

Speech by DSJ entitled "Hong Kong, China as a staunch supporter of the rules-based multilateral trading system" at reception hosted by HKETO in Geneva in Switzerland (English only) (with photos)

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Following is the speech by the Deputy Secretary for Justice, Mr Cheung Kwok-kwan, entitled "Hong Kong, China as a staunch supporter of the rules-based multilateral trading system", at a reception hosted by the Hong Kong Economic and Trade Office in Geneva in Switzerland, on March 8 (Geneva time):

Thank you Mr Lo (Permanent Representative of the Hong Kong Special Administrative Region of China to the World Trade Organization (WTO), Mr Laurie Lo) for your kind introduction.

Ambassador Li (Ambassador Extraordinary and Plenipotentiary and Permanent Representative of the People's Republic of China to the WTO, Mr Li Chenggang), excellencies, distinguished guests, ladies and gentlemen, good evening. It is my pleasure to speak to you on International Women's Day. May I take this opportunity to congratulate and celebrate with all the amazing women who have made a difference in our world?

And certainly I would like to take this opportunity to share with you that Hong Kong, China (HKC) was in the past, and is at present, a staunch supporter of a rules-based international trade order, and will remain to be so in the future.

HKC was and is a staunch supporter of free trade and the WTO

HKC is always a classic example of how free trade can benefit the economy. For over 150 years, HKC has been a hub of international trades and commerce, connecting businesses from all over the world to the markets of Asia and beyond. Our success as a trading hub is built on the foundation of a free and open market, where goods and services can flow freely, and businesses can compete on a level playing field. Our long-standing free trade policy has therefore led HKC to evolve from a fishing village to an international cosmopolitan city today. According to the WTO, HKC was the world's sixth largest trading entity in merchandise trade, and 20th largest in commercial services in 2021.

HKC has been a pioneer in free trade and a dedicated supporter of the rules-based

multilateral trading system throughout our history and even today. As early as 1986, we became a contracting party to the General Agreement on Tariffs and Trade (GATT), and were proud to be one of the founding members of the WTO in 1995.

Following the return to the motherland in 1997, HKC continues to be a separate custom territory member of the WTO. This unique status, as a special administrative region of the People's Republic of China participating in the WTO, is premised on the innovative and promising principle of "one country, two systems", as enshrined in our Basic Law.

Under the "one country, two systems" principle, HKC enjoys a high degree of autonomy and conducts external affairs in accordance with the Basic Law. We have also been authorised to maintain and develop our own trade relationships with foreign economies. In the past 25 years, we have signed free trade agreements with 20 economies, and are still expanding our network. Last year, we have also submitted our application to join the Regional Comprehensive Economic Partnership (RCEP).

HKC is unwavering in our commitment to free trade and the applicable legal principles. We have an untarnished record, never having been the subject of any complaints before the Dispute Settlement Body (DSB) of the WTO.

We uphold and abide by our rights and responsibilities under the WTO-covered agreements, and we are always ready to take any necessary actions against any trade practices that may harm HKC's interests directly or indirectly under the auspices of the WTO.

Recently, we have intervened in a series of disputes brought by different WTO members against the duties and related measures imposed by the United States (US) on steel and aluminium imports. Our involvement in the DSB has been instrumental in clarifying important legal principles of the WTO law and enhancing the understanding of international trade law through the development of its jurisprudence.

As a devoted supporter of the system, we hold firm in the belief that trade disputes should be resolved exclusively with reference to the WTO-covered agreements and through the use of WTO mechanisms, rather than any other means.

For example, HKC recently brought a complaint before the DSB against the arbitrary and discriminatory origin-marking requirement imposed by the US on

products exported from HKC. In that case, while flagging up unjustified and biased concerns on the National Security Law in HKC, the irony is that it is the US which used "national security" as grounds in its failed attempt to resist our complaint. The Panel in that case concluded that the measure adopted by the US cannot be justified on the grounds of a security exception under Article XXI(b) of the GATT 1994. It also helpfully clarified that the security exception is not entirely "self-judging" as purportedly claimed by the US.

HKC welcomes the Panel's findings. With the implementation of the National Security Law and the improvement of the electoral system in our city, order and stability have been restored, enabling us to enhance our commitment to the rules-based multilateral trading system, of which the WTO is at its core. While we recognise the importance of protecting national security, the security exception under Article XXI of the GATT 1994 must not be abused by members as a "guise" for unilateralism, protectionism or other political purposes.

HKC will remain a staunch supporter of free trade and the WTO

This Panel's findings also highlight the crucial role of the dispute settlement mechanism in preserving a rules-based multilateral trading system. By ensuring that the obligations under the WTO-covered agreements are respected and upheld, it helps maintain an open, stable and predictable global trading environment. It is for this reason that the dispute settlement mechanism is widely regarded as the "crown jewel" of the WTO.

However, the ongoing dilemma of the Appellate Body since 2019 has caused great concern for HKC. In order to preserve this "crown jewel", we have been actively engaged and making constructive contributions to the WTO dispute settlement reform exercise. HKC is and, will undoubtedly remain, a staunch supporter of the rules-based multilateral trading system.

In March 2020, together with another 15 WTO members, we have set up the Multiparty Interim Appeal Arbitration Arrangement (MPIA) as a contingency measure, seeking to preserve the appellate function of the dispute settlement mechanism.

The MPIA provides for the use of arbitration as an alternative mechanism for resolving appeals lodged by members. To date, 25 WTO members are parties to this

arrangement. HKC would like to take this opportunity to encourage other WTO members to join this arrangement. The more participants we have, the more useful this would be in preserving the dispute settlement pillar of the WTO functions, and in demonstrating our commitment to ensuring certainty and stability in the rules-based multilateral trading system led by the WTO.

All in all, we are of the firm belief that the restoration of a fully functioning, binding and two-tiered dispute settlement system and authority remains the foremost priority in the coming months to meet the 2024 deadline set out in the MC12 Outcome Document.

#### HKC's unique strengths and opportunities

Not only that arbitration under the MPIA is useful in resolving WTO disputes, arbitration is also a popular dispute resolution mechanism to resolve international disputes. HKC takes pride to be one of the leading international arbitration centres in the world. According to the International Arbitration Surveys conducted by Queen Mary University of London, Hong Kong has been voted as one of the top five preferred seats of arbitration globally since 2015 and in the most recent survey, ranked third in the world.

So it comes as no surprise that many international and regional dispute resolution bodies have established their presence in Hong Kong over the years. Recently, with the support of the Central People's Government, the Asian-African Legal Consultative Organization has established its regional arbitration centre in Hong Kong in May last year, and earlier this year, the International Organization for Mediation Preparatory Office was opened in Hong Kong to organise the negotiation of the relevant international convention and the preparatory work relating to the establishment of this permanent international organisation.

HKC also possesses a unique strength in the provision of international legal services under the principle of "one country, two systems".

HKC is the only common law jurisdiction within China which is truly bilingual, with both Chinese and English as the official languages. Our legal and regulatory frameworks are also in line with the international law and business practices.

Another notable feature of our legal system lies in our strong commitment to the

rule of law, which is a cornerstone of our society. Our judiciary exercises its power independently and we have our own Court of Final Appeal in Hong Kong which may invite eminent foreign judges to sit as Non-Permanent Judges and may refer to judicial precedents of other common law jurisdictions. Indeed, the judgments of our Court of Final Appeal have been cited by other common law jurisdictions from time to time.

All these strengths and features are premised on the order and stability of the community. With the implementation of the laws safeguarding national security and the improvement of the electoral system, our city's order and stability have been restored.

The unwavering support by the Central People's Government, coupled with the Belt and Road Initiative and the Guangdong-Hong Kong-Macao Greater Bay Area, makes HKC truly a place full of opportunities for the business and legal communities, as well as an important gateway connecting China with the rest of the world.

#### Concluding remarks

Ladies and gentlemen, HKC is now fully reopened to the world and we have recently launched the "Hello Hong Kong" Campaign. We invite not only tourists but also foreign traders and businesses to come to Hong Kong to take full advantage of the opportunities that I have just mentioned. Our longstanding free trade policy supported by an independent and effective legal system offers a stable, safe and favourable business environment to enterprises around the world.

My sincere thanks to the Hong Kong Economic and Trade Office in Geneva for organising this reception tonight. I hope you enjoy the evening and hope to see you all in Hong Kong in the near future. Thank you very much.

Ends/Thursday, March 9, 2023