NOTE ON THE MEETING OF 17-21 JULY 1989

1. The Chairman welcomed delegations to the twenty-second meeting of the Group of Negotiations on Services. He drew the attention of the Group to GATT/AIR/2808 which contained the proposed agenda for the meeting and said that under the agenda item "Other business" he would like to raise the question of how work in the Group should proceed between the September meeting and the end of the year. He asked if any delegations had any comments.

2. The representative of Brazil said that he would comment on a statement by his delegation recorded in MTN.GNS/23.

3. The Chairman 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 a discussion of transport services. One document before the Group was "Trade in transport services" (MTN.GNS/W/60), prepared by the secretariat. He noted that the document should serve as background material and was not intended to be negotiated or revised on the basis of discussions in the Group. Moreover, the list of questions prepared by the secretariat in MTN.GNS/W/51 was also relevant. Another paper "Implications for application of concepts, principles and rules for the transportation sector" had been circulated by the United States delegation.

4. Before commencing the discussion on transport services, the representative of Egypt noted that the current sectoral examination exercise was an important step in agreeing on the relevant concepts, principles, and rules to be included in a multilateral framework agreement on trade in services. It was therefore essential in his view that delegations spell out more clearly the specific transactions being addressed in the various sectors under examination. He felt that this issue had not been adequately reflected in the previous meeting of the GNS, thereby making it difficult to reach conclusions regarding the applicability of various concepts in the telecommunications field. He emphasized that delegations could not be expected to undertake commitments with regard to transactions which remained unspecified, adding that what he merely sought was compliance with the language contained in the Montreal text on the issue of specific transactions within individual sectors.
5. The Chairman asked the secretariat to introduce document MTN.GNS/W/60 and then opened the floor to a discussion of transport services, starting with air transport services. He asked whether any delegations wished to make general statements.

6. The representative of the United States introduced document MTN.GNS/W/64 by saying that his delegation felt that the brevity of the time allotted to the discussion of transport services might not allow the numerous complexities - regulatory and other - which existed in the sector to be addressed comprehensively. He emphasized that the observations made in the document did not in any way prejudge his delegation's views as to the possible coverage of a services understanding in the transport services field. He noted that the paper reflected the view that some principles, e.g. transparency, could be applied in the sector without dramatically affecting existing regulatory régimes and practices. On the other hand, the application of some principles - particularly m.f.n./non-discrimination, national treatment and market access - would exert profound effects on current regulatory régimes, both domestically and internationally. This was particularly true for the air and maritime transport sectors and would have to be borne in mind when assessing the applicability of concepts, principles and rules in the field of transport services. He noted that in most countries, including his own, national security considerations were particularly important in the sector, adding that beyond the sensitivities associated to national security concerns lied some fairly detailed undertakings that would have to be considered in seeking to conform to the requirements of domestic regulatory régimes, at least in the United States.

7. The representative of Sweden, on behalf of the Nordic countries, said that the transport sector had certain features that could be likened to the telecommunications sector. Transportation was both a traded service in its own right as well as a prerequisite for trade in other goods and services. He noted that as for telecommunications, access to networks was an important issue in the transport sector. He noted that transport infrastructure facilities (ports, airports, roads, air lanes, etc.) were physically constrained, adding that when such constraints were met, additional service providers could only enter a market if facilities were increased or else at the expense of already established providers. There were, however, cases of unlimited access, access to international waters on the open seas being traditionally free. He noted that the degree of regulation varied between different areas of the transport sector. Some areas were heavily regulated, e.g. liner conferences and cabotage in shipping and air transportation of passengers and cargo. However, in recent years several countries had started to deregulate both international and domestic aviation. Maritime bulk cargo transport on the other hand had never been extensively regulated. The amount and intensity of competition also varied. Some transport services were provided in an environment of strong competition in spite of the fact that the particular transport activity might be heavily regulated. An example was the airline industry. Another, was those liner trades where outsider tonnage competed with conference ships. However, there were also national monopolies in the transport sector, e.g. in many countries there was only one railroad company. Different modes of transport also competed with each other, e.g. road and sea transport. When transport services were
provided across borders, usually both the service provider’s equipment and his personnel entered the territory of the other state, delivered the transported goods or people and left again. This could be likened to a typical case of temporary entry of factors of production. International transportation was closely linked to domestic transportation. Most goods and people needed continued transportation from the point of entry into a country to their final destination. Technological developments had led to a rapid expansion in recent years of multimodal transport operations linking domestic and international transport modes even closer to each other. Auxiliary transport services were an increasingly important part of the provision of efficient and reliable modern transport services. For these services as well as for multimodal transport operators a presence in the local market could be particularly important. Local establishment could also be crucial for more traditional types of transport in order to take advantage of- and apply- new technology that improved services and cut costs. The Nordic countries were of the opinion that a framework agreement on trade in services should apply to all transportation services and sectors, i.e. the physical distribution of goods and people; transit traffic; and, auxiliary transport services. This was necessary if the agreement was to produce a balanced set of rights and obligations for signatories that would benefit all interested parties: transport operators, shippers and the final user of the transported goods (the travelling public in the case of passenger transport).

8. The representative of the European Communities said that there were strong and growing links among the various transport modes which had to be considered in approaching the sector, the trend toward multimodal/end-to-end services being a manifestation of such linkages. He agreed that many aspects of transport services were considered as being of strategic importance, and the Group would have to acknowledge the different perceptions which governments had in this regard. He stressed the importance of standards for all transport modes, standards which were set at a range of different levels, both within countries and internationally. Similarly, there was a wide range of agreements which had implications for trade in the sector. Depending upon the particular modes, these arrangements were either bilateral, plurilateral or multilateral in nature, with important implications for progressive liberalization. Another important element worth considering in the sector was that of state aids which applied, albeit in various forms, to all transport modes.

9. The Chairman opened the floor to a discussion in the air transport sector on the application of the concept of transparency, as described in paragraph 7(a) of MTN.TNC/11.

10. The representative of Mexico said that available international statistics recalled the very clear dominance of developed countries in the world market for transport services. Developed countries accounted in 1986 for about seventy-eight percent of world shipment receipts and in 1988 for some eighty-five percent of international air traffic, these countries owning a similar percentage of the world’s total aircraft fleet. Similarly, it was estimated that some three-quarter of the world’s cargo fleet was concentrated in developed countries. This data showed the fairly low degree of
developing country participation in the sector, a situation which was altogether not surprising in view of the technological gap separating developed and developing countries. He noted that the secretariat had depicted in MTN.GNS/W/50 the transportation sector as comprising four main types of activities (cargo, passenger, charter and auxiliary transport services) which were then divided into twenty-two sub-categories of activities. At its most disaggregated level, the Central Product Classification (CPC) contained over one hundred transport sub-activities. He agreed with the representative of Egypt on the importance of definitional clarity regarding the specific transactions under discussion. He would be addressing his remarks to only a subset of transport activities described in MTN.GNS/W/50, without however prejudging Mexico's negotiating interests in the sector. His delegation would be addressing the applicability in the transport sector of various concepts in the light of four hypotheses: (i) the cross-border movement of services; (ii) the temporary cross-border movement of factors of production; (iii) the indefinite cross-border movement of factors of production on a definitive basis. Regarding transparency, it implied the notification and publication of national and sub-national regulations and administrative guidelines relating to transport. Bearing in mind the various rules and regulations applying in most countries with regard to labour and immigration, it would probably be quite difficult to ensure that governments complied with notification and publication requirements in this regard, nor was it likely that many countries would be prepared to ensure that changes to immigration and foreign investment policies be subject to prior consultation. He emphasized the administrative burden aspect of transparency and its particular relevance to developing countries. He noted that great progress had been achieved in applying the concept of transparency in the field of civil aviation through the ICAO framework. Transparency provisions would also have to ensure that foreign established companies supplied information on their activities.

11. The representative of Canada agreed with much of what the representative of Sweden had said in his opening remarks. The transportation sector clearly played a strategic role, both nationally and internationally, a fact which would have to be taken into account in the Group's work. Consistent with the way in which his delegation was tackling the sectoral testing exercise, he would be taking a descriptive - as opposed to prescriptive - approach to the transport sector. All Canadian laws and regulations in the transport sector were publicly available. His delegation was prepared to look at the idea of prior notification as part of an overall package. While transparency was not a general problem, there might be more of an issue in air transport given the existence of confidential side-agreements in the sector. As well, computer reservation systems and central freight bureaus could be areas where the strict application of transparency rules might require regulatory changes.

12. The representative of Brazil felt that the statistical annexes contained in MTN.GNS/W/60 painted a vivid picture of the imbalance between developed and developing countries in the various transport modes. He shared some of the considerations and concerns, particularly those relating to strategic policy choices, contained in MTN.GNS/W/64. These were concerns
which his delegation had already expressed on numerous occasions. In addition to its strategic importance, the transport sector exerted significant impacts on a country's balance of payments. As regarded transparency, he stressed that the basic rule should be to publish all laws and regulations relating to transportation in official gazettes and that any requests for further information should be dealt with within the framework of relevant international organizations. This dual approach should in his view secure an adequate level of transparency. He agreed with the representative of Mexico on the need for transparency provisions to apply to the operations of foreign companies and not be merely limited to governmental laws and regulations.

13. The representative of Japan said that in the civil aviation field transparency appeared to be two-tiered: on the one hand, the régime under the Chicago Convention helped to ensure that bilateral agreements and various domestic policy elements were registered with ICAO; on the other hand, various national regulations were published in official gazettes and were thus available for any information enquiry. He reiterated the fact that his delegation saw difficulties with the notion of prior notification. As for maritime transport, he said that Japan staunchly believed in freedom of trade in the sector and noted that all domestic measures relating to it were published in Japan.

14. The representative of Peru emphasized the strategic contribution of the transport sector to the process of economic development. The transparency provisions of ICAO were useful and needed to be reinforced. His delegation had strong reservations on the issue of prior notification.

15. The representative of the European Communities agreed that while there were few general problems in applying the concept of transparency in the transport sector, the complex and often highly technical nature of regulation in some transport modes meant that having full knowledge of existing regulatory régimes might in some instances prove quite difficult. He noted that many agreements - particularly those negotiated bilaterally - were only partially published. In addition, many such agreements were often published long after they were implemented. There were strong reasons therefore to strengthen notification procedures in the sector. The Canadian views on the transparency dimension of computer reservation systems and central freight bureaus were in his view quite pertinent.

16. The representative of the United States agreed that in some areas of transportation countries had recognized the importance of transparency and were already securing it through publication in official gazettes. There were, however, lengthy delays in the publication of some bilateral air transport agreements as well as numerous side agreements which effectively undermined the meaning of published agreements. Any side agreement which the United States entered into was notified to ICAO. He agreed that computer reservation systems could create major transparency problems in the air transport sector, adding that authorities in the United States had developed criteria for ranking airlines and other service offerings on such systems. As to availability of information supplied by private foreign operators, he noted that such requests had to meet legitimate regulatory
criteria, emphasizing that private firms needed to retain some degree of confidentiality with regard to certain strategic aspects of their activities.

17. The representative of Hungary noted that the section in MTN.GNS/W/60 dealing with other transport services, particularly surface transport services, was not as detailed as the ones relating to air and maritime transport. As well, he noted the lesser quantitative importance of international trade in surface transport. On the issue of transparency, he stressed the importance of publishing and making available all national legislation relating to the sector. At the same time obligations in this regard should not represent undue administrative burdens. He felt that the reference in MTN.GNS/W/64 to state-controlled economies under the heading of transparency was not a useful one. He wondered whether Hungary was understood to fit that description with regard to transparency. Hungary regularly published rules and regulations concerning transport and other service sectors in its official gazette and was ready to consider reasonable notification requirements in a future framework agreement. Hungary notified also its bilateral civil aviation agreements with ICAO.

18. The representative of Australia, referring to the possible amount of paper which might stem from a positive notification obligation, said that his delegation would prefer a transparency provision to contain an obligation to publish laws, regulations, judicial decisions and administrative rulings pertaining to trade in services. Also, transparency obligations should provide interested parties with the opportunity to comment on laws and regulations to the extent possible. This dual approach mirrored that which Australia and New Zealand had taken in Article 13 of their Protocol Agreement on Services. He recognized the problem posed by side-letter agreements in the air transport sector, noting that these reflected the essentially bilateral structure of the industry. While it was different to envisage how an agreement could attempt to prevent such arrangements, his delegation would feel uneasy about provisions which would simply exempt countries from maintaining transparency in their bilateral dealings. Options which might be considered in this respect could include reverse notification or time frames after which bilateral agreements would have to be made public, the main objective being that of limiting the use of substantive confidential addenda to bilateral agreements.

19. The representative of Egypt felt that the concept of transparency was of general applicability in the transport field, although as in other sectors the volume of information was a potential source of concern. He said that the idea of national enquiry points was a useful means of lessening the administrative burden which transparency commitments might entail. At the international level, existing multilateral procedures such as those of ICAO were useful and should be reinforced in the area of transparency. He agreed that full transparency was not achieved in the air transport sector given the existence of confidential side letters. He shared the views put forward by the representatives of the United States and the European Communities on the strategic importance of some transport sector activities, be it for economic or national security reasons. Such reasons provided the rationale for ensuring that transparency provisions be applied...
to market operators. He did not feel that the idea of prior notification could be envisaged as a mandatory commitment in a framework agreement since it was not in his view applicable from a practical point of view.

20. The representative of Switzerland stressed the economy-wide importance of transport activities, both to goods and services-producing firms. Transparency was secured in Switzerland through the publication of all laws, regulations or international agreements pertaining to transportation. He recalled that to serve a useful purpose in an agreement, transparency had to be thorough, understandable, comprehensive, efficient and limited to the public domain.

21. The representative of Korea said that transport services transactions included the cross-border movement of factors of production - technology and capital as well as labour - and equipment. All three factors of production would need to be considered in the course of the services negotiations. Due account would also need to be taken of the public nature element that was inherent in the transport sector as well of the national policy objectives which applied in it. His delegation wished to propose that domestically transacted and operated transport services - such as public bus transportation, taxis, coastal shipping - be excluded from the scope of the current negotiations. In addition, services such as air transport which operated within a bilateral framework and respected the international practices and national sovereignty of the airspace did not fit the current scope of coverage and should be discussed at a later stage. On the issue of transparency, he recalled the burden which transparency provisions could represent for developing country administrations and felt that not all laws and regulations should be made transparent in view of the strategic importance of some of them. Korea published its transport laws and regulations in its national gazette. He suggested that national laws and regulations could be notified to the GATT secretariat once they had been enforced. He shared the views of those who felt that the prior notification of regulatory changes was not an appropriate course to pursue, adding that transparency could be enhanced by setting up national enquiry points.

22. The representative of Sweden, on behalf of the Nordic countries, said that signatories to a framework should commit themselves to making available as published material all regulations and standards established by authorities or industry associations that applied to trade in transport services. Existing regulations should be notified to other signatories in summary form and full texts in original languages should be available for reference purposes. Changes to existing regulations or new regulations should also be notified, preferably in the form of prior notification and with the possibility of consultation among signatories. Cross-notification could also be envisaged. Each signatory should designate enquiry points to which others could address questions and requests for information. He felt that standard transparency provisions could be applied in the transport sector.

23. The representative of India noted that MTN.GNS/W/60 showed that the developed countries accounted for an overwhelming share of trade in the transport sector. All laws and regulations pertaining to all transport modes were published in India; in the cases of surface and road transport
regulatory régimes were administered at various levels of government. His delegation had some reservations on the issue of prior notification, a concept that was not feasible in the sector.

24. The representative of Turkey said that his delegation hoped that obstacles to full transparency in the air transport sector could be removed in the GNS context. He suggested that signatories commit themselves to publishing all their bilateral agreements within a reasonable period of time and register them with ICAO. As regards confidential side agreements, he believed that cross-notification could prove useful. Transparency was difficult to ensure in the case of computer reservation systems; worldwide transparency could be secured if all airlines had access to such systems.

25. The representative of Yugoslavia welcomed the secretariat’s efforts in highlighting the problems typically encountered by developing countries in the transport sector. In particular, she felt that the statistical information contained in the Annexes to MTN.GNS/W/60 revealed the dominant position of developed countries in the sector. Special attention would have to be given to the developmental - social and economic - security and sovereignty dimensions of transportation activities. On the issue of transparency, she agreed that the obligation to publish all regulatory information should be secured under the agreement’s transparency provisions. Access for computer reservation systems, as well as activities of private market operators needed to be made more transparent. Transparency commitments could only become clearer once the specific transactions to which they would apply were properly delineated.

26. The representative of Nigeria recognized the importance of achieving transparency in the transport sector and noted that in a federal system such as that of Nigeria laws and regulations were published and made available at various levels of government. At the same time, he noted that the very nature of a federal system meant that the implementation of prior notification procedures was very difficult.

27. The representative of Argentina felt that MTN.GNS/W/64 suggested the need for a pragmatic approach in the transport sector, not least because of the complexity of regulatory régimes, but also because of the key strategic and security implications of transport activities to national economies. With regard to transparency, he agreed that all laws, rules and regulations applied at the national level should be published, as was the case in Argentina. The notion of prior consultation was not compatible with Argentina’s constitutional practices.

28. The representative of Poland shared the views of the representative of Hungary on the imbalance in the treatment of various transport sub-sectors in MTN.GNS/W/60, although this would not in any way limit the current discussions in the GNS. He agreed that transparency was fully applicable in the transport sector and felt that the approach outlined by the representative of Sweden on behalf of the Nordic countries was both useful and pragmatic. The notion of prior notification posed major difficulties for his delegation.
29. The representative of Mexico said that laws governing foreign investment in his country required foreign firms to supply certain information to relevant government bodies. At the same time, Mexico had a law on confidentiality which was strictly applied. There should be nothing either in the framework or sectoral agreements which could prevent governments from requiring various types of information of foreign operators when changes in market conditions occurred. This did not imply that any degree of prior consultation should be required. He also felt that the institution that would ultimately be responsible for administering the framework agreement should have the ability to require certain information in specific circumstances which could be determined in the GNS.

30. The Chairman opened the floor to a discussion in the air transport sector of the application of the concepts of progressive liberalization, national treatment, m.f.n./non-discrimination and market access.

31. The representative of the European Communities recalled that the provision of international air transport services was regulated on the basis of bilateral reciprocity. At the same time, trade in the sector was almost exclusively cross-border in nature, although the description of trade which the secretariat had given in paragraph 11 of MTN.GNS/W/60 could be somewhat broadened as other means of supplying air transport services could be envisaged. A broader definition of trade in the sector could relate, for instance, to a range of "doing business" issues such as ground handling. He recalled that the Chicago Convention provided a multilateral framework in which trade on the basis of bilateral agreements had developed. This framework did not preclude multilateral liberalization. So far however, there had been little trade on any other basis than cross-border provision, not least because most bilateral agreements effectively precluded any other form of trade through the use of ownership clauses. A significant degree of liberalization of air transport was already occurring at the national and regional levels, although cabotage continued to be reserved for domestic airlines and remained an area in which liberalization was difficult to achieve. More liberal rules applied to the provision of non-scheduled traffic. He emphasized the growing importance of ancillary services to the efficient provision of air transport services. These included computer reservation systems, the ability to set up local agents more freely, ground handling operations, as well as linkages with other transport modes for onward movements so as to provide end-to-end services. Because of the existing regulatory structure, liberalization on the basis of normal multilateral trade principles and practices would require great creativity. Air transport services could not, indeed, shift from a bilateral to a multilateral regime overnight. The issue of standards was particularly complex in the transport field, not least because some international standards (e.g. environmental) might not be rigorous enough. The same could be said of some security standards. Group members should not forget, in approaching liberalization, that the cross-border provision of air transport was not the only possible mode of delivery. Establishment-related trade could thus be one of the creative avenues to pursue in looking at the possibility for greater liberalization in the sector. He concluded by saying that the air transport sector was in all likelihood one of the most difficult sectors to
tackle in the GNS. This did not, however, imply that meaningful liberalization could not be achieved in the sector.

32. The representative of the United States said that the air transport sector posed the most overt challenge to the concept of m.f.n./non-discrimination, however defined. More than two thousand bilateral agreements covered issues such as landing rights, air fares, as well as a range of ancillary activities. National governments and airlines (whether state-owned or not) saw natural advantages in packaging activities within bilateral arrangements in view of the greater leverage enjoyed in trying to obtain additional rights. The question was whether governments were willing to dismantle a régime that had been in existence for four decades. If not, he suggested that the concepts agreed upon in Montreal would have a very limited effect on the air transport sector. This he saw as a question of choice for GNS members to make, recalling that the notion of compatibility with existing international régimes was part of the Punta del Este Declaration. The main premises of the current régime governing civil aviation were clearly in contradiction with the GNS principles under discussion. On the issue of market access, he said that the issue of investment and of movements of personnel came up in interesting ways in the air transport sector, extending to how personnel could move across borders, how it could be used in times of national emergencies as well as to the pervasive ownership restrictions applied in the sector, including those in the United States. Both existing domestic and international régimes could be seen as contradicting what many in the GNS saw as the basic requirements for a more liberal trade in services régime. In approaching the civil aviation sector, Group members would have to decide whether they would want to devise a system of rules that would subordinate the current international regulatory régime. In his view the sector could not be practically negotiated until this internal assessment had been made.

33. The representative of Korea said that progressive liberalization meant enlargement of the coverage of a framework and the removal of regulations inhibiting trade. He recalled that air transport services sectors varied greatly depending on the levels of development of countries. This implied that a sudden, complete removal of regulations was impossible to achieve or at least unwise from a practical point of view. For this reason, the objectives and coverage of negotiations had to be discussed on a continuing basis. Market access referred to the cross-border movement of transport services and needed to be reviewed in conjunction with progressive liberalization. In view of the fact that transport services were often provided through overseas branches or subsidiaries, the rights of commercial presence and of establishment should have priority in securing market access. At the same time, such rights would have to be granted in line with the overall socio-economic conditions of individual signatories. When the acquisition and operation of transport facilities were limited for reasons of capacity or infrastructural constraints as well as of national security, standards should be set apart from an agreement's general provisions. As regarded the application of national treatment to both imported services and service providers, the complete liberalization of trade in services could be considered as an ideal objective in international transport services. While his delegation had no objection to seeing the national treatment principle
accommodated in a multilateral framework, discrepancies in national policy objectives and in the development of national transport capabilities meant that the application of national treatment to some transport services, including air transport services, port management, ship owning, etc. should be restricted to some extent.

34. The representative of Nigeria said that bilateral agreements in the air transport sector were quite comprehensive and covered issues such as market access and national treatment. He wondered what was left to be liberalized in the air transport sector, adding that his delegation felt that sufficient liberalization had been achieved in the sector. He said that Nigeria had been liberalizing the provision of domestic air transport services, which was no longer the monopoly of the national carrier. If progressive liberalization were to allow foreign carriers to provide services on domestic routes, issues such as national security as well as differences in regulatory regimes across countries would have to be considered. He felt that few developing countries would probably be ready to allow foreign airlines to compete with national carriers for domestic traffic.

35. The representative of Singapore felt that although the existing bilateral régime had worked well and that national regulatory regimes were highly complex, these should not be viewed as intrinsic reasons to exclude the air transport sector from the coverage of a trade in services agreement. The decision to exclude either sectors or activities within sectors would of course be taken at a later stage in the Group's work. He pointed out that the rationales that were given for possibly excluding the air transport sector - national security concerns, complex regulatory regimes, etc. - could also be applied to the telecommunications field. In paragraph 30 of MTN.GNS/W/60, the secretariat had listed a number of ways in which to promote progressive liberalization in the air transport sector. These were in his view worthy of further consideration by Group members.

36. The representative of Egypt said that the current discussions were not about deregulation in the air transport sector nor were they about the potential coverage of the agreement, which could be negotiated later. Rather, the discussions were aimed at assessing the modalities of progressive liberalization, i.e. the scope of gradually increasing the participation of foreign suppliers in domestic services markets. The issue of networks (i.e. computer reservation systems, telecommunications, financial) was of particular importance in the sector, especially in cases of geographically dispersed markets and operations. He recalled that the basic principle on which the Chicago Convention was based was that of the sovereignty of national airspaces, out of which flowed the conditioned rights to schedule traffic as well the requirement for prior permission to operate an airline. He asked whether GNS members were willing to do away or modify with the guiding principle upon which the current international régime was built. Although the existing system did not have a very strong multilateral dimension, it still permitted a fair opportunity to operate international services as well as the determination of which air transport links to maintain, elements of significant importance for numerous countries. There were two main types of restrictions brought about by regulation in the sector, relating to market entry on the one hand and to commercial
operations on the other. Liberalization in the sector was thus inherently complex, particularly in regard to the application of the m.f.n. principle, and would no doubt upset the balance and predictability achieved under the current régime. Progressive liberalization in the air transport sector could be achieved within the current bilateral context, subject however to certain parameters which could be discussed in a multilateral setting. A multilateral liberalization of trade in the sector might not prove feasible, given the shortcomings of the Chicago Convention in this regard. Similarly, the limited membership of the International Air Transport Agreement, which established the five freedoms of the air, suggested that sweeping liberalization might not be an optional path to follow in the sector.

37. The representative of Brazil said that in discussing progressive liberalization, Group members should not lose sight of the growth and development objectives of the current negotiations. National policy objectives and priorities in the air transport field had to be taken into account since any effort to promote liberalization would be conditioned by them. He agreed that the bilateral nature of regulation in the sector, as well as the existing multilateral machinery, complicated attempts at uncovering the applicability of various concepts and rules. Many countries would encounter problems were the existing régime to be dismantled, not least because a considerable amount of business operations had been established under its auspices. The air transport sector, despite appearances to the contrary, was often quite fragile, so that a sudden alteration of operating rules could prove highly disruptive to many market operators. He recognized that some countries already provided liberalization through bilateral agreements but felt that it should be up to countries to decide the extent to which they would be interested to engage in bilateral liberalizing exercises. Some GNS concepts, among which national treatment, were already contained in the Chicago Convention and some bilateral agreements specified the conditions under which national treatment would be accorded to designated airlines. He agreed that further reflection was required at the national level with a view both to determining the scope of any attempt at multilateralizing the rules currently applied in the air transport sector and to minimize any potentially adverse effects arising out of this process.

38. The representative of Japan agreed with the views of the representatives of the United States and the European Communities on the difficulties of applying the principles of national treatment, m.f.n. and market access in the air transport sector, not least because of the existence of an international régime governing trade in the sector. It was not realistic to ignore this international régime, which in his delegation's view should in fact be respected. He asked the representative of the European Communities to detail some of the specifics of the creative thinking he had in mind regarding the possible ways in which to promote progressive liberalization in the air transport sector.

39. The representative of Israel stressed the economy-wide importance of the air transport sector and the close links which existed between it and the tourism sector as well as a range of other service sectors. While a significant degree of liberalization had occurred in respect of international traffic, domestic airline markets remained on the whole quite closed
to foreign competition. He recalled the importance of domestic markets by noting that almost sixty percent of the traffic carried by North American airlines was domestic in nature, the relevant figure for Western Europe being twenty-five percent. He pointed out that there were circumstances in which protected domestic markets, particularly larger markets, might prove a crucial determinant of the international competitiveness of an airline by allowing, for instance, for some elements of cross-subsidization between domestic and international routes. The influence which dominant carriers could yield was thus an issue to consider in the context of discussions on market access, not least because this dominance usually extended to auxiliary services such as computer reservation systems. On the issue of market access, he said that the failure to provide for meaningful multilateral liberalization in the ICAO framework could perhaps be overcome were Group members to focus in a creative manner on some of the obstacles to the efficient provision of air transport services. The challenge before the Group was indeed to find better ways to promote progressive liberalization and enhance market access.

40. The representative of India welcomed the fact that the application of the Montreal principles to the air transport sector was viewed as an inherently complex undertaking, in view of the existing régime. This was a view which his delegation had long held for most, if not all, service sectors. The sectoral specificities of individual service sectors meant that no unique paradigm could be applied single handedly. With regard to the concept of market access, the notion of preferred mode of delivery was qualified by being subject to a definition of trade in services. It was thus essential for Group members to gain a clearer understanding of the specific transactions or activities being addressed and to remind themselves that the current discussions were about international trade in services. The preferred mode of delivery had to be related to a specific transaction and not be used to define the nature of the activity itself. He also sought additional information on the current attempts of the European Community to liberalize its internal air transport market in the wake of 1992. He wondered whether the concept of national treatment had ever been applied in the civil aviation field, noting that the difficulties which some delegations had alluded to in applying this concept would have to be borne in mind. India was not envisaging any dramatic transformation of the way in which its international civil aviation sector was regulated and controlled but noted that there was nonetheless scope for making some activities in the sector more liberal. He felt that in their respective papers the secretariat and the United States had taken two different positions on this issue, the latter taking the view that the direct application of the concepts embodied in the Montreal text would necessitate a wholesale change of the current regulatory régime. The secretariat, for its part, suggested that there were various ways in which liberalization could be achieved within the current structure. This difference in approach was quite pronounced in respect of market access, as paragraph 38 of MTN.GNS/W/60 suggested that the greatest scope for enhancing competitiveness in the sector had been argued to lie in more liberal bilateral agreements. He felt that the GNS should attempt to ensure that the international market for air transport services be made more freely competitive. At the same time, the benefits of liberalization had to be shared equitably among participants so
as to increase the participation of developing countries in the world market for transport services. The trade restricting effects of computer reservation systems and other ancillary services had to be diminished. He stressed the importance of scarcity constraints at major airports as an impediment to market access and agreed that the idea of liberalizing non-scheduled traffic was worthy of further consideration, although the share of this traffic remained globally quite small. Another possibility could lie in attempts to liberalize the market for air cargo services.

41. The representative of Peru agreed that the application to the air transport sector of the concepts contained in the Montreal text would represent a radical change to the existing international régime. It was thus essential in his view to proceed with great caution in this sector. Commenting on paragraph 15 of MTN.GNS/W/64, he noted the far-reaching implications of a hasty dismantling of the current régimes governing the provision of international transport services.

42. The representative of Hungary underlined the central importance of computer reservation systems as marketing instruments in the airline industry, noting that the conditions governing access to such systems might have a major bearing on the competitiveness of national airlines. As in the case of telecommunications, air transport was a sector in which the linkage between goods and services was of particular significance. Access to technology was also of great relevance in the sector, particularly in view of the sophistication of computer hardware. The issue of export controls on high-technology goods was thus worthy of consideration in regard to both progressive liberalization and market access.

43. The representative of Tanzania said that in addressing progressive liberalization, Group members had to be mindful of the need to respect and take into account existing arrangements, both bilateral and multilateral. He emphasized the unevenness of development in the air transport sector, a fact well documented in the statistical annexes to MTN.GNS/W/60. The current discussions would have to acknowledge and deal with the gap separating developed and developing countries in this area. He recalled that under the heading of progressive liberalization, Ministers had realized the need for specific exclusions for developmental reasons, adding that any degree of liberalization in the sector would have to be geared towards fulfilling the growth and development objectives of the GNS mandate.

44. The representative of Australia felt that liberalization in the air transport sector was not only desirable but already taking place, whether on a bilateral or regional basis. Changes had affected the ways in which both capacity was determined and carriers designated. Liberalization was also taking place in a growing number of countries' domestic airline markets, among which Australia where the substantial protection enjoyed by the national duopoly was being rescinded and where a significantly freer régime for the provision of non-scheduled passenger and freight services had been put into place. A key question was whether further progressive liberalization in the sector was possible on a multilateral basis. His delegation's answer was affirmative in principle, even within the framework of the Chicago Convention. He agreed however that new ideas would be required to
fulfil this objective. The current market structure suggested that multilateral liberalization might not be uniformly difficult to achieve. There were segments of air transport markets - charter services and a host of ancillary services were prime examples - where liberalization might be more easily pursued. It was also possible to envisage liberalization in respect of domestic scheduled passenger services, i.e. establishment-related trade in airline services. These were all areas in which his delegation wished to examine the implications of applying multilateral liberalization principles, without however prejudging at this stage what the actual coverage of the agreement might encompass. He agreed that the m.f.n./non-discrimination concept was the most difficult one to apply in civil aviation, particularly in regard to scheduled passenger services, adding that the dismantling of the current bilateral régime would necessarily result were the concept to be applied in the sector. Group members should bear in mind that the sector was changing rapidly and that present market structures might not last forever. The m.f.n./non-discrimination concept could be applied in the area of ancillary services. Liberalization of market access was also crucially important for the efficient provision of ancillary services. The notion of preferred mode of delivery was highly relevant in this regard. Where market access existed, national treatment was a key condition of such access. He suggested that progressive liberalization was desirable and achievable on a multilateral basis in virtually all segments of the air transport market, with the possible caveat of scheduled passenger services. Finally, he joined other delegations in seeking more details on the implications of the creation by 1992 of a single European market for air transport services.

45. The representative of Mexico said that progressive liberalization in the air transport sector might best be achieved within the current international regulatory situation and agreed that the process of progressive liberalization could not be likened to that of deregulation. He felt that the existing régime was beneficial to all countries and promoted air safety. It seemed particularly difficult to develop a multilateral system for trade liberalization in the area. As regarded market access, there was a possibility for a greater degree of liberalization, especially in the areas of technology and computer reservation systems.

46. The representative of Yugoslavia said that her country’s experience tended to show that progressive liberalization could be achieved bilaterally. She noted that commercial carriers, for instance, were increasingly determining tariff levels on their own. She felt that the idea to focus initially on the liberalization of some market segments - charter services for instance - before others was a valid one. Group members should be careful in regard to the liberalization of ancillary services, due account having to be taken of individual countries’ levels of development. Overall, she felt that more liberalization had been achieved in the air transport sector than in some traditional GATT areas such as textiles or agriculture.

47. The representative of Jamaica agreed that the application of the Montreal concepts to the air transport sector posed significant problems. The current testing exercise was providing valuable insights in regard to cross-sectoral similarities and differences. His delegation felt it necessary to take a cautious approach in deciding whether substantive
modifications should be made to the existing international régime governing civil aviation. In applying the principles of progressive liberalization and market access in the sector, it was necessary to ensure consistency with the objectives of growth and development, particularly of developing countries. As developing countries participated in international air traffic more as destination points than as sources of traffic, there was a clear need for liberalization to enhance the ability of developing country airlines to compete in world markets and reduce the obstacles which inhibited their participation in them. He suggested that fifth freedom rights could be examined as an area for possible liberalization, particularly for airlines from countries with small domestic markets. As well, greater transparency and increased participation in the development and use of computer reservation and ticketing systems would be of benefit to developing countries and to new airlines in general. Finally, there should be scope for improved access to airports, particularly in the most attractive markets.

48. The representative of Turkey agreed that the air transport sector had been progressively liberalized in recent years. He did not think, however, that a complete multilateral deregulation was either feasible or realistic for the time being. The liberalization process should thus be carried out within the current bilateral structure. He described briefly recent efforts at liberalizing Turkey's civil aviation régime, noting that air transport services were no longer provided by a state monopoly as several private carriers had in recent years been licensed to compete in the domestic market. These airlines were open to foreign participation. The privatization of several firms engaged in the provision of ancillary services had been undertaken and would continue. The liberalization of charter traffic had also contributed significantly to supporting the country's expanding tourism sector. Government procurement rules no longer obliged officials to favour national airlines when travelling abroad. While several secondary impediments in the sector had been relaxed domestically, foreign airlines could not engage in cabotage. This would remain the case, as elsewhere, mainly for non-commercial reasons. He concluded by saying that beneficial results achieved so far in progressively liberalizing the country's air transport industry would prompt the government to take further steps in the same direction.

49. The representative of Canada proposed to comment on all transport modes in one intervention dealing with the four concepts under review. He said that his delegation shared most of the remarks made by the representative of the European Communities, including those on non-scheduled services and ancillary services. Moreover, as the section on aviation in the secretariat's paper brought out, there were significant changes underway in the market place and whatever the GNS might be able to do in this Round, it should not exclude any possibilities for the future. He noted that progressive liberalization was a key concept in MTN.TNC/11 and that Canadian views were set out in MTN.GNS/W/63. There was no reason to believe that those techniques should in principle not be used in regard to transport. However, it was clear that some basic policy decisions would be required. Progressive liberalization had its practical effect significantly through other concepts, especially market access and national treatment. Under market access, he noted that in most countries cabotage was generally not
allowed in any mode. Should cabotage be granted, it would require significant legislative and regulatory changes, of both an economic and an operational nature. Many countries had transportation policies that reflected general economic and regional development concerns which had to be considered when greater market access was sought. While scheduled air services access was regulated by bilateral agreements, it did not apply as strictly to commercial ground services and to charter services. He noted that cargo reservation arrangements, including the UNCTAD Liner Code, heavily restricted market access in maritime shipping and meant less efficient service for shippers. His delegation would be concerned by any movement to further restrictions by attempts to include bulk goods under an arrangement similar to the UNCTAD Liner Code. He observed that whatever their advantages, shipping conferences had the effect of restricting market access in maritime shipping. Central freight bureaus further restricted access to the transport of goods through non-transparent operations, especially in state-controlled economies. Establishment could be necessary in order to provide some transportation services and good information flows were very important in modern transportation networks. Finally, the movement of labour became a major issue when dealing with cabotage. On the issue of national treatment, he stressed that cabotage would need to be addressed if national treatment were to be applied as a principle. He agreed that the present structure of air services (scheduled) and international shipping was inconsistent with the m.f.n. principle. Scheduled air services limited privileges to bilateral partners only. The charter market was more open, although at present it usually involved unilateral and pragmatic decisions on market access. He felt that the operational side of air services (e.g. ground services and other "doing business" issues) could be made consistent with m.f.n. - as indeed with other trade principles. At the same time, the UNCTAD Liner Code might be seen as a clear violation of the m.f.n. principle.

50. The representative of Switzerland felt that the GNS should not close the door to those who might one day be ready to liberalize air transport services on a multilateral basis. He agreed with the representative of Canada that the Montreal concepts did lend themselves, perhaps with some slight adjustments, to a progressive liberalization of air traffic. Negotiations in the GNS would produce tools to be used in liberalizing numerous service sectors, including air transport services. Much liberalization had already been achieved in the sector through bilateral means and this process could be pursued further. It was important that the liberalization process continued, whether in the GNS or through ICAO, and the Montreal concepts were appropriate for this purpose. He recalled that his delegation had earlier suggested how the m.f.n. principle could be modified with a view to achieving plurilateral liberalization which could subsequently have multilateral impacts.

51. The representative of New Zealand did not share the view that the current international régime governing civil aviation should be maintained simply because of the complexities involved in changing it. While the civil aviation sector was heavily regulated internationally, GNS members should seek to ensure that the possibility for progressive liberalization remain open rather than seek to preserve the status quo. She agreed that there was a range of activities within the sector which offered scope for liberalizing
progressively. New Zealand had a relatively liberal air transport régime which extended to the domestic market and therefore expected that the provisions of a services agreement could be sufficiently flexible in structure and coverage to accommodate the sector's specificities. She felt that the United States' delegation had adopted a rather short-term approach by focusing on the immediate difficulties inherent in a fundamental overhauling of the existing civil aviation régime. But there was a middle ground between the status quo and a multilateral open-skies policy, on which the GNS could focus its attention. There should, in any event, be scope for promoting progressive liberalization starting with the current bilateral régime. For example, it should be possible to accord traffic rights without necessarily having the intention of taking up the reciprocal rights that were granted; allowances could be made for increased capacity and frequency without having to renegotiate bilateral agreements; tariff approval procedures could be made simpler, etc. The suggestions contained in MTN.GNS/W/60 under the heading of progressive liberalization were extremely useful. The overall direction of change in the sector and in market structures appeared to suggest that meaningful multilateral liberalization might be possible in the long run. At the moment, however, she agreed that the m.f.n./non-discrimination principle was most difficult to apply in the sector. A review of the country's national civil aviation policy in 1985 had recognized that it was neither practical nor feasible to adopt a truly open-skies approach, and that it was not possible to unilaterally ignore the international regulatory framework. It was nonetheless possible to make the current régime more flexible by encouraging increased competition and freer access for international airlines. This had been done with a view to maximizing the benefits for New Zealand of more efficient airline services. The case for including civil aviation in the GNS discussions and for seeking ways of enhancing market access conditions through progressive liberalization was made stronger in view of the strong interlinkages between air transport and other service sectors such as tourism. While a start could be made by liberalizing the provision of ancillary services, more fundamental reforms should not be ruled out for the future. She felt that all other concepts were relevant and applicable in the sector without any special conditions provided progressive liberalization was accepted as a possibility.

52. The representative of the European Communities was interested by the comment made by the representative of Turkey on government procurement policies for passenger services and wondered whether the concept of national treatment had ever been used in the civil aviation sector. He agreed with the nuanced approach favoured by the representative of New Zealand on the scope for progressive liberalization in the sector. The European Community's aviation policy had been developing in phases, the first one having been initiated when a package was adopted in December 1987. The Community was currently going through the preparation of proposals for the second phase. The 1987 package contained four main proposals. A first one concerned fares for scheduled services and introduced a more flexible Community régime for approval of fares while providing greater scope for discount fares. A second proposal tackled the questions of capacity sharing and market access and was aimed at encouraging a move away from the fifty-fifty capacity arrangements which were typically found in bilateral agreements. As well, limited fifth freedom rights were introduced. A third element
dealt with the application to the sector of the Rome Treaty's competition rules. While it was still too early to report in a balanced manner on the impact of this element of the package, it was generally accepted that its implementation had brought some changes in the field of civil aviation by offering new possibilities for air travellers. It also provided airlines with possibilities to expand and compete which were not available under the bilateral system. The package, finally, allowed airlines to increase capacity and open new routes. The Community was committed, in a second phase, to furthering the process of liberalization with a view to completing the internal market by 1992/93. The Community spokesman hoped to be in a position to inform the GNS at a later stage on the implementation of the second phase of its aviation policy. The Community was currently examining the external implications of the creation of a single air transport market. He emphasized that the general approach being followed was a gradual one and that due account had to be taken of the divergent realities existing in the sector in various Community Member States. Being progressive, the liberalization process might thus be of some relevance from the point of view of the GNS.

53. The representative of Argentina said that in view of the specific characteristics of regulation in the area of civil aviation and of the limited applicability of some of the Montreal concepts, a pragmatic approach to progressive liberalization would have to be taken. In addition, account had to be taken of air safety, traffic congestion as well as environmental concerns. At the same time, due account had to be taken of the benefits derived from the current bilateral approach, which had already allowed for a major expansion of trade, improved conditions of market access and seen a real reduction in air fares.

54. The representative of ICAO confirmed that the national treatment concept was a familiar one in international air transport. For example, it applied in the Chicago Convention in relation to prohibitive areas (Article 9) and to airport and other charges (Article 15). To illustrate his point, he referred to the language contained in the latter article which stated that "any charges that may be imposed or permitted to be imposed by contracting States for the use of such airports and air navigation facilities by the aircraft of any other contracting States shall not be higher as to aircraft engaged in scheduled national air services than those that would be paid by its national aircraft engaged in similar international air services". On the issue of transparency, ICAO's belief was that it served not only as a tool to satisfy the curiosity of those wishing to know the contents of bilateral agreements. ICAO had taken active steps in developing guidance material and model clauses so as to facilitate the alignment of such agreements and the elimination of as many barriers as was practically feasible. This helped explain why ICAO had taken an active position in catering for transparency by providing guidance material to Member States on the regulation of computer reservation systems (CRS) which, despite having already become an important tool in civil aviation, could still be considered as a relatively new - albeit rapidly developing - issue in the sector. Regulations in regard to such systems had only recently begun to be introduced. It was expected that those States which had not yet approached the subject would use the ICAO guidance material as a basis for drawing up
national regulations aimed at securing greater transparency in the CRS field. He believed that ICAO was well placed to assist in the process of making CRS regulations compatible across countries. He recalled that ICAO's next Assembly meeting, which was scheduled to take place in Montreal in September 1989, would address the matter of computer reservation systems and in particular the guidance material on the subject. On the suggestion that international standards developed in ICAO might not be rigorous enough, he said that such standards had to be quite universal in character, noting that problems might result from the way in which they were implemented rather than the level at which they were set. In most cases, it was up to member States to decide when and to which extent standards could be applicable. As to the references to ICAO's work on the sixth freedom of the air, charter traffic and other matters, he informed the Group that such issues were on the organization's current work programme and would be considered in the context of the forthcoming triennial programme starting next year. ICAO's participation in GNS discussions had proven extremely useful and the reports which its Council had received in the wake of this participation had been taken into account in the Council's approach on the issue of trade in services and other aspects of the Organization's future work. The trade in services issue would be addressed at the forthcoming session of ICAO's assembly later this year. He noted that one potential action by ICAO arising from the meeting might be a review of trade barriers in international air transport and of the applicability of trade in services concepts and principles in the sector. The purpose of such a review would be to meet the desire of States for an expansion of trade in air transport services based on the orderly reduction of barriers while furthering the aims and objectives of the Chicago Convention, in particular those of a fair opportunity to operate and compete and the avoidance of discrimination. If circumstances so warranted it, ICAO could convene a worldwide air transport conference to consider the results of this review and provide a focus for defining its role in the area of trade in services. He was pleased to learn that a representative of the secretariat would be attending ICAO's next assembly and thanked the GNS for its efforts in ensuring that its discussion of the air transport sector took place on the basis of a full knowledge both of the Chicago Convention and of ICAO's role in the field of civil aviation.

55. The Chairman opened the floor to a discussion in the air transport sector on the application of the concept of the increasing participation of developing countries.

56. The representative of Egypt, recalling that developing countries had a quite limited share of the world civil aviation market, noted that there would need to be built-in mechanisms in a liberalization process which would aim to secure a balance of benefits for all participating countries. Under the current bilateral régime, developing countries were able to negotiate access to developed country markets on the basis of a reciprocal exchange of concessions. He felt that the current discussion had not provided much evidence in support of a multilateral approach to liberalization in the sector. Rather, it appeared that developing countries could use available bilateral opportunities in pursuing progressive liberalization. He felt that the issue of access by developing country suppliers to information and distribution network in developed countries was particularly relevant in the
sector. He said that better access by developing country airlines to computer reservation systems could allow them to more fully utilize their predetermined share (usually fifty percent) of a market. Because airline markets were physically constrained, the so-called grandfather rights enjoyed by some airlines at crowded airports were a major impediment to market access for new and/or developing country airlines. It was important to secure and enhance an adequate degree of market access for developing country airlines in such airports. The idea of liberalizing the provision of ancillary services required a more detailed discussion, particularly as elements of establishment-related trade had been invoked. It was necessary to gain a clear understanding of the meaning in the sector of the preferred mode of delivery. The granting of cabotage rights would pose significant difficulties and require in most countries fundamental legislative changes.

57. The representative of Sweden, on behalf of the Nordic countries, indicated that his comments would be of a general nature and address all transport modes. The Nordic countries believed that developing countries would be able to increase their participation in the provision of transportation services if the markets for such services were liberalized. His delegation was convinced that the number of joint-venture operations in transportation would increase significantly with liberalization. That would mean increased diffusion of new techniques and technology to more parts of the world. As well, more persons from developing countries would receive on-the-job training and learn new skills. Since transportation services were needed for all domestic and international trade in goods and tourism, the diffusion of skills and more efficient transportation techniques would have beneficial effects on all those sectors of a country's economy that use transportation services to bring products to or from a market place. The Nordic countries attached great importance to translating the concepts, principles and rules from Montreal into practicable solutions. When discussing transparency, enquiry points had been mentioned frequently and in positive terms in the GNS. A conceptually similar thought could be considered for facilitating the exports of individual developing countries. He suggested that countries contemplate the possibility to supply commercially relevant information to individual developing countries. There should thus be some kind of body which, upon request, could be able to provide concrete information on the market, access conditions, etc. i.e. supply commercial information which would facilitate developing countries exports. In the air transport field, for instance, this could take the form of establishing contact with travel agencies, tour operators, etc.

58. The representative of Brazil said that in discussing modalities for increasing the participation of developing countries in the world market for air transport services, there was need for introducing other concepts, such as those contained in MTN.GNS/W/21. One such concept was that of developing country access to modern technology, an issue of key importance in a sector of considerable technological sophistication such as that of civil aviation. Technology was a key determinant both of an airline's ability to enter a market as well as to maintain its share in it. Developed countries should thus commit themselves in a services agreement not to impose restrictions on developing country access to modern technology and know-how and also to provide special arrangements to enhance such access on behalf of developing
countries. As well, and closely related, there was a need that developing countries should be able to take whatever measures were necessary to protect domestic markets with a view to enhancing their national capabilities. Another key concept related to the need of developing countries for financial support, not least because of the high cost of developing national air transport systems. His delegation would welcome any other suggestions aimed at promoting the increased participation of developing countries in air transport. Proposals relating to the setting up of joint-ventures in the airline sector begged the question of whether international trade in services was being discussed. However, if joint-ventures related to possibilities for the diffusion of technology, his delegation wished to know more about the terms for such arrangements. He stressed that Group members should not lose sight that the issue of direct investment remained one which had yet to be fully resolved in the GNS.

59. The representative of Yugoslavia said that paragraph 45 of MTN.GNS/W/60 contained some practical suggestions for increasing the participation of developing countries in civil aviation. In particular, she suggested that developing country airlines could gain from more liberal fifth and sixth freedom rights, thereby gaining a preferential market access in developing country markets. She agreed with the representative of Brazil on the central importance of access to technology in the field of civil aviation.

60. The representative of India said that any attempt to extend a trade in services framework to civil aviation should be geared towards improving the situation of developing country airlines in the world market. He said that a large portion of the traffic growth documented in paragraph 44 of MTN.GNS/W/60 was generated by the developing country's airlines own nationals travelling abroad rather than by a significant rise in foreign traffic. He agreed that access to technology was a key determinant of airline competitiveness, adding that the size of the national aircraft fleet was also a main source of comparative advantage in the sector. A better access to computer reservation systems was also a precondition for increasing an airline's participation in world markets. He felt that the idea put forward by the representative of Yugoslavia of enlarging fifth and sixth freedom rights on a preferential basis for developing country airlines was an idea worthy of further consideration, as was the Nordic countries' proposal to supply commercial information on market access conditions.

61. The representative of the European Communities agreed that access to computer reservation systems was an important element of airline competitiveness. He was not convinced however by the notion that liberalization had to bring about an increase in developing country exports of air transport services, noting that developmental benefits could also be derived from increased imports given the host of upward and downward linkages which existed in the sector. He wondered whether the bilateral régime currently governing the air transport sector had truly yielded the benefits which developing country delegates appeared to suggest it had. It was certainly true that some developing country airlines had derived clear benefits from the current régimes, but that did not apply for many others. The high growth achieved by some developing country airlines appeared to suggest that they were carrying a significant number of foreign nationals. He welcomed
the proposal by the Nordic countries and said that it should be further explored. He expressed surprise at the lack of reference to an idea contained in paragraph 46 of MTN.GNS/W/60 on regional pooling efforts, noting that it would appear at first sight to be a fairly logical way for developing country airlines to increase their share of world markets and overcome some of the handicaps described in paragraph 44 of the secretariat's document.

62. The representative of the United States agreed that realistic ways of enhancing access to technology and know-how had to be explored. He noted that many airlines were state-owned, both in developed and developing countries, adding that the recent spate of privatization in the sector reflected the need to inject more capital into airlines so as to fuel their growth and allow them to maintain or increase their market shares. He suggested that the experience of Mexico's national carrier had been quite revealing in this respect and sought more information about Turkey's current experimentation with market forces in its own airline sector. On the issue of access to technology, he noted that aircraft manufacturers had an incentive to provide attractive financing in order to sell their aeroplanes. They also had an interest, as part of an overall sales package, in training pilots and avionics engineers, both of which resulted in technological diffusion. Access to computer reservation systems was clearly relevant to the ability of an airline to fill its capacity. A key question was, however, the conditions under which such access could be gained. He recalled that all airlines had access to such systems by paying for it and wondered whether there was any basis for substantiating different access charges for developing country airlines. There was not so much a problem of access per se, but rather one of cost of access. He expressed surprise at the comment made by representative of Brazil suggesting that country's national service capacity could be enhanced by effectively closing the domestic market further. Such an approach would in all likelihood make matters worse. Finally, he agreed that the issue of access to networks (cargo handling facilities, check-in counters, etc.) was a very important feature of an open airline régime and improvements in such access was in the interests of airlines from all countries, irrespective of their levels of development.

63. The representative of Canada was concerned that the discussion of the air transport sector appeared to have swung from the idea of progressive liberalization to that of managed trade. He said that MTN.GNS/W/60 had shown that the ten fastest growing developing country airlines had increased their share of the world market for scheduled services by over twenty-five percent during the last decade. This was far from being a bad performance in the view of his delegation. His delegation could envisage transitional arrangements aimed at helping individual developing countries increase their participation in transport services, as indeed in other services. Greater degrees of technical assistance could also be given further consideration. He shared the views expressed earlier by the representative of Sweden, noting that the establishment of a trade in services framework would increase, promote and assist international competition in the transport sector.
64. The representative of India said that developing countries were familiar with the benefits accruing to them from the current bilateral system but were on balance unsure of where departures from this system could lead. Developing countries were keen to ensure therefore that any changes to the current régime would result in additional benefits for them. Stated differently, if somewhat negatively, developing countries were not in his view interested in losing their current market shared in a free-for-all situation.

65. The representative of Mexico said that Aero México had been privatized a year and a half ago and that also Mexicana Aviaciôn was now private. He noted that privatization did not, in itself, result in enhanced market access, particularly in access to the world market. Capital shortages continued to be a major problem, inhibiting the ability to purchase aircraft and upgrade the country's fleet. As well, access to computer reservation systems remained a problem for airlines that did not own such systems. He stressed the importance of enhancing entrepreneurial technology, which could only come about through an intensification of direct manpower training in developed countries.

66. The representative of Egypt expressed support for the proposal put forward by the representative of Sweden on behalf of the Nordic countries. He felt that such a proposal could be of general applicability in most service sectors.

67. The Chairman opened the floor to a discussion of the maritime transport sector and invited comments on the application of the concept of progressive liberalization.

68. The representative of Australia said that the nature of the barriers to international trade in maritime transport services and of government regulations in the sector suggested the need to make a practical distinction between international shipping on the one hand and coastal shipping or cabotage on the other. As in the case of civil aviation, significant changes were taking place in international shipping markets, buoyed in part by significant technological improvements in the supply of shipping services. For this reason, it would be important not to devise a framework agreement which excluded the possibility for meaningful multilateral liberalization in the sector, even in coastal shipping. That being said, he noted that the present regulatory structure governing coastal trade, particularly when it came to the cross-border supply of services - severely restricted the access of foreign suppliers. Some small steps had recently been taken in Australia to liberalize the availability of licenses for foreigners to participate in domestic coasting trade. Such a decision had been taken with a view to improving market efficiency, although significant steps in the way of progressively liberalizing market access of a cross-border nature were not currently envisaged. Establishment-related coastal trade was not restricted, so that to the extent that foreigners had access to the supply of cabotage, they were accorded national treatment either through establishment or the licensing system. International shipping was in the view of his delegation a very different case. Major distortions to international trade existed in this sector in the form of unilateral,
bilateral and plurilateral market sharing agreements. Trade distortions also arose out of the rise of subsidies, fiscal incentives, competition policies and various other measures relating to cargo reservations. There were common barriers in the unilateral reservation of cargos, typically on the basis of governmental or strategic cargos, in bilateral cargo reservation arrangements, as well as in inter-industry cargo allocation practices which took place within vertically integrated companies. The creative interpretation of unfair trading practice laws, with a view to penalizing alleged dumping in the supply of shipping services, was another type of barrier encountered in the sector. The most effective counter to such practices would be a multilateral instrument which promoted the opening of markets for international shipping on the basis of the principles agreed upon at Montreal, including national treatment and the phased rollback of existing reservation practices according to a predetermined timetable.

69. The representative of Poland agreed with the distinction made in MTN.GNS/W/60 between cargo reservation and cargo sharing, the former practice relating to the legislative measures and governmental policies concerning unilateral cargo reservations for national fleets or bilateral agreements to this end, while the latter related to commercial practices at the company level. Both practices constituted barriers in the way of free access to cargo markets. He felt that administrative cargo arrangements had not been sufficiently covered in the section dealing with concepts, principles and rules in MTN.GNS/W/60. Unilateral cargo reservations significantly limited international competition in the sector, with important implications for transport costs. Progressive liberalization should result in the elimination of unilateral cargo reservations. Another area to which the principles of a framework agreement might apply were subsidies, the gradual reduction of which could only prove beneficial to the international transport of goods by sea.

70. The representative of Japan supported the progressive liberalization of various international shipping regulations. He recognized the difficulties relating to a relaxation of national cabotage laws and recalled that the maritime transport sector had a long history which would need to be taken into account, particularly as regarded existing international arrangements under the aegis of UNCTAD or various other fora. His delegation was concerned by the possibility that the current negotiations might be used as an opportunity to rubber stamp some of the highly restrictive governmental practices which existed in international shipping.

71. The representative of the European Communities agreed that international shipping was one of the oldest service sectors, tending in the last century to develop along relatively liberal lines. There had, however, been a marked recent tendency toward restrictive cargo reservation practices. Cargo reservation was not a distinguishing feature of all market segments in shipping. It was, for instance, much less prevalent in bulk shipping. The issues of establishment and of commercial presence were becoming very important in the sector, particularly as regarded the supply of ancillary services as well as for that of multimodal transport services. While the UNCTAD Liner Code was aimed at preventing creeping cargo reservation, its application underlined the fact that any effort aimed at meaningful
multilateral liberalization in the sector would require an unambiguous interpretation of the Liner Code's provisions to ensure that its present scope did not extend to areas other than conference liner shipping. In approaching the concept of progressive liberalization in maritime transport, it was important to put a stop to increased protection and trade restrictions in the sector as a first step towards achieving enhanced market access in the medium- to long-term. He felt that not all international standards necessarily applied in the sector. For example, manning requirements on ships were not applied in order to use ports. He agreed that the issues of access to cargos and of choice of technology were central to the effective supply of shipping services.

72. The representative of India said that as conceived the Montreal concepts were not applicable to trade in maritime services. In testing such concepts, an effort should be made to specify the transactions and activities being dealt with and to examine them in light of the four criteria set out in paragraph 4 of the Montreal text. Flexibility should be maintained in dealing with concepts so that modifications could be introduced whenever necessary to reflect the specificities of certain sectors. The maritime transport sector was not as regulated as some other services sectors such as air transport but shared with this sector the fact that it had also many bilateral agreements in force. Another important feature of the sector was the existence of anti-competitive practices on the part of market operators deriving from cartels or vertical and horizontal integration of transnational corporations. The liner conference code should be seen in that context, as representing a response to unsatisfactory market conditions and with a view to readdressing related imbalances. He disagreed with the characterization of maritime transport as liberal in the past since major maritime powers always had placed a great deal of emphasis on the building of national fleets at the detriment of foreign ship builders and shipping services providers. Factors that contributed to the development of the world fleet would have to be borne in mind when trying to apply various concepts to the sector.

73. The representative of Sweden, on behalf of the Nordic countries, said that the Group should strive to consolidate the liberal situation which already existed in international bulk cargo shipping, through a firm commitment by participants from the moment of entry into force of the agreement not to introduce new restrictive regulatory measures in this or any other area of the shipping sector. The same might be possible also for other types of transportation services and for certain auxiliary services where the present market situation was open and liberal. In other areas, however, it would probably be more appropriate to consider a gradual phase out of restrictive bilateral or plurilateral arrangements over time. Also, a commitment should be made that signatories would be prepared to enter into negotiations, at some later date, with the aim of further liberalizing trade in transport services. As regards transit traffic, signatories should commit themselves to a progressive liberalization process at the time of entry into force of the agreement. Regarding m.f.n./non-discrimination, he said that on condition that providers of transport services complied with national technical and legal requirements relating to the particular mode of transport, signatories should in principle grant m.f.n. treatment to foreign
service providers in the application of market access provisions of the agreement. However, there might be physical limitations to market access due to the capacity of infrastructural facilities. A clarification would be needed in the agreement as regards the applicability of m.f.n. in this respect as well. Account should be taken in air transport of the possibility of countries joining up in one common national carrier. When capacity limitations put a ceiling on the volume of services that could be handled by an infrastructural facility, the resulting situation should be managed in a non-discriminatory fashion. A commitment to this effect should be included in the agreement. Regarding auxiliary transport services such as storage, warehousing, customs agents, cargo-handling, etc. the agreement should ensure that service providers from all signatories could compete in the market of a particular signatory on equal terms with domestic service providers. Signatories that were parties to regional economic integration groupings or free trade areas should be allowed to grant their partners more far-reaching rights and benefits than those resulting from the agreement on trade in services. Such commitments and obligations should only be allowed, however, within regional economic integration groupings or free trade areas that fulfilled specific criteria. There was a need to include a set of criteria for this purpose in the agreement on trade in services. National treatment did not entail the right to use the national flag of a signatory. Under the agreement on trade in services signatories would maintain their complete and exclusive right to determine on what grounds ships and other transport vehicles would be accepted for national registration. A clarification to this effect might be needed in the agreement. When a foreign service provider was allowed to register a transport vehicle in a signatory country, all rules and regulations of that country, including those which were labour-related, should be respected. When vehicles operated in the territory, territorial waters or airspace of another signatory without being registered in that country, full national treatment would imply treatment no less favourable than that accorded to national providers with respect to access to infrastructural network facilities, to cargo and to users of the service. As regards technical norms, standards and inspection requirements, foreign vehicles should be obliged to conform to current regulations of the signatory, including traffic regulations, on the same conditions as nationally registered vessels. National treatment should be administered in a non-discriminatory fashion to all service providers covered by the agreement. Taxes charges and levies therefore should not be structured so that they discriminate between domestic and foreign providers. Similar effects should also be avoided as regards subsidies. Market access in transportation should comprise access to infrastructural networks, access to cargo and access to consumers. Consequently, cargo-sharing provisions would not be compatible with an agreement to liberalize trade in transportation services. Market access for transportation services should include the possibility for service providers to have local market presence and to use key personnel in the provision of services across borders and through local establishments. As we noted earlier, market access in transportation should not be interpreted to include a right of access to the national flag of a signatory. That was a national sovereignty issue outside the scope of the agreement.

74. The representative of the United States disagreed with the representative of India that the Montreal concepts were generally not applicable to
maritime transport services. He said that the Montreal concepts would have a profound effect on the sector if they were to be applied in their original formulation, affecting for example national cabotage laws as well as practices deriving from the United Nations Convention on a Code of Conduct for Liner Conferences. He agreed that a great part of shipping could be characterized as open and liberal, comprising all of bulk shipping and some of liner shipping. Liner conferences also had different degrees of openness, open conferences allowing non-member shipping firms to become members provided they subscribed to certain rules particular to the conference in question. Closed conferences were less liberal by nature since they only granted membership rights to a carrier if it was so approved by all member carriers. Another important feature of liner shipping was the 40-40-20 cargo-sharing/reservation practice formally endorsed by the Liner Code, especially if one were to consider the market conditions of the last ten years when over-tonnage precluded the achievement by many developing countries of a forty percent share of their own foreign trade. The United States also had some bilateral understandings through which cargo was shared on a fifty-fifty percent basis with carriers of other flags. However, these arrangements were very costly, underscoring the need for the Group to give due consideration as to how to provide for a balance between stability in the provision of services and reasonable freight rates for maritime transport services rendered. Cabotage was another important feature of the regulatory frameworks applying to the sector, often reflecting more than national security concerns. He stressed that the application of national treatment to foreign-flagged vessels in regard to cabotage requirements could imply a very high cost to foreign providers since they would have to subscribe to national regulatory régimes which were often very strict with respect to military as well as safety and environmental considerations. The question underlying the liberalization of maritime transport services should be how to preserve the competitive environment which already obtained in most of bulk shipping and in some of liner shipping, including the wide utilization of information systems and multimodal facilities.

75. The representative of Brazil said that as in the case of air transport and telecommunications, maritime transport could be seen both as trade in its own right as well as a support for trade in goods. Both aspects had implications in terms of the principles set out in the Montreal Declaration. The trade surpluses obtained by developing countries were often offset by deficits in shipping trade with dire consequences for their capacity to import and to expand their trade in goods. Tables 6 and 7 of the secretariat's note exemplified the meagre participation of developing country shipping exports in world markets which represented only half of the value of their shipping imports. Another striking feature of shipping trade was that competition had been the exception rather than the rule. Through deliberately restrictive government policies, seafaring nations of the past which were today developed countries were able to build sizable fleets. Such policies led to increased know-how and to a tradition of standardized services. Technological development would in turn lead to further concentration of vessel ownership by a few nations. The demand for regular traffic through greater discipline in the provision of maritime transport services would lead to the establishment of oligopolistic groupings of carriers - i.e. the liner conferences. Countries which enforced cargo
reservation policies as a means to counter the development of liner conferences were accused of discrimination whereas restrictive practices of liner conferences such as rate-setting and the setting of access conditions were accepted as non-discriminatory. The same underlying reasoning was still applied today to justify the practices of "open conferences" while the UN Liner Code was often singled out as especially rigid and discriminatory. His delegation was willing to discuss the application of market access and non-discrimination to the sector as long as the Group did not lose sight of the actual market structure in maritime transport. New provisions should not tend to increase restrictions to access and discrimination by shippers. Turning to maritime transport as a support for trade in goods, he said that freight rates affected the prices of goods and, through the price mechanism, income distribution and resource allocation. In the case of primary products, transport might represent up to 80 percent of the final price. Developing countries were very vulnerable to fluctuations in export revenue and often were forced to absorb increases in freight rates which further aggravated the scarcity of hard currency. As primarily consumers of maritime transport services, developing countries could not influence rate-setting which meant that ten to fifteen percent of the final price of their exports and imports was beyond their control. "Cargo generator's rights" could prove relevant in that regard, as a means of combating anti-competitive pricing by assuring the participation of a country's vessels in its own trade. The price of maritime transport reflected, in principle, supply and demand conditions of the market. However, many variables affected both conditions. Freight rates were set within several distinct market structures, ranging from almost free competition in the leasing of ships, to oligopolies in the case of liner conferences where only a few companies dominated the trade and competition was very limited. Faced with this situation, developing countries had no alternative but to implement policies towards an increased participation of national fleets in the national trade. Through such policies these countries had managed to obtain an encouraging but still far from sufficient increase in their maritime transport capabilities.

76. The representative of Hungary said that access to cargoes was an area to which progressive liberalization should be applied on an unconditional m.f.n./non-discriminatory basis. Another area which should be subjected to m.f.n. and national treatment provisions was port fees and charges. Finally, point-to-point transport brought out the relevance of in-land transport through, for example, internal waterways. The application of national treatment should be most relevant in cases where access to such waterways was restricted to national vessels. The application of m.f.n., on the other hand, should be most appropriate in cases where access was granted selectively to different foreign providers.

77. The representative of New Zealand said that because of her country's geographical situation and its reliance on external trade, it was very reliant on shipping services as well. The basic philosophy which had guided New Zealand's approach to the sector had been to ensure that national shippers had access to carriers of their choice on the basis of normal commercial criteria - i.e. efficiency and quality of services provided. There had been no preferences imposed by government and the 1987 Shipping
Act gave statutory expression to this open policy. Progressive liberalization was long overdue in this sector even though great difficulties could be envisaged in the liberalization of certain aspects of maritime transport. In response to a concern raised by the representative of the United States, she said that a future agreement on trade in services should strive not to ignore areas where trade was already liberal while at the same time preserving levels of liberalization which already existed in these areas. Also, a framework agreement should encourage improvement in areas which were more difficult and sensitive domestically. In that respect, progressive liberalization could eventually apply to discriminatory practices which derived from the provisions of the Liner Code. Regarding the application of national treatment, the two most crucial aspects would be effective access to port facilities and to cargo. Regarding market access, the Montreal formulation that foreign services could be supplied according to the preferred mode of delivery was especially relevant to maritime transport services where modes of delivery varied widely depending on the transaction or sub-sector in question. Her delegation would have no difficulty with the liberalization of both cross-border and establishment in the sector. New Zealand already had a very liberal regime applying to access to port facilities and cargoes, including the possibility of foreign direct investment in productive infrastructures. Regarding movement of personnel, some difficulties could be envisaged relating to cabotage regulations but that should not preclude the inclusion of this type of factor mobility in a future agreement. Access to a national flag would not necessarily be required for effective market access to be achieved by foreign providers. With respect to the application of m.f.n., there were potential problems relating to bilateral agreements enforcing reciprocity, and to some provisions of the Liner Code and of the Brussels package. Provisions to deal with regional economic integration would be relevant but should be under carefully defined conditions.

78. The representative of India said that in some cases concepts might need to be modified to fit the specificities of the maritime transport services sector. He agreed with the representative of Brazil that this sector had a direct influence on the trade balance of countries, potentially affecting the competitiveness of specific goods exports. He noted that none of the participants had denied that restrictive practices by conferences existed and suggested that the Group's task was to evolve an equitable basis for the liberalization of world trade which did not favour any specific country or group of countries. Theoretically, even cabotage laws could be subjected to free competition rules but overriding policy considerations would limit such an undertaking. It should be understood that the Liner Code arose as a response to a certain market situation in an effort to counter the domination of the trade by only a few carriers. An agreement resulting from the GNS should ensure that it did not provide further fillip to anti-competitive practices. Even the bulk shipping sector had some problems since much of it was undertaken through vertical integration with consequent restrictive and distorting effects in world markets. One should not be overly categorical about the elimination of the Liner Code, for example, without addressing the restrictive practices of the liner conferences themselves.
79. The representative of the United States said that the issue of the Liner Code should be seen in the light of specific provisions agreed upon in Montreal under the concept of "increasing participation of developing countries". He said that the Liner Code imposed specific restrictions to international trade and as such distorted the efforts towards the fulfilment of the Montreal objective of inducing greater efficiency and competitiveness in the provision of services. It was very hard to assume that by reserving trade shares to their own vessels, developing countries would experience overall growth and development. For one thing, the cost of such reservation policies was considerable and would ultimately be reflected in the price shippers would have to pay for services rendered. Responding to a concern raised by the representative of India, he said that the liner conferences promoted efficiencies while reducing costs to both carriers and shippers. Some thought should be given as to how to deal with the Liner Code in the discussions and in a future agreement, considering the substantive economic implications the Code had for maritime transport.

80. The representative of the European Communities said that it was far from clear that the Liner Code had achieved its principal objective of providing for an increased level of participation of developing country fleets in world maritime transport services trade. As to the objectives set out in the Montreal text of providing for increased participation through greater efficiency and competitiveness, the Liner Code should prove most inadequate and the Group should strive to avoid adopting solutions which ultimately resembled an expanded version of the Code. He did not share the view that conferences - even closed ones - were restrictive in nature and suggested that due consideration should be given of the state intervention which occurred in the maritime transport services sector of many participating countries. He agreed with the representative of New Zealand that the sectoral testing exercise was not intended to square the current situation of the sector with the Montreal principles. Of more relevance to the exercise was the effort to find formulations which would ultimately be adequate for application to the sector both currently as well as in the future.

81. The representative of Switzerland said that maritime transport services should be included in a future framework agreement on trade in services. He shared the view expressed by the representative of the Nordic countries that one of the most important questions regarding the sector was access to cargoes. Also, the Liner Code should not be ignored in the deliberations of the Group since the Code had some very significant implications for the sector.

82. The representative of Egypt said that the Liner Code had been a step towards providing for a more equitable level of participation by developing country fleets in world markets. The Group should not proceed on the assumption that liberalization should dismantle very complex regulatory frameworks which reflected as diverse motivations as the promotion of national fleets and ship-building capacity, employment creation and national security. The concepts of progressive liberalization, national treatment, market access and m.f.n. should not be dealt with in isolation from the concept of increasing participation of developing countries. In the case of
many developing countries one of the major motivations for regulating the maritime transport services sector was to develop national capacities which could ultimately be translated into competitive services exports in the future. In many developed countries, government support for national services providers and ship-builders was very common and should be considered by the Group. What the discussion had so far demonstrated was that the Montreal concepts were not applicable to the sector as they were formulated.

83. The representative of Peru said that the regulatory situation existing in the maritime transport services sector needed to be carefully examined before this sector was included in the framework agreement. The sectoral testing exercise should be an exercise in applying concepts to sectors and not the other way around.

84. The Chairman opened the discussion on the application of the concept of increasing participation of developing countries to maritime transport services.

85. The representative of Brazil agreed with the representative of the European Communities that the concept of increasing participation was intimately linked to the concept of progressive liberalization. As indicated in table 6, developing countries only had a 15 percent share of the world's shipping exports and therefore should be allowed to pursue policies which aimed at improving such a situation. The Liner Code had been especially instrumental in the small but encouraging increase developing countries experienced in their participation in world shipping markets and stood as a prime example of an arrangement which promoted growth and development. Often developing countries subsidized their national fleets as a means to maintain the level of freight rates charged by liner conferences at a reasonable level. Given the imbalances in the sector, unilateral liberalization in favour of carriers from developing countries should be both desirable and feasible. Another area where developing countries could play a larger role was that of ancillary services. Technical assistance might be relevant in the case of those services for which technological development took place at a rapid pace. In providing ancillary services, countries should ultimately still retain the right to choose the equipment which best reflected their availability of resources.

86. The representative of India said that the objective of ensuring that a certain percentage of cargo generated by a country was reserved for that country's vessels was not necessarily a restriction or distortion of trade. The determination of whether cargo reservation constituted or not a distortion to trade should be based on its effect on freight rates and not on allocative practices. He stressed that closed conferences were the very antithesis of an open and liberal trading system in maritime transport. Apart from liner conferences, there were numerous other gross distortions in world shipping markets, distortions which market forces alone could not redress. Another feature of shipping transactions was that developing countries were often forced to accept c.i.f. prices for their imports and f.o.b. prices for their exports. Providing for an increasing participation of developing countries in maritime transport services trade would have to be accomplished through a reduction of anti-competitive practices in the
sector. This reduction in turn could only be contemplated if they were to start with the practices of liner conferences.

87. The representative of Egypt said that the Liner Code was an important instrument for the attainment of a more significant participation in shipping by developing countries. A future agreement should preserve the right of governments to pursue policies intended to ensure the provision of shipping services competitively. Labour-related activities played a significant role in the maritime transport services sector and the relaxation of laws restricting the mobility of labour and personnel could be a means to promote growth and development in the sector. The achievement of greater efficiency and competitiveness was clearly linked to the degree of competition to be prescribed by a future framework agreement.

88. The representative of the European Communities said he was far from convinced that the increased participation of developing countries in the world's shipping trade was achieved as a result of provisions in the Liner Code regarding cargo reservation and cargo sharing.

89. The Chairman opened the discussion on progressive liberalization, national treatment and m.f.n./non-discrimination as applied to multimodal and other transport services.

90. The representative of Hungary said that trade in trucking services was very heavily regulated, the motivations for regulations resembling those applying to other types of transport services. On the basis of national sovereignty over their own territories, countries retained the right to regulate the entry of foreign-owned trucks, thereby effectively controlling cross-border trade. The entry of vehicles was often subject to road permits which were issued and exchanged among countries on bilateral and reciprocal taking into account the volume of bilateral trade. As the volume of goods transported often was different for different parties, permits could become barriers to trade. When under utilized, permits could act as quantitative restrictions placed on the operators of the other party's trucking companies. Transit and third country traffic - i.e. traffic through permits allowing haulage from one foreign country to a third country - were regulated in a especially restrictive manner. In short, the present regulatory system applying to trucking services often protected domestic companies while effectively limiting the scope for competition by foreign firms. Transparency also constituted a problem for trucking services since, unlike other sectors such as air transport services, there was no specialized organization compiling and disseminating relevant information about the sector. Information on bilateral arrangements on road transportation were usually only available to the two parties concerned. Progressive liberalization would need a multifaceted approach dealing with the several aspects of transactions in the sector. The progressive removal of restrictions on bilateral traffic could be a starting point while ensuring that government mandated limits did not act as barriers to trade. There was also scope for progressively liberalizing transit and third country traffic. Regarding international passenger transport by road, regulations were also often put in place as a result of bilateral and reciprocal arrangements but tended to be less restrictive than those applying to cargo transport. There
was also scope for further liberalization in this sub-sector through, for example, a gradually more liberal issuing of permits. There was a clear linkage between passenger road transport services and tourism services.

91. The representative of the United States said that auxiliary services provided at ports were very crucially affected by developments in technology and managerial know-how. Existing regimes permitting foreign investment in related facilities should be maintained whereas no additional restrictions should be envisaged for regimes which did not permit foreign participation in facilities or in the provision of trucking services.

92. The representative of the European Communities said that the different transport services modes should not be considered separately as they were very interrelated. He agreed with the representative of Hungary that land transport was regulated as much as or even more than other transport. Similarly to air transport, land transport was primarily regulated through bilateral arrangements. However, geographical limitations alone could restrict the scope of an eventual multilateral undertaking relating to land transportation services. Much of government policy had attempted to reflect a balance between different modes of transport. The potential for multilateral discipline in the transport services sector might differ according to the mode of transport in question, even though many considerations were common to all modes. Standards, for example, were very important for all types of transport as recent bilateral experience of the European Communities with Switzerland and Austria had shown. The application of m.f.n. to road transport could run into some practical limitations such as differing road infrastructures.

93. The representative of Korea said that the multimodal transport services sector was becoming increasingly important and deserved full consideration by the Group in all its complexity. He stressed that international cooperation was necessary to bring order to the sector and cited the 1980 United Nations Convention on International Multimodal Transport as a related example. So far only a few states had become contracting parties to the convention and efforts should be devoted towards gathering sufficient signatories to bring it into force. It was imperative for participating countries in the GNS to reach a minimum level of consensus agreement on the progressive liberalization of other individual modes of transport - mainly, air and maritime transport services - before productive discussions on the multimodal transport services sector could take place.

94. The representative of Mexico said that market access in transport services could be achieved through four different modes of delivery: (1) cross-border movement of services; (2) temporary cross-border movement of production factors; (3) indefinite cross-border movement of production factors including subsidiaries of foreign companies and foreign labour; (4) indefinite cross-border movement of production factors including international and domestic provision of services through foreign subsidiaries and foreign labour. The first mode would only apply to the transport of cargo between two bordering countries. Chartered transportation involving the movement of tourists from one country to another would be the most relevant type of transportation relating to the second and third alternatives and
with respect to passenger transport. As to cargo transport, alternatives two and three would apply to the movement of complete transport units involved in international traffic between two or more countries. These two alternative would furthermore imply the possibility of establishment of subsidiaries in the importing country as well as the free mobility of essential manpower and personnel. The fourth alternative would imply similar conditions as those applying to the two former alternatives but in addition would include the possibility for providers to stop and pick up cargo or passengers within the importing country. Also, establishment of subsidiaries and indefinite movement of manpower and personnel would be implied. Treatment no less favourable than to nationals would be accorded to foreign providers, including the granting of traffic permits and/or permits to establish locally. Progressivity could be undertaken according to the geographical extension accorded, volume of cargoes, or the access granted to sub-activities or routes. Also, progressive liberalization should apply to the activities performed by foreign labour and personnel in importing countries. In accordance with the Montreal text, developing countries should be allowed great flexibility in the liberalization they undertook. As with cabotage in maritime transport for some developed countries, land transport had historical reasons in some developing countries as to why it should be exempt from certain provisions of a future framework agreement on trade in services. The delegation of Mexico would prefer a long-term approach to the concept of national treatment as opposed to its automatic application to foreign services and services providers once market access had been obtained. In the case of the first alternative above - cross-border movement of services - national treatment should apply to the cargoes and vehicles involved in the transportation. The second alternative would imply national treatment being applied to cargoes and vehicles, including traffic permits, the recognition of foreign insurance certificates and of the driver's licenses of the labour and personnel performing the service. Concerning the third and fourth alternatives, locally established foreign firms should receive the same treatment as national firms regarding working conditions, foreign exchange transfers, fiscal incentives, access to national financing, local content, etc. Also, foreign labour and personnel should be entitled to the same treatment as national labour and personnel with respect to social security, employment insurance, and other benefits. Access to information networks should be made available for firms involved in both passenger and cargo transport. Finally, in conformity to the Montreal text, developing countries should be permitted to reserve the application of national treatment in relation to one or several elements relevant to the sector.

95. The representative of Switzerland said that the Montreal concepts were applicable to both multimodal and land transport services. Market access, for example, should imply the possibility of foreign trucking firms to establish in importing countries. As to national treatment, some complex issues would need further consideration relating to land transport services.

96. The representative of Egypt envisaged some difficulties in the application of the Montreal concepts to those aspects of multimodal transport services which closely related to maritime transport. The scope of application was wider with respect to auxiliary services. The application of the
Montreal concepts should be undertaken so as to reflect the concerns set out under the concept of increasing participation of developing countries and should be contained within the framework of existing national policy objectives of all participating countries.

97. The representative of Hungary said that also trade through commercial presence should be included in the progressive liberalization of land transport.

98. The representative of the United States stressed the importance of preferred mode of delivery for multimodal transport services. It had already been a widespread practice in his country for investment to be permitted in trucking services for firms engaged in multimodal transport such as Lufthansa or Air France. The formulation of the market access concept in the Montreal text was especially relevant as it applied to auxiliary services.

99. The representative of Canada said that his previous comments on maritime transport services also applied to multimodal transport services.

100. As no participants had comments under the concept of increasing participation of developing countries, the Chairman opened the discussion on safeguards, exceptions and regulatory situation as applied to the multimodal and other transport services.

101. The representative of Sweden, on behalf of the Nordic countries, said that there were some exceptions in the transport sector that would need to be accommodated in an agreement on trade in services. As previously mentioned, an exception would be needed for registration of maritime vessels under the national flag. Another obvious exception related to national security. As regards safeguards, there would be a need for a general safeguard provision relating to environmental issues. Temporary congestion of traffic could, for example, bring levels of pollution close to maximum safety limits, including authorities to intervene and cut down traffic volumes or reduce speed limits for a certain time period. In the transportation sector, there were different types of regulations. Some were national such as registration of vehicles and vessels, traffic rights and traffic regulations, safety regulations, frequency schedules, technical norms and standards, etc. Others were international such as rules and regulations established by the United Nations, ICAO, IMO, IATA, ECES and other international bodies. In addition, there were many technical norms and standards regulating traffic conditions, safety, loading and discharging, and other issues where international, regional, plurilateral or bilateral cooperation efforts had led to uniform or harmonized conditions in several countries.

102. The representative of Canada said that as a sector, transport did not seem to require special safeguards treatment nor to prevent or limit the inclusion of safeguards in a services agreement. With regard to general exceptions, provisions akin to those applying to goods in article twenty and twenty-one should be desirable. Exceptions could, for example, include provisions allowing countries to take the necessary measures for
drug-enforcement. He agreed with the view that the GNS was not engaged in the issue of deregulation. What the Group was committed to do was to put in place a framework for the progressive liberalization of trade in services with a view to achieving the objectives set out in the Punta del Este Declaration. This implied the need to examine the regulatory frameworks of participating countries as to their compatibility with those objectives.

103. The representative of Peru said that the transport sector, if included in the framework agreement, would require numerous exceptions and safeguards relating to national sovereignty, national security, environmental concerns, drug enforcement and balance of payments considerations. The liberalization of transport services should be undertaken in such a way as to respect existing bilateral and multilateral arrangements dealing with the sector.

104. The representative of the European Communities did not envisaged any major difficulty with the application of safeguards and exceptions to the transport sector but warned against abuse in the formulation of exceptions based on national security. Transport services had the peculiarity of being more standardized than other services sectors where the quality of a service could vary widely each time it was provided. Standards were very important for the transport services sector and had been evolving towards more rigorous formulations both at the national as well as the international level. The Group was primarily interested in standards which had significant trade implications. Adequate consideration should be given to the relationship between national and international standards.

105. The representative of Brazil considered that the examination had shown that provision would have to be made for safeguards and exceptions in the transport sector. His delegation was willing to discuss specific ways for such provisions when deliberations in the Group had reached a more advanced stage. Some exceptions and safeguards had already been included in international instruments regulating transport and this could be a starting point for work in the GNS. Such provisions could relate for instance to balance of payments considerations and development of infant industries.

106. Regarding the regulatory situation, the representative of the United States noted that under the various transportation sub-sectors several speakers had mentioned the relevant nature of standards and regulations dealing with environmental protection and safety. The question was to what extent the GNS could deal with highly technical and complicated regulations which it did not have the competence to judge. One conceptual alternative was to follow the precedent of the Code on Technical Barriers to Trade which recognized a certain degree of sovereignty over standard-setting but at the same time required that such standards were imposed in as least restrictive a manner as possible. Whether that was an appropriate formula for the enormous maze of regulations existing in services was something that could be debated. It was important to deal with those situations where regulations, under the guise of security or safety, were discriminatory to foreign providers. On exceptions, it was necessary for the GNS to consider whether it was feasible to have some criteria in order to allow countries to explain the basis for their having protected a particular sector. This should be
explored further and in this regard he was interested in learning of any relevant experience with GATT Article XX.

107. The representative of Australia agreed that it was important to narrowly define security exceptions which were not infrequently used to justify the reservation of cargoes. Concerning the use of anti-dumping laws in the shipping area, he noted that there were recent cases where anti-dumping provisions had been used to prevent competition from a source outside a particular liner conference. This was a sensitive area for a number of governments.

108. The representative of Poland said that regarding safeguards and exceptions the rationale of environmental protection should be examined with great caution. Provisions relating to environmental protection should be linked with those provisions of the future agreement which aimed at increasing competition. In particular this related to access to modern technology which would allow all participants to comply with existing norms and standards. The Group should also consider the fact that many participants were bound to many types of different international and regional agreements. The regulatory frameworks of these agreements were in many cases conducive to a more liberal trade regime in the transport services sector in general and to the road transportation sector in particular.

109. The representative of Egypt considered that safeguards for balance of payments purposes was extremely important and the criteria should be well defined and unambiguous. Regarding exceptions, national security considerations in particular for maritime transport would depend to some extent on the geographic situation of a country. Concerning the regulatory situation, the regulation of transportation services in developed countries was more extensive, complex and detailed than it was in developing countries and in this regard the question of additional regulation was relevant.

110. Regarding GATT Article XXI-type security exceptions, the representative of Hungary noted that this was open-ended and that there were no criteria in practice for national security exceptions.

111. The representative of Korea considered that the principle of safeguards and exceptions should be duly applied to the transport services sector. Given the differences in competitiveness and market characteristics between developed and developing countries, further study was required before drafting an agreement. Safeguards should be applicable where national transport industries were threatened by excessive market access of foreign providers. In addition, the provision of exceptions should be recognized when market access was not appropriate due to special circumstances.

112. The representative of Yugoslavia said it was necessary for the GNS to explore criteria and appropriate implementation of exceptions for security reasons in the transportation sector. Safeguard provisions should be considered for sudden and large services imports which damaged domestic services industries. Regarding the regulatory situation, she noted that developing countries which did not have legislation for new services or new
technology had the right to regulate and safeguard their service industries with the same measures that other countries had already introduced.

113. The representative of India said that the nature of the safeguards and exceptions would be related to the kind of obligations that the framework provided for. Developing countries needed to have provisions to undertake indigenization programmes to promote their shipping sectors. Exceptions would also apply to sensitive cargoes e.g. imports of petroleum were entirely allocated to the domestic fleet which could play a vital role in times of emergency. He agreed that more detailed work was necessary before the GNS could determine the nature of the obligations which had to be considered in regard to the transport services sector.

114. The representative of the European Communities agreed that in the Montreal text the right of countries to introduce new regulations was recognized but this should be consistent with commitments under the framework. Regarding the remarks of the representative of India, he noted that he did not know what indigenization programmes to promote the shipping sector were. It would be problematical if it meant the right of developing countries to decide on unilateral cargo reservation irrespective of any commitments they might have. Similarly, he was not sure that national security concerns justified continued allocation of cargoes whether sensitive or not when there was no national emergency.

115. The representative of India replied that the transportation sectors were regulated by various international conventions such as ICAO or by bilateral agreements or in accordance with national objectives. His delegation had not accepted the proposition that the set of concepts provided for in the Montreal document were directly applicable to the transportation sector. He was yet to be reassured of prospects that any change from the present situation of cargo reservation and sharing would actually lead to liberalization and a better balance of benefits for participants. There were provisions for participants to exclude certain sectors for overriding considerations which his delegation would consider in cases where there was no balance of benefits accruing in their favour. Regarding the right of indigenization of domestic shipping, he noted that his country's shipping fleet was below a satisfactory level. Without wishing to dump shipping services on the international market, the right to develop an indigenous merchant fleet was a vital one.

116. The Chairman concluded the discussion on the transportation services sector and turned to the next item on the agenda concerning trade in tourism services.

117. The secretariat introduced the note "Trade in tourism services" contained in document MTN.GNS/W/61.

118. The Chairman then invited the representative of Mexico to introduce his delegation's document entitled "Simulation of the applicability of concepts, principles and rules to tourism activities" contained in document MTN.GNS/W/62.
119. The representative of Mexico said that tourism was traditionally considered labour-intensive, a production factor that was abundant in developing countries. However, according to analyses carried out by his delegation comparative advantage in this sector was in fact held by developed countries. The competitiveness of developed countries stemmed from a number of factors: first, business tourism rather than holiday tourism was prevalent in this sector, i.e. businessmen going to other countries for non-recreational purposes. Second, tariffs of airlines and other means of transport were generally lower between developed countries than between those countries and developing countries. Third, airlines had increasing interests in other tourism activities (e.g. hotels, travel agencies, and car-hire firms) and channelled tourists towards the places where their interests were best catered for, i.e. in developed countries. Fourth, it was developed country airlines and hotel chains which had the worldwide information and reservation networks for these activities. Fifth, tourism installations were becoming increasingly sophisticated and expensive and could only be done by those with the necessary capital. Sixth, the promotion of tourism required the publicising of a country’s attractions through the advertising media which implied having available both efficient advertising services and also the necessary resources for obtaining them. As a result tourism had become an activity that was intensive in capital, organization, information and know-how. In accordance with the definition of tourism by the United Nations and the World Tourism Organization, the Uruguay Round negotiations in this sector would be confined to negotiations on barriers that hinder the free movement of tourists among countries. He noted that some delegations wanted foreign investment to be included in the negotiations. There were various forms of foreign investment in tourism which should be taken into account in the building and the management of hotels. Not infrequently, the foreign investor only "leases" the emblem to a local firm on condition that the hotel be run in the same way as the other hotels of the chain elsewhere in the world. It was not yet clear what the proposal of the countries wishing to include international movement of foreign investment in the negotiations would amount to. Concerning the cross-border movement of consumers, he noted that this implied an incongruous situation for the negotiations where the person to whom a service was sold would be a foreigner and the seller would be a foreign company established in a foreign country. This created problems not only of definition but also regarding the way transactions were conceptualized. This was why Mexico had suggested that the cross-border movement of labour should be considered. In the tourism sector this meant that labour of different skill levels could be contracted and recruited in the different tourist activities. In addition, the current negotiations could also cover elements such as an increase in the duty-free allowance for travellers returning to their country of origin. Concerning the activities to be dealt with under tourism, his delegation considered that the applicability of concepts for transport and financial services was being examined in a separate discussion. Without prejudice to his country’s negotiating position, there were two possible hypotheses concerning the testing exercise: first, dealing solely with the international movement of consumers; second, dealing with the international movement of consumers as well as the international movement of production factors of either a temporary or an indefinite nature.
120. The representative of Canada welcomed the two papers under discussion and remarked that government measures perceived to limit trade in tourism affecting either travellers or tourism enterprises tended not to be due to specific policies designed to protect the tourism industry. Regulations which affected tourism were often the by-product of general regulations of business or specific sectoral regulations, e.g. in the transport sector. Tourism was a bundle of services which raised the questions of what was to be included under tourism and how it could be negotiated. It should be possible to include this area in the negotiations and to make the concepts applicable without too much difficulty.

121. The representative of Brazil, while welcoming the documents, wondered whether certain concepts contained in document MTN.GNS/21 could be included in the sectoral background documents prepared by the secretariat. He appreciated the importance attached in the Mexican paper to the question of definition which should be discussed in depth before undertaking any normative exercise.

122. The representative of the European Communities welcomed the documents and said it was more appropriate to talk of tourism-related services instead of dealing with tourism as a sector as such for liberalization. Most of the services did not exist purely for tourist purposes. The secretariat document pointed out two broad categories in the provision of tourism services: one relating to the supply of services to consumers who had moved temporarily to the exporting country and the second relating to the provision of tourism services in a location other than that of the country of origin of the service provider. Tourism was a very important sector in particular as a major employer in a number of countries and was often seen as a way of contributing to regional development. Regarding the view in the Mexican paper that industrialized countries would derive the greatest benefits from international negotiations, he said that the answer depended on how liberalization was approached. Tourism was a sector that, with growing standards of living and with development, would assume increasing importance with great potential and there was no logical reason in the long term why developing countries could not also obtain major benefits from liberalization.

123. The representative of Australia considered it not uncommon in several services sectors to have a wide range of different economic activities subject to different types of regulations. Tourism was not particularly different in that respect. Nor was it uncommon that in various sectors there existed regulations which posed barriers to foreign entry but which were not in themselves directed at policy objectives within the sector. Finally, it was not peculiar to the tourism services sector that there should be regional development policy objectives involved. Positively, one could think of tourism as a single sector on the supply side because there were some barriers which related to the way the supply of tourism services was regulated, e.g. regarding tour operators in foreign countries selling travel packages. His delegation had no special problem about treating the individual activities within this sector in the agreement although he hoped that the principles which would apply horizontally would apply to all of those individual activities. For the purpose of the present exercise he
considered it convenient to treat them as if they formed a homogeneous whole.

124. The representative of the United States noted that while in the secretariat's reference list of sectors many activities associated with tourism (e.g. civil aviation, financial services) were regulated by themselves and had to be dealt with on their own terms, he was in favour of combining activities which would comprise a sector of tourism in the agreement. This was mainly because the negotiations were dealing both with individuals who were travelling as well as enterprises providing tourism services. In the United States-Canada trade agreement, the tourism annex listed activities and disciplines which governed the provision of services which had been classified as tourism.

125. Following the general remarks, the Chairman invited comments on the application of the concept of transparency to tourism services.

126. The representative of Mexico said that in the first hypothesis (international movement of consumers) transparency in the case of travel agencies would refer solely to information about the laws and regulations of the receiving country concerning travellers (e.g. visa requirements, exchange controls). In the second hypothesis (international movement of consumers and production factors), transparency would refer both to travellers and to laws and regulations on direct foreign investment as well as any regulations relating to the actual operation of travel agencies in the host country. He considered that no country in the world would be prepared for any changes in its laws and regulations on foreign exchange policy, immigration or foreign investment, to be subject to prior consultations with other countries that were signatories to the agreement. Given the large number of specific activities which the tourism sector comprised, it would be hard to establish a "reference point", particularly in developing countries, in which to concentrate all the laws and regulations affecting these activities.

127. The representative of the European Communities noted that according to the Mexican delegate, transparency would refer to information about the laws and regulations of the country receiving the tourism. This was transparency as regards export barriers in the receiving country and he was unconcerned about that if he was trying to increase his own exports. He was more interested in the laws and regulations of the countries from which tourists were coming, e.g. in facilitating the movement of those tourists out of their home countries. It was therefore important to cover regulations covering such matters as exchange controls, exit restrictions as well as the establishment of tourist offices or travel agencies in those countries. More generally, most regulations affecting trade in tourism services (regarding the outward movement of tourists or the inward movement of tourism-related services) were not usually strictly tourism related. He did not share the view of the Mexican delegation that it was too complex to have an enquiry point.

128. The representative of Egypt said it was difficult to conceive of tourism as a sector per se. Paragraph 6 of the secretariat document included activities which would be considered under other sectors in their own
right. Exchange restrictions were important in the context of macroeconomic policy for those countries that imposed such restrictions. Regarding transparency, the idea of enquiry points was useful if the GNS could narrow down the scope of what it was dealing with.

129. The representative of Canada noted that transparency would have to be a central component of a workable agreement and should address government measures applicable to both travellers and to tourism enterprises. Flexibility in the means of reporting might be required to ensure cost effectiveness.

130. The representative of Japan said that his country was an importer of tourism. In 1987 the tourism account deficit was about 9 percent of the Japanese trade surplus and in 1988 this grew to 16.6 percent. In 1987 Japan launched a national five-year campaign to double the number of outbound travellers from five to ten million people. He was hopeful that the figure could be achieved by 1990. As far as transparency was concerned, any relevant national regulations should be made public. Enquiry points could be useful although his delegation had reservations concerning prior consultation.

131. The representative of Hungary considered that there were particular transparency problems relating to visa practices, e.g. not only cases when visas were issued on a restrictive basis with substantial time delays but also practices of double checking of entry (i.e. refusal of entry even when the traveller had a valid visa).

132. The representative of Jamaica agreed that measures and regulations concerning visitors should be transparent. Enquiry points were useful although some countries such as his own had government agencies or ministries of tourism which in part fulfilled this function. Transparency should also apply to measures and regulations which affected the ability of nationals to travel overseas.

133. The representative of Brazil considered that it would be difficult to devise new mechanisms to increase the level of transparency. He expressed reservations concerning the idea of prior notification because in his country's legal order it would be difficult to find a place for such a mechanism. Regarding enquiry points he shared Mexico's concerns.

134. The representative of Korea said that transparency could be achieved through the publication of relevant regulations. In Korea's case, the publication of regulations was limited to laws and enforcement decrees due to the burdens involved in publication procedures. The idea of an enquiry point was useful and practical to enable service providers to understand without difficulty a country's regulations.

135. The representative of Indonesia underlined the developmental role of tourism for his country which facilitated inbound travel by issuing visas on arrival and eased outbound travel through the abolition of exit permits. In this regard, transparency was a key principle for both types of tourism.
136. The representative of Yugoslavia said that her delegation was interested in publishing all relevant regulations also for outbound nationals.

137. The Chairman then invited comments on the application of the concepts of progressive liberalization, national treatment, m.f.n./non-discrimination and market access to tourism services.

138. Regarding progressive liberalization, the representative of Mexico referred to the two basic hypotheses he had presented. Under the first hypothesis, progressive liberalization referred to the improvement of international conditions for increasing value added in a tourism "exporting" country, e.g. an increase in the duty-free allowance for goods a tourist can take back home, access to hotel and airline information reservation networks, greater flexibility of exchange controls. Under the second hypothesis, it would in addition be necessary gradually to allow access for foreign investment and foreign labour to the countries providing the service. The indefinite presence of a travel agency or hotel in a foreign country would imply the likewise indefinite presence of labour in a foreign country. Furthermore, his delegation considered that any framework agreement should contain specific provisions on technology transfer to developing countries which could be stepped up by provisions allowing labour from developing countries to be hired at all levels in developed countries in various tourism-related activities. Turning to national treatment, he noted that under hypothesis I national treatment would mean granting the same treatment to foreign licences or franchises as to domestic licenses or franchises. Under hypothesis II, national treatment implied granting foreign tourism enterprises the same rights and obligations as similar local firms. In addition, it implied that foreign labour should receive the same treatment as local labour in terms of social security, unemployment insurance, training etc. Concerning m.f.n./non-discrimination, he noted that under hypothesis I, as laid out in the Mexican submission, non-discrimination could apply among countries of destination in the application of exchange controls for travellers; in the application of exit restrictions for nationals of a country; with respect to the value of the duty-free allowance for goods imported by homecoming tourists, etc. Such elements would have different effects according to whether m.f.n. treatment was optional, conditional or unconditional with Mexico preferring the last option. Under hypothesis II, m.f.n. treatment would imply non-discrimination among countries of origin of labour and capital for tourism activities. Again referring to MTN.GNS/W/62 he noted that market access could take various forms under hypothesis I including access to information and reservation networks of airlines, hotels, etc., access in respect of licensing and franchising for hotels, restaurants and tour operators, and access to "soft" technology. Under hypothesis II, market access meant the possibility for labour and capital to provide their services in tourism activities in a foreign country.

139. The representative of Canada considered that predictable, on-going trade liberalization would be a result of the establishment and progressive application of an agreed framework of rights and obligations regarding trade in tourism. While the issue of factor movement distinguished market access from national treatment, he saw a close linkage between the two concepts in practice. Barriers to be examined had to include both barriers which
limited the movement of travellers as well as barriers to providing tourism services. Market access was a means to secure and enhance through progressive reduction in trade barriers the ability of a tourism enterprise to advertise, sell and deliver a service to the traveller. National treatment could be applicable to the operating conditions of tourism enterprises and the particular context or meaning would need to be worked out. The principle should be for non-discrimination between foreign-controlled and domestic firms in their ability to offer tourism services. There was no reason why any rights or obligations, undertakings and concessions should not be extended on the basis of unconditional m.f.n. treatment to all adherents.

140. The representative of Australia agreed that non-discrimination on the supply and on the demand side in tourism was important and would cover measures such as temporary or long-term entry for firms, establishment conditions dealing with infrastructure and temporary movement of industry personnel for the purpose of delivering the tourism service.

141. The representative of Korea said that the aim of progressive liberalization was to achieve complete liberalization of trade in tourism services. To this end, adversely affecting national regulations should be reduced. However, such a measure should be implemented gradually taking into consideration existing disparities among countries, particularly between the developed and developing countries. Progressive liberalization should avoid an attempt to remove regulations all at once. For developing countries, transitional arrangements should be established so that progressive liberalization could be carried out with minimum damage. Market access related to the cross-border movement of tourism services. The general types of entry barriers were the banning of 100 percent investment of foreign service providers, unreasonable share request for a joint venture, limitations to the establishment of local branch offices and restriction of cross-border movement of labour. Effective market access could be ensured through appropriate decisions on types of investment, the commercial presence of tourism service professionals and the import of unskilled labour forces according to the needs and development level of individual industries. Any multilateral framework should include guidelines for these items. Finally, the application of national treatment to tourism service providers as well as to the imported tourism service itself would ensure a full liberalization of trade in tourism services. In applying the principle of national treatment, different policy objectives and the development level of the tourism industry of importing countries had to be taken into account.

142. The representative of Sweden considered that progressive liberalization of tourism would mean the gradual relaxation of many and very different types of impediment. Tourism was highly heterogeneous and relied heavily on other service sectors including transport, insurance, banking and telecommunications. An expansion of tourism would thus have effects in other sectors. The WTO had identified frontier formalities, although usually not imposed for trade reasons, as being one factor impacting on tourism. Limitations on the amount of foreign exchange (stemming from concerns over the balance of payments situation) that individual travellers could take out of a country were another obstacle to increased tourism. For tourism enterprises, access to distribution and computer reservation systems was
important as was the question of commercial presence and franchising. As there existed a large number of distinct regulatory measures that could be the subject of liberalization, he believed it would be fairly easy to achieve a gradual liberalization tailored according to the needs and concerns of individual countries. Turning to m.f.n/non-discrimination, he said that for enterprises supplying tourism services m.f.n. should in principle apply and there should be no discrimination as between foreign suppliers that were party to the agreement. Regional economic integration groupings and free trade areas had to be taken into account under the agreement. National treatment would mean that when foreign service providers had been accorded market access it should be based on the principle of national treatment. It should apply equally to cross-border provision as well as to commercial presence but only in terms of the specific activity for which market access had been granted. The possibility for certain domestic preferences should be kept in mind. Market access in terms of exporting on a large scale involved bringing consumers to one's own country which depended to some extent on improving tourism facilities. Market access also involved the possibility for foreign service providers to supply services either from within the territory of another signatory or from abroad.

143. The representative of the United States considered that perhaps the most notable obstacle in this sector was the travel allowance itself. There were inevitable limitations concerning an open-ended travel allowance but some were overly burdensome on travellers and discouraged travellers to become tourists. Similarly, currency convertibility problems existed in some countries. Concerning tour operators, the flexibility of commercial presence reflected in the Montreal document was appropriate. A company might wish to have a representative or marketing office or might wish to form a subsidiary, or a joint venture of some kind. There were also tour operators who simply wanted to do business across borders and had individuals who were capable to provide that service; the agreement should take into account the extent to which those persons were able to move across borders in a manner consistent with the immigration laws that frequently prevented them from doing so. Concerning the licensing of tour operators, many countries imposed certain licensing requirements for good reasons and in that case the principle of national treatment became a relevant feature of whatever disciplines were imposed on tour operators who were licensed in foreign countries.

144. The representative of Jamaica said that countries tended to encourage the inflow of tourists and reduce restrictions to the inward flow. Investment in the tourist sector in his country was encouraged and no discriminatory regulations existed. Concerning market access, two important areas related to access to adequate airline services and to reservation systems which should be treated in the discussions.

145. The representative of New Zealand said that the fact that tourism constituted a bundle of services reinforced her view that in approaching the development of a framework agreement and in negotiating specific liberalizing commitments a sector by sector approach was not necessarily the best one to take. The interlinkages argued not only for a broad coverage of the agreement but also for providing opportunities to negotiate improved
market access by means of progressive liberalization on the basis of specific activities or perceived barriers to trade. She agreed with the United States that it was not appropriate to negotiate separate tourist-related commitments on related areas such as aviation. She did not consider it necessary to gather together a tourism sector for the purposes of achieving progressive liberalization. The concepts of national treatment and m.f.n. would apply both to enterprises providing services and to consumers of those services. With respect to market access, different forms of commercial presence would be relevant extending from franchising and leasing operations and joint ventures through to full establishment. In the case of her country, it was possible for foreign enterprises to establish fully with 100 percent foreign ownership with very few exceptions and with no restrictions on the repatriation of profits. Access to computer reservation systems was relevant but she wondered whether domestic competition laws could be used to prevent anti-competitive practices which could be a form of discrimination in this sector. Regarding travel allowances, she suggested that market access and progressive liberalization could be achieved by gradual increases in the ceiling that would be allowed.

146. The representative of Switzerland considered that progressive liberalization could best start by trying not to worsen the present market access situation. The idea of a freeze could be of importance in this regard. As reported by his country's tourism industry, there was a growing concern about licensing requirements for tour guides either in terms of their local activities or in the form of additional requirements such as visas. National treatment seemed to be not applicable to the consumer of tourism in particular regarding inward movement, i.e. it would be difficult to envisage that incoming tourists would profit from social security benefits etc. Many countries had national tourist offices which were either government owned or heavily government subsidised. It was possible in certain cases that these subsidies could have some effects on market access for other countries.

147. The representative of Hungary noted that concerning regulations affecting tourism service enterprises, the reference in the Montreal document to "preferred mode of delivery" was of special relevance to progressive liberalization. The movement of all factors of production in the tourism sector was relevant including capital, know-how and labour. Restrictions affecting their movement should be progressively liberalized. Restrictions affecting labour movement were both of a temporary and a longer term character. In the first case, there were restrictions in many countries on the short-term use of foreign guides and such protectionist measures should be eliminated. Concerning the movement of labour with respect to establishment and commercial presence there were in a number of countries very rigid requirements which kept the number of foreign management and professional personnel at a very low level. In several countries there were national treatment issues with respect to established foreign operators who might be restricted, for example, in organizing third country tours for citizens of the country of establishment whereas such restrictions did not exist for local operators. There were discriminatory restrictions between foreign and domestic operators with regard to local road transport in a number of
countries. There were also standardization problems and in particular lack of mutual recognition of professional qualifications caused problems.

148. The representative of Peru noted that regarding currency allowances there were fewer restrictions in his country than in the past. Any reference to this in the framework agreement, however, would have to be very flexible as it was not possible to have minimum figures or stated amounts.

149. Concerning the progressive liberalization of measures affecting tourists, the representative of Japan noted that many countries had among themselves bilateral visa exemption agreements but said that whether this could be applied automatically on an m.f.n. basis would be up to discussion. Concerning the operators, his country had regulations and domestic legislation, e.g. the registration procedure for any tourist operator based on non-discriminatory national treatment. Some sort of regulatory measure was needed to ensure the safety and comfort of the foreign tourist. Japan tested the qualifications for those wishing to become guides. He was concerned that in some countries there were regulations which might not apply national treatment, which might restrict advertising or sales promotion, and which might have a nationality requirement to be, for example, a tour guide.

150. The representative of the European Communities considered that more could be achieved in terms of progressive liberalization by liberalizing sectors important for the supply of tourism services such as transport. If air transport was a good deal cheaper, more tourism would be encouraged. There were limits to what could be accomplished in the GNS in terms of the facilitation of the movement of tourists. In this regard, the primary problems at the level of imports related to exchange control and exit restrictions etc. Also, balance of payments considerations should be taken into account. The idea of a minimum floor level for individual tourist allowances was an interesting idea which might be worth exploring. In the secretariat document mention was made under national treatment of a number of bilateral agreements to promote tourism and it was worth reflecting on the idea of doing that on a multilateral basis with a large number of countries making the same commitment. Concerning nationality requirements, he noted that tourism was a sector which was promoted in some instances for regional development reasons in declining areas with little opportunity for local employment. The rationale for reserving certain tourism jobs was to preserve regional employment. He favoured a greater liberalization although it required careful examination. Referring to the Mexican paper, he said he was concerned about the suggestion that laws and regulations on foreign investment also had to be respected insofar as they had non-economic policy objectives. Punta del Este talked about respect for the policy objectives and not the laws and regulations. Regarding national treatment, he questioned the Mexican view that foreign labour should receive exactly the same terms as local labour even when the movement was temporary. Did this mean that travel couriers when they crossed the border should move onto a different scale and have different social security arrangements?
151. In response to the comments made by the European Community representa­
tive, the representative of Mexico said that his submission did not refer to
national treatment for personnel during a temporary period of work abroad.

152. The representative of India said that tourism was a very important
foreign exchange earner for developing countries. He agreed with the
Mexican view that the specific form of progressive liberalization would
depend on the definition of trade in tourism that was adopted. Concerning
the impact of foreign exchange regulations and tourist allowances in this
area, he noted that this was closely related to the balance of payments
situation. Developing countries were close to the bottom of the list in
terms of being beneficiaries or recipients of tourists. He had reservations
about any notion of progressive liberalization that would create additional
liabilities in terms of net outflows of foreign exchange as long as there
was an adverse balance of payments situation. He agreed that the traffic of
tourists could be encouraged by facilitating service transactions in related
areas or improving infrastructural facilities rather than specifically
improving the quality of tourist guides or similar measures.

153. The representative of Egypt categorized tourism restrictions in terms
of enterprise ownership, repatriation of profits, employment of foreign
labour, ability of non-established foreign firms to sell directly their
services to customers and access to networks. Restrictions on foreign
ownership often took the form of local equity requirements and were per­
ceived to affect the management of the enterprise and the share of profits.
It was important to be clear about the policy objectives that such restric­
tions served, e.g. solvency. Restrictions on the repatriation of profits
were related to countries' financial policies and should be examined within
the context of the economic and financial circumstances of the country.
Restrictions on the employment of foreigners (e.g. number of employees,
qualification requirements) could affect the competitiveness of the enter­
prise itself. Restrictions on the direct sales enterprises which were not
established were also related to the issue of company solvency and to
consumer protection. Restrictions on access to networks were obvious in the
case of many enterprises from developing countries which might not have
access to such networks in foreign markets. The preferred mode of delivery
raised a number of problems and he doubted whether it could be left to the
discretion of the service provider.

154. The representative of Thailand said that tourism and economic develop­
ment were interrelated. Growth in the tourism industry could lead to
capital formation in other sectors and overall economic development.
Liberalization of tourism services should not stand in the way of develop­
ment. Developing countries needed opportunities to strengthen the com­
petitiveness of their own tourism industry including the transfer to them of
tourism related technology.

155. The representative of Yugoslavia agreed that progress in liberalizing
tourism services was linked to the development of other sectors of the
economy. Improvements in procedures for the issuing of visas and other
customs formalities depended on the political readiness of countries.
Liberalization of restrictions in the tourism sector had to take place both on the supply and the demand side.

156. The representative of Brazil said that if tourism was defined as the movement of tourists among countries there would be some room for liberalization and benefits for all countries. There were regulations or controls that countries found necessary to maintain in order to fulfill national policy objectives. On the issue of travel allowances, he considered it irresponsible to ignore the balance of payments implications of such measures although it would be an exaggeration to use those measures to create unnecessary barriers to trade. Health restrictions were also imposed as the mass entry of tourists could lead to problems for health authorities.

157. The representative of Argentina said that the tourism statistics in the secretariat document showed the deteriorating situation in terms of receipts and arrivals for developing countries (excluding Far Eastern countries). Another important aspect requiring analysis was that tourism was not independent of existing facilities and infrastructures and more should be understood about how they contributed to the growth of tourism activity.

158. The representative of Turkey said that progressive liberalization was possible provided that there was joint agreement on definitions. His country had simplified customs formalities, cancelled all restrictions on nationals travelling abroad and had adopted more flexible regulations on currency allowances. On national treatment he agreed with the Mexican view except that he saw no drawback to extending the concept once market access had been granted. Concerning the mutual recognition of professional qualifications in the tourist sector, he said that harmonizing legislation at the world level was a very difficult task. In his country certain professions, including guides, were set aside for nationals.

159. The representative of Israel underlined the importance of tourism exports and imports for his country. Restrictions related to balance of payments problems had to be viewed in the context of governments setting national priorities and it happened that in certain situations travelling abroad was a luxury. Therefore careful consideration had to be given for the reasons for such restrictions. Concerning m.f.n. treatment, he said that for instance business or professional travel was a growing segment of the tourism market. In many countries travel for professional reasons was tax-deductible and in some cases there were agreements between countries on the recognition of tax-deductible tourist activities. This was a way of encouraging this type of tourism. By applying such an arrangement in a non-discriminatory way, the development of tourism could be enhanced.

160. The Chairman then invited comments on the application of the concept of increasing participation of developing countries to tourism services.

161. The representative of Mexico pointed out that international competitiveness in this sector depended on various factors ranging from the development of appropriate technology to the financing of infrastructure and equipment. The tourism sector was a good example of where better access to distribution and information networks would considerably help improve the
national capacities of developing countries to compete in providing many tourist services. The framework agreement and a possible sectoral agreement on tourism should contain suitable provisions to expedite the transfer of the new "soft" technologies to developing countries. The best way to do this was to contract various types of labour from developing countries for tourist activities in developed countries. Furthermore, paragraphs 7(f) and 7(b) of the Montreal text should be considered components of the concept of relative reciprocity which was summarized in MTN.GNS/W/62 (page 11).

162. The representative of Brazil said that concerning tourism developing countries might be found to be already liberal. Much had been done by developing countries for opening up possibilities for a greater flow of tourists. He believed the Mexican proposals concerning transfer of technology and additional flow of resources were two important aspects in attempting to increase the participation of developing countries in this sector. The proposal also had interesting ideas about non-reciprocal ways for developing countries to benefit from greater access to the service markets of developed countries. He identified as a problem for his country the lack of adequate access to information, distribution and reservation networks.

163. The representative of India noted that an important category was that of business tourism. In terms of liberalization of restrictions to entry, he suggested that the GNS could give some priority to facilitation of access for business tourists. In this regard, he noted that his country had more liberal foreign exchange allowances for business travellers. He also suggested that it was well within the capacity of governments to liberalize visa restrictions on business travel. In order to increase the participation of developing countries it was necessary to ensure that the tourism infrastructure was of world standard which might mean meeting an information, technology or capital resource gap.

164. The representative of Egypt said that efforts to increase developing country participation would have to tackle various problems related to infrastructure, human resource development, lack of capital to undertake investments in tourism, and access to networks. It was important to ensure that a service provider operating in the market complied with national policy objectives and contributed to achieving them. Regarding infrastructure, one could expect very little from foreign tourism enterprises active in the market. In the area of transfer of know-how and managerial capabilities, however, considerable contributions were possible. Concerning finance, he referred to the concept of financial support included in MTN.GNS/21. Regarding access to networks, there was need for developing countries to achieve such access preferably on a preferential basis. It was necessary for developing countries to maintain some domestic preferences whether in the form of financial support and preferential treatment for domestic enterprises in order to enhance their performance.

165. The representative of Hong Kong said more attention should be paid to the question of how to promote the inward flow of tourists, in particular for developing countries. Regarding infrastructure development, joint ventures were a useful concept or foreign capital funded concerns.
Regardless of the source of capital, infrastructural facilities - including hotels and restaurants, theme parks, and road building - generated employment, provided foreign exchange and facilitated the transfer of soft technology.

166. The representative of Tanzania noted that the maintenance of existing infrastructures for the inward flow of tourists was a heavy task for developing countries and was also a drain on foreign exchange. He also said that the concerns of the least developed countries should be taken into particular account. It was necessary to agree on how this commitment, stated in the Montreal document should be translated into action.

167. Regarding specific measures to increase the participation of developing countries, the representative of Jamaica noted tax relief for certain travel purposes of business people going to developing countries, increasing duty free allowances, availability of adequate airline servicing at reasonable prices, access to reservation and information systems including the cost of such access, measures to encourage capital flows to the tourism and tourism-related sectors of developing countries, and measures to develop inter-regional tourism traffic between developing countries.

168. The representative of the European Communities said the issue before the Group was how best to promote the development of a world standard tourism industry in different developing countries. It was a decision for individual developing countries of how best to approach that but the GNS should look at ways to facilitate that. One possibility related to management services where there was no establishment of wholly owned subsidiaries but a management contract for locally financed operations. This encompassed transfer of know-how, access to networks, and franchises which were all important for the promotion of developing country tourism. He was less convinced that know-how transfer could be efficiently obtained by sending workers off to another country to acquire the know-how to run effective tourist operations. It was better to have such transfer via inward movement into the country. Concerning information networks, the suggestion of preferential terms of access should be explored although many information networks were run by private companies and thus the question arose of how to translate the idea into practical effect.

169. The representative of Yugoslavia underlined the overall economic situation of developing countries and their ability to improve infrastructure which, in turn, depended on adequate access to sources of capital. She suggested that the framework should allow for more freedom in the labour market as suggested in the Mexican submission.

170. The representative of India noted that concerning government efforts to attract capital, joint ventures, franchising or management contracts, it would be difficult to accept that as part of a multilateral framework of rights and obligations. His government, however, was willing to consider on a case by case basis individual requests or proposals for investment or participation in his country's tourism facilities.
171. The representative of the United States said that many developing
country institutions were encouraging investment in tourism because this
developed the tourism industry and provided the necessary technology trans­
fer and know-how. He considered it possible to build such elements into the
principles of the framework not only to provide a specific element of access
but also to complement the principle of development of developing countries.
Concerning the movement of labour, he thought the sheer efficiency of
training and know-how was probably best achieved within the country rather
than sending workers abroad to gain that know-how. The notion of one-way
treatment by developed countries to developing country workers should be
handled with caution. Most immigration procedures and laws were predicated
on the principle of reciprocity and the consideration of one-way treatment
added one more difficulty to an already difficult topic. The representative
of Mexico replied that his submission talked of relative reciprocity and not
non-reciprocity; relative reciprocity was a lesser contribution on the part
of developing countries and not a one way process.

172. The representative of Sweden noted that increased exports of services
from developing countries could be facilitated by assisting individual
countries to obtain commercial information about the market. In tourism
that could take the form of assistance to establish contacts with tour
operators, travel agents etc. To help developing countries acquire a long
term competitive position, he suggested a number of ways including joint
ventures and franchising whereby the diffusion of management skills could
take place simultaneously with infrastructural improvements in, say, hotels.

173. The Chairman opened the discussion on the application of the concepts
of safeguards and exceptions and the regulatory situation to tourism ser­
vices.

174. The representative of Mexico said that safeguards might concern balance
of payments problems, growing and unforeseen imports of services, and the
development of an infant industry. Concerning the first hypothesis, safe­
guards could apply when licence or franchise payments began to grow rapidly
and lead to a balance of payments problem. In hypothesis II, the main
safeguard would concern the development of an infant industry such as travel
agencies. Exceptions would apply to cultural and recreational services in
order to protect morals, customs and cultural values.

175. The representative of Korea was concerned about the possible adverse
effects of liberalization. The existence of different levels of development
and competitiveness between countries justified the application of safe­
guards. Exceptions would be applicable when the domestic tourism industry
faced the danger of bankruptcy on account of imported services. A certain
type of conditional arrangement was needed in the framework in areas where
parts of a country's domestic tourism industry lacked competitiveness and
was vulnerable to import surges of services.

176. The representative of Canada was not inclined to think that anything
beyond what turned out to be the standard framework provisions would be
necessary for the tourism sector. He did not consider that purely sectoral
trade deficits should be a ground for restrictive action and if restrictions
were applied on the free movement of travellers there should be some form of multilateral ability to examine how that was being done.

177. Concerning general exceptions, the representative of Israel said he was thinking along the lines of the existing article XX of the GATT. The question of national and public security measures was important regarding tourism.

178. Regarding general exceptions, the representative of Japan believed that the elements pertaining to national security, health, sanitation, protection of the natural environment and immigration policy should be accommodated in some way.

179. The representative of Turkey considered that safeguards related to emergency measures for balance of payments problems, and national security and public health measures could be applicable.

180. The representative of the European Communities said the GNS had to be careful about suggesting that tourism expenditure needed to be treated as a special category as concerned balance of payments problems. Countries might wish to have some flexibility in how they addressed different elements of their services imports expenditure. Tourism expenditure should be treated in the same way as other imports of services. On the issue of security restrictions for travellers, he said that countries might decide to cut down their exports of tourism for public policy reasons, but he was not sure that special provisions or safeguards were needed to deal with that. Finally, referring to the Mexican submission, he was perplexed by the suggestion that safeguards should be applicable when licence or franchise payments began to grow rapidly. It was paradoxical to encourage the development of the tourist sector on the basis of licensing or franchising and at the same time to insist on a safeguard measure which foresaw the stoppage of payments.

181. The representative of Sweden said that mass tourism could put a heavy strain on the environment. Seasonal variations gave rise to uneven capacity utilization and the impact of poor weather could temporarily bring hardship to the industry. The question of whether the framework would need special provisions in respect of such factors would have to be examined in greater detail. Such concerns in his view could be covered by general safeguard provisions in the framework agreement.

182. The representative of Hong Kong said that the issue of discrimination (e.g. price) against foreign travellers should be looked at in the context of the regulatory situation.

183. The representative of Argentina said that exceptions could apply to questions of an on-going nature such as public health, environmental protection and even national security. Balance of payments restrictions should not be applied for minor passing events.

184. The representative of Australia said that there was nothing about the tourism services sector which warranted any special formulation of
safeguards or exceptions. He did not quite understand why some participants perceived it as necessary to include exceptions relating to environmental, health and moral aspects of the influx of tourists into a particular country. There were two types of subsidies in the sector, one being the promotion of tourism facilities through government aid, the other relating to domestic subsidization of tourism infrastructures. Because tourism exports were delivered in the exporters' domestic markets, infrastructure development subsidies could be considered subsidies to exports. As such, they could eventually pose problems in cases where they were granted specifically as a means to increase the capacity to capture export markets.

185. The representative of the European Communities said that his delegation was attached to the horizontal nature of the sectoral testing exercise. The exercise constituted a testing of concepts and not of sectors. To some extent, it could be said that the concepts appearing in the Montreal text - paragraph 7 of MTN.TNC/11 - were adequate for the application to the transport sector even though some sector specific provisions might be necessary. The Montreal concepts were adequate for the application to the tourism sector. As had been the case in the previous GNS meeting, some clear linkages became evident between the two sectors under examination in this meeting - namely, transport and tourism - as well as between these sectors and those examined previously - namely, telecommunications and construction and engineering.

186. The representative of Egypt said that, similarly to the previous GNS meeting, the discussions did not explicitly emphasize specific transactions and activities which might be ultimately affected by the application of concepts. However, some progress in that area had been discernible. He shared the view expressed by the representative of the European Communities that the multilateral application of concepts to air transportation could indeed be very difficult and could require a very creative approach to be successful. He noted that some difficulties were envisaged in the application of national treatment, especially as it related to foreign providers in domestic markets. Special attention should be devoted to the relationship obtaining between the concepts of national treatment, market access, m.f.n./non-discrimination and progressive liberalization on the one hand, and the concept of increasing participation of developing countries on the other.

187. The representative of India warned the Group against hasty conclusions regarding the applicability of the Montreal concepts to transport and tourism. The application of national treatment to tourism services consumers (tourists), for example, was rejected by some participants. Similarly, m.f.n./non-discrimination had been suggested for application only to very limited, specific situations. He agreed with the representative of Egypt that more detailed consideration should be given to various aspects of the sectors examined, including a better working definition of the transactions to which the concepts were being applied.

188. The Chairman opened the discussion on item 2.2 of the agenda which invited participants to submit indicative lists of sectors of interest to them.
189. The representative of Hong Kong said that his delegation's indicative list in MTN.GNS/W/59 in set out those sectors in which Hong Kong currently had a trading interest and was not intended to be the final coverage of the agreement.

190. The representative of Hungary said that the coverage of the agreement was crucial in the deliberations of the GNS and a better idea of sectors of interests to participants was necessary before the Group could discern and assemble the main elements of the framework on trade in services. He agreed that the coverage should be universal.

191. The representative of India said that the purpose of indicative lists was not to define the coverage of the agreement but rather to give examples of sectors where trade in services was already or had the potential for taking place. From that point of view, the Hong Kong list was too broad, including sectors which were usually not considered in the context of trade in services. He enquired how the representative of Hong Kong envisaged trade in hire cars, road haulage or public transport taking place. He was encouraged by the inclusion of medical and educational services under professional services but could not comprehend the reasoning by which investment and real estate were included under financial services.

192. The representative of Hong Kong said that public transportation in Hong Kong was operated through various means, none of which necessitated domestic management or ownership. The same applied to hire cars and road haulage. Trade in real estate was very common in Hong Kong through establishment of real estate agencies. Overseas property was also dealt through Hong Kong. As mentioned under financial services, investment was not intended to denote a generic conception of investment but merely investment related to commercial banking and securities-trading services.

193. The representative of Singapore requested some clarification as to the meaning of educational services, whether they were intended to mean teaching-aids, the establishment of schools in other signatory countries, etc.

194. The representative of Hong Kong said that trade in educational services could involve, for example, the importation of teachers for language training as was already the case in his country. As concerned financial services, in Hong Kong these were very liberal and banks were allowed to undertake various lines of business.

195. The Chairman opened the discussion of item 2.3, concepts, principles and rules in accordance with paragraph 7 of MTN.TNC/11. As agreed in the previous meeting, the Group was to examine the concepts of national treatment, m.f.n./non-discrimination and market access. There was a submission by Canada on the concept of progressive liberalization (MTN.GNS/W/63) and two submissions by the European Communities, one on the concept of transparency (MTN.GNS/W/65), and another on the concept of progressive liberalization (MTN.GNS/W/66).
196. The representative of Canada said that MTN.GNS/W/63 reiterated points made previously under the concept of progressive liberalization. He hoped that it would be useful for the work of the Group in the autumn when the main elements of a draft framework should be assembled.

197. The representative of the European Communities said that MTN.GNS/W/65 reflected most of the views previously expressed by his delegation on transparency while clarifying some aspects such as the need for national enquiry points potentially accompanied by a cross-notification procedure. He also brought the Group's attention to the last three items of the submission, namely, information from enterprises, discretionary power of authorities, and sub-national entities. The views of the European Communities delegation on progressive liberalization were reflected in MTN.GNS/W/66. He underlined the item on sectoral annotations where it was indicated that these annotations would be necessary but modifiable through multilateral review after the entry into force of the framework. He also stressed that according to items "C" and "D" of the submission, his delegation favoured an initial package of commitments/bindings to be negotiated in the framework of the Uruguay Round.

198. The Chairman opened the discussion on the concept of national treatment.

199. The representative of Canada said that it was becoming increasingly difficult to discuss concepts in isolation and without having a clear idea as to how all the main elements would ultimately fit together in a framework agreement. There was a special linkage between the concepts of national treatment and market access, for example, while both concepts also related very closely to the concept of progressive liberalization. Market access had to do with the degree to which a provider could sell his services to foreign consumers. Ultimately, some degree of market access was essential before national treatment became relevant at all. Conversely, a complete application of national treatment was in some cases not necessarily sufficient to assure full market access. Divergences seemed to remain as to how to deal with the relationship between the two concepts in order to properly fulfill the obligation of progressive liberalization. His delegation preferred not to over-emphasize the importance of these differences as they were perceived to concern negotiation techniques and methods rather than fundamental purposes and commitments. Some delegations had tended to view the concept of market access as a potential subject for negotiating bindings (consolidation). According to this view, national treatment should follow automatically, reservations applying only where such automaticity was not immediately feasible for individual participants. Another important proposal set out national treatment to be the subject of a binding commitment at the outset, along with the possibility for lists of national reservations to be negotiated at a later stage. According to this view, market access would be obtained inter alia through commitments on the modes of delivery (e.g. establishment). Other suggestions had included the possibility of national treatment as an objective or goal which participants would be committed to achieve progressively - i.e. national treatment as a guideline. Some of these approaches had favoured sectoral agreements including more detailed formulations of national treatment to fit the
specificities of each sector. The Montreal text took a definitional ap­proach, setting out the Ministers' understanding of what national treatment could resemble if accorded. Little guidance, however, was provided as to how to operationalize the concept and presumably various techniques remained to be considered, including the application of the definition (in whole or in part) to one or more sectors, activities, or transactions. The results of negotiations on such an application could be bound against "back­sliding". While further moves towards the granting of non-discrimination to foreign providers would be welcome, such moves would be of less value without the essential, basic and binding commitment in the framework to further and continued progressive liberalization. Until a broad consensus emerged on a solid structure for the framework and, in particular, on how to render operational the concepts of progressive liberalization, market access and national treatment, difficulties could be envisaged in assembling the necessary elements of a draft text by the end of this year.

200. The representative of the United States said that the formulation of national treatment was perhaps the clearest one in the Montreal text. Since services sectors were heavily regulated, it was imperative that provision was made for treatment no less favourable than that accorded to national services and services providers be accorded to foreign services and services providers. Clearly, however, the application of national treatment did not in all cases imply sufficient market access so that additional provisions relating specifically to market access were also in order. The formulation of national treatment should be based on the notion of equivalent treatment whereby foreign providers would not be granted identical treatment as to that accorded to national providers but merely the treatment through which greater market access could be achieved.

201. The representative of Singapore said that national treatment as applied to services went beyond its traditional formulation for goods trade to include treatment of foreign providers. Thus, in the case of financial services, for example, national treatment could potentially apply to the entire banking sector. However, coverage considerations could preclude such a broad application of national treatment since by deciding on which fields of activities or transactions foreign firms could operate, countries could in effect determine the scope of application of national treatment as well. As such, coverage considerations should not be viewed as violations of national treatment. Only after a foreign provider had satisfied the conditions of entry into a particular field of activity in a particular market (e.g. surcharges, operating regulations) should national treatment be applied.

202. The representative of Mexico said that as indicated in previous sub­missions by his delegation, national treatment should be applied to both services and the labour and personnel involved in the provision of such services. In accordance with the formulation of progressive liberalization in the Montreal text, national treatment was part of a process leading ultimately to the achievement of effective market access. The automatic application of national treatment once market access had been granted could potentially force governments to engage in higher levels of liberalization than they might be ready to accept. This was why it was important to envisage the progressivity set out in the Montreal text to apply also to the
granting of national treatment to foreign services and services providers. Developing countries in particular should be allowed the flexibility in granting national treatment with respect to the number of sectors and/or transactions as well as to the time-frame within which they undertook the commitment.

203. The representative of Switzerland said there was a close interrelationship between market access, national treatment and progressive liberalization. The concept of national treatment could be expressed in terms of the principle of equal opportunity. Regulations did not need to be absolutely identical. It was the effect of the regulations which should be equal in terms of the opportunities provided to foreign suppliers. It should be construed as equality of access to a particular market. The application of national treatment should be bound by national schedules and national schemes which described each participant's universe of sectors to which the concept should apply. The application of national treatment should extend both to the granting of access to a particular market as well as to operating conditions once foreign suppliers had gained access to that market. Market access conditions could vary between those applying to foreigners and those applying to nationals. Once access had been granted to a market, national treatment would be applicable, whether to cross-border services, to services delivered in the importing market, or to services providers established in the importing market.

204. The representative of Japan said that national treatment was a crucial concept in attaining market access in services. As such, national treatment should be applied to all measures which were relevant to achieving market access, including those relating to factor mobility essential for the provision of services. As set out in Article III of the General Agreement, the application of national treatment should to the fullest extent possible not be inconsistent with existing regulations. As the ultimate aim of the application of national treatment would be to secure further market access, one should go beyond domestic regulations to provide for a mechanism allowing the reduction, through negotiations, of any limits or restrictions on national treatment. The concepts of transparency and progressive liberalization would play a crucial role in the application of national treatment by providing a mechanism for review and reduction of existing measures. There might be reservations on national treatment but these should also be reduced through a mechanism to be negotiated.

205. The representative of Peru said that there was a very close relationship between the concepts of progressive liberalization, market access, national treatment, and increasing participation of developing countries. He agreed with the view expressed by other participants that national treatment should not be automatically applied once market access had been achieved but should be applied progressively with respect to time and number of sectors. Developing countries should be allowed to liberalize fewer sectors, activities and/or transactions than developed countries. Also, the objectives contained in paragraph 7 of MTN.TNC/11 regarding the increased participation of developing countries and the national policy objectives of laws and regulations were of special relevance in the formulation of national treatment. Therefore, national treatment could be interpreted as an
objective to be attained in the short, medium and long-term, sector by
sector, activity by activity, depending on the coverage and the commitments
deriving from the final framework agreement. These ideas had all underlaid
the formulation of the concept of equitable national treatment contained in
the previous submission by his delegation, MTN.GNS/W/49.

206. The representative of New Zealand said that national treatment was not
sufficient on its own to ensure effective market access. National treatment
constituted an important element of market access and should be viewed in
relation to the various modes of deliveries. Aspects such as subsidies,
government procurement, and monopolies, which could affect the level of
market access available in a particular market for a particular services
product were all relevant in the consideration of national treatment.
National treatment should follow automatically the granting of market
access. However, even when national treatment had been granted, access
might not exist as was the case with markets which were equally closed to
both domestic and foreign providers. Conversely, national treatment was
necessary for effective market access. Whenever market access was limited
(e.g. by quantitative restrictions on the number of foreign operators
allowed into a market), national treatment would need to be compromised,
unless a similar restriction on market entry applied equally to domestic
service providers/firms. For that reason, the concerns that total free
trade would follow from the application of national treatment were not
well-founded. The linkage between national treatment, market access and
progressive liberalization should be further explored. If the achievement
of progressive liberalization was undertaken through, inter alia, the
progressive expansion of quotas limiting market access, for example, careful
consideration should be given to the constraints which that approach could
represent on the application of national treatment. She could accept the
linkage established by the representative of Singapore between national
treatment, market access and the field of transactions to be covered by the
agreement. Limiting the scope of activity of foreign providers to certain
sub-fields within sectors should be viewed as a limitation on market access,
however, and not as a compromise on national treatment. Given the distinc-
tions and the inter-linkages between the two concepts, it should be desir-
able that progressive liberalization be undertaken through negotiations on
market access. For effective market access to be achieved, however, it
should be assumed that national treatment, as a full-fledged obligation,
would automatically follow the granting of market access. To negotiate
simultaneously for both concepts would work to the disadvantage of smaller
countries whereas to negotiate for national treatment alone would not
necessarily result in effective market access. The interlinked nature of
the two concepts could ultimately be translated into progressive
liberalization by gradually implying the opening of markets through the
introduction of increased competition - i.e. expanding quotas, reduction in
services reserved to national monopolies, etc. It could also imply the
gradual elimination of any differential treatment which limited market
access. Regarding the concept of equivalent treatment, she said that its
application should be limited and countries applying it should be required
to justify the reasons for doing so. Finally, when national treatment was
not currently provided, the inconsistency should be inscribed as a reserva-
tion in the agreement to be negotiated away at a later stage.
207. The representative of Hong Kong said that the notion of granting treatment "no less favourable" was the crucial element in the application of national treatment to services, as it had been for goods. The most important distinction between the application of the concept to services and its application to goods was that with services national treatment was not sufficient to ensure effective market access and, in some cases, could even have an adverse effect on the latter.

208. The representative of Egypt said that it should come as no surprise that national treatment was a relatively controversial concept. The concept had a clear linkage with the concept of progressive liberalization. Its linkage to the concept of increasing participation of developing countries needed further exploration. He enquired how participants would envisage to reconcile the need governments often had to grant domestic preferences - whether in terms of financial support, access to infrastructure facilities, etc. - with the principle of national treatment. In some cases, national treatment could represent a barrier to market access. Countries might be reluctant to accept a very sweeping formulation of national treatment. Also, careful consideration should be given to the relationship which national treatment bore to national policy instruments and objectives.

209. The representative of Argentina said that the previous discussion on the application of national treatment had been very helpful and constructive. He referred to two important exceptions in Article III of the General Agreement on the principle of national treatment, namely those relating to government purchases and to the granting of domestic subsidies. He also noted that the application of national treatment as set out in the General Agreement should not be inconsistent with existing national regulations at the time of accession of a contracting party. He agreed with the representative of Singapore that granting market entry to foreign services and services providers could be viewed as equivalent to the granting of lower tariffs to goods. National treatment could be gradually applied to a greater number of domestic regulations, thus respecting the progressivity of the liberalization exercise. In that context, he considered it important to envisage an eventual exchange of concessions relating to national treatment obligations in specific activities, fields of transactions and, ultimately, whole sectors. A full application of national treatment to services should be viewed as the equivalent of the application of a zero-tariff to goods.

210. The representative of the European Communities said that the Montreal text on national treatment was an excellent basis from which to proceed. Along with the concept of market access, national treatment was a necessary condition for the attainment of effective market access even though it might prove insufficient for that purpose in some cases. There had been a tendency in the Group to see market access as relating to market entry conditions whereas national treatment related to those conditions relevant after entry had been achieved. In that respect, the interlinkage between the two concepts for services was analogous to that for goods. In services, there were cases where market entry did not pose a problem but operating conditions within the country were very restrictive. In some cases, there were no limits on the number of foreign suppliers which could enter a market but the total amount of business these suppliers could undertake was restricted.
The granting of national treatment should not be automatic once market access had been granted. The Group should not be deciding on whether one particular regulatory structure was more appropriate than another and that was why, in the view of his delegation, national treatment could not be conceived as an obligation. For sectors where entry to the market was relatively unimpeded, there should be no presumption that national treatment would broadly and automatically apply to operating conditions of foreign suppliers. National treatment should apply progressively in some cases and this application could vary from sector to sector and from country to country, depending on the regulatory structure. This should not be construed to mean that a national treatment commitment would be any less binding than other commitments since national treatment would remain as the yardstick against which liberalization could be gauged. In some cases, entry could be granted to as many foreign suppliers as possible, all of which would benefit from national treatment. In other cases, as many foreign suppliers might be granted access to a particular market but operating restrictions could still remain in place.

211. The representative of Australia agreed that national treatment was necessary but insufficient to achieve progressive liberalization. The main question before the Group in that respect was how to make the concept operational. It was not yet clear whether the concept should ultimately constitute an objective or a rule. In the view of his delegation, national treatment should be a rule enforceable as an integral part of a contractual agreement. National treatment should imply rights under a contract, and not merely impose or condone certain behaviour by foreign providers. Progressivity in the application of national treatment should follow from the progressive liberalization of specific activities participants would be committed to undertake. It might also be necessary for a country to reach agreement with trading partners on market access in a sector or an activity where it could not immediately accord national treatment. Temporary reservations should be negotiated away according to a time-schedule. He agreed with the representative of Switzerland that there would be different degrees of market access countries could grant. Also, there should be no presumption that foreign providers would be subject to the same conditions for entry into a market as domestic providers. Once in the market, however, foreign providers should be accorded national treatment as a matter of obligation, unless some related reservation remained in place. Participants should be prepared to recognize that a distinction existed between entering into and operating in a market. National treatment should also apply in the case of new measures.

212. The representative of India understood the statement made by the representative of the European Communities to mean that market access and national treatment should each be negotiated separately. The concept of national treatment was the most complex in the negotiations and his delegation had many reservations as to its application. The Group might profit from a clarification regarding the meaning of effective market access. The application of national treatment should not imply that foreign providers would be granted equality before the law in terms of rules and regulations. It should ultimately be related to whether foreign enterprises were able to effectively undertake business in the areas which were to be liberalized
through negotiations. Also, the negotiations on national treatment should take account of the different levels of economic development of participating countries. The Group should avoid considering a gradual application of national treatment across a wide range of sectors and should concentrate on the concept of effective market access. This concept should be subject to negotiations according to whether services providers could in effect undertake business in a particular market. Effective market access should apply to each individual transaction in a particular sector and could affect barriers to access to a market, barriers to operation within a market, etc.

213. The representative of Egypt said that a formulation of national treatment implying a strong commitment would make it difficult for many countries to apply the principle to a wide segment of their services markets. Many developing countries would like to stimulate the interaction between national and foreign providers in various services sectors as a means towards increased transfer of technology and development of human resources. A strong national treatment commitment could preclude such an increased interaction. The Group should aim at increased transparency in operating conditions within a market and not merely at increased market entry.

214. The representative of Brazil stressed that according to the Montreal text, developing countries should not be expected to undertake the same level of market access or national treatment commitments as developed countries. Some concepts were not applicable to certain activities and/or transactions and thought should be given as to how to modify them to render them applicable to a wide range of sectors. The application of national treatment and other concepts to services trade should not be modelled on their application to goods trade.

215. The representative of the European Communities said that the Group was not negotiating total free trade but only a certain degree of liberalization in services. Therefore, a certain degree of protection in the services sector should be permissible even though total lack of protection could also be envisaged in some cases. Also, the Group was not engaged in the drafting of a framework which would ultimately favour one regulatory structure over another. He stressed that the Montreal text had set out progressive liberalization to be a process providing for effective market access, including national treatment. This reflected the fact that national treatment was indeed an objective criterion on which to base progressive liberalization. Problems between the application of national treatment and the application of market access arose only in certain cases. Placing temporary reservations on the application of national treatment would imply total liberalization in the long-run and should be avoided. Ultimately, a framework agreement should bind the level of opportunity available for foreign providers in a given market whether in terms of entry or operating conditions.

216. The representative of Hungary enquired whether the application of national treatment and market access to foreign services and services providers would ultimately imply the elimination of all preferences being accorded to domestic producers in some cases.
217. The representative of Argentina said the approach involving the granting of increased opportunities or access to a particular market should be undertaken through concession consolidation and not by means of reservations. This consolidation should apply not only to particular activities or fields of activity but also to specific disciplines within certain activities. The compilation of relevant laws and regulations was infeasible, given the complexity and variety of regulatory frameworks applying to services transactions.

218. The representative of the United States said that the Group was engaged in negotiating conditions under which trade in services should take place, and not free trade as such. The application of national treatment should be viewed as protecting the regulatory situation already existing in different markets by setting national practices and regulations to be the standard by which foreign providers would need to abide. For liberalization to occur, foreign providers should, however, experience greater market access in addition to being granted national treatment. Both national treatment and market access should imply commitments, and not merely objectives, which could be undertaken separately and through the phasing out of reservations. It was the preference of his delegation that the application of national treatment would automatically follow the application of market access.

219. The Chairman opened the discussion on the concept of m.f.n./non-discrimination.

220. The representative of Mexico said that m.f.n./non-discrimination should be granted unconditionally to developing countries since the participation of these countries in international trade in services was very limited, comprising only around one seventh of the world's trade. For example, Mexico, the greatest developing country exporter of tourism services, only accounted for 1.5 percent of the world's total. Granting unconditional m.f.n./non-discrimination treatment to developing countries would not represent a great cost to developed countries and could at the same time provide for an increased participation of developing countries in world trade in services. Exceptions to this treatment should include cases of economic integration or preferential agreements amongst developing countries.

221. The representative of Australia said that m.f.n./non-discrimination was a key element of an eventual contractual framework agreement on trade in services, constituting both an obligation and a benefit for participants. Non-discrimination should be provided in the form of m.f.n. commitments whereby all signatories would be granted any advantage granted by another signatory to a third party, whether unilaterally or as a result of trade negotiations. The obligation could be extended to arrangements made between signatories and non-signatories. Full rights to m.f.n. treatment should be granted only under the condition of full participation. The application of m.f.n. should not only involve an adequate level of bindings and schedules to be determined as a result of negotiations, but it should also apply to as broad a sectoral coverage as possible. The application of m.f.n. should account for already existing regional arrangements. Longer time frames
should be provided for developing countries. Reservations could be lodged but should be less frequent than those relating to national treatment.

222. The representative of Japan said that m.f.n. was a crucial element in the eventual framework agreement as it related to the issue of how to share the benefits of the agreement while promoting greater market access. Careful consideration should be given as to how to balance the granting of m.f.n. with the different market access levels participants would be in a position to concede initially and throughout the existence of the agreement. Optional m.f.n. was undesirable since it would stimulate the conclusion of unrelated bilateral agreements, access to the benefits of which third parties would be obliged to negotiate each time. Conditional m.f.n. seemed to imply separate agreements involving a lesser number of countries than the framework agreement might otherwise include. M.f.n. should be applied unconditionally. If the problem of free-riding arose, it should be negotiated away progressively along with the liberalization process. Reservations relating to reciprocal arrangements could be lodged but should also be progressively reduced.

223. The representative of Sweden, on behalf of the Nordic countries, said that m.f.n. was a fundamental principle for striking a balance between commitments and rights under a multilateral agreement and for ensuring a multilateral process of progressive liberalization. It meant that signatories should grant all other signatories the most favourable treatment or advantages that had been granted to another country regardless of whether that country or entity was a party to the agreement in question. Most commonly, however, market access undertakings would probably occur as a result of negotiations between two or more signatories to the agreement and would then through the m.f.n provision automatically be extended to all other signatories. Thus, m.f.n. was a dynamic principle which captured market opening measures and extended them to all signatories. However, GATT moderated the m.f.n. obligation through Article XXIV whereby countries in a FTA or customs union did not need to extend more far-reaching liberalization undertakings to all signatories of the GATT, provided that the arrangement met certain criteria as set out in Article XXIV. A framework agreement on services should contain a provision along the lines of Article XXIV of the GATT and permit more far-reaching liberalization without extending these benefits to all other signatories of the agreement. It was worth noting that certain modifications of m.f.n. could be necessary in those cases where there could only be a limited number of entrants to the market in a particular sector. The airline industry was an example where the physical limitations of airspace and airport facilities would make unlimited entry very difficult. In these and perhaps other cases one would need to uphold the m.f.n. principle through provisions on non-discriminatory allocation of market access.

224. The representative of the European Communities agreed with other participants that m.f.n./non-discrimination was a key element of a future agreement, in order to ensure a balanced level of rights and obligations. An appropriate level of mutual obligations should be achieved between participants, thus precluding the existence of free-riders. The right to substantial benefits in a particular sector should not be exclusively
dependent on contributions undertaken in the same sector. Also, the right to benefits did not require the same contribution from every signatory since different participants could assume different levels of obligations. The approach to m.f.n. should be multilateral even though the services sector had for the most part been regulated internationally on a bilateral basis. M.f.n. could be conditional with respect to standards, whereby providers would only benefit from m.f.n. treatment whenever they complied with certain minimum norms and standards. Mutual recognition of standards might need to be permitted in some cases. The problem of free-riding should not arise if the final agreement succeeded in providing a balanced level of benefits to all participants. However, a minimum level of initial contributions would be desirable, even though much consideration should still be given as to how to determine such a minimum level. Further consideration of a non-application provision should also be in order to avoid arbitrary use by participating countries. A provision permitting participants to pursue existing regional economic integration processes should be included but limits should be set as to its application. The origin of a service being provided should be determinable so as to ensure that benefits were limited to signatories.

225. The representative of Singapore requested some clarification as to how the representative of Japan had intended to achieve the balance between the application of m.f.n. and the different levels of market access available in different countries.

226. In response, the representative of Japan said he had not implied any operational link between the concepts of market access and m.f.n. under the general framework agreement. Because there would be differences in the level of market access before entering into the agreement, the application of m.f.n. could lead to imbalances. The problem could be approached by negotiating on the market access side, an initial or minimum level of market access commitments. M.f.n. should be the unconditional GATT-type m.f.n. and should be provided for all signatories. Concerning economic integration, he agreed with the view of the New Zealand delegate and reserved the right to comment on this matter at a later stage of the negotiations.

227. The representative of Switzerland said that the application of m.f.n./non-discrimination should only be undertaken once services activities, transactions, or whole sectors had been consolidated. In some cases, the application of m.f.n./non-discrimination should not be limited to those participants which engaged in concession-exchanges among themselves. Unqualified m.f.n. should not apply to harmonization and/or mutual recognition of laws, especially where such recognition constituted a pre-condition to the delivery of a service. In cases where a group of participants might wish to proceed on a more rapid process of liberalization than others, the application of m.f.n. would be rendered very difficult. He agreed with others that a provision should be included which ensured the pursuit of regional economic integration programs.

228. The representative of the United States said that m.f.n./non-discrimination should only apply to participants that were signatories to the agreement. Countries should be inspired to sign the agreement as a sure basis for receiving m.f.n. treatment, and could
undertake bilateral or plurilateral commitments at a more rapid pace than others, provided that arrangements entered into with other countries did not impose further restrictions on third parties. An initial level of commitments implying a freeze on the level of restrictions to market access was desirable considering the different implications of such a freeze deriving from the diversity in regulatory systems. A provision of non-application would also be desirable.

229. The representative of Egypt perceived m.f.n. to relate very closely to the question of how benefits were ultimately distributed among signatories to the agreement. Non-discrimination, on the other hand, should ultimately ensure that laws were not discriminatory in nature. The application of m.f.n./non-discrimination should not preclude the pursuit of regional economic integration among countries, nor should it interfere with preferential arrangements among developing countries or preferential market access opportunities for developing countries. The application of m.f.n. to the granting of market access could have different effects on countries with different levels of economic development. Countries with lesser levels of economic development often could not fully profit from greater market access opportunities granted by developed countries on an m.f.n. basis. For that reason, it was difficult to envisage that the free-rider problem would arise in the application of the concept to services transactions. The notion of an initial level of commitments should be considered. Countries, in particular developing ones, should be permitted to introduce new regulations. The application of m.f.n./non-discrimination should not be affected by the harmonization or mutual recognition of norms and regulations.

230. The representative of Argentina said that in the application of m.f.n./non-discrimination to trade in services account would have to be taken of existing arrangements which were guided by the principle of reciprocity. Regional integration agreements also deserved careful consideration in order to avoid further restrictions on third parties. In some cases, the size of the market could imply the need for laws restricting the number of entities participating in certain activities. As concerned standards, the wide differences obtaining among countries could give rise to the non-application of m.f.n. in some cases. Also a freeze on regulations could be problematic due to the very diverse regulatory situations. He agreed with the representative of Mexico that the granting of unconditional m.f.n./non-discrimination treatment should help to redress some of the imbalances in the participation of developing countries in world trade in services.

231. The representative of New Zealand said that the concept of m.f.n. was closely tied to the issue of a balance of rights and obligations. The question of free riders had been partially dealt with in the area of goods by attempting to ensure that concessions made by different countries were of similar value, whether by means of a request and offer process or through a formula approach. The Australian delegate had stated that full participation in a services agreement should be a prerequisite for achieving the full benefits of the agreements and had mentioned two key aspects: a broad coverage of sectors and an adequate level of bindings. She agreed fully with that view and noted that Switzerland had commented that m.f.n. was
applicable only where a positive concession was made. She considered however that m.f.n. was a broader concept. If market access was available anyway without a positive binding having been entered into, then that access should be available on a non-discriminatory basis. In that sense both m.f.n. and the related concept of non-discrimination were obligations under the services agreement. The process of assessing whether concessions were of a similar value should extend beyond the entering of initial levels of commitment. It was however necessary for all signatories to the agreement to be satisfied about the level of commitments made initially by each of the other signatories. In her view, unilateral reductions in protection were beneficial to a country but she was aware that not all countries saw liberalization in the same way. She favoured trade-offs between sectors in order to accommodate the different strengths and weaknesses of the parties to the agreement. In this regard, she endorsed the comments of the European Community delegate concerning the preference for an agreement that was not based on strict sectoral compartmentalization. It was necessary to have a broad m.f.n. obligation, i.e. to extend any benefits to all contracting parties to the agreement. She agreed that it was necessary to have a provision to take account of existing regional economic integration arrangements. Considering the conditions under which regional economic integration could be acceptable, she noted that such agreements should be outward looking and liberalizing rather than encouraging closed markets. Concerning possible problems of m.f.n. regarding banking and air services, she said that it was feasible to allow businesses in those sectors to operate subject to prudential or safety requirements, i.e. to allow market forces to operate in determining the limits of the market that was available.

232. The representative of India said that the concept of conditional m.f.n. had arisen in the light of the Tokyo Round codes. Extending m.f.n. to non-signatories in the area of services was not such a major issue. Too much emphasis was put on the free-rider issue. In the area of goods so-called free riders had not gained great benefits through their participation in the multilateral trading system. A more important issue was the extension of progressive liberalization. How much of world trade in services could be covered progressively and how could the benefits be extended among all the signatories? In the Montreal text, a lesser degree of obligations by the less developed countries was recognized. In this regard, he expected that the least developed countries would be so-called "free riders" by definition, as it would be inappropriate to demand a degree of commitment from them. An important point was how the question of preferences in favour of developing countries could be reconciled with the concept of m.f.n. Concerning the conditions under which m.f.n. or non-discrimination would not apply, he urged the GNS to be very careful. One clear example related to Article-XXIV-type agreements where there might be a higher degree of liberalization. The transparency of such arrangements was important in order to ensure that the balance of benefits had not been affected. There were also implications for regulatory systems and standards in regional integration arrangements. If standards resulted in a discriminatory régime the principle of non-discrimination would be undermined. He was concerned by the suggestion that a mutual recognition of standards would be an important qualification to m.f.n. Most technical standards were determined on
objective criteria based on considerations concerning health, environmental protection, etc. However, if the concept of standards was applied to a broad range of sectors it would have implications for the mutual recognition of qualifications of the providers of services which could become an inherent form of discrimination and restriction.

233. The representative of Hungary agreed that m.f.n. should be a fundamental and general rule in a future services agreement, applicable on an unconditional basis. The obligations to be undertaken by signatories would not be of the same level which was clearly referred to in para 7(b) of the Montreal text. He agreed with the idea of achieving a balance of rights and obligations through cross-sectoral concessions which was a justification for the universal coverage of the agreement. This was linked to the issue of conditions for joining the agreement. He considered that there should be a minimum level of contribution from each participant. He questioned whether an absolute minimum which could constitute an "entry ticket" should be an across-the-board freeze as proposed by the European Community. This would mean that countries with highly protective regulatory structures would enjoy substantial and long-term advantages. On non-application, he assumed that on joining the agreement there would be an appropriate level of undertaking by each signatory and therefore a non-application clause (GATT Article XXXV) was not necessary for a services agreement. He was also uneasy about GATT code-type approaches as suggested by some participants although he took note of the United States view that arrangements based on some form of conditional m.f.n. would not be discriminatory to outsiders. The proliferation of codes had led to a fragmentation of the GATT system and it would not be a good idea to take the same road with a services trade agreement. Concerning exceptions to m.f.n. he recognized that GATT Article XXIV type provisions would be needed but this should be further examined in the light of experience with goods trade. He foresaw the possibility of reservations as regards m.f.n. application by individual countries.

234. The representative of Canada considered that a strong m.f.n. clause was essential which entailed both rights and obligations. He welcomed the statement that the European Community was not expecting strict sectoral reciprocity but that some appropriate contribution by all would be required as part of the agreement. Assuming that such an approach was accepted and carried through, there would not be a problem of free riders. Provision would have to be made for economic integration. He would welcome any further contributions on the issue of origin.

235. The representative of Yugoslavia agreed that m.f.n. was an essential principle but the GNS had to ensure that it contributed to the objectives of the negotiations. The notion of a freeze needed further discussion because it could nullify all benefits of m.f.n. for other signatories. Her delegation would examine the suggestion that cross-sectoral concessions should be considered and state its position when it was clearer to which sectors and transactions m.f.n. would be applied. Further discussion was needed on the question of the origin of the supplier and its relevance to an m.f.n. clause.
236. The representative of Israel stated that there should be an m.f.n. provision in the agreement and that non-discrimination was a complementary principle. In order to apply effective non-discrimination, the m.f.n. principle was a precondition without which markets could not be opened. He agreed with the Canadian view that this could be achieved through cross-sectoral trade-offs and, as contained in the Montreal text, through different levels of commitments. Used in this way, m.f.n. would be conducive to the participation of many countries and would lessen the importance of the free rider problem. His delegation did not exclude the possibility of unilateral benefits of a GSP-type for developing countries. He hoped that by the end of the negotiations, the word "signatories" would be replaced by "contracting parties" which would better symbolize broad participation in a services agreement. He agreed that there was a need for provisions relating to economic integration along the lines of GATT Article XXIV and noted that one of the first agreements to contain a services provision was the Israel-United States free trade agreement. He added that Article XXIV talked about economic integration and not about regionality. It was also necessary to set up criteria for such integration arrangements, e.g. that they would have liberalizing effects and not create new barriers. On the question of non-application, he urged caution as his country's experience with the existing Article XXXV of the GATT was negative and any future provision should be much more rigid. Rules of origin constituted an important issue to develop. While he noted that in certain sectors full m.f.n. would be impossible or very difficult to apply at this point in time, he suggested that interim solutions or provisional arrangements be found.

237. The representative of Peru agreed that rules of origin should be the subject of in-depth analysis in a forthcoming session. He considered that a freeze should apply not only to the concept under discussion but should also take account of point 7(h) in the Montreal text on the regulatory situation.

238. The representative of Korea considered that the m.f.n. principle should be applied unconditionally because conditional m.f.n., based mainly on reciprocity or regional arrangements, might undermine the basic objective of free trade in services.

239. The representative of Hong Kong expected that m.f.n. would be the cornerstone of the services agreement. M.f.n. and non-discrimination were back-to-back concepts. While m.f.n. related to the extension of benefits, privileges and concessions, non-discrimination referred to the application of trade restrictive measures. To avoid any doubt about interpretation, he agreed with Canada that both concepts should be incorporated as obligations in the framework. He noted that a non-application clause was probably inevitable, but there should be a surveillance or review procedure to constrain the application of this provision. He hoped that a non-application provision would serve as a good incentive for all to contribute to meaningful market access obligations and would be used only very sparingly. Turning to the issue of a freeze, he said that given the asymmetry in regulations this would have to be examined. Regional economic integration was a derogation from the m.f.n. principle and he did not want to see regional trading blocks developing out of extensive use of Article XXIV-type arrangements because they undermined the multilateral trading system.
Rigorous disciplines were necessary to ensure that there would be no abuse of such provisions. Concerning qualifications and standards, there should be transparency in the criteria leading to mutual recognition arrangements so that others who could fulfil the same criteria would also be able to obtain the same level of recognition.

240. The representative of Argentina reaffirmed that the specific characteristics of a sector had to be taken into account in the discussion of m.f.n. and non-discrimination in order to examine the best way to proceed.

241. The representative of India noted that non-application was an explicit form of discrimination and it was necessary to proceed with extreme caution in drawing up such a provision. The history of non-application - to ensure desired levels of obligation - had not been positive in the GATT. In his view it should be an instrument of the last resort and should ensure transparency and have very strict criteria subject to multilateral consultation as it could otherwise serve to perpetuate discrimination.

242. The representative of the United States said that a non-application provision should take account of the different levels of obligation that countries could make as was clearly recognized in the Montreal text. He strongly supported the idea that strict criteria and transparency were necessary in this regard.

243. The representative of Switzerland stated that his delegation did not support a non-application clause particularly if such a clause should be applied unilaterally.

244. The Chairman opened the discussion on the concept of market access.

245. The representative of Canada said that market access negotiations related to the circumstances which limited, conditioned or prevented the sale of services from a seller or a supplier from one country to a purchaser from another country. Market access existed where an exporter was not inhibited or prevented from selling and delivering a service to a buyer. Access could be restricted by the presence of barriers, i.e. other than the normal commercial forces of the market. A barrier to trade in services could be defined as a government measure that created an obstacle to the sale of services produced by a foreigner beyond what was essential for the achievement of strictly non-protectionist domestic regulatory objectives (i.e. goals of public policy). Barriers could also include restrictions or penalties affecting the delivery of services in various ways. He noted that access could be horizontal or product-specific and be limited or denied by the application of charges or other quantifiable measures, by regulations or other non-quantifiable barriers, as well as restrictions on the mode of delivery. He said that in order to have market access or to have improved market access, such barriers should be transparent and predictable, and be subject to reduction or removal. In order to ensure continuing market access, transparency and predictability, existing barriers should be bound against increases and new barriers should be prohibited. Concessions involving the removal or reduction of trade barriers should also be bound. He noted that market access considerations were closely related to the
concepts of progressive liberalization and national treatment. Progressive liberalization could both improve market access and lead to full national treatment. Some degree of market access was necessary before the question of national treatment could arise. Market access, however, could still be an issue in certain cases even after full national treatment was obtained. Market access as it currently existed could be secured by the binding of existing régimes. His delegation did not believe that it was helpful to refer to this as a freeze. Rather, it was a binding undertaken as a result of negotiations with a view to making a contribution to the overall outcome. It could be thought of as one type of formula approach. In the Canadian text on progressive liberalization, the coverage would be very broad. He was well aware of the concerns that less regulated countries or markets would be conceding more than more regulated ones. His delegation's proposal stated that "this binding of existing régimes would be a significant undertaking. However, as the régimes of participants do not all have the equivalent level of openness, and in order to provide for an equitable balance of the rights and obligations of participants, further measures of liberalization might need to be taken." In other words, a "down-payment" or initial access commitment or minimum access requirement could include the binding of existing régimes but could well have to include some degree of improved access as well in order to get a deal. He said that his delegation felt that the notion of preferred mode of delivery included, in principle, cross-border access, movement of consumers, commercial presence or establishment, flows of information, as well as movement of services providers. He noted that specific undertakings would of course flow from the negotiations and be bound in national schedules to be applied in accordance with the agreed m.f.n. clause.

246. The representative of Sweden, on behalf of the Nordic countries, said that market access in services trade was an issue with many dimensions, spanning both traditional cross-border trade, as well as factor movements such as commercial presence and the temporary movement of skilled or other qualified personnel. It could not be discussed in isolation, but was intimately connected with both progressive liberalization and national treatment. Through the progressive extension of additional market access by way of successive negotiations, the scope of national treatment would be progressively widened in terms of the sectors, activities and transactions covered for individual signatories. Over the long-term this could be seen as a process of gradually approaching full national treatment. Market access was determined, inter alia, by the following factors: the possible existence of monopolies; certification requirements for professionals, as well regulations concerning commercial presence in the market such as restrictions thereto or demands on certain forms of establishment; existing bilateral or multilateral arrangements and agreements; demands for reciprocity; procurement policies; access to distribution networks; technical barriers to trade; domestic preferences, as well as quantitative limitations on market entry. The gradual loosening and easing of these and other regulations affecting the supply of services would imply that market access was a function of extending national treatment, be it partial or full, to foreign firms in areas where the market was in fact contestable (i.e. where competition was allowed as between domestic firms). Thus, national treatment meant providing foreign services suppliers with equality of competitive
opportunity in respect of those activities for which they had been granted access to the market. It was important that both the service and the provider be given national treatment within the confines of the specific sector, activity or transaction in which market access had been accorded. From the foreign provider's point of view, the extent of market access seemed to be a function also of the degree of market penetration that foreigners were allowed. He said that one form of market access would cover only pure cross-border trade. However, effective market access might require more broadly defined terms of market access since the provision of services was frequently contingent on close proximity between consumer and producer. Different modes of delivery would therefore need to be considered when negotiating market access and these modes could be more or less extensive depending on the degree of market opening. There was, so to speak, a rising scale of market access opportunities, each one successively broadening the extent of market access and moving closer to full national treatment. Thus, the need for commercial presence in the market needed to be taken into account in a services agreement. Franchising or licensing would require very little factor mobility. Slightly more might be needed with regard to local representation through an agent in the importing country. Yet another form of commercial presence would be a representation office. Such a presence through the further extension of market access opportunity could take the form of a branch office which in turn, as market access was broadened, could become a subsidiary. Depending on local conditions, levels of development and local equity laws, such broad-based market presence could take the form of full ownership, joint ventures or simply partial ownership of a domestic firm. He noted that the degrees of market presence outlined could be seen as representing various forms of market access that could be negotiated. In respect of some services, however, the market itself might obviate certain forms of access, in others effective market access might require, for instance, a branch office as a minimum. Commercial presence, the form of which was a matter for negotiation, should be included as a legitimate form of trade under the framework. A mechanism for operationalizing this would need to be devised. Account would also have to be taken of cases where non-establishment was most appropriate. As mentioned earlier, market access should obviously be directly related to the particular sector, activity or transaction for which it was accorded. It was not a blank cheque for engaging in the activity of one's choice but would specifically be limited to the scope of the particular market access concession. Likewise the movement of key personnel would have to be carefully delineated by the scope of the market access undertaking and allowed when essential for effective market access. Of paramount importance was the need for the national regulatory framework to be respected in terms of labour laws, consumer protection, prudential requirements, etc. Exceptions to national treatment by way of clear and transparent domestic preferences would also have to be accommodated.

247. The representative of Egypt said that the Montreal text made it clear that market access would not be provided automatically, but would need to be consistent with other provisions of the multilateral framework and in accordance with the definition of trade in services. The issue of the preferred mode of delivery raised the questions of factor mobility and the criteria upon which the essentiality of such movement should be determined.
He felt that the operational modalities of market access could only be worked out in detail at a later stage of the negotiations. For the moment, however, it was important to recognize the conditional elements which were attached to market access in the Montreal text.

248. The representative of Japan said that his delegation felt that the notion of effective market access which was contained in the Montreal text was somewhat vague. Market access was a very important objective of the general framework and provided the opportunity for foreign service suppliers to participate in a régime of free competition in services trade. He was concerned that the notion of effective market access might be understood as meaning effective results. The reciprocal undertone of this notion was another source of concern. While the progressive liberalization of market access was derived mainly from the perspective of service providers, it should be remembered that service consumers would benefit greatly from the provision of more efficient and lower priced services which would result from enhanced conditions of market access. He noted that market access was an objective but not a right in itself, adding that concepts such as transparency, progressive liberalization, national treatment and m.f.n. should be seen as the main tools with which to achieve and improve market access. In cases where national treatment may not be sufficient for attaining market access - for example, state monopolies - specific provisions would need to be negotiated into the framework. Progressive liberalization, finally, was a useful means of attaining market access by removing various exceptions or reservations which might not be covered by the specific provisions which had just been mentioned.

249. The representative of the United States shared the concerns expressed by the representative of Japan on the possible meaning of effective market access. He pointed out some of the elements of market access which might be identified in a framework agreement. Such elements might not cover all transactions and/or activities found in the services area but would deal with some critical - albeit often controversial - aspects of market access which needed further discussion. One such issue pertained to ensuring the cross-border sale of a service. The ability not to establish was a relevant issue in this regard. He agreed with the representative of Canada that information systems could be viewed as a form of access in themselves. This, he felt, should be spelled out in a framework given both the key role played by access to networks in providing services effectively as well as the high degree of regulation governing such access. Commercial presence was another issue worthy of further consideration. He recalled that in the view of his delegation commercial presence was not a substitute to establishment but rather a form of establishment which facilitated the provision of a service. Establishment related to the ability of a firm either to have a branch, a subsidiary or a joint venture depending on its preferences. He said that the notion of establishment had different dimensions, depending upon regulation. In the area of financial services, for example, it was the rule rather than the exception that a form of establishment was necessary to carry out all of the activities ordinarily associated with the provision of such services. In other areas, establishment might relate more to the preferences of particular suppliers, the proximity of markets and clients which were often of central importance for the efficient provision of a
service. His delegation saw the ability to establish as a fundamental provision of trade in services, even though it recognized that trade in services was traditionally viewed as consisting of cross-border sales and not of investment. The key question, therefore, was how to structure an understanding in such a way that regulatory régimes which had prohibitions against establishment were dealt with. The ability to establish could not be automatic, although it was his delegation's strong preference. Finally, on the issue of labour mobility, he recalled that trade in services was in many instances conducted by people. The ability to complete and provide services in an efficient manner hinged importantly on the movement of persons. The relevance of this issue was unquestioned, the challenge lying with existing regulatory structures which severely restricted the ability of foreign persons - particularly those with low skill levels - to move across borders. His delegation felt that it would be extremely difficult, if not impossible, to overcome the perceived barrier element imposed by immigration rules in regard to the latter category of individuals. Immigration rules were enacted for a number of reasons and he doubted whether they could be subordinated to trade rules. Efforts could nonetheless be directed toward facilitating the movement of essential personnel, such as executives, managers and other persons whose specialized knowledge and presence were essential to the provision of services under the agreement.

250. The representative of Singapore emphasized that, as envisaged in the Montreal text, conditions would be attached to the granting of market access. Market access, therefore, should be understood as being potentially made available at a cost, i.e. that pertaining to conditions of entry. He said that, as trade in goods, once the conditions of entry (be it a tariff, a license, etc.) had been satisfied, a foreign provider could deliver his services in an unlimited fashion. Indeed, a major distinction between goods and services was that once inside a market, a service provider was typically free to produce as many services as his capacity could provide. Moreover, whereas a sudden surge of imported goods could be addressed through the application of quantitative restrictions, the only way to stop a foreign provider from producing his services would be by expelling him from the country or by requiring him to terminate his production. He cited the example of banking liberalization in Singapore, saying that foreign institutions applying for banking licenses would in all likelihood not be automatically granted such licenses. Rather, the authorities could apply various quantitative restrictions on the total number of banks allowed to operate in Singapore. As well, licensing approval could be made subject to various conditions of a non-commercial character (financial standing, past performance, capital base, etc.). Once a foreign firm had obtained its license, it was free to deliver services in Singapore. The automatic granting of market access could be likened to a zero-tariff situation. He foresaw conditions of entry in relation to market access as comprising, among others, tax surcharges on foreign providers, quantitative restrictions limiting the number of foreign providers in a given market, as well as regulatory restrictions imposing extra operating costs for foreign providers.

251. The representative of Argentina said that market access should be achieved through concessions or progressive bindings covering various
conditions of entry as outlined by the representative of Singapore, as well as regulations or rules applied to the various service activities in which concessions were being granted. He said that the movement of factors of production - particularly labour - could be assimilated to investment flows. The preferred mode of delivery should cover the movement of labour of any kind and not be limited by considerations relating to skill levels. For instance, there might be labour shortages in various professions in foreign countries, irrespective of the skill intensity involved. As well, foreign providers might deliver their services more efficiently by employing their own teams of workers.

252. The representative of Hungary said that while the simultaneity of production and consumption was a distinguishing feature of many services, there were numerous other services which could be provided across borders without any need for establishment, be it permanent or not. In the latter case, obligations to establish could in fact be viewed as serious impediments to trade. He felt that cross-border trade in services should for this reason be given equal treatment to establishment-related trade. While the ability to establish should be favoured under an agreement, the obligation to do so should not. On the issue of factor mobility, he repeated the view that all factors of production should be treated on an equal footing. He said that his delegation's understanding of essentiality of factor movement clearly referred to suppliers of services and was true both of labour and capital. Whereas unrestricted flows of capital were considered necessary in cases of establishment, he noted that an undifferentiated approach in regard of factor movements might mean that establishment should also be translated into unrestricted flows of labour. He felt that the scope for unrestricted flows of both labour and capital should in neither case be seen as an absolute right, the current liberalization process being gradual in nature. He also expressed difficulties with the use of the word effective in relation to market access, noting that his delegation was of the view that market access either obtained or not. Finally, he noted that private monopolies or oligopolistic market situations resulted in as severe impediments to trade as was the case of the operation of state or state-mandated monopolies.

253. The representative of the European Communities said that he did not find any evidence in the Montreal text of a requirement of either reciprocity of quantitative results. What he did find, however, was a recognition that national treatment might not be enough to guarantee effective market access in some instances. In such cases, negotiations could aim to overcome those obstacles in the way of effective market access. As regarded the preferred mode of delivery, he agreed that there would have to be a specificity of undertakings referred to in the bindings. Moreover, just as there would be areas where it might be essential to establish, there would be others in which the need for establishment would not obtain. At the same time, there were areas where consumer protection or prudential requirements would be such as to preclude at an early stage the possibility of supplying services in a cross-border manner. He said that similar considerations would also be true in regard of the movement of other factors of production.
254. The representative of India said that effective market access could relate to situations involving even less than national treatment so long as it was enough for a particular mode of service delivery to be transacted effectively. He submitted that the meaning of market access depended upon the definition of trade in services, the sectors involved, as well the particular transactions within each sector. He felt that it was axiomatic that conditions of entry would be negotiated in respect of market access. Market access would not be granted on the basis of commonly agreed ground rules. While the principle of market access was unassailable, it was neither an automatic right nor an obligation. He said that rather than through applying conditions of entry (which could only be applied once), market access could be negotiated through recourse to objective criteria such as standards, essential requirements to be fulfilled for a cross-border service to be provided, etc. Effective market access also required access to networks and to technology. He said that, by definition, market access had to be effective to be meaningful. It would have to be gradual and be made to relate to transaction specificities. He agreed that while some forms of commercial presence could facilitate the provision of a service, his delegation looked at market access in the context of the four criteria which were contained in paragraph 4 of the Montreal text. He stressed that the current negotiations aimed at achieving a régime for liberalizing international trade in services rather than one aiming at more liberal investment régimes.

255. The representative of Switzerland was in full agreement with what the representative of Singapore and Argentina had said earlier on market access. Market access was something to be negotiated once. It was thus important to ensure that the degree of negotiated market access be bound through consolidation. He listed various elements which could form part of a consolidation process. These included conditions of entry, conditions of exercise, the factors of production to be used in various service activities, as well as the range of possible modes of delivery.

256. The representative of Korea said that in respect of market access there should be "certain conditions of entry", such as border measures like tariffs in trade in goods when foreign providers wanted to cross borders in order to export services. His delegation fully agreed with the earlier statements made by the representatives of Singapore and Hungary. The GNS would have to deal with the conditions of entry which might apply to trade in services. For example, discussions could be conducted on the following items: what was the minimum extent, type and ratio of cross-border movement of each production factor necessary for the exportation of a particular service? How could political, social and cultural problems be prevented? To what extent would the period, type and ratio of the cross-border movement of production factors be restricted? To achieve development objectives or other national policy objectives, to what extent would the type and ratio of the cross-border movement of production factors be limited? Which national policy goals could serve as the basis for limiting the cross-border movement of production factors? Finally, what form of cross-border movement of each production factor would bring balanced benefits to the participating countries?
257. The representative of Mexico stated that the factors of production mentioned in the Montreal text obviously included labour. The distinction had been made in the discussion between skilled, semi-skilled and unskilled labour but the conclusion that only skilled labour would be essential for the distribution of services did not correspond to Mexico's view. The notion that only one category of labour was relevant to trade in services was tantamount to discriminating between factors of production. Market access had to be global and general and exceptions would have to be for development reasons, national security and the like.

258. The representative of Peru said that the Montreal text did not indicate an appropriate avenue towards the goal of effective market access. Market access had to be gradual, progressive and had to take into account the level of development of each participant as well as the definition of trade in services. Market access was not an automatic right but stemmed from negotiation and concessions. Concerning the movement of capital, developing country investment policies had to be fully respected and taken into account.

259. The Chairman then suggested that for the September meeting the following concepts be discussed: increasing participation of developing countries, safeguards and exceptions, and regulatory situation.

260. The representative of Canada invited the secretariat to help the Group in regard to safeguards and exceptions. He suggested a ground-clearing exercise, building on whatever had been said so far in the GNS and posing issues and questions which would help delegations in preparing themselves for the meeting. He suggested that the secretariat prepare a paper along those lines which would be circulated in early September to serve as background.

261. The Chairman confirmed that the secretariat would prepare the note on safeguards as requested by Canada and then turned to item 2.4 concerning statistics.

262. The representative of the secretariat then gave an outline of the note entitled Balance of Payments Statistics on Services contained in document MTN.GNS/W/58. The note focused on IMF balance of payments data and did not provide information on foreign direct investment or sales by affiliates of transnational corporations. No attempt was made to determine which non-merchandise components of the current account could comprise international services trade. The document reported the major categories of invisibles separately, focusing on the shares of world exports by region and by leading exporter.

263. The representative of Brazil welcomed the statistics document and looked forward to further work of the secretariat in this area including information on the next meeting of the Voorburg group.

264. The representative of Argentina considered with regard to tables 1 and 2 that the category "investment income" referred to income from financial
activities which comprised various things. He wanted to know why this
category had increased its share of invisibles exports and imports.

265. The representative of the United States noted that trade in services
statistics still failed to compile data on establishment transactions,
including those of affiliates located within the markets of other countries.
Regarding available balance of payments data, he believed it was important
to distinguish between the headings "services" and "investment". The
heading "investment income" did not measure the value of sales of services
but measured returns on capital invested in various enterprises including
manufacturing and profits on portfolio investments and real estate. The
headings "other official services" and "unrequited transfers" measured
government transactions. These three latter categories, which were not
components of trade in services, constituted more than half the total value
of world exports and imports of "invisibles". The inclusion of these
figures trivialized the percentage of cross-border services transactions
and, in his delegation's view, balance of payments data was a limiting
factor in measuring what he regarded as trade in services. Fundamental
changes in data collection were required to properly measure the commercial
transactions involved in this area.

266. The representative of the European Communities said that the Community
was in the process of developing the best possible estimates of the sort of
data found on a global basis in the secretariat document. This would be
made available to other delegations as soon as it was ready.

267. In response to the question posed, the secretariat representative noted
that the balance of payments statistics included in the document did not
constitute an attempt to measure trade in services. He considered that the
intervention by the United States delegate went a long way in providing an
answer to the query raised by the Argentinian representative. Investment
income contained all forms, be it portfolio income or direct investment
income in any sector of production within the economy.

268. The Chairman then turned to item 2.5, Other Business, and invited
comments.

269. The representative of Brazil requested that the word "population" in
paragraph 57 of MTN.GNS/23 be changed to "territory".

270. The representative of Japan noted that in paragraph 263 of the same
document the first sentence should read as follows: "The representative of
Japan reserved his position with regard to prior consultation or notifica-
tion because he did not think that his country's legal system could provide
room for such a mechanism".

271. The representative of Hong Kong requested that the last two sentences
in paragraph 251 of the same document should be replaced by the following:
"Many delegations wanted a definition to be practical and to allow the scope
and coverage of the agreement to be as broad as possible. The idea of not
having a definition was not a step backwards as it allowed the broadest
possible coverage and would not prejudice the elements in paragraph 4 of the Montreal mandate."

272. The representative of Hungary requested that in the last sentence of paragraph 227 of the same document the words "Canadian" should be deleted as the statement was a general one; secondly, regarding paragraph 59 he noted that to the phrase "in respect of progressive liberalization, developing countries would be able to open their telecommunications sectors in a gradual way" there should be added "depending on their individual levels of development".

273. Concerning the organization of the Group's future work, the Chairman said that following informal consultations the sectoral background notes for the September meeting would be structured as follows: the financial services paper would have three broad headings - banking, securities and insurance - which would address in a broad sense items 6 and 9 of the secretariat reference list in MTN.GNS/W/50. Secondly, the professional services paper would have a broad horizontal approach covering both accredited and non-accredited services in such a way that a spectrum of situations would be dealt with; at the same time a number of specific professional sub-sectors of both an accredited and non-accredited kind would be treated in a more detailed manner, in order to provide the necessary focus on the trade and regulatory issues involved. It was understood that, while the background paper could not deal with every sub-sector of professional services, no sub-sector was excluded from consideration in the Group. Regarding the use of time after the September meeting, scheduled for the week of September 18, he suggested that the GNS hold two further formal meetings scheduled provisionally as follows: one of three days duration in the week of 16 or 23 October, and another one lasting five days in the week of 20 November. There was clearly a need for flexibility as both formal and informal discussions were necessary to complete the GNS work programme by the end of the year as stated in paragraph 11 of the Montreal text. Finally, he informed the Group of his intention to make a report to the TNC on 28 July on progress made so far and of the work planned for the remainder of the year.

274. The representative of the United States asked if the schedule of the GATT permitted, and whether the Chairman was willing to convene, a possible meeting after the three meetings planned for the autumn.

275. The Chairman replied that if necessary the GNS could meet for one or one-and-a-half days before the last meeting of the TNC in December.