1 ANNEX II

1.1 Text of Annex II

ANNEX II

BEST INFORMATION AVAILABLE IN TERMS OF PARAGRAPH 8 OF ARTICLE 6

1. As soon as possible after the initiation of the investigation, the investigating authorities should specify in detail the information required from any interested party, and the manner in which that information should be structured by the interested party in its response. The authorities should also ensure that the party is aware that if information is not supplied within a reasonable time, the authorities will be free to make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the domestic industry.

2. The authorities may also request that an interested party provide its response in a particular medium (e.g. computer tape) or computer language. Where such a request is made, the authorities should consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and should not request the party to use for its response a computer system other than that used by the party. The authority should not maintain a request for a computerized response if the interested party does not maintain computerized accounts and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble. The authorities should not maintain a request for a response in a particular medium or computer language if the interested party does not maintain its computerized accounts in such medium or computer language and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble.

3. All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties, which is supplied in a timely fashion, and, where applicable, which is supplied in a medium or computer language requested by the authorities, should be taken into account when determinations are made. If a party does not respond in the preferred medium or computer language but the authorities find that the circumstances set out in paragraph 2 have been satisfied, the failure to respond in the preferred medium or computer language should not be considered to significantly impede the investigation.

4. Where the authorities do not have the ability to process information if provided in a particular medium (e.g. computer tape), the information should be supplied in the form of written material or any other form acceptable to the authorities.

5. Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability.
6. If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons therefor, and should have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the authorities as not being satisfactory, the reasons for the rejection of such evidence or information should be given in any published determinations.

7. If the authorities have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, they should do so with special circumspection. In such cases, the authorities should, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate.

1.2 "best information available"

1. With respect to Annex II and recourse to "best information available" pursuant to Article 6.8, see the Section on Article 6 of the Anti-Dumping Agreement.

1.2.1 "reasonable period, due account being taken of the time-limits of the investigation"

2. In Egypt – Steel Rebar, the Panel considered that the text of paragraph 6 of Annex II "makes clear that the obligation for an investigating authority to provide a reasonable period for the provision of further explanations is not open-ended or absolute. Rather, this obligation exists within the overall time constraints of the investigation." The Panel concluded that "in determining a "reasonable period" an investigating authority must balance the need to provide an adequate period for the provision of the explanations referred to against the time constraints applicable to the various phases of the investigation and to the investigation as a whole." 1

3. In Egypt – Steel Rebar, the Panel considered that the issue of whether the two-to-five day deadline fixed by the investigating authority was unreasonable "must be judged on the basis of the overall factual situation that existed at the time". In this case, the Panel considered whether the information requested was new information, whether any of the other respondents received a longer period in which to respond and what was the attitude of the respondents concerned, and concluded that the deadline in question was not unreasonable. 2

1.3 Relationship with Article 6

1.3.1 Relationship with Article 6.1

4. In Egypt – Steel Rebar, Turkey had claimed a violation of paragraph 1 of Annex II outside the context of Article 6.8. The Panel decided not to rule on whether paragraph 1 could be invoked separately from Article 6.8. 3

1.3.2 Relationship with Article 6.2

5. In Egypt – Steel Rebar, Turkey had made a number of claims of violation of both paragraph 6 of Annex II and Article 6.2. The Panel, which did not take a position on whether paragraph 6 of Annex II can be invoked separately from Article 6.8, considered as follows.

"As for the claim of violation of the requirement in Annex II, paragraph 6 to provide a 'reasonable period', we recall that this provision forms part of the required procedural

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1 Panel Report, Egypt – Steel Rebar, para. 7.282.
and substantive basis for a decision as to whether resort to facts available pursuant to Article 6.8. We further recall that we have found, supra, that the investigating authority’s decision to resort to facts available ... did not violate Article 6.8, based on considerations under Annex II, paragraphs 3 and 5. Thus, we would not necessarily need to address this aspect of this claim for its own sake. Nonetheless, a full analysis of Annex II, paragraph 6 as it pertains to the factual basis of this claim, appears necessary to evaluate the merits of the claimed violation of Article 6.2 resulting from the deadline for responses to the 23 September requests. In performing this analysis, however, we note that we again do not here take a position on whether Annex II, paragraph 6 can be invoked separately from Article 6.8. We would need to do so only if we find that as a factual matter, the deadline in question was unreasonable.”