SAFEGUARDS

Chairman's Report

1. At the Session of the CONTRACTING PARTIES last November, Ministers called for a comprehensive understanding on safeguards to be presented to the CONTRACTING PARTIES at their forthcoming session (L/5424, page 5). Such an understanding should be based on the principles of the GATT and contain, inter alia, the following elements: transparency, coverage, objective criteria for action including the concept of serious injury and threat thereof, temporary nature, degressivity, structural adjustment, compensation and retaliation, notification, consultation, multilateral surveillance and dispute settlement with particular reference to the role and functions of the Safeguards Committee.

2. At the Council meeting on 26 January 1983, I indicated that it was my intention to convene informal consultations on this matter (C/M/165, page 3). Such consultations have taken place. An interim report to the Council on my own responsibility has been presented in July 1983 (Spec(83)27), as requested by the Chairman of the Ministerial Meeting (SR 38/9). I made a further report to the Council when it met on 1-2 November (Spec(83)47) making it clear that consultations would have to continue. Further consultations have been held. The present report, which gives contracting parties information on the present situation, is made once again on my own responsibility.

3. We are all aware of the vital importance of an improved and more efficient safeguard system for the maintenance and strengthening of an open trading system, especially in present economic conditions. But we are also aware of the great problems attached to the safeguards question, and that all efforts made in the past have failed to yield any concrete results.

4. It was therefore considered useful to use a different method of work, and to examine measures of a safeguard nature that had actually been taken, in order, inter alia, to understand better the underlying reasons for them, to arrive at a common analysis and to seek to draw conclusions therefrom, and to use this examination as a basis for deciding on how to proceed further.

5. This examination of measures was conducted very informally but very intensively over the past nine months. It was clearly understood by everyone that the examination which took place did not prejudice the legal status of the measures discussed, nor the final position of governments as to the results, nor the rights and obligations of the contracting parties under the GATT.
6. The talks took as their starting point the list of measures, established last year by the secretariat (Spec(82)18/Rev.2) on the basis of available information which was incomplete and unofficial, and addressed a number of questions which are set out in paragraph 6 of my interim report. A few additional actions were examined in the course of the discussion.

7. The discussion that has taken place confirmed that so-called "grey-area" actions comprise not only bilateral arrangements of a VER or OMA type between governments providing for quantitative limitations, surveillance systems, price undertakings or export forecasts, but also industry-to-industry arrangements, where the specific rôle of governments was not always clear, and actions of a unilateral character. The discussions have also thrown some interesting light on the circumstances in which both Article XIX and these other measures have been used. The use of Article XIX measures has been less frequent than that of the so-called "grey-area" actions, and a "grey area" surrounds not only Article XIX action, but a number of other GATT Articles, notably Article VI relating to anti-dumping or countervailing action. So-called "grey-area" actions have sometimes been used under conditions not provided for in Article XIX or other relevant Articles of the General Agreement. It was generally recognized that many arrangements were apparently concluded on an industry-to-industry basis and that far too little was known about such arrangements and their effects.

8. In the discussion, participants from importing countries which have sought VERs and OMAs explained that such action had been resorted to as a response to pressures on their governments for increased protective support and assistance to domestic industry. Among the causes of pressures were increased imports which, in the view of these importing countries, would cause damage to the domestic industry if left unchecked. Once the governments of these countries had accepted the need for relief, they had preferred a bilateral arrangement to other action for a number of reasons, e.g. these arrangements could be used without the need to wait for serious injury or threat thereof to the domestic market from increased imports to materialize. Another reason was that governments seeking such action were of the view that the question of compensation and retaliation posed less of a problem for them under so-called "grey-area" actions than under Article XIX. Such actions were also seen by these importing countries as a means to guarantee to domestic producers stable prices where production conditions were cyclical and seasonal and to secure income by providing protection from competition of third country producers. In some instances the countries seeking the action considered that these arrangements had a more limited effect on trade flows and trade relations than Article XIX actions because they did not affect all supplying countries and were taken following an arrangement with the affected country.

9. It appeared in the discussion that exporting countries which accepted so-called "grey-area" actions did so primarily because, even if they were not satisfied that the requirements of the GATT safeguard provisions had been met, they felt that they had little choice and that the alternative was, or would have been, unilateral action in the form of quantitative restrictions, harassment by anti-dumping investigations, countervailing action, enforcement of pricing mechanisms, etc., involving greater harm to
their exports in terms of both quantity and price. The time factor played an important role - the exporting countries concerned had not sought a remedy under the GATT dispute settlement procedures, e.g. Article XXIII, because these were considered cumbersome and time-consuming and there was fear that the industries involved could suffer serious, and perhaps irreparable, damage in the meantime.

10. In the light of the foregoing, some considered that so-called "grey-area" actions should be regarded as temporary and exceptional and taken outside the GATT. Others considered them to be contrary to specific GATT Articles. The view was also expressed by some that, despite all the considerations advanced, exporting countries should not have accepted so-called "grey-area" actions and should, if necessary, have invoked the dispute settlement provisions.

11. In so far as the duration of such actions is concerned, it was noted that a few actions contained firm expiry dates and that some had been phased out but that there was little indication in the discussion by the parties concerned as to when most of these arrangements - some of which have been in force for a number of years - would be phased out. It was also noted that little information was available regarding any possible structural adjustment plans.

12. Concern was expressed over the industry-to-industry restraint arrangements, in particular because they might circumvent action on safeguards in the GATT. It was considered that it would be useful to have more information, insofar as it is relevant to such restraint arrangements, on legislation and practices relating to competition, so that a better understanding was reached of the position regarding such arrangements.

13. In the course of the discussion serious concern has been expressed about the effect of so-called "grey-area" actions. They were considered to have the economic disadvantages of any protective measures, such as wasting valuable resources by maintaining inefficient, non-competitive industries, and adversely affecting competitive industries in other countries, increasing prices for the consumers, raising costs and retarding structural adjustment. In addition, so-called "grey-area" actions may have the effect of cartelizing markets, of penalizing the most efficient suppliers, and often lead to trade-diversion and political frictions, even if this was not intended by the countries which have sought them.

14. The discussion showed also that these actions differ from actions taken under specific GATT provision in that they are not subject to multilateral disciplines, that there is a lack of transparency, that existing domestic procedures to establish whether there is need for safeguard action may not be followed, that one or a few suppliers are usually isolated, that there is usually no provision for compensation or adjustment of rights and obligations as provided for in Article XIX, and that, as a consequence, a lack of equity could be created between contracting parties.

15. The discussion also brought out the need for considering the effect of so-called "grey-area" actions in terms of the danger of proliferation, and weakening of disciplines in the area of safeguards, since these actions
were not taken in conformity with the relevant GATT provisions. Once such actions are taken they have, like all protective actions, an inherent tendency to proliferate. One industry is protected and industries downstream find their costs increase and demand protection. The protection of one sector has a demonstration effect and other industries ask why they too should not have protection. One government protects an industry and the industry in another country asks for protection too. These dangers are particularly great in the case of so-called "grey-area" actions because of the lack of discipline. The so-called "grey-area" has continued to grow recently both in terms of numbers of actions and trade coverage. The adoption of the GATT Ministerial Declaration in November 1982 did not halt the process.

16. The existence of such actions and their cumulative effect poses a serious threat to the multilateral trading system and it is a matter of importance to generate the political will to follow multilateral disciplines in order to prevent the further erosion of the GATT system.

17. A certain progress has been made in further preparing the ground for the comprehensive understanding which Ministers instructed us to seek and which must remain our objective. Our work has shed additional light on the safeguards issue and revealed new dimensions and facets of this complex problem. Developments since the Ministerial Meeting have continued to be a matter of concern and in the present economic environment it is particularly important to achieve the comprehensive understanding. It has been confirmed that there remains an imperative need to draw up a comprehensive understanding, which can ensure predictable, stable and equitable conditions for both importers and exporters.

18. More time will, however, be needed to achieve this goal and a positive political will will be even more indispensable if continued progress on a comprehensive understanding is to be made.

19. I had hoped to be able to put forward today a text containing certain proposals for immediate action to be taken by contracting parties which would act as a signal whilst efforts towards reaching a comprehensive understanding continued. In spite of the progress made, this has not proved possible at this stage. In these circumstances, I suggest that contracting parties should continue to work with a view to drawing up a comprehensive understanding for adoption by CONTRACTING PARTIES at their 1984 Session.

20. I therefore suggest that all contracting parties might reaffirm their intention to give effect to such a comprehensive understanding on safeguards based on the principles of the General Agreement which would contain, inter alia, the elements contained in the decision on safeguards taken by the CONTRACTING PARTIES at their 1982 Session. The contracting parties might also note that such a comprehensive understanding should also encompass the problem of so-called "grey-area" actions. It might also be agreed that the Council will keep under regular review the progress made in the negotiation of the comprehensive understanding.

21. I might add that, in my view, it is important that this work is not jeopardized by uncontrolled developments in the trading system and that while the work continues all contracting parties should exercise the utmost restraint with regard to behaviour that might weaken the trading system.