



**SAUDI ARABIA – MEASURES CONCERNING THE PROTECTION OF INTELLECTUAL  
PROPERTY RIGHTS**

**NOTIFICATION OF AN APPEAL BY THE KINGDOM OF SAUDI ARABIA  
UNDER ARTICLE 16.4 AND ARTICLE 17 OF THE UNDERSTANDING ON RULES  
AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES (DSU),  
AND UNDER RULE 20(1) OF THE WORKING PROCEDURES FOR APPELLATE REVIEW**

The following communication, dated 28 July 2020, from the Delegation of the Kingdom of Saudi Arabia, is being circulated to Members.

1. Pursuant to Article 16.4 and Article 17.1 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), the Kingdom of Saudi Arabia hereby notifies to the Dispute Settlement Body regarding its decision to appeal to the Appellate Body certain issues of law covered in the Panel Report and certain legal interpretations developed by the Panel in the dispute *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights* (DS567).
2. Pursuant to Rule 20(1) of the Working Procedures for Appellate Review, the Kingdom of Saudi Arabia simultaneously files this Notice of Appeal with the Appellate Body Secretariat.
3. The Kingdom of Saudi Arabia restricts its appeal to those errors that it believes constitute serious errors of law and legal interpretation that need to be corrected. Non-appeal of an issue does not signify agreement therewith (including in relation to the Panel's failure to make an objective assessment of the matter before it), does not signify agreement to any facts placed before the Panel, and is without prejudice to positions that may be taken or arguments that may be made by Saudi Arabia in the context of other international disputes. Saudi Arabia also believes that it may not be necessary for the Appellate Body to decide all of the issues raised in this notice of appeal because certain issues may become moot as a result of its decisions on other issues under appeal.
4. Saudi Arabia would like to confirm that, as in the proceedings before the Panel in this dispute,<sup>1</sup> and consistent with Saudi Arabia's severance of diplomatic and consular relations with the complaining Party before the Panel and with the essential security interests that motivated Saudi Arabia to take that action, Saudi Arabia will not interact or have any direct or indirect engagement with Qatar in any way in the context of this appeal.
5. For the reasons to be further elaborated in its submissions to the Appellate Body, Saudi Arabia appeals, and requests the Appellate Body to reverse, modify, or declare moot and of no legal effect certain findings and conclusions of the Panel with respect to the following errors of law and legal interpretations contained in the Panel Report:

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<sup>1</sup> Panel Report, *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights* (DS567) (circulated 16 June 2020) (hereinafter Panel Report), paras. 1.10-14.

## **I. THE PANEL'S FINDINGS REGARDING beIN'S ACCESS TO CIVIL ENFORCEMENT PROCEDURES**

6. Saudi Arabia appeals the Panel's overall conclusions<sup>2</sup> that it acted in a manner inconsistent with Articles 42 and 41.1 of the TRIPS Agreement by taking measures that, directly or indirectly, have had the result of preventing beIN from obtaining Saudi legal counsel to enforce its IP rights through civil enforcement procedures before Saudi courts and tribunals. The Panel failed to make an objective assessment of the matter before it, as required under Article 11 of the DSU.

7. Saudi Arabia appeals the Panel's conclusions<sup>3</sup> that Saudi Arabia has taken anti-sympathy measures that, directly or indirectly, have had the result of preventing beIN from obtaining Saudi legal counsel to enforce its IP rights through civil enforcement procedures before Saudi courts and tribunals. The Panel failed to make an objective assessment of the matter before it, as required under Article 11 of the DSU.

8. Saudi Arabia appeals the Panel's intermediate conclusions<sup>4</sup> that Saudi Arabia imposed anti-sympathy measures banning expressions of support toward Qatar and the Panel's intermediate findings<sup>5</sup> regarding the existence of anti-sympathy measures, including its failure to make an objective assessment of the matter before it, as required under Article 11 of the DSU. Among other errors, the Panel failed to identify the relevant measures with the necessary specificity, failed to conduct the analysis to attribute any such measures to the government of Saudi Arabia, and accorded relevance to Saudi Arabia's decision not to engage with the Complaining Party in order to contest the evidence.<sup>6</sup>

9. Saudi Arabia appeals the Panel's intermediate conclusions<sup>7</sup> that "it is difficult to conceive of any plausible explanation" of why beIN and certain foreign rights holders "would be unable to obtain any legal representation in Saudi Arabia in relation to beoutQ... if not for some form of government instruction, direction or guidance" and the characterization of other evidence as "Saudi authorities actively seeking to influence right holders or a law firm in their arrangements with beIN." The Panel failed to make an objective assessment of the matter before it, as required under Article 11 of the DSU.

10. Saudi Arabia also appeals the Panel's intermediate findings<sup>8</sup> regarding the evidence of the "refusal of Saudi law firms to act in relation to the beoutQ matter" and "other actions by Saudi authorities to direct private entities in their arrangement with beIN", including its failure to make an objective assessment of the matter before it, as required under Article 11 of the DSU.

11. Saudi Arabia appeals the Panel's interpretation and application of the standard required for the complaining Member to demonstrate a *prima facie* case, including, but not limited to, whether mere "inferences and circumstantial evidence" or "implausibility" of alternative explanations are sufficient to demonstrate a *prima facie* case in the context of this dispute.<sup>9</sup> In its application of the standard, the Panel failed to make an objective assessment of the matter before it, as required under Article 11 of the DSU.

## **II. THE PANEL'S FINDINGS REGARDING NON-APPLICATION OF CRIMINAL PROCEDURES AND PENALTIES**

12. Saudi Arabia appeals the Panel's overall conclusions<sup>10</sup> that Saudi Arabia acted inconsistently with Article 61 of the TRIPS Agreement by not providing for criminal procedures and penalties to be applied to the operations of beoutQ. The Panel failed to make an objective assessment of the matter before it, as required under Article 11 of the DSU.

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<sup>2</sup> Panel Report, paras. 7.194, 7.197, 7.198, 7.199, and 8.1(b)(i).

<sup>3</sup> Panel Report, para. 7.73, 7.95, 7.164, and 7.194.

<sup>4</sup> Panel Report, para. 7.72.

<sup>5</sup> Panel Report, paras. 7.55-7.59.

<sup>6</sup> Panel Report, paras. 6.4, 6.6, 6.7, 6.9, 7.6, 7.37, 7.40, 7.59, 7.64, 7.115, 7.142, 7.154, 7.159, 7.160, and 7.174.

<sup>7</sup> Panel Report, para. 7.72.

<sup>8</sup> Panel Report, paras. 7.60-7.71.

<sup>9</sup> Panel Report, paras. 7.39, 7.40, 7.71, 7.72, 7.73, and 7.155.

<sup>10</sup> Panel Report, paras. 7.221 and 8.1(b)(ii).

13. The Kingdom of Saudi Arabia appeals the Panel's interpretation<sup>11</sup> and application of Article 61 of the TRIPS Agreement and related intermediate conclusions<sup>12</sup> that Saudi Arabia was required to apply criminal procedures or penalties against beoutQ under the facts and circumstances of the dispute. The Panel failed to make an objective assessment of the matter before it, as required under Article 11 of the DSU.

14. Saudi Arabia appeals the Panel's intermediate findings and conclusions<sup>13</sup> that Qatar established a *prima facie* case that beoutQ was operated by individuals or entities subject to the criminal jurisdiction of Saudi Arabia and that Saudi authorities had sufficient credible evidence at the time of the establishment of the Panel to require the application of criminal procedures and penalties to beoutQ. Among other errors, the Panel did not consider the fact that subject evidence had not been submitted to the relevant Saudi authorities,<sup>14</sup> expressly relied on evidence that was not made available to Saudi authorities prior to the establishment of the Panel,<sup>15</sup> relied on evidence dated after the establishment of the Panel and incorrectly applied such evidence to the facts and circumstances at the time of establishment,<sup>16</sup> made conclusions based on mere "possibility",<sup>17</sup> and accorded relevance to Saudi Arabia's decision not to engage with the Complaining Party in order to dispute or contest the evidence.<sup>18</sup> The Panel failed to make an objective assessment of the matter before it, as required under Article 11 of the DSU.

### **III. THE PANEL'S FINDINGS REGARDING INVOCATION OF ARTICLE 73(b)(iii) OF THE TRIPS AGREEMENT**

15. Saudi Arabia also appeals the Panel's decision to make a ruling<sup>19</sup> on the requirements for invoking Article 73(b)(iii) of the TRIPS Agreement in relation to the Panel's finding in relation to the inconsistency with Article 61 of the TRIPS Agreement arising from Saudi Arabia's non-application of criminal procedures and penalties to beoutQ, because Saudi Arabia explicitly confirmed to the Panel that it was not invoking Article 73(b)(iii) in relation to any measures related to Article 61 of the TRIPS Agreement. Such conclusion, and all associated findings, should be declared moot and of no legal effect based on the Kingdom's above-referenced appeals and because the Panel erred in making a ruling under Article 73(b)(iii) where Saudi Arabia had explicitly confirmed it was not invoking the relevant *Security Exception* in relation to any measures related to Article 61 of the TRIPS Agreement. Saudi Arabia's appeal of this issue relating to the invocation of *Security Exceptions* under the WTO Agreements is of particular systemic importance in the context of this and other pending disputes. WTO panels have no basis to ignore Members' definition of the scope of invocation of WTO *Security Exceptions*.

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<sup>11</sup> Panel Report, paras. 7.207-7.213.

<sup>12</sup> Panel Report, paras. 7.164, 7.214 – 7.220.

<sup>13</sup> Panel Report, paras. 7.155, 7.213, and 7.219.

<sup>14</sup> Panel Report, paras. 6.10, 6.11, 6.12, 6.15, 7.136 - 149, and 7.155.

<sup>15</sup> Panel Report, paras. 6.10, 6.11, 6.12, 6.15, 7.136 - 149, and 7.155.

<sup>16</sup> Panel Report, paras. 7.110 - 7.111, 7.123 – 7.130, 7.134 – 7.149, and 7.290.

<sup>17</sup> Panel Report, para. 7.153.

<sup>18</sup> Panel Report, paras. 7.6, 7.37, 7.40, 7.59, 7.64, 7.115, 7.142, 7.154, 7.159, 7.160, and 7.174.

<sup>19</sup> Panel Report, paras. 7.294 and 8.1(c)(ii).