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Page: 1/6

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**SAUDI ARABIA– 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 Saudi Arabia 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 Saudi Arabia ("Saudi Arabia") to enter into consultations concerning measures adopted in the context of coercive attempts at economic isolation imposed by Saudi Arabia 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 The measures at issue in this request include all written and unwritten, published and unpublished measures adopted in the context of coercive attempts at economic isolation imposed by Saudi Arabia against Qatar.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 Saudi Arabia 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 Saudi Arabia bans Qatari nationals from travelling to and remaining in Saudi Arabia in order to provide services, as well as bans on the provision of services by Qatari service suppliers established in Saudi Arabia. They include bans on the supply of (digital and other) services from Qatar to consumers of Saudi Arabia as well as prohibitions on nationals of Saudi Arabia 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 broadcasting of and accessing television content over which Qatari nationals hold copyrights and related broadcasting

rights. These also include measures that prohibit or restrict making of payments to (or receiving of payments by) Qatari television broadcasters.

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) Saudi Arabia's closure of its land and maritime borders with Qatar, and prohibition on Qatari aircraft from accessing its airspace;
- (ii) Saudi Arabia's prohibitions on entry into its ports of (i) all ships owned by Qatar or Qatari individuals; and (ii) all ships bearing the Qatari flag;
- (iii) Saudi Arabia's prohibition on the discharge in Saudi ports of any goods shipped from Qatar;
- (iv) Saudi Arabia's prohibition on flights to and from Saudi Arabia operated by aircraft registered in Qatar, including prohibiting landing of Qatari aircraft at airports in Saudi Arabia;
- (v) Saudi Arabia's closure of certain Qatari service suppliers' offices in Saudi Arabia;
- (vi) Saudi Arabia's blocking of access to certain Qatari service suppliers' websites, in Saudi Arabia;
- (vii) Saudi Arabia's removal of Qatari audio-visual service suppliers' channels from Saudi tourist facilities;
- (viii) Saudi Arabia's prohibitions and restrictions on (a) the broadcasting and operation of certain Qatari service suppliers' media content in Saudi Arabia, and (b) accepting new and renewing existing subscriptions to Qatari audio-visual service providers' channels;
- (ix) Saudi Arabia's prohibition on the making of any payments, by any method, including by credit cards, payment cards, transfers, to certain Qatari service suppliers, either for new subscriptions or renewal of old subscriptions to the companies' channels;
- (x) Saudi Arabia's unilateral suspension of the handling of international mail items and parcels originating from or designated to Qatar Postal Services Company; and
- (xi) Saudi Arabia'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 Saudi Arabia, as described in Section A of this request, are inconsistent with Saudi Arabia'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:
 - land and maritime border closures, airspace and airport closure by Saudi Arabia;
 - prohibitions on entry into Saudi ports of (i) all ships owned by Qatar or Qatari individuals; and (ii) all ships bearing the Qatari flag;

- prohibition on the landing of Qatari aircraft at airports in Saudi Arabia; and,
- prohibition on the discharge in Saudi ports and airports of any goods transported from Qatar,

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

(b) Article V:2 of the GATT 1994, because, through the:

- land and maritime border closures, airspace and airport closure by Saudi Arabia;
- prohibitions on entry into Saudi Arabia's ports of (i) all ships owned by Qatar or Qatari individuals; or (ii) ships bearing the Qatari flag;
- prohibition on the landing of Qatari aircraft at airports in Saudi Arabia; and,
- prohibition on the discharge in Saudi ports and airports of any goods transported from Qatar,

Saudi Arabia appears to deny freedom of transit through the territory of Saudi Arabia, 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, aircraft 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,

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

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

- land and maritime border closures, airspace and airport closure by Saudi Arabia;
- prohibitions and restrictions on entry into Saudi Arabia's ports of goods from (i) all ships owned by Qatar or Qatari individuals; or (ii) ships bearing the Qatari flag;
- prohibition on the landing of Qatari aircraft at airports in Saudi Arabia; and,
- the discharge in Saudi ports and airports of any goods transported from Qatar,

Saudi Arabia 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:

- land and maritime border closures, airspace and airport closure by Saudi Arabia;
- prohibitions on entry into Saudi Arabia's ports of (i) all ships owned by Qatar or Qatari individuals; or (ii) ships bearing the Qatari flag;

- prohibition on the landing of Qatari aircraft at airports in Saudi Arabia; and,
- prohibition on the discharge in Saudi ports and airports of any goods transported from Qatar,

Saudi Arabia 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 land or maritime borders with Saudi Arabia, or entering Saudi Arabia via airspace, to supply services, as well as persons from Saudi Arabia crossing land or maritime borders with Qatar, or entering Qatar via airspace, to consume services;
- prohibiting (i) all ships owned by Qatar or Qatari individuals; and (ii) all ships bearing the Qatari flag, from entering Saudi ports, which prevents Qatari service suppliers from supplying services;
- prohibiting the discharge in Saudi ports and airports of any goods transported from Qatar, which prevents Qatari service suppliers from supplying services;
- prohibiting aircraft registered in Qatar from operating flights to and from Saudi Arabia, including prohibiting landing of Qatari aircraft at airports in Saudi Arabia, which prevents Qatari service suppliers from supplying services;
- prohibiting certain Qatari service suppliers from providing any service from their offices in Saudi Arabia;
- prohibiting certain Qatari service suppliers from providing any service in Saudi Arabia and/or to consumers located in Saudi Arabia through their website;
- prohibiting Qatari audio-visual service suppliers, from providing services in certain parts of Saudi Arabia, such as in tourist facilities, and/or to consumers located in Saudi Arabia; 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,

Saudi Arabia 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:

¹ Saudi Arabia does not appear to have scheduled relevant exemptions in the sense of Article II:2 of the GATS. See GATS/EL/41, 29 March 2006, Kingdom of Saudi Arabia, Final List of Article II (MFN) Exemptions, p. 2.

- 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 Saudi Arabia's specific commitments under the GATS,

Saudi Arabia 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 land or maritime borders with Saudi Arabia, or entering Saudi Arabia via airspace, to supply services, as well as persons from Saudi Arabia crossing land or maritime borders with Qatar, or entering Qatar via airspace, to consume services;
- banning (i) all ships owned by Qatar or Qatari individuals; and (ii) all ships bearing the Qatari flag, from entering Saudi ports, which prevents Qatari service suppliers from supplying services;
- banning the discharge in Saudi ports of any goods shipped from Qatar, which prevents Qatari service suppliers from supplying services;
- banning aircraft registered in Qatar from operating flights to and from Saudi Arabia, including prohibiting landing of Qatari aircraft at Saudi airports, which prevents Qatari service suppliers from supplying services;
- banning certain Qatari service suppliers, from providing any service from their offices in Saudi Arabia;
- banning certain Qatari service suppliers, from providing any service in Saudi Arabia and/or to consumers located in Saudi Arabia through their website;
- banning Qatari audio-visual service suppliers, from providing services in certain parts of Saudi Arabia, such as in tourist facilities, and/or to consumers located in Saudi Arabia; and
- banning 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,

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

(i) Article XVIII of the GATS, because, by:

- banning Qatari persons or vessels and vehicles from crossing land or maritime borders with Saudi Arabia, or entering Saudi Arabia via airspace, to supply services, as well as persons from Saudi Arabia crossing land or maritime borders with Qatar, or entering Qatar via airspace, to consume services;
- banning (i) all ships owned by Qatar or Qatari individuals; and (ii) all ships bearing the Qatari flag, from entering Saudi ports;
- banning the discharge in Saudi ports of any goods shipped from Qatar;
- banning aircraft registered in Qatar from operating flights to and from Saudi Arabia, including prohibiting landing of Qatari aircraft at Saudi airports; and,

- banning 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,

Saudi Arabia violates its additional commitments on maritime transport services and communication services, as inscribed in Saudi Arabia's schedule of specific commitments.

13. Saudi Arabia 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 Saudi Arabia's specific commitments under the GATS within the meaning of Article XXIII:3 of the GATS.

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

(j) 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 copy rights, trademarks and other forms of intellectual property, and their licensees, to use those intellectual property rights in the territory of Saudi Arabia,

Saudi Arabia 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.

(k) 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 copy rights, trademarks and other forms of intellectual property, and their licensees, to use those intellectual property rights in the territory of Saudi Arabia,

Saudi Arabia 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 Saudi Arabia 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.
