

(Check against delivery)

**IN THE WORLD TRADE ORGANIZATION**

**Panel Proceedings**

**Saudi Arabia – Measures concerning the Protection of Intellectual Property  
Rights**

**WT/DS567**

**Third Party Oral Statement**

**by**

**Norway**

**at the Third Party Session of the Panel**

Geneva  
10 July 2019

Mr. Chairperson, Members of the Panel,

1. Norway would like to thank the Panel for the opportunity to make a statement at this meeting. Norway also presented a written submission to the Panel confined to the order of analysis the Panel should apply, and the justiciability of Article 73 of the TRIPS Agreement.

2. In the following, Norway will share its views on the burden of proof when a security exception is invoked.

3. The security exception in Article 73(b) justifies violations of the TRIPS agreement, under certain limited conditions. This provision is properly understood as an *affirmative defence*, just like Articles XX and XXI(b) of the GATT 1994. A respondent invoking an affirmative defence bears the burden of proving that the applicable conditions are met. If the respondent does not take on that burden, beyond invoking an exception, a panel should not proceed to consider the merits of the exception.

4. Hence, if the complainant establishes that a measure imposed by the respondent is inconsistent with the provisions of the TRIPS Agreement, and the respondent does not make a *prima facie* case that those measures are justified under Article 73, the panel must, as a matter of law, rule in favour of the complainant.

5. In our view, the panel in *Russia – Traffic in Transit* failed, in effect, to treat Article XXI(b) of the GATT 1994 as an affirmative defence. This resulted in reversing the burden of proof, obliging the complainant to adduce evidence and arguments that the measures were not plausibly connected to the articulated essential security interest. The panel found, however, that the measures were justified, but without requiring the respondent to make its case, either in presenting arguments or evidence. Norway finds that the panel in that dispute erred in not seeing the burden of proof as resting on the respondent.

6. Summing up, if a respondent invoking the security exception in Article 73(b) does not meet the burden to show that the conditions for justification under this provision are met, the panel must, by default, find that the measures are not justified.

Thank you.

\*\*\*