1. The subject of trade in services was introduced in general terms in a short note prepared by the secretariat (CG.18/W/45) in response to a request made in the Group at its meeting of 15 July 1980. At its meeting of 30–31 October 1980, the Consultative Group of Eighteen discussed this paper and agreed that "the secretariat would pursue its analysis, bearing particularly in mind, as guiding principles, those services which are linked to trade in goods, and how obstacles to trade in such services may affect commitments under the GATT and the Codes" (CG.18/13, paragraph 32). The report of the Consultative Group of Eighteen to the Council states that the Group "agreed to keep the matter on its agenda and that the secretariat should pursue its study of this subject, focusing on the links between trade in goods and trade in services and on the relevance of the existing commitments under the General Agreement and the MTN Codes for trade in services." (L/5066, paragraph 20). This paper has been prepared in response to this request.

2. From the economic point of view both services and goods are products. There are therefore many similarities between the two. However, the fact that services are not tangible does mean that they are different from goods in certain ways. Services are, for instance, not normally transferable or storable which means that there is usually a direct relationship between the provider and the user of a service.

3. The demand for some services, such as health services or entertainment is direct: these may be classified as "consumption" services. The demand for other services, such as transport, insurance or advertising is derived from other economic activities: these may be classified as "intermediate" services. Returns on capital and labour may be classified as "factor" services. Only intermediate services are linked in any significant way with trade in goods.

4. The following are the main linkages between services and international trade in goods:
4.1 Some services are complementary to international trade in goods, the degree of complementarity varying greatly. Some services (such as transport, insurance and banking) are a crucial complement to trade in goods. Others (such as advertising) may not appear absolutely indispensable but may be necessary to attain the volume of sales necessary to justify the marketing of a product. This linkage may work both ways as trade in goods may be complementary to services. A construction company, for example, may need to import machinery to carry out a particular project.

4.2 Some services are substitutes for international trade in goods. Goods may be manufactured under licence rather than imported, the sale of licenced know-how thus being a substitute for trade.

4.3 In some special cases, goods may simply be physical supports for services - such as exposed film, books, programmed computer tape. Such goods may, of course, be traded.

5. Service industries can be classified on the basis of this categorization. Clearly, the extent to which certain services are linked to exports or imports of goods varies greatly from one country to another, as a result of factors such as geographical location, or resource endowment (influencing the types of goods produced and traded). Similar factors also affect the degree to which a country's exports or imports are dependent on foreign or domestic suppliers of associated services. The linkages in Table 1 do not therefore represent actual economic relationships for all countries or for any particular country. There is also a certain amount of overlap between the categories.

Table 1

| Tentative classification of services by nature of association with trade in goods |

I. Complementary services

1. Shipping (SIC7121)
   1.1 Port services, including handling warehousing and storage (SIC 7123)

2. Other transport (SIC 711, 7122, 713)
   (air, rail, road, inland waterways)
   2.1 Handling, warehousing and storage at loading and delivery stations
      (SIC 719)

\(^1\)SIC classification number in parentheses.
3. **Insurance and Reinsurance** (SIC 82)
   3.1 Hull and cargo
   3.2 Freight, motor
   3.3 Fire, theft and similar risks

4. **Wholesaling and retailing**

5. **Banking** (SIC 8101, 8102)
   5.1 Financing of imports and exports
   5.2 Suppliers' credits

6. **Brokerage** (SIC 7191, 8200)
   6.1 Transport and insurance brokers

7. **Advertising** (SIC 8325)
   7.1 Advertising for products and services traded internationally

8. **Accounting** (SIC 832)

9. **Data processing (telematics)** (SIC 7200, 8323)

10. **Construction and engineering** (SIC 5000, 8324)
    10.1 Project execution
    10.2 Management training and consulting
    10.3 Architects, designers etc.

II. **Substitute services**

11. **Commercial services** (SIC 71, 8330)
    11.1 Franchising and chartering
    11.2 Leasing

12. **Repairs and maintenance** (SIC 5000, 95)

III. **Services embodied in goods**

13. **Films** (SIC 9412)
    13.1 Cinematograph films
    13.2 Television features

14. **Text copy**
    14.1 Books, manuals, etc.
    14.2 Other

6. The main service industries that have not been fitted into the categories set out above are given in Table 2.
Table 2
Other services

1. Travel (passenger transportation, tourist counselling and advertising, touring)
2. Life insurance
3. Miscellaneous professional services (legal, economic, medical, security, etc., including management and consulting)
4. Recreational and cultural services
5. Rental (real estate)
6. Personal services (other than repair)
7. Government services (diplomatic, military, etc., expenses abroad)
8. Royalties, licence fees, copyrights (property income excluding income from financial assets)
9. Factor income (direct and other investment income)
10. Workers' remittances (usually classified as a transfer)

7. Services are either produced and sold in the same country (in which case they are said to be supplied on an "establishment" or "investment" basis) or, being produced in one country and sold in another, they are traded internationally. Some services cannot be traded internationally because their performance requires the simultaneous presence of the supplier and the user - it is not possible to export a haircut. Instances in which this sort of situation occurs are more numerous in the case of services than in that of goods.

8. Obstacles to the performance of services, whether on an establishment or on a trade basis, may affect trade in goods in various ways. This paper discusses measures that affect the supply of services with the exception of obstacles to the establishment of foreign producers (and thus with the free movement of labour), which have not been dealt with in the General Agreement.

9. Such evidence as is available shows that measures adversely affecting international trade in services are largely of the same type as measures affecting trade in goods and that there is a wide variety of such measures. Table 3 presents a first attempt to classify the measures on which information is available.
Table 3. Illustrative list of obstacles to trade in services

<table>
<thead>
<tr>
<th>Service</th>
<th>MFN Treatment not granted</th>
<th>National Treatment not granted</th>
<th>Taxes or charges</th>
<th>Quantitative restrictions</th>
<th>Technical Barriers</th>
<th>Subsidies</th>
<th>Other: (Government Procurement, Exchange Control etc)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Shipping</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
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<tr>
<td>2. Other transport</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
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<tr>
<td>3. Insurance</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
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<td>X</td>
<td></td>
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<tr>
<td>4. Banking</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>5. Advertising</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
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<tr>
<td>6. Film rental</td>
<td></td>
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<td></td>
<td></td>
<td>X</td>
<td></td>
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<td>7. Construction/</td>
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<td>engineering</td>
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<tr>
<td>8. Data processing</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
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<tr>
<td>10. Commercial services</td>
<td></td>
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<td></td>
<td></td>
<td>X</td>
<td></td>
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<tr>
<td>11. Management and</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>consulting</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>12. Repairs and</td>
<td>n.i.</td>
<td>n.i.</td>
<td>X</td>
<td>n.i.</td>
<td>n.i.</td>
<td>n.i.</td>
<td></td>
</tr>
<tr>
<td>maintenance</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13. Accounting</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1 Evidence of an obstacle being applied is shown by a cross (x) in the corresponding column
n.i. = no information making identification of obstacles possible
10. As with measures affecting trade in goods, measures affecting trade in services are either applied at the border or internally. However, measures affecting services are frequently imposed internally as their intangible nature makes services less readily identifiable at the border. Also as in the case of trade in goods, some measures are imposed deliberately to protect domestic production while others are imposed for other purposes, which may be quite legitimate but which incidentally have a protective effect. This is the case of technical regulations. These regulations are imposed on goods in order to protect the health and safety of the population and e.g. on the insurance industry to protect the population against unprofessional or insolvent firms. In the service area, again because products are intangible, the regulations often apply to the way in which firms operate rather than to individual products.

11. The different linkages between services and goods referred to above determine the impact on trade in goods of measures adversely affecting trade in services.

12. The exceptional cases in which a good acts simply as a necessary support for a service (e.g. exposed film, books, programmed computer tape) are straightforward - a measure affecting trade in the good automatically affects trade in the service and vice versa.

13. A restriction on a service which is a substitute for trade in goods will tend to facilitate trade in those goods but this may lead to misallocations of resources.

14. A measure adversely affecting international trade in a service which is a complement to trade in goods will affect that trade adversely. Basic economic forces apply equally to trade in services and trade in goods - free competition among producers of services will bring prices down and restrictions will increase prices and therefore limit quantities consumed. At the limit, if prohibitions on trade in complementary services were necessary they would bring trade in goods to a complete halt.

**Services and the GATT**

15. A number of questions arise in this regard: (1) to what extent has the GATT dealt with services? (2) can the obstacles to trade in services affect existing commitments negotiated in the framework of GATT and if so, how? (3) could existing commitments be extended to trade in services?

16. The GATT has dealt only marginally with services in the past. While the term "products" used in the General Agreement is not defined, the drafting history makes it clear that the General Agreement was in general designed to apply to goods and not to services1 and a note to Article XVII:2 which (exceptionally) uses the term "goods" makes it clear that this "is limited to products as

---

understood in commercial practice, and is not intended to include the purchase or sale of services."

17. The General Agreement does, of course, deal with services incorporated in goods. Goods which are simply a physical support for services are covered in the same way as other goods, there being additional obligations relating to exposed cinematograph film in Articles III:10 and IV. These Articles lay down conditions governing the maintenance of screen-time quotas (which require cinemas to show a certain percentage of nationally produced films) and which make such quotas subject to negotiation for their "limitation, liberalization or elimination". In addition, the fact that services have been used in the production and trade of goods will be reflected in the price of goods, which is dealt with in the General Agreement, particularly in Article VII. This Article permits the inclusion of such services, such as insurance and freight, in the basis for the customs valuation of imported products.

18. There are, however, other obligations in the General Agreement which relate to particular services, some of which are enumerated below. Most of these obligations relate to services which complement trade in goods. Article III, providing national treatment on internal taxation and regulation, applies for instance in respect of complementary services supplied in the importing country - paragraph 4 of the Article reading as follows (emphasis added):

"The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution, or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product."

19. Article V provides for freedom for traffic in transit through the territory of each contracting party and for most-favoured nation treatment for such traffic.

20. Article VIII provides that all fees and charges imposed in connexion with importation or exportation shall be limited in amount to the approximate cost of services rendered, and the Article lists services to which this provision applies. Charging for those government services far above their cost would constitute an indirect means of protection of domestic products or a taxation of imports or exports for fiscal purposes.

21. Article XVII relates to services performed by state-trading enterprises and marketing boards in so far as these are complementary to trade in goods (e.g. the buying, selling and transportation of such goods), laying down that such activities shall be conducted on a non-discriminatory basis and in accordance with commercial
considerations. It recognizes that state trading enterprises "might be operated so as to create serious obstacles to trade" and makes such obstacles subject to negotiation. The Article also establishes a notification procedure.

22. In Article XXXVII developed contracting parties commit themselves to make every effort, in cases where a government directly or indirectly determines the resale price of products wholly or mainly produced in the territories of less-developed contracting parties, to maintain trade margins at equitable levels. This commitment relates to services, at least to the extent that governments determine the resale price of products directly.

23. The CONTRACTING PARTIES have on occasion concerned themselves with services which complement trade in products and which are not dealt with explicitly in the text of the General Agreement. After extensive preparatory work the CONTRACTING PARTIES adopted a recommendation on freedom of contract in transport insurance which reads as follows:

"Taking note of the resolution of the United Nations Economic and Social Council at its fifteenth session (resolution 468 H (XV) of 16 April 1953) and of the studies and reports of the Secretary-General of the United Nations and of the Executive Secretary of the CONTRACTING PARTIES on restrictive measures in regard to transport insurance and their effect on international trade;\n
Considering that measures adopted by certain countries which restrict the freedom of buyers and sellers of goods to place transport insurance on the most economic basis create, in certain circumstances, obstacles to international trade in that they increase costs of goods entering into international trade;\n
Recognizing that most countries regulate the activities of insurance firms operating on their territory and that national regulation of such activities which addresses itself to the solvency, reliability, prudence and legal accountability of particular firms does not itself constitute an interference to the freedom of traders in the transport insurance field and therefore does not of itself create obstacles to international trade; and\n
Taking note of the desire of countries that do not have a sufficiently developed and effective national insurance business to take such measures as they consider necessary to foster such a business,

The CONTRACTING PARTIES\n
\n
1 Recommendation of 27 May 1959, BISD, 8 Sup, p26.
Recommend that in the formulation of national policies in the field of transport insurance, governments should endeavour to avoid measures that would have a restrictive effect on international trade,

Recommend that this matter be regarded as a subject of interest to the CONTRACTING PARTIES, and

Request governments to report to the Executive Secretary any information relevant to the subject matter of this Recommendation not previously reported to him”.

24. The second paragraph of the introduction clearly brings out the fact that transport insurance and international trade in goods are complementary. The third paragraph illustrates the fact that services are subject to technical regulations in much the same way as goods, the aim of governments being to protect their citizens, not against unhealthy or dangerous products, but against firms that are insolvent, unreliable, imprudent and not legally accountable. The Recommendation still stands, including the request which it contains for governments to report relevant information.

25. In casting their votes or in recording abstentions on the Decision of 8 May 1961 relating to Uruguayan Import Surcharges, a number of representatives of seafaring countries commented on an element of flag discrimination contained in the relevant legislation of Uruguay (L/1493, Appendix). At subsequent extensions of the waiver granted to Uruguay, these countries regularly raised the question of flag discrimination which resulted in the discriminatory application of the surcharge. The flag discrimination element was lifted by Uruguay in 1972 (L/3722, paras. 8-10).

26. Services were to some extent covered in the Multilateral Trade Negotiations. Table 4 summarizes specific requests made in the MTN for the elimination of obstacles to trade in services. Some offers may have been made to these specific requests in bilateral negotiations but the secretariat has no information on these. However, the main results of the Negotiations in the field of services were incorporated in multilateral agreements on non-tariff measures.
<table>
<thead>
<tr>
<th>Tariffs or Taxes</th>
<th>Quantitative Restrictions</th>
<th>National treatment (including mixing regulations)</th>
<th>Technical barriers</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Port taxes</td>
<td>Restrictions on use of foreign insurance services</td>
<td>Local content requirements for insurance</td>
<td>Containers for use in domestic vessels</td>
<td>Restrictions on the hiring of national</td>
</tr>
<tr>
<td>Merchant marine taxes</td>
<td>Flag discrimination</td>
<td>Local content requirements for radio and TV commercials</td>
<td></td>
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<tr>
<td>Maritime freight taxes</td>
<td>Discriminatory road transport practices and local carrier requirements</td>
<td>Compulsory patents for national representatives</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parcel post tax</td>
<td>Prohibition of use of foreign vessels</td>
<td>Discrimination in patent and trademark registration procedures</td>
<td></td>
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<tr>
<td>Tax on foreign consulting services</td>
<td>Local film copying requirements</td>
<td>Exchange rate discrimination</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duty on repairs made abroad</td>
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</tr>
<tr>
<td>Recurring customs duties on leased equipment</td>
<td>Embargo on radio commercials</td>
<td></td>
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<tr>
<td>Dubbing fee (films)</td>
<td>Discriminatory licensing of films</td>
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<tr>
<td>Price ceilings on film rentals</td>
<td>Restrictions on the use of foreign printing services</td>
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<tr>
<td></td>
<td>Restrictions on advertising (films and periodicals)</td>
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</tbody>
</table>

1 Only the obstacles most readily identifiable in terms of the different categories are included in the table.
27. Several of the MTN Agreements contain specific references to services. The Agreement on Government Procurement covers services incidental to the supply of products procured by the entities listed in Annex I to the Agreement if the value of these incidental services does not exceed that of the products themselves, but not service contracts per se (Article 1). This Agreement also provides that the licensing of technology should not normally be used as a condition of award of contracts (Article V:14(h)). The Note to Article V:14(h) states:

"Having regard to the general policy considerations of developing countries in relation to government procurement, it is noted that under the provisions of paragraph 14(h) of Article V, developing countries may require incorporation of domestic content, offset procurement, or transfer of technology, as criteria for award of contracts. It is noted that suppliers from one Party shall not be favoured over suppliers from any other Party."

The Agreement also specifies that, in the context of further negotiations provided for in Article IX: 6(b), the Committee established under the Agreement shall, at an early stage, explore the possibilities of expanding its coverage to include service contracts.

28. The following items on the illustrative list of export subsidies, annexed to the Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the GATT, contain references to services:

(c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.

(d) The delivery by governments or their agencies of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for delivery of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available on world markets to their exporters.

(j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates, which are manifestly inadequate to cover the long-term operating costs and losses of the programmes.¹

¹In evaluating the long-term adequacy of premium rates, costs and losses of insurance programmes, in principle only such contracts shall be taken into account that were concluded after the date of entry into force of this Agreement.
(k) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

Provided, however, that if a signatory is a party to an international undertaking on official export credits to which at least twelve original signatories to this Agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original signatories), or if in practice a signatory applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Agreement.

29. The Agreement on Trade in Civil Aircraft covers repairs and operating and maintenance procedures under the following provisions. In Article 2.1.2, Signatories agree "to eliminate by 1 January 1980, or by the date of entry into force of this Agreement, all customs duties and other charges of any kind levied on repairs on civil aircraft" and, in Article 3, they "note that the provisions of the Agreement on Technical Barriers to Trade apply to trade in civil aircraft. In addition, Signatories agree that civil aircraft certification requirements and specification on operating and maintenance procedures shall be governed, as between Signatories, by the provisions of the Agreement on Technical Barriers to Trade".

30. There are other references to services in the MTN Agreements. For instance, under the Agreement on Implementation of Article VII of the GATT the cost of certain services complementary to the goods may be included in the basis for customs valuation. This basis will be raised if obstacles to trade in these services raise their price above the level that would prevail under conditions of free competition. The Agreement on Technical Barriers to Trade provides for most-favoured-nation treatment and national treatment in the area of testing for conformity to standards (Article 5).

1An original signatory to this Agreement shall mean any signatory which adheres ad referendum to the Agreement on or before 30 June 1979.

2"Other charges" shall have the same meaning as in Article II of the GATT.
31. At the end of the Multilateral Trade Negotiations the CONTRACTING PARTIES decided that the Inventories of Non-Tariff Measures established in the negotiations should be up-dated. A number of notifications relating to services have already been made.

32. The previous paragraphs have shown that certain obligations negotiated in the framework of GATT prohibit certain measures affecting services or lay down conditions for their use. If such obligations are breached, contracting parties may have recourse to Articles XXII of the General Agreement or the corresponding provisions of the relevant MTN Agreements, providing for consultations with respect to any matter affecting the operation of the Agreement in question. Contracting parties might also have recourse to Article XXIII or to similar provisions in MTN Agreements if they considered that nullification or impairment had occurred.

33. It is also possible that a contracting party could bring an action (under Article XXIII:1(b)) in respect of a measure adversely affecting the performance of a complementary service "whether or not it conflicts with the provisions of this Agreement" or under Article XXIII:1(c) which refers to the existence of "any other situation" since the existence of measures adversely affecting the performance of services which are essential complements to trade in goods could clearly have a harmful effect on that trade. It is generally recognized that only in particular circumstances can actions be brought in respect of measures which do not conflict with the provisions of the General Agreement, but this is perhaps the sort of case that the drafters of the Article had in mind.

34. The reasons why techniques for negotiations on services should be discussed in the GATT are, by now, clear, although it should be equally clear that discussion of these techniques does not prejudge the question as to whether such negotiations would be held. Trade in goods which are simply physical supports for services may increase as a result of increased demand for the services themselves. Measures adversely affecting services which are essential complements to trade in goods automatically have an effect on trade in goods and can bring it to a complete halt: not all of these services are at present dealt with in the GATT. Obstacles to trade in services which are substitutes for trade in goods can lead to an increase in merchandise trade but do not necessarily lead to a better allocation of resources.

35. Given the similarities between measures affecting services and measures affecting goods, the obvious question is whether existing commitments could be extended to services. International obligations relating to trade in goods which are embodied in basic provisions of
the General Agreement, such as the most-favoured-nation clause, non-
discrimination, national treatment and the negotiability of import
duties and other charges, thus appear relevant to trade in services
and it is likely that they could, mutatis mutandis, be extended to
such trade. The General Agreement contains certain modifications to
these principles, which were made necessary to make them applicable to
particular aspects of trade in goods. Similarly, existing commitments
would no doubt need to be modified in a number of respects in order to
effectively cover relevant services.