

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNS/W/90

18 December 1989

Special Distribution

Group of Negotiations on Services

MATERIAL TO BE CONSIDERED WITH A VIEW TO FULFILLING THE MANDATE
GIVEN TO THE GNS IN PARAGRAPH 11 OF THE
MONTREAL DECLARATION (MTN.TNC/11)

Note by the Secretariat

1. The secretariat was asked to prepare a paper in order to provide a structure and focus for the discussion in the GNS aimed at assembling by the end of 1989 the necessary elements for the negotiation of a draft framework on services, as requested in paragraph 11 of the Montreal Declaration.
2. This paper has drawn on material contained in national submissions as well as oral presentations made in the context of the GNS discussions during the course of this year. The material has been grouped under four main headings with sub-headings where it seemed appropriate. The main headings are as follows: (I) What the negotiations for a future framework on trade in services relate to; (II) Concepts, principles and rules to be embodied in a future framework on trade in services; (III) Structure and application of a future framework on trade in services; and (IV) Institutional aspects of a future framework on trade in services.
3. As agreed by the GNS, the paper represents only a "grouping of the available material" (see paragraph 129 of MTN.GNS/26) rather than an analytical presentation of the ideas expressed in written and oral forms. To this end, the material in the national submissions has been reproduced in such a way as to fit within these four main headings. The oral interventions have been edited with a view to presenting the positions of participants on the specific subjects and to limiting the length of this paper.
4. In cases where written submissions by participants with regard to specific subject areas exist, it is assumed that these represent their present considered view on the matter and, therefore, earlier oral interventions on the same subject area by these participants have not been included separately.
5. References to paragraphs which appear in the extracts from national submissions relate to the original texts of the national submissions in question and not to paragraphs in this paper.
6. This paper has been drawn up without prejudice to further submissions by participants or to other issues that might arise from the continuing discussions in the GNS. This paper has not been prepared with the intention of it being the object of further negotiation. However, the secretariat stands ready to adjust the material on the basis of suggestions for additions, deletions or amendments.

GATT SECRETARIAT

UR-89-0469

TABLE OF CONTENTSPage

I.	<u>WHAT THE NEGOTIATIONS FOR A FUTURE FRAMEWORK ON TRADE IN SERVICES RELATE TO</u>	3
II.	<u>CONCEPTS, PRINCIPLES AND RULES TO BE EMBODIED IN A FUTURE FRAMEWORK ON TRADE IN SERVICES</u>	5
	(a) Transparency	5
	(b) Progressive liberalization	8
	(c) National treatment	11
	(d) M.f.n./non-discrimination	15
	(e) Market access	18
	(f) Increasing participation of developing countries	22
	(g) Safeguards and exceptions	27
	(h) Regulatory situation	31
	(i) Other provisions	33
III.	<u>STRUCTURE AND APPLICATION OF A FUTURE FRAMEWORK ON TRADE IN SERVICES</u>	35
	(a) Coverage	35
	(b) Initial commitments	36
	(c) Mechanics of liberalization	38
	(d) Sectoral annotations	43
	(e) Application of the framework provisions among participants	44
IV.	<u>INSTITUTIONAL ASPECTS OF A FUTURE FRAMEWORK ON TRADE IN SERVICES</u>	46
	(a) Dispute settlement	46
	(b) Monitoring of commitments, institutional machinery, enforcement	46
	(c) Acceptance, entry into force, withdrawal, non-application	47
	(d) Relationship to other international organizations	49

I. WHAT THE NEGOTIATIONS FOR A FUTURE FRAMEWORK ON TRADE IN SERVICES RELATE TO

The following texts provide an overview of the material drawn from submissions and statements relating to the scope and subject matter of a future framework agreement on trade in services.

(i) Material from national submissions

° New Zealand, MTN.GNS/W/72, page 4

The scope of the Agreement should be determined by incorporation of a provision which contains a "definition" as follows:

"The provision of a service includes, singly or in any combination:
the cross-border movement of payment(s) for the service;
the cross-border movement of consumers of the service;
the cross-border movement of providers of the service;
access to, and use of, domestic distribution systems and telecommunications networks;
the establishment, temporary or permanent, of a branch, subsidiary or other form of commercial presence, necessary for the effective production, distribution, marketing, sale or delivery of a service."

° European Communities, MTN.GNS/W/76, pages 2, 3

The Community does not consider that an all-embracing, generic definition of trade in services, which stands on its own, will be feasible, due to the difficulty of developing unambiguous, universal criteria to determine where factor movement is essential to suppliers.

Proposed approach to the definition of trade in services

For the purposes of the multilateral framework, trade in services shall be considered to include the provision of a service through one or more of the following types of transaction:

- . transactions involving cross-border supply of the service;
- . transactions involving cross-border movement of consumers;
- . transactions involving a commercial presence, whether temporary or permanent (including through the creation of wholly-owned subsidiaries, branches, representative offices, joint ventures, partnerships and franchizing operations), providing that activities are limited to the specific purpose for which access was granted;
- . transactions involving the movement of personnel essential to the supply of the service (to be defined by sectoral annotation as appropriate) i.e. key personnel and other skilled personnel, and providing that such movement is limited to the specific purpose for which the access is granted, and is of limited duration or is a discrete transaction.

(ii) Material from statements made in the general discussion on concepts, rules and principles

° Jamaica, MTN.GNS/23, paragraph 235

Paragraph 4 of the Montreal text sets out a number of criteria which suggest elements requiring consideration in defining trade in services. It would be useful for the Group to pay close attention to definition in existing agreements, sectors including liner conferences, international civil aviation, telecommunications, and satellite communications. It is useful to look at these definitions rather than start from scratch in the GNS as they relate to multilateral agreements involving more or less the same governments which are participating in the GNS.

° India, MTN.GNS/23, paragraph 242

The four criteria set out in paragraph 4 of the Montreal text are relevant as regards tradeability. The point is not what is the definition of a service but of trade in services. The text does not prejudice or cover the question of investment. The Punta del Este Declaration provides for the negotiation of a framework for trade in services and not in investment.

° India, MTN.GNS/26, paragraph 73

As long as there is asymmetry in the definition with regard to the flow of capital and the flow of labour, there will not be fair treatment of developing countries.

° Austria, MTN.GNS/23, paragraph 243

Liberalization of the movement of labour should be considered in connection with the element of progressive liberalization. Criteria for the term "essential" have to be defined. One criterion might be that there is no possibility to supply the service other than with foreign labour. Also the movement of key personnel and qualified personnel could be envisaged.

° Mexico, MTN.GNS/23, paragraph 244

A proposed definition of trade in services includes the cross border movement of services as well as the international mobility of manpower, of which there are five categories: (1) manpower on a permanent basis abroad offering services to producers of goods and services, (2) permanent residence of labour in a foreign country giving services to service producers only, (3) manpower with temporary residence abroad giving services to goods and services producers, (4) manpower supplying temporary services to producers of services, (5) specific types of manpower, e.g. very highly qualified personnel giving temporary services to a service industry only. Mexico is mainly interested in categories 1 to 4.

° Canada, MTN.GNS/23, paragraph 245

Regarding the term "essential", it is necessary to refine its meaning but without getting lost in an endless list of criteria, in particular, when it concerns establishment. Similar considerations apply to the movement of people or information. A definition should be flexible.

° Egypt, MTN.GNS/23, paragraph 246

A definition should not deal differently with the various factors of production, i.e. if permanent investment is discussed then also permanent immigration should be considered.

° Korea, MTN.GNS/23, paragraph 247

A definition of trade in services should cover a very broad area including the movement of the production factors of capital, technology and labour. At this stage, it is important to discuss appropriate means of capital movement and the appropriate duration of labour movement to help establish a definition of trade in services.

° Nordic countries, MTN.GNS/23, paragraph 249

An all-encompassing and generally applicable precise definition of trade in services is neither necessary nor practicable for the purposes of a services framework.

° Brazil, MTN.GNS/23, paragraph 250

It is beyond question that part of the Group's mandate since Montreal is to continue work on definitions and it is therefore not pertinent to go back and discuss whether the GNS needs a definition.

° Brazil, MTN.GNS/26, paragraph 112

Trade in services should be considered to occur when there is: (a) cross-border movement of services; (b) cross-border movement of consumers; (c) cross-border movement of factors of production where such movement is 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, are 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, mentioned in (c) above. All trade in services, as defined above, is open for negotiations. The framework agreement should be drafted in a way to avoid a priori exclusions.

* * * * *

II. CONCEPTS, PRINCIPLES AND RULES TO BE EMBODIED IN A FUTURE FRAMEWORK ON TRADE IN SERVICES

The following texts provide an overview of the material drawn from submissions and statements relating to the concepts, principles and rules mentioned in paragraph 7 of the Montreal Declaration and others.

(a) TRANSPARENCY

(i) Material from national submissions

° European Communities, MTN.GNS/W/65, pages 2-3

Publication

Signatories will undertake to publish all laws, regulations and administrative guidelines which are of general application and which place obligations on service suppliers in their markets. Publication will be made in such a way as not to discriminate between foreign and domestic suppliers.

Such publication should take place not later than the date of entry into force of the measure concerned, and, to the extent possible prior to that date. In the case of existing measures not previously published, this obligation shall enter into force [one year] after the entry into force of the framework. This obligation shall extend to all sectors covered by the framework.

Enquiry points, counter-notifications and consultation procedures

Each signatory will transmit to the secretariat, for circulation to all signatories, a list of the publications in which measures are published (see A.1 above).

Signatories will establish enquiry points for the exchange of information between governments on measures covered by the publication obligation in Section A. At the request of any signatory, full information on a measure shall be made available within four weeks of receipt of the request.

Signatories may counter-notify measures which they consider to have a significant impact on trade. Such counter-notification may initially be made on a bilateral basis.

A signatory would be ready to consult bilaterally on request with another signatory regarding information supplied through its enquiry point under paragraph B.2 above or regarding a counter-notification made under paragraph B.3 above.

A signatory may, following bilateral consultation, bring the matter before the appropriate multilateral body established under the framework.

International agreements

Signatories will undertake similar obligations with regard to international agreements relating to services trade to which they are parties.

Consultation obligations would have to be defined in the light of the framework's provisions regarding the substance of such agreements. Specific consultation obligations would clearly apply in relation to agreements which are subject to derogations from the framework provisions.

Information from enterprises

Signatories may require enterprises operating within their jurisdiction to supply information regarding their operations equivalent to, but not going beyond, that required under national legislation from domestic enterprises operating in that sector.

Discretionary power of authorities

Signatories will undertake to draft and administer measures affecting trade in services in such a way that the necessary discretionary power of authorities is applied in a manner consistent with the objectives, principles and rules of the framework.

Sub-national entities

The obligations set out in Sections A, B, D and E above will also apply to measures described under paragraph A.1 which are applied by sub-national entities.

° Switzerland, MTN.GNS/W/69, page 3

The agreement would define the basic principles regulating the process and scope of notification, taking into account that it is practically impossible to notify all regulations on commercial services. It is conceivable that information should be generally accessible and provided on the basis of specific requests. Further obligations on transparency regarding bound services are considered below (dispute prevention, paragraph 3.1.j).

Any party to the agreement may bring to the attention of the appropriate surveillance mechanism any actions or omissions it believes to be relevant to the fulfilment of these commitments. Notifications should be addressed to the GATT secretariat which may also provide further relevant information.

° New Zealand, MTN.GNS/W/72, page 5

The Agreement would contain provisions ensuring the publication of all relevant laws, regulations and administrative practices; the availability of information through the establishment of enquiry points; and the notification (in summary form) of all relevant laws and regulations.

° United States, MTN.GNS/W/75, page 9

Each Party shall make public promptly all judicial decisions; administrative rulings; international agreements to which it is a party; and all measures (other than administrative decisions), which pertain to or affect the provision of a covered service.

Except in urgent circumstances, no measure taken by any Party affecting the provision of covered services shall be enforced before such measure has been officially published. In urgent circumstances precluding advance publication of such a measure, that measure shall not be enforced before it is made known to the persons affected.

Except in urgent circumstances, before instituting any new or revised regulation affecting provision of a covered service, a Party shall:

publish a notice in a publication at an early stage, in such a manner as to enable interested persons to become acquainted with it, that they propose to introduce such a regulation; allow, without discrimination, reasonable time for other Parties, or interested persons of other Parties to make comments in writing; discuss these comments upon request with other Parties; and take these written comments and the results of these discussions into account in the regulation.

Any Party may make a written request to any other Party for information regarding any measures, judicial decisions or administrative rulings that pertain to or affect provision of a service covered by this Agreement. Parties receiving such requests shall provide such information as quickly as possible and in a comprehensive manner, and shall be ready, upon request, to provide additional information to the requesting Party. Any Party which considers that such information has not been provided may bring the matter to the attention of the Committee, by notification or otherwise.

Each Party shall ensure that enquiry points exist which are able to answer all reasonable enquiries from interested parties in other Parties regarding the measures, judicial decisions, and administrative rulings referred to in paragraph 12.1.

° Republic of Korea, MTN.GNS/W/80, page 5

- All laws, rules and administrative guidelines for all commercial services should be made public.
- To facilitate foreign service providers' access to information, each contracting party shall establish an enquiry point.
Such enquiry point need not to prepare all the information on services in advance, but should sincerely and rapidly provide information upon enquiry.
- Considering the extensiveness and variety of regulations in service trade as well as administrative burdens for interpretation, it would be realistic to limit a country's obligation to notify to only the services conceded.
- With regard to specific objectives, procedures and authorities to be notified, it will be useful to examine the Article 10 of the MTN Agreement on Technical Barriers to Trade.
- The agreement shall exclude prior notification, pre-consultation and cross-notification because of the problems arising from each contracting party's different legislative procedures.

° Japan, MTN.GNS/W/82, pages 7-8

(1) Concept

(a) Transparency is an important element for the realization of market access. As there exist various types of regulations in each country concerning market entry and operations therein, especially in the service sectors, transparency of these regulations is indispensable in order for services suppliers from abroad to operate in a stable manner.

(b) Regulations should basically be published in the respective official languages. Due to the broad and diverse nature of regulations in services, establishment of enquiry points which provide necessary information should be an effective method of securing transparency. The actual functioning of enquiry points need further elaboration.

(2) The scope of transparency

In the framework agreement, the requirement for transparency should be applied to as wide a range of regulations as possible, for the following reasons: business activities concerning services such as cross-border transactions, establishment and commercial presence, can be extremely diverse, and it is often very difficult to distinguish between regulations concerning services industries pertaining to trade in services and those not pertaining to trade in services.

(3) Regulations on services are laid down not only by the national government, but also by various regional and local authorities, in order to meet the regional necessities. In addition, due to the highly professional and technical nature of some services sectors, there are cases where technical standards are set by private organizations. Since these regulations and standards stipulated by local authorities and private organizations can go into detail, it is not practical to expect the national government to consistently market all these regulations available. Accordingly, when stipulating transparency in the framework agreement, one idea would be to endeavour to establish enquiry points for providing information concerning such regulations.

(4) Prior consultations or prior notification

Due to the fact that legislative procedures differ from country to country, obligatory prior consultation or prior notification of new regulations, in our view, is not appropriate.

(ii) Material from statements made in the general discussion on concepts, principles and rules

° Canada, MTN.GNS/23, paragraph 255

GATT Article 10 deals with certain aspects of this issue. This article is of potential interest in terms of language for a transparency provision although it would need to be adapted to the needs of the GNS. Another way of approaching the access problem is through the notion of an enquiry point. Notification, presumably through the GATT secretariat, is an important idea that has to be dealt with. It is possible that a summary or a list of some kind open for countries to examine is adequate. Counter-notification or notification by exporters to a market where the transparency provisions are in question is also important.

° Austria, MTN.GNS/23, paragraph 258

All laws and regulations should be published in a suitable way by the participants and made available not only to states but also to the interested companies and possible foreign service suppliers. The establishment of a national enquiry point might be helpful in this respect. If a notification procedure is set up, a mechanism must be found which limits the administrative burden for the participating countries and the GATT secretariat, if the latter is involved in this mechanism. Complete notifications of all existing laws and regulations, which may require translation into a GATT language, is not advisable; a short description of the main legal provisions would be preferable. Counter notifications might be a part of the notification mechanism.

° Romania, MTN.GNS/23, paragraph 259

Transparency provisions should not oblige a signatory to disclose confidential information if such disclosure is contrary to the public interest or would prejudice the legitimate trade interests of public or private enterprises. Draft laws should not be published to enable parties concerned to make observations before they came into effect; such a procedure could lead to interference in the internal affairs of signatory countries.

° Egypt, MTN.GNS/23, paragraph 260

Transparency obligations should be general and applicable to all sectors. Enquiry points should make available necessary information without being a centre for the compilation of all kinds of laws, regulations and administrative guidelines. Prior notification is not practically applicable in most

cases and it would not be useful to adopt it as a best endeavour obligation. There is a danger that a transparency commitment would lead to an unmanageable amount of information; obligations should focus on laws and regulations which relate to market access. Transparency on the part of market operators is also an important element.

° Argentina MTN.GNS/23, paragraph 264

The use of different languages by signatories could raise problems in the case of notification. Prior notification would create constitutional problems.

° Nordic countries, MTN.GNS/23, paragraph 265

First, laws, regulations and administrative guidelines should be published and made publicly available at the latest by the time of their entry into force. Secondly, regulations and changes to existing regulations that impact on trade in services should be subject to appropriate notification requirements. Provisions on cross notification should be included since there is always a certain subjectivity in assessing the trade impact of regulations. Thirdly, the possibility for prior comment when a signatory intended to introduce new regulations should be considered. To make it workable at the international level, a summary notification highlighting the main features of the proposed measures would be needed. Concerning the language factor, for many countries extensive translation into a foreign language is simply not possible. For some regulations advance notification might not be possible, e.g. the trade impact of court rulings could obviously only be notified post factum. Finally, large parts of national services legislation are not relevant to the operation of the services agreement. An existing model that could with appropriate modifications be studied was the GATT TBT Code where summary notifications of regulations are made. National enquiry points should provide additional information when requested.

° Brazil, MTN.GNS/26, paragraph ..

Transparency should be applied to service suppliers as well as governments to ensure that the objective of the agreement are being met. Service suppliers should provide information on their operations to national and local authorities of the countries in which these operations took place.

(b) PROGRESSIVE LIBERALIZATION

(i) Material from national submissions

° Canada, MTN.GNS/W/63, page 5

The principles and rules of the framework agreement, the binding of existing régimes and measures of liberalization, could all take effect immediately upon the conclusion of an agreement.

Some of the commitments made in the negotiations, e.g. on the formula basis or resulting from an exchange of specific negotiated concessions, could however be implemented over time, as in the case of the changes to national tariff schedules in previous MTN rounds. Liberalization would thus be carried out progressively during the implementation period, although the commitments would exist as of the entry into force of the agreement. The timetable for implementing obligations may vary from country to country, depending on the results of the negotiations.

Given the complexity of the issues involved in the trade in services negotiations, there should be an undertaking to pursue the issues after the end of the Uruguay Round. This undertaking would include further liberalization, as provided for in the Montreal text. The framework agreement should contain a mechanism for further negotiations aimed at increasing liberalization, as well as arrangements for reviewing and improving the operation of the agreement.

° European Communities, MTN.GNS/W/66, page 3

All signatories shall make negotiated liberalization commitments. The long-term aim of the process will be to achieve effective market access. Such an objective implies that differing contributions will be required from different signatories, depending on the particular characteristics of their markets, the degree of liberalization already achieved and their individual development situation in different sectors.

All signatories will contribute to the process of progressive liberalization by adequate participation in periodic packages of negotiated commitments/bindings. The first of these should be negotiated in the framework of the Uruguay Round, and subsequent packages every [--] years.

° Switzerland, MTN.GNS/W/69, pages 2-3

Commitment to progressive liberalization and effective market access

The agreement would state in terms of a contractual obligation, and not merely in terms of a recommendation, a commitment to engage in an ongoing process of liberalization of trade in commercial services and to bring about effective market access for foreign competition.

Obligation to enter into negotiations in good faith

The central element to generate a long-term and dynamic process is an explicitly stated right to negotiations and, as a corollary, an obligation to enter into service negotiations in good faith. All commercial services are open to requests for negotiations. None would be a priori excluded under GATS. In this context, negotiating rights and obligations would need to be defined carefully. A contracting party having an important interest in a sector should be entitled, irrespective of its trade volume and rank among suppliers, to request negotiations with another contracting party.

° Austria, MTN.GNS/W/79, pages 2-4

Progressive liberalization should be an instrument to open markets gradually and over a longer range to foreign suppliers and to accord them national treatment. The objective of progressive liberalization should be achieved by regular negotiating rounds. The legal basis of this process should be a multilateral agreement with rules and principles which are to be negotiated during the Uruguay Round. Such rules and principles should be applicable horizontally to all international tradeable services under this agreement included by the end of the Uruguay Round or to be included in future negotiating rounds. Sectors covered by the liberalization process should be set down in an Annex to the agreement.

Content of progressive liberalization:

- (1) Progressive opening of markets to foreign service suppliers (general clause).
- (2) Progressive inclusion of new sectors into the liberalization process.
- (3) Progressive extension of liberalization to cover new services within particular sectors.
- (4) Progressive extension of the transactions to be included into "trade in services" with regard to market access. This could involve inter alia the extent of factor movements, movement of consumers as well as other cross-border transactions. Signatories may consider it necessary to interpret or restrict certain transactions in some sectors or services by sectoral annotations during the first stages of liberalization. The necessity of such reservations may be determined only after a definition has been achieved and after examining the individual sectors.
- (5) Progressive reduction of regulation discriminating against foreign suppliers. Such regulations concern foreign suppliers and therefore may protect national suppliers of services.
- (6) Progressive mutual recognition of national regulation (see national treatment).
- (7) Progressive reduction of foreign trade restrictions in services.

° Indonesia, MTN.GNS/W/81, pages 8-9

Liberalization should not necessarily be perceived on a sectoral basis. Instead, it should be perceived in the form of transactions liberalization. While participants may not be precluded from wishing to negotiate liberalization on a sectoral basis, the basis should be on the narrower scope of liberalization of transactions.

The process of negotiations could accordingly be kept at a steady momentum over the years in which a balanced approach could be taken allowing liberalization across a wider spectrum of services, through the transactions approach, synchronized with increased participation of service providers of developing countries and at the same time developing the service exports of interest to developing countries.

Credit for liberalization already undertaken

In the meantime, many developing countries have already undertaken steps of unilateral liberalization in the field of services, especially in the field of banking and finance. Credits should be given for such efforts.

In addition, there are special conditions in developing countries which have facilitated trade in services without having to make explicit, sector-specific, or transaction-specific, provisions.

° Japan, MTN.GNS/W/82, pages 5-7

(1) In the framework agreement, the principle of progressive liberalization is reflected in the following two aspects:

- The framework agreement should require as a standard not only standstill, but also rollback of existing regulations. As each participant to the GNS has various measures which restrict trade in various service sectors, market access will not be sufficiently realized by simply freezing those measures.
- The framework agreement should provide a mechanism for realizing progressive liberalization for the period after the end of the Uruguay Round. Concretely, periodical reviews for further liberalization should be conducted. Periodical reviews would also be effective in adjusting the commitments for liberalization under the framework agreement to actual changes in trade in services, which may arise from a rapid increase in the importance of trade in services due to further development of the services markets and industries, or from a modification of the form of trade in services due to technological innovation.

(2) In order for participants to make further commitments in market access in line with the principle of progressive liberalization, there remains the important issue of how to assess the liberalization measures and reservations.

Note: Although Japan presumes that "progressive liberalization" means progressively reducing or removing the regulations inhibiting market access, the meaning of the expression would need further elaboration for common understanding among participants.

(ii) Material from statements made in the general discussion on concepts, principles and rules

° Jamaica, MTN.GNS/23, paragraph 278

Progressive liberalization implies the gradual improvement of market access through the reduction or elimination of negotiable barriers to trade in services and is a means of increasing international competition; it is not to be equated with the simple dismantlement of national regulations. Liberalization concerns not only governments but also private operators. Progressive liberalization should not be seen as antithetical or prejudicial to development nor to the national policy objectives set by each country.

° Egypt, MTN.GNS/23, paragraph 281

The question of the phasing of the implementation of commitments may have sectoral specificity and, on the part of developing countries, there may be a need to maintain or introduce some transparent domestic preferences for certain sectors and individual countries. Price-based measures could also be considered which could afford well calculated rates of protection for domestic industries. The right of countries to introduce new regulations should not be confined to trade-neutral regulations. A review mechanism for the agreement is necessary.

° Hungary, MTN.GNS/23, paragraph 283

Progressive liberalization should occur for the full universe of tradeable services which should be spelled out in an annex to the agreement. The extent of national liberalization undertakings would depend on several factors including: countries' level of development; the trade conditions of a given sector, e.g. trade distortions such as the use of subsidies by dominant suppliers, restrictions on access to technology leading to competitive differences; and economic considerations, e.g. balance of payments considerations. In progressive liberalization, the factors of capital, labour and information should be included in a balanced fashion. Progressivity should be seen in terms of (a) sectoral coverage in that an increasing number of sectors would be covered by participants and (b) treatment of foreign service providers in that it would not be feasible to provide market access immediately with full national treatment. Some preference for domestic service providers should be maintained on a temporary basis.

° Argentina, MTN.GNS/23, paragraph 288

A framework agreement should contain some obligations from the outset, the non-exclusion of any sector a priori, and the gradual incorporation of concessions granted by the signatories to the agreement. Concerning the level of general consolidation of restrictions which exist at present, there is an imbalance between countries regarding the regulation of services. In some developing countries there are certain service activities which have not yet come under any form of regulation because no provision for such services exists. Therefore, if there is an obligation to consolidate restrictions at a given level, there should be some sort of exclusion or exception included for developing countries.

° India, MTN.GNS/26, paragraph 73

With regard to the progressive liberalization of trade in services, the choice should be left to the developing country to decide which sector it can open up, at what point of time that sector can be opened up, and in so opening up what are the operating conditions that are necessary in order to see that there is a fair balance in the framework.

° Brazil, MTN.GNS/26, paragraphs 113, 114, 123,

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. 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.

Throughout the process of progressive liberalization, signatories should establish a balance between concessions and offers. Two basic elements to be considered in this context are access to technology and financial support.

Any attempt to discuss the long-term process of liberalization will 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.

(c) NATIONAL TREATMENT

(i) Material from national submissions

° Switzerland, MTN.GNS/W/69, pages 7-8

The concept of national treatment, i.e. treatment no less favourable than accorded to domestic service-providers, could be expressed in terms of a principle of equal opportunity. This would help to recall that regulations need not be absolutely identical for domestic and foreign supplied services. What matters is that the effect of both regulations must provide equality of opportunities on the market. The concept was used by the Panel in United States - Section 337 of the Tariff Act of 1930, L/6439, page 51/2, paragraph 5.11 and could be taken up in GATS:

"The words treatment no less favourable in paragraph 4 [of Article III GATT] call for effective equality of opportunities for imported products in respect of the application of laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products. This clearly sets a minimum permissible standard as a basis. On the one hand, contracting parties may apply to imported products different formal legal requirements if doing so would accord imported products more favourable treatment. On the other hand, it also has to be recognized that there may be cases where application of formally identical legal provisions would in practice accord less favourable treatment to imported products and a contracting party might thus have to apply different legal provisions to imported products to ensure that the treatment accorded to them is in fact no less favourable."

Equality of opportunity therefore makes it clear that it is not formal treatment before the law but equality of access to and conditions for the operation on the market which matters. Accordingly, equality of opportunity shall be granted notwithstanding the legal form of the foreign enterprise operating on a domestic market.

° New Zealand, MTN.GNS/W/72, page 6

When market access is available, foreign suppliers of a service would be accorded treatment no less favourable than domestic services providers in the same market.

° United States, MTN.GNS/W/75, pages 6-7

Whenever market access has been achieved by a service provider of another Party with respect to provision of a service, each Party shall accord national treatment to that service provider with respect to provision of that service.

This obligation of national treatment shall apply with respect to all measures covered by this Agreement as defined by Article 2.1.

For the purposes of paragraph 8.1, a service provider of another Party shall be deemed to have achieved market access with respect to a Party whenever it has entered that Party's market, either through establishment, cross-border transactions, or use of the service of the public telecommunications transport network.

No Party shall establish or maintain any measure which requires, directly or indirectly, that any specified covered service or proportion of covered services be provided by persons of that Party.

Subject to the provisions of Article 6, measures of a Party which discriminate against service providers of another Party on the basis of the nationality (or nationality of ownership or control) of such service providers shall be presumed to deny national treatment.

Notwithstanding paragraph 8.1 above, the treatment a Party accords to service providers of another Party may be different from the treatment the Party accords its own persons provided that:

the difference in treatment is no greater than that necessary for prudential, fiduciary, or health and safety reasons; and

such different treatment is equivalent in effect to the treatment accorded by the Party to its own persons in like circumstances.

The provisions of this Article shall not apply to measures governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in production for resale.

The provisions of this Article shall not prevent any Party from bestowing government aid exclusively on service providers of that Party.

For the purposes of this Article, "national treatment" is treatment no less favourable than that accorded in like circumstances to a Party's own service providers, to service providers owned or controlled by persons of that Party, or to like services provided by such service providers. In this context, "no less favourable" means no less favourable than the most favourable treatment a Party accords to any domestic provider of like services (or, in the case of a local government entity, the most favourable treatment it accords to any of its own like services providers).

° Austria, MTN.GNS/W/79, pages 9-10

Within the scope of cross-border trade in services, national treatment could mean granting foreign suppliers conditions with regard to laws, regulations, administrative practices, national taxes and dues which are equivalent to those of national suppliers. National treatment does not mean according them the same treatment unconditionally.

National treatment is a precondition for being able to offer services at equitable competitive conditions. National treatment provides foreign suppliers with effective market access.

In order to be accorded national treatment, the foreign supplier should meet the national regulations of the host country to the same extent as the national supplier. A foreign supplier cannot expect any better treatment than that accorded the national supplier, as this would mean discrimination against the national supplier.

National treatment of a foreign supplier is a long-term objective. National regulations could be mutually recognized bilaterally or plurilaterally by future negotiations. Such agreements on reciprocity

would accord foreign suppliers which meet the national regulations of their home country national treatment in the host country. It appears suitable to proceed by sectors. Harmonization negotiations within a general agreement on trade in services on a sectoral basis would be conceivable. It should be examined to what extent harmonization negotiations may be possible in co-operation with existing international services organizations active in the relevant sectors. In some cases cross-border movement of capital and labour is necessary in order to provide services. The extent of factor movements will depend on the transactions to be included in the "trade in services" and the sectoral annotations. Factor movements which are essential for providing a service may also be accorded equivalent national treatment, i.e. application of national regulations with respect to establishment and labour (salaries/wages and social law). National regulations with regard to stay of foreigners should be respected. Some exceptions from equivalent national treatment of foreign suppliers should be possible for national policy objectives.

° Republic of Korea, MTN.GNS/W/80, page 4-5

National treatment means treatment of foreign services providers that is no less favourable than that which is accorded to domestic service providers in business activities in terms of laws, regulations and administrative guidelines after the foreign service providers have been permitted to enter under the market access conditions imposed by the host country.

° Japan, MTN.GNS/W/82, pages 9-11

(1) Concept

National treatment may be considered as one of the principles for realizing market access. In other words, discrimination between national and foreign service suppliers constitutes a barrier to the realization of market access, and national treatment would remove this discrimination. Therefore, the principle of national treatment should be stipulated and maintained as an important rule in the framework agreement.

(2) Measures subject to national treatment

With respect to the application of this rule, all measures affecting market access, i.e. all measures relating to trade in services covered by the framework agreement, should be subject to examination. However, it should be noted that, in consideration of immigration policies, the principle does not require the abolition of entry regulations concerning the movement of persons, which by its very nature, does not lend itself to national treatment.

(3) Relation to existing national laws

(a) Article III on national treatment is included in Part Two of the General Agreement, which is to be implemented "provisionally" and "to the fullest extent not inconsistent with its (existing) legislation", through a protocol concerning provisional application or through each protocol of accession. It would be realistic to render consideration to this point with respect to the framework agreement.

(b) However, any domestic regulation which restricts national treatment should not be left unchecked, but some sort of mechanism should be applied whereby the restriction may be diminished through negotiation.

One way to achieve this would be through application of the transparency rule. By having regulations published, we may keep track of any regulations restricting national treatment, as well as deter the introduction of any modifications which increase the restrictions on national treatment.

Secondly, through a progressive liberalization mechanism, a review of existing restrictive measures could be conducted periodically coupled with negotiations for its reduction or removal.

(4) The treatment of reservations

(a) Quite apart from the transitional measures stated in (3) above, some participants to the framework agreement may wish to make reservations on the application of national treatment itself, for example with respect to specified service sectors, measures or activities.

(b) Such reservations are not desirable, but even in exceptional cases where they are accepted, it is essential to have them published to secure transparency and to subject them to future negotiations in line with the principle of progressive liberalization.

(ii) Material from statements made in the general discussion on concepts, rules and principles

° Mexico, MTN.GNS/24, paragraph 202

National treatment should be applied to both services and the labour and personnel involved in the provision of such services. The progressivity set out in the Montreal text should apply also to the granting of national treatment to foreign services and services providers. Developing countries in particular should be allowed the flexibility in granting national treatment with respect to the number of sectors and/or transactions as well as to the time-frame within which they undertake the commitment.

° Peru, MTN.GNS/24, paragraph 205

National treatment should not be automatically applied once market access has been achieved but should be applied progressively with respect to time and number of sectors. National treatment can be interpreted as an objective to be attained in the short, medium and long-term, sector by sector, activity by activity, depending on the coverage and the commitments deriving from the final framework agreement.

° Argentina, MTN.GNS/24, paragraph 209

An eventual exchange of concessions could be envisaged relating to national treatment obligations in specific activities, fields of transactions and, ultimately whole sectors.

° European Communities, MTN.GNS/24, paragraph 210

National treatment should apply progressively in some cases and this application could vary from sector to sector and from country to country, depending on the regulatory structure. This should not be construed to mean that a national treatment commitment would be any less binding than other commitments since national treatment would remain as a stick against which liberalization could be gauged.

° Australia, MTN.GNS/24, paragraph 211

National treatment should be a rule applicable as an integral part of a contractual agreement. Progressivity in the application of national treatment should follow from the progressive liberalization of specific activities participants would be committed to undertake.

° India, MTN.GNS/24, paragraph 212

The application of national treatment should not imply that foreign providers would be granted equality before the law in terms of rules and regulations. It should ultimately be related to whether foreign enterprises were able to effectively undertake business in the areas which were to be liberalized through negotiations. Also, the negotiations on national treatment should take account of the different levels of economic development of participating countries. The Group should avoid considering a gradual application of national treatment across a wide range of sectors and should concentrate on the concept of effective market access.

° Brazil, MTN.GNS/24, paragraph 214

According to the Montreal text, developing countries should not be expected to undertake the same level of market access or national treatment commitments as developed countries.

° Brazil, MTN.GNS/26, paragraph 119

Once market access has been granted, the national treatment principle should apply. The application of national treatment should imply that services exports and/or exporters of any signatory are 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 is granted to such services exports and/or exporters. 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 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.

(d) MFN/NON-DISCRIMINATION

(i) Material from national submissions

° Switzerland, MTN.GNS/W/69, page 7

GATS would contain this fundamental principle of GATT multilateralism. Legal effects of non-discrimination are at the heart of the agreement. Given the great variety of different structures in service industries and complexity of regulation, the principle could be developed in two different modalities:

(1) M.f.n.

M.f.n., corresponding to the principle contained in Article I GATT, brings about an immediate extension of autonomous and negotiated liberalizations of commercial services to all contracting parties. It could apply to autonomous liberalizations and to those achieved in bilateral negotiations.

(2) Qualified m.f.n.

The model would certainly apply in all cases where standard-setting agreements are concluded. It is natural that benefits of such agreements only accrue to parties of such treaties. What the GATS could provide for is a right to access or to negotiations leading to such agreements.

° New Zealand, MTN.GNS/W/72, page 5

The benefits of any concession would be extended immediately and unconditionally to all signatories of GATS. Access to any services market available under the Agreement would not discriminate between foreign suppliers of the service.

° United States, MTN.GNS/W/75, page 7

With respect to any measure covered by this Agreement, each Party shall accord to service providers of any other Party treatment no less favourable than that accorded by the Party in like circumstances to service providers of any other Party. Benefits provided under this Agreement shall be extended to all signatories, except as provided by Articles 3.2, 3.3 and 28.

° European Communities, MTN.GNS/W/77, pages 2-3

Liberalization commitments should be bound in the framework on a basis of unconditional m.f.n. among signatories. This should be formulated along the lines of Article I of the GATT.

Cases arise where the provision of a service requires compliance with regulations, standards or qualifications in the importing country and where the particular mode of delivery makes it impossible for that country to control directly compliance with such requirements. If in such cases it is impossible to modify or remove the relevant requirements, signatories may subordinate market access to a requirement of harmonization or recognition of the regulations, standards or qualifications of the supplying country.

Wherever possible in this respect, recourse should be made to internationally agreed requirements. In any case, compliance with regulations, standards or qualifications, and any requirement of harmonization or recognition, should be formulated and/or implemented in a manner which is transparent and which would not constitute a means of arbitrary or unjustifiable discrimination between signatories where the same conditions prevail, or a disguised restriction on international trade.

Where a signatory believes that it has been unjustifiably excluded from benefits under the framework as a result of such a requirement, it may raise the issue in the framework of the consultation and dispute settlement provisions of the framework.

° Austria, MTN.GNS/W/79, page 11

Similar to GATT, most-favoured-nation treatment should be granted to cross-border trade in services among signatories. Positively, this means that an advantage given to one party to the agreement should be granted to all others as well; negatively, this means that signatories are obliged to treat a party "not less favourably" than any other party (non-discrimination).

Most-favoured-nation treatment should be applicable horizontally as a general principle for all services sectors. Nevertheless m.f.n. should be applied only when a specific sector has been included in the liberalization process. Vertically it should be granted to those signatories which liberalize the respective sector to approximately the same extent. If any signatory excludes an important services sector

from liberalization it should not be accorded m.f.n. in this sector. All signatories should commit themselves at a comparable level.

The m.f.n. principle should at first refer only to market access. Granting national treatment depends a priori on bilateral/plurilateral agreements. Agreements on mutual recognition of national regulations cannot be extended automatically to all signatories. Other signatories should, however, have the option to enter into bilateral/plurilateral negotiations as well.

Exceptions from m.f.n.

Customs unions, free-trade areas and regional economic integration schemes which provide for more extensive liberalization of the trade in services, possibly special agreements between neighbouring countries to facilitate cross-border trade.

° Republic of Korea, MTN.GNS/W/80, page 5

The benefits of negotiations of commercial services should immediately be extended to all contracting parties on a non-discriminatory basis.

° Japan, MTN.GNS/W/82, pages 11-12

(1) Concept

(a) M.f.n./non-discrimination is a principle which accords a participant to the framework agreement benefits that are accorded to any other participant without discrimination.

This principle will serve to provide, in a universal manner to all the participants, the benefits of market access achieved in the framework agreement, as well as the benefits to be achieved in future negotiations for market access in specific sectors.

(b) We consider that the framework agreement should adopt the unconditional m.f.n. principle. With regard to the imbalances in the level of market access among the participants which could lead to the problem of "free ride", they should be addressed in future negotiations on market access to be conducted under the progressive liberalization mechanism.

(2) The relation to existing reciprocal agreements and national reciprocal regulations

(a) GATT Article I requires that m.f.n. treatment be accorded "immediately and unconditionally". However, as the framework agreement would cover various kinds of rights and obligations, we may envisage situations where it is not possible to apply the treatment to all of them unconditionally the moment the agreement enters into force. In order to encourage more participation in the framework agreement by countries having reciprocal agreements, or national reciprocal regulations, in difficult circumstances certain minimal reservations may have to be negotiated.

(b) Needless to say, such reservations made with respect to specified services sectors, measures or activities, should also be subject to future negotiations within the context of progressive liberalization.

(ii) Material from statements made in the general discussion on concepts, rules and principles

° Mexico, MTN.GNS/24, paragraph 220

Exceptions to this treatment should include cases of economic integration or preferential agreements amongst developing countries.

° Australia, MTN.GNS/24, paragraph 221

Non-discrimination should be provided in the form of m.f.n. commitments whereby all signatories would be granted any advantage granted by another signatory to a third party, whether unilaterally or as a result of trade negotiations. The obligation could be extended to arrangements made between signatories and non-signatories. Full rights to m.f.n. treatment should be granted only under the condition of full participation. The application of m.f.n. should not only involve an adequate level of bindings and schedules to be determined as a result of negotiations, but it should also apply to as broad a sectoral coverage as possible. The application of m.f.n. should account for already existing regional arrangements. Longer timeframes should be provided for developing countries. Reservations could be lodged but should be less frequent than those relating to national treatment.

° Japan, MTN.GNS/24, paragraph 222

Optional m.f.n. is undesirable since it would stimulate the conclusion of unrelated bilateral agreements, access to the benefits which third parties would be obliged to negotiate each time. Conditional m.f.n. seems to imply separate agreements involving a lesser number of countries than the framework agreement might otherwise include. M.f.n. should be applied unconditionally. If the problem of free-riding arises, it should be negotiated away progressively along with the liberalization process. Reservations relating to reciprocal arrangements could be lodged but should also be progressively reduced.

° Nordic countries, MTN.GNS/24, paragraph 223

M.f.n. means that signatories should grant all other signatories the most favourable treatment or advantages that had been granted to another country regardless of whether that country or entity was a party to the agreement in question. Thus, m.f.n. is a dynamic principle which captures market opening measures and extends them to all signatories. A framework agreement on services should contain a provision along the lines of Article XXIV of the GATT and permit more far-reaching liberalization without extending these benefits to all other signatories of the agreement. Certain modifications of m.f.n. could be necessary in those cases where there can only be a limited number of entrants to the market in a particular sector.

° India, MTN.GNS/24, paragraph 232

In the area of goods so-called free riders had not gained great benefits through their participation in the multilateral trading system. In this regard, the least developed countries would be so-called "free riders" by definition, as it would be inappropriate to demand a degree of commitment from them. An important point is how the question of preferences in favour of developing countries can be reconciled with the concept of m.f.n.

° Egypt, MTN.GNS/24, paragraph 229

The application of m.f.n./non-discrimination should not preclude the pursuit of regional economic integration among countries, nor should it interfere with preferential arrangements among developing countries or preferential market access opportunities for developing countries. Countries with lesser levels of economic development often cannot fully profit from greater market access opportunities granted by developed countries on an m.f.n. basis. The notion of an initial level of commitments should be considered. Countries, in particular developing ones, should be permitted to introduce new regulations. The application of m.f.n./non-discrimination should not be affected by the harmonization or mutual recognition of norms and regulations.

° Argentina, MTN.GNS/24, paragraph 230

In the application of m.f.n./non-discrimination to trade in services account has to be taken of existing arrangements which are guided by the principle of reciprocity. Regional integration agreements also deserve careful consideration in order to avoid further restrictions on third parties. In some cases, the size of the market could imply the need for laws restricting the number of entities participating in certain activities. As concerns standards, the wide differences obtaining among countries could give rise to the non-application of m.f.n. in some cases. Also a freeze on regulations could be problematic due to the very diverse regulatory situations. The granting of unconditional m.f.n./non-discrimination treatment should help to redress some of the imbalances in the participation of developing countries in world trade in services.

° Hungary, MTN.GNS/24, paragraph 233

M.f.n. should be a fundamental and general rule in a future services agreement, applicable on an unconditional basis. There should be a minimum level of contribution from each participant.

° Canada, MTN.GNS/24, paragraph 234

A strong m.f.n. clause is essential entailing both rights and obligations. There should not be strict sectoral reciprocity but some appropriate contribution by all would be required as part of the agreement. Assuming that such an approach was accepted and carried through, there would not be a problem of free-riders. Provision would have to be made for economic integration. The issue of origin will need further study.

° Yugoslavia, MTN.GNS/24, paragraph 235

The notion of a freeze could nullify all benefits of m.f.n. for other signatories. Further discussion is needed on the question of the origin of the supplier and its relevance to an m.f.n. clause.

° Israel, MTN.GNS/24, paragraph 236

In order to apply effective non-discrimination, the m.f.n. principle is a precondition without which markets cannot be opened. The possibility of unilateral benefits of a GSP-type for developing countries should not be excluded.

° Hong Kong, MTN.GNS/24, paragraph 239

A non-application clause is probably inevitable, but there should be a surveillance or review procedure to constrain the application of this provision. A non-application provision should serve as a good incentive for all to contribute to meaningful market access obligations and should be used only very sparingly.

° Brazil, MTN.GNS/26, paragraph 119

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. This 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.

(e) MARKET ACCESS

(i) Material from national submissions

° New Zealand, MTN.GNS/W/72, pages 5, 6

Access may be provided through one or more of the modes of delivery listed above (see page 2), and should be increased progressively through bilateral or plurilateral negotiations. Restrictions on market access could only take certain agreed forms, and would operate under strict conditions of, inter alia, transparency.

Market access: establishing and expanding trade in services

An approach based on obligations combined with a system of reservations has implications for market access. Under the scenario advocated by New Zealand, full market access would not be available as an automatic right under the Agreement. To do otherwise would result in unacceptably long lists of reservations by each contracting party. Furthermore, a basic aim of the GATS is to liberalize trade in services progressively: this aim could only be achieved by a combination of gradually bringing measures affecting trade in services into conformity with rules ensuring non-discrimination (in the broadest sense), and providing for additional market access through multilateral negotiations.

New Zealand accepts that certain, narrowly defined types of access restrictions could be tolerated under the Agreement. Nevertheless, it would be clearly understood that such restrictions, which remain inherently undesirable, should be gradually eased over time. Negotiations to reduce or eliminate these

barriers to access would constitute one means of achieving progressive liberalization (along with the gradual removal of reservations from country schedules and the provision of additional market access through an exchange of concessions).

New Zealand suggests that "acceptable" forms of access restrictions should be limited to the following:

- a surcharge on foreign service suppliers, in the form of a differential fee or charge (which could be reduced and bound through negotiations); or
- a restriction on the number of foreign service suppliers able to enter a market (which could be increased and bound through negotiations).

These forms of access restriction can be seen as analogous to the protective measures tolerated under the GATT. In other words, a surcharge could be seen as a tariff equivalent, while a restriction on foreign suppliers is clearly a form of QR.

With respect to "modes of delivery", which are of course determinants of market access, the Agreement would need to recognize the limitations of existing national legislation with respect to immigration and investment. The restrictions referred to in the preceding paragraph would, therefore, apply to forms of trade other than those involving investment or the movement of service providers. Existing national legislation in these two areas would be included on a country's schedule of reservations (where such legislation was not consistent with GATS provisions). Alternatively, "acceptance" of existing legislation could be written into the body of the Agreement.

° United States, MTN.GNS/W/75, pages 4-6

Establishment

With respect to provision of any covered service, each Party within its territory shall permit persons of any other Party to establish or expand a commercial presence for the provision of a covered service (including, *inter alia*, acquisition of an existing company, establishment of a new company, or joint venture or affiliation with an existing company) on a basis no less favourable than that accorded in like circumstances to its own persons.

For the purposes of Article 4.1, "persons of any other Party" includes persons within the territory of a Party which may or may not be persons of that Party but which are owned or controlled by persons of another Party.

Cross-border provision of services

No Party shall establish or maintain any measure that prohibits or restricts the provision of a covered service to persons within its territory on the basis that the service or service provider is located partially or wholly within the territory of another Party.

Temporary entry for services providers

Each Party shall, to the extent feasible and taking into account its national objectives, apply its laws relating to the entry and sojourn of aliens in a manner that facilitates temporary entry of nationals of any other Party for the purpose of providing a covered service. The Parties may undertake further negotiation with a view toward additional commitments for the admission of nationals who are essential to the provision of a covered service.

Notwithstanding Article 6.1, each Party shall permit the temporary entry of nationals of any other Party who are senior managerial personnel essential to the provision of a covered service and who are otherwise qualified for entry under applicable laws or regulations relating to public health and safety and national security.

Each Party shall publish its laws, regulations, and procedures relating to the entry and sojourn of aliens, and shall, upon request, provide to any other Party such explanatory material as may be necessary to enable the other Party and its services providers to become acquainted with them. Each Party shall also, upon request, consult with persons of any other Party concerning its laws with respect to the temporary entry of nationals of the other Party for the purpose of providing a covered service.

The application and enforcement of measures governing the granting of temporary entry by a Party to persons of any other Party shall be accomplished expeditiously so as to avoid unduly impairing or delaying trade in covered services.

No provision of any other Article of this Agreement shall be construed as imposing obligations upon any Party regarding entry of foreign nationals or immigration.

Licensing and certification

Measures governing the licensing and certification of persons of any Party providing covered services should relate principally to competence or the ability to provide such covered services.

Each Party shall ensure that such measures shall not have the purpose or effect of discriminatorily impairing or restraining the access of persons of any other Party to such licensing or certification.

° Austria, MTN.GNS/W/79, pages 6-8

Market access should be accorded those sectors and services only which have been included in the liberalization process.

Markets should be opened progressively to foreign suppliers of services in accordance with the liberalization agreements achieved in the negotiating rounds. Market access will be extended progressively by the liberalization process (see progressive liberalization).

The most-favoured-nation and non-discrimination principles should govern market access.

Market access will also depend on the extent to which national regulations are observed by foreign suppliers. Foreign suppliers fulfilling national regulations will be accorded equivalent national treatment, i.e. the opportunity to operate in this market at competitive conditions equivalent to those accorded national suppliers.

Signatories should be entitled to exclude or limit market access to foreign suppliers in particular sectors or services for reasons of ordre public or other national policy objectives. Nevertheless a balance of rights and obligations should be observed.

Because of national policy objectives, in some sectors market access may be accorded only through establishment. The right of establishment may be restricted in other sectors.

Effective market access in this connection means transparency and the opportunity of actually working on a market, in particular free movement of the service provider within the country; access to the customers, access to information, statistics, etc.; utilization of the infrastructure necessary for offering services; no administrative measures treating foreign suppliers less favourably than national suppliers. If the right of establishment is granted, effective market access also means the opportunity to actually establish a local presence and work on the market.

In some cases granting effective market access may depend on reciprocity.

Exceptions and limitations to market access are to be considered under "Safeguard and Exceptions" with particular regard to the following reasons: national security, sovereignty, protection of morals and public order, protection of cultural identity, health, environmental and consumer interests, guaranteeing the quality of services, requirement of very high supplier reliability, ensuring product liability and legal recourse against the supplier, etc.

° Republic of Korea, MTN.GNS/W/80, pages 3-4

- The Agreement should contain the mechanism which provides progressive increasing market access to foreign service suppliers according to the results of negotiations. However, as a tariff in the case of trade in goods, the same kind of regulating measures namely the Condition of Market Access are being imposed on foreign services and foreign service providers.

- Conditions of Market Access are imposed on mode of delivery, movement of production factor, or activities on the market. For example, conditions may be on:

Establishment and mode of commercial entities such as subsidiaries, branches and offices.

Establishment of their own network and the access to domestic network.

Number and duration of foreigners employed.

Scope and region of business.

Establishment of global quota.

- Progressive liberalization of trade in services will be realized by the concession of Conditions of Market Access. Through the subsequent negotiation the number of sectors (sub-sectors, transactions, activities) conceded will be increased and the Conditions of Market Access which had already been conceded will be eased progressively.

(ii) Material from statements made in the general discussion on concepts, rules and principles

° Canada, MTN.GNS/24, paragraph 245

Market access negotiations relates to the circumstances which limits, condition or prevent the sale of services from a seller or a supplier from one country to a purchaser from another country. Market access exist where an exporter is not inhibited or prevented from selling and delivering a service to a buyer. In order to ensure continuing market access, transparency and predictability, existing barriers should be bound against increases and new barriers should be prohibited. Concessions involving the removal or reduction of trade barriers should also be bound.

° Nordic countries, MTN.GNS/24, paragraph 246

Market access is determined, *inter alia*, by the following factors: the possible existence of monopolies; certification requirements for professionals, as well regulations concerning commercial presence in the market such as restrictions thereto or demands on certain forms of establishment; existing bilateral or multilateral arrangements and agreements; demands for reciprocity; procurement policies; access to distribution networks; technical barriers to trade; domestic preferences, as well as quantitative limitations on market entry. The gradual loosening and easing of these and other regulations affecting the supply of services implies that market access is a function of extending national treatment, be it partial or full, to foreign firms in areas where the market is in fact competitive (i.e. where competition is allowed between domestic firms). One form of market access would cover only pure cross-border trade. However, effective market access might require more broadly defined terms of market access since the provision of services is frequently contingent on close proximity between consumer and producer.

° Singapore, MTN.GNS/24, paragraph 250

Market access should be understood as being potentially made available at a cost, i.e. that pertaining to conditions of entry. Conditions of entry in relation to market access could comprise, among others, tax surcharges on foreign providers, quantitative restrictions limiting the number of foreign providers in a given market, as well as regulatory restrictions imposing extra operating costs for foreign providers.

° Argentina, MTN.GNS/24, paragraph 251

Market access should be achieved through concessions or progressive bindings covering various conditions of entry, as well as regulations or rules applied to the various service activities in which concessions are being granted.

° India, MTN.GNS/24, paragraph 254

The meaning of market access depends upon the definition of trade in services, the sectors involved, as well as the particular transactions within each sector. It is axiomatic that conditions of entry be negotiated in respect of market access. Market access should not be granted on the basis of commonly agreed ground rules. While the principle of market access is unassailable, it is neither an automatic right nor an obligation. Rather than through the application of conditions of entry (which can only be applied once), market access could be negotiated through recourse to objective criteria such as standards, essential requirements to be fulfilled for a cross-border service to be provided, etc. Effective market access also requires access to networks and to technology.

° India, MTN.GNS/26, paragraph 73

When market access is given, it is possible to insist that there should be access to technology. It is possible that the incoming foreign service may be asked to undertake the export building capacity of the service.

° Switzerland, MTN.GNS/24, paragraph 255

Market access is something to be negotiated once. It is thus important to ensure that the degree of negotiated market access be bound through consolidation. Various elements could form part of a consolidation process. These include conditions of entry, conditions of exercise, the factors of production to be used in various service activities, as well as the range of possible modes of delivery.

° Peru, MTN.GNS/24, paragraph 258

Market access has to be gradual, progressive and has to take into account the level of development of each participant as well as the definition of trade in services. Market access is not an automatic right but stems from negotiation and concessions. Concerning the movement of capital, developing country investment policies have to be fully respected and taken into account.

(f) INCREASING PARTICIPATION OF DEVELOPING COUNTRIES

(i) Material from national submissions

° Switzerland, MTN.GNS/W/69, page 3

The agreement may contain provisions allowing a phasing-in of obligations under this heading, taking into account existing levels of market access granted, as well as circumstances and resources available to contracting parties, in particular to developing countries.

° Singapore, MTN.GNS/W/78, page 6

To permit increasing participation of the developing countries, 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 is therefore suggested that in their country offer schedules, the developing countries would have, inter alia, the following facilities:

- (a) They would have a longer time period to implement their offer schedules.
- (b) Preferences for domestic service providers over external suppliers would be allowed.
- (c) Government incentives to develop their domestic services should be permissible.
- (d) There should be safeguard provisions against corporate practices of external service providers which may be detrimental to the development of domestic services in the developing countries.

° Austria, MTN.GNS/W/79, pages 14-15

Provisions for the increasing participation of developing countries should take into account that individual signatories have different levels of development and competitiveness within the respective services sectors.

Progressive liberalization should therefore grant developing countries appropriate flexibility to liberalize services sectors or types of transactions within certain sectors according to their development needs.

Whether the slower liberalization of the services (or types of transactions) concerned is still necessary under a development and competitive aspect could be reviewed periodically or upon request of another signatory to the agreement.

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 the services sectors. Joint ventures and possibly establishment could support such transfer, with positive effects on domestic employment policies.

° Republic of Korea, MTN.GNS/W/80, page 6

The agreement shall include provisions for technology transfer to developing countries and improved method of market access from the developing countries to the developed countries.

° Indonesia, MTN.GNS/W/81, pages 6-8

While developing countries recognize that opening the market for trade in services, under proper conditions and with adequate developmental provisions, could be beneficial to all concerned, the process of opening must be balanced. It must meet the development, trade and financial needs of developing countries. For this reason, the negotiating approach proposed by Singapore would go a long way to help a balanced process.

Export interests of developing countries

To address adequately and properly the question of participation of developing countries no factor movements should be excluded. Developing countries are competitive in labour-intensive services. There should be no permanent exclusion to factor mobility that would exclude labour from trade in services. In

the sectoral agreement, negotiations could be conducted to specify the conditions, but the principle should be accepted.

Other sectors of export interest to developing countries should be opened in order to demonstrate that mutually beneficial trade in services could be initiated from the beginning. A process of liberalization which would only meet the market needs of a group of service-exporting countries, would not reflect a fair application of the concept of participation of developing countries.

Domestic market of developing countries

As developing countries continue to progress in their economic development, the domestic market for service products would also increase. Developing countries could benefit from foreign participation to the extent that such participation could render the domestic economy more efficient.

However, foreign participation should help the development of service-providing enterprises in developing countries as well. For example, requirements of establishing Joint-Venture as a prerequisite for the establishment of some service sectors should not be regarded as an impediment to trade but rather, as a contribution to the process of progressive liberalization of trade in services in developing countries.

If developing countries are to participate actively in trade in services, the trade interest of developing countries must be adequately safeguarded. Their interest would be safeguarded if, among others, they could be active participants in trade in services as providers of services and not merely consumers of internationally traded services. To be active participants in trade in services means to be able to develop the national business entities. Conditions must be established where such developments could take place.

In many instances, the producers and the products are not easily separable. Thus the opening of a sector to foreign service providers must be accompanied by concrete provisions to strengthen the capabilities of domestic service providers as well. Therefore, participation of developing countries should imply the strengthening of developing country enterprises. This leads to the concept of a more dynamic "infant-industry" protection for developing countries. The mode of gradual liberalization and of strengthening of service capabilities of developing countries must also clearly mean, in operational terms, the strengthening of services operators, the business entities, in developing countries.

These concepts lead to the need for at least two necessary provisions in any framework agreement:

- (a) conditions for entry of foreign providers of services to a developing country must incorporate specific provisions which differ from sector-to-sector depending on the sectoral strength of national companies of developing countries;
- (b) once the foreign services operators are allowed entry to the market, conditions could be established for "relative-national-treatment", more favourable to nationals of the developing countries concerned, depending on the realities of each sector. But the rules must be transparent and predictable.

The framework agreement would provide periodic negotiations in trade in services which would aim to improve and gradually liberalize trade in services while giving time for developing countries to develop the capabilities to develop their service industries. Foreign providers of services should play the catalysts that would help the dynamics of developing service industries in developing countries leading to mutually advantageous and profitable arrangements to all parties.

(ii) Material from statements made in the general discussion on concepts, rules and principles

° Nordic countries, MTN.GNS/25, paragraphs 200, 202

In some developing countries certain service sectors are particularly weak or even non-existent. Those situations require traditional longer-term development measures such as expanded basic education, improved facilities for academic and technical education, various forms of specialized training, and others. This is especially true for those service sectors that were knowledge-intensive.

The possibility of improving developing countries' means of obtaining market information could be pursued both at the national and the international levels. At the national level, it could be envisaged that signatories to a multilateral service agreement (both developed and developing) would need to establish

national "focal points" to which service providers from individual developing countries could address themselves with requests for market information. At the international level, certain projects of a similar kind were already being undertaken, primarily by the International Trade Centre. These programmes and projects, which were market oriented and in many cases operated at the enterprise level, could probably be expanded and made more comprehensive.

° India, MTN.GNS/25, paragraphs 209, 210

The lack of transparency which existed on global trade and the market situation, and on business opportunities is a barrier. The Nordic idea about presenting information to developing countries about market opportunities is useful if it could be made into a concrete element.

As far as the acquisition of skills, qualifications and technology by developing countries is concerned, encouraging training programmes, the development of professional service sectors to international standards, and promoting joint ventures are positive forms of cooperation and participation in the area of services.

° Brazil, MTN.GNS/25, paragraph 192

Specific mechanisms should be designed in order to deal with the transfer of technology, the prohibition of measures and practices restricting the access to technology and networks of services. It should be recognized that governments have the freedom to adopt rules and disciplines to avoid that an excessive protection of intellectual property rights restricted the access to modern technology. Equally important is to avoid monopolies resulting from the restrictive enforcement of those rights.

° Mexico, MTN.GNS/25, paragraph 210

The framework agreement should include provisions which stimulated the transfer of such technologies to developing countries without interfering with the commercial decisions of firms.

° Canada, MTN.GNS/25, paragraph 211

Concerning technology, such ideas as the use of joint ventures are important. Establishment as a means of delivering services could be significant in facilitating know-how and training.

° Egypt, MTN.GNS/23, paragraph 281

The question of the phasing of the implementation of commitments might have sectoral specificity and, on the part of developing countries, there might be a need to maintain or introduce some transparent domestic preferences for certain sectors and individual countries.

° Egypt, MTN.GNS/25, paragraph 207

It is necessary for developing countries to enjoy some flexibility regarding the selection of sectors for liberalization. Producer services deserve special consideration in this regard.

° Egypt, MTN.GNS/26, paragraph 96

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.

° Argentina, MTN.GNS/23, paragraph 288

If there was an obligation to consolidate restrictions at a given level, there should be some sort of exclusion or exception included for developing countries.

° India, MTN.GNS/26, paragraph 72

For strengthening the domestic services capacity it is imperative that the developing countries are able, either to exclude sectors - where they can develop their domestic services capacity - temporarily, or for

a reasonable period of time. To say that developing country participation can be ensured by having a multilateral framework which applies the same rules and disciplines for everyone, but use time-limited derogation of five, ten or fifteen years alone would be sufficient will not be a valid proposition in the case of developing countries.

° Brazil, MTN.GNS/26, paragraph 114

One way of respecting national policy objectives would be the establishment of priorities for the import and export of services. Countries would have the right to negotiate only the sectors and transactions that constitute a priority for the promotion of growth and development in general, or for the strengthening of specific segments of the domestic economy.

° Nordic countries, MTN.GNS/25, paragraph 202

Clear and transparent domestic preferences might constitute another means of strengthening the domestic services capacity and its competitiveness.

° Mexico, MTN.GNS/25, paragraph 196

A proportionately greater number of concessions made among developed countries should be granted to developing countries.

° Brazil, MTN.GNS/25, paragraph 192

The unrestricted and unconditional extension to developing countries of the benefits resulting from agreements to liberalize trade in services concluded among developed countries is relevant in this context.

° India, MTN.GNS/25, paragraph 209

A preferential regime for accessing the imports from developing countries is required.

° Mexico, MTN.GNS/25, paragraph 195

The most important factor contributing to the increasing participation of developing countries would be the inclusion from the outset of sectors of export interest to these countries, including the possibility of allowing labour from these countries to move across borders to provide services temporarily and/or for indefinite periods of time in developed country markets.
The inclusion of manpower in the coverage of the agreement would be beneficial to both developing and developed countries.

° Peru, MTN.GNS/25, paragraph 193

Developing countries should not be expected to make contributions inconsistent with their individual development, financial and trade needs.

° Nordic countries, MTN.GNS/25, paragraph 202

The time-span for phasing in market access undertakings could vary with the level of development of countries.

° Brazil, MTN.GNS/23, paragraph 272

It is necessary to consider different speeds in the liberalization process to achieve a balanced global liberalization for all countries.

° Brazil, MTN.GNS/26, paragraph 114

The commitment to engage in negotiations for the progressive liberalization of trade in services includes the right to maintain, implement or adapt internal mechanisms and policies aiming at securing the development process. Embodied in this principle are the notions of "development security" and "technological security", which represent a minimum guarantee for developing countries that the liberalization process will not provoke a retrocession in terms of development and technological advancements.

° India, MTN.GNS/26, paragraph 72

In order to enthruse greatest confidence in the developing countries, the framework must provide for their giving preferences and other forms of support for domestic service providers vis-à-vis the foreign service providers.

° Brazil, MTN.GNS/25, paragraph 190

The aim of increasing the level of services imports should be compatible with the notion of maintaining the autonomy of macroeconomic policies, such as those required to safeguard a country's external position and to ensure a level of reserves adequate for the implementation of economic development plans.

° Brazil, MTN.GNS/24, paragraph 58

Developing countries should be able to take whatever measures are necessary to protect domestic markets with a view to enhancing their national capabilities.

° Romania, MTN.GNS/23, paragraph 274

Developing countries should participate on the basis of relative reciprocity, a principle implicitly recognized in the Montreal document. Participants should not expect developing countries to make concessions which would be incompatible with their own development needs. Liberalization should begin with liberalization among developed countries, and developing countries should benefit from preferential treatment.

° Japan, MTN.GNS/25, paragraph 206

Whatever measures, reservations or flexible application are introduced, they should not represent an exception to the rule of progressive liberalization which would commit all countries to have periodical reviews.

° Brazil, MTN.GNS/25, paragraph 191

As much financial support might be necessary to improve services' infrastructures, mechanisms should be envisaged in the agreement through which this support might be provided.

° European Communities, MTN.GNS/25, paragraph 208

Concerning the financing implications, the GNS forum should not deal with this directly but could exhort others to concentrate on the development of infrastructure and the technological base of developing countries. The GNS cannot mandate the transfer of technology in this framework but could provide an environment which would facilitate such transfer as, in the end, the transfer of know-how comes down to the microeconomic decisions of individual operators.

° Peru, MTN.GNS/25, paragraph 193

The framework agreement should contain provisions permitting complementarity and integration agreements for developing countries in various sectors of services.

° Tanzania, MTN.GNS/25, paragraph 216

Regarding least developed countries it is necessary for the GNS to take into account, inter alia, the balance-of-payments situation and technological requirements of those countries as way of promoting their future development.

° Egypt, MTN.GNS/25, paragraph 207

It is necessary to establish a review mechanism in order to review how the participation of developing countries in the international market place is really evolving.

(g) SAFEGUARDS AND EXCEPTIONS

(i) Material from national submissions

° Switzerland, MTN.GNS/W/69, pages 8, 9-10

Legitimate public policy objectives

Exceptions to national treatment or equality of opportunity could be provided for legitimate public policy objectives in line with Articles XX and XXI of GATT which the GATS should enumerate explicitly (ordre public as defined by the agreement).

Deconsolidation

The agreement could provide for appropriate processes of deconsolidation. Signatories, as in GATT, may introduce market restrictions only if they provide for appropriate compensation to those mainly affected. The problem of calculation of compensation and the allocation of Initial Negotiating Rights (INRs) needs careful examination.

Safeguards

Besides modalities of deconsolidation, a safeguard clause type Article XIX GATT is conceivable and to be distinguished from constellations under paragraphs 2.a in fine and 3.1.g-j above. Under strictly defined criteria, access restrictions applied to new applicants may be imposed in case of actual or immediate threat of injury to a particular domestic service industry. Measures should only be justified within a period of five years after the liberalization took effect. Also, safeguard measures in order to facilitate structural adjustment should be provided for.

Finally, the need and scope of balance-of-payment safeguards for appropriate situations could be examined by the GNS. Due to close links between balance of payments, capital movement and liberalization of services, appropriate and strict criteria and procedures have to be devised in order to avoid excessive recourse to restrictions on service transactions under that safeguard clause.

° Peru, MTN.GNS/W/74, pages 1-2

"Ab initio" general and permanent exceptions:

The framework agreement should include a specific clause allowing "ab initio" permanent exceptions for reasons of public order, legitimate policy objectives, national security, and protection of cultural values and public morals, among other things. Through the application of this concept, certain sectors, sub-sectors or specific transactions could be excluded. All participants could invoke this clause.

Temporary safeguards exclusively for balance-of-payments protection:

The framework agreement should contain specific provisions to protect the balance of payments of developing countries. The temporary safeguards are aimed at protecting the external situation of a country facing a serious decline in, or low level of, monetary reserves.

Consequently, this clause should be included in the framework agreement and be applicable to all services sectors.

Recourse to these temporary safeguards should be notified by the country applying them to interested contracting parties immediately following their application. The creation of a body responsible for conducting consultations and supervision concerning the application of these measures should be envisaged in order to avoid abuses and ensure the measures are dismantled once the balance-of-payments problems that gave rise to them have ceased to exist.

The application of temporary safeguards for balance-of-payments reasons could involve the temporary withdrawal or limitation of concessions granted on the basis of the principles of market access, national treatment, progressive liberalization, etc.

Temporary derogations "(rebus sic stantibus)" - unforeseen cases of "force majeure" arising in specific sectors or sub-sectors:

These derogations may be invoked by all participants. Examples:

- Injury to domestic industry caused by a sudden increase in imports;
- consumer protection;
- Protection of the environment;
- Protection of physical infrastructure;

- Protection of networks;
- Protection of infant industries;
- Monopolistic practices of operators affecting competition.

The consultation and supervision mechanism suggested in the case of temporary safeguards for balance-of-payments reasons would also be applicable to this category.

° United States, MTN.GNS/W/75, pages 11-13

Short-term restrictions for balance-of-payments reasons

In the event of serious balance of payments crisis, a Party to this Agreement may temporarily apply restrictions on cross-border provision of services, except for exchange controls or exchange restrictions. However, such restrictions may only be imposed:

- if the Party has appropriate economic policies in place to permit the early elimination of such restrictions;
- in a manner no less favourable than that accorded to service providers of another country;
- for a period not to exceed one year, unless extended by the Parties to this Agreement after consultation with the International Monetary Fund;
- in a manner that does not afford protection to its providers of a particular covered service from competition from the service providers of another Party; and
- in the manner that has the least disruptive effect on cross-border provision of a covered service by another Party; and
- in a manner that does not prohibit the cross-border provision of a covered service by another Party.

Parties to this Agreement will develop appropriate procedures, in consultation with the International Monetary Fund, that provide for annual evaluation of restrictions imposed under this Article.

Parties shall accept the determination of the International Monetary Fund on whether:

- a party's balance-of-payments situation justifies short-term restrictions under this Article;
- a party has appropriate economic policies in place to permit the early elimination of such restrictions;
- the balance-of-payments situation justifies the extension of such restrictions beyond a period one year from the date they were initially instituted.

No Party shall institute or maintain restrictions under this Article if it maintains controls or exchange restrictions that are not in conformity with Article VIII of the Articles of Agreement of the International Monetary Fund.

General exceptions

Nothing in this Agreement shall be construed to require any Party to furnish any information the disclosure of which it considers contrary to its essential security interests, nor to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests: relating to fissionable materials or materials from which they are derived; relating to the traffic in arms, ammunition and implements of war and to such traffic in services as is carried on directly or indirectly for the purpose of supplying a military establishment; or taken in time of war or other emergency in international relations.

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties where like conditions prevail, a disguised restriction on international trade in services, or a means of circumvention of the objectives of this agreement, nothing in this Agreement shall be construed to prevent any Party from adopting or enforcing measures: necessary to protect public morals, order or safety, human, animal, or plant life or health; necessary to ensure compliance with measures which are not inconsistent with the provisions of this Agreement, including those relating to protection of intellectual property and prevention of fraudulent or deceptive practices; or relating to imposition or enforcement of indirect taxes.

Nothing in this Agreement shall be construed to prevent any Party from adopting or enforcing measures involving the imposition or enforcement of direct taxes.

° Austria, MTN.GNS/W/79, pages 16-18

Three kinds of protective measures and their implications should be considered:

1. measures against unfair trading practices, such as dumping and subsidies (Article VI);

2. exceptions of a general or specific nature aiming at situations comparable to those embodied in Articles XII, XVIII, XX, XXI (fair trade situation);
3. safeguard measures aiming at situations comparable to Article XIX as presently discussed in the NG9, i.e. strictly temporary, accompanied by structural adjustment measures; (fair trade situation).

The maintenance of a minimum national production of services can be recognized as a legitimate national policy goal.

Similar to the service-relevant situations covered by and referred to in numbers 2 and 3 above (exceptions and safeguard measures) the following ones should inter alia be recognized as valid criteria (national objectives) because of the specific nature of services:

- protection of public morals;
- protection of human, animal or plant life or health;
- protection of essential security interests;
- balance of payment considerations;
- maintenance of vital infrastructure (e.g. transport, health care, communication);
- structural adjustment measures;
- maintenance of a national education system;
- protection of the national identity and culture;
- protection of a healthy environment;
- prevention of excessive unemployment or structural underemployment;
- assurance of social security;
- protection and preservation of scarce resources and endangered species;
- consumers' protection by setting minimum requirements for providers of certain services.

Protective measures may be directed against cross-border trade, cross-border movement of factors, consumers and payments.

The applicability of the following principles to provisions which will allow obligations to be waived should be considered by the group:

- universal or sector specific application of measures;
- flexibility for developing countries;
- subsidiary of protective measures;
- multilateral application as the rule, selectivity as the exception in well-defined circumstances;
- causality between import increase of a service and injury suffered;
- proportionality of the measures taken;
- degressivity of measures;
- limitation of duration;
- stricter rules for an eventual prolongation;
- transparency through reporting, notifications, consultations;
- special surveillance and review mechanism;
- recourse to a dispute settlement procedure.

As many of these principles will be applicable to all protective measures irrespective of the service concerned, general rules for protective measures could be envisaged which would, nevertheless, allow for service specific adaptations if necessary.

° Indonesia, MTN.GNS/W/81, page 7

Safeguards for developing countries

In participating in the international trade in services, provision of safeguards for developing countries should encompass two levels of economic realities:

- (a) safeguard to ensure the appropriate macro-economic management of developing countries, e.g. balance of payments and other related matters;
- (b) safeguard at the level of enterprise development with a view to strengthening the capacity of developing countries in services.

Domestic regulations are normally addressed to deal with one or both levels of policy areas and must accordingly be respected.

(ii) Material from statements made in the general discussion on concepts, rules and principles

° European Communities, MTN.GNS/25, paragraph 221

On exceptions, the Montreal text foresees something like GATT Articles XX and XXI. It is worth considering the extent to which recourse to those articles requires more definition, more careful drafting, maybe even a degree of surveillance or at least a requirement to justify.

° Mexico, MTN.GNS/25, paragraph 222

There are two types in respect of safeguard action for increasing imports which could cause damage to certain industries, the purpose of a safeguard is to limit the volume of services. It would have to be applied on a temporary basis. Concerning the unexpected increase of imports, a number of elements have to be taken into consideration: the existence of a sudden and unforeseen increase of imports, that caused or might cause injury to domestic producers, and the existence of specific indications in the framework agreement. As soon as the situation no longer justifies the existence of these measures, they would be suppressed.

Regarding the issue of safeguards for economic development, such safeguard measures would be invoked when necessary, e.g. to help the development of certain sectors, to deal with structural problems such as those related to technological progress or the capitalization of service industries. The definition of trade in services would have a bearing on the safeguards issue.

Regarding exceptions, it is appropriate to establish certain provisions such as those contained in Articles XX and XXI which would have to be adapted to take account of the specific characteristics of trade in services as well as of new technologies.

° Hong Kong, MTN.GNS/25, paragraph 223

The criterion of a sudden and unforeseen increase in imports is difficult to apply to services which were not as easily detectable as a shipment across borders. The question of safeguard measures applied in the case of injury to a particular sector can have widespread implications.

° Romania, MTN.GNS/25, paragraph 224

The provisions on safeguards in the General Agreement can be applied to trade in services with a few adaptations. The first case where safeguards are applicable is in the event of unforeseen increases in imports which affect local producers in an adverse manner. The second case relates to balance of payments difficulties and the third to the protection of the domestic industries of developing countries. Two important conditions can be attached to safeguard provisions: non-discriminatory application and application according to specific criteria. Regarding exceptions, two categories can be established, one based on Articles XX and XXI of the General Agreement, another based on the specificities of trade in services and covering such areas as the protection of cultural identity, exemption for national monopolies, and exceptions in the application of national treatment.

° Canada, MTN.GNS/25, paragraphs 227, 229

Provisions in the areas of safeguards and exceptions should be of equal interest and application to all participants and should not be applied unilaterally but involve an agreed multilateral procedure - e.g. requirements, as appropriate, for some or all of full transparency, notification, consultations and dispute settlement, multilateral surveillance, and perhaps other provisions. Regarding exceptions specifically, any list should be kept as short as possible and be tailored carefully to reflect the needs of an effective services agreement. A number of suggestions have been made, including those relating to security, public morals, safety and the environment, and cultural policy. Any such provisions, however, should: (i) not include any broad exclusions for economic or trade reasons; (ii) preclude the use of the measures as disguised restrictions on international trade; and (iii) relate to the overall multilateral procedure. With regard to a possible national security exception, any proposals should be tightly drawn, be as specific as possible, and seek to minimize the potential for abuse.

Balance of payments concerns are of course macro-economic - not micro-economic or sectoral - in nature. Moreover, they are not in principle limited to any country or class of country. To avoid the worst problems encountered in the GATT experience, the Group should adopt a general approach to safeguards, its provisions applying to all parties.

° Nordic countries, MTN.GNS/25, paragraph 232

Regarding exceptions, certain national policy objectives should guide their application and could include national security, public health including environmental protection, public morals and public order. Environmental concerns should not be viewed as loopholes in that context. Regional development concerns could also be incorporated into a provision on exceptions but this could possibly be dealt with under the concept of regulatory situation. Cultural concerns relating to audio-visual services, for example, also might fit into the context of exceptions and/or regulatory situation.

° Australia, MTN.GNS/25, paragraph 233

The need to resort to safeguards should be minimized in the final agreement. The formulation of exceptions for services should be much narrower in nature than its counterpart in the General Agreement.

° India, MTN.GNS/25, paragraph 234

The difficulty in applying the concept of safeguards to an established firm in a foreign country is directly linked to the fact that the issue of establishment goes beyond the notion of tradeability in its traditional meaning. Clearly, balance of payments concerns should be a central element in the invocation of safeguard action. The approach of the GNS to the issue of safeguards should not be based on Article XIX of the General Agreement. Regarding exceptions, a distinction needs to be made with respect to whether they would apply generally to the framework agreement or whether they could be more specific and apply to particular elements of the agreement such as national treatment, market access, m.f.n./non-discrimination and others.

° Brazil, MTN.GNS/26, paragraphs 114, 122

Exceptions would be invoked with respect to the overall framework, possibly including the commitment to enter into negotiations. The basis for exceptions will include, *inter alia*, considerations on national security, public order, technological development, infant industry protection, cultural and development objectives.

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 do not comply with their obligations under the agreements.

(h) REGULATORY SITUATION

(i) Material from national submissions

° United States, MTN.GNS/W/75, pages 8, 18

Domestic Regulation

The Parties recognize the right of each Party to regulate within its territories the provision of covered services, including the right of Parties to introduce new measures consistent with this Agreement. Parties shall ensure that such measures are not prepared, adopted or applied, the intent or effect of which is to nullify or impair the obligations of this Agreement.

Each Party shall administer in a reasonable manner consistent with all other obligations of this Agreement, all its measures and judicial decisions that pertain to or affect the provision of covered services.

Each Party shall provide procedures for the prompt hearing and reviewing of complaints arising in connection with the regulation of covered services and for the prompt correction of administrative action, where justified.

National legislation

Each government accepting or acceding to this Agreement shall ensure not later than the date of entry into force of this Agreement with respect to the services covered by the Agreement, the conformity of its measures with the provisions of this Agreement.

° Austria, MTN.GNS/W/79, pages 12-13

It should be possible for signatories under certain conditions to introduce new regulations after the framework agreement has been signed (safeguard and exception clauses).

Major objectives of such regulations may be: ensuring the quality of services, protecting life and health, environmental protection, consumer protection, protection of creditors, maintenance of safety and security, product liability and legal recourse, fair competition, etc.

In order to ensure these objectives the right to provide a service is linked to certain legal preconditions, such as professional qualification standards, diplomas, minimum capital requirements, etc. Some services require a particularly high reliability on the part of suppliers. In such instances the right to provide such services could be linked to establishment.

National regulations apply to both national and foreign suppliers of services; they thus offer no a priori protection of national producers against foreign imports. The foreign supplier should meet for the national regulations in order to be accorded national treatment and effective market access.

National regulations which are a precondition for the provider to supply a service may impair cross-border trade in services as only national regulations of the country involved are usually recognized and not those of the foreign supplier's home country. Progressive liberalization should lead to mutual recognition of foreign regulations (see progressive liberalization and national treatment).

(ii) Material from statements made in the general discussion on concepts, rules and principles

° Mexico, MTN.GNS/25, paragraph 238

Asymmetries between developed and developing countries with respect to the sophistication of their regulatory frameworks are due to many reasons. Account should be taken of the different degrees of development in the regulation of services transactions so as to ensure that in this Round and others to come, the scope would remain for the progressive elimination of regulatory asymmetries.

° Japan, MTN.GNS/25, paragraph 239

The possibility for introducing new regulations to address asymmetries in the different regulatory systems should encourage participants to join the multilateral framework agreement, thus strengthening the multilateral system of trade in services. However, the introduction of regulations must be consistent with other commitments in the agreement. A mechanism of consultations might be necessary in this regard. If new regulations have trade-distorting effects, interested parties might see the need for consultations with the government of the importing country. Regulations could be considered justified in accordance with their motivation and the appropriateness of the measures taken in relation to the regulations in place. Governments should bear in mind the trade-distorting effects of the measures introduced and should notify such measures. If through consultations it was found that new measures were not justified, governments should be allowed to request compensation or resort to retaliatory measures to ensure their own trade interests. Newly introduced regulation should also be subject to future review.

° India, MTN.GNS/25, paragraph 240

The regulatory situation of each country has an impact on the characteristics of specific services sectors, the nature and content of market access, and the manner in which progressive liberalization would take place. A valid criteria implied by the Punta del Este Declaration for the maintenance of government regulations is the promotion of economic growth and development of developing countries.

° Canada, MTN.GNS/25, paragraph 241

Regulations should be consistent with the obligations of the agreement (e.g. transparency, national treatment, market access including modes of delivery, m.f.n.) while their scope should be limited to the minimum required in order to achieve their recognized public policy objectives. They should not be

applied in a manner which could constitute a means of arbitrary or unjustifiable discrimination between countries where similar conditions prevailed, or a disguised restriction on international trade (ideally regulations should be trade-neutral). Where a party accords different treatment to persons of other parties, the difference in treatment should be no greater than that necessary for prudential, fiduciary, health and safety, or consumer protection reasons. Differential treatment should be equivalent in effect to the treatment accorded by the party to its own nationals for those same reasons.

° Hungary, MTN.GNS/25, paragraph 242

Liberalization could involve re-regulation in some cases. Re-regulation might be especially prominent in areas where countries do not commit themselves to liberalize under the framework agreement. This could be the case, for example, with the commitment to grant national treatment to foreign providers.

° European Communities, MTN.GNS/25, paragraph 243

Re-regulation does not necessarily create trade-distorting situations. It is the effects of regulations and not the regulations per se which should be the focus of attention of the GNS.

° Nordic countries, MTN.GNS/25, paragraph 244

Consideration should be given as to whether longer-term issues should be addressed under regulatory situation, such as minimum standards, mutual recognition and harmonization. It should not be excluded that discussions on such issues might need to be undertaken by experts and under the most appropriate fora - whether that be inter-governmental bodies, professional associations or some mixed forum with governmental and industry representation.

° Egypt, MTN.GNS/25, paragraph 245

Asymmetries exist between developed and developing country regulatory systems and developing countries in particular might need to add to their bodies of regulations to reflect significant national policy objectives.

(1) OTHER PROVISIONS

(i) Material from national submissions

° Switzerland, MTN.GNS/W/69, page 8

Further undertakings

GATS may include further undertakings in order to progressively overcome systemic differences in view of achieving mutually compatible competition conditions.

Disciplines on service subsidies and TRIMS

GATS may have to address the problem of subsidies which may cause trade distortions. The question should be examined whether special provision on subsidies can draw from Article XVI and the present reforms on subsidies in GATT.

Equally, it has to be examined to what extent results of negotiations on TRIMS should be included in GATS.

Cartels and State monopolies

GATS may include a provision obliging signatories to establish minimal rules on fair competition, and to provide for judicial protection and review.

Equally, rules might be designed to set-off similar trade-distorting effects caused by state monopolies.

Regional economic integration and free trade areas

Lawful derogation from both modalities of the m.f.n. principle of GATS should be envisaged for agreements concluded in the context of regional integration falling under Article XXIV GATT and provided that the exclusion of the m.f.n. principle does not constitute a disguised restriction on international trade in services.

° United States, MTN.GNS/W/75, pages 7-8, 10-11

Exclusive service providers and monopolies

Whenever a Party designates or maintains exclusive or monopoly providers of a service (whether or not such service is a covered service), the Party shall ensure that the entity or entities enjoying such

privileges will provide to consumers of any other Party who are located within its territory treatment no less favourable than that accorded in similar circumstances to its own persons with respect to sales of such exclusive or monopoly services.

Each Party shall ensure that, whenever a person designated or maintained as the monopoly provider of a service competes in the provision of another service that is a covered service (either directly or through its dealings with an affiliated company), such monopoly will not use its monopoly position to engage in predatory practices that adversely affect service providers of another Party, whether through the discriminatory provision of service, cross-subsidization or otherwise.

After the entry into force of the provisions of this Agreement, if a Party grants exclusive or monopoly privileges regarding provision of a covered service, the Party taking the action shall enter into negotiations pursuant to Article 23 of this Agreement, with the objective of reaching agreement on mutually acceptable compensatory adjustments by that Party.

For the purposes of this Article, a "monopoly provider of a service" is any entity, public or private, including any consortium, which, in any relevant market in the territory of a Party, is authorized or established by that Party as the sole provider of that service; and an "exclusive service provider" is one of a limited number of government-designated providers of that service.

Government aid

No Party may grant, directly or indirectly, government aid for the provision of covered services within its own territory, or within or into the territory of any other country, if such aid causes injury to the interest of another Party.

Payments and transfers relating to provision of a covered service

Parties to this Agreement recognize that the International Monetary Fund has jurisdiction over payments and transfers for current international transactions. Accordingly:

nothing in this Agreement shall be construed to alter the rights and obligations of members of the International Monetary Fund; and

nothing in this Agreement shall prevent the use by a Party that is a member of the International Monetary Fund of exchange controls or exchange restrictions that are in conformity with Article VIII of the Articles of Agreement of the International Monetary Fund.

Subject to Article 14.1, each party shall permit payments and transfers for current transactions and capital to be made freely and without delay into and out of its territory in a freely convertible currency at the exchange rate on the date of the transfer with respect to spot transactions, to the extent that such payments and transfers relate to:

the provision of a covered service across its borders by a person of another party, or a commercial presence in its territory established consistent with Article 4.1 (or its partial or total sale or liquidation), and activities associated with it.

Notwithstanding the provisions of paragraph 14.2, any Party may maintain measures:

requiring reports of currency transfer;

imposing income taxes by such means as a withholding tax applicable to dividends;

protecting the rights of creditors, or ensuring the satisfaction of court judgements, through the equitable, non-discriminatory and good faith application of its laws.

No provision of any other Article of this Agreement shall be construed as imposing rights or obligations on any Party regarding exchange controls or exchange restrictions on payments or transfers for current international transactions.

^o European Communities, MTN.GNS/W/77, pages 3, 4

Regional agreements

A specific provision will be necessary to allow for more rapid liberalization under agreements between a limited number of signatories on a regional basis. Such liberalization should respect the following conditions:

- agreements should liberalize trade in services between the parties in a broad range of sectors;
- agreements should be linked to customs unions or free-trade agreements for goods; and
- agreements should not prejudice the level of liberalization commitments undertaken by the signatories concerned in the context of the general framework.

Appropriate transparency and monitoring provisions should be foreseen.

Origin rules

Liberalization commitments are bound only in relation to other signatories and provision will therefore need to be made for the determination of origin of services supplied. This issue will also be relevant in relation to regional liberalization agreements and common criteria in this area would be desirable. There is at present no internationally agreed basis for the determination of origin of services supplied and different options will need to be explored.

° Austria, MTN.GNS/W/79, page 18

Public entities or state-owned monopolies or firms

A special regime for tradeable services offered by public entities or State-owned monopolies or firms with dominant market positions could be envisaged. Such a regime could contribute to avoiding the abuse of market power. However, national competition, anti-trust and cartel laws should be the main instruments used to ensure fair competition.

° Republic of Korea, MTN.GNS/W/80, page 3

- The Agreement should contain the principles and rules included in the Montreal text as well as provisions concerning subsidies and countervailing measures, government procurement, anti-dumping, dispute settlement and obligation of local governments.
- The Agreement may take account of the results of negotiations from other relevant groups of the Uruguay Round and the related articles of the GATT.

Japan, MTN.GNS/W/82, page 12

Regional economic integration aimed at liberalization in trade in services could provide benefits if adequately implemented. It should, however, be conducted in line with the relevant provisions of the framework agreement to be negotiated. In this connection, it is Japan's strong view that the benefits of economic integration should be open to other participants of the framework agreement, and Japan reserves its position for future examination of this matter.

(ii) Material from statements made in the general discussion on concepts, rules and principles

° Brazil, MTN.GNS/26, paragraph 122

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.

* * * * *

III. STRUCTURE AND APPLICATION OF A FUTURE FRAMEWORK ON TRADE IN SERVICES

The following texts provide an overview of the material drawn from submissions and statements relating to coverage, initial commitments, mechanics of liberalization, sectoral annotations and the application of the framework provisions among participants.

(a) COVERAGE

(i) Material from national submissions

° European Communities, MTN.GNS/W/56, page 2

In principle, all internationally tradeable service sectors should be covered. If an enumeration of these sectors is found to be a necessary, integral part of the agreement, it should, however, not be agreed before the draft agreement itself is available.

In this connection, the reference list compiled by the Secretariat would, at the appropriate time, constitute a useful starting point for such a discussion.

° Switzerland, MTN.GNS/W/69, pages 3-4

Scope of agreement

Two aspects should be considered:

- GATS should apply to the universe of commercial services. None of existing and future commercial services are excluded. As GATT, which contains no definition of a traded good, GATS should not attempt to define the notion of commercial services at this stage, but leave the matter open to future developments.
- Each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this agreement by the regional and local governments and authorities within its territory. Inclusion of services regulated by such authorities should be taken into account in the context of defining requirements for the Accession to the Agreement (see 2.a.i and 2.b) and modalities (see 3.2.a).

° New Zealand, MTN.GNS/W/72, page 3

The coverage of the GATS must be universal - i.e. its provisions would be applicable to all internationally-traded or tradeable services. This would need to be spelled out in the Agreement. It is understood that universal coverage and application of the Agreement's provisions cannot be achieved from the date of its entry into force. The system of initial "reservations" would highlight those areas which are not currently in conformity; ensure, as a minimum, the maintenance of current levels of liberalization and openness; and provide the agenda for future multilateral efforts to achieve further liberalization.

° United States, MTN.GNS/W/75, page 3

This Agreement applies to any existing or new measure of a Party which is related to the provision of a covered service within or into its territory by a person of another Party, or by a company owned or controlled by such a person.

A covered service is, for each Party, any service included in the universe of service activities in Annex I (this list will be developed by the secretariat with approval by the Parties), except for those services specifically excluded in Column 1 of its Schedule.

Except as otherwise provided, the terms used in this Agreement shall have the meaning given to them by the general definitions in Article 17. The Annexes and Schedules annexed to this Agreement shall constitute an integral part thereof.

The obligations of this Agreement shall apply to measures of local government entities of the Parties.

° Republic of Korea, MTN.GNS/W/80, page 2

The Agreement shall cover all commercial services. In order to prevent disputes on coverage of the Agreement, however, there must be a commonly understood universal coverage.

(b) INITIAL COMMITMENTS

(i) Material from national submissions

° Canada, MTN.GNS/W/63, page 5

The principles and rules of the framework agreement, the binding of existing régimes and measures of liberalization, could all take effect immediately upon the conclusion of an agreement.

° European Communities, MTN.GNS/W/66, page 2

An appropriate first liberalization commitment/binding would be constituted by a commitment by all signatories in relation to all sectors covered by the agreement, not to introduce new measures which are incompatible with the rules and principles of the multilateral framework or, as appropriate, any relevant sectoral annotations.

° Switzerland, MTN.GNS/W/69, pages 5-6

Agreement on immediately applicable achievements

Even though GATS is a framework for long-term liberalization of commercial services, it might be desirable to include provisions on specific achievements by the end of the Round. These results could provide the starting point for further negotiations.

An agreement could include the following elements:

(a) Initial level of commitment

Initial commitments in particular sectors or sub-sectors of individual service activities/transactions could be envisaged. They would oblige contracting parties to refrain from steps reducing the present level of market access for foreign competitors in the sense that they would be pre-empted from rendering market access more difficult (freeze). Violations of such commitments would be subject to countermeasures within the GATS system.

Modalities of the initial level of commitments could be negotiated with a view to taking up negotiations on liberalization and bindings. It might be conceivable to develop some sort of a safeguard clause with respect to market access in order to facilitate commitments by contracting parties under this heading.

There are two principal ways to define the initial level of commitment:

(i) Requirement for the accession to the agreement (RAA)

The initial level of commitment could be the entry-ticket to the agreement. Each contracting party would have to freeze a certain number of commercial services of economic importance, taking into account the degree of protection and of present market access. Each country could submit a list (schedule) of services falling under the initial level of commitments. Conditions to secure an overall balance would have to be developed.

A less ambitious model of RAA, described in MTN.GNS/W/45, would merely require parties to notify a minimal number of service sectors, sub-sectors or service activities/transactions open for negotiations within the next [x] years.

(ii) Package deal

Another approach would consist of defining an initial level of commitments in terms of a negotiated number of selected services (package deal). It may be combined with individual schedules. A similar approach is conceivable for the model which merely lists services open for subsequent negotiations.

(b) Special circumstances

It should be noted that the initial contribution required to adhere to the agreement takes into account existing levels of protection and levels of market access, including those enacted by regional or local governments and authorities. The agreement may also take into account other circumstances. This would allow for a successive phasing-in of obligations also under this section of the GATS, in particular on the part of developing countries.

(c) Subsequent accessions

Subsequent accessions to the GATS would be negotiated on the basis of similar requirements. The global degree of liberalization of the sector should be taken into account.

° New Zealand, MTN.GNS/W/72, page 8

Intending signatories to GATS must undertake some level of commitment as part of their "entry fee" to the Agreement. The initial level of commitment would be assessed by a combination of the measures included on a schedule of reservations (i.e. pressures would operate to keep the list as small as possible in relation to others) and of concessions included in a schedule of bindings (i.e. counterbalancing pressures to bind as large a list as possible). Where a time limit on any legislative measure is included with a reservation, this would be a "plus" in assessing an overall level of commitment. Whatever is not included in a list of reservations would, by implication, be fully subject to the obligations of GATS provisions.

° Singapore, MTN.GNS/W/78, page 5

There should be agreement as to what would constitute minimum initial commitments (i.e. for purpose of accession to a Services Agreement). Some examples could be envisaged as follows:

- (a) A commitment to comply with the rules/principles as contained in an agreed multilateral framework for those sectors/transactions initially offered. In circumstances where existing levels of protection need to be maintained, the developing countries may bind at such existing level, for a fixed period of time, for those sectors/transactions so offered. For those participants which already maintain an open regime on international trade in services, special credits should be given to them.

- (b) In exceptional circumstances such as serious balance-of-payments difficulties, a special time-bound waiver could be granted subject to agreement by all other participants.

° Austria, MTN.GNS/W/79, page 4

Round 1 (Uruguay Round):

Signing of the multilateral framework agreement and its adoption as a national law. Some of the rules and principles of the framework agreement, in particular transparency, could become effective on its signature. The framework agreement should cover all sectors included in the liberalization process. A standstill (freeze) provision may be agreed for these sectors.

(c) MECHANICS OF LIBERALIZATION

(i) Material from national submissions

° Canada, MTN.GNS/W/63, pages 3-5

1. Binding of existing régimes

As a first step in the process of progressive liberalization, there could be a binding of the degree of openness of participants' régimes affecting services trade subject to the Agreement. Although participants would be free to make changes to their regime, they could only do so in such a way as not to increase the trade restrictiveness (i.e. to reduce the trade opportunities) of the regime. In other words, the commitment to progressive liberalization would take as a base this bound level of liberalization. This binding of existing régimes would be a significant undertaking. However, as the régimes of participants do not all have the equivalent level of openness, and in order to provide for an equitable balance of the rights and obligations of participants, further measures of liberalization might need to be taken.

2. Further liberalization on a "formula" basis

The second element would be the liberalization of measures or practices which distort or restrict trade. This could be accomplished through the application of the framework disciplines to existing measures, either by sector, by factor of production, or by type of transaction. This second element is akin to "formula" liberalization, since liberalization would come, for example, from providing market access or national treatment for one or more whole sectors, or would open up particular transactions or activities across a range of sectors.

It is possible to conceive of this formula liberalization being accomplished either by means of a "positive" or a "negative" list, to appear in a national schedule. In either case, the results would be bound against trade restrictive change.

3. Exchange of concessions

A third means of carrying out trade liberalization would be the negotiation of defined "concessions", which would reduce or eliminate specific measures in a particular market which had been identified as barriers or impediments from the point of view of exporters to that market. The concessions would be bound in the importing country's national schedule.

The exchange of concessions could begin with individual countries indicating to others their interest in negotiating changes to specific regulations or other measures. Bilateral or plurilateral negotiations concerning the identified measures would ensue under procedures designed to provide appropriate transparency to the negotiating process; and the agreed m.f.n. clause would be applied to the results of the negotiations.

° European Communities, MTN.GNS/W/66, pages 2-3

Any measure which is not covered by an exception as referred to in paragraph A(3) above may be the subject of negotiations on a further liberalization commitment/binding (see section D below).

Such further liberalization commitments/bindings, the first package of which should be agreed in the framework of the Uruguay Round, should be negotiated primarily on the basis of a multilateral approach, leading to commitments which are applicable by all signatories. In addition, bilateral or plurilateral negotiations could lead to individual commitments which are then extended to other signatories on the basis of the provision regarding m.f.n./non-discrimination (paragraph 7(d) of the Montreal text).

Liberalization commitments/bindings would be made in the form of an undertaking regarding the total or partial elimination, whether immediate or on the basis of a time-schedule, of measures which are

incompatible with the rules and principles of the framework or, as appropriate, any relevant sectoral annotations.

Where commitments relate to the partial elimination of measures, these might, to the extent provided for in the framework, be qualified by conditions aimed at promoting development.

Where commitments under paragraph 1 apply, and where further commitments under paragraph 4 above do not result in the full and immediate application of the rules and principles of the framework in relation to all measures, the provision regarding m.f.n./non-discrimination will normally apply.

° Switzerland, MTN.GNS/W/69, pages 2-3, 6

Different modes of negotiation

Negotiations may take place in different forms and fora.

Negotiations should primarily be undertaken under the aegis of the GATT system, either within multilateral trade rounds or on a bilateral, plurilateral or a multilateral basis. Furthermore such negotiations may take place outside the GATT system, on a bilateral, plurilateral or multilateral basis within or without other international fora and organizations.

Either under the aegis of the GATT system or outside of it, negotiations may be undertaken on the basis of specific requests and offers or with a view to achieving sector related standard-setting agreements which bring about a higher degree of compatibility of national regulations. Negotiations in international fora other than the GATT system are necessarily dedicated to such standard-setting operations.

In all modes, agreements shall be subject to rules and disciplines of GATS.

Autonomous liberalizations

GATS does not need to regulate unilateral, autonomous liberalizations, erga omnes. They can be bound under the rules and disciplines of this agreement.

Provisions on the long-term process of progressive liberalization and bindings

Progressive liberalization of service sectors, sub-sectors or service activities/transactions could be achieved under the general commitment defined above by the successive inclusion of different sectors under substantive rules and disciplines of this agreement. This inclusion is called binding. It may be achieved either by autonomous measures or by bilateral, plurilateral or multilateral negotiations.

° New Zealand, MTN.GNS/W/72, pages 3, 5, 8-11

In order to achieve the longer-term aims of the Agreement, through the fullest application of the rules and disciplines contained in its provisions, it would also contain a precise mechanism for progressive liberalization through, inter alia, regular multilateral negotiating rounds. The results of a multilateral exchange of concessions would be embodied in schedules of bindings for each signatory. Bindings would allow for the provision of additional market access, and would follow from the gradual elimination of measures inscribed on each country schedule of reservations.

Each country, in examining its national legislation and regulatory framework, would have the opportunity to identify areas within individual services sectors where the provisions of the GATS could not be immediately applied, and would seek a reservation. Where legislation existed which was not sector-specific, but affected one or other of the above forms of trade (specifically, investment or immigration laws), details of the legislation could be notified. Any area not so reserved would be presumed to be in conformity with GATS provisions. (This "presumption", however, could of course be challenged through the dispute settlement mechanisms of the Agreement by other member countries.) In view of the size of the task, it would be possible to agree on a limited "grace period", within which further reservations could be notified. Wherever possible, intending signatories should nominate a date by which inconsistent measures should be terminated.

New Zealand envisages two types of country "schedules" to the GATS: a schedule of reservations and a schedule of concessions.

A schedule of reservations would outline service activities or sub-sectors which are, effectively, temporary exceptions to certain provisions of the Agreement. Such exceptions should be narrowed down as far as possible - to a sub-sectoral level, for example, or by pin-pointing legislation which would have an impact on trade across a number of services sectors. Exceptions would be narrowed also in the sense that the temporary derogation from obligations of the Agreement would be confined to the GATS provision(s) directly affected. All other obligations would remain applicable to the sector or activity concerned. A schedule of reservations is important for reasons of:

- protection: guarding signatories against the invocation of dispute settlement procedures;
- progressivity: recognizing that the provisions of GATS cannot be implemented universally and immediately, and consequently, allowing for the gradual achievement of trade-liberalizing objectives;
- domestic regulation: allowing time for structural adjustment; and
- transparency: allowing for multilateral assessment of a balance of rights and obligations and establishing an agenda for future negotiations.

In summary, a list of "reservations" would comprise any measure (law, regulation, administrative practice or government decision) relevant to the operation of the Agreement, which materially affected (a) the entry of a foreign service (or service supplier) into a market, with the exception of "acceptable" restrictions on market access, or (b) the operating conditions of suppliers within that market. A reservation could take, for example, the following form:

<u>Sector/service</u> activity	<u>Nature of</u> <u>exception</u> (Relevant legislation)	<u>GATS provision(s)</u> <u>affected</u>	<u>Expiry</u> <u>date</u>
Telecommunications: Provision of basic services	State monopoly: foreign establish- ment prohibited (Telecommuni- cations Act)	Article (X) market access Article (Y) national treatment	
Banking: Retail banking	- Licences granted to limited number of foreign banks. Foreign market share limited to X per cent	Article (Z) m.f.n./ Non-discrimination Article (Y) national treatment	

The option of drawing up sectoral annexes to the GATS should be used in only rare cases; if at all. Should annexes be contemplated, they must not constitute a derogation from the principles of GATS; nor must they establish a separate legal instrument for individual sectors. Instead, they should maintain consistency by amplifying or elaborating the provisions of the Agreement.

A schedule of concessions would contain positive bindings, undertaken by signatories as a result of multilateral negotiations, the benefits of which would be extended to all signatories. Bindings would take the form of negotiated commitments, going beyond the provisions of the GATS: in other words, they would comprise commitments to provide additional market access, and could include arrangements to ensure effective market access was achieved, in cases where (for example) granting national treatment was insufficient in itself to allow trade to take place. An entry on a schedule of concessions could take the following form:

<u>Service</u>	<u>Access commitment</u> (modes of delivery)	<u>Negotiating rights</u>	<u>Original</u> <u>concession</u> <u>negotiated</u>
Retail banking	- establishment and maintenance of branch or subsidiary - temporary entry for key personnel [etc.]	US EC Malaysia	1990

Bound versus unbound measures

Services entered on a schedule of concessions would be bound. Concessions could be exchanged on a cross-sectoral basis, and those contracting parties with relatively "open" services markets would have the choice of withholding bindings for future negotiating rounds. The binding would relate to the modes of delivery for that service sector/activity, and would allow for those with negotiating rights under the concession to receive compensation, should the terms of the binding be broken. Where negotiations have resulted in the reduction or elimination of a surcharge (or expansion/elimination of a quota), the details of this additional market access would also be inscribed on a country schedule. A binding would be considered to be broken if national laws, legislation or administrative practices, amended (or intended to be amended) or introduced, had the effect of restricting or prohibiting access to the market through the modes of delivery inscribed. A binding could also be nullified or impaired through amendments to, or the introduction of, legislation affecting the operating conditions of service suppliers in the market (e.g. by impairing the application of national treatment).

Mechanisms for establishing contracting parties with negotiating rights, beyond the party which originally negotiated the concession, would need to be established (i.e. counterpart to GATT "principal supplier" status).

By contrast, changes to legislation could be made in unbound areas covered by the Agreement without a requirement to negotiate compensation with affected contracting parties, providing those changes or newly introduced measures were consistent with the provisions of the Agreement. The GATS-consistency of any legislative changes could, of course, be challenged by other contracting parties through the Agreement's consultation and dispute settlement procedures. The Agreement's transparency obligations would ensure that notice of such changes was brought to the attention of member countries.

The system of reservations would obviate the necessity for specific standstill or freeze commitment, which would merely lock in existing, widely differing levels of protection. With respect to reservations, however, there would be an expectation that each country's list should gradually become shorter, rather than longer. Should a contracting party feel impelled to add new GATS-inconsistent restrictions to its list of reservations, this would need to be negotiated, since it would clearly impact on the balance of rights and obligations which had been initially achieved. Any addition to a schedule of reservations would therefore need to be accepted by all contracting parties, and would require some form of compensation to maintain the overall balance.

° United States. MTN.GNS/W/75, pages 17-18

Reservations

Reservations to some or all of the provisions of Chapter III, Article 8 and Article 13 of this Agreement may be entered with respect to specific services, or specific aspects of existing legislation. Such reservations shall be on a non-discriminatory basis consistent with Article 9.

Any reservations under the preceding paragraph must be entered by a Party on or before this Agreement enters into force for it with respect to the service or services concerned. Parties entering reservations should endeavour to withdraw these reservations as soon as circumstances permit. Parties entering reservations should also give due consideration to requests of other Parties to withdraw these reservations during the course of future negotiations as provided in Article 25.

Reservations may not be entered in respect of any of the other provisions of this Agreement.

A Party may agree to undertake additional commitments to provide market access for a service covered by this Agreement. Such commitments shall be incorporated into the Schedule of the Party undertaking them. Each Party shall list in its Schedule in Column 1 the services which the Party intends to exclude from the coverage of this Agreement; and in Column 2, any reservations entered under this Article which relate to covered services; and in Column 3, any additional commitments it has undertaken under this Article, and any Protocols or Special Agreements to which it is a Party.

Modification of schedules

A Party may add to Column 1 of its Schedules only in exceptional circumstances. In such cases, the Party proposing such a modification shall notify the Chairman of the Committee, who shall promptly convene a meeting of the Committee. The Parties shall consider the proposed exclusion and consequent compensatory adjustments with a view to maintaining the balance of rights and obligations provided in this Agreement.

prior to such additional exclusion. In the event agreement is not reached on any modification taken or proposed, affected Parties shall be free to make compensatory adjustments on a provisional basis until the matter has been definitively resolved through the dispute settlement provisions of this Agreement.

Expansion of coverage through future negotiations

Not later than three years from entry into force of this Agreement and periodically thereafter, the Parties shall undertake further negotiations with a view to strengthening its obligations, increasing the coverage of services and reducing the number of reservations set forth in the Schedules of the Parties, negotiating, as appropriate, further Annexes and Protocols.

° Singapore, MTN.GNS/W/78, pages 3-5

This approach seeks to achieve, as an instant start, liberalization in agreed sectors, by applying to those sectors concepts/principles contained in the framework.

Framework with individual offer/exception schedules

This approach envisages the following:

- (a) Each participant would make its initial offers of sectors/transactions.
- (b) Further concessions could be exchanged through bilateral requests/offers.
- (c) The final individual schedule of offers would be subject to the operation of framework concepts/principles, but with indication of conditions of market entry (e.g. surcharges, number of foreign suppliers, etc.) specific exceptions, and any other operating conditions after market access is granted.
- (d) Whatever does not appear in individual offer schedules would not be open to progressive liberalization.
- (e) The country offer schedules would be implemented on an m.f.n. basis.
- (f) There should be a minimum threshold of individual initial commitments or offers.

° Austria, MTN.GNS/W/79, pages 3-4

Round 2 and following rounds:

These rounds should negotiate further stages of liberalization. Negotiations will concern mainly the inclusion of new services sectors, new services within services sectors and sector-specific issues (see content of progressive liberalization).

° Republic of Korea, MTN.GNS/W/80, pages 2-3, 6-7

According to the Ministerial decision of Montreal, the GNS should endeavour for the entry into force of the Agreement by the end of the Uruguay Round. Since there is less than one year remaining until the end of the Uruguay Round, the following two-step approach may be adopted:

- First, within the time remaining in the Uruguay Round, participants shall construct the General Agreement and make initial commitments on a few principles and rules such as transparency desiring to achieve the long term aims of the Agreement through concession negotiation. Second, the concession negotiation on market access and national treatment shall be continued periodically after the Uruguay Round.
- A single general agreement covering all commercial services shall be adopted and sectoral agreements may be made only in exceptional cases, if necessary.

Concession negotiation

- Concession means each contracting party's commitment to market access and national treatment for progressive liberalization that would include a time-table of market opening.
- Concessions would be made by sub-sector, by activity and by transaction.
- Concessions would be made on the conditions of market access in accordance with national policy objectives and level of development of individual contracting party, but the conditions shall be obvious, foreseeable and shall be gradually eased to expand trade in services.
- Concessions shall be negotiated through bilateral, plurilateral and multilateral requests and offers. Results from the negotiations shall be multilateralized and applied to all contracting parties on an unconditional m.f.n. basis.

(ii) Material from statements made in the general discussion on concepts, principles and rules

° Australia, MTN.GNS/23, paragraph 282

Full obligations should apply initially to a full range of services covered by the framework although the coverage might be different for different countries. The full range of obligations would not necessarily apply to the entire universe of traded services sectors. Any reservations or exceptions would need to be balanced by concessions in other areas in order to achieve equity. Liberalization should occur on the basis of either bilateral or plurilateral negotiations of schedules of market access agreements and schedules of reservations. The reservations schedules would list those services preferably by activities rather than by whole sectors to which some of the principles and rules of the agreement might not apply for particular countries at the outset of the agreement. In subsequent negotiations which would take place at regular intervals, members of the agreement would resubmit their proposed lists of reservations to the coverage of the agreement and would renegotiate among themselves with a view to progressively reducing over time barriers to trade in services which the reservations necessarily would cover. Progressive liberalization would be also achieved by additions to the schedules of market access agreements. The balance in obligations and rights would be achieved by a balance between the reservations and the market access agreements which would be seen as obligations to accept in respect of trading partners. Over time, the market access agreements would be extended, possibly on a formula basis. Problems could arise in determining how a formula would apply in sectors where there is no obvious way of quantifying or standardising the protection which exists.

° Brazil, MTN.GNS/26, paragraph 120

The long-term process of liberalization should 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. 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.

If the long-term process of providing greater market access is to be conducted in terms of reducing adverse trade effects of regulations, it is 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. 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.

(d) SECTORAL ANNOTATIONS

(i) Material from national submissions

° European Communities, MTN.GNS/W/66, page 2

Sectoral annotations

1. Certain multilaterally agreed sectoral annotations to elements of the framework may be necessary. These may take the form of:

- clarifications or modifications of a provision of the framework in relation to the sector concerned or to the form of trade utilized.
- additional provisions applicable only to one or more sectors, or,
- in special cases, the total or partial non-application of a provision to the sector.

2. Such sectoral annotations shall be subject to multilateral review [--] years after the entry into force of the framework.

° Austria, MTN.GNS/W/79, pages 2, 4-5

Considering that services sectors are highly heterogeneous, provisions deviating from the general rules and principles may be necessary for some sectors. They could be set down in sectoral annotations. Signatories should be entitled to include in such annotations sector-specific national regulations deviating from the general provisions. These sectoral annotations may be an integral part of the framework agreement but may be subject to renegotiation in future negotiating rounds. Signatories should also be entitled to exclude certain sectors in whole or in part for national policy objectives or to liberalize them at a slower rate than generally agreed upon. Such provisions could be added in the form of sectoral annotations again, but may be subject to future negotiations.

Content of sectoral annotations

Sectoral annotations may contain general rules or national provisions applicable to all signatories:

- notes on sectors or services included in the liberalization process, possibly also the extent of liberalization, reservations, etc.;
- sector-specific interpretation of the horizontal elements and principles of the multilateral framework agreement;
- sector-specific rules with regard to the transactions determined under "trade in services";
- possibly also information to improve transparency, e.g. relevant national regulations, bilateral/plurilateral agreements, etc.

° Indonesia, MTN.GNS/W/81, page 4

Sectoral agreements

Having formulated an agreed framework agreement, the sectoral agreements or sectoral annotations could then be negotiated applying the general principles contained in the framework agreement. The Singapore proposal on request-and-offer approach could form the basis for such sector-specific agreements. The specific advantage of the Singapore proposal is that countries could initially undertake commitments and gradually extend them at their own individual speed. On the other hand, to accommodate those who do not wish to accord advantages to "free-riders", the proposed "entry fee" is provided. The mechanism provides a flexible approach to build on a convention or practice in trade in services.

(e) APPLICATION OF THE FRAMEWORK PROVISIONS AMONG PARTICIPANTS

(i) Material from national submissions

° European Communities, MTN.GNS/W/66, pages 1-2

The rules and principles of the framework shall be applicable to all sectors covered by the framework, unless otherwise specified therein on the basis of sectoral annotations (see section B below).

Some of the rules and principles, particularly transparency, disputes settlement, safeguards and institutional provisions, will represent obligations to be implemented by all signatories from the moment of entry into force of the framework. Others, particularly those relating to the achievement of effective market access such as national treatment, will constitute obligations to be implemented by a signatory immediately in relation to the initial commitment and progressively as he takes on greater liberalization commitments/bindings.

° Switzerland, MTN.GNS/W/69, page 6

Substantive rules and principles

This basket would contain the legal obligations and effects attached to bindings. Unlike the General Agreement on Tariffs and Trade, services would be subject to the following rules and principles only to the extent that they are bound. This reflects the complexity of the matter and the need for a step-by-step approach. Such rules are as follows:

Scope of binding

Binding relates to three elements of regulations on trade in services:

- Accession to the market and activities on the market (i.e. modalities to enter a service market, regulation of operations in a service market);

- preferred mode of delivery (i.e. cross-border trade, establishment of a commercial presence and transborder movements of factors of production);
- relevant factors of production (labour, capital, information, e.g. real estate, labour and capital market regulations, privacy laws).

° New Zealand, MTN.GNS/W/72, pages 3, 8, 12

GATS would consist of a framework of generally applicable rules and disciplines, accompanied by individual country schedules of reservations and of concessions.

- The framework would establish a series of obligations to ensure that, where trade in services takes place, it occurs under non-discriminatory, equitable conditions.
- A schedule of reservations would allow each signatory to spell out clearly those areas (i.e. subsectors or activities) to which the obligations of the framework could not be immediately applied.

Any "assessment" of relative levels of commitment would necessarily be subjective, to some extent, but a multilateral process would ensure broad comparability (and hence satisfaction with the undertakings of other intending signatories) and guard against over-use of economic leverage. There may need to be provision for individual non-application of the Agreement, but this should be only under carefully defined conditions. Different levels of economic development (including within different sectors) would be taken into account in assessing the acceptability of individual levels of initial commitment.

The Articles of the GATS must take the form of obligations on signatories in order for the Agreement to be effective. This is the only means of ensuring compliance with its fundamental principles, through the establishment of a comprehensive dispute settlement mechanism. An objective, incorporated in the Agreement in the form of a "definition", could not be legally binding.

° United States, MTN.GNS/W/75, pages 4, 18

Annexes, protocols and special agreements

The Parties may by agreed Annexes to this Agreement interpret and apply the provisions of this Agreement with respect to any covered service or services. The provisions of this Agreement shall apply to such Annexes.

Parties may by separate Protocols negotiated under this Agreement provide for additional and expanded liberalization with respect to specified covered services. Notwithstanding Article 9, the rights and obligations in any such Protocol shall apply only as between the Parties that have accepted or acceded to it under Article 20.4 of this Agreement, and shall not alter the rights or obligations under this Agreement of signatories to such Protocol with respect to non-signatory Parties, or vice-versa. Protocols shall be attached separately to this Agreement.

Parties may by separate Special Agreements provide for rights and obligations with regard to any service not covered for such Parties under this Agreement. Notwithstanding Article 9, the rights and obligations in any such Special Agreement shall only apply as between Parties that have accepted or acceded to it. Any Party entering into such a Special Agreement shall notify it to the Parties to this Agreement.

Expansion of coverage through future negotiations

Not later than three years from entry into force of this Agreement and periodically thereafter, the Parties shall undertake further negotiations with a view to strengthening its obligations, increasing the coverage of services and reducing the number of reservations set forth in the Schedules of the Parties, negotiating, as appropriate, further Annexes and Protocols.

° Republic of Korea, MTN.GNS/W/80, page 6

Application of principles and rules

Principles and rules except market access, national treatment, should be applied to all commercial services.

Reservation on the principles and rules can be permitted by an agreed procedure.

* * * * *

IV. INSTITUTIONAL ASPECTS OF A FUTURE FRAMEWORK ON TRADE IN SERVICES

The following texts provide an overview of the material drawn from submissions and statements relating to monitoring of commitments, institutional machinery, dispute settlement, institutional machinery, other international agreements, etc.

(a) DISPUTE SETTLEMENT

(i) Material from national submissions

° Switzerland, MTN.GNS/W/69, page 9

Dispute prevention

All changes to significant laws and regulations in a bound area of services would be subject to prior notification. Contracting parties therefore should allow for advance commentary by interested parties, to be taken into account on the basis of reciprocity. The problem of major policy changes imposed by court rulings should be examined in this context. Dispute prevention should also include the possibility of cross-notification.

° United States, MTN.GNS/W/75, page 16

Consultations, dispute settlement and enforcement

Each Party shall afford sympathetic consideration to, and shall afford adequate opportunity for prompt consultation regarding, representations made by another Party with respect to any matter affecting the operation of this Agreement.

If any Party considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded by another Party, it may with a view to reaching a mutually satisfactory resolution to the matter request in writing consultations with the Party in question, providing an explanation of the reasons for the request. Any such request shall be notified to the Committee.

[Further provisions under consideration pending consultation with the Negotiating Group on Dispute Settlement.]

(b) MONITORING OF COMMITMENTS, INSTITUTIONAL MACHINERY, ENFORCEMENT

(i) Material from national submissions

° European Communities, MTN.GNS/W/65, page 3

Signatories may counter-notify measures which they consider to have a significant impact on trade. Such counter-notification may initially be made on a bilateral basis.

A signatory would be ready to consult bilaterally on request with another signatory regarding information supplied through its enquiry point under paragraph B.2 above or regarding a counter-notification made under paragraph B.3 above.

A signatory may, following bilateral consultation, bring the matter before the appropriate multilateral body established under the framework.

° Switzerland, MTN.GNS/W/69, pages 4, 9

Institutional aspects drawn from GATT

In order to achieve greatest possible compatibility with GATT, institutional questions should be resolved on the basis of GATT experience. The following GATT features could, inter alia, be taken, into account:

- The process of consultation, mediation, and dispute settlement, including arbitration.
- The establishment of a Standing Body for the purpose of monitoring the functioning of the agreement, the elaboration of further rules (recommendations), the conciliation of disputes by the Chairman and, possibly, the adoption of panel reports.
- The system of monitoring, implementation and sanctions.

Notification of bound services and monitoring

GATS should regulate the procedures how to notify bindings to the contracting parties of the agreement. Areas not fully subject to bindings could be subject to a strict system of reporting on the state of affairs and developments.

° United States, MTN.GNS/W/75, pages 15, 20

Committee on trade in services

There shall be established under this Agreement a Committee on Trade in Services (referred to in this Agreement as the "Committee") composed of representatives from each of the Parties. The Committee shall elect its own Chairman and shall meet as necessary but not less than once a year for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of this Agreement or the furtherance of its objectives. The Committee shall have final decision-making authority with regard to the interpretation and application of this Agreement.

The Committee shall:

- collect, analyse and publish information relating to international trade in services, in cooperation with other organizations active in this area;
- encourage and facilitate consultation among Members on all questions relating to this Agreement;
- aid the further development of trade in services through facilitation of future negotiations on trade in services; and
- carry out such other responsibilities as may be assigned to it by the Parties.

The Committee may establish working parties, technical expert groups, panels, or other bodies as may be appropriate, which shall carry out such responsibilities as may be assigned to them by the Committee in accordance with the relevant provisions of this Agreement. The Committee may establish its own rules of procedure. The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof.

Secretariat, deposit and registration

This Agreement shall be serviced by the GATT secretariat.

This Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT, who shall promptly furnish to each Party and each contracting party to the GATT a certified copy of this Agreement and of each amendment thereto pursuant to Article 26 and a notification of each acceptance or accession to the Agreement or any Protocol thereto pursuant to Article 20 and of each withdrawal therefrom pursuant to Article 27.

This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

(c) ACCEPTANCE, ENTRY INTO FORCE, WITHDRAWAL, NON-APPLICATION

(i) Material from national submissions

° United States, MTN.GNS/W/75, pages 16-17, 18-19

Acceptance and accession

This Agreement shall be open for acceptance by signature or otherwise by governments contracting parties to the GATT and by the European Economic Community whose agreed Schedules are annexed to this Agreement. Any government contracting party to the GATT which is not a Party to this Agreement may accede to it on terms to be agreed between that government and the Parties. Accession shall take place by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.

Protocols negotiated under Article 3 shall be open to accession by any Party, on terms to be specified in the Protocol in question.

Entry into force

This Agreement shall enter into force on 1 January, 1992 for the governments which have accepted or acceded to it by this date. For each other government, it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement.

Amendment and waiver

The Parties may amend this Agreement having regard, inter alia, to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with procedures established by the Committee, shall not come into force for any Party until it has been accepted by that Party.

In exceptional circumstances not elsewhere provided for in this Agreement, the Parties may waive an obligation imposed upon a Party by this Agreement; Provided, that any such decision shall be approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the Parties. The Parties may also by such a vote define certain categories of exceptional circumstances to which other voting requirements shall apply for the waiver of obligations, and prescribe such criteria as may be necessary for the application of this paragraph.

Withdrawal

Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of one year from the day on which written notice of withdrawal is received by the Director-General. Any Party may upon such notification request an immediate meeting of the Committee.

Non-Application of this agreement between parties

This Agreement shall not apply as between any two Parties if either of the Parties, at the time either accepts or accedes to this Agreement, does not consent to such application.

Denial of benefits

A Party may deny the benefits of this Agreement to a service provider of another Party, if the Party establishes that the service in question is indirectly provided by a person of a country that is not a Party or by a person of another Party to whom the Party does not apply this agreement pursuant to Article 28. The Party denying benefits in such circumstances shall notify the other Party in question and the Committee, and shall have the burden of establishing that its action is consistent with this Article.

° European Communities, MTN.GNS/W/77, pages 3-4

A provision relating to non-application of commitments between particular signatories should be included in the framework. Such a provision should permit a signatory not to apply some of its liberalization commitments to another signatory when it considers that the level of commitment of the other signatory is not in keeping with the particular characteristics of that signatory's market and the degree of liberalization already achieved by that signatory, as well as its individual development situation in different sectors.

Such a provision should be subject to appropriate consultation and multilateral surveillance. A possible mechanism could be based on the following elements:

- action to be subject, at the request of the affected signatory, to bilateral consultation with a view to reaching a mutually satisfactory solution (consultations to be initiated within a reasonable time prior to the intended implementation of non-application);
- action taken to be notified not later than the moment of entry into force of the commitments concerned;
- opportunity for the affected signatory to raise the matter before the managing body of the multilateral framework, which would examine whether the action being taken was in proportion to the problem complained of, and might make appropriate recommendations.

(ii) Material from statements made in the general discussion on concepts, rules and principles

° India, MTN.GNS/24, paragraph 241

Non-application is an explicit form of discrimination and it is necessary to proceed with extreme caution in drawing up such a provision. It should be an instrument of last resort, should ensure transparency and have very strict criteria subject to multilateral consultation.

° Switzerland, MTN.GNS/24, paragraph 243

A non-application clause is not advisable particularly if such a clause is applied unilaterally.

(d) RELATIONSHIP TO OTHER INTERNATIONAL ORGANIZATIONS

(i) Material from national submissions

° Switzerland, MTN.GNS/W/69, page 4

Relationship GATT - GATS

GATT and GATS should be part of the same multilateral system. Since an increasing number of economic activities combine elements both of goods and of services, rules may need to be established in order to determine which of the agreements applies in a particular case.

The Relationship of GATS to sectorial standard-setting agreements

Since GATS is a framework agreement, it has a constitutional function. It would be important that GATS should legally prevail over subsequent sectorial agreements with respect to market access. (Without such provision, subsequent, sectorial and more specific agreements could replace and rules and disciplines of GATS in accordance with the general principles codified in Article 30 of the Vienna Convention on the Law of Treaties.