

HARMONISING TANZANIA LEGAL FRAMEWORK WITH WORLD TRADE ORGANIZATION TRADE RULES: HOW WELL IS TANZANIA FARING?

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Abstract

This article aims to analyse the Tanzanian trade legal framework and its compliance with the World Trade Organization (WTO) Trade rules. Under the WTO trading system there is a governing principle called single undertaking obligation. Single undertaking obligation is of the effect that once a member country has joined the WTO, it cannot make reservations on any WTO agreement. This rule is based on the fact that all WTO Agreements are considered as a single package. The article therefore considers the compliance of Tanzania with WTO single undertaking rule especially on the principle of non-discrimination, rules on market access, rules on fair trade, and rules on trade liberalization and societal values. It submits that to a large extent Tanzania legal framework have been updated to ensure the compliance with the WTO obligations.

Key words: *International Trade, WTO, National Treatment, Single Undertaking*

1.0 Introduction

Generally, the World Trade Organization (WTO) was established on 1st January 1995 following a series of negotiations.⁵⁴⁴ The WTO succeeds GATT 1947 that had governed international trade since 1948 and it is the result of the Uruguay Round of Multilateral Trade Organization Negotiation.⁵⁴⁵ The functions of the World Trade Organization are to supervise and enforce the realization of the Uruguay Round agreements, to act as a forum for continuing negotiations on the trade and investment rules and to solve the conflict between member state through a dispute settlement body.⁵⁴⁶ Tanzania is one of the founding members of the WTO as it joined the WTO on 1st January 1995.⁵⁴⁷ Currently the WTO has 164 member states which account to more than 3/4 of all countries of the world.⁵⁴⁸ So, this work underscores the WTO framework and the Tanzanian compliance.

The WTO Agreement provides that “Multilateral Trade Agreements” shall be binding to all its members.⁵⁴⁹ This is what is referred to as “single undertaking”. This character makes WTO agreements as “single treaty for which there are no reservations and where all WTO provisions are generally simultaneously and

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544 Mercurio, B and Lester, S (2010) *World Trade Text, Materials and Commentary*. Law Publishing Co Pvt Ltd.p.70.

545 *Ibid*.

546 Article III of the Agreement establishing the World Trade Organization

547 See www.wto.org/members.

548 *Ibid*.

549 Article II: 2 of the Agreement Establishing the World Trade Organization. These Multilateral Trade Agreements includes, General Agreement on Tariffs and Trade (GATT), General Agreement on Trade in Services (GATS) and Trade Related Aspects of Intellectual Property Rights (TRIPS). These documents can be accessed at https://www.wto.org/english/docs_e/legal_e.

cumulatively applicable to all member states”⁵⁵⁰. With it, on joining the WTO a member state agrees to be bound by all agreements and associated documents as the treaty comes as an inseparable single package. The single undertaking approach has been the overarching modality for trade liberalization negotiations in the WTO.⁵⁵¹ As the WTO aims at trade liberalization, all “Multilateral Trade Agreements” under WTO, adhere to different rules that WTO has adopted so that it may realize its goals. These rules includes; principle of non-discrimination, rules on market access, rules on fair trade, rules on trade liberalization and societal values, rules on special and differential treatment for developing countries and institutional and procedural rules. These principles/rules will be the basis of analysis in this paper.

2.0 Tanzania Trade Legal Framework and its Harmonization to WTO Rules

Business activities in Tanzania are governed by over 70 principal legislations and subsidiary legislations thereto. These can mainly be grouped into company laws, tax laws, contract law, intellectual property rights laws, procurement laws, banking laws, foreign exchange laws, competition laws, labour laws, dispute settlement laws, and investment laws. Some basic legislations are the National Trade Development Authority Act,⁵⁵² the Fair Trade Practices Act,⁵⁵³ the Capital Market and Securities Act,⁵⁵⁴ Export Processing Zones Act⁵⁵⁵, East African Community Custom Management Act,⁵⁵⁶ The Finance Act⁵⁵⁷, the Tanzania Investment Act,⁵⁵⁸ The Income Tax Act,⁵⁵⁹ the Intellectual Property Legislations such as the Copyrights and the Neighbouring Rights Act,⁵⁶⁰ the Patent Act⁵⁶¹ the Trade and Service Marks Act⁵⁶² and as many other legislations as will be discussed below. As stated in the introduction (1.0), this paper aims at making a critical analysis as to whether the Tanzania trade legal framework is in compliance with the WTO single undertaking obligations and the related rules, with special focus on the rule of non-discrimination, rules on market access, rules on fair trade, and rules on trade liberalization and societal values. Each rule is discussed hereunder and a comparative analysis is made against Tanzania legal framework on each rule.

550 China – Measures Related to the Exportation of Rare Earths Tungsten and Molybdenum, WT/DS431/R, WT/DS432/R, WT/DS433/R, adopted 29th August 2014 at para 7.123, also see Brazil - Measures Affecting Desiccated Coconut WT/DS22/AB/R adopted on 21 February 1997 at p 12.

551 Rolland S. E. (2010) Redesigning the Negotiation Process at the WTO *Journal of International Economic Law* 13(1), 65–110. This approach has recently being criticized by various scholars for been badly crafted, complicated, and not able to include new issues. And it has been suggested that the WTO should adopt plurilateral agreements instead. See Jones E. (2014) Which Way Forward For the WTO? The Plurilaterals Debate, Vickers, B. (2013) ‘The Relationship between Plurilateral Approaches and the Trade Round’ Think Piece for the E15 Export Group on the Functioning of the WTO. Geneva: ICTSD and WTI. However, this paper focuses on Tanzania’s “compliance with the WTO single undertaking obligations”.

552 Act No. 4 of 2009.

553 Act No. 4 of 1994.

554 Cap. 79 of the Laws of Tanzania.

555 Act No. 11 of 2002 as amended by Act No. 3 of 2006 on March 2006.

556 Act of 2011.

557 Cap. 218 RE 2002.

558 Cap. 38 RE 2002.

559 Cap. 332 of the Laws of Tanzania.

560 Cap. 218 RE 2002.

561 Cap. 217 RE 2002.

562 Cap. 326 of the Laws of Tanzania.

2.1 Principle of Non-Discrimination

The principle of non-discrimination is a fundamental principle in all Multilateral Trade Agreements.⁵⁶³ It entails that all members are obliged to grant other WTO members the best possible treatment without any discrimination. In return, each member has a right to receive the best possible treatment without any discrimination.⁵⁶⁴ This principle is embodied in two principles, that is, the Most Favoured Nation (MFN) treatment principle and National Treatment principle. The Most Favoured Nation (MFN) treatment principle provides that there should be no discrimination based on nationality. This means that traders from two different nations should not be accorded different treatment based on their nations of origin. On the other hand, the National Treatment (NT) principle provides that nationals should not be treated better than foreigners. These principles have been provided for under the WTO Multilateral Trade Agreements as they have been analysed below.

2.1.1 The Most Favoured Nation Treatment Principle (MFNTP)

With MFNTP principle, members cannot discriminate between their trading partners.⁵⁶⁵ Once a state treats one nation with favour, other nations should also receive the same favour immediately and unconditionally.⁵⁶⁶ This is provided under article I: 1 of GATT, article II of GATS and article 4 of Trade Related aspects of Intellectual Property Rights (TRIPs). For TRIPs, for example, the principle provides that same treatments should be given to like products, services and equal protection of Intellectual Property Rights.⁵⁶⁷ Tanzania in order to comply with the WTO in 1999 repealed its copyright Act and enacted the Copyright and Neighbouring Rights Act so as to comply with the TRIPs requirement of international standard of protection of copyright.⁵⁶⁸ Section 44 provides protection of copyright by technical measures of protection. Section 3 of the Copyright and Neighbouring Rights Act,⁵⁶⁹ provides that works of nationals and those published in Tanzania are all protected regardless of one's nationality. Under the Patents (Registration) Act⁵⁷⁰ any person can register for patent in Tanzania and all shall be equally protected. In addition, all patents registered under the African Regional Intellectual Property Organisation (ARIPO) protocol are protected in Tanzania by the virtue of section 29 of the Act. This protection is based on regional integrations which is an exception provided under Article 4 (a) of TRIPs and under section 14 and 31 of the Trade and Service Marks Act⁵⁷¹ exclusive right over a trade mark is granted to all who successfully registered their interest.

563 The preamble of the WTO agreement states that member have a desire to eliminate discrimination treatments in all international trade relations.

564 WTO E-Learning (2012) Introduction to WTO Basic Principles and Rules, My Course series available at <https://ecampus.wto.org> accessed on 20/02/ 2018.

565 *Ibid* at 3.

566 *Ibid*.

567 MFN broadens trade liberalization, reduces international tension, enable parties to produce in a most efficient production country and simplify trade negotiations. See Lester S. et. al. (2010) World Trade Law, Text, materials and Commentary, universal Law Publishing Co. PVT ltd, New Delhi at pp. 323-324.

568 [Cap. 218 RE 2002].

569 *Ibid*.

570 [Cap. 217 RE 2002].

571 [Cap. 326 RE 2002].

Furthermore, in order to ensure free market and free flow of capital, the Tanzanian government has established the Capital Markets and Securities Authority (CMSA) Act,⁵⁷² which among other things facilitates the free flow of capital and financial resources to support the product and factor markets.⁵⁷³ Foreign individuals or companies can invest in shares with foreign participation limit of 60 % of the aggregate value of the listed shares, even to obtain credit for foreign investors in the local financial market.

The 2014 Capital Markets and Securities (Foreign Investors) Regulations allow foreign investors to purchase equities and corporate debt listed on the DSE without limitations.⁵⁷⁴ The Regulations Also open up government issued securities to purchase by investors from within the East African Community (Burundi, Kenya, Rwanda, Tanzania, South Sudan and Uganda) with total foreign ownership limited to 40 per cent.

In addition, the Tanzania Trade Development Authority Act⁵⁷⁵ was enacted for the purposes of establishing the Tanzania Trade Development Authority⁵⁷⁶. Section 5 of the same Act, underlined the functions of the Authority. Section 5(1), (a) empowers the authority to be an adviser to the government on matters relating to formulation, development, supervision of trade policies and strategies in accordance with objectives stated in the National Trade Policy. The law further gives power the authority to organize fair trade and market access.

2.1.2 The National Treatment Principle (NTP)

This principle prohibits internal discriminatory measures once goods, or services have been imported in a member country. In Intellectual Property Rights (IPR), member countries should not treat nationals of other members less favorably than its subjects. Domestic products and services or IPR holders are not to be treated better than foreigners. Under this, domestic taxes and regulations should express equality between nationals and foreigners. Article III of GATT is applicable to like products and directly competitive and substitutable products. Likewise, Article XVII of GATS provides that members should not treat services provided by nationals better than like services provided by foreigners.

In further compliance to WTO, and the fact that the investment sector is the essential component, Tanzania in 1997 enacted the Investment Act⁵⁷⁷ so as to create favorable environment for foreign investment, 100% foreign ownership is allowed in most economic activities, the Act gives equal incentives opportunity to foreigners and the local investors; this is as far as section 3 of the Tanzania Investment Act is concerned, though the act provides minor exceptions between the two group, the law requires different on investment capital between the

572 [Cap. 79 RE 2002].

573 Therefore to this extent, it can be said that, Tanzania has tried to comply to the requirement of the WTO to ensure market access and the free trade.

574 This is a result of the establishment of the Capital Market (foreign Investors) Regulations) GN. No. 338 of 2014 example Regulation 3 allows the participation of the foreign investors into of CMS of Tanzania.

575 Act No. 4 of 2009.

576 Under the provision of section 4 of the Trade Development Authority Act, No. 4 of 2009.

577 Act No. 1 of 1997.

foreigner and the local investor, which accordingly is argued to have violated the principle of National Treatment of the WTO which is provided for under Article III of the GATT which requires the member state to offer treatment to other member state similar to that offered to its locals.

Also, Tanzania provides right to license on the petroleum and mining sectors equally between the local investors and the other investors, except with few exceptions, including that in section 8 of the Mining Act,⁵⁷⁸ which gives rights to extract gemstone to only citizen of Tanzania. The Petroleum Act which provides for a local contents requirement requires foreign investors while dealing in their activities to take into account such local contents requirement; example; requirements to give a plan on recruitment of local workers and training for locals⁵⁷⁹ and to give certain percent of their extracted product to the domestic market.⁵⁸⁰ Although this may seem discriminatory, this is indeed for the purpose of ensuring the protection of domestic industry and locals at large.

The Excise (Management and Tariff) Act⁵⁸¹ under fourth schedule *inter alia* provides that wine made “with the domestic grapes content exceeding 75%” shall not have excise rate, hence pay no excise duty, while other wines are subjected to Tsh. 1,053.00 per litre exercise rate. This favour domestic product, and wine made of domestic products. However, as stated earlier, this is justified by the WTO economic development exception.⁵⁸² In addition, under section 2 (2) of the Tanzania Investment Act,⁵⁸³ it has been provided that the Act shall apply only to investment with capital of 100000 USD for local investors while 300000 USD for foreign investors. This shows that local investors are given a better treatment compared to foreign investors. However it is not a violation as *inter alia*, protection of local industries is one of the exceptions to article III of GATT.

Another exception is that of government procurement as it is provided for under article III.8 (a) of GATT. This allows members to accord preference to domestic products over imported products in case, these products are procure for consumption and no resale or production of goods for economic gain.⁵⁸⁴ Section 54 of the Public Procurement Act⁵⁸⁵ provides that everyone is allowed to participate in procurement proceedings with no regard to nationality. However, in some cases, preference is given to nationals.⁵⁸⁶ The Mining Act⁵⁸⁷ allows any person to conduct mining. However, it set rules which benefits locals such as training and employment.⁵⁸⁸ This means services from locals are favoured more than those from foreigners.

578 Act No. 14 of 2010.

579 Section 97 of the Petroleum Act, NO. 21 of 2015.

580 Section 220 to 221 f the Petroleum Act, No. 21 of 2015.

581 Cap. 147 RE 2008.

582 Article XVIII of GATT.

583 Cap. 38 RE 2002.

584 WTO E-Learning (2012) Introduction to WTO Basic Principles and Rules p. 3.

585 Act no 7 of 2011.

586 This has also been provided for under regulation 30-45 of the Public Procurement Regulations, G.N. no. 446 of 2013. Under these provisions, locals are promoted and foreigners are motivated to team up with locals so that they can get benefits.

587 Act No. 14 of 2010.

588 See section 10, 14, 42, and 44 of Act No. 14 of 2010.

Likewise, under the Petroleum Act⁵⁸⁹ it is provided that goods and services should be provided by Tanzanian entrepreneurs.⁵⁹⁰ Also there should be training and employment of Tanzanians,⁵⁹¹ and these companies should be listed so that the public may subscribe. Also, section 5 (1) (d) of The Tanzania Trade Development Authority Act,⁵⁹² provides that the Trade Development Authority shall inter alia “foster better market access conditions for Tanzanian products and services at domestic, regional and international markets.” This may seem discriminatory on face of it, however, it falls under the exceptions of the national treatment principle. Under TRIPs⁵⁹³ availability, acquisition, scope, maintenance, and enforcement of IPR protection should be equal between locals and foreigners.⁵⁹⁴ The same has been reflected under domestic legislations governing IPR.⁵⁹⁵

3.0 Rule on Market Access

These rules are not much different from the rule of non discrimination, they are intertwined in the sense that, once the trade environment is non discriminatory, then the member states could be able to access market without disturbances or limitation. *Inter alia*, WTO has an objective of reducing tariffs and other trade barriers.⁵⁹⁶ These are barriers on access to market. Rules on market access in goods are quite different from those in services.

3.1.1 Rules on Market Access in Goods

In goods, barriers can be of tariff or non-tariff nature⁵⁹⁷ as analysed below.

3.1.1.1 Tariff Barrier

These are also known as custom duties. WTO does not prohibit tariffs. However, there are agreed tariff rates that members should impose on imports. These rates are listed in the schedules of tariff concessions. Members are obliged to adhere to the bound tariff rates in their schedules. However, they can modify them by using the renegotiation procedures outlined in Article XXVIII of GATT. Obligations on the bound tariff level are provided under Article II, XXVIII, and XXVIIIbis of GATT. In Tanzania the Excise (Management and Tariff) Act regulates tariffs in the country.⁵⁹⁸ The Act is in compliance with WTO laws. The Act regulates matters relating to import procedures, the computation of duties, and exemptions and remission of duties. The respective annual Finance Act⁵⁹⁹ normally contains the newly enacted tariff schedule for Tanzania (Harmonized System, eight-digit level).

589 Act No. 21 of 2015.

590 Section 219 of Act No. 21 of 2015.

591 Section 220 of Act No. 21 of 2015.

592 Act No. 4 of 2009.

593 Article 3 of TRIPs.

594 Lester S. et. al. op. cit. pp. 709-718

595 See part 2.1.1 above.

596 Bossche P. and Zdouc W (2013) *The Law and Policy of the World Trade Organization: Text, Cases and Materials Textbook*, 3rd Ed. Cambridge Press University, New York.

597 Introduction to WTO Basic Principles and Rules. p. 20.

598 Cap. 147 RE 2008.

599 See for example 2017 Finance Act on Tariffs, available at <http://www.mof.go.tz/docs/THE%20FINANCE%20ACT,%202017%20CHAPA%20Final.pdf> accessed on 20/02/2018.

3.1.1.2 Non - Tariff Barriers

Non-Tariff Barriers includes quantitative restrictions, technical regulations and standards, sanitary and phytosanitary measures, lack of transparency, unfair and arbitrary application of trade measures,⁶⁰⁰ customs formalities and procedures,⁶⁰¹ pre-shipment inspection, marks of origin, measures relating to transit shipments, rules of origin, and import licensing procedures. In Tanzania there is restriction on goods that can be imported. However, that can be justified for protection of local industry.⁶⁰² This has also been reflected in the SADC Protocol on Trade in Goods of 2012.⁶⁰³ The Protocol prohibit and avoid limitation of supplies in terms of quotas, monopolies and exclusive service supplies.

3.1 Rule on Market on Service

On Trade in services, market access is governed by article XVI of GATS. This is not a mere obligation; rather it is a series of commitments made under national schedules. These schedules regulate natural persons supplying services cross borders, financial services, air transport services, maritime transport services, and telecommunications. In all these services, access should be granted without discrimination.⁶⁰⁴ In Tanzania, this has been reflected under different laws. For instance, the Banking and Financial Institutions Act, 2006⁶⁰⁵ allows a company from any country to register as a bank or financial institution as long as it has qualified.⁶⁰⁶

3.2 Rule on Fair Trade

Apart from trade liberalization, WTO insists on fair trade practices.⁶⁰⁷ Unfair trade practices are defined to include abuse of position in bargaining, fixing prices, and cartel agreements and any other practice that is not fair. Tanzania in order to ensure compliance with the WTO principle of market access and fair trade to all member states enacted the Fair Trade Practices Act.⁶⁰⁸ The Act has tried to give of what amount to restrictive trade practices so as to avoid offering less treatment to foreign investors under the provisions of section 17 of the Act.⁶⁰⁹ Furthermore, the definition of the term discrimination under section 18 of the Act shows total compliance to the WTO principle of non discrimination. This section cement that Tanzania offers Most Favored Treatment to all member states. For the purpose of clarity the section defines discrimination as:

“the act of a person in selling or supplying or offering to sell or supply, goods or services to another person, whether for use in production for

600 Article X:3(a) of GATT.

601 Article VIII.1(c) and Article VIII.3 of GATT.

602 Article XVIII of GATT.

603 Tanzania is one among the members of that agreement and it has ratified the application of this agreement into his economy.

604 National Treatment, under article XVII of GATS.

605 Act No. 5 of 2006.

606 See Part III of Act No. 5 of 2006.

607 Bossche P. and Zdouc W op. cit. at pp 507-508.

608 Act No. 4 of 1994.

609 *Ibid.*

resale or final consumption, under conditions less favourable to that person than those on which he sells or supplies or offers to sell or supply substantially similar goods or services to third persons."

Therefore, if the goods or services of one person which are similar to the other person or substantially similar are treated differently under the meaning of restrictive practice it will amount to discrimination. Therefore, this Act provides the basis for non-discrimination under Tanzania trading environment. Therefore, everyone can freely trade on Tanzania whether a foreigner or local person provided that such person is not involved in restrictive trade activities.

4.0 Anti-Dumping Measure

WTO does not prohibit dumping however it allows members to take measures to protect themselves from injuries as a result of dumping.⁶¹⁰ Dumping is defined as bringing the product into the market of another country at a price lower than the market price.⁶¹¹ Article VI of GATT entails that for measures against dumping to be enforced there must be proof that there is dumping, domestic industry injury and a causal link between dumping and the injury.⁶¹² Anti-dumping measures which members are allowed to take include; price undertakings, imposition and collection of anti dumping duties and provisional measures.⁶¹³

In Tanzania, anti-dumping measures are regulated by the Anti-Dumping and Countervailing Measures Act.⁶¹⁴ This statute reflects the principles of anti-dumping as provided under article VI of GATT and Anti-Dumping Agreement (ADA). However, the problem still persists due to a number of challenges in implementation of the Act. Such challenges include the lack of regulations to govern its implementation, and the absence of permanent body and experts to deal with anti-dumping measures, lack of awareness on pursuing remedies available and financial dependency to donor countries that are normally dumping their products into our markets.

4.1 Subsidies

Subsidies are normally used by governments to boost local production and economy. However, when used in international trade it may cause unfair competition.⁶¹⁵ For instance, when country A subsidizes its export products to country B, country B products and other products with no subsidies from other countries have to compete in the same market. The subsidized products will be relatively cheaper hence causing unfair advantage. Article XVI of GATT and Subsidies and Countervailing Measures (SCM) agreement⁶¹⁶ provides that in case

610 Dumping refers to introduction of products in a foreign market in a lessor price than its normal value. See article 2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994. This is also referred to as ADA. ADA also provides for anti-dumping measures.

611 *Ibid.*

612 Injury can be material injury, threat of material injury or material retardation.

613 Article 7, 8 and 10 of ADA. These measures should be in accordance with article VI of GATT, and ADA. See United States – Anti-Dumping Act of 1916 WT/DS136/ARB, 24 February 2004.

614 Act no 1 of 2004.

615 Bossche P. and Zdouc W (2013) the Law and Policy of the World Trade Organization: Text, Cases and Materials Textbook, 3rd Ed. Cambridge Press University, New York. p. 557.

616 Article 10 to 23 of SCM.

subsidies cause injury to domestic industry then countervailing duties may be imposed.⁶¹⁷ Not all subsidies are prohibited. Prohibited subsidies are provided for under Article 3 of SCM Agreement to include export subsidies and import substitution subsidies. Other subsidies will only be challenged when they cause adverse effects to members.⁶¹⁸ When injured with subsidies measures may cure the situation by countervailing measures.⁶¹⁹ A recent study shows that, like other developing countries, subsidized imports still act as a challenge to our domestic industry.⁶²⁰ Although subsidies has been injuring our local producers, there have been challenges in taking countervailing measures due to; absence of comprehensive national legislation and institutional framework, lack of experts, local producers incompetence, national economic interest and technical nature and complexity of the WTO rules on countervailing measures.⁶²¹ It has also been noted that Tanzania has no regulations governing countervailing measures.

To eliminate these unfair trade practices, Tanzania has to; enact regulations governing countervailing measures, establish trade remedy unit under the Ministry of Industry and Trade⁶²² and do away with the lesser duty rule as provided under the Anti-Dumping and Countervailing Measures Act.⁶²³

4.2 Rules on Trade Liberalization and Societal Values

The main object of WTO is trade liberalization. However, WTO members are diverse in terms of culture, economy, and political ideologies. This has necessitated enactment of provisions which would reconcile domestic conditions in every member state with trade liberalization. These provisions are mainly regarded as exceptions to the WTO principles. They include the following:

5.0 General Exceptions

These are provided for under article XX of GATT and article XIV of GATS. These provisions provide that as long as there are no intentions to discriminate or bar trade liberalization, governments may impose measures to protect public morals; human, animal or plant life and health; and the protection of national treasures. Tanzanian government has complied with this provision by enacting laws prohibiting trade in goods that are considered immoral, or would endanger life or health, public order, or national treasure. These laws include: Tanzania Food, Drugs and Cosmetics Act⁶²⁴ and the Standard Act⁶²⁵ which regulates *inter alia* standards of products which can be imported for protecting health and safety of

617 As in anti-dumping, one must establish that there is subsidized trade which cause injury to its domestic industry before imposing any measure. See Bossche P. and Zdouc W ip. Cit. at p. 561.

618 Article V of SCM agreement. These are referred to as actionable subsidies.

619 Article X of SCM agreement.

620 Numbi T.C (2013) The Implementation of Countervailing Measure in Tanzania: Challenges and Constraints, Mini Thesis at University of the Western Cape available at http://etd.uwc.ac.za/xmlui/bitstream/handle/11394/2182/Numbi_LLM_2013.pdf?sequence=1, accessed on 20/02/2018.

621 *Ibid.*

622 This may constitute of a permanent body dealing with the dumpind and subsidized imports, and experts ready to render services on the same.

623 Act No. 1 of 2004, see also Numbi T.C op. cit note 76.

624 Act No 1 of 2013.

625 Cap. 130 of 2002.

consumers, environment and life at large. In addition, there is the Drugs Control and Enforcement Act⁶²⁶ which regulates “narcotic drugs and psychotropic substance”. This Act prohibits the use and sale of narcotic drugs for protection of morals, health and life. Furthermore, there is the Anti- trafficking in Persons Act.⁶²⁷ The Act prohibits trafficking of persons for protection of life and morals. Another important legislation is the Penal Code.⁶²⁸ The Penal Code, *inter alia*, prohibit sex workers and prostitution activities⁶²⁹ under section 139, 145 and 148 and pornography contrary to section 138 B⁶³⁰ for protection of morals. Apart from the above-mentioned laws, there is the Gaming Act⁶³¹ which prohibits games which are considered immoral or are against public order. For instance, “*upatu*”, structured gaming and cheating games or devices are not allowed.⁶³²

There are no general exceptions under TRIPs, but some provisions apply to specific circumstances, when it is necessary to protect the public.⁶³³ These includes the following articles; Article 27.2 which provides that a state may exclude some inventions from being patentable for protection of public order or morality, life, health and environment. The same rule has been reflected under section 12 of The Patents (Registration) Act,⁶³⁴ which states that patents cannot be obtained where its exploitation will be against public morals and order.

In addition, Article 27.3 provides that “diagnostic, therapeutic and surgical methods for the treatment of humans or animals”, plants, animals and biological processes in their productions are not patentable. The same has been provided for under section 38 of The Patents (Registration) Act.⁶³⁵

Article 30 provides for exceptions to rights conferred to the patent right holder. This is reflected under section 38 The Patents (Registration) Act.⁶³⁶ In addition, Article 31 provides on circumstances under which patents may be used without authorization of the patent right holder. The same has been reflected as compulsory licensing and government use under part XI and XIII of The Patents (Registration) Act.⁶³⁷

Article 13 provides for exceptions on protection of copyrights and related rights. This can be seen under section 12 of the Copyright and Neighbouring Rights Act⁶³⁸ which provides for exceptions on copyright protection. Also, section 26 of the Copyright and Neighbouring Rights Act⁶³⁹ provides for exceptions on protection of folklore. Furthermore, the Act under section 35 provides for protection of

626 Act No.5 of 2015

627 Act No. 6 of 2008.

628 Cap. 16 RE 2002.

629 Commonly referred to as prostitutes.

630 Pornography is also prohibited under sections 83 and 158 of the Law of the child Act, Act no 27 of 2009.

631 Cap. 41 RE 2008.

632 Section 55, 62, and 75 of Cap. 41 RE 2008.

633 WTO E-Learning (2012) Introduction to WTO Basic Principles and Rules.

634 Cap. 217 RE 2002.

635 *Ibid.*

636 *Ibid.*

637 *Ibid.*

638 Cap 218 RE 2002.

639 *Ibid.*

performers' rights. Article 17 provides for an exception on "fair use of descriptive terms" under trademarks. This is provided under section 34 of the Trade and Service Marks Act⁶⁴⁰ which allows "bona fide use of name or description."

5.2.1 Security Exception

This is provided for under article XXI of GATT, article XIV bis of GATS and Article 73 of TRIPs. The provisions allow members to take measures which would otherwise be prohibited in spirit of protecting security of its nation. These measures must relate to either, the trade in fissionable materials; or traffic in arms, ammunition and other war-related trade. Also, it may be for fulfilment of one's duty to the United Nations.⁶⁴¹ For instance, the government can prohibit some technology importation for national security such as armaments.

5.2.2 Regional Integration Exception

WTO member states are allowed to enter into regional integration and agreements therein to liberate trade in the form of Preferential Trade Agreements (PTAs).⁶⁴² However, WTO requires that these agreements must adhere to the conditions set under article XIV of GATT and article V of GATS. Article XIV of GATT provides for 3 qualifications. These include; to raise overall the level of barriers, not discriminating any member state, and the discrimination should be within a reasonable time. In addition, Articles V of GATS provides for a requirement for the agreement to aim at more trade liberalization rather than restriction. These Preferential Trade Agreements have to be notified to WTO organ.⁶⁴³ Tanzania is a part of many regional organizations, such as East African Community (EAC), Southern Africa Development Community (SADC), and the African Union (AU). For instance, there is EAC Common Market Protocol which regulates trade among east African countries.⁶⁴⁴ And due to this there is free movement of goods within the region. This can also be found under the East Africa Community Custom Management Act.⁶⁴⁵

5.2.3 Economic Development Exception

Article XVIII of GATT recognizes the position of developing countries and their need for derogations from some trade measures with respect to the GATT Articles. The purpose of such allowance is to support the infant industries and remedying balance of payments problems. This can be reflected in various provision in Tanzanian laws such as; section 2 (2) of the Tanzania Investment Act,⁶⁴⁶ the Mining Act,⁶⁴⁷ the Petroleum Act,⁶⁴⁸ and Section 54 of the Public Procurement Act⁶⁴⁹ and

640 *Ibid.*

641 WTO E-Learning (2012) Introduction to WTO Basic Principles and Rules at pp. 39-40.

642 The rationale of allowing regional integration is to increase trade liberalization.

643 In case of trade in service, to the council of trade in services. Article V.7 of GATS.

644 2 Protocol for the Establishment of the EAC Common Market Protocol.

645 Revised Edition 2009.

646 CAP 38 RE 2002.

647 Act no 14 of 2010.

648 Act no 21 of 2015.

649 Act no 7 of 2011.

the Tanzania Trade Development Authority Act,⁶⁵⁰ as discussed above.⁶⁵¹ All these provision were enacted to realize economic development in Tanzania while at the same time ensuring that the legal framework goes hand in hand with Tanzania obligations at the WTO.

6.0 Conclusion

Therefore, as shown in this paper, Tanzania, as a member state of WTO has an obligation to comply with the WTO single undertaking principle. By looking at the legal framework of trade in the country, Tanzania has, to a large extent, complied with single undertaking as its legislations reflect WTO rules such as; principle of non-discrimination, rules on market access, rules on fair trade, and rules on trade liberalization and societal values.

650 Act no 4 of 2009.

651 See 2.1.2 The National Treatment Principle at pp. 3-4 above.