Dispute Settlement Body Meeting
28 April 2023

Hong Kong, China's Statement

Item 4. United States - Origin Marking Requirement (Hong Kong, China) (DS597)

A. Statement by the United States

Hong Kong, China's 1st Intervention

Procedural matters

- Members would note that this is the third time that the panel case DS597 is discussed at the DSB, since circulation of the panel report on 21 December 2022 and the US' notification to the DSB on 26 January 2023 of its decision to appeal to the Appellate Body (AB) on certain issues of law and legal interpretations in the panel report.

- First, on a point of procedure, Rule 27 of the Rules and Procedures for the General Council, which are applicable to DSB meetings, sets out that "[r]epresentatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record".

- Further, from a systemic point of view, Hong Kong, China harbours serious doubts about whether it serves the interests of the dispute settlement system, for a party to a dispute to keep coming back to DSB meetings to seek to repeat its arguments in a DS case that have already been duly heard and ruled on by a panel, especially when this Member has also lodged an appeal under the DSU against the panel ruling.

- The fact that the US has blocked appointment to the Appellate Body thereby incapacitating the AB from considering its appeal is not intended by any Member except the US. There is no duty on the part of the DSB and I cannot see how it would help resolve the dispute, for the US to present its one-sided arguments time and again at DSB meetings, when those should be heard by adjudicators in accordance with the relevant rules and procedures in the Dispute Settlement Understanding (DSU).

Hong Kong's law enforcement actions and judicial system

- As Hong Kong, China has pointed out several times before, the DSB is not the right forum for discussions of internal affairs of any individual Member and we continue to hold this view. Our refusal to be engaged in political discussions on our internal affairs at DSB meetings, however, must not be construed as our agreement with the US' wrongful allegations. Our refusal stems from our respect for the DSU and the DSB functions, and our firm belief that the DSB should not be used by anyone to seek to achieve ulterior, political motives not related to nor conducive to resolving trade disputes.

- But to our disappointment, the US has presented yet again today its biased and untrue descriptions of the current state of affairs in Hong Kong, so I am afraid I have to set out the facts for the record.

- Hong Kong, China strongly objects to the groundless and out-of-context statements about the situations in Hong Kong just made by the US. We reiterate that Hong Kong is a society underpinned by the rule of law and has always adhered to the principle that laws must be obeyed and lawbreakers be held accountable.

- The HKSAR Government safeguards independent judicial power and fully supports the Judiciary in exercising its judicial power independently, safeguarding the due administration of justice and the rule of law. All judges and judicial officers are appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors. All judges and judicial officers so appointed will continue to abide by the Judicial Oath and administer justice in full accordance with the law, without fear or favour, self-interest or deceit. Establishing the mechanism for safeguarding national security in the HKSAR will not undermine the independent judicial power. Our judicial system continues to be protected by the Basic Law. When adjudicating cases concerning offence endangering national security, as in any other cases, judges remain independent and impartial in performing their judicial duties, free from any interference.

- In view of the increasingly pronounced national security risks faced by the HKSAR, the enactment of the National Security Law in 2020 was both necessary and urgent in order to plug the loophole in national security in Hong Kong, and to restore stability in the society. The National Security Law provides clear rules and legal basis for preventing, suppressing and imposing punishment for acts endangering national security.

- The National Security Law only targets an extremely small minority of persons endangering national security. It clearly stipulates the four categories of offences that endanger national security. Apart from providing that the principle of the rule of law shall be adhered to, Article 5 of the National Security Law provides for the presumption of innocence, the prohibition of double jeopardy, and the right to defend oneself and other rights in judicial proceedings that a criminal suspect, defendant and other parties in judicial proceedings are entitled to under the law.

- Following the implementation of the National Security Law in 2020, chaos stopped and stability has been restored in Hong Kong. It helped bring the society back on track to focus on developing the economy, enhancing people's livelihood, sustaining Hong Kong's long-term stability and prosperity, and achieving good governance.

- The National Security Law ensures the resolute, full and faithful implementation of the "one country, two systems" principle under which the people of Hong Kong administer Hong Kong with a high degree of autonomy, and it also clearly stipulates that human rights shall be respected and protected in safeguarding national security in Hong Kong. The rights and freedoms, including the freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration enjoyed by residents of the HKSAR under the Basic Law, and the provisions of the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights as applicable to Hong Kong shall be protected in accordance with the law.

- As in many other jurisdictions that uphold the "rule of law", so long as people, institutions or organisations observe the laws in Hong Kong, they will not unwittingly violate the law, including the National Security Law. Meanwhile, any law enforcement actions taken by Hong Kong law enforcement agencies under our National Security Law or any local laws of Hong Kong are based on evidence, strictly in accordance with the laws, based on the acts of the persons or entities concerned, and have nothing to do with their political stance, background or occupation.

<u>DS597</u>

- Hong Kong, China is a staunch supporter of the rules-based multilateral trading system with the WTO at its core. We respect the WTO, its rules, and its DS system which resolves trade disputes among WTO Members. As a small delegation, we have followed and gone through all the steps in accordance with the rules and procedures under the DSU in handling DS597,

from requesting consultations, to establishment of the panel and participation in the panel proceedings.

- The US, in DS597, was given ample opportunities to put forth, elaborate and clarify its arguments and respond to Hong Kong, China's submissions and responses before the Panel, composed of three independent and fair-minded experts. The Panel had considered the submissions of the US and Hong Kong, China, as well as from the third parties, in full and in totality, and came to the unanimous decision that the challenged measure in question is discriminatory and WTO-inconsistent, and that the US should bring its WTO-inconsistent measure into conformity.

- As Members are aware, the US does not agree with the ruling and has lodged an appeal to the Appellate Body, when the body has been single-handedly wrecked by the US itself since end-2019. Reading all these acts together, one could not help but question whether the purpose of the US lodging an appeal is to stall its obligations to implement the panel ruling. In short, a procedural abuse.

- The US notified the DSB of its decision to appeal issues of law covered in the DS597 panel report on 26 January 2023. Presumably, a notice of appeal shall include "a brief statement of the nature of the appeal", which in turns includes "an indicative list of the paragraphs of the panel report containing the alleged errors", as well as an appellant's submission. As the US' notice of appeal was not accompanied by these required documents, Hong Kong, China, despite being the respondent of the appeal, is not privy to the issues of law that the US contemplated of the appeal, if they exist at all. This shows a lack of respect for the well-established rules set out in the working procedures for appellate reviews.

- Meanwhile, and outside the appeal and the adjudicative process, the US has been continuously and unilaterally clamouring for its objection to the Panel's ruling and, as mentioned in its statement at the previous DSB meeting on 31 March, "the serious consequences of the flawed interpretation of Article XXI of the GATT 1994" in the DS597 panel report.

- We consider the US' attempts to keep repeating the issues in DS597 and criticising the specific panel ruling shows no respect to the Panel, the panelists and, most importantly, the rules-based multilateral trading system. What adds to the US' disrespect of the rules-based multilateral trading system is that the US has already initiated an appeal itself and would have sufficient opportunities to present its case before the Appellate Body, had the

appointment to the AB not been held hostage by the US and resulted in the current impasse.

- If the US is genuine in its quest for a "correct" ruling, perhaps it should consider unblocking the appointment process of the AB so that DS597, as well as other cases being held up, can be heard and adjudicated on expeditiously.

- But instead, the US has turned to the DSB meetings to continue its "appeal", by repeating its arguments and political claims against Hong Kong, China. We strongly believe that the DSB should not be subjected to such needless and repeated distractions, not least those which serve nothing but the political purpose of one single Member.

Hong Kong, China's 2nd Intervention

<u>"Bringing politics into the WTO/DSB"</u>

- I am asking for the floor again because the US in its second intervention continued with its repeated accusation that Hong Kong, China is bringing politics into the WTO. From our perspective, both the US and Hong Kong, China are Members of the WTO, and as such both are subject to the rights and obligations as provided for under the WTO covered agreements and would expect each other to comply with their obligations in handling all aspects of trade matters in accordance with the covered agreements.

- The US' revised origin marking measure imposed on exports from Hong Kong is a discriminatory trade measure, as it accords less favourable treatment to Hong Kong, China's products. Hong Kong, China rightfully seeks to address the impairment suffered by our exports through the established rules and procedures under the DSU. The entire DS process, by design, is legal, technical and professional. The focus of the dispute has all along been whether the US' trade measure is inconsistent with the rights and obligations under the WTO covered agreements.

- In our view, the fact that the US' decision to impose the measure stemmed from its own political decision, and that the US sought to rely on the security exceptions under Article XXI(b) of the GATT 1994 as a defence before the Panel for the measure in question are perhaps where the so-called "bringing politics into this case" may come from. But they were all actions initiated by the US, rather than by Hong Kong, China, so it would neither be accurate nor fair to lay the blame on us.

- The US seems to believe that the security exceptions provisions are entirely self-judging and once it invokes the security exceptions, the measure in question can no longer be reviewed by any dispute panel. This argument is not accepted by the Panel, nor by any third party involved in this case. Other panels which have considered similar arguments under other cases in the past have also come to the same conclusion.

- It seems to us that the US is blaming Hong Kong, China for defending its rights under the WTO covered agreements when it is being discriminated against by another WTO Member. And the US seems to expect that Hong Kong, China should submit to its discriminatory actions once the US has claimed to have invoked security exceptions, otherwise Hong Kong, China is bringing politics into the WTO/DSB.

- I am afraid there is nothing further than the truth in this case. The DS597 Panel has rightly ruled that: the security exceptions provision is not entirely self-judging; the US origin marking measure in question is according less favourable treatment to products of Hong Kong, China and hence not WTO-consistent; and the US origin marking requirement is not justified by its claim of invoking the security exceptions.

- We call on the US to follow the Panel's decision to bring its measure into conformity early with its obligation under the GATT 1994. Should the US genuinely wish to pursue its appeal against the Panel's ruling in accordance with the DSU, Hong Kong, China will be obliged to follow the established rules and procedures to assist the adjudicators in considering the appeal so as to resolve the dispute in a timely manner.

Item 5. Appellate Body Appointments: Proposal by Afghanistan; Angola; Antigua and Barbuda; Argentina; Australia; Bangladesh; Benin; Plurinational State of Bolivia; Botswana; Brazil; Brunei Darussalam; 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.24)

- Thank you, Chair.

- Hong Kong, China would like to first thank Guatemala for presenting the proposal on behalf of co-sponsors. We would also like to welcome Brunei Darussalam on board.

- Chair, in the previous item, Hong Kong, China has pointed out the very importance of having the Appellate Body (AB)'s appointments unblocked so that we can overcome the current AB impasse, and that Members can have their cases heard by the AB properly.

- Hong Kong, China thus continues to join other Members to reiterate our concerns about the Appellate Body impasse. We would like to emphasise our commitment to work constructively with all WTO Members to restore a fully and well-functioning dispute settlement system by 2024 as mandated in the MC12 Outcome Document.

- Thank you.

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