NOTE ON THE MEETING OF 29-31 AUGUST 1990

1. The Chairman welcomed delegations to the thirty-third meeting of the GNS and drew their attention to GATT/AIR/3056 circulated on 31 July 1990 which contained the proposed agenda for the meeting. As agreed at the last meeting of the Group in July, the secretariat had prepared two informal documents: one containing draft texts on the articles appearing under Parts V and VI of the draft framework text in MTN.GNS/35 and on which so far no language had been elaborated; the second document containing a checklist of issues arising from discussions on the draft framework.

2. He suggested that under item 2.1, the group should take stock of its work at this point and how it was going to proceed further in order to achieve, by November this year, a full draft text of a services framework. He referred to his introductory note to MTN.GNS/35 which indicated that the entire text in that document was subject to further consideration and that delegations retained their right to make additional proposals or to return to proposals made by them earlier. This applied also to the new texts relating to Part V and VI of the draft framework. Apart from the major issues that had been identified and mentioned in paragraph 6 of the introductory note, considerable work would still need to be undertaken on a number of provisions, including Articles VIII to XIII in Part II of the draft framework in MTN.GNS/35 and the newly drafted Articles under Parts V and VI. In this context the Group would have to consider the question of submitting to legal experts agreed texts emerging from its considerations.

3. Under item 2.2, guidance would need to be given to the various sectoral working groups on what exactly would be expected as an outcome of their work, and by when discussions should be finalized. The purpose of their work was to establish the special features and particularities of the sectors they were concerned with, and to give a view whether it was considered necessary to have annotations in these particular sectors. In his view, notwithstanding the timetable agreed upon at the last GNS meeting, it would seem important that at some stage these specific discussions were led back into the context of the discussions on the general framework provisions. It would therefore seem necessary that in order to accomplish this and to have enough time available for the drafting of possible annotations, an ad hoc GNS body should be established. This group would be composed of trade negotiators, and where necessary by experts. Such a body should begin working in the course of the second half of October. Under item 2.3, the group should consider further the modalities of liberalization and in particular the question of whether and
how initial commitments could be negotiated by the end of the Uruguay Round negotiations.

4. The Chairman recalled that at the meeting of the GNS on 16-20 July, he had indicated that a draft would be prepared by the secretariat of Articles XXI-XXXV covering Parts V and VI of the Multilateral Framework for Trade in Services (MTN.GNS/35). The text dated 28.8.90 contained such a draft and had been distributed. He suggested that the Group may wish to have a first reading of these draft texts.

5. The representative of Chile expressed concern about the transparency of the negotiating process and suggested that the discussions of the Group be first devoted to parts I through IV of MTN.GNS/35.

6. The Chairman called attention to paragraph 6 of the cover note to MTN.GNS/35 where some issues were identified on which agreement needed to be reached urgently in order that satisfactory progress could be achieved in further negotiations. He then suggested that the Group start its discussion with the issue of increasing participation of developing countries.

7. The representative of the United States stressed that the increasing participation of developing countries constituted only one of a number of issues which gave rise to considerable ambiguity in MTN.GNS/35. For example, there was no reflection whatsoever in the document of his government's position that countries should have the right to exclude sectors. In order to make progress, several other issues should be addressed in addition to increasing participation of developing countries. Several provisions appearing in part II of the document on general obligations and disciplines posed considerable problems for his government and required thorough discussion by the Group. These included: m.f.n. (article III), economic integration (article VI), domestic regulation (article VII), monopolies and exclusive services providers (article VIII) and emergency safeguard measures (article XI). Some provisions such as transparency (article IV) was for the most part adequate while others, such as article IX on behaviour of private operators, were absolutely unacceptable to his government. He stressed that MTN.GNS/35 constituted a draft text submitted by the Chairman to the TNC on his own responsibility and did not represent a consensus by the Group.

8. The representative of Chile noted that language from the Montreal text on increasing participation of developing countries regarding access to distribution channels and information networks was absent from article V of MTN.GNS/35. He also said that language should be included regarding the need to give priority to the liberalization of market access in sectors of export interest to developing countries.

9. The representative of the European Communities warned against a repetition of last July's discussion on the draft framework. He agreed with the representative of the United States that MTN.GNS/35 did not represent a consensus text on a draft framework. Regarding development, he said that an attempt was made in the draft text to reflect the progressive
nature of the liberalization process and the aim of increasing the participation of developing countries in an operational manner, away from the approach embodied in Part IV of the GATT. The issue of increasing participation of developing countries was addressed not only under article V but also under other substantive provisions of the draft. Development should be approached not only in terms of individual countries but also in terms of individual sectors.

10. The representative of India agreed with previous speakers on the status of MTN.GNS/35. He mentioned articles VII through XII in part II and all of part IV as provisions which still required considerable refinement in order to arrive at a consensus. He found the suggestion by the Chairman of starting with the increasing participation of developing countries to be useful since progress on this concept might be feasible in the absence of parallel developments with respect to other issues. He stressed that his delegation, though not seeking the approach to development embodied in Part IV of the GATT, found article V of MTN.GNS/35 to be an insufficient means to address the concerns of developing countries.

11. The representative of Nigeria said that the Group should go through the entire document. The Chairman re-stated his original intention of dealing first with the concept of increasing participation of developing countries.

12. The representative of Switzerland said that concerns relating to development and the increasing participation of developing countries appeared in many parts of MTN.GNS/35, including, in addition to article V, part IV on progressive liberalization and article XXV on technical cooperation.

13. The representative of Egypt said that his delegation viewed the development of developing countries as one of the main objectives of the framework; therefore the preamble would need to reflect this objective. Some provisions of the annex attached to MTN.GNS/35 should be integrated into the framework. Also, article V of the Chairman's text was weak compared with the provisions contained in article VIII of MTN.GNS/101.

14. The representative of Brazil said that the increasing participation of developing countries was not only important as an objective of negotiations but was also related to a variety of elements of the framework. Moreover, increasing participation should be fostered through the structure of the framework. A way should be found to make the elements of MTN.GNS/35 which related to increasing participation operational, such as including access to technology in article V, and stating clearly that developing countries would only be expected to make concessions in sectors where they felt they were ready.

15. The representative of India noted that a consensus was emerging that a number of elements related to increasing participation be woven into the preamble and the legal provisions of the framework as well as negotiated guidelines. This approach was adopted in what was thus far contained in MTN.GNS/35. There should be a legal recognition that terms and conditions
of market access, limitations on market access, and qualifications on national treatment that would lead to increasing participation could be attached to commitments. The current text lacked such a legal enabling provision. Some provisions of part IV as well as part II would also need to be strengthened in this regard.

16. The representatives of Jamaica, Nigeria and Pakistan agreed that the concept of increasing participation needed to be given further operational content in the agreement. The representative of Jamaica noted, as an example, that there was no clear legal linkage between the concept itself and what it would mean with respect to negotiated commitments. The representative of Pakistan suggested that provisions for treatment similar to the Generalized System of Preferences (GSP) for trade in goods should be adopted, but unlike the GSP should operate on a multilaterally-agreed rather than unilateral basis.

17. The representative of Malaysia noted that article V should be strengthened, and that enhancing domestic capacity and wider access to markets were inadequately addressed.

18. The representative of the European Communities, referring to comments that article V lacked operational content, noted that operational elements were contained in other articles of the draft text while article V presented the general objectives. He noted that the question of agreements between developing countries had been raised, but that the types of agreements involved should be considered. There could be practical difficulties in determining how a GSP-style arrangement would work or how it could take into account individual levels of development.

19. The representative of the United States said that his delegation could not accept, as a premise, the notion that the increasing participation and competitiveness of developing countries would be improved by taking measures to close the market. Regarding more specific provisions, such as technology transfer, the treatment should differ in relation to the level of development of individual countries. Therefore, such provisions should be related to levels of negotiated commitments made by each country rather than to general obligations.

20. The Chairman opened the floor to a discussion of item 2.2 of the agenda, concerning the work of the sectoral working groups on the question of sectoral annotations.

21. The representative of the European Communities felt that it might be difficult for the sectoral working groups to come up with a set of consistent draft texts by November without some form of more direct contact with the GNS. He recalled that the GNS had to have the final word on what would ultimately form an integral part of the services agreement. He said that given the complexity of issues encountered in the transport sector, there might be a need to wait until the working group's third meeting before drawing conclusions.
22. The representative of Nigeria agreed to the need for the GNS to give clear guidelines to the sectoral working groups so as to ensure that the outcome of sectoral deliberations was fully compatible with the work of the GNS. In the absence of such guidelines, there was a risk of seeing sectoral groups go their separate ways and coming up with complete agreements on their own.

23. The representative of Chile said that the essence of the work carried out on trade in services was done in the GNS, noting that work done in the sectoral working groups was incidental in nature. He made reference to the Montevideo Treaty on Latin-American integration, noting that the framework that was established under the treaty had allowed for the later signing of supplementary agreements. He agreed that it was essential to specify the nature and scope of the sectoral exercise but noted that it should only lead to interpretative notes to be embodied in the framework. He felt that under no circumstances should sectoral discussions lead to changes in framework provisions and constitute exceptions to the m.f.n. clause.

24. The representative of Switzerland said that his delegation shared to some extent the concern of other delegations as to the direction taken by some of the sectoral working groups. The results of the sectoral exercise currently underway could indeed be described as falling into four categories. For one, working groups could do redundant work by focusing on concepts or issues which were already addressed by the framework itself. On the other hand, it may well be that the working groups would refine some of the concepts developed in the framework. The working groups would thus be considering issues which, for one reason or another, had not been fully taken into consideration by the GNS. He cited the formulation on national treatment which a number of delegations were using in the financial services area, with its emphasis on de facto results, as one example of this second category of sectoral findings. A third category of findings might relate to issues which were so specific to an individual sector as to make them unworthy of inclusion in a general services framework. Such issues would per force need to be addressed in a sectoral annex or annotation. A fourth category of sectoral findings could, finally, relate to issues that were so superfluous as to be unworthy of inclusion in a sectoral annex. He noted that some sectoral groups were dealing with extremely specific issues and gave the impression of being quite independent bodies but recalled that all groups would be submitting the conclusions of their work to the GNS, whose task it would be to make decisions on the contents of possible sectoral annotations.

25. The representative of the United States felt that the limited number of days left in the Uruguay Round called for a decision on a specific date, e.g. the second half of October after which an ad hoc group would consider the need for whatever specific provisions might be required on a sectoral basis. He felt that such a decision would prompt all sectoral groups to focus their priorities with a view to meeting the October deadline. He suggested that the Chairman of the GNS should advise the chairmen of each sectoral groups of such a decision.
26. The representative of Japan said that the chairmen of the sectoral working groups would find it important to know exactly when to submit draft annexes to the GNS. Recalling that the GNS November meeting was the last at which a services agreement could be drafted, he felt that the Group's meeting in October would be particularly important from the point of view of considering the results of the sectoral working groups. It was thus essential that such results be made available in time for the GNS October meeting. While some flexibility would be required to deal with those working groups which were at a less advanced stage of deliberations, he considered that the GNS should as a general principle stick to a firm deadline for receiving the reports of the chairmen of the various working groups. He saw a need for much closer coordination between the GNS and the working groups during the period leading up to the GNS October meeting. He recalled that all service sectors had their own institutional and regulatory histories, noting the importance of giving sufficient consideration to the specific characteristics of individual service sectors and to the existing institutional arrangements applying to them.

27. The representative of Sweden, on behalf of the Nordic countries, said that a fifth category which could be added to the Swiss delegation's list of possible sectoral working group findings related to service sectors where a need arose not to apply certain provisions of the framework. He cited the example of the m.f.n. principle as applied to bilaterally-negotiated air traffic rights.

28. The representative of Hungary recalled that the lack of progress registered in some sectoral working groups was a reflection of the lack of progress made in deliberations on the framework itself. He agreed that the directions taken by the various working groups were fairly heterogeneous but recalled that the mandate of such groups made it clear that any annex would have to be fully integrated into the GNS process. He felt that the setting up of an ad hoc sectoral group of the GNS would play a useful role in this process. He said that beyond indicating whether an annex was required in their respective sectors, the chairmen of the working groups should be prepared at their next meetings to indicate which issues would need to be addressed in possible annexes as well as those issues which might need to be taken up in the framework discussions.

29. The representative of India recalled that his delegation had made it clear on several occasions that any sectoral annotation would need to form an integral part of the multilateral framework. This, he noted, placed a constraint on the time available to the sectoral working groups for concluding their work. He wondered whether the schedule of sectoral meetings could be brought forward in order to allow the various working groups to meet an October deadline, noting that some thought would need to be given to the best means for completing the sectoral work. He said that his delegation was ready to explore the possibility of setting up an ad hoc working group consisting of trade policy and sectoral experts but wondered whether such a group might not prove somewhat unwieldy given the heterogeneity of sectors and interests it would encompass. He felt that working groups were operating under the constraint of an unfinished framework text and expected that not much could be done between now and
late October to alleviate this problem. The GNS would nonetheless need answers from the sectoral working groups on two sets of questions: on the one hand, whether annexes were deemed to be required in particular service sectors; on the other, what the main issues to address under such annexes consisted of. The identification of such issues should relate to Part II of MTN.GNS/35, since issues relating to national treatment and market access in regard to particular sectors would be treated at the framework level.

30. The representative of Australia stressed the need for coordination between the GNS and the sectoral working groups. She agreed that the working groups had been working under a constraint given the lack of direction given to them by the framework discussions. In setting a deadline for concluding the sectoral discussions, the GNS had to be aware that it was not shifting the responsibility for taking tough decisions to the sectoral groups. There appeared to be no consensus in some of the working groups as to whether sectoral annexes were required, and that the perceived need for an annex in other sectors owed partly to the lack of agreement found in the GNS on a range of fundamental issues such as the m.f.n. principle. Unless the GNS was able to resolve such outstanding issues, it stood little hope of satisfactorily integrating the results of sectoral deliberations under its aegis.

31. The representative of the European Communities said that he fully shared the concerns expressed by the Australian delegation and felt that the Indian representative was right in not overestimating what could be expected from the sectoral working groups under the current circumstances. While sectoral annotations should in principle concentrate on the general obligations found in Part II of the draft framework, he was unsure that this should necessarily always be the case. There was indeed a rationale in certain circumstances for addressing issues which related to Part III of MTN.GNS/35. There would as well be a need to address the issue of coverage in one way or another, if only to define precisely those activities to which sectoral annexes applied.

32. The representative of Canada agreed to the need to pull together the results of the sectoral discussions so as to ensure that such results were commensurate with what the GNS wanted them to be. He was convinced that the results of the sectoral working groups would have a bearing on some of the elements under discussion in the GNS. For instance, the difficulties of applying a given concept in a particular sector would have implications for the kinds of initial commitments which one could expect to see emerging from that sector.

33. The Chairman, in concluding the discussion on item 2.2 of the agenda, read out the following text on further work on sectoral annotations/annexes which was approved by the GNS:

- The GNS notes the importance of completing work on sectoral annotations with a view to ensuring that a full text of a multilateral framework of principles and rules with possible annotations for individual sectors is available as soon as possible for consideration before the GNS meeting beginning 12 November 1990.
To this end, the GNS invites the chairmen of the sectoral working groups to review the work programme of their respective groups with the objective of completing this work by 20 October 1990.

The GNS notes that, since its July meeting, the sectoral working groups have available to them a draft text of a multilateral framework, presented by the GNS chairman in MTN.GNS/35.

While recognizing the difficulties that may arise from a lack of agreement at the present time on a number of issues as reflected in the Chairman's text and its introductory note, the GNS agreed that, in order to complete its work, each sectoral working group should:

(a) give its assessment as to whether a specific annotation/annex is or is not needed in that sector, in the light of any relevant characteristics/peculiarities identified by the working group in the sector under discussion;

(b) if it comes to the view that an annotation is needed, identify the issues/provisions that need to be annotated and suggest, to the extent possible, the nature and content of such an annotation in relation to the specific provisions of the framework involved.

The GNS also agrees that an open-ended ad hoc working group consisting, as appropriate, of GNS negotiators and sectoral experts, should meet as from the second half of October, with a view to taking stock of the situation in the light of the conclusions reached in the working groups, and finalizing the draft texts of the annexes or annotations where these appear necessary.

34. Comments were made by the representatives of Chile, Austria, Nigeria, Yugoslavia, Jamaica, Indonesia and Malaysia about the need for greater transparency in the negotiating process. The representative of Austria drew attention to the importance of having documents circulated sufficiently ahead of deadlines to allow for reflection by officials in capitals.

35. The Chairman took up the reports of the chairmen of the sectoral working groups which had met since the last GNS meeting, e.g. audio-visual services, professional services and tourism services. He passed the floor to the Chairman of the working group on audio-visual services.

36. The representative of Finland, as Chairman of the Working Group on Audio-visual Services, said that the working group held its first meeting on 27-28 August 1990. The purpose of the meeting was to arrive at a better understanding of the specificities of the sector and any elements that may need to be taken into account in the application of the general framework on trade in services. In this context, he said that the working group discussed the following matters: coverage of the audiovisual services sector; the essential characteristics of the sector such as its public service function and its cultural importance; the applicability of trade principles and concepts and in particular most-favoured-nation treatment,
increasing participation of developing countries and exceptions based on cultural values; the implication of progressive liberalization for this sector with regard, inter alia, to the distinction between its content and carriage functions. He said the working group agreed to a further meeting on 5 November and to a possible meeting on/or around 5 October 1990.

37. The Chairman said that the Working Group on Professional Services had held its first meeting on 30-31 July 1990. The purpose of the meeting was to arrive at a better understanding of the specificities of the sector and any elements that may need to be taken into account in the application of the general framework on trade in services. In this context, the working group discussed the following matters: coverage of the professional services sector including the distinction between accredited and non-accredited professional services; the applicability of trade principles and concepts such as most-favoured-nation treatment, transparency, domestic regulation, market access and national treatment, increasing participation of developing countries; the implications of progressive liberalization in particular to professional services where trade might require the mutual recognition of qualifications and standards; labour mobility in professional services. He indicated that the working group agreed to a further meeting on 8-9 October 1990.

38. The Chairman said that the Working Group on Tourism Services had held its first meeting on 1-2 August 1990. The purpose of the meeting was to arrive at a better understanding of the specificities of the sector and any elements that may need to be taken into account in the application of the general framework on trade in services. In this context, the working group discussed the following matters: the definition and scope of the tourism services sector to be covered in the work of the group; the applicability of principles and concepts to the sector and in particular m.f.n. treatment and market access; the significance of the movement of consumers as a unique characteristic of the sector; modalities of providing for the increasing participation of developing countries in this sector. He noted that the working group agreed to have another meeting on 10-11 October 1990.

39. The representative of Singapore asked the Chairman if it was his intention to formally request the chairmen of the sectoral working groups to submit to the GNS by the second half of October the results of their respective groups' deliberations for consideration in the ad hoc group of the GNS.

40. The Chairman confirmed that he intended to proceed along the lines outlined by the representative of Singapore, noting that he would be engaging in informal consultations with GNS members as well as the secretariat on the issue of rescheduling working group meetings. He then opened the floor to a discussion of agenda item 2.3 dealing with the negotiation of commitments.

41. The representative of Canada recalled that his delegation had at the June meeting outlined the functioning of a formula approach, noting that its description appeared on page 15 of MTN.GNS/34. He expressed the hope of
seeing the GNS review such an approach with a view to refining for instance the ways in which it could apply to an annex dealing with the movement of service providers. By way of further illustration, he cited a list of services in regard to which a formula approach could be envisaged noting that such a list was neither exhaustive nor delimitative. This included: tourism services (excluding its financial and transportation components); software and computing services; trading houses; environmental protection services; commercial education and training services; translation services; surveying and mapping services; engineering and project services; oil field services; oceanographic services; freight forwarding services; as well as courier services.

42. The representative of the United States said that initial commitments could be sought using either a formula approach or a more traditional request and offer approach, the latter being perhaps better suited for dealing with highly regulated sectors or sectors where markedly different regulatory approaches prevailed between countries. A problem with the latter approach related to the fact that there was presently only one such list. He noted that his government would soon be tabling a request and offer list in the areas of banking and securities-related services. He said that one of the key challenges of the negotiations during the Uruguay Round's last ninety days related to the need to get a request and offer process started in the services area. While a country could not force the coming about of such a process, the outcome of the negotiations on initial commitments would have a major bearing on the overall results of the services negotiations. Another form of initial commitment being considered related to the notion of a freeze; his delegation did not support an across-the-board freeze. Since a freeze would rather arbitrarily grandfather a number of issues which his delegation would want to deal with, it was better to leave such issues open to further negotiation.

43. The representative of the European Communities said that the longer progress was delayed on the framework, the more difficult it would be to have meaningful negotiations on initial commitments. He noted that the problems of a request and offer process were compounded by the current time constraints facing the GNS, adding that there were limitations of a purely logistical nature over what could be achieved before the end of the Round in terms of actual rollbacks of existing restrictions to trade in services. He felt that the freezing of existing situations at least had the merit, in the current circumstances, of obviating the need for a domestic consensus on changes to current regulatory practices. His delegation was mindful of some of the problems which an across-the-board freeze could entail in the face of widely divergent levels of market openness, and was aware of the fact that such a commitment was indeed substantial. A freeze was admittedly not the best possible outcome and his delegation would welcome alternative proposals for achieving a comparable result. It was essential to ensure in any event that the outcome of the Round was not a substantial move away from the existing degree of services trade liberalization.

44. The representative of India said that his delegation was prepared to discuss the subject of modalities for initial commitments as this had to be done at some point in time. His delegation was still studying the
possibilities of pursuing a formula approach and welcomed the representative of Canada's list of activities to which such an approach could be applied. He wondered whether there was sufficient time to enter into meaningful negotiations on a request and offer -or any other- basis. He felt that the idea of an across-the-board freeze, which was being envisaged as a solution to the problem of initial commitments, overlooked the very objective of the current exercise, i.e. that of bringing about a balance of benefits among signatories of a services agreement. Given the current inequities in world market conditions in the services area, he did not see how the notion of a freeze should be seen as a solution, particularly in the absence of a meaningful draft framework.

45. The representative of Japan said that he sympathised with what the representative of the European Communities said in regard to the implications of the current time constraints facing the GNS and the need for realistic expectations. He felt that the formula approach may have more value for the GNS at this juncture than before the July meeting of the TNC. Calls for a standstill or an across-the-board freeze need not necessarily be seen as an alternative to a formula approach. The Group should explore the possible means of combining the two approaches.

46. The representative of Egypt agreed that the issue of initial commitments was difficult to envisage in the current state of framework deliberations. His delegation welcomed the idea of discussing the formula approach, along with any other proposals on the modalities of initial commitments, at the next meeting of the GNS.

47. Regarding the next meeting of the GNS beginning 17 September, the Chairman said that the text of the draft framework in MTN.GNS/35 would be completed by the addition of a Preamble and draft texts on Articles XXI-XXXV (Parts V and VI) and would be issued as a new complete document for the September meeting. The texts on Articles I-XX would be cleaned up as regards linguistic inconsistencies and the texts on Articles XXI-XXXV would be revised, where necessary, in the light of today's discussion.

48. He further said that he, with the help of the secretariat, would hold informal consultations with delegations before the next GNS meeting in preparation for the discussion of the draft framework at the next meeting. The September meeting of the GNS would be devoted to achieving substantial progress on the draft framework.

49. He noted that in the week following the September meeting of the GNS, by way of initiating a scrutiny of the GNS texts from the point of view of their legal consistency, delegations which were in a position to provide legal experts were invited to meet with the secretariat in order to discuss with the secretariat any points of a legal character relating to the texts considered in the GNS. Before closing the proceedings, he noted that there would be a change in the meetings of sectoral working groups in the first two weeks of October. The schedule of GNS meetings and sectoral working groups for 17 September now read as follows:
<table>
<thead>
<tr>
<th>Week starting</th>
<th>Dates</th>
<th>Meetings</th>
</tr>
</thead>
<tbody>
<tr>
<td>17 September</td>
<td>17-21</td>
<td>GNS meeting</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Work of legal experts (see paragraph 50 of MTN.GNS/37)</td>
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<tr>
<td>24 September</td>
<td>24-25</td>
<td>Maritime Transport W.G.</td>
</tr>
<tr>
<td></td>
<td>26</td>
<td>Land Transport W.G.</td>
</tr>
<tr>
<td></td>
<td>27-28</td>
<td>Air Transport W.G.</td>
</tr>
<tr>
<td>1 October</td>
<td>1-2</td>
<td>Tourism W.G.</td>
</tr>
<tr>
<td></td>
<td>3-4</td>
<td>Professional Services W.G.</td>
</tr>
<tr>
<td></td>
<td>5</td>
<td>Audiovisual Services</td>
</tr>
<tr>
<td>8 October</td>
<td>8-9</td>
<td>Labour Mobility W.G.</td>
</tr>
<tr>
<td></td>
<td>10-11</td>
<td>Construction and Engineering W.G.</td>
</tr>
<tr>
<td>15 October</td>
<td>15-17</td>
<td>Telecommunications W.G.</td>
</tr>
<tr>
<td></td>
<td>18-19(20)</td>
<td>Financial Services W.G.</td>
</tr>
<tr>
<td>22 October</td>
<td>22-26</td>
<td>GNS meeting</td>
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<td></td>
<td></td>
<td>Meeting of ad-hoc working group on sectoral annotations/annexes (to be scheduled)</td>
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<tr>
<td>29 October</td>
<td>29-30</td>
<td>Maritime Transport W.G.</td>
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<tr>
<td></td>
<td>31</td>
<td>Land Transport W.G.</td>
</tr>
<tr>
<td></td>
<td>1-2 Nov.</td>
<td>Air Transport W.G.</td>
</tr>
<tr>
<td>5 November</td>
<td>5</td>
<td>Audiovisual W.G.</td>
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<tr>
<td></td>
<td>6-7</td>
<td>Professional Services W.G.</td>
</tr>
<tr>
<td></td>
<td>8-9</td>
<td>Tourism W.G.</td>
</tr>
<tr>
<td>12 November</td>
<td>12-16</td>
<td>GNS meeting</td>
</tr>
</tbody>
</table>