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REPORT OF THE SUB-COMMITTEE ON PROTECTIVE MEASURES

1. The Sub-Committee on Protective Measures held its sixth session on 27 and 30 September 1983, under the Chairmanship of H.E. Ambassador F. Jaramillo (Colombia), in the absence of its Chairman, H.E. Ambassador G.O. Ijewere (Nigeria).
2. In his introductory remarks, the Chairman drew attention to the Sub-Committee's terms of reference, as determined by the CONTRACTING PARTIES in November 1979 (L/4899). These require it to examine any case of new protective action by developed countries affecting imports from developing countries in the light of the relevant provisions of GATT, particularly Part IV thereof, such examination being without prejudice to the rights of contracting parties under the GATT or the competence of other GATT bodies. The Chairman also recalled that the Committee on Trade and Development agreed at its forty-ninth session in March 1983 (COM.TD/114) that the work of the Sub-Committee, together with that accomplished in the country consultations called for by ministers at the thirty-eighth session of the CONTRACTING PARTIES in November 1982 (L/5425), would form part of the regular annual review of the application of Part IV.
3. The Sub-Committee had before it four notifications received from governments in response to GATT/AIR/1929: a notification from the United States was circulated as document COM.TD/SCPM/W/19, "reverse" notifications from Argentina and India as documents COM.TD/SCPM/W/20 and COM.TD/SCPM/W/18 respectively, and a communication from Japan contained in document COM.TD/SCPM/W/21 indicating that it had no new restrictions to notify. The representatives of Canada and New Zealand also stated that their countries had no new protective measures to notify to the Sub-Committee. In addition, the secretariat had put together in COM.TD/SCPM/W/17 certain information on a number of measures that could be of interest to the Sub-Committee. The information contained in the secretariat note was presented, as indicated in its paragraph 5, in accordance with the understanding reached at the first session of the Sub-Committee that the inclusion of measures in secretariat documents would be without prejudice to views delegations might have regarding the desirability of taking up for examination any such measures or on whether they fall within the Sub-Committee's terms of reference.
4. In response to the enquiry from the Chairman whether any members of the Sub-Committee wished to include items on the agenda under "any other business", the representative of India stated that although it was not strictly a matter under "any other business" he would like some clarification about the notification procedures of the Sub-Committee before

moving on to discussion of the substantive items on the agenda. He noted that apart from the reverse notifications submitted by India and Argentina, there were only two notifications under consideration: namely, those of the United States and Japan. Since other contracting parties had clearly taken actions adversely affecting the exports of developing countries, as reported in the "reverse" notifications and the secretariat document COM.TD/SCPM/W/17, he wondered if the representatives concerned would explain why they had not notified such measures to the Sub-Committee. He asked whether contracting parties resorting to protective measures felt it would suffice to notify other GATT bodies or whether they did not notify to the Sub-Committee because they did not consider that these measures adversely affected developing countries. The Chairman suggested that this question be reverted to in the context of discussion on specific measures. In regard to earlier discussions of notification procedures in the Sub-Committee, the Chairman drew the attention of members of the Sub-Committee to guidelines established when the Sub-Committee was set up, as reproduced in COM.TD/104 (paragraph 20).

5. The representative of Peru, recalling that the mandate of the Sub-Committee extended to the discussion of measures threatened or likely to be taken, expressed his intention to make a statement on behalf of the copper producing countries. The Chairman confirmed that the request was in conformity with the terms of reference of the Sub-Committee and agreed to take up the matter under "any other business".

6. The Sub-Committee organized its work by first taking up the notifications made by governments, followed by discussion and examination of a number of measures referred to in the secretariat document, including developments with regard to certain measures examined at its earlier meetings. Finally, the Sub-Committee took up the matter referred to by Peru under "any other business".

United States notification COM.TD/SCPM/W/19

7. The representative of the United States stated that the measures adopted on specialty steel, as notified in document L/5524 and referred to in COM.TD/SCPM/W/19, constituted the only Article XIX action taken since the last meeting of the Sub-Committee which affected developing countries. She noted that as a result of bilateral consultations under Article XIX, developing countries affected by the measure, including Argentina, Brazil and Korea, were well aware of the details of the action. She pointed out that in taking protective action after a finding of serious injury substantially caused by increased imports, the United States was exercising its rights under Article XIX of the GATT. She emphasized that the investigation carried out by the United States authorities was fully transparent and provided opportunities to all interested parties to comment on questions of remedy and injury. While noting the temporary nature of the relief measures taken, she referred to the possibility of only one limited extension, after which relief must be terminated and no new investigation may be initiated for at least two years.

8. The additional tariffs, which covered approximately 75 per cent of the United States market, were to be phased down at a relatively rapid rate and could not be raised above the initially proclaimed rates. The quotas, covering 25 per cent of the market, were to be increased at the rate of 3 per cent per annum despite the negative growth in demand recorded since 1978/1979. The representative of the United States further stated that the President cannot reduce, but could expand the quotas after consultations with the appropriate domestic authorities on conditions in the domestic market. Noting that the United States had already entered into consultations with a number of interested parties under Article XIX, she reaffirmed that her authorities would be willing to do the same with other countries.

9. With regard to the action taken by the United States, the representative of Brazil expressed his country's desire to reserve its Article XIX rights. The representatives of Korea, Spain, Argentina and Romania also expressed their intention to reserve their full rights under Article XIX. The representative of Pakistan enquired if the action taken under Article XIX encompassed all exporting countries. Upon confirmation by the representative of the United States that this was the case, and that as far as she knew the United States had conducted bilateral consultations with Brazil, Argentina and Korea, the representative of Pakistan complimented the United States authorities on implementing Article XIX in a non-discriminatory fashion. Recalling the consideration underlying the decision to form the Sub-Committee, he did, however, wonder whether some consideration could be shown to developing countries in cases such as this one, where developing countries are relatively minor suppliers.

Argentinian notification COM/TD/SCPM/W/20

10. The representative of Argentina said that the notification contained in document COM/TD/SCPM/W/20 was made mainly to show how products of interest to Argentina were being affected by protective action on the part of developed countries. He noted that the products affected were mainly agricultural, with most of them being fruit products. He expressed concern that no action had been taken regarding any of these products despite earlier notifications and wished this notification to serve as a reminder. He said that while he did not expect any answers now he would welcome any written responses from the delegations concerned. With regard to measures taken by Canada, he acknowledged receipt of a verbal reply in the Dairy Committee but indicated his preference for a written one with greater details. He added that Argentina had received replies from Austria and South Africa on some of the notifications appearing in earlier documents and therefore did not consider it necessary that these two countries comment on those particular items.

11. The representative of Austria stated that in the light of the mandate of the Sub-Committee to examine new protective measures his country had no measures to notify and added that he did not consider the Sub-Committee to be the appropriate forum for the discussion of measures taken in the past, such as those contained in the Argentinian notification. The representative of the European Communities noted that many of the measures listed in the Argentinian notification were past measures on which the

Community had already commented. The representative of Canada, referring to the Argentinian notification with regard to milk and cream, preserved, concentrated or sterilized, said that the measure was of relative long standing and had been notified on three separate occasions. Moreover, the measure was applied in connection with a supply management programme and was in conformity with Article XI of the General Agreement. The representatives of Norway, Finland and Sweden expressed the view that the Sub-Committee did not provide the appropriate framework for the discussion of these measures. However, some developed country delegations said they were willing to discuss specific measures bilaterally.

12. The representative of India, commenting on the foregoing discussion regarding the mandate of the Sub-Committee, recalled that the Sub-Committee was established in pursuance of a unanimous resolution of the UNCTAD Manila Conference. He also recalled that the Sub-Committee had witnessed discussions similar to the present one on previous occasions. He said, however, that some developing country representatives had repeatedly pointed out that, whereas the Sub-Committee may not be the appropriate forum for examining the technical or legal aspects of actions such as those involved in anti-dumping or countervailing duty cases, they could still be discussed in the light of the terms of reference of the Sub-Committee and the provisions of Part IV. He stated that his delegation was concerned about the reluctance on the part of some developed countries to provide information and discuss issues relevant to the mandate of the Sub-Committee and expressed the view that it might be necessary to reconsider the interpretation placed by some delegations on the mandate of the Sub-Committee.

13. The representative of Argentina reiterated that the reason for submitting the notification was to express concern about certain measures in certain sectors. He could not see what purpose the Sub-Committee would serve if such measures as those contained in the Argentinian notification could not be discussed. The representative of Pakistan expressed concern that the mandate of the Sub-Committee was being eroded. He noted that the Sub-Committee was created in the full knowledge that other GATT Committees were in existence. The purpose of the Sub-Committee, however, was to create another track for the discussion of fresh protective measures and the work of the Sub-Committee should be seen in that light. With regard to specific measures, the representative of Pakistan expressed the view that seasonal measures could be regarded as new protective measures every time they were reintroduced. Furthermore, he stated that in his view the practice of introducing more than one measure affecting a single product, such as both a global quota and discretionary licensing, introduced an unwarranted element of discrimination. These were the kinds of issues which the Sub-Committee should examine. The representative of the United Kingdom for Hong Kong supported the views expressed by the representative of Pakistan and emphasized the need for a pragmatic and flexible approach which stressed the role of the Sub-Committee in examining protective measures in the light of the provisions of Part IV. The representative of the Philippines recalled that a "modus vivendi" had been reached on the Sub-Committee's mandate in the past. It was more important to discuss particular protective measures in the Sub-Committee and their effects on the exports of developing countries than to spend time deciding whether or not these measures fell within the mandate of the Sub-Committee.

14. The representative of Norway expressed reservations about the utility of discussing old and well-known measures in the Sub-Committee, particularly when all the parties concerned were generally aware both of the desirability of removing such measures when practicable and the difficulties involved in abolishing them. He further said that the discussion surrounding the Argentinian notification might make it necessary to examine the mandate of the Sub-Committee again.

Indian notification COM.TD/SCPM/W/18

15. The representative of India said the measures outlined in the Indian notification needed no further clarification and indicated that with the exception of points 6 and 7 of the notification, many of the other measures had already been discussed in the Sub-Committee. He said that he would return to the matters raised in Point 7, and in regard to Point 6, he stated that he wanted to avoid a discussion on which was the appropriate forum for examining particular measures. He recalled that there had been problems in the past arising from the referral of particular issues from one GATT Committee to another. He emphasized that his delegation was not interested in discussing legalities or technicalities in the Sub-Committee but it was concerned with the application of the provisions of Part IV. He then asked if importing countries had given any thought to the phasing-out of some of the long-standing measures listed in the notification. With reference to Point 6, the representative of Canada stated that in the view of his authorities the anti-dumping action in question was consistent with the provisions of the General Agreement and the Anti-Dumping Code. He added that while he considered it would be more appropriate to discuss these questions in the Anti-Dumping Committee, there had in fact been consultations between the two countries during which points made by the Government of India, including with respect to Article 13 of the Anti-Dumping Code, were taken into account and resulted in a reduction in the final determination of duty.

16. The representative of the European Communities stated that he appreciated the Indian delegation's concern about particular issues relevant to developing countries not being discussed either in one committee or another and instead being referred back and forth. However, he thought that case 6 referred to in the notification constituted a problem with implications which went further than developing countries' concerns alone, and which touched on the application of the provisions of the Anti-Dumping Code itself. The representative of India agreed that certain elements of the action taken by Canada were of wider concern and should be discussed in the Anti-Dumping Committee. He considered it necessary, however, to analyse in the Sub-Committee the extent to which Article 13 of the Anti-Dumping Code was being complied with.

17. The representative of Argentina recalled that in the Anti-Dumping Committee his delegation had not received a response to a question addressed to the Community concerning anti-dumping duties for steel goods, on the grounds that Argentina was an observer in the Anti-Dumping Committee. The representative of the European Communities reiterated that he, like the Indian delegate, would distinguish between points of wider interest referring to the technical application of the Code and points

which may relate to specific discretion in favour of developing countries. In response to the comment made by the Argentinian delegation, he said that the Communities had felt it was not the Anti-Dumping Committee's responsibility to discuss actions against non-signatories. He added that his authorities had offered to discuss the issue bilaterally.

Japanese notification COM.TD/SCPM/W/21

18. The representative of Pakistan, while welcoming the notification by Japan, asked for clarification on what was meant precisely by the term "protective measures". He wished to know what type of measures needed to be notified to the Sub-Committee and whether the Japanese notification had taken account of such matters as anti-dumping and countervailing duty investigations, seasonal restrictions, discretionary licensing and voluntary export restraints. The representative of Japan stated that the Japanese notification had taken all these matters into account.

Discussion of points arising out of the secretariat note COM.TD/SCPM/W/17

19. In regard to the measures taken by the European Communities affecting imports of tableware and other articles of a kind commonly used for domestic or toilet purposes, of stoneware, contained in paragraphs 6-7 of COM.TD/SCPM/W/17, the representative of the European Communities pointed out that a previous document of the Sub-Committee, COM.TD/SCPM/W/14 (paragraph 20) had indicated that trends in the imports of these items, and the affects of these imports on domestic production, were under investigation by the Commission of the European Communities. The Article XIX action notified in document L/5447 was taken as a result of these investigations, but subsequently modified following consultations with affected exporting countries. In relation to the observation made earlier by the representative of India that many developed countries were not notifying new protective measures taken by them to the Sub-Committee, the representative of the European Communities expressed the view that since the appropriate notifications had been made to the GATT in the context of Article XIX, there was no reason to duplicate the secretariat's own efforts in bringing such matters to the attention of the Sub-Committee.

20. The representative of Korea stated his view that the real intention of the Article XIX action taken by the European Communities was to restrict imports from Korea. In these circumstances the Korean authorities had little choice other than to agree to a voluntary export restraint, since the alternative was a unilateral import restriction. The representative of Korea expressed the view that this was a situation faced by all developing countries. The representative of the European Communities agreed that the Article XIX action was designed to restrict imports, but the fact that Korea was the major supplier did not mean that the Article XIX action was in any way discriminatory.

21. The representative of Pakistan wished to know whether the voluntary export restraint affecting trade in these items was agreed between the respective industries involved or the respective governments. He was of the view that industry to industry agreements may be comprehensible, particularly where industries in different countries were in some way

connected with each other, but the motivations behind government to government agreements were less clear. The representative of the European Communities stated that this was a government to government agreement, but observed that it took at least two parties to make an agreement, and that his authorities could have maintained the original Article XIX action.

22. The representative of the European Communities, referring to the information contained in paragraph 8 of COM.TD/SCPM/W/17 concerning protective measures affecting imports into the European Communities of dried grapes other than currents, informed the Sub-Committee that these measures had recently been extended for a further year to 31 August 1984, and would be notified shortly. With respect to the earlier notification of these measures as an Article XIX action in document L/5399, the representative of the European Communities stated that the only requests for consultations had been those of the United States and Australia, and he assumed that this was because other suppliers did not face any difficulties as a result of the measures. Should this not be the case, he expressed the hope that affected developing countries would avail themselves of the opportunity to consult in the context of the impending notification by the European Communities of the extension of the measures. The representative of Pakistan said that in his view it was necessary for the Sub-Committee to bear in mind that new protective measures could take the form of intensification of existing measures. He suggested that it might be appropriate for the Sub-Committee to have further discussion on what constituted a protective measure.

23. The representative of Chile, referring to the information concerning export restraints on apples contained in paragraph 9 of COM.TD/SCPM/W/17, stated that although this matter had been mentioned in the press, his authorities had not entered into a restraint agreement with the European Communities. The representative of the European Communities confirmed that the possibility of restraint had been under consideration, but the market situation was not as bad as had been expected and so no restrictions of this nature were introduced. The representative of Argentina said that although Chile had not entered into a restraint agreement, he would nevertheless prefer to see this item maintained in the secretariat's documentation.

24. The representative of Australia informed the Sub-Committee that certain statistical information contained in Table 5 of Annex I of COM.TD/SCPM/W/17, relating to the Australian Article XIX action on filament lamps referred to in paragraph 12 of the same document, was incorrect. In particular, he stated that the GSP column in Table 5 should read "10 per cent (Free)" because a GSP rate of 10 per cent was introduced this year in place of the previously free rate. In addition, the "total" trade column should read "15,000" and not "18,114" and the amounts shown against individual exporting countries in the final column should be correspondingly reduced. Details of the revised breakdown of supplier country exports would be made available to interested delegations on request.

25. The representative of India, commenting on these measures, enquired why the Australian authorities had not notified them to the Sub-Committee, in view of the fact that a number of developing countries were adversely affected by them. In reply the representative of Australia stated that he did not have any information on why the Sub-Committee had not been notified of the measures but observed that Australia generally had a good record in this regard. The representative of India expressed appreciation for the Australian reply and noted that it was qualitatively different from the kinds of replies given by some other developed countries. At the same time he referred to the commitments contained in Article XXXVII, including the notification provisions of Article XXXVII:2, and enquired whether some consideration might be given to ameliorating the particular difficulties of developing countries when measures of this nature are taken. The representative of Australia undertook to report these comments back to his authorities and explained that in the particular case of filament lamps, circumstances had made it necessary to take action under Article XIX pending the outcome of discussions relating to the new consolidated tariff schedules and the possibility of Article XXVIII renegotiations. Moreover, in accordance with Australian law, the temporary action would be subject to a review within twelve months by either the Industries Assistance Commission or the Temporary Assistance Authority.

Other developments of possible interest to the Sub-Committee

26. The Sub-Committee had before it in paragraphs 13-14 and Annex II of COM.TD/SCPM/W/17 certain information on anti-dumping and countervailing duty actions and on subsidies. The representative of Argentina referred to information contained in Annex II concerning an anti-dumping action taken by the European Communities against iron and steel coils from Argentina and informed the Sub-Committee that with effect from July 1983 the provisional anti-dumping duties introduced in March 1983 had become definitive. He stated that this matter was of considerable concern to Argentina and had been the subject of a submission by Argentina to the European Communities. The representative of Egypt informed the Sub-Committee that an anti-dumping procedure initiated by the European Communities in respect of non-alloyed unwrought aluminium originating in Egypt had been terminated following a finding of no dumping.

27. Many representatives of developing countries, including those of Pakistan, Argentina, Philippines, Korea, Romania and India, expressed concern at the growing frequency with which anti-dumping and countervailing duty actions were being resorted to by developed countries. Evidence of this was to be found in the length of the list in Annex II of COM.TD/SCPM/W/17, which cited no less than one hundred cases of anti-dumping and countervailing duty actions taken against developing country exports in the period from August 1982 to July 1983. The delegate of Mexico, speaking in an observer capacity, also shared this view and indicated, without prejudice to existing bilateral arrangements, that the large number of countervailing duty cases against Mexican exports was a cause of particular concern. Concern was also expressed about the adverse effects on trade of initiating anti-dumping and countervailing duty actions even if no duties were subsequently imposed. In this connection one representative from a developing country expressed the view that the

initiation of investigations was sometimes a prelude to extracting a price undertaking or a voluntary export restraint, and often in such cases inadequate attention was given to the circumstances in which the initiation of investigations was justified. Moreover many of the actions included in the list in Annex II were taken by countries whose domestic legislation was not in conformity with the provisions of the GATT Codes dealing with anti-dumping and countervailing duty actions. Some representatives of developing countries also stated that anti-dumping and countervailing duty actions were being taken with insufficient regard to the provisions of Part IV, and in particular Article XXXVII.

28. The representatives of the European Communities and the United States stated that in the view of their authorities anti-dumping and countervailing duty actions were a legitimate defence against unfair trading practices. The representative of the European Communities pointed out that the majority of complaints about dumping and subsidies did not reach the formal complaint stage, let alone the investigation stage. As a major exporter as well as importer, the Community was conscious of the potential trade disruption that could result from such actions and acted accordingly. The representative of the United States reiterated the view that the Sub-Committee was not the appropriate forum for discussing these matters, but stated that she had noted the concerns expressed by developing countries and would relay them to her authorities.

Developments in respect of measures examined at the Sub-Committee's earlier meetings

29. With regard to paragraph 16 of COM.TD/SCPM/W/17, which contains information on European Community arrangements affecting imports of sheepmeat and goatmeat, the representative of Chile noted that the existing restraint agreement expires in March 1984. He said that if further restrictions were necessary, this would provide a good opportunity for the European Communities to fulfil their commitments under Part IV and include the products in their GSP scheme. The representative of the European Communities stated that he was not in a position to comment on this issue.

30. The representative of India, referring to the information contained in paragraph 15 of COM.TD/SCPM/W/17 concerning Canadian measures affecting imports of footwear, expressed the view that this item would be more appropriately categorized as a new one in the secretariat documentation rather than as a previous one in respect of which there had been new developments. He stated that in his view the introduction of a price break in an Article XIX action constituted the introduction of a selective safeguard measure, in this case adversely affecting the interests of developing countries and also being alien to the letter and spirit of Article XIX. The representative of Canada stated that in his view the adjustment of the quotas to exempt high priced footwear did not constitute a new protective measure. The action was taken without any corresponding reductions in the established levels of quota and the restrictions were being applied on a most-favoured-nation basis. The representative of the European Communities shared the Canadian view that price breaks in the context of a safeguard action were consistent with the most-favoured-nation principle.

31. The representative of Bangladesh, referring to paragraph 20 of COM.TD/SCPM/W/17, which contains information on Greece's import restrictions on certain woven jute fabrics, expressed concern about their continuation. While he noted that the quota levels had been increased, he requested the withdrawal of these restrictions since jute was an important product for Bangladesh. The representative of the European Communities informed the Sub-Committee that the particular quotas were tied to self-restraint agreements affecting the other Member States of the European Communities which were linked to tariff concessions affecting jute. With the expiry of the agreements at the end of 1983, restrictions on imports into Greece would also be removed. While there would be no quantitative restrictions by the end of this year, the GSP rate for imports into Greece would not be zero in 1984 because of the continuing process of alignment of tariffs under Greece's accession treaty to the European Community.

Any Other Business

32. The representative of Peru, speaking on behalf of copper exporting countries (CIPEC) - Australia, Chile, Indonesia, Papua New Guinea, Peru, Yugoslavia, Zaire and Zambia - said that she would like to draw the attention of the Sub-Committee to several draft bills which had been introduced in both the House of Representatives and the Senate of the United States Congress concerning imports of copper or copper products. She enumerated those bills and said that they were in effect measures of protection against imports of copper or copper products into the United States and were, therefore, of great concern to copper producing and exporting countries. She pointed out that the mere fact that such bills were introduced year after year in the United States Congress was a matter of concern, since this created additional instability and insecurity in a world market which was already subject to great fluctuations and had registered extremely low prices in recent years.

33. The Peruvian representative recalled the political commitment that Contracting Parties made at the Ministerial Session last November

"to make determined efforts to ensure that trade policies and measures are consistent with GATT principles and rules and to resist protectionist pressures in the formulation and implementation of national trade policy and in proposing legislation". (para. 7(i))

She noted that this commitment required a determined reaction from the United States Administration on this matter and expressed the hope that, as in the past, the Government would actively oppose the adoption of such bills and discourage the introduction of similar or new proposals to the same effect.

34. The representative of the Philippines, thanking the representative of Peru for her statement, expressed his concern over the several draft bills introduced in the United States Congress concerning copper imports. He agreed that the mere introduction of such bills created uncertainty and instability. Referring to a previous session of the Sub-Committee when the United States delegation had informed the group that the draft bills included in a "reverse" notification were not enacted, he expressed his hope for a similar response today. The representative of Chile also expressed the hope that the United States Government would take firm action to discourage such initiatives.

35. Responding to the statements made by the representative of Peru on behalf of CIPEC and the representatives of the Philippines and Chile, the representative of the United States said that the various bills mentioned had not reached a stage in the U.S. legislative process where a formal position of the Administration would be necessary. She pointed out the possibility that some may never reach that stage. She noted that the U.S. Administration in the past had opposed enactment of such legislation and added that, based on a preliminary examination of these bills, it was likely the Administration would do the same regarding these measures, if that should prove necessary. She said that the Administration opposed in principle the enactment of protectionist measures and stood by the commitments embodied in the GATT Ministerial Declaration. She informed the Sub-Committee that, in the United States, the introduction of legislation was the prerogative of the legislative branch of the United States Government, the Congress. The Executive Branch, the Administration, had no control over that prerogative. She added that the bills that were introduced reflect the views of individual Members of the Congress. They did not reflect the views of the Administration or, necessarily, of a substantial number of Members of the Congress. The representative of Canada, noting that any measure which restricted international trade in copper products would be of concern to his Government, expressed his satisfaction with the United States response.

Next meeting of the Sub-Committee

36. The Sub-Committee agreed that the Chairman, in consultation with delegations and the secretariat, would fix the date for the next meeting of the Sub-Committee, taking into account the points made on frequency of the Sub-Committee's meetings at the March 1980 meeting of the Committee on Trade and Development.