



## World Trade Organisation Rules and Livestock Labelling

### Pasture Fed Livestock Association (PFLA)

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#### Executive Summary

The Pasture-Fed Livestock Association (PFLA) promotes the unique quality of produce raised exclusively on pasture, and the wider environmental, animal welfare and human health benefits that pastured livestock systems represent. The PFLA believes that mandatory labelling of beef, lamb and dairy products setting out the percentage of pasture and forage that the animal has been fed through its life will enable the consumer to identify the unique health, nutritional and agroecological benefits of 100% pasture and forage-fed (hereinafter “grass-fed”) ruminants.

#### The PFLA view on the labelling of “grass-fed” products

On January 31<sup>st</sup> 2020, the UK officially left the European Union. Negotiating a new trade deal with the EU has now become key to defining the future relationship with the EU27. However, the UK is simultaneously attempting to negotiate trade deals with other nations, including the United States. Within the food and farming sector, one of the main discussions over post-Brexit trade revolves around the differing standards of livestock, particularly in regard to differences between animal welfare standards. Much talk has focused on the potential of using labelling to indicate method of production (cage-free, hormone-treated, chlorine-washed, etc) or country of origin.

The key issue that concerns the PFLA is the need for clear labelling of the term grass-fed in relation to meat and dairy products. At present, in the UK, the term grass-fed can be used on any products that are “predominantly” grass-fed – that is just 51%. This is misleading to the consumer and potentially negates the health and nutritional benefits of 100% grass fed beef and lamb. The PFLA has been working with farmers across the UK to promote and expand pasture-fed livestock systems, which bring environmental, animal welfare and human health benefits. Today we have 600 members, mainly farmers, and over 1,500 supporters. To help increase public awareness of the importance of grass-fed ruminants, and to help consumers distinguish them in the marketplace, we created the Pasture for Life certification, which is the only independently audited certification mark for 100% grass-fed ruminant meat and dairy in the UK. It is a scheme to which producers can sign up to, in order to provide an auditable verification that their products are genuinely 100% grass-fed.

We believe that any post-Brexit trade deal should ensure there is mandatory method of production labelling specifically for the terms grass and pasture-fed. We also support calls for wider transparent method of production labelling as this is key to the consumer being able to support farmers who are farming in a way that produces nutritionally dense products from high animal welfare and environmentally-friendly farming methods.

This mandatory requirement should be supported by independently audited schemes such as Pasture for Life certification. Consequently, we warmly welcome the Government’s intention under Section 35 of the Agriculture Bill to introduce regulations around labelling of specific terms and methods of production. We see this commitment as fundamental to achieving the desired higher animal welfare, environmental and human health outcomes from the Bill. The PFLA would like to see the UK Government introduce mandatory regulations whereby, when using the term “grass-fed” it needs to be qualified with an assurance of the percentage to which the animal has been grass-fed i.e. 75%, 80% etc. Such a system is already in use in the United States and enables the consumer to make an informed decision. In terms of the Trade Bill, this would ensure regulations in the UK are aligned with those in the US, thus facilitating meaningful trade. In summary, it would be mandatory for key labelling terms to be supported by an independently auditable certification of specific husbandry standards that prohibit practises such as routine use of antibiotics and growth hormones, among a range of other prescriptions.

Some have questioned the viability of adopting mandatory labelling due to the WTO restrictions. We believe that there is a justifiable case for the UK adopting mandatory labelling of pasture-fed ruminant meat. This argument is

based on the strong scientific evidence that proves that there is “an objective difference” in the meat produced in a 100% pasture-based production system vs a grain-based system due to the nutritional quality of the meat itself. In recent years there has been increasing scientific evidence of the benefits of eating pasture-raised and grass-fed meat and dairy. These are not just limited to animal welfare and the environment, but also include health benefits for humans. Meat from animals fed only on a grass diet tends to be lower in total fat and also has a higher level of ‘good fats’ such as omega-3 fatty acids.

This briefing paper aims to examine the specific regulations within the WTO framework on livestock and labelling and to clarify to what extent the World Trade Organisation Rules permit or restrict labelling that could be used to inform consumers of the origin and standards of their meat.

### **The purpose and objective of the WTO**

The World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. The WTO aims to liberalise trade policy to ensure that trade flows as smoothly, predictably and freely as possible. It seeks to reduce protectionism and promote globalisation. It does not exist to promote ‘fair’ or ‘ethical’ trade. Rather, it is there to promote ‘free’ trade. While not a regulator, the WTO supports voluntary international agreements between states and is a forum for settling disputes about such agreements. It is a mistake to think of the WTO as ‘setting rules’ or ‘regulating trade’, despite the fact that it is commonly reported as doing just that. It has a quasi-judicial role in that WTO agreements set timetables and processes for settling disputes about WTO agreements, and control escalation of those disputes via expert determination. However, (put simply) these processes encourage states to reach agreement with one another, rather than create a system for states to be sanctioned or ‘punished’ for breaching the rules.

Members of the WTO sign up to specific agreements with one another, the purpose of which is to increase free trade. The most important agreement is the ‘General Agreement on Tariffs and Trade’ that created the model that preceded the creation of the WTO in 1995, and which forms the basis of the current system. However, several other additional agreements have since been reached, each of which governs different aspects of trade (e.g. services, agriculture or intellectual property). The agreements apply differently to developing countries as compared with developed countries, but in most other respects the agreements are adopted in the same form and apply in an identical way to all members. The aim over time is for all members to be treated equally.

Once a member of the WTO, a state can officially complain that another member state is in breach of a WTO agreement because it has adopted ‘protectionist’ measures to benefit a domestic industry or limit imports. In that case, the WTO will encourage the states to reach agreement with the goal that any protectionist measures are removed. If agreement cannot be reached then the matter may be referred to a panel of experts for a ruling.

### **The ‘Trade and Environment Committee’**

The WTO’s Trade and Environmental Committee (CTE) is the WTO committee responsible for deciding the WTO’s role, in relation to environmental matters (including the application of Article XX exemptions), and for making recommendations regarding any changes that may be needed in WTO trade agreements. That said, the WTO is “only competent to deal with trade” and consequently, it is clear within its mandate that its role does not extend to promoting environmental standards and its concern in this area is to consider the extent to which such standards may impact on trade. It is clear that “if the committee does identify problems, its solutions must continue to uphold the principles of the WTO trading system”. In other words, the WTO does not exist to promote environmental protection and will prioritise the free flow of trade above such considerations.

## WTO Rules relate to Food Labelling

Within GATT, Articles I, III and XX relate to food labelling.

### - Article I: 'General Most-Favoured-Nation Treatment':

*'... With respect to all rules and formalities in connection with importation and exportation.... any advantage, favour, privilege or immunity granted by any [member] to any product originating in or destined for any other country shall be accorded immediately to the like product originating in or destined for the territories of all other [members].'*

e.g. member A wishes to reduce tariffs on product x, imported from member B. Whatever reduction in tariffs is made by member A, for the benefit of member B, must be made to like products *of all members in relation to product x*.

### - Article III: 'National Treatment Principle'

*'1. ... internal ... laws, regulations and requirements affecting the internal sale... purchase, transportation, distribution or use of products ... should not be applied to imported or domestic products so as to afford protection to domestic production.'*

e.g. member A cannot impose legal or other requirements within its domestic market, that put member B's producers at a disadvantage, when competing with member A's domestic producers in that domestic market (e.g. 'product X must be manufactured from materials sourced from within member A's domestic market').

*'4. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements ....'*

e.g. member A cannot impose different rules or standards in relation to product x, between those that are produced within its domestic market, and those that are imported from member B.

### - 3.1.3 Article XX (exceptions):

*'... nothing in this Agreement shall be construed to prevent adoption or enforcement by any Member of measures:*

*(a) necessary to protect public morals;*

*(b) necessary to protect human, animal or plant life or health;*

...

*(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.*

i.e. If country A feels that the import of product x from country B would damage human, animal or plant health in its market then it may restrict such imports (e.g. if there is a risk of spread of disease or pests as a result of such import). The restriction must be *necessary* in order to achieve this goal i.e. there should not be alternative means available that are at least as effective and practical, that do not restrict trade.

That said, the Article XX exceptions have additional restrictions;

If:

- 1) such measures are made effective in conjunction with restrictions on domestic production or consumption; and

- 2) no alternative measures are available that distort trade to a lesser extent, and achieve the same ends.

It is in principle possible for a member state to prohibit the import of products whose means of production offend “public morality” – an obvious example being imports made by child labour. The case needs to be made that the means of production in question has been regarded as “immoral” by the domestic public for a long time, and of course that it is illegal in this country.

If, however, imports of a product are permitted, it is possible to assist consumers to choose voluntarily to prefer or avoid certain methods of production, by providing labels. Without such a label, the consumer has no realistic chance of making an informed choice.

### What does this mean for mandatory method of production labelling?

It is acceptable for member states to introduce mandatory labelling to indicate real differences between products in terms of their ‘product characteristics’ i.e. to show that they are not ‘like products’. The reasoning is that this is not distorting trade since it is simply explaining objective differences between products. However, it is generally unacceptable within WTO rules to introduce mandatory labelling that relates to ‘Production and Processing Methods’ (‘PPMs’) unless those PPMs *themselves result in differences in ‘product characteristics’*. Regulation of PPM’s have historically been viewed as ‘[non-tariff barriers to trade](#)’. The reasoning is that if the PPM is not relevant to the product characteristics then it is unfairly distinguishing between ‘like products’. According to WTO regulation, the consumer should not need to know ‘how’ a product is produced. He or she should only need to know *what the product is*.

The WTO argument, if applied to livestock would be that cattle raised in state A to a ‘low’ welfare standard is objectively no different (in terms of its product characteristics such as nutritional content and taste) to cattle raised in state B to ‘high’ welfare standards. Therefore, any local system of regulation that distorts trade in such a way as to promote state B’s ‘high’ welfare standards (e.g. regulations mandating food labelling that refer to ‘Production and Processing Methods’) may unfairly distinguish between ‘like products’.

That said, there would be two routes on which to advocate mandatory labelling.

1. If sufficient scientific evidence was provided to demonstrate that methods of sustainable agricultural practice (including pasture-fed livestock systems) *do* protect human, animal or plant life, Article XX would mean that products could be labelled to differentiate from industrial production systems. Alternatively, one could argue that sustainable food production systems help to conserve exhaustible natural resources (e.g. water, soil, biodiversity) but it would be necessary to prove that the sustainable farming methods promoted are truly ‘necessary’ in order to achieve the conservation objectives, and that there are no alternative methods available.
2. If it can be demonstrated that a production method results in an objective difference in the final product, a mandatory system of labelling to inform consumers of the production method would be acceptable. For example, if there was clear scientific evidence that demonstrated that pasture-fed livestock had a higher nutrient content, it could be labelled accordingly since it would allow consumers to decide between varying method of production for themselves.

In this respect, we would argue that there is sufficient evidence to support mandatory labelling of pasture-fed ruminant meat. The scientific evidence to date shows how there is a clear difference in the nutrient content of products that are 100% reared and finished from pasture when compared against those that are grain finished. Meat from animals fed only on a grass-based diet tend to be lower in total fat, has a better ratio of omega-3:omega-6 than grain-fed beef and high levels of conjugated linoleic acid (CLA) that is known to exhibit significant antioxidant activity. The PFLA paper [“The Health Benefits of Pasture for Life Meat”](#) summarise some of the current research. More work is currently underway on this and we would encourage greater examination into the significant differences.

## What about Voluntary Food Labelling?

While we would argue that there is sufficient evidence to support mandatory labelling, it is beyond question that the WTO regulation would allow for the voluntary use of independently audited certifications scheme around labelling of pasture-fed meat. WTO rules do not restrict *voluntary* systems of labelling or other indicators that may be useful to consumers, to inform them of the origin and standards that apply to the production of food. The Pasture for Life certification would fall into such a category currently.

There are well established systems of food labelling in operation worldwide that indicate specific Production and Processing Methods that ostensibly have no bearing at all on 'Product Characteristics'. An example is tuna labelled as dolphin-safe since a tuna caught using 'dolphin safe' methods will be identical with one that is not. With 'organic' labelling, while some consumers might believe that organic indicates more 'nutritious' or 'chemical free' products, the label is voluntary and therefore is not required to demonstrate significant differences in PPMs.

## WTO disputes and the Appellate Body

The WTO does not actively approve legislation of members ahead of time. It only gets involved in domestic regulation when a dispute is brought by a member of the WTO against another member for violating the terms of the WTO. To date, 594 disputes have been brought to the WTO, with over 350 rulings being issued. Members comply with rulings in about 90% of cases.

The purpose of the process is to settle disputes, rather than reach a ruling. Consequently, many disputes are settled early (and the processes encourage this). Rulings are provided by a panel of experts, but, importantly, the WTO is not a legal authority. The WTO simply provides an interpretation of the application of agreements struck between member states i.e. states may ignore rulings or refuse to engage in the process if they choose to. However, in normal circumstances (and particularly in the case of the UK) member states will not wish to do this given the impact on their international reputation, and the likelihood that this will hamper future trade or other negotiations.

When considering the impact of WTO disputes, it is worth bearing in mind that the WTO's Appellate Body shutdown on December 10<sup>th</sup> 2019. This shut down was due to the fact that President Trump had refused to appoint or confirm any new judges to the WTO since he maintained that it unfairly penalized the US and accused them of overstepping their authority, breaking their own rules and interfering in U.S. laws. There was still no consensus on appointing new judges so when the terms of American judge Thomas Graham and Indian chief judge Ujal Singh Bhatia ended in December 2019, China's Hong Zhao was left alone on the bench. Her term is due to end in November 2020.

Since three judges are needed for each case, no decision can be made regarding disputes. As a band-aid fix, Canada and the European Union announced a deal to stop trade disputes falling into limbo. The Canada-EU agreement uses the WTO's arbitration rules to replicate the Appellate Body as closely as possible, with former WTO judges hearing cases. It is intended to be temporary, but will last until the Appellate Body is restocked with judges.

## Conclusion: What could the UK do to promote sustainable farming methods in the future?

The PLFA believe that the scientific research into the nutritional difference of grass-fed meat over grain-fed meat would meet the "objective difference" requirement of the WTO. Adopting clear and consistent labelling across the entire sector that has the backing of the Government would enable the consumer to make an informed and knowledgeable choice between products. Supporting this approach would also help to support farming methods that bring significant environmental and animal welfare benefits too, which the UK Government have indicated a strong intention to support going forward, and allow consumers to express their personal support for production methods that are more environmentally sustainable.

For all the above reasons we strongly urge the Government to pursue mandatory labelling. The PFLA is advocating for the UK to adopt the system in the US whereby it is mandatory for the term "grass-fed" to be supported by an independently audited labelling system that provides the percentage to which the animal has been grass-fed (i.e. 75%, 80% etc.). This would ensure that the UK labelling of grass-fed product would come into line with the US system of

labelling, facilitating trade and simultaneously providing the UK consumer with more information and increased transparency of our food system.

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