providers offered in terms of their ability to cross the border and perform such services.

84. The representative of Hong Kong welcomed the New Zealand submission and also envisaged a framework with universal sectoral coverage and strong and meaningful obligations and not merely objectives. He also looked for some liberalization to be achieved during the Uruguay Round and for commitments to further liberalization in the future. The structure of the agreement would have to allow for a broad balance of interests among participants who might be at different stages of development and have different regulatory regimes for service sectors. The element of flexibility would have to address the different needs of participants which would be superior to the existence of special provisions for particular groups of participants. Regarding coverage in paragraph 3, he said that once a sector was subject to derogations from the framework then subsequent efforts to integrate that sector would be much more difficult. On the reservations approach in the paper, he wondered how would one provide for those participants with a relatively open regime which might in the future need to introduce regulations for good reasons but which would reduce the current level of liberalization. Turning to the question of scope in paragraph 7, he asked what would be covered by the term "provider". The general approach to the definition of scope was transaction-based which his delegation could agree with. However, the reference to access to use of domestic distribution systems and telecommunication networks did not fit squarely into a transaction-based approach. This was no doubt an essential element in the provision of services, but technological developments could overtake this particular definition and in the future there might be other means essential for the delivery of a service which were not covered by this definition. The definition should therefore not preclude any future development of means to deliver services. The notion of allowing a limited grace period to allow notification of reservation was a useful example of flexibility. Regarding market access, New Zealand had proposed the idea of

a surcharge and restrictions on the number of foreign service suppliers. A ceiling on the number of suppliers should be seen as an exception which would be phased out. He hesitated to go along with formalizing these notions which would only encourage others to invoke them and to put up more barriers. Regarding the reference in paragraph 12 that there should be no outright prohibition on trade, countries might just put in a small quota which effectively would not allow much additional access on top of what was available. It was worrying that surcharges were not only border measures but could also apply to established firms or established personnel. The notion of replacing non-transparent with transparent barriers was behind these proposals but the Group had to make sure that the outcome was not one where overall protection would rise. Paragraph 21 referred to the possibility for cross-sectoral trade-offs, which was a useful and flexible approach, but paragraph 19 referred to a situation where a few participants could exchange concessions across sectors that might otherwise remain closed. There seemed to be a very fine dividing line between the two situations and he wanted to ensure that the m.f.n. obligation would not be undermined in a paragraph 19-type situation. Turning to the U.S. text, he was concerned about the undermining of the m.f.n. principle and the adverse implications of derogations as outlined in Article 3.3. If Article 3.2 was intended to cover harmonization of standards or mutual recognition, he believed that this intention was not very clear in the text as such. Article 6, on the temporary entry of service providers, was one point where it was necessary to strike an appropriate balance between this article and Article 4 on establishment. In Article 8 on national treatment, he did not see that the movement of consumers was included and he asked if this was a deliberate omission. In Article 10.1 dealing with monopolies, he wondered whether the degree of specificity ("located within its territory") in the text was necessary. Concerning Article 13 on government aid, he felt a lot of useful work had already been done in that area in the GATT and he considered that Article 13 required careful reflection taking this into account.

85. The representative of Canada said that his delegation basically agreed with the approach taken on coverage in the New Zealand submission (MTN.GNS/W/72), but was unclear what Singapore's approach was on the issue. He noted that paragraph 8(d) in the Singapore submission (MTN.GNS/W/78) suggested that what was not contained in individual offers was not open for progressive liberalization, asking whether such an approach had any bearing on the possible coverage of an agreement. He said that the U.S. text appeared to have a universal coverage of commercially-traded services in principle. He recalled that if one provided for complete freedom of trade overnight while at the same time providing for reservations, then the issues of coverage and of exclusions assumed considerable importance. On the issue of scope/definition, his delegation saw a fair amount of convergence. Indeed, the U.S., New Zealand and EC texts, as well as comments made by several delegations, suggested that considerable progress had been achieved on this question, with most participants agreeing that some common understanding of what was being dealt with was required. Increasingly, he noted, the scope of the discussion was being delineated by a listing of modes of delivery; i.e. cross-border provision, movement of consumers or movement of factors of production. He recalled that his

delegation believed that all modes of delivery should be covered in principle. In this regard, issues of commercial presence or establishment, whether by joint venture or other forms, were of interest. Turning to the issue of m.f.n./non-discrimination, he said that his delegation liked the approach taken in the New Zealand proposal and had some problems with the limitations introduced in the U.S. draft proposal's Article 9. He also shared some of the doubts and concerns which had been expressed in regard to Article 3 in MTN.GNS/W/75. He said that his delegation could go along with much of what was found in MTN.GNS/W/77 on m.f.n. He took note of the various comments made in the Group on the issue of local governments. On transparency, he felt that the only thing to add to the New Zealand proposal was the notion of cross-notification. He felt that the U.S. proposal went a step further in providing for advance notification and consultation, noting that for a number of practical reasons, such an objective might be difficult to achieve in the current negotiating round. On progressive liberalization, he said that his delegation's formula approach would go beyond a simple request and offer approach, noting that one element of a framework could easily be a national treatment provision. He saw his delegation's views on progressive liberalization as going beyond the proposals contained in the U.S. and New Zealand submissions, adding that it was important that there be an explicit commitment in the framework to achieve progressive liberalization - that signatories agree on the direction in which to move and understand that a price would have to be paid for any backward steps. He felt that the Singapore submission appeared to limit itself to a request and offer approach to progressive liberalization. On the questions of market access and national treatment, he noted that the New Zealand submission spoke of reservations placed on areas within individual sectors where the provisions of a GATS could not be immediately applied. He recalled that the U.S. proposal also featured a reservations approach whereby negotiations could be entered into in those areas where market access could not be provided immediately. He noted that since many delegations hoped to see - both during and after the Round - major results coming out of the negotiations, the question was whether it was more manageable to negotiate step-by-step with a more visible set of obligations or rather try to initially list all reservations with a view to progressively negotiating them away. He was somewhat concerned by the apparent tendency to put on the table more reservations than might be strictly necessary simply to preserve one's future options and hedge the risks inherent in not knowing fully what the implications of contractual commitments might be for non-reserved areas. Turning to the question of regulation, he said that questions of standards, regulations or qualifications were quite similar to those emerging in technical barriers to trade in goods, adding that sub-standard services, like goods, should not be allowed. This, he noted, was not an m.f.n. issue as suggested in MTN.GNS/W/77, adding that any service or service provider should be allowed in a market so long as they met required standards. He said that efforts to harmonize or achieve mutual recognition of standards and regulations should proceed in the appropriate fora. On safeguards and exceptions, he agreed that there were some general exceptions which should be applied, but viewed balance-of-payments safeguards as being of general application. His delegation was of the opinion that such a safeguard should follow from macro-economic considerations rather than micro-economic

ones. He said that the issue of temporary safeguards, as discussed in the Peruvian submission, raised a number of questions suggesting a need for caution. He said that, like the U.S. delegation, he could envisage the possibility of several attachments to a framework, including footnotes or annotations which would provide, where necessary, explanations or interpretations of particular sectors and/or issues. His delegation saw such annotations as being entirely consistent with the agreement. There should also be scope for annexes and schedules which would, in the former case, include the obligations covered by the liberalization formula and, in the latter case, be individual/national sets of obligations representing those particular obligations which were unique to a given country. He saw the latter as being of particular importance for developing countries, for it would allow them to tailor their commitments depending on their own individual situation. Developmental considerations would also be dealt with through phasing provisions allowing developing countries more time for implementing liberalization commitments. He felt that based on the last two provisions, one need not be unduly frightened by the relatively infrequent appearance of the words "developing countries" in a framework agreement. He said that his delegation was interested in seeing - and prepared to consider - proposals for treaty language or concepts dealing with the various areas which both the representatives of Singapore and India had mentioned earlier. He hoped that this could be done in general terms and therefore not require the general derogations.

86. The representative of Sweden, on behalf of the Nordic Countries, said that the guiding principles, as formulated by New Zealand, were exactly the same as his delegation had in mind. The coverage and scope as outlined in paragraphs 5, 6 and 7 were something he would have little quarrel with. On the provisions of an agreement (paragraph 9) he would have a few additions to make, particularly on transparency, where prior comment and cross-notification were absent. Although there were important differences, both the U.S. and New Zealand proposed that the agreement should contain binding obligations to the extent that reservations had not been lodged. In this basic approach, i.e. the negative list approach they were very similar. One advantage with this approach was that it delineated with great precision the coverage of the agreement in any given market. It provided for great transparency also in respect of what might be subject to future negotiations, and access restrictions and non-conforming measures were easily found in the national schedule. There was however a drawback in the negative list approach: what if a country had no regulations? Additionally, the approach also raised the question of future emerging services. Since no reservation had been lodged at the outset these would automatically be covered by the agreement's obligations. Full market access and national treatment would result automatically. A similar situation would arise if by oversight, some sector had not been reserved at the outset. There was an automaticity in the approach, which might create difficulties and make it hard to handle. The New Zealand approach has somewhat more nuanced, providing for broad horizontal reservations as well as more specific concessions. On the scope of an agreement, he agreed with what both the New Zealand and Swiss submissions clearly emphasized, i.e. no service existing or future should be excluded from the coverage of an agreement. Thus, the idea of negotiating a precise and agreed definition

of services did not seem particularly useful. After all, at the end of the day the national regulatory framework would define the exact details of the service and the operating conditions governing it in any given market. On the other hand, the broad parameters of a definition would need to be delineated in order for the scope of application of the agreement to become clear. He saw that the U.S. in very precise terms outlined what it felt were the necessary elements of the general definitions (Articles 4 and 17, in particular). There was a right of establishment on national treatment terms in all covered sectors. This was rather far-reaching in terms of the obligations under a framework. New Zealand put greater emphasis on determining the outer boundaries of the scope of application which fitted rather neatly, although not exactly, with his delegation's ideas of what a generic definition might look like. In this connection, he noted that the EC had made a submission which was also in line with this thinking. On the m.f.n. clause, the New Zealand, Swiss and U.S. submissions addressed this issue in basically the same way, i.e. benefits accruing to one signatory or non-signatory should automatically be extended to all signatories. On non-discrimination, all three were in agreement that there should be non-discrimination as among foreign providers. He agreed with these points. Both the U.S. and the Swiss submissions contained explicit reference to the possibility of entering into more enhanced agreements, the U.S. calling it special protocols and the Swiss "qualified m.f.n.". On a preliminary reading, it seemed that the two concepts were similar if not identical. When the GNS went through the testing exercise it was clear that, in the case of professional services for instance, automatic extension on an m.f.n. basis was difficult when it involved mutual recognition. It was highly probable that provisions for some kind of qualified m.f.n. would be necessary. New Zealand seemed to be indicating something along the same lines when it spoke of "annexes". Together with Switzerland, it made the crucial point that GATS should be all inclusive, i.e. no a priori exceptions. Sectoral coverage would differ from signatory to signatory and be progressively extended in future; the GATS itself, however, should cover the entire universe of services. The New Zealand paper made an additional very important point on the relation of GATS to other international agreements, i.e. even if international agreements precluded coverage at the initial stage for a signatory, this would be "preferable to the entire sector being excluded from GATS".

87. The U.S. text was a comprehensive submission which in clear and precise legal language succinctly detailed the U.S. position of what a framework agreement should look like. The U.S. submission raised an interesting question concerning the scope of an agreement. By annexing an agreed list of sectors to the agreement it would in the U.S. scheme become an integral part of the agreement. This might give rise to a rather static agreement which defined its sectoral coverage based on a snapshot of today's world. He said he would prefer a dynamic agreement, as the Swiss and New Zealand's proposals put it, which was open to additions in future without arduous discussions of whether something was in or out. Presumably the problem could be addressed in two ways. The preferable approach to coverage and scope of application was through defining modes of delivery as suggested by New Zealand and the EC. Paragraph 3.3 in the U.S. paper was disturbing since it gave scope for departure from the principle of

universal coverage of the agreement. In practice it left the door open for external exclusions under separate legal instruments for sectors not covered initially. The possibility for a proliferation of bilateral and/or plurilateral agreements outside the framework agreement loomed large in this approach and the famous "universe of sectors" seemed to contain some black holes. It was very important to remember that all participants had areas which they regarded as difficult. The total exclusion of a sector could give rise to a domino effect as everybody started excluding their own problem sectors. It would not serve the interests of the GNS negotiations, which aimed to establish a multilateral framework and one single institutional locus for trade in services, to lay the ground for sweeping exclusions in coverage. Article 3 contained two other elements which were likely to be needed in an agreement. One was what the U.S. called annexes, which were basically the same thing as sectoral annotations applicable to all signatories, and which essentially had an interpretative character which clarified how the agreement operated in a particular sector. Article 3.2 provided for what he interpreted as the Swiss "qualified m.f.n." which would probably be a necessary element in a services agreement. He noted that the U.S. submission lacked a reference to the possibility of parties having the right to liberalize trade much more rapidly and comprehensively within the context of regional economic integration, i.e. a GATS-equivalent to Article XXIV of the GATT. This was something which the Nordic countries had referred to repeatedly and which they saw as an essential right that had to be explicitly provided for in a GATS. The existence of the U.S.-Canada Free Trade Agreement suggested that some form of free-trade agreement provision would also be in the interest of the U.S. Article 4 of the U.S. draft spelled out what was essentially a right of establishment on a national treatment basis. This was a very ambitious approach. His delegation had also stressed that the inclusion of establishment related trade was necessary for a services agreement to be economically meaningful. However, he hesitated at the far-reaching nature of inscribing a provision on a global right of establishment on national treatment terms and believed that qualifications would have to be introduced. He understood from the introduction that the U.S. reservation system provided for a horizontal reservation with respect to Article 4, i.e. it would be possible to lodge a reservation based on national investment laws with respect to all services. Article 5 stipulated that covered services may be freely supplied on a cross-border basis. This raised a highly interesting question relating to the right of non-establishment. If a signatory covered a service it might very well be, and the testing of the financial sector was clear evidence in this regard, that establishment might be a requirement for the service to be provided in a given national market. How did such a requirement square with the free cross-border provision found in Article 5? Article 12 on transparency was in line with his delegation's thinking but he was unclear as to which notification requirements existed as well as what the possibilities for cross-notification were. Article 13 on subsidies raised a couple of interesting matters, the first relating to the comments made in respect to Article 3.3; as he read it injurious subsidies would be permitted in the case of excluded services. Article 13 left unanswered the question of injury tests in case of government aid. Who would decide that injury had resulted and what criteria should be used? Simply speaking of causing

"injury to the interest of another Party" lacked the kind of necessary precision. Article 23 spoke of compensatory adjustments on a provisional basis by affected parties when another signatory made modifications to its schedule. This provisional adjustment could be made when no agreement had been reached on how to rebalance the rights and obligations and dispute settlement had not yet settled the matter definitively. This seemed to open the door for unilateral action in such cases and was rather disturbing. He noted with satisfaction that the U.S. draft addressed the question of how the agreement would operate in cases where signatories had a federal structure of government.

88. The representative of Jamaica said that his delegation fully agreed with the need, as spelled out in MTN.GNS/W/72, for provisions to reflect long-term objectives. He felt, nonetheless, that the objectives of economic growth and of the development of developing countries should be spelled out in greater detail for inclusion in a framework agreement. He said that the precise scope of coverage of an agreement would remain unclear until the elements contained in paragraph 4 of the Montreal text were properly addressed. Without this, a rather imprecise line could be drawn between what on the one hand were investment issues and what on the other were trade in services issues. He felt that the New Zealand approach, in which all that was not reserved was subjected to general liberalization rules, placed an unrealistic onus on the need for participants to determine on an a priori basis all areas within individual services sectors where the provisions of a GATS would not be applied. He recalled that in paragraph 23, the New Zealand submission noted that changes could be made to legislation in unbound areas without the requirement to negotiate compensation so long as such changes were newly-introduced measures which were consistent with the provisions of the agreement. Given that all that was not reserved would be subject to framework provisions, and since it was expected that reservations should be kept at a minimum, he felt that the New Zealand approach could in practice prove extremely difficult to adopt, particularly for developing countries. Rather than the framework agreement respecting the policy objectives of national laws and regulations, this seemed to lead to a situation where laws and regulations would have to respect framework provisions. He noted with interest in regard to MTN.GNS/W/76 that the movement of personnel essential to the supply of a service seemed to have been interpreted to mean movement within a corporate context only. In addition, the notion of essential personnel was likened to that of skilled personnel. He said that his delegation was not sure whether such an interpretation was a correct one.

89. The representative of Brazil said that his delegation endorsed many of the characteristics of a future framework agreement set out under "Guiding Principles" in MTN.GNS/W/72, including long-term objectives and flexibility in the application of principles to the broadest range of traded services. He enquired whether the notion of ensuring that trade in services took place under fair and equitable conditions would create the scope for the inclusion of specific provisions and/or mechanisms relating to developmental considerations aimed at redressing the existing asymmetries in services between developed and developing countries. Regarding

transparency, his delegation objected to the idea of notification of all laws and regulations, having a clear preference for a general publication of such measures. It would be difficult to determine which laws and regulations were relevant, and which were not in the context of the framework. As concerned the structure of the agreement, he said the approach of having schedules of reservations was inadequate to the extent that it created unnecessary pressures on participants. Under the listed "acceptable" forms of access restrictions in paragraph 12 of the submission, he agreed that surcharges and other fees could be instrumental in the reduction of barriers to market access. He asked whether the behaviour of market operators could be reflected in the obligations of the agreement.

90. On the communication from Peru, MTN.GNS/W/74, he agreed with the need to carefully examine the safeguards issue from the perspective of the balance of payments. He enquired whether the body to be established for the surveillance of the application of safeguard measures would take into account the overall situation of the world economy in determining the adequacy of such an application. In other words, would factors such as the access provided for the services exports of developing countries into developed country markets be duly considered in the necessary calculations.

91. The representative of Tanzania said that the communications from the United States, Switzerland and New Zealand did not reflect the aim set out in the Montreal text of providing for the increasing participation of developing countries in world trade in services. The notions of binding and freezing were not applicable to many developing countries which lacked regulatory frameworks applying to many services sectors. In that context, he enquired what would be an adequate initial commitment for such countries. The question was whether these countries would be granted m.f.n. treatment by other trading partners if their initial commitment was limited to the general obligation of subscribing to the rules and principles of the framework agreement. This still might not be sufficient to attract the participation of many countries, particularly the least developed, for whom much time would be necessary to upgrade regulatory frameworks and build adequate services infrastructures. The time-frame within which the participation of such countries could be envisaged would vary according to their individual prospects for growth and development. Elements of considerable relevance in attracting a wider participation of developing countries in the framework agreement included: technology transfer, technical assistance and training, preferential market access, development of export sectors based on indigenous experience, promotion of regional economic integration. The safeguards provision to be included in the agreement should ensure that the efforts to strengthen the domestic services capacities of developing countries were not hampered by the foreclosing of policy options available for these countries. The communication from Peru was especially relevant in that regard.

92. The representative of Mexico said that the negative list approach embodied in the reservations procedure set out in the communication from New Zealand could be complicated by the fact that new services were constantly being created as a result of technological progress. A service

which was not tradeable today could be in the near future. Countries would have to devote a great effort to determine the sectors and/or transactions which they would reserve and reservations could also be made with respect to each of the elements of the framework agreement. In a sense, providing for transparency constituted a very similar process to that of placing reservations since under transparency commitments all relevant laws and regulations should be notified in summary form. The question was left open, however, as to how and by whom the relevance of laws and regulations would be determined. Providing for relevant regulations in summary form would be even more expensive than the mere collection of such regulations.

93. Regarding the definition proposed in paragraph 7 of the communication from New Zealand, he said his delegation did not see the difference between the "cross-border movement of providers of a service" and the "establishment, temporary or permanent, of a branch, subsidiary or other form of commercial presence", except for the omission in the latter case of the cross-border movement of manpower. Also, it was not clear how the "cross-border movement of payments for the service" or the "cross-border movement of consumers of the service" were necessary for the "effective production, distribution, marketing, sale or delivery of a service". The access to distribution channels and information networks was crucial for developing countries. Regarding market access, it was not very clear what the difference was between the gradual easing of access restrictions tolerated under the agreement and the gradual reduction of negotiated negative lists of reservations. His delegation did not see how acceptable restrictions could take the form of surcharges and differential fees, given that by definition there was no single price applied to a service either in national or international markets. It would be very difficult to determine a higher surcharge or fee for a foreign engineer, construction firm, or bank without having a precise knowledge of the prices charged in the national and international markets. As to the "acceptance of existing legislation" being written into the body of the agreement, he asked whether that would constitute a kind of grand-fathering clause which included the possibility of the progressive liberalization of the conditions embodied in national laws and regulations. In any case, developing countries were internationally competitive in labour-intensive services and eliminating such services ab initio from the negotiations was contrary to the commitments embodied in the Montreal text. There were many ways to avoid the free-rider problem other than through a provision on non-application. Most importantly, the agreement should be attractive to all participants from the outset. Finally, his delegation agreed with the point made in the communication that mechanisms similar to that of the "principal supplier" in the General Agreement should be established. Statistical limitations at the national and international levels could, however, render that aim rather difficult to achieve.

94. The representative of Peru said that the communication from Singapore, MTN.GNS/W/78, brought out some of the main elements of relevance in the drafting of the framework agreement. In particular, he agreed that the most essential prerequisite for a services agreement was that it was able to attract the widest possible participation. In that context, the four points set out under the section "development considerations" were of

special significance. Regarding the communication from his own delegation, MTN.GNS/W/74, he said it was structured so as to draw distinctions between measures of a temporary and of a permanent nature. The list of temporary derogations provided under section III of the communication was not exhaustive. In reacting to a concern raised by the representative of Brazil, he said that the determination of the adequacy of safeguard measures should indeed include the consideration of global economic conditions.

95. The representative of Romania said that the communication from New Zealand, MTN.GNS/W/72, neglected to deal appropriately with the question of development. He disagreed with the definition attempted in the paper which included the establishment, temporary or permanent, of a branch and/or subsidiary of a service firm in a foreign market as a feasible form of trade in services. State-trade should not be regarded as an obstacle to market access. The establishment of state monopolies constituted a sovereign right of nations and could not be subject to negotiations.

96. The representative of Egypt said that the communication from the United States, MTN.GNS/W/75, did not reflect the objective of providing for the development of developing countries. Regarding the communication of New Zealand, MTN.GNS/W/72, he agreed with the guiding principles described in it, his only concern being with the degree of subjectivity which could be introduced in the determination of fair and equitable conditions under which trade took place. As to the structure proposed, the status of those provisions which stood between positive obligations and negative reservations was unclear. In the case of developing countries, it was more pertinent to consider exceptions than reservations. As to a precise mechanism for the undertaking of progressive liberalization, he enquired whether such a mechanism would in any way converge towards the review mechanism proposed by his delegation through which successive rounds of concession-exchanges, re-examination of rules and principles, and the re-assessment of the position of different signatories were envisaged. He said that his delegation had no defined position on the issue of coverage, and noted that New Zealand seemed to show a preference for a broad coverage including all internationally traded or tradeable services, as opposed to the United States for whom the universe of sectors to be covered should be previously defined through negotiations. A definition of trade in services should be helpful in determining the scope of application of the agreement, but should not include the establishment of foreign firms in importing markets. Concepts such as m.f.n./non-discrimination, transparency, market access and national treatment should all be relevant, but perceptions still varied widely among delegations. In terms of market access, not only government-mandated restrictions on trade in services should be duly examined, but also informal, non-government-mandated restrictions such as those deriving from professional associations or from the practices of market operators should be subject to scrutiny and negotiation. As to acceptable forms of access restrictions, the notion of surcharges on foreign service suppliers could prove instrumental in the adaptation of markets to the process of progressive liberalization. A distinction should be drawn, however, with respect to whether the restrictions on the number of foreign service suppliers was contemplated in terms of firms or

individuals. The recognition of the limitations of existing national legislation with respect to immigration and investment still necessitated further elaboration regarding its implications for the process of liberalization to be followed.

97. Regarding the communication from Singapore, MTN.GNS/W/78, he said that it constituted a useful contribution to the structure of the agreement and could be complemented by a more precise definition of trade in services. He also found the four points made under the section on development considerations to be very relevant for the deliberations of the Group. The notion of development should be an integral part of the agreement, being reflected in the various elements of the framework. For example, since developing countries tended to be competitive in labour-intensive services, the definition to be adopted should be such as to include the cross-border movement of labour and personnel. Similarly, the coverage of the agreement should provide for the liberalization of services sectors of export interest to developing countries while allowing these countries the flexibility to liberalize fewer sectors at a slower pace than their developed counterparts. Development considerations were relevant with respect to both imports and exports of services, market access commitments having a great bearing on the strengthening of domestic capacities. The granting of market access could be accompanied with conditions relating to aspects of great importance in the upgrading of domestic expertise and efficiency (e.g. training, technology transfer). The framework agreement should include provisions regarding domestic preferences, financial support and re-regulation. Development-related concerns should be reflected throughout the agreement, ranging from definitions to safeguards and exceptions.

98. The representative of Korea requested some clarification as to what was being proposed regarding development in the communication from the United States (MTN.GNS/W/75) beyond the recognition of the importance of increasing the participation of developing countries in the expansion of world services trade. The automatic application of national treatment once market access had been granted was unacceptable to his delegation who viewed it as equivalent to the granting of a zero tariff in the case of goods trade. He requested some further clarification on whether the application of national treatment as formulated in the communication would imply better treatment being granted to foreign than to national providers in some or all cases. Regarding transparency, his delegation could not accept the notion of prior notification. He enquired whether the provision on acceptance and accession was limited only to governments which were already contracting parties to the GATT. Regarding the communication from the European Communities on progressive liberalization, MTN.GNS/W/66, he requested some clarification on the difference between liberalization commitments and bindings. According to the communication from New Zealand, reservations would be made in services sectors where the provisions of the agreement could not be immediately applied. Bindings, on the other hand, would take the form of negotiated commitments, going beyond the provisions of the agreement. In the communication from the European Communities, commitments/bindings would involve the total or partial elimination of measures which were incompatible with the rules and principles of the

framework. Should bindings be equated to commitments? If so, what was the relationship between commitments and reservations?

99. The representative of Nigeria welcomed the communication from Singapore, MTN.GNS/W/78, as the only recent communication fully devoted to development considerations. He said that an agreement which did not provide for the development of all participating countries, in particular developing ones, would not fulfil the mandate of the Group. Provisions of relevance in the strengthening of the domestic services capacities of developing countries could relate to incentives for domestic services providers through preferential arrangements. In concluding, he reiterated the position of his delegation that the treatment of the cross-border movement of both factors of production - capital and labour - should be equal.

100. The representative of New Zealand said that the communication from her delegation was intended to place the general agreement on trade in services under the umbrella structure of the GATT while at the same time avoiding the mere transposition of traditional GATT concepts, rules, principles and approach to the field of trade in services. Pressures deriving from a multilateral framework of rules and principles providing for the liberalization of trade in services would create a dynamic process which should be viewed in a positive light. The establishment of clear, generally applicable rules in the form of obligations upon signatories provided the scope for redressing asymmetries among trading partners. The system would provide for an overall balance of rights and obligations which was enforceable through a dispute settlement system. The establishment of general rules provided a sound foundation for negotiating additional commitments and for ensuring that benefits achieved by participants could not be nullified or impaired. Approaches based solely on building up concessions as a means to achieve liberalization left too much to be negotiated while establishing inflexible bindings. Details relating to the application of principles such as national treatment/market access, m.f.n./non-discrimination, for example, could be left open to further negotiation.

101. In responding to a concern raised by the representative of the EC, she said that by signing the multilateral agreement, countries would be committing themselves to its principles and objectives while accepting some constraints on the way their governments operated in order to achieve those objectives. The signature of the services agreement would entail acceptance of the principle of "open services markets" where trade could take place under fair and non-discriminatory conditions. The sovereign right to regulate remained open to every signatory of the agreement. For regulations not to conflict with the provisions of the agreement they should not have adverse effects on trade. It should also be accepted, however, that certain forms of regulation were inherently trade-restricting. Even if the distinction between market access and national treatment was not as clear for services trade as it was for goods trade, it became clearer for services the broader was the definition adopted for market access. Market access for services should go beyond border measures to include the operations of firms in the importing market.

National treatment should apply once market access had been granted so as to ensure that foreign providers operated in the importing market under equivalent conditions as national providers. Provisions in the agreement would also establish disciplines over the use of other trade policy measures such as subsidies, government aid and monopolies. Market access would not be an automatic obligation under the New Zealand proposal, countries retaining their right to restrict their services markets in terms of numbers of services providers or the operations of services providers allowed. Those providers already present in the market and the activities to which they had been granted market access, however, should be subject to full national treatment. In that context, bindings, or the schedules of concessions, were all the more important to secure market access. Where bindings were not involved, countries would have the possibility of placing restrictions on access to their markets. This should create an incentive in the agreement for participants to negotiate specific bindings.

102. There should be no prohibition on market access, and the two "acceptable" forms of access restrictions outlined in the communication should be expected to be phased-out over time. Stages in the phasing process could take the form of a market access commitment and could be entered as bindings on an individual signatory's schedule of concessions. Surcharges and quotas were not the only possibilities of acceptable forms of access restrictions. Whereas surcharges cut across the application of national treatment, quantitative restrictions would affect the application of non-discrimination. As to the length of the list of reservations, she noted that long lists might be avoided through the flexibility provided in the formulation of market access. It could also be envisaged that additions to the list of reservations be allowed in the presence of unforeseen problems but such additions should be subject to negotiation. Reservations should not apply with respect to all obligations of the agreement, being confined to specific aspects of legislation which were inconsistent with the provisions of the agreement. In theory, a reservation could relate to an entire sector but such a reservation would weigh heavily against the country applying it in the assessment of the overall balance of rights and obligations. Some provisions, such as transparency, could not be reserved upon and there should be no complete exclusions. All areas which had been reserved remained negotiable and this was where the reservations approach differed from suggestions of grandfathering. Her delegation would prefer to avoid separate sectoral agreements with a limited participation. Through the schedule of concessions, market access commitments would be locked in. Since market access was not an automatic right, there would be no automatic right of establishment. A prohibition on imports should not be allowed but a reservation could be placed in that regard. Otherwise, the country could provide limited market access in accordance with provisions of the agreement. Individual concessions could be negotiated with respect to the different types of factor movements essential for the provision of services, exchanges occurring on a sector-by-sector basis as countries opened their markets and commitments to maintain that degree of openness. Bindings would be undertaken on an m.f.n. basis and relevant legislation affecting their value would need to be compensated. Wherever market access was bound, its application should be in conformity with other provisions of

the agreement unless a reservation had been taken. The principles of m.f.n./non-discrimination and national treatment should apply to whatever extent market access was available. Regulations relating to unbound areas could be changed without consultation or compensation towards other members of the agreement. The changes to the regulations should, however, attempt to remain consistent with the agreement. If a reservation was simply removed it would not be necessary to reflect that in a binding commitment, except if a specific market access undertaking was negotiated.

103. In reacting to a concern raised by the representative of Singapore, she said that the definition attempted in the communication was primarily intended to delineate the scope of the agreement. Similarly, an attempt was made in the paper to define the scope of the negotiable elements relating to production factor mobility. The mobility involved should be necessary for the effective production, distribution, marketing, sale or delivery of a service. The level at which the binding would be undertaken with respect to individual forms of factor mobility was, however, left open for negotiation. Where legislation on immigration and/or investment was not consistent with the provisions of the agreement, it could be included on a country's schedule of reservations. Full establishment could, however, be included on a country's schedule of bindings even if it went beyond the national investment legislation. Regarding the coverage of the agreement, there should be no agreed lists of sectors since that would make the wide application of general rules and principles more difficult for participating countries to accept. Since it was infeasible to reach agreement in the short-run on a classification of services, her delegation had felt that the coverage of the agreement could be best achieved through individual schedules of bindings.

104. The absence of development considerations was largely due to the fact that the communication was intended to concentrate on the issues of structure and mechanism of the framework agreement. The interests of developing countries could, however, be addressed to some extent through the aim of providing for a balance of rights and obligations in the agreement and through the possibility of taking the different levels of economic development into account in the achievement of such a balance. That balance should reflect individual development needs not only at the outset of the agreement but during its entire lifetime. In responding to a question by the representative of Mexico, she said that transparency was a broader commitment than that implied by a list of reservations as it would cover potentially all existing regulations of relevance to market operators. Notification should be provided in summary form, the countries involved deciding for themselves what regulations were relevant to be included in such summaries.

105. In concluding, she said that the structure and mechanisms of the framework agreement constituted more than a technical issue to be readily dismissed. The underlying questions were how to provide for the security of trade and a sound basis of general obligations which served as an incentive for participating countries to enter into commitments through the progressive binding of levels of market access. The communication from her delegation contained a great deal of flexibility, especially as it

recognized that countries often desired to protect their industries however much they were willing to subscribe to the principles of an agreement. In contrast to a comment made by the representative of Jamaica, she stressed that it should not be unreasonable to expect that new laws be consistent with the provisions of the agreement. The flexibility in the formulation of market access commitments was in that it provided countries with the ability to change regulations to meet national policy objectives.

106. The representative of Singapore said that the approach involving sector by sector negotiations and/or negotiations of clusters of sectors on a conditional m.f.n. basis alongside a provision of non-application would have the shortcomings indicated in paragraph 7 of the communication from his delegation. He said that the approach adopted by New Zealand would encourage participating countries to place more reservations than otherwise necessary. Also, under the reservations approach the coverage of market access commitments would not be sufficiently clear and disputes might arise as a result. It was the preference of his delegation that entry conditions such as those mentioned in the communication from New Zealand (i.e. surcharges and number of providers) be provided through a positive list approach. Responding to a question by the representatives of the United States and the EC, he said that a bilateral request and offer mechanism was more appropriate for the positive list approach adopted by his delegation. The final individual schedule of offers would be subject to the application of all rules and principles of the agreement. Sectors and/or transactions which did not appear in individual schedules but only in the reference list of the universe of sectors to be assembled by the secretariat should be subject to the application of certain basic principles such as transparency. Preferences for domestic service providers over foreign suppliers should be allowed for developing countries and could relate to government procurement practices. Corporate practices of foreign services suppliers which might be detrimental to the development of domestic services capacities (e.g. predatory practices with a view towards the dominance of the domestic market) could be controlled through specific regulations and such regulations should not be regarded as violations of national treatment.

107. The representative of the United States said that it was feasible to establish an agreed universe of sectors. He said that the approach adopted by his delegation was not the only one to imply the possibility of the full exclusion of a sector from the framework agreement. By adopting a positive list approach, other countries were also implying that those sectors not figuring in their individual schedules were in effect excluded. The provision on special agreements was not intended to serve as an incentive for the undertaking of bilateral arrangements between countries which concurred on the need for the exclusion of a particular sector. It was intended as a means to allow agreements to be concluded among a number of countries on a sector or sectors which were viewed to necessitate special treatment but should ultimately remain under the framework agreement. The reservations approach had the advantage of giving a clear and transparent idea of the limitations individual countries would have with respect to commitments applying to the different sectors. Also, lists of reservations would provide a basis and a starting point for future negotiations. The

notification of relevant laws and regulations might not be as burdensome as some had contended since most of existing laws and regulations dealt with domestic transactions and not foreign or trade-related transactions.

108. In responding to a question posed by the representative of Japan, he said that signatories to the general framework could not be a party to a special agreement relating to a specific services sector. The provision on the establishment of firms in the importing markets was indeed intended to include permanent establishment. Flexibility in that regard was provided, however, through the placing of reservations whereby countries could reserve the granting of establishment rights to foreign providers. Government procurement should be dealt with along the same lines as in the Code on Government Procurement under the General Agreement. Considerable thought should still be given to the granting of subsidies to domestic service providers. In reacting to a concern raised by the representative of Korea, he said that the provision on national treatment was not intended to imply the granting of better treatment to foreign than to national providers. On non-discrimination, he recognized that the provision neglected to include the possibility of treatment no less favourable being automatically accorded to signatories of the agreement whenever it had been accorded to non-signatories. The absence of a provision on regional economic integration reflected the fact that the existence of numerous bilateral understandings might warrant some further consideration as to how such integration might be treated in the agreement. Regarding transparency, he said that the notion of prior notification and prior comment could be crucial in the achievement of effective market access in a particular market, especially in sectors where activities and transactions were very heavily regulated. Concerning development, he stressed that his delegation would not accept a formulation similar to that contained in Part IV of the General Agreement and re-emphasized that many of the concerns expressed by developing countries might be addressed through the system of reservations and exceptions proposed in the communication.

109. The representative of the European Communities said that in paragraph 2 of MTN.GNS/W/77, the notion of compliance with regulations, standards and qualifications did not correspond in any way to the notion of protocol set out in the communication from the United States, MTN.GNS/W/75. His delegation did not think that there was a need to negotiate a separate arrangement under the same framework relating to mutual recognition and harmonization of regulations. Also, mutual recognition and harmonization were regarded by his delegation as a means to facilitate the granting of m.f.n. treatment to signatories, rather than as a means to provide for additional and expanded liberalization beyond that provided through the application of m.f.n. He said that a provision on non-application of commitments should provide for a checks and balances scheme against which the compliance with the provisions of the framework agreement could be gauged. In responding to concerns raised by the representative of Korea, he said that liberalization commitments and bindings were used interchangeably, as alternative methods of description and not as substantially different elements. The approach adopted by his delegation was to progressively take on a greater level of obligations and bindings as opposed to committing itself from the outset to all obligations except for

those which were reserved. The question still remained unanswered as to how to express the level of commitments undertaken, whether in terms of a schedule or a list. Transparency might well be aided by expressing the level of liberalization commitment in terms of the elements where national treatment was not granted.

110. The Chairman opened the discussion on Item 2.1(ii) - specific issues mentioned in the Montreal Declaration or arising from the discussions in the GNS during the course of this year which in the view of participants need further examination or clarification.

111. The representative of Brazil said that the Punta del Este Declaration and the Montreal decision contained a set of elements which had Ministers decided to be of importance for the elaboration of a possible framework agreement on trade in services. Therefore, taking into account the fact that the guidance given by Ministers represented a balance between different opinions and in order for the discussions to be carried out in good faith and in a constructive manner, it was necessary to respect the texts guiding the Group's work and to try to discuss every point included in its mandate. In this context, careful consideration should be given to the various issues raised during the examination of some concepts, principles and rules as applied to a limited number of selected sectors. Although a thorough examination of the applicability and implication of the application of such concepts, principles and rules to individual sectors and the types of transactions to be covered by the multilateral framework had not been fully achieved, it was essential to place the exercise of assembling elements for a draft framework agreement under the perspective of practical considerations based on the reality of the world services market. The aim of the multilateral framework agreement of principles and rules for trade in services was to promote economic growth of all trading partners and the development of developing countries, including the improvement of the technological capabilities of signatories, through the expansion of trade in services - under conditions of progressive liberalization, in consistency with the policy objectives of national laws and regulations applying to services, and taking into account existing international disciplines and arrangements dealing with the subject.

112. He said that the multilateral framework agreement should apply only to situations where trade in services occurred. For the purpose of the framework agreement, trade in services should be considered to occur when there was cross-border movement of services, cross-border movement of consumers and/or cross-border movement of factors of production where such movement was essential to suppliers and subject to the criteria of limited duration, specificity of purpose and discreteness of transactions. Cases involving the permanent establishment of factors of production, such as international immigration and foreign direct investment, were outside the definition of trade in services and would not, therefore, be covered by the agreement. Negotiations should attempt to identify, as precisely as possible, the types of commercial presence that would conform to the situations indicated above, as well as to give a more precise formulation for the general principle of "essentiality" in the supply of services, implied above. All trade in services, as defined above, was open for

negotiations. The framework agreement should be drafted in a way to avoid a priori exclusions.

113. He said that the agreement should include a firm commitment by signatories to engage in a long-term process of liberalization of trade in services as a means to promote economic growth and development, as well as the improvement of the technological capabilities of signatories. The commitment to progressive liberalization would include the discussion, in future negotiations, of the possible application of principles to specific sectors and types of transactions, as a means of reducing adverse trade effects of all laws, regulations and administrative guidelines and taking into account the possibility for countries to benefit from the liberalization achieved, given their development situation. In the process of progressive liberalization, four basic principles would always apply, irrespective of the sector under consideration in future negotiations, namely: (i) respect for national policy objectives; (ii) consistency with development objectives; (iii) balance of benefits among participants; and (iv) exceptions.

114. He said that the principle of respect for national policy objectives implied that a country member of the agreement would not be obliged to frustrate, modify or abandon national policy objectives in order to make concessions during the process of progressive liberalization. One way of respecting national policy objectives would be through the establishment of priorities for the import and export of services. Countries would have the right to negotiate only the sectors and transactions that constituted a priority for the promotion of growth and development in general, or for the strengthening of specific segments of the domestic economy. He explained that the principle of consistency with development objectives meant that the commitment to engage in negotiations for the progressive liberalization of trade in services included the right to maintain, implement or adapt internal mechanisms and policies aimed at supporting the development process. Embodied in this principle were the notions of "development security" and "technological security", which represented a minimum guarantee for developing countries that the liberalization process would not provoke a retrocession in terms of development and technological advancements. Throughout the process of progressive liberalization, signatories should establish a balance between concessions and offers. Criteria should be adopted in order to operationalize the possibility of participants deriving benefits from the liberalization process. Such criteria would take into account the development situation of all countries. Two basic elements to be considered in this context were access to technology and financial support. Countries could measure their interest or possibilities in expanding imports and exports of services according to the technological benefits to be gained as well as to the availability of adequate financing which would enable them to compete in the international market. Exceptions would be invoked with respect to the overall framework, possibly including the commitment to enter into negotiations. The basis for exceptions would include, inter alia, considerations on national security, public order, technological development, infant industry protection, cultural and development objectives. He stressed that the legitimate invocation of such exceptions

should not be used as a justification for the discriminatory withholding of benefits of the agreement or resort to "non-application" procedures.

115. He said that transparency should be applied to service suppliers as well as governments to ensure that the objective of the agreement was being met. Service suppliers should provide information on their operations to national and local authorities of the countries in which these operations took place. The framework could also include the obligation for governments to publish all laws or acts related to international trade in services. Additional means of ensuring the transparency of the process, such as the establishment of enquiry points and notification mechanisms, should receive due consideration during the negotiations of specific services sectors. These mechanisms should also be considered in terms of their feasibility and burden for signatories.

116. He said that signatories should make a firm commitment to create the necessary conditions for the increasing participation of developing countries in world trade in services and for the expansion of their service exports, including, inter alia, through the strengthening of their domestic services capacity and their efficiency and competitiveness. It should be agreed that developing countries, in the light of the general principle of balance of benefits, would not be expected to make contributions in return from which they could not benefit due to their development situations. The agreement should include a commitment concerning conditions for the strengthening of domestic capacity, as well as for the continuous technological upgrading of services suppliers from developing countries. In this context, developing countries, when negotiating the liberalization of a given sector, would have the right to request, as a pre-condition for the concession of market access, that supplying firms undertake commitments aimed at strengthening the domestic service sectors of importing developing countries and at increasing their export capacities. Such conditions could involve provisions ensuring the improvement of technological capabilities. They could also involve commitments by suppliers with respect to access to distribution channels and information networks for developing country firms, to enable them to overcome barriers to market entry as well as to obtain a greater share of the value-added from international trade in services.

117. He said that preferential financial mechanisms should be provided to developing countries both for exporting and importing services. Import of services by developing countries should be accompanied by access to the latest technologies. The export capacity of developing countries should be supported by, inter alia, financial mechanisms to facilitate sales of services exports abroad, financial assistance for the improvement of basic infrastructures, for the acquisition and upgrading of skills, as well as for their participation in information networks and distribution channels. Preferential treatment could be extended with respect to access to financing and more favourable conditions for participation of suppliers from developing countries in international tenders.

118. He stressed that the framework should not impinge on the autonomy of developing countries to pursue macro-economic policies, including those

required to safeguard their external financial position and to ensure a level of reserves adequate for the implementation of their programme of economic development, establishment of state enterprises and granting exclusive rights in sectors necessary to promote development. Such autonomy would include, likewise, the right for developing countries to ensure compatibility of activities and practices of the market operators with the national policy objectives. The agreement should also provide for ways and means to control trade-distorting activities restricting trade in services of developing countries such as voluntary restrictions, restrictive informal arrangements and other restrictive business practices. Particular account should be taken of the serious difficulty of the least-developed countries in accepting negotiated commitments.

119. He said that the framework agreement should contain a clause establishing a most-favoured-nation treatment for all signatories. Under such clause it should be established that any concession in terms of market access, as well as provisions affecting the trade in services resulting from autonomous liberalization or deriving from bilateral or plurilateral negotiations should be immediately and unconditionally extended to services providers of all signatories. He emphasized that the m.f.n. clause would not exclude the following possibilities: (a) developing countries' right to benefit from preferential concessions on trade in services granted by developed countries; and (b) developing countries right to exchange concessions on trade in services to be valid only among themselves. The framework should contain provisions concerning the application of the most-favoured-nation treatment in the context of regional economic integration arrangements and free trade areas. Such provisions would include, inter alia, the following elements: (i) definition of the types of arrangements eligible for m.f.n. derogation; (ii) assurance that the derogation from the m.f.n. principle would not constitute a restriction on international trade in services; (iii) declaration of competence in the area of trade in services; (iv) examination of the consistency of the concessions exchanged and the provisions of the framework agreement on trade in services; and (v) compensation for signatories non-members of the above mentioned arrangements, when appropriate.

120. He said that the long-term process of liberalization would include the progressive negotiation of access to markets, consistent with national policy objectives and in accordance with the provisions of the multilateral framework, especially the definition of trade in services. The multilateral framework could provide rules for subsequent negotiations in which market access conditions could be discussed. These conditions would include, inter alia, surcharges on foreign service suppliers, in the form of a differential fee or charge and restrictions on the number of foreign service suppliers allowed to enter a market. Preferential and effective market access opportunities should be granted to developing countries. Access to information and distribution networks should also be guaranteed for developing countries. He suggested that countries should retain the right to ensure that firms benefiting from negotiated access commitments maintained standards of corporate behaviour consistent with their development and technological objectives. Modes of delivery of services would have to conform to national policy objectives. The possibility of

choosing modes of delivery should, in no way, include the possibility of imposing the supplier's own standards to the local market. The delivery of services would have to conform to existing national legislation requirements, including those affecting non-service aspects of the operations. There would be a need to establish a difference between modes of delivery and the services themselves. Special sectoral characteristics will have to be taken into account during the long-term process of liberalization.

121. It was the view of his delegation that once market access had been granted, the national treatment principle should apply. The application of national treatment should imply that services exports and/or exporters of any signatory were accorded in the market of any other signatory, in respect of all laws, regulations and administrative practices, treatment "no less favourable" than that accorded to domestic services or services providers in the same market, subject to the conditions and circumstances under which market access was granted to such services exports and/or exporters. He clarified that in the case of developing countries, the concession of national treatment would only apply to the extent that national policy objectives were served, both in terms of its gradual implementation and the scope of its application. During the long-term process of liberalization, the principle of national treatment could be further developed in order to take account of the special characteristics of different sectors. In some cases, a precise identification of services and services providers enjoying national treatment could be necessary. He suggested that participants could further discuss ways to avoid the creation of "more favourable treatment" for foreign suppliers. For this purpose, there would be an interest in establishing that foreign suppliers should share the same social and development responsibilities of national suppliers. Furthermore, in order to prevent foreign suppliers from appealing to foreign governments' support as a means to strengthen its position vis-à-vis national suppliers, the concession of national treatment would also imply that domestic legislation is to be applied for the settlement of disputes.

122. He agreed with others that safeguards for balance-of-payments reasons should be established. Other reasons for safeguards could include situations of concentration of ownership and market domination, as well as action to deal with restrictive business practices, and other situations when supplying firms or persons did not comply with their obligations under the agreements. Given the asymmetries which existed with respect to the degree of development of services regulations in different countries, the framework agreement should recognize the right of countries, in particular of developing countries, to introduce new regulations related to the services sector, concerning, e.g. the establishment of state enterprises, the granting of exclusive rights in certain sectors, the upgrading of skills and others judged necessary for the promotion of development objectives. The framework should include principles and rules to promote competition in international trade in services. In this context, there would be a need to discuss measures to control restrictive activities and practices of market operators, as well as anti-competitive conditions. It should recognize the right of developing countries to regulate services

sectors including, inter alia, establishment of state enterprises and granting exclusive rights in sectors necessary to promote their development.

123. He said that any attempt to discuss the long-term process of liberalization would depend on the existence of a commonly agreed statistical basis. The first step to be taken would be reaching an agreement on, inter alia, the following elements: (a) types of modes of delivery of services to be included in statistical surveys with indication of forms of payments; (b) specification of the transactions to be covered during the collection of statistics; (c) classification of services sectors for statistical purposes; (d) criteria to separate national suppliers from foreign suppliers. The Punta del Este Declaration established that negotiations should aim at "elaborating possible disciplines for individual sectors". This exercise, if needed, would possibly precede the more general negotiations on market access possibilities. Discussions of individual sectors would aim at identifying the need for specific disciplines to be applied to the whole sector, sub-sectors or types of transactions. To this end, it might be necessary to discuss first the types of adverse trade effects identified by different participants.

124. He stressed that one fundamental stage in the long-term process of liberalization of trade in services was the examination of the consistency of the framework agreement with the existing international disciplines and arrangements. The future exercise of establishing disciplines for individual sectors should take fully into account the work conducted in the various international fora related to services. Participants could start the examination of specific sectors by choosing those which were not yet regulated multilaterally. In order for participants to have a clear picture of the benefits at stake in future negotiations, it was imperative that statistical data be available. If the long-term process of providing greater market access was to be conducted in terms of reducing adverse trade effects of regulations, it would be necessary to follow at least two paths. Firstly, there should be a multilateral discussion of the types of adverse trade effects to be covered in future negotiations. Objective criteria for the invocation of adverse trade effects could be: direct efforts produced by different regulations, quantifiability, impact on trade, etc. One major criterion should be consistency with development objectives. Secondly, countries claiming to have identified the type of trade effects which were multilaterally recognized to deserve action would request negotiations with those countries holding allegedly restrictive measures. Therefore, the ultimate stage of the negotiations would be conducted in terms of requests and offers for the reduction of adverse trade effects.

125. In presenting MTN.GNS/W/79, the representative of Austria said that the aim of progressive liberalization should be achieved slowly and with caution. The main task was to negotiate a multilateral agreement with all the necessary elements and principles. Some liberalization measures should be achieved by the end of this round but substantial liberalization steps should be negotiated in future rounds of negotiation. The rules and

principles of the agreement should be applicable horizontally to all internationally tradeable services included under the agreement by the end of the Uruguay Round or to be included in future negotiation rounds. Sectors included in the liberalization process should be set down in an annex to the agreement. This procedure should provide for transparency and predictability in the liberalization process. That process should be progressive with respect to the following elements: opening of markets to foreign services suppliers, inclusion of new sectors into the liberalization process, extension of liberalization to cover new services within particular sectors, extension of the transactions to be included into the definition of trade in services with regard to market access, reduction of regulations discriminating against foreign suppliers, mutual recognition of national regulations, and reduction of foreign trade restrictions in services. Sectoral annotations might be necessary to clarify sectors or services as well as specific regulations and/or transactions. Market access should be accorded with respect to those services which had been included in the liberalization process and its application would depend on the extent to which national regulations were observed by foreign suppliers. Effective market access should be aimed at. Some limitations on market access should be allowed. National treatment was a long-term objective, providing foreign suppliers with effective market access. In order to be accorded national treatment, foreign suppliers should fulfil national regulations. There should be an understanding that national regulations could be mutually recognized bilaterally, or plurilaterally in future negotiations. M.f.n. treatment should be granted only to those sectors included in the liberalization process. A balance of rights and obligations should be ensured. M.f.n. should refer first to market access. The granting of national treatment would depend on bilateral/plurilateral agreements on a reciprocity basis. Exceptions to the application of m.f.n. could include: customs unions, free trade areas, regional economic integration, possibly special agreements between neighbouring countries to facilitate cross-border trade.

126. Regarding regulatory situation, he said that many national regulations constituted an expression of important national policy objectives. Such objectives might vary widely among States and might change over time (e.g. environmental protection). In order to ensure such objectives, the right to provide a service was linked to certain legal pre-conditions such as professional qualifications, diplomas, minimum capital requirements, etc. Such regulations applied both to national and foreign suppliers and should therefore be respected. On the increasing participation of developing countries, he said his delegation fully recognized the Ministerial Declaration of Punta del Este and the Montreal Decision where the aim of providing for the economic growth of all trading partners and the development of developing countries was clearly acknowledged. The process of liberalization should be undertaken so as to grant developing countries the appropriate flexibility to liberalize sectors or types of transactions within sectors according to their development needs. Transfer of know-how, technology and capital as well as education and training of local workers might be relevant to increase the efficiency and competitiveness of developing countries in services sectors. Joint ventures and possibly establishment could support such transfers. Particular

account should be taken of the serious difficulties of the least developed countries. As concerned exceptions and safeguards, three kinds of protective measures and their implications should be considered: measures against unfair trading practices such as dumping and subsidies, exceptions of a general or specific nature, safeguard measures which were strictly temporary and accompanied by structural adjustment measures. For all of these measures, clear criteria and rules should be set out. The GNS could draw on the experience of GATT in this respect. However, having in mind the very different nature of trade in services and goods, existing GATT provisions should not be directly applied to trade in services.

127. In presenting the communication from his delegation, MTN.GNS/W/80, the representative of Korea said that it concentrated on three main areas of enquiry: the structure of the agreement, the main principles of the agreement, and the process of concession exchange. The first main point made in the communication was that the framework should encourage a process of progressive liberalization which in turn induced the economic growth of all contracting parties and the development of developing countries. Only by assuring a balance of benefits for all contracting parties could the agreement gain the support of a maximum number of participating countries. Secondly, the agreement should take the form of a framework covering all commercial services alongside sectoral agreements which could be concluded in exceptional cases. Thirdly, the agreement should provide for a mechanism whereby increasing market access to foreign services providers was granted. Progressive liberalization would be realized through subsequent rounds of negotiations on market access and national treatment. The application of both market access and national treatment should not be automatic under the agreement. Other principles and rules such as transparency could nonetheless be automatically applied to all commercial services. Even though the communication might appear to have adopted an overly gradual approach, he stressed that it had been the intention of his delegation to draft the main elements of an agreement which could draw on the broadest possible participation of all contracting parties and contribute to the expansion of trade in services.

128. The representative of Indonesia said that the communication from his delegation, MTN.GNS/W/81, was intended to be complementary to the communication from Singapore, MTN.GNS/W/78. The first main issue addressed in the communication was how developing countries could participate more fully in international trade in services. The second issue addressed was how the process of progressive liberalization could be undertaken taking into account the interest of developing countries. The third issue related to how the services industries of developing countries could be developed.

129. The Chairman said that in order to provide a structure and focus for the discussion in the GNS aimed at assembling the necessary elements for a draft framework, the Secretariat would put together in an informal paper under a number of main headings material drawn from submissions including oral presentations by delegations. This work would be carried out without prejudice to further submissions by delegations or to other issues arising from future discussions in the Group. A grouping of the available material should provide the Group with a better basis for its discussions that

should enable it to assemble the necessary elements of a future framework. The Secretariat would also very soon issue the paper concerning "Increasing Participation of Developing Countries". Finally, he confirmed that the next formal meeting of the GNS would be from 20-24 November 1989 with the same agenda as for the present meeting. He said there might be a need for an additional meeting before the TNC meeting in December, as well as for informal consultations for the period after the November meeting of the GNS and before the meeting of the TNC, possibly during the 6, 7 or 8 December 1989.