The following communication, dated 16 July 1976, has been received from the mission of the United States.

At the meeting of the Committee on Anti-Dumping Practices on 29-31 March 1976, the delegation of Japan submitted a paper (COM.AD/W/54) which included comments on the conduct of anti-dumping investigations in the United States. The delegation of the United States reserved the right to respond to the paper. Following is the text of the United States response:

1. According to this provision of the 1974 Trade Act, the United States authorities will, if there are no or virtually no domestic sales in the exporting country, look at the prices of the merchandise of the same manufacturer in a third country, making adjustments for the differences in the two economies concerned. Article 2(d) of the Code does not address itself to the problem of the multinational corporation and it is the position of the United States that this very limited provision of its law, applying as it does only in cases where there is no viable home market in the exporting country, is consistent with the spirit of that Article of the Code. The provision in question has never been utilized by the United States authorities (COM.AD/37, paragraph 41, and COM.AD/34, paragraph 20).

2. The United States concedes that in this case several of the manufacturers concerned had no home market sales and sales of similar merchandise manufactured by other Japanese manufacturers were therefore used for price comparison purposes. This procedure was required by the United States law prior to January 1975, and was permitted under the Code. The Trade Act of 1974, however, changes this methodology and provides in this situation for price comparisons based on sales to third countries, or, if necessary, for comparisons based on constructed value (COM.AD/34, paragraph 33).
3. The United States provision on sales at less than the cost of production is not directed at end-of-year or close-out sales, but rather is concerned with the situation where home market sales are made at prices less than cost over an extended period of time and in substantial quantities and at prices not permitting recovery of production costs within a reasonable time in the normal course of trade. According to Article 2(d) of the Code, authorities may resort to prices to third countries or to constructed value when home market sales do not permit a proper comparison because of the particular market situation. The provisions of the Trade Act of 1974 apply to the situation of extended sales in the normal course of trade where the vendor(s) does not break even on sales in the home market and is consistent with both the letter and spirit of Article 2(d) (COM.AD/37, paragraph 42).

6. The United States anti-dumping regulations provide for allowances to home market, or third country, prices, where expenses are directly related to the sales being compared. Thus, where it can be shown that costs were incurred as a result of home market, or third country sales, those costs are allowable adjustments. No allowance, however, can be made for costs benefiting both home market and export sales to the United States, as for example, research and development.

9. While it might appear, in this case that injury had been more significant in some regions than in others, the United States' position is that, given the nature of the United States as a market, injury to a portion of the United States industry generally cannot be isolated from the injury incurred by the entire national industry. In the case involving expanded base metal from Japan, the then Tariff Commission considered that the industry in question consisted of all United States facilities producing expanded metal of base metal. Eight firms accounted for the bulk of total domestic output, and six of these firms sold their production in the Western market. Some firms located in areas outside this market were also found to have suffered injury, so that the determination in question must be viewed as correct, and totally consistent with Article 4(a) of the Code (COM.AD/34, paragraph 28).

10. The United States would note that the Motor Vehicle Manufacturers' Association had a somewhat unclear position in the automobile case inasmuch as it represented not only the major producers but also the major importers in the United States. For this reason, the International Trade Commission may have given greater weight to other evidence. In the view of the United States, Article 5(a) of the Code requires, prior to initiation, evidence of both dumping and injury resulting therefrom, but does not require that dumping or injury be proved as a certainty. In the automobile case there were allegations of margins amounting on the average to 20-30 per cent, with the ratio of imports to total sales having increased from 15 to 21 per cent during the last six-month period.
These two facts created a presumption of causality (COM.AD/37, paragraph 34). The information produced in the two anti-dumping petitions, filed by the United Auto Workers and by Congressman John Dent, further showed a decline in profits of the United States motor vehicle industry, a decline in capacity utilization over the last four-year period, and significant unemployment among automobile workers (COM.AD/37, paragraph 28).

11. The preliminary injury investigation provided for by the Trade Act of 1974 does not provide for a "determination" of injury, but rather for a decision on the part of the International Trade Commission of the threshold question whether there is sufficient evidence to warrant a full-scale investigation, in those instances where the Secretary of the Treasury determines that "substantial doubt" of injury exists (COM.AD/37, paragraph 40). Although it is not possible for the Commission to conduct a full-scale injury investigation during the thirty-day period provided for by the Act, this procedure does create an additional safeguard for exporters. Article 5(a) requires merely that evidence of injury be present prior to initiation of an investigation. Article 5(a) does not require a "determination" of injury at the initiation stage (COM.AD/37, paragraph 34). Since therefore the question of the sufficiency of evidence of injury can be examined twice under the United States legislation, the American procedures provide greater safeguards than do those of most other countries, where evidence of injury is examined only one time (COM.AD/37, paragraph 40).

13. The acceptance of price assurances is generally limited to those cases in which dumping margins are minimal in terms of the volume of trade involved. Further, the 25 June Regulations provide for a new procedure, that is, the discontinuance of an investigation on a firm-by-firm basis where margins are minimal in relation to the volume of exports of the merchandise in question by the foreign manufacturer, producer, or exporter, price revisions have been made which eliminate any likelihood of present sales at less than fair value, and price assurances have been received which eliminate any likelihood of sales at less than fair value in the future. It is the position of the United States that its policy with respect to the acceptance of price assurances is and has been wholly consistent with both the letter and spirit of Article 7(a) of the Code, which Article clearly leaves the acceptance of voluntary undertakings to the discretion of the authorities of the member countries (COM.AD/34, paragraph 52).

14. The United States Anti-Dumping Regulations provide for the revocation of findings of dumping normally after there has been a two-year period of no sales at less than fair value. In certain instances this two-year period is computed from the date of the withholding of appraisement rather than the dumping finding, so that the length of time necessary is considerably shorter. This does not mean however that anti-dumping duties will be collected during the period after the dumping finding. Anti-dumping duties are collected on an entry-by-entry basis,
and the Customs Service does an extensive entry-by-entry analysis to determine whether any dumping margins exist. If no sales at less than fair value occur, then no duties are assessed. These procedures are fully in compliance with the Code, and specifically with Article 9(a). Further, the United States is evolving a revocation procedure based on changes in circumstances affecting the injury determination of the International Trade Commission (COM.AD/37, paragraphs 43, 47).

16. The United States concedes that in this case the Code has been technically violated in that the withholding of appraisement lasted longer than the six-month period. This was due to a technical error, that is, that it was discovered late in the investigation that several categories of the class of merchandise had not been thoroughly investigated. Thus it became necessary to narrow the scope of the inquiry, so as to exclude those categories. The United States does not, however, consider this a serious violation of the Code, but rather a technical one (COM.AD/34, paragraph 35).

17. The United States is aware that certain technical distinctions have been made between the text of United States law and the text of the Code. The United States would note that the provision of United States law alleged to be inconsistent with Article 11 of the Code has never been applied. The United States believes therefore that there can be no question in respect of conformity with the Code (COM.AD/37, paragraph 39).