

WTO ACCESSION AND REQUIRED PRODUCT STANDARDS: THE CASE OF ETHIOPIA

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By: Binnyam Ahmed
(I.D. No. 2919/00)

Advisor: Elias Nour

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Addis Ababa

DECLARATION

I, the undersigned declare that, this thesis titled “WTO ACCESION AND REQUIRED PRODUCT STANDARDS: THE CASE OF ETHIOPIA” is my own work, and that it has not been submitted before a program in any other university, and that all the sources I have used have been indicated and acknowledged.

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Abstract

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INTRODUCTION

The word 'standard' has become a common term in all sectors of business. The desire towards having the best standards in goods and services is progressively increasing. Participants in all business undertakings do not negate the idea of having the best quality. Consumers look for a product or service with high standards. And, transactions are expected to result in the satisfaction of the parties, with a special concern that consumers need to be protected from any possible harm that would occur from the normal consumption of any goods or services.

The future of the world, borrowing the words of the US president Barrack Obama's address to the 62nd United Nation General Assembly, is established on pillars, one being the expansion of global trade with opportunities to people in all countries. At present time, global trade has become an essential element in the proper functioning of the world as it caters for the economic needs of nations. More than half of the nations in the world are members of an international trade organization whose primary aim is fostering global trade and expanding market access by reducing and eliminating trade barriers. As the significance of trade is increasing in countries that have embraced the multilateral trade regime, many nations including Ethiopia, are in the process of joining this trade regime.

When countries welcome the products and services of other nations in international trade, a responsibility resides in importers to monitor the 'standards'. The first point of focus in this regard is to make sure that the safety and health of people are not affected negatively. The protection of animal and plant life, plus the concern about the environment will be major issues of concern. The next step will then be assuring that imported products and services fulfill the standards required by domestic consumers. This envisages availability of different alternatives to choose from. These concerns exist whether a nation is importing or exporting.

This thesis, entitled "**WTO Accession and Required Product Standards: The Case of Ethiopia,**" primarily focuses on examining one aspect of standard in trade, i.e. *product standards*, in the context of Ethiopia's anticipated accession to the world trade organizations (WTO). The paper is organized in four chapters. In the first chapter an

introduction to the WTO is made followed by general remarks on standards in relation to trade. The second chapter examines the WTO legal regime on standards. It is in this part that the relevant WTO legal instruments and some case laws on standard will be assessed. The third chapter will explain the issues that are of utmost concern in developing and least developed countries when the topic of product standard is raised in the multilateral trade regime. The last chapter will explore the enigma of standards in the WTO for Ethiopia. National laws on standard, current working condition of concerned local bodies, preparation at the national level to tackle possible problems, and major issues that need attention in Ethiopia will be discussed in this last chapter. The thesis finally forwards conclusion and recommendations for the problems addressed.

CHAPTER ONE

STANDARDS AND TRADE

A discussion of world trade in relation to product standards needs to examine the relationship between trade and standards. This chapter aims at establishing this relation. A general remark on the World Trade Organization is made followed by a note on standards in which definition, type, need, the major institutions involved, etc. are explained. The conclusion of the chapter establishes the economic and legal link that makes the discussion of product standards one of the subject matters of international economic law.

1.1 GENERAL REMARKS ON THE WTO

WTO is referred to a “a negotiation forum, a set of rules and a dispute settlement forum.”¹ The world trade which used to be done by a defacto organization of a mere trade agreement by the name GATT (General Agreements on Tariffs and Trade) ² was strengthened by series of trade rounds under the umbrella of GATT resulting a dejure trade institute in 1994 by the name World Trade Organizations.³ It is this global trade entity that is at present referred to as a negotiation forum, set of rules and dispute settlement forum.

WTO is negotiation forum in the sense that it brings bilateral trade talks to multilateral trade regimes. The move from GATT to WTO took a series of negotiation lasting years. Starting from the year 1947 to the Birth of WTO in 1994, countries ranging in number from 23 to 123 gather around a table, set their interest, learn what others have

¹ Understanding World Trade Organization, www.wto.org (accessed on Sep 25, 2009).

² John H.Jackson, William J.Davey & Alan O.Skyes, Legal Problem of international economic relations: cases, materials and text St.Paul Minn, 4th ed. (2002) pp.208.

³ Id. The move from GATT to WTO took decades, but the result of the Uruguay round trade talk was labeled the best result of trade negotiations held so far. The reform was not only limited to creating WTO but also include major institutional changes, the dispute resolution system coming on the front line.

to say, debate on different trade and political stand and then at last reach an agreement.⁴ Picturing WTO as a negotiation forum looks valid at present because the Doha Development Agenda (DDA) trade talks are underway. The talks involve issues related to developing nations at the central point of trade talk.⁵ As the international trade is of evolving nature, member nations are expected to meet and discuss challenges in the trading arena. It seems that the success of achieving the motto of WTO can be a reality only if member nations work towards a common goal by setting aside their glaring differences and by undertaking multilateral discussion with a view to enabling the smooth flow of global trade. It is such a setting that can enable WTO to be instrumental towards its function as a negotiation forum.

WTO can also be explained as a set of rules. Without stipulated rules, the governance of behavior of members is difficult to achieve. In most cases, trade talks involve rules to adhere to. The WTO legal regime has six broad set of rules namely an umbrella agreement establishing the WTO, agreements for the three broad areas of trade WTO cover i.e. goods /Services/ Intellectual property, Dispute settlement rules and review of government trade polices. The existence of side agreements with a purpose of implementing these broad set of rules is too worth mentioning.⁶ These set of rules are meant to meet the ends of WTO.

The existence of vast global trade relations inevitably involve trade dispute among members, and this necessitates a forum for dispute settlement. The criticisms that used to be made on GATT in this regard, has been resolved to great extent as the Uruguay rounds of trade talk has resulted in a dispute settlement forum and rules. This in turn has enhanced the confidence of member nations to join the trade liberalization movement in full force and energy. WTO is now treated not only as a place of making world trade

⁴ World Trade Organization, a Training Package, Module 1, (Dec 1998). Pp. E1-7. The GATT trade Rounds subject matter was primarily the issue of tariff medication. Other topics join the talks after wards Non-Tariff trade barriers, Trade in service, Intellectual Property and others.

⁵ Ian. F.Ferguson, WTO Negotiations, The Doha Development Agenda, Congressional Research Service report, (Jan 18,2008), pp 1 ff.

⁶ Supra Note 1, P.S WTO is labeled as a package agreement because by becoming a member a country will be accepting the 6 broad categories of multilateral treaties with number of side agreements meant to implement them. Of course a limited number of non mandatory agreements exist on the package.

rules but also as a forum of settlement of disputes that may arise from international trade relations. The quasi judicial body uses a nearly similar litigator approach as national courts, and it is the justice forum for global trade. Settlement of disputes involves mechanisms by which complainant parties can consult and reach at an agreement or may involve a decision in favor or against of a party.⁷

The principles of trading under this organization have also been explained as:-⁸

- a. Trade without discrimination-** This principle is expressed by the pillar rules of WTO. According to the principles of the *Most Favored Nation* and *National Treatment* all trading partners are treated equally and discrimination is not made between treating foreigners and local enterprises. Trade without discrimination is thus the characteristic feature of the trading system.⁹ The conception of Trade liberalization is presumed to be achieved when all trading partners are provided with equal grounds to trade.
- b. Free trade: - Gradually, through negotiations-** Global trade requires market access, and on the other hand the opening of markets requires the adjustment of each member's market which in some sense involves political factors. One of the most common arguments against free trade sounds political as it argues that the opening of the market to all will entail the surrender or loss of sovereignty in the aspect of economy.¹⁰ This is why the move towards free trade is based on the principle of 'progressive liberalization', changes which are gradual and based on negotiations.
- c. Predictability: through binding and transparency-** What is expected of a WTO member in the trading world is stipulated ahead of becoming a member. The tariff

⁷ A hand book on the WTO Dispute Settlement System, WTO, A WTO Secretarial Publication, Cambridge University Press, (2004).

⁸ Supra Note 1

⁹ The Most Favored Nation and National Treatment Principles are coined in similar tone on all three major WTO rules, the General Agreement on Tariff and Trade (GATT, Article 1&3) General Agreements on Trade in Service (GATS, Article 2&17) Agreements on Trade Related Aspects of Intellectual Property (TRIPS, Article 4&3).

¹⁰ Sovereignty and WTO, Stephen .C.Preston. Available at <http://www.math.sunysb.edu>(accessed onsep 6,2009)

cuts are set in a binding tariff concession schedule so that it can be possible for any member to easily predict the pros and cons of trading with a country. All changes in the process of trading are availed to members to secure predictability through transparent reporting mechanisms. It can be safely concluded that surprises in the WTO trading system are minimal.

d. Promoting fair competition: - Although the WTO is not a free trade institution per se, it works towards a system of rules dedicated to an open, fair and undistorted competition. The rules set in this regard offer remedies against any measures or actions made towards trade distortion in direct violation of a rule or in any other way eligible for remedy.¹¹

e. Encourage development and economic reform: By exploiting the benefits of comparative trade advantage, countries anticipate to register an economic growth. As can be seen from the preamble of one of the major WTO rules the GATT, the objectives of global trade include raising living standards, full employment assurance, large and steadily growth in income are some reasons to pursue trade in the WTO frame work.¹² The achievement of these objectives is presumed to have the effect of facilitating a nation's economic development which is considered to be beneficial to all participating parties. Among the ten major benefits that are said to be obtained from WTO accession, three are directly related with economic reform, i.e. cutting the costs of living, raising incomes and stimulating economic growth.¹³

1.2 STANDARDS IN GENERAL

The focus of this research is on 'product standards'. The theme of the study thus requires a brief discussion on the basics of standards. To this end, discussion on the term standards, kinds or types of standards, the need or necessity of having standards as well

¹¹ Article 25 of GATT and Art 8(3) of the Dispute Settlement Understanding make both cases of violation and non-violation valid grounds of complain to the WTO Panel.

¹² Preamble to the General Agreement on Trade and Tariff (GATT)

¹³ Supra Note 1

as major institutions involved in the process of setting standards with their working procedures in brief becomes essential.

1.2.1 Definition of the Term ‘Standards’

A search for the meaning of the word standard results in a broad range of explanations which refer to various issues. But taking only those which have a link with the subject matter we are looking at, standard may be defined as follows:

“Standard is something established by authorities, custom or general consent as a model or criterion” or “... Something set up and established by authority as a rule for the measure of quantity, weight, extent, and value/quality.”¹⁴

The definition considers the purpose of standard and bodies responsible to set standards. Standard is essential to measure a quality (value) of things. For instance, it is a criteria set to know the value of a certain thing. The definition also lists bodies such as standard setting authority and seemingly refers to national governments and customs authorities. This leans towards a defacto accepted practice without force of obligation while general consent refers to bilaterally or multilaterally recognized standards via treaty and the like.

Standard may also be defined as “a limit or rule approved and monitored for compliance by an authority, agency, professional or recognized body as a minimum acceptable benchmark.”¹⁵ This definition gives importance to factors such as involvement of professionals in the process of setting standards and the fact that what standards do in most scenarios is to set the minimum benchmark. Any product/service which happens to be not in line with this benchmark will be treated unfit to circulate in the market.

The Australian government’s environmental body report has defined standard as a basis for comparison and a reference point against which other things can be evaluated.¹⁶ In this aspect a discussion of standard involve the comparison of products with similar end use and the act of grading one better than the other is based on varying scale of comparison. The United Nation Conference on Trade and Development (UNCTD) world trade report dealing specifically with standard and Trade states Standard as a required or

¹⁴ <http://www.merriam-webster.com/dictionary/standards> (accessed on Sep 6, 2009).

¹⁵ <http://www.businessdictionary.com/definition/standards.html> (accessed on Sep 6, 2009).

¹⁶ <http://www.Environment.gov.au>

agreed level of quality or attainment and something used as a measure, norm or model in a comparative evaluation. The document elaborating on the definition states:

“The requirement that chocolate does not contain more than 5 Percent vegetable fat (instead of cacao butter) in order to warrant the name chocolate, could probably fall under both definitions of a standard. The requirement for a traffic light to use the three colors red, yellow and green would fall under the second definition....”¹⁷

The meaning rendered in the International guide of the world’s largest global standard setting body, International organization for standards (ISO) reads as follows:

“Standard is a document established by consents and approved by a recognized body that provides for common and repeated use, rules, guidelines or characteristics for activities or their result, aimed at the achievement of the optimum degree of order in a given context.”

In light of the above definitions, product standards specify the character of a product. This can involve regulations affecting the design or safety of a product,¹⁸ or could also mean the specification of what a certain product should have either at times of manufacturing or what a product need to serve after it reaches consumers.

1.2.2 Types of Standards

In an Article U.S standard- Today and tomorrow, it was stated that there are more than 95,000 standards in the United States of America.¹⁹ Literatures show different ways of classifying standards although some commonalities are observed. For instance, the aforementioned source classifies standards into eight, product standards being one. Others include basic standards,/design standards,/process standards and the like.²⁰

Moreover, standards may be classified as Defacto, Dejure and Regulatory standards.²¹ A Defacto standard refers to a standard which lacks the status of being

¹⁷ TRADE, STANDARDS AND THE WTO, UNCTD, World trade Report, (2005) pp30,31

¹⁸ Product Standard defined, The Washington Council on International trade, accessed from <http://www.wcit.org> (accessed on Sep 6, 2009).

¹⁹ U.S.A Standards-Today and Tomorrow, <http://www.standardslearn.org> (accessed on Sep 20,2009).

²⁰ Id. Please note that the classification employed here is also followed by many literatures (see also, <http://www.coilws.com>)

²¹ Types of standards, <http://www.standardsgateway.org> (accessed on Sep 1,2009)

formal or legal, but nevertheless has established some kind of acceptance in the market. On the contrary, a *de jure* standard is established either by national authorities or internationally recognized standard agencies and subsequently acquires the force of a law. Regulatory standards fall under this category but one designed as part of regulatory process than a full-fledged standardization. This sort of standard for instance may be developed out of necessity in a particular time and vanish afterwards.

At the time of setting standards, the interest of the target population is expected to be addressed. Distinctions as to standards exist in these regard. If the interest of all actors in an economy are considered thoroughly (effect on company profit with consumer well being) the standard is deemed public. When standards consider only the profits of a firm they become private standards.²²

The Private Public dichotomy can further be classified into mandatory and voluntary standards.²³ The main difference being, in the first case a product need to fulfill the standard in order to circulate in the market while in the later case products that do not fulfill the stipulated standards are not prohibited from market access. In a similar line of discussion the issues of ‘minimum standards’ and ‘labeling’ is also mentioned. Minimum standards are the specifications laid down that products need to fulfill to be safe for marketing. As consumers cannot easily differentiate products which fulfill standards from those which do not, the system of ‘labeling’ can be employed for purpose of informing product users.²⁴

1.2.3 The Need for Standards

Trade experts do not question the need for product standards. We can imagine what the world would look in the absence of standards that ought to be observed in the production of goods and services. Apparently, standards of such goods and services affect each of us

²² Supra Note 17, pp32&33 Private Standards may take into account the consumer interest. yet this happen in cases where the firms profit is not compromised by the taking of such consideration. This article also mentions the existence of Non-Governmental organizations setting product standards and treats them in the private sector.

²³ <http://www.Jurisint.org/pub/06/en/doc/cos.pdf,manadatoryandvolutarystandards>. (accessed at Sep 1,2009).

²⁴ Id, pp 83 ff

one way or the other.²⁵ The necessity of standards surpasses the traditional function narrated everywhere, i.e., confidence building on the safety/health/security/quality and flexibility of a product.

“Standardization brings important benefit to business including solid foundation up on which to develop new technologies and an opportunity to share and enhance existing practice. It also plays a pivotal role in assisting governments, Administration, Registers, the legal profession as legislation/Regulation and policy initiatives are all supported by standardization”.²⁶

It is also stated that standards serve the following three basic purposes:²⁷

- (a) **Compatibility:** - Certain products will have no or little value if consumed isolated. The existence of complementary products necessitates compatibility. Standardization can achieve such by solving the problem of coordination.
- (b) **Information asymmetry:** - “Information asymmetry is a situation that occurs when producers are with information of product while purchasers are not.”²⁸ Many of the producer liability rules come to action after the consumer reaches the point of no return. As such standardization plays a huge role by eliminating the information gap. The under-supply of “quality” output will reduce if standards are in place. The ascertainment of quality can be made either at the time of purchase or in the process of using the good. Real problem appears in circumstances where quality check is rarely learned even after consuming the product. The role of standards in these aspects is of paramount importance to the consumer.
- (c) **Consumption externality:** - Information asymmetry was spelled in the context of product safety while being used by the consumer. The focus is protection of the interest of product users. But market entry of products and afterward consumption affect others too. Environment externality is a form of market failure that arises because the use of environmental resources is not properly

²⁵ Why we need standards, <http://www.etsi.org> (accessed at Sep 1, 2009).

²⁶ Ibid

²⁷ Supra Note 17, pp 35-51

²⁸ For a detail analysis of Information asymmetry relating to standards please refer.

priced. The effect of trading of a product has an international aspect. Concerns about the future of the planet emanate from the usage of products and product processes. Such concerns necessitate product standards which will mull over such consumption externalities. Standardization can save the planet.²⁹

1.2.4 Standard Setting Parties

The need for standards in the market raises the question as to who are the parties involved in the standard setting. The confidence of participants in a trade circle will be enhanced if the standardizing agency is trustworthy. The organ is expected to have experts and infrastructure that can enable it to carry out its task effectively and efficiently. The issue of standard harmonization is also important in order to avoid multiplicity of standards and the complexities that can ensue as a result of inconsistent standardization.

This study does not deal with national standardizing authorities, and current trends show that most nations are adhering to international and regional standardizing body's rules and specifications.³⁰ The case of Europe and Africa can be mentioned with regard to regional standard setting practice. In 1985 Europe, a movement of new approach for technical harmonization and standardization took place. The movement establishes four main principals; legislative harmonization, stipulation of standards, application and benefits to product process in conformation with standards.³¹ The task of standardization rests with the European committee for standardization (CEN) and the European committee for electronic standardization (ENELEC)³². Until the year 2003 a total of 17,103 standards have been set and are in process by CEN and some 4,377 by CENELE. It shall be mentioned that the regional integration has played an important role in the development of such regional standards.³³

²⁹ The lead word of the current world standards date celebrated on 14th Oct 2009 was 'Tackling Climate change through standards'

³⁰ Of course in the coming chapters we will see the role of national standard bodies in relation to another topic we are to address.

³¹ <http://www.europa.eu.int/comm/enterprise/newapproach/legislation/guide/legislation.htm/>. A detail as to the four stages Principle can be accessed from this web.

³² <http://www.wssn.net/wssn/print>.

³³ The observation in this regard is that if regional integration is secured a head of trade talks, the later will be a matter of simple negotiation. As the Eu have integrated, the establishment of

With an objective of promoting regional standardization in Africa thereby promoting development, consumer protection and safety, the African Regional organization for standardization (ARSO) was established in 1977.³⁴ The working progress is slow, as expressed by Ethiopian minister of Trade and Industry, MR. Girma Birru in an opening Remark, of the 12th ARSO General Assembly that much cannot be said on the accomplishment of the regional body than that it exists.³⁵

The International organization for standardization (ISO) is the world's largest developer of standards extending to all fields except electrical and electronic engineering.³⁶ A simple look at Ethiopian television advertisement indicates the place ISO has with regard to standards to be observed by Ethiopian producers and exporters. The role of ISO as an international body is steadily increasing as many of its standards are endorsed by many national standard authorities, including Ethiopia.³⁷ Nearly 15,000 standards were published as of the end of year 2004.³⁸ The most common scheme employed by ISO in establishing standards is the establishment of technical committees involving all parties interested in the area where standard is needed. As nation states will be represented by their local standard authorities, the representative nature of the entity is far from doubt. The committee will pass through stages of identification of need for standard, development of standard, adoption and publication and promotion.³⁹

Some pertinent international bodies other than the ISO, include the Codex Alimentarius Commission (codex) for food safety,⁴⁰ The former 'OIE' office

common standards come as a matter of necessity than choice, hence fosters the harmonization of regional integration of standards.

³⁴ Supra Note 17, pp82.

³⁵ Other prominent regional institutions include The ASEAN Consultative Committee on Standards and quality (ACCSQ) and the pan American Standards Commission (COPANT) Working in the region of South East Asia and Latin America, respectively.

³⁶ A partner organization by the name International Electro Technical Commission (IEC) undertakes that task.

³⁷ Ethiopia is a member of ISO, through the Ethiopian Quality and Standard authority.
<http://www.qsae.ort>

³⁸ <http://www.iso.org>

³⁹ Id

⁴⁰ <http://www.codexalimentarius.net>. Codex is a joint organ of the world agricultural & food organization and the world health organization (accessed on Sep 8, 2009).

international des Epizooties, the now World Organization for Animal Health ⁴¹ Related to animal health and zoonosis and the FAO International Plant Protection Convention (IPPC) for plant health. ⁴²

With the growth of concern about the future of the planet, different non-governmental organs have come to involve themselves in the act of standardization. This makes the regional and International movement towards standardization effective if a coordinated approach is employed in the eradication of duplication of standards. The ISEAL alliance can be mentioned in these regard. ⁴³ It is an organ with members whose primary interest is “environmental and social issues that may be adversely affected in the run for trade benefit.” ⁴⁴

The act of setting product standards is mainly carried out by national and international organs. Although most national standards comply with the ISO specification by an act of adoption, it is also plausible to expect unique standard setting approaches employed by some countries. Regional efforts are also feasible. In certain circumstances, NGO’s are found to be involved in the act of setting standards.

1.3 EFFECTS OF STANDARDS ON TRADE

A detailed analysis of effect of standard on trade is a matter of economics and statistical study than that of law. ⁴⁵ Yet, legal research or an interdisciplinary research can assess points of common understanding to help appreciate the issue in the context of law or other spheres of study. Authors like Peter Swann, Paul Tempel and Mark shurmer for instance have explained the impact of standardization on trade on a tone easy to

⁴¹[http:// www.oie.int](http://www.oie.int)(accessed on sep8,2009)

⁴² <http://www.ippc.int>(accessed on sep 8,2009)

⁴³ <http://www.isealliance.org> (accessed on Sep 6, 2009)

⁴⁴ A detail account on members and their specific working condition can be reached at www.fairtrade.net and www.eftafairtrade.org

⁴⁵ Most articles on the topic ‘effect of standard on trade’ prefer to elaborate this point by a detail statically analysis. An instance of such a case can be referred from show case articles: Anette Boom, As symmetric International minimum Quality standards and vertical differentiation, Journal of Eco, vol 43, No.1 (1995) Michael Ostrovsky & Michael Schwart, Adoption of standards under certainty, The Rand Journal of ECO, Vol. 36.No 4 (2005) Michael Boulanger, etal, Evolution of stastiscal standard via Life cycle of products & Service, Int statistical review, vol 67 No 2 (Aug 1999).

understand.⁴⁶ Although both defacto and institutional standards affect trade, they focused on the *latter* and stated that standards can affect trade in three perspectives⁴⁷

- a. *Standards and competitive advantage*: The long run movement in world trade market share is best described in firm's ability to compete in terms of product quality delivery and after sale service.⁴⁸ The functioning of a domestic firm depends on the national system of product and service standards. So National/ international standards will increase perception of quality and in effect improve trade performance.
- b. *Standards, Trade deterrence and Competitive Disadvantages*: - If national or international standards look idiosyncratic to buyers, export markets will diminish and can act as import barriers. The burden of standards will negatively impair firms from the field of competition hence resulting in competitive disadvantage.
- c. *Standards and Intra-Industry trade*: Common standards promote trade and lower barriers by creating internationally recognized sizes, weights and the like. Moreover, specialization in trade standardization is likely to increase intra-industry trade.

Peter Swann *et al* concluded that their analysis of the impact of standard in trade is shaped in a manner which advocates the fact that standards both create a positive and negative effect on total trade flow. In spite of all the limitation in the context of International trade, a positive sign can be registered. in trade development

In a paper presented for the 1st Annual conference on International trade to the Australian, Asia-pacific Economic cooperation (APEC), Drew Andison has exhaustively discussed the effects of product standards and their impact on international trade.⁴⁹

⁴⁶ Peter Swann,etal, Standards and Trade Performance: The UK experience: The Economic Journal, Vol 106 No. 438 (1996)

⁴⁷ Ibid, pp. 1298

⁴⁸ Id.

⁴⁹ Drew Andison, Product Standards and their impact on International trade: Presented to the Australian APEC study Center, 1st Annual Conference on International trade, Education and Research, (Dec 5&6, 1996).

Recognizing the vital role standards can play in facilitating transaction and enhancing trade, Andison puts two broad concerns:

“Firstly, standards especially regulatory standards are sometimes more prescriptive or restrictive than they need to be to achieve the health and safety outcome desired by the community. This limits the types and design of products that can be marketed and reduces incentives for innovation. Secondly, differing requirements between countries can result in substantial additional cost for producers and mean that foreign firms are in effect shut out of market”⁵⁰

The paper goes on to elaborate the remedies to curb such externalities. The paper points out both the positive and negative impact of standards. The two problems raised by Andison relate with a product shrink in the market as a consequence of tight regulators which can bring about a decrease in research and development and the burden of meeting costs for fulfilling standards, as mentioned earlier in the competitive disadvantage discussion.⁵¹

Peter Swann *et al* identified compatibility as one of the reasons that necessitate a discussion on standards.⁵² Neil Gandal has also studied compatibility in relation with its effect on trade.⁵³ In a setting of differentiated products, standards will increase product sale as a result of an increase in the number of consumers using compatible products (the net work effect). This will allow entry of new firms into the market as a response to the increased market size. This will lead to a general increase in price competition.

Analysis of European product standard in connection with trade has shown a positive result.⁵⁴ The product standards which emphasize on the textile, clothing and foot wear sector have proved that international standards are associated with increased partner

⁵⁰ Ibid

⁵¹ Supra Note 47

⁵² Supra Note 27

⁵³ Neil Gandal, Quantifying the Trade Impact of Compatibility Standards and Barriers: An Industrial Organization perspective, Tel Aviv University, University of California (Sep 2000).

⁵⁴ Ben Shepherd, Product Standards, Harmonization and Trade: Evidence from the Extensive Margin, Princeton University, (Sep 2006).

country export variety. Standards also have the potential to exert an important impact on export variety growth in the developing world.⁵⁵

Baltzer in a recent publication has shown the impact of product standard on international trade.⁵⁶ His approach relies on the premise that impact of standard on trade depends on quality characteristics of the product in question relative to close substitute. He goes to elaborate:

“If the substitute is a higher quality alternative, domestic firms would lobby for a more restrictive product standard than would domestic consumers and foreign firms thus generating the potential for international trade dispute. On the other hand, if the foreigner firm would prefer the higher standard. In the latter case, international trade dispute is more unlikely.”⁵⁷

Different literature also points out that product standards set at the national level result in tension of the international trading system.⁵⁸ This concern can economically be explained as was done by Keeneth Baltzer in the aforementioned analysis.

The effect of standards on trade will be a matter of further discussion in relation to the special case of countries like Ethiopia. But it would be proper to once again summarize these findings.. This has been satisfactorily presented on the world trade report by the UNCTD.⁵⁹ According to the report, “the effects of standards on the direction and size of trade flow is complex and needs a case by case analysis.”⁶⁰ Yet an effort has been made to shade light on the relation of trade and standards. The approach employed is one of reviewing different literature in the area. The report is concerned with pertinent issues, namely.

⁵⁵ Ibid, a full text of the work can be accessed a

<http://www.gem.sciences-po.fr/content/publications/pdf/shepherd-standards-and-extensive-margin-24sep08.pdf>

⁵⁶ Keeneth Baltzer, Product Standards and International Trade, Institute of Foods and Resource Economics, University of Copenhagen (Aug, 2009). The author can be reached at Kb @ foi.dk

⁵⁷ Ibid, pp 14

⁵⁸ Strum, Daniel, Product Standards, Trade Disputes and Protectionism, European Research workshop in international trade-ERWIT, Munich: Germany (2002).

⁵⁹ Supra Note 17, p 57-77. Note that In addition to the presentation of impact of standards on the flow of international trade, relevant literatures to visit are also mentioned

⁶⁰ Id, pp 72

- a. How much do standards raise the cost/prices of tradable goods? and
- b. What does empirical literature say about the effects of standards on trade, in another words are standards trade creating or trade hampering?

Through the methodology of counting the number of standards or counting the number of tariff lines and values of imports covered by product standards, different literature has reached a conclusion that there is a high potential for an adverse effect on trade as a result of existence of standards.⁶¹ According to the report, the biggest complaint against product standards in international trade emanated from the cost faced by exporters in complying with the requirements of the importing country.

Different studies have reached at different conclusions. While some suggest that the meeting of standards did not significantly increase costs, others go to the extent of stating that ‘Standards *are impediments to exports.....*’⁶² A common perception yet exists on the face of such disparities because “[o]n average firms perceive that the cost of complying with a foreign regulation is higher than that of complying with domestic regulation”.⁶³

⁶¹ Data’s Presented to the UNCTAD, Trade Analysis and Information system (UNCTAD, TRAINS), Annula notifications made to the WTO secretariat and the perinform data base which is a consortium of standard setting institutes have been consulted to support the claim by the reporting team.

⁶² Supra Note 17, pp 63

⁶³ Id

CHAPTER TWO

WTO RULES ON PRODUCT STANDARDS

In the first chapter a link between trade and standard was established. The focus of this chapter is to examine the specific WTO rules on product standards. A discussion of standards on the multilateral trade regime (WTO) is a reference to the study of major trade agreements relating to standards i.e. GATT 1994, the Agreement on the Application of sanitary and phytosanitary measures (SPS) and the Agreement on Technical Barriers to Trade (TBT). A detailed look as to the content of these rules will be made. The chapter will also look into some WTO case laws that relate them with product standards.

2.1. PRODUCT STANDARDS AND WTO

Standards affect trade. The question whether the relation between the two is in the spirit of positive or negative is a matter of continual debate.⁶⁴ The issue becomes more debatable in discussions of multilateral trade regime that involve the issue of trade liberalization. The traditional functions of standards were explained as the protection of consumers, animals and plant life as well as the environment from being adversely affected by trade externalities. A nation which involves itself in opening its borders to the goods of others will have utmost concern in protecting its manifold interests. This concern is expressed as an inherent responsibility of each government.⁶⁵

The aforementioned factor was the driving force of stipulating exceptions to the ‘undistorted and free trade’ notion of GATT.⁶⁶ According to this provision the following requirements must be in the exercise of assuring standards:

- a. The measure shall not be applied “in a manner which constitutes a means of arbitrary or unjustifiable discrimination between nations of same condition” and
- b. The measure shall not be “a disguised restriction on International trade.”

⁶⁴ See Chapter 1, pp.16-20 where in scholars reach at different conclusion while establishing relation between standards and trade.

⁶⁵ A class lecture on SPS and TBT, Dr Fikremarkos Merso, Dean Faculty of law (2009)

⁶⁶ Art XX of GATT entitled General exception provides a number of grounds that can justify an act of a member even being contrary to GATT.

Provided that these requirements are fulfilled, members can adopt and enforce measures which are necessary to protect human, animal or plant life or health.⁶⁷ This shows the fact that the major WTO legal instrument, GATT, indirectly authorizes the setting of standards (product standards) in the international trade regime if the motive behind the measure is legitimate, i.e. if it fulfills Art XX of GATT. As Article XX is general and does not explicitly discuss the scope of the measures or their type, member nations may involve themselves in acts that can adversely affect the multilateral trade regime. The elaborate rules i.e. SPS and TBT thus regulate the details with regard to standards.

2.1.1. Agreement on the application of sanitary and phytosanitary measure (SPS)

The sanitary and phytosanitary (SPS) agreement forms part of the WTO agreement and aims at laying a firm foundation in the implementation of food safety standards in agricultural trade towards the objective of consumer protection.⁶⁸ The measures countries take to make sure food is safe for consumers and prevents the spread of pests. Disease among animals and plants take different forms and standards require products to come from an area which is free from disease, through inspection of product, specific treatment or processing of products permitting use of only certain additive in food and the like.⁶⁹

On the other hand, SPS also builds on GATT rules to check whether measures related with standards are misused for the purpose of trade protection in the guise of human, plant and animal health within a country's territory. SPS stipulates against such pretext of ensuring rights that become barriers to international trade.⁷⁰ The preamble to SPS be summarized as follows:⁷¹

- (a) Member nations have the right to adopt and enforce protecting measures;

⁶⁷ *ibid*, Art XX(b)

⁶⁸ Food Safety issues, Trade and WTO rules: A Developing Country perspective, Prema-Chandra Atuakorala (2003), Blackwell publishing limited, pp 1409

⁶⁹ Understanding the GATT agreement on the application of SPS, G.H Stanton, paper to the GATT Contracting parties and selected public audience, The GATT secretarial

⁷⁰ *id*

⁷¹ Agreement on the Application of Sanitaria and Phyto sanitary measure, The preamble (1994)

- (b) The improvement of human and animal health as well as plant sanitary is anticipated;
- (c) A multilateral framework of rules and disciplines which guide the working of such measures ought to assure the avoidance of arbitrary/unjustifiable application or a disguised restriction of global trade;
- (d) International standards, guidelines and recommendations will contribute a great deal to the process and facilitate harmonization of measures;
- (e) Developing nations need assistance in their endeavor to fulfill such requirements; and
- (f) Elaborating Art xx (b) of GATT 1994 is necessary.

Pursuant to Article 1, the agreement applies to sanitary and phytosanitary measures which may directly or indirectly affect international trade.⁷² The provision states that the act of developing and applying any measure must follow the agreement. The SPS agreement puts several obligations on member states. The provision stating the basic rights and obligation of members provides:

“Members have the right to take sanitary and phytosanitary measure necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of this agreement”⁷³

In the wording of Gretchen H. Stanton, a counselor in the GATT agriculture and commodities division, this is a rule which expressly recognizes the right of governments.

⁷² Annex A of the SPS agreement defines a sanitary or phytosanitary measure as any measure applied to protect animal or plant life or health within the territory of the member from risks arising from the entry, establishment or spread of pests, diseases, disease carrying organisms or disease causing organisms;

- a) to protect human or animal life or health within the territory of the member from risks arising from additives, contaminants, toxins or disease causing organisms in foods, beverages or feed stuffs,
- b) to protect human life or health within the territory of the member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests or
- c) to prevent or limit other damage within the territory of the member from the entry establishment or spread of pests

⁷³ Supra note 71, Art 2(1)

But the recognition is conditional in that a government cannot go against the SPS agreement in the whole context.⁷⁴ This is addressed as follows:

“... There are several basic obligations of members under the SPS Agreement (Art2.) The first is to ensure that their SPS measures are not applied in a manner which could constitute a means of arbitrary or unjustifiable discrimination among members where the same condition prevails or a disguised restriction on international trade. second, measures are to be applied only to the extent necessary to protect human, animal or plant life or health are to be based on scientific principles and are not to be maintained without sufficient scientific evidence”⁷⁵.

Emphasis in this respect is made to apply science and scientific evidence before taking SPS measures. This presumably lessens a nation’s capacity to involve in an arbitrary act of applying SPS measures. Even in the availability of evidence, the measure taken shall prove to be proportional to the damage it purports to reduce/prevent. One aspect of addressing such complex issues is coming up with common set of standards. *Harmonization* of standards entails numerous benefits in this aspect.⁷⁶

WTO collaborates with various international standard setting bodies to bring about the harmonization of measures by member nations. Article 3 refers to some specific institutes, namely the Codex Alimentarius Commission, the International office of Epizootics, and other organizations operating within the framework of the International plant protection convention.⁷⁷ The agreement enumerates standard-setting bodies rather than exhaustively listing standards thereby allowing members to adopt measures created

⁷⁴ Questions and answers on sps, <http://www.wto.org/eng/tratop-e/sps-e/spsund-e.htm>(accessed at sep 23/2009)

⁷⁵ Trade, standard and the WTO, world Trade Report, UNCTD (2005) pp.132

⁷⁶ International trade and health protection, a critical assessment of the WTO’S SPS agreement, Tracy Epps, (2008.)PP 121-126. Additionally if one recalls the discussion in the first chapter on regional and international effort of setting standards, the benefits that can accrue from standard harmonization can be seen.

⁷⁷ Codex Alimentarius Commission (CODEX) Scope includes specifications, sampling and analysis of food products, food additives; food hygienic pesticide residues; contaminants; labeling, essential composition; nutritional aspects; veterinary drug residues; food import /export inspection and certification systems. The International office of Epizootics (OIE) scope includes standards for international trade in animals and animal products, diagnostic techniques, reference resents, vaccines and procedures for international reporting of transmissible animal disease (See Also, SPS Annex (3))

by other international bodies. It is believed but the specific naming of certain organs is an indication of preferred institutions in this regard.

This provision makes the participation of members in such organizations mandatory depending on economic resources. To accommodate some exceptions, the SPS Agreement recognizes the right of members in applying a measure so long as scientific justification is available and if issues of publication and transparency are fulfilled. The word ‘where they exist’ in Article 3(1) indicates that under certain scenarios international standards, guidelines or recommendations may not be present forcing members to come up with their own set of measures.⁷⁸ Harmonization is important, *inter alia*, because the works of most international standard setting organs works have inputs from leading scientists and experts in the field which play a significant role in the ‘must be scientific’ section of the SPS agreement requirement.⁷⁹ The harmonization effort is also reflected in Article 4 of the agreement where the principle of equivalence is enshrined. According to this principle, members are mandated to accept SPS measures of other states on the condition that the exporting country should indicate to the importing country that its measures achieve the latter country’s appropriate level of protection. This avoids duplication of standard setting and possible trade hampering effects.⁸⁰

The agreement makes it a condition to take risk assessments before application of any measure.⁸¹ Risk assessment is also defined as:

“The evaluation of the likelihood of entry, establishment or spread of a pest or disease within the territory of an importing member according to the sanitary or phytosanitary measures which might be applied, and of the associated potential biological and economic consequences or the evaluation of the potential for adverse effects on human or animal health arising from the presence of additives, contaminants, toxins or disease-causing organism in food, beverage or feedstuffs.”⁸²

⁷⁸ Supranote74

⁷⁹ Supra Notes 69, questions and answers, Qn. No 5

⁸⁰ Supra note 76. Note that ‘Harmonization’ under SPS is defined in Annex A as the establishment, recognition and application of common sanitary and phytosanitary measures

⁸¹ Supra note71, Art5

⁸² Supra note71, Annex A (4)

Such evaluation is to be carried out based on the workings of international bodies explained earlier. The assessment is presumed to be a guiding element in the appropriate level of protective measure to be taken. The assessment must follow scientific approach. To this end, Art 5 requires the following to be taken into account in deciding the proper SPS measures:

- (a) Relevant economic and technical factors;
- (b) The objective of minimal negative trade effect; and
- (c) Participation in different SPS committees and the like.

The act of requiring risk assessment and sufficient scientific evidence are essential from the perspective of maintaining a balance in the agreement between the shared yet competing interests of promoting free international trade and protection of life and health of humans, animals and plants.⁸³ And the case of standards in the WTO forum is one whereby the role of science is clearly manifested.⁸⁴ In recognition of cases with insufficient scientific evidence, but involving a clear case of risk, the SPS agreement has authorized the adoption of emergency/precautionary measures on temporary basis, with the corresponding obligation of a member responsible for the action to carry further investigation to get in line with the normal principle.⁸⁵

All the measures under the SPS agreement are published and made available to members that the multilateral trade regime. Article 7 of the SPS states such obligations. One of the methodologies that can verify whether an act is an honest practice which is meant to protect consumers or a disguised trend to hamper international trade is to make all measures of members subject to a close scrutiny.⁸⁶

The agreement has provisions that can possibly enhance the role of developing country members in the proper application of the agreement. , Article 9 states the duty of

⁸³WTO- Technical barriers and SPS measures ,Max Planks Commentaries on World Trade Law, Rudiger Wolfrum etal,(ed) vol3,pp 435-467(2007)

⁸⁴ The role of science in international trade law, Elsevier ,pp 69ff (2006)

⁸⁵ Supra note 71, Art 5(7)

⁸⁶ WTO /SPS transparency ,food safety from the farm to the fork, <http://ec.europa.eu> (accessed at sep23/2009)

developed countries in providing technical assistance in different areas deemed necessary in relation to standard development.⁸⁷

2.1.2. The Agreement on Technical Barriers to Trade (TBT)

The TBT agreement covers issues of technical regulations, standards and conformity assessment. Annex 1 of the Agreement provides a definition for these three categories of concern.⁸⁸ The main difference among them is the fact that technical regulation is mandatory while standards are voluntary. Conformity assessment is the mechanism of checking whether required stipulation in the regulation and standards are met. It can be said that the term technical regulation refers to mandatory standards while the term standards in the TBT stands for voluntary standards.⁸⁹

Elaborating the historic route to TBT, Jackson, explains how certain GATT parties were using Technical regulations and standards as protectionist tools, thereby increasing the need for establishing a stronger regime governing the issue.⁹⁰ Visible in the introductory statement of the agreement is also this concern and the desire to curb such acts.

⁸⁷ The agreement also includes a vast coverage in relation to administration of the agreement and how disputes can be settled if raised under SPS (Refer to Art 11 and 12 of SPS) refer The Law and Policy Of World Trade Organization, texts case and materials, Peter Van Den Bosch, pp.694-696(2005) for a general approach of the trading system in assisting developing countries.

⁸⁸ Technical regulation is a document which lays down product characteristics or their related process and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbol, packing, marking or labeling requirements as they apply to a product, process or production method.

Standard is a document approved by a recognized body that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbol, packing, marking or labeling requirements as they apply to a product, process or production method.

Conformity assessment procedure is any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled. (Annex 1, Terms and their definitions for the purpose of this agreement, 1-3) TBT.

⁸⁹ Refer the first chapter for the discussion concerning mandatory and voluntary standards

⁹⁰ John H-Jackson, The World Trading system: Law & Policy of international economic relations, (1997), pp.222.

‘Desiring however to ensure that technical regulations and standards, including of conformity with technical regulations and standards do not create unnecessary obstacles to international trade’⁹¹

The act of employing TBT shall aim at attaining legitimate objectives as that of protection of human, animal or plant life or health, prevention of deceptive practice, national security and the environment.⁹² Although TBT and SPS seem to be similar in this regard, they have their own distinct scope and application.⁹³ According to Article 1, Paragraph 3 of TBT, all products are subject-matters of the agreement thereby broadening the scope of its application which was limited to food products under SPS. Yet, many points raised under SPS are also embodied under TBT, which, inter alia, include the following:

- (a) Non-discriminatory approach of employing measures;⁹⁴
- (b) Use of scientific information and science in applying measures;⁹⁵
- (c) The need of using international standards and technical regulations where available with the possible of employing other measures too so long as they can be explained and justified. Also the effort towards harmonization with active role of members in the process.;⁹⁶
- (d) The principle of equivalence.⁹⁷

⁹¹ The Agreement in Technical Barriers to Trade (Jan 1, 1995), preamble Note that this objective is also reflected in Article 2, specifically on Art 2.2 of TBT.

⁹² Ibid, Introductory statement

⁹³ A detail analysis of the link that prevails over TBT and SPS is a point of discussion in the latter part of the research

⁹⁴ Both Art 2(3) of SPS & Art 2(1) of TBT read to tone the idea of non discriminatory international trade barriers which were explained in detail in the GATT, as National treatment and Most Favored Nations.

⁹⁵ Art 2(2) of TBT requires a risk assessment with relevant elements of consideration. This considerations listed in illustrative form include available scientific and technical information, related processing technology or intended end-uses of products. Also see Art 5 of SPS in this regard

⁹⁶ See Art 2 (4), 2(5), 2(6) of TBT with Art 3 of SPS.

⁹⁷ Art 2(7), 6(1), 6(3) The principle is not defined in the agreement, but members are encouraged to accept foreign regulations, standards and conformity assessment procedures as equivalent to theirs provided they are assured of same fact.

Another unique aspect of the TBT is the “Code of Good practice”. As stipulated under Article 4.1 of the Agreement, a member shall, while developing standards, comply with the Code of Practice annexed thereof. The Code of Good Practice applies in the preparation, Adoption and Application of standards. Members must ensure that standardizing bodies comply with this code.⁹⁸ The application of Code of Good Practice by all members whether or not they belong to international standard bodies has the object of harmonizing how standards are set and applied.⁹⁹ A look at the detailed substantive provisions of the Code substantiates this assertion. Like most of the WTO rules under TBT, technical assistance and a special/ differential treatment provision is stipulated in favor of developing country members.¹⁰⁰

2.1.3. The Link between SPS and TBT

Although many provisions under SPS and TBT have similar content, provisions found in both expressly state their scope or status of application. Article 1(4) of SPS reads:

‘Nothing in this Agreement shall affect the rights of members under the agreement on Technical Barriers to Trade with respect to measures not within the scope of this agreement.’

Again a provision to similar effect appears in the TBT agreement under Article 1(5)

‘The provisions of this agreement do not apply to sanitary and phytosanitary measures as defined in Annex A of the agreement on the application of sanitary and phytosanitary measures.’

As Deodhar remarked, there exists a lot of confusion regarding the understanding of distinction between SPS and TBT.¹⁰¹ It is to be noted that the scope of TBT is broad in that it is not limited to the food sector. The distinction is stated as follows:

“The SPS agreement refers to the food and agriculture sector alone, while TBT measures refer to all products including food products.”¹⁰²

⁹⁸ Supra note 75, pp 131

⁹⁹ The establishment of a standardized procedure in the development of measures allowed under TBT will entail the harmonization goal and avoid duplication of efforts.

¹⁰⁰ Supra note 88, Art 11 & 12

¹⁰¹ Satish Y.Deodhar, WTO Pacts & Food Quality Issuers, economic & political weekly vol-36 No.30 (Jul-aug 2001), pp.2814

¹⁰² id

Another distinction relates to the fact that SPS applies for the purpose of measures, while TBT concentrates on the kind of measures. In order to classify a certain measure under SPS, one has to see the purpose of the measure, and what falls under TBT is any sort of measure taking the form of Technical regulation, standards and conformity assessment. The mere fact that an issue relates to standards does not bring it under SPS.

The stipulation enshrined under Art 1(4) of SPS is similar with Art 1(5) of TBT and this clearly shows the link that prevails between these two WTO standard related agreements. The first explains that, so long as the measures are not governed by the SPS Agreement, members can resort to TBT. In practice, all matters of standards other than food products and agriculture can benefit from TBT. The latter recognizes the independent application of SPS. Food products and agricultural products come under the SPS although the same products can fall under the generic term of any products of the TBT agreement.¹⁰³

2.2. WTO Case Laws on Product Standards

Lack of an authoritative text in the interpretation of WTO rules has increase the frequency of referring disputes to panels and appellate body decisions.¹⁰⁴ The right of members to bring a violation of GATT/WTO agreements (that result in benefit nullification/impairment) has become a ground for many countries to bring cases before the panel.¹⁰⁵ And the decisions rendered have helped in understanding WTO rules in their full context. Various cases related to SPS and TBT show how the panel and Appellate bodies have given meaning to the most crucial provisions of the agreements.¹⁰⁶ Joost

¹⁰³ A detail exploration on the relationship between SPS and TBT is available at [Developing disharmony? The SPS and TBT agreement and the impact of harmonization on developing countries.](#) G.Mayedas .(2004)

¹⁰⁴ On a comment regarding the 15th birth day of WTO and also the 400 dispute to the panel, Director General of WTO pascal lamy has stated the role of case laws in building a confidence on the whole system which in turn is considered *a clarification of the original treaties* (the writers understanding)

¹⁰⁵ Art XX III of GATT(1994)

¹⁰⁶ A further explanation on the context of SPS can be accessed at WTO website (<http://www.wto.org>), Sanitary and Phytosanitary measures, The WTO Agreements services, Vol 4, Geneva.

Pauwelyer examines the agreement as applied in the first three SPS disputes.¹⁰⁷ In order to grasp the lessons in the case it is proper to have basics of the cases that a summary of the three cases is presented as follows.

2.2.1- Cases on SPS

a) EC-Hormones (WT/DS 26, WT/DS 48)

The European community (EC) adopted a set of council directives that resulted in the prohibition of the importation and marketing of meat and meat products treated with any of the six hormones used for growth purpose. Three of these hormones are naturally produced by animals whereas the others are artificial. In 1996, in their complaint to the dispute settlement body, first the U.S.A then Canada argued that this prohibition violated SPS agreement Art 2, 3 and 5.¹⁰⁸

b) Australia-Salmon (WT/DS 18)

In 1975, Australia introduced a quarantine measure requiring fresh, chilled and frozen salmon products to be heat-treated for certain prescribed durations and at certain temperatures before being imported into Australia. This measure aimed at preventing the spread of fish disease among Australia's Salmon population. As a consequence, imports of Salmon were limited to smoked and canned salmon. In 1994, Canada urged Australia to conduct an import risk assessment of wild pacific salmon import that evisceration of salmon (as opposed to heat-treating) is a widely accepted practice to effectively prevent the spread of diseases and that therefore no other measure should be required. The final versions of the report conducted by Australia recommended the ban be maintained. In 1997, Canada filed a complaint before the DSB.¹⁰⁹

¹⁰⁷ Josst Pauwelyn, The WTO Agreement on Sanitary & PhytoSanitary (SPS) Measures as applied in the first three SPS disputes, EC- Hormones, Australia-salmon and Japan-Varietals, Journal of International economic law (1999), pp 641-664.

¹⁰⁸ Look at See 2.1.3, The Link between SPS and TBT

¹⁰⁹ Supra note 75, pp. 142-143

c) Japan-Varietals (WT/DS)

Japan wanted to avoid the introduction of the codling moth, considered to be a pest, and thereby protect its plants, by banning certain first imports from the United States.¹¹⁰ It has been established that what a measure requires in order to be named ‘SPS’ is the object/purpose of the regulation which shall be protecting human, animal or plant life and health.¹¹¹

Dispute panels and appellate bodies have come to state that the disciplines of SPS agreements apply to a certain measure when:

- (a) The measure affects international trade,
- (b) The measure is enacted after the entry into force of SPS or even before that.¹¹²

SPS measures need sufficient scientific evidence. The Japan varieties case addressed this issue stating sufficient, under Art 2(2) of SPS has a relational concept between the measure taken and the scientific evidence the measure bases up on. So the existence of a rational relation shall be established on a case by case basis.¹¹³

Regarding the issue of ‘risk assessment’ the EC- Hormones case has resulted in the following considerations which are pointed by

- (a) There exists no requirement to make a quantitative evaluation;
- (b) A WTO member may determine its acceptable level of risk at zero;
- (c) The risk evaluated must be an ascertainable risk;
- (d) A risk assessment needs to be specific to each substance; and
- (e) Assessments carried by other member (international organs) hold good when a member wills to adopt the same.¹¹⁴

¹¹⁰ Ibid, pp.140-141

¹¹¹ Supra note 107, pp.644

¹¹² EC-Hormones, Panel Reports, per 8.36 (US panel), Par 8.39 (Canada Panel), Par, 8.24-8.28 (Us Panel), Par 8.27-8.31 (Canada panel) and Appellate body report, par 128-30.

¹¹³ Japan-Varietals, Appellate Body Report, par 73 and 84.

¹¹⁴ Supra note109, pp.646

A distinction was also made between assessment of a food borne and disease/pest risk. While the former only requires evaluation of potential risk, the latter demands evaluation of the likelihood of entry, establishment/spread of disease, associated potential biological and economical consequence thereby making the assessment more result oriented. The Australian Salmon appellate body establishing the distinction has put an additional requirement in pest risk cases.¹¹⁵

The same panel stated that if a measure is not based on the aforementioned risk assessments, there exists a presumption that it is maintained without sufficient scientific evidence.¹¹⁶ The factors that shall be taken into account in cases of risk assessment were limited to science only until the EC-Hormones appellate body came with an interpretation which widens the list under Art 5 of SPS.¹¹⁷ The factors which can be looked at in assessing risk on top of a typical science laboratory may include risks in human societies i.e. society values, consumer concerns and moral preference.¹¹⁸

In the part where the contents of SPS agreement was explained the case of precautionary principle was mentioned.¹¹⁹ The Japan-varietals appellate body stated that the requirements under Art 5(7) of SPS are cumulative and that the country taking the action has the burden of proof to show all those elements being fulfilled.¹²⁰ Once the act of establishing scientific evidence and risk assessment is done, the next step is the determination of acceptable risk level as stipulated under paragraph 5 of Annex A of SPS. WTO panels and appellate bodies have established that the determination of

¹¹⁵ Australia-salmon, Appellate Body Report, par 137-38 panel reports par 8.52 and 8.99

¹¹⁶ Id Appellate body par137-38, panel, 8.52 &8.99.

¹¹⁷ Supra note 112, par.187

¹¹⁸ id

¹¹⁹ Supra note 87

¹²⁰ Supra note 113, par.89 and par 47. the four elements are that the measure

1. is imposed in respect of a situation where 'relevant scientific information is insufficient'
2. is adopted on the basis of available pertinent information
3. and the member taken the action seeks to obtain additional information necessary for a more objective risk assessment and
4. review the measure accordingly with in a reasonable period of time

‘acceptable level of risk’ is the prerogative of members extending to the ‘zero risk’ level.¹²¹

In Australia-salmon and Japan-varietals the Appellate Body has deduced a three element test for an SPS measure suggesting that the existence of an alternative measure with less trade barrier effect will put the earlier measure to be found inconsistent to WTO law. These cumulative requirements which make a measure inconsistent with the SPS agreement is when the alternatives are:

- (a) reasonably available taking technical and economic feasibility into account;
- (b) able of achieving members appropriate level of SPS protection;
- (c) Significantly less restrictive to trade than the SPS measure contested.¹²²

The core principles of GATT, i.e. non-discrimination in the forms of the most favored nation and National Treatment is manifested in the SPS agreement. Moreover, discrimination between situations and products is prohibited. Case law tends to establish a broad definition of a similar situation by stating the existence of some common elements/comparable elements which are able to render the case the notion of similarity.¹²³ The Appellate bodies in EC-Hormones and Australia-Salmon have shown different views on details. The latter hold the view that mere existence of arbitrary and unjustifiable distinctions in similar situations indicates that there is disguised restriction on International trade. The EC-Hormones Appellate criticizing the panels report states to the opposite:

“We are unable to share the inference that the panel apparently draws that the import ban on treated meat and the community-wide prohibition of the use of the hormones here in dispute for growth promotion purposes in the beef sector were not really designed to protect its population from the risk of cancer, but rather to keep out US and Canadian hormone-treated beef and thereby to protect the domestic beef producers in the European communities.”¹²⁴

¹²¹ Supra note 112, panel Report, Par 8.160 ff, (US panel) par 8.163ff (Canada) par. 199, 125.

¹²² Supra note 115, Appellate body par. 194 and supra note 113, appellate par. 123

¹²³ Supra note 112, Appellate body par. 217 and Supra note 115, appellate par 146

¹²⁴ Id, par 245 (Ec-Hormones), id par 166 (Australia-Salmon)

It has been explained that SPS measures must conform to international standards. This was meant to harmonize standards and minimize trade distortion. Case laws in this regard have confirmed the presumption laid under Art 5.5 of SPS that conformity with international standards is a reason for the presumption that the measure is consistent with SPS/GATT. Yet, a member may choose either to merely base its measure on international standards or apply a completely new measure in which case the aforementioned presumption does not exist.¹²⁵ Another important case law was the point whether application of a deviant measure from those set by international bodies is a rule or an exception. The EC-Hormones panel stated it an exception, although later the Appellate body decided otherwise when it ruled as follows:

‘The SPS agreement recognizes the autonomous right of a member to establish (a higher level of sanitary protection than would be achieved by a measure based on an international standard)’.¹²⁶

A lesson that can be drawn from the cases relates to the broad definition given to the obligation of transparency which comprises not only the publication of laws, regulation and decrees but also non-mandatory measures if it has any effect in interfering in trade.¹²⁷

2.2.2- Cases on TBT

The following two cases are selected, EC-Asbestos and EC-sardines¹²⁸ are selected as illustration for cases that involve TBT.

a) EC- Asbestos

In December 1996, France adopted a decree imposing a ban on asbestos in order to protect workers and consumers health. Asbestos is the name of a group of highly fibrous minerals with separable, long and thin fibers. In 1998, Canada the world’s largest exporter and second largest producer of asbestos claimed the French decree violated several GATT and TBT Articles and therefore complained to the dispute settlement body.

¹²⁵ Id, par 170,171

¹²⁶ Id . Panel par 8.87 (US) 8.90 (Canada),, Appellate par 104.

¹²⁷ Supra note 113, par105

¹²⁸ Supra note 75, The briefs of the case is found in the trade report

b) EC- Sardines

The dispute arose when the European Communities prohibited the use of the term ‘Peruvian sardines’ on tins containing sardine-like fish species (*Sardinops sagax*) caught off the Peruvian coast. The relevant EC regulation provided that only products prepared from sardine pilchardus (The “European Sardine”) may be marketed as preserved sardines. In other words, only products of this species were allowed to feature the word “sardine” as part of the name on the container. The case concerns a complaint by Peru against the European communities.

Arthur. E. Appleton¹²⁹ explains basic terminologies related with TBT as established by case laws. According to the appellate body in EC-Asbesto, a measure (a document) is to be regarded as a technical regulation under Article 1.1 of TBT, if it fulfills a three part test:

1. The document must apply to an identifiable product (s)
2. The document must lay down one or more product characteristics, and
3. Complain with the product characteristics must be mandatory.¹³⁰

Moreover, it was stated that a product does not have to be explicitly mentioned in a document to be identifiable under the first requirement and that identifiable doesn’t mean expressly identified.¹³¹ With regard to product characteristics, both the appellate bodies of EC-Asbestos and EC-sardine rule that characteristics include not only features and qualities intrinsic to a product but also those that are related to it. In simple terms, a means of identification is worth product characteristics.¹³² A case law on TBT offers

¹²⁹ Arthur E.Appleton, The Agreement on Technical barriers to Trade: Balancing Domestic policy Autonomy with Trade Liberalization (2003). Pp 1-43. (Here a detail account of the content of the entire agreement can also be found)

¹³⁰ European communities-Measures affecting Asbestos and Asbestos containing products, Appellate Body report, WT/DS 135/AB/R (2001) par 66-70 note that later the EC-sardine panel affirm these same point.

¹³¹ European –communities Trade Description of Sardines, Appellate Report, WT/DS 231/AB/R par 180.

¹³² Supra note 130, par 67, of supra note 68, p.189, 190

other definitional element that it will be proper to stick to the textual readings found in the agreement.¹³³

Another area established by case law is the notion of conformity. The adoption of measures which are international by nature enhances its consistency with WTO agreements. In the EC-Sardine case, Peru alleged that codex standard was a relevant international standard for purposes of TBT agreement while EC argued that only standards adopted by consensus are relevant international standards. The appellate body found consensus not a requirement for adopting standards.¹³⁴ For a measure to be called ‘based on’ international standards relationship must be established, because “there must be a very strong and very close relationship between two things in order to be able to say that one is ‘the basis for’ the other”¹³⁵

The TBT agreement has made room for the application of a measure which is not international standard or based on international standards under Article 2(4). The panels and Appellate bodies in the aforementioned cases have tried to clarify certain points in this area. The article states that setting aside international standard is allowed when legitimate objectives pursued by the measure would not be fulfilled as a result of being ineffective or inappropriate means. A panel ruling has offered some clarification about the exact scope of words like ‘ineffective’ ‘in appropriate’ and ‘legitimate’. An international standard is regarded as effective if it has the capacity to accomplish the legitimate objectives set forth; and it is appropriate if it is suitable for the fulfillment of these objectives. In other words, the issue of effectiveness is related to the result of the measure, while the term appropriate relates to name of the measure.¹³⁶ And the legitimate objectives are those listed in the agreement, plus some other reasons beyond the list of the specific objective mentioned in Art 2(2) of the TBT agreement.¹³⁷

¹³³ Supra note 129, pp 91&10

¹³⁴ Supra note 131, par 222

¹³⁵ Id, par 243,244

¹³⁶ Id, par 285,288

¹³⁷ Id, par 286

CHAPTER THREE

CONCERNS OF DEVELOPING COUNTRIES ON PRODUCT STANDARDS IN THE MULTILATERAL TRADE REGIME

This chapter focuses the concerns of developing nations regarding the issue of product standards in the multilateral trade regime. Various trade literature as well as the nations themselves have expressed concerns so that shortcomings can be rectified and smooth flow of international trade free from discrimination becomes a reality. The major theme of this chapter deals with the cost of complying with product standards, the participation of developing nations in standard setting organs, the issue of multiplicity of standard, private sector standards, the lack of technical assistance to developing nations in standards, the case of small-scale farmers, the WTO disputes settlements process and issue of transparency.

3.1. THE COST OF COMPLYING WITH PRODUCT STANDARDS

The United Nations Conference on Trade and Development (UNCTAD) World Trade Report stated that issue of product standards is the biggest complaint in the international trade.¹³⁸ The Report employed both tests of price-based approach and cost-based approach and has examined whether product standards are reasons for costs of exports and as such concerns of the international trade.¹³⁹ As stated in the Report, analysis conducted by Wilson and Otsuki, especially on developing countries has arrived at the conclusion that standards and technical regulations are impediments to exports because of the cost associated with them.¹⁴⁰

¹³⁸ UNCTAD, World Trade Report 2005, Trade, Standards and the WTO, The economies of standard and Trade, pp 62.

¹³⁹ Id, pp 62-64. the price based approach involve the comparison of domestic price of an item to the world market price while the Cost-based approach examines how standards affect firm cost as a result of adapting to required standard.

¹⁴⁰ id

Many fear that developed nations (importing) nations may craft standards which impose a cost on foreign competitor's resulting at protection of domestic producers. The asymmetry in compliance cost is treated as an impediment of trade for the economically weak countries.¹⁴¹ Quantifying on the trade impact of standards especially for sub-Saharan Africa nations, it was noted that firms are expected to incur 'sunk' cost related to complying with specific regulation¹⁴² The paper further stated how these costs will highly affect small scale industries as a reason of economic of scale.¹⁴³

According to study presented at an international forum, "[u]nless proactively addressed, the benefits of [standards] can elude developing country producers, in particular small scale farmers and can potentially become a serious market entry hurdle".¹⁴⁴ The workshop admitted the benefits of standards and also identified the challenges thereof. The latter include a list of issues including high certification cost (compliance to standard) falling on producers.¹⁴⁵ The lack of financial capacity to convert production to standards and technical requirements is stated in these regard¹⁴⁶

Doctor Halima Noor has studied the impact of SPS agreement on Kenya's horticulture and fishing industry. She stated that the compliance cost of standards is so high that unemployment is an outcome of product standards in the sectors under study. In her terms

"Many other individuals or entities will be faced with laying off staff in order to compensate for the additional capital expenditure needed for compliance..."

¹⁴¹ Food Safety issues, Trade WTO Rules and Developing country Perspective, Prema-Chandra Athukorala and Sisira JayaSuriya, 2003, pp1403

¹⁴²Quantifying the Trade Impact of SPS: What is known and Issues of Importance for Sub Saharan Africa, T.Ademola oyejide, E.o Ogunkola and S.A Bankole, 2000, pp.21

¹⁴³ Id

¹⁴⁴ Pre-UNCTAD XII Event on Making Sustainability Standards work for small scale farmers, Arusha, United Republic of Tanzania, April 2008, pp.1 These Recent international workshop involve some 80 experts of the public and private sector from 15 sub Saharan African countries and else where. The meeting has used the term 'sustainability standard' to express standards in the agricultural sector in aggregate.

¹⁴⁵ Id, pp2, Table 2:2a

¹⁴⁶ Id, pp3, 2.2 b

unemployment is a likely scenario as producers seek to survive or alternatively, investment in development will be held back resulting in fewer employment”¹⁴⁷

Member nations to the WTO which are economically developed are aware of compliance cost as a problem to developing nation’s market access. A green paper circulated by the Commission of European Community on agricultural product quality (esp. product standard) has affirmed the fact that the direct /indirect cost of fulfilling standard involves a significant burden expressed in finance and administrative difficulty.¹⁴⁸

Chaturvedi and Nagpal expressed their concern that “the cost of upgrading sanitary condition in the Bangladesh frozen shrimp industry to satisfy the EU and USA hygiene requirement was about 17.6 dollars in the year 1997-98. Such kind of costs will result many companies in the developing world to close down.”⁽¹⁴⁹⁾ They concluded that:

“... compliance with external eco-standards often necessitated the important of inputs and technology, which were likely to raise the cost of production and price of output... such price factor (rise) could hamper competitiveness (in the global trade)”¹⁵⁰

The hindrance from entry into the international market is expressed by some authors on a much broader angle. A situation was registered relating to cost compliance whereby the conclusion drawn was one with the worst of all effects i.e. prohibition of trade Altogether.¹⁵¹ Two cases in point are EU’s requirement on diary products from cow milk to be kept on farms and milked mechanically and Australian regulation requiring chicken meat imported from Thailand to heat at 70 degree celcius for 143 minutes.¹⁵²

¹⁴⁷ Sanitary and Phytosantiary measures and their impact on Kenya, Dr.Halima Noor, Eco news Africa, Nairobi, Kenya, pp4.

¹⁴⁸ Green Paper on agricultural Product quality: product standards, farming requirements and quality schemes, commission of the European Communities, Business,2008, pp.20

¹⁴⁹ WTO and product-related Environmental standards: emerging issues and policy issues, sachin chaturvedi and Gunjan Nagpal, Economic and political weekly, Jan 2003, pp 67.

¹⁵⁰ Ibid

¹⁵¹ Supra note 141, pp1404

¹⁵² Id, the EU requirement was reported to preclude imports from many developing countries where milk production was not done mechanically. Same goes to the Australian regulation which closes the market for Thai Chicken export.

The standards set by most developed nations is expressed to be both out of sight from technical feasibility and economic affordability¹⁵³ The concern expressed by many developing nations is that although there are circumstances where some large firms managed to cover the compliance cost, the standard requirements are of the nature which require not only the availability of money but also technical capacity/and technological innovations. Developing nations are known for their low or no technological advancement to cope up with such high-tech standards and technical requirements as a result of which they inevitably face the problems economic affordability and technical feasibility.

3.2. PARTICIPATION IN STANDARD SETTING ORGANS

The WTO legal framework that is primarily concerned with the issue of product standard on top of GATT is the SPS and TBT agreements.¹⁵⁴ These agreements speak of certain international standard setting organs to guide member nations on the issue of product standards.¹⁵⁵ The WTO is then said to principally adopt standards set by these organizations which encourage each member nation to establish a certain link with them. The issue that needs to be raised is the role of developing countries as active participants in these organs.

The interests and concerns of developing countries can be effectively addressed only when they can participate in the process of formulating the standards. There are scholars who are not convinced of the participation of developing nations in spite of the importance of the issue to them as per the main text relating to product standard i.e. the SPS.¹⁵⁶ The lack of not actively involving in this organs is taken as a cause for the publication of standards that do not take in to account the different barriers that hurt the economies of developing nations. This seems to be inconsistent with GATT and other

¹⁵³ Development, Trade and the WTO A Hand Book, B.Hoekman, A.Mattoo and P. English (eds) Washington D.C, Finger and P Schuler 'implementation of WTO commitments: The development Challenge (2002) pp. 403-503.'

¹⁵⁴ Refer to the second chapter which discusses these legal instruments in detail.

¹⁵⁵ Ibid

¹⁵⁶ Impact of SPS on developing Countries and the Role of the SPS Agreement, Spencer Henson and Rupert Loader, 1999 (The whole article is devoted to explain these concept).

agreements which embody special and differential treatments.¹⁵⁷ This doesn't, however, mean that differential treatments justify lower standards, but protectionism under the pretext of standards negates the principle of differential treatment.

A study undertaken by ISO has indicated that the level of participation of developing countries in international standardization work is very low.¹⁵⁸ The reason provided by the developing nations was the lack of fund both at the industry and standardizing body level and lack of expertise plus awareness in standardization.¹⁵⁹

“...[D]eveloped countries have set standards, with some standards being in appropriate and inconsiderate of the situation of developing countries, making them difficult to implement.”¹⁶⁰

The position of most developing countries must change from being ‘standard takers’ to ‘standard makers’. This is easier said than done as studies reflect. For instance five out of six developing countries did not actively participate at the technical committee level of both the SPS and TBT because of financial and other constraints.¹⁶¹

It is observed that the financial constraints and lack of standard expertise hamper developing nations from practicing their rights in these regard. This was the belief that led the five most concerned international organizations to issue a joint statement in this regard.¹⁶² The organizations are the WTO, the UN Food and Agriculture Organization, the OIE, WHO and the world bank¹⁶³ The statement underlined the necessity of the participation of developing countries in the process of formulating standards.

¹⁵⁷ Special and differential treatments are those treatments of special nature given to developing countries in WTO agreements, which can including longer periods to phase in obligations, more lenient obligation and the like

¹⁵⁸ Supra note 138, pp 93

¹⁵⁹ Id

¹⁶⁰ Supra note 147, pp 12

¹⁶¹ Influencing Market Standards: A voice for developing Countries International trade forum, ([http://www.tradeforum.org/m/fullstory.php/aid/553\(accessed on Dec23,2009\)](http://www.tradeforum.org/m/fullstory.php/aid/553(accessed on Dec23,2009)))

¹⁶² Agencies to boost developing countries participation in setting food safety and related norms, WTO NEWS: 2001 press releases, 11Nov, 2001, ([http://www.wto.org/english/news-e/pres01-e/pr254-e.htm,\(accessed on Dec20,2009\)](http://www.wto.org/english/news-e/pres01-e/pr254-e.htm,(accessed on Dec20,2009)))

¹⁶³ These organizations are responsible for international standards, buildings and recommendations relevant to the WTO SPS agreements.

We are committed to strengthen the capacity of developing countries to... participate fully in the work of standards, guidelines and recommendations. To this end--- agencies undertake technical assistance activities and investment in infrastructure ...¹⁶⁴

In relation with small-scale farmers, the United Nation's Conference on Trade and Development stated the necessity of becoming a main actor in the standard-setting process and development and it also stressed the need to consult small-scale farmers as primarily affected stakeholders.¹⁶⁵ The foregoing statements expressed by the major organs concerned with trade and standards can easily be verified by the apparent lack of the participation of developing countries at the various stages of the standard-setting process.

Professor Henson¹⁶⁶ explains participation as a continuum of services of stages, i.e. membership and status, attendance at annual meetings during which standard are discussed and/or agreed, participation in technical committees /sub-committees in which standards are established and finally participation in the administration of the organization and its standard-setting institutions.¹⁶⁷ Henson's approach envisages broader perspectives in participation. It shows that the mere fact of membership in an organ does not guarantee that the interest of developing countries is taken into consideration.

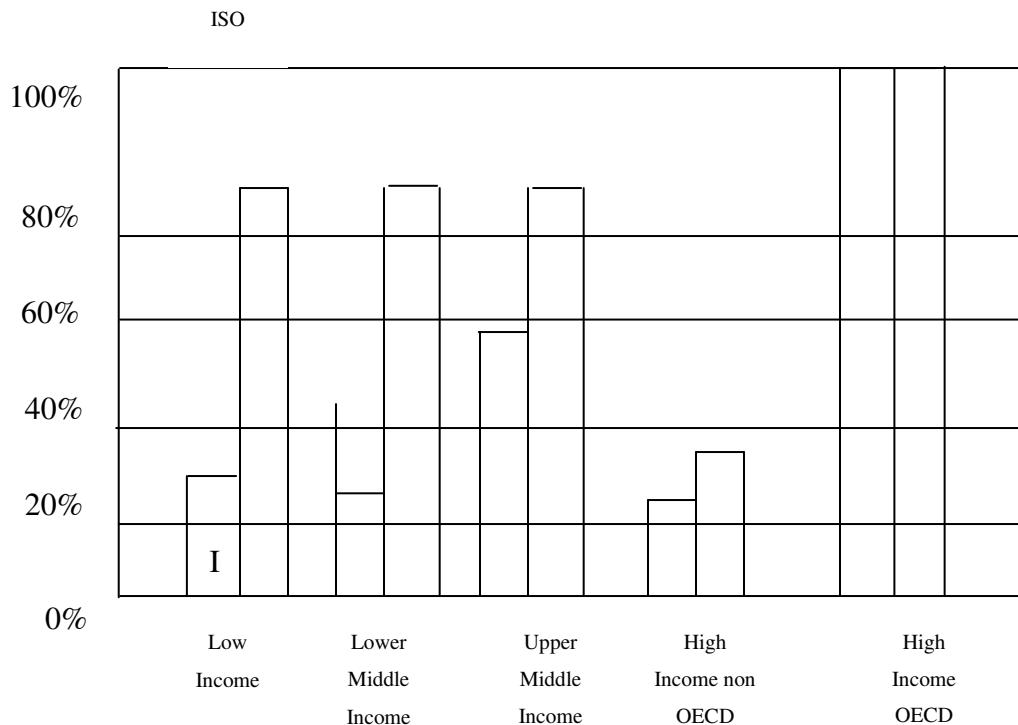
The following table shows levels of participation in ISO and Codex and summarizes the roles taken by developing nations in the four different phases of participation:

¹⁶⁴ Supra note 162, A joint statement by the directors-General of the food and agriculture organization of the UN, OIE WHO, WTO and the president of the World Bank.

¹⁶⁵ Supra note 144,pp4

¹⁶⁶ Supra note 156, I personally recommended a deep and analytical look at these work. It is an research which clarify the problem in a Quantitative approach on certain major international standard setting organs which have direct link with the WTO standard and trade regime. The topic it self can be a hot spot of further research where in the reason why and the solution how it can be curbed may be presented. The writer can be reached at s.j Henson@rdg.ac.uk

¹⁶⁷ Id, pp 40



The level of participation of developing countries in technical committees and sub committees ¹⁶⁸ is 8% on the average, while high-income countries participated in 37% of the technical committees or sub committees of ISO. In the Codex technical committee, a similar data is registered wherein over 70% of high income countries were represented, whereas less than 30% of developing nations were found. ¹⁶⁹ Regardless of such level of meager participation of developing countries, the standards are applied to all members which includes the standard takers. ¹⁷⁰ The study has also presented the possible causes for such low participation of developing countries which is similar reason discussed in earlier part of this work. ¹⁷¹

¹⁶⁸ Bear in mind that this role is quaint essential as almost all standards in these organs are developed Via Technical Committees. Being present easily mean being able to present individual concern and get more of the talks/negotiations.

¹⁶⁹ Supra note 166, pp 43 and 54

¹⁷⁰ Ibid

¹⁷¹ In chapter 3 constraints to participation these reasons are counted (pp 69-71).

1. Costs of participation membership fee/Travel& subsistence/ opportunity cost of time.

3.3. PRIVATE SECTOR STANDARDS

Multilateral trade rules, specifically WTO agreements in principle govern acts of governments.¹⁷² It is the acts of member nations that are eligible to be judged under international trade rather than acts of private individuals or organizations which function in the trade-circles of member nations. The acts of latter are outside the scope of the WTO and can neither be deemed right or wrong nor be a point of panel scrutiny in the WTO dispute settlement process.

Private-sector standard was a recent issue of discussion at the WTO and has taken the theme of standards into a comparatively new territory.¹⁷³ Although it is recent to the WTO, developing nations have been presenting their concern on the issue for a long period of time. Moreover scholars have been expressing the challenges and possibilities faced by private sector standards.¹⁷⁴ Elaborating on the issue, Denise Prevost stated that the birth of private sector standards relate with the attitude of considering organizational set standards as insufficient. She underlines that in the food sector, in particular,

-
2. Resource-based constraints
 3. Human capital resources
 4. Administrative structures in developing countries
 5. Attitudinal factors
 6. Administrative structures and procedures of international standards setting organizations.

¹⁷² All the covered agreements found in WTO are applied on either sovereign member states or on custom territories putting the act of private sectors out side the immediate realm of the WTO legal regime

¹⁷³ Transparency deal emerging for developing nation's treatment in food safety and related issues, WTO: 2009 new item, oct. 28 and 29, 2009, (<http://www.wto.org/english/news-e/news09-e/sps-28oct29-e.htm>) by private sector standards note that what is referred is a product standard set by organs other than national governments and international standard setting bodies. An example in this regard is a standard set by a large supermarket chain.

¹⁷⁴ Among many literatures I went through for such purpose I've found the work of Denise provost very organized and helpful. The work also entails a number of sources which can assist a further effort on the area. Some are

<http://www.ifpri.org/2020/focs/fouri10/focess10-12.pdf>

<http://siteresources.worldbank.org/INTANETTRADE/Resources/Tipics/standrds/standards-challnges-sythesisreport.pdf>

<http://wwwolis.oecd.org/olis/2006doc.nsf/43bb6130e5e86e5fc>

<http://www-wids.worldbank.org/external/default/wos>.

consumers in developed countries tend to opt to pay higher prices for products with standards higher than normal (i.e. set internationally or by national standard bodies.)¹⁷⁵ No doubt a safer, a safer product benefits consumers. The concern of developing nations here is that an additional standard while in fact even the normal standards have become burdensome is unimaginable.

Even if it might be only few chain stores that require such elevated standards, they control the lion-share of the market. The voluntary nature of the standard will not render the problems of developing countries easier, because, ultimately, it is the consumer who determines the demand of a given product exported from a developing county. On the basis of Henson's empirical finding in Zimbabwe and Kenya, Denise noted the following:

“In particular, the challenge of complying with private sector standards has the effect of excluding small-scale producers in developing countries from participating in the export market for high-value agricultural product.”¹⁷⁶

Rules on the WTO regime on product standards strongly require the existence of scientific justification as one element of setting standards.¹⁷⁷ On the contrary, private-sector standards are met with no sound scientific base.¹⁷⁸ This is of utmost concern for the developing world. It is to be noted that this problem cannot be alleviated through accession to the WTO because the WTO legal regime is not applicable on private corporations that tend to pursue the pace of standards set by their private clients.

The trade implications of private sector standards were issues of high concern in the UNCTAD-FAO regional workshop on good agricultural practice in Eastern and Southern Africa.¹⁷⁹ The background note for the workshop stated how farmers would incur

¹⁷⁵ Private Sector food-safety Standards and the SPS agreement Challenges and Possibilities, Denise Provost, (2009) 33 SAYIL, pp.

¹⁷⁶ Id, pp 13-14, note that a talk of 'product standard' when it comes to developing countries revolves mainly on agricultural products.

¹⁷⁷ see chapter 2,pp 19-25

¹⁷⁸ Private food Standard and their impacts on developing countries, China-Hvi Lee, (2006), pp 27

¹⁷⁹ Private-sector food safety standards and developing countries exports of Fresh fruit and Vegetables: synthesis of country-case study in Africa (Ghana, Kenya, Uganda), Asia (Malaysia,

additional cost of investment, training, record keeping, use of tracking system, audits and certification simply to comply with European good agriculture practice (Euro GAP) or other GAP standards.¹⁸⁰ These concerns escalate with the existence of great variety of standards, the existence of non-recognition of equivalence and related cost issues.¹⁸¹

The developing nations have make it their primary task to present the issue in different WTO forums, Saint Vincent and the Grenadines, for example, have communicated the effect of private-standards on small-farmers, and also recommended a mechanisms wherein SPS is observed at times of developing same.¹⁸² Ecuador also presented the case of high-cost and in turn losses of market access as a result of private sector standards.¹⁸³ Groups of developing nations led by Egypt and Uruguay have also made a critical remark on the agenda.¹⁸⁴ WTO news item posted on the 28th and 29th of October 2009 relating to SPS and private standards has mentioned the circulation of a new-document on the legal frame work of private standards in the WTO which intends to establish guidelines on “how governments could implement their obligations on this, and add items to the committee’s agenda for monitoring private standards and to allow members to raise specific concerns.”¹⁸⁵

The particular concern in this regard for developing countries is also said to be the fact that private standards have the capacity to undermine the discipline negotiated in the SPS agreement.¹⁸⁶ If these problems continue unresolved, SPS an arm of the WTO package agreement losses effectiveness thereby adversely affecting the credibility of

Thailand, Vietnam) and Latin America (Argentina, Brazil, Costa Rica), UNCTAD-FAO Regional workshop, Nairobi, Kenya, March (2007), Background Note, pp.4

¹⁸⁰ id

¹⁸¹ Supra note 179 , pp 14

¹⁸² Committee on SPS measures, Private Industry Standard. Communication from saint Vincent and the Grenadines, G/SPS/GEW/776, 28 Feb.2007, par 6.

¹⁸³ Committee on SPS measures, Private and Commercial Standards, Statement by Ecuador at the meeting of June 2007, G/SPS/GGU/797, July 2007.

¹⁸⁴ <http://www.wto.org/english/news-e/newseq/e/sps-apr08e.htm>(accessed on dec1,09)

¹⁸⁵ Supra note 173, pp5

¹⁸⁶ id

WTO treaties and also the status of WTO as a trade regime. And eventually it will hardly be possible to reestablish the system as a whole.¹⁸⁷

3.4. THE DISPUTE SETTLEMENT UNDER WTO

One of the major achievements of the international trade regime was the move from a mere agreement which serves as a defacto trade organ to a real institutional frame work by the name WTO, with a so “functional and effective trade dispute settlement body”.¹⁸⁸ Among the many doubts upon the much anticipated system was the case of developing countries and the question how to integrate them to the system.¹⁸⁹ The problem of small countries was expected to be their involvement “in the dispute settlement system, particularly when they need to collect extensive information to support complicated legal arguments.”¹⁹⁰

If an act of a member violates the agreement covered under the WTO, the cessation of unilateralism under the trade regime forces parties to bring the case to the Quasi-Judicial organ of world trade dispute. The support then rendered to the developing countries to effectively participate in these forums is a concern. Standard violation substantially injuring the trade flow (benefit) of a developing nation needs to be addressed. For this to be fulfilled financial constraint will be an obstacle. Finance present, In short developing nations lack the technical, scientific and legal resources needed both to start and to defend a case against them in the panels and appellate bodies. It is a fact that in the absence of such coordinated support, what the dispute panels achieve

¹⁸⁷ The issue of Private sector standard feared to compromise the multilateral trade regime is not only assessed from perspectives discussed above. In a new dimension the role of super markets in setting quality and safety standards for domestic suppliers is dealt. The writer of this paper thinks This is an area that needs a deep look as the long turn effect will be reflected to export supplies too. The barriers that are domestic by nature will grow to the global market in the long-term. The effect of private sector standards on domestic suppliers, especially those found in the developing nations is presented in the work, Supermarkets and produce quality and safety standards in both America, Fernando Balsevich, et al, American Journal of Agricultural economics 85 (No 5, 2003) pp 1147-1154.

¹⁸⁸ Hand book on the WTO dispute settlement system, WTO,(2004)

¹⁸⁹ Legal Problems of International Economics Relations: Cases, materials and Text, J.H Jackson et.al, (2002) pp 335-336

¹⁹⁰ Id

considering rights of developing members will be insignificant. As Seyoum Yohannes noted:

“Altogether 154 specific trade concerns were raised during the eight years from 1995 to the end of 2002 [on product standards]; least developed country members raised only two. The participation of them in the SPS dispute settlement process has been even poorer... up to the end of 2002, there were 19 disputes brought to the WTO, dispute settlement body. Developing country members were involved only in three of the cases”¹⁹¹

On the contrary, the organization argues the benefits accorded to developing nations by the existence of such system and also the different mechanisms employed aiming to benefit such nations.¹⁹² The current situation and empirical evidence makes the statement untenable. And the fear of properly benefiting from the dispute process is a matter ubiquitous for developing nations not only related to product standards but for the entire WTO system. The complex-nature of trade-dispute requires much more than a simple differential treatment. This applies to Ethiopia as well because, “Ethiopia will, in most cases, be unable to vindicate its rights under the WTO dispute settlement system because it lacks the resources to litigate and more importantly the economic muscle to retaliate against the party losing the case”¹⁹³

3.5. OTHER MAJOR CONCERNS

3.5.1- Technical Assistance

In addition to the major concerns discussed above regarding the concerns of developing nations in the realm of product standards in the multilateral trade regime, there are other points that need to be raised. The first issue relates to ‘Technical Assistance’. The talk of product standard and related duties imposed on developing members will be real if technical assistance is provided from concerned bodies, primarily, the developed world.

¹⁹¹ Supra note 141, pp 1411

¹⁹² A Hand book on the WTO Dispute settlement System, A WTO secretariat publication, WTO, prepared for publication by the legal affairs division and the appellate body, (2004) pp 109-115

¹⁹³ Import Restriction Based on Process and production methods: Limits to what is in WTO membership for Ethiopia?, Seyoum yohannes, Ethiopian Business law series, vol.2 2008 pp 93-94. It is the scope of the last chapter to show in depth the specific concerns Ethiopia will face if becomes WTO member regarding required product standard. As such this concept will be seen in depth there.

The need of developing countries in this area is explained as ‘considerable’¹⁹⁴ The WTO legal framework starting from GATT didn’t lack provisions which made this a group duty.¹⁹⁵ The concern of the developing members (or members to be) is the implementation and effectiveness of the provision. The technical assistance needs a broader understanding which envisages ‘financial assistance’. The major organs on product-standard and trade seem to have realized this:

“We agree to explore jointly new technical and financial mechanisms for coordination and resource mobilization and to build alliance between standard-setting bodies and the implementing and financing agencies so as to ensure the most effective use of technical and financial resources.”¹⁹⁶

This idea was addressed in a case study related with the WTO trade regime of product standards in the fishery and horticulture sector in Kenya. The paper included the need for financial support, in addition to which it recommend and called upon the developed world to live up to the expectations embodied under provisions such as Article 9 of the SPS agreement and transform promises and the theoretical support into practice. To this end it noted that “[t]echnical assistance offered to developing countries.... Should be of better quality and should be delivered as and when required.”¹⁹⁷

The other fear on this line is the lack of coordination on concerned parties on the support to be rendered so as to make trade of standardize product a reality. It is not the sole task/capability of WTO to achieve the technical assistance, but is expected to involve all developed nations and other concerned organs involved in tasks of standardization. Developing nations need security that WTO will work strongly with all concerned parties to meet this end. Hoekman noted the necessity of organized effort to secure technical assistance and the need to make international trade growth an agenda of the current era.¹⁹⁸ The need for a global framework is felt with the motto of supporting both national

¹⁹⁴ Supra note 64, pp 95

¹⁹⁵ All the WTO agreements bear provisions to the effect of assisting developing and least developed nations in different mechanisms to achieve the goals of the multilateral trade regime.

¹⁹⁶ Supra note 162, pp.2

¹⁹⁷ Supra note 68, pp 14

¹⁹⁸ Strengthening the Global Trade Architecture of development: The Post Doha Agenda, Hoekman, B. (2002) World trade review p 23-45

capacity building and the design of international standards. It is regarded as a multilateral effort outside the WTO towards mobilizing additional financial and technical assistance.¹⁹⁹ Such schemes might to a certain extent alleviate the problems encountered in developing countries.

3.5.1- Standard multiplicity

The existence of standard variety on a product by different countries impedes market access. The cost of complying with product standard was a major concern for developing countries. Imagine a scenario whereby standards required of a country major export product are different as a result of each importing market establishing its own standard. The cost of compliance to export standards may hinder involvement in international trade. World Bank has recommended the following:

“To mitigate the costs of multiplicity of standard, the world Bank’s strategy should be divided in two directions. To develop awareness of costs related to multiplicity of standards and to support actively harmonization of the global level and at the regional level”²⁰⁰

What came with standard duplication are not only the issues of compliance cost. Under circumstances where finance is not a problem, expertise and infrastructure will be an additional bar from fair trading in a standardized trade world. It involves factors that force developing countries to go for Harmonization of standards. Harmonization being unable to be achieved, the case of mutual recognition can be an option for many developing countries²⁰¹ Here one can observe that the task of harmonization requires the active role of developing nations participating in the process, turning us to the issue of participation in standard-setting.

¹⁹⁹ Supra note67, pp 1413

²⁰⁰ How do different standards, Increase Trade costs? The cases of pallets, Gael Raballand and Enrique. Aldaz-Carroll, (2005), World Bank policy research working paper No. 3519. pp 1 ff

²⁰¹ Supra note 1, pp 51-55

3.5.1- Gaps in WTO product-standard agreements and transparency

Another concern related to this is that WTO product-standard agreements have gaps that can be utilized by members against the interest of developing nations. Though these instruments command and encourage members to stick to international standards, there is still a mechanism of employing ‘self-set standards’ under certain exceptional situations.²⁰² Developing countries believe that though some yardsticks are stipulated, the risk of standard multiplicity is not definitively avoided.

The last concern by developing members relate with the issue of transparency. Transparency in most literature explains what WTO is or what its attributes are, and this is cited equally with the pillars of the legal regime, i.e. the most favored nations and national treatment.²⁰³ This is so because without a transparent working procedure all obligations are in vain. Notification of measures taken by all members to different committees and concerned countries relating to trade (in our case product standard) is an effective means towards achieving transparency.

Rendering proper response when another member requests an explanation on a trade measure of product standard enhances transparency. Developing nations are worried about the responses they are likely to get from the developed countries because of the apparent influence that trade partners have on lower economies. Such fears were addressed at the WTO forum by developing nations. A WTO news item has stated, on a draft food standard document relating to developing countries and the transparency issue.

“The procedure’s (in the draft) aims is to ensure consultations take place in response to requests for special treatment and technical assistance. This would happen when a developing exporting country is concerned about problems that may arise from a new SPS measure”.²⁰⁴ Developing countries have the concerns here-above with regard to

²⁰² See chapter2 pp 19-25

²⁰³ Dictionary of trade policy terms, DR. Walter Goode,2003

²⁰⁴ Supra note 173, pp2. As a show case of how the Transparency and notification process works some recent concerns discussed include Ukraine’s new measure on animals and animal product, H1-N1 influenza-trade restriction, India’s measure on bird flu, the EU ‘novel foods’ regulation, us import restriction of fresh pork meat and beef concern of brazil, us measure on catfish-concerning china and others. In light of our discussion of concerns of developing courtiers can not get a fair and adequate access to product standard quests of their own and also are provided

product standards in particular and in relation to accession to the WTO in particular. The position of Ethiopia indeed doesn't seem to be any different when it comes to product standard and related issues.

with proper response the mere existence of trade rules can not be regarded to fruit benefits for them. Flora of concerns shall be there, also there need to be a clear notification of all measures taken with full and detailed information.

CHAPTER FOUR

1. Product standard: the Ethiopian case for multilateral trade regime

This is the chapter finale, the effort made so far in explaining what product standard is, how it affects and works in the international trade regime, especially WTO and the concern of the developing world in these regard will now rest on a detailed analysis of the apparent situation in Ethiopia. The whole paper was aimed at looking the Ethiopian case of product standard with the move to accede to the WTO. For such purpose this chapter is designed in the following manner. The discussion of major organs involved in the work of 'standards' in Ethiopia will come first. The task of setting and enforcing product standards in most nations is treated as the traditional governmental function. As such the organ is one established by governments or one bestowed with the same task by the will of the government. The Quality and Standards Authority of Ethiopia (QSAE) is the primary and sole organ with such a function in Ethiopia. The whole working of this entity will be a point to discuss. Other organs which in one or other way are linked with national product standards mandate a look also. The topic of standard in Ethiopia will also see the legal frame work available. Most of the income derived of export comes from agricultural commodities. The second part of the work then tries to look at some selected products of major export income providers and assess how 'standards' is being employed. New least developed nations which accede to WTO have their own experience on matters of product standard. Assuming our moves success, visiting the status of Cambodia and Nepal sounds beneficial. The third part of the work will cover this topic. The fourth part is totally devoted at a study of our current position at the accession stage and how 'standards' can affect the accession pace, or even after that, our future involvement in the organization. As all papers do, the last part will be one to make a conclusion and recommendation for all the stipulated hurdles.

4.1. Standards in Ethiopia

The attitude of both producers and consumers is found in a not so satisfactory level in Ethiopia when it comes to product standards. In an interview held with active actors in the market for domestic trade the primary concern for the producers/Traders was found to

be profit while most consumers' emphasis on lower prices prior to any thing when they trade.²⁰⁵

For reasons that the issue of 'standards' is becoming a mandatory requirement in many aspects of products, producers have a better understanding and perspective on the issue. Leaving whether they are implementing 'standards' because they are convinced of the over all benefit or not, we still found it a fact that now a days it looks like entities/personalities involved in the Ethiopian market has made it their agenda to meet criteria's which are deemed to fit some sort of quality/standards in the business they are involved.²⁰⁶

Attitude on a certain concept will be measured by the effort the government is putting to make sure that the concept is perceived by all concerned in the area. The talk of 'standard' concerns us all. As a reason, the discussion of standards in Ethiopia will detail the working of the national standard body and the existence legal framework relating to product standard. Also other working bodies on issue of standards will be examined in brief.

4.1.1. Quality and Standard Authority of Ethiopia

The establishment of a national standard body in Ethiopia dates back to the year 1970.²⁰⁷ The Ethiopian standard institute (ESI) had the primary objective of promoting

²⁰⁵ The interview was held between the days of Meskerem 10 to 20 in major trading centers of Addis. In Merkato for instance trading areas found in Tana, 'Autobis Tera', 'Kolfe', 'Raguel' were covered. Other areas include Kazanchis, Bole, Asko and 'Addisu Gebeya'. The writer has had a face to face contact lasting minutes with whole-sale traders who has the opportunity to meet the producers/importers of the products they sale as well as retailers. Consumers on spot were also included. The question was simply 'what do you give priority for in trading?' And among 104 respondents of the sellers 96 say 'the best way to profit' while only 8 comment on 'meeting the whim of consumers both in quality and quantity of products.' Among 80 consumers 64 comment they look for 'lower prices' while they buy products and only 16 talk of 'quality' in one or another way as an additional, yet not prior criteria to prefer a certain brand of product.

²⁰⁶ A similar interview was held on some selected industries which produce and distribute products to the public. The overall result speak that almost all producers in Ethiopia employs the 'standard' concept in their respective industries. [interview held on Meskerem 16/2002 – 30/2002, Tikimt 10-15/2002, Hidar 20-30/2002, at different factory head office in Addis Ababa, Bishoftu and Adama]

²⁰⁷ Order No 64/1970 establishes the Ethiopian standard institutes (ESI)

standardization and quality control activities in the national economy.²⁰⁸ The move in the establishment of the organ is believed to be the over all reform taken in the commercial sphere at the time to become competitive in the developing business world.²⁰⁹ The reform does not end at starting an institute. Through it takes years the organ was given a wider scope of promoting metrology, quality assurance and certification as a sole organ of the government at the national level by proclamation 328/1987.²¹⁰ Understanding the pressing need of promoting quality and standard, than merely controlling it the organ was restructured in February 1998 based on proclamation No. 102/98 with aim of effectively promoting quality management practices.²¹¹ At the present time the QSAE is a non-profit government organ which accounts to the ministry of science and technology.²¹² The move so taken in making the authority to answer to this organ is believed better than others in a sense that 'standard' being highly an issue of expertise in the scientific field, as well as the role of science in developing, monitoring the effective working of 'standards'. Yet the organized effort of all government organs involved in the trading cycle in one or another way is deemed valuable.

The policy making and governing organ of QSAE is the standards and certification council whose members are appointed by the office of the prime minister. Headed by a director general, QSAE comprises six directorates, three services and seven branch offices with five representative offices operational in different regions of the country,

²⁰⁸ A brief account of the Profile, Quality and Standards Authority of Ethiopia, Information Brochure Public Relations and Education Service, A.A. 2009.

²⁰⁹ The preamble of the Ethiopian Commercial Law shows a change in the legal framework of business world was found to be important to be competitive. After the promulgation of the Commercial Code different organs with connection to trade start to flourish, the ESI being one.

²¹⁰ Ethiopian Standards List, History, QSAE (2009) PP1-6

²¹¹ One may note that the word 'Quality' is employed time and again. Standard is treated to be a document for quality in the context of QSAE. In this paper though the terms 'Quality' and 'Standard' have an interchangeable approach.

²¹² Quality and standards authority of Ethiopia establishment proclamation makes the authority accountable to the Prime Minister. This has been modified by an organizational structure posted on the web of the organ on July 2,2008. In this structure the authority was made accountable to the ministry of Trade and Industry. A recent publication by the organ basing the amendment for the aforementioned proclamation (procl. No 413/2004/) made The authority accountable to the ministry of science and technology which itself was upgraded to a ministry level from an authority.

plus Djibouti.²¹³ The existence of offices at places near export trade is made to start its move to the destination (port near cities) is found pretty impressive considering the quality of a product to be sent abroad. As standard is a matter of not only the product itself but also how it is loaded, transported and the like, having a standard office near the point of departure will make the effort to scrutinize a single product fruitful.²¹⁴ The directorates' roles is the traditional functions of any standard setting organ i.e. setting/developing standards, monitoring the conformity of products to standards, enforcing regulation and the like.²¹⁵

The vision and mission of the authority is respectively,

'To be a national center of excellence for quality and standards that substantially contributes to raising the living standards of the society' and

'To deliver effective quality promotion and conformity assessment service that add best value to products and service'.²¹⁶

The vision and mission does not explicitly talks of the issue of being competitive in the export market by presenting products with required product standards. It is still possible to read though with the 'best value' added to products through standard the competitive value of our products in the international market will increase leading to export earning and raised society living standards. But the mission/vision statement does not fall short of emphasizing the core responsibility of the organ; standard setting and conformity assessment.

²¹³ The branch offices are located in Nazareth, BahirDar, Hawasa, Diredawa, Mekele, Dessie & Jimma. The representative offices are located at Moyale, Djibouti, Gondar & Humera. The head office is in Addis Ababa.

²¹⁴ Interview held with Ato Shiferaw ,Administration head of QSAE about the need to have different offices in parts of the country, Tahasas 4,2002 E.C

²¹⁵ <http://www.qsae.org/web-en/about%20us/en.orgstr.htm>., QSAE's Organizational Structure. for instance the standard and Metrology Directorate has the responsibility of developing Ethiopian standards, the quality certification Directorate certifies products systems while The inspection and verification service Directorate enforces regulation, inspect products and carryout laboratory testing.

²¹⁶ Supra note208

The objectives the QSAE works to achieve are said to be²¹⁷ :

- a. Promoting and assisting the establishment of appropriate quality management practice as an integral yet distinct management function in the social and economic sector.
- b. Assisting the improvement of the quality of products and processes through the promotion and application of Ethiopian standards.
- c. Promoting and coordinating standardization at all levels in the country.
- d. Establishing a sound national metrological system as a basic structure for economic development and
- e. Strengthen, promoting and enhancing the reliability of testing laboratories nationwide.

Objective b and c is all about developing standards while d & e talk of the establishment of proper infrastructure/appropriate ground work to reach at objective b and c. Because a mere standard established/accepted will not change how a company function unless other values as that of good corporate management practice, QSAE has made it its objective to look in to the employment of same as part of the standard cycle.

In order to fulfill these objectives it is essential to empower the authority with certain tasks. This is what article 6 of the authority's establishment proclamation speaks. In brief the provision makes it the power and duty of the authority to approve and declare Ethiopian standards, to formulate quality promotion and standardization policy and strategy, to establish and operate testing laboratories for conformity assessment, ban movement of product or cessation of undertaking not in line with set standards and to represent the government in matter of standardization²¹⁸. An interesting provision in these regard would be sub article 18, which reads

²¹⁷ id

²¹⁸ Quality and standards Authority of Ethiopia Establishment Proclamation No. 102/98 , Art. 6(1) – (18). The provision contains a detail account of the powers and duties of the organ.

*'to carry out such other similar activities necessary for the attainment of its objectives.'*²¹⁹

Accordingly the authority power is not barred from extending to similar tasks though not enumerated in this specific provision. This is positive news to the authority to carry out its work in a more liberal way so long as it does not exceed its mandates.

In the field of standards then the run to be at the top envision the act of harmonization and working hand and glove with the well established other national entities as well as international organs. The need to have technical expertise mandate to lean towards these organs and art 6(18) paves the road for the effective and uninterfered working of the authority as it bestows it a power to do all in the move of achieving its objective.²²⁰

Basing this power the QSAE has been involving it self in the development of Ethiopian standards. Presently 7417 Ethiopian standards exist with more than 6500 being active in the trade and commerce sector. The fields of products cover engineering, agriculture and food technology and leather technology notably. The status of the standards is both inclusive of voluntary and mandatory.²²¹ The standards are developed in three ways.

- a. Original - setting a new standard which is Ethiopian
- b. Adaptation - modifying an already existing standard else where to the specific need (situation) of Ethiopia.
- c. Adoption - taking standards else where as it is.²²²

The task of setting standards, which every way it follows, is generally carried out by technical committees. 92 technical committees at the present time are involved in the activity.²²³ The three methods of developing standards are viewed with different

²¹⁹ id, Art 6(18)

²²⁰ Note also that a counter-argument can be raised on this 'unlimited' power of the authority. Objections may be there which base the fear of power abuse. But so long as the requirements of the provision are looked this fear will be minimized.

²²¹ Supra note 210

²²² Interview with Ato Sisay Alemu, Public relation and Education service director of QSAE, Oct. 14, 2009.

²²³ Each Technical Committee is with the task of establishing standards in areas it is concerned. As a show case listed some of the committees. The selection is based on what this work will emphasis at later stages...

approach. For instance adoption from the perspective of acceding WTO is considered best as basic legal instrument on standards are recommended to be in line with internationally accepted standards and guidelines.²²⁴ The benefits range from cost reduction of compliance to avoidance of double standardization. In an effort to see the amount/coverage of our standards which are inline with international ones analysis of the existing standards were made. As seen in the table those number of standards not inclusive in the 150 list are either original or adapted from other organs. A comparison of other data shows that the Ethiopian standards on different products are highly adopted from ISO.

Tc 9 – Packaging and distribution on goods
Tc 11 – Cereals, pulses & derived products
Tc 13 – Fruits & vegetables
Tc 17 – Fish & fishers products
Tc 26 – Processed meat and poultry products
Tc 28 – Alcoholic beverages
Tc 29 – Coffee and tea
Tc 70 – Textile fabrics
Tc 73 – Raw hide / skin and tanned leather
Tc 91 – Food product in general

²²⁴ SPS, Art3 and TBT Art 4, though TBT speaks of code of good practice it all boils down to harmonization of standards and technical regulations.

Technical Committee	No of Standards	Same with ISO	Remains
Labeling for prepackage products	8	2	6
Glass bottle	12	3	9
Man-made fibers	2	2	0
Production in textile industry	22	17	5
Textile in general	11	8	3
Cotton fabric and cotton yard	80	39	41
Food hygiene	27	19	8
Cereals and pulses	45	19	26
Fruit, vegetable and derived products	125	30	95
Meat and meat products	23	11	12
Tea	22	18	4
Coffee	37	21	16
Alcoholic beverage	80	1	99

Table: Selected Ethiopian Standards in line with ISO

It can be conclude also from the capacity of the country in setting 'original' standards, the remains are results of adaptation. The conclusion that can be safely drawn is that the country will not face a big hurdle when it come to the issue of standards set, as if complied correctly, the harmonization is done through the adoption and adoption strategy. One of the mechanisms of insuring a countries interest in international standards than to merely copy it is to actively participate in the process of development. Participation starts from being a member. As such the QSAE is a member of major international organs concerned with the issue, i.e. the international organization for standardization. (ISO), ²²⁵ the international organization of legal metrology (OIML), the international Electro-technical commission (IEC), codex Alimentarius commission (CAC), the African Regional Organization for standardization (ARSO) and South

²²⁵ <http://www.iso.org>, A 2002 data on ISO member bodies resources and standardization activity states Ethiopia as a member with a staff of 328. With the passage of time and reform of the organ one can assume the current status.

African Quality Institute (SAQI).²²⁶ The benefit of being a member it self counts for much. Being part of the standardization process gives an ample opportunity to voice the concern and interest of a country, least will be a mechanism of being informed what is happening in the standard sector so that the organ is shaped with in a same line. Of course QSAE keeps a close touch with these organs that it can be assumed the benefit grasped are valuable.²²⁷ The agenda here is to look to it that standards are not simply adopted to get global favor or any thing, but by weighting the pros and cons for a nation if it trades minus the standard in question.²²⁸

For both purpose of developing standards or assessing the conformity of products before it is destined to export market an infrastructure which is well-equipped to carry such a task is needed. In these aspect the QSAE

"Operates a well-equipped and modern testing laboratory capable of carrying out vast number of tests"²²⁹.

5 fields of testing are present; mechanical testing, textile and leather testing, electrical testing, chemical testing and microbiological testing.²³⁰ In the wording of the general manager of QSAE the work carried out by these testing laboratories is more than satisfactory. A major concern with these laboratories was the acceptability of the results in the export market. A product approved to conform to required national/international standard in the laboratories of QSAE might face a different fate in the laboratories of importing country. Basing current news aired in the print media about the return of many

²²⁶ Supra note 208

²²⁷ Supra note 18, In these regard for instance each year the world standard day is celebrated by QSAE in collaboration with ISO & IEC. The Authority is currently involved in a task of improving its services quality to internationally accepted ones, for which the support of these international organs prove to be important.

²²⁸ Adoption of standards under uncertainty, Michael Ostrovsky and Michael Schwart,, Winter 2005, (The whole article is devoted in explaining what should be done in adopting standards).

²²⁹ Supra note 208

²³⁰ The writer has had the opportunity to have a personal visit to all these laboratories (except microbiological testing) on Oct. 14, 2009 on the occasion of world's standard day. The laboratories are filled with equipments and literally there was no enough space to stand. Though how many of these equipments are working/in use a question to ask, from the out look it seems as if all the equipment is on scene. Also young technicians were seen here and there crowded with products to test and certify. The account in this paper relating to these laboratories is then a total personal observation as well as interviews conducted with experts found in the working area.

products to Ethiopia on grounds of lack of standard and quality this issue was presented to the experts. Ato Tesfaye Nigussie, Testing expert at the EQSA, textile and leather laboratory does not think this as a major problem. He said

"Because we have at hand different countries standard, we usually carry out a comparative testing method, we do not conclude standard fitness by the mere fact that our requirements are met. We double and triple check through proficiency testing mechanism. This way it will be hardly possible to an importing country to reject a product that passes through this complicate and error-proof process"²³¹

Not all agree with the aforementioned idea. Not going far Ato Belete Eshetu, a food product technician working in the chemical laboratories of QAE thinks otherwise. Citing a personal experience he suggests

"We can't proudly state our labs are equipped with all what we need. Without denying we have the basics we still need to improve our infrastructure. Taking for example coffee our capacity is limited to look into only the quality of the product. In the international market, importing countries are concerned into the details like the soil the coffee plant grows, kind of fertilize used, the material coffee is collected, the suck it is packed and so on. If we can't grow into including all these in our tests rejection is inevitable. I can even tell you a scenario where what we sent as standard product (coffee) was turned in by a major importing country. This is a problem at hand".²³²

Although for professional confidentiality reason Belete Decline to mention the detail of product rejection, the case is a public secret if secret at all. In the part of the work dealing with some selected commodities the problem will be mentioned in detail.

The standards developed by QSAE have the nature of being either voluntary or mandatory. This also is raised as a problem as it is only in the case of the later many produces/ exporters have the habit of going for standardization. Their is this strong believe that if producers start to look for the quality of all sorts of production, even for the domestic market then it will be a matter of easy transformation to advocate for standard of products to the export market. In the earlier part of this work a random

²³¹ Interview held with Ato Tesfaye Niguise, testing expert in the textile leather laboratory of QSAE, Oct. 14, 2001. (N.B the interview was translated from Amharic to English by the writer. This holds true for all of the interviews)

²³² Interview held with Ato Belete Eshetu, Food Product technician, chemical testing laboratory of QSAE, Oct. 14, 2009.

sample taken to assess the know how and appreciation of product standards both in the consumer and producer cycle have proved to be shocking.²³³ The acclaimed quote 'safety does not cost it pays' shall be understood by all for the benefit of all. A question to ask in these regard is "what is the QSAE doing to improve this long standing habit?" There exists the public relations and educational service office. The task of this office is creating public awareness on quality and standards, plus communicating the benefits of implementing standards to stakeholders as well as the value of quality to the general public. The organization and conducting of seminars, symposiums, panel discussions, conferences, radio program, publication and exhibition is made a view of bringing the standard talk to the reach of the public.²³⁴

Mentioning the work of the engineering capacity building program (ECBP) is a necessary aspect of the discussion of Ethiopian standards.²³⁵ The program is primarily concerned with quality infrastructure reform of the QSAE. Explaining the benefits that can accrue from such a change, it was explained

"For Ethiopian products to be competitive in international markets they must meet certain criteria. ECBP intends to make 'made in Ethiopia' a mark of quality. By raising Ethiopian product and processes to international standards, Ethiopia will attract much needed foreign direct investment and create new markets for its goods and services."²³⁶

As a weapon of executing these objectives on top of working closely with QSAE, the program has developed a national quality infrastructure document which outlines what the perfect model for Ethiopia is on product standards²³⁷.

²³³ Supra note 205

²³⁴ Supra note 205

²³⁵ The engineering capacity building program, under the Ministry of Capacity Building, is an organ backed by the Ethiopian Government and GTZ, a company from Germany, which is involved with the QSAE and work on Ethiopian standards, among many of its tasks.

²³⁶ Quality Infrastructure, <http://www.ecbp.biz/reform-fields/> quality (accessed on Oct. 6,2009) The organ mentions the major impacts of the quality infrastructure reform that industries which follow the adapted /adopted 2,500 standards of QSAE can be sure of meeting the requirements of export markets and thereby the potential for exports is wide.

²³⁷ The effort to lay hands on the document was unsuccessful as currently the organ, and The Ministry of Capacity Building is on a reengineering phase, not in a position to handout materials, but insiders has informed the writer that the whole content of the document has been sent to the council of ministers and it becoming a law is a to be soon phenomena.

4.1.2. Major Organs Relating to Standards

The two governmental organs to be assessed in this part are the Ministry of Agriculture and Rural Development (MOARD) and Ministry of Health (MOH.) The reason for selecting these two is their direct connection with the issue of 'product standard'. MOARD takes the lion share of analysis as most of the products Ethiopia Export abroad are agricultural and whole point starting from where they are planted to the last stage of exporting is directly linked with agriculture. MOH, though mostly is concerned on the safety of public health in Ethiopia, some times takes the initiation of making sure that products that go out of the country are not hazardous to the life and health of others. As such a brief look seems reasonable.

A world trade organization trade profile for the year 2009 states that the break down in Ethiopia's economy total exports by main commodity group, agricultural products count for 85.5% of the total merchandise trade²³⁸. The data needs no more additional evidence for the fact that at an observer status our country is highly dependant on agriculture to its export trade. The agricultural led development program the government is following will be another strong reason for the continual of this fact. Though we think of a policy change with change in government of the reality on the ground relating to industries makes it hard to imagine a change any time soon. The deal is on agriculture and agricultural products.

The MOARD is involved in the task of making sure that agricultural products are standardized before they are ready to the export markets. With special emphasis on products the current export market is looking for best that the service they render was explained to be an end to end activity.²³⁹ According to Dr. Berhe G/egziabher.

²³⁸ Trade profile, World trade organization, WTO 2009, pp. 59

²³⁹ Interview Rendered by Dr. Berhe G/egziaber, Animal and Plant standard and Health control desk Director Directorate (MOARD) to Ethiopia Television and Radio Authority, aired on Thasas 2002 E.C

"The service we render starts from the moment preceding slaughter (speaking of animals), post-slaughter inclusive to the moment the meat is in the cargos of the aero plane"²⁴⁰.

Leaving the question whether the 'standards' of agricultural products are problems in Ethiopia's move to become competitive in the export industry for later, now let us see what the ministry is planning to do in view of 'product standard' and 'export market' enigma. The organ has currently undertaken a re-engineering phase with view of improving its working. The need for change other than the overall governmental policy was also motivated by the importance of the result of the change to the country. A study undertaken by USAID assistance regarding 'standards' on selected agricultural products has this to state.

"... It is well recognized that failure to meet international or private sector standards could have a devastating impact on Ethiopian exports. Other countries have seen highly valued export markets disappear almost overnight due to their inability to meet SPS requirements of the importing countries..."²⁴¹

The new structure in the ministry is done with believe of avoiding such fear. The BPR document itself reads this same motive when it states.

"... The new process of work is prepared taking into account the aims of achieving world class product, product with quality and standard, WTO requirements and..."²⁴².

We shall not fail to emphasis on the wording "WTO requirements" which specifically refers the SPS agreement. The work of standardization relating plants and animals being made as required by the SPS agreement or even the thought of trying to implement the provisions is a positive Point to bring to tables of accession negotiation. Again SPS requirements being inclusive of international standards/preachers of harmonization the

²⁴⁰ id

²⁴¹ An assessment Of Ethiopia's Diagnostic Capacity in Sanitary and Phytosanitary Measures Related to Fresh Fruit and Vegetables, Dr. Thomas Deeb and Mr. Patrick Hanemann, Prepared for USAID, Executive Summary, (2005) pp.3

²⁴² The exact Amharic words in the document read as (. . . አዲሱ የሥራ ሂደት ሀገራችን በአለም አቀፍ ገበያ እወቅና የለው ፣ የገበያ ፍላጎትን መሠረት ያደረገ ፣ ተወዳዳሪና ጥራትን የጠበቀ የአንስሳተና የአፅዋት ምርት በማቅረብ የውጭ ምንዛሬን ለማግኘት የWTO መስፈርት የሆኑትን (P SPS PSC) ስምምነቶች ታሳቢ ያደረገ የቁጥጥር ሥራ (Regulatory) በስፋትና በጥልቀት ለመስራት እንዲያስችል ሆኖ ተዘጋጅቷል። MOARD, BPR document (Transacted to English by the write) pp. 3

fear of multiplicity of standards or even the fact that our standards might differ with others will be curbed.²⁴³ This was strongly stated in the BPR document

"Specifically by the use of SPS based laws, policies and working procedures and implementing same in all of our works, we expect to put the acceptance of our products in the international market to the utmost higher level"²⁴⁴

Though to judge the working one has to wait to total implementation stage, on its face the document is a road-map of perfection in solving our problem of standard in the agriculture sector. The work of the ministry coupled with the work of the QSAE can be so good that our product and their standards will not be a thing to worry about.²⁴⁵

The MOH also is involved in the standard setting process, though not as directly as QSAE or MORDA. The concern of MOH is mostly on products that are made for domestic consumption. But some times its involvement in products which are about to be exported is observed. For instance the newly endorsed food, medicine, health care administration and control proclamation drafted by MOH is one example. This new law tightens among other things inspection of food and drug production relating to their standards, be it for domestic consumption or for export purposes.²⁴⁶

It would only be right to also assess the Ethiopian commodity exchange [ECX] when discussing product standard and export market. ECX is a new initiative for Ethiopia, being first of its kind in Africa with a vision of revolutionizing Ethiopia's agricultural trade by creating a new market place for market actors i.e. farmers, traders, processor, exporters and consumers. An end to end system for handling, grading, storing, offering, bidding, payment and delivery on an agricultural commodity is rendered.²⁴⁷ The Exchange which started operation in April 2008 emphasis on market integrity on three levels deemed important i.e. products, transaction and market actors. To our point in hand

²⁴³ See chapter 2, pp19ff

²⁴⁴ Translated by the write, supra note 242, pp.7

²⁴⁵ The full BPR document is available at <http://www.moard.org.et>, here a look at the whole document is necessary to endorse the comment made about how the work can solve the product standard problem. Each working process is provided in detail account with the time table, manpower and infrastructure needs to reach the desired objective

²⁴⁶ House writes stiff drug law, Kirubel Tadesse, capital, Vol. 12. No. 575, Dec. 20,2009

²⁴⁷ Ethiopia Commodity Exchange, <http://www.ecx.com.et/companyprofile.aspx> (accessed on Nov. 26,2009)

the integrity of products is a point to discuss. In this aspect speaking of the agricultural market in Ethiopia it was said

"Trade was done on the basis of visual inspection because there was no assurance of product quality..., this drove up market costs, leading to high consumer prices."²⁴⁸

The best way of achieving product integrity is no other than assuring the quality of the product presented to the market. The exchange vows to promote market integrity by guaranting product standard.²⁴⁹

Paradoxically the preamble to the ECX proclamation nowhere has stated the issue of 'product/commodity standard' as a major concern. Article 6 of the proclamation which states ten purposes of the exchange also fails to incorporate the issue of 'standard'. Before this leads one to conclude as if standard is not within the realm of ECX agenda, a look on two provisions will be kind of a relief.²⁵⁰ Article 20(2) dealing with trading and trading system clearly refers to product quality and consequences thereof by saying

"It shall be unlawful for a commodity to be traded on the exchange without the issuance of an exchange product certificate as to the product quality and grade and of an exchange warehouse receipt as to the product quantity, condition and location of storage"

The full understanding of this provision requires a further look into what an exchange product certificate is, which is answered by same proclamation. Article 23 gives the exchange a power to develop and maintain standards for trading purpose i.e. it is a certificate issued by the exchange on grounds of fulfilling required standards.

Recalling what has been stated about the QSAE being the sole organ developing standards for Ethiopia confusion may arise on the scope of power of ECX. A compromise provision in these regard reads

²⁴⁸ Ibid

²⁴⁹ id

²⁵⁰ Ethiopia Commodity Exchange Proclamation, Proc. No. 550/2007, Art. 20(2) with Art. 23

"The exchange shall carry out its duties under this article without prejudice to the quality standards authority of Ethiopia as the sole government organ mandated to approve and declare Ethiopian standards"²⁵¹.

The best way to understand or even implement this article would be to assume a kind of joint working between these two organs. The practice of setting standards not in the list of QSAE will entail different questions. To the contrary trying to put a needed new set of standards through QSAE will make a better sense both to the market actors, as well as, the effective working of art 23(3). The vision of ECX in becoming a global commodity market of choices will only be achieved if the commodities in the marketing channel are one with required global standards. At this stage it is very difficult to proudly talk on the change the market brought as to product standards. For example, taking the major commodity on the market, coffee, two types of standard/grading is employed which still reveal the traditional market area regarding standards.²⁵² The entity being new may not be blamed for such but future effort in making the commodities as standardized as required in the international market is a thing not to sleep on.

4.2. The Agricultural Sector: Export Market Backbone

The basic aim of this part is to once again stress that 'lack of meeting required international standards' has highly damaged the Ethiopian export capacity, also if a strong major is not taken no sooner than very soon the anticipated market access benefit from acceding the WTO is going to be a pie in the sky. To show how the agricultural product has been a backbone to the export market let us use the NBE report for the year 2004/05 and 2006.

²⁵¹ Ibid, art 23(3). The term 'without prejudice' is given a parallel meaning «አንድተጠበቀ ሆኖ» in the Amharic Version which gives the impression that on top of the authority rendered to QSAE the ECX has its own powers to issue standards. In this aspect recognizing the 'sole' world in the provision will be difficult.

²⁵² Interview held with Ato Fekadu, compliance officer in the ECX. Coffee standard /grading currently is done on two bases referred as raw test and laboratory test. The first refers to a checking done using once eyes, whether the coffee is free of pests/not (imagine the validity?). The second is far from how it sounds as what they refer as laboratory is a testing done by expert coffee testers... as to its test and the like, reliance being made on ordinary peoples. Of course this may not amaze one because the recent coffee quality law defines standard setting on coffee with a similar means/mechanism.

Particulars	2002/3	2003/4	2004/5	Percentage Change
Coffee	165.26	223.45	335.37	50.09/102.93
Leather & leather product	52.22	43.59	63.73	46.2/22.04
Pulses	19.97	22.58	35.47	57.09/77.62
Oil seeds	46.09	82.66	102.29	23.75/121/94
Fruits & vegetables	9.58	12.72	16.07	26.34/67.75
Meat & meat products	2.42	7.66	14.59	90.47/502.89
Live animals	0.481	1.91	12.82	571.59/2564.22
Chat	58.02	88.02	99.96	13.57/72.21
Gold	42.08	48.71	52.5	7.78/24.70
Others	86.66	89.15	84.96	22.86/=1.96
Total export	482.78	6.45	817.74	36.19/6939

Value in Million \$, NBE, 2004/05 Annual Report, Export by Commodity

Product	2001		2002		2003		2004		2005	
	mt	Birr	mt	Birr	mt	Birr	mt	Birr	mt	Birr
Meat	870	14.4	662	9.4	1722	20.8	4007	66.7	7274	126.3
Live Animals	214	1.5	166	7.1	607	4.1	3141	16.5	9126	10.9
Total	1084	15.9	828	16.5	2329	24.9	7148	83.2	16400	236.3

NBE, 2006 Annual Report, Live animals and meet export over the last five year and the revenue generated there from

The data is a self-explanatory one about the place of agricultural product in earning export value to Ethiopia. It wouldn't be unfair to state 'product standard' in speaking of Ethiopian case is a direct reference to agricultural products, as the WTO trade profile has put the contribution of other products to 9.0% only²⁵³. It goes with out saying that for stronger reasons the standard of our agricultural products will be a major concern for the anticipated benefit the country is to grasp from acceding WTO or getting a better market access. The scholarly articles on the field by experts or even the comments rendered by

²⁵³ Supra note 238, note that the agricultural products breakdown counts for 85.5%.

active market actors puts the cause of 'standard' a topic of pivotal concern for our case. Some reflections made on this regard are as follows.

"The Protectionist import regulations of the developed world market have hitherto made it virtually impossible for Ethiopia to make the most of its animal and animal products export. This is so mainly because the poor health that it's lives animals and generally in makes it very difficult to meet these countries stringent regulations"²⁵⁴.

Developing the export sub sector is taken by the government as the pillar of economic reform. The ministry of finance and economic development has already drafted a sustainable development and poverty reduction program to achieve the export market reform nonetheless the issue of standard seems to be neglected as a major component the program endeavors to work upon²⁵⁵. This proves to be dangerous looking the comments rendered both by the private and public sector on the export of Agricultural Products²⁵⁶. Same voice was heard at questions presented to the minister of sciences technology, Ato Junedin Sado, before months, by some members of the parliament²⁵⁷. The findings and the conclusions made everywhere is same all same, standard is a thing we shall work on, what ever the cost may be if we are to far total rejection. In other words, on the Hide skin Industry

"Unless strong measures that could bring about fast and effective changes in the areas of production (feeding, health, breeding, reproduction) processing and marketing (transportation, storage and packaging) are taken with a sense of

²⁵⁴ Livestock Resource Potentials: Constraints and Opportunities for Intervention by the Private Sector, Dr. Tesfaye Kimsa, Etal (2008) pp. 78.

²⁵⁵ Sustainable development and poverty reduction program (SDPRP), MOFED (2002)

²⁵⁶ A study carried on the role of private sectors and public sector has showed that all consider 'standard' a major issue and fear that if not worked soon might risk the loose of export market. The organs included in the study were the Ethiopian live animal trader's Association, the Ethiopian Meat Exporters Association, The Ethiopian Society of Animal Production, Chamber of Commerce and Sectoral Association, Dairy Unions, Pastoral Commission and Regional Governments (Oromiya, Amahara, Somalias South Nations, Nationalities and Peoples Region. (Super note 50, P 46-62)

²⁵⁷ House of Peoples Representatives, 5th yr, 5th General meeting, Hidar 10/2002 E.C Member of Parliament his excellence Ato Tsegaw Birhane and W/o Asselefeech Bekele has questioned the what is being done in order to be competitive in the export market on existing standard hurdles to which the ministry has responded (note that the QSAE is currently accountable to the MOST)

urgency, there is, therefore, a high probability that Ethiopia could lose even its existing export market by not being as competitive as it ought to be”²⁵⁸

The point is our search for a better market access will be shadowed by the loss of even existing markets if an urgent work is not carried in the standard areas.

General findings on the areas of plant health requirements, human health or food safety requirements reveal that what we currently stand at is not a situation to be proud of. Major undertakings shall be on scene to improve such situation. The problems are of manifold. A study prepared for USAID states the Ethiopian plant quarantine system as poorly equipped, poorly trained and without the resources to comply with standards set by importing countries. The procedure of conducting inspection is also highly criticized. Same is said of the Human Health Sect²⁵⁹.

Some has gone to the extent of claiming the 'market access' as not a major issue for Ethiopia. Their comment is derived by the stand that so long as the product standards are not in the line with the requirements on the export market, how open the global borders for trade is profit will never rain. On an interview to reporter newspaper, Assegedech wolde-leuel doubt Ethiopians capacity to penetrate the international market, because of quality problem²⁶⁰. Though there are laws on making sure the products are of standard required, be it for domestic consumption or export market, the implementation of these specific laws is seen with doubt present lack of proper infrastructures needed²⁶¹.

Despite the existence of great livestock-population, the ideal export markets for meat and meat products, i.e. the Middle East, prefer products from countries other than Ethiopia, as

²⁵⁸ Supra note 254, pp. 82

²⁵⁹ Supra note 241, pp. 4

²⁶⁰ Productivity in Ethiopia is low as our waste is greater than what we use, Assegedech Wolde. Leul, V/p, Admas University College Interviewed, The reporter, Sat, April 25,2009.

²⁶¹ Animal – Disease Prevention Control Proclamation, Procl No. 267/2002, Coffee Quality Control and Marketing Proclamation, Pocl. No 602/2008, and the like

the SPS situation fail to motivate the confidence of these markets, even to date²⁶². It was so duly noted.

"Market band by the traditional import markets of the Arabian peninsula countries, due to disease out breaks from time to time, have stifled the Ethiopian livestock export market...Required access to the markets of these Arabian Countries is unthinkable unless Ethiopia significantly improve the SPS condition of its livestock and is able to meet quality requirements."²⁶³

Since the year 2000 the Ethiopian flower-industry has shown an amazing growth in the export market. Looking the so far performance it is anticipated that in the coming years of 5 to 10, the export earning will be in excess of 100 million USD. But recalling what happened to the export markets of Mexico, India and Guatemala, studies fear failure to meet SPS standards will diminish or even totally deny these anticipated export earnings."²⁶⁴

These concerned are not only those of the scholars or the government. The market actors (Individual/companies) involved in the export sectors also shares them²⁶⁵.

4.3. Least Developed countries Accession to WTO: Faced Hurdle relating to "Product Standards": The experience

The WTO considers a country as least developed if the country is named as such by the United Nations²⁶⁶. Ethiopia is found on this list. Both the process of accession as well as

²⁶² The livestock population in Ethiopia can be a basic source of export earning on a head count, i.e., cattle (40.4 million). Sheep (20.7 million), Goat (16.4 million), camels (0.44 million), poultry (32.2 million) putting Ethiopia on the top 10 list of world's livestock population (2009)

²⁶³ Supra note 254, pp. 78

²⁶⁴ Supra note 241

²⁶⁵ Supra note 239, Interview held with managers of selected export abattoirs .Supra notes 52 "It goes without saying that the international market for meat is highly competitive. Yet the meat that Ethiopia exports is not so competitive so much so that it is the least preferred..... The Arab Countries in the Middle East are also very strict about health issues. The SPS situation in Ethiopia has not, however, been able to inspire their confidence to date. Furthermore, Ethiopian meat exporters find it very difficult to access live animals that meet the requirements let for export-destined slaughter."

²⁶⁶ The list has 49 countries in it, where in more than 30 are members of WTO. These countries include Angola, Bangladesh, Benin, Burkinafaso, Burundi, Cambodia, Central African Republic, Chad, Congo, Djibouti, Gambia, GuineaBissau, Haiti, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Mynamr, Niger, Nepal, Rwanda, Senegal,

possible prospects and challenges of becoming a WTO member will be benefited much from experience of countries with a similar economic structure²⁶⁷.

The idea of becoming a part of multilateral trade negotiation is encountered with fear in most LDC's. This fear, explains former Brazilian finance minister who served as UNCTAD Secretary General until 2004, can be reduced to three genre²⁶⁸

(a) Lack of skills

"The fear of not understanding the issues at stake /or not possessing the negotiating skills and resources to effectively take part in the difficult same of negotiation."

(b) "Uncertain out come"

The fear of very tangible negative out come of negotiation including loss of jobs, food security doubt, cost of enforcement and the like.

(c) 'Problems competing'

The fear of not being able to be competitive in quality, price and range of products is mentioned in this regard.²⁶⁹

sieraleoen, Solomon islands, Tanzania, Togo, Uganda, Zambia, [Bhutan, Capeverde, Laos, Ethiopia, Samoa, Sudan, SaoTome and Principe, Vanuatu and Yemen]

²⁶⁷ The writer is aware of the fact that each country is of its own. What happens in Angola or Saotomeand principe may not necessary happen in Ethiopia. Yet commonality prevails than differences with regard to almost a similar economic set-up, that dealing this issue was found pertinent.

²⁶⁸ Over coming fear first, Rubens Ricupero, (2005), Finance and Development, PP.10 (Appears in the heading 'why should small developing global trading')

²⁶⁹ Ibid, p11. This one is sounder to the topic at hand. Generally referred as 'supply constraints' the fear of being unable to fulfill required product quality drags LDC's move to be part of the multilateral trading regime.

In the other side of the room, WTO proponents do not deny the existence of fear. Rather they prefer to emphasis on ways to over come them. They cite practical visible evidences of economic development accrued from market access and argued if more assistance for integrating the LDCs to the global market is made a better and faster development would be registered.²⁷⁰

When the interest of poor nations in joining WTO was met with a passive response, there was an attitude that

“The accession process is not meeting their needs (poor countries) and that developed members are not fulfilling their stated intention of facilitating LDC accession.”²⁷¹

Later when Cambodia becomes the first LDC entrant to the organization it was said

"For the WTO this was proof that the WTO could accept LDCs as new members. It could also be presented as a satisfactory response to the long-standing demanded by LDC members that accession procedures for LDCs be simplified and streamlined.”²⁷²

The then EU trade commissions, presently the director general of WTO also state the scenario as a demonstration of the developed world's commitment to facilitate LDC's accession and integration to the multilateral trade regime. He also stresses the duty of the developed world putting LDC accession Quest as a "right of the LDC's.”²⁷³ With all negative claims against acceding WTO the reality is that many LDC's are showing a great

²⁷⁰ Help Needed to Liberalize, Faizel Ismail, (2005), (as Cited on note 65) pp. 11-12 and datas shows export growth in LDC has risen from 2.9% a year (1980s) to 3.2% a year (1990s), GDP has rose by 0.8% [<http://www.wto.org/English/theWTO/e/minist/e/min01e/briefe/brief0.3e.htm>] accessed on Nov. 27,2009.

²⁷¹ Current status f the WTO accession process and the experience of ESCAP acceding countries, Mallcom Bosworth and Ron Duncan, pp.9

²⁷² Cambodia and WTO: the first LDC entrant: Background Note, Sok Siphana, Sep. 2009

²⁷³ Id, pp. 1c Pascal Lamy has termed the quest of LDC for a better accession mechanism 'reasonable.'

extent of interest. Now their claim has turned from the issue 'whether WTO accession is beneficial' to 'How can we make accession beneficial?'.²⁷⁴ One way to answer this is to look back at acceding LDC's and their experience. The fact that our paper is focused on product standard bars us from dealing with the ups and downs Cambodia or Nepal went through. So our scope will be limited in looking what happened with regard to 'standards' in these countries.

A policy brief presented about Cambodia and WTO by sok siphana, the secretary of state for commerce and the lead in the WTO negotiation of Cambodia states the accession agreement has allowed a phased implementation of major WTO agreements, TBT and SPS, coming in front.²⁷⁵ The main reason stated for the rendition of this transition time is Cambodia's LDC status. As explained in earlier parts the implementation of these agreements require a cumbersome cost which is beyond the capacity of poor countries. The transition period will serve as a time of developing whatever is required to be capable of fulfilling the agreement.

Literatures spell of the fact that accession is presumed to bring benefits in a form of economic and commercial gain.²⁷⁶ But without sufficient supply capacity the stipulated benefits are feared to be mere wishes. In these regard as a lesson for members to be, like Ethiopia, sok siphana, has out lined a number of lessons to look in depth. It is believed that the mechanism to faster accession process or be capable of becoming part of WTO in the long run can be achieved when a two-way work is done. WTO members has their own part to play, yet acceding nation is expected to carryout some important tasks. These lessons which Cambodia grasps from a long accession process as well as from the honor

²⁷⁴ The main claim in this regard is the entry fee/cost of accession required in the process has started to be regarded as a WTO-plus obligation raising the heights of joining too high. (Not too 4.4)

²⁷⁵ Supra note 272, pp3. Presently the transition periods has expired

²⁷⁶ . Supra note 271, pp 10-12, economic benefit is stated as a help in facilitating policy reform leading to trade liberalization, there by a market economy which bring competition, productivity with economic growth. Commercial benefit is stipulated in a way of securing market access to major export markets with non-discriminatory status. Also the dispute settlement process is sited in these regard.

of becoming the first LDC entrant to the organization are paraphrased in the following manner.²⁷⁷

1. Cambodia, being a small economy with a defacto liberal trade and economic regime the small size of its economy pose a few market access issues for major WTO members, which can made the accession negotiation easier. Same can be stated for Ethiopia. Ethiopia is a least developed country with a per capital income of around \$125 and population of more than 80 million. Being /becoming WTO member she is not expected to become a main actor. This is one good value to secure the accession process on the condition that what Ethiopia as a country is looking for is simply a secured market access with security and does not treat any member with fear of market overtake as happened with china.
2. Cambodia designed a clear policy that promises to work for substantial trade liberalization on a more broad based reform package. It is also the stand of Ethiopia that liberalization is a key act in acceding to WTO. Members must see these commitments at least on policy bases. Speaking of product standards the willingness to join international standard organs, as well as, to look for the applicability of SPS & TBT need to be designed on paper basis. Cambodia has done that.
3. What Cambodia does was not only policy designing. It also shows a clear political commitment securing support for the negotiating team from all government branches. Political commitment is stated as a crucial, if not, essential requirement for rapid and successful accession. In the Ethiopian case, the accession arm on the 'product standard' topic need certain commitment. By its nature the issue connect different executive organ of the government, as well as the parliament which has a key role in making WTO agreements laws of the country. In these regard much problem may not be anticipated as these branches are set in the first place to carry the policy and programs of the government. Yet an organized work as well as a real commitment is required.

²⁷⁷ Supra note 272, pp 4-6

4. Cambodia demonstrates its capacity as well as political will to implement commitments made to other WTO members. Ethiopia at the current stage may not be in a good position to demonstrate capacity of implementation. New instructional framework as well as legislation are needed which are costly. Yet a start in the process has the power of delivering the message that we are trying, and with proper assistance from all concerned we will be able to do what is expected of us.
5. Cambodia has placed the private-sector in the fore front as a force of accession. This was carried by development of engaging policy dialogue consultation, active public awareness campaigns, effective public-private partnership and the like. The task of 'standardization' directly concerns those involved in the export market. If a coordinated work is not done which makes these private sector an active actors, anticipated /needed results may not be secured. observing the necessity of involving private-sector, trade scholars have noted

"There is no denying the fact that Ethiopia's accession to the WTO has immense socio-economic implication for the lives of all segments of society. It is therefore, imperative that farmers, consumers, the business community, NGO's, academia and the like join in the discussion and debates the benefits and costs of joining WTO."²⁷⁸

6. A delay was an occurrence in Cambodia's negotiation process reasons for delay were elaborated as

"Insufficient knowledge, inadequate experience, limited resource, shallow analytical capacity required for accession, lack of common approach to accession terms and the like."²⁷⁹

Ethiopia's request for accession was circulated some 6 years back. it is possible that with all problems at hand the addition of aforementioned facts will further delay the process. Learning from Cambodia a way of solving such difficulties must be designed.

²⁷⁸ How to optimize advantages of accession to the WTO and measures to be taken to met possible challenges, Dr. Bacry Yusof, etal (2008) pp. 125

²⁷⁹ Supra note272, p. 5

7. Cambodia was able to fasten the accession process, though still claimed to be an inherently long and complex by an aggressive pro-active approach and creative modality for negotiation. In the product standard cycle for instance three inquiry points were established and an action plan was done in the TBT and SPS areas where in Cambodia believes there is an institutional infrastructure weakness. Ethiopia needs to involve in such approach. The existence of a strong infrastructure to implements product-standard related WTO-agreements will fasten one aspect of the accession process. It goes without saying also after accession attentions will be devoted on profiting rather than fulfilling required institutional frameworks.
8. Cambodia made use of the different assistances rendered in to a channel of local capacity building. WTO convinced of the need to render technical assistance and consultancy to the LDC has come up with different programs, so does other international organs.²⁸⁰ Ethiopia is also beneficial of this package.²⁸¹ After accession, trade scholars as well as efficient institutions which can implement the agreements are needed. We can never assume the shout for assistance for forever, that this time shall be one to develop our local capacity.
9. Cambodia has used its accession strategy to negotiate and obtain what it believes is in its best interest. Protection of national interest is mentioned in this aspect. Many who object the idea of WTO raise the concept of surrendering national interest as a reason. What Ethiopia can grasp from Cambodia is a strategy of accession which does not harm sensitive national interests and values is a possibility. A give and take approach mandate other negotiating parties to give us some to get some. Though not in an equal scale of bargain perseverance of

²⁸⁰ The integrated frame work effort among the most concerned entities about the World trade and economy is cited in this regard.

²⁸¹ A current training being rendered to selected law academics on the 'WTO' generally by some high ranked names in the subject internationally at moment of writing this paper is one simple, near example.

protecting some interest is not far from reach. And this was stated as a concluding lesson.²⁸²

Still not all view Cambodia's accession and lessons valuable. Their argument basically is established on the premises that terms for accession are beyond what is required by WTO agreements; referred commonly as "WTO - plus" obligations which put LDC's in to an unnecessary cost compared to the benefit to be accrued.²⁸³. In this aspect it is further noted.

"... There is a very real risk that Cambodia's accession will serve as a template model for the accession of other LDC's and developing countries. The establishment of a precedent would confirm the trend of demanding increasingly higher level of commitments of those countries that have not yet entered the WTO."²⁸⁴

4.4. Ethiopia's Accession to WTO and Product Standards

The major purpose of this part is showing the present status of Ethiopia in the move to join WTO and where the issue of 'product standard' is thereof. For this end it is essential to look briefly at the accession process of WTO. The legal regime governing WTO accession process is principally Art XII of the WTO agreement which provides.

"Any state or separate custom territory possessing full autonomy in the conduct of its commercial relations and of other matters provided for in this agreement and the multilateral trade agreement may accede to this agreement, on terms to be agreed between it and WTO..."²⁸⁵

As such the existence of commercial sovereignty is the only requirement a nation needs to become a member other than the will to join WTO. The provision is attacked by most scholars as lacking a concrete guide line of accession than merely stating terms to be

²⁸² The experience of Nepal is of same nature with Cambodia that the writer has intentionally left it to avoid redundancy. But for further look at Nepal accession lesson one can look <http://www.wto.org/english/newse/newsoze/acc/>

²⁸³ Cambodia's accession to the WTO, how the law of the Jungle is applied to one of the world's poorest countries, Celine Charveiat and Mary Kirkbride. For further information, email, celine.charveriatt@oxfaminternational.org or mary,kirkbride@oxfaminernatonal.org.

²⁸⁴ Ibid, pp.2

²⁸⁵ Art XII of the Marrakesh Agreement (1994)

agreed by WTO and acceding member.²⁸⁶ Practically the accession process has been termed as long and complex than art XII sounds with different procedures. For ease of understanding this process was put into four different phases.²⁸⁷

The first phase is that of application and the establishment of the working party. This introductory phase will be followed by the fact finding phase. A country which request accession is expected to submit its memorandum of foreign trade regime with pertinent legislations/ action plans active in its jurisdiction. Pertinent data's on major trading regimes is also required from an acceding nation.²⁸⁸ Once all datas and required documents are submitted a series of questions and answers follow on documents presented. This is believed to be a fact-finding mechanism. As a multilateral track, the memorandum of foreign trade regime submitted will be examined by the meeting of the working party. This phase will lead to the third negotiation cycle. Here commitment to rules will be made through bilateral and multilateral agreements between the acceding member and WTO members. The final stage is referred as the protocol of the accession phase (POA) were in the working party is expected to present the accession package to the ministerial conference which is expected to approve the agreements on the terms of accession by 2/3 majority. The decision so secured need to be verified by the applicant as to acceptance with effect of making the nation a WTO member after a period of 30 days.

For the point of this paper, the major commitment in the process of accession is the act of bringing domestic laws and regulations governing international trade into to conformity with WTO rules. The basic rules on the area of product standards, as has been stipulated all time long are the SPS and TBT. This by it self is a very demanding task in the

²⁸⁶ Supra note 271, pp. 14

²⁸⁷ Supra note 278, pp. 30 ff , Supra note 272, pp. 14

²⁸⁸ In the language of WTO, we refer these documents as WT/Acc 4 (data on agricultural domestic support and export subsidy), WT/ACC 5. (Data on trade in service), WT/Acc 9 (Data on TRIPS), data on applied tariff, are the main ones.

accession process. There are claims which state new acceding members are required to commitments found even beyond the SPS and TBT agreement.²⁸⁹

Ethiopia has been accorded status of an observer state some 13 years back. The accession request was circulated on Jan 13, 2003, where in working party was established immediately. This first phase was followed by the submission of the memorandum of foreign trade regime. It took three years to submit the memorandum after the establishment of the working party. The only progress made so far till this point of time was the question and answer sessions which was held twice. We practically are stuck on the fact-finding phase as we stand.²⁹⁰ Efforts were made to verify whether the issue of SPS/TBT was among the points raised in the question, answer stage. For purpose of secrecy it was not revealed, but one can reasonably expect dozen of questions will definitely relate with product standards and the Ethiopian case for such. Also assuming the successful completion of this stage we are heading to the negotiation phase. Expecting the bilateral and multilateral negotiations to be met with commitment issues related to SPS and TBT is also reasonable. Apparently the WTO accession desk is not carrying any particular task regarding product standards except some impact assessment studies carried on the SPS/TBT.²⁹¹ This does not mean the need is not felt. According to Ato Wondwosen Shewareg, An attorney at the MOTI, WTO accession desk, the mere fact that our export earning rely on agricultural products which directly relate with consumption makes 'standard' a big issue. He agrees we need to straighten what is

²⁸⁹ Effects of WTO accession on Policy Making in sovereign states, preliminary lessons from the recent experience of transition counties (draft) Bachetth, Drabek (2002), as it appear on Oxfam International staffing note of Cambodia's accession to the WTO.

²⁹⁰ The country is currently to hold the 4th national election that all attention of the government is devoted towards the May election. No soon we are expected then to register an improvement in the accession process, interview held with Ato Wondwesen Shewareg, MOTI, WTO Accession plus project, Thasas 20/2002 E.C

²⁹¹ Major activities carried so far with regard to the accession process can boil down to:

- a. Preparation and submission of memorandum of foreign trade regime
- b. Preparing a road map for the accession (which puts the year 2009, as entry year...)
- c. The diagnostic trade integration study supported by WTO/UNCTA/D/ITC/IMF/WB and UNDP
- d. Capacity-building activity by opening WTO affairs department in the MOTI.
- e. An impact assessment study on SPS and TBT.

missing in the standard circle, yet not for the sake of acceding to WTO but to our own benefit.²⁹² His argument is understandable in a sense that the 'standard' issue shall be addressed not because we want to be WTO members but because it is right to do so.

The accession desk is found to be aware of what the country is doing concerning standards. It is but noted too a lack of concrete communication among the different organ dealing with standards. The result of a scattered effort will not be as effective as an organized one. To cite an example, regarding the establishment of SPS & TBT enquiry points as required by these agreements²⁹³ the accession desk is of the opinion that the EQSA or MOARD are in a best position to carry these task, but does not act to see to it that such is done.²⁹⁴

Taking the Cambodian experience and looking to what extent the accession team is involving the private-sector in the 'standardization' process no mentionable work is registered. Some domestic industries with big name in the export market even have a negative opinion of some aspect of standard.²⁹⁵ This is a clear result of lack of awareness which can easily be cured through consultation, workshops and training.

The work of the accession desk on product standard shall never be paused for a moment on the fact that market access is secured via different means's, even if WTO accession is elongated or even not secured. It is proved that market access secured via WTO accession is both with security as well as vast in coverage of almost all huge export markets. This

²⁹² Supra note 290, It is the personal opinion of this expert that Ethiopian standards do not act as a bar for the acceding process. The writer of this paper has a totally different view of this fact. In fact he believes that if the problems we spotted in the paper regarding standards are not solved there is a high probability of being stuck on accession process, plus high risk of even losing available export markets.

²⁹³ See chapte2,pp19ff

²⁹⁴ . Supra not 290

²⁹⁵ Interview held with Ato Zeru Export Market Office Head of BGI Ethiopia PLC, St. George Beer Factory Head Office, A.A. Though Ato Zeru explain the company sticks to the country set standards by QSAE and health requirements set by MOH, they do not accept the ISO Standards., in the move to WTO, with existence of major standard agreements calling for the adoption of international organizations. Standard for sake of harmonization such an opinion may awaken us to look at the stand of our companies and is a point the accession desk need to study deeply.

tendency of looking for markets with less SPS/TBT requirements was referred as '*tacit policy of exporting easy products to easy markets*' and also an act to be changed.²⁹⁶ The accession desk shall also look the efforts made towards making our agricultural products competitive in the export market, by the QSAE and MOARD to emphasis in eradicating the SPS problems with frequent notification by major importing countries.²⁹⁷ This will be a strong tool of bargain in convincing negotiating members the positive ground available in the country to create viable business partnership.

A major actor in facilitating the accession process as well as in being a channel of exportation when market access through WTO is secured is the ECX. The accession team can utilize this first kind of its nature in African market to boost the process, if members are able to heighten their confidence in the trading center. It is for this that the issue of 'standard of products' needs to be a core point of emphasis for the ECX. A coordinated effort between this two government bodies is inevitable for a better result. The need to involve different organs for implementing all WTO agreements was long felt, when a paper studying the pros and cons of accession state

"In respect of ensuring the full implementation of all WTO agreements, particularly the SPS and TBT agreement, a number of organization with expertise and competency in particular WTO issues are designated as focal points. These focal points serve as interlocutors for providing technical inputs on specific issues relating to the pertinent sub-committee... in this regard the EQSA may be designated to serve as both the focal point and national inquiry point (NIP) on matters relating to standards & TBT."²⁹⁸

²⁹⁶ . An alternative perspective on SPS compliance in a poor country: the case of Ethiopia, Mehdi Shifaeddin, (2006) pp.4

²⁹⁷ The EU market is regarded to be the most stringent one when it comes to SPS application, and the sources of notification and concern in these regard has been chemicals, microbiological contaminations and hygiene (The last was regarded serious concerning products from LDCS), Kolstad and wiig (2002) Table 7

²⁹⁸ Supra note 75,pp.125

4.5. Conclusions and Recommendations

The thought that one of the ways to curb global conflict is to create global peace via trade brought the General Agreement on Trade and Tariff (GATT.) For years to come nations carry multilateral trade through the instrumentality of this agreement. Growth in all aspects of the world forced the establishment of a more organized and effective trade regime, the shift of GATT to the World Trade Organization (WTO) was the result. WTO, was a result of different trade package agreements, which widen the horizon of trade to fields never before as Trade in service and Intellectual Property. Trade Liberalization was the core agenda of the organization for bringing world economic development. Market access is the tool for liberalizing trade, so much so that a nation's product/service will have the opportunity to land in the markets of all member nations. This forces the idea of "standards", product standard i.e. what a certain item needs to fulfill in order to be marketable in a certain set the agenda of the free trade. Product standards can be established as of mandatory/voluntary nature. The basic need of standard was explained as 'consumption externality' which focuses on the protection of the product users. In the international trade regime standards are set both by national bodies and certain international organs and regional bodies as the international organization on standard (ISO) and the African regional organization for standardization (ARSO). Different studies have established the link between trade and standard, standing both for positive and negative relations, yet a fact not to deny is the link is so visible that it deserves a dogged look of this nature.

The WTO legal framework which is concerned of 'standards' is found in the main text GATT itself. Art xx talks of measures a member nation can take in order to protect consumer interest and interest of plant, life the environment and natural resources. This issue was further elaborated by SPS and TBT agreements. The former emphasis on food safety standard relating to Plant and animal health while the later covers all sorts of other products. These agreements guide on how standards shall be implemented in the multilateral trade regime, so as to avoid arbitrary/discriminatory standards. Case laws at different time have enriched the texts of SPS and TBT that now an established way of understanding the agreements exist. Finally as all WTO agreements, the SPS & TBT take

into account the capacity of developing nations and vow the trade aid through technical assistance and the like.

It was also found proper to pinpoint the concern of developing and LDCs with regard to 'product standards'. Worries are enormous, but the major concerns were found circling issues of cost of complying with standards, the lack of or the unsatisfactory involvement in standard setting influential organizations which made them standard takers, the private sector standard which cannot be governed through the WTO legal framework, as the later govern actions of governments, the human as well as institutional framework for becoming part of the dispute settlement process in case of infringements, the fear that anticipated technical assistance on the area of product standardization being ideal or insufficient, lack of harmonization of standards and WTO-transparency in implementing SPS & TBT.

The attitude of Ethiopian producer as well as consumer on product standard is not rich. The organ with sole responsibility of Ethiopian standards is the QSAE. The organ is currently performing dozens of functions with view of improving the standards of Ethiopia, but has its own limitations. The MOARD is also involved in the standard setting and implementing activity of plant and animals, and products from plants and animals. Speaking of export market the Ethiopian context is of agricultural products. Different data's and studies reveal that the export market for Ethiopia will be highly damaged if standards are not improved soon. This has been also a bar for least developed countries to foster and fasten the WTO accession process. Members will to open markets depend highly on the quality of product they are ready to entertain in their markets. The accession process of Ethiopia will face same kind of trouble. The act of bringing domestic laws as well as infrastructures to the requirements in the WTO text is a task to work for else much anticipated accession will remain in vain of our products are of low standard.

For the problems narrated in these work the following are considered to be solution path.

1. The quality and standard of Ethiopian products is not one which can earn us proud. The brand 'made in Ethiopia/produced/ from Ethiopia' is to face a serious challenge from importing countries. The later have become stringent in their SPS

- & TBT rule even with out the notion of WTO. Therefore our products need to be in line with standard requirements of different importing nations not in anticipation of WTO accession, but as a matter of necessity. Efforts of an utmost nature are mandatory in these regard. This will be made possible with a variety of other tasks the country need to work on the 'product standard' area like
2. The different governmental organs working on 'Ethiopian Standards' need to be in line with the requirements of the times. The world is evolving. The industries are shifting from one cycle of technology to another. In this dynamic set, standardizing bodies need to develop their capacities so as to meet the challenges of the time. It is the duty of those organs to search for what the export market is looking for in a product at least, on common standard terms. Setting of standards that stand only for the sake of domestic consumption costs. Ethiopia, as a primary exporter of agricultural products is faced with a challenge of number of different standards. The fact that the products are of consumption nature, makes our case complicated. Our standard setting bodies must be in a position to know and meet the wish of our products destinations.
 3. The task of standard setting bodies must never end at setting standards and assessing conformities. The today world SPS & TBT problems are not a matter of a single transaction. Agricultural products for instance will be troubled to be in line with set standards if not looked from their inception i.e. the soil they grow in, the fertilizer used, the temperature, the way they are collected, packed, transported. All these have a role in meeting set standards. In short the work of standardization shall not be limited to controlling at the export stage but must emphasis on preventive works from the start of the products growth to its export stage.
 4. Different organs were involved in the standardization of Ethiopian products. Starting from the major organ QSAE, the MOARD, MOH & ECX are highly linked to the matter of 'product standards'. These governmental entities need to work in close coordination to develop a uniform approach on our standard policy. What is at stake is a countries survival in the international market which proves to

- be stringently competitive. The lack of concerned organs 'one effort' will endanger and result in negatives. It is therefore suggested a committee which will be headed by the QSAE need to be established involving members from these different government organs with a main function of looking and making sure the 'standards' issue is handled in a manner beneficial to the nation, inclusive of the interest as well as say of concerned parties, there by uniformity is ensured.
5. The culture of involving the public in a governmental task is ill in Ethiopia. This holds goods on 'standards' too. Both in the function of QSAE as well as the accession process/work to the WTO, the role of the private-sector is proved nil. This needs an immediate turnover. A national consensus must be dreamt, least to land at a stand the majority understands. The business community is with real experience as to its products rejection at different levels of deals because of low standard. Brining these sectors to be part and parcel of the accession talk as well as the QSAE activity will value a lot. The organization of workshops /public forums by the government to achieve same will be a manifestation of the governments commitment towards making 'product standard' a national agenda.
 6. The bilateral trade agreements the country is highly involved must keep up. Efforts made in these regard to present our products with standards need to develop. Ethiopia is not currently so desperate of joining WTO for market access. Our move towards WTO is highly motivated by security for market access than market access alone. As such we need to grab the opportunities here and there which are of preferential treatments and make use of them. A name established in the bilateral field on standard will pave the way for fast accession to the WTO and its long-term effect on boosting the confidence of importer of different products is of high value.
 7. Ethiopia is represented in the major international standard organizations and is also a founding member of others. But the participation of the country as an influencing voice in these organs is not convincing. A change in these regard is mandatory. With all existing limitations, at least the representatives need to see to it that what is decided there and applied in the international trade regime does not

- harm or is in the interest of Ethiopia. The QSAE, as a representative of the government on all international standard bodies must examine its capacity and work towards a more sound and beneficial role, especially since we are to link our selves with the WTO, which highly relies on international standards dealing with 'product standards'.
8. Capacity-building in the QSAE and the accession-desk is a matter of urgency. Infrastructures, human expertise are issues not to sleep-over. It is not with the mere aim of acceding to WTO, but with a long-term plan of becoming a beneficial in the trade circle. We need to change the different support schemes coming from different direction to our advantage. Legal scholars, trade experts, standard agents need to know what is going on and what is to go. Different data shows that the capacity building is starting well, concerning responsible persons in the sector familiar with WTO laws. But all in all it is just a start. Taking in to account the requirements stipulated under SPS & TBT, emphasizing the building of required infrastructure for compliance with 'product standards' side by side with human-resource building is recommended.
 9. Working towards 'harmonization' and 'mutual recognition' of standards is also recommended as a means of reducing the cost of compliance with duplicity of standards. It is through exercising the rightful membership of international organs as well as bilateral treaties, this can be effectively achieved.
 10. Conformity to the WTO laws is a requirement to accession. It is recommended that the act of making all local laws in line with SPS & TBT requirements need to be done soon. The requirements stipulated in those WTO texts are clear. It takes only figuring out our scattered laws which have relation with product standard, bring it to a compilation and see to it whether it conforms or not. A task force can be organized for such a task.
 11. The act of encouraging exporters involved in different sectors by the government country wide should also take into account the notion of standard. Those exporters proved to meet standards and get credit for same by importers shall be our heroes who need real encouragement. In these regard the act of QSAE

recognizing such exporters shall continue in a more formal and national way. Also efforts by the newly organized 'Ethiopian Quality organization' shall be shared by others in the sector of assuring 'standard'

12. The trade era forces us to worry pass WTO rules/requirements. We should be able to think of private-sector standard enigmas and prepare our nation's strategy to exploit the benefits anticipated without being pulled back from the huge export market via WTO.
13. It is also recommended, in order to minimize the burden inflicted as a result of compliance cost the nation need to develop a strategy of shifting its export products to other sector than the agriculture. In a long-term plan developing abilities to produce/ manufacture less-costly standard requiring products must be an agenda for the government.
14. Lastly it is suggested the accession team shall negotiate a deal that benefits the nation on the area of standard by a maximum utilizing of the already established fast-track and simplified LDC's accession process.

If so, it is strongly believed the saying "standard doesn't cost, it pays" will become something more than a say for a country with a new development pact.

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