

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNS/FIN/1

5 July 1990

Special Distribution

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Group of Negotiations on Services

WORKING GROUP ON FINANCIAL SERVICES INCLUDING INSURANCE

Note on the Meeting of 11-13 June 1990

1. The Chairman of the Group of Negotiations on Services (GNS) recalled the terms of references agreed upon at the last meeting of the GNS with regard to sectoral consultations. He noted that sectoral annotations or annexes, where considered necessary to interpret or effectively apply the provisions of the framework to specific sectors, shall be multilaterally agreed and form an integral part of the framework. Such annotations or annexes shall, in addition, be periodically reviewed according to a timetable agreed upon in the GNS. He recalled that the GNS would receive information on the sectoral discussions through the Chairmen of the working groups. He said that it was particularly important that the working group on financial services had been established as a body of the GNS so as to ensure that decisions taken with regard to a sector of such importance be as transparent as possible.

2. The Chairman of the working group on financial services recalled that the mandate of the group was to hold informal consultations with a view to arriving at a better understanding of the specificities of the banking and financial sector and of any elements that might need to be taken into account in the application of a framework agreement on trade in services to this sector. He said that the crucial importance and complexity of the financial services sector called for a thorough examination of its characteristics, and noted that this sector-specific work began last autumn, when the GNS discussed the implications and the applicability of concepts, principles and rules to the financial services sector. In this context, he recalled the relevance of documents MTN.GNS/W/71 and MTN.GNS/25. As work in the GNS had been proceeding since then, and as the layout of a framework agreement was being progressively developed, the time had, in his view, come to intensify the work related to banking and financial services, making the best use of experts in the field. He noted that in order to allow for a most productive and unconstrained exchange of views in the forthcoming discussions, he intended to focus the debate on the substance of the matter. He therefore wished to avoid institutional issues at this stage. He introduced the provisional agenda that had been submitted to participants, noting that it was limited to a number of key issues to which priority could be given with a view to identifying the elements that had to be provided for in order that banking and financial services could be covered under a wide liberalization process. These elements included: market access; cross-border financial services; increasing participation of developing countries; national treatment; prudential regulation (covering both issues relating to prudential carve-out as well as experience in the multilateral harmonization of

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UR-90-0379

prudential rules), and payments and transfers relating to financial services. In order to stimulate the discussion, he said that options and specific questions had been listed in non-papers prepared for each topic. These non-papers had been circulated under his responsibility and did not claim in any way to be exhaustive. Their only function was to launch the debate. He asked participants whether the proposed agenda could be adopted.

3. The representative of India said that some of the delegations present at the current meeting had not participated in the work that had been undertaken earlier among some delegations in a very informal manner outside the aegis of the GNS. There was thus a need for some delegations, including his own, to do some catching up. In this context, he felt that, in addition to the elements contained in the provisional agenda, other concepts, principles and rules under discussion in the GNS might be relevant to an examination of the specificities of banking and financial services. His delegation felt for instance that the concepts of transparency and progressive liberalization were of considerable relevance to the financial sector and warranted a closer examination. Issues relating to the regulatory situation as well as to safeguards and exceptions would also require discussion in the working group. He suggested therefore that some of these issues be added to the working group's agenda and be discussed either in the current or the next meeting of the group. With regard to the preparation and circulation of documents in the context of sectoral discussions, he recalled that the GNS had agreed that the secretariat would service the sectoral working groups and prepare reports and documents as required by group members. He expressed the hope, finally, that the deliberations of the working group would be conducted in as transparent a manner as that applying in the GNS.

4. The Chairman said that the current sectoral discussions served the dual purpose of allowing those countries which had not participated in earlier consultations to catch up and of furthering discussions in a number of areas of importance to the liberalization of banking and financial services. The representative of India said that his delegation did not see the working group's deliberations as the mere formalization of a process already underway.

5. The representatives of Australia and Hungary endorsed the idea of adding the concept of progressive liberalization to the meeting's agenda. The representatives of Brazil and Thailand said that it would be most useful for the working group to tackle those very issues which the GNS was currently addressing insofar as they applied to financial services. The representative of Korea felt that the working group should also place the issue of m.f.n./non-discrimination on the current meeting's agenda. The representatives of the European Communities and Japan said that all issues appearing in MTN.GNS/23 supported the Chairman's draft agenda but agreed that other issues could be added. The representative of Brazil proposed a revised agenda which the representatives of India and Egypt endorsed. The representatives of the European Communities and Australia said that the proposal put forward by the Brazilian delegation appeared to emphasize GNS linkages and would be acceptable.

6. The Chairman interrupted the meeting to consult with various delegations to seek agreement on a revised agenda which might help delineate the group's work programme for the remainder of the week. Following such consultations, he presented group members with a revised agenda which he felt took into account the concerns which had been voiced by various delegations. The revised agenda was adopted by the members of the working group. (A copy of the agenda is in the attached Annex.)

7. The Chairman noted that, in the wake of informal discussions which he had held in recent weeks, there might be merit in arranging for the possible participation of experts from two international bodies - the OECD Secretariat and the Basle Committee of Banking Supervisors - in the working group's discussion of regulatory matters (i.e. item 3 of the revised agenda). He said that he had established informal contacts with both organizations and indicated that representatives of each of the two bodies stood ready to assist the working group in any capacity. He noted, in addition, that he had consulted informally with the Chairman of the GNS on this matter and sought the guidance of group members.

8. The representative of Egypt recalled that the issue of the participation of international bodies in the work of the GNS had been discussed three years ago and asked the secretariat to report on the agreement in this regard which had been reached among group members at that time.

9. The representative of India said that the issue before the group had been discussed in the GNS at the time of setting up the sectoral working groups. He noted that it was agreed that the representatives of relevant international organizations could be invited by the Chairman of the GNS. He recalled, as well, that a decision had been taken in the Trade Negotiations Committee (TNC) that only relevant international organizations could be invited to attend the meetings of the Uruguay Round's various negotiating groups. This latter decision applied in the GNS whenever meetings were scheduled in which specific sectoral issues were discussed. He noted that the GNS had not been inviting regional organizations and emphasized that his delegation had very serious reservations about the idea of granting observer status to organizations which had not been specifically nominated by the Chairman of the GNS and were neither truly international in character nor relevant to the work of the sectoral group.

10. The representative of Switzerland said that his understanding of the Chairman's proposal was not to grant observer status to the international bodies in question but merely to draw, as and when appropriate, on the expertise of two organizations that were currently dealing with matters relating to the liberalization of trade in financial services.

11. A member of the secretariat indicated that the last GNS meeting had taken up the issue of the representation of relevant international organizations in the sectoral discussions. He noted that the Chairman of the GNS had made a proposal which appeared in paragraph 116 of the summary records of the group's last meeting (MTN.GNS/33). The proposal, which the

GNS later adopted, stipulated that "representatives from the relevant international organizations may be invited by the Chairman of the GNS".

12. The Chairman recalled that he had not referred to the notion of observer status and was fully aware of the mandate entrusted to the Chairman of the GNS on this matter. He asked whether it might be agreeable on a non-prejudicial basis with respect to an eventual decision of either the Chairman of the GNS or the group itself to invite experts from the two international bodies concerned to be present during the working group's discussion of regulatory matters.

13. The representative of Brazil said that his delegation recognized the relevance not only of the two organizations being discussed but also of other organizations, such as SELA, which would no doubt like to participate in the current discussions. He noted, however, that it was not for group members to take decisions on such matters. While recalling the need to conform to the procedures agreed upon in the GNS, he suggested that the Chairman of the working group engage in further consultations with the Chairman of the GNS on this matter.

14. The representative of India said that participants in the Uruguay Round had been attaching a certain amount of sanctity to certain procedural matters, because many delegations shared in the belief that procedural matters could affect the substantive outcome of the negotiating process. While endorsing the suggestion of the Brazilian delegation, he recalled that the Chairman of the GNS was also bound by the fact that only relevant international organizations could be invited to attend meetings relating to GNS matters.

15. The representative of Japan said that that his delegation fully supported the idea of inviting the two bodies concerned and said that, in view of the contents of the revised agenda, it was entirely appropriate to obtain their views on matters such as the implications of an m.f.n.-based regime in financial services or the harmonization of capital adequacy standards.

16. The Chairman said that in view of a lack of consensus among group members, he would be engaging in further consultations on the matter of the possible participation of these two bodies.

17. The representative of Pakistan said that a financial expert from his country's capital was attending the working group's meeting. He hoped that the group would be spending as much of its time possible in multilateral consultations so as to provide the possibility for the national expert to fully participate in all discussions.

18. The Chairman opened the floor to a discussion of definition and coverage, with particular emphasis on modes of delivery and on the cross-border provision of financial services.

19. The representative of India recalled that discussions of definition and coverage in the GNS were still incomplete, noting that the language

contained in MTN.GNS/28 on this issue contained many square brackets. Noting that the issue of modes of delivery had also yet to be settled in GNS discussions on definitional matters, he indicated that it was far from agreed that establishment should be included as a means of delivery in the definition of trade in services. His delegation's view was that establishment, including the acquisition of host country service companies, was an issue that did not relate to trade in services but to investment, an issue which did not form part of the GNS's negotiating mandate. He indicated that his delegation was nonetheless prepared to hear the views of other delegations on the modes of delivery applicable to the various sub-sectors and/or transactions comprising the financial services sector, particularly with regard to the cross-border movement of services and personnel.

20. The representative of Canada said that unlike many other sectors, the opportunities for cross-border trade in financial services were fairly limited. This fact suggested that deliberations should focus on establishment. He noted that there were nonetheless some cross-border services that offered possibilities for multilateral liberalization, such as financial advising, re-insurance, marine insurance, etc. He said that the right to establish was fundamental to trade in financial services and suggested that group members needed to be as broad-ranging as possible in finding ways to allow for establishment to take place. Once established, foreign service providers should be subjected to terms and conditions that were equivalent to those applied to domestic firms. He noted that the movement of essential personnel was an extremely important feature of the right to establish and suggested that a reasonable range of skills be included under provisions on essential personnel. It was important to ensure that the specialized knowledge necessary for financial services be provided when a firm established a presence in a foreign market.

21. The representative of Korea agreed that the discussion of modes of delivery in the financial services area should relate mainly to establishment. His delegation felt, that cross-border trade was not relevant with regard to the liberalization of financial services. This was so because cross-border trade in financial services raised complex problems in connection with the liberalization of capital and foreign exchange transactions. He said that the issue of cross-border trade in financial services might be dealt with more appropriately by the IMF or in the OECD context. He also said that the issue of the movement of essential personnel might need to be discussed separately from that of cross-border trade in financial services.

22. The representative of Japan said that market access should be regarded as an obligation to be imposed upon entry into a market. He defined market access as encompassing establishment, cross-border provision of services, temporary entry, and licensing and certification. He agreed that establishment was the most important mode of delivery in financial services, pointing out that establishment was in many instances required by host country governments in order to ensure that cross-border servicing was not used to circumvent licensing measures. It related as well to the need to protect investors. He felt that cross-border trade should not be

defined as an obligation in an agreement covering financial services. This would mean that where establishment was not allowed, financial services could not be provided by foreign firms.

23. The representative of Thailand said that the most tangible benefit developing countries could derive from the liberalization of financial services would be to enable more efficient domestic service providers to take advantage of global market activities. He recalled that his country had been moving in the direction of freer financial markets by abolishing foreign exchange controls and freeing interest rates. He noted however that the issue of financial market liberalization in developing countries had to be handled with care given that few local institutions were ready and/or able to compete in global markets. Most developing country financial institutions were undercapitalized and lacked specialized professional expertise. It was thus essential that the process of opening markets be conditioned upon the level of financial market development of individual developing countries. He said that the option of selective liberalization outlined on page 5 of the non-paper on coverage of cross-border financial services should be pursued as it allowed greater flexibility in determining what should be subjected to progressive liberalization commitments.

24. The representative of Australia said that his delegation favoured an agreement which provided the greatest scope for liberalization, whether on an establishment or cross-border basis. He wondered whether establishment would need to be addressed under a sectoral annotation on financial services, if the framework itself were to contain a provision allowing for establishment. He felt that the working group should address the particular features of financial services which might require particular forms and/or conditions of establishment to be specified in a sectoral annotation. He asked whether insurance should be addressed in conjunction with banking and other financial services or whether insurance-related activities might have particularities warranting a closer look. He noted that as far as Australia was concerned, differences between insurance and other financial services would not require a separate sectoral annotation.

25. The representative of Egypt drew the working group's attention to Article 1.2 of a draft framework proposal which his delegation had co-sponsored in MTN.GNS/W/101 and which stated that trade in services shall not extend to permanent establishment nor to foreign direct investment. He briefly described his country's policy on establishment in the banking sector, noting that, while Egypt maintained a liberal approach regarding the forms and conditions under which foreign financial institutions could establish in the country, it nonetheless believed that establishment did not fall under the negotiating mandate of the GNS.

26. The representative of Brazil noted that there was a wide range of views - and perhaps some confusion - about the concept of market access. In the view of his delegation, market access could not be an obligation imposed on parties to an agreement but should result from a process of negotiations to arrive at a positive list of specific sectors, sub-sectors, transactions and/or modes of delivery. He asked whether the definition

which was agreed upon at the Mid-Term Review was acceptable and/or applicable in the field of financial services or whether it might need to be modified to cater to sectoral peculiarities.

27. The representative of Hungary agreed with those delegations that had emphasized the crucial importance of establishment as a mode of delivery in financial services. Were establishment to be excluded from the possible modes of delivery, he questioned whether many, if any, financial services could be provided. His delegation was unsure whether it should endorse a selective liberalisation of cross-border services, as envisaged in option five of the chairman's non-paper, or simply put cross-border services aside for the time being, as envisaged by the representative of Korea in his earlier intervention. He said that for Hungary, the issue of liberalizing cross-border financial services was closely linked to those of foreign exchange controls and currency inconvertibility. Referring to Article 12 of the Swiss draft framework (MTN.GNS/W/102) dealing with payments and transfers, he said that in financial services trade it was important to ensure that nothing altered the rights and obligations of Parties in regard to the IMF. On establishment, he mentioned that the chairman's non-paper did not distinguish between acquisitions and de novo investment as means of establishing a presence in a market. He felt that a differentiation should be made between the two forms of establishment given the strategic importance which most countries attached to the maintenance of domestic control over the so-called "core" banking or financial sector. He agreed on the importance of enhancing the scope for the movement of key personnel, but wondered what the term "essential" referred to in the context of banking and financial services.

28. The representative of Australia, in response to an earlier statement by the Japanese delegate, said that no one in the GNS context was talking of market access as an automatic obligation under the framework agreement. He said that his delegation endorsed an approach whereby market access was a de facto obligation against which countries had the right to enter reservations. Market access commitments thus might need to be entered into with a view to determining those forms of access that could be liberalized. He did not agree with the idea of excluding cross-border services from the scope of coverage of the agreement, noting that countries could either lodge reservations on modes of delivery they did not want to see liberalized or advance a positive list of liberalization commitments. He asked the representative of Korea whether there were substantive economic reasons for not liberalizing cross-border trade in financial services.

29. The representative of Malaysia said that her country operated a very liberal exchange control regime which allowed a large and growing volume of cross-border trade in financial services. She said that, as in many other developing countries, a substantial foreign commercial presence already existed in Malaysia's financial market. There were sixteen foreign banks operating in the country, out of a total of thirty eight, and all foreign banks were more or less operating on a national treatment basis. She agreed however that there might be a need for developing countries to ensure that national development objectives were met through measures aimed at enhancing the competitiveness of domestic service providers. There

might, as well, be a need for caution in allowing the free movement of personnel, so as to develop specialized local expertise in the financial services. She said that Malaysia was currently rationalizing its domestic financial services industry. Under this process, foreign-established banks would be allowed to operate on the basis of full foreign ownership.

30. The representative of Poland agreed that establishment was the key mode of delivery to consider in financial services and that a useful distinction needed to be made between acquisitions, on which many restrictions were placed in most countries, and de novo investment, to which fewer restrictions typically applied. He noted that issues relating to capital movements and invisibles transactions rendered the liberalization of cross-border financial transactions inherently more complex and doubted whether it was possible to achieve more than an OECD-type of liberalization in a multilateral setting. He agreed that the fifth option listed in the chairman's non-paper was more realistic, as it would leave open the possibility for further liberalization. He also agreed on the importance of the movement of key personnel, but felt that any such movement should be of a temporary (i.e. medium-term) nature.

31. The representative of Mexico said that his delegation had few problems with the issue of establishment, noting that to focus solely on cross-border trade in financial services might complicate the life of regulators and create a number of problems of a fiscal nature. He noted nonetheless that the issue of establishment was closely related to the concepts of progressive liberalization and increasing participation of developing countries. His delegation felt that the working group would achieve more progress if it focused its attention firstly on establishment-related trade, while leaving cross-border trade to future negotiating rounds. He sought clarifications on the meaning of the term "essential" in relation to the movement of personnel. He felt that option three in the chairman's non-paper on market access was somewhat redundant, since countries typically allowed their nationals to establish a commercial presence through acquisition. He suggested that the right of foreign financial institutions to establish and enjoy national treatment might need to be qualified with respect to the right to acquire a host-country firm.

32. The representative of Korea said that the reason why his delegation suggested excluding cross-border trade from the scope of an agreement covering financial services related to the need of regulatory authorities to ensure and maintain the soundness of domestic financial systems, an objective which could be circumvented were cross-border services to be used for tax evasion or money laundering. Also, cross-border trade in financial services raised a number of regulatory problems with regard to foreign-exchange controls and capital transactions which could be addressed more appropriately in fora such as the IMF or the OECD. He said that his delegation wished to maintain terms and conditions on establishment and argued that this should not pose problems so long as the terms and conditions applying to foreign financial institutions were non-discriminatory and transparent in nature and related solely to prudential considerations.





33. The representative of New Zealand agreed that the framework agreement should contain a provision on the right of establishment and recalled that sectoral annotations should elaborate on framework provisions. She said that a sectoral annotation on financial services should neither be a derogation from the framework agreement nor constitute a separate entity altogether, but should merely expand and/or elaborate framework provisions in the light of the specificities of the sector. She noted that her delegation sought an agreement which would promote the liberalization of financial services both across borders and through establishment. For this reason, her delegation did not feel that cross-border issues should be left to future negotiations as this could risk losing the momentum of the current negotiating round. She recalled her delegation's position that market access should be an obligation under the framework, albeit one which could be subject to reservations.

34. The representative of Switzerland said that his delegation viewed market access as an obligation which could be reserved on under a framework agreement. This was in fact one of the main means of ensuring that the framework contained sufficient flexibility. Parties would thus not be obliged to grant market access immediately to all other parties of the agreement in regard to all modes of delivery. At the same time, he felt that making market access an obligation would lead to a stronger agreement. In regard to modes of delivery, he mentioned that three elements were relevant: first, determining the efficiency of a particular mode of delivery for providing financial services; second, identifying the prudential concerns for a given mode of delivery; and third, giving proper consideration to the capital movements that were linked to a particular mode of delivery. He said that the establishment of a commercial presence played a crucially important role in financial services trade and noted that the various types of establishment (whether a branch, subsidiary or other) should not be subject to restrictions. He agreed that it might prove difficult to arrive at a considerable liberalization of cross-border services, because of both prudential considerations as well the likely magnitude of capital movements which such liberalization could entail on a multilateral basis. This being said, he felt that those financial services whose provision across borders was already very liberal (e.g. maritime insurance, reinsurance, etc.) should be covered by an agreement. He said that the problems alluded to under option two of the Chairman's non-paper on market access typically arose in instances where financial markets were segmented. He noted that preferential treatment in a pure form would not be practicable but felt that intermediate solutions could be envisaged, such as a multi-functional institution/bank holding company approach.

35. The representative of Argentina said that market access should be a qualified right under the framework that would be granted only through negotiations among participants in the Round. He felt that cross-border services should be covered under an agreement even though countries might lodge numerous reservations in this area. He said that the negotiating process would yield different levels of market access depending on the types of financial services under discussion. He agreed that the issue of establishment stood at the heart of liberalization discussions in the

financial services area, but recalled that this remained an unresolved issue in the GNS.

36. The representative of Austria said that his delegation agreed that priority should be given in the current negotiating round to liberalizing establishment-related trade in financial services. He said, however, that some services could be liberalized on a cross-border basis through recourse to lists of liberalization measures. He said that small countries such as his tended to fear the disturbances which the liberalization of cross-border services might generate in capital movements. His delegation also had some difficulties understanding the possible meaning of "essential" personnel, noting that greater clarity was required on this term. He said that his delegation favoured the equivalent national treatment approach found in option one of the non-paper on market access.

37. The representative of the European Communities said that there was no alternative to establishment as a means of securing access to a market. He said that foreign financial institutions should be allowed to establish to provide their services under the conditions and terms applied to host country entities. If this were not the case, the host country should be required to allow all financial services to be provided on a cross-border basis. He agreed that a sweeping liberalization of cross-border services would pose serious problems, notably in terms of existing foreign exchange controls, the ability of host countries to supervise the activities of non-established companies and, more generally, the enforcement of national laws (fiscal, criminal, etc.). This did not mean, however, that cross-border liberalization commitments could not be made. He suggested that a selective approach should allow countries to identify those areas of cross-border provision - e.g. maritime and aircraft insurance, reinsurance, financial advisory services, financial information services, etc. - which would be subjected to multilateral obligations. As regards other cross-border services, he noted that it could be possible to undertake positive commitments and negotiate further liberalization undertakings without having across-the-board obligations. On establishment, he felt that all forms of commercial presence should be covered on a national treatment basis by an agreement, including the creation of wholly-owned subsidiaries, partnerships/joint-ventures and branches as well as the acquisition of existing financial institutions. He said that market access should not be a general obligation to be granted to all parties on an immediate basis. Rather, there was a need for flexibility to ensure that the process of liberalization was progressive in character. His delegation felt that all financial services should be covered by an agreement, with the exception of operations conducted on a government's own account, operations of central banks in the conduct of monetary policy, social security, etc. For those activities which were allowed in a host country, market access possibilities should then be subject to negotiations conducted against the backdrop of host country rules. While there were many technical differences in the ways banking and insurance activities were regulated, he felt that the underlying regulatory principles were broadly similar. Both areas could thus be covered by the same liberalizing principles, with minor exceptions in limited areas - e.g. cross-border insurance services, branches of insurance companies - where some regulatory

distinctions might be required. He concluded by describing the competitive gains, both domestically and in international markets, which countries could expect to gain from participating in the ongoing globalization of financial markets.

38. The representative of India felt that the working group had strayed from its intended purpose of focusing on the relevant modes of delivery in financial services. Also, he thought that the discussions had not so far identified noticeable peculiarities, in the sector with regard to modes of delivery which might need to be addressed in an annotation. He wondered whether the requirements of the financial services sector in terms of commercial presence for the delivery of a service differed from those of other service sectors. He said that the purpose of the working group's deliberations was not to discuss the liberalization of financial services per se but rather to examine the implications of applying framework concepts and principles in the sector with a view to determining those which might need to be clarified and/or interpreted in a sectoral annotation. He indicated that participants in the GNS broadly agreed that, in exchanging market access concessions, trading partners would have the choice of determining which modes of delivery would be liberalized. In this context, he wondered whether it was relevant to debate whether or not cross-border services should be covered by the agreement. He said that the temporary entry of essential personnel was another mode of delivery under discussion in the GNS, noting that it could apply as well to a broader category of personnel. To the extent therefore that the framework might cover all the relevant modes of delivery, he suggested that group members focus once more on the specificities of the financial services sector which might warrant clarification or interpretation in an annotation. He did not mean to suggest that the financial services sector was not different from others or deny its importance to national economies, but noted that he had not yet identified those issues currently evolving in the GNS which required special consideration for the purposes of liberalizing financial services trade. On the issue of market access as a general obligation, he recalled that the GNS was at a very advanced stage of its deliberations and indicated that it was clearly understood that market access would result from an exchange of concessions rather than be accorded automatically. It was also his understanding that, in granting market access, countries would be free to apply conditions of entry and operation.

39. The representative of the United States said that he shared the views put forward by the representatives of Canada and the European Communities on the issue of market access. He realized that the issue of cross-border services was technically complex, but felt that that it should not be automatically dismissed as one of the possible modes of delivery for financial services. He felt that it was very difficult to look at the issue of market access in financial services without bearing in mind the other principles that were being elaborated in the GNS. One such example related to the issue of the regulatory situation, which bore strong links to those of prudential regulations and exceptions. He was somewhat surprised that the issue of whether or not to qualify market access had come up in the discussions, noting that he was unaware of anyone ever proposing that market access be an across-the-board, general obligation

against which no reservations could be lodged. Recourse to a reservations approach was one of the main ingredients required to launch a process of progressive liberalization. Addressing the issue of the specificities of the financial services sector, he noted that a crucial issue was whether a lowest common denominator approach should be followed or whether a more efficient and separate agreement should be sought. He felt there was little doubt that the provisions of a general services framework could be written in such a way as to apply to all traded services. He wondered, however, if this was a desirable outcome, noting, for instance, that the movement of "essential" personnel would need to be defined with great clarity to satisfy the needs of financial institutions. He said that the proper place to do so was in a sectoral annotation, all the more so as the meaning of essentiality differed across sectors. He said that the more a framework agreement were couched in general language, the greater would be the likelihood of extensive recourse to dispute settlement procedures. He argued that specificities abounded in the financial area, citing the inability of retail banks to operate from a physical base that was distinct from its customer or depositor base. The provision of retail banking services almost by definition required foreign financial institutions to establish a commercial presence.

40. The representative of India said that there were a number of service sectors, including banking, where particular modes of delivery might not be relevant. The issue therefore was not whether all modes of delivery were equally relevant for all services but rather the extent to which those modes provided by a signatory were relevant to the liberalization of a particular service.

41. The representative of Sweden, on behalf of the Nordic countries, agreed that the scope for liberalizing financial services on a cross-border basis was limited. On specificities, he felt that there was a legitimate need to ensure that consumers were adequately protected, maintain fair and orderly market conditions, preserve the security of the payments system and banking system as an instrument for pursuing legitimate monetary policy objectives. He said that the liberalization of cross-border services might prove more feasible on a regional basis where a greater scope for regulatory harmonization in regard to prudential standards might exist. He agreed that establishment was necessary to effectively carry out trade in financial services, noting that the right to establish should be an obligation under the agreement which could be subject to reservations concerning various forms of commercial presence. He said that, while important, the issue of the movement of essential personnel could be addressed more broadly in the framework itself. He agreed that some cross-border services could be liberalized on a multilateral basis. Examples included reinsurance, the insurance of large risks (maritime and aircraft insurance), as well as the ability of consumers to buy financial services abroad at their own initiative.

42. The representative of Australia said that all delegations in the GNS saw the need for annotations to address the specificities of sectors. At the same time, it was broadly agreed that sectoral annotations would be limited both in number and content and that a generic definition of trade

in services would be preferable to a process involving the reinvention of the wheel in every sector. The task before the working group was thus to identify those particular issues which were clearly specific to the financial sector and required further elaboration in the context of a sectoral annotation.

43. The Chairman summed up his personal views on the discussions on market access by noting that group members appeared to recognize that establishment was an essential mode of delivery in the area of financial services, it being understood that the right to establish a commercial presence in a host country needed to be qualified and differentiated depending, inter alia, on the form of establishment concerned (greenfield investment vs. acquisition), the sector or sub-sector (e.g. banking vs. insurance) involved, as well as the level of development of individual countries. He felt that the need for the temporary entry of essential personnel was also widely recognized as a critical element of market access, albeit one which warranted a closer examination. He said that most delegations appeared to favour a cautious approach in regard to the liberalization of cross-border services, without however excluding a selective liberalization of such services subject to a proper consideration of issues relating to capital movements and prudential regulations. He felt that while some delegations were of the view that market access should be an obligation of the arrangement, for other delegations it appeared evident that market access obligations should be the result of negotiations, bearing in mind that access to financial markets was subject in all countries to specific regulations covering both the terms of entry and conditions of operation. He suggested, finally, that the discussion of modes of delivery had highlighted both the legitimacy of prudential concerns and the range of measures limiting market access for reasons other than prudential considerations. His feeling was that both issues were deemed as requiring particular attention in the context of sectoral discussions in the financial services area.

44. The Chairman opened the floor to a discussion of national treatment. He commented that the interpretation and application of this principle in the banking sector depended, inter alia, on relevant national regulations which often varied considerably from country to country. He noted that the traditional definition of national treatment was outlined in option one of the non-paper that he had supplied on the topic. Other options, he said, took into account the effects of national regulations on the competitive ability of foreign service providers as compared to domestic financial institutions. He said that these were presented as so-called equality of competitive opportunity in option two and equivalent treatment in option three. He noted that option three was particularly relevant to the conditions of establishment of foreign branches and agencies.

45. The representative of the European Communities said that the principle of national treatment should be one of the cornerstones of a services agreement and apply to financial services. The principle of national treatment, he said, should not only apply de jure but also de facto, meaning that the overall treatment granted to foreign service providers shall not be less favourable than that given to domestic financial service

institutions. He suggested that national treatment might be specified according to the modes of delivery. Subsidiaries should be granted identical treatment to that granted to domestically-owned companies incorporated in the host country. He said that branches, not being incorporated in the host country, might require different provisions because their supervision could be subject to the authority of both domestic and host country authorities. Nevertheless, the resulting national treatment for branches should be equivalent in effect. As regards accounting or reporting requirements, the need to supervise the activities of the branch in the host country should take into account the legal status of the branch as part of the financial institution registered in another country. Regarding cross-border services, he said that it was normally acknowledged that authorities could not supervise the soundness or solvency of companies which were not established in the host country. Therefore, although some modification of the national treatment principle might be necessary, the rules for conduct of business for the provision of services from abroad should not be more burdensome than for the provision of services domestically.

46. The representative of Japan stated that market access should be regarded as an obligation, but an obligation subject to reservation. National treatment should be extended to operations once entry into the market had been granted. He said Japan preferred the traditional definition of national treatment and believed it to be sufficient. He noted that although some delegations saw a difference between de jure and de facto national treatment, Japan currently saw no convincing reason to depart from the traditional definition.

47. The representative of the European Communities noted that there existed a number of situations in which foreign financial institutions were subject to the same regulations as domestic institutions, but the effective application of those regulations was different. He said, for example, that the same authorization procedure might be applied differently to domestic institutions than to foreign institutions, particularly if national authorities possessed wide discretionary powers. He said that there were also cases in which exactly the same regulations restricted the foreign financial institution in their ability to enter or compete in a market. In instances in which a quota system involved discretionary decisions of authorities, foreign financial institutions could be at a disadvantage compared with long-established domestic institutions in their attempts to expand into new activities or set up additional branches. Also, access to central banks' rediscount windows could be fixed in an arbitrary manner to the disadvantage of foreign institutions, even though, in principle, the same regulations applied to both foreign and domestic institutions.

48. The representative of India said that he would address the subjects of national treatment, market access, m.f.n. and non-discrimination jointly. He said that India did not envisage market access as a general obligation from which reservations would be made, but viewed it as the result of a specific exchange of concessions. He observed that in spite of disagreement on the type of approach, there existed agreement that market access, because of the progressive nature of the liberalization process,

would be subject to certain conditions on entry and operation applying to both market access and national treatment. For the banking and financial services sector, he said that India foresaw conditions of entry and operation as related to the types of transactions that would be liberalized, restrictions on activities within sectors or sub-sectors, restrictions on the number of foreign suppliers, restrictions based on the volume or value of transactions, restrictions on segments of the market (either territorial or activity related), and preferences and incentives for domestic suppliers in developing countries. He noted that some of these conditions could be characterized as restrictions on market access or as limitations on national treatment in its purest form. In market access, he said India foresaw negotiations covering modes of delivery as well as conditions of entry and operation. Once access prescribing conditions of entry and operation was granted, then traditional national treatment would be accorded to foreign suppliers. Also, treatment may not be exactly similar for foreign suppliers but would be intended to be equal in effect. Turning to m.f.n./non-discrimination, he said that it was his delegation's view that any benefit, privilege or immunity negotiated or autonomously granted with regard to trade in services or any sector thereof by any party or any country should be extended immediately and unconditionally to all other parties without exception. He said that the non-discrimination principle should say that parties shall not discriminate with respect to foreign service suppliers in regard to entry and operation conditions. The intention, he said, was not that participants should have total freedom to impose any conditions of entry and operation, but that such conditions would be based upon provisions of the framework. He added that since market access would be based on the exchange of concessions, the conditions of entry and operation would determine the value of concessions.

49. The representative of Korea said that national treatment was one of the key issues to be resolved in trade in services. He said that his delegation favoured the traditional definition of national treatment. He noted that because each country's financial system had a history that should be respected, only de jure, or traditional, national treatment should be applied. He said that the option of equality of competitive opportunity was not only a vague concept but also one which might lead to a result-oriented approach that no country could accept.

50. The representative of Argentina said that market access should be the result of negotiations among parties, rather than an obligation. He noted that there should be no blank check for access to markets, especially in this sensitive sector. Access and conditions might differ among countries, he said, but pure unrestricted access in any country was unlikely. He said that within national and international financial markets, certain types of limitations on market access were recognized, such as limitations on the number of entities, the types of operation, or the number of operations in the national market. He supported the principle of national treatment, but noted that the principle could require a certain degree of clarification with respect to financial services, to ensure that treatment was not less favourable. He also stated that, in some instances, national treatment could result in more favourable treatment for the foreign operator. Non-discrimination and m.f.n. would need to be clear and unconditional. If



this were not the case, a country could be better off operating outside the agreement. He said that this view applied not only to the financial services sector but also to other sectors as well.

51. The representative of Thailand said that national treatment was important, but difficult to apply to financial services, particularly for the developing countries. In developing countries, domestic financial institutions played a role far more complex than just serving as financial intermediaries. They played an important social and development role in lending, for example, to agriculture, to rural areas or to socially desirable yet unprofitable projects. He said that this role meant that the domestic financial institutions had a heavier burden than their foreign counterparts. In banking and securities, the global activities were concentrated in the wholesale or trade and investment business. Thus, since the concept of national treatment might not be relevant, it could only be accepted with reservations or conditions.

52. The representative of Australia said that national treatment should be obligatory once market access was granted. He said that if it could be reserved against it would involve an element of negotiation. He said that his delegation viewed market access as an obligation. He observed that no delegations in the GNS were suggesting that the m.f.n. principle should be reserved against. Regarding the market access options, he said that granting establishment without reference to conditions applied to nationals was an option whose disadvantages outweighed its advantages. If the regulatory situation in another country were more restrictive than the regulatory environment in the country that was receiving market access, then the concession would be worth significantly less. This would be a factor that would need to be taken into account in the negotiations. He said that for smaller, less economically powerful countries a strong national treatment provision was a crucial element. He said that Australia favoured the traditional definition but had no intrinsic difficulties with option two. On option three, he said that he agreed with the caution expressed by the representative of Japan that the option may push the national treatment concept beyond its desirable level and become a back door to sectoral reciprocity. He noted that for some individual cases it may be appropriate to draw upon some of the work done in the OECD with respect to branches, but said that he was wary of applying option three across the board to financial services. Some of the problems mentioned by the EC representative, such as quota allocations or licensing, could be addressed by other provisions of a framework such as non-discrimination and transparency. One problem he noted was that the concepts of market access and national treatment seemed to merge in actual negotiations. If reservations were allowed on both market access and national treatment, drawing the line between the market access conditions and national treatment conditions might be difficult.

53. The representative of Singapore stated that an important consideration in financial services was the protection of depositors. He said that control over branches by the host country was very different from the control the host government could exercise over local domestic banks. In granting market access, he said that Singapore would seek to ensure that

banks were financially sound and provided proper protection to depositors. In Singapore, domestic banks were highly supervised, they had high financial standards based on the BIS capital adequacy ratios, and their capital was in the country. As a result, their operations could be carefully monitored. He said central banks would need to consider how the same assurances could be applied to foreign banks operating in the host country. He noted that it would not be a simple matter of blindly applying national treatment to foreign banks. He said that foreign banks tended to be oriented towards short-term profits and often did not consider the economic conditions applying in the host country. When a possibility of economic slowdown was eminent, they could pull back operations, with the risk of the economy being pulled down further and faster. He added that foreign banks could also close because of problems in headquarters that would be totally beyond of the control of the host government. Traditional national treatment had merits, he said, but would require very careful consideration of "like circumstances".

54. The representative of Mexico pointed out that there were basic differences between market access and national treatment. He said that access should not automatically imply national treatment. There were certain difficulties with the traditional definition of national treatment. He said that it was criticized as static because it did not take into account the effects of global developments in financial matters. Another criticism of traditional national treatment was that "like circumstances" lacked clear definition. These arguments had been made by those that preferred to go beyond traditional national treatment to options two or three. He said that his delegation appreciated these difficulties, but observed that similar difficulties existed for the other options. He noted that option two also contained the expression "in like circumstances." He said that what was sought was to ensure an actual equality of competition. He noted that competitive equality should allow for prudential regulations, which although implying some degree of discrimination between domestic and foreign institutions, should be applied in a transparent manner. Regarding equivalent treatment, he asked to hear from an OECD member country about the results of its application. He asked when option two would provide a safeguard against such discrimination. He noted that whatever definition of national treatment was adopted, it should be applied with flexibility.

55. The representative of Malaysia said that although market access was necessary, it should be subject to special considerations for developing countries that needed to develop their own financial sector in order to become more competitive. She said that her delegation did not see how national treatment could be implemented in an effective manner, given the complexities of the financial sector. She said that the Malaysian economy was small but resilient and felt that national treatment would not dislodge domestic financial institutions. She noted that her delegation nevertheless shared some of the difficulties of other ASEAN countries. She noted that a maintenance of social and economic stability was critical, adding that domestic financial institutions performed functions that extended beyond commercial interests alone. She argued that national treatment might be too ambitious an objective at this point in time, but

felt that it might be appropriate to consider it in later negotiating rounds.

56. The representative of Hong Kong said that his delegation preferred a strong rules-based approach in the area of market access and national treatment. He said that whichever negotiating approach was adopted, the possibility of reservations from full application of either approach would be central. Envisioning little practical differences in the final results of the two approaches, he said that the essential aim was that the regime be clear. On market access, he preferred option one and said that option two would be very difficult. On national treatment, he said that his delegation agreed with option one. He saw no problems in principle with option two, but noted that certain foreign operators were not operating in the market in circumstances similar to those of domestic suppliers. He said that the concept of like circumstances would need to be refined. He agreed that m.f.n. and non-discrimination should also apply in a services agreement and encouraged further discussion of whether there were reasons to qualify these provisions with respect to financial services.

57. The representative of Switzerland said that national treatment under the traditional definition was a necessary but not sufficient condition. He said that examples such as those mentioned by the delegate of the European Communities demonstrated that the obligation should be substantive in order to achieve progress on liberalization process. The concept of de facto national treatment, which would guarantee equality of competitive opportunity in like circumstances, was the key element for the success of the liberalization. National treatment also depended to some extent on the mode of delivery. A subsidiary should receive identical treatment. Branches entailed differing requirements, so treatment needed to be equivalent in effect. Quoting work of the OECD which explained its definition of the concept of equivalent treatment, he said "the notion of equivalent treatment should be regarded not as an alternative to national treatment but rather as an expression of national treatment designed to meet the particular circumstances associated with establishment by non-resident investors in a form other than that of an enterprise incorporated under the host country law. The application of the national treatment standard is normally straightforward when establishment takes the form of a subsidiary. In that case, the host country would normally be expected to apply the same rules as those applying to the establishment of the subsidiary of a domestic enterprise, whether by takeover, merger, or new investment. By contrast, if establishment takes the form of a branch, the established enterprise remains in important respects independent of the authority of the host country because it is still part of the parent enterprise. Thus, host country authorities may for prudential reasons need to impose specific requirements on the establishment of branches of non-resident enterprises that would not need to be applied to branches of domestic enterprises nor even to non-resident enterprise subsidiaries incorporated under domestic law. As a result, branches of a non-resident parent enterprise could be treated in a different - and possibly less favourable - manner than branches of a domestic enterprise (or than subsidiaries of non-resident enterprises) in like circumstances. Under the

"equivalent treatment principle", such different treatment of the branches of non-resident investors would be authorized, provided the conditions imposed were not more burdensome than those imposed on domestic enterprises."

58. The representative of Canada commented that the right of establishment meant little without a right to national treatment, subject to reservations as necessary. He said that he shared the views of the EC and the Swiss delegates that it should go beyond de jure national treatment. He observed that Canada had about fifty foreign banks and eight domestic banks, yet had not experienced a tendency for foreign banks to pull back when the going got tough. Also, proper regulation could ensure the protection of depositors. Therefore, he said, to the extent possible foreign banks should have rights and opportunities similar to those of domestic banks.

59. The representative of the United States said that his delegation, like a number of other delegations, disavowed option two in the non-paper on market access for the reasons cited in the cons under that option. Most countries seemed to apply the kind of treatment in option two, known as reciprocity. He said that he hoped that the problem of reciprocity could be dealt with in the course of these negotiations. On national treatment, he said that he agreed with the EC, Canada, Switzerland and others that the option of equality of competitive opportunity was desirable. If the concept of equality of competitive opportunity were to become part of a text, some refinement or elaboration could be required. He said that he also preferred option two over option one, because a number of regulations in the banking, securities and insurance industries already treated residents and nonresidents alike with respect to market access. In cases where countries had closed their markets to new foreign and domestic entrants alike based on an assessment of the domestic market, such treatment might be considered no less favourable. However, in instances where the market was closed to new participants but where few or no foreign institutions were in the market, it would be questionable whether a level playing field existed for foreign and domestic competitors. He said that he was surprised that some delegations expressed difficulty with accepting the no less favourable treatment standard. He noted that equality of competitive opportunity was a new concept that could be subject to varying interpretation if it were not defined further. However, he noted that it was not the only concept in the services area that would be subject to interpretation. He said that his delegation could envision letting the dispute settlement mechanism develop a body of interpretation for the concept of equality of competitive opportunity.

60. The representative of Singapore commented that the situations in Canada and Singapore were not similar. Singapore was a small economy where more than half of total banking assets and liabilities were controlled by foreign banks. In the case of Canada, because foreign banks were restricted to a certain percentage of the total banking market, the impact of a bank's pullout on the economy would be minimal. She said that Singapore did not have such a restriction. In 1985, Singapore experienced a recession in which foreign banks wanted to leave. This had prompted the government to consult with banks to stabilize the securities industry.

61. The representative of Egypt stated that to achieve long term progressive liberalization, parties should negotiate market access concessions. He agreed that the local financial sector in developing countries had a role in the development of the economy. On national treatment, he said that his country needed more time to accommodate the problems of exchange controls currently in place and which would likely remain in place for some time. On non-discrimination, he said he said that financial problems which warranted a central bank to restrict the opening of new branches for foreign and domestic institutions should not be described as discrimination.

62. The representative of Thailand said that m.f.n. was an important concept for trade in services, but that in financial services it would be a difficult principle to apply for the developing countries. He cited depositor protection as among the reasons for this difficulty. In developing countries, consumers were not as well prepared to assess the risks associated with various institutions. Failures by operators could have wide ranging repercussions on the social as well as the economic well being of a country. Therefore, to apply the concept of m.f.n., mutual recognition of regulatory and supervisory standards needed to be taken into account along with the need to promote trade and investment and the need to spread the representation of the banks among geographical areas.

63. The representative of Korea said that he wished to clarify a distinction between national treatment and market access. One delegation, he said, had argued that when new entrants were prohibited in markets where only nationals actually operated the action might be de jure national treatment but represented de facto discrimination. He stated that this example was actually a problem of market access, not a problem of national treatment.

64. The representative of Argentina asked if delegations would specify any peculiarities within their financial services sector which would prevent their countries from accepting the principle of national treatment in its purest form.

65. The representative of Japan said that there appeared to be a broad consensus that national treatment and market access were to be subject to reservations, but that no countries argued that m.f.n. would be subject to reservations. He noted that if m.f.n. were not subject to reservations, his delegation would have difficulties due to specific peculiarities of Japan's financial services sector. He said that Japanese banking laws stated that for the issuance of licenses to foreign banks, Japan had to take into account whether or not equivalent status under the laws of the country of the parent company was given to Japanese banks. Although this article was based on reciprocity, in fact, it had been flexibly applied in practice. He said that the law had only been applied in the exceptional cases of countries where Japanese banks were completely denied market entry. If Japan did not revise this banking law, it would have to lodge a reservation to the m.f.n. principle, or might need to take recourse to the non-application clause of the agreement. Since similar banking provisions

appeared in other countries, reservations to the m.f.n. principle should be envisaged.

66. The representative of Korea said that m.f.n. was one of the most important principles in the GATT, which had lead to post-war global economic development through free trade. He said that the liberalization of financial services heretofore had been achieved through reciprocity. He cited a need to respect and maintain the present financial system of particular countries as a reason for the m.f.n. clause to be subject to reservation. He argued that some aspects of financial services trade could be set aside for further negotiation, noting that the most important aim was to launch the framework agreement.

67. The representative of the European Communities said that his delegation did not believe that any special application of the most-favoured-nation clause with respect to financial services was necessary. He added that in financial services allowance would need to be made for mutual recognition agreements among countries or for unilateral recognition of existing regulations in the country of origin. He said that he did not view this issue as relating to m.f.n., but rather to a provision which would enable host country authorities to regulate services within their own territories. In the insurance sector, for example, when a country recognised that the supervision taking place in the country of origin was equivalent to the receiving country, it would become possible to sell an insurance policy in the receiving country subject to the control of the country of origin. As for the matter of "free riders", in an agreement where there could be liberalization available to countries that did not contribute to that liberalization, he saw the need for the inclusion of a non-application clause with certain procedural guarantees.

68. The representative of Mexico said that it was important to examine the differences, if any, in the applicability of the m.f.n. principle to services, particularly financial services, as opposed to goods. The importance of financial services as a means of implementing economic policies or as having significant impact on economies was widely recognized. The implications of a unconditional m.f.n. treatment should be spelled out very clearly for services in general and for financial services in particular. This related to the question of "free riders" and to prudential measures. "Free riders" should not present substantial problems because the trading system had done well in spite of this problem for some time. With respect to the application of m.f.n. treatment, he noted that certain types of regionalism should be transparent, but were desirable. Regarding a non-application clause, a number of guarantees needed to be worked out, including machinery for dispute resolution, so that non-application would not be a unilateral measure.

69. The representative of Hungary asked how delegations expected the agreement to deal with the currently existing reciprocal treatment in international financial services, particularly OECD countries.

70. The representative of Egypt said that provisions allowing regional arrangements among developing countries which provided liberalization only

among members, subject to multilateral disciplines and surveillance, were very important to his delegation. He said that making a distinction between market access and national treatment provided after the granting of such access was also important. He described control over market access as one of the most important policy instruments enabling a government in a developing country to choose the banking regime believed to be the most appropriate to its circumstances and needs.

71. The representative of Argentina said that Argentinian banking and financial legislation also contained reciprocity provisions and was thus interested in the views of other delegations on the relationship of such provisions to the concept of m.f.n.

72. The representative of the United States said that his delegation was puzzled by the view that reservations to m.f.n. treatment and non-discrimination were necessary because of reciprocity. He said that an evaluation of all measures of the agreement, including non-application, ought to lead a party to conclude that a balance of rights and obligations had been achieved, rather than to require preservation of reciprocal treatment. He commented that he did not agree that "free riders" were not a problem and some aspect of the agreement would have to deal with the issue. He said that some delegations' views, that full account would have to be taken of prudential requirements and mutual recognition, could unnecessarily complicate the application of the principles of m.f.n. and non-discrimination.

73. The representative of Mexico reiterated that "free riders" had not been a substantial problem in the area of international trade in goods, but that this might be an issue to take into account in services trade.

74. The representative of Korea said that some aspects of his country's financial market had been liberalized through bilateral negotiations. He said that there were no guiding international rules such as m.f.n. or non-discrimination at the time of these negotiations. If there had been such rules at the time of the bilateral arrangements, he said that Korea might not have liberalized as much.

75. The representative of Japan said that he was concerned about comments which implied that non-application could be invoked to avoid the "free rider" problem. He hoped that the implication of the interventions was not that non-application could be taken unilaterally. He argued that a non-application clause should be invoked only with the consent of the CONTRACTING PARTIES. He suggested that such problems might be handled through a dispute settlement mechanism.

76. The representative of the European Communities said that there was a need for a non-application clause and the decision whether to invoke such a clause would be made at the end of negotiations and as a last resort. The Community position on non-application did include safeguard provisions or guarantees such as bilateral consultations and notification that would allow recourse to verify whether the action was justified. He said that it

also included review of the action with a view to the elimination of the non-application measure.

77. The Chairman summarized his personal views on the discussions by noting that some delegations stressed that market access did not automatically mean the granting of national treatment. While the two principles were distinct, some elements of the principles overlapped in practice. Regarding national treatment, he saw no clear cut preference among the various options, although a need for a qualification of its application according to different circumstances was expressed. Types of establishment, e.g. branches or subsidiaries, represented an example of the different circumstances that were observed. Many delegates from developing countries stressed the vulnerability of their financial and capital markets and the necessity for prudential safeguards. He said that various forms of mutual recognition and harmonization might in some cases justify a differentiated treatment, such that m.f.n. might not apply in its purest sense. He said that the issues of "free riders" would need to be tackled as would the non-application issue. Regional integration was raised with respect to preferential arrangements among developing countries.

78. The Chairman recalled that the next agenda item concerned regulatory matters such as prudential fiduciary requirements. He noted that one question concerned how and where to draw the line between those measures that were consistent with the agreement and those that might go beyond it. He said that the options in the non-paper ranged from narrow to broad in scope. The first option provided for a prudential carve-out limited to a qualified national treatment provision. The second option was broader, permitting all "reasonable" prudential and fiduciary measures. Option three was a variation of option two, enumerating examples of permissible measures. Option four provided for an unqualified right to take such measures. Option five aimed at defining as precisely as possible the prudential actions that would be permitted, so as to reduce legal uncertainties.

79. The representative of Canada said that it was extremely important to have prudential provisions which would allow governments or regulators to take action required to protect their markets. There was no particular reason that it should apply only to national treatment, rather than to any other provision of the agreement as may be necessary. He said that the approach in option two was preferable. In order for any prudential carve-out not to be abused, he said that it should be subject to dispute settlement. He sought a clear definition of what was prudential and what was not, recognising the difficulty of making such a distinction.

80. The representative of Japan said that prudential considerations were a particular area of financial services in which specific provisions were needed. Prudential regulations were essential to the provision of financial services. He said that a prudential carve-out should not be limited to national treatment but also apply to other articles of the framework. For this reason Japan supported option two. In order to avoid being used as a loophole, the prudential carve-out should be subject not only to dispute settlement but also to obligations such as notification.



He said that the concept of the maintenance of fair and orderly markets, as mentioned in option three, was important to financial services. Liberalization in Japan had been promoted gradually on a step-by-step basis while reinforcing the financial institutions to enable them to compete. Liberalization had also been promoted with the understanding that no bankruptcy should be allowed and with a policy objective of maintaining fair and orderly markets.

81. The representative of India said that prudential regulations cut across all the aspects of discussion thus far. He said that the question was whether to place elaborate provisions in the agreement to make it a subject of negotiation. For instance, prudential regulations were important with respect to monitoring cross-border trade in services, modes of delivery, and national objectives, particularly in developing countries. There should be provisions assuring the right of parties to introduce regulations consistent with commitments in the framework and provisions for developing countries to pursue objectives such as the development of the national economy and sectoral priorities. He said that his delegation preferred option two, with more specification added to the examples of justifications for these regulations.

82. The representative of the European Communities said that any agreement on services would need to respect national laws with respect to financial services that aimed to ensure the solvency and integrity of the financial system and institutions, as well as objectives such as the protection of consumers and checks against money laundering. He said that the variety of different systems in the financial sector had to be respected. An agreement should also allow harmonization to be sought on a regional level. Regulations should be compatible, not only with provisions on national treatment but also with any other provision of the agreement including market access, transparency, and most-favoured-nation treatment. A prudential carve-out could make it possible to adopt any measures that were consistent with the rules of the agreement.

83. The representative of Thailand said that it was necessary to have prudential regulation with regard to balance of payments difficulties, the conduct of monetary policy, the safeguarding of orderly competition and consumer protection. His delegation questioned the need to have prior consultations with other countries before implementing a regulation concerning monetary policy. He also expressed reservations about dispute settlement procedures, saying it was better to allow each government to decide what action might need to be taken in any particular situation.

84. The representative of Australia said it was fundamental for all countries to retain sufficient power to manage their financial systems in a prudential way. Regarding the options that had been presented, he said he was attracted to options one and two. He believed that while the concept of "reasonable" actions was difficult to define precisely, there should be a broad consensus as to what constituted "reasonable". He found option five complicated and suggested that it appeared to be exceedingly difficult to negotiate.

85. The representative of Sweden, on behalf of the Nordic countries, emphasised the need for clearly formulated provisions to delineate the scope for prudential regulation. He considered option four would give too much freedom for regulators to invoke prudential caveats and might lead to the enacting of discriminatory or otherwise inappropriate rules. He recognised the difficulties of having criteria based on a reasonableness test. If such a test were inevitable, he preferred to combine options two and three in the sense of an illustrative list of legitimate objectives for prudential and fiduciary regulations including monetary policy objectives, protection of fair and orderly markets, protection of depositors, investors, insurance policy holders and consumers, and prevention of inappropriate practices. He considered that option five was attractive insofar as the right to enact prudential regulations would be consistent with the obligations of the agreement.

86. The representative of the United States said that in the financial services sector the question of a prudential carve-out was vital for his delegation. A prudential carve-out referred to measures which were reasonably necessary to protect (a) the financial service provider (b) the customer and (c) the strength and stability of the financial system as a whole. The freedom for prudential regulation had to remain intact for each country so long as the measures were legitimate and reasonable and not taken for the purposes of circumventing the agreement. He believed that option two came closest to achieving that objective; it was preferable to more complicated variations such as in options one, three and five.

87. The representative of Switzerland agreed that the right to regulate should not be put into question by an agreement on the liberalization of financial services. Regulation had to be transparent and non-discriminatory and should not restrict freedom of activity and market access under fair competition. He noted that conflicts arising from the application of regulation should be subject to the dispute settlement mechanism; his delegation would therefore eliminate option four. He considered the reasonableness test would put pressure on the dispute settlement mechanism and attached great importance to a system which ensured increased legal certainty for market participants and for this reason he sympathised with the ideas contained in option five.

88. The representative of South Africa said that the options for prudential provisions were the most important part of the agreement but should not be seen as an escape clause. Option one seemed to be too narrow; option two was most acceptable if "reasonable actions" could be defined in precise terms; option three listed all the possibilities, which seemed to be very wide, for non-compliance or exceptions and would have to be defined in more detail; option four was very wide and should not come into the picture at all; option five contained practical and sensible provisions which attempted to limit areas of possible misunderstanding and conflict, although some further explanation of this option would be necessary. In all, option five might be the best possible option to accept.

89. The representative of Brazil emphasised that any eventual agreement on prudential safeguards in this sector should be consistent with the framework agreement for trade in services, and should make sufficient allowance for individual national legal systems.

90. The representative of Egypt considered that at this stage of the negotiations it was difficult to make a choice between the options under discussion, given that the framework was not yet formulated, that levels of development differed greatly between participants, and that there had been insufficient time to reflect on the substance of the options.

91. The representative of Singapore noted that countries had different philosophies for banking regulation and supervision, implying that an issue such as "reasonableness" in prudential requirements was a very subjective one; there existed different standards among countries regarding, for example, the admission of foreign institutions.

92. The representative of Malaysia said that it was necessary that a provision on prudential regulation allow for maximum flexibility in the national regulatory process. Her delegation was concerned about the nature and coverage of any dispute settlement system as it was uncertain how dispute settlement could adversely constrain the powers of a country's central bank to affect financial and banking policies. A review of prudential measures before implementation would be difficult for a developing country. She only supported measures which allowed maximum flexibility for countries to manage their economies in order to attain the desired level of economic growth. The representative of India supported the views of the Malaysian delegate that prior consultation and on prudential regulation and national policy making should be made subject to a dispute settlement mechanism.

93. The representative of Poland said that his country was in an economic transition period and was more or less constructing the banking system from the beginning. Given this situation, and the need for more clarity on the framework, he felt that the issues under discussion and the options proposed required further consideration.

94. The representative of Hungary said his delegation was not yet committed to any of the options on the table although preliminary considerations indicated that options two or three were interesting. In his country, too, the financial sector was in regulatory flux which, in part, made his delegation hesitant about dispute settlement. He did not think that Hungary could undertake an obligation, at least in the financial sector, to make any regulatory changes based on binding panel decisions.

95. Following the discussion, the Chairman considered that, in his view, there had to be wide room for flexibility in order to allow for the necessary prudential organisational measures. It was not possible to draw even a preliminary conclusion as to which approach should be chosen and suggested. If the group so asked, the matter of prudential regulation would be discussed in depth at the next meeting of the working group. He

then suggested that participants turn to the next agenda item, progressive liberalization.

96. Regarding modes of delivery, the representative of Hungary said that the establishment-related forms of trade were of special relevance and would be the major focus of market opening where he foresaw a gradual liberalization of various types of banking activities. Concerning the different kinds of establishment, he saw a difference between so-called green-field establishments, the setting up of joint ventures, and establishment via acquisition. Acquisition, while not being fully excluded, would to a large extent be limited for foreign banks in the case of his country.

97. The representative of the European Communities referred to the non-paper circulated informally in the GNS on March 28 by the European Communities and the United States as a product of discussions reflecting broad agreement on most issues. He said the non-paper was applicable to financial services, and contained a standstill provision applicable with very minor exceptions, unconditional institutional obligations, and an obligation regarding national treatment with the possibility of inserting specific limited reservations. In the text, market access was an obligation only insofar as binding commitments were made. The possibility was foreseen to enter into multilateral commitments among the parties consisting of the progressive elimination of limitations and conditions of market access. This specific provision in his view could apply to financial services with progressive liberalization taking place ideally according to a time schedule with the possibility of longer transitional periods for developing countries.

98. The representative of Argentina said that the degree of openness in the financial sector varied considerably from one country to another. In this regard, he recalled that his delegation had consistently pointed out that the freeze or standstill that was being suggested would be inequitable, if it applied to the whole gamut of services. Commenting on the proposal of reservations against market access - the so-called telephone directory approach - he said that the alternative positive list approach was preferable and would facilitate progressive liberalization in the financial as well as other services sectors.

99. The representative of Hungary said that under a freeze approach the assumption was that a highly developed regulatory regime was already in place. In his country's restructuring process, there were completely new financial activities coming into existence e.g. securities trade, where regulations were being developed. The freezing of a regulatory regime that was in flux would be both difficult and inequitable, despite the possibility of reservations on specific regulations under the EC-US scheme. In the case of his country there were whole areas in financial services without regulations and thus there was nothing to reserve on.

100. The representative of Japan referred to the joint US-EC text and said that the level of liberalization obligations envisaged remained low. His delegation's view was that the liberalization of financial services should

be fully promoted. The first commitment in the joint text was only a freeze with grandfathering permitted; the text also allowed some degree of future reservation to future measures. Furthermore, the concept of effective market access constituted a central problem, rendering the text in overall terms inappropriate as a basis for progressive liberalization negotiations. He agreed with the Malaysian representative that central bank monetary and financial policy should not be covered by dispute settlement procedures.

101. The representative of Australia said that his delegation supported an overall agreement whose principles and rules covered all trade in services, including financial services with an appropriate prudential carve-out. There should be strong rules ensuring that m.f.n., national treatment and transparency applied to all covered services while allowing parties to enter reservations to the extent that these could not be met. Market access should be subject to negotiation and developing country participation would be negotiated on a flexible basis. Any special problems which every country would have in applying the framework principles to a particular sector should be reflected in limited sectoral annotations to the framework agreement, rather than by way of separate sectoral agreements.

102. The representative of Egypt referred to MTN.GNS/W/101 in which his delegation along with others had stated their position on progressive liberalization. Article 5 of the document referred to appropriate flexibility for developing countries in the process of progressive liberalization which should be governed by, inter alia, governmental and technological objectives of developing countries in the services sector.

103. Referring to the same document, the representative of India supported the views of the Egyptian delegate and asked whether in discussing progressive liberalization the Group was looking at only the liberalization of the legislative requirements in one set of countries, or whether the Group was also objectively looking at liberalization to achieve some parity in the exchange of services. Liberalization should not lead to further concentrations of market power in international trade in services.

104. The representative of the United States, referring to the joint U.S./EC non-paper of 28 March on structure, said that his delegation's position was that a more dynamic understanding that assured a meaningful set of principles, not only for services generally but also for financial services, could be achieved if countries drafted principles with precision and agreed to abide by them. The issue was whether or not the ultimate agreement would be a set of definitions or a set of obligations. It was the U.S. view that an agreement would be of practical value only if parties assumed the obligations of specific provisions. This was why the U.S. and the EC had arrived at the essential conviction that countries should be bound by all the provisions of the understanding, subject to the flexibility afforded by taking necessary reservations. He said that it was clearly understood that all signatories could not assume all of the obligations upon entry into force of the agreement. However, he thought

that an approach that began with the assumption that a party was bound, unless a reservation was taken regarding a particular provision, would assure a greater degree of liberalization and would result in greater transparency. He said that the joint proposal put forth by the U.S. and the European Community assured that at least there would be a degree of liberalization and reflected the flexibility necessary for certain countries not capable of binding themselves to certain principles of the agreement. He noted that some delegations had complained about the complexity of the approach, but argued that the process of scheduling certain measures as reservations was flexible. A country could take a generic reservation with respect, for example, to banking; the country would simply state that it would not bind itself to the principle of national treatment. If that signatory already had a regulatory regime that allowed national treatment under certain circumstances, it could expect other countries to request that the reservation be narrowed.

105. The representative of South Africa said that a certain degree of liberalization already had taken place over a wide spectrum of markets and countries. The question was how to further encourage this process. He said that it would not be easy to impose a timetable. Each country was different and a timetable would depend of the development of financial markets and on internal policy objectives. As countries liberalized, higher risks would be introduced which would require a strengthening of supervisory practices. However, stronger financial markets would increase potential for profits. Initially the bilateral and multilateral expansion of financial markets and transactions between countries would occur mainly between highly developed countries. Countries which were just beginning the process of liberalization would need support and could not open their markets without exercising caution. The issue of exemptions would arise because countries that were not in a position to liberalize quickly would require flexibility. Harmonization of prudential rules would also help avoid creating barriers to any other sector. He wondered whether development objectives would be reconciled with trade liberalization in other sectoral agreements. He pointed out that multilateral liberalization should be reconciled with the existing bilateral and international agreements that had been in place for some time. He noted that a phase out of such arrangements would require time, were it to be required.

106. The representative of Switzerland said that progressive liberalization was the basic idea of this negotiation. Since the existing situation could not be changed overnight, a mechanism needed to be designed with the requisite flexibility. The starting point should be that at least no de-liberalization should occur following the entry into force of the agreement. For this reason, he said that his delegation favoured the idea of a standstill. He said that a standstill did not contradict the right of countries to regulate for prudential purposes and to adapt these regulations as necessary. He said that the time had come in financial services for substantial commitments to be undertaken under an agreement that would be strong, but under which commitments would be undertaken progressively. Market access should be an obligation from the beginning, although the ability to reserve on this obligation would provide

flexibility. In this regard, he said that his delegation believed the negative list approach to have tangible merits.

107. The representative of Brazil said that progressive liberalization and increasing participation of developing countries were not only important issues but also were closely linked. He said that many questions with regard to the increasing participation of developing countries could only be answered over the long term. In terms of strengthening the export capacity of developing countries, some approaches could be useful, such as finding ways to improve the service providers' participation in international bidding and to improve their access to networks. He said that it was important to indicate the link between the main elements of the framework and adapt the sectoral issues relevant to increasing participation of developing countries to those elements. He said that the concept of flexibility was directly related to increasing participation and it had been recognized since the Montreal meetings that flexibility should be interwoven into the framework and not only appear in an appendix. He said that the working group should devote effort to devising ways to build such flexibility into any annotation that might result, particularly with respect to market access and national treatment. He also recalled that since there were major objections to a negative list approach in the GNS, annotations could not be designed with this approach in mind. He pointed to a distinction between obtaining disciplined, predictable markets and the granting of market access commitments, with the former being an immediate objective of all participants but the latter to occur over a period of time. He said that the developing countries had a greater need for flexibility than developed countries because they would have a less clear idea of the regulatory and market situation, especially where policies and regulations were in the process of being established. He noted also the difficulty of producing an annex on the basis of a framework that did not yet exist.

108. The representative of Argentina said that his country was faced with a situation similar to that in other countries for which it would be advisable to have machinery that took into account the degree of evolution of liberalization. Some countries, such as his, already had achieved a high degree of liberalization and applied a non-discriminatory regulatory regime. This could present difficulties in later efforts at liberalization. He noted that, in some cases, progressing too quickly could lead to the disappearance of private domestic banks as well as important official banks. Some developing countries faced with serious economic difficulties had adopted a freeze on certain banking activities. Although such measures might ultimately fall under safeguard provisions, it was not clear that the provisions would be sufficiently flexible to deal with some of the difficult economic situations that could arise. For this reason, for example, even though the sector in Argentina was currently liberalized, Argentina would have difficulty making commitments which would not allow for modification in the future to deal with economic difficulties.

109. The Chairman commented that the group was confronted with a sector in which a number of clear specificities existed. He observed that three main

specificities included the density of regulations, the variety of sub-sectors, and a market in which new financial instruments were rapidly emerging. He said that two different negotiating approaches were put forward. He noted that proponents of both approaches argued that they could be applied flexibly with respect to trade in financial services.

110. The representative of Egypt asked about the status of the Chairman's summaries, particularly in view of the fact that a delegation might believe that its positions were not reflected in that summary.

111. The Chairman responded that his comments did not have any formal status, but that they were simply summary reflections.

112. The representative of Egypt said that his delegation had no objections to hearing the Chairman's personal views concerning the discussions assuming that written documents on the meeting would reflect the views of all delegations.

113. The Chairman opened the floor to a discussion of the increasing participation of developing countries.

114. The representative of Mexico said that the most-favoured-nation principle referred to questions of external discrimination with respect to economic policy, whereas the principle of national treatment referred to questions regarding international discrimination. These principles had been responsible for the success of the GATT and were basic principles which should apply to trade in services. There might be certain aspects of m.f.n. that would differ in application to services as compared with goods. Such differences should be considered, for example in the area of prudential regulation in the financial sector. Once adequate principles were determined, the question of progressive liberalization and increasing participation of developing countries would be relevant. He said that his delegation did not wish to conclude an agreement that would not be respected or that had too many loopholes. If the agreement were to establish commitments and provide for transparency, it had to provide adequate margins for the progressive liberalization by developing countries of trade in services, particularly financial services. He noted that some developing countries did have comparative advantages in some service sectors where, for example, labour was an issue but this was not the case for financial services. It would be necessary to have macroeconomic stability in order to increase liberalization, particularly for volatile economies and those countries with a history of over-regulation. He said that there was also a need for gradual liberalization, not only for developing countries but also for developed countries. Otherwise, many countries would have difficulty participating in a services agreement, particularly with respect to financial services. He said that it was recognized that regional integration efforts, among developing as well as developed countries, had positive benefits and should be encouraged. Regarding structural adjustment, a great many such policies had been directed towards the liberalization of financial markets, first extended to the internal sector and later to the foreign, or external, sector. He said that it was necessary to develop provisions that would ensure that



developing countries would be active participants in international trade in financial services. He noted that losses in domestic market shares by home country firms in developing countries would be more than compensated for if increased efficiency were to result.

115. The representative of the United States said that his delegation agreed that there was a need for appropriate flexibility for developing countries. This flexibility could be accomplished through a reservations process. He said that liberalization would also strengthen the ability of developing countries to meet their national policy objectives.

116. The representative of Japan said that it would be difficult for developing countries to adhere to the agreement with respect to financial services. He said that one approach under consideration to increase their participation was to give due consideration to the needs of developing countries in assuming initial commitments. This approach could relate to the number of reservations and include a grace period. He noted that another approach involved including sectors of particular interest to developing countries. He noted, however, that the movement of labour would be a difficult sector to accept in the agreement. A third approach was similar to treatment in the GATT, under the provisions of Article XVIII and Part IV, in which developing countries were exempted from some GATT obligations in consideration of development needs. He said that his delegation opposed an approach which would develop two blocs, one of developing countries and one of developed countries, and impose different obligations on each of the blocs. He said that he had no objections to the first and second approaches. He said that in financial services, an approach which allowed differing obligations with respect to conditions of entry and establishment on the basis of whether a country was developed or developing was not acceptable. He noted that financial services were an indispensable infrastructure in free-market economies, not only for developing countries but for all countries. He said that policy imperatives in the financial field included preserving financial order, protecting depositors, and ensuring sound business operations. Given that the financial sector impacted heavily on society and public investment, it would be important to promote liberalization gradually. Authorities should be able to enforce restrictions, whenever necessary, for prudential reasons. He noted that if cross-sectoral retaliation were applied in financial services, an economy could be jeopardised, particularly in the case of a developing country.

117. The representative of Switzerland said that an efficient national financial system was an essential element of economic progress in developing countries and in all countries in general. He said that this fact supported the argument that the financial system should be allowed to adopt modern techniques and instruments, to function according to market forces, and to establish links with the world financial market. Foreign financial suppliers could have a positive impact on developing countries' financial sectors both in providing services to the economy and in transferring know-how to the domestic market. While the level of development was an important parameter with respect to accepting obligations, specific situations differed from one country to the next. He

agreed that two blocks of countries should not be formed and that the necessary flexibility should be provided that would take into account each country's capacity to undertake commitments. He said that each country should accept the obligations to the extent which corresponded to the level of maturity of its financial sector. Regarding whether domestic reforms should be implemented prior to liberalization of foreign financial services, he argued that such efforts could be undertaken simultaneously rather than after domestic reform was fully in effect. He noted a need for adequate safeguards for balance of payments reasons, but argued that such safeguards should be subject to transparency and multilateral surveillance to avoid abuses. He recalled that no mode of delivery should be excluded a priori.

118. The representative of Egypt said that the concept of increasing participation of developing countries should be linked with all other elements of the agenda. He noted that the Montreal text expressed the need to expand service exports of developing countries through effective market access, through the liberalization of service sectors of export interest to developing countries, and by developing the capacities of indigenous service providers. Banks from developing countries participated in trade in services to a very limited extent and further progress to increase their participation in both domestic and international markets would require strengthening domestic financial systems. He said that a key element in accomplishing this would be to recognize the right of developing countries to use market access as an instrument for achieving policy goals in the banking sector--goals such as infant industry protection and the acquiring of knowledge and skills. Developing countries, being faced both regulatory and market-access barriers in developed countries, would require preferential market access. Individual developing countries should be allowed to decide which segments of the financial sector to liberalize. This approach might, for example, involve beginning with liberalization of the wholesale banking sector, leaving liberalization of the retail banking segment to future negotiations.

119. The representative of Brazil said that his delegation did not see any aspects of increasing participation of developing countries that needed to be addressed in an annotation. He said that the concerns should be addressed in the framework, since they were too important to be relegated only to annotations. Reacting to comments that a reservations approach could provide the necessary flexibility for developing countries and that the liberalization was beneficial in itself, he said that these were assumptions that would be taken into account but that were not necessarily valid in every instance. He noted that the reservations approach would place a tremendous burden on developing countries to determine from the outset what reservations would be necessary for preserving national policy objectives and to determine the status of compatibility between international commitments and provisions of national legislation, particularly since services was a new area. The concept of expressing reservations was a negative idea rather than a positive one. He said that the legal function of reservations was normally to take care of specific cases that were out of the ordinary. Basing a comprehensive negotiating process on such reservations was incorrect in the view of his delegation.

Regarding an annotation, if one were needed, it would be useful to consider that financial services represented a downstream service. He noted that banks usually followed other business around the world and that they provided for the enhancement of other services as well as the economic situation. He noted that, as a corollary of the assumption that financial services were a downstream activity, liberalization in financial services would depend on the overall level of increased participation of developing countries in the total international flow of services. Regarding modes of delivery, some of the difficult decisions in the GNS might be resolved more easily by recognising the long-term process of progressive liberalization, particularly with respect to commercial presence. He said that an annotation for financial services might allow the imposition of additional information requirements for the purposes of transparency of operation and statistical compilations.

120. The representative of Singapore noted that it was not only developed countries that had liberalized financial markets. He argued that developing countries were increasingly aware of the need to liberalise financial markets to achieve economic development. He said that Singapore made the decision to develop financial markets two decades ago and now had no exchange or interest rate controls. He said that about 200 financial institutions now operated in Singapore, of which only five were Singaporean. He said that foreign banks accounted for almost 70 per cent of industry profits and 85 per cent of trade financing business, and noted that this degree of liberalization surpassed even that found in some OECD member countries. He said that such an open financial market made the maintenance of macroeconomic stability increasingly difficult for the country's monetary authorities. He said that his government was not as concerned with the protection of indigenous financial institutions as with the prudential and regulatory oversight of all financial institutions operating in the country, whether domestic or foreign. A small economy could not afford bankruptcies and the government of a small country did not have the funds to offer deposit insurance to cover the losses of foreign financial institutions. He emphasized that the liberalization of financial markets should be gradual.

121. The representative of India said that increasing participation of developing countries was not a question of providing for two distinct blocs. The framework should provide for a balance of interests among those countries with advanced and stable economies and those countries where the situation was otherwise. He said that MTN.GNS/W/101 made an attempt to balance these interests by using a structure that reflected existing imbalances in services trade. It included the notions of providing for areas of export interest to developing countries and permitting developing countries to liberalise over a longer time period than developed countries. Particular features of developing countries would be taken into account through limitations on the type of commercial presence, minimum requirements for training and employment, and recognition of the export potential of developing countries, which depended upon the liberalization of cross-border movement of personnel. He noted that developed countries should liberalise their national regimes taking into account the special needs of developing countries supplying services abroad and, as stated in

MTN.GNS/W/101, developed countries should be allowed to recruit personnel from the source that was economically most advantageous. There should also be attempts to eliminate measures that impeded access to technology. Increasing participation of developing countries should be provided for in the framework, rather than be left to negotiations and reservations.

122. The representative of the United States said that it was inappropriate to talk of developing countries as one bloc, because each country had its own domestic situation. He said that a fundamental basis for the presence of foreign banks was that they contributed to capital formation. Thus, their presence in the country would help to develop the economy. He said that negotiations should not ignore this fundamental basis for having a more open system, particularly in developing countries where the presence of banks and insurance companies could result in greater capital formation. The framework should encourage the participation of foreign banks and take into account the necessary regulatory situation. Regarding the view that the U.S. proposed negotiating approach would be more of a burden on developing countries, he noted that financial services were regulated heavily in every country and would continue to be. The basic question was whether a country would make a commitment to binding those regulations to an international framework. He said that the best way to assure predictability in financial services would be to have specific rules pertaining to the nature of regulation that existed in financial services and addressing the particular kinds of problems that could arise. The more general rules under consideration in the GNS would not satisfy the current situation in financial services and would not provide assurances that the legitimate regulatory process could continue. He said that the U.S. was not insensitive to the need for maintaining the stability of the financial system in developing countries nor to the fact that the system could at times face a crisis. Without taking into account these considerations, it would be impossible to arrive at pragmatic rules to foster the appropriate degree of competition and liberalization. Flexibility would be necessary. However, if the agreement were to fail to provide a greater degree of openness in financial services, it would be unfortunate because of the role these institutions played in development and capital formation.

123. The representative of the European Community said that the mercantilist case often made for trade for goods did not apply to trade in services. He said that although the exchange of concessions had a mercantilistic connotation, in financial markets the objective of regulators was to achieve an efficient and competitive system. Liberalization of financial services had its own merits and would especially benefit those countries that suffered from a closed market. Foreign competition introduced into the financial market the innovation and expertise that was important both for developing and developed countries. For example, the establishment of a foreign financial institution could create employment and value-added in the host country. It would also facilitate transfers of technology and know-how as a result of the employment and training of local personnel. Foreign financial institutions also helped to promote savings and capital formation. He noted that liberalization had to be gradual, or progressive, taking into account the degree of development of each country and the degree of

development of the financial services sector. Developing countries should be allowed to open markets over a longer time frame and be able to impose some other conditions on market access, but developing countries with more advanced financial systems should make concession that constituted effective liberalization. He said that financial system reform should occur simultaneously with liberalization because the two actions were complementary. The specific policy objectives of developing countries could be taken into account provided that they did not represent pure and simple protectionism. These issues could be dealt with under provisions for progressive liberalization with a view to eliminating all restrictions to market access over a period of time. He said that there was a parallel between the competitiveness and efficiency of the domestic market and the ability of domestic companies to compete abroad. Thus, these processes should be linked. Foreign participation could also introduce into the domestic market innovations without which domestic firms would not be able to compete abroad.

124. The Chairman noted that the issue of payments and transfers would appear on the agenda of the working group's next meeting. He suggested that the next meeting of the working group would take place on 12-13 July and 14 July, if necessary.

125. The representative of Yugoslavia emphasized the need to ensure parallel progress in all working groups and, in this context, to set dates for first meetings of all these groups before a date for a further meeting of the working group of financial services was finalized.

126. The representative of Egypt requested the secretariat to prepare a paper on issues related to payments and transfers for discussion at the group's next meeting. This was agreed by the Group.

ANNEX

Working Group on Financial Services  
including Insurance - 11-13 June 1990

Agenda

1. Definition and Coverage
  - Modes of delivery
2. Applicability of principles
  - National treatment/market access
  - M.f.n.
  - Non-discrimination
3. Regulatory matters
4. Progressive liberalization
5. Increasing participation of developing countries