Reproduced herewith are replies received from the delegation of the EEC to questions put by Japan in document ADP/W/164 on the EEC Commission Notice concerning the reimbursement of anti-dumping duties.

Ad. 1. The Notice of the Commission of the European Communities published on 22 October 1986 does not differ from past practice. It was intended to specify that practice, as well as the guidelines laid down by the existing anti-dumping regulations.

With regard to the number of cases of reimbursement, this depends on the number of applications submitted and their merits. As decisions on the reimbursement of anti-dumping duties are individual decisions, which do not need to be published in order to be applicable, most of them are never published.

Ad. 2.1 Article 8:3 of the GATT Anti-Dumping Code provides for the and reimbursement of anti-dumping duties when the duty collected exceeds the actual dumping margin, which occurs when the dumping margin initially found to exist decreases or disappears. This depends on changes in the normal value and/or export price.

For the calculation of the export price to associated importers, which is the subject of the questions raised, Article 2 of the GATT Anti-Dumping Code, to which Article 8:3 of the Code refers, provides that the export price may be constructed on the basis of the price at which the imported products were first resold to an independent buyer (Article 2:5) and that, in such cases, allowance for costs, including duties and taxes, incurred between importation and resale, may also be made (Article 6:2).

The anti-dumping duty is unquestionably a "duty" within the meaning of the GATT Anti-Dumping Code and therefore constitutes a "cost".

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Consequently, point 11.2(c) of the above-mentioned Notice, which provides that

"where an export price is constructed pursuant to Article 2(8)(b) of Regulation (EEC) No. 2176/84 [which is itself an application of the rules laid down by Article 2 of the GATT Anti-Dumping Code], any payment of anti-dumping duties for the release for free circulation of the product concerned in the Community will be regarded as a cost incurred between importation and resale",

is entirely consistent with the provisions of the Code.

Contrary to the opinion that can be seen to underlie the questions raised, this does not necessarily lead to the result that no reimbursement will be made when the resale price has been increased by an amount equivalent to only once the amount of the duty. The granting of a reimbursement depends exclusively on the question whether the applicant has been able to prove the actual disappearance of the dumping margin. Reimbursement may be granted where, taking account of all the circumstances of each specific case, such proof shall have been submitted by an associated importer which has increased its resale price only once.