The Cuban Delegation, in paper E/PC/T/W 29, of May 7, put forward for consideration certain questions regarding the affects of the General Agreement on Tariffs and Trade on existing bilateral treaties. It was decided by the Preparatory Committee meeting in Executive Session that the Secretariat, in consultation with the Cuban Delegation and with the Tariff Negotiations Working Party, should prepare a paper on the points that had been raised.

The issues raised by the Cuban Delegation were - in short - the following:

1. In case of any inconsistency between the terms of the General Agreement and any commitment previously entered into by a contracting party, do the provisions of the General Agreement prevail?

2. Do products not included in the schedule annexed to the General Agreement which are subject to regulation by existing bilateral treaties or agreements, retain their former status?

3. Are general and specific preferences contained in existing bilateral treaties to be maintained as such, in so far as they have not been eliminated or reduced, or replaced by preferences explicitly provided for in the schedules annexed to the General Agreement?

4. Should the reply to question 3 above be in the affirmative, do the provisions of paragraph 1 of Article I of the General Agreement, require the granting to other contracting parties of any preferential treatment maintained?

In addition, the Cuban Delegation has since asked for clarification of a fifth point:

5. Does the General Agreement prevent the contracting parties from entering into commercial treaties or agreements among themselves or with other countries, provided such treaties or agreements are not inconsistent with the purpose of the General Agreement?
Clarification of the above issue can be given as follows, on the basis of the present texts of the Draft Charter and General Agreement:

In the case of any inconsistency between the General Agreement on Tariffs and Trade and previous bilateral agreements, signatories to the General Agreement must take such steps as may be necessary to amend their bilateral agreements to the extent necessary to remove such inconsistency. Where no such inconsistency exists, the General Agreement imposes no obligation with respect to previous bilateral agreements. The Tariff Negotiations Working Party feels that - in accordance with the suggestion made by the Cuban Delegation in the last paragraph of document E/PC/T/W/29 - a paragraph should be added to Article XXV of the General Agreement incorporating the general principle that in case of any inconsistency between the terms of the General Agreement and any commitment previously entered into by a contracting party, such contracting party must be governed by the terms of the General Agreement. The precise wording of such a paragraph should - of course - await the drafting of Article XXV.

2. Products not included in the schedules annexed to the General Agreement, but which are subject to regulation by existing bilateral treaties or agreements, will retain their status provided that such bilateral treaties remain in force and that, in the case of preferential treatment, such preferences comply with Article I of the General Agreement which will presumably be drafted along the lines of Article 14 of the Draft Charter.

The extent to which the parties to the General Agreement decide to retain or to negotiate commercial agreements among themselves or with other countries should be left for their determination, so long as such agreements do not conflict with the General Agreement.

3. General and specific preferences not included in the schedules annexed to the General Agreement, which are subject to regulation by bilateral agreements, may retain the same status provided there is no inconsistency with the terms of the General Agreement; if there is any inconsistency, they cease to have the old status (see reply to question 1 above). In particular, the conditions established in Article I. of the General Agreement (Article 14 of the Draft Charter) must be complied with and would preclude any increase in the margin existing on the base date between the preferential rate and the m.f.n. rate.

4. The provisions of paragraph 1 of Article I of the General Agreement require the extension to other contracting parties of any preferential treatment which is not covered by paragraph 2 of the same Article.

5. The General Agreement does not prevent the contracting parties from entering into commercial treaties or agreements among themselves or with other countries, provided such treaties or agreements do not contain any provision inconsistent with the terms of the General Agreement.
The Cuban Delegation feels that the points raised in its five questions should be specifically covered in the text of the General Agreement. The Tariff Negotiations Working Party is of the opinion that there would be advantage in incorporating in the General Agreement the principle set out under No. 1 above.

It would seem that in the course of discussions to take place on the text of the General Agreement, the Preparatory Committee will decide what texts, if any, should be added to the General Agreement as a consequence of its consideration of the points raised by the Cuban Delegation.