NOTE ON THE MEETING OF
23-25 FEBRUARY 1987

1. The Group of Negotiations on Services held its sixth meeting under the Chairmanship of Ambassador F. Jaramillo (Colombia), on 23, 24 and 25 February 1987.

2. The Chairman said that, as indicated in airgram GATT/AIR/2373, the meeting would be devoted (a) to a general debate structured around the elements listed in the programme for the initial phase of the negotiations (MTN.GNS/5) and (b) to specific comments on these elements. He also drew the attention of the GNS to communications from Sweden on behalf of the Nordic countries (MTN.GNS/W/1), and from Japan (MTN.GNS/W/2).

3. The points made by delegations in the more specific discussion of the elements listed in the programme for the initial phase of the negotiations (summarized in paragraphs 23 to 35 below) should be read in conjunction with the statements made in the general debate (summarized in paragraphs 4 to 22 below).

General debate

4. One member said that the views of his group of countries were outlined in document MTN.GNS/W/1. Negotiations on trade in services could draw on the 40 years of experience in multilateral trade negotiations without being constrained by the limitations of the existing GATT. The countries represented could envisage a general binding instrument, similar to that governing trade in goods but flexible enough to adjust to the rapid changes in the area of services. It was however important to note that the Ministerial Declaration implied no linkage between services and the regulatory framework of trade in goods. During the first phase of negotiations it was important to establish a comprehensive analytical base in order to identify and to understand better the problems. To avoid the risk of purely general and abstract discussions it would be necessary to initiate at an early stage work on an inventory of measures and practices affecting the expansion of trade in services. The information to be drawn from the inventory could form an analytical basis for discussion of the problems to be addressed, e.g. coverage, definition of tradeable services, national regulations and their impact on economic development. One core issue was the formulation of a framework leading to economic growth of all trading partners and to the development of developing countries. These two questions which had in the past been sometimes separated should be dealt with simultaneously within the frame of the conceptual discussion. Information should be provided about the methods of collecting statistics and about existing international regulations in services and their relevance to trade.
5. One member stated that the GNS should put the elements of the negotiating plan into some logical sequence, bearing in mind that the exercise was no longer a mere exchange of information but a trade negotiation. A coherent discussion on each element could be undertaken with an examination of the trade rules and principles that might be applicable to services. Similarly a presentation of specific problems countries encountered in trade in services could help shape these negotiations. A legally binding services understanding would have to identify the specific sectors covered as well as the activities of these sectors. The GNS should also develop systematic information on the role of international organizations specialized in individual services industries. While Ministers had authorized a period of four years to complete the negotiations in the Uruguay Round, there was no reason why the GNS could not set a goal of completing a framework for a services understanding by the summer of 1988. Such a framework would have to emerge as a compromise of the ideas of all delegations.

6. One member said that his authorities had commissioned a major analytical study on the national services sector and on the question of what more liberalization would mean in economic terms. The findings of the study would be shared with the members in the GNS. The two communications from the Nordic countries and Japan were welcomed, in particular in light of the proposals to start negotiations in different areas in parallel, right from the beginning. His country was particularly interested in the inclusion of the sector of tourism in the multilateral framework.

7. One member recalled that both developing and developed countries had benefited from the growth of world trade and the dismantling of trade barriers. There existed many obstacles in the area of trade in services and there were no multilateral rules and disciplines. His authorities supported a horizontal, across-the-board approach to negotiations on services, rather than a compartmentalized sectoral approach. Sectoral rules could be dealt with at a later stage, if necessary, to verify the effectiveness of general rules and disciplines. He referred to a list of points for discussion circulated by his delegation in document MTN.GNS/W/2. In the view of his delegation the elements for the initial phase of negotiations were related to each other and could not be discussed separately. Consequently, there needed to be both a deductive and inductive process from general to specific and vice-versa, or from one element to another.

8. One member said that the major problems in the services area concerned the definition of trade in services, the identification of the factors affecting the structure of international trade in services and the effects on economic development. He also expressed concern about the possible repercussions of technological advances in services on developing countries. Specific measures would have to be adopted so that services contributed effectively to the development of these countries. Most of the expansion in services activities was taking place essentially in developed countries. The services sector was also influenced by the development of new products, e.g. fibre optics. This reduced the importance of the cost of labour in manufacturing, and consequently had negative repercussions on the exports of manufactured and labour-intensive products from developing countries. The new technologies implied that comparative advantage was being modified in services on a continuous basis. Multinational companies had diversified their activities in services and had hampered the expansion of services in developing countries. Effective negotiations in services required that the
contribution of the services sectors to the economy of developing countries be known more precisely. His authorities were working on a national study on services to show the significance of national services in international transactions as well as their impact on the trade balance. Information should be compiled on the existing international instruments dealing with services issues as well as on the measures and practices contributing to or limiting the expansion of trade in services.

9. One member stated that the multilateral framework of trade in services should reflect the principle of special and more favourable treatment for developing countries. It should cover those services sectors in which the developing countries had a comparative advantage, in particular labour-intensive services. The negotiations should be accompanied by a parallel effort to relax controls on the cross-border movement of the services sector labour force. There was need for a safeguard mechanism, in order to protect the objectives of national security, consumer protection and promotion of infant industries. An appropriate dispute settlement mechanism was also needed. The elements of the programme for the initial phase of negotiations should be considered as being only illustrative.

10. One member stated that discussions should focus on commercially traded services. One had to explore in this context also the issues of temporary access to markets for skilled services workers, investment and the rôle of the rapidly developing information and telecommunication services. Her authorities were in favour of a binding framework which should build upon familiar trade policy concepts. Countries should agree to bring regulations and practices affecting their respective services progressively under multilateral discipline. They should also identify barriers and propose concessions which could be exchanged to produce liberalization. The path towards progressive liberalization could involve a standstill, the goal being enhanced economic development for all parties to the agreement, while respecting the policy objectives of national laws and regulations. It was realized that the long-term interest of her country required access to world class services inputs from both domestic and foreign services. These inputs not only enhanced the competitiveness of national services but also increased the productivity of the rest of the economy.

11. One member said that his authorities were working on a report on the rôle of services in the foreign trade of his country. In their view a strong services sector was one condition for maintaining a competitive position in manufactured exports. Discussions should also concentrate on issues like the different means of marketing services, market access for newcomers and the new services which were capital, human and technology intensive. Any new international agreement should keep a balance between the benefits arising from a multilateral framework providing for progressive liberalization on a non-discriminatory basis and those national laws and regulations applying to services for the promotion of domestic economic growth. The lack of adequate statistics might complicate the traditional negotiating techniques of reciprocal concessions based on quantitative assessment of benefits.

12. One member said that every phase of the negotiations should take full account of the differences existing in the stage of development in services between developed and developing countries. Discussions should first focus on the definition, coverage and existing international arrangements. Trade barriers existing in developed countries should also be discussed. The secretariat should prepare a study on world trade in services by country and by sector based on information from other international organizations, on contributions from delegations and on its own data bank.
13. One member stated that a multilateral framework in services should respect the policy objectives of national laws and regulations on services. Work should be done on definitional and statistical issues. The question of technical support by relevant international organizations should be addressed at an early stage. UNCTAD which had already submitted valuable studies on the rôle of services in the development process should produce more studies in order to enable developing countries to analyse the impact of services in their economies.

14. Some members expressed the view that services were insignificant in the gross national product of a number of developing countries. They, nevertheless, considered that priority should be given to the elaboration of a precise definition of trade in services and to the coverage of the proposed multilateral framework, including services sectors of interest to developing countries. They proposed a study on the rôle of trade in services in the economies of developing countries. They also considered that special and differential treatment was needed in order to protect the services industries of developing countries which were still at an infancy stage from increased international competition.

15. Other members pointed out that the differences in the level of development in services between developed and developing countries were even greater than in goods. In the negotiations all the interests should be reflected in a balanced manner. There should be no link between progress in the negotiations on goods and progress in the negotiations on services and also no trade-off between concessions in goods and concessions in services. It was important to co-operate in the work on services with other relevant international organizations, in particular with UNCTAD. The existing rights and obligations under other international conventions or arrangements should not be impaired or weakened.

16. Some members stated that they were keen to see an early agreement on a multilateral framework of principles and rules to govern international trade in services. Priority should be given to the establishment of a list of services sectors to be covered as well as to an inventory of measures and practices compiled on the basis of notifications and counter-notifications. Work should start on the general characteristics of the services sectors and on the principles to be included in the framework, then in a next stage the negotiating rules and techniques could be discussed and finally the exceptions to the main provisions. It was also stated by these members that the future multilateral framework should be based on non-discrimination and equal treatment, the principal device being the unconditional application of the most-favoured-nation principle. Due account should be taken of the differences in the levels of economic development, provided these differences reflected objective and economic criteria.

17. One member representing a group of countries said that in the course of this year the GNS should try to lay the conceptual foundations for agreement on the services framework. His authorities sought agreement on a basis of consensus and were ready to adapt their conceptual approach to take account of the interests of others. Services were different from goods and therefore trade in services was different from that in goods. This meant that trade rules for services would also have to be different and would have to respect the specificity of services and be appropriate to that trade. The widest possible range of internationally tradeable services should be covered. The definition of trade in services would have an impact on the rules to be
agreed. The concept of liberalization was concerned with the removal of protection so as to expand trade progressively. But not all perceived barriers to trade in services could be subject to liberalization since regulations were usually the expression of national policy objectives. It would be necessary to agree on a distinction between appropriate and inappropriate regulations.

18. This member further stated that since different services sectors had their own characteristics, an agreement, in order to be satisfactory, would have to take account of these sectoral specificities. There would have to be a standstill on inappropriate regulations. This would also ensure that participants would not take measures designed to improve their negotiating positions during the negotiations. There should be a provision similar to Article XXIV of the General Agreement, allowing trade in services within a customs union to be liberalized more fully and at a faster pace than trade between a customs union and third countries. There should be no quantitative link between progress in the GNS and progress in other areas of the Uruguay Round. However the results of the negotiations would have to be examined together, giving full force to the concept of a single political undertaking. A negotiating plan for the GNS for the entire negotiating process should be discussed at the end of 1987.

19. In his statement, which was circulated in document MTN.GNS/W/3, one member stressed in particular that, since the Ministers had established two legally distinct negotiating processes, the premise of trade-offs between the area of goods and that of services had been excluded from the outset. The multilateral approach for dealing with trade in services was more appropriate than bilateral or plurilateral solutions. The negotiations should attempt in good faith to find solutions which by definition must be compatible with national sovereignty. Developed countries had extensively and intently regulated, by national legislation, all services sectors, in the traditional as well as in the new technologically advanced areas. National regulations in developing countries covered almost exclusively the traditional services sectors. The correction of this fundamental asymmetry could only occur either as a result of the extension by less-developed countries of the current coverage of their national regulations to the extent of those of developed countries or by decision of the latter to proceed, unilaterally or among themselves, to the dismantling of their own regulations. It would be extremely difficult to conceive of the notion of a standstill commitment in the area of services. The letter and the spirit of Part II of the Ministerial Declaration pointed necessarily in the direction of equitable solutions, capable of correcting the basic quantitative and qualitative absence of symmetry existing in trade in services between developing and developed countries. Since states were the only actors in these negotiations and as such the ultimate beneficiaries of the results of these multilateral efforts, respect for the policy objectives of national laws and regulations were given a central status in the Ministerial Decision as the frame of reference within which the attempt to develop multilateral rules in trade in services should be confined.

20. He commented also on the lack of generally accepted definitions of services and of adequate statistical information, furthermore on the question of the applicability of existing theoretical principles such as the notions of comparative advantage, national treatment and right of establishment, and on conceptual difficulties such as the need to differentiate between the notions of trade and of investment activities. He said also that a logical sequence for the negotiating process would be the establishment of a factual
basis, presentations by relevant international organizations, discussions of
techniques and modalities of negotiations, the presentation of proposals, the
definition of a common negotiating approach, and finally negotiations to
establish agreed texts. Any agreement should be based on consensus in
respect of the technique of negotiations and the mechanism for the adoption
decisions. Although the Uruguay Round was a single political undertaking
comprising two legally independent negotiating processes, one on goods within
GATT and the other on services outside GATT, certain basic principles
embodied in the General Agreement might possibly be applied to trade in
services, e.g. unconditional most-favoured-nation treatment. Development of
developing countries should be an integral part of any future set of rules in
this area.

21. In his statement circulated in document MTN.GNS/W/4, another member
stressed in particular the distinction made in the Ministerial Declaration
between the negotiations on trade in goods and the negotiations on trade in
services, the one being GATT negotiations and the other being negotiations
conducted on the basis of the Ministerial Declaration of Punta del Este. He
said also that the mandate for the negotiations on trade in services did not
make any a priori assumption that the rules and principles governing trade in
goods were relevant to trade in services. Ministers had also left out any
reference to standstill and progressive liberalization had been mentioned
only as one of the conditions for expansion of trade. In his view, to start
with an inventory of national laws and regulations, which were perceived as
obstacles to trade in services, was not consistent with the mandate.
Attempts to question the legitimacy of national regulations were not
appropriate in terms of the agreed decision. Much confusion could be avoided
if negotiations could be confined to international trade in services, i.e.
trade in services taking place across national frontiers, and if the concept
of trade in services was not stretched to cover operations involving
investment, production or distribution of services within national borders.
It was necessary to agree on a commonly accepted definition of trade in
services and on a list of services sectors in order to have an idea about the
possible overall balance of advantages that would emerge from the expansion
of trade in services.

22. This member further stated that trade in services should encompass free
access of skilled and unskilled workers from the developing countries. All
labour and labour-intensive services which could be traded across the borders
would have to be incorporated in the list of sectors. A general approach
based on liberalization per se would not be consistent with the needs of
development which should remain the general objective. Existing
international disciplines and arrangements on services should be examined to
see whether and how far services sectors covered by them needed to be
incorporated in a new multilateral framework or a sectoral discipline. These
instruments might also provide alternative approaches or models appropriate
to the mandate. He suggested furthermore that a framework on trade in
services should cover also restrictive business practices.

Elements Listed in the Programme for the Initial Phase of the Negotiations

23. On definitional issues it was pointed out that the main problem was the
lack of accepted criteria to define or classify services. This was a source
of misunderstanding and misconception. It was also stated that to devise
general principles and rules applicable to services without knowing to what
economic activities they would apply was either a meaningless exercise or was
bound to affect the implementation, interpretation and the validity of these principles and rules. A unifying concept was needed to describe services and to separate services from goods.

24. It was also said that the question of definition of trade in services would be central to the impact of an agreement on the world services economy. While it could be agreed that the concept should not be stretched to include all aspects of services transactions, a definition would nonetheless have to be sought which reflected the reality of the services economy and the objectives agreed in Part II of the Ministerial Declaration. An important issue was the identification of the various types of services transactions. For example some services, characterized as pure cross-frontier trade, could be wholly produced in one country and consumed by residents of another. Some services were partly produced in one country but also partly, during the temporary presence of an employee of the producer, in the consumer's country. Some services were essentially produced within the central organisations of a producer in one country but contact with the consumer took place through some form of permanent commercial presence of the producer in the consumer's country. The ability to produce a particular service could be sold to the resident of another country through a licensing or franchising agreement.

25. Reference was made to international services transactions which would cover cross-border transactions of information, data, voice, and images, contractual agreements for the transmission of intellectual property, technology and other services and, the movement of consumers and producers. Another suggestion was that internationally traded services could be classified on the basis of production (e.g. low or high input of capital and qualified labour services), or consumption (e.g. complementary, new or old services). A number of concrete examples of consumption of services and trade in services, were given in order to show that there were two distinct features in trade in services, namely that the product could not be stored and that the question of the right of establishment arose only where the agent could not be separated from the production of the service itself.

26. On statistical issues, it was stated by some members that there existed a close link between the problems of definitions and statistics since in their view statistical data would have to be related to the definitions adopted. Some other members were of the opinion that the negotiation of a multilateral framework was separate from the development of an appropriate statistical base for trade in services. It was suggested that some similarities existed with the situations prevailing at the time when the Havana Charter was negotiated. By analogy with these negotiations on trade in goods, it would not seem a necessary precondition for negotiations on trade in services to have available definitions and statistics in services. This view was disputed by some members; according to them, there was a clear need for a definition of services. They considered it difficult to proceed in specific areas of the negotiations unless the GNS had a better picture of the services sectors and of trade in services.

27. It was generally noted that statistical data concerning international transactions in services were inadequate, due to the fact that they were conceptually imprecise, highly aggregated and misleading in international comparisons. Among the problems faced in data collection were the coverage of transactions, the method of collection, the classification of certain services activities and confidentiality requirements. It was pointed out that in order to assess the magnitude of services on a global scale, there was need for improved international co-operation in the area of statistics.
28. It was proposed that the Chairman of the GNS with the assistance of the GATT secretariat, should consult with the relevant international organizations and seek information on the main problems in statistical data gathering, on the sources of statistics available in their respective area of work, and on the availability of technical assistance to developing countries in this field. It was also proposed that developed countries submit to the GATT secretariat relevant information on compilation of statistics. The suggestion was also made that the GATT secretariat, in consultation with other agencies such as the IMF or UNCTAD, could develop a model technique for distinguishing and gathering statistical data on various sectors of trade in services. This technique would help countries in their data collection, particularly on specific sectors where exchange of concessions might be required subsequently. One member said that her national authorities were already allocating significant resources for the improvement of services statistics and that a policy of deliberate work sharing existed in this area. Her authorities were willing to provide technical assistance on a bilateral or plurilateral level on the condition that the needs of requesting developing countries be specifically identified.

29. On the element concerning the broad concepts on which principles and rules for trade in services, including possible disciplines for individual sectors, might be based, preliminary views were expressed with regard to matters such as transparency, national treatment, most-favoured-nation treatment (general or conditional), reciprocity, market access, regulations, public monopolies, safeguards, exceptions, secondary rights and obligations, consultation and dispute settlement, and treatment of developing countries. It was stated that the principles of most-favoured nation treatment, national treatment and transparency had been widely recognized as the cornerstones of the GATT and that it was worth trying to examine how far these principles could be applied also to services. National treatment was considered an essential principle to ensure equal and fair opportunities for competition and the expansion of trade in services. At the same time it was recognized that there might be legitimate national policy objectives which would justify exceptions to national treatment. One possible approach put forward for ensuring the expansion of trade in services was the negotiation of criteria for effective liberalization of existing regulations in services. Another view was that, among all the regulations having an effect on trade, only those having a distorting effect on foreign providers of services should be scrutinized. In liberalizing trade in services, due attention should be given to the need to derive economic benefits for developing countries. Further study and understanding of the effects of services on economic development was therefore desirable. It was also said that development of new high technologies would enable services industries to provide new and often inter-sectoral type of services, which would in turn bring about new types of trade in services. The future services framework should therefore be an evolutionary arrangement, with a built-in mandate for periodic renegotiations and procedures for amendments.

30. It was furthermore proposed that a concept of binding concessions should be developed to ensure that the concessions were protected. The dispute settlement concept should address the issue of nullification and impairment. The necessity of inclusion of an Article XXIV-type provision for trade in services was again stressed. It was also emphasized by various members that growth and development should be among the main principles to be covered in the agreement and that transfer of technology might be a practical way to narrow the gap in the level of development in some services sectors.
31. It was also suggested that some negotiating partners might assume greater obligations than others. Such obligations should also take into account specific characteristics of negotiating parties, e.g. the problem of equivalence between obligations undertaken by unitary and federal states. It should be accepted that equivalent obligations should not be sought from unequal partners. It should also be agreed that the objectives of the negotiations were not to dismantle or deregulate national regulations, but rather to explore how national regulations impinged on trade and hampered its expansion. Such an examination should not question the legitimacy of national regulations which would remain a sovereign right. The aim would be to achieve a balance between the objectives behind national regulations and the objectives of liberalizing and expanding trade.

32. On the element of coverage of the multilateral framework for trade in services, views were expressed on the types of services, i.e. sectors, branches or activities which should be made subject to multilateral trade disciplines. The point was made that, although the final coverage would have to emerge from the negotiations, the GNS should address all tradeable services. It was also proposed by some members that delegations should be free to submit, at a preliminary stage, an illustrative list of sectors, sub-sectors and activities in services they wanted to be covered. This information could then be compiled by the secretariat and presented to the GNS. Other members considered that there was a logical sequence in the programme for the initial phase of negotiations and they thought that agreement on coverage would have to await an agreement on definition. In their view, the question of coverage should be examined in the light of the basic objectives, in particular the development objectives. In this context they considered that labour services and labour-intensive services should be covered.

33. No specific views were expressed on the element dealing with existing international disciplines and arrangements.

34. Concerning the element dealing with measures and practices contributing to or limiting the expansion of trade in services, including specifically any barriers perceived by individual participants, to which the conditions of transparency and progressive liberalization might be applicable, it was stated by some members that an inventory of various practices and measures including perceived barriers would lead to increased transparency and serve the purpose of conveying a better understanding of trade in services as well as the problems encountered in that process. The inventory would complement the analysis of two issues, namely the motivations and policy objectives behind regulations and measures having trade inhibiting effects, and the impact of such regulations and measures on trade and economic development.

35. Other members thought that the effects of regulations on trade in services could be assessed only once trade in services had been defined. The notion of measures and practices did not imply a value judgement on their character, in particular as to whether they could be considered restrictive or not. A distinction should be made between measures by sovereign states and practices by transnational corporations and other market operators. The latter were often responsible for restrictive business practices in trade in services.

36. In his concluding observations, the Chairman noted that, following a Brazilian proposal, there was agreement that he would consult informally, with the assistance of the GATT secretariat, with the relevant international
organizations, with respect to (1) sources of statistics available in their respective area of work, (2) the main problems in statistics, and (3) the availability of technical assistance to developing countries in this field. He would report its findings to the next meeting of the GNS. In addition, referring to a Mexican proposal, he suggested that communication by developed countries to the GATT secretariat of relevant information on statistics would be welcome.

37. On the issue of observer status requested by a number of international and regional organizations, the Chairman said that he had carried out informal consultations which had suggested that some more time was needed before the Group could come to an agreed view on the matter. Accordingly, he proposed that the GNS revert to this matter at a future meeting in the light of further consultations. He hoped that the GNS could also decide at an early date on the question of technical support from other organizations.

38. On the question of the schedule of meetings, he had held a series of informal consultations which had permitted the identification of a number of factors to be taken into consideration in dealing with this matter. In the light of these consultations, it seemed that, for the time being the GNS was only in a position to agree on the date for the next meeting. It was agreed that the meeting be held on 8, 9 and 10 April 1987. At that meeting the Group would also consider the question of establishing a calendar of meetings for the whole of 1987.