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Coffee, culture, and intellectual property: lessons for Africa from the Ethiopian Fine Coffee Initiative

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THE PARDEE PAPERS / No. 11 / July 2010

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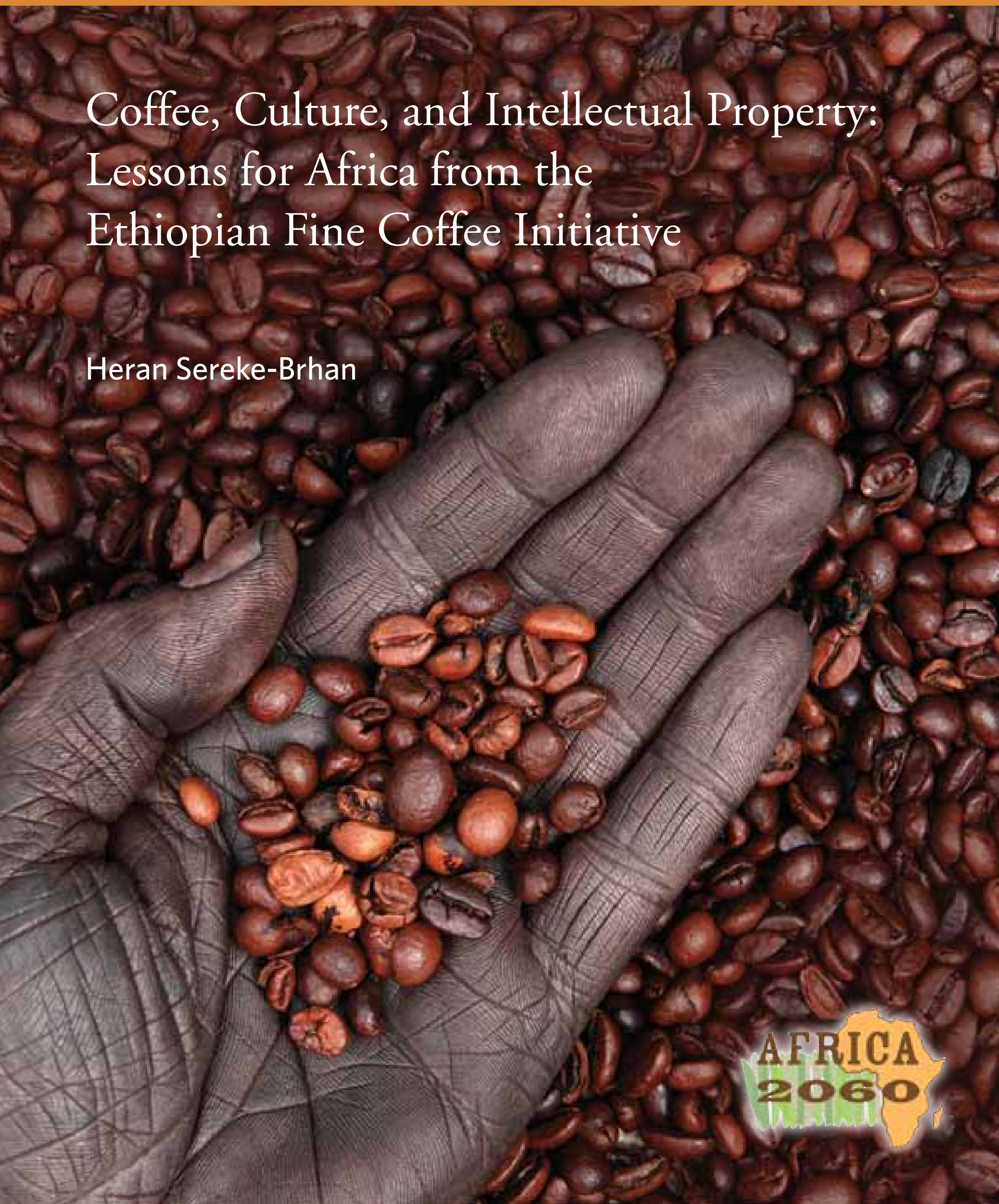
Heran Sereke-Brhan



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Coffee, Culture, and Intellectual Property: Lessons for Africa from the Ethiopian Fine Coffee Initiative

Heran Sereke-Brhan

Abstract

The initiative to register trademark for Ethiopia's fine coffees was launched in 2004. What seemed a quiet progression of actions by the Ethiopian Intellectual Property Office quickly grew to command international media attention. Opinions differed as to whether rightful claim could be exercised over an agricultural product that happened to be growing in a particular location. The fact that a leading specialty coffee company opposed the initial registry attempt added further charge to the issue, as it subsequently became cast as a battle between a country with meager means and an avaricious multinational with little regard or remorse. Little research has been done about this important action and its potential application to other sectors of the African economy and cultural resources. This paper reconstructs part of the initiative in a preliminary exploration of its significance for the future.

The Ethiopian trademark initiative provides the basis to examine related uses of intellectual property rights (IPRs) as a powerful potential tool for development. Lessons learned in this case study suggest similar benefits could be garnered for other African agricultural products that fulfill registry requirements. Even beyond trademarks and commodity products, exercising IPRs to identify and protect creativity offer boundless possibilities for Africa that have yet to be galvanized.

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INTRODUCTION

In recent decades, the legal and economic effects of intellectual property rights (IPRs) have been at the forefront of international trade policy concern. Advocates of greater intellectual property protection note related potential economic benefits, such as increased innovation and the overall stimulation of research and development that would result from investment and risk-taking. Opponents argue that countries with minimal or non-existent research sectors benefit very little from such economic growth and have less means for using IPRs to support their national development. They therefore will not make building an intellectual property infrastructure or participating in the global IP system, embodied by the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement), a priority. As IP is increasingly incorporated into the multilateral trading system, pressure to comply with global conventions and to harmonize practices mounts, further fueling the debate.

In this general setting, the initiative to seek trademark registry for Ethiopian fine coffees provides an interesting example of the use of intellectual property tools. The history of this initiative and its prospects for Africa have yet to be thoroughly studied and analyzed. Through interviews and primary sources, this working paper is an attempt to reconstruct the effort and examine its longer-term effects. The Ethiopian shift in stance towards intellectual property rights suggests broader implications and applicability for other African agricultural products. In addition, by examining how one category of intellectual property (trademark) was used as a business strategy, this paper also considers whether other IP categories such as copyright could afford similar outcomes for culture production and knowledge preservation on the continent.

In developed countries like the United States, corporate income is generated in large part by enhancing a company's intellectual property portfolio. Successful businesses build on the distinction, tradition, or reputation of a product to further enhance its intangible assets. Ethiopia's coffees enjoy an international reputation as high quality beans with distinct flavors and tastes. Rich traditions of production and consumption also indicate the importance of coffee in local culture. Building on these strengths and the country's specific circumstances, the Ethiopian initiative used innovative thinking and strategic negotiations to spur economic growth in its coffee sector.

PROSPECTS OF INTELLECTUAL PROPERTY FOR AFRICA

In the final quarter of the 20th century, market studies in developed countries showed the growing importance of intangible value of products in generating corporate income. Intangible value is defined as the "non-physical characteristics of a product, such as its uniqueness, reputation, or tradition" (Light Years IP 2008, 4). This is represented in a company's intellectual property (IP) portfolio which includes technological know-how, brands, trademarks, patents, and other forms. Because intangible assets have become, in many cases, the greater part of a company's income, its importance has shifted from solely being a legal issue to being a core part of overall business strategy. In the U.S., large and small companies employ IP tools to develop profitable licensing programs or to identify market niches through design and creative packaging of products with greater appeal, which ultimately provide competitive advantage.

A Washington, D.C.-based development group known as Light Years IP suggests that transposing such standard business practices to international export trade would benefit countries seeking to capture higher returns for their products. By employing such strategies, developing countries can shift the focus from increasing the production of commodities (which are often already over-supplied and under-priced) to using IP tools to enhance intangible value determined by uniqueness, tradition, or reputation. Export income will grow as African countries build on particular intangible values—of agricultural or creative products—and manage and control those values through IP strategies. With this goal in mind, Light Years IP served as the technical advisory group for the Ethiopian initiative to register trademark for specialty coffees.

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Within the broader context, this trademark initiative in some ways marks a departure from earlier thinking on intellectual property protection for African products. Specifically, intellectual property was the very tool by which fairer trade issues were brought to the fore and re-negotiated. The approach of combining economic need and business-oriented perspectives on intellectual property rights with the particular demands of the specialty coffee market was innovative. It is important to point out that similar efforts had been successfully undertaken by coffee-producing countries like Jamaica and Colombia. The motive behind the creation of Jamaica/Jamaican Blue Mountain Coffee or Café de Colombia and the fictional coffee farmer character Juan Valdez was all intellectual property protection, although each country took a different approach for registry. As discussed below, Ethiopia's choices had their own set of challenges and subsequent outcomes that invite closer examination.

Ethiopian strategies devised and revised during negotiations with coffee industry players such as Starbucks were forward-thinking. The public support that mobilized for poor coffee farmers was astounding, considering the geographic and socio-economic distance between producer and consumer. With its success, the conglomeration of actors and supporters aligned with coffee producers, and the formal body of the Ethiopian Fine Coffee Stakeholder Committee placed the critical cornerstone in winning what seemed an impossible battle to favorably reposition a developing country in a rapidly changing global economy.

INTELLECTUAL PROPERTY RIGHTS & DEVELOPMENT ISSUES

The question of whether intellectual property (IP) rights provide a useful tool for development is one that has been discussed from legal, economic, and policy perspectives. International agreements for intellectual property protection were launched in the late 19th century with the Paris Convention for the Protection of Industrial Property adopted in 1883 and the Berne Convention for the Protection of Literary and Artistic Works adopted in 1886. The nature of protection varied from country to country, according to how each chose to adapt the rules to its particular needs. Towards the end of World War II, western innovations in radio, television, and satellite technology laid the foundation for a new knowledge economy. Goods and services became the basis of wealth, and the innovative qualities they exhibited provided a competitive edge.

Intellectual property laws were created to protect these innovative qualities. As production and distribution systems improved, so did trade, which in turn increased the risk of exposing such innovative qualities to copying and counterfeiting. All this progress and growth reduced market share of such goods and services. Meanwhile, fearing that the lack of uniform protection laws would rob them of their competitive edge, Western interest groups began to integrate trade and intellectual property to protect wealth created by intellectual capital. The establishment of the World Trade Organization provided the institutional framework to link trade to intellectual property and through the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) it continues to govern the regulation of trade among its member states (Nwauche 2003).

Legal scholars who argue against the primacy of intellectual property laws for development perceive the global system and its governing rules as a mechanism that garners greater protection and income for developed countries, often at the expense of developing countries.[1] Others posit that there is enough flexibility in the system to allow signatories room for development initiatives. The three areas of intellectual property—namely patents, trademarks, and copyright—receive legal recognition and exert control over distribution through such mechanisms as product names or brand identity, ownership of creative works and rights to their reproduction, and payment of royalties.

Although each has its particular legal focus and technical requisites, the common governing principle across intellectual property categories is three-fold: protecting the inventors/creators from counterfeit users; awarding originators economic and moral rights over their works; and making the inventions/creations available for use by the wider public. Managing a balance between these interests is a common subject of contention and negotiation across IP categories. It is often challenging to determine defini-

1. For a similar assertion about the patent system, see Oddi 1987.

tive "ownership" rights over such things as creativity, communal heritage or traditional knowledge, seeds, agricultural products, or biodiversity. At the global level, the issues of who has invested in research or "value-added" transformations and who should share from the benefits of trade complicate such negotiations even further.

Scholars and activists argue that countries with extensive capacity for scientific research and development have perpetual advantage in extracting original materials from developing countries, then transforming and marketing products that are duly protected by intellectual property laws. Whereas these countries are able to finance the immense costs of research, transportation, and value-adding activities, low-income countries are relegated to the role of providing source materials without access to ultimate profits garnered. Across categories, multinational companies that own extensive IP portfolios in certain industries are considered to benefit immensely from this arrangement. Examples are evident in pharmaceutical drugs often developed from locally used medicinal herbs and plants, in genetically modified seed patents, or in cultural and creative industries that appropriate traditional knowledge in textiles, in music, and in the expressive arts (Boateng 2002; Jere-Malanda 2003; Lanoszka 2003; Lanjouw 2003).

The increasing tendency of linking intellectual property rights with trade has placed low-income countries further to the margins of the global economy. Critics of this trend point out that as consumers of Western knowledge production and technology, low-income countries are forced to adopt laws that are not beneficial to them or, worse still, actually work against their national development and policy needs. The threat of losing trade privileges with developed countries creates pressure to comply with the World Trade Organization's TRIPS guidelines. However, even establishing the minimum protection required under TRIPS IP is often very costly for developing nations (Phillips 2001). The fact that countries in the west (most notably the U.S.) relied on decades of complete disregard of intellectual property rights for its economic growth—as seen for example, by the history of its publishing industry (Altbach 1986)—is held as evidence that some measure of leniency in the form of exemptions or favorable compulsory licensing terms should be actively enforced in the global system.

At the global level, African countries are faced with numerous challenges in exerting their intellectual property rights. Arguably with the exception of South Africa, legal mechanisms and the capacity to pursue IP protection and ensure its enforcement are lacking. The high costs associated with obtaining appropriate counsel and registering for international IP ownership are prohibitive. Another recurring difficulty observed across IP categories is conceptually fitting the parameters and fulfilling the numerous technical requirements required for legal recognition. For instance, the continent's vast richness in traditional knowledge is difficult to measure by way of individual creator or sometimes even singular origin.[2] The very system that makes commodities out of knowledge and creativity through intellectual property rights may also run counter to cultural values. In cases that involve trans-cultural exchange and trade, individuals and communities might be offended or even exploited by a copyright system that focuses on financial value and makes a marketable commodity of sacred knowledge and rites.

It is perhaps prudent to observe that models of protection for intellectual property must ultimately factor in fundamental differences in values that underlie political, social, cultural, and legal institutions (Aoki 1998). The complex issues of whether protection of intellectual property rights is critical for development and who is positioned to benefit the most from its global application continue to be fiercely debated.

The Ethiopian coffee trademark initiative considered in this paper provides a salient example of a shift in thinking best summarized in the words of the former Ethiopian Intellectual Property Office Director General, Getachew Mengiste: "I believe that every country, whether poor or rich, has the capacity to create intellectual property assets…The difference lies in the fact that developed countries recognize the value of these assets and protect them…In many developing countries, people perceive intellectual property as being in the interest of America, Europe, and Japan…It is based on the wrong assumption that there are no inventors and creators in developing countries…Intellectual property, if properly used, can meet the needs of

2. Sherylle Mills explores these difficulties of fitting indigenous music to copyright requirements of "author" or "tangibility and originality" (Mills 1996).

countries like Ethiopia."[3] Ultimately, the prevailing global IP framework continues to posit developing countries as net importers of knowledge. Within these delineations, the Ethiopian initiative is an example of incremental steps that can be taken to recognize the importance of intellectual property protection and its uses for a developing country.

WORLD TRADE IN COFFEE

Although areas of coffee production have changed over time, some contend that as early as the sixth century Abyssinia (now Ethiopia) was the principal region supplying the Arabic world. Coffee was imported into what is now Yemen sometime around the 15th century, or even earlier (Pankhurst 1997, 518). Dutch explorers and entrepreneurs then took coffee to areas of Southeast Asia including Ceylon, Timor, and Sumatra. The Dutch East Indies soon became the most important region in the world for coffee. Between the 16th and 19th centuries, other colonial powers introduced coffee into their territories. The French established coffee on the Caribbean island of Martinique and this, along with Dutch introduction of the bean in South America, would provide the source for much of the New World's coffee industry (Rice 2003).

Like other prime commodities in the world market, the supply of coffee generally tends towards overproduction, which results in periodic steep price hikes and falls. Between 1999 and 2004, the decline of coffee prices to a 30-year low in the international market reverberated globally. Critics link this downturn and oversupply to the policies of multi-national financial institutions and development banks (IMF, World Bank, and the World Trade Organization in particular) that offered advice or loans to help low income coun-

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3. Personal communication with Getachew Mengiste, 5 February 2010, and Kurata 2008.

tries to produce more coffee for export. Arguable as this link may be, the most significant outcome occurred in Vietnam, which went from being a small producer in the early 1990s to the second largest by 2000. This outcome did not necessarily result in corresponding improvement of farmers' livelihoods, in part because oversupply kept prices low.

The crisis caused coffee farmers and their families (estimated to be between 30 to 60 million by the World Bank) to suffer innumerable financial and social hardships. In Latin America and Africa, it prompted mass migrations to urban centers. Farmers who decided to stay on grew different crops on their land. In Ethiopia, many abandoned coffee cultivation, resorting to the more lucrative *khat* or *qat.* Considered a narcotic in the U.S. and in most European countries, qat is widely consumed in the Middle East and the Horn of Africa. A fast-growing crop that is generally drought and pest resistant, qat requires minimum labor and maintenance. Qat leaves are chewed as a stimulant and its increasing demand locally and for export guaranteed a change of fate for farmers as a bushel of qat may be sold for as high as $9, while coffee would bring $0.01.

The drop in coffee prices cost the country $1.12 billion in lost export revenue from 1995 to 2000. The crisis severely challenged Ethiopia's capacity to generate foreign exchange and to meet balance of payments as the income lost from decline in coffee revenues amounted to almost twice as much as the IMF debt ($58 million). Erratic instability of coffee prices also made it difficult to pursue development goals and articulate longer-term policy interests.

Besides price volatility and overproduction, particular characteristics of the coffee industry also have an active role in shaping the market. On the consumer end, demand is not affected greatly by price changes. On the supply side, farmers may be able to increase their yield in the short term (using fertilizers, for instance). But the cyclical nature of growing coffee requires from three to five years to reach full production and the built-in lag may result in overproduction and price-inelasticity (Rice 2003, 223).

Added to this effect was the fact that the New York Coffee, Sugar and Cocoa Exchange (CSCE) price, which functions as the main futures market reference price and ultimately controls prices paid to farmers, indicated a vast difference in prices paid to producers in exporting countries and the retail prices recorded by importing member countries. The International Coffee Organization (ICO) reports that between December 1999 and September 2001, the futures market price fell by 57 percent due to oversupply, yet during the same period, U.S. retail prices only fell by less than 10 percent (Rice 2003, 224).

This disparity was noted by the Chairman of the World Coffee Conference in 2001:

> "In the 1980s . . . the final consumer spent around $US 30 billion on coffee; of this total, exporting countries took around $9–10 billion annually, representing around 30–33 percent. The latest estimates indicate that the final consumption now accounts for around $US 55 billion annually and producing countries receive less than $US 8 billion, representing only some 15 percent. This imbalance between the behavior of export and retail prices deserves in-depth analysis."[4]

It is important to note that the coffee industry has two distinct sectors: "industrial" or commercial coffees (which constitute canned or instant blends), and specialty or gourmet coffees. The U.S. is the highest consumer of world coffee followed by Germany and Japan. Up to a half of all purchases are dominated by one German and four U.S. manufacturers: Tchibo, Kraft Foods (Maxwell House), Procter & Gamble (Folger's), Sara Lee (Hills Brothers), and Nestlé. Industrial coffees generally make more use of lower quality "Robusta" beans in their blends. Specialty coffees constitute a much smaller volume accounting for about 10 percent of all

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4. Remarks by Jorge Cardenas, Chairman of the World Coffee Conference and General Manager, National Federation of Coffee Growers of Colombia, during the Opening Statement at the World Coffee Conference, London, 17 May.

coffee exports. Such coffees represent about 15 percent of the unit volume of all coffee sold in the U.S., 40 percent of gross sales, and about 55 percent of the gross profit dollar sales. Retail estimates in 2001, which combine coffee beverages and coffee bean sales, measured the total U.S. specialty market at nearly $11 billion (Rice 2003). Even while growers were suffering, international companies were able to reap record profits by taking advantage of low prices.

Despite the fact that Ethiopia was producing the Arabica beans most sought-after by the gourmet industry, its selling price continued to be pegged to that of the New York CSCE's commodity price. Coffee sold on the international commodity market and that sold as final product to Western consumers were becoming increasingly different from each other. The difference between commodity market and retail price was accounted for in part by the value accrued to the "symbolic" attributes of specialty coffee such as territory, a story, ideas, and the exotic (Petit 2007; Schüßler 2009). The strategic thinking adopted by the Ethiopian coalition was that this gap between market export and retail prices needed to be better aligned to ultimately channel value added to coffee producers and farmers.

The need to de-link the price of gourmet coffee beans from the New York futures market price was similar to the commonly held view in the specialty coffee industry that prices should be based less on the "material" quality of beans as a commercial commodity than on intrinsic considerations of quality (aroma and taste) and costs of production. Furthermore, the failure to pay higher prices for quality at the farm level was also threatening the very base of supply of the specialty coffee industry and its longer term "economic viability" (Ponte 2002, 16).

One response by the specialty industry to this threat was to experiment with different forms of coordination such as "relationship coffees" that try to create a connection between producers/locations and consumers. Because single-origin coffees are a fundamental element of the specialty coffee industry, the tendency grew to sell "stories in a cup" by sharing intimate knowledge of the growing process and emphasizing intrinsic qualities. As a marketing philosophy, this created both a niche and demand by enlightened and "educated" customers who would eventually seek to consume high-quality single-origin coffees instead of blends that "mixed" beans from unknown locations.

What has been termed the "coffee paradox" marked a departure from assumed economic models of supply and demand. The price of global (green) coffee fell despite increased demand for coffee by consumers in developed countries, and producing countries experienced sharp decreases in their export income. Between the late 1990s to around 2004, the world coffee market was characterized by a boom in consumer countries and a corresponding crisis in producing countries.[5] Among the causes was that the market was awash with low-quality Robusta coffee beans. The oversupply harmed producers but resulted in coffee roasters being able to raise their profit margins as international prices dipped to record-setting lows (Schüßler 2009, 151). At this same time, the growing consumer market for specialty coffee meant that this sector recorded increasing price premiums even during the crisis. The specialty coffee industry was in dire need of high-quality coffee of the kind that Ethiopia produced. Ethiopia's Yirgacheffe, Sidamo, Harar, and several other Arabica coffees, could easily be geared towards this higher-price niche market.

The price of global (green) coffee fell despite increased demand for coffee by consumers in developed countries, and producing countries experienced sharp decreases in their export income. Between the late 1990s to around 2004, the world coffee market was characterized by a boom in consumer countries and a corresponding crisis in producing countries.

An analysis of the specialty coffee revolution also provides some insight into changing consumption patterns (Brendt and Durant 2006). Following World War II, coffee-producing countries of Africa and Latin America formed a cartel with the U.S. that was intended to stabilize volatile prices and guarantee some type of aid to coffee-producing countries. Production quotas for coffee exports were fixed. When the agreement collapsed in 1989, countries that had been unable to compete based on quantity production (as dictated by the agreement) turned to quality production. This resulted

5. The term was coined by Daviron and Ponte, 2006.

in an increased variety of high-quality beans being available at lower cost and ultimately allowing for the expansion of the specialty coffee industry (Brendt and Durant 2006, 4).

Set into motion by rapidly expanding specialty retailers, this “revolution” introduced and marketed coffees in a new way to a new kind of consumer with environmental savvy and “fair trade” concerns. The industry’s leader was Starbucks Coffee, which opened its first outlet in Seattle in 1971. In its publicly projected values and institutional demeanor, Starbucks embodied an alternative vision of a “gentler” global business with good corporate citizenship and social responsibility at its core. Its steadily increasing growth indicated strong retail market potential, and that potential appears to have been realized as sales in U.S. coffee shops rose by more than 19 percent *per year* between 2002 and 2007 (*Tea and Coffee Trade Journal* 2007). To its great credit, Starbucks was also among the first in the specialty coffee industry to take the initiative of introducing and packaging single-origin coffees that served to promote products and their source to consumers.

Ethiopia was well positioned to explore possibilities presented by the rise in demand for specialty coffees: with its vast range of genetic variety, its acclaimed high-grade Arabica coffee, and local knowledge of production, the country could seek to capture part of the retail price, which would raise export earnings and farmers’ incomes. With such a strategy, vulnerabilities to the global market price and its volatility would be kept at minimum, and greater control could be exercised over distribution. One path leading to this end was to explore the potential of intellectual property rights for Ethiopia’s fine coffees.

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THE PLACE OF COFFEE IN ETHIOPIA

In at least one version of the story, the discovery of coffee owes much to the gastronomical adventures of goats and their mythical herder, Kaldi. The young boy noticed the excited prancing of his goats that had wandered up a hill to eat the leaves and red beans of nearby shrubs. Kaldi's own curiosity got the better of him, and he ventured to try chewing the somewhat bitter leaves and beans himself. Happy with its stimulating effect, he shared his findings with a monk who, as this version goes, went on to perfect the art of roasting, grinding, and brewing the drink for fellow monks. Coffee kept them awake and alert in their long hours of prayer and devotion, and it was quickly adopted as the beverage of choice among the clergymen.

Over the ages, the practice of drinking coffee has been alternately banned and accepted by both Christianity and Islam. In 1511 orthodox imams at a theological court in Mecca banned coffee though the popularity of the drink led to an overturn by Ottoman Turkish Sultan Selim I in 1524. In Ethiopia, the strong association of coffee with Islam and indigenous religious practices initially made its consumption taboo among the Christian population. Early nineteenth-century travelers observed this aversion that seemed to have lessened towards the latter half of the century, perhaps due in part to coffee-drinking by Egyptian *Abun*s who served as head of the Ethiopian Orthodox Church.[6] By the first half of the 20th century, coffee was widely drunk among the nobility, and travelers also noted its availability in the homes that hosted them.

COFFEE & ETHIOPIAN CULTURE

Ethiopia is considered to be the oldest exporter of coffee, and in 2005 was the sixth-largest coffee producer and seventh-largest exporter worldwide (Petit 2007). These facts indicate the importance of coffee as a commodity, but do not adequately reflect its immense cultural and social significance for Ethiopians. Coffee preparation and consumption is included in Islamic and Christian religious celebrations. It also serves as a key element in sacred ceremonies and rituals associated with indigenous religions. In Oromo

6. *Abuna* Matewos is noted as an important protagonist of coffee-drinking during Menilek II's reign (r. 1889–1913) (Pankhurst 1997).

traditional belief systems, coffee is assigned a ceremonial role and its consumption as part of a ritual meal is thought to bring blessings through invocations and prayers. In parts of Wallo (northern Ethiopia), coffee is thought to have spiritual powers to safeguard the household, and is thus venerated. (Pankhurst 1997, 524). A women's ritual known as *Atété* makes use of coffee as a symbol of penance for offenses committed. Possession cults known collectively as *zar* and believed to have begun in the northern highlands also use coffee in various capacities to rid afflicted persons of unwanted spirits, or to stimulate recitations and prayers (Pankhurst 1997, 526).

Beyond the religious context, the modern coffee ceremony, which borrows some practices from these antecedents, is an integral part of Ethiopian culture. Preparation is usually done by a woman who sits on a stool before a small charcoal brazier, slowly turning a handful of washed coffee beans on an open pan. The heady aroma of browning beans is mixed in with perfumed frankincense smoke and the smell of fresh cut grass and flowers strewn around the coffee brazier. The woman often makes her round with roasted coffee in the pan, the better to give her guests a closer whiff of the beans, before they are manually ground with pestle and mortar. The coffee is then brewed with water in a clay *jabana* and served in small cups without handles. The coffee may be drunk with or without milk, sugar, and in some regions salt or butter.[7]

Traditionally, coffee is boiled three times (*abol*, *tona*, *barakaa*) and guests are expected to drink a minimum of a cup of each session. These terms, as well as the name of the coffee pot, indicate strong links to Arabic practices.[8] The coffee ceremony is one around which neighbors and friends gather to exchange news and advice. Women may choose to continue their work, spinning or basket weaving in the company of friends over coffee. Consumed in this way, the socio-cultural significance of coffee cannot easily be quantified as it serves immense purpose in human relations. Ethiopia and Brazil are two of the only producing countries with a strong coffee-drinking culture (Petit 2007, 241). Although difficult to measure, local consumption

7. Fresh coffee beans could be eaten salted or spiced and fried in butter. Coffee leaves and husks are also prepared for drink in the northeastern and southwestern areas of Ethiopia.
8. *Jabana* is an Arabic word, as are *abol* or *awol* (thought to derive from *awaal* meaning "first"); *thani* means "second," and *barakaa* translates as "blessing." See Pankhurst 1997, 524.

accounts for around 40 percent of the trade (Petit 2007, 245), and may well have mitigated complete collapse of its trade in times of global crisis.

Towards the end of *barakaa*, an elder may rise to offer blessings and prayer: "May your family live and your house stay in peace; May your children grow well and may the Lord grant you the grace/blessing He has bestowed upon coffee."

THE PLACE OF ETHIOPIA IN COFFEE HISTORY

Ethiopia is now unequivocally recognized as the birthplace of coffee, whose name itself is regarded by most to have been derived from Kaffa in the south west of the country, where coffee still grows wild in mountain forests.[9] Preserved in local gene banks and research centers such as the Jimma Agricultural Research Center and the Institute of Biodiversity Conservation (in the southwestern town of Limu), the variety of coffee beans is registered to be over 6,000. This wealth of diversity attests to Ethiopia's claim of origins, and links the survival of the world's largest genetic pool to its adequate conservation. According to the International Coffee Organization (ICO), 70 percent of world coffee production is commercial grade Arabica beans, and only a few varieties of these beans supply most of the coffee drunk in the world. The ability to develop new varieties that can overcome disease depends on the survival of these wild varieties in Ethiopia (BBC, June 2000).

There are two types of coffee beans that are further classified for trade in the global market: Arabica and Robusta. *Coffea arabica*, popularly known as Arabica coffee, grows in drier climates with mountainous elevations of 1,000 meters or more above sea level. It takes longer to reach maturity (three to five years) and is described as aromatic and flavorful by coffee connoisseurs and tasters who rank it as the highest quality specialty coffee. Its retail price may fetch from $15 to over $25 per pound on the global market. Arabica is distinguished from *Coffea canephora* or Robusta coffee, a more disease-resistant bean which grows in less time and at lower altitudes. Ideal

9. This etymological connection was speculated by 18th- and 19th-century travelers to Ethiopia (Pankhurst 1997, 518).

for instant coffee, Robusta is often mixed in with other beans to round out flavor.[10]

The total share of coffee exports from African countries is relatively marginal to world trade in coffee (Ponte 2001, 11). Nonetheless, some African producers play an important role in the market for the volume of production (Ivory Coast and Uganda for Robusta and distinct Robusta, respectively) and for fine quality coffees (Ethiopia and Kenya). Ethiopia is the largest producer of Arabica coffee in Africa, and as an economy based on agriculture, relies heavily on the foreign exchange generated by its export trade. Indeed, coffee now accounts for around 35 percent of Ethiopia's export (down from the earlier higher figure of around 60 percent), though it constitutes less than three percent of the global trade, dominated by Brazil, Vietnam, and Colombia. This figure may seem negligible in light of global trade in coffee, which ranks worldwide as the second most sought-after and traded commodity next to oil; its significance lies in the fact that Ethiopia produces the most highly prized quality Arabica beans and thus plays an important role in the "global value chain" (Petit 2007, 232). Recognized by experts in the specialty industry, Ethiopian beans are distinguished from commercial variety Arabica and are often used to "upgrade" coffee blends to enhance overall flavor and aroma.

Centuries of local knowledge of coffee cultivation in different regions of Ethiopia have produced distinct coffees such as Harar, Yirgacheffe, and Sidamo which are described by connoisseurs in specific terms such as "fruity," "citrusy," "aromatic," "clean and with bright acidity," and "with dark chocolate notes."[11] By most estimates, close to 15 million (or one in five) Ethiopians depend directly or indirectly on coffee for income. Cultivated by small farmers, the coffee is shade-grown generally without the use of fertilizers. One of four production methods (forest, semi-forest, garden, and plantation) is used to cultivate coffee and nearly all coffee so produced

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10. The scientific name was given to the coffee plant by Linnaeus in 1753. More than a century prior to Linnaeus, coffee was identified by its Ethiopian common name *buna* (Pankhurst 1997, 518).
11. Ethiopian Yirgacheffe, described as a "darker roast with a complex flavor suggesting dark chocolate, woodsy juniper, and juicy blueberry," was deemed a rare find, given it is certified organic. It won top (Gold) honors at the Specialty Coffee Association of Americas (SCAA) Roasters Choice in a testing competition in Minneapolis, Minnesota, on May 5, 2008. www.cariboucoffee.com/asp/shop/details.asp.

is fully organic. After harvesting, coffee is processed in one of two ways: dry or wet. Though "washed" coffee receives higher market price, most of Ethiopia's exported coffee is naturally (sun) dried by farmers before they remove the husks and transport them to markets.

TRADEMARK REGISTRY FOR ETHIOPIA'S COFFEES

Getachew Mengiste, former Director General of the Ethiopian Intellectual Property Office (EIPO), established in Addis Ababa in 2003, is credited by many as the force behind the trademark registry initiative.[12] EIPO partnered with Light Years IP to examine this potential and in conjunction with the Ethiopian Fine Coffee Stakeholders Committee, made up of cooperatives, private coffee exporters, government bodies, and others with direct involvement in the Ethiopian coffee sector, launched the Ethiopian Coffee Trademarking and Licensing Initiative in 2004. Funded by the UK Department for International Development (DFID), this initiative sought to increase Ethiopia's revenues from fine coffee exports and ultimately raise farmers' income through intellectual property-based business tools.

By identifying points in the supply chain where value could be added, Light Years designed an IP export solution that would capture a larger share of intangible value for Ethiopia's fine coffees.[13] The three-step strategy aimed to:

1. Take control of brands by trademarking Harrar, Sidamo, and Yirgacheffe,
2. Develop an enforceable brand management system so that importers, distributors, roasters, and retailers who wish to use Ethiopian fine coffee marks to sell their coffee would do so with Ethiopia's permission (through licensing), and
3. Use the powers gained from licensing to improve negotiating position to raise income.

12. EIPO was established as a service and development-oriented agency guided by the strong belief that IP could be used as a development tool. It carried out a comprehensive study of regional and international experiences and assessed Ethiopia's needs (Mengiste 2010).
13. See Light Years IP 2008.

Meanwhile, in June 2004 Starbucks filed an application with the United States Patent and Trademark Office (USPTO) to register the "Shirkina Sun-Dried Sidamo" trademark. This act garnered unexpected attention only when the Ethiopian Coffee Trademarking and Licensing Initiative filed its own application with USPTO in March 2005 to trademark three of its specialty coffees: Harrar/Harar, Sidamo, and Yirgacheffe. The Sidamo name was included in the Starbucks application and this was cause for major contention.

A key strategic decision was made by the Ethiopian team and its legal counsel Arnold and Porter LLP to seek regular trademark registry and not geographical indicators for these fine coffees. Although both approaches ultimately result in intellectual property protection, it is worth noting their distinct differences in technical requirements, in the capacity to enforce, and in circumstances of production. Lennart Schüßler's comparative study of Colombian and Ethiopian coffee registry offers useful insights in this regard. The author notes that Café de Colombia's registry under geographical indication (GI) and the Ethiopian Initiative's request for trademark each offer mixed blessings that might only be determined by the particularities of the global coffee market.

In the former case, the National Federation of Coffee Growers of Colombia (with an established presence since 1927) chose to develop a comprehensive marketing strategy that included the intangible qualities of its product. This way, Colombia combined the advantages of the two concepts: comprehensive protection offered through geographic indicators, with a license agreement (offered through trademark) for use of its popular Juan Valdez logo.

Schüßler contends that with fewer resources, Ethiopia will come to depend more heavily on the promotion of licensed distributors, retailers, and roasters who will increase public knowledge of its specialty coffees. GI certification may also prove difficult and costly for Ethiopia as coffee is produced by small-scale farmers located in dispersed regions. A GI certifying body would face insurmountable challenges to ensure standard compliance in Ethiopia, whereas plantation-style production as in Colombia is easier to monitor. Finally, the author notes that geographic indication schemes are more costly and involve a longer process for a country like Ethiopia, which would have to start the process from scratch (Schüßler 2009, 167–171).

The Ethiopian decision to pursue trademark registry was hotly contested.[14] Starbucks opposed the petition, proposing the geographical certification model instead. The company argued that this model—basically the same as geographic indicators—would help farmers receive a higher price for better quality coffee, while obtaining trademark might invite legal complexities that would eventually discourage buyers and hurt farmers.

Despite pressure, the Ethiopian coalition insisted that trademarks would add more value for the producer. From their perspective, the benefits of trademark were seen to offer better leverage in negotiations regarding distribution. Further, securing trademarks would not stand in the way of later acquiring geographic indicators—whereas obtaining the latter first would disqualify efforts to apply for trademarks. That the three Ethiopian fine coffees were distinct and identifiable in taste could be verified by means of a cupping test—making them more suitable for trademark registry than for geographic indication, which would have no such requirement (Assefa 2009; Luxner 2008).

In the U.S., industry support for this move was withheld. The National Coffee Association appeared to support denial of Ethiopian registry, arguing that the names had become generic terms for styles of coffee. Initially, efforts to engage Starbucks in discussion were ignored even as the Ethiopian coalition sought to secure the company's voluntary agreement in acknowledging Ethiopia's ownership of the names Sidamo and Harar.[15]

As discussions stalled with trademark registry, it also became clear to the Ethiopian Initiative team that costly lawsuits and legal battles against a global corporation such as Starbucks would ultimately prove futile. The strategic decision was made to conduct matters in the public domain and with broad-based support. Oxfam's decades-long involvement and advocacy in the fair trade movement, which seeks to provide a living wage and fair prices

14. The advantages and drawbacks of each approach are still debated. See Schüßler 2009 and Hughes 2009. Hughes cites a useful distinction by Daviron and Ponte (2006): "Trademarks enable the 'consumption of an enterprise.' Geographic indications facilitate the 'consumption of place'" (Hughes 2009, 60). An article supporting Starbucks' advice for Ethiopia to pursue standard approaches to intellectual property (that is, not trademark) appeared in Economist.com, 7 November 2006.
15. Part of the legal registry procedures for Harar/Harrar coffee can be viewed online at www.schwimmerlegal.com/Harrar%20office%20action.pdf.

for farmers and producers, made them a natural ally. The organization was already working with coffee cooperatives in Ethiopia, one of whom was featured in an Oxfam-commissioned film, *Black Gold*.

Furor generated by the film coincided well with the issues of intellectual property raised by the Ethiopian coalition. Directed by British documentary filmmakers Nick and Marc Francis, *Black Gold* follows the story of an Ethiopian coffee cooperative set in the broader context of the unfairly skewed world trade system that keeps low-income countries marginal and perpetually dependent on aid. The difficult livelihoods of coffee farmers are juxtaposed provocatively against the high retail value and lifestyle brand marketed with specialty coffee. *Black Gold* raised media attention and consumer concern for ethical and equitable practices that would guarantee farmers' income for basic needs. The grounds by which Ethiopia lay birthright claims to its unique fine coffees and the right of its farmers to a better life as custodians of this "gift to the world" was gathering moral force.

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By October 2006 Oxfam International had mobilized more than 90,000 signatures and petitions by Starbucks customers and activists demanding that the company discuss Ethiopia's request and acknowledge the country's ownership of Sidamo and Harar coffees. The movement gathered impetus as the Starbucks Workers Union joined in and issued a statement asking the company to honor its commitment to coffee farmers (IWW Starbucks Workers Union 2007). These efforts culminated in a Starbucks Day of Action on 16 December 2006, signaling new levels of commitment in the public campaign. Ethiopian community members, regional fair trade coalitions, university students, and concerned activists took posts outside

Starbucks coffee shops, wielding banners and posters and engaging employees and clients with their concern. This act began to shift consumers' thinking about the Starbucks brand, hitherto considered relatively ethical and more socially responsible in its practices.[16]

The combined and coordinated effort of the Ethiopian coalition and Oxfam and supporters seemed to have approached its goal when Starbucks agreed to no longer oppose Ethiopia's trademark applications. Yirgacheffe was granted registry first, followed by Sidamo and Harar/Harrar, and Starbucks eventually withdrew its application for "Shirkina Sun-Dried Sidamo." Yet, significantly, it continued to refuse signing a licensing agreement. Even while there was no fundamental agreement on the trademark issue, meetings between senior officials of the Ethiopian government and Starbucks resulted in joint press statements that were criticized as empty public relation moves to lessen mounting pressure on the company.[17] Because Starbucks was considered a leader in the specialty coffee industry, its hesitation to support the trademark request likely created doubt and hesitancy among others. Despite this, about a dozen companies, including Green Mountain Coffee Roasters, the second-largest specialty coffee distributor in the U.S., announced their acceptance of Ethiopia's position and agreed to licensing arrangements.

On 3 May 2007, a joint statement by the Ethiopian Initiative and Starbucks signaled the beginnings of a truce: Starbucks agreed "in principle" to sign an agreement that recognized the importance and integrity of Ethiopia's specialty coffee names. The agreement was concluded on 22 July 2007, but details were not made public—a point sorely criticized by supporters of the campaign.[18] The conclusion of the "Ethiopia-Starbucks Saga," as it came to be known, witnessed the company's announcement of plans to build support centers for Ethiopian coffee farmers—plans that were still in the works in March 2009.

16. Chronology of activities available at "Coffee Politics" (poorfarmer.blogspot.com), a blog by Wondwossen Mezlekia, a committed volunteer and active voice contributing to and monitoring debates on Ethiopia's coffee and the fate of its farmers.

17. See Ethiopian Intellectual Property Office 2007.

18. See for example "Ethiopia Got More Not Less Says Government," poorfarmer.blogspot.com, 30 July 2007.

BEYOND THE INITIATIVE

By most ethical measures, the Ethiopian coalition's task of securing trademarks for heritage coffees was a success. Sidamo, Harar/Harrar, and Yirgacheffe were registered in about 30 countries and over 80 companies have since joined the network of licensed distributors, committing to partner in protecting Ethiopia's coffee brands. In May 2008, Ethiopia was invited to become the first African "Portrait Country" at the 20th Annual International Exhibition and Conference of the Specialty Coffee Association of America (SCAA) held in Minneapolis. The new brand identity for the three trademarked coffees was designed and unveiled. Festivities showcased Ethiopia's rich cultural heritage and its unique place in the history of world coffee. Ethiopia's featured participation at this important annual conference signaled widespread industry recognition and willingness to forge new partnerships.

Most importantly, Light Years IP cites from a report by the Ethiopian Ministry of Trade and Industry (June 2008) that the stronger negotiating position gained after trademark registry led to the capture of an extra $100 million of coffee retail value in 2007/8.[19] It is difficult to ascertain whether the increase was a direct result of trademark registry. What is significant to note, however, is that the volume of coffee produced had not increased, only the price. This indicates a link to the latent potential of exercising intellectual property rights.

Using these tools to enhance intangible value for an export product also points to potential for other African countries.

There were numerous factors that led to this outcome. First, Ethiopia produced high-quality Arabica coffee beans, which fulfilled the requirements of single-origin distinction and provided the basis for pursuing the case through intellectual property tools. Distinctively flavored beans produced in different regions were already internationally recognized. Using these tools to enhance intangible value for an export

19. Light Years notes that while Ethiopia was receiving export income of $100m in 2006/7 from the export of three highly respected fine coffees, this coffee was generating over $1,500m in retail markets worldwide. See www.lightyearsip.net.

product also points to potential for other African countries. Second, that these fine coffees could be marketed on their own merits and with no links to the commodity price of coffee meant that they could draw a higher retail price, potentially generating an income that could be distributed further down on the supply chain.

Doctrinal issues aside, both parties could strongly agree that farmers' livelihoods had to change in the foreseeable future and that a structural shift had to occur in the nature of relations. One can surmise that the specialty coffee industry would have vested interest in improving farmers' lives as it would rely on the supply of consistently high-quality beans for longer-term economic viability. Whereas the normal business model may dictate keeping costs of production low further down the supply chain, it became clear that this short-term rationale could not be sustained for the specialty coffee sector, and that a deeper matrix of interests needed to be identified (Assefa 2009).

The skillful handling of the negotiation process and the leading personalities involved also lend insight into the success of this initiative. The Ethiopian coalition chose to pursue trademark registry and not geographical indicators for fine coffees—a departure from mainstream practices. One drawback anticipated by global companies and discouraging business interests in trademark products is the high cost of royalties that have to be paid for use of licensing agreements and brands.

The Ethiopian team's decision to not collect royalties for the first few years and offer free licensing agreements in exchange for commitment to promote Ethiopian fine coffees was unprecedented. Building the reputation of these coffees around the brand was seen as priority. For the first time, the network of licensed companies would provide Ethiopian coffee stakeholders with information on retail demand that would help in price negotiation for producers and exporters. These terms and actions indicated foresight on the part of the Ethiopian coalition in thinking of long-term economic gains. It also illustrated the options of greater bargaining power attained through exercising trademark rights.

The move to conduct affairs in the public eye was also of significant strategic importance. Legal expenses associated with battling a global corporation such as Starbucks would have been prohibitive for the Ethiopian coalition. Mention must be made of the internationally renowned legal counsel for Ethiopia, Arnold and Porter LLP, who offered thousands of dollars of pro-bono work to represent the coalition. The public nature of the contestation for ownership of fine coffee names invited broad support and solidarity of purpose with non-governmental organizations working on rural development issues. Oxfam's role in mobilizing immense support for this cause and sustaining media interest was critical.

The negative publicity generated for Starbucks was ironic, if sometimes thought to be undeserved (Hughes 2009, 108–109). The company enjoyed brand recognition and distinction as a successful retailer that took initiative in doing business "differently"—with an eye to promoting knowledge of the product and fair trade practices. Also, the fact that Starbucks bought only around two percent of its fine coffee from Ethiopia and had already begun introducing single-origin coffees to its customers made it an unlikely target for controversy.[20] From the perspective of the Ethiopian team though, for these very reasons, Starbucks was one of a few companies that *could* be engaged and held to higher standards. In the course of the trademark negotiations, Starbucks Corporation, the world's largest coffee distributor, was converted from an opponent into a licensee and vigorous supporter (Kurata 2008).

Moments of lightness and camaraderie experienced during parts of the negotiation owed much to the personalities involved. The Ethiopian Ambassador to the U.S., H. E. Dr. Samuel Assefa, marshaled the exchange forward with warmth and humor. The Ethiopian request seemed to have resonated with Howard Schultz, founder, board chair and CEO of Starbucks, who ultimately responded in accordance with his personal values and the founding tenets of his company. The diplomatic tone set during negotiations was consciously cultivated and carried through until the end when the outcome was declared a win-win-win for all involved (the Ethio-

20. Following the trademark registry, Starbucks increased its purchase of Ethiopian coffee by 400 percent to about 10 percent of its total purchases. See Luxner 2008.

pian coalition, Starbucks, and Oxfam). Portrayed in this positive way, any inclination towards corporate bashing quickly abated and a new and more optimistic platform for extending notions of social responsibility in business practices was launched.[21]

While it is difficult to quantify the initiative's immediate effect, Ato Tadesse Meskela, the representative of the Oromia Union of Cooperatives (featured in *Black Gold*) reported securing higher prices and observing improved negotiating positions in his dealings with international roasters and buyers. The potential for product differentiation is considered high for Ethiopia, with its wealth of genetic resources and good growing conditions. Ethiopian semi-washed coffees and good quality unwashed coffees present further potential for world markets. Sustainable coffees in Ethiopia also present immense potential—90 percent of production is considered organic—and this gives the country a natural advantage in markets for organic coffee (Petit 2007, 253).

Many more challenges remain before tangible benefits from trademark registry and the fundamental aim of securing greater share of retail coffee prices to benefit producers and exporters are attained. Critical funding for continuing the work, such as preparing brand guidelines and monitoring or enforcing their application with licensees, is lacking. One of the vital forces in launching the project, Getachew Mengiste has since left his position as Director General of the Ethiopian Intellectual Property Office (EIPO), and this may have adversely affected continuity of the project's work. Also, brand management, promotions, and distribution control are highly specialized areas that fall beyond EIPO's expertise and may require other institutional commitment and stewardship.

Even more complex issues have yet to be resolved. Questions remain concerning who decides on the distribution of income generated from exports, which farmers will benefit, and how this income will reach coffee producers. The recently launched Ethiopian Commodity Exchange (ECX) with its expressed intent of improving transparency and efficiency in Ethiopia's

21. It is important to note that trademarks had already been secured in Europe (EU) and Canada, along with 28 other countries, by February 2008.

commodity markets provides one mechanism. The challenge is in designing appropriate responses within a commodity market for the needs of the specialty coffee sector. As recently as October 2009, the Specialty Coffee Association of America and the Ethiopian Commodity Exchange were discussing strategies on addressing issues of quality grading and traceability of sources—issues that are central to the specialty coffee industry in providing single-origin coffees to consumers.

LESSONS FOR THE LONGER TERM

The success of Ethiopia's trademark initiative for fine coffees can be attributed in part to the particularities of the case: the strategic approach adopted, the caliber and disposition of personalities involved, and the skillful handling of negotiations despite the many odds. Instead of in court and behind closed doors, the battle over ownership of coffee names took place in the public eye and with the support of a prominent development group.

The original intent of trademark registry had little to do with Starbucks until the contention over the name Sidamo arose. However, the negative publicity generated took aim at the otherwise good reputation of a company who prided itself on its responsible business practices and pitted a corporate giant against impoverished farmers, creating the necessary public pressure to negotiate. Partly because of the pressure, and partly because the Ethiopian demand resonated somewhat with the values upon which Starbucks was built, the outcome was one that all could claim as success.

The success of Ethiopian fine coffee trademark registry begs the question of to what extent lessons learned can be generalized. As witnessed by the recent availability and popularity of gourmet coffees in such food corporations as McDonalds and Dunkin' Donuts, the demand for quality beans will continue to rise in the foreseeable future.[22] Other countries that supply Arabica coffee may well benefit from pursuing similar trademark registry to gain part of the retail value for farmers and producers. For Ethiopia, economic incentive for farmers may encourage improved production techniques

22. Reuters cites *The Wall Street Journal*'s report that the addition of coffee bars will add $1 billion to McDonald's annual sales. See Reuters 2008.

and enhance pride in local knowledge. If such public-private partnerships resulted in investment in facilities and better grading systems, a steady supply of high-quality coffee beans would be assured and sustained livelihoods guaranteed for farmers and producers.

Even beyond coffee, the general premise holds that African countries have the capacity to generate intellectual property assets that can then be harnessed to meet development needs. A survey conducted by Light Years IP indicates this immense potential to derive more returns from distinctive export products. Select African products identified for their importance in earning export income along with appropriate business strategies that could maximize intellectual property gains are featured in its scoping study. Among these products are: Kenyan tea, Sudanese Barakat cotton, Namibian marula oil, Togolese black soap, Senegalese artisanal tuna, Tanzanian blackwood, Mozambican cashews, Ugandan vanilla, Madagascar cocoa, Malian *bogolan* (mudcloth) textiles, and Ethiopian leather (Light Years IP 2008, 22–46).

All of these products have in common unique characteristics and significant reputations that, in some cases, have already garnered local and international markets.[23] Distinctive brand capitalizing based on culture or geographic location, or production traditions and aesthetic appeal, will provide the basis for IP strategies that could create global marketing and presentation schemes. The intangible value of a product relies and is built on traditions of local knowledge, distinct qualities, and reputation that can be attributed to a geographic locale or to cultural significance. The "story" behind

The "story" behind the creation of a design and its authenticity may be showcased at the retail end, to ultimately evoke greater awareness around the product. Employed in this way, intellectual property tools provide critical intervention that, in principle, favorably shifts the position of African farmers, producers, or artisans to capture an increased portion of retail price for their goods.

23. Consider for example that prominent shoe manufacturers such as Converse (in 2006) and Nike (in 2008) have featured *bogolan* or *bogolan*-inspired Malian designs in their limited edition collections.

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Lessons learned in the Ethiopian trademark registry initiative also indicate the potential of exercising rights in other intellectual property domains for Africa. For developing countries, culture and the creative industries present perhaps the most exciting yet unexplored area recently identified as a dynamic and rapidly growing sector in world trade. A 2008 report by the United Nations Conference on Trade and Development (UNCTAD) and five other United Nations agencies signals a promising and more holistic approach towards development that includes culture and creativity as vital elements of economic growth. This report loosely defines the creative industries as "the cycle of creation, production and distribution of goods and services that use intellectual capital as their primary input" and lie "at the crossroads of the arts, culture, business, and technology" (UNCTAD 2008, iv). Four areas of cultural industry are grouped under Heritage, Arts, Media, and Functional Creations.

Africa is home to rich and diverse cultures and aesthetic expressions whose original contribution to universal art forms is acknowledged. The breadth of creativity in music, visual and performance arts, and crafts and textiles is the subject of numerous fields of research and study in academia and beyond. Antiquities of Africa's past are actively sought after in the highly lucrative illicit trade that operates globally from the continent to Europe, Asia, and America (Schmidt and McIntosh 1996). Living art forms in language, music, and material culture often provide strong foundations and offer bridges of continuity to the past. In urban settings, contemporary artists, poets, writers, musicians, filmmakers, and playwrights present original works that probe into notions of power, representation, identity, and social relations. Like artists elsewhere, they are actively engaged in interpreting their surroundings and giving voice and shape to poignant realities. These expressions reflect a diversity of worldviews that might not otherwise be heard or represented. Although not without drawbacks and challenges, intellectual property tools provide one way to harness these creative capacities for the overall development gains of the continent.[24]

According to UNCTAD's findings, in the period from 1996 to 2005 the creative industries gained shares in global markets, growing at an annual rate of 8.7 percent for the period 2000–2005. Even though the vibrant nature of African cultural expression is easily recognized, the continent's participation in most categories of the creative industries appears limited. Light Years IP notes that for 2005 creative industry sectors in sub-Saharan Africa, crafts garnered the highest income with $7,484 million, textiles $2,176 million, arts and antiques $8 million, music $2 million, and film $3 million (Light Years IP 2008, 48).

The UNCTAD report affirms that arts and crafts are the most important creative industry for export earnings in both developing and developed countries (UNCTAD 2008, 114). Despite the predominance of Asian countries as major exporters of arts and crafts, African exports went from $129 million in 2000 to $296 million in 2005, with an annual change of 25.8 percent. Intellectual property tools could help maximize returns from retail values. African crafts—ceramic works, jewelry, beadwork, basketry, and doll-making among them—employ communities and contribute to tourism and economic growth. The fact that designs of craft creations or textile patterns are often relegated to "public domain" makes them vulnerable to competition from cheaper factory-produced or mass-manufactured imitations. Recovering IP rights over such cultural products and establishing retail outlets for organized

African crafts—ceramic works, jewelry, beadwork, basketry, and doll-making among them—employ communities and contribute to tourism and economic growth. The fact that designs of craft creations or textile patterns are often relegated to "public domain" makes them vulnerable to competition from cheaper factory-produced or mass-manufactured imitations.

24. The UNCTAD report notes that current tools that measure income flows generated by the creative industries and translated into copyright are not fully adequate (UNCTAD 2008, 141).

creative groups is one possibility of extending protection and generating an income (Light Years IP 2008, 49).

In both developing and developed countries, intellectual property rights are particularly important to the expansion of the broader creative economy. The World Intellectual Property Organization (WIPO), a specialized agency of the United Nations with a mandate to develop a balanced and accessible global IP system, stresses that the relationship between creativity and intellectual protection, particularly copyright, is essential (UNCTAD 2008, 143). Copyright provides protection to original works of authorship of creative works such as paintings, poems, plays, dance, music, and novels among others. There is as yet no method agreed upon to measure the non-economic benefits of creativity. However, in its purely economic sense, copyright legislation provides incentive and reward for individuals who invest their time and intellectual prowess to create works that can then be traded for financial return.

The copyright system depends on enforcement for its credibility. Through the ages, the onslaught of technologies has posed immense challenge to copyright laws (most notably, the advent of the printing press and now digital technology and the Internet). Technological advances also offer advantages such as access to global audiences, and new tools to assist in creativity, trade, and distribution. At the national level, most developed countries have legal structures, enforcement channels, and market mechanisms that afford artists some direct or indirect protection. In the international setting, cultural industries are also contentious fields of power between developed countries. This is evident from policies that aim to protect home-grown artistic expression from "foreign cultural invasion." In some countries, governments intervene in local markets to shield domestic cultural industries from foreign competitors. For instance, mechanisms such as broadcast quotas in television and radio are employed to set aside time to transmit local works.[25]

Such support mechanisms are largely missing in African countries. Though there are commendable efforts to set up intellectual property units and

25. For a comparative study on domestic cultural industry schemes in South Africa, Australia, and Canada, see Kotlowitz 1998.

organize artists' associations around pertinent copyright issues, supportive country-specific policy measures and various means for protection and enforcement have yet to be strengthened. For instance, it is telling that African countries rich in musical traditions are not represented among the top 10 exporters of music among developing economies listed in the UNCTAD report. This is in part because the few conglomerates that control the global music industry have a weak presence in Africa, which may in turn affect the data available to measure the trade in music. The report finds that with the exception of South Africa, African music production is largely independent, small in scale, informal, and domestically oriented. A few of the continent's music stars such as Youssou N'Dour (Senegal), Alpha Blondy (Ivory Coast) and Salif Kieta (Mali) have taken individual initiatives to create better structure for the music industry (UNCTAD 2008, 122).

In addition, the paradox mentioned in this study shows that while increasingly more music is being consumed worldwide, earnings received by songwriters, producers, and performers have been declining. Two key issues are identified: the lacunae in current regimes of IPRs; and the need for music originators to exercise greater control over their works, in part by accessing markets through technological tools. Related to both is the fact that distribution channels and labels often buy the copyright of works along with the right to reproduce them for a single up-front payment. Artists who choose this option are left without recourse to earn longer-term returns from royalties, and have little control over subsequent promotions and sales.

Besides monetary gains, African musicians and artists could benefit from deserved recognition for their creativity. This is unwittingly demonstrated by the soundtrack of the well-intentioned film *Black Gold*, whose main purpose is to draw attention to the injustices of the global coffee industry. While it reached wide audiences and very effectively raised awareness for the cause of Ethiopian coffee farmers and cooperatives, there is no mention in the film's credits of the Ethiopian musicians and vocalists whose works are featured.[26] Composer Andreas Kapsalis describes his experience of creating an overlay of sound with these works, with due attention to maintaining the integrity of the originals. In scoring the film,

26. Matt Coldrick is listed in the credits as the source of the Ethiopian music samples.

his discerning selection of sound successfully evokes the "pain, excitement, and journey" of the film as he intended.[27] Yet by not mentioning the identity of the musicians, the film misses a perfect opportunity to introduce (and possibly encourage a market for) the rich cultural offerings of a country blessed with the perfect coffee bean.

27. See www.blackgoldmovie.com/soundtrack.php.

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