

## Trade remedy laws in Ethiopia: A critical Review

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**ABSTRACT:** Though the concept of Trade remedy laws flourished in comprehensive manner in 20<sup>th</sup> century, its origin went back to the 18<sup>th</sup> century. It was in GATT 1947 (after the demise of formation of international trade organization); the 1<sup>st</sup> multilateral trade remedy law was effectively made to regulate international trade. And these also latter strengthened by the breakthrough move to successfully establish WTO in 1995. Today, about 164 independent nations are member to WTO (both poor and advanced economies). The main objects of the Trade remedy laws are to protect domestic industries from unfairly traded imports and sometimes, it will be imposed even if the trade is fair like in cases of import surge. Ethiopia is not a member to WTO though it has passed more than two decades having an observer status. Since, Ethiopia is not a member to WTO, trade remedy regimes of WTO is not applicable under Ethiopian scenario. That means, it is presumed that the country has to use other domestic legislations which deals about trade remedy issues. In order to deal with competition and trade issues, Ethiopia has enacted proclamation number 813/2013 (A trade competition and consumer protection proclamation). Besides, in order to facilitate the smooth flow of international trade the country enacted customs proclamation (a proclamation no.859/2014.) This article will therefore critically examine trade remedy laws of Ethiopia in lights of its importance with a recommendation that Ethiopia as a non-WTO member country has to design and enact more comprehensive trade remedy laws that can be able to address practical problems rising out it.

**KEY TERMS:** -Trade remedy laws, GATT, WTO, unfair trade, domestic industry protection.

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### I. BACKGROUND

WTO system permits trade Protection to member nations in specific circumstances by using trade remedy measures as a tool<sup>1</sup>. In order to achieve WTO tasks, Trade Remedy laws, has been incorporated in both GATT 1994 and other subsequent laws under the umbrella of the WTO. Article six of the GATT deals about Anti-dumping and countervailing measures.<sup>2</sup> Further specific laws regarding Anti-dumping issues of international trade has been incorporated under agreement on implementation of article six of the general agreement on tariffs and trade 1994.<sup>3</sup> Apart from provisions incorporated under the GATT agreement, an agreement on subsidies and countervailing (ASCM) was also enacted.<sup>4</sup> And most importantly, in order to regulate the import surge, agreement on safeguard<sup>5</sup> was made under the mandate of WTO.

Ethiopia is an ancient independent country with the history of more than 3000 years. Only few countries in Africa have had such a long, varied, and troubled history like as Ethiopia. The Ethiopian state

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<sup>1</sup>[http://wtocentre.iift.ac.in/CBP/Safeguard%20Presentation\\_Prof.%20Shashank%20Priya.pdf](http://wtocentre.iift.ac.in/CBP/Safeguard%20Presentation_Prof.%20Shashank%20Priya.pdf), accessed on 26<sup>th</sup> Sep/2020

<sup>2</sup> See article six of the GATT, available at [https://www.wto.org/english/docs\\_e/legal\\_e/gatt47.pdf](https://www.wto.org/english/docs_e/legal_e/gatt47.pdf), accessed on 26<sup>th</sup> Sep/2020

<sup>3</sup> see *agreement on implementation of article Six of the general agreement on tariffs and trade 1994*, available at [https://www.wto.org/english/docs\\_e/legal\\_e/19-adp.pdf](https://www.wto.org/english/docs_e/legal_e/19-adp.pdf), accessed on 26<sup>th</sup> Sep 2020

<sup>4</sup> *agreement on subsidies and countervailing*, available at [https://www.wto.org/english/docs\\_e/legal\\_e/24-scm.pdf](https://www.wto.org/english/docs_e/legal_e/24-scm.pdf), accessed on 26<sup>th</sup> Sep 2020

<sup>5</sup> WTO, an agreement on Safeguards, available at [https://www.wto.org/english/docs\\_e/legal\\_e/25-safeg\\_e.htm](https://www.wto.org/english/docs_e/legal_e/25-safeg_e.htm), accessed on 26<sup>th</sup> Sep/2020

coined in the Aksumite kingdom, a trading state that emerged about the first century A.D.<sup>6</sup> This indicates that, the history of international trade is as old as the history of the country. However, too long the history of international trade engagement, Ethiopia has remained among the poor nations in the world. Several governments with varying trade policies have ruled the country. Despite Both the imperial(Haileseilassie regime) and the Marxist governments(Derg regime) tried to improve Ethiopia's balance of trade, the former by encouraging exports and the latter by curtailing imports, Ethiopia's foreign trade balance had essentially been in deficit since 1953.<sup>7</sup> After the downfall of the Socialist Derg Regime, new revolutionary government (EPRDF) came to power in 1991 with new promise and constitution. After, 1991 the countries market and economic policy had changed from socialist to liberal and free market structure though despite the reform made the country has still left with huge trade deficit. Following the political and economic reform, during the last several years, the new EPRDF government has made legal reform and enacted several laws among others; trade laws, competition laws, Customs laws, and investment laws.

Ethiopia is not a member to WTO though it has passed more than two decades just having an observer status. That means since, the country is not a member to WTO, the laws of WTO regulating trade remedy regime is not applicable under the situation of Ethiopia. Therefore, the regulation of trade remedy issues fully falls up on the scope of domestic trade and competition legislations. Based on this background, therefore, this article is going to critically examine the place of trade remedy laws under the current Ethiopian trade and competition legislations. The study is conducted mainly based on the doctrinal legal research methodology. Accordingly, both primary and secondary data will be gathered during the review. Focuses on electronic online based written manuscripts such as; trade laws and competition laws will be investigated to get relevant information. Since Ethiopia is not a member to the WTO, and as a result the trade remedy laws existing under the WTO regime is not applicable to Ethiopia, this study argues that, the existing domestic trade and competition law in Ethiopia is not comprehensive and can't appropriately regulate the issues of international trade.

## II. TRADE REMEDY LAWS UNDER GATT AND WTO

Trade remedy measure can be considered as an exception to the free trade Principles of WTO.<sup>8</sup> The term "trade remedy laws" refers to three types of national laws (such AD, CVM, and safeguard measure) that impose import restrictions under specified conditions which are mainly aimed at protection of domestic manufacturers.<sup>9</sup> Even though the pillar principles of the foundation of WTO and GATT is creating a freer international trade, in special circumstances the WTO/GATT allows member countries to apply trade remedy measures(which hinder the free flow of goods and services).

### 2.1 Anti-dumping measures

Anti-dumping measure is one of the controversial subjects of international trade among the three types of trade remedy measures<sup>10</sup>. It is also considered as by far the most frequently used among the three trade remedy measures<sup>11</sup>. As a remedy for dumping<sup>12</sup>, the laws of Anti-dumping allows WTO member countries to apply anti-dumping measures. It permits a national government body to impose a special duty which is deemed

<sup>6</sup>Thomas P. Ofcansky and LaVerle Berry,(editors), *Ethiopia: A Country Study*. Washington: GPO for the Library of Congress, 1991.

<sup>7</sup>ibid

<sup>8</sup>Jean-Sébastien Roue, Trade remedies: What business needs to know?, International Trade Centre, International Trade Forum - Issue 3/2002, available at <http://www.tradeforum.org/Trade-Remedies---What-Business-Needs-to-Know/>, accessed on 26<sup>th</sup> Sep/2020

<sup>9</sup>Alan O. Sykes, "Trade Remedy Laws" ( John M. Olin Program in Law and Economics Working Paper No. 240, 2005). P2

<sup>10</sup>See Patrick F. J. Macrory, THE ANTI-DUMPING AGREEMENT, P487

<sup>11</sup> supra note 19 p 23

<sup>12</sup>According to Jacob Viner (Economist), Dumping is "price discrimination between national markets." See Richard Dale., anti-dumping law in a liberal trade order, 1st edition, the Macmillan press Ltd, London, UK, 1980, p. The definition of Jacob Viner broader and it root bases on economics. More specific and seemibgly legal definition is seen in , the dictionary of trade policy terms. it defines, dumping as the situation trade that occurs 'when goods are exported at a price less than their normal value, generally meaning they are exported for less than they are sold in the domestic market or third-country markets, or at less than production cost.'" see Walter Goode, *Dictionary of Trade Policy Terms, 4th edition, 2003, available at* <http://ctr.sice.oas.org/trc/WTO/Documents/Dictionary%20of%20trade%20%20policy%20terms.pdf>, accessed on 03/07/2020, P115

unfairly imported<sup>13</sup>. Since it restricts unfair imports from other countries, these kinds of laws are aimed to permit domestic industries of a country to seek special tariff protection against unfairly traded goods from other countries.<sup>14</sup> An agreement on Anti-dumping (AD) puts a collection of principles that governs the application of AD remedies by the member of WTO.<sup>15</sup>

In the history of multilateral trade agreement, it was in 1947 under Article VI of the GATT the first provision of Anti-dumping measure incorporated. The use of the anti-dumping measure provision is designed in a manner that can counterbalance the harming effect of dumped imports (an item/goods/ imported and believed to be sold below the normal price).<sup>16</sup> In order to effectively implement article VI of the GATT, a more specific anti-dumping law<sup>17</sup> was enacted in 1994. An agreement on implementation of article VI of the general agreement on tariffs and trade generally puts three essential criteria's for the existences of dumping and the consequent Anti-dumping measure to be applied. These are; firstly there are an import which are being sold below the normal price, secondly, the domestic industries<sup>18</sup> manufacturing like products has to suffer or threaten to suffer "material harm/injury",<sup>19</sup> and thirdly and most importantly there has to be "causal relationship"<sup>20</sup> between the dumped<sup>21</sup> product and the harm caused to the domestic industries. Hence, the criteria are cumulative and there will not be Anti-dumping measure if one of the condition is missed.

## 2.2 Countervailing measures

Even though the level of subsidy<sup>22</sup> varies from country to country, evidences has indicated that, almost all countries in the world directly or indirectly subsidize their economies (may be Manufacturing, Agriculture, or service sectors).<sup>23</sup> There are three types of subsidies under the WTO regime. These are, prohibited subsidies, actionable subsidies and non-actionable subsidies.<sup>24</sup> Among these types of subsidies, it is the red light subsidies namely export subsidies and import substitution subsidies which are prohibited under WTO.<sup>25</sup> Other type of subsidies unlike import substitution and export subsidies, are not prohibited in principle but they are actionable<sup>26</sup> (which is to mean that; even though they are not prohibited they will be actionable and be challenged to the extent it causes harm.)

Apart from the rules on dumping and AD duties, the law of WTO also incorporates rules and principles that regulate unfair trade practice that emerges from prohibited subsidies and actionable subsidies that causes harm.<sup>27</sup> Article four of the agreement on subsidies and countervailing measures talks about the remedy against prohibited subsidies. Therefore, under WTO multilateral agreement, those types of subsidies which are

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<sup>13</sup>Brink Lindsey and Daniel J. Ikenson, *Antidumping exposed: the devilish details of unfair trade law*, ©CATO INSTITUTE (2003), Washington Dc, USA, P,vii

<sup>14</sup> anti-dumping law in Canada, Macmillan International trade bulletin, available at [https://mcmillan.ca/Files/153985\\_Anti%20Dumping%20Law%20in%20Canada%20-%20Final.pdf](https://mcmillan.ca/Files/153985_Anti%20Dumping%20Law%20in%20Canada%20-%20Final.pdf), accessed on 25<sup>th</sup> sep 2020

<sup>15</sup>JOHN D. MCINERNEY, *Legal Aspects of International Trade*, Proceedings of a World Bank Seminar, first edition, Washington, DC 20433, USA, 2001, p171

<sup>16</sup> supra note 20

<sup>17</sup> See, article 5(2) and subsequent provisions of an Agreement on implementation of article VI of the general agreement on tariffs and trade 1994.

<sup>18</sup> ibid

<sup>19</sup> id. art 3

<sup>20</sup> id article 3(5)

<sup>21</sup> In principle dumping is not prohibited, however it is condemned if it causes or threaten to cause the injury/harm . see Peter Van Den Bossche, *The law and policy of the world trade organization*, 1<sup>st</sup> edition, cambridge university press, New york, 2005, p 552

<sup>22</sup> The concept of subsidy is defined under **article one** of the subsidies and countervailing measure agreement. According to this provision, for a subsidy to exist three cumulative criteria has to be fulfilled. firstly, there is financial contribution(either by government or any public body), secondly, there is any form of income or price support in the sense of article XVI of the GATT 1994. and finally, a benefit is thereby conferred.

<sup>23</sup>Brian McDonald, *The World Trading System: The Uruguay Round and Beyond*, I st edition, MACMILLAN PRESS LTD, UK, London, 1998, P95

<sup>24</sup> supra note 31 P 561

<sup>25</sup> ibid

<sup>26</sup> id, P567

<sup>27</sup> id p551

prohibited and actionable (which causes harm to the local industry), will be counterbalanced by a trade remedy measure called CVM.

### **2.3 Safeguard measures**

On the basic concepts of international trade, the term “safeguards” is to describe the defensive (protective) actions against a fair trade in order to protect the harm that happen to domestic industries due to increased imports<sup>28</sup>. Hence, the root causes for the application of safeguard measure as a remedy for trade is, import surge. Unlike the cases of Anti-dumping and CVM, which are applied against unfair trade, safeguard measure will be applied in cases of fair trade.

Under the WTO regime, safeguard measure can be considered as permitted exception.<sup>29</sup> The Agreement on Safeguards sets forth the rules for application of measures pursuant to Article XIX of GATT 1994. Safeguard measures are defined as “emergency” actions with respect to increased imports of particular products, where such imports have caused or threaten to cause grave harm to the importing Member's domestic industry.<sup>30</sup> Application of safeguard measure also requires some essential conditions to be followed. Since it will not be arbitrarily applied, article two of the agreement on safeguards set forth conditions such as existence or potential existences of a threat that were caused/will be caused due to the increased import and it requires member countries to follow the principles of MFN.<sup>31</sup>

## **III. JUSTIFICATIONS FOR TRADE REMEDY LAWS**

It would be very important to raise a question like , despite the fact that WTO has been preaching a global free trade and set an objective to attain the same, why WTO also allow a trade remedy measures which is the opposite to the principles of capitalism and free global trade? The answer to this question is not easy and of course it is beyond this article and which need broad discussion by itself. However, as we have discussed in the above parts, the justification of trade remedy measures basically lays on fairness and on the goal of protection of domestic industries from the harm posed due to the foreign imports (either the act is unfair like in cases of dumping and subsidized imports or even if the act is fair but causing harm to local industries like in the cases of import surge).

## **IV. PLACE OF TRADE REMEDY LAWS IN ETHIOPIA**

### **4(1) Trade competition and consumer protection Laws**

Historically, the law which is designed to regulate competition in Ethiopia went backs to the 14<sup>th</sup> century period of FethaNagest(The Law of the Kings). Among other things; the FethaNagest allows reasonable profit from the trade and discourages or prohibits unnecessary overstated prices on the goods.<sup>32</sup> The modern concept of competition law comes to exits on the 1960s civil code of the country. The code mainly protects the buyers from several deceit and non-conformity of the good and it further regulates defects in delivery of goods. Furthermore, laws which were designed to regulate the behavior of seller, buyer and consumer were incorporated in the penal code of 1957 of the country<sup>33</sup> which latter replaced by criminal code of 2004. Besides, the 1960 commercial law of Ethiopia also incorporated some provisions regarding unfair competitions.<sup>34</sup> Apart from these aforementioned general and old laws, there are some specific laws enacted in recent past years. These laws can be mentioned as; Proclamation No. 329/2003<sup>35</sup>, proclamation 685/2010<sup>36</sup>, and Proclamation

<sup>28</sup>Pablo MARTI ´N RODRI ´GUEZ, Safeguards in the World Trade Organization Ten Years After: A Dissociated State of the Law? *Journal of World Trade* 41(1), 2007, Kluwer Law International, Netherlands, P160

<sup>29</sup>supra note 1, P289

<sup>30</sup> WTO, Safeguard measures, available at [https://www.wto.org/english/tratop\\_e/safeg\\_e/safeint.htm](https://www.wto.org/english/tratop_e/safeg_e/safeint.htm), accessed on 25<sup>th</sup> Sep, 2020

<sup>31</sup>J.H.H. Weiler , Sungjoon Cho ,Isabel Feichtner and Julian Arato , INTERNATIONAL AND REGIONAL TRADE LAW: THE LAW OF THE WORLD TRADE ORGANIZATION, J.H.H. Weiler, S. Cho, I. Feichtner& J. Arato 2016, P6

<sup>32</sup>E. N. Stebek, Consumer Protection Law in Ethiopia: The Normative Regime and the Way Forward, *Journal of Consumer Policy*, Volume 41, P, 309–332 (2018). <https://doi.org/10.1007/s10603-018-9389-9>

<sup>33</sup> ibid

<sup>34</sup> See article 133 of the 1690 commercial code of Ethiopia

<sup>35</sup>Trade Practice **Proclamation** No. 329/2003

<sup>36</sup>Trade practice and consumers’ protection proclamation 685/2010

No. 813/2013<sup>37</sup>. As all the previous proclamations are amended, the current working laws regarding the trade competition and consumer protection is Proclamation No. 813/2013.

Regardless of all these laws which are designed to regulate trade competition and consumer protection, no space is given to incorporate laws regulating trade remedy issues. The single legal provision that was remarkably incorporated to regulate the issue of Dumping and Anti-dumping measure was article 10 under proclamation no. 329/2003. Article 10:Sub article 2 (h), clearly states that “The importation of any goods from any foreign country into Ethiopia at a price less than the actual market price or wholesale price of such goods in the principal markets of the country of their production with the intent to destroy or injure the production of such goods in Ethiopia or to restrict or monopolize any part of trade in such goods”.....is deemed to be unfair competition and prohibited. Regardless of its importance to regulate the unfair trade practice related issue of dumping, the provision is amended by subsequent proclamation (proclamation number 813/2013) and hence it is not currently working provision in the country.

What is essential to mention is, due to unjustified reason, the recent new proclamation enacted to regulate trade competition and consumer protection is intentionally removed the provision dealing with trade remedy even without substituting other further substantive and procedural laws that are ready to regulate unfair international trade practices. As a result, Currently in Ethiopia there is no a single comprehensive provision that are incorporated under trade competition and consumer protection laws which are deemed to regulate unfair international trade practices (such as dumping, increased imports and the issues of import surge).

#### **4(2). CUSTOM PROCLAMATION NO.859/2014**

As seen from the preamble, and article five, the proclamation<sup>38</sup> has set objectives which are to have an expedient and modernized customs legal framework and ultimately help the development of the investment and manufacturing industries in one hand help facilitating the smooth flow of international trade. Having these important economic objectives, the proclamation with 182 articles is divided in to eight parts. The first part talks about general issues (definition and scopes of application). The second and third part of the proclamation consecutively deals about Principles of customs operation customs procedure. The fourth fifth part talks about custom duties and taxes and obligation related to customs operations. From part six to the final part administrative issues regarding customs control and law enforcement as well as the offences related to custom and its application provisions are discussed. Even though, amendment<sup>39</sup> was made in 2019, in order to incorporate essential issues, nothing new was added regarding the issues of dumping, subsidized imports and import surge.

When we go through the whole provisions, the proclamation deals regarding where the export and import originates and where would be their destination. It also allows customs authority to check whether the importer has an authorized license to do the trade. Apart from that, it set banning rules regarding some identified goods which are prohibited to be imported to the country due to public health issue, environmental standards, public morality, as well as security reasons unless approved by Ministry of Health and other concerned organs of the country. Except for these reasons, there is no room in the proclamation which prohibits import of dumped or subsidized goods.

Important provisions; Article 89(2) and 90(1) of the proclamation dealing about determination of dutiable and transaction value of the goods failed to incorporate the controlling mechanism about goods dumped and other types of unfair trade. Article 89 (2) states that ....”The dutiable value for imported goods shall be the actual total cost of the goods up to the 1<sup>st</sup> entry point to the customs territory of Ethiopia, whereas, Article 90(1) states that The transaction value of the imported goods shall be the transaction value that is actually paid or payable for the goods when sold for export to Ethiopia. These provisions which are set to deal with the dutiable and transaction value of the imported goods are clearly failed to regulate those items imported below the manufactured cost (Dumping price) as well as subsidized imports.

## **V. CONCLUSION**

The gamut of the existing Ethiopian trade laws have to come with a number of improvements which take in to account the incorporation of trade remedy measures which are specific, more technical and flexible with changing environment as well as in line with the targeted economic goals of the country. As we have seen in the aforementioned discussions, several countries in the world (developed, developing and poor) had enacted relatively well organized trade remedy laws even before they came to be the member to the WTO. However,

<sup>37</sup> Trade Competition and Consumers Protection Proclamation No. 813/2013

<sup>38</sup> Proclamation No.859/2014, available at <file:///C:/Users/Dell/Desktop/Customs-ProclamationNo.%20859-2014%20ETH.pdf>, accessed on 22/09/2020

<sup>39</sup> Amendment proclamation No.1160/2019, available at [file:///C:/Users/Dell/Desktop/customs-amendment-proclamation-1160\\_2011.pdf](file:///C:/Users/Dell/Desktop/customs-amendment-proclamation-1160_2011.pdf), accessed on 22/09/2020

right after their membership to WTO, they had seen easily adopting their domestic laws in line with the principles and obligations of WTO. Their prior experience undoubtedly helped them to easily cope up with stringent substantive and procedural norms of the WTO.

So far, Ethiopia is not a member to WTO. However, that does not mean that Ethiopia doesn't engage in international trade, rather, it is to mean that since the country is not a member to WTO, the norms of WTO regulating world trade issues are not applicable under Ethiopian circumstances. From the foregoing discussions, it is evident that Ethiopia has no comprehensive international trade remedy laws. In a country where there is no comprehensive law and policies that are designed to regulate unfair international trade practices such as subsidized imports, dumping and import surges, it would be easy to imagine how much the degree of the problem would be. Meaning, it is clearly difficult to apply appropriate measures to regulate the potential injury which dumped and subsidised imports would cause to the Ethiopian domestic industries mainly to the infant textile and apparel industries (As this sector is considered as a priority sector under industrial policy of the country). Therefore, Ethiopia has to revisit her trade and competition laws in order to incorporate trade remedy measures.

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