

***Addis Ababa University***  
***Faculty of Law***  
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**Food Quality Regulation in Ethiopia**

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## **Declaration**

I, the undersigned, declare that the thesis is my original work. Sources of materials used in the thesis have been duly acknowledged.

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## **ABSTRACT**

Ensuring an acceptable level of food quality and safety is necessary to provide adequate protection for consumers and to enhance economic development through the facilitation of fair practice in food trade. These objectives can be achieved by implementing and monitoring quality assurance measures along the entire food chain from production through to consumption. Everyone involved in food quality assurance system from farmer to the consumer is expected to shares in the responsibilities of ensuring the supply of good quality and safe food to the domestic consumers and foreign markets.

In this regard, the study tries to point out the legal and institutional problems related with domestically produced, exported and imported foods in Ethiopia. In addition techniques and instruments employed as well the means used to enforce the food quality regulation to assure the supply of safe and of good quality food has also been the subject of this study. Accordingly the study demonstrates that although food establishments, in Ethiopia, are rapidly increasing and their role in the economy of the country is also considerable, food quality regulatory system, however, is not keep pace with the contemporary food quality and safety assurance system. The Outdated and fragmented food related laws and inadequate Coordination among government regulatory bodies involved in the activities brought about practical problems in assuring the quality and safety of food supplied to domestic consumers and foreign markets.

At the end, the thesis tries to recommend that the laws should be updated and made comprehensive in a way it match international standards and the institution that coordinate the activities of all stakeholders need to be established so as to rectify the existing problems.



# Chapter 1: Introduction

## 1.1: Background

Quality standard which subjects suppliers of goods and services to behavioral control and which penalize those who fail to perform in accordance with the specified standards are the dominant form of social regulation.<sup>1</sup> In the history of social Regulation, food regulation also occupies a significant place.<sup>2</sup> Since ancient time producers of food products have attempted to alter their wares in an effort to obtain dear prices for cheaper goods by adding water to wine and by skimming cream from milk.<sup>3</sup> This shows that adding worthless substance to food and taking valuable substance from food product was experienced in ancient society. Hence regulation governing what could or could not be added to food products and regulations that require the use of official weights and measures have been introduced to protect consumers from fraudulent and/or unsafe food products.<sup>4</sup>

Regulation applicable to food and food product may be justified in market where producers know more about product quality than consumers.<sup>5</sup> To the extent that regulators are better informed about quality than consumers, regulations that punish firms that cheat on quality or that requires firms to disclose information about product quality can improve efficiency.<sup>6</sup>

Thus regulations governing what can or cannot be added to products, how products are labeled, and whether certain products can be safely sold to consumers, can be justified in the public interest, if consumers do not possess the necessary information to accurately discern these aspects of product quality on their own.<sup>7</sup> This indicates that if the consumers can get sufficient information about the quality of food product regulation may not be required. However, if the consumers can not clearly perceive the quality of

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<sup>1</sup> Anthony I, Ogus, Regulation: legal form and economic theory, 1996, p.150

<sup>2</sup> Ibid, p.192

<sup>3</sup> History of Food and Drug Regulation in the United States, retrieved from <http://eh.net/encyclopedia/article>, accessed on April 26/2009

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> Ibid

food products regulatory intervention becomes necessary to safeguard the health and safety of citizens.

Domestic consumers need food that satisfy their expectation, and that do not pose risk to their health and safety. Importing countries also require imported food to conform to the technical regulations and standards that they apply to domestically produced food products for healthy, safety and consumer protection. Imported agricultural products also have to conform to sanitary and phytosanitary measures which are applied to protect human or animal life from food borne risks and from plant carried diseases.<sup>8</sup>

The WTO Agreement on Technical barriers to trade (TBT) and the Agreement on the application of sanitary and phytosanitary measures (SPS), therefore, specify that countries should base their technical regulation and sanitary and phytosanitary measures on international standards.<sup>9</sup>

For the moment Ethiopia is not member of the WTO to get this advantage. Until she becomes WTO member, however, the quality and safety of exported food products have to comply with the standards of the specific importing country requirements. The requirements can be mandatory for requirements such as health, safety, protection of environment or consumer protection and are laid down in the legislation of the importing country.

As a result of conducive investment policy the country is following, the amount of food processing industries are rapidly increasing. These food processing industries are playing a significant role in terms of establishment, employment, and market share. The 2007/08 statistics published by the Central Statistics Agency shows that there were about 381 food and food products manufacturing plants in the country that constitute 26.5 % of the total manufacturing establishments in the country.

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<sup>8</sup> Codex Alimentarius Commission, International Harmonization of Food safety and Labeling standards, 1997, p. 1

<sup>9</sup> See SPS and TBT Agreement

Street foods are also flourishing in major towns of the country. These street foods, as an informal sector and, which are readily accessible to urban population also need the attention of regulatory bodies so as to get their quality and their safety ensured.

In general, to respond to the international requirements of food quality and safety in the global market and to meet the expectations of domestic consumers as well as to safeguard the public health, there must be strong and up to date regulatory framework and well organized institutions and cooperation among all stakeholders involved in food quality regulation, production, supply and distribution.

How ever in Ethiopia while food processing industries are rapidly increasing, the country's food quality and safety regulatory system is very little developed and is not able to effectively support the production, supply, and distribution of safe and quality food to the domestic consumers and to the export market.

It is this fact, therefore, that initiated the writer to conduct the study on this untouched areas of law. Accordingly, the writer assessed the current state of food quality regulation in Ethiopia, and tried to find out legal and institutional problems and subsequently recommend solutions to the perspective problems.

## **1.2: Statement of the Problem and Research Questions**

Success in today's highly competitive global market requires producers to be quality conscious that helps them in providing better quality products. Placing great emphasis on producing good quality and safe food products helps to ensure that the products offered to their customers are consistent, reliable and truly meet their customer's needs.

In today's globalized world where food production is on rapid increase and movement of food products through international trade is growing, guarantying the quality and safety of imported, exported and locally produced food products become basic requirements.

In Ethiopia, as food processing sector is rapidly increasing, giving attention to ensure quality and safety plays a significant role in the national economic development by

enhancing tourism, national and international trade for production, supply and distribution of quality and safe food and preventing avoidable losses.<sup>10</sup>

Though food processing sector is rapidly increasing and street food has been started to flourish it become common to listen that the food control system in Ethiopia is not adequate to support the production, supply and distribution of quality and safe food to local consumers as well as to the export market due to the existence of the following major problems.

- There is no comprehensive national food law and sufficient number of updated food quality and safety regulation. Except public health proc. No. 200/2000 and animal disease prevention and control proc. No.267/2002 all existing regulations relevant to regulation of food quality and safety regulations were issued before 1970s and can not respond to the contemporary issues of food quality and safety.
- In Ethiopia the food control activities are scattered among various regulatory bodies such as ministry of health, ministry of agriculture and rural development and quality and standard Authority of Ethiopia. However the responsibilities and mandates given to these regulatory bodies are not adequately defined, demarcated to avoid overlap and duplication of functions.
- Low level of integration, collaboration and cooperation among regulatory bodies, food producers, and consumers.
- Lack of social awareness on food quality and safety issues.
- Absence of central and responsible food quality and safety authority
- Absence of Codes of practice which can serve as reference for all parties involved in food quality and safety affairs

Based on the above stated problems, the study has tried to address:

- Whether there are challenges and constraints in regulating the quality and safety of foods in Ethiopia?

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<sup>10</sup> National Food System in Ethiopia, a situation Analysis, a paper presented on FAO/WHO Regional Conference on Food Safety in Africa, Harare, 2005

- What should be done by the government, food firms, consumers' organization to enhance the level of food quality in Ethiopia to meet the demand of consumers and Ethiopia's food importers?
- Whether there is the need to establish central and responsible food quality and safety authority in Ethiopia?
- Whether there are adequate facilities and sufficient and capable human power to implement food quality control system;
- Whether having codes of practice is important to enhance food quality and safety control system;
- What are the experiences of other countries, especially those with good regulatory framework and/ or similar level of development looks like, and International Standards in regulating food quality and safety issues?

To sum up, the study attempted to address the legal and institutional problems related to the:

- Adequacy of laws and regulations
- Efficiency of organizational structure to control food quality and safety
- Awareness of all parties involved in food quality control system.
- Adequacy of facilities and human powers to implement food quality control system.

### **1.3: Objective of the Study**

In light of the increasing number of food industry and the growing need for quality and safe food and the prevailing challenges, and constraints, the main objective of this study is to assess the existing food quality and safety regulatory mechanisms put in place and then recommend solutions to rectify the existing problems surrounding food quality regulation, so as to accommodate domestic consumers and foreign food product importers that would contribute much for the economic prosperity of the country.

With this aspiration, the specific objectives of the study were:

- To contribute to the existing knowledge in the field by assessing the existing food quality regulatory framework in order to establish the sufficiency or insufficiency

of the food quality control systems in Ethiopia in protecting consumers and in promoting food trade ;

- To identify gaps in legal and institutional framework in implementing food quality control system in Ethiopia and then to forward remedial solutions;
- To examine the extent to which the existing food related legislations are in compliance with internationally recognized food quality standards
- To examine the experience of selected countries with a view to knowing the system they have used to regulate the quality of food and compare the result with our current situation of food quality control system.
- Finally to suggest possible recommendations (solutions) to government that would provide a better ways of regulating food quality and fill the gaps that are identified in the existing regulation of food quality in Ethiopia.

#### **1.4: Significance of the Study**

As it has been stated herein above the study has focused on food quality and safety regulation and the recommended solutions.

- Hence, it may hopefully contribute by developing awareness of food quality regulatory bodies, food industries and consumer to work in collaboration and coordination in improving the production, supply and distribution of good quality and safe food.
- The study will also serve as input for those who want to conduct further research in the field.
- Finally, it may serve as input for policy making and regulation in the area of food quality and safety.

#### **1.5: Scope of the Study**

The whole study has focused on regulation of food quality and safety in Ethiopia. Since food quality and safety regulatory requirements are commonly applicable to all foodstuffs, the study has tried to explore the legal and institutional framework put in place to regulate all foods in general without focusing on specific foodstuff. However the practices of regulating meat and meat products, Edible oils, as well as street foods issues

were briefly considered to assess what the practice looks like in regulating quality and safety of food in Ethiopia. In examining the food quality control system in Ethiopia, the objectives, areas, techniques and instrument of regulation as well as the means for the enforcement of the regulation are the areas on which the study focused.

International agreements such as the WTO Agreement on Technical barriers to trade (TBT) and the Agreement on the application of sanitary and phytosanitary measures (SPS) have been considered to show their relevance in international food trade. Although Ethiopia is not signatory to the TBT and SPS Agreements, it is obvious that her access to export market depends on her capacity to meet the regulatory requirements of importing countries. At present time, most countries are signatory to SPS and TBT agreements. Understanding both SPS and TBT Agreements is relevant to know the requirements for food quality control system at the national level and the rules under which food are traded internationally.

In addition, the regulatory mechanisms employed in food quality and safety regulations from some selected countries have been dealt with for the purpose of comparisons. For this purpose U.S.A., Canada, and India are selected. U.S.A. and Canada are selected since their food quality and food safety regulatory systems are considered as the best one to which those who want to have new food law or to revise their existing food law make reference. India is selected since she is categorized in developing countries and has shown promising development in food export by establishing good food quality and safety regulatory framework.

## **1.6: Research Methodology**

The study involves qualitative methods in that it has devoted on the reasons, justifications or logical arguments on the existing legal instruments dealing with food quality regulation. However to substantiate the study, relevant data from the concerned bodies have been collected. Making review of various literature and undertaking analysis of laws related with the subject under consideration has been employed as one of the methods employed in the study. Field study, as well as, interview has also been used with a view to gathering necessary data and information from the concerned persons.

The sources of information have been both primary and secondary sources. The primary data was obtained from concerned official, from head Office and Addis Ababa branch of Quality and Standard Authority of Ethiopia. Ministry of Health, Ministry of Agriculture and Rural Development, and Ministry of Trade and Industry were also used as primary sources of information for assessing the existing regulatory mechanism of food quality control system in Ethiopia. As food quality control issues touch up on all levels of regulatory bodies, the respective regional bureaus of Oromia, and Addis Ababa were also used as sources of information in the process of conducting the study.

The secondary data employed were legislations, regulations, domestic and foreign literature related with the study.

International agreements relevant to food quality regulations, such as the WTO, TBT and SPS Agreements, as well as Codex Alimentarius constituted one of the secondary data which were considered in the study to show their importance in international food trade. In addition, the regulatory mechanisms put in place in food quality regulations from some selected countries were included for the purpose of comparisons of our food quality regulatory system with foreign experience.

## **1.7: Literature Review**

Countries require that imported, exported and domestically produced goods conform to regulatory requirements provided for these purposes. With a view to achieve these objectives government employ legal instruments to compel individuals and organizations so that they can comply with the prescribed behavior and regulatory requirements.<sup>11</sup> This is to mean that regulation is provided with a view to inform what can or can not be done with respect to the matters for which it is prescribed.

As it has been stated previously quality standard which subjects suppliers of goods and services to behavioral control and which penalize those who fail to act in accordance with the specified standard is the dominant form of social regulation.<sup>12</sup> Here quality regulation

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<sup>11</sup> General theories of regulation, retrieved from <http://users.urgent.be/gdegeest>, accessed on April 28/2009

<sup>12</sup> Supra note cited at 1, p. 192



as a form of social regulation is provided to control, restrain or correct the producers of good and services so that they can act in a responsible manner.

The regulation of food quality is emerging as a major policy challenge, especially because of the unusual nature of some important attributes of food. When considering the economic impact of food quality regulation and the proper role of government in regulating food quality, it is important to address the issues revolving around the existence of acceptable justification for regulatory intervention in this respect.

In the debate about food quality regulation, the primary issue that needs to be addressed is the economic justification for government intervention. The justification for government intervention was rightly explained by Julie A. Caswell and Daniel I. Padberg in their categorization of food products into search, experience, or credence goods based on the timing and types of quality information available to consumers.<sup>13</sup> The distinction was based on foods attributes whose quality is readily observable, whose quality can be observed after they are purchased and used, and food attributes whose quality cannot be readily observed even with repeated purchase.<sup>14</sup>

In the case of search goods, the consumer can accurately ascertain the product's quality before purchase since quality information is nearly perfect and markets generally function efficiently in providing consumers with the quality attributes they are willing and able to pay for.<sup>15</sup> This indicates that because of the way the market for search attributes operates, they have been a relatively minor focus of government regulatory activities. Stated otherwise with regard to search attributes of food since the market can correct itself government intervention is not required.

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<sup>13</sup> Julie A. Caswell and Daniel I. Padberg "Toward a More Comprehensive Theory of Food Labels," American Journal of Agricultural Economics (vol. 74, No. 2), 1992, p. 461, retrieved from, <http://www.jstor.org/stable/1242500>, accessed on January 13/2010

<sup>14</sup> John K. Horowitz, "Regulating safety and quality standards in food marketing, processing, and Distribution", American Journal of Agricultural Economics (Vol. 78, No. 5), 1996, p. 1261, retrieved from <http://www.jstor.org/stable/1243503>, accessed on January 12/2010

<sup>15</sup> John M. Ante, "Efficient Food Safety Regulation in the Food Manufacturing Sector", American Journal of Agricultural Economics, (Vol. 78, No. 5), 1996, p. 1244, retrieved from <http://www.jstor.org/stable/1243500>, accessed on January 12/2010

In the case of experience goods market quality information is imperfect before purchase but consumers can realize the quality of the product after purchase and use, and product repeat purchase can serve to achieve the efficient provision of food with good quality.<sup>16</sup> As Julie A. Caswell and Eliza M. Mojduszka argued, for experience attributes, the most important issue is information and how consumers can learn about product quality. Hence, information problems in markets for experience goods may be mitigated if consumers make repeated purchases of a product where their choices are based on prior experience with product quality.<sup>17</sup>

However, in the case of credence goods since the market for food quality is not perfect, consumers are often unable to know product quality either before or after purchase.<sup>18</sup> The most significant imperfections are that sellers are better informed about quality attributes (e.g., safety, nutritional quality or quality related to the production process) than consumers. Under these conditions of asymmetric information consumers may have misperceptions of the risks and hazards of consuming particular foods, and food quality and information about food quality may have public good characteristics.<sup>19</sup> John K. Horowitz argued that it is in the case of credence goods only that government intervention is likely to be warranted in an attempt to correct imperfections or mitigate their effects.<sup>20</sup>

The above scenario suggests that in the case of search good, where the quality attributes of food can be ascertained before purchase regulatory intervention is not necessary. Even where the quality of food attributes is known after purchase and use (for experience goods), government intervention may not be warranted so long as market imperfection is likely to be remedied through repeated purchase of the product. However where market mechanisms can not provide full and accurate information to consumers such as in the case of credence goods government is required to intervene to overcome information

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<sup>16</sup> Ibid

<sup>17</sup> Julie A. Caswell and Eliza M. Mojduszka, "Using Information Labeling to Influence the Market for Quality in food industry", *American Journal of Agricultural Economics* (Vol. 78, No. 5), 1996, p. 1249, retrieved from <http://www.jstor.org/stable/1243501>, accessed on January 13/2010

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> Supra note cited at 14, p. 1261

asymmetries. In other words it can be said that the existence of market failure because of asymmetric information is the economic justification for regulatory intervention.

The second important issues need to be addressed is what forms of efficient regulation would take, if it can be demonstrated that some type of regulation is economically justified. John M. Ante made clear that if the inability to observe a good's quality is the reason that intervention is justified, then providing information about quality through product certification and labeling would be a natural way for a regulator to intervene.<sup>21</sup> This is because of the fact that where there is information asymmetries, sellers know product quality and can make that information available to consumers through product certification or labeling.

Since it is difficult to talk about food quality by setting aside the safety of food, food quality regulation is considered in connection with food safety. Hence, since the term food quality and food safety can sometimes be confusing it is important to briefly explain their distinction. Food quality is the extent to which all established requirements relating to food are met.<sup>22</sup> Quality characteristics of food include attributes such as the origin, quantity, colour, flavor, texture, and processing methods of the food.<sup>23</sup> Failure of a food to meet regulatory requirements relating to a standard of identity, the declared quantity, declared ingredients or label claims can be considered as misrepresentation, misbranding or fraud.<sup>24</sup>

Food safety implies absence or acceptable and safe level of contaminants, adulterants, or any other substances that may make food injurious to persons.<sup>25</sup> This means that food safety is related with the absence or acceptable and safe level of harmful substances present in the food and concerned with whether the food has been prepared, handled, and stored under controlled and sanitary conditions in conformance with practice prescribed by government regulations.

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<sup>21</sup> Supra note cited at 15, p. 1242

<sup>22</sup> Food Quality Assurance : Principles and Practices, p. 29, Retrieved from <http://books.google.com.et/books>, assessed on May 29/2009

<sup>23</sup> Assuring Food Safety and Quality: Guidelines for strengthening National food control system, Joint FAO/WHO Publication, p. 29, Retrieved from <http://www.who.int/foodsafety/publication>, accessed on may 12/2009

<sup>24</sup> Supra note cited at 1, p. 30

<sup>25</sup> The Importance of Food Quality and Safety for developing countries, p. 1, Retrieved from <http://www.fao.org/trad/edoc/Lcd-foodqual-en-htm>, accessed on may 11/2009

Many national governments have established the legal requirements for food quality and food safety with the objective of protecting consumers against unsafe, impure and fraudulently presented food by prohibiting the sale of food not of the nature, substance or quality demanded by the purchaser.<sup>26</sup> It is to mean that regulating quality of Food is necessitated with a view to protecting consumers from illness and injury as well as deceptive practices by obliging producers and distributors to provide true and reliable information on which consumers can rely to make the right choice of buying safe and of good quality food.

In order to provide consumers with good quality and safe food, regulatory framework applies standards techniques that can be achieved through different means: Such as permissive, mandatory and prohibitory standards regulations.<sup>27</sup> Permissive standard is a type of standards that prohibits the addition of any substances other than those it specifies and is usually employed in connection with food additives, a “permitted list” containing only those additives which may be used to the exclusion of all others.<sup>28</sup> In this type of standards technique, the producer is allowed to use only those food additives specified by the regulatory authority.

Mandatory standards provision specifies the substances to be added in food stuff.<sup>29</sup> It means that it imposes obligation up on the producers to add certain type or quantity of ingredients in the foodstuffs. Prohibitory standards on the other hand provides for list of substances not to be included in the food stuff.<sup>30</sup> This is to mean that , for instance, if ‘x’ is prohibited from contained in certain food all that is not ‘x’ is permitted.

Traditionally food laws and regulation had defined unsafe food and has prescribed the enforcement tools for removing unsafe food from commerce and punishing responsible parties after the fact.<sup>31</sup> This indicates that it has been reactive and enforcement oriented rather than preventive to reducing the risk of food borne disease. However, modern food

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<sup>26</sup> Supra note cited at 23, p. 2

<sup>27</sup> S.M. Herschdoerfer(Editor), Quality control in the food industry (volume 1), 1967, p. 312

<sup>28</sup> Ibid

<sup>29</sup> The new Encyclopedia Britannica, Vol. 19 1993, p. 312

<sup>30</sup> Ibid

<sup>31</sup> Supra note cited at 25, p. 6

laws and regulations allow the competent food authority/ authorities to build preventive approach in to the food quality and food safety control system.<sup>32</sup>

To achieve maximum consumer protection and to satisfy importing countries food quality and safety requirements, it is essential that quality and safety be built into food products from production through to consumption.<sup>33</sup> This calls for comprehensive and integrated farm-to table approach in which the producer, processor, and transporter and all play vital role in ensuring food quality and food safety.<sup>34</sup> This is because many food-safety hazards can enter the production chain at multiple points and can multiply or cross-contaminate other products one present. Then a farm-to-table approach allows identification of the effective points for intervention.<sup>35</sup> This shows that food quality and safety regulation needs a coherent and proactive policy that helps to controls from raw material, up to the final products (out puts) and helps to establish an environment for supplying safer and quality food at all areas of exported, imported and domestically produced food products.

With regard to instruments employed for regulating the quality and safety of food Anthony I Ogus states that the instruments governing food supply can be categorized as information regulation.<sup>36</sup> Information regulation, also called food labeling regulation, is evolved with the view to provide all relevant information about the true description of food such as the place or origin, its ingredient and the way in which the food is produced.<sup>37</sup> It provides information that represents a material fact in order to enable consumers to make the right choice when buying their food. Food labeling regulation provides general provisions prohibiting the publication or use of a label which falsely describes the food 'or' is likely to mislead as to the nature or substance or quality of the

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<sup>32</sup> Ibid

<sup>33</sup> Ibid, p. 10

<sup>34</sup> Ibid

<sup>35</sup> New approaches to food safety economics: Overview and new research direction, P. 11, Retrieved from <http://library.wur.nl/frontis/food-safety>, accessed on June 16/2009

<sup>36</sup> Supra note cited at 1, p. 194

<sup>37</sup> Quality Control/Quality Assurance and International Trade; good manufacturing practices; Hygienic Requirements; Hazard Analysis and Critical Control Points (HCCP) for fruits and Vegetables processing in Developing Countries, P. 3, retrieved from <http://www.unido.org/fileadmin/import/userfiles>, accessed on September 22/2009

food.<sup>38</sup> Hence food producers are under obligation to inform their customers by providing information that is true and not misleading.

The issues of street food are also other areas of concern in food quality regulation. Street foods are defined as ready to eat foods prepared/or sold by vendors in street and other similar public place such as around place of work, school, rail way stations and bus terminals for immediate consumption without further processing or preparation.<sup>39</sup> Here street foods are easily accessible and relatively affordable food that can satisfy a vital need of the urban population. Although the accessibility and affordability of street foods are their merits, they are perceived to be a major public health risk in view of health problems associated with food hygiene and sanitation that are closely related to improper personal hygiene, unsanitary practices and habits.<sup>40</sup> This implies that this informal food sectors (street foods) need to receive specific attention with respect to legislation to ensure that they are not pose risks to their consumers.

As regards enforcement of food quality regulation, there can be an inspection as well as sampling and testing by government regulatory agencies to ensure the compliance by food producers and distributors to specified standards and government regulatory requirement.<sup>41</sup>The enforcement activities fall into two categories. First, they include inspection and Audits of establishments that process, handle, and store food to ensure that the required sanitary and controlled conditions are followed.<sup>42</sup> Second, they include inspection and analysis of food for harmful substances to ensure that there is conformance to established limits and tolerance.<sup>43</sup> In conducting inspection activities sample and analysis are required to determine whether the food product conform to standards and prescribed regulation or not.

Although government has made concerted effort to ensure the supply of safe and of good quality food, misbranded foods or food that cause harm some times enters the food

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<sup>38</sup> Supra note cited at 1, p. 194

<sup>39</sup> Food safety Issues from the Asian Consumer viewpoint, p. 2, Retrieved from <http://www.selamat.net/Document>, accessed on June 25, 2009

<sup>40</sup> Supra note cited at 37, p.33

<sup>41</sup> Supra note cited at 27, p. 319

<sup>42</sup> Supra note cited at 11, p. 33

<sup>43</sup> Ibid

distribution chain. When ever a misbranded food is detected or a harmful substance is detected in food, government regulatory agencies take the necessary action such as administrative action to protect consumer against violations.<sup>44</sup>In addition, if it is determined that adulterated and misbranded food has been produced as result of negligence on the part of the food company; legal action can be taken against the company.<sup>45</sup> This legal action may be criminal or civil as the case may be.

In contemporary globalized world food quality regulation is not only confined to domestic consumer, it also cross border and enter in to international trade. Hence access of countries to export market depend and will continue to depend on their capacity to meet the regulatory requirements of importing countries.<sup>46</sup> In this regard codex Alimentarius (food code) is provided by FAO/WHO joint commission to protect the health of consumer and to ensure fair practice in internationally traded food.<sup>47</sup> SPS and TBT agreements are also relevant in understanding the regulatory requirements for food protection measures at the national level and the rules under which food are traded internationally.<sup>48</sup> This suggests that having clear understanding on internationally recognized standards of food quality and safety regulation has a pivotal role to play in creating sustainable environment for active participation in international trade in food.

Most of the food rejections from developing countries by importing countries are attributed to lack of basic food hygiene, and failure to meet labeling requirements.<sup>49</sup> Dealing with these is possible if countries could introduce basic sanitary and phytosanitary (SPS) measure in order to meet international requirements for food quality and safety.<sup>50</sup> However, in developing countries basic food laws may either be lacking or the existing one may be outdated, inadequate, fragmented and could be found in different statutes and codes which resulted in confusing the enforcement agent, producers and

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<sup>44</sup> Ibid

<sup>45</sup> Ibid

<sup>46</sup> Supra note cited at 25, p. 4

<sup>47</sup> Ibid

<sup>48</sup> Ibid

<sup>49</sup> Developing and maintaining food safety control system for Africa: current status and prospects for change, P, 3 Retrieved from <http://www.fao.org/docrep/meeting>, accessed on June 25/2009

<sup>50</sup> Ibid

distributors.<sup>51</sup> There are at least two ministries and departments involved in food quality and safety regulation activities, however, there is no collaboration and coordination resulting in conflict and duplication of efforts.<sup>52</sup> This could not allow the efficient use of human, material and financial resources.

Similarly, food quality regulation in Ethiopia is a shared responsibility of Ministry of Health, Ministry of Agriculture and Rural Development, Ministry of Trade and Industry, and Quality and Standards Authority of Ethiopia. However there is no strong coordination and cooperation among these government regulatory agencies. There is also no comprehensive food law that clearly defines and streamlines the activities of each regulatory body. Moreover the existing laws and regulations are outdated and could not respond to contemporary food quality and safety issues. Hence for the purpose of identifying the problems and challenges associated with food quality regulation in Ethiopia, international food standards guidelines and selected countries experience serve as useful instruments.

## **1.8. Organization of the Thesis**

In brief, this study will attempt to explore the present status of regulation of food quality in Ethiopia. In so doing, the study is divided in to five chapters each of which is again divided in to sections and sub-sections. Chapter one starts with introducing statements of the problems, objective of the research, and scope of the study, research methods, and significance of the study and literature review. Chapter two explores the objectives for which the food quality and safety regulation is provided in general and in Ethiopia in particular.

Chapter three tries to examine the areas, techniques and instruments of the regulations. In this chapter an attempt will be made to briefly examine which areas of food are regulated and what techniques and instruments are employed in regulating the quality and safety of food supplied to the public. The international experiences and standards of food quality regulation by focusing on the experiences of selected countries and international

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<sup>51</sup> Ibid

<sup>52</sup> Ibid, p. 4



standards relevant to food quality regulation such as Codex Alimentarius, the WTO TBT and SPS Agreements are also briefly considered in this part of the study. In this part of the study the legal and institutional problems faced in regulating the quality and safety of food in Ethiopia will be examined in the light of legal and institutional mechanisms put in place by other countries.

Only providing food legislation will not guarantee the supply of safe and good quality food. To protect consumers any legislation must be supported by an adequate enforcement infrastructures. Chapter four, therefore, is about the enforcement mechanisms employed for regulating the quality and safety of food in Ethiopia.

The last part of the study is conclusions and recommendation, which examines ways of addressing food quality issues in Ethiopia. Based on the finding of the study possible recommendations will be suggested that would provide better mechanisms of regulating food quality in Ethiopia and remove gaps (defects) that are identified by the study in food quality regulation.

## Chapter two

### The Objective of Regulation

Governments, all over the world, have employed various mechanisms with a view to protecting their citizens from unnecessary risks and to ensure the socio-economic development of their country. Regulation is one of the many systems used to safeguard the public interest. It safeguards public interest both by preventing unfounded risks, to which the society would be exposed, and by enhancing markets for economic development.

Regulation in the area of food quality and safety protection is one aspect of regulatory mechanisms which is emerged as the result of many problems related to food; the problems that cannot be detected by consumers using their sense of sight, smell, taste, or touch when selecting or consuming foods.<sup>53</sup>

Consumers have been increasingly demanding that government should take legislative action so as to ensure food quality. They demand so with the assumption that it is only safe and accurately labeled food that is sold, and that risk of food-borne health hazards is minimized.<sup>54</sup> Government and food industry seek to trade in safe and good quality food to avoid adverse effect on both consumers and Economies.<sup>55</sup> It can be said that food quality regulation is evolved to safeguard consumers from both economic and health risks and to ensure the functioning of food markets in an orderly manner by prohibiting the production and sale of unsafe food products and fraudulent acts committed on foods.

In general it can be said that the objectives of food quality and safety regulations are:

1. Protecting public health by reducing the risk of food borne illness;<sup>56</sup>

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<sup>53</sup> John R. Cupien, The world of Science, p. 3, retrieved from <http://www.worldfoodscience.org/cms/> assessed on September 15/2009

<sup>54</sup> Ian Lindenmayer, Harmonization of food regulation and food quality and safety measures based on Codex standards, Guidelines , 2009, p. 2

<sup>55</sup> Ibid

<sup>56</sup> Assuring Food Safety and Quality: Guidelines for strengthening National food control system, Joint FAO/WHO Publication, p. 3, Retrieved from <http://www.who.int/foodsafety/publication> assessed on may 12/2009

2. Protecting consumers from unsanitary, unwholesome, mislabeled or adulterated food;<sup>57</sup> and
3. Contributing to Economic development by maintaining consumer confidence in the food system and ensuring fair practices in the food trade.<sup>58</sup> From these, we can infer that food quality and safety norms are relevant to a variety of policy areas such as health and consumer protection as well as enhancement of economic development by ensuring orderly functioning of the food market.

Under this part of the study, therefore, these objectives of food quality and safety will be considered as follows.

## **2.1. Public Health Protection**

Basically, factors which contribute to potential hazards in food include improper agricultural practice, poor hygiene at all stage of the food chain, lack of preventive control in food processing and preparation operations (stages), misuse of chemicals, contaminated raw materials, ingredients and water, as well as inadequate or improper storage.<sup>59</sup> This gives rise to food-borne health hazardous; and this would require intervention by regulatory mechanisms. Regulation in this case should aim at providing mechanisms in which the quality and safety of food and food products can be protected at appropriate stages. Hence maintaining safety and quality of food measure are required not only in some end point of the food chain, like manufacturing, but also in some starting point, like farm production.<sup>60</sup> This is because agro-chemical residue in food is unmanageable at the point of consumption but it can be managed at the point of production by using good agricultural practice.<sup>61</sup> The primary objective for which food

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<sup>57</sup> Ibid

<sup>58</sup> Ibid

<sup>59</sup> Ibid

<sup>60</sup> Ensuring food quality and safety and FAO technical assistance , p. 1, retrieved from

<http://www.fao.org/docrep>, assessed on July 17/2009

<sup>61</sup> Ibid

quality and safety protection regulatory mechanisms is adopted, therefore, is safeguarding public health by ensuring safe and of good quality foods, which do not injure human health. In other words food quality regulations have the objective of minimizing unreasonable risks to which the public would be exposed, by providing safety protection mechanisms, by which food-borne health hazards could be controlled at each state of the food chain.

Consumers cannot ascertain the safety of many food products. Furthermore, even producers or retailers may be unable to ascertain or to certify safety because food-borne diseases (photogenes) are living organization that can enter the food at any point and may grow overtime.<sup>62</sup> The lack of information about safety and the resulting consequences for public health are, therefore, the fundamental justification for public intervention to improve food safety.<sup>63</sup> Accordingly, food quality and safety regulatory systems are adopted to provide assurance so that consumers are provided with food suitable for human consumption. The regulatory systems play significant role in that they direct food industries to produce food which is safe and suitable for consumption by controlling the quality and safety of food from its primary source up to its final consumption.

This public health protection objective is also provided under Ethiopian laws dealing with protection of quality and safety of foods. The public health proclamation No. 26/1947 provides, in its preamble, that the proclamation is enacted for the protection of the health of the people and the sanitation of the cities in Ethiopia.<sup>64</sup> Legal notice No. 25/1943, which is issued under proclamation No. 26/1942, also holds the objective of protecting public health by empowering a medical officer of health to require the seizure of any food stuffs when, in the officer's opinion, such food is found to be dangerous to public health if consumed. Shortly stated, the regulation prohibits the consumption of foods that have the probability of affecting the health of the public.

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<sup>62</sup> Helen H. Jensen, *The Economic Implications of using HACCP as a food regulatory standards*, Ames, Iowa, Iowa state University Center for Agricultural and Rural development, 1998, p. 5

<sup>63</sup> Ibid

<sup>64</sup> See the preamble Public Health Proclamation No. 26/1942, *Negarit Gazeta*,

Public health amendment proclamation No. 111/1950 also states that the medical officer of health is empowered to seize, prevent the sale, or drinking of any food or drink offered for sale or otherwise, when it appears dangerous to public health, and if necessary cause them to be thrown out, burned or destroyed otherwise.

The legal notice No. 147/1950, which is issued with regard to food, provides that vegetables irrigated or irrigation of vegetables with water containing human excrement shall be considered as dangerous to public health and unsafe for consumption. Meat for sale, not bearing the stamp or approval of the public municipal or of the slaughter house shall be considered unsafe for human consumption; milk from animals having Tuberculosis, infectious abortion or suppurating wounds shall be considered unsafe for human consumption.

Public health proclamation No. 200/2000 has also an objective of promoting the health of the society and creating health environment for the future generation thereby enabling it assume its responsibility. In general we can say that legislations provided with regard to protecting the safety and quality of food and foodstuffs has come into force with the objective of safeguarding the health of the public from health risks arising from consumption of foods and food products.

## **2.2. Consumer Protection**

In consumer market, the resolution of quality uncertainly appears to be a central issue. This is partly because, for many products, consumers do not automatically know the level of quality; nor can they be certain as to whether the information regarding a given product is true or not.<sup>65</sup> In addition, quality and safety is an example of information asymmetry between sellers and buyers as, obviously, sellers know the quality and safety attributes of their product much better than buyers, and it is hardly possible for buyers to fully asses these attributes during the transaction.<sup>66</sup>

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<sup>65</sup> Armelle Maze, Quality regulation and the creation of a private market for certification: Institutional design and regulatory issues in Agro-Food sectors, 2005, p. 4

<sup>66</sup> Savas Alpay, Ismet Yalin, and Toker Dolekoglu, Export performance firms in Developing countries, Ankara, Turkish Agricultural Economics Research Institute, p. 6

When consumers have less information about product quality than producers, lower quality producers (who can produce with cheaper cost) may drive out higher quality product. Asymmetric information about product quality may thus result in lower quality product dominating the market. To the extent that regulators are better informed about quality than consumers, regulation that punishes firms that cheat on quality or that requires firms to disclose information about product quality can improve efficiency.<sup>67</sup>

This generally necessitates the need to provide a transparent system so as to avoid consumer deception. Food regulation, therefore, provides for a transparent system so that asymmetric information, as to the quality and safety of food, between food producers and consumers will be avoided or, at least, minimized. Thus regulation that governs as to what can or can not be added to products, how products are labeled, and whether certain products are safely sold to consumers, can be justified in the public interest if consumers do not possess the information to accurately discern these aspects of product quality on their own.<sup>68</sup>

Applied appropriately, food regulation solves the asymmetric information problem and benefits consumers who desire better information about product quality, as well as producers of higher quality products, who desire to segment the market for their wares.<sup>69</sup> Accordingly, for certain products, it may be relatively easy for consumers to know whether or not they have been deceived into purchasing a low quality product after consuming it. In this connection, it is useful to make distinction between ‘*search good*’ for which the quality of a product can be determined prior to purchase, ‘*Experience goods*’ for which quality only becomes apparent after consumption of the good and ‘*credence goods*’ for which the quality can not even be established after consumption.<sup>70</sup>

For some goods, such as “*experience goods*” market mechanisms like branding or repeat purchase may be adequate to asymmetric information problems. Consumer can punish firms that cheat on quality by taking their business else where. Hence as long as

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<sup>67</sup> History of Food and Drugs Regulation in the United States, p. 1, retrieved from <http://eh.net/encyclopedia/article/law>, assessed on April 15/2009

<sup>68</sup> Ibid

<sup>69</sup> Ibid

<sup>70</sup> General Theories of Regulation, p. 228

consumers are able to identify whether or not they have been cheated (deceived) regulation may not be needed to solve the asymmetric information problem.<sup>71</sup> However, for those products such as ‘*credence goods*’ where quality is not easily ascertained by consumers even after consuming the product, market mechanisms are unlikely to be adequate to ensure that the right level of quality is delivered.<sup>72</sup> This indicates that with regard to credence goods it is impossible for consumers to punish cheater since it is difficult for them to determine whether or not they have in fact been cheated.

Like all goods, food is multidimensional in terms of product quality. Some dimensions of quality (for instance flavor or texture) are experience goods because they can be easily determined up on consumption. Other dimensions (for instance the ingredients contained in certain foods, the caloric content of food, etc) are better characterized as credence goods; hence, it may not be easy even to a very sophisticated consumer to know as to whether or not he has been cheated.<sup>73</sup> Hence, there are prior reasons to believe that market forces will not be adequate to solve the asymmetric information problem that plagues many dimensions of food quality.<sup>74</sup> As noted earlier, to the extent that regulation reduces information asymmetries about product quality, regulation may benefit producer of higher quality items as well as the consumers of such goods.

Under Ethiopian law, the consumer protection objectives of food quality and safety regulation can be observed from the beginning of the enactment of legislations dealing with food quality and safety issues.

Meat inspection proclamation No. 274/1970, clearly provides that the main reason for the issuance of the proclamation was to ensure the production and market of meat and meat products, which are sound, wholesome and otherwise of a quality totally fit for human consumption, and thus to protect foreign and domestic consumers.<sup>75</sup>

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<sup>71</sup> Supra note 43, p. 2

<sup>72</sup> Ibid

<sup>73</sup> Ibid

<sup>74</sup> Ibid, p. 3

<sup>75</sup> See the preamble and Article 4(1) of Meat proclamation No. 274/1970

### **2.3. Assuring Fair Trade Practice and Aiding Economic Development**

At present time, demand for food at national as well as international level is on the increase. Due to this, the amounts of food trade are rapidly increasing. In this case regulation may affect the competitiveness of internal versus foreign business and also internal competition as they may generate market barriers that can ultimately lead to market failure or alter the market balance between firms of different economic size.<sup>76</sup> At the International level the SPS and TBT Agreements are provided to achieve the objectives of free and fair trade transactions. Specifically SPS which deals with the protection of the health and safety of human, animal and plant is evolved with the objective of realizing fair trade practices with respect to agricultural and food products. The SPS covers all measures whose purpose is to protect human or animal health from food born risks or plant carried diseases or to protect animals and plants from pests or diseases. This agreement restricts the use of unjustified sanitary and phytosanitary measures for the purpose of trade protection or as unnecessary barriers to international trade.<sup>77</sup> This means that the SPS measures are designed with the objective of assuring fair practice in internationally traded foods by prohibiting the adoption of unreasonable rules that restrict the free movement of food products at the international arena. While recognizing the right of member countries to take SPS measures that are necessary to protect human, animal and plant health within their jurisdiction, the Agreement instructs members to harmonize these measures with international standards and guidelines.<sup>78</sup> This is to avoid the adoption by countries of various contradicting rules that has the potential to pose obstacles on the free and fair movement of food products.

The TBT Agreement in its part is designed to ensure fair trade practice by prohibiting national regulations, standards, testing and certification procedures from creating unnecessary obstacles to international trade.<sup>79</sup> With a view to ensure fair trade practices at the International level, under both SPS and TBT Agreements, Codex standards are

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<sup>76</sup> Ragona M. and Mazzocchi M., measuring the impacts of food safety regulation: A methodological Review, 2008, p. 2

<sup>77</sup> International food standards, p. 3, <http://www.parl.gc.ca/information/library>, assessed on September 28/2009

<sup>78</sup> Ibid

<sup>79</sup> Ibid, p. 4



considered to be accepted international standards that provides for uniform food standards.<sup>80</sup> The codex has formulated international standards for a wide range of food products and specific requirements covering food additives, hygiene, food contaminants, labeling and packaging requirements.<sup>81</sup> These requirements are designed with a view to harmonizing, at international arena, the quality and safety requirements to be established by countries to realize free and fair food trade practices.

The encouragement of the use of accurate measurements with regard to weights and measures is also with objective of ensuring free and fair trade at national and international food market. Accurate and widely accepted measurements are important in ensuring that market transactions can take place and that consumers can feel confident that the goods they buy are of the quantity and quality they expect.<sup>82</sup> Accurate and precise measurements curb the buyer's tendency to want more and the seller's tendency to give less.<sup>83</sup> Hence by requiring accurate and reliable measurements food quality regulation can achieve the objective of ensuring fair practice in food trade.

One of the objectives of food quality regulation is aiding economic development by assisting the provision of safe and of good quality food to domestic and export markets. It is obvious that for most developing countries including Ethiopia, agricultural products and food products exports are a major source of foreign exchange and income generation. Hence the most important solution for developing countries to sustain a demand for their food products in domestic and foreign markets lies in establishing food quality and safety regulation that build the trust and confidence of importers in the quality and safety of their food supply systems.<sup>84</sup> This indicates that the objective of improving national food quality and safety assurance is also to provide safe and of good quality food to both domestic and international food market with a view to earn income that assist their economic development.

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<sup>80</sup> Ibid

<sup>81</sup> Supra note cited at 4, p. 4

<sup>82</sup> Standards, Metrology, Conformity Assessment and TBT agreement, p. 57, retrieved from <http://pdf.usaid.gov/pdf/PNADP636.pdf>, assessed on September 12/2009

<sup>83</sup> Ibid

<sup>84</sup> The Importance of Food Quality and Safety for Developing Countries, P. 3, Retrieved from <http://www.fao.org/trade/docs/Lcd-foodqual-en-htm>, assessed on May 11/2009

In Ethiopia food related laws are also introduced with objective of facilitating the availability of good quality and safe food products that assist economic development through the promotion of fair trade practices. In this regard Quality and standards Authority of Ethiopia establishment proclamation No. 102/1998 provides that the authority is empowered to verify and/or calibrate measuring instruments so that they are kept up to the established standards.<sup>85</sup> This is to ensure the fair functioning of the food market and guarantee that the foods bought by the consumers meet the quality and quantity they expect through normal food trade transactions.

Under Ethiopian laws food quality and safety assurance system is also developed with the objective of contributing to the economic development of the country. In this regard Quality and Standards Authority of Ethiopia Establishment Proclamation No. 102/1998 provides that promoting and applying quality, metrology and standardization is necessitated with a view to assist economic development and progress in technology to enhance the quality of life of the Ethiopian society.<sup>86</sup> Here the QSAE is established to effectively promote quality and standardization practices so that it can contribute to the country's economic development. Under Animal Diseases Prevention and Control proclamation No. 267/2002 it is also provided that controlling animal disease helps to promote the export trade of animals and animal products so as to gain foreign exchange that contribute for the economic growth of the country.<sup>87</sup> This also reveals that putting in place effective food quality and safety control mechanisms has a pivotal role to play in aiding the economic development of a country by ensuring the supply of foods that consumers can trust to pay for it.

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<sup>85</sup> Quality and Standards authority of Ethiopia establishment, proclamation No. 102/1998

<sup>86</sup> See the preamble of the proclamation No.102/1998

<sup>87</sup> See the preamble of Animal Diseases Prevention and Control Proclamation No. 267/2002

## **Chapter Three**

### **The Areas, Techniques, and Instruments of Regulation**

In addressing the food quality regulations, it is important to keep in mind the areas that are covered by the regulations. Any food quality regulations is expected to cover all foods produced within the country and foods imported from abroad. In properly regulating the quality and safety of foods, there are certain techniques and instruments of regulations that are intended to assure the quality and safety of foods from farm production through to consumption. Under this chapter, therefore, the areas to which it is applied, the techniques and instruments used to regulate the quality and safety of foods will be considered.

#### **3.1. The Areas of Regulation**

Countries require that domestically produced and imported foods should conform to regulations and should possibly adhere to standards. Moreover, to enhance their foreign earnings and to maintain the confidence of their food trading partners, countries also have to assure that exported food products are safe and be with a good quality in a manner they meet the importing countries' safety and quality requirements. To this end, effective national food control systems, which protect the health and safety of domestic consumers, are required. These systems are also critical in enabling countries to assure the safety and quality of their food entering international trade and to ensure the imported foods conform to national food regulatory requirements.<sup>88</sup>

Hence, to assure the quality and safety of domestically produced, imported and Exported food and food products, governments employ various controlling mechanisms with a view to protecting public health and consumers as well as to ensure fair practice in food trade. Subsequently, in this section, the means used to regulate such foods will be explored.

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<sup>88</sup> Assuring Food Safety and Quality: Guidelines for strengthening National food control system, Joint FAO/WHO Publication, p.1, Retrieved from <http://www.who.int/foodsafety/publication>, accessed on may 12/2009

### **3.1.1. The Regulation of Domestically Produced Food**

#### **A. Brief History**

The concept of food quality regulation featured in the early legislation to protect consumers, by prohibiting the sale of foods which pose risk to the health and safety of persons.<sup>89</sup> This indicates that ancient government authorities were taking measures to protect consumers from dishonest practices in the sale of food. Egyptian laws incorporated provisions to prevent the adulteration of meat.<sup>90</sup> Before 2000 years, Indian had regulations which prohibit the adulteration of grains and edible fats.<sup>91</sup> In ancient Athens, beer and wines were controlled and inspected to ensure their purity and soundness.<sup>92</sup> Romans had provided for state food control system to protect consumers from fraud and bad products.<sup>93</sup> Here the predominant concern of early food laws was to protect purchasers from fraud.

During thirteenth century, legal provisions were provided in England to penalize bakers who produce badly made bread, or who produce bread having inappropriate weights and measures.<sup>94</sup> In the Middle Ages, law was promulgated in France to protect consumers' material interest and health, and to ensure the good reputation of the food trade association and the penalties imposed for violations of these laws were fines, confiscation and expulsion from the trade guild.<sup>95</sup> So too in Europe, during the middle ages, individual countries passed laws concerning the quality and safety of food and food products with a view to safeguarding their citizens from fraud and illness.

During the nineteenth century, comprehensive food laws and other means of controlling the composition of various food stuffs were introduced. Accordingly, the first comprehensive modern law concerned with protection and control of food quality was promulgated in 1860, in England, with a view to preventing the adulteration of articles of

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<sup>89</sup> Anthony I, Ogus, Regulation: legal form and economic theory, 1996, p. 151

<sup>90</sup> History of food Quality and Standards, p. 4, Retrieved from <http://www.eolss.net/ebook/sample>, accessed on may 4/2009

<sup>91</sup> Ibid

<sup>92</sup> Ibid

<sup>93</sup> Ibid

<sup>94</sup> Ibid, p.5

<sup>95</sup> Ibid

food and drink.<sup>96</sup> A scientific approach to food problems was provided by this law; to this end, an analyst was appointed being charged with the sole duty of examining the purity of articles of food and drink.

An important change was brought about by the industrial revolution in that many people who became town dwellers could no longer produce their own food and that they began to rely exclusively on food produced and sold by others.<sup>97</sup> The food shortage and the great demand for food in these urban areas created fertile ground for food adulteration to flourish. As food problem become more involved and specialized, laws enacted for consumer protection required continual updating to keep pace with the changing needs to be applied to the food and food products from the production stage through to consumption.<sup>98</sup>

## **B. The stages and General System of Regulation**

As it has been raised elsewhere above, the quality and safety of domestically produced food are essential to protect public health and to satisfy the expectation of consumers. However, food hazards and quality loss may occur at a variety of points in the food chain from production to consumption.<sup>99</sup> Consumers, therefore, demand that food and food products supplied to them must not cause injury to them and must not be adulterated.

This calls for a comprehensive and integrated farm-to-table approach in which the producer, processor, transporter, and consumer all play a vital role in ensuring the quality and safety of domestically produced food.<sup>100</sup> This brings into light the need to have a well structured food quality and safety control mechanism. This mechanism helps to control and ensure the quality and safety of food and food products produced within a country. A well structured food quality and safety control mechanism is preferred in that it protects and controls food quality and safety at all stages of food from production to consumption. Controlling many potential food hazards and quality loss along the food

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<sup>96</sup> The new Encyclopedia Britannica, Vol. 19 1993, p. 400

<sup>97</sup> Supra note cited at 3, p.7

<sup>98</sup> Ibid

<sup>99</sup> Ibid

<sup>100</sup> Ibid

chain is possible through the application of good practices such as Good Agricultural Practices (GAP), Good Manufacturing Practices (GMP), and Good Hygienic Practices (GHP).<sup>101</sup> As their name implies these practices are employed to enhance the quality and safety of agricultural and industrial food products.

Implementing quality assurance measures starts at the farm with the application of GAPs and Good Veterinary Practices (GVPs). GAPs are those practices that enhance the production of food that is safe and of good quality and that ensure appropriate handling, storage, transportation and management of the product.<sup>102</sup> GAPs involve food quality and safety assurance practices such as:<sup>103</sup>

- Selecting the right land to be cultivated for food crop production
- Planting the best quality seeds of the most appropriate varieties
- Using authorized and acceptable chemical inputs (fertilizer, pesticides) according to approved direction (e.g. concentration, frequency, timing of use)
- Using appropriate harvesting and on farm storing and handing techniques, and
- Using appropriate methods of transportation to markets or food processors.

It is understood from this all that food quality and safety assurance system passes through series of technical requirements for producing, harvesting, storing, and transporting food and food products.

In similar Manner, GVPs have also been established to assure consumers that foods derived from animals should meet an acceptable level of quality and safety.<sup>104</sup> It can be said that GVPs is employed for appropriate care and treatment of animals with the objective of assuring that food items derived from animals are safe and fit for human consumption. GVPs related measures are thus applied to ensure that:

- Only healthy animals are slaughtered for the purpose of human food.<sup>105</sup>

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<sup>101</sup> Ibid

<sup>102</sup> Ensuring food quality and safety and FAO Technical assistance, p. 1, retrieved from <http://www.fao.org/w9474t/w9474t03.htm>, accessed on July 17/2009

<sup>103</sup> Ibid

<sup>104</sup> Ibid

<sup>105</sup> Ibid, p. 2

- Any drug used in the control of animal disease is safe for its intended use and used according to approved directions (residues of such drugs do not remain in the edible tissues at unsafe levels when the food is made available for consumption.<sup>106</sup>
- Appropriate storages conditions, handling, transportation and butchering techniques and sanitary conditions are maintained during processing and butchering to protect post slaughter contaminations.<sup>107</sup>

This generally reveals that food quality and safety regulatory system has to begin with requiring the proper application of GAPs, and GVPs to protect crops from being damaged by insects and pests and animals from disease and there by ensure the supply of safe and of good quality food.

Pesticides are used to control pests and insects from damaging crops and disease from affecting animals; and this makes important the use of pesticides. Given the benefit they have in controlling pests and insects, pesticides are intentionally employed during an earlier stage of processing.<sup>108</sup> On the other hand, such use is said to have negative impact in that the raw materials, from which the food is made, may not absolutely be free from small amount of residue arisen out of the pesticide used during an earlier stage; and this, in turn, affects the quality and safety of the food.<sup>109</sup>

Pesticide residue in or on the final food may originate from any of the three different stages in food processing. It emanates from the application of pesticides up on the standing crop, or up on the harvested crop, or else from sprays and washes used in food processing rooms.<sup>110</sup> Hence, control of pesticide residue is important through food quality and safety regulations and food standards work, which can be effected through the determination of *maximum residue limit*<sup>111</sup> of pesticide to ensure the quality and safety of

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<sup>106</sup> Ibid

<sup>107</sup> Ibid

<sup>108</sup> Herschdoerfer, S.M., Quality Control in the Food Industry, 1967, p. 303

<sup>109</sup> Ibid

<sup>110</sup> Ibid

<sup>111</sup> Codex Alimentarius defines “Maximum residue limit” (MRL) as the maximum concentration of a pesticide residue (expressed as mg/kg) to be legally permitted in or on food commodities and animal food.

crop and animal food. This shows that setting maximum residue limits by regulation is essential to protect the final food and food products from being rendered unfit for human consumption as the result of the use of pesticides at an earlier stage of producing crop and animals.

Application of good practices such as Good Manufacturing Practices (GMP) and Good Hygienic Practices (GHP) in food processing establishments is also essential to ensure the quality and safety of food produced through manufacturing or processing.

GMP is a set of guidelines that specifies activities to be undertaken and conditions to be fulfilled, in food manufacturing process in order that the food produced meets the standards of food quality and food safety.<sup>112</sup> GMPs is employed to ensure that food materials and ingredients, including food additives, are used in an appropriate level of quality, and are stored properly in a manner they prevent contamination and mix up of food with other processing materials.<sup>113</sup> Shortly stated, GMP is concerned with the regulation of the use of appropriate materials and ingredients, by food processing industries in the course of producing foods, so that the food they produce will be safe and be with a good quality.

GHP constitute a set of guidelines specifying activities to be undertaken and hygienic conditions to be fulfilled and monitored at all steps of the food chain in order to assure the quality and safety of foods.<sup>114</sup> GHP deals with the observation of sanitary practices, use of protective clothing and strict observations of rules of personal hygiene of personnel involved in handling and processing food.<sup>115</sup>

In general, it can be said that, the use of GMP and GHP is intended to ensure quality and safety for all the food manufacturing steps from the selection of primary products and other ingredients to the marketing of the final products to the consumers.<sup>116</sup>

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<sup>112</sup> Safety and Quality assurance and management system in food Industry: An Overview, p. 87, retrieved from <http://www.ip.aua.gr/> accessed on April 16/2009

<sup>113</sup> Supra note cited at 15, p. 3

<sup>114</sup> Supra note cited at 25, p. 87

<sup>115</sup> Supra note cited at 15, p. 3

<sup>116</sup> Ibid p. 2



In some cases, because of the nature of the food processing methods or hazards associated with some food, consideration is given to the application of intensified safety and quality regulatory and control procedures or systems. These systems are generally known as Hazards Analysis and Critical Control Point (HACCP).<sup>117</sup> Today, most governments and food industry groups accept HACCP based system as an appropriate method to identify, monitor and control safety hazards, by focusing on out comes to be achieved in the production of safe and of good quality food.<sup>118</sup> This shows that trends in food quality and safety regulatory mechanisms are towards guaranteeing food safety and quality during the production process.

HACCP system establishes process control through the identification of points in the production process that are most critical to monitor and to control.<sup>119</sup> It emphasizes up on the preventive activities that can be applied to control any stage in the food system, and is designed to provide enough feed back to direct corrective activities.<sup>120</sup> This implies that HACCP system helps to identify food safety hazards at an earlier stage and helps to take corrective action before unsafe and poor quality final food product is produced.

To develop and operate HACCP programs, and effectively undertake its activities in food processing industries, seven principles are developed: <sup>121</sup>

- assesses the hazard, list the steps in the process where significant hazards can occur and describe the prevention measures;
- determines critical control points (CCPs)<sup>122</sup> in the process;
- establishes critical limits for each CCP;
- establishes procedure to monitor each CCP;

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<sup>117</sup> Ibid p. 4

<sup>118</sup> Ian, Lindenmayer, Harmonization of food regulation and food quality/safety measures based on codex standards and Guidelines, 1999, p. 10

<sup>119</sup> Laurian J. Unnevehr and Helen H. Jensen, The Economic Implications of using HACCP as a food safety regulatory standards, 1998, p. 3

<sup>120</sup> Ibid

<sup>121</sup> Savas Alpay, Ismet Yalcin, and Turker Dolekoglu, Export performance of firms in developing countries and food quality and safety standards in developing countries , p. 5

<sup>122</sup> A *CCP* stands for critical control points and is any point in the chain of food production where the loss of control would result in unacceptable food safety risks.

- establish corrective actions to be taken when monitoring indicates a deviation from the CCP limits;
- establish record keeping for the HACCP system; and
- establish procedures to verify that the HACCP system is working correctly.

These all, as principles of HACCP, are employed with a view to identifying all the known potential hazards which can be associated with the food being processed. The HACCP system is highly effective, however, only when employed properly; and its proper application requires considerable understanding and technical information related to the food product, the processing methods and the production facility.<sup>123</sup>

In manufacturing and processing of foods and food products, it is also necessary to ensure the quality and safety of ingredients used as technical aids, additives.

In addition to the main nutrients, food products contain food additives.<sup>124</sup> Food Additives are defined as non-nutritive substances internationally added to food generally in small quantities so as to improve appearance, flavors, and texture or storage properties.<sup>125</sup> This implies that food additives are added to foods to improve the quality of foods without, however, affecting the nutritional values of foods in which they are added.

In order to prevent foods from being affected by excessive additives, most governments issue lists of permitted additives determining the highest acceptable concentration, and define food products in which such additives may be used, and sometimes, recommend the maximum daily consumption.<sup>126</sup> Here determining the maximum additives used in food through regulation is to reduce the possible health risks directly involved<sup>127</sup>, and that might result in causing injury upon safety and health of persons. Hence, the purpose of limiting the amount of additives used in food is to preserve the quality and safety of the food in which they are used with a view to avoiding the possible risk that may result from the consumption of foods with excessive additives.

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<sup>123</sup> Supra note cited at 15, p. 4

<sup>124</sup> Supra note cited at 9, p. 399

<sup>125</sup> Ibid

<sup>126</sup> Ibid

<sup>127</sup> Supra note cited at 21, p. 298

### **C. The Ethiopian Regime**

In Ethiopia, we have no enough record of quality regulation in general and food quality regulation in particular, before 1940s. It was with the enactment of Public Health proclamation No. 26/1942, which was promulgated with a view to protecting the health of the public and the sanitation of the cities in Ethiopia, that issue of quality and safety regulation was introduced.<sup>128</sup>

In Ethiopia, regulating the quality and safety of domestically produced foods and food products is the common (Shared) responsibility of the Health sector, Agricultural sector, Ministry of Trade and Industry and Quality and Standards Authority of Ethiopia. The health sector is responsible to protect consumers from health hazards by assuring the quality and safety of food produced for human consumption.<sup>129</sup> Under the Public Health Proclamation No. 200/2000, the preparation, distribution, or making available to consumers any food which is unhygienic, contaminated, non-wholesome or mislabeled, and which does not meet the standards of food quality, is prohibited.<sup>130</sup> Any food provided for human being for consumption must fulfill hygienic requirement of the food, and it must be free from health risks and shall satisfy the standards of food quality. As it is stated under article 9 of proclamation No. 200/2000, any person who is engaged in any activity of selling, producing for sale, storing, preparing or preserving of any food, which is intended for human consumption, is required to meet the standards set by ministry of health. This indicates that there is a standard established by the ministry of health and that

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<sup>128</sup> Under the proclamation the ministry of Interior is empowered to make rules for the licensing, regulation, inspection and control the premises of butchers, retailers of meat, bake house and bakeries and for the seizure of foodstuffs made available for sale if deemed to be dangerous for health.

<sup>129</sup> There is Public Health Proclamation No. 200/2000 which empowers the health sector for the purpose of assuring the quality and safety of foods presented for human consumption. There are also various regulations issued in 1940s and 1950s and still implemented with regard to protecting the quality and safety of foods intended for human consumption. As per these regulations the health sector is given the authority to inspect and control the quality and safety of foods and food products produced, distributed and sold to the public in Ethiopia

<sup>130</sup> Public Health Proclamation No. 200/2000, Article 8.1

has to be observed by any one involved in production, distribution storing, preservation of any food made available for consumption to the public.

Although the public health proclamation No. 200/2000 empowers the council of ministers to issue regulations for the implementation of the provisions of the proclamation,<sup>131</sup> there are no regulations issued. However, the same proclamation, under its article 21(2), provides for the applicability of regulations issued under public health proclamation No. 26/1942 and No. 91/1947 as long as they are not inconsistent with it (proclamation No. 200/2000). Thus, legal notice No. 25/1943 and legal notice No.145/147/1950, which deal with the production, distribution and sale of food and food products produced domestically, are applied.

Under Proclamation No. 200/2000 and all the above stated regulations, an inspector (a medical health officer) is appointed to undertake inspection to ensure that only safe and of good quality food is offered to the public for consumption. Accordingly, the 1943 Public health rules empowered the public health officer to require the seizure of any food stuffs which, in his opinion, would be dangerous to public health if consumed.<sup>132</sup> These rules, however, do not provide for the standards on the bases of which the public health officer determines whether a particular food is dangerous for human consumption or not. The public health officer determines so simply based on his personal opinion and requires the seizure of the food that is found to be dangerous for consumption; while it is difficult to rightly determine the dangerousness of food with complex composition and ingredients without referring to any established standards.

From among the regulations issued to control food quality and safety system, the most relevant one that was (and still is) used to regulate the quality and safety of food is the municipal public health rules of 1950 issued with regard to food. As per this regulation, offering the public to eat any food, which is unsafe or unfit for human consumption, is prohibited.<sup>133</sup> This is with an assumption that domestically produced food product had to be safe and be in the state of good quality to be consumed as food by human being.

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<sup>131</sup> Ibid, Article 22

<sup>132</sup> Public Health Rules, Legal notice No. 25/1943, Article 5

<sup>133</sup> The Municipal Public Health rules, legal notice No. 147/ 1950, Article 2

To ascertain the safety and quality as well as the fitness of food for human consumption the public health officer used to inspect and control food establishments, production, distribution and sale of food.<sup>134</sup> If, during inspection, any condition, which is dangerous to public health, is found up on the new establishment, no license shall be granted to such establishment.<sup>135</sup> Inspection is also carried out on establishments already licensed and during inspection if the inspector found upon the premises already licensed any conditions which is dangerous to the public health, the extension or renewal of the license of this establishment shall not be granted.<sup>136</sup> What is concluded from this is that inspection is conducted before and after granting license for food establishment. This is to disallow establishments that can not fulfill the food quality and safety requirement to enter the food production and distribution chain.

To assure the quality and safety of domestically produced foods and food products, inspection is conducted in various ways. The inspection is conducted regularly or randomly as well as where the question is brought from the consumers to make inspection activities.<sup>137</sup> During inspection, if the inspector suspects any food stuff or drink, he/she has the power to seize samples of reasonable size for the purpose of analysis.<sup>138</sup> After analysis, if the food sample, on which the analysis has been conducted, is found to be unsafe and unfit for human consumption, the establishment might be ordered either to correct its fault, if the wrong is easily corrected, or close the establishment.<sup>139</sup>

To conduct the control and inspection activities for assuring the quality and safety of locally produced food products, and establishments producing and providing food for human consumption, there is a department in Ethiopian Drug Administration and control Authority at federal level. At regional level also there is department/ team organized from region to health center level. This implies that there are Federal and Regional offices that

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<sup>134</sup> The Municipal Public health rules, Legal notice No. 145/1950, Article 5

<sup>135</sup> Ibid

<sup>136</sup> Ibid, Article 7

<sup>137</sup> Interview conducted with Ato Wondafirash Abera, Senior expert for foods and drug licensing and registration, at Ethiopian Drug Administration and Control Authority, on September 22/2009

<sup>138</sup> Supra note cited at 46, Article 9

<sup>139</sup> Interview Cited at 50

assume the task of conducting inspection services on locally produced food products. However, there is no clear law that defines powers and duties of these respective offices. They rather conduct the inspection activities simply based on customary powers given to the federal and regional governments. Accordingly, the federal government inspects large establishments including those involved on food import and export trade, while the regional governments inspect those establishments such as hotels, restaurants and small enterprises involved in food production and processing in their respective region.<sup>140</sup>

To protect the safety and quality of animal, animal products and plants, the agricultural sector is empowered to issue rules and provide control and inspection activities with a view to ensuring the quality and safety of foods derived from animals and plants. To provide the inspection services with regard to the quality and safety of animal, animal products and plants, there is plant and animal health protection regulatory directorate at federal level and departments /team at regional level, being structured, vertically, from the region up to woreda animal health center.<sup>141</sup>

The federal government conducts inspection services on export animal, animal products and plants and plant products, whereas the regional Agricultural Bureaus and Zonal and Woreda Agricultural Offices are responsible to carryout inspection activities that ensure the quality and safety of locally produced animal, animal products and plants.<sup>142</sup> Likewise, to ensure the quality and safety of Agricultural products and to protect animal from diseases, there are agricultural extension workers with the charge of assisting and advising farmers at the grass-root level. They also conduct inspection activities so as to ascertain the quality and safety of domestically produced agricultural products.<sup>143</sup>

At this juncture, it is difficult to assess all the regulatory mechanisms employed to ensure the quality and safety of plants and animals and animal products. This warrants the need

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<sup>140</sup> Ibid

<sup>141</sup> Interview conducted with Dr. Melaku Asefa Senior Inspector for Quarantine and Meat Inspection service, at Plant and Animal Health protection Regulatory Directorate of the Ministry of Agriculture and rural development, on October 8/2009

<sup>142</sup> Ibid

<sup>143</sup> Ibid

to have an insight into regulations that deal with the quality and safety of meat and meat products to look into what the practice looks like.

To begin with, regarding the regulation of the quality and safety of meat and meat products, there is meat inspection proclamation No. 274/1970, and its amendment proclamation No. 81/1976. This proclamation deals with the control and inspection of meat and meat products and is also concerned with establishments dealing with the same. There is also proclamation number 267/2002 which is also meant to deal with the prevention and control of animal disease with a view to protecting the quality and safety of animals and animal products.

Under proclamation No, 274/1970, and its amendment proclamation No. 81/1976, the animal health officer is empowered to conduct inspection on meat and meat products with a view to determining whether they meet the criteria set by government; and, at the same time, it prohibits the sale or disposal of meat and meat products.<sup>144</sup> This is to ensure that locally produced meat and meat products are safe and of good quality and fit for human consumption.

To prevent the occurrence and the spread of disease at any time and place, the Ministry of Agriculture and Rural Development and the respective regional Bureaus are empowered to prohibit and control the movement of animal, animal products and byproducts from areas (regions), infected or suspected of being infected by animal disease, to other regions in the country.<sup>145</sup> Stated otherwise, the health officer limits or prohibits the movement of animals infected or suspected of being infected by animal disease with a view to securing their healthy and thereby ensure the quality and safety of food ( meat and meat products) derived from animals.

In order to prevent and to control animal disease, animal health officer is also empowered to undertake inspection activities on animals, prior to transport, during transport and after transport.<sup>146</sup> For the purpose of identifying animal disease, the public health office can

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<sup>144</sup> Meat inspection Proclamation, No. 274/1970, Articles 2 and 5

<sup>145</sup> Animal Disease prevention and Control Proclamation No. 267/2002, Article 7 (2)

<sup>146</sup> Ibid, Article 8(2)

enter any premises or area where animals, animal products, byproducts or animal foods are kept and take samples from the same.<sup>147</sup> Here, after taking the sample and conducting analysis, if the animal, animal product or byproduct is found to have been caught by disease, the public health officer can restrict the movement of those animals affected by disease or order the disposal of the same as the case may be. But if the animal is found to be free from animal disease, animal movement permit is given from animal's place of origin to any person who wants to transport animals from woreda to woreda and/or from region to region.<sup>148</sup> Here, even though the animal may be free from disease, the person transporting it is required to obtain movement permit to assure that such animal is free from disease and that it is safe of good quality to be consumed as food by human being.

Seen generally, the whole purpose of restricting the movement of animals, animal products and byproducts is to safeguard the safety and quality of the remaining animal and to make their meat and meat products fit for human consumption.

The quality and safety of domestically produced foods and food product is also regulated by Trade and Industry sector. The Ministry of Trade and Industry and the respective regional Bureaus have departments that carryout the registration and licensing of commercial activities. These trade and industry sectors have a role to pay in warranting the quality and safety of food and food products made available for human consumption.

The commercial registration and business licensing proclamation number 67/1997 provides that:

*Where, owing to its particular nature, a commercial activity for which a license is applied for requires the applicant to hold a specific professional qualification or certification of competence, the appropriate sectoral government institution shall issue evidence of such professional qualification or certificate of competence.*<sup>149</sup>

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<sup>147</sup> Ibid, Article 8 (3) and (4)

<sup>148</sup> Ibid Article 15

<sup>149</sup> Commercial Registration and Licensing Proclamation No. 67/1997, Article20(5)



It is understood from this legal provision that a person, who wants to engage himself in the business activity that requires certificate, should hold a certificate that evidences his qualification or competence so as to obtain license. In other words, it is prohibited to produce or to trade in goods which require mandatory quality certificate, which is issued by QSAE.<sup>150</sup> The quality mark issued by QSAE in respect of Goods for which compulsory Ethiopian standards are established, therefore, can be taken as certificate of competence. Hence, the Ministry of Trade and Industry and the respective regional Bureaus are expected to require a person or an organization, to produce certificate of competence to obtain license for a business activity related to food the use or the production of which require mandatory quality mark. In sum, a person or an organization can not run commercial activities in Ethiopia unless he/it holds certificate of competence for food production, distribution or sale` for which compulsory Ethiopian standards are established.

Another aspect, through which the trade and industry sector can involve, in the regulation of domestically produced food quality and safety, is through either suspension or cancellation of business license. It is stated that a business license may be suspended where the license holder has failed to maintain the standards of health and sanitary conditions and quality of his product as confirmed by the concerned organ of government institution.<sup>151</sup> This is to mean that if a person is found be producing or distributing foods and food products without fulfilling the requirements (standards) set by the concerned agencies (ex.QSAE), the license of such person may be suspended until he rectify his/its wrong. During suspension, it is confirmed that if the business, the license of which has been suspended, is found to be dangerous to public health and safety or to the national economy, the business shall be closed temporarily.<sup>152</sup> This offers that if the license holder is found to be producing poor quality and unsafe food, which is dangerous to public health and safety, the business can be closed to protect the health and safety of the public.

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<sup>150</sup> Standards Mark and Fees Council of Ministers Regulation No. 13/1990, Article 4

<sup>151</sup> Supra note cited at 62, Article 26 (1)

<sup>152</sup> Ibid, Article 27

Cancellation of business license is also one instance in which the ministry of trade and Industry and the respective regional Bureaus can take part in regulating the quality and safety of Foods and food products produced domestically. A business license may be cancelled where its holder is found either using the license for an improper commercial activities or has repeatedly failed to maintain the standards of health and sanitary conditions and quality of his product in accordance with the already established requirements.<sup>153</sup> This may be the case where the license holder is involved in an unfair trade practice such as adulterating the food with unwanted and dangerous ingredients.

Quality and standards Authority of Ethiopia is also the principal government agency entrusted with the Authority to develop Ethiopian standards. Accordingly it is involved in the activities of regulating the quality and safety of domestically produced food products by promoting and assisting the establishment of appropriate quality management practices in the food processing industry through the application of food related Ethiopian standards.<sup>154</sup> The authority may establish either voluntary or compulsory standards.

A person, who wants to engage in producing and/or trading in foods, the production or the trading of which requires compulsory Ethiopian standards, should hold quality mark and certificate of conformity to assure that the product conforms to the relevant compulsory Ethiopian standards.<sup>155</sup> Accordingly, where a person is found producing or trading in food and food products, without holding quality mark, the authority may order the closure of the factory or business undertaking or for the cessation of operations and the ban of movements of the products.<sup>156</sup> Hence, it can be said, QSAE plays a pivotal role in promoting and assisting the use of voluntary food standards and in assuring the proper implementation of compulsory food standard so that consumers can be provided with safe and good quality of domestically produced food and food products.

All what has been discussed above indicate that there are several government agencies involved and various laws provided with regard to the regulation of the quality and safety of food and food products produced in Ethiopia. The effective and efficient

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<sup>153</sup> Ibid, Article 28 (1) (b) & (c)

<sup>154</sup> Quality and Standards Authority of Ethiopia Establishment Proclamation No. 102/1998, Article 5 (1) and (2)

<sup>155</sup> Supra note cited at 63, Article 4

<sup>156</sup> Supra note cited at 67, Article 10

implementation of these various laws with a view to ensuring the quality and safety of domestically produced foods and food products require the coordination and cooperation of several agencies participating in these activities.

Now, there fore, to establish the adequacy or in adequacy of food quality and safety regulatory mechanisms employed with respect to domestically produced foods and food products it seems relevant to briefly look at the regulatory system put in place in some foreign countries. In the following part, therefore, the regulatory systems employed in Canada, United States of America, and India will be considered briefly.

#### **D. Selected Country Experiences**

In contemporary world in which foods produced in one corner are sold allover the world, it is unreasonable to confine the quality and safety issues regulatory systems to ones own living standards. It is imperative to know the regulatory mechanisms used in foreign countries to determine the sufficiency of the food quality regulation put in place in ones own country. Accordingly, this section will make a brief look at regulatory mechanisms employed in Canada, USA, and India.

#### **The Canadian Experience**

In Canada, food quality and safety protection matters operate in multi- Jurisdictional context involving federal, provincial/ territories and municipalities.<sup>157</sup> The Food and Drugs Act is the main federal legislation and prohibit the manufacture or sale of all dangerous or adulterated food products any where in Canada.<sup>158</sup> Under this act, Health Canada is responsible for establishing policies and standards relating to the safety and quality of food produced and sold in Canada.<sup>159</sup> Health Canada, for example, determines the residual quantities of pesticides allowed in foods and the quality and safety of new foods produced and/or sold in Canada.<sup>160</sup>

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<sup>157</sup> Shared responsibility in the Canadian Regulation of Food Quality and safety, p. 2, retrieved from <http://www.fao.org/docrep/meeting/004/aa028e.htm> accessed on October 1/2009

<sup>158</sup> Food Safety Act: An Overview of Canadian Approach, p.3, retrieved from <http://dsp.psd.pwgsc.ca/>, accessed on October 29/2009

<sup>159</sup> Ibid

<sup>160</sup> Ibid

Canada food inspection agency is responsible for implementing policies and standards set by health Canada, as well as all federally mandated food inspection, compliance and quarantine service.<sup>161</sup> The Jurisdiction of provinces and territories is extended to all foods manufactured and sold within their borders.<sup>162</sup> From the above statement one can infer that food quality and safety regulatory system in Canada is a shared horizontally and vertically among different federal and regional governments. This means horizontally, it is a shared responsibility of different federal institutions such as Health Canada and Canadian Food Inspection Agency. Vertically, the federal government, provinces and municipalities are involved in establishing and implementing food quality and safety regulatory system.

Horizontally, the Canadian Food Safety Inspection Agency created in 1997, brought together inspection and related services that had been previously delivered by four federal departments agriculture and Agri-food Canada, Fisheries and oceans Canada, health Canada and industry Canada.<sup>163</sup> CFIA is responsible for the administration and enforcement of thirteen pieces of legislation dealing with food safety and quality, food labeling practices, animal health and plant protection.<sup>164</sup> The activities of CFIA include inspection of federally registered food establishments border inspections for foreign pests, enforcement of practices relating to fraudulent labeling, food investigation and recall.<sup>165</sup>

Vertically, Canadian food inspection activities are shared between municipalities, provinces and the Federal level.<sup>166</sup> Because of the shared responsibilities in regulating the quality and safety of food produced and/or sold in Canada, mechanisms are introduced to ensure that the food quality and safety regulatory system at all level work effectively.

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<sup>161</sup> Food safety regulatory system in Canada, p. 3, retrieved from <ftp://ftp.fao.org/docrep/fao/meeting/010>, accessed on October 10/2009

<sup>162</sup> Ibid

<sup>163</sup> Should Canada be concerned? Food safety in Canada, p.3, retrieved from <http://www.foodprotect.org/media/positionreport>, accessed on October,3/2009

<sup>164</sup> Ibid

<sup>165</sup> Ibid

<sup>166</sup> Food Inspection Reform in Canada and the European Union, p.9, retrieved from <http://www.cpsa.acsp.ca/papers-2005/pdf>, accessed on October 15/2009

Accordingly the Canadian food inspection agency mandated to work closely with all agencies at all level in order to eliminate gaps, over laps, and duplication of functions.<sup>167</sup>

For effective and efficient operation of the food quality and safety regulatory system at all levels, Health Canada and Canadian food inspection agency has established a *Memorandum of Understanding* (MOU) that streamline their respective roles and responsibilities and establishes principles and mechanisms for an effective working relationships. “This MOU set out the detail of responsibilities for each elements of the federal food quality and safety regulatory system.<sup>168</sup> As a result collaborative mechanisms have been established between Health Canada and the Canadian food inspection agency through the HC/CFIA joint food safety and nutrition quality committee which provides over all guidelines and leadership.<sup>169</sup> The Canadian food inspection agency also established Memorandum of Understandings (MOU) with provincial and territorial counter parts on shared responsibilities, such as inspection activities, and control of food borne illness.<sup>170</sup>

The above statements offer that the involvement of two and more agencies in food quality and safety regulation is inevitable. However mechanisms are needed to curb the problem of overlapping and duplications of activities emanating form the involvement of several institutions. The success of the Canadian food safety and quality inspection system, therefore, is the result of the close working relationships established between federal, provincial/ territorial authorities, industries, distributors, retailers and ultimately consumers.<sup>171</sup>

In Canada Hazard analysis and critical control points (HACCP) system has also been established to serve as minimum food safety and quality inspection standards. Accordingly, HACCP programs are made mandatory in federally registered fish

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<sup>167</sup> The food quality regulatory system in Canada, p.3, retrieved from <http://www.foodprotect.org/media/positionreport/> accessed on October 3/2009

<sup>168</sup> Ibid

<sup>169</sup> Ibid

<sup>170</sup> Ibid

<sup>171</sup> Supra note cited at 74, p. 3

processing plants and meat and poultry establishments.<sup>172</sup> Other food establishments are also highly encouraged to implement this internationally recognized systematic and preventive approach (HACCP) to the identification and control of physical biological and chemical hazards that have the potential to affect the safety and quality of foods.<sup>173</sup>

### **The US Experience**

In the U.S. Food quality and safety protection system is based on strong, flexible and science based federal and state laws and industry's legal responsibility to produce safe and of good quality food.<sup>174</sup> The controlling law for much of the food supply in the U.S. is the federal Food, Drug, and Cosmetic Act (FDCA).<sup>175</sup>

In the U.S., ensuring the quality and safety of American food supply is a shared responsibility of several government agencies and these agencies ensure that all foods supplied to the people are pure, wholesome, safe and of good quality to eat and produced under sanitary conditions and properly labeled.<sup>176</sup> The Principal federal agency tasked with implementing the statutory provisions set forth in the FDCA is the Food and Drugs Administration (FDA).<sup>177</sup> The food and Drugs administration is charged with protecting consumers against food that is impure, unsafe, and fraudulently labeled.<sup>178</sup> The FDA carries out activities such as.<sup>179</sup>

- Inspecting food production establishments and food warehouses and collecting and analyzing samples for physical, chemical and microbial contamination.
- Establishing Good agricultural practices and good manufacturing practices and other production standards such as plant sanitation, packaging requirements, and Hazard analysis and critical control points (HACCP) program

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<sup>172</sup> Ibid, p. 4

<sup>173</sup> Ibid, p. 5

<sup>174</sup> United States food safety system, p. 1, retrieved from <http://foodsafety.gov/fsg/fss4st2.html>, assessed on October 5/2009

<sup>175</sup> Importance of Standards in Assuring good Quality food ingredients and foods, p. 6 retrieved from <http://www.fao.org/trade/doc/LCD-foodqual-en.htm>, accessed on September, 25/2009

<sup>176</sup> Food Laws and Regulations, p. 2, retrieved from <http://jifsan.umb.edu/> accessed on September 21/2009

<sup>177</sup> Supra note cited at 88, p. 7

<sup>178</sup> Supra note cited at 89, p. 3

<sup>179</sup> Ibid

- Educating industry and consumers on safe handling practices.

The U.S Department of Agriculture (USDA) is also another principal U.S. regulatory organ charged with the responsibility of regulating the quality and safety of meat, poultry, seafood, and grains. Through its department known as the food safety inspection service it ensures that meat and poultry products moving in interstate and foreign commerce are safe, wholesome for consumption, and accurately labeled.<sup>180</sup> This means that USDA inspects meat and poultry products during processing, handling, and packaging to ensure that they are safe and truthfully labeled.<sup>181</sup> To improve the quality and safety of meats and poultry foods products U.S. Meat and Poultry plants are required to adopt the system of process control known as Hazard analysis and critical control points (HACCP).<sup>182</sup>

What can be concluded from the above discussion is that at the Federal level the regulatory oversight of the quality and safety of food supplied in the U.S. is split between the U.S. Department of Agriculture (USDA)—responsible for the regulation of meat and poultry products —and the FDA —responsible for safeguarding quality and safety of the remaining all other foodstuffs.

Recognizing the overlap and duplication of jurisdiction that may be created between them the two agencies established Memorandum of Understanding (MOU) that dictates the roles and responsibilities of each agency<sup>183</sup>. For example, the owner of a meat processing plant is required to have a USDA inspector on-site whose job is to assure that the meat is safe for consumption pursuant to the Federal Meat Inspection Act. An FDA inspector can also inspect the plant to determine whether any unsanitary conditions exist in or outside the plant that could cause the meat to be contaminated, adulterated, or unfit for human consumption before, during, or after processing.<sup>184</sup> The jurisdiction of the USDA extends to the actual meat being processed while the jurisdiction of FDA is over

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<sup>180</sup> Food and Agricultural import regulations and standards, p. 5, retrieved from <http://www.fas.usda.gov/itp/ofsts/us.htm1>, accessed on October, 5/2009

<sup>181</sup> Ibid

<sup>182</sup> Ibid

<sup>183</sup> Supra note cited at 88, p. 8

<sup>184</sup> Ibid

the plant, processing area, and employees to ensure that good manufacturing practices are being followed.<sup>185</sup>

In U.S. every state also plays a pivotal role in assuring the quality and safety of food produced within their respective jurisdiction.<sup>186</sup> In order to ensure that state food standards meet federal rules and to maintain effective and efficient cooperation between the federal and state regulatory agencies the FDA partners with the states through MOU that prescribe specific regulatory targets and goals for each state.<sup>187</sup>

This indicates that the nature of food quality and safety regulation invites the involvement of two or more agencies which might result in overlap and duplication of functions. However, if systematically handled through mechanisms such as memorandum of understanding, these overlap and duplication of activities can be minimized, even if not eliminated absolutely.

### **The Indian Experience**

Until 2006, there were several (about 8) food related laws in India. Some of these laws were overlap and fragmented and were administered by a number of different ministries and departments and the failed to provide a holistic approach to ensure the quality and safety of food supplied in India.<sup>188</sup> In recognition of the need to modernize the food quality and safety regulatory system the Indian government enacted food safety and standards act in 2006 to integrate and streamline the many regulations covering food and food products and then overriding the already existing eight laws.<sup>189</sup>

The food safety and standards act of 2006 brings together different pieces of legislation pertaining to food quality and safety and its control under a single law and under a single authority.<sup>190</sup> This means that the new act established a single reference point for all

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<sup>185</sup> Ibid

<sup>186</sup> Supra note cited at 93, p. 7

<sup>187</sup> Supra note cited at 88, p. 8

<sup>188</sup> Indian Food and Agricultural import regulation and standards, p. 2, retrieved from <http://www.fas.usda.gov/IN9113>, accessed on October 3/2009

<sup>189</sup> Food laws and Regulations, p. 2, retrieved from <http://jifsan.umb.edu/pdf>, assessed on may 8/2009

<sup>190</sup> Functional food and regulation in India, P. 2, retrieved from <http://www.pharmainfo.net/>, accessed on September 23/2009



matters relating to food safety and quality, by moving from multi departmental control to a single line of regulatory mechanism.

The act establishes a new national regulatory body known as the “food safety and standards authority of India” to develop science based standards for food and to regulate and monitor the manufacture, processing, storage, distribution, sale and import of foods so as to ensure the availability of safe and whole some food for human consumption.<sup>191</sup> Accordingly the government of India has recently constituted a food safety and standards authority of India with the objective of consolidating various food laws and establishing a single regulatory agency in place of the multiple regulatory agencies.<sup>192</sup> This indicates that it became difficult to effectively and efficiently warrant the quality and safety of food through the application of several laws scattered here and there and by multiple jurisdiction.

### **E. The Problems in Ethiopia**

Food quality and safety protection system requires strong coordination among regulatory agencies and up to date and comprehensive legal frame work that keep pace with advances and changes in the industry and then protects the nation’s food supply from production through to consumption. Currently in Ethiopia, however, there are obstacles, in this regard, that impair the effective and efficient functioning of the food quality and safety regulatory system. Key problems identified in regulating domestically produced foods include:

- Inadequate Coordination among federal agencies as well as between Federal and states regulatory bodies involved in the activities;
- Outdated and fragmented food related laws ;

#### **Inadequate Coordination**

The federal oversight of food quality and safety is fragmented, with at least four principal agencies independently administering several laws related to food quality and safety protection. In this respect The Ministry of Health, the Ministry of Agriculture and Rural

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<sup>191</sup> Ibid

<sup>192</sup> A surveillance and Monitoring System for Food safety in India, 2007, p. 2

Development, the Ministry of Trade and Industry and Quality and Standards Authority of Ethiopia are the main regulatory bodies.

There is no integrated and holistic approach in handling the issues related to food quality and safety control system in Ethiopia. An effective role that has to be played in safeguarding the quality and safety of food is undermined by this fragmentation of food quality and safety responsibilities among many agencies, each of which operates more or less independently. No agency has a practical mandate to create an integrated strategy that puts these differing and fragmented activities in a coherent way to minimize risks that may occur from unsafe and poor quality food presented to the public.

To show the lack of coordination among regulatory bodies it seems better to examine practically how edible Oils are regulated in Ethiopia. As stated on page 40 above a person, who wants to engage in producing goods, the production of which requires compulsory Ethiopian standards, should hold quality mark that evidence his/her competence to produce the goods. Article 20 (5) of Commercial registration and Business Licensing proclamation No. 67/1997 also provides that where a commercial activity for which a license is applied requires the applicant to hold a specific professional qualification or certificate of competence, the concerned government institution shall issue evidence of such professional qualification or certificate of competence. This is to mean that a person, who wants to engage himself in the business activity that requires certificate, should hold a certificate that evidences his qualification or competence so as to obtain license. Since the quality mark issued by QSAE in respect of Goods for which compulsory Ethiopian standards are established, can be taken as certificate of competence, therefore, it is prohibited to produce goods without holding the quality mark issued by QSAE. Hence, the Ministry of Trade and Industry and the respective regional Bureaus are expected to require a person, to produce certificate of competence to obtain license for a business activity related to food the use or the production of which require mandatory quality mark. These require the close working coordination between the QSAE and the Ministry of Trade and industry and the respective regional Bureau of Trade and Industry.

However the practice is different from what has been stated above. For instance, For producing Edible oil Ethiopian standards has been issued and therefore any one can not produce it without holding and using the quality mark.<sup>193</sup> However, there were several producers found producing Edible oil by obtaining business license from trade and industry sector without, however, getting the Quality Mark, which they should have obtained before securing the business license.<sup>194</sup>

For instance in Addis Ababa from among 109<sup>195</sup> producers of edible oil obtained license from Addis Ababa Trade and Industry Development Bureau only 22 of them are using quality mark and about eighty percent (80%) of them do not use quality mark and simply produce Edible oil which does not fulfill the required standards.<sup>196</sup> Similarly in Oromia there are 34<sup>197</sup> producers who have business license to produce Edible oil. However, 32 of them (94%) have no permit to use quality mark.<sup>198</sup> Although there is no up to date data at hand there are similar even more serious situations in the remaining regional states of the country.<sup>199</sup> This indicates the problems of coordination between the QSAE and the Trade and Industry sector concerning Regulation of food Quality and safety in Ethiopia. This seems happened since the permit to use quality mark is granted by one organization and the business license is granted by another organization and due to the absence of effective coordination between the two.

Obviously, of the meats that are presented for consumption in Addis Ababa, many tones are entered the city from the Oromia towns which are adjacent to Addis Ababa city. This warrants the need of coordination to exist between the two regions concerning the regulation of the quality of meat. However, according to one of the key informants,<sup>200</sup> there is the lack of coordination, among regulatory bodies, between Addis Ababa City Administration and the Oromia regional state, concerning the regulation of quality and

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<sup>193</sup> See volume 7 of Ethiopian Standards regulation No. 12/1990

<sup>194</sup> Interview conducted with w/ro Almaz Kahsay, Director, Inspection and Regulatory Affairs Service of QSAE, on October 12/ 2009

<sup>195</sup> The data is obtained from Addis Ababa Trade and Industry Development Bureau

<sup>196</sup> Interview cited at 107

<sup>197</sup> The data is obtained from Oromia Trade and Industry Bureau, on November 16/2009

<sup>198</sup> Interview cited at 107

<sup>199</sup> Ibid

<sup>200</sup> Interview conducted with Dr. Tafa Hunde Senior meat inspector at Addis Ababa Trade and Industry Bureau, on October 13/2009

safety of meat and meat products supplied to the city from Oromia towns surrounding the city.<sup>201</sup> Because there is the lack of coordination, the way meat is slaughtered, handled, transported to the butcher shops, and its distribution is not regulated; and, this would result in risking the health of many people. This is particularly true here in Ethiopia, given the obvious fact that the country's people have the custom of eating raw meat.<sup>202</sup> Avoiding or, at least, limiting this possible risk requires special attention to be paid in the course of producing meat and meat products for public consumption. Despite this, in Addis Ababa, the place where cattle are slaughtered, the way meat is transported, and handled; all are outside the norm of slaughtering, transporting, and handling meat and meat products.<sup>203</sup> Evidently, in Addis Ababa, of the cattle that are slaughtered and presented for consumption to the people of the city, many cattle are slaughtered not in abattoirs but in every village and corner of the City. This meat slaughtered at undesignated place is exposed to serious health hazards and affect consumers' health, as it is difficult to be free from health risks arising out of eating meat slaughtered and presented for consumption in such conditions. Moreover, the quality and safety of meats that enter into Addis Ababa from Oromia towns, surrounding the city, is not properly controlled.<sup>204</sup>

To sum up, the quality of meats and meat products are not presented for consumption in a manner their quality is maintained to an accepted level. The way slaughtering is conducted and the manner meats are handled is not adequately controlled. Accordingly, it cannot be said that meats, which are slaughtered in Addis Ababa City and those that are entered into the City from the neighboring Oromia towns, are with the required quality and are free from causing harm upon the health of consumers. Thus, the Addis Ababa City Administration and the Oromia regional state need to work in collaboration with each other so as to ensure the quality of meat for consumers. Actually, it seems with the recognition of the dangerousness of the meat slaughtering and transport system, the Addis Ababa city Trade and Industry Bureau and Oromia Animal marketing promotion and Health protection Agency is currently on the way to establish MOU to coordinate the

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<sup>201</sup> Ibid

<sup>202</sup> Ibid

<sup>203</sup> Ibid

<sup>204</sup> Ibid

activities of the two regions towards ensuring the quality and safety of meat presented to Addis Ababa city.<sup>205</sup>

### **Outdated and fragmented food related Laws**

Currently, food related laws in Ethiopia do not meet the need for a food safety system that protects the nation's food supply from farm production through to consumption. The problems related to laws can be seen in two ways. In the first place the existing laws are outdated and can not respond to the new system of food production and distribution system. Secondly the existing law itself is inadequate and scattered in different codes and legislations and do not cover all segments of foods and food products supplied to the people.

When we see the existing laws, most of them were outdated. They do not respond to new modes of living in which the Ethiopian people is, new kinds of products evolved from time to time, new methods of manufacturing and distribution chain, and new scientific discoveries, all demanding frequently updating of the food laws to coup up with the modern methods of food quality and safety control system.<sup>206</sup> When we examine the laws we observe that recent proclamations implemented by regulations issued in 1940s and 1950s. To cite an example the public health proclamation No. 200/2000 enacted in year 2000 is implemented by regulation issued in year 1940s (more than 50 years before the enactment of the proclamation). Because the proclamation, under its article 21(2), made applicable legal notice No. 25/1943 and legal notice No. 145/147/1950 for regulating the production, distribution and sale of food and food products produced in Ethiopia.

The meat inspection Proclamations issued in 1970s to safeguard the quality and safety of meat and meat product presented to consumers are also not in a position to respond to the contemporary environment in which the meat is slaughtered and transported. Here the meat inspection service is also governed by proclamation issued before 25 years. Since

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<sup>205</sup> Ibid

<sup>206</sup> Interview Conducted with Ato Derege Habte, Regulatory and Legal Service Directorate Director, at QSAE, on October 22/2009

1970s many things has been changed with respect to the environmental pollution, the demand of the society and health hazards emanating from the consumption of meat.

The problems regarding food laws is not only confined to the absence of up to date food quality and safety protection regulations, the lack of comprehensive food laws is also another impediment that hamper the supply of safe and of good quality foods.<sup>207</sup> As it has been discussed elsewhere in this section Ethiopian food quality and safety regulatory legislations are found in various legislations implemented by several government Agencies. Accordingly the public health proclamation and its implementing regulations, the proclamations and regulations provided to protect plant and animal health implemented by Ministry of Agriculture and Rural Development, different laws enforced by QSAE and the ministry of Trade and industry are some instance that indicate the fragmentation of the food laws in to various areas. More over the food laws are also found in different codes such as the Ethiopian Civil code and Criminal code. However the trends at global level is towards integrating and having comprehensive food laws that respond to the contemporary situations of food production, distribution, transportation and consumption system.

Hence, in order to have comprehensive national food law and sufficient number of up to date food quality and safety regulations, it need assessing where that laws are found and bring them together in one legislation. On the basis of the comprehensive food laws it also needs enacting sufficient regulations that are meant for effectively and efficiently implement the laws.<sup>208</sup>

### **3.1.2 The Regulation of Street Food**

Street food is one of the domestically produced foods on which many persons rely for their daily consumption. They are those foods prepared on the street and ready to be eaten, or prepared at home and consumed on the street without going through further preparation.<sup>209</sup> Being easily accessible and relatively affordable, these foods are prepared and/or sold by vendors mainly in the street or on other convenient public areas such as

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<sup>207</sup> Ibid

<sup>208</sup> Interview cited at 50

<sup>209</sup> Informal food distribution sector in Africa (street food), p. 1. retrieved from <http://www.fao.org/docrep/meeting/010/a021se/A02/5E26-htm>, accessed on October 10/2009

around working place, school, railway stations and bus terminals etc.<sup>210</sup> When compared with other foods, street foods may be the least expensive and most accessible foods outside home and are easily accessible foods for many people with low income.

In developing countries, street food preparation and selling provides a regular source of income for many men and women with limited education or skill, especially because the activity requires low initial investment.<sup>211</sup> This is to mean that street foods play a vital socio-economic role in terms of creating employment opportunities and making available foods that are affordable by people/consumers with middle and low income. Shortly stated, it is well recognized that this informal sector (street foods) has significant positive impact on the socio-economic situations of a city.

Although their accessibility and affordability, as well as their creating employment opportunity are some of their principal merits, street foods are perceived to be a major public health risk in view of health problems associated with sanitation problems. There is a general perception that street foods are unsafe, mainly because of the environment under which they are prepared and consumed, which expose the food to numerous potential contaminations which in turn are risky for human health.<sup>212</sup>

Irrespective of these possible risks, in many developing countries, street foods are not subjected to formal inspection by regulatory Authorities mainly because most vendors operate without license and at undesignated places.<sup>213</sup> This indicates that the risks that might be created on consumers, because of the use of street foods, are not appreciated by regulatory bodies and that there has been no legislation that pertains to the regulation of these foods; and this creates difficulty on ensuring that these foods are free from potential contaminations that expose consumers to unnecessary risks.

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<sup>210</sup> Food safety issues from the Asian consumer view points, p. 2, retrieved from <http://www.selamat.net/document>, accessed on June 25/2009

<sup>211</sup> Ensuring Quality and Safety of Street foods, p. 1, retrieved from <ftp://ftp.fao.org/docrep/fao/011>, accessed on October 3/2009

<sup>212</sup> Scheme for up grading safety and quality of street food, p. 1, retrieved from <http://www.southernexchange.un.net.in/food/resource/res2704070.doc>, accessed on September 22/2009

<sup>213</sup> Ibid, p. 5

In Ethiopia, in the past few years, street foods are flourishing in major towns of the country. There are many<sup>214</sup> people who get involved in the preparation and sale of street foods. It becomes common practice to observe them around school, bus stations and other places where several people found. All categories of people are consuming these food prepared and sold in street in Addis Ababa. Especially High school and University students are the largest consumer of this food. For this reason, controlling this informal sector has many advantages in Ethiopia, for one thing assistance may be provided to street food venders. On the other hand, consumers are protected from using street foods prepared at unhygienic places. It is also possible to make this sector contribute to national economy. Regardless of this fact, there is no specific legislation dealing with these foods other than those laws generally applicable to all food and food products. This offers that even though their special nature requires special handling which fit to their special situations, they are totally ignored by regulatory bodies. As information obtained from Addis Ababa Health Bureau reveals the condition and environment in which most of the street foods are prepared exposes consumers to health hazards.<sup>215</sup> Addis Ababa Trade and Industry Bureau in its part states that since they are not considered as traders it created difficulty to monitor and shape them in a way they can contribute to the national economy.<sup>216</sup>

The writer has also tried to obtain information from those involved in this informal sector, only three persons were consented to respond with out, however, revealing their name. They said that they fear to reveal their name and give information suspecting that it may be used to aware the regulatory bodies to take action to stop these work on which their livelihood depends. Those who gave information said that as much as possible they try to keep the safety of the food they prepare. However due to lack of capacity and finance it is difficult to say that the foods presented to consumers are prepared in a good sanitary condition. If training and financial assistance through credit is given to them they can enhance their capacity of providing safe and good quality foods much better that the

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<sup>214</sup> The exact number of people (vendors) involved in producing and selling of this informal food sector is Unknown since they are not registered anywhere.

<sup>215</sup> Interview Conducted with Ato Alemayehu Negash, Environmental Health Protection Sub-Process Head, at Addis Ababa Health Bureau, on November 10/2009

<sup>216</sup> Interview conducted with Ato Zewudu Bekele, Business Registration and Licensing Department head, at Addis Ababa Trade and Industry development bureau, on October 13/2009



current situations.<sup>217</sup> As the writer has observed every segment of the Addis Ababa community is consuming foods prepared on the street. However the material used for covering the foods (especially Biscuit) is past exam papers and previously used Gazetas. Even most of the color of the covering papers and gazetas were fade which shows the fact that they were come from unsanitary environment.

### **3.1.3. The Regulation of Exported and Imported Food**

#### **A. General**

With the advancement and development of a food consciousness amongst consumers, various countries have adopted sophisticated food law and have established food control agencies. Food importing countries, however, may no longer accept foods and food products imported to them as they are skeptical of whether such foods are with an accepted quality. For this reason, importing countries often demand food exporting countries that food and food products they export shall meet the requirements of their food law; and with a view to ascertaining as to whether the imported food meets the already established requirements, they conduct inspection by their control agencies.<sup>218</sup> Understood otherwise, countries do not allow food and food products to enter their territory unless it satisfies their food quality and safety regulatory requirements. Moreover, many importing countries require exporting countries to certify that the food products comply with their national legislation.<sup>219</sup> As a result, most of the efforts and resources of exporting countries are now directed towards ensuring that food for export meet the mandatory requirements of importing countries and providing the necessary associated certification.<sup>220</sup> This shows that access of countries to export markets depends and would continue to depend on their capacity to meet the regulatory requirements of importing countries, failure of which may be resulted in inviting either the detention or, at worst, rejection of food product at point of entry.<sup>221</sup> This is to mean that unless exporting

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<sup>217</sup> The Information was obtained from three street vendors involved in the preparation and sale of the foods around AAU (Sidist Killo Compus) and Stadium Areas.

<sup>218</sup> Quality control/quality assurance and international trade, Good manufacturing Practice (GMP), Hygiene requirements, Hazard Analysis and Critical Control Points (HACCP) in developing countries, p. 3, retrieved from <http://www.unido.org/filedomin/import/userfiles>, accessed on September 22/2009

<sup>219</sup> Ibid

<sup>220</sup> Ibid

<sup>221</sup> Supra note cited at 1, p. 4

country satisfy the mandatory requirements of importing countries they can incur the risk of having their food rejected at their own financial loss. Further more, failure to satisfy the quality and safety requirements of importing countries, expose exporting countries to great losses of revenue and loss of foreign exchange.

Since creating and sustaining demand for food products, in the world market, depends on maintaining trust and confidence of importers and consumers in the integrity of their food system, failure to comply with importing countries' food quality and safety requirements may result in damaging the commercial reputation of both exporting and importing countries.<sup>222</sup>Hence, having a clear understanding and knowledge of food quality and safety regulatory framework of importing countries is crucial in securing the confidence of importing countries so as to sustain the good trade relationship between the exporting and importing countries.

## **B. The Ethiopian Regime**

In Ethiopia, it is obvious that, export of food and food products stands first in generating revenue and bringing foreign exchange for the country. As information obtained from Ministry of Trade and Industry shows more than 65 % of the revenue gained from export products is obtained from exported foods and food products. Accordingly in the year 2000 E.C the revenue obtained from foods and food products constitute 67 % of the total export products. In year 2001 65 % the revenue from export product was obtained from food products. This calls for special attention to be paid to improve the quality and safety of exported foods and food products to maximize the revenue to be gained from it.

Since countries may not be self sufficient to satisfy all their basic needs, they fulfill their food shortage by importing from countries producing in excess. In order to protect their citizens against food borne hazards and deceptive marketing practices importing countries prescribe regulations to ensure that imported food and food products are safe and fit for human consumption.<sup>223</sup> Accordingly Ethiopia is not only exporting food to

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<sup>222</sup> Ibid, p. 4

<sup>223</sup> Food import and export, p. 4, retrieved from <http://ftp.fao.org/codex/publications/bookletinspection>, accessed on September 13/2009

foreign market she also importing large amount of food from abroad to satisfy her food shortage.

In Ethiopia there are several legislations and regulations dealing with the inspection and control of exported and imported food and food products from Ethiopia, which are implemented by various government bodies such as the Health sector, Agricultural sector, QSAE, Trade and Industry sector and revenue and Custom Authority of Ethiopia.

The health sector is empowered to inspect and control the quality and safety of food and food products intended for human consumption to assure that the food are free from health hazards. In order to conduct the inspection and control activities, the Ministry of Health has assigned health inspectors at each exit and entry points/ports to ensure the quality and safety of exported food and to safeguard Ethiopian consumers from health hazards associated with consumption of unsafe and unwholesome imported food.<sup>224</sup>

These inspectors rely on public health proclamation number 200/2000 and other several regulations issued in 1940s and 1950s. The Public Health proclamation No. 200/2000 entitles the health sector to provide inspection and control services of exported and imported food and food products. The proclamation imposes an obligation on a person, who prepares, distribute or make available foods for export and/ or import to ensure that the foods he makes available shall be of hygienic, wholesome, properly labeled, and free from contamination and be made in a manner they meet food quality standards.<sup>225</sup> The ministry of health is responsible to inspect exported and imported foods to ensure that they are safe and do not pose risk on human health.<sup>226</sup> Hence, for food and food product to qualify for export and import standards, it must be hygiene and shall meet label requirements as well as standards of food quality set by concerned organs. This organ may be food standard setter of both exporting and importing countries.<sup>227</sup>

The Agricultural sector, which is empowered to protect plant and animal health, is charged with the duty of inspecting and controlling exported agricultural products, animal

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<sup>224</sup> Interview cited at 50

<sup>225</sup> Supra note cited at 43, Article 5(1)

<sup>226</sup> Ibid, Article 9 (1)

<sup>227</sup> Interview cited at 50

and animal products.<sup>228</sup> Through its plant and animal health regulatory directorate the Agricultural sector also ensures that the quality and safety of agricultural commodities, live animals and animal products imported into Ethiopia conform to regulatory requirements laid down for this purpose.<sup>229</sup> Since it is difficult to go through all exported and imported agricultural products, animal and animal products' Quality and Safety regulatory mechanism, the writer wants to see the regulatory mechanism put in place with regard to meat inspection service so as to assess the practice of meat and meat products' inspection activity that is carried out by meat inspection and quarantine professionals of ministry of Agriculture and Rural development. Meat inspection proclamation No. 274/1970 and its amendment proclamation No. 81/1976 as well as Animal disease prevention and control proclamation No. 267/2002 are the relevant legislation on which the inspectors base to determine quality and safety of meat and meat products intended for export.

Under Meat Inspection Proclamation number 274/1970, the Ministry of Agriculture and Rural Development is empowered to set criteria for the classification of meat and meat products on the bases of whether they fit for human consumption or not; and, according to the standards of any particular country or countries, and up on due inspection, the ministry prohibits the export of meats and meat products which fail to satisfy the established criteria.<sup>230</sup> This proclamation stipulates the necessity of satisfying the quality and safety standard set out by the importing countries.

To provide inspection services for exported meat and meat products, there is inspection and quarantine unit under meat and animal health protection regulatory directorate, which is organized in the Ministry of Agriculture and Rural Development. To ensure the quality and safety of exported meat and meat products, inspection begins with selecting animals to be slaughtered for exporting meat and meat product.<sup>231</sup> It is only the animal that passed through safety and quality requirements that can be slaughtered for exporting meat.<sup>232</sup> During slaughtering, the fulfillment of the necessary sanitation is also observed.

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<sup>228</sup> Interview Cited at 54

<sup>229</sup> Interview cited at 54

<sup>230</sup> Supra note cited at 57, Article 6

<sup>231</sup> Interview cited at 54

<sup>232</sup> Ibid

After slaughtering also, inspection is conducted to assure that the slaughtered meat and meat products are ready for export.<sup>233</sup> Finally, at exit posts, meat inspectors are assigned to inspect and control meat and meat products and can prohibit the export of the same where it ascertains existence of any condition that undermines the quality and safety of the meat made available for export.<sup>234</sup> This shows that inspecting and controlling the quality and safety of exported meat and meat product is carried out before, during and after slaughtering to determine whether or not the meat qualify for export.

Similar to exported agricultural products and animal and animal products, there are inspectors at entry ports to ascertain the quality and safety of imported agricultural commodities and animal products.<sup>235</sup>

Quality and safety of exported and imported food is also inspected and controlled by QSAE. QSAE takes part in the regulation of exported food products by promoting, assisting and by establishing appropriate quality management practices as well as by applying Ethiopian standards so as to guarantee the quality of products and processes.<sup>236</sup> For the purpose of ensuring the conformance of products to relevant requirements, the QSAE is also vested with the power of establishing and operating testing laboratories.<sup>237</sup> As can be understood from the above provisions, QSAE has many roles to play in assisting and enhancing the quality and safety of food and food products intended for export. Especially, the establishment and operation of a national conformity assessment system is crucial in creating and promoting foreign markets for Ethiopian food and food products, because it involves inspection, certification, and testing the conformance of exported products to relevant Ethiopian standards. Where the exported food and food products are failed to conform to the relevant compulsory Ethiopian standards, the QSAE has the power to stop the export of such foods and food products.<sup>238</sup> This shows that a

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<sup>233</sup> Ibid

<sup>234</sup> Ibid

<sup>235</sup> Meat inspection No. 274/1970 and its amendment Proclamation No. 81/1976 entitles the then ministry of Agriculture to inspect or require the inspection of by competent authority in the country of origin of any livestock, meat and meat products intended for import into Ethiopia and prohibit the import of any of the same which fail to satisfy the quality and safety requirement set out under the proclamations.

<sup>236</sup> Supra note 67, Article 5 (1) and (2)

<sup>237</sup> Ibid, Article 6(7)

<sup>238</sup> Ibid Article 6 (10)

person who wants to involve in the production and export of food and food products has to comply with the compulsory quality and safety standards set by the authority.

QSAE also plays a pivotal role by involving in the inspection of imported foods and food products to ensure that they conform to compulsory Ethiopian standards. The authority assures the quality and safety of imported foods by conducting inspection at port of entry.<sup>239</sup> This inspection service is carried out by taking samples of imported good and then conducting analysis. To carryout the analysis of the sample taken the authority has well established laboratories. After inspection if the goods are found to be unsafe and of poor quality that does not conform to the relevant Ethiopian standards, such a food is prohibited form entering into Ethiopia. Only those products which fulfill the regulatory requirements issued by Ethiopian governments are allowed to enter the country.

The Revenue and Custom is also authorized to prohibit the exportation from Ethiopia of any products which do not bear the mark, the use of which is required to be compulsory by the Ethiopian standards.<sup>240</sup> The Custom officials have also primary responsibility to ensure that imported food and food products satisfy the compulsory quality and safety requirement set by concerned government agencies.<sup>241</sup> This offers that where food and food products arrive at exit and entry port for export and/or import, the customs authority is empowered to check whether or not such product conforms to the prescribed standards. If customs authority found that the food and food products made ready for export are found to be in compliance with the relevant Ethiopian standards, they are released for export; but they are rejected from export where they fail to comply with the required standards. In the same token if the Customs officials discovered that foods and food products intended to be imported into Ethiopia do not fulfill the Ethiopian quality and safety requirements, it ban such foods from entering into Ethiopia.

The Trade and Industry sector is also involved in regulating the quality and safety of exported and imported foods and food products through licensing those exporters who fulfills the relevant requirements. Where a commercial activity for which license is

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<sup>239</sup> Interview with Ato Sisay Asefe, Public relation and Education service head, at QSAE, on October 20/2009

<sup>240</sup> Supra note cited at 63, Article 13(2)

<sup>241</sup> Ibid

sought requires the applicant to hold a specific professional qualification or certificate of competence the ministry of trade and industry require the applicant to produce certificate which assure such professional qualification or competence to involve in export of foods.<sup>242</sup> Therefore Trade and Industry minister participate in regulating the quality and safety of exported food and food product by granting license to those food exporters who fulfills the requirements established by institutions such as QSAE regarding the production of food intended for export.

Assuring the quality and safety of exported and imported food is not as such an easy task. Food export depends not only on the national food quality and safety requirements but also on the regulatory requirements prescribed by food importing country. Therefore in addition to complying with compulsory requirements of food standards established in Ethiopia, Ethiopian food exporters need to have the knowledge and understanding of the food quality and safety requirements of the country to which they want to export. Importers are also required to have a good understanding of food quality requirement established in Ethiopia. It is, therefore, important to briefly examine some international Agreements relevant to exports and imports of foods and food products and the experiences of some selected country.

### **C. The International Agreements**

Like any other products large amount of foods and food products are also traded at international level. With increasing volume of food trade among countries, variations in the procedure for national food control system, involving monitoring and sampling, detection, application of standards and food safety requirements were emerged globally; thus, there appeared a growing need for international guidelines and rules; and, it seems, in response to this that guidelines and rules that deal with food control system have been incorporated in the WTO frameworks constituting one of its rules and principles.<sup>243</sup>

There are international agreements which provide guidelines and rules and which are relevant in understanding the requirements for food quality and safety protection

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<sup>242</sup> Supra note 62, Article 20 (5)

<sup>243</sup> Supra note cited at 3 , p. 13

measures at the national level, and the rules under which food is traded at international level.<sup>244</sup> These Agreements are:

- Agreement on application of sanitary and phytosanitary measures (SPS)
- Agreement on technical Barriers to Trade (TBT)
- Codex Alimentarius.

Since these agreements are considered as minimum requirements for assuring the quality and safety of food, exporting countries who want to participate in food export market need to meet the requirements laid down by these agreements and the regulatory requirements of importing countries.<sup>245</sup> The role of these instruments in internationally traded food is briefly considered below.

### **The SPS Agreement**

SPS agreement is one of the international agreements dealing with the application of measures associated with the protection of human, animal and plant health and life. The SPS agreement recognizes that governments have the right to adopt sanitary and phytosanitary measures to protect human, animal and plant health.<sup>246</sup> This indicates that the aim of SPS agreement is to protect human, animal and plant life or health from pests and diseases arising out of imports of food and Agricultural products.<sup>247</sup> The SPS agreement covers all relevant laws, decrees, regulations, testing, inspection, certification and approval procedure, packaging and labeling requirements directly related to food safety.<sup>248</sup> This means that SPS is concerned with the measures taken to ensure the quality and safety of food and food products produced for domestic consumption as well as for export market.

It is stated that members shall base their sanitary and phytosanitary measures on international standards, guidelines, and recommendations where they exist.<sup>249</sup> The SPS agreement identifier codex food standards, guidelines and recommendations as the

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<sup>244</sup> Supra note cited at 1, p. 4

<sup>245</sup> Ibid

<sup>246</sup> SPS Agreement, Article 2 (1)

<sup>247</sup> WTO Agreement on SPS and TBT implications for the food Quality issues, p. 5, retrieved from <http://cepdea.esalpq.usp.br/>, accessed on September 22/2009

<sup>248</sup> Supra note cited at 88, p. 4

<sup>249</sup> Supra note cited at 148, Article 3 (1)



preferred international measures suggested by the codex Alimentarius commission.<sup>250</sup> Here the agreement encourages the use of international food standards where they exist for the purpose of safeguarding the health of animal and plants there by ensuring the quality and safety of foods traded at international level.

Under the codex Alimentarius limits of pesticide residue, contaminants, food additives, veterinary drugs, methods of analysis and sampling and codes and guidelines of hygienic practice fall within the scope of SPS agreement.<sup>251</sup> The above discussion suggest that countries have the right to take measures with a view to protecting the health and life of human, animal and plant from risks arising from imported food products. Hence exporting countries are expected to have the knowledge of this health and safety measures taken by their importing partners.

### **The TBT Agreement**

The TBT agreement is also one of the international agreements which are relevant to the protection of the quality and safety of foods traded internationally. The TBT agreement affects all technical regulations which are not covered by SPS agreements such a quality, labeling, packaging and products content.<sup>252</sup>

It recognizes that a country has the right to take necessary measures to fulfill legitimate objectives of ensuring the protection of human health or safety, animal or plant life or health; and to prevent deceptive practices.<sup>253</sup> Countries may also take the necessary steps to ensure that those measures taken by them do not create unnecessary obstacles to international trade.<sup>254</sup> Therefore the rights of a country to take measures in order to protect the health or life of human, animal and plant is recognized by this agreement with out, however, creating unjustifiable barriers to food traded at international level. Stated otherwise, technical regulations on quality factors, fraudulent practices, packaging, and

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<sup>250</sup> Supra note cited at 160, p. 5, see also Article 3 (4) of SPS Agreement

<sup>251</sup> Implications of the WTO agreements on SPS measures and Technical Barriers to Trade, p. 2, retrieved from <ftp://ftp.fao.org/codex/ccneal/ne01.08e>, accessed June 15/2009

<sup>252</sup> Technical regulation and food safety in NAFTA, p. 71, retrieved from <http://agencensearch.umn.edu/bitstream>, accessed on June 15/2009

<sup>253</sup> TBT Agreement Article 2(2)

<sup>254</sup> Ibid

labeling requirement imposed by countries may not be more restrictive on imported products than they are on products produced domestically.

The TBT agreement encouraged countries to use international standards exist where they require technical regulations.<sup>255</sup> Codex standards can also be taken as one of the international standards to which reference is made by TBT agreement. Under the codex alimentarius various commodity standards, labeling provisions, methods of analysis and sampling fall with in the scope of TBT Agreement.<sup>256</sup>

### **The Codex Alimentarius**

The most important development in international food quality control has been the setting up, under Joint FAO/WHO auspices, of the Codex Alimentarius commission.<sup>257</sup> The Codex Alimentarius Commission (CAC) was established in 1962 by a Joint FAO/WHO food standards program and has the major objectives of protecting the health of consumers and ensuring fair practices in food trade.<sup>258</sup> The commission draws up voluntary international standards that, on the adoption by a member country, became national, statutory, or legal minimum standards with all the necessary power of enforcement.<sup>259</sup>

As has been indicated here in above both the SPS and TBT agreement acknowledge the use and harmonization of international standards to minimize the risk of sanitary, phytosanitary and other technical standards. Codex alimentarius is one of the international standards to which reference is made. Codex is a collection of internationally adopted foods standards presented in a uniform manner to protect consumers' health and to ensure fair practice in the food trade.<sup>260</sup> There is an international organization called codex alimentarius commission (CAC) that coordinates food standards at international level. Accordingly the CAC has formulated international standards for a wide range of food products and specific requirements covering food

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<sup>255</sup> Ibid Article 2 (4)

<sup>256</sup> Supra note cited at 164, p. 2

<sup>257</sup> Supra note cited at 9, p. 400

<sup>258</sup> Supra note cited at 88, p. 8

<sup>259</sup> Supra note cited at 9, p. 400

<sup>260</sup> General Principle of Codex Alimentarius, p. 1, retrieved from <http://www.fao.org/docrep/>, accessed on September 24/2009

additives, pesticide residues, veterinary drug residues, and food contaminants, methods of sampling and analysis and code and guidelines of hygienic practice.<sup>261</sup> This means that the codex standards, guidelines and recommendations are used and accepted by governments as the benchmark to evaluate, determine and refine measures and regulations regarding their national food quality and safety control system.<sup>262</sup>

The adoption of codex standards as scientifically justified norms for the purpose of the SPS and TBT agreements is of immense significance. The standards have become an integral part of the legal framework within which international food trade is facilitated through harmonization.<sup>263</sup> Although it is said that the CAC guidelines are voluntarily implemented, the WTO endorsement of the codex standards through SPS and TBT agreements has made these standards defacto mandatory.<sup>264</sup> Hence adherence to this standard is crucial to have an understanding of the quality and safety requirement for food traded at international arena.

Ethiopia is member to CAC and participates in food standards setting at international level.<sup>265</sup> This indicate that although Ethiopia is not member to WTO and the rules of SPS and TBT Agreements are not binding on Ethiopia, the mere fact that standards established by CAC is recognized by SPS and TBT Agreements obliged our exporters and concerned Government agencies to have awareness of these internationally accepted rules for international trade in foods. Hence when establishing rules and regulations related to foods and food products, considering its compliance with the above described three international agreements has a great importance to effectively participate in world food markets.

#### **D. Selected Country Experiences**

At present time the trend is to wards harmonizing the food quality and safety control system at global level. Establishing food quality and safety control system which is

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<sup>261</sup> Supra note cited at 164, p. 2

<sup>262</sup> Supra note cited at 1, p. 4

<sup>263</sup> Supra note Cited at 164, p. 2

<sup>264</sup> Supra note cited at 160, p. 5

<sup>265</sup> Interview conducted with Ato Aregahegn Yimer, Standards Directorate Director, at QSAE, on October 23/2009

acceptable before international community and domestic consumer is essential to effectively participate in international food trade and to safeguard the health of citizens. It is, therefore, important to make a brief look at selected country experiences to know how they employ regulatory requirements to effectively regulate their exported and imported food and food products.

### **The Canadian experience**

In Canada regulating the quality and safety of exported and imported food and food products is the shared responsibility of Federal agencies and departments. The principal Federal government agencies involved are the Canadian Food Inspection Agency, Canadian Border Service Agency, and the Department of foreign affairs and international trade.<sup>266</sup>

The Canadian food inspection agency provides all federal inspection services related to food safety, economic fraud, trade related requirements, plant and animal disease.<sup>267</sup> The CFIA's primary function is to verify the compliance of Canadian exported and imported food products with federal safety standards in order to ensure the safety and health of Canada's food consumers.<sup>268</sup> Inspectors and veterinarians inspects and Audits establishments and products intended for export and the food intended to be imported into Canada with the help of experts who examine and test food samples in the laboratory.<sup>269</sup> In the event of non compliance the inspectors and veterinarians takes measure and prohibit from exporting the food. Similarly where the food intended to be imported into Canada is found to be not in compliance with Canadian food quality and safety requirement, the CFIA takes measures such as detention and prohibition form importing into Canadian.<sup>270</sup>

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<sup>266</sup> Guide to importing Food products commercially, p. 6, Retrieved from <http://www.inspection.gc.ca/>, assessed on January 14/2010

<sup>267</sup> Ibid

<sup>268</sup> Supra note cited at 71, p. 3

<sup>269</sup> Ibid, p. 4

<sup>270</sup> Ibid

Canadian border service Agency assists in regulating the quality and safety of food imported into and exported from Canada by detaining food that may be in contravention of the customs Act or other regulation governing the import and export of foods.<sup>271</sup> Customs inspectors review all import and export documentation to ensure that all required permits, certificates and licenses are fulfilled.<sup>272</sup> Custom inspectors also perform examination of food shipments to verify that the information and documents being presented are relevant to the food made available for import or export.<sup>273</sup>

Foreign affairs and international trade department is involved in the regulation of imported and exported food through its export and import controls Bureau by issuing permits for foods on the import control list and export control list under the Authority of the export and import permit act.<sup>274</sup>

In addition to food quality and safety regulation established in Canada, Canadian food exporters are required to observe international standards and rules established to protect public health and safety and to protect plant and animal in the importing countries.<sup>275</sup> This means that for Canadian foods and food products to be sold in foreign market, it needs to meet the importing country's food quality and safety regulatory requirements.

With a view to assuring the quality and safety of Canada's food supplied to foreign market there are internationally accredited institutions which conduct testing and issue certificate that evidences that the food is produced in accordance with requirements and standards established by Canadian governments and there fore safe to eat any where in the world.<sup>276</sup> Here having internationally accredited certifying institution assists Canada's food exporters to effectively participate in international food trade and also relieve exporters from excessive expenses that they has to pay for retesting and recertification in the importing country.

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<sup>271</sup> Supra note cited at 179, p. 7

<sup>272</sup> Ibid

<sup>273</sup> Ibid

<sup>274</sup> Ibid

<sup>275</sup> Supra note cited at 76, p. 8

<sup>276</sup> Supra note 80, p. 3

It is obvious that food related laws in any country are bulky and complex to easily get and make use of it. Recognizing the complexity of the regulatory requirements related to foods and to fulfill its international obligations, Canadian government has established a WTO/TBT Enquiry point that provides complete and current information concerning the requirements for food import and export.<sup>277</sup> To solve major problems encountering importers and exporters of food in obtaining information on technical regulations and standards TBT Enquiry points has been established at Intergovernmental Affairs and trade standards council to provide essential information related to food quality and safety regulatory system in Canada and Canada's food importing country.<sup>278</sup> This Canadian National Enquiry points provide relevant information to exporters and importers on the conditions that must be met by Canadian exporters in order to be allowed to enter into food market in the importing country and the regulatory requirements and standards to be followed to import food into Canada.<sup>279</sup> Hence food exporting and importing countries and enterprises can get information relevant to export from and import into Canada food and food products through their Canadian national enquiry points.

### **The U.S. Experience**

In the U.S. ensuring the quality and safety of food supplied to Americans and foreign market is a shared responsibility of several departments of the United States government. These agencies/ ensure that all foods imported into and exported from the United States are pure, whole some, safe to eat and produced under sanitary conditions.<sup>280</sup>

At least three U.S. government agencies are involved in the regulation of the quality and safety of the food intended for export and import. Accordingly the US Food and Drug Administration, the Food safety Inspection service and the U.S. custom services are the principal US food regulatory agencies designated to assure that the food imported into the

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<sup>277</sup> Supra note cited at 179, p. 15

<sup>278</sup> World Trade Organization: National Enquiry Point, p. 8, Retrieved from <http://www.wssn.net/wssn/RefDocs>, assessed on January 14/2010

<sup>279</sup> Improving and Maintaining Market access using the WTO Agreement on TBT and SPS, p. 3, Retrieved from <http://www.intracen.org/tdc/export%20Quality%Bulletins/EQM75eng.pdf>, accessed on January 14/2010

<sup>280</sup> Supra note cited at 89, p. 2

United States and exported to the foreign market is in compliance with the U.S. Food laws and the food regulatory requirements of importing country.<sup>281</sup>

The US Food and Drug Administration regulates both exported and imported food except meat and poultry products by employing food quality and safety assurance system such as:<sup>282</sup>

- Sampling and inspection of imported and exported foods.
- Working with foreign governments to ensure the quality and safety of imported foods
- Educating food establishments producing exported food on regulatory requirements of major importing countries and on quality and safe food handling practice.

The quality and safety of meat and poultry products imported into and exported from the United States are regulated by the Food Safety Inspection Service of the United States department of Agriculture. Food safety inspection service (FSIS) is responsible for regulating and ensuring that meats and poultry products imported into and exported from the United States are safe, wholesome for consumption and accurately labeled.<sup>283</sup> This means that FSIS inspects all meat and poultry products to protect Americans and foreign consumers from poor quality and unsafe meat and poultry products.

The FSIS assess the overall production hygiene and evaluate the exporter's ability to deliver an effective inspection system and then only permits imports of food from countries that operate under equivalent quality and safety regulations as that of the United States.<sup>284</sup> There fore, foreign countries that export meat and poultry product to the US are required to establish and maintain inspection systems that are equivalent to those carried out in the United States.

More over regular on site and audits of the eligible foreign inspection system and re-inspection of products up on arrival at the ports are performed to verify on- going

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<sup>281</sup> Supra note cited at 76, p. 9

<sup>282</sup> Supra note 89, p. 3

<sup>283</sup> Supra note cited at 76, p. 5

<sup>284</sup> Ensuring the Optimum food quality, p. 1 , Retrieved from <http://www.thermo.fr/e-therm/CMA/pdf>, accessed on January 14/2010

equivalence.<sup>285</sup> This offer that countries importing meat and poultry products into the U.S. are required to keep consistency in protecting the quality and safety of their food supplied to Americans. FSIS also inspects meat and poultry products intended for export during processing, handling, and packaging to ensure that they are safe and truth fully labeled.<sup>286</sup>

The U.S. Custom services provides service at the point of exit and entry for food products exported from and imported into he U.S. Accordingly it participates in the regulation of exported and imported food products by detaining the foods when the US food quality and safety regulatory requirements have not been met.<sup>287</sup> For food products to qualify for export and import needs to pass through the requirements established by the U.S. Custom Services.

Similar to Canada in the U.S. also there are several institutions that are internationally accredited in testing and certifying to assure the quality and safety of food supplied to Americans and Foreign food markets.<sup>288</sup> The existence of these internationally accredited food quality and safety assuring institutions contributes a lot in sustaining the confidence of U.S. food importers and in ensuring that the food supplied to the American people are with good quality and safe that has been prepared under sanitary conditions.

To provide importers and exporters of food with relevant food related regulatory requirements the US government has established the WTO TBT Enquiry points in the National institute of standards and Technology which is called National center for standards and certification information (NCSCI).<sup>289</sup> This Enquiry point provide information to the exporter and importers of food about all relevant information that assist importers in adhering to the U.S. food quality and safety regulations and exporters in fulfilling the regulatory requirements of countries to which their food is being exported.<sup>290</sup> This Enquiry points which provide all relevant food quality and safety related information, there fore, has of a grate role to play in guiding importers and

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<sup>285</sup> Ibid

<sup>286</sup> Supra note cited at 76, p. 5

<sup>287</sup> Supra note cited at 89, p. 5

<sup>288</sup> Supra note cited at 76, p. 5

<sup>289</sup> New online Service Alert Industry to trade related technical regulation, p. 12, Retrieved from [http://www.trade.gov/exportamerica/news from commerce/](http://www.trade.gov/exportamerica/news%20from%20commerce/), assessed on January 15/2010

<sup>290</sup> Supra note cited at 179, p. 7



exporters of foods what are required from them and in ensuring the quality and safety of food supplied to Americans and foreign food markets.

### **The Indian Experience**

Similar to other countries, in India also, several orders and acts are established and implemented by several food quality and safety regularity agencies to safeguard the quality and safety of food supplied to Indian citizens and for foreign food market.<sup>291</sup>

India's current import regulations do not require any specific export certificates from the country of origin.<sup>292</sup> However all foods imported in to India are required to meet the requirements established under various domestic food laws such as:<sup>293</sup>

- The prevention of food Adulteration act
- The standards and weights and measures Act, 1976
- The meat food product order, 1992
- Milk and Milk products order, 1992
- Fruit products order, 1955

This means that domestic food regulations/ standards apply equally to domestic and imported food products. At the port of entry food products are sampled and tested by inspectors, and the consignment is cleared only if it meets the requirements of the domestic laws/ standards.<sup>294</sup>

For the regulation of exported food products, the export inspection council is responsible to carry out the quality control and inspection of various exported food products through a net work established at more than fifty offices located around major production centers

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<sup>291</sup> Supra note cited at 197, p. 2

<sup>292</sup> Supra note cited at 93, p. 2

<sup>293</sup> Ibid

<sup>294</sup> Ibid, p. 3

and port of shipment.<sup>295</sup> This shows that in order to enhance the export of food products export facilitation is established nearby establishments producing exported food and assist them to effectively compete in international food market.

In India, International relations and Technical information service department which was established in Bureau of Indian standards has been designated as WTO/TBT Enquiry point to provide information relating to the export and import of food.<sup>296</sup> The Enquiry point established by Indian government respond to enquiries and provides relevant documents/ information such as:<sup>297</sup>

- Technical regulations standards and conformity assessment procedures;
- Location of notice published; and
- Location of other enquiry points.

Here having necessary information about regulatory requirements of food helps importers and exporters to effectively participate in food market by providing safe and good quality food demanded by the regulations and standards.

### **E: - The Problems in Ethiopia**

As has been discussed above on page 57 importing countries do not allow food and food products to enter their territory unless it satisfies their food quality and safety regulatory requirements. Moreover, many importing countries require exporting countries to have certification which assures that the food products are free from health hazards and with good quality to be consumed by their citizens. In Ethiopia, however, the certification issued by the QSAE has no acceptance in importing countries. Ethiopian exporters require the certification only to obtain export license.<sup>298</sup> They are exposed to excessive expenses for re-inspection and recertification in the importing countries.<sup>299</sup> This shows that the QSAE can not conduct inspection that adds values to exported foods and food

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<sup>295</sup> Export-Import Regulations, p. 3, Retrieved from <http://www.indiadairy.com/zone-import-export.html>, assessed on January 15/2010

<sup>296</sup> Supra note cited at 179, p. 2

<sup>297</sup> WTO Technical Barriers to Trade, p. 5, Retrieved from, <http://commerce.nic.in/tbt.matters.pdf>, accessed, on January 12 2010

<sup>298</sup> Interview cited at 178

<sup>299</sup> Ibid

products. This requires the initiation of internationally acceptable inspections and certification system at least by focusing on the country's major export foods.

As stated in section **3.1.1.B** the existing laws for export and import is not adequate to support the export and import of foods that the contemporary food quality and safety control system at international level requires. This demands the up dating of the existing export legislations relevant to export of foods and food products.

As experiences from selected counties discussed above reveal export and import of foods and food products require having knowledge of the National Standards and food quality and safety regulations of the country from which the foods are imported and the knowledge of the food quality and safety regulatory mechanisms of ones own country. In this regard there is no working system that assists to provide adequate awareness and information to those involved in export and import of food and food products.<sup>300</sup> Hence there is a need to establish WTO/TBT Enquiry Desk in Ethiopia to provide reliable and adequate information to those involved in food export and import trade.

The existence of effective coordination among agencies involved in the regulation of exported and imported food is very crucial. However as information obtained from QSAE, Addis Ababa branch made clear, there is no sufficient coordination among those involved in the inspection of exported and imported foods and food products.<sup>301</sup> Some of them present only where called to attend as observer when detained foods at the port of entry is burnt or destroyed.<sup>302</sup>

In conclusion domestically produced, exported and imported food and food products are the areas where food quality and safety regulation is focused on to warrant the quality and safety of food provided to consumers. In implementing food regulations and in controlling the quality and safety of food presented to domestic consumers and foreign market different government agencies are involved in implementing several laws. Hence the existence of up to date and comprehensive food laws which keep pace with the development of food trade and changes in environment and the coordination and

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<sup>300</sup> Interview cited at 119

<sup>301</sup> Interview conducted with Ato Yalem berihan, head , QSAE, Addis Ababa Branch office, on October 27/2009

<sup>302</sup> Ibid

cooperation among these government agencies are vital to effectively and efficiently ensure the quality and safety of food supplied to domestic consumers and foreign market.

## **3.2 The Techniques of Regulation**

In assuring the quality of any products, processes or methods, there are certain techniques to be employed with a view to enabling producers both to establish what is required of them, and to credibly demonstrate their compliance with a wide variety of quality standards.<sup>303</sup> Standards and conformity assessment serve as a techniques to regulate the quality and safety situations of food and food products. Hence, this section tries to explain how standards and conformity assessment are employed for the purpose of ensuring the quality and safety food supplied to domestic consumers and foreign market.

### **3.2.1. Standards**

The international guide to ISO/IEC guide 2: 1996 defines standards as a document established by consensus and approved by a recognized body that provides for common and repeated use, rules, guide lines or characteristics for activities or their result; aimed at the achievement of the optimum degree of order in a given context.<sup>304</sup> Standard set out specific characteristics of a product such as its size, shape, functions, ingredients and performance or the way it is labeled or packaged before it is put on sale.<sup>305</sup> Standard, being a document that describes the important features of a product and the essential requirement that must be met, is a vital tool in ensuring the effective operations and control of products, processes and methods.

In today's competitive market, it is easy to compare price; but it is much more complex to compare level of quality. The existence of a unanimously recognized quality system of

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<sup>303</sup> The Quality institutions: An enabling framework for international trade, 2002, p. 1

<sup>304</sup> About Standardization, p. 1, retrieved from <http://www.qsae.org/>, assessed on August 20/2009

<sup>305</sup> Standards, Metrology, Conformity assessment, and TBT Agreements, p. 32

reference, constitute a very precious clarification tool. Standard is, therefore, meant to play precisely this role.<sup>306</sup> This shows that standard is used to clarify and minimize discrepancies in products, processes and methods.

As a general rule, the implementation (application) of standards is voluntary. However in certain cases such as in the fields connected with safety and health of the public, application may be mandatory.<sup>307</sup> Hence a country can adopt either mandatory or voluntary standards depending on areas for which standards can be established.

### **3.2.1.1. The International Guideline and Types of Standards**

#### **A. The International Guideline**

With increasing volume of food traded at international market, variations in the application of standards were emerged globally and resulted in a growing need for international guidelines. In response to this demand the Codex has established guidelines for the preparation adoption and application of standards for various foods, whether processed, semi-processed or raw in the form that they reach the consumer.<sup>308</sup> Codex standards are voluntary and not legally binding on member countries. Though Codex standards are voluntary for member countries, the role of the Codex has been significantly enhanced under the WTO trading regime through the Sanitary and Phytosanitary Measures Agreement and the Technical Barriers to Trade Agreement and it is now an international reference point for matters related to food standards.<sup>309</sup>

The Agreement on the Application of Sanitary and Phytosanitary measures set out rules for food standard preparation by allowing countries to set their own standards.<sup>310</sup> While recognizing the right of member countries to take SPS measures that are necessary to protect human, animal or plant health within their jurisdiction, the Agreement instructs

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<sup>306</sup> Supra note cited at 217, p. 2

<sup>307</sup> Supra note cited at 218, p. 32

<sup>308</sup> Mark Mahabir, International Food Standards,p.2, Retrieved from <http://www2.parl.gc.ca/LOP/ResearchPublication/>, assessed on January 16/2010

<sup>309</sup> Ibid, p. 4

<sup>310</sup> Understanding the WTO on Sanitary and Phytosanitary Measures, p. 2, retrieved from <http://www.wto.org/english/tratop-e/spsund-ehm>, assessed on 16 January/2010

members to base these measures on international standards and guidelines where they exist.<sup>311</sup> Under this Agreement, Codex standards are considered to be the international standards and guideline for establishing food standards and national food safety measures that are based on Codex standards are presumed to comply with WTO rules.<sup>312</sup> This shows that countries are encouraged to use international standards established as guidelines and recommendations with respect to foods.

Members may, however, use standards that are higher than international standards if they can provide a scientific justification or if the decision is based on a proper risk assessment.<sup>313</sup> In short, it means that domestic measures departing in either direction from SPS-recognized standards must be based on a risk assessment, take available scientific evidence into account, and avoid unnecessary discrimination.

The TBT Agreement under its Article 4 (1) also states that for the Preparation, Adoption and Application of Standards countries are required to ensure that their central government standardizing bodies accept and comply with the Code of Good Practice. Annex 3 of the TBT Agreement while recognizing the right of a country to prepare, adopt and apply standards to fulfill legitimate objectives of ensuring the quality and safety of food supplied to consumers, instruct countries not to create unnecessary obstacles to international trade in food.<sup>314</sup> The TBT agreement also encouraged countries to use international standards where they exist as a basis for the standards it develops, unless such international standards are found to be ineffective or inappropriate in safeguarding the supply of safe and good quality food.<sup>315</sup> Under the TBT Agreement Codex standards are also taken as one of the international guideline to which reference is made in preparing, adopting and applying food standards.<sup>316</sup>

From the above discussion we can conclude that while establishing food standards countries are required to use codex food standards and follow code of good practice as

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<sup>311</sup> Supra note cited at 159, Article 3 (1)

<sup>312</sup> Supra note cited at 221, p. 3

<sup>313</sup> Ibid, p. 2

<sup>314</sup> Supra note cited at 166 Article 2(2)

<sup>315</sup> Ibid Article 2 (4)

<sup>316</sup> Supra note cited at 221, p. 3

guideline to harmonize their national food standards with international one. However, in the event where the codex standards is not sufficient to ensure the quality and safety of food supplied in their territory countries can adopt higher food standards than the codex standards by providing scientific justification to that effect.

### **B. Mandatory Standards**

When standards are adopted or used in regulations, they are termed technical regulation; thus, their use becomes mandatory requirements that local goods and imported products must meet.<sup>317</sup> This is to mean that once they are put in regulation adherence to them becomes mandatory for the producers of the product for which mandatory standards are established. In another words products which do not comply with mandatory standards (regulations) can not be made available to consumers.

As stated above in the fields connected with safety and health of the public, application of standards may be mandatory. Hence one can safely say that most of food quality standards are among those standards the application of which can be categorized under mandatory standards since food is connected with the safety and health of the public.

Generally, mandatory food standard is necessitated for the following reasons:<sup>318</sup>

1. To prevents the transmission or the cause of disease
2. To limits the sale of unfair products

The concerned bodies set food standard to prevent the transmission or the cause of disease and to limit the sale of unfair products; and that the producers of the product are expected to observe it when producing the products offered for sale to the public.

A food may cause or transmit disease through the constituents of the food itself, including food additives or through the impurities they contain.<sup>319</sup> Therefore, food standard is established; on the one hand, to “permit no harmful substances”; on the other

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<sup>317</sup> Supra note cited at 171, p. 13

<sup>318</sup> Supra note cited at 21, p. 287

<sup>319</sup> Ibid

hand, to prohibit the use of specified substances.<sup>320</sup> In setting food standards, the standard setting bodies define chemical compositions, specify essential ingredients, state maximum or minimum concentration of certain ingredients, regulate food additive use, and set tolerance limits for such contaminants, like pesticide residue.<sup>321</sup> What can be inferred from this is that mandatory standard prohibits the addition of certain substances in food and /or provides for the list of substances to be contained in a food product.

Standard of hygiene and standard methods of sampling, analysis and testing are some of the aspects of standard techniques applied for the regular and uniform application in food production, storage and distribution chain.<sup>322</sup> This reveals that standard is provided with a view to lay down minimum quality control to be followed for food from its production stage up to its consumption. Another aspect for which standard can be used is to limit unfair practices created through misleading designation.<sup>323</sup> This may be the case in which labeling requirement and packaging regulation require the producers of food to state the true nature of the food and packed it in specified packaging material. Once the standards are set out in this way through legislation, its application appears to be obligatory (mandatory), and then it becomes a technical regulation.<sup>324</sup> In other cases in general the application of standards are made to be voluntary.

### **C. Voluntary standards**

Voluntary standards provide for common and repeated use, rules, and guidelines or characteristic for products or related process and production methods with which compliance is not necessarily expected.<sup>325</sup> Voluntary standards are agreed up on procedures, systems and methods etc, which producers voluntarily meet to show that their products achieve a stated level of quality and/or performance.<sup>326</sup> This means that the application of voluntary standard is discretionary as compliance to it by producer, distributor or any other concerned body is only optional. Standards drawn up by trade

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<sup>320</sup> Ibid

<sup>321</sup> Supra note cited at 9, p. 397

<sup>322</sup> Supra note cited at 21, p. 287

<sup>323</sup> Ibid,

<sup>324</sup> Ibid, p. 313

<sup>325</sup> Supra note cited at 218, p. 32

<sup>326</sup> Ibid, p. 13



organizations (both national and international) for the guidance of their members may be the common example of Voluntary standards.<sup>327</sup>

As indicated above, non compliance with the requirements of voluntary standards may be discretionary (allowed) in the market. But it is not without impact on the market, as a market share may be negatively affected as it is likely that consumers prefer products that meet the standards they need (for example the product that meet the quality or color that meets their preference).<sup>328</sup> Given this possibility, even if compliance with voluntary standards is optional, its application becomes crucial to effectively participate in today's highly competitive market and to win the confidence of customers and consumers.

Voluntary standards can be extremely useful where the element of self interest in their application is high and the cost of direct enforcement out of proportion to the advantages expected.<sup>329</sup> They can also be useful to prepare the ground for latter legal standards on the same subject, for industry need time to adopt any new standards.<sup>330</sup> Hence voluntary standards play pivotal role in shaping the functioning of the market where there is a fair competition to get access to market and where there is no serious health and safety risk with regard to the product process and methods of production employed by the producers.

In general, both mandatory and voluntary food standards aim at minimizing risks, providing information to consumers about the characteristics of the product, and to producers about market needs and expectations, facilitating market transactions, raising efficiency and contributing to economic development of a country.

Having said this much about international guideline and types of quality standards in general and food quality standard in particular, subsequently, we will be exploring Ethiopian standards.

### **3.2.1.2. The Ethiopian standards**

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<sup>327</sup> Supra note cited at 21, p. 315

<sup>328</sup> Supra note cited at 218, p. 32

<sup>329</sup> Supra note cited at 21, p. 315

<sup>330</sup> Ibid

As development and change is a continuous process, Ethiopian Authority for standardization establishment proclamation No. 328/1987, which repealed Proc. No 64/1970 was enacted. The objective of this proclamation was promoting standardization and quality control with a view to ensuring the quality and safety of products.<sup>331</sup> Then after, Ethiopian Standards Regulations No. 12/1990 was promulgated to provide for the compulsory Ethiopian standards. By this regulation 389 standards are developed and made compulsory, from which about 180 of them deal with food and food products.

The development and restructuring with regard to standardization and quality control continued and resulted in the establishment of Quality and standards Authority of Ethiopia through proclamation No. 102/1998. A new public health proclamation No. 200/2000 was also enacted by incorporating provisions which deal with the issues of food quality.

Ethiopian Standard is any standard formulated and approved by the QSAE.<sup>332</sup> Ethiopian standards promote an improved quality of life by providing industry and users with the framework for economies of design, great product quality and better production and delivery efficiency.<sup>333</sup> This means that Ethiopian Standards establish guidelines which producers are expected to follow while producing goods provided to consumers.

Ethiopian standards are developed through active participation of all stockholders that are meant to take part to ensure its effective implementation. In most cases, the involvement in the preparation of the Ethiopian standards is effected in two spheres/layers: by participating in attending the meeting of technical committee, and by commenting on the draft standards that are made to be available for public.<sup>334</sup> Ethiopian standards are prepared by technical committees made up of Experts from government, industry, use groups and other sectors of the economy.<sup>335</sup> From this we can observe that those who are members of the technical committee can give their views and expertise opinion during their meeting. However those who are not participating in a technical committee but may

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<sup>331</sup> Ethiopian Authority for Standardization Establishment Proclamation No. 328/1987, Article 6

<sup>332</sup> Supra note cited at 67, Article 2 (7)

<sup>333</sup> General Information on Ethiopian Standards, p. 2, retrieved from <http://www.qsae.org/>, assessed on August 20/2009

<sup>334</sup> Ibid, P. 3

<sup>335</sup> Ibid

be affected by the outcome of the standard can give their views and opinion through arrangements made for this purpose. This can be either through the QSAE website or through documents distributed to them.<sup>336</sup>

To date there are 92 (ninety two) technical committees who are entrusted with the responsibility for technical work of preparing Ethiopian standards.<sup>337</sup> From among these committee about 22 (24%) of them are working on food related standards. Currently there are about 7414 Ethiopian standards in some 32 fields, of which agriculture and food technology and textile and leather technology are prominent in number (comprising about 70%).<sup>338</sup> Out of the existing 7414 Ethiopian standards about 850 of them deal with food and food products.<sup>339</sup>

As with general principles of standards, implementation of or compliance with Ethiopian standards is normally voluntary but for standards that have direct influence on health, safety, fair trade and related considerations compliance is often made compulsory.<sup>340</sup> Accordingly from among 7414 established Ethiopian standards 389 of them are made mandatory (technical regulations) through Ethiopian standards regulations No.12/1990 from which about 174 of them are concerned with foods and food products.<sup>341</sup> This means that from food standards established only about 20.5% of them made technical regulations. The remaining 79.5 are expected to be implemented voluntary.

Once standard is set for food products, any one who wants to produce or trade in such food should hold quality mark for mandatory food standards.<sup>342</sup> For voluntary food standards also having quality mark is essential to attract market for the users and to maintain confidence by the consumer in the food they buy from a person who uses the quality mark.<sup>343</sup>

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<sup>336</sup> Ibid

<sup>337</sup> Ethiopian standards 2009 Catalogue, retrieved from <http://www.qsae.org/>, assessed on September 15/2009

<sup>338</sup> Supra note cited at 246, p. 5

<sup>339</sup> Supra note, cited at 250

<sup>340</sup> Supra note cited at 246, p. 5

<sup>341</sup> Regulation No. 12/1990

<sup>342</sup> Regulation No. 13/1990

<sup>343</sup> Interview with Ato Deressa Fufa, Quality certification Directorate Director, at QSAE, on October 15 /2009

As standards developed with regard to food and food products have direct impact on health, safety, and fair trade activity, most food standard, therefore, can be put under those standards whose application is compulsory.

As information obtained from QSAE reveals there are still food and food products such as meat, baby foods, bottled mineral water, whose compliance with the standards are not still made compulsory.<sup>344</sup> This indicates that there is the need to revise the existing compulsory Ethiopian standards to prepare compulsory standards for those foods the absence of which may has an impact on health and safety of the public.

This indicates that in the areas of food standards much is expected to be done from the standard setting bodies on the one hand to revise the existing mandatory food standards to keep pace with current advances in foods production and distribution system, on the other hand to set compulsory standards (technical regulations) for foodstuffs which should have been made mandatory but still implemented through voluntary standards. However in preparing national standards one thing should not be ignored. As discussed under section 3.2.1.1, international harmonization of food standards are encouraged by international community both for protection of consumers and for the facilitation of global trade. It means that while preparing national food standards pursuing to international standards, guidelines, and recommendations is crucial. Hence in revising the existing one and in developing new food standards in Ethiopia the standards setting body need to observe international food standards and requirements.

### **3.2.2 Conformity Assessment**

#### **3.2.2.1. General**

Conformity assessment is another techniques employed to determine the compliance with the technical regulation (standards). Hence this section tries to explain conformity assessment and its relevance in the area of food quality and safety regulation.

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<sup>344</sup> Ibid

Conformity assessment is the process of testing compliance with standards or technical regulations.<sup>345</sup> It is technical activities such as testing, inspection, certification accreditation, which confirms that products or process fulfill the requirements laid down in regulations and/or standards.<sup>346</sup> The above statements demonstrate that conformity assessment activities are conducted to assure that relevant requirements stipulated in standards and technical regulations are fulfilled.

The purpose of conformity assessment is to provide confidence for users that requirements applicable to products process and systems have been met and then contribute to the market acceptance of those products, process or systems.<sup>347</sup> From this we can observe that conformity assessment is a technique applied to ensure that products, process or production methods are in accordance with the relevant standards and regulations and then fit for use.

It is also stated that conformity assessment procedures provide a means of ensuring that the products, process or systems produced or operated have the required characteristics, and that these characteristics are consistent from product to product or system to system.<sup>348</sup> Conformity assessment provides assurance that the products we use won't harm us, that their components will work and that manufacturers are effectively managing the impacts of their activities on health, safety and the environment.<sup>349</sup> For the purpose of this study it can be said that conformity assessment is a tool that helps to ascertain whether foods and food products or system of production meet the requirements of the food standards and regulations and fit for use by customers and consumers.

Conformity assessment is fundamentally important and very widely used techniques at food quality and safety assurance system. The confidence of consumers in the quality and safety of their food supply depends on their perception as to the effectiveness of the food

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<sup>345</sup> Supra note cited at 216, p. 2

<sup>346</sup> Supra note cited at 218, p. 9

<sup>347</sup> Ibid, p. 77

<sup>348</sup> Ibid

<sup>349</sup> Ibid, p. 78

quality and safety control measures.<sup>350</sup> It is, therefore, through effective conformity assessment procedures that the quality and safety of food produced is assured.

### **3.2.2.2. The Components of Conformity Assessment**

As it has been stated earlier in section 3.2.2.1 on page 85 conformity assessment is an activity that includes certification, inspection, testing, quality management system assessment (including HACCP and food safety management), and accreditation of the competence of those activities. This section therefore, deals with explaining these components of conformity assessment and their role in ascertaining the quality of products in general and food quality in particular.

**I. Certification:** certification is the procedures by which a third party gives written assurance that a product, process, personnel, organization or systems conforms to requirements.<sup>351</sup> With regard to food quality and safety assurance certification, it is provided to assure that food or food control system conform to requirements provided in food standards and food regulations.<sup>352</sup> Here certification is given to show that the products, process or methods of production for which the certificate is given is consistent and comply with the regulatory requirement and fit for use or consumption by customers and consumers.

Certification is an asset and advantage, both for producer and for the purchaser, consumer or distributor since a person or producer who is given certificate is also provided with quality mark, it gives them an incontestable added value to the product bearing its mark.<sup>353</sup> For the manufacturer, it open up market and simplifies relations and for the user, it provides assurance that the product purchased meet defined characteristics or that an organization's process meets specified requirements.<sup>354</sup> In the case of food and food products certification mark represent an assurance of safety and quality of the food.<sup>355</sup> Certification of food products may be based on a range of inspection activities

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<sup>350</sup> Codex Alimentarius Commission, Food import and export inspection and certification system, Rome. 1999, p. 3

<sup>351</sup> Supra note cited at 218, p. 78

<sup>352</sup> Supra note cited at 263, p. 3

<sup>353</sup> Interview cited at 256

<sup>354</sup> Ibid

<sup>355</sup> Ibid

which may include continuous on line inspection, auditing of quality assurance system, and examination of finished products.<sup>356</sup> This indicate that food product certification consists of initial testing of a food product, surveillance that takes into account producers quality management system plus testing of samples the final product.

In Ethiopia product certification is carried out by QSAE. It is the certificate of conformity to assure that the product process and methods applied in accordance with the standards and regulations in place.<sup>357</sup> For our purpose it is the certificate that evidences that the food presented to consumers is as per the specified quality and safety requirements. Once certification is given with regard to certain Product, the owner of that certificate uses quality mark of the QSAE.<sup>358</sup> When he sells the product he has to use the quality mark to assure the purchaser that his product conforms to relevant compulsory Ethiopian standards provided for that particular food product.

**II. Inspection-** Inspection is the examination of products, process, materials, and work procedures to ascertain that they comply with the requirements.<sup>359</sup> In the food sector inspection is the examination of food or system for control of raw materials, processing, and distribution including in process and finished product testing in order to verify that they conform to requirements.<sup>360</sup> The overall aim of inspection is to reduce risk to the buyer, owner, user or consumer of the item being inspected.<sup>361</sup> Here inspection in the areas of foodstuff is carried out with a view to verifying that the food produced, the materials used, and the process employed is as set out in the regulations (standards).

**III. Testing-** Testing is perhaps the most common form of conformity assessment which can include activities like measurement and calibration. It is the main techniques used in product certification.<sup>362</sup>

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<sup>356</sup> Supra note cited at 263, p. 4

<sup>357</sup> Interview cited at 256

<sup>358</sup> Ibid

<sup>359</sup> Supra note cited at 218, p. 80

<sup>360</sup> Supra note cited at 263, p. 4

<sup>361</sup> Supra note cited at 218, p. 80

<sup>362</sup> Ibid, p. 80

**IV. Accreditation-** Accreditation, which is one of the components of conformity assessment, is a procedure by which an authoritative body gives formal recognition that a body or a person is competent to carry out specific tasks.<sup>363</sup> It can be said that accreditation is attestation given to a person or an organization to assure that they are capable to undertake activities for which accreditation is given. Accreditation is a conformity assessment activity and is the internationally accepted system that recognizes the competence of testing and calibration laboratories, inspection bodies, product certification bodies and quality system certification bodies.<sup>364</sup> Accreditation establishes assurance of the quality of test data and provides discipline and a sense of professionalism that is internationally accepted. This minimizes duplication of re-testing and re-certification reduces cost and eliminate non- tariff barriers to trade and market access delays.<sup>365</sup> Here accreditation is used to facilitate transactions by eliminating the redundancy of certification and testing by establishing confidence between exporters and importers of foods and food products.

Generally it can be said that conformity assessment is important to protect consumers from health and safety risks by bringing together the discipline needed to assure compliance. Although Conformity assessment has many advantages for both producers and purchasers, in Ethiopia it is not well developed. This means that a certification granted by Ethiopian certification body has no acceptance abroad. Ethiopian exporters demand certification only for the purpose of obtaining license for export of their food products. Ethiopian exporters are exposed to excessive expenses to get certification from abroad. But in the field of quality management system QSAE has got accreditation from German International Accreditation body which is valid for about (nine) scopes from which two of them deal with food related areas. That is in the fields of agriculture, Fisheries, and foods products and beverages. (See Annex No. 1)

### **3.3. Instruments of Regulations**

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<sup>363</sup> Supra note cited at 217, p. 3

<sup>364</sup> Supra note cited at 218, p. 80

<sup>365</sup> Ibid



Consumers expect that domestically produced and imported foods and food products conform to basic quality and safety standards and requirements relating to hygiene, ingredients as well as the manner of its use. Although consumers demand safe and of good quality foods, it is difficult to them to know automatically the level of quality and safety by simply looking at the product they want to buy.<sup>366</sup> This is to mean that food consumers can not precisely ascertain the conditions of the quality of their food. As the result instruments that assist consumers in informing and protecting the quality and safety of their foods are introduced. Labeling and packaging regulation are therefore, introduced as instruments to provide information and to protect health of the public. This section is, therefore, designed to provide information on the needs of labeling and packaging regulations as basic instruments in enhancing the foods quality and safety control systems.

### **3.3.1. Labeling (Information) Regulation**

#### **A. General**

As has been stated here in above the quality and safety situations of foods and food products may not be identified by consumer normal perception. In effect labeling is introduced as the means of communication between producers and sellers of food on one hand, and the purchaser and consumer on the other, on the quality and safety conditions of foods.<sup>367</sup> In this context food labeling is employed to inform consumers as to the level of quality and safety of food they need to purchase.

The law provides not only simply the labeling of foods and food products, it also stipulates what to be contained on the label and the manner in which it is written. Accordingly a food label is expected to contain specified information which is true and reliable, and in terms that the ordinary consumers is likely to read and understand to make educated food purchasing decisions.<sup>368</sup>

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<sup>366</sup> Quality regulation and the creation of a private market for certification: Institutional design and regulatory issues in Agro-food sector, 2005, p. 4

<sup>367</sup> Food labeling (5<sup>th</sup> ed), World Health Organization and Food and Agricultural Organization of the United States, 2007, p. 3

<sup>368</sup> Food Labels, p.1, retrieved from <http://www.faqs.org/nutrition/fao-hea/foodlabels.html>, accessed on, October 12/2009

This shows that the law requires manufactures and/or sellers of food and food products to label their products in away it can communicate the true state of their products with out misleading and confusing consumers. Since information on labels are powerful way to inform, persuade, or misinform consumers, information that represents only a material fact should be appear on the label. The general principle of food labeling is that:

*“Food should not be described or presented on any label or any labeling in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect”*<sup>369</sup>

The above statement offers that any food labeling must carry only true information, on which consumer can rely to purchase and use their food. Misleading or fraudulent labeling is an unfair trade practice that can not be tolerated in food business transactions.

## **B. The International Recommendation for Labeling Requirements**

As food traded at international arena becomes increasing Food labels are also becoming an essential source of information for consumers to enable them to have effective control and choice over what they eat.<sup>370</sup> Countries, including Ethiopia, now have labeling regulations stipulating how foods are to be labeled and what information should be included in labeling. Since the food labels developed by countries can hamper and restrict the international trade in food, The WTO SPS and TBT Agreements stipulate the manner in which labeling regulation can be adopted by countries. The SPS Agreement states that Labeling requirements has to be demanded only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence.<sup>371</sup> Article 3 (4) of the SPS Agreement provides that a food labeling requirements is presumed to be legal if it conforms to a standard, guideline, or recommendation established by Codex. A national standard that provides a greater level of protection than Codex is a "trade barrier" unless it is determined that the

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<sup>369</sup> Supra note cited at 280, p. 3

<sup>370</sup> The Impact of the TBT and SPS Agreements on Food Labeling and Safety Regulations, p. 1, Retrieved from <http://www.cspinet.org/reports/codex/wtospst.htm>, assessed on January 13/2010

<sup>371</sup> Supra note cited at 159, Article 2(2)

stricter national standard is based on a proper "risk assessment" that demonstrates that the Codex standard, guideline, or recommendation does not provide sufficient protection or that the country maintaining the stricter standard has other scientific justification.<sup>372</sup> This indicates that countries are encouraged to base their labeling regulation on the guideline developed by Codex Alimentarius commission so long as there is no scientific justification for developing more stricter food labels than that provided by Codex.

Similarly the TBT Agreement proclaim that labeling requirements developed shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create.<sup>373</sup> Article 2.4 of the TBT Agreement provides that countries shall use Codex or other international standards "except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfillment of a" legitimate objective.

Both the SPS and TBT Agreement state that countries need to use international labeling guideline/recommendation developed by Codex Alimentarius Commission in formulating their labeling requirements. Accordingly the international food labeling requirements established will be briefly considered below.

There are mandatory statements which the label must contain. These are:

**I. The name of the food-** Food labeling regulations require food products to be labeled prominently with a product identity statement to ensure consumers obtain important information about the type of food contained in the package.<sup>374</sup> In other words the food name should not be false, misleading or deceptive but should serve to make the nature and type of food known to the purchasers. The name used on labeling need to be the common or usual name of the food.<sup>375</sup> This indicates that the name of the food appeared on the label need to be a standard name that is familiar to consumers.

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<sup>372</sup> Supra note cited at 283, p. 3

<sup>373</sup> Supra note cited at 166, Article 2(2)

<sup>374</sup> Supra note cited at 281, p. 2

<sup>375</sup> Codex Alimentarius Commission General standards for Labeling of prepackaged Foods, p. 1, Retrieved from <http://www.freshquality.org/files/labeling/pdf>, assessed on October 22/2009

**II. List of Ingredients-** The ingredients in a food must be stated by their common name in their descending order of weight.<sup>376</sup> However, if the food is made of only one ingredient, there is no need of listing (writing) it.<sup>377</sup> This means that a list of the ingredient must be included on all foods that have more than one ingredient.

**III. Net Quantity of Contents-** This is an accurate statement of the net amount of food which has to be declared in the metric system with a view to inform the consumer the amount of the food contained in the package.<sup>378</sup> This helps the consumer to make informed choice regarding the amount of food he/she wants to buy since the foods can be packed in various quantities.

The net content is needed to be declared in the following manner:<sup>379</sup>

- i. for fluid foods by volume
- ii. for solid foods by weight
- iii. for semi -fluid either by weight or volume.

**IV. Name and Address-** The label must contain the name and address of manufacturer, packer, distributor, importer and exporter of the food.<sup>380</sup>

**V. Country of origin-** if the omission of the country of origin would mislead or deceive the consumer, it must be declared. When a food under goes processing in a second country which changes its nature, the country in which the processing is performed is considered as the country of origin for the purpose of labeling.<sup>381</sup>

In addition to the above specified components, label has also to include amongst other things, date of manufacture and date of expiration, storage directions, language used as well as instruction for use.<sup>382</sup>

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<sup>376</sup> Supra note cited at 280, p. 3

<sup>377</sup> Ibid

<sup>378</sup> Supra note cited at 281, p. 2

<sup>379</sup> Supra note cited at 280, p. 6

<sup>380</sup> Ibid, p. 7

<sup>381</sup> Ibid

<sup>382</sup> Quality control/Quality assurance and international trade ; Good manufacturing (GMP); hygienic requirements; and Hazard Analysis and Critical Control Points (HACCP) for Fruits and Vegetables in developing Countries, p. 3

The above discussed labeling requirements are considered to be mandatory and any one engaging in the production, distribution and sale of food and food products should include them on the label.

### **C. Selected Country Experiences**

Since the food label is one of the most important and direct means of communicating product information between buyers and sellers countries demand for the labeling of food presented to consumers to help consumers to make informed purchasing choices. Under this part, there fore a brief explanation will be made concerning the food labeling requirements adopted in selected foreign countries.

#### **The Canadian Experience**

In Canada the food labeling requirements is governed by the provisions set out in Food and Drugs Act and the Food and Drug regulations, and the consumer packaging and labeling Act and regulations. All foods packaged for consumer use and imported into Canada must, there fore, comply with these basic food labeling requirements specified by the Food and Drugs Act and Regulations and the Consumer Packaging and Labeling Act and Regulations.<sup>383</sup>

Subsection 5(1) of the Canadian Food and Drugs act prohibit the labeling of any food (at all level of trade) in a manner that is false, misleading or deceptive to consumer or is likely to create an erroneous message regarding the character, value, quantity, composition or safety of the product.<sup>384</sup> The act requires the label to contain only true and reliable information that address the true state of the food.

Generally it can be said that in Canada a label serves the following three primary functions.<sup>385</sup>

1. It provides basic product information (including common name, list of ingredients, net quantity, durable life date, grade/quality, country of origin and name and address of manufacturer, dealer or importer).

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<sup>383</sup> Supra note cited at 179, P. 11

<sup>384</sup> Guide to food Labeling and Advertising, p. 2, retrieved from <http://www.inspection.gc.ca/assessed> on September 25/2009

<sup>385</sup> Ibid, p. 5-6

2. It provides health, safety, and nutrition information. This includes instructions for safe storage and handling, nutrition information such as the quantity of fats, proteins, carbohydrates, vitamins and minerals present per serving of stated size of the food, and specific information on products for special dietary use.

3. It acts as a vehicle for food marketing, promotion and advertising (through promotional information and label claims such as "low fat", "high source of fiber", "product of Canada", "natural", "organic", "no preservatives added", and so on).

What one can observe from the above Canadian labeling function is that declaration on the label can add market to producers by promoting the level of quality and safety contained in the food. In Canadian all mandatory labeling information and nutritional labeling, other than the name and address of responsible party, is also required to be declared in both French and English language.<sup>386</sup> It means that it stipulates bilingual labeling requirements.

Information regarding labeling for all food is provided to business community and consumers by the Canadian Food Inspection Agency through its Access Food Labeling Service offices located in major urban centers.<sup>387</sup> Through the information made available to them, consumers are aware about the information contained in each types of food and make use of it in the course of purchasing their food.

### **The US Experience**

In the USA, food labeling is regulated by the Food and Drug Administration and the labeling requirements are provided under the Fair Packaging and Labeling Act. The act provides for a food label to contain specified information in terms that ordinary consumer is likely to read and understand under ordinary condition of purchase and use.<sup>388</sup> This is to mean that the information contained on the label must not be complex and confusing to consumers of the food item. In the USA, information in the form of label is designed to contribute to the completeness and accuracy of consumer's assessment in identifying the

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<sup>386</sup> Supra note cited at 297, p. 12

<sup>387</sup> Ibid

<sup>388</sup> Supra note cited at 93, p. 7

complex attributes as to the quality and safety of the contents of the food they are buying.<sup>389</sup>

Accordingly the law demands the mandatory existence of certain statements on the label in the English language.<sup>390</sup> These mandatory statements are: The common or usual name of the food, an accurate statement of the net amount of food in the package, the name and address of the manufacturer, packer or distributor, the list of ingredients in order of their predominance by weight, the list of food additives and nutrition information.<sup>391</sup> As the above list indicates the label on a food is required to contain all necessary information on which the consumer can rely to make choice in buying their food. If label of a food bears representation in a foreign language, the label must bear all of the required statements in the foreign language, as well as in English.<sup>392</sup> Since informed consumers are essential to the fair and efficient functioning of a fair food market, any person engaged in the production and distribution of food in the USA is obliged to provide accurate information as to the quality and quantity of the contents of the food supplied to consumers.

### **The Indian Experience**

In India Food labeling requirements are addressed under the Prevention of Food Adulteration Act and the Standards of Weights and Measures Act and require the label to provide information such as: description of product, Name of ingredient used in the product in descending order of their composition by weight or volume, Name and complete address of manufacturer, packer, or importer and country of origin of the imported food, Net weight, volume or number of contents, Month and year the product was manufactured or packed, Month and year by which the product is best consumed, Maximum retail price.<sup>393</sup>

The Prevention of Food Adulteration Act also provides for special labeling requirements for certain packed food items, such as infant foods, condensed milk, milk powder blended

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<sup>389</sup> Julie A. Caswell and Daniel I. Padberg, "Toward a More Comprehensive Theory of Food Labels." American Journal of Agricultural Economics (Vol. 74, No. 2), 1992, p. 461, Retrieved from <http://www.jstor.org/stable/1242500>, assessed on January 13/2010

<sup>390</sup> Supra note 295, p. 7

<sup>391</sup> Ibid

<sup>392</sup> Supra note cited at 301, p. 7

<sup>393</sup> Supra note cited at 101 , p. 5

vegetable oils etc.<sup>394</sup> The language by which the label has to be printed is also provided in Indian labeling requirements. Accordingly any food produced in or imported in to India must bear a label that is printed in English or Hindi.<sup>395</sup>

#### **D. The Ethiopian Regime and Problems**

In Ethiopia labeling requirements are provided under Ethiopian standards regulations No.12/1990. This regulation provides for the labeling of prepackaged foods. As per this labeling regulations, food labels on food items sold in Ethiopia must bear the product name, list of ingredients, net contents, the manufacturer's name and address, country of origin and language to be used on the label.<sup>396</sup> This regulation provides for the language used on the label to be at least Amharic and English.<sup>397</sup> This shows that there is a possibility of writing on the label in more than two languages. The regulations also stipulate that statements required on the label shall be clear, prominent and readily legible by the consumer under normal conditions of purchase and sale.<sup>398</sup> This offers that particulars on the label need to be written in a way ordinary consumer can understand and make decisions accordingly. In addition to the mandatory information stated here in above the regulations also provides optional labeling. Hence it is stated that any information or pictorial device may be displayed in labeling so long as it is not in conflict with the mandatory requirement nor mislead or deceive the consumer in any way whatsoever in respect of the food.<sup>399</sup> This indicates that labeling can be done in any manner that can communicate the true nature the foods without creating any confusion on customers and consumers.

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<sup>394</sup> Ibid

<sup>395</sup> Ibid, p. 6

<sup>396</sup> General Standards for the labeling of prepackaged food, regulation No. 12/1990

<sup>397</sup> Ibid, Article 5 (2)

<sup>398</sup> Ibid, Article 5(1)

<sup>399</sup> Ibid, Article 7



It has been stated that labeling requirements is introduced with a view to protecting consumers by offering information about the true nature of the foods. However, since most consumers do not pay attention to the significance of information on the label, it is difficult to say that the labeling requirements are functional as expected.<sup>400</sup> On the part of the seller also there is lack of commitment to provide foods as instructed on the label, i.e. they are found providing to consumers foods whose date of use has been expired.<sup>401</sup> This shows the need to pay due attention by all concerned bodies in devising mechanisms in which the awareness of both the consumers and sellers of foods can be enhanced.

### **3.3.2. Packaging Regulations**

The objective of delivering safe and of good quality, wholesome and nutritious food to the consumer is achieved by using packaging regulations as the instrument to assure the quality of food stuffs at the time they reach the consumer.

Since most food deteriorate eventually due to mechanical damage, moisture, content changes, and flavor loss, efficient packaging operations can play a great role in delaying such deterioration.<sup>402</sup> Hence it can be said that food packaging is an essential instrument to reduce quality loss by preserving foods from being damaged by moisture and other contaminants.

Now a days food products made in a single processing plant are shipped all over the country and sometimes through out the world.<sup>403</sup> As a consequence longer shelf life is demanded to transport food items to a long distance.<sup>404</sup> In such conditions packaging is an essential tool for preserving the quality and safety of food for a longer time by hindering or minimizing growth of unwanted microorganisms and other contaminants in food.<sup>405</sup>

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<sup>400</sup> Interview cited at 168

<sup>401</sup> Ibid

<sup>402</sup> Supra note cited at 9, p. 400

<sup>403</sup> Food safety: food and culture Encyclopedia, p. 4 retrieved from <http://www.answer.com/topic/food.safety> , assessed on September 25/2009

<sup>404</sup> Betty Bugusu and Lory Bryant, Food packaging Innovations: the science, current research and future research News, 2007, p. 2

<sup>405</sup> Position Paper Packaging and Food safety, p. 1, retrieved from <http://www.worldpackaging.org/assessed> on September 20/2009

Therefore, it can be said that food packaging regulation is an instrument that provides for packaging of foodstuffs for preserving their quality and safety through out the whole distribution chain by maximizing shelf life. The packaging regulations stipulates the material from which the packaging material is made for each specific food, limits on fill of containers etc.<sup>406</sup> This indicates that each food stuff is packed by packing material that fit to its specific nature of the food. Stating otherwise the packaging material for solid food and liquid food products may not be the same.

Since different packaging materials are used for different kinds of food products packaging regulation in Ethiopia is adopted in relations to each specific food stuff.<sup>407</sup> This is to mean that since each food item has its own packaging standards that fit to its particular nature, packaging materials used for solid food products may not be used for liquid food products.

At this moment, since it is difficult to consider all the packaging standards for all food items, this writer preferred to briefly consider standards established for packing edible oil.<sup>408</sup>

As indicated under Ethiopian standards regulations No. 12/1990 Edible oil produced in Ethiopia or imported into Ethiopia must be packed in a container which protect the product and which do not cause any alternation in it.<sup>409</sup> The packaging materials (containers) to be used for packing oil are stated to be either metallic container, Glass container or plastics containers.<sup>410</sup> Metallic containers such as casks, barrels, drums, cans which are sound, new or in good condition, clean and dry, not containing any product that may alter the quality, the composition or the odor of the oil shall be used for packing Oils.<sup>411</sup> This shows that any person engaged or wants to engage in producing or selling edible oil in Ethiopia is under obligation to use metallic, Glass, or plastics containers that conform to standards stipulated under the regulation for packing edible oil. The use of

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<sup>406</sup> Supra note cited at 21, p. 304

<sup>407</sup> Interview cited at 168

<sup>408</sup> The packaging Standards applicable to edible oil is stipulated under Ethiopian standards regulation regulations No. 12/1990 which provides for standards regarding quality requirements and test methods for edible oil

<sup>409</sup> Ethiopian Standards Regulation No. 12/1990, Vol. 7, Article 3

<sup>410</sup> Ibid

<sup>411</sup> Ibid , Article 3 (1) (1)

container other than those established by Ethiopian standards render the oil unsafe and with poor quality that can not be used for human consumption.

The regulations also provides for the filling of the packaging material by stating that the head space shall be between 5 and 10% of the volume of the container depending on the method of transport adopted.<sup>412</sup>

Various quality and hygienic systems for packaging food items have been developed to help the preservation of quality and safety of food stuffs. Even for one product there are many standards established to be used for protecting the from health risks arising from different parts of the packaging materials.

The above discussions reveal that packaging requirements are evolved to protect consumers by preserving the foods from deterioration through their shelf life. However, adherence to the packaging requirement is not strong as it has to be. Most of the packaging materials are not up to the standards set by regulations, as most foods are covered and presented to the consumer with unsanitary and undesignated packaging materials.<sup>413</sup> Especially the cover used to handle street foods shows how the importance of packaging requirements are ignored. In this regard the effort of all concerned bodies is required to augment the attitude of both the sellers and consumers of foods in valuing the significance of packaging materials.

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<sup>412</sup> Ibid, Article 4

<sup>413</sup> Interview cited at 167

## **Chapter Four**

### **The Means for the Enforcement of Regulation**

The mere enactment of food legislations by itself will not guarantee the supply of safe and good quality food. To protect consumers any legislation must be supported by an adequate enforcement mechanisms. Enforcement is critically indispensable for a law to have a binding force. As we have seen in the previous section there are protracted legal regimes, which are provided to have some relevance with consumer protection by ensuring the quality and safety of food supplied to them. These laws are put on the ground (enforced) through various means. This chapter, therefore, tries to highlight these means used to enforce the food quality and safety regulation in Ethiopia.

#### **4.1. The Enforcement Organs**

In Ethiopia enforcing the regulations dealing with assuring the quality and safety of food presented to domestic consumers and foreign market is a shared responsibility of different government agencies. Accordingly the Ministry of Health, the Ministry of Agriculture and Rural Development, the Ministry of Trade and Industry, Quality and Standards Authority of Ethiopia, and the Revenue and Customs Authority of Ethiopia are government agencies cited as the principal enforcement organs for the food quality regulation in Ethiopia. This section, therefore, attempts to concisely discuss the role of these organs in enforcing the laws and regulations related to food quality and safety.

##### **I. The Health Sector**

The health sector is empowered to enforce the quality and safety of food and food products intended for human consumption by public health proclamation No. 200/2000 and other several regulations issued in 1940s and 1950s.<sup>414</sup> The Public Health proclamation No. 200/2000 empowers the health sector to enforce the proclamation by

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<sup>414</sup> There is Public Health Proclamation No. 200/2000 and various regulations issued in 1940s and 1950s and

still implemented that empowers the health sector to enforce these laws and regulations for the purpose of assuring the quality and safety of foods presented for human consumption. Under the proclamation and the regulations the health sector is given the responsibility ensure the quality and safety of foods and food products produced, distributed and sold to the public in Ethiopia and exported from Ethiopia by enforcing the laws and regulations.

appointing inspectors that can conduct inspection and control services of domestically produced, exported and imported food to ensure the provision of only safe and of good quality food for domestic consumption and for foreign market.<sup>415</sup>

In order to enforce the public health protection related laws and regulations the public health officer (inspector) is empowered to inspect food establishments proposed to be newly established and already licensed to ascertain that they are competent to produce and provide safe and good quality food to the public by consistently complying with terms and conditions set out in the regulations.<sup>416</sup> What is concluded from this is that the health sector is empowered to enforce the food quality assurance regulations in Ethiopia by conducting inspection before and after granting license for food establishments.

In order to enforce food quality and safety related laws and regulations, the ministry of health has a department in Ethiopian Drug Administration and control Authority at federal level. At regional level, from region to health center level, also department is organized to enforce the food laws and regulations by conducting the control and inspection activities. This implies that there are Federal and Regional enforcement organs involved in the enforcement functions to ensure the quality and safety of food supplied to Ethiopian consumers and foreign market.

## **II. The Agricultural Sector**

The Agricultural sector also enforces the laws and regulations concerned with the protection of the safety and quality of animal, animal products and plants by providing control and inspection activities with a view to ensuring the quality and safety of foods derived from animals and plants. To enforce the laws and regulations adopted to safeguard the quality and safety of animal, animal products and plants, there is plant and animal health protection regulatory directorate at federal level and departments /team at regional level, being structured, vertically, from the region up to woreda animal health center.<sup>417</sup>

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<sup>415</sup> Public Health Proclamation No. 200/2000, Article 6

<sup>416</sup> The Municipal Public health rules, Legal notice No. 145/1950, Article 5 and Article 7

<sup>417</sup> Interview conducted with Dr. Melaku Asefa Senior Inspector for Quarantine and Meat Inspection service, at Plant and Animal Health protection Regulatory Directorate of the Ministry of Agriculture

The federal government enforces the laws and regulations through inspection it conducted on export and import animal, animal products and plants and plant products, whereas the regional Agricultural Bureaus and Zonal and Woreda Agricultural Offices are responsible to enforce the laws and regulations by carrying out inspection activities that ensure the quality and safety of locally produced animal, animal products and plants.<sup>418</sup>

Meat Inspection proclamation No, 274/1970, and its amendment proclamation No. 81/1976, empower the animal health officer to enforce the proclamations by conducting inspection on meat and meat products with a view to determining whether they meet the criteria set by government.<sup>419</sup> This is to ensure that domestically produced, imported and exported meat and meat products are safe and of good quality for human consumption.

The Ministry of Agriculture and Rural Development and the respective regional Bureaus are also empowered to enforce animal quality and safety protection proclamation by prohibiting and controlling the movement of animal and animal products from areas (regions), infected or suspected of being infected by animal disease.<sup>420</sup> Stated otherwise, the agricultural sector is the principal organ that enforces laws and regulations dealing with the protection of animal and plant health to ensure the supply of good quality and safe food to the consumers.

### **III. The Trade and Industry Sector**

The Trade and Industry sector is also involved in enforcing the food quality and safety through licensing those producers, distributors, and retailers who fulfill the relevant requirements established to safeguard the quality and safety of food provided to consumers.

The Ministry of Trade and Industry and the respective regional Bureaus have departments that enforce the commercial registration and business licensing proclamation No. 67/1997 by conducting the registration and licensing of commercial activities involved in the production and sales of foods and food products. Where a commercial activity for which

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and rural development, on October 8/2009

<sup>418</sup> Ibid

<sup>419</sup> Meat inspection Proclamation, No. 274/1970, Articles 2 and 5

<sup>420</sup> Animal Disease prevention and Control Proclamation No. 267/2002, Article 7 (2)

license is demanded requires the applicant to hold a certificate that assure the competence of a person/organization to involve in the production, import and export of foods, the ministry of trade and industry require the applicant to produce such a certificate.<sup>421</sup> Therefore Trade and Industry minister participate in enforcing the quality and safety protection related laws and regulations by granting or prohibiting the grant of license to those producers, importers and exporters who fulfills the requirements established by institutions such as QSAE regarding the production and distribution of food.

#### **IV. Quality and Standards Authority of Ethiopia**

Quality and standards Authority of Ethiopia is also another government organs involved in enforcing the food quality and safety protection laws and regulations. Accordingly it is involved in the enforcement activities of food quality and safety regulation of domestically produced, exported and imported food products by establishing and applying food related Ethiopian standards.<sup>422</sup>

The QSAE play the enforcement role by issuing quality mark and certificate of conformity to a person who wants to engage in producing and/or trading in foods, the production or the trading of which requires compulsory Ethiopian standards.<sup>423</sup> This means that a permit to use quality mark or certificate of conformity is granted if the applicant complies with the relevant Ethiopian standards, other wise the permit to use the quality mark or the certificate of conformity can not be granted. The authority also enforces by ordering the closure of establishments involved in food production and distribution, where a person is found producing or trading in food and food products without holding quality mark or certificate of competence.<sup>424</sup> Hence, it can be said, QSAE plays a pivotal role in enforcing the laws by assuring the proper implementation of compulsory food standard to provide safe and good quality food to domestic consumers and foreign market.

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<sup>421</sup> Commercial Registration and business Licensing Proclamation No. 67/1997, Article 20 (5)

<sup>422</sup> Quality and Standards Authority of Ethiopia Establishment Proclamation No. 102/1998, Article 5 (1) and (2)

<sup>423</sup> Standard Mark and Fees Council of Ministers Regulations No. 13/1990, Article 4

<sup>424</sup> Supra note cited at 9, Article 10

## **V. The Revenue and Custom Authority**

The Revenue and Custom Authority of Ethiopia assists the enforcement of food quality and safety legislations by prohibiting or permitting the exportation from and importation into Ethiopia of any food and food products which do not satisfy the compulsory quality and safety requirement set by concerned government agencies.<sup>425</sup> This offers that if customs authority found that the food and food products made ready for export or import are found to be in compliance with the relevant Ethiopian standards, they are released for export or import; but they are rejected from export or import where they fail to comply with the Ethiopian quality and safety regulatory requirements.

All what has been discussed above indicate that there are several government agencies involved in enforcing the regulation of the quality and safety of food and food products produced in and imported into Ethiopia. The effective and efficient enforcement of food quality and safety protection related laws require the coordination and cooperation of these enforcement organs participating in these activities.

### **4.2. The Enforcement Powers**

#### **4.2.1. Inspection**

As has been discussed in the previous chapter government all over the world provides laws and regulations that assist the supply of safe and of good quality food. The supply of foods and food products which is safe and with good quality is possible if there is a system employed to assure the same. Inspection definitely serves this purpose. In this part, therefore, the relevance of inspection and when and where it is employed in the assurance of safe and of good quality food supply is considered.

Inspection is defined as a careful examination of something such as goods to determine their fitness for use.<sup>426</sup> This definition being general, inspection of food is the examination of food or system for control of foods, raw materials, processing and distribution including in process and finished product testing in order to verify that they

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<sup>425</sup> Supra note cited at 10, Article 13(2)

<sup>426</sup> Bryan A. Gardner (editor), Black's law Dictionary (7<sup>th</sup> ed), 1999, 799



conform to the requirements.<sup>427</sup> Inspection of food may occur at any stage in the production and distribution process. Inspection in food quality and safety control system involves, the examination of food manufacturing plants, food storage warehouse, and food transportation system etc.<sup>428</sup> This is to mean that inspection involves checking up on equipment, methods of operations through out the production process with a view to discover defective foods and food products where and when they occurs so that corrective action can be taken to remedy the problem.

These food inspection systems are employed to ensure that foods and their production system meet regulatory requirements (standards) in order to protect consumers against food borne hazards and deceptive marketing practices and to facilitate trade on the basis of accurate product description.<sup>429</sup> Inspection activities are carried out to identify food which is unit for human consumption; or food which is other wise deceptively sold to the consumer; and taking the necessary remedial action.

For ensuring consistent, transparent, and effective food inspection service, competent food inspectors who are adequately trained and equipped with necessary inspection tools are required.<sup>430</sup> Inspectors who have a good understanding of the relevant food laws and regulations, who knows their powers under those laws and the obligations such laws impose on the food sector have a key role to play in food quality and safety assurance systems.<sup>431</sup> The inspectors equipped with necessary inspection tools are responsible to inspect premises and processes for compliance with hygienic and other requirements of standards and regulations, to collect and transmit evidence when breach of law occurs, and appearing in court to assist prosecution, and to carry out inspection, sampling and certification of food for export and import inspection purposes when so required.<sup>432</sup> This shows the fact that responsible inspectors capable of discharging inspection activities

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<sup>427</sup> Codex Alimentarius Commission, Food import and Export inspection and certification systems, 1999, p. 4

<sup>428</sup> Safety food: State and Federal Standards and Regulations, 1999, p. 670

<sup>429</sup> Supra note 14, p. 4

<sup>430</sup> Food safety in South East Asia: Challenges Facing the region, p. 86, Retrieved from <http://www.seaca.org/ajof/archives>, assessed on October 12/2009

<sup>431</sup> Assuring Food Safety and Quality: Guidelines for strengthening National Food Control systems, p. 8 Retrieved from <http://www.who.int/foodsafety/publication> , assessed on may 12/2009

<sup>432</sup> Ibid. p. 7

through out the food production and distribution so as to assure the quality and safety of foods provide to the public.

Inspection activities are carried in various ways. Accordingly it is conducted either regularly in proportion to risk, when non-compliance is suspected or when complaint is made by customers.<sup>433</sup> This means that the inspector authority set annual plan during which he can randomly conduct the inspection activities. Sometimes the food product may cause or suspected to cause damage to the consumer. In such circumstances the inspector carries out inspection in order to stop the distribution of such foods. In the other cases inspection activities are conducted when a person who may be affected by consuming injurious foods make complaint.

During inspection if the inspector discovered that premises where food and food products are manufactured, stored or deposited or sold are found to be unsanitary, or the transportation and storage system is improperly handled, the producer or distributor is to be notified and warned to place the premises in sanitary condition.<sup>434</sup> Where the producer or distributor is failed to correct the conditions after the warning, it become a violation and entail criminal sanction up to the closure of the undertaking and revocation of food business license.<sup>435</sup> The power of the food inspector extends from giving advice up to ordering the cessation of food production and distribution functions to guarantee the safe and proper delivery of foods.

In Ethiopia inspection service to ensure the quality and safety of foods is conducted by different regulatory Agencies. As stated in chapter three above several government agencies are involved in inspection activities to assure the quality and safety of food supplied to the public. These are ministry of health, ministry of agriculture, and quality and standards authority of Ethiopia. To conduct inspection activities both the ministry of health and the ministry of agriculture have organizational structure that extends form federal to a local level. The ministry of Agricultural has also veterinarians and meat inspectors for meat inspection and look after the sanitation of slaughter houses and

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<sup>433</sup> Supra note cited at 14, p. 14

<sup>434</sup> Supra note cited at 15, p. 670

<sup>435</sup> Ibid, p.671

butcher's shops.<sup>436</sup>To provide the food quality and safety inspections services on imported, exported and locally produced food products, food establishments and processing industries the ministry of health has structure that extends from federal up to health center.<sup>437</sup>

The QSAE is also empowered to conduct inspection to ensure the proper implementation of the laws and regulations to which the authority has competence. The authority is empowered to order, subject to prior notice, the closure of factories or business undertaking or the cessation of operations, or the ban of movement of the products, where the products do not conform to the relevant compulsory Ethiopia standards.

Inspection is undertaken to determine conformity with product standards through initial testing and assessment of factory control system and its acceptance; and surveillance that takes in to account the factory quality management system and the testing of samples from the factory and the open market.<sup>438</sup> As indicated in chapter three, inspection is conducted with a view to ensure the provision of safe and of good quality foods for local consumption and export market. In the case of non-conformances, measures ranging from banning to downgrading of products in questions are taken as per the provisions of the relevant regulation and corresponding certification procedures.<sup>439</sup>

It has been stated hereinabove that at least three government regulatory bodies are involved in inspection activities to ensure the quality and safety of food supplied to the public. However it is the QSAE that has relatively good recording practice. Hence at this juncture it is appropriate to see the inspection activities of the authority in the past two years with regard to imported and exported foods and food products.

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<sup>436</sup> Interview conducted with Dr. Melaku Asefa Senior Inspector for Quarantine and Meat Inspection service, at Plant and Animal Health protection Regulatory Directorate of the Ministry of Agriculture and rural development, on October 8/2009

<sup>437</sup> Interview conducted with Ato Wondafirash Abera, Senior expert for foods and drug licensing and registration, at Ethiopian Drug Administration and Control Authority, on September 22/2009

<sup>438</sup> Regulatory enforcement, p.2, retrieved from [http://www. Qsae.org/](http://www.Qsae.org/), assessed on September 22/2009

<sup>439</sup> Ibid

As data<sup>440</sup> obtained from QSAE reveals, in the year 2000 E.C the authority has carried out inspection services on about 1,640.000 metric tones of imported and exported products among which more than 75% covers food and food products. During the year under consideration, inspection service was undertaken on 979,870 metric tone imported and 660,406 exported products. From among imported products on which inspection was carried out, about 404,650kg food and food products were rejected (prohibited) from entering into Ethiopia. These prohibited (rejected) foods were 3,760 kg Fruit juice 200,000 kg sugar 161 kg baby's food and biscuit, 24.3 kg baby's milk powder, are the principal food products.

Moreover different kinds of food additives, margarine, fruits etc were also among food rejected at the port of entry. These foods and food products were prohibited from entering the country due to their failure to satisfy compulsory Ethiopian standards, expiration of their usage time, due to damage resulting from long distance transpiration, failure to bear labeling requirements dealing with the usage of language (failure to contain description in Either Amharic or English as stipulated by the packaging regulation).

In the year 2001 E.C. inspection was also undertaken on about 4300 tone of imported and exported products. From among products inspected 2091 tone was imported and 2209 was exported products. During 2001 E.C inspection service was carried out on 1788 tone exported oilseeds and cereals agriculture products. Similarly inspection has been conducted on 1020 food products in the year 2001 E.C.

From imported food products inspected in the year, more than 6000 kg solid food products were rejected from entering the country. From the different type of food prohibited, 3000 kg marmalade, 1532kg tomato spices, 550 kg paste and Macaroni, 540 K.g. maize powder, 300 kg sugar were the principal one. These food products were rejected because of failure to comply with the relevant compulsory Ethiopian standards. Failure to describe their usage time, failure to write the label on the package either in Amharic or English as required by labeling standards, lapse of their expiration date,

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<sup>440</sup> The data that shows the inspection activities carried out by the QSAE was obtained from the public relation and education service department of the authority

damage arising from improper handling and transportation system are the major reasons for the rejection of imported foods. However, due to absence of sufficient number of inspectors and up to date regulation that empower the authority to take action on the base of current foods production and trading system it become difficult to provide inspection services as is expected.<sup>441</sup>

#### **4.2.2. Sampling and Testing**

Sampling and testing are another means that are employed to determine the conformity of a product to the established regulations or standards. With out conducting sampling and testing on foods and food products there can be no uniform determination of conformity and therefore no possibility of uniform enforcement the protracted food related laws.<sup>442</sup> Sampling and testing are an essential step in verifying the uniform application of many standards, whether by inspection during the manufacturing process or by analysis of the final product or both.<sup>443</sup> To establish the compliance of domestically produced, imported, and exported foods sampling is conducted on food and food at every stage of food production and distribution chain.

Samples are collected from several different sources. Some foods samples are collected during periodic inspection if the inspector's observation warrants collection to test for contamination.<sup>444</sup> In Other cases samples are collected in response to trade or consumer complaints.<sup>445</sup> Finally samples of imported foods and food products offered for entry into a country may be collected and tested to determine if they are incompliance with all applicable laws and regulations.<sup>446</sup> Shortly explained samples of foods are collected in at least three different ways depending on the sources and the danger the food may pose to consumers. During his periodic inspection activities, if the inspector discovered (suspect) certain conditions on foods that may cause injury to the consumer he/she can take the sample of such food and make to be tested to determine the compliance of the safety and

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<sup>441</sup> Interview conducted with with w/ro Almaz Kahsay, Director, Inspection and Regulatory Affairs Service

of QSAE, on October 12/ 2009

<sup>442</sup> S.m. Herschdoerfer (editor), Quqlity Control in the food Industry (vol. 1), 1067, 318

<sup>443</sup> Ibid

<sup>444</sup> Bottled water regulation, P. 7

<sup>445</sup> Ibid

<sup>446</sup> Ibid

quality of the foods to the established regulatory standards. A person who may be injured by consuming unsafe and poor quality foods can lodge his grievance to the concerned regulatory body so that the problem facing the foods be tested and analyzed. With regard to imported foods, samples are taken at the port of entry to check its conformity with importing country food quality and safety protection regulatory requirements.

Samples are taken and tested by laboratory and then analyzed for the purpose of ascertaining the existence of substances which may render food injurious if consumed by human being.<sup>447</sup> This is to identify foreign matters not consumed as foods and if adulterated, substituted or misbranded foods are found unsafe and with low quality corrective action may be taken by concerned regulatory bodies.

In food control system, through sampling and testing, laboratories are essential instruments. The laboratories that have adequate facilities for physical microbiological and chemical analysis are very crucial in ensuring the level of the quality and safety of foods<sup>448</sup>. This is because substances that undermine the quality and safety of foods, such as microbiological and chemical hazards can not be identified by simple physical observation. Hence adequately equipped food control laboratories is required to support the monitoring, surveillance and enforcement activities undertaken through testing and analysis of the food samples collected.<sup>449</sup> The result of testing laboratory serves various purposes. For one thing it is used to determine the competence of food producing establishment before entering into a food supply market. After the food establishment entered the food market, it is used to test the conformity of the establishment's food products to the prescribed regulations and standards. More importantly the analytical results of a food control laboratories are often used as evidence in a court of law to determine compliance with regulation or standard of the country.<sup>450</sup> This multi purpose role of the food testing laboratory, therefore, warrant the need for utmost care to be taken, to ensure the efficient and effective performance of the laboratory to obtain reliable testing result.

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<sup>447</sup> Supra note 15, p. 671

<sup>448</sup> Supra note cited at 18, p. 8

<sup>449</sup> Supra note cited at 17, p. 86

<sup>450</sup> Supra note cited at 18, p.8

In Ethiopia the QSAE has chemical and microbiological testing laboratories designated to food analysis, which assist the authority's quality and safety assurance system through sampling and testing.<sup>451 30</sup> This is significant for determining the level of quality and safety of foods on the bases of scientific findings.

Chemical testing laboratory conducts chemical testing on the food products such as cereal products (Biscuit flour) dairy products (Butter) canned fruits and vegetable, alcoholic and non alcoholic beverages (soft drinks, beer, whisky, wine etc), edible oils and fats, and edible salt.<sup>452</sup> Samples from the above stated foods are collected and tested to determine their compliance with the relevant Ethiopian standards.

Microbiological testing laboratory carry out microbiological testing on the food products such as: Cereal products, milk and milk products, meat and meat products, fish and fish products, Fruits and vegetables and food for infants and children.<sup>453</sup> In conducting testing these laboratories apply established testing standard procedures only for testing purposes. In selecting methods of testing priority is given to Ethiopian standards provided that they are available.<sup>454</sup> Where there are no established Ethiopian standards for testing procedures, international standards, or other national ISO member countries testing standards are used.<sup>455</sup> Stated generally sampling and testing require testing laboratories that can assist to determine the presence of biological, chemical, and physical food hazards in the foods. The analytical result of the testing laboratory is used to prevent food products which are not up to the standards to enter in to food markets and thereby ensure the availability of safe and good quality food products to the consumers. Specially, where there is a dispute as to the level of the quality and safety of food, the result of the laboratory can be used, before the court, as evidence to determine the conformity of the foods to the regulatory requirements.<sup>456</sup>

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<sup>451</sup> Interview Conducted with W/ro Genet G/Medihin, Testing laboratory Directorate Director, at QSAE, on

October 12/2009

<sup>452</sup> Ibid

<sup>453</sup> Ibid

<sup>454</sup> Ibid

<sup>455</sup> Ibid

<sup>456</sup> See the Annex no. 2

The practical problem with sampling and testing is that the unacceptability of the result of the testing laboratory in Ethiopia's food importing countries. Since there is no internationally accredited laboratory in Ethiopia, the result of the laboratory has no acceptance in importing countries.<sup>457</sup> To get internationally acceptable testing laboratory result exporters are required to undergo re-testing in importing countries which exposes them to excessive expenses and may result in undermining their competitiveness in international food markets.

By recognizing the impact of the absence of internationally accredited laboratories on Ethiopia's exported food products the QSAE is at present vigorously working towards accreditation of its food testing laboratories (chemical and microbiological) in at least selected testing fields/areas where international recognition is most required.<sup>458</sup> It is true that most Ethiopia's export products are mainly based on agricultural and food products. This affirms that most of the revenue and foreign earnings generated from Ethiopia's export products are mainly based on agricultural and food products. Hence to relieve Ethiopian food exporters from re-testing of their foods in importing countries and excessive expenses and to secure the maximum revenue and foreign earnings from exports of foods, the testing laboratories should get international accreditation.

### **4.3. The Enforcement Measures**

Despite efforts of government agencies to enforce food quality and safety protection laws and regulations through various mechanisms, misbranded foods or foods that cause harm or have the potential to cause harm sometimes enter the food distribution chain or the consumer market.<sup>459</sup> As the result of the failure of the food item to conform to the regulatory requirements and standards, consumers may be exposed to economic loss and health hazards up to the loss of their life.

If it is determined that adulterated or misbranded food may be or has been produced due to non observance of the quality and safety requirements; action (administrative and/or

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<sup>457</sup> Interview cited at 26

<sup>458</sup> Ibid

<sup>459</sup> Food Quality Assurance : Principles and Practices, p. 29, Retrieved from <http://books.google.com.et/books>, assessed on May 29/2009



legal action) may be taken to ensure the presence of safe and good quality food.<sup>460</sup> This means that remedial actions are available to protect the consumer where food producers, distributors, and/or retailers fail to discharge their obligation of providing safe and of good quality food. This section will, therefore, provide an insight in this respect.

#### **. 4.3.1. Administrative (Regulatory) Action**

It is a known fact that a person who wants to engage in the production, distribution, export and import of goods for commercial purpose is required to have a business license from concerned government organs prior to involving in the activity.<sup>461</sup>

In Ethiopia also the Commercial and business licensing proclamation requires a person who want to involve in any commercial activities to obtain valid business license.<sup>462</sup> There fore any person who demands to conduct commercial activities related to food need to hold business license from concerned licensing government agencies. After obtaining the business license, the holder of the license is required to consistently adhere to all the requirements put in place by relevant organs of government.

Where the license holder fails to observe the regulatory requirements, the concerned administrative organ is authorized to take administrative action with the goal of encouraging and reinforcing compliance with the law.<sup>463</sup> In this regard the most common form of administrative action is refusal to issue or to renew a business license, suspension or revocation of license when it is determined that the continuance of such license would be contrary to regulatory requirements.<sup>464</sup> Hence, this section briefly discusses these regulatory action stipulated in food related laws in Ethiopia with a view to obliging persons engaged in commercial activities related to food to comply with food quality and safety regulatory requirements developed by relevant government organs.

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<sup>460</sup> Ibid

<sup>461</sup> Canadian Food Inspection Agency , p. 1, Retrieved from <http://www.inspection.gc.ca/>, assessed on January 18/2010

<sup>462</sup> Commercial Registration and Business Licensing Proclamation N. 67/1997, Article 21 (1)

<sup>463</sup> Supra note cited at 48, p. 4

<sup>464</sup> Ibid

**I. Refuse to issue License:** - A person applying for license in order to carry on commercial activities concerning food and food product is required to demonstrate that he is able to produce, distribute, or sale food by complying with the food quality and safety requirements set out by government The concerned administrative agency may refuse to issue a license if the organ finds that the applicant does not meet or no longer meet the requirements provided by laws and regulations.<sup>465</sup>

Commercial and business licensing proclamation No. 67/1997 Under its article 20 (5) provides that where a commercial activity for which license is sought requires the applicant to hold a specific certificate of competence the ministry of trade and industry require the applicant to produce such certificate which ascertain the competence of the applicant to engage in food trade and provide food that does not cause injury to consumers. It is also stipulated that, it is prohibited to produce or to trade in goods which require mandatory quality mark (certificate) issued by QSAE in respect of Goods for which compulsory Ethiopian standards are established.<sup>466</sup> Hence, the Ministry of Trade and Industry and the respective regional Bureaus can refuse to issue license where the applicant is unable to produce such certificate from QSAE that evidences his competence to produce and/or trade in food that comply with compulsory Ethiopian standards.

Under public health proclamation legal notice No. 145/1950 it also stated that to determine the sanitary conditions of food establishments proposed to be newly established the public health officer need to inspect the food establishments and during inspection, if any condition, which is dangerous to public health, is found up on such establishment, the license issuing agency shall refuse to grant the license.<sup>467</sup> This reveals that a person who wants to obtain food related business license need to have food establishment which is free from any conditions that affect the quality and safety of food in the absence of which license may not be granted.

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<sup>465</sup> Ibid

<sup>466</sup> Supra note cited at 10, Article 4

<sup>467</sup> The Municipal Public health rules, Legal notice No. 145/1950, Article 5

**II. Refuse to Renew License:-**To request a license renewal the license holder should consistently meet the regulatory requirements laid down by government. In order to determine whether the license is qualified for renewal, inspection is conducted by concerned government agency on the establishments already licensed and during inspection if any condition which is dangerous to the public health is found up on the premises of such establishment, the license may not be renewed.<sup>468</sup> This means that the enforcement organ may refuse to renew license if the organ finds that the licensee no longer comply with the requirements provided by laws and regulations. In other words the license renewal process takes into consideration the applicant's compliance to the food quality and safety protection regulations and maintaining food quality assurance program in good standing.<sup>469</sup> Hence to maintain once license in good standing and then qualify for renewal, the licensee must consistently meet all the established regulatory requirements.

**III. Suspension or Cancellation of License:-**Suspension or cancellation (revocation) of business license is also another administrative action taken by regulatory agencies where the license holder has failed to comply with the quality and safety requirements provided in food laws and regulations. Accordingly under commercial and business licensing proclamation it is stated that where the license holder has failed to maintain the standards of health and sanitary conditions and quality of his product as laid down by the concerned government agencies, a business license may be suspended.<sup>470</sup> In this case action for the suspension of the business license is taken to give chance to the licensee so that he/she will rectify his/her wrong.

An administrative action for the cancellation (revocation) of license may be taken where its holder has been found either using the license for an improper commercial activities or has repeatedly failed to sustain the standards of health and sanitary conditions and quality of his product in accordance with requirements set out in the regulations and standards.<sup>471</sup> In this case a food business license may be cancelled/revoked where the holder of such

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<sup>468</sup> Ibid, Article 7

<sup>469</sup> Supra note cited at 48, p. 2

<sup>470</sup> Supra note cited at 8, Article 26 (1)

<sup>471</sup> Ibid, Article 28 (1) (b) & (c)

license is found repeatedly involved in the activities that render the food unfit to be consumed by human being.

Concerning any goods in respect of which compulsory Ethiopian standards has been issued it is mandatory to use quality mark.<sup>472</sup> For the use of the quality mark license is issued by QSAE. In order to ensure the consistent conformity of the users goods with the relevant Ethiopian standards, periodic inspection is conduct by the Authority.<sup>473</sup> After inspection, where it is discovered that the user of the quality mark has failed to comply with requirements set out in the relevant Ethiopian Standards or with the conditions set out in the license, the license issued for the use of the quality mark may be cancelled.<sup>474</sup>

**IV. Detention/restriction/Prohibition:** - Detention/restriction/prohibition of food from entering the food distribution chain is also another instance in which the administrative organ may take regulatory action to limit adulterated and misbranded food from entering the consumer markets if the food intended to be distributed is found to be of poor quality and unfit for human consumption.

Under Animal Disease Prevention and Control Proclamation, the Ministry of Agriculture and Rural Development and the respective regional Bureaus are empowered to take action to prohibit and control the movement of animal and animal products from areas (regions), infected or suspected of being infected by animal disease, to other regions in the country.<sup>475</sup> Stated otherwise, administrative action can be taken by animal health officer if animals and animal products are found to have been caught by disease to restrict the movement of such animals and animal products.

The Revenue and Custom Authority of Ethiopia is also empowered to take action to detain/prohibit the importation into and exportation from Ethiopia if such food is found to be misbranded and fail to satisfy the requirements set out in compulsory Ethiopian standards.<sup>476</sup> In taking this action the Customs Officials takes into consideration the requirements of other laws and Regulations applicable to the importation and exportation,

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<sup>472</sup> Supra note cited at 10, Article 4

<sup>473</sup> Ibid, Article 6(1)

<sup>474</sup> Ibid, Article 12(1)

<sup>475</sup> Animal Disease prevention and Control Proclamation No. 267/2002, Article 7 (2)

<sup>476</sup> Supra note cited at 10, Article 13(2)

such as applicable legislation relating to labeling requirements.<sup>477</sup> This offers that the customs authority can take necessary action to detain/prohibit where the food arrived at exit and entry ports are failed to fulfill the requirements of the Customs Authority and other requirements established by relevant government organs.

**V. Closer of Food Establishment:**-A person, who wants to engage in producing and/or trading in foods, the production or the trading of which requires compulsory Ethiopian standards, should hold quality mark and certificate of conformity to assure that the product conforms to the relevant compulsory Ethiopian standards.<sup>478</sup> Accordingly, where a person is found producing or trading in food and food products, without holding quality mark, the authority may take action and order the closure of the factory or business undertaking.<sup>479</sup> Hence, it can be said, QSAE plays a key role in implementing compulsory food standard by taking action of closing those establishments engaged in food production with out obtaining the permit to use the quality mark.

#### **4.3.2 Criminal Action**

The intrusion of criminal law into the area of private sales and marketing, which was once the concern of civil law, has been developed with a view to safeguarding the interest of consumers and honest trader. Nowadays, due to the increase of societal consciousness to ward the protection of the consumer, criminal law is not only concerned with honest traders but also with the consuming public at large.

For the purpose of this study criminal action is available to criminal offences committed against the consumer who need safe and good quality foods and food products. The criminal code of the Federal Democratic Republic of Ethiopia Proc. No. 414/2004 and other food quality and safety protection related legislation incorporate provisions for certain criminal acts associated with providing unsafe and poor quality foods to the public. It is stated that criminal sanction is aimed at preventing commission of further crime through imposition of punishment on criminals.<sup>480</sup> With a view to achieve this purpose the criminal code and other food related laws impose criminal sanction on

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<sup>477</sup> Supra note cited at 48, p. 2

<sup>478</sup> Supra note cited at 10, Article 4

<sup>479</sup> Supra note cited at 9, Article 10

<sup>480</sup> The Criminal Code of the FDRE, Proclamation No. 414/2004, Article 1

manufacturers and seller of foods and food products who don't respect minimum quality and safety regulatory requirements established for the protection of the consumer. As indicated earlier in this work, in addition to the criminal code, there are several food related laws that incorporate criminal sanctions. Some of the laws refer to the criminal code for the purpose of instituting criminal action.<sup>481</sup> As per proc. No. 267/2002 any person who violates the provision of proclamation, regulations and directives issued pursuant to the proclamation shall be punishable under the provision of the criminal code. However, others incorporates the criminal sanction to be imposed up on a person who provide unsafe and poor quality foods and food products as long as more sever penalty is not provided under the criminal code.<sup>482</sup>

Article 527 of the criminal code deals with manufacture, adulteration and sale of injurious or damage products or food stuffs. This article stipulates that:

”Whosoever intentionally;

- a. Manufacture food, provisions, food stuffs or products unfit for human consumption or goods which contain injurious or damaged ingredients, or who adulterates food or goods in such a way as to endanger public health; or
- b. Stores offers for sale, exports, imports, receives or distributes such injurious products, is punishable with simple imprisonment for not less than six months or in serious cases, with rigorous imprisonment for not less than five years and fine.<sup>483</sup>

Ones the mental element for crime is proved, the person who manufactures unfit products for human consumption is criminally liable, for one thing he violates the products standard rules, and for the other thing he fails to take reasonable precautions so as to protect the health and safety of the consumer. Thus the criminal code is against those who pursue profit as the expense of consumer's health and safety. The adulterator or manufacturer of goods, which contain injurious or damaged ingredients, and those who fall under the list of person in article 527(b) are punishable. This is indicative of the fact that the scope of articles 527 is wide enough to accommodate criminal liability against those who take part

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<sup>481</sup> See Animal disease prevention and control proclamation No. 267/2002, Article 21 and Meat Inspection Proclamation No. 274/1970, Article 8

<sup>482</sup> See Public health Proclamation N. 200/2000, Article 20 and Article 14 of QSAE establishment Proclamation No. 102/1998

<sup>483</sup> Supra note 67, Article 527 (1)

in the commission of crimes relating to injury caused by the consumption of unfit or unsafe food products. From the consumer protection perspectives, such a broad provision has great significance for it can be executed against any one who fails to respect the product against any one who fails to respect the product standard rules.

To substantiate criminal action under this provision with court judgment the writer has visited the Federal High Court and most of the Federal First Instance Courts, however only one case that is on adjournment before the Addis Ababa First Instance Court was found. In criminal case between Public Prosecutor Bekele Eshete V. Talegegn Caka Mahamed, Talegegn Food Complex, Raga Asmare Beshir, and Sharif Ashagire Sali the public prosecutor instituted the case by stating that the defendants have violated Article 32/1/a/ and Article 527/1/a/b/ of the criminal code of Ethiopia. In the charge the public prosecutor claimed that the defendants mixed foreign matters with spice and presented to the public adulterated spices that can affect the health of the consumers. Since the case is on adjournment the final judgment of the court is unknown.

Earlier in chapter two, we have discussed that one of the objective of food quality and safety regulation is to protect consumer from deceptive trade practice. Accordingly falsification and adulteration of the consumer good with intent to deceive the consumer is made criminal act under Article 391 to 395 of the criminal code. It is clear that falsification and adulteration of foods highly affect the consumer who acts in a genuine state of mind, nonetheless deceived by a dishonest trader. Any one with intent to deceive another, falsify (counterfeit), adulterates or alters goods as genuine, unadulterated or in fact is criminally liable under articles 391 and 392 of the criminal code respectively. Further more, any one who imports, exports, acquires or procures or accepts for storage falsified, counterfeited, altered or adulterated goods for the purpose of deceiving another, or knowing that they are intended to deceive is punishable under article 393 of the criminal code.

The regulatory mechanism authorizes the quality and standards authority of Ethiopia to provide and control standards pertaining to weights and measures for the sake of consumers. The standardization of weights and measures get important place in the administrative law of the country for its impact upon the quantity of the goods destined

for consumption is great. Apparently, falsification of weights and measures that arise because of the non-observance of the regulatory regime is made crime under article 367 of the criminal code. This article provides that “Whoever with intent to deceive another:

- a. falsifies weights, balances, measures or other instruments intended for use in commerce or trade; or
- b. unlawfully affixes there to a mark or imprint denoting official certification or warranty, or forges such marks; or
- c. Intentionally makes use of such forged or falsified instruments is answerable under Article 367 (1) (a-c) of the criminal code.

Moreover whoever export, imports purchases acquires or procures or accepts in trust, sells or offer for sale or donate--- official weights or measures which he know to be forged or falsified is also punished under article 368 of the criminal code.

Apart form the cases punishable under article 367 of the criminal code use of illicit weights and measures is made petty offence under article 780 of the criminal code. It is stipulated that whoever makes use in his relations with third parties of weights or measures which are not in conformity with the relevant laws, regulations or directives, or who generally contravenes the laws, regulations, or directives issued for the control and use of official weights and measures is punishable with fine or arrest as the case may be.<sup>484</sup> In addition to consumer protection provisions provided in the criminal code, other legislations dealing with food quality and safety protection matters also impose penalties up on a person who fails to observe the provisions of the respective legislations.

Accordingly OSAE establishment proclamation No 102/1998 provides for penalty with regard to failure to observe the provisions provided therein. Under the proclamation it is prohibited to sell or offer for sale a product of a measuring instrument for which there exist a compulsory Ethiopian standard, without a certificate of conformity or a license to the use of the quality mark.<sup>485</sup> It means that for products of measuring instrument for

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<sup>484</sup> Ibid, Article 780

<sup>485</sup> Supra note cited at 9, Article 14(3) (b)



which compulsory Ethiopian standard is established, the use of certificate of conformity or the quality mark is mandatory failure of which entail criminal penalty.

A person who found using the certificate of conformity or the quality mark for other purpose than in accordance with the terms and conditions of the certificate or the license or use the certificate or the mark is also liable under the proclamation.<sup>486</sup> According to Article 14(3) (f) of QSAE establishment proclamation No 102/198 selling a pre-packed commodity that does not comply with the provisions of the regulations issued in this regard is made criminal act.

The other legislation that provides for the imposition of penalty for unsafe and poor quality food that does not meet the standards of food quality is public health proclamation No 200/2000. Under this proclamation any person engaged in any activity of selling, producing for sale, storing, preparing or preserving of any food intended for human consumption without fulfilling the regulatory standards set for this purpose is liable.<sup>487</sup>

The applicability of criminal penalty provided under the above mentioned legislations come to picture where either there is no provisions in the criminal code or where the criminal code provides lesser penalty than that provided in the legislations.

When we observe the effectiveness of criminal action, it can be safely said that they did not made functional up to their expectation. This is because from the Federal High Court and most of the Federal First Instant Courts visited by the writer, only one Criminal case was found.

### **4.3.3 Civil Action**

Civil action is a suit that plaintiff institutes against the defendant for the recovery of the financial loss (or claim for damage) that the plaintiff alleges to have sustained. Under Ethiopian law whenever the victim is the consumer of food items, he/she can get a relief for the damage he/she sustained on the basis of the relevant provisions of the civil code governing contracts and extra contractual liability depending on the particular circumstance of the case.

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<sup>486</sup> Ibid Article 14(3) (b)

<sup>487</sup> Public Health Proclamation No. 200/2000, Article 20 (1)

#### **4.3.3.1. Action based on Extra-Contractual liability**

The contract oriented part of the consumer protection laws is primarily designed to guarantee the quality and safety of consumer (food) products. Sometimes a consumer may be injured by the product normally used with out having any contractual relationship with producer of the product. In such situations, the consumer is compensated by the producer who put unsafe and poor quality product on the market. That means, product liability is aimed to ensure that the costs of injuries resulting from unqualified or defective products are borne by the manufacturers rather than the injured consumers who are powerless to protect themselves.

As per article 2085(1) of the civil code, a person who manufactures goods and supplied them to the public (consumer) for profit is liable for damage caused up on the consumer resulting from the normal use of these products. Article 2085(1) of the civil code provides for a very important concept of product liability. It safeguards consumers from food manufacturers that do not follow standard sanitary, hygienic, etc requirements in their production. This sub article applies to manufactured food products that resulted in damage to another person while the latter makes a normal, customary use of them.

The defect may either relate to the construction and design of the labeling of the product. Probably, the product is deceptively designed if it does not fulfill the standards required by the competent authority. Moreover, the defect may relate to the packaging of a product. For instance failure of manufacturer to package food as stipulated in the regulatory standards.

For a consumer to invoke article 2085(1) of the civil code, he/she should not have contractual relationship with the manufacturer. In most instances manufacturers do not have contractual relationship with the consumer of their products, hence, neither warranty nor subsequent contractual remedies protect them. For that matter, there fore, the essence of product liability lies in the protection of the injured consumer who does not have contractual remedy against the manufacturer. However note also that the manufacturer is free from liability where the defect that has resulted in the damage could have been

discovered by a customary examination of the product used.<sup>488</sup> Stated otherwise, the product liability provision is nothing but part of the whole consumer protection machinery aimed at the protection of a reasonable consumer.

It should be noted that since product liability is part of the strict liability section of tort law, there is no need for the consumer to prove the fault of the manufacturer. Thus in order to claim compensation for damage sustained, the only thing consumer has to prove is the fact that he suffered damage because of his normal use of the food products produced by the producer. Consequently, he may get compensation that covers the damage. This means, the extent of the compensation is equal to the actual damage caused to the consumer by the defective product.

In practical terms, however, the products liability provision does not live up to its expectations. First, usually, consumers are ignorant of their rights, secondly, as far as manufactured food imported from abroad is concerned, it is hardly possible for an individual consumer in Ethiopia to bring legal action against the producers abroad.

#### **4.3.3.2. Contractual remedy**

Contractual remedy is the most common type of civil action that is intended to protect the consumer both in Ethiopia and other countries. Whenever a given consumer buys a certain products in general and food products' in particular, he/she is in effect engaging him self/herself in some kind of contractual relationship, which will accord a reciprocal rights and obligations to both parties.

In this regard, the Ethiopian law of sales is the most relevant part of the civil code in determining the obligation and rights of parties to the sale contract. Accordingly article 2287 of the civil code stipulates that the seller is under obligation to guarantee that the thing sold to buyer conforms to the contract and is not affected by defects. In other words the seller of food and food products is obliged to guarantee that the food he sold to the consumer is free from defect and is fit for consumption. The thing sold to the consumer is deemed not conform to the contract where the seller delivered to the buyer greater or

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<sup>488</sup> Civil Code of the Empire of Ethiopia, Proclamation No. 165 of 1960, Article 2085 (2)

lesser quantity than he has under obligation to deliver.<sup>489</sup> Here as quantity is one aspect which a food product must contain, the law imposes obligation upon the seller to deliver, the quantity expected under normal course of purchase and sale or as agreed upon between the parties. The foods and food products delivered to the consumer is also expected to possess the quality required for its normal use or commercial exploitation.<sup>490</sup> This means foods and food products presented to consumer need to be with good quality and fit to be consumed by the buyer.

Where the seller of food products breach his/her obligation to provide foods that fulfill the required quality and safety there are certain remedies available to the consumer. In this case where the foods delivered to the buyer fails to meet the required quality for its normal use the buyer is entitled either to the cancellation of the contract, reduction of the original prices, or claim damages.<sup>491</sup>

When one sees effectiveness of civil action for damage caused from consuming unsafe and poor quality foods, it can be said that the laws in this regard seems disused. This can be evidenced from the absence of a case brought before the courts.

Generally seen there is the need to pay attention to strengthening the regulatory bodies in Ethiopia. This is because food quality assurance system is not something that can be left to private enforcement. For one thing the awareness of the society in making the right choice while buying food is not as such developed. For the other thing the asymmetric information arising from the attributes of food justify the strong intervention by regulator. Hence in addition to creating awareness of consumers so that they can make effective decision while buying their food, strong enforcement mechanisms by administrative (regulatory) bodies shall be put in place.

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<sup>489</sup> Ibid, Article 2288 (a)

<sup>490</sup> Ibid, Article 2289 (a)

<sup>491</sup> See Article 2343 and 2344 of the Civil Code

## **Chapter Five**

### **Conclusion and Recommendations**

#### **5.1. Conclusion**

It is worth recalling that regulation in the area of food quality and safety protection was emerged with the objectives of safeguarding consumers from both economic and health risks and to ensure the functioning of food markets in an orderly manner by prohibiting the production and sale of unsafe food products and fraudulent acts committed on foods. Ensuring the quality and safety of domestically produced, exported and imported food and food products constitutes one of the areas of food quality and safety protection. This is with an assumption that maintaining the quality of these foods is essential to protect public health, to satisfy the expectation of consumers, and to enhance foreign earnings and to maintain the confidence of food trading partners.

Hence, governments assure the quality and safety of domestically produced, imported and exported food and food products. To this end, they employ various controlling mechanisms with a view to protecting public health and consumers as well as to ensure fair practice in food trade.

As food hazards and quality loss can occur at several stages in the food production chain, a comprehensive and integrated farm-to-table approach in which the producer, processor, transporter, and consumer all play a vital role is becoming a mandatory requirement in the processing, production, supply, and distribution chain of food. Ensuring the quality and safety of foods produced both for domestic consumption and foreign markets require a workable legal and institutional framework that guarantee farm –to- table food quality and safety protection and control mechanism.

Ensuring the supply of safe and of good quality food can be achieved through the control of potential food safety hazards and quality loss along the whole food chain. This food safety hazards and loss of quality can be prevented and controlled through the application

of good practices such as Good Agricultural Practices (GAP), Good Manufacturing Practices (GMP), and Good Hygienic Practices (GHP) as well as through the implementation of HACCP.

These practices are applied with a view to ensuring the supply of food that is safe and with good quality through the use of appropriate handling, storage, transportation and management practices at all stage of food production from agricultural production through to industrial products.

It has also been noted that the modern food quality and safety control system comprises well established and up to date food legislations that ensure the application of these good practices (GAP, GVP, GMP and GHP), as well as the system that encourages the implementation of HACCP. The assurance of the quality and safety of foods at all levels also require the involvements of many stakeholders.

Obviously, various institutions are established to effect food safety control. For these institutions to live up to what is expected of them, in ensuring the availability of quality and safe food, there need to exist strong coordination among them; in particular, there must be strong coordination among the concerned regulatory agencies. Further, it is also required to have up to date and comprehensive legal framework that keep pace with advances and changes in the contemporary technological development and environmental changes.

Many national governments have established the legal requirements for guaranteeing the quality and safety of foods supplied with the objective of protecting consumers against unsafe, impure and fraudulently presented food by requiring the proper application of GAP and GVP to protect crops from being damaged by insects and pests and animals from disease. The use of GMP and GHP is also demanded by regulatory bodies to ensure the supply of safe and of good quality industrial food products by prohibiting the manufacturing and sale of food not of the nature, substance or quality demanded by the purchaser.

In Ethiopia, several regulatory bodies involve in the regulation of the quality and safety of all foods produced at all levels for both domestic consumption and foreign market assuming the common (Shared) responsibility of maintaining food safety. The health sector holds the responsibility to protect consumers from health hazards by assuring the quality and safety of food produced for human consumption. The agricultural sector is empowered to protect the safety and health of animal, animal products and plants by providing control and inspection activities with a view to ensuring the quality and safety of foods derived from animals and plants. The trade and industry sectors have also a role to play in warranting the quality and safety of food and food products made available for human consumption through the registration and licensing of food related commercial activities and by suspending/revoking the licenses where foods presented to the public are found to be unsafe and poor in terms of quality. Quality and standards Authority of Ethiopia is also involved in the activities of regulating the quality and safety of domestically produced, imported and exported foods and food products by promoting and assisting the establishment of appropriate quality management practices in the food processing industry through the application of food related Ethiopian standards. It also conducts inspection activities to assure the conformance of the food product to the established compulsory standards.

The involvement of these several regulatory bodies, in these critical areas of regulations, in one way or another, demands the existence of a close working relationship for effective and efficient quality and safety protection. However, the current oversight of food quality and safety in Ethiopia is fragmented, as these four principal agencies are independently administering several legislations and regulations related to food quality and safety protection. This generally reveals that there is a lack of clearly defined and demarcated responsibilities and mandate given to these regulatory bodies. For the reasons discussed elsewhere above, this lack of integration and coordination undermines an effective role that ought to be played in safeguarding the quality and safety of food supplied to consumers.

Further, it has been noted that foods related laws in Ethiopia also do not meet what the supplying of safe and of good quality food so demands. In the first place, the existing

laws are outdated and they focus only on the inspection of final products by overlooking the need to take proactive measures which are required by the current food quality and safety system; this proactive measure includes the need to conduct inspection from the sources, even beginning from the selection of farm lands. Secondly the existing law itself is not comprehensive and adequate in that it is scattered in different codes and legislations.

As far as Street foods are concerned they are becoming major dish for many persons, particularly for middle and low income persons. Similarly in Ethiopia preparing and selling of street food become the sources of employment for producers and sellers. They are produced and sold in major towns of Ethiopia. Particularly, in Addis Ababa it is a matter of fact to observe street foods vendors and consumers in every place in the city. This shows the demand for this informal sector is on the increase as street foods are considered as an important source of affordable food. However, because of the absence of adequate laws that specifically treat street foods and their vendors on the base of their specific nature, they are produced and sold under unsanitary and unhygienic conditions. Lack of financial resources to invest in safer equipment, and lack of education for food-handlers are considered as the major problems that render street foods to be prepared and sold in unsanitary condition. Consuming foods prepared in such conditions expose consumers to health risks arising there from. This reveals that the issues of street foods are also an area that demands the attention of regulatory bodies.

As far as the regulation of food export is concerned, it is axiomatic that importing countries do not allow food and food products to enter their territory unless it satisfies their food quality and safety regulatory requirements. However, the current practice in Ethiopia informs that the food quality control system is unable to live up to the requirements laid down by importing countries, especially by the developed ones. Likewise, many importing countries require exporting countries to have certificate which assures that the food products they export are free from health hazards and be with good quality to be consumed by their citizens. But in Ethiopia, there is no well established and internationally acceptable food quality and safety certification system that guarantees the food exported to the importing country is in compliance with their quality and safety



regulatory requirements. As a result, food exporters are said to have been exposed to excessive expenses for re-inspection and recertification in the importing countries.

Further, it has been indicated that exporters and importers of foods and food products are required to have the knowledge of the National Standards and food quality and safety regulations of both the importing and exporting country. However, as there is no working system that provides for adequate awareness and information, the awareness of exporters and importers in this regard is at its lower level.

It is said that, in today's competitive market, it is much more complex to ascertain the level of quality even for higher professional consumer. Accordingly, providing for a technique that clarifies the level of quality and safety of certain products, is highly required. Standard is, therefore, introduced to play precisely this role by clarifying and minimizing discrepancies in products, processes and methods. Depending upon the degree of the obligation it presupposes, standard is divided into compulsory and voluntary. In principle, the application of standard is voluntary allowing derogation from applying it. Compulsory standard comes into picture where the safety and health of the public is at stake. Since the production and supply of foods has direct influence on the health and safety of consumers, the application of standards with regard to foods needs to be made compulsory.

Although most food standards can be categorized in mandatory standards because of the aforementioned reason, in Ethiopia, there are still food and food products for which compulsory standards are not yet established. Stated otherwise, there are still foods and food products which are not yet made compulsory although it has an impact on health and safety of the public.

The mere fact of establishing standards may not be sufficient to ascertain the quality and safety of foods presented to the public. Certain technique is, rather, needed to test whether a given product is in compliance with standards required. Conformity assessment is, therefore, employed as a means of testing the compliance, or not, of products with standards or technical regulations. It involves technical activities such as testing,

inspection, certification accreditation, which confirms that products or process fulfill the requirements laid down in regulations and/or standards.

Although consumers demand safe and of good quality foods, it is difficult to them to know automatically the level of quality and safety by simply looking at the product they want to buy. This demands the need to establish instruments that assist purchasers and consumers in informing and protecting the quality and safety of foods supplied to them. Labeling and packaging regulation are, therefore, introduced as instruments to provide information and to preserve the food from being affected by moisture, content change, color or any other unwanted foreign substances etc.

Food labeling regulation is evolved with the view to providing all relevant information about the true description of food such as the product name, list of ingredients, net contents, the manufacturer's name and address, country of origin and language to be used and the way in which the food is produced. Accordingly, a food label is expected to contain specified information which is true and reliable, and in a manner ordinary consumers can read and understand under ordinary conditions of purchase and use.

The quality and safety of food stuffs at the time they reach the consumer usually depends on the efficiency of the packaging operation. In the contemporary globalized world, food products made in a single processing plant are shipped all over the country and sometimes throughout the world. As a consequence longer shelf life is demanded to transport food items to a long distance through efficient packaging to avoid possible deterioration. Food packaging regulations, therefore, provides for the requirements to be observed in packaging foods and food products to preserve the quality and safety of food for a longer time by hindering or minimizing growth of unwanted substances in food. The problem in Ethiopia in this respect is that the awareness of consumer in reading and using the information provided on the packaged food product is at a very lower stage of development. Due to low level of their living standards consumers are focused on the least price than paying attention to the quality and safety of foods they are buying.

It is a matter of principle that the mere enactment of food legislation will not guarantee the supply of safe and good quality food. To protect consumers any legislation must be supported by an adequate enforcement mechanisms. With regard to the protection of the quality and safety of food, protracted legal regimes are introduced for consumer protection. These laws are put on the ground (enforced) if and only if there are effective enforcement mechanisms. Inspection, sampling and testing and action against non conformance, therefore, are the principal means employed to enforce food quality and safety protection related laws.

Inspection of food by government regulatory agencies is carried out to ensure the compliance by food producers and distributors to specified standards and government regulatory requirement. Inspection involves examination and analysis of food for harmful substances to ensure that there is conformance to established limits and tolerance. In conducting inspection activities sample and analysis are required to determine whether the food product conform to standards and prescribed regulation or not.

Despite considerable efforts of government agencies to enforce food quality and safety protection laws and regulations through various mechanisms, misbranded foods or foods that cause harm or have the potential to cause harm, sometimes, may enter the food distribution chain. If it is discovered that adulterated or misbranded food has been produced as a result of negligence on the part of the food company; legal action (civil or criminal) can be taken against the company to protect consumers against violations.

With regard to enforcing food quality and safety protection related laws, there are overlap and duplication of activities among regulatory bodies. This is observed, particularly in the areas of import and export of food products inspection. Sampling and analysis require testing laboratories that analyze microbiological and chemical food safety hazards. However the result of the laboratory has no acceptance in importing countries, since there is no accredited testing laboratory in Ethiopia.

## **5.2. Recommendations**

When we see the current food quality and safety regulatory system of Ethiopia, there are several problems that require serious attention from all stakeholders involved in the activities of providing safe and quality food to both domestic consumer and international markets. With this impression, the writer has the following points to recommend:

- To begin with, when we see the current food laws and regulations, most of them were outdated, and do not comply with new kinds of products evolved from time to time, new methods of manufacturing and distribution chain, all demanding a frequent updating of the food laws to couple up with the modern methods of food quality and safety control system. Moreover, the recent proclamations are made to be implemented by regulations issued in 1940s and 1950s. On top of that, Ethiopian food quality and safety regulatory legislations are scattered and found in various legislations implemented by several government Agencies. Therefore, comprehensive food laws, which can update the outdated laws and can bring laws scattered in different statutes into one umbrella, shall be formulated.
- There are several government agencies involved in the regulation of the quality and safety of food and food products produced in Ethiopia. There must exist strong integration and coordination among these regulatory bodies; otherwise, it is unthinkable to achieve the objective of protecting the public from health risks and consumers which could result from unfair trade practices. To curb this problem, in line with the current international trend, there shall be established National Food Quality and safety Assurance body in Ethiopia, and be charged with the responsibility of coordinating and defining the responsibilities and mandate of each regulatory bodies, inspection authorities, and regional office of coordination among federal agencies as well as between Federal and states regulatory bodies, involved in the activities, and to integrate the activities related to food quality and safety assurance system.
- Even establishing this single responsible body alone may not totally bring an end to the involvement of several agencies or the establishment of one responsible

agency may be unacceptable for any other reason. Where the involvement of several regulatory bodies become inevitable because of this reason, any other mechanism is needed to effectively coordinate, integrate and define the responsibilities of all organs involved. Accordingly, Memorandum of Understanding (MOU), which streamline and define the respective roles and responsibilities of each food quality and safety regulatory body, shall be established so as to solve the problem of coordination and integration in this regard. This memorandum of understanding can be established among federal regulatory bodies and between federal and regional regulatory bodies; and it can solve the overlap and duplications of functions by setting out the mandate of each party involved in it. It is also possible to have MOU between regional states in areas of food distribution touching two or more regional states. The ongoing discussion between Addis Ababa City Government and Oromia Regional state to establish MOU regarding protection of the quality and safety of meat and meat products supplied to Addis Ababa from Oromia towns, surrounding Addis Ababa, can be taken as an experience for establishing MOU between regional states.

- In all countries in general and in developing countries in particular the production and consumption of street foods become normal lifestyle. In Ethiopia also they are produced and sold in major towns. However they could not get the attention of the regulatory bodies. Hence program that provides street vendors and handlers with health education and training in acceptable food preparation and handling practices shall be developed. There is also the need to assess the means in which street foods vendors can get credit that can assist them in providing safe and of good quality foods prepared on the street to protect consumers from health hazards arising from their consumption.
- Though, as a principle, standard is voluntary, standards established concerning foods need to be made compulsory, given an assumption that most food and food products have a direct impact on health, safety, and fair trade activity unless they are properly regulated. However, in Ethiopia, foods which require the establishment of compulsory standard are still implemented through voluntary

standards from which the producer/distributor of food may derogate. Hence, taking this into consideration, foods and food products standard setting body shall establish compulsory standards for those foods the consumption of which may seriously affect the safety and health of consumers. In addition to this, if establishing compulsory standards for all food products appears to be impractical, due attention should be given to exportable foodstuffs by taking in to consideration the foreign earnings they bring to the country. As the contemporary move with regard to food standard is towards adoption of harmonized international food standards, while preparing food standards, the Ethiopian Standards setting body need to follow the codex food standards and guidelines developed as international bench mark for this purpose.

- With regard to food import and export, there is no any established mechanism that provides information for importers and exporters of food and food products and to any person requiring information on Ethiopian foods and food products regulatory systems, as well. This, accordingly, demands the establishment of National WTO/TBT Enquiry point to provide sufficient information to importers, exporters etc. about food quality and safety requirements of Ethiopian food product and regulatory requirements of countries to which Ethiopian food products are exported.
- In today's international trade in food and food products, a certificate of conformity has become a necessary requisite to inter into international trade in foods. Many Importing countries do not allow food and food products to enter their territory unless the exporter holds the certificate of conformity that ensures the food he/it imports satisfies the food quality and safety regulatory requirements of that particular country. In Ethiopia, however, there is no accredited body that can issue internationally acceptable certificate of conformity. So, the country shall have an accredited body in charge of issuing such certificate.
- Further, internationally accredited testing laboratories are also necessary to ensure the conformance of foods with regulatory requirements. In Ethiopia,

however, there is no single accredited laboratory that tests the conformity of a particular food and food products with internationally accepted regulatory requirements. This necessitates the need for the establishment of National accreditation body for the purpose of recognizing certification and testing laboratories. The initiation of internationally acceptable quality and safety certification system and testing laboratory, at least by focusing on the country's major export foods, is needed to enhance the foreign earnings obtained from export of foods and food products.

- It is obvious that labeling and packaging requirements are designed to protect consumers by providing the necessary information about the true state of the foods and preserving the foods from being deteriorated. However, most sellers and consumers do not give priority to the importance of information provided on the label. While searching for lower price, sellers are not hesitated from selling expired foods by setting aside the issues of quality and safety, which may expose consumers to more expenses emanating from the consumption of unsanitary handled and poor quality foods. This calls for designing mechanisms in which consumers are informed (aware) and the foods sellers are act responsibly by clearly understanding the significance of labeling and packaging requirements in securing the quality and safety of foods.
- Although different efforts are made by governments to prevent and control acts that may render food injurious for human consumption, sometimes it is common to see adulterated and misbranded foods entering the consumer markets. In such a case if the adulterated and misbranded foods are presented to consumers and then cause any damage up on the consumers, regulatory measures and legal action are available against any person who provides such food for consumption. But, at present in Ethiopia the existence of this legal remedy is hardly known by consumers. More over it is difficult to identify the level of quality of some attributes of food which is beyond the knowledge of consumers. Therefore efforts are needed from government to strength the enforcement by regulatory agencies

to protect consumers from harm caused to them from adulterated and misbranded foodstuffs and to assure the availability of safe and good quality food in a market.

- Generally seen, the overall responsibility for food quality and food safety is shared by all segments of the food system, including government regulatory agencies, the various food industry sectors and consumers in general. The government is expected to enact food laws and regulations designed to protect consumers from harm resulting from unsafe foods and from deception resulting from misrepresentation or fraud relating to certain established food quality characteristics. The government also needs to establish responsible regulatory agencies that enforce these food laws and regulations effectively. The food industry, in their part, need to have the clear understanding of both the legal and moral responsibility for providing consumers with food that meets all established qualities and safety requirements. With in the food supply chain, customers have also a great role to play in ensuring the quality and safety of foods provided to them. When making purchases, consumers need to be vigilant in their assessment of foods for safety and quality. In particular, consumers must pay attention to the instructions for handling, storage, preparation, and use of foods.



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