

**EXAMINATION OF THE PRINCIPLE OF UNFAIR  
TRADE UNDER WTO AND ITS EFFECT ON COTTON,  
TEXTILE AND GARMENT (CTG) SUBSECTOR IN  
NIGERIA**

**BY**

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**BEING A THESIS SUBMITTED TO THE SCHOOL OF POST  
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THE AWARD OF THE DEGREE OF MASTERS OF LAWS  
(LLM)**

**SAFAR, 1441 AH  
OCTOBER, 2019**

## **DECLARATION**

I hereby declare that this work is the product of my own research efforts; undertaken under the supervision of Associate Prof. Ahmad Rabi'u and has not been presented and will not be presented elsewhere for the award of a degree or certificate. All sources have been duly acknowledged.

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## **CERTIFICATION**

This is to certify that the research for this thesis and the subsequent preparation of this thesis by Sani Ibrahim Koki (SPS/15/MLL/00016) were carried out under my supervision.

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## APPROVAL PAGE

This thesis “EXAMINATION OF THE PRINCIPLE OF UNFAIR TRADE UNDER WTO AND ITS EFFECT ON COTTON, TEXTILE AND GARMENT (CTG) SUBSECTOR IN NIGERIA” by Sani Ibrahim Koki (SPS/15/MLL/00016) has been well examined by us and we hereby approve it for the award of degree of Masters of Laws (LLM).

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## **DEDICATION**

I dedicate this thesis in the name of Allah, Most Gracious, and Most High to my late Father Malam Haruna Abdullahi, may his gentle soul rest in perfect peace, amen.

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8. Company and Allied Matters Act,(CAMA) Cap 20 2010 as amended, Laws of the Federal Republic of Nigeria 2004.
9. Customs and Excise Management Act 1958 no.55 Cap 84 Laws of the Federal Republic of Nigeria 2004.

## **TABLE OF ABBREVIATIONS**

WTO - World Trade Organization

GATT – General Agreement on Tariffs and Trade

ADA – Anti-Dumping Agreement

CTG – Cotton Textile and Garments

DSU – Dispute Settlement Unit

UNCITRAL – United Nations Commission on International Trade Law

UR – Uruguay Round

TFA – Trade Facilitation Agreement

NEPC – Nigerian Export Promotion Council

EPZs – Export Processing Zones

WIPO – World Intellectual Property Organization

SON – Standard Organization of Nigeria

ITO – International Trade Organization

IMF – International Monetary Fund

UNCTAD-United Nations Conference on Trade and Development

UN – United Nations

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## **ABSTRACT**

WTO is a body responsible for trade negotiations policies and agreements in goods, services and intellectual property. Its objectives allow member states to export manufactured products into the markets of another member states. But where the export becomes excessive causing injury or threat to an established industry WTO considers it unfair (dumping) trade practice. Taking action against the said unfair trade practice (Measure) completely violates the objectives of WTO. Nigeria has been a dumping ground for almost everything and suffering from dumping practices in a number of its industries. Cotton, Textile and Garment (CTG) Subsector was carefully selected for this study. The study revealed that there were 19 industries in this subsector within the study area of Kano State, but none can be said to be producing optimally. In fact, only two (2) produce on part time basis with rest completely closed shops. The WTO regime provides trade remedies against dumping allowing the affected party to take measure against the unfair trade practice but this provision does not appear to have been used to protect these affected industries. This is the problem examined in this research. The study employed doctrinal and empirical methodologies. The instrument used for the study was structured questionnaire with some key concepts to answer formulated research questions. The data analysis was done through one way variance (ANOVA) for testing hypothesis using descriptive and statistical package for Social Science (SPSS). From the analysis of data the research reveals that dumping was the major factor affecting this subsector. The research also found that the stakeholders are unaware of the reliefs provided by WTO, and this adversely affected the stakeholders' ability to resort to the WTO remedies for Anti Dumping and this lead to their helplessness and the complete stoppage of their production. The study also found that the existing legal regime in Nigeria notably Customs Duties and Subsidies Good Act 1958 that would have dealt with this problem is obsolete. The study recommends for the enactment of a new legal regime and establishment of institutional frame work that will promote and enlightens the stakeholders in the affected industries under study to be in line with the current reality on Anti-Dumping criteria so that the stakeholders can find it simple for utility as obtained in other jurisdictions.

## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.1 BACKGROUND OF STUDY

This study focuses on the principle of unfair trade under WTO and its effect on Cotton Textile and Garment (CTG) subsector in Nigeria. World Trade Organization (WTO) was established in 1995 as an entity to negotiate trade agreements that cover goods, services and intellectual property. It is committed to lower customs tariffs and other trade barriers. WTO monitors measures that the governments of member states adopt(ed) for trade policies and practices to make sure they are implemented. It discourages unfair trade practice such as dumping and settles trade disputes amongst member nations<sup>1</sup>.

Nigeria has been an active member of WTO since creation. It registered the World Trade Organization treaty in December 1994, there has been occasional focus on the economic implication of this treaty for the Nigerian economy, yet in 1995 became a founding member of the organization specifically in January. WTO which is the only international body dealing with the rules of trade between nations went into trade agreements with various nations of the world. The legal documents emanating there from, provided ground rules for international commerce, contracts, binding governments of various countries of WTO agreement within agreed unit and as an institution on trade globally<sup>2</sup>.

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<sup>1</sup> Obalade, F. Analysis of Dumping as a Major Cause of Import and Exports Crises, Vol. 4, No. 5; International Journal of Humanities and Social Science, March 2014 Page 235.

<sup>2</sup> This is a research study specifically to ascertain the implications and aspect of WTO trade policies on the development of Nigeria economies, by Nnabuihe, N.S et al, WTO and developing World Nigerian economy; a case study. Department of Political Science. Science, Alvan Ikoku Federal College of Education, Owerri, Imo State, Nigeria. Page 396.

Thus, by merely ratifying that treaty (agreement) Nigeria is bound by its commitment under the general principle and customary International Law and must respect those commitments made. The principle of “*Pacta Sunt Servanda*” which obliges every state to respect its undertaking speaks in this direction.

As pointed out by Mavroidis, a country (or customs territory, such as the European Union) upon acceding to the WTO might be bound by three different sets of obligations which are enumerated as follows<sup>3</sup>:

- a) Obligation reflected in the multi-lateral agreements, which are obligation which a WTO member must respect because of its accession in the WTO. In other words, there is no possible opt-out from this set of obligations.
- b) Obligations reflected in the Pluri-lateral agreements, which are obligations which a WTO member might want to assume, by acceding to a WTO Pluri-lateral agreement. Participation in these agreements is optional.
- c) Adhoc obligations that is obligations, which bind the acceding country (and not necessarily each and every acceding country) and regulates its legal relationship with the WTO membership. Such obligations are usually imposed on countries which are not, what is understood to be, market economies.

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<sup>3</sup> Mavroidis, The General Agreement on Tariff and Trade-A Commentary (2005) Page7.

This means that, WTO agreement possessed the character of every international treaty including the requirement of compliance with the provisions and the articles made there from in the process of acceding and signing the treaty agreement.

The Anti-dumping agreement falls within the first category (a) mentioned in the list above<sup>4</sup> even though radical compliance may not necessarily be practicable due to the complex nature of the provisions to regulate the effects and minimize dumping. In recent years, the manufacturing sector has raised alarm over the negative impact of globalization and liberalization on the Nigerian economy especially in agricultural sector, oil, automobile, manufacturing and the CTG subsectors that have witnessed massive reduction in quantum of production, employment opportunities and cash flow etc.

There was frequent call by the manufacturers for further negotiations of the WTO treaty in order to protect the local industry and the Nigerian economy from massive dumping of foreign goods<sup>5</sup>. In Nigeria, the textile industry including cotton and garment is the third largest in Africa after Egypt and South Africa. It is the largest employer of labour in the manufacturing sector. The industry is mainly controlled by large private-sector firms, often with substantial foreign participation. Low productivity levels limit Nigeria's export

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<sup>4</sup> Caribbean Export Development Agency 'An Introductory to Trade Remedies in the Multilateral Trade System' (2010)1:1 <http://www.carib-export.com/login/wp-content/uploads/2010/01/trade%20wins%20wins%20remedies%20%final%June/202010.pdf> accessed on 27<sup>th</sup> October, 2016).

<sup>5</sup> Ibid at page 396.

and import possibilities as a result of massive dumping for foreign substandard goods/product from WTO member states<sup>6</sup>.

Many countries are engaging in unfair trade-practices (and Dumping is one of them) to establish their strong economic supremacy turning Nigeria into dumping ground where almost everything including Garri made from Cassava is imported into this country from India. This takes place at the expense of Nigeria that is unable to reap the benefits of international trade and the resultant collateral outcomes of globalization and free trade since Nigeria did not participate in it from the beginning. It is obvious that the participation of Nigeria will not be forthcoming for a long time since Nigeria already exhausted politically from the continuous rule of corrupt regimes, civil unrest and many years of military conflict in addition to many other economy-related problems. Dumping is considered to be unfair trade practice and not acceptable by many national laws and other international trade laws<sup>7</sup>. Because of these effects policies were not made to deal with the devastating effects of dumping as a result of which there will not be economic growth through industrialization in the African continent. To achieve greatness Africa needs to diversify; because most or almost African States are among the developing Economies.

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<sup>6</sup> Eneji, M.A. et al, Import of Foreign Trade and Investment on Nigeria's Textile Industry: the Case of China, *Journal of African Studies and Development*, Volume4(5), PP130-141, July2012 also available at <http://www.academicjournal.org/ASD>.

<sup>7</sup> Obalade, F. *Supra* note 1. Page 233.

Africa has no choice but to industrialize (or re-industrialize) and diversify its economies including and more particularly that of Nigeria. This is even more so that the continent has one of the fastest growth rates of population and urbanization in the world, requiring large number and different kind of jobs, as well as the volatile and declining terms of trade for commodity products. The question is no longer if but how Africa could achieve rapid industrialization or at least resuscitation especially under the new rules of economic liberalization and non-interventionism particularly by the emerging economies like Nigeria<sup>8</sup>. As it is well known, industrialization took place in virtually all other parts of the world behind high tariff walls and state interventionism, Africa would be the only region in history that would have to industrialize without this instrument i.e. allowing and sticking to their commitments under WTO. In 2008 African countries called WTO for more flexibility especially in trade remedies, technical assistance for the establishment of local trade remedy frameworks on the continent to stop dumping and its effect on the local industries including textile, cotton and garment subsector<sup>9</sup>.

Nigeria's quantum production in textile, whether cotton textiles, synthetic fibers or garments systematically declined every year especially in Kano, Lagos and Kaduna as was mentioned during an oral interview with Dr. Sa'idu Adhama

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<sup>8</sup> ILLY, O. Trade Remedies in Africa: Experience, Challenges and Prospects, 4<sup>th</sup> Global Leaders Fellowship Program Annual Colloquium, Princeton 14-15 May, 2012, University of Oxford and Princeton University Page1

<sup>9</sup> O. Ibid, at page 4

Chairman Adahama Textiles Ltd., in Kano on 16<sup>th</sup> August, 2016<sup>10</sup> said the textile industry performance is dismal. Hence, some form of trade protectionism is needed for the development of Nigeria's domestic factories. Imports substitution is highly desirable or measure against the aspect of dumping on the cotton, textile and garment subsector which causes, joblessness, shrinking revenue and poverty. Traditionally, imports from Asian and other industrially developed states were not prevalent but it has dramatically raised that, what Nigeria produced locally could not compete with the imported products mainly due to some factors like selling below normal value, incentives provided by the various governments in the exporting member states, this directly affects local producers<sup>11</sup>. What then is dumping in the eye of WTO<sup>12</sup>? Article VI:1 of GATT provides:

*The contracting parties recognize that dumping by which products of one country are introduced into the commerce of another country at less than the normal value of the product, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry<sup>13</sup>.*

Therefore, if a company exports a product at a price lower than the price it normally charges on its own home market it is said to be “dumping” the product. The WTO agreement does not regulate the action of companies

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<sup>10</sup> Personal Interview was conducted and Alhaji Sa'idu Dattijo Adhama has been a stakeholder in this subsector for almost 40 years. He is the Executive Chairman Adahama Textile and Garment Ltd. in Kano Established in 1979.

<sup>11</sup> Eneji. M.A, Op cit note 4 at Page 134.

<sup>12</sup> Jackson, H.J., et al, International Economic Relations Cases, materials and text, West Publishing Co. 610 Opperman Drive, USA, 1995 page 1.

<sup>13</sup> United Nations Conference on Trade and Development (2006) Training Module on the WTO Agreement on Anti-Dumping, Article VI:1 of General Agreement on Tariff and Trade 1994 and also Article 2.1 of the WTO Anti-Dumping Agreement (1994).

engaged in “dumping”. It focus is on how governments can or cannot react to dumping - it disciplines anti-dumping action and it is often called the “Anti-Dumping Agreement<sup>14</sup>” a position where a country takes measure which will not allow the exporting country to export indiscriminately causing injury or threat to an already existing industries in the importing country. Dumping can be predatory, which is the most unethical type and this happens when companies takeover a given market with low priced item only to turn around and increase their prices. In other words, it is taking a product with a low price, look for a vulnerable market, dominate it, and then raise the price.

The purpose of this action is driving the home country’s foreign competitors out of the market, the company will use its monopoly power to raise prices and get high profit, but in this case the product used has to have comparative advantage<sup>15</sup>.

Dumping can also be cyclical which normally takes place during recession periods, particularly when there is unemployment, no income and no money to spend, and the demand for goods and services is low, companies then tend to lower their prices to minimize sales loss and the decline in quantity produced; market prices will fall below the full average cost. Companies continue to produce and sell as long as the price exceeds average variable cost and if these products are exported to other markets at the recession prices, then that will be

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<sup>14</sup> WTO Anti-Dumping Gate way a WTO text on its website accessed on the 27<sup>th</sup> October, 2016

<sup>15</sup> Obalade, F. Supra note 5 at page 235.

cyclical dumping. Unlike seasonal dumping which is an act of selling products that are seasonal sold at high prices in season and remaining surplus taken to other markets off seasons and sold at below fair market price that obtains at home (1950)<sup>16</sup>. Persistent dumping is considered to be the worst and dangerous, it happens regularly and goes on and on. It is the continuous tendency of a domestic monopolist to maximize total profits by selling commodities at a higher price in the domestic market than international just so to be competitive in those foreign markets<sup>17</sup>. These are different types of dumping that many developed countries (industrialists) who are WTO member states engage in and without consideration of the parties that are injured in the process. Dumping affects Nigeria and in almost all the sectors of the economy. Cotton, Textile and Garment subsector can be among the target looking at the sizeable number of these industries in Kano, Lagos and Kaduna States that are closing shops.

However, can Nigeria considering its commitment under WTO and most especially taking anti-dumping measures as trade remedy saves its dwindling subsector from total collapse? Textile, Cotton and Garment subsector have been a major provider of labour but the effect of dumping is likely to be its major problem in Kano State of Nigeria.

Investigations by Financial Vanguard revealed that products from Asian and other parts of the world especially China are heavily subsidized for export

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<sup>16</sup> Ibid at page 235 This was illustrated in the Mexican Overripe Tomatoes' case (1950).

<sup>17</sup> Ibid at page 235.

which makes it possible for them to be sold at much cheaper rates in Nigeria than similar products that are manufactured locally in the country. China is exporting goods at rock-bottom prices to Nigeria, and because Nigerian consumers are highly price-sensitive they keep picking up the imported goods without questioning their quality<sup>18</sup>. The influx of these low quality goods into Nigeria will keep coming in unless the government makes an effort to implement fully some of its policies or providing (anti-dumping laws) legal framework with a view to stopping Nigeria from becoming a dumping ground and saving local manufacturers from total collapse as seen in the study area. Lack of strong and efficient institutional framework to curb the menace of massive dumping of products, or sometimes even smuggled into Nigeria need to be checked with a view to saving the cotton, textile and garment subsector if really the current collapse is as result of dumping<sup>19</sup>. In Nigeria the organized private sector has criticized the entire WTO agreement, which has been seen as lopsided in favour of the developed economies. They hold the view that if the Nigeria's economy is to remain relevant in the globalized economic system, the World trading must be reversed<sup>20</sup>. It is the view of the underdeveloped theorists like Nnabuihe who opines that the measure of influx of foreign finished goods

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<sup>18</sup> Editorial, 'Product Dumping: How Asians are Killing Made-Nigeria Goods Financial Times (Reporter) 2<sup>nd</sup> April, 2012 page 1 also [http://www.vanguardngr.com/2012/04/Product -dumping-how-asians-are-killing-made-in-nigeria-goods/](http://www.vanguardngr.com/2012/04/Product-dumping-how-asians-are-killing-made-in-nigeria-goods/) accessed on the, 30th October, 2016.

<sup>19</sup> Ibid at page 2.

<sup>20</sup> Nnabuihe, N.S Supra at note 2 at page 398.

dumping and smuggled into the country has been to near collapse of local industries in all the sectors of the Nigerian economy<sup>21</sup>.

The nation's landscape is littered with the debris of dead industries killed by unbridled importation. Efforts to employ WTO rules have often been frustrated because of the problem of dumping<sup>22</sup>. The history of the cotton-textile industry dates back to pre-colonial Nigeria. The spread of Islam in Northern Nigeria from the 8<sup>th</sup> century contributed to the development of the textile industry owing to the contact with Arabian and European markets. The new and uniform standard for dress helped to galvanize textile production. Production and consumption of textile became so widespread that in pre-colonial times Kano was known as the Manchester of West Africa<sup>23</sup>. The post-independent era saw the textile industry rapidly modernized and developed providing 22 percent of employment. The Industry declined gradually in 1990s, the industry contribution to GDP is less than 0.5 percent.

At its peak in the 80s, the industry had 175 ginning and textile companies employing approximately 320,000 people but 2015 only 34 textiles plants were operating- and even those at suboptimal levels-employing about 20,000 workers, Kaduna town, the former hub of textile industry has only two functioning textile mills, both of which are operating at a fraction of their

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<sup>21</sup> Ibid note 18 page 2 398.

<sup>22</sup> Ibid.

<sup>23</sup> Fatai, A.A., Political Settlement Analysis Employment Creation in Agriculture and Agro-industries on Nigeria; Partership for African Social & Governance Research, Sponsored by National Institute for Legislative Studies, Page 19.

capacity and employ fewer than 1,500 people, this same story applies to Kano having not more than 6 at Sharada and Bompai<sup>24</sup>. This table illustrates the decline textile industry, Cotton and Garment and the corresponding job losses.

**Decline of industry and job loss<sup>25</sup>.**

<b>Location</b>	<b>Closed Companies</b>	<b>Job Lost</b>
Kaduna	8	18,750
Kano	19	16,700
Lagos	60	66,250
Other locations	18	19,300
Total	105	121,00

This research examines the above parameters<sup>26</sup>, with a view to finding out whether dumping, Nigeria’s Commitment to WTO agreement and lack of awareness by the CTG industries on the implementation of the Anti-Dumping Agreement are the causes of the cotton, textile and garment subsector in Kano State of Nigeria. This is particularly what informs the researcher to carry out an in-depth examination of the principle rules of unfair trade in WTO (Anti-Dumping Agreement i.e. Article VI) 1994 WTO agreement and its effect on Cotton, Textile and Garment (CTG) subsector in Kano, State Nigeria.

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<sup>24</sup> Ibid.

<sup>25</sup> Ibid at page 19.

<sup>26</sup> Ibid at page 20.

## 1.2 STATEMENT OF PROBLEM

Nigeria has been a WTO member; an institution saddled with the responsibility of shaping world trading policies. The main thrust of WTO objectives are removal of trade barriers, access to markets, reduction in tariffs, increased fair competition and avoidance of trade discrimination in form of national treatment and Most-favored-Nation principles and unfair trade practices.

Nigeria has been committed to respecting these principle objectives, this allows for other members turn Nigeria a dumping ground for almost everything including Garri made from cassava and soya bean cake<sup>27</sup>. The major industrial countries exploit this vulnerability to export manufactured goods/products in textiles, Cotton and Garment. The CTG subsector has been badly affected by these unchecked exports which seriously made this subsector closed shop.

This subsector was one of the major provider of employment in the past with almost 320,000 work force before the accession of Nigeria into the WTO with more than 175 local industries in the subsector<sup>28</sup>. As at the time of this research study out of 19 local industries in the study area, only two are said to produce on part time basis employing only 1000 employees as against 20,000 before the accession.

It is argued however, that where dumping of foreign products/goods affects local industries or threatens their existence WTO provides trade remedies in

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<sup>27</sup> Fatai, A.A; Political Settlement Analysis Employment Creation in Agriculture and Agro- Industries In Nigeria.

<sup>28</sup> Partnership for Africa Social & Governance research, Sponsoring by National Institute for Legislative Studies Page 19.

form of subsidy and countervailing, anti-dumping and safety measures. The stakeholders in this subsector are unaware of these trade remedies. There are procedures for their application embodied under the WTO Anti-Dumping Agreement (Article VI).

The Article provides procedure on how anti-dumping action can be applied, requirements, and initiation of investigation by the local industries and other evidentiary process to be considered in cases of dispute. These variables need to be available in from of legislation or a legal regime for the local industries to utilize and apply. This is lacking, in fact the only legislation that made reference to dumping as an unfair trade is obsolete. This Act of 1958 made reference to dumping<sup>29</sup> without recourse to the procedure of its establishment by the local industries. The law also made reference to export price at less than fair value<sup>30</sup>, duty imposition amongst others but completely neglected the requirements of initiation of investigation by the local industries, the concepts of injury determination, dumping margins etc. are also neglected. The Act also made reference to relief on anti-dumping but neglected consideration of substantial economic evidence and industry data these are prerequisites for the imposition of anti-dumping duties<sup>31</sup>.

Attempt was made in 2010 by Senator Patrick Enebeli Osakwe who sponsored a “Bill” to repeat the act as “Bill to repeal Customs Duties (Dumping and

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<sup>29</sup> Section 3 of the “Custom Duties (Dumped and Subsidized Goods) C45 Laws of the Federal Republic of Nigeria 1958.

<sup>30</sup> Ibid Section 4.

<sup>31</sup> Ibid Section 5.

Subsidized Goods) Act of 1958 and to make Provision for subsidy countervailing and Anti-Dumping Duties and for Further Matters Connected there with. This bill made thorough but careful considerations of Article VI of the WTO if pass into law, but has been languishing before the National Assembly since 2010 unattended<sup>32</sup>.

This research study focused its attention on how Nigeria's commitment to WTO has been a "clog" rather than "benefit". It made the local industries to completely stopped production in the study area. And the remedies available for the establishment of their claims are far away from their knowledge meaning the stakeholders are unaware of these trade remedies.

In other jurisdictions like South Africa and Mauritania, there are legislation on dumping and how anti-dumping restrictions are imposed. South Africa has Anti-Dumping Regulations, South Africa Trade Remedy Laws, Regulation and Rule (2002)<sup>33</sup>. South Africa became the fourth country in the world to adopt anti-dumping legislation while in 1921 became the first to impose anti-dumping duties<sup>34</sup>.

For this subsector to thrive and be resuscitated these problems need to be addressed. There is need for local legislation that will capture the provisions article VI of the WTO on Anti-Dumping Agreement and to further reflect on

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<sup>32</sup> From the draft Bill C2175 "An Act to Repeal the Custom Duties (Dumping and Subsidized Goods) Act And to make Provision for Countervailing and Anti-Dumping Duties and for other Matters Connected there with: sponsored by Sector Patrick Enebeli Osakwe in 2010.

<sup>33</sup> Arnold; P. "The Anti-Dumping Regulation of the South Africa Tariffs no 31 Journal Article <https://www.jsor.org/stable/2547906> University London accessed on 6<sup>th</sup> September,2017.

<sup>34</sup> Brink; G; Anti-Dumping in south Africa, Tralae, [www.tralae.com](http://www.tralae.com) 25<sup>th</sup> July, 2012 accessed on 6<sup>th</sup> September,2017.

other legislations from other jurisdictions like South Africa on the implementation of anti-dumping rules to save this subsector from total collapse. This legislation must incorporate provisions for policy formulations like organizing seminars, workshops and conferences on the activities of WTO for the benefit of stakeholders who are main target in anti-dumping cases before the Dispute Settlement Board (DSB).

### **1.3 RESEARCH QUESTIONS**

Flowing from the research problems, the following research questions have been formulated;

1. How does the Nigeria's commitment to WTO affect CTG subsector of the economy?
2. To what extent imports of foreign products affect the success or failure of Cotton, Textile and Garment (CTG) Subsector in Kano State of Nigeria?
3. Are the industries under CTG subsector aware that WTO provides trade remedies accessible against dumping as an unfair trade practice?

### **1.4 AIM AND OBJECTIVES OF THE STUDY**

The aim of this research is to examine the principle of unfair trade in WTO and its effect on Cotton, Textile and Garment (CTG) subsector in Kano State of Nigeria. The Objectives of this study are:

1. To assess causes of failure of Cotton, Textile and Garment subsector and the relation of Nigeria's commitment under WTO.
2. To examine the effects of unfair trade on the success or failure of CTG subsector in Kano state of Nigeria.
3. To determine the level of awareness of the stakeholders on the implementation of Anti-Dumping Agreement as a trade remedy against dumping in Kano state of Nigeria.
4. To analyze the barriers for accessing the Anti-Dumping measure by the Nigerian Government in favour of the stakeholders in CTG subsector in Kano State of Nigeria.

### **1.5 DEVELOPED HYPOTHESES**

Developed hypothesis in research enables the researcher develop a specific direction as well as better understand about the subject matter of the study. It further assists in the careful and focused analysis of data collected. This kind of research study involves both doctrinal and empirical methodology as discussed in chapter IV which required two hypotheses tested as are determined from the objectives. These are two opposite statements that if  $H_0$ , is incorrect then the  $H_a$  is correct. The predictive statement was either null hypothesis or alternate which related to a dependent variable and an independent variable. The formulated hypotheses are:-

1a. that dumping foreign products has no effect on the success or failure of the CTG subsector in Kano State (H0) of Nigeria.

1b. that dumping foreign products has effect on the success or failure of the CTG subsector in Kano state of Nigeria (Ha).

2a. there are no barriers for accessing the Anti-Dumping measures as principle of unfair trade under (WTO) to curb dumping by the CTG subsector in Kano state of Nigeria (H0).

2b. there are barriers for accessing the Anti-Dumping measures as principle of unfair trade under (WTO) to curb dumping by the CTG subsector in Kano State of Nigeria (Ha).

## **1.6 JUSTIFICATION**

The research work came at a time when Nigeria was in economic recession a situation which further worsened when a particular subsector cannot be seen to contribute to economic growth and development as it used to be. Cotton, textile and garment subsector contributed immensely before the discovery of oil in fact this sector was the major provider of employment and supplementing gross domestic product (GDP) especially from 70s to late 90s.

However, with the ratification of WTO agreement by Nigeria in 1995 which explains why it must open its borders, liberalize trade, intellectual property rights to any member state bringing in products to its market the action which

becomes detrimental to its economy. Countries like China, India and Indonesia dump their cotton, textile and garment products endlessly such that the local industries cannot compete in producing the like product. More so, some of these exporting states enjoy some incentives to protect their indigenous companies to produce maximally and to ensure profitability in any importing state. This has gradually reduced the local industries from production, because the product could only be sold below cost of production, effect of which renders local production virtually impossible. Thus, the local industries are being wiped away shifting the repercussion on the government, on issues of income, employment, security and expertise.

Conducting this kind of research will assist government especially policy makers and the legislature who make policy and laws to address the inadequacies identified in the cause of writing this research work and how these gaps might be filled through the processes mentioned inter alia.

Examining the principle rules on unfair trade and the devastating nature of dumping can only be addressed if a research of this nature is undertaken to bring out how blindly ratifying and signing international instruments especially when experts are not consulted or those consulted are self-serving and careless about corporate and economic survival of any nation state like Nigeria.

The effect dumping and the unpractical nature of taking measure against it is not only peculiar to CTG subsector but cut across almost all the sectors of the

Nigerian economy and this is apparent not only in Kano State but in all the states of the federation where local production take place. Therefore, it is of help to extend this kind of research work to cover all the sectors of the economy. There is dumping of medical equipment, drugs, agro-chemicals, agro-allied, manufacturing, building materials, construction, communication technology, and automobiles to mention but a few.

### **1.7 SCOPE OF THE STUDY**

This study cannot cover all the issues relating to dumping of foreign products in Nigeria neither will it identify all the causes leading to the collapse of Cotton, Textile and Garment industrial subsector in Nigeria including those in Kano State. The study covers the trade remedy as a principle rule of unfair trade provided under WTO agreement to which Nigeria has been a member since inception and how this unfair trade practice affected this subsector and the barriers to exploit antidumping agreement provided by the WTO as trade remedy against dumping. The study covers only the Cotton, Textile and Garment industries in Kano State of Nigeria from 1980 to 2018.

## 1.8 LITERATURE REVIEW

There are a number of works the research consulted in this study. These works are hereunder reviewed.

**Yoon Y.** et al, in their work *Antidumping and the People's Republic of China: Five Case Studies*<sup>35</sup> have discussed how member states explore the provisions of antidumping agreement provided by WTO through domesticating the provisions some modification to suit and save their industries from collapse. Antidumping laws, which punish foreign producers for selling their products in domestic markets at low prices, have been in existence for decades.

Since the finalization of the Uruguay Round of GATT they have taken on increased importance and the GATT agreement included an antidumping provisions to which all signatories must adhere. The author emphasized further that before the recent GATT agreement was concluded, only 40 countries had antidumping provisions in their domestic laws while after Uruguay Round, more than 120 countries agreed to adopt and enforce the GATT antidumping laws<sup>36</sup>. They equally raised the issues of US exercising its rights as a sovereign state to be subjective in protecting its industries. Antidumping provisions adopted by GATT are somewhat different than the provisions in U.S laws, and it has not yet been determined which set of laws will prevail in antidumping actions initiated in the United States.

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<sup>35</sup> Yoon Y., et al 'Antidumping and the People's Republic of China: Fine Case Studies, W. Poul Stillman School of Business, Seton Hall University, New Jersey, USA Economics and Finance Department accessed in October, 2016, page 208.

<sup>36</sup> Ibid page 208.

Some commentators have suggested that adopting the GATT antidumping provision would amount to partial abrogation of U.S sovereignty<sup>37</sup>. This work is important to this study in that it assist the researcher's broad understanding of various antidumping laws applicable in other jurisdictions and the effects of dumping and how it is being tackled. However, the authors did not cover the most problematic aspects of WTO antidumping laws which centrally are the impracticability of developing countries whose economics are vulnerable take and implement these antidumping laws when developed economies lead in this direction.

**Yilmaz** in his work *Trends in the Use of Antidumping Measures During the First Twelve Years of the WTO*<sup>38</sup> is another work. In this article, after elaborate explanation of 13 different multi-lateral agreements establishing WTO including the Agreement on implementation of Article VI of the GATT 1994 ("The Antidumping Agreement"), he emphasized that the agreement allows WTO members to take measures against imports at dumped prices, but maintained that these measures are subjected to strict conditions<sup>39</sup>. The author revisited the longstanding debate about implementing the WTO antidumping agreement since the inception of the WTO in 1995<sup>40</sup>. The author also illustrates how antidumping investigations are initiated by importing member, covering the periods between 1995-2006, he explains the kind of measure taken and the

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<sup>37</sup> Ibid at page, 28.

<sup>38</sup> Yilmaz, M. Trends in the Use of Antidumping Measures During the first Twelve Years of the WTO, A Counselor, WTO, Rules Division also <http://www.wto.org/english/tralop-e/adp-e.htm> page 1 accessed on 4<sup>th</sup> Sept. 2017.

<sup>39</sup> Ibid at page 2 also in Trebilock Micheal J. and Howse Robert, The Regulation of International Trade (1999), page 167.

<sup>40</sup> Ibid at page 4.

countries that benefited most. The author observed that only South Africa and Egypt had initiated the investigations about dumping between 1995-2006<sup>41</sup>. This article assists the research to examine the reasons why Nigeria has never initiated this investigation despite supposedly effects of dumping that is very where and in almost all of the sectors of the economy. The article did not however, focus on the Nigeria's predicament, hence the need to conduct a study of this nature to fill the gaps.

**Layton** in his writing *the WTO Antidumping Agreement. A Guide for Developing Countries*<sup>42</sup> opines that WTO members are permitted to take measure towards saving the economic sovereignty (domestic industries) with tariff and other relief against imports under circumstances narrowly defined in the GATT 1994 and related agreements (the WTO Agreement)<sup>43</sup> three kind of trade remedies were highlighted;

First, a member may impose antidumping duties against imports when products are sold at dumped prices if they cause or threaten to cause material injury to a domestic on industry.

Second, a member may impose countervailing duties against imports that subsidized if the imports cause or threaten to cause material injury to a domestic industry. Third, a country may take a "Safeguard" action by imposing either an import quota or duties on imports of a product from all countries if increased

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<sup>41</sup> Ibid at page 4.

<sup>42</sup> Layton, W.D., et al " The WTO Antidumping Agreement: A Guide for Developing Countries ( The Authors are attorneys in the International Trade and Customs Group & King & Spalding in Nastington, DC, USA at page 1.

<sup>43</sup> Ibid at page 1.

imports are causing or threaten to cause serious injury to domestic producers.<sup>44</sup>

The authors also defined dumping as essentially price discrimination between purchaser in different national market, that dumping occur most often when a company sells a product in an exports market at a lower price than it sells a product in its own country. A product need not be sold below Cost to be dumped although below-cost pricing will often result in dumping<sup>45</sup>.

The authors made a novel contribution by stating that antidumping duties may be assessed when the investigating authorities (which is lacking in Nigeria)<sup>46</sup> in the importing country determine that an imported product is dumped and that dumped imports are causing or threaten to cause material injury to a domestic industry. They are collected by the customs authorities of the importing country.<sup>47</sup> However, the article did not address the Nigerian dumping problems and no articulation whatever made regarding the shrinking number of Cotton, Textile and Garment industries in Kano State of Nigeria but consistently mentioned the measures taken by U.S government and a number of Panel and Appellate body reports of WTO decision against antidumping by<sup>48</sup> other WTO members, this further shows the dire need to conduct a research of this nature with a view to curbing the problem.

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<sup>44</sup> Ibid at page 2.

<sup>45</sup> Ibid at page 2.

<sup>46</sup> Bracketed is the research's views for emphasis. On October 28, 2000 President Clinton Signed into law the Contained Dumping and Subsidy Offset Act 2000, Otherwise Known as the "Byrd Amendment" in honour of its chief sponsor Robert Byrd from the State of West Virgins".

<sup>47</sup> Report of the Panel, Guatemala-Anti-Dumping Investigation Regarding Port land Cement form Mexico, WT/DS60/R, adopted as modified by Appellate Body November 25,1998, Para 7.51 (Guatemala-Cement).

<sup>48</sup> Rana, R. (2012). Impact of WTO Policies on developing Countries: Issues and Perspective TRANSNATIONAL CORPORATION REVIEW(CANADA), 4(3):77-99 also University of the Western Cape Repository [tavinder.rena.2006@gmail.com](mailto:tavinder.rena.2006@gmail.com).

**Renas, *Impact of WTO Policies on Developing Countries: Issues and Perspectives***<sup>49</sup> is another expository work. The article delves into discussing the various Multilateral Trade Negotiations leading to WTO i.e. the Uruguay Round Agreement at Marrakech, the Doha Development Round (DDR) IN 2001 by obliging the developing countries to all access to the markets. The author also critiqued the role of the WTO towards developing countries raising issues of cotton trade in West Africa and how World's poorest farming families have been fraudulent of business and into deeper poverty. The author explained how member of WTO failed to deliver the promised pro-development changes. This research assists in identifying how nations especially developing countries blindly participate in signing international multi-lateral treaties without deeper and proper understanding of what these treaties contain<sup>50</sup>. The author also shows how developing countries have been completely sidelined by the economic and political interest of global powers, about 10 instances are cited as examples of how WTO has failed the poor. However, although the author made elaborate arguments on the effect of WTO policies, the work did not specifically cover the effects in dumping most especially in the Nigerian context and how antidumping measures can be exploited to the same deplorable condition of the economy effect CTG subsector in Kano State. The author's list of failure only included Cotton and other agriculture subsidies, legal Costs of

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<sup>49</sup> Available of <http://www.guardian.co.uk/global-development/poverty-matters/2011/nov/14/wto-fails-developing-countries> accessed on the 28 may 2012. Recently accessed and visited on the 29<sup>th</sup> October,2016.

<sup>50</sup> Neufeld, N.I., *Antidumping and Countervailing Procedures-Use-or Abuse? Implication Developing Countries, Policy Issues in International Trade and Commodities Studies series No.9*, UNCTAD, United Nations 2001 New York and Geneva available at UNCTAD.

filing before WTO cases among others, thus without specifically making Nigeria as a case hence the need to conduct this research work.

Neufeld's<sup>51</sup> in his work, *the concept of antidumping and how developing countries should see it differs*, for this author antidumping (AD) and countervailing (CV) measures have become popular subsector for traditional trade barriers which are gradually being reduced in the course of regional and multilateral trade liberalization. As WTO legal, judicial instrument for private parties looking for government enforced restriction on competition resort to AD and CV actions became frequents tool to tackle problems arising in the context of free trade. Designed as a correction mechanism, particularly antidumping has been hijacked of protectionist purpose.<sup>52</sup> However, the view here is like adding salt on an injury particularly to developing countries like Nigeria who has no institutional mechanism to enforce antidumping. This article is relevant in the sense that unless protectionism approach is taken the United Nation and World Trade Organization would keep sponsoring articles of this nature to keep developed economics on top. The author defines his own model "WTO) definition and the record of successes archived in this direction. The author encapsulates that in his analysis the antidumping action are without success, that the reasons for the large number of cases ending without of final measure one finds that act of injury was the dominant factor especially in the United States cases; 80 per cent of all investigation with no final measure because no

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<sup>51</sup> Ibid at III (Abstract).

<sup>52</sup> Ibid at page 7.

dumping was found in 6.6 percent of all cases<sup>53</sup>. This in effect has not solved or related to the peculiar problem that this current research work is aiming to address, that is the effect of dumping as an unfair trade practice on the Cotton, Textile and Garment Subsector of Kano State of Nigeria though the arguments raised on the rampant applicability of antidumping measures by other developing countries may be useful particularly at the observation point where the research concludes its findings some of these measures taken would form part of the research recommendations.

**Illy** in his work<sup>54</sup> *Trade Remedies in Africa: Experience Challenges and Prospects* made a novel contribution in that it looks into the remedies against unfair trade practices generally. While most of the write ups restrict to only one trade remedy i.e. antidumping, Illy opines that antidumping (AD) measures are typically tariffs in addition to ordinary customs duties that are imposed to counteract certain unfair pricing practices (Price undercuts) by foreign companies that injure or threaten to injure domestic producers of like or directly competitive product<sup>55</sup>. The author further reveals the historical development of “Dumping” which goes back to at least the sixteen countries. Jacob Viner, the first scholar to have conducted a comprehensive study on the subject of dumping, describes the case of sixteen century English writer who charged foreigners with selling paper at a less to smother the infant paper industry in England. Furthermore, As early as 1776, the renowned British economist Adam

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<sup>53</sup> Illy, O., Supra note 7.

<sup>54</sup> Ibid at page 1.

<sup>55</sup> Ibid at page 2.

Smith discussed in detail the custom granting official boundaries on exports and referred to practices which today would be described as “Dumping”. And, finally, following complaints in the early years of American independence that British manufacturers “dumped” their products into the United States with the deliberate objective of “crushing” young American industries<sup>56</sup>, Alexander Hamilton, the first US Secretary of the Treasury, declared in his Report on Manufactures that the *greatest obstacle encountered by new industries in a young country is the system of export bounties maintained by foreign governments*<sup>57</sup>. This article is elaborate and a different definition of dumping has been provided depending on the country and the damage this dumping causes or threatens to cause.

Another definition had been explained by Canadian then Finance Minister, in presenting his proposed approach to the problem in June 1904, explained the situation as follows<sup>58</sup>:

*We find today that the higher tariff countries have adopted that method of trade which has now come to be known as slaughtering, or perhaps the more frequently used is dumping; that is to say, the trust or combine, having obtained command and control of its own market and finding that it will have a surplus of goods, sets out to obtain command in a neighboring market, and for the purpose of obtaining a neighboring market will put aside all reasonable consideration with regard to the cost of fair price of the goods; the only principle*

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<sup>56</sup> A. Hamilton “Report of the Secretary of the Treasury on the Subject of Manufactures” 1791, quoted in Viner, (1923), page 37.

<sup>57</sup> Illy, O. Supra note 2 at page 8.

<sup>58</sup> Murshed, M.S., ‘The Problem of Anti-Dumping Protection and Developing Country Export, P.K.M Tharakan, Working, Papers No. 198, UNU World Institute 2006 for Development Economics Research, The United Nations University, Wider page 9.

*recognized is that goods must be sold and the market obtained.....this dumping then, is an evil and we proposed to deal with it.*

However, this article did not discuss the effects of dumping as an unfair trade practice affecting local industries in Kano State of Nigeria. It dealt specifically with the issues of history.

**Murshed's**<sup>59</sup> study has been prepared and is articulated well enough in the practice of dumping and how antidumping becomes practically impossible in terms of its application. The author dealt with some conceptual and operational problems of the Anti-Dumping mechanism especially determination of injury. Also, reviewed was the empirical evidence on the general observations about antidumping actions and the developing countries, and vulnerable, lower middle income economies. The author also suggests closer scrutiny for various reasons against antidumping to include the ambiguity of definition; fragility of economics rationale; the growing importance of the investigations undertaken, lack of transparency in implementation, and certain operational weaknesses<sup>60</sup>. This will assist this research study to find out the causes of the foregoing effects to see whether they apply into the local Cotton, Textile and Garment inclusive and how they may overcome them to succeed in the end. The research work is not directly aim towards solving Nigeria local CTG Subsector hence the need to conduct this current research.

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<sup>59</sup> Ibid at page VI (Abstract).

<sup>60</sup> Pam, A.A., Antidumping and Countervailing Measures, and Developing Countries,; Recent Development, Nigerian Law Review 2007-2010 page 42 [adamupam@unps.edu.ng](mailto:adamupam@unps.edu.ng) accessed 20<sup>th</sup> Nov,2016.

Pam's<sup>61</sup> work called *Antidumping and Countervailing Measures and Developing Countries: Recent Development* is an instructive article written and in the author's analysis WTO agreements have not solved many negative effects of antidumping. Loopholes and ambiguities in their provisions open doors for practice constituting abuse rather than use that reforms of the Agreements are urgently required<sup>62</sup>. The author's perspective started from the other principles of WTO i.e. Non-Discrimination (MFN and National Treatment Principles), that countries must not discriminate their own partners both within or without border as regulated by Article 1 and III of GATT in terms of tariff application as an action taken to save competition against similar or like products that there is standard criteria to determine similarity of the like products as set out in the Asbestos case and in Japan-taxes an Alcoholic Beverages case<sup>63</sup>. This article assist this current research work in that it deals with how antidumping article fall short in addressing the problems of dumping through decided cases by both panel and appellate body reports and would be important sources of literate in the study of this nature.

However, the author as a Nigerian did not advert his mind to the event and in efficiency of antidumping especially how the dumping practice occurs in almost all the sectors of the Nigerian economy hence falls short and the current research is most needed in this direction.

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<sup>61</sup> Ibid at page 42.

<sup>62</sup> Ibid at page 43.

<sup>63</sup> Nnabuihe, N.S.; Opcit page 20.

**Nnabuihe** in his work<sup>64</sup> *World Trade Organization and the Developing World Nigerian Economy* is a study which seeks especially to ascertain the implications and effects of WTO trade policies on the development of Nigeria economies. The author raises questions which would require answers: How has Nigerian external trade fared since she become a signatory to the WTO in 1995? How has the adherence to the provisions of the organization affected non-oil exports in Nigeria? How have trade liberalization affect imports into Nigeria? What are the sectoral effects by these liberal imports? Which particular industries are most affected by these liberal imports regime? What is the direction of such effects<sup>65</sup>? This article will assist the current research study in a number of ways. Literature used in developing the article serve as an important tool towards further comprehending the whole concept of trade liberalization encapsulated under WTO and the effect on especially peripheral states as opposed to center states. Argument was canvassed and to the criticism between organized private sector on the entire agreement and that for Nigeria to remain relevant in the globalized economic system, the World trading system must be reversed<sup>66</sup>. Although this article serves purpose yet it does not restrict itself to dumping in Cotton, Textile and Garment subsector of the Nigerian economy particularly how the effects of dumping as an unfair trade practice shrinks the industries.

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<sup>64</sup> Ibid at page 395.

<sup>65</sup> Ibid at page 398.

<sup>66</sup> Obalade, F.A.; Supra note 15 page 233.

**Obalade**<sup>67</sup> in his work *Analysis of Dumping as a Major Cause of Import and Export Crises* describes dumping as a traditional military war and the experience the world has suffered more than 50 years ago in World War I, World War II, and the cold war eras<sup>68</sup>. The author gave his own version of the definition ascribable to dumping, he further brings out various types of dumping being practice World over and the devastating effect each of the classification possess<sup>69</sup>. Equally of importance is the way anti-dumping agreement is seen as practically impossible while implementing the Article VI of the General Agreement on Tariffs and Trade 1994 (the “AD Agreement”)<sup>70</sup>. Yet, the article does not cover specifically the Cotton, Textile and Garment subsector in Kano State of Nigeria. But very important definition, classification as well as effects of dumping have been conceptualized hence the need to further undertake this current research work in order to deal with the menace directly been describes as a war.

**Enejis** in his work<sup>71</sup> *Impact of Foreign Trade and Investment Nigeria’s Textile Industry: the Case of China* is also a notable contribution to this work. It traced the historical antecedent of textile manufacturing which included Cotton and garment and how these industries were flourishing before the bilateral trade between China and Nigeria in 1971.<sup>72</sup> The author lamented the trade volume between import and export while China’s export to Nigeria stood

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<sup>67</sup> Ibid at page 233.

<sup>68</sup> Ibid at page 234.

<sup>69</sup> Ibid at page 235.

<sup>70</sup> Eneji, M.A, Supra note at page 23.

<sup>71</sup> Ibid at page 130.

<sup>72</sup> bid at page 136.

at \$5.476 billion importation from Nigeria was \$0.897 billion having trade deficits.<sup>73</sup> This work will assist the current research work determine the trade deficits, the effects of dumping from Asian countries, and also shows how impracticable is the implementation of Antidumping although China is one of the most prominent countries enjoying AD at the moment.

**Makinde**<sup>74</sup> in his work *Nigeria Textile Industry: A Tool for Actualizing Economic Stability and National Development* is a well enriching article from reputable journal. In this article the authors opine that Nigerian textile (Indigenous and modern) have sustained the national economy for more than three decades and are dying by the day. Without any hope a resurrection.<sup>75</sup> This article attributed the current position the textile sector alone neglecting its components that are very essential in the Cotton and Garment. The authors identified over-dependency on oil (the black gold) as one of the keys towards the collapse of this particular sector<sup>76</sup>. Others are the over-dependency on foreign good (dumping)<sup>77</sup> brought by liberalization consequent upon signing WTO, other trading agreements like GATT and the growing importance and influence international organizations such as G7, IMF, WB, etc. The authors concluded that from the beginning of 1999, the textile industry shows a significant reduction in the number of functional textile industries till date and

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<sup>73</sup> Andrew, G.I., LLM ‘ Implementing Effective Trade Remedy Mechanism: A critical Analysis of Nigeria’s Anti-Dumping and Countervailing Bill,2010 (International Trade and Investment Law in Africa Faculty of Law, Center for Human Rights, University of Pretoria).

<sup>74</sup> European Journal of Business and Social Sciences, Makindes, O.D, et al, Nigerian Textile Industry: A tool for Achieving Economic Stability and National Development (2015), Vol. 4, No. 08, also available on URL: <http://www.gbss.com/recent.aspx-1>.

<sup>75</sup> Ibid at Page 2.

<sup>76</sup> Ibid at Page 3.

<sup>77</sup> Ibid at Page 3.

found that inadequacy of locally produced raw materials, man power development, dependency of foreign technology and low patronage and low quality products are responsible of the collapse of this sector. The authors neglected the Cotton and garments aspect structurally and forget to highlight on the key issues on unfair trade which is central to trade liberalization and which of course is the vital as far as World Trading is concerned.

**Babangida**<sup>78</sup> in his work *Profitability and Production Efficiency in Cotton Production in North-West* says Nigeria is an articulate and well conducted PhD research which analyzed the Cotton production and what was obtainable in those days.<sup>79</sup> The author identified some factors that were only peculiar to farming generally in Nigeria without making deeper analysis on why the production is collapsing. The author identified climate soil, pest and diseases, poverty, marketing, illiteracy and poor extension delivery system to farmers, insecurity and high cost of input and seed adulteration as key factors responsible and consultants to cotton production in Nigeria. However, this research is short towards addressing the principle unfair trade in WTO and its effect on Cotton, Textile and Garment as a subsector of the economy and whether the collapse the author identified has anything to down such commitment couple with the level of awareness of the stakeholders in the subsector to take measures against any dumped products.

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<sup>78</sup> Ibid at Page 3.

<sup>79</sup> Babangida, A.U “ Profitability and Production Efficiency in Cotton Production in North-West Nigeria” a PhD thesis submitted for the award of Phd Degree in the Agriculture Economics Department, ABU Zaria (2016).

**Gatawa**<sup>80</sup> in his work et al, *Impact of Globalization on Textile Industries* case study of some Nigerian industries in Kano Metropolis is a very interesting piece, the results of this research work and its findings are the impact of globalization and concluded that consumption, exchange rate and the Nigeria's membership of the World Trade Organization (WTO)<sup>81</sup> have significant influence towards the collapse of industries in Kano metropolis. The work recommends stable power supply, rethink on the policies of the WTO<sup>82</sup> and review the exchange rate policies.

However, the work only referred to the membership of Nigeria to WTO lightly and has not even delved into unfair trade practices of dumping, that is why the work falls short to cover some of the problems identified in this research work.

**Oyejide**<sup>83</sup> in his work *Study of the Impact of Nigeria's Textile Imports Restriction* focuses on the determination of the impact on Nigeria's textile import restriction describing the global structure, value chain, policy environment analyzing the operational industries and implementation of import restriction, impact of the restriction on cotton and garment sectors through price impact on output and employment.<sup>84</sup> It finally evaluated the external aspects of protection, quantified the cost and benefits the value of waivers and examined the issue of ratification as an alternative to import production.<sup>85</sup> The study

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<sup>80</sup> Ibid at Page 57-60.

<sup>81</sup> Ibid at Page 60.

<sup>82</sup> European Scientist Journal, Gatawa, N,M; Impact of Globalization on Textile Industries: A case study of some Nigerian Industries in Kano Metropolis (2013), Vol, No.2.

<sup>83</sup> Oyejide, T.A. et al, Study of the impact of Nigeria's Textile Import Restrictions, A final Report Submitted to DFID Nigeria, (2013)

<sup>84</sup> Ibid at Page V.

<sup>85</sup> Ibid at Page V.

concludes that the development of Nigerian's textile industry has been shaped partly by government policy but also by the nature of the global textile industry policy which affected it.<sup>86</sup> This study is also illustrative on the impact of global policy textile sector, however, it did not specifically address the issues of the impact of trade liberalization which allows for the countries dormant in the production of cotton and fabrics to dump these products in the market economies of developing WTO member states. The study made explanation an import restriction and advocates ratification instead of prohibition hence the need to conduct this current research to fill the gap left by this study.

Finally, **Andrew's<sup>87</sup> work title: *Implementing Effective Trade Remedy Mechanism: A Critical Analysis of Nigeria's Anti-Dumping and Countervailing Bill, 2010*** is another important work in this area of research study. The author discusses the WTO framework, Article VI of the General Agreement on Tariff and Trade 1994 provides the rules for its application. The author's view was to ascertain whether the proposed Anti-Dumping Bill, 2010 is consistent with WTO jurisprudence<sup>88</sup> on anti-dumping and made corporate analysis with that of the South Africa. This study (thesis) assisted the current research study in that it clearly showed the need for a country like Nigeria to have its own anti-dumping regulation in order to protect its domestic industries from collapsing.

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<sup>86</sup> Ibid at Page 68.

<sup>87</sup> Ibid at page X (Abstract).

<sup>88</sup> Ibid at page 11.

Finally, the literature reviewed have further proved that there are problems of dumping being unfair trade practice affecting most of the developing economics. The review further revealed that almost all the sectors of the economy in Nigeria were subjected to this kind of unfair trade practice. The problems were not only limited to Cotton, Textile and Garment (CTG) subsector of the Nigerian economy hence the dire need to conduct this kind of research study so that the stakeholders, the policy makers and legislators would be awaken before the problems completely do away with the economic sovereignty the WTO member carefully known as Nigeria.

The review has shown the complete absence of a legal regime in Nigeria to deal with the current but identified problems.

The next chapter examines the conceptual framework on the principles of sovereignty and unfair trade.

**CHAPTER TWO**

**CONCEPTUAL FRAME WORK ON THE PRINCIPLES OF**

**SOVEREIGNTY AND UNFAIR TRADE**

**2.0 INTRODUCTION**

This chapter examines the conceptual framework on the principles of sovereignty and unfair trade. Generally nations engaged themselves in international trade whereby products manufactured in one country might be in excess for internal consumption hence the need for export. Free trade being a concept designed as result of global trade liberalization allowed those countries to reap the economic benefits outside their home states. Countries that allow imports must be ready to sacrifice certain trade regimes in away partially losing their sovereign powers to dictate economic policies and constitutional norms. For the exporting countries of the manufactured products, much is needed to trade fairly and to subvert avoidable injuries on the local industries outside their home states.

This chapter discusses the concept of sovereignty in international trade and how nations either surrender or protect their economic supremacy at global lawmaking in form of protectionism either through politics or law making. The concept of fairness in international trade and its principles are thoroughly perused for their roles in shaping the global trade systems. Fair or unfair trade practice among nations had been of serious concern particularly as it relates to

trade liberalization. While some scholars view concept of fairness as something beneficial to exporting countries for the benefit of consumers in the importing countries other scholars view it as unfair particularly as the exports affect local industries in the importing countries.

While the debate was ongoing, foreign trade laws explained vigorously the concept as hegemonic where major economics exploited the vulnerability of the minor economies in the name of free trade at the same time concealing their borders for protection in favor of their local industries.

## **2.1 CONCEPT OF SOVEREIGNTY IN INTERNATIONAL TRADE**

Can we conceive “constitutional” norms at the global level beyond the nation-state? The global organizations developed certain constitutional norms to self-generate ambiguous treaty provisions that might not be fully captured as against the state centeredness<sup>1</sup>. International relation mainstream theorists have often refused to recognize an international organization’s capacity to develop autonomous capacities to produce, monitor and enforce legal norms<sup>2</sup>. The concept of sovereignty has been well captured in trade jurisprudence which carries a hallmark of the Lotus principle. Under the well-known principle of public international law, sovereign states are capable of doing whatever they desire as long as no explicit prohibition exists under international law<sup>3</sup>.

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<sup>1</sup> Weiler J.H; et al, “European Constitutionalism and its Discontent (1997) Page 354.

<sup>2</sup> Alec, S.S “Constitutionalism, Legal Pluralism, and International Regimes (2009) IND. J. Global Legal studies Page 621.

<sup>3</sup> S.S Lotus (France V Turkey), 1927 P.C.I.J, CHO,S; Global Constitutionalism of Country College of Law, Chicago- Kent, Illinois Institute of Technology Page 667.

In traditional legal doctrine, sovereignty is the category which expresses the content and scope of competences of the state in the domestic and foreign policy. The appearance of a new state automatically means the presence of its sovereignty. The loss of sovereignty leads to the termination of its existence of a subject of international law; as it can not belong to any one except state<sup>4</sup>.

National sovereignty engulfed in complex world economy with the growth of transnational organization, supranational and communications but, national ethnic upsurge consistently called for it. Sovereignty is still in force in international relations<sup>5</sup>. It follows from the nature of sovereignty of the state that is supreme internally which suggests no intervention within its domestic affairs by another national organization; this is a shield from international regulations<sup>6</sup>. However, the influence of international law is beginning to make itself felt in areas hitherto regarded as subject to the state's exclusive jurisdiction.

For instance, the creation of WTO and the allowance for the application of Anti Dumping Agreement within the domestic affairs of the state further elaborates the state inclusiveness<sup>7</sup>. In international law theorists supports its exclusivity possessed by the state other opposing views are that certain exceptions do exist where the exclusivity is relaxed and the international law regulates in that

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<sup>4</sup> Yunk,B; et al; "The State sovereignty and Sovereign Rights: The Correlation Problem" Man in India (2018), Research Gate: <https://www.researchgate.net/Publicatio/322233984> accessed on the 2<sup>nd</sup> October, 2019. (Abstract).

<sup>5</sup> George, H.S; "A History of Political Theory (Theory of sovereignty ) revised 2019. (1973) Drydan Press, Tokyo. P 377 access on the 2<sup>nd</sup> October,2019.

<sup>6</sup> Malcom, N.S; International Law, Cambridge University Press 2002, Page 454.

<sup>7</sup> Ibid at Page 455; in the Anglo-Norwegian Fisheries Case: ICJ Reports, 1951, P116; 18 ILR,P.86.

regard. What then is sovereignty from the various arguments: from the perspective of International law theories and those whose opinions give exclusive jurisdiction to state in the domestic affairs?

## **2.2 DEFINITION OF SOVEREIGNTY**

According to Black's Law Dictionary the word is derived from the word "sovereign or Sovran" to mean a person body, or state vested with independent and supreme political authority of an independent state. It also means the state itself<sup>8</sup>.

Such definitions may be confusing, it is well to distinguish the senses in which the word sovereignty is used. It means supremacy in the ordinary sense as the right to demand obedience, but the prominent idea is to have power in exercise of control. Etymologically the word means merely superiority of the monarchs, because, sometimes it was considered as an exclusive preserve of the law church directly bestowed by god<sup>9</sup>.

In order to be consolidated in the law field, any state-legal phenomenon should be conceptualized, transferred into the category of legal structures. The sovereignty of the state is legal construction that reveals the essence of the state

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<sup>8</sup> Garner, A .B; Black Law Dictionary 9<sup>th</sup> Edition Page 1524.

<sup>9</sup> Supra note 5.

authorities<sup>10</sup>. There is an intensive interaction between the sovereign's legal concept and its real implementation<sup>11</sup>.

Usually, sovereignty is defined in one of two ways. The first definition applies to Supreme public power, which has right and in theory, the capacity to impose its authority in the holder of legitimate power, who is recognized to have authority<sup>12</sup>.

When national sovereignty is discussed, the first definition applies and it refers in particular to independence, understood as the freedom of a collective entity to act<sup>13</sup>. When popular sovereignty is discussed, the second definition applies, and sovereignty is associated with power and legitimacy<sup>14</sup>.

State sovereignty should not be overestimated, it is not absolute. Interstate communication leads to contacts and rapprochement of the position of the various states. This encourages interaction and interdependence, the searches for compromise and harmonization of national interests, which in some cases may involve certain concessions for the sake of peace and social progress<sup>15</sup>. It should be noted that only small but large countries have to adhere to the norms and the principles of international law, developed with their participation, as well as an intergovernmental agreement. As a result, the state in a certain extent

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<sup>10</sup> Supra note 414.

<sup>11</sup> Ibid Page 579.

<sup>12</sup> Alain D. B; what is Sovereignty” Page 99 accessed on the 3<sup>rd</sup> October, 2019. Also in chayas, A.H; “The New Sovereignty” 1995, Cambridge, Harvard University Press.

<sup>13</sup> Ibid at Page 99.

<sup>14</sup> Ibid at Page 99.

<sup>15</sup> Supra note Page 10.

constantly resorts to self restraint on the issue of the implementation of its sovereign rights, which, however does not lead to the loss of sovereignty<sup>16</sup>.

On the international level, sovereignty means independence, i.e., non interference by external powers in the internal affairs of another state.

International norms are based on principle of sovereignty, equality of independent state; International law excludes interference and establishes universally-accepted rules. Sovereignty depends not only on the autonomous will of its sovereign but on other sovereign states<sup>17</sup>. From this perspective, one can say that sovereignty of any single state is the logical consequence of the existence of several foreign states.

## **2.3 THEORIES AND CONCEPT OF SOVEREIGNTY**

The concept of sovereignty has been debatable by scholars as to what exactly it embodies with various interpretations that are more and more complex. The reason was that all explanations were intended to justify either the hypotheses of the scholars or the political manipulation of the statement<sup>18</sup>. Later on, rebellious secularism justify it as a “supreme power over citizens and subjects unrestrained by law” it was later said to manifest itself in the “general will of people and made wholly responsible for them.

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<sup>16</sup> Ibid Page 578.

<sup>17</sup> Supra note 12 Page 100.

<sup>18</sup> Supra note 9.

Despite all these developments sovereignty was limited by democrats divided by pluralists and even discarded by anarchists; yet it maintained its basic tenets<sup>19</sup>. The changes of the concept at international sphere met with challenge by other eminent concept like national self determination whether state is actually a sovereign one or a certain political-territorial formation proclaims itself as a state that can be obtained only from the analyses of the practice of the implementation of sovereignty is concretized in sovereign rights<sup>20</sup>. It is generally known that sovereignty is concretized in sovereign but in legal science there is no correlation between the two in modern constitutions, the state is characterized as sovereign but to find international legal instruments and national legislation links to its sovereign rights is rather difficult<sup>21</sup>.

More important for discussion of sovereign rights and its relationship with sovereignty is a constitutional legislation and international legal document regulating interstate relations in the political sphere<sup>22</sup>.

The Declaration principles of international law provide that state shall not be entitled to use or promote use of economic, political measures to subdue the other state in questioning the implementation of its sovereign right<sup>23</sup>. This is in

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<sup>19</sup> Ibid Page 1.

<sup>20</sup> Supra note 15.

<sup>21</sup> Ibid Page 579 (An exception from this rule was the constitutional law of the Soviet Union, which in constitution of 1936, and 1979 contained a statement that sovereign right of the union republics ( Soviet Republics have been normally recognized as state) are protected by the USSR.

<sup>22</sup> Ibid Page 580.

<sup>23</sup> Ibid Page 580.

line with the principle objectives of the WTO (Non-Discrimination(Most-Favored-Nation and National Treatment Principles).

That declaration also refers to the principle of sovereign equality of states: all states are juridically equal; they have the same rights and responsibilities are equal members of the international community each states enjoy the right inherent in full sovereignty<sup>24</sup>. Thus, sovereignty does not exclude the possibility of its implementation by participating of the state in the activities of interstate unions<sup>25</sup>.

The transfer of the state of certain sovereign rights and authorities to supranational structures does not mean the restriction of sovereign rights. The transferred rights compensated by the acquisition of the so called system-wide authority. As a result, the limit of the overall activity of the states is expanding significantly.

The sovereignty of state cannot be identified with its powers and competence; it is a specific property of state power which cannot be measured in volume. It is possible to limit the government in the implementation of specific rights or competence, but it is impossible to limit the sovereignty<sup>26</sup>.

It is to note that there cannot be universal list of sovereign rights, the state can actualize the rights required to perform some functions for instance imposing

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<sup>24</sup> Article 1 of the Final Act on Security and Cooperation in Europe.

<sup>25</sup> Article 88 (2) of the constitution of French Republic which specifies that such participation is possible in compliance with the principle of Reciprocity. Cited from Goryunov.V (2007) "Sovereignty of the Russian Federation (the essence, content security) (PhD). Ural state law Academy accused on the 1<sup>st</sup> October, 2019 at <https://www.USLA.org.edu>.223.

<sup>26</sup> Pastukhov, N. (2006) State Sovereignty in the Era of Globalization. Magazine of the Russian Right, 5 Page 130-141.

taxes or anti-dumping measure in form of restriction after the occurrence of the sovereignty theory, but special popularity stated with development of the process of globalization and regional integration leading to institutionalization of international cooperation.

The popular view here is that state accession to the integration of associations leads to a limitation of state sovereignty. This conclusion is regarded as erroneous<sup>27</sup>.

## **2.4 ORIGIN OF THE CONCEPTS IN THEORY**

The theory of sovereignty emerged as an attempt to identify and analyze the center of power in the society. Jaen Bodin was the first to develop the theory as “absolute and perpetual power within the state<sup>28</sup>. According to him, power is without any restriction, unrestrained by law because sovereign is the law. That government is strong only when it’s legitimate and actions must be in accord with certain norms determined by justice and that the capacity to make and break laws belongs only to the sovereign: the powers to legislate and rule are identical<sup>29</sup>.

John Locke, attempted to democratize the word in to ‘people’ general “well” purportedly place sovereignty into the hand of common man. The French Revolution in 1789 adopted these ideas which the state sovereign remain an

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<sup>27</sup> Ibid Page 135.

<sup>28</sup> Supra note 9.

<sup>29</sup> ibid at Page 378.

arbitrary power resulting in poverty and superstition permitted<sup>30</sup> Kings and governments to exercise arbitrary sway and later become “personal command” State entered and broke treaties in a way which particular citizens would not contemplate<sup>31</sup>.

Thomas Hobbes<sup>32</sup> reinforced the theory that since power is derived from rational will of all, the sovereign has the right to require total obedience from everyone since legitimacy stems from the fact that members of society have forfeited their sovereignty voluntarily which neither depends on persons nor situations but stands on right and law. The people cannot oppose the sovereign for possession of unlimited freedom of the state of nature. Sovereignty is equally indivisible and absolute<sup>33</sup>.

Hegel (1770-1831)<sup>34</sup> also enunciated the theory of unlimited sovereignty which ultimately led to the use of concept of sovereignty in support of totalitarianism and expansionism. This theory became a threat to international legal order. The claim to unlimited external sovereignty would amount to the negation of international law and reduce it to a system of international morality<sup>35</sup>.

Global society which Althusius<sup>36</sup> calls the “*integral symbolic community*” is defined as an organization ascending plurality of communities founded on prior

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<sup>30</sup> Konnova, E.(2007). Early Recognition of the New State. Some Theoretical Aspects. Journal International Law And International Relationship's Vol.4 Page 15.20.

<sup>31</sup> Ibid at Page 21.

<sup>32</sup> Supra note Page 104.

<sup>33</sup> Ibid Page 105.

<sup>34</sup> George; S; 'power Politic- A study of World Society Stevens and Sons, London Press, 1964.

<sup>35</sup> Ibid at Page 92.

<sup>36</sup> Supra note Page 112.

associations and multiple memberships, and disposing of overlapping powers. According this view “what concerns all must be approved by all “*quod omnes tangit, ab omnibus approbetur*”.

While sovereignty belongs to the people in perpetuity, it cannot be prescribed, because it resides inalienably in popular community, however, it is not absolute on the contrary, it can be distributed and shared. It only represents the level of power with the greatest capacity to decide and to execute a given task<sup>37</sup>.

The sovereign cannot act willfully without being held accountable. This idea supports the notion where ONLY the stakeholders are responsible to initiate anti-dumping actions where there is injury or threat to a product/good or established industry from exporting member state(s). These concept as found in the theory of sovereignty can be placed effectively to suggest that a nation state participate actively in international agreements/treaties without losing either sovereign rights to decide internal affair no subject to external powers of multinational or supranational institution like UN, WTO etc.,.

Are there exceptions where sovereignty and international rights are relinquished to justify commitment and respect for international norms without necessarily losing the said supremacy over internal and external affairs?

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<sup>37</sup> Ibid Page 114.

## 2.5 BASIC INGREDIENTS OF SOVEREIGNTY

The doctrine of the state sovereignty has two essential characteristic-internal supremacy and external independence. In a classical perspective “sovereign state was one which exercised undivided authority over all persons and property within its borders and was independent of direct control of any other power. Sovereignty implies independence all round, within and without the borders of the country<sup>38</sup>. Sovereignty is an essential feature of state power, that it signifies “supremacy” of the state in its internal and independence in its external relations<sup>39</sup>.

Sovereignty was the supreme authority by any state governed. There was no power within the state which might compete with it. It possesses an exclusive competence and the relative independence of law making entities from outside intervention. No subordination to a foreign authority in international sphere and in domestic affairs it assumed predominance over any power vested in groups or individuals within the state<sup>40</sup>.

Sovereignty of the state appeared as a centralized power, exercises its lawmaking and law enforcing authority within a certain territory<sup>41</sup>. The exclusiveness of the state powers within a certain territorial jurisdiction related to the power of legislation, adjudication and administration. The illimitability of

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<sup>38</sup> Charles, G.F; International Law (1967) New York Publication Serious P 125.

<sup>39</sup> Ibid-Djura Nincil: the Problem of sovereignty in the Charter and in practice of the United Nation (Murtinus Nijhoff, The Hague, 1970) Accessed on 3<sup>rd</sup> October,2019 from [www.https://UN/texts](http://www.https://UN/texts) 126'Page 201.

<sup>40</sup> Taylor, P; “Supranationalism the Point and Authority of International Institutions; (1990) Framework for International Cooperations. A.J.R Printer Publication London Page 111.

<sup>41</sup> Ibid Page 112.

sovereignty involved; the unlimited right to govern; the unlimited capacity to rule; the unlimited concentration of granted rights; unlimited authority within the domain of the state.

Another ingredient ensues which implied that sovereignty has three main features: it is legal, absolute, and unitary condition. Indivisibility constituted its main feature because the nature of its function could not afford the division. External independence was concomitant aspect of sovereignty with its internal supremacy. The idea of sovereignty was no final and absolute authority exists elsewhere. Autonomy, independence, and equality were the three basic elements of sovereignty as recognized by the norms of international relations<sup>42</sup>.

Non-intervention is another ingredient of sovereignty as observed by the United Nation General Assembly in its resolution 1970<sup>43</sup>:

No state or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state. Consequently, armed intervention and all forms of interference .....are in violation of international law.....Every state has an inalienable right to choose its political, economic, social and cultural symbols, without interference in any form by another state.....

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<sup>42</sup> Ibid at Page 114-40.

<sup>43</sup> Ibid at Page 118-41.

This principle signifies independence which must be observed for the states to survive in the international law sphere. It further brought equality among the nation states. All states enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature<sup>44</sup>.

## **2.6 EXCEPTIONS TO THE GENERAL RULE**

Although, all the concepts ranging from exclusivity, supremacy, dominance, indivisibility, competence, etc demand absolute compliance for states to be independent, there are situations where the general rule admits exceptions upon which the concepts may be relaxed. Other exception (modern theory) emerges to which submission does not divest state off their sovereign powers. Both exceptions are discussed alongside each other.

State sovereignty confronted several challenges to its internal and external aspect of supremacy and independence from its inception. Even the founder of the theory, Bodin<sup>45</sup> conceded to this fact where he admitted that sovereign is bound by the law of God and of nature. The exceptions are many but few would be considered in this research work. Rule of law, democratization and decentralization, pluralism, Rule of ideology, people's sovereignty, federalism, self determination are the general exceptions. There are special exceptions that

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<sup>44</sup> United Nations, Declaration on Principle of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with Charter of the United Nations, Resolution 2625 (XXV), 24 October, 1970.

directly shape the global trading system where states may be seen to be losing sovereign rights but in practical sense they are not<sup>46</sup>.

### **2.6.1 International Law**

International law comprises a system of institution and rules designed to govern international relations between sovereign states. These rules impede the traditional expression of internal supremacy and absolute independence of the sovereign state. But to be sovereign is not to be above the law<sup>47</sup>, it is to be subject, from the moment of its foundation, to all the existing rules and obligations of international law<sup>48</sup>.

Hence, external sovereign does not mean 'supremacy' but equality of sovereign state to participate in the international system on a level of legal or formal equality with other members, this signifies independence in foreign policy within the framework of general international law<sup>49</sup>, and it is bound by or have an obligations under international law.

Conceptions which proclaim sovereignty and international law as incompatible are scientifically invalid, respective of whether they proceed from the position of absolute sovereignty or negate it. International law regulates the conduct between members, hence there exists some norms which restrain certain powers

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<sup>46</sup> Ibid page 201.

<sup>47</sup> Supra note 40.

<sup>48</sup> Ibid Page 20.

<sup>49</sup> Ibid Page 20.

in the interest of the community. State assumes corresponding obligations under international law<sup>50</sup>.

International agreements and general obligations under international law do not normally constitute a limitation on state sovereignty. The idea that sovereignty can neither be limited nor divided is contrary to modern development in international society, yet cannot divest states from the absolute rights to control their economic, social and cultural norms internally and how they relate externally<sup>51</sup>.

### **2.6.2 International Organizations**

The institutional aspects of organizations of states pose serious challenge to the principle of sovereign equality of member states. Various organs of the organizations may be permitted to take decisions, or even make binding rules, with or without express consent of all or any of the member states. However, this organization is an association of states established on the basis of a treaty and in accordance with international law in order to achieve specific objectives possessing a system of organs and rights and duties that are distinct from those of member states<sup>52</sup>. This gives the organizations international legal personality and competence but they are secondary subjects of international law and do not possess sovereignty.

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<sup>50</sup> Ibid Page 30.

<sup>51</sup> Supra note 47.

<sup>52</sup> Supra note 38 Page 126.

### **2.6.3 Complex World Economy**

Complex world economy has begun to cast serious doubts on claims of state sovereignty. International trade, credits and financial relations, transportation and industrial co-operation among nations have risen to immense proportions, the system of international trade produces a specialized economic pattern which seems largely unaffected by administrative decisions and actions at the hand of government. In the interest of international economic security, the emphasis is always on how promptly and effectively individual countries agree to subordinate their national sovereignty and independence to the interests of international monopoly capital<sup>53</sup>.

These concepts proved the independence of member-states to regulate internal policies, socially, economically and culturally. Anti-Dumping Agreement falls within this sphere under the WTO Agreement. States need to exercise a policy that would be more responsive to promote development of a new form of sovereignty. This focuses on those aspect as to content which would allow state actively develop international communication without compromising its foundation<sup>54</sup>.

Under the influence of globalization, states increasingly agree to transfer their own certain sovereign rights to supranational jurisdictions and associations including international organizations: United Nations, Council of Europe,

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<sup>53</sup> Valentine S; Transnational Corporations and Doctrine of Neoglobalism (1987) Allied Publishers, New Delhi, Page125

<sup>54</sup> Supra note 15

CSCE, NATO, and WTO. This gives rise to a qualitatively new situation for countries that are forced to look for new approaches to the implementation of sovereign rights. Constitution of a number of states also contains provisions relating to the implementation of sovereign rights of membership in the intergovernmental associations<sup>55</sup>. The transfer by the state of certain sovereign rights does not mean the restriction of sovereign rights.

States under WTO possess the right to make decisions, modify constitutions, legislate on setting government authorities, citizenship, currency, collection of taxes and fees, establishment of territorial divisions, regulate natural resources, law enforcement, armed force etc. These are basic attributes of sovereign state internally<sup>56</sup>.

External sovereignty decided to disclose the right to conclude international treaties and agreements, establishment of diplomatic relations, participation in international organizations like WTO, declaration of war and conclusion of peace, right to neutrality etc. These attributes still exist and WTO member states have control over them<sup>57</sup>.

States knowingly engage into international organizations, voluntarily giving them the right of realization of part of their rights and duties, to be exact - involve them in a joint implementation. States independently develop and enter into

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<sup>55</sup> Ibid Page 580.

<sup>56</sup> Ibid Page 583.

<sup>57</sup> Ibid Page 583.

contracts, signing and adhering does not result in depriving the state under the contract sovereign rights. Such transfer only signifies right to form voluntary self limitation of its own jurisdiction<sup>59</sup>.

Sovereignty may not do justice to the contemporary status of global market integration because there are plausible risks that protectionists may seek refuge in an overarching claim of sovereignty<sup>60</sup>. At times powerful countries tend to summon the ill-defined concept of veto to do away with compliance or cooperation within an international organization<sup>61</sup>.

It is imperative that in this highly interdependent international environment, trading nations, even the most powerful ones, involve a degree of intrusiveness into domestic governance which also necessitates cooperative mechanisms, appropriate allocation of power between international institutions and diverse national legal system<sup>62</sup>.

Therefore, as Abraham Chayes and Antonia Chayes argued altering international context requires a more flexible concept of sovereignty which departs old passion. Nations should adopt the “new sovereignty” which is more mature, constructive, and participatory so that trade norms should be “disaggregated” to make possible to assess the relative advantages and

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<sup>59</sup> Ibid Page 587.

<sup>60</sup> Ibid at page 668.

<sup>61</sup> Ibid at page 669.

<sup>62</sup> John H. J; International Economic Law in Times That are Interesting, 3 Journal of International Economic Law (2000) Page 6

disadvantages of reinforcing particular norms<sup>62</sup>. This approach will enable governments to identify and focus on important “policy” issues that confront the entire international community and together help governments achieve objective in international obligations<sup>64</sup>.

State authority is designed to take care of the interests of its people acting as its source and created by them. Under the general rule government has no right to conclude agreements or take any other steps that are harmful, but government is obliged to stop immediately imposition of agreement or a decision that has negative effects on its citizens.

Nigeria’s commitment to WTO would not in any way stops its sovereign right to implement Anti-Dumping Agreement. In fact WTO allows for its implementation under article VI especially where the effects are manifest. Thus, it is provided where there is injury or threat to an established industry or a particular product(s) the affecting member-state applies or takes Anti-Dumping measure as a trade remedy. However, taking this measure has always being criticized as an unfair trade practice.

## **2.7 GENERAL PRINCIPLES OF FAIRNESS IN FREE TRADE**

There are various arguments as to what is ‘fair’ or ‘unfair’ in trade liberalization. Dumping is being referred to as unfair from the perspective of

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<sup>62</sup> H.J. The Great 1994 Sovereignty Debate: The United States Acceptance and Implementation of the Uruguay Round Results, 36 (1994). Page 157 and 187-188.

<sup>64</sup> Supra note 62 at page 670.

importing states and fair by the exporting states. These two opposing views are ongoing as they related to free trade principles in the global economic system.

It is not surprising that fairness as a concept would have many supporters but the nagging question is what exactly fairness means? This question alone may receive dozens of different responses for not having one definition<sup>65</sup>; thus, it means different things to different people in different contexts<sup>66</sup>.

Fairness is difficult to describe accurately and completely, the notion that something is unfair can sometimes rise up within a person with a sudden conviction, thus scholars describe the concept in seven distinct ways.<sup>67</sup> Each of these seven principles is likely to be viewed as individually reasonable by most people though consistently conflict with each other when applied to particular situations<sup>68</sup>.

Many people consider outcomes and processes to be fair if they conform to a common, or shared set of standards as such; they form a set of individuals' expectations<sup>69</sup>. The concept of equality in modern day generates expectations that two individuals should be treated the same way in certain situations. This is similar to describing some issues as right or wrong<sup>70</sup>.

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<sup>65</sup> Steve; S. "A Moderate Compromised Economic Policy Choice In an Era of Globalization (excerpt) Palgrave Mc. Millan, 2010 at page 1.

<sup>66</sup> Ibid at page 2.

<sup>67</sup> Ibid at page 2.

<sup>68</sup> Ibid at page 2.

<sup>69</sup> Ibid at page 3.

<sup>70</sup> Ibid at page 3.

There was a popular notion from western perspective which tendered to focus on the standard of equality, liberty, fraternity, equality of men, equal justice, equal treatment and equal opportunity regularly aspired to though not always achieved<sup>71</sup>.

The concept of fairness has a long and voluminous literature associated with it in the philosophy, legal and social science disciplines, particularly in its relation to trade liberalization<sup>72</sup>. In many societies there is strong believe in the equality of people, this takes two forms: either applied to expectations about outcomes or expectations about treatment or behaviors. In the former case, observers desire outcomes, such as wages, incomes, sales to be more equally distributed while the latter case involve concerns about equal treatment in certain situations<sup>73</sup>.

### **2.7.1 Distributional Fairness**

Globalization has been criticized that the concept favors the rich becoming richer while the poor becoming poorer resulting in an increase inequality both within countries and around the world<sup>74</sup>.

This is left for public policy discussions. The first concern about inequality is based on a presumption that all people are equal in some sense. Many people have the sense of the rightfulness of equality that important life outcomes

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<sup>71</sup> Ibid at page 4.

<sup>73</sup> Ibid at page 5.

<sup>74</sup> Ibid at page 6.

should be equal or at least more equal. Then how can the outcomes be equalized<sup>75</sup>.

The answers are many by measure and what is appropriate. Thus it is well accepted that income is not only source of well being, but an important source. Most important to equalize is “capabilities” or “functioning” for their similarity with equal opportunity. However this concept is clearly much more difficult to measure effectively and convincingly<sup>76</sup>.

In the economics literature a prominent thread of discussion in normative welfare discussions is trade between efficiency and equity where equality refers to the widespread preference or concern for equality in economic outcomes. Notably, a free market economic system, which may generate the most efficient economic outcome and the best use of scarce resources, may not generate a relative by equal distribution of income or wealth<sup>77</sup>.

The advent of socialist and communist ideologies was to proper solutions to the problems of free-market capital society particularly it result expected inequality. Even today the concern about inequality is manifest, though many would no longer demand that income, wealth, production cost to be equalized completely<sup>78</sup>. As such policies, law are often judged to be fair or unfair on the

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<sup>75</sup> Ibid at page 6.

<sup>76</sup> Ibid at page 6 See Hayek (1954: chapter 5) page 20 for useful discussion of the history of social justice and Public Policy.

<sup>77</sup> Ibid at page 7.

<sup>78</sup> Ibid at page 7.

basis of whether they would cost more or less inequality, of income, sales, wealth, opportunities, capabilities or whatever else.

### **2.7.2 Non Discrimination Fairness**

Non discrimination means equal treatment, for individuals, though acceptable to have discrimination on the basis of ability for instance, the worker with more experience may rightfully be hired over a person with less experience because past experience contributes to the person's ability to do the job<sup>79</sup>.

Thus non discrimination is considered fair whenever different characteristics judged irrelevant to the decision, do not influence the decision. Non discrimination fairness is precisely the basis of John Rawls' first principle of justice that says "Each person has equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all, known as the principles of impartiality<sup>80</sup> .

This principle is accepted in WTO as most- Favored Nation (MFN) and national treatment. MFN means that the best trade policy a country offers while a commitment to national treatment requires that a country treats foreign goods, after clearing customs, equal to domestically produced goods.

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<sup>79</sup> Ibid at page 7.

<sup>80</sup> Ibid at page 8.

### **2.7.3 Golden Rule Fairness**

The golden rule is often prescribed as method to determine acceptable actions, although found in moral and religious code yet found in public policy discussions. A note worthy application arises in the common expectation that people will abide by the “rules of the game” In a simple context, cheating to gain an advantage for oneself violates the golden rule and consequently, is quickly objected to a being unfair<sup>81</sup>.

Regardless of the social setting and despite the fact that the “rules of the game” are sometime hard to pin down, violations of explicit or implicit rules are generally considered unjust and unfair. WTO agreements are meant to be respected as expected by other members, unfair trade is often proclaimed when another member has failed to live up to one of its previous, promises or when expectations are unfulfilled<sup>82</sup>.

Similarly, anytime, a country is judged to be violating any rule, law or promise, whether explicit or implicit, the charge of unfairness is often applied. In some instances, following rules or laws is often regarded sacrosanct. For example, when other countries charge the US with being protection because it applied tariffs against other countries in anti dumping actions, the US response is always that it lies within the rules of the game since antidumping actions are

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<sup>81</sup> Ibid at page 9

<sup>82</sup> Ibid at page 10

allowed by the WTO agreement. On this basis, these protection actions are perfect by fair<sup>83</sup>.

### **2.7.4 Reciprocity Fairness**

Fairness is basically a reward requiring reciprocity, a kind of quid pro quo<sup>84</sup>. There are different variations of reciprocity, thus when someone does something that has a positive effect on another person, that person is sometime expected to reciprocate in kind with an equally positive response being a positive reciprocity and in contrast is term to be negative reciprocity<sup>85</sup>. Finally, if someone does something that has no effect upon another, it's generally accepted that the other person will not respond with a negative effect upon the first. This kind of non-interaction will be called privacy fairness<sup>86</sup>.

Adam Smith described positive and negative reciprocity in the “Theory of Moral Sentiments” when he wrote: *To reward, is to recompense, to return good for good received. To punish, too, is to recompense, to remunerate, though in a different manner; it is to return evil for evil that has been done*<sup>87</sup>.

#### **2.7.4.1 Positive Reciprocity**

This kind of fairness is common features of exchange between people in an economic transaction made between two individuals or two businesses or an individual and a business, the two parties to the exchange believe that the value

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<sup>83</sup> Ibid at page 10.

<sup>84</sup> Garner. A.B; Black's Law Dictionary 9<sup>th</sup> Edition. This is Latin meaning something for something. An action or thing that is exchanged for another action or thing of more or less equal value; a substitute.

<sup>85</sup> Supra note 27 at page 11.

<sup>86</sup> Ibid at page 11.

<sup>87</sup> Smith (1971), Part 2 section 1 page 20.

of what's given up is approximately equal to the value of what is received. If not, it is unlikely both would agree to exchange voluntarily<sup>88</sup>.

In needed, for trade to be viable, parties should believe the value of item received more than the one given up on the basis of economic exchange. In international trade agreements, like GATT and subsequent WTO, countries negotiates and offer trade-liberalizing concessions in exchange for equal concessions by trading partners, thus where both sides reached agreement trade rounds come to a conclusion<sup>89</sup>.

Another embodiment of positive reciprocity fairness is in the definition of the fair price in anti dumping actions. AD actions, sanctioned WTO agreement, allow a country to raise trade barriers on imported products that are shown to be sold at less than fair value. One definition of fair value is a price that is approximately equal to the cost of producing the good after allowing for a reasonable profit<sup>90</sup>. In this case, fairness is related to approximate equality of reciprocal value, namely the cost and sales price<sup>91</sup>.

#### **2.7.4.2 Negative Reciprocity**

Negative reciprocity fairness arises in cases of revenge, retribution or redress of grievances. Revenge is one of the motivations behind punishment for those found guilty of crimes. In international trade, an application of negative

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<sup>88</sup> Supra note 86.

<sup>89</sup> Ibid page 12.

<sup>90</sup> International Trade Centre UNCTAD/WTO:WTO Negotiations on the Agreement on Anti-Dumping Practice (2005) accessed on 25<sup>th</sup> Sept 2019 page 7.

<sup>91</sup> Ibid page 7.

reciprocity fairness is the allowance for suspension of concessions as part of the WTO dispute settlement process. If a country is found to have violated one of its commitments under the WTO agreement, and if it refuses to come into compliance, the Dispute Settlement Board (DSB) can allow the aggrieved country to suspend its previous concessions<sup>92</sup>.

A suspension means taking away some of the trades liberalizing benefits that were previously granted. In this way some pain is caused to the violating country and in keeping with the spirit of equality, the value of the suspended concessions, in terms of how much trade is affected, is meant to be approximately equal in value to the original harm caused by the violating country<sup>93</sup>.

#### **2.7.4.3 Privacy Fairness**

Privacy fairness related to situation in which the reciprocal effects are null or zero. It is often applied in situations in which a person may do something that has an effect upon oneself but not upon anyone else<sup>94</sup>. The most notable application of privacy fairness in international trade discussions is the issue of national sovereignty. Quite often some countries pressure other countries to change their trade or domestic policies<sup>95</sup>.

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<sup>92</sup> Reid M. B.; (2001) Anti Dumping and Distrust: Reducing Anti- Dumping Duties under the WTO Through, Heightened Scrutiny, 29 Berkeley Journal of International Law vol.129/issue1 66(2011).

<sup>93</sup> Ibid at page 68.

<sup>94</sup> Supra Note 33.

<sup>95</sup> Ibid page 13.

Sometimes this is done because the changes would have some positive effects on businesses in the advice- giving country. At other times it is suggested because it is perceived to be in the best self interests of the other country. Privacy fairness issues arise whenever one person or country insists that another person or country mind their own business. One could argue that privacy fairness is just the null application of the golden rule.

## **2.8 MAXIMUM – BENEFIT FAIRNESS**

This arises out of a concern that decisions should be made that are “best” or “most appropriate” in some sense. While it is true that in many contexts this concern does not coincide with the use of the term fairness, occasionally it does. One simple example is the decision to hire a worker for employment<sup>96</sup>. If a firm considers hiring the best qualified worker; the worker that would best achieve the objectives of the company needed but where the worker is less qualified many would judge the outcome unfair<sup>97</sup>.

In an international economic context maximum benefit fairness is a prime concern among economic analysis focusing on efficiency effects of economic arrangements or policy options. Free trade is often promoted, largely, because it is expected to raise overall economic efficiency implying a greeter overall benefit for the county. While surely some would content efficiency is separate

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<sup>96</sup> Ibid page 14.

<sup>97</sup> Ibid page 14.

and distinct from fairness considerations, it remains true that efficiency (i.e. maximum overall benefit) is a valid concern for policy makers<sup>98</sup>.

## **2.9 MODERN CONCEPT OF FAIRNESS IN TRADE**

In earlier times the concern about free trade was whether it would maximize that a country can make of its resources, knowledge and the resulting trading possibilities<sup>99</sup>. Nowadays among the primary worries are whether free trade is fair and the moral considerations applicable to trade policies of countries with different bodies of law whose citizen's trade with each other<sup>100</sup> is also fair.

Based on ideas going back to David Ricardo's (1817) Principles of Political Economy, the concept of comparative advantage applies even today. Some countries produce more efficiently than others because of different social costs in production<sup>101</sup>.

There are worries about "unfair trade practice globally of foreign competitors. Fairness in trade is conceptually muddled because ideas of fairness seem tied to the image of "leveling the playing field" for equal opportunities since trade thrives on differences<sup>102</sup>. International trade is a voluntary activity in a setting where actors do not share a thick coercive structure (e.g. national laws) before which worries about fairness are easily motivated. Often fairness claims about trade are mere rhetoric. Some argue that all trade practices adversely affect

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<sup>98</sup> Ibid page 16.

<sup>99</sup> Mathias R; Fairness in Trade (2005) John F. Kennedy School of Government, Harvard University Page 1.

<sup>100</sup> Ibid page 1.

<sup>101</sup> Ibid page 2.

<sup>102</sup> Ibid at page 2.

import-competing industries while others are of the view that nearly all policies of other governments on trade practices constitute source of unfair competition as rightly put by Burtless<sup>103</sup>:

Fairness (.....) is in the eye of the beholder. What constitutes “fair” and “unfair” has changed over the years. In the 1980s, unfairness was associated with barriers imposed by foreign governments to block market access.....in 1990s one still hears complaints about closed foreign markets.....

Such observations illustrate why many find it hard to see any substance in claims about fairness in trade but hard to deny its presence. Trade affects what people have, unequal benefits between countries, domestic trade winners and losers<sup>104</sup>. According to some commentators fairness talk to trade urges many to gain clarity a subject that harbors philosophical complexities. While there is nothing conceptually wrong about applying fairness to trade but why is it difficult to apply? Fairness draws on views about what is owed to person as to what is fair<sup>105</sup> or what other person perceives it to be.

Fairness has become a rallying cry for a diverse and somewhat eclectic set of people who accept there are some advantages to open markets and free trade, they also contend that in many cases free trade allows stronger and more

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<sup>103</sup> Ibid page 3.

<sup>104</sup> Burtless, et al., (1998) Globophobia. Confronting Fears about Open Trade, Washington (D.C.): Brookings Institution page 90.

<sup>105</sup> Supra note 69 at page 3.

powerful groups (such as multinational corporations) to take advantage of weaker, disadvantaged groups (like poor unskilled workers) and proclaim that free trade is unfair or unjust<sup>106</sup>.

## **2.10 BASIC IDEAS OF TRADE THEORIES**

Basically, the main thrust on the trade theories are the concepts of absolute and comparative advantages as to what one produce and where including the costs of production. Based on the idea of comparative advantage economic theory recommends free trade<sup>107</sup>. It is advantageous to liberate trade even if others do not, still restrictions are common and their reduction has been a goal of all GATT/WTO trade rounds<sup>108</sup>.

There are several reasons why countries protect, first, there are products for which countries may not want to depend on imports e.g. defense and culture, second, wealth maximization is not a country's only concern. On fairness ground, one may decide to protect particular interest at the expense of wealth maximization<sup>109</sup>, for instance the recent closure of land borders by the president of Nigeria on the basis of security and agriculture. This aspect of trade motivates such protection which obviously produces winners and losers.

Trade affects the income distribution because some gain directly from beneficial trade arrangements, whereas others lose to international competition,

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<sup>106</sup> Steves, "A Moderate Compromise: Economic Policy Choric in an Era of Globalization (Excerpt) Palgrave McMillan, (2010).

<sup>107</sup> Supra note Page 13.

<sup>108</sup> Ibid Page 13.

<sup>109</sup> Ibid Page 14.

a country may want to accept temporary protection for greater wealth later; protecting infant industries is a case in point. A country may take protective measure to raise revenue<sup>110</sup>.

Free trade benefits economic factors (such as labor, or resources), specific to the export sector of a country, but hurts import-oriented sectors relative to export-oriented sectors. Those hurt by trade tend to be producers who are better organized than those who win the consumers<sup>111</sup>.

### **2.10.1 The Strong Westphalian View**

According to this theory trade policy is every country's own and exclusive affair. As long as the production processes do not harm other countries, the social costs of production and hence the prices of good from a country should not be subject to external inference unless such production involves atrocious activities<sup>112</sup>. The prices of goods from other countries must be accepted in much the same way in which climatic conditions must be accepted: their change cannot be demanded as a requirement of claims in fairness. Different countries or citizens do not stand in a relationship to each other that allows for fairness considerations to arise<sup>113</sup>.

So, in a larger scenario, the oppressed have complaint in fairness against trading partners, this view seems to disregard their claims. Trade theory recommends

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<sup>110</sup> Anderson, Kym. (2004) "Subsidies and Trade Barriers" in Byorn Lomborg (ed) Global Crises, Global Solutions, Cambridge University Press Page 14.

<sup>111</sup> Ibid Page 16.

<sup>112</sup> Ibid page 20.

<sup>113</sup> Barfield C. 2001 "Free Trade Sovereignty, Democracy' The Future of the World Trade Organization. Washington DC: The AEI Press Page 41.

liberalizing trade because of benefits accrued to countries that do so even unilaterally<sup>114</sup> for fast growth.

But for the proponent of this view there are three myths about trade<sup>115</sup>, one “myth is that” trade is beneficial only if a country is strong enough to stand up to foreign competition”. This myth confuses “absolute” and comparative advantage. Another myth is that “trade exploits a country and makes it worse off if its workers receive much lower wages than the workers in other nations. Thirdly foreign competition is unfair and hurts other countries if it is based on how wages<sup>116</sup>.

### **2.10.2 Moderate and Weak Westphalian View**

This view emphasizes that it is up to each country to determine the social costs of production. However, the production processes themselves must not harm, other countries and the effects of trade must be distributed in accordance with a legitimate process. Violations of this latter condition give rise to claims in fairness to the trading partners by those who lose out in the process<sup>117</sup>.

One way of thinking about this view is to assume a world in which all countries set up trade policies through a legitimate process and have reasonably similar social systems. Economists in general reject anti-dumping duties; to them there is nothing inherently harmful or anticompetitive about price

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<sup>114</sup> Ibid Page 75.

<sup>115</sup> Ibid Page 86.

<sup>116</sup> Ibid Page 86.

<sup>117</sup> Ibid Page 26.

discrimination. It would be surprising if domestic prices were exactly the same as an exporter's home price. The anti-dumping laws are simply a popular means by which domestic firms can stifle competition under the pretence of fair trade<sup>118</sup>. This is clear according to this view that the modern trade system is about competition.

Moreover, since developing countries protect domestic interests, this view seems to be ill-understood or rejected, to them it is a show-down between the rich and poor, although protective measure also create winners as well. Hence the weak Westphalia view suggests that every country's trade policy is subject to constraints in fairness that limit how it can determine social costs of production<sup>119</sup>.

## **2.11 THE FAIR TRADE MOVEMENT**

As in the eyes of many, "fairness and trade" come together mostly in labels of the so-called fair-trade-movement. There are two views that can illuminate how this movement may claim to be concerned with fairness<sup>120</sup>.

The first is that there is something about trade relationships that brings about certain kind of duty for the participants in that relationship, namely to make sure either that commodity producers get a certain proportion of the gain from trade (a relative standard), or that they can make a decent living (an absolute

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<sup>118</sup> Ibid Page 27.

<sup>119</sup> Bhagwat, et al, 1993 "Fair Trade, Reciprocity and Harmonization and the Novel Challenge to the Theory and Policy of Free Trade" Cambridge University Press Page 201 [www.cup.edu/](http://www.cup.edu/) accessed on the 19th Sept. 2019.

<sup>120</sup> Ibid at Page 21.

standard). The second view is that, while there is nothing morally important about the actual trade relationship, what matters is that people's needs are satisfied. Everybody should contribute to that goal in ways available to them<sup>121</sup>.

Both views are problematic, one is that consumers who buy fair trade products pay more than the market price, this seems to be unfair since it means giving some producers more than others get and some are put at the disadvantaged position contrary to the kind of concern with proportionality essential to fairness<sup>122</sup>. The second view is that people have a claim to having their needs met, this seems to suggest fairness in trade relationship<sup>123</sup>.

## **2.12 APPLICATION OF FAIRNESS IN A GLOBALIZED TRADE DEBATE**

Application of fairness is intended to show the distinct ways in which people make policy evaluations, each view or principle is commonly accepted or applied by most individuals in at least some situations depending on how it puts their own interest. The concept has some problems associated with it. Application of fairness involves scope of the application e.g. removal of tariff<sup>124</sup>.

Application of fairness principles often requires measurement of key variables for instance; critics of freer international trade argue that globalization is

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<sup>121</sup> Ibid at Page 20.

<sup>122</sup> Panaganya et al, 2004 "Miracles and Debacles" in Defence of trade Openness" at <http://www.colombia.edu/~app2231/policy.com> Page 18 accessed on the 20<sup>th</sup> Sept. 2019.

<sup>123</sup> Ibid at Page 20.

<sup>124</sup> Brown et al, 1996 "International Labor Standards and Trade: A Theoretical Analysis". Vol.1 Page 208 also [www.ilsktm.edu](http://www.ilsktm.edu). Cambridge University Press.

leading to environmental degradation as polluting firms move facilities to countries that have more lenient environmental standards<sup>125</sup>. Proponents of freer trade have countered by showing that environmental costs savings are dominated by other cost concerns when firms make relocation decisions. These issues imply that for any policy under consideration it is usually possible to build a differently configured fairness argument that opposes the policy<sup>126</sup>. One needs to only vary which principle is applied, the scope of the application, the data used to measure the variables of interest<sup>127</sup>.

### **2.12.1 Theory of Dumping**

The growth of trade liberalization in the past century provided convenient conditions for particularities in firms' behavior engaged in the international trade to occur<sup>128</sup>. One of the consequences of imperfect competition is the appearance of the situation when a firm charges a lower price in the export market than in the home market, the phenomenon of dumping occurs<sup>129</sup>.

Firms use different techniques to perpetrate either domestic or foreign market. In international trade enterprises therefore export products willing to capture markets abroad, to mitigate competition or even further to pursue the

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<sup>125</sup> Supra note 50.

<sup>126</sup> Ibid Page 29.

<sup>127</sup> Ibid Page 29.

<sup>128</sup> Zarnic Z., "Anti-Dumping" (2002) Christian Albrechts University, Department of Economics (Abstract).

<sup>129</sup> Ibid at Abstract.

competitive firms to withdraw. This means the enterprise supplies its products at very low prices which is considered to be beneath its fair value<sup>130</sup>.

Dumping is not only a concern of international economic community but is defined by international law<sup>131</sup>. The authority puts efforts in analyzing the effects by applying those definitions to a set of circumstances<sup>132</sup>. Dumping has two common effects, first, the low prices of the imported products may harm the domestic industry producing similar products, secondly, increases the welfare of the consumers and industry users of dumped products<sup>133</sup>. An enterprise selling abroad at lower prices force firms to produce efficiently locally if they do not want to confront the losses or to be withdrawn from the market<sup>134</sup>.

### **2.12.2 Fairness and Anti-Dumping**

Antidumping is a legal procedure that allows a country to raise tariff on specific items if several criteria are satisfied. The procedures are allowed to all countries that are members to WTO. Thus, most, if not all, WTO members have antidumping legislation.

### **2.12.3 Dumping is Unfair: Anti-Dumping is Fair**

This theory suggests that antidumping is known as an unfair trade law purportedly because it protects a country against unfair pricing practices by

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<sup>130</sup> Ibid Page 2.

<sup>131</sup> Anderson, J. E (1994), "Strategic Lobbying and Antidumping", Journal of Economic Integration, vol. 9, Page 129-155.

<sup>132</sup> Ibid Page 2.

<sup>133</sup> Ibid Page 151.

<sup>134</sup> Brander, et al (1983) "A Reciprocal, Model of International Trade" Journal of International Economics vol. 15 Page 313-321.

foreign firms. When foreign firms undercut domestic producers, especially by selling below the cost of production, this makes it more difficult for the domestic firms to compete. To stay in the market, import competing firms may be forced to lower their own prices, perhaps to a level below their production cost<sup>135</sup>.

The losses incurred by these firms would cause harm to the firm owners and employees by reducing profits and lowering wages. If losses persist for very long, the domestic firms may be forced to lay off workers causing the further damage of unemployment, insecurity and increased poverty among others<sup>136</sup>.

Several distinct fairness principles can be applied to argue that antidumping actions protect against unfair trade. Applying golden rule fairness one can argue that firms in different country should play by the same set of rules, that there should be a level playing field<sup>137</sup>. Foreign firms should not have unfair advantages, over the domestic firms as postulated by this theory.

Another common argument supporting antidumping procedures is that the procedures are themselves encoded in law and agreed to by the WTO countries. As such foreign firms are violating the rules when they engage in predatory or discriminatory pricing. Actions taken against these firms are allowable and they

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<sup>135</sup> Supra note 106.

<sup>136</sup> Jackson J., (2001). "The WTO "Constitution and Proposed Reforms Seven Mantras Revisited" Journal of International Economic Law: Page 67-78 accessed on the [www.jiel.edu/the](http://www.jiel.edu/the) 19th Sept. 2019.

<sup>137</sup> Ibid Page 70. See Also Palgroe MacMillan 2010 Page 28.

are fully consistent with golden rule fairness<sup>138</sup>. Antidumping procedures themselves incorporate other fairness conceptions such as reciprocity.

Finally, antidumping measures are allowed for all WTO member countries, thus the non discrimination fairness principle applies.

### **2.12.3 Dumping Is Fair: Antidumping Is Unfair**

An alternative perspective on these same actions is possible by opening the scope of analysis. The change that unreasonable pricing is unfair is based on the narrow perspective of the domestic import-competing firms. Thus, it is not accurate to say dumping is unfair overall, or unfair to the importing country only that is unfair from the perspective of the import competing firms. However, the effects of dumping and antidumping have many other impacts on individuals in both the exporting and importing countries. This perception may be reversed as to what is fair if wider effects are included.

The effects ignored in the above “fairness analysis are the impacts on the consumers of the affected products in the importing country. When foreign firms sell their products below cost, consumers are enabled to purchase the products at a lower price. Antidumping duty however will raise the price back up and eliminate these benefits<sup>139</sup>.

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<sup>138</sup> Ibid at Page 29.

<sup>139</sup> Ibid at Page 29.

According to privacy fairness one could ask what right the government has to restrict the mutually voluntary exchanges between the foreign firms and the domestic consumers. The antidumping interferes with the private actions of the domestic consumer and the foreign firms. Thus from the narrow perspective of domestic consumers one can argue that dumping is fair while antidumping is unfair<sup>140</sup>.

Another alternative argument is the assumptions made by those who consider dumping to be unfair. One most compelling argument is that price is less than cost and this made foreign firms set their price low to force its competitors from business; however this needs to be proved by economic evidence to show predation. This argument alleging predation as a reason dumping is unfair is unsubstantiated according to this theory<sup>141</sup>.

## **2.13 CONCLUSION**

This chapter discussed two important concepts that have direct link with the subject matter dumping. The first concept was dealt with lightly because Nigeria has already submitted to the principles governing the rules under WTO. Discussion of sovereignty at this time might be a waste academic exercise. But the concept of fairness suggests that Nigeria being a WTO member requires and mostly need it for fair play so that economic sovereignty would be said to exist.

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<sup>140</sup> Ibid at Page 29.

<sup>141</sup> Ibid at Page 30.

Taking antidumping measure would be said to be fair if the ailing industries are to survive against foreign competitors.

Evaluation of fairness provides a specific example that demonstrate how it principles can be used to construct an argument that trade policy is simultaneously fair and unfair. Opposing conclusions are possible by picking different fairness principles, altering the scope of application, picking data favorable to one etc. In other words, every policy/theory or view can be reasonably argued to be both far and unfair.

These principles can simply be applied to suit general and specific purposes in the global trade mechanism. For example, free trade is considered unfair to domestic workers when foreign firms face less stringent and hence unequal, health and safety requirements and lower minimum wages. This treatment is non discrimination principle. This can be unfair because low wages paid to foreign workers contributes to poverty and inequality known as distributional fairness.

Free trade is also considered unfair when firm owners make greater profit by laying off workers in the domestic economy and moving factories abroad (golden rule fairness). However, free trade is considered fair trade because it reduces economic inefficiencies and contributes to an increase in average standards (maximum benefits fairness). Free trade is considered fair because it consists of millions of mutually voluntary and reciprocal exchanges (reciprocity

fairness). Finally free trade is considered fair because to restrict trade interferes in the exchanges of private parties (privacy fairness).

Nevertheless, all these mechanisms are for policy and legal utility. The most widely accepted conception of fairness in International law today is provided by Thomas Franck (1995: 26-27) where he says: ..... Fairness is a composite of two independent variables legitimacy and distributive justice. Fairness discourse is the process by which the law, and those who make the law, set to integrate those variables, recognizing the tension between the community's desire for both order (legitimacy) and change (justice), as well as the tension between different notions of what constitutes good order and good change in concrete instance<sup>142</sup>.

Thomas Franck conception refers to public international law in general. But in international trade law, Brown and Stern argue that " fairness in the global trading system can best be assessed in terms of two criteria: equality of opportunity and distributive equity<sup>143</sup>.

This research study is of the view that free trade is fair if economic theory, empirical studies and justice principles are meant to protect national firms as against foreign firms as others may argue to support trade liberalization. The next chapter deals with the examination of the antidumping agreement (article

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<sup>142</sup> Export Impact for Good 2010, International Trade Centre, Market Access Transparency and Fairness in Global Trade, accessed in the 24<sup>th</sup> Sept. 2019.

<sup>143</sup> Ibid page 20.

VI of the WTO) so that at the conclusion of the study a particular theory(ies) may be chosen to conceptualize the efforts facing the Cotton, Textile and Garment CTG (subsector) in Nigeria as is related in the industries within the scope of the study. The next chapter discusses the principle of unfair under WTO (Article VI of GATT 1994).

**CHAPTER THREE**  
**EXAMINATION OF THE PRINCIPLE OF UNFAIR TRADE (WTO TEXT ON**  
**AN ANTI-DUMPING AGREEMENT ON THE IMPLEMENTATION OF**  
**ARTICLE VI OF THE GATT 1994)**

**3.0 INTRODUCTION**

This chapter examines the principle of unfair trade under WTO. The concept of the principle of unfair trade in WTO explains how a particular member state under the auspices of trade liberalization targets a particular sector or subsector or a product or products in another member state(s) with a view to chasing the targeted out of business (dumping). There are laid down procedures provided by the WTO (AD measures) against such practice described as an unfair trade practice or where a measure taken against such a product (Discrimination) not in compliance with the procedures laid under the Anti-Dumping Agreement. This chapter deals with and examines the principle, when is it unfair<sup>4</sup>, when is taking Anti-Dumping Measure is said to be fair, how are the stakeholders under Cotton, Textile and Garments subsector ought react to dumping in Nigeria and how the Nigerian government should react to dumping through various law provisions as encapsulated under Article VI of the General Agreement on Tariffs and Trade [1994].

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<sup>1</sup>Jackson et' el', Legal Problems of International Economic Relations, cases and Materials and Text (3<sup>rd</sup> edition), American Book Series, West publishing Co. (1995) Page 666. There are Laws and policies of government or private that affect International trade flows which are described as unfair in importing countries and fair when a measure is taken against such act.

### 3.1 MEANING OF DUMPING AS AN UNFAIR TRADE PRACTICE

Generally, dumping is selling for export at below home-market price or costs<sup>2</sup>.

It is exporting at prices below those charged on the domestic market (or if none, on a third-country market) or at prices insufficient to cover the cost of the goods sold.<sup>5</sup> These meanings suggest:

- i) Those prevailing in the home market (international price discrimination) or*
- ii) Those necessary to cover production cost (below cost sales), price discrimination occurs where the exporter sees separate market for its product and charge a higher price in the market that attaches a greater utility to the product<sup>6</sup>.*

Effectively, dumping can be predatory, cyclical, persistent or seasonal depending on whether or not there is a comparative advantage<sup>7</sup>. It is predatory conduct with the aim of driving domestic producers out of the market so that it can ultimately raise its prices to monopolistic levels<sup>8</sup>. Cyclical is when there is unemployment and during recession, companies lower their prices to minimize sales loss and the decline in quantity produced; market price will fall below full average cost this continues as long as price exceeds average variable cost.<sup>9</sup>

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<sup>2</sup> Ibid at pp 669.

<sup>5</sup> Ibid at Page 671.

<sup>6</sup> Ibid at Page 673 (see generally for the effects of dumping and the various arguments for fair or unfair trade practice).

<sup>7</sup> Obalade F. "Analysis of Dumping as a Major cause of Import and Export Crises, vol. 4, No. 5; International Humanities and Social Science, March 2014 Page 234-235.

<sup>8</sup> Jackson Supra note 4.

<sup>9</sup> Obalade, Supra note 5.

This persistent dumping is usually described as the worst<sup>10</sup>. It is the continuous tendency of a domestic monopolist to maximize total profits by selling its commodities at a higher price in the domestic market than international just so to be competitive in those foreign markets (International Price Discrimination)<sup>11</sup>.

Lastly, seasonal dumping is examined as the act of selling products that are seasonal sold at high prices in seasons and remaining surplus taken to another markets off seasons and sold at below fair market price that obtains at home<sup>12</sup>.

Technically, dumping is best explained from the WTO text (instrument) in **Article VI(1)** of Anti-dumping and Countervailing Duties Protocol to the General Agreement on Tariffs and Trade 1947 thus;

*..... products of one country are introduced into the commerce of another country at less than the normal value of the product, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry.*

*For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less*

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<sup>10</sup> Ibid at page 235

<sup>11</sup> Ibid at Page 235

<sup>12</sup><http://unfair> Trade Export/Promotion Policies.html accessed on the 2<sup>nd</sup> August 2017 also available at Obalade, Supra Note page 235

*than its normal value, if the price of the product exported from one country to another.*

*(a) Is less than the comparable price, in the ordinary course of trade for the like product when destined for consumption in the exporting country or,*

*(b) In the absence of such domestic price, is less than either*

*i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or*

*ii) The cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit<sup>13</sup>.*

### **3.1.2 WHEN IS DUMPING SAID TO BE CONDEMNABLE?**

The idea of conceptualizing “dumping” as legislation dates back to the beginning of the 20<sup>th</sup> century<sup>14</sup>. The GATT 1947 contained a special article on dumping and dumping action. Article VI of the GATT condemns dumping and anti-dumping that causes injury, but it does not prohibit it.<sup>15</sup> Rather, Article VI authorizes the importing member to take measures to offset injurious dumping. Hence, because of the problem associated and the effect at which dumping poses

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<sup>13</sup> Kabir, A. Compendium of International Economic Law Instruments.

<sup>14</sup> Training Module on the WTO Agreement on Anti-Dumping, United Nations Conference on Trade and Development (2006), United Nations Publication, New York and Geneva Page 3 (this module focuses on the legal aspect of anti-dumping frame works).

<sup>15</sup> Ibid at Page 3.

to importing members WTO recognizes that any dumping that is injurious is condemnable and measure may be taken to offset the injury.

Since 1947, anti-dumping has received elaborate attention in the GATT/WTO when in 1958 a group of experts was established and in 1960 agreed on certain common interpretations of ambiguous terms of Article VI defining how dumping could be said condemnable<sup>16</sup>. Anti-dumping Code was negotiated during the Kennedy round and signed by 17 parties and also revised during Tokyo Round with 25 signatories. Article VI was carried forward into GATT 1994. A new agreement that is the agreement on implementation of Article VI (ADA) which was concluded in 1994 as a result of the Uruguay Round, article VI and the ADA apply together<sup>17</sup>.

Dumping is condemnable only under circumstances provided for in article VI GATT 1994 and pursuant to investigation initiated and conducted in accordance with the provisions of the agreement.<sup>18</sup> Where also dumping is condemnable appears when it covers only goods and not services as negotiated during the Uruguay Round, and it has long been accepted that neither article VI nor the ADA cover exchange rate dumping, social dumping, environmental dumping or freight dumping<sup>19</sup>. The other condemnable forms are; market expansion dumping implying selling at lower price for export than domestically in order to

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<sup>16</sup> Ibid Page 3.

<sup>17</sup> Ibid at Page 4.

<sup>18</sup> Ibid at page 4.

<sup>19</sup> Ibid at page 4.

gain market share, state trading dumping,<sup>20</sup> on the other hand implies selling at low price in order to earn currency and the strategic dumping is condemned when it is done by benefitting from overall strategy which includes both low export pricing and maintaining a closed home market in order to reap monopoly or oligopoly projects.

### 3.1.3 EFFECTS OF DUMPING

General dumping as trade mechanism which was conceived as free trade opportunity to be exploited, the concept has two folds: there is effect on the position of the dumper and the exporting country which normally turns out to be positive and also effects the importing country<sup>21</sup>.

- a. *dumping can have clear advantages for the individual export when a profitable home market provides: platform which may be used to operate in export markets at price much lower than could have been possible without market segregation,*
- b. *Dumping can also be beneficial to dumpers even in situation where home market sales are made at a loss. As long as the latter cover fixed costs, export sales can be priced as low as variable cost, a strategy which permit production and employment to be maintained in a recession or enables the*

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<sup>20</sup> Ibid at page 4.

<sup>21</sup> Jackson Supra note 6 page 679.

*aggressor to obtain considerable advantages when going for economics of scales...*<sup>22</sup>

The benefits of dumping for the exporting country's economy are that domestic industries develop capacities which far exceed the size of national market<sup>23</sup>. This facilitates strategic targeting of key industrial sectors in important markets, and can result in high trade surplus and possibly dominant positions in the industrial sector concerned. The advantages derived from dumping can thus outweigh disadvantages stemming from protection of the home market, in particular relatively high in consumer price<sup>24</sup>.

However, dumping has effects on the importing country thus<sup>25</sup>;

- a. A domestic industry facing dumped imports is in a difficult position. The normal reaction to the low prices of a competitor would be to sell on the latter's home market at equally low prices but this is not always possible because of access barriers. Instead it has to reduce its domestic price to the level of the dumped import prices or lose market share.*
- b. Users and consumers are likely to enjoy short term benefits from dumped imports through low prices, but the position may be less favorable in the longer term. Where domestic producers*

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<sup>22</sup> Ibid at page 680.

<sup>23</sup> Ibid at page 680.

<sup>24</sup> Ibid at page 680.

<sup>25</sup> Ibid at page 680.

*are forced to lower production or to ceases it al-together, competition is reduced, a situation which, in the long run, is unlikely to serve consumer interest.*

- c. The impact of dumping on the importing country as a whole is the reverse of the impact on the exporting country. There may be an immediate advantage through the cheap imports, but account has to be taken of the total costs of dumping to the domestic economy i.e. lost capacities sectors, lost investment the loss of technology especially in promising or strategic a shrinking industrial base, and he social costs of unemployment and the or contraction elimination of whole industries.*

### **3.1.4 WHAT IS ANTI- DUMPING?**

The General Agreement on Tariffs and Trade lays down the principles to be followed by the member countries for imposition of Anti – dumping duties, countervailing duties and Safe Guard measures. Pursuant to the GATT, 1994, detailed guidelines have been prescribed under the specific agreements which have also been incorporated in the national legislation of some member countries like India, USA, Canada, UK etc who are also WTO members<sup>26</sup>.

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<sup>26</sup> Prabhu, P.P.; Anti Dumping ‘ a guide’ Directorate General of Anti-Dumping & Allied Duties Ministry of Commerce, Govt. of India New Delhi 110011 page 1.

Indian laws were amended with effect from the 1<sup>st</sup> January 1995 to bring them in line with the provisions of the respective GATT agreements<sup>27</sup>.

Dumping is said to have taken place when an exporter sells a product to importing state at a price less than the price prevailing in its domestic market. However, the phenomenon of dumping is Per se not condemnable as it recognized that producers sell their goods at different prices to different markets<sup>28</sup>. It is also not usual for prices to vary from time to time in the light of supply and demand conditions. It is also recognized that price discrimination in the term of dumping is a common international commercial practice<sup>29</sup>. It is also not uncommon that the export price is lower than domestic prices.

Therefore, from the point of view of anti- dumping practices, there is nothing inherently illegal or immoral about the practice of dumping.

However, as stated inter alia, where dumping cause, or threatens to cause material injury to the domestic industry there shall be a designated authority that will initiate necessary action for investigations and subsequent imposition of anti-dumping duties similar to what is obtainable in Indian laws the preceding prerequisites prompt action and without which dumping per se is not actionable<sup>30</sup>.

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<sup>27</sup> Ibid at page 1.

<sup>28</sup> Ibid page 1.

<sup>29</sup> Ibid page 1.

<sup>30</sup> Ibid at Page 1.

In the light of the explosion of anti-dumping measures worldwide, it is noteworthy that relatively few anti-dumping measures have been challenged in the WTO.<sup>31</sup> More than in other areas of WTO law, anti-dumping measures directly and principally impact on the private sector and often result from skirmishes between domestic and foreign industries<sup>32</sup>. Anti-dumping legislation is also completed and cases are highly factual (as a result of which they are often multi claim cases)<sup>33</sup>.

Therefore, before a WTO dispute settlement proceeding is initiated, private industry must satisfy its home government on the technicalities and to convince the government on the merits of its case, and experience shows that this is no easy task<sup>34</sup>. This is because government dislike losing WTO cases, especially only if that can be convinced that the cases are ironclads<sup>35</sup>.

However, the record shows that, once WTO dispute settlement cases are initiated, the applicant is often found to have a strong case. Third party representations were made mostly by EC, the United States and Japan<sup>36</sup>. This sees to reflect the perception of these countries that it is important to actively monitor and be heard in ongoing dispute settlement proceedings because of systemic determinations that will often exceed the specifics of the case and the

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<sup>31</sup> WTO training module Supra note 15 at page 39.

<sup>32</sup> Ibid at page 39.

<sup>33</sup> Ibid at page 39.

<sup>34</sup> Ibid at page 39.

<sup>35</sup> Ibid at page 39.

<sup>36</sup> Ibid at page 39.

table on the appendix 1 below emphasizes this point.<sup>37</sup> The table provides chronologically recent WTO proceedings on anti-dumping and related issues which have led to panel or appellate Body reports so far.<sup>38</sup> Chronological list of dispute cases as shown on the appendix 1<sup>39</sup>.

### **3.5 AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GATT [1994](PART1)**

#### **3.5.1 PRINCIPLES (ARTICLE 1)**

**Article 1**<sup>40</sup> Deals with the principles governing the circumstances upon which article VI of GATT 1994 would be applied. It also includes powers upon which investigations are initiated<sup>41</sup>. This article brings to light that the only recently accepted regulation on dumping encapsulated and agreed by the anti-dumping agreement is the 1994 text legislation.

#### **3.5.2 DETERMINATION OF DUMPING (ARTICLE 2)**

**Article 2** deals with the process of determination of dumping where the 2.1 emphasize that product to be considered as being dumped i.e. introduced into the commerce of another country at less than its normal value if the export price of the product<sup>42</sup>.... This envisages that before dumping is said to have occurred certain ingredients must be seen within the context of the transaction, the

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<sup>37</sup> Ibid at page 39.

<sup>38</sup> Ibid at page 39.

<sup>39</sup> Go to appendix for the table.

<sup>40</sup> The text is available on WTO website accessed on the 16<sup>th</sup> august 2017 as agreement on the implementation of article VI of the General Agreement on Tariff and trade 1994, <https://www.wto.org/eng/lsih.com>.

<sup>41</sup> The term "initiated" as used in this agreement means the procedural action by which a member formally commences an investigation as provided in article.

<sup>42</sup> The WTO text Supra note at page 145.

product itself introduced, in another country at less than normal value among others.

**While Article 2.2**<sup>43</sup> further explains the above article that when there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country .....the determination can be made comparing what is obtainable in the third country . This means even where the exporting country does not sell the like product in its home market a comparison shall be made as to what is obtained in the third country.

**Article 2.2.1**<sup>44</sup> explains that sales of the like product in the domestic market of the exporting country or sales to a third country at price below per unit (fixed and variable) costs of production plus administration selling and general cost may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities determine that such sales are made within an extended period of time...

**Article 2.2.1.1**<sup>45</sup> deals with how dumping is determined the calculation of cost which normally done on the basis of records kept by the exporter or producer under investigation, provided that such record are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the

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<sup>43</sup> Article 2.2 of WTO text.

<sup>44</sup> Article 2.2.1 of WTO text.

<sup>45</sup> Article 2.2.1.1 of WTO text

product under consideration. This is where authorities<sup>46</sup> and government bodies responsible are required to consider all available evidence on the proper allocation of costs.

**Article 2.2.2** explains further on how dumping is being determine of that where costs and profits cannot be defined pertaining to production and sales in the ordinary course of trade of the like product the amount may be determined on the basis of<sup>47</sup>;

- i. the actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the same general category of products*
- ii. the weighted average of the actual amounts and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country origin.*
- iii. any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producer on sales of products of the same general category in the domestic market of the country origin.*

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<sup>46</sup> When in this text Agreement the term “authorities” is used, it shall be interpreted as meaning authorities at an appropriated senior level.

<sup>47</sup> WTO text Supra Note at Page 147.

**Article 2.3**<sup>48</sup> explains the situation where there is no export price or where the export price is unreliable the export price may be construed on the basis of the price at which the exported products are first resold to an independent buyer or if products are not resold to independent buyer or as imported the authorities are obliged to determine it unilaterally.

**Article 2.4**<sup>49</sup> explain how a fair comparison shall be made between the export price and the normal value which shall be made at the same level of trade and in respect of sale made at as nearly as possible the sometime.

**Article 2.4.1**<sup>50</sup>, this sub-article further explains that on marking comparison<sup>51</sup> there is the requirement to convert currencies which should be made using exchange rate at the date of sale<sup>52</sup> on condition when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sales shall be used.

**Article 2.4.2**<sup>53</sup> this article elaborates the existence of margins of dumping during investigation which shall be on the basis of a weighted average normal value with a weighted average of prices and shall be transaction to transaction basis. This also determines on individual export transaction which may differ among different purchases, regions or time periods.

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<sup>48</sup> Article 2.3 of WTO text

<sup>49</sup> Ibid at page 147

<sup>50</sup> Article 2.4 of WTO text

<sup>51</sup> It's understood that some of the above factors may overlap, and authorities shall ensure that they do not duplicate adjustments that have been already made under this provision.

<sup>52</sup> Normally the date of sale would be the date of contract, purchase order, order confirmation, or invoice which ever establishes the material firms of sale.

<sup>53</sup> WTO text op cit note 51 at Page 147.

**Article 2.5**<sup>54</sup> This Article encapsulates. The situation where the products come from an intermediate country, the price at which the products are sold from the country of export to the importing Member which shall normally be compared with the comparable price in the country of export. This may be made with the price in the country of origin if products are transshipped through country of export, if not produced in the export country or there is no price in the export country.

**Article 2.6**<sup>55</sup> is the definition article telling the members that it should be the meaning of liked product to be interpreted as a product which is identical, i.e. alike in all respects to the product under consideration or in the absence of such a product which although not alike in all respect, has characteristics closely resembling those of the product under consideration<sup>56</sup>.

**Article 2.7**<sup>57</sup> this article explains the requirement of notification to the exporting Member and the firms that on the spot investigation would be carried out by the government (authorities) in the importing Member country. This article is without prejudice to the supplementary provision in article VI in Annex I to the GATT 1994<sup>58</sup>.

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<sup>54</sup> Ibid at page 148.

<sup>55</sup> Ibid at page 148.

<sup>56</sup> Ibid at page 148.

<sup>57</sup> WTO text Supra note 56 page 148.

<sup>58</sup> Ibid at page 148.

### 3.6 DETERMINATION OF INJURY (ARTICLE 3)

This Article clearly spelt the procedure on how injury<sup>59</sup> may be determined, which shall be based on positive evidence and involve an objective examination of both;

- (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products and,*
- (b) The consequent impact of these on domestic producers of such products.*

**Article 3.1** goes further to emphasize that investigating authority shall consider if there is significant increase in dumped imports, either in absolute terms or relative to production, or price undercutting or whether the effect of such imports is otherwise to depress prices to a significant degree.<sup>60</sup>

**Article 3.3** this elaborates the process where imports of a product come from more than one country, the investigating authority shall consider:

- (a) The margin of dumping established in relation to the imports from each country*
- (b) A cumulative assessment of the effects of the imports.....  
Between the imported products and the conditions of*

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<sup>59</sup> Under this agreement the term “injury” shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interrupted in accordance with the provision of this Article.

<sup>60</sup> Ibid note 61 at page 148, article 3.2 of the same Article discuss the issues regarding dumping 8 volumes, whether it is of significant increase etc.

*competition between the imported products and the like domestic product*<sup>61</sup>.

**Article 3.4** this article provides for the examination of the impact of the dumped imports on the domestic industry which must include evaluation of all relevant economic factors and indices in member country, the actual and potential decline in sales, profits, output, market shares, productivity, return on investments, or utilization of capacity<sup>62</sup>. Other factors must also be evaluated as, the magnitude margin of dumping actual and potential negative effects on cash flow, inventories, employment, wages, growth ability to raise capital or investments and many other factors as the list may not be exhaustive<sup>63</sup>.

**Article 3.5** talks about demonstration of causal relationship between the dumped imports and the injury to the domestic industry which shall be based on an examination of all relevant evidence before the authorities<sup>64</sup>. Other factors that are relevant must be included like these mentioned inter alia<sup>65</sup>.

**Article 3.6** while 3.5 talks about the cause and effect 3.6 centers on the relation between production domestically of the like product and the dumped imports which shall be separated or if not possible be assessed by the examination of the

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<sup>61</sup> Ibid page 148.

<sup>62</sup> Ibid at page 148.

<sup>63</sup> Article 3.4 of WTO text

<sup>64</sup> Ibid at Page 149.

<sup>65</sup> Factors like volume and price of imports not sold of dumping prices, contraction in demand or change in the patterns of consumption etc.

production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided<sup>66</sup>.

**Article 3.7** this article explains how a threat of material injury is determined which shall be based on facts not mere allegation, conjecture or remote possibility,<sup>67</sup> for instance where there is every reason to believe that there might in the near future, substantially increased importation of the product at dumped prices. In making determination of material threat the authority should consider factors live;

- i. A significant rate increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation
- ii. Sufficient freely disposable, or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped export to the importing Member's market, taking into account the availability of other markets to absorb any additional exports.
- iii. Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further import; and
- iv. Inventories of the produced being investigated<sup>68</sup>

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<sup>66</sup> WTO Text Supra Note 67 at Page 149.

<sup>67</sup> Ibid at Page 149.

<sup>68</sup> Ibid at Page 149.

**Article 3.8**<sup>69</sup> is a caveat that care must be taken especially so that the application of anti-dumping measures on product dumped and these dumped products threatened and injury is seen. Although taking anti-dumping measures is allowed after satisfying preceding requirements, products said to have been dumped must have qualified to be the like products in the domestic industry.

### **3.7 DEFINITION OF DOMESTIC INDUSTRY**

**Article 4.1**<sup>70</sup> defines domestic industry meaning the home producers of the like products or even those whose collective output of the products constitutes a major proportion of the complete home production of their products but with some exceptional circumstances.<sup>71</sup>

**Article 4.2** this specifies that where domestic industry has been referred as producers in certain area anti dumping shall be levied only on the products in question consigned for final consumption to that area<sup>72</sup>. The anti-dumping may equally be levied by the importing Member without limitation only if;

- a. The exporters shall have been given an opportunity to cease exporting at dumped prices to the area concerned -----or*
- b. Such duties cannot be levied only on products of specific producers which supply the area in question.*<sup>73</sup>

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<sup>69</sup> Ibid at Page 149 .

<sup>70</sup> Ibid at Page 150 .

<sup>71</sup> See Article 4.1 (1) (11) of the WTO Text.

<sup>72</sup> As used in this agreement "levy" shall mean the definite or final legal assessment or collecting or duty collection of a tax

<sup>73</sup> Supra note 73 Page 150 producers shall be deemed to be related to exporters or importers only if (a) one of them directly or indirectly control the other or (b) both of them are directly or indirectly controlled by a third person or (c) together they directly or indirectly control a

**Article 4.3** explains a situation where two countries are integrated and regarded as single, unified market, the industry in the entire area of integration shall be regarded as the domestic industry<sup>74</sup>, while Article 4.4 connects the provision of paragraph 6 of article 3 to be read together.

### **3.8 INITIATION AND SUBSEQUENT INVESTIGATION**

Article 5 elaborates the process of initiating and subsequent investigation into the alleged dumping. Article 5.1 provides the requirement of a written application by on behalf of the domestic industry Article 5.2 provides that the application shall include evidence of<sup>75</sup>

- a. Dumping,*
- b. Injury within the meaning of article Vi of GATT 1994 as interpreted by this agreement and*
- c. A causal link between the dumped imports and the alleged injury.*

*However, simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph therefore, the application must contain the following<sup>76</sup>;*

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third person provided that there are grounds for suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-producers.

<sup>74</sup> Ibid at Page 150.

<sup>75</sup> Ibid at Page 151 also see article 5.2 of the WTO text.

<sup>76</sup> Ibid at Page 151 also see article 5.2 of the WTO text.

- i. *The identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant.....*
- ii. *a complete description of the dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known person importing the product in question*
- iii. *Information on price.....prices at which in the product is sold from or .....on the constructed value of the product.....*
- iv. *information on the evolution of the volume of the alleged dumped imports, the effect of the these imports on prices of the like product in the domestic market and consequent impact of the imports on the domestic industry.....as listed in paragraphs 2 and 4 of article 3<sup>77</sup>*

**Article 5.2<sup>78</sup>** emphasizes the need by the authorities to examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation which in essence will qualify the importing Member Imposing an antidumping measure against the exporting member or the sad like product in question. While 5.4 allows further the investigation thus, authorities must have determined that

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<sup>77</sup> Ibid at Page 151 of the WTO Text.

<sup>78</sup> Ibid at Page 151.

there is degree support for or opposition to the application expressed<sup>79</sup> by the domestic producers of the like product that the application has been made by or on behalf of the domestic industry.<sup>80</sup> There is the requirement of 50% of the total production of the product provided by that portion of the domestic industry expressing either support for or opposition to the application and where the domestic producers constitute only 25% the investigation shall not be commenced.

**Article 5.5**<sup>81</sup> Prohibits publication initiation of an investigation unless after the receipt of properly documented application and before proceeding to initiate an investigation the authorities shall notify the government of the exporting Member concerned. However article 5.6<sup>82</sup> provides that where there is sufficient evidence of injury and causal link as described in paragraph 2, to justify the initiation of an investigation so be it. The evidence of both dumping a injury shall be considered simultaneously as encapsulated in article 5.6<sup>83</sup> that;

- a. in the decision whether or not to initiate an investigation, and*
- b. thereafter, during the course of the investigation, starting on a date not late than the earliest date on which in accordance*

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<sup>79</sup> In the case of fragmented industries involving an exceptionally large number of producer, authorities may determine support and that in the territory of certain Members employees of domestic producers opposition by using statistically valid sample techniques

<sup>80</sup> Members are aware product or representatives of those employees may made it support an application for an investigation order paragraph 1

<sup>81</sup> Ibid at page 152.

<sup>82</sup> Ibid at page 152.

<sup>83</sup> Ibid at page 152.

*with the provisions of this Agreement provisional measures may be applied as provided by article 5.7<sup>84</sup>*

**Article 5.8<sup>85</sup>** this gives the investigation authorities the power to terminate the process of investigation when authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case which shall be immediate if the margin of dumping is de minimis<sup>86</sup>, or the volume of dumped imports and the injury are negligible<sup>87</sup>.

**Articles 5.9 and 5.10** respectively provides that an anti-dumping proceeding shall not hinder the procedure of the customs clearance so as not to offend the fundamental objective of WTO market access principle and providing a time frame within the investigations have to be completed, i.e. year and except in special circumstances and in no case more than 18 months, after initiation<sup>88</sup>.

### **3.9 EVIDENCE**

Article 6 discusses how evidence is needed that is relevant in respect of the investigation in question<sup>89</sup>. Article 6.1 provides that all interested parties in an anti-dumping investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question<sup>90</sup>.

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<sup>84</sup> Ibid at page 152.

<sup>85</sup> Ibid at page 152.

<sup>86</sup> The margin of dumping shall be considered de minimis if it is less than 2 percent expressed as percentage of the export price

<sup>87</sup> The volume of dumped imports shall normally be regarded as negligible if the volume is less than 3 percent of imports of like products

<sup>88</sup> Ibid at page 152 see article 5.9 and 5.10 from the WTO text

<sup>89</sup> Ibid at page 152 (evidence).

<sup>90</sup> Ibid at page 152 Article 6.1.

**Article 6.1.1** explains how exporters or foreign producers who receive questionnaires used in an anti-dumping investigation shall be given at least 30 days for reply<sup>91</sup>. Due consideration should be given to any request for an extension of the 30-day period and upon cause shown, such an extension should be granted wherever practicable<sup>92</sup>.

**Article 6.1.2** Presupposes transparency in dealing with evidence that although confidentiality is required in protecting information evidence presented in writing by one interested party shall be made available promptly to other interested parties participating in the investigation<sup>93</sup>.

**Article 6.1.3** Request flexibility in dealing within the written application to the known exporters<sup>94</sup> and to the authorities of the exporting member and shall make it available upon request, to other interested parties involved.<sup>95</sup> Due regard shall be paid to the requirement for the protection of confidential information, as provided for in paragraph 5.

**Article 6.2** states that throughout the antidumping investigation all interested parties shall have opportunity for the defense of their interests. The authorities shall on request, provide opportunity for all interested parties to meet those parties with adverse interest, so that opposing view may be presented and

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<sup>91</sup> As a general rule, time limit for exporter shall be counted from the date of the receipt of the questionnaire which for this purpose shall be deemed to have been received one week from the date on which it was sent to respondent or transmitted to the appropriated diplomatic representative of the reporting members or in the case of a separate (customs territory Member of the WTO, an official representative of the exporting territory.

<sup>92</sup> Supra note 88 at page 152.

<sup>93</sup> Ibid article 6.1.2 at Page 153.

<sup>94</sup> It being understood that, where the number of exporters, involved is particular high, the full text of the written application should instead be provided only to the authorities of the exporting members or to the relevant trade association

<sup>95</sup> Ibid at page 153.

rebuttal arguments offered. There is need for opportunities to preserve confidentiality, no obligation to attend meeting which shall not be prejudicial to that party case and interested party shall have the right to present on justification other information orally<sup>96</sup>.

**Article 6.3** elaborate further on the need to present oral information provided by 6.2 that it must be reduced in writing and made available to other interested parties, as provided by paragraph 1.2<sup>97</sup>.

**Article 6.4** provides that the authorities shall whenever practicable provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 5, and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information<sup>98</sup>.

**Article 6.5** provides that any information which is by nature confidential (for example, because its disclosure would be of significant comparative advantage to a competitor or because its disclosure would have a significant adverse effect upon a person supplying the information or upon a person from whom that person acquired the information) or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as

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<sup>96</sup> Ibid at page 153 article 6.2 of the WTO text.

<sup>97</sup> Ibid of page 153 Article 6.3

<sup>98</sup> Article 6.6.4 WTO text

such by the authorities such information shall not be disclosed without specific permission of the party<sup>99</sup>.

**Article 6.5.1** requires that authorities shall insist interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence except if the information is not susceptible to summaries and reasons why summarization is not possible<sup>100</sup>.

**Article 6.5.2** States that if the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct<sup>101</sup>.

**Article 6.6** Stresses that except in cases provided under paragraph 8, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested parties upon which their findings are based<sup>102</sup>.

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<sup>99</sup> Article 6.5 WTO text, members are aware that in the territory of certain members disclosure pursuant to a narrowly drawn protection order may be required it at least a kind of freedom is allowed which must not be too apparent to the protecting certain trade usages and practices.

<sup>100</sup> Ibid at page 154 article 6.5.1.

<sup>101</sup> Ibid at page 154 Article 6.5.2.

<sup>102</sup> Article 6.6 of the WTO text at page 154.

**Article 6.7** provides that in order to verify information provided or to obtain further details, the authorities may carry out investigation in the territory of other Member as required provided they obtain the agreement of the firms concerned and notify the representative of the government of the Member in question and unless that member objects to the investigation<sup>103</sup>.

**Article 6.8** provides that in cases in which any interested party refuses access to, or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative may be made on the basis of the facts available. See the provisions of Annex II for the application of this paragraph<sup>104</sup>.

**Article 6.9** states that the authorities, shall before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis of or the decision whether to apply definitive measures. Such disclosures should take place in sufficient time for the parties to defend their interests<sup>105</sup>.

**Article 6.10** states that the authorities shall, as a rule, determine an individual margin of dumping for each know exporter or producer concerned of the product under investigation. In case where the number of exporters, producers,

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<sup>103</sup> Article 6.7.

<sup>104</sup> See the Annex II infra, this is provided in Article 6.8 of the WTO text.

<sup>105</sup> Article 6.9.

importers or types of products involved is so large as to make such a determination impracticable, the authorities may limit their examination either to a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to the authorities at the time of selection, or to the largest percentage of the volume of the export from the country in question which can reasonably be investigated<sup>106</sup>.

**6.10.1** Any selection of exporters, producers, importers or types of products made under this paragraph shall preferably be chosen in consultation with and with the consent of the exporters, producers or importers concerned<sup>107</sup>.

**6.10.2** In cases where the authorities have limited their examination, as provided for in this paragraph, they shall nevertheless determine an individual margin of dumping for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation. Voluntary responses shall not be discouraged<sup>108</sup>.

6.11 For the purposes of this Agreement, "interested parties" shall include:

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<sup>106</sup> Article 6.10 WTO text.

<sup>107</sup> Article 6.10.1 WTO text.

<sup>108</sup> Article 6.10.2 WTO text.

- (i) *An exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product;*
- (ii) *The government of the exporting Member; and*
- (iii) *A producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member.*<sup>109</sup>

*This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned, above to be included as interested parties.*<sup>110</sup>

**6.12** The authorities shall provide opportunities for industrial users of the product under investigation, and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding dumping, injury and causality<sup>111</sup>.

**6.13** The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable<sup>112</sup>.

**6.14** The procedures set out above are not intended to prevent the authorities of a Member from proceeding expeditiously with regard to initiating an

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<sup>109</sup> Article 6.11 WTO text.

<sup>110</sup> Article 6.12 WTO text.

<sup>111</sup> Article 6.13 WTO text.

<sup>112</sup> Article 6.14 WTO text.

investigation, reaching preliminary or final determination, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of this Agreement<sup>113</sup>.

### **3.10 PROVISIONAL MEASURES (ARTICLE 7)**

#### **Article 7.1 Provisional Measures may be applied only if:**

(i) An investigation has been initiated in accordance with the provisions of Article 5, a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments;

(ii) A preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry; and

(iii) The authorities concerned judge such measures necessary to prevent injury being caused during the investigation<sup>114</sup>.

**7.2** Provisional measures may take the form of a provisional duty or, preferably, a security - by cash deposit or bond - equal to the amount of the anti-dumping duty provisionally estimated, being not greater than the provisionally estimated margin of dumping. Withholding of appraisement is an appropriate provisional measure, provided that the normal duty and the estimated amount of the anti-

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<sup>113</sup> Article 6.15 WTO text.

<sup>114</sup> Article 7.1 WTO text.

dumping duty indicated and as long as the withholding of appraisement is subject to the same conditions as other provisional measures<sup>115</sup>.

**7.3** Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation<sup>116</sup>.

**7.4** The application of provisional measures shall be limited to as short a period as possible, not exceeding four months or, on decision of the authorities concerned, upon request by exporters representing a significant percentage of the trade involved, to a period not exceeding six months, when authorities, in the course of an investigation, examine whether a duty lower than the margin of dumping would be sufficient to remove injury, these periods may be six and nine months, respectively<sup>117</sup>.

**7.5** The relevant provisions of Article 9 shall be followed in the application of provisional measures.

### **3.11 PRICE UNDERTAKING (ARTICLE 8)**

**8.1** Proceedings may' be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is eliminated. Price increases under such

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<sup>115</sup> Article 7.2 WTO text.

<sup>116</sup> Article 7.3 WTO text.

<sup>117</sup> Article 7.4 WTO text.

undertakings shall not be higher than necessary to eliminate the margin of dumping. It is desirable that the price increases be less than the margin of dumping if such increases would be adequate to remove the injury to the domestic industry<sup>118</sup>.

**8.2** Price undertakings shall not be sought or accepted from exporters unless the authorities of the importing Member have made a preliminary affirmative determination of dumping and injury caused by such dumping<sup>119</sup>.

**8.3** Undertakings offered need not be accepted if the authorities consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. Should the case arise and where practicable, the authorities shall provide to the exporter the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon<sup>120</sup>.

**8.4** If an undertaking is accepted, the investigation of dumping and injury shall nevertheless be completed if the exporter so desires or the authorities so decide. In such a case, if a negative determination of dumping or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of a price undertaking. In

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<sup>118</sup> Article 8.1 WTO text.

<sup>119</sup> Article 8.2 WTO text.

<sup>120</sup> Article 8.3 WTO text.

such cases, the authorities may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement. In the event that an affirmative determination of dumping and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Agreement<sup>121</sup>.

**8.5** Price undertakings may be suggested by the authorities of the importing Member, but no exporter shall be forced to enter into such undertakings. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the dumped imports continue<sup>122</sup>.

**8.6** Authorities of an importing Member may require any exporter from whom an undertaking has been accepted to provide periodically information relevant to the fulfillment of such an undertaking and to permit verification of pertinent data. In case of violation of an undertaking, the authorities of the importing Member may take, under this Agreement in conformity with its provisions, expeditious actions which may constitute immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with this Agreement on products entered for consumption not more than 90 days before the application of such provisional

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<sup>121</sup> Article 8.4 WTO text.

<sup>122</sup> Article 8.5 WTO text.

measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking<sup>123</sup>.

### **3.12 IMPOSITION AND COLLECTION OF ANTI-DUMPING DUTIES (ARTICLE 9)**

**9.1** The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry<sup>124</sup>.

**9.2** When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources from which price undertakings under the terms of this Agreement have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If however, several Suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country

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<sup>123</sup> Article 8.6 WTO text.

<sup>124</sup> Article 9.1 WTO text.

are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved<sup>125</sup>.

**9.3** The amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2<sup>126</sup>.

**9.3.1** When the amount of the anti-dumping duty is assessed on a retrospective basis, the determination of the final liability for payment of anti-dumping duties shall take place as soon as possible, normally within 12 months, and in no case more than 18 months, after the date on which a request for a final assessment of the amount of the anti-dumping duty has been made.<sup>127</sup> Any refund shall be made promptly and normally in not more than 90 days following the determination of final liability made pursuant to this sub-paragraph. In any case, where a refund is not made within 90 days, the authorities shall provide an explanation if so requested<sup>127</sup>.

**9.3.2** When the amount of the anti-dumping duty is assessed on a prospective basis, provision shall be made for a prompt refund, upon request, of any duty paid in excess of the margin of dumping. A refund of any such duty paid in excess of the actual margin of dumping shall normally take place within 12 months, and in no case more than 18 months, after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the

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<sup>125</sup> Article 9.2 WTO text.

<sup>126</sup> Article 9.3 WTO text.

<sup>127</sup> Article 9.3.1 WTO text.

product subject to the anti-dumping duty. The refund authorized should normally be made within 90 days of the above-noted decision<sup>128</sup>.

**9.3.3** In determining whether and to what extent a reimbursement should be made when the export price is constructed in accordance with paragraph 3 of Article 2, authorities should take account of any change in normal value, any change in costs incurred between importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and should calculate the export price with no deduction for the amount of anti-dumping duties paid when conclusive evidence of the above is provided<sup>129</sup>.

**9.4** When the authorities have limited their examination in accordance with the second sentence of paragraph 10 of Article 6, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed:

(i) The weighted average margin of dumping established with respect to the selected exporters or producers or,

(ii) Where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value, the difference between the weighted

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<sup>128</sup> Article 9.3.2 WTO text.

<sup>129</sup> Article 9.3.3 WTO text.

average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined<sup>130</sup>,

**9.4.1** Provided that the authorities shall disregard for the purpose of this paragraph any zero and *de minimis* margins and margins established under the circumstances referred to in paragraph 8 of Article 6. The authorities shall apply individual duties or normal values to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation, as provided for in subparagraph 10.2 of Article 6<sup>131</sup>.

**9.5** If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing member. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The

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<sup>130</sup> Article 9.4 WTO text.

<sup>131</sup> Article 9.4.1 WTO text.

authorities may. However, withhold appraisal and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review<sup>132</sup>.

### **3.13 RETROACTIVITY (ARTICLE 10)**

**10.1** Provisional measures and anti-dumping duties shall only be applied to products which enter for consumption after the time when the decision taken under paragraph 1 of Article 7 and paragraph I of Article 9, respectively, enters into force, subject to the exceptions set out in this Article<sup>133</sup>.

**10.2** Where a final determination of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or, in the case of a final determination of a threat of injury, where the effect of the dumped imports would, in the absence of the provisional measures, have led to a determination of injury, anti-dumping duties may be levied retroactively for the period for which provisional measures, if any have been applied<sup>134</sup>,

**10.3** If the definitive anti-dumping duty is higher than the provisional duty paid or payable or the amount estimated for the purpose of the security, the difference shall not be collected. If the definitive duty is lower than the provisional duty paid or payable or the amount estimated for the purpose of the

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<sup>132</sup> Article 9.5 WTO text.

<sup>133</sup> Article 10.1 WTO text.

<sup>134</sup> Article 10.2 WTO text.

security, the difference shall be reimbursed or the duty recalculated, as the case may be<sup>135</sup>.

**10.4** Except as provided in paragraph 2, where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive anti-dumping duty may be imposed only from the date of the determination of threat of injury or material retardation, and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner<sup>136</sup>.

**10.5** Where a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner<sup>137</sup>.

**10.6** A definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the authorities determine for the dumped product in question that:

(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury, and

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<sup>135</sup> Article 10.3 WTO text.

<sup>136</sup> Article 10.4WTO text.

<sup>137</sup> Article 10.5 WTO text.

(ii) the injury is caused by massive dumped imports of a product in a relatively short time which in light of the timing and the volume of the dumped imports and other circumstances (such as a rapid build-up of inventories of the imported product) is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned have been given an opportunity to comment<sup>138</sup>.

**10.7** The authorities may, after initiating investigation, take such measures as the withholding of appraisement or assessment as may be necessary to collect anti-dumping duties retroactively, as provided for in paragraph 6, once they have sufficient evidence that the conditions set forth in that paragraph are satisfied<sup>139</sup>.

**10.8** No duties shall be levied retroactively pursuant to paragraph 6 on products entered for consumption prior to the date of initiation of the investigation.<sup>140</sup>

### **3.14 DURATION AND REVIEW OF ANTI-DUMPING DUTIES AND PRICE UNDERTAKINGS (ARTICLE 11)**

**11.1** An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.<sup>141</sup>

**11.2** The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable

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<sup>138</sup> Article 10.6 WTO text.

<sup>139</sup> Article 10.7 WTO text.

<sup>140</sup> Article 10.8 WTO text.

<sup>141</sup> Article 11.1 WTO text.

period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review." Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately<sup>142</sup>.

**11.3** Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury." The duty may remain in force pending the outcome of such a review<sup>143</sup>.

**11.4** The provisions of Article (i) regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried

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<sup>142</sup> Article 11.2 WTO text.

<sup>143</sup> Article 11.3 WTO text.

out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review<sup>144</sup>.

**11.5** The provisions of this Article shall apply *mutatis mutandis* to price undertakings accepted under Article 8<sup>145</sup>.

### **3.15 PUBLIC NOTICE AND EXPLANATION OF DETERMINATIONS**

#### **(ARTICLE 12)**

**12.1** When the authorities are satisfied that there is sufficient evidence to justify the initiation of an anti-dumping investigation pursuant to Article 5, the Member or Members the products of which are subject to such investigation and other interested parties known to the investigating authorities to have an interest therein shall be notified and a public notice shall be given<sup>146</sup>.

**12.1.1** A public notice of the initiation of an investigation shall contain, or otherwise make available through a separate report", adequate information on the following:

- (i) The name of the exporting country or countries and the product involved;
- (ii) The date of initiation of the investigation;
- (iii) The basis on which dumping is alleged in the application;
- (iv) A summary of the factors on which the allegation of injury is based;

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<sup>144</sup> Article 11.4 WTO text.

<sup>145</sup> Article 11.5 WTO text.

<sup>146</sup> Article 12.1 WTO text .

(v) The address to which representations by interested parties should be directed;

(vi) The time-limits allowed to interested parties for making their views known<sup>147</sup>.

**12.2** Public notice shall be given of any preliminary or final determination, whether affirmative or negative, of any decision to accept an undertaking pursuant to Article 8, of the termination of such an undertaking, and of the termination of a definitive anti-dumping duty. Each such notice shall set forth, or otherwise make available through a separate report, in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities. All such notices and reports shall be forwarded to the Member or Members the products of which are subject to such determination or undertaking and to other interested parties known to have an interest therein<sup>148</sup>.

**12.2.1** A public notice of the imposition of provisional measures shall set forth, or otherwise make available through a separate report, sufficiently detailed explanations for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. Such a notice or report shall, due regard being paid to the requirement for the protection of confidential information, contain in particular:

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<sup>147</sup> Article 12.1.1 WTO text.

<sup>148</sup> Article 12.2 WTO text.

- (i) The names of the suppliers, or when this is impracticable, the supplying countries involved;
- (ii) A description of the product which is sufficient for customs purposes;
- (iii) The margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value under Article 2;
- (iv) Considerations relevant to the injury determination as set out in Article 3:
- (v) The main reasons leading to the determination<sup>149</sup>.

**12.2.2** A public notice of conclusion or suspension of an investigation in the case of an affirmative determination providing for the imposition of a definitive duty or the acceptance of a price undertaking shall contain, or otherwise make available through a separate report, all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures or the acceptance of a price undertaking, due regard being paid to the requirement for the protection of confidential information. In particular, the notice or report shall contain the information described in subparagraph 2.1, as well as the reasons for the acceptance or rejection of relevant arguments or claims made by

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<sup>149</sup> Article 12.2.1 WTO text.

the exporters and importers, and (he basis for any decision made under subparagraph 10.2 of Article 6<sup>150</sup>.

**12.2.3** A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to Article 8 shall include, or otherwise make available through a separate report, the non-confidential part of this undertaking<sup>151</sup>.

**12.3** The provisions of this Article shall apply *mutatis mutandis* to the initiation and completion of reviews pursuant to Article 11 and to decisions under Article 10 to apply duties retroactively<sup>152</sup>.

### **3.16 JUDICIAL REVIEW (ARTICLE 13)**

Each Member whose national legislation contains provisions on anti-dumping measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review of administrative actions relating lo final determinations and reviews of determinations within the meaning of Article 11. Such tribunals or procedures shall he independent of the authorities responsible for the determination or review in question<sup>153</sup>.

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<sup>150</sup> Article 12.2.2 WTO text.

<sup>151</sup> Article 12.2.3 WTO text.

<sup>152</sup> Article 12.3 WTO text.

<sup>153</sup> Article 13 WTO text .

### **3.17 ANTI-DUMPING ACTION ON BEHALF OF A THIRD COUNTRY (ARTICLE 14)**

**14.1** An application for anti-dumping action on behalf of a third country' shall be made by the authorities of the third country requesting action.<sup>154</sup>

**14.2** Such an application shall be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing injury to the domestic industry concerned in the third country. The government of the third country shall afford all assistance to the authorities of the importing country to obtain any further information which the latter may require<sup>155</sup>.

**14.3** In considering such an application, the authorities of the importing country shall consider the effects of the alleged dumping on the industry concerned as a whole in the third country; that is to say the injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to the importing country or even on the industry's total exports<sup>156</sup>.

**14.4** The decision whether or not to proceed with a case shall rest with the importing country. If the importing country decides that it is prepared to take

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<sup>154</sup> Article 14.1 WTO text.

<sup>155</sup> Article 14.2 WTO text.

<sup>156</sup> Article 14.3 WTO text.

action, the initiation of the approach to the Council for Trade in Goods seeking its approval for such action shall rest with the importing country<sup>157</sup>.

## **DEVELOPING COUNTRY MEMBERS (ARTICLE 15)**

It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members<sup>158</sup>.

### **3.18.0 PART II**

#### *3.18.1 COMMITTEE ON ANTI-DUMPING PRACTICE (ARTICLE 16)*

**16.1** There is hereby established a Committee on Anti-Dumping Practices (referred to in this Agreement as the "Committee") composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any

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<sup>157</sup> Article 14.4 WTO text.

<sup>158</sup> Article 14.5 WTO text.

matters relating to the operation of the Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee<sup>159</sup>.

**16.2** The Committee may set up subsidiary bodies as appropriate.

**16.3** In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a Member; it shall inform the Member involved. It shall obtain the consent of the Member and any firm to be consulted<sup>160</sup>.

**16.4** Members shall report without delay to the Committee all preliminary or final anti-dumping actions taken. Such reports shall be available in the Secretariat for inspection by other Members. Members shall also submit, on a semi-annual basis, reports of any anti-dumping actions taken within the preceding six months. The semi-annual reports shall be submitted on an agreed standard form<sup>161</sup>.

**16.5** Each Member shall notify the Committee (*a*) which of its authorities are competent to initiate and conduct investigations referred to in Article 5 and (*h*)

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<sup>159</sup> Article 16.1 WTO text.

<sup>160</sup> Article 16.2 WTO text.

<sup>161</sup> Article 16.4 WTO text.

its domestic procedures governing the initiation and conduct of such investigations<sup>162</sup>.

### **3.19 CONSULTATION AND DISPUTE SETTLEMENT (ARTICLE 17)**

**17.1** Except as otherwise provided herein, the Dispute Settlement Understanding is applicable to consultations and the settlement of disputes under this Agreement<sup>163</sup>.

**17.2** Each Member shall afford sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, representations made by another Member with respect to any matter affecting the operation of this Agreement<sup>164</sup>.

**17.3** If any Member considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective is being impeded, by another Member or Members, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the Member or Members in question. Each Member shall afford sympathetic consideration to any request from another Member for consultation<sup>165</sup>.

**17.4** If the Member that requested consultations considers that the consultations pursuant to paragraph 3 have failed to achieve a mutually agreed solution, and

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<sup>162</sup> Article 16.5 WTO text.

<sup>163</sup> Article 17.1 WTO text.

<sup>164</sup> Article 17.2 WTO text.

<sup>165</sup> Article 17.3 WTO text.

if final action has been taken by the administering authorities of the importing Member to levy definitive anti-dumping duties or to accept price undertakings, it may refer the matter to the Dispute Settlement Body ("DSB"). When a provisional measure has a significant impact and the Member that requested consultations considers that the measure was taken contrary' to the provisions of paragraph I of Article 7, that Member may also refer such matter to the DSB<sup>166</sup>.

**17.5** The DSB shall, at the request of the complaining party, establish a panel to examine the matter based upon:

(i) a written statement of the Member making the request indicating how a benefit accruing to it, directly or indirectly, under this Agreement has been nullified or impaired, or that the achieving of the objectives of the Agreement is being impeded, and

(ii) The facts made available in conformity with appropriate domestic procedures to the authorities of the importing Member<sup>167</sup>.

**17.6** In examining the matter referred to in paragraph 5:

(i) In its assessment of the facts of the matter, the panel shall determine whether the authorities' establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective. If the establishment of the facts was proper and the evaluation was unbiased and objective, even though

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<sup>166</sup> Article 17.4 WTO text.

<sup>167</sup> Article 17.5 WTO text.

the panel might have reached a different conclusion, the evaluation shall not be overturned;

(ii) The panel shall interpret the relevant provisions of the Agreement in accordance with customary rules of interpretation of public international law. Where the panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, the panel shall find the authorities' measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations<sup>168</sup>.

**17.7** Confidential information provided to the panel shall not be disclosed without formal authorization from the person, body or authority providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the person, body or authority providing the information, shall be provided<sup>169</sup>.

### **3.20.0 PART III**

#### **3.20.1 FINAL PROVISIONS (ARTICLE 18)**

**18.1** No specific action against dumping of exports from another Member can be taken except in accordance with the provisions of GATT **1994**, as interpreted by this Agreement<sup>170</sup>.

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<sup>168</sup> Article 17.6 WTO text.

<sup>169</sup> Article 17.7 WTO text.

<sup>170</sup> Article 18.1 WTO text.

**18.2** Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members<sup>171</sup>.

**18.3** Subject to subparagraphs **3.1** and **3.2**, the provisions of this Agreement shall apply to investigations, and reviews of existing measures, initiated pursuant to applications which have been made on or after the date of entry into force for a Member of the WTO Agreement<sup>172</sup>.

**18.3.1** With respect to the calculation of margins of dumping in refund procedures under paragraph **3** of Article **9**, the rules used in the most recent determination or review of dumping shall apply.

**18.3.2** For the purposes of paragraph **3** of Article II, existing anti-dumping measures shall be deemed to be imposed on a date not later than the date of entry into force for a Member of the WTO Agreement, except in cases in which the domestic legislation of a Member in force on that date already included a clause of the type provided for in that paragraph<sup>173</sup>.

**18.4** Each Member shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it. The conformity of its laws, regulations and administrative

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<sup>171</sup> Article 18.2 WTO text.

<sup>172</sup> Article 18.3 WTO text.

<sup>173</sup> Article 18.3.2 WTO text.

procedures with the provisions of this Agreement as they may apply for the Member in question<sup>174</sup>.

**18.5** Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations<sup>175</sup>.

**18.6** The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews<sup>176</sup>.

**18.7** The Annexes to this Agreement constitute an integral part thereof<sup>177</sup>.

### **3.21.0 ANNEX I**

#### **3.21.1 PROCEDURES FOR ON-THE-SPOT INVESTIGATIONS PURSUANT TO PARAGRAPH 7 OF ARTICLE 6**

1. Upon initiation of an investigation, the authorities of the exporting Member and the firms known to be concerned should be informed of the intention to carry out on-the-spot investigations<sup>178</sup>.

2. If in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the firms and the authorities of the exporting

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<sup>174</sup> Article 18.4 WTO text.

<sup>175</sup> Article 18.5 WTO text.

<sup>176</sup> Article 18.6 WTO text.

<sup>177</sup> Article 18.7 WTO text.

<sup>178</sup> Article 1 WTO text, Annex I.

Member should be so informed. Such non-governmental experts should be subject to effective sanctions for breach of confidentiality requirements<sup>179</sup>.

3. It should be standard practice to obtain explicit agreement of the firms concerned in the exporting Member before the visit is finally scheduled<sup>180</sup>.

4. As soon as the agreement of the firms concerned has been obtained, the investigating authorities should notify the authorities of the exporting Member of the names and addresses of the firms to be visited and the dates agreed.

5. Sufficient advance notice should be given to the firms in question before the visit is made<sup>181</sup>.

6. Visits to explain the questionnaire should only be made at the request of an exporting firm. Such a visit may only be made if (a) the authorities of the importing Member notify the representatives of the Member in question and (b) the latter do not object to the visit<sup>182</sup>.

7. As the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary and the government of the exporting Member is informed by the investigating authorities of the anticipated visit and does not object to it; further, it should be

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<sup>179</sup> Article 2 WTO text, Annex 1.

<sup>180</sup> Article 3 WTO text, Annex 1.

<sup>181</sup> Article 5 WTO text, Annex 1.

<sup>182</sup> Article 6 WTO text, Annex 1.

standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.<sup>183</sup>

8. Enquiries or questions put by the authorities or firms of the exporting Members and essential to a successful on-the-spot investigation should, whenever possible, be answered before the visit is made<sup>184</sup>.

### **3.22.0 ANNEX II**

#### **3.22.1 BEST INFORMATION AVAILABLE IN TERMS OF PARAGRAPH 8 OF ARTICLE 6**

1. As soon as possible after the initiation of the investigation, the investigating authorities should specify in detail the information required from any interested party, and the manner in which that information should be structured by the interested party in its response. The authorities should also ensure that the party is aware that if information is not supplied within a reasonable time, the authorities will be free to make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the domestic industry<sup>185</sup>.

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<sup>183</sup> Article 7 WTO text, Annex I.

<sup>184</sup> Article 8 WTO text, Annex I.

<sup>185</sup> Article 1 WTO text, Annex II.

2. The authorities may also request that an interested party provide its response in a particular medium (e.g. computer tape) or computer language. Where such a request is made, the authorities should consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and should not request the party to use for its response a computer system other than that used by the party. The authority should not maintain a request for a computerized response if the interested party does not maintain computerized accounts and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g. It would entail unreasonable additional cost and trouble. The authorities should not maintain a request for a response in a particular medium or computer language if the interested party does not maintain its computerized accounts in such medium or computer language and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble<sup>186</sup>.

3. All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties, which is supplied in a timely fashion, and, where applicable, which is supplied in a medium or computer language requested by the authorities, should be taken into account when determinations are made. If a party does not respond in the preferred medium or computer language but the authorities find that the circumstances set

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<sup>186</sup> Article 2 WTO text, Annex II.

out in paragraph 2 have been satisfied, the failure to respond in the preferred medium or computer language should not be considered to significantly impede the investigation<sup>187</sup>.

4. Where the authorities do not have the ability to process information if provided in a particular medium (e.g. computer tape), the information should be supplied in the form of written material or any other form acceptable to the authorities<sup>188</sup>.

5. Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability<sup>189</sup>.

6. If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons therefore, and should have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the authorities as not being satisfactory, the reasons for the rejection of such evidence or information should be given in any published determinations<sup>190</sup>.

7. If the authorities have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation,

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<sup>187</sup> Article 3 WTO text, Annex II.

<sup>188</sup> Article 4 WTO text, Annex II.

<sup>189</sup> Article 5 WTO text, Annex II.

<sup>190</sup> Article 6 WTO text, Annex II.

they should do so with special circumspection. In such cases, the authorities should, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favorable to the party than if the party did cooperate<sup>191</sup>.

### **3.23 CONCLUSION**

This chapter dealt with the literal and technical meanings of Dumping, the procedure upon which dumping could be tackled has been thoroughly examined to wit; the provisions of Anti-Dumping Provisions as captured under the GATT[1994].WTO provides remedies so that any Member State that alleges dumping activity can simply resort to which in the eyes of WTO not prohibited unless if certain requirements are met[when is dumping condemnable?] so that the complaining Member or industry will explore those remedies against unfair trade practices that normally drive away industries as alleged, most especially by those under this research work, the Cotton, Textiles and Garment Subsector in Kano State, however, the procedure provided appears to be cumbersome and too technical, the question now is how true is this statement? Chapter 4 is the

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<sup>191</sup> Article 7 WTO text, Annex II.

empirical aspect of this research [Methodology] in which a structured questionnaire was designed and questions were asked and answers provided by the respondents who are the stakeholders under this subsector in Kano State. The next chapter examines the research methodology.

## **CHAPTER FOUR**

### **RESEARCH METHODOLOGY**

#### **4.0 INTRODUCTION**

This study is aimed at examining the principle rules of unfair trade under WTO and its effects on Cotton, Textile and Garment (CTG) subsector in Nigeria. This chapter deals with research methodology two methods were used as doctrinal which involves sourcing data in primary, secondary and tertiary texts ranging from international instruments (WTO Texts) conventions, treaties, journal, articles and text books among others, the other is empirical. This phase of the research is called the method attack<sup>1</sup> plan of attack<sup>2</sup> for the problem under investigation. The phase refers to the general strategy and logistics that are employed in the conduct of the study and precisely in the gathering and analyzing of the data needed for answering research questions and hypothesis formulated to direct the study. This chapter discusses the research design, population and study area, sampling and sampling technique, validity and reliability of instrument, research instrument for data collection, data analysis presentation and procedure and a conclusion at the end of it.

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<sup>1</sup> Dalen, V, J., *Measuring Dynamic Efficiency: Theories and An integrated Methodology*, (1993), (2011), Rotterdam School of Management, University, Press, Erasmus University Rotterdam, Page1.

<sup>2</sup> Ibid.

## 4.1 RESEARCH DESIGN

This aspect has been described as the plan, structure and strategy of investigation conceived<sup>3</sup> so as to obtain answers to the formulated research questions.

## 4.2 POPULATION AND STUDY AREA

The population of the study comprises of all the Cotton, Textile and Garment industries in Kano State Nigeria. In all, there are eighteen (18) of these industries covered by this study selected using geographical locations of the industries; Sharada, Challawa, Bompai and Dakata respectively. Below is a tabulation of the number of Cotton, Textile and Garment industries.

**Table 4.2.1 Population of the study<sup>4</sup>**

S/N	Name of Industrial Area	Number of Industries
1.	Bompai industrial area	10
2.	Challawa industrial area	2
3.	Dakata/kawaji	2
4.	Sharada industrial area	2
5.	Tokarawa	1
6.	Gwammaja	01

**Source: Kano State Ministry of Commerce Industries and Cooperatives (2017)**

<sup>3</sup> Kerlinger, L. J., Personality and Social Psychology (1977), Journal of Personality and Social Psychology, New York, John Wiley and Sons Inc. also available <http://www.journalofpersonalityandsocialpsychology.com>, New York, accessed on the 27<sup>th</sup> June, 2018.

<sup>4</sup> Ministry of Commerce Industries and cooperatives Panplets (2007), Post office Road Kano. And [Naijaown.com/listing-item](http://Naijaown.com/listing-item) sourced manufactures resource center partners with innovation center on the buy made-in-Nigeria, on September, 26, 2016, accessed on the 6<sup>th</sup> May, 2017.

The population of subjects in the study also comprises of all Cotton, Textile and Garment industries/ who although not in operation some structures could be seen and those whose structure could not be traced.

Table 4.2.2 membership of Cotton, Textile and Garment (CTG) industries in the study Area

Membership CTG	Freq	%
Member	15	88.24
Non Member	2	11.76
Total	17	100

#### **4.2.3 THE STUDY AREA:**

The study area’s history of industrialization predates colonization, commercial activities started with the establishment of Kurmi market by the Emir Muhammad Rumpa in the 16<sup>th</sup> century and expanded during Ibrahim Dabo and Sulaiman in the 19<sup>th</sup> century.<sup>5</sup> Kola nut trade and craft industries had annual turnover of about \$ 30 million.<sup>6</sup> Kano state was created in 1967with estimated population of about 11, 058, 30 and the per capita of %1,288. Kano is the second largest industrial center after Lagos and largest in Northern Nigeria with textile, tanning, foot wear, cosmetics and plastic industries<sup>7</sup>. Kano is said to

<sup>5</sup> Kurawa, A.1 “ Briefly History of kano 99-2003, Page1 available at [http://www.kanostate.net/kanostate\\_governmentnigeria](http://www.kanostate.net/kanostate_governmentnigeria) accessed on 4<sup>th</sup> May, 2017.

<sup>6</sup> Ibid.

<sup>7</sup> US Africa Business Summit June, 13-16-2018 Washington (DC) Nigeria: The Future of North’s Textiles News Paper) published on 17<sup>th</sup> October, 2015.

have had about 19-20 textiles related industries with as many as 120,000 employees making materials for local and international markets<sup>8</sup>.

### **4.3 SAMPLING AND SAMPLING TECHNIQUE**

Sampling is a systematic process used to select a required portion of a target population<sup>9</sup>. This is the procedure which a researcher employs in selecting elements to represent the entire population but in this kind of research all the industries (CTG) within Kano state were selected excepts those who presence could not be identified. The total population of the CTG was considered i.e. 18 in Kano 17 were purposefully selected based on the industrial location/areas within Kano state of Nigeria. Rao-soft sample size calculator was not needed to determine the size nor random sampling from the population largely because only one out of 18 industries was not selected.

#### **4.3.1 JUSTIFICATION SAMPLE AND DATA COLLECTION**

The rationale for the choice of sample subjects (CTG) is basically for the acquisition of the needed information on the effects of unfair trade on the industries under Cotton, Textile and Garment Subsector in Nigeria as a principle of world trade organization (WTO). Primary data was collected from the CTG'S in the study area; structure questionnaire was prepared and used for face to face interviews with representatives of the State. Responses to questions were recorded on the questionnaires.

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<sup>8</sup> Ibid.

<sup>9</sup> Razau B. Ayayi, O. " Research Methods & Statistical Analysis" (200), Haytee Press and Publishing Company Limited, Ibadan, Nigeria, Page 10.

#### **4.4 RESEARCH INSTRUMENT FOR DATA COLLECTION**

For data collection the following research instruments were found to be useful

- i. Questionnaire.
- ii. Documentary source.

##### **Questionnaire:**

Due to the nature of this study, structural questions otherwise known as “closed ended” questionnaire in which alternative responses are provided and administered to respondents. The questionnaire was structured in a short straight forward and precise manner in order to facilitate prompt responses, because long questionnaires often discourage respondents.

The questionnaire is divided into section A which request respondents to answer question on industries background information. Section B questions were designed to know the causes of failure of Cotton, Textile, and Garment subsector and the relation of Nigeria’s commitment under WTO. Section C’s questions were designed to generate answers to the formulated hypotheses on the effects of unfair trade on the success or failure of CTG subsector in Kano State of Nigeria. While the last section D’s questions were formulated to determine the level of awareness of the stake holders on the implementation of Anti-Dumping as a Trade Remedy against dumping foreign products.

The questionnaire is designed in the following sections follows:

- a. Background Information of the industries
- b. Causes of failure of Cotton, Textile and Garment and Nigeria's commitment under WTO
- c. Effects of unfair trade on the success or failure CTG in Kano state
- d. Level of awareness of the CTG stakeholder on the implementation of Anti-Dumping Agreement as a remedy against dumping and relevant laws in Nigeria.

### **DOCUMENTARY SOURCE**

Efforts were intensified to search and make use of primary and secondary source of data gathering related to the research study. The primary sources utilized include: interview with stakeholders, prepared checklist on the information supplied by the major stakeholders, reports and certificates of seminars and trainings, trips reports, official documents from the State Ministry of Commerce, Industries and Cooperatives. The secondary sources included relevant text books, journals publications, articles newspaper, unpublished thesis, policy papers, news letter, conference and seminar papers, internet and other related materials written by various authors on related field of knowledge. All these materials and previous research is were reviewed in order to provide the theoretical foundation on which the research study was based.

#### **4.4.1 VALIDATION OF RESEARCH INSTRUMENT**

In order to certain the extent to which the instruments used clearly measure what that are designed to measure, the questionnaire items were adequately studied, modified and corrected. In each industrial area a key stakeholder was indentified and used to facilitate linkages with other stakeholders in the area under study. Also check list was prepared and used to guide key information on the conduct of interviews in all the industrial areas under the study. The final face and content validation of the questionnaire items was done by the research supervisor after the initial modification by Professor Aminu Suleiman of Agric-Economics Bayero University, Kano. A more refined set of questionnaire were personally administered in a trial testing during a purposeful pilot study. For copy of questionnaire format see appendices.

#### **4.4.2 RELIABILITY OF RESEARCH INSTRUMENTS**

To find the reliability of the instrument for data collection, a pilot study was carried out on the seven identified key stakeholders in the respective industrial location. The draft questionnaire was administered each to the key stakeholders for pilot testing in the presence of the researcher personally to identify any difficulty in respondents understanding of the questionnaire items. Upon receipts of the completed questionnaires, the split half reliability method was employed to establish reliability of the instrument. All the questionnaires were divided into two half's and sub scores were obtained for each half. The two subs score were

then correlated using person product moment coefficients (PPMC). A reliability of  $r=0.72$  was obtained. After the pilot testing all necessary corrections were made items found to be vague or not properly responded to have been modified and some of them changed

#### **4.5 ADMINISTRATION OF INSTRUMENT**

Data is defined as a set of values collected for the response variable, from each of the elements belonging to the sample<sup>10</sup>. Data collection is a very important step in the empirical research process because conclusions of a study are based on what the data reveals<sup>11</sup>.

The questionnaires were personally administered. The face-to face method of administration of the questionnaires facilitated the completion and subsequent retrieval of the questionnaires. The meeting with the respondents took place in the industries with the exception of meeting with the key stakeholders that were basically conducted at their various homes spread within days in a week to answer only one questionnaire. Some question had to be interpreted into the language of the environment.

However, about four (4) questionnaires were given to other stakeholders who were not in town but showed interest in the research work. In such situation, researcher was asked to come back at a later date to collect the questionnaires. In

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<sup>10</sup> Robert L;S., L;S., Journalism and Mass Communication (1992) also available at [www.ajmc.rog](http://www.ajmc.rog) uploaded 2012, allocated on the 27<sup>th</sup>, 2018.

<sup>11</sup> Awotunde, O.P.J (2004) “ Research Methods in Education, Fab Ameh (Nigeria) Ltd Page 103.

all the number of copies of questionnaire distributed were seventeen (17). Below is a tabulation of the number of questionnaire distributed, returned and analyzed.

**Table 4.5.1 Number of questionnaires distributed, returned and analyzed**

S/N	Names Of Industrial Area	Questionnaires distributed	Questionnaires returned	Questionnaires analysis	%
1.	Bompai industrial area	10	09	<b>09</b>	<b>90%</b>
2.	Challawa	02	02	<b>02</b>	<b>100%</b>
3.	Dakata/kawaji	02	02	<b>02</b>	<b>100%</b>
4.	Sharada	02	02	<b>02</b>	<b>100%</b>
5.	Tokarawa	01	01	<b>01</b>	<b>100%</b>
6.	Gwamaja	01	00	<b>00</b>	<b>00%</b>

#### **4.4 DATA PRESENTATION AND ANALYSIS PROCEDURE**

The primary goal of data analysis is to find out whether findings support a claim to behaviour<sup>12</sup>. In analyzing the data generated from the responses of the respondents through the questionnaire, descriptive analysis was used to describe the data in the research work. The data was computed and analyzed using descriptive statistics (DS) and one way analysis of variance (ANOVA) to ascertain the possibility of any significant difference if any between the variable involved for accepting or rejecting the hypotheses formulated to direct this study.

<sup>12</sup> Zubairu, I “Effects of Educational Resources Internationalization on Student Program in Social Studies in Junior Secondary Schools in Sabon Gari L.G.A, Un published, M.sc Thesis , ABU (2009).

#### **4.7 CONCLUSION**

The fourth chapter of this write-up described the methodology and the procedures adopted in carrying out the research study. The chapter has presented the research design which is a survey design. It has described the population of seventeen Cotton, Textile and Garment industries located within the study area. All the variables excluding only one (1) were used as sample. The statistical procedure has been stated as ANOVA for testing the null hypotheses, while descriptive analyses are described and discussed in this write-up based on the responses from the questionnaires. A pilot study was also carried out in order to determine the reliability of the instrument. The actual statistical and qualitative analysis of the major finding of this study will be presented in chapter five of this research work. The next chapter presents data analysis, results and discussion , this is an explanation of the translated version of the questionnaire distributed to the respondents. The next chapter presents the data analysis, results and discussion.

## CHAPTER FIVE

### DATA ANALYSIS, RESULTS AND DISCUSSION

#### 5.0 INTRODUCTION

This chapter contains the data presentation, data analysis, interpretation and discussion of the results. The data or study was analyzed using descriptive analysis and the statistical package for social science (SPSS). The data were generated from questionnaires administered to the respondents to which major findings were drawn. The chapter ends with a conclusion.

#### 5.1 ANALYSIS OF RESULTS

##### 5.1.1 Section A: Background of Information

**Table 1: Location of Industries Analyzed**

<b>Industry</b>	<b>Location</b>
Adahama Textile & Garment industries Limited	Bompai Independence road Kano
African Textiles Manufacturers Limited	Challawa Industrial Estate
Angel Spinning plus Dyeing Limited	Sharada III, Kano
Bagauda textiles	Kawaji Dakata, Kano
Dangote General Product Limited	Maimalari, Bompai Kano
Gaskiya Textiles Limited	Dakata, Kano
Holborn textile Limited	Bompai Independence road Kano
Integrated Fibers	/Kawaji Kano
Lakki	Sharada II, Kano
Norknitt	Challawa Industrials Estate
Sapari Textiles Limited	Challawa, Kano
Terrytex Nigeria Limited	Bompai Independence road Kano
Tofa Textiles Limited	Bompai Independence road Kano
Universal Textiles	Bompai Independence road Kano
Universal Spinners	Bompai Independence road Kano
White Gold Ginnery	Challawa

The table above shows that there are four major industrial locations in the study area; Bompai, Sharada, Challawa, Dakata/Kawaji including their addresses with Bompai containing most of these respondents having 7(41%), followed by Challawa with 5(29%) and Sharada with 2(11.8) and Dakata 2(11.8), respectively, as the only subjects analyzed in this study.

**Table 2: Membership of Cotton, Textiles and Garment (CTG) Industries**

<b>Membership of CTG</b>	<b>Freq.</b>	<b>%</b>
Member	15	88.24
None member	2	11.76
<b>Total</b>	<b>17</b>	<b>100</b>

From the above table, 15 industries are members of this subsector officially representing (88.24%) while 2 are non-members as at the time of this research work representing (11.76%). This shows that benefit occurring from being a member of CTG would not be enjoyed by non-members.

Table 3: Period of Establishment and Operation among **Cotton, Textiles and Garment (CTG) Industries**

<b>Period</b>	<b>Establishment</b>		<b>Operation</b>	
	<b>Freq.</b>	<b>%</b>	<b>Freq.</b>	<b>%</b>
1971 – 1980	3	17.65	3	17.65
1981 – 1990	4	23.53	3	17.65
1991 – 2000	3	17.65	3	17.65
2001 – 2010	6	35.29	7	41.18
> 2010	1	5.88	0	-
<b>Total</b>	<b>17</b>	<b>100.00</b>	<b>16</b>	<b>94.12</b>

As shown in the above table, Cotton, Textiles and Garment industries started to be established and began operation since 70<sup>th</sup> up to the year 2010 and above. The table indicated the establishment at various intervals amounting to the total number of 17 but as at 2010 above the number of industries reduced by 1 representing the frequency to 16. At establishment the frequency represent 17 (100%) while only 16 operate representing (94.12%).

**Table 4: Proportion of Cotton, Textiles and Garment (CTG) Industries Presently in Operation**

<b>Operation</b>	<b>Freq.</b>	<b>%</b>
Operational	12	70.59
Non-Operational	5	29.41
<b>Total</b>	<b>17</b>	<b>100</b>

As shown in the table, as at the time this study out of 17 industries only are presently in operation representing the frequency distribution with (70.59%) while 5 are non-operational representing (29.41%). This table shows reduction of the number of industries in operation.

**Table 5: Products of Cotton, Textiles and Garment (CTG) Industries**

<b>Products</b>	<b>Inception</b>		<b>Presently</b>	
	<b>Freq.</b>	<b>%*</b>	<b>Freq.</b>	<b>%*</b>
African print plus wax print	12	70.59	5	29.41
Blankets	4	23.53	3	17.65
Baby shawls	8	47.06	2	11.76
Floor duster and Mops	4	23.53	2	11.76
Praying mats	3	17.65	1	5.88
T/ Shirts & Vests and Garment	3	17.65	1	5.88
Cotton, ginning and Threads	6	35.29	2	11.76
Brocades, laces	2	11.76	0	-
None	-	-	1	5.88

\* Multiple responses (Industries produced same/similar products)

The table above shows the products manufactured by these industries at inception and what are produced presently. At inception the table indicated huge production ranging from (70.59%) with frequency of 12 to (11.76%) per products. However, the production per products presently drastically reduced to (29.41%) to (11.76%). The table will not tally over 100% because of multiple responses i.e. industries produced same/similar products.

**Table 6: Major Reasons for Change in Operation/Products among CTG**

**Industries**

<b>Reasons</b>	<b>Freq.</b>	<b>%</b>	<b>Rank</b>
Inability to compete with foreign Products/Dumping	6	35.29	1
Inability to sale/low turn over	5	29.41	2
Smuggling	2	11.76	3
Epileptic power supply	2	11.76	3
Lack /scarcity of some raw materials	2	11.76	3
Economic situation	1	5.88	4
Inadequate manpower	1	5.88	4
Cheats	1	5.88	4

The analysis from the above table shows that there are drastic changes in production as per products among CTG members in Kano State. In statement No1, 35.29% with a frequency appearing 6 times is ranked 1<sup>st</sup> (1) that the major reason for change in operation is the inability of their product to compete with foreign products because of dumping. Others respondents attributed the change to inability to sale/low turnover representing frequency of 5 and 29.41% and is ranked 2 following dumping, this variable directly related to the statement

number 1. In statement No. 3, the change in product is attributed to smuggling representing frequency of 2 and is ranked 3 and graded based on % having 11.76%. In statement No 4, the change in product was linked to epileptic power supply representing another frequency of 2, ranked 3 and graded based on the same % of 11.76%. The statement No5 change in production/operation among these industries was due to lack and scarcity of raw materials representing frequency of 2, ranked 3 and graded based on the same % with preceding variable (statement). The statement indicated that scarcity of raw materials represent 11.76% as a reason for change in production. In statement No 6 change operation was due to economic situation representing frequency of 1, ranked 4 and graded 5.88%. This statement shows that the variable although important but represent a proportion that might not largely affect the respondents if the previous variables attacked. Statement No 7 attributed inadequate manpower as reason for change in operation and products propitiation that might not largely affect the respondents if the previous variable attach. In statement No, 7 which attributed inadequate manpower as reason for change in operation and products representing frequently 1, ranked 4 and graded also 5.88%. in statement No 8, change in operation and product were due to cheating. This represents also frequency 1, removed 4 as having 5.88%

### 5.1.2 WTO (SECTION B) CAUSES FAILURE OF COTTON, TEXTILE AND GARMENT (CTG) AND NIGERIA COMMITMENT UNDER

**Table 7: Awareness about Nigeria’s Trade Policy**

<b>Awareness</b>	<b>Freq.</b>	<b>(%)</b>
Aware	16	94.12
Not aware	1	5.88
<b>Total</b>	<b>17</b>	<b>100.00</b>

The observation from the above table reveals out of the 17 industries in the study area 16 are aware about Nigeria’s trade policy representing 94.12% while only representing 5.88% is not aware of the Nigeria’s trade policy CTG.

**Table 8a: Beneficiaries of the Nigeria’s Trade Policy**

<b>Response</b>	<b>Freq.</b>	<b>(%)</b>
Benefited	13	76.47
Not Benefited	4	23.53
<b>Total</b>	<b>17</b>	<b>100.00</b>

The table indicates that the frequency of the industries that benefit from the Nigeria Trade Policy is 13 representing 76.47% while 4 not benefited representing 23, 53%.

**Table 8b: Benefits enjoyed**

<b>Benefit enjoyed</b>	<b>Freq.</b>	<b>(%)</b>
Production subsidy:	2	11.76
Patronage for local consumption:	5	29.41
Credit facility with reduced interest rate :	6	35.29

The above table shows that 2 industries enjoyed production subsidy representing 11.76%, 5 enjoyed with reduced interest rate representing 35.29%

**Table 9: Perception of the Nigeria's Policy on CTG:**

<b>Perception</b>	<b>Freq.</b>	<b>(%)</b>
Good	6	35.29
Fair	3	17.65
Poor	6	35.29
Undecided	2	11.76
<b>Total</b>	<b>17</b>	<b>100.00</b>

The above table reveals that 6 industries rated the policy as good representing 35.29%, 3 graded the policy as fair representing 17.65%, 6 graded the policy as

poor representing 35.29% also while only 2 were undivided representing 11.76%.

**Table 10: Awareness about World Trade Organization**

<b>Awareness</b>	<b>Freq.</b>	<b>(%)</b>
Aware	16	94.12
Not aware	1	5.88
<b>Total</b>	<b>17</b>	<b>100.00</b>

From the above table it reveals that 16 of the 17 industries representing 94.12% are aware of the existence of WTO while 1 representing 5.88% is not aware of WTO.

**Table 11: Aware that Nigeria is a member of WTO**

<b>Awareness</b>	<b>Freq.</b>	<b>(%)</b>
Aware	16	94.12
Not aware	1	5.88
<b>TOTAL</b>	<b>17</b>	<b>100.00</b>

The table shows that 16 members are aware that Nigeria is a WTO member representing 94.12% while 1 member is not aware which represents 5.88%.

**Table 12: Aware that a treaty or agreement enters by a country is binding**

	<b>Freq.</b>	<b>(%)</b>
<b>Awareness</b>		
Aware	14	82.35
Not aware	3	17.65
<b>Total</b>	<b>17</b>	<b>100.00</b>

This table shows that 14 members are aware that treaty agreement signed by Nigeria is binding on it to fulfill representing 82.35% while 3 are not aware representing 17.65%

**Table 13: Aware that trade liberalization is one of the WTO objectives:**

<b>Awareness</b>	<b>Freq.</b>	<b>(%)</b>
Aware	15	88.24
Not Aware	2	11.76
<b>Total</b>	<b>17</b>	<b>100.00</b>

From the table above 15 members representing 88.24% while 2 are not aware which represent 11.76%.

**Table 14: Awareness on Features of trade liberalization**

<b>Features of trade liberalization aware</b>	<b>Freq.</b>	<b>(%)</b>
Improved market access	11	64.71
Boarder-less economy	2	11.76
Free movement of goods	3	17.65
Reduction in cost of transportation of goods	1	5.88
<b>Total</b>	<b>17</b>	<b>100.00</b>

The table above shows features of trade liberalization an objective of the WTO. Statement No11 reveals that 11 members are aware of improved market access as one of the feature of trade liberalization representing 64.71%, only are aware that board less economy is a features of trade liberalization as show in statement No2 representing 11.76% statement No. 3 reveals that 3 members are aware that free movement of goods is a feature of trade liberalization representing 17.65%. Statement No 4 shows that only member knows that reduction in cost of transportation of goods is a feature trade liberalization representing 5.88%.

**Table 15: Participation in functions organized by WTO on CTG**

<b>Functions Participated</b>	<b>Freq.</b>	<b>(%)</b>	<b>Year Attended</b>
Refresher training/courses:	1	5.88	1995
Workshop/seminar:	7	70.00	2007, 2011, 2012
Symposium:	1	5.88	2014

The table above shows different functions organized by WTO on CTG, statement No 1 shows that only 1 member attended refresher training/course which represent 5.88% in 1995 immediately after the inception of the WTO. Statement No2 shows that 7 members participated in the work shop/seminar organized by WTO in Nigeria representing 70.00% in 207, 2011 and 2012 respectively. Statement No 3 indicates that 1 attended symposiums organized by WTO representing 5.88% in 2014.

**Table 16: Assessment of the CTG in Kano State**

<b>Assessment</b>	<b>Freq.</b>	<b>(%)</b>
Growing	-	-
Collapsing	17	100.00
<b>Total</b>	<b>17</b>	<b>100.00</b>

The tale above reveals how to the CTG stakeholders assessed themselves in Kano state. From the frequency 17 none of the members indicate that then industries are growing however from the said frequently of 17 it the total

number of stakeholders indicated that all the industries in Kano state are collapsing representing 100%

**Table 17: Factors responsible for the collapsing of CTG Industries**

<b>Factors</b>	<b>*Freq.</b>	<b>*%</b>
Competition of foreign goods/Dumping	22	39.29
High cost of production	1	1.79
Poor Government Policy	8	14.29
Inadequate raw materials	6	10.71
Poor/Inadequate infrastructural facilities	2	3.57
Poor patronage of locally made product	6	10.71
Inadequate electricity supply	5	8.93
Lack of holistic approach to resolve the issues attached	1	1.79
Poor CTG policy	2	3.57
Poor Financing	1	1.79
Inadequate Manpower	2	3.57
<b>Total</b>	<b>56</b>	<b>100.00</b>

\*Multiple responses

The above table reveals after being established that the CTG industries in Kano state are collapsing as shown in table 16, that, the factors responsible are shown

evidently. Notes statement No1 representing the frequency 22 that competition with foreign goods as a result dump in takes 39.29%. statement N0 2 has only 1 frequently that the factors responsible for the collapse is high cost production representing 1.79% statement No 3 is poor government policy representing frequency 8 with 14.29%.statement No 4 reveal inadequate raw materials as a factor representing 6with 10.71%. Statement No 5 reveals poor inadequate instructive representing frequency 2 with 3.57% statement No 6 reveals poor patronage of locally made products representing frequency of 6 with 10.71%.

Statement No7 shows that inadequate electricity supply represent frequency 5 with 8.93% as a factors responsible for the collapse of industries in Kano State statement that lack of holistic approach to resolving confuting issues of members appears 1 with only 1.79%. Statement No 9 shows that poor CTG policy is also a factor but only appears 2times out from the subjects report representing 3.57%. statement No 10 shows that poor foreign and marketing strategy is a factor responsible for the collapse representing frequency of 1 with 1.79% also statement N0 11 shows that inadequate manpower is also factor responsible for the collapse representing a frequency of 2 with 3.57%. There are multiple responses as indicated from frequency distribution of the factors responsible for the collapse (\*) shows the multiple Reponses.

**5.1.3 SECTION C: EFFECTS OF UNFAIR TRADE ON THE SUCCESS OR FAILURE OF CTG SUBSECTOR IN KANO STATE OF NIGERIA.**

**Table 18: Awareness on dumping foreign goods in Nigeria:**

<b>Awareness</b>	<b>Freq.</b>	<b>(%)</b>
Aware	17	100.00
Not Aware	-	-
<b>Total</b>	<b>17</b>	<b>100.00</b>

The table shows that from the total number of subjects used for this research study it 17 frequency, 100% are aware that there is dumping foreign goods in Nigeria, Kano, state inclusive.

**Table 19: Types of Products dumped**

<b>Country</b>	<b>CTG Products dumped</b>	<b>Freq.</b>	<b>(%)</b>
China	Textile, wool, cotton, wax, cloth	17	30.36
United Kingdom (U.K)	Textiles, chemicals, wool, cotton	4	7.14
India	Wool, cotton, wax, brocades, laces, textiles, garments	16	28.57
Malaysia	Wax, cotton, textiles,	3	5.36
United Arab Emirate (U.A.E)	Brocades, textiles, wax, laces, cotton	5	8.93
United States of America (U.S.A)	Garment, textiles, wool, cotton, wax	5	8.93
Turkey	Carpet, rugs	4	7.14
Saudi Arabia	Wears	1	1.79
<b>Total</b>		<b>56</b>	<b>100.00</b>

The table above shows different types of products dumped in Nigeria that are competing with the locally produced. Statement No 1 shows that from the frequency 17, respondents believe that textile wool, cotton wax, and ready cloth are dumped and the imports core from China representing 30.36. Statement No 2 reveals that textiles, chemicals, wool cotton products come from united kingdom which present 7.14%. Statement NO 3 reveals that wool, cotton wax brocades, lake, textiles and garments are exported from India representing 28.57%. Statement NO 4 indicates that wax, cotton and textiles are export from Malaysia representing 5.36%. Statement NO 5 shows that Brocades, textile wax lakes and cotton are imported into Nigeria from united Arab Emirates representing 8.93% statement 0 6 shows that Garment, textiles, wool, cotton wax are imported into Nigeria from USA also representing 8.93%. Statement NO 7 shows that carpet and rugs are imported into Nigeria from Turkey representing 7.14%.Statement No 8 reveals that read made wears are imported from Saudi Arabia representing 1.79%.

**Table 20: Similarity of local products to those dumped in Nigeria:**

<b>Response</b>	<b>Freq.</b>	<b>(%)</b>
Similar	17	100.00
Not Similar	-	-
<b>Total</b>	<b>17</b>	<b>100.00</b>

Table 20 shows that all the respondent responded positively that all the products dumped in Nigeria are similar to the ones product locally in Nigeria representing 100%.

**Table 21: Aware that dumping is condemnable by WTO**

<b>Awareness</b>	<b>Freq.</b>	<b>(%)</b>
Aware	9	52.94
Not Aware	8	47.06
<b>Total</b>	<b>17</b>	<b>100.00</b>

From the above table it is shown that 9 of the respondents are aware that dumping is condemnable by WTO which represents 52.94% while 8 are un aware representing almost half of the respondent it 47.06%

**Table 22: Aware that there is trade remedy against dumping foreign product**

<b>Awareness</b>	<b>Freq.</b>	<b>(%)</b>
Aware	7	41.18
Not Aware	10	58.82
<b>Total</b>	<b>17</b>	<b>100.00</b>

From the above table it is shown that 41.1% of the respondents are aware that there is trade remedy against dumping foreign product while 58.82% are not aware.

**Table 23: Aware of the procedure to establish dumping**

<b>Awareness</b>	<b>Freq.</b>	<b>(%)</b>
Aware	5	29.41
Not Aware	12	70.59
<b>Total</b>	<b>17</b>	<b>100.00</b>

The above table shows that 29.41% are aware of some of the procedure for establishing dumping which 70.59% are not aware of any of the procedure.

**Table 24: Awareness on some concepts related to establishing dumping**

<b>Concepts:</b>	<b>Freq.</b>	<b>(%)</b>
Injury and threat	5	83.33
Normal Value	1	16.67
Dumping Margin	-	-
Causal Link	-	-
<b>Total</b>	<b>6</b>	<b>100.00</b>

The above table reveals that there are concepts that are related to establishing dumping provided by the WTO. Statement No 1 indicated that only 5 responded to having knowledge of injury and threat which represent 83.33% of the responses. Statement No shows that only 1 respondent is aware of normal value representing 16.67%. Statement No 3 and 4 have not been attended to.

**Table 25: Industries affected by dumping**

<b>Response</b>	<b>Freq.</b>	<b>(%)</b>
Affected	17	100.00
Not affected	-	-
<b>Total</b>	<b>17</b>	<b>100.00</b>

Table above shows that 17 respondents responded that they are affected the dumping of foreign products imported into Nigeria representing 100%

**Table 26: Industries that accessed the procedure for establishing dumping**

	<b>Freq.</b>	<b>(%)</b>
Accessed	5	29.41
Not Accessed	12	70.59
<b>Total</b>	<b>17</b>	<b>100.00</b>

The table shows that only 5 respondents tried to access to the procedure for establishing dumping representing 29.41% 12 the respondents did not to the procedure which represent 70:59%

**Table 27: Outcome of accessing the procedure for establishing dumping**

<b>Outcome:</b>	<b>Freq.</b>	<b>(%)</b>
Satisfactory	1	20
Fairly Satisfactory	4	80
<b>Total</b>	<b>5</b>	<b>100.00</b>

The table above shows that only 1 responded graded the procedures as satisfactory representing 20% while 14 graded it fairly satisfy 80%. However, the removing 2 respondents did not attempt the question.

**Table 28: Identification of factors responsible for unsatisfactory**

	<b>Freq.</b>	<b>(%)</b>
Identified	1	5.88
Not Identified	14	82.35
<b>Total</b>	<b>15</b>	<b>88.24</b>

The table above reveals that 1 respondent identified the factor why the procedure is unsatisfactory representing 5.88% 14 of the respondents did not as

to identify which represent 82.35% while 2 of the respondents did not attempt the question.

**Table 29: Factors responsible**

<b>Factors</b>	<b>Freq.</b>	<b>(%)</b>
Lack of Investigation	1	25.00
Smuggling/absence of legal regime	1	25.00
Poor policy on CTG	1	25.00
Lack of experts on WTO sessions	1	25.00
<b>Total</b>	<b>4</b>	<b>100.00</b>

The above table reveals that only 1 respondent identified factors responsible why the procedure is unsatisfactory. The respondent states that being a key stakeholder and participated in all the functions organized by the WTO in Nigeria luckily attended its preliminary session at inception in 1995. That lack of investigation unit, lack of legal regime on dumping, poor policy on CTG in Nigeria and non-experts on the WTO proceedings are some of the factors responsible why the procedure is dissatisfactory.

**5.1.4 SECTION D: LEVEL OF AWARENESS OF THE STAKEHOLDER ON THE IMPLEMENTATION OF ANTI-DUMPING AGREEMENT AS A TRADE REMEDY AGAINST DUMPING.**

**Table 30: Awareness and Assistance of anti-dumping Unit**

<b>Responses</b>	<b>Freq.</b>	<b>(%)</b>
<b>Aware of Anti-Dumping investigation Unit:</b>		
Aware	20	-
Not Aware	17	100.00
<b>Total</b>	<b>17</b>	<b>100.00</b>
<b>Assistance given by the Unit:</b>		
Assisted	2	11.76
Not assisted	15	88.24
<b>Total</b>	<b>17</b>	<b>100.00</b>
<b>Government awareness of Dumping:</b>		
Aware	17	100.00
Not aware		
<b>Total</b>	<b>17</b>	<b>100.00</b>

The table above shows that 3 respondents are aware of anti-dumping unit. 14 are not aware which represent 17.65% and 82.35 respectively, that none of the respondents has been assisted by the unit representing 0.00%-100.00% respectively.

Also from the responses made by the respondents 100% behave that government is aware of dumping in Nigeria.

**Table 31: Profitability of Production among CTG Industries**

<b>Profitability of Production:</b>	<b>Freq.</b>	<b>(%)</b>
Profitable	2	11.76
Not Profitable	15	88.24
<b>Total</b>	<b>17</b>	<b>100.00</b>

The table none shows only 2 respondent s behave that there is profit in production which represent 11.76% while 15 respondent are of the there that production is not profitable representing 88.24%.

**Table 32: Products and Profit Level**

<b>Products</b>	<b>No Profit</b>		<b>Low Profit</b>		<b>High Profit</b>	
	<b>Freq.</b>	<b>%*</b>	<b>Freq.</b>	<b>%*</b>	<b>Freq.</b>	<b>%*</b>
African print plus wax print	1	5.88	15	88.24	10	5.88
Baby shawls	2	11.76	15	88.24	-	-
Blankets	1	5.88	16	94.12	-	-
Floor duster and Mops	2	11.76	15	88.24	-	-
Praying mats	2	11.76	15	88.24	-	-
T/ Shirts & Vests and Garment	2	11.76	15	88.24	-	-
Cotton, ginning and Threads	2	11.76	15	88.24	-	-
Brocades, laces	2	11.76	15	88.24	-	-

Table above shows that from the statements made there are products that have no profit at production low profit and high at production. Statement No1 reveals that African print and wax enjoy 5.88% from 1 respondent as no profit, 15 respondents representing 88.24% as low profit with only 1 respondent recording high profit representing 5.88%. statement No 2 reveals that Blankets production Kenner record any profit stated by the No 2 respondent representing 11.76% while 16 record low profit representing 94.12% Statement No 3 shows that baby shells has no profit record stated by 1 respondent representing 5.88% while 16 respondents believe that the profit is low representing 94.12%. Statement No 4 shows floor duster and maps has no profit as concluded by the 2 respondents representing 11.76 while 15 respondents concluded that profit is low representing 88.24%. Statement No 5 shows that praying mats has no profit according to 2 respondents representing 11.76% while 15 respondents are of the view this the profit is low representing 88.24%. Statement No 6 shows that T/shirt and rest/Garment have not being profitable revealed by 2 respondents representing 88.24%. Statement No 7 shows that cotton, ginning and threads are not profitable revealed by 2 respondent is representing 11.76 while 15 respondents record low profit representing 88.24% statement No 8 shows that Brocades and levels are not profitable revealed by 2 respondents representing 11.76% while 15 respondents record low profit representing 88.24%.

**Table 33: Availability of product competing with any foreign products:**

<b>Response</b>	<b>Freq.</b>	<b>(%)</b>
Competing	14	82.35
Not Competing	3	17.65
<b>Total</b>	<b>17</b>	<b>100.00</b>

The responses made from the above table show that 14 respondents whose products are competing with foreign products representing 82.35% while 3 of the respondents have no products competing with foreign products representing 17.63%

**Table 34: 835 Local Products with their Corresponding Foreign Products**

<b>Local Products</b>	<b>Competing Foreign Products</b>									
	Blankets	Wax	Holla ndias	Knit wear	Brocades	Laces	Baby Shawls	Gray Fabrics	Garments	Textile Materials
Blankets	11.77				5.88		17.65			
Knit wear				5.88						
Nigerian wax		52.9 4			5.88			11.77	5.88	
Textile materials										47.06
Shawls	11.77						23.53			
Laces						5.88			5.88	
Blouse										
Gray fabric								5.88		
Brocades	5.88				17.65		5.88			
Garment		5.88							5.88	

Figures are in %

The above table shows that local products can only compete minimally with foreign products depending on the degree of percentage and the level of utilization by the answers. Statement N01 indicates that blanket locally produced can only compete by 11.77%. Statement No 2 shows knit near can only compete with foreign product by 5.88%. Statement No 3 shows that Nigeria wax competes with foreign products by 52.94%. Statement No 4 shows that textile materials generally compete with foreign product by 47.06% statement No 5 shows that locally product shows compete with foreign products by only 23.52%. Statement No 6 shows shawls that are locally produced compete by only 5.88%.Statement No 7 shows that locally produced blouse cannot compete with foreign blouse. Statement N0 8 shows gray bus cannot can compete it foreign gray fabrics by 5.88% statement No 9 indicates that brocades can only compete with foreign product by 5.88%.

**Table 36: CTG Industries Awareness of law Against Dumping of Foreign Goods in Nigeria**

	<b>Freq.</b>	<b>(%)</b>
Aware	2	11.76
Not aware	15	88.24
<b>Total</b>	<b>17</b>	<b>100.00</b>
<b>Antidumping Laws Known</b>		
Customs duties dumping and subsidies govt. act 1958	1	100.00

**Propose amendment or repeal:**

Proposed	2	11.76
Not Proposed	15	88.24
<b>Total</b>	<b>17</b>	<b>100.00</b>
<b>Amendment or repeal:</b>		
General repeals	1	50.00
Total over of the law if really one exists	1	50.00
<b>Total</b>	<b>2</b>	<b>100.00</b>

From the above table the 2 respondents are aware of the law against dumping foreign products in Nigeria representing 11.76% while 15 respondents are not aware of any law against dumping foreign goods Nigeria represent 88.24%.only 1 respondent is aware of Custom Duties and Subsidies Act 1958. The two (2) respondents proposed that there is need for amendment even if there is any law against dumping foreign goods while 15 of the respondents did not made any proposal, to them the law needs total repeal in case one exists representing 11.76%and 88.22% respectively.

One 1 respondent suggests general repeal representing 50% while 1 respondent suggests total overhaul if really the law exist.

**Table 37: Problems militating against production**

<b>Problems</b>	<b>Freq.</b>	<b>(%)</b>
<b>Presence of problems militating against production in the Industry</b>		
Present	17	100.00
Absent		
<b>Total</b>	<b>17</b>	<b>100.00</b>
<b>Problems militating against production:</b>		
Poor government policies	14	25.45
Poor Electricity supply	11	20.00
Infrastructure	3	5.45
Interest rate	1	1.82
Competition with foreign goods/ dumping	10	18.18
Poor policy on CTG	1	1.82
Multiple taxation charge by the government policies	2	3.64
Inadequate skilled Manpower	3	5.45
Poor Financing	1	1.82
Security Challenges	1	1.82
Inadequate raw materials	5	9.09
local patronage	2	3.64
General High cost of product	1	1.82
<b>Total</b>	<b>55</b>	<b>100.00</b>

From the above table it is shown that all the respondents believe that there are problems militating against production in CGT subsector in Kano State of Nigeria which represents 100%. The table continues to reveal the problems identified by these respondents depending on individual perception spread between 100%. Statement No 1 reveals that 14 respondents identify poor

government policies as one of the problems militating against production representing 25.45%. Statement No 2 shows that 11 respondents agree that poor electric supply is a military against production representing 20.00%. Statement No 3 shows that 3 respondents identify lack on infrastructure as a problem militating against production representing 5.4%. Statement No 4 shows that 1 respondent indentify interest rate as a problem militating production with foreign 1.82% statement No 5 shows that 10 respondents identify 18.18%. Statement No 6 shows poor policy on CTG identified by 1 respondent as a factor representing 1.82%. Statement No 7 shows that 2 respondents identify multiple taxation as a factor representing 3.64% statement No 8 shows that 3 respondents identify inadequate skilled manpower as factor representing 5.45% statement No 9 shows that 1 respondent agrees that poor financing as factor representing 1.82%, statement No 10 shows that 1 respondent agrees that security challenges is a factor representing 1.82% statement No 11 shows that 5 respondents behind that inadequate raw materials is a factor representing 9.09%. Statement No 12 shows that 2 respondents identify lack of local patronage as a factor representing 3.64% statement No 13 shows the 1 respondent attributes general high cost of product a factor militating against production representing 1.82%.

**Table 38: Production Capacity**

<b>Capacity</b>	<b>Freq.</b>	<b>(%)</b>
Optimal	-	-
Below Optimal	17	100.00
<b>Total</b>	<b>17</b>	<b>100.00</b>

Table above shows that all the respondents graded the production capacity as below optimal representing 100%.

**Table 39: Signing of Treaty or agreement by Nigeria on trade in future time**

<b>Responses</b>	<b>Freq.</b>	<b>(%)</b>
<b>Encourage signing any treaty or agreement by Nigeria on trade in future time:</b>		
Encouraged	2	11.76
Not Encouraged	15	88.24
<b>Total</b>	<b>17</b>	<b>100.00</b>
<b>Reason not encouraging signing any treaty or agreement:</b>		
it shows that treaties are meant to benefit major world economics not developing economics	1	16.67
It has never benefitted CTG subsector (stakeholder)	2	33.33
Too many were already signed	1	16.67
Should be done in consultation with all relevant stakeholders	1	16.67
Nigeria not ready economically	1	16.67
<b>Total</b>	<b>6</b>	<b>100.00</b>

The table above shows that 2 respondents responded that trade should be encouraged in future time representing 11.76%. While 15 respondents responded that trade should not be encouraged at a future time representing 88.24%. Statement No 1 shows that 1 respondent gave reason that treaties are meant to benefit major world economies not developing ones representing 16.67%. Statement No 2 shows that 2 respondents gave reason why signing is not encouraged because it has never benefitted CTG subsector (stakeholders) representing 33.33%. Statement No 3 shows that 1 respondent gave reason why it should not be encouraged because too many were signed to no benefit representing 16.67%. Statement No 4 shows that 1 respondent attributes reason that it can only be encouraged in consultation with all relevant stakeholders representing 16.67%. Statement No 5 indicates that 1 respondent gave reason that Nigeria is not ready economically so signing trade treaties is not encouraged representing 16.67% also.

**Table 40: Intervention Enjoyed from Nigerian Government**

	Freq.	(%)
<b>Enjoyed any intervention from Nigerian government:</b>		
Enjoyed	10	58.82
Not Enjoyed	7	41.18
<b>Total</b>	<b>17</b>	<b>100.00</b>
<b>Benefits enjoyed:</b>		
BOI Loan	8	80.00
EEG	2	20.00
<b>Total</b>	<b>10</b>	<b>100.00</b>

The above table reveals that 10 respondents enjoyed one form of intervention or the other from Nigeria Government representing 58.82%. While 7 respondents

have not enjoyed any intervention from government representing 41.18%. Statement No 1 shows that 8 respondents enjoyed loan from Bank of industry. Statement No 2 shows that 2 respondents benefitted and enjoyed Export Expression current.

## 5.2 HYPOTHESES TESTING

This section is concerned with testing the four null hypotheses postulated for the study. The descriptive statistical method employed was ANOVA for significant differences between the variables involved in each of the four null hypotheses. The summary of the analysis of the result using the statistical package for social science (SPSS) will be presented;

### 5.2.1 Table41: Test of Hypotheses

Hypotheses	Chi-square Value	Df.	Sig	Decision
Dumping foreign products has no effect on the success or failure of the CTG subsector in Kano State (Ho) of Nigeria.	2.882	1	0.090	The chi-square test revealed that the popular opinion (among 70.58%) which state that “dumping products have effect on the success or failure of the CTG subsector in Kano State” is significantly different from other contrary opinions at 10% LOSS.
Dumping products has effect on the success or failure of the CTG subsector in Kano state of Nigeria (Ha)				
There are no barriers for accessing the Anti-Dumping measures as principle of unfair trade under WTO by the CTG subsector in Kano state of Nigeria (Ho).	2.882	1	0.090	The chi-square test revealed that the popular opinion (among 70.58%) which state that “there are barriers for accessing the Anti-Dumping measures as principle of unfair trade under WTO to curb dumping by the CTG subsector in Kano state of Nigeria” is significantly different from its contrary opinion at 10% LOSS.
There are barriers for accessing the Anti-Dumping measures as principle of unfair trade under WTO to curb dumping by the CTG subsector in Kano state of Nigeria (Ho).				

### **5.3 DISCUSSION OF FINDINGS**

The aim of this research work was to examine the principle of unfair trade under WTO and its effects on cotton, textile and garment (CTG) subsector in Kano state of Nigeria. The outcome of the hypothesis one attempted to find out whether any significant difference exists on the opinion that dumping foreign products has no effect on the success or failure of CTG subsector in Kano state of Nigeria (Ho), while the alternate hypothesis opines that dumping foreign product has effect on the success or failure of CTG subsector in Kano state of Nigeria (Ho) as alternate by hypothesis reveals that three popular opinion (among 70.58%) states that dumping foreign products has effect on the success or failure CTG subsector in Kano state of Nigeria having significant difference on the opposite opinion at 10% loss.

More so, the outcome of the second hypothesis which attempted to find out whether any significant difference exists on the opinion that there are no barriers for accessing the Anti-dumping measures as one of the principle of unfair trade under WTO as a remedy provided to curve dumping (Ho) while the alternate hypothesis opines that there are barriers for accessing the anti dumping measures as one of the remedies available to curve dumping by the Nigerian government which reveals also that the popular opinion (among 70.58%) states that (as shown by the chi-square test) there are barrier for accessing the anti

dumping measures by the CTG subsector in Kano state Nigeria having significant difference on the opposite opinion at 10% loss.

#### **5.4 MAJOR FINDINGS FROM THE HYPOTHESES**

From the data collected, analyzed, interpreted and discussed, the following findings were arrived as are formulated from the hypotheses.

1. That signing any treaty (trade) agreement without in-depth knowledge on the intend and purpose lead to careless policy making which later results in the collapse of any sector of the economy as shown on the cotton, textile and garment subsector in Kano state of Nigeria.
2. That dumping foreign products in Nigeria particularly cotton, textile and garment lead to the collapse of Cotton, Textile and Garment (CTG) subsector in Kano state of Nigeria.
3. That although WTO has provided trade remedies against dumping foreign products in member states, there are barriers for accessing these trade remedies which majority stakeholders are unaware of.
4. These barriers include unavailability of legal regime on the subject matter dumping, lack of a particular desk officer at the Federal Ministry of Trade and Investment to assist the stakeholders who will in turn assists in satisfying the requirement for the establishment of dumping among others. The next chapter presents summary, conclusion and recommendation.

## **CHAPTER SIX**

### **SUMMARY, CONCLUSION AND RECOMMENDATION**

#### **6.1 SUMMARY**

This chapter summarizes major findings drawn from the study, the conclusions drawn there from and useful recommendations thereto for various stakeholders in Cotton, Textiles and Garment (CTG) subsector of the Nigerian economy. The followings are the summary of the main discussions throughout the research study.

Nigeria has been a member of the WTO since its inception in 1995 being an entity established to negotiate trade agreements covering goods, services and intellectual property. Its committed to lowering custom tariffs and other trade barriers especially issues on market access, non discrimination and unfair trade practices.

This study examined the principle of unfair trade (dumping) under WTO and its effect on cotton, Textile and Garment (CTG) subsector in Kano state of Nigeria. Definitions of this concept were provided ranging from the one supplied within the WTO text to those mentioned largely due to their negative effect on the economic sovereignty of WTO member states. Dumping is not condemnable under WTO neither treated as unfair trade practice. It can only be condemned when it causes material injury to a particular product(s) industry or hampers the existence of any industry in any of its member states.

Trade remedies are provided by the WTO that in cases where injury is shown or threat of injury foreseen relief in form of measures be taken to either protect the affected industry or product there by invoking the provisions of article VI of the general Agreement on Tariffs and Trade 1994 which is the Anti-dumping Agreement containing (provisions) on how dumping is defined, how can injury or its threats are established. This agreement has been examined and analyses were made on its provision and how the stakeholders could make use of the opportunities available there from to save the collapsing industries in this subsector.

Similarly, 17 industries were selected for this research study that were placed on some empirical parameters which results have shown that as a result of Nigeria's commitment to WTO, lack of awareness from the part of stakeholder in CTG about the trade reliefs most especially article VI of GATT 1994, Cotton, Textile and Garment industries were seriously affected leading to their collapse as found from the research work.

The study made general analysis of trade treaties/agreements, their historical evolution, classifications up to the current world trading system which led to the development of WTO, its vision and missions, purpose and objectives, functions principles, institutional structure, decision making, accession and membership and how Nigeria ended up been a member. Nigeria's trade policy

was also examined , measures against imports and exports and those measures affecting production and trade were also examined.

This study because of its empirical nature developed questions in form of questionnaires thus obtaining accurate data from the respondent which were collected, analyzed and findings were also obtained from the data analysis. These data were validated, reliable administered and presented on tables, using statistical procedure stated as ANOVA and descriptive analysis of all which further proved that dumping foreign product(s) in Nigeria has negative effect on Cotton, Textile and Garment (CTG) subsector in Kano State of Nigeria.

## **6.2 CONCLUSION**

From the summary above the following conclusions can be drawn;

Dumping as defined under article VI of GATT has negative effects on Cotton, Textile and Garment (CTG) subsector in Kano state of Nigeria, as established in the research work. The major causes of these effects were basically signing trade treaties without in depth knowledge as to the likely consequences in future, the inability of the stakeholders to access trade remedies provided by the WTO in case of unfair trade practices.

There are barrier preventing these stakeholders to access these trade reliefs. In Nigeria, there is no legal regime as obtained in other jurisdictions like South Africa which has strong legal regime and the regime provides articulate means

through which anti-dumping, subsidy, countervailing measures including safeguards are entrenched so that dumping effects could be minimized if not completely eradicated.

Article VI of GATT provides procedures for the implementation of Anti dumping agreement, the only legislation on dumping in Nigeria is an obsolete Act of 1958 that is Customs Duties (Dumped and Subsidized Goods Act 1958) which was the aftermath of the inception of GATT 1947 despite several modifications in trade world over Nigeria still resorts to the said legal regime. The new legal regime shall contain procedure to establish empirical evidence that can be seen physically so that stakeholder can challenge any product(s) or foreign investor(s) dumping products in Nigeria.

For many decades Nigeria has been in dire need of legal regime on dumping as an unfair trade under WTO. There has been a bill on the same subject matter lying before Senate *“The Customs Duties (Dumped and Subsidized Goods Act) and to make Provisions for Countervailing and Anti-Dumping Duties and for other Matters Connected Therewith.”* This bill is strongly needed because it provided procedure for the establishment of dumping, how dumping can be upset, investigation unit and how economic evidence can be manipulated to suit the requirement for the establishment of dumping so that measure can be taken against any product(s) in Nigeria.

However, there are other factors leading to the collapse of this subsector but major stakeholders have complained more about dumping, infact some respondents kicked against the idea of Nigeria's existence and continued membership of WTO. Many were of the view that the collapse of this subsector started after the Nigeria's ratification of WTO in 1995. 20% of respondents called for withdrawal while 80% are of the view that a strong legal regime must be in place to protect the ailing industries.

Most of the industries in this subsector produced below capacity, some have shifted production to other things while others on part time basis. Ensuring adequate legislation on the subject matter would save many jobs, brings back many lost employments thus providing security in the entire state and the country at large. This will also improve the economy and boost capital investment through foreign direct investment (FDI).

### **6.3 MAJOR FINDINGS**

Nigeria has no legal regime on the implementation of Article VI of GATT (anti-dumping agreement) which contemplates establishment of Anti-dumping investigation unit, and the legal experts on how economic evidence are presented before WTO Dispute Settlement Unit.

The investigation unit in Nigeria may assist the stakeholders to determine how dumping effects are checked and the procedure for filing cases by the industries

affected and they may be assisted by the unit so that government presents the matter before dispute settlement units of the WTO on their behalf.

Requirement of expert legal practitioners is paramount so that trade treaties may not be signed blindly and carelessly through ill-advised in future time by self-serving technocrats to the detriment of the nation. The analysis of data collected revealed how manufactured products have been in adequate despite increasing demand both within and outside the state. All the cotton, textile and garment products produced locally compete with foreign ones brought through imports at substandard quality. The locally made are more qualitative than the foreign products. It's evident that dumping occurs on products produced locally especially citing the study area and the incessant collapse of these industries preceding signing the WTO agreement. Similarly, as enshrined under the agreement the only competent body responsible for making a case against dumping of foreign products is the industry affected, which when established the government takes measure, in case the matter goes to the WTO dispute settlement unit the government may succeed in taking measure against the dumped product(s). All the stakeholders are not aware of the procedure to establish dumping, because there are barriers that hinder knowing these procedures.

The relationship between WTO and Nigeria's trade policy is as a matter of fact that of master and servant in that the economy is liberalized, border checks

mitigated, competition encouraged, import dependent so that day-in-day-out these local industries are closing shops yet WTO describes Nigeria's economic policies as "protective".

The research work also found out that there is no legal regimes to assist the stakeholders know the procedure for the establishment of dumping cases and how government can take measure against any foreign products dumped in Nigeria. There is no concrete legal regime in which the stakeholders will fall on so that their industries can succeed against imports of the substandard goods from foreign member states. There are various policies and programs including little weaker legislation like Consumer Protection Act, Local Content Act and Standard Organization Act serving as toothless bulldogs watching these industries collapsing.

More so, what was found from data analysis testifies shocking revelations that the number of industries decreases so also production which was below optimal, most of the respondents complained about their inability to compete with foreign products due the large number of consignments of different characteristics from India, China, UK, USA, Turkey and UAE among others. The need to produce at optimal capacity was stressed because it is only when local production is put to almost 100% that may satisfy the need of only 50% population of the study area. Production would be improved if enabling environment is provided which in effect checks dumping and only if smuggling

is mitigated, electricity and other facilities are provided. Other similar problems affecting production apart from dominant dumping are in adequate man power, cheating (stealing raw and finished products).

Despite the indicators mitigating production this study found that majority or almost all the respondents are aware of the Nigeria's trade policy which suggested that they are well informed and enjoyed some of the facilities provided by the government policies, e.g. credits at reduced interest rates, but heavily complained about loss of production subsidy, and low patronage by the government placing their perception on equal proportion. These industries largely depend on politicians who order epileptic production for ceremonies and conventions of the political parties, admittedly describing the procedure of getting credit facilities as cumbersome.

Similarly, the respondents are aware of some of the advantages of these features provided by the WTO. Very few in fact 20% have attended some program organized by WTO, in fact only one key stakeholder, the MD Adahama textiles was nominated to attend refresher course at the inception of WTO in 1995. Since then fewer functions were organized intermittently till today. The respondents did not attribute their failure to the programs but stressfully on dumping, high cost of production, poor government policy, inadequate raw materials, infrastructural delay, poor local patronage, inadequate poor supply, lack of holistic approach to resolve trade disputes, poor CTG policy, poor

financing, Inadequate- power representing 39.29%, 1.79% 14.29%, 1.79%, 14.29, 10.71% 3.57%, 10.71% 8.93% 1.79& 3.57%, 1.59%, 3.57% respectively. From the data, dumping foreign goods is the highest factor responsible for the collapse of CTG industries in Kano state.

More so, from what transpired in table 18, it found that all the respondents are aware that there is dumping of foreign goods in Nigeria mostly from countries that produce substandard or compromised goods. But these respondents are not aware that dumping is condemnable, trade remedies provided, and the dire need for establishment of anti-dumping investigation some respondents purported to have accessed the procedure although, the key stakeholder disrepute the claim that they were only advised on how to go about managing the injury, this report come from the Federal Ministry of Trade and investment and obtained from one of the major stakeholders during filling the questionnaire.

While table 27 shows that even among those purporting to access the procedure, admitted that the effort was unsatisfactory for lack of proper investigation procedure provided by WTO, legal regime on the subject matter dumping, poor policy on CTG, non- expert among others.

Similarly, table 33 indicates that 82.35% of their industries have products that are in one way or the other competing with foreign products, with only 1 respondent knowing the existence of the only obsolete law concerning dumping i.e. Custom Duties and Subsidies Goods Act. 1958, and regrettably complained

the inability of the National Assembly to provide current Legal Regime on the subject matter that will spell out the procedure to establish dumping, establish Anti-dumping investigation unit and provide experts on the same subject as obtained in other jurisdictions like, Canada, south Africa and Mauritania.

It is evident from tables 37 and 38 that the factors militating production are mostly connected requiring government intervention so as to jack up production that is 100% below capacity. While table 40 shows that about 10 respondents enjoyed one form of intervention or the other from government, 7 respondents complained bitterly by that intervention or loan from government that are directly linked with politics depending on whom you know. The benefitting respondents enjoyed loans from Bank of industry, others benefitted from Export Expansion Grant (EEG).

Finally, all the respondents believed that Nigeria's membership at the WTO is not of any help to their industries because it allows free access to their markets, trade in the study area was liberalized so that both standard and substandard goods (products) are constantly being imported and smuggled. The local production that is below optimal could not compete with the foreign products, couple with the other factors that virtually all the respondents are not aware of the trade remedies provide by the WTO to check the effect of the principle of unfair trade (Dumping). Admittedly, there is no legal regime in Nigeria to check the menace, and establish Anti-dumping investigation unit as obtained in

other jurisdictions, lack of commitment on the side of the legislators to pass existing bill in the subject matter lying since 2010. Inadequate government policy on CTG and its non shifts towards providing facilities that will enhance production like electricity and credibility, non-patronage of local products are among other factors leading to the collapse of Cotton, Textile and Garment (CTG) subsector in Kano of Nigeria, thus serve as barriers for accessing Anti dumping measures that would ultimately save them from total collapse.

#### **6.4 RECOMMENDATIONS**

In light of the insights of the study and conclusions drawn, the following recommendations were made;

- I. There is need for a legal regime on the subject matter dumping as an unfair trade practice; this legislation will spell all that is required for the establishment of the Anti-dumping investigation unit to entertain complaints from the affected industries not only on CTG but all other sectors of the economy affected by dumping of foreign products. The unit will provide procedure to establish dumping as provided by the AD agreement in Article VI of the GATT 1995. Anti Dumping laws are almost everywhere in other jurisdiction like, China, India, US, UK, Canada, South Africa and even Mauritania. Policy makers, practitioners and academics be enlightened on the dangers of entering trade treaties by

- first having in depth knowledge of the content, motive and likely expectations of the schemas of the treaty or agreement before ratification.
- II. At least if enacting fresh law would be too demanding and cumbersome there is need to repeal the obsolete Act of 1958 the Customs Duties and Subsidized Act to come to terms with the current realities on dumping and to incorporate Anti-dumping rules as an emerging trend of the WTO.
  - III. Or in the alternative, there is an existing Bill on the same subject matter that has been before the senate since 2010, this bill needs to be revisited and be passed into law to save the local industries from collapsing. This bill should bring out the dangers facing all the sectors of the economy especially those dealing with unfair trade practice.
  - IV. Emphasis should not only be placed on legislation, there is need for effective overhaul on all the WTO policies and programs in Nigeria including membership, achievements or otherwise. Therefore a body of experts on the activities of WTO is highly encouraged to advise Nigeria on its policy concerning WTO and other trade agreements now and in subsequent engagements to avoid being victims of what is happening to the Cotton, Textile and Garment industries in Kano State. In fact, the whole charter needs to be revisited owing from the facts indentified in the course of this research work. This body of expert can be a think tank as to the application of which principle of trade liberalization best suits Nigeria as a nation.

- V. Cotton, textile and Garment subsector is the largest in terms of employment generation a side of government. There is need for strong government policy on this subsector so that more employment opportunities would be created. Employment reduces rates of criminal activities, insecurity and corruption that become cancer worm to the Nigeria's survival that is hoping to be an industrial state in 2020.
- VI. Other legal regimes on similar subject matter like Consumer Protection , Standard Organization, Local Content Acts should also be amended to recognize dumping as one of the major factors that hinder development, these legislations should emphasize local patronage in such a way that will not contravene the principle of non-discrimination of the WTO instrument ( national treatment).
- VII. There is need for continued emphasis on government to provide facilities, e.g. Export Expansion Grant, Reduced Interest Rate, loans subsidies, taking serious measures against imports, provision of stiff legislation on electricity, cheating, and smuggling of substandard goods need to be in place. This would promote greater opportunities to the stakeholders and even the foreign investors to come into the country for more investment in almost all the sector of the country.
- VIII. There should be constant supervision of the WTO secretariat in Nigeria on the impacts of its policies, especially on the developing and under developing countries so that the objectives of its establishment should not

be left at the mercy of the developed economies whose position have been favoured by the objectives of WTO.

- IX. Free trade allows some form of protection as enunciated under the fairness principles. Nigeria should exploit such measures in cases of policy formulations and legislative drafting to achieve trade transparency.
- X. In order to enhance fairness international trade Nigeria needs to strengthen existing relation with WTO and other international institutions so as to design policy and law in line with current economic debates available in trade liberalization.
- XI. Nigeria should increase inter-institutional cooperation in the production of norms, increase cross-reference to non-WTO norms for sharper focus on social solidarity ethnics which include values of development, respect for the environment and social justice.
- XII. From the theories and analysis on the concepts of sovereignty Nigeria's commitment would not in any way hinders the application of Anti-Dumping Agreement. These theories proven to empower sovereign nations participate in international agreements, enter trade treaties, and sign contracts without losing their sovereign supremacy and foundation. In fact participation in international affairs concretizes the position of nations to regulate internal affairs without hindrance from external forces. Although contemporary scholars like Chayes opine that modern

contemporary sovereignty needs to be applied in this globalized economic world.

## **6.5 RECOMMENDATION FOR FURTHER RESEARCH**

1. A study of this nature should be carried out using states of the Federation like Kaduna and Lagos on the Cotton, Textile and Garment industries in order to generalize the finding to include all the stakeholders in Nigeria as a whole.
2. Presumably, dumping is almost in all the sector of the Nigerian economy, examination of the principle of unfair trade and its effect should not only be restricted to Cotton, Textiles and Garment subsector of the economy, it is highly recommended to cover all the sectors to know the effects so that something urgent can be done about it.
3. Subsequent study of this nature should include how these effects of unfair trade (dumping) are being tackled in other jurisdiction and how measures are taken so that Nigeria will go in line with the principle objectives of world trade organization.
4. Analytical discourse on the activities of WTO is highly recommended especially on how unfair trade practice is determined, the burdensome nature of bringing convincing economic evidence to substantiate the claims of dumping so that country (member state) succeeded in taking measure(s) in

case the matter goes the Panel or Appellate Dispute Settlement Bodies of the WTO.

5. A need to examine the procedure on how cases are filed, processed and conducted before the Dispute Settlement Bodies is highly recommended so that the under developed and probably developing member states would be familiar so that the benefit of accessing the remedies may not be left to only developed states who have the strength and the technology of indoctrination and possibly who are the perpetrators of the dumping activities in these developing member states.

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## APPENDICES

### APPENDIX 1: RESEARCH QUESTIONNAIRE

This is a research questionnaire intended at finding out the reasons for the collapse of Cotton, Textile and Garment (CTG) subsector in Nigeria. It is an academic study of the principle under the World Trade Organization and the effect of that principle on the subsector. There is certainty of confidentiality in dealing with any information as answers to this questionnaire including the security of the respondents. The question only centers on the issues of failure of CTG subsector in Kano State industries;

#### SECTION A: Industry's Background Information

1. What is the name of your industry: \_\_\_\_\_
2. Location of your industry: \_\_\_\_\_
3. Is your industry a member of CTG Subsector: Yes [  ] No [  ]
4. if yes since when \_\_\_\_\_ and when was your industry established  
\_\_\_\_\_
5. Industry's years of operation \_\_\_\_\_
6. Is your industry presently operational? Yes [  ] No [  ]
7. What were the products of your industry at inception \_\_\_\_\_  
\_\_\_\_\_
8. What do you produce presently? \_\_\_\_\_
9. Reason(s) for change in products (compare inception and the present):
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

**SECTION B: Causes of failure of Cotton, Textile and Garment Subsector and the Relation of Nigeria's Commitment under WTO**

10. Do you know Nigeria's Trade Policy Yes [ ] No [ ]
11. if yes, have you ever benefitted Yes [ ] No [ ]
12. What are the benefits enjoyed (Tick the relevant ones):
- i. Production subsidy [ ]
  - ii. Tax holiday [ ]
  - iii. Patronage for local consumption [ ]
  - iv. Credit facility with reduced interest rate [ ]
  - v. Others (specify) \_\_\_\_\_
13. What is your perception of the Nigeria's Policy on CTG? Please rate it appropriate
- i. Excellent [ ]
  - ii. Very Good [ ]
  - iii. Good [ ]
  - iv. Fair [ ]
  - v. Poor [ ]
  - vi. Undecided [ ]
14. Do you know World Trade Organization? Yes [ ] No [ ]
15. Are you aware that Nigeria is a member of WTO? Yes [ ] No [ ]
16. Do you know that a treaty or agreement enters by a country is binding Yes [ ] No [ ]
17. Are you aware that trade liberalization is one of the WTO objectives?  
Yes [ ] No [ ]
18. Which of the following features of trade liberalization are you aware of:
- Improved market access [ ]
  - Boarder-less economy [ ]
  - Free movement of goods [ ]
  - Reduction in cost of transportation of goods [ ]
19. Have you ever attended any function organized by WTO on CTG:

Function attended	Year
i. Refresher training/courses [ ] _____	-
ii. Workshop/seminar [ ] _____	-
iii. Symposium [ ] _____	-
iv. Others (specify)_____	-

20. What is your assessment of the Cotton, Textile and Garment industries in this State?

- i. Growing [ ]
- ii. Collapsing [ ]

21. Please state the factors responsible if the CTG industries are collapsing:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SECTION C: Effects of Unfair trade on the Success or Failure of CTG Subsector in Kano state of Nigeria.**

22. Are you aware of dumping foreign goods in Nigeria? Yes [ ] No [ ]

23. Can you mention some of these countries dumping their product(s)

Countries	Product(s) dumped
_____	_____
_____	_____
_____	_____
_____	_____

24. Are your products similar to those dumped in Nigeria?  
Yes  No
25. Is your industry aware that dumping is condemnable by WTO?  
Yes  No
26. Do you know that there is trade remedy against dumping foreign product Yes  No
27. Are you aware of the procedure to establish dumping  
Yes  No
28. if yes,do you know these concepts  
Injury and threat    
Normal value    
Dumping margin    
Causal link
29. Have your industry ever been affected by dumping Yes  No   
]
30. Have you ever accessed the procedure when affected?  
Yes  No
31. if yes, What was the outcome?  
Very Satisfactory    
Satisfactory    
Fairly Satisfactory    
Not satisfactory
32. Have you identified the factors responsible if not satisfactory  
Yes  No
33. If yes, mention the factors responsible  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION D:Level of Awareness of the Stakeholders on the Implementation of Anti-Dumping Agreement as a Trade Remedy Against Dumping**

34. Have you ever heard of Anti-Dumping investigation Unit?  
Yes [ ] No [ ]
35. if yes,Was there any assistance given by the Unit?Yes [ ] No [ ]
36. Do you believe that government is aware of dumping
37. Yes [ ] No [ ]
38. Is your production profitable Yes [ ] No [ ]
39. if yes can you state the level of the profit (No profit, low, high)

**Products manufactured**

**Profit Level**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

40. Is your product competing with any foreign product  
Yes [ ] No [ ]
41. What is the name of that product competing with yours

**Local Products manufactured:**

**Competing Foreign Products**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

42. Do you know any law against dumping foreign goods in Nigeria

Yes [ ] No [ ]

if

yes

state

it \_\_\_\_\_

Do you propose amendment or repeal? Yes [ ] No [ ]

43. If yes, what is the amendment or repeal?\_\_\_\_\_

\_\_\_\_\_

—

44. Are there other problems militating against production in your organization Yes [ ] No [ ]

45. if yes state the problems:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

46. Is your production optimal or below

Optimal [ ]

Below [ ]

47. Do you encourage signing any treaty or agreement by Nigeria on trade in future time Yes [ ] No [ ]

48. If yes and if no why

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

49. Have you ever enjoyed any intervention from Nigerian government [ ] [ ]

50. if yes what type\_\_\_\_\_

## APPENDIX 2

**Table: Test of Hypotheses appendix 2**

Hypotheses	Chi-square Value	Df.	Sig	Decision
Dumping foreign products have no effect on the success or failure of the CTG subsector in Kano State (H0) of Nigeria.	2.882	1	0.090	The chi-square test revealed that the popular opinion (among 70.58%) which state that “dumping products have effect on the success or failure of the CTG subsector in Kano State” is significantly different from other contrary opinions at 10% LOSS.
Dumping products have effect on the success or failure of the CTG subsector in Kano state of Nigeria (Ha)				
There are no barriers for accessing the Anti-Dumping measures as principle of unfair trade under WTO by the CTG subsector in Kano state of Nigeria (H0).	2.882	1	0.090	The chi-square test revealed that the popular opinion (among 70.58%) which state that “there are barriers for accessing the Anti-Dumping measures as principle of unfair trade under WTO to curb dumping by the CTG subsector in Kano state of Nigeria” is significantly different from its contrary opinion at 10% LOSS.
There are barriers for accessing the Anti-Dumping measures as principle of unfair trade under WTO to curb dumping by the CTG subsector in Kano state of Nigeria (H0).				

### APPENDIX 3

NPAR TEST  
 /CHISQUARE=Cause Aware  
 /EXPECTED=EQUAL  
  
 /MISSING ANALYSIS.

#### NPar Tests

Notes		
Output Created		21-Jul-2018 08:26:15
Comments		
Input	Data	C:\Users\Prof Aminu Suleiman\Desktop\Desktop Files\Koki Data\Hypo.sav
	Active Dataset	DataSet0
	Filter	<none>
	Weight	<none>
	Split File	<none>
	N of Rows in Working Data File	56
Missing Value Handling	Definition of Missing	User-defined missing values are treated as missing.
	Cases Used	Statistics for each test are based on all cases with valid data for the variable(s) used in that test.
Syntax		NPAR TEST /CHISQUARE=Cause Aware /EXPECTED=EQUAL /MISSING ANALYSIS.
Resources	Processor Time <sup>a</sup>	00:00:00.031
	Elapsed Time	00:00:00.015
	Number of Cases Allowed	157286

a. Based on availability of workspace memory.

[DataSet0] C:\Users\Prof Aminu Suleiman\Desktop\Desktop Files\Koki Data\Hypo.sav

## Chi-Square Test

### Test Statistics

	Competition of foreign goods/Dumping causes failure of CTG industries in Kano State	There are barriers for accessing the Anti-Dumping measures by the CTG subsector in Kano state of Nigeria
Chi-Square	2.882 <sup>a</sup>	2.882 <sup>a</sup>
df	1	1
Asymp. Sig.	.090	.090

a. 0 cells (.0%) have expected frequencies less than 5. The minimum expected cell frequency is 8.5.

## Frequencies

### Competition of foreign goods/Dumping causes failure of CTG industries in Kano State

	Observed N	Expected N	Residual
Dumping is the major cause of CTGs failure in Kano State	12	8.5	3.5
Dumping is not the major cause of CTGs failure in Kano State	5	8.5	-3.5
Total	17		

### There are barriers for accessing the Anti-Dumping measures by the CTG subsector in Kano state of Nigeria

	Observed N	Expected N	Residual
Accessed Anti-dumping measures	12	8.5	3.5
Did not accessed Anti-dumping measures	5	8.5	-3.5
Total	17		

## APPENDIX 4: DATA ANALYSIS

### BACKGROUND INFORMATION

**Table 1: Location of Industries Analyzed**

Industry	Location
Adahama Textile & Garment industries Limited	Bompai Independence road Kano
African Textiles Manufactres Limited	Bompai Independence road Kano
Angel Spinning plus Dyeing Limited	Sharada III, Kano
Bagauda textiles	Kawaji Dakata, Kano
Dangote General Product Limited	Sharada II, Kano
Gaskiya Textiles Limited	Dakata, Kano
Holborn textile Limited	Bompai Independence road Kano
Interated Fibres	Bompai Kano
Lakki	Sharada II, Kano
Norknitt	Challawa Industrials Estate
Sapari Textiles Limited	Tokarawa, Kano
Terrytex Nigeria Limited	Bompai Independence road Kano
Tofa Textiles Limited	Bompai Independence road Kano
Universal Spinners	Bompai Independence road Kano
White Gold Ginnery	Bompai Independence road Kano

**Table 2: Membership of Cotton, Textiles and Garment (CTG) Industries**

Membership of CTG	Freq.	%
Member	15	88.24
None member	2	11.76
Total	17	100

**Table 3: Period of Establishment and Operation among Cotton, Textiles and Garment (CTG) Industries**

Period	Establishment		Operation	
	Freq.	%	Freq.	%
1971 – 1980	3	17.65	3	17.65
1981 – 1990	4	23.53	3	17.65
1991 – 2000	3	17.65	3	17.65
2001 – 2010	6	35.29	7	41.18
> 2010	1	5.88	0	-
<b>Total</b>	<b>17</b>	<b>100.00</b>	<b>16</b>	<b>94.12</b>

**Table 4: Proportion of Cotton, Textiles and Garment (CTG) Industries Presently in Operation**

Operation	Freq.	%
Operational	12	70.59
Non-Operational	5	29.41
<b>Total</b>	<b>17</b>	<b>100</b>

**Table 5: Products of Cotton, Textiles and Garment (CTG) Industries**

Products	Inception		Presently	
	Freq.	%*	Freq.	%*
African print plus wax print	12	70.59	5	29.41
Blankets	4	23.53	3	17.65
Baby shawls	8	47.06	2	11.76
Floor duster and Mops	4	23.53	2	11.76
Praying mats	3	17.65	1	5.88
T/ Shirts & Vests and Garment	3	17.65	1	5.88
Cotton, ginning and Threads	6	35.29	2	11.76
Brocades, laces	2	11.76	0	-
None	-	-	1	5.88

\* Multiple responses (Industries produced same/similar products)

**Table 6: Major Reasons for Change in Operation/Products among CTG Industries**

Reasons	Freq.	%	Rank
Inability to compete with foreign Products/Dumping	6	35.29	1
Inability to Sale/Low turn over	5	29.41	2
Smuggling	2	11.76	3
Epileptic power supply	2	11.76	3
Lack /scarcity of some raw materials	2	11.76	3
Economic situation	1	5.88	4
Inadequate Manpower	1	5.88	4
Cheats	1	5.88	4

#### CAUSES OF FAILURE OF COTTON, TEXTILE AND GARMENT BU-SECTOR AND THE RELATION OF NIGERIA'S COMMITMENT UNDER WTO

**Table 7: Awareness about Nigeria's Trade Policy**

Awareness	Freq.	(%)
Aware	16	94.12
Not aware	1	5.88
<b>Total</b>	<b>17</b>	<b>100.00</b>

**Table 8a: Beneficiaries of the Nigeria's Trade Policy**

<b>Response</b>	<b>Freq.</b>	<b>(%)</b>
Benefited	13	76.47
Not Benefited	4	23.53
<b>Total</b>	<b>17</b>	<b>100.00</b>

**Table 8b: Benefits enjoyed**

<b>Benefit enjoyed</b>	<b>Freq.</b>	<b>(%)</b>
Production subsidy:	2	11.76
Patronage for local consumption:	5	29.41
Credit facility with reduced interest rate :	6	35.29

**Table 9: Perception of the Nigeria's Policy on CTG:**

<b>Perception</b>	<b>Freq.</b>	<b>(%)</b>
Good	6	35.29
Fair	3	17.65
Poor	6	35.29
Undecided	2	11.76
<b>Total</b>	<b>17</b>	<b>100.00</b>

**Table 10: Awareness about World Trade Organization**

<b>Awareness</b>	<b>Freq.</b>	<b>(%)</b>
Aware	16	94.12
Not aware	1	5.88
<b>Total</b>	<b>17</b>	<b>100.00</b>

**Table 11: Aware that Nigeria is a member of WTO**

<b>Awareness</b>	<b>Freq.</b>	<b>(%)</b>
Aware	17	100.00
Not aware	-	-
<b>Total</b>	<b>17</b>	<b>100.00</b>

**Table 12: Aware that a treaty or agreement enters by a country is binding**

	<b>Freq.</b>	<b>(%)</b>
<b>Awareness</b>		
Aware	14	82.35
Not aware	3	17.65
<b>Total</b>	<b>17</b>	<b>100.00</b>

**Table 13: Aware that trade liberalization is one of the WTO objectives:**

<b>Awareness</b>	<b>Freq.</b>	<b>(%)</b>
Aware	15	88.24
Not Aware	2	11.76
<b>Total</b>	<b>17</b>	<b>100.00</b>

**Table 14: Awareness on Features of trade liberalization**

<b>Features of trade liberalization aware</b>	<b>Freq.</b>	<b>(%)</b>
Improved market access	11	64.71
Boarder-less economy	2	11.76
Free movement of goods	3	17.65
Reduction in cost of transportation of goods	1	5.88
<b>Total</b>	<b>17</b>	<b>100.00</b>

**Table 15: Participation in functions organized by WTO on CTG**

<b>Functions Participated</b>	<b>Freq.</b>	<b>(%)</b>	<b>Year Attended</b>
Refresher training/courses:	1	5.88	1995
Workshop/seminar:	7	70.00	2007, 2011, 2012
Symposium:	1	5.88	2014

**Table 16: Assessment of the CTG in Kano State**

<b>Assessment</b>	<b>Freq.</b>	<b>(%)</b>
Growing	-	-
Collapsing	17	100.00
<b>Total</b>	<b>17</b>	<b>100.00</b>

**Table 17: Factors responsible for the collapsing of CTG Industries**

<b>Factors</b>	<b>*Freq.</b>	<b>*%</b>
Competition of foreign goods/Dumping	22	39.29
High cost of production	1	1.79
Poor Government Policy	8	14.29
Inadequate raw materials	6	10.71
Poor/Inadequate infrastructural facilities	2	3.57
Poor patronage of locally made product	6	10.71
Inadequate Electricity supply	5	8.93
Lack of holistic approach to resolve the issues attached	1	1.79
Poor CTG policy	2	3.57
Poor Financing	1	1.79
Inadequate Manpower	2	3.57
<b>Total</b>	<b>56</b>	<b>100.00</b>

\*Multiple responses

**SECTION C: EFFECTS OF UNFAIR TRADE ON THE SUCCESS OR FAILURE OF CTG SUBSECTOR IN KANO STATE NIGERIA.**

**Table 18: Awareness on dumping foreign goods in Nigeria:**

<b>Awareness</b>	<b>Freq.</b>	<b>(%)</b>
Aware	17	100.00
Not Aware	-	-
<b>Total</b>	<b>17</b>	<b>100.00</b>

**Table 19: Types of Products dumped**

<b>Country</b>	<b>CTG Products dumped</b>	<b>Freq.</b>	<b>(%)</b>
China	Textile, wool, cotton, wax, cloth	17	30.36
United Kingdom (U.K)	Textiles, chemicals, wool, cotton	4	7.14
India	Wool, cotton, wax, brocades, laces, textiles, garments	16	28.57
Malaysia	Wax, cotton, textiles,	3	5.36
United Arab Emirate (U.A.E)	Brocades, textiles, wax, laces, cotton	5	8.93
United States of America (U.S.A)	Garment, textiles, wool, cotton, wax	5	8.93
Turkey	Carpet, rugs	4	7.14
Saudi Arabia	Wears	1	1.79
<b>Total</b>		<b>56</b>	<b>100.00</b>

**Table 20: Similarity of local products to those dumped in Nigeria:**

<b>Response</b>	<b>Freq.</b>	<b>(%)</b>
Similar	17	100.00
Not Similar	-	-
<b>Total</b>	<b>17</b>	<b>100.00</b>

**Table 21: Aware that dumping is condemnable by WTO**

<b>Awareness</b>	<b>Freq.</b>	<b>(%)</b>
Aware	9	52.94
Not Aware	8	47.06
<b>Total</b>	<b>17</b>	<b>100.00</b>

**Table 22: Aware that there is trade remedy against dumping foreign product**

<b>Awareness</b>	<b>Freq.</b>	<b>(%)</b>
Aware	7	41.18
Not Aware	10	58.82
<b>Total</b>	<b>17</b>	<b>100.00</b>

**Table 23: Aware of the procedure to establish dumping**

<b>Awareness</b>	<b>Freq.</b>	<b>(%)</b>
Aware	5	29.41
Not Aware	12	70.59
<b>Total</b>	<b>17</b>	<b>100.00</b>

**Table 24: Awareness on some concepts related to establishing dumping**

<b>Concepts:</b>	<b>Freq.</b>	<b>(%)</b>
Injury and threat	5	83.33
Normal Value	1	16.67
Dumping Margin	-	-
Causal Link	-	-
<b>Total</b>	<b>6</b>	<b>100.00</b>

**Table 25: Industries affected by dumping**

<b>Response</b>	<b>Freq.</b>	<b>(%)</b>
Affected	17	100.00
Not affected	-	-
<b>Total</b>	<b>17</b>	<b>100.00</b>

**Table 26: Industries that accessed the procedure for establishing dumping**

	<b>Freq.</b>	<b>(%)</b>
Accessed	5	29.41
Not Accessed	12	70.59
<b>Total</b>	<b>17</b>	<b>100.00</b>

**Table 27: Outcome of accessing the procedure for establishing dumping**

<b>Outcome:</b>	<b>Freq.</b>	<b>(%)</b>
Satisfactory	1	20
Fairly Satisfactory	4	80
<b>Total</b>	<b>5</b>	<b>100.00</b>

**Table 28: Identification of factors responsible for dissatisfactory:**

	<b>Freq.</b>	<b>(%)</b>
Identified	1	5.88
Not Identified	14	82.35
<b>Total</b>	<b>15</b>	<b>88.24</b>

**Table 29: Factors responsible**

<b>Factors</b>	<b>Freq.</b>	<b>(%)</b>
Dumping	1	25.00
Smuggling	1	25.00
Poor policy	1	25.00
Poor Electricity	1	25.00
<b>Total</b>	<b>4</b>	<b>100.00</b>

**SECTION D: LEVEL OF AWARENESS OF THE STAKEHOLDERS ON THE IMPLEMENTATION OF ANTI-DUMPING AGREEMENT AS A TRADE REMEDY AGAINST DUMPING**

**Table 30: Awareness and Assistance of anti-dumping Unit**

<b>Responses</b>	<b>Freq.</b>	<b>(%)</b>
<b>Aware of Anti-Dumping investigation Unit:</b>		
Aware	3	17.65
Not Aware	14	82.35
<b>Total</b>	<b>17</b>	<b>100.00</b>
<b>Assistance given by the Unit:</b>		
Assisted	2	11.76
Not assisted	15	88.24
<b>Total</b>	<b>17</b>	<b>100.00</b>
<b>Government is awareness of Dumping:</b>		
Aware	17	100.00
Not aware		
<b>Total</b>	<b>17</b>	<b>100.00</b>

**Table 31: Profitability of Production among CTG Industries**

<b>Profitability of Production:</b>	<b>Freq.</b>	<b>(%)</b>
Profitable	2	11.76
Not Profitable	15	88.24
<b>Total</b>	<b>17</b>	<b>100.00</b>

**Table 32: Products and Profit Level**

<b>Products</b>	<b>No Profit</b>		<b>Low Profit</b>		<b>High Profit</b>	
	<b>Freq.</b>	<b>%*</b>	<b>Freq.</b>	<b>%*</b>	<b>Freq.</b>	<b>%*</b>
African print plus wax print	1	5.88	15	88.24	14	82.35
Blankets	2	11.76	16	94.12	-	-
Baby shawls	1	5.88	15	88.24	-	-
Floor duster and Mops	2	11.76	16	94.12	-	-

Praying mats	1	5.88	15	88.24	-	-
T/ Shirts & Vests and Garment	1	5.88	15	88.24	-	-
Cotton, ginning and Threads	1	5.88	15	88.24	-	-
Brocades, laces	1	5.88	15	88.24	-	-

**Table 33: Availability of product competing with any foreign products:**

Response	Freq.	(%)
Competing	14	82.35
Not Competing	3	17.65
<b>Total</b>	<b>17</b>	<b>100.00</b>

**Table 34: Local Products with their Corresponding Foreign Products**

Local Products	Competing Foreign Products									
	Blankets	Wax	Hollan dias	Knit wear	Brocades	Laces	Baby Shawls	Gray Fabrics	Garments	Textile Materials
Blankets	11.77				5.88		17.65			
Knit wear				5.88						
Nigerian wax		52.94			5.88			11.77	5.88	
Textile materials										47.06
Showals	11.77						23.53			
Laces						5.88			5.88	
Blouse										
Gray fabric								5.88		
Brocades	5.88				17.65		5.88			
Garment		5.88							5.88	

Figures are in %

**Table 36: CTG Industries awareness of law against dumping of foreign goods in Nigeria**

	Freq.	(%)
Aware	2	11.76
Not aware	15	88.24
<b>Total</b>	<b>17</b>	<b>100.00</b>
<b>Antidumping Laws Known</b>		
Customs duties dumping and subsidies govt. act 1958	1	100.00
<b>Propose amendment or repeal:</b>		
Proposed	2	11.76
Not Proposed	15	88.24
<b>Total</b>	<b>17</b>	<b>100.00</b>
<b>Amendment or repeal:</b>		
General repeals	1	50.00
Total over of the law if really one exists	1	50.00
<b>Total</b>	<b>2</b>	<b>100.00</b>

**Table 37: Problems militating against production**

<b>Problems</b>	<b>Freq.</b>	<b>(%)</b>
<b>Presence of problems militating against production in the Industry</b>		
Present	17	100.00
Absent		
<b>Total</b>	<b>17</b>	<b>100.00</b>
<b>Problems militating against production:</b>		
Poor government policies	14	25.45
Poor Electricity supply	11	20.00
Infrastructure	3	5.45
Interest rate	1	1.82
Competition with foreign goods/ dumping	10	18.18
Poor policy on CTG	1	1.82
Multiple taxation charge by the government policies	2	3.64
Inadequate skilled Manpower	3	5.45
Poor Financing	1	1.82
Security Challenges	1	1.82
Inadequate raw materials	5	9.09
local patronage	2	3.64
General High cost of product	1	1.82
<b>Total</b>	<b>55</b>	<b>100.00</b>

**Table 38: Production Capacity**

<b>Capacity</b>	<b>Freq.</b>	<b>(%)</b>
Optimal	-	-
Below Optimal	17	100.00
<b>Total</b>	<b>17</b>	<b>100.00</b>

**Table 39: Signing of Treaty or agreement by Nigeria on trade in future time**

<b>Responses</b>	<b>Freq.</b>	<b>(%)</b>
<b>Encourage signing any treaty or agreement by Nigeria on trade in future time:</b>		
Encouraged	2	11.76
Not Encouraged	15	88.24
<b>Total</b>	<b>17</b>	<b>100.00</b>
<b>Reason not encouraging signing any treaty or agreement:</b>		
it shows that treaties are meant to benefit major world economics not developing economics	1	16.67
It has never benefitted CTG subsector (stakeholder)	2	33.33
Too many were already signed	1	16.67
Should be done in consultation with all relevant stakeholders	1	16.67
Nigeria not ready economically	1	16.67
<b>Total</b>	<b>6</b>	<b>100.00</b>

**Table 40: Intervention Enjoyed from Nigerian Government**

	<b>Freq.</b>	<b>(%)</b>
<b>Enjoyed any intervention from Nigerian government:</b>		
Enjoyed	10	58.82
Not Enjoyed	7	41.18
<b>Total</b>	<b>17</b>	<b>100.00</b>
<b>Benefits enjoyed:</b>		
BOI Loan	8	80.00
EEG	2	20.00
<b>Total</b>	<b>10</b>	<b>100.00</b>

**APPENDIX 5: KANO STATE MAP SHOWING THE SPREAD OF THE INDUSTRIES  
AFFECTED**

