

## **Dispute Settlement Body Meeting held on 25 January 2021**

### **5. United States – Origin Marking Requirement (DS597) - Hong Kong, China's Request for the Establishment of a Panel (WT/DS597/5)**

#### **Hong Kong, China's Statement**

##### **First Intervention**

1. Thank you, Chair. Hong Kong, China is requesting the establishment of a panel to examine the United States' revised origin marking requirement that is inconsistent with various provisions under several WTO covered agreements.

3. Despite Hong Kong, China's strong opposition, the United States has implemented a revised origin marking requirement starting from 10 November 2020, which requires that imported goods produced in Hong Kong may no longer be marked to indicate "Hong Kong" as their origin, but must be marked to indicate "China" for the purposes of the said revised origin marking requirement.

4. Hong Kong, China strongly objects to this arbitrary, unilateral, unnecessary and unjustifiable requirement. The revised origin marking requirement impairs Hong Kong, China's rightful and legitimate interest under the relevant WTO covered agreements. It is also inconsistent with, among others, the fundamental WTO obligation to provide Most-Favoured-Nation (MFN) treatment to all Members, and violates various provisions of the WTO covered agreements including the GATT 1994, the Agreement on Rules of Origin, and the Agreement on Technical Barriers to Trade as stated in our panel request.

5. For many decades before the implementation of the revised origin marking requirement at issue, goods originating from Hong Kong have been marked as products of "Hong Kong" origin. The United States has now imposed a restriction requiring goods originating from Hong Kong to be marked as products of "China". The revised requirement disregards the fact that Hong Kong, China is a separate customs territory and a Member of the WTO in our own right. The revised requirement is also blatantly discriminatory in nature, because it does not extend to products of Hong Kong origin immediately and unconditionally the same advantages, favours, privileges, or immunities that the United States extends to like

products originating in the territory of other countries and customs territories. It also does not accord to the products of Hong Kong treatment with regard to origin marking requirements no less favourable than the treatment that the United States accords to like products of other countries and customs territories, nor does it administer its origin marking requirements in a uniform, impartial and reasonable manner.

6. The revised origin marking requirement imposes unnecessary burdens upon our business enterprises, and causes confusion to consumers. Both before and after the resumption of the exercise of sovereignty by the People's Republic of China on 1 July 1997, goods produced in Hong Kong have been marked, correctly, as products of "Hong Kong" or "Made in Hong Kong" - this is how our products are known around the world, including among consumers in the United States. The unilateral imposition of the revised origin marking requirement confuses the market, and our business enterprises now need to mark their products in one way when destined for sale in the United States, and in the correct way when destined for sale elsewhere. Not only is this revised requirement logistically burdensome, it also undermines the investments that our business enterprises have made in developing the Hong Kong brand. It should be further noted that we have our own laws and regulatory regimes, for example product safety standards and licensing requirements, and so consumers in the United States should not be deprived of such factual and important information if a product is originated from Hong Kong.

7. The revised origin marking requirement also disregards the fundamental objective of the Agreement of Rules of Origin, which seeks to determine, objectively, precisely and accurately, the origin of imported products. In respect of products produced in Hong Kong, the United States imposes a requirement that mandates the fulfilment of a certain condition not relating to manufacturing or processing, as a prerequisite for the determination of their origin, and the United States fails to administer its rules of origin in a consistent, uniform, impartial and reasonable manner. The above is clearly not WTO-consistent.

8. From the standpoint of the multilateral trading system, it is deeply erroneous for any WTO Member to impose on another Member a unilateral and arbitrary origin marking requirement that bears no relationship to the actual origin of the product under the WTO regime and misinforms consumers that the product is originated from a third WTO Member. The proper determination of a product's origin should be a technical and rules-based exercise exclusively informed by the facts surrounding its manufacturing or processing, and not an occasion for political theatrics.

Otherwise, rules of origin would lose their function of relating the origin of an imported product to a particular WTO Member, which is the basis to determine many of the rights and obligations in relation to that product in international trade. The application of rules of origin should in no circumstances be deployed as a means for attaining political ends.

9. Hong Kong, China requested consultations with the United States on 30 October 2020. Consultations were held on 24 November 2020, but failed to reach a mutually satisfactory solution to resolve the dispute.

10. To conclude my intervention, Hong Kong, China reiterates that the revised origin marking requirement imposed by the United States is not WTO-consistent, and bears substantial trade and systemic implications on the multilateral trading system. To this end, Hong Kong, China requests that the DSB establish a panel with standard terms of reference to examine the matter. In the meantime, Hong Kong, China continues to urge the United States to honour commitments under the WTO covered agreements, and withdraw the revised requirement immediately.

11. Thank you very much.

#### Second Intervention

12. Thank you, Chair. I would just like to respond briefly to the United States. We note the circumstances mentioned by the United States, but we still consider it necessary and appropriate for a panel to be established to examine the present matter in accordance with the WTO Dispute Settlement Understanding. Thank you.