

# **THE LEGAL FRAMEWORK OF INTERNATIONAL TRADE INSTITUTIONS AND THEIR IMPACT ON ENVIRONMENT IN ETHIOPIA**

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## **Abstract**

*The purpose of the study was to reveal environmental subordination of international trade institutions. It also determined the fate of the environment after the accession of Ethiopia to the international trade institutions. There is no single institution enforcing trade-environment debates. However, there are no clear and adequate legal provisions in the existing international or regional trade organization legal frameworks recognizing the environment as legal personality. International trade instigates one of the environmental problems like global warming, environmental degradation and economic globalization. It is also a failure of regulating TNCs which has led to further the problem. The general objective was to analyze the legal frameworks of international trade institutions and the danger that it may pose on the environment of Ethiopia. In order to attain the general objective, the study tried to point out the role of TNCs subordination of environmental concerns using doctrinal legal research methods complemented by some non-doctrinal/socio-legal research methods and by employing content analysis of qualitative data analysis. The findings of show that the Ethiopian policies and laws will be adversely affected by the legal frameworks of the international trade institutions. When Ethiopia accedes to the WTO or ratify other regional FTA Agreements, the applicability of the constitutionally guaranteed rights will be highly limited as a result of the weak legal framework of international institutions in protecting the environment. In sum, the legal frameworks of those international trade institutions will negatively impact on the Ethiopian environment. One may conclude that the efforts of the Ethiopian Government to accede to the WTO may negatively affect the country's environment because the legal frameworks of the international trade institutions exacerbate poverty and environmental degradation which are against the Ethiopian GTP and the CRGE. Surprisingly, there is an economic growth without Ethiopia has accessed to WTO. Thus, it is recommended that the Ethiopian government should establish an independent and permanent environmental adjudicatory body in order to battle environmental harms caused by joining to the international trade institutions, like WTO. Finally, if the Government aspires to protect the Ethiopian environment, it should also refrain it self from accessing to the international trade institutions.*

## **Introduction**

International trade relations have existed between states and merchants since the dawn of time, dating to the ages of the Egyptian and the Mesopotamian period. Later on as Roman territory expanded, Roman citizens started trade relation with the peregrines (nations lived nearby the territory of Rome) and the existing Roman Civil Law was incompetent to regulate such relations. Jus gentium (laws of nations) was another branch of law which was formed to settle disputed arising between the roman citizens and peregrines. In the 13<sup>th</sup> century, there was also merchant's law enacted in England. Those early era of trade did not incorporate the concept of environmental matters in their trade relations not only because the concept was unknown as a discipline but also trade relations were limited among a few nations which, in turn, made environmental concerns nonexistent.

Following the World War II and the formation of the General Agreements on Tariffs and Trade (hereinafter GATT) document took effect in 1948. This provisional GATT has become the principal set of rules governing international trade for the next 47 years and incorporated aspect of the environment under Article XX of the Agreement. GATT has remained in effect until WTO was formed in 1994 after the Doha negotiations. The Doha negotiation was highly influenced by the Rio Convention of 1992 and incorporated the concept of sustainable development.

The issue of environmental problem was a major concern in Europe in 1950s.<sup>1</sup> Sweden which had began to experience transboundary acid rain, in the beginning of the 1970s volunteered to host it in Stockholm. Up to the Stockholm Conference held, international environmental problems had been dealt within sporadic and ad hoc manner resulting in a few significant treaties. The Stockholm Conference has resonated in the thinking of industrial nations, like USA, and England.

With an aim of stabilizing green house gas emission, the United Nations ratified UN Framework Convention on Climate Change (UNFCCC) in 1994. Since ratification of the Convention, three meetings of the Conference of the Paris (COP) to this international treaty have been held. These are Berlin (1995), Geneva (1996) and Kyoto (1997). The Kyoto Conference resulted in adoption of the Kyoto Protocol.

In recent times, the links among international trade, sustainable development and planets' environmental health have occupied a prominent spot on the international political agenda. The earth summit held in Rio De Janerio revealed a "global consensus that it is no longer possible to treat ecological and the international political economy as separate spheres" in its program. The program of action which was adopted at the RIO Conference is referred to as Agenda 21 which meant the agenda for the 21<sup>st</sup> century. However, this political and ecological truism is not reflected in contemporary international institutions or practice. The fragmented nature of the international system has given rise to acute tensions between the international trade regime which seeks the general elimination of barriers to trade and the international

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<sup>1</sup> A. Bishop and R. Munoro. (1972). The UN regional economic commission and environmental problems. In *International*, 26(2). Genève: UN Commission for Environment, p 359.

environmental regime which imposes barriers to trade. Thus, the global climate regime as represented by the Kyoto Protocol may be on a collision course with the global trade policy regime, as represented by the World Trade Organization (here in after referred as WTO).

Some twelve to thirteen years ago, at the ministerial meeting of the WTO in Seattle in November 1999, some protestors wore turtle costumes while launching the first big anti-globalization demonstration in the world. These demonstrators were concerned that international trade in shrimp was harming the sea turtles and the environment in which the sea creatures live in. They felt that international trade institution such as the WTO had, in the name of free trade negated the ability of the most developed countries such as America to protect the turtles, simultaneously undermining the international environment and national sovereignty. Subsequently, anti globalization and trade protests became common at meetings of multinational trade meetings. The international trade institution is levied with higher burden to solve the dichotomy created among the trade and the environment. The lack of permanent body on the issue of environment due to competition between UN and other institutions is creating a major problem in representation of developing countries.<sup>2</sup>

The frailty of the UN to handle concern of the environment has brought many suffering to less developed countries. Most developed countries proposed that matters of trade and environment be brought to other institutions, such as International Monetary Fund (IMF), World Bank

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<sup>2</sup> According to Bossche (2002), the lack of permanent institution to entertain environmental matter arises in both lack of international concern and interest of the most developed countries. Since the procedural negotiations are time taking and costly, developing countries do not have any choice but to watch matters as an outside observant.

(WB) or World Trade Organization (WTO) because they claim that the United Nations is incapable of settling such disputes,<sup>3</sup> while the former wants environmental concerns to be under the regime of the UN.

The WTO is the prominent international trade organization governing international trade in the world. Its role is to regulate trade related matters, and whenever environmental concerns come before the WTO they are invariably subordinated to the economics and trade interests that it is designed to serve. The so called Article XX of GATT which exhaustively addresses the general exception on human, plant, animal life, and conservation of exhaustible natural resources still fails to address environmental concerns. The two side agreements which further elaborated Article XX, the Agreement on Sanitary and Phyto-Sniterly (hereinafter SPS) and Agreement on Technical Barriers to trade (herein after TBT) have not dealt with the recent fear of global warming and issue of other environmental concerns<sup>4</sup>. In addition, similar logic could be presented about legal frameworks of the regional trade organization. It is from such a misconception and lack of environmental mainstreaming the dichotomy arises between trade and environment.

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<sup>3</sup> According to Guruswamy (1997), the UN was founded before the dawning of environmental awareness, but international organizations may be created by treaty to bring specialized agency.

<sup>4</sup> National laws are banning imports with a view to outlawing certain production methods for environmental reasons have been considered as prohibition or restriction on imports (see for example, panel report, us shrimp, WT/DS58/IR,para.7.17). See also Article 2.5 of TBT whereby it acknowledges contracting parties to adopt technical regulations which may constitute barriers to trade to the extent of protection of human health or safety, animal or plant life or health or environment. According to the provision, it is to be presumed that technical regulation that is prepared, adopted or applied for one of the legitimate objectives and in accordance with the relevant international technical standards - both criteria apply cumulatively – do not constitute or create an unjustifiable obstacle to international trade (see max plank).

According to Bossche (2005), trade is being used as the ultimate weapon for economic globalization without giving due regard to environmental degradation. The issue here is not whether trade is evil or good. The problem is not with trade per se, but rather with the questions like: (1) How to prevent big business tycoons and transnational corporations from influencing the politics and environmental policies of a country whose capital almost exceeds the annual gross domestic product (GDP) or budget of small countries. (2) How are countries, such as Ethiopia going to survive or even try to regulate matters before they are out of their hands? (3) How can we draw the line between free trade and the environment? (4) When is the normative and practical implication of sustainable development grasped? And (5) What kind effects will the free trade notion on the environment?

Principles 3 and 4 of the Rio Declaration of 1992 and Articles 43, 44 , as well as 92 in the Constitution of the Federal Democratic Republic of Ethiopia (FRDE) recognize the concepts of sustainable development in aspiring to conjugate the elements of integration of environmental and developmental aspects. In the light of this, developing countries have faced with a great dilemma of self-sustaining and preserving their environment to the next generation.<sup>5</sup> Given that, most countries including Ethiopia incorporated the concept of sustainable development it is already facing practical problems in protecting the environment whilst advocating free trade notion. Sustainable development has become the key concept in the field of international environmental and trade laws. However, it is not always easy to grasp its normative and practical implications.

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<sup>5</sup> Balkrishna Kurvey. (1992). *Environment, development and developing countries*. New Delhi: Indian Institute of Peace, pp. 1-3.

According to Pugel and Lindert (2000), in reality international trade is an alleged culprit in environmental damage and takes the environment as hostage in its endeavors. Environmental degradation is also human induced in the name of development. In addition, most of these activities are carried out by state agencies or other agencies sponsored by states. Moreover, the existing substantive and procedural laws are not adequate to guarantee a minimal future environmental degradation made in the name of development. As Ethiopia is already a member to some regional trade and economic organizations and is aspiring to accession of the WTO, the need for special legal protection to the environment is critical.

In these circumstances, there are gaps between what have been claimed by different organizations and the reality on the ground. Although there is growth of international environmental law and its expanding domain, there is still no single institution or organization in the way that the WTO advances, interprets, implements, and enforces the concept of free trade. The institutions and organizations enlisted to advance international law are fractured and fragmented and divided along different aspects. The lack of unified enforcing institution may be difficult to a developing country such as Ethiopia to get remedies on environmental damage. There is no clear and adequate legal provisions in the existing international or regional trade organization legal framework recognizing the environment as legal personality. The GATT/WTO is an exclusively trade organization which is not competent to address environmental concerns.

Trade is, among other things, used as an instrument in the globalization process in general and in economic globalization in particular. With a view to effectively assist the process of economic globalization, the role

WTO plays cannot be overemphasized. In the aftermath of accession to WTO countries eliminate (lower) tariffs which increases competitiveness among member countries. Nations do their best both domestically and internationally in a bid to gain and outperform their competitors using state of the art technologies they expand their output. The obvious implication of this action is the creation of further strain to the environment may it be global warming/climate change or environmental degradation.

Production of output requires the employment of resources, both renewable and non renewable. Massive production implies that more and more of these resources have to be used. In this manner, environmental degradation is caused in the light of the fact that resources are being depleted. The effect which is manifested on the environment also reflected in environmental waste occasioned by industrial production especially in developing countries having fixed technologies which more often than not do not improve to meet the new supply surge. Moreover, these countries are highly constrained financially making it difficult to invest on new technologies which are environmental friendly. The effect of trade on the environment is also exhibited through the shaping of countries cultural, religious and other heritages. Globalization means that distance among nations is highly narrowed making it easier for countries to share ideas, values and norms more than ever resulting in wiping out that which is endemic to the nations. The culture of nations in protecting the environment could also be wiped out.

The purposes of this study were to determine to what extent the rights to a healthy environment is accepted and protected at different international and regional trade institution's legal frameworks; and to evaluate the



suitability of existing international trade laws in the course of their enforcement towards the environmental protection in the context of Ethiopia.

Based on the foregoing accounts, the student researcher came up with the following study hypotheses:

(a) Given the recent trends in the development and growth of international or regional trade agreements and their institutions through globalization, there is a great fear of a global warming and climate change and growing recognition of these problem is being made internationally and also nationally with a view of urgency to protect the right to a healthy environment; (b) The legal challenges in developing countries, such as Ethiopia may have to face from the growing dominance of international trade institutions in which the country aspires to be a member or is already member; and (c) the existing international or regional trade institution legal framework is insufficient and ineffective to regulate recent environmental concerns because it is designed to make sure trade goes smoothly, but yet environmental rights and issues, albeit subjective are neglected and there exists the need to establish new mechanism for the task or strengthen national laws or policies and international treaties or agreements or combined efforts at both the national and the international levels.

The objectives of the study were to analyze the existing legal frameworks of international trade institutions in relation to healthy environment and to indicate possible legal solutions to the existing problem in the case of Ethiopia. Specifically, the study aimed at (a) examining different theories about environment and trade; (b) discussing the dichotomy that exists between environment and trade; (c) producing some evidentiary proofs

both on the legal and on the economic aspects; (d) examining the provisions of the legal framework of specific international and regional trade institutions and identifying their stands on the environment; (e) explaining the GATT, SPS, TBT, TRIPS, COMESA and IGAD in relation to the environment and reviewing their protection against the environment; (f) investigating whether or not there has been environmental subordination made by regional and international trade institutions; and (g) identifying the stand of Ethiopia on trade and environment vis-a-vis the acceding process of WTO.

The scope of the study was delimited to look at the Kyoto Protocol, as well as the WTO's rules, particularly GATT/SPS/TBT/TRIPS legal frameworks' perspective; at COMESA and IGAD general agreement from regional perspective; to observe developed countries' concerns on the matter of trade and environment dichotomy and trying to answer if the worry is legitimate and global; at the Ethiopian Environmental Protection Laws. Generally, the study relied on those selected international and regional trade agreements which have bearing on the rights to healthy environment.

## **Review of Related Literature**

In his writing of the early 19<sup>th</sup> century, Thomas Robert Malthus predicted that geometric growth in population and economy would eventually and inevitably run into the natural resource limits of the carrying capacity of the planet.<sup>6</sup> In addition to this, he proposed that the growth in population

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<sup>6</sup> Malthus was an en economist. A contemporary commentator reacted by calling economics the dismissal science. This description has stuck, long after ecology or environmental science broke off as independent fields of study; fields that in fact make economics look like sunny optimists by comparison.

would increase the need to trade among nations which, in turn, would inevitably strain the economics and will degrade the natural resources.

Pugel and Lindert (2000) raised the possibility of international trade as being a factor that makes environmental problems worse.<sup>7</sup> They state three reasons why this might be true. First, free trade simply promotes production or consumption. The second reason is that the free trade permits production to be shifted to countries that have lax environmental standards. A third possible reason follows from the gains from international trade. Free trade raises income and subsequently, higher average income makes humans pollute more.

Al Gore (2007) claims that trade is a leading cause of environmental degradation.<sup>8</sup> He asserts that “the quest to supply the everlasting lust of energy in the world created unethical practice in the international trade arena”. The same author further states that, “the designed legal framework of the international trade institutions has kept on disappointing.”<sup>9</sup> The problem he raised is that trade uses too much energy either to produce goods or to render service causing devastating and irreversible environmental harm. Streger counter-argued that Al Gore’s claim is to be exaggerated and is made dramatic.<sup>10</sup> He elaborated that the global warming notion is not as an imminent threat on the global community as it’s publicized to be, rather a made believe or fictional.<sup>11</sup> The global warming is a mere creation of politicians and bureaucrats for

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<sup>7</sup> Thomas A. Pugel and Peter H. Lindert. (2000). *International economics*, Boston: McGraw-Hill Companies Inc. p. 235.

<sup>8</sup> Al Gore was the Vice President of the United States of America in 2000.

<sup>9</sup> *ibid*, p. 231.

<sup>10</sup> Fred Streger. (2009). *Global warming or global governance*: California: Carlton University Press, p. 85.

<sup>11</sup> *ibid*. pp. 48-63.

the sole purpose of global governance.<sup>12</sup> He further depicts that international trade institutions should not to take blame for the environmental harm rather the innate behaviour of humans has caused this atrocity.

There are different perspectives and debates for relationship between environment and trade. Many scholars from the European society, especially from the Soviet argued, “GATT is a profit maximization machines to the already rich and powerful nations without giving due consideration to the resources and future generations.<sup>13</sup> Institutions which are dealing with international trade and environment have acted mostly with ignorance of each other. The environment-trade debate suggests that this kind of ignorance shall not be tolerated. According to some environmentalists, “the fear is that trade officials are not attuned to environmental issues. There is also concern that the trade provision in widely accepted international environmental declarations might be found inconsistent with GATT/WTO if challenged.”<sup>14</sup>

Environment-trade debate poses difficult quandary for governments. Indeed, the Kuznets curve shows that there is some evidence contemplating environmental and trade policy being complementary at least in the sense of increasing welfare can lead to citizens’ demands and governmental actions to improve protection for environment.”<sup>15</sup>

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<sup>12</sup> Global governance is a conspiracy theory which claims that a movement is being undertaken by the super-nationals to create united or unified nations of the world with one supreme governance. The theory mostly criticizes terrorism and global warming as being the creation of those elite groups to create a revengeful fear on the world community.

<sup>13</sup> John Gibbons. (2007). *Trade and environment: Conflict or opportunity*. Washington DC: US Government Printing Office. p.75.

<sup>14</sup> <http://www.environmentalconcerns.com/global-warming>

<sup>15</sup> *ibid.* p. 4.

In what follows, let us consider the concept of environmentalism under trade institutions. According to the UN (2005), environmental awareness has shown a promising improvement from 2002 to 2005.<sup>16</sup> The car makers, energy and other companies have recently engaged in producing more environmental friendly products. Moreover, there are consecutive and repeated pressure and efforts to establish permanent international body responsible on environment, but the competition among the international organizations and institutions made it impossible.<sup>17</sup> The WTO, the ICJ, and many other regional trade institutions are among those battling institutions to assume jurisdiction on the Trade-Environment Dispute.

The WTO Policy is believed to make the environmental practice subordination. Dunoff (1994) states, “WTO subordinates environmental interests to economic interests thereby disabling governments from utilizing many of the most effective tools at their disposal for protecting the global environment.”<sup>18</sup>

Regarding environmentalism under sanitary and phyto-sanitary measures (SPS), it is only a function of the SPS Agreement; only seems to reaffirm and to elaborate Article XX (b).<sup>19</sup> Accordingly, whenever a conflict arises between GATT and SPS Agreements, the later shall prevail.

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<sup>16</sup>UN Report on EU and United States. (2006). P. 46.

<sup>17</sup> Simeneh Kiros Assefa. (2008). The trade and environment debate: The normative and institutional incongruity. *Mizan Law Review*, 2(2), 315.

<sup>18</sup> Jeffery L. Dunoff. (1994). Institutional MISFITS: The GATT, the ICJ and trade-environment disputes. Michigan, *available at: <http://www.worldtradelaw.net/articles/dunoffmisfits.pdf>* pp. 3, para. 3.

<sup>19</sup> See preamble of SPS, para. 8... desiring to elaborate application of the provision of GATT...in particular... Article XX (b).

The Agreement of WTO on Trade-Related Aspects of Intellectual Property Rights (TRIPS) sets out the kind of protection of intellectual property rights which are patents, copyrights or other means of protecting an innovator's exclusive ability to control the use of his or her innovation for a specified period. Notwithstanding its constructive side, TRIPS can have a number of undesirable effects. The three main defects of the TRIPS Agreement include: (1) The first impact is related to way of its implementation; (2) Its style of protection may work against the objectives of sustainable development by making goods, such as pharmaceuticals more costly and less accessible to the poor; and (3) genetic resources provide the foundation for a range of new products and technological applications in biotechnology, agriculture, medicine and other areas.<sup>20</sup>

In this study, some of the major regional trade institutions in Africa, such as COMESA and IGAD were considered in the light of the study's objectives. The Policy on environment of the Common Market for Eastern and Southern Africa (COMESA) states that several points made which are intended to enhance and to develop agriculture and protect the environment and natural resources in the COMESA Region. Therefore, COMESA never tried to address the visible environmental problems of the continent (East-Southern Region). Most scholars have criticized the COMESA Treaty as it is being the extension of the WTO.<sup>21</sup> Most of the members of the COMESA are either already member or is aspiring to be a member of the WTO.

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<sup>20</sup> See Article 27(2) of TRIPS Agreement.

<sup>21</sup> Economic Report on Africa. (2007). *Accelerating Africa's development through diversification*. Addis Ababa: Economic Commission for Africa, p. 87.

The Intergovernmental Authority on Drought and Development (IGADD) was formed to handle issues of drought and desertification in 1986. In the mid-1990s, the founding members of IGADD decided to revitalize the Organization into a matured regional political, economic, development, trade and security entity similar to SADC and ECOWAS.<sup>22</sup> On the 21<sup>st</sup> of March 1996, the Heads of State and Government at the Second Extraordinary Summit in Nairobi approved and adopted an Agreement on establishing the Intergovernmental Authority on Development (IGAD).<sup>23</sup>

IGAD's Policy on Environment is stipulated under Article 7(e) and Article 13(e) of the Agreement on establishing the IGAD. These Articles stipulate that developmental practices shall consider the concept of sustainability and member states shall coordinate their efforts in preserving, protecting and improving the quality of the environment. It is further stated that, "IGAD has maneuvered active policies that will be implemented throughout the region."<sup>24</sup>

In what follows, let us look at the relationships of transnational corporations with trade institutions and institutional effects or the roles of international trade institutions on the environment in Ethiopian context.

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<sup>22</sup> Mizanie Abate and Alemayehu Tilahun. (2009). International organization teaching material. Prepared under the sponsorship of the Legal Justice System Research Institute, Addis Ababa, p.224.

<sup>23</sup> In April 1996, upon the recommendation of the Summit of the Heads of State and Government, the IGAD Council of Ministers identified three priority areas of co-operation: Conflict prevention, management and resolution and humanitarian affairs, infrastructure development (transport and communications), food security and environment protection. Available at [http://www.issaafrica.org/AF/regorg/unity/-to-union-/pdfs/igad/Agreemets\\_estab.pdf](http://www.issaafrica.org/AF/regorg/unity/-to-union-/pdfs/igad/Agreemets_estab.pdf).

<sup>24</sup> IGAD. (2007). Environment and natural resource strategy. pp. 5-20.

In Ethiopia, the rainfall season has been disturbed for the past three years beginning from 2012 onwards. Thus, decrease of ten percent on crop production was recorded due to the lack of rainfall in the country in 2012.<sup>25</sup> Ethiopia could be negatively affected as a result of environmental pollution the nature of which could be transboundary.<sup>26</sup>

The move of Ethiopia for accession of international trade institutions, such as WTO is primarily initiated to accelerate economic growth and development, attracting foreign investment and to secure global market access.<sup>27</sup> But such commitments to the International Trade Organization made the country to accomplish economical objectives may also bring a devastating effect on the environment.

In Ethiopia, Simeneh Kiros argues that “with the equality of votes, they could not have control over the outcome of cases.”<sup>28</sup> In addition, the author believes that developed country’s cosmic influence over trade institutions and the adjudication structure within the institutions gives them a home run advantage in getting away with environmental crimes.<sup>29</sup>

The study further considered and reviewed the Ethiopian Environmental Policy and Law. To this end, the researcher reviewed issues related to

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<sup>25</sup> [www.erta.gov.et/Ethiopian Metrology](http://www.erta.gov.et/Ethiopian%20Metrology), March 27, 2012.

<sup>26</sup> [http://www.globalgiving.co.uk/projects/help-orphans-in-japan-rebuild-lives-post-tsunami/?rf=ggadgguk\\_goog\\_even\\_japan\\_1&gclid=CK28nsOsgreCFUJL3wod72vc\\_A](http://www.globalgiving.co.uk/projects/help-orphans-in-japan-rebuild-lives-post-tsunami/?rf=ggadgguk_goog_even_japan_1&gclid=CK28nsOsgreCFUJL3wod72vc_A)

<sup>27</sup> At the General Council Meeting, the representative of Ethiopia outlined some of the reasons which had led the Government to decide to start the WTO accession process and to be a part of the multilateral trading system as follows: The Government was fully convinced that the best way to accelerate economic growth and development was to integrate its economy into the multilateral trading system to be a member of the WTO to be a part of rules based multilateral trading system ... ( some notes omitted). The Government has four objectives. These include: (1) to accelerate economic growth and development; (2) to attract foreign investment; (3) to secure predicable and transparent market access; and (4) to influence the speed, nature and direction of globalization. See also WTO doc. WT/GC/M/78, 7 March 2003 ( curtesy of Ministry of Trade).

<sup>28</sup> Supra nota 48.

<sup>29</sup> Ibid.



environmentalism under the FDRE's Constitution. After Ethiopia had ratified the Rio Declaration, it became pursuant to Article 9(4) of the Constitution and included the concepts of sustainable development and of healthy environment under Articles 43 and 44 respectively. The geneses for Article 43 are Principles 3 and 4 of the Rio Declaration. The Rio Declaration did not expressly state the right to clean and a healthy environment, but gave further support to the concept of sustainable development in Principle 1.<sup>30</sup> The latter Article seems to be incorporated into Article 111 of the East African Community (EAC) Treaty.<sup>31</sup>

Article 43(1) of the Ethiopian Constitution, *inter alia*, guarantees the people of Ethiopia the right to sustainable development and the right to improved living standard. Principle 3 of the Rio Declaration in same manner notes that the right to development must be fulfilled to equitably meet developmental and environmental needs of present and future generations.

Article 43(4) looks to be an extension of article 43(1) in which it reaffirms concept of sustainable development, i.e. development through rational and prudent use of the environmental resources. According to Article 43(3) of the Constitution, while pursuing for development, Ethiopia is expected to see to it that international agreements and relations concluded, established or conducted by the state shall protect and ensure the right to sustainable development.<sup>32</sup>

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<sup>30</sup> Principle 1 states that human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

<sup>31</sup> Recognition that development activities may have negative impacts on the environment leading to the degradation of the environment and depletion of natural resources and that a clean and healthy environment is a pre-requisite for sustainable development

<sup>32</sup>See Article 43 of the FDRE's Constitution published in 1995.

Article 44(1) declares that “all persons have the right to clean and healthy environment.” It could be cited as vital environmental right guaranteed by the Constitution. Article 42(2) of the Constitution similarly guarantees a person who is displaced or has lost means of his livelihood due to implementation of state programmes and the right to seek appropriate compensation from state.<sup>33</sup>

In addition, Article 92 of the Constitution not only reiterates the fundamental right to live in a clean and healthy environment but also imposes a corresponding Constitutional duty on the Federal and Regional Governments along with citizens to protect the environment. In the same spirit, the above-stated Article expects the Governments to ensure that any development projects and programs do not damage or destroy the environment in which they are being implemented.

The Ethiopian Environmental Protection Authority was established according to Proclamation No. 9/1995. The aim was to prepare [Environmental Protection Policy and Laws. It accomplished its task in 1997 after two years of ratifying Environmental Policy of Ethiopia.

According to the Growth and Transformation Plan (2010-2015) (hereinafter GTP) which was designed to go hand in hand with Environmental Policy, the Ethiopian Government is set in building a green and climate change resilient economy.<sup>34</sup> In addition, identifying the past problems of EP of the GTP environment is ambitious to formulate and effectively implement policies, strategies, laws and standards which

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<sup>33</sup> See Article 44 of 1995 FDRE’s Constitution.

<sup>34</sup> See the GTP, environment and climate change, p. 119.

will foster social and green economy development so as to enhance the welfare of citizens and environmental sustainability.<sup>35</sup>

Dereje et al.<sup>36</sup> and also Ashenafi<sup>37</sup>, who simulated the liberalization of trade as a result of WTO, they both reached at the conclusion that trade liberalization can exacerbate poverty in Ethiopia. There is a fear that similar occurrences may indefinitely be seen on the environment of Ethiopia as a result of the accession to WTO or signing the FTA of COMESA for that matter.

In the study, other environmental legislations were considered in the light of its objectives. Environmental Protection Organ Establishment Proclamation No. 295/2002 (herein after EPO) carries a significant role in the Ethiopian Environmental Law regime.<sup>38</sup> This shows that institutionalizing and mainstreaming environmental concerns has legal foundation. The Environmental Impact Assessment Proclamation No. 299/2002 (hereinafter EIAP) also intends to ensure development without unacceptable adverse impacts on the environment.<sup>39</sup>

The environmental pollution control proclamation no. 300/2002 (herein after EPCP), inter alia, prohibits a person to pollute the environment in violation of the environmental standards (herein after standards) set under article 6(1).<sup>40</sup> To bring about the legal penetration of the right to a clean and healthy environment, APAP has lodged this complaint to the

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<sup>35</sup> Ibid.

<sup>36</sup> Dejene Aredo et al. (2007). Complete trade liberalization, growth and poverty. Addis Ababa, Department of Economics, Addis Ababa University, p. 28.

<sup>37</sup> Ashenafi Assefa. (2012). The impact of trade on poverty in Ethiopia: A sequential dynamic computable general equilibrium micro-simulation analysis. (unpublished Master Thesis). pp. 23-34.

<sup>38</sup> See Preamble of EPO, Proclamation No.295/2002.

<sup>39</sup> See Preamble of EIAP.

<sup>40</sup> See Articles 4 and 5 of the EPCP.

Environmental Authority on the basis of article 11(2) of the Proclamation No. 300/2002 to take administrative or legal measures against any person who pollutes Akaki and Mojo Rivers.<sup>41</sup> Simultaneously, APAP calls and summoned the authority to inform it the decision made or measures taken to address the problem within the time limit in the EPCP. But this suit was later on thrown out by the cassation supreme court.<sup>42</sup>

This study further reviewed literature on effects of transnational corporations on the environment. Today, there are some 91,000 of transnational corporations with more than a million foreign affiliates and branches across the globe. In their persistent battle to increase profits, Transnational Corporations (herein after TNC) have increasingly turned to the developing world, a world that holds many attractions for them.<sup>43</sup>

According to Abraham E. Carlton, “TNCs sprint to elevated profit has pressed their lust to control powerful political places in countries.” In recent years, environmentalists have expressed alarm over the effects of this shift of power from governments to TNCs.<sup>44</sup>

The other facet of Corporations could be characterized as an anti-environment for the sole reason of profit, especially in developing countries. This huge claim of the writer is evidenced in John Madley (2009) work whereby he describes TNCs as “instruments of a market tyranny that is extending its reach across the planet, like a cancer,

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<sup>41</sup> APAP is a non-profit making, non-partisan, indigenous non-governmental organization established in 1993 with main objectives of providing legal and professional services to the poor, women, and children in Ethiopia.

<sup>42</sup> <http://gadaa.com/news/1007/2009/05/02/industrial-pollution-of-akaki-modjo-and-sebeta-rivers/>

<sup>43</sup> Abraham E. Carlton. (2011). Corporate responsibility. Michigan: University of Michigan, p.85.

<sup>44</sup> Ibid.

colonizing ever more of the planet's living spaces, destroying environment, and feeding on life in an insatiable quest for money".<sup>45</sup>

TNCs are also powerful enough to exert considerable influence on the agenda and rules of the WTO and other regional organization. It is corporations rather than countries that trade, the WTO is made up of countries. The researcher believes that WTO's decisions on environmental issues are usually made in line with corporate expectations.<sup>46</sup>

Proclamation No. 678/2010 (herein after Mineral Proclamation) is a proclamation which was proclaimed to promote sustainable development of mineral resources. This Proclamation allows the Ethiopian Government to set the environmental standards and the EIA has been approved for artisanal and large scale mining pursuant to Articles 32(2) and 26 respectively. This legal application of the Mineral Proclamation could not be extended to the petroleum/natural gas exploitation for the very fact that the mineral proclamation article 2(19) b excludes natural gas and petroleum. According to Bacha Faji of the Ethiopian Ministry of Mining, the petroleum/ natural gas exploration/exploitation process that is being carried out by Tallow Company. However, the environmental standard is to be made by conducting a negotiation with the oil companies and the Ethiopian Government could not impose a stringent standard other than those prescribed under the International Petroleum Agreement which Ethiopia has ratified under Proclamation No. 295/1986. EIA is to be yet done by the ministry mine environmental division.<sup>47</sup> Surprisingly, the Oil Company started the operation at Kenya-

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<sup>45</sup> *ibid*, p. 67.

<sup>46</sup> *ibid*.

<sup>47</sup> Bacha Faji, Director of the Public Relations and Communication Directorate

Ethiopia boarder without making the EIA complete either by EPA or by the sector institution on March 2012.<sup>48</sup>

In battling environmental subordination over trade matters administrative agencies play a pivotal role. They have become the “necessary evil” for an effective and efficient administration<sup>49</sup>. Consequently, EPA is one of the agencies in Ethiopia which not only has legislative and judicial but is entrusted to implement environmental laws and policies through the federal and regional authorities. EPA is believed to shoulder the big brunt that international trade institutions may impose upon the environment.

The Ministry of Trade has been pushing very hard in the accession of WTO. In the Eighth Ministerial Conference, the Ethiopian Representative asserted the dedication of the Ethiopian Government in joining the Trade Institution.<sup>50</sup> Theoretically, the delegation will invariably create conflict of interest which will result in sacrificing Ethiopian environmental laws and policies that are promulgated to ensure environmental rights.<sup>51</sup>

Courts have roles in entertaining environmental concerns. Pursuant to article 77(6) of the constitution council of ministers can formulate and

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<sup>48</sup> <http://www.erta.gov.et>

<sup>49</sup> Aberham Yohannes and Desta G/Michael. (2009). Administrative teaching material. Prepared under the sponsorship of the Justice and Legal System Research Institute, Addis Ababa. p 50.

<sup>50</sup> Supra nota 113.

<sup>51</sup> The TBT and SPS checklist shows that the government has submitted to make new laws (the draft certification proclamation and regulations) to be in accordance with the TBT clause of unnecessary obstacle. The draft proclamation seems to contradict the existing Environmental Proclamation No.299/2002, Article 9(2).

implement policies and strategies<sup>52</sup>. With a view to avoiding conflicts of interests, the EP proposes that task developing and managing natural resources, as a matter policy, should be assigned to one organization (I.e. the executive) and that of environmental protection, regulation and monitoring to another. It suggests that the enforcement and administration of environmental laws and regulations should be assigned to (the federal and regional) courts.

Technically speaking, judicial power/function is the primary function of courts. The FDRE Constitution expressly vested judicial power, both at the Federal and State levels in courts.<sup>53</sup> This goes in line with the principle of separation of state powers. However, it does not necessarily imply that only regular courts shall exercise judicial power. There are possibilities where judicial power may be delegated to other bodies falling outside the structure of ordinary courts.<sup>54</sup> Accordingly, judicial power is usually delegated to administrative agencies/tribunals with the purpose to provide expedient, cheap, accessible, informal, speedy and specialized justice.

To date, Ethiopia, however, has not come up with an instrument that provides uniform standards or guidelines that regulate environmental adjudication process in Ethiopia. Both at the federal and the regional levels, there is no uniform substantive or procedural guidance that dictates what environmental courts must go through while adjudicating cases. The Ethiopian courts should be given the power to place limits on

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<sup>52</sup> See Article 77 of the FDRE Constitution.

<sup>53</sup> See FDRE Constitution, Article 79(1).

<sup>54</sup> See FDRE Constitution, Article 37(1).

the ability of states to adopt trade impeding trade environmental legislation.<sup>55</sup>

In Ethiopia, “it is not capable of doing so due to lack of resources and other factors”. This lack of independent environmental courts may create a problem if Ethiopia succeeds in the accession of the WTO and other trade institutions. Wondwosen pointed out that following accession (already some problems has been faced with the FTA Agreement of COMESA); the big projects intended to come expedient, cheap, accessible, informal, speedy and specialized justice is highly is a must. Therefore, administrative courts under the EPA may be the answer to such problems.<sup>56</sup> Meantime, it is true that regular courts also could not handle all legal disputes and controversies that may arise in due process of pursuit for justice.

In summary, the dichotomy between environment –trade debate could be considered in the light of institutions dealing with international trade and environment have mostly acted with ignorance of each other, the experts’ ideological difference between the proponent of trade and that of environment, and environmental subordination by trade institutions. Article XX of the GATT Agreement also incorporates the protection of entities of the environment under the Articles XX (b) and XX (g) and also the chapeau of Article XX.

## **Study Design and Methodology**

The methodology of this study was mainly a doctrinal legal research. The researcher basically used primary and secondary resources, such as

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<sup>55</sup> Ibid.

<sup>56</sup> Personal Communication with Ato Wondwosen Sintayehu, Head of EPA of Legal Department.



library materials, laws and commentaries, journal articles and documentary movies and other relevant documents as data basis for developing the argument. In addition, international treaties, national constitutions and legislations and decisions of some international and national judicial institutions were used as bases for the submissions presented in this study. To corroborate some of the claims which have been raised in this study, some socio-legal or non-doctrinal research methods were also employed, like semi-structured interviews with some government officials and experts, data had been collected from different places and from experts' opinions using structured questionnaires.

### **Legal Data Analyses**

There is an engrained relation among trade institutions. It is already established that COMESA is the road cleaner for the WTO objectives.<sup>57</sup> The Preamble of the IGAD clearly shows that it was partly formulated to further strength the COMESA by recalling the spirits, principles and objectives of the treaty of COMESA.<sup>58</sup>

Since international trade institutions are established to serve trade matters, there is a fear in that environmental concerns will be subordinated or they will not be given the same position as trade matters. However, aspiration of the Ethiopian Government to join the WTO or the regional pressure that exists on Ethiopia to sign the free trade agreement (FTA) of COMESA may bring a change on the manifestation of the nation, nationalities and people of Ethiopia, including the environmental policies and laws of the country.

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<sup>57</sup> See discussion made on COMESA under Chapter two section 2.3.1.4.1

<sup>58</sup> See the Preamble of IGAD.

## **Legal Analysis on the FDRE Constitution**

As Ethiopia accedes to WTO or ratifies the FTA of COMESA, a change in the manifestation of the nation, nationality and the people of Ethiopia is expected. The assertion could be justified due to the constitutionally imposed obligation of Article 9 (4). The strict application of the Ethiopian Constitutional mandates that any Agreements (not declaration or protocols) ratified by the country shall be parts and parcel of the country law. This assertion shows that if Ethiopia accedes to WTO or to sign FTA Agreements of COMESA, the trade agreements will be parts and parcel of the law of the nation as per the Article 9 (4). The strict application of this Article of the Constitution might neglect declaration and protocols which environmental claims will not be in equilibrium with trade aspects.

Secondly, Article 44 of the Constitution which stipulates that, “all persons have the right to clean and healthy environment” of the Constitution seems to be efficient in recognizing the environment as an entity. But the meticulous provision is deemed to award the right to clean and healthy environment only to human beings. These requirements however put the environment in unfavorable positions as member states may be required to justify every action they had taken to protect the environment. Consequently, actions or legislations that neither have intention to discriminate nor restrict international trade but are made to protect the environment require scientific justification.

Thirdly, Article 92 and Article 89 (5) of the Constitution require the government to positively act towards ensuring and protecting the

environment and position resources among regions.<sup>59</sup> Article 92 (2) of the Ethiopian Constitution stipulates that “any design of development shall not damage the environment. Article 89 (5) allows the government to hold land and other natural resources deploy them for the benefits of the people. Finally, there is no other substantive step, except a proclamation ratifying the convention is required to make a ratified agreement an integral part of the Ethiopian law.

The researcher also conducts a legal analysis on the effect of the legal framework of the trade institutions on the Ethiopian policies and laws. International trade and environment are two parallel and yet often overlapping tracks. When the two policies collide with each other, one of them benefits; while the other deteriorates. If Ethiopia joins WTO or ratify FTA Agreements of COMESA, a new policy which will be made to compliment the Agreements may be on a fast track to collide with the existing GTP and CRGE environmental policy of the country. With this aspect, the new CRGE plan is a highly acclaimed environmental friendly policy that mandates strict environmental standards in order to achieve the green economy set by the government. Green economy projects are mostly unpopular with the trend of the international trade institutions and their economic hit man of the TNCs.

This would be a problem because pursuant to Article 9 (4) of the Constitution confirms that the international agreements ratified by the country will be parts and parcel of the countries law. Nevertheless, this will pose a detrimental effect on environmental legislations and policy of the country. Those legislations and policies that does not fulfill the

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<sup>59</sup> See Articles 89 and 92 of the FDRE Constitution

necessary clause requirements set to protect the life of human, animal and plant's life under Articles 2.2, 3.3 and 5.2 of SPS (by a subjective opinion made by trade experts in the WTO) are deemed to be in contradiction with codex/IPPC. Consequently, the clause subordinates environmental concerns over trade.

The floriculture industry is in line with Article 4 of TBT because similar to the latter; the regulation is voluntary unless it is less than the bronze standard. The problem with voluntary standard is first, which it is left to the consumer's discretion and awareness in that unless the consumer is interested in purchasing gold standard products or the investor is dedicated in saving the environment, companies may not be motivated to get the highest standards available and protecting the environment thereof. Second, the law mandates some minimum environmental standards to be fulfilled to protect the environment from any wrong doing, anything less than this is deemed to be environmental crime and is by imprisonment and fine under all the proclamation.<sup>60</sup> In effect, the environment will be negatively affected as a result of the liberalization and free trade notion following the accession to WTO and FTA of regional institutions, particularly in the floriculture business.

The standards established under the TRIPS Agreement are generally are ill-adapted to protecting the environment. After 2016, major exporters of generic products will no longer have produced cheap versions of drugs, and sources of supply of generic drugs will be limited which, in turn, become a challenge to Ethiopia's efforts to reach middle income status by 2025 and the expiry of the grace period of TRIPS and the Ethiopian Government's GTP to eradicate TB and malaria from the country by

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<sup>60</sup> See discussion made on the floriculture under Chapter three, section 3.2.3

2020 will have become another implementation problem. The WTO is generally the main institution crafting, promoting and enforcing free trade policies globally.

### **Legal Analysis on the BPR Implementation Strategy**

The Environmental Protection Agency (EPA) has recently delegated its power of environmental impact assessment (EIA) to the sectoral ministers according to the new BPR implementation program contradicts with Article 6 of the Proclamation No. 295/2002 and also opens a door for corruption or sectoral abuse and environmental subordination over trade matters - environmental concerns will be suppressed and environmental degradation will reach an all time peak.<sup>61</sup>

### **Legal Analysis on the Role of the Ethiopian Courts**

The contribution of the judiciary takes a 'negative' form because free trade is achieved through the abolition of trade-restrictive state rules. EP suggests that enforcement of environmental laws be assigned to courts. But courts cannot involve in policy making and strikeout a certain free trade policy by saying it's contrary to environmental laws because Article 77 (6) of the constitution mandates the executive to formulate policies and promulgate regulations to implement them. If Ethiopia becomes a member of the WTO and ratifies FTA of COMESA, the role of courts doctrine to invalidate state environmental measures impeding trade will be unconstitutional. The involvement of courts to negatively harmonize environmental laws and policies is unknown to the Ethiopian legal system and contradictory to its Constitution.

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<sup>61</sup> See discussion made under Chapter three, section 3.3.1.

## **Findings of the Study**

The incorporation of the concept of sustainable development is one step forward to the environmental concern in the national or international arena. However, sustainable development is not always easy to grasp its normative content and its practical implications. This has led to subordination of environmental concerns over trade matters in international arena. Some aspect of the environment is inadequately incorporated under WTO/COMESA/IGAD Agreements (also side Agreements TBT, SPS and TRIPS). The so called environmental provisions are also by far insufficient to cover the recent environmental worries of the globe, like global warming, climate change and environmental degradation.

The legal frameworks of WTO and COMESA have been fashioned to quench the everlasting thirst for the profit maximization of transnational corporations. Enlarging complexity of global production and consumption chains through the trade institutions, whose overall control is normally in the hands of TNCs has devastating effects on the environment. Even though some big problems had occurred involving TNCs and the environment (also in Africa), trade institutions (like WTO) chose to keep quiet - it assumed jurisdiction over trade-environment dispute. Although Ethiopia is yet acceded to WTO and to sign FTA of the COMESA, the involvement of TNCs needs to be controlled prior to fully pledging to the institutions, and an under progressed EIA is being made by the Ministry of Trade to companies, like the Tullow and Gazapron Company in the natural gas exploration and exploitation of Potash respectively.

While scrutinizing the environmental policies and laws of the country vis-a- vis the laws of trade institutions, the finding of the study shows that the Ethiopian policies and laws will be adversely affected. If Ethiopia accedes to the WTO or ratify other regional FTA Agreements, the applicability of constitutionally guaranteed rights (such as the right to sustainable development and right to healthy environment) will be highly limited as a result of the weak legal framework of international trade institutions in protecting the environment.

To protect the environment, strong laws and their proper implementation are needed. But the BPR implementation and the non-existent of environmental inspectors as per Floriculture Proclamation and EPCP are examples of weak enforcement strategy as result of which will make the laws of the country incapable of protecting environmental harms that might be caused by the trade activities of member states of the institutions. If Ethiopia joins WTO or signs FTA Agreements, the already weak implementation strategy will subordinate environmental matters because the delegation makes it either for environmental unfriendly projects to be under assessed by sector institutions.

GTP and CRGE are policies of the country which aspire in better protection of the environment and in building a green economy. The latter is one of the environmental conscious policies in the world. Thus, the country might be discouraged in pursuing the policies till its end.

Other environmental legislations of the country will also be impaired as a result of the weak environmental provisions of the WTO or COMESA or IGAD. Article 9(4) of the FDRE Constitution enshrines the concept of harmonization of international laws with the laws of the nations. As result, the necessity clauses, less trade restrictive and proportionality test

will be the guiding principles in making, interpreting the already existing national environmental laws of the country. Therefore, the study indicates that environmental laws of Ethiopia will be forced to make laxer environmental laws which, in turn, cause the amendment or repeal of national environmental laws.

Article 128 (j) of the COMESA which encourages governments to take nuclear energy generation as sign of promotion of science and technology is environmentally unsound provision. Such projects are chosen by the Organization which are usually the causes for unsustainable development. IGAD, in reality, is an instrument for political domination. In this aspect, environmental concerns will not have the same footing with trade matters because trade will definitely detect how winds of politics go. In sum, the legal analyses made clearly shows that if Ethiopia accedes to WTO then the legal frameworks of those international trade institutions will have negative impact on the Ethiopian environment.

## **Conclusion and Recommendation**

### **Conclusion**

The efforts of Ethiopia to accede to the WTO may affect its environment because the legal frameworks of international trade institutions may exacerbate poverty and environmental degradation in the country. This is against the GTP and the Plan of CRGE of the Ethiopian Government whereby it has planned to reach middle income status while pursuing the green economy notion. In addition, the BPR implementation and other amendment made to be in line with the trade institutions highly affect environmental well being. There is also empirical evidence that Ethiopia has already showed a double digit economic growth solely done by the



Government and nationality of the country without becoming the WTO's member. Thus, it can be concluded that economic growth is being achieved without the accession to WTO by Ethiopia.

### **Recommendation**

If Ethiopia needs to battle environmental harms caused as a result of joining to international trade institutions, the Ethiopian Government shall establish an independent and a permanent environmental adjudicatory body. Because neither trade bodies nor adjudicatory bodies, like the ICJ ought to resolve these issues. Instead, trade-environment conflicts should be heard before a permanent institution that recognizes the interdependent nature of global economic and environmental issues, and that has a mandate to advance both economic development and environmental protection.

The body should have ready access to the scientific and technical expertise that would enable it to resolve trade-environment disputes knowledgeably, as well as by its own law. It should possess tools to encourage nations to comply with its decisions. Finally, the institution should be able to look beyond the interests of the parties to a particular dispute to protect broader interests in the international economy and the global ecosystem. In addition, the international community must agree to amend clauses under WTO which states that legitimate objectives, like the environment should not be unnecessary obstacle; instead there should be a clause stating "environmental objectives are not unnecessary obstacle to trade."

Since Ethiopia is a stake holder in the enlarging complexity of global production and consumption chains through the trade institutions, whose

overall control is normally in the hands of TNCs could have devastating effects on the environment.

In order to stop this not only national act is needed but also international agreements, such as the Montreal Protocols (designed to show the destruction of the ozone layer) and at Kyoto Protocol (with respect to showing global warming) specifically need to call upon the role of TNCs and trade institutions in their agreements. The TNCs must pay a hefty amount of compensation supporting the fight against global warming and climate change.

Corporate CEOs have primary responsibility to their stakeholders but they also have a responsibility as global citizens. Therefore, they should incorporate energy efficient machineries in their companies.

A new global body is needed to oversee the regulation of transnational corporations to ensure that its activities safeguard people's basic rights and contribute to the environment. Based on this assertion, under the Kyoto Protocol or the Montreal Protocol, a clause should be added stating that, "The regulation of transnational business is perhaps the most pressing problem of globalization. The power of the TNCs needs to be brought under democratic control of the international society; recognizing the sovereignty of states, nations are encouraged to adopt stricter regulations."

It is important to note those negotiations made between TNCs and the Ministry of Mine that are intended to bring economical benefits to the country need to be done with caution and with the presence of professional lawyers or negotiators. Secondly, while conducting petroleum/natural gas negotiation; the sector institution needs to bring

together on board independent institutions, like the EPA to address the gravity of environmental degradation and to avoid institutional conflict of interests. Thirdly, since Article 92(2) mandates the Ethiopian Government in ensuring programs from destroying or damaging the environment, the legislature should amend Article 14 of the Petroleum Operation Proclamation No. 295/1986 and it should state impose in “black and white” additional national environmental standards on the oil companies.

Depending on the magnitude of environmental and prevalence of environmental degradation in Ethiopia after joining WTO especial environmental court might be necessary for the expeditious resolution of disputes. This will help the role of courts to negatively harmonize laws ( since pursuant to Article 4 of the Federal Proclamation No. 454/2005, the cassation decision shall be used for interpretation).

In order to prevent and to control the negative effect of TNC and influence of trade institutions on the environment, as Article 26(3) of the Constitution mandates for effective implementation and better protection environmental inspectors with badges should be appointed immediately and carry out their job accordingly - pursuant to the EPCP and the Floriculture Proclamation pursuant to Articles 7 and 16 respectively.

The certification draft regulation should be in terms with the environmental law and the policy of the country. It should be drafted in line with the GTP, EP and CRGE, and Article 9(2) of the EIAP. Articles 3 and 8 of the draft certification regulation are intended to prohibit unnecessary obstacles to international trade. Accordingly, they should be amended because they are clauses subordinating the environment over trade. They shall also be amended as follows:“legitimate objectives such

as the environment will not be unnecessary obstacles even if they are trade restrictive.”

The delegation of EIA to other sectors by the Ethiopian Government’s BPR implementation is made by substantive and procedural irregularities. Moreover, it opens doors to environmental degradation. The Ethiopian Government needs to bring to an end BPR to stop ultra vires and environmental subordination of environmental matters by the sectoral agencies. In addition, power should be given back to EPA pursuant to Article 6(2) of EPO.

In facing negative impact of trade institutions, the priorities for Ethiopia is achieving high political recognition on the platform of international negotiations, allocating resources appropriately, and managing and adapting to long-term climate risk. These goals require good governance; access to technology; investment in innovation; the involvement and commitment of all segments of society; and international, national and regional cooperation. Global warming and climate-proof development imply extra costs. Accordingly, 100 billion dollars promised by the global polluter must be made immediately.

The CRGE Plan and the vision to build a green economy should be strictly followed by applying the “Preventive Principle”, and the plan to reach middle income status by 2025 should be made without accession to the WTO or ratifying FTA of the COMESA. The “Preventive Principle” mandates that if one aspires to protect the environment and to prevent irreversible damage to the environment from happening, one should refrain oneself from joining institutions that are constantly being accused of instigating and causing environmental harm.

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- The Common Market for Eastern and Southern Africa (COMESA Agreement)
- Agreement Establishing the Inter-governmental Authority on Development (IGAD Agreement)
- Kyoto Protocol
- Montreal Protocol
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