

Dispute Settlement Body Meeting
26 October 2023

Statement by Hong Kong, China

Item 2. United States – Origin Marking Requirement (Hong Kong, China)
(DS597)

A. Statement by the United States

- Thank you, Chair.
- Chair, despite your earnest efforts in encouraging Members to observe Rule 27 for DSB meetings to avoid repetition of issues, I regret to say that your advice has fallen on deaf ears. Today marks the sixth time that DS597 is put on the agenda of a regular DSB meeting.
- The US' statement just now has raised no new substantive point that it had not raised before, in the DS597 submissions and hearings, as well as at previous DSB regular meetings. Members would recall that the US' arguments and claims in DS597, on the premises that security exceptions under Article XXI of GATT 1994 are self-judging in entirety, did not gain any support from the 13 third parties to DS597, and were eventually flatly rejected by the DS597 panel.
- Members with any sincerity to preserve the integrity of the WTO should have allowed the appointment of new members to the Appellate Body for it to resume operation, so that a Member feels aggrieved at a ruling of the panel can file an appeal to the Appellate Body. Instead, the US chose to appeal to a now defunct Appellate Body, while harping on the item of DS597 in regular DSB meetings on a monthly basis, seeking to undermine the legality of the faithful implementation of the Hong Kong National Security Law by the Hong Kong SAR Government in accordance with law.
- Chair, it is clear to everyone in the room that this is a smear campaign against the law enforcement actions of another jurisdiction. This would not change the fact that the DS panel has ruled against the US and has dismissed all the claims that the US is claiming now and here.
- Chair, we are most reluctant to discuss yet again the law enforcement actions in Hong Kong in implementing the National Security Law, not least

because they are our non-trade-related internal affairs that are outside the scope of DSB, but we feel obliged to do so given the defamatory description of our city's state of affairs by the US just now. Please bear with me.

- Chair, the Hong Kong National Security Law enacted in 2020 clearly stipulates that human rights shall be respected and protected in safeguarding national security in the Hong Kong SAR and the rights and freedoms that 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 the freedom of speech, of the press, of publication, of association and of assembly, shall be protected in accordance with the law.
- However, such rights and freedoms are not absolute, just like in any society. The exercise of such rights may be subject to restrictions that are provided by law and are necessary for pursuing legitimate aims such as the protection of national security or public order. Journalists, publishers, like everyone else, have an obligation to abide by all the laws.
- In fact, since the implementation of the national security law, the media landscape in Hong Kong has remained vibrant. As always, the media can exercise their freedom of the press in accordance with the law. Their freedom of commenting on and criticising government policies remains uninhibited as long as this is not in violation of the law.
- The implementation of the National Security Law has enabled the livelihood and economic activities of the Hong Kong community at large to resume as normal and the business environment to be restored. It has also enabled Hong Kong people to enjoy the rights and freedoms which were severely impaired during the period of serious violence in 2019; it swiftly and effectively restored the stability and security in Hong Kong. It is the personal experience of people living in and businesses operating in Hong Kong that Hong Kong has successfully achieved the major transition from “chaos to order”.
- Under Article 85 of the Basic Law, the courts of the Hong Kong SAR shall exercise judicial power independently, free from any interference. The US just now brought up a case adjudicated by the Court of the Hong Kong SAR. This is apparently a blatant attempt at exerting pressures on our judges. It should be noted that the defendant had fully exercised his right to defend himself and the right to appeal. Verdicts given by the courts were

solely based on applicable laws, facts and evidence after open trials and hearings. Also, the detailed reasons for sentence are contained in the publicly available judgment. Any suggestion that the charges were “spurious” or the conviction “unjust” is an utter disrespect to the due administration of justice.

- Hong Kong’s legal and judicial system has always been highly regarded by international communities. The Basic Law provides constitutional guarantee for fundamental rights and freedoms, including the right to equality before the law, and is buttressed by the rule of law and independent judicial power.
- Article 85 of the Basic Law clearly provides that the courts of the Hong Kong SAR shall exercise judicial power independently, free from any interference. Judges are immune from legal action in the performance of their judicial functions. The appointment and removal of judges in Hong Kong are free from political or other irrelevant considerations. Judgments of the courts contain detailed reasoning for the relevant decision and are publicly available on the website of the Judiciary, which the public can access at any time. Equality before the law is a fundamental principle observed in Hong Kong. The allegation against the independence and impartiality of our judiciary is totally groundless and unsupported by objective evidence.
- 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 Department of Justice of the Hong Kong SAR is in charge of criminal prosecutions under Article 63 of the Basic Law, with all prosecution decisions made based on an objective analysis of all admissible evidence and applicable laws. Hence, any suggestion that any cases are tied with political considerations is totally absurd and inappropriate.
- 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.
- Any attempt by any country, organisation, or individual to interfere with the judicial proceedings in the Hong Kong SAR by means of political power, in order to procure a defendant’s evasion of the criminal justice process, is a blatant act undermining the rule of law of Hong Kong. Doing any act or making any statement with the intent to interfere with or obstruct

the course of justice, or engaging in conduct with the same intent, is very likely to constitute the offence of criminal contempt of court or the offence of perverting the course of justice. Anyone who requests a foreign country to impose “sanctions” against the Hong Kong SAR or our country also commits the offence of collusion with a foreign country or with external elements to endanger national security, contrary to Article 29 of the National Security Law.

- Chair, I shall stop here. Thank you.

Item 6. Discussions Concerning DS Reform

- Thank you, Chair.
- As a keen participant of the DS Reform Informal Process, Hong Kong, China is heartened by the progresses made so far, with fellow delegates’ concerted efforts, under the able leadership and facilitation of Mr Marco Molina.
- We are also pleased to note the strong support expressed by a vast number of Senior Officials, including that of Hong Kong, China, at the Senior Officials Meeting (SOM), for fulfilling the MC12 mandate of having a fully and well-functioning dispute settlement system accessible to all Members by 2024.
- At the SOM, Hong Kong, China complimented on the transparent and inclusive nature of the informal process discussions. We have also reiterated our goal that the reform shall include a mechanism that would afford reasonable opportunity for aggrieved parties to review or appeal their cases in a judicial manner for enforcement of their rights and obligations under the WTO covered agreements.
- Chair, we look forward to seeing delivery of the MC12 mandate at MC13, but we would not underestimate the massive amount of work ahead of us and the required determination across the membership.
- Thank you, Chair.

Item 7. 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.
- Chair, Hong Kong, China would just like to express our support for this proposal, and to join other Members speaking before me under this Item, as well as under Item 3 and Item 6, to reiterate our grave concerns on the Appellate Body impasse which gravely undermines the rules-based multilateral trading system with WTO at its core.
- Thank you.

**Hong Kong Economic and Trade Office in Geneva
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