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Page: 1/27

**Council for Trade-Related Aspects of
Intellectual Property Rights**

Original: English

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

RESPONSES TO THE CHECKLIST OF QUESTIONS¹

NORWAY

Revision

The present document contains responses to the Checklist of Questions which the Secretariat has received from the delegation of Norway on 7 November 2018.

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?

Protection for geographical indications in Norway is provided under both unfair competition law and through a formal procedure of registration. The recognition of a geographical indication does not necessarily require registration, but the use of a registration system may strengthen the protection conferred. Geographical indications are protected, as required by Article 22.2 and 22.3 of the TRIPS Agreement, through the Marketing Control Act (2009) and the Trademarks Act (2010).

Under the Marketing Control Act, consumers are protected against unfair and misleading commercial practices and misleading act in Sections 6 and 7. The provisions read as follows²:

"Section 6. Unfair commercial practices

Unfair commercial practices shall be prohibited.

A commercial practice shall be unfair if it conflicts with good business practice towards consumers and is likely materially to distort the economic behaviour of consumers, causing them to make decisions they would not otherwise have made.

¹ Documents IP/C/13 and IP/C/13/Add.1. The four questions communicated in IP/C/13/Add.1 have been added to Sections A, B and F of the Checklist and appear as questions 7(a), 16(a), 16(b) and 46(a).

² Disclaimer: Translations of Norwegian legislation are unofficial and for information purposes only. Should there be any differences between the translation and the authentic Norwegian text, the authentic Norwegian text prevails.

A commercial practice shall always be unfair if it is misleading pursuant to section 7 or section 8, or aggressive pursuant to section 9.

..."

"Section 7. Misleading acts

A commercial practice shall be considered misleading if it contains false information and is therefore untruthful, or if it is otherwise likely to deceive consumers in relation to one or more of the following elements:

- a) the existence or nature of the product,
- b) the main characteristics of the product, such as its availability, benefits or risks, the product's execution, quantity, composition, specifications, accessories, origin, method and date of manufacture or provision of the product, delivery, usage or fitness for purpose, results to be expected from its use, tests or checks carried out on the product, or after-sale service and complaint-handling,

The practice shall nevertheless only be regarded as misleading if it is likely to cause consumers to make an economic decision that they would not otherwise have made.

Any marketing of a product, including comparative advertising, which creates confusion with the product or trade mark, trade name or other distinguishing mark of a competitor, shall also be considered misleading."

The interests of traders are protected in Sections 25 and 26 of the Marketing Act, which reads as follows:

"Section 25. Good business practice

No act shall be performed in the course of trade which conflicts with good business practice among traders.

Section 26. Misleading business methods

It shall be prohibited in the course of trade to use an incorrect or otherwise misleading representation which is likely to influence the demand for or supply of goods, services or other products. In this chapter, «representation» shall mean any form of announcement or statement made orally, in writing or otherwise, thus including descriptions, pictures, demonstrations, the form, size or type of packaging, etc.

..."

Under the trademark registration procedure, Geographical Indications dealt with in Section 14 of the Trademarks Act. The provision reads as follows:

"Section 14. General conditions of registration

A trademark to be registered shall consist of a sign which is capable of being protected pursuant to Section 2 and capable of being represented graphically. It shall have distinctive character as a sign for the relevant goods or services.

A trademark cannot be registered if it exclusively, or only with insignificant changes or additions, consists of signs or indications that:

- indicate the kind, quality, quantity, intended purpose, value or geographical origin of the goods or services, the time of production of the goods or of the rendering of the services or other characteristics of the goods or services, or

- constitute customary designations for the goods or services according to normal linguistic usage or to loyal, established business practice.

The conditions in paragraphs one and two shall be met on both the date of application and the date of registration. When assessing a proposed trademark pursuant to paragraph one, sentence two, and paragraph two, it is necessary to take into consideration all circumstances that prevailed on the date of application, in particular effects of use of the trademark prior to this time.

A mark that is used in an industrial or commercial undertaking to designate the geographical origin of a product or service may, notwithstanding the second paragraph letter a), be registered as a collective mark."

A provision on prohibition of registration of misleading trademarks is found in:

"Section 15. Trademarks that conflict with public interests

A trademark cannot be registered if it:

...

2. is liable to deceive, for example in respect of the nature, quality or geographical origin of the goods or services,"

The deceiving use of a geographical indication in a trademark may be prohibited in accordance with the Trademarks Act section 10:

"Section 10. Deceiving trademarks, etc.

If a trademark is of such nature as to deceive or is used by the trademark proprietor or by any other person with the consent of the trademark proprietor in a manner capable to deceive, a court may prohibit the use of the trademark or such forms of use that are considered deceiving and may issue other injunctions that are considered necessary.

Legal actions pursuant to paragraph one may be brought by the Norwegian Industrial Property Office and by anyone who has a legal interest in doing so."

The special protection required for wines and spirits under Article 23.1 and 23.2 of the TRIPS Agreement is set out in Section 31 of the Marketing Control Act and Section 15 paragraph 2 of the Trademarks Act. The provisions read:

MARKETING CONTROL ACT

"Section 31. Application of incorrect geographical indications to wines and spirits

It shall be prohibited in the course of trade to apply a geographical indication to a wine or spirit which does not originate from the geographical location designated by the indication. This shall apply even if the actual place of origin is also stated, or if the geographical indication has been translated or is followed by an expression like «kind», «type», «imitation», or something similar."

TRADEMARKS ACT

"Section 15. Trademarks that conflict with public interests

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For wine and spirits, it is not permissible to register a trademark that consists of or contains anything that is liable to be understood as a geographical indication of origin, unless the geographical origin of the goods is in accordance with the indication."

Norway has adopted a sui generis regime for protection of geographical indications, designations of origin, and traditional specialties for agricultural products and foodstuffs, which provides protection above TRIPS-level for geographical indications fulfilling the set criteria. The legal basis for this system is found in Section 30 of the Food Production and Safety Act (2003).

Regulation No. 698 of 5 July 2002 (as amended) establishes the criteria and procedures for the certification of GIs, designations of origin, (and traditional specialties for foodstuffs) (other than waters, wine, and spirits). Decisions to grant such protection are made by the Norwegian Food Safety Authority (Mattilsynet). The applicant, who may be a group of primary producers and/or processors or a legal person (i.e. not a group), then becomes the holder of the registered indication or designation. The scheme has been administered by the Norwegian Food Branding Foundation (Matmerk) since 2007. Although there are time variations, on average an application is processed within 18 months.

Norway does not participate in the EU registration systems for agricultural products and foodstuffs, as agriculture falls outside the scope of the EEA Agreement. Registration is thus required both in the EU system as well as in the national system of Norway to enjoy protection against misuse, imitations, etc. in both markets. Two Norwegian specialties ("Fenalår from Norway" and "Stockfish from Lofoten") have been certified as GIs in the European Union and are thus provided the same protection there as registered products from EU Member States.

The EU systems for the protection of GIs for wines, spirits and aromatized drinks have, on the other hand, been incorporated into the EEA Agreement, and these GIs thus enjoy the same protection in Norway as of the registration in the EU. Norway has two such GIs – Norsk Akevitt (Norwegian Aquavit) and Norsk Vodka (Norwegian Vodka").

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

Protection for geographical indications in Norway is provided under both unfair competition law and through a formal procedure of registration. The recognition of a geographical indication does not necessarily require registration, but the use of a registration system may strengthen the protection conferred. Geographical indications are protected, as required by Article 22.2 and 22.3 of the TRIPS Agreement, through the Marketing Control Act (2009) and the Trademarks Act (2010).

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The EU systems for the protection of GIs for wines, spirits and aromatized drinks have, on the other hand, been incorporated into the EEA Agreement, and these GIs thus enjoy the same protection in Norway as of the registration in the EU. Norway has two such GIs – Norsk Akevitt (Norwegian Aquavit) and Norsk Vodka (Norwegian Vodka").

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

The general provisions on protection provided in the Trademarks Act and the Marketing Control Act (see the reply to question 1 above) extend to services. The sui generis registration systems for geographical indications do not extend 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.

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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.

Protection for geographical indications in Norway is provided under both unfair competition law and through a formal procedure of registration. The recognition of a geographical indication does not necessarily require registration, but the use of a registration system may strengthen the protection conferred. Geographical indications are protected, as required by Article 22.2 and 22.3 of the TRIPS Agreement, through the Marketing Control Act (2009) and the Trademarks Act (2010).

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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.

As of November 2018, 29 Norwegian foodstuffs have been certified as GIs under the Norwegian sui generis system, designations of origin, or designations with traditional character, including Norwegian "Pinnekjøtt" (lamb), Norwegian "Fenalår"; "Stockfish from Lofoten"; two types of local cheeses; apples, sweet cherries, and plums (from Telemark or Hardanger); and pears, apple juice, and cider (from Hardanger) as well as turnips from Northern Norway.

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.

Geographical indications for agricultural products and foodstuffs registered under the national system enjoy a similar protection as GI's for wines and spirits under Article 23.2 of TRIPS.

7(a). 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?

Yes, this follows from Section 31 of the Marketing Control Act, please see reply to question 1 above.

B. DEFINITION AND CRITERIA FOR RECOGNITION

8. How are geographical indications defined?

There is no general definition of geographical indications in Norwegian law.

Regulation No. 698 of 5 July 2002 (as amended) (the Regulation) establishes the criteria and procedures for the certification of GIs, designations of origin, and designations with traditional character for agricultural products and foodstuffs under the specific system in Norway.

9. Would such a definition comprise geographical indications identifying products of a certain quality or reputation which are indirectly linked to a specific region?

There has to be a link between the region and the product, and the requirements are stricter for designations of origin than for geographical indications. For traditional specialties, which are not GI's a direct link to a specific region is not required, as long as the product is produced using traditional ingredients or traditional production methods.

10. In determining whether recognition should be given a geographical indication, what criteria are considered?

According to Section 5 of the Regulation, a protected designation of origin is

1. the name of an area or a specific place,
2. used as a designation for a foodstuff, which comes from such an area or place and
3. the quality or properties of the foodstuff are significantly or exclusively determined by the geographical environment, including natural and human factors and
4. the production, processing and preparation takes place within the determined geographical area.

Exceptions to the criteria in Section 5 are found in Section 6 of the Regulation:

A non-geographical designation may nonetheless be protection as a geographical designation for a foodstuff, if the designation traditionally is associated with a specific region or place. The other conditions set forth in Section 5 must be fulfilled.

Notwithstanding Section 5 number 2, 3 and 4, a geographical designation may be protected as a designation of origin if the raw material in a foodstuff originates in an area larger than or different from the processing area, provided that:

1. The production area of the raw material is defined

2. Special condition for production of the raw materials applies,
3. a control mechanism exists, ensuring the fulfilment of these criteria, and
4. The designation is a traditional and has an exceptional reputation.

In this provision, raw material includes living animals, meat and milk.

The protected geographical indication is defined in Section 7 of the Regulation as

1. the name of an area or a specific place,
2. used as a description of a foodstuff which comes from such an area or place and
3. which has a specific quality, goodwill or other characteristic property, attributable to its geographical origin and
4. at least one of the stages of production, processing or preparation takes place in the area or place

The traditional specialty-regime provides protection for foodstuffs with a specific character. It does not certify that the protected food product has a link to specific geographical area. Accordingly, traditional specialities are not GIs, and do not fall under the scope of this review.

11. Is there any human creativity involved in the making of specific products under protection by the system of geographical indications? If so, how much? And do these products involve any human factors?

Human factors may be relevant for the determination of a designation of origin, see the reply to question 10 above. How much human creativity is or must be involved must be determined on a case-to-case basis.

12. Are there any other intellectual property rights involved, such as patents for example?

Other intellectual property rights are not involved. GI's can alternatively be protected under the trademark system, by use of collective marks or guarantee/certification marks.

13. What authority, if any, may define the geographic region or area for which rights are claimed and on what basis is such definition made?

The applicant must define the geographical area covered by the right applied for in the application for registration of a GI or a designation of origin under the Norwegian system. The Norwegian Food Safety Authority will determine whether it is substantiated that the criteria for protection are fulfilled for the claimed geographical region or area.

14. Does your legislation contain criteria for homonymous geographical indications for wines?

The rules on homonymous GIs for wines in Regulation (EU) 1308/2013 article 100 and Regulation (EU) 251/2014 article 17 apply also to GIs for wine registered through the EU system that enjoy protection in Norway through the EEA Agreement.

15. Does your national legislation provide for recognition and protection of geographical indications or appellations of origin of foreign countries?

Yes, geographical indications from foreign countries may be protected by registration under the sui generis system for protection of GIs and designations of origin for foodstuffs and will then enjoy the same level of protection as Norwegian indications. Italian producer associations for three food specialties have applied for and been granted protection in Norway for Prosciutto di Parma, Parmigiano Reggiano, and Gorgonzola.

Further, geographical indications from foreign countries may enjoy protection under the general provisions of the Marketing Control Act and the Trademarks Act on inter alia misleading use.

16. Is there any specific prohibition in the legislation/regulations/rules/procedures covering geographical indications not protected in the country of origin? If so, please specify the relevant statutory provision.

No, there is no such provision in Norway.

16(a). 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?

There is a distinction between the terms "geographical indication" and "appellations of origin"/"designations of origin" for indications to be protected under the Norwegian sui generis protection system for foodstuffs, as well as under the EU systems for indications for wines and spirits. However, under the general provisions of for instance the Marketing Control Act there is no distinction between these terms.

16(b). Does your legislation contain criteria for homonymous geographical indications for wines and spirits?

Please see reply to question 14 above regarding wines. For GIs for spirits, such criteria follow from Regulation (EC) No 110/2008 Article 19.

C. PROCEDURE FOR RECOGNITION

17. With respect to any formal system for recognition of geographical indications, must the applicant be a governmental organization or can a private entity own the rights to a geographical indication?

According to Section 15 of the Regulation, the applicant for a product regulation for or owner of a GI or designation of origin for foodstuff under the Norwegian system may be a group of primary producers and/or processors, or a legal person (i.e. not a group). The applicant for a new GI or designation of origin must himself produce, process or distribute the product for which protection is applied for.

18. What are the competent authorities where the protection of a geographical indication can be obtained?

Decisions to grant such protection under the Norwegian system for foodstuffs are made by the Norwegian Food Safety Authority (Mattilsynet).

19. Do the procedures which lead to the recognition of a geographical indication take place ex officio or must they be based on the initiative of an entity or person?

The procedures must be initiated by the group or entity seeking protection and cannot take place ex officio.

Anyone is entitled to apply for the right to use a protected designation.

20. What, if any, fees are involved in the application and maintenance of rights in a geographical indication?

As of November 2018, the fees for the processing of an application for a new product regulation setting out a designation of origin, a geographical designation, or a traditional speciality is NOK 33 940, -. The same fee applies for obtaining an approval to use such designation under an existing product regulation.

21. If criteria must be set out in an application for recognition of a geographical indication, are those criteria purely geographic in nature?

According to Section 9 of the Regulation, the application for a GI or a designation of origin must contain:

1. Designation of the foodstuff, including the GI or the designation of origin
2. A description of the foodstuff with information about the raw materials, the most important physical, chemical, microbiological or organoleptical properties of the product
3. A definition of the geographical area together with information substantiating that the criteria in Section 6 [see question 10 above] are fulfilled
4. Information substantiating that the foodstuff originates in the designated geographical area, cf. Sections 5 or 7 [see question 10 above]
5. A description of the method used for the production of the foodstuff and, if relevant, information about the original, traditional method used in that area. The packaging must be described if the applicant can substantiate that it is decisive for the quality of the foodstuff, the traceability and the control that the packaging is carried out within the designated geographical area.
6. The indication of factors confirming the link to the geographical environment or the geographical origin, cf. Sections 5 or 7 and
7. A proposal for the labelling of the product

22. What other criteria, if any, must be set out in an application for recognition of a geographical indication?

According to Section 9 of the Regulation, the application for a GI or a designation of origin must contain:

1. Designation of the foodstuff, including the GI or the designation of origin
2. A description of the foodstuff with information about the raw materials, the most important physical, chemical, microbiological or organoleptical properties of the product
3. A definition of the geographical area together with information substantiating that the criteria in Section 6 [see question 10 above] are fulfilled
4. Information substantiating that the foodstuff originates in the designated geographical area, cf. Sections 5 or 7 [see question 10 above]
5. A description of the method used for the production of the foodstuff and, if relevant, information about the original, traditional method used in that area. The packaging must be described if the applicant can substantiate that it is decisive for the quality of the foodstuff, the traceability and the control that the packaging is carried out within the designated geographical area.
6. The indication of factors confirming the link to the geographical environment or the geographical origin, cf. Sections 5 or 7 and
7. A proposal for the labelling of the product

23. What information must be supplied in an application for rights in a geographical indication?

The Norwegian Food Safety Authority (Mattilsynet) issues authorizations to use a GI or a designation of origin. The producer/applicant for an authorization must substantiate that the conditions set in the product regulation are met.

24. Must the goods or services with respect to which a geographical indication is claimed be set out?

The Norwegian Food Safety Authority (Mattilsynet) issues authorizations to use a GI or a designation of origin. The producer/applicant for an authorization must substantiate that the conditions set in the product regulation are met.

25. What mechanisms are provided to oppose the recognition of a geographical indication? How is an investigation conducted after such a complaint?

According to Section 20 of the Regulation, anyone may, in writing, oppose the registration of a product regulation for protection of a GI or a designation of origin within three months after the publication of the application. The Norwegian Food Safety Authority carries out the investigation after such complaint.

26. Who can oppose the recognition of a geographical indication?

According to Section 20 of the Regulation, anyone may, in writing, oppose the registration of a product regulation for protection of a GI or a designation of origin within three months after the publication of the application. The Norwegian Food Safety Authority carries out the investigation after such complaint.

27. If your national legislation provides for recognition and protection of geographical indications or appellations of origin of foreign countries, what is the procedure that has to be followed in order to obtain such recognition and consequent protection?

The procedure for foreign GIs for foodstuffs is the same as for national GIs. They must be registered under the national registration system. For wines and spirits, indications registered in the EU systems enjoy protection also in Norway.

D. MAINTENANCE**28. How long does recognition for a geographical indication continue?**

The term of protection is indefinite.

29. If recognition of a geographical indication must be renewed or reaffirmed, what information must be provided in order to effect such a renewal or reaffirmation? Specify any fees involved in renewal or reaffirmation.

N/A.

30. Must a geographical indication be used in order to maintain rights? If so, how is such use determined?

There is no obligation to use a GI or a designation of origin according to Norwegian law.

31. Is there a specified limit for non-use before rights in a geographical indication cease and, if so, what is that limit?

There is no obligation to use a GI or a designation of origin according to Norwegian law.

32. Who monitors the use of geographical indications to determine if the criteria identified in the application continue to be met?

The Norwegian Food Safety Authority monitors the use of GIs and designations of origin registered under the Norwegian system, cf. Section 25 of the Regulation.

33. If a government entity is responsible for monitoring the use of geographical indications, what are its procedures for doing so?

The regional branches of the Norwegian Food Safety Authority monitor the use of GIs and designations of origin, cf. Section 25 of the Regulation.

34. Are there means by which interested parties may request termination of a geographical indication based on non-use or failure to maintain the criteria identified in the application? Describe the procedure.

Termination based on non-use is not applicable.

Subject to Section 21 of the regulation, any interested party may claim the invalidation by the courts or by The Norwegian Food Safety Authority (Mattilsynet) of a product regulation registered under the Norwegian system, if the conditions to register the GI or the requirements for the content of a product regulation were not met.

The claim for invalidity submitted to the Food Safety Authority must be in writing and substantiate the claim.

A claim for invalidation will be processed by the courts according to general civil procedural law.

35. Do the procedures which lead to forfeiture of a geographical indication take place ex officio or must they be based on the initiative of an entity or person?

A procedure which may lead to forfeiture of a product regulation for a GI or a designation of origin registered under the Norwegian system must be initiated by an interested party and will not take place ex officio.

Authorisations for use of a GI or a designation of origin may be detained by the Norwegian Food Safety Authority if the user no longer fulfils the criteria set out in the product regulation or the Regulation, cf Section 22 of the Regulation. The authorization may be changed if the product regulation is changed or cancelled.

E. SCOPE OF RIGHTS AND USE

36. May anyone who meets the criteria submitted to obtain recognition of a geographical indication use that geographical indication after recognition is given or must additional criteria or procedures be followed by that party before use is permitted?

Anyone who meets the criteria may use a GI or a designation of origin registered under the Norwegian system, but only after authorization to the individual user is given by the Norwegian Food Safety Authority.

37. Who makes the determination regarding use of a geographical indication by particular parties, the entity responsible for the recognition or the entity that obtained the recognition?

The entity responsible for the recognition makes the determination (the Norwegian Food Safety Authority).

38. Are there fees involved in receiving authorization to use a particular geographical indication and, if so, what are those fees and how are they established?

The fee for receiving an authorization to use a GI or a designation of origin is NOK 33 940 as of November 2018, cf Section 27 of the Regulation.

39. If there is a dispute regarding use of a geographical indication by a particular party, what procedures are followed to resolve it?

Any dispute regarding the use of a geographical indication by a party is to be settled by the courts in accordance with general civil procedural law.

40. Must individual authorized users of a geographical indication use that geographical indication continually to retain their right to use it and, if so, how is their use determined and how long will disuse be permitted?

There is no obligation to use the geographical indication to retain the right to use it.

41. If there is a dispute over continuity of use by a particular party, how is it resolved?

N/A

42. Does the regime for protection of geographical indications allow geographical indications to be licensed and, if so, what conditions are imposed on such licenses? If such conditions are not met, what is the effect on the geographical indication?

There are no specific provisions on licencing of GIs and designations of origin. Anyone may use a GI or a designation of origin under an existing product regulation as long as the conditions are fulfilled, after authorization from the Norwegian Food Safety Authority. The right to use the GI/designation

of origin is connected to the specific producer who applied for authorization and is therefore not transferable and cannot be licenced.

43. How is "grandfathered use" of a geographical indication, under Article 24.4 of the TRIPS Agreement, applied in your country?

We do not believe this question is relevant to Norway, as we are not aware of any GI for wines or spirits of another Member having been used in Norway in a continuous manner for 10 years before 15 April 1994.

F. RELATIONSHIP TO TRADEMARKS

44. What steps are taken to ensure that, in recognizing a geographical indication, the obligations of Article 16.1 of the TRIPS Agreement are not nullified and impaired?

Under Norwegian law, we generally apply the principle that the person being first to establish rights to a distinctive sign, prevails (prior tempore, potior jure). Thus, if rights to a trademark have been established prior to rights to a GI, the trademark will prevail.

45. What steps are taken to ensure that, in recognizing a geographical indication, the obligations of Article 16.2 and 16.3 of the TRIPS Agreement are not nullified and impaired?

We refer to the reply under question 44 regarding the principle mentioned there.

46. What procedures are foreseen in case of a conflict of a geographical indication with a trademark?

Section 18 of the Regulation contains provisions to be used in case of a conflict between a GI and a younger trademark, ref. also Section 16 e of the Trademarks Act. An application for a trademark which conflicts with a GI already protected under a product regulation, will be refused. The same applies for GIs for wines and spirits protected under the EU registration systems providing protection in Norway.

If use of a trademark would conflict with the right to an older GI, that would be dealt with by way of an infringement lawsuit or lawsuit based on unfair competition law, initiated by the GI holder before the courts.

In the case of an earlier trademark, Section 19 of the Regulation applies. A GI/designation of origin may not be registered if because of the reputation or use of a trademark or a collective mark is likely to mislead the consumer as to the actual origin of the product. Further, a GI/designation of origin may not be registered, if a trademark or collective mark already is registered if the trademark/collective mark

- is identical to the GI/designation of origin and
- is protected for the same or similar foodstuffs and
- may mislead the consumers as to the real origin of the foodstuff and
- is registered or applied for before the date of the reception of an application for protection of a GI/designation of origin in accordance to the Regulation

Further, if use of a GI would infringe rights to an older trademark, that would be assessed according to the general trademark law on risk of confusion etc. under Section 4 of the Trademarks Act, and would, upon a lawsuit, be dealt with by the courts.

46(a). 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?

Yes, please see the reply to question 1 above, referring to Section 15 of the Trademarks Act.

G. ENFORCEMENT

47. 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.

Protection for geographical indications in Norway is provided under both unfair competition law and through a formal procedure of registration. The recognition of a geographical indication does not necessarily require registration, but the use of a registration system may strengthen the protection conferred. Geographical indications are protected, as required by Article 22.2 and 22.3 of the TRIPS Agreement, through the Marketing Control Act (2009) and the Trademarks Act (2010).

Under the Marketing Control Act, consumers are protected against unfair and misleading commercial practices and misleading act in Sections 6 and 7. The provisions read as follows:

"Section 6. Unfair commercial practices

Unfair commercial practices shall be prohibited.

A commercial practice shall be unfair if it conflicts with good business practice towards consumers and is likely materially to distort the economic behaviour of consumers, causing them to make decisions they would not otherwise have made.

...

A commercial practice shall always be unfair if it is misleading pursuant to section 7 or section 8, or aggressive pursuant to section 9.

..."

"Section 7. Misleading acts

A commercial practice shall be considered misleading if it contains false information and is therefore untruthful, or if it is otherwise likely to deceive consumers in relation to one or more of the following elements:

- a) the existence or nature of the product,
- b) the main characteristics of the product, such as its availability, benefits or risks, the product's execution, quantity, composition, specifications, accessories, origin, method and date of manufacture or provision of the product, delivery, usage or fitness for purpose, results to be expected from its use, tests or checks carried out on the product, or after-sale service and complaint-handling,

...

The practice shall nevertheless only be regarded as misleading if it is likely to cause consumers to make an economic decision that they would not otherwise have made.

Any marketing of a product, including comparative advertising, which creates confusion with the product or trade mark, trade name or other distinguishing mark of a competitor, shall also be considered misleading."

The interests of traders are protected in Sections 25 and 26 of the Marketing Act, which reads as follows:

"Section 25. Good business practice

No act shall be performed in the course of trade which conflicts with good business practice among traders.

Section 26. Misleading business methods

It shall be prohibited in the course of trade to use an incorrect or otherwise misleading representation which is likely to influence the demand for or supply of goods, services or other products. In this chapter, «representation» shall mean any form of announcement or statement made orally, in writing or otherwise, thus including descriptions, pictures, demonstrations, the form, size or type of packaging, etc.

...".

Under the trademark registration procedure, Geographical Indications dealt with in Section 14 of the Trademarks Act. The provision reads as follows:

"Section 14. General conditions of registration

A trademark to be registered shall consist of a sign which is capable of being protected pursuant to Section 2 and capable of being represented graphically. It shall have distinctive character as a sign for the relevant goods or services.

A trademark cannot be registered if it exclusively, or only with insignificant changes or additions, consists of signs or indications that:

indicate the kind, quality, quantity, intended purpose, value or geographical origin of the goods or services, the time of production of the goods or of the rendering of the services or other characteristics of the goods or services, or

constitute customary designations for the goods or services according to normal linguistic usage or to loyal, established business practice.

The conditions in paragraphs one and two shall be met on both the date of application and the date of registration. When assessing a proposed trademark pursuant to paragraph one, sentence two, and paragraph two, it is necessary to take into consideration all circumstances that prevailed on the date of application, in particular effects of use of the trademark prior to this time.

A mark that is used in an industrial or commercial undertaking to designate the geographical origin of a product or service may, notwithstanding the second paragraph letter a), be registered as a collective mark."

A provision on prohibition of registration of misleading trademarks is found in:

"Section 15. Trademarks that conflict with public interests

A trademark cannot be registered if it:

...

2. is liable to deceive, for example in respect of the nature, quality or geographical origin of the goods or services,"

The deceiving use of a geographical indication in a trademark may be prohibited in accordance with the Trademarks Act section 10:

"Section 10. Deceiving trademarks, etc.

If a trademark is of such nature as to deceive or is used by the trademark proprietor or by any other person with the consent of the trademark proprietor in a manner capable to deceive, a court may prohibit the use of the trademark or such forms of use that are considered deceiving and may issue other injunctions that are considered necessary.

Legal actions pursuant to paragraph one may be brought by the Norwegian Industrial Property Office and by anyone who has a legal interest in doing so."

The special protection required for wines and spirits under Article 23.1 and 23.2 of the TRIPS Agreement is set out in Section 31 of the Marketing Control Act and Section 15 paragraph 2 of the Trademarks Act. The provisions read:

MARKETING CONTROL ACT

"Section 31. Application of incorrect geographical indications to wines and spirits

It shall be prohibited in the course of trade to apply a geographical indication to a wine or spirit which does not originate from the geographical location designated by the indication. This shall apply even if the actual place of origin is also stated, or if the geographical indication has been translated or is followed by an expression like «kind», «type», «imitation», or something similar."

TRADEMARKS ACT

"Section 15. Trademarks that conflict with public interests

...

For wine and spirits, it is not permissible to register a trademark that consists of or contains anything that is liable to be understood as a geographical indication of origin, unless the geographical origin of the goods is in accordance with the indication."

Norway has adopted a sui generis regime for protection of geographical indications, designations of origin, and traditional specialties for agricultural products and foodstuffs, which provides protection above TRIPS-level for geographical indications fulfilling the set criteria. The legal basis for this system is found in Section 30 of the Food Production and Safety Act (2003).

Regulation No. 698 of 5 July 2002 (as amended) establishes the criteria and procedures for the certification of GIs, designations of origin, (and traditional specialties for foodstuffs) (other than waters, wine, and spirits). Decisions to grant such protection are made by the Norwegian Food Safety Authority (Mattilsynet). The applicant, who may be a group of primary producers and/or processors or a legal person (i.e. not a group), then becomes the holder of the registered indication or designation. The scheme has been administered by the Norwegian Food Branding Foundation (Matmerk) since 2007. Although there are time variations, on average an application is processed within 18 months.

Norway does not participate in the EU registration systems for agricultural products and foodstuffs, as agriculture falls outside the scope of the EEA Agreement. Registration is thus required both in the EU system as well as in the national system of Norway to enjoy protection against misuse, imitations, etc. in both markets. Two Norwegian specialties ("Fenalår from Norway" and "Stockfish from Lofoten") have been certified as GIs in the European Union and are thus provided the same protection there as registered products from EU Member States.

The EU systems for the protection of GIs for wines, spirits and aromatized drinks have, on the other hand, been incorporated into the EEA Agreement, and these GIs thus enjoy the same protection in Norway as of the registration in the EU. Norway has two such GIs – Norsk Akevitt (Norwegian Aquavit) and Norsk Vodka (Norwegian Vodka").

Section 18 of the Regulation contains provisions to be used in case of a conflict between a GI and a younger trademark, ref. also Section 16 e of the Trademarks Act. An application for a trademark which conflicts with a GI already protected under a product regulation, will be refused. The same applies for GIs for wines and spirits protected under the EU registration systems providing protection in Norway.

If use of a trademark would conflict with the right to an older GI, that would be dealt with by way of an infringement lawsuit or lawsuit based on unfair competition law, initiated by the GI holder before the courts.

In the case of an earlier trademark, Section 19 of the Regulation applies. A GI/designation of origin may not be registered if because of the reputation or use of a trademark or a collective mark is likely to mislead the consumer as to the actual origin of the product. Further, a GI/designation of origin may not be registered, if a trademark or collective mark already is registered if the trademark/collective mark

- is identical to the GI/designation of origin and
- is protected for the same or similar foodstuffs and
- may mislead the consumers as to the real origin of the foodstuff and
- is registered or applied for before the date of the reception of an application for protection of a GI/designation of origin in accordance to the Regulation

Further, if use of a GI would infringe rights to an older trademark, that would be assessed according to the general trademark law on risk of confusion etc. under Section 4 of the Trademarks Act, and would, upon a lawsuit, be dealt with by the courts.

Any rightful user of a GI/designation of origin under the Regulation has the right to enforce a GI/designation of origin. A group may on behalf of the rightful users of a GI/designation of origin it represents enforce the protected designation and claim reimbursement for any damage caused to the rightful users, cf. Section 27(a) of the Regulation.

48. Who has the right to enforce a geographical indication?

Any rightful user of a GI/designation of origin under the Regulation has the right to enforce a GI/designation of origin. A group may on behalf of the rightful users of a GI/designation of origin it represents enforce the protected designation and claim reimbursement for any damage caused to the rightful users, cf. Section 27(a) of the Regulation.

49. 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?

Disputes concerning GIs/designations of origin are handled by the Courts. The claimant has to pay a court fee according to the Act on Court Fees, see <https://www.domstol.no/en/Civil-case/costs/Court-fee/>. The losing party may also be ordered to pay the other party's costs.

50. Must the public be notified of the existence of a geographical indication and, if so, how and how often?

All new Regulations establishing a geographical indication or designations of origin under the Norwegian sui generis-system are published in the Norwegian Official Trademarks Gazette: <https://www.patentstyret.no/en/services/trademarks/norwegian-official-trademarks-gazette/>

GIs and designations of origin are also published on the website of the Norwegian Food Safety Authority (Mattilsynet) after registration (only in Norwegian): <https://www.matmerk.no/no/beskyttedebetegnelse/godkjente-produkter>.

51. 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.

Yes, unauthorized use of a GI or designation of origin may be subject to criminal action, see Section 28 of the Regulation and Section 28 of the Food Safety Act. There are no specific procedures provided for criminal actions concerning GIs. The general procedural rules in the Penal Code and the Criminal Procedural Act applies. We are not aware of any criminal actions having been initiated concerning GI's.

H. INTERNATIONAL AGREEMENTS

52. 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.

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

Protection for geographical indications in Norway is provided under both unfair competition law and through a formal procedure of registration. The recognition of a geographical indication does not necessarily require registration, but the use of a registration system may strengthen the protection conferred. Geographical indications are protected, as required by Article 22.2 and 22.3 of the TRIPS Agreement, through the Marketing Control Act (2009) and the Trademarks Act (2010).

Under the Marketing Control Act, consumers are protected against unfair and misleading commercial practices and misleading act in Sections 6 and 7. The provisions read as follows:

"Section 6. Unfair commercial practices

Unfair commercial practices shall be prohibited.

A commercial practice shall be unfair if it conflicts with good business practice towards consumers and is likely materially to distort the economic behaviour of consumers, causing them to make decisions they would not otherwise have made.

...

A commercial practice shall always be unfair if it is misleading pursuant to section 7 or section 8, or aggressive pursuant to section 9.

..."

"Section 7. Misleading acts

A commercial practice shall be considered misleading if it contains false information and is therefore untruthful, or if it is otherwise likely to deceive consumers in relation to one or more of the following elements:

a) the existence or nature of the product,

b) the main characteristics of the product, such as its availability, benefits or risks, the product's execution, quantity, composition, specifications, accessories, origin, method and date of manufacture or provision of the product, delivery, usage or fitness for purpose, results to be expected from its use, tests or checks carried out on the product, or after-sale service and complaint-handling,

...

The practice shall nevertheless only be regarded as misleading if it is likely to cause consumers to make an economic decision that they would not otherwise have made.

Any marketing of a product, including comparative advertising, which creates confusion with the product or trade mark, trade name or other distinguishing mark of a competitor, shall also be considered misleading."

The interests of traders are protected in Sections 25 and 26 of the Marketing Act, which reads as follows:

"Section 25. Good business practice

No act shall be performed in the course of trade which conflicts with good business practice among traders.

Section 26. Misleading business methods

It shall be prohibited in the course of trade to use an incorrect or otherwise misleading representation which is likely to influence the demand for or supply of goods, services or other products. In this chapter, «representation» shall mean any form of announcement or statement made orally, in writing or otherwise, thus including descriptions, pictures, demonstrations, the form, size or type of packaging, etc.

...".

Under the trademark registration procedure, Geographical Indications dealt with in Section 14 of the Trademarks Act. The provision reads as follows:

"Section 14. General conditions of registration

A trademark to be registered shall consist of a sign which is capable of being protected pursuant to Section 2 and capable of being represented graphically. It shall have distinctive character as a sign for the relevant goods or services.

A trademark cannot be registered if it exclusively, or only with insignificant changes or additions, consists of signs or indications that:

indicate the kind, quality, quantity, intended purpose, value or geographical origin of the goods or services, the time of production of the goods or of the rendering of the services or other characteristics of the goods or services, or

constitute customary designations for the goods or services according to normal linguistic usage or to loyal, established business practice.

The conditions in paragraphs one and two shall be met on both the date of application and the date of registration. When assessing a proposed trademark pursuant to paragraph one, sentence two, and paragraph two, it is necessary to take into consideration all circumstances that prevailed on the date of application, in particular effects of use of the trademark prior to this time.

A mark that is used in an industrial or commercial undertaking to designate the geographical origin of a product or service may, notwithstanding the second paragraph letter a), be registered as a collective mark."

A provision on prohibition of registration of misleading trademarks is found in:

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...

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The deceiving use of a geographical indication in a trademark may be prohibited in accordance with the Trademarks Act section 10:

"Section 10. Deceiving trademarks, etc.

If a trademark is of such nature as to deceive or is used by the trademark proprietor or by any other person with the consent of the trademark proprietor in a manner capable to deceive, a court may prohibit the use of the trademark or such forms of use that are considered deceiving and may issue other injunctions that are considered necessary.

Legal actions pursuant to paragraph one may be brought by the Norwegian Industrial Property Office and by anyone who has a legal interest in doing so."

The special protection required for wines and spirits under Article 23.1 and 23.2 of the TRIPS Agreement is set out in Section 31 of the Marketing Control Act and Section 15 paragraph 2 of the Trademarks Act. The provisions read:

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"Section 31. Application of incorrect geographical indications to wines and spirits

It shall be prohibited in the course of trade to apply a geographical indication to a wine or spirit which does not originate from the geographical location designated by the indication. This shall apply even if the actual place of origin is also stated, or if the geographical indication has been translated or is followed by an expression like «kind», «type», «imitation», or something similar."

TRADEMARKS ACT

"Section 15. Trademarks that conflict with public interests

...

For wine and spirits, it is not permissible to register a trademark that consists of or contains anything that is liable to be understood as a geographical indication of origin, unless the geographical origin of the goods is in accordance with the indication."

Norway has adopted a sui generis regime for protection of geographical indications, designations of origin, and traditional specialties for agricultural products and foodstuffs, which provides protection above TRIPS-level for geographical indications fulfilling the set criteria. The legal basis for this system is found in Section 30 of the Food Production and Safety Act (2003).

Regulation No. 698 of 5 July 2002 (as amended) establishes the criteria and procedures for the certification of GIs, designations of origin, (and traditional specialties for foodstuffs) (other than waters, wine, and spirits). Decisions to grant such protection are made by the Norwegian Food Safety Authority (Mattilsynet). The applicant, who may be a group of primary producers and/or processors or a legal person (i.e. not a group), then becomes the holder of the registered indication or designation. The scheme has been administered by the Norwegian Food Branding Foundation (Matmerk) since 2007. Although there are time variations, on average an application is processed within 18 months.

Norway does not participate in the EU registration systems for agricultural products and foodstuffs, as agriculture falls outside the scope of the EEA Agreement. Registration is thus required both in the EU system as well as in the national system of Norway to enjoy protection against misuse, imitations, etc. in both markets. Two Norwegian specialties ("Fenalår from Norway" and "Stockfish from Lofoten") have been certified as GIs in the European Union and are thus provided the same protection there as registered products from EU Member States.

The EU systems for the protection of GIs for wines, spirits and aromatized drinks have, on the other hand, been incorporated into the EEA Agreement, and these GIs thus enjoy the same protection in Norway as of the registration in the EU. Norway has two such GIs – Norsk Akevitt (Norwegian Aquavit) and Norsk Vodka (Norwegian Vodka").

53. What other international agreements, if any, have been entered into? What do those agreements provide?

N/A.
