

# LOCAL CONTENT

---



Norway – Petroleum



Columbia Center  
on Sustainable Investment

A JOINT CENTER OF COLUMBIA LAW SCHOOL  
AND THE EARTH INSTITUTE, COLUMBIA UNIVERSITY



- Resource-rich countries are increasingly inserting requirements for local content (“local content provisions”) into their legal framework, through legislation, regulations, contracts, and bidding practices. If successful, a policy to increase local content can lead to job creation, boost the domestic private sector, facilitate technology transfer and build a competitive local workforce. However, local content goals are often unfulfilled and the opportunities are not captured. For example, local content provisions typically require investors to meet targets measured as a percentage of investment, hours worked, equipment supplied, or jobs created. If targets are too high, they may either scare away investment or remain unmet as investors accept the fines or find loopholes. If they are too low, the country will not maximize potential linkages. This shows the importance of the framing of local content provisions. Targets, and other local content objectives, need to be carefully quantified, adapted to the local context and collaborative. Because local content provisions can be key to translating resource investments into sustainable benefits for the local population, this project examines the detail of the existing legal frameworks for local content in a number of countries.
  - CCSI has conducted a survey of the local content frameworks of a number of countries – identifying the key legislation, regulations, contracts and non-binding policies and frameworks dealing with local content issues in the mining and petroleum sectors<sup>2</sup>. A profile was created for each country, summarizing the provisions in the legal instruments dealing with local content and highlighting examples of high impact clauses<sup>3</sup> – those containing precise language which might be useful as an example to those looking to draft policies to enhance a country’s local content<sup>4</sup>. The profiles examine provisions dealing with local employment, training, procurement, technology transfer, local content plans as well as local ownership, depending on the country’s approach to and definition of local content. In addition, as key to translating provisions into action, the profiles look at implementation, monitoring and enforcement provisions as well as the government’s role in expanding local involvement. Aside from emphasizing the strong clauses, which may be adaptable across countries, the profiles summarize the provisions but do not provide commentary, because local content is so context specific. The profiles are intended as a tool for policy makers, researchers and citizens seeking to understand and compare how local content is dealt with in other countries, and to provide some examples of language that might be adopted in a framework to achieve local content goals. Hyperlinks are provided to the source legislation, regulations, policies and contracts where available.
- <sup>1</sup> The project was managed by Perrine Toledano and Sophie Thomashausen. Research was conducted by Suzhe Jia.
  - <sup>2</sup> General legislation with provisions that relate to local content (for example, tax laws with incentives for local procurement or employment in any industry), was not included in the review. The review included dedicated mining or petroleum sector or specific local content legislation, regulations, policy and contracts.
  - <sup>3</sup> Those clauses are framed and singled out by a “thumb up”.
  - <sup>4</sup> Our criteria for assessment of the quality of the provisions were language that is less likely to present a loophole, i.e. less likely to be subject to interpretation due to vagueness and more likely to lead to enforcement because of its clarity in terms of rights and obligations of both parties (state and investor), and reasonable in its obligations on the company. In addition, as mentioned above, we looked for clauses that encourage collaboration between the company and the government in defining local content targets and goals, and those where the government has a role, as well as clauses enabling implementation and monitoring of the requirements and those giving the government strong remedies to enforce companies’ compliance.



## The impact of international law

The World Trade Organization (WTO)'s agreements and investment treaties can present an obstacle to the realization of local content goals by prohibiting some types of local content requirements (a sub-category of “performance requirements”<sup>1</sup>). CCSI therefore surveyed the relevant WTO agreements and investment treaties in each country profiled to identify the provisions that may prevent, counsel against and/or shield local content standards. These provisions are quoted in the profile in order to show the potential barriers to implementation of local content so that they can be kept in mind when countries enter into these international investment treaties<sup>2</sup>. FTAs other than the WTO agreements, some of which may contain investment chapters, are not included in the scope of the review, but may also be relevant and should be similarly kept in mind.

<sup>1</sup> Performance requirements are measures in law, regulation or contract that require investors to meet specified goals when entering, operating or expanding in, or leaving a host country. Some are strictly mandatory; others are imposed as a condition for receiving some sort of added benefit or advantage.

<sup>2</sup> Countries implementing local content requirements should be aware of the possibility of a challenge to those provisions either through the WTO (state-to-state dispute settlement) or arbitration under the bilateral investment treaties (which is investor-state dispute settlement). While the potential for such actions may be low, they remain a risk depending on the circumstances, and particularly should relations between the state and the investor sour over the course of the investment.

## Highlights

- Norway has been a success in local content utilization. This profile focuses on its legal framework from 1972 to 1997.
- From the 1970's to the mid 1990's, the Norwegian government used the grant of licenses, along with additional agreements targeting training of Norwegian nationals and technology transfer arrangements to ensure local content.
- Norway became a member state of European Economic Area (EEA) in 1994, which required it to update its petroleum law and local content requirements, and repeal some of its non-compliant local content provisions.
- CCSI's analysis is based on non-official translations of the laws. We therefore do not guarantee the accuracy of the texts.
- We also used secondary analysis when we were lacking access to the primary text.

✓	Employment Requirements
✓	Procurement Requirements
✓	Training Requirements
✓	Technology Transfer Requirements
✓	Monitoring and Enforcement Mechanisms
✗	Government Obligations in Support of the Companies' Program



## International law

### Legislation

Royal Decree of December 8, 1972 ("1972 Royal Decree")

[Act of 22 March 1985 pertaining to petroleum activities](#) ("1985 Petroleum Act")

[Act of 29 November 1996 No.72 pertaining to petroleum activities](#) ("1996 Petroleum Act")

### Regulation

[Regulations to Act relating to petroleum activities in 1997](#) ("1997 Petroleum Regulation")

### License

Representative historical licenses include Model Petroleum Production Licenses in 1974, 1979, 1981, 1988, and 1991. ("1974/1979/1981/1988/1991 License")

### Contract

Selected agreements include Standard Petroleum Exploration & Production Agreement, Frame Agreement for Offshore Petroleum Technology Research & Development Activities, and Model Training Agreement Concerning Petroleum Activities, etc.

## Key Definitions

- **There is no definition of "local content"** in Norwegian law.
- **Research and development (R&D) activities** means, "research, development studies, development and testing of concepts and technical solutions, product development, feasibility and pre-engineering studies concerning activities mentioned in Act no. 11 of 22 March 1985 pertaining to petroleum activities Section 1. R & D include[s] engineering, design and construction to the extent substantial elements of development are included." (1985 Petroleum Act)



## Rights and Plan

- A local content plan was required to be submitted to the Ministry of Petroleum and Energy for approval before the grant of license.

## Training and Employment

- Licensees were obligated to provide local training and engage a certain number of Norwegian personnel in their petroleum activities.
- Licensees had to enter into a training agreement after they had been granted a license.
- Technical assistance agreements were entered into between Norwegian operators and experienced oil companies.

## Procurement

- Licensees had to use Norwegian suppliers to procure goods and services for their petroleum activities.

## Technology Transfer

- Operators were required to enter into research and development agreements with the Norwegian Ministry of Petroleum and Energy.
- At least 50% of research and development activities undertaken in connection with any petroleum activities under a Petroleum License had to be performed in Norway.

## Monitoring and Enforcement

- The Ministry of Petroleum and Energy has authority to monitor and supervise compliance with laws.
- Enforcement mechanisms and penalties for non-compliance are not local content specific.

## Implementation

- The Norwegian State administers the petroleum reserves for the benefit of Norwegian society as a whole.
- The Ministry of Petroleum and Energy is authorized to implement local content policies and laws through regulations and licenses.
- The Research Council of Norway manages the research and development agreements and ties the oil and gas industry to the research institutes in Norway.



- The 1979 License required licensees to submit a plan as soon as the license was granted that detailed how activities onshore would be organized in the exploration phase, with alternative priorities as to where they should be located and estimates of the expected employment impact and indications as to which occupational group would be employed (Section 15).
- Section 23 of the 1985 Petroleum Act subsequently required the submission of a plan to the Ministry of Petroleum and Energy for approval for the development and operation of petroleum deposits, which contained some local content requirements:



“If a licensee decides to commence development of a petroleum deposit, he shall submit to the Ministry for approval a detailed plan for development and operation of the deposit, including the placing of installations for production of petroleum. The plan shall contain an account of the cooperation which has been implemented with the Norwegian supply industry to accommodate the opportunities of the Norwegian industry to supply goods and services to the development, operation and maintenance of the project in question, and information on the plans for further cooperation. .... Substantial contractual obligation must not be undertaken or construction work started before the Ministry has approved the plan. If the development is planned in two or more steps (phases), the plan shall, to the extent possible, cover the total development. The Ministry may limit the approval to apply to the individual steps (phases).”



- The 1974 and 1979 Licenses required licensees to provide training to Norwegians and to engage a certain number of Norwegian Government staff in their activities:



- “The licensees, their contractors and subcontractors, shall during their work on the continental shelf assist in qualifying Norwegian personnel on relevant levels by engaging a suitable number of trainees. ...Further provisions relating to the engagement of personnel shall be agreed upon between the licensees, their contractors, subcontractors and The County Labor Division ” (Sec.11 of 1974 License).
- “Norwegian personnel shall be employed to the greatest extent possible in the activities” (Sec.7 of 1979 License).
- “The licensees shall undertake training of personnel from the Ministry, the [Norwegian Petroleum Directorate ] NPD or other Norwegian authorities in accordance with further agreement” (Sec. 21 Training of 1979 License, similar in Sec.17 of 1974 License).
- “According to need, the licensees may be required to ensure that Norwegian personnel, who teach petroleum associated subjects in Norwegian schools, may have access as trainees to the licensees’ facilities and installations on the Norwegian continental shelf and on shore in Norway” (Sec. 21 Training of 1979 License).

- Art VII of the 1981 Model Technical Assistance Agreement, which had to be entered into by licensees aimed to ensure that experienced oil companies would provide technical assistance to Norwegian operators in carrying out their obligations under the Petroleum Production License:



## Article VII: “Training and Development of Personnel

1. Company will provide training and development of a sufficient number of [operator] employees to facilitate [operator]’s ability to fulfill its task as operator irrespective of finds being made or not in the license area. Company will offer such intensive training programs, schools, seminars and on-the-job exposure at may be required including development of supervisory and managerial personnel for top positions in the Operator’s offshore and onshore organizations. An initial plan for the on –the – job training part for the first 2 years is enclosed as Exhibit V. The plan may be exchanged by Statoil during the two year period. Company will provide such additional training and development as is reasonably requested by the [operator].
2. Details for specific programs will be developed by Company and when approved by [operator], will be implemented by Company. The number of op personnel, duration of training and development, their location and description of different job levels which the personnel should experience will be considered in development of specific programs. Special emphasis should be placed on opportunities to gain experience and maximum exposure. At fixed intervals or otherwise as often as needed, [operator] and Company shall discuss the progress of the training development programs and make necessary adjustments.”

- The 1985 Petroleum Act requires licensees to provide training to all persons engaged in petroleum activities to the extent necessary to ensure that they perform their assigned work in a prudent matter. It also provides that additional rules may be issued to require licensees to train civil servants (Section 49).
- The 1988 and 1991 Licenses required licensees (usually Statoil and a foreign oil company) to enter training agreements in the form of the applicable model training agreement in relation to the training of Norwegian personnel (Section 5 of the 1988 and 1991 Licenses).
- Art. 2 of the 1988 and 1991 Model Training Agreements Concerning Petroleum Activities required the foreign company to allow Statoil's staff (and the staff of other listed domestic companies) to participate in its in-house trainings:



## Art. 2: "Participation in Training"

2.1 National Company may demand that a reasonable number of its employees shall participate in Foreign companies' internal courses, seminars etc. and other internal job training programs which are relevant for petroleum activities on the Norwegian shelf. This includes practical and theoretical training in, inter alia, in technical, administrative, commercial and marketing functions.

2.2 Information about such training shall be provided to National company in due time before the start up of the training."

- The 1988 and 1991 Model Training Agreements Concerning Petroleum Activities required the foreign company to allow certain of Statoil (or other listed domestic company)'s employees to work for it or to assume certain limited operator functions in order to develop Statoil's capacity (Arts. 3 and 4):



Art. 3: "Work in Organization etc.

3.1 If the aim is to develop competence which a National company needs for its petroleum activities on the Norwegian Shelf, the company may, subject to the Ministry's approval, demand that a reasonable number of its employees shall be given the opportunity to work in:

- a) a foreign company's organization in Norway;
- b) administrative working-groups or project groups a Foreign company or its Affiliated companies have established in connection with the activities pursuant to the Production License."

Art. 4: "Take-over of Limited Operator Functions

4.1 If the aim is to develop the competence of a National company, the company may, subject to the Ministry's approval, demand to take over from a Foreign operator the performance of specific tasks, studies or other limited functions...."

- The 1996 Petroleum Act provides that rules may issued to require licensees to train of Norwegian civil servants (Sections 10-11).
- The 1997 Petroleum Regulation further provided that licensees could be required to carry out training of personnel from the Ministry, the Norwegian Petroleum Directorate, or other Norwegian authorities (Section 84).



- The 1972 Royal Decree required licensees to use Norwegian goods and services to the extent they were competitive in terms of quality, service, schedule of delivery, and price with foreign goods and services (Section 54).
- Norwegian contractors also had to be included in invitations for tenders to the extent they produced goods or rendered services of the kind required (Section 54).
- The 1972 Royal Decree also made the licensee responsible for the compliance of its suppliers with these local procurement requirements (Section 54):



Sec.54: “On evaluating the offers given by Norwegian or foreign bidders, the licensee shall take into account to which extent the bidders will use Norwegian goods and services. The licensee is responsible for the observation of these provisions by his contractors and their sub-contractors.”

- The 1974 and 1979 Licenses also included local procurement requirements in relation to Norwegian goods and services (Section 13 of 1974 License; Section 6 of 1979 License).
- 1985 Petroleum Act further stipulated that competitive Norwegian suppliers should be given genuine opportunities to secure orders for deliveries of goods and services and provided that the Ministry of Petroleum and Energy could implement additional regulations, or impose additional requirements in any subsequent licenses to give effect to this provision (Section 54).

- The 1979 License described the method and scope of technology transfers (Sections 22 and 23):



Sec. 22: “Expertise and Laboratory Services.

The licensee shall, on [the Norwegian Petroleum Directorate (NPD)’s] request, and within reasonable magnitude provide NPD with expertise and laboratory services for solving special problems related to exploration and production.”

Sec. 23: “Research and Development Activity.

At least 50% of research and development activities undertaken in connection with the activity on the license area under this PL [Petroleum License] shall be performed in Norway. The obligation for the licensees will be further defined in an agreement entered into between the Ministry and the operator of the license area under this P.L. not later than 30 days after this license has been granted.”

- Selected Frame Agreements on Technology Research & Development Activities made in 1981, 1988, and 1991 required [foreign] operators to enter into such an agreement with the Norwegian Ministry of Petroleum and Energy, with a view to promoting joint R&D activities and developing the competence and know-how of Norwegian research institutions and contractors for the mutual benefit of the operator and the Norwegian oil and gas industry (Preamble and Art.2) :



“Whereas it is a condition for Company’s operatorship in PL [Production License] that it enters into an Agreement with the Norwegian Ministry of Petroleum and Energy covering research and development activities” (Preamble of 1981 Frame Agreement For Offshore Petroleum Technology Research & Development Activities); “ ... the following frame agreement on technological research and development concerning petroleum activities has today been entered into between the Operator on behalf of the licensees and the Ministry of Petroleum and Energy” (Preamble of Frame Agreement on Technological Research & Development of March 1991).

“Art. 2 Purpose of Agreement: The purpose of this Agreement is, within the scope of Article 3.1, to ensure that the Operator in his performance of R & D related to the activity carried out under the Production License, to make use of and develop competence and know-how among Norwegian contractors in order to develop new technology to the mutual benefit of the Operator and the Norwegian contractors.” (Art. 2 of Frame Agreement on Technological Research and Development Concerning Petroleum Activities 1988 and Art. 2 of Frame Agreement on Technological Research & Development of March 1991).



- The 1981 Frame Agreement For Offshore Petroleum Technology Research & Development Activities required research and development (R&D) activities to be carried out in cooperation with local Norwegian institutions and industry (Art.4):



## “Organization of Projects

In undertaking R&D projects in Norway, Company will ensure that relevant technology and know how which is at Company's disposal will be made available for the performance of such projects.

Company shall appoint a person in Norway that shall be responsible on behalf of Company for the day to day fulfillment of the obligations of Company according to this Agreement.

R&D activities carried out under the scope of this Agreement may be organized in the following manner or combination thereof:

- a. cooperation between the parent or affiliated company's R&D headquarters and Norwegian industry and/or research institutions.
- b. offering Norwegian industry and research institutions possibilities to perform tests of concepts, equipment and process (in Company's or affiliated companies' laboratory) on installations offshore Norway or elsewhere.
- c. projects conducted for Company in Norwegian research institutions and/or industrial companies.
- d. professional and financial participation in R&D projects in Norway.”

- The 1988 and 1991 Frame Agreements provided similar requirements regarding research and development activities (Art 4.):



## “Organization of the Research and Development Activities

In connection with R & D activities under this Agreement, the Operator shall seek to utilize the acquired knowledge to develop products and services in co-operation with Norwegian trade and industry.

If a product developed in co-operation with Norwegian trade and industry needs testing before it can be commercially utilized, the Operator shall seek to contribute towards the testing of such products.

In undertaking R & D projects the Operator shall ensure that relevant technology and know-how at his disposal shall be made available for the performance of such projects.

The Operator shall appoint a person who shall be responsible for the daily fulfillment of the Operator's obligations according to this Agreement. A notice specifying the appointment shall be submitted to the Ministry.

R&D activities carried out under the scope of this Agreement may be organized in the following manner or combination thereof:

- a) by offering Norwegian contractors opportunities to test concepts, equipment, and processes on installations offshore, in Norway or elsewhere,
- b) by projects/studies conducted for the Operator by Norwegian contractors,
- c) by professional or financial participation in R & D projects.”



- Interestingly the frame agreements included mutually beneficial intellectual property (IP) ownership provisions and ability for host nation party to utilize foreign IP beyond scope/life of project (1991 Frame Agreements, Art. 5.4):



“5.4 The Norwegian contractor and the Operator shall aim at ensuring a mutual right to an irrevocable, royalty-free, non-exclusive right to utilize in their own operations, inventions and other technology developed under a contract, which are the other party’s property according to Article 5.3. Accordingly the parties shall aim at ensuring a mutual right to acquire patents of inventions and other technology developed under a Contract, which are the property of another party according to Article 5.3.

This right shall not include the right of transference to any third party, either on commercial or non-commercial terms. Participation in joint ventures or similar co-operations, shall in this connection be regarded as “own operations”. Such participation does not constitute the right to transfer to other participants in such co-operations, technology which according to this agreement is the property of another party”.

- According to secondary source, international companies had also to sign standards financing agreements stipulating the operator’s obligation to implement “certain research projects on the territory of Norway over the period specified in the agreement within a budget drawn in advance” (Vorobyov 2012).
- International companies also concluded “goodwill agreements” where they declared their intention to conduct as much research in the field of energy as possible in Norway without being submitted to strict legal obligations. However, goodwill agreements required that international companies should submit annual reports to the Research Council of Norway. Projects implemented under the goodwill agreements mostly related to the preparation of applications for licenses and future field development in the framework of concession rounds.

- Source: Vorobyov, Alexey: Research and technology agreements in the Norwegian concession system of the 1970s - 1990s. In: Baltic Region (2012), 4, pp. 43-51



- The Ministry of Petroleum and Energy may appoint inspectors having authority to supervise petroleum activities and to ensure that such activities are carried out in conformity with applicable rules and regulations (Section 45 of 1972 Royal Decree; Section 51 of 1985 Petroleum Act).
- The 1979 License also provided that the Ministry and the National Petroleum Directorate could participate as observers in cooperative bodies to monitor activities (Section 17).
- Both the 1972 Royal Decree and the 1985 Petroleum Act provided for fines and penalties for violations of their respective provisions, as well as the revocation of licenses for more serious or repeated violations (Sections 57 and 59 of the 1972 Royal Decree; Sections 58, 62 and 66 of the 1985 Petroleum Act).

- The Norwegian “ten oil commandments” of June 14, 1971 laid out Norwegian petroleum policy, including the objectives that the State becomes involved at all appropriate levels and contributes to the coordination of Norwegian interests in Norway’s petroleum industry as well as to the creation of an integrated Norwegian oil community.
- The stated objectives in the 1985 Petroleum Act include (Section 3):



“The right to subsea petroleum deposits is vested in the state. The petroleum deposits shall be administered for the benefit of Norwegian society as a whole. The administration shall contribute to the development of Norwegian industry and be conducted with due regard to other activities to local policy considerations and to the protection of nature and the environment.”

- The Royal Ministry of Petroleum and Energy is authorized to issue additional rules regarding local content (1985 Petroleum Act, Section 54):



“The Ministry may, by regulations or in the individual license, issue further rules regarding the implementation of this provision.”

- From 1979, the Research Council of Norway was assigned the responsibility of managing the frame agreement. The Research Council of Norway was an institution that itself financed research projects in the oil and gas industry, implemented by the research institutes affiliated with the Council.



“The Ministry assigned the following tasks to the Research Council:

- to provide the Ministry with regular updates on the plans and course of implementation of technological agreements;
- to issue a quarterly newsletter in order to inform the Norwegian scholarly community on framework agreements and relevant opportunities;
- to hold biannual meetings between representatives of Norwegian research institutes and industrial companies participating in the implementation of projects in the framework of technological agreements;
- to collect information and carry out annual updates on proposals and ideas of research institutions.”



- Norway has been a member of the EEA since 1994.
- EC Directive 94/22/EC of 30 May 1994 on the Conditions for Granting and Using Authorizations for the Prospection, Exploration and Production of Hydrocarbons (1994) restricted the capacity to use laws or regulations to implement local content in Norway.
- As a result, Act 29 November 1996 No.72 Relating to Petroleum Activities was amended, replacing the 1985 Petroleum Act.



## Agreement on Trade-Related Investment Measures (TRIMs)<sup>1</sup>

- Norway has been a member of the WTO since January 1, 1995.
- All World Trade Organization (WTO) Members must adopt and abide by the obligations of TRIMs. This can impact a country's ability to impose certain local content requirements (referred to as "investment measures"), to the extent they affect trade in *goods*.
- The following types of local content requirements are covered by TRIMS<sup>2</sup>:
  - requiring a company to purchase or use products of domestic origin – TRIMs prohibits discrimination between goods of domestic and imported origin;
  - limiting the amount of imported products that an enterprise may purchase or use depending on the volume or value of local products that the enterprise exports;
  - restricting foreign exchange necessary to import (e.g., restricting the importation by an enterprise of products used in local production by restricting its access to foreign exchange); and
  - restricting exports.

<sup>1</sup> The TRIMs Agreement clarifies existing rules contained in Articles III (National Treatment Obligation (NTO)) and XI (Prohibition on Quantitative Restrictions) of the General Agreement on Tariffs and Trade (GATT), 1994.

<sup>2</sup> It is important to be aware of the types of measures prohibited under the TRIMs Agreement, in order to avoid the potential for dispute settlement under the WTO - a state can bring an action against another state for an alleged violation of the TRIMs Agreement (i.e. "state-to-state action").



## General Agreement on Trade in Services (GATS)

- A separate WTO agreement, the General Agreement on Trade in Services (“GATS”), covers investment measures related to services (in Article XVI), including the following which are relevant to local content:
  - Requirements to use domestic service suppliers
  - Limits on the number of service suppliers
  - Limits on the total value of service transactions or assets
  - Limits on the total number of service operations or quantity of service output
  - Limits on the total number of natural persons permitted
  - Restrictions on or requirements for certain types of legal entities (e.g., joint venture requirements)
  - Imposition of domestic equity
- GATS only applies to those service sectors that the country chooses to include in its Schedule of Commitments. [Norway's commitments](#) postdate the time frame of this profile, and shall not affect the implementation of local content provisions from 1970's to mid-1990's.



- As of 1996, Norway has entered into 18 bilateral investment treaties (BITs) but only 14 are in force.<sup>1</sup>
- Investment treaties are international agreements between two or more countries which establish the terms and conditions of foreign investment within each country and provide rights directly to the investors of each country which is party to the treaty. The treaties can contain restrictions on local content requirements.<sup>2</sup>
- Investment treaties can contain the following types of provisions, each of which affects a country's ability to impose local content requirements:
  - non-discrimination provisions (“national treatment” and “most-favored nation” obligations), which are relevant in the context of local content when:
    1. host countries require some foreign investors to source from certain goods and service providers but don't impose similar requirements on other investors; and
    2. host countries give an advantage to some domestic or foreign goods and services providers, but not to a foreign provider whose state has a relevant treaty with the host country. (Note that this is relevant only where the foreign provider of goods or services has or, intends to have<sup>3</sup>, a presence in the host country);
  - restrictions on capital transfers;
  - “pre-establishment” protections, which prevent a state from imposing conditions on foreign investors that are not imposed on domestic investors, such as requirements to transfer technology to local firms, to establish the firm through a joint venture, or to reinvest a certain amount of capital in the host country;
  - incorporation of the TRIMs agreement; and
  - *explicit* prohibition of performance requirements that go beyond what is restricted by the TRIMs Agreement.

<sup>1</sup> According to UNCTAD's [country specific list of bilateral investment treaties](#)

<sup>2</sup> It is important to be aware of the BITs a country has signed and the types of requirements prohibited under it, in order to avoid the potential for arbitration against the country - the majority of investment treaties allow investors to bring arbitration claims directly against the country in which they have invested (“investor-state arbitration”).

<sup>3</sup> I.e., the conditions under which an investor may enter into the territory of a party, not only the conditions once the investment is made.



- Of the 18 BITs signed by Norway, 15 were located and reviewed.
- Aside from the inclusion of National Treatment Obligations and Most Favored Nation clauses, which are included in most BITs, performance requirements are generally not specifically prohibited in the BITs reviewed.