NOTE ON THE MEETING OF 5-9 JUNE 1989

1. The Chairman welcomed delegations to the twenty-first meeting of the GNS. He drew the attention of the Group to GATT/AIR/2782 which contained the proposed agenda for this meeting. He said that under the agenda item "Other Business" he would like to raise the question of attendance at GNS meetings by other international organizations. He asked if any delegations had any comments.

2. The representative of Singapore indicated that in MTN.GNS/22, the first line of paragraph 5, should read "the reference list should not be looked upon as a negotiating tool". In the current version of the document, the word "not" had been omitted.

3. The Chairman then turned to agenda item 2.1 relating to the examination of the implications and applicability of concepts, principles and rules for particular sectors and specific transactions (paragraphs 6 and 10(c) of Part II of MTN.TNC/11). He said that as agreed, the Group would start with the discussion on telecommunications services. The documents before the Group were "Trade in Telecommunications Services" (MTN.GNS/W/52) and the list of questions that might be addressed in the examination of concepts (MTN.GNS/W/51). Both documents were prepared by the Secretariat as requested at the last meeting. These documents were intended to serve as background material for discussions and were not intended to be negotiated or revised in the light of discussion. The Chairman also noted that as mentioned on the cover note of MTN.GNS/W/51, the questions listed were not intended to be exhaustive, nor was it suggested that each of the questions need be addressed. The Group should discuss matters as comprehensively as considered necessary.

4. The Chairman suggested that after general statements, delegations could follow the order of concepts, principles and rules as they appeared in paragraph 7 of MTN.TNC/11 under sub-paragraphs (a)-(h). At the request of the Chairman, the Secretariat introduced document MTN.GNS/W/52. (The floor was open for general statements.)

5. The representative of the European Communities stated that the general approach of his delegation at this stage was not to negotiate the sectors under discussion, but rather to test concepts with two objectives in mind.

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First, to assist in the drafting of the general provisions of the agreement, and to ensure that the concepts would work in practice. Second, all participants would be looking individually to see what sector specific annotations or provisions may be needed within the overall framework. It was not yet clear whether particular provisions would be necessary to deal with sector specific considerations that were not dealt with in the general provisions. A checklist of such provisions should be drawn up by the end of the year, however, and this should go hand in hand with the elements of the draft framework. He said the European Communities would make some cross sectoral comments at the end of the discussion of concepts.

6. In his view the telecommunications sector was particularly important because of its relationship to other service sectors. Its complexity, however, made it rather difficult to deal with. It had been the subject of intensive national and international discussion, the details of which were not necessarily relevant for present purposes. Some important characteristics of the sector included its constantly changing character, in particular, the changing way in which it was regulated and the extent to which it was frequently the object of technical evolution. Therefore, it was important that the concepts in the framework were flexible enough to accommodate these changes. Another important characteristic was the link between equipment and services. Could trade in services be envisaged without liberalization of trade in equipment? Further, the question of access to networks was particularly important as was the need to reflect on the question of whether jointly produced services were traded services. An additional aspect concerned the intercorporate flows in telecommunications. Telecommunications was a highly regulated sector where the monopoly provision of services was common. There were also a number of international agreements in this sector. As telecommunications was a strategic sector, it was not possible to neglect the link with security and defence, nor the constraints relating to data protection and the protection of privacy. Finally, services produced within the sector as a whole were particularly heterogeneous and might require different treatment. In this respect he mentioned specifically information services and managed data network services.

7. The representative of Egypt stressed that it was the applicability of concepts, rules and principles that was under discussion. He drew attention to the agreed procedures for the present exercise as set out in paragraph 39 of MTN/GNS/22, and noted that it was important to look for cross sectoral conclusions from the exercise. He said that MTN.GNS/W/52 was useful, but had taken a trade policy rather than an overall perspective. A broader perspective would have been useful as in many countries the trade policy perspective was subordinate to more overall national considerations. Furthermore, in his view the document did not reflect any of the developmental considerations which certainly merited attention. He referred in this context in particular to paragraph 22. For a number of the matters mentioned there, e.g. preferred mode of delivery, regulatory treatment, market structure, and questions relating to access to and use of networks development considerations were important. The same
applied to infrastructural considerations and to motivations for regulations. The document did not deal in any detail with the public utility character of telecommunications which was also relevant for the concepts under discussion. The last sentence in paragraph 40 of MTN.GNS/W/52 referring to the social objectives of legislation and the deviation from purely economic considerations gave the impression that trade policy objectives could take priority over social objectives. He stressed that it was important to identify the specific types of transactions in each sector that would be examined in the testing exercise.

8. The representative of the United States stated that the testing exercise should not prejudice the positions of various participants with respect to the concepts or the eventual coverage of the arrangement. The telecommunications sector was a good starting point as it challenged the philosophy behind the Declaration from Punta del Este. The objective of expansion of trade was relevant to telecommunications and the challenge presented itself to identify what trade actually was in this sector. Changing technologies had led to trade expansion and alterations in the manner in which services were supplied and to alterations in regulatory regimes. The respect for national policy objectives behind regulations provided a further challenge, in particular the question whether these objectives were compromised by more competition and a less regulated environment. With respect to the development objectives of developing countries, it was important to note that telecommunications infrastructures were very costly, permitting developed countries to offer more lines and circuits to users in their countries than many developing countries. This needed to be borne in mind in the present discussions. He also drew attention to the role of the telecommunications network for firms in providing their services on a world wide basis. The provision of telecommunications services also affected trade in manufactured goods and therefore their competitiveness. While the sector of telecommunications covered a wide range of services, he intended to concentrate his comments on value added services as these were the services provided on a competitive basis. He also indicated that the distinction between basic and enhanced services was not clear. Thus, although he intended to speak only of value added and information services, it should be noted that he considered this to be an artificial distinction. In particular, he would later address in his comments on information services, matters relating to access to networks as distinct from the establishment of competing networks. He would also address the situations where it would be appropriate to have an annex to the agreement to delineate the rather unique situation in telecommunications.

9. The representative of Switzerland noted that the telecommunications sector was in full evolution and that there had been deep rooted changes that have had an impact on legislation and national practices in several large markets. In Switzerland, for example, several pieces of legislation were currently being revised. This sector was crucial for many other services as it constituted the main channel of exchange between other
service sectors. He recalled that liberalization in this sector should not neglect national policy objectives and that telecommunications had as its objective to ensure that the needs and requirements of the population and the economy were met.

10. The representative of Sweden, speaking on behalf of the Nordic countries, indicated that their approach to the subject was as described by the spokesman for the European Communities. He noted the forward and backward linkages of the telecommunications services sector both nationally and in the world economy. His delegation had observed that trade in telecommunications services, broadly speaking, was affected by two categories of regulations. First, those that regulated the provision of network based services, the ownership of carriage functions and those governing tariff rates. Second, there were technical regulations of standards for equipment. He noted that regulations quite unrelated to trade had a bearing on the sector. The information services industry, for example, which relied heavily on telecommunications networks faced many kinds of impediments to free transborder data flows. However, quite legitimate policy concerns were usually given as justifications for these regulations. Such regulations should be formulated so as to minimise their trade distortive impact. A close relationship between the GATT and the new services agreement was important in telecommunications, because of the close interrelationship between goods and services in this sector. For example, the Technical Barriers to Trade Code of the GATT was already applied in the Nordic countries to monitor technical standards for hardware. ITU regulations on standards and accounting rates also affected international trade in telecommunications. Governments had the ultimate responsibility for drawing up the telecommunications market policy in such a way as to ensure efficient and nation wide telecommunications services. These regulatory frameworks were far from uniform and in a constant state of change. In general, telecommunications administrations were commercial enterprises and an important source of government revenues. Some of the services in this sector might be unprofitable, but were highly desirable and therefore often subsidized. One example was uniform installation rates regardless of the geographical location of the permanent residences. Thus, a fundamental question was what was the responsibility of the state in the area of telecommunications and what basic services should be guaranteed by the state. There was a potential conflict between the providers and the regulators if the distinction was blurred between the operational activities of providers and the formulation of the rules of the game. Technological developments affected the telecommunications environment in that existing regulations might be rendered obsolete and create the need for more up to date regulations. Monopolies dominated this sector for a variety of well known and well accepted reasons, relating to, for example, social and welfare goals. Many of the reasons for monopoly provision of these services were relevant in the context of exceptions and safeguards.

11. The representative of Japan noted that there were innovations in the telecommunications sector almost on a daily basis. He cited in this respect data telecommunications, value added networks and ISDN. As this
trend would continue, the Group should not spend too much time on
definition but rather deal with the broader context. With respect to
determining what was trade in telecommunications services, one way was to
look at it as an international joint enterprise as the question had
important transborder aspects. Not too much time should be spent on
classifications of telecommunications services, such as the distinction
between basic and enhanced telecommunications services. He noted as a
footnote that according to the Secretariat document (paragraph 17), Type 1
carriers in Japan did handle enhanced telecommunications services and not
just basic services. Given the different regulatory regimes in different
countries he stressed the importance of transparency and national
treatment. While the regulatory policy was a matter for individual
countries, it was important to introduce competitive conditions where it
was possible and preferable.

12. The representative of Brazil welcomed the fact that the GNS was now
initiating the practical exercise of testing concepts. He said this
process could either confirm the relevance of some of the concepts and
principles set aside for consideration by the group, or it could lead to
the recognition of the inadequacy or incompleteness of those concepts and
principles for the GNS process. To have a clear picture the exercise had
to be thorough, and therefore it might be useful to expand the time
available for some sectors or to allow a second reading if necessary.
Telecommunications was a complex sector, and apart from the testing of
concepts and principles, the group would have to address the tradeability
of telecommunications services, the specific transactions involved and
questions, such as preferred mode of delivery, which related to definition.
Telecommunications comprised facilities, equipment, services and
information, and it would be out of place to discuss anything other than
the service aspect of telecommunications. While he agreed that the
Secretariat document was not a document to be negotiated, he regretted the
absence of development concerns, and particularly the absence of the
recognition of the gap that existed between developed and developing
countries' capacities in this area. The degree of liberalization in the
telecommunications sector would have to be based on the possibility for
such liberalization to promote both growth and development.

13. The representative of Mexico asked the representative of the ITU to
inform the Group as to what were considered to be telecommunications
services and whether value added services were considered to form part of
the sector of telecommunications services. He asked if the ITU dealt with
producers of value added services within its framework, and if so, why.

14. The representative of the ITU said that the Secretariat
documentation, while being well drafted, necessitated clarification on some
points. For example, as concerned paragraph 36 of MTN.GNS/W/52, which
referred to Article 4 of the Convention, it should be indicated that one of
the purposes of the Union was also "to foster collaboration among its
Members, with a view to the establishment of rates at levels as low as
possible consistent with an efficient service, and taking into account the
necessity for maintaining independent financial administration of telecommunication on a sound basis". In the context of references made by other speakers to national policies that went towards ensuring a minimum service of universal scope, he drew attention to Article 18 of the Convention which recognized the right of the public to correspond by means of the international service of public correspondence. That Article stipulated that the services, charges and safeguards were to be the same for all users in each category of correspondence without any priority or preference. Furthermore, paragraph 31 of the Secretariat document referred to the recently adopted International Telecommunications Regulations implying that these regulations were concerned only with telecommunications services offered to the public. In fact, these regulations also dealt with services not offered to the public, albeit to a lesser degree. Similarly, in paragraph 9 of the document concerning the question of classification of telecommunications services, the ITU was mentioned as having "recently referred to telecommunications services as comprising traditional services which include voice telephony, message telegraphy, telex, facsimile, data transmission and a number of other telecommunications services which are limited essentially to transmission and switching functions". It should be clarified that the ITU had not given such an interpretation to traditional services. Moreover, the ITU had not made significant progress in defining value added services. That was the reason why he was not in a position to reply to the question posed by the representative of Mexico on the definition of value added services. In any event, he found it difficult to agree with the remarks on such services in paragraph 9 of the document. He added that it was the endeavour of the ITU to make regulations that would apply to telecommunications of all kinds. In reply to the other question posed by the representative of Mexico, he said that an international telecommunication service had been defined by the 1988 Melbourne Conference as the offering of a telecommunication capability between telecommunication offices or stations of any nature that were in, or belonged to, different countries.

15. The Chairman opened the floor to a discussion on the application in the telecommunications services sector of concepts, principles and rules contained in paragraph 7 of MTN.TNC/11, starting with transparency.

16. The representative of Egypt said that before addressing particular concepts, Group members should first define the specific types of telecommunications transactions which were the object of the sectoral examination of the applicability of concepts. It was important to distinguish facilities or infrastructure - made up of cables, satellites, switching systems, etc. - from terminal equipment, which consisted of hand-held telephones and attachments to computer equipment (i.e. modems) operated on customers' premises. These then needed to be distinguished from telecommunications services - that is, what could be provided over facilities using equipment. He noted that the term network tended to be used interchangeably with that of facilities, adding that it was important to qualify its use so as to maintain clarity. While network infrastructure did relate to facilities, network-based services related to organizational structures for the provision of telecommunications services. In attempting
to delineate types of telecommunications transactions, it was also important to distinguish "pure" telecommunications services from services which had telecommunications components (e.g. information services).

17. The representative of India said that with respect to telecommunications services, trade policy imperatives could not be superimposed on the sector's developmental imperatives, as the Group's mandate was to discuss trade in services and not services per se. Also, discussions should limit themselves to services issues, as opposed to issues broadly relating to telecommunications, such as the provision of equipment. As regards the definition of trade in services, he recalled that there was no clear agreement on ways of distinguishing basic and enhanced services, nor on the borderlines between telecommunications and other services sectors (i.e. banking, insurance, tourism, etc.). Before looking at the application of concepts, it was important to agree on what these concepts were to be applied to. He sought additional information on the services within the telecommunications area which were traded.

18. The representative of Brazil agreed with the views put forward by the representatives of Egypt and India as to the need for the Group to gain a better understanding of the particular transactions making up the telecommunications services sector before engaging in the examination of the application of concepts to the sector. He noted that it would be very difficult for his delegation to address, or even consider, traditional telecommunications services and issues relating to their provision in a multilateral framework. At the same time, his delegation might have useful remarks to make on so-called "enhanced" services, particularly in relation to the issue of access to technology. It was, however, essential to agree first on what transactions were being discussed to have a meaningful examination of concepts.

19. The Chairman recalled that Group members had agreed at the last GNS meeting that the discussion of both the telecommunications and construction and engineering services sectors would proceed on the basis of the descriptions of these sectors contained in the Secretariat's reference list of sectors (MTN.GNS/W/50), and that the sectoral testing would be conducted along the lines suggested in paragraph 7 of MTN.TNC/11 and with the help of the questions contained in MTN.GNS/W/51.

20. The representative of Brazil noted that MTN.GNS/W/50 provided a characterization of the telecommunications sector which was at times too broad to serve as a useful starting point in the current discussion. For this reason, he suggested that members spend some time defining a universe of telecommunications transactions for the purposes of sectoral testing.

21. The representative of the European Communities felt that definitional matters would become clearer as the examination of particular concepts proceeded. He was interested by the views of the representative of the United States concerning the usefulness of concentrating solely on value-added and information services rather than on so-called "basic"
services. He noted, however, that delegations might well have things to say on basic services given their relevance in the provision of other forms of telecommunications services. This did not, however, imply that basic and enhanced services should be treated in a similar way.

22. The representative of India noted that his delegation wished to define more precisely the particular transactions against which the concepts were meant to be tested. While any typology of transactions could not be expected to be fully exhaustive, it should nonetheless be sufficiently clear before engaging in the testing of concepts.

23. The representative of the United States shared the view of the representative of the European Communities, adding that the telecommunications field ranked among the most complex in regard to sectoral terminology. Moreover, as numerous and somewhat inconclusive definitional discussions in the ITU framework had shown, it would probably not be possible for members to gain a thorough and shared understanding of the types of telecommunications transactions that might be covered by the current discussions. He said that his delegation would direct its comments to enhanced telecommunications services, but did not wish to suggest that others necessarily do the same. He added that the precise activities to which a possible agreement would apply could only be negotiated at the end of the negotiations.

24. The representative of Australia said that the application of the transparency provisions as envisaged in the Montreal text should be a central feature of the framework agreement. His delegation saw no fundamental problem in applying transparency provisions to telecommunications services and placed very high value in seeing such a principle become a rule. The publication and transparent administration of all laws and regulations in telecommunications services were possibly more important than the ideas of prior consultation and/or notification which some delegations had earlier suggested. He felt that the attainment of transparency should be fairly easily achieved; transparency would need to apply to some of the bodies exercising delegated regulatory powers in the sector. Examples of such regulatory bodies included the soon to be created AUSTEL in Australia, OFTEL in the United Kingdom and the F.C.C. in the United States. He added that the delegation of standards setting powers should also be made subject to the transparency provisions of a framework agreement so as to ensure that countries which are parties to it take responsibility for the decisions - and the decision-making powers - of independent regulatory agencies.

25. The representative of Canada said that, from his delegation's point of view, telecommunications did not include radio and television broadcasting. He added that the description of telematics in the reference list was not fully complete and that computer services deserved attention in the treatment of enhanced telecommunications services. His delegation attached considerable importance to transparency and it should apply to
everything covered in the framework, including telecommunications services. The Canadian view was that publication was important, and that an appropriate and workable system of notification and/or cross-notification would need to be given further consideration. National enquiry points would also be needed to deal with the various kinds of regulatory regimes applying in particular markets. An important issue relating to transparency concerned the separation between regulators and those to which regulations applied.

26. The representative of Switzerland agreed that transparency was an essential pre-requisite for the effective implementation of a framework agreement. In view of the prevalence of monopolies - public or private - in telecommunications, transparency bears importantly on issues relating to competition, subsidies and government procurement. Switzerland attached great importance to transparency in the process of structural reform currently underway in Switzerland's telecommunications sector. Transparency must apply both to legal texts and to the practical implementation of legislation. For instance, under conditions of monopoly provision, it was important that the monopoly's financial accounts be made public. He noted that all Swiss legislation which directly and indirectly affected the telecommunications sector was published in legal handbooks in the country's three national languages, as well as in various publications of the telecommunications authorities themselves. He said that he shared the view of Australia and Canada on this topic, noting that transparency should be a basic and binding rule on all signatories.

27. The representative of Japan considered transparency as one of the key principles in the services area. There were three main ways in which Japan sought to secure transparency in telecommunications: the first related to the publication of all rules and regulations in the official gazette of the government; the second related to technical standards, as Japanese authorities sought to follow the procedures contained in the GATT's Code on Technical Barriers to Trade; and the third consisted of making information on various charges and/or conditions of service provision as well known as possible. More generally, he felt that it was important to spell out the various criteria which needed to be met in order to secure transparency. Equally important in the telecommunications field was the need to apply transparency to the technical conditions governing access to networks. This was a potentially important source of concern in markets in which telecommunications regulators and were also the operators. He was interested in knowing how countries with state monopolies secured transparency in the sector.

28. The representative of the United States said that the need for transparency - particularly as a means of enhancing the predictability of network access and use - was of critical importance. Regulatory practices requiring transparency included, among others, access charges, the testing of equipment, as well as standards imposed by regulatory authorities. While the availability of public information was perhaps more important than the ability to comment on regulations prior to their publication, it remained an established regulatory procedure in many countries - including
his own - that interested private parties had the opportunity to comment on regulations or regulatory changes before they were introduced. This was important in providing greater predictability and could logically be included in an agreement, with due account taken of the inevitable exceptions where the possibility for prior comment was limited in view of the need for the expeditious implementation of a new regulation.

29. The representative of Brazil emphasized the usefulness of transparency provisions and suggested that all norms relating to the sector be made public through publication in official gazettes. Further, other procedures for notification or exchanges of information could be discussed within organizations such as the ITU. Attention could also be paid to possible ways of addressing notification and/or information exchange procedures in respect of regulations. It was essential that members address the concept of transparency solely as it applied to the trade dimension of telecommunications services.

30. The representative of New Zealand noted that the current exercise should be viewed as a concept-testing one, with no bearing on the potential coverage of a framework agreement. In assessing the applicability of various concepts, principles and rules, it was important to look not only at existing regulatory regimes and practices but also at what could be possible in the future, particularly as a services agreement would need to be both flexible and forward-looking. She noted that her delegation had approached the current testing exercise by looking at all areas which could fall within the broad purview of telecommunications. She cautioned against engaging in a protracted debate over definitions. Her delegation felt that the question of definitions did not need to be decided, either now or later during the negotiations, as a sector by sector approach would in all likelihood not allow for the broadest range of interests among participants to be taken into account. She emphasized the particular importance which her delegation attached to the concept of transparency. The widespread existence of monopolies in the sector made the need for transparency provisions all the more essential. The general approach to be followed with regard to transparency at the level of the framework should also be applicable in telecommunications: all information should be publicly available, both with respect to the basic regulatory environment as well as to technical standards. As to notification procedures, proposals to introduce new regulations or to make changes to existing ones should be notified. At the very least, notifications should be promptly lodged once regulatory changes were made. With regard to technical standards, it should be expected that they be not only publicly known but that changes to them be notified. The establishment of enquiry points could provide one of the best means of implementing a transparency provision. These would allow information to be provided in a summary form so as to lessen the scope for transparency provisions to become overly cumbersome, and permit parties to the agreement to request information on the basis of the notifications that were made.
31. The representative of Egypt recognized the vital importance of transparency in drawing up a framework agreement. The concept had already been the object of numerous discussions in the GNS, and the Ministerial Declaration stated that agreement should be reached with respect to any outstanding issues relating to transparency. The literal application to telecommunications of transparency provisions as envisaged in the Montreal text would involve the publication of a considerable amount of regulatory and legislative documentation, amendments to which tended to be made on a daily basis. It was thus important to ensure that any transparency provisions be made to apply strictly to the relevant trade-related laws, regulations and administrative guidelines in the telecommunications services area. He noted that while the scope of a transparency commitment could not yet be defined, negotiators should ensure that by the end of the negotiations, any commitment be feasible to administer. He noted that the idea of creating national enquiry points was useful and would certainly facilitate the obtaining of information on the part of interested parties. In the view of his delegation, the idea of prior notification was not appropriate. He noted that the telecommunications sector, particularly in its international aspects, was one in which a significant degree of transparency already obtained. Developing countries, for example, typically followed ITU standards. The idea of notifying changes in technical standards would have to be looked upon in greater detail, although developing countries were not heavily involved in the ITU's standard setting exercises. Transparency provisions should apply both to public telecommunications organizations and to private market operators. This could be viewed at two levels: at the level of the framework agreement itself, and, at the level of the regulatory devices which governments might need to introduce in the light of the conclusion of a trade in services agreement. The precise nature of a transparency commitment on the part of private operators would have to be defined at a later stage, once the specific types of transactions to be covered under a telecommunications agreement became clearer.

32. The representative of the European Communities emphasized the importance of publication in securing transparency, particularly in an area such as telecommunications in which monopolies abounded. While transparency provisions need not be sector specific, they would nonetheless need to cater to the wide range of regulatory structures found in the telecommunications sector. The transparency provisions to be included in a framework agreement should not, therefore, represent undue burdens nor result in total transparency in countries having chosen a predominantly public regulatory structure and minimal transparency in countries with a heavy bias towards private services provision. As to what should be covered by transparency provisions, he agreed that much was already published in many countries, so the key issue was that of ensuring that all that was necessary was published. In addition, tariff principles, technical interfaces, services and standard features in general had to be made as transparent as possible, as did the overall regulatory framework. Operating licences in a number of telecommunications fields, including that
of broadcasting, were another area requiring greater transparency. He emphasized that his delegation did not wish to create unnecessary administrative burdens, but suggested the need for going beyond publication commitments.

33. The representative of Sweden, speaking on behalf of the Nordic countries, emphasized that the form which transparency provisions might take would ultimately depend on the scope of the agreement itself. He recalled the need for manageable provisions in this regard. He said that his delegation would favour exploring concepts of publication, notification, cross-notification, prior comment and national enquiry points in respect of transparency. One aspect requiring particular mention in the telecommunications field was that of technical standards. He said that provisions contained in the Code on Technical Barriers to Trade of GATT could prove relevant in this regard.

34. The representative of Poland agreed that the concept of transparency was of vital importance in the telecommunications field. Referring to the three-fold approach which the representative of Japan had described, he noted that his delegation saw no particular difficulty in applying the concept of transparency to telecommunications.

35. The representative of Yugoslavia said that documents MTN.GNS/W/52 and MTN.GNS/W/53 had not been received in her capital prior to the current meeting. She therefore reserved the right to make detailed comments later on in the meeting. As regards transparency, she recalled that the Montreal text had underlined its relevance in a services agreement. Given that telecommunications services were heavily regulated, both nationally and internationally, it was important to ensure that any transparency provisions did not translate into undue administrative burdens for developing countries. She noted, for example, that the requirement to translate all relevant documentation could prove quite difficult in her country. She would thus support initiatives aimed at ensuring that all relevant trade related information be published in official gazettes, as was the case in Yugoslavia. She noted that the scope of transparency provisions would become clearer once the particular types of telecommunications services transactions to be covered were determined. She added that her delegation did not consider radio and television broadcast services as forming part of the telecommunications services sector as described in the Secretariat's reference list of sectors.

36. The representative of Hungary said that his delegation felt that transparency should be a general concept included in the framework agreement, and one which would apply equally to all the sectors covered. Transparency was, however, of particular relevance in telecommunications given the extensive degree of regulation which obtained in the sector. As to the special features of a transparency provision, he agreed that all regulations, laws and administrative guidelines relating to trade in telecommunications services should be published by all parties to the agreement. A number of considerations had to be borne in mind as regarded
notification procedures, not least of which was the need to avoid the creation of unbearable administrative burdens. He wondered whether notification procedures relating to changes in technical standards could be centralized via the Secretariat of a services agreement, adding that in view of the bulkiness of the relevant documentation it might be more desirable to deal with technical standards and regulations through recourse to national enquiry points.

37. The representative of Peru agreed that the concept of transparency had to be included in a framework agreement. He said that all legal texts were published in his country's official bulletin once they came into effect. While agreeing to the need for a notification system, his delegation did not feel it was appropriate to provide for the prior notification of changes to national legislations. He said that discussions on telecommunications services - and on the need for transparency provisions - should address solely trade issues.

38. The representative of Singapore sought information on transparency provisions within the ITU framework. He asked, firstly, what information ITU member countries were required to provide regarding technical standards as well as regulations affecting basic and enhanced services and, more generally, network access and use. Secondly, he enquired about the extent to which ITU members were obliged to provide the organization with prior notification of proposed changes in standards and/or regulations.

39. The representative of India agreed that transparency was a generic concept which should apply to all service sectors. He said that all norms and regulations relating to telecommunications services were published in India's official gazette, while information pertaining to the prevailing technical standards were available in various publications. As such, transparency was already a feature of telecommunications in India. However, in looking more broadly at the application of transparency, there were a number of principles on which it should be based. For one, the administrative burden of transparency provisions should be manageable. Secondly, such provisions should apply solely to norms relating to trade in telecommunications services. Thirdly, the same norms of transparency should apply to both public and private operators. He felt that prior notification might not be feasible, adding that the exact norms that would be subject to publication commitments would ultimately depend on the nature of transactions to be covered by an agreement in the sector.

40. The representative of Argentina said that once all rules, regulations and guidelines were published - as was the case in his country - it was difficult to envisage what other information would be required to secure transparency. He said that the operations of public monopolies are more transparent than those of private ones, not least because the financial statements and balances of public monopolies were typically subjected to far greater degrees of control and monitoring than was the case for private operators. He felt that serious consideration would need to be given in crafting transparency provisions to two important issues: one the one
hand, the sheer accumulation of information which might result from publication commitments in the telecommunications field; on the other, the need to agree on ways of dealing with the various languages to be used in the framework agreement.

41. The representative of Jamaica noted that the specific transparency requirements that might be necessary should become clearer as the scope of a service agreement emerged. Given the enormous body of rules and regulations applying in telecommunications, manageability concerns were of the utmost importance in tackling the issue of transparency. It was therefore imperative, as others had noted, that the focus of the current discussions be on traded telecommunications services. He agreed that transparency obligations should apply to both private and public operators in the telecommunications field.

42. The representative of Korea said that his delegation had no objection to including all forms of legislation and administrative regulations under the purview of transparency provisions, with the exception however of administrative practices. He said that the translation of all administrative practices into international languages could place a strain on his country's limited capacities. He said that it was probably sufficient if information relating to telecommunications services was made known after its enforcement in national legislations. He mentioned that his delegation favoured the establishment within the GATT of national enquiry points, adding that the GATT could be notified of changes to national regulatory regimes once these had been enforced. His delegation was opposed to the idea of prior comment on proposed legislative and/or regulatory changes.

43. The representative of Malaysia emphasized the central and generic importance of transparency provisions. He said that all rules and regulations in Malaysia's telecommunications sector were published in the government's official gazette once they were enacted. The country's regulatory regime was therefore already very transparent. He said that his delegation did have some difficulty with the notion of prior notification. It was important in his view to link transparency to coverage. The relative manageability of transparency provisions could indeed only be grasped once a firmer knowledge of the types of telecommunications transactions to be covered under the agreement was gained.

44. The representative of the European Communities said that he had not meant to imply that all types of operating licences could be subjected to transparency provisions, but noted that there were certain areas of telecommunications services where licensing played a significant role, particularly in regard to network access. There was a tendency to confuse the issue of administrative burden as it related to publication commitments on the one hand and to any further notification obligations on the other. It was difficult to envisage how one could limit the application of transparency provisions only to trade-related rules and regulations given
that virtually all technical standards and norms had important implications for trade in the sector. He noted, for example, that an operator could not access a market without having some knowledge of prevailing technical interface standards and norms. Publication of information relating to that interface was thus critical for the possibility of trading a particular telecommunication service. The adoption of international standards, which were published and universally known, was in his view one way of limiting transparency to publication commitments. He emphasized that the prospects for liberalization in the telecommunications field hinged critically on an adequate degree of transparency. This could also be said of all sectors which depended heavily on telecommunications services for their efficient provision.

45. The representative of Nigeria felt that the concept of transparency was of special relevance given that national monopoly conditions typically prevailed in the telecommunications services sector. He agreed with those participants who had emphasized that Group discussions should focus on tradeable telecommunications services; also, that transparency provisions should apply to both public and private market operators and should not result in undue administrative burdens for developing countries.

46. The representative of the United States said that the idea of applying transparency provisions to private market operators had surfaced in discussions which had preceded the Mid-Term Review. He had - then as now - some problems with the idea. He recalled that the provision of telecommunications services involved public and private operators who extended basic services to the public. The accountability of private users of network services extended, in his view, only to their customers, so that the question of transparency in their regard had to be looked upon somewhat differently. There was thus a major distinction to be made in regard to transparency between service-providing firms and individuals which were not publicly accountable from those whose responsibility related to the provision of basic network services to the general public. Responding to a comment made by the representative of India, he asked why the prior publication of regulations was not feasible, noting that the provision of a finite space of time, as determined by national regulations, in which to offer comments on proposed regulatory changes should not be an unreasonable proposition.

47. In reply to a question by the representative of Singapore, the representative of the ITU said that the publications of the Union normally related to international regulations and standards. While the former were published in the six official languages of the ITU, the latter were published in full in its three working languages. In addition, information that was relevant to the operation of the network in terms of both its interconnectivity and interoperability was also published by the ITU based on the data provided by Member Administrations. He indicated that two Resolutions of the 1988 Melbourne Conference had in fact addressed the latter question. As to the extent of prior notification in regard to changes to international regulations and standards, Member countries did engage in this process, either prior to or during the relevant ITU conferences and meetings.
48. The representative of Egypt said that it was not his understanding that all transparency provisions would automatically extend to private operators, in part, because some of the activities of public entities in the sector did not have a private counterpart. His concern in this area related to the practices of private operators which could have adverse effects on markets. He cited the issues of dumping and of predatory pricing as potential problem areas in telecommunications services. It was important, in his view, that greater transparency be made to apply to cost structures in the sector. He recalled that the specific features of transparency obligations for private operators would become clearer once the scope of transactions to be covered by the agreement was itself better defined.

49. The representative of India said that the idea of prior notification posed several difficulties. The first of these related to administrative burdens. He noted that regulatory decisions were usually taken with a view to satisfying a wide range of policy objectives and involved numerous organization within and outside government. A second difficulty concerned the timing of such notifications. When these were done merely before regulatory changes were formally notified, he wondered whether any useful purpose was being served. Prior notifications, indeed, could simply delay the introduction of regulatory changes. Third, given the array of developmental and other policy objectives pursued through regulatory changes, the time element of such decisions could be crucially important.

50. The Chairman opened the floor to a discussion in the telecommunications services sector of the application of the concept of progressive liberalization.

51. The representative of Canada drew the distinction between basic or reserved telecommunications services - which tended to be provided in monopolistic fashion - and non-basic or enhanced services as a useful starting point in addressing the issue of liberalization, progressive or otherwise. As to the first category, the Group's discussion did not appear to address the provision of basic telecommunications services but rather that of the access of users of such services. If that was the case, he suggested that the issue of liberalization would arise in regard to both user access for basic services and to the broad range of enhanced and computer services. The evolution of technology implied the need for keeping any such distinctions under review. It might also be useful to bear in mind the distinction and interface obtaining between the carriage and content aspects of telecommunications. The difficulties in regard to network access included matters such as the availability and pricing of telecommunications services, notably of private leased lines; restricting the sharing or resale of leased private lines to third parties; as well as restrictions on the ability both to interconnect private lines and to attach customer premises equipment to public telecommunications networks. Barriers to trade in enhanced services could result from
regulations that denied or restricted the right of establishment of foreign firms; from the anti-competitive behaviour of a foreign supplier of basic services who competed in the provision of enhanced services; from a lack of transparency, as well as from circumstances in which the common carrier was also the regulator. Other impediments resulted from restrictions on the kinds of information that could be communicated. He suggested that these and other difficulties that arose in the provision of telecommunications services would need to be tackled in the GNS, adding that there was a variety of techniques (to be discussed later on during the meeting) that could be used to this end.

52. The representative of the European Communities felt that it was difficult to talk about progressive liberalization on its own, as it was closely linked to concepts such as national treatment, m.f.n. and market access. To address the concept of progressive liberalization in concrete terms, one had to focus on the possible ways to incrementally liberalize so as to achieve better access to the market. His delegation felt that there were a number of ways to open markets on a gradual basis. Gradualism could be applied, for instance, in respect of modes of delivery (i.e. by liberalizing services provided via establishment first and then those supplied in cross-border fashion, or vice-versa) or to different types of services within the sector (i.e. not all telecommunications services would be subject to the same degree and/or pace of liberalization). He noted in this regard that no GNS member had expressed a particular interest in liberalizing the provision of basic telecommunications services in the same manner as that of enhanced or non-reserved services. As well, within the broad range of enhanced services, attention could be devoted to some services before others.

53. The representative of Switzerland felt that there were two distinct areas in telecommunications to which the principle of progressive liberalization could be applied in a differential manner: enhanced services on the one hand, and computer terminal equipment on the other. The latter was a particularly important element of the interface between services and goods in the field of telecommunications. They were also important from the point of view of standardization. It might be difficult to follow an overly rigid approach, not least because the legitimate objectives of national policies in the sector had to be respected. There was in his view a clear need for a flexible and progressive approach to liberalization in the telecommunications services sector. The domain of reserved services - those provided by public monopolies - had shown a tendency to be gradually limited to activities that were necessary to accomplish the legitimate interests of domestic policies. While the legitimacy of such pursuits needed to be recognized and addressed, it was also important that markets be progressively opened to competition, perhaps simultaneously for domestic and foreign competitors, within the context of a multilateral framework agreement. Rules concerning competition should be established on a non-discriminatory basis and should not represent hidden restrictions to trade in services.
54. The representative of Australia felt that the issue of determining how progressivity could be made to apply to the liberalization of telecommunications services was a particularly difficult one, not least because of the diversity of telecommunications activities and of regulatory structures related to their provision. An added problem in searching for a progressivity formula was that there were relatively few aspects of protection in telecommunications that were quantitative in nature. Of course, some barriers did have a distinct quantitative connotation—content rules in broadcasting or restrictions placed on foreign ownership in telecommunications were examples—but the relative absence of quantifiable impediments to trade in telecommunications services was a complicating element in regard to progressivity. One way of approaching progressive liberalization in the sector could be to consider it as translating into a progressively higher number of telecommunications activities that were open to foreign competition. Alternatively, progressivity could be achieved by reducing the number of activities which parties to the agreement might have reserved. Progressivity in the view of his delegation implied both some initial liberalization at the time of joining the agreement and some future liberalization, implying the need for continued negotiations after an agreement had come into force.

55. The representative of Sweden, speaking on behalf of the Nordic countries, felt that progressive liberalization could, from a theoretical point of view, be looked upon as a three-staged process. Initially, negotiators would need to make a demarcation between basic services and those network-based services that could be subject to competition in a domestic context. Thus, a given market, however defined in terms of basic and enhanced services or information/data processing, would be delineated in terms of segments where nationals would have a right to conduct business in a competitive environment. He recognized that the variations among countries as to the scope of such an approach were potentially very large. Secondly, the delineation of a given market into monopoly and competitive segments—a process which would itself be subject to redefinition or enlargement on the basis of national priorities or decisions—would be necessary to single out competitive markets that could also be exposed to foreign competition. Progressive liberalization in this context could therefore be open to a two-tiered mechanism: permitting framework principles to apply on the one hand, while on the other binding the degree of foreign involvement in the provision of particular services, either sectorally or in terms of specific transactions. In the third stage, progressively larger chunks of competitively provided services would be exposed to foreign competition. This would entail a process of reduction of access barriers through successive rounds of negotiations under the agreement as well as a progressive extension of the scope of bindings. He emphasized that this was simply a rough theoretical sketching of how progressivity could be negotiated, adding that its mechanisms might differ depending on whether a positive or negative list approach was taken. Finally, and as others had pointed out, an aspect not to be overlooked in any discussion of liberalization in telecommunications services was that of
equipment/hardware. He noted that as the borderlines between telecommunications equipment and computers were being continually challenged, the liberalization of telecommunications equipment was a necessary, although in itself insufficient, ingredient in the progressive liberalization of trade in the sector.

56. The representative of the United States felt that it was somewhat frustrating to have to proceed to progressive liberalization as the second element of the discussion. Progressive liberalization, at least as formulated in the Montreal text, was really a modality which did not incorporate the elements of any agreement that would comprise liberalization. As such, he felt that it might be desirable to address the issue last. He was not clear as to how to formulate progressive liberalization in the telecommunications sector. While the two suggestions made so far by the representatives of the European Communities and Australia were imaginative, he was unsure that he could agree with them given that neither was compatible with the competitive environment which prevailed in the United States. The challenge before the Group was therefore to devise acceptable norms to progressively liberalize. It would seem important for countries to establish at this stage some terminology as to the types of telecommunications activities they wished to see subjected to the principles contained in the framework agreement and, perhaps even more, to determine what principles they would not like to extend. This process would, by itself, be a highly complex one in view of the well known terminological problems which existed in the sector. Assuming that there would be a positive list of sectors, countries should be willing to bind the application of the principles contained in the framework to all the activities comprising telecommunications with the exception of those they would reserve. While the existing differences in national definitions of various telecommunications activities would no doubt lead to a heated debate, the exercise would still represent a significant step forward, not least because greater transparency would result. Efforts aimed at listing every activity falling within the broad purview of telecommunications should however be resisted, as no such undertakings had ever proved feasible internationally. He concluded by saying that the notion of phasing-in obligations was recognized in the Montreal text under the heading of progressive liberalization, as was the fact that the degree of progressivity would depend in part on the level of development of signatory countries.

57. The representative of Brazil agreed that progressive liberalization should be discussed together with other concepts, particularly those relating to the increasing participation of developing countries and their ability to progressively liberalize on the basis of greater access to modern technology. Other important considerations concerned the ability of developing countries to enhance national services capabilities, engage in preferential agreements among themselves, attract the requisite forms of financial support, etc. He believed that multilateral rules should
contribute to the gradual reduction of unnecessary restrictions to international trade in services with a view to expanding such trade. It would be unrealistic to assume that liberalization could be either automatic or immediate, particularly for developing countries. Telecommunications was a sector in which the ability of developing countries to liberalize differed greatly from that of developed countries. As called for in MTN.GNS/W/48, liberalized access to developed country markets should be granted to developing countries on a non-reciprocal basis. In this process, developed countries would go ahead with their liberalization while developing countries prepared themselves for the liberalization of their own service sectors as and when they saw fit. While many participants would no doubt argue that some developing countries were already in a position to initiate some degree of liberalization, it was certainly not the case for Brazil, where great importance was attached to national policy objectives that related not only to the strategic aspects of telecommunications but also their cultural and social aspects. As 85 per cent of Brazil’s population was still rural, the priority in telecommunications was heavily geared towards the development and improvement of basic network infrastructures. For this reason, Brazil was, at the moment, not in a position to give priority or attention to services other than basic ones.

58. The representative of New Zealand informed the Group that as of 1 April 1989 changes to the country's telecommunications regulations had allowed for full competition in the provision of both basic and value-added services. Authorities in the country had indeed come to the conclusion that competition was a spur to the introduction of improved technology and to the improvement in quality, range and price of telecommunications services. Therefore, the assumption that liberalization discussions should focus only on value-added services while exempting the provision of basic network services was not universally shared. She agreed that the delineation of what each country considered reserved activities and practices in the telecommunications field was a useful first step in the direction of progressive liberalization. It was, however, merely a first step and did not, per se, constitute progressive liberalization. Proposals to gradually liberalize various segments of telecommunications was useful, and the object of the exercise should be to progressively shift the various dividing lines towards greater degrees of openness to foreign competition. In this process, progressive liberalization would imply a gradual redefinition of the extent of monopoly provision in each country, with a view to gradually reducing the range of services whose provision was restricted to national monopolies. This should be achieved through a continued process of negotiations.

59. The representative of Hungary said that progressivity was a core issue in the current discussions. He saw no reason to exclude the provision of basic network services from the possible scope of an agreement, although there were perhaps reasons to expect discussions to focus chiefly on enhanced telecommunications services. He felt that the
idea of promoting progressivity by engaging initially in domestic deregulation was a valid one for many countries. It remained nonetheless chiefly an internal matter; one which could not always be linked to the multilateral liberalization commitments under discussion in the GNS. He spoke of the strategic importance of the telecommunications sector, noting the far-reaching economy-wide implications of developing efficient telecommunications networks. He welcomed the idea stated earlier by the representative of the United States that in respect of progressive liberalization, developing countries would be able to open their telecommunications sectors in a gradual way and to undertake lesser obligations at the outset. Concerning the issue of access to technology, he emphasized that telecommunications was an area where such access had a major bearing on both the quality of services provided and the competitiveness of the sector as a whole. In this regard, he placed particular emphasis on the need for better access to telecommunications equipment and to a lessening of international restrictions on the flow of technology, many of which related to telecommunications technology. He could only foresee the advent of progressive liberalization once domestic and foreign service providers alike enjoyed equal access to modern technology. Finally, he noted that Hungary's telecommunications sector was currently undergoing a process of structural reform, with two main policy directives being followed: one pertained to the separation of operational and regulatory functions so as to put the sector on a market-oriented basis; the other to the introduction of greater competition in various telecommunications activities.

60. The representative of Mexico said that progressive liberalization should aim to gradually reduce the scope of regulations which inhibited market access for foreign telecommunications services. With regard to the special needs of developing countries in the telecommunications field, he recalled that the Montreal text had spoken of the need of developing countries for greater flexibility in opening up their services markets to foreign competition, as well as the greater amount of time they would require in doing so. According to recent ITU statistics, 75 per cent of telephone lines throughout the world were concentrated in eight or nine countries. This reflected the special situation of developing countries in regard to the sector.

61. The representative of the European Communities said that the object of the current negotiations was not to tell countries how they should regulate their service sectors, nor what level of monopoly provision they should retain. These were national prerogatives which, although having significant implications for competitive conditions - both internal and external - could simply not be forced upon participating countries. It was important, however, to ensure that the behaviour of monopolies did not inhibit competition in sectors which were open to competition. The impact of conditions governing the provision of reserved or of competitive services should thus be seen as one of the main points for discussion in the GNS.
62. The representative of Argentina said that progressive liberalization was considered by his delegation as a means of achieving economic development, although in the area of telecommunications, social and cultural dimensions were of great importance. The concept of progressive liberalization was also closely linked to that of investment, with a view to upgrading the technological capabilities of developing countries. The link with national policy objectives was also very important in the sector, in view of the economy-wide relevance of telecommunications to the efficient production of both goods and services.

63. The representative of Peru said that his delegation did not consider progressive liberalization as an end in itself, but rather as a means for achieving economic development. He also recognized that the concept could not be addressed in isolation, but had to be treated along with other concepts contained in the Montreal text. As well, MTN.GNS/21 contained relevant language, particularly as regarded technology transfers. The progressive liberalization of trade in telecommunications services would, moreover, have to address the range of imbalances between developed and developing countries in the sector.

64. The representative of Korea recalled that most developing countries were not in a position to offer value-added or enhanced telecommunications services. It was important for this reason to ensure that the progressive liberalization of trade in these services did not hinder the development of indigenous capacities in the sector. He noted that Korea had embarked upon the path of telecommunications liberalization several years ago, and had followed a three-tiered approach in doing so: firstly, by liberalizing the provision of some enhanced services through recourse to a positive list approach which made no distinction between domestic and foreign enhanced service providers. Secondly, by extending the list of domestic telecommunications services to be supplied in a competitive setting. Thirdly, by liberalizing the provision of international value-added services, although in recent years distinctions between basic and enhanced services had ceased to be drawn in respect of international telecommunications services.

65. The representative of Egypt noted that progressive liberalization consisted of two elements: liberalization on the one hand, which referred to the increasing participation of foreign service providers in the domestic market, and progressivity on the other, meaning that liberalization would take place in stages and that appropriate modalities would be designed for this purpose. As to telecommunications liberalization, the key questions consisted of determining what activities would be liberalized, what degree of foreign participation in domestic markets would be allowed and how this process would be disciplined and organized. Recalling that the representative of Canada had said that the current discussions were not about the provision of basic network services but rather about the access of users of such services, he felt that such an
approach tended to shift the focus of the discussion in significant ways. After all, if Group members had decided to discuss telecommunications services, presumably these discussions should centre around their provision. Meanwhile, the provision of other services could be addressed under other headings. While the interface between provision and use was of obvious importance, it was essential nonetheless to concentrate on the sector at hand and on the proper issues within it. The distinction which had been drawn between the carriage and content aspects of telecommunications was helpful in defining the scope of the current discussion. He felt that it was inevitable that many of the issues relating to progressive liberalization were closely linked to the concept of market access, particularly when talking about network infrastructure. It was important that participants spell out more clearly the commitments they had in mind in this regard and how such commitments related to the ownership of facilities. When discussing the modalities of the increasing participation of foreign providers in domestic markets, it was important to look at provider issues as opposed to adopting a user perspective. The former approach was central to defining the proper scope of the discussions while the latter tended to confuse telecommunications services proper from telecommunications-dependant services. As regarded progressivity, he agreed that there were various ways of making the concept operational, although the scope of various formulas with which to implement provisions would become clearer once the scope for foreign participation in domestic markets was more clearly defined. The maintenance of transparent domestic preferences which would be gradually phased out could be a way of promoting progressivity. Finally, a combined approach could be envisaged. He recalled that respect for national policy objectives was of central importance to telecommunications in view of the public utility dimension of the sector. The crucial role played by the sector in the development process, combined with the development needs of the sector itself, meant that developing countries were typically confronted with a dilemma in the sector, that of providing - in a context of resource scarcity - universal services to all regions while simultaneously updating telecommunications technology in urban areas and commercial centres.

66. The representative of Poland saw progressivity as more of a commitment than a concept. He stressed the strong link which existed between progressive liberalization and the concepts of market access and national treatment. A second element worth stressing was that the telecommunications sector had a number of specificities which related mainly to the issue of access to technology as the prime determinant of competitiveness in the sector. A relevant issue in this regard was that of standards harmonization. More generally, the ability of countries to engage in the liberalization process hinged on their access to sophisticated telecommunications equipment. Without access to such technology, liberalization was not feasible. It was particularly important that due account be taken of the level of development of participating countries in crafting progressive liberalization provisions. He emphasized
that gradualism was the key to making liberalization palatable. Pragmatism tended to suggest that it would probably be easier to progressively liberalize enhanced as opposed to basic telecommunications services. Three steps could be applied in this regard: the first, which was already applied in Poland, related to the liberalization of terminal equipment and encompassed more liberal homologation procedures and easier attachment of equipment to networks. A second step could consist of liberalizing access to certain value-added networks while a third could relate to the eventual liberalization of basic service provision.

67. The representative of Romania said that as envisaged in the Montreal text, governments were committed to ensure that progressive liberalization would take due account of the objectives of national policy and the degree of development of the various signatory countries. In the telecommunications area, national polices aimed first and foremost at protecting national safety and public order. The ITU Convention, for instance, clearly recognized the sovereign rights of member countries to regulate their telecommunications sectors. National policies in the sector were carried out in most countries through public monopolies, a reality which the progressive liberalization of telecommunications would have to take into account. At the same time, progressive liberalization was intimately related to the concept of development. As envisaged at the Mid-Term Review, developing countries should merely be asked to ensure relative reciprocity in the realm of progressive liberalization. As well, a number of other provisions contained in the Montreal text, among which those addressing the need for an effective degree of market access for developing country exports, were broadly relevant in the telecommunications field.

68. The representative of Yugoslavia felt that the concept of progressive liberalization was relevant and applicable in the area of telecommunications services. She said that liberalization should be of benefit to all parties to the agreement. It would be important to devise appropriate phase-in provisions which would depend both on national objectives and on competitive abilities in the sector. Different modalities would have to be designed depending on whether basic or enhanced services were being discussed. Pointing to the insights gained in goods trade with regard to phase-in obligations - the MFA was a revealing example - she felt that new mechanisms and criteria would need to be developed to gauge the true competitiveness of individual countries' telecommunications sectors. Matters relating to progressive liberalization were closely linked to a host of other concepts, among which national treatment, market access, safeguards and exceptions.

69. The representative of Malaysia agreed that it might have been more appropriate to discuss progressive liberalization at the end in view of its close links to all of the concepts, principles and rules contained in MTN.TNC/11. Governments would need to conduct individual analyses with a
view to determining what progressive liberalization would generate in terms of end results. His delegation was not opposed to the idea that progressive liberalization in telecommunications should take place at some point in the future, but that it was important in discussing the concept to focus on the services dimension of telecommunications. He said that the monopolistic characteristics of the telecommunications sector in Malaysia complicated the task of addressing progressive liberalization insofar as it related to the ability of foreign service providers to establish a domestic presence with a view to providing services to the public at large. Malaysia considered the telecommunications services sector as the domain of a state or state-sanctioned monopoly since it was the government's moral and social responsibility to provide telecommunications services in both rural and urban areas. It was for this reason in his view that progressive liberalization could not be looked upon as an end in itself. His delegation did not believe that foreign providers - particularly if private - would take due account of the telecommunications needs of the general population, even less so those of rural populations. The level of development of participating countries also had to be taken into account when discussing progressive liberalization. As well, geographic considerations, and imbalances between various regions within a country, had to be borne in mind. Telecommunications had important strategic, social and cultural implications, all of which prompted his delegation to approach the concept of progressive liberalization with great caution. He expressed interest in some of the ideas which had been mentioned earlier as to ways in which to liberalize progressively, some of which required further reflection. In view of the growing importance of enhanced telecommunications services, his government wished to see these publicly provided, although the door had not been closed to foreign participation, not least because of the strong link which existed between the availability of facilities/equipment and the ability to provide enhanced services. In the latter regard, Malaysia hoped to secure technology transfers through joint ventures which brought together foreign facilities' providers and the public telecommunications monopoly.

70. The representative of Hong Kong recognized that there were participants at different stages in telecommunications development and that participants had different regulatory frameworks and priorities in the sector. As well, no participant would be required to liberalize trade in this sector, or for that matter in any sector, in ways that would be inconsistent with their growth and development needs. The usually high level of regulation in telecommunications meant that progressive liberalization was an important concept in the sector. The division of telecommunications services into basic and enhanced or value-added services was a useful concept but only up to a point for, as many had recognized, the dividing line was becoming increasingly blurred with advances in technology. The very nature of telecommunications services suggested that setting a priority on the development of basic services did not preclude the development of enhanced services. The latter category of services were
usually aimed at serving the business sector and could be introduced with a very basic communication network infrastructure, which was usually readily available in the form of a basic telephone network. It followed that enhanced services generally had low entry costs as they made use of existing facilities. They were in his view inherently suitable for liberalization, particularly as the provision of competitive services at reasonable prices was certainly in the interest of the business community. He agreed that perhaps Group members should first concentrate on enhanced services as they were more directly related to trade in services while the provision of basic services served primarily social and developmental objectives. The various ideas which had been floated on how to achieve progressive liberalization were useful and could form the basis of fruitful work in the GNS. He concluded by highlighting some features of Hong Kong's experience in the progressive liberalization of the telecommunications sector.

71. The representative of India said that it was essential in discussing this concept that members be aware of what it was they were seeking to progressively liberalize. In the absence of some degree of definitional clarity, the concept of progressive liberalization was difficult to understand. He agreed with those who had suggested that progressive liberalization was only a means of promoting the economic growth of all trading partners and the development of developing countries. He suggested that a number of criteria be considered when discussing progressive liberalization. These included: (i) the level of development of participating countries; (ii) the developmental needs of developing countries and the public nature aspect of telecommunications services; (iii) the need for enhancing national services capabilities; (iv) the question of access to technology; (v) the activities and practices of market operators; (vi) preferential arrangements among developing countries; (vii) preferential market access opportunities for developing countries; and (viii) national policy objectives relating to social, cultural, security and public service considerations. These parameters had to be considered in determining the level, extent and scope of liberalization in the sector, alongside the Punta del Este Declaration as it addressed the development needs of developing countries.

72. The representative of Chile agreed that it was most difficult to treat the concept of progressive liberalization in isolation from those of national treatment, m.f.n. and market access. Regulations were inevitable in the telecommunications area for technical reasons. Regulations which were economic in nature aimed at ensuring that the sector contributed to national policy objectives in the social, economic, cultural and security areas. It was necessary to distinguish between regulatory authorities on the one hand, and network operators - public or private - on the other. It was also important to distinguish basic from enhanced services for liberalization in the sector to be made progressive and for gaining flexibility in achieving it. The liberalization of enhanced telecommunications should be easier to deal with. As well, the
modification of regulations and standards could lead to a gradual opening of markets to foreign providers on a non-discriminatory basis and through the application of a national treatment clause. She recalled the link between progressive liberalization and foreign investment and technology, with a view to improving the overall efficiency of national telecommunications sectors. The liberalization of basic services would have to be envisaged in a second stage along the lines foreseen for enhanced services, bearing in mind the social, cultural and security objectives which obtained in regard to the provision of basic services. Regulations relating to such concerns should not restrict trade unnecessarily beyond what might be required to satisfy public utility criteria. Chile's telecommunications services sector (both basic and enhanced) was in private hands with operators relying on both domestic and foreign capital. Operating licenses in Chile were awarded on a non-discriminatory basis and national treatment applied in the sector. For these reasons, progressive liberalization in the sector could yield maximal results.

73. The Chairman suggested that Group members move on to the consideration of the application of the concept of national treatment, as envisaged in paragraph 7 of MTN.TNC/11.

74. The representative of the United States said that as the concepts of national treatment and market access were closely linked he would address them simultaneously. He noted that the provision of national treatment in the telecommunications field was of limited value in terms of market access. This was so because services were provided in most countries in a monopolistic environment. Moreover, even under competitive market conditions, a complicated set of standards and limitations placed upon the different technologies which service providers could use might result in the denial of market access even though national treatment obtained. Thus, Group members should be mindful that while the provision of national treatment could deal effectively with some impediments to trade in telecommunications - for example, the requirement that foreign service providers process their data in the market to which they gained access, discriminatory access charges, etc. - it nonetheless suffered from some limitations, even though it had been rather adequately defined in the Montreal text. He recalled that the Montreal text had discussed market access in terms of the preferred mode of delivery. Transposed into the telecommunications field, this left open in the purest sense the option for a service provider either to send a person across a border for the purpose of establishment or to send information across a border. Telecommunications was peculiar in that a foreign provider of enhanced services was not necessarily inhibited by the regulatory biases affecting the particular environment in which he worked. The challenge therefore was to deal with the inherent regulatory sovereignty of countries to protect the network as they saw fit while allowing for provisions aimed at greater market access for foreign service providers. For a number of countries it was important to have some form of establishment, although an obligation to
invest in telecommunications facilities was in most instances an unnecessary burden given the prior existence of facilities and the general ease of network interoperability. Another major challenge in the sector concerned the range of issues relating to network access. It was essential that service providers - be they foreign or not - be able to choose the form of technology of their liking so as to gain the flexibility that would have value to their customers, both in terms of choice and price. There would, therefore, probably have to be some provisions in the framework that would deal with the question of access to basic telecommunications networks. These would address, among others, the need for unrestricted access to a varied menu of basic services including private lines; the use of any available transport service to provide value-added and information services to customers; pricing of basic telecommunications transport services that was reasonable, non-discriminatory and, to the extent possible, cost-justified; freedom to choose equipment and the ability to connect or operate any type of equipment within the host country; the right to use proprietary standards and protocols for value-added and information services; and the right to process and store information. While not fitting into any of the principles under discussion, he felt that a way should be found to include them in the framework agreement, perhaps in the form of an annex which, while part of the framework, would nonetheless pertain to telecommunications services alone.

75. The representative of Jamaica felt that the diversity of telecommunications services and of regulatory environments governing their provision implied that the concept of national treatment might have several different meanings in the sector. He saw national treatment as a concept which embodied the provision of services to the public at large within a certain territory, and not necessarily as applying to a user or receiver that was only connected to an outside entity. So defined, national treatment could provide two things: either the ability to compete within the national boundary or the conditions of access for the telecommunication itself (i.e. the information or the message). In the latter case, national treatment would ensure that the conditions of access allowed for connection to provide and/or use telecommunications services. It could include the right of establishment, i.e. the right to establish the physical infrastructure of facilities and equipment. On the other hand, national treatment could encompass the right of commercial presence, i.e. the ability to use the existing infrastructure to provide a service. The compatibility of standards, so as to allow interconnectivity, was of central importance in this regard. He wondered whether attempts to draw distinctions between basic and enhanced services served a useful purpose, particularly as technological developments meant that today's enhanced services might well be tomorrow's basic services. At the same time, he cautioned that because of technological developments - for example the advent of cellular phone technology - full rights of establishment could have far-reaching implications for basic services providers in developing countries, a majority of which possessed technologies that would place them
at a competitive disadvantage vis-à-vis sophisticated new entrants in the sector. He did not wish to suggest that telecommunications markets in developing countries had to be monopolized or protected, nor that the infusion of new technology in the sector was undesirable. In fact, he felt that the process of progressive liberalization of domestic telecommunications markets could translate into technology transfers, increases in efficiency and productivity and, consequently, enhanced economic development prospects, particularly in information-intensive sectors. Further reflection was called for in assessing the implications of national treatment in respect of rights of establishment or commercial presence. He wondered how the principle of national treatment would be linked to that of m.f.n., adding that qualifications might have to be made to both principles depending on either prevailing market structures or the benefits to be derived on a regional or bilateral basis.

76. The representative of the European Communities underlined that the references to development in the paragraph on progressive liberalization contained in MTN.TNC/11 were important in that they referred to the levels of development of individual signatories. Development in this regard applied not only to the particular case of developing countries since all countries had different policy objectives, regulatory structures and levels of telecommunications (as well as other services sectors) development. Before distinguishing between national treatment and market access, it was important to think about the mode of delivery of a given service. The distinction between the two concepts was somewhat easier in the case of services provided through establishment, as established firms should expect to be treated like national entities. In cases of cross-border provision, the distinction became more difficult. For example, it was inherent that an established firm had to abide by the standards which applied in a country. For a cross-border provider, however, the standards issue was slightly different. While it was not clear whether this was a national treatment or a market access issue, it was nonetheless clear that the possibility for cross-border provision would hinge on some degree of mutual recognition of standards. He noted that in practice, few telecommunications services were purely cross-border in nature, although the issue of standards tended to arise even when firms established a commercial presence. The issue of network access was of central importance to discussions of the provision of enhanced telecommunications services although it was perhaps not relevant in respect of the supply of basic services. Access to the network was also important for many other service sectors as well. The inherent regulatory sovereignty of countries to protect the network was an important concept, one which had to be preserved while ensuring the freedom of access to the network that was necessary for enhanced services suppliers to enjoy effective market access. The representative of the United States was right in suggesting the need for a sectoral annotation which established elements relating to network access, although one could debate what such elements should consist of. He felt that the representative of the United States had spoken mostly in terms of
the rights of suppliers. While such rights were important, suppliers would also need to have to fill some obligations so as to strike an acceptable balance. Obligations could relate to the issues of network protection and standards, particularly as regarded the use of proprietary protocols given the potential for a firm in a dominant position to engage in uncompetitive practices through recourse to proprietary technology. In this regard, the distinction between the provision of private network services and that to the public at large was a relevant one. A final access issue worth reflecting upon concerned access to information, since the need for as free a flow of information as possible had to be balanced by considerations relating to data and privacy protection. He was not sure whether this issue could be covered in general terms under the framework or would need to be addressed more specifically in regard to information flows.

77. The representative of Brazil felt that the concept of national treatment was difficult to apply in the telecommunications area. His delegation did not consider national treatment as implying the obligation to grant unconditional access to a domestic market, adding that countries should be able to retain national monopolies whenever these were deemed appropriate. As to the granting of rights to suppliers of enhanced services, he noted that the possibility of allowing for a greater or lesser extent of competition in a domestic market would have to be related to the basic objectives of the current negotiations, i.e. those of growth and economic development. Thus, if countries came to the conclusion that opening their markets would not contribute to the achievement of their growth and development objectives, they could choose not to pursue such a policy course.

78. The representative of Canada said that many of the concepts under discussion were interrelated, the issue of national treatment having close links with those of market access, progressive liberalization and regulation in the sector. His delegation wished to have strong and clear definitions of the concepts of national treatment and market access with which to negotiate the specific commitments to be included in national schedules under both headings. In addressing the issue of market access, he recalled the distinction between basic and non-basic services. On the basic side, the issue was one of access for users to the network, as opposed to access to the market for the purposes of provision. His delegation did not use the word "right" in dealing with user access issues, but saw the need for an obligation for recipient countries to ensure that such access to the network was provided. Rights in his view accrued to states. As to enhanced and computer services, the issue was clearly one of access to the market for foreign suppliers who wished to provide such services. He saw no reason for not negotiating progressive liberalization in this area through recourse to the full range of trade policy instruments and principles. His delegation in fact favoured the adoption of a formula approach in the telecommunications field and expected that things could move fairly rapidly. He saw the need of providing for the possibility of negotiating on all forms of factor movement (i.e. labour, capital and
information). The suggestion made by the representative of the European Communities regarding access to information was a useful one. Regarding technical standards, he felt that the suggestion - made by the representative of Sweden, on behalf of the Nordic countries - to follow a GATT-like technical barriers to trade approach was also a worthwhile avenue to pursue. As to the concept of national treatment, his delegation's approach was analogous to that for market access. On the basic services side, he was attracted by a "no worse than national treatment" approach, although some improvements would need to be made if access to the network was not provided even to domestic entities. With regard to non-basic services, a standard trade policy approach could be followed and result in the binding of obligations to negotiated levels of market access. These could be improved over time either through commitments taken in the current negotiations or through subsequent negotiations.

79. The representative of India said that the concept of national treatment was difficult to apply in the telecommunications sector. He recalled that in its traditional GATT sense, national treatment applied to goods once they crossed borders and not to the producers of goods. Furthermore, the concept had a subsidiary position as compared with the principle of non-discrimination since it related to the treatment under domestic laws and regulations of goods after the application of border measures. The very nature of trade in telecommunications precluded the application of border measures such as tariffs. Therefore, only the national regulatory system served as the effective controlling mechanism of the participation of foreign entities. His delegation thus felt that the application to telecommunications of the concept of national treatment was inappropriate. Moreover, the demand that foreign suppliers be treated like domestic providers also appeared to be incompatible with the clear recognition in the Montreal text of the need for developing countries to upgrade their domestic services capabilities.

80. The representative of Hungary restricted his comments to the possible application of national treatment to enhanced telecommunications services, recognizing, however, that technological change made definitional distinctions in the sector quite difficult. He noted the different implications which the application of national treatment had to trade in services as opposed to trade in goods, adding that this was particularly true of trade in telecommunications services. This was so because services often could not be distinguished from providers, suggesting the far reaching implications of applying strict national treatment provisions, not least because of the necessity which some countries felt to give some preferences to domestic as opposed to foreign service suppliers. He wondered whether the full application of national treatment provisions would imply equal access to subsidies. The importance of access to technology in telecommunications had to be emphasized in regard to national treatment, as differences in the availability and use of technology often made it difficult to place domestic and foreign suppliers on an equal
footing. While the notion of progressively opening up market access could be discussed, that of doing it on a national treatment basis was an issue requiring further consideration.

81. The representative of Jamaica agreed to the need for provisions dealing with access to information. He emphasized that borders were highly porous in the telecommunications field and that services could not be kept out of national borders simply by government fiat. He asked whether the representative from Canada had meant to suggest that only when states were themselves providers of services could they enjoy rights. If rights were conferred to a provider, he would have some discretion as to what services to provide with his technology and information, so if obligations were conferred only to receivers (which could be states), this could limit the discretion of national authorities in deciding what services should be provided in a given market.

82. The representative of Romania also believed that national treatment was difficult to apply in telecommunications. In the sector, as in others, it was necessary to provide for certain derogations to national treatment. For one, developing countries should benefit from a derogation of this principle given its incompatibility with the need to protect infant industries. It was obvious that to develop national services industries, developing countries needed to grant more favourable treatment to national as opposed to foreign services suppliers. Second, national monopolies should also be deemed to constitute a derogation to the principle of national treatment.

83. The representative of Mexico shared in the belief that applying national treatment in the telecommunications sector was difficult, especially for developing countries. He noted that it was most difficult to grant national treatment when many countries did not even have domestic provision capabilities for certain services. Likewise, assuming that domestic providers did exist, they would probably be in early operating stages and might need infant industry support, although in the long run national treatment might need to be applied to foreign providers. He felt that one way of strengthening competition would be by allowing infant national industries to use networks set up by foreign operators. This he likened to a technology transfer.

84. The representative of Egypt said that the concept of national treatment was highly controversial, as indicated by the fact that it had been subjected to numerous caveats in the Montreal text. In view of the regulatory structures typically found in the area of telecommunications, policies governing state-sanctioned monopolies were likely to bear importantly on the questions of whether and how national treatment could apply in the sector. Market entry in telecommunications was usually based on licensing or various forms of authorization which were closely linked to the activities of public monopolies. The concept of national treatment
seemed more appropriate in competitive market conditions. It was the public entity character of telecommunications—particularly in developing countries—which dominated the largely trade-oriented objectives of national treatment provisions. Indeed, telecommunications was not a sector that was purely governed by trade considerations, as these were in fact quite recent. He described enhanced telecommunications as comprising services which, while not interfering with the content of a message, could affect its form through, for example, a computer application (i.e. packet switching). He questioned the appropriateness of the application of national treatment for enhanced services, particularly in view of the weakness of telecommunications infrastructures in many developing countries. Such weaknesses would certainly govern the level of market entry which national regulatory authorities would allow. It was highly relevant to raise in regard to national treatment the issues of the enhancement of indigenous services capabilities in developing countries and their increasing participation in world services trade.

85. The representative of Malaysia said that under conditions of monopoly provision, the concepts of market access and of national treatment were difficult to approach. As Malaysia did not intend in the near future to allow foreign telecommunications services providers to gain market access, the application of national treatment was not possible. He indicated, however, that Malaysia's telecommunications market was not entirely closed. While the provision of basic and enhanced services would be entrusted to a state-sanctioned monopoly, there was still a need for foreign participation in the process of building up and upgrading the country's network infrastructure, particularly with a view to enhance the ability to provide value-added services. Two Malaysian firms had been set up as joint ventures with foreign suppliers to promote technology transfers. The resulting services were, however, still provided by the national monopoly.

86. The representative of Japan said that his delegation viewed the concept of national treatment as a bare minimum. It was crucial to secure the non-discriminatory application of any regulatory measures in the field of telecommunications. National treatment on its own might not suffice in providing adequate degrees of market access. The need to secure a free flow of information was also very important in the sector, particularly as information itself was often a key component of the telecommunication service provided.

87. The representative of the United States felt that the definition of enhanced services provided by the representative of Egypt was one which was not in line with the regulatory structure which applied in his country's telecommunications sector. In particular, the use of packet switching was a mode of communicating a basic service rather than an enhanced service. The definition of enhanced services contained in paragraph 9 of MTN.GNS/W/52 more closely matched his delegation's definition of such services. He recalled that because telecommunications services were
provided in many countries by monopolies, it simply had to be recognized that the absence of competition in such markets meant that national treatment had little relevance for foreign service providers.

88. The representative of Sweden, speaking on behalf of the Nordic countries, said that extensive trade in telecommunications already took place and basically hinged on access to carrier networks. This in turn was contingent on the technical possibility to interconnect which was a feature quite peculiar to the provision of enhanced services. Providing market access did raise some additional questions such as the physical capacity of the system. Some services might require leasing of circuits on a permanent basis - if the infrastructure was insufficient or unavailable market access would clearly be difficult. Whatever the physical limitations, it appeared that to the extent that market access was available, the crucial criterion was that it should be provided on a non-discriminatory basis and on clear and transparent terms. Additionally, he noted that technical standards played an important role. Foreign providers hooking up to the network had to live up to requirements which prevented technical damage to the network or rules concerning for instance data security and protection of privacy. As to the mode of delivery, the provider was probably the best judge of which mode best suited his activity. Accessing data-bases could be done either domestically or across borders depending on the location of the data-base. In cases where storing data and/or processing it abroad was prohibited, establishment seemed a relevant mode of delivery. All modes of delivery were thus relevant to telecommunications trade depending on the type of services being provided and on the regulatory environment. National treatment in telecommunications would mean that foreign providers would be able to gain access to the network and use the network as an intermediary to provide their services on the same terms and conditions as a national company. The steps needed to achieve national treatment related to the question of market access and progressive liberalization. In other words, if the service could be provided on a competitive basis amongst nationals, national treatment would be axiomatic if foreigners were also allowed to compete. It was no more difficult than putting foreigners and nationals on an equal-footing and ensuring equality of competitive opportunity, the only proviso being the possible existence of clear and transparent domestic preferences. The market access aspect was very important in discussing national treatment. If there was a statutory monopoly in certain market segments, then national treatment would in effect be a ban on both domestic and foreign suppliers. It followed that non-discrimination and m.f.n. would be fulfilled, i.e. all signatories would receive the same treatment and there would be non-discrimination among potential suppliers. It was clear therefore that national treatment, non-discrimination, m.f.n. and market access were interrelated.
89. The representative of Jamaica, in response to comments made by the representative of Sweden, said that foreign providers could only expect to be treated like domestic firms if and when they had been allowed to compete. While the concepts of national treatment and market access were closely related, he recalled that they were not identical. The representative of Sweden, speaking on behalf of the Nordic countries, agreed that market access would have to be granted before national treatment could apply.

90. The representative of Egypt suggested that delegations which had come forward with ideas on enhanced services should provide the GNS with illustrative lists of what services they had in mind in this regard.

91. The Chairman opened the floor to a discussion in the telecommunications sector of the application of m.f.n./non-discrimination as described in paragraph 7 of MTN.TNC/11.

92. The representative of Egypt said that the concept of m.f.n. was clearly one of the least developed elements in the Montreal text. He hoped that there would be an opportunity to address it - alongside other concepts which were not yet fully developed - at a later stage.

93. The representative of the European Communities said that there were issues of harmonization and of mutual recognition which might have implications for the application of m.f.n., particularly in the area of cross-border flows. Data privacy regulations were also relevant, given that public order considerations might mean that personal data could not be transmitted across borders without guarantees of equivalent protection for that data in a foreign country. There would also be a need in looking at the application of m.f.n. to consider its relationship with the numerous bilateral agreements which obtained in the area of enhanced telecommunications services.

94. The representative of Australia agreed that the issue of how existing bilateral telecommunications agreements would be captured by - or reflected in - the framework agreement might have to be addressed in the GNS. Such arrangements arose out of differences in regulatory structures - both for basic and enhanced services - across countries. It was obviously in the interest of countries with very open regimes governing the supply of services to enter into bilateral or plurilateral arrangements. The lack of detail which currently existed in MTN.TNC/11 with regard to this concept was a source of concern and more thought would need to be devoted to the possibility that the same telecommunications transactions could be covered both on a m.f.n. and a non-m.f.n. basis.

95. The representative of Brazil, noting that his delegation also wished to see the Group pursue the issue of the link between a future multilateral agreement and existing bilateral agreements in the area of telecommunications, said that there was a definite need to elaborate
further the possible meaning of the application of m.f.n. in the sector. He agreed that the issue of the harmonization of standards was highly relevant as technological advances could affect the basis on which operating licenses were granted to various operators.

96. The representative of Romania agreed that it was necessary to elaborate in greater detail the implementation modalities of m.f.n./non-discrimination. In its unconditional sense, this principle should constitute a basic element of the multilateral framework for trade in services. Progressive liberalization would need to be achieved on a non-discriminatory basis. It might be useful to consider derogations which might be allowed in support of development, one possibility being the possibility of a more favourable treatment for developing countries in the field of services. By way of derogation to the m.f.n. clause, countries could also agree to allow developing countries to engage in preferential arrangements on trade in services among themselves.

97. The Chairman opened the floor to a discussion in the telecommunications sector of the application of market access as described in paragraph 7 of MTN.TNC/11.

98. The representative of Switzerland said that the concept of market access was one of the very objectives of a future services agreement. Under conditions of market access, firms would have the opportunity to provide and obtain their services in a competitive environment. Besides relating to objectives such as the protection of intellectual property, protection of data, choice of technology, market access contained two aspects: firstly, market access for the benefit of services exporters or sellers and, secondly, market access from the importer's or purchaser's point of view, including access to information. While both aspects were of equal importance, market access in telecommunications would mean above all the possibility of using existing telecommunications infrastructures, i.e. the right of both national and foreign users to be connected to national and international networks and, if so needed, to leased lines on a non-discriminatory basis. Such access could of course not be expected in developing countries which did not have leasing capacities. Finally, he recalled that Ministers at Montreal had established a close link between market access and the preferred mode of delivery.

99. The representative of Egypt said that the concept of market access as envisaged in the Montreal text included two specific ideas which needed to be further clarified: firstly, that of the conditions of market access and, secondly, that of the definition of trade in services. There were, in addition, definitional problems specific to telecommunications, with important distinctions having to be drawn between "pure" telecommunications
services and services which had a significant telecommunications component attached to them. He provided a listing of what Egypt considered to be enhanced telecommunications services, including packet switching with code or protocol changes; radio paging; asynchronous protocol conversions; telenet and private-switched services; telexes, store and forward; telepost services, electronic text or postal mailgrams; and electronic mail language translation. All these services did not interfere with the information content of a message but were enhanced in the sense that they represented more than point to point transmission. If these were the types of services for which market access was sought, the question of the preferred mode of delivery assumed some importance. As well, questions of establishment and of non-establishment rights were of particular relevance in this regard, although both questions should in his view be outside the realm of the negotiations and remain the prerogatives of states. He linked the issue of access to networks to the host of infrastructural problems which most developing countries faced in the sector, adding that their increased participation in world telecommunications depended crucially on the state of their network infrastructure. An important challenge in the negotiations was to find ways of enhancing infrastructural development in developing countries through a more reasonable - both for providers and recipients - access to modern technology and know-how. There should be some commitment on the part of developed countries not to restrict various technological exports to developing countries. A related consideration in regard to access to technology concerned the practices of market operators. These needed to be made more transparent and compatible with developmental objectives. Ways would also need to be found of promoting developing countries' exporting capabilities in the sector. Although the scope for such exports was at present in most countries quite weak, the enhancement of developing countries' telecommunications capabilities could well promote their exports of telecommunications-dependant goods and services.

100. The representative of India said that in listing the market access concept, attention had to be drawn to the Montreal text which qualified the concept in two ways by noting that it had: (i) to be consistent with the provisions of the multilateral framework and (ii) in accordance with the definition of trade in services. It was therefore premature in his view to discuss market access when the Group had not reached a satisfactory level of clarity on both issues. The issue of the preferred mode of delivery also required further clarification as it related to establishment/non-establishment as well as to factor mobility.

101. The representative of Jamaica addressed the question of foreign services as described in the Montreal text, saying that he considered it as relating to international - i.e. cross-border - trade in the traditional balance of payments sense. However, when rights of establishment were considered, the accompanying investment inflows would appear on the capital account and not the current account. The issue of domestic services capacities was important in assessing the implications of market access, particularly as it affected the developmental mandate of the negotiations.
Market access could not be looked upon in isolation but needed to be consistent both with the other provisions of the multilateral framework and the overall policy objectives of countries. The Montreal text spoke of market access being made available to signatories; it was important for Group members to have a common understanding of what the word signatories meant. On the issue of the preferred mode of delivery, he asked whether by virtue of having been granted market access, foreign services providers would enjoy some discretion in using various carriage facilities within the host country. He wondered whether, in light of the list of enhanced services which the Egyptian delegate had described, the Universal Postal Union should be present in the room.

102. The representative of Brazil said that telecommunications was a mode of delivery in itself, so that the issue of a preferred mode of delivery was somewhat difficult to address in the sector. His delegation was concerned by the idea that providers should be able to render their services by using their own standards. Were this discretion to be allowed, it might imply the need for importing countries to adapt to such standards by means of changing their facilities. He wondered whether the issue of standards should be left to each operator, recalling that developing countries relied importantly on the adoption of international standards. He was also concerned by the idea of allowing enhanced services to be imported, particularly in developing countries. The notion of cross-subsidization also had to be addressed in regard to infrastructural development needs; since such needs were usually pressing in developing countries, regulatory authorities should be able to maintain under either monopoly rules or exclusive rights the ability to engage in cross-subsidization.

103. The Chairman invited comments on the application of the concept of the increasing participation of developing countries, as contained in sub-paragraph (i) of paragraph 7 in MTN.TNC/11.

104. The representative of Egypt said that one of the basic issues conditioning the participation of developing countries in the sector related to the efficiency of infrastructures. Another important issue for discussion under this heading was that of financial support. Financial constraints had become increasingly binding for developing countries, with serious implications for the upgrading of both rural and urban infrastructural projects. It was typically the responsibility of public monopolies in developing countries to execute and oversee development programmes in the sector through various practices such as cross-subsidization. He emphasized that deficiencies in network infrastructures could also affect foreign service providers by limiting the degree of market access that could be achieved.

105. The representative of the United States indicated that all but one of the telecommunications services described by the Egyptian delegate as enhanced were considered as basic services by regulatory authorities in
the United States. He felt that such differences of interpretation revealed the definitional problems in the sector. The Secretariat had laid out useful questions in regard to the ability of developing countries to increase their participation in world services exports. The Montreal text had spoken about the access of developing countries to industrialized countries' networks. No restrictions applied in respect of access to the United States' market. He emphasized the critical role which the development of a healthy telecommunications infrastructure played in overall economic development. Not only did telecommunications affect the ability to provide important services in high technology areas, it was also instrumental for health, education and overall communications purposes. In many developing countries, national telecommunications systems were less reliable and sophisticated than in industrialized countries and the greater part of revenues in the sector was generated by international calls. Moreover, in many instances, a call from a developing country network was more efficiently produced within the country by switching it in a foreign country, thereby increasing its price.

106. One of the key questions in the sector was whether allowing for competition in the provision of enhanced services would divert monopoly revenues. The question was a somewhat academic one in many developing countries given that the lack of user demand for such services typically reflected the inadequacy of existing facilities. It was unrealistic to expect that countries which had enhanced services providers who wished to have access to a basic network would require developing countries to expand their basic networks in such a way as to allow foreign enhanced services to be provided. The representative of Egypt had raised the relevant issue, i.e. that of the role of financial assistance and of foreign investment in network infrastructure to enhance developing country capabilities in the sector. While the ability to obtain technical and financial assistance was not necessarily in the direct purview of the GNS, it was still highly relevant to the development needs of developing countries. The case for providing access to suppliers of enhanced services hinged importantly on the profitability of the network itself. In instances when deregulation had been undertaken by allowing for the competitive provision of enhanced services, the evidence suggested that monopoly revenues were greater on average than when the monopoly itself provided such services. This he described as a practical consequence of competition which developing countries should take into account in attempting not only to improve their overall network and transportation systems in telecommunications, but also to provide the same services in foreign countries. There were already a number of developing countries that had become effective exporters of enhanced telecommunications services. There were clear returns on investment in new technology that developing countries were able to make either through financial assistance or through the priorities of their investment systems. Such investments had, in turn, direct effects on the growth of an economy as well as on the users of telecommunications services. This should be the basis for considering the priority which should be attached not only to network development but also to competition.
in the sector in view of the practical financial consequences which went beyond the development objectives that also had to be pursued in the sector.

107. The representative of Brazil said that his delegation attached the greatest importance to the concept of the increasing participation of developing countries. Developing countries needed to have greater access to modern technology. This was evidenced by the inability of some countries to sell their services simply because they could not meet international quality and/or technical standards. At the same time, when developing countries did not have access to the technology that was embodied in services imports, it was difficult to see how such imports could contribute to national development. A multilateral framework should contain some provisions that would aim at ensuring the access of developing countries to the latest technologies. He also recognized the need to make sector-specific provisions in this regard given that technological considerations took on various forms across sectors. Finally, he emphasized the importance of providing developing countries with appropriate levels of financial support with a view to increasing their participation in international trade in services, adding that the modalities of such support could be discussed for possible inclusion in a framework agreement.

108. The representative of Nigeria spoke of the gap which separated - both in quality and quantity terms - developed and developing countries in the area of telecommunications. This gap was mainly caused by the lack of - or inadequacy in - network infrastructures in developing countries. These were very costly to put in place and, whenever available, could become rapidly obsolete due to rapid technological changes. Developing countries acknowledged that telecommunications was a vitally important tool in the process of development. There was a need, therefore, to address in the GNS the range of issues relating to access to technology.

109. The representative of Mexico said that the world telecommunications market reached $4.45 billion at the end of 1984, 65 per cent of which related to telecommunications services, 18 per cent to communications equipment, 13 per cent to telecommunications equipment and the remainder to various computer services. Developing countries accounted for about 10 per cent of the world’s telecommunications equipment market. He said that there were various ways to set up the required telecommunications infrastructure, most of which implied a need for greater financial assistance. Infant industry considerations also seemed relevant, given that considerable investments were required to build up indigenous telecommunications capabilities. It was quite possible for developed countries to engage in autonomous liberalization so as to provide developing countries with more time to develop their competitive abilities in the sector.
110. The representative of Hungary agreed with the representative of the United States over the wide economic and social implications of having an efficient national telecommunications sector. Developing countries were not alone in being affected by a lack of access to new technology in the telecommunications field. He agreed with the representative of Brazil on the consequences which restrictions on access to technology could have on countries' socio-economic prospects. Such restrictions, moreover, could even hinder the ability of countries to increase their imports of telecommunications equipment and services. Hungary's difficulties in gaining access to digital switching equipment had affected the development of its domestic voice telephony services.

111. The representative of India said that in view of the language contained in the MTN.TNC/11 regarding the increasing participation of developing countries, there were some major issues requiring consideration for their possible inclusion in a framework. These related, firstly, to the broad question of access to technology, which should be seen as the prime determinant of the ability of developing countries to participate in - and expand their share of- the world services market. A second issue related to the question of standards. While most developing countries subscribed to international standards, the use by private operators of different standards could affect the competitiveness of developing countries' telecommunications systems. A third question which needed to be treated at the level of the framework related to financial issues, while a fourth pertained to the possibility for autonomous liberalization of market access for developing countries.

112. The representative of Jamaica noted that the increasing participation of developing countries was linked in a most direct way to the very mandate of the GNS in respect of economic growth and development. His delegation felt that a multilateral framework should include specific modalities to facilitate such increased participation. One clear means of doing so consisted of strengthening and improving domestic telecommunications infrastructures. This would assist the process of stimulating the overall development of service sector capabilities in developing countries and provide a capacity for exporting telecommunications-dependent services. Provisions should allow for autonomous liberalization of market access in favour of developing countries. It was doubtful, however, whether such market access could serve a useful purpose without a prior strengthening of the domestic telecommunications capacities of developing countries.

113. The representative of Argentina said that if developing countries were to participate more actively in the world market for services, particularly telecommunications services, it was obvious that there would be a need for an intensive stage of technological improvement making possible a consolidation of local services capabilities. He felt that coordination or integration agreements among developing countries could be a useful avenue to pursue in regard to such a consolidation process. This might involve the provision of an exception to the general rules of the framework.
114. The representative of the European Communities felt that the Group should avoid an overly rigid interpretation of where the objectives and needs of developed and developing countries lay in regard to telecommunications services or to services trade more generally. He stressed the importance of the efficiency and competitiveness elements in respect of the concept under discussion, adding that the increasing participation of developing countries should not be looked upon as producing a less efficient, more monopolistic approach to telecommunications than currently obtained. Rather, the proper focus should be the efficient competitive provision of services within the developing countries. He agreed that telecommunications was a sector in which a distinction could be made between access to various forms of technology, GNS discussions dealing more with what could be termed "hard" technology. Problems of access to such technology were different than those applying to know-how which were largely embodied in human capital. In addition, hard technology was embodied in equipment and procedures which were protected by intellectual property rights, with important legal and strategic implications. The GNS could not be expected to develop binding obligations with respect to access to technology or technology transfers. What Group members could do, however, was to reflect on how best to ensure that the liberalization which resulted from the framework be of a nature which contributed to the objectives contained in paragraph 7(f) of MTN.TNC/11. It might be that telecommunications could require a specific solution because of the different types of technology which were found in the sector. Group members should refrain from attempting to develop binding commitments which in all likelihood might prove both impossible to negotiate and apply. He agreed with the representative of the United States that while the issue of financial support was relevant to the discussion, it did not fall within the purview of the mandate of the GNS.

115. The representative of Malaysia said that his delegation placed more emphasis on the first element of paragraph 7(f), i.e. that pertaining to the strengthening of domestic services capacities, than on the objective of increasing developing countries' exports of services. Malaysia was in favour of improving the efficiency and competitiveness of its services sector, a fact reflected by the recent move towards privatization in the telecommunications area. One positive feature of this privatization related to the investment which it had allowed, particularly in respect of service computerization. While the provision of telecommunications remained in the hands of a state-sanctioned monopoly, Malaysia had recognized the need to rely on some degree of foreign participation while engaging in structural reform in the sector.

116. The representative of Indonesia recognized the difficulties of attempting to delineate modalities for the increasing participation of developing countries in the highly complex field of telecommunications. He recalled that developing countries had always been net importers of services, be they traditional services such as shipping, financial services or technology-intensive services. Services were imported because they were
necessary for developmental purposes. An important question consisted of determining what provisions aimed at increasing the participation of developing countries in world services trade should contain. Only when such a question had been answered could a meaningful examination of various concepts take place. Everything in this process had to be related to the pace of development of signatory countries so that liberalization would proceed in stages, i.e. be progressive. Other elements to be looked at under the heading of increasing participation for developing countries included safeguards and exceptions. While the scope for progressive liberalization in a particular sector could prove difficult when looked at in broad terms, attention should be devoted to assessing the scope for liberalizing specific transactions.

117. The representative of Peru agreed with a number of delegations as to the importance of an increased participation of developing countries in world services trade. This objective could only be achieved in the telecommunications field through proper access to high technology and by means of sufficient financial support and investment making it possible for developing countries to achieve an appropriate level of competitiveness. He shared the view of the representative of Argentina on the need for regional cooperation efforts among developing countries in the telecommunications area.

118. The representative of Korea felt that differences in competitive strengths between developed and developing countries had to be considered in approaching the concept of the increasing participation of developing countries. Even though strict borderlines between basic and enhanced services were difficult to draw, the latter category still encompassed a wide range of activities in which developed countries enjoyed a significant competitive edge over developing countries. The transfer of telecommunications technology to developing countries was in his view crucially important. The free movement of all factors of production - capital, labour and technology - should be harmonized at a proper rate taking into account the proper level of telecommunications development of individual countries.

119. The representative of Yugoslavia said that her delegation shared the view of others as regarded the importance of this concept for the future framework agreement on services. The concept of increased participation had strong links with that of progressive liberalization. Some form of technical assistance on the part of developed countries was essential both to help in determining which areas of telecommunications contributed most to the development process and to move the negotiating process forward in the sector.

120. The representative of Brazil welcomed the fact that several delegations had underlined the importance of financial assistance to developing countries in the telecommunications field. The relevance of financial issues to the services negotiations was implicit in Part II of the Punta del Este mandate when it spoke of economic growth and development
objectives. His delegation viewed intellectual property rights as a problem in relation to the diffusion of technology and to the ability of developing countries to participate more actively in world services trade, particularly as the use of proprietary technology could greatly restrict the ability of all countries to share in a fair manner in such trade.

121. The representative of Romania, in response to a question raised by the representative of the European Communities, said that there were a few ways to facilitate access to modern technology for the benefit of developing countries. For one, it was necessary not to impose any restrictions on the transfer of technology to developing countries. Another method would be to increase technical assistance to developing countries in introducing new technologies in the domestic economy.

122. The representative of Canada agreed that it was difficult to approach the concept of the increasing participation of developing countries in isolation of other concepts. On the issue of financial and technical assistance, he presumed that those anxious to see changes in these areas were also raising them in appropriate fora, such as the World Bank or the UNDP. He recalled that such matters related to another part of the Punta del Este Declaration when account was taken of what could be achieved in other bodies. Technical assistance and perhaps further financial assistance could be appropriate, particularly for the least developed countries. Such assistance, however, would have to form part of an overall plan whose origin would lie in receiving countries themselves. The issue of technology was important for all countries, developed and developing, which were net importers of services, as was that of intellectual property protection which could bear importantly on inward transfers of technology. He wondered whether there were trade policy obstacles that applied differently to service suppliers of developing countries as opposed to other suppliers.

123. The representative of Egypt felt that the issue of trade policy instruments in services trade would depend on the definition of such trade and in particular on the degree of mobility of production factors. The granting of visas or of work permits could thus, in some instances, constitute discriminatory barriers for services providers from developing countries. While developing countries were not seeking within the context of negotiations proper to obtain either technical or financial assistance, they were nonetheless keen to ensure that no restrictions could discourage the transfer of technology. A related concern was the potentially restrictive practices of firms in dominant positions through non-compliance with existing standards or other practices in the telecommunications area. Services providers should not only enjoy rights but undertake some obligations also. He agreed that the GNS was perhaps not the appropriate forum to discuss financial issues but felt that the issue was sufficiently compelling to ensure that any provisions did not aggravate the financial situation of developing countries in the sector. For example, the ability of monopoly providers to engage in cross-subsidization would need to be retained.
124. The Chairman opened the floor to a joint discussion of the application in the telecommunications sector of safeguards and exceptions as well as of the regulatory situation, as described in paragraph 7 of MTN.TNC/11.

125. The representative of Egypt said that appropriate provisions would need in due course to be developed in regard to safeguards and exceptions. The main idea behind the latter concept was that regulatory regimes in developing countries were often not as developed as in developing countries, although the question arose somewhat differently in telecommunications given that the latter group of countries had in some instances engaged in a significantly greater degree of deregulation. The right of countries to regulate different services sectors was recognized in the Group's mandate, and one of the recognized means for such regulation was the granting of exclusive rights. The existence of telecommunications monopolies should not be viewed as an impediment to trade in the sector but rather as a regulatory mechanism. The right of developing countries to introduce new regulations also needed to be recognized in the sector, particularly as regards the issues of standards and of general conditions governing market access for various telecommunications services.

126. The representative of the United States referred to question 6 in MTN.GNS/W/51, which related to the role of national monopolies in the sector. His delegation did not wish to challenge the existence of telecommunications monopolies but might challenge some of the ways in which such monopolies behaved. It was, in other words, necessary to ensure against the potential abuses of monopoly provision. This concern applied especially in the telecommunications area where public monopolies did engage in the provision of services that could be provided competitively. The ability of monopolies to cross-subsidize their revenues for the provision of enhanced services, combined with their position as the sole suppliers of basic services, provided some scope for anti-competitive behaviour. It was important to have some form of provision in an agreement that dealt with such potential behaviour. To ensure against recourse to cross-subsidization, there would appear to be a need for accounting and disclosure obligations on the part of monopolies.

127. The representative of Egypt agreed that the question of market distorting practices should be of interest to all Group members. The context in which the question of national monopolies had been raised in MTN.GNS/W/51 was somewhat different from that of the Montreal text in which monopolies were referred to in relation to the regulatory situation. In the Secretariat's questionnaire, the focus was more on monopolies as barriers to market access as opposed to instruments of regulatory policies.

128. The representative of India said that both safeguards and exceptions as well as the regulatory situation were germane to a discussion of trade in telecommunications services. It would be difficult to gain a better understanding of what might be needed by way of safeguards and exceptions.
without some clarity as to the definition of the transactions or activities under discussion. The applicability to the sector of both concepts could therefore only be considered at a later stage of the negotiations.

129. The representative of Brazil said that the Group was not at a stage of deliberations permitting a detailed examination of what might be needed in respect of safeguard and exception provisions, not least because no clear understanding existed as to the precise nature of telecommunications transactions to which such provisions could be addressed. For instance, the need for safeguard action for balance of payments reasons might well be different depending on whether the provision of basic or enhanced services were being discussed. Similar concerns applied to the range of security and strategic concerns in the sector. He emphasized however that the issues of safeguards and exceptions were relevant in the telecommunications field, particularly in view of the competitive gap between developed and developing countries in the sector. Paragraph 7(h) of the Montreal text appeared to have been written with the particular case of telecommunications in mind and was therefore of central relevance in the sector.

130. The representative of European Communities agreed with the representative of the United States that the existence of monopolies in the telecommunications field was a sovereign right and was not a subject for discussion in the Group. The concern rather was over the potential abuse of monopoly positions. He added to this concern that of the potential abuse of dominant positions, which was a real issue in telecommunications. Dominant positions per se were not a problem but, as for monopolies, the behaviour of dominant entities could prove problematic. It was important in respect of safeguards and exceptions to look at the particularities of telecommunications which might suggest the need for specific provisions. He emphasized that safeguards and exceptions were, by definition, narrowly drawn. He recalled that the ITU had foreseen certain specific safeguard provisions which were either technical in nature or related to the particular ways in which networks operated. Issues such as the security of network operation, the maintenance of network integrity or national and international emergencies were pertinent in this regard. He stressed the importance of taking such provisions into account to ensure that they did not conflict with obligations arising out of the current negotiations, and vice versa. While cultural policy objectives in relation to the telecommunications sector had been mentioned by a number of participants, exceptions in this area would also have to be drawn narrowly. He was personally unconvinced that there were cultural policy considerations which applied to the broad range of telecommunications services. There were however very real ones in certain segments of the audio-visual sector and it was important to ensure that legitimate cultural policy objectives were not undermined by commitments made in the framework.

131. The representative of Peru said that while much further thought would have to be given to the concepts under discussion, his delegation felt that the need for safeguards and exceptions was greatly pertinent in the telecommunications sector.
132. The representative of the United States agreed fully with the approach outlined by the representative of the European Communities in respect of safeguards and exceptions. There had to be care in prescribing what all Group members would probably consider as necessary provisions in this area. Such care should perhaps be somewhat greater than that which applied to the drafting of Article XX of the General Agreement. He reminded Group members of the last sentence of paragraph 7(h), noting that more regulation would have to be consistent with the provisions of the framework. The process of deregulation in the United States' telecommunications sector had required more regulation in some aspects. Finally, he said that he did not completely share the views expressed by the representative of the European Communities on the issue of firms in dominant positions. An understanding providing for a greater degree of competition in services would likely reduce the likelihood of firms being in dominant positions.

133. The representative of Hungary felt that care should also be taken in drafting Article XXI-type provisions in the services area given the range of national security concerns which could be invoked to restrict the flow of technology in the telecommunications area. He suggested that Group members give some thought to the idea of applying time limits to any possible exceptions.

134. The representative of Canada agreed to the need for safeguard and exception provisions in the area of telecommunications, noting that such provisions should ensure that there be no harm made to the network as a result of the current exercise. Thus, any equipment or services which violated this requirement could be disconnected from the network. With regard to the regulatory situation, he felt that in view of the importance of monopolies in the sector, the issues of the separation of regulators and service providers, as well as safeguards to prevent monopolies from engaging in anti-competitive activities outside their mandated areas would need to be addressed. The issue of cross-subsidization was also an area of concern, particularly as it might allow the dumping of enhanced services.

135. The representative of Japan said that four years ago the country's telecommunications sector had been deregulated with allowance made for foreign competition in the sector. The introduction of market forces in the sector had proven successful so far, as efficiency gains had translated into lower customer charges.

136. The representative of Korea felt that safeguard and exception provisions were desirable in view of the legitimate cultural and national security concerns which applied in the telecommunications sector. As well, the monopolization of information by foreign countries could be seen as justifying safeguard action. He stressed however that any provisions in this regard should be allowed only on a temporary basis.
137. The representative of Malaysia asked the representative of Japan what rationale had prompted the country's regulatory authorities to open up the sector by taking service provision out of the hands of the state monopoly. The representative of Japan said that the main reasons for liberalizing was the need to improve efficiency and the belief that the natural monopoly model had reached its limits.

138. The representative of Egypt reiterated the usefulness of drawing up illustrative lists of what countries considered various segments of the telecommunications market to comprise. He hoped that there would be an opportunity to address at a later stage some of the issues which had been left open in the current discussion, not least because telecommunications affected the provision of so many other services.

139. The Chairman closed the discussion on telecommunications services. As agreed, the second sector to be examined would be construction and engineering services (CES) and three related documents were before the Group: "Tests of the Applicability of Concepts to the Construction Sector" prepared by the delegation of Mexico (MTN.GNS/W/57), "Construction and Engineering Services" prepared by the Secretariat (MTN.GNS/W/53), and, the list of questions that might be addressed in the examination of concepts (MTN.GNS/W/51). At the request of the Chairman, the Secretariat introduced document MTN.GNS/W/53.

140. In presenting MTN.GNS/W/57, the representative of Mexico said that it did not prejudge the position of his delegation. It represented an effort to reflect the positions of all participants in past discussions in the GNS. Different modalities of application of concepts to the sector were examined in the document and the five activities indicated in the Secretariat's reference list were covered. Two hypotheses were set out in the document according to which trade in services could be defined to include the cross-border movement of production factors for either a limited or indefinite duration. These two hypotheses would appear to be the most relevant ones for the sector, and referred to the section of the document dealing with general construction work for buildings in this respect. He closed by re-stating the conclusions contained in MTN.GNS/W/57.

141. The representative of Brazil shared some of the concerns expressed in the Mexican document, especially the recognition that for developing countries, information, know-how and organization were important elements to be considered in the discussions. To those elements, he added financial support as being of special relevance.

142. The representative of Egypt said that the CES sector was of particular interest to developing countries. He pointed out that distinction needs to be made between the two segments of the sector - namely, engineering and physical construction - and that there is a need to deal with each of them separately in the negotiations. Although the first
represents a small percentage of any project cost, however, it usually influences the sourcing of inputs going into physical construction since developed countries had an overwhelmingly dominant position in world markets of engineering services, it was difficult for developing countries to expand their exports of construction services in foreign markets. In physical construction developing countries had some export potential, even though they were still the main markets for exports of the dominant developed country construction firms. The exports of firms from developing countries were often deterred by barriers in developed country markets such as restrictions on labour movements, building norms and public procurement.

143. The representative of Korea said that a framework dealing with construction and engineering services should contribute to the reduction of the various types of regulations applying to the sector in areas such as immigration, provincial budgeting and accounting, government procurement, foreign direct investment, trade, and general construction. Laws relating to the mobility of production factors such as personnel and equipment should be given special attention since such mobility was essential to the delivery of CES. Regarding the classification of CES, he agreed with the Secretariat's reference list where engineering services figured under business services while construction services included site preparation, new constructions, installation and assembly work, building completion, and maintenance and repair of fixed structures. He said that factor mobility had to be provided for in any definition of CES, and that liberalization in the sector should concentrate on lifting related restrictions. In accordance with MTN.TNC/11, the provision of services in the sector should be examined with regard to cross-border movement of service and payment, specificity of purpose, discreteness of transactions and limited duration. This would imply that personnel or equipment could not be transported or moved for a purpose other than a specific construction project. A definition of trade in construction and engineering services should therefore include the execution of specific projects by foreign contractors within a fixed period of time and making use of personnel, construction equipment and operating factors as deemed necessary.

144. The representative of the European Communities said that CES differed from telecommunication services in that they provided a specific product - i.e., a project. Conversely, in telecommunications, the nature of the product was continuous and not discrete. The construction sector in most countries was very important, with small scale construction representing the bulk of the activities. Important elements in the CES sector included: sub-contracting, company reputation through long-standing relationships between users and providers, limited duration of projects, movement of production factors, and the linkage between the services and the equipment involved in construction and engineering activities. He noted that CES activities could in some cases be regulated for macro-economic reasons such as the attenuation of counter-cyclical movement in an economy through the procurement of public works. Regarding the movement of production factors, one should not expect a general modification of immigration policies to
ensure the liberalization of trade in CES. Even though short-term, temporary movement of personnel and labour was often needed for the execution of CES projects, an element of continuity could become relevant where the awarding of contracts could be favourably influenced by some form of commercial presence in a local market.

145. The representative of India pointed out that in addition to the two forms of contracting mentioned in MTN.GNS/W/53, a third form was especially relevant for developing countries since it involved very little engineering design; namely, bid-and-construct. He said a clearer idea on definition was in order to know to which activity the concept was being applied at any particular juncture. He stressed that the discussions should cover trade in CES and not all transactions in the CES sector. From the point of view of developing countries, it was very significant that the international construction industry involved for the most part large projects undertaken by increasingly specialized firms. Another important feature of the sector was that the major markets were found in the developing countries and the major exporters were developed country firms. The linkage between the design and the physical construction phase was also very important, the former constituting only between 5 and 10 per cent of most projects, but influencing considerably the sourcing of inputs for the latter. Studies had shown that around 80 per cent of all international construction contracts were awarded to firms of the same nationality as the one providing the engineering and design services. As to financing, a great part was undertaken through multilateral funding or bilateral assistance and played a crucial role in determining the extent of the participation of developing country firms in the international markets. The mobility of production factors was central to the provision of CES, especially the physical construction phase. Since regulation in the sector usually had a very broad coverage (e.g. houses, airports), many government agencies could be involved in the setting of norms and standards. This, along with the fact that norms also varied on a project-by-project basis, would make it very difficult to assemble all relevant regulations in one place for transparency or other purposes.

146. The representative of Argentina warned against establishing too strong a link between the services provided and the equipment imported for a construction project. The progressive liberalization of CES should not necessarily imply the liberalization of related equipment. Such a link might interfere with the Uruguay Round negotiations on goods.

147. The representative of the United States said that the great variety of activities involved in the CES sector (e.g. engineering design, construction implementation, turn-key projects) should be reflected in the discussion of concepts, rules and principles as well as in the deliberations relating to the coverage of the framework agreement. He called attention to the fact that various forms of commercial presence in a foreign market might be necessary according to the field of activity firms may choose to engage in. Clearly, in the engineering design phase,
cross-border trade might be more relevant than establishment trade. He noted that joint-ventures were especially relevant for the CES sector not only for their contribution to the flow of technological know-how to the importing country, but also for their role in assisting firms to develop sufficient expertise in local laws, regulations and practices. The option of having a permanent presence in a foreign market was also becoming increasingly relevant, especially in cases where it could facilitate the establishment of a local reputation based on continuing business relationships. He agreed that the movement of labour and personnel was a crucial element in the delivery of CES, but underscored the difficulties which might be involved in the liberalization of those movements due to existing regulations.

148. The issue of subsidization was of great concern to his delegation, since his country did not participate in the current global trend towards increased public assistance to national firms. He drew a distinction between subsidization and development assistance, saying that the latter was justified as long as no distortions were introduced in the existing competitive environment. Government procurement constituted a very common practice in many countries and should be dealt with in the discussions on the CES sector. Also, certification and qualification of engineers and architects should be given careful consideration especially in cases where they were enforced in a discriminatory manner. Referring to the Mexican submission, he enquired how countries endowed with large labour supplies would be able to exert their comparative advantage in labour-intensive construction projects if workers were to receive local social security, unemployment, insurance, education, and other benefits. He also wondered how labour mobility could be treated in an eventual agreement while respecting the national policy objectives embodied in immigration laws and regulations. As to performance bonds, he enquired whether they should indeed be considered as trade impediments or as practical prudential measures and safeguards. He conceded that even though an asymmetry might exist between developed and developing countries with respect to the level and sheer number of regulations relating to investment and immigration, this asymmetry might merely point towards a higher level of transparency in countries with the most elaborate regulatory systems. Finally, he requested some clarification as to the precise meaning of the title "technician" in the CES context.

149. The representative of Hungary said that his country approached the discussions on the CES sector as both an importer and an exporter. These discussions should not be limited to cross-border aspects in which case they would not be of much relevance. As to the mobility of production factors essential to CES, he cited capital goods, financing, skilled and unskilled labour, know-how and information as relevant. He said that the direction of trade in the sector was primarily from developed to developing countries for many reasons, including different degrees of competitiveness and specialization as well as varying levels and types of protection. While he noted that immigration laws seemed to be considered by many
participants as sacrosanct, their subordination to trade rules being completely out of question, in his view such laws could be touched upon by some provisions of an eventual agreement. He thought that an understanding had been previously reached in the Group that laws were not to be immune from multilateral scrutiny even though the policy objectives underlying them could be. Immigration laws should not be an exception to this understanding and should be examined, especially as they could at times serve protectionist aims such as the exclusion of foreign professionals and labour from national markets.

150. Since much of construction activities were undertaken through sub-contracting, special attention should be given in the discussions to this aspect of CES activities. Due attention should also be given to differences in regulatory practices with respect to scope: federal regulations in some countries applied nationally whereas in others they applied on a regional basis. He said that permanent establishment should be discussed only as a possibility, and not as a pre-condition for the undertaking of local CES business. Referring to section 5 of the submission by the Mexican delegation, he said that providing for the extension of m.f.n. treatment only to developing countries would in effect constitute a new type of conditionality: countries could benefit from m.f.n. treatment on the condition that they qualified as developing countries.

151. The representative of Indonesia said that he subscribed to the division of the international CES sector into the two main segments under discussion and noted the strategic nature of engineering design in allocating much of the work to be undertaken in physical construction. He stressed the importance of labour mobility in the provision of CES services and called for flexibility in devising means to deal with it in an eventual agreement. Capital mobility was especially relevant in the case of joint-ventures.

152. The representative of Sweden, speaking on behalf of the Nordic countries, said that considerable effort on the part of governments and private associations had been devoted to the establishment of regionally or internationally acceptable technical standards and regulations for CES activities. The greater the progress in this area, the greater were the prospects for increased trade in CES. Harmonization efforts were hindered, however, by natural limitations such as climate and geology. An important difference between the CES and the telecommunications sectors was that in most countries, providers of CES services varied widely both in number and level of expertise. Monopolies did not seem to exist in most construction markets as was the case in the telecommunications sector.

153. Liberalization of trade in CES should not be envisaged as the full elimination of restrictions on the mobility of production factors, but should include provisions relating to the movement of personnel, capital and equipment which were essential for the provision of such services. CES
could be provided through many modes of delivery, including permanent establishment through a subsidiary, or the temporary, cross-border movement of equipment and personnel for the completion of a specific project. For the Nordic countries, national treatment, m.f.n./non-discrimination and market access were the key concepts for discussion of the CES sector in the GNS. Regional development policy constituted a crucial national policy objective for the Nordic countries, for whom the sparsely populated territories in the north required special consideration.

154. The representative of Canada said that the Secretariat document had launched the discussion in a most effective manner and found the section on "measures and practices" to be of special relevance. He stressed that the approach to the CES sector should be as general as possible. His country was, as many others, both an exporter and an importer of CES but did not fit the pattern described earlier where developed countries were primarily exporters to developing country markets. He considered both government procurement and government assistance as important issues to be examined by the Group.

155. The representative of Poland said that the CES sector played a crucial role in the economy of most countries. He agreed with other participants that the mobility of production factors was very important in the provision of CES and that immigration policies would be potential barriers to trade in the sector. He pointed out that the reputation of CES firms did not only depend on the possibility of local establishment, also mobility of labour could contribute to a good reputation in those cases where labour was the key component of the competitiveness of firms. For Poland, the mobility of both skilled and unskilled labour would need to be ensured for Polish companies to become sufficiently competitive in bidding for international contracts. Joint-ventures were also of great interest to his delegation, especially if they would involve additional forms of financing. The most important concepts to be discussed in the sectoral testing phase were m.f.n., national treatment, market access and transparency.

156. The representative of Yugoslavia agreed that the best way to discuss the applicability of concepts to the sector was to examine both physical construction and engineering design services. He stressed that the definition and the coverage of CES was very important as countries tended to specialize in different activities within the sector. He suggested the addition of maintenance and operation services to the item "professional services" in the Secretariat's reference list (MTN.GNS/W/50) and hydro-construction and construction management to the item "construction services". These items could have further sub-divisions such as dams, embankment channels, pools and ports in the case of hydro-construction. Greater precision in the activities involved in the sector would serve the interest of providing for greater concordance in the classifications adopted by the different participants. The construction sector employed 8.5 per cent of the work force in Yugoslavia, and its contribution to GNP
had reached 10 per cent (U.S.$ 2.5 billion). He agreed that traditional cross-border trade had relatively little relevance in the CES sector and that special attention should be devoted to the treatment of factor mobility. Ensuring permanent presence for developing country firms in developed country markets was of great interest to his delegation, especially if greater access to financing could be achieved through that presence. In that context, joint-ventures could also be very relevant.

157. The representative of Brazil, supported the view put forth by the representative of Argentina, that the establishment of a link between services trade and equipment trade in specific sectors could jeopardize the objectives of the negotiations in the GNS.

158. The Chairman opened the discussion on the application to the CES sector of particular concepts, principles and rules in accordance with paragraph 7 of MTN.TNC/11 starting with transparency.

159. The representative of Canada said that transparency in this area should apply to: building codes and related technical regulations and standards for construction techniques and materials, qualifications, procedures for work permits for temporary entry, procedures for establishment or different forms of commercial presence, government procurement, currency exchange and related matters, and tax regimes.

160. The representative of the European Communities said that very often the application of transparency would restrict itself to temporary factor mobility since relatively little permanent establishment occurred in the sector. The issue of building codes and material standards was a difficult one in CES since they varied widely among countries as well as within countries. Even though it should be desirable to arrive at a digestible compilation of regulations for transparency's sake, this effort should not constitute or imply a huge administrative burden for participants.

161. The representative of New Zealand said that transparency should be applicable to professional qualification and licensing regulations, environmental controls, building controls, standards and codes of practice. Controls could go beyond laws and regulations to include administrative guidelines. Also, a distinction should be made between laws relating to safety and consumer protection which were of wide application, and project specifications relating to the requirements of individual projects. Contact with local authorities should be ensured for foreign providers if necessary. Her country was in the process of codifying regional by-laws into one national building code confined primarily to safety and health aspects.

162. The representative of the United States said that many small localities in his country, as in many others, did not publish construction regulations. It could be useful, however, for small localities to have such regulations for distribution in one place. The difficulties involved
in obtaining local regulatory or administrative information had for a long time led to the need for companies to undertake joint ventures with local partners. The information burden was proportional to the size of the exporting/investing company and the extent to which the notification process itself was cumbersome.

163. The representative of Argentina agreed that the multitude of local, provincial and regional regulations was difficult to digest or compile at the national level. He stressed that a distinction should be drawn between regulations relating to market access and those relating to local standards to facilitate the undertaking of transparency obligations. These two types of regulations could imply two different levels of obligations, access regulations being the most important ones.

164. The representative of Australia said that most building standards and regulations were administered at local level. Attempting to provide for transparency by collecting all relevant norms at one single point could prove to be a very burdensome procedure. Clearly, some standards affected market access, but the difficulty would be to determine to what extent they did so. He contended that the problem with CES regulations had less to do with a lack of national treatment than with the sheer numbers of measures which existed in every country. Even when foreign companies were granted national treatment, their access to the local market could be complicated by a very cumbersome information-gathering process. He agreed with the representative of New Zealand that standard and regulation setting procedures should be removed as much as possible from the local level and brought to the national level. Areas where transparency would be particularly relevant included professional qualifications and licensing, temporary permits for personnel, and government procurement especially with relation to tendering procedures.

165. The representative of Korea said that transparency obligations should apply not only to laws and regulations but also to administrative practices and notification. This application should extend beyond measures relating directly to construction activities to include more general, practical restrictions such as immigration rules and regulations, or regulations relating to the movement of related equipment. The announcement of new regulations in an official gazette would be very useful but advance consultations should be avoided in order not to delay legislative processes.

166. The representative of Hungary said that ideally relevant laws, regulations and administrative guidelines should be published, but he recognized the limitations involved and the implications for a notification process. He said that if enquiry points were to vary as to their scope (e.g. national or sub-national) from country to country, firms from any two countries could in effect enjoy different (and not comparable) degrees of market access even after they had been both granted national treatment. Firms from countries with sub-national enquiry points, for example, would have a lesser information burden than firms from countries with national enquiry points.
167. The representative of Mexico said that transparency could potentially apply to all laws, regulations and administrative guidelines of a federal, state, provincial and cantonal nature. In many cases a complicating factor was that various government agencies shared responsibility for the regulation of CES trade. For developing countries, it would be extremely difficult to provide for the transparency of all relevant regulations since they would lack the resources to do it. He agreed with the representative of Argentina that only laws and regulations affecting market access directly should be subject to transparency provisions even though that would imply the inclusion within the purview of the agreement of investment and immigration regulations. Another area which deserved consideration in the context of transparency was that of explicit and implicit preferences for national firms.

168. The representative of Sweden, speaking on behalf of the Nordic countries, said that the CES sector was faced with a problem of regulatory volume and not of principle. To deal with such a problem, he suggested that it would be useful to explore procedures similar to those applying to information requirements in the Technical Barriers to Trade (TBT) Code. Regarding the question of the usefulness and form of an enquiry point, he said that what was needed was some form of repository which would collect and forward specific requests for information to relevant agencies.

169. The representative of the European Communities said that some of the local planning regulations (e.g. zoning, building rights, etc.) should not be subject to transparency obligations. Also, transparency should not depend on the regulatory structures of different participants, implying greater or lesser commitments according to the manner in which their regulations were structured. The fulfilment of expansion of trade and progressive liberalization should be accomplished through greater but equitable transparency, implying a comparable level of commitments for all participants.

170. The representative of Switzerland said the concept of transparency was the cornerstone of any agreement on trade in services. To be effective, transparency obligations should be manageable, covering therefore a limited number of relevant regulations. It should be expected that participants would have some difficulty in agreeing on the ultimate content of a provision on transparency since they each had different and changing legislative philosophies. The suggestion to examine, in this context, more closely the TBT Code was a good one, particularly as concerned the article dealing with non-governmental rules and standards such as those of self-regulatory bodies and associations (e.g. engineering associations). Even though the establishment of an information centre for the CES sector would have its drawbacks, it could provide a more solid foundation on which to base the undertaking of transparency commitments.

171. The representative of Egypt agreed that the problem of regulatory volume could indeed be unmanageable. He found the idea of enquiry points appealing since that could be more easily achieved than the publication and
notification of all relevant laws and regulations. Certain information related to CES projects was usually provided through the bidding process and did not need to be covered by transparency commitments. Some precision was needed concerning the scope of application of transparency. It should not be confined to government rules, regulations and administrative guidelines but should also apply to the practices of market operators. There was a strong relationship between, for example, the engineering design phase and the physical construction phase of a project: in 80 per cent of the cases engineering design firms would source the inputs going into the physical execution of construction projects to construction firms of the same nationality. There was a need to distinguish between practices deriving from legitimate commercial considerations and those reflecting a certain degree of discrimination. He agreed that the purview of transparency should cover not only sector-specific laws, regulations and administrative guidelines but also measures of a broader nature such as immigration legislation.

172. The representative of Yugoslavia said that it would be difficult for his delegation to commit itself to any transparency formulation which went beyond the publication of relevant national laws and regulations in the various national languages of Yugoslavia. The assembly of all relevant information in one enquiry point would also be very difficult since Yugoslavia had not only regional and city regulations in place but also local regulations within different communities. He agreed that the TBT Code could serve as an useful example for the notification of standards and suggested that the dissemination of relevant information could be facilitated through international associations. Transparency was lacking with respect to qualification specifications necessary for the bidding process, especially those with respect to public works at the various sub-national levels (state, provincial, municipal, communal, etc.).

173. The representative of Japan noted that participants had different institutional or systemic approaches to CES sector regulation, even though in many cases local regulations seemed to be significant. In Japan the regulatory system was very centralized at the national level with respect to standards and technical regulations, local authorities engaging at most in the issuance of permits. He welcomed the idea of national enquiry points and the suggestion that non-governmental standards should be covered by transparency commitments whenever applicable.

174. The representative of India said that national enquiry points would be very difficult to implement due to the large volume of relevant regulations in most countries. He suggested that regulation which was tender-specific, appearing in the contracts on the basis of which CES projects were undertaken, should not be subject to transparency commitments. This was not the case with pre-qualification restrictions, or visa restrictions and professional qualifications in the case of CES projects involving the mobility of skilled and unskilled labour. A very selective approach should be adopted in determining the types of regulations for which transparency should apply. The suggestion made by
the representative of Argentina that only regulations relating to market access should be considered was perhaps a good starting point. He warned that even when regulations were published and available, difficulties remained as to the setting up of national enquiry points.

175. The representative of Hungary stressed that procedures on work permits were not only restrictive but also lacked transparency and should be given appropriate consideration in the deliberations of the Group.

176. The representative of Brazil said that the publication of relevant regulations was a very good first step in the direction of greater transparency in the sector. Even though some mechanism for the exchange of information was desirable, it was still very difficult to envisage the form it could take without knowing the regulatory scope of future transparency commitments.

177. The representative of Morocco agreed with the submission by Mexico that small localities often lacked published information relating to regulations in the CES and other sectors. Transparency was a basic element in the discussions on trade in CES and efforts were needed to define its form and scope.

178. The Chairman opened the discussion on the application of progressive liberalization, market access, national treatment, and m.f.n./non-discrimination to the CES sector.

179. The representative of Australia said that national treatment should include conditions attached to joint-venture commitments. These conditions could represent barriers to trade in CES in cases where the contractual requirements were very onerous, putting foreign services providers at a disadvantage in national markets. The central objective of national treatment should be equity, its underlying rationale being the promotion of efficiency. He disagreed with the interpretation put forth in the submission by Mexico that national treatment would be applicable only after market access had been granted to a foreign services provider. The progressiveness of liberalization should be achieved by adding a progressively larger number of activities to the list of transactions covered by market access provisions. Market access should be conceived to include the granting of national treatment. Granting both market access and national treatment at the same time would avoid a second round of negotiations to obtain national treatment once market access had been granted.

180. Since purchasing preference arrangements were very common in most countries, it could be expected that abolishing or attenuating such practices through the introduction of national treatment provisions in a future agreement would be opposed by many local services providers.
181. The representative of Korea said that progressive liberalization should be undertaken taking into account the level of economic development of participants and the effects that such liberalization could have on domestic CES firms. It was important to ensure a high level of market access to the greatest possible number of firms. National treatment should apply to all aspects of trade in CES, including the establishment of branches, licensing and registration, bidding procedures and the awarding of contracts. Many countries utilized licensing and registration as a means to control the domestic construction industry. Previous overseas performance of firms should be considered in the awarding of contracts. Preferential arrangements favouring national firms ran counter to the principle of national treatment and should be given special attention. Most-favoured-nation treatment should apply to the mobility of personnel, equipment and capital. Market access was the most important principle and should be applied as extensively as possible. In some cases, qualifications required for the bidding process or pre-qualification standards were very restrictive and made market access to foreign CES providers impossible even when national treatment was granted. Performance bonds were widely accepted in practice but different countries applied different standards to evaluate performance. Finally, the discussion of market access should include the consideration of different modes of delivery, commercial presence being of special relevance in the delivery of CES.

182. The representative of Jamaica said that the application of m.f.n. to CES should be such as to allow for preferential treatment being granted within the context of free trade arrangements. With respect to national treatment, attention should be devoted to the fact that often foreign firms benefiting from financial aid were exempted from local taxes by means of certain clauses in the aid contract whereas local firms were still subject to taxation - this clearly worked to the advantage of the foreign firm.

183. The representative of Mexico said that, as set out in the submission of his delegation in MTN.GNS/W/57, market access would have different meanings depending on the definition of trade in CES, e.g. whether the movement of production factors was accepted for a limited or indefinite duration. The same held true for progressive liberalization which, when applied to CES transactions involving the movement of production factors for a limited duration, could relate to the following elements: granting of temporary working visas, recognition of professional qualifications, temporary foreign direct investment, various discriminatory measures and other barriers to trade in CES. In accordance with MTN.TNC/11, progressive liberalization should provide the appropriate flexibility for individual developing countries to open fewer sectors or liberalize fewer types of transactions. National treatment should apply not only to firms established temporarily or indefinitely in the importing country, but also to construction workers, engineers and other professionals. Foreign firms should be granted the same treatment as domestic firms with respect to subsidies, employment requirements, foreign-exchange earnings, tax incentives, etc. Construction workers should be entitled to the same
benefits as national workers regarding, for example, social security and unemployment, whereas engineers and professionals should be enabled to practice fully in the importing country. As put forth in the submission by his delegation, there were three possibilities for m.f.n. treatment/non-discrimination. Two of those - optional and conditional - would by nature be accepted only by a small number of participants. The third possibility - unconditional m.f.n. - would be open to all participants and should lead to a larger participation.

184. The representative of Nigeria said that the movement of labour, whether temporary or not, skilled or unskilled, was essential for the delivery of CES and related barriers should be progressively removed. There should be no differentiation in the granting of progressive liberalization or market access whether the movement involved skilled or unskilled labour. The CES sector was capital-intensive and firms established in foreign markets should have access to local capital whenever necessary.

185. The representative of Japan said that the granting of licenses for CES projects should not be discriminatory. Freedom of establishment should be recognized along with the free flow of capital that was necessary to support the establishment of foreign firms. Once establishment had been granted, the conditions regarding bidding and the fulfilment of contracts would become relevant for the application of national treatment. There should be no institutional or technical barriers in that respect. In the implementation phase of a CES project, there should be freedom of movement relating to labour, equipment, and financing, especially with regard to joint ventures. The hiring of local labour could have an important employment creating effect in the final stages of projects and that should be considered in the discussions on the mobility of production factors. Along with the transfer of technological know-how and the creation and strengthening of domestic infrastructures, employment creation was one of the most important developmental aspects of the CES sector. He said his delegation agreed with the point made in MTN.GNS/W/53 that regulations relating to the physical mobility of persons were relevant where such mobility was crucial for the delivery of CES.

186. The representative of Egypt noted that, as indicated in MTN.GNS/W/53, developed country firms accounted for about ninety per cent of both the global market in construction and the engineering design. These two main sub-sectors of the CES sector would need to be treated differently if developing countries were expected to participate actively in CES sectoral commitments. The CES sector was very crucial in the development process and played an important role in the enhancement of indigenous scientific and technological capabilities. Many developing countries had implemented policies to foster the development of the sector, including policies to stimulate interaction between domestic and foreign CES providers. An unqualified introduction of foreign competition to their markets could, however, undermine the objective of such policies. Referring to a point
made by the representative of Australia, he said that even though national treatment was a concept that was closely related to the concept of efficiency, equity aspects would have to be taken into account, especially in the case of developing countries where the introduction of foreign competition could ultimately result in the elimination of many local firms.

187. The representative of Hong Kong said that there were five types of barriers to trade in CES which had been relevant in his country's experience: immigration restrictions on key staff, levy or tax on the importation of equipment or material, requirement to form associations with local firms, lack of "protection" of design and stringent registration or licensing requirements for the establishment of firms. Not all of these barriers would have to be addressed by the GNS as some of them related to matters other than trade in services. While he accepted the distinction between services and goods in CES activities, in his view certain restrictions applying to the movements of goods needed consideration whenever they affected the provision of services. For example, safety or health standards which might restrict the import of equipment or material needed for the execution of a CES contract should be examined as barriers to trade in CES. As to the mobility of skilled and unskilled labour, he said that ways should be found to provide for the greatest level of liberalization of trade while recognizing the legitimate objectives embodied in immigration policies. Also, the recognition of educational and professional qualifications was very relevant to trade in CES. Even though national treatment should be applied to as wide a range of services activities and sectors as possible, there were certain areas - such as the granting of social benefits to foreign workers - where its application would be very problematic. M.f.n. treatment should not imply that all interested providers would be awarded the same contract but that they all should be able to compete on equal terms. Special attention should also be devoted to transparency in the contract-awarding process in the government procurement area where considerations other than price levels (e.g. special expertise, previous experience) were important. Provisions of the Agreement on Government Procurement could be of relevance in this respect.

188. The representative of the United States said that provisions for trade in CES which were similar in content to those of the Agreement on Government Procurement were perceived as insufficient by his country's private sector; the reason being that practices such as 'gentlemen's agreements' were just as important as procurement in excluding foreign providers from national markets. The formulation relating to market access in MTN.TNC/11 was especially useful since in practice, different modes of delivery were preferred by CES firms, such as establishment through subsidiaries, temporary presence for the design phase or the execution of projects, or commercial presence through joint-ventures with local firms. Mobility of labour was also crucial for the delivery of CES, especially where the competitiveness of firms was strongly linked to a reliance on low-priced labour. For the mobility of highly-skilled labour, the accreditation of professionals was a crucial issue. Often professional
standards were clearly discriminatory, including the requirement of citizenship or local university education for foreign professionals to be entitled to practice. Agreements at times involved the requirement that some additional training to that acquired by the professional in his/her home country be undertaken locally whenever the needed expertise was only available in local institutions (e.g. earthquake construction, structural design). Without such a requirement, it could be argued that foreign providers would actually enjoy more than national treatment since they would be entitled to practice their profession without being required to have the same expertise as national providers. It was necessary to differentiate between those standards which aimed at safeguarding the quality of the professional service and those which merely discriminated against foreign professionals.

189. The representative of Sweden, speaking on behalf of the Nordic countries, said that the concept of progressive liberalization implied that liberalization should be a continuous process over time. It could involve, for example, the gradual opening up of markets according to the contract value of CES projects or to the type of construction activity. Certain policy objectives would need to be accommodated in this process; employment creation in depressed regions having been traditionally important for his delegation. Similarly, environmental protection, public safety and even national security were objectives on which governments should not be expected to compromise. As he had stated in the discussion on the application of concepts to the telecommunications sector, national treatment, market access, and m.f.n./non-discrimination were interrelated concepts. The issue of labour mobility was crucial for the CES sector and should be treated according to whether it involved locally recruited manpower or personnel temporarily entering the country on a contract basis with a foreign service provider. If the foreign provider was registered as a national entity, or if it recruited in the national labour market, local labour market practices should be respected. In the case of temporary presence of personnel in local markets, the recognition of foreign certificates of competence required further consideration by the GNS.

190. Preferably a future agreement on trade in services applying to CES should include general provisions on m.f.n. and non-discrimination applying to all signatories. Even though market access was intimately related to national treatment, some participants would prefer to establish a clear distinction between the two concepts with a view to respecting overriding national policy objectives. The link between the two concepts was such, however, that the application of effective national treatment could afford foreign providers a very large degree of market access. Provisions on market access should ensure the temporary entry of personnel and equipment essential to the provision of CES. The following factors could influence the choice of a particular mode of delivery by firms: the type and dimension of the construction project, technological requirements of projects, availability of local manpower, equipment and materials. Since construction services could be delivered in many different ways, all forms
of market presence ranging from traditional cross-border trade to the establishment of fully-owned subsidiaries would seem relevant. The choice of mode of delivery should be left to the service provider.

191. The representative of the European Communities suggested that progressive liberalization should involve the progressive elimination of barriers to trade. This would only be feasible for those barriers which did not prescribe the outright exclusion of foreign providers from undertaking certain activities. If an absolute prohibition on awarding of contracts to foreign companies existed, for example, the outright elimination of such a prohibition would not be feasible. The application of m.f.n./non-discrimination as concerns the recognition of foreign training and professional competence should not be expected. In practice such recognition had only been achieved through mutual understandings. Mutual acceptance of architectural qualifications for instance had taken eighteen years in the European Communities. In the formulation of m.f.n./non-discrimination applying to the CES sector, provision should be made for regional economic integration and bilateral agreements. Relevant bilateral agreements specific to the sector might include construction of dams and hydroelectric structures, as well as joint programs in research, and projects involving tied-aid. National treatment and market access were very important, especially as these concepts related to the mobility of production factors essential to the delivery of CES. The distinction should be kept in mind, however, between temporary and permanent factor mobility. He disagreed that the practice of performance bonds was inherently or implicitly discriminatory against foreign enterprises since firms did not have to produce the money in cash in the host country but could resort to the home country banking network.

192. The representative of New Zealand said that the relationship between national treatment and market access was evident with respect to transactions involving factor mobility. Effective market access should imply that foreign firms were allowed to offer their services in a particular national market or to be considered for selection on individual projects. Where public registration or tenders were sought, foreign firms should be entitled to bid competitively and on equal terms with local companies. Once a contract had been awarded to a foreign firm, this firm should be able to fulfill the conditions of the contract as though it were a local firm. The application of national treatment provisions would be relevant with respect to standards and building codes as well as professional qualifications. Treatment no less favourable than that accorded to national providers should be granted to foreign providers in relation to registration, licensing and professional accreditation. The application of m.f.n. provisions to professional qualifications could run into difficulties as evidence by the widely-adopted practice of mutual recognition (i.e. reciprocity) agreements for several professional areas. She supported the views set out in the submission by Mexico that the granting of subsidies should only be envisaged, if at all, on an equitable and fair basis. Regarding preferred modes of delivery, she said companies should be allowed to base their decisions on the long-term perspectives for
on-going local business in a particular market. Progressive liberalization commitments could imply improved tendering procedures, the gradual reduction of preferential arrangements, and the gradual opening up of government procurement to foreign providers.

193. The representative of Canada said that in many cases both public and private entities were involved in a project. For example, in large contracts involving mineral development or offshore structures, a lead company or consortium of both national and foreign firms often executed the project while government agencies became involved in environmental assessments or the implementation of mining laws. The internationalization of the CES sector was another important feature and was evident in the recruiting practices of many Canadian firms operating overseas which relied on personnel from various countries and regions of the world according to the level of skill and expertise deemed necessary for specific projects. As to the general approach to the liberalization of the CES and other sectors, he said that it should involve specific commitments based on agreed definitions of national treatment and market access. His delegation had a flexible position as to whether liberalization should imply the immediate application of these two concepts to all relevant sub-sectors, or to individual barriers, or to measures and practices. He stressed that for many Canadian CES providers, the cross-border movement of specialized equipment was important and should not be overlooked in the negotiations. He shared the view expressed by others that the application of m.f.n. should be as broad as possible.

194. The representative of Hungary said that the mobility of production factors should be treated in an equitable manner. Therefore, if there should be a right of establishment involving capital mobility, one should envisage a similar right for CES transactions involving labour mobility - especially since low-cost labour underpinned the advantage some developing countries had in the sector. He warned that the requirement that a foreign firm be established in a particular market could serve protectionist ends, at least insofar as such a requirement implied reliance on local labour. The requirement to establish locally could therefore undermine the benefits that certain countries could draw from increased market access. Establishment should remain an option for firms to choose whenever they found it necessary. Finally, the application of m.f.n. should be as broad as possible.

195. The representative of Romania said that progressive liberalization should aim at the reduction of the negative effects of all laws, regulations and administrative guidelines applying to the CES sector. According to MTN.TNC/11, liberalization should be compatible with the national policy objectives and the level of economic development of participating countries. National treatment should imply that a service export and/or provider from a signatory country should benefit from a treatment no less favourable than that accorded to a national service or service provider. Currently, a large number of regulations applying to the
CES sector were discriminatory against foreign providers, including those relating to subsidies, local content, the recruitment of local personnel, and government procurement. In accordance with MTN.TNC/11, national treatment should be applied in a progressive manner. However, the protection of infant industries in developing countries would clash with an unqualified application of national treatment. As stated in the submission by Mexico, developing countries should be entitled to implement national treatment provisions less rapidly than developed countries. Also, the existence of national monopolies in developing countries should suffice to justify a derogation from the application of national treatment. Finally, the application of m.f.n. treatment should be based on the principle of absolute or relative reciprocity, depending on the country to which it was being applied.

196. The representative of Argentina shared the view expressed by the representative of the European Communities that national treatment could be gradually negotiated. If it were to be applied immediately after market access had been granted to foreign services and services providers, it could have adverse effects on local providers, thus not serving the interest of increased competition and progressive liberalization in the national economy. An area which deserved further consideration was that of professional recognition where discrimination against foreign providers often resulted from excessively subjective evaluation procedures.

197. The representative of Yugoslavia said that both national treatment and market access were especially relevant to the suppliers of CES. National treatment should be extended to as many aspects of the sector as possible, including licensing and participation in the bidding process. Of special importance with respect to market access were regulations relating to subsidies and taxation. He noted the significance of the movement of labour, not only highly-skilled, for the delivery of CES. He agreed that the application of m.f.n. treatment to professional qualifications would be very difficult as recent efforts at the standardization of educational requirements had shown. Finally, the application of non-discrimination should not be confined to government procurement but also to the sector as a whole.

198. The representative of Poland said that national treatment was essential for the achievement of effective market access. He agreed with the view expressed by others that m.f.n. should be applied on an unconditional basis. Market access should be achieved through a higher level of transparency in the activities of the sector and through a liberal approach to the transborder movement of labour. Progressive liberalization could imply the gradual elimination of barriers as well as the gradual opening of certain types of activities to foreign competition. It could also be undertaken according to the level of contracts, involve the recognition of fair qualifications, and apply to government procurement practices.
199. The representative of Malaysia noted the statement by the representative of the United States that the mobility of labour was crucial to the delivery of CES. He enquired in this context whether the United States considered its immigration laws and regulations sacrosanct and outside the scope of the GNS negotiations. He also wondered whether the requirement for locally-established foreign firms to use local labour would be considered a trade barrier in the context of CES. He said that Malaysia was very liberal in the sector, especially in construction areas where no local expertise was available. He envisaged no problem with the application of m.f.n./non-discrimination since it had already been the practice in his country to have a bidding process that was open to all interested foreign firms. He requested clarification on the scope of the application of national treatment, in particular, whether it was envisaged to apply to labour flows, equipment imports, and to operating conditions for locally established foreign firms.

200. The representative of the United States responded that immigration laws and regulations were not sacrosanct but the national policy objectives they embodied should not be questioned. It was a fact that a more liberal regime in the CES sector, would require a freer flow of both capital and labour. Also, concepts relating to subsidies and professional accreditation could be especially relevant for the progressive liberalization of trade in CES.

201. The representative of Australia said that the use of tied-aid, the lack of transparency, and export subsidies (both direct and indirect) deserved special consideration.

202. The Chairman opened the discussion on the application to the CES sector of the concept of increasing participation of developing countries.

203. The representative of Brazil said that in many services sectors the participation of firms from developing countries in world markets was rather limited. For example, in the CES sector the share of developing country contractors in the international construction services market was only 4 per cent in 1987. The share of the United States had declined from 45 to 24 per cent between 1980 and 1987 but this decline had been mostly in favour of contractors from European countries. He shared the view expressed by Mexico that unless developing countries had a greater access to information and distribution channels, they would not be able to compete on an equal footing with developed country firms. He stressed that a definition of what constituted a subsidy and how it was to be measured was necessary before countries would be able to accept any commitments. He also supported the view expressed by Mexico that a future agreement should provide for the autonomous granting of preferences to developing countries. Special provisions relating to government procurement would appear to be more acceptable if they would imply a non-reciprocal commitment by developed countries to liberalize their practices towards developing country firms. He was glad to see that the necessity of factor mobility was recognized by most participants since the movement of factors of
production often determined the competitiveness of firms in international markets. Similarly, access to know-how was crucial in the CES sector and could involve, for example, training and cooperation with developed country firms. An important aspect of CES transactions for developing country firms was the need for financial support to stay internationally competitive. He cited as an example the practice of tied-aid whereby donor countries required that the work for which the bid was granted be undertaken by firms in these countries. This practice often did not reflect the most cost-competitive alternative and discriminated against firms in developing countries regardless of level of experience and/or competence. He recalled that his delegation had already proposed the inclusion of provisions in a future agreement that would accord financial support, access to preferential financial arrangements, or favourable conditions for participation in tenders, to suppliers from developing countries.

204. The representative of Mexico said that there were two main possibilities to strengthen the national capacity of developing countries in CES through the upgrading of efficiency and competitiveness: allocation of a larger number of domestic projects to domestic firms and labour, and promotion of an increased market share of national firms in the international market. With regard to the domestic market, developing countries should be permitted to liberalize a smaller number of transactions and to open their markets less rapidly than developed countries. Developing countries should also be able to make reservations on certain aspects of the application of national treatment to foreign providers. Also, the trend - observed in projects funded by regional and international financial agencies - towards the granting of a growing number of domestic projects in developing countries to domestic firms should be stimulated. Access both to information and distribution channels was crucial to developing country firms who, without such an access, could not even participate as sub-contractors in activities where they were competitive. The granting of visas had often been a major obstacle for developing country labour and professionals seeking to provide services in developed country markets. The need to examine this issue more closely did not imply that all immigration laws and regulations would need to be radically changed. Experience had shown that very imaginative solutions could be found to the utilization of foreign manpower without touching upon, or threatening, the basic underlying objectives of immigration regulations. Finally, the autonomous granting of preferences by developed countries was very important.

205. The representative of the United States said that resorting to infant industry protection in the CES sector could be counter-productive since much knowledge and expertise was often obtained from foreign providers. Much of that know-how existed in developing countries themselves and the experience of some developing country firms in other developing country markets had confirmed that fact. What was often lacking was financial capital with which developing country firms could establish locally. As to how to gain access to financial capital, he suggested that, in view of the
fact that governments and international agencies had limited resources with which to support developing country projects, joint-ventures could play a very important role in attracting financing for such projects. Furthermore, while making projects financially feasible, joint-ventures also created employment for local labour and professionals.

206. The representative of Yugoslavia agreed with the comments made by the representative of the United States on joint-ventures. He said that joint-ventures were not only important in terms of financial resources and the upgrading of existing domestic capacities in the CES sector, but also in terms of the technological transfer and the learning process they usually brought about.

207. The representative of Indonesia noted that most of the CES activity flowed from developed to developing countries. The size of the international construction market which had declined by 30 per cent in the last eight years, might have increased if developed country markets had been more open to competition from foreign firms. He stressed that the question of how to provide for an increasing participation of developing countries in the international CES market involved both liberalization as well as the strengthening of domestic capacities in the sector. That might involve infant industry protection or joint-ventures. Both possibilities did not necessarily contradict each other. What mattered in CES activities was less the qualifications of services providers than the quality of the work to be achieved as specified in contracts.

208. The representative of Romania said that six countries had a share of over 80 per cent of the international market for construction services. Given this situation, progressive liberalization would only benefit developed country firms unless corrective provisions were included in favour of developing countries. He referred in that respect to proposals made in the submission by Mexico which included greater access to information and distribution networks, greater discipline in the practices of subsidization by developed countries, and greater opening of developed country markets to developing country firms.

209. The representative of Peru said that the concept of increasing participation of developing countries could contribute substantially in enabling them to profit from the potential they had in the CES sector. He agreed with the representative of the United States that joint-ventures could play an important role in the participation of developing country firms in world markets.

210. The representative of the European Communities, sharing the views expressed on joint-ventures, stressed the importance of local sub-contracting in the undertaking of large international projects. Even though the chief contractor was often from a developed country, a large share of international projects were sourced through sub-contracting from national developing country suppliers.
211. The representative of India said that it was important to be aware of the existing CES trading pattern in considering the application of national treatment and market access. Developing countries were mostly importers of CES, constituting the major markets for developed country firms. He stressed that the discussion should not be about construction and engineering services per se, but only about trade in those services. The distinction between investment and trade in CES should be respected. An important feature of the sector was the impact of the engineering design activities on physical construction. This should be kept in mind in the considerations relating to the improvement of the competitiveness of developing country firms.

212. The representative of Egypt said that the concept of increasing participation of developing countries was intended to fulfil the objective, set out in the Punta Del Este Declaration, of promoting the development of developing countries. The concept represented a recognition of the fact that liberalization was not sufficient to promote development and that other elements should be considered in that respect. The strengthening of domestic services capacity in this sector depended on both financial and technological factors. Appropriate mechanisms should ensure that preferential financial conditions were given to domestic providers as a means to stimulate the upgrading of the capacity of national firms. Another important element were joint-ventures. The CES sector functioned as a channel for the transfer of technology which could be useful to other sectors. The transfer of know-how could be considerable in areas such as planning, design and implementation of projects. The learning process could be stimulated through policy instruments which enhanced interaction between domestic and foreign providers. Restrictive or trade-distorting effects of policy instruments should be minimized, while constructive behaviour of market operators should be stimulated.

213. In addition to the strengthening the domestic CES capacity of developing countries provision should also be made for an expanded share of developing country exports. Important in this context was improved access to relevant information. Also, access to financial support on preferential terms could have a corrective effect on some of the imbalances existing between developed and developing country firms. The often prohibitive financial conditions attached to contracts awarded by developed countries could be considered as one of the major barriers to developing country access to developed country markets. In this respect, developing country firms faced a competitive disadvantage in relation to their developed country counterparts. M.f.n. should be applied in as broad a manner as possible, but should not affect preferential arrangements concluded in favour of developing countries. He agreed with the view advanced earlier that consideration should concentrate on the quality of work and not the qualifications of the personnel involved in its implementation. Additional concepts of special relevance to the CES sector were access to modern technology, and activities and practices of market operators, both of which appeared in MTN.GNS/21. Design activity in developing countries was minimal, implying a very limited exposure of national personnel to modern technology and know-how.
214. The representative of Canada, referring to the figures presented in MTN.GNS/W/53, said that the role of sub-contracting and of joint-ventures did not come out clearly in Tables I and II of the document. Both types of activities were common in the sector and accounted for the wide participation of local firms, especially from developing countries, in the implementation of CES projects. Information he had received indicated that international competition was not limited to firms from France, the Federal Republic of Germany, or Japan, but included competition from a number of developing countries in terms of both expertise and government assistance. He favoured a cautious approach to the issue of preferential schemes for developing country services exports and providers.

215. The representative of Hungary said that the Montreal text, MTN.TNC/11, implied the possibility for developing countries to protect their services industries by committing fewer sectors and/or transactions to liberalization, or by liberalizing less rapidly than developed countries. The text also emphasized the need for improved access to distribution channels and information networks, and mentioned the possibility of autonomous liberalization of market access by developed countries in favour of services exports from developing countries. Preferential treatment for developing countries amounted to a form of conditional m.f.n., the condition being that the participant was accepted as a developing country. Preferences granted on an unconditional basis could have far-reaching effects; conditional m.f.n. could imply the outright exclusion of certain providers from certain markets. Regarding sub-contracting, he said that not only foreign companies sub-contracted locally, but also domestic companies sub-contracted the services of foreign companies for domestic projects.

216. The representative of Malaysia said that developed country firms were dominant in world markets for CES. While many participants had said that developing countries had a great potential in the sector this was not suggested by available statistical information. The weak position of developing country firms was due to their lack of domestic capacity and international experience. The concept of increasing participation of developing countries should permeate the sectoral discussions.

217. The representative of Argentina said that the most important issue for developing countries in the context of the CES sector was financing. It would be important to examine mechanisms and possibilities for promoting greater access to financing from different sources, including international and regional specialized agencies.

218. The representative of Romania said that a system of preferences for developing countries was possible and desirable because of the lack of competitiveness as regards technology and financial resources. He found that the suggestion by Mexico in MTN.GNS/W/57 - that preferential treatment should be granted on the amount of performance bonds required of suppliers for a particular project - exemplified well the type of preferences developing countries could receive in the CES sector.
219. The Chairman opened the discussion on the application of concepts of safeguards, exceptions, and regulatory situation.

220. The representative of Mexico said that temporary safeguards could be considered for infant industry protection, balance of payments problems, and temporary disruption of the domestic CES market due to a sudden surge of related imports. Also, market access or progressive liberalization commitments could be suspended temporarily as a result of safeguard actions, as well as the application of different elements of national treatment. While it was difficult at this stage to envisage exceptions relating to cultural policy objectives, this would seem more possible in the case of national security. Regarding the concept of regulatory situation, he said that the regulations applying to CES activities were continuously modified, reflecting changing priorities at the national, state or provincial, and local or cantonal level. Not all related regulations should, however, be considered to be negotiable, nor should liberalization merely be identified with "deregulation". The asymmetries existing between developed and developing countries in this sector were evident in regulations relating to the mobility of labour, foreign direct investment and market access for professionals. Bonds provided by national banks of developing countries were often not accepted for CES projects by developing country firms in developed countries. In the case of Mexico, foreign bonds were sufficient to qualify foreign firms for the awarding of domestic contracts. Also, foreign firms had access to local financing whenever necessary. Much of the sub-contracting in the sector involved domestic firms of developing countries which hired the services of foreign firms for the performance of different parts of domestic projects.

221. The representative of Peru said that safeguards and exceptions were very important for all sectors, especially as they related to balance of payments difficulties experienced by many participating countries. The latter should not be viewed as an excuse for not complying with any part of a future agreement on trade in services.

222. The representative of Brazil said that the formulation and application of safeguards might depend on the effects that wide liberalization of trade in services might have on the balance of payments of participating countries, especially developing countries. Exceptions deriving from national security considerations needed careful consideration.

223. The representative of Yugoslavia said that safeguard provisions similar to those appearing in the General Agreement - namely, those relating to infant industry protection and balance of payments problems (Articles 19 and 20) - could be relevant for the CES sector. Priority should be given to the liberalization of developing country services exports to developed countries. Liberalization efforts should reflect the fact that developing country firms had a low level of participation in world markets. Only 10 per cent of Yugoslavian CES exports went to developed countries.
224. The representative of Hungary said that regulations at the local level could in some cases undermine commitments made by governments at the national level. He agreed with the view expressed by the representative of Mexico that developed countries usually had a more elaborate system of regulations applying to CES transactions, especially as concerns the mobility of labour. National security considerations could justify provisions for safeguards and exceptions in a future agreement.

225. The representative of Canada said that formulations similar to Articles 20 and 21 of the GATT could be envisaged in the CES sector. While further consideration of matters relating to professional qualifications was necessary, this should not be in the context of the general application of the m.f.n. principle. Visa regulations in Canada were generic, applying uniformly to different nationalities regardless of the regions of origin. He agreed that liberalization should not be identified with deregulation.

226. The representative of the European Communities said that regulatory structures applying to CES activities varied from country to country. Clearly, one way of facilitating trade in CES would be to promote the use of international standards. In responding to a concern raised by the representative of Argentina, he said that in 1987 nearly 23 per cent of all international construction awards were in Europe, 15.5 per cent in North America, 18 per cent in the Middle East, 12 per cent in Africa, 21 per cent in Asia and 10 per cent in Latin America. These figures showed that developing countries were not predominant as importers of construction services as had been previously suggested. However, these countries continued to be the world's major importers of engineering design services.

227. The representative of Hungary, in reacting to a comment made by the representative of Canada, said that the issue of labour mobility was more closely linked to the granting of work permits than to the granting of visas as such. Even though Canadian visas were granted in a generic manner, the granting of Canadian work permits varied according to the country of origin of the worker or professional concerned.

228. The representative of Egypt agreed that regulatory structures applying to CES activities varied widely from country to country and that the different levels of regulatory scope (e.g. national, state, provincial, cantonal, etc.) could affect market access opportunities. The differences between the regulatory situations of developed and developing countries were very large, especially with respect to labour mobility. Regarding exceptions, it was important that whenever participating countries resorted to such provisions they had to have a well-based and transparent justification.

229. The Chairman closed the discussion on the applicability of concepts, principles and rules to the CES sector and opened the floor to general comments.
230. The representative of the European Communities said that it had become evident from the discussions that the "sectoral testing" exercise involved the testing of concepts, rules and principles and not of sectors per se. In drawing conclusions from the discussion on the CES, participants should attempt to consider both general and specific implications for the drafting of a future framework and sectoral commitments. He said he considered the exercise just concluded to have had a double aim: first, to identify considerations which point towards the need for sector specific provisions; second, to provide an input as to how to formulate the general concepts comprising the future framework agreement. The exercise had shown that the concepts appearing in the Montreal text - paragraph 7 of MTN.TNC/11 - were adequate for the application to the sectors of telecommunications and CES. It had become evident that some sector-specific concerns would have to be reflected in the final framework, perhaps in the form of additional concepts to those contained in the Montreal text. Links of the telecommunications and the CES sectors to other services sectors had also been brought out in the discussions. The concern expressed by various developing countries for increased financial support, for example, had served to highlight the value of a liberalized financial services sector to all countries.

231. The Chairman said the discussion had been useful and encouraged participants to submit papers on sectoral issues following the example of the Mexican delegation.

232. The Chairman then opened discussion on item 2.2 of the agenda, "Invitation for participants to submit indicative lists of sectors of interest to them". He noted that two communications had been distributed to the Group, one by Poland (MTN.GNS/W/55) and another by the European Communities (MTN.GNS/W/56), containing the indicative lists of sectors of interest to these participants. He then invited comments. The representative of the European Communities referred to his statement made at the previous meeting.

233. The representative of Switzerland said that his delegation had not notified a list of sectors of interest. Such indicative sectoral lists could be interpreted as referring to the coverage of the multilateral framework. In that case, his country would have notified that a multilateral framework should a priori exclude no service or transaction. In order to avoid the impression that the universe of services was negotiable at the present stage, his delegation had not made such a notification. On the other hand, the invitation to draw up an indicative list could be interpreted in terms of a national indication of sectors which his delegation should be ready to negotiate. In this case, the notification would be an offer as to the substance of the negotiations for liberalization. Such a list would have been an indication of the initial level of commitments that could be negotiated by his delegation; but the moment had not yet come to enter into such commitments. A third possible interpretation was the path chosen by the EC where the list of sectors of
interest was linked to the process of examining the implications and applicability of the multilateral concepts and rules for particular sectors and transactions.

234. In presenting his delegation's list, the representative of Poland noted that it was a preliminary list of sectors for the purpose of testing the applicability and implications of the concepts.

235. The Chairman then turned to agenda item 2.3 on definitions and invited comments. The representative of Jamaica believed that paragraph 4 of the Montreal text set out a number of criteria which suggested elements requiring consideration in defining trade in services. He asked whether the Group was working towards a generic definition of trade in services which covered all different kinds of services, or whether it would be necessary to qualify the definition in relation to certain specific sub-sectors of services or specific kinds of traded services. In this regard, he drew the Group's attention to two documents: a "Comparative Table on Services-related Agreements" and a "Comparative Table on Existing International Arrangements and Disciplines covering individual Services Sectors and specific Principles and Rules". The first volume examined six services-related agreements including a comparison of definitions. In the Declaration on Trade in Services contained in the U.S./Israel Agreement, for example, the definition was as follows: "Trade in services takes place when a service is exported from the supplier nation and is imported into the other nation". The volume contained a range of definitions related to different sectors including, in the light of the discussion on telecommunications, a definition of enhanced services in the Canada-United States Free Trade Agreement. He concluded that it would be useful for the Group's continuing work to pay close attention to these agreements. The second volume also dealt with definitions in relation to sectors including liner conferences, international civil aviation, telecommunications, and satellite communications. He considered it useful to look at these definitions rather than start from scratch in the GNS as they related to multilateral agreements involving more or less the same governments which were participating in the GNS. Finally, with regard to the Universal Postal Union, he noted that the Australia-New Zealand Agreement and the ITU both referred to "postal mail and written communications by way of telegrams. In some cases of monopoly, post and telegraph were run by the same entity" and he wondered whether it would be useful for the GNS to omit postal mail from its considerations.

236. The representative of Romania considered that a general definition for trade in services had to be elaborated as well as sectoral definitions for those sectors to be included in the multilateral framework. At present, the Group should focus on a general definition as set out in the Montreal text. Taking the criterion of limited duration as set out in that text, he believed that the general definition of trade in services would not be able to include direct foreign investment in the service sector.
237. The representative of Japan said that paragraph 4 of the Montreal text limited cross border movement of factors of production to cases where such movement was essential to suppliers. If movement of personnel was essential to suppliers, for instance skilled labour of some sort, then that element should be accommodated. The movement of capital related to establishment which was a central element of market access.

238. The representative of the United States noted that the Montreal text provided useful guidance regarding work on definitions. The GNS needed a definition which was practical for the purposes of trade in services and the two fundamental ingredients to that were those activities that would be covered in the way of movement of factors as well as specific sectoral activities. The focus of GNS discussions on definition should be on the extent to which the movement of persons, investment and establishment, and information could or could not be dealt with. The Group's deliberations over the first two and a half years had covered free labour mobility and the right to establish. Both principles, if included, would achieve the optimum liberalization of all forms of trade in services. The Group had also discussed the limitations that existed in the laws and regulations of countries. The purpose of the GNS negotiations was to see the extent to which both could be covered. Regarding movement of labour, most immigration laws as currently structured were built around the "essentiality" concept: the more essential the access of the individual, the more open the border. There were however social and political constraints which governed the movement of persons that had nothing to do with economic factors. The movement of persons was clearly relevant to trade in services but the question was how it could be dealt with in the reality of the constraints existing in each country.

239. As concerned the movement of capital, this extended to the ability of a company to invest or to establish in a foreign country and had to be circumscribed with careful provisions. Countries with open investment climates had a basic interest in seeing the same situation around the world although it was recognized that this was impossible. However, services were provided largely through investment whether required by regulation or by the practical needs of companies which had to be competitive in foreign markets. It was not necessary to achieve an open-ended right to establish but rather to determine what transparent rules governing the ability of companies to establish would be appropriate for the services agreement. Both aspects were relevant to trade in services and the GNS should negotiate accordingly, recognizing, on the one hand, the inevitable limitations imposed by countries and, on the other hand, the value of having as open a system as possible under a multilateral framework.

240. In referring to the concept of "essentiality", the representative of Egypt raised the question of who would decide that if the movement of production factors was essential as referred to in the Montreal text. For example, it was perhaps easier to judge whether the movement of capital as a factor of production was necessary in order to establish the needed
facilities to provide a given service. In other cases the movement of labour might not seem essential (i.e. without it the service could not be provided) although it might represent a very important element in the comparative advantage of the service supplier. If the idea of essentiality was regarded from the point of view of the regulatory mechanism, it was necessary to deal with both factors of production, as well as with that of information, in the same manner. The issue as raised in the Montreal text was subject to further examination in the light of four criteria to which he wanted to add a further relevant criterion; namely the timeframe for the transfer of payment for the service which would allow the GNS to identify when payment crossed the border (as referred to in the first criterion). Unless there was a time limit for the transfer of payment it would be difficult to decide whether the payment was crossing the border or not.

241. The representative of the European Communities considered that the Group was seeking a definition in order to help define the scope of the agreement, i.e. set the outer limits of what was covered by the agreement and beyond which activities would not be considered as trade. The sorts of movement referred to in paragraph 4 of the Montreal text were not all necessarily covered by a definition of trade in services. It was not possible to have a water-tight general definition of universal application across the sectors under consideration. Some form of generic definition closely linked to other elements of the agreement, particularly that of sectoral coverage, was needed. Defining trade in services meant establishing the potential for liberalization in an agreement which was likely to have a long life. It would be useful to look at how others had attempted to define trade in services but the GNS could not simply adopt a definition which had served elsewhere in a bilateral or in an exclusively sectoral context. On the issue of essentiality, he wondered whether it could be left to the exporter or the importer or whether there should be a common definition of what was essential. He considered it worth a serious effort to try to determine what was essential. He agreed that there were more than four criteria to be examined in the analysis and that the GNS should attempt to set broad limits on essentiality rather than simply defining essentiality on a sector by sector basis.

242. The representative of India considered that the four criteria set out in paragraph 4 of the Montreal text were relevant as regards tradeability. The point was not what was the definition of a service but of trade in services. The text did not prejudge or cover the question of investment. He also pointed out that the Punta del Este Declaration provided for the negotiation of a framework for trade in services and not in investment. Therefore there could not be any presumption that investment related issues were within the scope of the work of the GNS. It was a separate matter that developing countries welcomed foreign investment in accordance with their own individual socio-economic objectives and to upgrade their industrial and technological capabilities. This however did not mean that the Group was negotiating a multilateral framework for investment in
services. The Montreal text mentioned cross border movement of service and payment and it was relevant to see this in terms of the time period in which the payments took place. Regarding capital as a factor of production, it was possible to divide it into the categories of equipment and investment. Equipment or goods were covered by the normal GATT provisions dealing with trade in goods. Similarly, the question of investment, whether in services or other areas, was an independent issue which could not be part of the framework agreement for trade in services. One of the reasons for the blurring of this distinction was the mention of the right to establish which could take various forms. For example, in the construction sector where major international business was done through contracts, commercial presence was more important than investment. Similarly, in a number of areas with investment requirements it was more a question of national regulations rather than establishment itself being germane to the provision of the service. It was important to isolate these issues in order to define the concept of trade in services. The four criteria set out in paragraph 4 were relevant and the GNS should examine these rather than turn to the question of covering investment in services.

243. The representative of Austria noted that under existing national laws the movement of the factor capital, for example establishment and local presence, would not cause major problems to his country. Experience had shown that establishment was one way to import new technologies and also had positive effects on employment. However, a profound analysis would be necessary in the different sectors. Liberalization of the movement of labour should be considered in connection with the element of progressive liberalization. Criteria for the term "essential" had to be defined. One criteria might be that there was no possibility to supply the service other than with foreign labour. In that case the territorial principle should be valid. Also the movement of key personnel and qualified personnel could be envisaged. Austria had a highly developed social security system and the aim of a liberalizing process could not be to reduce social standards. His delegation understood that provisions regulating the stay of foreigners had to be respected.

244. The representative of Mexico said that the Montreal text already recognized transborder movement of factors including manpower. In December 1987 his delegation had proposed a definition of trade in services which included the cross border movement of services as well as the international mobility of manpower, of which there were five categories: (1) manpower on a permanent basis abroad offering services to producers of goods and services, (2) permanent residence of labour in a foreign country giving services to service producers only, (3) manpower with temporary residence abroad giving services to goods and services producers, (4) manpower supplying temporary services to producers of services, (5) specific types of manpower, e.g. very highly qualified personnel giving temporary services to a service industry only. His delegation was mainly interested in categories 1 to 4 and he stressed that whatever definition for trade in services emerged, it was important to consider the interests of all participants.
245. The representative of Canada noted the difficulty of establishing a specific definition. In effect the GNS was dealing with the issue of the scope of the agreement. The conclusion of the Mexican paper on construction made it clear that if construction services were dealt with solely on the basis of coverage without including the factors of production, then the Group would be talking about very little indeed. The notion of not excluding items on an a priori basis as expressed in paragraph 5 of the Montreal text could be considered at a later stage. The GNS should take a broad approach to the delimitation of trade in services but this did not mean that countries were accepting particular commitments through the definition or scope. Regarding the term "essential", it was necessary to refine its meaning but without getting lost in an endless list of criteria, in particular, when it concerned establishment. Similar considerations would apply to the movement of people or information. A definition should leave enough flexibility for negotiations in as many different ways as possible in order to make the agreement useful to all participants.

246. The representative of Egypt considered that the purpose of a definition was to define the scope of any obligations. It would need to be of a generic nature cutting across different sectors and viable in its practical applicability. A definition should not deal differently with the various factors of production. The GNS was certainly not dealing with investment as some participants asserted, nor was it dealing with immigration but with factor mobility. Those factors had to be addressed on the same level, i.e. if permanent investment was discussed then also permanent immigration should be considered. The question of definition was related to coverage but they were not synonymous: coverage decided the sectors whereas definition decided the transactions within those sectors.

247. The representative of Korea noted that a definition of trade in services should cover a very broad area including the movement of the production factors of capital, technology and labour. At this stage, it was important to discuss appropriate ways of capital movement and the appropriate duration of labour movement to help establish a definition of trade in services.

248. The representative of Switzerland noted that a definition which was acceptable to all today might become too restrictive within a few years. The GATT, for instance, did not contain a definition of goods or trade in goods. There were new financial, telecommunications and other services emerging all the time which a current definition might not take account of. A definition should not stand in the way of a potential liberalization but should make progressive liberalization easier and enhance the momentum of the services sector in general.

249. The representative of Sweden noted on behalf of the Nordic countries that they considered that an all-encompassing and generally applicable precise definition of trade in services was neither necessary nor practicable for the purposes of a services framework. The range of transactions was so wide and they took place within and among countries
with such widely differing economic environments that attempting a comprehensive definition might result in doing the GNS a disservice. The Group had to ensure that an agreement was dynamic and responsive to changes in the global economy and took account of developments on a more micro-economic scale. A definition on the basis of today's circumstances was likely to be incomplete and antiquated in a few years time. Furthermore, what some participants would regard as a tradeable service might be perceived as non-tradeable by another. This would probably result in a definition by way of successive exclusions and in a coverage based on the lowest common denominator. This would run counter to the idea of crafting an agreement which was responsive to the dynamism of the world economy. In the GATT no definition of trade was ever needed or attempted. In services the national regulatory framework modified any given service according to national requirements. In Sweden, for instance, both goods and services might need, in some circumstances, to fit several differing conditions depending on the nature of the product. To accommodate the universe of services the GNS would be well advised to draw up the international provisions and rules governing actual or potential trade and leave the definitional aspects to the national level. Internationally, a generic open-ended approach would seem to best meet the needs of the trading system.

250. The representative of Brazil pointed out that it was not wise to look into the GATT to inspire discussions in the GNS. It was beyond question that part of the Group's mandate since Montreal was to continue work on definitions and it was therefore not pertinent to go back and discuss whether the GNS needed a definition.

251. The representative of Hong Kong welcomed the Swiss and Nordic interventions. The Montreal mandate was to work on a definition which would have to take account of various elements and factors. The definition should allow as broad as possible a scope and coverage of the agreement.

252. The representative of Sri Lanka stressed that a definition of trade in services was required under the Montreal decision. How was it possible to negotiate if the GNS did not know what services were? In contrast to goods, interest in services was recent and even today it was not clear what services were. For example, some countries went to the extent of denying that labour was a service although labour was in fact the first factor of production.

253. The representative of Jamaica considered that a definition of trade in goods or services was simple: it was an exchange across a border and that was what the GNS was dealing with. If the Group did not define the universe of trade in services, he wondered how one could assert that trade in services was the dynamic element in international trade. Definitions were important because they set the limits on which statistical comparisons were made.
254. The Chairman turned to item 2.4 of the agenda concerning concepts, principles and rules, and in particular transparency and progressive liberalization. The representative of Jamaica asked whether the concept of transparency was related to the set of measures and regulatory practices put in place at the border or within the border. For example, if an architect wished to practice in a certain country he would enter the country, make the necessary application and fulfil certain licensing or certification criteria. However, there might be certain conditions to be fulfilled at the border, e.g. immigration procedures. Under other legislations, the intended immigrant had the possibility of landing, i.e. crossing the border and then testing his chances within the border. Referring to the two volumes on bilateral and multilateral agreements he had earlier presented to the Group, he noted that among the common elements was the obligation to publish. It appeared that the counterpart to that was the right to be informed. Certain agreements contained obligations in respect of advance publication before the regulation took effect and also touched upon the obligation to identify the technical characteristics of the service infrastructure. This was important for a service importer who might not be aware of the complexities of the technologies in place to provide new and enhanced services. Another point concerned dispute settlement and access to the process.

255. The representative of Canada noted that transparency was a key obligation in a services agreement and should apply to the full scope and coverage of the agreement and to all signatories. A transparency provision was of interest to governments and private operators, which both had an interest in knowing the laws, regulations, administrative guidelines and international agreements applicable to the matters covered by the agreement. GATT Article 10 dealt with certain aspects of this issue: paragraph 1 set out certain considerations in relation to publishing which was a basic requirement of a transparency provision. Furthermore, in that Article, the coverage aspect which related to goods was of potential interest in terms of language for a transparency provision although it would need to be adapted to the needs of the GNS. Other discussions of the publication issue concerned notions such as 'make publicly available' which perhaps carried the implication of ensuring that those interested had access to the material. Another way of approaching the access problem - the right to be informed - was through the notion of an enquiry point to which his government attached considerable importance although it was not necessary to find there a copy of every regulation or administrative guideline that existed in the country. This was a referral point to put in touch people interested in the subject and would not take over the legislative or regulatory responsibility from anyone in the government. Nor would they serve as a trade promotion point within the country for foreign suppliers wishing to export to that country. Regarding the question of notification, it seemed clear that the idea of notification presumably through the GATT Secretariat was important and had to be dealt with. The question of how much material and what the precise responsibilities of the Secretariat would be required careful examination. It was possible that a summary or a list of some kind open for countries to examine was adequate. The notion of counter-notification or notification
by exporters to a market where the transparency provisions were in question was also an important provision. His delegation wanted to have the possibility of raising issues in relation to the implementation of transparency obligations and to making use of consultation and other types of institutional provisions that might appear in the framework agreement, including dispute settlement. He considered it possible that if the transparency obligations were not being lived up to, there could be impairment of benefits that could be expected from the agreement. Concerning advance notification and consultation, which had been raised by his delegation in MTN.GNS/W/13, he would welcome further discussion. He did not favour the notion of optional or best endeavours advance notification and consultation. If it was to be included, it needed to be equitable for all participants and not one-sided.

256. The representative of the United States noted that the declaration on transparency in the Montreal text was rather innocuous. The reason was apparent from document MTN.GNS/21 which discussed essentially four aspects to transparency: the notion of notification including international agreements, the publication of laws and measures, advance notification or the ability to comment on regulations, and the requirement for international operators to provide appropriate information to regulators. There was disagreement on the latter two aspects and he pointed out that there would have to be a careful study of the practical limits of prior notification, although where there was considerable regulation, there should be time to comment and for regulators to hear the views of affected parties. Referring to the transparency provisions in the Australia-New Zealand CER agreement, he quoted the following as a suggested way of dealing with the notion of prior publication: each member state shall make public promptly all laws and regulations; each member state shall to the extent possible provide maximum possible opportunity for comment by interested parties on proposed laws, regulations, procedures and administrative rulings affecting trade in services. The provisions in these two paragraphs are to be interpreted as widely as possible without requiring a member state to disclose confidential information contrary to national security or the public interest, or prejudicing legitimate commercial interests. Turning to the obligations of services providers, he referred to the chapter on investment in the United States-Canada Agreement which could extend to services providers across borders as well as to those investors. He quoted that each party may require an investor of the other party who makes or who has made an investment in its territory to submit to it routine information concerning such investments solely for information and statistical purposes. The parties shall protect confidential business information or information that would prejudice the investor’s competitive position. Nothing under that paragraph shall preclude a party from otherwise obtaining or disclosing information in connection with a non-discriminatory and good faith application of its laws.

257. The representative of the European Communities agreed that document MTN.GNS/21 was a useful source. He considered that publication was the basis for transparency. His delegation was interested in such laws,
regulations and guidelines of general application to operators and not necessarily in every single individual decision in each sector. Disclosure on a non-discriminatory basis was important and publication should not be made in such a way that domestic suppliers were given an advantage over foreign suppliers. Regarding prior consultation, constitutional provisions in some countries had to be borne in mind. It would be hard to come up with the kind of provision indicated by the Canadian delegate where all participants were committed to accept prior comments on all the matters covered under the transparency provision. However, he agreed that the basic publication obligation should apply to all signatories and to all areas covered by the agreement. He drew attention to the issue of sub-national entities and the need for the basic transparency obligation to apply in such a way that differences in regulatory structure did not lead to an inequitable set of obligations. It would be helpful for signatories to be aware of the relevant publications in each participating country. This was possible at national level but might not always be the case at sub-national levels. His delegation was considering whether one should go beyond a simple publication obligation and include a requirement to make the information directly available to other signatories. Such a requirement could not cover as wide a field as the basic publication obligation. The idea of enquiry points was useful regarding the exchange of information between governments but not for dealing directly with private operators. Counter-notification was an important element; the question was what was to be counter-notified. Counter-notifying a failure to abide by an obligation was perhaps logical, but exactly what was being counter-notified would depend on the other transparency obligations. There was some merit in a notification obligation for international agreements particularly where they had a relationship with the signatory's commitments under the framework. It would be appropriate to have some consultation obligations in this respect. Concerning information from enterprises, his delegation considered that nothing prevented signatories from requiring foreign enterprises operating within their jurisdiction to supply information regarding their operations which was equivalent to that asked of similar domestic enterprises. This could be considered the reverse side of national treatment. Finally, those countries which had a developed regulatory system tended to leave relatively little discretion to the administrators of the regulations, whereas those countries with an undeveloped regulatory system tended to leave much discretion in the hands of the regulatory authorities. The usual situation was that the more discretion which was left to bureaucrats, the less transparently they tended to operate. It was relevant to have some commitment by all signatories to both draft and administer measures affecting trade in services in such way that regulatory discretion should not be excessive and should be reduced to the minimum which was compatible with the need to regulate.

258. In response to the points raised by Jamaica, the representative of Austria noted that in his country all legal measures, whether at or within the border, were published. He agreed that transparency was an important element of the general framework which should be applied to all sectors
concerned. Transparency of all laws and regulations was the starting point and the condition sine qua non of any liberalization process. Therefore, a binding commitment within the general framework should be achieved among the participants. All laws and regulations should be published in a suitable way by the participants and made available not only to states but also to the interested companies and possible foreign service suppliers. The establishment of a national enquiry point might be helpful in this respect. In case a notification procedure was foreseen a mechanism had to be found in order to limit the administrative burdens for the participating countries and the GATT Secretariat, if the latter would be involved in this mechanism. In this respect, he doubted the usefulness of complete notifications of all existing laws and regulations which might need to be translated into one of the GATT languages. Rather a short description of the main legal provisions could be imagined. As laws and regulations should respect the aims of the agreement, counter notifications might be a part of the notification mechanism. This meant that each member state might notify laws and regulations of other members which were not in accordance with the aims of the agreement. Consequently a dispute settlement procedure was needed. Concerning the question of prior notification, he pointed out that usually the drafts of laws underwent many changes before passing parliament. Therefore it was probable that notified and circulated drafts would not be the last version.

259. The representative of Romania said that transparency was aimed at ensuring that all relevant information should be made available to all parties concerned. It was also a way of monitoring the compliance with the different obligations stemming from the multilateral framework. It was possible to introduce transparency provisions into the framework similar to Article 10 of the General Agreement with the necessary adaptation for services trade. Transparency provisions should not oblige a signatory to disclose confidential information if such disclosure was contrary to the public interest or would prejudice the legitimate trade interests of public or private enterprises. His delegation did not believe that draft laws should be published to enable parties concerned to make observations before they came into effect. Such a procedure could lead to interference in the internal affairs of signatory countries.

260. The representative of Egypt agreed that a transparency obligation should be general and applicable to all sectors. He considered that enquiry points should make available necessary information without being a centre for the compilation of all kinds of laws, regulations and administrative guidelines. Prior notification was not practically applicable in most cases and it would not be useful to adopt it as a best endeavour obligation. There was considerable danger that a transparency commitment would lead to an unmanageable amount of information and he suggested focusing on those laws and regulations which related to market access. Regarding the non-discriminatory nature of the provision of information, he was concerned about the practical difficulties of complying with the provision particularly when it involved translation problems.
Transparency on the part of market operators was an important element and he welcomed the suggestion of the United States delegate on this issue as an example for the kind of obligations that could be envisaged in this regard. He noted that this was not meant to be an element of discrimination against foreign service providers but a matter of general principle.

261. The representative of Peru noted the concept of enquiry points was of interest to his delegation and should be retained for future discussion and negotiation. He considered notification an important idea but was not sure to whom the notifications would be sent. Regarding publication and notification, care should be taken not to create an unmanageable bureaucratic apparatus. The question of prior consultation was linked to the different legislative systems of each country and for that reason seemed difficult to implement. The framework should not contain a compulsory provision concerning prior consultation or notification.

262. The representative of Mexico noted that the element of publication was of major importance for the functioning of the multilateral framework. At the national level various means of publication existed, usually the official gazette. He believed that GATT Article 10 already represented an important basis for further work. What would be published were measures relating to trade in services. Transparency provisions should also cover national and international private operators who should be compelled to publish like governments. Concerning notification, his delegation did not have precise ideas on certain issues: for example, how would notification take place? Would there be a central body within GATT? To what extent would these notifications be compulsory? The notion of enquiry or reference points to obtain the required information was of interest and needed further examination. The possibility of counter notification as a means of ensuring greater transparency should be examined.

263. The representative of Japan noted that with regard to prior consultation or notification he would explore his country's legal system to see if there was room for such a mechanism. National treatment or no less favourable treatment to the foreign provider was necessary with respect to transparency provisions.

264. The representative of Argentina agreed that it was necessary to define what was to be notified to the appropriate body under the multilateral framework. The definition had to be as specific as possible to avoid overly cumbersome information processing procedures. Another aspect concerned the different languages used by signatories in the case of notification. Prior notification would go against his country's constitution and there was no way that such an obligation could be acceptable. Prior notification was not available to Argentine citizens, making it virtually impossible to make it available to foreign governments.

265. The representative of Sweden, speaking on behalf of the Nordic countries, underlined the importance of a well-defined and operationally efficient transparency mechanism. Transparency was not an end in itself,
and the level of detail in transparency would need to be a function of the commitments of signatories under the agreement. Adequate provisions served several purposes. First, to ensure that the rules of the game were known, i.e. economic operators had to know the economic environment in which they did business. Secondly, transparency increased clarity and predictability in the regulatory system. An important aspect concerned federal states where it was important that the services agreement applied to regulations in the entirety of the territory of each signatory. Thirdly, unless signatories knew what rules were in place in other signatories' markets, there was no way of monitoring compliance with the agreement's provisions. Fourthly, improved knowledge of the regulations in place was necessary for a progressive liberalization process. The question that arose concerned the means through which these objectives should be realized. In elaborating effective provisions, the following elements should be considered. First, laws, regulations and administrative guidelines should be published and made publicly available at the latest by the time of their entry into force. Secondly, regulations and changes to existing regulations that impacted on trade in services should be subject to appropriate notification requirements. However, the notification requirements should be consistent with the scope of the agreement and signatories' commitments and should be manageable. It had to minimize the paper flow and maximize the availability of relevant information. His delegation wanted to include provisions on cross notification since there would always be a certain subjectivity in assessing the trade impact of regulations. Thirdly, the possibility for prior comment when a signatory intended to introduce new regulations should be considered. Such a consultative element in advance of the introduction of laws, regulations and administrative guidelines would give other signatories an opportunity to present their views. To make it workable at the international level, a summary notification highlighting the main features of the proposed measures would be needed. Concerning the language factor, for many countries extensive translation into a foreign language was simply not possible. For some regulations advance notification might not be possible, e.g. the trade impact of court rulings could obviously only be notified post factum. Finally, large parts of national services legislation were not relevant to the operation of the services agreement. An existing model that could with appropriate modifications be studied was the GATT TBT Code where summary notifications of regulations were made. Interested parties could direct questions to a national enquiry point which provided the additional information requested. Regarding services, such an enquiry point should not only deal with proposed changes but act as a general contact point for information on all services regulations in the country concerned. There was no need for an enquiry point to possess expertise in every field but it should be able to direct queries from signatories to the responsible agency, department or authority at the national or sub-national level.

266. The representative of Switzerland stated that transparency was a prerequisite which identified the potential areas of interest for access to markets and dispute settlement. There should be notification of any
agreement involving services between signatories and between signatories and non-signatories. Prior notification should be viewed from two angles: as an educational exercise for the competent authorities and in terms of dispute prevention. Prior notification, if it existed at all, should be limited to those essential laws and regulations governing a given sector and could concentrate on an explanatory descriptive note which might emphasise access to markets. As far as his delegation was concerned, prior notification would not create any obligations on the notifying party to take into consideration any comments made to them. Non-governmental organizations sometimes exercised significant regulatory powers in some sectors which was recognized in the TBT Code in which Article 6 could serve as model for further consideration.

267. The representative of Brazil referred to his government’s proposal in document MTN.GNS/W/48 on transparency. Publication of all laws and decrees related to trade in services should be retained as a primary rule and decisions on further mechanisms should be taken at a later date. He considered intra-enterprise trade transparency to be an important element for discussion in the GNS. He could not envisage specific types of notification at this stage but concerning prior notification he shared the concerns of the Austrian delegation about the practical aspects and noted that his country could not conceive of such a mechanism.

268. The representative of Korea agreed that publication should be a basic requirement of the transparency concept. Enquiry points would be a useful method to obtain specific information given the volume of regulations that existed for service sectors. The principle of notification was acceptable if the signatory was obliged to notify after a given piece of legislation had been passed. One way would be to notify to the GATT Secretariat. Considering the big gap between participants’ levels of development, it was practically difficult to accept the idea of cross-notification. Prior notification was also a difficult question for his delegation either due to domestic legislative procedures or to the changes which proposals underwent in the legislative process.

269. The representative of Malaysia noted that disagreement existed on how transparency provisions in the agreement would work in practice. That could depend on the eventual coverage of the services to be traded. He warned that notification procedures could overburden national authorities, and expressed reservations about prior notification. Within the legal and administrative system of Malaysia it was difficult to envisage a prior notification mechanism as nationals themselves did not have that kind of advantage.

270. In addressing the scope of a transparency commitment, the representative of Hungary said that the framework agreement should cover regulations for all tradeable services. He referred to the operation of the existing GATT transparency clause where there was an obligation with respect to transparency even if a country had a complete import ban. The
type and level of the transparency commitment should result in equitable and reasonable burdens for the various parties. Problems might arise in the case of countries and sectors where there were no regulations at the national level but only at the regional or local level. In such cases, which might have important implications for services trade, the question was how the transparency requirement would be fulfilled. Concerning forms of transparency, he considered that publication of laws and regulations was an absolute minimum and suggested that further discussion was needed on the practical implications for local regulations. Consideration should be given to notification as an additional commitment and how national enquiry points as contained in the TBT Code could provide information in respect of sub-national regulations. Any questions that could not be answered by them could be passed on to the competent authorities.

271. The representative of Yugoslavia considered that the GNS should examine all relevant elements regarding private operators in telecommunications and the role of standards with a view to understanding what transparency would mean at the national level in that sector.

272. The Chairman then turned to the subject of progressive liberalization. The representative of Canada noted that progressive liberalization meant a commitment to a direction of change. There would have to be some sort of floor to avoid backsliding, and there would need to be the notion of penalties and conditions in such cases. The negotiations would have to relate to bindings otherwise there was little of value for trading partners. Once the bindings were made, the relevant general provisions (e.g. consultation) could come into effect should there be nullification or impairment of rights. Moving to liberalization per se there were several possible techniques. One was the binding of existing regimes for which very broad coverage was foreseen; this did not preclude new or changed regulations but they would have to be trade neutral. The significance of such a binding depended on many factors, notably the degree of openness that already existed. This technique was not necessarily sufficient to establish an equitable level of rights and obligations among the parties to the agreement. A second technique would be through a formula liberalization plus bindings on an m.f.n. basis which could be by sector or sub-sector. Computer services, possibly enhanced services, engineering and construction, and business and consulting could be candidates for such approaches to liberalization. In defined areas one could aim for complete free entry, complete national treatment and elimination of other types of barriers and distortions. It was also possible to tackle certain factor flows, such as the complete free flow of information within a defined area, or issues such as the elimination of trade distorting export credits. A third technique might be request and offer liberalization where bindings would take place on a multilateral basis to deal with specific problems in specific markets. In order to achieve progressivity, phased implementation might be a suitable element. Obligations would be binding commitments as of entry into force of the agreement but their implementation could be phased over a period of years, a practice used for tariff reductions in previous goods negotiations. Another element of progressivity could be, together with arrangements for
reviewing the agreement’s operation, a provision for further negotiations on unfinished business such as sectors that had not been included or particular barriers that had not been dealt with. With regard to increasing participation of developing countries, he suggested that the various elements outlined above should help to provide flexibility for individual country situations. Concerning the work programme, his delegation expected progressive liberalization to begin as a result of the negotiations in this round. It was important to get some mutual economic benefits as a result of the negotiations and therefore provision should be made for the use of these above mentioned techniques in the GNS process.

273. The representative of Brazil considered that progressiveness was a key element in the negotiations and one way of initiating this process was to start liberalization among developed countries. He also advanced the idea of establishing preferential opportunities for developing countries, e.g. preferential access to developed country markets for services of special export interest to developing countries, unrestricted and unconditional extension to developing countries of the benefits resulting from agreements concluded among developed countries, opportunities for developing countries to grant concessions between themselves which would not be extended to developed countries. It was necessary to consider different speeds in the liberalization process to achieve a balanced global liberalization for all countries. As already pointed out in the Brazilian document MTN.GNS/W/48, a greater degree of liberalization within customs unions and free trade zones could have a multiplier effect on international trade in services.

274. The representative of Romania stressed the importance of answering five key questions. First, what did progressive liberalization mean concretely? Did it mean the reduction of the negative influence of the presently existing regulations? Second, which practical measures were envisaged in order to achieve progressive liberalization? Here, Canada had made useful proposals concerning negotiating techniques. Third, what were the national policy objectives that had to be taken into account? Fourth, how could developing countries be assured the necessary flexibility in the progressive liberalization exercise? These countries would participate on the basis of relative reciprocity, a principle implicitly recognized in the Montreal document. It meant that participants should not expect developing countries to make concessions which would be incompatible with their own development needs. He agreed that liberalization should begin with liberalization among developed countries. Finally, what were the main barriers to market access for services from developing countries and how could their export possibilities be increased? In his view, developing countries should benefit from preferential treatment.

275. The representative of Indonesia noted that for a developing country, the question of progressive liberalization needed to be placed in the context of their development realities and was linked with the question of the increasing participation of developing countries. Progressive liberalization was relevant for developing countries when it was consistent
and compatible with their development needs and goals. Elements of relevance in this context included preferential arrangements among developing countries and unilateral opening of developed country markets for some exports.

276. The representative of the European Communities said that the rules and principles of the framework should be generally applicable unless otherwise specified. However, certain general exceptions would be needed as well as certain sectoral annotations to elements of the framework. These could be clarifications or adaptations to ensure the appropriate applicability of an element to a particular sector, or additional elements peculiar to a sector and not met by the general provisions of the framework. Progressive liberalization could be achieved by signatories assuming commitments in terms of market access. A starting point would be a commitment by all signatories to consolidate the existing situation regarding measures in conflict with the basic principles for effective liberalization. To move from a consolidation position towards actual liberalization, a multilateral approach among signatories was required. This approach would be preferable because it moved all participants towards the same goal of effective market access. An alternative would be the bilateral or plurilateral negotiation of specific individual commitments related to the elimination of certain measures which would then be extended in accordance with an m.f.n. provision to be included in the framework. As a principle, all signatories should have negotiated commitments in relation to achieving effective market access (including national treatment) which was the aim of the process. This objective implied that countries with more open markets would make fewer new commitments to liberalization than those with more closed markets. Ultimately the aim was to achieve effective market access for all signatories in all markets. He expected that signatories would contribute to the process of progressive liberalization, not only at the end of the round, but by participating in further periodic packages of negotiated commitments and bindings. His delegation favoured the concept of reviewing and increasing the level of liberalization on a multilateral basis. Finally, he noted that no government, developed or developing, would liberalize unless it was convinced of the advantages to its economy. Rules for progressive liberalization per se did not necessarily have to be different for developing countries providing they allowed flexibility in the level of commitment of individual signatories. In this regard, he stressed the concept of flexibility for individual developing countries (as stated in the Montreal text which had differing levels of competitiveness in different sectors). He did not favour proposals, such as put forward by Brazil, which suggested that all developing countries and all sectors in those countries should be treated alike.

277. The representative of Switzerland noted that progressive liberalization meant it was progressive in terms of coverage and of time and was irreversible. It was necessary to achieve a ratchet effect which would guarantee that the concessions exchanged could not be turned back. The consolidation mechanism should guarantee a degree of market access and would not constrain the right of signatories to establish other regulations.
or to supplement existing regulations. The result would be an obligation for signatories to maintain the degree of market access which had been consolidated or bound at the time of consolidation. Secondly, negotiations should aim at the progressive elimination of trade obstacles of which there were different types: protectionist barriers and barriers which were the result of legitimate national policy objectives. The former category could be reduced or eliminated as long as there was the political will to do so. The latter category caused more complex problems as the barriers in question touched often on vital aspects of national policy which made unequal treatment between nationals and foreigners very difficult to remove. However, it was important to ensure that this type of barrier would be limited to what was essential for maintaining public order for example and would not be arbitrary in nature.

278. The representative of Jamaica said that according to the Secretariat Glossary of Terms (MTN.GNS/W/43/Rev.2) progressive liberalization implied the gradual improvement of market access through the reduction or elimination of negotiable barriers to trade in services; it was also referred to as a means of increasing international competition and was not be equated with the simple dismantlement of national regulations. He noted that paragraph 7b of the Montreal text dealt with the liberalization of trade and not of services, and that specific procedures might be required for the liberalization of trade in particular sectors. It was necessary to look at progressive liberalization in terms of the openness of the markets at the border and of the measures within the border which provided for competition. Domestic competition was implicit when the Montreal text spoke of reducing the adverse affects of all laws, regulations and administrative guidelines. Liberalization concerned not only governments but also private operators. Concerning modalities, it was essential to increase the participation of developing countries, e.g. by technology transfer. He believed that in the discussion of the concepts, development should be a standing agenda item whereby the concepts would be examined in relation to development. Progressive liberalization should not be seen as antithetical or prejudicial to development nor to the national policy objectives set by each country.

279. The representative of Peru noted that progressive liberalization was a means to promote development and not an end in itself. The element of flexibility found in the Montreal text would have to be taken into serious consideration in the establishment of the framework. To be attractive to his country, progressive liberalization would have to guarantee two points: when his country opened its market, it would have to be able to benefit from openings in other markets; and it would have to enable his country to increase its efficiency and competitivity in the field of services.

280. The representative of Malaysia noted that in 1979 his country's services deficit was 4.8 billion ringgits (MR); ten years later it grew to 11.2 billion and was forecast to grow to 13 billion MR by 1990. He believed that the Malaysian service sector was relatively liberal. Progressive liberalization could promote development to the extent that
imports were needed to help build up an indigenous services sector but at the same time the country was suffering from a chronic and persistent trade deficit in services. He doubted that Malaysia could bind at this point in time its national schedule as proposed by Canada and the European Communities. Their ideas could be applicable at some point but in the present situation he could not foresee the application of such liberalization measures. His country did not intend to close its markets as protection led to inefficient industries. It was necessary to find a balance between how to liberalize and how to regulate as agreed upon at Punta del Este. In trying to overcome a chronic services trade deficit, countries such as Malaysia should not be penalised, during the course of the round or when the framework agreement came into force, for introducing new regulations to fulfil legitimate national policy objectives.

281. The representative of Egypt noted that liberalization was an instrumentality for growth and development rather than an objective of the negotiations. Concerning progressivity, he distinguished between achieving liberalization through this round of negotiations and through other rounds which came out clearly in the Montreal text. He added that the question of the phasing of the implementation of commitments might have sectoral specificity and, on the part of developing countries, there might be a need to maintain or introduce some transparent domestic preferences for certain sectors and individual countries. He also considered the possibility of introducing price-based measures which could afford well calculated rates of protection for domestic industries. Such instruments could be of help in the progressive aspect of liberalization in developing countries. The right of countries to introduce new regulation should not be confined to trade-neutral regulations which, in any case, would be difficult to identify. There could be a clear need to introduce some trade-related regulation in order to devise the appropriate mechanisms for progressive liberalization. The Montreal text provided flexibility as a long-term concept for developing countries to open fewer sectors or liberalize fewer types of transactions in this and later rounds. A review mechanism for the agreement was necessary, and it should not only oversee the implementation of the agreement but should also review the evolving situation in the market and how different countries were achieving benefits from market access opportunities. This would be important for assessing the competitiveness of different countries, and consequently the ability to assume further liberalization commitments.

282. The representative of Australia noted that the Montreal text did not give a mechanism for achieving progressive liberalization. His country's approach stressed flexibility as a key element and recognized that there would be some temporary exceptions to the full obligations in the framework as part of the attempt to flexibly manage economic adjustment pressures. The approach provided for the full obligations to apply initially to a full range of services covered by the framework although the coverage might be different for different countries. He did not think that the full range of obligations would apply to the entire universe of traded services sectors. Any such reservations or exceptions needed to be balanced by concessions in
other areas in order to achieve the equity mentioned by the Canadian delegate. The approach suggested in document MTN.GNS/W/46 drew on a procedure for achieving and maintaining this flexible balance which was used in the early years of the GATT. It provided for liberalization to occur on the basis of either bilateral or plurilateral negotiations of schedules of market access agreements and schedules of reservations. The reservations schedules would list those services preferably by activities rather than by whole sectors to which some of the principles and rules of the agreement might not apply for particular countries at the outset of the agreement. In subsequent negotiations which would take place at regular intervals, members of the agreement would resubmit their proposed lists of reservations to the coverage of the agreement and would renegotiate among themselves with a view to progressively reducing over time barriers to trade in services which the reservations necessarily would cover. Progressive liberalization would be also achieved by additions to the schedules of market access agreements. The balance in obligations and rights would be achieved by a balance between the reservations and the market access agreements which would be seen as obligations to accept in respect of trading partners. Over time, the market access agreements would be extended, possibly on a formula basis. He foresaw problems in determining how a formula would apply in sectors where there was no obvious way of quantifying or standardising the protection which existed and could be the subject of reduction as part of a formula. From the outset, the market access agreements would imply the application in any sector covered by an agreement of all of the principles embodied in the Montreal agreement.

283. The representative of Hungary favoured progressive liberalization for the full universe of tradeable services which should be spelled out in an annex to the agreement. The extent of national liberalization undertakings depended on several factors including: countries' level of development; the trade conditions of a given sector, e.g. trade distortions such as the use of subsidies by dominant suppliers, restrictions on access to technology leading to competitive differences; and economic considerations, e.g. balance of payments considerations. Concerning the areas for progressive liberalization, he said that the factors of capital, labour and information should be included in a balanced fashion. Capital tended to be permanent in the sense that once an enterprise was established there was little possibility to limit its function or employ safeguard measures. Labour flows were more temporary in respect of individual persons thus creating an inherent imbalance between the two production factors. He saw progressivity in terms of (a) sectoral coverage in that an increasing number of sectors would be covered by participants and (b) treatment of foreign service providers in that it would not be feasible to provide market access immediately with full national treatment. Some preference for domestic service providers should be maintained on a temporary basis. Concerning the prevention of backsliding, he could not foresee a situation where bound market access would be nullified or impaired through new regulations but he was not sure whether this notion was possible where market access was not bound or where there was no access at all.
284. The representative of the United States was sceptical of a formula approach to liberalization due to the absence of quantitative protection in services but considered it interesting to find out to what extent it could be achieved at least in some of the sectors. His delegation viewed a framework in terms of a combination of principles dealing with both mechanisms (e.g. consultations and dispute settlement, administration of the agreement) as well as those related to market access. They would form an agreement to which countries would legally obligate themselves and which would extend to a broad range of agreed upon sectors which were traded internationally. It should entail also the flexibility required by countries where they were not capable of conforming their existing regime to, in particular, national treatment obligations. Provided there was a definition that not only included the ability of countries to move personnel across borders but also the ability to establish combined with national treatment, then the notion of market access in services would be to a large extent achieved. According to the Montreal text on progressive liberalization, developing countries would have the ability to reserve more measures than would developed countries. His delegation subscribed to that but the inevitable question related to the degree of such reservations. Relevant considerations in this regard concerned defining the nature of development objectives, and the concept of infant industry. He doubted that the traditional infant industry model was of benefit to the development of developing countries particularly in service sectors where technology was predominant, and where receiving such technology depended on the presence of foreigners and of competition. He considered as artificial the notion of special treatment (e.g. more generous application of reservations or lesser obligations) based on whether a country was a net importer of services. It was necessary to look at structural aspects which related to the regulatory situation in a country. There was no blank cheque for any country and countries had to be explicit as to why they felt they needed additional time or a particular reservation because it would be difficult for other participants to uphold those forms of exceptions to their own governments. His delegation would insist, as part of any understanding, that the level of commitments was a relevant factor as to whether a country was going to receive the benefits of the understanding. Ministers at Montreal rejected the idea of an enabling clause in a services understanding and his delegation would continue to resist such an enabling clause.

285. The representative of New Zealand noted that progressive liberalization would start at the point of finalizing the agreement. At its time of entry into force, each signatory had to know to what extent all signatories were able to operate in conformity with its provisions. This would be identified by means of a system of reservations. Negotiations would be necessary to keep the list of exceptions narrow and to achieve a balance of positive concessions. Participants would have to assess the level of commitment they could accept on joining the agreement and how much could be bound in countries' services regulatory regimes. It would be difficult to give credit to any signatory which had not accepted any commitments. However, the binding of a current relatively open regime could count for considerable credit in assessing an individual commitment
made at the time of signing the agreement. In the longer term, there was a need for subsequent negotiations. Different methods such as a formula or an exchange of concessions would not necessarily be mutually exclusive. Liberalization could take the form of (a) the gradual reduction and elimination of measures and practices that formed each country's list of reservations and (b) corresponding commitments by way of positive bindings or concessions. The framework should contain principles which implied a good degree of obligation and in this regard national treatment should be accorded once market access was negotiated unless otherwise specified.

286. The representative of Japan noted that his delegation would like to address the technique or modality for securing progressive liberalization in more concrete terms after having a clearer idea of what the fundamental regime for services would be, including the other main principles.

287. The representative of Egypt pointed out that developing countries identified their own developmental objectives differently. Services in developing economies were strategic in terms of being means of managing the national economy. Concerning infant industries, he noted that the history of competitive providers of services in the world market today showed that they had passed through phases of protectionist policies which allowed them to reach their present stage of development. He considered that a certain quantifiable level of protection was justified to allow developing countries to develop their own indigenous service capacities. The idea of an enabling clause was important as developing countries needed to have flexibility regarding the choice and the extent of commitments they would undertake regarding sectors. This did not mean however that developing countries would refrain completely from undertaking commitments. He did not consider that at the end of the Uruguay Round the prevailing situation in the international services market would be that liberalization would be the norm and any reservation would have to be carefully defined and justified. On the other hand, what would have to be clearly defined are the commitments under the agreement.

288. The representative of Argentina foresaw a framework agreement which contained some obligations from the outset, the non-exclusion of any sector a priori, and the gradual incorporation of concessions granted by the signatories to the agreement. Concerning the level of general consolidation of restrictions which existed at present, there was an imbalance between countries regarding the regulation of services. In some developing countries there were certain service activities which had not yet come under any form of regulation because no provision for such services existed. On the basis of the criterion of consolidating the existing level of protection, it might occur that a country wanting to develop a certain type of activity in the future was not able to do so because it could not introduce a certain degree of protection to ensure the development of that particular activity. Therefore, if there was an obligation to consolidate restrictions at a given level, there should be some sort of exclusion or exception included for developing countries.
289. Before concluding the discussion on this item, the Chairman suggested that at the next meeting the Group discuss national treatment, m.f.n./non-discrimination and market access. He then turned to agenda item 2.5 on statistics and called on the Secretariat to introduce its note in MTN.GNS/W/54 which informed participants on the discussion on improvements of statistical classification systems for services at recent meetings of the Voorburg Group and the Statistical Commission of the United Nations.

290. The representative of Brazil considered that improved statistics could offer at least a partial view of the reality of trade in services. He welcomed the Secretariat document and asked to what extent information on balance of payments data on invisibles could be made available to the Group. He further requested the Secretariat to always bring to the attention of the GNS the latest developments in relevant statistical work performed by other institutions. In response, the Secretariat noted that it could present detailed information on balance of payments statistics based on IMF data which was available for individual countries over time and for various sub-groups of invisible transactions according to the balance of payments classification. It was, however, important to bear in mind that the definitions used for services trade for balance of payments statistics were just book-keeping definitions, and that the data on country exports and imports were not recorded according to source and destination.

291. The representative of the United States stressed that the work of the Voorburg Group on definition was related to statistical considerations only. All proposals maintained an approach for statisticians that trade could only occur between a resident and a non-resident and thus sales by affiliates and transactions between residents and non-residents that did not imply cross-border transactions would continue not to be registered in the balance of payments statistics. However, it was necessary to have more information about sales by foreign affiliates as most services were provided through such sales.

292. The representative of Yugoslavia considered that the GNS should explore all possibilities in the area of statistics including work done by different international organizations. In particular it was important to establish criteria for measuring the level of development of developing countries. Her delegation would appreciate inclusion of data on the position of developing countries in the background papers being prepared by the Secretariat. The representative of Canada commented that the Secretariat's reference list did not allow the Group in a statistical sense to tackle the intra-firm issue. He suggested that the material that might be presented should be taken with some degree of caution.

293. The Chairman turning to item 2.6 of the agenda, Other Business, took up the question of attendance at GNS meetings by representatives of other international organizations. He recalled that the Group had decided to invite the ITU to attend the present meeting for the discussion on telecommunications. He had also received a letter from ICAO asking to be
present only when air transport was under discussion. He suggested therefore that he be authorized to invite ICAO to the July meeting to attend the discussion that related directly to ICAO's activities. This raised the question whether organizations like IMO dealing with maritime transport and WTO dealing with tourism should also be invited on an ad hoc basis. He asked the Group for its views on, first, the participation in the July meeting by ICAO. The representative of the European Communities requested that the Chairman in his reply in this or other cases did not use the word "observer" as it could give wrong expectations but use the term "attendance". The Chairman noted that the Group was not opposed to him inviting other relevant international organizations which requested attendance at future discussions. As concerned the request by the ITU for permanent observer status for meetings of the GNS, he noted that there was not sufficient consensus to be able to give a positive reply to the ITU. He therefore intended to reply to the ITU that specialized agencies or other international organizations could attend GNS meetings on an ad-hoc basis when subjects of interest to them were to be dealt with.

294. Concerning the sectors to be discussed at the next meeting, transportation and tourism, the Chairman outlined the possible scope of the background papers to be provided by the Secretariat on the two sectors. In response to various comments and questions, the Secretariat pointed out that the written outlines provided to delegations were simply a reorganization and simplification of the material contained in the Secretariat's reference list. The Chairman confirmed that in the discussion of these sectors any delegation could raise any matters considered relevant.

295. The Chairman confirmed that the next meeting would take place in the week beginning 17 July 1989.