

The Challenges of Trading Halal Food: The Logistics and the Law

15.1 Introduction

The market for halal consumer goods has grown at a rapid rate over the past decade, with products that range from food to personal care. The global halal food market alone is potentially worth USD580 billion.¹ However, the production and distribution of halal food has created a number of issues that are unique to domestic and international trade between Muslim and non-Muslim countries, as well as between different Muslim countries. Fundamentally, disputes on the transportation of halal food arise when there is the potential of distributing food with non-halal food. Logistics then becomes a religiously sensitive issue as Muslims would like to ensure the integrity of their food. The purview of public international law then becomes important to regulate the halal food supply chain.

This chapter explores the logistics and the legal issues of transporting halal food. Although current halal standards regulate food production, preparation, handling and storage to some degree, it does not ensure that the product is halal at the point of consumption. In particular, halal logistics capabilities are critical in ensuring the halal integrity of the entire supply chain from farm to fork. The management of halal food supply chains is therefore important in order to extend the halal integrity from source (where the product is halal certified) to the point of consumer purchase (where the Muslim consumer buys the halal product).

The chapter will then provide an overview of international trade law and the status of halal in the eyes of the law. It will discuss how international trade law can be used as a “shield” to allow individual governments to implement halal certification standards they deem necessary to protect the integrity of the halal supply chain. Finally, it will provide a recent example of how international trade law can also be used as a “sword” to overcome

discriminatory legislation which could stigmatise religiously certified food products, thereby imposing impermissible trade barriers for those products.

15.2 Halal food logistics

15.2.1 The halal evolution

As Islam is a way of life, a philosophy, a religion and a belief system, it is rooted in a culture that is both evolutionary and revolutionary,² and it can then be argued that halal too goes through an evolution. When seeing halal as an evolution, four phases can be identified: Muslim company, halal product, halal supply chain, and halal value chain.

In the first phase, Muslim company, the halal supply chain is purely based on trust. A Muslim is buying from another Muslim, and therefore the seller will be responsible to God for ensuring that the food he/she is selling is halal. In this way, the buyer has sufficient confidence that the food he/she is consuming is halal. In the second phase, halal product, an important basis for trust is the halal certification behind this product as shown as a label on the consumer product or outlet (in case of a meat shop or restaurant). This halal trust mark provides assurance that the product, its source and facility have been verified by an independent Islamic certification authority to be compliant with Shari’a. In the third phase, halal supply chain, the halal trust mark provides assurance that the entire supply chain is compliant with Shari’a, which is audited and certified by an Islamic certification authority. In the fourth phase, halal value chain, halal covers the entire value chain. In this phase, Islamic food multinationals control entire supply chains from “seed to fork”. Islamic science is important in ensuring high-performance supply chains. Instead of current green movements that have the ambition of being environmental neutral,

¹ Imarat Consultants, An overview of the Global Halal Market, at <http://www.halalrc.org/images/Research%20Material/Presentations/overview%20of%20global%20halal%20market.pdf>

² Wilson, J.A.J. (2012) “The new wave of transformational Islamic marketing.” *Journal of Islamic Marketing*, Vol. 3, No. 1, pp. 5-11.

the future halal value chain will create value, value for the community as well as the Earth. Although most countries are in phase 1 or 2, Malaysia and Brunei have made a lot of progress in addressing the importance of halal logistics and have entered the third phase. There are no countries yet that have entered the phase of the halal value chain.

15.2.2 Characteristics of halal food supply chains

Today's food chains are complex, consisting of a great diversity of processed and natural ingredients and additives that are sourced from countries, both Muslim and non-Muslim. Halal requirements add another complexity, particularly as there are differences in halal requirements, halal standards and certification between countries. This difference is due to, first of all, the complexity of the halal markets, which are shaped by Islamic schools of legal thought, local fatwas (religious rulings) and local customs. Second, halal is generally not regulated in non-Muslim countries as well as in many Muslim countries, leading to a lack of enforcement on the use of halal logos.

Halal food supply chains are vulnerable as they are based on trust, the maintenance of halal integrity throughout the supply chain, avoiding doubt in the authenticity of halal food, control of halal food norms and sensitivity of the Muslim consumer towards halal. The result is that halal food supply chains need to, firstly, be robust in order to minimise the impact of a possible contamination. Secondly, halal supply chains need to be effective in ensuring the integrity at each link in the chain. Thirdly, halal supply chains need to be efficient in order to avoid higher prices for halal food products.

- **Robustness**

A robust halal supply chain is capable of protecting the halal product from contamination under all plausible scenarios. Robustness requires preventive measures in segregation such as no mixing of halal and non-halal on one pallet/load carrier, dedicated storage and designated transport as well as containerisation in complex logistics (such as air shipments). Important key performance indicators for robustness include the availability of halal storage and halal transport/containers.³

- **Effectiveness**

Halal supply chains are effective if its integrity is well addressed in each link of the chain according to at least the prescribed standards of the destination. This is made possible through halal certification of supply chain parties as well as conformity to these standards (preferably contractual). A halal supply chain should also minimise waste. Waste or excess is addressed in the Holy Quran in three locations (verses 5:87; 6:141 and 7:31), where it is clearly mentioned not to waste in excess, as Allah loves not the wasters. Furthermore, the Holy Quran (44:38-39) addresses the Earth's dedicated balance, a balance created by God but entrusted to us. Important key performance indicators for effectiveness are the strength/trust of a brand, credibility of the halal certificate, halal customer service complaints, waste in

the supply chain, carbon footprint and resources used.⁴

- **Efficiency**

Efficiency of halal supply chains is important to ensure low costs and high accessibility of halal food products to (Muslim) consumers. Problems in this would result in hardship for Muslim consumers in having access to affordable halal food, which would especially affect Muslims living in non-Muslim countries. Important key performance indicators for efficiency are supply chain (management) costs, utilisation of halal storage facilities, utilisation of halal transport/containers.⁵

The vulnerability of halal food supply chains, the large size and growth of the halal market, and more stringent requirements in halal through regulations force brand owners to extend halal towards logistics and supply chain management in order to protect their brand and deliver their promise to the Muslim consumer.

15.2.3 Halal logistics

In developing robust, effective and efficient halal food supply chains, logistics plays a key role in extending the halal integrity from source to the point of consumer purchase. The foundation of a halal logistics system is a robust policy, which confirms the intention and commitment of the company in establishing a halal logistics/supply chain management system. Amongst others, a halal policy addresses: the responsibility of an organisation in protecting the halal integrity along the supply chain; the scope of halal certification of the organisation; the assurance to the consumer; and methods of assurance (control mechanisms covering aspects like halal monitoring committee, halal compliance officer and inspections).

Key components of a halal logistics system are warehousing, transportation and terminal operations. The foundation of a halal logistics system is based on three fundamentals: avoid direct contact with haram (cross-contamination), avoid risk of contamination based on product characteristics (i.e., is the product a) bulk or unitised; b) dry or wet) and address the perception of the Muslim consumer based on Muslim market requirements, shaped by Islamic school of legal thought, local fatwas and local customs. It has been argued that two different halal logistic systems are needed: a halal logistics system for non-Muslim countries addressing direct contact and risk of contamination only; and for Muslim countries, the halal logistics system also needs to address the perception of the Muslim consumer, namely the particular Islamic school of thought, local fatwas and local customs. This means that for Muslim countries a dedicated warehouse/designated transport is required, and for non-Muslim countries halal and non-halal, can be combined to a certain degree.⁶ The rationale is that in non-Muslim countries the halal (certified) volumes are much smaller than in Muslim countries, leading to high costs in warehousing and transportation during the last-mile distribution in case of a dedicated/designated halal logistics system. In case of a dedicated halal logistics system for halal products in a non-Muslim country, it would lead to significant higher prices of halal food products in non-Muslim countries as the costs will be high to do this in a non-Muslim country. A second

³ Tieman, M., Vorst, J.G.A.J. van der, Ghazali, M.C. (2012) "Principles in halal supply chain management". *Journal of Islamic Marketing*, Vol. 3, No. 3, pp. 217-243.

⁴ *ibid*

⁵ *ibid*

⁶ IHI Alliance (2010). ICCI-IHI Alliance Halal Standard: Logistics – IHIAS 0100:2010 (first edition). Kuala Lumpur: International Halal Integrity Alliance Ltd.

problem would be that with a dedicated halal logistics system in a non-Muslim country, halal food will not be widely available in non-Muslim countries due to the high costs and the logistics complexities involved. This scenario would result in difficulties and hardship for Muslims in having access to affordable halal food, and therefore would be against the Shari'a.

For example, a halal certified product produced in a Muslim country such as Malaysia (a Muslim country) destined for a supermarket in the same or another Muslim country should be distributed through a dedicated halal warehouse and utilise designated halal transport. In case of a halal certified product produced in a non-Muslim country such as France but destined for a supermarket in the same or another non-Muslim country, it does not need to be distributed through dedicated halal warehouses and utilise designated halal transport, but can, to a certain degree, be shared with conventional cargo. However, if a French halal certified product, produced in France (a non-Muslim country) but destined for the Malaysian market (a Muslim country), it should be distributed through a dedicated halal warehouse and utilise designated halal transport already in France and all the way to its customer in Malaysia.

- **Warehousing**

A dedicated halal warehouse only stores halal and halal certified products in the warehouse as well as products where halal is not an issue (for example, cement, computers, etc.). For a dedicated halal warehouse, it is important that the halal status of the goods are verified at receiving and labelled when leaving the halal warehouse. Halal goods are labelled, marked and coded as "halal supply chain" when leaving the warehouse. Non-dedicated halal warehouses - for instance in non-Muslim countries- have dedicated storage zones or racks for halal products and ensure that there is no mixing of halal and non-halal products, vertically. Second, halal and non-halal products are not mixed on pallets/load carriers. Third, in case of a cold room environment (more sensitive), halal and haram products (products that contain pork and/or alcohol) are not stored together. However, products that contain sources from a halal livestock (like chicken or beef) but are not slaughtered according to Islamic regulations, are allowed to be stored together in the same cold room with halal products. Upon receiving halal goods in a non-dedicated halal warehouse, halal products are labelled as "Halal Supply Chain" to recognise and differentiate the halal goods in the warehouse. During the movements and handlings, halal and non-halal goods cannot be mixed on one pallet or load carriers. Upon leaving the warehouse, halal products will be labelled, marked and coded as "Halal Supply Chain" if not already present.

- **Transportation**

Transportation follows the same logic as the warehouse. Designated halal transport only manages halal and halal certified products as well as products where halal is not an issue. For non-Muslim countries, halal and non-halal products can be combined, as long as halal and non-halal is not put on the same pallet and mixed vertically. In case of a chilled or frozen transport, halal and haram products cannot be transported together. However,

products from halal livestock but not slaughtered according to Islamic requirements can be transported in the same cool transport. For designated halal transport, the container/truck may require ritual cleansing or cleaning to remove traces of an earlier non-halal or unknown shipment. Ritual cleansing according to the Malaysian halal standard (which follows the Shafi legal school of thought) requires washing seven times, one of which with water mixed with soil.

- **Terminals**

Seaports, airports and inland terminals normally have both halal and non-halal flows, even in many Muslim countries. It is important that halal goods are inspected in a designated halal inspection area in order to avoid cross-contamination and minimise the risk of contamination when primary packaging is removed. However, until today "Halal Supply Chain" is not recognised as an international code, like for example dangerous goods. Therefore inspection of halal goods is not well conducted in most countries. Respective transportation requirements - important for stuffing of containers- and warehousing need to follow the requirements of the destination market (Muslim or non-Muslim country). In non-Muslim countries where cold room facilities are scarce like in airports, it is wise to work with containerisation at lower levels through the use of halal cargo boxes or designated unit load devices to simplify segregation of halal cargo where designated halal transport and storage is required and mixing is difficult to avoid.

As there are different slaughtering requirements, depending on the Islamic school of legal thought one chooses to follow, local fatwas and local customs, it might even be necessary to segregate between different types of halal. An example is halal slaughtered meat for the Brunei market needs to be hand-slaughtered and not stunned, whereas for Malaysia stunning is acceptable. Brunei does not want their meat to be shared in the same warehouse and transport with stunned halal meat.

15.2.4 The future: Halal SuperHighway

Halal logistics is new with only a handful of logistics players that are halal certified today. Most are based in Malaysia, Thailand, Singapore, the Netherlands, and France. Therefore, it will take time to get logistics organised globally. The international halal logistics standard can already be certified in most countries by accredited halal authorities, but many logistics players have taken a wait-and-see approach. The reason is that halal authorities have not made halal logistics compulsory for the certification of halal food manufacturers. However, as multinational brand owners -both food manufacturers and retail chains- are concerned with their brand in Muslim markets, it is expected that they will be the early adopters of halal logistics and supply chain managements.

LBB International conducted a research program with the intention to develop a collaborative network, providing authentication of halal in a supply chain, market access and a cost advantage for the halal

industry. The Halal SuperHighway is anchored on the: 1) collaboration with global gateways; 2) physical logistics solutions to simplify segregation in the supply chain; 3) process excellence based on a common international halal logistics standard⁷; and 4) an information and communication technology (ICT) platform.

Global gateways are terminals (seaports or airports) as well as halal parks that provide consolidation and distribution services with dedicated halal warehouse facilities, designated halal transportation services, and container/unit load device (ritual) cleansing facilities. Physical logistics solutions, such as a pool of dedicated halal cargo boxes, could provide a solution for complex logistics, like in air cargo, if economically viable between certain routes.

Process excellence is important, and should refer to a common standard such as the international halal logistics standard IHAS 0100:2010. The development of local standards and a different level of compliance, as logistics is cross-border, will create confusion with the halal industry and logistics service providers. This will result in issues in managing supply chain halal integrity effectively.

ICT is an important facilitator in connecting markets and communicating the halal status along the supply chain. However, ICT should not become a threshold for halal industry players to join as many supply chain participants of halal food supply chains located in developing countries with poor access to, or high costs in, implementing advanced ICT. Therefore, ICT should not be used for detailed tracking and tracing as suggested by some parties, other than maybe the chain of custody. It would be more important to ensure process excellence so that these halal food supply chains are robust, effective and efficient by design. Advanced tracking & tracing by itself does not make a supply chain robust, effective and efficient.

The Halal SuperHighway initiative which started in Malaysia has seen the signing of MOUs in Asia, Europe, the Middle East and the USA, but will require more participation globally of food industries, logistics service providers, retail chains, halal authorities, universities and Governments to develop this global collaborative network over the coming years.

15.3 The impact of public international law

The development of halal certification standards is a major concern for many governments and international Islamic organisations, but is an area where there are many pitfalls and the impact of international trade law needs to be accounted for. There is vast interest in developments in this multi-billion dollar growth industry, as multinational corporations, and as the export industry in general, are keen to cater to the worldwide halal market.

15.3.1 International law and the World Trade Organization

In the absence of a unified certification standard, there is uncertainty for both producers and consumers, impacting on consumer choice and the ability of producers to cater to specific needs. Since 2009, two concerns have been raised at the World Trade Organization (WTO) regarding the stringent halal certification requirements of Malaysia and Indonesia, which impose impermissible barriers to trade on goods exported to those countries. Both concerns remain on the agenda today.

The WTO guarantees the smooth flow of trade among its current 157 signatory states. It seeks to promote global competition, efficiency and prosperity by ensuring that countries can freely import and export goods. The conduct and relationships of WTO signatory states are governed by various agreements, which were designed to encourage and facilitate free international trade of goods. The agreement most relevant to a discussion on halal consumer goods certification is the Agreement on Technical Barriers to Trade (TBT), according to which governments, i) cannot pass discriminatory legislation against foreign products for the benefit of domestic products; ii) must allow the same treatment of products from all signatory states; and iii) must not pass legislation that would act as a barrier to trade.

If there is a compelling reason to pass legislation that has the effect of violating the principles contained in the TBT, a government must demonstrate that this reason constitutes a “legitimate objective” and that there is no less trade restrictive way of achieving this objective, taking into account the risks that non-fulfilment of the objective would create. Permissible objectives include (amongst others) national security, the protection of human health and safety, and consumer protection. Arguably, the protection of one’s right to practice religion as one sees fit is another one of these objectives. This proposition will be discussed in more detail below.

If there is either no legitimate objective behind a trade restriction or a less trade restrictive way of achieving a legitimate objective exists, one government can take another to the WTO’s dispute panel, where the WTO may then order the government in violation of the TBT to bring its legislation into conformity with international agreements. If it refuses to do so, the WTO can allow retaliatory sanctions by the aggrieved country against the offending one.

15.3.2 The status of halal in the eyes of international trade law

Notwithstanding the efforts of the Organization of the Islamic Conference (OIC) and other international Islamic bodies, there is no internationally recognised authority accepted by Muslims that grants globally accepted halal certifications. This is due to the fact that the definition of halal is a matter of religious doctrine with centuries of history and evolution: Put simply, what might have been acceptable to a halal consumer 15 years ago may not be acceptable today.

Despite this, the UN’s Food and Agricultural organization in 1997 incorporated a definition of halal in its publication of international standards relating to food and food

⁷ For further details on the international halal logistics standard, please refer to the IHAS 0100:2010 standard, developed by the Islamic Chamber of Commerce & Industry – International Halal Integrity Alliance. This standard can be purchased from the International Halal Integrity Alliance (www.ihalliance.org).

safety, the Codex Alimentarius (the “Codex”). The Codex definition of halal borrows aspects of definitions of halal from different Islamic legal schools of thought. In particular, it lists criteria for the use of the term halal

a country embraces. The US industry has encountered difficulties in exporting halal products because of differences in how countries regulate slaughtering, handling and transportation, labelling, and certification

Table 1: Codex prescriptions for halal slaughter

- A. The slaughterer should be a Muslim who is mentally sound and knowledgeable of Islamic slaughtering procedures.
- B. The animal to be slaughtered should be lawful according to Islamic law.
- C. The animal to be slaughtered should be alive or deemed to be alive at the time of slaughtering.
- D. The phrase “Bismallah” (in the Name of Allah) should be invoked immediately before the slaughter of each animal.
- E. The slaughtering device should be sharp and should not be lifted off the animal during the slaughter act.
- F. The slaughter act should sever the trachea, oesophagus and main arteries and veins of the neck region.

Table 2: Codex prescription for processing halal produce

Halal Food means food permitted under Islamic law and [must] not have been prepared, processed, transported or stored using any appliance or facility that was not free from anything unlawful according to Islamic law and has not been in direct contact with any [non-halal products]. [However,] halal food can be prepared, processed or stored in different sections or lines within the same premises where non-halal foods are produced, provided that necessary measures are taken to prevent any contact between halal and non-halal foods, and using facilities which have previously been used for non-halal foods provided that proper cleaning procedures, according to Islamic requirements, have been observed.

in respect of lawful food, slaughtering methods (Table 1) and the processing of halal produce (Table 2). The definition of permitted foods has not been an issue, but the prescribed slaughter methods and processing requirements have caused controversy.

The Codex definition is a baseline definition, but does not satisfy most halal consumers or certifiers. It accepts that “... there may be minor differences of opinion in the interpretation of lawful and unlawful animals and in the slaughter act, according to the different schools of thought. However, the certificates granted by the religious authorities of the exporting country should be accepted in principle by the importing country, except when the latter provides justification for other specific requirements.”⁸

By considering the differences of opinion regarding the requirements for halal products to be minor the Codex fails to reflect the importance of the issue at stake. It attempts to impose certainty in an area that is subject to religious difference and interpretation.

15.3.3 The “shield” – The use of public international law to protect halal integrity

- The argument

An argument put forward by the United States during a TBT committee meeting in 2011 was that the “US industry continues to face market access barriers for halal products. While the Codex General Guidelines on the use of the term “Halal” are helpful in setting out basic principles, governments have established halal standards that vary significantly depending on which of the four prevailing Islamic schools of legal thought

for halal purposes, as well as when governments exceed the Codex General Guidelines. As one example, Malaysia has adopted a standard that would require halal food to be processed in dedicated halal facilities, whereas the Codex recognises food as halal if it is processed on a dedicated line within a facility that produces non-halal products.”⁹ Furthermore, Malaysia requires an audit for every foreign meat establishment that wants to export to Malaysia, which is considered not only unnecessarily burdensome and costly, but is also not in line with the Codex.¹⁰

At the most recent TBT committee meeting of 13-15 June 2012, bilateral discussions between the US and Malaysia were on-going and yielding some success, but a number of other countries such as Brazil and Argentina criticised Malaysia on the same grounds as the US.¹¹

Complaining states consider halal standards that differ from those contained in the Codex to be an impermissible barrier to trade when such halal standards are used to block the trade in Codex compliant goods. Furthermore, as is evident from the 2011 US TBT Report, it is not universally accepted that stringent halal rules fall into the traditional legitimate objective of food safety: “While some governments have attempted to frame their halal rules as a food safety issue, the US has consistently viewed halal as a process/quality standard with no inherent food safety component.”¹²

- The response

Even if the legitimate objective of food safety cannot be held to encompass halal rules, there is an argument that the right to practice one’s religion as one sees fit is a legitimate objective justifying trade restrictive measures. In the first instance, the list of legitimate objectives provided in the TBT is not intended to be exhaustive. The TBT prescribes that technical regulations shall not be

⁸ Codex Alimentarius, CAC/GL 24-1997, General guideline for the use of the term halal, at page 1.

⁹ 2011 Report on Technical Barriers to Trade, Ambassador Ronald Kirk, Office of the United States Trade Representative (March 2011), Issues Related to Trade in Halal Products, at page 53.

¹⁰ TBT Committee Meeting Minutes, 9 February 2012 G/TBT/M/55, at paragraph 236.

¹¹ TBT Committee Meeting Minutes 18 September 2012, G/TBT/M/57, at paragraph 171-176.

¹² Ibid, 10.

more trade-restrictive than necessary to fulfil a legitimate objective taking account of the risk non-fulfilment of the objective would create. Relevant information to assess the risks of non-fulfilment of objectives consists of technical information, which might or might not include technical religious considerations.

The fact that technical views on halal slaughtering, for example, differ has been demonstrated by an independent study to understand scholarly opinions on the acceptance of certain methods of halal slaughter commissioned by the Halal Monitoring Committee in the UK. The report established that there was no absolute consensus on these questions, although there were some clear trends, such as mechanical slaughter and stunning being rejected as a method of halal slaughter.¹³ At the June 2011 TBT committee meeting, however, it was put forward by the US that "... it was important to ensure that Malaysia would continue to allow mechanical slaughter of both poultry and meat as long as the process would fully allow for the required ritual slaughter methods."¹⁴ This raises the question whether a sovereign state is free to decide the religious standards it seeks to impose on its religious food certification process if that standard deviates from the Codex and acts as a trade barrier for goods from other countries.

Making reference to religious needs in one's justification for deviation from the Codex definition should help make evident that these stricter halal standards are motivated by religious reasons, not commercial or protectionist ones. The purpose is not the protection of domestic industries, but the consideration of values which transcend the pure economic realm. Whether a WTO dispute panel would accept such a line of reasoning remains to be tested. One cannot argue with the fact that non-unified standards, by definition, make production more expensive and will result in certain products not being accepted. However, the discrimination against various Islamic practices in the context of international trade could be a very politically charged topic, and it is unlikely that any concerns would be elevated to a formal WTO dispute proceeding.

• Discussions within the international Muslim community

At the most recent TBT committee meetings of 20 March and 13-15 June 2012, another Muslim country, Turkey, invited Malaysia in light of its dispute with a number of meat-exporting countries to accept the guidelines of the Standards and Metrology Institute of Islamic Countries established under the OIC, rather than pursuing its own halal standards. It was put forward by the representative of Turkey that "...the use of different standards and conformity assessment procedures in the halal food industry lead to technical barriers to trade, including among Muslim countries."¹⁵ The suggestion seems to be that the Codex definition be replaced by a definition to be developed by actual religious authorities, i.e. the one to be developed by the OIC. This implies a compromise, but one to be reached within the international Muslim community rather than by a secular international body such as the UN. The future development of this intra-Muslim dialogue will certainly be closely watched by all

interested parties.

• Transparency

A further concern of halal exporters such as the EU and Argentina is that halal standards not only differ between countries, but also differ within one country from time to time.¹⁶ The Malaysian Protocol for the Halal Meat and Poultry Productions states that it "...is subjected to periodical review according to the current needs of the local and international industries to keep abreast of progress in the industries concerned."¹⁷ The developing nature of religious interpretation is arguably not too different to changes in standards for other product categories as new scientific knowledge becomes available. A key point for government's implementing changes to their halal certified standards is to comply with WTO notification procedures when a new national standard is to be implemented relating to halal certification. Sufficient prior notice needs to be given to any potential governments whose trade could be impacted 60 days in advance of the implementation. Furthermore, a greater degree of transparency could be achieved by inviting would be certifiers from countries whose trade would be adversely affected by changes in halal certification standards to offer them training on the new standards. This should protect against claims that halal certification changes are protectionist in nature.

15.3.4 The "sword" – the use of public international law to overcome discriminatory legislation

In 2010, a member of the European Parliament from Germany suggested an amendment to an EU proposal regarding food labelling for consumer information that "[m]eat and meat products derived from animals that have not been stunned prior to slaughter, i.e. have been ritually slaughtered, must be labelled "Meat from slaughter without stunning."¹⁸ This Amendment 205 would have applied to certain halal meat which is imported and sold in the EU. The justification for the amendment was that "...consumers should be informed that certain meat is derived from animals which have not been stunned. This will enable them to make an informed choice in accordance with their ethical concerns."¹⁹

Certain religious groups challenged this amendment and argued that while it is not generally objectionable to provide consumers with information about the method of slaughter employed for meat products, this does not justify the singling out of one method of killing (e.g. meat from slaughter without stunning), while not informing consumers about other methods of animal killing. Instead, as a logical consequence of the government's objective to inform consumers fully, it was argued that all meat products should be labelled, specifying other methods of killing used, such as gassing or electrocution. Amendment 205 seemed to have been proposed with a view towards delegitimising and discriminating against religious practice, singling out only one method of slaughter as used for religious purposes.

¹³ See ii.

¹⁴ TBT Committee Meeting 10 November 2011, G/TBT/54, New Concerns – Malaysia – Draft Protocol for Halal Meat and Poultry Production (G/TBT/N/MYS/23)

¹⁵ TBT Committee meeting of 9 February 2012 (G/TBT/M/55), 16 May 2012 (G/TBT/M/56), 18 September (G/TBT/M/57); Malaysia – Draft Protocol for Halal Meat and Poultry Production at paragraphs 238, 198 and 175, respectively.

¹⁶ See for instance TBT Committee meeting minutes of 16 May 2012 (G/TBT/M/56), Malaysia – Draft Protocol for Halal Meat and Poultry Production at paragraph 196.

¹⁷ Malaysian Protocol for the Halal Meat and Poultry Productions, Department of Islamic Development Malaysia (Draft of 4 April 2011), at page 1.

¹⁸ European Parliament, Committee on the Environment, Public Health and Food Safety, Amendments 001-249, A7-0109/001-249, Proposal for a regulation (2008/0028(COD)) (9.6.2010), Amendment 205, at page 101.

¹⁹ Ibid, 8.

If Amendment 205 had been passed, the labelling of meat products slaughtered without stunning would have rendered such products “second class” or “less humane,” which would have presented a barrier to trade to many halal meat exporting countries’ ability to compete in the broader meat trade. As a member of the WTO, the EU is bound by international trade agreements which restrict the measures the EU may take affecting international trade. In particular, the aforementioned Article 2.2 of the TBT states that “technical regulations shall not be more trade restrictive than necessary to fulfil a legitimate objective, taking into account the risk that non-fulfilment would create.” Therefore, unless Amendment 205 fulfilled a legitimate objective and was no more trade restrictive than necessary, the EU and its Member States would have been in violation of their obligations under the TBT. However, the imposition of a lopsided and mandatory labeling regime that singles out one form of killing over others is not a legitimate objective and does not provide complete and accurate consumer information in any event.

Moreover, there are less trade restrictive measures available such as voluntary labeling schemes regarding animal welfare. Such voluntary labeling schemes have worked successfully in the EU for many years. The market for organic produce for instance has worked well with manufacturers labeling their products as such, so that consumers who are willing to pay a premium for those products can identify them. It is not necessary for the producers of conventional produce to be labelled as containing potentially toxic chemicals. Similarly, free range eggs are labelled as such, whereas eggs from conventional production do not say that the chicken spent their entire life in a battery cage 16 inches wide – they are simply sold as “eggs”.

The outcome in relation to Amendment 205 was that on 1 December 2010, the Council of the EU published the political agreement on the proposal for a regulation on the provision of food information to consumers.²⁰ The final proposal did not contain any provisions mandating the pejorative labelling of halal meat or other meat derived from slaughter without stunning.

15.4 Conclusion

Halal logistics and supply chain management is important in ensuring halal integrity for the Muslim consumer and protecting the brand of manufacturers and retail chains. As today’s food supply chains are complex and require crossing borders, logistics plays a key role in extending the halal integrity from source to the point of consumer purchase. As an international halal logistics standard has been developed, there is today a reference in how to organise halal logistics for the halal industry, which addresses both the differences in market requirements (based on the Islamic schools of legal thought, local fatwas and local customs) as well as the complexities of last-mile logistics in non-Muslim countries. As the halal industry is a large and fast growing industry, which is demanding a higher level of integrity throughout the supply chain, there is an evident need for robust, effective and efficient halal food supply chains. Halal logistics plays a central role in connecting the individual links in the halal food supply chain according to the requirements of the destination

market. However, it will need concerted efforts by all stakeholders to get it right.

In considering the logistical process, the impact of international trading law has to be accounted for, which, thus far, has proven to be a controversial topic. At a time where many stakeholders want a piece of the growing market for halal products, the issue of whether individualised, national standards are acceptable to the market is the subject of much discussion. The question is whether a deviation from international standards based on religious needs of sovereign states makes the deviation permissible under international trade law. While the legal position is uncertain, it would be politically challenging to raise a dispute to require another state to accept goods certified under standards contrary to its religious beliefs. The position is more definite that international trade law indeed protects halal certified products against mandatory labelling in a way that would discriminate against it in the broader market vis-a-vis non-halal products.

²⁰ ‘Proposal for a Regulation of the European Parliament and of the Council on the provision of food information to consumers’ (2008/0028 (COD) 16555/10) Political agreement (2 December 2010).

