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**BAHRAIN – MEASURES RELATING TO TRADE IN GOODS AND SERVICES, AND
TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS**

REQUEST FOR CONSULTATIONS BY QATAR

The following communication, dated 31 July 2017, from the delegation of Qatar to the delegation of the Kingdom of Bahrain and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

1. My authorities have instructed me to request the Kingdom of Bahrain ("Bahrain") to enter into consultations concerning measures adopted in the context of coercive attempts at economic isolation imposed by Bahrain against the State of Qatar ("Qatar") and detailed further in this document.

2. The request is made pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXIII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), Article XXIII of the General Agreement on Trade in Services ("GATS"), and Article 64.1 of the *Agreement on Trade-related Aspects of Intellectual Property Rights* ("TRIPS Agreement"). For the avoidance of any doubt, consultations under the *TRIPS Agreement* are requested solely under Article XXIII of the GATT 1994 as elaborated and applied by the DSU, as that provision is made applicable to the *TRIPS Agreement*. Qatar intends that the first sentence of Article 4.11 of the DSU shall not apply to consultations in this dispute.

3. This request identifies the measures at issue in Section A, and indicates the legal bases for Qatar's complaint in Section B.

A. Measures at issue

4. The measures at issue in this request include all written and unwritten, published and unpublished measures adopted in the context of coercive attempts at economic isolation imposed by Bahrain against Qatar. The measures individually and collectively affect trade in goods, trade in services and trade-related aspects of intellectual property rights.

5. In respect of goods, the coercive attempts at economic isolation entail acts and/or omissions through which Bahrain bans, prohibits or otherwise restricts the import, export, sale, purchase, license, transfer, receipt, and shipment of goods originating in, transiting through, towards or from, or with the destination of Qatar.

6. In respect of services, the coercive attempts at economic isolation entail acts and/or omissions through which Bahrain bans Qatari nationals from travelling to and remaining in Bahrain in order to provide services, as well as bans on the provision of services by Qatari service suppliers established in Bahrain. They include bans on the supply of (digital and other) services from Qatar to consumers of Bahrain as well as prohibitions on nationals of Bahrain to travel to and remain in Qatar in order to consume Qatari services.

7. In respect of trade-related aspects of intellectual property rights, coercive attempts at economic isolation entail interference with intellectual property rights enjoyed by nationals of

Qatar. Specifically, these measures include prohibitions or restrictions on display of and accessing television content over which Qatari nationals hold copyrights and related broadcasting rights.

8. Without limiting the scope of the general description of the measures in the preceding paragraphs, the measures at issue include the following specific acts and/or omissions:

- (i) Bahrain's closure of its maritime borders with Qatar, and prohibition on Qatari aircraft from accessing its airspace;
- (ii) Bahrain's prohibition on the use of all Bahrain ports and territorial waters for marine navigation from and to Qatar;
- (iii) Bahrain's prohibition on flights to and from Bahrain operated by aircraft registered in Qatar; including prohibiting landing of Qatari aircraft at airports in Bahrain;
- (iv) Bahrain's closure of certain Qatari service suppliers' offices in Bahrain;
- (v) Bahrain's prohibitions and restrictions on (a) the import of Qatari audio-visual equipment that is necessary to access Qatari audio-visual content in Bahrain, and (b) accepting new and renewing existing subscriptions to Qatari audio-visual service providers' channels;
- (vi) Bahrain's prohibitions or restrictions on display of and accessing television content over which Qatari nationals hold copyrights and related broadcasting rights;
- (vii) Bahrain's unilateral suspension of the handling of international mail items and parcels originating from or designated to Qatar Postal Services Company; and,
- (viii) Bahrain's omission to publish certain measures of general application imposing the coercive attempts at economic isolation described in the paragraphs above.

B. Legal bases of the complaint

9. Qatar is concerned that the measures at issue taken by Bahrain, as described in Section A of this request, are inconsistent with Bahrain's obligations under the WTO covered agreements.

10. *First*, it appears that certain of the measures at issue contravene provisions of the GATT 1994. Specifically, certain measures appear to violate:

- (a) Article I:1 of the GATT 1994, because, through the:
 - maritime border and airspace closure by Bahrain;
 - prohibition on the use of all Bahrain ports and territorial waters for marine navigation from and to Qatar;
 - prohibition on the landing of Qatari aircraft at airports in Bahrain; and
 - prohibition on the importation of Qatari audio-visual equipment that is necessary to access Qatari audio-visual content in Bahrain,

Bahrain appears to fail to accord immediately and unconditionally to like products originating in Qatar relevant advantages, favours, privileges or immunities that are granted by Bahrain to products originating in other countries;

- (b) Article V:2 of the GATT 1994, because, through the:
 - maritime border and airspace closure by Bahrain,
 - prohibition on the use of all Bahrain ports and territorial waters for marine navigation from and to Qatar; and,

- prohibition on the landing of Qatari aircraft at airports in Bahrain,

Bahrain appears to deny freedom of transit through the territory of Bahrain, via the routes most convenient for international transit, for traffic in transit to or from the territory of Qatar, and makes distinctions based on the flag of vessels and/or place of registration of aircraft, the place of origin, departure, entry, exit or destination or on circumstances relating to the ownership of goods, vessels or of other means of transport;

- (c) Article X:1 and X:2 of the GATT 1994, because:

- through the omission to publish relevant measures affecting trade in goods; and,
- by enforcing such measures prior to publication,

Bahrain appears to be in violation of the obligations under these provisions;

- (d) Article XI:1 of the GATT 1994, because, through the:

- maritime border and airspace closure by Bahrain;
- prohibition on the use of all Bahrain ports and territorial waters for marine navigation from and to Qatar;
- prohibition on the landing of Qatari aircraft at airports in Bahrain; and,
- prohibition and restriction on the importation of Qatari audio-visual equipment that is necessary to access Qatari audio-visual content in Bahrain,

Bahrain appears to institute or maintain prohibitions or restrictions, other than duties, taxes or other charges, on the importation of products of the territory of Qatar, and on exportation of products to the territory of Qatar;

- (e) Article XIII:1 of the GATT 1994, because, through the:

- maritime border and airspace closure by Bahrain;
- prohibition on the use of all Bahrain ports and territorial waters for marine navigation from and to Qatar;
- prohibition on the landing of Qatari aircraft at airports in Bahrain; and
- prohibition and restriction on the importation of Qatari audio-visual equipment that is necessary to access Qatari audio-visual content in Bahrain,

Bahrain appears to apply prohibitions and restrictions on the importation of products of the territory of Qatar, and on the exportation of products destined for the territory of Qatar, without any corresponding prohibitions or restrictions on the importation of the like product of any other countries or the exportation of the like product to or from any other countries being similarly prohibited or restricted.

11. In addition to, and independently of, the multiple violations of obligations under the GATT 1994 identified above, Qatar considers that benefits accruing to Qatar directly and indirectly under the GATT 1994 are being nullified and impaired as a result of the application of the measures identified above, within the meaning of Article XXIII:1(b) of the GATT 1994.

12. *Second*, it appears that certain of the measures at issue contravene provisions of the GATS. Specifically, certain measures appear to violate:

(f) Article II:1 of the GATS, because, by:

- prohibiting Qatari persons, vessels and vehicles from crossing maritime borders with Bahrain or entering Bahrain via airspace to supply services, as well as persons from Bahrain crossing maritime borders with Qatar, or entering Qatar via airspace, to consume services;
- prohibiting aircraft registered in Qatar from operating flights to and from Bahrain, including prohibiting landing of Qatari aircraft at airports in Bahrain, which prevents Qatari service suppliers from supplying services;
- prohibiting certain Qatari service suppliers, from providing any service from their offices in Bahrain;
- prohibiting Qatari audio-visual service suppliers from providing services in Bahrain and/or to consumers located in Bahrain; and,
- prohibiting Qatari service suppliers, such as Qatar Postal Services Company, from providing services in relation to mail items that are originating from or designated to Qatar,

Bahrain fails to accord immediately and unconditionally to services and/or service suppliers of Qatar, in a variety of services sectors and through multiple modes of supply, treatment no less favourable than that it accords to like services and service suppliers of any other country;¹

(g) Articles III:1-2 and III:3 of the GATS, because, through the:

- omission to promptly publish, or make otherwise available, relevant measures pertaining to or affecting the operation of the GATS; and,
- omission to promptly inform the Council for Trade in Services of the introduction of, or changes to, measures that significantly affect trade in services covered by Bahrain's specific commitments under the GATS,

Bahrain violates the transparency obligations enshrined in Article III of the GATS;

(h) Article XVI of the GATS, because, by:

- banning Qatari persons or vessels and vehicles from crossing maritime borders with Bahrain, or entering Bahrain via airspace, to supply services, as well as persons from Bahrain crossing maritime borders with Qatar, or entering Qatar via airspace, to consume services; and,
- banning aircraft registered in Qatar from operating flights to and from Bahrain, which prevents Qatari service suppliers from supplying services,

Bahrain appears to unduly restrict market access for Qatari services and/or service suppliers, thereby according treatment that is less favourable than that provided for under the terms, limitations, and conditions agreed and specified in Bahrain's schedule of specific commitments.

13. Bahrain thus fails to carry out its obligations and/or specific commitments under the GATS within the meaning of Article XXIII:1 of the GATS.

14. In addition to, and independently of, the multiple violations of obligations under the GATS identified above, the measures appear to nullify or impair benefits that Qatar could reasonably have expected to accrue to it under Bahrain's specific commitments under the GATS within the meaning of Article XXIII:3 of the GATS.

¹ Bahrain does not appear to have scheduled exemptions in the sense of Article II:2 of the GATS.

15. *Third*, it appears that certain measures contravene provisions of the *TRIPS Agreement*. Specifically, certain measures appear to violate:

(i) Article 3 of the *TRIPS Agreement*, because, by:

- making it impossible for holders of licenses to copyrights, trademarks and other forms of intellectual property owned by Qatari nationals to honour their obligations under licensing agreements; and,
- making it impossible for Qatari owners of copyrights, trademarks and other forms of intellectual property, and their licensees, to use those intellectual property rights in the territory of Bahrain,

Bahrain appears to have failed to accord to the nationals of Qatar treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property.

(j) Article 4 of the *TRIPS Agreement*, because, by:

- making it impossible for holders of licenses to copyrights, trademarks and other forms of intellectual property owned by Qatari nationals to honour their obligations under licensing agreements; and,
- making it impossible for Qatari owners of copyrights, trademarks and other forms of intellectual property, and their licensees, to use those intellectual property rights in the territory of Bahrain,

Bahrain appears to have failed to accord, immediately and unconditionally, to the nationals of Qatar, advantages, favours, privileges and immunities granted by it to the nationals of other countries with regard to the protection of intellectual property.

16. This request for consultations also concerns any modification, replacement or amendment to the measures identified above, and any closely connected, subsequent measures.

17. Qatar reserves its rights to raise additional matters during the course of these consultations and in any future request for panel proceedings.

18. Qatar looks forward to receiving a reply from Bahrain to this request within 10 days after receipt of this request, as contemplated by Article 4.3 of the DSU, and to fixing a mutually acceptable date for consultations.
