

Challenges and Opportunities of Consumer Protection in the WTO Legal Framework: Implications for Ethiopia's Accession

Saleamlak Yemane[★]

Abstract

Consumer protection is a key aspect of modern economies that safeguards consumer rights against unfair practices and unsafe products, especially in the context of global business interactions. The World Trade Organization (WTO), widely charged with such responsibilities, has been criticized for being overly producer-centered. This paper examines such challenges of the consumer protection regulatory framework of the WTO, particularly targeting consumer protection provisions such as the General Agreement on Tariffs and Trade (GATT), the Agreement on Technical Barriers to Trade (TBT), and the Agreement on Sanitary and Phytosanitary Measures (SPS). In light of the examinations of these provisions, the paper critically assesses Ethiopia's legal and institutional capacity to implement these rules, considering its limited resources and infrastructure. Through qualitative analysis and an exploratory review of literature, and Ethiopia's trade-related laws, the paper found out that while the WTO offers some consumer protection mechanisms, they are often vague and impose stringent procedural requirements, which are difficult to fulfill for developing countries like Ethiopia. Finally, the paper concludes by offering policy recommendations for Ethiopia, emphasizing the need for a stronger legal and institutional framework, enhanced technical expertise, and effective dispute resolution mechanisms to ensure that

[★]LL.B, LL.M, Lecturer of Law, School of Law, Wollo University.
saleamlaky86@gmail.com

trade liberalization benefits do not come at the expense of consumer welfare.

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Introduction

The World Trade Organization (WTO) is a global, member-based institution that governs the international trading systems. It is responsible for overseeing and regulating interstate trade relations, including consumer protection.¹ Consumer protection has become one of the major subjects taking the center stage in modern economic systems involving multifaceted interactions and actors.² As countries increasingly open their markets and engage in cross-border commerce, the need for robust consumer protection frameworks has become a necessity for many states. Consumer protection laws are designed to ensure that individuals are safeguarded from harmful products, deceptive practices, and unfair competition while promoting transparency, trust, and fairness in the marketplace.³ Further, they are meant to promote economic efficiency, consumer confidence, and social justice. Without such safeguards, consumers may be exposed to

¹ Alan M. Rugman & Gavin Boyd (eds.), *The World Trade Organization in the New Global Economy: Trade and Investment Issues in the Millennium Round* (Routledge 2001), p. 2 [hereinafter Alan M. Rugman & Gavin Boyd, *The World Trade Organization in the New Global Economy*.]

² Wilkinson, Richard, *The Role of Consumer Protection in a Globalized Economy* (Oxford Univ. Press 2012), p. 6.

³ Lim, H. K., & Choi, S. H. (2006). The WTO and the Protection of Consumer Interests: An Overview of Trade and Consumer Protection Measures. *Journal of International Economic Law*, 9(3), pp. 405-426.

substandard goods, environmental hazards, or exploitation by powerful market players, leading to potential market failures.⁴

While the free market is a defining feature of modern business transactions and is often seen as the most efficient mechanism for allocating resources, it does not always address the interests of consumers adequately.⁵ This is especially true where citizens are affected by negligent or deliberate supply of harmful products or services and where consumers have to bear the consequences of such goods and services. In such cases, government intervention becomes necessary to address market imbalances, set safety standards, and ensure that consumers have access to accurate information. Such moves also play a crucial role in promoting sustainable development by addressing issues related to environmental impacts, health concerns, and ethical production practices.⁶

At the international level, institutions such as the World Trade Organization (WTO) have established frameworks for regulating trade while recognizing the right of nations to implement measures to protect consumer welfare. The WTO's agreements, such as the Agreement on Technical Barriers to Trade (TBT) and the Sanitary and Phytosanitary (SPS) measures, provide member countries with the flexibility to introduce regulations that address consumer safety, health standards, and environmental concerns without unnecessarily restricting

⁴ *Ibid.*

⁵ John Goldring, *Consumer Protection, Globalization and Democracy*, (1998) Macquarie Law Journal, Vol. 8 (2008), Available at <http://classic.austlii.edu.au/au/journals/MqLawJl/2008/6.pdf>. Last accessed on 12 May 2024.

⁶ UNCTAD, *Manual on Consumer Protection 2* (2018), Available at <https://unctad.org/webflyer/manual-consumer-protection> last accessed on May 12, 2024 [herein after UNCTAD, *Manual on Consumer Protection*].

international trade.⁷ However, aligning national consumer protection policies with international trade rules can be challenging, particularly for developing countries like Ethiopia. As Ethiopia seeks to accede to the WTO, it faces the task of harmonizing its domestic consumer protection measures with global trade obligations.⁸ This balancing move represents both a challenge and an opportunity for Ethiopia as it navigates the complexities of international trade and domestic regulatory priorities.⁹

This paper examines the regulatory framework of consumer protection within the World Trade Organization (WTO) and analyzes how Ethiopia's regulatory framework aligns with WTO standards. It further explores Ethiopia's capacity to address existing gaps in consumer protection and the challenges it faces in meeting international trade obligations. The contents of the investigation are organized into four sections. In the first section, it revisits and discusses the major consumer's right in the globalized market with a special emphasis on the Ethiopian consumer protection laws. This is followed by an exploration of the regulatory schemes of consumer protection in the WTO regimes. This part examines the opportunities and challenges of the WTO system from the viewpoint of consumer protection. Finally, the paper presents concluding remarks and suggests the implication of the WTO system for the Ethiopian accession moves.

⁷ *Ibid.*

⁸ M. Melaku, Ethiopia's Accession to the World Trade Organization: Challenges and Opportunities for Development. *Journal of World Trade*, Vol.45, No.1, (2011), pp. 123-145.

⁹ *Ibid.*

1. Consumers' Rights in the Globalized Market: A Comparative Analysis of Ethiopia's Legal Framework in Light of the UN Guideline

Consumers today face numerous challenges, both in national and international markets. These challenges include issues such as adulteration of goods, inaccurate weights and measures, misleading advertisements, and hoarding, all of which are frequently observed in many economies.¹⁰ Studies shows that more than half of consumers (55%) in the world experienced at least one of these challenges in the past year, often related to poor product quality or services not matching their descriptions. Surprisingly, almost half of those affected (46%) did not take any action against the traders responsible.¹¹ Following these rising challenges, there is a growing movement to recognize consumer rights as part of broader human rights.

In consumer-oriented societies, protecting individual consumers is increasingly seen as a crucial mechanism for preserving human dignity, particularly against the influence of large business organizations.¹² In light of this, numerous international and national frameworks currently assert the need to acknowledge consumer rights as part and parcel of fundamental human rights. Fundamental consumer rights are enshrined

¹⁰ Joseph E. Stieglitz, *Globalization and Its Discontents* (W.W. Norton & Co. 2002) available at https://www.researchgate.net/publication/4755241_Joseph_E_Stiglitz_2002_Globalization_and_Its_Discontents last accessed on 20 April 2024

¹¹ Key findings about problems consumers face in the collaborative economy, available at https://ec.europa.eu/info/sites/default/files/key_findings_about_problems_consumer_s_face_in_the_collaborative_economy.pdf. Last accessed on 12 April 2022.

¹² Irene Benöhr & Hans-W. Micklitz, Consumer Protection and Human Rights, in *Handbook of Research on International Consumer Law* 16, pp.16-34 (Geraint Howells, Ian Ramsay & Thomas Wilhelmsson (eds.), Edward Elgar 2010).

in both international instruments and national laws, marking significant progress in consumer protection.¹³

The United Nations set a key milestone in consumer protection law in 1985, when the General Assembly adopted the UNGCP, establishing for the first time a set of international consumer law principles. These principles now guide national consumer protection laws, setting minimum standards. As the global trade landscape evolves and consumers face new challenges, the UNGCP has been revised—first in 1999 and again in 2015—introducing provisions that address emerging concerns and provide a more comprehensive approach to consumer protection.¹⁴ The next sections explore the minimum consumer rights recognized in the global trading system, as outlined by the UN Guidelines for Consumer Protection (UNGCP), and analyze Ethiopia's consumer protection laws, comparing them with international best practices.

1.1. The Right to Access and Selection of Products

Economic interconnectedness has led to an increased diversity of goods and services, providing consumers with more options and better market access.¹⁵ The availability of a wide range of products is a fundamental right of consumers, as recognized by the UN Guidelines for Consumer

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ David Bigman, *Globalization and the Least Developed Countries: Potential and Pitfalls* 34 (Cambridge University Press, 2007). Available at <https://www.cabidigitallibrary.org/doi/book/10.1079/9781845933081.0000>. Last accessed on 20 April 2024.

Protection.¹⁶ Consumers have the freedom to choose products and services based on their needs and preferences, provided they fulfill their obligations to sellers. However, various anti-consumer practices undermine this right in varying ways, such as Tie-in sales, hoarding, and other forms of violations. In a tie-in sale, a consumer is required to purchase a product (the “tied goods”) only if they agree to buy another product (the “tying good”) from the same seller.¹⁷ While the tying product may be the consumer's primary choice, the imposition of the tied good limits their freedom to select the products they truly want.¹⁸ Similarly, hoarding creates artificial scarcity, raising prices and limiting the availability of products. This can lead to shadow market practices, where hoarded goods are sold at inflated prices. Both practices restrict consumers' ability to freely access and select products in the marketplace.

The UN Guidelines on Consumer Protection advocate for an environment where consumers can exercise their right to access goods and services and make independent product selections.¹⁹ States are encouraged to adopt regulations that support consumer choice and protect them from such exploitative practices. In Ethiopia, the right to access and select products is similarly recognized within the legal

¹⁶ UN Guideline on Consumer Protection (2015), A/RES/70/186, Available at https://unctad.org/system/files/official-document/ares70d186_en.pdf. Last accessed on 12 April 2022.

¹⁷ Liebowitz, S J, 1983. “Tie-In Sales and Price Discrimination”, Economic Inquiry, Western Economic Association International, Vol. 21(3), available at <https://www.proquest.com/openview/> Last accessed on 12 April 2024.

¹⁸ *Ibid.*

¹⁹ United Nations, *United Nations Guidelines for Consumer Protection* (1985), G.A. Res. 39/248, U.N. Doc. A/RES/39/248, Available at <https://documents.un.org/doc/resolution/gen/nr0/462/25/pdf/nr046225.pdf>. Last accessed on 12 April 2024.

framework.²⁰ The Ethiopian Consumer Protection Law guarantees this right in two key ways. First, it expressly acknowledges consumers' right to freely choose goods and services without being forced to purchase additional products during the bargaining process.²¹ This freedom to choose is a fundamental part of consumer protection.

It is, however, commonly observed that some traders try to pressure consumers by linking product choice to price negotiations. This is often the first step in coercive sales tactics, which limits consumers' freedom to make independent decisions.²² Secondly, Ethiopian law addresses anti-consumer practices, such as hoarding and tie-in sales, through its competition and consumer protection regulations. For instance, the law prohibits the diversion of essential goods and the use of tying arrangements, ensuring that consumers are not forced into unfavorable purchasing decisions. These provisions align with international standards by fostering an environment where consumers can access goods and services based on their own interests and preferences.

1.2. Consumer Information and Education

The concepts of consumer information and consumer education are often closely linked in academic literature, though they have distinct meanings. According to the UN Guidelines for Consumer Protection, consumer education refers to the process of gaining the knowledge and skills to manage consumer resources and taking steps to increase the competence of consumer decision-making. It focuses on the

²⁰ Trade Competition and Consumer Protection, Proclamation No. 813/2013, *Federal Negarit Gazeta* (2013), 20thYear No.28. Art.14 (2) [hereinafter Trade Competition and Consumer Protection, Proclamation No.813/2013].

²¹ *Ibid.*

²² *Id.*, Art. 22(17).

development of understanding and skills and the gaining of knowledge. Consumer information, on the other hand, refers to the provision of data relating to a particular product or transaction to enable decision-making concerning the purchase.²³

Consumer education is essential for enabling consumers to exercise their right to information. It builds their ability to evaluate and interpret basic information about goods and services. Sufficient access to reliable information is a cornerstone of a well-functioning market and is widely recognized in the business world.²⁴ Consumers need objective and impartial information to make informed decisions that align with their interests, be it regarding price, quality, or other product attributes.²⁵ Such information directly enhances consumer welfare by facilitating better choices. Various methods are used to make information available to consumers.²⁶ These include advertising and promotional campaigns, media reporting, product labeling, online reviews, e-commerce platforms, personal experiences, and word-of-mouth from other users. While many of the mechanisms are used with some level of requirements in Ethiopia, labeling requirements are more detailed and comprehensive, mandating information such as the product's name, country of manufacture, net weight, volume, safety measures, quality indicators, expiry dates, and other technical specifications.²⁷ Additionally, the law prohibits false and misleading advertising that

²³ UNCTAD, Manual on Consumer Protection, *supra* note 6, p. 72.

²⁴ Howard Beales, Richard Craswell and Steven C. Salop, *The Efficient Regulation of Consumer Information*, the Journal of Law & Economics, Dec., 1981, Vol. 24, No.3 P. 492. Available at <https://chicagounbound.uchicago.edu/jle/vol24/iss3/10/> Last accessed on 15 April 2024

²⁵ UNCTAD, Manual on Consumer Protection, *supra* note 6, p. 73.

²⁶ Howard Beales, Richard Craswell, and Steven C. Salop, *supra* note 24, p. 493.

²⁷ Trade competition and consumer protection, Proclamation No. 813/2013, *supra* note 20, Art. 16.

could compromise consumer information, thereby safeguarding the integrity of the market place.²⁸

1.3. The Right to Safety and Product Liability

Product safety and product liability are two closely interconnected consumer rights. Traders have a fundamental obligation to provide consumers with safe and healthy products. As international trade policies and instruments evolve, there is growing emphasis on ensuring product quality and safety.²⁹ The UN Guidelines for Consumer Protection also highlight the importance of product safety, urging states to establish facilities for testing and certifying the safety, quality, and performance of consumer goods.³⁰ This right is referred to as the right to safety, which guarantees that consumers are protected from goods and services posing risks to life, health, and property. The right to safety has been recognized as a fundamental human right and is central to the Montreal Declaration, which calls for the protection of consumers against unsafe products.³¹

Despite these efforts, unsafe products are still prevalent in the market for several reasons. The expansion of international markets and increased product exports has often led to a simultaneous rise in the risk of harm

²⁸ *Id.*, Art. 19.

²⁹ Global Panel on Agriculture and Food Systems for Nutrition, *Rethinking trade policies to support healthier diets*, POLICY BRIEF No.13, Available at <https://www.glopan.org/wp-content/uploads/2020/02/Global-Panel-policy-brief-Rethinking-trade-policies-to-support-healthier-diets.pdf>. Last accessed on May 15, 2022. Recent shifts in global trade policy suggest that action in favor of sustainable food and nutrition systems could be feasible, and governments should move urgently to better align trade policies with their health and nutrition goals.

³⁰ UNCTAD, Manual on Consumer Protection, *supra* note 6, p. 61.

³¹ Jane Roseman, Declaring the Right to Safety: Advancing Health and Human Rights?, 6 MINDY HEALTH & HUM. (2003). pp. 171-174.

caused by such products. Consequently, it is essential to ensure that consumer safety is protected through effective regulatory mechanisms. There are several reasons why this protection is necessary:

1. **Complexity of Business Transactions:** As global markets evolve, products become more complex, and the risks associated with them increase. It is inevitable that some products will have inherent defects or safety hazards.³²
2. **Consumer Uncertainty:** Consumers are often unable to anticipate risks, especially when it comes to new products that may not yet have been fully tested or understood.³³
3. **Protection against Unsafe Imports:** Economic globalization increases the likelihood of unsafe or substandard products entering markets, especially in developing countries, which may become dumping grounds for harmful goods.³⁴

In Ethiopia, the Consumer Protection Law provides for both the right to safety and product liability in close alignment with international standards.³⁵ Although the law does not explicitly mention the right to safety, it implicitly guarantees it by prohibiting traders from offering defective products. Specifically, traders are barred from selling goods that do not meet established safety standards, and they are forbidden from marketing products that pose a risk to human health or safety. Products must be free from deficiencies such as substandard quality, contamination, expiration, or adulteration. Ethiopian law further

³² UNCTAD, Manual on Consumer Protection, *supra* note 6, pp. 61-62.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Trade competition and consumer protection, Proclamation No. 813/2013, *supra* note 20, Arts. 14(5), 20, and 22(10)(11).

empowers consumers by giving them the right to report defective products to the relevant authorities, such as the Trade Bureau or Consumer Protection Authority, particularly if a product endangers their safety. Despite these legislative moves on consumer protections, challenges persist. A 2020 report from the Ethiopian Food and Drug Authority revealed that it had seized products worth 6.4 million birr, including adulterated butter and honey, over the course of just six months.³⁶ Furthermore, dangerous products, such as those with expired dates or hazardous chemicals, continue to enter the local market from both domestic producers and international traders.

1.4. Availability of Consumer Dispute Resolution and Redress

Disputes are an inherent part of business transactions. As global trade interactions continue to grow, the types, number and manifestations of disputes increase over the last decades. This makes imperative for many governments and international institutions to devise dispute resolution mechanisms. The availability of such mechanisms is crucial, very generally, to redress conflicts of interests among consumers and other parties, enable consumers to have fair and efficient redress for any harm or losses incurred, and to obtain appropriate compensation without facing excessive costs, delays, or burdens.³⁷

³⁶ Authority Seizes Adulterated Food Items, Addis Fortune newspaper, Available at <https://addisfortune.news/authority-seizes-adulterated-food-items/>. Last accessed on February 22, 2020. Although food adulteration has been criminalized under Art. 527 of the Ethiopian Criminal Code, it remains a serious problem in Ethiopia.

³⁷ OECD (2005-04-19), "OECD Workshop on Consumer Dispute Resolution and Redress in the Global Marketplace: Background Report," available at <https://www.oecd.org/fr/publications.html> Last accessed on 12 April 2024.

To this effect, different dispute resolution mechanisms such as court litigation, Alternative Dispute Resolution (ADR), consumer associations, consumer protection boards, ombudsmen, and business customer service centers emerged over the last hundred years.³⁸ As they come into use in the same period, these mechanisms play a substantial role in addressing consumer grievances though their accessibility and effectiveness vary depending on the circumstances and the nature of the dispute. For instance, court litigation, although a formal route, often presents significant challenges for consumers. Litigation can be expensive, time-consuming, and complex, especially for those without legal expertise. In many cases, the cost and duration of legal proceedings can outweigh the value of the dispute, making it an impractical option for many consumers.³⁹

Courts can also handle collective actions, where consumer associations represent the interests of a group of consumers facing similar issues. However, collective actions are not commonly practiced in Ethiopia, as consumer associations are not formally recognized under Ethiopian law to address consumer abuses in a collective manner. Yet the Ethiopian civil society proclamation has some loopholes for the establishment of associations.⁴⁰ Although the CSO law is a step forward in terms of overall freedom for civil society organizations, Ethiopia still lacks a robust consumer protection framework that would allow consumer associations to directly intervene in issues of consumer abuse. Consumer groups face challenges in building the capacity needed to effectively challenge businesses and governmental entities in favor of consumer rights.

³⁸ UNCTAD, Manual on Consumer Protection, *supra* note 6, p. 83.

³⁹ *Ibid.*

⁴⁰ Organizations of Civil Societies Proclamation, 2019, *Federal Negarit Gazzeta*, Proc. No. 113, 25th year, No. 33.

In Ethiopia, Alternative Dispute Resolution (ADR) mechanisms, such as arbitration and mediation is an alternative to court litigation. However, under the current Ethiopian Arbitration and Conciliation Proclamation, consumer protection issues are excluded from the scope of arbitrable matters.⁴¹ This means that consumers cannot submit their disputes to arbitration or conciliation processes, limiting their access to these potentially quicker and less expensive alternatives. As a result, consumers are left with fewer options for resolving disputes efficiently and without incurring substantial costs. The exclusion of consumer disputes from the scope of arbitration under Ethiopian law is likely intended to protect consumers, ensuring they have access to a more transparent and equitable legal process in court. It reflects broader consumer protection principles and access to justice while also addressing concerns about the potential inequalities inherent in arbitration processes.

However, the international experience, including the practices in African countries like South Africa and Nigeria, considers consumer disputes as arbitrable.⁴² The ongoing legal reforms in many African countries may eventually lead to more rigorous approaches that introduce specialized arbitration systems for consumer disputes. The South African and Nigerian experiences allow for arbitration in consumer disputes, but consumer protection laws prioritize the role of regulatory bodies to handle issues related to consumer rights and disputes.⁴³ Moreover, many

⁴¹ Arbitration and Conciliation, Working Procedure Proclamation No. 1237/2021, *Federal Negarit Gazette*, 27th Year No. 21, Art.7(8).

⁴² Akinwumi Olawuyi Ogunranti, *Separating the Wheat from the Chaff: Delimiting Public Policy Influence on the Arbitrability of Disputes in Africa* (2019), available at https://digitalcommons.schulichlaw.dal.ca/scholarly_works/534/ Last accessed on 24 April 2024.

⁴³ *Ibid.*

countries in Africa, such as Ghana and Kenya, rather than totally excluding the matters from the ADR mechanisms, rely heavily on consumer protection agencies to handle disputes. These agencies are designed to offer accessible and affordable mechanisms for addressing consumer grievances.⁴⁴

2. Regulatory Schemes for Consumer Protection under the WTO Regime

One of the major benefits of WTO membership is the ability to secure lower tariffs and guaranteed market access through trade policy commitments.⁴⁵ However, membership also requires careful consideration of how consumer interests and protective regulatory schemes are addressed in the context of global trade. While the WTO does not have a comprehensive or explicit framework for consumer protection, it does contain provisions that touch on aspects of consumer welfare, though these are limited and often ambiguous.⁴⁶ There is no clear, overarching reference to consumer rights in the main WTO agreements. Instead, consumer interests are addressed in fragmented provisions such as:

- The General Agreement on Tariffs and Trade (GATT),
- The Agreement on Technical Barriers to Trade (TBT),

⁴⁴ *Ibid.*

⁴⁵ Kent Jones, *Who's Afraid of the WTO*, (Oxford University Press 2004), p.46, available at <https://global.oup.com/academic/product/whos-afraid-of-the-wto-9780195166163>. Last accessed on 12 April 2024.

⁴⁶ Ecologic-Institute for International European Environmental Policy (EIIIEP), *Consumer Interest and Sustainable Development in international Trade Law*, (2007), P. 8, available at <https://www.ecologic.eu/>. Last accessed on 12 may 2022).

- The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), and
- The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

These agreements refer to consumer interests in indirect ways, often with stringent preconditions for invoking consumer protections. For example, the TBT and SPS agreements focus on the technical and health standards of goods traded across borders, while TRIPS deals with intellectual property rights that can impact consumer access to certain products, such as medicines. However, the WTO framework often overlooks the relationship between trade liberalization and the protection of consumer rights.

In many instances, the liberalization of trade is prioritized over ensuring consumer safety and welfare.⁴⁷ This creates a challenge, especially for developing countries, where consumer protection standards may be weaker or less enforced and where trade policies can have disproportionate effects on vulnerable populations. This section will explore both the opportunities that exist within the WTO for consumer protection and the challenges faced by developing nations in safeguarding consumer interests in a liberalized global market.

⁴⁷ Kent Jones, *Who's Afraid of the WTO*, *supra* note 46.

2.1. Opportunities for Consumer Protection under the WTO Agreement

Protecting consumers' interests, though primarily a domestic concern, faces increasing challenges in the era of free trade and economic globalization.⁴⁸ However, this does not mean that the WTO legal framework completely overlooks consumer protection rights. As outlined earlier, consumer interests generally encompass rights such as access to reliable and accurate information about products, ensuring product safety (particularly protecting consumers' health and life), and ensuring product availability at fair prices.⁴⁹ This section examines the various WTO provisions that can help support consumer protection frameworks to this effect.

2.1.1. Conveying Truthful Information to Consumers within WTO Regimes

Consumers have the right to be informed about the quality, content, price, and quantity of goods, among other attributes, to make informed purchasing decisions. Several WTO agreements regulate the information that must be conveyed to consumers, though they do not explicitly require states to mandatorily provide such information.⁵⁰ Instead, these agreements offer an enabling framework for states to set domestic standards. For example, the TBT Agreement, the most relevant of all these instruments, explicitly endorses the prevention of deceptive practices in its preamble, recognizing that such practices can harm

⁴⁸ Sonia E. Rolland, 'Are Consumer-Oriented Rules the New Frontier of Trade Liberalization', (2014) *Harvard International Law Journal* Vol. 55, No. 2, p. 361-419 [Hereinafter Sonia E. Rolland].

⁴⁹ *Id.*, p. 376.

⁵⁰ UNCTAD, *Manual on Consumer Protection*, *supra* note 6, p. 73.

consumers.⁵¹ The TBT agreement acknowledges that the prevention of deceptive practices is a legitimate objective for adopting domestic technical regulations. These regulations are crucial as they set out the standards, technical specifications, and conformity assessment procedures that define the characteristics of goods, including labeling, packaging, and production processes—all of which help convey truthful information to consumers.⁵²

The WTO principles of national treatment and most-favored-nation (MFN) treatment also play a role in this respect. States must apply their technical regulations to both domestic and imported products in a non-discriminatory manner.⁵³ According to Article 12 of the TBT Agreement, developing countries are given special and differential treatment, although they are still required to comply with the core provisions of the agreement.⁵⁴ In addition to the TBT Agreement, the GATT and TRIPS also regulate consumer information. Under GATT Article IX (Rules of Origin), consumers are protected from misleading indications regarding the origin of goods, while TRIPS includes provisions on geographical indications, ensuring that consumers are not misled about the origin of a product.⁵⁵ As Sonia E. Rolland notes, TRIPS explicitly addresses the prevention of misleading geographical

⁵¹ Marrakesh Agreement Establishing the World Trade Organization 1868 UNTS 120 (opened for signature 15 April 1994, entered into force 1 January 1995) Annex 1A: Agreement on Technical Barriers to Trade [TBT Agreement, hereinafter, the TBT agreement].

⁵² To clarify key terms: technical regulations are mandatory, while standards are voluntary. Conformity assessment procedures are used to determine whether a product complies with a technical regulation or standard. This distinction allows domestic regulatory schemes to ensure that consumers receive truthful information about products in the marketplace.

⁵³ Agreement on Technical Barriers to Trade, *supra* note 51, Art. 2.

⁵⁴ *Id.*, Art. 12.

⁵⁵ Sonia E. Rolland, *supra* note 49, p. 376.

indications, reinforcing the role of information in consumer protection.⁵⁶ In cases like EC–Trademarks/GIs, the WTO’s Appellate Body has affirmed that consumers have a legitimate interest in distinguishing between goods and avoiding confusion, particularly in the context of trademarks and geographical indications.⁵⁷ This demonstrates how labeling regulations under the WTO contribute to consumer protection by promoting truthful information.

2.1.2. Consumers’ Health and Safety Rights in the WTO Regime

One of the most fundamental consumer rights is the protection of health and safety through product safety standards. Both the SPS and TBT agreements offer frameworks that allow states to set health and safety standards for products.⁵⁸ Moreover, Article XX of GAAT provides an exception that allows members to take measures to protect public health (Article XX (b)) and the environment (Article XX(g)).⁵⁹ The SPS Agreement specifically addresses the protection of human health from risks associated with food safety, animal health, and plant health. However, it does not prescribe specific SPS measures; instead, it sets general procedural requirements, such as ensuring that such measures are scientifically justified. For instance, any SPS measure must be based

⁵⁶ *Id.*, p. 378

⁵⁷ Panel Report, *European Communities –Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs*, Complaint by the United States, ¶ 7.676, WT/DS174/R, DSR 2005:VIII, 3499 (Mar. 15, 2005) (adopted Apr. 20, 2005) [hereinafter *EC – Trademarks / GIs*].

⁵⁸ Sonia E. Rolland, *supra* note 49, p. 376.

⁵⁹ General Agreement on Tariffs and Trade, Oct. 30, 1947, as modified by General Agreement on Tariffs and Trade, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 33 I.L.M. 1125 (1994) Article XX:B (Hereinafter cited as General Agreement on Tariffs and Trade).

on scientific evidence and must be applied only to the extent necessary. In cases where there is a dispute regarding SPS measures, the WTO allows for the adoption of measures that are more stringent than international standards if they are scientifically justified.⁶⁰

GATT Article XX(b) also provides a basis for countries to take measures to protect human life and health from unsafe products.⁶¹ However, before such measures can be imposed, the country must demonstrate that they are necessary to protect human health and that they do not unjustifiably discriminate between countries with similar conditions.⁶² These stringent requirements often present challenges, especially for developing countries that may lack the resources to conduct the necessary scientific research. In many WTO cases, the application of SPS interpreted in light of GATT XX(b) and the Chapeau clause and measures devised to protect the consumer against physical risks from consumption have been permitted so long as it is necessary

⁶⁰ Kevin C. Kennedy, *Resolving International Sanitary and Phytosanitary Disputes in the WTO: Lessons and Future Directions*, 55 Food & Drug L.J. 81 (2000), pp. 83-84, and Agreement on the Application of Sanitary and Phytosanitary Measures, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, April 15, 1994. This SPS agreement under its Preamble set forth (“Desiring to improve the human health, animal health, and phytosanitary situation in all Members... Desiring the establishment of a multilateral framework of rules and disciplines to guide the development, adoption, and enforcement of sanitary and phytosanitary measures in order to minimize their negative effects on trade”).

⁶¹ General Agreement on Tariffs and Trade, *supra* note 60, Art. XX (b).

⁶² Rudiger Wolfrum, Peter Tobias Stoll and Anja Seibert-fohr (eds.), *WTO-Technical Barriers and SPS Measures*, (2007), pp. 64-67. The Chapeau formulates general limitations on the application of these measures, which in particular are meant to ensure that the application of a measure does not constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or constitutes a disguised restriction on international trade.

and scientifically justified.⁶³ The SPS Agreement encourages members to harmonize their SPS measures by adopting international standards,⁶⁴ guidelines, and recommendations developed by several international bodies.

The most notable standards and guidelines in this respect are the Codex Alimentarius Commission (Codex),⁶⁵ the International Office of Epizootics (OIE),⁶⁶ and the Secretariat of the International Plant Protection Convention (IPPC).⁶⁷ With a more committed intent to the desired, the agreement further affords that members can adopt more stringent standards if, based on scientific justification, the relevant

⁶³ Panel Report, *European Communities—Measures Concerning Meat and Meat Products (Hormones)*, WT/DS26/R, WT/DS48/R, as modified by Appellate Body Report, WT/DS26/AB/R, WT/DS48/AB/R (Aug. 18, 1997) (*adopted* Feb. 13, 1998) [hereinafter *EC—Hormones*] Panel Report, *European Community —Measures Affecting the Approval and Marketing of Biotech Products*, WT/DS291/R, WT/DS292/R, WT/DS293/R, as modified by Appellate Body Report, WT/DS291/AB/R, WT/DS292/AB/R, WT/DS293/AB/R (Sept. 29, 2006) (*adopted* Nov. 21, 2006) [hereinafter *EC—Biotech*].

⁶⁴ Kevin C. Kennedy, *supra* note 61, p. 85.

⁶⁵ UNCTAD Training Module on the WTO agreement on sanitary and phytosanitary measures UNCTAD/DITC/TNCD/2004/3 Available at https://unctad.org/system/files/official-document/ditctnecd20043_en.pdf. Last accessed on 12 March 2021.

The Codex Alimentarius Commission (CAC) is an intergovernmental body, established in 1963, under the co-sponsorship of two UN organizations: the World Health Organization (WHO) and the Food and Agriculture Organization (FAO). The CAC's primary mission is to administer the Joint WHO/FAO Food Standards Programme to protect the health of consumers and promote fair practices in the food trade.

⁶⁶ *Ibid.* Created in 1924, the International Office of Epizootics is an intergovernmental organization, based in Paris, engaged in the prevention and control of the spread of zoonoses (animal diseases).

⁶⁷ *Ibid.* The International Plant Protection Convention is a multilateral treaty that aims to secure common and effective action to prevent the spread and introduction of pests of plants and plant products and to promote appropriate measures for their control.

specified international standards fail to provide an adequate level of protection for the intended purposes.⁶⁸

2.1.3. Market Access, Pricing, and Product Selection Rights of Consumers in the WTO

One of the key goals of the WTO is to facilitate market access, which can benefit consumers by increasing the variety of goods and services available at more competitive prices.⁶⁹ The WTO's focus on reducing tariffs and eliminating trade barriers is intended to allow consumers access to a broader range of goods at lower prices, compared to a closed economy. The WTO agreements have set clear regulatory frameworks for prohibiting import quotas, reducing tariffs, and ensuring market access, all of which indirectly benefit consumers by increasing the availability of goods and services.⁷⁰ However, there is ongoing debate about whether trade liberalization actually benefits consumers. Some studies suggest that while developing countries that accede to the WTO experience increased trade, there is no clear empirical evidence linking WTO membership with significantly better trade patterns or consumer outcomes.⁷¹ Anti-dumping measures in the WTO also have mixed implications for consumers. Dumping—the practice of selling goods at lower prices in foreign markets than in the domestic market—can

⁶⁸ Kevin C. Kennedy, *supra* note 61, p. 85, and the SPS agreement Art. 3.3.

⁶⁹ Ecologic-Institute for International European Environmental Policy (EIIIEP) *supra* note 4, p. 7.

⁷⁰ General Agreement on Tariffs and Trade, *supra* note 60.

⁷¹ Andrew K. Rose Source, Do We Know That the WTO Increases Trade? The American Economic Review, Mar., 2004, Vol. 94, No. 1, (March 2004), pp. 98-114. A recent study shows in contrast with such a conclusion. On average, joining GATT or the WTO has led to about a 72% increase in the international trade of member countries relative to their domestic sales in our full dataset covering 178 trading partners over the period 1980-2016.

benefit consumers by providing access to cheaper goods.⁷² However, dumping can also pose risks to product quality and safety. The WTO Anti-dumping Agreement allows importing countries to take action if dumping causes harm to domestic producer. The dumping effect may be so insidious that it benefit consumers in the short term by lowering prices, yet this could harm consumer welfare in the long run, leading to substandard products entering the market and eventually creating predatory pricing.⁷³ Thus, the anti-dumping rules of the WTO allow more far-sighted actions against such harms.

2.2. Challenges of Protecting Consumers Rights in the WTO Legal Framework

It is not easy to benefit from the consumer protection exceptions of the WTO legal framework. Especially for developing countries, it demands a lot of work to get familiar with the WTO regimes and economic and human capacities. This journey may sometimes be accompanied by challenges requiring strategic moves to overcome it. The producer-centered WTO principles and the Stringent Procedures of Consumer Protection exceptions are the major regimes cited as sources of such challenges in this respect. The next section explores the challenges associated with the processes understanding and employing these principles of such regimes.

2.2.1. Producer-Centered Principles and Measures

⁷² Karolina Andersson and Carin Thuresson, *The Impact of an Anti-dumping Measure, A Study on EU Imports of Chinese Footwear*, April 2008, p. 6. Available at <https://www.diva-portal.org/smash/get/diva2:3772/FULLTEXT01.pdf>. Last accessed on 12 April 2022.

⁷³ P.K. Mathew Tharakan, *Market structure and competition policy*, Cambridge University Press (2000), pp. 1-3.

Three notable principles of the WTO, namely the most-favored-nation (MFN) treatment obligation and the national treatment obligation⁷⁴ and eliminating discrimination are the other set of relevant, yet complex principles requiring conscientious examination to figure out the underlying intentions of the WTO to protect consumers. The most-favored-nation treatment concerns any advantages granted by any member concerning customs duties, other charges on imports and exports, and other customs matters, internal taxes, and internal regulations affecting the sale, distribution, and use of products should equally apply.⁷⁵ More specifically, MFN prohibits unfavorable discrimination between similar products or services from different producing countries.

Hence, the MFN treatment obligation requires that any privileges granted by a member to any product from or for another country be granted to all like products (goods and services) from or for all other Members.⁷⁶ In the case of national treatment, however, the principle prohibits members from treating imported products less favorably than alike domestic products once the imported product (goods and services) has entered the domestic market.

In contrast to producers' interest in the WTO regime, producers or sellers are not restricted from discriminating between domestic and foreign consumers to extract higher profits.⁷⁷ These consumer issues are typically not articulated as trade concerns but they are consumer-

⁷⁴ Peter Van den Bossche, *The Law and Policy of the World Trade Organization Text, Cases and Materials*, Cambridge University Press, (2005) p. 308.

⁷⁵ *Id.*, p. 312.

⁷⁶ Art. I of the GATT 1994 and Art. II:1 of the GATS recognized the MFN principles of WTO, which mainly concerned protecting the interests of producers.

⁷⁷ Sonia E. Rolland, *supra* note 49, p. 376.

oriented trade barriers that the producer-oriented regime is not capturing in both national and MFN treatment. Moreover, producer-centeredness also transpires from trade remedies like safeguards, anti-dumping, and countervailing duties, all of which aim to protect mainly domestic producers from certain types of competition.⁷⁸ Consumers, on the other hand, might have welcomed cheaper foreign goods now made more expensive by the imposition of such duties.⁷⁹ It becomes a barrier to market access and product selection privileges of consumers. This directly or indirectly shows consumers, as a segment in the market, have little weight in the interpretation of WTO legal frameworks.

2.2.2. The Stringent Nature of the Consumer Protection Exceptions in the WTO

The WTO legal framework has some exceptions for consumers' interests. Such major exceptions have a prerequisite that becomes more onerous to developing countries from the viewpoints of human resources and technological advancements. Among others, Article XX of the GATT provides for human health and life exceptions that require stringent two-tier tests. Firstly, it requires scientific justifications for the policy objectives provided in the exception clause. Accordingly, the importing state should assure the objective of protecting human health and life as a policy goal, and they are duty-bound to prove the adverse effect of the products on consumers' health and life through scientific justifications.

Apart from the stipulation in this regime of the WTO, scientific evidence and expert reports that show the adverse effect of products on

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

human health and life are a prerequisite for the state to benefit from this exception. It is predictable to understand the task of proving the impact of products in scientific ways, especially for developing countries like Ethiopia. International costs for such purposes are beyond the nation's capacity. Unless a nation proves the adverse effect in scientific ways, it becomes a disguised means for the international trading system.

The second element of the test under Article XX(b) is the 'necessity' requirement, which is more problematic to apply. Illustrating this test, the *Thailand –cigarettes* case shows that within the meaning of Article XX(b), only in cases where no alternative measure are available for GATT's consistent or less inconsistent treatment, and where a member could reasonably be expected to employ to achieve the public health or life objective pursued.⁸⁰ Further, the necessity tests as a precondition to employ the alternative measures, requires countries to have the required manpower and economic capacity to attain the desired ends. Hence, there may be alternative methods to avert the challenge in the eyes of the exporting country, assuming that the exporting state is more economically strong than importing nations. This would later have confirmation in the WTO panels. It also requires the same degree of conditions in the case of SPS measures.⁸¹ SPS measures must be applied only to the extent necessary, based on scientific principles, and must not be maintained without sufficient scientific evidence not to become a barrier to the international trading system.⁸² The SPS Agreement also identifies specific criteria to be used in evaluating the assessment of risk

⁸⁰ Thailand—Customs and Fiscal Measures on Cigarettes from the Philippines, Available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds371_e.htm. Last accessed on 12 April 2022.

⁸¹ Kevin C. Kennedy, *supra* note 61, pp. 83-85.

⁸² *Id.*, p. 84.

to the human, animal, or plant life or health in five parameters: 1) available scientific evidence; 2) inspection, testing, and sampling techniques; 3) relevant ecological and environmental conditions; 4) the existence of pest- or disease-free areas; and 5) production processes and methods.⁸³ All these conditions require efficient state machinery both in institutional and human resources capacity as well as financial capability of trading nations.

3. Concluding Remarks and Implications for Ethiopia's WTO Accession

The establishment of a robust consumer protection framework is critical in the context of global trade. While the WTO has been criticized for focusing predominantly on producer interests, often overlooking consumer rights, its regulatory schemes still provide opportunities for protecting consumer interests, albeit in a manner that may be less feasible for developing countries like Ethiopia. Particularly, despite these challenges, consumers' rights—including access to information, product safety, and dispute resolution—are recognized globally and incorporated into Ethiopia's legal framework. Ethiopia's path to WTO membership should ensure that consumer protection remains central in the process of trade liberalization. While adhering to the WTO principles, Ethiopia must balance these global obligations with the protection of national consumer interests. Particularly, the evidence from the study suggests, as part of Ethiopia's move to WTO accession, the need for:

1. Development of a Comprehensive Consumer Protection Framework: Ethiopia should work towards creating a more

⁸³ *Ibid.*

comprehensive and clearer consumer protection framework, both domestically and within the context of WTO agreements. While the WTO agreements offer some consumer protection provisions (like those in the GATT, TBT, and SPS), they tend to focus more on facilitating trade rather than protecting consumers. Ethiopia's accession process can serve as an opportunity to harmonize national consumer protection laws with WTO rules, but also to push for clearer provisions within the global trade system that consider consumer interests.

2. **Strengthening Institutional Capacity and Legal Infrastructure:** To effectively implement WTO provisions on consumer protection, Ethiopia must significantly strengthen its legal and institutional frameworks. This may include establishing or empowering agencies responsible for overseeing product safety, fair trade practices, and consumer rights enforcement.
3. **Addressing the Producer-Centric Nature of the WTO:** The WTO's focus has been criticized for prioritizing producer interests over consumer protection: As Ethiopia joins the WTO, it will need to advocate for more consumer-friendly regulations that ensure global trade benefits consumers equally. This can be achieved by lobbying for stronger provisions on transparency, information accessibility, and the safe quality of imported products, which are currently under-regulated in many international trade agreements.
4. **Improving the Procedural and Compliance Challenges:** One of the key findings is that the consumer protection provisions in WTO agreements often come with complex procedural requirements. For developing countries, including Ethiopia, these can pose a

significant challenge. Ethiopia may need to invest in specialized training for government officials, legal experts, and regulatory bodies to navigate these complexities. Additionally, Ethiopia might seek to negotiate flexibilities or transitional periods within the WTO framework to ensure it is not overwhelmed by the procedural burden while building its regulatory capacity.

5. **Enhancing Consumer Awareness and Education:** As Ethiopia opens its markets to international trade, the public's ability to understand and act on their rights as consumers becomes critical. The government could invest in public awareness campaigns and consumer education programs to ensure citizens are informed about their rights under both national law and international trade agreements.
6. **Ensuring Effective Dispute Resolution Mechanisms:** Ethiopia should establish accessible and efficient consumer dispute resolution mechanisms, including a clear framework for resolving consumer complaints regarding product safety, unfair trade practices, and breaches of consumer rights. While the WTO offers mechanisms for dispute resolution, these are often focused on intergovernmental disputes rather than consumer-level complaints. Thus, Ethiopia should consider developing its own consumer protection agencies or utilizing existing structures to handle these complaints in line with WTO requirements. Moreover, the arbitration law should enshrine ADR methods like mediation and arbitration in Ethiopian law for consumer complaints, with a streamlined legal process that is both affordable and accessible to the public.

7. Leveraging International Support and Technical Assistance: Since developing countries like Ethiopia often face challenges in meeting WTO requirements, it is crucial for Ethiopia to actively seek technical assistance from international organizations, including the WTO, UNCTAD, and the World Bank. This support can help enhance Ethiopia's capacity in areas such as legal drafting, institutional capacity-building, regulatory compliance, and consumer protection mechanisms, making the WTO's consumer protection provisions more accessible and implementable.