I. Description of the non-tariff barrier

The "Buy-American" Act of 1933 provides that domestic products shall be purchased for public use, unless the costs thereof are unreasonable or the procurement of domestic products is inconsistent with the public interest. It may be added that the Act does not apply to the procurement for use abroad.

Under the Act and relevant legislations and regulations, a foreign bid (including import duty and transportation costs) can be accepted only if 6 per cent below the lowest domestic bid. The margin of preference is increased from 6 per cent to 12 per cent in cases where the domestic bidder undertakes to produce substantially all of the procurement in a labour surplus area. In addition, heads of United States Government agencies may set aside procurements exclusively for small business and may reject any offers of imported materials for reasons of security or national interest.

In July 1962, the Department of Defense (by far the most important procurement agency in the United States Government) issued directives for balance-of-payments reasons providing to the effect that the margin of preference be increased to 50 per cent with respect to procurements under its jurisdiction both for use within the United States and for use abroad. Regarding procurements for domestic use, a 50 per cent preference has been accorded to domestic goods. As to procurements for use abroad the same margin is applied as a "benchmark" for the evaluation of bids. In some cases, however, higher preferences have been given to domestic firms.

Moreover, the 50 per cent preference has subsequently been accepted in principle by all other United States Government agencies for procurement abroad.
The United States Congress recently enacted the Urban Mass Transportation Act, which includes a "Buy American" clause providing to the effect that only such manufactured articles as have been manufactured in the United States shall be used in the work for which public loan or grant is made under the Act.

As to the "Buy American" policy of various States in the Union, more than ten States have legislation giving preferences to domestic products. There are, reportedly, several other States in which Buy American policy is adopted in practice on either State or municipal government level.

II. Reasons for raising the problem in the Sub-Committee

It would not be necessary to reiterate that such preference adversely affects the regular international trade. It would be difficult to conciliate the "Buy American" policy with the basic principles of the Kennedy Round negotiations which the United States is so actively promoting.

It is viewed with serious anxiety that the tendency is not for the amelioration or abolition of the policy, but for its reinforcement under the pretext of the necessity arising out of the United States balance-of-payments difficulties, which, it is believed, should and could be solved by other means than interfering with the normal flow of trade.

The adverse effect of the "Buy American" policy is particularly serious in the field of heavy electric equipment which is one of the most important export items of Japan. The most salient examples are as follows.

In January 1963, a Japanese firm made the lowest bid with respect to water turbines to be used at Green Peter Power Station, Oregon. However, the contract was awarded to an American firm. The margin of preference was approximately 35 per cent. The loss of contract to the Japanese firm amounted to $830,000.

In May the same year, again the Japanese lowest offer was rejected and an American firm which made the fourth lowest bid secured the contract. The margin of preference and loss to Japan were approximately 11 per cent and $1,840,000 respectively.

It should be noted that many Japanese firms gave up to join the tender because of the lack of confidence in the successful bidding.

III. Objectives of the negotiation

In view of the preponderant importance of the United States position in the development of international trade, the United States is urged, as a first step towards the final elimination of the preferential treatment for domestic products purchased by public authorities, to abandon such an unwarranted preference as the 50 per cent differential.