



## HOW HALAL PRODUCTS ARE REGULATED UNDER WTO LAW

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### Abstract

The regulation of halal products and services, including their labelling, is a complex and important issue that has gained significant attention in recent years. The *Halal* industry encompasses various niche markets like Islamic tourism, finance, lifestyle, and the *Halal* food market. Halal products are those that meet the dietary requirements of Muslims, as defined by Islamic law (*Sharia Law*<sup>1</sup>). A Halal logo is one way to assure consumers that a product is Halal. A certifying body generally issues the logo/label, and it can only be used/placed on a product that has been certified Halal and met the requirements stipulated in Sharia law. The primary source of law for Muslims is the *Al-Quran* (the Holy book<sup>2</sup>) and *Al-Hadith*<sup>3</sup>, all halal standards are developed based on these sources.

Some scholars and manufacturers argue that the process of labelling has challenges that are influencing international trade and evolving more trade-restrictive means than necessary to fulfill a legitimate objective. Another point is the lack of uniform standards for halal certification across different countries and organizations create confusion and inconsistency for consumers. On the other hand, the question of public morals in light of consumer choice and state sovereignty over internal affairs arises. Moreover, the differences between the four main Islamic schools of thought, their culture as well *Maslahah* (public interest) are accepted as a dominating factor. This paper aimed to discuss all these factors and evaluate the legal issues concerned. Moreover, this article will cover possible may effect of this regulations in case future accession of Uzbekistan to WTO.

**Key Words:** Halal goods, Shariah Law, WTO, TBT, GATT, SPS, labelling, halal standards, trade berries, uniformity and standardization.

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<sup>1</sup> Shariah translated from Arabic means 'legislation' - and provides the moral code and religious law for Muslims.

<sup>2</sup> Translation from Arabic means 'recitation' - and is the literal word of God recited to the Prophet Mohammed (peace be upon him "pbuh") (pbuh) in Arabic by the Angel Gabriel

<sup>3</sup> Translation from Arabic means "traditions" - and is a written record of Mohammed's (pbuh) life and thoughts.



## Introduction

Adequate nutrition is the cornerstone of the health and productivity of each individual<sup>4</sup>. The demand for healthy nutrition is rapidly increasing in today's changing world. People all over the world are now more conscious about the quality of the food, production, and ingredients used. The preference for food in the global market may depend on its compatibility with religious beliefs, traditions, and culture<sup>5</sup>. For instance, Muslims want to ensure that it is halal, Jews – Kosher. To meet the dietary needs of the Muslim population, it is critical to have a comprehensive understanding of the market and regulations concerned. *Halal*, in translation from Arabic, means permissible or usually used as a “lawful or permitted” for Muslims to consume or use. *Haram* is vice versa, which means that are forbidden<sup>6</sup>. Halal is the dietary for Muslims under Shariah law. Products and services in order to be permissible for Muslims should contain no haram product or procedure used during their manufacturing, processing, storing, and transportation<sup>7</sup>. There are three other terms used to describe the permissibility of food: *Mashbooh* is something that is under question and doubt due to the disagreements among scholars or the undetermined ingredients used. *Makrooh* from Arabic means detestable, food in this category is not forbidden but not recommended to consume as it may have harmful effects<sup>8</sup>. *Zabiha or dhabiha*, is commonly used by American Muslims to distinguish between meat slaughtered by Muslim and Ahlul Kitab (Jews or Christians) or meat slaughtered without religious connotation<sup>9</sup>.

Currently, the importance of Halal products in global trade is growing fast as the demand increases<sup>10</sup>. In 2015 according to the Organization of Islamic

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<sup>4</sup> Vincent H Smith and Joseph W Glauber, “Trade, Policy, and Food Security” (2019) 51 *Agricultural Economics* 159 <<https://onlinelibrary.wiley.com/doi/epdf/10.1111/agec.12547>> Accessed 12 November, 2023.

<sup>5</sup> Mian N Riaz and Muhammad M Chaudry, *Handbook of Halal Food Production* (CRC Press 2018).

<sup>6</sup> Hussein Elasrag, “Halal Industry : Key Challenges and Opportunities” <[https://mpr.aub.uni-muenchen.de/69631/1/MPRA\\_paper\\_69631.pdf](https://mpr.aub.uni-muenchen.de/69631/1/MPRA_paper_69631.pdf)> Accessed 12 November, 2023.

<sup>7</sup> Michelle Limenta and others, “Disabling Labelling in Indonesia: Invoking WTO Laws in the Wake of Halal Policy Objectives” *World Trade Review*, Cambridge University Press 2017 <<https://www.cambridge.org/core/journals/world-trade-review/article/disabling-labelling-in-indonesia-invoking-wto-laws-in-the-wake-of-halal-policy-objectives/AC92A276E83E05E3098B40E3AD5A5CE9>> Accessed 12 November, 2023.

<sup>8</sup> Riaz, M.N. and Chaudry, M.M., *Halal food production* (CRC Press LLC 2007) <[http://www.al-rida.net/attachments/040\\_halal.pdf](http://www.al-rida.net/attachments/040_halal.pdf)> Accessed 12 November, 2023.

<sup>9</sup> Michelle Limenta, above n7.

<sup>10</sup> Nor Bakhriah Sarbani and Harlina Suzana Jaafar, “Facilitation for Halal Product Supply Chain: A Conceptual Trade Review” *Journal of Applied environmental and biological sciences*, Text Road publication, 2016 <[https://www.researchgate.net/profile/Harlina-Jaafar/publication/354632407\\_Facilitation\\_for\\_Halal\\_Product\\_Supply\\_Chain\\_A\\_Conceptual\\_Trade\\_Review/links/6](https://www.researchgate.net/profile/Harlina-Jaafar/publication/354632407_Facilitation_for_Halal_Product_Supply_Chain_A_Conceptual_Trade_Review/links/6)>



Cooperation (OIC), the worth of the Halal global market was about 2.3 trillion dollars<sup>11</sup>. The primary consumers of Halal products are Muslims which constitute 25% of the world population<sup>12</sup>. This factor determines that the Halal industry has significance in the global dimension<sup>13</sup>. According to the Pew Research Center Muslim population going to increase from 1.6 billion in 2010 to 2.2 billion by 2030<sup>14</sup>. In case of Uzbekistan, 90 percent of population are muslims<sup>15</sup>.

Despite its great potential in the future, Halal products face some challenges in international trade, which are mainly: meeting the Halal standards in order to get certification/labelling. Moreover, some non-Muslim countries trying to join the Halal industry and import Halal goods or services which must meet different requirements implemented by national laws<sup>16</sup>.

Halal certificates have various requirements depending on the Islamic schools of thought, country, and regional traditions. In the interests of certainty, halal standards can be divided into main five depending on the global implementation: GSO 2055-1:2015 (Gulf countries)<sup>17</sup>; MS 1500:2019 (Malaysia)<sup>18</sup>; HAS 23103:2012 (Indonesia)<sup>19</sup>; WHT.G:2022 (Europe, Asia, CIS counties, America, Africa)<sup>20</sup>; OIC/SMIIC 1:2019 (Turkey, Pakistan, Middle Asia countries and other countries with specific requirements)<sup>21</sup>. Some scholars argue this variety composes difficulties in producing and importing Halal products in global trade. For instance, in cases of Indonesia — Chicken Products (2017) and Import Licensing Regimes (2017), Panel

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14359eebbd37262ca0df864/Facilitation-for-Halal-Product-Supply-Chain-A-Conceptual-Trade-Review.pdf Accessed 12 November, 2023.

<sup>11</sup> Organisation of Islamic Cooperation (OIC) (2015), 'Forum on Unifying Halal Standards and Procedures Kicks Off at OIC General Secretariat', [http://www.oic-oci.org/?t\\_id=10714&t\\_ref=4218&lan=en](http://www.oic-oci.org/?t_id=10714&t_ref=4218&lan=en).

<sup>12</sup> Conrad Hackett and others, 'The Changing Global Religious Landscape', Pew Research Center, The Changing Global Religious Landscape (2017) 46 <<https://www.pewforum.org/2017/04/05/the-changing-global-religious-landscape/>> Accessed 14 November, 2023.

<sup>13</sup> Eva Johan and Hanna Schebesta, "Religious Regulation Meets International Trade Law: Halal Measures, a Trade Obstacle? Evidence from the SPS and TBT Committees" Journal of International Economic Law 2022.

<sup>14</sup> Brian J and Mehtab S, "The Future of the Global Muslim Population Projections for 2010-2030" Pew Research center, < <https://www.pewresearch.org/religion/2011/01/27/the-future-of-the-global-muslim-population/> > Accessed 14 November, 2023.

<sup>15</sup> Pew research Center, "Table: Muslim Population by Country" <[Table: Muslim Population by Country | Pew Research Center](#)> Accessed 15 November 2023.

<sup>16</sup> Michelle Limenta, Above n 2

<sup>17</sup> GSO 2055-1:2015, <<https://www.gso.org.sa/store/standards/GSO:693304/file/1263/preview>>

<sup>18</sup> MS 1500:2019, < [https://www.isovnc.com/wp-content/uploads/2019/06/MS-1500\\_2019-Tieu-chuan-HALAL-MALAYSIA.pdf](https://www.isovnc.com/wp-content/uploads/2019/06/MS-1500_2019-Tieu-chuan-HALAL-MALAYSIA.pdf)> Accessed 14 November, 2023.

<sup>19</sup> HAS 23103

<sup>20</sup> WHT.G:2022

<sup>21</sup> OIC/SMIIC 1:2019, < <https://www.smiic.org/en/project/24>> Accessed 14 November, 2023.



discussed whether mandatory Halal measures composed on imported products are consistent with WTO law.

At the international level countries over the decades have made several attempts in order to develop and implement adequate food standards to protect consumer rights, and to avoid harmful and illegal practices in global trade. Currently, there are three main organizations in food policy: Codex Alimentarius Commission (CAC), International Organization for Standardization, (ISO) and World Trade Organization (WTO). CAC has a general explanation of what is halal, however, as their content consists of a board and lacks comprehensive elements concerning halal regulation those standards may serve only as introductory legislation.

In WTO law there is no explicit agreement that regulates halal products, for this reason, they refer to the Codex (CAC)'s Halal standards as a reference on Halal terms. The CAC accepts that there might be some minor differences in terms of allowed animals and the way of slaughtering depending on different Islamic schools of thought<sup>22</sup>.

### **The Application of WTO Law over Halal Regulations.**

#### **Harmonization effect over state sovereignty**

One of the core principles of WTO connects with harmonization requirements, which is mainly criticized for overwhelming states' sovereignty rights. When a dispute between states arises each member state has a mandatory obligation to follow and implement Dispute Settlement Body (DSB)s ruling as commonly accepted principle *pacta sunt servanda*, which means that treaties are binding on the parties and must be performed in good faith<sup>23</sup>. Moreover, membership in the WTO means that sometimes before implementing new municipal regulations States must ensure that those regulations are consistent with the provisions of WTO, which means that some national laws depend on international norms. For instance, under Article 1 of GATT a trade policy must be implemented on a non-discriminatory basis, all member countries must be treated in equal way in the implementation and import and export policies as well as those involving other costs, this principle know as the Most Favoured Nation (MFN). Another fundamental principle is under article 3 of GATT and known as National Treatment (NT), which similarly prohibits

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<sup>22</sup> Zoura Junita, "The Implementation Of Halal Food Labeling Based On The Technical Barriers To Trade (Tbt) Agreement By Indonesia" Jurnal Ilmiah Mahasiswa 2018, <<https://jim.unsyiah.ac.id/kenegaraan/article/view/13574>> Accessed 14 November, 2023.

<sup>23</sup> JOSHUA MELTZER, "STATE SOVEREIGNTY AND THE LEGITIMACY OF THE WTO" (2005) U. Pa. J. Int'l Econ. L 26(4) <<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1221&context=jil>> Accessed 14 November, 2023.



discriminatory regulations, but in line with protection and prevailing domestic goods, including taxation and others. Moreover, this principle can be applied to all legislation, as well as to the requirements that may influence the sale, purchase, distribution, or use of products on the internal market<sup>24</sup>.

Focusing on the case of Indonesia, they officially became WTO member in 1995<sup>25</sup>. The Indonesian Constitution stipulates that one of the purposes of the State of the Republic of Indonesia is to promote public welfare<sup>26</sup>. This indicates that the state plays a critical role in promoting welfare by assuring the fulfillment of fundamental rights, such as the right to food, which is a fundamental human right that should be provided without discrimination to all individuals<sup>27</sup>. The most significant challenge that Indonesia faces today as a developing country in achieving food security and sovereignty is a multiplier effect of world trade liberalization and globalization that has occurred in the last few decades, the boundary between developed and developing countries have no effect anymore, and have even influenced internal policies and political traditions of the state that are within them. Moreover, Indonesia's food sovereignty experienced a shock<sup>28</sup> after the decision over two cases brought to WTO dispute settlement body DS

### **Uzbekistan's Approach**

Uzbekistan has the largest Muslim population in Central Asia. The majority of them are Sunni and followers of the Hanafi school of thought. However, the demand for halal-labeled products is lower compared to other Muslim countries like Indonesia and Malaysia. Moreover, national laws are silent about halal standards and how they should be regulated, implemented, and practiced.

UZSTANDARD is the main body responsible for providing labeling and checking the quality of products in Uzbekistan<sup>29</sup>. There existing Law of the Republic of Uzbekistan<sup>30</sup> about certification of products and services came into force in 2013. However soon this legislation will be replaced by the Law of the Republic of

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<sup>24</sup> Kadek Sarna and others, "After the Trade Dispute: Is Indonesian Food Sovereignty Threatened?"(2020) Udayana Journal of Law and Culture 4(2) < <https://ojs.unud.ac.id/index.php/UJLC/article/view/57361> > Accessed 14 November, 2023.

<sup>25</sup> WTO, < [https://www.wto.org/english/thewto\\_e/countries\\_e/indonesia\\_e.htm](https://www.wto.org/english/thewto_e/countries_e/indonesia_e.htm) > Accessed 14 November, 2023.

<sup>26</sup> The 1945 Constitution of the Republic of Indonesia, <[https://www.parliament.go.th/ewtadmin/ewt/ac/ewt\\_dl\\_link.php?nid=123&filename=parsystem2](https://www.parliament.go.th/ewtadmin/ewt/ac/ewt_dl_link.php?nid=123&filename=parsystem2)>

<sup>27</sup> Soyoung Jung, above n 50

<sup>28</sup> Kadek Sarna and others, "After the Trade Dispute: Is Indonesian Food Sovereignty Threatened?"(2020) Udayana Journal of Law and Culture 4(2) < <https://ojs.unud.ac.id/index.php/UJLC/article/view/57361> > Accessed 14 November, 2023.

<sup>29</sup> SMIIC, ' Uzbek Agency for Technical Regulation (UZSTANDARD)' <<https://www.smiic.org/en/member/45>>

<sup>30</sup> <<https://lex.uz/docs/2248101>>



Uzbekistan dated February 27, 2023 "On technical regulation".<sup>31</sup> UZSTANDARD recently started certifying and labeling products and services qualifying under halal requirements in collaboration with JAKIM, a Malaysian governmental organization for the halal certification. However, there are some limitations, currently, UZSTANDARD provides halal certification only for companies whose products are dedicated for export to the Malaysia<sup>32</sup>. There are also current ongoing meetings with other Islamic countries like Indonesia<sup>33</sup>; Turkey<sup>34</sup> and others. General Requirements for Halal Food in Uzbekistan is based under OIC/SMIIC 1:2019<sup>35</sup> standard. This standard defines the basic requirements and general requirements that shall be followed at any stage of the food chain and is also implemented almost in all member states to the organization. International companies such as World Trust are providing halal certificates under this standard for local Uzbek producers.

### **Conclusion**

The Halal industry is of great importance taking into account the increasing demand for products and services in this sector, as well as the increasing number of Muslim populations. Halal regulations can be in various formats, international norms combining general requirements, internal/national standards and laws has different aspects depending on culture, social values, and religious belief commonly followed by the country's population, which Islamic school of thought is spread there and sometimes even political means. Moreover, they can be divided into voluntary and mandatory requirements. For instance, above-discussed Indonesian mandatory labeling requirement for products produced locally and exported from another country. Indonesian approach is the most affected practice in the field of halal labeling due to several reasons: The majority of the Muslim population is inhabited in Indonesia; developed halal market; the first mandatory labeling requirement was implemented there. However, this approach faced many criticisms due to its nature, uncertainty for exporting countries, in some cases lack of notification of implementation of such regulations evolved trade barriers. While, in international practice, there is no one standardized standard concerning halal products. Although the Halal Guidelines and several Codex and OIE standards include laws relevant to domestic Halal measures, they do not cover all aspects of Halal regulation. As a result, the lack of a universal and comprehensive international norm controlling halal

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<sup>31</sup> Law of the Republic of Uzbekistan On technical regulation 2022, No. ZRU-819

<sup>32</sup> UZSTANDARD, 'HALAL certification in Uzbekistan for unhindered access to the Malaysian market' (2018)

<sup>33</sup> <<https://www.standart.uz/ru/news/view?id=1764>>

<sup>34</sup> <<https://www.standart.uz/ru/news/view?id=1276>>

<sup>35</sup> <<https://lex.uz/docs/5074608>>



standards is a major source of legal ambiguity surrounding the World Trade Organization's adherence to local halal requirements.

The state sovereignty is balanced within the GATT agreement under article XX accepted as general exceptions. However, from the history of DSB decisions, it is obvious that the chances of justification of such defenses over importation bans from national laws and regulations, tariffs, and other measures contradicting to some provisions of WTO are almost zero. In today's culture, an increasing variety of non-trade elements influence trade difficulties. Though rarely considered during the GATT's development, the 'public morality' clause in Article XX (a) of the GATT is playing an increasingly crucial role in balancing trade liberalization and the safeguarding of the Contracting Parties' sovereignty over domestic moral matters.

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