ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES

THE LEGAL REGIME REGULATING COFFEE TRADE IN ETHIOPIA

BY: YARED BERHE

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THE LEGAL REGIME REGULATING COFFEE TRADE IN ETHIOPIA

BY: YARED BERHE

ADVISOR: PROFESSOR TILAHUN TESHOME

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(Approval Sheet)

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BY: YARED BERHE

Approved By:

_____	_____
Advisor's Name	**Signature**
_____	_____
Examiner's/ Reader's Name	**Signature**
_____	_____
Examiner's/ Reader's Name	**Signature**

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Declared By:

Name: Yared Berhe Gebrelibanos

Signature: _____

Date: _____

Confirmed By:

Name: Professor Tilahun Teshome

Signature: _____

Date: _____

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ABSTRACT

Coffee's role in the national economy of Ethiopia has been unparalleled for the past five or so decades particularly in generating hard currency. Presently, about 25% of Ethiopian population depends on coffee for its livelihood. Owing to this, Ethiopian governments have been regulating the industry more strictly than other agricultural sub-sectors. Regulating the industry by putting legal framework started from early 1950s. Coffee auction system in contrast was set up in 1972.

The legal and institutional frameworks governing coffee trade diverges across the three governments. During the imperial government, it was relatively liberal and had fairly positive impact to the industry. During the Dergue era, on the contrary, the overall regulatory regime including the coffee auction system was highly centralized which negatively affected the industry. The Transitional Government's market based economic policy on the other hand lifted most of the restrictions which enabled the country to export record amount of coffee. Yet, the coffee trade system including the coffee auction was similar.

In August 2008, however, the Ethiopian government introduced a new legal and regulatory regime which replaced the former one. This regime, among other things, switched coffee trade from the auction system to commodity exchange model of trading. It is, however, understood in a different ways by different stakeholders. Some seriously criticized it and others applauded it. This work studies the detail contents of this new coffee trade regime and its implications to the coffee industry. The study was conducted based on document analysis, interview, and observation. The findings of the study show that the present coffee trade regime is generally good scheme for modernizing the coffee industry. Even so, there are many shortcomings arising from the very law and/or practice. This work points out the major ones and suggests some recommendations which the writer thinks to be appropriate.

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ACRONYMS

ADLI	Agricultural Development-Led Industrialization
E.C	Ethiopian Calendar
CEO	Chief Executive Officer
ECEA	Ethiopia Commodity Exchange Authority
ECX	Ethiopia Commodity Exchange
EIPO	Ethiopian Intellectual Property Office
HPR	House of Peoples Representatives
ICO	International Coffee Organization
MoARD	Ministry of Agriculture and Rural Development
MoFED	Ministry of Finance and Economic Development
MoTI	Ministry of Trade and Industry
NBE	National Bank of Ethiopia
NGO	Non-governmental Organization
NCA	National Coffee Association (US)
QSAE	Quality and Standards Authority of Ethiopia
SCAA	Specialty Coffee Association of North America
SCAE	Specialty Coffee Association of Europe
SCAJ	Specialty Coffee association of Japan
TGE	Transitional Government of Ethiopia
USPTO	US Patent and Trademark Office

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

Agriculture is the dominant sector in the national economy of Ethiopia. According to the 2007 population and housing census, the life of about 83.9% of the Ethiopian population is dependent on this sector for its livelihood.[1] Historically, it accounted for around 90% of foreign exchange and 40% of the GDP.[2] Thus, the sector is the back bone of Ethiopian economy. The coffee industry dominates agriculture sector in its contribution to the national economy in general and the export sector in particular.

Coffee is the second most traded commodity in the world market after petroleum.[3] More than 80 developing countries produce and export it to the world market. For many of these countries, coffee is the most important source of hard currency one of which being Ethiopia.[4]

Currently, studies show that there exist more than 100 coffee species. Out of these, only three, i.e., *Coffea Arabica, Coffea Canephora (Robusta) and Coffea Liberica* have economic importance.[5] And among these, while *Coffea Arabica* is the best in terms of cup quality and wide choice of flavor, *Coffea Robusta* is the next important commodity in the world market. The former accounts for about 80% of the world coffee market and the remaining 20% comes from

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[1] Federal Democratic Republic of Ethiopia Population Commission, *Summary and Statistical Report of the 2007 Population and Housing Census* (Dec. 2008), p. 19

[2] African Development Fund, Agricultural and Rural Development Department, ONAR.1, *FDRE Agricultural Review*, July, 2002, p. 1 It is to be noted, however, that such numbers vary from one document to another including the official ones

[3] Girma Adugna *ET Al* (ed.), *Coffee Diversity and Knowledge: Proceedings of a National Workshop Four Decades of Coffee Research and Development in Ethiopia, 14-17 August 2007* (2008, Ethiopian Institute of Agricultural Research, Addis Ababa), p. 2

[4] Solomon Balami, *Genetic Diversity Analysis of the Wild Coffee Arabica L. Populations from Harenna Forest, Bale Mountains of Ethiopia, Using Inter Simple Sequence Repeats (ISSR) Marker,* (July 2007, Unpublished, Library, Faculty of Science, AAU), p. 1

[5] Ibid

Coffea Canephora.[6] *Coffea Liberica* on the other hand has only minor local importance in some parts of Western Africa.[7]

Coming to our case, many believe that "Ethiopia is the center of origin and genetic diversity for Arabica coffee."[8] It is to be noted, however, that there are some who argue that South Arabia is the birth place of coffee.[9] But it is now held that "(Arabica) coffee, despite its name, comes from Ethiopia and is still found in wild populations in the undergrowth of the high Abyssinian plateux."[10] The very word coffee is believed to come from root word "Kefa," a place in the South western Ethiopia where coffee trees first blossomed.[11] Coffee, hence, is the precious gift which Ethiopia contributed to the world.

In fact, Ethiopia is endowed with environment suitable for producing different varieties and flavor coffee beans in general and Arabica coffee in particular. In the international market, there are some unique flavor coffee beans which are favored by many consumers. These include: floral, sweet, mocha, winy, and fruity.[12] Ethiopia can produce all these and other types of beans. This is due, among other things, to its diverse ecological features such as suitable altitude, ample rainfall patterns, optimum temperature and fertile soils.[13] Owing to this, the country is termed as the "coffee flavor museum."[14] Moreover, despite there are many ranges of coffee exchange grades, most of Ethiopian coffee has historically been qualified as either grade 1 or grade 2 in the

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[6] Ibid
[7] Ibid
[8] Girma *ET AL*, cited above at note 3, p. 2
[9] Anton Foek, Trademarking Coffee: Starbucks Cuts Ethiopia Deal (May 8th, 2007), Available on http://CorpWatch Trademarking Coffee Starbucks cuts Ethiopia deal.mht. According to this line of argument, Arabica coffee is indigenous to the Arab World. Arabica coffee, according to them, means 'Coffee shrub of Arabia' and Yemen in particular claims to be the center of origin for same. But others still argue that South America is the birth place of coffee. See Tracey L. Cousin, Ethiopia Coffee and Trade, May 2, 1997, available at http://ethcoff.htm, last accessed on July 7, 2009.
[10] H.R. Cambrony, "Coffee Growing," *The Tropical Agriculturalist*, Macmillan Press Ltd, Hongkong, (1992), p. 1
[11] Ministry of Agriculture and Rural Development (herein after "The MoARD"), Agricultural Marketing Sector, *Coffee: the Gift of Ethiopia to the World*,(2007), p. 1
[12] Girma *ET Al,* cited above at note 3, 317
[13] Solomon, cited above at note 4, p. 2
[14] Ibid

international market which is additional opportunity to the country.[15] Besides, more than 90% of Ethiopian coffee is considered to be *de facto* organic.[16]

Coffee has been subject to trade long before 1500 years.[17] Ethiopia forms one of the oldest countries which used to trade coffee. Now many even believe that Ethiopia is the oldest coffee producer, consumer and exporter in the world.[18] Ethiopian merchants used to trade coffee in caravans of mules, camels, and donkeys for many centuries. Starting from the late nineteenth century in particular, coffee forms one of the most important cash crops of the country. It used to be exported even to far destinations like London, New York, Trieste and Marseilles.[19]

Even presently, coffee is the most important commodity in the country in many respects. It accounts for about 25% of the GNP, 40% of the total export and 10% of total government revenue.[20] Though decreasing from time to time due to increase in number and quantity of other export items, coffee, historically, used to account for about 60% of the total export revenues.[21]

Moreover, the coffee industry is labor intensive sector. It employs hundreds of thousands of people in processing of either red cherry (*key eshet*) or dried pulp coffee (*jenfel*) in the washing stations and hulling mills. Before it gets ready for export, coffee also goes through further processing, polishing, cleaning, and sorting. Generally, the sector employs about 25% of the Ethiopian population in different capacities like production, processing and marketing.[22] Thus, the life of one out of four Ethiopians depends on coffee. This makes the crop the most important commodity in the country.

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[15] Africa Group Research, *Ethiopian Coffee Brewing a Recovery*, available at http://www.theafricagroup.com/research/Africa_Group-Ethiopian_Coffee.pdf, last accessed on July 7, 2009. It should be noted, however, that some argue that the bulk of Ethiopian coffee come with in 3rd or 4th quality out of 6 grades due mainly to the deterioration of quality. See The ECX, cited below at note 17, p. 5

[16] Nicholas Petit, "Ethiopia's coffee Sector: A Bitter or Better Future?" *Journal of Agrarian Change*, Vol. 7, No.2, (April 2007), p. 253

[17] Ethiopia Commodity Exchange, *What is in A Bean? ECX and Specialty Coffee Market* (Dec. 2008), p. 4

[18] See Girma *ET AL*, cited above at note 3, p. 317

[19] Ethiopia Commodity Exchange, cited above at note 17

[20] The MoARD, cited above at note 11, p. 2. Note, however, that these numbers vary from one source to another including in the official documents.

[21] Petit, cited above at note 16, pp. 225-263. Currently, coffee accounts about 40% of the total foreign earnings which is still significant. See Girma *ET AL*, cited at note 3, p. 416

[22] Id

Coffee is consumed in large quantities locally also. Ethiopians have deep culture of drinking coffee. In addition to the consumption in almost every household, one may easily observe that coffee houses of different size are spreading out across all corners of the country which have their own socio-economic importance. From these, it will not amount to exaggeration if one argued that coffee is the blood line of Ethiopia's national economy as is, for instance, oil to countries like Saudi Arabia.

Realizing the unique role of the crop in the socio-economic life of the country, Ethiopia has put in place legal regime that governs the industry since early 1950s. This law took successive amendments and used to regulate different aspects of the industry including coffee quality, coffee grading, coffee marketing and the roles of the regulatory organs. Until early 1970s, however, there was not institutionalized coffee market system. In this period of time, the key role players were the intermediaries such as the collectors and brokers and coffee trade was carried out based on sample coffee these intermediaries bring on their handkerchiefs. As a result, the whole coffee trade came with in the mercy of these intermediaries as there was not free flow of information among the different market participants.

In 1972 on the other hand, a new market system, the coffee auction system, which works on price ascending method was introduced to the coffee trade system of the country. This market system persisted until August 2008, the time when a new law which introduced a new market system replaced this coffee trade system. This work studies the legal and regulatory regime introduced by the new law into the coffee environment of Ethiopia.

1.2 Statement of the Problem

As mentioned above, Ethiopia is endowed with environment suitable for producing high quality coffee beans. Despite this, Ethiopian coffee industry has been suffering from a number of multi-faceted limitations. The problems relate to production, processing and marketing. In terms of production, Ethiopian coffee remains to be low yield due to, among others, lack of advanced technology, lack or shortage of cultivars suitable for different localities.[23] In relation to

[23] Africa Group Research, cited above at note 15

processing, the main interest at stake is the quality of the coffee.[24] Coffee quality plays irreplaceable role in the increasingly competitive international coffee market. In Ethiopia, however, the quality of large quantity of coffee is believed to decline as result of poor and traditional techniques of post harvest processing such as during fermentation and drying.[25]

The annual coffee production in Ethiopia currently exceeds 225, 000 tons generating about $525 million[26] which makes the country to be the first and 5th largest coffee producer in Africa and the world respectively.[27] Nevertheless, Ethiopia's share in the world coffee market does not exceed 3.75 %.[28] This is a case in the event that over 60% of Ethiopian coffee is exported to the international market.[29] This is due, mainly, to market and market related problems.[30]

The main problems in this respect are lack of market standardization, fairness, transparency and efficiency.[31] There is also long chain of market channel. In this channel, numerous participants engage in different capacities. In the first place, this traditional market comprises large number of small holder coffee farmers.[32] Also, they are illiterate, poorly connected to one another and with market systems.[33] Moreover, they lack information and bargaining power which deny them the required level of benefits from the high consumer price of their produces.[34] Others include

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[24] Processing is concerned with the post harvest process of converting the raw coffee fruits into commodity and this takes one of two forms as dry coffee processing method or otherwise called as unwashed which is conducted by naturally pulping and drying the beans and wet processing method which is conducted by washing the fruits.

[25] But this does not mean that the problems at the processing stage are the only causes for declining the quality of our coffee. In fact, there are many factors that determine the coffee quality including genotype, climatic conditions, soil characteristics, harvesting methods, storage condition, transporting, etc.

[26] Ethiopia Commodity Exchange, cited above at note 17, p. 2. Note, however, that these numbers vary from one document to another.

[27] Africa Group Research, cited above at note 15

[28] Girma *ET AL*, cited above at note 3, p. 417

[29] Africa Group Research, cited above at note 15

[30] See Ethiopia Commodity Exchange, cited above at note 17, p. 5

[31] Bemnet Aschenaki, Senior Manager, Strategy and Business Development, *ECX Market Design*, (PPT Presentation, 2008), slide 6

[32] FDRE Ministry of Finance and Economic Development (MoFED), *Ethiopia: Building on Progress: A Plan for Accelerated and Sustained Development to End Poverty (PASDEP) (2005/06-2009-10*), October 2005, p. 49 The coffee sector is dominated by small farmers. More than 90% of Ethiopian coffee comes from this category of farmers and the remaining one from private and government-owned large scale farms. See MoARD, cited above at note 11, p. 2

[33] Ibid

[34] Ibid

primary collectors, local suppliers, farmers cooperatives, local and central brokers, wholesalers, few investors, state farms, processors, retailers, consumers, exporters, various government institutions, etc. [35]

These instances have been causing different problems including but not limited to excessive transaction costs which include search costs, negotiation costs and enforcement costs. This has forced the country to get little out of the plenty potential it has in the sector which is paradoxical scenario of scarcity amidst abundance.

In order to avoid or at least minimize these problems, the Ethiopian government has been taking different successive measures. In August 2008, a new law, the Coffee Quality Control and Marketing Proclamation which forms one of these measures was enacted by the House of Peoples Representatives.[36] In addition, other subsidiary legislations have been passed by different organs to implement the proclamation. This action of the government in respect to the present coffee trade regime gave rise to diverse and at times conflicting views.

On the one hand, this measure was considered to be an important move towards solving the age old problems in the industry by rising production and productivity, coffee quality and marketing and overall development of the sector. The fact that the present coffee law switched the whole coffee trade from the previous auction model to the exchange system called the Ethiopia Commodity Exchange (ECX), a new model of trade which is recently introduced to the legal and economic environments of the country in particular was praised to be "as bold and fundamental a transformation as the opening of the Coffee Auction was to the sector in 1972."[37]

On the other hand, others argue that the market participants were satisfied with the previous coffee auction system. Thus, the act of passing a new law which changes the coffee trade system instead of upholding and strengthening it was not necessary. As a result, they hold that "the

[35] Petit, cited at note 16, p. 240

[36] Coffee Quality Control and Marketing Proclamation (hereinafter "coffee proclamation" or the "proclamation"), August 2008 , Preamble, Proclamation No. 602, *Federal Negarit Gazeta*, 14th Year, No 61

[37] Ethiopia Commodity Exchange, cited above at note 17, p. 2

government of Ethiopia has attempted to fix something that was not broken."[38] The opponents further argue that the new coffee law totally prohibits direct sourcing of coffee from the producers.[39] Besides, the present coffee trade law allows the mixing of coffee beans from different growers before selling them for export.[40] This in turn impairs the traceability of the beans which is an important element in the international coffee market. Others still argue that the current laws do not allow coffee producers to directly export their coffee hence they must pass through the ECX. Others further argue that there are contradictions among the present different laws. Some coffee traders and international buyers come with in this category.[41]

Recently, there was a controversy between the government and some coffee traders. This has resulted in, among other things, the revocation of license of six largest coffee exporters of the country. Some argue that the coffee traders don't have a confidence in the system and this controversy is a manifestation of this loss of confidence on the new coffee trade regime.[42]

These poles apart views triggered the writer to be interested on the subject and do research in the area. In general terms, this research studies the detail contents of the new coffee trade regime and its implications to the coffee industry. In line with this broad problem of the study, the research will try to answer the following basic questions:

1. How coffee trade was historically regulated in Ethiopia?
2. What are the circumstances that called for changing the previous legal and institutional framework regulating coffee trade?
3. What does the present coffee trade regime looks like and how it is different from its predecessor?
4. To what extent the present coffee trade regime is appropriate in solving the age-old problems existing in the industry and generally in developing it to the required level of its potential?
5. What positive aspects that need to be strengthened and legal and practical problems that should be resolved do exist in the present legal regime?

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[38] ____, *"Confusion and chaos" with new Coffee auction system in Ethiopia*, http://www.jimmatimes.com/article/Latest_News/Latest_News/quotConfusion_and_chaosquot_with_new_Coffee_auction_system_in_Ethiopia/32097

[39] Wondwossen Mezlekia, *Coffee Brews Feud, Drowns out Voices*, Available at http://www.ethiomedia.com/ad., Last Accessed on April 9, 2009

[40] ____, "Confusion and chaos" with new Coffee auction system in Ethiopia, cited above at note 38

[41] Ibid

[42] **አዲስ ነገር፣ ቡና በመጨረሻው ሰዓት፣ መጋቢት**19, 2001, **ገፅ** 1

1.3 Objective of the Study

The legal regime that regulates coffee trade has, beyond doubt, significant repercussions for the success or malfunction of the industry. Against the backdrop of the above stated background and statement of the problem, therefore, the objective of this study is to explore the salient features of the new legal regime governing coffee trade and examine its implications to the industry. It is intended to demonstrate what the present coffee trade regime looks like and how it positively or negatively affects the industry with a view to identifying the existing legal and practical problems that need to be alleviated and the strengths promoted. Specifically, the research has the following objectives:

1. To examine how coffee was traded prior to putting in place of the present legal framework regulating coffee trade;
2. To scrutinize the reasons for changing the earlier coffee trade regime;
3. To explore what the present legal framework regulating coffee trade looks like, how it is different from the previous system and how it regulates it;
4. To analyze the regulatory system that is in place by the present law and its implications to the industry;
5. To investigate the reaction of role players in the industry on the law and in practice;
6. To survey the degree of implementation of the new law;
7. To find out the pros and cons prevailing in the present legal regime with a view to recommending the enhancement of the strengths and rectifying the problems;

1.4 Significance of the Study

The present law governing coffee trade is understood in a different way by different stakeholders including the market participants, international buyers and implementing institutions. This may be easily discerned from the widely divergent views provided above. This is partly due to lack of research in the area under consideration. The following are among the significance of the study to different parties. It:

1. assists different stakeholders including existing coffee traders and new entrants to have clear understanding about the present legal regime governing coffee trade. It will also

play its own role in assisting different institutions including the judiciary, the police and other law enforcement institutions in understanding, interpreting and applying the law as it will give comprehensive picture of the law;

2. identifies the major legal and practical problems in the area and recommend concerned policy makers and institutions realize the existing draw backs in the sector and thereby find out appropriate solutions. The researcher will also, based on the findings of the research, suggest solutions;

3. contributes to the little to no literature in the area. In addition, it will serve as a basis for further researches by the academia as well as by other researchers.

1.5 Scope of the Study

Many-sided activities are involved in the industry which may be broadly categorized into production, processing and marketing. The study is basically concerned with analyzing the legal regime regulating coffee trade in Ethiopia. Coffee trade is defined by the proclamation as acts of coffee collection, processing, and transaction.[43] The study therefore deals with the legal frame work governing both coffee processing and coffee marketing with, of course, significant emphasis on the later one. In order to give comprehensive analysis on the subject, however, the study will also broadly discuss the institutional framework regulating coffee trade in the country. Moreover, this work is mainly concerned with analysis into the law. But the writer intends to include some practices as far as necessary and to the extent possible.

Furthermore, the legal framework regulating the coffee industry has been in place since early 1950s. The focus of this work is on the proclamation that was enacted in 2008 which replaced the previous coffee legislations and its subsidiary laws and all other laws to which this legal regime makes reference. For the sake of showing the historical development and the present status of this legal regime, however, a broad overview will be made on the legal and institutional framework that had been regulating the industry since 1950s.

[43] Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 2(22). Art 2(16) on the other hand defines coffee transaction as a lawful buying and selling of coffee among different categories of coffee traders

1.6 Methodology of the Study

In the course of the study, the writer intends to employ two approaches. First, the writer will analyze the legal materials, past and present, to show the evolution and current status of the legal regime regulating coffee trade in Ethiopia. The researcher will also look into other published and unpublished literatures in the area. Thus, the coffee legislations and other laws that have to do with direct or indirect regulation of the area under consideration, books, journals, reports, statistical data, etc will be reviewed and cases will be analyzed. Secondly, first hand information obtained from the coffee traders, the ECX officials, officials from the regulatory institutions, stakeholders, etc secured in the form of interviews, personal observations and formal and informal discussions from the stake holders will be used. The methodology that will be employed, therefore, is an interplay of both primary and secondary sources.

1.7 Limitation of the Study

This work, as mentioned in section 1.5 above, is basically a research on the law governing coffee trade in Ethiopia. But the writer has included some practices to show the extent of enforcement of the law in general. This is not, however, fully realized due, at least, to two main reasons.

First, the market participants are generally not cooperative to give the writer full information. In this regard, the writer wants to make clear that, despite the relentless efforts made to interview many coffee traders, overwhelming majority of them were reluctant to cooperate. This has made the research limited in giving the correct picture of their feelings in respect to the present coffee trade regime. This doesn't mean, however, that the writer does not obtain any information from these actors. In fact, some traders were willing to narrate the existing situation but with condition that their name and their firm's name is not disclosed. As a result, the writer has cited these interviewees as anonymous respondents.

Besides, the writer obtained much information by holding a kind of informal discussions. This was done after many coffee traders failed to fill in some questionnaires prepared to assess the view of these traders concerning their view on different topics of the present coffee trade regime.

In the writer's observation this is due to, firstly, absence of well-built culture of transparency on the part of the traders and secondly, the recent license revocation measure taken by the government against some coffee traders has caused apprehension on these traders.

Secondly, some persons in different law enforcement institutions are not willing to give the writer sufficient information and/or documents necessary for analysis of the level of enforcement of the laws. The fact that some cases are still pending also has its own impact as the author is not able to get access to the cases. Yet, the writer believes that the cases analyzed and attached in this work can depict a broad picture about the state of things as they exist presently.

1.8 Organization of the Paper

The study is organized in to five chapters. The first chapter deals with the introductory part of the study which covers the proposal of the study. The second chapter discusses the historical development of the coffee trade regime in Ethiopia. It vividly shows the picture of the legal and institutional frameworks across the three governments: the Imperial era, the Dergue era and the EPRDF-led government (1991-2008). The third chapter analyzes the salient features of the legal regime regulating coffee trade that is in place in Ethiopia since August 2008. The fourth chapter is exclusively concerned with coffee trade in the Ethiopia Commodity Exchange, a new market institution to which the whole central coffee trade is shifted from the previous coffee auction centers. Finally, conclusions are drawn from the legal and practical analyses made in different chapters of the paper and possible recommendations are forwarded based on the research findings.

CHAPTER TWO

LEGAL HISTORY OF COFFEE TRADE IN ETHIOPIA

In the previous chapter, we have seen that the coffee industry has been playing unparalleled role in the national economy of Ethiopia. However, we have at the same time seen that the industry suffers from a number of limitations. Consequently, different and multifaceted reform measures

have been taken since long time to improve it. These measures, broadly, relate to coffee production and productivity as well as coffee trade. The focus of this work is on the later one.

In this process, many actors including the producers, processors, collectors, suppliers, brokers, wholesalers, retailers, warehousemen, financing institutions, consumers and regulators are involved. This chapter will give a broad picture of the interaction among such different actors and the way the action and the interaction of same has been regulated vertically across time before the present trade regime came into being. It in particular examines the nature and essential features of legal, institutional and policy environment regulating coffee trade in the country across three periods, i.e., pre 1974 (during the imperial government), 1974-1991 (during the Dergue regime) and 1991-2008 (the time before the present coffee legislations were enacted).

2.1. Coffee Trade during the Imperial Era

Some argue that Ethiopia is the oldest country to export coffee outside its border.[44] Irrespective of the veracity of this statement, however, studies show that, prior to 1920s, the bulk of Ethiopian coffee had been consumed locally.[45] From this time on, on the other hand, the volume of coffee export had been increasing and the industry started to increasingly play unique role in the national economy of the country.

At this time, actors other than the farmers and traders particularly brokers emerged and started to play significant role in the coffee economy. They used to circulate samples of various coffees coming from different areas in their handkerchiefs to the exporters and domestic traders. As there was no adequate information available for the farmers and local suppliers and even the traders, the brokers were manipulating the system. As a result, high level of cost and arbitrariness remained to be characteristic features of the then coffee trade which subjected the trading system particularly the farmers and local suppliers to the mercy of the brokers.[46]

[44] Ethiopia Commodity Exchange, cited above at note 17, p. 4
[45] Ibid
[46] Ibid

In addition, the country was not getting as much foreign currency as it was producing. This was mainly due to constraints related to the quality of the coffee as it couldn't meet the international quality standards. In this respect, Ethiopian coffee had to face either of two interrelated annoying circumstances: that a bulk of coffee didn't qualify to be loaded on the ship and if it was shipped, it could have been 'forcefully' unloaded at the 'consumers end' like the one shipped to the US but dumped to a sea at the New York port in the early 1950s.[47]

2.1.1. The Legal Environment

These above mentioned dreadful circumstances 'forced' the government to feel the situation and take urgent measures. Accordingly, the first measure was taken by passing a law which prohibits export of uncleaned and ungraded coffee. By virtue of this legislation, only coffee certified to be cleaned and graded by dully licensed cleaner and grader could be destined for export.[48] Export or any attempt to export coffee not certified in accordance with this law was punishable with two cumulative penalties: a fine of E$ 1,000 and confiscation of such coffee which may be cleaned, graded and exported for the account of the government.[49]

This proclamation empowered the Minister of Commerce and Industry to come up with a regulation which sets down the detail specifications of cleanliness and grade.[50] The Minister was also empowered to issue license to those persons who qualify for the business of cleaning and grading of coffee and revoke it whenever they certify coffee which does not meet the specifications.[51] Accordingly, the Minister promulgated a Legal Notice known as the Coffee Cleaning and Grading Regulations, 1952. This regulation introduced important classifications based on the origin,[52] size,[53] shape[54] and type[55] of the coffee.[56] It then required the licensed

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[47] Girma *Et Al*, Cited above at note 3, p. 11

[48] A proclamation to Prohibit Export of Uncleaned and Ungraded Coffee, 1952, Art 3, Proclamation No. 121, *Neg Gaz*, year 11, No. 5. However, that this same article of the proclamation allows export of coffee cleaned through traditional methods developed through experience.

[49] Id, Art 7

[50] Id, Art 2(b)

[51] Id, Art 4

[52] The Regulation designateed Harari, Arusi, Sidamo, Gimma, Lekempti and Gore as the places where Ethiopian Coffee originates

[53] Size was determined based on 'the number of the standard screens on which coffee is retained.'

[54] Shape was determined based on the inspection made and was designated as either 'long berry,' 'medium berry' or 'pearl'.

cleaners and graders to issue Export Certificate for the coffee which qualifies for export[57] and Domestic Certificate[58] for the one destined for domestic consumption.[59]

But the regulation was amended after few years by Legal Notice No. 196 of 1955. The reasons for the amendment include the following. First, it encouraged the traditional way of cleaning and grading due to the additional costs involved in the mechanical modern cleaning system; secondly, it didn't provide high-quality grading system to the satisfaction of the importers.[60]

In rectifying such problems, the new regulation rubbed out the three schedules and substituted them by different type of classification. The grounds of classification introduced by this regulation, basically, are the percent of moisture in the weight of the bean which should not exceed 11.5%, the number of defects which should not totally exceed 100, the absence of mould and noxious fermentation and origin of the coffee which designated to be "Harar," "Sidamo," "Jimma" or "Lekemti."[61] In relation to grade, the regulation introduced a new grading system which rates cleaned and graded coffee from grade 1 to 5 based on the degree of defects involved in the coffee.[62] But this regulation did not still categorize what sort of coffee is destined for export and which one for domestic consumption.

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[55] The type of the coffee was determined 'according to the defects found in a 300 gram sample drawn from any of "the size and shape groups".' The defects are determined on the extent of existence and number of things like white or black beans, cherry (djaffal),green (soft) beans, broken beans, red beans, empty cherry skin (big or small), pieces of earthy, wood and/ or stone.

[56] Coffee Cleaning and Grading Regulations, 1952, Art 2 cum Schedule A, Legal Notice No 161, *Neg Gaz*, year 11, No. 7

[57] Id, Art 3 cum Schedule B

[58] Id, Art 3 cum Schedule C

[59] It should be noted, however, that the regulation does not clearly provide the bench mark based on which the coffee's fate is determined either for export or domestic consumption.

[60] Tsegaye Workayehu, *Prospects for Commodity Exchange Regulation in Ethiopia*, (Oct. 2008, Unpublished, Law Library, AAU), pp.44-45

[61] Coffee Cleaning and Grading regulations (Amendment) 1954, 1955, Schedule A, Legal Notice no. 196, *Neg Gaz*, year 14, No.8.

[62] The number of defects and the grades were as following: Grade 1 (0-3 defects), Grade 2 (4-12 defects), Grade 3 (13-25 defects), Grade 4 (26-45 defects), and Grade 5 (46-100 defects). A coffee with more than 100 defects is considered, by this regulation, as unclean. Note, however, that the 1956 Regulation which amended this law extended the grade up to grade 7. Accordingly, coffee with 100-153 and 154-340 defects is rated as Grade 6 and Grade 7, respectively. If the number of defects exceeds 340 (as compared to 100 in the former one), however, it is classified as 'Unclean'. See Coffee Cleaning and Grading Regulations (Amendment) 1956, 1955, Art 2, Legal Notice No. 198, Year 14, No. 3. Legal notice No. 219 of 1959 which further amended the regulation described grades 1 to 5 as Usual Good Quality and further included grade 8 for coffee with over 340 defects and described

2.1.2. The Institutional Environment

One of the bold measures taken during this period of time is the establishment of the National Coffee Board. Before this board came into existence, two institutions were vested with different aspects of the coffee industry. The Ministry of Commerce and Industry was, as mentioned above, vested with enforcement of the law relating to the coffee quality and licensing persons involved in such and trading activities. The Ministry of Agriculture also had a division which was exclusively concerned with coffee since 1940's though its role was mainly concerned with extension services. However, there was lack of coordination between these two institutions. On top of that, there was confusion as to the respective roles of these institutions.[63] The establishment of the National Coffee Board on which all powers and responsibilities which previously were exercised by both institutions vested was an attempt to solve such problems.[64]

The Board was established by Decree No 28/ 1957. The board was entrusted with wide-range of duties and responsibilities. These include enforcing the Coffee Proclamation of 1952 and other subsidiary legislations; reviewing all legislations dealing with coffee and making recommendations concerning the way they should be strengthened; consulting stakeholders on what legislative and administrative measures should be in place to improve Ethiopian coffee; collecting and publishing market information and statistics relating to coffee trade; encouraging production and marketing of coffee by cooperatives; recommending taxes to be imposed on coffee.[65]

In order to effectively discharge such duties and responsibilities, the Board was given with broad powers.[66] To mention some, the board was empowered to exercise all powers of the Ministry of Commerce and Industry as provided by the Coffee (Cleaning and Grading) Proclamation of 1952

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it as Sub-standard grade). See Regulations issued pursuant to Coffee (Cleaning and Grading) Proclamation, 1959, Schedule A, Legal Notice 219, *Neg Gaz*, year 18, No. 5.

[63] Girma *ET AL*, cited above at note 3, p. 11

[64] Ibid

[65] A Decree to Make Provision for the Establishment of a National Coffee Board, 1957, Art 3 (a) to (g), Decree No. 28, *Neg Gaz*, Year 16, No. 4. This legislation was readopted by a parliament in 1961 with slight amendments and renumbered as Proclamation No. 178/1961. See The National Coffee Board Proclamation, 1961, Art 2, Proclamation No. 178, Neg Gaz, Year 21, No. 1

[66] Id, Art 4 (a) to (h)

and other subsidiary laws short of power of making regulations.[67] It was also empowered to construct, operate or lease warehouses, coffee processing and cleaning plants, market places and compounds, experimental and research stations, etc and undertake research on such and similar activities. Finally, the proclamation enabled the board to establish a Coffee Exchange in Addis Ababa.[68]

The law which established the Board also empowered the Minister of Commerce and Industry to issue regulation which levies tax on coffee destined for export for the first time.[69] Evasion or an attempt to evade tax was made an offence punishable with a fine not exceeding three times the amount of the tax or up to six months imprisonment.[70] Based on this provision, the Minister passed a regulation which imposed tax at the rate of E$1 per quintal.[71]

Moreover, this law authorized the Board to engage in coffee trade under exceptional circumstances for a year with the approval of the Council of Ministers to be published on the Negarit Gazeta.[72] This power included buying, cleaning, decorticating, processing, storing and exporting coffee and lending money against warehouse receipts.[73] In giving effect to this article,

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[67] Legal Notice 218/ 1959 gave effect to this provision. This regulation empowers the Board to issue license to coffee traders except for retailers who buy coffee from licensed coffee dealers or growers as provided in Art V. It also sets down the types of licenses the Board may issue which include "Coffee Dealers "A" License" (for coffee export license), "Coffee Dealers "B" License" (For Domestic traders), "Pulping station "C" License" (for those who engage in Pulping and drying), "Drying Station "D" License" (for those who operate a drying station) and "Cleaner and Grader "E" License" (for those who engage in the business of cleaning and grading). See Regulations issued Pursuant to National Coffee Board Decree 1957, 1959, Art VI, Legal Notice No. 218, Neg Gaz, year 18, No.5. "Warehouseman's "F" License," and "Vehicle's "G" License" were also included by Legal notice No. 324/ 1966. Finally, these license categories were deleted and substitute by the following descriptions by the different Legislations that came in 1973: License to Trade Coffee with in the Country, License to Wet Process Coffee, License to Store Coffee, License to Transport Coffee, License to Clean and Grade Coffee, and License to Export and Trade in Coffee.

[68] The proclamation does not define Coffee Exchange. This gap was filled by the 1973 National Coffee Board Proclamation which defines it as "a place where those persons licensed by the Board may meet to participate in the purchase and sale of coffee under the supervision of the Board." See Art 3 (9) of Proclamation No. 310/ 1973, cited below at note 74

[69] Id, Art 5

[70] Id, Art 5(2) cum Art 9

[71] The National Coffee Board Decree 1958 Regulations, 1958, Art 3, Legal Notice No. 217, *Neg Gaz*, year 17, No 10. This rate was continuously revised across time until sweeping amendment of the coffee legislations took place in 1973. But the E$3 per quintal (per bag which contains 60 Kgs of coffee in Procl. No. 310/ 1973) remained the upper limit.

[72] The National Coffee Board Proclamation, cited above at note 65, Art 7

[73] Id, Art 7 (a) to (b)

the Council of Ministers approved that there were exceptional circumstances in 1966 that gave green light to the Board to engage in coffee trade.[74] This regulation doesn't, however, state the exceptional circumstances that call for the Board's participation in coffee trade.

The Coffee Certificates of Origin Regulations which was issued by the Minister of Commerce and Industry by Legal Notice No. 308/ 1965 assigned the Board another role in the coffee trade. This regulation introduced certification of coffee based on its origin. Accordingly, all coffee grown in Ethiopia and destined for export qualified for a Certificate of Origin[75] and Certificate of Re-export was to be issued for all coffee imported to Ethiopia and destined for re-export as per Art 5. Art 7 on the other hand empowered the Board or any other agency delegated by it to issue both certificates for that purpose.

In 1969, an occupational association called the Ethiopian Coffee Exporters' Association was established. Some of the objectives of this association include: uniting coffee exporters, fostering the quality of Ethiopian coffee, promoting Ethiopian coffee locally as well as internationally, helping the establishment of coffee exchange centers, standardizing the trading system.[76] This association together with the Board established "Coffee Auction Centers," which effectively served as centers of information and coffee transactions. Before this system was in place, coffee transaction was conducted through brokers. Sometimes, the producers had to spend days to locate buyers and they often used to sell their coffee at the price the buyers offered to.[77]

The abovementioned laws undertook successive amendments at different times. In 1973, however, the government approached the amendment in a holistic manner and came up with comprehensive legislations that repealed many of the laws including the 1952 Coffee (Cleaning

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[74] Regulations Issued Pursuant to the National Coffee Board Proclamations, 1961, 1966, Art 2, Legal Notice 323, *Neg Gaz*, year 26th, No. 4. Note that this regulation was issued pursuant to Proclamation No. 178/ 1961 which adopted the 1957 National Coffee Board Decree with slight amendments.

[75] Coffee Certificates of Origin Regulations, 1965, Art 4, Legal Notice No. 308, *Neg Gaz*, year 25, No. 1

[76] Girma *ET AL*, Cited at note no. 3, pp. 424-425

[77] Id, p. 13

and Grading) Proclamation and the 1961 National Coffee Board proclamation and their subsequent amendments.[78]

The Board was re-established as an autonomous public authority[79] with two principal purposes of improving the quality of coffee produced in Ethiopia and maximization of coffee for export.[80] It was given "all powers necessary for the attainment of its purposes."[81] In addition to the powers and responsibilities given to it by the former laws, the Board was further granted with powers to develop and enforce policies and programs,[82] represent the government in relation to matters coming with in its jurisdiction;[83] and establish branch offices locally and internationally.[84]

In addition, it was the primary organ to control and direct the production, harvesting, processing, possession, storage, movement, transportation, purchase, sale, and export of coffee. By virtue of this, the board had powers to fix and control the price of coffee destined both for export and domestic consumption; establish and supervise coffee exchange in which coffee is traded by public auction; provide arbitration forum to solve disputes arising from coffee marketing; allocate export quota among exporters; fix, impose and collect tax on coffee grown in and exported from Ethiopia which may not exceed E $ 3 per bag; enter into international obligations relating to coffee representing the country.[85]

The power to issue regulations on the other hand was still given to the Minister of Commerce, Industry and Tourism.[86] By virtue of this power, the Minister issued three important legislations. These are: the Coffee Board Regulations[87] Coffee Cleaning and Grading[88] and Coffee Export Regulations.[89] These legislations empower the Board to, among other things, issue license and renew, modify, or revoke it.

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[78] National Coffee Board Proclamation, 1973, Art 2, Proclamation No. 310, *Neg Gaz*, year 32, No. 12
[79] National Coffee Board Re-establishment Order, 1973, Art 2, Order No. 84, *Neg Gaz*, year 32, No 12
[80] Id, Art 3 (1)-(2)
[81] Id Art 4(1)
[82] Id, Art 4(2) (g)
[83] Id, Art 4(2)(h)
[84] Id, Art 4 (2) (f)
[85] National Coffee Board Proclamation, 1973, cited above at note 78, Art 4 (1) cum (2)
[86] Id, Art 8
[87] Coffee Board Regulations, 1973, Legal Notice No. 441, Neg. Gaz, Year 32, No. 30
[88] Coffee Cleaning and Grading Regulations, 1973, Legal Notice No. 442, Neg. Gaz, Year 32, No. 30
[89] Coffee Export Regulations, 1973, Legal Notice No. 443, Neg. Gaz, Year 32, No. 30

The Board generally was empowered to supervise the overall enforcement of the laws relating to coffee. Nonetheless, the Dergue Government came to power soon after these laws were enacted. Yet, the Board's contribution to the coffee industry in those days can be assessed in light of the previous legislations. In this regard, the establishment of branches in the coffee growing areas which in turn promoted production of quality coffee by working closely with the farmers, traders and exporters, the beginning of washed coffee, continuously updating the stakeholders with information about the changes in the world coffee market by representing the country in the International Coffee Organization (ICO) and participating in international meetings, etc could be mentioned among the most notable success stories attributable to the Board.[90] Generally, however, "the entire exercise of the creating the Board put the coffee industry on a right footing as aimed. It rendered Ethiopian coffee to be competitive on the world market."[91]

2.2. Coffee Trade during the Dergue Regime

In 1974, the Provisional Military Administrative Council (PMAC) or *Dergue* (for Committee) seized power by deposing the imperial government. And it held that the feudo-bourgeois regime of Emperor Haileselassie and its pro-capitalist and pro-feudal policies is responsible for the stagnant economic performance and, generally, the backwardness of the country.[92] As a result, it redirected the overall development policies along the socialist line which was believed to rescue the country out of the persisting socio-economic quagmire. Thus, it came up with Economic Policy of Socialist Ethiopia in February 1975 which made the state as a main actor in development allowing it to involve in every aspect of the socio-economic life of the country.

In respect to the coffee industry, various measures were taken to increasingly socialize the sector including coffee trade. The government started such its role by amending the 1973 National Coffee Board Proclamation in such a way as it enables the Board to process, possess, store, transport, purchase, sell and export coffee.[93] This amendment didn't, in fact, make much difference in the role of the Board as that was "what the Board was doing in its early days, with

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[90] Girma, cited above at note 3, p. 12
[91] Ibid
[92] See, Befekadu Degfe and Berhanu Nega (ed.), *Annual Report on the Ethiopian Economy*, (1999/2000,The Ethiopian Economic Association), Vol.1, p. 2
[93] National Coffee Board (Amendment) Proclamation, 1975, Art 2, Proclamation No. 57*, Neg Gaz*, year 35, No. 6

some degree of limitation though."[94] It might have been, however, done to give due emphasis to the extensive roles of the Board in the industry.

After few years, however, a new legislation which repealed this law as well as other coffee laws was enacted. This law abolished the Coffee Board and, on its place, established a new institution called "Coffee and Tea Development and Marketing Authority," an autonomous public body having its own personality.[95] The reason for establishing the authority was to enable the government to actively involve on the production and trade of coffee.[96] Established with the principal purposes of maximizing the production, quality, industrial processing and export of coffee,[97] all of the powers and duties of the Board were transferred to this Authority.[98]

Unlike the previous laws which give it to the Minister of Commerce and Industry, this proclamation empowers the Minister of Agriculture and Settlement to issue regulations necessary to implement the proclamation as provided in Art 20. In addition, the Minister was empowered to establish coffee marketing corporations.[99] In this regard, the Authority was given power to direct and control the activities of these institutions.[100] This in turn transformed the role of the institution from more of regulatory organ to active participant in the coffee trade.

As per the power entrusted to him by the proclamation, the Minister issued regulations which established the Ethiopian Coffee Marketing Corporation. It was a public enterprise established with a broad goal of strengthening and developing Ethiopia's coffee market and to participate in the market in such capacity as purchasing, storing, processing, transporting, selling and exporting of coffee "in a manner which guarantees national interests."[101] As per Art 6, it was established

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[94] Tilahun Teshome, *Institutional and Legal Framework of Grain and Coffee Marketing in Ethiopia*, (2003, draft Report, IFPRI/IFAD Project on "Getting Markets Right" in Ethiopia), p. 11

[95] A Proclamation to Provide for the Establishment of Coffee and Tea Development and Marketing Authority,1978, Art 4, Proclamation No. 134, *Neg Gaz*, Year 37, No. 4.

[96] Id, Preamble

[97] Id, Art 6

[98] Id, art 19. Note that Art 7 of this proclamation adopted almost literally all the powers and responsibilities of the Coffee Board provided by Art 4 of Order No. 84/ 1973 and Art 4 of Proclamation No 310/ 1973.

[99] See Art 7(1)

[100] Ibid

[101] Ethiopian Coffee Marketing Corporation Establishment Regulations, 1978, Art 5, Legal Notice No. 59, *Neg Gaz*, year 37, No. 5

with a principal office in Addis Ababa and possible branch offices in other areas in Ethiopia and abroad. Art 7 of the regulation lists out the specific powers and duties of the corporation which include, but not limited to, lending money to coffee growers associations, giving coffee processing services by charging fees, establishing adequate facilities for the processing and marketing of coffee and collecting relevant market information and statistics relating to coffee trade and submitting to the Coffee and Tea Development and Marketing Authority.

Finally, the regulation requires the Authority to direct the corporation in accordance with the government's policies; promote its objectives and assist it in obtaining governmental support.[102] The strong supports which it received from government then enabled the corporation to dominate coffee related transactions by establishing 55 purchasing stations.[103] It was engaged in processing, storing, purchasing, selling and exporting of coffee. Generally, it took about 80% of the coffee market in general and 90% of coffee export in particular.[104] The remaining 20% and 10% of the general coffee market and coffee export respectively were shared by the coffee cooperatives and the private sector.[105] It, and to a lesser extent the cooperatives also had monopoly over washed coffee. These circumstances, consequently, limited the participation of the private sector in the coffee economy to negligible share.

The life of the Coffee and Tea Development Authority was, however, shortened by Proclamation No. 179/ 1980. This proclamation transformed the authority into ministry with some additional powers and responsibilities.[106] The Minister of Coffee and Tea Development was empowered to, among others, issue, suspend or revoke license of coffee traders, exporters, importers, and trade auxiliaries; establish and supervise organizations which produce, purchase, clean, store, export, import coffee; fix price of coffee for export as well as, up on approval of the government, for domestic consumption; control coffee movement using all means such as by establishing control stations where necessary.[107]

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[102] Id, Art 10
[103] Tsegaye Workayehu, cited above at note 60, p. 49
[104] Id, pp. 48-49
[105] Petit, Cited at note 16, p. 247
[106] Definition of Powers and Responsibilities of Ministers Amendment Proclamation, 1980, Art 2 (20), Proclamation No. 179, Neg Gaz, year 39, No. 8
[107] Id, Art 2(20) (1) to (21)

Another "draconic" law was issued in 1984, the Coffee Trade Proclamation. The proclamation was triggered by, the need to maximize the benefits the country gets from it. And that is secured by, the preamble states, proper regulation of the movement, storage, cleaning, sale and purchase of the commodity as well as clearly defining the rights and duties of the participants in the transaction of same. This proclamation repealed all laws relating to coffee except Regulations No. 47/ 1976 (The Cess on Coffee Export), Regulations No. 59/1978 (Coffee Marketing Corporation Establishing Regulation) and Arts 1, 2, 12, 15, and 18 of the Coffee Board Regulations (Reg. No. 441/1973).[108]

Under this proclamation, coffee trade was defined broadly as to include coffee cleaning, collection, supply, roasting, wholesaling, retailing or acting as coffee trade auxiliary.[109] By virtue of Art 4(1) of this proclamation, no person may engage in coffee trade with out license to be issued by the Ministry of Coffee and Tea Development. Sub Art 2 also prohibits engaging in transportation or storage of coffee with out authorization from the Ministry. Once issued, such license may be suspended and/or exceptionally revoked by the Ministry for the following reasons: [110] failure to handle coffee in the prescribed manner; transportation of coffee with out authorization; storage of coffee in a place other than registered premises; selling coffee in contravention to the terms provided in the license; cleaning or grading below the Ethiopian standard; failure to submit information required by the Ministry; and failure to comply with regulations or written directives of the Ministry.

Art 10 (2) also empowered the Ministry to suspend or revoke a license to implement a government policy. Any person aggrieved of the decision of suspension or revocation of his license was allowed to appeal to the Minister of the same Ministry and his decision was final.[111]

Part III of the proclamation is devoted to prescribing the obligations of coffee traders. Three basic obligations that are common to all coffee traders were provided in Art 13. These are

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[108] Coffee Trade Proclamation, 1984, Art 2, Proclamation No. 263, *Neg Gaz*, year 43, No 14

[109] Id, Art 3(3). Coffee Trade Auxiliary is defined as a "person engaged in the business of purchase and sale of coffee on behalf of a foreign coffee buyer" as provided in Art 3(4)

[110] Id, Art 10(1)

[111] Id, Art 11

obligations to buy or sell coffee at the price fixed and at the area designated by the Ministry; register the premises where coffee is stored with the Ministry and to store only in such premises; and submit information relating to their business to the Ministry periodically or when required.

In addition, the proclamation provides obligations in respect to different types of traders. Accordingly, coffee collectors were required to sell their coffee to coffee suppliers or to appropriate government body with in the time fixed by the Ministry.[112] Likewise, coffee suppliers were obliged to sell their coffee to exporters at a designated auction hall or to appropriate government organization.[113] Similarly, stringent obligations were provided in relation to exporters. Accordingly, they were required to buy coffee from designated auction hall and at a price fixed by the Ministry. Additionally, it was mandatory for them to process and export coffee where it meets the required export standard and register the sale contract with in the Ministry; and if it does not meet the standard, to sell it to appropriate government body at the price fixed by the Ministry.[114] The Ministry was also empowered to determine export price.[115]

Similar rules worked for wholesalers, retailers and coffee roasters. So, wholesalers and coffee roasters were required to buy their coffee only from government bodies as per Art 17 and 19 respectively. Further, while wholesalers were obliged to sell only to retailers assigned to them by the Ministry, the later were required to buy from the former or government organs assigned to them and sell to consumers as prescribed by the Ministry.[116] Art 21 further empowered the Ministry to determine the localities and the conditions under which coffee trade in general as well as each type of trade may be carried out.

2.3. Coffee Trade from 1991 to 2008

In 1991, the Dergue government had to face the same fate as that of the imperial regime in 1974- it was overthrown by the Ethiopian Peoples Revolutionary Democratic Front (EPRDF). In the aftermath of the end of the Dergue, a transitional government called Transitional Government of

[112] Id, Art 14
[113] Id, Art 15
[114] Id, art 16
[115] Id, Art 24 (1)
[116] Id, Arts 17 to 18

Ethiopia (TGE) was established which formulated a policy called "Ethiopia's Economic Policy during the Transitional Period." The document states, among other things, the following: "in the past, state control over the economy was the major cause of economic decline. Therefore, in order to embark upon economic recovery, it is essential to change the role of the state."[117] The policy thus limits the role of the state in the economy to formulating policies and strategies, promulgating laws and regulations that promote economic development; investing in areas of essential importance where the private sector does not show interest; enhancing infrastructures, research and development and capacity building; stimulating the private sector; and regulating market failure.[118]

The TGE, in this light, adopted a market-led economy. This policy further stipulates that such policy "would be open to continuity during the post-transition period with only minor adjustments"[119] which is also reaffirmed in the policy handbook of the FDRE.[120] In line with this, the government was taking a number of liberalization measures. It also adopted an overall development strategy known as Agricultural Development-Led Industrialization (ADLI) which makes agriculture as the engine of growth and development. The different sectoral policy documents further state that ADLI best achieves the objectives of market-oriented economy.[121]This being the general policy framework, whether the government made a break to a level it promised in the policy in relation to coffee trade is a point of scrutiny of this section.

The first thing the TGE did in relation to coffee was amending the Coffee Trade Proclamation of 1984. The amendment, however, relates only to coffee trade issuance and renewal fees.[122] By limiting itself to the schedule of license issuance and renewal fees, the proclamation allowed the continuation of the previous rigorous laws relating to price, market place and the role of the state including that of the regulatory organ in the coffee market. In fact, the licensing and renewal fee

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[117] The Transitional Government of Ethiopia, *Ethiopia's Economic Policy during the Transitional Period (an Official Translation)*, (1991, , Addis Ababa), Section 1.1

[118] Id, Sections 1.1.1 to 1.1.5

[119] Id, Introductory Part, p. 16

[120] FDRE, *The Policy Handbook of the Federal Democratic Republic of Ethiopia* (2005, Ministry of Foreign Affairs, Addis Ababa), vol. I p. 78

[121] See, for instance, Rural Development Policy Handbook which states that ADLI facilitates the achievement of strong market based economy. Rural Development Policies, Strategies and Programs (Amharic Version), (Hidar 1994 E. C, Ministry of Information, Addis Ababa), p. 21

[122] Coffee Trade (Amendment) Proclamation, 1993, Art 2, Proclamation No 70, *Neg Gaz*, year 52, No. 63

has its own impact as expensive fees have the effect of reducing market participants.[123] The licensing and renewal fees introduced by proclamation 263/ 84 were not only high but also excessive. The license issuance fee for coffee export and coffee supply, for instance, was 20,000 and 10,000 respectively.[124] The amended law reduced this to 200 and 150 respectively.[125]

In the same year, many regulations which increased the number of state enterprises operating in the coffee sector were issued. Accordingly, the former Coffee Marketing Corporation was split up into two enterprises, namely, the Ethiopian Coffee Purchase and Sale Enterprise and the Ethiopian Coffee Export Enterprise. The former was established with main objectives of purchasing and transporting of coffee and selling same in the auction centers; stabilizing internal coffee market; and expanding hull stations.[126] The objectives of the Ethiopian Coffee Export Enterprise on the other hand include buying coffee from the auction centers; processing[127]and exporting same.[128]

Two other enterprises operating in the coffee sector were established in the same year. The first was Coffee Technology Development and Engineering Enterprise which was concerned with the construction, importation, distribution, repair, etc of coffee pulping and drying machines and other agricultural devises.[129] The second one was the Coffee Plantation Development Enterprise with its objective of coffee production and managing some state coffee farms.[130] The Regulation further repealed the Coffee Plantation Development Corporation which was established by Legal Notice 84/1984 and transferred its rights and obligations to the new enterprise.[131]Another enterprise called Coffee Processing and Warehouse Enterprise was added in 1994 by virtue of

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[123] Petit, cited above at note 16, p. 247
[124] Coffee Trade Proclamation, cited above at note 108, Schedule I
[125] Coffee Trade (Amendment) Proclamation, cited above at note 122, Schedule I
[126] Coffee Purchase and Sale Enterprise Establishment Council of Ministers Regulations, 1993, Art 5, Regulations No. 127, *Neg Gaz*, year 53, No. 8
[127]It was also empowered to process and store coffee for others. See Ethiopian Coffee Export Enterprise Establishment Council of Ministers Regulations, 1993, Art 5(4), Regulations No. 128, *Neg Gaz*, year 53, No. 9
[128] Id, Art 5
[129] Coffee Technology Development and Engineering Enterprise Establishment Council of Ministers Regulations, 1993, Art 5, Regulations No. 150, *Neg Gaz*, year 53, No. 31
[130] Coffee Plantation Development Enterprise Establishment Council of Ministers Regulations, 1993, Art 5, Regulations No. 151, *Neg Gaz*, year 53, No. 32
[131] Id, Arts 9 to 10

Regulations No 184/1994. It was established to render coffee processing and warehousing services as provided in Art 5 of the regulation.

All these enterprises were established with limited liability.[132] Moreover, they were established for indefinite time and were empowered to carry out any activity necessary for the realization of their respective objectives.[133] Examined from the promises stipulated by the policy, one can easily see that there was not as such significant break up from the legacy of strong state intervention in the coffee industry including the coffee market. The sphere of participation of the state was even increased through the different and all-around public enterprises mushroomed in those days irrespective of their share in the market.

Another remarkable development that took place in this period was the establishment of new institution called the "Coffee and Tea Authority" (here in after the "Authority") an autonomous public institution. This institution replaced the former Ministry of State Farms, Coffee and Tea Development[134] "in a bid to further deregulate the production and marketing of coffee."[135] In relation to coffee, the objectives of the Authority include enhancing the production and quality of coffee; promoting coffee trade and encouraging processing of coffee and controlling its quality.[136]

To such end, a number of powers and duties were given to the authority. In fact, many of them were similar to that of its predecessors. In respect to coffee trade, the main ones were:[137] formulation of policies and strategies; issuing directives relating to coffee trade license, and licensing coffee exporters, importers and trade auxiliaries; issuing coffee export and import certificate: controlling coffee trade activities, promoting and expanding coffee market in foreign

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[132] See Art 7 of the respective Regulations

[133] See Art 8 and the last provision of Art 5 of the respective Regulations

[134] Coffee and Tea Authority Establishment proclamation,1995, Art 3, Proclamation No. 116, *Neg Gaz*, year 54, No. 15. The Ministry of State Farms, Coffee and Tea was established by merging the previous Ministry of State Farms and Ministry of Coffee and Tea Development by the Definition of Powers and Duties of the Central and Regional Executive Organs of the Transitional Government of Ethiopia Proclamation. See Definition of Powers and Duties of the Central and Regional Executive Organs of the Transitional Government of Ethiopia Proclamation, 1993, Art 3(1), Proclamation No. 41, *Neg Gaz*, Year 52, No. 26

[135] Tilahun, cited above at note 94, p. 14

[136] Coffee and Tea Authority Establishment proclamation, Cited above at note 134, Art 4

[137] Id, Art 5

countries, information dissemination, issuing directives concerning quality control of export coffee and supervise their implementation;[138] enforcing obligations arising out of treaties to which Ethiopia is a party, assisting regional agencies dealing with coffee and other powers and duties necessary for the achievement of its objectives. Art 14 of the proclamation also transferred the rights and obligations of the Ministry of State Farms, Coffee and Tea Development to the Authority.

In 1998, various laws dealing with tax and duties on coffee were consolidated into a single proclamation, Tax on Coffee Exported from Ethiopia Proclamation. The proclamation opted FOB as basis for computation of the tax.[139] Accordingly, it imposed tax at the rate of 6.5% of the FOB price.[140] The Customs Authority was empowered to collect such tax by virtue of Art 5. Art 9(1) required any person or organization to cooperate with the Customs Authority. The National Bank of Ethiopia in particular was required to supply information including the sales date of the coffee, contract number, the name and address of the exporter, the quantity and price of the coffee.[141] Lastly, the proclamation repealed previous coffee related tax laws including Transaction Tax Proclamation No. 205/1963, the third schedule (export duties) attached to the Customs Tariffs Regulations No. 42/1976, Coffee Surtax Regulations No. 280/1964 and Cess on Coffee Exported from Ethiopia Regulations No. 47/1976.

2002 was the time when another important event relating to coffee occurred. Proclamation 187/ 2002 amended the previous tax proclamations on export coffee making the 6.5% of FOB value tax zero.[142] This was done in response to the then low price persisting at the international coffee market.[143] The proclamation further changed the role of the Council of Ministers. Art 3

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[138] The Ethiopian Coffee Exporters Association was also exercising quality control activities with, in fact, approval of the Authority. See Tilahun, cited above at note 94, p. 14

[139] Tax on Coffee Exported from Ethiopia Proclamation, 1998, Art 3, Proclamation No. 99, *Fed Neg Gaz*, 4th year No. 18. Art 2(1) of the proclamation defines FOB (Free On Board) as "selling price of coffee quoted at the port of loading, agreed between the coffee export and his customer and approved by the National Bank of Ethiopia, from which freight and insurance costs are excluded."

[140] Id, Art 4. Art 8, however, provided that the Council of Ministers may amend this rate depending on the fluctuations in the quantity and price of the coffee exported.

[141] Id, Art 9(2)

[142] Tax on Coffee Exported from Ethiopia (Amendment), 2002, Art 2, Proclamation No. 287, *Fed Neg GAz*, 8thYear No. 35

[143] Petit, cited above at note 16, p. 248

empowered it to re-levy tax up on approval of the House of Peoples Representatives provided the quantity of coffee and its price in the international market is improved.

Generally, the sector in the 1991-2008 period had been gradually liberalized. The restrictions imposed on the private sector were reduced. To mention some, it did away with the previous quota system.[144] The Ethiopian Coffee Purchase and Sales and the Ethiopian Coffee Export Enterprise were brought to an end allowing the private sector to increasingly engage in the coffee market including in washed coffee.[145] Doing away with the price fixation, on the other hand, took long time. Until 2002, the time when it was discarded, the government used to fix price through a committee called Coffee Price Differential Setting Committee. The committee's members were drawn from members of the exporters association, the Ethiopian Coffee Export Enterprise and the Coffee and Tea Authority and it used to be chaired by the National Bank of Ethiopia. This committee used to set daily minimum price of both washed and unwashed coffee which a coffee exporter must register for upon sale of his coffee.[146]

The response of the private sector to the liberalization of the industry was worth mentioning. The successive reforms dynamically brought many new coffee traders and intermediaries to the marketing system.[147] In 2008, the country had 104 active coffee exporters, about 1800 suppliers, 5000 collectors, 230 primary cooperatives and five Cooperatives Unions.[148] Moreover, the quantity, quality of coffee exported and amount of foreign earnings from the commodity over recent times has been increased. Nevertheless, export of raw coffee is even now reserved to domestic investors.[149]

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[144] Id, p. 247. During the Dergue period, private participants were not allowed to participate in the coffee trade before the quota allocated to the Coffee Marketing Corporation was met.

[145] Id, p. 247

[146] Id, p. 248

[147] International Food Policy Research Institute (IFPRI) Markets, Trade and Institutions Division, *An Institutional and Legal Analysis of Grain and Coffee Marketing in Ethiopia* (Oct. 2003, Draft Report Prepared for the Ministry of Trade and Industry of the FDRE), p. 46

[148] Girma *ET AL*, cited above at note 3, p. 418

[149] Investment Incentives and Investment Areas Reserved for Domestic Investors Council of Ministers Regulations, 2003, Art 3 cum paragraph 1(4) of the Schedule, Regulations No. 84, *Fed Neg Gaz*, 9th year No. 34. The Regulation defines domestic investor as "an Ethiopian or a foreign national permanently residing in Ethiopia having made an investment and includes the Government, public enterprise as well as a foreign national, Ethiopian by birth and desiring to be considered as a domestic investor."

In 2008, however, the government came up with a new law, i.e., Coffee Quality Control and Marketing Proclamation, Proclamation No. 602/2008 which marked a new chapter in the industry in general and its marketing aspect in particular. The following chapters are devoted to the critical analysis of this proclamation, its subsidiary legislations and other relevant laws that come with in the legal regime governing coffee trade.

CHAPTER THREE

THE PRESENT COFFEE TRADE SYSTEM

3.1. Overview of the New Coffee Legislations

As mentioned in the previous chapter, the coffee industry has been increasingly liberalized starting from 1991. Attracted by the liberalization and other reform measures such as the removal of taxes on coffee and ending of the floor price of the National Bank of Ethiopia, an unprecedented number of market participants from the private sector started to actively engage in the industry in different capacities in the production, processing, supplying, exporting, wholesaling, retailing and roasting of coffee. Taking the export market as an instance, the role of the private sector's share has increased from 10% during the Dergue era[150] to 95%.[151] And the remaining 5% is shared by the existing cooperative unions and state farms which is the reverse scenario of the Dergue era.[152] This in turn increased the production as well as the productivity of the sector and the quality of the coffee produced. This situation enabled the country to export record amounts of coffee in this period in general and the past few years in particular.[153]

It was amidst such circumstances that the new law, i.e., the Coffee Quality Control and Marketing Proclamation[154] (hereinafter "the Proclamation" or the "Coffee Proclamation") was enacted in 2008. In order to implement this proclamation, other subsidiary laws, i.e., the Coffee

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[150] This 10% share of the export market includes the share of both the private sector and coffee cooperatives. See Petit, Cited above at note 16, p. 247

[151] Girma *ET AL*, cited above at note 3, p. 421

[152] Ibid

[153] ____, *"Confusion and Chaos "with New Coffee Auction System in Ethiopia*," cited above at note 38

[154] Coffee Quality Control and Marketing Proclamation, cited above at note 36

Regulation and Directive were issued by the Council of Ministers and the Ministry of Agriculture and Rural Development (hereinafter "MoARD or "the Ministry") respectively. The later also issued a manual called "**የቡና አመራረት ጥራት አጠባበቅና ግብይት አፈፃፀም ማኑዋል**" which roughly means "Manual on Coffee Production, Quality Control and Marketing Activities."

Three main reasons are provided by the proclamation for introducing the present coffee trade regime.[155] The first one is the need to establish better system of coffee quality and marketing which enables the country to supply better quality and competitive coffee to the international coffee market. The second reason relates to improving the marketing system in a way that enables coffee producers of the country get better share of the retail price. The third one has to do with the newly instituted market institution-the Ethiopia Commodity Exchange (hereinafter "ECX"). It is to harmonize coffee marketing with the ECX market system and the reorganization of the executive organs of the government.

These legislations provide for the different activities in coffee trade which include coffee collection, processing, supplying, exporting, roasting, storing and transporting. According to Art 3, the Proclamation is applicable to any person directly or indirectly involved in transactions of Ethiopian coffee quality control[156] and marketing.[157] Neither the proclamation nor the subsidiary laws provide what indirect involvement in coffee transaction constitutes. It, however, refers to those business activities which constitute not the marketing of the commodity but mainly the service aspect of the commodity such as processing, transportation, storage.[158]

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[155] Id, Preamble

[156] The proclamation, under Art 2(17), defines Coffee Quality control as "inspection and control of the picking, processing, storage and transporting of coffee, in accordance with acceptable norms, to ensure delivery of coffee to consumers in its natural state." These norms are enumerated in the proclamation itself, the regulations, directives and the manual

[157] The whole proclamation deals with coffee trade. Coffee trade on the other hand is defined by the proclamation broadly, as per Art 2(22), as "acts including collecting coffee from producers, processing and supplying to auction centers or the Ethiopia Commodity Exchange, exporting, roasting, grinding, distributing, retailing with license from the appropriate government organ." This definition includes both the quality control and marketing aspects of coffee

[158] Interview with Ato Firew Mamo, Attorney, MoARD, and who is, professionally, in charge of the cases related to the recent coffee controversy, on Nov. 9, 2009

3.2. Structure of the Coffee Market

The new coffee proclamation recognizes three kinds of coffee markets: the Local Coffee Markets, Coffee Auction Centers and the Ethiopia Commodity Exchange.[159] And it requires any person engaged in coffee transaction to transact coffee only in these centers.[160] Let's now see the essential features of each of these market forums.

3.2.1. Local Coffee Markets (Primary Transaction Centers)

At the production level, Ethiopian coffee sector is dominated by small farmers. More than 90% of Ethiopian coffee comes from these farmers.[161] The remaining 10% comes from private investors and government owned large-scale farms. This situation has its own impact on coffee quality and marketing. Collecting the coffees from the scattered small-scale farmers, for instance, is an onerous activity. In the past, this was done by primary collectors *(sebsabies),* locally licensed coffee traders, who buy in truck-load quantities from the farmers in the village markets.[162] These people did not, however, have adequate capital to buy such quantities of coffee and, as a result, they used to operate as sub-agents of the suppliers *(Akrabis).*[163]

In an effort to ease the difficulty and avoid 'unnecessary' role of intermediaries and, in a way, improve coffee quality, the proclamation stipulates for the establishment of local markets called Primary Transaction Centers or otherwise called local coffee markets. According to the regulation, a Primary Coffee Transaction Center is a "place designated by the appropriate regional organ[164] for trading red cherry and sun dried coffee"[165] in coffee producing localities.[166]

Art 5 of the regulation also empowers the organs entrusted with power of establishing such centers to determine the number and distribution of such centers in consultation with the organs

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[159] Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 2(21)
[160] Id, Art 6(1)
[161] Ministry of Agriculture and Rural Development, cited above at note 11, p. 2
[162] International Food Research Institute, cited above at note 147, p. viii, 47
[163] Id, p. viii
[164] Art 2(1)(b) of this same regulation defines appropriate regional organ as "agriculture and rural development bureau of a coffee producing region or any other organ of the region in charge of similar functions."
[165] Coffee Quality Control and Transaction Council of Ministers Regulation, Feb. 2009, Art 2(1)(c), Regulations No. 161, *Fed Neg Gaz*, Year 15 No. 22
[166] Id, Art 5(1)

which regulate trade. It, however, sets the factors that these organs must take into consideration in doing so which include proximity for coffee producers and suppliers, convenience for trading red cherry and sun dried coffees sharing similar properties, for entrance and exit of motor vehicles as well as for transporting the coffee to processing plants with in 12 hours after the transaction and sufficiency of distance from schools, health and religious institutions. [167] The centers are required to have, among other things, a dimension of at least 50 by 50 meters, common services such as market data board, loading and unloading platform, dry waste burning and pit latrine. [168]

Primary transaction centers may be established in such a way as to serve for two or more neighboring coffee producing woredas. In such occasions, Art 5(3) of the regulation requires the place and number of the centers to be determined jointly by the appropriate regional organs and/or the bureaus of agriculture and rural development of the respective woredas.

In these centers, transaction is carried out only between coffee farmers or coffee farmers' cooperatives that collect and supply coffee from their members on the one hand and coffee suppliers on the other.[169] To such effect, each supplier is required to have weighing scale certified by the Ethiopian Quality and Standards Authority.[170] From this it is easy to discern that enabling the coffee suppliers to directly access coffee from the farmers or farmers' cooperatives is one of the main objectives of the new coffee legislations.

The justification behind limiting the actors in these centers only to producers and suppliers is to do away the role of the previous collectors *(sebsabies).*[171] This achieves two important purposes at the same time. Firstly, it shortens the long chain of the coffee market. By doing so, the law strives to achieve an important purpose of enabling the producers get better price from the

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[167] Id, Art 5(2)
[168] Id, Art 7(1)
[169] Coffee Quality Control and Transaction Council of Ministers Regulation, cited above at note 165, Art 3(1)
[170] Id, Art 7(1)(d)
[171] Interview with Ato Adugna Fete, Coffee Development Expert, Oromia Bureau of Agriculture and Rural Development, Coffee Development Department, on November 10, 2009. Recent studies show that the number of primary collectors used to exceed 8000 and collect about 25% of the total coffee produces. See **በኢትዮጵያ ፌደራላዊ ዲሞክራስያዊ ሪፐብሊክ የኢትዮጵያ ምርት ገበያ የቡና ግብይት አሰራር አስመልክቶ የተዘጋጀ ፅሁፍ፣ ህዳር** 2001 **አዲስ አበባ ገፅ** 3-4

suppliers. Secondly, it has indirect effect of preserving coffee quality. This second purpose is premised on the assumption that collectors do not increase any value on the coffee they collect from the producers. Rather, coffee quality simply deteriorates as it changes many hands.[172] The other prong of coffee quality aspect is that these collectors were blamed for mixing coffees coming from different agro-ecologies.[173]

These centers are now established in many coffee producing areas. But the detail requirements are not practically complied with. In Oromia Regional State, for instance, many things including the design of these market centers are now under way.[174] Another challenge in this respect is that most of the coffee farmers are not bringing their produces to these centers. Instead, they are still supplying their coffee to the collectors.[175] Three main reasons could be mentioned for this. First, majority of the coffee farmers are small-scale farmers that their produce is little and the cost of round trip transportation and other contingent costs they incur made it economically unwise.[176] Secondly, there are many farmers who are physically weak that they can't transport their produce to these markets who have only one option which is to deliver to the collectors. Thirdly, there is no significant difference in the price at which the collectors receive from the farmers and in the primary transaction centers.

3.2.2. Coffee Auction Centers

Historically, Ethiopian coffee market has been characterized by long chain in which many actors participate in different capacities which include farmers, farmers' cooperatives, collectors, brokers, suppliers, service cooperatives, processors, exporters. For long time, coffee trade was conducted by the assistance of brokers who used to circulate the coffee in their handkerchiefs or so between the farmers on the one hand and suppliers and exporters on the other. As the farmers, suppliers and exporters didn't have sufficient information, however, the brokers used to play

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[172] Interview with Ato Adugna Fete, cited above at note 171
[173] Ibid
[174] ibid
[175] Interview held with anonymous supplier on October 20, 2009
[176] Ibid

incomparable role in the coffee trade. As a result, the trading system was costly and highly arbitrary leaving the other participants at the mercy of the intermediaries.[177]

Even if formalization of the coffee trade started beginning from early 1950s, establishment of central market had taken its own time. It was only in 1972 that the coffee auction system was established "at the request of both suppliers and exporters equally concerned by the need for an improved trading system that would be managed, at their request, by the state as a neutral third party."[178] From this time on, all coffees produced in the country had to pass through the auction markets.[179] To such end, two auction markets were established in Addis Ababa and Dire Dawa with 80% and 20% market share respectively.[180]

Accordingly, the suppliers were required to bring all coffees to these auction centers. Coffees that came from different localities were consigned separately. After this, inspection of quality and grading process takes place which was done on a sample basis by the coffee quality and liquoring unit of the organs responsible for overseeing the industry at different times.[181] Grading was made based on the number of defects and type of processing.[182] The samples of the graded coffee were displayed to the bidders in the halls an hour before the beginning of the auction proceedings. The bidders bid the lots one by one in a "Dutch type ascending price bidding system."[183] Following the sale, the seller was required to take the coffee to the warehouse of the buyer and payment is effected with in three days.[184] Finally, all coffees that meet export standards were directed for export and the remaining ones for domestic consumption.

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[177] Ethiopia Commodity Exchange, cited above at note 17, p. 4
[178] Ibid
[179] It is to be noted, however, that, since 2001, coffee cooperatives unions and some private investors have been empowered to by-pass the auction procedure and directly export their produces. See Petit, cited above at note 16, p. 240
[180] All coffees coming from different corners of the country with the exception of Harar Coffee which was traded in the Dire Dawa auction center were brought to the Addis Ababa auction market. See Petit, cited above at note 16, p. 241
[181] Id, p. 240
[182] Ibid
[183] The Ethiopia Commodity Exchange, cited above at note 17, p. 4
[184] International Food Policy Research Institute, Cited above at note 147, p. 50

The legal place given by the present coffee law to the auction model is creating confusion. On the one hand, the new coffee proclamation recognizes the auction centers as one of the present three coffee market channels. Art 5 of the proclamation in particular provides the following: "Coffee transaction between a coffee producer and coffee supplier; or where it is supply coffee intended for export, between a coffee supplier and a coffee exporter; where it is supply coffee and below an exportable grade, between supplier and a domestic wholesaler; or where it is not exportable, coffee by product, between a coffee exporter and a domestic wholesaler; shall take place in lawful *transaction centers*."

Transaction centers on the other hand are "local markets designed by the regional organ having legal power (primary transaction centers) for trading of red cherry coffee and coffee with pulp;[185] *the auction centers* and the Ethiopia Commodity Exchange."[186] In consolidating this stipulation, Art 6 of the proclamation makes trading of coffee out of these three market centers illegal.[187]

From this, it is clear that the present coffee proclamation clearly recognizes the auction model as one of the coffee market centers. In fact, neither the proclamation nor the subsidiary coffee legislations define what auction centers are. But in view of the fact that there existed only one model of coffee auction vertically across the three governments, we can't see any auction center other than the coffee auction model that was in place in the country until 2008.

On the other hand, the regulation which is issued to implement the proclamation switches all coffee trade to the Ethiopia Commodity Exchange. Art 4 of the regulation, for instance, provides the following: "*transactions in supply coffee and coffee by-products shall take place only at the Ethiopia Commodity Exchange in accordance with the rules of the Exchange.*"[188] Some argue that this provision contradicts to the abovementioned provisions of the proclamation, hence, there is violation of the rule of hierarchy of laws. Stated otherwise, the regulations issued by the Council of Ministers can not contradict the proclamation which is enacted by the House of

[185] These local markets are the ones, as depicted in the previous section, called Primary Transaction Centers
[186] Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 2(21)
[187] id, Art 6(1)
[188] Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note 165, Art 4(1)

Peoples Representatives (HPR),[189] the supreme organ at the federal level[190] on which legislative power on all federal matters is vested.[191]

On the contrary, others argue that the regulation does not contradict with the proclamation. According to an attorney in the MoARD, for instance, the fact that the regulation made the auction model away by shifting the whole coffee trade to the ECX should not be considered to be violation of the principle of hierarchy of laws. Conversely, it should be taken that the government favors the exchange model over the auction model.[192] Similarly, a legal officer of the ECX argues that the proclamation sets the general legal framework and the Council of Ministers chooses one which it deems appropriate at different times. This means the government can, for instance, stop the present commodity exchange trading system and switch back to the former auction model whenever it considers it to be appropriate.[193]

Price discovery, transparency, reward for quality, immediate payment and competition were considered, at least theoretically, as the most important strengths of the auction system.[194] Be that as it may, the system had many weaknesses. One of the defects of the auction model was the widely practiced deceptive practices made by the market participants. These practices take different forms. To begin with, few market participants used to control the whole coffee market in general and the export sector in particular. They did this in different ways such as by vertically and horizontally integrating themselves and with others by, among others, forming different sister companies and trading with one another; unduly influencing those coffee traders who do not cooperate with them.[195]

Secondly, there were serious contract enforcement problems. The notable and widely practiced problem in this regard was issuing of cheques while the issuer has insufficient fund which results

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[189] Constitution of the Federal Democratic Republic of Ethiopia (hereinafter, the FDRE Constitution), 1995, Art 77(13), Proclamation No. 1, *Federal Negarit Gazeta*, year 1, No 1
[190] Id, Art 50(2)
[191] Id, Art 55(1)
[192] Interview with Ato Firew Mamo, cited above at note 158
[193] Interview with Ato Yohannes Assefa, Chief Compliance Officer, Ethiopia Commodity Exchange, on Nov. 12, 2009
[194] International Food Policy Research Institute, Cited above at note 147, p. 57
[195] Interview with Ato Yohannes Assefa, cited above at note 193

in payment defaults.[196] It is in an effort to rectify these and many other problems of the coffee auction system that the government switched coffee trade into an exchange model.

Another weakness was that the auction system did not benefit the coffee producers and suppliers. It has been mentioned in the first chapter that about 95% of Ethiopian coffee comes from small-scale farmers. But the share of these farmers from the total market price of coffee in the international market has been negligible.[197] The exporters buy first and second grade coffees from the auction centers in commercial grade but they sell it in the international specialty coffee market fetching much higher price than the purchasing price.[198] This in a way adversely affects not only the farmers but also the suppliers though the degree varies.[199]

3.2.3. The Ethiopia Commodity Exchange (ECX)

The other market system introduced by the new coffee law into the Ethiopian coffee industry is commodity exchange model. As mentioned above, coffee trade currently is wholly conducted in the Ethiopia Commodity Exchange.[200] The next chapter deals with the commodity exchange system of trading vis-à-vis coffee trade in Ethiopia. So, the purpose of this section is only to show that ECX forms one of the coffee trade centers in Ethiopia. The writer thus directs the reader to the next chapter for matters dealing with the ECX as the third coffee market center.

3.3. Requirements to Engage in Coffee Trade

Coffee is not as simple commodity as other grains to Ethiopia. Due to the weight it attaches to its "green gold," the country has extended it special emphasis since early 1950s. Consequently, Ethiopian governments have been prescribing strict regulatory requirements in relation to different aspects of the commodity including the requirements to engage in transaction of same. In fact, the requirements vary across different times and in respect to different participants.

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[196] Ibid
[197] Ibid
[198] Ibid
[199] Ibid
[200] Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note 165, Art 4(1)

The present coffee law also strictly regulates the various activities of the industry. At the entrance level, it prescribes very strict rules and procedures that the participants in different capacities must fulfill in order to engage in coffee trade. Broadly, these requirements relate to certificate of competence, business license and prior membership of the ECX market system.

3.3.1. Certificate of Competence

One of the requirements currently introduced by the new coffee legislations is establishing competence to engage in coffee trade. In this regard, the regulation requires any supplier, exporter, wholesaler, roaster, processor, or coffee warehouse operator to obtain certificate of competence[201] before applying for license of his/its respective activity.[202] Moreover, each of these market participants can not participate in the ECX market system unless he has this certificate of competence as provided in Art 4(5) of the Regulation. This same regulation further provides the respective conditions that each of these actors must fulfill in order to obtain the certificate.

For instance, a supplier is required to fulfill the following requirements.[203] First, he is required to have or rent warehouse, a coffee pulping, washing and drying machine, bags, other necessary materials, service catering office, and if he is washed coffee supplier, coffee processing plant which meet the technical standards specified by MoARD or appropriate regional organ and weighing scale and moisture calibrator certified by the Quality and Standards Authority of Ethiopia (hereinafter "QSAE"). Secondly, a supplier needs to devise operational processes and procedures which process coffees from different ecological zones separately and which safely disposes wastes with out endangering the human and natural environments. Thirdly, a supplier has to have permanent staff qualified in coffee quality matters.

More or less similar requirements are prescribed for coffee exporters, processors, warehouse operators, coffee wholesalers, and roasters.[204] Of course, other requirements are provided in

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[201] Certificate of competence is, as per Art 2(25) of the proclamation, a "document that certifies the ability of a person to collect, process, store, transport coffee, and to engage in all other activities related to coffee trade."
[202] Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note 165, Art 8
[203] Id, Art 9
[204] Id, Arts 10, 11, 12, 13, 14 respectively

relation to some of these participants. Exporters, for instance, are required to develop information flow mechanism through which they notify MoARD about the details of their activities like the quantity and type of coffee they bought, exported, sold for wholesalers and the remaining one at least at the end of every month.[205] Moreover, if an exporter needs to export blended coffees which have different properties or standards, he is required to obtain special license which is issued by MoARD by virtue of Art 10(5) of the regulation.

The agriculture and rural development bureaus or other organs with similar functions are the organs competent to issue certificate of competence at the regional level.[206] For coffee exporters, however, MoARD is the only body which issues this certificate as provided in art 15 of the regulation. Once application for certification of competence is filed, the competent organ be it the Ministry or regional organ is required to decide it with in 15 working days from the date of receipt of the application. If the regional organ or, in case of coffee exporter, the Ministry rejects the application and if the applicant is aggrieved of the decision, he can appeal, on question of law, to the regional or federal high court respectively whose decision is final.

Currently, this certificate of competence is practically a prerequisite to getting license on coffee trade. To such end, MoARD is issuing this certificate.[207] If a person wants to engage in coffee export, for instance, he must first obtain the certificate from this Ministry. In case a person directly applies to the Ministry of Trade and Industry (hereinafter "MoTI") for coffee export license, the later requires him to first produce the certificate of competence from MoARD.[208] Likewise, whenever MoARD suspends or revokes the certificate of competence, MoTI takes similar measure up on notification from the former. This was practically a case in relation to the recent coffee controversy whereby MoARD notified MoTI by virtue of which the later revoked the license of the coffee exporters whose certificate of competence was revoked.[209] In any case, there is good coordination between the two institutions in this respect.

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[205] Id, Art 10(5)
[206] Id, Art 15(1) cum Art 2(2)
[207] Interview with Ato Firew, cited above at note 158
[208] Interview with Ato Yosef Alemu, Trade licensing and Registration Officer, MoTI, Nov.10, 2009
[209] Interview with Ato Firew, cited above at note 158. But Ato Nuredin Mohammed, Trade Licensing and Registration Director of MoTI, however, said that the decision concerning the revocation of license of the coffee exporters was made by a joint meeting of the MoARD, MoTI, MoFED, and NBE. Interview with Ato Nuredin, cited below at note 213

Similar situation exists in Oromia. Hence, the Bureau of Trade, Industry and Transport first requires any person to produce competence certificate from Bureau of Agriculture and Rural Development before it issues license.[210] But it is to be admitted that the certificate is now issued to the traders not because they fulfill all of the requirements.[211]

Moreover, the coffee traders who secured the license before the coming into force of the present coffee legislations are also required to obtain the competence certificate with in six months after the effective date of the regulation, i.e., Feb.4, 2009.[212] This is not, however, being fully realized. At the federal level, MoARD, in an effort to give effect to this provision, has got the name and address of the coffee exporters from MoTI and required them to get the certificate. Yet, many of them do not do so. But MoTI is not renewing their license unless they produce such certificate.[213] According to Ato Nuredin, the number of holders of this certificate of competence both at the federal and regional levels is not known as there is no data prepared for that end so far.

In a certain case filed to the Federal High Court on Sept.11, 2001 E.C, a warehouse of certain coffee exporter was sealed by MoARD on the ground that the former did not have certificate of competence.[214] The plaintiff then sued the Ministry on the ground that the later sealed its warehouse and seized its coffee illegally. But the Ministry justified its action based on Art 13(5) of the proclamation which empowers it to do so in order to ensure compliance with the law.

Once issued, certificate of competence may be suspended if the trader either fails to comply with the conditions of its issuance or violates the provisions of the coffee proclamation, regulation or directive.[215] In such case, the suspending organ orders the person whose certificate has been suspended to rectify the misdeeds with in specified reasonable time. If the person still failed to do so, the organ may totally revoke the certificate by virtue of Art 16(2)(b) of the Regulation.

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[210] Interview with Ato Abdela Osman, Trade controlling Expert, Bureau of Trade, Industry and Transportation, Oromia, on Nov. 13, 2009

[211] Interview with Ato Adugna, cited above at 171

[212] Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note 165, Art 24

[213] Interview with Ato Nuredin Mohammed, Trade Licensing and Registration Director, Ministry of Trade and Industry, on Nov. 14, 2009

[214] Ziway Dugda International Business and Industry Private Limited Company v. Ministry of Agriculture and Rural Development, (Federal High Court, 2009, Civil case No. 84636)

[215] Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note 165, Art 16(1)

Other grounds of revocation of certificate of competence include obtaining such certificate up on production of false information or commission of crimes provided in Art 15 of the proclamation.[216]

The party aggrieved of the decision of suspension or revocation of his certificate of competence may appeal on question of law to the federal or regional high court as appropriate with in 60 days whose decision, in this respect also, is final.[217] If the court approved the decision, the person is prohibited from engaging in any coffee transaction. Such person can not do so even with in the time when his appeal is under consideration. [218]

Recently, certificate of competence of six coffee exporters have been revoked due to an alleged violation of the coffee legislations. This in turn resulted in an automatic revocation of their coffee export license.[219] Revocation of certificate of competence thus results in an automatic cancelation of license unless the court holds otherwise in which case the recovery of the certificate results in an automatic effectiveness of the suspended or revoked license.

3.3.2. Coffee Business License

Though it may be obvious, the second requirement to engage in coffee trade is valid coffee trade license.[220] The proclamation does not provide the organ which is entrusted with power of licensing coffee trade. In the absence of specific empowerment by the proclamation or the subsidiary coffee legislations, the remaining option is to resort to other relevant laws. In this regard, the primary authority is the Commercial Registration and Business Licensing Proclamation. This proclamation centralizes the business of licensing commercial activities[221] which was carried out by different institutions in different sectors on pertinent institutions of the

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[216] Id, Art 16(2)
[217] Id, Art 16(3)
[218] Id, Art 17(1)
[219] Interview with Ato Nuredin Mohammed, cited above at note 213
[220] Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note 165, Art 4(5)
[221] Commercial activity is any activity listed in Art 5 of the Commercial Code, any other activity designated to be so commercial activity by Regulations issued by the government or service where it is carried on professionally and for gain. See Art 2(2) cum Art 2(3) of Commercial Registration and Business Licensing Proclamation, cited below at note 222. Note that this proclamation extended the scope of commercial activity beyond the traditional definition of only activities listed out in Art 5 of the Commercial Code. See Commercial Code of the Empire of Ethiopia, 1960, Art , 5, Proclamation No. 166, *Negarit Gazeta,* year 19, No. 3

trade and industry sector 'with the exception of those licenses which must be issued by other government institutions, owing to the particular nature of the activity.'[222]

Accordingly, no business person,[223] be it natural or juridical one, may carry out any of the commercial activities with out obtaining valid trade license from the Ministry of Trade and Industry or pertinent regional bureau.[224] The license for coffee trade thus is issued by the trade and industry bodies. Cumulative readings of Art 20(2) and the appendix part of this proclamation on the other hand reveals that export license including coffee export license is, however, issued only by MoTI. It is to be noted, however, that a business person licensed for the business of import and export can not engage in coffee import and export unless it is clearly mentioned in the license.[225] As per the information the writer obtained from Ato Nuredin of the MoTI, there is no central data developed recently which shows the total number of coffee trade licenses. But there are more 98 coffee traders licensed for coffee export out of which 66 are in Addis Ababa.[226]

3.3.3. Membership to the ECX

Previously, we have seen that the coffee regulation has shifted all coffee trade to the ECX. Consequently, the only avenue to participate in coffee trade outside the primary transaction centers nowadays is the ECX market system.[227] Engaging in coffee trade in the ECX on the other hand presupposes membership in same or recognition as agent of a member.[228] Thus, in the absence of any other market system such as the auction model, membership in the ECX can not

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[222] The Commercial Registration and Business Licensing Proclamation, 1997, Preamble, Proclamation No 67, *Federal Negarit Gazeta*, year 3, No. 25

[223] A business person is a person who professionally and for gain carries on any commercial activity. Id, see Art 2(2)

[224] Id, Art 21(1) cum Art 22(1) cum Art 2(16). See, however, Art 20(1) which makes some exceptions which can not be licensed by the Ministry or the regional bureau which are prospecting and mining of minerals, water work services, banking and insurance services, air transport service and other aviation services, commercial activities involving the use of radio-active materials and radiation emission equipment, repairing and maintaining of arms and firearms and sale of explosives and trade in tobacco products.

[225] Federal Government Commercial Registration and Licencing Council of Ministers Regulations, 1997, Art 17(2)(a), Regulations No. 13, Federal Negarit Gazeta, year 3, No. 28

[226] Data from Ministry of Trade and Industry

[227] It is to be noted that the Primary Transaction Centers operate only in the coffee producing areas and their purpose is to facilitate the on time delivery of coffees to the central market and maintaining natural coffee quality. Transaction is also made between producers and suppliers

[228] Ethiopia Commodity Exchange Proclamation, 2007, Art 20(1), Proclamation No 550, *Federal Neggarit Gazeta,* 13th Year, No 61

be optional. Quite the opposite, it is mandatory as any person other than coffee producers[229] and retailers[230] who needs to engage in the business of coffee trade has only one option, i.e., to be a member of the ECX market system.

3.4. Coffee Quality Control Procedures

As mentioned in section one of chapter one, coffee is produced in more than eighty countries all over the world. It is also a main export commodity for many countries including Ethiopia. Recently, different coffee producing countries in general and the newly emerging countries in particular are expanding their production enormously. Since 1997 only, coffee production has shown about 23.6% expansion.[231] World coffee import demand is not, however, growing to a greater extent as the level of growth in production leaving a great deal of differential shrunk.[232]

This in turn has created exceptional challenge to many coffee producing countries- every coffee producing country has to face an unprecedented competition in the world coffee trade. So, every coffee producing country has to find way out to this fierce competition in order to stay competitive in the market. In this regard, "providing good quality coffee is the only way out and viable option to get in to the world market and to remain competitive."[233]

Factors that determine coffee quality include genotype, climate conditions and soil conditions, harvesting techniques, post-harvesting processing techniques, grading, packing, storage conditions, and transporting.[234] In terms of the natural factors, Ethiopia is endowed with an ideal environment that made the country to be the center of diversity of Arabica coffee which is the most renowned coffee species in the world.[235] Quite the reverse, the human controlled factors are oftentimes poorly handled resulting in serious deterioration of coffee quality in the country. This

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[229] Art 11(1) of the coffee proclamation allows coffee producers to directly export their produces after processing of same and grading by the coffee quality liquoring and inspection unit of the MoARD. But there is every reason that even these producers must be members of the ECX as they are at the same time, as per sub Article 2 of this same article, required to sell their coffee by-products in the ECX or the auction centers which the later is now lacking

[230] Coffee retailers receive coffee from the wholesalers that must be members of the ECX Market system

[231] Girma *ET AL,* cited above at note 3, p. 307

[232] Africa Group Research, cited above at note 15

[233] Girma *ET AL,* cited above at note 3, p. 307

[234] Ibid

[235] Solomon, cited above at note 4, p. 4. See also Girma *ET AL*, p. 2

section examines how the present coffee legislations address the coffee quality issue with significant emphasis on coffee processing and coffee grading.

3.4.1. Coffee Processing

Before it gets ready for consumption, every coffee has to go through further processing. In Ethiopia, most coffee quality pitfalls are caused by processing-related shortcomings.[236] According to the proclamation, coffee processing "includes collecting and pulping red cherry coffee after picking, pulping and cleaning coffee with pulp, and processing export coffee in accordance with the country's quality and grade requirements and the buyers' needs as per the authorized technical procedures."[237]

The two widely used methods of coffee processing in Ethiopia are the wet method (washed coffee) and dry method (natural). The former is the type of coffee processing in which the red cherry is removed and processed until the bean gets its green color using water. It involves three stages: removal of the pulp and mucilage, fermentation and washing, and drying and removal of the parchment.[238] Wet processing helps to preserve the natural flavor and intrinsic quality of the coffee. As a result, it is often better quality coffee and fetches higher price as compared to the sun dried coffee.[239] In Ethiopia, it accounts only 29% of the total coffee export.[240]

Coffee which is prepared in wet processing method takes two types: washed coffee or semi-washed one. While the former is the type of coffee which is pulped, fermented and washed until its sticky mucilage is removed,[241] the later is one with its sticky mucilage.[242] Sun-dried coffee on the other hand is, as its name point towards, coffee which is dried naturally by exposing it to sunlight and then hulled, cleaned and sorted.[243]

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[236] Girma *ET AL,* cited above at note 3, p. 327
[237] Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 2(18)
[238] Girma ET Al, cited above at note 3, p. 395
[239] Note, however, that the demand for some sun-dried Ethiopian coffees like Sidamo 4, Lekempti 5 and Harar coffees is high in the international specialty coffee market. Id, p. 319
[240] Ibid
[241] Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 2(5)
[242] Id, Art 2(7)
[243] Id, , Art 2(6)

Coffee processing has been an issue of concern starting from early 1950s, the time when the first law which prohibits export of uncleaned and ungraded coffee was enacted. The present coffee laws also strictly regulate coffee processing. In this respect, the proclamation requires "the body which is engaged in coffee processing to "properly clean and process the coffee received by it as per the terms of the contract it entered and deliver the same to the owner with evidence of appropriate cleaning for the quality and grade of the coffee."[244]

The manner in which coffee shall be processed is provided in the directive[245] issued by the MoARD as per the power entrusted to it in Art 19 of the proclamation. The directive prescribes different rules applicable both to sun-dried and washed coffees and the processing industries.

In relation to the persons or entities engaged in the business of dry processing, the directive requires to, among other things, have coffee sifting machine verified by the QSAE, air blower which cleans the machine, warehouse, cement drying floor, drying table constructed out of local materials or drying bed which has 20 meters length and raised at 1 meter high, wooden pallets, packing sacks free from any kind of pesticides residue or unpleasant odor.[246] Similarly, Art 4(1) of the directive regulates the drying process and the type of coffee to be processed. To mention some,[247] only red cherry coffee can be processed by sun-dried method. In the course of drying, the thickness of the layer of the fruits shall not exceed 3 cm. Likewise, the percent of moisture of the coffee beans shall not exceed 11.5% as measured by calibrate certified by the QSAE. Lastly, the owner of the processing plant is required to issue certificate of cleanliness and such coffee must reach market with in 15 days after it ends processing.

In a similar fashion, the directive provides strict rules concerning washed coffee and processors of same. Accordingly, the person who is engaged in this activity has to have the necessary systems and equipments like huller, sorting table on which coffees that qualify for washing or otherwise are screened out, mucilage remover, repasser, fermentation tanks, washing canal,

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[244] Id, Art 12

[245] Coffee Quality Control and Marketing Directive, Directive No. 1, (December 2008), Ministry of Agriculture and Rural Development

[246] Id, Art 5.1

[247] As English version of the directive is not yet issued, all translations are the author's and any discrepancy in language in relation to the provisions of the directive is attributable to same.

water recirculation system, weighing scale certified by the QSAE, skin drying bed, main drying bed, and warehouse.[248] Washed coffee undergoes two-stage drying: skin drying and main drying. In the first stage, the fermented and washed coffee is dried by exposing to sunlight or using artificial heat for about 3 hours to eliminate the moisture that exists between the bean and its mucilage.[249] The second stage which is the main drying stage on the other hand takes long time until the coffee's moisture content reaches below 11.5% and is done in a drying bed.[250]

3.4.2. Coffee Grading

It has been mentioned earlier that, these days, coffee quality is the most critical factor to remain competitive in the international coffee market which in turn presupposes an ingenious quality management system. Two essential tasks are involved in quality management systems which are "the principles of standardization and the technical tools/standards that are associated with it"[251] and in the coffee sector, this is made through coffee grading.

The proclamation stipulates that coffee transaction in the auction centers and the ECX shall be conducted based on the grade and representative sample certificate issued by the coffee quality liquoring and inspection center.[252] In this regard, it is important to mention that "there is no universal (coffee) grading and classification system-each producing country has its own, which it may also use to set (minimum) standards for export."[253]

This doesn't mean, however, that countries do not have any criteria. Nor does it mean that the criteria that countries use in standardizing their coffee do not have any impact in the supply-demand aspects of international coffee market. In fact, they have. Some of the criteria which countries use in grading their coffee include: altitude, and/or region, botanical variety, preparation (wet or dry process), bean size (screen size, some times also bean shape and color,

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[248] Coffee Quality Control and Marketing Directive, cited above at note 245, Art 5.2
[249] Id, Art 4.2.8 cum Coffee Production, Quality Control and Marketing Implementation Manual (hereinafter "Coffee Manual,") (December 2008), p. 43
[250] Coffee Mannual, p. 43
[251] Girma *ET AL,* cited above at note 3, p. 328
[252] Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 5(2)
[253] Girma *ET AL,* cited above at note 3, p. 333

number of defects (imperfections), roast appearance and cup quality (flavor, characteristics, cleanliness and density of the beans).[254]

Now, let's redirect our attention to the Ethiopian scenario. In the previous system, there was an institution called Institute of Ethiopian Coffee Quality Inspection and Auction Center in Addis Ababa and Dire Dawa which deals with coffee grading and quality control.[255] On its place, the present coffee proclamation established the 'Coffee Quality Liquoring and Inspection Center', "an institution under the Ministry, that inspects, liquors, and issues certificates for coffee locally supplied from production areas, export coffee, and coffee by-product delivered to consumer areas."[256] Coffee trade in the ECX is now conducted based on the grade and representative sample certificate issued by this institution as per Art 5(2) of the proclamation.

Art 4 of the proclamation regulates the process of coffee grading. Accordingly, coffee shall first be pre-inspected by appropriate regional coffee quality inspector and sent as closed and sealed to the coffee quality liquoring and inspection center. The directive, in contrast, stipulates that the regional coffee quality inspection determines coffee that shall or shall not be taken to the coffee quality liquoring and inspection center based on the result of the pre-inspection it makes on a sample of a supply coffee.[257] It doesn't, however, say any thing with what this organ will do with the coffee that it does not allow to leave for the center. It doesn't as well empower it to grade such coffee by itself except to do pre-inspection on moisture and, in case of sun-dried coffee, the number of defects. In the previous system, there was similar regional institution which verifies that every truck-load coffee meets the minimum standards of cleanliness before it leaves for the central quality inspection and auction center. If it does not, the institution had power to order for further cleaning.[258] The present institution should also be entrusted with similar role.

At present, it is the coffee manual that provides the parameters of the grading. It provides two basic factors: the physical characteristics of the coffee and cup quality (test) which account for

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[254] Girma *ET AL,* cited above at note 3, p. 333
[255] Habtamu Minassie, *Image Analysis for Ethiopian Coffee Classification* (2008, Unpublished, Faculty of Informatics, AAU), p. 2
[256] Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 2(20)
[257] Coffee Quality Control and Marketing Directive, cited above at note 245, Art 7.2.2.6
[258] International Food Research Institute, Cited above at note 147, p. 20

40% and 60% respectively.[259] Four coffee classes are used in order to designate the type of coffee. These are washed, semi-washed, unwashed and local coffee. While the former three terms refer to the method of processing, local coffee refers to the type of coffee which doesn't meet export standard and hence destined for domestic consumption.[260]

In relation to the physical characteristics or otherwise called as raw value, whereas washed coffee comprises three factors: shape and make,[261] color and odor which constitute 15%, 15% and 10% respectively, unwashed coffee is examined from two factors: defect distribution[262] and odor which account for 30% and 10% respectively.[263] Similar factors are used both for washed and unwashed coffee in relation to the cup quality value. These are cleanliness, acidity, body and flavor which each constitutes 15%.[264] Overall, the Ministry developed, unlike the 5 grades in the previous system, 9 grades both for the washed and unwashed coffees.[265] On the contrary, domestic consumption coffee which is classified as washed, unwashed and by-product is categorized into 5 grades.[266] The aim of extending the grades is for quality differentiation and thereby creating rewarding fine coffees.

As a final point, the present coffee trade regime including the grading system doesn't take specific place of origin where the coffee comes from. The system mixes coffee beans from different growers. In fact, there are many provisions of the present coffee legislations that forbid the mixture of coffees of different agro-ecological zones. To begin with, Art 7(4) of the proclamation which deals with the obligations of coffee suppliers requires same not to mix the coffee of other agro ecologies. Art 8 also requires any coffee exporter not to mix different types

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[259] Coffee Manual, cited above at note 248, p. 79

[260] Note that selling unfrosted or roasted and ground coffee that is export standard locally is prohibited by virtue of Art 14(5) of the proclamation

[261] Shape and make refers to the structure or make up of the beans. See Girma *ET AL*, cited above at note 3, p. 330

[262] This is a criterion based on the number of different kinds of coffee defects and the rate of effect on the overall quality of the respective coffee. The standards developed by the ECX in this respect are: foxy, immature, black, white, solid, broken, wanza, stone, stick, grains, jenfel, stinkers, others. See ECX Unwashed Coffee Contracts: Grades and Standards

[263] Coffee Manual, cited above at note 248, pp. 79-80

[264] Id, p. 79

[265] Coffee Manual, cited above at note 248, p. 80. According to Ato Yohannes, 1 grade is now included and there are 10 grades

[266] Ethiopia Commodity Exchange, cited above at note 17, p. 6. Note, however, that the manual provides only 4 grades for this type of coffee

of coffee and, besides, to maintain the name of place of origin. In case an exporter needs export blend coffee, he is required to secure special permission from MoARD in which the process of mixing must be registered.[267] Special trade mark is also required from the Ministry of Trade and Industry which is issued after disclosing the blend and the ratio.[268] Finally, export coffee is required to be certified by a coffee quality liquoring and inspection center that, among other things, "it is prepared in accordance with the characteristics of the agro ecology of its production area and meets the required grade."[269]

Yet, coffee is traded in the ECX based on commercial grade though generic regional origin such as Sidama, Yirgachefe, Harar, is used in the course of grading and transaction. This does not, however, refer to the specific place or locality of origin which many international buyers need. In an effort, to address this problem, ECX has recently launched trading in specialty coffee.[270]

3.4.3. Packing, Storage, and Transportation

Unless due care is exercised, coffee quality may also deteriorate during packing, storage, and/or transportation. In the packing stage, coffee quality may be deteriorated due to different reasons. For instance, the bags may not be produced with the necessary quality and/or containers may be contaminated with foreign elements such as chemicals. High level pesticide residues were, for instance, found in 2008 in the sacks of coffee shipped to Japan, one of the biggest importers of Ethiopian coffee (about 20%) as a result of which the later banned importation until now.[271] In an effort to address such and related problems, the directive requires suppliers to use clean bags.[272] It also prohibits use of plastic bags or bags which have been used for other purposes.[273]

Likewise, coffee quality may be deteriorated as a result of factors like increase of moisture content of the bean, introduction of unpleasant flavors, infestation of storage insects, infection

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[267] Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art (4). See also Art 4.3.6 of the Directive
[268] Coffee Quality Control and Marketing Directive, cited above at note 245, Art 6.2.3.17
[269] Id, Art 4(4)
[270] The details of the different aspects of the specialty coffee are discussed in the next chapter
[271] Africa Group Research, cited above at note 15
[272] Coffee Quality Control and Marketing Directive, cited above at note 245, Art 6.2.2.12
[273] Id, Art 6.2.2.5

with moulds or bacteria, contamination with other things.[274] As a result, the coffee legislations cautiously regulate the manner in which coffee should be stored. The regulation, for instance, requires certificate of competence to engage in storage of coffee. The prerequisites for obtaining certificate of competence for coffee warehousing include having or leasing warehouse that meets the technical requirements issued by the Ministry,[275] devising a procedure which differentiates coffees of different agro ecological or other properties.[276] Also, the directive requires coffee warehousemen, among other things, not to store coffee with other commodities or other things. Likewise, these legislations require carriers to, among others, ensure that the vehicle is free from any thing that may deteriorate coffee quality.[277] Market participants are also required not to transport coffee mixing with other things which may deteriorate coffee quality.[278]

3.5. Major Market Participants

Historically, the Ethiopian coffee market is characterized by many market participants. These include producers, collectors, brokers, suppliers, processors, cooperatives, exporters, wholesalers, retailers, state enterprises and private investors. In addition, a new institution, the ECX has now been included to the list of participants.[279] In fact, some participants like the collectors are now legally forbidden from taking part in the coffee trade. In any case, this section deals with the respective main obligations of the major participants of the coffee market.

Some obligations are commonly applicable to many of the participants. These include the following. Firstly, any trader is required to transact coffee only in the transaction centers.[280] Secondly, every participant is obliged to sell coffee produced in one season before the next

[274] Girma ET AL, cited above at note 3, p. 313
[275] These requirements are provided in the Coffee Manual. Some of the requirements include building which has air blower, wooden pallets, and which is free from any chemical, etc. See Coffee Manual, cited above at note 249, pp.65-67
[276] Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 12
[277] Id, Art 6(4) cum Art 6.3.2.1 of the directive, cited above at note 245
[278] See, for instance, Art 6.2.3.9 of the directive
[279] Salient aspects including powers and responsibilities of the ECX are discussed in the next chapter. Thus this section will not discuss the ECX's obligations
[280] Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 6(1)

harvest.[281] Thirdly, any participant has to have certificate of competence for the activity he will engage in.[282] Fourthly, any participant is required to comply with the coffee legislations.[283]

3.5.1. Coffee Producers

This category of participants constitutes small-scale coffee farmers, coffee farmer's cooperatives, state coffee farms, and few private investors.[284] The existing coffee legislations prescribe some basic obligations that have to do with coffee trade in respect to these participants the most important of which being the following. First, producers can't purchase, transport and sell coffee except that they produce in their own farm.[285] Secondly, they are required to sell their produces only in transaction centers.[286] Of course, these participants have the right to by-pass the formal routes of coffee export and directly export their produces. The small-scale coffee farmers often do this by selling their coffee to their cooperatives and the later one's to cooperative unions[287] which buy them at market price.[288] In doing so, they must go through all the quality control and grading procedures.[289] Thirdly, they are required to sell coffee by-products at the ECX.[290]

3.5.2. Coffee Suppliers

A coffee supplier presently refers to a person who collects coffee from producers or from his own farm and, after processing, delivers to the ECX.[291] The present coffee legislations provide rigorous obligations in respect to suppliers. Art 7 of the proclamation, Art 4 of the regulation and Art 6.2.2 of the coffee directive in particular regulate the responsibilities and obligations of a

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[281] Coffee Quality Control and Marketing Directive, cited above at note 245, Art 6.2.1. As you will see it in the next section, this was one of the reasons for the recent coffee controversy
[282] Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note 165, Art 8
[283] Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 6(2)
[284] Id, Art 2(19)
[285] Coffee Quality Control and Marketing Directive, cited above at note 245, Art 6.1.2
[286] Id, Art 6(1)
[287] Currently, there are six coffee cooperative unions namely Oromiya Coffee Farmers Cooperative Union (OCFCU), Sidama Coffee Farmers Cooperative Union (SCFCU), Yirgachefe Coffee Farmers Cooperative Union (YCFCU), Kefa Forest Coffee Farmers Cooperative Union (KFCFCU), Tepi Coffee Farmers Cooperative Union, Bench Maji Forest Coffee Farmers Cooperative Union. See Kodama, cited below at note 288, p. 90
[288] Y. Kodma, "The New Role of Cooperatives in Ethiopia: the Case of Ethiopian Coffee Farmers Cooperatives," *African Study Monographs*, Suppl.35: 87-108 (March 2007), p. 91
[289] Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 11(1)
[290] Id, Art 11(2) cum Art 4(1) of the regulation
[291] Id, Art 2(13) cum (8)

coffee supplier. Cumulative readings of these provisions conveys us that a coffee supplier has, among other things, obligation: to deliver coffee he collected to processing plants with in 24 hours; to sell processed coffee in the auction centers or the ECX with in six months;[292] to ensure that the processed coffee he delivers to the quality liquoring and inspection centers meets the minimum quality standards and its moisture does not exceed 12%; to purchase, process and transport coffee only in the areas designated to him[293] and without mixing coffees of different agro ecologies.

Moreover, a coffee supplier's competence in the ECX is only to sell supply coffee by virtue of Art 4(3) (a) of the Regulation. Accordingly, a coffee supplier can not participate in activities other than selling what he collects from the coffee producers or from his own farm. A coffee supplier, for instance, can not buy supply coffee or coffee by-product from ECX to export to international market or distribute to retailers respectively.

3.5.3. Coffee Exporters

Under the existing coffee legislations, all coffee that meets export standard must be destined to foreign markets.[294] Export coffee which is the primary foreign exchange earner to Ethiopia constitutes over 60% of the total produces.[295] Coffee export is conducted mainly by private exporters licensed for coffee export business.[296] Coffee export is one of the most rigorously regulated areas of trade in the country. Arts 8 and 6.2.3 of the proclamation and the directive respectively deal with the obligations of coffee exporters.

Accordingly, exporters, with out getting into too technical aspects, are required to fulfill the following main requirements. First, a coffee exporter has to obtain identification number from

[292] The regulation (Art 4(1)) and the directive (Art 6.2.2.3), however, require that suppliers shall sell their coffee only at the ECX. For the detail discussion of this issue, see section 3.2.2

[293] The justification for this requirement is first, to avoid mixing of coffee of different agro-ecological properties, and secondly, to control the activities of suppliers. Interview with Ato Abdella, cited above at note 210

[294] Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 14(5)

[295] Africa Group Research, cited above at note 15

[296] Note that foreign investors can not engage in export of raw coffee by virtue of the existing investment regulation. See Investment Incentives and Investment Areas Reserved for Domestic Investors Council of Ministers Regulations, cited above at note 149, Art 3 cum paragraph 1(4) of the schedule

the International Coffee Organization (ICO).[297] Secondly, a coffee exporter is required to buy coffee only from the ECX, process it to meet the country's export coffee quality standards, and export same before the next harvest season and sell coffee by-product left over from the export coffee in same. A coffee exporter has to also register the contract of sale along the price of the coffee with the National Bank of Ethiopia (hereinafter "NBE," with in 24 hours after the conclusion of the contract and perform on the due date unless extension is permitted by the later for good cause. A coffee exporter is further required to produce certificate of origin from the Ministry for the coffee he exports. Fifthly, coffee exporters are required to mark on the necessary information like the ICO No., certificate No., coffee type and grade, country of destination and that it is produced in Ethiopia. Finally, coffee exporters are prohibited from selling coffee they bought in the local markets and from doing any thing that damages the country's coffee trade.

3.5.4. Domestic Consumption Coffee Wholesalers

As mentioned earlier, all coffee that meets export standard is required to be destined for foreign market. Domestic consumption coffee is any coffee that does not meet this standard and coffee by-product, coffee leftover from coffee processed for export[298] and constitutes about 40% of the total coffee production in the country.[299] The person who trades domestic consumption coffee is domestic consumption coffee wholesaler (hereinafter "wholesalers").[300]

Wholesalers are required to purchase domestic consumption coffee only from the ECX.[301] They are also prohibited from purchasing, transporting and selling of export coffee; storing coffee outside a warehouse registered by the region's bureau of trade and industry;[302] selling domestic

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[297] ICO is an international organization of coffee exporters and importers established in 1960s with different purposes such as promoting international cooperation between the producers and importers; serving as a center of collection, dissemination of information and statistics; promoting coffee quality; encouraging coffee consumption, etc. See Girma *ET AL*, cited above at note 3, p. 14

[298] Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 2(11)

[299] Africa Group Research, cited above at note 15

[300] Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art, Art 2(23)

[301] Coffee Quality Control and Marketing Directive, cited above at note 245, Art 6.2.4.3. See also Art 4(1) of the Regulation

[302] Id, Art 6.2.4.7

consumption coffee outside markets designated to them as well as in the coffee producing localities unless permitted by concerned organ. The assignment of the wholesalers into specific markets and the prohibition from storing outside the registered warehouse are triggered by the need to control their activities and coffee smuggling.[303] In view of that, a wholesaler can sell his coffee only in the region/area where the wholesaler is licensed.[304] But the law is silent as to whether a wholesaler can obtain license in different regions/areas so that he runs similar businesses in two or more areas at the same time.

The proclamation further requires domestic consumption coffee wholesalers not to sell their coffee in the coffee producing areas unless they get special permission from the concerned body. Two problems arise from this obligation. First, it is difficult to come up with a sound reason that calls for special permission in the absence of any market channel that enables the people in these areas to get access to coffee. Secondly, neither the proclamation nor the subsidiary legislations define the organ empowered to issue the special permission for the sale of such coffee and the grounds for permission or rejection. It simply says concerned organ.

3.5.5. Coffee Roasters

According to Art 2(24) of the proclamation, coffee roasters are those who engage in roasting and/or grinding and selling of coffee. They may do so either for export or domestic consumption. Their obligation also differs according to the market for which they supply. The obligations of roasters who supply for domestic market include purchasing coffee from the ECX or domestic consumption coffee wholesalers and refraining from using export standard coffee.[305] In contrast, those roasters who engage in exporting roasted/ roasted and ground coffee are required to purchase coffee only from the ECX. They are also required to go through the quality control procedures of the Ministry.[306] On the other hand, both categories of roasters are required to use

[303] Interview with Ato Abdela Osman, cited above at note 210
[304] Coffee Quality Control and Marketing Directive, cited above at note 245, Art 6.2.4.1
[305] Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 10(1) cum Art 6.2.5.1 of the directive
[306] Coffee Quality Control and Marketing Directive, cited above at note 245, Art 6.2.5.2

aluminum coated packaging bags and roasting, grinding machines and vacuum packer by the QSAE and to describe its grade and that it is produced in Ethiopia on the packaging.[307]

3.5.6. Warehouse Operators

Warehouse plays significant role in coffee trade. The importance of coffee warehouses has now increased more than ever. This is due to the fact that the whole coffee trade is now shifted to the ECX market system and trading in the later is effected through transferring a warehouse receipt rather than the commodities themselves.[308] A warehouse receipt normally is a "written acknowledgment drawn in accordance with the Warehouse Receipt System Proclamation and issued by a warehouseman (a person who, professionally and for gain is engaged in the business of storing of goods for others, purporting receipt of goods belonging to another) for storage and includes electronic warehouse receipts."[309]

Warehouse receipt in the ECX perspective is electronic receipt, which in fact can be changed into paper form, which is issued only by the Exchange Central Depository which represents the legal title to the coffee deposited in the ECX warehouse or ECX designated third party operated warehouse.[310] This situation is another instance of centralizing coffee trade to the ECX as warehouse operators who are not designated by the ECX can not issue warehouse receipt acceptable in the ECX market system.

The requirements to engage in coffee warehousing as well as the manner in which the warehouse operator shall store coffee are regulated by the coffee legislations and the commodity exchange laws. Basically, coffee is required to be stored in a warehouse based on the contract concluded between the owner and the warehouse operator.[311] But Art 6.3.1 of the coffee directive provides for detail requirements. The first one is that a warehouse operator shall have a warehouse which

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[307] Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 10(2) cum Art 6.2.5.3 to Art 6.2.3.5 of the directive

[308] Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 20(2) cum Art 9.3.4 of the Revised Rules of the Exchange, cited below at note 310

[309] The Proclamation to Provide for a Warehouse Receipt System, Oct. 2003, Art 2(20), Proclamation No 372, *Federal Negarit Gazeta*, 10th Year, No.2

[310] Ethiopia Commodity Exchange, Revised Rules of the Ethiopia commodity Exchange (Hereinafter, Revised Rules of the Exchange), 2009, Art 9.2 cum Art 8.2 t0 Art 8.3

[311] Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 12(6)

fulfills the requirements specified in the coffee manual. These basic requirements include having or renting of a warehouse which has air blower, concrete floor, wooden pallet, and which is free from any alien substance which deteriorates coffee quality or odor, etc.[312]

Secondly, warehouse operators are required to verify that the depositor is authorized to store the coffee by the Ministry or appropriate regional organ or he has certificate that evidences that purchased it from the ECX. Thirdly, warehouse operator can not let the depositor take out the coffee for processing or sale without the authorization or knowledge of the Ministry or the appropriate regional organ. Fourthly, he can not store other things in the coffee warehouse. Fifthly, he is required to refrain from selling or hiding the coffee under his trust. Similar provisions but not exclusively concerned with coffee are also provided for in Arts 8 and 9 of the Revised Exchange Rules.

3.6. The Regulatory Institutions of the Coffee Trade

The coffee industry is one of the highly regulated sectors in Ethiopia. There is very deep government involvement in almost every aspect of the industry including its production, processing, grading, quality inspection, storage, transportation and marketing of the coffees. In this regulation, many institutions with differing roles are involved. These include MoARD, regional bodies, coffee quality and transaction inspectors, coffee liquoring and inspection centers, QSAE, NBE, ECX, Ethiopia Commodity Exchange Authority (hereinafter "ECEA"), MoTI. This section reveals the respective roles of these institutions.

3.6.1. Ministry of Agriculture and Rural Development

The Ministry of Agriculture and Rural Development is the primary state organ responsible for regulating the industry. Accordingly, the Ministry is entrusted with wide-range of powers in relation to different aspects of the industry. Art 13 of the proclamation in particular provides the main ones which include the following. Firstly, the Ministry issues certificate of competence to persons engaged in coffee trade. Secondly, it determines the places and conditions of coffee quality and transactions. Thirdly, the Ministry, as per Art 7 of the directive, establishes central

[312] Coffee Manual, cited above at note 249, pp. 65-67

coffee liquoring and inspection center which mainly inspects and grades export coffee and eight similar centers in the coffee producing areas which, in fact, are now in operation.[313]

Fourthly, the Ministry inspects and issues certificate of quality and letter of release to coffee destined both for export and domestic consumption. It also provides other services at the quality inspection and auction centers by charging service fee. If it finds any person distorting the transaction process, the Ministry has power to suspend the services it provides to such person. Fifthly, in the course of issuing certificate of quality, the Ministry may order the reprocessing of export coffee that does not meet export quality. Sixthly, it may authorize the export of coffee for the purposes of sampling or trade fair.

Seventhly, the Ministry is required to establish coffee movement control stations at the gates of Addis Ababa.[314] In fact, these stations are not yet established. Related wit this is, it has power to seize and confiscate illegal coffee. Related with this is that the Ministry is empowered to inspect any place including private residence, warehouse, vehicle and public enterprise with or, in cases of urgent circumstances without court order. Nevertheless, the proclamation does not define what these urgent circumstances constitute. One ground under which coffee may be seized with out court order is provided in and Art 20(3) of the regulation which is where the coffee quality and transaction inspector believes that the coffee may be removed before he obtains court order. In any case, the Ministry can seize coffee which it believes to be illegal and, where it ascertains the illegality beyond doubt, confiscate it.

Eighthly, the Ministry is empowered to determine the amount of the commission for whistle-blowers who report illegal act in relation to coffee.[315] Finally, the Ministry has significant role as it regulates the whole process of coffee trade through supervising the ECX. [316]

In the case instituted by Ziway Dugda International Business and Industry PLC, MoARD seized coffee belonging to the company and sealed its warehouse in which the coffee was.[317] The

[313] Coffee Quality Control and Marketing Directive, cited above at note 245, Art 7, Introductory Paragraph
[314] Ibid
[315] Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 13(9)
[316] Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 4, Art 15
[317] Ziway Dugda International Business and Industry Private Limited Company v. Ministry of Agriculture and Rural Development, cited above at 214

company then brought court action against the Ministry alleging that, among other things, the later did this illegally and without court order. The Ministry on the other hand justified its action based on Art 13(5) of the proclamation which allows it to inspect places such as warehouses and seize coffee even without court order in case of urgent circumstances for ensuring compliance with the law as the exporter didn't have certificate of competence. The court, however, decided that the plaintiff should first exhaust remedies from the ministry and it is only by way of appeal that the plaintiff can institute court action based on Art 22 of the Regulation.

3.6.2. Regional Bodies

Regulation of coffee trade is not an exclusive subject matter of the MoARD. In fact, regional bodies also play significant role in that regard. Regional states are first and foremost empowered to issue laws necessary to implement the coffee proclamation by virtue of Art 19(3) of same. Actually, there is no state which issued this kind of law yet. But the Oromia Regional State is in the process of preparing such law.[318] Regional bureaus of agriculture and rural development or other organs vested with similar functions in the coffee producing areas in particular are also responsible for regulating coffee trade at the local level. The regulation, for instance, empowers these bureaus to establish and regulate the primary transaction centers.[319]

Third, regional bureaus issue, suspend or revoke certificate of competence for different participants of the industry except for coffee exporters.[320] Fourth, regions control coffee quality by establishing coffee quality control and registration stations at woreda levels and additional coffee movement control stations at any place necessary.[321] Fifth, regional bureaus may confiscate coffee subjected to illegal act as stipulated in Art 22(2) (b). In so doing, regional bureaus are required to communicate information monthly or when they are requested to the Ministry concerning coffee sent to the coffee quality liquoring and inspection center. They, together with the Ministry, also organize research proceedings, trainings, etc.[322] Finally, regional

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[318] Interview with Ato Adugna Fete, cited above at note 171

[319] Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note 165, Art 5 to Art 6

[320] Id, Art 15 to Art 16. The reason for excluding coffee exporters lies in the fact that coffee exporters do not come with in their jurisdiction.

[321] Coffee Quality Control and Marketing Directive, cited above at note 245, Art 7, Introductory Paragraph

[322] Id, Art 10.3

bureaus of trade and industry are the organs responsible for issuing trade licenses for all coffee traders except for coffee exporters.

3.6.3. Coffee Quality and Transaction Inspectors

Coffee quality control is concerned with the "inspection and control of the picking, processing, storage and transportation of coffee, in accordance with acceptable norms, to ensure delivery of coffee in its natural state."[323] As mentioned above, different coffee quality control procedures that regulate the commodity from its production to its marketing are devised by the present coffee trade regime. The primary organ entrusted with controlling coffee quality is the Coffee Liquoring and Inspection Center. There is also the regional coffee quality inspection organ which checks the fulfillment of the minimum standards of cleanliness before any coffee leaves for grading by the liquoring and inspection center.[324]

The fact that there are such institutions and that the legislations devote many provisions in connection with coffee quality is good thing. That by itself is not, however, sufficient. Additionally, an organ which oversees the implementation of the quality procedures in accordance with the relevant laws should be in place. To such end, the coffee regulation established an institution called Coffee Quality and Transaction Inspectors. As its name indicates, this organ's role is not, however, limited to inspection of coffee quality. As will be clear from the following paragraphs, it also is in charge of supervising coffee trade in general.

This institution is responsible for inspecting things like the processing, storage and transportation of coffee by investors, suppliers, processors, exporters, warehousemen, and/or carriers in conformity with the proclamation, the regulation and the directive.[325] To such end, the inspectors are empowered to, among other things, enter, during working hours, into coffee warehouses, processing plants, or the site of service providers and examine and take copies of relevant documents, take photographic pictures and samples of coffee; stop and inspect vehicles transporting coffee and require pertinent documents; and seize illegally handled coffee with or,

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[323] Coffee Quality Control and Marketing Proclamation, cited above at note36, Art 2(17)
[324] Id, Art 4(1)
[325] Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note 165, Art 20(1) cum (2)

where they believe that the coffee may be removed until the time they secure it, without court warrant or, after taking sample, seal warehouses.[326]

The institution of coffee quality liquoring and transaction inspectors is established at the federal and regional levels. inspecting the competence of persons who want to engage in the business of coffee export; ensuring that coffee exporters comply with all requirements relating to export coffee and that they have the required facilities; checking that export coffee is not stored and/or transported together with other things; inspecting the quantity of coffee purchased by coffee exporters, the quantity exported, sold for domestic consumption including coffee by-product and the remaining one; registering vehicles loading legally handled coffee to/from Addis Ababa and such coffee is destined to the appropriate destinations; etc are among the main powers and responsibilities of the federal coffee quality control and transaction inspectors.[327]

Similar powers and responsibilities are entrusted to the regional coffee quality and transaction inspectors. Accordingly, regional coffee quality and transaction inspectors are empowered to ensure that:[328] there is proper transaction in the primary coffee transaction centers; coffee processing industries fulfill the necessary human as well as material capacity; a certain coffee fulfills the minimum quality standards to leave for central quality liquoring and inspection center; write the necessary information of coffee and transmit to concerned bodies; etc

3.6.4 Others

The aforementioned regulatory organs are the principal regulators of coffee trade. In addition to these, however, there are other institutions which have regulatory role. These include the Quality and Standards Authority of Ethiopia (QSAE), the National Bank of Ethiopia (NBE), the ECX, Ethiopia Commodity Exchange Authority (ECEA), Ministry of Trade and Industry, etc. The QSAE plays significant role in the industry particularly in certifying the different machines and equipments necessary for the industry.

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[326] Id, Art 20(2) to (3)
[327] Coffee Quality Control and Marketing Directive, cited above at note 245, Art 7.2.1
[328] Id, Art 7.2.2

The NBE's role is limited to export coffee. The proclamation requires coffee exporters to register their contract concluded with the buyers and the sale price at the NBE.[329] Then, the exporter is required to perform the contract on the due date. Extension of performance is not allowed except upon securing authorization of the NBE which the later may do so only for sufficient reasons.[330] To such level, the NBE has regulatory role in the industry. The Ministry of Trade and Industry or the relevant regional licensing bureaus on the other hand have regulatory role in relation to the licensing of coffee trade. To such effect, these organs have regulatory power in the industry. The roles of the ECX and the Ethiopia Commodity Exchange Authority (ECEA) are dealt with in the following chapter.

3.7. Prohibitions and Liabilities Analyses

3.7.1 Prohibited Acts

Coffee related liabilities may arise as a result of violation of the coffee legislations and/or laws dealing with the ECX trading system. ECX related prohibitions and liabilities are common to all members who trade in different commodities including coffee. The concern of this section then is prohibitions and/or liabilities arising from the violation of the coffee legislations.

The present coffee legislations prohibit many acts relating to coffee transaction. Art 14 of the proclamation, Art 18 of the regulation and Art 11 of the directive in particular are devoted to prescribing the prohibitions and the liabilities arising for violating the prohibitions. This section summarizes the main ones. Cumulative readings of these provisions convey us that the following acts are prohibited:[331]

1. processing of coffee using technical processing procedures other than those set by the Ministry or the regional bodies;
2. buying or selling of coffee outside the transaction centers;
3. mixing export coffee with domestic consumption coffee; coffee with alien substances or other things that deteriorate its natural test and/or quality;

[329] Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 8(2)
[330] Id, Art 8(6)
[331] This list is not exhaustive

4. allowing coffee that does not meet minimum quality standard leave for central coffee quality liquoring and inspection center; issuing letter of release for such kind of coffee; transporting of same; using vehicles that do not conform with the standards; incorrect grading of coffee deliberately;
5. storing coffee in a warehouse other than which registered by the MoARD or appropriate regional bureau and/ or for more than one production season;
6. hoarding coffee in a manner that creates scarcity in the market;
7. engaging by coffee producers in buying, transporting and selling of coffee other than the one from their own farm;
8. packing coffee using sacks or equipments other than those allowed by the MoARD or appropriate regional organs;
9. selling of export standard coffee in any form in domestic markets;
10. engaging by any person who directly involved in the coffee trade, in manipulative practices for illegal gain;[332]

Art 15 of the proclamation also provides some penalties for infringing the prohibition clauses and other provisions of the coffee laws. Accordingly, a coffee processor who causes damage to coffee quality or the local community by failing to meet the technical procedures set by the Ministry is penalized by fine of Birr 20,000 and one to three years imprisonment. In addition, he can not transport his coffee and his processing plant shall be closed.

Any person engaging in coffee transaction outside the transaction centers is also subjected to a fine of Birr 20,000 and one to three years imprisonment and confiscation of the coffee. Likewise, a "person who, without notifying the appropriate body, stores and tenders for sale coffee outside the authorized time and place" is liable to Birr 30,000 fine, confiscation of his coffee and one to three years imprisonment.

The following acts on the other hand are punishable with fine of Birr 50,000, three to five years imprisonment and confiscation of the coffee: any person who unlawfully or in an inappropriate

[332] This provision may in practice create problem as the necessity of the phrase 'for illegal gain' is not clear. The fact that engaging in manipulative practice is attached by the conjunction 'and' may lead to an absurd conclusion that exercising manipulative practice is not adequate for the illegality of the act

manner transports coffee;[333] a person who sells unfrosted or roasted export standard coffee locally; and an owner of vehicle which transports illegal coffee. A person who does manipulative act in relation to coffee quality and marketing is also subjected to similar punishment short of confiscation of the coffee. Moreover, a person who illegally diverts and transports coffee being legally transported to the inspection centers, auction centers or the ECX is punishable by fine of Birr 100,000 and five to ten years imprisonment.

A point worth mentioning here is that all of the penalty provisions provide the phrase 'unless punishable with a greater penalty as per any other relevant law.' If there is any law that provides greater penalty in relation to any of the abovementioned prohibited acts, therefore, that law prevails over the particular penalty provided in the proclamation.

As a final point, the Regulation requires any person to cooperate with the MoARD or the appropriate regional bureaus in the course of implementing same.[334] Police are also obliged to extend their assistance in the course of seizing illegal coffee. In addition, the coffee laws encourage whistle-blowers of an illegal activity in relation to coffee to report to the nearest coffee quality and transaction inspector, the Ministry or appropriate regional organ by entitling them 60% of the confiscated coffee.[335]

3.7.2. Case Analysis

As the present coffee trade regime is new, the writer is unable to come across many cases. But there has been one thing that drew the attention of many. Recently, there was controversy related to coffee which resulted in revocation of license of 6 major exporters who share more than 75% of the total Ethiopian coffee export and confiscation of about 10 millions tones of their coffee. These exporters are the following: Mulege PLC, S. Sara PLC, Legesse Sherefa PLC, Kemal

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[333] One thing worth mentioning here is the appropriateness of the penalty. The provision does not make distinction between persons who merely give transportation service and those persons who transport their coffee in an unlawful or inappropriate manner. If the coffee belongs to the carrier, confiscation of the coffee may be an appropriate solution. If the carrier is simply service provider, however, the confiscation is not warranted hence inappropriate penalty as it damages innocent owners twice unless the owner is aware of the act of the carrier. The proclamation should thus discriminate between the two kinds of participants.

[334] Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note Art 165, Art 23(1)

[335] See Arts 13(9), 21 and 9.1.10 of the proclamation, regulation and directive respectively

Abdela PLC, Seid Yasin PLC, Ersede PLC.[336] The confiscation of the coffee and revocation of the license of the coffee exporters was made on the following four grounds.[337] Firstly, they were alleged to hoard coffee. This was proved by the statistics from different agencies such as the Ethiopian Revenue and Customs Authority and the NBE. Secondly, they failed to export coffee as per the contract they concluded with the foreign buyers. This was also proved by means of evidence acquired from the National Bank of Ethiopia in which, all coffee export contracts are registered.

Thirdly, they didn't sell coffee produced in one season before the next harvest season. This was proved by the coffee quality liquoring and inspection center which determined it to be old crop. One thing worth mentioning here, however, is that the coffee quality liquoring and inspection center forms one of the divisions of MoARD. So, though the fact that this organ belongs to MoARD does not necessarily mean that it is a partial organ, it at the same time does not mean that it is, at least structurally, independent and that its activities can not be influenced by the Ministry. In line with this, some of the traders whose coffee has been confiscated argued that this organ is not impartial and one can not be a judge on his own case.[338] Fourthly, they hoarded coffee by-product and consequently, coffee scarcity resulted in the domestic market.

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[336] The government authorities frequently accused these coffee traders for conspiring against the ECX before taking such measures

[337] This case brief is made primarily based on the administrative decision made by MoARD and addressed to each exporter by the following (unpublished) Letters on March 17, 2001 E.C which provided the suspension of their certificate of competence), shutting down of their warehouses and prohibiting of the movement of such coffee, and that suspends their license. Note, however, that as the author could not get access to all of the administrative decisions and court cases due particularly to the fact that many of the cases are still pending, the writer relied for much information obtained from the interview held with Ato Firew and Ato Nata'a Balcha, an attorney who is in charge of the cases and Legal Department Head respectively at the Ministry. Note also that suspension/revocation of certificate of competence results in an automatic suspension/revocation of the coffee trade license. Finally, some criticize the decision of the Ministry for procedural errors. In the first place, it was criticized for non-fulfillment of procedures such as the right to be heard. S. Sara PLC, for instance, alleges that it was not given reasonable time to rectify the irregularity as per Art 16(1)(b) of the regulation. Secondly, some argue that the decision was made by the Minister rather than a panel or committee. (Interview with an anonymous official at MoARD, on January 2, 2010)

[338] Seid Yasin PLC, for instance, raised this argument on its Memorandum of Counter Appeal filed to the Federal High Court. See Seid Yasin Private Limited Company v. Ministry of Agriculture and Rural Development (Federal High Court, Appellate Division, Addis Ababa, 2009, Civil Case No 80047) (The appellant finally renounced its appeal)

Indeed, these acts of traders entailed multifaceted ramifications. To begin with, the failure to export the coffee had resulted in double-fold effects. On the one hand, coffee being the primary foreign exchange earner to the country, it had an adverse effect on the country's hard currency. The Minister of MoTI, in his report to the HPR, mentioned that coffee exported to the international market in the year 2001 E.C declined by about 25% as compared to the 2000 Ethiopian fiscal year.[339] According to the Minister, this has to do with the aforementioned acts of these exporters and not for any other reason such as the global economic recession as the price of coffee didn't drop off.[340] On the other, this situation had similar negative impact on the international buyers of Ethiopian coffee. In the world where there are more than 80 coffee producing countries and hence there is very stiff competition in the international coffee market, lack of reliable supply may make the existing customers of Ethiopian coffee shift to other countries.

Secondly, the controversy had similar effect locally as well. It actually resulted in scarcity of coffee. Thirdly, the controversy had also negative implication on the revenue of the government as these traders did not pay their tax obligations.

Finally, it is noteworthy that the controversy is not yet settled. The decision of confiscation of the coffee and revocation of certificate of competence and ultimately trade license[341] was basically administrative measure made by the MoARD based on Art 22(2)(b) of the coffee regulation. Three traders had lodged an appeal to the Federal High Court based on Art 22(3) of the same regulation. However, two of them, after some time, withdrew their appeal opting for political rather than legal solution.[342]

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[339] ••••• ••••• 23 /2001, p. 1, col. 3

[340] Id

[341] Acoording to Ato Nuredin of the MoTI, Revocation of the coffee trade license was made as a result of the decision of revocation of certificate of competence made by the MoARD

[342] See, for instance, S. Sara PLC's application (the Annex part) for withdrawing its appeal and the decision of the Federal High Court approving the application and thereby closing the file. S. Sara Private Limited Company v. Ministry of Agriculture and Rural Development (Federal High Court, Appellate Division, Addis Ababa, 2009, Civil Case No 81081). Similar situation exists in respect to Seid Yasin Private Limited Company v. Ministry of Agriculture and Rural Development (Federal High Court, Appellate Division, Addis Ababa, 2009, Civil Case No 80047) in the sense that the former applied to the court renouncing its appeal and the court closed the case accordingly

The option they then resorted to accordingly was to approach the Prime Minister. To such effect, they wrote a letter for him to intervene in the matter but he kept silent probably because he was warning them time and again. One thing that was done in favor of them, however, was that the Ministry did not deposit the proceeds of the sale on its own name.[343] Rather, it used such money to the satisfaction of the loans these exporters had in the banks. This was triggered basically to promote the integrity of the banks during the times of financial crisis; hence it was political decision rather than legal one.

Dissatisfied with the government's silence, one exporter, Legese Sherefa PLC, has recently re-instituted its appeal for recovery of its certificate of competence which is a prerequisite to the coffee trade in whatever capacity. According to Ato Firew, while MoARD argued against this appeal based on res judicata, the exporter argued that it renounced its appeal for the confiscated coffee but not for the certificate of competence.[344] To Ato Firew's surprise, the court accepted its appeal and required MoARD to defend the case. The case is now under consideration in the court.

CHAPTER FOUR

COFFEE TRADE IN THE ETHIOPIA COMMODITY EXCHANGE

This chapter deals with coffee trade in the Ethiopia Commodity Exchange (hereinafter "ECX"). It is necessitated by at least two reasons. First, because commodity exchange is 'strange' model of trading system to the country's legal as well as economic environments, giving a general picture of the essential features of this system is necessary. Second, the whole coffee trade has, currently, been shifted from the previous auction model to this type of trading system.

4.1 Overview of the Ethiopia Commodity Exchange (ECX)

Before we proceed to examining the salient aspects of the Ethiopia Commodity Exchange (ECX) as one of the coffee transaction centers, let's have a quick look at what the system of commodity

[343] Art 22(2)(b) of the Regulation requires the Ministry or appropriate regional organ which confiscated and sold coffee to deposit the proceeds of the sale in a blocked account in the name of either of the organs as appropriate.

[344] The writer couldn't get access to this case as it is still pending

exchange is all about as this facilitates our understanding of the trading system. Commodity exchange is made up of the terms 'commodity' and 'exchange.' What do these terms signify? Various meanings have been attached to the term 'commodity' in the general literature, in different legal systems and across different times. Some materials define the term by listing out items that can be described as commodities and excluding others. A primary example in this respect is the US legislation on commodity exchange of 1936 which provides a long list of commodities primarily agricultural ones that had been traded in the nation's organized market.[345]

Later on, the definition of commodity was extended to refer to all goods, services, articles, rights, interests which are the subject of futures trading.[346] In this case, the interest is in a form of economic activity rather than the attributes or character of the subject or items. And the economic activity in question is futures trading.[347] Accordingly, every thing which can be the subject of futures trading whether tangible or intangible comes with in the purview of commodity. Futures trading or otherwise known as futures markets refers to a market in which a contract is concluded between buyer and seller. The contract specifies a future delivery date, price and other terms at the time of the conclusion of the contract and the goods would be hypothetically traded accordingly. [348]

On the other hand, commodity simply is a product having monetary value. "A commodity is an item that can be manufactured, produced, purchased, sold, and consumed. Commodities are primarily the products of agricultural sector of the economy. Natural resources such as crude oil, natural gas, different types of minerals, etc can also be considered as commodities."[349] In this case, the focus is on physical or tangible commodities irrespective of the type of contract by which the item is transacted. It does not also list the type of the commodity.

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[345] *US Commodity Exchange Act*, 1936, Section 2(a)(1)

[346] *US Commodity Futures Trading Commission Act*, 1974, Section 2(a)(1). This act massively amended the 1936 Commodity Exchange Act

[347] Philip McBride Johnson, *Commodities Regulation* (1982, Little, Brown and Company, Boston; Toronto), p. 4

[348] Jack D. Schwager, *Schwager on Futures: Fundamental Analysis* (1995, Johny Willey & Sons, Inc., New York; Chichester; Brisbane; Toronto; Singapore), pp. 7-8

[349] Mesay Zegeye, *Market Information System and the Ethiopia Commodity Exchange*, (2007, Unpublished, AAU, FBE Library), p. 7

Ethiopian law defines commodity as "a product which is interchangeable with another product of the same kind."[350] This definition is not concerned about the type of economic activity. It rather focuses on the characteristics of the item to be traded in the Ethiopia Commodity Exchange. It, thus, tends to incline to the later line of concept of commodity.

Exchange on the other hand means a central office or place of business such as stock exchange, labor exchange, etc. It also refers to "business association, generally incorporated, the members of which meet at fixed hours daily, to trade in securities or commodities."[351]

Commodity exchange, more or less, thus is "any organized market place where trade, with or with out the physical commodities, is funneled through a single mechanism, allowing for maximum effective competition among buyers and among sellers."[352] In this institutionalized market, the myriad of buyers and sellers come together and a process of offer and acceptance takes place publicly through a system of price bidding and through a set of rules governing the products traded in the system, the market actors and the contract.[353] This is the most important feature of a commodity exchange system that distinguishes it from an ordinary wholesale or terminal market. The rules are necessitated by the need to promote a fair, transparent, efficient and orderly market.[354]

The rules may relate to the product, contract, settlement, etc. Rules regarding a product may relate to issues like the items to be traded in the exchange, product standardization, product quantity, product integrity, sampling, origin, grading, certification, etc.[355] The rules concerning price on the other hand may pertain to procedures of bidding or auction, dissemination of trade price, etc. The other concern of rules is the actors in the exchange. In this regard, issues such as who may participate in the exchange, in what capacity, codes of conduct of the participants, etc are regulated.[356]

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[350] Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 2(4)
[351] WA. Redmond, "*Exchange (Business)*," 2008 Microsoft Corporation, Microsoft ® Encarta ® 2009
[352] Eleni Z. Gabremedhin and Ian Goggin, "Does Ethiopia Need a Commodity Exchange? An Integrated Approach to Market Development," *EDRI-ESSP Policy Working Paper*, No 4, (Nov. 2005), p. 6
[353] Id
[354] Messeret Nega, ECX, Chief Compliance Officer , *Rules of the Game*: *ECX* (2008, PPT Presentations), Slide 3
[355] Eleni and Googin, cited above at note 352, p. 8
[356] Messeret Nega, cited above at note 354, slide 5

Rules also regulate matters relating to contracts. In this respect, many things are included. To begin with, the type of contract is the primary one. Generally, there are three types of contracts: spot contracts, forward contracts and futures contracts. Spot contract or otherwise called as cash transactions is a trading where by the actual delivery of the item is made from the seller to the buyer immediately or near immediately and payment is made then and there.[357]

Forward contract is a contract which involves the initiation of the contract at one time and performance takes place at a subsequent time.[358] Futures contracts or otherwise known as futures markets on the other hand refer to market in which the contract specifies a future delivery date, price and other terms at the time of the conclusion of the contract and the goods would be hypothetically traded accordingly.[359] The other subject matters that come with in relation to rules governing contracts include product quality/grade, delivery terms and conditions, payment terms, price quotations, dispute settlement, etc.[360]

The Ethiopia Commodity Exchange (ECX) is a national multi-commodity exchange which is devised to overcome the century-old marketing system based on the abovementioned trading system. It is established as a public enterprise[361] in which buyers and sellers come together to trade and to assure of quantity, quality, delivery and payment. However, it is "uniquely structured as a private-public partnership commercial enterprise. The Ethiopia Commodity Exchange is established as a demutualised corporate entity with clear separation of ownership, membership, and management. Thus, owners cannot have trading stake. The management can be neither drawn from the owners nor from the members."[362]

The ECX is entrusted with broad objective of modernizing the Ethiopian agricultural market and thereby attaining overall economic growth. Specifically, for which the ECX is established for the

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[357] P. M. Johnson, cited above at note 347, pp. 28-29
[358] Robert W. Kolb, *Understanding Futures Markets* (4th Ed., 1994, Kolb Publishing Company, Miami, Florida), p. 2
[359] J. D. Schwager, cited above at note 348, pp. 7-8
[360] Bemnet, cited above at note 31, Slide 7
[361] Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 3(1)
[362] East Africa Forum, *The Ethiopia Commodities Exchange*, Available at file:///D:/files%20up%20to%20june%2015/East%20Africa%20Forum%20%C2%BB%20The%20Ethiopia%20Commodities%20Exchange.htm, Last Accessed on June 14, 2009

following main purposes.[363] Firstly, ECX is established to provide a centralized marketing mechanism in which transactions are carried out publicly through a physical trading floor or electronic system or both. Secondly, it is devised for creating an efficient, transparent, and orderly marketing system which addresses the interest of all stakeholders including buyers, sellers and intermediaries and small scale producers. Thirdly, it is there to gather and monitor and disseminate timely information concerning the market and exchange transactions to the general public. Fourthly, ECX is established to conduct trading based on product grade certificates, warehouse receipts, and standardized and grade specific contracts. Fourthly, ECX is came to reality with a view to do clearing and settling of transactions the Exchange itself to minimize default risks. Finally, it is there to provide a dispute settlement forum; undertake market surveillance activities to maintain the integrity of the market and of the members, and avoiding contingent risks by employing modern risk management tools. It is to be noted that, currently, almost all of these objectives are practically being realized by ECX as it will be clear in the following sections.

4.2 Significance of Commodity Exchange System to the Coffee Industry

Ethiopian agriculture is known for being subsistence and follows, overall, century old pattern of poor agricultural practices. Likewise, its marketing system suffers from a number of multi-faceted problems. Ethiopian agriculture lacks, among others, market fairness, standardization, transparency and efficiency.[364] It is characterized by long chain of market channel. In this channel, numerous participants engage in the market channel in different capacities.

In the first place, this traditional market comprises large number of farmers. Overwhelming majority of these farmers are smallholder ones.[365] Also, they are illiterate, poorly connected to one another and with market systems.[366] Moreover, they lack information and bargaining power which effectively deny them the required level of benefits from the high consumer price of their produces.[367] Others include primary collectors, local suppliers, farmers cooperatives, local and

[363] Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 6
[364] Bemnet, cited above at note 31, Slide 6
[365] MoFED, cited above at note 32, p. 49
[366] Ibid
[367] Ibid

central brokers, wholesalers, few investors and/or state farms, exporters, processors, retailers, consumers, various government institutions, etc.[368]

These result in, among other things, excessive transaction costs, costs incurred in relation to a commodity from the producer to the consumer.[369] This is due to lack of market coordination, lack of trust among market participants, lack of market information, deterioration of quality as it changes hands, lack of appropriate laws, regulations, directives, rules, procedures, standardized contracts and institutions entrusted with enforcement of same, etc.[370]

These problems exist in all of the agricultural markets including the coffee market though the degree varies from one to the other. In fact, the coffee industry has been, relatively, better situated as compared to the other subsectors as there has been long established auction system and continued to be highly regulated. In any case, the market related problems call for a modern, innovative and dynamic approach which can easily adapt to changing market circumstances locally and internationally. To such end, the Ethiopian government has been undertaking different structural and market adjustment programs including increased market liberalizations. Unlike the popular belief on the part of large part of the international community that market liberalization can reduce costs and catalyze production and growth; improve market integration, etc, such reforms did not bring about the required success.[371]

Studies show that the most important reasons for the weak performance of the Ethiopian agricultural markets are attributable to weak infrastructure or to missing institutions.[372] Infrastructure related weaknesses such as roads, telecom services, storage, handling services, etc are estimated to increase the final price of a commodity by about 40-60 %. Equally or more to these physical constraints constitute transaction costs which include costs of searching for and screening a trading partner, costs of obtaining information on prices, qualities and quantities of

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[368] የኢትዮጵያ ምርት ገበያ ባለሥልጣን የምርት ግብይት አሰራርና የባለድርሻ አካላት ሚና፣ የግንዛቤ ማስጨበጫ ፅሁፍ፣ የካቲት 2001 ፣ገፅ 7

[369] Id, p. 6

[370] Ibid

[371] Eleni and Goggin, cited above at note 352, p. 2

[372] Ibid, p. 3

goods, costs of negotiating a contract, costs of monitoring contract performance, and the costs of contract enforcement.[373]

These constraints in turn call for a solution beyond market reforms such as market liberalization. To this effect, the Ethiopian government approached the problem from the perspective of integrated market development which includes establishing market institutions. The ECX is introduced into the Ethiopian legal system as a means of overcoming the problems existing in the grain and coffee markets and ultimately developing the sector by revolutionizing agricultural market.

Commodity exchange has a lot of advantages over ordinary market. To begin with, it promotes price transparency.[374] As the commodities are traded publicly and prices are determined by the demand and supply forces, everyone has access to a neutral reference price.[375] Second and related to this is that commodity exchange system serves as a true instrument of price discovery, i.e., "clearing price for a good at a particular point in time due to the highest possible concentration and competition among buyers and among sellers."[376] This is particularly achieved through the bidding of the publicly traded commodities and through a set of rules governing the activities and actors in the exchange.[377]

Moreover, commodity exchange reduces the long chain of channels in a traditional market. It reduces transaction costs as it is easy to find buyers or supply in the organized central market.[378] Further, commodity exchange market creates market integrity as, among others, products are graded and certified, transactions are conducted through registered members; contractual terms are standardized and enforceable.[379] Also, an exchange system is of significant importance in terms of transfer of risk (through, for instance, futures trade), in generating and disseminating market information.[380]

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[373] Id

[374] Eleni Gabre-Madhin, *The Ethiopia Commodity Exchange (ECEX): Making the Market Work for All*, (April 19, 2007, Presentation), slide 4

[375] Id

[376] Gabre-Madhin and Googin, cited above at note 352, p. 6

[377] Ibid

[378] Eleni, cited above at note 374, Slide 4

[379] Id

[380] Id

In fact, an auction model of trading also shares many of these features. Commodity exchange model, however, differs from the auction model in two main respects: in the later, "the mechanism of price bidding is coordinated by a third party, an auctioneer, and transactions are generally for spot delivery."[381] They also differ in modes of payment and many other things.

The existence of an organized, transparent and efficient market in turn has significant role in many respects such as in: increasing production and productivity; producing competitive products at national as well as international markets with fair price; generating hard currency; establishing forward and backward linkages with different sectors, etc.[382] The fact that the commodity exchange model is introduced into Ethiopian coffee market is therefore triggered by these factors. The ECX launched its formal trading operations on April 24, 2008 with maize and haricot beans with 85 members.[383] In August 2008, the new coffee proclamation was enacted and this law makes ECX one of the three market centers in which coffee is traded by virtue of Art 2(21). Following this empowerment, the ECX started trading of coffee as of December 2008.[384]

4.3. The ECX Trading System

The ECX is an institution which "provides a marketplace where buyers and sellers can come together to trade and be assured of quality, delivery and payment."[385] Participating in this trading system presupposes membership in same.[386] Broadly, there are two classes of members: ordinary members and special members.[387] The former category includes a Trading Member and Intermediary Member. Limited Trading Member and Limited Intermediary Member on the other hand are included in the category of the special class of members. A Trading Member is a member who can only trade on his own account.[388] Intermediary member is one who may trade

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[381] International Food Policy Research Institute, Cited above at note 147, p. 60

[382] የኢትዮጵያ ምርት ገበያ ባለሥልጣን፣ cited above at note 368, p. 12

[383] Ethiopia Commodity Exchange, Press Release, May 2008

[384] Ethiopia Commodity Exchange, Press Release, Nov. 27, 2008

[385] International Food Policy Research Institute, *Ethiopia's Commodity Exchange Opens its Doors,* Available at file:///E:/Ethiopia%27s%20Commodity%20Exchange%20Opens%20its%20Doors%20-%20IFPRI%20Press%20Release.htm, Accessed on April28, 2009

[386] Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 20(1)

[387] Revised Rules of the Exchange, cited above at note 310, Art 4.1.1. It should be noted, however, that the ECX may create other classes of membership where it finds it to be appropriate as per Art 4.1.5

[388] Ibid, Art 4.1.2

either on his account or on behalf of his clients.[389] This member may appoint an agent called Associate Member who shall trade through the former only on behalf of clients.[390]

On the contrary, Limited Trading member is a member who participates only as a buyer or seller of a single specified product. [391] Currently, all suppliers who collect coffee from their own farm including coffee farmers cooperatives and sell in the ECX, coffee purchasers associations and coffee wholesalers come with in this category.[392] Limited Trading Member does not have clients, hence transacts only on behalf of himself.[393] Nonetheless, a coffee exporter Buy-only Limited Trading member may sell its coffee by-product in the ECX.[394] In contrast, Limited Intermediary Member is one who participates only as a seller for his own account or on behalf of clients.[395] This kind of membership is suitable for coffee suppliers who have other suppliers in the coffee producing areas.[396]

Any person, business organization, public enterprise or cooperative can be a member to the Exchange provided they fulfill the eligibility requirements.[397] But according to Art 4.2.2, however, requires that a member can not acquire more than one seat. Moreover, a person who has

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[389] Ibid, Art 4.1.3

[390] Ibid, Art 4.1.3(a). Sub article d of this same article on the other hand makes the intermediary member liable for all of the transactions made by the associate member

[391] Ibid, Art 4.1.4

[392] **በኢትዮጵያ ፌደራላዊ ዲሞክራስያዊ ሪፐብሊክ የኢትዮጵያ ምርት ገበያ፡** cited above at note 171, p. 6

[393] Revised Rules of the Exchange, cited above at note 310, Art 4.1.4

[394] Id

[395] Ibid, Art 4.1.5

[396] **በኢትዮጵያ ፌደራላዊ ዲሞክራስያዊ ሪፐብሊክ የኢትዮጵያ ምርት ገበያ፣** cited above at note 171, p.6

[397] The detail requirements are provided in Art 4.6.2 of the Revised Rules of the Exchange. These requirements include: 1. Recognition of being exchange actor by the Ethiopia Commodity Exchange Authority; 2. Producing audited financial statement of Birr 500,000 for a Trading Member and Birr 1,000,000 for an Intermediary Member from an auditor recognized by the Authority; 3. Payment of membership seat price of 50, 000 Birr; 4. First year annual membership maintenance fee of 5,000 Birr; 5. Payment of non-interest bearing security deposit amounting 200, 000 Birr for Trading Member and 300,000 for an Intermediary Member in cash to form the Settlement Guarantee Fund of the Exchange; 6. Providing Tax Identification Number and Tax Clearance (if VAT registered, VAT registration Certificate); 7. Submission of a valid license (and partnership agreement for Partnerships); 8. Submission of a copy of valid license and the memorandum and articles of association for companies and cooperatives and establishing law for public enterprises; 9. Attending a certification course in commodity marketing and passing in exam unless exempted. The requirements provided from 1 to 5 are not, however, applicable to Non-Clearing Limited Trading Buy-Only or Sell-Only members, Clearing Buy-Only Limited Trading Members and Limited Intermediary members. Instead, these members are required to pay non-refundable membership fee of 5,000 Birr and non-interest bearing refundable membership fee of 50,000, 200,000 and 100,000 respectively. These requirements work across all members trading in different commodities. The coffee trader members, however, are required to first produce certificate of competence to participate in the ECX market system.

share in more than one private limited company, a shareholder who is a board member or owns more than 50% of shares in a share company or any form of partnership or vice versa or business organizations or public enterprises established in the form of holding and subsidiary or which are legally or factually related are not allowed to have two separate memberships at the same time.[398] Nevertheless, any of such persons engaged in coffee trade may acquire two separate membership seats provided: i, they disclose all the necessary information including their ownership and senior management structure; ii, they do not conduct trade between themselves and affirmed that their membership be terminated if they do so; iii, they are not client of their own intermediary member; and iv, they do not use the same management for both businesses.

The ECX Proclamation under Art 22(1) gives recognition to two types of contracts: spot and futures contracts. The later are oftentimes found to be important in risk management by fixing prices and supply in advance for future delivery.[399] In the mean time, however, it is operating only with spot contracts. Yet, trading is carried out based on standardized contracts in that the product quality/grade, lot size, delivery terms and conditions, payment terms, price quotations, dispute settlement, etc are determined in advance.[400] This in turn makes ECX, according to the CEO of the same, "the only exchange in the world that trades on the basis of standardized 'spot' contracts."[401]

Most of the commodity exchanges that currently operate in different countries have virtual or electronic trading systems. Despite this, most of them operate in an exchange floor of a physical place.[402] This Floor is a place where all traders gather and conduct trades by open outcry method.[403] Thus, all the participants need to be present and 'cry' out their price, which oftentimes presupposes shouting in order to draw attention.[404] This also holds true for the ECX. Art 20(4) of the Exchange Proclamation stipulates that the exchange may operate based on either open outcry on physical trading floor or an automated electronic system. Presently, "the trading platform is an

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[398] Revised Rules of the Exchange, cited above at note 310, Art 4.2.3
[399] Ethiopia Commodity Exchange, cited above at note 17, p. 7
[400] Bemnet, cited above at note 31, slide 7
[401] East Africa Forum, cited above at note 362
[402] Bemnet, cited above at note 31, Slide 8
[403] Bharat Kulkarni, *ECX*, *The Trading System*, National Forum, ECX, (4th April 2008, PPT Presentation), Slide 4
[404] Ibid

open outcry competitive bidding system, with a trading floor in Addis Ababa and sequential trading sessions according to different classes and types of coffee."[405]

Once the coffee is sold in the ECX, the law prohibits its resale in same.[406] In recent times, this requirement caused a problem when the government seized coffee alleging to be illegal and reintroduced it for resale in the ECX. While the government justified its resale based on Art 9.2 of the coffee directive which provides for sale of illegal coffee in the ECX, there was an argument which questions the validity of this action on the ground that it contradicts with the regulation.[407]

"As an institution, a commodity exchange itself depends on a number of linked institutions which are critical to its functioning."[408] The so called "allied" sectors such as warehouse receipt systems and clearing institutions are among the institutions that are necessary for functioning of exchanges.[409] Trading in the ECX market system is made based on warehouse receipt with out the physical delivery of the coffee or the sample. The receipt represents the legal title to the coffee deposited.[410]

The members in exchange system are required to clear their trade at the end of each transaction and they do this through clearing institutions.[411] Clearing institution in the context of the ECX refers to a clearing division of the ECX or domestic bank or similar financial institution recognized by the Ethiopia Commodity Exchange Authority to settle the transactions undertaken in the ECX.[412] They in particular transfer funds among the members, from the buyer to the seller.

To such end, the Rules of the Exchange requires members to open Pay-In (To the Exchange) account and/or Pay-Out (from Exchange) accounts in the designated banks.[413] Buyers are required to deposit exchange buy funds in their Pay-In account by 3:30 P.M of the day before the

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[405] Ethiopia Commodity Exchange, cited above at note 17, p. 6
[406] Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note 165, Art 4(4)
[407] Interview with Ato Yohannes Assefa, cited above at note 193
[408] Eleni Z. Gabre-Madhin, *Building Institutions for Markets: the Challenges in the Age of Globalization* (February 2006, Addis Ababa, Ethiopia Strategy Support Program-International Food Policy Research Institute), p. 34
[409] Ibid
[410] Revised Rules of the Exchange, cited above at note 310, Art 9.2.2
[411] Robert L. Lerner, *The Mechanics of the Commodity Futures Markets: What they Are and How They Function*, Mount Lucas Management Corporation, June 2000, p. 3
[412] Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 2(1)
[413] Revised Rules of the Exchange, cited above at note 310, Art 10

trading day.[414] This time is however, extended for coffee exporters. Buyers of export coffee may deposit such amount up to 10:00 A.M of the trading day.[415] The designated bank then, based on the instructions of the clearing house of the ECX, transfers from the Pay-In account of the buyer to the Pay-Out account of the seller on 8:00 to 9:00 A.M of the next day at the latest.[416] The ECX thus assures enforcement of coffee trade contracts in this way.[417]

Moreover, in the unlikely event that there is contractual default for whatever reason, the ECX has a system of settlement which is called Settlement Guarantee Fund one of the purposes of which is to settle transactions up on failure to meet settlement obligations.[418] As a result, the ECX is said to have "zero default system."[419]

In the course of trading, ECX, its officials or employees or the actors may cause damage to one another. Envisaging such possible circumstances, the exchange proclamation addresses the matter. Accordingly, ECX is liable for damages caused by action or omission of its officers, directors and employees relating to the trading system, information dissemination, warehouse system, product grading and certification, clearing and settlement, etc.[420] Likewise, members are liable for, among other things, non-performance of exchange traded contracts, acts or omissions of their agents, etc.[421]

Some coffee trader members complain in this regard as well. According to a certain coffee exporter, if members violate any penalty clause of the ECX system, ECX gives automatic effect to the law and hence penalizes them. On the contrary, if ECX does wrong to the members, the system does not apply the penalty clauses imposing liability on it. Some officials go even to the

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[414] Id, Art 10.5.1.1
[415] Ibid
[416] Id, Art 10.6.2.1
[417] In this regard some coffee traders complain that there are some problems in transferring the money from the account of one member to another and/or communicating same to the ECX or in transmitting the instructions by the ECX to the banks. For instance, the author came across a certain coffee exporter who was prohibited from participating in the export coffee bid due to, according to him, a problem in communicating his deposit while he deposited the money before the fixed time
[418] Id, 12.5.1.2, 12.6.1
[419] Keith Thomas, Chief Clearing & Settlement Officer, "*Who owes Who What": Clearing & Settling Transactions*, (2008, Presentation), Slide 12
[420] Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 9(1)-(2). Note, however, that ECX has limited liability. Thus it is not liability beyond its total assets as provided in Art 9(3) of the same proclamation
[421] Id, Art 9(4)-(5)

extent of saying that, in the words of him, "ECX can not be claimed."[422] The liability aspect therefore tilts, according to the coffee traders, towards the members.

The other thing worth mentioning is that the ECX has its own dispute settlement system. Art 28 of the Exchange proclamation in particular empowers the ECX to issue rules and procedures, subject to approval of the ECEA, which govern dispute resolution mechanism through arbitration. Based on this power, the ECX has put in place two types of dispute resolution mechanisms: arbitration and conciliation. Disputes may arise between members or between a member and the ECX itself. Except in the later case, all disputes are required to be referred to conciliation or arbitration.[423] Conciliation, however, presupposes the agreement of the parties to the dispute.[424] The arbitrator/s may use expert opinion at the expense of the parties for their arbitral award.[425] If the dispute is between a depositor or buyer and pertains to the quality or grade of coffee, however, the Coffee Quality and Inspection Center in the MoARD is empowered to decide on the case.[426]

Finally, Art 3.3.3 of the Rules of the Exchange empowers the board of the ECX to appoint an advisory committee consisting of experts and officers of the exchange for different commodities. Now, three committees related to coffee have been established. These are: coffee exporters committee, coffee suppliers committee and domestic consumption coffee committee.[427]

4.4 ECX and the Specialty Coffee Industry

Starting from the near past, multi-faceted coffee labeling activities have been done to add value to a particular coffee at the retail price. These include, among other things, fair trade certified

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[422] Interview with anonymous coffee exporter, Dec. 11, 2009, held at the premises of the ECX

[423] Revised Rules of the Exchange, cited above at note 310, Art 15.1.2. These two methods of dispute settlement are selected by the ECX for two reasons. First, they are important alternative dispute resolution mechanisms to the formal court proceedings. Second, their negative impact on the future relationship of the parties is minimal compared to the formal court proceedings. See የኢትዮጵያ ምርት ገበያ ባለሥልጣን፣ cited above at note 368, p. 22

[424] Revised Rules of the Exchange, cited above at note 310, Art 15.1.4.1

[425] Id, Art 15.1.25

[426] Id, Art 15.2.2. However, "claims to down grade the ECX given grade to local grade shall not be accepted." But the justification is not clear though it seems to avoid mischief related to export standard coffee. Yet, it should be admitted that if such coffee does not fulfill the export standard and has been graded as it fulfills so, the inspection unit should be allowed to down it to the extent of lowering it to the local level.

[427] Interview with Ato Yohannes Assefa, cited above at note 193

coffee,[428] organic certified coffee,[429] bird-friendly coffee, forest coffee, etc.[430] Others still use different mechanisms such as the trademarks, branding, geographical indicators, etc.[431] These all efforts have been done to distinguish a particular coffee and hence make special with a view to taking away of the commodified nature of coffee and thereby fetching premium price over conventional one.[432]

Specialty coffee originally was referring to coffee beans with unique flavors and attributes produced from special geographic microclimates.[433] Currently, however, "the definition of specialty seems to refer to the maintenance of an integrated value chain starting from where the coffee is produced, to how it is harvested and processed, to the roasting and brewing of the coffee."[434] The concept of specialty coffee therefore is connected with different things that add value to coffee which may include but not limited to the geographical location, the cup quality and uniqueness of character, the cultivation system, the environmental impact, the social impact, or a combination of these.[435]

The important question in this respect is who determines the specialty of coffee. The fact that specialty coffee is a result of different factors makes the ultimate determiner of the specialty to be the consumer. But certification and standard setting for specialty coffee is now done by different national and international bodies the primary ones being industry associations such as the Specialty Coffee Association of North America (SCAA), Specialty Coffee Association of Europe (SCAE), and Specialty Coffee Association of Japan (SCAJ).[436] Moreover, third party operated certification agencies which may be accredited by different national and international bodies are expanding from time to time.[437] In addition, certification for different forms of specialty is made at the national level.

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[428] Fair trade is a market system which aims small scale coffee producers by establishing direct relationship between the groups of producers and the consumers with a view to provide additional benefits to the producers. See Kodama, cited above at note 282, p. 92
[429] Ethiopia is second largest supplier of organic coffee in the world next to Peru. Id, p. 94
[430] Ethiopia Commodity Exchange, cited above at note 17, p. 9
[431] Ibid
[432] Ibid
[433] Ibid
[434] Id, p. 10
[435] Id, p. 13
[436] Id, p. 14
[437] Ibid

When we come to Ethiopia, some argue that owing to its altitude, various microclimates, and varietal diversity as a country of origin, etc, the whole of Ethiopian coffee, has the potential to be specialty coffee. Despite such potential, specialty coffee at present times constitutes only about 3.7%.[438] Even this was not traded in the title of specialty coffee. In the previous coffee auction system, specialty was not an issue. The exporters used to buy first and second grade coffees from the auction centers in commercial grade and sell it in the international specialty coffee market fetching much higher price than the purchasing price.[439]

Until recently, similar situation persisted in the ECX as well. One of the grounds that ECX was criticized for by many at the national and international arenas was adopting a commercial grade system based on the class and generic name of the region where the coffee comes from. Thus, once coffee is entered the ECX system, the specific origin of the coffee is lost and can not be traced. However, the regulation empowers it to "establish special arrangement for transaction of better quality and higher price supply coffee."[440]

Based on this power, ECX has recently launched trading in specialty coffee which is primarily aimed at connecting coffee farmers directly with international buyers.[441] Consequently, only coffee producers are now participating in the specialty market.[442] Similarly, international buyers or their representatives are allowed to buy the specialty coffee.[443] According to Dr. Eleni, the CEO of the ECX, the parameters for specialty include the coffee's quality, socio-economic impact on the producer, environmental attributes, and traceability to the grower. But quality and traceability are given greater emphasis.[444]

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[438] Id, p. 17. This is simply estimation made from the total volume of exported coffee and the type and grades of coffee as there is no government or private body which deals with the subject

[439] Interview with Ato Yohannes Assefa, cited above at note 193

[440] Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note Art 165, Art 4(2)

[441] *Addis Fortune*, Dec. 13, 2009, Vol. 10, Number 502, available at file:///D:/Speciality%20Coffee-The%20New%20Thing%20at%20ECX.htm, last accessed on Dec.16, 2009

[442] Interview with Ato Yohannes Assefa, cited above at 193. However, as most of the producers of the specialty coffee do not know how the ECX system and/or the international coffee market works, they are allowed to delegate service providers who act in the name and on behalf of the producers for which the later pay commission of 5% of the total value.

[443] Interview with Ato Yohannes Assefa, cited above at note 193

[444] *Addis Fortune*, cited above at note 441

Ethiopia does not, however, have the legal framework dealing with many of the segments of coffee which may come with in the class of specialty except for the organic one in which case there is a generic organic agriculture law which is not yet practically implemented.[445] But a coalition of the Ethiopian government represented by the Ethiopian Intellectual Property Office (EIPO) and coffee producers, some years ago, set up a program of trademarking three brands of coffee, Sidama, Yirgachefe, and Harrar in major international coffee destinations with a view to increasing the benefits Ethiopian coffee producers get from such coffee. When the government filed an application to the US Trademark and Patent Office (USPTO), however, Starbucks, a huge multinational coffee enterprise mobilized the National Coffee Association (NCA), a group of major US coffee retailers against the movement of the Ethiopian government as a result of which the USPTO refused to grant the trademark. Owing to the outcry and pressure made by the Ethiopian government, international NGOs like the Oxfam and many intellectual property professionals, however, the USPTO recently accepted the application and now the three coffee brands are trademarked.[446] This is supposed to give about 47 million pound additional benefits to Ethiopian coffee producers.[447]

4.5. Ethiopia Commodity Exchange Authority

Commodity exchanges are basically private organizations. This is true for most of the exchanges in the world. Even if such markets are mainly made up of private actors, it does not mean that there is no state intervention at all. At times, "the success of the commodity exchange in privately fulfilling its functions depends to a large extent on the disruptive consequences of bringing about order."[448] This and other concerns call for intervention of the state in some limited instances.

The primary example in this respect is the Chicago Board of Trade, the world's first advanced and most successful commodity exchange. The activities of this institution relating to matters such as enforcement of contracts may be taken as success story. On the other hand, the institution had

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[445] Ethiopian Organic Agriculture System Proclamation, March 2006, Proclamation No. 488, *Federal Negarit Gazeta*, 12th year, No. 21

[446] James Watson and Jeremy Streatfeild, "The Starbucks/Ethiopian Coffee Saga Geographical Indications as a Linchpin for Development in Developing Countries," *The Nordic Africa Institute*, Policy Notes: Trade, No. 3, February 2008.

[447] Yangyang Li, *Trade marks of Ethiopian coffee beans?* December 2006, available at file:///D:/view_article.asp.htm, accessed on Nov. 12, 2009

[448] Eleni Z. Gabre-Madhin, cited above at note 408, p. 33

failed in many respects such as in weighing, grading and inspection of grains mainly due to the fraudulent practices of warehousemen. As a result, the board appealed to the state authorities for regulating such and similar matters. This scenario continues even today.[449] Taking such lessons the Ethiopian government has subjected the Ethiopia Commodity Exchange to close regulation of the Ethiopia Commodity Exchange Authority (hereinafter, "ECEA").[450]

The objective of the ECEA is "to ensure the development of an efficient modern trading system, and to regulate and control the secure, transparent and stable functioning of a Commodity Exchange and to protect the rights and benefits of sellers, buyers, intermediaries and the general public."[451] Specifically, the authority is established for, among other things, ensuring proper dissemination of market information to market actors, promoting innovative practices and healthy competitive atmosphere in the system; deterring disruptive activities such as fraud, price manipulation abusive practices misuse of customer services and protecting market participants from same; ensuring financial integrity of transactions, avoiding risks to the system. [452]

In order to effectively accomplish its objectives, ECEA has been entrusted with broad powers and responsibilities in the exchange market system. The first one is law making power. This power is particularly concerned with enacting of directives in relation to different matters. This is done in two ways. On the one hand, there is a general provision which empowers the Authority to enact a directive necessary for the proper implementation of the Authority proclamation[453] and the Exchange proclamation.[454] On the other, the proclamation provides specific matters in relation to which the Authority is required to mandatorily enact directives. These are provided mainly in Arts 6 and 31 of the proclamation.

Art 6 calls for enacting directives in relation to the specifications, sale and purchase principles of contracts traded in the ECX;[455]determining the principles related to independent auditing

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[449] Id, pp. 33-34

[450] Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 3(4) cum Preamble, Ethiopia Commodity Exchange Authority Proclamation, cited below at note 437

[451] Ethiopia Commodity Exchange Authority Proclamation, September 2007, Art 5, Proclamation 551, *Fedral Negarit Gazeta*, 13th Year, No 62,

[452] Id, Art 5(1) to (4)

[453] Id, Art 34

[454] Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 31(2)

[455]Ethiopia Commodity Exchange Authority Proclamation, cited above at note 451, Art 6(5)

operations;[456] regulation of the ECX, Clearing Institutions, and Exchange Actors and fees and charges related to these; [457] Art 31 on the other hand requires ECEA to enact directives relating to, among others, determination of the mode and amount of contributions made by members in the exchange to the Settlement Guarantee Fund,[458]and its administration, conditions of withdrawal and repayment, coverage and exclusion, charges for utilization, and penalties and disciplinary measures for non-performance. Besides, the approval of the authority is required for rules and procedures developed by the ECX. These rules generally relate to the regulation of trade in the ECX[459] and include the rules and by-laws relating to membership, clearing and settlement, contracts traded in the ECX,[460] admission, suspension or expulsion of a member of the Exchange,[461]dispute settlement.[462]

The other role of ECEA is recognition of actors in the ECX. There are a number of participants in the ECX. The capacity and level of participation of each participant, however, depends on the recognition of the Authority. This requirement is triggered by the necessity of promoting an efficient and orderly market system as the entry is based on trustworthiness of the participants in order to enhance the level of public confidence on the system.[463]

The participants who need recognition by the Authority include exchange actors, exchange actors associations, and clearing institutions. An exchange actor is "any person recognized by the Authority who engages in the business of buying and selling Exchange traded contracts for others or for his own account."[464] Thus, coffee suppliers, coffee exporters, domestic consumption coffee wholesalers, coffee roasters, need to be first recognized as exchange actors by the ECEA in order to trade their coffees in the ECX market environment as provided in Art 16(1) of the

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[456] Id, Art 6(8)
[457] Id, Art 6(3), (13)
[458] Settlement Guarantee Fund is a fund which is held by the ECX and to which each member is required to contribute to and provide a minimum interest free deposit. Contributions may also be made by the government. See Art 12.2.1-2 of the Revised Rules of the ECX.
[459] Directives of the Ethiopia Commodity Exchange Authority(hereinafter "ECEA Directive"), October 2008, Art 13(1)
[460]Id, Art 12(10). See also Art 8(3)
[461] Id, Art 12(11)
[462] Ethiopia Commodity Exchange Authority Proclamation, cited above at note 451, Art 6(12)
[463] Tsegaye cited above at note 60, p. 73
[464] Ethiopia Commodity Exchange Authority Proclamation, cited above at note 451, Art 2(7)

Authority proclamation. Exchange actors association on the other hand refers to exchange members organized in group for the purpose of upholding and maintaining the standards of integrity, professionalism, and skills of their members.[465] Recently, an exchange actors association comprising members trading in different commodities was established though it was not yet operational.[466]

A commodity exchange system is not self-contained. Instead, it "depends on a number of linked institutions which are critical to its functioning."[467] One of these institutions is clearing institution. Clearing institution in the context of the ECX refers to domestic bank or similar financial institution recognized by the authority to settle the transactions undertaken in the ECX as provided in Art 2(1) and 2(3) of the Authority proclamation.

Exchange regulatory organs role is critical for establishing a viable commodity exchange system.[468] Taking this into consideration, the Ethiopian government has entrusted the Authority with ensuring the proper functioning of same. Ensuring market integrity is the other role of the ECEA. Ensuring market integrity is all about making the market operate efficiently, fairly, transparently and orderly.[469] To such end, ECEA is empowered to, among other things, take appropriate measures to prevent, investigate and correct activities such as insider trading,[470] fraudulent, deceptive, manipulative[471] and unfair practices relating to Exchange traded contracts;[472]regulate the clearing and settlement of Exchange trade contracts;[473] regulate the conduct of investment advisors, consulting companies, law practictioners, accounting professionals related to the ECX;[474] inspect financial statements, reports and other documents

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[465] Id, Art 20
[466] Interview with Ato Yohannes Assefa, cited above at note 193
[467] Eleni, cited above at note 408, p. 34
[468] Euna Shim, *Success Factors of Agricultural Futures Markets in Developing Countries and Their Implication on Existing and New Local Exchanges in Developing Countries*, the Fletcher School, April 2006, P 17
[469] የኢትዮጵያ ምርት ገበያ ባለሥልጣን፣ cited above at note 368, p. 25
[470]Art 2(8) of the Authority Proclamation defines Insider trading as "the buying or selling of an Exchange traded contract using nonpublic information, in breach of a fiduciary duty or other relationship of trust and confidence."
[471] Manipulation is defined under Art 2(9) of the Authority proclamation as "any conduct which may mislead or deceive market participants concerning the Value and/or price of a commodity."
[472] Ethiopia Commodity Exchange Authority Proclamation, cited above at note 451, Art 6(7), Art 27(1) cum Art 2(10)
[473] Id, Art 6(6)
[474] Id, Art 6(4)

submitted to it as required by law or on its own motion from the ECX, Clearing Institutions, Exchange Actors, and Internal and Independent auditors.[475] In addition, the Authority may suspend or withdraw the recognition it extended to Exchange Actors, Exchange Actors Associations and Clearing Institutions where they fail to live up to their expectations.[476]

Adjudicatory power is the other role of ECEA. Art 6(10) of the Authority Proclamation expressly empowers the Authority to investigate any act that violates the laws regulating the ECX and related businesses. To such end, the Department of Enforcement of the Authority is empowered to investigate whether any person has violated, is violating or is about to violate the Authority and Exchange proclamations, the Directives and/or by-laws of same.[477] Ultimately, however, it is the Administrative Tribunal which is responsible for deciding violation or otherwise.[478] Appeal is allowed from the decision of the tribunal to the Authority Board whose decision is the final decision of the authority.[479] The tribunal does not, however, have criminal jurisdiction.

The Exchange Authority is also entrusted with broad powers whenever an act of emergency that endangers the Commodity Exchange system happens. Emergency is broadly defined in the directives of the Authority. It includes or the occurrence of one or more of the following events:[480] an act of God, war or terror, force majeure event, civil disorder, fire, flood, or explosion, natural disaster affecting the business of the Exchange; an economic, financial or political crisis or any similar circumstance in Ethiopia which affects the business of the Exchange; any market disturbance which prevents the markets from fairly reflecting the forces of supply and demand for the Exchange traded contracts; and any other undesirable market situation or practice which, in the opinion of the Authority likely to affect the proper operation of the Clearing house,[481]Exchange Designated Settlement banks, or any other Clearing Institution or is

[475] Id, Art 6(9), Art 18, Art 22
[476] Id, Art 19, Art 23, and Art 26 respectively
[477] ECEA Directive, cited above at note 459, Art 9.7.2.1
[478] Id, Art 10.2.1
[479] Id, art 10.19
[480] ECEA Directive, Art 12.9
[481] "A division of the Exchange, or a third party recognized as a Clearing Institution, providing the service of clearing and settlement of transactions and guaranteeing settlement by delivery to Members, on behalf of the Exchange." Art 3.6, ECEA Directive, General

likely to affect or cause a disruption to the orderly trading of Exchange traded contracts on the Exchange.

If one or more of these things come about, the Authority is empowered to:[482] liquidate or transfer outstanding obligations in any contract; suspend or curtail trading in any contract; require market participants in any contract to meet special deposit requirements; direct the Exchange to close for a period not exceeding five days, modify trading days or hours not amounting to a closure of the same for any one day, modify or suspend the application of any of the business rules.

From these, one can easily discern that the ECEA has been entrusted with extensive powers and responsibilities in regulating the business of the ECX, its members and supporting institutions. Despite this, some of the coffee traders complain that the former is not active enough in exercising many of such powers. This is also admitted by the Assistant Director General of the authority.[483] He told the writer that the Authority is regulating ECX basically through regulating the system by, among other things, creating awareness, rather than involving in routine regulatory activities by entertaining specific individual cases.[484]

[482] ECEA Directive, cited above at note 459, Art 12.2
[483] Interview with Ato Girma Biftu, Assistant Director General, Ethiopia Commodity Exchange Authority, on January 2, 2010
[484] Ibid

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

Coffee is beyond simple commodity to Ethiopia. The life of one out of four Ethiopians directly or indirectly depends on coffee. Moreover, about than 40%[485] of the country's foreign earnings come from this commodity. In return, the country realized this fact and as a manifestation of this, it put in place special regulatory machinery to the commodity since early 1950s. The legal and institutional framework regulating this industry including its marketing has different shapes across the three governments.

Starting from 1952, the imperial government had been taking different measures with a view to develop the industry and enhance its role in the socio-economic life of the country. Some of the bold steps taken during this time include enacting a range of coffee legislations dealing with coffee quality, coffee trade and coffee regulation and establishing the National Coffee Board. Despite that, there was no central market in which all coffees coming from different coffee producing areas come and exchange with the exporters and local coffee traders until the last times of this government. During this time, coffee transaction was made based on samples the brokers and other intermediaries bring in their handkerchiefs and, in the absence of sufficient information, the market actors were left at the mercy of the intermediaries. In addressing these problems, the imperial government took an audacious of all measures by establishing the coffee auction system in 1972.

The coffee auction system with two auction centers at Addis Ababa and Dire Dawa persisted until recently. Coffee trade including the auction system during the Dergue era on the other hand was highly centralized. The role of the private sector was thus negligible. The coming into power of the Transitional Government of Ethiopia (TGE) and the adopting of neo-market economy on the contrary lifted many of the restrictions. Satisfied with these promising events, the private sector then started to play its distinctive role which resulted in what can be termed as the rebirth

[485] In the past it even used to exceed 60%

of the industry. Consequently, the country has been exporting record amount of coffee to the global coffee market for the last one and a half decades.

It was in such a situation that the government put in place new coffee trade regime by virtue of the Coffee Quality Control and Marketing Proclamation of 2008 and its subsidiary legislations which include the coffee regulation, coffee directive and the coffee manual. The proclamation recognizes three market centers: local market centers, auction centers and the ECX market system. The coffee regulation on the other hand shifted the whole coffee trade to the ECX. Therefore, the present coffee trade regime, basically, is made up of the new coffee laws and the ECX related legislations. This work is a study on the contents of this legal regime and its impact on the and future of the coffee industry in Ethiopia.

Based on the legal and practical research done through the investigation of these legislations, the writer, overall, concludes that the present coffee trade regime can be described, as opposed to the widespread contrary views, good scheme in solving the age-old problems of coffee quality and marketing in a way it benefits different market participants including the producers. This is also confirmed by many coffee traders with whom the author held formal and informal discussions who hold that the present coffee trade system is good to the traders as well as the country as a whole.[486] Nonetheless, this doesn't mean that the present coffee trade regime does not have any drawback. In fact, there are some shortcomings arising from the present legal and regulatory regime and/or its enforcement.

To begin with, the present legal regime and the regulatory system it creates are a bit draconic. In line with this, majority of the traders with whom the writer held formal interview and informal discussions agree that the powers and responsibilities the present law entrusts to the regulating institutions such as the MoARD, regional bodies, coffee quality and transactions inspectors, ECX, ECEA signify that the government extends heavy hand to the sector leaving little or no say

[486] Some, however, argue that the present law does not add value to the coffee industry and/or its actors. They believe that many of the alleged values of the ECX can be pursued even in the previous auction model with which they are familiar for long time with better enforcement capacity.

to the private sector. Yes, government regulation is necessary given the role of the industry and the prevailing rampant limitations. Yet, the coffee market may not be efficient if it is overregulated which in effect defeats one of the underlying objectives of the very legal regime.

Secondly, the present law is merciless to the collectors. It sweepingly drives them out from the market hence can not get license in a title or field of business of coffee collection. Practically, however, they are still engaging in such activity in no less extent than before.

Thirdly, in some instances, there lacks check and balance system in the sector. In the recent controversy, for instance, one of the grounds for the confiscation of the coffee of the exporters and revocation of their license was failure to sell coffee before the next harvest season. Nonetheless, the fact of old crop was proved by the Coffee Liquoring and Inspection Center which is a division of the MoARD. There is no private or independent coffee liquoring center which examines the quality of coffee whenever a dispute that calls for expert knowledge arises.

Fourthly, Coffee smuggling is serious problem even these days.[487] The problem emanates from two interrelated causes. The first one is the fact that the price of coffee locally is low and the second and the other side of the first one is the existence of better price in the neighboring countries and/or border Ethiopian communities due to, in the later case, lack of sufficient supply.[488] The third and contributing factor in this regard is the fact that the coffee laboratories were restricted at the center which in effect required coffee producers additional cost.[489] One of the solutions which the law envisages in this respect is establishment of coffee control stations. In fact, these stations were in operation since long.[490] But they were not effective in controlling coffee smuggling. This is due to two main reasons.[491] First, these stations are not effectively controlling coffee smuggling due to reasons such as lack of human power and corruption. Secondly, the number of these stations across the country is negligible.

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[487] Interview with Ato Adugna Fete, cited above at note 171
[488] Id
[489] Id
[490] Id
[491] Id

Fifthly, the present coffee legal regime gives rise to some predicaments that need to be urgently revisited. To mention some, the directive specifies timelines in which the whole coffee must be traded. This timeline seems to assume that the season when coffee ripens is always similar. This is not, however, always true. It rather varies from year to year. Sometimes, the season may begin early and the coffees ripen early which may not actually conform to the already set timelines. Similarly, the season may begin at different times for different coffee producing areas and/or coffee agro-ecologies. This in turn is presently creating practical problems to the ECX.[492]

Moreover, the Regulation provides that coffee graded by the coffee liquoring center and sold at the ECX can not be resold in the later.[493] Recently, the coffee confiscated by the government from the coffee exporters who bought it from the ECX and resold in same, for instance, caused controversy in this regard. But the government justified its action by invoking Art 9.2.1.2 to Art 9.2.1.4 of the directive which allows illegal coffee to be sold at the ECX provided that it is not red cherry or coffee with pulp in which case it is to be sold in the primary transaction centers. Some argue that the directive clearly contradicts with the regulation in this respect. But others argue that the former is excepting illegal coffee from the general rule. In the recent instance, the ECX accepted the resale of the confiscated coffee by invoking the later line of interpretation.[494]

Seventhly, the MoARD and the regional bodies are now issuing the certificate of competence at the federal and regional levels respectively. But the certificate is being issued while the requirements are not fully complied with particularly at the regional level. As the requirements are very strict, it is good that certificate is issued for those who fulfilled the minimum ones.

But two main concerns exist in this regard. First, the minimum requirements are not specified by law. Hence, they are not uniformly set in different regions or localities as the directive does not discriminate among different requirements. Moreover, while the coffee producing regions are empowered to enact a law for implementing the coffee proclamation, they do not yet come up with such law. Hence, it is being made subjectively by different licensing agencies. Secondly, the requirements that must be fulfilled must be well thought of. For instance, Oromia is presently

[492] Interview with Ato Yohanes Assefa, cited above note 193
[493] Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note 165, Art 4(4)
[494] Interview with Ato Yohannes Assefa, cited above at note193

issuing the certificate for suppliers who do not have the moisture tester.[495] This instrument is, however, very critical one in the sector without which we can't expect success of the industry.[496]

Eighthly, it goes with out saying that coffee exporters over the world rely on the international coffee market for their purchase decisions. This is due particularly to the price volatility of coffee in the global market. Consequently, coffee traders use futures contract as a means of risk management and, of course, due to other reasons such as means of financing coffee production and guaranteeing continuous supply. Futures contract "enables market actors to lock in their positions through offering contracts of a pre-specified quantity for future delivery at a pre-specified price."[497] Nevertheless, ECX is, currently, trading only in spot contracts. But Ethiopian coffee exporters need to lock in the domestic supply price and quantity in order to meet their export obligations. Or else, they must buy coffee today and store for several months or so until the date of delivery which is not desirable in many respects.

Ninthly, there are some shortcomings that negatively affect competition in the present coffee trade regime. One of the essential values of a commodity exchange model is to allow maximum possible competition. When we see coffee trade in the ECX, on the other hand, we come across flaws that may defeat this essential element. To begin with, the new coffee regulation shifted the whole coffee trade into the ECX with out leaving any room to competition from any other market channel. Participating in the trading system of the ECX presupposes membership in same. This in turn gives rise to multi-faceted implications. To begin with, any person who needs to engage in coffee trade must be member of the ECX.

Secondly, if the ECX rejects an application for membership in same, that in effect amounts to prohibition from participation in coffee trade as that is the end of all options to engage in coffee

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[495] Interview with Ato Adugna Fete, cited above at 171

[496] In fact, Ato Adugna said that this and many other instruments are not available as desired in the local market and even if they are, they are expensive ones. But from the point of view of the overall development of the sector and international competitiveness of Ethiopian coffee, quality which is the most important thing in the global coffee market should not be compromised. Therefore, as quality pays, the advantage of issuing the certificate to many suppliers by putting quality at stake should be compared with issuing it to relatively small number of suppliers who can afford such strict requirements

[497] Eleni Z. Gabre-Madhin, An Eye on the Future: Can the Ethiopia Commodity Exchange Succeed Without Futures? May 31, 2007

trade. Thirdly, this may be entry barrier and to such extent undermines competition in the marketing aspect of the industry. It is to be noted that there is only one commodity exchange in Ethiopia. The fact that there is no any other similar or any other model other than the ECX in particular may tempt the later to extend heavy hand in the coffee market unless due oversight is exercised by the supervising agencies which many coffee traders complain for its absence. This may be disincentive for those who need to engage in coffee trade without being members of the ECX for what ever reason and ultimately competition.

Tenthly, Recently, ECX has started trading of specialty coffee. This is a step forward which should be applauded. Yet, the drawbacks existing in that regard should be appreciated and resolved. In this respect, the primary concern may be on the parameters currently in use for categorizing a certain coffee as specialty in the country. Now, a particular coffee is considered to be specialty based on its specific geographical origin. But we have seen in the previous chapter that the parameters are many and include specifications regarding the processing, roasting, brewing, etc of the coffees which ultimately give a notable and distinctive character. These things are now lacking in our case and should be introduced as soon as possible. Secondly, the specialty market does not currently have specific legal framework that governs it. Even the ECX has introduced the specialty coffee by simply modifying the existing contracts and does not have specific rules or by-laws dealing with this market.

Finally, the coffee industry in Ethiopia has its own peculiar features which make it unique over other agricultural sub-sectors in many respects. To begin with, the industry is a cornerstone of the country's economy. Second and which unsurprisingly follows from the first one is that the industry continues to be highly regulated. Thirdly, the industry's market evolution particularly in recent times follows an extraordinary pattern in the sense that new market concepts that add value to the commodity emerge at different times. The trade fair certification, organic coffee certification, branding trade marking, geographical indication, etc are among the manifestations of this pattern. And special efforts and devotions are required to satisfy the complex demands of the current consumers.

Taking such and many other things into account, the fact that coffee trade is shifted to the ECX market system is good thing as, if properly operated, this market system is established to develop the country's agriculture through modernizing the agricultural market. However, this writer believes that ECX is not enough for the coffee sector due to the aforementioned reasons.

In addition, many coffee trader members believe that coffee does not get an attention which is comparable to its importance to the country in the ECX. The fact that ECX is a multi-commodity exchange has its own repercussions to the sector. Coffee is traded with other commodities in the same manner as the later. Taking the Exchange Board which is responsible for the overall functioning of the ECX, for instance, it has eleven members and six of them including the chairperson are appointed by the MoARD. The remaining five members come from the members trading in different commodities.[498] This may make the ECX to overlook the special role it plays to the country's economy and the special treatment of the commodity such as undertaking extensive market researches in light of the evolutionary nature of its global market.

5.2. Recommendations

On the basis of the findings of the research in general and the conclusions drawn above, the writer recommends the following points which, he thinks, will contribute in minimizing the problems that arise out of the present law and/or practice and enhancing the positive aspects of same.

1. The role of the private sector in regulating coffee trade should be increased. It is to be noted that the private sector is often times in a better position in overcoming market related problems, hence developing the industry. So, empowering the private sector in the industry for mainly self-regulation rather than escalating government regulation should be the direction as opposed to the contrary present trend.
2. The problem created on the collectors by the new law should be appreciated and solved. Given their number, the experience they developed through time in the field, the level of unemployment that will be created as a result of this law, the government should come up with a solution that will enable them to participate in the field of coffee trade. One

[498] Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 11(1)

mechanism of doing so may be organizing them in a form of micro and small scale business so that they bring their individual money together and engage in a business of coffee supply. Alternatively, they may keep on engaging in the coffee trade as sub-agents of the suppliers for which legal back up is necessary. This eases their problems and has its own role in solving problems of unemployment without compromising the underlying purpose of the law.

3. The following solutions are suggested in respect to the problems of coffee smuggling. First, a series of awareness creation and sensitization activities should be done. Second, the producers should be continuously enabled to receive better price and, likewise, better share of the market price of their produces. This may be done through what the ECX is doing now in respect to specialty coffee in which case coffee producers from specific areas transact coffee with foreign importers. The fact that the coffee laboratories are being established in the coffee producing areas also solves an aspect of the problem as it, at least, reduces the cost of coffee transportation to the center in Addis Ababa. Thirdly, border Ethiopian communities should get adequate access to the commodity legally. Fourthly, there should be better law enforcement including the penalty clauses of the coffee laws and the anti-corruption law. Fifthly, the government should increase the number of the stations and should equally and adequately staff them.
4. The writer suggests for amendment of some provisions of the present coffee legislations. The first one pertains to the provisions of the Directive which put specific timelines with in which the whole coffee produced in one season must be traded. In this regard, the directive may be amended in such a way as it empowers MoARD to determine the timeline each year taking into account the realities existing in each harvest season and/or the specific realties to different coffee producing regions. Alternatively, it may be amended in such a way as it changes the present rigid timelines into flexible mode in the sense that the present timelines serving as general rules and empowering the Ministry to change them whenever there appear such circumstances that warrant so. The other provision the writer suggests for amendment is Art 4(4) of the regulation which prohibits resale of coffee bought from the ECX. As this provision caused debate recently, it should be amended in such a way as it excepts resale of illegal coffee.

5. The problems in respect to the certificate of competence should be resolved as soon as possible. In this regard, the requirements that can be tolerated for at the moment should be, first, well-considered and be prescribed by law; and secondly, the requirements should be harmonized across all coffee producing areas and regions.
6. The challenges relating to the check and balance may be solved by establishing independent organ which oversees the proper enforcement of the law. In the case of the coffee liquoring and inspection, for instance, the problem of check and balance may be solved by establishing an independent organ and/or experts that examines the oldness or similar instances of coffee. Alternatively, such problems requiring expert knowledge should be examined by a panel of experts drawn both from the government and the private sector so that the concerns of both the government and the private sector are equally addressed.
7. ECX can not be successful without introducing contracts for future delivery.[499] The solution in respect to the type of contract is that ECX should start trading in futures contracts for which it need to devise the infrastructure as soon as possible. This is even strongly true in the coffee sector due to its importance and that over 90% of Ethiopian coffee comes from poor farmers who may at times lack money to finance inputs for production at every season.
8. The aforementioned drawbacks relating to competition emanating from the ECX system may be solved by letting the previous auction model continue to trade coffee as it gets legal recognition by the proclamation. This may be done by making a corporation prototype like the ECX and modernizing it by rectifying its previous flaws. This enables market participants to opt for one or the other based on the merit of each. Alternatively, competition may be achieved by empowering the private sector to establish privately devised commodity exchange which may be supervised by the ECEA in the same way as it does in respect to the ECX.
9. In relation to the specialty coffee, the writer suggests for, given the comparative advantage the country has in the segment of the sector and the additional revenues that may be made from it, putting in place of legal framework as soon as possible. This may be made by issuing a regulation or a directive.

[499] Eleni, cited above at note 497

10. Finally, the writer suggests, given the coffee industry's role to the national economy and the peculiar local and international realities of the industry, establishment of commodity exchange specializing in coffee, i.e., coffee commodity exchange which may take similar form as the ECX.

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