

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNS/34

16 July 1990

Special Distribution

Group of Negotiations on Services

NOTE ON THE MEETING OF 18-22 JUNE 1990

1. The Chairman welcomed delegations to the 31st meeting of the GNS. He drew attention to GATT/AIR/3005 and Corr.1 circulated on the 25th and 30th of May 1990 which contained the agenda of the meeting. He announced that he would raise under "Other Business": the matters of attendance of international organizations in the sectoral working groups and chairmanships and dates of meetings for sectoral working groups. He pointed out that there were a number of new submissions and papers before the Group: one by the Swiss delegation (MTN.GNS/W/102) and one by the EC delegation (MTN.GNS/W/105), both containing a draft multilateral framework of principles and rules for trade in services; another document by eight delegations (MTN.GNS/W/106) containing a draft annex on temporary movement of services personnel; and secretariat papers on m.f.n./non-discrimination provisions in the GATT (MTN.GNS/W/103) and on labour movement and trade in services (MTN.GNS/W/104). He said that he would begin discussions by providing the opportunity to the delegations concerned and the secretariat to introduce the various texts.

2. The representative of Switzerland said that MTN.GNS/W/102 was a comprehensive draft of a general agreement of trade in services which advocated a number of delegations' positions, not only those of his own and he hoped the draft would help significantly advance negotiations. The document was legal language representing the Swiss and others' visions of the result of the negotiating process and, as such, did not address procedural aspects of the negotiations. The draft should strengthen the multilateral trading system through agreed, effective and enforceable multilateral disciplines, and expressly recognized the increased participation of developing countries in world services trade as an objective. The agreement was based on principles, rules and disciplines such as national treatment, non-discrimination and transparency through which market access opportunities would be maintained or improved. The engine of the draft framework was the most-favoured-nation clause. Governments would have the right to regulate service sectors within the boundaries of the agreement. Progressive liberalization would occur through the exchange of concessions which would be codified in the form of initial commitments, additional commitments, or multilateral commitments. Initial commitments would be made at the time of acceptance or accession and would be applied from the outset of the agreement. It was important for progressive liberalization to take full account of the economic situation of individual countries, in particular, the special circumstances of the least developed countries. Multilateral procedures on consultations, surveillance, dispute settlement and dispute prevention were included as a means to implement the agreement. General rules and principles represented the bulk of the agreement and included m.f.n., non-discrimination, transparency, free trade areas and preferential

GATT SECRETARIAT

UR-90-0407

agreements, mutual recognition or harmonization of standards and qualifications, payments and transfers, exceptions, dispute settlement and a waiver provision. The specific rules of the agreement concerned market access, national treatment, and subsidies, anti-dumping, government procurement, and trade-related investment measures. It contained a provision on the agreement's relationship to other international agreements and a provision authorizing a periodic conference to review the operation of the agreement and foster an increasingly higher level of cooperation. The aims of the first such conference would be to establish and review guidelines for negotiations with developing countries, examine sectoral annotations, develop a common statistical basis, develop and adopt a comprehensive nomenclature for the services sector, and further develop rules and disciplines on subsidies, anti-dumping, government procurement, and trade-related investment measures. The specific, or qualified rules would apply to concessions that were bound by a party. One type of concession would be to eliminate international agreements, existing legislation, or administrative regulations that were inconsistent with the rights and obligations of the agreement. Another type of concession would preserve existing market access or eliminate totally or partially existing limitations or conditions. The third type of concession would be specific commitments to ensure market access obligations. He called attention to the model schedule of concessions attached to the proposal and provided examples of how the schedule would be employed. The schedule represented neither a negative nor a positive approach, but was a hybrid of both. He noted that developing countries were not mentioned frequently in the draft, the reason being that not only developing countries but also other countries could have complicated or difficult situations that might need to be addressed, citing Eastern European countries as an example. For such countries, fewer sectors could be bound in initial commitments, ceiling bindings could be introduced, or a waiver might be employed. He said that the justifications for this flexibility were not contained in the proposed framework, but were found in the Punta del Este and Montreal Declarations.

3. The representative of India said that while the proposal was comprehensive and did take into account many elements of the negotiations, his delegation was disappointed with the treatment the proposal gave to the issues and concerns of developing countries. The document implied that the concerns of developing countries would be addressed only through the negotiating and exchanging of concessions. However, the balance of interests that should result from the exchange of concessions and special considerations of developing countries needed to be reflected in the provisions of the framework agreement. His delegation would have difficulty accepting the approach contained in the document, which sought substantial liberalization on an immediate basis. The document did not recognize developing countries as a group for which flexibility would be required. The idea that flexibility was required by all countries completely overlooked the specific mandates of the Punta del Este and Montreal Declarations with respect to developing countries. He pointed out that commercial presence, or the right of establishment, was included as a mode of delivery, which his delegation did not accept. Although the

initial commitments provision was a hybrid, the approach unfortunately leaned more toward the negative approach.

4. The representative of Czechoslovakia described the Swiss proposal as a worthwhile and thorough undertaking. Regarding modes of delivery, he noted that the right of establishment was implied. On temporary entry for service providers, he asked who would decide when given individuals were "essential" for the provision of a service. With his economy in a state of transition, he said that he hoped that future legislation would be liberal, but this was not the case at present. He stated that the waiver provision might take into account his country's situation.

5. The representative of Tanzania said that the document seemed to obscure the concerns of developing countries. To expect developing and least developed countries to begin to negotiate for consideration of their situation in a conference following the establishment of the framework was insufficient. Referring to the balance of payments provision, he said that this was not the only criteria which would inhibit many developing countries from developing their services sector. For many developing countries, services would have to be distinguished on the basis of whether the service was provided directly to the consumer or as an input. Services directly to the consumer could draw on scarce resources. Services that were inputs to a production or manufacturing process could be purchased, but on a piecemeal basis because of constraints on resources in developing countries. Developing countries would need to negotiate over time, rather than to commit themselves initially to a framework with heavy obligations.

6. The representative of Mexico said that certain concrete proposals of developing countries were not included in the Swiss proposal. He asked whether preferential agreements among developing countries were intended to be the same as free-trade zones. He asked to which agreements the words "relevant international principles and rules" were referring to in article 14 on anti-competitive behaviour, and furthermore, whether article 15 on monopoly service providers intended to grant immediate national treatment in a provision to which a reservation could not be taken. He asked also how article 22 regarding additional commitments would operate in practice.

7. The representative of Korea asked what specific criteria would be applied to the term "any form of subsidy" in article 13. He noted that this term might be too broad and added that the matter was better left to the Uruguay Round negotiating group dealing with subsidies.

8. The representative of Egypt said that he shared the views of the delegation of India and other developing countries with regard to the lack of flexibility for developing countries in the Swiss proposal. He asked what the Swiss representative meant when it referred to ceiling bindings. He failed to detect sufficient flexibility under articles 17 (Waiver) and 22 (Rights and Obligations to Negotiate) regarding the application of these provisions to developing countries.

9. The representative of Hungary said his delegation could support the notion of universal sectoral coverage and the language contained on definition under article 2 of the Swiss proposal. The formulation under article 6 on non-discrimination and m.f.n. treatment was very straight-forward but further consideration should be given to the relationship between that article and article 35 on other international agreements. Article 37 seemed to stipulate that the fulfilment of initial commitments would suffice as a pre-condition to acceptance of, or accession to, the agreement but article 20 listed additional commitments beyond those made initially to be also relevant at the time of acceptance. He noted that under article 4 the notion of essentiality in the provision of services was only applied to the movement of personnel or labour and not to other modes of delivery involving the movement of capital across borders. National treatment was also only mentioned in the context of commercial presence in that article. Regarding article 15, he asked for clarification as to whether the Swiss delegation had intended to equate state-trading enterprises to monopolies. As to the possibility for countries in a transitional period in their economies to resort to waivers as stipulated under article 17, he said that his delegation reserved its position until later, when greater understanding regarding the modalities of liberalization to be included in the framework agreement could be discerned.

10. The representative of Yugoslavia said her delegation could agree with several elements of MTN.GNS/W/102, including article 1 on coverage and article 6 on non-discrimination and m.f.n. treatment. More generally, she felt the proposal neglected to take into account development-related concerns which had been expressed by various delegations throughout the GNS deliberations. It tended to emphasize a process which might be suitable for OECD countries but not for developing countries whose regulatory frameworks applying to services were very incipient. Over sixty services activities listed in the secretariat's reference list had not been recognized by her country's authorities to be covered by some form of law or regulation. That kind of asymmetry between developing countries such as Yugoslavia and developed countries boasting highly sophisticated regulatory structures applying to services had serious implications for the work of the Group and should be given comprehensive consideration at this crucial stage of the GNS negotiations.

11. The representative of Japan reserved judgment on part four of MTN.GNS/W/102 which dealt with modalities for liberalization and set out what he perceived to be a hybrid approach to the issue of structure of the framework agreement. He said that article 26 on dispute prevention could pose constitutional problems for many participants to the extent that it stipulated prior consultation and comment on draft legislation and/or regulation to be an obligation bestowed upon countries. Regarding the treatment of international agreements, his delegation requested further clarification of related provisions appearing in the eighth paragraph in the preamble, paragraph 2 of article 6 on non-discrimination and m.f.n. treatment, and article 35 on relations with other international agreements. His preoccupation related principally to the possibility which seemed to be

implied in those provisions for other existing international agreements to be grandfathered.

12. Regarding article 4 on market access, the representative of Switzerland disagreed with the representative of India that commercial presence should be outside the purview of the framework agreement since it involved foreign investment considerations. As to the application of national treatment to commercial presence, he reminded the Group that the Swiss proposal envisaged the possibility of reservations being lodged with respect to that principle. Article 8 on free-trade areas and preferential agreements should be seen in the context of the overall draft agreement being proposed, especially as reflected in the preambular language contained in the document. Article 13 on subsidies and other measures was intended to apply to export subsidies and not subsidies in general. Under article 14 on behaviour of private operators, the wording "relevant international principles" referred to the U.N. Code of Conduct on Transnational Corporations. Article 15 addressed the issues of monopolies and exclusive services providers including state-trading enterprises, putting special emphasis on the need for the agreement to stop the creation of such entities in the services field.

13. In response to a question by the representative of Hungary, he said that the entry ticket to the agreement was set out in article 19 on initial commitments, while article 20 on additional commitments was going beyond requirements for acceptance of, or accession to, the agreement. He clarified that article 21 on multilateral commitments referred to what the Canadian delegation had called the formula approach and not to other existing international agreements. The language contained in article 35 was intended to imply that the framework agreement emanating from the GNS should not in any manner change previous existing international agreements. Regarding the treatment of development-related concerns, an attempt was made in the document to propose techniques and an overall mechanism through which sufficient flexibility could be introduced so as to allow countries to undertake commitments according to their individual levels of development. That approach was deemed by the Swiss delegation to harbour more concrete results for developing countries than general language addressing development concerns.

14. In introducing MTN.GNS/W/105, the representative of the European Communities said that it differed from previous communications from his delegation in that it was comprehensive and drafted in legal language. In that sense it constituted a complete proposal for a draft framework agreement and not merely another conceptual paper on aspects of special relevance to the work of the GNS. The mechanics of the liberalization process set out in the document were reflective of a previous paper informally circulated among delegations and presented as a joint submission to the Group by the EC and the United States. Some elements contained in MTN.GNS/W/105 reflected concerns relating to the negotiations still to come in the context of the Uruguay Round and should be viewed as provisions of a short-term nature not applying beyond the conclusion of the round. Regarding the treatment of development-related concerns and of developing countries, he called the Group's attention to article VI on transparency,

article X on restrictive business practices, and article XX on negotiated liberalization commitments. He emphasized that his delegation was seeking an agreement whose provisions would apply to all levels of government in order to avoid creating inequities across participating countries with different internal structures. Further consideration was needed as to the application of sectoral annotations, especially depending on whether such annotations were intended to clarify or modify provisions of the framework. Special attention was devoted in the text to the appropriateness of making provisions such as those relating to subsidies, safeguards and dispute settlement consistent in their application to the results emanating from other Uruguay Round negotiating groups.

15. In introducing document MTN.GNS/W/106, the representative of Mexico stressed the relevance of dealing with the temporary movement of service personnel through an annex as a means to provide symmetry in treatment of production factors under the framework agreement. As stated in paragraph 4 of article 1 nothing in the annex was intended to affect immigration laws and regulations dealing with permanent residence, establishment or citizenship. Such laws and regulations should not, however, be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination among Parties or as disguised restrictions on international trade in services. In paragraph 3 of article 1, it was recognized that the expansion of services exports from developing countries and these countries' increased participation in world trade in services hinged crucially on the liberalization of the cross-border movement of personnel at all levels of skill. Articles 3 and 4 dealt with the access to and the movement of service personnel and stipulated that the legal employer should cooperate with the authorities of the importing country regarding compliance with immigration laws and regulations. He called the Group's attention to specific articles on many relevant aspects including mutual recognition arrangements and movement of qualified professionals or tradesmen (article 5), transparency (article 6), non-discrimination (article 7) and national treatment (article 8). He stressed that the document represented the minimum threshold of understanding the Group should attain in order for the framework agreement to reflect the widest possible range of concerns expressed by delegations in the GNS deliberations.

16. The representative of the secretariat said that document MTN.GNS/W/103, "Most-Favoured-Nation Treatment and Non-discrimination under the General Agreement on Tariffs and Trade", was prepared in response to a request made for the secretariat to clarify the difference between the concepts of most-favoured-nation treatment and of non-discrimination. He said that the legal techniques used in the General Agreement might be of some use in the drafting of a provision applying to trade in services.

17. The representative of Canada asked for some clarification as to why no mention of GATT's Article II appeared in the document. He understood from the document that the most-favoured-nation principle was one of several expressions of the broader principle of non-discrimination. Referring to a practice apparently followed by some GNS participants and reflected in

article 6 of the communication from Switzerland, MTN.GNS/W/102, he enquired whether it would be fair to assume that non-discrimination was more readily identified with the notion of "treatment no less favourable" while m.f.n. was more deeply rooted in the formulation contained in Article I of the General Agreement. He also asked if delegations identified any problems with a formulation of the m.f.n. principle which omitted the "no less favourable" notion and relied for the most part on GATT's Article I.

18. The representative of the secretariat said that consideration of GATT's Article II was not included in the document since that Article did not deal with tariff discrimination among nations. He suggested that the Group keep in mind that in GATT different standards were adopted for different policy instruments. The m.f.n. clause essentially implied that a party should extend privileges granted to another party to all other parties, in an expression of a formal equality of treatment among nations. In tariffs negotiations, formal equality of treatment was an appropriate non-discrimination standard but that was not the case, for example, with import quotas for which the notion of distribution of trade on the basis of a previous representative period was much more useful. Similarly, commercial criteria constituted a much more pertinent standard for state-trading than any other notion. Responding to concerns raised by the representative of the United States, he confirmed that the principle of m.f.n. implied that the benefits granted to any nation should be extended to all contracting parties. The same was true regarding the rule contained in article XIII on the non-discriminatory administration of quantitative restrictions and the rule contained in article XVII on the need for state trading enterprises to import or export in accordance with commercial considerations.

19. In introducing document MTN.GNS/W/104, "Labour Movement and Trade in Services", the representative of the secretariat said that it covered in broad terms the rationale and nature of regulations governing the movement of labour across frontiers. It also examined some of the relevant international agreements in this area while investigating how existing regulations might relate to the concepts, principles and rules under discussion in the GNS. The annex provided, to the extent available, relevant statistics on the international flow of labour.

20. The Chairman opened the discussion on agenda item 2.1.II regarding institutional questions, and invited comments on dispute settlement.

21. The representative of the European Communities, referring to article 24 of MTN.GNS/W/105, said his delegation was in favour of applying essentially GATT procedures. The issue of individual decisions which were not of general application should be addressed separately. It was necessary to look at the extent to which retaliation was appropriate and, in particular, whether guidance needed to be given to the parties to the agreement regarding decisions on the appropriateness of retaliatory measures. The Community had proposed as a general rule that retaliation should be confined to the sector which was the subject of the dispute, although this did not preclude, in appropriate circumstances, the possibility of going outside the sector. Finally, regarding actions which

affected existing commercial presence, i.e where an established service provider had acquired rights to stay in a foreign country to provide services, it should not be possible as a result of cross-sectoral retaliation to undermine those acquired rights. For example, the sudden withdrawal of a licence to operate, for reasons which did not relate to the behaviour of the provider concerned, would cause fundamental problems concerning domestic law in almost every country.

22. The representative of the United States favoured as a model for services the current GATT dispute settlement mechanism of first trying to resolve the dispute bilaterally before the creation of panels or other procedures. His delegation was interested in a dispute settlement which would result in predictability in a very finite space of time, and would also solve the problem of the ability to block consensus on the adoption of panel reports. He agreed as a first priority that any appropriate compensation should relate to the same sector, although it would be necessary to look beyond that particular sector if an appropriate balance could not be established, thus the ability to retaliate would be extended both to services and to goods. This meant a common dispute settlement mechanism both for the GATT and the GATS. Regarding the selection of panels for disputes, he said that, as a general rule, in order to ensure that a dispute was properly considered in all its technical ramifications and looked upon as a credible process, experts in the particular area involved should serve on panels.

23. The representative of Egypt, referring to MTN.GNS/W/101, said that the the framework agreement required an international trade in services organisation separate from the GATT, as explained in articles 21 and 22. It was assumed in chapter five that dispute settlement had two stages, consisting of consultation and an eventual dispute settlement process.

24. The representative of India said that his delegation's position was clearly spelled out in MTN.GNS/W/101, namely that the framework agreement should have an existence totally independent from the GATT in terms of administration and dispute settlement.

25. In response, the representative of the United States said that a consensus among contracting parties at the end of the Uruguay Round could lead to a negotiated legal basis for adopting a joint dispute settlement process for both goods and services.

26. The representative of Canada emphasised the importance of the consultation phase. He noted that the article on dispute settlement in the European Community proposal talked about representations, and the article on transparency referred to different sorts of consultations, which appeared to be related to the dispute settlement type of consultations. He requested clarification as to how these two elements would fit together. Going beyond the consultative stage, he accepted the notion of a certain parallelism with what the GATT was doing and considered it essential to draw heavily on the experience in the GATT and on the progress that was being made in the discussions going on in the relevant negotiating group. He encouraged the GNS to use GATT procedures although this did not prejudice

how any decisions which might need to be taken would be processed and adopted. He accepted the premise in the European Community dispute settlement text that retaliation should be confined in the first instance to the sector under dispute.

27. The representative of Peru considered that GATT experience and the results of the negotiating group on dispute settlement would have to be taken into account. However, he said the Group could not simply transpose the concepts and procedures contained in the dispute settlement provisions for goods trade to services trade. His delegation was in favour of a dispute settlement system that was autonomous and where any type of compensation would have to be given within the services framework and not outside of it.

28. The representative of Poland considered that bilateral consultations should constitute the beginning of any dispute settlement, and that amicable settlement in those consultations would be the best possible method of clarifying or easing any tensions between the parties concerned. If a bilateral solution was not possible, the panel mechanism might be used, the panels consisting not only of trade experts but also of sectoral experts. If a panel could not solve the problem, then a party might have the possibility of recourse to retaliation which should be confined to the sector under dispute.

29. The representative of Japan noted that his delegation's examination of this issue was still at a preliminary stage but emphasised that it was necessary to have fair and well-disciplined procedures for the effective enforcement of the framework agreement. The question of whether to keep retaliation/compensation within the same sector or not required further consideration. He shared the view that panels required specific sectoral expertise in their composition.

30. The representative of Hungary considered that the framework agreement should have an independent dispute settlement mechanism which should, however, draw heavily on GATT experience. Regarding the suspension of obligations, he agreed to a large extent with what was contained in paragraph 4 of the European Community draft, and said that such suspension should be sought in the same sector. The issue of cross-sectoral retaliation was linked to the final outcome of negotiations on the framework agreement and should be dealt with at a later stage.

31. The representative of Yugoslavia favoured a separate dispute settlement system for services; she requested clarification from the European Community delegate regarding article 6, paragraph 4 on transparency as she found that the transparency discipline was not relevant for dispute settlement procedures. She queried the view proposed by the European Community that dispute settlement should not affect an established service provider.

32. The representative of the European Communities, in response to the questions that had been raised, said that the consultation provisions in article 6 regarding transparency, and paragraph 1 of article 24 both

referred to procedurally something that was essentially the same. However, the consultation provisions in article 6 did not form the beginning of a dispute settlement procedure but concerned the need for seeking further information and clarification from enquiry points. The Community considered that the suspension of commitments should not be applied to trade through existing commercial or professional presence because almost all countries would find it difficult in terms of national legislation to withdraw operating licences without being exposed to cases of administrative malpractice.

33. The representative of Chile said her delegation also preferred an independent dispute settlement system which would be exclusively reserved for the services sector and compensation or retaliation should be allowed solely in the given sector and then only as an option of last resort.

34. The representative of Korea supported the view that GATT experience should be used in developing a dispute settlement system. Regarding retaliation, it was appropriate to keep this to the same sector as cross-retaliation might lead to dispute acceleration rather than to settlement.

35. The representative of New Zealand supported the view that bilateral consultations were a very important part of a dispute settlement mechanism. In addition, it was important to have clear provisions for the multilateral settlement of any disputes that might arise. The progress being made in the Negotiating Group on Dispute Settlement could be helpful in the GNS. She considered it likely that the dispute settlement procedures covering consultations, panels, etc. used under the services agreement would be very similar as those used under the GATT. She favoured sectoral expertise on panels. She considered that retaliation should initially be in the same sector but her delegation did not want at this stage to take a formal position as to whether cross-sectoral retaliation should be an option.

36. The representative of India said that regarding dispute settlement the Group was talking about a legal instrument and it was necessary to provide for all contingencies. While he agreed that the preferred mode of dispute settlement should be consultation and conciliation, it was necessary to provide for the other mode of adjudication. He wondered whether retaliation confined to the same sector was a feasible proposition given the possibility that under the services agreement concessions would be exchanged across sectors. The basis of the agreement was the exchange of concessions by parties in order to bring about a balance of benefits. If the sectors involved in that exchange of concessions were different, he asked how the Group could rule out the possibility of cross-sectoral compensation or retaliation.

37. The representative of Pakistan agreed that concessions would have to be exchanged across different sectors which implied that cross-sectoral compensation and retaliation would have to be built into the agreement. However, in the event of a dispute he considered that the determination of the equivalence of concessions across, or even within, sectors might not be easy.

38. The Chairman suggested that the Group turn its attention to the next item, surveillance, institutional machinery and enforcement.

39. The representative of the European Communities said that these issues were dealt with under article 25 of MTN.GNS/W/105 which resembled the way GATT operated. It was likely that, where sectoral annexes had been agreed, committees might need to be established to monitor the operation of those annexes. The committees would be subsidiary organs to the Council which would perform certain preliminary functions in the same way that certain standing bodies in the GATT operated. His delegation saw a clear relationship, spelled out in article 26, between the GATT and the services agreement.

40. The representative of Canada suggested that the recently established Trade Policy Review Mechanism in the GATT might be a model for something similar in the services area.

41. The representative of India referred to chapter 4 of MTN.GNS/W/101 which set out proposals for the institutional machinery of the future agreement. He envisaged a free-standing organisation with its own Council, and chief executive, as well as other organs and committees, the functions of which were described in detail. He considered the Canadian proposal relating to a trade policy review mechanism interesting and worthy of future consideration but perhaps premature at this stage as some experience would be first needed in working the agreement.

42. Regarding the Canadian idea, the representative of the European Communities noted that it was necessary to look for ways to examine trade policy in terms of the totality of both goods and services.

43. The Chairman turned to the next item concerning entry into force, acceptance, withdrawal, non-application.

44. The representative of India referred to chapter 6 of MTN.GNS/W/101 and said that the depository of the services agreement should be the U.N. Secretary General and not the Director General of GATT. The document envisaged non-application only in terms of GATT Article XXXV.

45. Referring to all aspects of institutional machinery, the representative of Canada understood the concern of the authors of MTN.GNS/W/101 although it was not necessary to ensure, in institutional terms a legal separation in the way the two agreements were carried out. It was quite possible in national legal systems that different legal instruments would fall under the same overall framework; it was not necessary to set up two separate structures in order to ensure compartmentalisation between the GATT and the services agreement. Regarding non-application, he said that every participant in the agreement should make an appropriate contribution and assuming that would be the case, the issue of non-application would not arise. His delegation would however be prepared to consider something along the lines of GATT Article XXXV.

46. The representative of Switzerland drew the attention of the Group to part 7 of the Swiss proposal in document MTN.GNS/W/102. He thought that every instrument so far negotiated within the framework of GATT, except for the General Agreement itself, had been deposited with the Director General of GATT. He considered that regarding non-application the costs were higher than the benefits for a small country and he therefore did not favour any form of non-application.

47. The representative of the European Communities believed that non-application, in appropriate circumstances and subject to multilateral surveillance procedures, was necessary and appropriate.

48. Given appropriate liberalization commitments by participants, the representative of Hungary was not convinced that a non-application clause was needed at all. The only possibility he foresaw for such a clause would be based on GATT Article XXXV with the possibility of multilateral review. The selective non-application provision contained in article 21 of the Community text would very much reduce the value of all provisions of the agreement and of any commitments undertaken by parties.

49. The representative of the United States said that while non-application was an action that would be taken on very rare occasions and had to be considered in the context of the overall commitments made by a particular signatory, he felt that provisions drafted along the lines of Article XXXV of GATT would be appropriate in the area of trade in services. He felt that while recourse to a selective non-application clause such as that envisaged by the delegation of the European Communities might seem attractive in certain circumstances, it nonetheless opened a Pandora's box that could be too easily exploitable. He said that the issue of non-application was a very sensitive issue which could unravel the agreement were countries able to nullify some of the benefits of liberalization commitments on a piecemeal basis.

50. The representative of India recalled that the current negotiation was not taking place within the framework of GATT.

51. The representative of Canada asked whether article 37 of the Swiss draft proposal was related to the issue of non-application, noting that the proposal appeared to provide a means for assessing what constituted an appropriate contribution on the part of a signatory. Were a country not to make such a contribution, his understanding was that no other country would be applying the terms of the agreement to it.

52. The representative of Switzerland indicated that the Canadian delegate's portrayal of the intent of article 37 was accurate.

53. The representative of Morocco agreed that a non-application clause should be foreseen under a services agreement, but felt that the approach taken in GATT Article XXXV should be followed.

54. The representative of Mexico recalled that the co-sponsors of MTN.GNS/W/95 had foreseen in article 33 (Part 7) an approach on

non-application which followed that taken in Article XXXV of the GATT. The Council proposed in the submission would be empowered to review the operation of the article on non-application in particular cases and at the request of any party to the agreement with a view to making appropriate recommendations.

55. The Chairman opened the floor to a discussion of other international arrangements and disciplines. As no delegation sought the floor under this agenda item, he invited Group members to address the issue of the identification of sectors requiring annotations and the nature of such annotations. He indicated that, following consultations, he had designated Mr. Robert Tritt, from Canada, as Chairman of the Working Group on Telecommunications Services; as well as Mr. Alexis Lautenberg, from Switzerland, as Chairman of the Working Group on Financial Services including Insurance. Based on the reports of the chairmen of the two working groups, he informed Group members of the main points discussed at the meetings which both groups had recently held.

56. On telecommunications, he said that the working group held its first meeting on 5-6 June 1990. Following an invitation by the Chairman of the GNS, representatives of the ITU attended the meeting and participated in the discussion. He said that the purpose of the meeting was to arrive at a better understanding of the specificities of the sector and any elements that may need to be taken into account in the application of the general framework on trade in services. In this context, the working group discussed the following matters: concepts, principles and rules being considered in the GNS for inclusion in the framework agreement as they related to the specific requirements of trade in telecommunications services; submissions before the working group, including the United States' proposal (MTN.GNS/W/97) and non-papers from Korea, Japan, and the European Communities on the possible features of an annex on the sector; possible subjects for further discussion including, inter alia, telecommunications as a mode of delivery, distinction of basic/enhanced services, transparency, standards, pricing, monopoly behaviour, privacy, conditions for use of networks, national treatment/MFN, increasing participation of developing countries. He recalled that some of the general concepts mentioned in this context remained subject to further negotiation in the GNS.

57. As regards financial services including insurance, he said that the working group held its first meeting on 11-13 June 1990. The working group discussed the following matters: the issue of definition and coverage, including modes of delivery such as the provision of cross border services; the applicability of principles and concepts such as national treatment, market access, most favoured nation treatment, and non-discrimination; regulatory matters, including prudential and fiduciary concerns; progressive liberalization and its relationship to financial services; and the increasing participation of developing countries.

58. The representative of India felt that the sectoral working groups whose deliberations had been summarized would need to do further work before making a substantive contribution to the work of the GNS. He asked

whether there was a possibility for him to address the issues contained in MTN.GNS/W/97, recalling that he had raised this matter at the Group's previous meeting (paragraph 121 of MTN.GNS/33).

59. The Chairman saw no difficulty in accommodating the Indian delegate's request so long as the GNS was not duplicating the work of the group on telecommunications services.

60. The representative of the United States said that although his delegation did not have the expertise that may be required to engage in a substantive discussion of MTN.GNS/W/97, he would nonetheless try to respond to any questions which the Indian delegate might have in regard to his country's submission.

61. The representative of India suggested that informal consultations might be necessary for determining the best way of proceeding on this matter.

62. The representative of the European Communities proposed that sectoral consultations be considered in the area of audio-visual services.

63. The Chairman opened the floor to a discussion of the kinds of progressive liberalization undertakings that may be pursued by participants.

64. The representative of the United States said that a request and offer exercise would provide assurances that countries would undertake specific bindings by the conclusion of the Uruguay Round. His delegation had recently presented countries on a bilateral basis with lists of measures in regard to which the United States sought trade liberalization. The U.S. was not specifically requesting that countries apply a standstill or binding to any particular measures but was simply indicating to its partner countries those measures which appeared to create problems and whose elimination, phase out or rollback would be appropriate. While this was merely a part of the request and offer process, it nonetheless reflected what his delegation felt was necessary to ensure that some initial commitments were taken by all signatories at the conclusion of the Round, due regard being given to the level of development of participating countries. Recalling that only five and a half months remained before the end of the Round, he invited other delegations to study such requests, clarify the factual mistakes which may have been made in preparing them and consult with their capitals for the purposes of engaging in negotiations in the final period of the Round. He said that the lack of operating guidelines with which to conduct a request and offer process might need to be addressed in the GNS with a view to determining the appropriate negotiating procedures to follow.

65. The representative of the European Communities said that his delegation also intended to put forward certain proposals in regard to moves which it hoped its partner countries might make so as to begin the long-term process of progressive liberalization by the end of the Uruguay Round. He agreed that there should be an appropriate degree of transparency

for participants in regard to the proposals made by other parties to the negotiations, particularly as the services area was largely uncharted in terms of the conduct of negotiations. He felt that it would be valuable for the GNS to develop some procedures aimed at enhancing the degree of transparency governing the negotiations, noting that there were perhaps other negotiating groups within the Uruguay Round which the GNS could look to in addressing this issue.

66. The representative of Canada recalled his delegation's belief that in addition to the framework agreement on trade in services there was a need for a degree of liberalization commitments to be taken by the end of the Uruguay Round. While agreeing with the notion of initial commitments as outlined in article 19 of the Swiss proposal, he felt that it was not in itself an adequate basis with which to judge what constituted an appropriate contribution. He agreed that the GNS had to address the issue of the modalities for entering into the negotiating phase of the Group's work and proposed that the Chairman take it up at an early date in his informal consultative procedures. He wondered to what extent negotiating rules and procedures used elsewhere could apply in the area of services, noting that the concept of substantial supplier could be more difficult to determine in relation to services than to goods. He recalled the main elements of a formula approach, noting that his delegation had not attempted to set it down in firm and final form as it stood to benefit from the views of Group members. He said that in his view a formula approach would provide a mechanism which could act as one motor for liberalization. The approach would apply to all parties, would bind imports subject to formula at the same level of openness, would apply to an agreed list of sectors, sub-sectors and/or transactions, and would affect agreed modes of delivery of services in designated ways. As well, the approach would supersede any contractual standstill or binding of existing regimes in the field of application of the formula. It would be bound in an annex that was attached to and part of the agreement. He said that one possible formula could liberalize market access or modes of delivery fully or partially over a period of say four years, with schedules to be worked out and attached. When market access was provided in accordance with this agreement, full national treatment would be accorded. He said that such a formula could relate to an agreed list of sectors or sub-sectors such as a range of business services, software and computer services, tourism and possibly construction and engineering services. Agreement would need to be reached on the scope of coverage, i.e. the precisely defined modes of delivery allowed would be set down in lists whose shape would have to be determined through negotiations. The negotiations under this type of formula would focus on the liberalization formulations themselves, on the lists of sectors and sub-sectors, as well as on the precise modes of delivery or forms of transaction. He said that a vertical approach could be substituted to the horizontal one just outlined, and might deal with a particular mode of delivery across a range of areas. He said that reservations to a formula would appear to undermine the purpose of such an across-the-board approach. A formula approach would in the view of his delegation provide benefits to all participants and thus take into account the disparities in countries' negotiating leverage.

67. The representative of India said that since the issue of modalities for entering into negotiations had not yet been addressed in the GNS, all ideas on the subject were welcome. His delegation would want to study the proposed formula approach to determine its scope of application in the services area. The global imbalance in trade in services, with ninety five percent of world services trade taking place among developed countries, conditioned his delegation's stance in regard to initial commitments. The binding either of existing degrees of market access or of regulatory regimes in their current degree of inconsistency with framework provisions would thus introduce a basic inequity in the negotiating process and complicate attempts at finding a balance of benefits among participants. His delegation did not feel that the proposals currently being discussed in regard to initial commitments were appropriate for developing countries. A balance of benefits should rather be derived from a process of positive contributions by developing countries in their bindings. He recalled the firm view of its delegation that it would not be in a position to enter into market access commitments by the end of the Uruguay Round. This was so because the GNS was still far from agreeing to the contents of the multilateral framework and because the level of information on trade in services was so poor as to make it impossible for a large number of developing countries to enter into a meaningful exchange of concessions. This did not mean that the issue of negotiating modalities should not be addressed in the Group as it would be of relevance for the process that would go on after the end of the Round.

68. The representative of Sweden, on behalf of the Nordic countries, agreed that as the GNS was now entering into a negotiating phase, it was essential to ensure that an adequate degree of transparency prevailed. He felt that the procedures followed in the negotiating group on non-tariff measures could provide some useful guidance on the conduct of negotiations in the GNS.

69. The representative of Switzerland said that his delegation's recent submission addressed the issue of the various means for entering into an exchange of concessions in Articles 19, 20 and 21. He drew the Group's attention to article 22.1 of the submission, noting that it dealt not only with the question of the rights and obligations to negotiate but also with that of transparency. He said that Parties that had a substantial interest as either consumers or providers of a service should have the right to ask any other Parties to enter into negotiations on commitments in regard to any sector, sub-sector or transaction. He said that his delegation would be coming forward with a list of requests to other delegations during the current negotiating round.

70. The representative of Australia agreed that procedures for conducting exchanges of concessions should be drawn up shortly so as to allow a request and offer process to commence. He felt that the idea of a formula approach should be given further consideration but was doubtful as to whether the approach could be sufficiently developed to serve a useful purpose during the limited time left for the negotiations. He said that a complicating factor in the services area related to the difficulty of quantifying the benefits accruing from an exchange of liberalization

commitments. The achievement of a balance of benefits would require countries to adopt a more flexible approach, one which took due account of the concessions made by all partner countries across a broad range of sectors. It was thus essential in such circumstances that the negotiating process be as transparent as possible.

71. The representative of Egypt agreed that in view of the current asymmetries between developed and developing countries in world services trade and the lack of available statistics, his delegation had grave doubts about its ability to engage in an exchange of concessions during the course of the Uruguay Round.

72. The representative of Mexico said that his delegation was open to all proposals on negotiating modalities and was studying some of them very closely. He recalled that Mexico's position in regard to the exchange of concessions would depend on a number of factors, among which the contents of the framework agreement, particularly in regard to definition and scope; the nature of concessions offered to his country in exchange for particular requests; and the strict application of the principle of relative reciprocity.

73. The representative of Romania agreed that there would be a need to apply the principle of relative reciprocity to countries with lower levels of development. Developing countries should not be expected to undertake commitments which were incompatible with their trade, financial or developmental needs. Special consideration should be given in regard to the level of liberalization commitments to those countries that were undergoing a transition to a market economy, noting that the structural nature of the changes taking place in these countries' economies would make it difficult for them to envisage concrete undertakings by the end of the current negotiating round.

74. The Chairman suggested that the GNS leave open the possibility for the representative of India to offer at the Group's next meeting his delegation's views on some aspects of MTN.GNS/W/97.

75. The representative of the European Communities referred briefly to the Groups's earlier discussion of matters relating to dispute settlement, noting that his delegation's submission was clearly not the last word on the possible contents of a GATS. In particular, he noted that considerable importance had been attached, both favourably and unfavorably, by almost all delegations to the issue of cross-sectoral retaliation. His delegations saw the need for clarification of this concept in relation to certain sectors.

76. Under Other Business, the Chairman informed Group members of the names of chairmen and the dates relating to the meetings of the various sectoral working groups created under the aegis of the GNS. He said that the working group on labour mobility would meet on 25-27 June 1990 and be chaired by Mr. D. Nayyar from India. The group on construction and engineering services would meet on 28-29 June 1990 and also be chaired by Mr. Nayyar. The working group on maritime transport would meet on 2-3 July 1990 and be

chaired by Mr. W. Hoffman from Germany. The group on land transport would meet on 4 July 1990 and be chaired by Mr. de Groot from The Netherlands. The group on air transport would meet on 5-6 July 1990 under the chairmanship of Mr. W.H. Ng from Singapore. He noted that the working group on telecommunications would hold its second meeting on 9-11 July 1990 under the chairmanship of Mr. R. Tritt from Canada. The group on financial services including insurance would also meet for a second time on 12-14 July 1990 and be chaired by Mr. A. Lautenberg from Switzerland. The group on professional services would meet on 30-31 July 1990 under the chairmanship of Mr. P. Gallagher from Australia. The group on tourism would meet on 1-2 August 1990 and be chaired by Mr. D. Edgell from the United States. He noted that the working group on audiovisual services would meet when work resumed in September 1990 and be chaired by Mr. Julin from Finland. He said that the procedures laid down in the GNS in regard to the attendance of other international bodies would be followed in the sectoral working groups. He recalled that the GNS would hold its next meeting during the week of 16-20 July 1990 with a view to producing a preliminary draft of the framework agreement.