NOTE ON THE MEETING OF 18-22 SEPTEMBER 1989

1. The Chairman welcomed delegations to the twenty-third meeting of the Group of Negotiations on Services and drew their attention to GATT/AIR/2830 circulated on 4 September 1989, which contained the proposed agenda for the meeting. In this context, he informed Group members that the secretariat had, as agreed at the last meeting, circulated a paper entitled Safeguards and Services (MTN.GNS/W/70). He asked whether any delegation wished to raise any matters under "Other Business". From the Chair, he said that he would like to take up three matters under "Other Business": firstly, he would give the delegation of the European Communities the possibility to present their statistical paper (MTN.GNS/W/73); secondly, he would ask the delegation of Switzerland to introduce their paper entitled, General Agreement in Services - A Draft Blueprint (MTN.GNS/W/69); and thirdly, he would raise the question of how to proceed in the negotiations after this meeting until the end of this year. As concerned the organization of the current meeting, he suggested that the Group start with item 2.1 on the agenda, that is, the examination of concepts, principles and rules with regard to particular sectors. He suggested to begin with item 2.1, Financial Services (including insurance), and then to proceed to Professional Services. As agreed earlier, he recalled that the Group should devote not more than one-and-a-half days to each of these sectors, allowing, of course, for a certain flexibility depending on how the discussion developed. The rest of the week should be devoted to the discussion of the other agenda items. Also, his intention was to provide an opportunity for participants to have informal consultations as that reflected the wish of a number of delegations. He asked whether there were any comments on organizational matters.

2. The Chairman turned to item 2.1, starting with financial services. He recalled that Group members had received two papers, one entitled, Trade in Financial Services (MTN.GNS/W/68) prepared by the secretariat, and one by the Delegation of Mexico (MTN.GNS/W/71). He said that the secretariat paper, which was presented in two parts (Part I on banking and securities-related services, and Part II on insurance services), should serve as background material and was not intended to be negotiated or revised on the basis of discussions in the Group. He noted that the list of questions that might be addressed in the examination (prepared by the secretariat in MTN.GNS/W/51) was also relevant as a background document. He suggested that the Group organize its discussion so as to follow the order of concepts, principles and rules as they appeared in paragraph 7 of MTN.TNC/11 under sub-paragraphs (a)-(h). He also suggested to take, because of the specific characteristics of the activities in question, each of the sub-sectors of financial services separately; that was first,
Part I—banking and securities-related services, and then Part II—insurance services, and invited Group members to make separate interventions on each of them. He invited the secretariat and the representative of Mexico to introduce their respective papers in MTN.GNS/W/68 and MTN.GNS/W/71.

3. The representative of Brazil recalled that his delegation had suggested that, in preparing its background notes, the secretariat should pay attention to some of the principles that were contained in MTN.GNS/21. He felt that none of the features of the latter document were reflected in MTN.GNS/W/68 and wondered whether the lack of consideration given to concepts such as competition provisions, activities and practices of market operators, etc. suggested that these issues were not relevant for the examination of the financial services sector.

4. The representative of the secretariat said that the secretariat had had to tackle a very complex sector in a limited amount of time. It was thus felt that in order to keep such a task manageable, it would be appropriate for the secretariat to limit itself to the principles contained in the Montreal text. This did not, of course, suggest that delegations could not raise other elements which were felt to be of relevance in the sector.

5. The representative of Mexico said that his delegation's document related mainly to banking and securities-related services although it mentioned in some instances issues related to the provision of insurance services. He said that the international financial system had become increasingly complex, primarily because of the expansion of banking services and the appearance of new participants (brokerage houses, insurance and mortgage companies, securities firms, factoring institutions) and instruments in the market. This was one of the most globalized and interconnected sectors of the world services economy, as well as one of the most highly regulated at the international level. He noted that the international financial system was currently in the midst of a process of transformation, deregulation and increasing automation. The transformation process resulted firstly from the fact that clients were increasingly well informed, and therefore sought to obtain the best conditions and the best services. Secondly, there was considerable competition among banking and non-bank institutions, stock market intermediaries, insurance companies, credit card firms and specialized financial institutions. In the specific case of banking institutions, this transformation process was characterized by continual consolidation through the acquisition of small banks by large and prosperous ones with a view to reducing operating costs. He said that deregulation was the immediate consequence of this process of consolidation, adding that new rules aimed at increasing the profits of firms in the financial sector. As far as increasing automation was concerned, technological developments had made possible increases in the number of operations and services at lower cost while enabling some firms to compete in financial services. He said that all the foregoing indicated that the financial system had become internationalized, and primarily through the large financial institutions of developed countries. In these circumstances, the financial institutions of developing countries could be adversely affected; therefore, the options open to them were
modernization, competition, specialization with a view to offering better quality services, association with complementary financial institutions to offer joint products and learning to use technology more efficiently. He pointed out that, according to a number of studies, the sudden and indiscriminate opening up of the financial sector had a negative effect on the growth of developing countries. He recalled that major structural differences remained between the financial services provided by developed nations and those of developing countries. According to IMF data, total external liabilities of the banking institutions of industrialized countries during the present decade averaged 75 per cent of the total liabilities of international banking institutions. Combined with the fact that roughly 19 per cent of the remaining 25 per cent were in the hands of "off-shore" centres, he concluded that the developed countries' share of world liabilities was a mere 6 per cent. Another example of the developing countries' disadvantage in trade and financial services was provided by insurance: during the present decade, developed countries accounted for 95 per cent of insurance premiums and developing countries for the remaining 5 per cent. He said that MTN.GNS/W/71, which did not prejudge his delegation's negotiating position, contained two possible scenarios relating to the cross-border movement of financial services: on the one hand, a scenario in which the international mobility of financial services was allowed on a temporary basis; on the other, one in which the cross-border movement of production factors was allowed either temporarily or indefinitely. Addressing the issue of transparency, the representative of Mexico said that the concept implied the publication of all the relevant legislation of countries which were parties to an agreement. Transparency provisions should also cover regulations dealing with foreign investment, immigration and to labour matters, in the event that the GNS negotiations involved indefinite establishment and cross-border flows. He said that the financial sector was one in which the failure of foreign-established institutions to provide, as required, information on their operations was sufficient grounds for withdrawing authorizations to provide specific types of financial services. Transparency provisions should thus cover both government regulations as well as activities of market operators. He noted that since some developing countries lacked the necessary infrastructure to carry out the information effort which the application of transparency provisions implied, it would be advisable to establish "contact points" in the countries which would indicate the source from which the relevant information could be obtained. This was different from "information points" which implied the need for costly operations of compilation and computer-processing of laws and other regulations. He felt, in addition, that there should be no prior consultation requirements regarding changes to regulations governing any of the financial services, since these were considered strategic in most countries.

6. The representative of Brazil said that transparency in the financial sector would imply the publication of all norms affecting the sector in the signatory countries' official gazettes. His delegation felt that transparency provisions should include information on the activities of market operators to the extent that this was possible without jeopardizing the firms' business activities through the disclosure of confidential
information. Transparency should not be confined merely to government laws, regulations and administrative practices.

7. The representative of Canada said that the various secretariat papers had helped the GNS achieve focus. For example, they brought out that telecommunications was not simply another sector but acted as an electronic highway whose viability, openness and accessibility were of vital and growing importance to the whole economy - including financial services. He said that MTN.GNS/W/68 had brought out the special characteristics of financial services, and their key role in the health and growth of national economies. Governments could not fail to remain keenly interested in this sector and whatever they did would necessarily have to recognize these facts. As noted in MTN.GNS/W/68, trade in financial services had expanded rapidly in the past decade. Indeed, this was an area where much had been happening, between countries, regionally, and more broadly. Even in the period since the Uruguay Round began there had been many positive developments. Progress was evident, not just in steps taken by countries to open up their markets to greater foreign participation, but also in bodies which had made significant strides in furthering international cooperation and standards. It was fitting in this regard to recognize the important and useful roles played by international organizations as the Bank for International Settlements and the OECD. As in the case of other sectors with competent international organizations, he stressed that the GNS was not seeking here to replace them. His delegation believed, however, that it was well worth exploring ways to further liberalize trade in financial services through the GNS negotiations. With regard to the Montreal text, he noted that most of its concepts could in the view of his delegation be applicable to financial services trade. Of course, financial services were so wide-ranging and evolving so quickly that one could only confirm this assessment once more precise information became available. On the issue of transparency, he recalled that Canada had a long tradition of making public laws and regulations in the financial area. He felt that publication and contact points to deal with requests for information would also be useful for financial services. It was important to ensure, however, that transparency undertakings still allowed governments to deal with concerns over solvency and the stability of the financial system.

8. The representative of Japan recalled that the financial services sector was one in which extensive and diverse regulations and regulatory approaches applied. He said that the expansion in international financial transactions had necessitated the review of existing institutional arrangements. He said that his delegation believed that financial deregulation and internationalization went hand in hand and were mutually reinforcing processes which played a vital role in the development of other sectors. These processes also contributed to the expansion of trade in both goods and services. He felt that it was very important for the GNS to take up the issue of whether the various concepts and principles agreed at Montreal could be applied to the financial sector. A representative of Japan's Ministry of Finance thanked the Chairman and the GNS for giving him an opportunity to discuss financial matters under the GATT framework. He confessed, however, that the concept - and the definition - of trade in banking and securities-related services was quite unfamiliar to him and
seemed somewhat strange, noting that the problems discussed in MTN.GNS/W/68 were not so much trade issues but financial issues *per se*. He stressed that the financial sector had in recent years become increasingly independent from trade in goods and services and more powerful and dominant when compared to goods- and services-producing sectors alike. He said that Group members had to recognize the fact that each national currency had to be endorsed by national sovereign powers and the international monetary system. In this sense, the financial sector was closely related to each country's national sovereignty. He noted that trade transactions in goods and services could not be fully developed without using the financial system, which should be recognized as an indispensable infrastructure of free market economies. Finance and trade were both important ingredients of the world economy, prompting him to suggest that the financial sector should be treated differently from other sectors in the context of the sectoral examination exercise. He noted that the purpose of GATT was to realize free trade, adding that the sound functioning of the financial system was a major pre-requisite for the realization of free trade. He said that the establishment of the GATT and Bretton Woods systems after World War II had been a very wise decision, adding that officials should now treat the financial services sector independently from other service sectors, taking due consideration of the expertise of international monetary institutions. He said that, in principle, he did not believe that it would be relevant or practicable to apply the general rules and principles of GATT to the financial sector. He emphasized that his knowledge of trade matters was limited and that he was open to any other kinds of arguments which would come from those with more profound knowledge and experience in these matters within the GATT framework.

9. The representative of Peru said that transparency was absolute in his country's financial system. All laws, regulations and administrative guidelines were constantly being published in the country's official gazette. He said that there were several dimensions to the transparency issue which needed to be addressed. On the one hand, there was a need for all countries to publish all laws and regulations pertaining to banking and financial services. In addition, he pointed out that the international compilation, translation and dissemination of relevant material was lacking and that efforts should be made to overcome this question. He did not feel that prior notification procedures were a useful route to follow in regard to transparency, noting that the concept referred to publication requirements and not to legislative processes. He said that his delegation considered that transparency should also be sought in regard to certain banking operations. While the need to maintain confidentiality should be acknowledged, there were areas - for example in cases of flight capital or money laundering - where mutual cooperation could be called for.

10. The representative of Australia said that his delegation viewed the financial sector as one of the most significant services sectors and its treatment in the GNS would contribute in a very basic and important way to the substantive benefits to be derived from a framework agreement. He indicated that the concepts agreed upon at Montreal were in his view wholly applicable in the financial services sector. As regarded transparency, he noted that a competitive, efficient and equitable financial system required
a high degree of transparency, both domestically and internationally. Regulations and rules in the financial sector were readily available in published form in Australia. He expressed some doubts over the need for prior notification procedures, particularly in regard to the commercial implications which might flow from mandatory requirements for such notification.

11. The representative of Switzerland said that given the growing importance and internationalization of banking and financial services, and bearing in mind the specific characteristics of the financial sector, the applicability of concepts, principles and rules set out in the Montreal declaration had to be examined with particular attention. He said that from a general point of view, two basic issues had to be addressed before entering into an analysis. First, it was evident that there was an inherent link between liberalization of banking and financial services on the one hand and liberalization of capital movements on the other. The secretariat's document appeared at this point to limit the Group's endeavours to the question of liberalizing banking and financial services without considering the related aspects of capital movement liberalization. A second point had to do with the existence of different systemic approaches in the financial sector on the one hand and the great diversities in the level and intensity of regulations on the other. He said that these aspects would require careful attention when the applicability of concepts and principles was tested. An additional point related to the fact that since the coverage of financial and banking services would be new for GATT, it might be useful to take into account other experiences of liberalization in this field which were gained over the years, such as in the IMF or the OECD. He noted that these elements were considered in the blueprint for a general agreement on trade in services which his delegation would introduce at a later stage. He said that the blueprint suggested an approach which - although general in nature and aiming at covering the whole range of services - took into account the specificities of the various sectors. Regarding transparency, he said that the concept was a pre-requisite for success in a liberalization process in the sector of banking and securities-related services. He recalled the costs associated with transparency provisions, noting that such costs should be kept at a reasonable level. He said that his delegation preferred commitments on the availability of written information (publication) rather than obligations to disseminate. He said that transparency should relate first to all information on rules and regulations governing access to - and the exercise of - activities, including supervision. Transparency also implied predictability and objectivity in regard to the application of rules and of administrative guidelines, being in addition required with respect to other rules affecting effective market access (i.e. constraints of private origin, rules governing private investment, labour of expatriate manpower, taxation, etc.). Whereas MTN.GNS/W/68 mentioned the question of national enquiry points in regard to transparency, he noted that such mechanisms were already largely provided by national supervisory authorities as well as private sectoral associations.
12. The representative of Romania reiterated his delegation's view on transparency, noting that it was valid for trade in services in a general sense. He felt that a framework agreement should contain a provision similar to the GATT's Article 10, which would pertain to the publication of rules and regulations relating to trade in services. He recalled that all laws and regulations were published in his country's national bulletin. He did not think it desirable to provide for prior notification procedures in developing a framework for trade in services.

13. The representative of Egypt said that MTN.GNS/W/68 was structured around assumptions which all delegations might not share. In particular, he noted that the secretariat document spoke of a category of trade - namely establishment-related trade - in banking and securities-related services which was not yet recognized multilaterally. He felt that it was somewhat premature to assume that this form of trade was fully recognized and to speculate on some of the ways of facilitating such trade in the sectors under review. He said that in the document's section on regulation in the financial services sector, mention was made of the functions of the sector, its relation to national macro-economic policies and the forms of regulations which existed in the sector. He felt that the discussion should have focused on the characteristics of the regulations and the policy objectives they aimed to achieve in the financial sector rather than addressing the issue of how national regulatory regimes affected foreign service providers. On the issue of transparency, he emphasized the particular sensitivities which all countries had in regard to the financial sector, recalling that the sector was instrumental in managing countries' monetary policies and played a vital role in the development process through resource mobilization. He agreed with the representative of Japan over the need to address this sector somewhat differently from other service sectors in view of its particularly sensitive nature. He felt that such sensitivities could be likened to those which had been discussed in the telecommunications sector. He felt that adequate levels of information relating to laws, regulations and administrative guidelines should be provided through contact or enquiry points, recalling that transparency provisions also had to cover the activities of market operators. He agreed that this latter aspect of transparency needed to be addressed in regard to issues such as flight capital and money laundering and to the implementation of domestic financial and monetary policies which required some degree of transparency on the part of market operators.

14. The representative of Korea said that the financial sector, which could be broken down into financial and insurance services, formed an important part of the national monetary and credit system. However, there were wide-ranging differences in the level of financial sophistication and development between developed and developing countries. In his view, it was not feasible to apply all the principles of a multilateral framework, such as m.f.n., national treatment or market access, to the financial sector on an equal footing with other service sectors. He noted that the rapid pace of innovation and the drastic changes that had taken place in recent years in financial markets had given rise to an ever greater diversity of financial services and forms of insurance. It was essential that this diversity be reflected in the drafting of the framework so that
it may promote a fair distribution of benefits from increased trade in services among signatory countries. For this reason, his delegation felt that there was a need to apply a special standard to the financial sector, one which would differ from that applied to other service sectors. On the issue of transparency, he said that his delegation felt that the level of transparency attained in GATT in the case of goods trade should be sufficient in the services area. He said that all laws, regulations and administrative guidelines affecting the financial services sector and multilateral agreements relating to trade in financial services and insurance should be made readily available through the publications of signatory countries and the GATT secretariat. In this regard, his delegation endorsed the suggestion of establishing enquiry points as mentioned in MTN.GNS/W/68. He noted that as in the case of current GATT provisions, public announcements should be made immediately after the adoption of - or changes to - laws and regulations. As regarded the issues of prior notification and consultation, including cross-notification, with requesting countries on the enactment, amendment and/or repealing of all types of government measures, his delegation felt these were not desirable features to include because of the inherent complexities of national legislation processes.

15. The representative of the United States sought to complete the picture depicted in MTN.GNS/W/68 by calling attention to the crucial role played by the financial sector in regard to most countries' fiscal and debt management policies. The financial sector not only intermediated savings and investments but also generated and mobilized them. It also linked banks together on a world-wide basis to create an international payments system without which any economic intercourse could not take place except through barter. Banks and securities firms also played a vital role in regard to international capital formation. He said that the range of activities carried out in the financial sector was perhaps broader than in any other service sector. The sector was important both in quantitative and qualitative terms. To highlight the financial sector's quantitative importance, he compared the US$415 billion which was daily traded in the world's leading foreign exchange markets and the US$600 billion of daily inter-bank clearings in New York alone to the US$14.5 billion figure which total world trade represented on a daily basis. The latter figure, he noted, was roughly equal to the daily volume of secondary trading in the Euro-bond market alone. He noted that the extensive degree of prudential supervision which existed in the financial sector was perhaps not surprising in view of the numbers previously quoted. In the United States alone, there were more than half a dozen federal agencies involved in one form or another of financial regulation, to which each state's regulatory bodies had to be added. He said that these prudential requirements and the broad prudential networks through which they were applied had to be fully respected and would play a major role in ascertaining the applicability of trade concepts and principles in the financial services sector. He agreed with the representative of Japan over the reasons for the historical division between many financial services and other services as well as between finance and goods trade, noting that it would be a challenge to ensure that the work of the GNS did not impair the functioning of existing international financial institutions while at the same time achieving the
(a) **Improvements to the GATT Dispute Settlement Rules and Procedures** (C/M/231)

At its meeting on 12 April 1989, the Council adopted the draft Decision in Annex I of C/W/585 on Dispute Settlement. The representative of Sweden, on behalf of the Nordic countries, spoke. The Council took note of the statement.

(b) **Trade Policy Review Mechanism** (C/M/231)

At its meeting on 12 April 1989, the Council adopted the draft Decision in Annex II of C/W/585 on Functioning of the GATT System. The Council also instructed the Committee on Budget, Finance and Administration to take appropriate action on the financial aspects of the Decision related to the Trade Policy Review Mechanism (TPRM). The representatives of Australia and Sweden on behalf of the Nordic countries spoke. The Council took note of the statements.

(i) **Outline Format for Country Reports** (C/M/235)

At the meeting of the Trade Negotiations Committee in April 1989, the CONTRACTING PARTIES decided that the country reports would be "based on an agreed format to be decided upon by the Council" (L/6490, Part I, para. B(i)). In that Decision, it was provided that "this format may be revised by the Council in the light of experience".

At its meeting on 19 July 1989, the Council considered a draft Decision (C/W/602) regarding the Outline Format for Country Reports. The representative of Brazil suggested adding the word "outline" to the text in Paragraph 2 of C/W/602, so that it would read "agreed outline format".

The Council adopted the draft Decision in C/W/602 as amended by Brazil.

(ii) **Programme and conduct of reviews** (C/M/235, 236)

At the meeting of the Trade Negotiations Committee in April 1989, the CONTRACTING PARTIES decided that "the Council will establish a programme of reviews for each year in consultation with the contracting parties directly concerned". (L/6490, Part I, para. D(iii)).

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1 Subsequently issued as L/6489.
2 Subsequently issued as L/6490.
3 Subsequently issued as L/6552.
services did not in themselves constitute trade, noting that he disagreed with the definition of establishment-related trade which was contained in paragraph 14 of MTN.GNS/W/68. He felt that ownership criteria, when applied to trade in services, could be misleading for they were neither necessary nor sufficient to determine what constituted trade. He indicated that by using the term "establishment-related trade", the secretariat did a dis-service to those delegations, including his own, which had made efforts to distinguish between establishment and investment in the context of services discussions. On the issue of transparency, he shared the views of other developing country delegations that transparency provisions should apply to the activities of market operators. He said that whereas central banks or national supervisory authorities could scrutinize national banking activities and transactions, their ability to oversee the international operations of banks and other financial intermediaries was lacking. There was, therefore, a need for a framework agreement covering financial services to extend transparency provisions to the international activities of financial institutions.

18. The representative of Nigeria said that his delegation considered transparency as an essential ingredient in the operation of financial services. Transparency involved making available to interested parties information on all regulations pertaining to financial services as well as changes to these regulations. He said that such information was published regularly in the governments' official gazette and was easily accessible for anyone wishing to avail himself of such information. In addition, the Central Bank regularly published administrative guidelines for the operation of the financial sector. He said that his delegation supported the idea of establishing enquiry points so as to facilitate the availability of information for those seeking it. His delegation did not, however, see the need for - nor the applicability of - prior notification procedures in view of the legislative difficulties which such procedures would involve.

19. The representative of the European Communities said that it was always tempting to view particular sectors as being so inherently special as to require special treatment. He said that the GATT's latest Annual Report estimated that world trade in services had amounted to some US$560 billion in 1988, a figure he could not reconcile with those provided earlier by the representative of the United States. He noted that actual trade in financial services was obviously not as important as the actual financial transactions taking place on a daily basis in world financial markets. It was doubtful nonetheless whether one could single out the special character of a particular sector by invoking numbers which in any event could not be compared. He underlined that his delegation saw no reason for excluding any of the activities which had been set out in MTN.GNS/W/50 under the headings of financial and insurance services. He felt that it was important to talk about activities and not banks or firms as such, noting that differences in regulatory regimes across countries assigned different activities to companies filling the same description. It was also important in discussing the possible elements of a framework that all activities taking place in the financial services area be discussed in the GNS. He confessed to not reading paragraph 14 of MTN.GNS/W/68 as
The representatives of Brazil, Colombia, the European Communities, Japan, Czechoslovakia, Peru, India and Chile spoke.

The Council took note of the statements and of the information contained in the note by the Director-General in L/6566.

4. Tariff matters

(a) Committee on Tariff Concessions - Designation of Chairman and Vice-Chairman\(^1\) (C/M/228)

At their Forty-fourth Session in November 1988, the CONTRACTING PARTIES took note of a suggestion by the Council Chairman concerning the appointment of presiding officers of standing bodies.

At its meeting on 8-9 February 1989, the Council agreed to appoint Mr. de la Peña (Mexico) as Chairman of the Committee on Tariff Concessions and Mr. Tuusvuori (Finland) as Vice-Chairman of the Committee.

(b) Harmonized System - Transposition by the United States (C/M/227, 228, 231)

At the Council meeting on 20 December 1988, the representative of the European Communities said that in the Community’s view, the manner in which the United States had transposed its tariff schedule to the Harmonized System did not conform with the principles set out in Section 2 of L/5470/Rev.1.

The representative of the United States spoke.

The Council took note of the statements and agreed to revert to this matter at its next meeting.

At its meeting on 8-9 February 1989, the Council again considered this matter.

The representatives of the European Communities, the United States, Japan, Canada, Singapore, Chile and Hong Kong spoke.

The Council took note of the statements and of the European Communities’ request for arbitration by the Director-General, and agreed to revert to this item at a future meeting.

At its meeting on 12 April 1989, the Council again considered this matter.

The representatives of the European Communities, the United States, Hong Kong, Australia and Chile spoke.

\(^1\)Carried in Council Minutes under "Appointment of presiding officers of standing bodies".
20. The representative of New Zealand said that his delegation would like to see the agreement on services having as wide a coverage as possible. His delegation considered that no sector should be excluded from the agreement on an *a priori* basis and would see the application of the agreement to financial services. He noted that financial services had been traded internationally longer than most other services. The financial sector was a dynamic and innovative one, with new services constantly being developed. This made it all the more desirable that the sector be covered by the agreement from the beginning. Referring to the sectoral testing which the Group undertook in its June 1989 meeting, he said that international trade in financial services was heavily dependent on the presence of a strong telecommunications system. It was worth noting that the world’s leading financial centres were in countries which also had liberal telecommunications policies. On the issue of transparency, he said that the financial services sector was quite transparent relative to other service sectors. Because of the importance of this sector governments frequently ensured that the sector was regulated by legislation at the national (or federal) level. He said that in New Zealand, as in many countries, laws were printed and readily available to the public. He noted that the purpose of legislation related to the provision of financial services was most often to maintain public confidence in the operation and stability of the financial system in its widest sense and to avoid significant damage deriving from the failure of an institution. As a general principle, he said that New Zealand had a preference for laws of general applicability across sectors rather than sector-specific statutes and regulations. Such an approach provided business with a clear and consistent operating environment. In addition, the public availability of laws and regulations was another element of transparency as was the requirement for institutions, including banks, stock brokers, insurance providers and companies generally to provide certain information on their operations. This included financial statements of profit and loss, the identity of major shareholders, the holdings of directors, etc. He said that in New Zealand, company annual reports and the like were publicly available and that other information on companies was kept at their offices and was available for public search. He concluded by saying that because of the importance of trade in financial services to national economies, New Zealand considered transparency to be a basic obligation. The agreement should ensure the publication of relevant laws, regulations and administrative practices, the availability of information through national enquiry points and the notification, in summary form, of relevant laws and regulations. He felt that this could be in a manner analogous to the arrangements under the Technical Barriers to Trade Code.

21. The representative of Pakistan said that the financial sector was a most important and sensitive sector in all national economies; it was a sector which stood at the very basis of national sovereignty. This explained why countries built regulatory safety nets to protect this sovereignty, to ensure national security and to maintain public confidence in national financial systems. He said that the extensive degree of financial market regulation meant that the sector was one in which a relatively high level of transparency existed. He contrasted the issue of making relevant information available to that of making such availability
an obligation under a framework agreement. He said that his delegation did not feel that prior notification procedures were a useful route to follow in regard to securing greater transparency in the financial services sector.

22. The representative of the United States said that the ongoing sectoral testing exercise was not designed to determine the coverage of the framework agreement. He agreed that many of the sectors which the Group had examined were critically important, but noted that financial sector was slightly different in that it was the instrument through which countries implemented monetary and fiscal policies - in short macro-policies - which determined the growth, stability and level of employment of national economies. It was essential in addition to recognize the vital important of the international payments system. He suggested that any agreement that pertained to financial services had to be such as to not impair in any way the functioning of the international financial services sector on which the health of all economies depended. The financial sector was thus in his view one which had to be handled especially carefully.

23. The representative of the European Communities said that he had not understood the United States' delegation as suggesting that the financial services sector should not be covered by a services agreement. He agreed moreover that any framework agreement should not impair the functioning of either the international financial system or national financial systems. He recalled that his delegation was interested in promoting better and more efficient financial systems in all participating countries' economies.

24. With respect to an earlier comment on the grouping of developing countries and members of the European Communities, the representative of the secretariat said that the sources for Tables 2 and 3 in MTN.GNS/W/68 had been cited, noting that the classification of countries into developed and developing countries was that used by the World Bank in its latest World Development Report. With respect to the comment that the document of the secretariat had adopted a definition of trade which included establishment-related trade, he said that it was a fact that many banking and securities-related services were provided on the basis of a locally established presence in foreign markets. He said that while the GNS might eventually choose to exclude such a form of trade from what it would treat under trade in banking and securities-related services, some of the most difficult issues encountered in the financial services area arose from the fact that these were forms of trade which were regarded as less amenable to the application of normal domestic fiduciary and prudential regulations. He said that to ignore the existence of services which are provided through establishment would have resulted in an incomplete and inadequate treatment of the subject. He recalled that the Montreal text referred in paragraph 4 to the need for further work to proceed on the basis that the multilateral framework may include cross-border movement of factors of production where such movement was essential to suppliers and noted that the financial services sector was not the first sector in which the secretariat had looked at establishment-related issues in preparing its background notes.
25. The representative of India said that he was appreciative of the comments made by the secretariat and noted that had MTN.GNS/W/68 been structured along the lines just described, his delegation would have had no quarrel over its content.

26. The Chairman then opened the floor to a discussion of progressive liberalization, national treatment, m.f.n./non-discrimination and market access in banking and securities-related services as contained in paragraphs 7(b)-(e) of MTN.TNC/11.

27. The representative of Mexico said that in the financial services area, progressive liberalization was not a synonym of deregulation. He said that there were various ways in which progressive liberalization could be pursued. In the case of cross-border services, progressive liberalization would involve the gradual elimination of the restrictions contained in all regulations limiting trade in cross-border banking transactions. He pointed out that these restrictions usually concerned the "passive" or liabilities side of bank operations. He said that liberalization would imply changes in the application both of credit and monetary policies. This scenario would be attractive for foreign providers of financial services since they would not be subjected to national regulations governing such aspects as legal reserve requirements, credit ceilings, interest rates, and so forth, thereby granting them better treatment in comparison with local firms. However, this scenario would not be attractive for the importing country. In the case of the scenario covering the cross-border movement of production factors, he noted that progressive liberalization would involve the gradual elimination of restrictions contained in all regulations limiting the establishment of institutions and preventing the free flow of capital. He felt that this process might exert adverse effects on the host country's various economic policy instruments. The most glaring case was where developing countries saw their financial sector's share of gross domestic product shrink. Consequently, it would be necessary to follow the Montreal decision and allow developing countries greater flexibility with regard to progressive liberalization. As far as the other financial intermediaries were concerned, he said that this scenario would involve the establishment of the institution in the host country, and it would have to operate under the regulations imposed by the host country. In addition, and in keeping with the Montreal document, he felt that it was necessary to apply the principle of relative reciprocity to developing countries, thereby implying a change in the traditional use of the concept of reciprocity in the financial sector. He said that relative reciprocity meant that developed countries would grant entry to their markets for firms of developing countries without expecting automatic reciprocity from the latter. On national treatment, he said that his delegation interpreted it as a long-term objective in the process of progressive financial liberalization, especially for developing countries. He said that in the case of cross-border trade in services, it was hardly feasible to invoke national treatment since the regulations were hard to apply in practice. The situation was quite different in cases involving the cross-border movement of production factors. For bank financial intermediaries, national treatment meant imposing on foreign banks located in the country the same conditions as local banks as regards minimum...
reserve requirements, gearing, interest rate policy, sectoral allocation of resources, taxation, requirements for the establishment and closing of branches, capitalization levels, administrative sanctions and fines for non-compliance with directives of supervisory bodies, loan loss reserve provisions and, in general, the rules governing borrowing and lending operations. He pointed out the implication of national treatment in cases where banks were state-owned and subjected to different regulations with respect, inter alia, to current expenditure and investment policy, regulations on the purchase and leasing of movable property and real estate, salaries, etc... In the case of other financial intermediaries, national treatment would need to encompass specific provisions whereby foreign staff would enjoy general working conditions which were equal to those of domestic staff. There would also need to be equality of treatment in respect of authorizations to engage in the provision of various financial services. On the issue of m.f.n./non-discrimination, he said its application could imply non-discrimination among countries as regarded both the import and export of financial services; non-discrimination between countries in the granting of market access; non-discrimination of any kind against foreign workers to work in the host country of foreign institutions; as well as non-discrimination against foreign workers recruited by local firms. He said that his delegation favoured the unconditional application of m.f.n. provisions, at least for developing countries. On market access, he said that in the case of a scenario involving factor movement, market access for financial institutions on an indefinite basis would be determined not only by establishment but also by the facilities granted by national regulations for their operations. For other financial intermediaries, he said that market access would be provided for in accordance with the host country's domestic legislation, but this would not in itself guarantee national treatment. He noted that there might be new financial sub-sectors, such as factoring, where the application of the concept of market access would even imply a process of regulation. In some countries, this activity was subjected to few or even no regulations, so that market access was not synonymous with deregulation. He said that under this scenario, market access would be guaranteed if, and only if, the increasing circulation of manpower among countries party to the agreement was permitted. In conformity with the Montreal text, he said that some flexibility had to be introduced as regarded the participation of developing countries. While market access implied the reduction or elimination of the type of barriers mentioned, clearly developing countries should have the flexibility to open up their financial markets at a different pace from the developed countries, and not necessarily in all activities of the sector. Equality of circumstances could not be expected, for example, in the case of the purchase of financial institutions if, for example, it concerned an exporting country which had eighteen banks and a low level of assets and the banks of an importing country which had more than fourteen thousand institutions, ten of which exceeded the total assets of the exporting country's eighteen institutions.

28. The representative of Peru said that the significant asymmetries between developed and developing countries in the financial services sector became readily apparent in considering the application of concepts such as national treatment, market access, m.f.n./non-discrimination or progressive
liberalization. He said that progressive liberalization would contribute to the development of developing countries if it generated capital inflows and increased investment in developing countries. He said that a parallel process of financial reform would be necessary to remove the structural impediments affecting capital inflows. He said that while many developing countries were quite willing to engage in such reforms, they often could not proceed because a majority of them were submitted to adjustment problems and faced acute debt servicing problems, both of which contributed to economic instability which undermined the prospects for financial liberalization. He felt that in view of such realities, the process of progressive liberalization in the financial services sector would not be an easy one for developing countries. He emphasized that liberalization was not the same as deregulation and that it had in any event to be carried out progressively. He agreed that the complementarity between foreign and domestic financial institutions should be encouraged, albeit in a progressive manner. He said that his delegation felt that national treatment should not be considered as implying equality of treatment but rather equitable treatment. This involved progressivity, not automaticity. The objective of national treatment was long-term in nature and had to be made subject to safeguards and exceptions in light of national security or sovereignty considerations as well as for regional integration purposes.

He noted, finally, that an m.f.n./non-discrimination clause should not be automatic but contain features of conditionality as envisaged in the proposals made by the Swiss delegation.

29. The representative of Japan said that transparency was almost fully secured in regard to his country's financial sector. Laws, governmental ordinances and directives were usually published in the official gazette. He noted that such information was important for the general public but less so for financial market operators for whom nuances and discretion were far more important. There was in his view a need to distinguish, in regard to transparency, financial regulations from informal practices. He said that regulatory changes were promptly notified to financial intermediaries but that it often proved difficult to provide for prior notification and/or consultation in view of the delicate and sensitive nature of many financial market regulations. Regarding market access, he said that the liberalization of Japan's financial sector had been almost fully realized in terms of implementing a distribution of resources and contributing to the development of the world economy. The regulations that were left were those which dealt with policy imperatives such as maintaining orderly credit conditions, protecting depositors, ensuring sound business operations, etc. He indicated that such measures were deemed as not suitable for further liberalization. He said that in prompting the liberalization of the financial sector of developing countries, it was important to consider whether existing regulatory regimes were suitable for liberalization, so as to avoid disruption in the world's financial system. It was in his view irrelevant to promote a comprehensive liberalization of the financial sector under a GNS agreement given the heterogeneity of its membership.

30. The representative of Canada noted that the Canada-United States Free Trade Agreement featured an obligation on the part of the two countries to
provide transparency covering legislation and proposed regulations. He said that the progressive liberalization of financial services rules was occurring in a number of countries, albeit at different paces. Accordingly, the concept of progressively liberalizing trade in financial services was welcome. He said that acceptance of the principle of progressively liberalizing trade would help countries domestically in their plans to open up their financial markets to foreign firms. There remained a wide range of different regulatory models for financial services and that made trade liberalization more difficult than it would otherwise be. Some countries were already liberalizing trade rules and this should be recognized. As pointed out in MTN.GNS/W/63, there were several elements involved in progressive liberalization. This observation was particularly relevant for financial services. He said that the application of national treatment to future changes in existing regimes would be a useful instrument in liberalizing trade in financial services. It would not, however, be sufficient for significant liberalization to be achieved, the major challenge being to reconcile different regulatory structures with trade liberalization measures. He indicated that his delegation had not yet had a chance to study MTN.GNS/W/71 but had already reacted to the notion of relative reciprocity, noting that its views remained unchanged.

On market access, he said that the concept was closely related to progressive liberalization and to national treatment. Financial services were accessed through different modes of delivery including the movement of service providers, the movement of consumers, commercial presence and establishment, cross-border access and transborder flows of information. He said that access through all these modes would have to be addressed. There were other elements that might be relevant for trade in financial services and market access. For example, there were cases where the extra-territorial application of laws and/or regulations would create impediments to trade by becoming a barrier to market access. He noted that the concept of market access could also be useful in focusing on problems that would not be resolved by national treatment; for example, problems of access arising out of the regulatory separation of financial activities.

He said that there were several possible ways to define national treatment, noting that in the case of financial services, it seemed difficult to consider this concept in isolation from market access and progressive liberalization. While national treatment would certainly be a key concept of itself in liberalizing trade, it would not guarantee that reasonable access to financial markets was provided. Therefore, it could serve as a key building block, but it was not sufficient in its own right. He said that his delegation supported the m.f.n. concept as basic to a successful agreement, noting that it should apply to all participants. Ways would nonetheless have to be found to deal with the regulatory model problem and its implications. For example, countries that had already liberalized a good deal would wish to ensure those with more restrictive regimes did not get a free ride.

31. The representative of the United States said that there was a considerable amount of information available in his country with respect to laws and regulations as they applied to financial services. He noted that all laws were published and, under the Administrative Procedures Act, agencies were generally required to make notice of proposed rules makings
and to publish them in the federal registry. Public comment on proposals was requested in the notice. Moreover, under the Freedom of Information Act, agencies were required upon reasonable request to grant access to a wide range of records and documents whereas the Sunshine Act required that meetings be open to the public. He said that this broad range of disclosure was deemed very suitable to the GNS process in respect of transparency. At the same time, he said that in view of the prudential concerns which arose in the sector it was difficult in all instances to provide advance notice on - or publish - some types of regulations or practices. Cases where this was not possible included instances where the safety and soundness of financial institutions, where systemic risks impaired the safety of the financial system as a whole, where information might unsettle market conditions and exacerbate emergency situations, where law enforcement operations might be impaired, as well as cases where information was provided in confidence by domestic and foreign banking and securities firms to regulatory authorities. He said that Group members had to exercise caution in making judgements about the best approaches to prudential regulation in the financial services sector. Accordingly, it was important not to confuse policies developed in reaction to different prudential approaches with the need for effective market access and national treatment. Regulations separating commercial banking and securities activities, for example, did not of themselves constitute a restriction on market access nor a denial of national treatment. He said that foreign financial institutions in the United States were accorded equality of competitive opportunities with domestic institutions and competed in every segment of domestic markets on the same terms as U.S. firms. Foreign firms enjoyed the same degree of access to the national market than domestic firms did. He noted that foreign financial institutions had captured about a fifth of over US$600 billion worth of domestic banking business conducted in the United States. In addition, 275 affiliates of foreign financial institutions were authorized to conduct securities activities in the U.S. market. He said that national treatment provided the most effective means to pursue liberalization in the financial sector, particularly in the face of markedly different national regulatory systems. A multilateral agreement in the financial services area should aim to reduce discriminatory restrictions that limited foreign participation in domestic markets and not to force change in domestic regulations. He said that national regulations which were designed primarily to deter foreign competition should not be permitted in any multilateral agreement. In this context, he noted that market access in the financial sector should include the ability to acquire domestic institutions, particularly as increased market access through acquisition did not undercut the ability of regulatory or supervisory authorities to ensure the safety and soundness of the financial system. Rather, allowing for such acquisitions contributed to enhancing the efficiency of markets. He said that the concepts of national treatment and market access would have to deal with instances where, for example, it was perceived that a particular market was saturated, where stock exchange floors were too crowded, where new entry into a market was prohibited but where the impact was greater on foreign participants if their participation in foreign markets was already small. In such circumstances, national treatment could prevail without ensuring effective market access. On the issue of market
access, he recalled that direct, close and continuous links between financial service providers and potential users was essential for the former to be able to compete for local business. He emphasized that a great deal of financial services activity would simply not take place unless users and providers were allowed such permanent contact. It was important to recognize under market access that there were many forms of restrictions in the financial area for prudential reasons. Some countries, for instance, required entry in the form of subsidiaries while others restricted entry to a limited number of branches. Some countries similarly set minimum capital requirements and had different definitions of what own-funds meant in that regard. Enforcement in the banking and securities sectors often required agreement on the part of market participants to accept host country jurisdictions even if the conduct in question emanated from abroad. He felt that the concept national treatment was also not without difficulties, noting that the application of special regulatory and prudential requirements to foreign firms often stemmed from their overseas nexus which could entail special problems, risks and concerns. Differential treatment could thus be imposed in regard of comfort letters, special financial obligations, residency or nationality requirements of officers of firms, designation of domestic agents, etc. He noted that another, less obvious, problem with national treatment stemmed from the sheer complexity and importance of the financial sector. He said that the imperative of ensuring the safety and soundness of the financial system could result in situations where national treatment, however defined, would present special challenges. One example was how - if at all - banking offices established outside the territory of a country should be allowed to join the electronic payment and settlement systems of the territory. While there might be no particular wish to deny foreign firms additional opportunities, there could be concern that such action could contribute to systemic risks. On m.f.n/non-discrimination, he said that his delegation might have a problem with the use of this concept in view of the passage of the International Banking Act in the late 1970's. Under the Act, the United States had voluntarily extended benefits to foreigners which were not enjoyed by residents of the United States. This had been done to prevent any hardships to foreigners' existing operations, although U.S. authorities had not - and could not be expected to - extend such benefits to others. Moreover, because of the complex nature of regulation in the banking and securities sectors as well as the various degrees of regulations between countries, not all arrangements which countries had entered into could be extended globally. A complicating factor in applying m.f.n. to the financial sector stemmed from situations where mutual recognition and harmonization had taken place. He noted that efforts were being made to establish on a bilateral and plurilateral basis mutual recognition or harmonization of selected regulations in the banking and securities sectors and, where successful, such efforts did provide a basis for reliance on the prudential regulations or standards of the home country of a financial service provider and accordingly permitted greater liberalization, particularly in respect of cross-border activities. He emphasized that such an approach was not always possible, except perhaps through a long and slow process.
32. The representative of Yugoslavia felt that MTN.GNS/W/68 was not adequately balanced in respect of development and progressive liberalization as envisaged in the Punta del Este Declaration. On the issue of transparency, he supported the speakers which had previously advocated an approach involving publication commitments, taking due account of the administrative and financial burdens which such commitments might entail. He agreed on the need to achieve a certain degree of transparency in regard to the financial activities of market operators and expressed reservations as to the desirability of prior notification procedures. On the issue of progressive liberalization, he noted the strong asymmetry characterising the level of development of financial markets and institutions in developed and developing countries. It was important in his view to link the issue of progressive liberalization with ongoing adjustment efforts, noting that developing countries would encounter difficulties in implementing progressive liberalization commitments in the financial sector under current economic conditions, particularly in regard to the often precarious balance-of-payments situations which many such countries faced.

33. The representative of the European Communities said that in looking at progressive liberalization it was worth recalling that the current negotiations were not aiming to engage in a comprehensive process of deregulation in the sense of eliminating prudential regulations in the financial sector; achieve mutual recognition or harmonize regulatory regimes across countries; and liberalize all capital movements. Addressing the notion that some regulations might not be suitable for liberalization, he noted that there were no rules in the view of his delegation which the current negotiations should not discuss. He recalled that while there might be very valid reasons for maintaining various types of financial regulations, all regulations were potentially on the negotiating table. He stressed that because a regulation was aimed at a specific policy objective, this did not place it inherently outside the scope of Group discussions - recalling that there were perhaps more than one way to achieve national policy objectives, particularly if the chosen alternatives were non-discriminatory in nature. He noted that the financial services area was one in which the application of national treatment raised some difficulties. He recalled in this regard the different regulatory and supervisory implications which national treatment had in the case of locally incorporated subsidiaries as opposed to branches of foreign financial institutions. In such circumstances, national treatment could not in all circumstances guarantee equality of treatment between domestic and foreign financial institutions. He noted that in some cases differences in treatment might be envisaged but should result in treatment no less favourable than that accorded to domestic service providers in similar situations. He said that Group discussions had to address not only cases of formal national treatment but also those instances where undue burdens on foreign suppliers might yet emerge in the face of formal national treatment. In this context, the issue of effective market access was of central importance for it recognized that although national treatment was a basic principle to include in a framework, that of effective market access went beyond national treatment. He noted that, in principle, no regulation which in fact constituted an obstacle to the
provision of financial services by foreign companies should be left outside the scope of negotiations. On the issue of progressive liberalization, he noted that both documents MTN.GNS/W/66 and MTN.GNS/W/68 contained useful elements for discussing the modalities of progressivity. On the issue of m.f.n./non-discrimination, he emphasized the need for an adequate balance of rights and obligations in an agreement covering trade in financial services. There would be a need to ensure that the benefits accruing from an agreement were achieved, otherwise there would be a need to fall back on other provisions, such as a non-application clause. There was in addition a need for the GNS process to allow regional integration efforts to coexist with the contents of a multilateral agreement. As well, one could not expect m.f.n. provisions to override the need for adequate prudential controls, adding that there should be room for some degree of mutual recognition and harmonization of prudential requirements. On the issue of market access, he noted that restrictions to the access of a specific financial services market should be subject to negotiation and to progressive elimination. He said that the institutional and/or geographical separation of various financial activities within the jurisdictions of importing countries could also constitute trade restrictions, noting that while there was no optimal regulatory structure it was still legitimate to seek to ensure that differing regulatory structures did not in themselves constitute barriers to effective market access. Regulatory measures which forced specialization in such a way as to render foreign companies simply unable to enter a market even as separate subsidiaries should in his view be on the negotiating table. In the absence of such discussions, there would be a risk that an agreement on financial services might create glaring asymmetries in the ability of foreign financial institutions to compete in different markets, thereby leading signatories to a perception of an inadequate balance of rights and obligations. This would hinder prospects for meaningful liberalization in the sector.

34. The representative of Australia said that his delegation endorsed the objective of financial liberalization and had been pursuing it actively through a series of domestic deregulatory actions in recent years. It was important to realize that the objective of the current discussions was not to achieve full liberalization from the outset. He said that steps which Australia had taken to progressively liberalize its financial sector included the removal of exchange controls, the lifting of almost all borrowing, lending and interest rate controls on the banking system, the extension of invitations to foreign-based banks to establish a presence in a country, as well as the granting of foreign exchange dealers' licence to non-bank financial intermediaries, both domestic and foreign. He noted that there were no plans currently to extend additional invitations to foreign commercial banks for establishment purposes. At the same time, foreign financial institutions remained free to establish themselves as merchant banks and engage in a virtually full range of banking activities with the exception of offering cheques on their own accounts. He agreed that the object of the negotiations was not to dismantle prudential financial regulations but noted that existing regulations should still be open for review so as to determine their relevance in the face of changed market conditions.
35. The representative of Egypt said that discussions of the process of progressive liberalization should focus on how it could contribute to growth and development. He emphasized the relationship between the level of economic development and the specialization patterns which emerged in different markets, both of which were linked to the functions performed by the financial sector in implementing macro-economic policies. He felt that progressivity was of key relevance to developing countries in view of the difficulties they faced in the sector. He recalled that the language on progressive liberalization as reflected in the Montreal text included the important caveat of due respect for national policy objectives. The concept also touched on the need for specific procedures providing developing countries with the required flexibility in liberalizing fewer types of transactions in line with their levels of development. Moving on to national treatment, he felt that MTN.GNS/W/68 had focused only on the concept’s application to exporters of financial services, noting that the Montreal text also foresaw the application of the concept to services exports. The latter consideration was of some significance in the financial sector in view of the widening scope of cross-border transactions provided for by ongoing technological developments in telecommunications and data-processing. In regard to market access, he stressed the link between the adopted definition of trade in services and the various forms of market access which might derive from it. He said that the notion of preferred mode of delivery presented some difficulties for developing countries, noting that it was one of the most problematic elements to incorporate in a framework agreement. The right of suppliers to decide whether or not to establish a presence in a foreign market was a sensitive issue over which many governments might wish to retain national prerogatives. He noted that both rights of establishment and of non-establishment might be difficult to grant depending on circumstances. He said that the treatment of market access in MTN.GNS/W/68 did not adequately reflect the types of concerns which his delegation would have hoped to have seen addressed, adding that the document looked at regulations as being often implicitly more burdensome for foreign service providers.

36. The representative of Switzerland felt that progressivity was a workable principle to build upon in the realization of effective market access within a multilateral scheme in the financial area. He said that the starting point of the negotiations should be the existing degree of market access, which would have to be secured. Progressivity in accepting formal obligations for contracting parties would provide for the necessary flexibility in advancing towards the final goal of full insertion into an open multilateral system. He recognized that there were legitimate national policy objectives which could be limiting factors for liberalization, noting however that such objectives would have to be clearly defined. He noted that issues linked to market access, national treatment and m.f.n. were all closely related, saying that a GATS in the area of banking and securities-related services should provide for effective market access in terms of both access to - and exercise of - activities. Two issues needed to be considered in this respect. Firstly, there were differences in national regulatory systems. Secondly, some national markets were segmented whereas others were totally free from
barriers between sub-sectors such as commercial and investment banking. He said that qualitative changes of considerable importance had already taken place or were underway in the financial arena. Among these, securitization had somewhat reduced the traditional function of bank intermediation whilst increasing the role of off-balance-sheet activities. There was a need to view the achievement of effective market access in a dynamic context, particularly since progressive liberalization was occurring both between markets on a geographical basis and within market segments themselves. Systemic differences in competitive circumstances would nonetheless have to be addressed when difficulties arose, particularly in instances where problems arose from regulations which, while non-discriminatory, placed greater competitive burdens on foreign providers. On its own, he said that the principle of national treatment left three important questions unanswered: firstly, how should one proceed to ensure that a multilateral scheme resulted in the insertion of all national markets?; secondly, and irrespective of national specificities, how could one ensure that various types of financial actors could freely choose the optimal mix with which to assert their comparative advantages?; and thirdly, how could one achieve a satisfactory balance of rights and obligations within a multilateral scheme in view of marked systemic differences in regulatory approaches? All three questions commanded clear answers were the Group to achieve its objectives. His delegation favoured an approach which would contain an appropriate m.f.n. clause while engaging further efforts to progressively overcome systemic differences and to achieve mutually compatible competitive conditions.

37. The representative of Korea said that progressive liberalization ultimately meant achieving equal conditions of competition for foreign and domestic service providers by reducing those national laws and regulations which hampered market access and restricted the range of permissible business activities. His delegation felt that the progressive liberalization of trade in financial and insurance services should be carried out gradually and with longer time-frames than for other sectors, taking into account the development level of individual signatories and with due respect for the national policy objectives of importing countries. It was necessary therefore to consider the following elements in allowing liberalization: maintaining the public character and ensuring the effective functioning of the financial sector; protecting and developing the national monetary and credit systems; securing the effectiveness of monetary policy and financial supervision as well as promoting economic growth and facilitating the development of domestic financial capabilities. He said that, in the light of the characteristics of trade in financial services, his delegation felt that when market access was made available to prospective foreign service providers these would have to meet certain conditions imposed by importing countries. Such conditions of entry could be compared to tariffs or customs duties in goods trade and be imposed on the preferred mode of delivery, the movement of production factors as well as on activities in the market. He said that examples of such conditions could include restrictions on the mode of establishment or commercial presence, on access to networks or on capital ratios in the case of foreign investment in financial and insurance services.
38. The representative of New Zealand said that as in other countries, New Zealand's financial sector had undergone a period of considerable regulatory reform and structural change. As a result, New Zealand now had a relatively liberal regime for trade in financial services. Steps taken included the removal of restrictions on access by foreign-owned companies to the New Zealand capital market, the abolition of overseas borrowing restrictions on all resident entities, and the lifting of the maximum 70 per cent foreign ownership limit on foreign exchange dealers. It was now easier for foreign companies to provide financial services to New Zealanders. Furthermore, there were now no controls on borrowing on- or off-shore by an overseas person. Of relevance to the deliberations on preferred mode of access for service providers was the fact that institutions wishing to be registered as a bank had the choice of corporate structure and could use either a branch or subsidiary form. There were, in addition, no restrictions on the number of applicants that could be registered as banks. He said that in the new, deregulated, climate New Zealand had also become more of an exporter of financial services, noting that some New Zealand insurance companies were expanding their operations overseas. In the insurance context, he noted in relation to national treatment that in New Zealand the requirement for local and overseas companies in regard to paid-up capital was the same for all in terms of the amount involved. New Zealand was also an important consumer of financial services provided by foreign companies, whether based overseas or locally. In the insurance field, for example, much of the country's reinsurance needs were fulfilled off-shore. He said that since the New Zealand economy had benefited from a more liberal climate permitting increased international trade in financial services, his delegation supported progressive liberalization on a multilateral scale in this sector. He considered that these negotiations should arrive at a mechanism to provide for further rounds of negotiations which could bring this about. The aim should be to increase market access for foreign providers of financial services, since this could have important benefits for the national economy. With developments in telecommunications, the world's financial markets were becoming increasingly interconnected, making it sensible for countries to be able to provide and use financial services from a number of places.

39. The representative of Sweden, on behalf of the Nordic countries, said that his delegation recognized the importance of opening domestic financial markets to international competition. He believed that an increased exchange of financial services, along with liberalization of capital movements, would promote economic growth and welfare. Indeed, liberalization in the field of financial services was closely linked to the issue of dismantling foreign exchange controls. A widened scope for financial trade relied on the undisturbed transfer of capital movements and current transactions. In addition to regulations relating to capital movements trade in financial services was subject to regulations on business conditions and prudential supervision. He noted that foreign banks and other financial enterprises had so far been given limited access to the Nordic capital markets. In general, the establishment of an operating entity had been a pre-requisite of the right to provide financial services in the region. Furthermore, authorizations necessary for the
conduct of business had been mainly restricted to domestic enterprises. He said that while foreign banks had in recent years been offered opportunities of establishing subsidiaries in Nordic countries, foreign financial institutions had rarely been permitted to set up branch offices. He noted that harmonization and internationally accepted standards for the conduct of business and for prudential supervision were important components in an effort to liberalize trade in the financial sector. Governments, central banks and supervisory authorities were cooperating closely on many issues of importance to multilateral liberalization. A considerable amount of valuable work had been carried out over the years, e.g. in the context of the Supervisory Committee linked to the Bank of International Settlements. An extensive de-regulation of foreign exchange controls was now underway in the Nordic countries. In view of the international efforts to establish standards for harmonized rules and supervisory cooperation, the Nordic countries felt it possible to progressively make domestic markets available to foreign financial institutions. Even cross-border trade in financial services should be facilitated, although certain problems in regard to legitimate taxation controls of current transactions remained to be solved. In short, the Nordic countries believed that the negotiations should aim at a process of liberalization that comprised all forms of trade and marketing in the financial sector, i.e. establishment through subsidiaries, affiliate enterprises or branch offices, joint ventures and cross-border services. It was, however, obvious that such a process could not have as its ultimate goal unconditional liberalization in the sense of a total deregulation of the financial sector. In his view, it was essential to accept that the conduct of business in this sector should also in the future be subject to a certain minimum amount of "quality control", exercised by supervisory bodies. In addition to safeguarding consumer interests through, for instance, capital adequacy requirements, supervision was necessary for ensuring the stability of the financial system and thus also providing a secure environment for operators in the economy as a whole. As rightly pointed out in MTN.GNS/W/68, the right to regulate was not at issue. The application of criteria for "licensing" or "authorization to operate" therefore could not and should not be avoided. The question was rather how to avoid unnecessarily trade restrictive regulations. He stressed that one technically possible option for achieving less trade restrictive supervisory control could be that signatories agreed on procedures for recognition of authorisations and prudential supervision exercised by other signatories in accordance with a list of agreed requirements. The practicalities of this kind of an option would need to be looked at in greater detail but an undertaking of that kind might also be termed as an example of a binding under the agreement. Another issue that would need to be satisfactorily handled in relation to the liberalization of capital movements and trade in financial services was the possibility for governments to maintain sufficient control over economic operators for taxation purposes and prevention of money laundering. The latter issue he noted was something which was well suited for international cooperation. It might be possible to deal with this issue by limiting the authority to transfer payments across the national frontier exclusively to domestically established institutions that fulfilled specific non-discriminatory conditions. Thus, establishment would seem to be an element of importance.
in financial services. The issue of how to deal with fiscal control measures called for further consideration among specialists. He said that the Nordic countries believed that the legitimate interest of governments to exercise taxation control over economic operators in the financial sector should not be seen as conflicting with efforts to move towards freer international competition in this sector.

40. He noted that the Nordic countries believed that trade liberalization in the financial sector would have to take place gradually over time. In most areas of this sector some form of minimum "quality control" over economic operators and their operations would be needed also in a more liberalized trading environment. It was important to note that a fair amount of liberalization had already taken place in the world. The Nordic countries hoped that the present state of liberalization could be consolidated through whatever form of bindings that the agreement would contain. As noted previously, a liberalized financial environment benefited the economy as a whole and locking in the present situation would prevent backsliding both in terms of liberalization already achieved and its resultant efficiency gains. As regards insurance, he noted that the reinsurance market in the world was characterized by a large degree of liberalism which should be consolidated so that the future direction was greater liberalization - not digression and subsequent negotiations on reopening previously open markets. He said that as a long-term liberalization objective, one needed to look into whether supervision exercised by national entities according to multilaterally agreed criteria and conditions could be automatically recognized by corresponding supervisory bodies in other signatories. The issue was not quite clear and would probably need to be studied in detail by specialists since it would determine the extent and pace of effective multilateral liberalization of trade in most areas of the financial sector. One issue that also needed detailed study by specialists was the possibility for governments to maintain a sufficient degree of tax control and other prudential control measures in a more liberalized trading environment. It was important to keep in mind that financial services comprised many different types of transactions and could be described as a matrix of activities. Thus it could be possible to liberalize piece by piece, rather than the sector as a whole. As pointed out in MTN.GNS/W/68, liberalization efforts would also need to take account of the overall macro-economic stability - or lack thereof - in a country, noting that one should not forget that, depending on the circumstances, liberalization of financial services could in some cases need to be preceded by liberalization of the current account, i.e. liberalization of trade in goods. He suggested that given the need for supervisory control, a gradual process of liberalization might have as a starting point permission to establish a commercial presence which over the course of time widened both in scope and activities. Irrespective of what form of market access foreign providers enjoyed, an equality of competitive opportunity should be ensured vis-à-vis domestic providers in respect of the activities that they were allowed to pursue. In addition, there should not be any discrimination as among the foreign providers. He noted that in the banking field the number of permitted operators was frequently limited. Market access opportunities in conditions of limited entry should therefore be ensured through some non-discriminatory
allocation mechanism. He felt that liberalization measures that related to operations through establishment by foreign financial institutions in the domestic market of a signatory might be less complicated to implement than in cross-border trade. Foreign-owned entities could be allowed to establish and operate on the same, or no less favourable, conditions as domestically-owned institutions. For supervisory and taxation purposes they would be treated as nationals. For some types of insurance services, establishment might be the only way of actually gaining access to a market and could in fact be a requirement for consumer protection purposes. Progressive liberalization of trade in financial and insurance services would need to address the discriminatory aspects of measures that imposed differential costs on foreign/domestic providers as well as those that restricted the pursuit of certain activities, the objective being to progressively widen the scope of activities in which foreign participation was allowed. Finally, he underlined that MTN.GNS/W/68 contained many wise words on the concept of reciprocity as a means of liberalization.

41. The representative of India felt that the discussion of concepts and principles as applied in the financial services sector lacked an adequate degree of detail and precision. This, he felt, stemmed partly from a lack of knowledge as to which financial transactions the current discussion were about. He emphasized the relevance of an elaborate network of regulatory safety nets to ensure the stability of domestic monetary and fiscal policies. He wondered to what extent the current discussions on regulatory approaches could be made to respect national policy objectives, noting that some delegations had expressed an interest in testing the appropriateness of certain regulations. In such cases, national policy objectives would appear no longer to be considered as "givens". He hoped that the ongoing discussion would clarify the degree to which Group members would be prepared to respect the national policy objectives which underlined financial market regulations and demarcated the point beyond which such objectives could be questioned. He said that liberalization was not the ultimate goal of the negotiations. Rather the process of progressive liberalization had as its central aim the promotion of growth and development. He noted that the appropriate level of financial regulation could not be uniform in the case of countries with differing levels of development. On the issue of m.f.n./non-discrimination, he said that it might have to be addressed within a sectoral annotation, noting that such annotations were perhaps more necessary in the financial sector than in other service sectors. With regard to market access and national treatment, he noted that these would have to be achieved progressively and had to be considered in a longer term perspective. He said that his delegation could not go along with viewing national treatment as a benchmark to fulfil upon entering into an agreement with a view to securing market access. He said that his delegation did not consider national treatment as an obligation to include in the framework, the key yardstick being an effective degree of market access to be achieved progressively. He noted that effective market access could well involve less than national treatment, adding that his delegation had yet to take a stand on the longer-term meaning of national treatment. He suggested that national treatment was perhaps of greater interest for countries at comparable levels of development, as in the case of the Canada-United States Free
Trade Agreement. On progressive liberalization, he agreed that liberalizing the financial sector could take longer than other service sectors but said that Group discussions would have to make precise what progressivity meant in the sector. If this involved a consolidation of the existing degree of market access, he suggested that this could be done in a sectoral annotation with a view to marking the various levels of progression. He noted that progressive liberalization was more of a modality for negotiations than an absolute concept or principle. His delegation supported the concept of progressive liberalization, and said that it should proceed on a differentiated scale for countries at different levels of development.

42. The representative of Hungary said that progressive liberalization was an essential means for promoting the efficiency of financial sector activities in national economies. He commented briefly on his country's experience with progressive liberalization in the financial sector. He said that there were two sides to the question: on the one hand, a process of deregulation of the domestic banking sector by abolishing previously existing restrictions or monopolistic positions. This process resulted in an increasing number of banks or financial institutions operating in markets. On the other hand, there was a process of opening up the domestic financial sector to foreign service providers. He noted that the country had allowed some foreign banks to enter the domestic market as majority owners. He agreed that deregulation was not the same as liberalization, noting that re-regulation might have to follow liberalization if it resulted in the introduction of new financial instruments in domestic markets, instruments for which no regulations previously existed. The notion of a regulatory freeze in the context of liberalization was not in his view a useful one. He noted that progressivity related to the levels of development of signatory countries and recalled that some countries would need longer adjustment periods in undertaking liberalization commitments in the financial sector. As well, he recalled that the dismantling of exchange controls had been a lengthy process in developed market economies and would no doubt have to be addressed gradually in developing countries. Other relevant issues in this regard were the link between financial market liberalization and economy-wide structural adjustment efforts, as well as the special problems posed by the non-convertibility of some countries' currencies. He noted that national treatment in the financial sector might only be truly considered once full currency convertibility was achieved. On the issue of m.f.n./non-discrimination, he did not feel that an unconditional approach should be excluded from the scope of an agreement covering financial services and recalled the potentially negative side effects of reciprocal arrangements in the sector. He agreed that the provision of many financial services was contingent on some form of presence in markets on the part of service providers and accepted the view that factor movement could be envisaged when deemed essential to the efficient delivery of services. Finally, he noted that a balance of rights and obligations might be difficult to achieve if looked for solely within the financial sector, recalling that the competitive abilities of countries in the financial field varied greatly. He suggested that a realistic balance of benefits should rather be sought through a cross-sectoral exchange of concessions.
43. The representative of Nigeria said that existing regulations in his country's financial sector were not meant to restrict foreign trade but to regulate the operational activities of firms involved in the sector. Such regulations applied equally to foreign and domestic institutions. He was concerned by the fact that domestic financial institutions were not always granted reciprocal market access opportunities in foreign markets. As regarded progressive liberalization, he noted that Nigeria's financial system had recently undergone far-reaching changes in the context of structural adjustment efforts and felt that there would be no turning back on this process. He said that his delegation hoped to see a situation emerge where developed countries in particular would adopt less stringent regulations with a view to encouraging financial institutions from developing countries to gain greater access to developed countries' markets.

44. The representative of Brazil said that the greater internationalization and tradeability of financial services did not mean that all financial services should be covered by a multilateral framework agreement. While no sector should be excluded on an a priori basis, the complexity of the financial sector heightened the need to modulate concepts and principles in such a way as to attain the broadest coverage possible. He said that Group members would have to carefully select concepts so as to avoid situations in which sectors would be excluded in block. He agreed with those delegations which had stated that the process of progressive liberalization could not be likened to that of deregulation, recalling the need to maintain prudential controls in the financial sector. He said that his delegation favoured a cautious approach in the sector, one which would cater to the pursuit and maintenance of national policy objectives. He emphasized the key link between progressive liberalization, on the one hand, and the process of growth and development, on the other, noting that many delegations seemed to forget what the main objective of the GNS discussions was about. He said that in view of the marked asymmetries between the financial systems of developed and developing countries, the concepts of national treatment and m.f.n. would have to be treated with particular caution so as to redress such asymmetries. He believed that developing countries should benefit from preferential access arrangements in regard to developed country markets so as to redress current imbalances and provide an impulse for developing countries in pursuing greater degrees of liberalization. He felt that progressivity in regard to trade liberalization in the financial area should come naturally for developing countries, not only in terms of time schedules but also in meeting the quality standards that would be required to compete effectively on world markets. He felt that the current discussion had led to some confusion over the potential meaning of applying m.f.n. and national treatment provisions, both in financial services and in the broader context of a framework agreement. He said that his delegation was in favour of maintaining some kind of non-discrimination element in the framework but much was still unclear on this issue.

45. The representative of Romania said that the four concepts under review were applicable under certain conditions in the financial services area. In regard to progressive liberalization, which was not an end in itself but
a means to promote economic growth and development, he noted that it needed to be achieved on a non-discriminatory basis and be based in the case of developing countries on the concept of relative reciprocity in view of the well-known asymmetries which obtained in the sector. This approach was in his view implicitly acknowledged in the Montreal text where greater flexibility was envisaged in respect of developing countries in pursuing progressive liberalization. He felt in addition that the process of progressive liberalization had to be made compatible with the objectives of national policies, including those pertaining to national monopolies. He emphasized the significant limitations which the application of national treatment had in the financial sector. National treatment was incompatible with the pursuit of a policy of infant-industry protection in developing countries. He felt that public monopolies should be considered as acceptable derogations from national treatment provisions, as in the case of general exceptions and safeguards measures. He said that a services agreement should contain unconditional m.f.n. provisions as in the GATT, noting that a full and complete reciprocity of exchanges should prevail between developed countries while relative reciprocity would govern relations between developed and developing countries under a framework agreement. Derogations to an m.f.n. clause in favour of developing countries would have to be envisaged, notably in cases of preferential market arrangements among developing countries. Finally, in regard to market access, he drew attention to the fact that financial services should be provided in accordance with the legal system prevailing in importing countries, including laws in respect of governing foreign investment.

46. The representative of Poland said that the somewhat scattered exchange of views with Group members were having on financial services was perhaps less than fully surprising in view of the sector's complexity. He felt that the discussions had served the useful purpose of identifying those problem areas that would have to receive priority attention. He felt that due account had to be taken of national policy objectives as well as the level of development of signatory countries in respect of progressive liberalization commitments. There was a need in his view for a gradual process; one which started for instance with full liberalization of cross-border financial transactions before moving on to other types of transactions involving various forms of trade. The movement from one end of the spectrum to the other would need to be a gradual one. He said that national treatment was one of the core issues under discussion, noting that both domestic and foreign financial institutions would have to be subordinated to policy measures which were important for national development purposes. He agreed that national treatment had obvious limitations depending on the legal form which a foreign established financial institution might have (i.e. branches vs subsidiaries). He felt that market access had to be effective to be meaningful, and should have to be combined with national treatment in such a way as to translate into de facto access to a foreign market. Finally, in regard to m.f.n./non-discrimination, he said that it should be applied in the financial sector on a full non-discriminatory basis. As mentioned by some delegations, m.f.n. was a highly complex concept to apply in the financial services area, suggesting the possible need for an approach involving
sectoral annotations. This, however, would be a subject for further negotiations.

47. The representative of Japan said that national treatment was an important principle with which to secure market access in the financial sector, noting that the various restrictions which countries had introduced - such as limiting access to central bank rediscounting facilities - and which constituted departures from national treatment had to be reduced. He said that national treatment was basically rendered in respect of the business operations of foreign-affiliated financial institutions in Japan. On the issue of m.f.n./non-discrimination, he said that reciprocity was a reality which various countries adhered to in the financial sector, particularly in respect of the establishment of branches and subsidiaries of financial institutions. He said that Japan had a special provision in its banking law stipulating that reciprocal considerations were taken into account in granting operating licences to foreign banks. He noted that this policy had been implemented in a flexible manner so as to enhance market access opportunities for foreign providers. He said that eighty-one banks from twenty-four countries currently operated either branches or subsidiaries in Japan, noting in addition that one hundred and seventeen banks from thirty-four countries had representative offices as of mid-1988.

48. The representative of the European Communities wondered whether the complexity of the financial services sector was really as great as some delegations had intimated, noting that the problems emerging in the telecommunications field for instance were of equal - if not greater - complexity. He said that whereas the financial sector obviously had a complex series of regulations, it did not offer the same complexity of problems from a trade point of view. He recalled that the provision of financial services was - and should remain - normally subject to authorization procedures, stressing that while the objectives of such procedures were not questionable, the methods used in pursuing them should be discussed if they proved unduly burdensome for foreign service providers. He said that authorization procedures should not be wholly discretionary but rather objective and transparent. In response to a comment made by the representative of Nigeria, he said that he favoured a greater access of developing country financial institutions to developed country markets. Such enhanced access could not, however, come at the expense of lessened prudential controls in the financial sector in view of the systemic risks which might follow from less stringent regulations. He agreed that national treatment could be looked upon as a yardstick in liberalizing financial service activities but recalled that there were many instances - particularly in the case of cross-border trade in financial services - in which the application of national treatment did not translate into a satisfactory degree of market access. In such instances, the notion of equivalent treatment could become necessary. He was doubtful as to whether the application of m.f.n. posed particularly specific and difficult problems in the financial services sector. He said that the concept of non-discrimination was particularly relevant when looking at the issue of regulatory standards, particularly in the case of cross-border transactions. He noted that compliance with regulatory standards was
perhaps less difficult in the case of foreign established financial institutions. He said that the issue of m.f.n. raised clear economic and political considerations in regard to reciprocity, noting that if countries entertained ideas of pursuing reciprocal arrangements, they would have to be reminded that multilateral commitments such as those being sought in the GNS would be incompatible with unilateral actions.

49. The Chairman opened the floor to a discussion on the increasing participation of developing countries as referred to in paragraph 7(f) of MTN.TNC/11.

50. The representative of Mexico said that financial activities were fundamental for the development process of developing countries and that it was increasingly acknowledged that the effectiveness of economic policies depended primarily on the soundness and efficiency of financial markets, although not exclusively those of banking markets. He noted that an important dilemma emerged in the sector for while the need to modernize and make a country's financial sector more efficient was clearly understood, it was also obvious that this should take place in line with national economic guidelines, hence the need for local firms to predominate in the sector. He said that there was a risk that the developing countries' financial systems might be absorbed by international intermediaries of developed countries if the sector was opened up too rapidly and without consideration for the disadvantages faced by developing countries. The lack of development of insurance, security-bonds/guarantees and factoring or of capital markets left these sub-sectors very vulnerable to foreign competition. Large international financial intermediaries had a wealth of experience, acted simultaneously in various markets, offered a wide range of services efficiently and at low cost and had considerable technological capacities. In addition, their large volumes of capital and networks of branches and international offices provided further advantages: they could operate at a loss during some periods in order to try to maintain their presence in a market until their competitiveness increased, sacrificing profits in order to enter new markets. Increasing the participation of developing countries would seek to check or even reverse the trends tending to marginalize their financial institutions. The indiscriminate opening up of the sector would lead to a high concentration of the market in foreign hands, as a result of the displacement of local intermediaries. He said that access to the markets of developing countries would have to be secured by relative reciprocity aimed at increasing participation of developing countries, which could take various forms: flexibility as regarded the timing, forms and regulations for carrying out progressive liberalization and granting national treatment; an opening of the developed countries' markets for financial services of developing countries without expecting similar concessions in return; access to information and data processing networks; transfers of technology allowing foreign institutions to be majority shareholders for a reasonable period at the end of which they would become minority shareholders; and personnel training, through the recruiting of skilled and specialized manpower in developing countries by financial institutions in developed countries.
51. The representative of Brazil said that his delegation shared the main thrusts contained in MTN.GNS/W/71. He said that technology transfers were of central importance in approaching the concept of increasing participation and emphasized that the need for an increased participation of developing country financial institutions was made evident by their currently very low world market shares. For this reason, developing countries would need to enjoy certain benefits in order to improve their position. Preferential arrangements or access to developed country markets were means for achieving this end and would involve benefits being granted to developing countries on a non-reciprocal basis.

52. The representative of Egypt felt that the concept under discussion could not be de-linked from those which the Group had previously examined. He said that as envisaged in the Montreal text, the increasing participation of developing countries encompassed a number of elements - the need to expand developing countries' services exports, to provide effective market access for those exports, and to liberalize market access in sectors of interest to developing countries - which would need to be looked into. Apart from considerations relating to the export side, the concept of increasing participation also encompassed objectives relating to the development of indigenous service-producing capabilities. He noted that, as exporters of financial services, developing countries participated in a fairly limited way in world markets, significant expansion having taken place in only a small number of countries. He felt that mechanisms would need to be envisaged for inclusion in a multilateral framework which would enhance the development of human resources in the financial field and lead to a greater access to the appropriate technological infrastructures which underpinned the financial sector. He said that export opportunities for developing countries would depend on the extent to which developed countries opened up their markets to developing country financial firms. He said that while restrictions to trade in banking and securities-related services were perceived as being more widespread in developing countries, the latter countries nonetheless faced important barriers in developed country markets, both of a regulatory and a "market-image" nature. Since financial firms from developing countries often did not possess the level of competitiveness enabling them to participate fully in foreign markets, there was in his view a strong need for preferential market access opportunities. Without these, developing countries could not be expected to increase their financial service exports in a meaningful way. Taking a wider perspective, he said that there were a number of concerns relating to the adjustments which developing countries would have to make in the context of financial market liberalization which a framework agreement would have to address. Such concerns would vary in individual developing countries depending on the degree of development of domestic financial markets and institutions as well as on the monetary constraints under which countries might be operating. He said that such concerns were partly accommodated by the fact that liberalization would be achieved in a progressive manner and allow developing countries to enjoy certain flexibilities in liberalizing fewer sectors or covering fewer transactions within sectors. In weighing the relative costs and benefits associated with financial market liberalization, developing countries would also have to determine how increased imports of financial services would contribute
to the development process. This question, he noted, would have to be addressed both in regard to the overall economy as well as to the financial system in itself. Depending on individual situations, countries would have to decide which segments within the financial sector should be liberalized. In this regard, he noted that it could be advisable to start with wholesale banking activities and leave the liberalization of retail banking services to a much later stage. He agreed that the exposure of domestic firms to the competitive forces of foreign service providers could help in transferring the necessary technological and human resource know-how which developing countries needed to build competitive financial sectors. A central issue before the Group was the precise mechanisms to include in a framework agreement so as to reach such objectives. He concluded by noting that autonomous liberalization of market access in favour of developing country services exports was another avenue which developed countries should consider in the financial sector.

53. The representative of Argentina said that it was particularly difficult to imagine how developing countries could increase their participation in the world market for banking services. The provision of banking and other financial services was in most countries simply not competitive with that of comparable services in developed countries. This suggested that developing countries would encounter significant difficulties in trying to make use of any degree of enhanced access to developed country markets, even if extended on a non-reciprocal basis. If, however, developing countries did benefit from long enough adjustment periods, they could achieve meaningful results in developed country markets. Addressing the concept of national treatment, he said its application posed difficulties even to those countries which were strongly supportive of a services agreement. National treatment provisions in the banking field might need to be attended to with great care, one important distinction being the different implications of applying national treatment to branches as opposed to subsidiaries of foreign banks. In negotiating the coverage of activities or sub-activities within a sector, he noted that it might be possible to grant national treatment concessions to established bank subsidiaries and not to branches. He emphasized that m.f.n./non-discrimination was a key element to include in a framework agreement but that it should be applied in such a way as to not create barriers to trade in financial services. He said that the reciprocal nature of many existing arrangements in the sector complicated the pursuit of non-discrimination and wondered how such arrangements could be made to coexist with multilateral disciplines. On the issue of transparency, he said that his delegation's view in the financial sector were similar to that outlined in other sectors, namely that the practical difficulties associated with the publication of all relevant laws, regulations and administrative practices would need to be taken into account and that market operators would need to be quickly informed of changes made to regulatory regimes. As in the telecommunications field, Group members had to be mindful of the large amount of information and the administrative burdens which might be embedded in transparency provisions.

54. The representative of Yugoslavia said that a majority of developing countries were unable, both quantitatively and qualitatively, to follow
ongoing changes in international financial markets; rather, the gap appeared to be widening in the sector. The marginalization of developing countries in international capital markets was supported by figures on both the number of countries participating in them and the volume of activity conducted on their behalf. For example, the share of developing countries in syndicated bank loans had declined perceptibly since the late 1970's, as had their share of international bond financing. He traced the origin of this trend to two major issues - the increasing recourse to the securitization of financial instruments and the deepening external debt problems faced by many developing countries. To increase their participation in the world market for financial services, developing countries would have to reverse these trends. He said that two sets of measures might address this need. On the one hand were measures designed to improve the overall macro-economic performance of developing countries; on the other were more specific measures aimed at promoting international financial activities in domestic markets. With regard to the former set of measures, he recalled that developing countries had already been engaged in a fair amount of domestic adjustment and were often affected by developments in the international economy over which they had little control. As to the latter category of measures, he recalled that they were difficult to implement given the size of financial outflows which many developing countries were facing and the still undeveloped nature of many countries' financial institutions and markets. He felt that provisions in a framework agreement should permit developing countries to progressively strengthen their fledgling domestic financial sectors. Such provisions would need in addition to be of a more permanent nature so as to contribute to the growth and development process. He supported the views contained in MTN.GNS/W/71, although the Mexican proposal dealing with technology transfers in the financial area needed a more detailed assessment in the view of his delegation.

55. The representative of Thailand said that her delegation recognized the need to apply transparency principles in the field of financial services and that Thailand already provided relevant information on regulations and administrative guidelines to the public on a regular basis. She said that the idea of setting up a contact point was an interesting one but that her delegation would like to study its implication in further detail before making additional comments. On the issue of prior notification, her delegation was of the view that changes in the financial regulation of developing countries were usually related to the stability of financial systems. Her delegation found it difficult to subscribe to the concept of prior notification in the case of financial services. As far as progressive liberalization was concerned, she noted that her delegation recognized the efficiencies which banking liberalization could bring about. However, in a dynamic world excessive competition and unduly rapid liberalization could cause severe damage to a country's financial system. Preconditions for progressive liberalization were therefore needed when market access and national treatment were considered. In the view of her delegation, the process of liberalization should start domestically before being extended to the international front. She said that banks and finance companies in Thailand had been permitted to conduct many types of businesses and activities. Interest rates had been partially liberalized
using well-known measures and new financial instruments and institutions had been promoted. In addition, the development of domestic capital markets had been pursued so as to enhance the mobilization of long-term capital. However, the domestic banking system needed to be strengthened further before full liberalization was possible. In this connection, she said that the adjustment period should be longer for developing countries. She observed that Thai capital markets were in their early stage of development and the size of the domestic market was rather small. As was made evident from Table 3 in MTN.GNS/W/68, Thailand’s market capitalization as a percentage of GNP in 1987 was 9 per cent as opposed to 58 per cent in the case of Malaysia. However, Thai markets had been growing very rapidly, reaching well above 20 per cent in 1989. She said that one of the major factors contributing to this growth was the rapid increase in foreign demand for Thai securities, noting that markets were rather open to foreign investors. As for securities businesses, private operators needed to obtain a license from the authorities concerned. Brokering business was prohibited for foreign companies but foreign participation was welcomed through joint ventures with Thai partners. Peripheral activities in the securities sector, namely investment advisory services, financial arrangements, venture capital, credit-rating, etc, were areas where foreign participation was possible. In conclusion, she said that GATT principles and rules could be applied only to certain financial services sub-sectors. Therefore, conditions should be attached to foreign market participants so as to pave the way for increasing the participation of developing countries in the sector.

56. The representative of the European Communities said that Group discussions had revealed that the concept of increasing participation was seen as a two-way process, involving both greater access for developing country services exports to developed countries as well as an assessment of the pros and cons of liberalizing their own markets. This, he felt, was encouraging inasmuch as it was a recognition that viewing liberalization as a purely one-way process was probably not in anyone’s interest. He was struck by requests of developing countries for preferential market access opportunities in the area of financial services, noting that no precise modalities for achieving this end had been proposed. He said that his delegation would take an extremely reserved position on this issue were it to involve any degree of relaxation in prudential supervisory standards. In assessing the likely payoffs of liberalization, it was important to start with the premise that a sound financial services sector was crucial for the overall efficiency of an economy. He felt that liberalization, by allowing greater presence of foreign financial institutions, was one of the surest means to transfer the technological and human resource skills associated with efficient financial services. Foreign established institutions typically transferred knowledge which could spread to domestic banks and other financial intermediaries without, in addition, posing balance-of-payments problems. He felt that one of the main challenges in addressing the concept was how best to enhance the efficiency of domestic financial systems in developing countries and to allay the fears that developing country markets would be swamped by foreign competition in the wake of liberalization. He noted that the progressive nature of the liberalization exercise should partly allay such fears and was supportive
of the complementarity approach which the representative of Egypt had previously outlined. He said that favouring complementarity should not translate into a quota or market-saturation approach to progressive liberalization, noting that private bankers would not in all likelihood seek to establish a presence in a market which they perceived as saturated. He agreed that developing countries faced a highly differentiated set of issues and needs in regard to financial market liberalization, so that a blanket approach could not be followed in the sector. On the issue of training of developing country skilled personnel by developed country financial institutions, he wondered whether the proposal contained in MTN.GNS/W/71 was the most efficient way of promoting the objective, suggesting that such an approach could perhaps exacerbate the brain drain problems which many developing countries were faced with. These were in his view compelling reasons to prefer the in-house training and technology transfers associated with establishment-related trade.

57. The representative of Switzerland said that, as stressed in the World Bank's latest World Development Report, the development of efficient national financial services was of particular importance to developing countries. He said that the objective of enhancing financial market efficiency could be best attained if corporations were allowed to exchange capital and know-how, thereby leading to cross-fertilization between developed and developing country financial institutions. This process could be progressively extended depending on the maturity of domestic financial markets and on the achievement of growth and development objectives. Measures to ensure such cross-fertilization could include autonomous liberalization undertakings within national markets as well as multilateral negotiations. With regard to accepting formal obligations under an agreement, he said that a system of bindings within a multilateral scheme should be devised in a flexible way and allow a phasing in of developing country obligations taking specific country differences into account.

58. The representative of the United States commented on the distinction made earlier between the objectives of liberalization on the one hand, and of growth and development on the other, noting that in his view both were closely linked. He also reminded Group members that several smaller industrialized countries had indicated that financial market liberalization had proven highly beneficial in economic terms. Liberalization, he added, contributed to economic welfare and to growth of economies as a whole. Competition in the financial sector, including the participation of foreign financial institutions, helped in promoting lower costs and more efficient financial intermediation. In addition, foreign financial institutions generated domestic savings and facilitated the process of capital formation, both of which were crucial ingredients in the development process. Foreign participation in domestic financial markets also contributed to spreading technical expertise which could improve the functioning of domestic capital markets and increase the ability of domestic institutions to compete in international markets. He noted that, as mentioned in the latest World Development Report, increased foreign participation was a key element in the development process. This was demonstrated by the broad range of countries at all levels of development.
which now granted entry to foreign banks. He said that he found the concept of relative reciprocity somewhat strange to apply in the banking and securities industry, noting that it would be most unfortunate if financial market liberalization came to be regarded as something worth pursuing only in developed countries.

59. The representative of Pakistan emphasized the crucial significance of confidence in financial markets and recalled that it followed from the existence, maintenance and exercise of a reliable prudential regulatory environment. He agreed that developing countries needed to increase the range of financial instruments, and services in response to changing needs and strengthen domestic systems of prudential supervision. He noted that as developing countries introduced new financial instruments into their domestic markets, the need might arise for new forms of financial regulations. For this reason, the notion of entering into binding commitments on the basis of existing regulatory regimes might not be of immediate relevance for developing countries. Rather, liberalization might have to wait until an optimum regulatory situation had been attained and sufficiently tested and strengthened. He concluded by noting that financial liberalization in the case of developing countries would have to be very slow and gradual. As well, it would have to be in accordance with the individual needs of developing countries, the latter reflecting national policy priorities and objectives.

60. The representative of Canada noted that his delegation wished to know more precisely what developing countries had in mind under the concept of increasing participation. He felt that while MTN.GNS/W/71 raised a number of valuable considerations which emerged in examining the financial services sector, most of the suggestions it contained remained in his view fairly generic in nature and were broadly similar to those outlined in most other service sectors. It was important therefore to focus more attention on the specificities of the financial sector. He said that the main elements which appeared to be suggested under the concept of increasing participation could be put into four categories. The first category was that of timing or phasing in of the agreement. A second category consisted of modalities allowing developing countries to open fewer segments of their financial services sectors, thereby limiting the degree of foreign access to their markets. The third category consisted of preferential market access opportunities aimed at increasing developing country service exports. This involved attempts at ensuring that sectors of export interest to developing countries were covered by the framework agreement. He noted that, as Group discussions proceeded, it became increasingly difficult to isolate sectors which were of export interest solely to developing countries. He agreed with the representative of the European Communities that it would be most difficult to endorse preferential market access provisions if these involved a weakening of prudential financial rules. If this was not what developing countries had in mind, he wondered how this third approach differed from the second category which involved elements of relative reciprocity. A fourth category brought together various items such as access to information networks, data-processing facilities and technology, all of which were raised in the other sectors examined by Group members. He felt that the
previous remarks by the representatives of Egypt and Pakistan highlighted the need to look at the financial area on a case-by-case basis. The needs and circumstances faced by individual countries typically differed from one another, making it difficult to write general prescriptions that would be suitable for all. He agreed with the representative of the European Communities that general derogations to the agreement would pose a number of difficulties in the view of his delegation.

61. The representative of Japan also expressed a desire to know more concretely what developing countries had in mind under the concept of increasing participation in the area of financial services. He agreed with the views put forward by the representative of the United States on the positive implications of efficient financial systems for developing countries. Among the positive features were increased capital formation, greater revenues, expanded employment, strengthened financial infrastructures and lowered costs of financial products as a result of the presence of financial institutions from developed countries in local markets. He noted that each country operated its own financial system and the degree of financial market depth and maturity differed significantly across countries. It was thus important to coordinate liberalization efforts with the important need to develop and enhance domestic financial sectors through an appropriate body of regulations aimed at maintaining confidence and control in monetary and economic policies.

62. The representative of the European Communities said that liberalization commitments should by no means involve a renunciation of a country's right to modify regulatory environments. Rather, regulations would always be present, particularly in the financial services sector, and might need constant adaptation in the context of liberalization. He wondered whether an optimum regulatory situation could ever be achieved in the sector, noting that new regulations would have to be envisaged as new financial instruments emerged in developed and developing country markets alike. He said that the commitment to be sought under a framework agreement should seek to ensure that the introduction of new regulations did not confront service providers with added difficulties in international markets. He stressed that the processes of liberalization and of regulatory revision should be expected to take place simultaneously.

63. The representative of Singapore recalled that financial services were closely related to questions of monetary, fiscal and exchange rate policy - key macroeconomic issues which went beyond the provision of banking and insurance services. He noted that in comparison to the total volume of financial market activities, the volume of trade in commercial banking services was quite small. He noted that a key question was that of ensuring that foreign financial service providers abided by rules, prudential regulations and national obligations in respect of monetary and fiscal policies. He asked whether foreign financial institutions could be made to perform economic obligations relating for instance to rural development financing. In addition, how could national authorities ensure that foreign financial institutions behaved in accordance with prudential supervisory controls. He agreed with the representative of Pakistan that individual country needs differed greatly in the financial sector. He said
that individual country needs in respect to economic and monetary control might well override the question of applying framework principles and rules to the sector.

64. The representative of Mexico agreed that the concepts contained in MTN.GNS/W/71, as in other documents tabled by his delegation in the context of sectoral examination exercise, were generic in nature. This should not be surprising given that the current exercise aimed precisely at determining whether the concepts contained in the Montreal text were applicable to a wide range of service sectors. He noted that there were few service sectors in which developing countries possessed clear competitive advantages on the export side and that a framework agreement would have to contain provisions aimed at redressing such an imbalance. He felt that it was quite possible for an agreement to provide for training opportunities in developed country banks for developing country personnel. This, he noted, would result in the transfer of technology - in this case in the form of knowledge - which was a crucial ingredient for development. As to the prospect of a worsening brain drain, he felt that such a drain would be reversed when the economies of developing countries would resume strong and sustained growth. He noted that the Montreal text contained elements of relative reciprocity, most clearly in sub-paragraphs (b) and (f) of paragraph 7. He felt that relative reciprocity could easily be pursued in the financial sector and should not be considered as a request for preferential treatment on the part of developing countries but rather as the fulfilment of the spirit of the text adopted by participating governments in Montreal.

65. The representative of Canada said that as the sectoral examination exercise proceeded, it was evident that developing countries were interested in increasing their participation in the world market for all services under review. It was thus rather difficult to view sectors as representing greater negotiating prospects for one category of countries and not for another.

66. The representative of Egypt emphasized the importance of personnel training in the sector and noted that brain drain considerations should not deter from efforts to give operational meaning to the proposals contained in MTN.GNS/W/71. He agreed with the EC representative that restricting market access for trade in financial services through recourse to quotas was not an ideal approach. Rather, there was a need to look at alternative measures which could affect the competitive conditions prevailing in markets without restricting market access in quantitative terms. He felt that tariff-like measures could be usefully applied in the financial sector. Such measures could allow a greater degree of foreign participation in domestic market while offering some degree of protection to local firms. Such measures could also encourage the necessary interaction between foreign and domestic institutions, thereby resulting in transfers both of technology and know-how. He felt that recourse to tariff-like measures could also prove useful for extending preferential market access opportunities to developing countries. Preferential market access would mean that developing countries would enjoy in developed country markets opportunities of access which were preferential in regard
to those extended to developed country exporters. Developing countries would thus enjoy better operating conditions in developed country markets. He noted that the notion of preferential market access posed obvious difficulties in regard to m.f.n./non-discrimination, suggesting a need for fine-tuning in the context of devising the framework. He saw the need for developing countries to employ various support measures in the banking sector with a view to ensuring that overriding - and sometimes unprofitable - objectives, such as financing rural development - were met. This might influence the degree of market opening which developing countries would wish to extend to foreign financial institutions in more lucrative market segments. Once more, this might pose difficulties in terms of national treatment and highlighted some of its limits in the sector. He recalled that progressive liberalization had an important role to play in promoting the growth and development prospects of developing countries, noting however that liberalization had to be looked upon as a means to achieve growth and development rather than an end in itself.

67. The Chairman suggested that Group members take up a discussion of the concepts of safeguards and exceptions, as well as the regulatory situation as contained in paragraphs 7(g)-(h) of MTN.TNC/11.

68. The representative of Mexico said that safeguards could refer to infant industries, balance of payments as well as growing and unforeseen imports of services. In the case of infant industry considerations, which in the financial services sector could apply to some sub-sectors which may be considered new in a given country, safeguards could consist in maintaining sufficient flexibility for the service in question. He noted that this concept could clearly be applied to a number of sub-sectors of the financial sector of developing countries. These would evidently include factoring and services related to securities markets. However, in traditional sectors too the infant industry concept could be applied, although at first sight this might not seem to be so. In the case of banking, for example, although a number of developing countries had venerable banking institutions, the technological revolution in such services in industrialized countries was so huge that developing countries were permanently left behind and consequently virtually in the position of an infant-industry situation. In addition, in other sub-sectors where the technological revolution had perhaps been a secondary factor, there were other elements of an internal nature which maintained the financial services of developing countries in the position of an infant industry. There was, for example, the case of insurance and securities, which for reasons that might have to do with culture and market structure had not developed, so that indicators such as the level of premiums in relation to GDP were extremely low compared with other countries, thus reflecting one of the characteristics of an infant industry. In the case of balance-of-payments difficulties, he noted that the application of a safeguard could be triggered by a high and rising level of demand for imports of financial services which could adversely affect the implementation of a country's development and economic growth programmes. Under such circumstances, safeguards could be applied most viably in such areas as foreign-exchange firms, international bank operations, international credit card services or possibly also foreign securities
dealings. He said that the inability of local financial institutions to cope effectively with foreign competition highlighted economic difficulties of a structural nature. Some degree of restructuring of domestic financial intermediaries might also be required, and safeguards could guarantee or ensure that the process of progressive liberalization did not lead to a smaller participation of host country institutions. In the three situations, the application of safeguards would involve temporarily suspending the liberalization process (for example, the cross-border flow of capital), regardless of the stage reached. He noted that the safeguards mechanism was more complicated in the case of establishment-related trade because it involved additional elements for its application to foreign institutions resident in the importing country. Nevertheless, regulations - especially in developing countries - could provide that if national treatment was the long-term objective, account could be taken of emergency situations for resorting to safeguards, even after the process of granting market access and full national treatment had been completed. With regard to exceptions, he said that these could refer basically to questions of national security and consumer protection, as well as fiduciary responsibilities. As regards the regulatory situation, he noted that the Montreal document recognized that governments regulated services sectors in order to foster their own development policies and safeguard the application of their macro-economic policies. He noted that there was a marked imbalance in the degree of development of financial regulations both between developed countries and developing countries and even among the latter, adding that the degree of development was not synonymous with a greater or lesser degree of market openness. While a number of countries had made efforts to open their markets, there nevertheless remained a considerable amount of legislation and regulations governing both the domestic activities of their institutions and the modalities for the establishment and participation of foreign institutions in those markets. Moreover, even these developed countries which had opened their markets to international competition had not totally eliminated restrictions. The right to establishment for example continued to be directly or indirectly regulated in many countries which had undertaken liberalization or deregulation processes. He said that for developing countries the use of specific existing and new regulations would continue to be an integral part of their development policies. This was set forth in paragraph 7(h) of the Montreal document, and thus liberalization would not be synonymous with deregulation. Moreover, a possible opening up of new sub-sectors, such as factoring firms, would imply that those sub-sectors be regulated, just as a possible liberalization of traditional services, such as banking or securities trading, would imply more advanced systems of supervision and control.

69. The representative of Japan said that policy imperatives in the financial field, such as preserving the financial credit order, protecting depositors and ensuring sound business operations were ultimately based on the sovereign power of a currency. He said that financial market regulations aimed at fulfilling such policy imperatives could be considered as safeguards. Given that the financial sector impacted heavily upon society and the public interest, it was important to promote gradual liberalization while seeking to create the needed climate. For these
reasons, he felt that the financial sector did not lend itself to a
multilateral scheme for promoting rapid and comprehensive liberalization.
Indeed, the financial sector should be treated as an exception in any
comprehensive agreement.

70. The representative of India agreed with the representative of Japan
that safeguards in the financial area consisted of those prudential and
fiduciary management requirements which were applied in virtually every
country's financial sectors. While there were differences in the forms of
regulations applied across countries, it appeared as though the motivations
behind their application were fairly universal in nature. He felt that
such considerations highlighted the greater need in the financial sector
for a detailed sectoral annotation which would take into account both the
specificities of the banking and financial sector and the particular
sensitivities of the sector for the economies of all Group members. He
agreed that the pursuit of certain national policy objectives could warrant
specific exceptions in the financial service sector, noting that such
exceptions might well need to be of a general nature rather than being
country-specific. Exceptions might also be envisaged for reasons of
national security, particularly in instances when public confidence in the
financial system weakened sharply. He noted that economic development
objectives could also be accommodated as countries might wish to promote
the development of indigenous financial capabilities or engage first in a
process of domestic liberalization before progressively opening up domestic
markets to foreign financial competitors. He agreed that the emergence of
new financial instruments meant that developing countries could not
contemplate a regulatory freeze in the context of financial market
liberalization. While there could not be an optimal regulatory situation,
liberalization might have to wait for an appropriate regulatory structure
to be in place before being pursued in a progressive manner.

71. The representative of Israel said that his country operated a liberal
policy vis-à-vis foreign banks and financial institutions and did not
detect any particular problems in applying framework principles and rules
in the sector. The ways in which such principles could be implemented did,
however, call for further analysis in the view of his delegation. He noted
that the more liberal a country's banking regime, the greater the need for
well prescribed safeguards and exceptions provisions. He recalled that the
crucial responsibilities of the financial system in fostering and
orienting national economic development also had important implications for
safeguarding the balance of payments. Banking activities similarly exerted
significant effects on prices, exchange rates and other key macro-economic
variables which impacted directly on a country's external accounts, thereby
suggesting the importance of safeguards for balance-of-payments purposes.
He said that an issue of particular concern to his country was the
possibility of exceptions for national security purposes.

72. The representative of the European Communities wondered whether there
was really a need for safeguard provisions to be drafted if one were to
follow the policy prescriptions contained in MTN.GNS/W/71. Considering the
flexibility which the Montreal text provided developing countries with
regard to the phasing-in of liberalization, he did not find the case for
infant-industry safeguards a compelling one. He hoped that the comments made by the representative of Japan represented a misunderstanding of the meaning of safeguards in trade policy terms. These comments, he added, were all the more surprising given that Japan, like many other industrialized countries, had already taken on the multilateral disciplines contained in the OECD Codes. He wondered why such disciplines affected Japan's national sovereignty in a seemingly acceptable manner whereas multilateral trade rules were perceived in a different light. He agreed that the intent of regulations in the financial sector, as in other service sectors, was to safeguard national policy imperatives. This, however, was a different use of the world safeguard, which in the trade context related to exceptional measures involving temporary departures from commitments under an agreement. He was unsure as to whether the possible reasons for invoking safeguard measures, as described in MTN.GNS/W/68, were such as to suggest a need for provisions which would be specific to the financial services sector. He noted that there might be important implications for the stability and confidence of the financial system were the activities of established financial institutions to be suspended through recourse to safeguard measures. He noted in this regard that the activities of established banks and other financial intermediaries exerted limited balance-of-payments effects. As far as exceptions were concerned, he was unsure whether convincing evidence had been put before the Group showing the need for particular service sectors to be generally exempted from the provisions of a framework agreement. Addressing the regulatory situation, he recalled that the need for authorization procedures would remain irrespective of the form of trade involved. Similarly, liberalization notwithstanding there would always remain a need for prudential supervision as well as rules aiming to protect consumers. It was important to ensure, nonetheless, that multilateral commitments involving regulatory changes did not impact negatively on the international activities of market participants.

73. The representative of Korea said that, in view of the specificity of the financial service sector, his delegation believed that the need for strong safeguards and exceptions should be recognized. The excessive entry of foreign financial institutions and the attendant increases in short-term capital movements could create financial market disruptions and lead to a deterioration in the balance of payments. He said that to enable importing countries to be prepared for such an event, safeguards were inevitable. He mentioned a series of reasons for invoking safeguard measures, including restrictions on the establishment of branches and joint venture subsidiaries as well as restrictions on specific business areas. With regard to exceptions, he noted that in addition to considerations of national security and cultural preservation recognized in the case of commodity trade, an exception on the ground of national monetary policy objectives should be justified. Examples of such objectives included the maintenance of the national monetary and credit system. In particular, he noted that when a financial institution from an universal banking system entered a market operating a specialized banking system, the laws governing the latter system should prevail. Other examples included the avoidance of disruptions in domestic financial markets as well as the protection of depositors, investors and insured entities. As regarded the regulatory
situation, he said that restrictions applying in the financial sector were not necessarily intended to restrict the flow of trade but rather designed to further the objectives of industrial and macro-economic policies. Moreover, even when such restrictions hindered trade in financial services and insurance, they had to be recognized as long as they were consistent with legitimate national policy objectives as pointed out in the Punta del Este Declaration. In short, the government's right to establish new restrictions in the light of the specificities of the financial sector had to be recognized.

74. The representative of Switzerland said that although his delegation recognized the strategic impact of the financial sector on the rest of the economy, it nonetheless believed that liberalization in the sector could be achieved through multilateral means. He felt that the current exercise should be seen as reinforcing similar attempts in other fora such as the OECD. Liberalization in the sector was possible if its specificities were properly addressed. On the issue of exceptions, he noted that his delegation accepted that there were limiting factors for liberalization such as legitimate national policy objectives. Such objectives would nonetheless need to be clearly defined both for the sake of transparency and for maintaining confidence in the financial system. Regarding safeguards, he distinguished between balance-of-payments provisions and safeguard clauses which related to serious disturbances in domestic financial markets as a result of liberalization. In the latter case, access restrictions might temporarily be imposed to new applicants under strict criteria in cases of actual and/or immediate threat or injury to a particular domestic service industry. As to the need for safeguards for balance-of-payments purposes, he recalled the inherent links between the balance of payments, capital movements and the liberalization of financial services. He felt that appropriate and strict criteria would need to be developed so as to avoid an excessive recourse to such measures. On the regulatory situation, he said that his delegation was convinced the progressive liberalization required adequate regulation in the field of prudential supervision so as to maintain the good functioning of markets and the protection of depositors. Supervisory systems should not try to restrict the freedom of activity more than underlying concerns warranted and should be implemented on a non-discriminatory basis. He said that the harmonization of regulatory systems should not be considered as a pre-requisite for liberalization. Nonetheless, a sufficient degree of compatibility would have to be achieved in order to ensure fair competitive opportunities. This compatibility should be pursued to the largest extent possible through efforts aiming at the mutual recognition of adequate national supervisory systems.

75. The representative of the United States recalled that supervision and regulation were and would continue to be necessarily extensive in the banking and securities sectors - in banking, both because of its monetary policy function and of concerns over the safety and soundness of the financial sector; in the securities field, because of fiscal policies and debt management considerations. He noted that the Montreal Declaration stressed that regulations and regulatory changes of any kind were acceptable provided they were consistent with the provisions of the
agreement. That being said, he noted that liberalization could occur within the context of prudential regulations and measures to protect the safety and soundness of the financial system. To be sure, prudential regulations should be distinguished from those designed simply to limit competition between foreign and domestic service providers. He noted that there might be cases where slightly different measures with equivalent effect might have to be imposed on foreign firms for prudential reasons. In general, however, prudential requirements could be satisfied without actual discrimination in the application of laws and regulations. He was doubtful of the validity of the proposition that liberalization might result in as much re-regulation as deregulation. Rather, he felt that it was as likely that deregulation and liberalization might need to go hand in hand. He also could not accept the view that safeguards and exceptions could pertain to situations involving the promotion and development of indigenous financial capabilities nor that foreign control might warrant the invoking of a national security exception. Finally, with regard to balance of payments considerations, he agreed that the liberalization of financial services would in many instances not necessarily result in significant payments problems. It was nonetheless important to bear in mind that invisibles payments could be very large for some countries. To the extent that a services agreement contained substantive obligations covering payments, it would have to be considered whether exceptions would be needed to permit temporary derogations from certain provisions of the agreement during periods of balance of payments difficulties. Such exceptions - if provided for - should not be used as loopholes to justify protection for domestic service providers, adding that restrictions imposed for balance-of-payments purposes should be permitted only during periods of acute payments’ difficulties. In addition, restrictions invoked under a balance of payments exception should be non-discriminatory and apply equally to all countries whether they were parties or not to the agreement. He said that time limits would need to be set for such exceptions insofar as permanent restrictions could not be justified on economic grounds, adding that restrictions imposed for extended periods of time would clearly impede the process of adjustment.

76. The representative of Brazil said that as his delegation analysed the increasing internationalization of financial and capital markets, it observed that such phenomena, together with others such as exchange rate instability, complicated the implementation of economic policies in a majority of countries, with the exception however of those countries which could export the cost of their external adjustment through their ability to control capital flows. He said that the possibility for a lasting and effective liberalization of trade in financial services depended to some degree on the success of parallel efforts to restore stability to the international financial and monetary order through recourse to sound disciplines. In this regard, he noted that some safeguards provisions would have to be established with a view, firstly, to avoiding that financial crisis could spread uncontrollably on a global basis. A second type of safeguard would address the need for countries to maintain an adequate degree of autonomy in formulating and implementing domestic economic policies. In addition, he said that safeguards were necessary for developing countries experiencing balance-of-payments problems, noting that
balance of payments safeguards were necessary for trade in services generally and especially for trade in financial services. He said that such safeguards would not only cover the possibility of avoiding crises in emergency situations but would also allow developing countries to establish priorities in implementing a services agreement. In the case of financial services, developing countries could first consider those services which facilitated and promoted foreign trade, thereby generating the necessary resources for a further expansion of their import capabilities in general and their services import capabilities in particular. He observed that the issue of safeguards and exceptions would have to be dealt with in the light of the final results of the negotiations. This prompted his delegation to reserve its right to comment further on this subject at a later stage.

Regarding the regulatory situation, he recalled that significant differences persisted among countries as concerned the degree of development of national regulatory regimes, these being most pronounced in respect of developing countries. He said that there appeared to be a consensus over the need for countries to maintain their autonomy in establishing domestic financial market regulations, adding that it made no sense to be talking of a regulatory freeze in the context of liberalization. He said that it would be necessary to provide adequate cooperation mechanisms in the regulatory area in favour of developing countries. He noted that in accordance with Article 190 of Brazil's new constitution, the establishment of provisions concerning the national financial system were subjected to national interest considerations. The Constitution did however mention the need to take into account international commitments in the financial sector. As well, it required the formulation of a new law aimed at reshaping the domestic financial system. In this regard, the Brazilian central bank had issued on 21 September 1988 Resolution 1,524 which created multiple service banks. This example highlighted the far-reaching changes currently taking place in the country's financial sector. He concluded by saying that regulations were changing in line with the country's adjustment needs. Such regulating powers should, however, be safeguarded under any framework the GNS might agree to.

77. The representative of Sweden, on behalf of the Nordic countries, said that the financial sector including insurance, because of its central importance to all sectors of the economy, might be an area where the safeguards and exceptions provisions of a services agreement could be particularly important, particularly in regard to national security considerations. As mentioned earlier, aspects of transparency for certain macro-economic decisions which impacted directly on the sector and its profitability might not be possible. For example, a change in the discount rate or some other government-controlled financial instrument could have far-reaching implications for the value of trade concessions. He said that prior consultation on such matters could wreak havoc in financial markets. Since such decisions were sovereignty issues which might impinge on trade concessions, national security was an exception which was highly relevant in the field of financial services. In respect of safeguards, i.e. temporary derogations, the liberalization of capital movements might put a heavy strain on countries' balance of payments and thus balance-of-payments safeguards were highly relevant.
78. The representative of Canada said that his delegation had yet to find anything under safeguards and exceptions which was unique to the financial services area. Attention should therefore be given to the general discussion of these concepts for answers that should cover the sector. His delegation assumed that governments would need to be able to assure solvency and other prudential purposes. Regarding the regulatory situation, he noted that again the issues were not conceptually unique to financial services despite the prevalence of regulation in this area. He said that the Montreal text correctly underlined that new regulations would need to be consistent with the agreement, adding that the thoughts contained in paragraphs 45 and 46 of MTN.GNS/W/68 were worth pursuing in this regard. He felt that an useful approach might be to promote international cooperation in the regulation of the financial sector through common standards and exchanges of information. For instance, participating countries could agree, as a general principle, to build on existing agreements to expand international rules dealing with prudential concerns and to promote the exchange of information between national securities commissions. He added that in considering the question of regulation, there would be a need to cover in an appropriate manner the activities of all those involved in regulation - at least the governmental and self-regulating levels. He felt that a realistic and pragmatic approach to both issues would be warranted.

79. The representative of Romania felt that it was necessary to provide infant industry derogations in a framework agreement, noting that the protection of infant industries would make the Montreal text concrete by highlighting areas where liberalization might not be possible. He recalled that such protection was a feature of the rules governing trade in goods most notably in the GATT's Article 18.

80. The representative of Australia agreed with the representative of the European Communities that no compelling argument had so far been made to exclude the financial sector form the operations of the framework agreement or to treat it in an exceptional manner. His delegation felt strongly about the need for a framework agreement to cover financial services, both because of their intrinsic importance but also in view of the likely snowball effect which the removal of such a vital sector might have for the overall negotiating process in the services area. He agreed that it was essential to maintain an adequate degree of prudential regulation in the financial sector as liberalization proceeded but wondered whether the application of framework principles and rules was as incompatible with the need to maintain adequate regulatory regimes as some delegations had suggested. He felt that nothing in the discussions so far was suggestive of this apparent inconsistency. He felt that regulatory concerns should not be used as a smoke screen to exclude the financial sector from the coverage of the framework agreement. He invited the delegation of Japan to spell out with greater clarity the concerns it had on this issue.

81. The representative of India called attention to the impact on the balance of payments which the liberalization of financial services could have on the economies of developing countries. He raised that point not to underscore the need for safeguard action, but to emphasize that such an
impact could destabilize the very foundation of these economies, especially given that the speed of adjustment in the financial markets was much greater than that in the goods markets. It was well recognized that governments had a sovereign right to regulate their financial markets with a view to attaining legitimate national objectives and priorities. It should also be clear that sufficient flexibility would need to be provided in an agreement to take account of the differences in the national regulatory frameworks. The respect of the sovereign right of governments to determine the manner in which their national financial sectors were regulated should not be construed to obstruct the fulfilment of the Group’s mandate. The discussion had shown that the financial services sector had specificities which required special consideration, possibly in the form of sectoral annotations with a view to avoiding an excessive recourse to safeguard actions once the framework agreement was in place. It had been pointed out in the body of literature on financial services that it might be desirable that a certain degree of efficiency be bypassed with the ultimate aim of ensuring an adequate level of security and stability in the financial and monetary system. He agreed with the emphasis placed in the note by the secretariat on the fact that liberalization might indeed involve as much re-regulation as deregulation.

82. The representative of Hungary said that even though there were no overriding considerations justifying the full exclusion of the financial services sector from the framework agreement, there were indeed some specificities which needed to be duly taken into account. He agreed with the representative of the Nordic countries that the sector played a crucial role in the economies of all countries and that the need to invoke safeguards or exceptions might be more pronounced in this sector than in others. However, he stressed that some important elements of safeguards and exceptions would automatically be built into a liberalization process which, as set out in the Montreal text, was supposed to be progressive in accordance with the level of economic development of the signatories. He agreed with others that this sector was a prime example of a sector where the need for adding to existing regulatory measures might often arise.

83. The representative of Egypt agreed that in this sector the need for safeguards and exceptions was especially felt, particularly with respect to balance of payments, macroeconomic policies and infant industry protection. On regulatory situation, he shared the view that the process of liberalization could involve both deregulation as well as re-regulation. In the case of developing countries, it could be envisaged that much re-regulation might need to take place to reflect the complexity which might be introduced as a result of an increased level of competition in the domestic market. The sophistication of financial systems often reflected the overall level of economic development of countries. Regulatory frameworks in turn tended to be more elaborate the more sophisticated was the financial system.

84. The representative of Pakistan put an additional emphasis on the point made previously by many participants that the regulatory situations of developing and developed countries in this sector varied greatly and due account should be taken of that fact in determining the scope of
application of the concepts underpinning the framework agreement. He stressed that in some cases, developing countries might put a new regulation in place whose resulting effect on trade might be relatively negative. As many developing countries did not host or have a great exposure to international financial institutions, they sometimes did not have regulations at all in place which restricted the transactions or operations of such institutions. He found that this consideration was also relevant in the context of exceptions and particularly in the case of countries whose financial regulatory frameworks were relatively weak regarding prudential concerns.

85. The representative of the European Communities shed some doubt as to whether there were indeed countries which did not have in place prudential regulations applying to the financial services sector. In response to a concern raised by the representative of Australia, the representative of Japan said that nothing in the statements made previously by his delegation was to be interpreted as prejudging the ultimate coverage of the agreement. He felt that his delegation had actively participated in the examination of the financial services sector and reminded participants that the sectoral testing exercise was intended to examine concepts and not to determine in any way the ultimate coverage of the agreement.

86. The representative of Hong Kong said that it was generally recognized that banking and securities-related services played a particularly crucial role in the economies of all countries, bearing a close relationship to various aspects of economic policy-making, including financial and monetary policies, debt-management, savings, investment and international payments. Even though this sector had some significant specificities which should be duly considered, there was no overriding reason for special treatment of this sector in comparison to other services sectors. Differences among sectors should be addressed through sectoral annotations. Regarding modes of delivery, it should be noted that establishment in foreign markets was a predominant mode of delivery preferred by banking and securities-related institutions. Leaving establishment outside the scope of the agreement would be as meaningless for this sector as ruling out the movement of labour in the case of construction services. His delegation was very much attached to the concept of national treatment which should be an obligation with a view towards ensuring effective market access. It was not identical, but equivalent treatment that should be implied by the concept. Effective market access should be approached in this context both in terms of access as well as operating conditions once access had been obtained. Hong Kong's approach to progressive liberalization had been to progressively grant licenses to specific "layers" of banking activity (e.g. wholesale banking). He supported whole-heartedly the view expressed by the representative of Canada that credit should be given for the liberalization already undertaken by participating countries. Regarding the proposal for a freeze on financial laws and regulations, he pleaded for some caution as the speed of adjustment in financial markets might at times warrant re-regulation or some re-structuring of the existing national regulatory frameworks.
87. The Chairman introduced the discussion on the insurance services sector starting with the examination of the concept of transparency.

88. The representative of Canada said that the views of his delegation regarding the concepts as applied to insurance services were the same as those regarding banking and securities-related services. In Canada, financial reform had been undertaken in the direction of eliminating the so-called "artificial" distinctions among the various financial services sectors. No longer could it be said that certain services were more pertinent to banking than to insurance or securities. All three types of institutions virtually competed for the same pool of funds and often engaged in similar activities. This had been reflected to some extent in legislation passed in 1987 and would be reflected in the new legislation to be introduced shortly. The GNS discussions should avoid excessive differentiation among the three financial industries. If the framework agreement were ultimately to provide for different treatment among the three industries, inequities could be introduced in the market as a result and the durability of the agreement itself could be called into question. He drew attention to chapters fourteen and seventeen of the Free Trade Agreement between Canada and the United States. Chapter fourteen dealt with services and covered financial services relating to the underwriting and distribution of insurance. By contrast, chapter seventeen covered financial institutions as institutions per se. This approach might provide a useful example of how an international agreement might cover financial services without limiting the ability of governments to implement macroeconomic policies through financial institutions established in their territory. By focusing on the services provided by financial institutions and not on the financial institutions themselves, a multilateral framework agreement might achieve the same result.

89. The representative of the United States stressed that his delegation attached great importance to the provision of insurance services through establishment, whether through branches or subsidiaries. As recognized in the note by the secretariat, some countries regulated insurance transactions at sub-national levels. In the United States, it was solely the states that regulated insurance. He said that his government was fully committed to complying with the provisions of a framework agreement applying to insurance and that both state authorities and the relevant private sector had already endorsed the principles of the Montreal text. Regarding transparency, he clarified that the notion of prior comment would clearly be circumscribed by the nature of laws and/or regulations which were issued by the competent authorities. It might not be feasible, for example, to provide for prior comment on judicial decisions or legislative actions due to the processes involved in the elaboration of such measures. It might be feasible, however, for the regulatory authorities to devise ways in which drafts or proposed measures might be made available for comment.

90. The representative of Switzerland said that transparency commitments applying to insurance services should cover not only laws and regulations, but also relevant administrative practices. It was the view of many Swiss insurers that a notification of the existing legal environment was not
something essential, but that publicly available compilations of relevant legal and administrative text such as the French Code des Assurances would be of a great practical use. In that context, the notion of a reference point could also be pertinent.

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

92. The representative of the United States said that the provision of national treatment might in some cases not suffice to ensure that a foreign insurance firm has the same degree of market opportunities as a domestic firm. The application of national treatment to the sector should provide for the following: equivalent treatment with respect to investment rules, including the right to invest in the same assets (e.g. real estate and securities) as domestic firms and equivalent rules regarding mandatory investments; equivalent reporting and operating requirements; the right to participate in and lead co-insurance pools; the right of foreign establishment to grow by increasing capital, premium volume, employees and offices; and the right to join local trade associations which have preferential access to regulators. An aspect of special relevance to the insurance services sector was the role of state-designated monopolies. It was the view of his delegation that such monopolies were very inefficient, often failing to pool sufficient funds with which to provide adequate insurance protection to persons or firms. Principles should be sought in the final text of the framework agreement that would encourage the elimination of existing monopolies and discourage the creation of new ones.

93. The representative of the European Communities said that most of the comments made for banking and securities-related services applied mutatis mutandis to the insurance services sector as well. He agreed that certain lines of insurance business did not lend themselves to cross-border trade. On national treatment, he supported the points made by the representative of the United States. Finally, he stressed that the requirement that different lines of insurance business be carried out by legally separate institutions often reflected legitimate prudential concerns which took priority over the avoidance of restrictive effects on market access for foreign insurance providers.

94. The representative of Switzerland stressed that his comments on the insurance services sector would be somewhat limited, due to the fact that the sector was in many ways very similar to the banking and securities-related services sectors. Progressivity in this sector, as in many others, should be directed towards improving market access. As a starting point to that process, existing market access should be secured. A factor limiting the scope of liberalization was the need to respect legitimate national policy objectives such as public order. Market access in this sector and others was determined by conditions of entry into a market and by operating conditions within such a market. Modes of delivery varied according to the type of insurance provided, cross-border provision being most common with re-insurance. Operating conditions should be stable and predictable and could include taxation issues, liberalization of
capital movements, prescriptions on local content, and others. Certain lines of business where the presence of public monopolies was very strong (such as social insurance) might be difficult to liberalize. National treatment should be applied gradually to an increasing number of insurance activities. The gradual elimination of barriers to market access might require the mutual recognition of licensing and of supervisory authorities. The individual regulatory situations of countries would dictate whether national treatment would suffice to provide for effective market access. It should be clear that a formulation of m.f.n./non-discrimination such as Article I of the GATT should not suffice to ensure effective market access in a multilateral framework agreement applying to insurance and other services sectors. In that context, the qualification of m.f.n. proposed by the Swiss delegation in its most recent submission (MTN.GNS/W/69) could provide an adequate solution for many problems encountered in the insurance sector.

95. The representative of Japan said that his previous comments regarding the banking and securities-related services sector also applied to the insurance services sector. The premiums collected by insurance companies were managed in the most safe and advantageous manner before returning to the policy-holders in the form of claims resulting from the event of death, injury or other loss. Insurance firms often played an important role in the social security system of countries, providing social insurance to wide segments of the population. Due to the fact that insurance products could be very technical and specialized, a wide range of regulations usually applied to the sector in order to protect policy-holders who might not understand those products. The regulatory frameworks applying to insurance transactions varied widely from country to country, reflecting different appreciations as to the need to protect consumers and/or to ensure sound business operations. Large-scale insurance operations could affect monetary policy through, for example, interventions on the part of insurance firms in the foreign exchange market. From the point of view of financial experts, it would be inappropriate to pursue liberalization in the insurance sector through a comprehensive multilateral framework agreement.

96. The representative of Romania could not share the point of view expressed by the representative of the United States as to the need to seek ways in the framework agreement could provide for the elimination of public monopolies in services sectors, and especially in the insurance services sector. Even though in Romania insurance services were provided through a public monopoly, insurance transactions obeyed traditional commercial principles and practices, including non-discrimination. Furthermore, the delivery of services through a public monopoly constituted a legitimate national policy objective, and as such should not be subject to the provisions of the future framework agreement on trade in services.

97. The representative of Israel said that different lines of insurance business might need to be treated differently in the framework agreement. Life insurance, for example, played a very important role in the capital formation of the economies of many countries and might warrant special treatment in some respects. Regarding national treatment, consideration
should be given to the issue of taxation. Taxation measures varied widely among countries and could, if applied differentially among suppliers, affect market access undertakings. With respect to the role of governments in the insurance services sectors, attention should be devoted to the activities undertaken by governments in the sector both as a consumer and a producer of services. The effort towards ensuring the support of sub-national authorities for the GNS negotiations and a future framework agreement on trade in services covering insurance services was very relevant and should be pursued. A type of regulation which was especially relevant in the context of market access was deposit requirements for insurers. These requirements could be very high, representing a considerable barrier to market access in some cases. A reasonable level of deposits would need to be found in the context of a multilateral framework agreement.

98. The representative of the European Communities agreed with the representative of Japan that both public interest and consumer protection were motivations which underlined much of the regulation applying to insurance activities in many countries. The different regulatory situations existing in different countries would not necessarily create any special difficulties with regard to insurance transactions undertaken through local establishment. Firms established in a foreign market would be subject to the same prudential measures as local firms. The concern expressed by the representative of Japan regarding large-scale insurance transactions and their impact on foreign exchange markets and the making of monetary policy was justified, but there was no reason to believe that the introduction of foreign competition in the market could necessarily exacerbate such a situation.

99. The representative of Sweden, on behalf of the Nordic countries, stressed that the process of examination of the implications and applicability of concepts to specific sectors which the GNS was undergoing was without prejudice to coverage. Also, the Montreal text clearly stated that there should no a priori exclusion of any sector during the process leading to the conclusion of a framework agreement on trade in services.

100. The representative of Japan said that the comments made previously by his delegation were not intended to prejudge in any way the final coverage of the framework agreement.

101. The representative of Hungary said that progressive liberalization of the insurance services sector could be envisaged to start with the lessening of restrictions in the domestic market itself, to be followed at a later stage by the progressive granting of greater market access to foreign providers. This had been the process adopted by Hungary where domestic liberalization was started three years before the national public monopoly for insurance services was dismantled. Today there were four major firms competing in the Hungarian market, some of them with foreign participation. He stressed that the extent of liberalization of insurance markets should not be gauged according to the type of ownership of insurance firms but rather according to the rules and/or conditions regarding competition existing in those markets.
102. The representative of the United States said that his concern regarding public monopolies related more closely to situations where governments designated a state-owned firm as an exclusive service provider. He agreed that ultimately the consideration of greatest importance in the context of liberalization was whether a competitive environment existed or could be secured in a particular market. He was interested in knowing more specifically from the representative of Japan to what extent prudential regulations applying to financial services were necessarily inconsistent or incompatible with the principles being considered in the sectoral testing exercise.

103. The representative of Australia said there were no overriding reason why the principles under discussion should not apply to insurance services. In Australia there were no restrictions on foreign participation in the insurance market, around 50 per cent of general insurance being already written by foreign-owned companies.

104. The Chairman opened the discussion on the concept of increasing participation of developing countries as applied to insurance services.

105. The representative of Mexico said that the points made by his delegation in its communication to the GNS on financial services (MTN.GNS/W/71) were widely applicable to insurance services, particularly with respect to the increasing participation of developing countries.

106. The representative of Brazil said that most of his previous comments on banking and securities-related services were applicable to insurance services as well. He emphasized, however, that insurance constituted the least developed of all the sub-sectors of the financial services sector in Brazil and that for his delegation a greater degree of flexibility might be required in the consideration of insurance services than with other services sectors.

107. The Chairman opened the discussion on the concepts of safeguards, exceptions and regulatory situation as applied to insurance services.

108. The representative of the United States stressed that even though the regulatory frameworks applying to financial services were very different among countries, provisions in the framework agreement regarding the regulatory situation of this sector, and many others, should be consistent with other commitments included in the agreement. In the case of insurance services, domestic regulations frequently eliminated the most dynamic elements of competition such as price and product differentiation. Discriminatory licensing could exclude competitive firms from certain lines of insurance business, thus limiting the scope of product differentiation in a particular market. Competitive firms might also be prevented from offering various types of services and greater protection to persons and/or other firms at a lower cost to the consumer than that prescribed through price controls.

109. The representative of India said that nothing he had heard on the discussion led his delegation to change its view that the insurance
services sector was indeed quite different from the banking and securities-related services sector and should therefore be treated as a separate sector on its own. The nature of international transactions in the sector continued to be unsettled. The inability of insurance firms to provide their services within the market of a country other than their own should not be viewed as a barrier to trade in insurance services, since the provision of services in the domestic market was guided by legitimate national policy objectives which were not to be subject to negotiation. Also, the provision of a competitive environment in a particular market was not as such recognized in either the Punta del Este Declaration or the Montreal text. India had a public monopoly as the exclusive provider of insurance services and its choice to exclude competition in the sector was based on legitimate concerns relating to social and economic factors.

110. The Chairman closed the discussion on financial services and suggested that the Group commence the discussion on professional services.

111. After the note by the secretariat on the subject entitled "Trade in Professional Services" - MTN.GNS/W/67 was introduced, the representative of Sweden, on behalf of the Nordic countries, said that the professional services sector encompassed a wide range of different professions, most of them being highly specialized and knowledge-intensive. Many professions require certification or registration procedures for professionals to gain access to a market, and in some cases these requirements are applied through professional associations in a manner resembling old European guilds. It was imperative that a multilateral liberalization process did not reinforce the restrictive effects of such associations. Ultimately, market access for professional services implied the possibility for foreign highly-qualified or specialized foreign personnel to practice their profession, independently or through an enterprise, within the market of a country other than their own. It should be very difficult, however, to extend market access to those professions which did not require local certification without implying the total freedom of movement and establishment for all professionals who claimed to be "independent operators".

112. The representative of the United States said that the ability to provide services in a foreign market according to the preferred mode of delivery constituted the key notion underlying market access in the professional services sector. Mode of delivery in this sector could imply local establishment of firms providing professional services in some cases and/or movement of persons in others. The effect of the application of immigration regulations on the movement of professionals was clearly a relevant aspect which deserved consideration alongside differences among countries regarding qualification standards. The framework agreement should aim at establishing a common denominator for standards which could vary widely giving rise to different levels of discrimination being applied to foreign providers.

113. The representative of Switzerland said that the professional services sector was extremely heterogeneous in nature while related regulatory systems varied widely among professions and countries. In some
professions, such as consultancy, markets were frequently open to foreign competition. In others, overriding national policy objectives dictated the need for regulatory control as in the case of health services, where consumer protection was indispensable to ensure a certain level of quality in the provision of services. Between these two extreme situations of complete market openness or control, there was a vast range of professional activities whose regulatory context could lack precise definition. It should be the aim of the GNS negotiations to effectively deal with such activities.

114. The representative of Hungary remarked that the sub-sectors covered in the note by the secretariat were of special interest to OECD countries, but the discussions on the sector should attempt to cover a wider range of activities than those implied in the note. Regarding transparency, special attention should be devoted to those regulations relating to the movement of professionals across borders. In many cases, entry into a foreign market was made difficult through immigration regulations, while the granting of work permits could at times be the complicating factor. Conditions for obtaining work permits could be especially unclear, discretionary and discriminatory, and should be given due consideration by the Group.

115. The representative of the European Communities said that there were two broad categories applying to the sector: regulated and non-regulated professions. In the former case, the access to a market was frequently regulated, in many cases by professional associations which set qualification standards and ensured they were met through certification and registration requirements. In the latter case, the access to a market virtually escaped any regulatory limitations even though the actual exercise of the profession was often subject to laws and/or regulations of both a general or specific nature. In both cases, the intellectual content of professional activities might vary widely among professions. Quality was a key element in the provision of professional services and in some cases could only be ensured through the proximity of supplier and consumer. Even though independent practitioners were becoming increasingly common, international trade in the sector involved primarily services provided by firms enjoying some form of commercial presence in the importing/hosting markets. Differences among professions were gradually disappearing as the professions were performing overlapping activities. Regarding transparency, he noted that in many cases there was a delegation of public regulatory powers to professional associations, but the degree to which these powers were delegated varied widely across professions and countries. Due attention should be given as to how to provide for transparency without creating unnecessarily burdensome situations. Frequently, transparency in the professions was not provided for through official journals, but the notion of national enquiry points might prove applicable to this sector as to many others.

116. The representative of Australia said that the professional services sector was very heavily regulated in some cases so that the number of potential barriers to trade in the sector was very high. In addition to those measures mentioned in the note by the secretariat, he added the
following measures which were commonly encountered in developing countries:
mandatory use of local consultants, discriminatory regulation of fees and
expenses, discriminatory purchasing arrangements, entry restrictions such
as visa restrictions, restrictions on the use of names of firms, licensing
and registration requirements going beyond prudential concerns,
unreasonable qualification and experience requirements, local establishment
requirements, foreign exchange controls affecting the repatriation of
earnings by firms, and counter-trade payment. In the case of developed
countries, Australian professional services providers often perceived the
use of subsidies or other forms of official support being granted to
domestic suppliers as barriers to trade in the sector, especially with
respect to consultancy and construction engineering. Forms of support
included mixed credits, general financial assistance, direct export or
operating subsidies, and taxation for other support facilities.

Straight-forward prohibition of the use of distorting subsidies could be
especially useful as a broadly applicable rule of a framework agreement.
The definition of the professions varied widely in the regulatory systems
of different countries. The legal profession exemplified that point as
some countries regulated only the jurisdictional aspects of legal work
whereas others regulated aspects such as negotiation, creation of documents
and various other activities performed by lawyers. Certain activities in
physiotherapy which escaped specific regulations in one country were often
covered by regulations governing quasi-medical activities in another
country. This definitional consideration could make the approach of having
positive lists of transactions rather difficult to execute as the scope of
professional requirements applying to each professional activity might be
very extensive. As a means to reduce the protective effects of
qualification requirements, exchanges of mutual recognition might be
envisioned between any two countries and extended plurilaterally
to third countries.

117. The representative of Korea said that the liberalization process could
be undertaken in several phases, including the following: the accordance
of professional qualifications to foreign nationals under national
treatment, the recognition of professional qualifications obtained abroad,
the right of establishment or temporary presence for foreign firms, advice
on the laws and practices of the lawyer's home country, and opening of
professional services usually reserved exclusively for local professionals.
There were a number of reasons why professional services were regulated in
developed and developing countries alike, including: consumer protection,
protection of domestic business, local employment, the need to manage
foreign exchange and the preservation of cultural values and tradition. A
host of restrictions on the scope and type of activities were often imposed
by importing/host countries at the point of market entry. The following
factors should be taken into account in the pursuit of liberalization of
professional services: firstly, national policy objectives such as
consumer protection, ethics, and the preservation of cultural traditions
should be respected; secondly, the regulations enforced by both
governments and professional associations should be subject to the
obligations of the multilateral framework; thirdly, since international
trade in professional services was dominated by a small number of large
multinational firms of developed countries, special attention should be
devoted as to how to ensure that certain professional activities of potential export interest to developing countries be covered by the multilateral framework agreement.

118. The representative of Canada said that liberalization in professional services could bring benefits to his country and others. He stressed that the sector was indeed heavily regulated, including residency and citizenship questions. In examining the sector, his delegation had found nothing precluding the application of the principles agreed upon in Montreal across the various professional services sub-sectors.

119. The representative of Mexico said that for the purposes of the sectoral testing exercise, professional services should be considered as the application of technology and know-how, experience and/or ability by an expert in a certain service activity, with a view towards the satisfaction of clients' demands. As such, professional services could be interpreted as a host of activities and trades including: the liberal professions (architects, accountants, doctors, dentists, lawyers, etc.); the services linked to fields such as auditing, engineering, advertising, software development and general consultancy; other activities involving a certain degree of specialization such as automobile maintenance and repair, photographic services, laundry services, travel services, plumbing services, cooking services, shoe repair, carpentry, driving services, industrial cleaning, building maintenance, etc. Given the high degree of diversity of such services, a precise classification was difficult to obtain. However, one common characteristic among all the different sub-sectors was that the provision of professional services relied primarily on human capital. Such services could also be provided by firms but that should not be the focus of the GNS discussions.

120. It had been pointed out in the body of literature pertaining to the subject that the level of competitiveness of developed countries in the sector was much higher than that of developing countries, as reflected in their dominant position in the international market. These were some of the factors contributing to that situation: many professional services were becoming increasingly intensive in information, know-how and organization; some professional services could be sold through telecommunication channels and information networks, both of which were controlled by developed country providers and the access to which could be restricted to developing countries; many professional services were sold in packages by large transnational companies from developed countries; the provision of such services required extensive financial inputs in some cases, thus preventing the participation of developing countries in many international projects. Under such conditions, it was primarily the developed countries which benefited from international trade in the sector, their exports having reached over 85 per cent of the world's total in 1987. Also, between 1961 and 1984, firms from developed countries obtained 92 per cent of the value of contracts granted by the Inter-American Development Bank for the acquisition of goods and services in Latin America.

121. In accordance with the Montreal text, market access could be conceived to involve foreign services being supplied according to the preferred mode
of delivery but should be in conformity with other provisions of the multilateral framework and with the definition of trade in services to be adopted. As such, different basic possibilities could be established with respect to the applicability of concepts, principles and rules to the sector, deriving from the assumption that such trade could involve the following cross-border movements: the cross-border movement of services, the cross-border movement of consumers, the temporary cross-border movement of factors of production, the indefinite cross-border movement of factors of production.

122. Regarding transparency in the sector, the first possibility could involve the publication of all laws, regulations and administrative practices of a national, federal, state or provincial, local or cantonal nature, related to the provision of professional services. The second possibility could involve the notification of regulations relating to cross-border movements (temporary or indefinite) of labour (skilled or semi-skilled) and/or capital in the form of foreign investment. Also relevant here could be regulations relating to buy-national schemes. The third possibility could involve the notification and publication of international biddings for specific projects to be undertaken in one's territory or in the territory of a third party. The fourth possibility could involve the notification by foreign firms established in the importing country to the local competent authorities of their practices and operations in that country. To avoid excessive administrative burdens, contact points could be established where interested parties could find out where to go to obtain the necessary information. This was different from national enquiry points, the establishment of which might incur very high costs.

123. The representative of Canada said that transparency should cover laws, regulations and administrative guidelines, including those pertaining to foreign exchange, temporary international mobility, taxation of foreign individuals and corporations, technology and data flows, and accreditation. This last aspect should be covered both in terms of government regulations as well as guidelines of professional associations. In that context, he agreed with others that the definition of scope of activities covered by specific accreditations was also important.

124. The representative of Switzerland said that transparency commitments should extend to all laws which related to the provision of professional services. Due attention should be given as to how to deal with those norms imposed by private professional associations.

125. The representative of Sweden, on behalf of the Nordic countries, agreed with others that the norms set out by private professional associations should also be covered by transparency commitments.

126. The representative of India said that both accredited and non-accredited professional services should be included in the examination by the Group, including such services as accountancy, business management and business administration, architectural services, audio-visual services, computer-related services (consultancy, software and training), engineering
and consultancy services, engineering design services, industrial engineering services, project management services, maintenance and repair services, medical and para-medical services including hospital management, and others. Transparency commitments should apply to such aspects as qualifications and educational requirements, licensing and accreditation requirements, cross-border movements of professionals (e.g. visa requirements) and business opportunities for foreign professionals.

127. The representative of Brazil said that even though the sector was very heterogeneous in nature, most of the concepts examined by the Group would indeed apply to the sector. Regarding transparency, his delegation favoured a more general approach involving the publication of norms and regulations, but not their notification and/or compilation in a single national enquiry point.

128. The representative of Egypt agreed with others that the sector was very heterogeneous but cautioned against an over-emphasis of the differences of intellectual content among professional services or of the need to differentiate between services provided by individuals and those provided by firms. Regarding transparency, commitments should cover laws, regulations and administrative guidelines as well as norms and measures imposed by private professional associations. He agreed with the representative of India that transparency should also cover a listing of business opportunities for foreign providers. The notion of contact points put forth by the representative of Mexico might be more functional than the notion of enquiry points but further consideration was necessary on that point.

129. The representative of the United States endorsed the suggestion made by the representative of Mexico regarding contact points. He would also be interested in knowing more specifically whether the notion of providing for a listing of business opportunities was basically intended to cover government procurement situations.

130. The representative of India took up the issue of transparency as it applied to business opportunities in the professional services sector. At present, because of the closed circuit character of most of these services, the business opportunities that might accrue did not get broadcast across borders and hence the lack of transparency in this regard was an obstacle to the promotion of international trade. Professional services were regulated either through self-regulation or government regulation and information about opportunities was not available through publication. How would the concept of national enquiry points apply to this sector which covered a variety of activities? Would there be one such point for each sector?

131. The representative of Egypt referred to the example of engineering design services and the existence of government procurement policies which affected transparency of business opportunities. These policies also affected opportunities in the physical construction segment of that sector.
132. After the Chairman turned to the discussion of the concepts of progressive liberalization, national treatment, market access and m.f.n/non-discrimination.

133. The representative of Romania noted that the rules and principles under discussion were applicable to professional services with the adaptations imposed by the specificity of the sector and with certain reservations. Progressive liberalization in this area could be carried out by respecting national policies and duly taking into account the development level of the various participating countries. The application of national treatment raised difficulties for developing countries since they had a very small capacity to compete as compared to developed countries. He favoured the unconditional application of the m.f.n. clause which meant access to markets or other commitments subscribed vis-a-vis a signatory to the agreement would automatically and unconditionally be extended to all the other signatories. On market access, he pointed out that professional service suppliers had to comply with the legal framework of the country buying the service.

134. The representative of Switzerland said that progressivity should be directed towards improving market access. The starting point was existing market access which also in the field of professional services should be secured. National treatment in the sense of equal competitive opportunities could progressively be introduced starting with activities on the market and gradually approaching national treatment in the sense of equivalent treatment for the conditions of accession. As already stated, he believed that the gradual reduction of barriers in connection with conditions of accession might require at a certain stage mutual recognition of professional and educational standards which was an extremely complex task. He observed that in some professional fields not only states regulated but also professional associations. This point should be considered carefully in the future agreement, especially in those cases where one sought a mutual recognition of certain professional standards. There were also limitations to liberalization and one of the limiting factors was the issue of legitimate national policy objectives, e.g. immigration requirements or the ordre publique. Such criteria would have to be defined carefully in the agreement.

135. The representative of Canada said that impediments to trade in professional services could occur both at the level of the firm as well as the individual practitioner. The Australian list of impediments was very helpful and he trusted it would appear in full in the records. At firm level, progressive liberalization implied a growing access to the market including choice of mode of delivery that was essential as well as national treatment. As with other traded services a number of related matters needed to be addressed such as the right to commercial linkages, transborder data flows and computer facilities, joint ventures, commercial presence and relevant parts of taxation issues. The nature of professional services was such that personal contact to provide customised services was often essential thus requiring both temporary international mobility and cross border professional recognition to permit effective entry and practice by individuals. Thus the applications of these concepts might be
most difficult in areas of professional licensing and accreditation particularly where they included citizenship and residency requirements. The m.f.n/non-discrimination concept would require that a service provider from any party to the agreement who could meet the professional licensing and accreditation standards would be able to obtain recognition and entry into the market. The problem lay in meeting these standards.

136. The representative of Mexico pointed out that developing countries should be given appropriate flexibility to open fewer sectors or liberalize fewer types of activities, and should be given longer periods of time to open their markets. The concept of progressive liberalization under discussion could be viewed from four possible angles: (a) in the hypothesis of the transborder movement of services, liberalization would mean the progressive elimination of restrictions against access to data bases and the use of telecommunications networks required for the transmission of services; in particular, the developed countries should be more flexible as regards conditions and costs for the use of telecommunications installations; (b) concerning the transborder movement of consumers, progressive liberalization depended on the progressive elimination of barriers to the circulation of goods carried by consumers and which were the object of such services, e.g. taxes and duties affecting motor cars which could be repaired in another country and where value added was given; (c) under the hypothesis of temporary movement of production factors, progressive liberalization might entail liberalization of the granting of temporary work permits, visas, or licenses and the recognition at national and sub-national level of qualifications of foreign personnel; (d) under the hypothesis of mobility for an indefinite period of time of the production factors, liberalization would require the progressive elimination of measures contained in laws or regulations which limited or prohibited the establishment of foreign firms or of individual practitioners for the rendering of services. Finally, liberalization could mean the progressive elimination of other obstacles relating to the recognition of qualifications, standards and the granting of licences.

137. The same delegate said that national treatment was a long term objective. The modalities and effects of the granting of this treatment in trade in professional services varied depending on the activity and the hypothesis under which the trade was carried out. First, foreign practitioners living temporarily or for an indefinite period of time in the importing country would be given the same treatment as national practitioners as regards possibilities and facilities to freely exercise their profession in that country. This included the possibility of obtaining permits and licenses, and registration in the corresponding association wherever necessary. Secondly, foreign professionals and practitioners should receive the same benefits as nationals as regards social security, unemployment, education, etc; national treatment would differ in the case of temporary or indefinite residence. Third, national treatment could also imply equality of treatment between foreign and national suppliers as regards access to data banks and information networks. Developing countries could apply less rapidly national treatment and could reserve their position regarding certain elements of that treatment. Turning to market access, he said that this could be viewed on
the basis of the four hypotheses mentioned. Regarding transborder movements, market access related to those which could be used based on the flow of information transmitted through telecommunications channels. Concerning the international movement of consumers, this was practised in medical services and technical repair and cleaning services, etc; access to markets would be determined by the elimination of restrictions to access to the country of origin of the consumer or destination of the service. Regarding temporary movement of production factors, market access could apply to all professional services where trade implied such temporary movement of practitioners travelling individually or as a group to meet a client to comply with the terms of a contract; here there were a series of obstacles which had been referred to. Market access meant the possibility for foreign practitioners to obtain a temporary entry permit (both work and residence) into the importing country and to obtain recognition of certificates and degrees for the liberal professions as well as skills and experience related say to maintenance services, tourist guides etc. It also implied the elimination of restrictions preventing foreign practitioners from obtaining affiliation in the corresponding association. In some cases, the exercise of a profession required material and equipment for the transborder movement which was dealt with under other headings in the GATT. Regarding the indefinite mobility of production factors, the concept applied to the provider who rendered the service individually or as a group. Many countries had restrictions concerning nationality to prevent foreign professionals and practitioners to associate themselves with national firms. There were also restrictions to deny the granting of licenses to foreigners while subjecting them to strict and discriminatory processes of professional certification. Another restriction related to the prohibition of work or residence permits to foreigners. Regarding the movement of investment and enterprises, the delegations of the developed countries considered that in the framework the movement of foreign investment should be included. This would automatically permit the indefinite movement of one of the production factors and therefore his delegation considered that personnel and labour movement should also be included. One possibility would be for a foreign firm to associate itself in a joint venture with a company in the host country. In this connection, restrictions would have to be reduced in respect of the granting of licenses or the right to practice the service in question whenever necessary, the use of the international name of the foreign company, and the recognition of standards and norms for those services.

138. Turning to non-discrimination, the Mexican delegate noted that its application depended on the definition adopted in the agreement of the m.f.n. clause and the sectoral annotations thereto. In any event, m.f.n should be granted unconditionally to developing countries in order to increase their limited participation in world trade. Non-discrimination would be applied to elements such as: nationality of professionals and practitioners, granting of licenses, work permits, entry visas, residence permits, granting of national treatment, origin of foreign supplier regarding access to data banks and information networks, and transfer of technology and know-how.
139. The representative of the European Communities said that there were two aspects in providing professional services, the one being access to the profession and the other being the actual exercise of the profession. Access to the non-accredited professions was generally liberal at the moment and there was interest in preserving the status quo in that respect. Regarding the accredited or regulated professions, the national treatment of foreigners in exactly the same way regards access to the profession would not necessarily achieve any liberalization depending upon the particular regulations which applied to access. As far as access was concerned, the two broad types of restriction related to nationality and qualifications. Nationality restrictions could not necessarily be eliminated in all cases where certain professions had certain statutory functions. Regarding professional qualifications, there had to be some means of ensuring that such qualifications would be abided by. The Mexican delegate had suggested that foreign practitioners should be allowed to be registered based on compliance with national standards. But how could this be determined? National standards were often determined in terms of educational requirements, followed by additional professional requirements including both examinations and certain practical experience. The issue had to be approached carefully and in the past had been approached on a case by case basis, by looking at the specific professional qualifications in different countries of practitioners. There was already a network in different professions of mutual recognition agreements regarding training and other relevant aspects. In the Communities' own experience, even if the training and general qualification was recognised to be adequate, in a number of fields supplementary examination might still be necessary. This was not because a lawyer from another country was not perceived to be a good lawyer but because one had to be satisfied that his knowledge of, say, local law was adequate. The conclusion to be drawn was that in accredited professions liberalization would have to proceed on a case by case basis and using the basis of mutual recognition which was difficult to pursue on a multilateral basis. He added that in the accountancy profession, which was very international, there existed international training and ethical standards. The freedom to provide services internationally would be greatly advanced by the development of internationally accepted standards just as in the field of goods in the standards agreement there was recognition of the work done by the ISO. It was necessary to reflect on how best to promote the development of international services quality standards. Second, the operational obstacles were easier to deal with but there was some work to do in this regard concerning obstacles such as the inability to use a foreign company name, excessive restrictions on the possibility of advertising, restrictions on linkage with other professional services, and unnecessary restrictions on the type of activities which could be engaged in. The implications of the standards issue meant that one could not be obliged to accept automatically standards from other signatories without being satisfied that the standards were genuinely acceptable. Finally, the issue of movement of consumers to obtain professional services in exporting countries was an important factor in current international transactions in services and was one which could grow.
140. The representative of Poland said that there existed different standards and agreements across professional services. It was indispensable to decide on the coverage of professional services in order to proceed with meaningful negotiations. Another issue concerned the two-tier regulation of all professional services, both government and private or association-type regulation. Key obstacles to liberalization were nationality requirements or restrictions, visa and work permits, access to information including networks and data bases, local staff requirements, and establishment of a commercial presence. Regarding establishment, it was sometimes impossible to establish commercial presence because of excessive regulation not only pertaining to the quality of the services rendered but sometimes only artificially blocking the market. This should be addressed in the GNS negotiations. Progressive liberalization was simply to decide in which manner the GNS should proceed to remove those barriers. As far as national treatment was concerned, he considered that problem not only related to setting standards but also citizenship, nationality, and sometimes excessively complicated procedures for admission to a profession. National treatment was an indispensable factor for effective market access and varied depending on the professional activity under discussion. In m.f.n/non-discrimination the main problem was the existing bilateralization of contacts between nations. Any multilateral framework would require a procedure which included certain standards of qualifications to proceed from the bilateral framework into a multilateral one.

141. The representative of India noted that a number of specific characteristics emerged in the professional services sector. Professional services were highly amenable to international trade although regulatory frameworks that were currently in place did not permit many of these services to be provided across borders. Professional services involved a high degree of manpower content and trade involved mobility of labour across borders. He distinguished trade in services from other forms of transactions often on the basis of the distinction as to whether the establishment or investment was a sine qua non for the provision of the service. The right of establishment in this sector implied permanent residence and immigration which brought with it a catalogue of concomitant issues which fell within the realm of sensitive national prerogatives which would impinge upon the proposed framework. Another important characteristic was that of discrimination as documented in the secretariat paper. Regarding several professional services, de facto or de jure all countries limited considerably if they did not actually prohibit access by foreigners to the local market sometimes for clearly protectionist purposes, regarding, say, visa requirements, work permits, or qualifications and standards. The mutual recognition of standards was a vital aspect of the Group's work which should be based on objective criteria and ideally dealt with by a neutral body. He felt that it was necessary to move towards non-discrimination. Progressive liberalization did not mean a complete dismantlement of national regulations but a move should be made in that direction. On national treatment, he asked whether any participants could assure that at any foreseeable point they could make a commitment to accord perfect equality of opportunity to all foreign nationals. He welcomed the provision of national treatment in this sector
whether it implied recognition of professional qualifications or perfect equality in terms of regulations and administrative practices which discriminated against foreign service providers. But this was an elusive concept and the GNS should not pretend that it represented a level that they could hope to achieve. A multilateral framework on services trade would not necessarily be enhanced by trying to apply the theoretical concept of national treatment in terms of perfect equality for foreign providers. A better yardstick was effective market access which was recognised in the Montreal text and which meant the progressive dismantlement of the factors which adversely affected market access. These included non-transparency in procedures, regulations, and business opportunities, discriminatory regulations, visa regulations, the non-issue and delays in the granting of work permits, the non-recognition of foreign qualifications, and the non-accreditation of suppliers of professional services.

142. The representative of New Zealand noted that barriers to trade in professional services were often connected with the ability of providers to actually offer their services. This was affected by controls both on the individual and on the company. Often the number of potential providers of a service was restricted or the quality of the providers was controlled in some way. Controls on companies frequently dealt with the scope of their activities, the mix of services they could provide, or the mode of delivery of those services, and a company might face restrictions on the staff it could employ, e.g. restrictions on the employment of foreigners or requirements to obtain or renew work permits. His country fully accepted the right of countries to take decisions about the permanent or temporary migration of persons but wanted to see any such legislation administered in the least trade restrictive way. Of importance was the question of whether foreigners were able to practice their profession in another country. For most professions in his country there were no restrictions on the employment of foreigners per se. Any person who could meet the requirements relating to qualifications, experience, and character could be employed. Since most professions had requirements relating to a certain qualification or level of experience, international trade could be facilitated by wider recognition of professional qualifications or experience gained in other countries. These were often recognised on a reciprocal basis which had implications for national treatment and m.f.n. principles in a future services agreement. Restrictions on the ability of the holders of foreign qualifications to practice in another country, which might be necessary to ensure that adequate information was available to the consumer about the standard of the service provided, should be administered in a way that was least damaging to trade. With the level of market access being related to the ability of individuals or companies to offer their services, he considered that progressive liberalization could be achieved through reducing or removing controls which limited the number of providers of the service. In this context he noted that the reform of occupational regulation currently underway in New Zealand had begun to reduce the extent of quantitative licensing. Restrictions on the scope of activity of companies whether foreign or domestic could also be reduced or removed as could regulations influencing the mode of delivery which had to be used by foreign suppliers.
143. The representative of Hungary said that the cross-border provision of services through the temporary movement of experts was important. Commercial presence could be allowed for the efficient delivery of the service but he did not want to see it as a requirement which, in itself, could be an important obstacle to trade. In many professional service sectors the major issue was the possibility of direct cooperation between the expert and the customer. It was secondary whether the expert arrived in the country on his own initiative or under some kind of commercial contract. Consultants, for example, were often self-employed persons and it was not easy to make a distinction where the individual ended and the company started in one- or two-person companies. It was important to see that the regulation of trade in professional services was motivated by a number of factors including quality concerns, promotion of indigenous service industries and the protection of local employment. Regarding qualification requirements, he suggested that the elaboration of international standards for, as well as the mutual recognition of, qualifications might be useful. Informal requirements could also have substantial effects on trade and were therefore relevant. For example, entry to professional bodies and the conditions for practical operation could be restrictive in some countries. Protection of local employment through entry restrictions related to practices prevalent in a large number of developed countries. He did not think that liberalization in this field could be any faster than in other fields. There were minimum immediate requirements regarding the issuance of visas and work permits, one being transparency. The potential service provider should be able to know the conditions and criteria for entry of foreign professionals. Progressive liberalization might follow that although there was a long way to go; in some countries there was a total ban on trade as there was no possibility of entry for foreign professionals. There were also cases of selective restrictions on entry, of discretionary licensing systems which meant that work permits were issued under non-transparent conditions. He could not agree with European Communities view of non-accredited services. His experience showed that there were very widespread entry restrictions which were not related to qualifications but were simply protectionist in character. Finally, he noted that government-mandated restrictions on the flow of high technology products were directly relevant: the provision and quality of software services through software experts were determined by whether the experts had the possibility of access to higher technology products.

144. The representative of Korea considered that progressive liberalization could be achieved in legal services through the removal of various barriers. The most common type was that a foreign lawyer was not allowed to provide legal services without first obtaining host country qualifications. In view of the specificity of this service sector, the concept of national treatment should be interpreted appropriately, i.e. in the limited sense that only those foreign nationals who had obtained local qualifications should receive non-discriminatory treatment vis-à-vis domestic nationals with the same qualifications, in areas such as opening an office, obtaining clients, and the method of legal service supply. The recognition of foreign qualifications without any restrictions or conditions was therefore beyond the concept of national treatment. The
liberalization of legal services to be obtained in the multilateral framework might be possible to the extent that the foreign service providers supply advisory services on the laws of a foreign lawyer's home country. Even if a foreign lawyer was allowed temporary presence or establishment of a branch office, the scope of his activities would be inevitably confined to advice on his home country's laws and regulations. Concerning accounting and tax services, progressive liberalization might be attained by the progressive expansion of business to foreign nationals. National treatment might mean that foreign nationals qualified for local accounting and tax services would be treated in the same way as domestic nationals. However, the automatic recognition of foreign qualifications in host countries was beyond the concept of national treatment. Difficulties in this regard related, inter alia, to the need to have special knowledge of tax laws and accounting standards of a country which foreigners did not have. Permission to practice for foreigners would be subject to the same conditions outlined for lawyers above.

145. The representative of Japan considered that national treatment meant that foreigners were not to be discriminated against vis-à-vis domestic nationals in the accreditation process, and obviously on grounds of nationality. Turning to the Japanese situation, he noted that concerning the accredited professions of legal services and accountancy, Japan rendered national treatment. There was a system of accredited foreign lawyers which, if certain conditions were met, the Minister of Justice would permit them to offer legal services within the realm of their countries' legislations or on other specific designated legislations. According to 1988 statistics, about forty-two such accredited foreign lawyers from both North America and Europe were actually operating in Japan. Regarding advertising and consulting, Japan adhered to the market mechanism in the sense that there was no system of approval or notification or regulations. It was quite a free market and in that sense he considered it a problem when in the advertising sector there was a local content requirement where national treatment should be observed. Concerning accountancy, he said that in Japan financial statements were required to be audited and certified by a chartered public accountant in terms of protecting general investors, shareholders, and corporate creditors. The public accountant sector had high public interest. In order to perform their activities properly, chartered public accountants were required to have professional expertise concerning the principles of financial accounting standards, auditing standards, as well as to be independent and fair third persons. To this end, the authorities concerned legally prohibited non-qualified persons from performing such activities, and imposed restrictions to enable accounting activities to be carried out strictly and properly. Under these regulations Japanese and non-Japanese were equally treated, e.g. nationality requirements were not imposed as regards the obtaining of qualifications. In fact there were a number of non-Japanese public accountants operating currently. In addition, there was close collaboration which existed between domestic audit corporations and international accounting offices with global networks. It was desirable that the accounting and auditing system should be internationally harmonised and eventually unified but reality did not permit any mutual recognition of the requirements of public accountants. In Japan,
foreigners were able to take a qualification examination and, if successful, could then register audit corporations. Regarding financial statements submitted by foreign corporations, national standards were allowed if the Finance Minister acknowledged that the statements submitted were satisfactory in terms of public interest and protection of investors. Financial statements submitted by foreign corporations were not required to be audited and certified by domestic Japanese public accountants in accordance with the provisions of Cabinet and Ministerial orders of the security and exchange law, if a certificate corresponding to domestic standards was attached. Foreign public accountants who were not qualified in Japan were able to audit the financial statements of corporations of their own country and report them in Japan according to bilateral treaties. He concluded that in this sector in Japan national treatment and m.f.n. were secured and that the Ministry of Finance was confident that there remained no room for further liberalization.

146. The representative of the United States said that many entrants to a market were unable to become accountants, architects or lawyers because their own background did not meet the particular professional certification requirements that were imposed. Certification should generally be judged by competence. If a certifying body decided that a national was deficient in his or her particular education in architecture, he or she could supplement that education by taking whatever tests or processes that would be available to domestic individuals who wished to become certified. The regulators had to ensure a process where that individual had been informed precisely why he or she could not become a member of the profession, and was capable of supplementing it. This was a realistic proposal that should be given some consideration. His delegation proposed the idea of a protocol which was an arrangement among a smaller number of countries than those who were part of the overall framework. The smaller group could enter into harmonisation or mutual recognition understandings of certification. Such a protocol would be open to any signatory of the framework agreement that could meet the requirements that were established under this mutual recognition understanding. Concerning market access alternatives, the notion of choice of market access was critical in the professions. Where it was a matter of being in a country for a brief space of time, one was dealing with border processes and immigration restrictions. There were however many professional firms who wished to have a continued presence to be in a better position to do business in a country and that provision should be allowed for. Concerning the use of a firm name, the ability of a company to use its name had economic value as well as its ability to use its reputation around the world. This should be considered as part of the market access aspect of at least certain professional services. Furthermore, a provision should be in the framework that allowed for payments to be made between the subsidiary and the parent company, including in the form of profits and earnings. This was a principal barrier as perceived by professional service firms such as consultants. On immigration, he said the GNS should strive to achieve as much movement as possible through the professions, beginning with the notion that the heads of offices, i.e. management personnel, would be provided free access to move to the subsidiary company. One challenge for U.S. immigration law concerned those areas where there were peculiar skills
which might or might not be available in the local company. This matter deserved serious attention by the GNS. Concerning culture, in the case of advertising he could not imagine that culture was distorted by the use of advertising; the main issue was whether companies were satisfied that their product was being marketed in the most optimal way. He looked dimly at cultural arguments for denying or restricting the use of those services.

147. The representative of Brazil stressed that in several areas developing countries were already liberal compared to other markets. Market access involved providing access of developing country services to developed countries through the avoidance of imposing discriminatory barriers to the entry or exercise of the service. Greater access to information networks was important as well as to technology. Both accredited and non-accredited services deserved consideration although both terms required more precise definition. National treatment was a goal to be achieved. On non-discrimination he agreed with those countries which had indicated the need to avoid the implementation of restrictions on a purely discriminatory basis. Any non-discrimination provision should not prevent developing countries from eventually benefiting from whatever preferential access to developed country markets was designed.

148. The representative of Egypt noted the Mexican delegation’s reference to dealing symmetrically with different factors of production. If the GNS was going to deal with the permanent movement of capital then it should address the permanent movement of labour. With regard to standards, it was important to pay attention to the self-regulatory function of the private associations in different professions and to how far such self-regulation might impede the delivery of services. The real question however was how far governments could affect the private associations and make them adhere to whatever parameters might be decided within a services agreement. The discriminatory nature of professional requirements represented an important element in considering a framework that would progressively liberalize the delivery of such services. Regarding the mobility of consumers, he urged cautious consideration if it would lead to the issue of exchange restrictions. Concerning the restrictions on monetary flows in the case of remittance of profits, etc., he said it was important to take balance of payments considerations into account. The issue of culture had to be dealt with in an objective way as there were different levels of censorship in different countries. A reasonable obligation on transparency might alleviate many concerns in this regard. Restrictions on flows of technology were an important feature of this sector and he agreed with the remarks of the Hungarian delegation in this respect. Furthermore, it was difficult to envisage establishment in this sector as a right or as a requirement since it might be prohibitive in many situations for the delivery of services. The definition of trade in services should be the guiding element by which the supplier might choose the preferred mode of delivery but it seemed that in GNS discussions such focus on the definition of trade in services had not guided statements made by a wide number of participants.

149. The representative of the European Communities clarified that when he had said that national treatment in relation to access to the professions
could constitute a backward step, he meant that if access to the professions relied solely on the national standards which de facto or de jure made it impossible for a foreign supplier to have access, then national treatment instead of any pre-existing mutual recognition agreement would be a step backwards. The Korean and Japanese ideas that one could give national treatment in terms of access to the profession but not in terms of operation showed the difficulty of saying a priori that it was always possible to give national treatment in either respect. In certain professions there were certain statutory functions which were equivalent to public functions even though they were not functions performed as employees of public authorities and for which it would be difficult to envisage allowing the performance by non-nationals. In some countries notaries had certain public functions as well as functions performed on a normal client basis, the former posing different problems in terms of liberalization. Regarding mutual recognition in accountancy in the EC, the basis was mutual recognition of training requirements, the fact that access to the profession could not be refused to other nationals qualified in another member state, recognition of the total qualification process, and recognition of the need to make up additional qualifications due to national specificities. Protocols as suggested by the United States was an interesting idea which should be explored. He added that the bilateral process would be necessary in the beginning although a pluri- and then a multilateral process should be encouraged. On the question of accreditation, he agreed with Brazil that there were differences across countries regarding what was perceived as an accredited profession. It was necessary to think in terms of activities rather than just of the professional name. Regarding the provision of the internationalised non-accredited professions, there were relatively few restrictions which were specific to the provision of professional services. It was thus important to maintain the status quo.

150. The representative of Egypt noted that the U.S. delegate had distinguished between key personnel and other personnel but he was not sure what key personnel meant. The representative of the United States replied that he had identified those kinds of labour mobility activities that would not be easily negotiable in the round. He felt it would be difficult to deal with the unskilled labour issue because of the way immigration regimes were established. Concerning essential personnel, he referred to the current experience of the U.S. immigration law which was that people in managerial positions were permitted to enter the United States to take up the head of the office subsidiary. This was more complex for people who were not in managerial capacities but who possessed special expertise (e.g. accounting knowledge of a particular industry). It had to be established whether that person was essential within the context of how U.S. immigration procedures were established. The representative of Egypt replied that this boiled down to a de facto restriction on the form of operation which would be permitted in the American market. If the condition was that an individual would have to have a managerial capacity this implied he belonged to an establishment, i.e. only establishments would enjoy access to the U.S. market to deliver professional services. This unduly restricted the movement of persons to key personnel. He was
concerned with the limited scope of possibilities and this had implications for how he would consider the issue of factor mobility.

151. The representative of Hungary said that under such provisions the cross-border movement of professional services for the time being at least could not be liberalized. Also establishment type trade would be seriously prejudiced because professionals apart from the managers could not have entry to the market.

152. The representative of India said he did not know whether the equivalent of establishment related activities which was permanent immigration, would make it easier for the United States to handle that issue. If the GNS was to talk about facilitating international trade in professional services, then something would have to be done to liberalize the present restrictive regime for the issue of visas and work permits in various countries. There had been no detailed discussion of this in the GNS but one starting point was to prepare a compendium of national regulations affecting conditions of entry. In the appendix to the U.S.-Canada Free Trade Agreement, there was a provision for the facilitation of visas, in fact for the absolute visa-free entry of certain categories of business services. This was the kind of thing he was hopeful of achieving on an m.f.n. basis within the multilateral framework. Computer software suppliers in India had had their visa applications rejected out of hand which was for them a major trade barrier.

153. The representative of Korea noted that regarding national treatment, anyone who wanted to be a lawyer or an accountant in Korea should pass the required examination without regard to nationality. In the case of foreigners with qualifications from their own country but who had not passed the examination of the importing country, it was inevitable to limit their business operation even if market access was allowed to them. This could be limited, for example, to giving advice on the supplier's home country rules and regulations.

154. The representative of the European Communities did not believe that any participant was really interested in the freedom of movement of personnel into their markets. But he was interested in seeing within the limits of existing policies what could be done to promote liberalization of the provision of professional services. In addition, he had not suggested he was only concerned with the movement of companies. The statistics in the secretariat document were so inadequate at world level that it was extremely difficult to draw any conclusions whatsoever about the presence or not of any particular operators. The EC statistics showed that the involvement of developing countries was probably a little higher.

155. The representative of Egypt said there was an area within immigration policies which warranted attention in the GNS. He considered his own country relatively liberal in terms of inward labour movement. The representative of the United States had said his government had done a survey of immigration rules throughout the world which showed that every participant in the GNS was just about as vulnerable as the United States. He had not attempted to suggest that the United States would allow the
movement of persons strictly associated with investment rather than cross-border movement of services. It happened that U.S. law provided such benefits for people going to a branch office whether in the area of goods or services. There was also that complicated category and he encouraged a debate about that. The United States granted visas to people of distinguished merit and ability; engineers and architects because they possessed a certificate of membership of that profession, received a such a visa automatically. The Indian example of the data processors was a good example of one that fell into the complicated category where there had been denials. He had attempted to see how far the GNS could go in this sensitive and complex area rather than to frighten participants about immigration rules.

156. The representative of India emphasized that this was an area which deserved to be explored. The need for transparency in this area was a precondition before moving to the stage of liberalization. Some of the information which negotiators had might be out of date or not immediately relevant. As far as he knew, the granting of visas had so far been done on the basis of reciprocity. It was important to look at what should be done to ensure the right degree of market access in this respect. He cautioned against making a comparison between provision of professional services across borders with that of investment-related activity. He considered that the latter type of activity should not be incorporated within the multilateral framework.

157. The Chairman opened the floor for discussion of the concept of the increasing participation of developing countries. The representative of Mexico noted that despite the lack of statistics, it was possible to say that it was the developed countries which were the winners in bidding for service contracts in competitions sponsored by financial development institutions, noting that less than 15 per cent had been awarded to Latin American countries. There could be improvement in the criteria established by the World Bank for selecting more developing country companies in order to promote effective participation of developing countries in those areas where they were genuinely competitive. If appropriate provisions were not included in the framework agreement and in the sectoral annotations which called for greater participation of developing countries, then the process of liberalization would only serve to strengthen the existing dominant position in the world market of the major suppliers. Developing countries could attain significant competitive positions in some areas of professional services, above all in skilled and semi-skilled manpower intensive activities. Developed countries should begin to reduce the rules and regulations governing professional service activities. The European Communities had just said that no participant in the GNS favoured free movement of labour across borders. In fact the GNS was talking about progressive liberalization, not about free movement. As the range of activities involved in professional services was increasingly intensive in knowledge and know-how, there should be appropriate provisions to accelerate transfer of technology to developing countries as well as to facilitate access of those countries to data banks and information networks. An effective form of knowledge transfer could be through contracting and access to markets by various developing country staff
members involved in professional activities in developed countries. There could be a series of inter-institutional agreements which would lead to an exchange of personnel and training in such institutions. Joint ventures could help developing countries by giving them access to markets where they had competitive advantage.

158. The representative of Brazil said that one idea to promote increasing participation would be to eliminate discrimination for professional service providers from developing countries in terms of entry conditions, visa and work permit requirements, recognition of qualifications and accreditation requirements. Further, access to information was important in terms of networks and market opportunities. Regarding technological barriers that existed, service providers from developing countries might be highly qualified but not be able to gain access to the necessary technology to sell their services. Another idea was the establishment of favourable marketing conditions or facilities either by means of preferences or through the promotion of developing country services in developed country markets. He also mentioned the need to create favourable conditions for the access to public sector procurement markets in developed country markets.

159. The representative of Pakistan recalled that the Mexican delegate had given a concise connotation of professional and business services which should be seen as the application individually or collectively of technology, knowledge, skill, experience, know-how and capability. This sector represented for his delegation one of the most crucial sectors in the negotiations. The facilitation of progressive liberalization could best be facilitated by cataloguing the most obvious restrictions, both formal and informal and by reducing or eliminating those restrictions. Restrictions concerning professionals from developing countries in particular would fall under the headings of non-recognition of professional qualifications (including experience) and of entry requirements (work permits, visas, etc.). It was important to search for possibilities to provide for non-discriminatory treatment regarding the recognition of professional qualifications, experience requirements, and of entry requirements for developing country professionals. These two elements would go the longest distance in providing for the increased participation of developing countries in this area. Concerning the last point, immigration difficulties existed in every country but if the GNS was concerned with establishing a framework to facilitate and expand trade, it was necessary to grapple with those difficulties. The suggestion to provide for automatic visas for the heads of firms only would not go far enough. Regarding the idea put forward by the U.S. delegation of protocols relating to the agreement in which only a smaller number of countries could participate, he asked whether the U.S. foresaw a code-type approach only in the area of professional services or in other areas as well. As the GNS was engaged in a multilateral exercise, his delegation would not be favourably disposed to the code or protocol type approach which implied bilateral or plurilateral exercises which would undermine the multilateral effort.
160. The representative of Jamaica noted that the data in the secretariat's background note showed that there was substantial export activity taking place in the area of "other services". In a number of areas of professional services - accountancy and advertising, for example - there was already significant penetration of the markets of developing countries by firms from the developed world. Increased and equivalent levels of competence and skill in developing countries in professional and technical services was not yet reflected in increased market share through the export of those services. He considered that the issue of lack of transparency in business opportunities was a major obstacle that should be addressed. Enhanced market recognition of the quality and competitive cost structure of professional services available in many developing countries was vital to an expansion of their exports. It was evident that a growing range of professional and technical services could be supplied through cross-border flows of information and data and that developing countries could play an increased role in supplying such services at reasonable cost to consumers. A number of services such as engineering, architecture, data processing for business could be supplied in this manner. Additionally, the question of temporary movement of production factors and the movement of consumers would need to be examined. He drew attention to other considerations that could enhance the participation of developing countries including access to technology, participation in joint ventures, provision of training, preferential treatment in international bidding processes, and a comprehensive approach to the coverage of professional and technical services.

161. The representative of Romania said that in professional services an increased share of developing countries depended on their own efforts to train their nationals. At the same time, it was necessary to provide measures at the international level to favour the increased participation of developing countries. The framework should contain effective measures to that end, including measures concerning the expansion of export capacities (e.g. technical assistance) and the facilitation of exports (elimination of trade obstacles on a preferential basis, promotion of imports from developing countries).

162. The representative of Yugoslavia noted the importance of the professional service areas discussed in the secretariat document although they were not of primary export interest to her country. Major considerations included employment on the supply side, and the establishment of some kind of enquiry point for business opportunities so that there could be transparency in the information system to identify and categorise levels of demand in various professional services and match them to supply. She added that joint ventures could balance the interests of developed and developing countries.

163. The representative of Egypt said the concept of increasing participation embodied a number of ideas. Regarding the expansion of exports, the issue was one of effective market access for developing country service exports, preferential market access opportunity, access to information networks and distribution channels, as well as liberalization. Developing countries in general were more liberal than developed countries.
Restrictions on the movement of persons were more trade-restricting in the area of professional services in the case of developed countries. Concerning the strengthening of domestic services capacities, he stressed access to modern technology and know-how, training requirements, and in a more general context, access to financial support, and the improvement of the services infrastructure in developing countries. There should be some scope for preferential arrangements among developing countries in this sector and he considered that some sort of enabling clause in this respect would be needed. The discussion of the development concept represented a test of the goodwill with regard to making the agreement development-oriented.

164. The representative of the European Communities wondered whether, instead of having Protocols and Annexes in the multilateral framework, the standards code approach was preferable where it was recognised that the standards committee was there to encourage the establishment of international standards and to resolve problems. The secretariat paper contained important ideas, particularly the reference in paragraph 37 to the advertising sector where multinational networks were important in gaining market recognition, and inter-operator cooperation could be important in promoting a more competitive sector in the developing country. When foreign companies got involved in a market it was in their own interest to undertake training of local personnel. Training requirements were a tricky area and it might not be fruitful to look for formal commitments in this respect even if there was a clear recognition that training by service firms was very important and a valuable implication of the commercial presence of a firm in a foreign market. He was interested to know how the Egyptian representative foresaw preferential arrangements among developing countries working. He did not think an enabling clause was desirable with its connotations of blanket derogations.

165. The representative of India said the GNS had discussed what the various barriers to effective market access could be in the area of professional services. The recognition of qualifications and professional expertise was an important area where something could be done to provide preferential treatment for developing countries which might assist them in increasing their share of world trade. A step could be made by facilitating access to the acquisition of such qualifications and standards in the industrialised countries. A provision could be made for developing countries to acquire such internationally recognised standards and qualifications on a preferential basis, including through specialised programmes. That would be within the capacity of governments. The GNS had to think of more specific provisions to provide for increasing developing countries participation. As there were many discriminatory practices which either prevented or restricted the ability to provide professional services, such provisions based on m.f.n. and non-discriminatory treatment could do much to increase participation and would be a major improvement on the existing situation.

166. The representative of Australia noted that the progressive liberalization and expansion of trade between developed and developing countries would bring about increasing participation of developing
countries. His delegation had looked at what actually took place in technology transfer at the level of firms. In professional services, firms tended to voluntarily involve themselves in technology transfer or training because this was a rational way of conducting their business. Most of the firms in developing countries depended on the development of a base in the developing country market which necessarily meant training and the transfer of technology. The mechanisms that were likely to promote more of that would be expansion of trade as recommended in the Montreal and Punta del Este texts. There seemed to be a direct correlation between the volume of the trade and the amount of training that went on because the proportion of training was directly related to the number of contracts that took place. The so-called enabling clause had provided very doubtful benefits for developing countries to the extent that it was not an enforceable right that they had gained under that clause; it had been something of a disabling provision in the expansion of their trade. M.f.n. and non-discrimination were much more likely to protect a country's interests in services markets in the future.

167. The representative of Sweden, on behalf of the Nordic countries, reiterated the suggestion that focal points be established for providing market information to developing countries.

168. The representative of Egypt noted that regarding the enabling clause he had in particular referred to paragraph 2(c) of that clause which only permitted developing countries to enter into preferential arrangements, whether regional or global. The services framework should envisage such possibilities for developing countries in order to promote services exports of developing countries not only to developed country markets but also to developing country markets. He said that the Group should seriously consider the possibility of special programmes for the acquisition of qualifications.

169. The representative of India said that considering the existing level of discrimination and limitations on m.f.n., even bringing up the current levels of market access to m.f.n. standards would represent an improvement on the present situation. He had not meant that m.f.n. would be preferred to preferential treatment or that the enabling clause had somehow disabled developing countries vis-à-vis the m.f.n. provision. The enabling clause had provided the legal basis for the provision of the GSP, i.e. preferential tariff access, which had been positive for developing country trade. First, it was necessary to bring up the level of international trade in professional services in terms of m.f.n/non-discrimination, and then the Group could think of preferential access. It was too much to expect to jump to preferential access for the exports of developing countries. He supported the point made by Egypt about providing access to training and technical qualifications where such expertise might be lacking in developing countries. This could be undertaken on a preferential basis through training programmes to enhance developing country abilities to provide those technical services in a manner acceptable to the industrialised countries.
170. The representative of Canada agreed with the notion of m.f.n. treatment and shared the views expressed by Pakistan in this regard. This did not however necessarily resolve all the qualifications and standards issues. The suggested approach of drawing on the experience of the Technical Barriers to Trade Code was positive. The ability to establish and maintain substantive standards was something that all participating countries would retain. If there was a request for preferential treatment it had to apply in some other way and he was still puzzled as to exactly what that would be unless it had to do with market access. If so, this sounded like a special case in which developing countries opened fewer areas than developed countries. He was trying to understand exactly what was being sought under the heading of preferences and wondered whether developed countries were being requested to provide some diminution of the standards or regulations as they dealt with the substantive issues they were intended to cover.

171. The representative of the United States noted that in considering some of the suggestions relating to additional know-how, it would be useful to know to what extent some of the resources were lacking. This varied according to developing country with personal know-how being well established in some countries. As concerned the access of developing countries, he placed emphasis on the ability of professionals to cross the border and the related issues of visa and immigration problems, and the accreditation process. He doubted whether certification requirements around the world could be standardised but considered the assurance essential that a country was providing a process in which any foreign national was capable of qualifying. He then turned to the idea of protocols, where a group of countries would go further than the provisions in the framework and where a prominent example would be the harmonization or mutual recognition of professional standards. The question was whether that sort of process undermined or distorted trade. He thought this would not be the case provided that there was a meaningful framework that covered that particular sector. All signatories would be bound by the provisions of the framework which would be necessary before a protocol was undertaken to achieve higher levels of liberalization. Without the protocol structure countries would not be encouraged in engaging in such efforts to mutually recognise their standards if they had an m.f.n. obligation because other countries might not be capable of doing so.

172. In response to Canada, the representative of India said that since developing countries were not likely to possess internationally recognised qualifications and standards, one way of providing preference to developing countries would be to encourage professionals from developing countries to acquire those technical qualifications in industrialised countries, perhaps in some specialised short programmes.

173. The representative of Egypt said that the idea of preferential opportunity was not envisaged with regard to the substantive elements of the professional requirements and standards themselves. Rather it was envisaged with regard to the acquisition of such qualifications through preferential programmes designed for this purpose.
174. The representative of Mexico, referring to the comment by the U.S. representative on technological capacities in the professional sector in developing countries said that professional services had suffered more externalisation than any other sector. Simple professional services like making beds in a hospital had become increasingly externalised in the developed countries. Concerning the question of direct foreign investment in the developing countries, he noted that those countries could adapt and acquire new technologies. But the new technologies were reaching the developing countries very late and that is why they were losing ground in other services. The proposal that personnel in various services could enter developed country firms to facilitate a rapid acquisition of know-how was a good one, but often there were no working visas available which made it impossible for many services to acquire the technology which later they would reinvest in the developing countries.

175. The representative of Canada welcomed the assurance given by Egypt. Concerning the need to find ways of ensuring the development of the service sector in developing countries, he noted that it was necessary to reflect on the extent to which that question was best addressed through bindings in a contractual trade agreement as compared with other methods.

176. The representative of Pakistan said that a fundamental question related to recognition of educational standards and degrees at the level of governments as well as of professional bodies. The latter might represent more of a problem. The protocol idea proposed by the U.S. delegation made him wonder whether it would be necessary to embark on a separate exercise through a protocol or would it be possible in some way to attain this recognition at a multilateral level. This boiled down to recognising professional degrees and diplomas where they might be required. Regarding software development, for instance, if IBM were to establish an institute in his country, could the diploma awarded by IBM in his country be considered equal to that awarded by IBM in the United States?

177. The representative of the United States considered that the software example was not a practical problem. It was not a question of certifying diplomas but of whether the customer thought the individual was good and then he would get a visa. The GNS should talk about those professions that required certification. Because of the differences in jurisdictions which had their own bases for certification of their professionals, he felt it was useful to consider the possibility of a protocol. He doubted that during this round or future rounds of negotiations a multilateral understanding could be reached over those peculiar areas. A protocol between a finite number of countries could be one way of facilitating a multilateral understanding over time.

178. The Chairman opened the discussion on safeguards, exceptions and regulatory situation as applied to trade in professional services.

179. The representative of Australia said that it might be under safeguards and exceptions that the widespread subsidization of consultancy and other professional services should be treated, through a commitment towards the prohibition and elimination of such practices. In response to a concern
raised by the representative of India, he said that a rule dealing with subsidies and other forms of support was not only relevant in the context of professional services but should be applied across the board to all services sectors through the multilateral framework agreement.

180. The representative of Mexico said that exceptions could be applied in relation to moral and cultural values, and national integrity. They could be applied in cases where foreign providers neglected to respect national norms of conduct relating to the professions. As to safeguards, developing countries should be able to invoke them under the following circumstances: balance of payments problems, damage caused by unforeseen surges of imports, development of the national sector. Safeguards could furthermore be applied in relation to other principles such as market access, progressive liberalization and national treatment. For example, the application of a safeguard with relation to progressive liberalization would imply a temporary suspension of the process of liberalization. This could imply the freezing of authorization/permits/licenses applying to certain sub-activities or regions. The application of a safeguard with respect to national treatment would imply the suspension at a certain stage of the liberalization process of the granting of treatment no less favourable to foreign services exports and/or exporters.

181. Regarding regulatory situation, a clear asymmetry was evident with respect to professional services among developed and developing countries. Whereas developed countries already had very sophisticated regulatory frameworks in place applying to the various professional activities, developing countries' regulatory systems lagged considerably behind. This was especially evident in that the regulations regarding the movement of professionals across borders tended to be much more restrictive in the case of developed countries than developing countries. This was also evident in the prevalence of developed country providers in the markets of developing countries. Given that situation, a framework agreement should provide for the possibility for developing countries to increment and upgrade their regulatory systems in the manner necessary to safeguard their development objectives.

182. The representative of Yugoslavia said that with the heterogeneity of the sector it was difficult to know how to apply the concept of safeguards and exceptions. Further elaboration was necessary on the concept, perhaps with a basis on the formulation available in the General Agreement.

183. The representative of the European Communities did not find any specific problem with the application of safeguards to the sector. In the context of exceptions, not only national security should be considered but also the practice of delegating public authority to certain professions such as notaries in some countries. In the context of regulatory situation, special attention should be devoted to the delegation of public powers to private professional associations which might vary widely among countries.

184. The representative of Canada agreed with others that there was nothing precluding the application of safeguards and exceptions to this sector. He
also endorsed the emphasis placed by others on the issues of delegation of public powers and of government support. Regarding the regulatory situation, he said that complications might arise in the context of licensing and accreditation requirements relating to citizenship or landed immigrant status, residency, education and experience, and examinations. A key consideration was to what extent and in what manner would licensing and accreditation requirements be subject to liberalization commitments. Three points could be considered in that context: first, the recognition that licensing and certification of nationals providing certain services should relate principally to competence or the ability to provide such a service; second, such measures should not have the purpose or effect of discriminatorily impairing or restraining the access of nationals of other parties; third, mutual recognition of licensing and certification requirements should be encouraged with a view to achieving understandings on standards. Non-accredited professions should be fully included in the liberalization process.

185. The representative of the United States said his delegation would object to any formulation on safeguards which permitted signatories to resort to temporary measures restricting the access of foreign professional services providers. Such measures would present significant practical problems in the case of those providers which were already established in the importing market. He supported the suggestion that the agreement should ultimately deal with the issue of trade-distorting government support but cautioned against the kind of precision sought in countervailing duties calculations for goods trade. The scope of exceptions should be limited to certain aspects, including those relating to moral and cultural considerations.

186. The representative of Korea said that existing exceptions in the GATT on national security and cultural reasons could also be applied to trade in professional services. Regarding regulatory situation, licensing and certification requirements should not be viewed as trade-restricting as they were usually intended to preserve certain ethical standards and maintain a reasonable level of professional competence within a particular market.

187. The representative of Hungary agreed that there were no specificities regarding professional services which would warrant special safeguard and exceptions provisions. Consideration should be given as to how to deal with norms imposed on services providers by private professional associations.

188. The representative of Brazil said that his delegation would not exclude the possibility of special safeguards and exceptions being applied to some of the activities involved in the professional services sector. In general terms, he agreed with the emphasis adopted in the note by the secretariat where balance of payments measures were listed as relevant in the context of safeguards. There should be the possibility for developing countries to place exceptions for development reasons with a view towards ensuring the compatibility of the provisions of the framework agreement with the issue of development. The regulatory situations of developed and
developing countries in the sector were very different, developed countries having much more sophisticated regulatory regimes in place governing professional activities. A standstill or freeze of relevant regulations in that context would be meaningless.

189. The Chairman opened the discussion on the concept of increasing participation of developing countries.

190. The representative of Brazil said that in accordance with paragraph 7(f) of the Montreal text, the discussion on the concept of "increasing participation of developing countries" should cover both services exports and imports. Developing countries already provided for a more liberal environment for services imports than their developed counterparts. Increasing the level of services imports therefore did not constitute a high priority for these countries. However, if the Group was to address the means through which developing countries could become greater importers of services, due attention should be given to the disequilibria and asymmetries existing between developed and developing countries. The overall weakness of developing countries with respect to import financing, for example, limited the scope of their participation in international trade in services. Adequate financial mechanisms would need to be devised before these countries augmented their participation. The aim of increasing the level of services imports was compatible with the notion of maintaining the autonomy of macroeconomic policies, such as those required to safeguard a country's external position and to ensure a level of reserves adequate for the implementation of economic development plans. In addition to having a clear link to the discussion on safeguards and exceptions, such balance of payments concerns were relevant in the context of increasing participation as well since the aim of attaining a higher level of services imports would necessarily be conditioned by, and subject to, developmental objectives.

191. Regarding services exports, he said that the strengthening of domestic services capacities should be not viewed in isolation from its overall developmental implications. The services sectors played a central role in the development process, generating employment and revenue, supporting production activities, contributing to higher productivity levels and functioning as a major source of value-added. The lack of a strong services sector could jeopardise the industrial and agricultural development of developing countries, in addition to contributing to a deterioration in their terms of trade. The development of domestic services capacities could assure national economic integration by eliminating disparities among regions and productive sectors. The principle of autonomy of macroeconomic policies was also relevant in this context and should apply to the activities and practices of market operators. An agreement should provide for compatibility between the activities of market operators and the national policy objectives embodied in the regulatory frameworks of developing countries. In addition, obligations and disciplines could apply to the home governments of the exporting firms. Implicit in the process of strengthening domestic services capacities was the improvement of services infrastructures. As much financial support might be necessary to improve such infrastructures,
mechanisms should be envisaged in the agreement through which this support might be provided.

192. As to the facilitation of effective market access for the services exports of developing countries, the first aspect of relevance was financial support. In the case of international tenders, for example, the disadvantageous position of suppliers from developing countries could be compensated for by access to preferential financial rates. The second aspect was the autonomous liberalization of developed country markets on a non-reciprocal and unconditional basis, in favour of services exports of developing countries. Also relevant in that context was the unrestricted and unconditional extension to developing countries of the benefits resulting from agreements to liberalize trade in services concluded among developed countries. Similarly, this would imply the possibility for developing countries to make non-extensive concessions negotiated among themselves. The third aspect was the access and use of modern technology as technological considerations were essential for the production, advertising, selling and rendering of services. Developing countries expected that the GNS negotiations would include the consideration of how they could overcome the technological gap existing between them and their developed counterparts. Specific mechanisms should be designed in order to deal with the transfer of technology, and the prohibition of measures and practices restricting access to technology and networks of services. It should be recognized that governments had the freedom to adopt rules and disciplines to avoid that an excessive protection of intellectual property rights restricted the access to modern technology. Equally important would be to avoid monopolies resulting from the restrictive enforcement of those rights. As to the use of modern technology, restrictions imposed on the use and export of modern technology, measures and practices affecting the distribution networks of the services supplier should be duly discussed in the Group. Finally, he said his delegation was very interested in knowing the degree of willingness and the possible intentions some of the industrialized country participants had with respect to the Montreal provision for the "autonomous liberalization of market access in favour of services exports of developing countries".

193. The representative of Peru said that his delegation agreed with the basis for negotiations set out in the Montreal text but felt the need to emphasize certain aspects which should be given more attention in the negotiations. First, the framework agreement should be attractive and favourable to developing countries. Second, the agreement should reflect the aim of promoting the development of developing countries and of respecting the national policy objectives of national laws and regulations applying to services. Third, the agreement should recognize the asymmetry inherent in services trade existing between developed and developing countries. In insurance, for example, around 72 per cent of the world’s premiums were concentrated in North America and Europe. This related very closely to the fourth aspect to be given special attention which was the major imbalances in the balance of payments of developing countries. Often these imbalances had been expressed in terms of a surplus in favour of developed countries and a structural deficit for developing countries. In the case of the Andean Pact, the overall deficit in the services account of
the balance of payments amounted to $3,700 million a year. The fifth aspect related to the need to apply relative reciprocity in the exchange of concessions resulting from a framework agreement. Such an application implied that developing countries were not expected to make contributions which were inconsistent with their individual development, financial and trade needs. Through the application of relative reciprocity, a balance could be achieved in the framework agreement between the concessions made in the services sector by developing countries and the benefits they obtained in that sector. Sixth, provisions should be included on fair and equitable access to new technologies, on the growth of production and productivity of the services sectors of developing countries, and on the increasing participation of these countries in the world market for services. Seventh, the framework agreement should contain provisions permitting complementarity and integration agreements for developing countries in various sectors of services. Such a rule would be based on the recognition that complementarity and economic integration constituted an instrument of development. Eighth, the framework agreement should envisage provisions for diversifying and expanding trade in services in developing countries through a process of progressive liberalization which was accompanied by a process of technology transfer.

194. The representative of Mexico said that even though the overall participation of developing countries in cross-border trade in services amounted to around one seventh of the world's total, the share of the participation of developing countries in specific sectors usually was smaller than that, with the possible exception of tourism services. If indeed, as some participants had suggested, the physical presence of the service provider was to be included in the definition of what constituted trade in services, how should the value of that trade be measured? Possibly, it should not be according to the level of profit or royalty remittances but rather according to the sales of the foreign firm in the host country. If that were the case, calculations had shown that the sales of the subsidiaries of developed country services firms in host developing countries could reach a level five times superior to that of cross-border services exports. Under the extreme assumption that this scenario would be applicable to all developed countries while all developing countries had no foreign investment in services, the participation of developing countries in the world's total services exports would amount to only 3 per cent. Perhaps a more reasonable approximation of the participation of developing countries could be obtained by drawing the average between that figure and the figure applying to cross-border trade in services. As such, the participation of developing countries would reach 9 per cent but this figure could also be overvalued. If the broader definition of trade in services was adopted, for example, the participation of developed countries in tourism services would be augmented to include the provision of these services by developed country firms through their establishment in developing countries.

195. Generally, developing countries were internationally competitive in the provision of labour-intensive services. The same argumentation as to the need for proximity between service user and provider through the presence or establishment of foreign firms in the local market also applied
to services provided through the mobility of persons. It should be noted that a person providing services in foreign markets should be considered as a one-person firm for the purposes of the GNS. Intrinsically, there should be no difference between a corporation or a one-person firm providing services in foreign markets. According to IMF data on the balance of payments, while the OECD countries had a surplus of SDR5 billion, the developing countries had a surplus of less than SDR3 billion under the same account. It should be noted that the inclusion of manpower in the coverage of the agreement would be beneficial to both developing and developed countries, as had been indicated in previous GNS discussions. As recognized in the Montreal text, the most important factor contributing to the increasing participation of developing countries would be the inclusion from the outset of sectors of export interest to these countries, including the possibility of allowing labour from these countries to move across borders to provide services temporarily and/or for indefinite periods of time in developed country markets.

196. Under the section on progressive liberalization of the Montreal text it was recognized that the agreement should have a certain flexibility so that developing countries could liberalize fewer types of transactions or grant access to their markets in a gradual manner, taking due account of their level of economic development. In this provision, the Mexican delegation recognized some elements of the concept of relative reciprocity which it had been advocating for quite some time. The Montreal text provided for the demand-side of the concept. Supply-side considerations would require that the framework agreement include provisions establishing that, in this Round and in the ones to follow, priority be given to the liberalization of sectors of interest to developing countries. Also, a proportionately greater number of concessions made among developed countries should be granted to developing countries. The experience of the Tokyo Round should be avoided where tariff reductions were higher than 30 per cent for developed countries while they hardly exceeded 25 per cent for developing countries.

197. The weak participation of developing countries in sectors such as tourism, construction, professional services and transport was closely related to the limited access these countries enjoyed to distribution channels and information networks, including data-banks. As recognized in the Montreal text, the framework agreement should include provisions which aimed to facilitate effective access for the services exports of developing countries, including a greater access to distribution channels and information networks. It could hardly be denied that developed countries were undergoing a "services revolution", characterized, inter alia, by new technologies which were intensive in information, organization and know-how. The framework agreement should include provisions which stimulated the transfer of such technologies to developing countries without interfering with the commercial decisions of firms. The possibility of developed country firms employing skilled and semi-skilled manpower, for example, could be considered in that context. Another possibility could be the joint establishment of research and development centres by firms from developed and developing countries under the sponsorship of the governments concerned. These different possibilities
did not in any way diminish the value of joint-ventures and/or foreign direct investments in the developing countries. In fact, these mechanisms were already widely used in many services sectors.

198. The delegation of Mexico was convinced of the need to improve the capacity and efficiency of its domestic services and was in the process of taking concrete action in that context. However, he said no government nor its voters would be satisfied with progressive liberalization if it were to cause the elimination of national services providers by a foreign provider. Nor would they be satisfied if the collusive, monopsonistic and/or oligopolistic behaviour of foreign firms ultimately affected their development policies or their national sovereignty. For that reason, it seemed necessary that the framework agreement included specific provisions regarding the behaviour of dominant operators in the market, including the right for each country to take the necessary measures to deal with those situations in a proper manner. Such measures should be transparent and non-discriminatory. As became evident in the sectoral testing exercise, the autonomous liberalization of market access in favour of services exports of developing countries was possible on many fronts. Finally, his delegation attached great importance to the consideration of the situation of the least-developed countries, as set out in the Montreal text.

199. The representative of Romania said that a greater effort should be devoted to ensuring that developing countries had a greater participation in services trade than had been the case with goods trade. Only through an increased participation of developing countries in the world's services markets could the agreement provide for a balance of interests among all trading partners. To achieve an increased participation, developing countries themselves should have policies in place which aimed at improving their services export capacities and at upgrading the competitiveness and efficiency of domestic firms. In that regard, the development of adequate infrastructures and the training of personnel were especially relevant and could be achieved through the technical and financial assistance of developed country firms, including technology transfer. It would not be sufficient to rely on the application of m.f.n. in order to provide for an increased participation of developing countries. An enabling clause similar to that applying to goods trade in the General Agreement should be envisaged, including three main elements. First, preferential treatment for services exports of developing countries should be granted. Second, the principle of relative reciprocity should be included in the agreement. Third, in the scope of application of the enabling clause preferential arrangements among developing countries should be permitted.

200. The representative of Sweden, on behalf of the Nordic countries, said that in the view of the Nordic countries the purpose of the work in the GNS was to achieve a multilateral framework for the liberalization of trade in services in order to promote worldwide expansion of that trade and the increasing participation of developing countries. These two aims went together. Liberalization of the trading environment for services would lead to expanded world trade and that expansion per se would benefit service providers from developing countries along with their developed counterparts. However, he recognized that in some developing countries
certain service sectors were particularly weak or even non-existent. Those situations required traditional longer-term development measures such as expanded basic education, improved facilities for academic and technical education, various forms of specialized training, and others. This was especially true for those service sectors that were knowledge-intensive. In order to bridge some of the gap in the short-term and as a complement to longer-term developmental efforts, many developing country governments could make better use of international trade to promote access to information, skills, knowledge and technology. That would, however, require policies that facilitated rather than restricted trade in services.

201. International service providers possessed specific knowledge, skills and management technology which they had to absorb and adapt to remain internationally competitive. When they operated abroad they frequently made use of local personnel, thus generating employment in the domestic economy. They also often trained local employees, thus contributing to the upgrading of local skills. Foreign service providers could, in addition, be taxed by the host country government. They could also sufficiently develop their capabilities in the host country to become themselves exporters of services from that country. In short, the standard benefits for a host country that were associated with foreign investment in the extractive or productive industries were available also when the foreign investor was a service provider. In many cases foreign service providers preferred to establish cooperative arrangements with local companies (e.g. joint ventures), in order to integrate more fully into the local economy. Access to services through trade would also ensure that services of internationally competitive quality were available to national users. That in turn would improve the competitiveness of those enterprises in developing countries that used services as inputs to production, thus contributing to a higher level of economic and social welfare.

202. In accordance with the Montreal text, the number of sectors and/or types of transactions to be liberalized could vary for individual developing countries depending on their development situation. Also, the time-span for phasing in market access undertakings could vary with the level of development of countries. Clear and transparent domestic preferences might constitute another means of strengthening the domestic services capacity and its competitiveness. As regards improved market access for service providers from individual developing countries, the possibility of improving those countries' means of obtaining market information could be pursued both at the national and the international levels. At the national level, it could be envisaged that signatories to a multilateral service agreement (both developed and developing) would need to establish national "focal points" to which service providers from individual developing countries could address themselves with requests for market information. At the international level, certain projects of a similar kind were already being undertaken, primarily by the International Trade Centre. These programmes and projects, which were market oriented and in many cases operated at the enterprise level, could probably be expanded and made more comprehensive.
203. Finally, the suggestion had been put forward that the increasing participation of developing countries would need to be accompanied by an increased flow of financial resources into these countries. It should be kept in mind that each international organization had its own specialization and that the mandate of the GNS was to establish a multilateral framework of principles and rules for trade in services. Even though the end result of the GNS negotiations would ultimately need to fit into the broader context comprising other international economic and trade institutions, the task of the Group was not to discuss what was in the domain of other bodies.

204. The representative of Israel said that the Montreal text was a sound basis for the GNS negotiations on increasing participation of developing countries as it reflected the concern expressed often in the negotiations that development should be an integral part of any future agreement on trade in services. The emphasis on the strengthening of domestic capacities, competitiveness and efficiency as a means towards greater participation in the world’s trade in services was very significant. It was important to include in the framework agreement provisions regarding access to distribution channels and information networks. Also, some scope should remain for the protection of the domestic services industries of developing countries. As set out in the Montreal text, no sectors should a priori be excluded from the negotiations, especially those of special interest to developing countries. Operational provisions should be included in the agreement aiming at facilitating a greater participation of developing countries. Drawing from the discussions on the applicability of concepts to sectors, the most important issues for his delegation were transparency, m.f.n/non-discrimination, market access, and safeguards and exceptions. The granting of preferential treatment to the exports of developing countries should be accepted as a viable way to increase these countries' participation in world trade in services.

205. The representative of Argentina said that both services exports and imports were relevant in the consideration of how to provide for an increasing participation of developing countries in services trade. On the import side, a process of progressive liberalization could gradually increase the flow of necessary services inputs from abroad, the only limitation being the possible adverse effects on the balance of payments which could result from such a process. The key to greater participation by developing countries was in the strengthening of domestic capacities towards higher levels of efficiency and competitiveness in the provision of services. This was especially relevant since through greater competitiveness in the provision of services, the overall economy would benefit from greater efficiency in the production of both goods and services. Also, only through greater domestic competitiveness could domestic firms become internationally competitive and thus increase their participation in trade. Competitiveness was very closely related to the flow of capital and technology. Investing firms could, for example, provide valuable training to local professionals and/or labour while transferring modern technology to the economy. Clearly, this process was facilitated if the services were provided locally and not from a base abroad. Similarly, by training local staff, foreign firms present within a
developing country market might attenuate the "brain drain" from that particular country. Having those aspects in mind, it should be very important to permit importing countries to decide on the mode of delivery firms should adopt which best suited their national development needs.

206. The representative of Japan said that capital formation and technology transfer were the two pillars on which the increasing participation of developing countries could be based. However, he did not agree that the most suitable manner to provide for the expansion of developing countries' trade was through an enabling clause or through across-the-board measures. Rather, the process of progressive liberalization constituted the most adequate approach, especially if it were sufficiently flexible to vary according to the specificities of each services sector. Clearly, the time element was central to the implementation of progressive liberalization. Whatever measures, reservations or flexible application were introduced, they should not represent an exception to the rule of progressive liberalization which would commit all countries to periodical reviews. As to labour movements, he emphasized that the Montreal text stated only those factor movements which were essential to the provision of services were relevant to the GNS deliberations.

207. The representative of Egypt stated that the concept of increasing participation of developing countries represented one of the most important concepts for developing countries in a framework agreement. It was necessary to look at different elements contained in this concept at two interdependent levels; those relating to exports and imports and those relating to the development of domestic services capacities. Regarding the first level, he noted that the participation of developing countries should not be viewed in terms of merely increasing imports but also exports. Concerning exports, he said that the enabling clause provision in the GATT was of relevance in this discussion (i.e. autonomous liberalization of market access in favour of services exports of developing countries). Regarding effective market access, it was necessary to consider the barriers which affected developing country exports, and the question of access to information networks and distribution channels. The latter issue was relevant in a number of sectors and he noted the importance of the suggestion of enquiry points serving the purpose of making commercial information available to developing country exporters. Furthermore, the idea of contact points was also useful and should serve the purpose of facilitating procedures related to market access (e.g. procedures related to the accreditation of professionals). Turning to the problem of how to develop the domestic capacities, it was necessary for developing countries to enjoy some flexibility regarding the selection of sectors for liberalization. Producer services deserved special consideration in this regard. Concerning the question of how to maximize the benefit from imports in terms of the exposure of domestic services industries to foreign participation, there could be a need for some transparent and objective policy measures to be taken by developing countries. It was not enough to simply liberalize segments of the market and allow foreign operators to enter. In the construction sector, for example, the brain work that was an essential part of engineering design services was always conducted outside the country importing the service. This represented a serious barrier to
transferring the necessary technology or know-how to developing countries. Furthermore, it would be necessary to establish a review mechanism in order to review how the participation of developing countries in the international market place was really evolving. This would ensure that liberalization provisions embodied in the agreement would result in tangible benefits to developing countries. He stressed that all options should be kept open in assessing how a trade in services agreement could promote the development objective. He did not want to see a situation in which developing countries would be punished for not doing enough homework on the kind of detailed provisions they would like to see in the framework agreement.

208. In response to the views expressed by the Mexican delegation concerning the share of developing countries in services trade, the representative of the European Communities noted that 14 per cent of the EC's services imports came from developing countries. Although 25 per cent of the EC's surplus was with developing countries, it actually had a deficit with developing countries other than the ACP and OPEC countries. Referring to the paragraph on increasing participation in the Montreal text, he emphasised the need for developing countries to develop efficient and competitive service sectors and not to seek to preserve uncompetitive sectors behind external protective walls. The negotiations were concerned with establishing an agreement in which developing countries could take on appropriate commitments. The sectoral testing exercise had shown that different developing countries had different strengths and weaknesses in different sectors. This was an important issue in approaching development; as it was a matter of how the interests of individual developing countries could be met. Concerning the review mechanism suggested by the Egyptian delegate, he was unsure that it was possible to have an objective, multilaterally approved recognition of which country was getting what type of benefit. Establishing objective criteria might not be possible, but there was a need to reflect on how to, say, measure competitiveness. Regarding exports, the sectoral testing exercise had shown that there were very few sectors of particular interest to developing countries. This suggested that blanket autonomous liberalization was not a starting point and that it was necessary to look at the expressed interests of developing countries in different sectors. Regarding preferential access he wanted to know how that could be actually achieved. Referring to the telecommunications sector, he cited the INTELSAT example to illustrate a situation in which there could be a balancing of prices so as not to erect additional barriers to developing country exports. Concerning developing country imports, it was necessary to explore in the coming meetings how the GNS could operate a flexible approach (as outlined in paragraph 7(b) of the Montreal text) to liberalization in ways to increase its contribution to development. Concerning the financing implications, the GNS forum should not deal with this directly, but could exhort others to concentrate on the development of infrastructure and the technological base of developing countries. The GNS could not mandate the transfer of technology in this framework but could provide an environment which would facilitate such transfer as, in the end, the transfer of know-how came down to the microeconomic decisions of individual operators.
209. The representative of India suggested that the barriers to the increasing participation of developing countries fell into two categories: formal and informal. As shown in the sectoral testing exercise, in the list of formal barriers, there were a number of discriminatory measures already incorporated in market structures in terms of national regulatory measures and legislations. This would be an obvious area of further work for the Group. In the context of progressive liberalization, provisions should be made for access for the export interests of developing countries. This did not suggest a dilution of standards in terms of imports from developing countries but meant rather a preferential regime for accessing the imports from developing countries. Concerning informal barriers, which required further analysis, he noted there might exist voluntary export restrictions, orderly marketing arrangements, market sharing agreements, bilateral arrangements, and industry to industry arrangements and restrictive business practices which could represent significant barriers to entry into various sectors. It was also necessary to ensure better access to information, technology and know-how where restrictions fell into both categories. Turning to the issue of acquisition of skills, qualifications and technology by developing countries, he noted the importance of encouraging training programmes, the development of professional service sectors to international standards, and promoting joint ventures as a positive form of cooperation and participation. The lack of transparency which existed on global trade, the market situation, and on business opportunities was also a barrier. The Nordic idea about presenting information to developing countries about market opportunities was useful if it could be made into a concrete element. The Montreal text contained a number of ideas of great significance, and he considered it necessary to incorporate specific measures in the multilateral framework in favour of developing countries. It would not be sufficient to have something analogous to the enabling clause. The development aspect had to be built in as an integral part of the framework and not in terms of special considerations. Finally, he perceived the need for the secretariat to compile a background document which would sum up and consolidate what had already been said in discussions that had taken place in the sectoral testing exercise as well as in the individual secretariat background notes on sectors. It would be useful to have this consolidation and compilation in terms of the work which lay ahead and not in order to have the opportunity to discuss this further as a specific agenda item. The GNS should try and draw on the lessons from the sectoral testing exercise in order to get some clarity on the various views that had been expressed and to sort them out in terms of what the different priorities would be in future work. The secretariat should not try to develop its own ideas or compile ideas from elsewhere, but should base its work on what had actually been said and what was contained in the background notes. The Chairman confirmed the secretariat's readiness to prepare such a document.

210. The representative of Canada believed that developing countries should be full contracting parties, participating to the maximum in a general agreement on trade in services. This would not only promote their development but also strengthen the integrity of the multilateral trading system. This assumed that developing countries would play meaningful roles in negotiations for, and the implementation of, the progressive
liberalization elements along with the other elements of the agreement. The Punta del Este Declaration did not say that the burden of development policy and programmes did or should fall on the GNS negotiations. It referred to the work of other bodies which the Group needed to take into account. It could well be that developing countries themselves should be strengthening their domestic economic and development policies and programmes to foster the contribution of services to their economies. It could also be that aid and development agencies and donors, both multilateral and individual, should be looking at ways to help more effectively. But this was not the task of this body which was to do what it could in a trade policy instrument, a binding contractual trade agreement while taking account of activity elsewhere. The basic contract - the disciplines and obligations of the framework agreement - should apply to all contracting parties. He did not welcome the idea of general derogations for classes of countries including a derogation of the MFN principle. If any individual country wished to avail itself of any provision for exceptions or safeguards there should be a multilateral procedure involved as yet to be defined. With regard to developing country export interests, they should certainly not be excluded. Discussions have shown that there are few if any broad sectors that did not attract at least some developing country export interest. His delegation was ready to look at all export interests and was prepared to address delivery of services by each factor of production. The Canadian approach to progressive liberalization should be helpful to the realization of developing countries' exporting and importing objectives. This included the practical tailoring of national schedules to reflect each country's situation. He noted with interest the idea of utilizing the International Trade Centre to help promote developing country service exports. He recognized that developing country concerns regarding restrictive business practices were long standing and not confined to services. It remained to be seen what was do-able in this area in a services agreement. Concerning technology, ideas such as the use of joint ventures were important. Establishment as a means of delivering services could be significant in facilitating know-how and training. He added that the establishment of a sound intellectual property regime would play an important contributory role in facilitating the flow of technology. There could be no question of setting down a legal requirement for developed country governments to force their firms to transfer technology to another country. This would be unworkable in practice and objectionable in principle to his authorities who did not accept extraterritoriality. It was therefore difficult to see what could be put into a binding legal contract. Turning to preferential access, he welcomed the assurances of the Indian and Egyptian delegates regarding any provisions that could undermine the substantive purpose of prudential, safety and other regulations or standards.

211. The representative of Yugoslavia supported the idea of the Indian representative regarding a background document on increasing participation of developing countries. In general terms, she noted that developing countries had the sovereign right to apply measures to improve their competitive position in world trade. Development considerations should be an inherent element of the multilateral framework. The GNS still lacked clarity on the definitional issue, on coverage, and on the concept of
relative reciprocity. Safeguard provisions were essential not only to protect infant industries but also to secure economic development. The same governments were participating on interrelated issues in several fora at the same time and better coordination of segments of the overall picture was required. There should be obligations on transnational corporations to disclose their operational standards. If these negotiations were considered to be strictly separate from financial, monetary, trade in goods and other issues, she doubted that much progress could be made. In terms of concrete suggestions for increasing participation of developing countries, she welcomed, inter alia, joint ventures, better access to information networks, export promotion and technical assistance.

212. The representative of Switzerland stressed that liberalization had to contribute to both growth and development. The problem was how to achieve the development objective. He believed that market access should be maintained and increased for developing countries. How could market access be maintained? Citing an example, he noted that Swiss banks were important consumers of software. Swiss software engineers were extremely expensive and software was increasingly made for Swiss banks in developing countries. This market access had to be kept irrespective of what Swiss software engineers eventually would say about it. Regarding the increase of market access, he said that in the medium or short term it could be increased by disseminating more information to developing countries, on the lines for example suggested by Sweden and other delegations. The Peruvian delegation had referred to regional integration among developing countries and he believed that this should be carefully studied and, as a concept, should be part of the future framework.

213. The representative of Mexico said that if the developed countries were trying to define international trade in services as the transnational movement of foreign investment, then it would be necessary to measure the participation of developing countries in transborder trade including the movement of capital and labour. Regarding the share of developing countries, his delegation had expressed a minimum figure of 3 per cent and maximum figure of 9 per cent. These figures did not refer only to the transborder trade mentioned by the European Communities but to an expanded definition of services trade.

214. The representative of the United States, regarding specific provisions in the framework that would address the issue of the increasing participation of developing countries, said that concepts such as technology transfer had been brought up prominently as an example of how to develop the competitive ability of developing countries and their service sectors. This was one paradigm for such provisions and in approaching it, it was necessary to look at all the difficulties that had been raised previously in the GNS about technology transfer as well as those restrictive business practices carried on allegedly by industrialised country multinationals. In services, technology transfer was frequently the transfer of know-how which was facilitated through, as one delegate had remarked earlier, the ability of companies to establish in foreign markets and provide that know-how in the most direct way. Another approach would simply recognize that the increasing availability of developed country
markets to developing countries would be assured through the process of scheduling specific commitments. This would take into account the peculiarities, strengths and weakness of particular service sectors in developing countries as well as the differences of the overall level of development of these countries. The GNS had to be careful about whether a provision of this kind could be made for all developing countries, or whether it should be done more on a case by case basis. It was hard to generalise about developing countries not only because they were at different stages of development but they had different strengths in services sectors. It was necessary to be as precise as possible regarding development needs; whether this meant, for example, the free access to patentable information or the assurance that human skills would be transferred. These were two separate policy and legal issues which had to be discussed with care.

215. The representative of Brazil supported the request made by India to the secretariat. He stressed the importance of the principle of balance in the negotiations. If the GNS wanted balanced results, it would have to consider the question of asymmetry. The attempt to reach an agreement without considering the needs of all participating countries would not be fruitful.

216. The representative of Tanzania said that maximum flexibility should be provided for during and beyond the Uruguay Round as far as the scope, limits and options available to developing countries were concerned. It was important not to exacerbate the imbalance that already existed between developed and developing countries. He did not see the increasing participation of developing countries in terms of a trickle down process in which benefits automatically flowed from liberalization. It had to be a clearly formulated option that would be available to developing countries. He noted the reference in paragraph 7(f) of the Montreal text to the least developed countries and said it was necessary for the GNS to take into account, inter alia, the balance of payments situation and technological requirements of those countries as way of promoting their future development. He considered that the level of economic development of Tanzania did not allow for blanket application of m.f.n and other principles, and would not be able to derive significant benefits from extending reciprocity in this respect.

217. The representative of Egypt supported the request by India and added that the development dimension was intertwined with all elements of the agreement and could not be dealt with in a separate part of the agreement. This was very relevant to how the GNS would deal with the question of definition and of factor mobility. The participation of developing countries would be hindered if the GNS allowed the mobility of certain production factors but not others, or regarding coverage if special consideration was not given to sectors of export interest to developing countries. Concerning transparency, the obligation on the part of market operators was important in the context of how to increase domestic service capacities. The overall question was how to ensure that liberalization would be contributive to the development process.
218. The Chairman then turned to the next agenda item, the discussion on safeguards and exceptions. After the secretariat representative had presented the document entitled "Safeguards and Services" (MTN.GNS/W/70), the Chairman invited comments.

219. The representative of Peru welcomed the secretariat paper and noted that safeguards and exceptions were a constant political requirement for practically all international agreements including GATT. This was due to the fact that such agreements had to be realistic. He considered that the services agreement could have two types of exceptions and one type of safeguard. The first type of exception referred to permanent, general exceptions ab initio (e.g. for reasons of public order, national security, moral or cultural values); the second type of exception would be temporary waivers contained in specific clauses to take account of unforeseen events which might occur during the lifetime of such an agreement (e.g. protection of consumers, or public health). He considered there was one temporary safeguard specifically for the protection of the balance of payments (i.e. severe outflow of foreign currency) which would be directly linked to developing countries. Such a temporary safeguard application should be notified by the country concerned to the organisation dealing with the framework; consultations should be undertaken and the implementation of such measures should be monitored to avoid any possible abuses.

220. The representative of Hungary pointed out that if the GNS took an approach which dealt with services on a selective basis, a situation might come about which was similar to the one in GATT with respect to agriculture, i.e. distortions could be expected and it could be difficult to bring back at a later stage unresolved trade issues under the generally applicable principles. Turning to the question of safeguards and services, he said that the lack of data on transborder trade in services meant that the scope of application for any kind of safeguard or exception was limited. Taking a wider definition to include trade through commercial presence or through establishment, the problems were multiplied. Referring to commercial presence, the possibility, and even necessity, for any safeguard action or exemption might arise in a quite different way than for goods. Matters which were well understood in GATT, such as dumping, were difficult to grasp in the services area. Furthermore, the possibility for remedies was questionable. If a company was established in a given country, it was difficult to see how on a post facto basis safeguard measures could be applied in terms, say, of ceasing activities, or having its licence withdrawn. A primary conclusion was that safeguards should be applied in the process of progressive liberalization itself. In this sense, paragraph 7(b) of the Montreal text recognized that safeguard measures were more relevant to countries with lower levels of development. Turning to balance of payment considerations, he noted that balance of payment difficulties were frequently the basis in goods trade for safeguard measures, and in particular, for import access restrictions. Articles XII and XVIII dealt with the issue and attached it to the criteria of decline or low level of monetary reserves. This approach alone was not sufficient in services trade to cover problems related to balance of payment considerations. When trade was through some form of establishment, this had the effect of the foreign provider being established in the host
country becoming deeply involved in the domestic economy. The regulations concerning domestic producers might fully or partially apply to such foreign providers. The macroeconomic situation in a large number of countries with lower levels of development did not allow for convertibility; wide-ranging exchange controls had to be maintained due to balance of payment considerations which had to be taken into account in drafting safeguard provisions. Concerning the linkage between trade in goods and trade in services, he said that restrictions on transfer of technology in sectors such telecommunications, air transport and professional services influenced countries' ability to produce and export efficiently. The restrictions applied in goods were based on Article XXI (national security) which was open-ended: there was no criterion for its application, no possibility to consult and even less to ask for compensation whatever the trade effect might be. This provided two lessons for the GNS: first, when drafting national security exceptions for a services agreement it was necessary to be careful about the drafting; second, safeguard provisions should also be applicable for countries affected by such technology transfer restrictions. In such cases, the affected countries should have the possibility to apply counter- or safeguard measures with respect to the sectors affected, which might take the form of government assistance to the industries affected (e.g. additional protection so that domestic producers would not be compelled to compete on an unequal basis with foreign service providers).

221. The representative of the European Communities said that it was important to be aware that safeguard action, in contrast to exceptions, was in principle temporary. It was difficult to have a definitive idea on what sort of safeguard measures or exceptions were needed without a clearer idea of the sort of commitments that parties were likely to undertake. Looking at the safeguards issue, one tended to think of temporary measures taken essentially on a sectoral basis which were viewed as a safety valve for the liberalization process. One was encouraged to liberalize rapidly with the understanding that if the effects of the liberalization created injury for domestic producers, then one could temporarily withdraw from that. It became more difficult when one looked at the different forms of trade in services, particularly establishment as the Hungarian representative had pointed out, and the movement of service providers who had a permit with a certain limitation to provide their service. These issues required careful thought and imposed certain limitations on the type of safeguard action which might be envisaged. The issues of remedies and procedures were complex. It was difficult to hypothesise situations where urgent action might be necessary in the sense that existed in GATT Article XIX. Concerning injury, he raised the question of what might be injured, looking beyond the potential damage to a sector and considering the implications of increased imports for the economy as a whole. It was difficult to see how increased imports would necessarily damage the wider interests of the economy more than, say, an increase in the domestic supply of the same service. Was it necessary to have a remedy which discriminated between foreign and domestic suppliers? Was it necessary to deviate from national treatment? He had not yet seen a convincing justification for that and it was necessary to reflect before moving too far down the path of a wider concept of injury which could make it either impossible to justify (in the
case of strict injury criteria) or alternatively allow almost any excuse to justify safeguard action (in the case of weaker criteria). This was not in the interest of any signatory to the agreement. Turning to balance of payment measures, he did not consider it was possible to consider balance of payment measures in the services sector in isolation from balance of payment measures in the goods sector. For that reason, in principal, he was not talking about sectoral action in balance of payment terms but about broad-based action which would affect a number of service sectors. This implied that surveillance of such measures was not possible without close coordination with the surveillance exercise not only in the GATT but also by the IMF. Regarding exceptions, it was necessary to draft carefully; the Montreal text foresaw something like GATT Articles XX and XXI. It was worth considering the extent to which recourse to those articles required more definition, more careful drafting, maybe even a degree of surveillance or at least a requirement to justify. It was possible to draw on the discussion going on in the GATT Articles Group.

222. The representative of Mexico said there were two types of safeguard action of a general nature, concerning balance of payments and increasing imports which could cause damage to certain industries. In this respect, the purpose of a safeguard was to limit the volume of services. It would have to be applied on a temporary basis. Concerning the unexpected increase of imports, a number of elements would have to be taken into consideration: the existence of a sudden and unforeseen increase of imports, that caused or might cause injury to domestic producers, and the existence of specific indications in the framework agreement. As soon as the situation no longer justified the existence of these measures, they would be suppressed. Regarding the issue of safeguards for economic development, such safeguard measures would be invoked when necessary, e.g. to help the development of certain sectors, to deal with structural problems such as those related to technological progress or the capitalization of service industries. He agreed that the definition of trade in services would have a bearing on the safeguards issue. In the case of transborder trade with the movement of consumers, it would be possible at least in theory to reduce the level of liberalization that had been adopted for certain activities, e.g. specific impositions on tourists, less strict regulations on freight sharing in maritime transport. Generally speaking, the safeguards would be applied through the mechanism of temporary freezing of the commitments of progressive liberalization and national treatment. It would be appropriate to have a mechanism which would determine the criteria to decide the adoption, appropriate application and future elimination of a given safeguard. This was more necessary in the case of trade in services including the transborder movement of the factors of production. Safeguard measures should freeze the level of liberalization granted as well as the level of national treatment accorded. These measures would have to avoid trade practices incompatible with m.f.n and non-discrimination. Regarding exceptions, his delegation considered it appropriate to establish certain provisions such as those contained in Articles XX and XXI which would have to be adapted to take account the specific characteristics of trade in services as well as of new technologies.
223. The representative of Hong Kong highlighted two aspects which made the discussion complex: first, the form of trade. In the goods context, it was primarily border measures which were applied to implement safeguard provisions. In services, the situation was complicated by the commercial presence of suppliers, whether temporary or through establishment. The GNS would need to consider more carefully the question of newcomers or those already established as there might be a situation where the problem was not created by newcomers but by those already in the market. Furthermore, the criterion of a sudden and unforeseen increase in imports was difficult to apply to services which were not as easily detectable as a shipment across borders. The second complicating aspect referred to the interrelationship among services sectors. The question of safeguard measures applied in the case of injury to a particular sector could have widespread implications. The secretariat's reference to a protection balance sheet was worth exploring in this respect. The issue of coverage was also relevant: if the agreement covered only a limited number of sectors, and given the interrelationship of services sectors, the question of safeguards against a particular service which might have inputs from other unregulated sectors might create problems which required consideration. Regarding subsidies, he noted the situation for services was more complex than for goods as many services - education or research and development - were provided by the government and gave rise to the question of inputs or indirect subsidies from other sectors. Concerning dumping, he said the question of price comparison could be complicated because there might be circumstances governing the fees or charges for services rendered which differed according to country. Regarding balance of payments, there were sectors which were closely related to the flow of foreign exchange across borders. In the case of financial services, it was not necessarily the case that only foreign firms were the cause of balance of payment problems; local financial institutions could also cause balance of payment problems. Turning to exceptions, the main characteristic of such measures was that there was no requirement to consult with other parties and there was no provision for retaliation or compensation. He considered that tighter provisions would be necessary in the services framework to guard against the abuse of measures which could undermine commitments or concessions made in the framework agreement.

224. The representative of Romania said that the provisions on safeguards in the General Agreement could be applied to trade in services with a few adaptations. The first case where safeguards were applicable was in the event of unforeseen increases in imports which affected local producers in an adverse manner. The second case related to balance of payments difficulties and the third to the protection of the domestic industries of developing countries. Two important conditions could be attached to safeguard provisions: non-discriminatory application and application according to specific criteria. Regarding exceptions, two categories could be established, one based on Articles XX and XXI of the General Agreement, another based on the specificities of trade in services and covering such areas as the protection of cultural identity, exemption for national monopolies, and exceptions in the application of national treatment.
225. The representative of Brazil said that without knowing the definition of trade in services for which a formulation of the concept of safeguards was being sought, it was difficult for his delegation to have a clear position on that concept. Even in the context of balance of payments, it was difficult to have a clear idea of the formulation the concept could have for services without having reached agreement on the definition of trade in services. Exceptions could be relevant in the context of certain development policies such as selective services importation. Regarding regulatory situation, he re-emphasized that given regulatory asymmetries between developed and developing countries it would be not be meaningful to consider a standstill or a freeze in the regulations applying to most services sectors.

226. The representative of Canada said that the note prepared by the secretariat on safeguards (MTN.GNS/W/70) was helpful in drawing out the main issues and questions which needed to be addressed by the Group. It was widely known that most comprehensive trade agreements included provisions on exceptions and safeguards. However, it had also become clear after reading the note by the secretariat that there could be no automatic transpositions of provisions from one agreement to another. In addition, the Group should be careful in the terminology it used. Both safeguards and exceptions had acquired relatively precise meanings in the trade policy context and those should be relied upon as much as possible in the discussions of the Group. In paragraph 4 of the note by the secretariat, a useful distinction between safeguards and exceptions had been drawn. Safeguards were described as provisions permitting the protection of certain national interests - in the event of the occurrence of a pre-defined set of circumstances - through the temporary suspension of obligations or other undertakings. In turn, exceptions were defined as provisions permitting the non-application of the accepted rules and principles of the agreement on a continuing basis.

227. Provisions in the areas of safeguards and exceptions should be of equal interest and application to all participants and should not be applied unilaterally but involve an agreed multilateral procedure - e.g. requirements, as appropriate, for some or all of full transparency, notification, consultations and dispute settlement, multilateral surveillance, and perhaps other provisions. Regarding exceptions specifically, any list should be kept as short as possible and be tailored carefully to reflect the needs and requirements of an effective, durable and viable services agreement. A number of suggestions had been made, including those relating to security, public morals, safety and the environment. Any such provisions, however, should: (i) not include any broad exclusions for economic or trade reasons; (ii) preclude the use of the measures as disguised restrictions on international trade; and (iii) relate back to the overall multilateral procedure. With regard to a possible national security exception, any proposals in this regard should be tightly drawn, be as specific as possible, and seek to minimize the potential for abuse.

228. The notion of safeguards was in the view of his delegation even more problematic than that of exceptions and should be approached even more
cautiously. Careful consideration should be given to the rationale for, the feasibility of, and the appropriateness - in the services context - of possible safeguard provisions. The broad context should be taken into account, reflecting both the consumer as well as the producer interest. Also, account should be taken of discussions elsewhere in the Uruguay Round on safeguards. It was arguable that despite the difficulties, the inclusion of a safeguard provision might be advantageous in order to facilitate more significant trade liberalization undertakings than might otherwise be the case. It might also help smooth adjustment requirements. The need for a safeguard provision, and its nature and flexibility, would in some measure depend on the extent of the agreement reached on services.

229. Clearly, any safeguard provision could not operate on an automatic basis. There would need to be defined grounds for action, which would not be simply "disruption". There should be presumably some link to the provisions and obligations of the services agreement and the type of multilateral process those provisions would imply. Questions related to "injury" should also be addressed, drawing on the secretariat's comments and questions. Similarly, the avoidance of the creation and growth of "grey area" measures would require careful attention. There were a number of difficult technical questions. One set related to measurement of trade, the definition of the traded service and the affected industry, and the basis on which the determination of injury might be made. Another set related to the problems of established trade as compared to cross-border trade and their implications for national treatment and m.f.n. treatment. In short, it was not at all clear at this stage just what an effective and appropriate general safeguards provision in a services agreement should contain and the Group should proceed with caution on the issue. Regarding the specific case of a balance of payments safeguard provision, as noted in the Montreal text, a number of issues would need to be examined. Balance of payments concerns were of course macro-economic - not micro-economic or sectoral - in nature. Moreover, they were not in principle limited to any country or class of country. To avoid the worst problems encountered in the GATT experience, the Group should adopt a general approach to safeguards, its provisions applying to all parties. Due account should be taken of the discussions on GATT Articles in the relevant Uruguay Round negotiating groups.

230. The representative of the United States was not sure that Article VI remedies were the most appropriate to deal with trade in services given the imprecision of transactional information available for services sectors. Trade distortions did exist for services but were often of a temporary nature. He agreed with the emphasis placed in the note by the secretariat on the problems relating to injuries (such as the absence of data). The application of safeguards in the same fashion as that suggested by Article XIX of the General Agreement could be very difficult in cases where services providers were already established in the importing country. The only justifiable type of safeguard in the view of his delegation would relate to economy-wide balance of payments disturbances. Regarding exceptions, the language of Article XX and XIX of the General Agreement would have to be considerably improved to become applicable to trade in services. Special problems could arise if broad
headings such as public morals and consumer protection were adopted in the formulation of the concept of exceptions for services.

231. The representative of Japan raised three problems with respect to the application of safeguards. Firstly, the statistical base for services transactions might be still inappropriate for a precise determination of injuries to be undertaken. This situation could give rise to different interpretations of the same event among signatories of the framework agreement. Secondly, the appropriateness of safeguard measures could vary among sectors and/or transactions, calling into question the possibility of reaching agreement on a single formulation to be incorporated in the framework agreement and applied across the board to all sectors. Thirdly, the scope of application of safeguards could be difficult to define. For example, should safeguard action be invoked only in relation to the granting of new licenses to foreign providers or should it also cover the revocation of licenses of firms already established within the importing country? Safeguard measures creating big risks for foreign investors could constitute a serious disincentive for services providers and could have a negative impact on the expansion of trade in services. Discussions in the group of negotiations on safeguards could be relevant for consideration by the GNS as issues such as coverage, objective criteria for action including serious injury, compensation and retaliation were already being considered there.

232. The representative of Sweden, on behalf of the Nordic countries, said that the provisions on safeguards in the General Agreement could be relevant along with the discussions on the subject in the negotiating group on safeguards. Compatibility between the General Agreement and the framework agreement on trade in services should be ensured with respect to dumping measures and countervailing duties. Trade in goods and trade in services were very closely linked and that should be reflected in similar rules being applied to both types of trade. Regarding exceptions, certain national policy objectives should guide their application and could include national security, public health including environmental protection, public morals and public order. Environmental concerns should not be viewed as loopholes in that context. Regional development concerns could also be incorporated into a provision on exceptions but his delegation was exploring the possibility of dealing with it under the concept of regulatory situation. Cultural concerns relating to audio-visual services, for example, also might fit into the context of exceptions and/or regulatory situation.

233. The representative of Australia said that it would be disastrous if the framework agreement provided the scope for an excessive reliance on safeguards in the effective operation of the arrangement. The need to resort to safeguards should be minimized in the final agreement. He endorsed the view expressed by others that the formulation of exceptions for services should be much narrower in nature than its counterpart in the General Agreement.

234. The representative of India said that the concept of safeguards and exceptions would relate not only to the nature of commitments under the
framework agreement but also to the nature of transactions to be covered under that agreement - i.e. to what constituted trade in services. He submitted that the difficulty in applying the concept of safeguards to an established firm in a foreign country was directly linked to the fact that the issue of establishment went beyond the notion of tradeability in its traditional meaning. Clearly, balance of payments concerns should be a central element in the invocation of safeguard action. In that context, progressive liberalization was especially relevant as well, as countries should be permitted to safeguard their balance of payments positions by gauging the progressivity of their commitment to the multilateral framework. In that sense, progressive liberalization did indeed have a built-in safeguard mechanism. He cautioned against basing the approach of the GNS to the issue of safeguards on Article XIX of the General Agreement. He found of special relevance the distinction made in the note by the secretariat between safeguards and exceptions, especially as such a distinction had been neglected for much of the discussion in the GNS. Regarding exceptions, a distinction needed to be made with respect to whether they were to apply generally to the framework agreement or whether they could be more specific and apply to particular elements of the agreement such as national treatment, market access, m.f.n./non-discrimination and others. It was the view of his delegation that exceptions should apply to specific aspects of the agreement.

235. The representative of Hungary said that a tighter drafting of Article XIX of the General Agreement would only address half of the safeguards issue, the linkage between goods and services remaining untouched by such an approach. Restrictions which were placed on goods but which also affected services would not be covered even if the scope of application of Article XIX was narrowed. It would be very difficult to conceive of the application of balance-of-payments-related safeguards measures to established firms in the market.

236. The representative of Israel said that provisions on safeguards and exceptions would be a very important part of the framework agreement but should not necessarily be too closely based on related provisions in the General Agreement. He remarked that the list of questions in the note by secretariat were most pertinent and should guide the Group in its discussion of the issue. There were three main types of safeguard provisions in the General Agreement. Those dealing with dumping would need still a great deal of consideration in the GNS. Those dealing with balance-of-payments problems were clearly applicable in the context of services, especially as trade in services was in some respects very closely linked to trade in goods. Those dealing with an unforeseen increase in imports could be difficult to apply to trade in services as the definition of injuries suffered could be even more complicated than it was the case with trade in goods. He agreed with the representative of India that it would be necessary to be more precise as to what exceptions were supposed to apply to. Perhaps a good basis with which to start a more comprehensive consideration of the issue of exceptions were Articles XIX and XX of the General Agreement.
237. The Chairman opened the discussion on the concept of regulatory situation.

238. The representative of Mexico said that the asymmetries which obtained between developed and developing countries with respect to the sophistication of their regulatory frameworks was due to many reasons. First, many of the new and more technologically-sophisticated services were not yet regulated in many developing countries. Moreover, the developed countries had progressed more rapidly than developing countries in the adaptation of their regulatory systems to the rapidly-changing nature of the market for services. Similarly, developed countries had tended to restrict more the international mobility of labour than developing countries had tended to restrict the international mobility of capital. Also, account should be taken of the different degrees of development in the regulation of services transactions so as to ensure that in this Round and others to come, the scope would remain for the progressive elimination of regulatory asymmetries.

239. The representative of Japan said that the possibility for introducing new regulations to address asymmetries in the different regulatory systems should encourage participants to join the multilateral framework agreement, thus strengthening the multilateral system of trade in services. However, the introduction of regulations would need to be consistent with other commitments in the agreement. A mechanism of consultations might be necessary in this regard. If new regulations had trade-distorting effects, interested parties might see the need for consultations with the government of the importing country. Regulations could be considered justified in accordance with their motivation and the appropriateness of the measures taken in relation to the regulations in place. Governments should bear in mind the trade-distorting effects of the measures introduced and should notify such measures. If through consultations it was found that new measures were not justified, governments should be allowed to request compensation or resort to retaliatory measures to ensure their own trade interests. Newly introduced regulation should also be subject to future review.

240. The representative of India said that the regulatory situation of each country would have an impact on the characteristics of specific services sectors, the nature and content of market access, and the manner in which progressive liberalization took place. A valid criteria implied by the Punta del Este Declaration for the maintenance of government regulations was the promotion of economic growth and development of developing countries.

241. The representative of Canada said that regulations should be consistent with the obligations of the agreement (e.g. transparency, national treatment, market access including modes of delivery, m.f.n.) while their scope should be limited to the minimum required in order to achieve their recognized public policy objectives. They should not be applied in a manner which could constitute a means of arbitrary or unjustifiable discrimination between countries where similar conditions prevailed, or a disguised restriction on international trade (ideally
regulations should be trade-neutral). Where a party accorded different treatment to persons of other parties, the difference in treatment should be no greater than that necessary for prudential, fiduciary, health and safety, or consumer protection reasons. Differential treatment should be equivalent in effect to the treatment accorded by the party to its own nationals for those same reasons.

242. The representative of Hungary said that liberalization could involve re-regulation in some cases. He could see that re-regulation might be especially prominent in areas where countries did not commit themselves to liberalize under the framework agreement. This could be the case, for example, with the commitment to grant national treatment to foreign providers.

243. The representative of the European Communities agreed that re-regulation did not necessarily create trade-distorting situations and that it was the effects of regulations and not the regulations per se which should be the focus of attention of the GNS.

244. The representative of Sweden, on behalf of the Nordic countries, said that consideration should be given as to whether longer-term issues should be addressed under regulatory situation, such as minimum standards, mutual recognition and harmonization. It should not be excluded that discussions on such issues might need to be undertaken by experts and under the most appropriate fora - whether that be inter-governmental bodies, professional associations or some mixed forum with governmental and industry representation. Another relevant issue was where to draw the line between home-country rule and host-country rule. Whereas host-country rule was more closely related to the application of national treatment, home-country rule was more closely linked to the application of mutual recognition.

245. The representative of Egypt agreed with others that asymmetries existed between developed and developing country regulatory systems and that developing countries in particular might need to add to their bodies of regulations to reflect significant national policy objectives. The Chairman opened the discussion on item 2.4 of the agenda - other business - by drawing the attention of the Group to a communication which he had received from the Union Mondiale des Professions Libérales. As requested in the communication, a document entitled, "Declaration by the World Union of Professions" would be made available to members of the Group.

246. The representative of the European Communities said that document MTN.GNS/W/73, containing a statistical study on trade in services, was a substantial analysis of the geographical break-down of the European Communities' cross-border trade and also a high degree of sectoral break-down, particularly under the item of "other services". There was also a large section on methodology, and a section comparing the situation of the EC with that of the United States and Japan in the matter of services.

247. The representative of Switzerland said that document MTN.GNS/W/69, containing a draft blueprint of a general agreement on trade in services
was intended to contribute to the future work of the GNS, particularly in fulfilling the aim set out in paragraph 11 of the Montreal text of assembling by the end of the current year the main elements of the multilateral framework agreement. The document should not be viewed as the Swiss position with respect to those elements but instead as an effort towards reflecting the overall situation of the Group as his delegation perceived it at that stage of the negotiations. It sought to provide an appropriate structure for the framework agreement and to identify problems still unsettled. From this perspective, and with a view to improved market access and increased participation of developing countries, the agreement resulting from the Uruguay Round would contain short- and long-term elements. It could contain immediately applicable commitments as well as a process for the progressive liberalization of commercial services to be undertaken after the end of the round. This meant that at the end of the Round signatories would accept to submit a universe of commercial services to the general rules and procedures of the framework agreement. Progressive liberalization would be undertaken sectorally, involving the progressive inclusion of services sectors under a set of specific rules and disciplines. Such inclusion would correspond to the concept of binding in the General Agreement. Sectoral negotiations - multilateral, plurilateral and bilateral - would pursue the compatibility of pertinent service regulations with the provisions of the agreement while aiming at the elimination of specific barriers to market access. The purpose and goal of this agreement would be to provide a long-term framework for the progressive liberalization of services, as a means of promoting economic growth of all trading partners and the development of developing countries. Liberalization would be defined as a substantial reduction of trade barriers in services with a view towards effective market access.

249. Institutionally, services should be fully integrated into the GATT, with the greatest possible degree of compatibility being achieved between the provisions of the General Agreement and those of the future framework agreement on trade in services. Regarding provisions of general application to the universe of commercial services, five types of obligations would be relevant. The first general obligation would be progressive liberalization and effective market access, the agreement setting out as a contractual obligation the provision of effective market access through an on-going process of liberalization. The second obligation would be for signatories to enter into negotiations in good faith. The third general obligation would be for signatories to engage in negotiations in the same fashion as they had traditionally done under the General Agreement. This was to say that signatories could negotiate under other fora or could enter multilateral, plurilateral and/or bilateral arrangements among themselves. Also, all negotiations under the agreement could be undertaken on the basis of specific requests and offers or with a view to achieving sector-specific standard-setting understandings which brought about a higher degree of compatibility among different national regulatory systems. Negotiation under fora other than the GATT system would necessarily be devoted to such standard-setting operations. This would imply that the GATT-related framework agreement would have a constitutional function, legally prevailing over subsequent sectoral agreements. Another central element of the agreement would be
transparency, as discussed at length in the GNS. Special circumstances relating in particular to developing countries should also be of great importance. The agreement should contain provisions allowing a phasing-in of obligations, taking into account existing levels of market access as well as special circumstances, particularly those of developing countries. The approach of his delegation to the question of development was reflected in all three parts of its communication.

250. As suggested above, progressive liberalization could be achieved through the successive binding of different sectors, sub-sectors or services activities/transactions under the rules and disciplines of the framework agreement. The inclusion of sectors could be undertaken through autonomous measures or bilateral, plurilateral and multilateral negotiations. Unlike the General Agreement on Tariffs and Trade, the framework agreement on trade in services would be subject to rules and principles which were bound, reflecting the complexity of the matter and the need for a step-by-step approach. The issues of definitions and coverage could also be resolved through the process of binding which would serve to clearly define the scope of services transactions under the national schedule of each signatory. The principle of non-discrimination/m.f.n. was also central to the process of progressive liberalization and should involve two different modalities: m.f.n. as traditionally embodied in the language of Article I of the GATT and qualified m.f.n. which would relate to standard-setting agreements. The concept of national treatment could be expressed in terms of equal opportunity being provided to national and foreign services suppliers, thus recognizing that regulations need not be completely identical for both types of suppliers. The agreement could also include further undertakings with a view to progressively overcoming systemic differences and achieving mutually compatible competitive conditions. Other elements of relevance in the context of progressive liberalization included: disciplines on services subsidies and TRIMS, cartels and State monopolies, legitimate public policy objectives, regional economic integration and free trade areas, special circumstances and dispute prevention. As to the modalities of progressive liberalization, different degrees of bindings could be allowed depending on the circumstance. Also, procedures for notification and monitoring of bound commitments should be negotiated along with appropriate processes of deconsolidation.

251. It might be desirable to include provisions on specific achievements by the end of the Round. These results could provide the starting point for further negotiations. Initial commitments in particular sectors or sub-sectors of individual service activities/transactions could be envisaged. They would oblige signatories to refrain from steps reducing the present level of market access available for foreign competitors. Modalities of the initial level of commitments could be negotiated with a view to taking up negotiations on liberalization and bindings. It might be conceivable to develop some sort of a safeguard clause with respect to market access in order to facilitate commitments by signatories. The initial level of commitment could be the entry-ticket to the agreement. Each contracting party would have to freeze a certain number of commercial services of economic importance, taking into account the degree of
protection and of present market access. Each country could submit a list (schedule) of services falling under the initial level of commitments. Conditions to secure an overall balance would have to be developed taking into account the special situation of developing countries.

252. The representative of New Zealand said that the Group was moving into a new phase with the completion of the sectoral testing exercise. Although the GNS had not come to any common conclusions from the sectoral testing exercise — and nor had this ever been the intention — the discussion had nevertheless influenced the thinking of her delegation. It had confirmed its view that the concepts tested were applicable across the broad range of services sectors. At the same time, the exercise had shown that for different participants, different sectors were domestically sensitive. This would tend to reinforce the position of her delegation that the coverage of the agreement should be universal. Without any clear idea of the structure of the agreement (its coverage and scope), it would be difficult to reach agreement on the formulation of concepts or principles to appear as provisions in the multilateral framework. The communication of her delegation in MTN.GNS/W/72, on key issues relating to the structure and mechanism for a general agreement on trade in services, had not attempted to look in more detail at the types of provisions and the precise lay-out of such an agreement. Instead, it suggested the background against which the Group should approach the process to follow to the end of the year. For that reason, there were few details on concepts and principles in the paper, its focus being on the issues of structure and coverage.

253. The work of the GNS constituted the opportunity to draft a sound multilateral agreement which would withstand the test of time. The experience gained in drafting the GATT provided a useful input into that process. It followed that the starting point to the paper was to analyse the reasons for the successes of the GATT. The first of these reasons was that the GATT consisted of a body of multilateral rules and disciplines which implied obligations on signatories. Secondly, these rules were enforceable through a dispute settlement mechanism. The provisions for consultation and dispute settlement were perceived both by signatories and non-signatories as effective and credible. Thirdly, the GATT contained a dynamic mechanism providing for successive rounds of multilateral trade negotiations through which the rules and disciplines applicable to signatories could be improved, and a multilateral exchange of concessions to achieve progressive liberalization could be realized.

254. The communication was designed to demonstrate that, while working towards a far-reaching agreement, her delegation recognized the realities of international trade, and proposed the basis for a flexible agreement, catering to the interests of all participants. There were two basic ways of approaching the process of drafting. On the one hand, it could be envisaged that the agreement should result from a series of specific commitments through a process of exchanging concessions. This was the approach outlined by the delegations of Canada and Switzerland, for example. On the other hand, a long-lasting framework agreement could be drafted from the outset, allowing time to achieve the full application of its provisions. Both of these approaches recognized the realities of
international services markets but some crucial differences existed between
them and should be properly addressed. The preference of her delegation
was for the second approach since a common basis was necessary to be
established before the process of progressive liberalization through
exchanges of concessions or rollback procedures was undertaken. A common
basis of rules would simplify the negotiations by reducing the variables
that would otherwise need to be renegotiated. It would also be beneficial
in particular to the smaller negotiating partners by providing a certain
degree of certainty while reducing the scope for the stronger economic
powers to negotiate access commitments skewed only in their favour.
Additionally, a common basis would be the most reliable way to ensure
effective dispute settlement procedures by allowing signatories to have
recourse to remedies when the benefits of membership were being nullified
or impaired.

255. In that context, the basic model embodied in the GATT could be adapted
to trade in services, particularly as the GATT comprised a set of broad,
multilateral rules and disciplines guiding signatories to behave in certain
ways when trading and ensuring transparency and an equitable basis for
competition. To be worthwhile signing on to, the framework agreement
should offer clear benefits to all signatories. In that context, her
department was concerned that too much emphasis had been placed by some
departments on approaches according to which benefits could only accrue to
signatories through an exchange of concessions. Such approaches would
clearly not be in the best interests of smaller countries - both developed
and developing - with limited negotiating leverage. The drafting of the
framework should be achieved through broad provisions, rather than through
exchanges of concession which added to the complexity of the negotiations
by emphasizing the specificity of each services sector.

256. The first important feature of the approach adopted by her delegation
was that it was a rules-based approach, the provisions of the agreement
acting as obligations on signatories. Secondly, bindings would take the
form of commitments exchanged on a bilateral or plurilateral basis but
ultimately multilateralized. Bindings would go beyond the basic
obligations of the agreement, their main focus being on the negotiation of
additional market access. Thirdly, flexibility would be provided through a
system of reservation applying to those areas which could not be
immediately liberalized and brought into conformity with the provisions of
the agreement. This would also provide for transparency and the agenda for
achieving progressive liberalization. Fourthly, there would be no freeze
in the regulations applying to services as this would merely result in the
consolidation of current imbalances in levels of protection. The signature
of the agreement should only entail a requirement to operate in accordance
with the provisions of the agreement, except where a signatory had taken a
reservation.

257. The representative of Egypt requested that the background notes
produced by the secretariat with regard to the six sectors chosen for the
sectoral testing exercise along with the Punta del Este Declaration and the
Montreal text be de-restricted and made available for public use. Also, he
requested that a document be compiled containing material produced by the
secretariat for different purposes, including press releases and presentations in seminars.

258. The representative of Nigeria drew attention to paragraph 26 on page 8 of MTN.GNS/24, and the last sentence of the statement attributed to his delegation. He said that the notion of prior notification in regard to transparency provisions was made difficult not by the federal nature of Nigeria's system of government but by the country's legal system.

259. The Chairman then proposed the programme for the continuation of work in October. He said that as part of the work programme in paragraph 10 of the Montreal Declaration, and with a view to the fulfilment by the end of this year of the mandate contained in paragraph 11 of the Montreal Declaration (MTN.TNC/11), the GNS should: (i) discuss any submissions put forward by participants during the course of this year concerning the structure and content of the future framework on services as well as particular concepts, principles and rules; (ii) discuss specific issues mentioned in the Montreal Declaration or arising from the discussions in the GNS during the course of this year which in the view of participants needed further examination or clarification; (iii) expedite its work towards the assembly of the necessary elements for a draft which would permit negotiations to take place for the completion of all parts of the multilateral framework. In the context of the work to be undertaken the following documents were of direct relevance: the Montreal Declaration (MTN.TNC/11); submissions by participants (MTN.GNS/W/63, 65, 66, 69, 72, 74); summary records of GNS meetings this year (MTN.GNS/22, 23, 24, 25); secretariat papers on definitions (MTN.GNS/W/38/Rev.1) and safeguards (MTN.GNS/W/70). Finally, as agreed previously, the next meeting of the GNS would take place between 23-25 October 1989.