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Trade in Services

GUIDELINES AND PROCEDURES FOR THE NEGOTIATIONS ON TRADE IN SERVICES

Adopted by the Special Session of the Council for Trade in Services on 28 March 2001

I. OBJECTIVES AND PRINCIPLES

1. Pursuant to the objectives of the GATS, as stipulated in the Preamble and Article IV, and as required by Article XIX, the negotiations shall be conducted on the basis of progressive liberalisation as a means of promoting the economic growth of all trading partners and the development of developing countries, and recognizing the right of Members to regulate, and to introduce new regulations, on the supply of services. The negotiations shall aim to achieve progressively higher levels of liberalization of trade in services through the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access, and with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.
2. The negotiations shall aim to increase the participation of developing countries in trade in services. There shall be appropriate flexibility for individual developing country Members, as provided for by Article XIX:2. Special priority shall be granted to least-developed country Members as stipulated in Article IV:3.
3. The process of liberalization shall take place with due respect for national policy objectives, the level of development and the size of economies of individual Members, both overall and in individual sectors. Due consideration should be given to the needs of small and medium-sized service suppliers, particularly those of developing countries.
4. The negotiations shall take place within and shall respect the existing structure and principles of the GATS, including the right to specify sectors in which commitments will be undertaken and the four modes of supply.

II. SCOPE

5. There shall be no *a priori* exclusion of any service sector or mode of supply. Special attention shall be given to sectors and modes of supply of export interest to developing countries.
6. MFN Exemptions shall be subject to negotiation according to paragraph 6 of the Annex on Article II (MFN) Exemptions. In such negotiations, appropriate flexibility shall be accorded to individual developing country Members.
7. Negotiations on safeguards under Article X shall be completed by 15 March 2002 according to the Decision adopted by the Council for Trade in Services on 1 December 2000. Members shall aim to complete negotiations under Articles VI:4, XIII and XV prior to the conclusion of negotiations on specific commitments.

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III. MODALITIES AND PROCEDURES

8. The negotiations shall be conducted in Special Sessions of the Council for Trade in Services, which will report on a regular basis to the General Council, in accordance with decisions taken by the General Council.
9. Negotiations shall be transparent and open to all Members and acceding States and separate customs territories according to Decisions taken in this regard by the General Council.
10. The starting point for the negotiation of specific commitments shall be the current schedules, without prejudice to the content of requests.
11. Liberalization shall be advanced through bilateral, plurilateral or multilateral negotiations. The main method of negotiation shall be the request-offer approach.
12. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.
13. Based on multilaterally agreed criteria, account shall be taken and credit shall be given in the negotiations for autonomous liberalization undertaken by Members since previous negotiations. Members shall endeavour to develop such criteria prior to the start of negotiation of specific commitments.
14. The Council for Trade in Services in Special Sessions shall continue to carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of the GATS and of Article IV in particular. This shall be an ongoing activity of the Council and negotiations shall be adjusted in the light of the results of the assessment. In accordance with Article XXV of the GATS, technical assistance shall be provided to developing country Members, on request, in order to carry out national/regional assessments.
15. To ensure the effective implementation of Articles IV and XIX:2, the Council for Trade in Services in Special Session, when reviewing progress in negotiations, shall consider the extent to which Article IV is being implemented and suggest ways and means of promoting the goals established therein. In implementing Article IV consideration shall also be given to the needs of small service suppliers of developing countries. It shall also conduct an evaluation, before the completion of the negotiations, of the results attained in terms of the objectives of Article IV.
16. While the Council for Trade in Services in Special Sessions may establish subsidiary bodies as it deems necessary, the proliferation of such bodies should be avoided to the maximum extent possible. Existing subsidiary bodies shall be utilised to their maximum capacity.
17. The needs of smaller delegations should be taken into account, e.g. by scheduling meetings in sequence and not in parallel.
18. The Council for Trade in Services in Special Sessions shall, when appropriate, develop time schedules for the conduct of the negotiations in accordance with any relevant decisions taken by the General Council.

TECHNICAL ASPECTS OF REQUESTS AND OFFERS

Summary of presentation by the Secretariat

The request to address this subject came from some delegations at a meeting of the Special Session of the Services Council. This presentation is mainly based on previous experience and will try to highlight the technical aspects of the process of submitting requests and offers in the context of negotiations. It must not be seen as pre-empting any alternative course of action participants might wish to take.

This presentation addresses mainly three aspects of both requests and offers. That is, the content, the format in which requests and offers may be submitted and finally the process through which requests and offers could be exchanged.

In Paragraph 15 of the Doha Declaration, Ministers agreed that participants shall submit initial requests for specific commitments by 30 June 2002 and initial offers by 31 March 2003. The word "initial" is of course indicative of the reality of the negotiating process being a succession of requests and offers. These dates only mark the start of the process. However, this must not in any way reduce the importance of those dates. They represent a political commitment by Ministers. It is important to keep in mind that when each Participant submits an initial request it does not have to be exhaustive and a Participant does not necessarily have to think of every conceivable item it wishes to request of other participants. In order to meet the dates, it might be necessary to avoid seeking perfection which might cause delays.

REQUESTS

A. Content

There are possibly four types of contents in a request, which are not mutually exclusive. Such a request may be addressed to a group of participants or to an individual participant.

- (i) The first is that a participant may request of another the addition of sectors that are not included in its schedule.
- (ii) The second type is requesting the removal of existing limitations or reducing its level of restrictiveness (e.g. in sector x there may be a foreign equity limitation of 49 per cent, a request may be pointed at the removal of that limitation or improving it by raising the 49 per cent to say 75 per cent). A request may also be directed at an "unbound" entry, with a view to establishing a binding, be it with or without limitations. Such requests always relate to commitments on market access (Article XVI) and/or national treatment (Article XVII).
- (iii) There may also be requests for additional commitments (Article XVIII), which may relate to matters not falling within the scope of Articles XVI and XVII, i.e. the type of commitments contained in the Reference Paper on regulatory principles in basic telecommunications. A number of such requests have been actually exchanged during the Uruguay Round and corresponding commitments were undertaken.

- (iv) Finally, a request may also relate to the removal of MFN exemptions. Paragraph 6 of the Annex on MFN Exemptions foresees that existing exemptions will be subject to negotiations in successive rounds of negotiations. Participants may expect to receive or wish to make requests for the removal of specific MFN exemptions. Or, if it is eventually agreed, and this is still subject to consultations and discussion in the Services Council, participants may ask for the reduction of the scope and/or level of an MFN exemption, not necessarily with a view to its complete termination but to bring it into more the conformity with the MFN obligation.

B. Format

So often a request is presented in the format of a simple letter, in which a participant would state what it requests of another. Out of the four types of requests mentioned previously, additional commitments under Article XVIII might require a higher level of technical specificity. The scheduling of commitments under Articles XVI and XVII (Market Access and National Treatment) is basically the removal of limitations. There is a definition in both Articles of what is a market access and a national treatment commitment. So, if a Participant wishes to undertake a full commitment on either, it would simply need to inscribe "none" in its schedule, indicating that there are no limitations. The substance of the commitment is defined in the Articles themselves.

However, when it comes to additional commitments under Article XVIII, there is no definition in the Article of what the legal undertaking would be. It merely provides a framework for Participants to ask of each other, and inscribe in their schedules, legal commitments that relate to any matter which is not covered by market access and national treatment. Article XVIII has proven to be very helpful on several occasions, including the negotiations on basic telecommunications where it helped those participants who were interested in ensuring that the liberalization of telecommunications is effective. It contains commitments on matters that were not even conceived within the GATS itself, such as an obligation to establish an independent regulator. That is not covered by market access, national treatment or any provision in the GATS. It also contains commitments on how to ensure competition, how to ensure interconnection on a reasonable and non-discriminatory basis. If a request is made of a participant to undertake certain obligations that are not defined in the GATS then there would be a need to describe carefully, in accurate legal terms what is being requested. That is the element of requests may have some technical aspects to it that would require careful preparation.

C. Process

The exchange of requests as a process has traditionally been purely bilateral. It is simply a process of letters being addressed from the requesting participants to their negotiating partners. The Secretariat does not normally have a role to play. In the Uruguay Round there was a suggestion, at some stage, that when a request is sent to a participant, a copy should also be sent to the Secretariat for its records. That was followed for some time but then subsequently abandoned and the process turned into a purely bilateral exercise. The exercise of preparing and submitting requests is not very complicated from a technical point of view. Once the requests are received participants may wish to start consulting with each other.

OFFERS

A. Content

In terms of content, offers would normally address the same four types previously mentioned in relation to requests, that is: (i) the addition of new sectors; (ii) the removal of existing limitations or the introduction of bindings in modes which have so far been unbound; (iii) the undertaking of additional commitments under Article XVIII; and finally (iv) the termination of MFN Exemptions.

A participant would submit an offer in response to all the requests that it had received, but would not necessarily have to address each and every element contained in those requests in its initial offer.

B. Format

Unlike a request, which is usually presented in the form of a letter, an offer is normally presented in the form of a draft schedule of commitments. Therefore offers do require considerable technical preparation. In the Uruguay Round, there were no preexisting schedules of commitments. Participants started the process with the submission of offers, which were subsequently followed by requests, and the process continued. In this round, offers will be submitted against the backdrop of preexisting schedules. Therefore the relationship between offers (eventually new commitments) and old schedules will raise important technical questions, the most important of which is whether participants would in the end submit new commitments in separate schedules to supplement the old ones or would they submit complete revised schedules containing all commitments, old and new. For the sake of clarity and legal certainty, it seems that the latter might be the best way to proceed, particularly given that existing commitments may also be subject to clarification and technical improvement in the light of the revised scheduling Guidelines (S/L/92). In which case, it might be more efficient if participants were to start the process of revising existing schedules with the submission of initial offers. In other words, an initial offer would be submitted on the basis of the old schedule to which newly offered commitments would be added. Such additions may be clearly indicated through the use of different techniques such as the use of strike out and bold, italics or any other preferred method. However, it must be noted that such a revised schedule would only constitute a negotiating document with no legal status. In other words it would not have any binding effect on the participant submitting it and would be treated as a working documents.

Participants may wish to use this opportunity to introduce other technical refinements to their old commitments in accordance with any conclusions that may be reached in the interim on other issues raised by Participants such as the distinction between modes 1 and 2 or issues raised in relation to Articles XVI, XVII and XX:2 of the GATS. So, if the final objective from these negotiations is to arrive at one clean revised schedule for each Participant containing all its commitments (old and new), it might be advisable to start pursuing that objective as early as possible, preferably starting with the initial offers to be submitted by 30 March 2003.

As mentioned earlier these will only be initial offers; the rest of the negotiations, almost two years that will ensue, would be a succession of requests and offers and offers will be subject to several revisions as a result of the negotiations. That is the phase in which the Secretariat is more in a position to help, particularly with the legal and technical questions relating to the preparation of offers and draft schedules. This will no doubt require a lot of preparation in the capitals and as well as consultation in Geneva, with negotiating partners and possibly with the Secretariat.

C. Process

While requests are addressed bilaterally to negotiating partners, offers are traditionally circulated multilaterally. This is not only useful from a transparency point of view but also from a functional point of view. In an offer, a participant is actually responding to all the requests that it has received. That offer would also be open to consultations and negotiation by all negotiating partners, not only those who have made requests to the participant concerned but also any other participant in the negotiations. Offers in effect are a signal of the real start of the advanced stage of bilateral negotiations. That is when negotiators will come to Geneva and have each time a long schedule of bilaterals with other delegations and the whole place becomes like a "beehive". Delegations will spend less time in Council Meetings and more time negotiating with each other. The process really enters a new phase with the submission of those offers.

The submission of offers could also trigger submission of further requests and then the process continues and becomes a succession of requests and offers. As an off-shoot from that

process, in bilateral negotiations certain substantive issues might arise and require further multilateral discussion, including certain regulatory issues raised in requests and offers relating to additional commitments (Article XVIII). For example, a group of participants might decide that the best way to deal with is through the development of a reference paper like in the case of basic telecommunications. The exercise of preparing and drafting a reference paper is essentially a multilateral one. It sometimes engages those who are interested in the issues or negotiating on a particular sector. Of course, once such a reference paper is adopted or agreed upon, it does not take legal effect until a Participant actually incorporates it in its schedule.

This is a brief description of how this process takes place and what are the technical aspects that might need to be kept in mind. This presentation does not really address the substantive content of requests or orders. It would not be appropriate for the Secretariat to advise on which sectors to focus on, what would be the limitations in other participants' schedules that might be removed etc. This presentation addresses only the technical aspects of the documentation as well as how the process itself normally takes place.

GUIDE TO READING THE GATS SCHEDULES OF SPECIFIC COMMITMENTS AND THE LISTS OF ARTICLE II (MFN) EXEMPTIONS¹

Introduction

The General Agreement on Trade in Services consists of the framework agreement - the Articles of the Agreement - and its Annexes, and the schedules of specific commitments and the lists of exemptions from MFN treatment submitted by member governments. The schedules and the exemption lists are integral parts of the Agreement. At the time of the signature of the Final Act of the Uruguay Round, on 15 April 1994, 95 schedules of specific commitments in services and 61 lists of derogations from the MFN principle had been submitted and agreed.

It is only by reference to a country's schedule, and (where relevant) its MFN exemption list, that it can be seen to which services sectors and under what conditions the basic principles of the GATS -market access, national treatment and MFN treatment - apply within that country's jurisdiction. The schedules are complex documents in which each country identifies the service sectors to which it will apply the market access and national treatment obligations of the GATS and any exceptions from those obligations it wishes to maintain. The commitments and limitations are in every case entered with respect to each of the four modes of supply which constitute the definition of trade in services in Article I of the GATS: these are cross-border supply; consumption abroad; commercial presence; and presence of natural persons:-

✓ **Cross-border supply** - the possibility for non-resident service suppliers to supply services cross-border into the Member's territory.

✓ **Consumption abroad** - the freedom for the Member's residents to purchase services in the territory of another Member.

✓ **Commercial presence** - the opportunities for foreign service suppliers to establish, operate or expand a commercial presence in the Member's territory, such as a branch, agency, or wholly-owned subsidiary. *be done business in us or any other FTAA member*

✓ **Presence of natural persons** - the possibilities offered for the entry and temporary stay in the Member's territory of foreign individuals in order to supply a service.

In order to determine the real level of market access represented by a given schedule it is therefore necessary to examine the range of activities covered in each service sector and the limitations on market access and national treatment pertaining to the different modes of supply. In addition, in cases where a country has also tabled a list of MFN exemptions, this must be examined in order to assess the extent to which the country gives preferential treatment to, or discriminate against, one or more of its trading partners.

The purpose of this introduction is to assist users to read and interpret the schedules and exemption lists and to assess their commercial significance.

¹ This note is intended to assist in reading and understanding schedules of commitments. The information contained herein should not be considered an authoritative legal interpretation of the GATS.

A. Schedules of Specific Commitments

A specific commitment in a services schedule is an undertaking to provide market access and national treatment for the service activity in question on the terms and conditions specified in the schedule. When making a commitment a government therefore binds the specified level of market access and national treatment and undertakes not to impose any new measures that would restrict entry into the market or the operation of the service. Specific commitments thus have an effect similar to a tariff binding - they are a guarantee to economic operators in other countries that the conditions of entry and operation in the market will not be changed to their disadvantage. Commitments can only be withdrawn or modified after the agreement of compensatory adjustments with affected countries, and no withdrawals or modifications may be made until three years after entry into force of the Agreement. Such modifications of commitments may not affect the application of most-favoured-nation (MFN) treatment. Commitments can however be added or improved at any time.

The national schedules all conform to a standard format which is intended to facilitate comparative analysis. For each service sector or sub-sector that is offered, the schedule must indicate, with respect to each of the four modes of supply, any limitations on market access or national treatment which are to be maintained. A commitment therefore consists of eight entries which indicate the presence or absence of market access or national treatment limitations with respect to each mode of supply. The first column in the standard format contains the sector or subsector which is the subject of the commitment; the second column contains limitations on market access; the third column contains limitations on national treatment. In the fourth column governments may enter any additional commitments which are not subject to scheduling under market access or national treatment.

In nearly all schedules, commitments are split into two sections: First, "horizontal" commitments which stipulate limitations that apply to all of the sectors included in the schedule; these often refer to a particular mode of supply, notably commercial presence and the presence of natural persons. Any evaluation of sector-specific commitments must therefore take the horizontal entries into account. In the second section of the schedule, commitments which apply to trade in services in a particular sector or subsector are listed.

The terminology used in schedules has also been standardized wherever possible. What follows is a description of the information which has to be inscribed in each column of the schedules and a summary of the terminology used.

The information that is entered in the columns

Sector or sub-sector column: this column contains a clear definition of the sector, subsector or activity that is the subject of the specific commitment. Members are free, subject to the results of their negotiations with other participants, to identify which sectors, subsectors or activities they will list in their schedules, and it is only to these that the commitments apply. It will be seen that committed sectors are sometimes very broad, as in "banking and other financial services" and sometimes very narrow, as in "noise abatement services".

In the great majority of schedules the order in which the sectors are listed corresponds to the GATT Secretariat classification which lists twelve broad sectors as follows: 1. Business; 2. Communication; 3. Construction and Engineering; 4. Distribution; 5. Education; 6. Environment; 7. Financial; 8. Health; 9. Tourism and Travel; 10. Recreation, Cultural, and Sporting; 11. Transport; 12. "Other". Furthermore, in most cases, the sectoral entries are accompanied by numerical

references to the Central Product Classification system of the United Nations which gives a detailed explanation of the services activities covered by each listed sector or subsector, and on which the secretariat list is based. Where this was not possible, listings are to provide a sufficiently detailed definition to avoid any ambiguity as to the scope of the commitment.

- **Market access column:** When a Member undertakes a commitment in a sector or subsector it must indicate for each mode of supply what limitations, if any, it maintains on market access. Article XVI:2 of the GATS lists six categories of restriction which may not be adopted or maintained unless they are specified in the schedule. All limitations in schedules therefore fall into one of these categories. They comprise four types of quantitative restriction plus limitations on types of legal entity and on foreign equity participation.
- **National treatment column:** The national treatment obligation under Article XVII of the GATS is to accord to the services and service suppliers of any other Member treatment no less favourable than is accorded to domestic services and service suppliers. A Member wishing to maintain any limitations on national treatment - that is any measures which result in less-favourable treatment of foreign services or service suppliers - must indicate these limitations in the third column of its schedule
- **Additional commitments column:** Entries in this column are not obligatory but a Member may decide in a given sector to make additional commitments relating to measures other than those subject to scheduling under Articles XVI and XVII, for example qualifications, standards and licensing matters. This column is to be used to indicate positive undertakings, not the listing of additional limitations or restrictions.

How commitments are recorded in schedules

In essence, the entries which constitute a legally binding commitment in a Member's schedule indicate the presence or absence of limitations on market access and national treatment in relation to each of the four modes of supply for a listed sector, sub-sector or activity. In the following cases the entries use uniform terminology:

- Where there are no limitations on market access or national treatment in a given sector and mode of supply, the entry reads NONE. However, it should be noted that when the term NONE is used in the second or sector-specific part of the schedule it means that there are no limitations specific to this sector: it must be borne in mind that, as noted above, there may be relevant horizontal limitations in the first part of the schedule.
- All commitments in a schedule are bound unless otherwise specified. In such a case, where a Member wishes to remain free in a given sector and mode of supply to introduce or maintain measures inconsistent with market access or national treatment, the Member has entered in the appropriate space the term UNBOUND.
- In some situations a particular mode of supply - such as the cross-border supply of bridge-building services - may not be technically possible or feasible. In such cases the term UNBOUND* has been used, usually in conjunction with an explanatory footnote stating "Unbound due to lack of technical feasibility".

In many cases it will be seen that there are textual descriptions of bound commitments which indicate limitations on market access or national treatment. Such entries, which vary in length considerably, do not use uniform terminology but are based on one of two common approaches:

- The entry describes in the appropriate space the nature of the limitation, indicating the elements which make it inconsistent with Articles XVI and XVII of the GATS.
- In some cases, Members have chosen to indicate a limited commitment by describing what they are offering rather than the limitations they are maintaining. Such an approach is often used to indicate the market access opportunities for the entry of certain categories of foreign natural persons who supply services.

B. Lists of Article II (MFN) Exemptions

Most-favoured-nation treatment is a general obligation that applies to all measures affecting trade in services. However, it has been agreed that particular measures inconsistent with the MFN obligation can be maintained - in principle for not more than ten years and subject to review after not more than five years. Such measures must have been specified in a list of MFN Exemptions submitted by the end of the Uruguay Round of Multilateral Trade Negotiations or by the conclusion of extended negotiations on certain sectors for which the delayed submission of related exceptions was expressly authorized. Subsequently, requests for exemptions from Article II (MFN) can only be granted under the waiver procedures of the Marrakesh Agreement.

In contrast to the complex nature of schedules of commitments, these lists are largely self-explanatory and are structured in a straightforward manner. In order to ensure a complete and precise listing of a country's MFN exemptions, each country is required to provide five types of information for each exemption:

- (i) Description of the sector or sectors in which the exemption applies;
- (ii) Description of the measure, indicating why it is inconsistent with Article II;
- (iii) The country or countries to which the measure applies;
- (iv) The intended duration of the exemption;
- (v) The conditions creating the need for the exemption.

It is a basic principle of the Agreement that specific commitments are applied on an MFN basis. Where commitments are entered, therefore, the effect of an MFN exemption can only be to permit more favourable treatment to be given to the country to which the exemption applies than is given to all other Members. Where there are no commitments, however, an MFN exemption may also permit less favourable treatment to be given. It is not necessary to list measures providing for preferential liberalization of trade in services among Members of economic integration agreements, such as Free Trade Areas; such preferential treatment is permitted under Article V of the GATS and must meet the criteria laid down in that Article.

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Trade in Services

GUIDELINES FOR THE SCHEDULING OF SPECIFIC COMMITMENTS UNDER THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

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GUIDELINES FOR THE SCHEDULING OF SPECIFIC COMMITMENTS UNDER THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

Explanatory note¹

INTRODUCTION

1. This note is intended to assist in the preparation of offers, requests and national schedules of specific commitments. Its objective is to explain, in a concise manner, how specific commitments should be set out in schedules in order to achieve precision and clarity. It is based on the view that a common format for schedules as well as standardization of the terms used in schedules are necessary to ensure comparable and unambiguous commitments. The note cannot answer every question that might occur to persons responsible for scheduling specific commitments; it does attempt to answer those questions which are most likely to arise. The answers should not be considered as a legal interpretation of the GATS.

2. The GATS contains two sorts of provisions. The first are general obligations, some of which apply to all service sectors (e.g. MFN, transparency) and some only to scheduled specific commitments (e.g. Article XI: Payments and Transfers). The second are specific commitments which are negotiated undertakings particular to each GATS signatory. Specific commitments, upon the conclusion of negotiations, are to be recorded in national schedules which will be attached to, and form an integral part of, the GATS. By virtue of Article XX, every signatory must attach to the GATS its national schedule. This note addresses two main questions: what items should be entered on a schedule, and how should they be entered.

PART I: WHAT ITEMS SHOULD BE SCHEDULED?

3. Since schedules, including footnotes, headnotes and attachments, are a record of legal commitments, nothing should appear in them which a Member does not intend to be legally binding. A schedule contains the following main types of information: a clear description of the sector or sub-sector committed, limitations² to market access, limitations to national treatment, and additional commitments other than market access and national treatment. If a Member undertakes a commitment in a sector then it must indicate for each mode of supply that it binds in that sector:

- what limitations, if any, it maintains on market access;
- what limitations, if any, it maintains on national treatment; and
- what additional commitments, relating to measures affecting trade in services not subject to scheduling under Articles XVI and XVII, it may decide to undertake under Article XVIII.

¹ This document is the result of a revision exercise carried out in the Committee on Specific Commitments. The exercise was based on the two documents which were produced and circulated during the Uruguay Round negotiations: MTN.GNS/W/164, entitled Scheduling of Initial Commitments in Trade in Services: Explanatory Note of 3 September 1993, and document MTN.GNS/W/164/Add.1, entitled Scheduling of Initial Commitments in Trade in Services: Explanatory Note, Addendum of 30 November 1993. These guidelines shall be applicable as of the date of their adoption. It should be understood that schedules in force prior to the date of this document have been drafted according to MTN.GNS/W/164 and MTN.GNS/W/164/Add.1.

² The term "limitations" will be used throughout this note to refer to the "terms", "conditions", "limitations", and "qualifications" used in Articles XVI and XVII of the GATS.

4. Where commitments do not cover the entire national territory, the entry should describe the geographical scope of measures taken according to Article I:3(a)(i).

5. If attachments are used, clear reference should be made to the part of the schedules they refer to (i.e. definitions in the first column, market access commitments in the second column, national treatment commitments in the third column and additional commitments in the fourth column).

6. Exchange control restrictions are subject to the general disciplines of Articles XI (Payments and Transfers) and XII (Restrictions to Safeguard the Balance of Payments) of the GATS.

7. There is no requirement in the GATS to schedule a limitation to the effect that the cross-border movement of goods associated with the provision of a service may be subject to customs duties or other administrative charges. Such measures are subject to the disciplines of the GATT.

A. LIMITATIONS ON MARKET ACCESS (ARTICLE XVI)

8. A Member grants full market access in a given sector and mode of supply when it does not maintain in that sector and mode any of the types of measures listed in Article XVI. The measures listed comprise four types of quantitative restrictions (sub-paragraphs a-d), as well as limitations on forms of legal entity (sub-paragraph e) and on foreign equity participation (sub-paragraph f). The list is exhaustive and includes measures which may also be discriminatory according to the national treatment standard (Article XVII). In other words, all measures falling under any of the categories listed in Article XVI:2 must be scheduled, whether or not such measures are discriminatory according to the national treatment standard of Article XVII. The quantitative restrictions can be expressed numerically, or through the criteria specified in sub-paragraphs (a) to (d); these criteria do not relate to the quality of the service supplied, or to the ability of the supplier to supply the service (i.e. technical standards or qualification of the supplier).

9. With regard to market access limitations, such as numerical ceilings or economic needs tests, the entry should describe each measure concisely indicating the elements which make it inconsistent with Article XVI. Numerical ceilings should be expressed in defined quantities in either absolute numbers or percentages; regarding economic needs tests the entry should indicate the main criteria on which the test is based, e.g. if the authority to establish a facility is based on a population criterion, the criterion should be described concisely.

10. Approval procedures or licensing and qualification requirements, such as financial soundness or membership in a professional organization, are frequently stipulated as conditions to obtain a licence. If they are of a non-discriminatory nature, and therefore to be applied equally to nationals and foreigners, they should not be scheduled under Article XVII. Nor should they be scheduled under Article XVI as long as they do not contain any of the limitations specified in Article XVI. However, if such approval procedures or licensing and qualification requirements are discriminatory, they should be scheduled as national treatment limitations. If approval procedures or licensing and qualification requirements contain any of the limitations specified in Article XVI, they should be scheduled as market access limitations. It has been pointed out that in some schedules the granting of licences has been subject to review, possibly meaning they are granted on a discretionary basis. In such a case the right to supply the service is uncertain. Therefore such entries should be avoided unless the objective criteria on which such a review is based are precisely described.

11. It should be noted that the quantitative restrictions specified in sub-paragraphs (a) to (d) refer to maximum limitations. Minimum requirements such as those common to licensing criteria (e.g. minimum capital requirements for the establishment of a corporate entity) do not fall within the scope of Article XVI. If such a measure is discriminatory within the meaning of Article XVII and, if it cannot be justified as an exception, it should be scheduled as a limitation on national treatment. If such a measure is non-discriminatory, it is subject to the disciplines of Article VI:5. Where such a

measure does not conform to these disciplines, and if it cannot be justified as an exception, it must be brought into conformity with Article VI:5 and cannot be scheduled.

12. The following are examples of limitations on market access drawn from the schedules of specific commitments. In this regard, paragraph 39 on the scheduling of limitations is also relevant.

(a) Limitations on the number of service suppliers:

- Licence for a new restaurant based on an economic needs test.
- Annually established quotas for foreign medical practitioners.
- Government or privately owned monopoly for labour exchange agency services.
- Nationality requirements for suppliers of services (equivalent to zero quota).

(b) Limitations on the total value of transaction or assets:

- Foreign bank subsidiaries limited to x percent of total domestic assets of all banks.

(c) Limitations on the total number of service operations or quantity of service output:

- Restrictions on broadcasting time available for foreign films.

(d) Limitations on the total number of natural persons:

- Foreign labour should not exceed x percent and/or wages xy percent of total.

(e) Restrictions or requirements regarding type of legal entity or joint venture:

- Commercial presence excludes representative offices.
- Foreign companies required to establish subsidiaries.
- In sector x, commercial presence must take the form of a partnership.

(f) Limitations on the participation of foreign capital:

- Foreign equity ceiling of x percent for a particular form of commercial presence.

B. LIMITATIONS ON NATIONAL TREATMENT (ARTICLE XVII)

13. A Member grants full national treatment in a given sector and mode of supply when it accords in that sector and mode conditions of competition no less favourable to services or service suppliers of other Members than those accorded to its own like services and service suppliers. The national treatment standard does not require formally identical treatment of domestic and foreign suppliers: formally different measures can result in effective equality of treatment; conversely, formally identical measures can in some cases result in less favourable treatment of foreign suppliers (*de facto* discrimination). Thus, it should be borne in mind that limitations on national treatment cover cases of both *de facto* and *de jure* discrimination as shown in the following examples.

Examples of limitations on national treatment³

- (a) Domestic suppliers of audiovisual services are given preference in the allocation of frequencies for transmission within the national territory. (Such a measure discriminates explicitly on the basis of the origin of the service supplier and thus constitutes formal or *de jure* denial of national treatment.)
- (b) A measure stipulates that prior residency is required for the issuing of a licence to supply a service. (Although the measure does not formally distinguish service suppliers on the basis of national origin, it *de facto* offers less favourable treatment to foreign service suppliers because they are less likely to be able to meet a prior residency requirement than like service suppliers of national origin.)

It is useful to keep in mind that, unlike Article XVI, Article XVII does not contain an exhaustive listing of the types of measure which would constitute limitations on national treatment.

14. Regarding the need to schedule residency requirements, it should be decided on a case-by-case basis, and in relation to the activity concerned, which requirements (e.g. the need to live in the country as opposed to having a mailing address in the country) constitute a *de facto* national treatment restriction and therefore must be scheduled under Article XVII unless justifiable as an exception. If the residency requirement is not discriminatory, it would be subject to the disciplines of Article VI:5. If it is not consistent with these disciplines and if it cannot be justified as an exception, it must be brought into conformity with Article VI:5.

15. There is no obligation in the GATS which requires a Member to take measures outside its territorial jurisdiction. It therefore follows that the national treatment obligation in Article XVII does not require a Member to extend such treatment to a service supplier located in the territory of another Member.

16. Article XVII applies to subsidies in the same way that it applies to all other measures. Article XV (Subsidies) merely obliges Members to "enter into negotiations with a view to developing the necessary multilateral disciplines" to counter the distortive effects caused by subsidies and does not contain a definition of subsidy. Therefore, any subsidy which is a discriminatory measure within the meaning of Article XVII would have to be either scheduled as a limitation on national treatment or brought into conformity with that Article. Subsidies are also not excluded from the scope of Article II (MFN). In line with the paragraph above, a binding under Article XVII with respect to the granting of a subsidy does not require a Member to offer such a subsidy to a services supplier located in the territory of another Member.

17. Restrictions on the purchase, lease or use of real estate, connected with the supply of a service inscribed in a schedule, are national treatment limitations to the extent that different conditions apply to foreign services suppliers which alter the conditions of competition in favour of service suppliers of the Member compared to like service suppliers of any other Member.

18. A Member may wish to maintain measures which are inconsistent with both Articles XVI and XVII. Article XX:2 stipulates that such measures shall be inscribed in the column relating to Article XVI on market access. Thus, while there may be no limitation entered in the national treatment column, there may exist a discriminatory measure inconsistent with national treatment inscribed in the market access column. However, in accordance with Article XX:2, any discriminatory measure scheduled in the market access column is also to be regarded as scheduled under Article XVII and subject to the provisions of that Article. When measures inconsistent with both Articles XVI and XVII are inscribed in the column relating to Article XVI (as provided for in

³ More examples of frequently occurring national treatment restrictions are listed in Attachment 1.

Article XX:2), Members could indicate that this is the case (e.g. by stating "also limits national treatment" in the market access column).

C. ADDITIONAL COMMITMENTS (ARTICLE XVIII)

19. A Member may, in a given sector, make commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI and XVII. Such commitments can include, but are not limited to, undertakings with respect to qualifications, technical standards, licensing requirements or procedures, and other domestic regulations that are consistent with Article VI. Additional commitments are expressed in the form of undertakings, not limitations. In the schedule, the Additional Commitments column would only include entries where specific commitments are being undertaken, and need not include those modes of supply where there are no commitments undertaken or any entries at all where no Article XVIII undertakings are made.

D. EXCEPTIONS

20. All measures falling under Article XIV (General Exceptions) are excepted from all obligations and commitments under the Agreement, and therefore should not be scheduled. Clearly, such exceptions cannot be negotiated under Part III of the Agreement. Likewise, any prudential measure taken in accordance with paragraph 2(a) of the Annex on Financial Services constitutes an exception to the Agreement and should not be scheduled. Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for prudential reasons in accordance with paragraph 2(a) of the Annex on Financial Services. Measures falling under Article XII (Restrictions to Safeguard the Balance of Payments) are also exceptions and should not be scheduled. Article XII provides for separate disciplines for such measures, including notification and consultation.

E. SPECIFIC COMMITMENTS AND MFN EXEMPTIONS

21. A Member taking a national treatment or a market access commitment in a sector must accord the stated minimum standard of treatment specified in its schedule to all other Members. The MFN obligation requires that the most favourable treatment actually accorded in all sectors, whether the subject of a commitment or not, must also be accorded to all other Members. Where an MFN exemption has been granted for a measure, a Member is free to deviate from its Article II obligations, but not from its Article XVI and Article XVII commitments. Therefore, in such cases, a Member may accord treatment in that sector more favourable than the minimum standard to some Members, as long as all other Members receive at least that minimum standard of market access and national treatment appearing in its schedule. In such cases, it is not possible for a Member to accord less favourable treatment to certain Members than that specified in its schedule (for example, on grounds of reciprocity or the lack of it).

PART II: HOW SHOULD ITEMS BE SCHEDULED?

22. Schedules record, for each sector, the legally enforceable commitments of each Member. It is therefore vital that schedules be clear, precise and based on a common format and terminology. This section describes how commitments should be entered in schedules. The main steps involved are:

- A. How to describe committed sectors and sub-sectors;
- B. How to treat the modes of supply;
- C. How to record commitments:
 1. Horizontal commitments;
 2. Sector-specific commitments;
 3. Levels of commitment.

A. HOW TO DESCRIBE COMMITTED SECTORS AND SUB-SECTORS

23. The legal nature of a schedule as well as the need to evaluate commitments, require the greatest possible degree of clarity in the description of each sector or sub-sector scheduled. In general the classification of sectors and sub-sectors should be based on the Secretariat's Services Sectoral Classification List.⁴ Each sector contained in the Secretariat list is identified by the corresponding Central Product Classification (CPC) number. Where it is necessary to refine further a sectoral classification, this should be done on the basis of the CPC or other internationally recognised classification (e.g. Financial Services Annex). A breakdown of the CPC, including explanatory notes for each sub-sector, is contained in the UN Provisional Central Product Classification.⁵

Example: A Member wishes to indicate an offer or commitment in the sub-sector of map-making services. In the Secretariat list, this service would fall under the general heading "Other Business Services" under "Related scientific and technical consulting services" (see item I.F.m). By consulting the CPC, map-making can be found under the corresponding CPC classification number 86754. In its offer/schedule, the Member would then enter the sub-sector under the "Other Business Services" section of its schedule as follows:

Map-making services (86754)

24. If a Member wishes to use its own sub-sectoral classification or definitions it should provide concordance with the CPC in the manner indicated in the above example. If this is not possible, it should give a sufficiently detailed definition to avoid any ambiguity as to the scope of the commitment.

25. It is understood that market access and national treatment commitments apply only to the sectors or sub-sectors inscribed in the schedule. They do not imply a right for the supplier of a committed service to supply uncommitted services which are inputs to the committed service.

B. HOW TO TREAT THE MODES OF SUPPLY

26. The four modes of supply listed in the schedules correspond to the scope of the GATS as set out in Article I:2. The modes are essentially defined on the basis of the origin of the service supplier and consumer, and the degree and type of territorial presence which they have at the moment the service is delivered.

⁴Document MTN.GNS/W/120, dated 10 July 1991.

⁵Statistical Papers Series M No. 77, Provisional Central Product Classification, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991.

MODES OF SUPPLY

Supplier Presence	Other Criteria	Mode
Service supplier <u>not present</u> within the territory of the Member	Service delivered <u>within</u> the territory of the Member, from the territory of another Member	CROSS-BORDER SUPPLY
	Service delivered <u>outside</u> the territory of the Member, in the territory of another Member, to a service consumer of the Member	CONSUMPTION ABROAD
Service supplier <u>present</u> within the territory of the Member	Service delivered within the territory of the Member, through the commercial presence of the supplier	COMMERCIAL PRESENCE
	Service delivered within the territory of the Member, with supplier present as a <u>natural</u> person	PRESENCE OF NATURAL PERSON

27. It is important to have a common understanding of what each mode covers. To this end, further examples and explanations are given below.

1. Cross-border supply

28. International transport, the supply of a service through telecommunications or mail, and services embodied in exported goods (i.e. services supplied in or by a physical medium, such as a computer diskette or drawings) are all examples of cross-border supply, since the service supplier is not present within the territory of the Member where the service is delivered.

2. Consumption abroad

29. This mode of supply is often referred to as "movement of the consumer". The essential feature of this mode is that the service is delivered outside the territory of the Member making the commitment. Often the actual movement of the consumer is necessary as in tourism services. However, activities such as ship repair abroad, where only the property of the consumer "moves", or is situated abroad, are also covered.

30. Whatever the mode of supply, obligations and commitments under the Agreement relate directly to the treatment of services and service suppliers. They only relate to service consumers insofar as services or service suppliers of other Members are affected. It should be noted that a Member may only be able to impose restrictive measures affecting its own consumers, not those of other Members, on activities taking place outside its jurisdiction.

31. Limitations in the schedule of a Member - if any - with respect to mode 2 on market access and/or on national treatment should only relate to measures affecting the consumers of that Member, and not to measures affecting consumers of another Member, in the territory of that Member.

3. Commercial Presence

32. This mode covers not only the presence of juridical persons in the strict legal sense, but also that of legal entities which share some of the same characteristics. It thus includes, *inter alia*, corporations, joint ventures, partnerships, representative offices and branches (see Definitions: Article XXVIII).

4. Presence of natural persons

33. This mode covers natural persons who are themselves service suppliers, as well as natural persons who are employees of service suppliers.

34. With respect to the fourth mode of supply, many participants have chosen to inscribe their bound commitments in the form of undertakings rather than in the form of market access limitations. In such cases the bound measures affecting the entry and temporary stay of natural persons are explicitly stated. Thus, in the absence of a reference to a specific duration for the temporary stay of a foreign service supplier, it could be understood that no binding is being undertaken in respect of the duration of that stay. It is noted in this regard that, according to Article XX:1(a) of the Agreement, with respect to sectors where commitments are undertaken, each schedule shall specify the terms, limitations and conditions on market access. Commitments should include the duration of temporary stay of natural persons for the purpose of supplying a service. In any event a Member's regulatory measures would still be subject to the general requirement, in paragraph 4 of the Annex on the Movement of Natural Persons, that they do not nullify or impair the benefits accruing to any other Member under the terms of a specific commitment.

5. Relationship between modes of supply

35. Where a service transaction requires in practical terms the use of more than one mode of supply, coverage of the transaction is only ensured when there are commitments in each relevant mode of supply.

Example: A Member has made a commitment in the cross-border supply of architectural services (e.g. by telecommunications or by mail). This commitment alone does not extend to the presence of natural persons (e.g. visits by architects). A separate commitment would have to be taken under "Presence of natural persons" to cover this case.

C. HOW TO RECORD COMMITMENTS

1. Horizontal commitments

36. A horizontal commitment applies to trade in services in all scheduled services sectors unless otherwise specified. It is in effect a binding, either of a measure which constitutes a limitation on market access or national treatment or of a situation in which there are no such limitations. Where measures constituting limitations are referred to, the commitment should describe the measure concisely, indicating the elements which make it inconsistent with Articles XVI or XVII. In order to avoid repetition, it is desirable to enter these commitments in a separate section at the beginning of the schedule according to the four modes of supply. Such a section could be entitled: "Horizontal commitments applicable to sectors listed in the sectoral part of the schedule". Some horizontal measures may be specific to only one mode of supply:

Example: Legislation may refer to foreign investment, formation of corporate structures or land acquisition regulations. Such measures affect above all commercial presence.

Example: Legislation may stipulate requirements regarding entry, temporary stay and right to work of natural persons; the categories of natural persons covered by a particular offer may also be specified. Such measures affect above all the presence of natural persons.

Other horizontal measures may affect more than one mode of supply:

Example: Legislation may provide for tax measures which are contrary to national treatment and not covered by Article XIV(d). Such measures would normally affect the supply of services in several modes.

37. Horizontal commitments condition all other entries in the schedule unless otherwise specified. Hence:

- A "none" in the sectoral section must be read as meaning "none except the conditions set out in the horizontal section".⁶
- To indicate in a given sector that no restrictions whatever are imposed, a Member must make clear in the horizontal section or in the relevant sectoral section that the horizontal restrictions do not apply in the sector in question.
- In the case of a sector-specific restriction the entry must be read as the combination of the horizontal restrictions and of the sector-specific restriction unless explicitly provided otherwise in the entry.

38. To the extent that domestic laws of general application contain measures which constitute limitations, and if the Member wishes to maintain them, the commitment should describe the measures concisely. According to the agreed scheduling procedures, schedules should not contain general references to laws and regulations as it is understood that such references would not have legal implications under the GATS.

2. Sector-specific commitments

39. A sector-specific commitment applies to trade in services in a particular sector. If in the context of such a commitment, a measure is maintained which is contrary to Articles XVI or XVII, it must be entered as a limitation in the appropriate column (either market access or national treatment) for the relevant sector and modes of supply; the entry should describe the measure concisely, indicating the elements which make it inconsistent with Articles XVI or XVII.

40. Given the legal nature of a schedule, it should contain only descriptions of bound commitments. Any additional information for transparency purposes should not be entered in the schedule. A reference to the legal basis of a scheduled measure (i.e. the relevant law or regulation) may be entered if thought necessary. In any event, such information will be subject to the obligations of Article III.

3. Levels of commitment

41. Since the terms used in a Member's schedule create legally binding commitments, it is important that those expressing presence or absence of limitations to market access and national treatment be uniform and precise. Depending on the extent to which a Member has limited market

⁶ Due account must be taken, if need be, of the provision of Article XX:2 of the GATS relating to the scheduling of measures inconsistent with both market access and national treatment in the market access column.

access and national treatment, for each commitment with respect to each mode of supply, four cases can be foreseen:

(a) Full commitment

42. In this case the Member does not seek in any way to limit market access or national treatment in a given sector and mode of supply through measures inconsistent with Articles XVI and XVII. The Member in this situation should mark in the appropriate column: NONE. However, any relevant limitations listed in the horizontal section of the schedule will still apply.

43. Regardless of what is inscribed in the market access column, a "no limitations" entry in the National Treatment column (expressed as "None") would mean that national treatment is bound for the entire mode; it is not limited to what may be bound in a market access commitment with limitations. Thus, if a Member makes a commitment under Article XVI in a sector, where commercial presence is limited to partnerships, an entry "None" or any other entry in the national treatment column would refer to the whole mode of supply and not only to partnerships. (See also paragraphs 3 and 13)

(b) Commitment with limitations

44. Where market access or national treatment limitations are inscribed, two main possibilities can be envisaged in this case. The first is the binding of an existing situation ("standstill"). The second is the binding of a more liberal situation where some, but not all, of the measures inconsistent with Articles XVI or XVII will be removed ("rollback"). In either case the Member must describe in the appropriate column the measures maintained which are inconsistent with Articles XVI or XVII. The entry should describe each measure concisely, indicating the elements which make it inconsistent with Articles XVI or XVII. It would not be correct merely to enter in a column words such as "bound", "freeze" or "standstill".

45. In some cases a Member may choose to partially bind measures affecting a given category of suppliers. For example, a Member may bind measures affecting the entry and temporary stay only of some categories of natural persons while leaving all other categories unbound. This may be achieved through an indication in the horizontal section of a schedule such as "Unbound except for measures affecting the entry and temporary stay of natural persons in the following categories...". In such cases, the corresponding sectoral entry under the fourth mode of supply should be "Unbound except as indicated in the horizontal section".

(c) No commitment

46. In this case, the Member remains free in a given sector and mode of supply to introduce or maintain measures inconsistent with market access or national treatment. In this situation, the Member must record in the appropriate column the word: UNBOUND. This case is only relevant where a commitment has been made in a sector with respect to at least one mode of supply. Where all modes of supply are "unbound", and no additional commitments have been undertaken in the sector, the sector should not appear on the schedule.

(d) No commitment technically feasible

47. In some situations, a particular mode of supply may not be technically feasible. An example might be the cross-border supply of hair-dressing services. In these cases the term UNBOUND* should be used. The asterisk should refer to a footnote which states "Unbound due to lack of technical feasibility". The term may not be used as an entry in the national treatment column for modes 1 and 2 when, for the same service, there is a market access commitment. Where the mode of

supply thought to be inapplicable is in fact applicable, or becomes so in the future, the entry means "unbound".

(e) Special cases

48. It could be argued that a reservation for a residence requirement, a nationality condition or a commercial presence requirement under cross border trade amounts to an "unbound". However in some cases there is clearly an advantage in inscribing those requirements instead of the term "unbound" in that trading partners have the certainty that there are no other limitations with respect to the cross border mode (see also paragraph 14 on residency requirements and paragraph 12 on nationality requirements).

49. Where a national schedule refers to foreign companies and national companies, it is necessary to offer a definition for those cases where a Member uses terms which are not covered by the common definitions contained in Article XXVIII of the GATS.

ANNEX 1

SCHEDULE OF SPECIFIC COMMITMENTS OF COUNTRY X

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	(1)	(1)	
	(2)	(2)	
	(3)	(3)	
	(4)	(4)	
	(1)	(1)	
	(2)	(2)	
	(3)	(3)	
	(4)	(4)	

Key: (1) Cross-border supply (3) Commercial presence
(2) Consumption abroad (4) Presence of natural persons

NOTE: The schedule shall also indicate the date of entry into force of the commitments and where appropriate the time-frame for their implementation. For all future commitments the relevant date of entry into force should be inscribed.

ANNEX 2

LIST OF ATTACHED DOCUMENTS RELEVANT FOR SCHEDULING PURPOSES¹

- 1) Examples of frequently occurring national treatment restrictions, which appear in schedules of specific commitments.
- 2) Informal Note by the Secretariat for the Committee on Trade in Financial Services, dated 24 June 1997, "The Distinction between Modes 1 and 2", (Also included in document S/FIN/W/14).
- 3) Job No. 3706, dated 3 July 1997, Informal Note by the Secretariat for the Committee on Trade in Financial Services, Report of Informal Consultations held on 27 June 1997 on the Distinction between Modes 1 and 2 in Financial Services (Also included in document S/FIN/W/14).
- 4) Job No. 6496, dated 25 November 1998 (also included in document S/WPPS/4, dated 10 December 1998), Informal Note by the Chairman of the Working Party on Professional Services "Discussion of matters relating to Articles XVI and XVII of the GATS in connection with the disciplines on domestic regulation in the accountancy sector".
- 5) S/GBT/W/2/Rev.1, dated 16 January 1997, Note by the Chairman of the Negotiating Group on Basic Telecommunications on Scheduling Basic Telecom Services Commitments.
- 6) S/GBT/W/3, dated 3 February 1997, Note by the Chairman of the Negotiating Group on Basic Telecommunications on Market Access Limitations on Spectrum Availability.
- 7) Annex to Job No. 1311, dated 12 April 1995, Informal Note by the Secretariat "Model Schedule of Commitments on Basic Telecommunications".
- 8) MTN.GNS/W/120, dated 10 July 1991, Note by the Secretariat "Services Sectoral Classification List".

¹ It is understood that the status of each of the documents listed is unique and that therefore each document should be looked at based on its specific background and nature. The fact that such documents are annexed to these guidelines should not be interpreted as changing their status. In the same manner, it is understood that some of the documents listed in this annex deal with scheduling questions only for the sector they refer to.

Attachment 1

EXAMPLES OF FREQUENTLY OCCURRING NATIONAL TREATMENT
RESTRICTIONS WHICH APPEAR IN SCHEDULES OF SPECIFIC COMMITMENTS

1. These examples are based on existing entries in the schedules and represent frequently occurring types of limitations on national treatment. It should be noted that the list is of an illustrative nature and therefore it is by no means exhaustive. Moreover, since the listed examples come from individual existing schedules and are based on their own interpretation of Article XVII of the GATS, the list does not represent the common view of WTO Members on this subject and therefore it does not prejudice Members' positions on the interpretation of Article XVII of the GATS. In other words, the list does not imply that all measures presenting similarities with one of the measures below would need to be listed as national treatment restrictions. Only discriminatory measures (i.e. measures which modify conditions of competition in favour of services suppliers of national origin) would need to be scheduled.

2. For instance, licensing and qualification requirements, registration requirements and authorization requirements will constitute national treatment limitations subject to scheduling only where they discriminate in favour of services and service suppliers of national origin. In the absence of discrimination, these same type of requirements will not constitute measures subject to scheduling under Article XVII and would possibly fall under Article VI of the GATS.¹ Similarly, whether residency requirements constitute national treatment limitations has to be determined on a case-by-case basis.

3. Finally, although there is no definition of what constitutes a subsidy under the GATS and disciplines under Article XV are still subject to negotiations, paragraph 16 in the revised guidelines recalls that a discriminatory subsidy constitutes a national treatment limitation. For this reason, an example of a discriminatory subsidy has been included in this list. The same goes *mutatis mutandis* for tax measures and other financial measures such as fees.

I. Subsidy measures

- Eligibility for subsidies reserved to nationals

II. Tax measures

- A 4 per cent federal excise tax is imposed on all non-life insurance premiums that are paid to companies that are not nationally incorporated
- An excise tax of 10 per cent is applicable on net premiums paid to non-resident insurers

III. Other financial measures (fees, charges, etc.)

- Charges taken for port services from foreign and national ships may differ in favour of national flag vessels

¹ On the determination of whether a measure is subject to scheduling under Articles XVI or XVII or whether it falls under Article VI of the GATS, see also the attached Informal Note by the Chairman of the Working Party on Professional Services "Discussion of matters relating to Articles XVI and XVII of the GATS in connection with the disciplines on domestic regulation in the accountancy sector", 25 November 1998, document Job No. 6496.

- Higher licence fees are charged for non-residents

IV. Nationality requirements

- Provision of yacht chartering and cruising services reserved to nationals
- Agents or managers must be citizens
- Sale or purchase of travellers cheques by individuals requires citizenship status

V. Residency requirements

- Permanent residency requirement for chiropodists
- Residency requirement for managers and the members of the board of directors of a company
- Residence requirement for actuarial profession
- Advisory and auxiliary financial services and asset management: The establishment must be managed by a resident of the province
- For foreign bank employees residence is required

VI. Licencing and qualification requirements

- In order to work as a mountain guide or ski instructor, passing of an examination is required; access to such exams for foreigners may be restricted
- Barristers and commercial lawyers in national law are required to be graduates of national universities
- Condition of licences is one year previous residency
- Three years of prior professional practice in the country required
- Non-residents must be registered and licenced in order to purchase unprocessed fish from primary producers and/or process fish

VII. Registration requirements

- Marketing of legal advice activities by foreign companies is restricted to registered law firms
- It is necessary to be registered as an accountant, for which it is necessary to be a national or an alien domiciled in the country for at least three years prior to the application
- Foreign companies are required to have a registered office in the country
- Certification of certain works involving health and safety is limited to registered engineers, who to become registered, must be ordinarily resident in the country

VIII. Authorisation requirements

- Loans to non-residents need to be approved by the Central Bank
- Banks: until 30 June 1999, ministerial approval is required for foreign bank subsidiaries to open more than one bank
- A non-national needs permission to become a director of a financial institution

IX. Technology transfer/training requirements

- The foreign service supplier shall use appropriate and advanced technology and managerial experience, and shall have the obligation to transfer its technology and pass on its experience to national personnel
- The foreign service supplier must prove commitment to recruit and develop more local human resources
- Foreign service suppliers, in the context of JV are required to offer on-the-job training for national employees
- Skilled foreign employees required to provide training to locals

X. Local content requirements

- Preferential use of local services to the extent they are available under conditions of quality, price and delivery equivalent to those of like services of foreign origin
- With regard to personnel, materials, equipment, facilities and services required in the petroleum operations, priority shall be given to the employment of national subcontractors, provided that they are competitive in delivery, time, price and quality

XI. Ownership of property/land

- Foreigners may not acquire direct ownership of land in a 100 km strip along the frontiers
- The acquisition, purchase as well as rent or lease of real estate by foreign natural persons and juridical persons requires an authorization by the competent regional authorities which will consider whether important economic, social or cultural interests are affected or not
- Foreign entities may only acquire real property through participation in joint ventures
- Non-residents are excluded from the acquisition of real estate

Attachment 2

Committee on Trade in Financial Services

24.6.97

The Distinction between Modes 1 and 2

Informal Note by the Secretariat

At the meeting of the Committee on Trade in Financial Services on 5 June, the Secretariat was asked to organise informal consultations on the issue of the distinction between modes 1 and 2 which would be open to all delegations. The Secretariat was requested to report on the results of such consultations to the next meeting of the Committee on 17 July. The purpose of this note is to assist delegations in those informal consultations by identifying the nature of the issue and laying down some possible options for a solution.

* * *

1. The mode 1 – mode 2 issue arises because of a perceived ambiguity in the distinction between the two modes for scheduling purposes. The question becomes particularly relevant when one of the two modes is unbound in a Member's schedule, while the other mode is either fully bound or bound with few limitations.¹
2. As indicated in the agreed scheduling guidelines (MTN.GNS/W/164 of 3 September 1993), the modes of supply are essentially defined on the basis of the origin of the service supplier and consumer, and the degree and type of territorial presence which they have at the moment the service is delivered. In both modes 1 and 2, the supplier is not present within the territory of the Member. The distinction between mode 1 and mode 2, therefore, hinges upon whether the service is delivered within the territory of the Member from the territory of another Member or whether the service is delivered outside the territory of the Member.²
3. The ambiguity is due to the fact that the delivery of a financial service very often does not require the physical presence of the consumer. Electronic means associated with the globalization of financial markets has made it possible to "deliver" a financial service almost anywhere in the world. Once the physical presence of the consumer ceases to be a benchmark for determining the place of delivery of a service, it becomes extremely difficult to determine in an unambiguous manner where a service is delivered.

¹ If both modes were unbound, a Member would be entitled to introduce any measures inconsistent with Article XVI or XVII with respect to both modes, and drawing a line between them would not serve any practical purpose. If both modes were bound, a Member would be entitled to apply only the measures inscribed in its schedule. In this latter case, any ambiguity in the distinction between modes 1 and 2 could result in a misplacement of scheduled measures, but the consequences of this might not be as far-reaching as the non-scheduling of a measure. If the measures applicable to services supplied under the modes are prudential, there is no need to schedule them.

² In making this distinction between modes 1 and 2, one should focus on the delivery of the service itself, and not confuse this with the underlying flows of capital or the act of ordering or requesting the supply of a service.

4. Some examples may illustrate this point:

Deposits: A bank account is opened abroad by a consumer of a Member. If the consumer travelled abroad to open the account, this may be mode 2 supply, while the absence of travel (opening of the account through mail order and bank transfer, or through electronic means) may imply mode 1. However, the services directly associated with this account (payment of interest, debiting and crediting of payments and transfers, offsetting of balances, etc.) can be delivered either abroad or in the consumer's home country at the request of the consumer.

Loan: A loan is made from a foreign bank established abroad to a consumer of a Member. The loan can be delivered either within or outside the territory of the consumer's home country.

Insurance: The consumer of a Member concludes a property insurance contract with an insurer established abroad. It can be argued that if the insured property is abroad, the service is also delivered abroad, since the protection provided by the insurance contract is "delivered" with respect to the property; therefore this belongs to mode 2. However, it can equally be argued that the insurance provides protection to the consumer in his or her home country, as the premiums are paid by the consumer, and in the event of an accident, the indemnity will be paid to the consumer in the home country; therefore this would come under mode 1.

5. Given the diversity and complexity of financial services, there may be an infinite number of such examples. It would seem very difficult, if not impossible to reach agreement on each of those cases. On the other hand, some general substantive solutions have been proposed such as the following:

- (a) all financial transactions (between non-resident suppliers and resident consumers) that take place inside a Member's territory could be classified as mode 1;
- (b) mode 1 transactions could be defined as those that take place under the laws of the Member, while mode 2 transactions could be defined as those that take place under the laws of the foreign country from which the service is supplied;
- (c) the supply of services accompanied by solicitation could be defined as mode 1, if not, mode 2;
- (d) any measure applicable to the supplier of the service could be classified under mode 1, any measure applicable to the consumer under mode 2;
- (e) modes 1 and 2 could be merged.

6. In (a) above, the question of determining where the delivery of the service took place would be substituted by the question of where a financial transaction took place. If the answer to the latter question is based on where the payment of fees, commissions or charges took place, it would seem to require a departure from the general principle of determining the place of supply of a service according to where the service was delivered. However, this may have the merit of being consistent with balance-of-payment statistics.

7. In (b), one would need to recognize the fact that the territorial application of laws differ between countries, and between civil and administrative laws within a country. A Member may also encounter a situation in which its mode 2 commitments would become unenforceable, since it may not be possible to implement any commitments concerning transactions which took place entirely outside the Member's legal jurisdiction. The fact that the parties to a financial transaction could choose the laws applicable to them might also complicate the issue.

8. The solution in (c) above would also seem to require a departure from the principle of determining the mode of supply by the place of delivery of a service. The exact meaning of solicitation (or active marketing) would also need to be clarified and agreed.
9. In (d), there could be cases in which the regulatory measures are applicable to both suppliers and consumers.
10. Finally, (e) would not seem to be feasible without modifying the basic principle of scheduling and possibly Article I of the GATS.
11. If Members find it difficult to agree on any substantive solutions such as those above within the time-frame of the current financial services negotiations, i.e. before 12 December 1997, some practical solution may need to be found.³ Such a practical solution could involve clarifying in the headnote of each schedule the distinction employed by the Member.

³ Another point worth noting is that any substantive solution would have immediate implications for a broad range of other services which are commonly traded cross-border, such as telecommunication services. Since any attempt to draw the line between the modes of supply for a financial service would have direct relevance to other service sectors, this issue might ideally be dealt with in parallel by the Committee on Specific Commitments. Such a major exercise would not be completed in the time-frame of the financial services negotiations.

Attachment 3

Job 3706

3.7.97

Committee on Trade in Financial Services

Report of Informal Consultations held on 27 June 1997
on the Distinction between Modes 1 and 2 in Financial Services

Informal Note by the Secretariat

At the meeting of the Committee on Trade in Financial Services held on 5 June, the Secretariat was asked to organize informal consultations open to all delegations on the question of the distinction between modes 1 and 2 in financial services schedules. The Secretariat was also requested to report on the results of such consultations to the next meeting of the Committee on 17 July. The purpose of this note is to summarize the results of an informal meeting held in accordance with this request which took place on 27 June 1997.

* * *

1. Discussions in the informal meeting took place on the basis of an informal note by the Secretariat dated 24 June 1997. The Secretariat also made an oral presentation at the beginning of the meeting, explaining the technical nature of the issue and some options for removing the ambiguities or uncertainties in the schedules. Ideally, a definitive and watertight solution for clarification of the distinction between modes 1 and 2 should be found, which would be accepted by all Members and would be valid not just for financial services but for all sectors. It was recalled, however, that at the formal meeting of the Committee on 5 June, there seemed to be a general view that it would be impossible to find the necessary time before the end of the current negotiations to look for such a definitive solution. A new definition of the coverage of modes 1 and 2, or the merging of the two modes, would entail re-negotiation either of the scheduling guidelines or of articles of the GATS itself, and would be very time-consuming. To develop an agreed list of financial transactions falling under mode 1 and those falling under mode 2 would also require substantial time and effort. There had been general agreement at the 5 June meeting of the Committee that it would not be possible or desirable to devote a great deal of time to this question in the final months of the negotiation.

2. It was therefore necessary to try to find a pragmatic solution which would suffice for the purposes of the current negotiations. Such a solution must provide as much clarity as possible, must be neutral with regard to existing commitments while facilitating the negotiation of new ones under the two modes, should if possible be accepted at the 17 July meeting of the Committee, and should close the discussions on this issue until the conclusion of the financial services negotiations in December this year.

3. A large number of delegations stated that they had not encountered any major problems or difficulties regarding the distinction between modes 1 and 2 in financial services schedules. They were, however, willing to discuss this issue in order to achieve as much clarity as possible. Several delegations also added that while they themselves had not encountered difficulties with regard to this issue, they were willing to discuss bilaterally with any delegation which had found difficulties in scheduling commitments under these modes.

4. Delegations generally thought that the issue was a horizontal one, which meant that any definitive agreement or understanding on the distinction between the two modes would necessarily apply to other services as well as financial services. Given the difficulties involved in finding a definitive solution, there was general support for a pragmatic solution to the issue, which could be put together in

the limited time frame of the current financial services negotiations. It was made clear that no solution to this issue could affect the rights of Members to modify or withdraw commitments during the negotiations; the solution should be "neutral" in the sense that it would not affect the substance of existing commitments. It was also confirmed that the rights of Members to take necessary prudential measures could not be affected by any discussion or "solution" of the modes issue.

5. There was a broad willingness to consider the use of headnotes as a means of clarifying the distinction between modes 1 and 2. Several delegations cautioned, however, that it would be extremely difficult to negotiate a common headnote for use by all Members. It was also pointed out that if all countries needed to adopt a common headnote, all existing schedules in financial services would need to be reconsidered, regardless of whether there were changes in the substance of the commitments. Based on these discussions, there was general support for a suggestion to consider developing a non-binding model headnote or a menu of possible headnotes which could be used by delegations on a voluntary basis.

6. The Secretariat distributed an example of such a headnote (see attached) which focused on the object of the measure to be listed in the schedule. The example was based on the question on whom a mode 1 or mode 2 binding conferred rights of action and on whom limitations would consequently bite; if it was the foreign service supplier who was restricted from supplying the service, the limitation would be scheduled under mode 1, while if it was the consumer who was restricted from consuming the service abroad, then the limitation would be scheduled under mode 2. It was pointed out that such a headnote would not address the issue of location - where the supply of the service took place - but it would make clear the limits of the obligations, in terms of rights conferred, assumed by governments in making commitments under these two modes. Delegations generally thought that such an example would be helpful in considering options.

7. Another possible headnote listed in the example was a reference to solicitation. The example stated that there was no commitment to allow solicitation of business or active marketing under mode 2. It was accepted that headnotes clarifying other issues might be required, and that the Secretariat should be ready to assist in drafting them on request. It was made clear that any delegation which thought that the examples were insufficient could ignore or modify them at will. Discussion of these models implied no commitment to use them.

8. The main conclusions of the informal consultations were therefore as follows. It was agreed that the responsibility for clarifying the content of commitments under modes 1 and 2 must lie with those individual Members feeling the need to do so; to develop a common multilateral solution for the purposes of the financial services negotiations would be infeasible in the time available and was in any case unnecessary. The simplest means of providing such clarification appeared to be the use of a headnote. Again, it was not thought necessary or feasible to develop a common headnote, but delegations undertook to give thought to the possible value of the two examples circulated by the Secretariat, and to any other examples which may come forward. There was also wide support for the view that in the longer term - after the conclusion of the financial services negotiations - consideration should be given, perhaps in the Committee on Specific Commitments since this was a horizontal issue, to definitive clarification of the distinction between modes 1 and 2. However, some delegations had reservations on this point, being unconvinced of the need for further consideration of the matter in the near future.

27.6.97

Example of a headnote explaining the distinction between Modes 1 and 2 in financial services schedules

- Market access and national treatment limitations with respect to the mode (1) (cross-border supply) and mode (2) (consumption abroad) supply of financial services are inscribed in this section of the Schedule in accordance with the following distinction between the measures affecting these two modes of supply:
 - 1. Measures affecting mode (1)

Any limitation on the ability of a non-resident supplier of financial services to supply the service in the territory of the Member.
 - 2. Measures affecting mode (2)

Any limitation on the ability of a resident consumer to purchase the service in the territory of another Member.

Optional texts

If applicable, the following can be added as optional texts.

"The absence of any limitation on the ability of a resident consumer to purchase the service in the territory of another Member does not signify a commitment to allow a non-resident service supplier to solicit business or to conduct active marketing in the territory of the Member."

Attachment 4

Job No. 6496

Working Party on Professional Services

25 November 1998

DISCUSSION OF MATTERS RELATING TO ARTICLES XVI AND XVII OF THE GATS IN
CONNECTION WITH THE DISCIPLINES ON DOMESTIC REGULATION IN THE
ACCOUNTANCY SECTOR

Informal Note by the Chairman

1. For the purpose of transparency, this Note explains the method by which the Working Party on Professional Services (WPPS) pursued its work with respect to the question of the types of measures it would address in creating the disciplines in the accountancy sector. For the avoidance of any doubt, it is emphasised that this Note has no legal status.
2. In the course of work to develop multilateral disciplines on domestic regulation in the accountancy sector, pursuant to paragraph 4 of Article VI of the GATS, the WPPS addressed a wide range of regulatory measures which have an impact on trade in accountancy services. In discussing the structure and content of the new disciplines, it became clear that some of these measures were subject to other legal provisions in the GATS, most notably Articles XVI and XVII. It was observed that the new disciplines developed under Article VI:4 must not overlap with other provisions already existing in the GATS, including Articles XVI and XVII, as this would create legal uncertainty. For this reason, a number of the suggestions for disciplines were excluded from the text.
3. Although it was not in the mandate of the WPPS to provide an interpretation of GATS provisions, the important relationship between the new disciplines and Articles XVI and XVII was noted. While these two Articles relate to the scheduling of specific commitments on measures falling within their scope, the disciplines developed under Article VI:4 aim at ensuring that other types of regulatory measures do not create unnecessary barriers to trade. It has been noted that Article XVI (Market Access) covers the categories of measures referred to in paragraph 2 (a) to (f), whether or not any discrimination is made in their application between domestic and foreign suppliers. Article XVII (National Treatment) captures within its scope any measure that discriminates - whether *de jure* or *de facto* - against foreign services or service suppliers in favour of like services or service suppliers of national origin. A Member scheduling commitments under Articles XVI and XVII has the right to maintain limitations on market access and national treatment and inscribe them in its schedule. On the other hand, the disciplines to be developed under Article VI:4 cover domestic regulatory measures which are not regarded as market access limitations as such, and which do not in principle discriminate against foreign suppliers. They are therefore not subject to scheduling under Articles XVI and XVII. However, it is also recognized that for some categories of measures the determination as to whether an individual measure falls under Article VI:4 disciplines or is subject to scheduling under Article XVII will require careful consideration.
4. The following types of measures affecting trade in accountancy services were raised by some Members as examples of those which may be subject to negotiation and scheduling under Articles XVI and XVII:

- * Restrictions relating to the number of foreign accountants that can be employed, the number of new licences to be issued, the legal form of establishment and the ownership of firms.

- * Discriminatory requirements and procedures relating to the licensing of foreign individuals and the establishment of natural persons and legal persons in the accountancy sector, including the use of foreign and international firm names. Discriminatory elements which set prior conditions unrelated to the ability of the supplier to provide the service when preparing, adopting or applying licensing requirements.
 - * Discriminatory residency requirements or requirements for citizenship, including those required for sitting examinations related to obtaining a licence to practice. Discriminatory requirements for membership of a particular professional body as a prior condition for application.
 - * Discriminatory treatment of applications from foreign service suppliers vis-à-vis domestic applications including: criteria relating to education, experience, examinations and ethics; the overall degree of difficulty when testing competence of applicants; the need for in-country experience before sitting examinations.
5. The above mentioning of these types of measures does not prejudice future negotiations, which are mandated under Article XIX of the GATS.
-

Attachment 5

WORLD TRADE ORGANIZATION

RESTRICTED

S/GBT/W/2/Rev.1
16 January 1997

(97-0173)

Group on Basic Telecommunications

Note by the Chairman

Revision

It has been suggested by a number of delegations that it might be helpful to produce a brief and simple note on assumptions applicable to the scheduling of commitments in basic telecoms. The purpose of the attached note is to assist delegations in ensuring the transparency of their commitments and to promote a better understanding of the meaning of commitments. This note is not intended to have or acquire any binding legal status.

NOTES FOR SCHEDULING BASIC TELECOM SERVICES COMMITMENTS

1. Unless otherwise noted in the sector column, any basic telecom service listed in the sector column:
 - (a) encompasses local, long distance and international services for public and non-public use;
 - (b) may be provided on a facilities-basis or by resale; and
 - (c) may be provided through any means of technology (e.g., cable¹, wireless, satellites).
2. Subsector (g) --private leased circuit services -- involves the ability of service suppliers to sell or lease any type of network capacity for the supply of services listed in any other basic telecom service subsector unless otherwise noted in the sector column. This would include capacity via cable, satellite and wireless network.
3. In view of points 1 and 2 above, it should not be necessary to list cellular or mobile services as a separate subsector. However, a number of Members have done so, and a number of offers have commitments only in these subsectors. Therefore, in order to avoid extensive changes in schedules, it would seem appropriate for Members to maintain separate entries for these subsectors.

¹ Including all types of cable.

Attachment 6

WORLD TRADE ORGANIZATION

RESTRICTED

S/GBT/W/3
3 February 1997

(97-0415)

Group on Basic Telecommunications

Original: English

CHAIRMAN'S NOTE

Market Access Limitations on Spectrum Availability

Many Members have entries in the market access column of their schedules indicating that commitments are "subject to availability of spectrum/frequency" or similar wording. In light of the physical nature of spectrum and the constraints inherent in its use, it is understandable that Members may have sought to rely on these words to adequately protect legitimate spectrum management policies. There is, however, doubt that words such as "subject to availability of spectrum/frequency" as listed in the market access column of many Members' schedules achieve that objective.

Spectrum/frequency management is not, *per se*, a measure which needs to be listed under Article XVI. Furthermore under the GATS each Member has the right to exercise spectrum/frequency management, which may affect the number of service suppliers, provided that this is done in accordance with Article VI and other relevant provisions of the GATS. This includes the ability to allocate frequency bands taking into account existing and future needs. Also, Members which have made additional commitment in line with the Reference Paper on regulatory principles are bound by its paragraph 6.

Therefore, words such as "subject to availability of spectrum/frequency" are unnecessary and should be deleted from Members' schedules.

Attachment 7

1311

12 April 1995

Negotiating Group on Basic Telecommunications

Informal Note by the Secretariat

DRAFT MODEL SCHEDULE OF COMMITMENTS ON
BASIC TELECOMMUNICATIONS

1. As requested by the Chairman at the meeting of 27-28 February 1995, the Secretariat has prepared a revision of the draft model schedule for further discussion and elaboration at subsequent meetings of the Negotiating Group on Basic Telecommunications. As further agreement is obtained among participants on any outstanding elements of the draft model schedule, the Secretariat can continue to provide updated versions of the model to assist participants in the drafting of their offers and final schedules.
2. Only four minor and non-substantive adjustments have been made to the draft model schedule as it appeared in *Negotiations on Basic Telecommunications* (TS/NGBT/W/1/Rev.1, 10 June 1994). These are as follows:
 - (i) the paragraph preceding the table format, concerning the provision of information regarding the regulatory environment for reasons of transparency has been deleted. Most such information has been or is being provided in the context of participants' responses to the *Questionnaire on Basic Telecommunications* (S/NGBT/W/3, 15 July 1994);
 - (ii) for clarity, a complete list of the telecommunications services subsectors from the *Services Sectoral Classification List* (MTN.GNS/W/120, 10 July 1991), previously referred to in the model as (a)-(g) and (o), has been listed in the sector or subsector column;
 - (iii) the reference to "modes of delivery" has been changed to "modes of supply" and has been moved to the top of the table so as to be consistent with the terminology and format used in the final schedules of commitments resulting from the Uruguay Round; and
 - (iv) the footnote referring to an emerging consensus on the use of the positive list approach in scheduling the commitments has been deleted as there has been no apparent outstanding disagreement on this point.
3. Regarding elements of this draft model schedule which have been left unchanged, it may be useful to recall the possible implication of certain issues for the continued drafting process. These include, but are not limited to, the following:
 - (i) many of the remaining footnotes refer to outstanding issues now under discussion, as further described in the *Review of Outstanding Issues* (TS/NGBT/W/2, 8 July 1994) and the Reports of previous meetings of the Group. The footnotes have been retained since the issues to which they refer are not yet resolved. As resolution of the issues is achieved, it would be

possible to delete such footnotes and, in some cases, make relevant changes to the model;

- (ii) the model's reference to 2.C(o) Other services is, and should probably remain, open ended. However, it may be useful to draw from "other" basic services cited in participants' responses to the *Questionnaire on Basic Telecommunications*¹, in order to furnish the model with some examples of "other" basic telecommunications on which commitment might be undertaken;
- (iii) the examples of measures listed in the model under the columns on limitations on market access and on national treatment may not be complete and may be further elaborated as a result of discussions on limitations relevant to the modes of supply for basic telecommunications (see also the informal note by the Secretariat on *Modes of Supply and Market access Limitations* (14 February 1995). For example, mode 2 in both columns and mode 4 under national treatment in the model currently list no examples;
- (iv) as currently drafted, the additional commitments column of the draft model schedule contains entries referring to areas of regulation in which some participants believe that additional commitments may be sought. Most of these entries do not yet specify any actual examples of how additional commitments might be drafted in the regulatory areas noted.

4. With regard to techniques to be used in the drafting of offers and schedules of commitments on basic telecommunications, the draft model schedule entails few, if any, departures from the techniques recommended in *Scheduling of Initial Commitments in Trade in Services: Explanatory Note* (MTN.GNS/W/164, 3 September 1993 and Add.1, 30 November 1993). However, for additional clarity of commitments in the telecommunications sector, the model provides some additional scheduling tools not addressed in the *Explanatory Note*. These include the list of "categories" that may be used in conjunction with entries in the sector or subsectors column and the list of possible areas of additional commitments. How these tools could be used to clarify the drafting and hence the understanding of offers/schedules may be viewed as follows:

- (i) the "categories" are intended to supplement, where relevant to a participant's telecommunications regime, the listing of subsectors 2.C(a)-(g)&(o). Using a "positive list" approach to scheduling, the combined use of subsectors and categories would mean, for example, that a participant could list "a. Voice telephone services: on a resale basis", along with any applicable limitations, as a commitment and might not list "Voice telephone services: facilities based", thus offering no commitment on the latter. Also, "a. Voice telephone services: wire based" and "a. Voice telephone services: radio based" might be listed separately in a schedule where different sets of limitations apply to each;
- (ii) whether a participant undertakes particular additional commitments and how such a commitment would be formulated will be likely to depend on the regime concerned and the agreed results of bilateral negotiations and/or

¹ Some such examples might include: paging services, satellite transmission services, intra-corporate communications, video dialtone, wireless access, fixed line access, analogue/digital cellular mobile networks and services, PCS networks and services, mobile data services, international switching and other international gateway facilities such as satellite earth stations, domestic/international satellite services and satellite links/capacity.

multilateral discussions. For example, participants that agree to undertake additional commitments on establishing or maintaining the separation of regulatory and operational functions might adopt a common formulation for such commitments. Alternatively, a regime that has posed a particular problem for its trading partners with respect to, for example, assignment or allotment of radio frequencies might inscribe a unique and appropriately drafted additional commitment as a result of bilateral negotiations.

MODEL SCHEDULE OF COMMITMENTS ON BASIC TELECOMMUNICATIONS

Modes of Supply:¹ 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
2.C.TELECOMMUNICATION SERVICES (UNCPC)	<i>Types of measures to be listed:^c</i>	<i>Types of measures to be listed:</i>	<i>Types of measures relevant to possible undertakings:</i>
a. Voice telephone services 7521	1) e.g., Quantitative	1) e.g., Preferences given to domestic	(Commitments on measures not
b. Packet-switched data transmission services 7523**	limitations/needs tests applied to	suppliers or restrictions imposed on	subject to scheduling under
c. Circuit-switched data transmission services 7523**	the number of service suppliers	foreign suppliers in the allotment of	Articles XVI and XVII, including
d. Telex services 7523**	(incl. monopolies, duopolies, etc.)	frequencies.	but not limited to those regarding
e. Telegraph services 7522	total value of transactions, total		qualifications, standards, or
f. Facsimile services 7521**+7529**	number of operations or quantity of		licensing requirements or licensing
g. Private leased circuit services 7522**+7523**	output.		procedures and other domestic
and o. Other ^b			regulations that are otherwise
			consistent with Article VI and the
			Annex on Telecommunications.)
Relevant categories:			
^d Local/long distance/international service	2)	2)	e.g., Separation of regulatory and
- wire-based			operational functions;
- radio-based			
- on a resale basis			Safeguards against anti-competitive
- facilities-based			practices (i.e., of monopolies and
- for public use			dominant providers);
- for non-public use			

¹ There may be a need to determine whether any telecom-specific clarifications regarding modes of supply are required.^b Refers to services mentioned in the *Services Sectoral Classification List* (MTN.GNS/W/120, 10 July 1991) which is considered as an illustrative list.^c It has been noted that there is a need for further discussion of measures related to international agreements between operators and the applicability of the Agreement to such measures.^d Depending on the services being offered or on the limitations existing in the regulatory regime concerned, the specific commitments on these services may be subdivided in to the categories as noted.

Modes of Supply:^e 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
2.C.(a) through (g), and (o) (continued)	<p>3) e.g., Quantitative limitations/needs tests applied to the number of service suppliers (incl. monopolies, etc.), total value of transactions or assets, total number of operations or quantity of output;</p> <p>Quantitative limitation on the number of available frequencies to be allotted to foreign service suppliers;^f</p> <p>Restrictions or requirements regarding the type of legal entity permitted to supply the services (also, a requirement of certain forms of commercial presence could rule out cross-border supply);</p> <p>Limits on foreign equity participation.</p> <p>4) e.g., Limitations/needs test applied to the total number of natural persons that may be employed.</p>	<p>3) e.g., Preferences given to domestic suppliers or restrictions imposed on foreign suppliers in the allotment of frequencies;</p> <p>Limitations on the nationality or residency of directors or board members;</p> <p>Restrictions on foreign ownership of land, or foreign ownership of facilities.</p> <p>4)</p>	<p>Procedures or requirements related to^g:</p> <ul style="list-style-type: none"> - licensing - allotment of radio frequencies - numbering and identification codes - type approval - interconnection; <p>Pricing related measures, e.g. cost-oriented pricing^g;</p> <p>Participation in the standards-setting process, including review and comment prior to adoption of new standards;</p> <p>Rights of way for the construction of infrastructure.^g</p>

^e There may be a need to determine whether any telecom-specific clarifications regarding modes of delivery are required.

^f This example is a discriminatory limitation. Some participants consider non-discriminatory limitations on the number of service suppliers that are established strictly for technical reasons (e.g. availability of frequency bands for radio-based services) to be covered by the disciplines of Article VI, rather than by Article XVI. This is not the view of all participants.

^g Further discussion is required to determine whether these measures would need to be addressed in the context of the negotiations; if so, whether they are adequately covered by other provisions of the Agreement or whether they need to be addressed as additional commitments.

Attachment 8

WORLD TRADE ORGANIZATION

RESTRICTED
MTN.GNS/W/120
10 July 1991

(98-0000)

Special Distribution

SERVICES SECTORAL CLASSIFICATION LIST

Note by the Secretariat

The secretariat indicated in its informal note containing the draft classification list (24 May 1991) that it would prepare a revised version based on comments from participants. The attached list incorporates, to the extent possible, such comments. It could, of course, be subject to further modification in the light of developments in the services negotiations and ongoing work elsewhere.

SERVICES SECTORAL CLASSIFICATION LIST

<u>SECTORS AND SUB-SECTORS</u>		<u>CORRESPONDING CPC</u>
1.	<u>BUSINESS SERVICES</u>	<u>Section B</u>
A.	<u>Professional Services</u>	
a.	Legal Services	861
b.	Accounting, auditing and bookkeeping services	862
c.	Taxation Services	863
d.	Architectural services	8671
e.	Engineering services	8672
f.	Integrated engineering services	8673
g.	Urban planning and landscape architectural services	8674
h.	Medical and dental services	9312
i.	Veterinary services	932
j.	Services provided by midwives, nurses, physiotherapists and para-medical personnel	93191
k.	Other	
B.	<u>Computer and Related Services</u>	
a.	Consultancy services related to the installation of computer hardware	841
b.	Software implementation services	842
c.	Data processing services	843
d.	Data base services	844
e.	Other	845+849
C.	<u>Research and Development Services</u>	
a.	R&D services on natural sciences	851
b.	R&D services on social sciences and humanities	852
c.	Interdisciplinary R&D services	853
D.	<u>Real Estate Services</u>	
a.	Involving own or leased property	821
b.	On a fee or contract basis	822
E.	<u>Rental/Leasing Services without Operators</u>	
a.	Relating to ships	83103
b.	Relating to aircraft	83104
c.	Relating to other transport equipment	83101+83102+83105
d.	Relating to other machinery and equipment	83106-83109
e.	Other	832
F.	<u>Other Business Services</u>	
a.	Advertising services	871
b.	Market research and public opinion polling services	864
c.	Management consulting service	865
d.	Services related to man. consulting	866
e.	Technical testing and analysis serv.	8676

f.	Services incidental to agriculture, hunting and forestry	881
g.	Services incidental to fishing	882
h.	Services incidental to mining	883+5115
i.	Services incidental to manufacturing	884+885 (except for 88442)
j.	Services incidental to energy distribution	887
k.	Placement and supply services of Personnel	872
l.	Investigation and security	873
m.	Related scientific and technical consulting services	8675
n.	Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)	633+ 8861-8866
o.	Building-cleaning services	874
p.	Photographic services	875
q.	Packaging services	876
r.	Printing, publishing	88442
s.	Convention services	87909*
t.	Other	8790

2. COMMUNICATION SERVICES

A.	<u>Postal services</u>	7511
B.	<u>Courier services</u>	7512
C.	<u>Telecommunication services</u>	
a.	Voice telephone services	7521
b.	Packet-switched data transmission services	7523**
c.	Circuit-switched data transmission services	7523**
d.	Telex services	7523**
e.	Telegraph services	7522
f.	Facsimile services	7521**+7529**
g.	Private leased circuit services	7522**+7523**
h.	Electronic mail	7523**
i.	Voice mail	7523**
j.	On-line information and data base retrieval	7523**
k.	electronic data interchange (EDI)	7523**
l.	enhanced/value-added facsimile services, incl. store and forward, store and retrieve	7523**
m.	code and protocol conversion	n.a.
n.	on-line information and/or data processing (incl.transaction processing)	843**
o.	other	

The () indicates that the service specified is a component of a more aggregated CPC item specified elsewhere in this classification list.

** The (**) indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance (e.g. voice mail is only a component of CPC item 7523).

D.	<u>Audiovisual services</u>	9611
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d.	Radio and television transmission services	n.a.
e.	Sound recording	
f.	Other	
E.	<u>Other</u>	
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E.	<u>Other</u>	511+515+518
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B.	<u>Wholesale trade services</u>	622
C.	<u>Retailing services</u>	631+632 6111+6113+6121
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E.	<u>Other</u>	
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a.	Life, accident and health insurance services	8121
b.	Non-life insurance services	8129
c.	Reinsurance and retrocession	81299*
d.	Services auxiliary to insurance (including broking and agency services)	8140
B.	<u>Banking and other financial services</u> (excl. insurance)	
a.	Acceptance of deposits and other repayable funds from the public	81115-81119
b.	Lending of all types, incl., inter alia, consumer credit, mortgage credit, factoring and financing of commercial transaction	8113
c.	Financial leasing	8112
d.	All payment and money transmission services	81339**
e.	Guarantees and commitments	81199**
f.	Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:	
	- money market instruments (cheques, bills, certificate of deposits, etc.)	81339**
	- foreign exchange	81333
	- derivative products incl., but not limited to, futures and options	81339**
	- exchange rate and interest rate instruments, inclu. products such as swaps, forward rate agreements, etc.	81339**
	- transferable securities	81321*
	- other negotiable instruments and financial assets, incl. bullion	81339**
g.	Participation in issues of all kinds of securities, incl. under-writing and placement as agent (whether publicly or privately) and provision of service related to such issues	8132
h.	Money broking management, all forms of collective investment management, pension fund management, custodial depository and trust services	81339** i. 81323*
j.	Settlement and clearing services for financial assets, incl. securities, derivative products, and other negotiable instruments	81339** 81319** or
k.	Advisory and other auxiliary financial services on all the activities listed in Article 1B of MTN.TNC/W/50, incl. credit reference and analysis, investment and	8131 8133 or

	portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy	
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e.	Pushing and towing services	7214

f.	Supporting services for maritime transport	745**
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c.	Rental of vessels with crew	7223
d.	Maintenance and repair of vessels	8868**
e.	Pushing and towing services	7224
f.	Supporting services for internal waterway transport	745**
C.	<u>Air Transport Services</u>	
a.	Passenger transportation	731
b.	Freight transportation	732
c.	Rental of aircraft with crew	734
d.	Maintenance and repair of aircraft	8868**
e.	Supporting services for air transport	746
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E.	<u>Rail Transport Services</u>	
a.	Passenger transportation	7111
b.	Freight transportation	7112
c.	Pushing and towing services	7113
d.	Maintenance and repair of rail transport equipment	8868**
e.	Supporting services for rail transport services	743
F.	<u>Road Transport Services</u>	
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GATS

THE GENERAL AGREEMENT

ON TRADE IN SERVICES

AND

RELATED INSTRUMENTS

April 1994

GENERAL AGREEMENT ON TRADE IN SERVICES

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GENERAL AGREEMENT ON TRADE IN SERVICES

Members,

Recognizing the growing importance of trade in services for the growth and development of the world economy;

Wishing to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the development of developing countries;

Desiring the early achievement of progressively higher levels of liberalization of trade in services through successive rounds of multilateral negotiations aimed at promoting the interests of all participants on a mutually advantageous basis and at securing an overall balance of rights and obligations, while giving due respect to national policy objectives;

Recognizing the right of Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right;

Desiring to facilitate the increasing participation of developing countries in trade in services and the expansion of their service exports including, *inter alia*, through the strengthening of their domestic services capacity and its efficiency and competitiveness;

Taking particular account of the serious difficulty of the least-developed countries in view of their special economic situation and their development, trade and financial needs;

Hereby *agree* as follows:

PART I

SCOPE AND DEFINITION

Article I

Scope and Definition

1. This Agreement applies to measures by Members affecting trade in services.
2. For the purposes of this Agreement, trade in services is defined as the supply of a service:
 - (a) from the territory of one Member into the territory of any other Member;
 - (b) in the territory of one Member to the service consumer of any other Member;
 - (c) by a service supplier of one Member, through commercial presence in the territory of any other Member;
 - (d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.
3. For the purposes of this Agreement:
 - (a) "measures by Members" means measures taken by:
 - (i) central, regional or local governments and authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

In fulfilling its obligations and commitments under the Agreement, each Member shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;

- (b) "services" includes any service in any sector except services supplied in the exercise of governmental authority;
- (c) "a service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

PART II

GENERAL OBLIGATIONS AND DISCIPLINES

Article II

Most-Favoured-Nation Treatment

1. With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.
2. A Member may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, the Annex on Article II Exemptions.
3. The provisions of this Agreement shall not be so construed as to prevent any Member from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

Article III

Transparency

1. Each Member shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Member is a signatory shall also be published.
2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.
3. Each Member shall promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement.
4. Each Member shall respond promptly to all requests by any other Member for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1. Each Member shall also establish one or more enquiry points to provide specific information to other Members, upon request, on all such matters as well as those subject to the notification requirement in paragraph 3. Such enquiry points shall be established within two years from the date of entry into force of the Agreement Establishing the WTO (referred to in this Agreement as the "WTO Agreement"). Appropriate flexibility with respect to the time-limit within which such enquiry points are to be established may be agreed upon for individual developing country Members. Enquiry points need not be depositories of laws and regulations.
5. Any Member may notify to the Council for Trade in Services any measure, taken by any other Member, which it considers affects the operation of this Agreement.

Article III bis

Disclosure of Confidential Information

Nothing in this Agreement shall require any Member to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Article IV

Increasing Participation of Developing Countries

1. The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, relating to:

- (a) the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia* through access to technology on a commercial basis;
- (b) the improvement of their access to distribution channels and information networks; and
- (c) the liberalization of market access in sectors and modes of supply of export interest to them.

2. Developed country Members, and to the extent possible other Members, shall establish contact points within two years from the date of entry into force of the WTO Agreement to facilitate the access of developing country Members' service suppliers to information, related to their respective markets, concerning:

- (a) commercial and technical aspects of the supply of services;
- (b) registration, recognition and obtaining of professional qualifications; and
- (c) the availability of services technology.

3. Special priority shall be given to the least-developed country Members in the implementation of paragraphs 1 and 2. Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs.

Article V

Economic Integration

1. This Agreement shall not prevent any of its Members from being a party to or entering into an agreement liberalizing trade in services between or among the parties to such an agreement, provided that such an agreement:

- (a) has substantial sectoral coverage¹, and
- (b) provides for the absence or elimination of substantially all discrimination, in the sense of Article XVII, between or among the parties, in the sectors covered under subparagraph (a), through:
 - (i) elimination of existing discriminatory measures, and/or
 - (ii) prohibition of new or more discriminatory measures,

either at the entry into force of that agreement or on the basis of a reasonable time-frame, except for measures permitted under Articles XI, XII, XIV and XIV bis.

2. In evaluating whether the conditions under paragraph 1(b) are met, consideration may be given to the relationship of the agreement to a wider process of economic integration or trade liberalization among the countries concerned.

3. (a) Where developing countries are parties to an agreement of the type referred to in paragraph 1, flexibility shall be provided for regarding the conditions set out in paragraph 1, particularly with reference to subparagraph (b) thereof, in accordance with the level of development of the countries concerned, both overall and in individual sectors and subsectors.

(b) Notwithstanding paragraph 6, in the case of an agreement of the type referred to in paragraph 1 involving only developing countries, more favourable treatment may be granted to juridical persons owned or controlled by natural persons of the parties to such an agreement.

4. Any agreement referred to in paragraph 1 shall be designed to facilitate trade between the parties to the agreement and shall not in respect of any Member outside the agreement raise the overall level of barriers to trade in services within the respective sectors or subsectors compared to the level applicable prior to such an agreement.

5. If, in the conclusion, enlargement or any significant modification of any agreement under paragraph 1, a Member intends to withdraw or modify a specific commitment inconsistently with the terms and conditions set out in its Schedule, it shall provide at least 90 days advance notice of such modification or withdrawal and the procedure set forth in paragraphs 2, 3 and 4 of Article XXI shall apply.

6. A service supplier of any other Member that is a juridical person constituted under the laws of a party to an agreement referred to in paragraph 1 shall be entitled to treatment granted under such agreement, provided that it engages in substantive business operations in the territory of the parties to such agreement.

¹ This condition is understood in terms of number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the *a priori* exclusion of any mode of supply.

7. (a) Members which are parties to any agreement referred to in paragraph 1 shall promptly notify any such agreement and any enlargement or any significant modification of that agreement to the Council for Trade in Services. They shall also make available to the Council such relevant information as may be requested by it. The Council may establish a working party to examine such an agreement or enlargement or modification of that agreement and to report to the Council on its consistency with this Article.

(b) Members which are parties to any agreement referred to in paragraph 1 which is implemented on the basis of a time-frame shall report periodically to the Council for Trade in Services on its implementation. The Council may establish a working party to examine such reports if it deems such a working party necessary.

(c) Based on the reports of the working parties referred to in subparagraphs (a) and (b), the Council may make recommendations to the parties as it deems appropriate.

8. A Member which is a party to any agreement referred to in paragraph 1 may not seek compensation for trade benefits that may accrue to any other Member from such agreement.

Article V bis

Labour Markets Integration Agreements

This Agreement shall not prevent any of its Members from being a party to an agreement establishing full integration² of the labour markets between or among the parties to such an agreement, provided that such an agreement:

- (a) exempts citizens of parties to the agreement from requirements concerning residency and work permits;
- (b) is notified to the Council for Trade in Services;

Article VI

Domestic Regulation

1. In sectors where specific commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. (a) Each Member shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Member shall ensure that the procedures in fact provide for an objective and impartial review.

² Typically, such integration provides citizens of the parties concerned with a right of free entry to the employment markets of the parties and includes measures concerning conditions of pay, other conditions of employment and social benefits.

(b) The provisions of subparagraph (a) shall not be construed to require a Member to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

3. Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Member shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Member shall provide, without undue delay, information concerning the status of the application.

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, *inter alia*:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service;
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

5. (a) In sectors in which a Member has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 4, the Member shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:

- (i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c); and
- (ii) could not reasonably have been expected of that Member at the time the specific commitments in those sectors were made.

(b) In determining whether a Member is in conformity with the obligation under paragraph 5(a), account shall be taken of international standards of relevant international organizations³ applied by that Member.

6. In sectors where specific commitments regarding professional services are undertaken, each Member shall provide for adequate procedures to verify the competence of professionals of any other Member.

Article VII

Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of paragraph 3, a Member may recognize the education or experience obtained, requirements met, or

³ The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.

licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. A Member that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for other interested Members to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Member accords recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Member's territory should be recognized.

3. A Member shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.

4. Each Member shall:

- (a) within 12 months from the date on which the WTO Agreement takes effect for it, inform the Council for Trade in Services of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1;
- (b) promptly inform the Council for Trade in Services as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 in order to provide adequate opportunity to any other Member to indicate their interest in participating in the negotiations before they enter a substantive phase;
- (c) promptly inform the Council for Trade in Services when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1.

5. Wherever appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Members shall work in cooperation with relevant intergovernmental and non-governmental organizations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

Article VIII

Monopolies and Exclusive Service Suppliers

1. Each Member shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Member's obligations under Article II and specific commitments.

2. Where a Member's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Member's specific commitments, the Member shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. The Council for Trade in Services may, at the request of a Member which has a reason to believe that a monopoly supplier of a service of any other Member is acting in a manner inconsistent with paragraph 1 or 2, request the Member establishing, maintaining or authorizing such supplier to provide specific information concerning the relevant operations.

4. If, after the date of entry into force of the WTO Agreement, a Member grants monopoly rights regarding the supply of a service covered by its specific commitments, that Member shall notify the Council for Trade in Services no later than three months before the intended implementation of the grant of monopoly rights and the provisions of paragraphs 2, 3 and 4 of Article XXI shall apply.

5. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Member, formally or in effect, (a) authorizes or establishes a small number of service suppliers and (b) substantially prevents competition among those suppliers in its territory.

Article IX

Business Practices

1. Members recognize that certain business practices of service suppliers, other than those falling under Article VIII, may restrain competition and thereby restrict trade in services.

2. Each Member shall, at the request of any other Member, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Member addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Member addressed shall also provide other information available to the requesting Member, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Member.

Article X

Emergency Safeguard Measures

1. There shall be multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination. The results of such negotiations shall enter into effect on a date not later than three years from the date of entry into force of the WTO Agreement.

2. In the period before the entry into effect of the results of the negotiations referred to in paragraph 1, any Member may, notwithstanding the provisions of paragraph 1 of Article XXI, notify the Council on Trade in Services of its intention to modify or withdraw a specific commitment after a period of one year from the date on which the commitment enters into force; provided that the Member shows cause to the Council that the modification or withdrawal cannot await the lapse of the three-year period provided for in paragraph 1 of Article XXI.

3. The provisions of paragraph 2 shall cease to apply three years after the date of entry into force of the WTO Agreement.

Article XI

Payments and Transfers

1. Except under the circumstances envisaged in Article XII, a Member shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Agreement shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of

exchange actions which are in conformity with the Articles of Agreement, provided that a Member shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article XII or at the request of the Fund.

Article XII

Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Member may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognized that particular pressures on the balance of payments of a Member in the process of economic development or economic transition may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.

2. The restrictions referred to in paragraph 1:

- (a) shall not discriminate among Members;
- (b) shall be consistent with the Articles of Agreement of the International Monetary Fund;
- (c) shall avoid unnecessary damage to the commercial, economic and financial interests of any other Member;
- (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1;
- (e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, Members may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.

4. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the General Council.

5. (a) Members applying the provisions of this Article shall consult promptly with the Committee on Balance-of-Payments Restrictions on restrictions adopted under this Article.

(b) The Ministerial Conference shall establish procedures⁴ for periodic consultations with the objective of enabling such recommendations to be made to the Member concerned as it may deem appropriate.

(c) Such consultations shall assess the balance-of-payment situation of the Member concerned and the restrictions adopted or maintained under this Article, taking into account, *inter alia*, such factors as:

⁴ It is understood that the procedures under paragraph 5 shall be the same as the GATT 1994 procedures.

- (i) the nature and extent of the balance-of-payments and the external financial difficulties;
- (ii) the external economic and trading environment of the consulting Member;
- (iii) alternative corrective measures which may be available.

(d) The consultations shall address the compliance of any restrictions with paragraph 2, in particular the progressive phase-out of restrictions in accordance with paragraph 2(e).

(e) In such consultations, all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments, shall be accepted and conclusions shall be based on the assessment by the Fund of the balance-of-payments and the external financial situation of the consulting Member.

6. If a Member which is not a member of the International Monetary Fund wishes to apply the provisions of this Article, the Ministerial Conference shall establish a review procedure and any other procedures necessary.

Article XIII

Government Procurement

1. Articles II, XVI and XVII shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.
2. There shall be multilateral negotiations on government procurement in services under this Agreement within two years from the date of entry into force of the WTO Agreement.

Article XIV

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:

- (a) necessary to protect public morals or to maintain public order;⁵
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;

⁵ The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
- (iii) safety;
- (d) inconsistent with Article XVII, provided that the difference in treatment is aimed at ensuring the equitable or effective⁶ imposition or collection of direct taxes in respect of services or service suppliers of other Members;
- (e) inconsistent with Article II, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Member is bound.

Article XIV bis

Security Exceptions

1. Nothing in this Agreement shall be construed:

- (a) to require any Member to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any Member from taking any action which it considers necessary for the protection of its essential security interests:

⁶ Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Member under its taxation system which:

- (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Member's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Member's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of another Member in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Member's territory; or
- (v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Member's tax base.

Tax terms or concepts in paragraph (d) of Article XIV and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Member taking the measure.

- (i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
- (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
- (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent any Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The Council for Trade in Services shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

Article XV

Subsidies

1. Members recognize that, in certain circumstances, subsidies may have distortive effects on trade in services. Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects.⁷ The negotiations shall also address the appropriateness of countervailing procedures. Such negotiations shall recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area. For the purpose of such negotiations, Members shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers.

2. Any Member which considers that it is adversely affected by a subsidy of another Member may request consultations with that Member on such matters. Such requests shall be accorded sympathetic consideration.

⁷ A future work programme shall determine how, and in what time-frame, negotiations on such multilateral disciplines will be conducted.

PART III
SPECIFIC COMMITMENTS

Article XVI

Market Access

1. With respect to market access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.⁸

2. In sectors where market-access commitments are undertaken, the measures which a Member shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;⁹
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign share-holding or the total value of individual or aggregate foreign investment.

⁸ If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(a) of Article I and if the cross-border movement of capital is an essential part of the service itself, that Member is thereby committed to allow such movement of capital. If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(c) of Article I, it is thereby committed to allow related transfers of capital into its territory.

⁹ Subparagraph 2(c) does not cover measures of a Member which limit inputs for the supply of services.

Article XVII

National Treatment

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.¹⁰
2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member.

Article XVIII

Additional Commitments

Members may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI or XVII, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Member's Schedule.

¹⁰ Specific commitments assumed under this Article shall not be construed to require any Member to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

PART IV

PROGRESSIVE LIBERALIZATION

Article XIX

Negotiation of Specific Commitments

1. In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.
2. The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.
3. For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV. Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations, as well as for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV.
4. The process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations directed towards increasing the general level of specific commitments undertaken by Members under this Agreement.

Article XX

Schedules of Specific Commitments

1. Each Member shall set out in a schedule the specific commitments it undertakes under Part III of this Agreement. With respect to sectors where such commitments are undertaken, each Schedule shall specify:
 - (a) terms, limitations and conditions on market access;
 - (b) conditions and qualifications on national treatment;
 - (c) undertakings relating to additional commitments;
 - (d) where appropriate the time-frame for implementation of such commitments; and
 - (e) the date of entry into force of such commitments.

2. Measures inconsistent with both Articles XVI and XVII shall be inscribed in the column relating to Article XVI. In this case the inscription will be considered to provide a condition or qualification to Article XVII as well.

3. Schedules of specific commitments shall be annexed to this Agreement and shall form an integral part thereof.

Article XXI

Modification of Schedules

1. (a) A Member (referred to in this Article as the "modifying Member") may modify or withdraw any commitment in its Schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article.

(b) A modifying Member shall notify its intent to modify or withdraw a commitment pursuant to this Article to the Council for Trade in Services no later than three months before the intended date of implementation of the modification or withdrawal.

2. (a) At the request of any Member the benefits of which under this Agreement may be affected (referred to in this Article as an "affected Member") by a proposed modification or withdrawal notified under subparagraph 1(b), the modifying Member shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the Members concerned shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in Schedules of specific commitments prior to such negotiations.

(b) Compensatory adjustments shall be made on a most-favoured-nation basis.

3. (a) If agreement is not reached between the modifying Member and any affected Member before the end of the period provided for negotiations, such affected Member may refer the matter to arbitration. Any affected Member that wishes to enforce a right that it may have to compensation must participate in the arbitration.

(b) If no affected Member has requested arbitration, the modifying Member shall be free to implement the proposed modification or withdrawal.

4. (a) The modifying Member may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration.

(b) If the modifying Member implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any affected Member that participated in the arbitration may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding Article II, such a modification or withdrawal may be implemented solely with respect to the modifying Member.

5. The Council for Trade in Services shall establish procedures for rectification or modification of Schedules. Any Member which has modified or withdrawn scheduled commitments under this Article shall modify its Schedule according to such procedures.

PART V
INSTITUTIONAL PROVISIONS

Article XXII

Consultation

1. Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by any other Member with respect to any matter affecting the operation of this Agreement. The Dispute Settlement Understanding (DSU) shall apply to such consultations.
2. The Council for Trade in Services or the Dispute Settlement Body (DSB) may, at the request of a Member, consult with any Member or Members in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.
3. A Member may not invoke Article XVII, either under this Article or Article XXIII, with respect to a measure of another Member that falls within the scope of an international agreement between them relating to the avoidance of double taxation. In case of disagreement between Members as to whether a measure falls within the scope of such an agreement between them, it shall be open to either Member to bring this matter before the Council for Trade in Services.¹¹ The Council shall refer the matter to arbitration. The decision of the arbitrator shall be final and binding on the Members.

Article XXIII

Dispute Settlement and Enforcement

1. If any Member should consider that any other Member fails to carry out its obligations or specific commitments under this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter have recourse to the DSU.
2. If the DSB considers that the circumstances are serious enough to justify such action, it may authorize a Member or Members to suspend the application to any other Member or Members of obligations and specific commitments in accordance with Article 22 of the DSU.
3. If any Member considers that any benefit it could reasonably have expected to accrue to it under a specific commitment of another Member under Part III of this Agreement is being nullified or impaired as a result of the application of any measure which does not conflict with the provisions of this Agreement, it may have recourse to the DSU. If the measure is determined by the DSB to have nullified or impaired such a benefit, the Member affected shall be entitled to a mutually satisfactory adjustment on the basis of paragraph 2 of Article XXI, which may include the modification or withdrawal of the measure. In the event an agreement cannot be reached between the Members concerned, Article 22 of the DSU shall apply.

¹¹ With respect to agreements on the avoidance of double taxation which exist on the date of entry into force of the WTO Agreement, such a matter may be brought before the Council for Trade in Services only with the consent of both parties to such an agreement.

Article XXIV

Council for Trade in Services

1. The Council for Trade in Services shall carry out such functions as may be assigned to it to facilitate the operation of this Agreement and further its objectives. The Council may establish such subsidiary bodies as it considers appropriate for the effective discharge of its functions.
2. The Council and, unless the Council decides otherwise, its subsidiary bodies shall be open to participation by representatives of all Members.
3. The Chairman of the Council shall be elected by the Members.

Article XXV

Technical Cooperation

1. Service suppliers of Members which are in need of such assistance shall have access to the services of contact points referred to in paragraph 2 of Article IV.
2. Technical assistance to developing countries shall be provided at the multilateral level by the Secretariat and shall be decided upon by the Council for Trade in Services.

Article XXVI

Relationship with Other International Organizations

The General Council shall make appropriate arrangements for consultation and cooperation with the United Nations and its specialized agencies as well as with other intergovernmental organizations concerned with services.

PART VI

FINAL PROVISIONS

Article XXVII

Denial of Benefits

A Member may deny the benefits of this Agreement:

- (a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a non-Member or of a Member to which the denying Member does not apply the WTO Agreement;
- (b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:
 - (i) by a vessel registered under the laws of a non-Member or of a Member to which the denying Member does not apply the WTO Agreement, and
 - (ii) by a person which operates and/or uses the vessel in whole or in part but which is of a non-Member or of a Member to which the denying Member does not apply the WTO Agreement;
- (c) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of another Member, or that it is a service supplier of a Member to which the denying Member does not apply the WTO Agreement.

Article XXVIII

Definitions

For the purpose of this Agreement:

- (a) "measure" means any measure by a Member, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (b) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;
- (c) "measures by Members affecting trade in services" include measures in respect of
 - (i) the purchase, payment or use of a service;
 - (ii) the access to and use of, in connection with the supply of a service, services which are required by those Members to be offered to the public generally;
 - (iii) the presence, including commercial presence, of persons of a Member for the supply of a service in the territory of another Member;
- (d) "commercial presence" means any type of business or professional establishment, including through

- (i) the constitution, acquisition or maintenance of a juridical person, or
 - (ii) the creation or maintenance of a branch or a representative office,
- within the territory of a Member for the purpose of supplying a service;
- (e) "sector" of a service means,
 - (i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Member's Schedule,
 - (ii) otherwise, the whole of that service sector, including all of its subsectors;
 - (f) "service of another Member" means a service which is supplied,
 - (i) from or in the territory of that other Member, or in the case of maritime transport, by a vessel registered under the laws of that other Member, or by a person of that other Member which supplies the service through the operation of a vessel and/or its use in whole or in part; or
 - (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Member;
 - (g) "service supplier" means any person that supplies a service;¹²
 - (h) "monopoly supplier of a service" means any person, public or private, which in the relevant market of the territory of a Member is authorized or established formally or in effect by that Member as the sole supplier of that service;
 - (i) "service consumer" means any person that receives or uses a service;
 - (j) "person" means either a natural person or a juridical person;
 - (k) "natural person of another Member" means a natural person who resides in the territory of that other Member or any other Member, and who under the law of that other Member:
 - (i) is a national of that other Member; or
 - (ii) has the right of permanent residence in that other Member, in the case of a Member which:
 - 1. does not have nationals; or
 - 2. accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, as notified in its acceptance of or accession to the WTO Agreement, provided that no Member is obligated to accord to such

¹² Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

permanent residents treatment more favourable than would be accorded by that other Member to such permanent residents. Such notification shall include the assurance to assume, with respect to those permanent residents, in accordance with its laws and regulations, the same responsibilities that other Member bears with respect to its nationals;

- (l) "juridical person" means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (m) "juridical person of another Member" means a juridical person which is either:
 - (i) constituted or otherwise organized under the law of that other Member, and is engaged in substantive business operations in the territory of that Member or any other Member; or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - 1. natural persons of that Member; or
 - 2. juridical persons of that other Member identified under subparagraph (i);
- (n) a juridical person is:
 - (i) "owned" by persons of a Member if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Member;
 - (ii) "controlled" by persons of a Member if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
 - (iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;
- (o) "direct taxes" comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

Article XXIX

Annexes

The Annexes to this Agreement are an integral part of this Agreement.

ANNEX ON ARTICLE II EXEMPTIONS

Scope

1. This Annex specifies the conditions under which a Member, at the entry into force of this Agreement, is exempted from its obligations under paragraph 1 of Article II.
2. Any new exemptions applied for after the date of entry into force of the WTO Agreement shall be dealt with under paragraph 3 of Article IX of that Agreement.

Review

3. The Council for Trade in Services shall review all exemptions granted for a period of more than 5 years. The first such review shall take place no more than 5 years after the entry into force of the WTO Agreement.
4. The Council for Trade in Services in a review shall:
 - (a) examine whether the conditions which created the need for the exemption still prevail; and
 - (b) determine the date of any further review.

Termination

5. The exemption of a Member from its obligations under paragraph 1 of Article II of the Agreement with respect to a particular measure terminates on the date provided for in the exemption.
6. In principle, such exemptions should not exceed a period of 10 years. In any event, they shall be subject to negotiation in subsequent trade liberalizing rounds.
7. A Member shall notify the Council for Trade in Services at the termination of the exemption period that the inconsistent measure has been brought into conformity with paragraph 1 of Article II of the Agreement.

Lists of Article II Exemptions

[The agreed lists of exemptions under paragraph 2 of Article II appear as part of this Annex in the treaty copy of the WTO Agreement.]

ANNEX ON MOVEMENT OF NATURAL PERSONS
SUPPLYING SERVICES UNDER THE AGREEMENT

1. This Annex applies to measures affecting natural persons who are service suppliers of a Member, and natural persons of a Member who are employed by a service supplier of a Member, in respect of the supply of a service.
2. The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
3. In accordance with Parts III and IV of the Agreement, Members may negotiate specific commitments applying to the movement of all categories of natural persons supplying services under the Agreement. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.
4. The Agreement shall not prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment.¹

¹ The sole fact of requiring a visa for natural persons of certain Members and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

ANNEX ON AIR TRANSPORT SERVICES

1. This Annex applies to measures affecting trade in air transport services, whether scheduled or non-scheduled, and ancillary services. It is confirmed that any specific commitment or obligation assumed under this Agreement shall not reduce or affect a Member's obligations under bilateral or multilateral agreements that are in effect on the date of entry into force of the WTO Agreement.

2. The Agreement, including its dispute settlement procedures, shall not apply to measures affecting:

- (a) traffic rights, however granted; or
 - (b) services directly related to the exercise of traffic rights,
- except as provided in paragraph 3 of this Annex.

3. The Agreement shall apply to measures affecting:

- (a) aircraft repair and maintenance services;
- (b) the selling and marketing of air transport services;
- (c) computer reservation system (CRS) services.

4. The dispute settlement procedures of the Agreement may be invoked only where obligations or specific commitments have been assumed by the concerned Members and where dispute settlement procedures in bilateral and other multilateral agreements or arrangements have been exhausted.

5. The Council for Trade in Services shall review periodically, and at least every five years, developments in the air transport sector and the operation of this Annex with a view to considering the possible further application of the Agreement in this sector.

6. Definitions:

(a) "Aircraft repair and maintenance services" mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance.

(b) "Selling and marketing of air transport services" mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions.

(c) "Computer reservation system (CRS) services" mean services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued.

(d) "Traffic rights" mean the right for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Member, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control.

ANNEX ON FINANCIAL SERVICES

1. *Scope and Definition*

(a) This Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in paragraph 2 of Article I of the Agreement.

(b) For the purposes of subparagraph 3(b) of Article I of the Agreement, "services supplied in the exercise of governmental authority" means the following:

- (i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
- (ii) activities forming part of a statutory system of social security or public retirement plans; and
- (iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

(c) For the purposes of subparagraph 3(b) of Article I of the Agreement, if a Member allows any of the activities referred to in subparagraphs (b)(ii) or (b)(iii) of this paragraph to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.

(d) Subparagraph 3(c) of Article I of the Agreement shall not apply to services covered by this Annex.

2. *Domestic Regulation*

(a) Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Member's commitments or obligations under the Agreement.

(b) Nothing in the Agreement shall be construed to require a Member to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

3. *Recognition*

(a) A Member may recognize prudential measures of any other country in determining how the Member's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

(b) A Member that is a party to such an agreement or arrangement referred to in subparagraph (a), whether future or existing, shall afford adequate opportunity for other interested Members to negotiate their accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Member accords

recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that such circumstances exist.

(c) Where a Member is contemplating according recognition to prudential measures of any other country, paragraph 4(b) of Article VII shall not apply.

4. *Dispute Settlement*

Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

5. *Definitions*

For the purposes of this Annex:

(a) A financial service is any service of a financial nature offered by a financial service supplier of a Member. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

Insurance and insurance-related services

- (i) Direct insurance (including co-insurance):
 - (A) life
 - (B) non-life
- (ii) Reinsurance and retrocession;
- (iii) Insurance intermediation, such as brokerage and agency;
- (iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

- (v) Acceptance of deposits and other repayable funds from the public;
- (vi) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
- (vii) Financial leasing;
- (viii) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (ix) Guarantees and commitments;
- (x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (A) money market instruments (including cheques, bills, certificates of deposits);
 - (B) foreign exchange;

- (C) derivative products including, but not limited to, futures and options;
 - (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (E) transferable securities;
 - (F) other negotiable instruments and financial assets, including bullion.
- (xi) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
 - (xii) Money broking;
 - (xiii) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - (xiv) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
 - (xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
 - (xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

(b) A financial service supplier means any natural or juridical person of a Member wishing to supply or supplying financial services but the term "financial service supplier" does not include a public entity.

(c) "Public entity" means:

- (i) a government, a central bank or a monetary authority, of a Member, or an entity owned or controlled by a Member, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
- (ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

SECOND ANNEX ON FINANCIAL SERVICES

1. Notwithstanding Article II of the Agreement and paragraphs 1 and 2 of the Annex on Article II Exemptions, a Member may, during a period of 60 days beginning four months after the date of entry into force of the WTO Agreement, list in that Annex measures relating to financial services which are inconsistent with paragraph 1 of Article II of the Agreement.
2. Notwithstanding Article XXI of the Agreement, a Member may, during a period of 60 days beginning four months after the date of entry into force of the WTO Agreement, improve, modify or withdraw all or part of the specific commitments on financial services inscribed in its Schedule.
3. The Council for Trade in Services shall establish any procedures necessary for the application of paragraphs 1 and 2.

ANNEX ON NEGOTIATIONS ON MARITIME TRANSPORT SERVICES

1. Article II and the Annex on Article II Exemptions, including the requirement to list in the Annex any measure inconsistent with most-favoured-nation treatment that a Member will maintain, shall enter into force for international shipping, auxiliary services and access to and use of port facilities only on:
 - (a) the implementation date to be determined under paragraph 4 of the Ministerial Decision on Negotiations on Maritime Transport Services; or,
 - (b) should the negotiations not succeed, the date of the final report of the Negotiating Group on Maritime Transport Services provided for in that Decision.
2. Paragraph 1 shall not apply to any specific commitment on maritime transport services which is inscribed in a Member's Schedule.
3. From the conclusion of the negotiations referred to in paragraph 1, and before the implementation date, a Member may improve, modify or withdraw all or part of its specific commitments in this sector without offering compensation, notwithstanding the provisions of Article XXI.

ANNEX ON TELECOMMUNICATIONS

1. *Objectives*

Recognizing the specificities of the telecommunications services sector and, in particular, its dual role as a distinct sector of economic activity and as the underlying transport means for other economic activities, the Members have agreed to the following Annex with the objective of elaborating upon the provisions of the Agreement with respect to measures affecting access to and use of public telecommunications transport networks and services. Accordingly, this Annex provides notes and supplementary provisions to the Agreement.

2. *Scope*

(a) This Annex shall apply to all measures of a Member that affect access to and use of public telecommunications transport networks and services.¹

(b) This Annex shall not apply to measures affecting the cable or broadcast distribution of radio or television programming.

(c) Nothing in this Annex shall be construed:

- (i) to require a Member to authorize a service supplier of any other Member to establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services, other than as provided for in its Schedule; or
- (ii) to require a Member (or to require a Member to oblige service suppliers under its jurisdiction) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

3. *Definitions*

For the purposes of this Annex:

(a) "Telecommunications" means the transmission and reception of signals by any electromagnetic means.

(b) "Public telecommunications transport service" means any telecommunications transport service required, explicitly or in effect, by a Member to be offered to the public generally. Such services may include, *inter alia*, telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information.

(c) "Public telecommunications transport network" means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points.

(d) "Intra-corporate communications" means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject

¹ This paragraph is understood to mean that each Member shall ensure that the obligations of this Annex are applied with respect to suppliers of public telecommunications transport networks and services by whatever measures are necessary.

to a Member's domestic laws and regulations, affiliates. For these purposes, "subsidiaries", "branches" and, where applicable, "affiliates" shall be as defined by each Member. "Intra-corporate communications" in this Annex excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers.

(e) Any reference to a paragraph or subparagraph of this Annex includes all subdivisions thereof.

4. *Transparency*

In the application of Article III of the Agreement, each Member shall ensure that relevant information on conditions affecting access to and use of public telecommunications transport networks and services is publicly available, including: tariffs and other terms and conditions of service; specifications of technical interfaces with such networks and services; information on bodies responsible for the preparation and adoption of standards affecting such access and use; conditions applying to attachment of terminal or other equipment; and notifications, registration or licensing requirements, if any.

5. *Access to and use of Public Telecommunications Transport Networks and Services*

(a) Each Member shall ensure that any service supplier of any other Member is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions, for the supply of a service included in its Schedule. This obligation shall be applied, *inter alia*, through paragraphs (b) through (f).²

(b) Each Member shall ensure that service suppliers of any other Member have access to and use of any public telecommunications transport network or service offered within or across the border of that Member, including private leased circuits, and to this end shall ensure, subject to paragraphs (e) and (f), that such suppliers are permitted:

- (i) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply a supplier's services;
- (ii) to interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier; and
- (iii) to use operating protocols of the service supplier's choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

(c) Each Member shall ensure that service suppliers of any other Member may use public telecommunications transport networks and services for the movement of information within and across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Member. Any new or amended measures of a Member significantly affecting such use shall be notified and shall be subject to consultation, in accordance with relevant provisions of the Agreement.

² The term "non-discriminatory" is understood to refer to most-favoured-nation and national treatment as defined in the Agreement, as well as to reflect sector-specific usage of the term to mean "terms and conditions no less favourable than those accorded to any other user of like public telecommunications transport networks or services under like circumstances".

(d) Notwithstanding the preceding paragraph, a Member may take such measures as are necessary to ensure the security and confidentiality of messages, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

(e) Each Member shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services other than as necessary:

- (i) to safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally;
- (ii) to protect the technical integrity of public telecommunications transport networks or services; or
- (iii) to ensure that service suppliers of any other Member do not supply services unless permitted pursuant to commitments in the Member's Schedule.

(f) Provided that they satisfy the criteria set out in paragraph (e), conditions for access to and use of public telecommunications transport networks and services may include:

- (i) restrictions on resale or shared use of such services;
- (ii) a requirement to use specified technical interfaces, including interface protocols, for inter-connection with such networks and services;
- (iii) requirements, where necessary, for the inter-operability of such services and to encourage the achievement of the goals set out in paragraph 7(a);
- (iv) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;
- (v) restrictions on inter-connection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; or
- (vi) notification, registration and licensing.

(g) Notwithstanding the preceding paragraphs of this section, a developing country Member may, consistent with its level of development, place reasonable conditions on access to and use of public telecommunications transport networks and services necessary to strengthen its domestic telecommunications infrastructure and service capacity and to increase its participation in international trade in telecommunications services. Such conditions shall be specified in the Member's Schedule.

6. *Technical Cooperation*

(a) Members recognize that an efficient, advanced telecommunications infrastructure in countries, particularly developing countries, is essential to the expansion of their trade in services. To this end, Members endorse and encourage the participation, to the fullest extent practicable, of developed and developing countries and their suppliers of public telecommunications transport networks and services and other entities in the development programmes of international and regional organizations, including the International Telecommunication Union, the United Nations Development Programme, and the International Bank for Reconstruction and Development.

(b) Members shall encourage and support telecommunications cooperation among developing countries at the international, regional and sub-regional levels.

(c) In cooperation with relevant international organizations, Members shall make available, where practicable, to developing countries information with respect to telecommunications services and developments in telecommunications and information technology to assist in strengthening their domestic telecommunications services sector.

(d) Members shall give special consideration to opportunities for the least-developed countries to encourage foreign suppliers of telecommunications services to assist in the transfer of technology, training and other activities that support the development of their telecommunications infrastructure and expansion of their telecommunications services trade.

7. *Relation to International Organizations and Agreements*

(a) Members recognize the importance of international standards for global compatibility and inter-operability of telecommunication networks and services and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

(b) Members recognize the role played by intergovernmental and non-governmental organizations and agreements in ensuring the efficient operation of domestic and global telecommunications services, in particular the International Telecommunication Union. Members shall make appropriate arrangements, where relevant, for consultation with such organizations on matters arising from the implementation of this Annex.

ANNEX ON NEGOTIATIONS ON BASIC TELECOMMUNICATIONS

1. Article II and the Annex on Article II Exemptions, including the requirement to list in the Annex any measure inconsistent with most-favoured-nation treatment that a Member will maintain, shall enter into force for basic telecommunications only on:

- (a) the implementation date to be determined under paragraph 5 of the Ministerial Decision on Negotiations on Basic Telecommunications; or,
- (b) should the negotiations not succeed, the date of the final report of the Negotiating Group on Basic Telecommunications provided for in that Decision.

2. Paragraph 1 shall not apply to any specific commitment on basic telecommunications which is inscribed in a Member's Schedule.

RELATED INSTRUMENTS

DECISION ON INSTITUTIONAL ARRANGEMENTS FOR THE GENERAL AGREEMENT ON TRADE IN SERVICES

Ministers decide to recommend that the Council for Trade in Services at its first meeting adopt the decision on subsidiary bodies set out below.

The Council for Trade in Services,

Acting pursuant to Article XXIV with a view to facilitating the operation and furthering the objectives of the General Agreement on Trade in Services,

Decides as follows:

1. Any subsidiary bodies that the Council may establish shall report to the Council annually or more often as necessary. Each such body shall establish its own rules of procedure, and may set up its own subsidiary bodies as appropriate.
2. Any sectoral committee shall carry out responsibilities as assigned to it by the Council, and shall afford Members the opportunity to consult on any matters relating to trade in services in the sector concerned and the operation of the sectoral annex to which it may pertain. Such responsibilities shall include:
 - (a) to keep under continuous review and surveillance the application of the Agreement with respect to the sector concerned;
 - (b) to formulate proposals or recommendations for consideration by the Council in connection with any matter relating to trade in the sector concerned;
 - (c) if there is an annex pertaining to the sector, to consider proposals for amendment of that sectoral annex, and to make appropriate recommendations to the Council;
 - (d) to provide a forum for technical discussions, to conduct studies on measures of Members and to conduct examinations of any other technical matters affecting trade in services in the sector concerned;
 - (e) to provide technical assistance to developing country Members and developing countries negotiating accession to the Agreement Establishing the World Trade Organization in respect of the application of obligations or other matters affecting trade in services in the sector concerned; and
 - (f) to cooperate with any other subsidiary bodies established under the General Agreement on Trade in Services or any international organizations active in any sector concerned.
3. There is hereby established a Committee on Trade in Financial Services which will have the responsibilities listed in paragraph 2.

**DECISION ON CERTAIN DISPUTE SETTLEMENT PROCEDURES
FOR THE GENERAL AGREEMENT ON TRADE IN SERVICES**

Ministers decide to recommend that the Council for Trade in Services at its first meeting adopt the decision set out below.

The Council for Trade in Services,

Taking into account the specific nature of the obligations and specific commitments of the Agreement, and of trade in services, with respect to dispute settlement under Articles XXII and XXIII,

Decides as follows:

1. A roster of panellists shall be established to assist in the selection of panellists.
2. To this end, Members may suggest names of individuals possessing the qualifications referred to in paragraph 3 for inclusion on the roster, and shall provide a curriculum vitae of their qualifications including, if applicable, indication of sector-specific expertise.
3. Panels shall be composed of well-qualified governmental and/or non-governmental individuals who have experience in issues related to the General Agreement on Trade in Services and/or trade in services, including associated regulatory matters. Panellists shall serve in their individual capacities and not as representatives of any government or organisation.
4. Panels for disputes regarding sectoral matters shall have the necessary expertise relevant to the specific services sectors which the dispute concerns.
5. The Secretariat shall maintain the roster and shall develop procedures for its administration in consultation with the Chairman of the Council.

DECISION ON TRADE IN SERVICES AND THE ENVIRONMENT

Ministers decide to recommend that the Council for Trade in Services at its first meeting adopt the decision set out below.

The Council for Trade in Services,

Acknowledging that measures necessary to protect the environment may conflict with the provisions of the Agreement; and

Noting that since measures necessary to protect the environment typically have as their objective the protection of human, animal or plant life or health, it is not clear that there is a need to provide for more than is contained in paragraph (b) of Article XIV;

Decides as follows:

1. In order to determine whether any modification of Article XIV of the Agreement is required to take account of such measures, to request the Committee on Trade and Environment to examine and report, with recommendations if any, on the relationship between services trade and the environment including the issue of sustainable development. The Committee shall also examine the relevance of inter-governmental agreements on the environment and their relationship to the Agreement.
2. The Committee shall report the results of its work to the first biennial meeting of the Ministerial Conference after the entry into force of the Agreement Establishing the World Trade Organization.

DECISION ON NEGOTIATIONS ON MOVEMENT OF NATURAL PERSONS

Ministers,

Noting the commitments resulting from the Uruguay Round negotiations on the movement of natural persons for the purpose of supplying services;

Mindful of the objectives of the General Agreement on Trade in Services, including the increasing participation of developing countries in trade in services and the expansion of their service exports;

Recognizing the importance of achieving higher levels of commitments on the movement of natural persons, in order to provide for a balance of benefits under the General Agreement on Trade in Services;

Decide as follows:

1. Negotiations on further liberalization of movement of natural persons for the purpose of supplying services shall continue beyond the conclusion of the Uruguay Round, with a view to allowing the achievement of higher levels of commitments by participants under the General Agreement on Trade in Services.
2. A Negotiating Group on Movement of Natural Persons is established to carry out the negotiations. The group shall establish its own procedures and shall report periodically to the Council on Trade in Services.
3. The negotiating group shall hold its first negotiating session no later than 16 May 1994. It shall conclude these negotiations and produce a final report no later than six months after the entry into force of the Agreement Establishing the World Trade Organization.
4. Commitments resulting from these negotiations shall be inscribed in Members' Schedules of specific commitments.

DECISION ON FINANCIAL SERVICES

Ministers,

Noting that commitments scheduled by participants on financial services at the conclusion of the Uruguay Round shall enter into force on an MFN basis at the same time as the Agreement Establishing the World Trade Organization (hereinafter referred to as the "WTO Agreement"),

Decide as follows:

1. At the conclusion of a period ending no later than six months after the date of entry into force of the WTO Agreement, Members shall be free to improve, modify or withdraw all or part of their commitments in this sector without offering compensation, notwithstanding the provisions of Article XXI of the General Agreement on Trade in Services. At the same time Members shall finalize their positions relating to MFN exemptions in this sector, notwithstanding the provisions of the Annex on Article II Exemptions. From the date of entry into force of the WTO Agreement and until the end of the period referred to above, exemptions listed in the Annex on Article II Exemptions which are conditional upon the level of commitments undertaken by other participants or upon exemptions by other participants will not be applied.
2. The Committee on Trade in Financial Services shall monitor the progress of any negotiations undertaken under the terms of this Decision and shall report thereon to the Council for Trade in Services no later than four months after the date of entry into force of the WTO Agreement.

DECISION ON NEGOTIATIONS ON MARITIME TRANSPORT SERVICES

Ministers,

Noting that commitments scheduled by participants on maritime transport services at the conclusion of the Uruguay Round shall enter into force on an MFN basis at the same time as the Agreement Establishing the World Trade Organization (hereinafter referred to as the "WTO Agreement"),

Decide as follows:

1. Negotiations shall be entered into on a voluntary basis in the sector of maritime transport services within the framework of the General Agreement on Trade in Services. The negotiations shall be comprehensive in scope, aiming at commitments in international shipping, auxiliary services and access to and use of port facilities, leading to the elimination of restrictions within a fixed time scale.

2. A Negotiating Group on Maritime Transport Services (hereinafter referred to as the "NGMTS") is established to carry out this mandate. The NGMTS shall report periodically on the progress of these negotiations.

3. The negotiations in the NGMTS shall be open to all governments and the European Communities which announce their intention to participate. To date, the following have announced their intention to take part in the negotiations:

Argentina, Canada, European Communities and their member States, Finland, Hong Kong, Iceland, Indonesia, Korea, Malaysia, Mexico, New Zealand, Norway, Philippines, Poland, Romania, Singapore, Sweden, Switzerland, Thailand, Turkey, United States.

Further notifications of intention to participate shall be addressed to the depositary of the WTO Agreement.

4. The NGMTS shall hold its first negotiating session no later than 16 May 1994. It shall conclude these negotiations and make a final report no later than June 1996. The final report of the NGMTS shall include a date for the implementation of results of these negotiations.

5. Until the conclusion of the negotiations Article II and paragraphs 1 and 2 of the Annex on Article II Exemptions are suspended in their application to this sector, and it is not necessary to list MFN exemptions. At the conclusion of the negotiations, Members shall be free to improve, modify or withdraw any commitments made in this sector during the Uruguay Round without offering compensation, notwithstanding the provisions of Article XXI of the Agreement. At the same time Members shall finalize their positions relating to MFN exemptions in this sector, notwithstanding the provisions of the Annex on Article II Exemptions. Should negotiations not succeed, the Council for Trade in Services shall decide whether to continue the negotiations in accordance with this mandate.

6. Any commitments resulting from the negotiations, including the date of their entry into force, shall be inscribed in the Schedules annexed to the General Agreement on Trade in Services and be subject to all the provisions of the Agreement.

7. Commencing immediately and continuing until the implementation date to be determined under paragraph 4, it is understood that participants shall not apply any measure affecting trade in maritime transport services except in response to measures applied by other countries and with a view to maintaining or improving the freedom of provision of maritime transport services, nor in such a manner as would improve their negotiating position and leverage.

8. The implementation of paragraph 7 shall be subject to surveillance in the NGMTS. Any participant may bring to the attention of the NGMTS any action or omission which it believes to be relevant to the fulfilment of paragraph 7. Such notifications shall be deemed to have been submitted to the NGMTS upon their receipt by the Secretariat.

DECISION ON NEGOTIATIONS ON BASIC TELECOMMUNICATIONS

Ministers decide as follows:

1. Negotiations shall be entered into on a voluntary basis with a view to the progressive liberalization of trade in telecommunications transport networks and services (hereinafter referred to as "basic telecommunications") within the framework of the General Agreement on Trade in Services.
2. Without prejudice to their outcome, the negotiations shall be comprehensive in scope, with no basic telecommunications excluded *a priori*.
3. A Negotiating Group on Basic Telecommunications (hereinafter referred to as the "NGBT") is established to carry out this mandate. The NGBT shall report periodically on the progress of these negotiations.
4. The negotiations in the NGBT shall be open to all governments and the European Communities which announce their intention to participate. To date, the following have announced their intention to take part in the negotiations:

Australia, Austria, Canada, Chile, Cyprus, European Communities and their member States, Finland, Hong Kong, Hungary, Japan, Korea, Mexico, New Zealand, Norway, Slovak Republic, Sweden, Switzerland, Turkey, United States.

Further notifications of intention to participate shall be addressed to the depositary of the Agreement Establishing the World Trade Organization.

5. The NGBT shall hold its first negotiating session no later than 16 May 1994. It shall conclude these negotiations and make a final report no later than 30 April 1996. The final report of the NGBT shall include a date for the implementation of results of these negotiations.
6. Any commitments resulting from the negotiations, including the date of their entry into force, shall be inscribed in the Schedules annexed to the General Agreement on Trade in Services and shall be subject to all the provisions of the Agreement.
7. Commencing immediately and continuing until the implementation date to be determined under paragraph 5, it is understood that no participant shall apply any measure affecting trade in basic telecommunications in such a manner as would improve its negotiating position and leverage. It is understood that this provision shall not prevent the pursuit of commercial and governmental arrangements regarding the provision of basic telecommunications services.
8. The implementation of paragraph 7 shall be subject to surveillance in the NGBT. Any participant may bring to the attention of the NGBT any action or omission which it believes to be relevant to the fulfilment of paragraph 7. Such notifications shall be deemed to have been submitted to the NGBT upon their receipt by the Secretariat.

DECISION ON PROFESSIONAL SERVICES

Ministers decide to recommend that the Council for Trade in Services at its first meeting adopt the decision set out below.

The Council for Trade in Services,

Recognizing the impact of regulatory measures relating to professional qualifications, technical standards and licensing on the expansion of trade in professional services;

Desiring to establish multilateral disciplines with a view to ensuring that, when specific commitments are undertaken, such regulatory measures do not constitute unnecessary barriers to the supply of professional services;

Decides as follows:

1. The work programme foreseen in paragraph 4 of Article VI on Domestic Regulation should be put into effect immediately. To this end, a Working Party on Professional Services shall be established to examine and report, with recommendations, on the disciplines necessary to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements in the field of professional services do not constitute unnecessary barriers to trade.
2. As a matter of priority, the Working Party shall make recommendations for the elaboration of multilateral disciplines in the accountancy sector, so as to give operational effect to specific commitments. In making these recommendations, the Working Party shall concentrate on:
 - (a) developing multilateral disciplines relating to market access so as to ensure that domestic regulatory requirements are:
 - (i) based on objective and transparent criteria, such as competence and the ability to supply the service;
 - (ii) not more burdensome than necessary to ensure the quality of the service, thereby facilitating the effective liberalization of accountancy services;
 - (b) the use of international standards and, in doing so, it shall encourage the cooperation with the relevant international organizations as defined under paragraph 5(b) of Article VI, so as to give full effect to paragraph 5 of Article VII;
 - (c) facilitating the effective application of paragraph 6 of Article VI of the Agreement by establishing guidelines for the recognition of qualifications.

In elaborating these disciplines, the Working Party shall take account of the importance of the governmental and non-governmental bodies regulating professional services.

UNDERSTANDING ON COMMITMENTS IN FINANCIAL SERVICES

Participants in the Uruguay Round have been enabled to take on specific commitments with respect to financial services under the General Agreement on Trade in Services (hereinafter referred to as the "Agreement") on the basis of an alternative approach to that covered by the provisions of Part III of the Agreement. It was agreed that this approach could be applied subject to the following understanding:

- (i) it does not conflict with the provisions of the Agreement;
- (ii) it does not prejudice the right of any Member to schedule its specific commitments in accordance with the approach under Part III of the Agreement;
- (iii) resulting specific commitments shall apply on a most-favoured-nation basis;
- (iv) no presumption has been created as to the degree of liberalization to which a Member is committing itself under the Agreement.

Interested Members, on the basis of negotiations, and subject to conditions and qualifications where specified, have inscribed in their schedule specific commitments conforming to the approach set out below.

A. *Standstill*

Any conditions, limitations and qualifications to the commitments noted below shall be limited to existing non-conforming measures.

B. *Market Access*

Monopoly Rights

1. In addition to Article VIII of the Agreement, the following shall apply:

Each Member shall list in its schedule pertaining to financial services existing monopoly rights and shall endeavour to eliminate them or reduce their scope. Notwithstanding subparagraph 1(b) of the Annex on Financial Services, this paragraph applies to the activities referred to in subparagraph 1(b)(iii) of the Annex.

Financial Services purchased by Public Entities

2. Notwithstanding Article XIII of the Agreement, each Member shall ensure that financial service suppliers of any other Member established in its territory are accorded most-favoured-nation treatment and national treatment as regards the purchase or acquisition of financial services by public entities of the Member in its territory.

Cross-border Trade

3. Each Member shall permit non-resident suppliers of financial services to supply, as a principal, through an intermediary or as an intermediary, and under terms and conditions that accord national treatment, the following services:

- (a) insurance of risks relating to:
 - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and
 - (ii) goods in international transit;
 - (b) reinsurance and retrocession and the services auxiliary to insurance as referred to in subparagraph 5(a)(iv) of the Annex;
 - (c) provision and transfer of financial information and financial data processing as referred to in subparagraph 5(a)(xv) of the Annex and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph 5(a)(xvi) of the Annex.
4. Each Member shall permit its residents to purchase in the territory of any other Member the financial services indicated in:
- (a) subparagraph 3(a);
 - (b) subparagraph 3(b); and
 - (c) subparagraphs 5(a)(v) to (xvi) of the Annex.

Commercial Presence

5. Each Member shall grant financial service suppliers of any other Member the right to establish or expand within its territory, including through the acquisition of existing enterprises, a commercial presence.
6. A Member may impose terms, conditions and procedures for authorization of the establishment and expansion of a commercial presence in so far as they do not circumvent the Member's obligation under paragraph 5 and they are consistent with the other obligations of the Agreement.

New Financial Services

7. A Member shall permit financial service suppliers of any other Member established in its territory to offer in its territory any new financial service.

Transfers of Information and Processing of Information

8. No Member shall take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier. Nothing in this paragraph restricts the right of a Member to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of the Agreement.

Temporary Entry of Personnel

9. (a) Each Member shall permit temporary entry into its territory of the following personnel of a financial service supplier of any other Member that is establishing or has established a commercial presence in the territory of the Member:
- (i) senior managerial personnel possessing proprietary information essential to the establishment, control and operation of the services of the financial service supplier; and
 - (ii) specialists in the operation of the financial service supplier.
- (b) Each Member shall permit, subject to the availability of qualified personnel in its territory, temporary entry into its territory of the following personnel associated with a commercial presence of a financial service supplier of any other Member:
- (i) specialists in computer services, telecommunication services and accounts of the financial service supplier; and
 - (ii) actuarial and legal specialists.

Non-discriminatory Measures

10. Each Member shall endeavour to remove or to limit any significant adverse effects on financial service suppliers of any other Member of:

- (a) non-discriminatory measures that prevent financial service suppliers from offering in the Member's territory, in the form determined by the Member, all the financial services permitted by the Member;
- (b) non-discriminatory measures that limit the expansion of the activities of financial service suppliers into the entire territory of the Member;
- (c) measures of a Member, when such a Member applies the same measures to the supply of both banking and securities services, and a financial service supplier of any other Member concentrates its activities in the provision of securities services; and
- (d) other measures that, although respecting the provisions of the Agreement, affect adversely the ability of financial service suppliers of any other Member to operate, compete or enter the Member's market;

provided that any action taken under this paragraph would not unfairly discriminate against financial service suppliers of the Member taking such action.

11. With respect to the non-discriminatory measures referred to in subparagraphs 10(a) and (b), a Member shall endeavour not to limit or restrict the present degree of market opportunities nor the benefits already enjoyed by financial service suppliers of all other Members as a class in the territory of the Member, provided that this commitment does not result in unfair discrimination against financial service suppliers of the Member applying such measures.

C. *National Treatment*

1. Under terms and conditions that accord national treatment, each Member shall grant to financial service suppliers of any other Member established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Member's lender of last resort facilities.

2. When membership or participation in, or access to, any self-regulatory body, securities or futures exchange or market, clearing agency, or any other organization or association, is required by a Member in order for financial service suppliers of any other Member to supply financial services on an equal basis with financial service suppliers of the Member, or when the Member provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Member shall ensure that such entities accord national treatment to financial service suppliers of any other Member resident in the territory of the Member.

D. *Definitions*

For the purposes of this approach:

1. A non-resident supplier of financial services is a financial service supplier of a Member which supplies a financial service into the territory of another Member from an establishment located in the territory of another Member, regardless of whether such a financial service supplier has or has not a commercial presence in the territory of the Member in which the financial service is supplied.

2. "Commercial presence" means an enterprise within a Member's territory for the supply of financial services and includes wholly- or partly-owned subsidiaries, joint ventures, partnerships, sole proprietorships, franchising operations, branches, agencies, representative offices or other organizations.

3. A new financial service is a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a particular Member but which is supplied in the territory of another Member.

APPENDIX

SCHEDULES OF SPECIFIC COMMITMENTS

The following are the documents containing the schedules of specific commitments resulting from the negotiations on trade in services during the Uruguay Round.

Algeria	GATS/SC/1
Antigua and Barbuda	GATS/SC/2
Antilles (Netherlands)	GATS/SC/3
Argentina	GATS/SC/4
Aruba (Netherlands)	GATS/SC/5
Australia	GATS/SC/6
Austria	GATS/SC/7
Bangladesh	GATS/SC/8
Barbados	GATS/SC/9
Belize	GATS/SC/10
Benin	GATS/SC/11
Bolivia	GATS/SC/12
Brazil	GATS/SC/13
Burkina Faso	GATS/SC/14
Cameroon	GATS/SC/15
Canada	GATS/SC/16
Chile	GATS/SC/18
China	GATS/SC/19
Colombia	GATS/SC/20
Congo	GATS/SC/21
Costa Rica	GATS/SC/22
Côte d'Ivoire	GATS/SC/23
Cuba	GATS/SC/24
Cyprus	GATS/SC/25
Czech Republic	GATS/SC/26
Dominica	GATS/SC/27
Dominican Republic	GATS/SC/28
El Salvador	GATS/SC/29
Egypt	GATS/SC/30

The European Communities and their Member States	GATS/SC/31
Fiji	GATS/SC/32
Finland	GATS/SC/33
Gabon	GATS/SC/34
Ghana	GATS/SC/35
Guatemala	GATS/SC/36
Guyana	GATS/SC/37
Honduras	GATS/SC/38
Hong Kong	GATS/SC/39
Hungary	GATS/SC/40
Iceland	GATS/SC/41
India	GATS/SC/42
Indonesia	GATS/SC/43
Israel	GATS/SC/44
Jamaica	GATS/SC/45
Japan	GATS/SC/46
Kenya	GATS/SC/47
Korea, Republic of	GATS/SC/48
Kuwait	GATS/SC/49
Macau	GATS/SC/50
Madagascar	GATS/SC/51
Malaysia	GATS/SC/52
Malta	GATS/SC/54
Mauritius	GATS/SC/55
Mexico	GATS/SC/56
Morocco	GATS/SC/57
Mozambique	GATS/SC/58
Myanmar	GATS/SC/59
Namibia	GATS/SC/60
New Caledonia	GATS/SC/61
New Zealand	GATS/SC/62
Nicaragua	GATS/SC/63
Niger	GATS/SC/64

Nigeria	GATS/SC/65
Norway	GATS/SC/66
Pakistan	GATS/SC/67
Paraguay	GATS/SC/68
Peru	GATS/SC/69
Philippines	GATS/SC/70
Poland	GATS/SC/71
Romania	GATS/SC/72
Saint Lucia	GATS/SC/73
Saint Vincent and the Grenadines	GATS/SC/74
Senegal	GATS/SC/75
Singapore	GATS/SC/76
Slovak Republic	GATS/SC/77
South Africa	GATS/SC/78
Sri Lanka	GATS/SC/79
Suriname	GATS/SC/80
Swaziland	GATS/SC/81
Sweden	GATS/SC/82
Switzerland	GATS/SC/83
Liechtenstein	GATS/SC/83-A
Tanzania	GATS/SC/84
Thailand	GATS/SC/85
Trinidad and Tobago	GATS/SC/86
Tunisia	GATS/SC/87
Turkey	GATS/SC/88
Uganda	GATS/SC/89
United States of America	GATS/SC/90
Uruguay	GATS/SC/91
Venezuela	GATS/SC/92
Zambia	GATS/SC/93
Zimbabwe	GATS/SC/94
Brunei Darussalam	GATS/SC/95
Grenada	GATS/SC/96
Bahrain	GATS/SC/97

ARTICLE II (MFN) EXEMPTIONS

The following are the documents containing the lists of exemptions from Article II resulting from the negotiations on trade in services during the Uruguay Round.

Australia	GATS/EL/6
Austria	GATS/EL/7
Benin	GATS/EL/11
Bolivia	GATS/EL/12
Brazil	GATS/EL/13
Cameroon	GATS/EL/15
Canada	GATS/EL/16
Chile	GATS/EL/18
China	GATS/EL/19
Colombia	GATS/EL/20
Congo	GATS/EL/21
Costa Rica	GATS/EL/22
Côte d'Ivoire	GATS/EL/23
Cuba	GATS/EL/24
Cyprus	GATS/EL/25
Czech Republic	GATS/EL/26
Dominican Republic	GATS/EL/28
El Salvador	GATS/EL/29
Egypt	GATS/EL/30
The European Communities and their Member States	GATS/EL/31
Finland	GATS/EL/33
Gabon	GATS/EL/34
Guatemala	GATS/EL/36
Honduras	GATS/EL/38
Hong Kong	GATS/EL/39
Hungary	GATS/EL/40
Iceland	GATS/EL/41
India	GATS/EL/42
Indonesia	GATS/EL/43

Israel	GATS/EL/44
Jamaica	GATS/EL/45
Korea, Republic of	GATS/EL/48
Kuwait	GATS/EL/49
Malaysia	GATS/EL/52
Malta	GATS/EL/54
Mexico	GATS/EL/56
Morocco	GATS/EL/57
New Zealand	GATS/EL/62
Niger	GATS/EL/64
Norway	GATS/EL/66
Pakistan	GATS/EL/67
Peru	GATS/EL/69
Philippines	GATS/EL/70
Poland	GATS/EL/71
Romania	GATS/EL/72
Senegal	GATS/EL/75
Singapore	GATS/EL/76
Slovak Republic	GATS/EL/77
South Africa	GATS/EL/78
Swaziland	GATS/EL/81
Sweden	GATS/EL/82
Switzerland	GATS/EL/83
Liechtenstein	GATS/EL83-A
Thailand	GATS/EL/85
Trinidad and Tobago	GATS/EL/86
Tunisia	GATS/EL/87
Turkey	GATS/EL/88
United States of America	GATS/EL/90
Uruguay	GATS/EL/91
Venezuela	GATS/EL/92
Brunei Darussalam	GATS/EL/95