



Guidance for Preparing Grounds of Review

Application form requirements

- Question 9 requires the applicant to set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision (s 269ZZE(2)(b) and s 269ZZQ(1A)(a) of the *Customs Act 1901* (the Act)).
- Question 10 requires the applicant to identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in question 9 (s 269ZZE(2)(c) and s 269ZZQ(1A)(b) of the Act).
- Question 11 requires the applicant to set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision (s 269ZZE(2)(d) and s 269ZZQ(1A)(c) of the Act).
- Question 12 requires the applicant to set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision (excluding decisions of the Commissioner referred to in ss 269ZZN (a), (b), (d) and (e)) (s 269ZZE(2)(e) and s 269ZZQ(1A)(d) of the Act).

In responding to Question 9, each ground should be articulated as a short, clear statement. Reasons to support each ground should be included in response to Question 11.

Requests for further information

If the Anti-Dumping Review Panel (Review Panel) is not satisfied that an application sets out reasonable grounds or otherwise satisfies the requirements of questions 9-12 (where applicable), the Review Panel may, by notice given to the applicant, request the applicant to give the Review Panel, within the period specified in the notice, further information in relation to those matters pursuant to s 269ZZG(1) or s 269ZZQA(1).

The Review Panel may also hold a conference after receiving an application for a review and before beginning to conduct the review, for the purpose of obtaining further information in relation to the application (including the grounds) pursuant to ss 269ZZHA(1) and (3), or ss 269ZZRA(1) and (3).

Rejection of grounds of review

A failure to adequately and accurately respond to questions 9-12 may result in the ground/s of review being rejected pursuant to s 269ZZG(5) or 269ZZQA(5), or the full application being rejected pursuant to s 269ZZG(2) or s 269ZZQA(2) of the Act.

If the Review Panel is satisfied that one or more of the grounds put forward in an application are not reasonable grounds for the reviewable decision not being the correct or preferable decision, then the Review Panel must reject these grounds pursuant to s 269ZZG(5) or 269ZZQA(5) of the Act.



Examples of accepted and rejected grounds of review

Accepted grounds

Note: each ground should be accompanied by supporting reasons provided in response to Question 11.

1. Error by not making necessary adjustments to normal values in accordance with s 269TAC(8) of the Act.
2. Failure to adequately consider whether injury was caused by factors other than dumping, contrary to s 269TAE(2A).
3. Incorrect and unreasonable determination of material injury, by lack of objective examination of the Australian industry's economic condition.
4. Error in failure to adjust normal value to account for the cost of inland freight so as to ensure a fair comparison between export price and normal value.
5. The determination of the dumping margin for the exporter based on an export price assessment using the order date as the date of sale, was not the correct or preferable decision.

Rejected grounds

1. The Commission did not comply with its obligations under s 269ZJ of the Act to maintain a public record.
 - Ground rejected because the allegations made in this ground, even if correct, do not provide a ground for concluding that the decision was not the correct or preferable decision.
2. Error in that the 'combination method' was unsuitable and the appropriate form of the duty to be applied should have been the 'ad valorem method'.
 - Ground rejected because a decision of the Minister in regard to the form of duties is made pursuant to s 8(5) of the Customs Tariff (Anti-Dumping) Act 1975 (the Dumping Duty Act) and is not a reviewable decision pursuant to s 269ZZA(1) of the Act.
3. The ADC ought to have considered whether the imposition of anti-dumping measures on the goods would further inflate domestic Australian prices for the goods and whether that is in the national interest.
 - Ground rejected because the Review Panel has no power to review whether the imposition of dumping measures are in the national interest as it is not a reviewable decision pursuant to s 269ZZA(1) of the Act.
4. By refusing to undertake a verification visit to the importer, despite invitations/requests, the ADC did not afford the importer natural justice or procedural fairness in its recommendations to the Minister regarding the reviewable decision.



- Ground rejected because the Review Panel has no power to review whether the ADC accorded procedural fairness (or natural justice), in its own terms, as this is not a reviewable decision pursuant to s 269ZZA(1).

6. Error in the Minister not having regard to the lesser duty rule.

- Ground rejected because the requirement to have regard to the desirability of a lesser duty and the exceptions thereto are decisions by the Minister under the Dumping Duty Act and are not reviewable decisions under s 269ZZA of the Act.

International Trade Remedies Advisory (ITRA) Service

Small and medium enterprises (i.e., those with less than 200 full-time staff, which are independently operated and not a related body corporate for the purposes of the *Corporations Act 2001*), may obtain assistance, at no charge, from the ITRA Service. For more information on the ITRA Service, visit www.business.gov.au or telephone the ITRA Service Hotline on +61 2 6213 7267.

Contact

If you have any questions about what is required in an application, please refer to the Review Panel website. You can also call the Review Panel Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.