

**Dispute Settlement Body Meeting
27 January 2023**

Hong Kong, China's Statement

Item 2. Colombia – Anti-dumping Duties on Frozen Fries from Belgium and the Netherlands (DS591)

- Thank you, Chair.
- Hong Kong, China applauds the efforts of Colombia and the European Union for resolving their trade dispute under the MPIA, which is a useful stopgap whilst the Appellate Body remains unable to function.
- The speed and quality of the appeal arbitration award, issued within the 90-day limit, clearly demonstrates the usefulness of the MPIA for safeguarding WTO Members' right to a binding, independent and two-tiered adjudication in resolving trade disputes, amidst the continued absence of a functioning Appellate Body.
- Participation in the MPIA arrangement is open to all WTO Members whilst the Appellate Body remains non-operational. As a participant of the MPIA, Hong Kong, China encourages more WTO Members to sign up for the Arrangement. It serves as a viable alternative for avoiding situations where the dispute settlement system could be undermined by "appeals into the void", and thus provides an important backstop for the rules-based multilateral trading system.
- Having said that, we consider it highly important to accord utmost priority to restoring a fully functioning, binding and two-tiered WTO dispute settlement system, so that Members' rights and obligations undertaken in the WTO Agreement could be effectively enforced. This is of paramount importance for maintaining the stability and predictability of the multilateral trading system. As always, Hong Kong, China will remain actively engaged in any constructive discussion that would help resolve the impasse of the Appellate Body and make the dispute settlement system fully functional again.
- Thank you very much, Chair.

Item 6. Statement by China regarding the Panel Report in the Dispute “United States – Certain Measures on Steel and Aluminium Products” (DS544)

(Report of the Panel (WT/DS544/R and WT/DS544/R/ADD.1 and WT/DS544/R/SUPP.1))

- Thank you, Chair. What I am going to say covers both this agenda item requested by China and the following agenda item requested by Türkiye.
- Hong Kong, China welcomes the rulings made by the Panels in the four dispute cases (DS544, DS552, DS556 and DS564) initiated by China, Norway, Switzerland and Türkiye respectively against the United States’ global imposition of Section 232 tariffs on steel and aluminium imports, in which Hong Kong, China participated as a third party.
- All four Panels have concluded that the United States’ measures are inconsistent with WTO rules, against the spirit of the GATT 1994, and are not conducive to promoting international trade. All four Panels also recommend that the United States bring its WTO-inconsistent measures into conformity with its obligations under the GATT 1994.
- Hong Kong, China notes that the United States has lodged appeals against all four panel reports. While we respect a Member’s right to appeal, the United States’ move to lodge appeals while continuing its blockage of the Appellate Body appointments is tantamount to refusing to adopt and implement the Panels’ recommendations. This demonstrates yet again the grave consequences of the United States’ blocking of appointments to the Appellate Body.
- Hong Kong, China reiterates our call to resolve the Appellate Body impasse as soon as possible, so that Members can have a fully and well-functioning, binding and two-tiered dispute settlement system for resolving disputes and enforcing the obligations pursuant to the WTO agreements. This is of utmost importance to safeguarding the rights and obligations of WTO Members, and maintaining the stability and predictability of the rules-based multilateral trading system.
- Thank you very much, Chair.

Item 12. Statement by Hong Kong, China regarding the Panel Report in the Dispute “United States – Origin Marking Requirement” (DS597)
(Report of the Panel (WT/DS597/R and WT/DS597/R/ADD.1))

(First intervention)

- Thank you, Chair.
- Hong Kong, China would like to thank the panellists for their professionalism in the close examination and objective assessment of the dispute case *United States – Origin Marking Requirement* (DS597) in accordance with the WTO Dispute Settlement Understanding. Hong Kong, China appreciates the tireless efforts put in by the panellists as demonstrated by the detailed analysis and rulings set out in the Panel Report, which was circulated to the wider membership on 21 December 2022. We would also like to show our appreciation for the valuable contributions made by the third parties¹ in this dispute, as well as the dedicated support of the WTO Secretariat throughout the panel process.
- Hong Kong, China welcomes the findings in the Panel Report which categorically refute the erroneous views of the United States, and clearly conclude that the origin marking requirement arbitrarily imposed on Hong Kong products by the United States is inconsistent with the WTO rules. More specifically, the United States has violated the most-favoured-nation treatment obligation, which is a bedrock principle of the WTO and a cornerstone of the multilateral trading system. The Panel found that the United States’ requirement accords less favourable treatment to products of Hong Kong, China; it also concluded that the United States has not demonstrated that such measure is justified on the ground of security exceptions under Article XXI(b) of the GATT 1994.
- The Panel has rightfully reached its conclusions after a meticulous assessment of the arguments presented in this dispute. The discriminatory requirement has not only modified the conditions of competition to the detriment of products of Hong Kong, China, but also confused consumers in the United States. The “Made in Hong Kong” label is well received and respected by our trading partners globally, and it signifies Hong Kong, China’s unique status as a separate customs territory under the principle of “one country, two systems” and a separate WTO Member in its own right.

¹ Third parties include Brazil, Canada, China, the EU, India, Japan, Korea, Norway, Russia, Singapore, Switzerland, Türkiye and Ukraine.

- The Panel has also scrupulously examined the United States' claims on the "self-judging" nature of the security exceptions clauses under Article XXI of the GATT 1994. The Panel has clearly pointed out that while the multilateral trading system allows for sufficient flexibility for Members to adopt measures they consider necessary for the protection of their security interests, it at the same time also ensures that this flexibility is exercised within the limits intended by its drafters².
- Hong Kong, China strongly regrets the statement issued by the United States that the Panel Report contained flawed interpretations and conclusions, especially in relation to the interpretation of Article XXI of the GATT 1994. As similarly demonstrated by the conclusions reached by the other Panels' rulings in *United States – Certain Measures on Steel and Aluminium Products* cases (DS544, DS552, DS556 and DS564) which dealt with the United States' imposition of global tariffs on steel and aluminium imports, we believe it is clear to any discerning eye that the United States has been abusing the concept of essential security interests with its erroneous interpretation of Article XXI of the GATT 1994 as entirely self-judging. The four panel reports in these cases as well as two earlier panel reports in *Russia – Measures Concerning Traffic in Transit* (DS512) and *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights* (DS567) have all consistently refuted the United States' assertion and interpretation of the security exceptions under the relevant WTO covered agreements, and reinforced that there is a limit to measures imposed by Members even on the ground of security, such that the predictability of the multilateral trading system can be preserved.
- It is most regrettable to note that despite the Panel's findings, the United States maintains its erroneous position in not removing the origin marking requirement, which is not conducive to resolution of the dispute. Hong Kong, China also regrets that the United States has decided to appeal against the Panel's findings, albeit the Panel Report has reached an unequivocal and fair conclusion that the measure imposed by the United States is inconsistent with the fundamental most-favoured-nation principle of the WTO.
- While Hong Kong, China recognises and respects WTO Members' right to appeal in accordance with the Dispute Settlement Understanding, this

² See 7.148 of the Panel Report.

is premised on having in place a fully functioning dispute settlement system, as well as the collective good faith and efforts of all WTO Members to make the system work, or at least not to disrupt it.

- The United States, on one hand, is creating an impasse in the appointment to the Appellate Body notwithstanding the repeated calls by the vast majority of WTO Members, while on the other hand, is taking advantage of the impasse to evade its responsibilities as a WTO Member to bring its measure into conformity with its obligations under the WTO covered agreements. By blocking appointments and holding the system hostage, the United States is single-handedly derailing the proper functioning of the WTO dispute settlement system, and in the present case, deliberately delays the implementation of the Panel's clear and sound recommendations. Hong Kong, China finds this situation deeply disturbing as this would ultimately undermine the multilateral trading system with the WTO at its core.
- We would reiterate Hong Kong, China's staunch support for the rules-based multilateral trading system, and we strongly believe that WTO Members should play by the rules and take the rights and obligations under the WTO covered agreements seriously. In this connection, we take the opportunity to call on the United States to take a constructive stance towards the dispute settlement system reform.
- To conclude, Hong Kong, China urges the United States to withdraw immediately its unilateral measure that is inconsistent with the WTO rules. We emphasise once again the importance for all WTO Members to constructively participate in the discussions on dispute settlement system reform, with a view to restoring without delay a fully-functioning, binding and two-tiered dispute settlement system accessible to all Members.
- Thank you very much, Chair.

(Second intervention)

- I would like to thank other Members for their interventions. As to the United States' presentation of various events happened in Hong Kong, I have to point out that they are biased and untrue presentations of the domestic situations in Hong Kong. As many Members have indicated on various occasions, the WTO is not the right forum for discussions of political issues or domestic affairs of individual Members. To borrow the

words of our United States colleague, bringing such matters into the WTO “is not only incompatible with the purpose of the WTO, a trade organisation, but will not advance WTO Members’ shared interests in the WTO as a forum for discussion and negotiation”.

- I would also like to point out that the United States has presented similar points to the Panel during the panel process, and the Panel, after careful consideration of their presentations and reference to the relevant provisions in the WTO covered agreements, has concluded that they do not provide justifications to the discriminatory measure adopted by the United States.
- Since the United States has made biased and untrue presentations about the National Security Law in Hong Kong, I believe I should set the record straight. Members may remember the social unrest and violent disruptions in Hong Kong in 2019. In view of the increasingly pronounced national security risks faced by the Hong Kong Special Administrative Region, the enactment of a national security law is both necessary and urgent in order to plug the loophole in national security in Hong Kong. The enactment of the National Security Law is an important step to improve the “one country, two systems” regime as well as to restore stability in Hong Kong society as soon as possible.

(Third intervention)

- I said earlier that “bringing political issues into the WTO is not only incompatible with the purpose of the WTO, a trade organisation, but will not advance WTO Members’ shared interests in the WTO as a forum for discussion and negotiation.”
- It was not Hong Kong, China who brought national security issues into the WTO or the dispute settlement process, it was the United States who tried to justify its discriminatory measure by claiming essential security exceptions, but the Panel has already concluded that the United States has not demonstrated that such measure can be justified on the ground of security exceptions.

Item 13. Appellate Body Appointments: Proposal by Afghanistan; Angola; Antigua and Barbuda; Argentina; Australia; Bangladesh; Benin; Plurinational State of Bolivia; Botswana; Brazil; Burkina Faso; Burundi; Cabo Verde; Cambodia; Cameroon; Canada; Central African Republic; Chad; Chile; China; Colombia; Congo; Costa Rica; Côte D’Ivoire; Cuba; Democratic Republic of Congo; Djibouti; Dominica; Dominican Republic; Ecuador; Egypt; El Salvador; Eswatini; The European Union; Gabon; The Gambia; Ghana; Guatemala; Guinea; Guinea-Bissau; Honduras; Hong Kong, China; Iceland; India; Indonesia; Israel; Kazakhstan; Kenya; Republic of Korea; Lesotho; Liechtenstein; Madagascar; Malawi; Malaysia; Maldives; Mali; Mauritania; Mauritius; Mexico; Republic of Moldova; Morocco; Mozambique; Namibia; Nepal; New Zealand; Nicaragua; Niger; Nigeria; North Macedonia; Norway; Pakistan; Panama; Paraguay; Peru; The Philippines; Qatar; Russian Federation; Rwanda; Saint Kitts and Nevis; Saint Lucia; Senegal; Seychelles; Sierra Leone; Singapore; South Africa; Switzerland; The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Tanzania; Thailand; Togo; Tunisia; Türkiye; Uganda; Ukraine; United Kingdom; Uruguay; The Bolivarian Republic of Venezuela; Viet Nam; Zambia and Zimbabwe (WT/DSB/W/609/REV.23)

- Thank you, Chair.
- We would like to first thank Guatemala for coordinating this proposal for today’s meeting.
- Chair, we have already spoken at length under previous items at today’s meeting the highly unsatisfactory situation of the Appellate Body impasse, which greatly undermines the security and predictability of the multilateral trading system that has the WTO at its core.
- It remains our firm belief that restoration of a fully-functioning, binding and two-tiered DS system shall remain the top priority of the WTO in the coming months, with a view to meeting the timeframe of 2024 to complete the reform as set out in the MC12 Outcome Document.
- Thank you very much, Chair.
