

"comprehensive measures" severing relations with Qatar, on the other hand. Whereas the anti-sympathy measures were announced on 6 June 2017, there is no such temporal connection between the non-application of criminal procedures and penalties and the 5 June 2017 "comprehensive measures". For the reasons given above, there is also no rational or logical connection between the comprehensive measures aimed at ending interaction with Qatar and Qatari nationals, and the non-application of Saudi criminal procedures and penalties to beoutQ.

7.293. The Panel concludes that the non-application of criminal procedures and penalties to beoutQ does not have any relationship to Saudi Arabia's policy of ending or preventing any form of interaction with Qatari nationals. Therefore, the Saudi authorities' non-application of criminal procedures and penalties to beoutQ is so remote from, or unrelated to, the "emergency in international relations" as to make it implausible that Saudi Arabia implemented these measures for the protection of its "essential security interests".⁸⁴⁸ As a consequence, the Panel concludes that the non-application of criminal procedures and penalties to beoutQ does not "meet a minimum requirement of plausibility in relation to the proffered essential security interests, i.e. that they are not implausible as measures protective of these interests".⁸⁴⁹

7.4.4 Conclusion

7.294. For these reasons, the Panel finds that the requirements for invoking Article 73(b)(iii) are met in relation to the inconsistency with Article 42 and Article 41.1 of the TRIPS Agreement⁸⁵⁰ arising from the 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 also finds that the requirements for invoking Article 73(b)(iii) are not met 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.

8 CONCLUSIONS AND RECOMMENDATION

8.1. For the reasons set forth in this Report, the Panel concludes as follows:

- a. The Panel has no discretion to decline to make any findings or recommendation in the case that has been brought before it;
- b. With respect to Qatar's claims under Parts I, II and III of the TRIPS Agreement:
 - i. Qatar has established that Saudi Arabia has taken 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, and thus Saudi Arabia has acted in a manner inconsistent with Article 42 and Article 41.1 of the TRIPS Agreement;
 - ii. Qatar has established that Saudi Arabia has not provided for criminal procedures and penalties to be applied to beoutQ despite the evidence establishing *prima facie* that beoutQ is operated by individuals or entities under the jurisdiction of Saudi Arabia, and thus Saudi Arabia has acted inconsistently with Article 61 of the TRIPS Agreement;
 - iii. in the light of these findings, it is unnecessary to make findings on Qatar's additional claims under Parts I and II of the TRIPS Agreement.
- c. With respect to Saudi Arabia's invocation of the security exception in Article 73(b)(iii) of the TRIPS Agreement:
 - i. the requirements for invoking Article 73(b)(iii) are met in relation to the inconsistency with Article 42 and Article 41.1 of the TRIPS Agreement arising

⁸⁴⁸ See paragraph 7.285 of this Report.

⁸⁴⁹ Panel Report, *Russia – Traffic in Transit*, para. 7.138.

⁸⁵⁰ The Panel notes that its analysis under Article 73(b)(iii) of the TRIPS Agreement would apply equally to any violations of Parts I and II of the TRIPS Agreement arising from the anti-sympathy measures, and therefore sees no reason to disturb its decision to exercise judicial economy over those claims.

from the 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; and

- ii. the requirements for invoking Article 73(b)(iii) are not met 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.

8.2. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. The Panel concludes that, to the extent that the measures at issue are inconsistent with the TRIPS Agreement, they have nullified or impaired benefits accruing to Qatar under that Agreement.

8.3. Pursuant to Article 19.1 of the DSU, the Panel recommends that Saudi Arabia bring its measures into conformity with its obligations under the TRIPS Agreement.
