

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNS/FIN/2
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Special Distribution

Group of Negotiations on Services

WORKING GROUP ON FINANCIAL SERVICES INCLUDING INSURANCE

Note on the Meeting of 12-13 July 1990

1. The Chairman welcomed delegations to the second meeting of the working group on financial services including insurance and opened the floor to a discussion of payments and transfers in the provision of financial services. He said that one approach to addressing concerns regarding payments and transfers could be to impose no obligations specifically regarding payments and transfers either in a framework or in an annex. In this case, depending on the outcome with regard to other provisions of the framework, parties might still be able to address situations in which measures on payments and transfers result in protectionism and nullify the value of commitment. If obligations regarding payments and transfers were to be established, whether such obligations should be more appropriately included in a sectoral annex or in the general framework would be a relevant question. The following considerations would be relevant: provisions in an annex would apply only to financial service transactions, whereas those in the general framework would apply more broadly to transactions for other services as well; whether obligations would entail general rules on the role of, and justification for, regulations on payments and transfers, or whether obligations would apply only to transactions involving liberalized financial services; whether obligations would apply to both current and capital transactions, to capital transaction only, or whether obligations on current transactions would differ from those on capital transactions. Other matters which could be taken into account included the relationship of any such provisions to: the institutional aspects of IMF jurisdiction and mechanisms for coordination or cooperation on appropriate matters, as well as measures in effect among OECD member countries as a result of application of the OECD Codes of Liberalization of Current Invisible Operations and Capital Movements. Two notes relating to payments and transfers were before the Group, one prepared by the secretariat and another which had been distributed at the working group's previous meeting under the Chairman's own responsibility. The latter paper listed four options relating to payments and transfers matters, ranging from the obligation to freely permit all payments and transfers related to the provision of financial services which were liberalized under the agreement (option 1) to the "no obligation" option (option 4). An intermediate option (option 2) would permit restrictions on current payments that were in conformity with the regulations of the IMF, as well as restrictions on capital account transaction that were necessary because of severe balance-of-payments problems. Option 3 would combine a grandfathering of existing restrictions on payments and transfers with option 2, applicable to new restrictions.

GATT SECRETARIAT

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2. The representative of the European Communities said that a distinction needed to be made between capital movements and current transactions when discussing possible disciplines on payments and transfers. This was so because disciplines already existed in the IMF in regard to current transactions whereas no direct obligations applied to restrictions on capital movements. Restrictions on capital account transactions could be taken into account under the IMF's surveillance activities but the absence of disciplines warranted the consideration of specific provisions on capital movements in a sectoral annex covering financial services. His delegation felt that disciplines on and monitoring of underlying payments and transfers were necessary for the liberalization of financial services to be effective, whether on an establishment-related or cross-border basis. Article 13 of his delegation's general framework proposal suggested that payments and transfers for current transactions and capital be allowed insofar as those transactions had been liberalized. Notwithstanding that obligation, countries could impose rules in order to monitor the payments themselves so long as these were in conformity with the obligations assumed by members of the IMF. His delegation had explicitly indicated that an agreement covering financial services should not alter the rights and obligations of members of the Fund. The reference to capital transactions in article XIII of the EC draft framework should be interpreted as covering only foreign direct investment, i.e. the payments necessary to establish a commercial presence. Reference to capital transactions was also justified by the fact that the regulations or restrictions that applied to capital transactions differed from those applying to current invisible operations. Measures relating to capital transactions other than foreign direct investment were widespread in the financial services area and warranted particular attention in the context of a sectoral annex covering the sector. Restrictions on payments and transfers could be imposed for reasons other than current account/balance of payments difficulties, such as monetary policy concerns, particularly in foreign exchange and/or capital markets, disturbances in the conduct of monetary and exchange rate policies, etc. Any such restrictions should however be monitored against the backdrop of agreed disciplines. Such disciplines could be adopted in cooperation with the IMF in order to provide an appropriate basis for the evaluation and monitoring of both existing and new restrictions. Any new restrictions should be limited in nature and time.

3. The representative of Japan said that options 1 and 4 of the Chairman's non-paper were both too extreme, noting that his delegation preferred either of options 2 or 3. It was essential to secure the predominance of the IMF in regard to payments and transfers questions, and any arrangement stemming from the Uruguay Round should not alter the rights and obligations of members of the Fund. His delegation believed as well that members of the Fund should be free to impose exchange controls or restrictions that were in conformity with Article VIII of the Fund's articles of agreement. The latter issue was not clearly addressed in the EC's draft framework proposal in MTN.GNS/W/105; his delegation strongly supported the language contained in article 12 of the Swiss framework proposal in MTN.GNS/W/102.

4. The representative of the United States said his delegation was concerned by the monitoring of balance-of-payments exceptions and wondered who would judge whether a party's measures in this area were in conformity

with an agreement covering financial services. A mechanism had been developed in the GATT to deal with such matters in the goods area, and he wondered whether such a mechanism could be appropriate in the area of financial services.

5. The representative of India said that the GNS had yet to hold an in-depth discussion of issues relating to payments and transfers. Payments and transfers were of relevance to all sectors and she wondered what peculiarity of the financial sector warranted the need to address such matters in the context of the current discussions. She agreed that a clearer understanding of GATT and IMF procedures in regard to payments and transfers in the goods area would be useful to better focus the group's discussions. Since the issue of payments and transfers was generic in nature and given the prior existence of IMF disciplines in the area, her delegation subscribed to the fourth option contained in the Chairman's non-paper.

6. The representative of the United States felt that issues need not be specific to a sector to require different treatment. There might indeed be valid reasons to treat certain issues differently even in the absence of sectoral specificities.

7. The representative of Korea said that when a foreign service provider was established in a country, payments and transfers issues naturally arose out of normal operations such as transactions with the overseas affiliates, profit remittances, external guarantees, trade-related finance, foreign exchange trading, etc. Restrictions applied in such circumstances to payments and transfers should be made on a non-discriminatory basis, i.e. apply equally to domestic and foreign financial institutions given that foreign established firms became residents from a balance-of-payments perspective. The situation was different when financial services were provided on a cross-border basis. He recalled that his delegation had already voiced its concerns on this matter. He recalled that the liberalization of cross-border services could hamper the stability of the financial system and adversely affect the supervision of financial institutions and noted that payments and transfers provisions should only relate to those cross-border services that were liberalized. Payments and transfers issues had to be differentiated from the underlying financial transactions which were the object of liberalization undertakings. Payments and transfers provisions in a financial services annex should be limited to the IMF's current jurisdiction and to the surveillance role of the Fund over the international monetary system. Parties to an agreement should have the right to apply restrictive measures as a general exception, or for domestic prudential reasons. In view of existing IMF disciplines over payments and transfers, countries were unlikely to abuse the right to apply restrictive measures.

8. The representative of the International Monetary Fund recalled that MTN.GNS/W/91 set out the Fund's jurisdictional concerns and responsibilities with regard to the possible payments and transfers provisions to emerge from the GNS and associated sectoral deliberations. The submission also addressed questions relating to balance-of-payments matters in relation to trade in services. Logic dictated that an agreement on services in general, and on

financial services in particular, should ensure the smooth delivery of the services being liberalized. It was essential to ensure that the payments system remained smooth and did not interfere with the growth of world trade. For that reason, the Fund's surveillance activities took into account all measures that could interfere with the flow of resources, both within and across countries. The IMF would welcome clarifications from group members on the role which the Fund might be called upon to play under a services framework. She would appreciate as well to hear the views of delegations on the functioning of the GATT's Balance-of-Payments Committee.

9. The representative of Switzerland felt that the working group would need to be somewhat inventive in regard to capital account transactions and the question of how to deal with possible restrictions placed on such transactions in instances where the underlying financial service transaction had been liberalized. He asked the representative of the IMF whether the Fund had thought of the ways to assist the group in this regard.

10. The Chairman suggested that the secretariat, in cooperation with the IMF, prepare for the working group's next meeting a background note outlining the way in which the GATT's Balance-of-Payments Committee operated.

11. The representative of the International Monetary Fund said that, subject to a member country's agreement, and to the approval of the IMF's Board, the Fund stood ready to share the views of the Board on a country's situation as well as the conclusions of the Board as to what the best remedies would be. She was somewhat concerned by some of the draft texts which were before the GNS and the working group, noting that some of them addressed issues with such specificity as to not relate to the conditions prevailing in some of the Fund's member countries. She cited, for example, the reference that was made in article XIII of MTN.GNS/W/105 to spot transactions, noting that there were many potential signatories of a services framework where daily spot transactions were not part of the financial system. She wondered whether such a level of specificity was necessary. She noted on the other hand that references to the provision of services which had been liberalized might be too restrictive, as there could be a large number of services that might be liberalized in the future and in regard to which the IMF would not want member countries to place payments restrictions.

12. The representative of the United States said that his delegation fully endorsed the views of the IMF representative when she said that the Fund would not want to see payments restrictions extended if the underlying financial transactions had been liberalized.

13. The representative of India felt that the issue of restrictions on payments and transfers should be discussed in the GNS but emphasized that countries should have the right to impose restrictions whether for balance-of-payments or other reasons. She asked the representative of the IMF how its procedures in regard to restrictions on payments and transfers would generally apply in the services area as well as in the particular case of financial services.

14. The representative of the International Monetary Fund said that she could not speculate at this moment on the way in which the Fund could, in a cooperative effort, look at problems in a financial services agreement until it knew what such an agreement might look like. If a member country of the Fund wanted to impose payments restrictions, be it on current or capital transactions, in the face of disorderly market conditions, this would be looked at within the Fund as an exceedingly short-term measure. This was so because markets were typically disorderly for only short periods of time, otherwise they must be looked at as structural problems needing to be addressed in a different policy context. The Fund would typically attempt to diagnose the causes of disorderly market conditions, determine what measures might be appropriate to safeguard the member country's reserve position and to get the market to function smoothly again. The IMF would tend to argue that restrictions might not be appropriate because they might erode and be circumscribed fairly quickly. In other areas, she noted that the Fund's response would depend on whether problems had a balance-of-payments origin or whether they were of a different policy nature. The Fund would, after attempting its diagnosis, look at the gravity of balance-of-payments problems and provide its financial resources to member countries as a bridge to a remedial situation. There would then be agreement between the Fund and its member country as to the timing over which restrictions that had been imposed would need to be lifted.

15. The Chairman felt that the working group would need to give further consideration to the possible solutions that might be envisaged on the issue of payments and transfers as it related to the liberalization of underlying financial transactions. Once a consensus was reached on this question, he felt that there would be a need to draw up whatever institutional arrangements might be necessary.

16. The representative of the secretariat indicated that the secretariat would be in a position to prepare a background note on the procedures used in the GATT's Balance-of-Payments Committee. The representative of Yugoslavia asked the secretariat if the background note it intended to produce for the working group's next meeting would comprise the texts of GATT Articles XII, XIV, XV, XVIII:b as well the Declaration of 1979. The representative of the secretariat said that he would wish to reflect on what exactly might be addressed in the background note.

17. The Chairman opened the floor to a discussion of the various submissions before the working group.

18. The representative of the European Communities said that one of the key difficulties which his delegation encountered in preparing its draft financial services annex (MTN.GNS/FIN/W/1) was to make it relate to the overall services negotiations and to his delegation's proposed general agreement on trade in services (MTN.GNS/W/105). He highlighted a number of features of his delegation's draft framework proposal which had a particular bearing on the drafting of the proposed financial services annex. He noted that article V spoke of the right to regulate the provision of services into the territory of a party. Such a right to regulate would be based, as an obligation, on objective criteria such as competence or the ability to

provide a service. There was, in his view, a broad right to regulate, provided this was not done in a discriminatory manner and was subject to the provisions of the framework, such as m.f.n, national treatment, and commitments on market access. The structure of the EC's draft framework proposal as it related to progressive liberalization was addressed in article XVI through XX of MTN.GNS/W/105. Article XVI imposed a standstill on new restrictions on market access and all restrictions on market access would be listed in national schedules. There was also reference to a negotiation of initial commitments to ensure that the process was dynamic in nature. The provisions of general application would have to be applied in full upon entry into force of the framework. Restrictions placed in regard to national treatment and subsidies would also be listed in national schedules. He said that article XX provided that further negotiating rounds would lead to commitments to eliminate existing restrictions and reservations listed in schedules as well as to additional measures necessary to achieve effective market access. All the provisions of the draft framework proposal would apply fully in the financial services area, except where specific provisions were established in the proposed sectoral annex. Turning to his delegation's proposed financial services annex, he said that the market access provisions found in sections 1-4 of MTN.GNS/FIN/W/1 specified what was found in article I.1 of MTN.GNS/W/105 and noted that the same could be said of provisions on national treatment; a number of financial sector specificities were, however, addressed in Chapter III of the draft annex. He said that article 1 of the annex merely delimited the scope of the agreement but had to be read in conjunction with article 17.1 which defined what financial services were for the purpose of the annex. He said that article 2.1 set out in unequivocal terms the need for market access to be achieved, as a general rule, through establishment. As regarded cross-border services, he said that even though the main focus of the negotiations related to the need to allow foreign service providers to establish a commercial presence, his delegation nonetheless wished to see a selective approach taken so as to not leave cross-border financial transactions outside the scope of a services agreement. Selectivity was necessary given the inherent difficulties encountered in cross-border liberalization, although positive commitments could be taken over and above those specified in articles 3.1 and 4.1. Article 5 addressed the crucial need for authorization procedures to be transparent and expeditiously handled. He noted that, as foreseen in article 5.2, the fact that a company was publicly-owned should not be a reason for refusing an authorization. Article 6 dealt with the application of host country rules, i.e. the host country retains the possibility to supervise and regulate the operations of foreign financial institutions operating within its territory. Article 7 dealt with the elimination, under the application of articles V and XX.2(c) of the draft framework, of restrictions which even if applied in a non-discriminatory manner might have an adverse effect on the provision of financial services by institutions of other signatories. Article 7 aimed at securing the objective of effective market access in the area of financial services. Article 7.2 contained a standstill provision which related to the need to preserve the rights of established financial institutions. A standstill was also foreseen in article 8 in regard to new monopolies. This provision differed somewhat from article IX of MTN.GNS/W/105. Article 9 dealt with a number of specific issues which facilitated access to the market, such as access to the payments and clearing

systems, access to funding and refinancing facilities, transfers of electronic data and of equipment, etc. The latter two issues might be addressed in a telecommunications sectoral annotation. He emphasized that provisions relating to transfers of data would be subject to data privacy and protection considerations. On national treatment, his delegation had opted in article 10 for an approach emphasizing de facto treatment. References to de facto hindrances targeted administrative practices which were not embodied in national laws but nonetheless adversely affected the operations of foreign financial institutions. An added element to be taken into consideration was that of equality of competitive opportunity. Article 10.2 tried to limit the possible expansive effects of a de facto national treatment provision. Article 10.3 had to be read in conjunction with the definition of measures given in article XXVIII.3 of MTN.GNS/W/105. Article 11 represented an exception to article XXIV of the EC's proposed framework in regard to public procurement. An example of what his delegation had in mind in this regard related to provisions in national laws that all public property had to be insured by domestic insurance companies. Article 12 dealt with the special regulatory requirements of supervising branches, which might need to differ from those applying to subsidiaries. Article 13 on domestic regulation represented an extension of article V of MTN.GNS/W/105 and spelled out the public policy considerations which had to be taken into account in the financial services area, such as the need to ensure an appropriate supervision of the activities of financial institutions, the need to protect depositors, investors and policy holders, the need to secure monetary policy objectives, etc. His delegation chose not to draw up a list of public policy considerations strictly for practical reasons; any such list might raise more problems than it solved. The right of authorities to regulate and supervise financial markets and institutions should not be challenged but had nonetheless to be exercised in accordance with the provisions of the agreement and should not result in a denial of market access on arbitrary grounds. Article 16 was in square brackets at this stage as his delegation considered that it was premature to have a specific rule for financial services dealing with the impairment of benefits. This was particularly true with regard to the possibility of allowing cross-sectoral retaliation. The position taken by his delegation in article XXIV of MTN.GNS/W/105 remained valid but this was an issue which his delegation would want to revisit in future meetings of the working group. Article 17 dealing with definitions provided an illustrative and open-ended list of financial services rather than a list for mutual recognition purposes.

19. The representative of India felt that the questions of coverage and establishment should be addressed in the GNS rather than in the context of sectoral discussions. Articles 3, 4 and 7 appeared to go beyond the mandate of sectoral annotations as they aimed to expand specific areas of liberalization. It remained for consideration whether such an expansion was necessary, appropriate or desirable in the context of a sectoral annotation. The question of monopolies should be dealt with exclusively within the general framework and he wondered whether provisions which were specific to financial services were warranted. The same applied in regard to article 10 on national treatment. The outcome of GNS deliberations would likely condition the way in which issues relating to payments and transfers should be handled. On the question of definitions, the level of

aggregation/disaggregation of any list of financial services was an important consideration to bear in mind. He was unsure whether the group should opt for an open-ended illustrative list operating at a higher level of aggregation or rather for a complete list which would per force need to be very disaggregated.

20. The representative of Canada welcomed the development of the concept of equal competitive opportunity. He recognized the need to limit the application of the concept, but felt that the EC delegation may have gone too far in article 10.2 of its proposed annex, noting that exceptions should relate more to prudential regulation than to a general statement on public policy considerations. His delegation supported the bottom-up approach taken by the EC delegation in the area of cross-border financial services, adding that there was a need to be realistic as to how much trade could be liberalized on a cross-border basis. There was a need to state as clearly as possible what the general prudential carve out related to. His delegation welcomed the EC's attempt at specifying the conditions that should apply to authorization procedures, although it would need some time to review it in detail. There were a number of items that had not been addressed in the EC paper but which might warrant inclusion in a financial services annex, such as the extra-territorial application by a home country of its laws when they were in conflict with those of the host country. There were also some institutional issues that might need to be addressed in greater detail.

21. The representative of Australia said that the EC's proposed annex provided a very comprehensive coverage of the financial services sector and offered strong rules on which to base a process of progressive liberalization. The representative of Switzerland said that his delegation fully supported the EC's valuable effort to try to achieve a strong agreement in the financial services sector and was favourable to the ideas contained in article 7 of the proposed annex in regard to access to all financial activities and territorial expansion. The emphasis in article 10 on the concept of equality of competitive opportunity was also most welcome. He was unsure how the EC delegation aimed to deal with the issue of the introduction of new financial products. The proposed annex represented an effort to secure an adequate degree of juridical security by formulating a certain number of obligations aimed at increasing the certainty of commitments entered into by parties to an agreement. He agreed that the right to regulate should first be defined in the general framework, but noted that there may be a need to develop more specific sectoral provisions where necessary.

22. The representative of Japan said that his delegation was somewhat disappointed by some of the language contained in the proposed EC annex. The text was overly complex and ambiguous at times; for example in article 10 dealing with national treatment. In view of the importance and complexity of the financial sector, there was a need in the view of his delegation for a more self-contained arrangement in the sector. The paper was lacking in regard to institutional matters, such as dispute settlement or the body that might be responsible for administering an agreement on financial services.

23. The representative of the United States indicated that his delegation would shortly be addressing, on the basis of a formal submission to the working group, the issue of what it felt should be included in an agreement on financial services. The EC delegation had produced a most valuable document which should prove useful to the group's future work.

24. The Chairman asked the delegation of the United States to introduce its submission in MTN.GNS/FIN/W/2.

25. The representative of the United States said that his delegation's paper outlined the principal considerations which it felt should be taken into account in an agreement pertaining to financial services. He drew attention to the fact that an agreement should cover new financial services and products, and underscored that the introduction of new products would be subject to the normal prudential requirements of host countries. It was extremely important to allow, with the proper prudential caveat, new products into markets. Were one to exclude the innovative securities products that were developed in recent years, perhaps as much as half of the activity generated in securities markets would not be covered by a financial services agreement. He saw no reason to believe that financial innovation would abate in the years to come. The paper spoke of a national treatment standard for both establishment and operating purposes which was a composite of the traditional "no less favourable treatment" approach and the somewhat newer concept of "equality of competitive opportunity". His delegation's submission dealt with the requirement for a sound prudential carve out and however financial services were handled at the end of the current negotiations, it was essential to ensure that the responsibility for regulating such services remained where they presently were. Delegations might need to gain a clearer understanding of where the negotiating group on dispute settlement was heading before determining what may be specifically required in the area of financial services. Finally, he emphasized that the current international financial environment was one in which a number of countries had the economic and/or financial capacities and strengths to operate competitive and open financial markets. It would be difficult to achieve an agreement if it froze the present level of market openness in countries that were already very liberal, while yielding little liberalization in countries that clearly had the ability to narrow down differences in the treatment accorded to domestic and foreign financial institutions in their markets.

26. The representative of Mexico asked the US delegation to spell out more clearly what it meant by the achievement of a level playing field amongst economically and/or financially strong countries. He wondered how this might be achieved in practice as well as what it meant for developing countries which did not have large and/or strong financial sectors.

27. The representative of Japan said that his delegation was most impressed by the US submission's reference to the need for any arrangement covering financial services to respect the traditional duties, rights and responsibilities of finance ministers, central bank governors and other regulators in the financial services area. He agreed as well to the stated need for a proper consideration of prudential matters in the context of

financial services trade liberalization. This was the key area in which provisions which were specific to the financial sector were required. The reference to level playing fields emphasized the importance of developing a strong agreement; having no agreement would be preferable to having a weak one. His delegation viewed it as imperative that a number of items be respected including the importance of the financial sector and its close links with monetary policies; the need for financial or monetary authorities to have the responsibility to conduct negotiations in the sector; the need to avoid recourse to cross-sectoral concessions and retaliation involving the financial sector; the need for separate and independent dispute settlement procedures to govern financial services trade and for disputes panels in the sector to be handled mainly by finance officials; and finally, the need to fully secure a prudential carve out.

28. The representative of Austria noted that the US delegation's short paper made no reference to the liberalization of cross-border financial services and wondered whether the US had changed its views on this matter.

29. The representative of the United States said that his delegation strongly believed that the liberalization of cross-border services had to be included in any agreement on financial services. He agreed that not all countries had strong economies or financial sectors, noting that this was a reality which would have to be taken into account in the negotiations. His delegation would nonetheless hope that all countries participating in the services negotiations could undertake some liberalisation commitments and he noted that the more detailed informal paper which his delegation intended to submit would provide ample scope for fully recognizing the disparities in the economic and financial situations of countries engaged in the negotiations, thereby enabling all participants to embrace the principles embodied in the proposal.

30. The representative of the European Communities said that he agreed with most of what was said in the US submission, in particular the need for as strong an agreement as possible. He wondered whether Japan's endorsement of the need for a strong agreement included the adoption of a national treatment standard aimed at securing conditions of equal competitive opportunities, noting that an agreement which did not secure the achievement of the latter objective could not be strong. He agreed that the institutional specificities of the financial sector should be properly reflected in any agreement covering financial services but wished to know more clearly what the United States' and Japanese delegations had in mind in regard to institutional provisions in the sector. The reference to "other officials" in the fourth paragraph of MTN.GNS/FIN/W/2 sounded somewhat corporatist and he doubted whether it served any useful purpose in the text. He sought more detailed views from the US delegation on new financial products.

31. The Chairman opened the floor to a general discussion of the two papers.

32. The representative of Japan said that a strong agreement should not contain a grandfathering clause. If only a standstill were involved, the agreement would not be strong enough. The traditional definition of national treatment was preferable because it was clearly defined, whereas the concept

of equality of competitive opportunity was not precise. De facto national treatment could be interpreted as an enlarged definition of traditional national treatment and might be compared with the concept of effective market access. A dispute settlement mechanism should be handled by financial experts; a dispute settlement panel should not only be composed of financial experts, but should also report to financial experts in order to assure its neutrality.

33. The representative of the European Communities said that since the concept of effective market access was broadly defined, equality of competitive opportunity represented only one element of the concept. The concept of equality of competitive opportunity could be interpreted as going beyond the concept of de facto national treatment. De facto national treatment implied only that there should be no discrimination in the practical application of laws and regulations. It might not be appropriate for an agreement to deal with the division of powers regarding financial matters within the respective administrations of parties.

34. The representative of the United States said that institutional arrangements pertained to the overall responsibility for handling the rules and regulations that would govern financial services under the agreement. On new products, all products and all countries would be covered. The agreement should spell out clearly that financial service providers would be able to seek approval of a new product from the authorities of a government, and that the authorities would base the decision on prudential grounds rather than on anti-competitive motives.

35. The representative of the European Communities said that consideration might be given to stating explicitly in the agreement that new products should be allowed to be introduced into the market.

36. The representative of Switzerland said that his delegation shared the objective of seeking a strong agreement. He noted that the dispute settlement mechanism would also need to be strong. He asked whether any delegations could name considerations, other than prudential requirements that might bar the introduction of new products. He also asked what was meant by the concept of "level playing field" as mentioned in the U.S. paper.

37. The representative of the United States said that his delegation favoured explicit mention in an agreement that new products would be allowed subject to prudential considerations. Reasons other than prudential ones that led to new products being barred would most often represent the kind of reasons that the agreement would seek to curtail. The term "level playing field" referred to the idea of a balanced agreement that negotiators would sign in the recognition that they had received as many benefits as they had offered. All countries could not be equated, but the opportunity should be sought in the Uruguay round to achieve equal rights and benefits among countries that were at the same level of development.

38. The representative of the European Communities wondered whether the protection of depositors, consumers, policy holders, and investors might justify some administrative control on the introduction of new products and

lead to a conservative approach. Also, regulatory authorities might need to carefully monitor and supervise new products that were introduced into the market.

39. The representative of Australia asked the Swiss representative whether, in relation to new products, prudential considerations would include issues such as consumer protection. The representative of Switzerland said that he viewed the right to regulate for prudential reasons as including policy objectives such as the protection of investors and consumers. He wondered whether countries would be cautious about allowing a foreign service provider to introduce a financial product that had not previously been offered by a domestic service provider.

40. The representative of Hungary asked the representative of the European Communities what linkage was seen between IMF obligations or situations in which countries did not have a convertible currency, and the EC proposed obligations on payments and transfers. Also, what was the scope and coverage of the obligations of article 14.1 of the proposed annex vis-à-vis article XIII.1 of the EC framework proposal.

41. The representative of the European Communities said that the relationship between annex article 14.1 and framework article XIII.1 was that capital account transactions mentioned in the framework provision referred only to foreign direct investment. All other capital account transactions would be covered by article 14.1 of the annex. For countries that did not have a convertible currency, capital movements might be difficult to liberalise. These cases would need to be examined and special disciplines might have to be developed in conjunction with the IMF. Article 14.1 went beyond the obligations of the IMF since its jurisdiction did not extend to capital movements. According to some interpretations, the IMF could take a position with regard to exchange controls applied to capital account transactions in its surveillance duties. Disciplines over capital accounts transactions would be desirable, but transitional arrangements might be needed to monitor restrictions taken by countries without a convertible currency.

42. The representative of International Monetary Fund said that the IMF had no direct responsibilities over capital transactions, but the assessment of the appropriateness and the impact of capital account restrictions could be considered under the surveillance function or under IMF Article IV responsibilities dealing with the exchange rate system.

43. The representative of Japan noted that while the EC had indicated that article 14 of its annex would go beyond the obligations of the IMF, the EC proposed framework stated that the agreement would not alter the obligations of members of the IMF. He sought clarification as to whether the annex provision would alter the rights and obligations of IMF members.

44. The representative of the European Communities said that nothing in the agreement or the annex was intended to alter the obligations of members of the IMF. The IMF's jurisdiction would be fully respected, but establishing disciplines beyond the IMF's area of jurisdiction would be fully compatible

with the rights and obligations of the IMF. If commercial presence and right of establishment were accepted under the framework, capital transactions would be involved. To be fully effective, then, the framework would need to establish some discipline over exchange restrictions on capital transactions.

45. The Chairman invited the United States delegation to introduce its informal paper submitted to the working group titled "Provisions regarding financial services".

46. The representative of the United States said that the paper did not purport to be an annex, a separate agreement, or a framework. It represented the U.S. views on the provisions that would be required for financial services in the 13 elements covered, whether in an annex, a framework or a separate agreement. The paper did not represent an exclusive listing of all of his delegation's thoughts on all issues related to financial services. Nevertheless, it would be extremely important that the rights and prerogatives of financial officials be taken into account and not impaired in any way. He noted a correction to article 10 where sections 1-4 should refer to reservations on articles 1, 2 and 3 rather than only articles 1 and 2. He reviewed the provisions of the proposal, noting that article 2 combined market access and national treatment because the kinds of provisions that would apply were similar. National treatment entailed treatment no less favourable as well as equality of competitive opportunity. Article 2 covered monopolies. Article 3 was a cross-border provision that would open up all cross-border transactions. All of the proposed provisions were subject to article 9 that stated that nothing in this agreement shall prevent a party from taking reasonable actions necessary for prudential reasons. Article 9 would be subject to dispute settlement so that unreasonable or arbitrary actions could be challenged. Such actions would presumably fail the dispute settlement test if found to be subterfuge for violating commitments. Article 4 covered temporary entry of essential personnel; an element which might be dealt with in the framework. Other articles covered non-discrimination, recognition and harmonization, payments and transfers, restrictions for balance of payments reasons, non-application, institutional matters, suspension or withdrawal of commitments and definitions. Article 10 on reservations was a flexible approach that allowed for progressive liberalization.

47. The representative of Austria asked whether, under article 7, countries could continue to require that capital movements and service transactions be made through an authorized resident agent. On article 10, he commented that the requirement for re-examination of reservations every three years would be a heavy workload. He noted that re-examination under the OECD Codes, comprising only 24 members, occurred roughly every four years. On article 12, he asked what would be considered "other relevant bodies". On article 13, he asked who would judge whether or not a party was complying with its obligations.

48. The representative of the United States said that under article 7, payments probably could still be made through an authorized resident agent, yet the national treatment provision might have bearing on this. Regarding the workload on re-examination of commitments, he responded that although the

workability of the specific time period should be considered, it would be important not to have a static agreement. The reference to other relevant bodies was open ended. He said that article 13 was written such that parties themselves could judge.

49. The representative of South Africa asked whether, if there were a reciprocity agreement between a certain U.S. state and another country, would the reciprocity be applicable to all states in the U.S. or only to that particular state.

50. The representative of the United States said that the example of a state's agreement with a foreign country raised a number of issues, such as whether local governments would be bound by the agreement, and if so, could a reservation be lodged in this regard. He was not sure whether the example cited by the representative of South Africa could occur under U.S. law. If local governments were bound by the agreement, however, presumably the non-discrimination provisions would apply. Regarding reciprocity, he noted that it was common in the financial services area. The United States, however, did not have reciprocity laws at the federal level and had resisted pressures to move in that direction. Reciprocity in the financial area would guarantee chaos. If differential treatment were applied in each financial service at each level of government with every country, then the proliferation of regulatory regimes would impair the U.S. financial system. For countries that had reciprocity provisions, the hope was that the result of negotiations would be beneficial enough for the countries to no longer find the arrangements necessary.

51. The representative of Thailand said that article 1.4 should exclude activities of the central banks in their conduct of monetary policy. While the provisions of article 4 used the word "temporary" for entry of personnel, it did not define the period of time that would be considered temporary, or whether any limit would apply to the number of persons allowed entry. Regarding article 9 on prudential regulation, he noted that this area should not be subject to dispute settlement. Article 13 on suspension or withdrawal of benefits should be handled through the dispute settlement process.

52. The representative of the United States said that article 1.4 would not apply to central banks. Regarding temporary entry of personnel, a definition was not required in the U.S. view because U.S. immigration laws provided the distinction between temporary entry and immigration status. Regarding the number of persons allowed temporary entry, it would probably not be necessary to place limitations on entry with respect to financial services because of the use of the term "essential personnel". He suggested that article 9.1.1. could be interpreted to mean that the provision should not be used as a consistent or across-the-board denial of market access. Article 13 presented one approach to a problem, but approaches proposed by other delegations would be welcomed.

53. The representative of the European Communities said that further details would be useful on some provisions, such as market access, and concepts, such as equality of competitive opportunity and like circumstances. Article 13 should not undermine m.f.n. obligations by providing a blanket authorization

for unilateral action. He asked whether the U.S. proposed provisions would apply to local entities as well as federal entities.

54. The representative of the United States said that the question of application of the agreement to local governments was subject to debate and the answer would depend on one's view.

55. The representative of Japan said that certain provisions of the U.S. proposal demonstrated what a strong agreement should entail. Regarding the national treatment provision, his delegation preferred using the traditional formulation of national treatment, but if other formulations were to be used, the wording in the U.S. text would be more acceptable than that in the text proposed by the European Communities. He suggested that the wording of the U.S. provision on prudential regulation should not neglect to mention the protection of policy holders. Parties should be able to apply prudential requirements with respect to any provision of an agreement, not only national treatment, but that dispute settlement would prevent their use as a loophole. He agreed with the proposal to create a body to monitor the agreement. His delegation was of the view that cross-border provision of financial services should be limited.

56. The representative of Switzerland said that article 3 on cross-border provision of financial services was ambitious, but could not easily be realised. National treatment requiring equality of competitive opportunity fit with his delegation's views, but the term might require further definition. Article 9 on prudential regulation was concise, but might require further specification to increase its juridical clarity. Article 10 on reservations was a good basis for discussion. Article 13 would require much further reflection as to whether it would be an appropriate way to deal with what was admittedly an important problem. He asked the U.S. delegation to clarify whether or not article 4 on temporary entry could be subject to reservation.

57. The representative of the United States said that article 4 was not intended to be subject to reservations, in part, because it was not a provision that would significantly alter current practices of governments. It would, however, ensure the continuation of current practice.

58. The representative of Canada said that his delegation supported the use of the concept of equality of competitive opportunity with respect to national treatment. On cross-border provision of financial services, the handling of the issues in the EC text was more realistic than that in the US text. Article 10 might include better means to accommodate developing countries. Regarding creation of a financial services body, his delegation reserved its position, but noted that it was not clear why the day-to-day activities with regard to the agreement could not be covered in a GATT institutional set up. He expressed concern about article 13 and commented that dispute settlement could deal with many of the problems that this article was meant to address.

59. The representative of Argentina said that in order to achieve an overall balance of interests her delegation would not want to see any annex or

sectoral annotation lead to the creation of different principals or to higher levels of obligations than the framework. On the U.S. provision on a financial services body, she said that the need for direct participation of financial authorities in an institutional or on dispute settlement panels was recognized, but general institutions would have to oversee the application of the framework covering services, including financial services.

60. The representative of India welcomed article 9 on financial regulation as having the potential to meet the needs of most countries. Article 10 was a good basis for discussion of progressive liberalization. Withdrawal of benefits, addressed in article 13, should be left to the dispute settlement mechanism. The monitoring and control of cross-border provision of financial services was an area of concern, especially since establishment might need to be required for some financial services activities.

61. The representative of Canada noted that his delegation favoured the general thrust of the U.S. proposed article on non-discrimination with the proviso that the treatment should be no less favourable than that accorded to any country, rather than any "third Party" as stated in the U.S. text.

62. The representative of Australia said that many of the provisions of the U.S. text might be included in a framework. The provisions were very strong - some very controversial - and would require further consideration. Some of the responsibilities mentioned in article 12 could be handled by a GATT institution with involvement of finance officials.

63. The Chairman proposed asking the secretariat to draft a paper on the functioning of the Balance of Payments Committee in the GATT. He suggested that the working group consider meeting again on 13-15 September, subject to further consultations. The secretariat noted that a paper on balance of payments would be a factual account and that a member of the secretariat could be made available to answer questions if the working group so desired.

64. The representative of Yugoslavia said that a number of delegations participating in the working group were involved in the activities of the balance of payments committee and would be able to offer insights regarding its functioning and problems encountered. He added that documents on the work of the committee were available to all delegations. The secretariat indicated that a paper would draw on available GATT documentation on the Balance-of-Payments Committee.