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Committee on Subsidies and Countervailing Measures

MINUTES OF THE REGULAR MEETING HELD ON 24 OCTOBER 2017

CHAIR: MS IEVA BARŠAUSKAITĖ (LITHUANIA)

1. The Committee on Subsidies and Countervailing Measures ("Committee") held a regular meeting on 24 October 2017, convened in WTO/AIR/SCM/18 and WTO/AIR/SCM/18/Corr.1 dated 13 October 2017 and 20 October 2017, respectively.

2. China noted that overcapacity was not a trade related issue which was related to the operation of the Agreement or the furtherance of its objectives as referred in Article 24.1 of the Agreement. Therefore, the issue of overcapacity was not in the terms of reference of the Committee and it was not an appropriate forum for the discussion of this issue. China did not oppose to those Members' briefing on the outcomes of the G-20 summit to the WTO. However, China would emphasize that the inclusion of item 13 into the agenda shall not constitute any precedent and could not represent any degree of consensus by Members on including similar issues into the agenda of future meetings of the SCM Committee or any subsidiary bodies of the WTO. China requested the Committee to take note of its position as stated.

3. Mexico requested to be included as a co-sponsor for the agenda item 13.

4. The Committee took note of the statements made and adopted the following agenda:

1 NATIONAL LEGISLATION

1.1 Review of notifications of new or amended legislation or regulations not previously reviewed by the Committee (including supplemental notifications of existing provisions not previously reviewed)

5. The Chair noted that, in accordance with the Committee's procedures (G/SCM/W/293/Rev.1), the new legislative notifications on the agenda were those that had been circulated in all three languages not less than six weeks before the meeting. The deadline for written questions on these notifications had been 2 October 2017. In accordance with the review procedures, the legislative notifications of Cameroon, El Salvador, and the European Union would also be taken up under this item due to outstanding written questions about them.

6. Oral questions could be asked at the meeting, and any Member wishing to receive a written answer to any such question would have to submit its question in writing to the Member concerned

and to the Secretariat not later than 13 November 2017. Written answers were due not later than 4 December 2017.[1]

7. The primary review of the notifications would be held in the Committee on Anti-Dumping Practices, where all horizontal issues in addition to anti-dumping issues would be addressed. Members thus were requested to limit their questions in this Committee to those specifically related to countervailing measures.

1.1.1 European Union (G/SCM/N/1/EU/2/Suppl.1)

8. No Member raised any questions or comments about this notification.

9. The Committee took note of the notification.

1.1.2 India (G/ADP/N/1/IND/2/Suppl.8–G/SCM/N/1/SCM/2/Suppl.8)

10. Written questions with respect to this notification can be found in:

- G/ADP/Q1/IND/26–G/SCM/Q1/IND/26 – questions from Ukraine
- G/ADP/Q1/IND/27-G/SCM/Q1/IND/27 – questions from Mexico

11. Mexico indicated that it was waiting for the written answers.

12. Ukraine noted that it was expecting to review this notification in the Committee on Anti-Dumping Practices.

13. India indicated that the notification was about the amendments made in the regulations in 2002 and 2003. As requested by Ukraine, India would provide its answers at the Committee on Anti-Dumping Practices. It was still working on the responses for questions from Mexico.

14. The Committee took note of the notification, questions, and statements made.

1.1.3 New Zealand (G/ADP/N/1/NZL/2/Suppl.6/Rev.1-G/SCM/N/1/NZL/2/Suppl.6/Rev.1)

15. Written questions with respect to this notification can be found in:

- G/ADP/Q1/NZL/3-G/SCM/Q1/NZL/3 - questions from the United States
- G/ADP/Q1/NZL/4-G/SCM/Q1/NZL/4 - questions from Australia

16. The Committee took note of the notification and questions.

1.2 Review of notifications of new or amended legislation or regulations with outstanding written questions

1.2.1 Cameroon (G/ADP/N/1/CMR/1/Suppl.1-G/SCM/N/1/CMR/1/Suppl.1-G/SG/N/1/CMR/1/Suppl.1)

17. Written questions with respect to this notification can be found in:

- G/ADP/Q1/CMR/3-G/SCM/Q1/CMR/3-G/SG/Q1/CMR/3 – questions from the United States

18. The Committee took note of the notification and questions.

[1] Relevant deadlines for written follow-up questions and written answers in November and December 2017, respectively, can be found in section 1 of document G/ADP/W/500-G/SCM/W/574-G/SG/W/242.

1.2.2 El Salvador (G/ADP/N/1/SLV/3/Suppl.1-G/SCM/N/1/SLV/3/Suppl.1-G/SG/N/1/SLV/3/Suppl.1)

19. Written questions with respect to this notification can be found in:

- G/ADP/Q1/SLV/8-G/SCM/Q1/SLV/8-G/SG/Q1/SLV/7 - questions from the United States
- G/ADP/Q1/SLV/9-G/SCM/Q1/SLV/9-G/SG/Q1/SLV/8 - questions from Mexico

20. The Committee took note of the notification and questions.

1.2.3 European Union (G/SCM/N/1/EU/2 and G/ADP/N/1/EU/3)

21. Written questions and answers with respect to this notification can be found in:

- G/ADP/Q1/EU/1–G/SCM/Q1/EU/1 – questions from the United States
- G/ADP/Q1/EU/2–G/SCM/Q1/EU/2 – questions from the Russian Federation
- G/ADP/Q1/EU/3–G/SCM/Q1/EU/3 – replies to the Russian Federation
- G/ADP/Q1/EU/4–G/SCM/Q1/EU/4 – replies to the United States

22. The Committee took note of the notification, questions, and answers.

23. The Chair noted that **Liberia** had recently submitted its legislative notification. Written questions concerning this and any other new legislative notifications to be reviewed should be submitted to the notifying Member and to the Secretariat by 3 April 2018.

24. To place a previously-reviewed legislative notification on the agenda of the Committee's April 2018 regular meeting, written questions had to be submitted to the Member concerned and to the Secretariat not later than 12 March 2018. The Member receiving such questions should submit its written answers not later than 9 April 2018. The Secretariat would circulate the usual triple-symbolled document containing these and the other deadlines shortly after the meeting.[2]

25. Some Members had yet to submit any notification concerning legislations. The Chair underlined the importance of these notifications in terms of transparency, and recalled that for many Members all that would be required was a single nil notification. For any Members that conducted countervailing duty investigations but had not yet notified their legislation, it was all the more important for the Committee to have the opportunity to review and ask questions about that legislation. Therefore, the Chair urged all Members that had not yet made a legislative notification to do so as promptly as possible.

26. The Chair referred to the document G/SCM/N/18/Add.43 which contained the latest revision of the list of authorities competent to initiate and conduct investigations within the meaning of Article 25.12 of the SCM Agreement and invited all Members with such an authority to submit the required notification pursuant to Article 25.12 of the SCM Agreement, or to review and update as necessary their previously-submitted notifications.

27. New Zealand invited Members to make their legislative notifications before the next meeting if they had not yet done so. For those who did not have any legislation all that was required was a one-time notification. Members should take advantage of the technical assistance available through the Secretariat if they had any issues.

28. The Committee took note of the statements made.

2 SEMI-ANNUAL REPORTS OF COUNTERVAILING DUTY ACTIONS (ARTICLE 25.11) – G/SCM/N/321 AND G/SCM/N/321/SUPPL.1

29. The Chair recalled that document G/SCM/N/321 and Supplement 1 had invited all Members to submit not later than 15 August 2017, their semi-annual reports under Article 25.11 of the SCM Agreement of countervailing duty actions taken during the period 1 January through 30 June 2017. Document G/SCM/N/321/Add.1 provided the current status of Members' reporting for that period. Paragraph 1 of the document listed those Members reporting countervailing duty

[2] G/ADP/W/500-G/SCM/W/574-G/SG/W/242, circulated on 27 October 2017.

actions during the period. Paragraph 2 listed Members that had notified having taken no countervailing duty action during the period. Paragraph 5 of the document listed the 39 Members that had submitted a one-time notification that they had no investigating authority, had taken no countervailing actions to date, and did not anticipate taking any such actions in the foreseeable future.

30. One-time notifications served a useful transparency function, as they assisted non-active Members to meet their notification requirements in a streamlined way. Any eligible Member that had not already done so thus was urged to submit a one-time notification. The Secretariat was ready to assist any Member in this regard.

31. Unfortunately, as listed in paragraphs 3 and 4 of the document, many Members had not submitted a semi-annual report for January – June 2017. They were urged to do so as soon as possible.

32. No comments or questions were raised concerning the semi-annual reports of Australia, Brazil, Canada, China, Egypt, India, New Zealand, Pakistan, and Peru.

33. China expressed its concerns regarding the **European Union's** CVD investigation on hot-rolled steel products, in which, according to China, the EU Commission had adopted many unreasonable practices. The Commission had determined that Chinese financial institutions had provided loans to the producers. Five of the state-owned financial enterprises had been determined to be public bodies on the ground that the Government of China exercised meaningful control over those banks. In addition, treating those loans as grants, the Commission had considered the full amount of the loan as the benefit while it had failed to provide reasons and justification for that decision. Since the treatment of the concerned loans as grants was neither evidenced nor explained and the alleged economic situation of the concerned companies did not justify that treatment, China was expecting the EU to end that erroneous practice and to ensure the rights of Chinese enterprises.

34. The European Union noted that there had been a large number of subsidy schemes in the investigation which had resulted in a high subsidy margin. A significant part of the subsidy margin had been based on the benefit found on the loans received under the preferential conditions. In that investigation, the determination of the benefit had been further individualized given the particular financial situation of each of the sampled companies. The financial situation of some of the sampled companies was such that they would not get access to additional financial means under normal market circumstances. Therefore, the capital amount of the loans had been taken into account for the calculation of the benefit for those companies. The EU noted that the actions taken and the justifications provided were fully in compliance with the Agreement.

35. With respect to the semi-annual report of the **United States**, Kazakhstan expressed its concern over the investigations on silicon metal originating in Kazakhstan for which the preliminary countervailing duty was determined as 120%. The US had recognized the Government of Kazakhstan and the exporting company as non-cooperative. Therefore, the responses provided had not been taken into account and the amount of subsidy had been calculated on the basis of adverse facts available. The US had accepted Kazakhstan as non-cooperative only because it had submitted the questionnaire response 8 minutes and 22 seconds later than the deadline which had been due to some technical problems related to the ACCESS electronic system itself.

36. Although Kazakhstan had acted in its best ability to submit the response within the deadline, including informing the US in advance about such technical problems, its request for extension had been rejected. In addition, while other countries had been given an opportunity to submit responses after the deadline in that investigation as well as in other investigations, such an opportunity had not been provided for Kazakhstan. Kazakhstan also noted that it had been given 14 days less time than other countries to complete the initial questionnaire and that equal opportunities should be provided to all Members. In light of those points, Kazakhstan asked the US to accept and use all the information provided before making the final decision.

37. Turkey expressed its concern over the investigations on iron and steel products originating in Turkey. In the investigations there had been inconsistencies regarding public body, specificity, benefit calculation and cross-cumulation decisions. Therefore, Turkey had taken those issues to the WTO panel. Turkey invited the US to take into account the Appellate Body and Panel decisions

on cross-cumulation methodology in ongoing investigations and not to cumulate the effects of subsidized imports with the effects of non-subsidized, dumped imports. In addition, referring to Article 27.10(a) of the Agreement, Turkey indicated that as a developing Member, it was expecting the US to terminate the investigation for Turkey if the per unit subsidization rate was not exceeding the 2% threshold.

38. The European Union expressed its concerns over certain procedural aspects in the ongoing investigation on ripe olives originating in the EU. In particular, the request for information by the US was extremely burdensome. Questionnaires were requesting information over twelve years and not only the olive producers but also their suppliers, over which the olive producers had no control, were expected to provide responses to the questionnaires although they were not related to the producers. Only 21 days had been provided to send replies where, according to Article 12.1 of the Agreement, the deadline to reply the questionnaire should be at least 30 days. The EU asked the US to take a reasonable and proportionate approach in the investigation and noted that discouraging parties from cooperation due to overly burdensome questionnaires was not in the spirit of the Agreement. The EU indicated that it would closely follow that case and make sure that its exporters' rights were duly respected.

39. Regarding Kazakhstan's concerns, the United States asked Kazakhstan to submit its questions in writing.

40. With respect to Turkey's concerns, the US recalled that much of the issues were in litigation before the Dispute Settlement Body and the results should be waited. As to the negligibility threshold, the US indicated that it was not accepting Turkey as a developing country. It was in correspondence with Turkey on that issue and had already explained its position in detail.

41. Regarding the concerns raised by the EU, the US recalled that the investigation on olives were outside of the reporting period. The US also noted that in the context of countervailing duty investigations, it was a well-accepted fact that some subsidies had an extended period over which they might benefit the company. In this regard, for example when a company received a big sum of subsidy in year-1 it was fair to say that this subsidy might be benefiting the company beyond year-1. Reaching back twelve years was looking for any subsidies benefit of which should be allocated over time.

42. The Committee took note of all semi-annual reports submitted, and all statements made.

3 PRELIMINARY AND FINAL COUNTERVAILING DUTY ACTIONS: NOTIFICATIONS (ARTICLE 25.11) – G/SCM/N/319, G/SCM/N/320, G/SCM/N/322, G/SCM/N/323, G/SCM/N/324, AND G/SCM/N/325

43. The Chair reported that since the Committee's April 2017 regular meeting, notifications under Article 25.11 of preliminary and final countervailing duty actions had been received from Australia, Canada, China, Peru, and the United States. Those notifications were listed in documents G/SCM/N/319, 320, 322, 323, 324, and 325.

44. China expressed its concerns on the **United States'** practice of considering the loans from state-owned commercial banks as subsidies while Chinese law stipulated that those banks operated independently. China noted that those banks provided loans according to market demand and urged the US to stop treating state-owned commercial banks as public bodies and to use China's market interest rates as the benchmark.

45. China also indicated that the US practice of considering the export credit insurance as a subsidy was unreasonable. Although the Chinese enterprises, their importers, and the relevant banks had submitted evidence to prove the absence of such subsidies, the US had calculated duty rates artificially based on a determination that the Chinese side had not cooperate. China urged the US to terminate those unreasonable practices and make determinations on objective facts.

46. With respect to China's concerns regarding the publicly-owned banks, the United States noted that according to Chinese banking law, Chinese banks had to lend in accordance with Chinese industrial policy, which seemed to be a lack of independence. The US also indicated that it had recently re-examined its policy with respect to bank lending in China which Members could

refer to. Regarding the export credit programme, the US noted that China had not given access to the investigating authority to verify the information provided by the export credit agencies.

47. The Committee took note of the notifications and statements made.

4 ARTICLE 27.4 EXTENSIONS OF THE TRANSITION PERIOD FOR THE ELIMINATION OF EXPORT SUBSIDIES - 31 DECEMBER 2015 END OF FINAL PHASE-OUT PERIOD AND FINAL NOTIFICATION DUE 30 JUNE 2016 (G/SCM/N/299/...)

48. The Chair recalled that Members that had been granted extensions under Article 27.4 pursuant to the procedures in WT/L/691 were required, under paragraph 2(c) of the procedures, to submit transparency notifications in respect of each year of the final two-year phase-out period, i.e. calendar years 2014 and 2015. The deadline for the notification pertaining to 2014 was 30 June 2015. A reminder to this effect had been circulated in document G/SCM/N/290/INF.

49. To date, Belize, Costa Rica, Dominica, Dominican Republic, El Salvador, Guatemala, Jamaica, Jordan, Mauritius, Papua New Guinea, Saint Lucia, and Saint Vincent and the Grenadines had submitted these notifications, which had been circulated in the G/SCM/N/290 series.[3]

50. Furthermore, given that 2015 was the final year of the two-year phase-out period pursuant to the previously mentioned procedures, the Members with extensions needed to have completed the elimination of their export subsidies by 31 December 2015. They also had to provide a final transparency notification in respect of calendar year 2015 not later than 30 June 2016. A reminder concerning that final round of Article 27.4–related notifications had been circulated in document G/SCM/N/299. For the information of Members, the Chair had asked Secretariat to prepare a room document indicating the current status of notifications and of actions reported by Members with extensions under Article 27.4.[4]

51. To date, only nine of the beneficiary Members – Belize, Costa Rica, Dominican Republic, El Salvador, Grenada, Guatemala, Jamaica, Jordan, Mauritius, and Saint Vincent and the Grenadines – had submitted those final notifications.[5] The Chair reminded other Members with extensions to submit their final transparency notifications as soon as possible. The deadline for the elimination of the export subsidies had been two years earlier while for submitting the final notification had been more than one year earlier. She also underlined the importance of the compliance of the beneficiary Members with the corresponding substantive and transparency obligations.

52. New Zealand thanked Costa Rica for its notification and noted that no other final transparency notifications had been received since the last meeting of the Committee. It recalled that all those export subsidies should have been removed by 31 December 2015 and an assessment was not possible in a number of cases as beneficiary Members had not confirmed the extent of their reforms. The notification should be a fairly simple administrative matter since almost all of the Members concerned had previously reported the time limited nature of the planned termination of their export subsidy programmes. New Zealand was keen to meet those Members to get a better understanding of the barriers they might have. Finally, it requested to keep that item on the agenda for the next meeting.

53. Costa Rica noted that it stood ready for the possible questions regarding its notification.

54. Jordan recalled that its subsidy programme had been discussed at the Council for Trade in Goods and it was committed to phase out its subsidy programme by the end of 2018 in accordance with the action plan that was submitted to the CTG. Jordan was working on a WTO-compliant replacement programme to be implemented as of January 2019.

55. Barbados informed the Committee that the process was still ongoing and it was not completed yet.

[3] Please note that Papua New Guinea submitted its notification in document G/SCM/N/290/PNG, dated 21 November 2017.

[4] RD/SCM/32.

[5] Please note that Papua New Guinea submitted its notification in document G/SCM/N/299/PNG, dated 21 November 2017.

56. Japan expressed its support for New Zealand's suggestion to keep this item, for the perspectives of transparency, on the agenda for the next meeting of the Committee.

57. The United States congratulated those Members who had already phased out their subsidy programmes. It was pleased to hear that Jordan was in accordance with its action plan to end the subsidy programme by the end of 2018. The US also echoed New Zealand's suggestion to keep this item on the agenda of the next meeting.

58. The Chair noted that the Committee would revert to that issue at the next meeting.

59. The Committee took note of the statements made.

5 IMPROVING THE TIMELINESS AND COMPLETENESS OF NOTIFICATIONS AND OTHER INFORMATION FLOWS ON TRADE MEASURES UNDER THE SCM AGREEMENT

60. The Chair recalled that since the request of the Chairman of the Trade Policy Review Body in spring 2009, the Committee had been discussing, at formal and informal meetings, "ways to improve the timeliness and completeness of notifications and other information flows on trade measures". The substance of those discussions was reflected in the minutes of the previous meetings.

61. The Chair recalled that at Committee's April 2017 meeting a number of Members had indicated their willingness to continue discussions on ways to improve timeliness and completeness of notification obligations under the SCM Agreement, with the notification of subsidies being the most fundamental. In this regard, there were three topics to cover under this agenda item, the status of Members' notifications of subsidies; the Australian suggestion to add a new annex to the document on the status of Member's notifications; and the US proposal regarding a written process for questions and answers under Articles 25.8 and 25.9 of the SCM Agreement. The Chair suggested to take these topics up one by one and invited Members to make comments separately on each.

62. Regarding the status of subsidy notifications, the Chair recalled that the Secretariat had prepared and updated a background note (G/SCM/W/546/Rev.8) at the request of Members since 2009, providing a snapshot of the level of compliance with the various notification obligations under the SCM Agreement since 1995.

63. Unfortunately, compliance with the obligation to notify subsidies remained low. 105 Members had not made their 2017 new and full subsidy notification for which the deadline had been 30 June 2017. Seventy-five Members still had not made their 2015 new and full subsidy notification, although the deadline had been more than two years earlier. Further, sixty Members still had not made their 2013 notifications, which had been due almost four years earlier. Many of these Members either had never notified or had done so only in the distant past. The chronic low compliance with this fundamental transparency obligation constituted a serious problem in the proper functioning of the Agreement.

64. The Members that had not yet made their 2017 notifications were: Afghanistan; Albania; Angola; Antigua and Barbuda; Argentina; Armenia; Australia; Bahrain, Kingdom of; Bangladesh; Barbados; Belize; Benin; Bolivia, Plurinational State of; Botswana; Brazil; Brunei Darussalam; Burkina Faso; Cabo Verde; Cambodia; Cameroon; Central African Republic; Chad; China, Colombia; Congo; Côte d'Ivoire; Democratic Republic of Congo; Djibouti; Dominica; Dominican Republic; Ecuador; Egypt; El Salvador; Fiji; the Gambia; Georgia; Ghana; Guinea; Guinea-Bissau; Guyana; Haiti; India; Indonesia; Israel; Jamaica; Kenya; Kuwait, the State of; Kyrgyz Republic; Lao People's Democratic Republic; Lesotho; Liberia; Lichtenstein; Madagascar; Maldives; Mauritania; Mauritius; Mexico; Mongolia; Montenegro; Morocco; Mozambique; Myanmar; Namibia; Nepal; Nicaragua; Niger; Nigeria; Norway; Pakistan; Panama; Papua New Guinea; Philippines; Qatar; Russian Federation; Rwanda; Saint Kitts and Nevis; Saint Lucia; Saint Vincent and the Grenadines; Samoa; Saudi Arabia, Kingdom of; Senegal; Seychelles; Sierra Leone; Solomon Islands; South Africa; Sri Lanka; Suriname; Swaziland; Switzerland; Tajikistan; Tanzania; Thailand; The former Yugoslav Republic of Macedonia; Tonga; Trinidad and Tobago; Tunisia; Uganda; United Arab Emirates; United States; Uruguay; Vanuatu; Venezuela, Bolivarian Republic of; Viet Nam; Yemen; and Zimbabwe.

65. The Chair invited the Members that had not yet submitted their 2017 notifications to provide an update to the Committee on their progress in preparing these notifications.

66. The United States indicated that it had completed 80% of the process of compiling the required information and getting clearance from sub-central and central agencies. For the upcoming notification, the US spent more time on its state-level programmes which was always the most difficult aspect of its notification. In particular, the US was checking whether any new programmes had been included. It also made an effort in establishing budget amounts of certain programmes and looked at the fisheries subsidy programmes provided by the states. Those efforts caused a delay but the US was expecting to submit its notification by the end of the year.

67. Australia was aware that it had not yet submitted its notification and assured Members that it was working on its central and sub-central level programmes. Australia was hoping to submit its notification by the end of 2017.

68. Brazil indicated that it was finalizing its notification and expected to submit it by the end of 2017.

69. The Russian Federation thanked the Secretariat for its efforts to monitor the compliance of Members with their transparency obligations which should be fulfilled by all Members in good faith. As a country that had a complex state structure, the Russian Federation understood the challenges Members might face in preparing their notifications. Collecting information from the regions, bringing it to the generally accepted format was time-consuming. Nevertheless, all Members should do their best to fulfil their obligations on transparency in a timely manner. The Russian Federation was preparing its notification and would submit it in due course.

70. Colombia noted that it was working on its notification and it would update the relevant information for the period between 2012 and 2017.

71. Uruguay informed the Committee that the elimination process of the Automotive Industry Program initiated during the 2013-2015 transition period was still ongoing and it was implementing necessary measures to eliminate it promptly. Uruguay also indicated that it would inform the Committee as soon as it had news on that matter.

72. China noted that as a developing Member with a vast territory and a complex administrative structure it was not easy to collect the subsidy information overnight. China had made unremitting efforts to collect the information both at the central and sub-central levels and it would do its best to submit its notification as soon as possible.

73. The Chair urged Members that had not yet submitted their notifications to do so, and recalled that the Secretariat continued to be available for enquiries about compliance with notification obligations. The Secretariat had assisted many Members in the past and Members finding themselves unable to comply with their obligations were encouraged to consult the Secretariat. There was a range of resources that delegations could draw upon in working to rectify the situation, including the Secretariat Handbook on Notification Requirements for the SCM Agreement and the two Geneva-based Internship Programmes coordinated by the Secretariat.

74. The European Union expressed its concern regarding the dismal state of compliance of Members with the notification obligations under the SCM Agreement. Two-thirds of the Membership had not submitted their 2017 notifications. The EU urged Members to take their notification obligations seriously. Not having that information undermined the work of the Committee. Members needed to understand how the subsidies had affected international trade. The EU asked the remaining Members, which had not already submitted their 2017 notifications to do so, as quickly as possible.

75. New Zealand supported the comments made by the EU and noted that it was disappointing to see such a low level of compliance with regular notification obligations, particularly for notifications prior to 2017. It also acknowledged that Members with sub-central programmes had additional challenges. To understand whether trade distorting subsidies were in place, which might be affecting other Members' interest, was difficult without up to date and complete notifications. Existence of Members who had not indicated that they had no programmes in place was

contributing to uncertainty and low level of compliance. Commending those Members who had met their obligations, New Zealand encouraged those Members who had not yet submitted their notifications, particularly for 2015 and previous years, to do so prior to the April meeting of the Committee.

76. Canada viewed transparency obligations as a fundamental aspect of the Agreement and a basic obligation for Members. It had strong concerns with the general trend towards lower rates of compliance with transparency obligations and the difficulties in moving towards greater transparency in the Committee. All Members should fulfil their obligations in a timely and complete manner.

77. The United States echoed the views of the European Union, New Zealand, and Canada. The US encouraged all Members who had not yet submitted their notifications to do so as soon as possible. In particular, the US encouraged larger Members who were significant exporters but had not yet provided their notifications to get up to date their notifications.

78. The Chair noted that many Members were aware of the scope and importance of the problem. She hoped that the Membership would further seek ways to improve the level of compliance with that fundamental transparency obligation. She would remain at Members' disposal and were ready to engage with those delegations which might have any ideas or suggestions for improvement.

79. With respect to the second topic under this agenda item, the Chair recalled that at previous meetings, the Committee had discussed a proposal by Australia to add a new annex to the compendium document which would list all Secretariat calculations of export competitiveness pursuant to Article 27.6.

80. Australia noted that it had two proposals which were aimed at improving internal consistency within the compendium document. In reference to Article 27.6, Australia was suggesting to include the requests made by Members and was not looking for an interpretation of Article 27.6. The second proposal was in relation to the request for information under Article 25.8 and the Annex C of the document, in particular. Although the heading read as "notification provided", it was the notification of the requesting Member, not the replies. Australia was seeking further clarification to complete the document.

81. Canada, the European Union, New Zealand, and the United States, expressed their support for Australian proposals.

82. China noted that the title of Annex C to the Secretariat's background note, "request for information under Article 25.8 of the SCM Agreement", was quite clear. In the third column of the annex, the document numbers of those requests were shown for information which reflected the heading i.e., the notification provided as well as the relevant rules of the Agreement. Therefore to change that heading into replies by the Members receiving request for information was not legally grounded.

83. The Chair suggested reverting to that issue at the next meeting of the Committee.

84. The Chair recalled that at the Committee's April 2017 regular meeting, a number of Members had indicated their willingness to continue discussions on the proposal from the US regarding procedures for questions and answers under Articles 25.8 and 25.9 of the SCM Agreement. The previous week, the US had submitted a revised document which had also been submitted as a room document at the previous meeting (G/SCM/W/557/Rev.2).

85. The United States recalled that previously it had introduced its formal proposal that written answers to initial questions under Article 25.8 be provided within sixty days and that follow-up questions be answered in thirty days. The Committee should try to reach consensus on common sense procedures to respond questions submitted under Article 25.8 of the Agreement. The US proposal was no different from the current accepted practice of responding to written questions submitted in regard to regular Article 25 subsidy notifications.

86. The US noted that provisions for written questions and written answers in the normal context of the Committee were not provided for in the Agreement; rather those were based on a common sense. Since the establishment of the WTO, Members had been judicious in invoking the provisions of Article 25.8 with only 17 submissions which was not as if Members had been abusing the mechanism. The US also recognized the potential burden that proposal might present, in particular for lesser developed countries with significant capacity constraints.

87. The US referred to a proposal regarding the possibility of responding to Article 25.8 questions in a Member's new and full notification and in responding to questions related to such a notification. That suggestion might have merit if the support measures identified in Article 25.8 submissions were explicitly addressed in either a new and full notification or in responses to questions submitted pursuant to such a notification. The US would welcome to hear from other Members regarding that proposal.

88. The US also referred to the room document distributed at the previous meeting and explained that according to the proposal, the answers to Article 25.8 questions would be submitted within 60 days unless otherwise agreed by the relevant Members. The previous week, the US had formally submitted the new text which was identical to the referred room document. If such a text had been adopted by the Committee, the US would have looked favourably upon any request by a developing Member for additional time.

89. The US welcomed specific proposals from Members on how the proposal could be modified in order to reduce the burden on those Members who had the most significant capacity constraints and invited Members to make a counter-proposal if they had an issue with the proposal. The US remained flexible in finding a pragmatic solution that would satisfy the underlying objective of enhancing the exchange of information.

90. Noting the importance of notification requirement under Article 25.8, Japan supported the US proposal to establish certain procedures to facilitate the responses in a timely and comprehensive manner.

91. New Zealand supported the US proposal indicating that it would allow a better understanding of Members' programmes. The proposal was practical and not overly burdensome. New Zealand expected to hear other Members' comments.

92. The European Union expressed its support for the US proposal noting that it complemented the existing notification requirements of the Agreement. The latest amendment to the proposal was good as it took into account resource problems or burdens for some Members in meeting the deadlines. The EU also asked other Members to support the proposal.

93. Canada supported the US proposal noting that it was open to explore a mechanism to address Article 25.8 requests and could be flexible. It also encouraged constructive discussions between Members in particular from those Members who had expressed concerns.

94. Australia remained interested and supportive of the US proposal. The US had usefully identified a gap in the Committee's procedures and the suggested approach had been flexible to accommodate the concerns raised by Members. Greater clarity in that procedure would encourage compliance with the notification obligations and improve the completeness and timeliness of the notifications.

95. The Russian Federation noted that there was a room for improvement in terms of completeness of notifications, meeting submission deadlines and timely responses by Members. The Russian Federation welcomed both proposals from the US and Australia. In general, Russia did not oppose the US proposal; however, Members should take due account of the difficulties faced by Members with large economies, complex state structures and allocation of budget funding. An opportunity to agree on other deadlines would also be helpful. Nevertheless, it should be thought over how Members could organize that option, considering available administrative resources and timing. The Russian Federation remained ready for further discussions.

96. China recalled its position at the previous Committee meetings noting that Article 25.9 neither provided for the submission of written replies nor any specific time frames for the

submission of answers. The requirements for making such written answers or setting compulsory deadlines would impose newly added substantive obligations on Members for which there was no legal basis. As expressed by many Members during previous meetings of the Committee, this might disturb the balance of rights and obligations reflected in the results of negotiations on relevant articles. The proposal would cause difficulties and challenges for both LDC Members as well as many developing Members with capacity constraints. It would increase the workload and distract Members' focus on preparing the notifications under Article 25.1. The proposal, contrary to the original intention, might further delay submissions of notifications.

97. According to Thailand, setting certain deadlines would impose additional obligations on Members. If the requesting and responding Member did not agree on a time-frame, the responding Member would be constraint with the proposed time limits which would cause difficulties and affect the completeness of responses especially when a Member received several questions related to a number of agencies. Thailand was open for further discussions.

98. Korea welcomed the revised proposal by the US and would make a thorough review with its capital experts. It encouraged Members to enhance transparency through the implementation of the notification obligations under the WTO.

99. The Chair stated that it appeared that Members wished to continue discussions on those issues at the next regular meeting of the Committee.

100. The Committee took note of the statements made.

6 PERMANENT GROUP OF EXPERTS

101. The Chair recalled that the term of office of Mr Welber Barral as a member of the Permanent Group of Experts had ended previous spring and his position needed to be filled.

102. Following the then Vice Chairperson's call for consultations, some issues had been arisen regarding one of the CVs received, and since it had not been possible to resolve the matter, the Vice Chair had suspended the consultations. Unfortunately, the Chair could not report a progress since she had took over the chairpersonship. She would inform the Committee if and when the matter was resolved.

103. Korea expressed its concerns over the postponement of consultations and hoped that the process would resume as soon as possible.

104. The Committee took note of the statements made.

7 TRANSPARENCY AND POSSIBLE STEEL SUBSIDIES IN CHINA - ITEM REQUESTED BY THE UNITED STATES

105. The United States noted that the global steel industry was in a state of crisis. Productive capacity had outstripped demand and the recent seminar on subsidies and overcapacity had touched on some of those issues. Partly that was due to the economics of making steel. Since a big part of steel mill costs were fixed, producers had a strong incentive to maintain or increase capacity utilization to capture economies of scale. That put pressure on companies to keep mills running even when market signals might indicate the need for production cutbacks or the elimination of capacity.

106. Government subsidies and other support policies could distort the market signals and thus companies' production and capacity decisions. As it had been touched on the recent seminar, such subsidies kept mills running longer than market forces might justify and delayed further the elimination of excess capacity. Since steel was a vital sector for its economy, the US had raised questions about the transparency of China's industrial development and support policies.

107. With an increase of approximately 580%, the growth of the steel industry in China had been remarkable since it had become a WTO Member. China accounted for one-half of the world's steel production. The growth of capacity in China had outpaced the growth of demand in China, by over 400 million tons.

108. In a market economy, when capacity outpaced demand, the owners of that capacity were threatened by financial losses which caused capacity reductions or exit from the market. When an excess capacity existed in a market economy, it would be difficult, if not impossible, to obtain commercial financing to invest in more capacity or the maintenance of existing capacity. Those basic economic realities did not apply in China.

109. While the global financial crisis in 2008 had led to a severe drop in worldwide steel demand, the capacity had continued to grow in China, by over 440 million tons, or 160%, since 2009. That increase in capacity was more than the total capacity of the US, Japan, India, and Brazil combined.

110. According to China's Ministry of Industry and Information Technology, as well as many market analysts, China's steel demand had peaked, and the demand had been declining since 2013. Due to insufficient domestic demand, China's excess production had spilled over to export markets. Since 2001, China's exports of steel had grown from less than five million tonnes to over 100 million tonnes in 2016 which had led to a significant rise in trade remedy cases against Chinese products in both developed and developing countries. China maintained that the tremendous growth in capacity and exports had been accomplished without any specific government subsidy while an examination of the annual reports of several of the largest steel companies in China indicated otherwise.

111. The US noted that in each of the six annual reports reviewed, there was a section titled "government subsidies" or "government grants" which were dozens of government-funded projects through the provision of grants. The total number of subsidies or grants listed was approximately 160 all of which might not be subject to notification requirements of Article 25. According to the US, however, there were certainly more than three non-specific programmes which China had claimed to be the exclusive instances of government intervention in the Chinese steel industry.

112. Those annual reports also indicated that several of China's steel companies had received government equity infusions. While it was possible that none of the government equity infusions had provided a benefit to the recipient companies, in light of the rapid expansion of the industry contrary to market demand, it was reasonable to ask if those government investments had been consistent with market principles.

113. Referring to the worldwide overcapacity in the steel industry and the particular economics of the steel industry, The US noted that it was critical for all steel-producing countries to come forward and meet their obligations under the Agreement.

114. China thanked the US for its consistent concern over China's policies involving the steel and iron sectors, and indicated its willingness to clarify them to the best of its ability. Referring to its statement made at the beginning of the meeting, China noted that the regular meeting of the Committee was not an appropriate forum for the discussion of overcapacity issues which were not in the terms of reference of this Committee.

115. China had introduced its relevant measures involving steel and iron industry at previous regular meetings. In its subsidy notification in documents G/SCM/N/220/CHN, G/SCM/N/253/CHN, and G/SCM/N/284/CHN, China had incorporated some of the subsidy policies related to the steel industry in line with the transparency principle, such as Programme 72, entitled the "Incentive Fund for Energy-Conserving Technology Upgrading and the Special Fund for Clean Energy" which had been notified as a sub-programme of Programme 79, entitled the "Special Fund for the Development of Circular Economy", although that did not mean that those policies were specific. Other policies which were considered as generally applied government inputs without specificity had not been included in China's subsidy notifications. Therefore, the doubts of the US that China had never notified a single steel subsidy were groundless.

116. China had carefully verified the measures requested by the US and the European Union pursuant to Article 25.8 of the Agreement and it would provide clarification in two categories. First, in its central government level subsidy notification, for example, (i) the "Incentive Fund of Hebei Province for Energy-Saving Transformation" had come from programme 72 entitled "Incentive Fund for Transformation of Energy-Saving"; (ii) "Wuhan Iron and Steel Group's Special Fund for Environmental Projects, Energy-Saving and Emission Reduction" had come from the "Special Fund

for Clean Energy", which had been notified as a sub-programme of Programme 79, entitled the "Special Fund for the Development of Circular Economy; and (iii) "Shougang Group's Import Discount Fund" had come from programme 39 entitled "Special Fund for the Development of International Economy and Trade".

117. As the second category, China referred to the policies which shall not be included in its notification due to non-specificity, such as "Polluted Water Treatment Special Fund of Hebei Iron and Steel Company"; "Environmental Protection Special Fund"; "National Technology Support Plan Special Fund"; "Hebei Finance Department Allocation of First Batch of Talent Selection Fund"; "Receipt of PRC MIIT Deepen Harmonization Special Fund"; "Stable Employment Subsidy for Losses from Demolition" and "Stopping Production and Stopping Business of Shougang Company".

118. Those were the verification results that China had collected from the relevant departments and local governments. China would update the Committee and the US on any further comments and responses if there was any progress.

119. Regarding the issue of specificity, China indicated that it would carry out in-depth studies on policies related to the iron and steel industry as well as the concerns of Members, and try to incorporate the results of the study and respond to concerns of Members including the US in its future notification.

120. Japan shared the US' concerns and supported the discussion raised. From the perspective of transparency, it was beneficial to strengthen the notification obligation in line with the existing WTO rules.

121. Australia agreed that it was critical for all steel producing Members to meet their notification obligations under the Agreement. It saw transparency as the core of the Agreement and urged all Members to complete their notifications as soon as possible. There were different mechanisms to meet notification obligations under Article 25 and Australia encouraged Members to explore them to ensure complete and timely notifications.

122. Canada recalled its previous interventions on the importance of transparency obligations as a fundamental aspect of the Agreement. All Members should strive to fulfil those obligations in a timely and complete manner and promptly provide responses to questions raised by other Members. In particular, Canada noted that transparency in steel subsidies was fundamental in addressing the overcapacity issue in that sector. Canada expected China's ongoing engagement in that issue.

123. The European Union noted that the notification obligations existed to ensure that Members had knowledge of each other's domestic subsidy regimes and their effects. The EU reiterated that the compliance with the notification obligations under Article 25 was crucial for the effective work of the Committee. The submission of a subsidy notification was a key step in meeting the obligations under the Agreement but not sufficient without complete information. It had to include information on all specific subsidies both at central and sub-central levels regarding all sectors. One of the means to understand the global problems arising from serious overcapacity in the steel industry was having knowledge of the type of the subsidies in place. Given the economic importance of the steel industry worldwide, the EU urged all steel producing Members to come forward and meet their notification obligations.

124. China clarified that its written answers to the questions posed by the US in document G/SCM/Q2/CHN/69 regarding its subsidy programmes at sub-central level had been submitted prior to the meeting and invited Members to check those responses.[6]

125. The Committee took note of the statements made.

[6] G/SCM/Q2/CHN/73 circulated on 30 October 2017.

8 TRANSPARENCY AND POSSIBLE FISHERIES SUBSIDIES IN CHINA – ITEM REQUESTED BY THE UNITED STATES

126. The United States recalled that in China's 2014 Trade Policy Review, the Secretariat had uncovered 30 support programmes for China's fisheries sector. The Secretariat's Report had noted that China had not notified any of these programmes to the Committee and further that China could not confirm any of the programmes had been in place. China had not provide any substantive responses to the questions asked in the course of the TPR process stating that it needed more time to identify and verify information regarding those support programmes. In its third subsidy notification covering the period between 2009 and 2014, which had been submitted in October 2015, China had not included any of the programmes identified by the Secretariat. In 2016, the US had counter-notified over forty possible fisheries subsidies, mostly those previously identified by the Secretariat.

127. During China's TPR in October 2016, Members had asked China to explain when it would notify its fisheries subsidies. Noting that three programmes had been already notified, China had stated that it had been continuing to review its fisheries subsidies and that it would deliberate on the notification issue. Accepting that three programmes had already been notified, over forty programmes remained unnotified.

128. Although the substantial number of measures that had been uncovered and translated indicated that the provinces in China had programmes to support a significant expansion of China's distant water fishing fleet, no fisheries subsidies had been included in China's sub-central subsidy notification submitted in July 2016.

129. The number, variety and substantial nature of the subsidies measures in China was quite noteworthy. It included a multitude of measures for fishing vessel acquisition and renovation; subsidies for insurance; subsidized loans for processing facilities; fuel subsidies; preferential provision of water, electricity and land; grants to explore new offshore fishing grounds; grants for establishing famous brands; and special funds for strategic emerging industries in the marine economy. It appeared that China had been aggressively expanding its distant water fishing fleet despite the fragile state of the global fisheries. The US urged Members to read the measures that had been uncovered and translated.

130. The dire state of the world's fisheries had led to calls both at the WTO and other international fora for greater transparency for fisheries subsidies that contributed to overfishing and overcapacity, beyond the obligations of all Members to notify their subsidy programmes under Article 25 of the SCM Agreement. While reaching an agreement on such disciplines had been difficult, countries had recognised that an initial step should be greater transparency with respect to the existing fisheries subsidy programmes. For example, in August 2014, at the 4th APEC Ocean Related Ministerial Meeting, APEC Ministers had agreed to the Xiamen Declaration. Paragraph 21 of this Declaration stated: "In light of the Rio+20 outcome document, particularly paragraph 173, we encourage APEC members to further improve the transparency and reporting of existing fisheries subsidies programmes through the WTO, and to eliminate subsidies that contribute to overcapacity and over-fishing, and to refrain from introducing new such subsidies, without prejudice to the WTO Doha negotiations".

131. More recently, the Sustainable Development Goal 14.6 targeted, by 2020, the prohibition of certain forms of fisheries subsidies which contributed to overcapacity and overfishing as well as the elimination of subsidies that contributed to illegal, unreported and unregulated fishing. I also asked countries to refrain from introducing new such subsidies, recognizing the need for appropriate and effective special and differential treatment. According to the US, the subsidy notification obligation of Members could serve as an effective monitoring mechanism to ensure implementation of the commitments made under the SDG 14.6.

132. Members could provide subsidies to their fishing industries; however, they all had an obligation to notify their programmes. In light of the Xiamen Declaration, SDG 14.6, and other international initiatives, most countries were seeking to increase the level of transparency of their fisheries subsidies programmes, reform those programmes, and to refrain from introducing new subsidies or from extending or enhancing the existing ones.

133. Noting that Members were negotiating disciplines on fisheries subsidies in the WTO, the US asked how Members could negotiate effective and meaningful disciplines if they lacked basic information on Members' existing programmes, including information on the programmes of the world's largest fish producer.

134. Given the even increasing pressure facing the world's fisheries and the global consensus to take action to save the oceans, the US again requested China to join those seeking a solution, which could start with Members putting all of their programmes on the table for all Members to see.

135. China reiterated that it had verified relevant programmes referred in the US counter-notification in document G/SCM/Q2/CHN/59. The majority of the programmes were overlapping with the document G/ SCM/Q2/CHN/52 submitted by the United States in April 2015 and at the previous meetings, China had already clarified some of the fishery subsidy programmes and provided a detailed explanation on the programmes covered by China's notifications. China would provide more clarification at the meeting.

136. First, regarding Programme No. 47 of China's notification and Programme No. 42 of the counter-notification, entitled "Subsidy for Purchasing Agricultural Machinery and Tools", China had indicated in its notification that the subsidy was provided to individual farmers purchasing agricultural machinery and tools or service providers and was not targeted at specific industries.

137. Second, with respect to Programme No. 55 of China's notification and Programmes No. 30 and No. 31 of the counter-notification, entitled the "Subsidy to the Change of Fishermen's Production", China noted that the submission by the US was one of the supporting directions of the funds of Programme No. 55. China referred to Item No.3, "Subsidies on Reduction in the Number of Fishing Vessels and Change of Fishermen's Production", regarding how the subsidy was provided.

138. Third, in respect of Programme No. 84 of China's notification and Programmes No. 36 and No. 37 of the counter-notification, there might be some misunderstanding. The support policies mentioned in the submission of the US included two aspects. Firstly, import tariffs were exempted for leading enterprises engaged in agricultural product processing programmes encouraged by the state which imported internationally advanced equipment for self-use. For that subsidy, China referred to Programme No. 61, "Preferential Tax Treatment for Import of Equipment", in its third subsidy notification. Secondly, leading enterprises enjoyed preferential tax treatments when purchasing environmental protection, water and energy conservation equipment. For that subsidy, China referred to Programme No. 14, "Preferential Tax Treatment for Projects for Environmental Protection, Water and Energy Conservation", in its third subsidy notification.

139. China noted that it would try to take into consideration the concerns of Members regarding fishery policies in its future subsidy notification. With respect to the completeness of the subsidy notifications, China indicated that its officials were in pursuit of submitting notifications in a complete manner. What China could do was to collect as much subsidy policy information as possible while striving to reduce omissions. Taking into account that China was a developing country with vast territory and complex administrative structures, all subsidy policies could not be covered overnight. Moreover, China did not think that the US notifications were totally perfect in terms of the completeness. As shown in the Article 25.8 request raised by China at the April meeting and the questions on the US' 2015 new and full notification, there were also problems regarding the completeness of the US notifications.

140. As a responsible Member, China had always committed to perform its transparency obligations earnestly and done its utmost to address Members' concerns related to China's subsidy policies. In the process of preparing new subsidy notifications at central and sub-central government levels, China would take Members concerns into full consideration, collect as much subsidy policy information as possible, and constantly improve the transparency of China's trade policies.

141. Japan noted that it was expecting China to notify the relevant subsidies in consistent with the WTO rules.

142. Recalling its previous interventions with respect to transparency obligations, Canada indicated that it specifically supported greater transparency regarding fisheries subsidies. It hoped that China was in a position to provide all relevant information in its forthcoming notifications.

143. The European Union remained concerned with the poor state of subsidy notifications in fisheries sector by important WTO Members. There was a wide agreement that fisheries subsidies were one of the major contributions to the poor state of world's fisheries. A failure to notify fisheries subsidies prevented Members from effectively scrutinizing the impacts of those subsidies. The EU called on all Members to respect those obligations under Article 25 of the Agreement and properly notify all subsidies granted in the fisheries sector both at the central and local levels.

144. Australia echoed the concerns over the lack of transparency regarding fisheries subsidies. Assessing the impact of subsidy programmes would be very hard without the most rudimentary transparency through notifications. Australia urged all Members to be mindful that there was an obligation to notify fisheries subsidies as well.

145. New Zealand encouraged all Members to ensure that they notified any relevant fisheries subsidies given their impact on overcapacity and overfishing.

146. China reiterated that the concerns raised by Members would be taken into consideration in its new subsidy notification.

147. The Committee took note of the statements made.

9 NON-NOTIFICATION BY CHINA OF ALLEGED SUBSIDIES UNDER THE INTERNATIONALLY WELL-KNOWN BRAND PROGRAMME (G/SCM/Q2/CHN/71) – ITEM REQUESTED BY THE UNITED STATES

148. The United States indicated that the focus of its fifth counter-notification was China's Internationally Well-known Brand Programme. That issue went back to 2008, when the US had asked for dispute settlement consultations regarding the Famous Export Brand Programme (FEBP) which had been alleged to be a prohibited export subsidy under the Agreement.

149. The US' statement of evidence had included more than 90 legal measures that had established and implemented the FEBP at the central and sub-central levels of government. The central level measures had laid out the parameters of the programme which had been implemented at the sub-central levels in a variety of ways.

150. Following the consultations, the US and China had conducted settlement discussions for several months. Towards the end of 2009, China had terminated or amended many of the measures at issue and demonstrated that the remaining programmes had expired or been no longer in effect. A mutually agreed solution had been signed in December 2009 in which China had confirmed "that no export-contingent benefit [would] be provided to entities in China under any measures contained in the consultation request or any subsequent related measure".

151. Subsequent to that agreement, the US had begun to see legal measures at the central and sub-central levels establishing the Internationally Well-Known Brand Programme. The relevant central government legal measure had stated that the FEBP had been "adjusted and perfected" and that the title Famous Export Brand would be changed to Internationally Well-Known Brand.

152. While the export-related eligibility criteria had been removed from the central level measure, very similar export-related eligibility criteria had been included in the sub-central measures.

153. In China's most recent subsidy notification regarding sub-central level programmes, the FEBP was notified by many sub-central governments although it had been effectively terminated in 2009. Notifying a programme after seven years from its expiration was not particularly helpful in furthering the transparency objectives of the Agreement.

154. While many of the Famous Export Brand measures had been notified after the termination of the programme, neither the central nor sub-central notifications of China had included the measures implementing the Internationally Well-known Brand Programme which had become

effective more recently. Those actions did not provide Members with the level of transparency envisioned by the Agreement and indeed raised questions as to the brand programmes currently in place and whether they were consistent with the rules of the Agreement regarding export subsidies. It was disturbing that those serious questions regarding China's subsidy regime continued sixteen years after China had become a WTO Member.

155. Japan noted that if there were any subsidies which triggered the notification requirement, yet had not been notified with the latest information, they should be adequately notified.

156. China indicated that the programmes referred by the US were either cancelled or abolished. Upon receiving the document G/SCM/Q2/CHN/71 submitted by the US, China had carefully sorted out and verified the relevant programmes which could be divided into four categories.

157. First, policies which granted honorary titles of "international well-known brands" rather than provided subsidies, such as;

- Item No. 2: Notice on Organizing and Carrying Out the 2013-2015 "Anhui Famous Export Brands" Selection Work;
- Item No. 7: Notice on Doing Well the 2014-2016 Fujian Province Key Cultivation and Development International Well-Known Brands Application Work;
- Item No. 9: Notice on Recommending the 2013-2014 "Fujian Province Key Cultivation and Development International Well-Known Brands" Enterprises;
- Item No. 15: Dehua County Three-Year Action Plan for Further Promoting Enterprises' Indigenous Innovation;
- Item No. 18: Notice on Carrying Out Guangzhou City 2012-2013 Key Cultivation and Development Indigenous International Well-Known Brands Enterprise Designation Work;
- Item No. 19: Work Plan for the 2011-2013 Guangdong Province Foreign Trade and Economic Bureau Key Cultivation and Development International Well-Known Brands Designation;
- Item No. 23: Implementing Opinion to Further Promote Henan Province International Well-Known Brands Cultivation and Construction Work;
- Item No. 25: Notice on Organizing the Recommendation and Selection of the 2013-2015 "Henan Province International Well-Known Brands" Activities;
- Item No. 26: Henan Province Selection Measure on International Well-Known Products;
- Item No. 72: Notice on Organizing the Application for the 2014-2016 "Shandong Province Key Cultivation and Development International Well-Known Brands";
- Item No. 78: Rule on the Tianjin Municipality Exit-Entry Inspection and Quarantine Bureau Promoting International Well-Known Brands Cultivation Work;
- Item No. 79: Notice on Carrying Out the 2011 "Tianjin Municipality International Well-Known Brands" Designation Work;
- Item No. 80: Notice on Carrying Out the 2014 "Zhejiang Export Brands" Designation Work.

158. Second, planning or catalogues were documents of guiding nature, which did not involve specific subsidies, such as;

- Item No. 1: Guiding Opinion on Promoting International Well-Known Brands Cultivation Work;
- Item No. 6: Fujian Province Foreign Trade and Economic Cooperation Bureau Passing on the Ministry of Commerce and Eight Agency [Issued] Guiding Opinion on Promoting International Well-Known Brands Cultivation Work, Min Wai Jing Mao Fa [2009] No. 16 (27 April 2009);
- Item No. 11: Implementing Opinion on Accelerating Industrial Leapfrog Development;
- Item No. 13: Opinions on Promoting the Upgrade and Development of the Manufacturing Sector;
- Item No. 17: Guiding Opinion on Promoting Foreign Economic and Trade Enterprises' Indigenous Innovation and Indigenous International Well-Known Brand Construction;

- Item No. 24: Opinion on Promoting International Well-Known Brands Cultivation Work;
- Item No. 37: Opinion on Accelerating Foreign Trade Development.

159. Third, relevant policies had existed but no subsidy had ever been granted in accordance with such policies including;

- Item No. 20: Haojiang District Measures on Promoting Foreign Trade Import and Export Development;
- Item No. 38: Implementing Opinion on Accelerating Industrial Development;
- Item No. 48: Inner Mongolia Implementing Plan on Promoting International Well-Known Brands Cultivation Work "Ten Thousand Talent Programme";
- Item No. 44: Notice on Carrying out 2015 "Inner Mongolia Key Cultivation and Development International Well-Known Brands" Selection and Designation Work.

160. Fourth, subsidy policies claimed by the US did not exist, such as;

- Item No. 22: Preferential Policies to Support Foreign-invested Enterprise Trademark Registration and International Well-Known Brands;
- Item No. 39: Measure on Industrial Enterprise Development Preferential Policies and Rewards;
- Item No. 40: Changde City Interim Measure on Continuation of Industrial Shifting Development and Processing Trade Guiding Fund Administration.

161. The United States indicated that it had to go back and compare China's responses with the counter-notified measures. It was curious that there were so many measures but no subsidies. In terms of measures that did not exist, the US reiterated that those measures existed and had been translated from Chinese.

162. The Committee took note of the statements made.

10 INDIA'S ELIMINATION OF EXPORT SUBSIDIES FOR TEXTILES AND APPAREL PURSUANT TO ARTICLE 27.5 OF THE SCM AGREEMENT – ITEM REQUESTED BY THE UNITED STATES

163. The United States recalled its view, based on the Secretariat's calculations, that the Indian textile and apparel sector had reached export competitiveness no later than 2007. Therefore, India had had an obligation – at least since 2007 – to gradually phase out export subsidies provided to numerous products in the textile and apparel sector, meaning that the eight year phase-out period had ended and all export subsidies to India's textile sector should have been terminated. While India's recently released Foreign Trade Policy for 2015-2020 recognized the need to terminate certain programmes, unfortunately it did not establish any procedural framework for doing so and appeared to target 2018 as the operative date for termination. The US had made clear to India that it would welcome further dialogue as to how India could meet its WTO obligations.

164. India recalled its previous interventions noting that 2018 would be its timeline for phasing out the export subsidies to textiles and apparel products. Most of the existing programmes were in the form of remission or exemption of duties and therefore not export subsidies. For the remaining programmes, which were alleged to be export subsidies, India was committed to meet its obligations and ready to engage in discussions on the issues such as when export competitiveness was reached. India recalled its previous interventions that export competitiveness had been reached in 2010 therefore it had time until 2018 to remove the programmes in question. Despite the fact that there were certain issues regarding the legal interpretations on the definition of product, India reiterated that it had time till December 2018.

165. The Committee took note of the statements made.

11 INDIA'S GRADUATION FROM ANNEX VII OF THE SCM AGREEMENT – ITEM REQUESTED BY THE UNITED STATES

166. The United States recalled that Members included in Annex VII of the Agreement were not subject to the prohibition on export subsidies in Article 3 of the Agreement and originally those Members would have graduated from the annex if their GNP per capita had risen above $1000 in a given single year. At the Doha Ministerial, the threshold for graduation had been raised substantially according to which those Members would graduate from Annex VII if their GNP per capita was above $1000 in constant 1990 dollars for three consecutive years.

167. According to Secretariat's latest calculation released in July 2017, India had been above the threshold for three consecutive years. Therefore, India was no longer included in Annex VII and would have to end all of its export subsidies in all sectors of its economy. The US was interested in hearing India's intentions for its existing export subsidy programmes.

168. Japan referred to the Secretariat's latest calculation and noted that India was expected to become subject to the prohibition on export subsidies. India should withdraw all the export subsidies or remove their contingency on export performance.

169. India noted that it was aware of its commitments under the WTO, however subsidies could not be withdrawn overnight. Along with other co-sponsors, it had submitted a paper in document TN/RL/GEN/177/Rev.1 in which they had explained their understanding of the present text of the Agreement and sought for amendments to the Agreement to clarify the existing provisions, Articles 27.2(b) and 27.4, in particular. The particular reference therein had been referred in 2011 Chair's text but had not been delivered further despite the efforts. India referred to its last review in Foreign Trade Policy 2015 which was available in the public domain and noted that it had streamlined export subsidy schemes substantially. There were one or two schemes which were alleged to be export subsidies. India was ready to work with Members to clarify and resolve any issue regarding graduation from Annex VII.

170. The Committee took note of the statements made.

12 ENHANCING FISHERIES SUBSIDIES TRANSPARENCY – ITEM REQUESTED BY THE UNITED STATES

171. The United States recalled the informal room document circulated at the last meeting of the Committee consisting of seven questions to guide the discussion. As some Members had needed more time, the US would continue its focus on those questions. The US clarified that those questions were submitted in the context of the work of the Committee and it did not intend to submit them to the Negotiating Group on Rules (NGR).

172. As a general matter, the US asked what other information might be needed to assess the trade and resource impacts of a fishery subsidy. The US recalled that it had suggested: (i) catch data by species in the relevant fishery; (ii) status of the fish stocks in the relevant fishery; (iii) fleet harvesting capacity in the relevant fishery; (iv) conservation and management measures in place for the relevant fish stock; and (v) total imports/exports per species.

173. Catch data and the status of the targeted fishery was important for the US to monitor the status of the relevant fishery and generally not to subsidize the harvesting of depleted stocks which would likely lead to even more fish to be harvested. The US recognized the point made about the difficulty of linking a subsidy to any one fishery in certain circumstances and welcomed ideas on addressing that issue. It understood that defining "harvesting capacity" was difficult and asked whether there was a practical approach to that issue which might provide valuable information. The US also asked whether any of the relevant international fishing organizations could help Members to fill in some of the information gaps regarding the catch data and status of stocks and fleet capacity.

174. The WTO was not a fishery management organization and might not have the expertise to evaluate management plans. However, if harvesting a particular fish stock was going to be subsidized, it would be critical to have a management regime to prevent overfishing.

175. Under the regular notification obligations of the Agreement, information on the trade effects of a subsidy was requested. While the reasoning behind that requirement was understandable, Members found it difficult to answer. Therefore the US asked whether there was concrete information that could be provided such as imports and exports, which might shed light on possible trade effects.

176. The US finally noted that its ultimate goal was to ensure that the notifications provided greater transparency on fisheries subsidies programmes and allowed a better understanding of the operation of notified programmes.

177. Panama noted that fisheries subsidies would not only distort trade but also restrict the competition as they had a great impact on export and production capacity. Fisheries were common resources, in particular the ones in the high seas. It was very important to understand the effects of fisheries subsidies on the environment and the possibility of exhausting resources due to overfishing. In this regard, transparency was very important and a key component to evaluate the impact of subsidies on trade. Panama was concerned with the quality of notifications and called upon all Members to cooperate on that matter.

178. New Zealand noted that it had provided answers to the questions raised by the US at the April meeting and encouraged all Members to take a look at the questions and provide answers.

179. The European Union was very concerned about the poor state of subsidy notifications in general, not only with regard to fisheries subsidies. It referred to its paper in document TN/RL/GEN/188 dated 30 May 2017 and recalled that it had offered three alternatives to improve transparency at the two subsequent NGR meetings: (i) streamlined monitoring of compliance with notification obligations; (ii) a general rebuttable presumption according to which all non-notified subsidies would be presumed to be actionable; and (iii) a rebuttable presumption of actionability applicable to counter-notified subsidies.

180. According to the EU, in the area of fisheries subsidies, more information than prescribed in Article 25.3 of the Agreement was needed in order to effectively know what other Members were doing. Hence, in the context of fisheries subsidies negotiations, the EU had proposed a two-tier approach in document TN/RL/GEN/181/Rev.1. In addition to information requested by Article 25.3, the EU had prescribed certain information to be provided on a mandatory basis while certain other types of information would be provided on the best endeavour basis only.

181. Japan noted that notifications of subsidies under the SCM Agreement were important. The NGR had been discussing the disciplines of fisheries subsidies and comprehensive negotiations on prohibited subsidies and notification requirements were ongoing. The NGR should be the relevant platform to discuss any additional notification requirements.

182. According to Canada, improved transparency in fisheries subsidies was an important step in taking action to address the state of world's fisheries. It supported the discussion on that item including exploring ways to enhance transparency in the context of fisheries subsidies negotiations. It continued to consider the questions posed by the US with the intention to respond.

183. Australia noted that transparency of subsidy notifications was core work of the Committee. There were ongoing discussions in the NGR but Members did not yet know the outcomes. Recalling the EU's proposals to improve transparency, Australia noted that it was open to discuss all those proposals. The Committee had a role to find ways to improve fisheries subsidies transparency. Australia was still working on the questions raised by the US and would provide some general responses at the next meeting. As it stated at the April 2017 meeting, Australia considered improved transparency should be implementable and not duplicate information requirements in other organizations. With respect to the second question posed by the US, it noted that the Committee could identify the information gaps. Australia was ready to work with other Members to improve transparency in fisheries subsidies.

184. Recalling the ongoing discussions in the NGR, China noted that the NGR was the appropriate forum to discuss fisheries subsidies transparency.

185. The Committee took note of the statements made.

13 SUBSIDIES AND OVERCAPACITY – ITEM REQUESTED BY CANADA, THE EUROPEAN UNION, JAPAN, MEXICO, AND THE UNITED STATES

186. The European Union indicated that it would deliver a statement on behalf of the co-sponsors of that agenda item and referred to a seminar on the role of subsidies as a contributor to overcapacity that had been organized by the EU, Canada, Japan, Mexico and the United States on 2 October 2017.

187. The EU noted that industrial overcapacity was a major and growing cause of distortions to international trade as it negatively affected the economic situation of those countries in which overcapacity occurred as well as of third countries whose industries were adversely affected by the resulting oversupply.

188. Subsidies were one of the main contributors to overcapacity which had also been recognized by global leaders. During the Chinese G20 presidency in 2016, both G20 Trade Ministers and Leaders had recognized that "subsidies and other types of support from governments or government-sponsored institutions can cause market distortions and contribute to global excess capacity and therefore require attention."

189. The EU and co-sponsors fully recognised that not only the WTO, but also other international settings had a relevant role to play in addressing the issue of overcapacity. Given its broader trade mandate and wide membership, and more specifically the SCM Agreement, the WTO had a central role to play. Therefore, the EU, along with other co-sponsors, had drawn the Committee's attention to the issue by submitting two papers (G/SCM/W/569 and G/SCM/W/572) about the role of subsidies on overcapacity.

190. The first paper discussed in October 2016 meeting had been a more general introduction of the topic while the second paper discussed in April 2017 had offered some specific answers to how the issue could be addressed.

191. The purpose of the referred seminar had been to have experts address the relationship between subsidies and overcapacity from different angles, thereby deepening the debate about the issue. The EU informed Members that the seminar was available online and interested Members could approach the co-sponsors directly if they had difficulties to access.

192. At the outset of the seminar, Marc Vanheukelen, the EU Ambassador to the WTO, had highlighted why the co-sponsors perceived the industrial subsidies and overcapacity as a grave problem. He had made reference to the papers submitted to the Committee by the EU and other co-sponsors and noted that the seminar would be useful when taking further steps aiming at subjecting subsidies that contributed to overcapacity to more stringent disciplines.

193. In the first and practical bloc of the seminar, the concrete situation in steel and aluminium industries affected by overcapacity and how subsidies had contributed to it had been described. The first speaker in that block, Mr Karl Tachelet, had described the situation in the steel industry and the crisis that had arisen in 2015. He had also addressed the issue of overcapacity indicating that there had been no one-size-fits-all definition of excess capacity.

194. The second speaker, Mr Markus Taube, had described the situation of the global aluminium industry and a particular situation in China including the Chinese impact on the global aluminium markets as well as subsidies and functional equivalents to subsidies. He had also pointed out the difference between the notions of overshooting capacity and overcapacity as the latter existed in the aluminium industry.

195. In the second and theoretical bloc, presentations had been on the most typical forms of subsidies that contribute to overcapacity and the role of state-owned enterprises, particularly state-owned banks. Presenters had also identified strengths and weaknesses of the SCM Agreement to tackle the issue as well as ways to improve it.

196. The first speaker in that bloc, Mr Bernard O'Connor, had explained the structure of the Chinese economy with Sasac, Central Huijin, NDRC and Cisa being the major pillars and highlighted that success in China was measured by achieving the plan not by the profitability. He had also described what the OECD had been doing in the steel sector and compared the current

situation to the one in agriculture in the 80's where OECD work had been central to resolving excess agricultural capacity in the lead up to the Uruguay Round. Subsequently, he had addressed the issue of SOEs and concluded that they benefited from, and delivered, subsidies contributing to overcapacity. As for possible solutions, he had suggested, for example, to focus on specificity asking whether such a concept was appropriate when, by virtue of government action, a particular raw material or energy source was provided at less than adequate remuneration even if it was provided to all players in a market. On the issue of overcapacity, he had suggested that where government policy created overcapacity and where the extra capacity was exported this should be seen as a prohibited subsidy within the terms of Article 3 of the Agreement.

197. The second speaker, Mr Robert DeFrancesco, had focused on the ways to improve the Agreement. He had criticised the Appellate Body for eroding the trade defence instruments in its jurisprudence, for example as regards the public body definition. With respect to the Agreement, he had suggested a number of amendments to address the issue.

198. The first such solution would be to add a new paragraph to Article 5 that would establish a finding that a subsidy causes serious prejudice where the subsidy was specific and a Member's capacity levels of a particular like product over a period of time had suppressed and/or depressed prices of another Member's like product.

199. The second solution would be to revive Article 6.1 of the SCM Agreement which had lapsed in 1999 and which had provided for a presumption of serious prejudice for some of the most harmful types of subsidies that would be relevant also in the context of addressing the relationship between subsidies and overcapacity.

200. The third suggestion would be to amend Article 3 of the Agreement to include below-market financing schemes as prohibited subsidies. These schemes were: (i) direct transfer of funds to cover operating losses; (ii) forgiveness of debt (taking into account bankruptcy laws or other insolvency proceedings); (iii) loans to enterprises that are uncreditworthy; and (iv) debt-for-equity swaps that are not on commercial terms.

201. The fourth solution had focused on adding two harmful subsidies to the list of prohibited subsidies: (i) subsides granted under any legal agreement to cover debts or liabilities; and (ii) subsidies (such as loans and guarantees, cash grants, capital injections, provision of assets below market prices or tax exemptions) to insolvent or ailing enterprises, without a credible restructuring plan based on realistic assumptions with a view to ensuring the return of the insolvent or ailing enterprise within a reasonable period of time to long-term viability and without the enterprise significantly contributing itself to the cost of the restructuring.

202. The fifth idea would be to prohibit subsidies inputs for less than adequate remuneration.

203. The sixth suggestion would be to focus on increased transparency, for example by preventing a Member that was withholding information about its subsidized programmes from challenging affirmative subsidy findings by other Members or by creating a presumption of actionability for non-notified subsidies. The final suggestion had been to strengthen Annex V to the SCM Agreement.

204. The third and last speaker, Mr Mark Wu, had referred to the issue of negative externalities stemming from excess capacities and highlighted legal methods that existed to circumvent the WTO law that would otherwise combat subsidies that promoted overcapacity. These methods included: (i) rendering a subsidy non-specific e.g. by providing cheap inputs at the level of the whole region; (ii) making sure that no government or public body in *stricto sensu* was involved in the subsidy; (iii) merges and acquisitions, debt-equity swaps and balance sheet transfers done by private or quasi-state entities without any direct evidence of direction or entrustment by the state; and (iv) implicit understanding arrangements that were premised on networks outside of government.

205. Australia shared the concerns over global overcapacity. It was a real problem and its impacts were felt in the Australian market. There were linkages between that issue and the work of the Committee and Australia was supportive of the Committee looking at the issue more fully as well as in other global fora. It was interested in how the Committee could further support discussion by Members and reiterated that transparency was vital to understand what was

happening in global markets. Therefore, it was important that Members continued to submit timely and complete notifications.

206. Japan noted that there were many governmental activities which might trigger overcapacity. For example, when strategically important companies began to fail, governments might seek to maintain employment, production, and capacity, in particular in the absence of an exit mechanism. Governments might forgive debt, roll over loans from state-owned or controlled financial institutions, convert debt-to-equity or provide new equity without restructuring the failing companies such that they could operate profitably with capacities in line with market demand. According to Japan, some of the categories of subsidies as contributor to overcapacity and possible disciplines could be explored in the Committee.

207. The typical subsidies related to overcapacity were (i) subsidies to cover debts or liabilities of certain enterprises without any limitation as to the amount of those debts and liabilities and the duration; and (ii) subsidies given to an insolvent enterprise without a credible restructuring plan.

208. Regarding the discipline of subsidies, Japan indicated that some new rules, which could be recognized as WTO-plus provisions, had been established through the FTA negotiations around the world. Exploring those disciplines could be beneficial in addressing and discussing the issue of overcapacity.

209. China recalled its statement made at the beginning of the meeting and reiterated that the Committee was not the proper forum to discuss overcapacity and subsidies were not the major cause of it. Overcapacity was a global, periodic and structural problem and the root cause was the slow recovery of the global economy as well as the sluggish demand conditions since the international financial crisis in 2008, which was also confirmed by the G20 Leaders.

210. China recalled that G20 Leaders' Hamburg Declaration had called for the removal of market-distorting subsidies and other types of support by governments and related entities. The Global Forum on Steel Excess Capacity, facilitated by the OECD, had also required Members to share information including supportive policies or measures in the steel sector. Therefore, the unremitting efforts and great contribution made by the Global Forum to analyse the links between subsidies and creation of excess capacity shall not be neglected or depreciated.

211. With respect to the EU's comments on the relationship between China's subsidy policies and industrial overcapacity, China expected Members to look squarely at its unremitting efforts in addressing overcapacity issues at both central and sub-central levels.

212. The Russian Federation reiterated its view that industrial overcapacity was one of the major challenges for global economy and joint effort was vital to tackle it. In July 2017, the G20 Leaders had confirmed their commitment to take the necessary actions to deliver the collective solutions that foster truly level playing field. All possible efforts should be made to that end. There were numerous factors contributing to overcapacity all of which should be approach in complex in order to overcome the challenge. In this vein, the Russian Federation welcomed the efforts of the leading steel producing countries within the Global Forum on Steel Excess Capacity.

213. At that stage, it might be more fruitful to leave the discussion on the other factors contributing to overcapacity in the Global Forum. First of all, following the declaration of the G20 Leaders, the Global Forum was authorized and expected to look into the issue of subsidies and other types of support. Secondly, it was anticipated that the Global Forum would elaborate concrete policy solutions which should take into account all the factors causing excess capacity.

214. The Russian Federation reiterated that due consideration should be accorded to other factors contributing to overcapacity, such as trade protectionism, including large number of trade remedy measures in order to address the challenge effectively. For that purpose, the solutions elaborated by the Global Forum could be useful to effectively organize the work at other venues, including the relevant WTO Committees.

215. The Committee took note of the statements made.

14 QUESTIONS REGARDING THE 2015 NEW AND FULL NOTIFICATION OF THE UNITED STATES (G/SCM/Q2/USA/73) - ITEM REQUESTED BY CHINA

216. China indicated that the 2015 new and full subsidy notification of the US had covered neither its new energy vehicle subsidies nor industrial energy efficiency subsidies. In addition, China had some questions regarding some federal and state-level subsidy programmes, which had already been incorporated in the notification of the US, such as specificity of a certain programme, conditions for granting the subsidy and the amounts of the subsidy. China had submitted written questions and was expecting to receive written replies from the US as soon as possible.

217. The United States indicated that it would work on the questions and provide answers by the next Committee meeting. The US also pointed out that China had asked about programmes that had not been notified. Although China suggested the opposite in principle regarding the non-notified programmes, the US would follow the normal processes within the Committee and submit written answers.

218. The Committee took note of the questions and statements made.

15 OTHER BUSINESS

15.1 Certain Systemic Concerns Regarding CVD Investigations Initiated by the United States – Item Requested by India

219. India noted that it had systemic concerns regarding the CVD investigations conducted by the United States and it would also submit written questions in due course. The first concern was regarding the timing of the processes initiated by the USITC and USDOC. India had indicated that although the USDOC was the relevant authority to initiate a CVD investigation under the SCM Agreement, the USITC frequently issued notices before the USDOC initiated the investigations. India requested the US to provide a clarification in that regard. India's second concern was regarding to new subsidy allegations and timelines given for questionnaire responses. Finally, the third concern of India was related to the practice of cross cumulation. India had found out that in a number of investigations such as certain new pneumatic off-the-road tires, sulfanilic acid, polyethylene terephthalate (PET) film, prestressed concrete steel wire strand, carbazole violet pigment 23, lined paper products, and certain oil country tubular goods, the cross cumulation of imports had been alleged to be subsidized. Import data alleged to be dumped but not subsidized had been used for the determination of the material injury by the US authorities. India indicated that its paper would provide the details of the issues raised.

220. The United States noted that it would look at those questions and get back to India.

221. The Committee took note of the statements made.

16 DATE OF NEXT REGULAR MEETING

222. The Committee decided to hold its next regular meeting during the week of 23 April 2018, with the exact date to be confirmed in due course. As usual, that meeting would be immediately preceded by a special meeting for review of subsidy notifications.

17 ANNUAL REPORT OF THE COMMITTEE ON SUBSIDIES AND COUNTERVAILING MEASURES TO THE COUNCIL FOR TRADE IN GOODS (ARTICLE 32.7)

223. The Committee adopted its Annual Report (2017) to the Council for Trade in Goods.[7]

224. The meeting was closed.

[7] G/L/1195-G/SCM/150.