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WORKING GROUP ON LABOUR MOBILITY

Note on the meeting of 25-27 June 1990

1. The secretariat representative, acting as temporary Chairman, opened the proceedings by welcoming delegations to the meeting and drew the Group's attention to the aim of these informal consultations as contained in GATT/AIR/3024. On the Chairman's invitation, a secretariat representative briefed the Group, on the main developments in the GNS since the start of the negotiations in 1986, and presented the secretariat document contained in MTN.GNS/W/104 on labour movement and trade in services.

2. He then invited the delegate of Mexico on behalf of eight developing countries to present their proposed annex on the temporary movement of services personnel contained in MTN.GNS/W/106. The Mexican representative said that it was necessary to reach agreement on how labour mobility would be considered within the context of trade in services. The document under discussion aimed at ensuring that regulations on migration would not constitute unnecessary barriers to trade in services nor diminish the benefits that would accrue from the services framework. He emphasized that the increasing participation of developing countries in services trade depended to a large extent on the liberalization by developed countries of cross-border movement of skilled, semi-skilled and unskilled labour.

3. The Chairman opened the floor for general comments. The representative of India considered that it had been agreed that the factors of production, in both the negotiations and in the framework, would be treated in symmetrical fashion; this meant the exclusion of immigration or the permanent movement of labour as well as the exclusion of permanent establishment. He further noted that the criteria of discreteness of transactions, specificity of purpose and limited duration, should be applied to all factors of production. The reason why he and others supported this approach, was that the temporary cross-border movement of personnel for the purpose of delivering services constituted the most important mode of delivery for those services in which developing countries had a comparative advantage. It was therefore important for developing countries to (a) ensure that labour-intensive sectors were covered by the framework and (b) to facilitate the temporary movement of services personnel in terms of entry and temporary stay. He noted that the thinking behind the proposed annex in MTN.GNS/W/106 (of which his delegation was a co-sponsor) was that, as the issue of labour movement cut across several

sectors, such an annex would become an integral part of the framework and would cover the movement of personnel as a mode of delivery.

4. The representative of the United States said that it was not her delegation's understanding that a services framework would exclude issues relating to commercial presence whether permanent or temporary. She noted that trade in services involved movement of labour which was essential to the delivery of the service. The Group should seek to define as specifically as possible, those groups of service providers who would meet the Montreal definition of labour mobility; that is, labour essential to the provision of the service. In addition, it would be useful to examine the applicability of some of the trade concepts, principles and rules which were under discussion in the GNS.

5. The representative of Hungary was not convinced at this stage that an annex was needed specifically for the movement of labour. Regarding the symmetrical treatment of factors of production, he considered that economic symmetry was needed between sectors where, on the one hand, commercial presence was required for delivering a service and, on the other hand, the movement of persons was needed for providing the service.

6. The representative of Nigeria considered that treating labour movement in the same way as other production factors in the framework would be one way of achieving the necessary balance of rights and obligations. This would require the deregulation of the strictly regulated movement of labour compared to other production factors.

7. The representative of Pakistan agreed with this view, and noted that labour mobility had to be dealt with satisfactorily in order to bring about an acceptable balance of interests.

8. The representative of Chile supported the views on symmetrical treatment of production factors as contained in document MTN.GNS/W/106.

9. The representative of the European Communities emphasised that the scope of the discussion was limited to the temporary relocation of personnel related to the provision of a service. She did not consider that a sectoral annotation was necessary for labour mobility as it was a horizontal issue, and which might be better dealt with in the context of a specific sector such as construction or professional services, if an annex was thought necessary.

10. The representative of Yugoslavia said temporary labour movement was linked to the provision of a service both in terms of a production factor and a mode of delivery. He agreed with other speakers that the concept of essentiality was crucial, not only for labour mobility but also for other production factors.

11. The representative of Sweden, on behalf of the Nordic countries, considered that the issues under discussion fell into four groups. The first group related to mode of delivery whereby the service provider moved across borders, accompanied by the key personnel needed to ensure the

quality and particular characteristics of the service to be provided; in this respect it was necessary to clarify how to distinguish key personnel from other personnel. Other related questions concerned the entry, residence, and work permit procedures which countries applied when they allowed persons to enter the country, as well as the conditions of stay whereby it was taken for granted that all countries wanted to ensure respect of local regulations and conditions. Furthermore, the Group had to reflect on how to deal with the licensing and registration procedures needed for certain occupations. Second, regarding labour market issues, the framework would have to deal with trade in services and not domestic labour market policies. The third set of issues related to commercial presence where the foreign service provider, in addition to the key personnel which he had brought, needed other personnel which would be recruited locally. In this respect, the concepts of national treatment and of non-discrimination would be crucial to ensure that the foreign service provider would be able to recruit and employ local staff on terms no less favourable than those pertaining to domestic suppliers. Fourth, for individual service providers such as self-employed professionals or managers/owners of small family restaurants, it was necessary to draw a clear distinction between staying in the country to provide a service and immigration.

12. The representative of Australia considered that appropriate provisions for temporary entry of skilled personnel should be elaborated in the framework rather than in a specific annex; the issues involved were horizontal in nature and any sectoral specificities could be treated in the relevant sectoral annex. The framework provisions applying to temporary labour movement should be capable of addressing access problems experienced by business people in foreign markets, while at the same time not compromising the rights of individual nations to determine their immigration and labour market policies and practices. The work in this group should be limited to the consideration of labour mobility for temporary relocation of service providers, and related to this, labour mobility involved in commercial presence of varying time durations.

13. The representative of Mexico said that temporary labour movement in connection with the provision of services rather than migratory matters was under discussion and asked where was the dividing line between temporary cross-border labour movement to provide services, and labour of a migratory kind to serve other purposes. He recalled his delegation's earlier proposal on "organised imports" of labour with regard to (a) enterprises providing a service in a foreign country with their own labour covering all skill levels, and, (b) entities specialised in hiring different types of labour which would be sub-contracted to enterprises in the labour-importing or host country. By way of a preliminary conclusion, he noted that it might be necessary to have a labour mobility annex in order to separate and explain the various elements of labour mobility.

14. The representative of the United States favoured treating labour mobility in the provisions of the framework while not ruling out that certain sectoral specificities in respect of labour movement could be reflected in sectoral annexes. The most appropriate path to pursue would

be to limit the coverage of temporary entry to those persons whose presence was truly essential or crucial to the functioning of the service provider, e.g. highly skilled personnel and certain professions. Regarding MTN.GNS/W/106, she disagreed with the suggestion that differentiating between skills or between positions in corporate hierarchies might be arbitrary. The difference, for instance, between the manager of a business firm and a member of the custodial staff of that firm was highly significant: in her view, the managerial skills were much more likely to be essential to the provision of the firm's services than those provided by the unskilled or semi-skilled worker.

15. The representative of Singapore drew attention to the distinction between a legal entity and a person; the former referring to trade and the latter to employment matters. Commercial presence and trade rules usually referred to the presence of a legal entity and they did not apply to a person who was usually treated under national employment and immigration policies.

16. The representative of Hungary said that in this discussion the entry of persons should be linked to some kind of commercial purpose either temporary or permanent. Individual migration of labour, as such, should not be covered by this framework, although there might be cases where trade in services meant the movement of self-employed individuals in a number of professional services. He drew attention to the difference between the employer as a foreign company which sent its employees to another country on a temporary basis and the employer as a domestic company which employed foreign persons; these two cases would have to be treated differently. Regarding "essentiality", he said it was difficult to foresee a commonly agreed definition of "essential" or of "key personnel" and it might be better to avoid attempting to agree on a definition. Commitments undertaken by various participants as a result of negotiations could, for each country, cover those categories of persons which it considered necessary or essential. Countries which did not need the movement of unskilled labour, for example, would not provide market access in those sectors.

17. The representative of Yugoslavia welcomed the Hungarian proposal that the group consider the possibility of specifying essential movement of labour in national schedules, but he wondered how the balance of benefits for all participants could be ensured.

18. The representative of Switzerland considered that it was necessary to limit the granting of temporary work permits to people who were absolutely essential to the performance of the service. Such authorisations should not run counter to national immigration legislation and should take into account the difficulties regarding immigration in arriving at a clear definition of temporary permits.

19. The representative of India said that the movement of labour had to be linked to the transactions which were required for the completion of a service contract. Once market access had been granted for a particular

service sector, there should be no limitations made on the basis of essentiality or skill level as such categories were very subjective.

20. The representative of Argentina agreed that such categories were largely subjective; in her view, essential personnel referred to people who were able to ensure the quality of the services rendered, and to maintain the competitiveness of the company providing the service.

21. The representative of Japan considered that labour mobility was a horizontal issue which should be handled within the provisions of the framework. The issue should be limited to the temporary movement of labour which was essential for the provision of a service. He considered that the receiving country, rather than the service provider, should be in a position to decide on what was essential.

22. The representative of Australia suggested the Group explore the Hungarian suggestion that essentiality be specified in national schedules, because access to particular categories of personnel which were deemed to be essential would be a matter for negotiation between the countries requesting and granting a market access concession.

23. The representative of the European Communities also considered that labour movement should be dealt with in the framework, and proposed that concerning personnel that were essential to the provision of the service, such as key and other skilled personnel, the Community would be willing to undertake commitments provided that the movement of personnel was limited to the specific purpose for which market access had been granted and was of limited duration or a discrete transaction.

24. Considering some of the statements that had been made, the representative of the United States said that the suggestion that the importing country should decide what was essential on a case by case basis was useful, but she feared that the liberalising effect could be fairly marginal if that would be the full extent of the agreement in the GNS. Regarding the view that essentiality could also be defined country by country and sector by sector in national schedules, she considered such an approach relatively cumbersome and would have only a moderate liberalising effect. Another possibility was to define specific types of service providers which countries were willing to recognise as being virtually always essential to the provision of the service including senior managers of corporations.

25. Following the general comments, the Chairman opened the floor for observations regarding the application of the various concepts, principles and rules defined the in Montreal text to labour mobility.

26. Regarding transparency, the representative of Mexico considered that at the request of any party to the framework, a party should provide any necessary information within a reasonably brief period of time. He emphasised that the establishment of enquiry points was necessary and could include embassies and immigration offices abroad (as reflected in article 6 of document MTN.GNS/W/106).

27. The representative of Sweden, on behalf of the Nordic countries, thought that it would be possible to apply the transparency provision in the framework to labour mobility without extra clarification. She welcomed the suggestion that the enquiry point for relevant labour movement regulations could be a country's embassy or consulate which were already probably closely involved in supplying that sort of information.

28. The representative of the United States agreed that enquiry points could be both in the embassies and in capitals. Administrative discretion was an important aspect of entry decisions, and she felt that the rationale for these decisions should be made available to the affected party although there were privacy concerns which would limit the release to third parties of individual immigration decisions.

29. The representative of India, in response to the point made by the United States delegate regarding the rationale for administrative decisions, said the grounds on which that rationale would be based would have to be negotiated and agreed.

30. The representative of Australia said her country had recently taken steps to increase the level of transparency of entry procedures for prospective entrants and companies wishing to apply for temporary entry. In addition, she noted transparency relating to standards, qualifications and operating conditions was very important to any prospective service provider. Like other speakers, she supported the suggestion about enquiry points in overseas embassies and immigration offices.

31. The representative of Hungary said that the scope of transparency should cover the various kinds of regulation which influenced the mobility of persons including entry, visa and temporary work permit practices, as well as regulations concerning qualifications, standards and conditions of practice. Transparency provisions should also cover regulations and conditions of practice at both the sub-national (governmental) level as well as at the non-governmental level. In order to avoid the possible undermining of obligations, he said that the relationship would have to be clarified between market access commitments in this area and possible exceptions relating to immigration policy.

32. The representative of the European Communities urged caution with regard to being unconditionally in favour of having all relevant immigration laws, rules and guidelines subject to the far-reaching transparency proposal that her delegation was aiming at in the general framework.

33. Regarding the concept of progressive liberalisation, the representative of Mexico said that the proposed annex would apply to those sectors where market access had been granted, and where it had been specified that this mode of delivering the service was included.

34. The representative of India noted that policies regarding labour movement should in principle not frustrate the economic advantage of those countries which were trying to export labour-intensive services.

35. The representative of Sweden, on behalf of the Nordic countries, referred to paragraph 3 of article 2 of the proposed annex and considered that the phrase "all personnel able to provide the services for which market access has been granted" was problematic insofar that it meant that all personnel able to provide the service would have the right to enter into another country together with the service provider.

36. The representative of Mexico replied that this was not his interpretation, and the annex was not suggesting that literally all the people able to provide the service should automatically have access to the country which had granted the market access concession.

37. The representative of India added that if market access had been granted under conditions of specificity of purpose, limited duration and discreteness of transaction, the service providing party should have the liberty to provide any service personnel of any skill level not only from its own source, but also from sources which were economically most advantageous.

38. The representative of Austria said that the question of progressive liberalisation with regard to labour movement was still under consideration by his authorities.

39. The representative of Canada asked whether there was room for a formula approach to liberalization and whether the United States had suggested a type of formula.

40. The representative of the United States said that the suggestion regarding senior managerial personnel was not a formal proposal for a formula, but more an example of the type of liberalisation that might be agreed upon across sectors.

41. In order to ensure a balance of interests, the representative of Hungary noted that any formula would have to refer to more than only the movement of senior managers of established operations.

42. On national treatment, the representative of Mexico said that article 8 of the annex proposed that foreign service personnel should be entitled to benefits and subject to obligations in conditions no less favourable than those applying to service personnel of national origin; the proposed national treatment provision in the annex was trying to strike a balance in both rights and obligations for foreign personnel.

43. The representative of Canada assumed that such a national treatment provision would also apply to the labour laws and working conditions including the minimum wage of the country to which the service was being provided.

44. The representative of Australia indicated that if equal treatment under labour laws was applied to unskilled or semi-skilled labour, it could undermine the comparative advantage of developing countries.

45. The representative of European Communities considered that local labour laws and conditions would apply to foreign service suppliers.

46. The representative of Sweden, on behalf of the Nordic countries, interpreted a national treatment commitment to mean the respect for, and compliance with, local regulations and local conditions such as minimum wage levels, social security benefits, etc.

47. The representative of the United States noted with respect to wages and working conditions that national treatment raised a number of practical questions: for example, how would the temporary workers who had been admitted, pursue employed activity if they did not have rights under the admitting nation's legal system? How would obligations under national treatment apply to social insurance and other longer term benefits for persons who would be in the admitting country on a temporary basis?

48. The representative of Hungary referred to the cases mentioned in the annex, i.e. (a) a company established in the host country which could decide to hire labour from a foreign source and (b) a subsidiary or branch of a foreign company operating in the partner country. In both cases the same obligations including minimum wages and labour laws etc, would apply. However, what would national treatment mean when a foreign company supplied a service in a cross-border mode. There was a distinction between a provider of a service, as stated in the Montreal text, and an individual person; in his view, the provider of a service was a company which signed a service contract; national treatment applied to such a company to the extent that it delivered a service, but this did not mean that every single worker of the foreign company was entitled to the same minimum wage rate, etc. For the cross-border provision of a service where the provider was a foreign company, national treatment should not mean the application of the same detailed conditions at the level of individual persons.

49. The representative of Mexico said that his delegation was open to the suggestion that it might be necessary to include, in a national treatment provision, a reference to cross-border trade in an annex.

50. Regarding the concepts of m.f.n./non-discrimination, the representative of Mexico referred to the annex contained in MTN.GNS/W106 which proposed that no party to the agreement should establish or maintain any measure which constituted a means of arbitrary or unjustifiable discrimination among parties on the basis of origin and nationality of service personnel.

51. The representative of the United States said it was important to consider how m.f.n. applied to existing agreements in force. Her delegation would have no difficulty in extending to all other signatories any commitments which were negotiated under the services agreement.

52. Concerning the concept of market access, the representative of Mexico again referred to the annex co-sponsored by his country and said that national enterprises in the countries importing a service might recruit personnel from the source which was most economically advantageous. The

"importing" of personnel did not refer to individual job seekers and might be organised by a national or by a foreign hiring entity which would cooperate closely with the authorities of the host country in the case of any breach of immigration laws and regulations by the hired personnel. Such an entity would avoid the type of labour movement where individuals were looking for employment in the host country. Article 4 of the annex proposed that in the case of such organized labour movement, the parties should not require, as a condition for temporary entry, any prior approval procedures such as labour certification tests.

53. The delegation of Sweden, on behalf of the Nordic countries, said that there seemed to be two types of market access commitments under discussion: one relating to a specific service sector, the service provider and the necessary personnel active in that specific sector, and another relating to the recruitment and supply of persons and labour which she considered as trade in labour or manpower services for which another market access commitment would be needed.

54. The representative of Hungary said that in the case of cross-border trade and supply of personnel, home country control should apply, i.e. for persons employed by a foreign company, the terms of employment were governed from the home country. In the case where the employing company was a host country entity, host country control would be applicable. He also cited another case, where the persons were attached to a form of foreign commercial presence in a partner country, which would need to be appropriately covered in the agreement; in this respect, he cited the example of a large advertising agency which sent its employees on a temporary basis abroad to deliver a service. If an advertising expert moved to another country for two weeks to consult with a client, it would be difficult to assume that for that period he would be under host country labour laws and social security regulations.

55. The representative of Australia agreed with the distinction drawn by the Swedish delegate and said her delegation did not see a national hiring entity as a relevant concept. The idea of a foreign hiring entity also caused problems because of the lack of control of the host country government to ensure that national immigration and employment policies were not being impaired or circumvented. In her view there was no definition of what constituted temporary entry in terms of particular categories of movement.

56. The representative of the United States said that in order for market access commitments to be meaningful, it was necessary to have a clear understanding of what categories and kinds of personnel, and under what circumstances, might enter foreign markets under the framework. She considered skills, positions in corporate hierarchies and conditions of entry as being very important in defining market access commitments to avoid any undermining of a country's domestic labour and social policies. She added that her delegation expected all parties to the framework to undertake some obligations regarding labour mobility.

57. The representative of the European Communities agreed with the distinction made by the representative of Sweden between a market access commitment that would be made for the provision of a service, and one that would be needed for the provision of labour services by means of the hiring entity. Regarding market access, it was necessary to focus on the different categories of service providers including: occasional service providers who were present for a very short duration (e.g. businessmen, consultants) and would provide a service on the basis of a visa; establishment of individual service providers which assumed that there was a market access commitment on the specific service in question and that the relevant standards and qualifications had been met (e.g. liberal professions); entry and sojourn for an undetermined period of time of employed personnel linked to a foreign established company and probably subject to host country rules (e.g. highly qualified and other skilled personnel); movement of personnel linked to a specific temporary transaction and which could be subject to host country rules (e.g. construction site work).

58. In response, the representative of Hungary considered that in the case of consultants who had to stay for weeks, or even months, in the foreign country, a visa alone would not be sufficient to meet the conditions of fulfilling the contract that had been signed. Regarding the final category suggested by the European Communities delegate, he asked what the legal basis would be for applying host country control (and not home country control) to personnel employed by a foreign company for a specified period.

59. The representative of the European Communities replied that in the case of the consultant staying abroad for a longer period of time, it was possible in many cases for a three-month visa to be renewed. In the case of temporary specific transactions, she said that the question of which rules - whether home country or host country - would apply, needed further reflection regarding skill category, type of contract, etc.

60. The representative of India added that the right of entry into a country was to be treated differently from the right to work in a country. He noted that the case of an independent practising architect who might be required to deliver a service on an individual basis was covered in article 5 paragraph 6 of the annex, and said that it was important for such cases to be included under the framework.

61. Regarding the concept of increasing participation of developing countries, the representative of Mexico said such increasing participation depended on the liberalisation of cross-border movement of unskilled, semi-skilled and skilled labour.

62. The representative of India said that another consideration related to the recognition of educational and professional competence of developing country professionals who wished to gain access to developed country markets.

63. The representative of the United States considered that developing countries would benefit from commitments to liberalise labour mobility even

for key personnel. Competitive services suppliers often hired nationals from developing countries as part of their professional staff, and then provided opportunities for the advancement of these personnel not only within that country, but also for temporary assignments in third countries. Countries whose comparative advantage was based on low labour costs could also benefit from liberalisation, even without moving those workers across national boundaries; services could often be provided within the home country and exported over telecommunications networks, e.g. computer software, insurance claims management, and data processing.

64. On safeguards and exceptions, the representative of Mexico said that article 12 of the proposed annex listed a number of exceptions which required further discussion.

65. The representative of the United States believed that the exceptions being discussed in the overall agreement seemed to be adequate for the area of labour mobility as well.

66. The representative of Hungary agreed in general with the view expressed by the United States on exceptions. It would however create certain problems if under national security or public order considerations, all movement of persons would be systematically denied as this would nullify the value of any trade concessions that had been granted. Safeguards might be applicable to forms of trade which required the movement of persons, although it was important to distinguish between safeguard measures applying to new entrants, and those applying to providers already in a given market.

67. On the subject of regulatory situation, the representative of Malaysia said that the sovereign authority to initiate and implement rules had to be respected and not eroded by multilateral agreements. The link between national objectives and measures designed to attain them, however, should not be too tenuous or remote as this could lead to disguised protection or the introduction of arbitrary and unjustified restrictions. The asymmetry in the regulatory situation between developing and developed countries could be overcome by permitting developing countries to introduce necessary regulations and by deregulation especially in developed countries. However, in introducing new regulations signatories should ensure that the original balance of obligations undertaken with regard to the framework was maintained.

68. The representative of Sweden on behalf of the Nordic countries said that regarding mutual recognition arrangements in the area of standards and qualifications, her delegation was not convinced that it was beneficial to talk in all instances about "mutual recognition" because it imposed a reciprocity requirement which might put unnecessary restrictions on the liberalisation undertakings that countries could make.

69. The representative of New Zealand said that the Agreement on Technical Barriers to Trade, which related to technical standards, recognised that regulations were necessary but should not be intended or applied with a

view to creating trade barriers; it might be useful to reflect further on the implications of this agreement for the deliberations of the Group.

70. The representative of Australia said that there should be provisions in the framework to cover the generic issue of the multilateral recognition of standards and qualifications. Her delegation was aiming for a framework of rules which would apply to the establishment, maintenance and application of standards relating to trade in services; the framework should provide for the transparency of standards in conformity with the general transparency provisions.

71. The representative of India agreed that regulations regarding qualifications and standards should be transparent, and added that when an importing country imposed restrictions on qualifications and standards, which denied entry of the foreign service supplier, the burden of proof should be on the importing country to demonstrate in a transparent way why it was restricting entry.

72. The designated Chairman took over the proceedings and invited suggestions from delegations regarding the elaboration of issues for the agenda of the next meeting of the working group.

73. The representative of Singapore, reflecting on what sort of result could be expected from the deliberations of this working group, said that one proposal related to the annex that had been submitted. The issue of labour mobility cut across all sectors and he doubted that a cross-sectoral annotation would be appropriate. He considered however that further work on labour mobility might deal with the clarification of certain concepts such as temporary entry, the definition of essential to the supply of a service, or how to ensure that immigration and labour laws did not impair trade in services.

74. The representative of the United States preferred that the working group first concentrate on the substance of the issues and leave the debate on how to incorporate the substance into the framework (e.g. in framework provisions, footnotes, annexes, or annotations) to a later stage.

75. The representative of Brazil said that labour movement was a horizontal issue affecting all sectors whether labour-intensive or not. The discussion of the proposed annex identified many difficult issues including the need to look more closely at visa requirements; in this respect, it would be useful to examine current arrangements among various countries to better understand where specific improvements could be made. Second, he considered that recognition of qualifications could also be dealt with by means of a separate protocol or annex, and in any case required further discussion. In terms of procedure, he thought it was important to have a more focused agenda for the next meeting.

76. The representatives of Mexico and New Zealand said that the discussions at the next meeting of the working group would be facilitated once the draft framework text was available.

77. The representative of Japan agreed that labour mobility was horizontal in nature. Regarding the issues to be discussed, he said that it was first necessary to address the question of defining labour movement that was essential for the provision of a service. What criteria should be used to decide on what was essential? Second, he noted that bilateral and regional agreements existed between countries on visa requirements and wondered whether such agreements could be expanded to the multilateral level. Third, he doubted that the discussion of the applicability of the Montreal concepts was a useful exercise for labour mobility which was cross-sectoral in nature.

78. The representative of the United States considered that the working group should address two specific issues at its next meeting. First, it should seek to identify categories of persons who were a priori essential to the provision of a traded service and who therefore should be admitted under this agreement on a temporary basis to perform the functions which made them essential. The categories identified in the discussion would build on those types of movements which the majority of countries already permitted under their national law. She recognised that any obligations relating to entry of service providers under the agreement would be subject to the exceptions of the general framework and that all countries would still have the right to take necessary steps regarding the entry of any individual to protect, say, public order or safety or health or other exceptions specified in the framework. It was probably not possible to develop a definition of the term "essential" which covered all possible categories of those who might be essential to the provision of a service, but it was necessary, and possible, to identify those categories where agreement was possible. Her delegation envisaged that countries would be able to make additional commitments in their national schedules with respect to entry of other categories of service providers in a certain sector or in all sectors. The second agenda item would be to explore the appropriate general principles and conditions for entry of persons and subsequent performance of their functions. There might be several broad principles which countries might be prepared to follow in implementing the agreement, e.g. agreeing that certain categories of essential services providers, identified in the agreement, would not require labour market tests, or that the issuance of an entry permit should take place expeditiously. Another discussion point could relate to national treatment, e.g. issues relating to the post-entry treatment of essential service providers. She considered that further examination of the applicability of the other concepts and principles to labour mobility was not necessary.

79. The representative of Hungary said it would be helpful from the outset to exclude permanent movement or migration from these negotiations, as well as the entry of individual job seekers; what was under discussion was the temporary movement of services providers on a commercial basis. Concerning the symmetrical treatment of production factors, he wondered how concessions related to establishment could be balanced in economic terms with concessions concerning labour movement; he suggested that a concession granted could be of a permanent nature although the individual

persons who entered under the concession could remain in another country only on a temporary basis.

80. The representative of the European Communities said it would be useful to concentrate in further work on the different types of service providers with regard to the movement of personnel; and clarify the notions of essentiality and of temporary relocation of personnel. At this stage her delegation did not see the need for an annex on labour mobility because she assumed that there would be sufficient provisions in the framework to deal with it, and where this was not the case, it would be possible to treat the relevant specificities in sectoral annexes.

81. The representative of Australia agreed that the focus of further work should be the movement of essential personnel in relation to delivery of a service covered by a market access concession, and not the question of labour mobility generally nor that associated with goods trade. Her delegation was not looking for an annex on labour mobility.

82. The representative of Yugoslavia agreed that the subject of the deliberations was the temporary movement of personnel essential for the provision of a service. His delegation was open as to how labour movement should be dealt with. Regarding the definition of essential personnel, he wondered whether in the ILO or elsewhere some kind of agreed definition had been worked out; another possibility was the illustrative list approach as suggested by the Nordic countries.

83. The representative of Mexico believed that the definition of what was essential personnel differed from sector to sector. He also considered that discussions could not be limited to one specific category of manpower. Other issues which required further examination related, inter alia, to the applicability of national treatment to foreign service suppliers; whether transparency should be related to all immigration laws or only those linked to the type of services rendered; and the implications of a non-discrimination provision for existing bilateral visa agreements.

84. The representative of Pakistan agreed that the discussions should concentrate on possibilities to provide services abroad by the movement of labour under certain conditions. Relevant questions related inter alia to the applicability of certain concepts as well as the definition of temporariness and essentiality. In this respect he asked how criteria could be developed to determine what would be essential for one sector as opposed to another. Other matters needing more discussion concerned visa requirements, entry permits, and recognition of qualifications.

85. The representative of India said that one way of addressing the definitional issue involved in temporary relocation could be to say that whatever was not permanent was temporary. Future points to be considered concerned the criteria for essentiality which could be approached as a separate issue or with reference to individual service sectors; and the question of qualifications and standards.

86. The representative of Korea emphasised the importance of defining essentiality in the delivery of a service. He considered that overall agreement on this concept would be very difficult and suggested that the Group might examine types of personnel sector by sector, industry by industry and skill by skill. He also proposed that information should be made available on existing regulations regarding labour movement related to the provision of services to better understand what regulations inhibited the movement of labour essential to the delivery of a service.

87. The representative of Singapore welcomed the suggestions by the United States for a future agenda. Regarding the obligations flowing from an agreement on services trade, he did not think that it would be possible to bring labour or immigration laws per se to a GATT- type dispute settlement; but a market access concession which had been impaired by the operation of a labour or immigration law might be subject to dispute settlement.

88. The representative of Sweden, on behalf of the Nordic countries, asked the Chairman to formulate the agenda for the next meeting so as to relate the various items as closely as possible to the framework text that would be available in draft form by the end of July.

89. The Chairman closed the meeting and informed delegates that the secretariat would indicate at a later stage the dates of, as well as an agenda for, the next meeting.