1. The Committee on Safeguards held its fourth meeting on 2 April 1982. It had before it Spec(82)18 and Corr.1, a document prepared by the secretariat on its own responsibility, containing a list of measures adopted since 1 January 1978, which were taken and notified under Article XIX as well as other measures which appeared to serve the same purpose.

2. The Chairman, recalling the conclusions adopted at the last meeting of the Committee in April 1981, pointed out that in the meantime the issue of safeguards had taken on an additional dimension through the Decision of the CONTRACTING PARTIES adopted in November 1981 to hold their next session at ministerial level. This Decision reflected, inter alia, the high level of concern among CONTRACTING PARTIES over the increasing sense of insecurity and uncertainty that had come to characterize international trade relations. The Safeguards Committee was expected to contribute to the preparation of the issue for the Ministerial Meeting. Over the last two months the Chairman had held a series of consultations on the possibilities for further progress. Almost all delegations had supported the concept of greater transparency with respect to safeguard-type measures and had attached considerable importance to getting as complete a picture as possible of the situation. The secretariat had therefore taken upon itself the preparation of the list of measures contained in Spec(82)18 and Corr.1. The document remained the responsibility of the secretariat and was subject to further comments or corrections from delegations. The categorization of some of these measures had been a matter of considerable difficulty and had involved an exercise of judgement on the part of the secretariat without the full details of these measures being in every case available to it. While delegations might want to comment on the secretariat paper it was important that consideration was given at this meeting to the question whether there was indeed a problem in the area of safeguards and what could and needed to be done to amend, change or improve present practice, rules or procedures. In doing so, the Committee should also give its own perception of the perspective and time-frame in which one could hope to make further progress so that this might be taken into account in the context of the Ministerial Meeting.

3. Many delegations expressed the view that the Ministerial Meeting provided a good opportunity to make further progress in the field of safeguards. They welcomed the initiative by the Chairman towards making progress in this area. In their view Spec(82)18 provided useful background information for further work on this issue. It was however suggested that certain improvements of the document as regards the completion of the information contained, the categorization of certain
measures, and the statistical part would be necessary in order to arrive at a more precise picture.

4. The representative of Finland, speaking for the Nordic countries, emphasized the urgency of making further progress in the safeguard negotiations. The fact that a Ministerial Meeting was foreseen in November made it even more important to undertake additional negotiating efforts. In a preliminary comment on Spec(82)18 he stated that the document illustrated, supported and even increased the concern of the Nordic countries as to the proliferation of various "grey area" measures outside the legal framework of the GATT. A closer analysis of these measures revealed that their trade coverage was of considerable importance and that in most cases they were of a selective nature. The so-called "other measures" should be categorized according to their real effect on trade, e.g. some of the measures might effect the pricing of goods, others might have a direct impact on the quantities traded. In general the focus should be on those measures which were most relevant in terms of their safeguard effect. The Nordic countries attached considerable importance to the Safeguard Committee making a substantive contribution to the Ministerial Meeting based on the following elements:

(i) a political declaration by Ministers addressing the safeguard issue, comprising a commitment to avoid the use of safeguard measures outside the GATT, as well as the objective of phasing out such measures within a limited period of time; in this context careful consideration should also be given to the possibility of phasing out negotiated exceptions to generally applied GATT rules;

(ii) agreement on increased transparency in the field of safeguards; reference was made in this context to a proposal put forward earlier by the Nordic countries which envisaged an operative Safeguards Committee which could deal with individual safeguard actions; such a decision could be taken either before the Ministerial Meeting or it could be left to the Ministers themselves;

(iii) inclusion of a commitment to continue negotiations on safeguards in the future work programme of the GATT with a clear deadline for reaching a comprehensive agreement; in view of the difficulties involved and the time factor it would seem necessary to consider also the prospects for some kind of an interim agreement as a first step to a comprehensive solution.

5. Various delegations supported the ideas put forward by the Nordic countries.

6. The representative of Yugoslavia stated that the importance of the safeguard system for international trade relations was well known. The main characteristic of current trade relations was uncertainty in the sense of a lack of discipline in the correct fulfilment of the obligations stemming from the provisions of the General Agreement. The safeguard system contributed to this uncertainty to a large extent as it was not only not respected but was inadequate and unadapted to economic
and trade conditions as well. This was why joint and relatively rapid action was indispensable in order that the system be improved and updated on a multilateral basis. In seeking ways and means for a solution to the existing impasse, Document Spec(82)18 might be of use which, although incomplete, gave a good insight into the scope and complexity of the safeguard system. In the opinion of the Yugoslav representative, the activity of the Committee was still in the stage of identification of the problem. From this stage it should now proceed to the stage of assessing safeguard measures, i.e. of analysis, which should enable the Committee to gear its activity in such a direction that would be conducive to the finding of a solution. The process of analysing safeguard measures should give an answer to the basic question of the extent to which the present safeguard system destabilized the multilateral trading system, i.e. to what extent it contributed to the uncertainty in multilateral relations. In other words, the analysis should show how the safeguard system functioned, on the basis of which it would be possible to more correctly and easily define the corresponding concrete proposals for the improvement of the safeguard system.

7. The spokesman for the EEC stated that the Community had always argued that a liberal trading system could only be well protected if there existed an effective safeguard system, in the absence of which, it would be very difficult to accept further liberalization of trade. If the present system were changed in a way that safeguard action could only be taken on the basis of prior multilateral consent, progress in trade liberalization would become even more difficult. Since the MTN the negotiations in the safeguard field had been practically blocked. In the meantime the so-called "grey area" arrangements had proliferated because the classical safeguard provision of Article XIX had not worked sufficiently well in the given economic circumstances. Spec(82)18 provided a good basis for further work but it would have to be improved, including, inter alia, an identification of the countries concerned and the reasons for taking the measures and their effects. The Community was prepared fully to participate in the further work aimed at finding a solution to the safeguard problem.

8. The representative of Spain was of the opinion that it might be necessary to set a deadline for a safeguard solution. He underlined that safeguard measures could be applied in difficult situations arising out of structural or conjunctural circumstances. In his view, the treatment should be different, structural readjustment being required in the first case, but in any event the application of procedures existing in GATT should cover both situations. One should consider the setting up a body similar to the ones existing under the MTN codes, which could examine the correct application of the safeguard system in GATT.

9. The representative of India stated that all measures with a similar effect as measures under Article XIX, whether taken bilaterally or unilaterally, including agreements concerning textiles, should be incorporated in the secretariat document. Experience showed that since the MTN, the situation in the safeguards area had deteriorated. The occasion of the Ministerial Meeting should be used to make a serious effort to reach a solution. The suggestions put forward by the Nordic
countries were very interesting, but it was not enough just to achieve better transparency. Some of the problems which could already be examined at the present time, were for example, the conditions for taking safeguard action, the geographical coverage of the measures, i.e. the question of selectivity, multilateral surveillance and discipline, and the coverage of various measures, especially the VERs and OMAs. Substantial progress should be achieved before the Ministerial Meeting and the results presented to Ministers. Areas where differences still existed could be identified by Ministers and a time-frame and guidelines should be set for further work. The main problem so far had been a certain unwillingness on the part of some participants to discuss openly all the aspects of the safeguard issue. Political will on their part was necessary to make progress.

10. The representative of Switzerland stated that given the importance of the safeguard system for the functioning of international trade it was essential to solve the pending questions as soon as possible. There were two major problems, firstly the improvement of transparency which would make possible an efficient multilateral surveillance of safeguard actions, and secondly the rules for establishing disciplines for the application of temporary safeguard measures. Agreement on certain basic premises should be reached, e.g. that safeguard measures should remain temporary and exceptional, and that the aim of such measures should not be to nullify permanently contractual obligations but to provide a temporary means to overcoming certain difficulties until it was possible to return to a normal situation. Solutions concerning criteria, conditions, internal procedures, notification, and requirements relating to consultation, surveillance and dispute settlement would seem to be negotiable and would have to form part of any future safeguard system. On the other hand the question whether safeguard measures should be applied on an m.f.n. basis, e.g. whether so-called "grey-area" measures should be legalized or not, was not negotiable and had to be decided at political level.

11. The representative of Japan stated that safeguards was one of the major items for the Ministerial meeting. He regretted that so far no satisfactory solution had been found. There had been an increased use of so-called "grey area" measures which had eroded the credibility of the GATT system. It would seem appropriate to look into this particular problem. The list in Spec(82)18 was a useful effort by the secretariat but needed considerable improvement, in particular as to the criteria to be employed in selecting the measures included in the document. One of the main tasks would be to try to achieve greater transparency concerning the "grey area" actions. Japan was ready to provide accurate information on governmental measures deemed to have a safeguard effect. Increased transparency should, however, not lead to a de facto legalization of such measures and therefore only information and not a formal notification should be provided. It was also preferable not to identify the countries concerned. For Japan, Article XIX and the established modalities and disciplines concerning its application remained unchanged. Discussion in the GATT on measures having a safeguard effect did not therefore prejudge its position as to the further work on this issue.
12. The representative of Romania stated that the proliferation of measures with safeguards effect not covered by the GATT reflected the inadequacy of the existing safeguard system and its inappropriate use by contracting parties. These measures were being applied increasingly as protectionist devices rather than as a temporary remedy for a difficult situation. The work in GATT should focus on the elaboration of mechanisms and criteria for the application of safeguards clauses.

13. The representative of Canada said that a certain urgency existed because of the increased recourse to voluntary export restraints and orderly marketing arrangements in international trade. In order to arrive at better transparency, more analytical work had to be done. It might be useful for the secretariat document to include, if possible, action taken under the MFA, including the estimated value of imports covered. While Canada would not want the Committee to address these types of measures for the purpose of establishing new rules, their inclusion would help complete the picture of the types of safeguard actions used, and perhaps show a better balance between actions taken within established rules (i.e. MFA and Article XIX) and those beyond existing rules.

14. The representative of the United States held the view that the secretariat should continue and expand its work on the list of safeguard measures. It should, on the basis of further comments from delegations, analyse and categorize safeguard actions taking into account the types of measures involved, the domestic economic circumstances under which they were implemented, their duration and the GATT background of the case, i.e. notification and/or discussion in a GATT body. The result of such analysis should be reported to the Safeguards Committee before the end of May. After a review of the material the Committee should make a report to the Preparatory Committee. As to Spec(82)18, he pointed out that the paper should contain all safeguard measures currently in force. The part of the list containing "other measures" would need further examination to determine under which heading these measures should be categorized. Detailed information on the measures contained in the paper as well as on measures not yet listed was required before the proposed analysis could be carried out.

15. The representative of Australia was of the opinion that the document drew the attention to some of the main problem areas and indicated the size of the existing problem relating to safeguards. The existing GATT safeguard provisions were neither adequate nor sufficient. There was a need for a new equitable system. If the present situation were to continue where only certain safeguard measures were subject to GATT disciplines, careful consideration would have to be given by his country to options available to redress that imbalance. A major question to be addressed was exactly what constituted a safeguard measure; Australia considered such measures to include any action which had the effect of safeguarding a domestic industry. The list of safeguard measures prepared by the secretariat should therefore contain, in addition to orderly marketing arrangements and voluntary export restraints, all negotiated exceptions from the GATT rules such as waivers, or exemptions provided for in certain protocols of accession. It should also be recognized that subsidies can have a safeguard effect.
and they, too, might be included in the list; the same applied to variable levies. It was therefore essential to broaden the coverage of Article XIX if a comprehensive safeguard solution was to be found. In this context, Australia would have difficulty with any solution which provided for exemptions whereby restrictive measures were permitted in specified circumstances under agreements or arrangements negotiated under GATT auspices. Furthermore, Australia would be opposed to any provision which allowed a "legitimate" and timeless derogation from safeguard disciplines: this was the precise problem which the Committee needed to resolve. As for future work on safeguards, it would be useful if the secretariat drew up a checklist of elements which were necessary for a comprehensive safeguard solution.

16. The representative of the United Kingdom, speaking for Hong Kong, said that Spec(82)18 seemed to indicate that large areas of world trade were affected by safeguard actions. Transparency was important but one had to be aware of the dangers involved, in particular of giving indirectly legitimation or recognition to measures taken outside the GATT framework. A political decision was needed if one were to consider a change in the interpretation of the provisions of Article XIX. The Article as it stood, including the m.f.n. principle, provided a defence for small developing countries against pressures from large economic groupings. It was therefore important not to erode these provisions. The basic problems to be examined in the safeguard context were transparency, coverage, institutional framework and the criteria for taking safeguard actions.

17. The spokesman for the EEC reaffirmed that the Community was ready to show the necessary political will to achieve progress in the safeguard field. It was, however, important to take a decision on how the problem should be dealt with at the Ministerial Meeting. The Community did not exclude any solution that would be satisfactory for all contracting parties but a prudent and balanced approach was necessary in order to avoid failure. In the Community's view a comprehensive safeguard solution should be found based on the concepts of security, equity and efficacity. It was also important to agree that safeguard measures should be temporary. Efforts should be concentrated on the so-called "grey area" actions. In addition to certain amendments to be made to the statistical part of Spec(82)18 and Corr.1, it would also seem important to obtain additional information regarding the effects and the background of the measures.

18. The representative of Argentina stated that any comprehensive safeguard solution would have to go beyond the problem of the so-called "grey area" measures.

19. The Chairman noted that the interventions had shown a renewed interest in finding a solution to the safeguard problem. Most delegations had expressed the view that better information was needed for an analysis of the so-called "grey area" measures, but at the same time it was important to avoid a legitimization of these measures. He noted that delegations had generally expressed the view that document Spec(82)18 should remain the responsibility of the secretariat. He suggested that work should continue on two levels, i.e. improvement of
the information and documentation and analysis and discussion of the various proposals made. At its next meeting, the Safeguards Committee should try to arrive at more concrete ideas concerning possible action on safeguards in the context of the Ministerial Meeting. In the meantime, the Chairman would continue consultations with delegations.

20. The next meeting of the Committee on Safeguards was scheduled for 24 and 25 May 1982.