

# **ST, MARY'S UNIVERSITY COLLEGE**

Faculty of Law  
LL.B THESIS

## **ETHIOPIAN PRODUCT STANDARD AND WTO /TBT AGREEMENT**

BY: - KIDIST YEBEKA

ADDIS ABEBA, ETHIOPIA  
JULY 2008

# **ETHIOPIAN PRODUCT STANDARD AND WTO /TBT AGREEMENT**

**BY: - KIDIST YEBEKA**

**ADVISOR: - GETAHUN SEIFU**

**Submitted in Partial fulfillment of the requirements for the  
Bachelors Degree of Law (LL.B) at the faculty of law,  
St. Mary's University College**

**ADDIS ABEBA, ETHIOPIA  
JULY 2008**

# Acknowledgement

Glorified be your praise Oh! Lord My God!

What tongue can speak of your Generosity! I thank you for the strength that you gave me to start and finish my education with less difficulty.

I would like to extend my deepest appreciation and heartfelt thanks to my advisor Ato Getahun Seifu who unreserved gave me all the necessary support in suggesting constructive ideas, reading and correcting the drafts and guiding me in the preparation and writing of my essay.

My dearest wish and thankfulness also to my brother Adal Yebeka who extended to me all the necessary support I needed in terms of material, financial and otherwise. My thanks go to my daughter Mahelt Yebeka who has always been my source of inspiration and aspiration

I would also like to thank Alemayehu Begashaw for his kind support in tracing necessary materials for my paper. I thank all those who directly and indirectly contributed towards my success in my endeavour.

Kidist Yebeka

July 2008

Addis Ababa

## Table of Contents

### Chapter One

	<b>Page</b>
1. Introduction	
1.1. Statement of the problem .....	1
1.2 Objective of the study.....	2.
1.2.1 General objective.....	3.
1.2.2 Specific objective.....	3.
1.3 Significance of the study .....	4
1.4 Scope and limitation of the study.....	5
1.4.1 Scope of the study.....	5
1.4.2 Limitation of the study	
1.5 Methodology of the study .....	5

### Chapter Two

2. Product standard and WTO/TBT Agreement.....	6
2.1 Introduction.....	6
2.2 Importance of Standards.....	8
2.3 National and International Standards.....	9
2.4 Trade Barriers.....	9
2.5 The National treatment principle and MFN.....	11
2.5.1 The National Treatment and MFN.....	11
2.6 Non-tariff barriers under the General Agreement.....	13
2.7 Tariff barriers.....	14
2.8 The Emergence of the TBT Agreement.....	15

**Chapter Three**

3. Review of related literatures.....	16
3.1 The Mercantilist Theory of Trade.....	16
3.2. The Theory of comparative Advantage.....	17
3.3. The Mainstream View.....	17
3.4. Instruments of Trade Policy.....	18
3.4.1. Effective Rate of Protection.....	18
3.4.2. Barriers Other than tariff.....	19
3.5. The Technical Barrier to Trade Agreement.....	19
3.6 The Prevention of Protectionism.....	20
3.6.1 The concept of protection.....	20
3.6.2. Preventing Protectionism.....	21
3.7 Technical Regulation.....	22
3.7.1 Equipment and Vehicles Regulations.....	23
3.7.2. Health regulations.....	23
3.7.3. Marking Regulation.....	23
3.7.4. Patents Regulations.....	24
3.8. The TBT Agreement .....	24
3.8.1. Technical regulations, standards and conformity assessment.....	24
3.8.2. The TBT Agreement, Harmonization and Mutual Recognition.....	26
3.8.3. The TBT Agreement and the Various Government and Non Government Organizations.....	27
3.9 The TBT Agreement, Its Principles and Rules.....	27
3.9.1. The Non-Discrimination Principle.....	27
3.9.2 Harmonization.....	28
3.9.3. Transparency.....	30
3.9.4. Negotiation and Accession Process.....	31

## Chapter Four

4. Ethiopian Standard and WTO/TBT Agreement.....	32
4.1. Compatibility of Ethiopian Standards and the TBT Agreement.....	32
4.1.1. The Essence of WTO/TBT Agreement.....	32
4.1.2 Objectives of the Agreement.....	34
4.2. The Ethiopian Legislation. Policies and Regulations .....	34
4. 2.1. The Laws of the Country within the Scope of TBT Agreement.....	35
4.3 Challenges in Meeting Technical Regulation.....	35
4.3.1 System Certification Service providers.....	36
4.4 The Social Impact of the Agreement.....	37
4.4.1 The role played by the Ethiopian Consumer Association.....	37
4.4.2. The Role played by the Ethiopian Custom Authority.....	38
4.5 Accession and the Benefits.....	40
4.5.1 The Benefits of Accession.....	40
5. Conclusion.....	41
5.1. Recommendation.....	41

## **Acronyms**

GATT \_ General Agreement on Tariff and Trade

ISO \_ International Organization for Standardization

QSAE \_ Quality and Standard authority of Ethiopia

MFN – Most Favored Nation treatment

MTO – Multilateral Trade Organization

TBT \_ Technical Barrier to Trade

WTO \_ World Trade Organization

I hereby declare that this paper is my work and I take full responsibility of any failure to observe the conversational rule of citation

Name :- Kidist Yebeka

Signed:- \_\_\_\_\_



# CHAPTER ONE

## 1. Introduction

As the end of the World War II was approaching in 1944, new global institutions at Bretton Woods imposed a cooperative order between nations. That order of cooperation focused on postwar reconstruction, currency markets and liberal trade. The institutions of cooperation of Bretton Woods were the International Monetary Fund (IMF), the World Bank and ultimately the General Agreement on Tariffs and Trade (GATT). So, the (GATT) came into existence as a treaty of several nations. It had a protocol of provisional application and acquired full legal personality when the Uruguay Round Final Act of 1994 created the World Trade Organization (WTO). Historically Article III of GATT 1947, on national treatment was subject to abuse and therefore, certain contracting parties began to use technical regulatory and inspection requirements as trade barriers necessitated the establishment of a stronger regime governing the application of technical regulation and standards. This gave birth to the standard code.

The 1979 Tokyo Round Agreement on Technical Barriers to Trade established a kind of symbiotic relationship between the GATT and the International Organization for Standardization (ISO). Here the ISO would be responsible for what the internationally accepted standards would be; and how these standards would be used would be the GATT responsibility.

On January 1/1995 the Uruguay Round of TBT agreement entered in to force when we see the Ethiopian Standard in this respect Ethiopia has adopted a National Standard Body in 1970.

This National Standards Body is called the Quality & Standards Authority of Ethiopia. This authority has developed about 7000 Ethiopian product standards in about 20 fields.

History tells us that the dynamic nature of international trade demands new and up-to-date mechanism to avoid different kinds of illegal import and export trade. So the need to make up new legislation on technical regulation would be to satisfy the international need in all aspects of international trade.

Africa's lagging trade position in general and that of Ethiopia in particular can be largely attributed to unfair trade rules and declining agricultural commodity prices. Also, they have been subjected to dumping by the developed world. They lacked duty-free and quota free access to rich country markets except for recent initiatives like that of AGOA, and are faced with overly complex rules of origin and non-tariff barriers that lack of free access to industries; countries, market which consequently limited their ability to benefit from trade. The peace, prosperity and environmental sustainability of this planet in the new millennium require a newly democratized version of trade policy. Ethiopia's aspirations hopefully are inline with the trade policy that benefits most from the liberal trading system.

## **1.1 Statement of the Problem**

Standard and technical regulation has been the international issue since the Industrial Revolution. Since then the development in technology and commerce demanded different agreements between the major developed nations.

Regarding the agreements that took place between developed nations, the major industrialized countries initiated a number of development projects that have been made by way of trade agreements of fair nature. However, the claim to develop the existing regulations and standards and the emergence of new ones were still evermore important to meet the industrial standards that manifested the international commercial situations on the ground. The world community founded GATT after WWII as an institution to peacefully regulate world trade.

More than 120 nations responsible for more than four-fifths of world trade belonged to GATT. In its first 45 years of existence, GATT concerned itself primarily with tariffs and

related matters; periodically, the GATT signatories would meet and negotiate lower tariffs on imported goods. In 1986, when the new Uruguay Round of GATT negotiations began, things changed. Multinational corporations thrust an expanded set of concerns on GATT that went far beyond traditional trade matters. They demanded to be free to invest anywhere in the world. This however, is beyond the scope of the study.

Nevertheless, they demand to invest without restrictions, they wanted environmental and safety standards be “harmonized” to enhance GATT’s power over each participating country with a view to impose any sort of controls on business. Now that things have further changed, the emerging WTO has come up with more versatile aspirations.

In this regard among all other related matters, to study the existing standards and TBT agreements in the view of developing nations like Ethiopia would be important. Since Ethiopia’s accession to WTO is undergoing a long process, before adopting the international standard the need to closely review the benefit of the standards with respect to long range (domestic) advantage and that of development is becoming the question of many developing countries. The same is true for Ethiopia in respect of standards and technical regulations.

## **1.2 Objectives of the study**

Based on the problem mentioned above, the proposed research has the following objective.

### **1.2.1 General Objective**

- To contribute to the on going process of development of standards and technical regulations.
- To contribute to the development of the countries standard policy.
- To indicate policies and create understanding that accommodates the situation that may result in Ethiopia’s accession to WTO and formulate standards that fall inline with the compulsory requirements of this global organization.

### **1.2.2 Specific objectives**

- To propose a better position that may possibly improve the policy measures.
- To come up with better position to suit national interest.
- To certain whether the international standard is suitable in respect to domestic ability.
- To come up with ideas that would help to improve the existing policy measures.

### **1.3 Significance of the study**

It is not as such simple to determine the significance of international TBT standard in the view of Ethiopian domestic interest due to the differences in technology and knowledge between developed nations and that of developing nations like Ethiopia.

Different standards should be adopted to meet the international standard. The gap between the developed and developing nations is not only the question of technology and knowledge; there is also a major problem with respect to the economy of the developing nations. Even though there is a keen interest to acquire new technology and study the required knowledge, countries like Ethiopia are lacking in capital to introduce new technology.

Due to these and other reasons international agreements such as TBT agreements can't be adopted to the third world countries in order to properly address the problem. Countries like Ethiopia should arrange their own mechanism to apply such important product that requires huge capacity in terms of economy and knowledge of the third world countries. The significance of this study also lies in its efforts to describe, analyze and evaluate the effects and implications of the present day multilateral trade negotiations.

## **1.4 Scope and limitation of the study**

### **1.4.1 Scope of the study**

As it is mentioned above, the study is not concerned with all aspects of WTO/TBT agreement. It only focuses on product standards that are relevant and most important for domestic use.

### **1.4.2 Limitation of the study**

The study is mainly concerned with standards & TBT agreement that are useful to Ethiopian standards. Therefore it would be more useful to focus on provisions that can be easily applicable in Ethiopia without demanding large expenses of the country. Farther, this short term essay cannot accommodate and evaluate or investigate the reciprocal effects of trade with the WTO member countries.

Also, this study will not cover an entire observation in to the complex system of arranging and re-arranging policy measures of international trade with a view to accommodating national interests as there are numerous member states and it would prove too big a task and too bulky given data and time and financial constraints. Nevertheless, a general conclusion as to the influence and impact can be reached.

## **1.5 Methodology of the study**

To achieve the objective of the study, the research would refer to websites, books and other international useful materials and legislations. That is the secondary data in their nature. The write up will mainly be descriptive and analytical in presentation. Furthermore, international trade and negotiations mainly deal with standards. In this reference major focus would be on domestic legislation and regulations.

## **CHAPTER-TWO**

### **2. Brief Background to the WTO/TBT Agreement**

#### **2.1 Introduction**

It is a historical fact that earliest states flourished because of the following trade that took place between them. As time went by these transactions gained momentum in terms of breadth and depth to an eventual development in to international economy to be regulated by an international regulation; concluded by agreement. According to economic theory, the benefit and adjustment costs created by a trade agreement, if achieved would emanate from two sources.

- First - Trade will permit greater specialization and a more efficient allocation of continued, Physical and Human Resources, in addition climatic and resource advantage in agriculture and extraction industries should permit additional specialization.
- Second -Trade could be expected to accelerate economic growth, creating a large market for goods and services. When we talk of trade agreements, the basic agreement governing commercial relations between countries is the GATT, prior to the WTO, which is supplemented by several records. The GATT is particularly important area such as subsidies and other accessories.

In January 2003, Ethiopia decided to join the WTO. It has also submitted its memorandum of foreign trade regime, also formally replied to questions coming from a few WTO members. The country's decision will have significant impact in the economic, social and cultural life of the nation and challenges ahead.

With the Ethiopian aspirations of membership at hand, the WTO has moved to a new model, with the elaboration of more detailed agreement as part of the WTO package. In

particular the agreements on the technical barriers to trade (TBT) and on sanitary and phytosanitary measures, establish more detailed criteria against which the validity of national measures should be evaluated. Indeed they go further and create linkages to internationally agreed standards, creating a presumption that national measure complying with such standards are deemed to be valid from a free-trade view point while there is much about these arrangements that needs improvement, they do at least begin to create linkages between compliance with internationally agreed standards and rights of access to global market places.

International trade in goods and services generally offers to raise living standards and it is, nevertheless, a paradoxical mix of its promises to provide an improvement in living conditions to poorer countries and what is being achieved as low returns that is now yielded. When one looks very closely to the transactions in the international trade area, they are seen to be of important for development efforts. This seems to be the main aim of most developing countries when they aspire to join such huge organizations as WTO while from outside they are seemingly hostile to them.

There is, however, the aspiration and belief that new development stimulus is in the pipeline and pull up poorer countries while the trade is international area being kept in proportion. For all practical purposes, the Quality and Standards Authority of Ethiopia has developed over 7000 Ethiopian standards in about 20 fields. Among the fields, agricultural, food technology and engineering are the prominent once comprising about 70% of the Ethiopian standards). Some Ethiopian standards are being put under mandatory enforcement by the government as regards health, safety, environment, fair trade and other related consideration. With this at hand, however the African countries of which Ethiopia is one, in general are faced with trade of a more or less of zero-sum game. These countries have always been forced to liberalize trade, only to find that they are increasingly marginalized.

## 2.2 Definition and Types of Standards

Standards are established levels of performance or means of carrying out work, which can be assessed through specific methods of measurements: (*Roman, 1988*) Standards, in accordance with measurements provide the means of monitoring performance.

Webster New World dictionary defines standard as: "Something set up as a rule or model with which other things like it are to be compared" (*Webster's New world dictionary for young readers, 1979*).

"Standard is no more than a set of principles- a template or framework- on which a unique quality system, to meet the needs of an individual organization, can be based. (*Jackson: Achieving BS EN ISO 9000:1996*)

Definitions of standard given above indicate that standards are important tools in ensuring the effective operation and control of process. Because standards define the criteria required to judge the acceptability of the process capability and product quality, a given task, product quality or process capability are expected to conform to those standards put in place for such purpose.

Standards can be categorized as national standards, international standards, standards for a particular industry and company standards. In like manner standards may be further categorized as features and characteristics that products and services are supposed to possess. Here, therefore, some standards may apply to a range of products while others may be type specific and still further, other standards may apply to all products irrespective of their type. Therefore it is taken for grant that standards are essential for defining the level and criteria of acceptance of a given capable process. (*Czinkota: International Business, The Dryden press: 1999*)



## **2.3 National and International Standards**

Ensuring effective planning, operation and control of processes that contain conditions, requirements, parameters etc... that regulate the different aspects of process or the resultant product prevails in the national and international standards that are deliberately designed to meet an essential requirement. These Standards are also essential in minimizing differences and alternatives there by ensuring interchangeability, safety and conceivability between the various components.

Although national and international standards are very useful, they have a number of limitations. Their details are not read carefully enough to avoid mistakes. They are, most of the time, taken for grant to have been readily available and therefore have been quoted in a specification where both customers and users assume that the organization is capable of meeting them. An external standard is not to be negotiated. External standards can not be supplemented or replaced. They force people to require work that meets the standard and reject work that does not meet the standards. They, therefore, reduce flexibility. The wide circulation of standards makes change of standards lengthy and costly both to the producers of standards and their users and therefore, standards can not be made to react quickly enough to meet customer needs. Product standards are, however, subject to continual surveillance and the only standards that work effectively. On product standards tests are routinely performed to verify that process outputs confirm to national or international standards. (*Jackson & Aston: 1996*)

## **2.4 Trade Barriers**

It is a common place that state governments oftentimes place various forms of barrier with the view to preventing the free entrance of goods and services in to the territories. The motives for such barriers may range from the creation of favorable working environment, in that domestic produces will be protected from fierce competition, to that of raising meaningful revenue for the national government.

Tariff measures have been the main instruments of protection in use by many countries. As it is a common happening in international business transactions that countries levy taxes, tariffs are a form of taxes imposed when items of trade are imported. These taxes are simplest form of measures in a country's trade policy. (*Alemayhu Geda: 2007*)

Non tariff barriers generally refer to all sort of governmental practices other than tariffs that may serve the purpose of discouraging the importation of goods and services. This pressure, however, does not impinge with equal magnitude on domestic production as it is also applied as a means of protection and encouragement to the home producers. Non tariff barrier, therefore, is a barrier that embraces the area of both border and non border measures that manifest its effect by way of curtailing imports.

There are numerous measures of non-tariff barriers. They come in very great weight of complexity (*Jackson J.H, 1995*), P.377

The list lacks clear and straight forward cases as quantitative import restrictions and prohibitions applied at the border. It includes a variety of forms of domestic programmers which play important role as barriers in disguise to the importation of competing products. Nevertheless in spite of the diversity, non-tariff measures have often been catalogued under a fair number of categories of practices including custom valuation, import licensing requests, subsidies, investment performance requirements, restrictive and discriminatory government procurement policies, technical standards, health and safety regulations, inspection and testing requirements, and lack of intellectual property protection (*Jackson etal (1995)supra 1, p.378*)

The General Agreement on Tariffs and Trade (GATT) favors tariff measures even non-tariff measures and as a choice of GATT - contracting parties had to enter into periodic negotiations to abandon non-tariff barriers and engage in negotiations for a stage by stage reduction of tariff, as well. This is sought because tariffs are believed to have numerous advantages over non-tariff measured. The reason for such favor is that tariff yields itself to transparency.

In principle the general Agreement prohibits the use of non-tariff border measures while at the same time it allows tariffs on the basis of the general principle, the General Agreement introduced a system by which countries would negotiate and fix the maximum amount of tariff they would impose on imports called bindings, consolidated in special documents for each contracting party known in GATT terminology as schedules of concessions. In view of such circumstance, countries do not have the obligation to reduce their tariff; the system is designed in such a way that contracting parties would select the products of their import or export interest and negotiate on the maximum amount of tariffs to be levied upon their importation. ( *Koul, Autar ,Krishen, Guide to the WTO a GATT, Kluwer Law , The Hauge,2005*)

Upon the fixation of tariff once, individual contracting party is at liberty to go downwards and not upwards. That is why the bound tariff level is often called "Ceiling bindings" beyond which one can not go up. There is however, a mechanism specified by the General Agreement itself; by which any act of raising bound tariff levels should follow the principal provision of which is Article XXVIII on the negotiation of commitments. On the negotiation of provisions, contracting parties are required" to endeavor to maintain a general level of reciprocal and naturally advantageous concessions no less favorable to trade than that provided for in the Agreement prior to the negotiations." (*Article XXVIII: 2 of the General Agreement*)

## **2.5 Other Instruments for Restriction of International Trade**

### **2.5.1 The National Treatment and MFN**

Negotiations and bindings of tariffs have always taken the form of bilateral and multilateral bargains between countries of substantial interest in the import and export of certain goods. The benefits of the concessions- are immediately and unconditionally extended to all other contracting parties through the main principles of Most Favored Nation Treatment (MFN), once bound as a result of the bilateral or multilateral negotiations of some contracting parties. The principle of non-discrimination stipulates that " any advantage, favor, privilege or immunity granted by any contracting party to any product originating in or destined for

any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties (*Articles 1:1 of the General Agreement*).

This is enshrined in the very first Article of the general Agreement. It thus provides every Member the assurance that their goods will be treated on equal basis with the like products of other Members. This therefore means the MFN clause creates the obligation, on every Member, to treat all Members in the same manner. Here, the advantages, favors, etc referred to are not only those extended to Members, but are also granted to non Members. This means any advantages, favors, etc granted by a GATT Members extended to all GATT Members, while no such advantage given by a Member to another Member is so extended to a non Member. The MFN is therefore responsible for the reduction and in many cases even elimination, of tariff by the adoption of the MFN standard which served the purpose of creating “Universal” standard which the most liberal of results negotiated between any two participants.

As regards National Treatment , in the 19<sup>th</sup> Century Western Nations such as West European countries and the United states developed an international minimum standards for the treatment of aliens and their property which they agreed to put into practice considering that the property of foreigners should not be taken with out due process of law and readily available effective compensation. Here Lipson points out that this principle emerged out of the orderly “Climate of European diplomacy after the Congress of Vienna” and were ‘elaborated and sustained by the expansive foreign policies of the Great Powers, Practically Great Britain (Lipson, 1985:38).

From what has been said earlier the National Treatment and the MFN obligations are intended to prohibit both measures which are explicitly discriminatory, and those that are formally natural but may disadvantage foreign investors in their effect.

This is taken care of by the equally important principle of national treatment incorporated under Article III of the General Agreement. The National treatment clause prohibits the use

of any internal measure for the purpose of affording protection to domestic production.  
(*GATT. Para 1 of Art 111.*)

"The Members recognize the internal changes and laws regulation and Requirements affecting the internal sale, offering for sale, purchase, Transportation, distribution or use of products and internal quantitative regulations requiring the mixture, Processing or use of products in specified amount or proportions should not be applied to imported or domestic products so as to afford protection to domestic production"

## **2.6 NON - TARIFF BARRIERS UNDER THE GENERAL AGREEMENT**

Generally, GATT's goal of reducing trade barriers and its successful operation especially in the reduction of tariff to their historic minimum the use of one or another of the non- tariff barriers would obviously circumvent those beneficial results.

"Designed primarily as a tariff reducing agreement it was realized from the beginning that substantive obligation governing other ways in which countries could limit the inflow of goods were necessary: otherwise the tariff reduction obligation would be meaningless.... For this reason GATT became a general code of conduct relating to international trade" (*Jackson J (1986) p.143*)

Despite its being seen with loopholes and exceptions, GATT has had rules prohibiting or restricting the use of such non-tariff measures as quantitative restrictions (*Article XI*), subsidies (*Articles XVII*), state trading enterprise (*Arti.XVII*) ,customs valuation (*Articles VII*), etc as disguised instruments of protectionism. In practice however, these provisions did not deter countries from widely applying non-tariff measures. Some of the provisions

themselves were not meant to impose any strict discipline against their use and others were either simply disregarded or not applied to their letter and spirit. (Several countries maintained quantitative restrictions in violation of Art XI and with out any justification on the basis of any of the exceptions (*Jackson 1969 Page 367-308.*)

Furthermore, with the progressive reduction of tariffs, countries were somehow forced to resort to non-tariff barriers in order to meet domestic protectionist pressures. As Hillman rightly observed the " removal or reduction of tariffs has an incitement effect in that it gives incensement to the introduction of new or extension of old non- tariff measures in order to maintain levels of domestic protection."

(*Hillma 1978:13*)

Several countries complained that "tariff concessions brought by in earlier rounds of negotiations had been substantially imposed by non- tariff measures for the protection of agriculture applied in the importing countries GATT. First report of committee II adopted (COM.II/5) on May 29, 1959.

According to the Committee II despite the claim of many countries to justify their use of quantities restrictions through the balance of payments outlets, "quantitative restrictions appeared to be an integrals part of the protections system in force in many countries and had no longer any connection with the balance of payments position of those countries" *GATT, second report of Com III, adopted (L/1192) on 20 May 1960.*(*Koul,A.K Guide to the Wto and GAAT, Kluwer Law International, The Hague,2005*)

The problem of non-tariff thus turned out to be the most important challenge for the multilateral trading system.

## **2.7 Tariff barriers.**

Tariff and non -tariff are both measures of borders which primarily serve the purpose of curtailing imports. Although, the ultimate objective of the multilateral trading system is the elimination of all sorts of barriers to international trade under the prevailing situations. This

remains only an idea goal that is perceivably the approach adopted for regulation of the two barriers. GATT, however, favors tariff over non-tariff measures.

When we talk of tariff as barrier, we talk of Most common barrier that countries use the restrict trade. When a country uses tariff as trade barrier it introduce tariff which simply is a tax imposed on goods as goods cross its national boundary. There are a number of reasons for imposing tariff: firstly, it is used to discourage consumption of a particular good, i.e. the good will be made relatively more costly to consumers by placing a tariff on it when it's Imported. Secondly, it is used to generate revenue for the government of the imposing country. Thirdly, tariff is imposed on imports to discouraged imports in am effort of a country to decrease a deficit is the balance of trade and fourthly, tariff is used as a protectionist policy – i.e a way of “ Protecting” or insulating a domestic industries from competition by foreign producers. Tariff as barriers is used on imports than on exports.

## **2.8 The Emergence of the TBT Agreement**

The WTO has moved to a new model, with the elaboration of more detailed agreement as part of the WTO package. In particular the agreement on Technical Barrier to Trade (TBT) and on sanitary and phytosanitary measures, establish more detailed criteria against which the validity of national measures should be evacuated. Indeed they go further and create linkages to internationally agreed standards, creating a presumption that national measures complying with such standards are deemed to be valid from a free- trade view point. While there is much about these arrangements that needs improvement, they do at least begin to create linkages between compliance with internationally agreed standards and rights access to global market places.

## CHAPTER THREE

### 3. Analysis of the TBT Agreement

Barriers to trade imply the hindrance of some sort to the availability of goods. Trade, however, plays an important role in improving welfare by increasing the supply of quality of goods and services for consumption. It is therefore, worthwhile to devote a little space for reviewing the theories of trade that have implication on application of technical barriers.

#### 3.1 The Mercantilist Theory of Trade

Mercantilism represented the dominant attitude of trade during the seventeenth and eighteenth centuries. The period was well known for being the time of nation building and consolidating of power by the newly formed nations. This was the time in which gold and silver were used as money. Therefore, the quantity of these very valuable metals hoarded by any nation symbolized the wealth and power of that nation. One prominent aspect of accomplishing the amassing of wealth and consolidation of power was to produce and export as many goods as possible while keeping purchases from abroad suppressed to a minimum. When other nation's exports were insufficient to pay for their imports, the account balance would be settled by flows of precious metals. Any country that exported more than it imported enjoyed an inflow of gold and silver. The policy prescription based on this Mercantilist view was to encourage exports and restrict imports. (*czinkota: 1996:154* )

One major fundamental idea by the propagators of this theory was the view that international trade was a zero-sum game <sup>1</sup>that one country's gains must come at the expense of another country and not from improved efficiency. ( *Chipman, John S (July, 1965), pp. 477-519* )



Like wise, they advocated strict government control of all economic activity and preached economic nationalism. The government imposed taxes and prohibitions designed to limit imports and gave subsidies to encourage greater production and exports.

### **3.2 The Theory of comparative Advantage**

The theory of comparative advantage was formulated by David Ricardo. His contribution showed that there was still a basis for trade, whether or not absolute advantage existed between countries. Ricardo wrote on the law of comparative advantage. Ricardo's principle of comparative advantage - import goods produced more efficiently than by local producers, export where one has the greatest comparative advantage over other nations - according to this principle even if one nation is less efficient than another in the production of both commodities, there is still a basis for mutual beneficial trade. One country should specialize in the production of and export the commodity in which its absolute disadvantage is smaller (this is the commodity of its comparative disadvantage). By this, Ricardo had demonstrated that trade was beneficial as long as advantage or disadvantage differentials existed in producing different goods.

### **3.3 The Mainstream View**

The view was called "Mainstream view" to emphasize a theoretical tradition that was at the core of conventional Western academic economic thinking on international trade issues. While this view of economics had much to say on the benefits deriving from trade, welfare implications of protectionist policies and regional trade agreements, it does not offer much by way of predictions with respect to the inter country distribution of trade gains. (*Yarbrough and Yarbrough 1988:23*)

Under comparative cost theory, the distribution of benefits is inversely related to the closeness of international terms of trade to the domestic price ratio. Later economist stressed the role of demand factors in the determination of terms of trade. The terms of

trade, however, continues to depend on the relative strengths of the respective demands. (*Yarbrough and Yarbrough 1988:23*)

### **3.4 Instruments of Trade Policy**

There are various instruments of trade policy that the government of a country could deploy to maximize the welfare of its citizens. Prominent of this instrument include tariff and non - tariff barriers, subsidies, export promotion as well as other administrative measures of protection which embrace quantitative restrictions. One of the instruments of trade policy that is largely used across the world is tariff. Non tariff barriers also play equally important roles as regards trade policy.

As has been indicated earlier, a tariff is a tax levied on import of goods at the point of importations. The application of tariff brings about a change on domestic price of the imported goods that will be above the world price of the same commodity thereby shielding domestic industries from foreign competition. Tariffs take different forms one of which is advalorem, given as percentage of import values or a specific fixed value per unit of an imported good. This form is usually preferred because of its transparency as seen in the price and comparability as it is given in percentage terms.

#### **3.4.1. Effective Rate of Protection**

Domestic prices of imports and that of production of import competing goods are raised as a result of the introduction of tariff as a government trade policy. Thus the tariff induced increase in production is referred as protective effect of tariff. The amount by which a nominal tariff raises an industry's value added above its free trade level is referred to as the effective rate of protection. (*Baldwin, 1970:14*)

### **3.4.2 Barriers Other than Tariff**

All actions except tariff that hamper trade between countries are taken as non tariff barriers. Non tariff barriers could take different forms that include: trade related restrictions, taxes or subsidies based on government intervention, quantitative restrictions (import and export quotas), voluntary export restraint (where exporting country agrees to limit its supply at the request of importing country), bureaucratic regulation, performance requirement (domestic content requirement) or export requirement, government procurement.

As tariff reductions took place progressively from time to time, concerned political leaders and industrialists started to look around for some means of protecting the industries. The protection they sought more often took the form of non-tariff barriers. These tools of restrictions that countries use in the process are what are known as policies. The failure on the part of countries to eliminate these barriers to trade and the increased reliance on the non-tariff forms of trade restriction have been named the "new protectionism".

### **3.5 The Technical Barrier to Trade Agreement**

At Braetton Woods in 1944 few countries showed interest toward new global institution that would impose a cooperative order on postwar construction, currency markets and liberal trade. The Bretton woods institutions were the IMF, the World Bank and ultimately the GATT. The General Agreement on Tariff and Trade (GATT) came into existence as a treaty without a secretariat but with a protocol of provisional Application (*Jackson, John H. 1990 Restructuring the GATT system*).

The Uruguay Round of multilateral trade negotiations was launched at Punta del Este, Uruguay, in 1986 and concluded in Marrakesh, Morocco, in April 1994 with the signing of The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (John, Croome. *A history of the Uruguay Round (World trade Organization: Geneva, 1995)*) This was the eighth negotiating round to take place within the framework of the General Agreement on Tariff and Trade (GATT) and was the most complex. It was

also the end of GATT. With effect from 1 January 1995 all previous responsibility for trade negotiations and dispute settlement has been assumed by a new world Trade organization (WTO), which became fully operational in January 1997 (*Thomas, Harmon. and Whalley, John., New York and Geneva 1998*)

As an embodiment to the GATT, the Agreement on Technical Barriers to Trade entered in to force in 1995 as a logical corollary of the standards code signed by the GATT contracting parties at the close of the Tokyo Round of Trade Negotiations. The TBT Agreement generally is intended to assure that technical regulations, standards and Conformity assessment procedures do not exert unnecessary obstacles to international trade, as well as to lend members of the Agreement sufficient discretion as regards the Protection of human, animal and plant life, health, national security, the environment consumers and other interests of policy nature. (*Ajit sing; The post Uruguay round world trading system 1996*)

Technical Barriers to Trade uses domestic regulatory process as a means of protecting domestic producers. The TBT Agreement puts in place a mechanism of balancing two policy objectives which are: the prevention of protectionism and that of the right of a Member to enact product regulations for approved public policy purposes. The right of a Member to enact regulations can further be explained as the allowance left to Member countries to enjoy adequate regulatory autonomy in perusing domestic policy objectives. (Vogel, 1995)

## **3.6 The Prevention of Protectionism**

### **3.6.1 The concept of protection**

Protection traditionally has been manifested in that, domestic producers and consumers respond to the price raising effect of tariffs by expanding the production and reducing the consumption of the commodity that has come to be protected. For the producer, tariffs on the product and on the material input such as: industrial material, fuels, parts and

components are used in the production process. Protection therefore is any measure public or private that causes internationally traded goods and services to be allocated in such a way as to reduce potential real world income. Here, the potential real world income is that level attainable if resources and outputs are allocated in an economically efficient manner. This is a situation where productive resources and goods and services are efficiently allocated and can not be redistributed in such a way that some will be better-off and none will suffer.

### **3.6.2. Preventing Protectionism**

Protectionism takes the form of tariff or export subsidies. Countries however, also apply other policy instruments to protect their domestic industries. Price and non - price for instance, directly affect the protection of particular activities. Price includes advalorem and specific tariff, import surcharge, advance deposit for imports and multiple exchange rates. The non-price comprises quotas, licensing and exchange controls. All price measures can be expressed more or less easily in terms of advalorem tariffs that are levied as a percentage of import value.

As the GATT/WTO framework encouraged the progressive tariff reductions, certain countries looked for other means of protecting thin industries. The method of protection therefore was in the form of non-tariff barriers. These were: technical regulations, standards and conformity assessment procedures, which are potential barriers to international trade.

The TBT agreement establishes rules and regulations that are deliberately designed in the direction of eliminating mandatory technical regulation, voluntary standards and conformity assessment procedures from becoming unnecessary barriers to international trade.

“Members shall ensure that technical regulations are not prepared adopted or applied with a view to or with the effect of certain unnecessary obstacles to international trade. For this

Purpose, technical regulations shall not be more trade- restrictive than necessary to fulfill a legitimate objective, taking account of the risk non- fulfillment world create. Such legitimate objectives are, inter alia- national security requirements the prevention of deceptive practice; Protection of human health or safety, animals or plant life or health, or the environment. In assessing such risks relative element of consideration are, inter-alia; available scientific and technical information, related processing technology of intended end-less of product.” (*Article 2.2 of Technical Regulations and Standards. The legal Texts, WTO, Cambridge University Press, 1999*)

### **3.7 Technical Regulation**

Technical regulation is an area where policy co-ordination might be beneficial. National technical regulations arise for good reasons like protecting consumers from dangerous products. These trade hindrances do not usually take the form of discriminatory financial payments or receipts like the way tariffs, export subsidies or domestic subsidies are. They are not expressed as an absolute limitation on trade the way quotas are. Nevertheless, technical regulations as regulations that exceed their legitimate purpose needlessly restrict imports or create uncertainty among foreign traders like the way unnecessarily rigorous administrative practices do. The impacts of these hindrance however, vary greatly on individual traders.

The main groups of technical and administrative rules that affect international trade are safety regulations for machines, vehicles and equipment, health regulations of various agricultural and pharmaceutical products; marking rules, requirements with respect to standards and measures; patent laws and various formalizes for customs clearance pursuant to Article 2 of the TBT Agreement Members have an obligation to ensure the central government bodies abide by the Provisions of the TBT Agreement governing technical regulations.

### **3.7.1 Equipment and Vehicles Regulations**

Government requirements that apply to electrical equipment illustrate the variety and international diversity of technical and administrative regulations. Rules governing the suppression of radio interference affect almost all electrical equipment, yet there is no uniformity among countries either in the methods for measuring the degree of interference in the technical requirements governing such products as flexible cords and cables, fuses and lighting, fittings or incandescent lamps and in the mechanical safety requirements for electrical household appliances.

There is also a wide diversity among countries in the safety standards set for vehicle and machinery. The cost of adopting a particular vehicle or machine to different markets also limits manufactures in taking advantage of scale economies.

### **3.7.2. Health regulations**

Health regulations have long been used for protectionist purposes in international trade forums. Veterinary rules are often alleged to restrict trade needlessly. As in case of industrial standards, much good work has been done toward setting up uniform standards in the health field, but central co-ordination has been lacking and progress has been slow.

### **3.7.3. Marking Regulation**

Marking is one of the most irritating regulations for exporters in which the origin marking required in different countries. Foreign producers object not only to the added cost of marking, but to the fact that the legibility requirement often significantly reduces the attractiveness of their products. Moreover, applications of the law by customs officers vary considerably. There is no doubt that most compulsory requirement for origin marking produce on unwarranted restriction in trade.

### **3.7.4. Patents Regulations**

The patent field is an important area where there is a need for international standardization and simplification. Simplification and greater uniformity among countries in the determination of novelty would greatly facilitate the awarding of patents (*O' Brien, Gerald D. "The Role of Patents and Trade marks in International Trade", International Lawyer, vol. 2 No. 1 (October 1967)* in some countries, the patent examiner in theory searches all patent throughout the world before awarding a new patent. In some others full examination is undertaken only after a patent is published and the applicant or a third party requests such a search. Still in others, a registration system is followed; a patent is granted simply on application and payment of a fee. Bringing this diversity to an end, an international agreement should set uniform standards for determining the patentability of a particular invention.

### **3.8 The TBT Agreement**

Technical Barrier to Trade refers to the use of domestic regulatory process as a means of protecting domestic producers. The TBT Agreement seeks to assure that:-

- 1) Mandatory product regulations,
- 2) Voluntary product standards.
- 3) Conformity assessment procedures.

Do not become unnecessary obstacle to international trade and are not employed to abstract trade. The argument further seek to balance two competing policy objectives which are the prevention of protectionism and the right of member enact product regulations for provide or legitimate public policy purposes. As has been indicated in the provisions of Article 1.3 of the Agreements, it is stated that all products including industrial and agricultural products shall be subject the agreement..

#### **3.8.1. Technical regulations, standards and conformity assessment**

The technical regulations, standard and conformity assessment are common principles and rules that are generally applicable throughout. The Agreement is undertaken to reduce and eventually eliminate the international trade impeding effect.



As regards technical regulation, paragraph 1 of Annex 1 of the TBT Agreement describes it as "Document which lays down product characteristics or their related processes and production methods including the applicable administrative provisions with which compliance is mandatory."

It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method". Where as pursuant to paragraph 2 of Annex 1 of the TBT Agreement a standard is defined as "Document" approved by a recognized body that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging marking or labeling requirements as they apply to a product, process or production method.

With respect to conformity assessment procedure, pursuant to paragraph 3 of Annex 1 of the TBT Agreement a "conformity assessment procedure is:" any procedure used, directly or indirectly to determine that relevant requirements in technical regulation or standards are fulfilled. The conformity assessment procedures include, among others, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combination.

The TBT Agreement is applicable to "technical regulations" "Standards" and "conformity assessment procedures" applicable to technical regulations and standards. The principal difference between a technical regulation and a standard is that compliance with a technical regulation is mandatory while compliance with a standard is voluntary.

Conformity assessment procedures are used to determine whether a technical regulation or standard has been complied with.

### **3.8.2 The TBT Agreement, Harmonization and Mutual Recognition**

Harmonization was not directly required by the GATT and the trade that flourished as a result of the subsequent agreement.

The Tokyo Round Agreement on Technical Barriers to Trade strengthened the ISO in harmonizing standards for everything from cargo containers to bridge clearances and screws. The crux of the matter of harmonization behind much of this agreement is that when nations have similar laws and policies for regulating international business, trade conflict over the standards being used as non-tariff barriers are less likely to occur. (Soskies 1999)

Article 2.7 of the Uruguay Round Agreement on Technical Barriers to Trade states: "Members shall give positive consideration to accepting as equivalent technical regulations of other members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfill the objectives of their own regulations."

The principle of harmonization has a close ally in the form of mutual recognition. The two principles are often co-active in opposition to national sovereignty. This simply means that they operate together to produce the same result. i.e the loss of national sovereignty. Where harmonization has been largely successful there is little need for mutual recognition, Example:- where the mutual recognition has only restricted operation because of the success of harmonization has been the easier. It is for state actors to accept the principle of mutual recognition, since the different rule or standard sets are more likely to approximate each others. Harmonization may enable mutual recognition (and therefore mutual recognition can carry on a process of convergence begun by harmonization) and mutual recognition may have recognizing effect)

### **3.8.3 The TBT Agreement and the Various Government and Non Government Organizations**

As technical regulations, standards and conformity assessment procedures are administered by national authorities as well as international, regional, local authorities and non-governmental organizations, the TBT Agreement applies to various governmental and non-governmental organizations at different levels of society (*UNCTAD, United Nation, 2003*)

The TBT Agreement applies to import prohibitions based on particular product characteristics. This is a clear indication that the TBT agreement is administered not only by national authorities, but also by international, regional and local authorities as well as, for the fact that the agreement sets forth rules and disciplines applicable to them.

### **3.9 The TBT Agreement, Its Principles and Rules**

As has been indicated the TBT agreement is composed of three separate fields of application (technical regulations, standards and conformity assessment procedures). The principles and rules are generally applied in all fields where the agreement is deemed to embrace. However, for ease of demonstration it we will be appropriate to dwell on non-discrimination, harmonization and transparency as these are the central pillars of the TBT Agreement.

#### **3.9.1 The Non-Discrimination Principle**

The Non-Discrimination principle is applicable to technical regulations, standards, and conformity assessment procedures the obligation of which has elements like "most favored nation treatment " (MFN treatment), and "national treatment."

These are logical outcomes as WTO moved to a new model with the elaboration of more detailed agreements as part of the WTO package. In particular the agreement on Technical Barriers to Trade (TBT) and on Sanitary and Phytosanitary Measures (SPS), establish more

detailed criteria against which the validity of national measures should be evaluated. Indeed, they go further, and create linkages to internationally agreed standards, creating a presumption that national measures complying with such standards are deemed to be valid from a free trade view point. Generally, the WTO Agreements refer to international standards as criteria for the validity of national rules, and thus tend to create a presumption against the validity of national standards which diverge from them. However they are also an encouragement to national states to adopt such standards. The TBT is more stringent, in requiring states to use international standards where they exist as a basis for their technical regulations. Further, No-discrimination is an obligation not to discriminate between imported and domestic "like products and products, and among imported "like products". If two products are not like products, the non-discrimination principle does not apply as between those products.

### **3.9.2 Harmonization**

Harmonization is a central pillar of the TBT Agreement. Members are encouraged to participate in the international harmonization of standards and to use agreed international standards as a basis for domestic technical regulations and standards. The emphasis on harmonization is based on the view that: trade is disrupted less if Members use international standards as a basis for domestic regulations and standards and producers and consumers benefit from a degree of harmonization. (UNCTAD, UN, 2003). Members have therefore, an obligation, within the limits of their resources, to participate in the work of international standardization organizations with respect to products for which they have adopted or expect to adopt technical regulations or standards. National sovereignty has most regularly been opposed to the principle of harmonization. This particular contest has been played out:

- in contract, where there have been largely unsuccessful attempts to harmonize national systems of contract law through international conventions;
- in property, where harmonization under the auspices of WTO has been remarkably successful in the case of intellectual property;

- in environment, where harmonization has had some pockets of success instance which can be mentioned as the chemicals regime developed by OECD;
- in telecommunications, where harmonization has been important in the area of technical standards
- in motor vehicle regulation, where ECE standards have had a harmonizing effect globally;
- in the regulation of food standards, where harmonization has acquired more clout through linking standards to the determination of WTO disputes concerning technical barriers to trade;
- in sea transport, where the International Maritime Organization (IMO) standards dominate;
- in air transport, where the air safety regime is to a considerable degree globally led by the FAA and Boeing;
- in the labor standards domain, where the ILO, the EU and US Occupational Safety and Health Administration (OSHA) have been active harmonizers;
- in nuclear regulation, where the International Atomic Energy Agency (IAEA) safeguards regime and to a lesser extent its safety regime operate under the principle of harmonization;
- in trade, where states by signing the Final Act have opened themselves up to the harmonizing influences contained in the various agreements in the Final Act. (Braithwaite and Drahos, 2000)

A degree of harmonization can enable mutual recognition. Mutual recognition can operate to allow regulatory standards not made uniform by harmonization to cross national borders. Harmonization is also sometimes co-active with national treatment in a contest against sovereignty. Harmonization requires that states move to the same set of standards or rules. The principle of national treatment obliges a state to pass on the benefits of the harmonization standards to foreigners. Intellectual property is an example where the co-activity of harmonization and national treatment has removed state sovereignty over the adjustment of property rights in information.

Mutual recognition is consistent with diverse regulatory standards, the operation of the principle in the corporate and securities area being an example. The principle of mutual recognition can have a harmonizing effect under certain circumstances. For instance, where individual states recognize the standard of the same international standard-setting body or bodies, they will move to the same set of standards.

In summarizing, therefore, the co-activity of harmonization and mutual recognition: harmonization may enable mutual recognition and therefore mutual recognition can carry on a process of convergence begun by harmonization and mutual recognition may have a harmonizing effect.

### **3.9.3 Transparency**

Transparency is another central tenet of the TBT Agreement .Transparency is the process whereby the creation, terms and application of technical regulations, standards and conformity assessment procedures are made public, and opportunities are provided for the public to comment on proposed technical regulations, standards and conformity assessment procedures (UNCTAD, UN 2003)

Of all the principles surveyed, transparency has been the one which has most consistently strengthened in importance. The air transport domain is the only domain in which it is weekly present although strengthening as time goes by. In nuclear regulation transparency has a likely restricted operation. Transparency is at its strongest in the domains of finance, corporations and securities. Transparency is also a principle which has become entrenched in some regulatory domains by means of law. It is, for example, a general obligation in the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Transparency obligations are dotted throughout the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (Final Act) and they also feature in Regional Agreements.

Transparency is the most striking emergent principle of International Trade. One example is in the regulation of drugs. At the national level of drug regulation consumer groups have

had to struggle to acquire information from national regulatory authorities. Each entity had to provide the others with information about their respective technical standards and regulatory systems. This phenomenon of Transparency appearing more at the international level than at the national level can also be seen in food regulation. Under the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) states have a general transparency obligation. In addition they must explain the reasons for their Sanitary or Phytosanitary measures if those measures are likely to constrain the exports of other states. The WTO pushes for transparency of trade restrictions, primarily through its Trade Policy Review Mechanism (TPRM) and transparency of outcome.

#### **3.9.4 Negotiation and Accession Process**

Issue that have to be taken in to account on the negotiations for WTO accession in respect to the WTO, TBT agreement has to be conducted with the view to meeting requirements. In this regard, major policy gaps have to be addressed before successfully concluding accessions negotiations with regard to the WTO, TBT Agreement is the resume that it has to provide to the WTO TBT Technical committee regarding the administrative arrangement, laws or regulations measures in existences. The effective manner of addressing this gap would be the development the technical regulations, proclamation and a technical regulations framework per suit to Art. 2 of the TBT, therefore members have an objection to ensure that central agreement bodies abide by the provisions of TBT agreement.

- As per Art. 3 of the TBT Agreement, members have an objection to the reasonable measures to ensure that local government body and non- governmental body also comply with the rules set fourthly the agreement.
- In accordance with Art4 of the Agreement, demands the code of good practice where members have to ensure acceptance and compliance.
- Article 5 TBT agreement set forth provision relevant to determining the scope and applicability of TBT agreement to confront assessment procedure ,notice, transparency equivalence, accreditation, ,mutual recognition and foreign participation in conformity, assessment procedure

## **CHAPTER FOUR**

### **4. Ethiopian Product Standard and WTO/TBT Agreement**

#### **4.1. Compatibility of Ethiopian Standards and the TBT Agreement**

Now that Ethiopian accession to the WTO seems to be just around the corner, the presence of the high level delegation of the WTO in Addis at the time of the writing of this paper has manifested a clear indication that the accession process is well underway. If all goes well Ethiopia is planning to gain accession in 2009/2010 (Impact assessment ... Draft, 2006) since most countries of the globe are members of the WTO, it would make sense for the country to join such an organization as it is likely that there would be something to be gained from such membership.

As has been the case, membership of a country to the WTO very much requires the liberalization of trade, the lifting of trade barriers, the accommodation of easier access to global market and the facilitation of competitiveness. The old notion of protectionism is gradually opening up for greater global trade integration and the dismantling of tariffs of imported products. The tides are changing for the better and Ethiopia like most developing countries will be in dire need to integrate itself to the international economic realities so that it will not be left behind.

##### **4.1.1. The Essence of WTO/TBT Agreement**

Transparency of technical regulation, standards and testing and certification procedures is a mandatory requirement of the TBT Agreement. These requirements are further justified by the legitimate objectives of national security and the prevention of deceptive practices while being ever mindful of the safety of human health, Animal and Plant life and health or environmental protection so that unnecessary obstacles to trade are not created. The provisions of this agreement subject all products including industrial and agricultural products excepting sanitary and phytosanitary measures that find their coverage under the



WTO/ SPS Agreement and that of governmental purchases the fall under the plurilateral Agreement so Government procurement.

There are five principles which are the basis of the WTO/ TBT Agreement. These are principle of:

- a) Transparency: This principle requires the technical regulations and the development of standards to be a transparent process. The transparency principle allows members to have their part played before being put to practice. There is also an additional requirement as regards information on standards to be promptly available together with conformity assessment and technical regulations.
- b) Sham: - There is a requirement here that technical regulations, standards and conformity assessment procedures are not used as disguised protection for local industry.
- c) National treatment: Extending of similar or identical measure in dealing with products that are imported and locally produced with out discrimination.
- d) Least Restrictive Means: This principle implies that accomplishments of the objectives of technical regulations are to be fulfilled with the minimization of restrictors to trade or apply means that minimize restrictions.
- e) Most Favored Nation: This requires members to extend same treatment to all products imported with out regard to county of origin.

#### **4.1.2 Objectives of the Agreement**

As a general legitimate objective the need for government intervention in the markets is well emphasized. The rights of countries to establish measures to protect human, animal or plant life or health or environment and to put them into practice is recognized by the Agreement. Where, Moreover, the right of national governments to intervene in matters of national security and avoidance of practices of deception is underpinned. There is, however a serious requirement by the agreement that governments have to prevent obstacles that are unnecessary to trade in the course of exercising technical regulations and standards.

In addition to what has been mentioned above, the Agreement requires the establishment of relevant institutions for the implementation of the Agreement at the time of the operation of the active process. This include among other things the establishment of a National enquiry point and Notification Authority whose duty it is to influence the obligation that the country has entered into and commits itself to meeting them in an effective and efficient manna.

#### **4.2. The Ethiopian Legislation, Policies and Regulations**

Ethiopia has a Federal Constitution that stands to be the supreme law of the hand. An other laws that contradict with the constitutions is null and void. Proclamations, Decrees and Regulation are considered to be subsidiary laws. There is also what we call directives that are issued as matters of minor importance.

#### **4. 2.1. The Laws of the Country within the Scope of TBT Agreement**

Those laws that comply with the requirement of the WTO/ TBT Agreement are considered as technical regulations in terms of the WTO definition, and are contained here in have the requirement of a technical nature for products and services that suppliers have to comply with. The laws that are subjected to WTO TBT Agreement requirement fall in the groups identified as: Agriculture, Building and Construction, Energy, Health, Medical, Mining, Telecommunication, Trade, Standards and Transport (*Memorandum of Foreign Trade Regime. Integrated Frame Work Committee, 2004*)

There are numerous proclamations to be embraced here: such as proclamations to provide for establishment of National Agricultural in put Authority, Fertilizer manufacturing and trade, Coffee trade regulation, Registration and Control of constriction machinery, Ethiopian Building Code standard, Electric Operation, Drug Administration and control Licensing and supervision of Health Service Institution, Motor Vehicle Identification, Inspection and Operation license, Vehicle size and weight, Mining and Capital Goods Leasing Business are but a few to mention.

#### **4.3 Challenges in Meeting Technical Regulation**

One encounters difficulties when embarking upon to a task of finding out how organizations are going about in regard to complain with technical regulations. There is very scanty information that could be secured from enterprises in Ethiopia because enterprises do no give exact figures as to the costs of compliance (*UNDP: Draft report, 2006 A.A*) The reason for such happening is attributed to major company's ways of doing things in associating costs of testing and certification with that part of the normal production cost or that of overheads.

#### 4.3.1 System Certification Service providers

The Quality and Standard Authority of Ethiopia (QSAE) is perceived to be an organization that provides system certification service. This perception has not materialized for the fact that QSAE has not started giving this service. After being established in 1970 and become operational in 1972 it underwent various restructuring the latest being in February 1998 pursuant to the enabling proclamation No.102/1998 and No.413.2004. QSAE is currently providing: Standards development and information; Testing and Laboratory; Metrology; and calibration. Product certification and training not system certification services. This is taken to be a major gap in to provision of the required service. Nevertheless, being in the process of finalizing the initial service; QSAE is preparing itself to establish a system of certification. What is not yet clear is that of whether it would be give accreditation for one or more of the 39 specific centers of economic activity as identified in the International Accreditation Forum (IAF) guidance on the application of International Organization for Standardization (ISO). International Electrical Commission Guide 62:1996 General Requirement for Bodies Operating Assessment and Certification (Registration Quality Systems, Issue 3,(IAF GD2: 2003).

As a position state however, QSAE is providing training in ISO 9000 to individuals at the level of quality managers and internal auditors. So far 400 plus individuals have been trained most of whom have come from companies with the intention of or on their way to implementing quality management system. (*Kellerman Martin and Mersha Yimer, 2006*)

QSAE is aspiring to embark upon a programmed of training for auditors in the years to come, which is seen as a major opportunity. When one looks in to the amount of investment required to conduct such training schemes, one is likely to ascertain that such an undertaking would not be easy to manage for the scheme is to require a tremendous amount of any, as has been manifested in the study conducted in Pakistan of UNIDIO.( *Trade Related Technical Assistance in the relevant market project ,EU/PAK/04/001,UNIDO,Veanna 2005*) such study would not come up much differently if it were conducted in this country given the similarities in the relevant situations . There is a

suggestion for QSAE to develop such a certification body as soon as possible, the failure to do so would cost the country dearly in that such a situation might lead to diminishing level service that might ultimately end up in the redaction of any certificate emanating for Ethiopia by the major markets if only private certification bodies happen to provide such service( *Draft Report ,Import Assessment ,UNDP 2005*)

#### **4.4 The Social Impact of the Agreement**

Some trade measures tend to affect all export and import –competing industries uniformly while others affect only a single sector or selected industries in a sector. (*Baldwin, Non-Tariff Distortion, The Brooking Institution, Washington DC, 1970*) The impact of technical regulations or the process of accession on the society lacks certainty for there is very little data available internationally to quantify it. An ineffective technical regulation regime of a country standards under question if unable to determine as to what happens as a result of not being effective. It is equally difficult to determine the financial loss a country suffers that results from non compliance of products with the technical regulations that are stipulated in the books of statutes that are not effectively implemented. Accession in to the WTO in entails compliance to requirements a technical regulations with regards to items for export and the participation in trade as a whole. The country has to avail itself of the opportunity to negotiate technical support from member states for the up grading of its national quality infrastructure to better serve export, supplies etc. which is a huge investment in its own right. Any deviation from the outlined frame of operation is tantamount to incurring of loss. Therefore it will be to the disadvantage of the country if the country doesn't conform to the requirements and hence, a loss.

##### **4.4.1 The role played by the Ethiopian Consumer Association**

Anecdotal evidence demonstrated by the Draft Report on the potential impacts of the TBT agreement produced by UNDP in 2006 after conducting discussion with an association of Ethiopia consumer protection that was established in 2001, indicated that: Important of substandard goods had flooded the market which included textiles, synthetic leather

products, and electrical goods, expired and ineffective pharmaceutical products have been carried out from the far east and low quality and unsafe electrical products and building materials produced by the Ethiopian industries have engulfed the markets and local shop shelves stuffed with food items close to or at times far beyond their expiry dates have left the society at a precarious situation. The discussion went on to maintain that the week purchasing of the average person in the country has rendered him avail to an exacerbated condition. As has been indicated by the same discussion, it was found out that that low income citizen would like to soon products which constituted the trappings of a modern life style, but do not have the means to purchase good quality products and therefore purchased the cheap and nasty” and had to contend with products that failed offer a few days weeks, or months. The discussion further would like to ascertain that such situation will not get better after accession to the WTO or probably would worsen as the liberalization of the markets is driven further by the WTO member states. The expert of the problem invites the relevant authorities to lend a responsive attention so that a careful review is undertaken to curls 888 the unfavorable situation.

#### **4.4.2 The Role played by the Ethiopian Custom Authority**

The Ethiopian customs authority is responsible for the clearance of all imports in to the country. There are several entry points the main of which are Moyale, Galafi Dewele, Meteme and Togowachale. The cities serving as clearance points are found in Djibouti, Nazreth, Addis Ababa /Legehar, Diredawa and airport sites. QSAE also maintains offices in most of the clearing sites. As QSAE conduct inspections for the products that fall within the scope of the mandatory standards other government Ministries or their agencies have delegated their inspection activities to the custom Authority The delegating Ministries and agencies include: Ministry of Agriculture and Rural Development, Ministry of Health , Drug Administration and control Authority, Telecommunication Agency , and Transport Authority.

These regulatory authorities provide the customs Authority with lists of their respective mandatory standards and lists of registered or approved products. Those products that are

not included in these lists will be held at the customs and only allowed entry when the importer obtains the required approval for entry of products

From the relevant regulator authorities, for all other products not regulated by such institution, customs allow entry of the goods into the country after examining and confirming invoice quantity and price information. (*Draft Report: Impact Assessment, UNDP, 2005 AA*).

Moreover, except for QSAE, the regulators do not have permanent offices with customs that offer leads to delays in clearing of the goods in cases where imports require approval from the regulatory authorities.

The labeling of products has also shown major problems. There is a need to enforce product labeling requirements, i.e. date of manufacturing, sell-by dates, product descriptions, permanency of labels, size and color of printing, etc, the lack of which is negatively affecting customers.

It is worth mentioning here problematic products where quality and labeling are identified that include: shoes imported from the Far East labeled as genuine leather where as they were actually manufactured from synthetic leather, clothes with labels only in Chinese which is not understood by the public, vehicle spare parts (although vehicles that are imported are subject to safety inspection by the transport authority spare parts are not subject of safety inspection in like manner) such as brake shoes, produced in collage industries abroad with unknown quality which could severely affect the safety of vehicles and road safety. (*Kellerman Martin and Marsha Yimer; UNDP 2006*)

## **4.5 Accession and the Benefits**

The accession process with respect to the WTO/ TBT agreement is fairly uncomplicated. Nevertheless, there are a few issues that would have to be taken in to account during the negotiating period where the period of standstill needs a very careful and thoughtful management of circumstances.

Before successfully concluding accession negotiations with regard to WTO/ TBT agreement, there is a need to address the poling gap that exist in laws and regulations and other measures in existence so that the fragmented and non-complaint nature of the legislation, customs and practices are properly attended to. This can be taken care of by bridging the gap by way of development of a technical regulation proclamation or technical regulation framework so that the institution of such measures serve in the assurance that the country together with all its ministries and their agencies lend it self to abide by the requirements of the WTO /TBT agreement. In like manner, the technical regulation framework would provide the details for the obligations contained there in the execution of the "how to do it" task as a logical corollary therefore the transition of a few years period could be successfully negotiated.

### **4.5.1 The Benefits of Accession**

There are three main benefits as identified by Michalopoulos, (2002) as quoted in (Alemayehu Geda, 2007).

- Strengthening of domestic policies and institution's for the conduct of inter national trade (as part of the accession process)
- Improvement in the case and security of market access to major export market
- Access, to an impartial binding and enforceable\_dispute settlement mechanism



## **5. Conclusion**

The WTO/ TBT agreement requires the technical regulations the standards and the testing and certification procedures to be transparent with unbiased legitimate objectives of national security, prevention of deceptive practices, human health and safety, animal life and health or environmental protection. The provisions of legitimate objectives have to be of the nature that do not create unnecessary obstacle to trade.

As trade plays a central role in the integration of the world economy, the WTO TBT agreement is based on five principles which generally deal with treating of products as if imported or locally produced in the same manner, avoidance of disguised protection of local industry, minimization of trade restrictions, and transparency in the development of standards and technical regulations.

The current Ethiopian Economic Policy is a market oriented and the country is endowed with a large number of young populations, a diversified climate, and fauna and flora and other national resources that put her in a potentially high yielding position with regard to economy and development. If all this is invested in the direction where economic efficiency, growth, development of technological capacities capabilities in conformity with the demands and requirements of accepted standard is made possible chances are that what is sought is likely to be achieved. Therefore, with what is said above the following recommendations have been made.

### **5.1. Recommendations**

- The country has to deal with substandard products entering the country, so that all health situations to plant and animal life is maintained.
- Formulate a proper technical regulation framework and put to operation and once this is done many issues will be dealt with accordingly.

- Prepare in due time to pay higher price when once better protection is put in place relevant products will be conform to established standards and hence the requirement for higher price.
- Assess the benefits that could be acquired a result of conformity to the agreement and accession and strive to work hard in that direction,
- Exploit technical assistance such as from WTO and UNCTAD to build capacity.

## Reference

Jackson, J.H et al, Legal problems of international economic relations; cases materials and text (3<sup>rd</sup> ed), Wat publishing co. 1995.

Koul, Autor, Krisher, Guide to be WTO and GATT, Kluwer Law, the Hague, 2005  
Chipman, John S. "A survey of the theory of international trade, part 1: the classical theory" Econometrea 33

John, Croome, a history of uruguay rourd, wourld trade organization general, 1995

Thomas, Harmon and Whalley, John. Uruguay round results and the emerging trade agenda, united nations, New York and Geneua, 1998.

O' Brien, Gerald D "the role of patents and trade marks in international trade" international lawyer, Vol, 2 No1. 1967.

Amjadi Azita, Reincke. Ulrich, Yeats, Alexander J. Did external Barriers causes the marnalizaiton of sub Sahara Africa in word trade? World Bank discussion paper No 348, The world Bank Washington, D.C. 1996.

Lipson, C. standing Guard: protecting foreign capital in the 19<sup>th</sup> and 20<sup>th</sup> centuries, university of California press, Barkeley, 1985

Baldwin, Robert E., Non tariff distortions on international trade, the Brookings institutions, Washington DC, 1970

Yarbrougl, Beth V., and Yarbrough Robert M., The world economy: trade and finance, the Dryden press, Holt, Rinehart and Winston saunders college publishing, 1988.

Ajit Singh, the post Uruguay round world trading system UN: New York al Geneva, 1996

Vogel, David, trading up consumer and environmental regulation in a global economy  
Cambridge, Mass., Harvard University press, 1995.

WTO, legal texts, the results of the Uruguay round of multilateral trade negotiations.,  
Cambridge university press, New York, 1999.

Braith waite, J., Drahos., P. Global business regulation, Cambridge university press,  
everbest printing co, ltd. China 2000

Kellerman, Martin and Masresha Yimer, impact assessment study, Draft report, UNDP,  
Addis Ababa, 2006.

UNCTADm dispute settlement, would trade organization UN, New York Geneva 2003

Alemayehu Geda, Fundamentals of international economics for developing countries, AAU  
and AERC, 2007

Czinkota M.R. et al international business, the fryden press, Harcourt brace college  
publishers, USA, 1999

Jackkson J.H. et al legal problems of international economics relations, cases, materials and  
text (3<sup>rd</sup> ed) west publishing co 1995

Jackson P., Ashton D., Achrivy BSEN, Iso 9000, Kongan page limited, 1996