Protecting Traditional Practices and Country of Origin in Developing Countries through Fair Trade and Intellectual Property Rights

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Ethiopia is widely regarded as the birthplace of coffee. With more than 30 native types of coffee plants, coffee is an integral part of Ethiopia’s cultural heritage. The Ethiopian coffees Sidamo, Yirgacheffe, and Harrar are known as some of the finest coffees in the world. Coffee makes up a large portion of Ethiopia’s economy, accounting for more than 30 percent of the country’s total export revenues. Moreover, nearly 20 percent of Ethiopia’s population earns its living through coffee. Despite coffee’s importance—both on the international market and to the domestic economy—coffee farmers in Ethiopia make approximately US$1-$2 per day.

Ethiopia is a textbook example of how countries or producers can extract higher export prices on the international market through the production of specialty commodities. Since the collapse of the state-controlled coffee sector, Ethiopian coffee growers have pursued different methods to gain greater profits. There is considerable experience in country in producing certified organic and/or shade-grown coffees, as well as Fair Trade-certified coffees. Most recently, the same producers have also used registered trademarks for specific Ethiopian coffee exports.

In the mid-2000s, with considerable experience with the Fair Trade certification process, the Government of the Federal Republic of Ethiopia (Government of Ethiopia; GoE) chose to exercise its intellectual property rights (IPRs) on certain varieties of coffee beans. Early work on defining coffee within the framework of IPRs was done through a value chain analysis financed by the United Kingdom’s Department for International Development (DFID) and in partnership with the Ethiopian Intellectual Property Office (EIPO). It was under the DFID project that the Ethiopian coffee trademarks were registered internationally for Harrar (and Harar), Sidamo, and Yirgacheffe coffees. During this time, much of the domestic legal framework was enacted to support the intellectual property claims. The World Bank financed a follow-up to the DFID project. Both of these projects were aimed at improving the livelihoods (and ultimately the revenues) of coffee producers in Ethiopia through Fair Trade certification and coffee name trademarking. These projects and their outcomes are described in this chapter.
The case of Ethiopian specialty coffees highlights the fact that accessing high-value or specialty markets through legal means can bring international recognition for traditional knowledge. IPRs can protect products on the international market when trademarked. The level at which interventions of this type can achieve financial success is ultimately affected by the overall openness of markets, the capacity of the legal system to assert these rights in international markets, and the overall sustainability of the intervention. Other market externalities, such as land ownership, access to credit, and the participation of women and children in the production process, were also factors in Ethiopian coffee production.

Commodities and High-Value Markets

IPRs are one way that farmers and other producers may seek to distinguish their products on the international market and earn higher profits for their products. Methods for the decommodification of coffee include Fair Trade certification, and organic, shade-grown, or sustainably grown products. Fair Trade certification is governed by standards established by private international organizations. Fair Trade standards are meant to be applied to production regardless of existing domestic legal and regulatory laws.1

Fair Trade began as a social movement in the 1960s. Its aim was to bring fair prices to producers in developing countries. Coffee was one of the first products that received the Fair Trade brand, and it remains the single most important Fair Trade product.2 Produced in developing countries by smallholders, coffee is well suited for this movement.3 Fair Trade promises fair prices for products by sidestepping certain perceived market failures or anomalies. Furthermore, Fair Trade has the promise of bringing the producer closer to the consumer. Fair Trade-certified products are largely marketed as providing ethical value-added for the consumer.

Fair Trade is not a process governed by national laws; it is a voluntary process whereby producers adhere to 10 specific international standards that can be applied to nearly any production system as long as the Fair Trade social standards are met.4 Producers pay a Fair Trade organization to certify their product’s adherence to certain criteria.5 Certification includes site visits to producer organizations to inspect production methods. In many cases, Fair Trade standards are more stringent than domestic norms, and the onus is on the producer organization(s) to meet the Fair Trade standards in order to be certified. The costs for the certification process are borne by the producers themselves and can be substantial relative to an individual farmer’s or smallholder’s income.

Fair Trade standards are applied independently of local laws and standards. Often, Fair Trade standards require a level of organization and regulation that may not exist in many developing countries. These standards center around 10 main issues: creating opportunities for economically disadvantaged producers; transparency and accountability; fair trading practices; payment of a fair price; ensuring no child labor and no forced labor; commitment to nondiscrimination, gender equity, and women’s economic empowerment and freedom of association; ensuring good working conditions; providing capacity building; promoting Fair Trade; and respect for the environment.6

Without a local organization or cooperative to manage the many Fair Trade standards, a smallholder or subsistence farmer may not understand their importance or how they will be evaluated during the certification or recertification process. Implementing these standards on an isolated or individual basis would be an onerous and expensive process. As a result, Fair Trade producers are generally organized in cooperatives to better manage the risks, to deal with the resulting bureaucracy from the application of Fair Trade standards, and to ensure quality.

Within the Fair Trade standards, some are more easily implemented than others; this was particularly the case with Ethiopian coffees. For example, relatively few smallholders or subsistence farmers use commercial inputs such as fertilizers—when farming, which makes managing Fair Trade’s environmental concerns relatively easy compared to meeting other standards. In the case of Ethiopian coffee farmers, it has been reported that approximately 90 percent do not use any inputs in growing their coffees, making them virtually organic.7 Fair Trade studies have long posited that by adhering to Fair Trade ecological and environmental practices, growers may reap larger yields, and therefore bigger profits.8

Issues related to transparency and accountability, capacity building, fair pay and prompt payments, and the promotion of Fair Trade mainly apply to the management of a farmers collective. As such, their impact on a smallholder would be minimal, though it is conceivable that the collective would ask a premium or contribution to manage these risks.

5 The Fair Trade Labeling Organization (FLO) regulates all organizations that provide Fair Trade certifications.
8 Sorby, supra note 4, at 1.
The Fair Trade standards more difficult to implement and sustain are those related to labor. In the Ethiopian coffee sector, the majority of smallholders use informal labor practices. Subsistence farming is often characterized by a structure in which the entire family participates. This means that (pregnant) women and children are often involved in production. In many cases, domestic law permits their participation, or the law is not enforced due to the rural nature of agricultural production. Cultural norms and practices may dictate that these practices are acceptable; some of these norms and practices may directly contravene prevailing law.

The Fair Trade certification process, however, views gender and child labor standards largely in black and white. By allowing children or pregnant women to work on Fair Trade-certified farms, the local producer risks losing certification and the market premiums afforded by the Fair Trade label. Similarly, many coffee farmers depend on migrant labor when harvesting. The highly transient nature of migrant labor may make it difficult for smallholders to monitor the labor supply and, ultimately, to fully adhere to Fair Trade standards.

The issues of access to land and credit undermine the Fair Trade model but are not explicitly addressed by the Fair Trade standards. Access to land and land rights have a direct bearing on what crops are produced and how they are produced. Though Fair Trade welcomes and promotes the participation of women producers in its networks through its gender standard, it falls short of advocating for women’s land rights. Similar to the issue of labor discussed above, cultural norms and practices may contravene national laws regarding women’s inheritance of land. Without directly addressing issues of inheritance or a woman’s right to hold property, the Fair Trade standard on gender may miss an opportunity to build equity and capacity within producer communities and organizations.

Linked to the issue of landholdings, access to credit can be a pressing issue for smallholders engaged in Fair Trade production. Access to credit allows farmers to buy new seeds or seedlings and fertilizers. Credit may also help a family ensure that a child receives health care or education. Credit for smallholders may be particularly difficult to obtain due to their geographic location and industry. Microcredit may be better suited to subsistence farming, as the cooperatives themselves may be more able to provide for their members’ needs than regular commercial banks can. Given this, and the comparatively high cost of certification, it is somewhat surprising that Fair Trade organizations have not taken a more proactive approach to provide a more enabling financial environment for their producers.

Credit could ultimately remove one of the biggest barriers to market entry and increase production. It could also provide a form of insurance for producing families to weather market declines. Surveys of Ethiopian coffee farmers have shown that a lack of credit greatly affects their willingness to buy agricultural inputs to boost production. In some cases, farmers have reported not wanting to take credit at all.

Finally, with regard to both organically grown and shade-grown products, the majority of smallholder coffee production in Ethiopia is done through subsistence farming. The certification process for these kinds of agricultural products is fairly streamlined. Ethiopian coffees are largely—if not entirely—produced without commercial fertilizers, GMO seeds, or other means that would degrade the environment. If coffee production were to shift from smallholders to larger farms, care would need to be taken to ensure that a commitment to organic or shade-grown farming would continue to ensure certification and, ultimately, market premiums.

Intellectual Property Rights and Agricultural Products

There is a range of IPRs that can be used to seek protection for an agricultural product: trademarks, geographical indications (GIs), and traditional knowledge (TK). Each country has its own intellectual property (IP) system, but some general rules can be delineated. As with the Fair Trade standards described above, adherence to any of the methods below will create value-added commodities for export to other markets. All are relevant legal instruments for the Ethiopian coffee case: trademarks and GIs are recognized in key export markets, such as the European Union and the United States, Ethiopia’s main export markets for coffee, and TK is receiving increasing attention from the international community.

Trademarks

A trademark serves to distinguish a product or service from similar goods, products, or services. It prevents confusion among consumers about the product origin and protects the owner’s goodwill. A trademark does not refer to the quality of the processes used to elaborate the service or manufacture the good. It attaches to a good or service regardless of either the manufacturing
process or the location of the manufacturing process. The value of a trademark depends on the intrinsic quality of the product or service itself. Under U.S. trademark law, a party can file an application with the United States Patent and Trademark Office (USPTO) to register a word, a logo, a device, a slogan, a package design, a scent, a color, or a shape. If the application is accepted, the registered trademark becomes the private property of the registering party and can be used or licensed only by that party on the goods or services identified in the application.

A trademark owner has a right to permit nonowners to use the owner's mark, in which case the parties will enter into a license agreement. A trademark owner can also prevent others from using the same or a similar mark on otherwise similar products. In the United States, trademark owners must protect their trademark by policing its unauthorized use and can actively enforce their right by excluding every other entity from using their trademark, in order to prevent it from becoming diluted or generic.

A trademark for a geographic region raises some issues because it gives the owner the exclusive right to use the trademarked name commercially. Generally, a geographically descriptive term cannot be granted a trademark because it is only descriptive, the reason being that all place-names should remain available for use by all competitors. However, this rule has an exception, and to overcome the descriptive nature of a geographic term, the term must have acquired a “secondary meaning.” A term has a secondary meaning when the product is considered significant beyond the physical location of the goods. Thus, when a geographic term is associated with qualities independent of its physical location, the secondary meaning test is proven, and the product can be registered. This test of secondary meaning was applied to the Ethiopian case.

**Geographical Indications**

A GI is a name or sign used on certain products that indicates the region of origin of a specific good or service and relates to some standard of quality associated with the good or service. There is no universal definition for what constitutes a GI. It can include certification marks, designated GIs, protected designations of origin, protected GIs, and appellations of origin.

16 Brownell, supra note 13, at 300.
17 Id., at 396.
18 O’Kicki, supra note 14, at 321.

The United States and the European Union have different approaches regarding GIs. Under U.S. trademark law, GIs are registered and protected with the USPTO as a certification mark and must meet the secondary meaning requirement to be registered. A certification mark indicates that the good or service bearing the mark possesses certain qualities or is made according to traditional methods, as determined by a party, such as a trade group or a government entity, including state agricultural agencies, but not by a manufacturer itself. The mark indicates that the manufacturer adhered to third-party standards when producing the product. Certification marks tend to be owned by a collective group that establishes the standard or criteria that a product must meet to bear the organization’s certification mark. There are several differences between a trademark and a certification mark in the U.S. IPR system. First, a certification mark is used by a third party, not by the original manufacturer itself, to indicate some attribute or quality of the goods. Second, while trademark owners are required to prevent every other entity from using their trademark, a U.S. certification mark owner cannot exclude other manufacturers that meet the standards and criteria as defined by the registered certification mark. In this respect, the U.S. system of certification marks creates opportunities for new producers and enables them to be associated with a particular certification mark, which can be a very valuable asset. A study found that consumers would be willing to pay 60 percent more for a wine labeled “Napa Valley” than for a wine labeled “California.”

In the European Union, GIs are given a registration and protection system independently of trademarks. This is a core element of the EU trade and agriculture policy, and the European Union established a single system for the registry of GIs for some products intended for human consumption and certain foodstuffs, but not all. This system provides protection for two categories of GIs: protected designation of origin and protected GIs. The EU system also offers protection for traditional specialty guaranteed.

A protected designation of origin covers agricultural products and foodstuffs that are produced, processed, and prepared in a given geographical area using recognized know-how. Thus, a protected designation of origin product is tied both to the land through production and to the people who process and prepare the good. It is important to note that the European Union places a high value on the human skill associated with the preparation of a good. In order to qualify for GI protection, at least one of the stages of production, processing, or preparation must take place in the geographical area. Because only
one of the three stages needs to occur within the designated region, protected GI s are not as closely tied to the land as protected designation of origins. As for the traditional specialty guaranteed protection, it highlights the traditional character, either in the composition or in means of production, and it is not directly connected to the land.

The TRIPS Agreement and Geographical Indications

Geographic origin has been cited in trade for over a century, and in their current form, GIs are governed by the 1995 WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Article 22.1 of the TRIPS Agreement defines Gls as “indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin.” This broad definition encompasses many of the different permutations of Gls that are legally recognized by WTO member countries. Moreover, the TRIPS Agreement (Articles 41 ss.) requires that all WTO members provide a certain level of protection for IPRs, including the legal means for a member country to assert and enforce its IPRs.

The TRIPS Agreement provides two levels of protection for Gls, depending on the product considered. For products other than wines and spirits (Article 22), a GI is protected to the extent it does not cause consumer confusion or mislead the public as to the origin of the product. The protection of a GI is therefore not absolute. An appellation such as “Camembert-like cheese made in Canada” is permitted, since the origin is clearly mentioned. Wines and spirits benefit from an additional protection under Article 23: Gls can be used only for products that originated in the place indicated by the GI in question. Thus, only producers of Champagne from the Champagne region of France can use the term “Champagne” to identify their products. “Champagne-like” and “produced by the Champagne method” are prohibited product designations under the TRIPS Agreement. The European Union advocates that the protection granted to wines and spirits be extended to all registered Gls. This means that product designations such as “Camembert-like cheese made in Canada” would no longer be authorized if the European Union succeeds in its efforts.

The strong legal protection granted to wine and spirit Gls under Article 23 of the TRIPS Agreement is similar to the legal protection provided by the trademark system. For example, the GoE has registered the word “Harar” for coffee. “Harar-like” and “in the style of Harar” are unacceptable uses of the word. In the same vein, only producers from the Champagne region, meeting the criteria described in the GI registration, can use the word “Champagne” in their label.

Traditional Knowledge

Traditional knowledge (TK) is not protected under the TRIPS Agreement. Currently, countries seeking IP protection for TK in the international market must fit it into one of the IP categories that is protected under the TRIPS Agreement. In principle, because Gls are not “intended to reward innovation, but rather to reward members of an established group or community adhering to traditional practices belonging to the culture of that community or group,” it is understandable that some developing nations would embrace the GI system as a means to protect their TK. In other cases, communities have sought to establish trademarks.

TK has received increasing attention in a range of recent international policy discussions. There have been considerable efforts to enshrine TK protection in the law—most notably with the World Intellectual Property Organization (WIPO’s) establishment of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore (the IGC). The IGC’s mission is to draft and reach an agreement on an international legal instrument (or instruments) that will ensure the effective protection of TK, traditional cultural expressions, and genetic resources. The IGC suggests the following definition(s) for TK: “[refers to] [includes] [means] know-how, skills, innovations, practices, teachings and learnings of [indigenous peoples] and [local communities] [for a state or states] that are dynamic and evolving, and that are intergenerational and that are passed on from generation to generation, and which may subsist in codified, oral or other forms.”

Efforts to protect TK by a new system of IPRs focus almost exclusively on the knowledge of indigenous people. The proponents of a new legal regime invoke concepts of property to enhance the protection of TK. A 2009 WIPO report states that “holders of TK should be entitled to fair and equitable sharing—
of benefits arising from the use of their knowledge."32 The objectives of the TK legal protection would be to promote respect for TK; deter the misappropriation of TK; empower TK holders, who are typically marginalized indigenous communities; and protect tradition-based innovation.33 Proponents advocate the creation of sui generis rights via international treaties and the establishment of global databases of TK. There are those who oppose an establishment of a legal instrument to protect TK, voicing concern that this type of IP protection would be "contrary to how many indigenous communities conceive of their cultural heritage."34 The concept of TK will continue to evolve with the continued work of the IGC and the overall efforts of WIPO.

The Case for Ethiopian Fine Coffees

By the mid-2000s, the GoE already had enacted a considerable legal framework to protect Ethiopia’s cultural and agricultural heritage. This included, inter alia, Trademark Registration & Protection Proclamation No. 501/2006; Access to Genetic Resources and Community Knowledge and Community Rights No. 482/2006; the Plant Breeders’ Right Proclamation; Copyright and Neighboring Rights Protection Proclamation No. 410/2000; and Research and Conservation of Cultural Heritage Proclamation No. 209/2000.

In the international sphere, Ethiopia has been a member of WIPO since 1998. The GoE is also a signatory to the Convention on Biological Diversity. It signed the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits and the Cartagena Protocol on Biosafety to the Convention of Biological Diversity, as well as the International Treaty on Plant and Genetic Resources for Food and Agriculture.

Coffee historically has been a major export for Ethiopia. The collapse of the International Coffee Agreements in the late 1980s and the almost simultaneous collapse of the state-run coffee trade that occurred with the overthrow of the Derg led to disarray and a precipitous drop in coffee earnings for the country. State-run coffee cooperatives collapsed, leaving many to rebuild after losing their records and premises due to looting. Over time, and with the reestablishment of coffee cooperatives and export agencies, the coffee sector began to rebuild. With market liberalization, prices paid to producers began to rise by the reestablishment of coffee cooperatives and export agencies, the coffee sector began to rebuild. With market liberalization, prices paid to producers began to rise.

Private land ownership, which had been abolished by the Derg, remained state controlled in the post-Derg (post-1991) period. This fact is important because all of the country’s land belongs to the GoE and the government claims the right to direct all economic initiatives. Recognizing that coffee would remain one of the country’s chief exports, the GoE’s first Poverty Reduction Strategy paper—A Plan for Accelerated and Sustained Development to End Poverty (PASDEP) (2005–2009/10) noted that due consideration will also be given to the production of high value/cash crops like fruit and vegetables, coffee, tea and spices which could play a significant role in improving the living standards of smallholder farmers and strengthening the foreign currency earning capacity of the country.35

The PASDEP gave the GoE a strong role in supporting the coffee production. This included targeted assistance to coffee preparation industries and the provision of adequate warehouses and storage facilities both in the woredas and centrally. Moreover, maintaining the quality of the coffee exports was a priority for the GoE. In this regard, the PASDEP called for, inter alia, • Improving the quality and agricultural products to supply export markets, improving existing standards and produce new ones, and ensure the introduction and control of proper observation of standards; • Establishment of coffee and tea inspection and auction centers in major coffee growing woredas.36

It was against this backdrop that the GoE began to work with DFID to develop its ability to enforce and manage its IPRs internationally in the early 2000s. As part of DFID’s efforts, and in order to build capacity within the GoE to support these claims, the project provided technical assistance to the Ethiopia Intellectual Property Office, established in 2003.

The overall aim of DFID’s support was to afford coffee producers a means to negotiate coffee prices through the operation of a transparent market. The project was based on a value chain analysis and a value capture strategy that entailed the use of trademarks, branding and licensing, and brand management.

DFID brought together the biggest actors in the national coffee market with the creation of the Ethiopian Fine Coffee Stakeholder Committee. This committee included local coffee farmers cooperatives, the relevant line ministries, EIPO, and the Ethiopian Coffee Exports Association Board. Through the creation of this committee, as well as the direct support to EIPO, the DFID project assisted in crafting trademark strategies and policies to maintain and protect the value of four high-value Ethiopian coffees—Harrar, Harrar (another trademarked name for Harrar), Sidamo, and Yirgachefe—on the international market.

33 Munzer & Raustiala, supra note 29, at 39.
34 Id.
36 Id., at 106.
The DfID project undertook a value chain analysis for these Ethiopian coffees. The objective of the value chain analysis was to ensure that value was accrued at the production end of the coffee value chain. The DfID project also worked with a law firm on a pro bono basis to register the four coffees in 33 international markets, including the United States, the European Union, Japan, Canada, Australia, and Saudi Arabia. Early indications from this trademarking effort showed an increase in export prices on the order of 50-100 percent. Trademarks may be more lucrative for producers to use, because they require less up front as compared to Fair Trade. This is important for a farmer making only a slight margin on products and is a different approach from Fair Trade certification, which requires compliance with a number of standards and relatively costly site inspections before crops are certified.

The DfID effort also sought to establish more transparent mechanisms for exporting. The collapse of the Derg regime and the resulting liberalization of the coffee sector resulted in the corresponding collapse of the old systems and agencies supporting Ethiopia's coffee exports. The Ethiopian Coffee Purchase and Sales Enterprise and the Ethiopian Coffee Export Enterprise emerged as government-controlled agencies in the early post-Derg period. By the 2000s, even these state-run companies were being phased out and replaced by private entities. Work was under way in Ethiopia to create a nationwide commodity exchange linked to various warehouses to handle coffee auctions.

Maintaining the brands established with DfID assistance, however, meant that coffee farmers needed to understand and apply the brand and ensure that quality was preserved. This would be a long-term process, as historically there had been little emphasis on coffee quality in Ethiopia. The World Bank would help finance, inter alia, a government-sponsored campaign to raise awareness among coffee farmers.

Trademark Dispute with Starbucks

In March 2005, the GoE filed trademark applications with USPTO for three of Ethiopia's specialty coffees: Harrar, Sidamo, and Yirgacheffe. This application took some companies, including U.S.-based Starbucks, by surprise. In 2004, Starbucks had applied for trademark registration of a limited-edition coffee, Shirkina Sun-Dried Sidamo. Ethiopia, working with Oxfam and a U.S.-based pro bono law firm, requested that Starbucks withdraw its trademark application to allow its own trademark application to move forward. Starbucks' initial response to Ethiopia was that a certification mark or a GI was a more appropriate designation for Ethiopia's heritage coffees. Eventually, Starbucks withdrew its application for Shirkina Sun-Dried Sidamo, stating it was a limited-edition coffee, but the dispute did not end there.

The World Bank Intellectual Property Rights Project

The World Bank coffee project came about at a time when the Bank was actively looking into Fair Trade as a way to raise profits for farmers and induce development. In the lead-up to the 2008 World Development Report, Agriculture for Development (WDR), considerable research was done by the Bank on the impacts of Fair Trade. Agriculture for Development recognized the growing trend of producing high-value or niche agricultural products for export. The WDR called this trend "decommodification," as producers sought alternative markets for these products. Yet, the report offered no specific policy recommendations on Fair Trade as a result of this research. On the contrary, the WDR cited a number of concerns about Fair Trade, related to rationing of Fair Trade products in the export markets due to saturation, and the high cost for farmers to do business with the Fair Trade organizations themselves. The report made recommendations for governments to establish enabling environments for agriculture and agricultural exports, with specific support to smallholders through strong producer organizations and more transparent market mechanisms.

IPRs fit squarely within the World Bank's operational policies. Specifically, the Bank's Indigenous Peoples Policy (Operational Policy 4.10) of the same period endorses the use of IPRs as one of nine initiatives to support

See http://tsdr.uspto.gov (case no. 78589307) for the proceedings documents; cited in O'Kicks, supra note 14, note 135
An Ethiopian trademark for Yirgacheffe was awarded by the USPTO in August 2006.
Id., at 133.

37 Overseas Development Institute, supra note 7, at 10.
38 O'Kicki, supra note 14, at 329-330.
development and poverty reduction. The policy further recognizes cultural ties to lands, as well as the species and fauna of indigenous peoples. The World Bank's support for Ethiopian coffee fits well within this framework.

The GoE first approached the World Bank for technical assistance with EIPO and for the protection and enforcement of the country's IPRs. The request came in as EIPO's involvement with DfID was drawing to a close. At the time the World Bank grant was developed, the Ethiopian government claimed that Ethiopian coffee names had been misappropriated in both local and foreign markets, the most visible example of which was the U.S. trademark dispute with Starbucks. The GoE asserted that the country's unique cultural, biotech, and agricultural assets held considerable promise as IP assets on the international market. With the proper branding and enforcement at the country's IPRs, these products could be appropriately valued and could generate the export income anticipated by the government. The promotion and enforcement of IPRs was seen as an effective policy tool to promote social and economic development in the country.

The World Bank project, Managing and Enforcing Intellectual Property Rights: Creating a Driver of Growth—an Institutional Development Fund (IDF) grant—was approved in June 2006 for US$496,000. The project closed in October 2010. The project objective was to strengthen the capacity of EIPO to manage, brand, and protect IPRs in Western markets. Although the country had considerable potential for branding other IPRs for other products, such as leather, flowers, spices, and traditional medicine knowledge, the IDF grant focused solely on coffee. The main beneficiaries of the project activities were EIPO, Ethiopian coffee growers' organizations, and coffee growers more generally.

The grant had three main activities: to assess IP assets within the country, building local capacity to undertake these types of assessments; to build the capacity of Ethiopian administrative and justice sector teams to enforce IPRs; and to empower local IPR owners.

Due to delays in project approval, the IP asset valuation exercise was ultimately done with the assistance of DfID prior to that project's closing. The Starbucks case helped transform EIPO's role, further transforming the agency's responsibilities and changing the scope of many of the planned IPR activities. In mid-2007, EIPO embarked on a process of reorganization with World Bank support. It sought to broaden its responsibilities from serving as a conventional IP registry to more broadly engaging in advocacy activities on a national, regional, and international scale. EIPO placed the country's innovations and products at the fore with this restructuring. As part of the reorganization and expansion of its activities, EIPO proposed to undertake greater outreach to small and median enterprises within Ethiopia, as well as build greater awareness of IPRs in local universities and industries.

A large portion of the grant activities involved the creation of a licensing and branding program within EIPO. Originally, the World Bank project envisioned the creation of specialized capacities within EIPO to manage trademark registration, foreign supply chain licensing, brand management, and stakeholder engagement. Recognizing that there was low recognition and knowledge of IPRs within various government agencies, the World Bank project scaled back its original aim to create a licensing program within EIPO. Rather, a comprehensive training program was designed and implemented using a train-the-trainers approach. Under this initiative, four EIPO staff members were trained on issues relevant to certification.

The project sought to expand the number of coffees trademarked in international markets. EIPO chose to pursue the licensing of Limu and Nekemte coffees internationally, first by developing a value capture analysis for these two coffees. Brand guidelines were also drafted for these two coffees, based largely on the precedent set by the guidelines developed for Harar, Harrar, Sidamo, and Yirgacheffe coffees. The project engaged the same U.S.-based law firm that had worked on the Starbucks case and the trademark claims for the four trademarked coffees on a pro bono basis. At the project's conclusion, it was estimated that the legal services provided for the trademarking of these two coffees cost close to US$1.0 million, more than twice the total amount of the grant. This figure is relatively conservative; a considerable amount of legal work was done drafting model licensing contracts and creating an umbrella brand standard and trademark.

As part of EIPO's new advocacy and outreach efforts, an Intellectual Property Rights Center was established in Addis Ababa to house information regarding IPRs. The center is open to the public. EIPO launched a website in Aramaic to describe EIPO's role and responsibilities. In addition, the grant financed a number of outreach activities to empower local producers, including television and radio programs, as well as leaflets regarding the role of intellectual property in their own personal lives and on the role that EIPO has played in the enjoyment and enforcement of those rights.

Ultimately, this activity led to the registration of only one coffee in one international market. This was due to a dispute between EIPO and the pro bono law firm over minor, nonlegal fees paid by the firm in the course of licensing. EIPO disputed the firm's claim that the government needed to pay the charges. At the end of the project, EIPO and the firm were in a stalemate over the payment of the fees and additional licensing.
The grant’s more successful activities involved the outreach activities related to IPR and coffee growers themselves. A number of radio and television programs were produced and aired on local stations to empower local IPR owners on IPR protection. These activities were targeted specifically at small producers, cooperatives, local business owners, and IP lawyers.

The grant was active in creating and disseminating local knowledge regarding IPRs. EIFPO delivered specific training to the coffee farmers cooperatives and other stakeholders regarding the importance of maintaining the respective brands. Through their own experiences with producing other de-commoditized coffees—such as organics, shade-grown, and Fair Trade coffees—various Ethiopian coffee farmers unions were aware of the importance of quality and began to ensure quality in their own production. Furthermore, the licensing agreements to use the trademarked brand names of coffee were royalty free for the coffee farmers, meaning that any additional profit accrued to the coffee at the point of sale accrued to the coffee farmer.

The grant had the least success in building the capacity of local Ethiopian administrative and justice sector teams. This was due in large part to the general outward/export orientation of the project. Local judges, lawyers, investigators, and other government officials were less involved in the enforcement of IPRs. There was little buy-in for the project’s activities by the customs and other enforcement officials.

**Project Outcomes**

The World Bank project built on a number of crucial building blocks already in place in Ethiopia. The fact that the project implementation was not dependent on the passage of new laws or structures—most of which were created under the DDF project—meant that the time frames for implementation were short. Furthermore, when the project was designed, it was conceivable that the project outcomes could be met by the end of the project’s original three-year term. It was also conceivable that certain targets for capacity building within EIFPO and among the coffee growers could be met during the original implementation period.

The World Bank project largely succeeded due to the presence of an enabling framework for trade within the country. On a much larger scale, and as measured by the website produced by Doing Business, it is more costly, time-consuming, and bureaucratic to export out of Sub-Saharan Africa than it is to export out of Latin America. Africa-specific studies, notably a World Bank

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47 A number of coffee cooperatives emerged in the post-Derg era. These include the Oromia Coffee Farmers Cooperative Union, the Yirgachefe Coffee Farmers Cooperative Union, the Sidama Coffee Farmers Cooperative Union, and the Kaffa Forest Coffee Farmers Cooperative Union.

prices had a direct impact on local coffee-farming communities and individuals. The coffee unions have self-reported an increase in investments in coffee-producing communities through the provision of physical infrastructure for schools, the creation of health posts, and the development of fresh-water supplies, among other developments. 51

The project had mixed success when it came to promoting IP issues internally. By the end of the project, there was considerable awareness among local coffee producers regarding their ability to use IP to extract a higher price on the market for their coffee. The project had had less traction in discussing these issues with government officials, such as judges and customs officials. For a majority of these officials, IP will remain a theoretical issue until clear domestic cases of IP infringement arise. Some observers have hinted at the fact that kickbacks may be at play with regard to inspectors and those involved in the export trade. Maintaining clear governance structures and transparency, with direct oversight by concerned stakeholders, will be the only way to ensure that such problems are minimized.

By the end of the World Bank project, EIPO had let a number of trademark licenses lapse on the international market. Trademarks in the United States require constant policing and research to enforce. Keeping licenses and trademarks current requires a level of internal organization, planning, and financial resources that fell outside the scope of the project. This leads to questions regarding the overall viability and sustainability of IPR interventions such as this.

A Possible Way Forward

Fair Trade and trademarking (through the enforcement of IPRs) can help promote development within countries that pursue export-led growth. Both Fair Trade and IPRs have their strengths and weaknesses. A combination of the two may provide the best way to promote equitable development while helping coffee farmers mitigate prevailing market risks.

World Bank research has shown that Fair Trade can deliver higher prices to producers and access to high-value markets. 52 The World Development Report 2008: Agriculture for Development recognized that by linking agribusiness and smallholders, there could be reductions in rural poverty. 53 As illustrated by the Ethiopian case, Fair Trade certification and IPRs can complement existing trade regimes. There is evidence that Fair Trade creates real impacts at the local level through the creation of a more level playing field for coffee farmers. There is also evidence of concrete improvements in Ethiopian Fair Trade pro-

52 Ronchi, supra note 2, at 1.

ducer communities through the building of health posts, schools, and clean drinking wells.

At the same time, the same research shows that Fair Trade does not supplant international trade mechanisms. As a single cash crop, coffee faces a number of externalities on the international market that are difficult to overcome. Regardless of special trademarks or brands, coffee prices remain volatile on the international market. Like conventional coffee, Fair Trade coffee exports can face market saturation. Ethiopian smallholders, cognizant of the risk of solely producing coffee, often raise other crops as well as produce to feed their own families.

Furthermore, Fair Trade mechanisms cannot wholly protect Fair Trade products from market failures. This was certainly the case for Ethiopian coffee in the fall of 2012, as local prices for coffee were higher than international prices. Many coffee farmers turned to the production of local consumable products to weather the drop in international prices. Without support to further diversify exports—both on a general level and with respect to the protection of the country's TK through IPRs—Ethiopia will lose market share and development potential.

However noble Fair Trade's objectives are, it can create unintended incongruences within markets. A community risks considerable harm by losing Fair Trade certification but may feel disempowered to apply the standard for cultural or financial reasons. Indeed, the decertification process would inflict considerable financial harm on a community or producer organization, as the fees paid to the Fair Trade certifying organization are substantial. These opportunity costs—and the level of risk involved to the producer itself—may discourage current and new entrants into the Fair Trade market.

With respect to Fair Trade's child labor standards, producers can quickly fall into trouble and lose Fair Trade certification if children perform tasks during (re)certification site visits. Some research has indicated that while labeling (such as Fair Trade) may be a deterrent for using child labor in the production of the Fair Trade goods, this labor pool may be shifted into domestic production where child labor is not an issue. 54 One study of organic and Fair Trade producers in Kenya showed that they employed virtually the same (high) levels of child labor as conventional means of production. 55

Building greater outreach on this standard, in particular by international Fair Trade groups to local producers, may go a long way toward changing attitudes regarding these practices. Furthermore, there may be real and pressing economic needs for children to be involved in production. If Fair Trade organizations would adopt a more graded or phased application of this standard,
one where children would attend school but could also work for a prescriptive amount or period of time, communities could reap the double benefits of Fair Trade and increased human capital.

In the case of the Fair Trade gender standard, its promotion of women’s rights within the production of Fair Trade–labeled goods is commendable. Yet, the standard is silent regarding the support of a woman’s right to hold land. Women, particularly in Africa, can face tremendous obstacles to owning and working their own farms. Although much has been written about large-scale land grabs in Africa, smaller land grabs within communities over inheritance tend to impact women the most.

Female land ownership in Ethiopia—for example, of land received by women through post-Derg land distribution or through the death of their husbands—does not automatically give the women a right to cultivate their own fields. Labor restrictions do not allow women to use oxen to plow fields. Many women keep their fields in coffee production because they are able to hire migrants and temporary labor to work during the harvests more easily than if they are growing other crops. Continued restrictions on women working their own land, and dwindling pools of migrant workers, will have a negative, long-term impact on women heads of household if the economy continues to diversify and offers more skilled, higher-paid jobs.

The IPR approach to trademarking of coffees, as noted above, has an external focus and therefore does not have the same level of impact on social development within the coffee-producing communities. Unlike with Fair Trade certification, a farmer does not face (substantial) up-front costs to the trademark or brand using IPRs, as the Ethiopian licensing agreements are royalty free. The trademark approach is less interventionist for the individual coffee farmers, although coffee farmers associations may pass some of their overhead costs on to the producers through fees. The quality of the coffees is ensured through the coffee farmers associations as well as the ECX.

Maintaining market share and quality have been constant problems for all producers in Ethiopia. If the country continues to pursue export-led growth through exports such as specialty coffees, the local coffee farmers cooperative associations must continue their outreach and capacity-building activities within communities around these issues. Additional policy supports from the GoE or capacity-building activities from international Fair Trade associations can be extremely beneficial in creating a strong culture of quality and brand adherence.

To date, few cases of World Bank–financed projects have involved the enforcement of IPRs. One reason may be the reluctance to use such a legal-based and (inherently) costly activity in pursuit of development. Unfortunately, an impact evaluation of the World Bank project’s activities fell outside the purview of the IDF grant. An evaluation of the cost-effectiveness of the IPR intervention would be useful, as the World Bank has provided a specific policy recommendation to undertake protection of traditional knowledge through IPRs in its Indigenous Peoples’ Policy.

From the data gathered in the World Bank project, it is apparent that some of the gains made through commercialization have been reinvested into the community. It is difficult to measure the quantitative impact of the Bank-financed IPR intervention, either on a cost basis (cost to farmer) or a benefits basis. Furthermore, it is difficult to separate a purely Fair Trade coffee from a trademarked coffee because production is so intertwined in Ethiopia. Some anecdotal evidence points to certain economic and social gains made at the cooperative level. In the future, impact evaluations would be useful to gauge the overall effectiveness of enforcing IPRs on the international market.

What is apparent from the World Bank–financed project is that IPRs require specialized legal knowledge. This knowledge and capacity are often beyond the scope of a domestic IP agency such as EIPO. It is highly unlikely that EIPO (or any national government) would be the main actor in drafting future licensing agreements. A greater appreciation by local agencies of the content of an agreement and the steps taken to file and fulfill such an agreement would go a long way toward ensuring greater sustainability of IP assets over the long term. Future twinning arrangements with (pro bono) law firms and local IP agencies would ensure greater understanding and appreciation of how these agreements and rights work on the international level. Building capacity within local legal communities—through specialized training provided by local bar associations, Fair Trade training and legal advisory services provided by international Fair Trade organizations, and specific courses in law schools—could help build the technical capacity to run domestic IP programs and reduce the involvement of other international actors. This approach will take considerable time to consolidate. As noted above, some of the teaching will remain theoretical in developing countries until there is a landmark IPR case.

The World Bank project brought an understanding to Ethiopian coffee growers and exporters alike that trademarks could bring value above and beyond that of merely Fair Trade–certified coffee. As a single cash crop, coffee exports face a number of market externalities that are difficult to overcome. Without greater diversification of crops or products for export, Ethiopian coffee farmers will continue to weather cycles of boom and bust. Further diversification of Ethiopia’s coffee base, including the pursuit of protecting other TK assets on the international market through trademarks, and continued adherence to Fair Trade standards by producer organizations in country, can bring considerable equitable development to Ethiopia while growing the economy. The gains made through Fair Trade certification and the use of trademarks positively affected those involved in the Ethiopian coffee sector. The larger question remains whether or not these gains can be sustained financially and institutionally.