

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

Spec(79)21

17 October 1979

RELATIONSHIP BETWEEN AGREEMENTS EVOLVED IN THE MULTILATERAL TRADE NEGOTIATIONS AND THE GENERAL AGREEMENT

Note by the Secretariat

1. Some delegations have requested the secretariat to examine the provisions of various Agreements evolved in the Multilateral Trade Negotiations from the point of view of their relationship with the General Agreement.
2. It should be made clear at the outset that the secretariat cannot make a definitive statement on this matter. It is only the governments parties to an international agreement which can, acting collectively, interpret that agreement in a definitive way. It is, for example, only the CONTRACTING PARTIES to the GATT who can interpret the General Agreement in a definitive way, in accordance with standard procedures. It is not yet known, of course, how the parties to the MTN Agreements will interpret these. What the secretariat can do is to indicate the points that need to be taken into account and, in particular, where past history gives some guidance as to the answers that suggest themselves.
3. Two crucial points should be mentioned at the outset. First: the provisions of an MTN Agreement cannot create new obligations for contracting parties which do not participate in it. Second: existing rights of such contracting parties under the General Agreement, including rights flowing from its most-favoured-nation provisions, could not be affected by any provisions in the MTN Agreements.
4. Another point which should also be mentioned is that the MTN Agreements generally relate to provisions in Part II of the General Agreement which are applied by contracting parties in accordance with the Protocols setting out the terms on which they apply the GATT, including the Protocol of Provisional Application, only to the fullest extent not inconsistent with their existing legislation. At the present time the secretariat does not have detailed information as to the extent to which individual provisions in Part II are not being applied because of existing legislation.
5. The secretariat first examined whether there may be conflicts between Agreements evolved in the Multilateral Trade Negotiations and the General Agreement. This, of course, must be seen in relation to what is understood by the term "conflict". A conflict could normally arise between provisions in two

instruments when there is a provision in one which places an obligation on a party to do something, or not to do something, which is prohibited, or expressly required, by the other agreement. It is difficult for the secretariat to know exactly what interpretation will be placed on all the provisions of the MTN Agreements but, prima facie, it does not appear to the secretariat that conflicts exist in the sense indicated.

6. The secretariat also examined which areas in the Agreements go beyond the provisions of the General Agreement. It is clear that the main aim of the MTN Agreements is to commit the signatories to go beyond the GATT, either in the sense that they are a step towards subjecting to rules, discipline and regulations, matters which have up to now been outside the General Agreement, or in the sense that they spell out, in terms of detailed rules, procedures or provisions, what appear in the General Agreement in the form of general provisions.

7. The other question which arises, and which the secretariat considered, relates to the most-favoured-nation provisions of the General Agreement. There would be a problem if an MTN Agreement contained provisions preventing parties from extending its advantages to other governments on a most-favoured-nation basis if, under the General Agreement, they have an obligation to do so. It has already been noted that it does not appear to the secretariat that conflicts of this sort exist. It is also to be noted that an international agreement normally establishes rights and obligations only among the parties to the agreement: this does not of itself prejudice the agreement's application on a most-favoured-nation basis.

8. A problem might arise if parties to an MTN Agreement do not apply it in such a way as to extend advantages to which other contracting parties have a right by virtue of the most-favoured-nation provisions of the General Agreement. Exactly what obligations contracting parties have in this respect is a question which can only be dealt with in a concrete way on a case-by-case basis if and when problems actually arise and would depend, inter alia, on the interpretation placed on the most-favoured-nation provisions of the General Agreement, including Article I, and whether the matters covered by the Agreement are covered by those provisions. Article I is very broadly drafted but some matters may fall outside its scope and other Articles have the effect of removing certain other matters from the ambit of the general most-favoured-nation clause.

9. It could be maintained that in several areas, the parties to the MTN Agreements are agreeing to apply the provisions of the General Agreement between themselves in a particular way, or to amplify or spell out these provisions as among themselves. As long, however, as there is no a priori conflict between the provisions of these Agreements and the relevant provisions of the GATT, it does not appear that any prior action by the CONTRACTING PARTIES is needed.

10. Should it appear that, in the implementation of the Agreements, non-signatories are being denied benefits to which they are entitled under the General Agreement, the rights of these governments under that Agreement are fully maintained and therefore can be exercised.

11. If other contracting parties are to be in a position to examine how their existing rights and benefits under GATT, including those flowing from Article I, are affected by the implementation of an MTN Agreement they would of course need adequate information as to how these Agreements are being operated. Each of these Agreements provides information being provided to the CONTRACTING PARTIES on an annual basis with respect to its implementation and operation. It should be possible for the CONTRACTING PARTIES to consider at any time whether the requirements of information which would permit a non-participant to see how its existing GATT rights and benefits are being affected by the operation of the MTN Agreements, are being met.