

Dispute Settlement Body Meeting
18 December 2023 at 2pm

Hong Kong, China's Statement

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

A. Statement by the United States

First Intervention

- Thank you, Chair.
- This is the 7th time that DS597 is put on the agenda of a regular DSB meeting. Unfortunately, Rule 27 of the Rules and Procedures for DSB meetings is not able to save Members from this monthly ordeal. Everyone in the room knew even before this agenda item started that no new substantive point would be raised in the US' statement. And, so was the case just now.
- 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”.
- As we have pointed out before, none of the 13 third parties to the case agreed with the US that security exception under Article XXI of GATT 1994 is self-judging in entirety, as a matter of legal principle. As a matter of fact, all the relevant facts at the material time were already put forward by the US in arguing for its case in DS597, they were all duly considered by the panel, so the only reason for the US to continue its one-sided, monthly chronicle of Hong Kong, China's socio-political situation in the DSB is not to further its legal claim, but to continue its political slandering against Hong Kong, China.

- As we have also pointed out before, if the US is genuine in challenging the panel ruling in DS597, the only proper way to do it is to let the appeal, lodged by the US, in January 2023, be heard by a restored Appellate Body, or a review or appellate body to be set up in a reformed DS system. There are also proposals under the DS reform informal discussion in relation to interpretation of WTO covered agreements. The US, being the proponent or spearheading such proposals is well aware of these developments. If not for the US' political agenda behind this agenda item, there is no reason to single out DS597 when an appeal is pending and a reformed system in the making.
- Chair, we are hesitant to fuel any malicious political manoeuvring in the WTO fora, especially as implementation of national security law is clearly an internal affair of any sovereignty. In the face of non-stop political slandering by the US, however, Hong Kong, China is left with no choice but to speak up and let the truth be told.
- Chair, Hong Kong residents enjoy the rights and freedoms guaranteed by the Basic Law, and other relevant laws. The enactment of the National Security Law aims to, among other things, improve the legal system and enforcement mechanisms for safeguarding national security of the Hong Kong SAR, as well as maintaining prosperity and stability of the Hong Kong SAR. The National Security Law clearly stipulates that human rights shall be respected and protected in safeguarding national security in the Hong Kong SAR, and that the rights and freedoms, which Hong Kong residents enjoy under the Basic Law and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong, including freedom of speech, press, publication, association, and assembly, shall be protected in accordance with the law.
- Endangering national security is a very serious offence, and the Hong Kong SAR Government, like any other governments, will fight against it with full force and pursue the liability of the person to the end. Fugitives should not have any delusion that they could evade legal liabilities by absconding. In our legal system, like many other legal systems, fugitives will be pursued for life unless they turn themselves in.

- The Hong Kong SAR law enforcement agencies have been taking law enforcement actions based on evidence and strictly in accordance with the law in respect of the acts of the persons or entities concerned. The suggestion that persons or organisations with certain backgrounds should be immune from legal sanctions for their illegal acts and activities is tantamount to granting such persons or organisations privileges to break the law and is totally contrary to the spirit of the rule of law.
- The Department of Justice of the Hong Kong SAR, by virtue of Article 63 of the Basic Law, is solely responsible for criminal prosecutions, free from any interference. All prosecutorial decisions by the Department of Justice are based on admissible evidence, applicable laws and guidelines such as the Prosecution Code. Prosecutions would only be commenced if there is sufficient admissible evidence to support a reasonable prospect of conviction and if it is in the public interest to do so.
- Any person, regardless of his or her identity, who makes any attempt to interfere with the judicial proceedings in the Hong Kong SAR in order to procure a defendant's evasion of the criminal justice process, is blatantly perverting the course of justice and is a reprehensible act undermining the rule of law of the Hong Kong SAR.
- The Judiciary of the Hong Kong SAR exercises judicial power independently in accordance with the law, and everyone charged with a criminal offence has the right to a fair hearing. The courts decide cases strictly in accordance with the evidence and all applicable laws. Cases will never be handled any differently owing to the profession, political beliefs or background of the entities involved. The prosecution has the burden to prove beyond reasonable doubt the commission of an offence before a defendant may be convicted by the court.
- Chair, the legal system in the Hong Kong SAR is robust and transparent. The Basic Law guarantees that the common law system continues to be practised in Hong Kong, the independence of the Judiciary, and that the exercise of judicial power shall be free from

interference. In addition, the power of final adjudication is vested in the Hong Kong SAR Court of Final Appeal. Eminent jurists from other common law jurisdictions, including the United Kingdom, Australia and Canada, are appointed as overseas non-permanent judges of Hong Kong's Court of Final Appeal. This helps maintain a high degree of confidence in the legal system of the Hong Kong SAR, and allows Hong Kong to maintain strong links with other common law jurisdictions.

- Yet, judges and prosecutors, in discharging their duties in relation to the National Security Law are among the various Hong Kong SAR personnel who are under sanctions or threat of sanctions by the US, a typical way of US intimidation.
- Our Judiciary has in particular been concerned about the US and others' attempt to exert improper pressure on its Judges and Judicial Officers. The Judiciary, independent from the Government, has pointed out clearly that any suggestion to impose sanctions is a flagrant and direct affront to the rule of law and judicial independence in Hong Kong, as well as to the Judges and Judicial Officers, who have constitutional duty to exercise judicial power independently and professionally in every case (including cases relating to national security) strictly on the basis of the law and evidence, and nothing else. All Judges and Judicial Officers must abide by the Judicial Oath to administer justice in full accordance with the law, without fear or favour, self-interest or deceit.
- Chair, just now the US has spoken at length criticising the extraterritoriality of the Hong Kong National Security Law. 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 previous interventions at previous DSB meetings, 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".
- Chair, we must not forget that the black-clad riots in 2019 severely damaged the social stability of Hong Kong, and it was the successful

implementation of the National Security Law that enabled the livelihood and economic activities of the Hong Kong community at large to swiftly resume as normal and the business environment to be restored.

- However, many US politicians insist on turning a blind eye to all these facts, and clamour for so-called “sanctions” against the Hong Kong SAR personnel who dutifully safeguard the National Security Law. This is nothing but political grandstanding rife with ill intentions.
- Chair, I shall stop here. Thank you.

Second Intervention

- Thank you, Chair.
- Chair, it is sheer and blatant double standards on the part of the US that “extraterritoriality” can be a central element of its national security law, but not that of other jurisdictions’, including Hong Kong, China’s National Security Law.
- Chair, I take it as a very alarming sign that a WTO Member would openly demand or command another WTO Member not to raise a DS claim that can be legitimately raised under the WTO covered agreements and jurisprudence and the WTO’s dispute settlement system, and openly threaten that otherwise the other Member would be subject to non-stop political slandering at the WTO fora, as is the case now. The US shows itself not just a bulldozer but a bully; it says nothing other than a superpower gleefully flexing its muscles to threaten and crush a small economy on all fronts.
- Thank you.

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.
- Hong Kong, China would like to join other Members to reiterate our concerns about the Appellate Body impasse, as well as 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.
- Chair, I did not ask for the floor under the previous item, noting the long list of agenda items and speakers today, but I would like to take this opportunity to thank Mr Marco Molina for his tireless work in the past few months on the DS reform informal process and to express my appreciation for the collegial spirit demonstrated by fellow delegates.
- Last but not least, may I wish you all a happy holiday and see you in the New Year of 2024.
- Thank you.
