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2. The Appellate Body in *US – Countervailing Duty Investigation on DRAMs* considered that, beyond SCM Agreement Article 12, which specifies in paragraph 2 that a decision of the investigating authority as to the existence of a subsidy "can only be based on" evidence on the

4. In light of such clarification from the Appellate Body, the Panel in Japan – DRAMs (Korea) stated:

"[W]e shall not be requiring the JIA's finding of entrustment or direction to have been based on a 'probative and compelling' standard of evidence. Rather, we shall consider whether or not the JIA's evidence could support its conclusion."⁶

5. At issue in US – Carbon Steel (India) (Article 21.5 - India) was a Section 129 Determination made by the USDOC following DSB findings in the original dispute settlement proceedings. One of India's arguments was that the USDOC had erred by not taking into account the CVD rates agreed to during domestic judicial review proceedings before the USCIT. In this regard, the Panel disagreed with India's argument that the USDOC's failure to take such previously agreed rates into account in its calculations in the Section 129 Determination created a conflict between domestic judicial review provided for under Article 23 of the SCM Agreement and the WTO dispute settlement proceedings referred to under its Article 30. The Panel stated:

"India's argument is that condoning the USDOC's approach would prevent Members from initiating WTO dispute settlement proceedings in parallel with legal actions taken by companies in domestic judicial proceedings. First, the newly determined rates do not impact the imports already liquidated based on the settled rates. In this regard,

"Although the text of Article 17.6(i) is couched in terms of an obligation upon WTO panels, we consider that 'the provision, at the same time, in effect defines when investigating authorities can be considered to have acted inconsistently with the Anti-Dumping Agreement in the course of their 'establishment' and 'evaluation' of the relevant facts'. Only if an investigating authority's 'establishment of the facts'and0.006 Tc 07 (ou)-tP9

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