

United States – Origin Marking Requirement (WT/DS597)

**Closing Statement of Hong Kong, China
at the First Substantive Meeting with the Parties**

15 September 2021

1. Madame Chair, distinguished members of the Panel, members of the Secretariat staff, Hong Kong, China thanks you for your attentiveness during the course of this first substantive meeting and for your efforts in making this meeting a productive one.

2. In Hong Kong, China's view, we end this first substantive meeting where it began. The violations of the covered agreements identified by Hong Kong, China in its Panel Request and elaborated in its first written submission and in its responses to questions from the Panel remain uncontested by the United States. The only substantive and yet untenable response that the United States has offered in respect of these *prima facie* cases of violations is its invocation of Article XXI(b) of the General Agreement on Tariffs and Trade 1994 (GATT 1994). Through its invocation of this exception, the United States has effectively conceded

that the challenged measures are inconsistent with the identified provisions of the covered agreements.

3. As it pertains to Hong Kong, China's claims under the Agreement on Rules of Origin (ARO) and the Agreement on Technical Barriers to Trade (TBT Agreement), the United States' invocation of Article XXI(b) of the GATT 1994 rests on the proposition that Article XXI(b) is available as a potential defence to violations of these two agreements. For the reasons that Hong Kong, China explained in its opening statement and in its responses in the present question-and-answer session, and as all third parties that have commented upon the issue have concurred, this proposition is completely untenable. There is no credible argument that Article XXI(b) of the GATT 1994 applies to either the ARO or the TBT Agreement.

4. In relation to Hong Kong, China's claim under Article 2.1 of the TBT Agreement, the United States argued "hypothetically" that the Panel could take its essential security interest into account based on the language in the 7th Recital. The United States maintained, however, that it does not actually have to articulate that essential security interest, much less attempt to demonstrate that the measures are necessary for the protection of that essential security interest, whatever that might be, because to do so would be inconsistent with the United States' only substantive and yet untenable

response to Hong Kong, China's *prima facie* case under Article 2.1 – namely, that Article XXI(b) of the GATT 1994 is applicable to the TBT Agreement and is entirely self-judging.

5. In view of these circumstances, Hong Kong, China believes that the appropriate resolution of this dispute is clearly presented. The Panel should find that the revised origin marking requirement is inconsistent with the ARO and the TBT Agreement, conclude that Article XXI(b) is not available as a potential defence to these violations, and exercise judicial economy in respect of Hong Kong, China's claims under the GATT 1994. This resolution of the dispute would achieve a satisfactory settlement of the matter in accordance with the objectives of the Dispute Settlement Understanding (DSU), and is one that the Panel could reach expeditiously within the timeframes contemplated by Article 12 of the DSU.

6. Hong Kong, China looks forward to elaborating on the Panel's questions and answering any additional questions that the Panel may have following this first substantive meeting in writing and to the further stages of this proceeding.