

Dispute Settlement Body Meeting on 19 September 2023
Hong Kong, China's Statement

Item 3. United States – Origin Marking Requirement (Hong Kong, China)
(DS597)

A. Statement by the United States

Hong Kong, China's first intervention

- Thank you, Chair.
- Thank you for your citation of Rule 27¹ for DSB meetings at the start of the meeting and before this item. Indeed, this is already the fifth time that DS597 is put on the agenda for discussion at DSB meetings since the US lodged an appeal on 26 January 2023 against the ruling of the DS597 panel report. We do not see the meaning of the US putting it yet again on the agenda; as demonstrated in its statement just now, no new substantive point was raised by the US.
- We strongly regret the US' total disregard of the rules-based dispute settlement system in the WTO designed for resolving trade disputes, and we emphasise the fact that the panel and the Appellate Body are the entities entrusted to rule on dispute cases. It is highly problematic and disrespectful for a losing party to keep criticising openly at regular DSB meetings, time and again, a ruling made by an independent panel, formed and adjudicated per established rules and procedures.
- We also strongly deplore the US' abusive use of DSB meetings to seek to challenge a ruling that is not in its favour, by conducting political smearing and slander against Hong Kong, China and demonising actions of our law enforcement authorities. As we have pointed out before, the DSB is not the right forum for discussions of internal affairs of any individual Member. But as at previous meetings, we are forced to respond to let the facts be heard.
- Chair, endangering national security is a very serious offence. No country will watch with folded arms those acts and activities that endanger national security. The Hong Kong SAR law enforcement agencies have been taking

¹ Rule 27 of the Rules of Procedure for DSB meetings reads “[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.”

law enforcement actions based on evidence and strictly in accordance with the law in respect of the acts of the persons or entities concerned, and have nothing to do with their political stance, background or occupation.

- The National Security Law has provided clear definition to the *actus reus* and *mens rea* of four categories of offences, namely, secession, subversion of state power, terrorist activities, and collusion with a foreign country or with external elements to endanger national security. No one will unwittingly breach the Law. Apart from providing that the principle of the rule of law shall be adhered to, Article 5 of the National Security Law also 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.
- No matter how the relevant country tries to exonerate the absconders in any form, means or excuse, it could not change the fact that the persons involved, who have fled overseas, are suspected of having continued to commit offences under the National Security Law, seriously endangering national security. The listing of the persons who have absconded overseas and allegedly committed offences under the National Security Law as wanted persons in accordance with the law, as well as the subsequent further investigation and law enforcement actions, are totally reasonable, rational, legal and necessary.
- Chair, I would like to reiterate that the Hong Kong National Security Law fully aligns with the principles of international law, international practice and common practice adopted in various countries and regions. As elaborated in our interventions at the previous DSB meeting on 28 July, the national security law of various countries, including the United States, the United Kingdom, Australia, Canada and the EU Member States also have extraterritorial effect under the principles of “personality” and “protective jurisdictions”.
- All in all, Hong Kong residents enjoy the rights and freedoms under the Basic Law, our mini constitution, the Hong Kong Bill of Rights Ordinance and other relevant laws. The National Security Law clearly stipulates that human rights shall be respected and protected in safeguarding national security in the Hong Kong SAR. Any law enforcement actions to safeguard national security will not affect the rights and freedoms that Hong Kong residents enjoy under the Basic Law, our mini constitution, and the International Covenant on Civil and Political Rights (ICCPR) and the

International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong.

- Chair, I would like to recall that implementation of the Hong Kong National Security Law has enabled the livelihood and economic activities of the Hong Kong community at large to resume normal, after the prolonged period of serious violence in 2019 during which many Hong Kong people were indeed deprived of their usual rights and freedoms due to the illegal actions of the rioters. It was the implementation of the National Security Law that had swiftly and effectively restored stability and security in Hong Kong, and bring our city back to order from serious chaos and violence.
- Chair, I shall stop here on the part of the Hong Kong National Security Law and the law enforcement situation in Hong Kong, China. I would now turn to DS597.
- Chair, the US said that the DS597 Panel erred in deciding that it was appropriate to substitute its security judgment for the US sovereign judgment of its own security interests. It said the Panel also erred in finding that the situation in Hong Kong, China did not “meet the required level of gravity” to qualify as an “emergency in international relations”. I would like to point out, once again, that, despite the US’ insistence on its view that Article XXI of the GATT 1994 is self-judging in entirety, in DS597, among the 13 third parties to the case, none of the Members agreed with the US on this point.
- On the other hand, if the US considers the Panel erred in its findings, then it should let the Appellate Body adjudicate on the case to get a final ruling. Instead, the US continues to block the appointments of AB members. Alternatively, the US may seek authoritative interpretation of GATT 1994 Article XXI under Article IX of the Marrakesh Agreement. It is unfathomable that the US would take the DSB regular meetings to have hearings on its claims that have already been rejected by a panel, while the US has also already lodged an appeal to the Appellate Body that it had wrecked single-handedly.
- Before closing, Chair, I would like to reiterate that it is ultimately the membership’s fundamental systemic interest to uphold a rules-based dispute settlement system. Members should be allowed to raise claims against WTO-inconsistent measures under the WTO covered agreements, and should be able to expect panels to rule in an objective and impartial manner without undue influence, and that rulings coming out from the established adjudicative process would be respected and complied with.

- Thank you, Chair.

Hong Kong, China's second intervention

- Chair, Hong Kong, China is not fearful of letting any fact of Hong Kong, China be heard in the DSB or any other forum.
- I would just like to reiterate that it is ultimately the membership's fundamental systematic interest that Members should be allowed to raise claims against WTO-inconsistent measures under the WTO covered agreements, without any fear or threat from another stronger power.

Item 9. 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; Lao People's Democratic Republic; Lesotho; Liechtenstein; Madagascar; Malawi; Malaysia; Maldives; Mali; Mauritania; Mauritius; Mexico; Republic of Moldova; Morocco; Mozambique; Myanmar; 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.26)

- Thank you, Chair.
- As we have stated in our previous statements in the DSB and other fora, in our view, it is the top priority of the WTO to restore a fully-functioning, two-tiered, binding dispute settlement system. The Appellate Body impasse has

put many dispute cases in a limbo, DS597 included, and this is highly prejudicial to the systemic interest of the membership.

- Hong Kong, China reiterates our commitment to work constructively with all WTO Members to achieve the goal of restoring a fully and well-functioning dispute settlement system.
- Thank you, Chair.

Hong Kong Economic and Trade Office in Geneva
September 2023