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

COMMUNICATION FROM QATAR

The following communication, dated 23 June 2020, was received from the delegation of Qatar with the request that it be circulated to the Dispute Settlement Body (DSB).

Subject: Saudi Arabia – Measures Concerning the Protection of Intellectual
Property Rights (DS567) - Saudi Arabia's Communication
of 2 June 2020 (WT/DSB/COM/9)

On 16 June 2020, the Secretariat circulated, as document WT/DSB/COM/9, a communication from Saudi Arabia dated 2 June 2020 and titled "Systemic Issue of the Lack of Remedy to the Breach of Confidentiality in WTO Dispute Settlement Proceedings".

Saudi Arabia's communication appears to be primarily concerned with criticizing a panel's procedural ruling, while also repeating unfounded allegations regarding the conduct of Qatar and its delegation, in the course of the proceedings in *Saudi Arabia – Measures Concerning Protection of Intellectual Property Rights* (DS567). Saudi Arabia also seeks to mischaracterize the substantive findings of the Panel in a manner suggesting they are somehow favourable to Saudi Arabia.

As Saudi Arabia has inscribed a discussion of this issue on the agenda for the DSB meeting on 29 June 2020, Qatar takes this opportunity, in advance of the DSB meeting, to set the record straight.

Under cover of a submission purportedly about a "systemic issue", Saudi Arabia first uses its communication as an opportunity to complain to the WTO membership about a procedural decision made by the Panel in DS567. As Saudi Arabia explains, a few weeks prior to circulation of the Panel Report, it complained to the Panel about the content of a press report in the newspaper "The Guardian", published on 26 May 2020. That article addressed the problem of broadcast piracy in Saudi Arabia and highlighted, among other things: serious concerns expressed by FIFA, UEFA, the Premier League and La Liga about the notorious Saudi-based pirate "beoutQ"; the fact that the British government had repeatedly expressed concern to Saudi Arabia about beoutQ at a Ministerial level; and the European Commission's naming of Saudi Arabia in a January 2020 report for failing to "crack down" on beoutQ.¹ Regrettably, the press report also made statements about findings of the Panel in DS567 at a time when the Panel Report was still confidential. As Saudi Arabia sets out, rather than authorizing Saudi Arabia to discuss the Panel Report prior to circulation, the Panel reiterated (as it must) that the Panel Report was to remain strictly confidential until circulation.

Based on the Guardian article, Saudi Arabia insinuates, with no evidence, that Qatar or members of its delegation are responsible for the disclosure of the contents of the Panel Report. In doing so, Saudi Arabia attempts to harm Qatar's reputation by accusing Qatar of: (i) a breach of confidentiality contrary to the Panel's working procedures; (ii) "general disrespect for international treaties", in particular certain "Riyadh Agreements"; and (iii) "abusing the WTO dispute process by fabricating

¹ *Newcastle takeover in serious doubt as WTO rules pirate TV channel is Saudi*, The Guardian (26 May 2020).

facts and raising baseless claims with the singular intent of maliciously damaging the reputation of Saudi Arabia while cloaking the 'real dispute'".

Qatar responds to each of these allegations in turn.

First, Qatar recalls that Saudi Arabia raised the alleged breach of confidentiality with the DS567 Panel in a summary and unsubstantiated manner, shortly after publication of the article in question. Saudi Arabia complains that it did not receive a remedy from the Panel, despite raising the matter. The reason that Saudi Arabia did not receive a remedy was because it provided "no information" to the Panel regarding the source of the alleged leak, other than denying that the leak emanated from Saudi Arabia's own delegation. The Panel did not endorse Saudi Arabia's unfounded allegation that Qatar was behind the alleged breach of confidentiality. There was simply no factual basis for it to do otherwise.

Consistent with the Panel's working procedures and the specific guidance provided in the Panel's cover letter transmitting the Final Panel Report, Qatar fully understood that the Panel Report remained confidential until its circulation. Qatar took appropriate steps to preserve the confidentiality of the proceedings and the Panel Report. Further, Qatar confirms that it did not provide the information regarding the contents of the Panel Report to the Guardian.

Second, Qatar rejects Saudi Arabia's suggestion that Qatar does not respect international treaties. Qatar stands by its international commitments. Qatar notes that it is Saudi Arabia, not Qatar, that was found by the Panel in DS567 to have violated the Agreement on Trade Related Aspects of Intellectual Property Rights ("TRIPS Agreement"), by not only failing to provide the protections required by the TRIPS Agreement, but actively supporting and participating in the broadcast piracy itself.² Further, the Panel found that there was no plausible connection between the measures violating Article 61 of the TRIPS Agreement and the asserted security interest, thereby rejecting the Saudi defense of that claim. At the same time, the Panel expressly stated that it took "no position" on Saudi Arabia's allegations concerning Qatar's alleged "repudiation" of the Riyadh Agreements,³ an allegation repeated by Saudi Arabia in its communication to the DSB.

Incidentally, following the circulation of the Panel Report, the Saudi government's active involvement in unauthorized use of intellectual property rights has continued, now extending to the use of the logo and name of the World Trade Organization, itself, which prominently appears on the top of misleading Saudi government press releases about the Panel Report.⁴ This was the topic of a separate letter (dated 18 June 2020) transmitted to the WTO's Information and External Relations Division and attached to this communication.

Third, contrary to Saudi Arabia's unfounded allegation, Qatar has not in any way "abus[ed] the WTO dispute settlement process by fabricating facts and raising baseless claims with the singular intent of maliciously damaging the reputation of Saudi Arabia while cloaking the 'real dispute'". Indeed, the Panel, itself, has already responded to that allegation, in paragraph 7.16 of the Panel Report:

The Panel is not persuaded that it can decline to make any findings or a recommendation, i.e. "decline to exercise its jurisdiction" on the basis of Saudi Arabia's argument that the "real dispute" between the parties is not a "trade dispute". The Panel considers that it is evident from its terms of reference that it has not been asked by Qatar or the DSB to make any findings or recommendation on any wider dispute between the parties. The matter raised by Qatar in its panel request, which now forms the Panel's terms of reference, concerns alleged violations of the TRIPS Agreement. Accordingly, the matter before the Panel falls within the legal subject-matter jurisdiction of a WTO dispute settlement panel.⁵

² Panel Report, *Saudi Arabia – Measures Concerning Intellectual Property Rights*, paras. 7.157- 7.163 ("the Panel concludes that Saudi Arabia promoted public gatherings with screenings of beoutQ's unauthorized broadcasts of 2018 World Cup matches.")

³ Panel Report, *Saudi Arabia – Measures Concerning Intellectual Property Rights*, paras. 2.19, 7.263.

⁴ See <https://twitter.com/CICSaudi/status/1272898783047802880>, <https://twitter.com/CICSaudi/status/1272898783047802880>, and <https://twitter.com/KSAMofaEN/status/1272958199965061121?s=20>.

⁵ Internal citations omitted.

As the Panel correctly found, the dispute at issue in DS567 – the *real* dispute – arose against the backdrop of beoutQ piracy in Saudi Arabia. The Panel Report speaks to the relevant facts, which were not "fabricat[ed]":

The Panel has found that Qatar has established a *prima facie* case that beoutQ is operated by individuals or entities subject to the criminal jurisdiction of Saudi Arabia. The Panel has also found that beIN and other foreign right holders repeatedly sent detailed information to the Saudi authorities to inform them of beoutQ's alleged piracy, and the extensive evidentiary basis for concluding that beoutQ is operated by individuals or entities subject to the criminal jurisdiction of Saudi Arabia. Additionally, the Panel has found that, while taking no action to apply criminal procedures and penalties to beoutQ, Saudi authorities engaged in the promotion of public gatherings with screenings of beoutQ's unauthorized broadcasts of 2018 World Cup matches.⁶

In addition, the Panel found that Saudi measures prevented Qatar-based broadcaster beIN from obtaining Saudi legal counsel to enforce its IP rights.⁷ It also found that seven major football right holders had similarly been unable to secure counsel to act in relation to the beoutQ matter. The Panel found it "difficult to conceive of any plausible explanation of why beIN and foreign right holders would be unable to obtain legal representation in Saudi Arabia in relation to beoutQ—an entity engaged in high-profile piracy that has been the subject of global condemnation—if not for some form of government instruction, direction or guidance".⁸

The Panel's ultimate findings upholding Qatar's claims were based on these factual findings. It is obvious that the Panel did not find Qatar's claims to be "baseless".

Qatar notes that Saudi Arabia proposes that the DSB "seize itself of the issue of breaches of confidentiality in WTO disputes". Qatar reserves the right to offer further comments on such issue at the DSB meeting of 29 June 2020.

Qatar requests that this document be circulated promptly to Members so that it is available in advance of the 29 June 2020 DSB meeting.

Attachment: Letter from Qatar to the Director of Information and External Relations Division of the WTO, dated 18 June 2020 (including annex)

⁶ Panel Report, *Saudi Arabia – Measures Concerning Intellectual Property Rights*, para. 7.219 (internal citations omitted).

⁷ Panel Report, *Saudi Arabia – Measures Concerning Intellectual Property Rights*, para. 7.73.

⁸ Panel Report, *Saudi Arabia – Measures Concerning Intellectual Property Rights*, para. 7.72

Subject: Unauthorized and wrongful use of the WTO's logo for spreading misinformation about the Panel Report in Saudi Arabia – Protection of Intellectual Property Rights

I write to draw your attention to the misuse of the World Trade Organization's ("WTO") logo in official statements by the Kingdom of Saudi Arabia ("KSA"), concerning the findings in a recently issued WTO panel report.

On 16 June 2020, the Panel in *Saudi Arabia – Protection of Intellectual Property Rights* ("DS567") circulated its report to the Members. The Panel found that KSA had violated certain obligations under the Agreement on Trade Related Aspects of Intellectual Property Rights ("TRIPS Agreement"), and called upon KSA to come into compliance with those obligations.

On the same day, two documents appear to have been issued by organs of the Saudi Government, respectively through Twitter handles of (i) the Saudi Ministry of Foreign Affairs, and (ii) the "Centre for International Communication", an initiative of the Saudi Ministry of Media.¹ Copies of these documents are included in the Annex to this letter.

The documents, in Arabic and English, contain mischaracterisations and misrepresentations about the findings of the Panel in DS567. The documents also contain statements that appear to be reactions of the Saudi government to the Panel Report.

Each document prominently displays the logo of the WTO at the head of the page.

The logo of the WTO is a proprietary mark, which should be protected from unauthorized use. The WTO's logo and name are to be protected as an emblem of an international intergovernmental organization, pursuant to Article 6^{ter} of the Paris Convention (1967), as incorporated into Article 2.1 of the TRIPS Agreement. On 23 July 1997, the World Intellectual Property Organization ("WIPO") issued a communication to all the members of the Paris Union, reiterating this protected status of the WTO's name and logo.²

We understand that the Saudi Government has used the WTO logo without authorization, and in doing so has created confusion as to the position of the WTO, and the connection between Saudi Arabia's official statements and the WTO.

Importantly, in including the WTO logo, the documents attempt to pass themselves off as official communications authorized by the WTO. The dispute in question has already attracted considerable media attention. A document passing itself off as authorized by the WTO may well be misunderstood as containing accurate or objective information about the dispute, and not inaccurate and partisan comments.

Qatar urges you to act promptly to take appropriate action and disassociate the WTO from the statements in question.

Note by the Secretariat: Annexes are not reproduced.

¹ See About CIC, Center for International Communications, <https://cic.org.sa/about-cic/>.

² See WIPO communication C-5922-551, <https://www3.wipo.int/branddb/jsp/data.jsp?SOURCE=SIXTER&TYPE=pdf&LANG=EN&KEY=5922>.