

**REVIEW UNDER ARTICLE 24.2 OF THE APPLICATION OF THE
PROVISIONS OF THE SECTION OF THE TRIPS AGREEMENT
ON GEOGRAPHICAL INDICATIONS**

Checklist of Questions¹

Responses from Norway

The present document represents the responses to the Checklist which the Secretariat has received from Norway, by means of a communication from its Permanent Mission, dated 20 November 1998.

I. RESPONSES TO THE QUESTIONS IN DOCUMENT IP/C/13

A. GENERAL

1.. *Is protection for geographical indications provided through unfair competition law, e.g., passing off, false designation of origin; through a formal procedure for notification/registration before protection is available; or through both? Does the recognition of a geographical indication require registration?*

Geographical indications are protected, as required by Article 22.2 of the TRIPS Agreement, through sections 1 and 2 of the Marketing Act, 16 June 1972, No. 47.² The two sections read:

"Section 1 - General provision

In the conduct of business no act may be performed which runs counter to good business practice in the relationship between entrepreneurs or which is unreasonable in relation to consumers.

[...]"

¹ Documents IP/C/13 and IP/C/13/Add.1

² A copy of the Marketing Act in English is attached. Chapter I of this law has been modified by Norway as a main dedicated intellectual property law in the area of geographical indication (see documents IP/N/1/NOR/1 and IP/N/1/NOR/G/1). Various sections of the law have also been notified as "other laws" (see Annex II of document IP/N/1/NOR/1).

"Section 2 - Misleading business methods

It is prohibited in the conduct of business to apply an incorrect or otherwise misleading representation which is likely to influence the demand for or supply of goods, services or other performances.

The same applies to any other procedure which may have such influence on the demand or supply, if as a result of its form or other circumstances it is likely to mislead consumers."

Geographical indications are also protected by section 14, paragraph 1, number 2 of the Trademarks Act, 4 March 1961, No. 4. The section reads:

"A trademark may not be registered if:

[...]

2. it is liable to deceive.

[...]"

The special protection required for wines and spirits under Article 23.1 of the TRIPS Agreement is set out in section 9 of the Marketing Act, 16 June 1972, No. 47 and section 14, paragraph 3 of the Trademarks Act, 4 March 1961, No. 4. The sections reads:

"Section 9 of the Marketing Act - Incorrect geographical indications for wines and spirits

It is prohibited in the conduct of business to make use of geographical indications with respect to wine or spirits which do not have the geographical origin that the indication indicates. The same applies even where the true origin is indicated, or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "imitation" or the like."

"Section 14, paragraph 3 of the Trademarks Act

Trademarks which consist of or contain geographical indications with respect to wine or spirits, may not be registered for wine and spirits, unless the product has the geographical origin the indication indicates."

The protection under these regulations does not require registration and the protection covers all products.

2. *Is there one single regime of protection of geographical indications for all products? If not, identify the different regimes.*

See the reply to question 1 above.

3. *Do(es) the regime(s) of protection of geographical indications also extend to services?*

Yes, the protection also extends to services.

4. *What provisions of law or regulations are directed to the recognition of geographical indications required by Articles 22.2 and 23.1 of the TRIPS Agreement? Citations to laws should be provided and, if the texts of the laws have not been notified to the WTO, copies should be provided pursuant to Article 63.2.*

See the reply to question 1 above.

5. *If the required recognition of geographical indications is not provided through statutes or regulations, please explain, in detail, the mechanism or mechanisms through which the protection required is provided.*

See the reply to question 1 above.

6. *Please provide a few examples of domestic geographical indications protected in accordance with the means discussed above and indicate the means by which such protection is provided.*

We know of no good such examples from case law. However, on the other side, we mention that the word "Harding" is registered as a trademark for lifeboats in plastic. A minority of the Appeal Board of the Patent Office would refuse registration, *inter alia*, because the word by some would be understood as a reference to the region of "Hardanger".

7. *Is the higher level of protection required for wines and spirits under Article 23.2 of the TRIPS Agreement provided for any other product? If so, please specify such products and the law under which they are protected.*

The higher level of protection is not provided for any other products in Norway.

B. DEFINITION AND CRITERIA FOR RECOGNITION

8-16. We understand the questions of sections B to F as predominantly meant for those states that have a special system for recognition and registration of geographical indications. Norway has no such system.

C. PROCEDURE FOR RECOGNITION

17-27. See the response to questions 8-16 above.

D. MAINTENANCE

28-35. See the response to question 8-16 above.

E. SCOPE OF RIGHTS AND USE

36-43. See the response to questions 8-16 above.

F. RELATIONSHIP TO TRADEMARKS

44-46. See the response to questions 8-16 above.

G. ENFORCEMENT

47-51. How are rights in the geographical indication enforced? Are provisions available under unfair competition law? Trademark law? Other laws? Provide citations to the laws and, if they have not been notified under Article 63.2 of the TRIPS Agreement, please provide copies. Who has the right to enforce a geographical indication? What judicial or administrative bodies have jurisdiction over enforcement actions related to geographical indications? Are there fees involved and, if so, what are those fees? Must the public be notified of the existence of a geographical indication and, if so, how and how often? Is unauthorized use of a geographical indication subject to criminal action and, if so, describe the procedures. If the law has not been notified pursuant to Article 63.2 of the TRIPS Agreement, please provide a copy.

When intervention is necessary in the interest of the consumers, the protection of geographical indications contained in the Marketing Act may be enforced by the marketing authorities, i.e. the Market Council and the Consumer Ombudsman.

Wilful violation of, *inter alia*, sections 2 and 9 of the Marketing Act is punishable by fines or imprisonment up to three months. Negligent violation of section 2 is punishable by fines.

Any interested party may file a civil lawsuit or apply for a provisional measure against unlawful use of geographical indications.

A person who unlawfully uses a geographical indication, is liable to pay damages if the use has inflicted a loss on somebody else.

The restrictions of the Trademarks Act on registrations of geographical indications as trademarks are enforced *ex officio* by the Norwegian Patent Office. However, if such an indication is registered as a trademark, the registration may be opposed in the opposition procedure or invalidated in a law suit.

H. INTERNATIONAL AGREEMENTS

53-54. Is your government party to an international, including bilateral or plurilateral, agreement for the notification and/or registration of geographical indications? If so, please name the international agreement and explain the relationship between it and your national legislation. What other international agreements, if any, have been entered into? What do those agreements provide?

Norway is party to the International Convention for the use of *appellations d'origine* and denominations of cheese, done at Stresa, 1 June 1951.

The Agreement on the European Economic Area, done at Oporto, 2 May 1992, contains in Annex II, Section XXVII extensive references to the EU legislation on definition, description and presentation of wines and spirits.

II. RESPONSES TO THE QUESTIONS IN DOCUMENT IP/C/13/ADD.1

A. GENERAL (SECTION A OF DOCUMENT IP/C/13)

1. Does your economy's industrial property law and/or related law prevent the use of geographical indications identifying wines or spirits against products not originating in the place indicated by the geographical indication, even where the true origin of the goods is indicated or the

geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like?

See the reply to question 1 under I above.

B. DEFINITION AND CRITERIA FOR RECOGNITION (SECTION B OF DOCUMENT IP/C/13)

2-3. *Is there a clear distinction among the terms "geographical indications", "appellations of origin" and "indications of source" in your economy's industrial property law and/or related law, or are there any substantive criteria to distinguish these terms? Does your legislation contain criteria for homonymous geographical indications for wines and spirits?*

See the answer to questions 8-46 under I above.

C. RELATIONSHIP TO TRADEMARKS (SECTION F OF DOCUMENT IP/C/13)

4. *Does your economy's industrial property law and/or related law provide the refusal or invalidation of a trademark registration, which consists of or contains geographical indications identifying wines or spirits with respect to such wines or spirits not originating in the indicated territory?*

See the answer to questions 8-46 under I above.

Act No. 47 of 16 June 1972 relating to the Control of Marketing and Contract Terms and Conditions (The Marketing Control Act)

Chapter 1. Control of Marketing.

Section 1. General Provision.

In the conduct of business no act may be performed which is in conflict with good business practice in the relationship between business people or which is unfair in relation to consumers or which is otherwise in conflict with good marketing practice.

The advertiser and anybody who creates advertising shall ensure that the advertisement does not conflict with the inherent equality between the sexes and that it does not exploit the body of one sex nor implies any offensive or derogatory judgement of female or male.

An evaluation of whether par. one or two has been offended against may, among other things, place emphasis on whether the advertising for reasons of its design, format, extent or other measures, appears as particularly obtrusive.

Section 2. Misleading Business Methods.

It is prohibited in the conduct of business to use an incorrect or otherwise misleading representation which is likely to influence the demand for or supply of goods, services or other performances.

This also applies to any other procedure which may have an influence as stated on the demand or supply if, as a result of its form or other circumstances, it is likely to mislead the consumers.

Use of the term guarantee or similar expression in the sales of goods and/or services is regarded as misleading in all instances where such use does not entail any rights in addition to, or if it limits, the rights which the recipient would have had without the guarantee etc.

Publication or any other announcement of a sale, clearance sale or any other form of sale in the retail trade at reduced prices may only be made when the prices of the goods offered have in fact been reduced.

Section 3. Insufficient Guidance etc.

It is prohibited in the conduct of business to use any representation which is likely to influence the demand for or supply of goods, services or other performances, when the representation does not provide adequate or sufficient guidance or introduces irrelevant matter and therefore must be deemed unfair.

This also applies to any other procedure which may thus influence the demand or supply, if it exploits the lack of experience or knowledge of consumers and therefore must be deemed unfair.

Section 4. Premiums

It is prohibited in the conduct of business to seek to promote the sale of one or more items of goods, services or other performances (the main performance) by offering a premium or permitting a premium to be offered to the consumer.

A premium shall be understood to be any additional performance (item of goods, service etc.) which, without a natural connection existing between the performances, has connection to the sale of the main performance. Payment of money shall, however, be considered a premium only where a natural connection with payment for the main performance does not exist or where stamps, coupons or similar documents are used which have as their primary function to serve as evidence of the right to the money payment. It shall also be considered to be a premium when a particularly low price is charged for the additional performance.

The provisions of Section 5, final paragraph, shall apply accordingly.