MULTILATERAL TRADE NEGOTIATIONS THE URUGUAY ROUND

RESTRICTED

MTN.GNS/27
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Special Distribution

Group of Negotiations on Services

NOTE ON THE MEETING OF 20-24 NOVEMBER 1989

1. The Chairman welcomed delegations to the twenty-fifth meeting of the GNS and drew the attention of Group members to GATT/AIR/2874 circulated on 7 November 1989, which contained the proposed agenda for the meeting. He said that he would take up under "Other Business" the Group's calendar of meetings for next year. He suggested that the Group start with item 2.1(i) on the agenda. He said that he first intended to give delegations which had made submissions since the September meeting an opportunity to present these to the Group, i.e. Japan, Peru and Mexico. He then suggested that the Group provide a possibility for participants to comment on the proposals introduced at the last meeting by Austria, Indonesia and Korea. He then invited further comments on submissions which had already begun to be discussed at the last meeting, i.e. from the United States, the European Communities and Singapore. He said that he intended to provide an opportunity under item 2.1(ii) of the agenda to discuss any specific issues mentioned in the Montreal Declaration or arising from the discussions in the Group during the course of this year. He also intended to set aside sufficient time in the second half of the week for informal consultations which would hopefully enable him to get a clearer picture of what the Group might be able to expect as a result of the work by the end of the year. With the benefit of these consultations, he would wish to invite views under item 2.1(iii) as to how work towards the assembly of elements for a draft framework might be expedited. He then gave the floor to the representative of Japan and asked him to introduce the submission of his delegation in MTN.GNS/W/82 which contained the Japanese view on certain elements of a multilateral framework.

2. The representative of Japan said that although market access and progressive liberalization were covered in his delegation's submission, he saw a need for further elaboration on both concepts. He said that the realization of a substantial level of market access was a major objective of the services negotiations, noting that his delegation was searching for practical ways to achieve such a guiding principle. He noted that market access would not provide participants with the prerogative to demand a review of the rights and obligations already agreed to in the framework simply because they did not compete successfully or had not attained a given market share. He felt that such a result-oriented approach was contrary to free trade in services and pointed to the dangers embedded in the notion of reciprocal market access, recalling that the framework's benchmark should be to provide equal opportunities to compete. Under progressive liberalization, one should not be merely aiming for a standstill but also for a rollback of regulatory restrictions. In addition, there should be a mechanism for realizing progressive liberalization following the completion of the Uruguay Round through recourse to periodic negotiating reviews.

3. The Chairman asked the representative of Mexico to introduce the submission of his delegation in MTN.GNS/W/85 concerning elements for a framework agreement with special reference to the participation of developing countries.

4. The representative of Mexico recalled that the main objectives of a framework agreement were the expansion of trade, the promotion of growth as well as the development of developing countries. He noted that a framework must allow for a balance of interests so as to reduce the current asymmetries between developed and developing countries in the area of trade in services and to motivate greater participation on the part of the latter group of countries. He recalled that many developing countries possessed competitive abilities in labour-based service areas and that many such countries were already fairly liberal in regard to foreign direct investment in service industries. A satisfactory treatment of labour mobility was an essential basis for an equitable consideration of all countries' interests in the services negotiations. He noted that the participation of developing countries in a framework agreement would be very important from the point of view of service imports, recalling that such imports contributed to strengthening the domestic capacities of developing countries through the assimilation of know-how and technology. He recalled that provisions dealing with technology transfers would have to be developed, noting that so-called soft technologies played a crucial role both in the production and distribution of tradeable services. Ways would have be found to address the numerous obstacles - be they financial, legal or technical in nature - which impeded the access of developing countries to modern technology. In particular, steps should be taken to provide vocational training programmes for the benefit of developing countries and to establish information centres in regard to service technologies. In view of the existing competitive asymmetries, it was essential to ensure that the contribution of signatories be a function of the level of development of participating countries. This was required both in regard to time and to the sectoral coverage of the framework. Priority would also have to be given to sectors of export interest to developing countries. The liberalization process would have to be progressive; it was not realistic to start the process on a zero-tariff equivalent basis. This had never been achieved in the goods area in any event, so that the application of market access and national treatment principles could only be achieved gradually. His delegation had difficulties with a negative list approach, not least because the absence of satisfactory service sector classifications and their potential obsolescence in view of the ever-changing technological realities. His delegation favoured the use of positive lists of concessions to be included in national lists annexed to the Agreement. On the issue of transparency, his delegation felt that no law or regulation should be applied before being published. In addition, he suggested that technical assistance be made available by countries possessing more sophisticated informatics know-how. He recalled that progressive liberalization could give rise to situations in which firms enjoyed dominant positions. There might be a need for national legislations to prevent such potential abuses while respecting the main provisions of a framework agreement. Provisions should also aim to prevent restrictive business practices from being exercised. He said that as for trade in goods, developed countries should refrain from subsidizing the production and export

of services. Developing countries should, for their part, be allowed to subsidize both the production and export of services insofar as this did not cause injury to other trading partners. He noted that there were two types of safeguards: general and specific ones. The latter category would be fully linked to the purpose of strengthening national productive capabilities. Both types, however, could be subjected to review mechanisms whilst being phased out altogether. He believed that the m.f.n. principle should be applied unconditionally in the case of developing countries. His delegation felt strongly about the need to provide a sound statistical underpinning to services trade. Such data would need to be updated on a continuing basis and there might be a need to consider the need for improved technical assistance in this area. He emphasized that the treatment accorded to developing under a framework agreement should not be based on waivers or derogations. Rather, development had to be made operational as an integral part of the framework.

5. The Chairman asked the representative of Peru to introduce the submission of his delegation in MTN.GNS/W/84 which contained a proposal on various elements of a services agreement.

6. The representative of Peru said that only through a broad-based participation of developing countries could a framework agreement be credible. It was essential therefore to reconcile all interests while recognizing the existing asymmetry between developed and developing countries in the area of trade in services. The scope of a framework agreement should be as wide as possible in terms of sectors, sub-sectors as well as transactions. This was all the more so in view of the heterogeneous nature of service sectors and of differences in the development levels of parties to the negotiations. The core principles to be included in a framework agreement consisted of transparency, progressive liberalization, economic development/relative reciprocity, non-discrimination, as well as safeguards and exceptions. The dynamic aspects to be considered in applying the framework related to the principles of national treatment and market access. National treatment meant equitable - as opposed to identical - treatment; developing countries should be able to give more favourable treatment to domestic service providers on a provisional basis without discriminating against foreign providers. Market access was one of the major elements to ensure the application of the framework agreement on a progressive basis. Market access should be secured through negotiations. This would ensure that the modes of delivery would be applied in accordance with established rules bearing in mind the specific characteristics of sectors and of national regulatory regimes as well as the negotiated conditions of access to markets. Market access provisions would in addition have to cater to development considerations relating, inter alia, to technology transfers, training of personnel, access to distribution networks and information channels, competition rules, etc.

7. The representative of Colombia said that his delegation agreed with most of the objectives laid down in MTN.GNS/W/84, whether in regard to the principles and rules to include in the general structure of a framework agreement or to the negotiating aspects relating to the achievement of market access and national treatment.

8. The Chairman invited comments on the submissions which had just been presented, on the submissions introduced at the last meeting of the GNS by Austria in MTN.GNS/W/79, Indonesia in MTN.GNS/W/81 and Korea in MTN.GNS/W/78, and on the earlier submissions by the United States, Singapore and the European Communities.

9. The representative of Malaysia suggested that the following principles be considered as the basis for the GATS: (i) the GATS should embody sufficient flexibility to ensure its effectiveness in a changing international trade in services environment; (ii) there should be a phasing-in period for obligations agreed to by signatories; and (iii) the GATS should take cognizance of the spirit of the Ministerial Declaration on the question of linkage. His delegation's proposed structure was that of a GATS framework accompanied by schedules of concessions and exceptions, adding that a simultaneous three tiered approach was proposed with regard to the scope of the GATS. The first tier would consist of services sectors/sub-sectors to which provisions of the GATS were applicable. This cluster of sectors/sub-sectors should be regarded as an open-ended schedule of concessions, which shall be bound in the GATS. Concessions could be accompanied by denotation of conditions. The second tier envisaged the vertical integration and application of the GATS principles in stages depending upon national priorities applicable to specified sectors/sub-sectors. This implied that the application of the principles and rules could be effected in partial form when the market situation or local conditions were appropriate for liberalization. The third tier would consist of the balance of sectors/sub-sectors to which the GATS was not applicable on the grounds of national and/or development related objectives, be it at the sectoral or sub-sectoral level. With regard to transparency, Malaysia considered that signatories of the GATS should assume responsibility for ensuring the compatibility of regulations drawn up by sub-national authorities with obligations under the GATS. As differing legislative processes affected in varying manners, the timing and substance of legislation, the need for advance notification could be replaced - at the very least - by an obligation to inform affected domestic parties prior to enacting legislation. However, this obligation could be eschewed when dealing with emergency measures relating to health, safety, national security or fiduciary considerations. To facilitate factor flows, technical standards and qualifications, criteria should be harmonized or standardized, bearing in mind the financial costs of implementing such an exercise. This exercise could be entrusted to the relevant international organizations. Progressive liberalization should have limits, i.e. total liberalization is not to be accorded if it proved injurious to national interests or seen to be detrimental to the growth of particular sectors. This exercise will need to take into account the overall level of economic development of member countries in arriving at a decision on the degree of liberalization to be undertaken. The notion that liberalization would lead to competition did not guarantee the maintenance of a competitive environment. It would be futile if the elimination of trade barriers resulted in monopolies. It was therefore appropriate to have regulations and rules of behaviour or competition to ensure that the liberalization process did not result in a reduction of competition. The qualitative and quantitative aspects of liberalization should be widened, deepened and monitored through subsequent

rounds of negotiations as this graduated approach would minimize the degree of economic dislocation. It would also provide an opportunity to gain the necessary knowledge and experience in further implementing the agreement. The issue of national treatment could be better addressed if it meant the provision of equal opportunities or equivalent treatment to foreign suppliers to participate in domestic services trade. Such treatment of foreign service providers should be applied regardless of the degree of openness of the services market. The suggested approach would facilitate consistency with provisions of the framework. To promote the increasing participation of developing countries the overall objective should be to ensure that developing countries achieve a larger (increased) share and integrate the global market for trade in services rather than to focus on the development of specific sectors, activities or quantitative progress. Preferential treatment should not be viewed as a derogation from the GATS but should rather be taken as being an integral part and be consistent with the provisions of the agreement. Malaysia was of the view that developing countries should be allowed more latitude in devising service promoting instruments including incentives, and in seeking financial assistance to promote service exports. As well, developed countries should adopt measures to encourage imports of services from developing countries. In developing provisions relating to safeguards and exceptions, advance notification should be made a pre-requisite, except in circumstances pertaining to national security or emergencies. Possible grounds for invoking these provisions could include existing multilateral/bilateral service trade related agreements, technical standards requirements, national security, emergencies, cultural and social considerations, balance of payments implications, or more general structural adjustment efforts. Recourse to such measures, however, should be made in a transparent manner and on a m.f.n. basis. Malaysia also proposed that national policies or programmes specific to individual countries and which were implemented as a result of circumstances peculiar to the country should be considered as an exception. It was Malaysia's considered view that the sovereign authority to initiate and implement rules must be respected and should not be eroded by multilateral agreements. The link between national objectives and measures designed to attain them, however, should not be too tenuous or remote, as this could lead to disguised protection or the introduction of arbitrary and unjustified restrictions. The asymmetry in the regulatory situation between developing and developed countries could be overcome both by permitting developing countries to introduce necessary regulations as well as through deregulation, particularly in developed countries. However, in introducing new regulations, signatories should ensure that the original balance of obligations undertaken with regard to the agreement was maintained. With regard to the introduction of new legislation or re-regulation, the focus should be on the incidental effects of regulations rather than questioning the legitimacy of the legislation. As concerned the application of the agreement, Malaysia would like to propose that where possible, all obligations entered into under the GATS should be extended on an equitable and unconditional basis to all signatories. The granting of m.f.n. would not, however, be automatic, eligibility being accorded only hence signatories acceded to some minimum form of contribution. This minimum contribution had to be negotiated by the signatories. He concluded by saying that the current statement should not be considered as a reflection of the final Malaysian position. His delegation reserved the

right to modify its stand on the issues raised in the light of both ongoing deliberations in the GNS and of developments that have a bearing on the negotiations.

10. The representative of the European Communities welcomed the greater number of ideas which had been put forward on development-related matters, particularly those from developing countries themselves. She agreed that developing countries should enjoy longer phasing-in periods in implementing the provisions of the framework agreement but recalled that these would have to be reasonable. She felt that the idea of engaging on a priority basis a process of domestic liberalization was a valid one but wondered whether this was a negotiating issue of concern to the GNS. The questions of domestic preferences and of subsidies for domestic service providers would have to be dealt with through an agreed definition of what constituted a national enterprise. She agreed that legislation dealing with restrictive business practices was a necessity but noted that it would have to be applicable both to domestic and foreign service enterprises. Commenting on the proposals put forward by the delegations of Korea and Indonesia, she noted that further ideas would need to be developed on ways of stimulating service exports by developing countries. Her delegation had taken careful note of what the Mexican delegation had said on the issue of technology transfers but drew a distinction between measures whose aim would be to encourage such transfers and those whose object would be to regulate them. She expressed some doubts as to the ability of the latter measures to achieve the desired policy objective. The Indonesian proposal was too categorical in certain aspects. Her delegation did not believe that special and differential treatment for developing countries should be the basis for progressive liberalization. Rather, the developmental needs of developing countries should be built into the framework's provisions. Parties to the negotiations should assess the performance of national service industries and come forward with requests that were tailored to a country's specific requirements. The notion of relative national treatment was, however, difficult to accept and could leave the door open to various abuses. Countries could expect credit for past liberalization undertakings providing these were bound within the framework agreement. Singapore's proposal had adopted an approach which was broadly similar to that of her delegation in regard to the possible structure of a framework agreement. She felt that it was important for developing countries to ensure that the sectoral coverage of the framework was as wide as possible so as to reap the greatest benefits from the agreement. She agreed with the Mexican delegation that a positive approach should be taken with a view to gradually expanding the scope of services trade liberalization. Whereas her delegation was aiming for complete liberalization within the European Community, its objective in the GNS was to put in motion a process of liberalization which was progressive in nature. The Austrian submission was too restrictive in scope; Group members should not aim merely at maintaining the status quo by the end of the Uruguay Round. The Austrian approach placed too great on emphasis on annotations to sectoral agreements and not enough on the needs of an overall framework agreement. As well, she noted that recourse to strict sectoral reciprocity was not a useful route to follow and that the concept of minimal national production was not suitable in the area of services. As regards the comments made by the representative of Japan on a result oriented approach, she noted that nothing had yet been said about

the balance of benefits to be derived from the agreement. The application of standstill/rollback provisions should not prevent signatories from continuing to regulate, so long as regulations did not inhibit trade in services. Her delegation had some doubts regarding the implementation of a protocol on a provisional basis, not least because the results of such an approach in the GATT had been far from encouraging. Finally, she sought further clarifications from the Japanese delegation on the notion of extending to third-countries the benefits of regional integration arrangements.

11. The representative of the United States confessed some disappointment at the direction taken in the Austrian submission and felt that the objectives pursued in it were overly negative. He noted that the submission appeared to foresee a slow, gradual and essentially sector-specific approach in which little or no liberalization was envisaged during the course of the Uruguay Round. He recalled that the notion of sectoral reciprocity was unacceptable to his delegation as it was not the proper way to promote a rules-based system for services trade liberalization. He sought further clarifications on Austria's views on national treatment, noting that it was incorrect to suggest that national treatment necessarily provided market access. He wondered whether Austria meant to propose that national treatment was a principle which would not be applied automatically to all signatories for covered services and whether a signatory's right to national treatment could only be obtained through additional bilateral or plurilateral negotiations. He agreed with the idea of a slower pace of liberalization for developing countries and felt that the notion of establishment through appropriate joint-venture conditions should be given further consideration. He felt that the Indonesian submission was on the whole more positive, particularly as it spoke of a long-term liberalization process. In regard to joint-ventures, he asked whether Indonesia foresaw the possibility for foreign participants to become majority shareholders in domestic service enterprises. He noted that in view of the high knowledge content of many service industries, one had to be mindful of the fact that an infant industry approach might well retard the development of indigenous capabilities rather than promote them. He emphasized that the basis of a liberalizing exercise consisted of those measures which regulated services trade and which needed to be in conformity with the obligations contained in a framework agreement, adding that an approach focusing on transactions had to concentrate on the regulatory measure which might impede those very transactions. He welcomed the Korean submission and noted that it contained new and interesting ideas in regard to transparency. He was somewhat disappointed by Korea's rejection of the prior notification of regulatory changes, noting that various segments of regulatory behaviour could be subjected to prior notification without undermining national constitutional prerogatives. He was also somewhat concerned by the fears expressed by Korea on the use of cross-notification procedures as a means of securing greater transparency. He welcomed Korea's hesitation in regard to sectoral agreements, noting that such an approach should be avoided as much as possible so as to derive a common set of principles which would apply to all sectors under the framework. He asked whether the Korean delegation was willing to consider the process underway in the Code on Government Procurement which aimed at developing entity coverage over the services area. In regard to countervailing and anti-dumping measures, he considered what remedies were being envisaged, noting the

practical problems which emerged in regard to distortive practices in services trade. He noted that the Korean submission was somewhat vague on the issue of technology transfers and wondered whether its delegation had specific views to put forward on it. He supported the fundamental thrust of the Japanese submission, namely that market access should be seen as the guiding principle of the ongoing discussions. He asked whether the Japanese delegation considered the notion of commercial presence to incorporate acquisition and greenfield investments and whether these were part of the objective of enhanced market access, noting that these were important elements for doing business in the area of services. He felt that the Japanese submission left quite a few things to so-called "further study", among which the specifics of progressive liberalization, the aspects of coverage and of reservations, as well as the principle of development. He wondered when the Japanese delegation would feel able to deal with such important issues. He said that he fully shared Japan's concerns over reciprocity. He was somewhat uncertain what Japan had in mind regarding the structure of an agreement and sought greater clarification on the issue. As well, on the suggested need for further sectoral agreements, he wondered what conditions would be subjected to separate agreements.

12. The representative of Brazil said that the numerous contributions before the Group, particularly those from developing countries, would give more balance to the negotiating process. He welcomed the submission from the United States, particularly its preamble, which contained those elements which the GNS should now be focusing on. His delegation had, however, serious reservations about the rest of the submission. He disagreed with the views expressed in the submission by Singapore on the issue of an initial level of commitment. The mere fact of agreeing by the end of the Uruguay Round on a framework to progressively liberalize trade in services already represented a considerable commitment on the part of signatories. He welcomed the fact that Singapore's submission highlighted the need for flexibility in carrying out the liberalization process. His delegation endorsed the building-block approach taken in the Indonesian submission and he agreed that the notion of special and preferential treatment for developing countries should be permeating the discussions. He welcomed Indonesia's emphasis on process - as opposed to rule-making-issues noting that the Group should not be advancing too far, too fast. He asked the Korean delegation what it meant by the notion of a "commonly understood" universe of coverage. He agreed that the initial level of commitment should be restricted to a few principles and rules such as transparency and that concessions relating to market access and national treatment should be negotiated periodically after the Uruguay Round. He felt that the idea of tariff-like market access conditions should be further explored. He agreed with Korea's rejection of the idea of prior and cross-notification procedures and said that his delegation did not endorse the idea of enquiry points. He felt that the Austrian submission called the attention of Group members to the main difficulties they faced and highlighted the disquieting lack of knowledge in dealing with most issues related to services trade. He said that the sectoral coverage of an agreement should be determined in further negotiations after the completion of the Uruguay Round and recalled that much work needed to be done on definitional issues. Other issues requiring additional work before the task of assembling the elements of a framework

could be initiated included the determination of the specific transactions under discussion, modalities for increasing the participation of developing countries in world services trade, the generation of more and better statistics on trade in services as well as a fuller discussion of existing international arrangements and disciplines. He disagreed with Austria's suggestion of a standstill provision to be applied at the end of the Uruguay Round and expressed reservations both on the proposed link between market access and reciprocity and on the suggested recourse to a qualified m.f.n. formula. He welcomed the fact that the Japanese submission highlighted the need for further elaboration and study. He expressed some surprise at Japan's suggestion that market access was the guiding principle in the current negotiations, recalling that growth and development were the prime objectives embodied in the Punta del Este Declaration. He asked the Japanese delegation whether it endorsed the notion of applying an m.f.n. provision unconditionally. He did not think that the principle of national treatment should be seen as a rule to include in the framework and asked the Japanese delegation why it felt that national treatment did not lend itself to the movement of persons.

13. The representative of Mexico felt that the submission by the United States contained many ideas which might serve as useful inputs for subsequent negotiations. It did not, however, meet the trade and development needs of developing countries, so that it would be necessary to ensure that development be an integral part of a framework agreement and not merely treated in an addendum. He felt that the elements of the Montreal Declaration had not been adequately taken account of in the submission from the United States. One example was provided by the objective of increasing the participation of developing countries in world services trade, which was dealt with in a rather cursory way in the submission's preamble. He said that the initial level of commitment which the United States' proposal envisaged raised some doubts for his delegation, particularly in regard of the treatment received by developing countries in subsequent negotiating rounds. His delegation felt that a negative list approach was not appropriate, not least because of the ongoing technological changes affecting service industries. Reaching consensus on what constituted, both in sectoral and transactional terms, a universe of commercially-traded services would take more time than that which the Group had at its disposal. He asked what activities would be covered by the US proposal's Article 3, noting that the suggested approach might imperil the pursuit of liberalization on a multilateral basis. In regard to Articles 4 and 5, he asked whether the US delegation was calling for automatic - as opposed to progressive - liberalization. He felt that Article 6.1 might unduly restrict the provision of those services in which developing countries could be internationally competitive, suggesting that an implicit division between so-called first and second classes of services appeared to be made. He wondered whether such a distinction might apply to countries as well. He asked whether the logic behind Article 6.3 would apply as well to rules governing foreign direct investment. He asked whether Article 8.1 applied to foreign companies already established in a host country as well as to established (or about to be established) foreign manpower. In addition, who would decide whether an equivalence of treatment was secured? He asked whether Article 10 was applicable to state or state-sanctioned monopolies or to all entities in

dominant positions. In regard to transparency, he sought further clarifications on the notion of urgent circumstances. He recalled that Mexico did not consider it appropriate to provide for prior consultation and/or notification. Such procedures might in fact prove damaging to the liberalization process by allowing vested interests to resist changes in regulatory structures. He said that Mexico preferred - essentially for budgetary reasons - contact points to national information centres. On Article 13, he asked how it would be determined that governmental aid may be prejudicial to the interests of other parties to the agreement. He asked whether safeguard measures might not be allowed to take the form of a temporary suspension of the process of progressive liberalization. He asked whether countries which had undertaken unilateral liberalization measures could expect compensation in the form of concessions from their major trading partners. He recalled that non-application, if deemed necessary for inclusion in a framework agreement, should relate only to non-economic factors such as war.

14. The representative of Singapore asked the representative of the United States whether concepts such as surcharges and/or other conditions relating to market access were regarded in his delegation's proposal as reservations to the national treatment principles or whether any additional entry costs could be allowed. In regard to Article 8.1.4, which stipulated that measures which discriminated against the service providers of another party on the basis of nationality of ownership or control constituted violations to the national treatment principle, he sought farther clarifications on the notion of nationality discrimination. He emphasized that national treatment should apply only once foreign service providers had fulfilled entry conditions and relate solely to the provision of a service, i.e. the production and marketing of a service. Beyond that, national treatment might be confused with matters relating to the domestic regulatory situation.

15. The representative of India felt that the large number of submissions before the Group highlighted the fact that things were becoming more complex as work proceeded. This suggested that some of the outstanding issues facing the GNS might take some time to resolve. On comments made by the representative of the European Communities, he noted that developing countries might encounter difficulties in opening up their service sectors in view of the absence of domestic competition in those very sectors. As well, on the issues of special and preferential treatment for domestic service providers through the use of subsidies as well as on that of the required freedom to curb the potentially restrictive business practices of multinational enterprises, he said that it was still unclear what solutions could be envisaged. Developing countries would, however, require some flexibility in regard to both sets of issues. The preamble contained in the US proposal accurately reflected the mandate given to the GNS. He said that his delegation had problems with the scope of the agreement envisaged in the US proposal, noting that it concerned not only issues relating to trade in services but also to issues which did not, such as foreign direct investment. Another problem was that the submission eschewed the issue of a definition of trade in services. It was of fundamental importance for the Group to make progress in delineating the possible elements of a framework. In regard to Article 12, he was unclear as to what was meant by the publication of all

judicial rulings and decisions. He reasserted his delegation's opposition to the idea of prior notification and/or consultation. In regard to Article 13, he said that given the current state of service industries in most developing countries, there might be a need for domestic providers to benefit from government aid. He wondered whether there was any need for Article 14 in a services agreement and asked what precise role would be assigned to the International Monetary Fund in regard to the provisions of the framework. Addressing the Austrian submission, he agreed that services impacted upon a wide set of national policy objectives and concerns. He welcomed therefore the suggested need for a cautious approach to services trade liberalization, which had to be conceived as a long-term process. He expressed serious doubts as to whether the results of the current negotiations would determine those sectors to be included under a framework agreement and the extent of the liberalization process. It was in his view more realistic to expect by the end of the Uruguay Round the delineation of the elements of a framework agreement and leave the actual process of progressive liberalization in individual sectors and/or transactions to future negotiating rounds. This was all the more advisable in view of the lack of information which could enable developing countries to decide what might be put on the negotiating table. It was not realistic therefore to expect - beyond the framework itself - initial contributions in the form of sectoral liberalization undertakings. He asked the Austrian delegation what would be covered by a standstill/freeze provision. Turning to the paper submitted by the Korean delegation, he endorsed the idea that initial commitments during the course of the Uruguay Round should be made solely in relation to framework principles and rules and that commitments on market access and national treatment should be negotiated in future rounds. He agreed that market access would be granted under certain conditions and that national treatment would follow once such conditions were met by foreign service providers. Finally, he felt that Korea's ideas on the increasing participation of developing countries should be further elaborated with a view to making them operational. His delegation was entirely in agreement with the idea expressed in paragraph 10 of the communication from Indonesia, MTN.GNS/W/81, that the framework agreement should be attractive and worthwhile joining for developing countries. In that context, he also appreciated section IV of the paper which related to the need to emphasize process rather than rigid rule-making in the formulation of the framework agreement. He endorsed the views expressed under section VII on the participation of developing countries but noted that the challenge still remained as to how to give operational content to such concerns. It might not be sufficient to include a provision on infant industries in services since in many developing countries such industries were still inexistent. He supported the view that conditions might be attached to the entry of foreign providers into the markets of developing countries along with the notion that more favourable treatment could be granted to nationals of developing countries depending on the realities of each sector. Finally, he agreed that no formal linkage should be established between negotiations on services and negotiations on goods. Regarding the elements which still deserved more attention, he cited the issues of definitions, statistics, international arrangements and the operationalization of development-related concerns.

16. The representative of Egypt welcomed the recognition set out in the preamble of the communication from the United States, MTN.GNS/W/75, that the increasing participation of developing countries was an important element to be taken into account in an agreement on trade in services. However, he disagreed with the formulation in the communication since it might lead one to believe that development would flow automatically from progressive liberalization. With regard to scope and coverage (Chapter II, article 2), he would have liked to see more concrete provisions on definitions. He enquired whether the formulation on annexes was supposed to imply that countries could have individual interpretations of provisions of the agreement with respect to certain sectors. Regarding establishment, he objected to the formulation to the extent that it implied a right for foreign firms to establish in importing markets. As to the cross-border provision of services, he said that granting a right to non-establishment could run counter to national policy objectives such as those embodied in prudential regulations. He disagreed that the emphasis on the temporary entry for services providers should be placed solely on senior managerial personnel essential to the provision of a covered service and enquired whether the omission of any language on m.f.n./non-discrimination in that context was intended. He objected to the inclusion of the use of the service of public telecommunications networks under a definition of market access as attempted in paragraph 8.1.2. He noted that according to article 9, non-discrimination was intended to apply only to signatories of the agreement. Regarding transparency, he continued to object to the idea of prior notification and comment. On government aid, he request further clarification as to how the delegation of the United States envisaged to determine injuries caused to the interest of another Party. Regarding short-term restrictions for balance-of-payments reasons, he had doubts about whether the formulation of article 15 would suffice for developing countries which had long-term balance-of-payment problems. Also, he did not see how there could be a multilateral determination of policies appropriate for individual countries to pursue. Regarding short-term balance-of-payments restrictions, he said it was not desirable to identify from the outset a time-limit within which safeguards action could be undertaken in that context. The role envisaged for the International Monetary Fund (IMF) in the communication went far beyond its counterpart in the GATT. The IMF should continue to play its diagnostic role in the monetary field and not have a direct involvement in the fulfilment of the provisions of the framework agreement.

17. Regarding the communication from Japan (MTN.GNS/W/82), he noted that considerable emphasis was placed on liberalization as the ultimate aim of the framework agreement. This view overlooked the agreement reached in Montreal that liberalization was not the objective per se of the negotiations but was a very important instrument in the achievement of the growth and development of participating countries. Where the application of national treatment and m.f.n./non-discrimination would not suffice for the achievement of market access, he enquired what was envisaged by the delegation of Japan in terms of additional substantive operational clauses. He pointed out that whenever participating countries could not make full use of market access opportunities provided by trading partners, the level of further obligations to be subscribed to under the agreement might be affected. In such cases countries should not be allowed to go back on commitments made but admittedly

their ability to make additional commitments would be lessened. Regarding transparency, he agreed that the principle should be applied to professional associations and that the notion of prior notification was unacceptable. Regarding the communication from Austria (MTN.GNS/W/79) he requested some clarification on whether different levels of commitments were envisaged in the framework (e.g. with respect to bound and unbound services). He agreed that the principle of market access should be closely linked to the definition of trade in services adopted and that the principle of national treatment should be regarded as a long-term objective. He welcomed the section on increasing participation of developing countries and found very pertinent the suggestion that the maintenance of a certain level of domestic services production should be regarded as a legitimate national policy objective. He enquired what kinds of special régimes were envisaged by the delegation of Austria with respect to public entities, state-owned enterprises and firms with dominant market positions.

18. Regarding communications submitted by the delegations of Peru, Indonesia, Korea and Mexico, he said they all made significant contributions to the issue of how to fulfil the development objective. Development-related concerns should permeate the entire structure of the framework agreement. The notion of an increasing participation of developing countries in world trade in services should be operationalized taking into consideration three different dimensions - namely, import performance, export performance and domestic performance. Relevant elements with respect to import performance included: forms of import management, role of producer services, role of joint-ventures, market access conditions with respect to the transfer of know-how. Relevant elements with respect to export performance included: preferential market access opportunities, access to information networks and distribution channels, differential tax rates, availability of information on export opportunities. With respect to domestic performance, he emphasized the role of preferential treatment and incentives being granted to domestic services providers.

19. The representative of Sweden, on behalf of the Nordic countries, commenting on the submission by Singapore (MTN.GNS/W/78), agreed that wide participation was itself an important element to be considered in the drafting of the framework agreement. Similarly, the agreement should be dynamic and forward-looking, providing incentives for liberalization, not least in order to promote economic growth and the development of developing countries. The paper pointed to some shortcomings involved in an agreement with agreed sectors. As to the second option outlined - i.e. a framework with individual offer/exception schedules - further study was required since he was not convinced that an individual schedule of market access commitments to which framework principles fully applied but where exceptions might need to be specified constituted a realistic approach. The idea of a "minimum entry price" was very relevant in the context of avoiding the free-rider problem and achieving a balance of rights and obligations. He assumed that even though something which did not figure on a schedule might not be subject to the operation of framework principles at the outset, it could still be subject to progressive liberalization commitments in the future. He was in agreement with the general extension of benefits on a m.f.n. basis. Binding of existing levels of market access would constitute a significant

contribution to the outcome of negotiations and the idea of applying framework rules to an entire sector was worth exploring. Finally, on development considerations the first three points of the submission by Singapore seemed reasonable and balanced whereas the fourth point regarding corporate practices could be best handled in the context of domestic competition law.

20. Turning to the submission by Indonesia (MTN.GNS/W/81), he agreed that the framework should be supportive of development, as anything else would be unfaithful to the mandate of the Group. Rules applying in the goods sector should not be transposed but adjusted to take account of the "realities of services trade" (paragraph 16). A balanced approach was indeed needed to encourage the participation of developing countries, the strengthening of their services capacity, development and the liberalization process. Following the elaboration of a framework, the Indonesian submission envisaged sectoral agreements or annotations on a request-offer basis but it was not sufficiently clear whether such agreements should be self-contained or whether trade-offs between sectors were also foreseen. He hoped that the gradual extension of commitments as referred to in paragraphs 21 and 27 was not intended as a self-selective process but that it was negotiable both initially and thereafter. He agreed fully that it was in the application and implementation of rules that appropriate flexibility was needed to accommodate developing country needs. As both the Singapore and Indonesian papers had underscored, liberalization commitments could be less comprehensive and time-frames could be longer for developing countries. It was recognized that foreign competition could make a positive contribution to overall efficiency and welfare. He agreed that the strengthening of domestic services capacity could be achieved through foreign participation on a joint venture basis. The undertaking of progressive liberalization on a transaction basis constituted a rather narrow approach and more broadly based approaches with appropriate flexibility for developing countries should not be ruled out. Turning to the question of credit, he said further study was still required on the part of his delegation.

21. The Nordic countries understood that the submission by Korea (MTN.GNS/W/80) was of an evolving character. He agreed that the Group should also aim for a balance of rights and obligations among signatories and that the sectoral coverage of the agreement should be universal. However, it was not sufficiently clear whether a list of sectors should be attached to the agreement. As to the results at the end of the Round, the aim should be higher than simply agreeing on a few principles. He agreed, however, that periodic negotiations should take place after the Round so as to ensure a process of liberalization over time. Fine-tuning the services agreement with results in other Uruguay Round groups would probably also be necessary. He agreed with the basic idea in the Korean paper that the agreement should contain incentives for future liberalization and mechanisms for progressively reducing access restrictions. As regards the sections on m.f.n. and transparency, he basically agreed with most of what had been said. The suggestion regarding Article 10 of the Technical Barriers to Trade Code was a useful one. He saw great difficulties in elaborating provisions which would mandate the transfer of proprietary technology. However, the framework agreement could be conducive to a transfer of technology by creating an

environment which would lead to a quicker diffusion of skills and know-how since this ultimately depended on what happened at the company level. Regarding the application of principles and rules, it would be interesting to know why market access and national treatment should not be applied. He hoped what was meant was that market access and national treatment were not applicable unless a concession had been made and set out in the schedule. Korea seemed to outline a reservations process which was broadly similar to the model by Singapore - i.e. concessions were listed in schedules but specific exceptions were listed as reservations thereunder. Finally, as regards the concessions and modalities of negotiations, the approach was well in line with the thinking of his delegation.

22. The submission by Japan (MTN.GNS/W/82) brought out the relevance of market access by relating it to the consumer's benefits from liberalization as well as the spin-off effects on the economy as a whole. For the Nordic countries, the consumer aspect had been one of the most prominent motivating factors in elaborating a multilateral framework for liberalization of trade in services. He agreed that reciprocity was not the optimal tool in cases where concepts such as m.f.n. and national treatment were insufficient to achieve market access. It would be interesting to know in greater detail what kind of "individual rules" Japan envisaged in such cases. In the section on progressive liberalization, he shared the notion of a freeze coupled with an initial package of liberalization measures and periodic negotiations to follow thereafter. The question of assessing the liberalization commitments raised the importance of ensuring incentives for further liberalization and the avoidance of free-riders. It was worth exploring the idea that enquiry points could also act as conduits for information on regulatory matters falling under private auspices. He understood that m.f.n. might prove difficult in some sectors and that this would need to be taken into account in drafting the framework. He believed that a provision allowing for regional economic integration agreements were needed in a framework. Such agreements should be seen as contributing to the fostering of multilateral trade. However, they should be subject to appropriate standards for which the criteria set out in GATT Article XXIV might well serve as general guidelines for drafting. As regarded the submission by Austria (MTN.GNS/W/79), it raised a couple of questions on whether to take a modest or ambitious approach to the outcome of the GNS.

23. The representative of Hungary supported a universal sectoral coverage and warned against a selective approach to the issue whereby sectors could be excluded from the scope of the framework agreement. The danger inherent to that approach was that a "domino effect" could ensue with each country excluding its own sensitive sectors from its national schedule. He disagreed with the mechanism for liberalization proposed in the communication from the United States whereby all services would be automatically subject to market access commitment based on national treatment unless otherwise specified in individual country lists of reservations. Market access should not be an automatic right but should be subject to negotiation and granted on a progressive basis. He agreed that the provisions of the framework should apply to sub-national governmental bodies but suggested that they should also be extended to apply to non-governmental bodies which also regulated services activities. Regarding the notion of protocols in the US submission, he

requested further clarification as to whether such arrangements would not imply sectoral reciprocity. As to the notion of special agreements among countries relating to excluded sectors, he was very much concerned that once such agreements were concluded it would become next to impossible to bring back the sectors in question under the provisions of the framework agreement. Regarding market access, he noted the imbalance in the treatment of the mobility of production factors whereby establishment was envisaged as an automatic right unless reserved while the mobility of labour was confined to senior managerial staff. In a criticism which also applied to the approach adopted by the delegation of the EC, he said that permanent concessions should be envisaged not only with respect to capital movements necessary for establishment trade but also with respect to labour movements, both unskilled and skilled, essential for the provision of services. He saw a major weakness in the US approach to reservations with respect to national treatment. He failed to understand how the US approach would be applicable for countries which lacked elaborate regulatory systems regarding certain services sectors. He said that the application of the m.f.n. principle to the results of bilateral and plurilateral negotiations could be very difficult and further thought should be devoted to that point. As to the notion of a freeze of existing regulatory régimes and/or existing degrees of openness, he was concerned that countries with an already liberal regulatory environment would gain less from such an approach than countries whose existing regulatory régimes provided for relatively high levels of protection to domestic service suppliers. The notion of a freeze would also be difficult to envisage for countries whose regulatory régimes were not yet very developed. Finally, he found the formulations of Articles 14 and 15 in the communication from the U.S. to be too broad and far-reaching in the context of the objectives of the framework agreement.

24. The representative of Hungary drew attention to paragraph 41 on page 13 of MTN.GNS/26 and noted that the reference to "national treatment" should be deleted in the sentence attributed to his delegation which read: "He said that national treatment and m.f.n. should be considered as general obligations to be included under paragraph 1(b)".

25. The representative of New Zealand appreciated the emphasis placed in the communication from Korea (MTN.GNS/W/80) on the merits of a general set of rules and principles applying to trade in services alongside a process of exchange of concessions. However, the proposal was somewhat unclear on the differences between rules and principles. Only transparency seemed to be a rule to be applied across the range of covered services, notification being required only where concessions existed. She enquired whether the delegation of Korea envisaged any liberalization at all taking place at the time of the entry into force of the agreement. She noted that Korea seemed to favour a universal sectoral coverage including all mobility of production factors and requested some clarification as to how such a universal coverage could be achieved through positive lists as suggested in the communication. She said that the process of request and offer proposed in the communication did not constitute a truly multilateral approach to liberalization and enquired whether the application of the m.f.n. principle would be automatic. It seemed as if the application of national treatment would follow once market access had been granted. She requested some clarification as to whether the

conditions to be attached to the granting of market access related to modes of delivery, scope of activities and global quotas. Regarding the communication from Austria (MTN.GNS/W/79), she found it to lack in ambition, providing for the possibility of exceptions with respect to various elements of the framework agreement. She said her delegation preferred a cross-sectoral approach to the negotiations and not the type of sectoral approach set out in the communication. Such a sectoral approach implied less than a universal coverage while providing for the possibility of exclusions. It was the view of her delegation that even when countries were not able to abide by generally applicable rules at the outset, there should be some minimum obligations applied such as transparency. She asked for some clarification on what transborder transactions were intended to mean as the application of national treatment and m.f.n. seemed to be restricted to such transactions. She enquired whether there would be a uniformly agreed upon list of sectors determining the coverage of the agreement. Further elucidation was also required with respect to whether the application of m.f.n./non-discrimination was intended to be restricted to countries which had also liberalized in a particular sector. Similarly, the granting of national treatment seemed to be linked to the notion of sectoral reciprocity and needed additional clarification. Even though she joined others in recognizing the difficulties involved in a widespread liberalization of trade in services, she noted that the communication from Austria seemed to enshrine the status quo, not leaving much scope for meaningful liberalization to take place.

26. On the communication from Indonesia, MTN.GNS/W/81, she was unsure as to what a flexible, process-oriented, building-block approach was intended to imply. She could accept, however, that such an approach would allow developing countries to liberalize their services trade progressively through longer time-frames and fewer initial concessions in line with their different levels of development. She requested some clarification as to whether the Indonesian approach to liberalization implied a two-tier process where a general application of rules and principles to all sectors covered by the agreement would be followed by a request-and-offer process relating to sector-specific concessions. Alternatively, she asked whether the process suggested implied that the actual agreement on trade in services could only be negotiated later, with the framework being an initial step towards that aim. Broadly applicable rules were of special importance to developing countries since they could serve as the foundation for the process of exchange of concessions. Such rules would also facilitate the establishment of a viable dispute settlement procedure. These rules could furthermore apply beyond the areas where concessions were exchanged to encourage non-discriminatory trade and to ensure that some commitments were undertaken by all signatories regardless of their initial level of undertakings. She was very much concerned with the emphasis placed on sectoral agreements. Regarding specific suggestions as to how to operationalize development-related concerns, she cited the following as relevant: slower market opening by developing countries, the inclusion of sectors of export interest to developing countries, encouragement of joint-ventures. Regarding provisions for infant industry protection, she could not see how national treatment could be granted in a relative manner so as to protect nationals of developing countries depending on the realities of each services sector. She

agreed in principle with the notion of credit being granted for liberalization already undertaken but suggested that it would be difficult to operationalize such a notion in the absence of commitments contingent on the signature of the agreement.

27. On the communication of Japan, MTN.GNS/W/82, she said that her delegation could agree with many of the points made therein, including the notion of reservations, the formulation of market access alongside the need for a result-oriented approach, the need to avoid sectoral reciprocity and the formulation of national treatment as a rule in the agreement. On coverage, Japan seemed to favour a positive list approach but it was not sure that such an approach would accomplish a truly universal sectoral coverage, especially as the communication seemed to leave open the possibility for sectoral exclusions. She enquired to what extent could reservations be placed with respect to m.f.n. and national treatment and failed to understand why a protocol of provisional application was necessary for legislation contrary to national treatment in addition to the possibility for lodging reservations. She suggested that special agreements should be permitted only under exceptional circumstances and should not constitute a carte blanche for arrangements regarding excluded sectors. She also requested further clarification on the notions of freeze, rollback and their relationship to the process of progressive liberalization.

28. She welcomed the U.S. submission in MTN.GNS/W/75 as it was the first attempt to set out a draft agreement in legal terms. There were many elements of the communication with which she could agree including the broad approach ensuring that the agreement provisions took the form of obligations. In principle she supported the article on market access but she would deal somewhat differently with certain specific aspects contained in it such as the treatment of the movement of services providers. The provisions on national treatment and non-discrimination were useful drafts but she would prefer the formulation of non-discrimination to be closer to Article I of the General Agreement. She endorsed a universal sectoral coverage and the lodging of reservations with respect to certain provisions of the agreement. There were also good drafting suggestions relating to exclusive service providers, domestic regulations, local government and others. She was concerned about the provisions on general exceptions and sectoral exclusions and perceived the notions of protocols and special agreements as potential derogations from the provisions of the framework agreement. Clear language would be necessary if protocols were not intended to go beyond standards-setting and harmonization. The provision on special agreements would permit and perhaps stimulate countries to exclude sectors from the provisions of the framework agreement as a means to achieve some liberalization in those sectors.

29. The representative of Romania said that MTN.GNS/W/75 did not fully reflect the scope of the Montreal Declaration, particularly as regarded the specific concerns of developing countries. He stressed that investment in services should not be confused with trade in services and that the regulation of foreign direct investment should continue to be the sovereign prerogative of nation-states. He objected to the notion of permitting countries to conclude special agreements for excluded sectors as many developing countries would not be able to reap any benefits from such a

parallel process to that of progressive liberalization based on the rules of the framework agreement. Concepts of special relevance to developing countries included unconditional m.f.n. treatment and relative reciprocity. Developing countries should be allowed to grant preferential treatment to domestic providers of services with a view to strengthening their services capacities. He agreed that national treatment should be conceived as a long-term objective and not as an obligation. He objected to the notion of granting compensation to foreign services providers with relation to the privileges exclusively enjoyed by domestic public monopolies. He also found the notion of prior notification and comment to be unacceptable. On the communication from the European Communities, MTN.GNS/W/77, he said that his delegation supported the idea that liberalization commitments should be bound in the framework on the basis of unconditional m.f.n. among signatories. He suggested, however, that regional agreements among signatories should not in any way affect trade in services with third countries. He appreciated the inclusion of considerations as to how to provide for the increasing participation of developing countries in world trade in services in the communication from Austria, MTN.GNS/W/79. He was also in full agreement that only certain general provisions (e.g. transparency) should apply to the coverage of the framework agreement at the time of its entry into force.

30. The representative of Canada, in referring to a point made by the representative of Egypt, asked whether the conditions to be attached to market access commitments could apply to both establishment and cross-border trade in services. He was generally concerned with the low level of commitment apparent in Austria's submission in MTN.GNS/W/79 in relation to liberalization undertakings during the Uruguay Round. The paper seemed to over-emphasize the need for exceptions and derogations in the framework agreement. There was a considerable emphasis on sectoral reciprocity while m.f.n. should not be envisaged in sectors excluded from the coverage of the agreement. The communication from Korea, MTN.GNS/W/80 also did not seem to envisage the undertaking of considerable liberalization commitments within this round of negotiations. The suggested formulations on subsidies, countervailing measures and anti-dumping gave rise to considerable doubts on the part of his delegation. He requested further clarification on the application of national treatment, the operationalization of the concept of increasing participation of developing countries and on the need for reservations in light of the general approach adopted in the paper. He welcomed the communication from Indonesia as a very useful contribution on the rationale for the participation of developing countries in world trade in services and in the framework agreement. He requested further clarification as to how a re-ordering of the conceptual basis of the agreement could be accomplished and asked what could be the conditions attached to the granting of market access. He supported the notion of credit being granted for the liberalization already undertaken but only if it was somehow reflected through bound commitments.

31. On the submission by Japan in MTN.GNS/W/82, he asked for clarification as to how the concepts of transparency, progressive liberalization, national treatment, m.f.n./non-discrimination would relate to the notion of negotiated reservations or exceptions. It was also unclear to him how the Japanese delegation envisaged to assess the balance between liberalization commitments

and reservations or how it expected to draw on the benefits of economic integration efforts by other participating countries. On the communication from Peru, MTN.GNS/W/84, he remarked that the positive list envisaged in it was different in content than the ones proposed by other participating countries. According to Peru, positive lists should include a list of sectors, sub-sectors and transactions which countries would be prepared to negotiate on. According to Canada, positive lists comprised actual undertakings countries would commit themselves to following the negotiations. He asked for clarification as to the information to be provided by private market operators under the provision on transparency included in the communication. He was not sure whether to equate the notion of counter-notification mentioned in the paper to the notion of cross-notification. Regarding m.f.n./non-discrimination, he was concerned with the assumption which seemed to be made that general derogations from the principle of m.f.n. would be permitted for developing countries. On market access, he noted that conditions would be attached to the commitment but was unsure about their scope of application (e.g. to what modes of delivery).

32. The representative of Jamaica noted that in the Japanese paper market access was referred to as a major objective and as a guiding principle. The GNS mandate treated market access as a condition for trade expansion and as a means of economic growth and development. He agreed with the Japanese position on prior consultation and prior notification. He noted the view that the area of immigration policies did not lend itself to national treatment. But it was not clear how cross-border movement of labour might be treated in a framework. In addition, how would other issues such as investment codes, or national labour policies be dealt with? He considered that national treatment could be more usefully discussed when trade in services was defined. Regarding the grandfathering of existing measures and regulations, he said that where there was considerable disparity between the levels of services legislation grandfathering could deepen asymmetries between developed and developing countries. He agreed that m.f.n. and non-discrimination should be accorded to participants in the framework without discrimination but urged that regional arrangements between developing countries should be viewed in the context of strengthening the services capacities of those countries. Turning to the Austrian submission, the Jamaican representative said that on national treatment Austria had a non-m.f.n. approach and that the imbalance between the extent of national regulations in services between developed and developing countries could create difficulties in achieving such mutual recognition on a basis acceptable to both parties. M.f.n. would be applicable only on a sectoral basis which was, in his view, a serious deficiency which could limit the scope for participation of developing countries in particular. The section on exceptions and safeguards showed that there was an entire range of issues which required careful consideration. Turning to the proposal by Indonesia, he said the concept of an "entry fee" would be useful only if developing countries in making an offer could expect that it would be reciprocated in sectors of interest to them. He was therefore concerned by approaches that could lead to significant sector exceptions by developed countries. In the paper by Korea, he welcomed the emphasis on a commonly understood universal coverage. He noted the view that sectoral agreements should be made only in exceptional cases and emphasised the importance of achieving sufficient

breadth and balance in terms of sectors covered. Concerning the submission by Singapore, he asked with regard to the second of the two broad approaches identified - a framework with agreed sectors and a framework with individual offer/exclusion schedules - what was there to ensure that when a developing country made an offer to satisfy, say, a minimum entry condition that the offer would be paid for in concessions in sectors of export interest to the developing country. He suggested that a combination of the two approaches might be better in that it envisaged agreement on inclusion of specific sectors of export interest to developing countries.

33. The representative of Peru commented that the Austrian paper's emphasis on sectoral reciprocity would lead to serious problems for developing countries in taking part in any negotiations. He agreed with the Indonesian proposal that there should not be mechanical application of the concepts and rules which governed trade in goods to the trade in services area. He wanted to qualify the idea of an entry fee as it was closely linked to levels of development; the entry fee would have to be higher for the more developed and lower for the less developed trading partners. He considered that the notion of conditions of access to markets for foreign suppliers, which was close to the idea of relative national treatment proposed by his own delegation, deserved closer consideration. Concerning the views of Japan on progressive liberalization, he noted that rollback should be the rollback of negative measures which constituted barriers to trade but should not be the dismantling of those measures which in fact protected trade. Concerning national treatment, he said that not only should immigration policies not be dealt with under national treatment, but it was also essential to find a balance between production factors i.e. foreign investment and immigration.

34. Regarding the rights and obligations of a framework agreement the representative of Japan considered that the freedom of establishment was an important concept but should not be an obligation as had been stated in the U.S. proposal. As concerned non-application, his delegation believed that any such provision should not allow misuse. The protocol approach outlined in article 3.2 of the American proposal might be too wide ranging and he suggested that any relevant provision should ensure that protocols could only be used in a limited way. In addition, he considered that reservations could be permitted either for sectors or for specific measures or activities in service sectors. Turning to the issue of scope or coverage, he preferred the U.S. reservations approach; if the GNS could agree on scope it would not be wise to spend too much time on the definition of what was trade in services. The idea of a special agreement contained in article 3.3. of the U.S. proposal allowed for coverage of all sectors under the umbrella of the Uruguay Round and thus met the spirit of the Montreal text. He wanted to know to what extent the framework principles would apply to a sectoral agreement, if a sector was made subject to such an agreement and the parties proceeded towards progressive liberalization in that context. Regarding the institutional question, he noted that dispute settlement in services trade and the kind of organization needed to run the agreement were complex issues requiring further study. In order to better meet the concerns of developing countries, he suggested inter alia longer phasing-in periods when reservations were being negotiated.

35. The representative of Yugoslavia said, referring to the United States proposal, that the universe of coverage and the overall balance of interests could be endangered if countries began to exclude sectors or parts of sectors. Provisions regarding protocols, special arrangements, non-application, as well as national treatment for capital movement and discrimination for other production factors, would not attract the widest possible participation of countries. Regarding transparency, she said that notification should also apply to professional and other business operators and their activities. The U.S. proposal did not offer a solution regarding the compatibility of a services agreement with existing international disciplines.

36. The representative of Korea, referring to the United States submission, asked the American delegation for clarification of the proposed relationship between the IMF and a body for trade in services outlined in article 14. He considered, that the requirements laid down in article 15 on restrictions for balance-of-payments reasons were too narrow and limited. He doubted that it would be practicable to apply such a provision. Turning to the Japanese proposal, he referred to the differentiation made between guiding principles (e.g. market access) and simple principles and asked what the differences between them were. Regarding transparency, his delegation fully supported the Japanese approach, in particular regarding the establishment of enquiry points and the views on prior notification. He also agreed that the benefits of regional economic integration should be open to other participants in the framework agreement.

37. The representative of Australia commented on the Japanese submission and wanted to know how the proposed "freeze plus rollback" would work. Once a freeze had been imposed, was the rollback negotiated or were participants required to volunteer some initial rollback? What would be the modality for further rollback? How would the coverage of such a freeze be determined? What disciplines would apply? On the core principles, she endorsed the general approach to transparency including that a requirement for prior notification was not appropriate. She supported the view that reservations could be made against national treatment while ensuring that mechanisms existed to diminish through negotiation measures which prevented the full application of national treatment. It was, however, not desirable to provide for exclusions of national treatment through protocols of accession or of provisional application. This might institutionalise, within the framework of obligations in the services agreement, problems which had been the cause of major imbalances of obligations in agricultural trade under the GATT. She welcomed the endorsement of unconditional m.f.n. by Japan and agreed that the free-rider problem resulting in imbalances should be addressed in future market access negotiations. Her delegation was not averse in principle to reservations against m.f.n./non-discrimination and, in addition, welcomed the rejection of the concept of reciprocal market access. Furthermore, she also welcomed Japan's recognition of the need for regional economic integration arrangements under specified conditions but was unclear as to how the benefits of economic integration could be "opened" to other participants in the framework agreement. Turning to the Korean submission, she welcomed its focus on horizontal rules and principles of general application which had the effect of downgrading the need for sectoral

agreements. The m.f.n./non-discrimination provision appeared strong and her delegation wished to see m.f.n. applied automatically to all services under the agreement. However, her delegation was disappointed with the level of ambition for liberalization commitments inherent in the Korean approach. She did not share the view that national treatment should be excluded from horizontal application and suggested that Korean concerns on national treatment could be covered through a reservations approach. She agreed that market access concessions should be negotiated but believed that, in the absence of national treatment being obligatory, i.e. a rule in the agreement, commitments to give access to markets could easily be nullified. Making national treatment subject to separate negotiation would seem to put countries with limited negotiating leverage in a disadvantageous position. Korea envisaged a reservation procedure and she suggested that this modality could provide a means for individual countries to exempt certain sub-sectors, activities or transactions within a sub-sector from, for example, the national treatment provision as well as from other specific provisions in the framework agreement. Regarding transparency, she did not see this obligation being limited for individual signatories to only those services which they had opened to market access, but rather extending to the universe of traded services. This was necessary to facilitate the ongoing process of negotiating in the future the inclusion of reserved or excluded sectors. While agreeing that prior notification should not be required, she wondered whether it was necessary to exclude it under the agreement; if some countries wished to notify in advance, they should be free to do so. On the structure of the agreement, her delegation supported the strong emphasis on a general agreement vis-a-vis sectoral agreements, but believed that the GNS should aim to move into step 2, i.e. negotiation of concessions, during the Uruguay Round. The agreement should also provide that negotiation of concessions should continue automatically at agreed set intervals after the conclusion of the Round. Finally, she agreed that the framework agreement should contain provisions on monopolies and economic integration arrangements.

38. The same representative then turned to the Indonesian submission which, in her view, did not fully elaborate the specific development needs. Indonesia appeared to envisage a multilateral framework with loose rules and disciplines. This approach had over the longer term damaged the trade of smaller developed and developing countries in the goods area and a similar outcome would be certain in services. The looser the rules, the greater the scope for bilateral pressures and discriminatory deals. She agreed with the view that liberalization should not necessarily be perceived on a sectoral basis. Combined with the ability to apply reservations and negotiate market access at the sub-sectoral level, developing countries had considerable flexibility in meeting developing needs. The Austrian approach represented a minimalist building-block approach. It was very loose on specific commitments and core rules and seemed to envisage that only transparency would become effective at the end of the Uruguay Round. It contained almost unlimited flexibility for countries to do as they pleased in view of the low level of obligations envisaged. Inevitably this would result in very few rights and benefits being accorded to signatories under the agreement. M.f.n. was was interpreted on the basis of "comparable" liberalization at the sectoral level rather than as a means of achieving an overall balance of

rights and obligations across all sectors, and was an approach which her delegation could not accept. The submission stated that market access should be accorded to those sectors and transactions covered by the liberalization process but acknowledged that this could be limited to only a few sectors or only certain services of a particular sector. It also envisaged market access being restricted in the case of signatories excluding too many sectors or excluding a sector of importance to other signatories. The effect of all these qualifications was to deny the prospect of multilateral benefits from liberalization. National treatment was viewed as a long-term objective and not an obligation, and was envisaged as only being granted on a sectoral basis in the form of bilateral or plurilateral agreements on mutual recognition of national regulations. The Austrian approach also placed emphasis on exclusions from national treatment for "national policy objectives". Her delegation was seeking a much more ambitious approach and wanted to see benefits such as national treatment extended on an m.f.n. basis with the possibility of intersectoral concessions or trade-offs. Turning to the regulatory situation, she said that under the framework participants should have an incentive to bring national regulations gradually and progressively into conformity with the agreement's provisions. The focus of the GNS negotiations should be on the trade distorting effects of national policies, laws, regulations and administrative practices. National regulations should therefore be considered in the context of the fundamental trade principles of national treatment, non-discrimination and transparency. Her delegation believed that national treatment should be a rule, not only an objective, under the agreement but recognized that it could not be granted in all services areas from the outset. National treatment provided for respect for national policy objectives in that it required that regulations to effect national policies be applied in a manner which did not discriminate between foreign and domestic services and services suppliers, thereby providing equivalent opportunities. Within the confines of the rules of the agreement, the sovereignty of national regulations would remain. If a country did not regulate a particular sector at present and might wish to do so in the future, it would do so in a manner which was consistent with the agreed rules. If it wished to do otherwise, it would reserve on the regulation. Turning to the submission from Singapore, she welcomed that Singapore envisaged all covered services being subject to the framework but noted the idea that those sectors that did not appear in individual offers schedules would not be open to further liberalization. She was concerned that under such an approach services covered by individual participants could be very narrow and provide little inducement for countries to join such an agreement.

39. The representative of Hong Kong, in referring to the submission by Singapore, said the paper compared two broad approaches for establishing a framework. It was not clear whether the first approach referred to separate sectoral agreements or to a collection of agreed sectors. The approach based on individual offer/exception schedules had drawbacks including the difficulty of ensuring that items of export interest to small participants would be included; there would be numerous exceptions in this approach. He noted the emphasis on bilateralism in Singapore's approach which tended towards the least liberalization with the least pain, leading to a small package of individual offers. It appeared that whatever was not included in individual offer schedules would not be open to progressive liberalization.

He found the concept of minimum initial commitment useful and, in his view, the crucial question was whether an objective approach could be devised to determine what should be the price of the entry ticket. The initial commitment would have to take into account the level of development and national policy objectives. Concerning special credits for participants which already maintained an open regime, he said one way to achieve this was to accept that ceiling bindings were permitted in order to ensure a proper balance of rights and obligations. Turning to the proposal by Austria, he said that on progressive liberalization he was not sure if sectoral annotations would include sector-specific national regulations deviating from the general provisions. He asked whether under the Austrian model m.f.n. applied to cross-border trade only or to all modes of delivery. Regarding the submission by Korea, the section on conditions of market access would be a useful input into the consideration of bindings. There was a need to state in the agreement that any restrictive measures affecting fair trade would be applied on a non-discriminatory basis.

40. The representative of Mexico, in referring to the European Community's proposal on initial commitments, contained in document MTN.GNS/W/77, asked what would be the basis of a minimum level of obligations, and wanted to know whether it meant accepting the concept of relative reciprocity. He also wanted to know what the Community meant by comparable levels of effective access to a market. Regarding the non-application of commitments, he sought clarification as to whether this referred to discriminatory measures taken on the basis of arbitrary decisions. Turning to the communication from Singapore, he asked who would define minimum entry conditions and how would this be done. It was appropriate to grant special credits to countries with open regimes of trade in services; this could be embodied in more specific form through provisions which would stipulate that in these or future negotiations priority treatment be given to sectors of interest to developing countries which already had liberal regimes. He requested that the Singapore representative explain in more detail the reference to the combination of the two broad liberalization approaches. Turning to the Austrian proposal, he asked how Austria foresaw that a balance of rights and obligations for signatories could cover market access and progressive liberalization; furthermore, what did the proposal mean when it stated that in certain instances granting effective market access might depend on reciprocity. Regarding m.f.n./non-discrimination he did not agree with the proposal which would merely bind discrimination and would exclude from the outset any possibility of applying the concept of relative reciprocity. Regarding m.f.n., it was his view that an m.f.n. clause should entail immediate and unconditional application. He found the comments on exceptions and safeguards interesting and suggested that to the measures to be included should be added the prohibition of developed countries to subsidise the export of services as had been indicated in his country's submission.

41. The representative of Israel noted that in the Singapore proposal the idea of request and offer schedules was a flexible and dynamic approach that could serve as a good basis for negotiations. He supported the idea of special credit for liberalization measures already undertaken. The Austrian approach tended to be sectoral which would limit the universe of services covered by the agreement. The idea of applying m.f.n. on a vertical,

sectoral basis would inhibit the possibility of cross-sectoral concessions. The inclusion of a statement on fair competition in the agreement would be a welcome step. The idea of reciprocity, however, was a problem for small and less developed countries. He agreed with the view expressed in the submission by Korea that the framework agreement should contain obligations for both central and local government entities as the latter were, in many cases, the source of regulations in services sectors. It was not clear to what extent the Korean approach envisaged the possibility of cross-sectoral concessions and thereby facilitate wide participation in the agreement. Turning to the communication by Japan, he was sceptical of the view that the opening of markets would also benefit the importing country through capital formation and transfer of technology. He considered it necessary to examine the possibility of providing rules and guidelines to enhance the transfer of technology as relying only on market access would not be sufficient to ensure technology transfer, particularly in the case of small and less developed countries. GNS participants should be cautious about grandfathering existing laws as it might give advantages to countries that maintained more elaborate regulatory legislation than other countries. The proposal by Indonesia contained interesting ideas on infant industries which required further examination. However, he was concerned about the notion of relative national treatment and requested clarification on this point. Regarding the United States proposal he was concerned that separate special agreements and protocols could restrict the coverage of the agreement and lead to different levels of membership which could empty the m.f.n. principle of any meaning. Furthermore, regarding article 15 on balance of payments restrictions, he noted that U.S. ideas on balance of payments safeguards were too restrictive.

42. The representative of Czechoslovakia said that respect for national policy objectives and the development of developing countries needed to be reflected in a framework. He felt that there was a need for more in-depth work on the possible implications of applying concepts, principles and rules. It was important to bear in mind the differences which existed not only in regard to general economic levels but also in regard to the international competitiveness of domestic service industries. In addition, attention had to be given to the consequences of marked differences in regulatory structures across countries. He recalled that negotiations aimed at the progressive liberalization of trade in services should continue beyond the Uruguay Round.

43. The representative of Costa Rica agreed with those delegations which had emphasized both the need for enhancing the access of developing countries to technology and the resulting competitive gains for domestic service producing capabilities. His delegation also agreed on the need for a balanced treatment of the movement of production factors, be it capital, labour or technology. Provisions aimed at securing greater transfer of technology towards developing countries would promote these countries' participation in world services trade. The process of progressive liberalization could give rise to the emergence of firms in dominant market positions; multilateral action was required in order to lessen the scope of restrictive business practices which might prove prejudicial to developing country interests by limiting the range of possible service offerings from domestic providers.

44. The representative of Colombia shared the views expressed in the Mexican submission, particularly those concerning the need to strengthen the domestic service capabilities of developing countries and to respect national policy objectives. He also considered it necessary to provide for the greatest degree of symmetry between the various factors of production. He stressed the need for developing countries to assimilate the knowledge and technology which was embedded in services imported from developed countries. His delegation considered the concept of relative reciprocity of considerable relevance given the competitive asymmetries which existed in the world market for services. A framework should contain provisions aimed at promoting on a priority basis - both during the Uruguay Round and in subsequent negotiations -- service sectors of export interest to developing countries. His delegation favoured a positive list approach as it better suited the ever-changing international landscape of service transactions. He recalled that national treatment was a long-term objective for developing countries. He emphasized the need for better service statistics, both in regard to domestic production and international trade.

45. The representative of Morocco said that the large number of contributions before the Group indicated the clear willingness of Group members, among which many developing countries, to carry work forward. He felt that Singapore's submission provided a sound basis from which to promote the increasing participation of developing countries. He welcomed the idea on crediting those countries whose service régimes were already liberal. The issue of initial commitments needed to be more fully spelled out and due account should be given to the level of development of participating countries in this regard. The flexibility envisaged in the submission by Indonesia was necessary in order to ensure the truly multilateral character of a framework agreement. He welcomed Indonesia's ideas on joint-participation/joint-ventures, noting that Morocco had recently concluded an agreement with an important telecommunications group aimed at modernizing and developing the country's network and telematics capabilities by 1990. The investment package also covered the domestic manufacturing of packet switching, part of which would be exported. He agreed with Korea that the coverage of the framework should be as wide as possible. In regard to the m.f.n./non-discrimination principle, he noted that provisions should allow developing countries to engage in regional and sub-regional integration efforts among themselves. He agreed with Korea that transparency commitments should not include prior notification provisions. As Morocco was currently drawing up plans to privatize some seven hundred public sector firms, many of which were service-producing firms, it attached particular importance to the market access provisions to be included in a services agreement. He was struck by the prudence contained in the Austrian submission which treated in a most realistic and pragmatic way the modalities of progressive liberalization. Contrary to the view put forward in the Japanese submission, he said that the exchange of concessions within a regional group should not be extended to other signatories. He felt that more time was required to absorb the complexities contained in the proposal put forward by the United States.

46. The representative of Austria referring to various questions concerning MTN.GNS/W/79 emphasized that in the communication, his delegation had

expressed some preliminary considerations relating to the elements and principles of the multilateral agreement. His delegation had tried to show different situations where some restrictions might be necessary. He believed that the main task of the Uruguay Round was to negotiate a multilateral agreement with all necessary elements and principles, adding that some liberalization measures should be achieved until the end of the Uruguay Round. The degree of liberalization achieved by the end of this Round would depend mainly on the negotiations next year and substantial liberalization steps should be negotiated in future regular negotiating Rounds. Progressive liberalization was a long term objective. In goods, this process had already been going on for 40 years and liberalization was much easier.

47. His delegation had tried to point out the contents of progressive liberalization in services. It had included into this process all internationally tradeable services, as well as different transactions like factor movements, movements of consumers as well as other cross-border transactions, reductions of regulations discriminating against foreign suppliers, foreign trade restrictions in services and mutual recognition of national regulations. It was not possible to liberalize all these elements immediately, the only reasonable way being a long term liberalization process. Addressing the question of coverage, he said that Austria favoured a positive list approach. Sectors covered by the liberalization process should be set down in an Annex to the agreement. This procedure appeared to be appropriate as no generally accepted classification of services was available. As to the content of progressive liberalization, his delegation favoured the progressive inclusion of new sectors into the liberalization process. That would mean the progressive extension of the positive list. All internationally tradeable services should be gradually included into this positive list. He recalled that service sectors were very different and heterogeneous and that national regulations were different across sectors. Therefore, sectoral annotations might be important. The content of sectoral annotations would depend on the definition of the elements and principles of the agreement. All annotations might be subject to further liberalization negotiations. Referring to the question of national treatment and sectoral reciprocity, he said that foreign suppliers of services should meet the requirements in national regulations of the host country to the same extent as national suppliers in order to be granted national treatment. In many services sectors national regulations were expressions of national policy objectives, like consumer and/or environmental protection, maintenance of safety and security, etc. But there were also many sectors which were not regulated, or where there were very few regulations; in such sectors national treatment could be granted more easily. National regulations had a similar function to norms in goods trade. As expressed in his country's submission, future negotiations could aim at bilateral or plurilateral mutual recognition of national regulations. Such agreements could not be extended automatically to other countries. Very often a harmonization of regulations might result from such agreements. A sectoral approach in this respect appeared suitable because national regulations differed across sectors. Nonetheless, negotiations on mutual recognition of national regulations would be a long term undertaking. With respect to qualified m.f.n., his delegation had not used this expression, although its understanding was the same as in the Swiss proposal. His delegation came to similar conclusions when

analysing the m.f.n. principal in connection with agreements on mutual recognition of national regulations. Other signatories should have the option to enter into bilateral/plurilateral negotiations on mutual recognition of national regulations. On non-discrimination, his delegation felt that signatories should be obliged to treat a party no less favourably than any other party to the agreement, noting however that the other party should respect the national regulations required in the host country. Qualifications and diplomas, for instance, were preconditions for having the right to offer a service, not only for foreign suppliers but also for national suppliers. Regarding the balance of rights and obligations, he said that many sectors consisted of numerous services. Different transactions took place in trade in services: cross-border trade, factor movements, movements of consumers etc. These transactions or modes of delivery of a service might be accorded to each or some services of the sector through progressive liberalization. He felt that a balance of rights and obligations should also be observed within important sub-sectors, if the sector as a whole were to be included under progressive liberalization. If a signatory excluded an important sector as a whole, other signatories should be entitled to restrict market access for the respective service suppliers of the signatory concerned. In such cases, market access would depend on reciprocity. In some - although probably not all - sectors, cross sectoral-concessions might be possible, noting that further examination would be necessary on this issue. The liberalization of labour movements should also be considered in connection with progressive liberalization, whereby criteria for the term "essential" would have to be defined. One criteria could be that there was no other possibility to supply the service but with foreign labour. In such cases, the territorial principle should be valid. The movement of key personnel and qualified personnel could also be envisaged. He said that Austria's preliminary position regarding a standstill/freeze was that such a provision could be agreed for covered services, e.g for sectors set down in an Annex to the Agreement. His delegation understood that problems might arise in countries where regulations were not yet developed. There would be a need for a special regime for monopolies and firms in dominant positions to ensure fair competition. He noted that unjustified regulations were regulations discriminating against foreign suppliers. Such regulations concerned foreign suppliers only and therefore could protect national suppliers of services. Such regulations should be subjected to progressive liberalization undertakings. The Austrian submission had not dealt with the questions of progressive liberalization/bindings but had mainly addressed the issue of how to start with progressive liberalization. This question would be one of the most difficult ones facing the GNS and his delegation was analysing various proposals put before the Group. With respect to the increasing participation of developing countries, he recalled that development and growth were very important goals of the negotiations. He was very grateful that many proposals from developing countries had been made on this issue, noting that such proposals would help in giving a better understanding of the needs of developing countries. On the issue of the regulatory situation, his delegation believed that it was legitimate to introduce new regulations even after signing the agreement. States should have the right to introduce new regulations because of vital national policy objectives. Such measures,

however, should not discriminate foreign suppliers. A notification procedure would be necessary in this regard.

48. The representative of Singapore circulated a chart which outlined the elements contained in his country's proposal. He said that an agreement should feature a minimum threshold of offers. Minimum entry conditions should not be seen as constituting a requirement to sign a framework agreement but rather as a means, once fulfilled, to enjoy on an m.f.n. basis the benefits derived from it. Once a country had fulfilled its minimum entry conditions, no other signatory should have the right to invoke a non-application provision against it. Determining minimum entry conditions was an inherently complex task that should be left to negotiations. A freeze, as envisaged in the Swiss submission, might constitute one option, another being a country's commitment to liberalize a given percentage of the value of its service exports with a view to transposing it to service imports. The entry fee would be greater for signatories with large service exports and special credit should be given to countries which already had liberal service regimes. In exceptional cases, countries experiencing serious balance of payments difficulties should be granted a time-bound waiver subject to agreement by the Parties. In regard to market access, he noted that one could envisage a combination of sectoral and country schedule approaches, noting that there were sectors which were fairly non-controversial and in which market access could be made available to all signatories. He mentioned construction and tourism as two possibilities, noting that surcharges or other entry fees might nonetheless apply to foreign service providers. He agreed that the potentially restrictive business practices of foreign service providers could be dealt with through domestic competition laws but noted that one had to accept the fact that the nationality of a service provider was a political reality. There might therefore be a need for extra provisions to apply to foreign firms without constituting a breach of national treatment. Referring to the chart which his delegation had circulated, he said that in areas other than those covered by individual country schedules countries would not be obliged to provide market access nor to comply with framework principles and rules. Countries could offer market access outside their country schedules, but this access might not be extended on a full national treatment or m.f.n. basis. He recalled however that such areas would be governed by transparency and dispute settlement provisions, noting that the latter provisions would apply solely in regard to those principles which signatories had agreed upon. A provision dealing with the increasing participation of developing countries could - depending on how it was formulated - be used as a basic obligation and apply to all sectors. Further thought was needed on how to treat, in respect of the m.f.n. principle, existing bilateral arrangements in various service sectors. He noted, finally, that the coverage envisaged by his delegation's submission was universal in scope, adding however that the universe of sectors and transactions covered by market access commitments (i.e. bound areas) might differ.

49. The representative of Korea said that the most important element that Korea wanted to include in the framework was a mechanism which could guarantee progressive liberalization with the broadest participation of contracting parties. Such a mechanism should respect each country's policy

objectives and the principle of progressive liberalization, which was clearly spelled out in the Punta del Este Ministerial Declaration. His delegation felt that market access and national treatment should not be basic obligations of a framework agreement as this would be inconsistent with the spirit of the Punta del Este Declaration. This was so because all domestic measures taken to fulfil each country's policy objectives but which restricted market access would be automatically classified as illegal. He recalled that tariffs in the GATT were the legal means to protect domestic industries in goods trade and that a similar approach should govern services trade. He noted, however, that such protective measures should be progressively liberalized through a series of multilateral negotiations in a similar manner to tariff reductions or concessions. In sum, Korea's basic position was that the general agreement should legally allow each country to impose appropriate conditions for market access while allowing progressive liberalization to be pursued through multilateral concession negotiations. Korea would like to see concession negotiations start from the beginning of 1991, immediately after the conclusion of the Uruguay Round. Responding to the comments made by the representative of the United States, he said that Korea's position was that the existing MTN Code for government procurement was relevant only for goods trade. The GNS should formulate separate principles and rules for government procurement in the area of trade in services. He stressed that dumping cases could also occur in services and emphasized that the framework should contain provisions on anti-dumping. He agreed, however, that it would be extremely difficult to develop formulas for calculating dumping margins in the case of services trade. As to appropriate remedies for dumping cases, his delegation had thought of anti-dumping duties or restrictions on business areas of foreign service providers. On the issue of technology transfers, Korea felt it was better to stimulate joint-ventures rather than wholly-owned foreign subsidiaries. An alternative was to provide some kind of incentive system to encourage technology transfers and other high-tech related foreign investment projects. He recalled that the framework agreement should recognize the critical importance of the availability of statistical data relating to international services transactions. This was necessary in order to evaluate whether expanded services trade really made a contribution to the economic development of developing countries. He said that the Korean delegation felt that foreign service suppliers should provide host countries with information on their business activities. This could cover production, imports, exports, investment, employment as well as R & D activities. He noted that the importance of such information was reflected in the OECD guidelines for multilateral enterprises, in that all companies were recommended to provide such information at least once a year. Addressing the meaning of a "commonly understood universal coverage", he said that the Korean delegation did not favour a positive list for the purposes of determining the scope of coverage. Due to the technical difficulties of many service sectors, as well as conflict interests among participants, it would be unrealistic to formulate a positive list of all service sectors and transactions to which the framework agreement would apply. In order to apply binding obligations for services trade there should be a common understanding of the range of cross-border movement of production factors and of types of services transactions as envisaged in the text of the Montreal Ministerial meeting. The idea of increasing the participation of developing countries was directly related to

the technology transfer issue. The perception that the Korean proposal lacked in principle stemmed from the fact that market access and national treatment were not regarded as basic obligations in his delegation's submission. He noted, however, that the Korean position included the m.f.n. principle, an obligation to faithfully engage in post-Uruguay Round negotiations as well as an obligation to follow dispute settlement procedures where necessary. He emphasized that the Korean approach centred around concession negotiations for effectively liberalizing trade in services. Once negotiations were concluded, the subsequent results would be extended on an m.f.n./non-discriminatory basis. The Korean submission proposed to concentrate on the general framework during the remaining period of the Uruguay Round in view of the obvious difficulties - mainly of time - in starting concession negotiations. This, he said, did not mean that Korea intended to delay liberalization efforts, noting that Korea was willing to participate in liberalization negotiations even before the conclusion of the Uruguay Round so long as a framework was satisfactorily formulated. In regard to m.f.n., Korea's position was that the m.f.n. principle should be applied only in sectors where concessions were made. The notion of a balance of interests among parties should be kept in mind as a fundamental premise throughout the Uruguay Round negotiations on services. Should the Group fail to achieve balanced benefits for all parties, only a few who would stand to gain from a GATS would participate in the negotiations while other parties would inevitably be forced to join through bilateral negotiations or other means. In order to achieve the required balance, concession negotiations should be based on each country's submission of offer lists, and requests should be limited. Each party should respect to the extent possible the initial offer list of other parties. The submission of voluntary offer lists by each party would make it possible to achieve a minimum balance of interests. Another way of achieving a balance of benefits would be to establish a standard percentage of service sectors to be negotiated. In regard to transparency, his delegation was concerned by the amount of work involved in notifying information relating to all service sectors. He agreed that each country should make all information available both to domestic and foreign residents through publication in its own language and through the establishment of national enquiry points. Korea was not in a position at this stage to envisage cross-sectoral concessions. At the same time, his delegation was not ruling out such a possibility. Korea thought that there were some fundamental difficulties in taking a reservation approach to progressive liberalization. For one, he noted that it was physically impossible to draw up a positive list in view of the technical complexities of many service sectors such as telecommunications. Were the Group to opt for a reservation approach, there was a risk that the reservation list would become too long to manage. He concluded by saying that based on the above observations, Korea's basic position was quite positive and forward looking in that it emphasized the need for continuous concession negotiations to further the liberalization of trade in services.

50. In response to the questions raised regarding his delegation's submission, the representative of the United States stated that his delegation continued to have a strong political commitment to development not only in the context of progressive liberalization - i.e. the ability of developing countries to have more sector exclusions and fewer commitments

than developed countries - but also regarding increasing participation of developing countries. His delegation had been careful not to explicitly delineate language which would have amounted to something similar to the GATT enabling clause or Part IV which had not been a solution for enhancing development. His delegation was interested in examining how one could formulate provisions relating to increasing participation, although it was not yet prepared to put forward specific language for such concrete measures. Regarding coverage, his delegation's idea of a universe of services was not totally different from that contained in the GATT secretariat's reference list of indicative services. He did not envisage that any tradable service would be left out of that universe. For the sake of transparency it was necessary to establish what a service covered by trade rules was, and there were grey areas in this regard which had to be delineated. Concerning exclusions of sectors, special agreements and the notion of protocols, he said that he saw situations where countries might have to exclude a sector, i.e. they could not apply all the provisions of the framework. He did not accept the arguments made by some delegations that the exclusion of a sector was equivalent to its permanent exclusion because he considered that future services negotiations would deal specifically with the removal of exclusions and of reservations. In view of the concerns expressed about the idea of special agreements, he could not guarantee that such agreement would be related to the articles of the framework. The United States envisaged that special agreements would be concluded in exceptionally rare instances where a large number of countries had agreed that a certain sector was not a candidate for the framework liberalization process. Regarding protocols, these would involve sectors where countries had assumed obligations under the framework. The harmonization of professional standards would be an example of further liberalization which might occur only among a few countries. Furthermore, he said that an annex would be an integral part of the framework which all countries would agree to and which would clarify and interpret the provisions of the framework for a specific sector. His delegation's submission did not contain a definition of trade in services per se except that it covered in the market access provisions all transactions that were seen as pertinent to trade in services. Through the proposed system of reservations, countries had the choice to make reservations with respect to the modes of delivery that they felt would not be appropriate for a particular sector. In certain instances the reservation might be universal which might call for a particular footnote to the agreement. In financial services, for example, the cross-border sale of services was usually not possible. However, that was an exceptionally rare case. His delegation had always made it clear that it saw limitations in the GNS process as far as immigration and the movement of persons was concerned. The U.S. proposal provided for the movement of persons under certain conditions, and also called for further negotiations with respect to skilled workers who fell into a particular category. Concerning the related question of establishment, he estimated that about 80 per cent of trade in services took place through foreign affiliates and therefore a framework should deal with this issue. On the other hand, the aim was not to negotiate a code on foreign direct investment. Concerning the issue of competition, the U.S. proposal contained a specific provision which gave a foreign corporation which had become a corporate citizen essentially the same rights as a domestic enterprise. However, there might be special situations which might have to be taken into

account. For example, a foreign bank's ownership of the premises might not be very relevant to its providing the financial service involved, although in other situations there could be implications if it did not own its property. Concerning the provisions for payments and balance of payments measures, he said that one of the most persistent complaints of U.S. service firms related to payments, i.e. the problem of getting their money out of a country. Turning to specific questions that had been raised, he said that the term "urgent circumstances" with respect to transparency concerned emergency measures which were sometimes necessary, and which could not await the publication of a regulation. Regarding article 22.4 of the U.S. text concerning additional commitments to provide access, he stated that this was designed to deal with peculiar situations that were not covered by the framework rules. Regarding injury and the subsidy issue, he said that defining injury was something that each signatory itself would determine as was done in the countervailing duty statutes that currently existed. It was difficult at this stage to define more precisely the notion of injury beyond the idea that it was something that his delegation wanted as a matter of principle.

51. Responding to the queries that had been raised, the representative of Japan said the basis for judging whether regulations were legitimate or not was how much of a trade-distorting effect they might have and whether they were consistent with the commitments to be undertaken under the framework. Regarding the statement on regional economic integration in the submission, he said that in the GATT Articles negotiating group Japan had tabled a paper elaborating on this issue and on its concerns about GATT Article XXIV which, in his view, should seek to improve market access to and to promote trade with countries outside the integration grouping. Regarding the structure of the framework agreement, his delegation was still in the process of examining what would be the most appropriate for Japan. Furthermore, when it was difficult or not appropriate to apply the general principles under the framework agreement to a certain sector, provisions in order to secure consistency with the agreement should be worked out giving due consideration to the special nature of that sector. Substantial market access and its realization was one of the major objectives of the services negotiation and in that respect market access had been placed as a guiding principle. Regarding national treatment and immigration, his delegation's proposal had simply stated that as long as were nationalities throughout the world immigration policy did not by nature deal with national treatment. As to the statement in the submission that when market access could not be secured through national treatment, m.f.n. or progressive liberalization, there would need to be individual rules, he said that one typical example of this situation related to state monopolies. Regarding the issue of what kind of disciplines were envisaged for the freeze, his delegation put more emphasis on rollback rather than on a freeze itself. Rollback would be the process of progressive liberalization already starting within the time-frame of the Uruguay Round. Turning to the question of m.f.n., his basic position was that under the framework all benefits should be rendered in a non-discriminatory way. However, when there were reciprocal international agreements, and when domestic legislations had reciprocal measures, participants could have the option of reserving on m.f.n. Finally, the grandfathering clause was an idea derived from the present GATT in order to

secure the largest number of participants, but he noted that such a clause would be covered by the progressive liberalization process.

52. The representative of Indonesia recalled that his delegation's communication was intended to be complementary to the proposal by Singapore. To achieve the development objective it advocated a flexible building-block approach which was process-oriented in order to ensure the widest participation of developing countries in the agreement. Regarding questions posed in relation to the concepts of specificity, dynamic infant industry protection, definition of joint ventures, and relative national treatment, etc. he said his delegation reserved its right to clarify its position in detail at a later meeting.

53. The Chairman concluded the discussion on item 2.1(i) of the agenda and asked whether any delegation wished to refer to any other communication or any other specific question under agenda item 2.1 (ii).

54. The representative of Brazil said his delegation considered that the discussion of the secretariat's document of 16 November containing various country positions represented only half of the work to be done in this Group. There was another side to the work which referred to paragraph 10 of the Montreal text, in particular items (c) and (d). The items of definitions, statistics and the question of existing international disciplines and arrangements should be given as much urgency as that given to the discussion of the informal document.

55. The representative of India agreed with the Brazilian delegation that the Group would arrive at, and do justice to, paragraph 11 of the Montreal text only after having addressed all the issues in paragraph 10, in particular those relating to definitions, statistics and the role of international arrangements. Regarding the exercise of testing of concepts, principles and rules, he said this was carried out in a meaningful manner with respect to sectors but not much attention was paid to transactions. It might therefore be necessary to revert to this kind of a discussion in order to clarify some of the issues and concerns.

56. The representative of the European Communities said that whereas items (a), (b), and (c) of paragraph 10 along with paragraph 11 of the Montreal text contained deadlines to be met by the Group, item (d) of paragraph 10 regarding the role of international disciplines and arrangements and the questions of definition and statistics lacked any specification of deadlines. This did not reflect the lesser importance of item (d) but indicated that more flexibility could be applied in dealing with the issues contained in it.

57. The representative of Yugoslavia said that there had been no overall assessment of the results of the sectoral testing exercise. She agreed with others that the issues contained in item (d) of paragraph 10 of the Montreal text had not been fully explored and perhaps for that reason no tangible progress could be discerned in their respect. She said much remained to be examined before agreement could be reached on a number of issues and particularly on development.

58. The Chairman said that work on those issues would continue along with work on all other elements of the framework agreement. Turning to "Other Business" he opened the discussion on the question of how the Group should pursue its work with a view to fulfilling the mandate contained in paragraph 11 of the Montreal Declaration. He considered it necessary to have a much more succinct document without the repetitions contained in the present document. On the basis of informal consultations, he suggested that a new version of the present document be prepared by the secretariat to aid the Group in its negotiations leading up to the TNC meeting. He asked whether it was agreed that the present version of the document be updated and circulated as a formal GNS document in the near future.

59. The representative of the European Communities suggested that the work involved in the formalization of the present informal document by the secretariat should in no way take priority over other more urgent work the secretariat was being requested to undertake. The representative of Canada said that the informal paper by the secretariat had been intended as a working tool. Its formalization would add a different dimension to the exercise and should perhaps be avoided. The representative of Japan supported the views expressed by the two previous speakers.

60. The representative of Brazil said that the formalization of the document would serve three purposes: the recognition of the work of the secretariat, the transparency of the process, and providing the basis for another formal document by the secretariat in the future.

61. The representatives of Poland and Peru supported the view that the formalization of the informal paper should not in any way take priority over other work requested of the secretariat.

62. The representative of Egypt suggested that the formalization of the document be undertaken during the first half of January 1990 by when other work of greater priority would have already been completed.

63. The Chairman declared as agreed that the secretariat would produce an official version of the present informal document including comments made during this meeting or contained in written submissions to be made directly to the secretariat. In accordance with paragraph 11 of the Montreal Declaration which set out that the Group should endeavour to assemble by the end of the year the necessary elements for a draft of the framework agreement, he said he would be having informal consultations with the various delegations until 18 December 1989 when the Group would once again meet formally.