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QATAR – CERTAIN MEASURES CONCERNING GOODS FROM THE UNITED ARAB EMIRATES

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED ARAB EMIRATES

The following communication, dated 11 April 2019, from the delegation of the United Arab Emirates to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

1. On 28 January 2019, the Government of the United Arab Emirates ("UAE") requested consultations with the Government of the State of Qatar ("Qatar") pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994") concerning measures maintained by Qatar on the importation, stocking, distribution, marketing, or sale of goods originating in the UAE.

2. Consultations were held on 28 February 2019 with a view to reaching a mutually satisfactory solution. However, these consultations failed to resolve the dispute.

3. Therefore, the UAE respectfully requests, pursuant to Article 6 of the DSU and Article XXIII of the GATT 1994, that the Dispute Settlement Body ("DSB") establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

4. Pursuant to Article 6.2 of the DSU, the UAE proceeds below to identify the specific measures at issue and to provide a brief summary of the legal basis of the complaint.

A. Measures at Issue

5. The measures at issue generally seek to restrict the competitive opportunities for UAE products and companies in Qatar.

6. More specifically, the measures maintained by Qatar prohibit sales outlets in Qatar — including distributors, agents, retailers, and pharmacies — from importing, stocking, distributing, marketing or selling goods, medicines, and other products originating in or exported from the UAE. The measures specifically require affected businesses in Qatar to remove from their shelves and to stop selling goods and medicines from the UAE, Bahrain, Egypt, and Saudi Arabia, which Qatar refers to erroneously and collectively as the "blockade countries".

7. The measures also include the exclusion of manufacturers and UAE products from the approved material lists of Qatar's public works authority (known as "Ashgal"). The exclusion of UAE manufacturers and products from the approved materials lists preclude their purchase and/or use in Ashgal projects.

8. Official statements made by Qatar indicate that Qatar imposed these measures in retaliation for the UAE (and the other referenced WTO Members) terminating relations with Qatar on 5 June 2017, which Qatar alleges to be inconsistent with the UAE's WTO obligations and which Qatar has challenged in the context of the proceedings in *United Arab Emirates — Measures Relating to Trade in Goods and Services, and Trade-Related Aspects of Intellectual Property Rights* (DS526). The DSB established a panel in DS526 and panel proceedings are ongoing. At present, no DSB recommendations or rulings have been adopted as a result of those proceedings.

9. The above measures are reflected in legal instruments that include, but are not limited to, the following, operating separately or collectively:

- a. Notice to sales outlets issued on 26 May 2018 by the Ministry of Economy and Commerce of Qatar ("Notice to sales outlets");
- b. Notice to pharmacies issued on 6 June 2018 by the Ministry of Public Health of Qatar ("Notice to pharmacies");
- c. Letter S/160/2018 dated 6 June 2018 to agents of pharmaceutical companies from the Ministry of Public Health of Qatar ("Letter to agents");
- d. Statement of 26 May 2018 issued by the Government Communications Office of Qatar on Protecting the Safety of Consumers and to Combat Improper Trafficking of Goods ("GCO Statement"); and,
- e. Approved materials lists of Ashgal.¹

10. The measures additionally include Qatar's omission to publish certain measures of general application, including the Notice to sales outlets, the Notice to pharmacies, and the Letter to agents.

B. Legal Bases of the Complaint

11. The measures identified in Section A above are inconsistent with the obligations of Qatar under the GATT 1994 and the DSU.

12. The measures at issue, both individually and collectively, seek to restrict the competitive opportunities for UAE products and companies in Qatar, both vis-à-vis Qatari products and companies, but also other foreign products and companies not subject to these measures. The competitive disadvantage suffered by UAE products and companies was made worse by Qatar's failure to publish these measures.

13. In particular, the UAE considers that the Notice to sales outlets, the Notice to pharmacies, the Letter to agents, and the GCO Statement fail to comply with the following provisions:

- a. Article I:1 of the GATT 1994 because, by prohibiting various sales outlets in Qatar, including distributors, agents, retailers, and pharmacies, from importing, stocking, distributing, marketing or selling goods, medicines, and other products originating in or exported from the UAE, and thus affecting their internal sale, offering for sale, distribution, and use, the measures fail to accord immediately and unconditionally to like products originating in the UAE advantages, favours, privileges or immunities that are granted by Qatar to products originating in other countries;
- b. Article III:4 of the GATT 1994 because, by prohibiting various sales outlets in Qatar, including distributors, agents, retailers, and pharmacies, from stocking, distributing, marketing or selling goods, medicines, and other products originating in or exported from the UAE the measures are laws, regulations, or requirements affecting the internal sale, offering for sale, purchase, or distribution of products and fail to accord products imported into Qatar treatment no less favorable than that accorded to like products of Qatari origin; and,
- c. Article X:1 of the GATT 1994 because one or more of these measures have not been published promptly in such manner as to enable governments and traders to become acquainted with them.

14. The UAE considers, furthermore, that Qatar acts inconsistently with Article I:1 of the GATT 1994 with respect to Ashgal's approved material lists, because, by excluding UAE manufacturers and products from such lists, Qatar fails to accord immediately and unconditionally to like products originating in the UAE advantages, favours, privileges or immunities that are granted

¹ <http://www.ashghal.gov.qa/en/Services/Pages/ApprovedMaterialHome.aspx>

by Qatar to products originating in other countries.

15. The UAE also considers that the ban on UAE products reflected in the Notice to sales outlets, the Notice to pharmacies, the Letter to agents, the GCO Statement, and the exclusion of UAE manufacturers and products from Ashgal's approved materials lists is inconsistent with Article 23.1 of the DSU because through the measures Qatar is seeking the redress of an alleged violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, without having recourse to, and abide by, the rules and procedures of the DSU.; and,

16. Article 23.2(a) of the DSU because through the measures Qatar has made a determination to the effect that a violation has occurred, that benefits have been nullified or impaired, or that the attainment of any objective of the covered agreements has been impeded without recourse to dispute settlement in accordance with the rules and procedures of the DSU, and Qatar has failed to make any such determination consistent with the findings contained in a panel or Appellate Body report adopted by the DSB or an arbitration award rendered under the DSU.

17. In addition to the violations of obligations identified above, the UAE considers that benefits accruing to the UAE directly and indirectly under the GATT 1994 are being nullified and impaired as a result of the application of the measures identified above.

18. This request for establishment of a panel also concerns any modification, replacement or amendment to the measures identified above, and any closely connected, subsequent measures.

19. The UAE asks that this request for the establishment of a panel be placed on the agenda for the meeting of the DSB scheduled to take place on 26 April 2019.
