

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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Committee on Anti-Dumping Practices

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REPLIES BY AUSTRALIA TO QUESTIONS RAISED
BY THE DELEGATION OF JAPAN¹ CONCERNING
THE LEGISLATION OF AUSTRALIA

(ADP/1/Add.18/Rev.1/Suppl.6)

The following communication, dated 22 April 1994, has been received from the Permanent Mission of Australia.

Question

CROSS CUMULATION

The Australian Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992 allows for the application of anti-dumping or countervailing duties without requiring the Anti-Dumping Authority to quantify how much of the injury is attributable to dumping or subsidization. This provision of "cross cumulation" would possibly lead to the imposition of anti-dumping duties without actual injury findings, supposing that the injury was caused only by subsidized imports in the case where unsubsidized dumped imports and subsidized imports (without dumping) were involved and the injury was assessed cumulatively.

- How can Australia justify the application of "cross cumulation" under the Anti-Dumping Code?

Answer

The basis for the question is unclear but it is assumed that it is in respect of Section 269TJA inserted in the Australian Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992.

Japan has claimed that the provision provides for "cross cumulation". As Australia understands the expression ("cumulation across the Codes"), it refers to the situation where undumped subsidized imports from one source and dumped unsubsidized imports from another source are considered together for the purpose of injury determination under one or both of the Anti-Dumping and Subsidies Codes.

¹ADP/W/358

Section 269TJA refers to a quite different situation. It was added to the legislation for domestic legal reasons to allow for the situation where imports from the one source are both dumped and subsidized. Nothing in the two Codes can be construed to prevent goods that are both dumped and subsidized from being subject to both an anti-dumping investigation as well as a countervailing investigation concurrently. Nothing in the two Codes can be construed to prevent goods from being subject to both anti-dumping and countervailing measures concurrently. For there to be an affirmative determination of injury under Section 269TJA the goods in question must be both dumped and subsidized and be causing injury in the sense of both Codes. This is fully consistent with Australia's obligations under both Codes.