

Trade Policy Review Body
11 and 13 October 2004

Original: English/
anglais/
inglés

TRADE POLICY REVIEW

NORWAY

Minutes of Meeting

Addendum

Chairperson: H.E. Mrs. Puangrat Asavapisit (Thailand)

This document contains the advance written questions, and replies provided by Norway.¹

Organe d'examen des politiques commerciales
11 et 13 octobre 2004

EXAMEN DES POLITIQUES COMMERCIALES

NORVÈGE

Compte rendu de la réunion

Addendum

Présidente: S.E. Mme Puangrat Asavapisit (Thailand)

Le présent document contient les questions écrites communiquées à l'avance et les réponses fournies par la Norvège.¹

Órgano de Examen de las Políticas Comerciales
11 y 13 de octubre de 2004

EXAMEN DE LAS POLÍTICAS COMERCIALES

NORUEGA

Acta de la reunión

Addendum

Presidente: Excma. Sra Puangrat Asavapisit (Thailand)

En el presente documento figuran las preguntas presentadas anticipadamente por escrito, junto con las respuestas facilitadas por Noruega.¹

¹ In English only./En anglais seulement./En inglés solamente.

**RESPONSES PROVIDED BY NORWAY TO ADVANCE WRITTEN
QUESTIONS AND TO OTHER QUESTIONS**

AUSTRALIA

GMOs and biosafety

We note the references in paras 60 and 65 of the Secretariat's Review to Norway's approach to the importation of GMOs and how that approach is harmonised with the EU's regulatory framework. We further note that Norway prohibited eight EU-approved GMOs.

We note that Norway is a Party to the Cartagena Protocol on Biosafety and that it is currently revising its gene technology regulations to incorporate obligations under the Protocol.

We would be interested in learning how Norway intends to implement its obligations under the Protocol in such a way as to respect its other international obligations, particularly in relation to science-based risk assessment procedures. We would also be interested in Norway notifying the WTO SPS Committee of its regulations in respect of GMOs.

Answer:

Norway has implemented our obligations under the Cartagena Protocol in such a way as to respect its other international obligations, including science-based risk assessment procedures.

The Norwegian Act relating to the production and use of genetically modified organisms (Gene Technology Act) of 2 April 1993 already corresponds to Norway's obligations pursuant to the Cartagena Protocol on Biosafety, apart from the obligation pursuant to Article 8 of the Protocol to require the exporter to ensure notification to the competent national authority of the Party of import prior to the intentional transboundary movement of a living modified organism. The implementation of this obligation is in progress. For the time being there are no exports of GMO from Norway.

As described in paragraph 90 of the Third Party Submission by Norway in "European Communities - Measures Affecting the Approval and Marketing of Biotech Products -DS/291, DS/292, DS/293, Section 10 of the Gene Technology Act requires prior approval by the competent authorities for the production and marketing of genetically modified organisms (GMO). Risk assessment is the basic element in the Norwegian regulatory approach. Under Section 11 of the Gene Technology Act, applications for approval of the deliberate release shall contain an impact assessment setting out the risk of any detrimental effects on health and the environment as well as other consequences of the release. The Gene Technology Act in English translation was enclosed in our Third Party Submission as Exhibit NOR-21. Examples of risk assessments made in connection with applications for approval of production and marketing of GMO were enclosed as Exhibit NOR-16 and 107.

The Gene Technology Act was adopted before the entry into force of the Agreement on the application of Sanitary and Phytosanitary measures, and is therefore not covered by the notification obligation pursuant to Article 7 and Annex B of that Agreement. In 1997, Norway notified a proposed Regulation pursuant to Section 10 of the Act under the TBT Agreement (G/TBT/Notif.97.704).

Tariffs on agricultural products

The Secretariat paper notes that the average bound tariff rate for agricultural products (WTO definition) is 150.2 per cent, while the average bound rate for non-agricultural products is just 3.6 per cent (WT/TPR/S/138, page 30, para 23). Agricultural sub-sectors such as live animals, dairy products, meat and preparations of meat, and grains are subject to extremely high tariff rates, with the live poultry and juices and extracts of meat sub-sectors the most highly protected with rates ranging from 500 per cent to 2,356 per cent (WT/TPR/S/138, page 28, para 18).

Norway's tariff policy approach with regard to agricultural goods is at odds with its approach to industrial goods. This disparity is particularly stark when the high average tariff rate for agricultural products is compared to the low tariff rates for other primary production products such as fish and fish products (HS chapter 3) and forestry products (HS chapter 44) which have average bound tariff rates of free.

Has Norway carried out an independent economic study on the economic welfare gains and losses resulting from maintaining such prohibitively high tariff rates for agricultural products?

If Norway firmly believes that improved market access will significantly benefit all WTO Members (particularly developing countries as stated in WT/TPR/G/138, page 9, para 28), why does Norway continue to strongly advocate and implement highly protectionist policies for agriculture, especially since developing countries are likely to gain considerable benefits from further agricultural trade liberalisation?

Answer:

The subject of this question is under negotiation in the DDA. Please refer to oral statements.

Agricultural support and non-trade concerns

The Secretariat paper notes that Norway's Producer Support Estimate, as estimated by the OECD, was 72 per cent in 2003, the second highest of all OECD countries and that total Aggregate Measurement of Support amounted to about 70 per cent of agricultural GDP (WT/TPR/S/138, pages 74 & 76, paras 22 & 23). Moreover, the potential for further structural adjustment to the farming sector is inhibited, inter alia, by current Norwegian agricultural policy which includes specific policies aimed at safeguarding non-trade concerns (WT/TPR/S/138, page 71 para 8 - 9).

Could Norway explain why its current policy approach to agriculture is designed to prevent moving from trade and production distorting support to measures which are Green Box consistent?

To what extent does Norway see the Doha Round as an opportunity to address non-trade concerns through general government wide policies or Green Box measures, rather than trade distorting domestic support?

Answer:

The subject of this question is under negotiation in the DDA. Please refer to oral statements.

TRQs

The WTO Secretariat report notes that “in general, quotas are allocated through auctioning”. Could Norway explain how it considers that the auctioning of tariff quotas is consistent with Article II of the GATT, given that it involves the imposition of charges in addition to the in-quota tariff rates?

Answer:

Norway believes that auctioning of import licenses have certain advantages that should be highlighted. Firstly, this method is equitable and non-discriminatory. Secondly, auctioning is transparent. Thirdly, auctioning is by far the most efficient way of allocating quotas. Competition among trading companies is stimulated, and the most efficient companies will get the licenses.

The Secretariat report also provides details on Norway’s tariff quotas and total imports under its minimum access commitment, 2002-2003, for agricultural products (table IV.4). For a number of tariff items, fill rates are very low.

What are the reasons for these low fill rates?

In light of these low fill rates, could Norway explain whether it considers the allocation of quotas through auction to be an efficient mechanism?

Answer:

In general, the actual import figures within the quotas reflect the commercial interest in importing the different products, regardless of the allocation method. The commercial interest is influenced by prices in the potential exporting countries, currency fluctuations, and the domestic market conditions.

Does Norway intend to modify its tariff quota regime, or move to a tariff-only regime, for those products during the Doha round?

Answer:

The subject of this question is under negotiation in the DDA. Please refer to oral statements.

Shipbuilding

Has Norway implemented the new European Commission framework for state aid to shipbuilding (2003/C 317/06) through its membership of the EEA? What arrangements and budget exist for implementing this framework? What assistance has been provided to shipbuilders through this framework?

Answer:

The EFTA states members of the EEA has adopted a framework similar to the new European Commission framework for state aid to shipbuilding (2003/C 317/06) that entered into force on 1st of July 2004. There are, however, no particular arrangements or budgets for this framework in Norway. Consequently, no assistance has yet been provided to Norwegian shipbuilders through this framework.

BRASIL

A) Import prohibitions, restrictions and licences

1. Chapter III (Trade Policies and Practices by Measure), paragraph 39, of the document WT/TPR/S/138 states that "Norway applies import prohibitions for environmental, health, safety, sanitary and phytosanitary reasons. Products banned for these reasons include asbestos and products containing asbestos; products containing CFCs, halons, carbon tetrachloride, methyl chloroform and other ozone depleting substances; and some live plants and plants that host certain diseases. The ban may apply to specific imports from specific countries". Is there any kind of register required from Norwegian importers prior to import licensing? If so, which are the required procedures?

Answer:

Regulations relating to plants and measures against pests of 1.december 2000 as amended from 9. January 2004 sets out the Norwegian plant health regime, specifying the phytosanitary conditions, procedures and formalities to which plants, plant products and certain other regulated articles are subjected when introduced into Norway.

Importers of plants, plant products and other regulated articles mentioned in annex 5, points 1,2, 4.2, 4.3 and 8 of Regulations relating to plants and measures against pests of 1.december 2000 shall be listed in the plant health register of the Norwegian Food Safety Authority under a registration number by which to identify them. Registered businesses are subject to certain obligations to ensure that the conditions in the plant health regulations are updated.

Importers of plants, plant products and other regulated articles mentioned in annex 5, points 1,2, 4.2, 4.3 and 8 of Regulations relating to plants and measures against pests of 1.December 2000 do not have to apply for an import license. (The regulation relating to authorisation of importers of nursery plants and flower bulbs under the authority of the Norwegian Agricultural Authority was repealed 2004.01.01.)

2. Under chapter III (Trade Policies and Practices by Measure), paragraph 40, of the document WT/TPR/S/138, "Norway applies automatic and non-automatic licensing to imports of certain agricultural products. For surveillance purposes, automatic licensing is maintained on imports of flour, grains, and feedingstuff from LDCs. Non-automatic licences are required for administration purposes of both MFN and preferential tariff quotas (Table III.7). Non-automatic licenses are maintained to administer 60 tariff quotas on agricultural products, including minimum access quotas resulting from the tariffication process during the Uruguay Round, other global quotas resulting from commitments predating the Uruguay Round, and bilateral quotas". Could Norway inform the cost of the licensing fees charges to cover administrative expenses fro the processing of documents? Which products are subject to non-automatic licensing?

Answer:

Of the tariff quotas listed in the Secretariat's report, 3 quotas under the Article 19 agreement with the EC are not subject to licensing (the first-come-first-served principle apply). For other tariff quotas non-automatic licensing applies.

The quota rent which otherwise would accrue to the importing company is collected by the governments in the form of a permit fee (auction fee). Fees are not charged related to other allocation methods.

B) Rules of origin

Under chapter III (Trade Policies and Practices by Measure), paragraph 12, of the document WT/TPR/S/138, "Preferential rules of origin are applied under trade agreements to which Norway is a party. Under the EEA Agreement, origin criteria are generally product specific. They stipulate processes that need to be followed or materials to be used, and usually fix a minimum threshold for value added through transformation in the EEA. A "tolerance rule" allows the use of non-originating materials provided these do not account for more than 10% of the ex-works price of the good. The tolerance rule does not apply to textiles and clothing products". Why does not the "tolerance rule" apply to textiles and clothing products?

Answer:

Trade in textiles and clothing has been a sensitive sector. This fact is also reflected in the origin rules laid down in the EEA agreement, where the rules for textiles and clothing are somewhat more restrictive than for other product categories. Therefore, the tolerance rule does not apply to textiles. However, it should also be noted that for these products some special derogation rules apply, ref. Notes 5.1 and 6.1 of Annex I to Protocol 4 to the EEA agreement, whereby tolerance rules of 10% and 8% respectively are given for some specific textile products. The protocol has been notified to the WTO.

C) General trade policy

1. In the Secretariat Report, Chapter III (Trade Policies and Practices by Measure), paragraph 10, it is stated: "If customs valuation is delayed, importers with a "credit status" may be permitted to release the imported good from customs". How is the "credit status" defined? Is it possible to provide information about such categorization?

Answer:

Importers can obtain "credit status" with Customs through an application containing background information of company status. The applicant will be screened by a credit rating agency and they will give the applicant a rating based on international standards. On this basis, and taking into account previous non-payment or delayed payment to Customs, the Authorities will allow the applicant credit status.

Although the screening is thorough, a high percentage of companies in Norway importing goods do have "credit status". Such a status enables the companies to postpone their payment of customs duties and VAT until the 18th of the month following the actual importation. Customs duty and VAT for two or more shipments can be accumulated into one single payment. Another benefit is that in some instances where the importer is unable to make a complete declaration at the time of border passage, he will nevertheless have the goods free to his disposal. By filling out a temporary declaration at the time of border passage, an importer with a "credit status" is granted 10 days before a final declaration has to be completed.

2. In the Secretariat Report, paragraph 36 of Chapter III (Trade Policies and Practices by Measure), it is affirmed that "A food production tax is collected on all foods (except water) at different rates. It applies to raw materials produced in Norway for use in food; to all imports of foods, semi-manufactured good and raw materials for use in food. Therefore, the taxation base for imported goods is different from the base for locally-produced goods". It is time, as the text seems to

indicate, that for Norwegian products, the taxation applies only for raw material, while for imports it comprises processed, semi-processed and raw materials? Could Norway clarify the question?

Answer:

The foodstuff tax is imposed on both imported and domestic products. Its objective is to cover costs resulting from the regular inspection made by the Norwegian Food Safety Authority on products in the food production chain that are not subject to control fees. The foodstuff tax is lower for imported products than for domestically produced products, since these products already have undergone controls and inspections in the export country.

Foodstuff tax shall not be imposed on the raw material more than once. For domestic products the foodstuff tax is imposed on the raw material. For imported products the tax is imposed on raw material, semi-processed and processed products. The foodstuff tax is lower for semi-processed and processed products than for raw material, since these products will undergo less processing and therefore fewer inspections in Norway.

3. With regard to Chapter III (Trade Policies and Practices by Measure), Table III.6 of the Secretariat Report, could Norway provide more information on the ban on imports of some flowers that differentiates regions of origin?

Answer:

Plants and other regulated articles which are prohibited to import if they originate in certain areas are mentioned in annex 3 of Regulations relating to plants and measures against pests of 1 December 2000. Import prohibition of the mentioned plants and articles are due to high risk of introduction and spread of quarantine pests mentioned in annex 1 and annex 2 of Regulations relating to plants and measures against pests of 1 December 2000. Permission to import otherwise prohibited plants and other regulated articles mentioned in annex 3 may be granted for scientific purposes, trials and breeding under specified quarantine requirements.

Link to English version of the regulation:http://landbrukstilsynet.mattilsynet.no/vedlegg/Plantehelseforskrift2001_eng.doc.

The amendments of 9 January 2004 are applicable to Phytophthora ramorum:
http://landbrukstilsynet.mattilsynet.no/vedlegg/midl_forskr_Phyt_ramorum_eng.pdf

D) Regional trade agreements

1. In accordance with document WT/TPR/G/138, Chapter III (Trade Policies and Practices by Measure), paragraph 49, "Since 2000, Norway has signed free trade agreements with Chile, Croatia, Jordan, Lebanon, Macedonia, Mexico, and Singapore". At present, the EFTA network consists of thirteen free trade agreements and eight declarations on co-operation. Several agreements are currently under negotiation, including some with countries in the Middle East and Africa". What have been the main criteria used by Norway to select the countries with which it intends to negotiate preferential trade agreements?

Answer:

The decision to pursue a preferential trade agreement with another country will depend on an overall assessment of the benefits of such an agreement, which include: the potential improvement in

market access for Norwegian goods and services; potential increase in trade volume; whether the country in question is negotiating or has negotiated an FTA with our main trading partners, such as the EU; and broader political considerations. As a rule the country in question should also be a WTO member.

E) Services

1. In document WT/TPR/S/138, paragraph 115 of Chapter IV (Trade Policies by Sector), it is stated that "National treatment is accorded only to subsidiaries of companies formed in accordance with the law of an EEA member state and with their registered office, central administration or principal place of business within an EEA member state; Norway's commitments do not extend this treatment to branches or agencies established in an EEA member state by a third-country company. Moreover, treatment less favourable than that accorded to national enterprises may be given to subsidiaries of third-country companies, that one formed in accordance with the law of an EEA member state but have only their registered office in the territory of an EEA member state, unless they show that they possess an effective and continuous link with the economy of an EEA member state". Which objective criteria determine if national treatment will be accorded or not to a subsidiary of a third-country company, in addition to the EEA law and territory requirements? Could Norway explain under which circumstances a less favourable treatment "may be given"? Regarding the expression "effective and continuous link", how can a company prove this link? Which criteria will be used in judging the fulfilment of this requirement?

Answer:

Norway generally extends national treatment to all companies established in Norway or the EEA, regardless of foreign ownership. The purpose of the horizontal exemption in Norway's schedule of specific commitments, as described in the Secretariat's report, is to afford preferential treatment under the EEA Agreement to EEA subsidiaries on areas Norway would not wish to extend to all foreign subsidiaries. The possibility to refuse national treatment to a subsidiary of a third country company based on lack of "effective and continuous link" has to our knowledge not been applied in practice.

2. Paragraph 123 of Chapter IV (Trade Policies by Sector) of WT/TPR/S/138 asserts that "The Ministry of Finance is in charge of granting licences to engage in banking activities, and issuing regulations pursuant to the main acts dealing with financial services. The payment system is monitored by the Central Bank. The Financial Supervisory Authority (Kredittilsynet) is responsible for the supervision of banks, finance companies, mortgage companies, and insurance companies, as well as activities such as securities trading, real estate agencies, and accounting and auditing undertakings. Kredittilsynet also supervises two guarantee funds, one for commercial banks and the other for savings banks; banks pay premiums to the guarantee funds based on a combination of total deposits. Kredittilsynet reports administratively to the Ministry of Finance; it is authorized to issue rules and regulations in a number of areas, and it prepares draft statutes and regulations for the Ministry of Finance". In addition to the rules already quoted, are there any other criteria to obtain the licence? Is there any subjective judgement by the Ministry of Finance?

Answer:

A bank needs to meet a number of requirements to obtain a licence. These requirements are set in accordance with the BIS standards for banking supervision (i.e. the Basel Capital Accord) in the Norwegian banking legislation. The requirements relate to fit and proper ownership, prudent and skilful management, capital requirements, other solidity requirements (e.g. on large exposures) and

orderly and transparent organisation. Foreign banks must fulfil similar requirements and be subject to prudential supervision in their home state in order to establish banking activities in Norway. Licensing of banks in Norway is not subject to any economic needs test. An important objective of banking regulation in Norway is to facilitate and encourage competition in the financial market.

3. It is stated in paragraph 26 of Chapter IV (Trade Policies by Sector) of the Secretariat Report that "Foreign, non-EEA-based service suppliers must obtain permission from Kredittilsynet to establish branches of banks, financing undertakings, securities brokerage firms, and management companies for collective investment funds, in accordance with the Norwegian legislation regulating financial institutions, as amended by Act. No. 46 of 28 June 1996 on establishment in Norway of providers of financial services suppliers situated outside the EEA. To obtain such permission, the supplier must have permission to provide equivalent services in its home state and be subject to prudential supervision there. In addition, the home supervisory authority must have established satisfactory co-operation with Kredittilsynet". How is the assessment of this "satisfactory co-operation" made? How is the assessment of "satisfactory co-operation" in the insurance sub-sector?

Answer:

In practice co-operation on supervision between the Norwegian Financial Supervisory Authority, Kredittilsynet, and foreign supervisory authorities are set out in Memoranda of Understanding. Such MOUs generally cover co-operation in general. In cases involving financial institutions with a significant impact on the financial stability in Norway, or the other state in question, the authorities may conclude an MOU covering the supervision of that particular entity or group.

Satisfactory co-operation relies vitally on timely exchange of information. Furthermore, the banking framework in the foreign state in question must materially comply with BIS standards.

The requirements above apply similarly to supervision co-operation in the insurance field.

4. In accordance with document WT/TPR/S/138 of Chapter IV (Trade Policies by Sector), paragraph 157, "Foreign shipping companies may also register their vessels in the NIS. They must satisfy a nationality condition laid down in the Norwegian Maritime Code, be a limited company or partnership with head office in Norway, or have appointed a representative who fulfils the nationally requirements. Ships with more than 40% foreign ownership must be operated by a Norwegian ship-owning company with its head office in Norway, or by a Norwegian management company. However, nationality requirements may be waived in certain cases, with prior dispensation from the Norwegian Maritime Directorate". In which aspects may the nationality requirements be waived? Is it only in the percentage of vessels' ownership? What are the "certain cases" mentioned? Or is it in a case-by-case basis?

Answer:

The question seems to be based on a misunderstanding in para 157 in the report from the Secretariat. The following corrections should be made:

The last sentence in para 157; "However, nationality requirements may be waived in certain cases, with prior dispensation from the Norwegian Maritime Directorate" is not relevant for NIS vessels. The sentence is however appropriate in para 155 for NOR vessels. Waivers for the nationality requirements for NOR vessels are granted by the Ministry of Trade and Industry and not by the Maritime Directorate. Waivers are normally granted for vessels in Norwegian domestic trade.

CANADA

Report by the Secretariat (WT/TPR/S/138)

Part II. Trade and Investment Regimes, (4) Investment Regime, Paragraph 12:

The Secretariat Report indicates certain measures that Norway has taken to relax its investment regime. Can Norway please elaborate on how these measures operate with the changes to the ownership regime for the banking sub sector described on page 96, paragraph 120?

Answer:

The question is covered in Norway's oral statement.

Part III. Trade Policies and Practices by Measure, (4) Measures Affecting Production and Trade, (iv) State-owned enterprises and privatization, Paragraphs 136-141:

The Secretariat Report describes Norway's state-owned enterprises and privatisation programme. In light of Norway's current policy towards state-owned enterprises and privatisation (see paragraph 138), is Norway contemplating reducing its 33.6 % stake in DnB Nor?

Answer:

Due to the merger between DnB Holding and Gjensidige NOR in 2003, the government will reduce its ownership from 47,8 per cent in DnB Holding to 34 per cent in the merged entity at year end 2004. There are no further plans to divest this stake in the near future.

Part III. Trade Policies and Practices by Measure, (4) Measures Affecting Production and Trade, (v) Intellectual property rights, Table III.14:

Under Norway's legislation, a compulsory license for a patent may be obtained if it is required for the exploitation of an invention representing an important technical advance of considerable economic importance. Could Norway please give an example or clarify what would constitute an "important technical advance of considerable economic importance".

Answer:

Each case has to be evaluated on its own merits. The language however is the same as in TRIPS Article 31, sub-paragraph 1 (i). Up to now, no such case has been tried in Norway.

Part III. Trade Policies and Practices by Measure, (4) Measures Affecting Production and Trade, (v) Intellectual property rights, Table III.14:

Geographical indications (GIs) seem to be protected in Norway under an administrative system of non-exclusive marks (which are not IPRs). Could Norway please explain what is meant by "non-exclusive marks" and indicate in what way these marks are not considered to be IPRs? Also, could Norway provide a description of their administrative system of protection for GIs and indicate how it may differ from GI legislation?

Answer:

The table on page 62 of the Secretariat's report describes the system for protecting local agricultural specialities through an administrative system of non-exclusive marks. The addition "(which are not IPRs)" should have been deleted from the document. A correction has been reported to the Secretariat.

The regime under Regulation of 5 July 2002 no. 698 is a voluntary regime, which provides legal protection of designations of origin, geographical indications and designations of specific traditional character upon application. In addition to the legal protection against any misuse of the protected designation, a successful application allows the use of the corresponding official brand/seal on the foodstuff, which has a protected name.

Protection is granted by a product regulation, which is laid down for each protected designation. The product regulation describes the product specifications for the foodstuff that has a protected designation pursuant to Regulation of 5 July 2002 no. 698.

The Norwegian Food Safety Authority (Mattilsynet) is the competent authority for granting protection of a GI or designation of origin. The Norwegian Food Branding Foundation (Matmerk) is authorized by the Norwegian Food Safety Authority to process applications and make recommendations regarding the outcome of the application. The administrative decision granting protection by laying down a product regulation is however made by the Norwegian Food Safety Authority, with the possibility of appeals to the relevant Ministry.

Part III. Trade Policies and Practices by Measure, (4) Measures Affecting Production and Trade, (v) Intellectual property rights, Paragraph 153:

Canada notes that registration of foreigners' trade marks is subject to a reciprocity condition contrary to Article 4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPS Agreement"). Although Norway stipulates that this provision is not applied in practice, Canada would like to know if Norway intends to amend the Trade Marks Act to fully comply with Article 4 of the TRIPS Agreement.

Answer:

A foreigner who wants to register his trade mark will in effect not be asked to prove that he has a corresponding right in his home country, provided that he is a national of a party to the Paris Convention or the WTO. The cited reciprocity condition is thus only effective for countries not party to the Paris Convention or the WTO. In order to correctly reflect the legal practice on the area, a proposal to amend the relevant provision of the Trade Marks Act has been tabled.

Part III. Trade Policies and Practices by Measure, (4) Measures Affecting Production and Trade, (v) Intellectual property rights, Paragraph 163:

It appears that Norway has extended its protection of domestic and foreign GIs to all agricultural and fish food products in February 2004. Could Norway provide a description of the amendments made to Regulation No 698 and explain the scope of protection for GIs used in association with agricultural and fish food products?

Answer:

Regulation of 5 July 2002 no. 698 established a regime, which provides legal protection of the names of certain foodstuffs upon application. Initially, the Regulation applied to foodstuffs that are produced from plants that are growing wild, or foodstuffs produced by means of animal husbandry or plant production. An amendment of 24 October 2003 included fish and fish products in the scope of the Regulation. The amendment of 13 February 2004 included technical amendments only.

Part IV. Trade Policies by Sector, (4) Fishing and Aquaculture, (ii) Policy developments, Paragraph 68:

The Secretariat Report states that under the unit quota system, the owner of two vessels is allowed to transfer part of a quota from one vessel to another. Please explain what limitations exist on the proportion (e.g., percentage) of the part of the quota that can be transferred under this system from one vessel to another and what happens to the re-allocated quota after the 13 and 18-year periods. Also, what mechanisms are in place to monitor what happens to the vessels that are sold out of the fleet rather than scrapped?

Answer:

An owner of two vessels may transfer the quota of one of the vessels to the other. He then may fish two quotas with one vessel for 13 years if the vessel is removed from fishing or 18 years if the vessel is scrapped. Paragraph 68 states that only a part of the quota can be transferred. This is only the case when a vessel is bought in one of the northernmost counties with the purpose of its quota being transferred to a vessel resident to the southern areas. The whole quota will be transferred when using the Unit Quota System (only available for vessels more than 28 meters). After 13 or 18 years, depending on whether the vessel is scrapped or not, the additional quota once transferred will return to the regulation group the vessel once belonged to and be re-distributed.

Most users of the Unit Quota System scrap the vessel removed from fishing. However, if the vessel is sold domestically, this vessel will have to replace another vessel in the same regulation group and fish the quota of this vessel if it is to enter Norwegian fishing again. If the vessel is sold abroad, it can only be sold to states that have ratified the UNCLOS agreement (the sales agreement must be approved by the authorities).

Part IV. Trade Policies by Sector, (4) Fishing and Aquaculture, (ii) Policy developments, Paragraph 74:

The Secretariat Report indicates that the Transport Support programme is at least partly driven by changes in export prices and exchange rates. Does this program thus provide a degree of market price support?

Answer:

There is no link between the Transport support programme, which is a cost reducing subsidy, and market price support. Norway does not operate any market price support programme.

Part IV. Trade Policies by Sector, (8) Services, (ii) Financial services, Paragraph 120:

Regarding the ownership limits for the financial sector, as described on page 96, paragraph 120, can Norway elaborate on whether the fit and proper tests underlying the operation of the new

limits contain any nationality requirements? Is there any requirement that financial institutions be widely held?

Answer:

This is covered in the Norwegian delegation's oral statement.

Part IV. Trade Policies by Sector, (8) Services, (ii) Financial services, Paragraph 128:

The Secretariat Report indicates on page 98 that insurance firms incorporated in Norway must establish either as joint-stock companies or mutual insurance companies. Can Norway explain the economic policy basis for such a requirement?

Answer:

The requirement to establish insurance companies as joint stock companies or mutual insurance companies, are made in order to ensure a proper company law framework for such institutions. The company laws regarding these forms of entities are suited to secure prudent management of the institutions, prudent supervision of capital requirements and other prudential regulation, and to facilitate proper crisis management, responsibilities for the managing bodies, replacement of the board or management etc.

Part IV. Trade Policies by Sector, (8) Services, (iii) Telecommunication and postal services, Paragraph 137:

Canada is pleased to see that since its last TPR, Norway has further liberalized its communication services. Canada notes that the Norwegian Post and Telecommunications Authority (NPTA) may impose access and interconnection pricing obligations on a telecommunication operator with significant market power where the NPTA considers that denial of access or unreasonable terms and conditions with a similar effect would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the end-users' interest.

A) Could Norway explain specifically the NPTA guidelines when imposing access and interconnection pricing obligations on a provider?

Answer:

A new Act on electronic communications entered into force on 1 July 2003, implementing the new regulatory framework within the EU for electronic communications networks and services. Pursuant to the Act, the NPTA is required to establish guidelines for imposing access and interconnection obligations. These guidelines are expected to be completed during 2005 and will cover the whole process of 1) defining relevant markets, 2) carry out market analyses of each of the relevant markets, with a view to reveal whether any providers have significant market power (SMP), as well as 3) imposing obligations on those providers identified as having SMP.

The NPTA takes part in the work of the The European Regulators Group for electronic communications networks and services (ERG). It is expected that the NPTA when issuing its guidelines will look to the recommendations laid down in the ERG-document: "Common Position on the approach to appropriate remedies in the new regulatory framework".

There are a number of considerations that the NPTA is required to take into account while imposing access and pricing requirements, such as the feasibility of the action, the viability of using or

installing competing infrastructures and the maintenance of the initial investment decision so that long-term competition is safeguarded to the greatest extent possible.

B) Canada understands that the regulatory framework also allows controls of retail services, e.g. price caps, of an undertaking identified as having significant market power. Canada would like to know the definition of “significant market power” under the NPTA’s guidelines?

Answer:

The definition of “significant market power” in the act is as follows:

“A provider has significant market power when the provider alone or together with others has economic strength in a relevant market that means that the provider may act mainly independently of competitors, customers and consumers. Significant market power in one market may result in a provider having significant market power in an adjacent market.”

As to the adoption of guidelines, see answer to a) above.

Also, could Norway please explain the guidelines for the NPTA to conclude that measures at the wholesale level would not promote competition effectively?

Answer:

In the preparatory works to the Act on electronic communications, it is stated that price-regulation first and foremost shall take place at the whole-sale level. Price-cap and other measures at the retail level, is meant to be a last-resort remedy in case the prices at the retail level get to high.

As to the adoption of guidelines, see answer to a) above.

c. Canada notes that the NPTA may impose specific reporting obligations, including financial information and technical specifications, and the use of specific systems for running cost accounts. In the Secretariat Report, it is mentioned that price guidelines have not yet been established by the NPTA. Would Norway be able to provide Canada with a general update on the NPTA’s process of establishing price guidelines?

Answer:

The NPTA is still in the process of establishing price guidelines. It is expected that the guidelines will be adopted during the course of 2005.

Part IV. Trade Policies by Sector, (8) Services, (iii) Telecommunication and postal services, Paragraph 140:

Canada is pleased to see that Telenor, Norway’s principal telecommunications operator, was partially privatized in 2000. Does the Norwegian Government have any plan in fully privatizing Telenor? If not, would Norway please explain what concerns keep it from doing so?

Answer:

There are currently no plans to fully privatise Telenor. The company has been partially privatised. In 2001 the Government obtained authority from the Parliament to reduce the state’s stake

in Telenor from 77,6% to 51% by government selldown and/or reduce the stake to 34% in event of a structural transaction. In 2003 and in 2004 the Government in accordance with its policy sold approximately 440 million shares in Telenor, reducing the state's stake from 77,6% to 54%.

Part IV. Trade Policies by Sector; (8) Services; (iv) Transport, Paragraphs 155-158:

We note that ships registered on the Norwegian International Ship Register (NIS) registry are forbidden from engaging in cabotage. We also note that only Norwegians or EEA individuals or majority-owned corporations can join the Norwegian Ordinary Register, whose ships are allowed to engage in cabotage. We therefore are wondering if in the future there will be a move to allow those vessels on the NIS to engage in unrestricted cabotage or if non-EEA members will be able to eventually perform cabotage?

Answer:

The Government has announced that NIS registered vessels will be allowed to engage in petroleum related activities in Norwegian domestic maritime transport. Norwegian domestic maritime transport is not restricted for foreign flag vessels. Norway has tabled an offer containing commitments in the domestic maritime transport sector (mode 3).

Report by the Government (WT/TPR/G/138)

Part II. The Economic Environment: (4) Structural Reforms: Keeping Norway Competitive, (i) Deregulating the markets and cutting subsidies, Paragraph 17:

Paragraph 17 of the Government Report (and Paragraph 68 of the Secretariat Report, Part IV. Trade Policies By Sector: (4) Fishing and Aquaculture, (ii) Policy developments) notes that a customized version of the unit quota system was introduced in 2004 for Norway's coastal fleet (the structural quota system). Please explain how the system introduced in 2004 differs from the unit quota system for the offshore fleet.

Answer:

The Structural Quota System applies only to vessels between 15 and 28 meters holding an annual permit. If one fisherman owns two vessels within the same length group (the length groups are 15-21meters and 21-28 meters), he can transfer the quota of one vessel to the other vessel after deducting 20 per cent of the quota. These 20% will be returned to the vessel group. Unlike the Unit Quota System, there are no time limits on the extra quota and the deduction requirement applies regardless of regional residency.

Part III. Trade Policy Objectives and Development: (1) The World Trade Organization, Paragraph 31:

Paragraph 31 states that Norway is seeking real liberalization in trade in services over a broad range of sectors, with specific mention of environmental services. Could the Government of Norway please address the manner in which this objective for improved liberalization is met by its initial General Agreement on Trade in Services offer?

Answer:

Norway has tabled a high quality initial offer to the Services Negotiations, covering a broad range of sectors, including extensive commitments on transport services, telecommunication services, energy services, financial services and environmental services. Norway urges other members to table offers of a similar quality in order to ensure real liberalisation in trade in services and the successful conclusion of the Services Negotiations in the Doha Round.

Part III. Trade Policy Objectives and Development: (1) The World Trade Organization, Paragraph 33:

Paragraph 33 notes that non-tariff measures for industrial goods, including fish and fish products, must be addressed. Please indicate which non-tariff measures Norway is most concerned about in the fish and fish products trade.

Answer:

Trade in food and foodstuff is among the most protected areas in international trade, and trade in fish and fish products is no exception. Today, Norway exports as many as 2000 different fish and seafood products to more than 150 countries. One of the major challenges/obstacles to trade in fish and fish products is the great variety of requirements related to fish health, seafood safety and quality.

EUROPEAN COMMUNITIES

Trade in Goods

Doing away with unnecessary external as well as internal impediments to trade is vital for the promotion of trade and prosperity. To this end, the EC should like to pose the following questions to Norway.

Discussions are currently ongoing in the WTO on further liberalisation of trade in agricultural and processed agricultural goods. However, in both areas, exporters have complained about obstacles to trade, particularly with regard to the industrial component of protection for processed agricultural products.

How does Norway appraise such complaints, and can one foresee further liberalisation or simplification in this respect in the future?

Answer:

The subject of this question is under negotiation in the DDA. Please refer to oral statements.

Government procurement

It seems that the award of supply contracts for the oil and gas sector are made almost exclusively to Norwegian companies. The EC should like to receive further information / statistics with respect to the awarding of the contracts in this particular sector. The EC should also be pleased to receive explanations from Norway as to any possible concentration in this field.

Answer:

The Government does not require licensees in the petroleum sector to report such contracts and consequently has no statistics to provide in this respect. Licensees are obliged to report contracts awarded to the EFTA Surveillance Authority (ESA).

Trade strategy

The EC considers that the WTO and multilateral liberalization is the most certain way for small countries to promote their interests. How do you judge the relative importance and weight of bilateral/FTA policies and further development of the WTO system in terms of your own trade needs and the trade needs of developing countries?

Answer:

A strong rules-based multilateral system is the best guarantee against unilateralism and protectionism. Norway sees regional and bilateral trade arrangements as being complementary to the multilateral regime.

HONG KONG, CHINA

Documentation, and Customs Procedures and Valuation
(WT/TPR/S/138, P. 25, Para. 7)

1. We note that Norway is considering an overhaul of the national customs legislation to further simplify and modernise its legal structure, as well as to increase transparency. Most of the simplified procedures resulting from earlier pilot projects are expected to enter into force on 1 January 2005. We are interested in knowing more details of the procedures that will be modified and their corresponding implementation dates.

Answer:

This is covered in the Norwegian delegation's oral statement.

Financial services
(WT/TPR/S/138, P. 96, Para. 120; and P. 98, Para. 132)

2. It is noted that in respect of the financial sector, including commercial banks, other financial institutions and the securities market, a 10% ownership limit in Norwegian financial institutions was replaced in 2003 by a fit and proper test of owners exceeding certain ownership thresholds. Permission is required from Kredittilsynet for ownership exceeding the thresholds of 10%, 20%, 25%, 33%, and 50%. It is also stated that a general 10% ownership limitation is applicable to securities registration.

In Norway's services initial offer, it is inscribed that no single or coordinated group of investors may acquire or hold more than 10% of the share capital of a Norwegian insurance company, a commercial bank or financing undertaking, or more than 10% of the equity certificates of saving banks and that foreign financial institution may, subject to approval, acquire and hold up to 25% of such shares or equity certificates when this is part of a strategic alliance agreement.

We are grateful if Norway could clarify:

(a) whether securities registration is currently still subject to the 10% ownership limitation in contrary to what has been set out in the Secretariat report;

(b) whether the 10% ownership limitation is still applicable to Norwegian insurance companies, commercial banks or financing undertakings as inscribed in Norway's initial offer. If not, we would like to encourage Norway to consider reflecting its freer regime in its revised offer so as to bring its commitments in line with its actual regime and to increase the predictability of the regime;

(c) whether permission from Kredittilsynet is required for ownership exceeding both the 10% and 20% thresholds (which are not found in the initial offer) before reaching the 25% level inscribed in Norway's initial offer; and

(d) whether 50%, instead of 25%, is the share/equity ceiling currently in force. If so, would Norway consider reflecting the existing freer regime in its revised offer?

Answer:

Securities registries in Norway are subject to a general 10 percent ownership limitation. Securities registration is considered to be a key function in the financial infrastructure. The ownership limitation is set to ensure the independent functioning of such institutions. The current regulation of securities registries is set out in legislation that came into force in 2003. It lifts the former legal monopoly held by the Norwegian Securities Registry (Verdipapirsentralen) established under the former act relating to the Norwegian Securities Registry.

As regards questions b) through d), these are covered by the Norwegian delegation's oral statement.

Maritime transport
(WT/TPR/S/138, P. 103, Para. 157)

3. It is noted that foreign shipping companies may register their vessels in the Norwegian International Ship Register (NIS) on the condition that they have appointed a representative who fulfils the nationality requirements. We however note that no such nationality requirements exist in Norway's existing services schedule. But in its initial services offers Norway has added such a domicile requirement for the representative. Could Norway share with us the rationale for introducing this additional mode 3 national treatment limitation?

Answer:

The previous requirement was for the representative to be Norwegian, which means citizenship and domicile in Norway. This has been modified to allow the representative to be from any EEA country, but the requirement to be domiciled in Norway has been retained. The modification does not restrict any previously accorded right, but liberalizes to some extent the requirement for citizenship.

INDONESIA

Free Trade Agreement

1. Paragraph 24 (p. 18) of the Secretariat Report (WT/TPR/S/138) and paragraph 52 (p. 13) of the Government Report (WT/TPR/G/138) notes that Norway's trade policy objectives is extensively expanding network of free trade arrangement. Indonesia would appreciate if Norway could explain that future direction of the policy would not undermine the importance of bilateral trade relationship of non-party member noting that free trade arrangement tend to become exclusive in manner.

Answer:

As a first priority, Norway wants to see further liberalisation based on multilateral rules under the auspices of the WTO. Norway therefore attaches great importance to the early conclusion of the DDA. The decision to pursue a preferential trade agreement with another country will depend on an overall assessment of the benefits of such an agreement, which include: the potential improvement in market access for Norwegian goods and services; potential increase in trade volume; whether the country in question is negotiating or has negotiated an FTA with our main trading partners, such as the EU; and broader political considerations. As a rule the country in question should also be a WTO member.

Generalized System of Preferences (GSP)

2. Paragraph 43 (p. 23) of the Secretariat Report (WT/TPR/S/138) notes that imports of industrial products of developing countries enter duty-free, with the exception of certain finished textiles and clothing products. Indonesia would be interested to know if Norway has any plan to include certain finished textiles and clothing products within GSP scheme for developing countries.

Answer:

The products concerned include some woven fabrics, fishing nets, some women's and men's clothes, blankets, some linen and footwear. MFN rates up to 14% apply to these products. The Government is in the process of reviewing our GSP scheme.

In its budget proposal presented last week, the Government proposes to include men's apparels in the Norwegian general system of preferences.

JAPAN

II. TRADE AND INVESTMENT REGIMES

(3) MAIN TRADE LAWS AND REGULATIONS **(WT/TPR/S/138, page 13, para. 9)**

Japan recognizes that Norway has adopted over 4,000 EU rules, in many areas, as a participant in the EEA after the EEA came into effect. At the same time, Japan also recognizes that the common agricultural policy and the common fishery policy of the EU are excluded from the EEA.

Are there any policies or areas in which EU rules have not been adopted by Norway other than in the agricultural and fishery areas? If so, please indicate such policies or areas with the reason why EU rules have not been adopted in such policies or areas.

Answer:

Please refer to the oral statement.

III. TRADE POLICIES AND PRACTICES BY MEASURE

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(iii) Tariffs

(WT/TPR/S/138, page 29, Table III.2 and page 118, Table AIII. 2)

According to Table III.2 and Table AIII. 2 of the Secretariat Report, the tariff of 588.5% has been imposed on some of the fish and fishery products. Please indicate the specific items of the fish and fishery products upon which the tariff of 588.5% has been imposed.

Answer:

Norway has never imposed a tariff of 588,5% for any fishery product. We would like to emphasize that all fish and fishery products are duty free when imported into Norway. The only exceptions are certain products derived from fish in chapter sub-headings 15.04, 16.03 and 23.01 when used for animal feed.

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(v) Intellectual property rights

(WT/TPR/S/138, page 66, para. 160)

According to the Secretariat Report, a proposal for amendments of the Copyright Act will be submitted to the Storting during 2004, in order to allow accession to the WIPO treaties of 1996. Please indicate the specific content of the amendments. Regarding the protection of intellectual property rights, does Norway have any plans for amendments other than the Copyright Act? If so, please indicate the specific plans for amendments.

Answer:

The Norwegian government is now in the process of finalizing a proposal for amendments to the Copyright Act to be presented to the Storting this fall. The proposal is based on the WIPO-treaties as well as the EU Copyright Directive of 2001. The draft legal amendments circulated during the process of public hearing in 2003 contained the following elements:

1) Producers of phonograms and films as well as performing artists are given the exclusive right of making their performances/products available to the public. The right of public performance and broadcasting of phonograms is however still maintained as a mere right of remuneration.

2) The right of making available to the public for authors, is clarified to include on-demand communication. This is not a substantive amendment, only clarifies existing provisions.

3) Certain temporary acts of copying whose sole purpose is to enable lawful use or the transmission in networks, are not covered by the exclusive right of reproduction.

4) The basis for copying under exemptions to copyright must be a copy of the work which has not been produced through infringement of exclusive rights.

5) Exemptions for the benefit of the disabled are adjusted to allow for digital distribution of copies of works adapted for specific use for disabled persons.

6) Exemptions to the right of reproduction for specific purposes for libraries, museums and archives include the option to regulate the enabling of digitization of their collections

7) Provisions are introduced on the prohibition of circumvention of technological measures used by rightholders to control access to and use of a protected work. The prohibition also includes the distribution, production, importation and marketing of devices or services whose purpose is to circumvent such technological protection measures. Provisions also include an obligation on the rightholder to enable use under certain exemptions when the user has legal access to the work in question.

8) Provisions are introduced on the prohibition of the removal or altering of electronic rights management information when the perpetrator knows or has reasonable grounds to know that this will enable, facilitate or conceal an infringement of copyright.

9) Existing provisions on the collective licensing mechanism for certain uses, are extended to cover also other means of reproduction than photocopying, and to cover libraries. The extended collective licence means that clearance for limited use within educational institutions, for internal use in other institutions, for certain uses in libraries, and for broadcasting and retransmission, can be done through an agreement between the user and organizations representing the various groups of rightholders affected.

(WT/TPR/S/138, page 66, para. 161)

According to the Secretariat Report, the Copyright Act allows limited use for specific purposes. Does the current proposal for amendments of the Copyright Act include the proposal for additional limited use for specific purposes on copyright and neighbouring rights? If so, please indicate the specific content of the proposal for additional limited use for specific purposes.

Answer:

See the answer to the previous question. No other proposal for additional limited use has been introduced.

(WT/TPR/S/138, page 66, para. 162)

According to the Secretariat Report, the production and import levies on analogue video and audio blank cassettes were eliminated from 1 December 2000. Are there any existing production and import levies in Norway? If so, please indicate the specific content of the levies, including the sum of the levies, the procedures to collect the levies and the objects of the levies (in particular, please indicate whether the digital audio and visual recorders and recording media are included or not.).

Answer:

There are currently no production and import levies in Norway on any products related to the private copying exemption under copyright.

KOREA

III. Trade policies and practices by measure (page 56, para. 126, 127)

The Secretariat's report commends Norway's public procurement regime for the non-discrimination and national treatment it provides to EEA members and parties to the GPA. However, we understand that foreign exporting companies can have some difficulties because they have to submit a series of application forms in the Norwegian language before a deadline. What is the view of the Norwegian government on the suggestion that such applications can be filled out in English?

Answer:

The Norwegian Government would appreciate to receive more information about the practical difficulties encountered and will be happy to address these difficulties accordingly.

(Page 84, para. 60)

It is said to be the Norwegian Seafood Export Council (NSEC) that is responsible for the marketing of seafood in and from Norway. The Secretariat reports that the NSEC operates under the Fish Export Act of 1990 and the Fish Export Regulation of 1991 and that the Board of the NSEC is composed of representatives from the Norwegian Federation of Trade Unions, the Norwegian Fishermen's Association, and the Norwegian Federation of Fish and Aquaculture Industries. Could the Norwegian government provide us with more information about how the NSCE operates?

Answer:

The Norwegian Seafood Export Council (NSEC) is the Norwegian seafood industry's combined marketing and information council. The goal of its operations is to increase the interest for and awareness of Norwegian seafood. The industry finances NSEC's activities through a separate statutory fee on the export of Norwegian fish and seafood.

Key areas of interest comprise:

Marketing; Joint marketing under the direction of NSEC should function as a support for the exporters' own sales promotions. Advisory marketing groups have been created for various product categories.

Market information; NSEC prepares statistics and conducts market analyses for seafood. NSEC has set up a system whereby industry participants can collect information about import quotas, tariff rates and trade conditions in various markets.

**IV. Trade policies by sector
(page 99-100, para. 134-136)**

The Secretariat reports that Norway introduced legislation on e-commerce and that the Electronic Communications Act, adopted on 4 July 2003, replaced the Telecommunications Act of 1995. Does the legislation on e-commerce include electronic signature provisions?

Answer:

The Act on Electronic Commerce and other Information Society Services (the eCommerce Act) is an implementation of the EU Directive on Electronic Commerce. This Act contains provisions regarding requirements of business when marketing and selling products over the Internet. The Act does not include electronic signature provisions.

(page 100, para. 141)

The Secretariat indicates that the Electronic Signature Act of 2001 also regulates online commercial activities in Norway. Does the Act regulate online content as well?

Answer:

The act on Electronic Signature is an implementation of the EU Directive in Electronic Signatures. The Act contains provisions regarding requirements for a certification service provider issuing qualified certificates and the content of such a certificate. The act does not regulate on-line commercial activities nor does it regulate online content.

**Report by the Government of Norway
(page 9, para. 23, 24)**

The government of Norway reports that state ownership has also undergone a number of structural and legislative reforms and, as a principal rule, state ownership of commercial activities is organized as limited liability companies. With respect to telecommunications sectors, it is reported that Telenor ASA, the incumbent telecom operator, was partly privatized in December 2000 and that the state now holds 53.1%. Could the government of Norway inform us more about the status and legal implications of the limited liability companies?

Answer:

Around 90 state owned enterprises are organized as companies with limited liability. These companies are mainly organised as joint stock companies, seven of them are listed on the Oslo Stock Exchange (OSE).

In limited liability companies the owner's responsibility is limited to the invested equity capital. Such companies can suffer bankruptcy. Could the government of Norway inform us more about the ownership breakdown of Telenor ASA? Is there any limitation on foreign ownership for telecommunications service providers?

Answer:

There are no limitations on foreign ownership for telecommunication providers in Norway.

Table (breakdown of shareholders)

Shareholders	No. of shares 30/09/04	Country	% of total 30/09/04
Norwegian Government*	944 626 908	NOR	54,00 %
State Street Bank	89 889 298	USA	5,14 %
Folketrygdfondet	59 364 000	NOR	3,39 %
JPMorgan Chase Bank S/A	30 657 026	USA	1,75 %
JPMorgan Chase Bank Clients Treaty Account	27 389 338	GBR	1,57 %
Mellon Bank AS Agent	26 653 839	USA	1,52 %
The Northern Trust Co	16 433 256	GBR	0,94 %
Vital Forsikring ASA	15 797 380	NOR	0,90 %
JPMorgan Chase Bank Omnibus	15 060 553	USA	0,86 %
Telenor ASA	14 939 900	NOR	0,85 %
Skandinaviska Enskil A/C Clients	12 818 918	SWE	0,73 %
State Street Bank & Client Omnibus	12 787 084	USA	0,73 %
The Northern Trust Co	12 126 347	GBR	0,69 %
Orkla ASA	12 000 000	NOR	0,69 %
Skandinaviska Enskildabanken	10 441 694	NOR	0,60 %
JPMorgan Chase Bank	9 287 600	USA	0,53 %
Bank of New York	9 000 000	USA	0,51 %
Nordea Bank Sweden	8 750 708	SWE	0,50 %
Credit Agricole Indosuez	8 547 600	FRA	0,49 %
Storebrand Livforsikring	7 854 600	NOR	0,45 %

NEW ZEALAND

Tariffs

Norway's 2004 tariff schedule contains 89.6% ad valorem duties and 10.4% non-ad valorem duties. The non-ad valorem duties apply mostly to agricultural products. Does Norway intend to move more tariffs towards ad-valorem duties and if so, when?

Answer:

The subject of this question is under negotiation in the DDA. Please refer to oral statements.

Generalised System of Preferences

It is good news that Norway expanded its GSP scheme so that by 1 July 2002 quotas and tariffs were eliminated for all products from least developed countries. Does it see the need to retain the special safeguard for flour, grains and feedstuffs if this has not been used since the scheme was enacted? If so, why?

Answer:

The safeguard mechanism may be invoked when products are being imported at such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive products. Like other safeguards mechanisms, this mechanism is not intended to be invoked on a regular basis. The fact that the safeguard mechanism has not been used during the short two year-period it has been in place is therefore not in itself a reason to abolish it. It should also be noted that the Norwegian Government has embarked upon a review of all aspects of the Norwegian Generalised System of Preference, including the special safeguard mechanism for flour, grains and feedstuffs.

Regional Assistance

The Secretariat's report (WT/TPR/S/138, Page 47) states that "Innovation Norway ... is in charge of export promotion and marketing assistance, internationalization, and transfer of technology". What activities does Innovation Norway undertake to support the transfer of technology and how much funding is dedicated to this?

Answer:

The export promotion and marketing activities of Innovation Norway, including transfer of technology, is described in our answer to a question from the USA. In 2003 NOK 21 million was allocated to technology related activities. For 2004 these activities are covered by the block grant to internationalisation and tourist promotion. The Board of Innovation Norway is responsible for the allocation of funds to specific activities.

The estimated subsidy provided by the Regional Development Grant is Nkr 773.5 million in 2002 (WT/TPR/S/138, Page 50). What are the economic development criteria for determining which firms receive funding? What are the criteria for establishing which sectors are eligible for receiving assistance under this programme?

Answer:

Regional Development Grants are available for all sectors except for agriculture. Firms receiving support from the Regional Development Grant must be located within the area eligible for regional aid. This area has been notified under the Regional State Aid Rules for the EEA-area and is based on a population density criterion. For an area to be eligible it must have a population density of less than 12,5 persons km².

Are there plans to phase out the “Scheme for Restructuring Regions Dependent on a Single Industry” (WT/TPR/S/138, Page 50)? If not, please advise why this is the case?

Answer:

The Scheme for Restructuring Regions Dependent on a Single Industry has been phased out. Aid from the scheme that was granted before the scheme was terminated in 2002 is still being paid out. No new projects receive aid from the scheme.

The report states that “expenditure for regional assistance totalled Nkr 963.5 million in 2002, up from Nkr 838.2 million in 1998. Support is geared mainly to Norway’s northern regions” (WT/TPR/S/138, Page 50). What is the reason for this large increase and why are the northern regions targeted?

Answer:

The nominal increase in expenditure totals around 15 per cent from 1998 to 2002, primarily due to inflation. The northern regions are targeted because of particularly low population density, arctic climate and high transportation costs. The total expenditure for regional assistance has decreased since 2002 and amounted to about 794 million NOK in 2003.

Agriculture – Market Access

We note Norway’s ambition to see the elimination of all tariffs on industrial goods (WT/TPR/G/138, page 10). When does Norway intend to apply a similar level of ambition to agricultural goods? We also note the Secretariat’s observation (WT/TPR/S/138, page 72) that due to the high border protection in place, consumer prices for agricultural products are higher in Norway than in neighbouring countries. Has Norway considered significantly lowering its tariffs on all agricultural products to provide benefits to its domestic consumers in the form of lower food prices and more variety of products available?

Answer:

The subject of this question is under negotiation in the DDA. Please refer to oral statements.

New Zealand would be interested in receiving further information about the implementation of Norway’s “tariff reduction regime” (WT/TPR/S/138, page 73). What particular products benefit from such reductions? How can Norway ensure that these are available on an MFN basis? In relation to general tariff reduction: how are the decisions to reduce tariffs communicated to importers? How are these decisions communicated sufficiently in advance to allow utilisation of the tariff reductions by suppliers who are faced with longer transportation time frames?

Answer:

Administrative tariff reductions are granted on MFN basis, and preferences granted in bilateral free trade agreements or through the GSP-system are maintained. A decision on general administrative tariff reduction is published in advance at the website of the Agricultural Authority, and is also mailed directly to subscribers.

Administrative tariff reductions are mainly granted to meat, plants and vegetables. products for preparations of vegetables, fruit, nuts or other parts of plants.

Agriculture – Domestic Support

We are pleased to see Norway's statement (WT/TPR/G/138, page 7) that during the period 1992-2002 support to agriculture was reduced 20% in real terms and that budgetary subsidies to farmers have shifted from price support to support with less impact on production. Nevertheless, as the Secretariat notes, Norway's agricultural sector receives more than two thirds of all budgeted state support, and, more specifically, in 2001 the total AMS (i.e. trade distorting, non-exempt support) notified to the WTO amounted to about 70% of agricultural GDP (WT/TPR/S/138, page 70 and page 74). While New Zealand does not dispute Members' right to address non-trade concerns, as Norway will be aware we consider that there are non-trade distorting ways to achieve this objective. Has Norway considered moving away from providing non-exempt support to its farmers and shifting to "green box" policies instead? If so, when is this likely to occur?

Answer:

The subject of this question is under negotiation in the DDA. Please refer to oral statements.

Agriculture – Export Subsidies

While Norway has reduced its agricultural export subsidy outlays by more than 45% between 1998 and 2003, export subsidies for dairy remain substantial. We welcome Norway's acceptance that the Doha Round will lead to a set end date for the elimination of export subsidies. We welcome Norway's acceptance that there will be an agreed date for the elimination of all forms of export subsidies. In that light, what policy changes are currently underway in order to facilitate this elimination in a timely manner?

Answer:

The subject of this question is under negotiation in the DDA. Please refer to oral statements.

SWITZERLAND

Recent economic developments

§ 9: Tax load is very high in Norway (49% of mainland GDP compared to an OECD average of 37.5%). Are there further reductions of taxes (inclusive of income taxes) foreseen for the period after 2005 (tax reductions are an objective of the government's policy during the parliamentary term ending in 2005)? Or reductions of expenditures?

Answer:

Taxes as part of mainland GDP overestimates the total tax level in Norway. This is due to difficulties isolating activities in the petroleum sector. Accordingly, Norway has developed an estimate that is corrected for the economic rent in the petroleum sector, both in taxes and GDP. This corrected estimate is 42.4 pct. in 2003. Total accrued taxes are estimated to 43.7 pct. of total GDP.

The tax reform is covered in the Norwegian delegation's final statements.

Government procurement

§130: Why are permanent lists of suppliers only allowed for utilities?

Answer:

According to Directive 93/38/EEC article 21(c) implemented into Norwegian law in the Utilities Regulation of 5 December 2004 nr. 1424 § 25, the opportunity to establish and make use of a qualification list is only available for the utilities sector. However, a new procedure similar to a qualification system is included in the new legislative package on public procurement, cf. Directive 2004/18/EC art 33: "Dynamic purchasing system". This is most likely to be introduced into Norwegian legislation in 2006.

Intellectual property rights

§142: Regarding undisclosed information, it is mentioned in table III.14, that Norway protects undisclosed data and tests from unfair commercial use by administrative practices and that, in the case of medicines, the protection expires six years after the marketing approval has been granted. Switzerland would like to know how Norway's administrative practice ensures that undisclosed test or other data submitted by an applicant to the responsible State agency in the procedure for market authorisation of pharmaceuticals or agricultural chemical products is protected against unfair commercial use (Article 39.3 of the TRIPS Agreement):

a) Does this administrative practice for example prohibit a second applicant from relying on, or from referring to the original data of the first applicant, when applying subsequently for market authorisation for his own product?

Answer:

Undisclosed information of commercial value are in general protected against unfair commercial use by the provisions on business secrets in Section 7 and 8 in the Norwegian Marketing Act 16 June 1972 No. 47. Undisclosed information are protected against disclosure according to section 13 paragraph 1 (2) of the Norwegian Public Administration Act of 10 February 1967 by the duty of any person rendering services to, or working for, an administrative agency, to prevent others from gaining access to, or obtaining knowledge of, any matter disclosed to him in the course of his duties concerning "technical devices and procedures, as well as operational or business matters which for competition reasons it is important to keep secret in the interests of the person whom the information concerns". Also this duty to not disclose matters indirectly prevents unfair commercial use of test data. By these provisions Norway has fulfilled its obligations according to TRIPS Article 39 (3).

When it comes to market authorisation of pharmaceuticals or agricultural chemical products test data is given a broader protection. In the case of pharmaceuticals a second applicant is prohibited from relying on or referring to the test data of the first applicant when applying for a marketing authorisation for a period of 6 years 10 years. In the case of agricultural chemical products approval is not based upon test data submitted by other producers in cases where the applicant cannot verify the existence of an agreement with the other producers allowing the applicant to make use of the test data. There is no time limit in this regard.

b) If this is the case, does your practice or legislation provide for exceptions to this? If yes, under what conditions would such exceptions apply?

Answer:

Exceptions from the regime described in a) would only apply where the second applicant has entered into an agreement with the first applicant that allows him to rely on or referring to the test data.

c) If this is not the case, how does this administrative practice protect test and other data against unfair commercial use?

Answer:

Does not apply, see answer to b).

The Swiss Delegation would also be interested to know whether the protection period of six years applicable to medicines is applicable to agricultural chemical products as well. If not, what would be the period of protection for such products?

Answer:

The period of exclusivity for test data is unlimited.

Furthermore, the Secretariat Report does not contain a general paragraph on the “Protection of undisclosed information, including trade secrets and test data” as is usually provided in TPR reports. However, the protection of undisclosed information is important for Switzerland. Therefore, we would be grateful if Norway could deliver more relevant information on this subject matter.

Answer:

See answer to question a).

TURKEY

II. Trade and investment regime

Norway is a founding member of European Free Trade Area (EFTA) and the European Economic Area. EFTA has preferential agreements with several countries and since last TPR, EFTA has also concluded bilateral FTAs with six countries. We know that, as Norway liberalized most of the industrial products, preferential margins of these agreements were not so significant. Could Norway elaborate on how it sees its EFTA experience within the context of general global FTA trends.

Answer:

As a first priority, Norway wants to see further liberalisation based on multilateral rules under the auspices of the WTO. Norway therefore attaches great importance to the early conclusion of the DDA. The decision to pursue a preferential trade agreement with another country will depend on an overall assessment of the benefits of such an agreement. Norway sees FTAs as a useful supplement to the liberalization taking place within the WTO.

UNITED STATES OF AMERICA

Trade and investment regimes

Investment regime

1. Paragraph 12 of the Secretariat's Report reported that in October 2002, Norway abolished a 7% investment tax on purchases of business assets. How have Foreign Direct Investment flows changed since the abolition of this tax?

Answer:

The investment tax was levied on the purchase of business assets for use in businesses liable for VAT. There were a number of exemptions from the tax i.a. manufacturing industries and most other sectors exposed to international competition. The investment tax was thus mainly paid by sectors not exposed to international competition, like retail and wholesale trade and commercial services.

Only about 1/3 of the investment tax was paid on capital and investment goods. Most of the tax was paid on intermediate goods and work on and repair of capital goods.

To a certain extent the removal of the investment tax could contribute to a higher return on investment in sectors where the tax was applicable, but the potential effect on foreign direct investment is uncertain.

Foreign direct investment (FDI) flows to Norway vary greatly from year to year. An isolated effect from the removal of the investment tax is therefore not easily identifiable in the FDI-data.

Trade policies and practices by measure

Overview

2. Paragraph 5 of the Secretariat's Report mentions a new Competition Act. Please elaborate on how the new Competition Act, which entered into force in May 2004, differs from the previous Competition Act and discuss what impact, if any, the new Act will have on the Agricultural Sector?

Answer:

The New Competition Act vs. the previous Competition Act

The new Competition Act brings Norwegian competition law in line with the anti-trust principles of the EC competition rules. The new Act furthermore strengthens the merger control regime. Norwegian merger control has not, however, as such been harmonized with EC merger control. In addition the procedural powers of the Norwegian Competition Authority has been strengthened, in particular with regard to the adoption of fines. The new Act also empowers the

Norwegian Competition Authority to apply Articles 53 and 54 of the EEA Agreement. Articles 53 and 54 EEA mirrors Articles 81 and 82 EC.

Anti-trust:

The previous dual system, consisting in part of provisions prohibiting certain practices and in part of provisions providing the Norwegian Competition Authority (NCA) with the authority to intervene against anti-competitive practices, is replaced by a system of much broader prohibitions. The Act harmonizes the Norwegian anti-trust rules with the anti-trust regime of the EU and EEA. Thus, the Act lays down wide prohibitions on anti-competitive cooperation and on the abuse of dominant positions, identical to the prohibition provisions in articles 81 and 82 EC and Articles 53 and 54 EEA. In line with the EU/EEA provisions, anti-competitive practices fulfilling the exemption criteria laid down in the Act are automatically exempted from the prohibition. This means that the undertakings no longer neither shall nor may notify agreements to the Norwegian Competition Authority to obtain individual exemptions. Also mirroring the EU/EEA system, the new Act furthermore empowers the King in Council to adopt block exemptions. Block exemptions are exemptions for certain types of agreements (as opposed to exemptions in individual cases), which, although having anti-competitive effects, by experience are known to have sufficient positive effects to outweigh the anti-competitive concerns.

Under the new Act, the Norwegian Competition Authority may award leniency to ‘whistle blowers’ by reducing – in some cases up to 100% - the fines imposed for cartel behaviour. The measure is expected to increase the number of infringements detected.

Infringements of competition law are subject to stricter sanctions under the new Act. In addition to the existing penal provisions, the new Act introduces a new civil law sanction of administrative fines similar to the sanctions imposed by the Commission and ESA under the EEA Agreement. The administrative sanctioning system is set to be the primary instrument of the Norwegian Competition Authority in ensuring compliance with the competition rules.

Merger control:

Under the new Act Competition Authority is obliged to intervene against any merger if it finds that it will “create or strengthen an appreciable restriction of competition”. The previous Act only empowered the Competition Authority to intervene against such mergers. The new Act introduces a system of mandatory notification to the Competition Authority of all mergers above certain thresholds (NOK 20 million). The merger control provisions of the Competition Act will, however, not apply to mergers falling within the merger control regime of the EEA Agreement.

The new Act also introduces shorter and fixed time limits in merger cases. Under the new rules, the Competition Authority is required to adopt a decision within a maximum of 100 working days. If the parties submit proposals for commitments, however, this period may be extended by another 25 working days.

Impact on the Agricultural Sector

The new Competition Act will have minor – if any – impacts on the Agricultural Sector. The previous act exempted the fish and agricultural sectors from most of the prohibitions. The Competition Authority could however, to a certain extent, intervene against other anti-competitive conduct. By Royal Decree of 23 April 2004 the fish and agricultural sectors were granted similar exemptions from the new Competition Act.

Measures Directly Affecting Imports – Other Taxes and Charges – Control Fees and Foodstuffs Tax

3. Referring to paragraph 35 of the Secretariat's Report, U.S. wheat exporters report Norway charges a control fee on U.S. wheat imports of 1.8 percent of invoice value because Karnal Bunt exists in some areas of the US. This charge is not commensurate with normal inspection costs and applies even if certificates specify that the wheat does not come from a region affected by Karnal Bunt. Norway applies a health control fee of 0.9 percent of invoice value on all imported food wheat. Please explain why U.S. wheat exported from regions not affected by Karnal Bunt is assessed the higher control fee?

Answer:

Wheat for non-food use, from countries where a phytosanitary certificate is required in accordance with Regulation relating to plants and measures against pests of 12. January 2000 No. 1333 (i.a. Karnal Bunt), is charged a control fee at 1.8% of invoice value. For consignments over 5000 tons delivered in bulk the control fee is set at 0.9%.

For wheat for food use there are no control fees. But the wheat is subject to foodstuff tax set at 1.43%. The objective of the foodstuff tax is to finance the regular inspections made by the Norwegian Food Safety Authority on the products in the food production chain, which are not subject to control fees.

4. Paragraph 36 of the Secretariat's Report states that "a food production tax is collected on all foods (except water) at different rates. It applies to raw materials produced in Norway for use in food; to all imports of foods, semi-manufactured goods and raw materials for use in food. Therefore, the taxation base for imported goods is different from the base for locally produced goods." U.S. wheat exporters have advised that when import quotas are opened for food wheat, a variable import duty is charged which is basically the difference between the domestic price and the world market price CIF Oslo. They have asserted that the import duty collected is used the following year to lower flour prices to bakers to help the baking industry to compete with certain imported bakery products.

A) Please advise whether the charge described by U.S. exporters is the food production tax described in paragraph 36 or some other program?

B) Please describe in detail this taxation and subsidy program U.S. wheat exporters report, including the period of time between the announcement of the variable tax rate and its application to imports.

Answer:

The foodstuff tax is imposed on both imported and domestic products. Its objective is to cover costs resulting from the regular inspection made by the Norwegian Food Safety Authority on products in the food production chain, which are not subject to control fees. The foodstuff tax is lower for imported products than for domestically produced products, since these products already have undergone controls in the export country.

Norwegian production of grain is not sufficient to meet domestic consumption. Quotas with reduced tariffs are therefore established on an autonomous basis to prevent domestic price from exceeding target prices. In-quota tariffs for grain for food, oilseeds and other input factors to feeding stuffs are set at a level necessary to prevent that domestic prices exceed target prices.

In order to reduce consumer prices of flour, a price subsidy is granted to consumers of food grain both domestic and imported. The price subsidy is financed over the State Budget.

Measured Directly Affecting Imports – Import Prohibitions, Restrictions, and Licensing

5. According Paragraph 42 of the Secretariat's Report, Norway allocates food import quotas through auctions. U.S. exporters have also advised that they believe actual imports under many of these quotas are considerably below (on average amounting to only about a third of) the quota tonnage sold.

A) Does the Norwegian Agricultural Authority have a system for reallocating unused import quotas, similar to the system for domestic production quotas?

Answer:

The quota administration system is aimed at facilitating utilisation of the various import quotas. In order to encourage increased quota fill Norway has autonomously decided to reduce the in-quota-tariffs for the WTO minimum access quotas with 25% of the bound in-quota-tariffs as of 1 July 2003 (exceptions are made for the sheep meat quota and the cabbage quotas). To stimulate quota holders to import, the auctioning fee is not reimbursable. Furthermore, the tariff quota shares are tradable. To some extent quota holders make use of this opportunity to sell their quota share in situations where they are not in a position to utilise the quota themselves.

Measures Directly Affecting Exports – Export Subsidies, and Duty and Tax Concessions

6. Please provide further information regarding the verification system for the duty drawback program described in paragraph 78 of the Secretariat's Report on Norway's Trade Policy Review?

Answer:

Upon importation of materials to be used in a manufacturing process in Norway for the production of goods, which are later going to be exported, customs duties and taxes shall be paid in the normal manner. After export clearance of the final products concerned, repayment of customs duties may be granted both when the products are exported abroad directly or as well if placed in a customs warehouse for subsequent exportation. The amount to be refunded shall be equal to the customs duty that has been levied for the used materials.

Measures Directly Affecting Exports – Export Promoting and Marketing

7. Paragraph 84 of the Secretariat's Report describes the activities of Innovation Norway.

A) Please provide further information regarding the specific type of export promotion and marketing assistance provided by Innovation Norway?

B) Please provide information regarding the specific requirements for companies to qualify for assistance under this program.

Answer:

The export promotion and marketing assistance offered by Innovation Norway (IN) are available for all companies although they are designed to meet the needs of SMEs.

The main services provided are:

1) General market information: Customised information on international trade, export markets and Norwegian companies as potential suppliers to the international market. Ready available market information on foreign industries, products, technology, distribution and competition. This information is customised to SMEs but is available to all companies using INs web-site and service-telephone.

2) Individual market and technology services like market research, technology search, product tests, analyses of competitors and entry strategy formulation (distributor search, partner search, establishment assistance, market and technology monitoring). This service is available to all companies.

3) Market activities like trade fairs, seminars, business forums, business delegations and joint promotional activities. These services are targeted for SMEs but some activities are open to all companies provided that they pay their own costs.

8. Please explain how products are able to qualify as having a “high export potential” under the Entrepreneur Programme described in paragraph 85 of the Secretariat’s Report?

Answer:

The evaluation of whether a product has “high export potential” is undertaken by Innovation Norway as part of the pre-qualification for the programme. The product’s competitive advantage is evaluated using the traditional competitiveness criteria: price, quality, service, design, competition, distribution etc. Innovation Norway employees usually based in the countries that are the target markets for the product in question, undertake the evaluation.

Measures Affecting Production and Trade – State Owned Enterprises and Privatization

9. According to Para 137 of the Secretariat’s Report, State ownership remains extensive throughout Norway’s economy and it is expected to remain an important feature of the Norwegian economy for the foreseeable future. The Secretariat’s report relates in paragraphs 137-140 that government policy is to divest State assets, either fully or partially, to strengthen the regulatory regime by clearly separating ownership and regulatory functions of the State, and to insure that State Owned Enterprises (SOEs) comply with WTO rules to operate on a commercial basis.

A) Please explain how the transfer of ownership of some SOEs to the Ministry of Trade and Industry, while leaving regulatory authority over the SOEs to sectoral ministries (Secretariat Report paragraph 140), is insuring that these firms operate on a commercial basis.

Answer:

The main purpose is to avoid intermingling between the State’s different roles; ownership management focusing on economic performance and industrial development on the one hand and, sector political aims and business regulations on the other. In addition companies should be organized in such a way that the same rules and regulations will apply for state companies as for private companies. The state as any owner sets economic performance measures for the companies.

B) Please provide an exhaustive list of which SOEs are still owned and regulated by the same ministries.

Answer:

A complete list of companies owned by the different ministries is presented in the Ministry of Trade and Industry's "Ownership Report" for 2003. There are very few companies that are regulated and owned by the same ministry unless it has some special role, and does not operate in full competition with others. Examples here are the state hospitals, state railway, etc.

C) Does Norway intend in the future to establish autonomous regulatory bodies (Secretariat Report paragraph 140)?

Answer:

At the present time we do not envisage any development of this nature.

D) What annual reports do Norwegian government regulators require SOEs to file to validate their operating on a commercial basis?

Answer:

Like all other commercial companies SOEs are required to file a full annual report which should contain a description of the business environment they are operating in an annual account describing profit and loss, assets and liabilities and cash flows. Some of the major companies also publish annual reports based on US-GAAP since they also are listed in the US.

E) If reports are filed, are they available to shareholders of partially private SOEs, the public, and other WTO member states? Are the reports reviewed by independent auditors who publish their findings?

Answer:

They are publicly available and are audited by independent auditors.

10. Paragraph 138 of the Secretariat's Report indicates that the Government's current policy towards state-owned enterprises and privatization is contained in the April 2002 White Paper, "Reduced and Improved State Ownership". Yet, paragraph 137 notes that state control of the Oslo Stock Exchange's capitalization rose from 17% in 1999 to approximately 41% at the end of 2003. Please explain this apparent contradiction between privatization policy and practice.

Answer:

The question is covered in Norway's oral statement.

Please provide evidence that government investments in SOEs and other Norwegian industries are made on a commercial basis.

Answer:

The Ministry of Trade and Industry publishes a yearly "Ownership Report" on the management of its portfolio. According to the 2003 report, the return on equity was 10% as an average for the total portfolio. Average for the listed companies were 12% compared to 8 % for the companies not listed.

11. The Secretariat's Report (para 138) stated that "the Storting has authorized further reduction of the State's stake in a number of enterprises; ending of state ownership in others is being considered."

A) Please provide a list of the enterprises that have been approved for full or partial privatization and the schedule for these divestments.

Answer:

All companies that have been approved for sales have been sold with the exception of Grødegaard. The government will consider further sales in Telenor and Statoil within the given limits.

B) Please also provide a list of companies under consideration for state divestiture.

Answer:

Such a list does not exist. State divestments have to be approved by the Parliament before the government is authorized to sell. Such decisions will be handled on a case by case basis.

12. The Secretariat's Report (para 140) states that sub sectors in which "competition is foreseen or has been introduced include postal services, rail services, road construction, health care, and higher education." Has Norway submitted, or does Norway intend to submit, Doha Development Agenda GATS offers on any or all of these service sectors?

Answer:

Norway's initial offer can be found in Norway's offer TN/S/O/NOR. Norway is presently reviewing its initial offer with a view to tabling a revised offer before May 2005. The review includes all sectors of the Services Negotiations.

Measures Affecting Production and Trade – Intellectual Property Rights – Patents and Undisclosed Information

13. In WTO Document IP/Q3/NOR/1, Norway indicated that it had no provision of law specifically permitting nationals of countries other than Norway or a member country of UPOV to obtain plant breeder rights in Norway.

A) Has Norway since implemented a specific legal provision allowing such persons to obtain plant breeder rights in Norway?

B) If not, how does Norway's law on plant varieties satisfy its national treatment obligation as set forth in TRIPs Article 3?

Answer:

The relevant regulation, dated 6 August 1993, has been amended to entitle nationals of a member of the WTO to obtain plant breeder rights in Norway.

14. In several responses provided in WTO Document IP/Q3/NOR/1, Norway indicated that it satisfied the reversal of burden of proof obligation set forth in TRIPs Art. 34 by reference to Norwegian legal tradition.

A) Has this tradition since been codified?

Answer:

No.

B) If not, have any cases been adjudicated that affect the interpretation of this tradition as it applies to the TRIPs Art. 34 requirement, and does Norway have any plans to codify this tradition?

Answer:

No, we are not aware of cases affecting the interpretation of this tradition, and there are no plans to codify it.

15. In document WT/TPR/S/138, Norway mentions that it has implemented a disclosure of origin requirement for inventions that involve biological material.

A) Please provide an English language copy of the 2004 amendments to the Patent Law that implement these provisions.

Answer:

A copy of the English translation of the Norwegian Patent Act with its latest amendments has been provided to the US delegation. It will also be made available shortly on the web page of the Norwegian Patent Office (www.patentstyret.no). The relevant provisions are Sections 8 b and 33 of the Norwegian Patent Act and Section 166 of the Norwegian General Civil Penal Code (see below).

Section 8 b of the Norwegian Patent Act reads as follows:

"If an invention concerns or uses biological material, the patent application shall include information on the country from which the inventor collected or received the material (the providing country). If the national legislation of the providing country requires that access to biological material shall be subject to prior consent, the application shall specify whether or not such consent has been obtained.

In cases where the providing country is not the same as the country of origin of the biological material, the application shall also specify the country of origin. The country of origin means the country from which the material was collected from in-situ sources. In cases where the national legislation of the country of origin requires that access to biological material shall be subject to prior consent, the application shall specify whether or not such consent has been obtained. In cases where the information required pursuant to this paragraph is not known to the applicant, the applicant shall specify this.

The duty to provide information under the first and second paragraphs applies even if the inventor has altered the structure of the received material. The duty to provide information does not apply to biological material derived from the human body.

Any person who violates the duty to provide information is liable to a penalty in accordance with section 166 of the General Civil Penal Code. The duty to provide information is without prejudice to the processing of patent applications or the validity of granted patents."

Section 33 second paragraph of the Patent Act reads as follows:

"The provisions of sections 8 b and 8 c do not apply to international patent applications."

Section 166 of the General Civil Penal Code reads as follows:

"Any person shall be liable to fines or imprisonment for a term not exceeding two years who gives false testimony in court or before a notary public or in any statement presented to the court by him as a party to or legal representative in a case, or who orally or in writing gives false testimony to any public authority in a case in which he is obliged to give such testimony, or where the testimony is intended to serve as proof."

The same penalty shall apply to any person who causes or is accessory to causing testimony known to him to be false to be given by another person in any of the above-mentioned cases."

B) If failure to disclose the source of origin is "without prejudice to the grant of the patent," what are the consequences of a failure to disclose?

Answer:

In the last period of Section 8 b of the Norwegian Patent Act it is explicitly stated "duty to provide information is without prejudice to the processing of patent applications or the validity of granted patents". However, according to Section 8 b, paragraph 4, first sentence in the Norwegian Patent Act "[a]ny person who violates the duty to provide information is liable to a penalty in accordance with section 166 of the General Civil Penal Code". The maximum penalties prescribed in Section 166 of the General Civil Penal Code are fines or imprisonment for a term not exceeding two years.

16. In WTO Document IP/C/W/427, Norway set forth its regulations for implementing the August 30, 2003 General Council Decision on paragraph 6 of the Doha Declaration. The following questions pertain to those regulations:

A) The language of Section 107 of the Regulations states that a compulsory license may be granted for export to a "State" meeting specified conditions. Later in the same provision, both a "State" and a "customs territory" are mentioned. Is export limited to an eligible "State" or may exports also be made to "customs territories?" If "customs territories" are included, please explain how the criteria for qualification as an eligible importing party, as outlined in Section 107(1), are consistent with either paragraph 1(b) or paragraph 6 of the General Council Decision.

Answer:

The authentic Norwegian version of the Regulation to the Patent Act, Section 107 paragraph 1, clearly defines an eligible State as a state or a custom territory. The English translation provided in WTO Document IP/C/W/427 is unfortunately less clear on this point. Norway may thus also grant a compulsory licence for exports to customs territories (if the criteria otherwise have been met).

We consider this to be clearly consistent with paragraph 1(b) of the General Council Decision, since both states and customs territories may be members of the WTO.

B) Section 108(4) of the Regulations provides that the compulsory license for export is "to cover the [importing State's] need for the product for health purposes." The phrase "for health

purposes" appears to be very broad. Would "for health purposes" be interpreted as the public health concerns recognized in paragraph 1 of the Doha Declaration, as incorporated by paragraph 1(a) of the General Council Decision?

Answer:

Yes.

C) Section 108, second paragraph (3), states that the export license shall cease if the license holder learns the products are being used "to an appreciable degree" for purposes inconsistent with the conditions for granting the license. What is meant by "to an appreciable degree?" Is an importing country permitted to resell the imported pharmaceutical to other countries under this provision? Can the government of Norway terminate the export license sua sponte if it, rather than the licensee, becomes aware that the products are being used "to an appreciable degree" for purposes inconsistent with the grant of the license?

Answer:

Section 108 paragraph 2 (3) regulates compulsory licences (not export licences) and provides that "export shall cease" if the products to an appreciable degree are used for purposes inconsistent with the conditions for granting the licence. Continued exports under the scheme would thus be considered to be a violation of the patent holders right and be subject to prosecution.

It is presumed that "to an appreciable degree" would cover a situation where more than a minor amount of the products were used for other purposes than those covered by the compulsory license. No cases have arisen as of yet to test the content of the criterion.

17. In several responses provided in WTO Document IP/Q3/NOR/1, Norway indicated that test or other data related to approval of agricultural chemical products are protected in accordance with TRIPs Art. 39(3) by an administrative agency's duty not to provide access to such data. TRIPs Art. 39(3), however, requires that such data be protected against unfair commercial use, not merely against disclosure.

A) How does Norway satisfy TRIPs Art. 39(3) in this regard?

Answer:

See answer to question 3 from Switzerland.

B) Does Norway provide for a period of exclusivity for test or other data submitted for agricultural chemical marketing approval?

Answer:

See answer to question 3 from Switzerland.

18. In several responses provided in WTO Document IP/Q3/NOR/1, it was unclear whether importation of a product into Norway would satisfy the working requirement for the grant of a compulsory license on failure-to-work grounds. Please clarify whether importation satisfies the working requirement, and if so, explain any conditions that apply?

Answer:

The amended Patent Act Section 45 makes it clear that importation into Norway would satisfy the working requirement.

Measures Affecting Production and Trade – Intellectual Property Rights – Designs

19. Please provide an English language copy of the Designs Act of March 2003.

Answer:

An English language translation of the Designs Act will be provided. It will also be available on the web-page of the Norwegian Patent Office (www.patentstyret.no).

20. In Document WT/TPR/S/138 it is noted that design protection for spare and component parts is available for 5 years. Do spare and component parts constitute industrial designs that are new or original under Norway's law?

Answer:

Yes, if the spare and component parts are visible under normal use of a complex product that the part is a component of and the spare and component parts themselves have individual character and sufficient novelty.

Is this 5-year period extendable?

Answer:

Design protection for spare and component parts is in general available for maximum 25 years. However, for spare parts the scope of protection is limited. After a period of 5 years a design registration will not prevent others from making and selling copies of spare parts provided that the spare parts are used to repair a complex product to give the complex product back its original appearance, for example a car door. This period of 5 years is not extendable. However, a design registration will for a period up to 25 years prevent others from making and selling copies of spare parts if the purpose of the spare part is not to repair a complex product to give the complex product back its original appearance. The scope of protection that subsists in the actual designs registration will in other words vary from what purpose the use of the product has. Let us provide the following example: A car manufacturer STING has multiple designs registrations for the whole car and its visible spare parts. A competitor RAXX produces also cars and spare parts. RAXX cannot offer for sale its own car partly composed of STING's protected spare parts the whole protection period i.e. up to 25 years, but RAXX can offer for sale spare parts for repair purposes for STING cars after the initial five-year protection period.

If not, and if spare and component parts are considered to constitute new or original industrial designs, how does this 5-year term of protection satisfy TRIPs Art. 26(3), which requires a term of protection of at least 10 years for protectible industrial designs?

Answer:

The limited scope of protection for spare parts satisfies TRIPs art. 26(3), because this represents a limited exception which is allowed according to TRIPs art. 26(2). The design protection

for spare and component parts is under consideration in the EEA-Area and any further developments with regard to substantive design law will have to be awaited. The proposal of 14 September 2004 from the European Commission (COM(2004) 582 final) states that protection as a design shall not exist for a design which constitutes a component part of a complex product used for the purpose of the repair of that complex product so as to restore its original appearance.

Measures Affecting Production and Trade – Intellectual Property Rights – Geographical Indications

21. According to Paragraph 163 of the Secretariat's Report [Document WT/TPR/S/138], the protection of geographical indications is implemented through the Marketing Act of 16 June 1972 and the Trade Marks Act of 3 March 1961. However, it is unclear from these laws whether trademark owners are protected from confusingly similar and later in time geographical indications.

A) In what manner does the law of Norway preserve the rights of trademark owners consistent with Articles 16(1) and 24(5) of the TRIPs Agreement?

Answer:

Article 16(1) of the TRIPs Agreement is implemented through Chapter 1 of the Norwegian Trade Marks Act, 3 March 1961.

The trademark owner is protected from confusingly similar and later in time geographical indications by the general rule in section 4 of the Norwegian Trademarks Act, cfr. in particular paragraph 1, 3. sentence, which states that "'the same sign" shall be understood to mean a sign that is so similar to another sign, that is liable to be confused with this sign in the ordinary course of trade..". In section 4, paragraph 3 it is stated that "[t]he right to a sign in accordance with sections 1 to 3 has the effect that no one other than the holder may in the course of trade use the same sign for his goods...". This establishes a protection which is in accordance with TRIPs Article 16 (1).

The provisions in the Trademark Act implementing Section 3 of the TRIPs Agreement do not apply to trademarks that have been registered or have been acquired through use before the date of application of these provisions, ref. also Section 25 of the Norwegian Trademarks Act which states "[i]f a trademark has been registered in contravention of the present Act, the registration may be invalidated by a court ruling...". Before the provisions implementing section 3 of the TRIPs Agreement entered into force it would not necessarily be in contravention of the Trademark Act if a trademark were registered where this would be forbidden according to TRIPs Article 23. The registration of trademarks containing a geographical indication for wine or spirit that was granted before the implementation of TRIPs, can therefore not be invalidated because the registration is not in accordance with TRIPs art. 23. This establishes an arrangement that is in accordance with TRIPs Article 24(5).

B) What are the civil and criminal penalties for wrongful use of a geographical indication?

Answer:

According to Section 17 paragraph 1 of the Marketing Act the penalties for intentionally wrongful use of a geographical indication are fines or imprisonment for a term not exceeding six months or both. The wrongful user may also be liable to pay damages to the owner of the geographical indication provided that the wrongful user is guilty of negligence. If the wrongful use of a geographical indication represents an infringement of a trademark the ordinary measures of

enforcement in chapter 7 of the Trademark Act may apply. These are fines or imprisonment for a term not exceeding 3 months, damages and other measures, for example confiscation of goods.

C) Who enforces judgments related to the wrongful use of a geographical indication?

Answer:

The Police and the Public Prosecutor Authority enforce judgments when it comes to criminal penalties. When it comes to civil penalties judgments must be enforced with the help of the Enforcement of Claims Authority, which in some cases is an administrative authority and in other cases the Courts of First Instance.

D) In cases of infringement, how are damages calculated?

Answer:

If the infringement concerns a geographical indication the damages shall compensate the economic loss of the owner caused by the infringement. The same applies when the infringement concerns a trademark, but in these cases the compensation shall at least be corresponding to a fair licence fee for the use of the trademark.

22. In Table III.14, pg. 62 of the Secretariat's Report under Geographical Indications, it states that coverage for "local agricultural specialties" has been extended "through an administrative system of non-exclusive marks (which are not IPRs)." What is meant by "non-exclusive marks (which are not IPRs)?"

Answer:

See answer provided to question 4 from Canada.

Measures Affecting Production and Trade – Intellectual Property Rights – Enforcement

23. According to Paragraph 168 of the Secretariat Report, "[i]n general, the maximum penalties prescribed for infringement of intellectual property rights involve fines and three-months imprisonment. However, the maximum penalty for copyright and lay-out design infringement is three-years imprisonment." Please indicate with regard to trademark counterfeiting whether three-months imprisonment is a deterrent.

Answer:

We consider that this is sufficient deterrent. The main sanctions when it comes to infringement of trademarks are civil penalties, for example compensation for loss. The criminal penalties for infringement of intellectual property rights will however be harmonised in the future. In the proposal for a new Trade Mark Act it is proposed to raise the upper limit for imprisonment to one year, for severe cases.

24. The Business Software Alliance July 2004 piracy study indicates Norway's software piracy rate is 32 percent, resulting in a loss of \$155 million. Please describe efforts to decrease the level of business software piracy in Norway.

Answer:

The Norwegian copyright Act has specific provisions on penal sanctions as well as civil remedies.

Both wilful and negligent infringement of copyright or neighbouring rights carry penalties of fines or imprisonment. For wilful infringement penalties can increase to three years imprisonment if the consequences are severe. On evaluating the severity of the consequences, relevant circumstances are first and foremost the amount of damage the infringement has caused the rightholder and others and the infringer's profit. As regards investigative steps, these follow the regular provisions of the penal code and include for instance the seizure of infringing goods.

As far as civil remedies are concerned, the rightholder can claim damages for the negligent infringement of copyright or neighbouring rights. If the infringement is carried out wilfully or with gross negligence, damages for non-pecuniary damage can be awarded. Even if there is no culpability at the hands of the perpetrator, the rightholder can always demand the disbursement of the net profit of the illegal act. A specific provision of the copyright act also prohibits the circumvention of technological measures used to control access to and use of computer programs.

Temporary injunctive measures are available which includes the option to apply for an injunction in audita altera parte.

The Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime has established a special computer crime unit to handle computer related crimes including copyright infringements. The unit detects, investigates and prosecutes such cases.
