

In World Trade Organization Panel Proceedings

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

(WT/DS567)

**EXECUTIVE SUMMARY OF
THE KINGDOM OF SAUDI ARABIA**

19 November 2019

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Short Title	Full Title and Citation
<i>Russia – Traffic in Transit</i>	Panel Report, <i>Russia – Measures Concerning Traffic in Transit</i> , WT/DS512/R and Add.1, adopted 26 April 2019.
<i>U.S. – Poultry (China)</i>	Panel Report, <i>United States – Certain Measures Affecting Imports of Poultry from China</i> , WT/DS392/R, adopted 25 October 2010.
<i>US – Cotton Yarn</i>	Appellate Body Report, <i>United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan</i> , WT/DS192/AB/R, adopted 5 November 2001.
<i>US – Hot-Rolled Steel</i>	Appellate Body Report, <i>United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan</i> , WT/DS184/AB/R, adopted 23 August 2001.
<i>US – FSC</i>	Appellate Body Report, <i>United States – Tax Treatment for “Foreign Sales Corporations”</i> , WT/DS108/AB/R, adopted 20 March 2000.
<i>US – Shrimp</i>	Appellate Body Report, <i>United States – Import Prohibition of Certain Shrimp and Shrimp Products</i> , WT/DS58/AB/R, adopted 6 November 1998.

LIST OF ABBREVIATIONS

Abbreviation	Description
Circular	Circular emailed by GCAM on 13 July 2017
Copyright Committee	Committee for the Examination of Violations of the Copyright Protection Law
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
GATT 1994	General Agreement on Tariffs and Trade of 1994
GCAM	General Commission for Audiovisual Media
GCC	Cooperation Council for the Arab States of the Gulf
KSA 26 July Responses	Responses of the Kingdom of Saudi Arabia to the Panel's Post-Hearing Questions to the Parties Following the First Substantive Meeting of the Parties, sent on 12 July 2019, dated 26 July 2019
KSA 29 October Responses	Responses of the Kingdom of Saudi Arabia to the Panel's Post-Hearing Questions to the Parties Following the Second Substantive Meeting of the Parties, sent on 8 October 2019, dated 29 October 2019
KSA Opening Statement, First Panel Meeting	Opening Statement of the Kingdom of Saudi Arabia at the First Substantive Meeting of the Panel, 9 July 2019
KSA First Written Submission	First Written Submission of the Kingdom of Saudi Arabia, 22 May 2019
KSA Second Written Submission	Second Written Submission of the Kingdom of Saudi Arabia, 30 August 2019
Riyadh Agreements	The First Riyadh Agreement, 23 and 24 November 2013, the Mechanism Implementing the Riyadh Agreements, 17 April 2014, the Supplementary Riyadh Agreement, 16 November 2014
SAIP	Saudi Authority for Intellectual Property
SCI	Strictly Confidential Information
TRIPS Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights

UAE	United Arab Emirates
WTO	World Trade Organization

EXECUTIVE SUMMARY

1. The Real Dispute Before the Panel Concerns Saudi Arabia’s Essential Security Interests and Does Not Concern WTO Obligations

1. As the Panel is aware, since 5 June 2017, Saudi Arabia has had no diplomatic or consular relations with the complaining Party because the Saudi Government concluded that any direct or indirect interaction with the complaining Party would harm Saudi essential security interests. Saudi Arabia has limited its engagement in this dispute to submitting arguments on the application of *Security Exceptions* under Article 73 of the World Trade Organization (“WTO”) Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS Agreement”), and providing the Panel with information regarding its *bona fide* invocation of the *Security Exception*.
2. The complaining Party’s intent is using WTO proceedings to project the patently false impression to the international community, including third party participants in this dispute, that the complaining Party and Saudi Arabia interact on cordial terms. Nothing could be further from the truth. Saudi Arabia will not interact with the complaining Party until it conforms to international norms prohibiting state support for terrorism and rejects extremism, as it agreed to under the “Riyadh Agreements”, as described below.
3. Based on Saudi Arabia’s approach to protecting its essential security interests, we have avoided all direct or indirect interaction with the complaining Party throughout these proceedings. Once again, we appreciate the Panel’s understanding in this regard.
4. Saudi Arabia profoundly regrets that a geopolitical confrontation with terrorism and extremism is unfolding before Panel in the guise of a dispute about WTO rules. As Saudi Arabia has made clear in all statements and submissions to the Panel, the real dispute behind this false “intellectual property” case is the diplomatic, political, and security crisis among the Cooperation Council for the Arab States of the Gulf (known as the “GCC”), involving Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (“UAE”), and other countries in the region, regarding the complaining Party’s State support for terrorism and promotion of extremism. The actions of the complaining Party violate its international obligations, including under the “Riyadh

Agreements”, that were entered into by the GCC Countries between 2013 and 2014 in a collective effort to address the dangers of terrorism and extremism based on a common definition and approach to protecting our shared essential security interests.¹

5. As detailed in Saudi Arabia’s statements and submissions to the Panel,² years of diplomatic effort to encourage the complaining Party to comply with its international obligations ended in February 2017 when the complaining Party repudiated the Riyadh Agreements,³ which brought down the façade of its cooperation against terror and extremism. Between February and June 2017, and thereafter, the complaining Party continued to act against the essential security interests of Saudi Arabia and other countries in the region, in violation the explicit terms of the Riyadh Agreements.⁴ As recent revelations continue to show, the acts of complaining Party continue to pose serious threats to the region and to the global community.⁵
6. In response to Saudi Arabia’s efforts to confront the complaining Party and to obtain compliance with the Riyadh Agreements, the complaining Party has reacted by taking ill-conceived actions against Saudi Arabia based on spurious claims in several domestic and international fora. The WTO is one of those fora where the complaining Party is exerting great efforts and resources to advance its agenda of unsubstantiated retaliation.
7. The facts and circumstances underlying the real dispute before the Panel complicate the Panel’s task of making an objective assessment of “the matter before it” because the “matter” actually in dispute relates exclusively to measures taken to sever diplomatic and political relations in the context of the well-known political and geopolitical confrontation. In order for the Panel to discharge its obligation, it must recognize and take full consideration of the real geopolitical dispute that has been brought before the

¹ Second Written Submission of the Kingdom of Saudi Arabia, 30 August 2019 (“KSA Second Written Submission”); Opening Statement of the Kingdom of Saudi Arabia at the First Substantive Meeting of the Panel, 9 July 2019, (“KSA Opening Statement, First Panel Meeting”), para. 5 and n. 3 (The First Riyadh Agreement, 23 and 24 November 2013 (Exhibit SAU-2)); the Mechanism Implementing the Riyadh Agreements (the “Implementing Mechanism”), 17 April 2014 (Exhibit SAU-3); and the Supplementary Riyadh Agreement, 16 November 2014 (Exhibit SAU-4), are collectively referenced as the “Riyadh Agreements”); *see also* KSA Opening Statement, First Panel Meeting, paras. 23-36.

² *Ibid.*

³ *Ibid.*, para. 34, citing Exhibit ARE-3.

⁴ *Ibid.*, para. 35.

⁵ *See* KSA Second Written Submission, para. 8.

WTO as a trade dispute. In particular, the political, geopolitical, and national security elements of the real, non-trade dispute underlying this proceeding provide reasons for the Panel to question the good faith of the complaining Party in bringing this case to the WTO in the first place, and to consider carefully how the real dispute taints the arguments and evidence presented by the complaining Party.⁶

2. Jurisdictional Issues

2.1. The Matter Before the Panel

8. As established before the Panel, the terms of reference of the “matter” referred to the WTO Dispute Settlement Body (“DSB”) in this case, as well as the relevant provisions of the TRIPS Agreement cited by Saudi Arabia, including Article 73(b)(iii), regarding the “action which [Saudi Arabia] considers necessary for the protection of its essential security interests.”⁷

9. Therefore, the “matter” before the Panel necessarily covers the comprehensive “measures” taken by Saudi Arabia to sever diplomatic and consular relations, as included in the Panel’s terms of reference, as well as the *Security Exceptions* cited by Saudi Arabia.⁸

10. The Panel’s terms of reference are as follows:

To examine, in the light of the relevant provisions of the covered agreements cited by the parties to the dispute, the matter referred to the DSB by Qatar in document WT/DS567/3 and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.⁹

11. The Panel’s terms of reference cover the “matter” referred to the DSB in this case, as well as the relevant provisions of the TRIPS Agreement cited by Saudi Arabia,

⁶ This applies in particular to evidence such as “witness statements” that cannot be substantiated under the procedures and resources available in WTO dispute proceedings.

⁷ KSA Second Written Submission, paras. 22-30.

⁸ *Ibid.*

⁹ *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights*, Constitution of the Panel Established at the Request of Qatar, Note by the Secretariat, WT/DS567/4 (19 February 2019), para. 2 (emphasis added).

including Article 73(b)(iii), regarding the “action which [Saudi Arabia] considers necessary for the protection of its essential security interests.” (Emphasis added.)

12. The “matter” referred to the DSB by the complaining Party is characterized as having a direct relationship between the comprehensive “measures” taken by Saudi Arabia to sever diplomatic and consular relations, and the alleged impact of these measures on the protection of intellectual property in Saudi Arabia. The matter referred to the DSB in document WT/DS567/3 provides as follows:

A. Measures at issue...

In June 2017, Saudi Arabia imposed a scheme of diplomatic, political, and economic measures against Qatar. Such measures impacted, inter alia, the ability of Qatari nationals to protect intellectual property rights in Saudi Arabia.¹⁰

13. Although the complaining Party’s characterization of the measures is not accurate, the complaining Party emphasized that its companies had been “severely impacted by these measures”,¹¹ and refers to the comprehensive “measures” as the basis for Saudi Arabia to apply additional, related measures identified by the complaining Party that allegedly impact the protection of intellectual property.
14. Notwithstanding the complaining Party’s current focus on alleged acts and omissions based on additional related measures challenged as allegedly taken pursuant to and in connection with the comprehensive “measures” taken by Saudi Arabia, the complaining Party cannot deny Saudi Arabia the opportunity to raise defenses, especially based on *Security Exceptions*, with reference to a measure affirmatively included in the Panel’s terms of reference. Even though Saudi Arabia’s characterization of the measure’s nature, scope, and application (*i.e.*, not related to intellectual property proportion) may not match the characterization by the complaining Party (*i.e.*, severely impacting the protection of its companies’ intellectual property), the extension to and coverage of the very same comprehensive measures within the Panel’s terms of reference has been

¹⁰ *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights*, Request for the Establishment of a Panel by Qatar, WT/DS567/3 (19 November 2018), para. 6 (emphasis added).

¹¹ *Ibid*, para. 7 (emphasis added).

asserted by the complaining Party since at least 19 November 2018 and cannot be disputed at this stage of the proceedings.

15. Second, consistent with the structure and meaning of Article 73 of the TRIPS Agreement, there is no requirement that actions necessary to protect essential security interests must match the substantive claims raised by the complainant. Although a complaining party must make claims concerning the “matter” referred to the DSB, this does not limit a panel’s consideration of relevant defenses or arguments raised by a respondent, or a panel’s competence to determine the actual subject matter of the dispute based on the arguments of both of the Parties.¹²
16. In any case, when a respondent Member raises a defense based on a measure that it has taken, especially based on *Security Exceptions* under Article 73, to protect its essential security interests, the panel must consider the arguments raised by the respondent, consistent with its Terms of Reference. The complainant in a WTO dispute cannot limit in any way the measures referenced or arguments made by the Member invoking *Security Exceptions*.
17. A panel should acknowledge that in the context of *Security Exceptions*, a *bona fide* emergency in international relations “involves a fundamental change in circumstances which radically alters the factual matrix in which the WTO-consistency of measures is

¹² The Rules of Court of the International Court of Justice (ICJ), similar to the DSU,

require an applicant to indicate the ‘subject of the dispute’ in the application. The application shall also specify the “precise nature of the claim” (Art. 38, para. 2, of the Rules of Court; *Fisheries Jurisdiction (Spain v. Canada)*, *Jurisdiction of the Court, Judgment*, *I.C.J. Reports 1998*, p. 448, para. 29).

Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile), *Preliminary Objection Judgment of 24 September 2015*, para 25. The ICJ has ruled that

[i]t is for the Court itself, however, to determine on an objective basis the subject-matter of the dispute between the parties, that is, to “isolate the real issue in the case and to identify the object of the claim” (*Nuclear Tests (Australia v. France)*, *Judgment*, *I.C.J. Reports 1974*, p. 262, para. 29 ; *Nuclear Tests (New Zealand v. France)*, *Judgment*, *I.C.J. Reports 1974*, p. 466, para. 30).

Ibid, para. 26. The same inherent competence, together with the requirement to make an “objective assessment” of the matter under Article 11 of the DSU, requires that the Panel here “isolate the real issue in the case”, and consider whether the “real issue” is limited to specific claims of intellectual property violation, or, as Saudi Arabia insists, relates to the comprehensive measures themselves, and not to intellectual property at all.

to be considered.”¹³ Based on this “fundamental change in circumstances”, the Panel here should recognize that, due to the political and security matters and stark differences at issue, measures referenced as the basis for *Security Exceptions* may not always directly match the measures identified by the complaining party in a WTO dispute.

18. Finally, an affirmative defense based on a non-trade measure that a Member considers necessary to protect its essential security interests requires no predicate violation of substantive WTO rules. The original intent behind the *Security Exceptions* was not focused on justifications for substantive violations, but rather on a “non-violation” approach, based on the understanding that non-trade, political or security actions falling under the agreed *Security Exceptions* should not be subject to dispute settlement provisions.¹⁴ In this connection, Saudi Arabia notes that Article 64 of the TRIPS Agreement on *Dispute Settlement* establishes a direct reference to Article XXIII of the GATT (1994), under which “non-violation” claims can be brought, obviously without establishing a “violation” of substantive provisions of the TRIPS Agreement.

2.2. Limited Jurisdiction to Assess Essential Security Interests

19. Saudi Arabia’s invocation of Article 73 of the TRIPS Agreement justifies our refusal to engage with the complaining Party at all, including with its claims, in this WTO dispute settlement proceeding. As Saudi Arabia has stressed throughout these proceedings, our refusal to engage with the complaining Party at all, including engaging with its claims in this dispute, is based on our sovereign determination that any such engagement would undermine our essential security interests. This is the very essence of severing diplomatic and consular relations, and this is why we emphasized in paragraph 2 of our First Written Submission that “[t]he severance of relations between the two countries and the publicly-stated reasons for the measures of Saudi Arabia constitute the only relevant facts in this dispute.”
20. Article 73 of the TRIPS Agreement is very clear that

¹³ Panel Report, *Russia – Measures Concerning Traffic in Transit*, WT/DS512/R and Add.1, adopted 26 April 2019, (“*Russia – Traffic in Transit*”), para. 7.108.

¹⁴ Third Party Oral Statement of the United States of America, *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights* (DS567), paras. 12 to 16; Third Party Submission of the United States of America, *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights* (DS567), para. 27.

Nothing in this Agreement shall be construed...

(b) to prevent a Member from **taking any action** which **it considers necessary** for the protection of its **essential security interests**[.] (Emphasis added.)

21. **Based on the explicit text of Article 73, the Panel may not construe any aspect of the TRIPS Agreement to prevent a Member from taking any action that it considers necessary for the protection of its essential security interests in time of an emergency in international relations.**
22. Therefore, the Panel is prevented from making findings on any of the measures and claims as raised by the complaining Party because that would necessarily include direct engagement by Saudi Arabia, and the TRIPS Agreement cannot be construed to require this result in light of our invocation of the *Security Exceptions*.
23. Rather, the Panel must limit its determination to whether an emergency in international relations exists and whether Saudi Arabia invoked the Security Exceptions in good faith.
24. The evidence that Saudi Arabia has placed on the record before the Panel in good faith establishes the existence of an emergency in international relations and that Saudi Arabia has invoked the Security Exceptions in good faith. Therefore, the Panel should not make any other finding in this dispute.

2.3. Impossibility of Satisfactory Settlement

25. Article 3.7 of the Dispute Settlement Understanding (“DSU”) requires that “[b]efore bringing a case, a Member shall exercise its judgement as to whether action under these procedures would be fruitful.” Given the comprehensiveness of the diplomatic and economic measures imposed not just by Saudi Arabia but also by other WTO Members in the region, and the underlying rationale for those measures, it is clear that the complaining Member has not exercised sound judgement in taking action under the DSU.
26. The function of a panel under Article 11 of the DSU is to “assist the [Dispute Settlement Body] (“DSB”)] in making the recommendations or in giving the rulings provided for

in the covered agreements.” Article 3.4 in turn requires that, “[r]ecommendations or rulings made by the DSB shall be aimed at achieving a satisfactory settlement of the matter.” Article 3.7 also provides that “[t]he aim of the dispute settlement mechanism is to secure a positive solution to a dispute.” WTO dispute settlement thus has a limited and specific purpose: to help settle *trade* disputes. A panel is required to make findings and recommendations only where the findings help resolve a dispute. Indeed, panels are encouraged to exercise judicial economy in respect of issues that are not necessary for such settlement.

27. In the same vein, where the facts of a case are such that no findings or recommendations by a panel are capable of resolving, or even contributing to the settlement of a dispute, the panel should exercise considerable discretion before proceeding further. This dispute is such a case. Saudi Arabia has severed all diplomatic and economic ties with the complaining Member in a transparent manner, and it has done so in cooperation with other Members in the region. This case does not concern whether the WTO or some other forum is more appropriate for the settlement of a trade dispute. Rather, the only relevant issue is that this is not a trade dispute at all.
28. In light of the severity of the emergency arising from the complaining Member’s actions and the resulting comprehensive severance of all diplomatic and economic relations between Saudi Arabia and the complaining Member, no finding or recommendation by the Panel, and no recommendation and ruling by the DSB, can be made that could secure a positive solution or achieve a satisfactory settlement in this matter. Therefore, no finding or recommendation should be made, and the Panel should refrain from proceeding further with this case in order to avoid further harm to the integrity of the WTO dispute settlement mechanism.

3. Saudi Arabia’s *Bona Fide* Invocation of the Security Exceptions

29. To the extent the Panel decides that has jurisdiction to consider this dispute, it should recognize that Saudi Arabia has demonstrated that, under the facts and circumstances

of its invocation of *Security Exceptions*, it has satisfied that the conditions for invoking Article 73 of the TRIPS Agreement.¹⁵

3.1. The Emergency in International Relations

30. Saudi Arabia considers that an “emergency in international relations” should be understood to mean “a situation of armed conflict, or of latent armed conflict, or of heightened tension or crisis, or of general instability engulfing or surrounding a state.”¹⁶ Members may have differing perceptions of what constitutes an emergency in international relations, so deference must be accorded to each Member’s characterization of situations as “emergencies”.¹⁷ Finally, Saudi Arabia notes the temporal relation that should exist between qualifying emergencies and related “actions” necessary to protect essential security interests.
31. Saudi Arabia has established the existence of an emergency in international relations arising from the complaining Party’s support for terrorism and extremism. In particular, the complaining Party, as a signatory to the Riyadh Agreements and the Mechanism Implementing the Riyadh Agreements (known as the “Implementing Mechanism”), agreed that the Riyadh Agreements were the basis for maintaining “security and stability of the GCC Countries” against terrorism and extremism affecting their internal and external political and security issues.¹⁸
32. The complaining Party’s renunciation of the Riyadh Agreements and continuing, unabated support for terrorism and extremism created the current emergency in

¹⁵ KSA Opening Statement, First Panel Meeting; KSA Second Written Submission, paras 31-73.

¹⁶ *Ibid*, paras. 7.76 and 7.111.

¹⁷ *See Russia – Transit*, para. 7.76 (“Such situations give rise to particular types of interests for the Member in question, i.e. defence or military interests, or maintenance of law and public order interests.” (Footnote omitted.)); European Union’s Third Party Integrated Executive Summary, *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights (DS567)*, para. 18 (While the party invoking *Security Exceptions* “should also provide sufficient explanations and evidence of the causes that motivated the severance of diplomatic relations. This does not imply a high evidentiary threshold.”) and para. 29 (“Such situations give rise to particular types of interests for the Member in question, i.e. defence or military interests, or maintenance of law and public order interests.”); Third Party Submission of the United Arab Emirates, *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights (DS567)*, para. 9.

¹⁸ KSA Second Written Submission, para. 15; *see also* KSA Opening Statement, First Panel Meeting, para. 28.

international relations,¹⁹ which has persisted since June 2017 and has deepened based on recent developments.

33. The complaining Party has created an emergency in international relations by failing to abide by its international agreements to cease support for terrorism and extremism. Saudi Arabia considers that the only effective measure to address the emergency is the severance of all diplomatic and consular relations with the complaining Party.²⁰
34. In order to find a solution to a profound, regional crisis arising from the complaining Party's support for terrorism and extremism, Saudi Arabia engaged in years of active diplomacy at the highest national levels as follows:
- In November 2013, Bahrain, Kuwait, Qatar, Saudi Arabia, and the UAE signed the “First Riyadh Agreement”, which established a collective understanding of the causes for, and solutions to, instability and violence in the region, and included a collective commitment to oppose terrorism and extremism.²¹
 - On 5 March 2014, due to Qatar's violations of the First Riyadh Agreement, and following the failure high-level diplomatic efforts to re-confirm the seriousness of the matter, Saudi Arabia, along with Bahrain and the UAE, recalled their Ambassadors from Qatar.²²
 - On 17 April 2014, following high-level, intensive diplomatic efforts to resolve the political dispute, all six countries of GCC, including Qatar, signed the Mechanism Implementing the Riyadh Agreements which identified the agreed “threats” to “security and stability” of GCC Countries, reaffirmed the obligations undertaken in the First Riyadh Agreement, and established specific procedures to ensure compliance with commitments already undertaken with regard to issues covered by the Riyadh Agreements.²³
 - In November 2014, based on Qatar's undertakings in the Supplementary Riyadh Agreement, Saudi Arabia, Bahrain, and the UAE returned their ambassadors to Qatar.²⁴
 - Between November of 2014 and June of 2017, Qatar continued to violate the explicitly agreed terms of the Riyadh Agreements by:

¹⁹ *Ibid*, para. 45.

²⁰ First Written Submission of the Kingdom of Saudi Arabia (“KSA First Written Submission”), paras. 1, 2 and 7; KSA Opening Statement, First Panel Meeting, para. 6.

²¹ KSA, First Written Submission, para. 26.

²² *Ibid*, para. 27.

²³ *Ibid*, para. 28.

²⁴ *Ibid*, para. 32.

- Supporting and harboring extremist individuals and organizations, many of whom had been designated as terrorists by the United Nations and by individual countries;
 - Supporting and allowing terrorist and extremist groups to use Qatar-based and Qatar-sponsored media platforms to spread their messages; and
 - Engaging in activities that threatened the security and stability of GCC Countries as detailed in reports by intelligence chiefs, including as mandated under the Riyadh Agreements, the details of which will not be presented in the context of this WTO dispute.²⁵
- On 19 February 2017, Qatar requested the termination of the Riyadh Agreements.²⁶
 - Between 19 February and 5 June 2017, Qatar continued to act against Saudi Arabia's essential security interests, in violation of the explicit terms of the Riyadh Agreements.²⁷
 - On 5 June 2017, the Kingdom of Saudi Arabia severed diplomatic and consular relations with the complaining Party.²⁸
35. Given that the complaining Party signed the Riyadh Agreements, Saudi Arabia had good reason to believe that the agreed solution would be implemented, but instead the complaining Party's request to terminate that framework gave rise to an emergency in international relations, during which Saudi Arabia took action to sever diplomatic and consular relations with the complaining Party.
36. In addition to confirming its unwillingness to abide by the terms of the Riyadh Agreements, the complaining Party continues to violate the explicitly agreed terms of the Riyadh Agreements by engaging in the following acts:
- **Financial support for instability, extremism, and terrorism;**
 - **Harboring and allowing operations by extremists and terrorists;**
 - **Supporting interference in other countries' internal affairs; and**
 - **Disseminating propaganda in support of extremism and terrorism.**²⁹

²⁵ *Ibid*, para. 33.

²⁶ *Ibid*, para. 34.

²⁷ *Ibid*, para. 35.

²⁸ *Ibid*, para. 1.

²⁹ *Ibid*, para 44.

37. The increased material risk of these existential threats to peace and stability causes an emergency in international relations to which Saudi Arabia and other countries in the region reacted based on their sovereign responsibility to protect their people, territories, and governments from such existential dangers.

3.2. Saudi Arabia’s Essential Security Interests

38. An “essential security interest” should be understood to mean an interest “relating to the quintessential functions of the state, namely, the protection of its territory and its population from external threats, and the maintenance of law and public order internally.”³⁰ If a panel were to construe a provision of the TRIPS Agreement to require a Member to take action that it considered to subvert its essential security interests, this would violate the text of Article 73, and would not be acceptable.³¹
39. Saudi Arabia defines its relevant “essential security interest” in carrying out its central sovereign duty of protecting Saudi citizens and population, government institutions, and territory from the threats of terrorism and extremism,³² which have led to war, instability, and general unrest in our region.

³⁰ *Russia – Transit*, para. 7.130.

³¹ *Russia – Transit*, para. 7.131 (“The specific interests that are considered directly relevant to the protection of a state from such external or internal threats will depend on the particular situation and perceptions of the state in question, and can be expected to vary with changing circumstances. For these reasons, it is left, in general, to every Member to define what it considers to be its essential security interests.”) and para. 132 (“However, this does not mean that a Member is free to elevate any concern to that of an ‘essential security interest’. Rather, the discretion of a Member to designate particular concerns as ‘essential security interests’ is limited by its obligation to interpret and apply Article XXI(b)(iii) of the GATT 1994 in good faith.”); Third Party Executive Summary of *Australia, Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights (DS567)*, para. 8 (“Australia agrees with the panel’s finding in *Russia – Traffic in Transit* that it is for every Member to define for itself what it considers its essential security interests.”); Executive Summary of *Brazil, Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights (DS567)*, para. 14 (“It stands out that the language of Article 73 – ‘which it considers’ – confers a great deal of discretion regarding the necessity of the measure.”); European Union’s Third Party Integrated Executive Summary, *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights (DS567)* (“EU Executive Summary”), paras. 31 (“The terms “its essential security interests” should be interpreted in such a way as to allow Members to identify their own security interests and the desired level of protection without having the Panel second-guess the value judgment as to the legitimacy of the interest.”); Third Party Executive Summary of the United States of America, *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights (DS567)*, para. 12 (“Accordingly Article 73(b)(iii) reflects a Member’s right to take action it considers necessary for the protection of its essential security interests when that action is taken in time of war or other emergency in international relations.”).

³² *Ibid*, paras. 21, 39.

3.3. Measures that Saudi Arabia Considers Necessary to Protect its Essential Security Interests

40. An “essential security interest” should be understood to mean an interest “relating to the quintessential functions of the state, namely, the protection of its territory and its population from external threats, and the maintenance of law and public order internally.”³³ If a panel were to construe a provision of the TRIPS Agreement to require a Member to take action that it considered to subvert its essential security interests, this would also be inconsistent with the broad agreement in interpretation that a panel may not review the “necessity” of measures taken by Members to protect their self-defined, *bona fide* essential security interests during an emergency in international relations.³⁴
41. **The deference that a panel should accord to Members’ determination of the necessity to take actions to protect their essential security interests during emergencies in international relations is limited only by the application of the principle of good faith.**³⁵ Saudi Arabia recalls that the obligation of good faith is a general principle of law as well as a principle of general international law that applies to all WTO treaty commitments. As recognized in WTO jurisprudence,³⁶ the obligation of good faith is codified under the Vienna Convention on the Law of Treaties, in Article 31(1): “[a] treaty shall be interpreted in good faith ...”; and in Article 26: “[e]very treaty ... must be performed [by the parties] in good faith”³⁷. Therefore, the obligation of good faith applies to Members’ application of *Security Exceptions*.
42. In light of the complaining Party’s decisions and actions, and the developments described above prior to June 2017, and following Saudi Arabia’s further consideration

³³ *Russia – Transit*, para. 7.130.

³⁴ See note 30 *supra*.

³⁵ See *Russia – Transit*, para. 7.132, stating that “discretion of a Member to designate particular concerns as “essential security interests” is limited by its obligation to interpret and apply Article XXI(b)(iii) of the GATT 1994 in good faith.”

³⁶ Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, adopted 6 November 1998, (“*US – Shrimp*”), para. 158; Appellate Body Report, *United States – Tax Treatment for “Foreign Sales Corporations”*, WT/DS108/AB/R, adopted 20 March 2000 (“*US – FSC*”), para. 166; Appellate Body Report, *United States – Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan*, WT/DS192/AB/R, adopted 5 November 2001 (“*US – Cotton Yarn*”), para. 81; and Appellate Body Report, *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/AB/R, adopted 23 August 2001 (“*US – Hot-Rolled Steel*”), para. 101.

³⁷ United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155.

and consultation with other friendly countries in our region regarding the remaining viable options to protect our essential security interests in view of the complaining Party's failure to abide by its commitments under the Riyadh Agreements, Saudi Arabia determined that severing all diplomatic and consular relations was the only way to protect effectively its essential security interests.

43. In Saudi Arabia's 5 June 2017 announcement of the severance of diplomatic and consular relations with the complaining Party, it publicly articulated the rationale behind the measures as follows:

the Government of the Kingdom of Saudi Arabia emanating from exercising its sovereign rights guaranteed by [] international law and protecting its national security from the dangers of terrorism and extremism has decided to sever diplomatic and consular relations with the State of Qatar, close all land, sea and air ports, prevent crossing into Saudi territories, airspace and territorial waters.³⁸

44. Saudi Arabia has severed diplomatic and consular relations in order to avoid contact with the complaining Party in order to protect its essential security interests from terrorism and extremism. As Saudi Arabia has made clear again above, we consider avoiding state-to-state interactions under the extremely politicized circumstances of these WTO dispute settlement procedures as "*necessary*" to protect our essential security interests. Saudi Arabia considers that any interaction with the complaining party, including in WTO dispute settlement proceedings, will subvert our essential security interests.³⁹

3.4. Respect for the Obligation of Good Faith

45. In applying the obligation of good faith to the *Security Exceptions* under Article XXI of the General Agreement on Tariffs and Trade ("GATT 1994"), the panel in *Russia – Transit* observed that

[t]he obligation of good faith requires that Members not use the exceptions in Article XXI as a means to circumvent their obligations under the GATT 1994. A glaring example of this would be where a Member sought to release itself from the structure of "reciprocal and mutually advantageous arrangements" that constitutes the

³⁸ KSA First Written Submission, para. 1 and Exhibit SAU-1.

³⁹ *Ibid*, para. 37.

multilateral trading system simply by re-labelling trade interests that it had agreed to protect and promote within the system, as “essential security interests”, falling outside the reach of that system.⁴⁰

46. While a panel must defer to Members’ characterization of situations as emergencies in international relations, and to Members’ determination of their own essential security interests and of the necessity of actions to protect such interests, a panel must limit its review to whether the Member invoking *Security Exceptions* is acting in good faith, as noted above. In order to assess compliance with the good faith obligation, a panel could assess whether the Member has re-labelled trade interests as essential security interests in order to avoid its trade obligations,⁴¹ and could also consider the relationship between the measures and the essential security interests at issue, if it considers that these tests would support its assessment of the *bona fide* invocation of *Security Exceptions*.
47. Saudi Arabia has established in submissions to the Panel that no credible basis exists to find that Saudi Arabia took its comprehensive actions on 5 June 2017 for any other reason than because they are necessary to protect its essential security interests.⁴² Saudi Arabia’s comprehensive measures were a direct response to and remain strictly related to the emergency in international relations that was created by the actions of the complaining Party. Therefore, Saudi Arabia cannot be considered to have “re-labelled” its trade interests as essential security interests in order to avoid its trade obligations. In fact, the opposite is the case here: the complaining Party has “re-labelled” a dispute about essential security interests as a “trade” dispute.
48. In the course of these proceedings, the Panel “invite[d] Saudi Arabia to provide the information that it considers relevant to the Panel’s assessment of Saudi Arabia’s good faith conduct in connection with the invocation of the security exception in Article 73.”⁴³ Saudi Arabia has provided to the Panel information responsive to the issues that it considered relevant to the Panel’s assessment of our good faith conduct in connection with the invocation of the *Security Exceptions* in Article 73. Saudi Arabia provided the requested information in the framework of the six issues below that the Panel identified

⁴⁰ *Russia – Transit*, para. 7.133 (footnote omitted).

⁴¹ *Russia – Transit*, para. 7.133.

⁴² See, e.g., KSA Opening Statement, First Panel Meeting, para. 49.

⁴³ See Panel’s Post-Hearing Questions to the Parties Following the First Substantive Meeting of the Parties, Question 29.

in Question 30 of the Post-Hearing Questions to the Parties Following the First Substantive Meeting of the Panel, as follows:

(a) Please elaborate further on whether Saudi Arabia is asserting that any of the following alleged acts or omissions are “action which it considers necessary for the protection of its essential security interests” for purposes of Article 73 of the TRIPS Agreement:

49. Before addressing the information provided in good faith by Saudi Arabia concerning the six alleged acts or omissions identified by the Panel, Saudi Arabia would like to re-confirm that, with the possible exception of certain travel restrictions, no action taken in June 2017 as part of the measures against the complaining Party was an “action which [Saudi Arabia] consider[ed] necessary for the protection of its essential security interests” for purposes of Article 73 of the TRIPS Agreement” in relation to intellectual property rights.⁴⁴
50. As noted above, the relevant company of the complaining Party faced legal actions in Saudi Arabia before 2017 due to violations of Saudi competition law and its failure to satisfy Saudi Arabia’s laws and regulations regarding broadcasting.⁴⁵ In connection with these legal actions, the relevant company’s temporary license lapsed due to legal issues arising before and wholly unrelated to the comprehensive measures applied by Saudi Arabia on 5 June 2017.⁴⁶
51. Notwithstanding the absence of the relevant company of the complaining Party from the Saudi market, third parties’ interests will always be protected directly in Saudi Arabia by entities not found to have illegally distributed digital content, including original owners of copyright.⁴⁷ Alternatively, non-discriminatory distribution methods have been adopted to protect the interests of copyright owners, consistent with WTO rules.⁴⁸

⁴⁴ Responses of the Kingdom of Saudi Arabia to the Panel’s Post-Hearing Questions to the Parties Following the First Substantive Meeting of the Parties, sent on 12 July 2019, dated 26 July 2019 (“KSA 26 July Responses”), para. 75.

⁴⁵ *Ibid*, para. 28.

⁴⁶ *Ibid*, para. 51; KSA Second Written Submission, para. 51.

⁴⁷ *Ibid*, paras. 48-49.

⁴⁸ *Ibid*, paras. 37-38.

(1) the 19 June 2017 Circular (stating that distribution of beIN content would lead to penalties and fines and the loss of legal right to protect related IP rights)

52. Saudi Arabia would like to confirm that the heading above, as originally presented by the complaining Party, does not accurately reflect the text of the Circular. In no way does the Circular state that the legal distribution of content would lead to penalties and fines and the loss of the legal right to protect related IP rights. In response to the Panel’s invitation to provide information regarding Saudi Arabia’s good faith conduct, we provided to the Panel a detailed description of the relevant Saudi legal regime, as follows:
53. First, the Circular represents an accurate description of Saudi law, as explained further below, and as stated by Saudi Arabia in response to the Panel’s previous questioning as follows:

Broadcasting Licensing Requirements

28. Saudi Arabia welcomes the legal distribution in the Kingdom of copyright-protected broadcasts in accordance with Saudi law. In order to be licensed as a broadcaster, certain objective criteria must be satisfied specific to the broadcasting business, and then generally applicable Saudi law must be observed, including copyright law, publications law, competition law, criminal law, etc. Broadcasting approval requirements are set out in the regulations of the General Commission for Audiovisual Media.¹¹ A broadcasting license may not be renewed or can be cancelled if its holder does not comply with broadcasting laws and regulations or with any other general Saudi law.
29. There is no specific “applicable law” that penalizes an unlicensed entity with the loss of the legal right to protect any related intellectual property rights. However, for the sake of clarity and to remove any doubt, Saudi Arabia confirms that any such loss of the legal right to protect any related intellectual property rights would need to be limited to the relevant entity’s own original content contained in its programming, and would not apply to content contained in its programming [licensed] to it by third parties, which can always be protected from illegal broadcasting by third party owners.¹²

¹¹ A summary of GCAM’s relevant regulations for broadcasters is attached at Exhibit SAU-19.

¹² See Exhibit SAU-21. ⁴⁹

54. Second, the Circular was informative in nature only and did not change the status of or revoke the legal rights of any entity. In June 2017, the relevant company of the complaining Party was not licensed and did not have the right to operate in Saudi Arabia. This has been the case since December of 2016, when the temporary license of the relevant company of the complaining Party lapsed due to the relevant company’s failure to comply with the generally applicable licensing conditions set out in a letter from the General Commission for Audiovisual Media (“GCAM”) dated 13 November 2016.⁵⁰ In addition, the relevant company of the complaining Party does not have the right to operate in Saudi Arabia due to its failure to comply with competition law of Saudi Arabia, as established on the record before the Panel.⁵¹
55. Third, as set out above in paragraph 29 of the Responses of the Kingdom of Saudi Arabia to the Panel’s Post-Hearing Questions to the Parties Following the First Substantive Meeting of the Parties, unlicensed distributors of illegally distributed content do not have a right to protect copyright in such illegally distributed content. However, **third party content owners or other entities that have not been found to have engaged in illegal distribution never lose their right to protect and enforce their legal rights in Saudi Arabia.** Therefore, Saudi law as such and as applied is fully consistent with the TRIPS Agreement.⁵²
56. Fourth, although Saudi authorities are keenly aware of efforts by unlicensed distributors to distribute digital content in Saudi Arabia, no evidence has been established to take action against such illegal distribution. Saudi Arabia described the situation in responses to the Panel’s questions as follows:

Rights to Protect Intellectual Property

47. Saudi Arabia is aware that entities have been distributing unlicensed media content in Saudi Arabia after 19 June 2017. However, no credible evidence exists to link such distribution

⁴⁹ KSA 26 July Responses.

⁵⁰ See Exhibit SAU-29.

⁵¹ KSA 26 July Responses, para. 51.

⁵² See also, KSA Second Written Submission, para. 54.

to the wilful conduct of companies of the complaining Party or related entities. Therefore, no entity has lost the legal right to protect any related IP rights in Saudi Arabia. beoutQ has not been licensed by Saudi authorities, so it has no right to protect its own copyright content distributed in Saudi Arabia.⁵³

57. Therefore, based on the description above, Saudi law as applied in this situation is fully consistent with the TRIPS Agreement. Saudi Arabia hereby confirms to the Panel once again that no entity has lost the legal right to protect any related IP rights in Saudi Arabia.
58. Saudi Arabia would like to confirm once again on the record before the Panel that it affords copyright protection to all entities even if they are not licensed to broadcast in Saudi Arabia, with the exception of entities found to have distributed content illegally (*i.e.*, without a broadcasting license) in Saudi Arabia.
59. In response to the request made by the Panel during its Second Substantive meeting, Saudi Arabia recalls for the record its Oral Statement at the Second Substantive Meeting that:
- “In order to be licensed as a broadcaster, certain objective criteria must be satisfied specific to the broadcasting business, and then generally applicable Saudi law must be observed....” Therefore, broadcasting in Saudi Arabia without a license is illegal.
 - “A broadcasting license may not be renewed or can be cancelled if its holder does not comply with broadcasting laws and regulations or with any other general Saudi law.”
 - “[U]nlicensed distributors of illegally distributed content do not have a right to protect copyright in such illegally distributed content.”
 - “[A]ny such loss of the legal right to protect any related intellectual property rights would need to be limited to the relevant entity’s own original content contained in its programming, and would not apply to content contained in its programming [licensed] to it by third parties, which can always be protected from illegal broadcasting by third party owners.”
 - “[T]hird party content owners or other entities that have not been found to have engaged in illegal distribution never lose their right to protect and enforce their legal rights in Saudi Arabia.”⁵⁴

⁵³ KSA 26 July Responses (footnote omitted).

⁵⁴ Opening Statement of the Kingdom of Saudi Arabia at the Second Substantive Meeting of the Panel, 3 October 2019, paras. 11, 13.

60. Further to the Panel’s request at the Second Substantive Meeting, Saudi Arabia respectfully affirms regarding the relevant company of the complaining Party that:

- “In June 2017, the relevant company of the complaining Party was not licensed and did not have the right to operate in Saudi Arabia. This has been the case since December of 2016, when the temporary license of the relevant company of the complaining Party lapsed due to the relevant company’s failure to comply with the generally applicable licensing conditions set out in a letter from the General Commission for Audiovisual Media (“GCAM”) dated 13 November 2016.”
- In addition, “the relevant company of the complaining Party does not have the right to operate in Saudi Arabia due to its failure to comply with competition law of Saudi Arabia, as established on the record before the Panel.”
- Although “Saudi Arabia is aware that entities have been distributing unlicensed media content in Saudi Arabia after 19 June 2017”, nevertheless, “no credible evidence exists to link such distribution to the wilful conduct of companies of the complaining Party or related entities. Therefore, no entity has lost the legal right to protect any related IP rights in Saudi Arabia.”

61. The above statement of facts and definitive interpretation of Saudi Arabia’s domestic law were officially endorsed by the head of the delegation of Saudi Arabia during the Second Substantive Meeting.⁵⁵ In particular, Saudi Arabia confirmed that

the Kingdom of Saudi Arabia intends to be bound by the statements concerning its legal position as regards its domestic law as described in [Saudi Arabia’s] Oral Statement with respect to the 17 June 2017 Circular.⁵⁶

62. Saudi Arabia submits that the Panel should accept the above formal statement and definitive interpretation as a final clarification of existing Saudi law and practice and as a commitment to continue this regime.

(2) the anti-sympathy measures alleged taken by Saudi Arabia

63. Saudi Arabia has stated throughout the proceedings that it does not maintain any “anti-sympathy measures” or any other measures that restrict access to attorneys in Saudi Arabia for assistance in intellectual property matters.⁵⁷ The neutrality, impartiality, and independence of the judiciary in Saudi Arabia are based on fundamental principles.

⁵⁵ See Exhibit SAU-41.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*, paras. 48-50 and 56.

Saudi Arabia's systems are clear and strict regarding the independence of the judiciary, and the right to litigation is one of the fundamental rights guaranteed by the Basic Law of Governance in Saudi Arabia with respect to every right or interest.

64. In any case, as discussed in this submission, companies may directly access remedies to copyright infringement in Saudi Arabia by providing information and evidence to the Saudi Authority for Intellectual Property (the "SAIP") or to the Government in support of criminal prosecution without retaining counsel or other local support in Saudi Arabia.
65. In proceedings before the Saudi Board of Grievances the relevant company of the Complaining Party has been represented by Saudi national counsel, as confirmed on page 2 of the Ruling of the Board of Grievances, of 4/11/1949H (30 December 2017G).⁵⁸ In addition, relevant company of the complaining Party has signed Powers of Attorney for several Saudi national lawyers to represent its interests in a wide variety of legal and administrative proceedings in Saudi Arabia.⁵⁹ We consider that it would be both logical and effective for other companies seeking counsel in Saudi Arabia to retain counsel in the same manner. In any case, there are thousands of lawyers registered to practice in Saudi Arabia. Any entity seriously seeking to engage counsel in any country should look beyond the nine law firms allegedly approached by the relevant company of the complaining Party in this case.
66. Saudi Arabia has confirmed to the Panel that complaints may be filed directly and electronically with the SAIP by interested parties not present in Saudi Arabia and without the involvement of Saudi national counsel. Upon receipt of a communication, including by email, SAIP's IP Respect Department refers complaints to the Committee for the Examination of Violations of the Copyright Protection Law ("Copyright Committee") to take the appropriate decisions and where warranted to impose the penalties provided for in Article 22 of the Copyright Protection Law.⁶⁰

⁵⁸ Responses of the Kingdom of Saudi Arabia to the Panel's Post-Hearing Questions to the Parties Following the Second Substantive Meeting of the Parties, sent on 8 October 2019, dated 29 October 2019 ("KSA 29 October Responses"), para. 8.

⁵⁹ See examples of powers of attorney at Exhibit SAU-36.

⁶⁰ KSA 29 October Responses, para. 12.

67. No case has been raised with SAIP by the relevant company of the complaining Party or related third party entities that allegedly own rights to content distributed in Saudi Arabia.⁶¹ Over the past two years, SAIP has worked successfully with interested parties to resolve 353 cases, including cases of copyright infringement regarding broadcasting of sports content.⁶²

(3) the travel restrictions allegedly imposed by Saudi Arabia

68. As Saudi Arabia has confirmed in previous responses to the Panel, the actions that Saudi Arabia took on 5 June 2017 to protect its essential security interests do affect “crossing into Saudi territories” by persons of the complaining Party. Therefore, to the extent the Panel finds the “travel restrictions” to be relevant to the intellectual property-related claims in this case, and to find violations related to this measure, Saudi Arabia would consider that they relate to the actions that Saudi Arabia took to protect its essential security interests. However, Saudi Arabia does not believe that travel restrictions relate to intellectual property and these restrictions not fall within the Panel’s terms of reference in this case.⁶³
69. Saudi Arabia re-confirms that, as of the date of the establishment of the Panel, the travel restrictions on citizens of the complaining Party referred to in the 5 June 2017 announcement still existed, but notes that certain exceptions apply as necessary, including for citizens of the complaining Party to perform the Hajj and Umrah.⁶⁴

(4) the requirement for Ministerial approval of Copyright Committee decisions as allegedly applied to beIN

70. Ministerial approval of Copyright Committee decisions is not provided for in Saudi Arabia.⁶⁵
71. Saudi Arabia’s Council of Ministers’ Resolution N°. 536 in 2018 (19\10\1439 H) amended the Saudi Copyright Law, including Article 25/2, replacing the Minister with the Board of Directors of the Saudi Authority for Intellectual Property. As a result, the

⁶¹ KSA 26 July Responses, para. 37.

⁶² *Ibid*, para. 35.

⁶³ *Ibid*, para. 58.

⁶⁴ *Ibid*, para. 6.

⁶⁵ *Ibid*, paras. 26-27.

Article currently reads: “Decisions of the Committee shall be made by majority vote, which shall be endorsed by the Board of Directors”.⁶⁶

72. Thus, the adoption of the decisions issued by the Committee must be approved by the Board of Directors of the Saudi Authority for Intellectual Property, and no longer involve Ministerial approval. The Board is composed of a President and 15 members of both government and private sectors, further to Saudi Arabia’s Council of Ministers’ Resolutions N° 410 in 2017 (28/06/1438 H) and 496 in 2018 (14/09/1439 H).⁶⁷

(5) Saudi Arabia’s alleged failure to apply criminal procedures and penalties against beoutQ

73. The TRIPS Agreement does not require the application of criminal procedures and penalties under the instant circumstances. First, intellectual property rights protected under WTO rules are “private rights” that generally require owners or “private” interested parties to assert their rights. Second, even in cases where the TRIPS Agreement generally provides for criminal procedures and penalties, Members are not required to apply these remedies in all cases. Rather, Members should provide legal fora and procedures to apply such remedies where warranted and where supported by evidence. In particular, Members cannot be expected to act on criminal allegations without evidence and without cooperation of concerned rights holders.⁶⁸

⁶⁶ See Copyright Law of Saudi Arabia (Exhibit SAU-32). For reference to Council of Ministers’ Resolution N°. 536 of 3 July 2018, and current Implementing Regulations of Saudi Arabia’s Copyright Law, see KSA 29 October Responses, paras. 33 and 36, respectively, and Exhibits SAU-42 and SAU 45.

⁶⁷ For reference to Council of Ministers’ Resolution N°. 496 of 29 May 2018, and current Implementing Regulations of Saudi Arabia’s Copyright Law, see KSA 29 October Responses, paras. 34 and 35, respectively, and Exhibits SAU-43 and SAU-44.

⁶⁸ See discussion in this section, *infra*; see also EU Executive Summary, para. 6, stating that

[t]he wording “to be applied” does not add an obligation to investigate and punish all cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. There are certain objective criteria which can justify if a WTO member does not investigate or prosecute in a given case (i.e. lack of evidence). In principle, the absence of initiation of investigations and the punishment of the alleged perpetrators alone cannot show a violation of Article 61.

And see Third Party Executive Summary of Singapore, *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights (DS567)*, para. 19 (“Article 61 merely obliges Members to criminalise wilful trademark counterfeiting or copyright piracy on a commercial scale, and to provide for the availability of criminal procedures and penalties in such cases.”)

74. As stated above, “Saudi Arabia is aware that entities have been distributing unlicensed media content in Saudi Arabia after 19 June 2017.”⁶⁹ There is indeed evidence of digital piracy in Saudi Arabia, as in most countries, and the existence of this evidence is not at issue in this dispute. Exactly for this reason, Saudi Arabia has pursued a multi-prong enforcement approach, including public education,⁷⁰ deterrence by monitoring the market, investigating compliance, and seizing hardware,⁷¹ as well as encouraging content providers to ensure that legal means of distribution are available.⁷² Experts on digital copyright enforcement have emphasized that ensuring the availability of content through legal means is key to achieving compliance, together with public awareness campaigns and monitoring and enforcement activities in the market.
75. Where concerned rights holders come forward with evidence and cooperate with the Government, Saudi Arabia effectively addresses copyright infringement. The SAIP is responsible for enforcement under the Copyright Law, including through a Committee for the Consideration of Copyright Infringements, which reviews all infringement cases raised by interested parties within Saudi Arabia and from abroad. Over the past two years, SAIP has successfully resolved 353 cases, including cases of copyright infringement regarding broadcasting of sports content.⁷³ No case has been raised with SAIP by the relevant company of the complaining Party or related entities.⁷⁴
76. Saudi Arabia has repeatedly committed to continue its efforts to identify the source and stop the copyright piracy of beoutQ, but requires cooperation from entities in the market to achieve compliance. Thus far, Saudi Arabia regrets, no cooperation has been forthcoming; it has only heard allegations without receiving supporting evidence concerning the operation of beoutQ.⁷⁵ Saudi Arabia has informed the Panel that

[v]arious Saudi Arabian Government agencies have received communications from original rights holders based outside of Saudi Arabia in the context of the alleged distribution rights in Saudi

⁶⁹ KSA 26 July Responses, para. 47.

⁷⁰ *Ibid*, para. 25.

⁷¹ *Ibid*, para. 33.

⁷² *Ibid*, para. 37.

⁷³ *Ibid*, para. 35.

⁷⁴ *Ibid*.

⁷⁵ *Ibid*, para. 42.

Arabia of the relevant company of the complaining Party. These communications follow a pattern of relaying unfounded and unsupported allegations that beoutQ is distributing content in Saudi Arabia in violation of their copyright. In the context of each such communication Saudi Arabia has asked each entity to provide information substantiating their allegations; no relevant and credible information has been provided by such companies to Saudi authorities in order to support action against alleged infringing activity and companies.⁷⁶

77. Saudi Arabia is aware that government entities of the complaining Party, the relevant company of the complaining Party, and associated entities and consultants, are responsible for funding, orchestrating, and implementing lobbying campaigns, especially in the United States and Europe, to encourage companies, trade associations, and especially licensors of digital content to the relevant company of the complaining Party, to complain to their governments based on “allegations” that provide no basis at all for Saudi Arabia to take criminal enforcement action.
78. Although several public statements have been made accusing Arabsat and the Government of Saudi Arabia of not doing enough to stop copyright piracy, Saudi Arabia notes that the complaining Party has joined with its instrumentality, the relevant company of the Complaining Party, to conduct a global, public campaign against Saudi Arabia for geostrategic reasons based on unsubstantiated and fabricated allegations of Saudi Government complicity in copyright violations.
79. In this disinformation campaign the Complaining Party and its relevant company have enlisted the support of lobbyists and lawyers, as well as content owners that have received significant compensation for distribution rights. The relevant company of the complaining Party has had some success at spinning its message by conditioning its continuing payments to content owners on their siding with the complaining Party against Saudi Arabia.⁷⁷ Although these content owners, in order to continue their lucrative contracts, have been willing in public to repeat groundless assertions against

⁷⁶ *Ibid*, para. 41 (emphasis added).

⁷⁷ According to reports, Tom Keaveny, beIN MENA Managing Director, admitted in a statement that “[a] rights holder’s stance on beoutQ’s piracy — in other words whether they’re taking legal action, making a public stand, and doing everything within their power to combat the industrial-scale theft of their rights — is a critical factor that we’re now considering when bidding”. Reuters, A. Baldwin, *Motor racing – Qatar’s beIN says it is not renewing F1 deal*, 8 February 2019 (Exhibit SAU-37).

the Saudi Government regarding beoutQ’s piracy, nevertheless, they “do not take ‘the extra step of directly accusing the Saudi Arabian government’ of supporting beoutQ”, as the complaining Party and its relevant company have done.⁷⁸

80. In addition, the public joint statement referenced in Panel question 39 is not consistent with communications received directly from individual entities by Arabsat. For example, in response to a request from Saudi Arabia, Arabsat provided recent correspondence between FIFA and Arabsat in which Arabsat asks

that FIFA kindly and promptly provide us with the written results of the “third party on-site testing.” In the meantime, FIFA has provided no proof or other basis that beoutQ is using Arabsat frequencies to transmit pirate broadcasts. As you know, we cannot act on unsupported factual allegations when similar accusations have in the past been proven false.⁷⁹

81. In response, FIFA stated as follows:

Our various letters to Arabsat have been drafted in the spirit of cooperation and we again reiterate that FIFA is simply requesting the support of Arabsat in addressing the unauthorised transmissions of beoutQ. FIFA is in no way implying that Arabsat is involved in, or complicit with, the illegal beoutQ operation.

...

Unfortunately, due to reasons of legal privilege, FIFA is presently unable to provide you with a copy of the third party report upon which FIFA is relying and which confirms that beoutQ’s broadcasts are made available by way of certain Arabsat satellite frequencies.⁸⁰

82. Based on the above, and in particular FIFA’s refusal to provide available information based on dubious “reasons of legal privilege”, “Saudi Arabia does not believe that unsubstantiated statements should be accorded weight in this dispute. Moreover, FIFA’s confirmation that it “is in no way implying that Arabsat is involved in, or complicit with, the illegal beoutQ operation” directly undermines claims by the complaining Party that Saudi Arabia is involved in and complicit with beoutQ operations.

⁷⁸ Variety, *Qatar’s beIN Rallies Support From U.S. Companies Against Pirate Broadcaster beoutQ*, 15 February 2019 (Exhibit SAU-38).

⁷⁹ Letter from Arabsat to FIFA, dated 24 June 2019 (Exhibit SAU-39).

⁸⁰ Letter from FIFA to Arabsat, dated 26 June 2019 (Exhibit SAU-40) (emphasis added).

83. The same problem regarding unsubstantiated claims by the relevant company of the complaining Party has arisen in foreign court proceedings. As noted in Saudi Arabia's Second Written Submission to the Panel, the *Tribunal de Grande Instance de Paris* rendered a summary judgment order against claims of the relevant company of the complaining Party that its content was distributed by beoutQ on Arabsat satellite frequencies.⁸¹ To the extent the Panel relies on the ruling of the Tribunal, it should review the actual ruling carefully, and not rely on misrepresentations made by the company of the complaining Party, which are described by the *Tribunal*, but not included in its ruling.
84. **The Government of the Kingdom of Saudi Arabia re-confirms formally before the Panel that it will continue to investigate and remains prepared to prosecute criminal violations of its intellectual property laws, consistent with the TRIPS Agreement and Saudi law, pending the production of credible information on whom to prosecute and on what basis.**
85. Therefore, as described above, resolution of copyright issues can be sought either by providing relevant information and supporting evidence:
- to the SAIP for action through the Committee for the Consideration of Copyright Infringements; and/or
 - to the Saudi Government to consider action under Saudi criminal law and procedure, including investigation and prosecution where warranted based on evidence of criminal violations.
86. Saudi Arabia regrets that no such information, evidence, or cooperation has been forthcoming on the part of the relevant company of the complaining Party.
- (6) Saudi Arabia's alleged promotion of public gatherings with screenings of beoutQ's unauthorized broadcasts.**
87. Once again, the Government of Saudi Arabia has never promoted or authorized screenings of beoutQ broadcasts and has no relationship at all with beoutQ. Saudi

⁸¹ KSA Second Written Submission, para. 63.

Arabia is aware of an allegation that an illegal broadcast by beoutQ was made in 2018. Efforts to exaggerate the scope of such an illegal broadcast and to attribute it to the Government are unfounded, and must be rejected.⁸²

88. Saudi Arabia maintains a vigilant watch over the enforcement of broadcast copyright violations at public gatherings. On 14 April 2019, the Saudi Ministry of Municipal and Rural Affairs issued Circular N° 41898 which forwarded Royal Court Circular N° 40752 to the Secretariats, the Agencies and the Public Administrations of the Ministry, including to all Saudi municipal administrations. Circular N°. 41898 emphasized that the Royal Order must be followed and reminded all administrations “to provide the maximum possible protection of intellectual property rights”, including copyright protection.⁸³

4. Conclusion

89. The real dispute underlying this case concerns only essential security interests, which are non-trade interests that must be addressed following changes in behavior, and then only in the context of bilateral and regional political and diplomatic discussions.
90. Geopolitical disputes of this kind cannot be resolved at the WTO and should not be brought to the WTO disguised as trade disputes. As Saudi Arabia has suggested previously, the Panel has multiple means to end its work without addressing the substantive claims that have been raised in this case, including by
- recognizing that *Security Exceptions* have been invoked;
 - confirming that Saudi Arabia’s actions are justified under Article 73 of the TRIPS Agreement;
 - referencing Article 3.4 of the DSU and the impossibility of issuing a recommendation or ruling “aimed at achieving a satisfactory settlement of the

⁸² Saudi Arabia notes that unofficial, non-government tweets should not be recognized by adjudicators or attributed to a government without explicit approval or formal attribution.

⁸³ Ministry of Municipal and Rural Affairs Circular N°. 41898, 9/8/1440H / 14 April 2019G. (Exhibit SAU-35.)

matter” or Article 3.7 of the DSU and the impossibility of securing a positive solution to the dispute;⁸⁴ and/or

- barring the claim because it has not been brought in good faith with the intention of addressing substantive WTO rules.

91. Even if the Panel decides to review the substantive claims in this case, nothing in the TRIPS Agreement can be construed by the Panel to prevent Saudi Arabia from protecting its essential security interests during the prevailing emergency in international relations because Saudi Arabia has satisfied the requirements of Article 73 of the TRIPS Agreement.
92. In addition, the information that Saudi Arabia has provided to support the Panel’s “objective assessment”⁸⁵ of our good faith conduct in connection with the invocation of the *Security Exception* in Article 73 establishes the absence of any substantive violation of the TRIPS Agreement in any case.
93. Based on all of the statements above, and the supporting evidence provided on the record before the Panel, the Kingdom of Saudi Arabia respectfully requests that the Panel find that Saudi Arabia has established that its invocation of the *Security Exceptions* under Article 73 of the TRIPS Agreement is justified and that no additional findings be made in this dispute.

⁸⁴ See KSA First Submission, paras. 4, 9-13; KSA Opening Statement, paras. 11-12, KSA Closing Statement, paras. 3-4.

⁸⁵ Panel Report, *United States – Certain Measures Affecting Imports of Poultry from China*, WT/DS392/R, adopted 25 October 2010 (“*U.S. – Poultry (China)*”), paras. 7.445-7.446.