

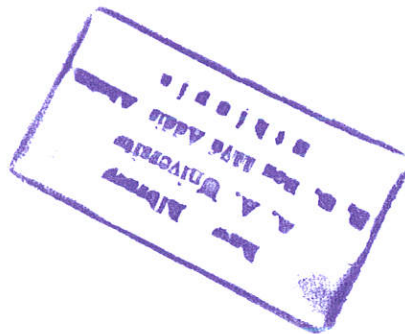
**ADDIS ABABA UNIVERSITY**  
**FACULTY OF LAW**  
**SCHOOL OF GRADUATE STUDIES**

**THE LEGAL REGIME REGULATING COFFEE TRADE IN  
ETHIOPIA**

**BY: YARED BERHE**

**ADVISOR: PROFESSOR TILAHUN TESHOME**

**A THESIS SUBMITTED IN PARTIAL FULFILLMENT FOR THE REQUIREMENT OF  
MASTER'S DEGREE IN BUSINESS LAW (L.L.M)**



**ADDIS ABABA**  
**JANUARY 2010**

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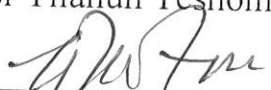
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## ABSTRACT

*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.<sup>1</sup> Historically, it accounted for around 90% of foreign exchange and 40% of the GDP.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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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<sup>1</sup> Federal Democratic Republic of Ethiopia Population Commission, *Summary and Statistical Report of the 2007 Population and Housing Census* (Dec. 2008), p. 19

<sup>2</sup> 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

<sup>3</sup> 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

<sup>4</sup> 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

<sup>5</sup> Ibid

*Coffea Canephora*.<sup>6</sup> *Coffea Liberica* on the other hand has only minor local importance in some parts of Western Africa.<sup>7</sup>

Coming to our case, many believed that “Ethiopia is the center of origin and genetic diversity for Arabica coffee.”<sup>8</sup> It is to be noted, however, that there are some who argue that South Arabia is the birth place of coffee.<sup>9</sup> 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 plateau.”<sup>10</sup> The very word coffee is believed to come from root word “Kefa,” a place in the South western Ethiopia where coffee trees first blossomed.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> Owing to this, the country is termed as the “coffee flavor museum.”<sup>14</sup> 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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<sup>6</sup> Ibid

<sup>7</sup> Ibid

<sup>8</sup> Girma *ET AL*, cited above at note 3, p. 2

<sup>9</sup> 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’ originated 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.

<sup>10</sup> H.R. Cambrony, “Coffee Growing,” *The Tropical Agriculturalist*, Macmillan Press Ltd, Hongkong, (1992), p. 1

<sup>11</sup> Ministry of Agriculture and Rural Development (herein after “The MoARD”), Agricultural Marketing Sector, *Coffee: the Gift of Ethiopia to the World*, (2007), p. 1

<sup>12</sup> Girma *ET AL*, cited above at note 3, 317

<sup>13</sup> Solomon, cited above at note 4, p. 2

<sup>14</sup> Ibid

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

Coffee has been subject to trade long before 1500 years.<sup>17</sup> Ethiopia forms one of the oldest countries which used to trade coffee. Now many even believed that Ethiopia is the oldest coffee producer, consumer and exporter in the world.<sup>18</sup> 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.<sup>19</sup>

Even presently, coffee is the most important commodity in the country in many respects. It accounts for more than 25% of the GNP, 40% of the total export and 10% of total government revenue.<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup> 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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<sup>15</sup> 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, some argue that the bulk of Ethiopian coffee come with in 3<sup>rd</sup> or 4<sup>th</sup> quality out of 6 grades due mainly to the deterioration of quality. See The ECX, cited above at note 13, p. 5

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

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

<sup>18</sup> See Girma ET AL, cited above at note 3, p. 317

<sup>19</sup> Ethiopia Commodity Exchange, cited above at note 17

<sup>20</sup> 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.

<sup>21</sup> 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

<sup>22</sup> 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.

Given 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. At this 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 traders 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.<sup>23</sup> In relation to processing, the main interest at stake is the quality of the coffee.<sup>24</sup> 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.<sup>25</sup>

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

The main problems in this respect are lack of market standardization, fairness, transparency and efficiency.<sup>31</sup> There is also 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 small holder coffee farmers.<sup>32</sup> Also, they are illiterate, poorly

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<sup>23</sup> Africa Group Research, cited above at note 15

<sup>24</sup> 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.

<sup>25</sup> 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.

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

<sup>27</sup> Africa Group Research, cited above at note 15

<sup>28</sup> Girma *ET AL*, cited above at note 3, p. 417

<sup>29</sup> Africa Group Research, cited above at note 15

<sup>30</sup> See Ethiopia Commodity Exchange, cited above at note 17, p. 5

<sup>31</sup> Bemnet Aschenaki, Senior Manager, Strategy and Business Development, *ECX Market Design*, (PPT Presentation, 2008), slide 6

<sup>32</sup> 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, 2

connected to one another and with market systems.<sup>33</sup> Moreover, they lack information and bargaining power which deny them the required level of benefits from the high consumer price of their produces.<sup>34</sup> Others include primary collectors, local suppliers, farmers cooperatives, local and central brokers, wholesalers, few investors and/or state farms, processors, retailers, consumers, exporters, various government institutions, etc.<sup>35</sup>

These problems 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.<sup>36</sup> 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 solveing 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.”<sup>37</sup>

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<sup>33</sup> Ibid

<sup>34</sup> Ibid

<sup>35</sup> Petit, cited at note 16, p. 240

<sup>36</sup> Coffee Quality Control and Marketing Proclamation (hereinafter “coffee proclamation” or the “proclamation”), August 2008, Preamble, Proclamation No. 602, *Federal Negarit Gazeta*, 14<sup>th</sup> Year, No 61

<sup>37</sup> Ethiopia Commodity Exchange, cited above at note 17, p. 2

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 government of Ethiopia has attempted to fix something that was not broken."<sup>38</sup> The opponents further argue that the new coffee law totally prohibits direct sourcing of coffee from the producers.<sup>39</sup> Besides, the present coffee trade law allows the mixing of coffee beans from different growers before selling them for export.<sup>40</sup> 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.<sup>41</sup>

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.<sup>42</sup>

These poles apart views triggered the writer to be interested on the on the subject and do research in the area. In general terms, this research is proposed to study 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 calling 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?

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<sup>38</sup> \_\_\_\_\_, "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](http://www.jimmatimes.com/article/Latest_News/Latest_News/quotConfusion_and_chaosquot_with_new_Coffee_auction_system_in_Ethiopia/32097)

<sup>39</sup> Wondwossen Mezlekia, *Coffee Brews Feud, Drowns out Voices*, Available at <http://www.ethiomediamedia.com/ad.>, Last Accessed on April 9, 2009

<sup>40</sup> \_\_\_\_\_, "Confusion and chaos" with new Coffee auction system in Ethiopia, cited above at note 38

<sup>41</sup> Ibid

<sup>42</sup> አዲስ ነገር፣ ቡና በመጨረሻው ሰዓት፣ መጋቢት 19, 2001, ገፅ 1

4. How 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?

### **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 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:

- To examine how coffee was traded prior to putting in place of the present legal framework regulating coffee trade;
- To scrutinize the reasons for changing the earlier coffee trade regime;
- 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;
- To analyze the regulatory system that is in place by the present law and its implications to the industry;
- To investigate the reaction of role players in the industry on the law and in practice;
- To survey the degree of implementation of the new law;
- 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:

- assist different stakeholders including existing coffee traders and new entrants to have clear understanding on 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;
- identify 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 solution.
- contribute 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.<sup>43</sup> The study therefore deals with the legal framework 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.

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<sup>43</sup> 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

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.

## **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, many 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 affairs 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.<sup>44</sup> Irrespective of the veracity of this statement, however, studies show that, prior to 1920s, the bulk of Ethiopian coffee had been consumed locally.<sup>45</sup> 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

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<sup>44</sup> Ethiopia Commodity Exchange, cited above at note 17, p. 4

<sup>45</sup> Ibid

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.<sup>46</sup>

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.<sup>47</sup>

### *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.<sup>48</sup> 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.<sup>49</sup>

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.<sup>50</sup> 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

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<sup>46</sup> Ibid

<sup>47</sup> Girma *Et Al*, Cited above at note 3, p. 11

<sup>48</sup> 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.

<sup>49</sup> Id, Art 7

<sup>50</sup> Id, Art 2(b)

specifications.<sup>51</sup> 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,<sup>52</sup> size,<sup>53</sup> shape<sup>54</sup> and type<sup>55</sup> of the coffee.<sup>56</sup> It then required the licensed cleaners and graders to issue Export Certificate for the coffee which qualifies for export<sup>57</sup> and Domestic Certificate<sup>58</sup> for the one destined for domestic consumption.<sup>59</sup>

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.<sup>60</sup>

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."<sup>61</sup> 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

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<sup>51</sup> Id, Art 4

<sup>52</sup> The Regulation designated Harari, Arusi, Sidamo, Gimma, Lekemti and Gore as the places where Ethiopian Coffee originates

<sup>53</sup> Size was determined based on 'the number of the standard screens on which coffee is retained.'

<sup>54</sup> Shape was determined based on the inspection made and was designated as either 'long berry,' 'medium berry' or 'pearl'.

<sup>55</sup> 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.

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

<sup>57</sup> Id, Art 3 cum Schedule B

<sup>58</sup> Id, Art 3 cum Schedule C

<sup>59</sup> 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.

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

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

in the coffee.<sup>62</sup> But this regulation did not still categorize what sort of coffee is destined for export and which one for domestic consumption.

### ***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.<sup>63</sup> 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.<sup>64</sup>

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

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<sup>62</sup> 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 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.

<sup>63</sup> Girma *ET AL*, cited above at note 3, p. 11

<sup>64</sup> *Ibid*

production and marketing of coffee by cooperatives; recommending taxes to be imposed on coffee.<sup>65</sup>

In order to effectively discharge such duties and responsibilities, the Board was given with broad powers.<sup>66</sup> 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 and other subsidiary laws short of power of making regulations.<sup>67</sup> 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.<sup>68</sup>

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.<sup>69</sup> Evasion or an attempt to evade tax was made an offence punishable with a fine not exceeding three times the

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<sup>65</sup> 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

<sup>66</sup> *Id*, Art 4 (a) to (h)

<sup>67</sup> 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.

<sup>68</sup> 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

<sup>69</sup> *Id*, Art 5

amount of the tax or up to six months imprisonment.<sup>70</sup> Based on this provision, the Minister passed a regulation which imposed tax at the rate of E\$1 per quintal.<sup>71</sup>

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*.<sup>72</sup> This power included buying, cleaning, decorticating, processing, storing and exporting coffee and lending money against warehouse receipts.<sup>73</sup> In giving effect to this article, the Council of Ministers approved that there were exceptional circumstances in 1966 that gave green light to the Board to engage in coffee trade.<sup>74</sup> 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<sup>75</sup> 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.

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<sup>70</sup> Id, Art 5(2) cum Art 9

<sup>71</sup> 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.

<sup>72</sup> The National Coffee Board Proclamation, cited above at note 65, Art 7

<sup>73</sup> Id, Art 7 (a) to (b)

<sup>74</sup> 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.

<sup>75</sup> Coffee Certificates of Origin Regulations, 1965, Art 4, Legal Notice No. 308, *Neg Gaz*, year 25, No. 1

helping the establishment of coffee exchange centers, standardizing the trading system.<sup>76</sup> 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.<sup>77</sup>

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 and Grading) Proclamation and the 1961 National Coffee Board proclamation and their subsequent amendments.<sup>78</sup>

The Board was re-established as an autonomous public authority<sup>79</sup> with two principal purposes of improving the quality of coffee produced in Ethiopia and maximization of coffee for export.<sup>80</sup> It was given “all powers necessary for the attainment of its purposes.”<sup>81</sup> 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,<sup>82</sup> represent the government in relation to matters coming within its jurisdiction,<sup>83</sup> and establish branch offices locally and internationally.<sup>84</sup>

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

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<sup>76</sup> Girma *ET AL*, Cited at note no. 3, pp. 424-425

<sup>77</sup> *Id*, p. 13

<sup>78</sup> National Coffee Board Proclamation, 1973, Art 2, Proclamation No. 310, *Neg Gaz*, year 32, No. 12

<sup>79</sup> National Coffee Board Re-establishment Order, 1973, Art 2, Order No. 84, *Neg Gaz*, year 32, No 12

<sup>80</sup> *Id*, Art 3 (1)-(2)

<sup>81</sup> *Id* Art 4(1)

<sup>82</sup> *Id*, Art 4(2) (g)

<sup>83</sup> *Id*, Art 4(2)(h)

<sup>84</sup> *Id*, Art 4 (2) (f)

exported from Ethiopia which may not exceed E \$ 3 per bag; enter into international obligations relating to coffee representing the country.<sup>85</sup>

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

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.<sup>90</sup> 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."<sup>91</sup>

## 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

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<sup>85</sup> National Coffee Board Proclamation, 1973, cited above at note 78, Art 4 (1) cum (2)

<sup>86</sup> *Id*, Art 8

<sup>87</sup> Coffee Board Regulations, 1973, Legal Notice No. 441, Neg. Gaz, Year 32, No. 30

<sup>88</sup> Coffee Cleaning and Grading Regulations, 1973, Legal Notice No. 442, Neg. Gaz, Year 32, No. 30

<sup>89</sup> Coffee Export Regulations, 1973, Legal Notice No. 443, Neg. Gaz, Year 32, No. 30

<sup>90</sup> Girma, cited above at note 3, p. 12

<sup>91</sup> *Ibid*

stagnant economic performance and, generally, the backwardness of the country.<sup>92</sup> 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.<sup>93</sup> 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 some degree of limitation though."<sup>94</sup> 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.<sup>95</sup> The reason for establishing the authority was to enable the government to actively involve on the production and trade of coffee.<sup>96</sup> Established with the principal purposes of maximizing the production, quality, industrial processing and export of coffee,<sup>97</sup> all of the powers and duties of the Board were transferred to this Authority.<sup>98</sup>

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<sup>92</sup> See, Befekadu Degfe and Berhanu Nega (ed.), *Annual Report on the Ethiopian Economy*, (1999/2000, The Ethiopian Economic Association), Vol.1, p. 2

<sup>93</sup> National Coffee Board (Amendment) Proclamation, 1975, Art 2, Proclamation No. 57, *Neg Gaz*, year 35, No. 6

<sup>94</sup> 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

<sup>95</sup> 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.

<sup>96</sup> Id, Preamble

<sup>97</sup> Id, Art 6

<sup>98</sup> 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.

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.<sup>99</sup> In this regard, the Authority was given power to direct and control the activities of these institutions.<sup>100</sup> 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."<sup>101</sup> As per Art 6, it was established 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.<sup>102</sup> The strong supports which it received from government then enabled the corporation to dominate coffee related transactions by establishing 55 purchasing stations.<sup>103</sup> 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.<sup>104</sup> The remaining 20% and 10% of the general coffee market and coffee export respectively were shared by the coffee

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<sup>99</sup> See Art 7(1)

<sup>100</sup> Ibid

<sup>101</sup> Ethiopian Coffee Marketing Corporation Establishment Regulations, 1978, Art 5, Legal Notice No. 59, *Neg Gaz*, year 37, No. 5

<sup>102</sup> Id, Art 10

<sup>103</sup> Tsegaye Workayehu, cited above at note 60, p. 49

<sup>104</sup> Id, pp. 48-49

cooperatives and the private sector.<sup>105</sup> 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.<sup>106</sup> 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.<sup>107</sup>

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).<sup>108</sup>

Under this proclamation, coffee trade was defined broadly as to include coffee cleaning, collection, supply, roasting, wholesaling, retailing or acting as coffee trade auxiliary.<sup>109</sup> By virtue of Art 4(1) of this proclamation, no person may engage in coffee trade with out license to be

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<sup>105</sup> Petit, Cited at note 16, p. 247

<sup>106</sup> Definition of Powers and Responsibilities of Ministers Amendment Proclamation, 1980, Art 2 (20), Proclamation No. 179, Neg Gaz, year 39, No. 8

<sup>107</sup> Id, Art 2(20) (1) to (21)

<sup>108</sup> Coffee Trade Proclamation, 1984, Art 2, Proclamation No. 263, Neg Gaz, year 43, No 14

<sup>109</sup> 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)

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: <sup>110</sup> 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.<sup>111</sup>

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 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.<sup>112</sup> Likewise, coffee suppliers were obliged to sell their coffee to exporters at a designated auction hall or to appropriate government organization.<sup>113</sup> 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

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<sup>110</sup> Id, Art 10(1)

<sup>111</sup> Id, Art 11

<sup>112</sup> Id, Art 14

<sup>113</sup> Id, Art 15

the Ministry; and if it does not meet the standard, to sell it to appropriate government body at the price fixed by the Ministry.<sup>114</sup> The Ministry was also empowered to determine export price.<sup>115</sup>

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.<sup>116</sup> 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 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.”<sup>117</sup> 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.<sup>118</sup>

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<sup>114</sup> Id, art 16

<sup>115</sup> Id, Art 24 (1)

<sup>116</sup> Id, Arts 17 to 18

<sup>117</sup> The Transitional Government of Ethiopia, *Ethiopia’s Economic Policy during the Transitional Period (an Official Translation)*, (1991, , Addis Ababa), Section 1.1

<sup>118</sup> Id, Sections 1.1.1 to 1.1.5

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”<sup>119</sup> which is also reaffirmed in the policy handbook of the FDRE.<sup>120</sup> 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.<sup>121</sup> 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.<sup>122</sup> 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 has its own impact as expensive fees have the effect of reducing market participants.<sup>123</sup> 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.<sup>124</sup> The amended law reduced this to 200 and 150 respectively.<sup>125</sup>

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

<sup>119</sup> Id, Introductory Part, p. 16

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

<sup>121</sup> 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

<sup>122</sup> Coffee Trade (Amendment) Proclamation, 1993, Art 2, Proclamation No 70, *Neg Gaz*, year 52, No. 63

<sup>123</sup> Petit, cited above at note 16, p. 247

<sup>124</sup> Coffee Trade Proclamation, cited above at note 108, Schedule I

<sup>125</sup> Coffee Trade (Amendment) Proclamation, cited above at note 122, Schedule I

purchasing and transporting of coffee and selling same in the auction centers; stabilizing internal coffee market; and expanding hull stations.<sup>126</sup> The objectives of the Ethiopian Coffee Export Enterprise on the other hand include buying coffee from the auction centers; processing<sup>127</sup> and exporting same.<sup>128</sup>

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.<sup>129</sup> The second one was the Coffee Plantation Development Enterprise with its objective of coffee production and managing some state coffee farms.<sup>130</sup> 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.<sup>131</sup> Another enterprise called Coffee Processing and Warehouse Enterprise was added in 1994 by virtue of 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.<sup>132</sup> Moreover, they were established for indefinite time and were empowered to carry out any activity necessary for the realization of their respective objectives.<sup>133</sup> 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.

<sup>126</sup> Coffee Purchase and Sale Enterprise Establishment Council of Ministers Regulations, 1993, Art 5, Regulations No. 127, *Neg Gaz*, year 53, No. 8

<sup>127</sup> 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

<sup>128</sup> *Id*, Art 5

<sup>129</sup> Coffee Technology Development and Engineering Enterprise Establishment Council of Ministers Regulations, 1993, Art 5, Regulations No. 150, *Neg Gaz*, year 53, No. 31

<sup>130</sup> Coffee Plantation Development Enterprise Establishment Council of Ministers Regulations, 1993, Art 5, Regulations No. 151, *Neg Gaz*, year 53, No. 32

<sup>131</sup> *Id*, Arts 9 to 10

<sup>132</sup> See Art 7 of the respective Regulations

<sup>133</sup> See Art 8 and the last provision of Art 5 of the respective Regulations

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<sup>134</sup> “in a bid to further deregulate the production and marketing of coffee.”<sup>135</sup> 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.<sup>136</sup>

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:<sup>137</sup> 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 countries, information dissemination, issuing directives concerning quality control of export coffee and supervise their implementation;<sup>138</sup> 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

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<sup>134</sup> 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

<sup>135</sup> Tilahun, cited above at note 94, p. 14

<sup>136</sup> Coffee and Tea Authority Establishment proclamation, Cited above at note 134, Art 4

<sup>137</sup> *Id*, Art 5

<sup>138</sup> 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

FOB as basis for computation of the tax.<sup>139</sup> Accordingly, it imposed tax at the rate of 6.5% of the FOB price.<sup>140</sup> 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.<sup>141</sup> 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.<sup>142</sup> This was done in response to the then low price persisting at the international coffee market.<sup>143</sup> The proclamation further changed the role of the Council of Ministers. Art 3 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.<sup>144</sup> 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

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<sup>139</sup> Tax on Coffee Exported from Ethiopia Proclamation, 1998, Art 3, Proclamation No. 99, *Fed Neg Gaz*, 4<sup>th</sup> 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."

<sup>140</sup> *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.

<sup>141</sup> *Id*, Art 9(2)

<sup>142</sup> Tax on Coffee Exported from Ethiopia (Amendment), 2002, Art 2, Proclamation No. 287, *Fed Neg Gaz*, 8thYear No. 35

<sup>143</sup> Petit, cited above at note 16, p. 248

<sup>144</sup> *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.

market including in washed coffee.<sup>145</sup> 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.<sup>146</sup>

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.<sup>147</sup> In 2008, the country had 104 active coffee exporters, about 1800 suppliers, 5000 collectors, 230 primary cooperatives and five Cooperatives Unions.<sup>148</sup> 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.<sup>149</sup>

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.

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<sup>145</sup> Id, p. 247

<sup>146</sup> Id, p. 248

<sup>147</sup> 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

<sup>148</sup> Girma ET AL, cited above at note 3, p. 418

<sup>149</sup> 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*, 9<sup>th</sup> 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."

## 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<sup>150</sup> to 95%.<sup>151</sup> And the remaining 5% is shared by the existing cooperative unions and state farms which is the reverse scenario of the Dergue era.<sup>152</sup> 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.<sup>153</sup>

It was amidst such circumstances that the new law, i.e., the Coffee Quality Control and Marketing Proclamation<sup>154</sup> (hereinafter "the Proclamation" or the "Coffee Proclamation") was enacted in 2008. In order to implement this proclamation, other subsidiary laws, i.e., the Coffee 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 ማኅ-ዋል" which roughly means "Manual on Coffee Production, Quality Control and Marketing Activities."

<sup>150</sup> 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

<sup>151</sup> Girma ET AL, cited above at note 3, p. 421

<sup>152</sup> Ibid

<sup>153</sup> \_\_\_\_\_, "Confusion and Chaos "with New Coffee Auction System in Ethiopia," cited above at note 38

<sup>154</sup> Coffee Quality Control and Marketing Proclamation, cited above at note 36



Three main reasons are provided by the proclamation for introducing the present coffee trade regime.<sup>155</sup> 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<sup>156</sup> and marketing.<sup>157</sup> 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.<sup>158</sup>

### 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.<sup>159</sup> And it requires any

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<sup>155</sup> Id, Preamble

<sup>156</sup> 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

<sup>157</sup> 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

<sup>158</sup> 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

<sup>159</sup> Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 2(21)

person engaged in coffee transaction to transact coffee only in these centers.<sup>160</sup> 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.<sup>161</sup> 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.<sup>162</sup> 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*).<sup>163</sup>

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<sup>164</sup> for trading red cherry and sun dried coffee"<sup>165</sup> in coffee producing localities.<sup>166</sup>

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 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

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<sup>160</sup> Id, Art 6(1)

<sup>161</sup> Ministry of Agriculture and Rural Development, cited above at note 11, p. 2

<sup>162</sup> International Food Research Institute, cited above at note 147, p. viii, 47

<sup>163</sup> Id, p. viii

<sup>164</sup> 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."

<sup>165</sup> 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

<sup>166</sup> Id, Art 5(1)

vehicles as well as for transporting the coffee to processing plants within 12 hours after the transaction and sufficiency of distance from schools, health and religious institutions.<sup>167</sup> 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.<sup>168</sup>

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.<sup>169</sup> To such effect, each supplier is required to have weighing scale certified by the Ethiopian Quality and Standards Authority.<sup>170</sup> 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*).<sup>171</sup> 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 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

<sup>167</sup> Id, Art 5(2)

<sup>168</sup> Id, Art 7(1)

<sup>169</sup> Coffee Quality Control and Transaction Council of Ministers Regulation, cited above at note 165, Art 3(1)

<sup>170</sup> Id, Art 7(1)(d)

<sup>171</sup> 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 ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የኢትዮጵያ ምርት ገበያ የቡና ግብይት አሰራር አስመልክቶ የተዘጋጀ ዕውቅና፣ ህዳር 2001 አዲስ አበባ ገፅ 3-4

from the producers. Rather, coffee quality simply deteriorates as it changes many hands.<sup>172</sup> The other prong of coffee quality aspect is that these collectors were blamed for mixing coffees coming from different agro-ecologies.<sup>173</sup>

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.<sup>174</sup> 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.<sup>175</sup> 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.<sup>176</sup> 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 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.<sup>177</sup>

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<sup>172</sup> Interview with Ato Adugna Fete, cited above at note 171

<sup>173</sup> *Ibid*

<sup>174</sup> *ibid*

<sup>175</sup> Interview held with anonymous supplier on October 20, 2009

<sup>176</sup> *Ibid*

<sup>177</sup> Ethiopia Commodity Exchange, cited above at note 17, p. 4

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.”<sup>178</sup> From this time on, all coffees produced in the country had to pass through the auction markets.<sup>179</sup> To such end, two auction markets were established in Addis Ababa and Dire Dawa with 80% and 20% market share respectively.<sup>180</sup>

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.<sup>181</sup> Grading was made based on the number of defects and type of processing.<sup>182</sup> 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.”<sup>183</sup> 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.<sup>184</sup> Finally, all coffees that meet export standards were directed for export and the remaining ones for domestic consumption.

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

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<sup>178</sup> Ibid

<sup>179</sup> 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

<sup>180</sup> 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

<sup>181</sup> Id, p. 240

<sup>182</sup> Ibid

<sup>183</sup> The Ethiopia Commodity Exchange, cited above at note 17, p. 4

<sup>184</sup> International Food Policy Research Institute, Cited above at note 147, p. 50

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;<sup>185</sup> *the auction centers* and the Ethiopia Commodity Exchange.”<sup>186</sup> In consolidating this stipulation, Art 6 of the proclamation makes trading of coffee out of these three market centers illegal.<sup>187</sup>

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.*”<sup>188</sup> 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

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<sup>185</sup> These local markets are the ones, as depicted in the previous section, called Primary Transaction Centers

<sup>186</sup> Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 2(21)

<sup>187</sup> *id*, Art 6(1)

<sup>188</sup> Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note 165, Art 4(1)

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

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.<sup>192</sup> 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.<sup>193</sup>

Price discovery, transparency, reward for quality, immediate payment and competition were considered, at least theoretically, as the most important strengths of the auction system.<sup>194</sup> 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.<sup>195</sup>

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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<sup>189</sup> 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

<sup>190</sup> Id, Art 50(2)

<sup>191</sup> Id, Art 55(1)

<sup>192</sup> Interview with Ato Firew Mamo, cited above at note 158

<sup>193</sup> Interview with Ato Yohannes Assefa, Chief Compliance Officer, Ethiopia Commodity Exchange, on Nov. 12, 2009

<sup>194</sup> International Food Policy Research Institute, Cited above at note 147, p. 57

<sup>195</sup> Interview with Ato Yohannes Assefa, cited above at note 193

in payment defaults.<sup>196</sup> 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.<sup>197</sup> 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.<sup>198</sup> This in a way adversely affects not only the farmers but also the suppliers though the degree varies.<sup>199</sup>

### ***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.<sup>200</sup> 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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<sup>196</sup> Ibid

<sup>197</sup> Ibid

<sup>198</sup> Ibid

<sup>199</sup> Ibid

<sup>200</sup> 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<sup>201</sup> before applying for license of his/its respective activity.<sup>202</sup> 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.<sup>203</sup> 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.

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<sup>201</sup> 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.”

<sup>202</sup> Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note 165, Art 8

<sup>203</sup> *Id.*, Art 9

More or less similar requirements are prescribed for coffee exporters, processors, warehouse operators, coffee wholesalers, and roasters.<sup>204</sup> Of course, other requirements are provided in 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.<sup>205</sup> 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.<sup>206</sup> 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.<sup>207</sup> 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.<sup>208</sup> 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

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<sup>204</sup> Id, Arts 10, 11, 12, 13, 14 respectively

<sup>205</sup> Id, Art 10(5)

<sup>206</sup> Id, Art 15(1) cum Art 2(2)

<sup>207</sup> Interview with Ato Firew, cited above at note 158

<sup>208</sup> Interview with Ato Yosef Alemu, Trade licensing and Registration Officer, MoTI, Nov.10, 2009

the license of the coffee exporters whose certificate of competence was revoked.<sup>209</sup> In any case, there is good coordination between the two institutions in this respect.

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.<sup>210</sup> But it is to be admitted that the certificate is now issued to the traders not because they fulfill all of the requirements.<sup>211</sup>

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.<sup>212</sup> 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.<sup>213</sup> 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.<sup>214</sup> 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.

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<sup>209</sup> 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

<sup>210</sup> Interview with Ato Abdela Osman, Trade controlling Expert, Bureau of Trade, Industry and Transportation, Oromia, on Nov. 13, 2009

<sup>211</sup> Interview with Ato Adugna, cited above at 171

<sup>212</sup> Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note 165, Art 24

<sup>213</sup> Interview with Ato Nuredin Mohammed, Trade Licensing and Registration Director, Ministry of Trade and Industry, on Nov. 14, 2009

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

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.<sup>215</sup> In such case, the suspending organ orders the person whose certificate has been suspended to rectify the misdeeds within 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. Other grounds of revocation of certificate of competence include obtaining such certificate upon production of false information or commission of crimes provided in Art 15 of the proclamation.<sup>216</sup>

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 within 60 days whose decision, in this respect also, is final.<sup>217</sup> If the court approved the decision, the person is prohibited from engaging in any coffee transaction. Such person can not do so even within the time when his appeal is under consideration.<sup>218</sup>

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.<sup>219</sup> Revocation of certificate of competence thus results in an automatic cancellation 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.<sup>220</sup> 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

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<sup>215</sup> Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note 165, Art 16(1)

<sup>216</sup> *Id.*, Art 16(2)

<sup>217</sup> *Id.*, Art 16(3)

<sup>218</sup> *Id.*, Art 17(1)

<sup>219</sup> Interview with Ato Nuredin Mohammed, cited above at note 213

<sup>220</sup> Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note 165, Art 4(5)

Proclamation. This proclamation centralizes the business of licensing commercial activities<sup>221</sup> which was carried out by different institutions in different sectors on pertinent institutions of the 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.'<sup>222</sup>

Accordingly, no business person,<sup>223</sup> 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.<sup>224</sup> 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.<sup>225</sup> 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.<sup>226</sup>

### **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

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<sup>221</sup> 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

<sup>222</sup> The Commercial Registration and Business Licensing Proclamation, 1997, Preamble, Proclamation No 67, *Federal Negarit Gazeta*, year 3, No. 25

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

<sup>224</sup> 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.

<sup>225</sup> 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

<sup>226</sup> Data from Ministry of Trade and Industry

centers nowadays is the ECX market system.<sup>227</sup> Engaging in coffee trade in the ECX on the other hand presupposes membership in same or recognition as agent of a member.<sup>228</sup> Thus, in the absence of any other market system such as the auction model, membership in the ECX can not be optional. Quite the opposite, it is mandatory as any person other than coffee producers<sup>229</sup> and retailers<sup>230</sup> 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.<sup>231</sup> 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.<sup>232</sup>

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.”<sup>233</sup>

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<sup>227</sup> 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

<sup>228</sup> Ethiopia Commodity Exchange Proclamation, 2007, Art 20(1), Proclamation No 550, *Federal Neggarit Gazeta*, 13<sup>th</sup> Year, No 61

<sup>229</sup> 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

<sup>230</sup> Coffee retailers receive coffee from the wholesalers that must be members of the ECX Market system

<sup>231</sup> Girma *ET AL*, cited above at note 3, p. 307

<sup>232</sup> Africa Group Research, cited above at note 15

<sup>233</sup> Girma *ET AL*, cited above at note 3, p. 307

Factors that determine coffee quality include genotype, climate conditions and soil conditions, harvesting techniques, post-harvesting processing techniques, grading, packing, storage conditions, and transporting.<sup>234</sup> 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.<sup>235</sup> Quite the reverse, the human controlled factors are oftentimes poorly handled resulting in serious deterioration of coffee quality in the country. This 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.<sup>236</sup> 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.”<sup>237</sup>

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.<sup>238</sup> 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.<sup>239</sup> In Ethiopia, it accounts only 29% of the total coffee export.<sup>240</sup>

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<sup>234</sup> Ibid

<sup>235</sup> Solomon, cited above at note 4, p. 4. See also Girma *ET AL*, p. 2

<sup>236</sup> Girma *ET AL*, cited above at note 3, p. 327

<sup>237</sup> Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 2(18)

<sup>238</sup> Girma *ET AL*, cited above at note 3, p. 395

<sup>239</sup> 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

<sup>240</sup> Ibid

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,<sup>241</sup> the later is one with its sticky mucilage.<sup>242</sup> 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.<sup>243</sup>

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.”<sup>244</sup>

The manner in which coffee shall be processed is provided in the directive<sup>245</sup> 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.<sup>246</sup> Similarly, Art 4(1) of the directive regulates the drying process and the type of coffee to be processed. To mention some,<sup>247</sup> only red cherry coffee can be processed by sun-dried method. In the course of drying,

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<sup>241</sup> Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 2(5)

<sup>242</sup> Id, Art 2(7)

<sup>243</sup> Id, , Art 2(6)

<sup>244</sup> Id, Art 12

<sup>245</sup> Coffee Quality Control and Marketing Directive, Directive No. 1, (December 2008), Ministry of Agriculture and Rural Development

<sup>246</sup> Id, Art 5.1

<sup>247</sup> 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.

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, water recirculation system, weighing scale certified by the QSAE, skin drying bed, main drying bed, and warehouse.<sup>248</sup> 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.<sup>249</sup> 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.<sup>250</sup>

### **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"<sup>251</sup> 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.<sup>252</sup> In this regard, it is important to mention that "there is no

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<sup>248</sup> Coffee Quality Control and Marketing Directive, cited above at note 245, Art 5.2

<sup>249</sup> Id, Art 4.2.8 cum Coffee Production, Quality Control and Marketing Implementation Manual (hereinafter "Coffee Manual,") (December 2008), p. 43

<sup>250</sup> Coffee Manual, p. 43

<sup>251</sup> Girma *ET AL*, cited above at note 3, p. 328

<sup>252</sup> Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 5(2)

universal (coffee) grading and classification system-each producing country has its own, which it may also use to set (minimum) standards for export.<sup>253</sup>

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, number of defects (imperfections), roast appearance and cup quality (flavor, characteristics, cleanliness and density of the beans).<sup>254</sup>

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.<sup>255</sup> 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."<sup>256</sup> 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.<sup>257</sup> It doesn't, however, say any thing with what this organ will do with

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<sup>253</sup> Girma ET AL, cited above at note 3, p. 333

<sup>254</sup> Girma ET AL, cited above at note 3, p. 333

<sup>255</sup> Habtamu Minassie, *Image Analysis for Ethiopian Coffee Classification* (2008, Unpublished, Faculty of Informatics, AAU), p. 2

<sup>256</sup> Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 2(20)

<sup>257</sup> Coffee Quality Control and Marketing Directive, cited above at note 245, Art 7.2.2.6

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.<sup>258</sup> 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 40% and 60% respectively.<sup>259</sup> 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.<sup>260</sup>

In relation to the physical characteristics or otherwise called as raw value, whereas washed coffee comprises three factors: shape and make,<sup>261</sup> color and odor which constitute 15%, 15% and 10% respectively, unwashed coffee is examined from two factors: defect distribution<sup>262</sup> and odor which account for 30% and 10% respectively.<sup>263</sup> 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%.<sup>264</sup> Overall, the Ministry developed, unlike the 5 grades in the previous system, 9 grades both for the washed and unwashed coffees.<sup>265</sup> On the contrary, domestic consumption coffee which is classified as washed, unwashed and by-product is

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<sup>258</sup> International Food Research Institute, Cited above at note 147, p. 20

<sup>259</sup> Coffee Manual, cited above at note 248, p. 79

<sup>260</sup> 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

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

<sup>262</sup> 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

<sup>263</sup> Coffee Manual, cited above at note 248, pp. 79-80

<sup>264</sup> *Id.*, p. 79

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

categorized into 5 grades.<sup>266</sup> 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 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.<sup>267</sup> Special trade mark is also required from the Ministry of Trade and Industry which is issued after disclosing the blend and the ratio.<sup>268</sup> 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."<sup>269</sup>

Yet, coffee is traded in the ECX based on commercial grade though generic regional origin such as Sidama, Yirgacheffe, 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.<sup>270</sup>

### ***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

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

<sup>267</sup> Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art (4). See also Art 4.3.6 of the Directive

<sup>268</sup> Coffee Quality Control and Marketing Directive, cited above at note 245, Art 6.2.3.17

<sup>269</sup> Id, Art 4(4)

<sup>270</sup> The details of the different aspects of the specialty coffee are discussed in the next chapter

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.<sup>271</sup> In an effort to address such and related problems, the directive requires suppliers to use clean bags.<sup>272</sup> It also prohibits use of plastic bags or bags which have been used for other purposes.<sup>273</sup>

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 with moulds or bacteria, contamination with other things.<sup>274</sup> 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,<sup>275</sup> devising a procedure which differentiates coffees of different agro ecological or other properties.<sup>276</sup> 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.<sup>277</sup> Market participants are also required not to transport coffee mixing with other things which may deteriorate coffee quality.<sup>278</sup>

### 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

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<sup>271</sup> Africa Group Research, cited above at note 15

<sup>272</sup> Coffee Quality Control and Marketing Directive, cited above at note 245, Art 6.2.2.12

<sup>273</sup> Id, Art 6.2.2.5

<sup>274</sup> Girma ET AL, cited above at note 3, p. 313

<sup>275</sup> 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

<sup>276</sup> Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 12

<sup>277</sup> Id, Art 6(4) cum Art 6.3.2.1 of the directive, cited above at note 245

<sup>278</sup> See, for instance, Art 6.2.3.9 of the directive

ECX has now been included to the list of participants.<sup>279</sup> 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.<sup>280</sup> Secondly, every participant is obliged to sell coffee produced in one season before the next harvest.<sup>281</sup> Thirdly, any participant has to have certificate of competence for the activity he will engage in.<sup>282</sup> Fourthly, any participant is required to comply with the coffee legislations.<sup>283</sup>

### *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.<sup>284</sup> 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.<sup>285</sup> Secondly, they are required to sell their produces only in transaction centers.<sup>286</sup> 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<sup>287</sup>

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<sup>279</sup> 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

<sup>280</sup> Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 6(1)

<sup>281</sup> 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

<sup>282</sup> Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note 165, Art 8

<sup>283</sup> Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 6(2)

<sup>284</sup> Id, Art 2(19)

<sup>285</sup> Coffee Quality Control and Marketing Directive, cited above at note 245, Art 6.1.2

<sup>286</sup> Id, Art 6(1)

<sup>287</sup> 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

which buy them at market price.<sup>288</sup> In doing so, they must go through all the quality control and grading procedures.<sup>289</sup> Thirdly, they are required to sell coffee by-products at the ECX.<sup>290</sup>

### 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.<sup>291</sup> 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 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;<sup>292</sup> 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<sup>293</sup> 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.

<sup>288</sup> 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

<sup>289</sup> Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 11(1)

<sup>290</sup> Id, Art 11(2) cum Art 4(1) of the regulation

<sup>291</sup> Id, Art 2(13) cum (8)

<sup>292</sup> 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

<sup>293</sup> 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

### 3.5.3. Coffee Exporters

Under the existing coffee legislations, all coffee that meets export standard must be destined to foreign markets.<sup>294</sup> Export coffee which is the primary foreign exchange earner to Ethiopia constitutes over 60% of the total produces.<sup>295</sup> Coffee export is conducted mainly by private exporters licensed for coffee export business.<sup>296</sup> 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 the International Coffee Organization (ICO).<sup>297</sup> 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.

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<sup>294</sup> Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 14(5)

<sup>295</sup> Africa Group Research, cited above at note 15

<sup>296</sup> 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

<sup>297</sup> 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



### 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<sup>298</sup> and constitutes about 40% of the total coffee production in the country.<sup>299</sup> The person who trades domestic consumption coffee is domestic consumption coffee wholesaler (hereinafter “wholesalers”).<sup>300</sup>

Wholesalers are required to purchase domestic consumption coffee only from the ECX.<sup>301</sup> 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,<sup>302</sup> selling domestic 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.<sup>303</sup> In view of that, a wholesaler can sell his coffee only in the region/area where the wholesaler is licensed.<sup>304</sup> 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.

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<sup>298</sup> Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 2(11)

<sup>299</sup> Africa Group Research, cited above at note 15

<sup>300</sup> Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art, Art 2(23)

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

<sup>302</sup> Id, Art 6.2.4.7

<sup>303</sup> Interview with Ato Abdela Osman, cited above at note 210

<sup>304</sup> Coffee Quality Control and Marketing Directive, cited above at note 245, Art 6.2.4.1

### *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.<sup>305</sup> 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.<sup>306</sup> On the other hand, both categories of roasters are required to use 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.<sup>307</sup>

### *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.<sup>308</sup> 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.”<sup>309</sup>

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

<sup>305</sup> Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 10(1) cum Art 6.2.5.1 of the directive

<sup>306</sup> Coffee Quality Control and Marketing Directive, cited above at note 245, Art 6.2.5.2

<sup>307</sup> 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

<sup>308</sup> 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

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

title to the coffee deposited in the ECX warehouse or ECX designated third party operated warehouse.<sup>310</sup> 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.<sup>311</sup> 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 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.<sup>312</sup>

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.

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<sup>310</sup> Ethiopia Commodity Exchange, Revised Rules of the Ethiopia commodity Exchange (Hereinafter, Revised Rules of the Exchange), 2009, Art 9.2 cum Art 8.2 to Art 8.3

<sup>311</sup> Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 12(6)

<sup>312</sup> Coffee Manual, cited above at note 249, pp. 65-67

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 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.<sup>313</sup>

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.<sup>314</sup> In fact, these stations are not yet established. Related with 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

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<sup>313</sup> Coffee Quality Control and Marketing Directive, cited above at note 245, Art 7, Introductory Paragraph

<sup>314</sup> Ibid

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 whistleblowers who report illegal act in relation to coffee.<sup>315</sup> Finally, the Ministry has significant role as it regulates the whole process of coffee trade through supervising the ECX.<sup>316</sup>

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.<sup>317</sup> The 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.<sup>318</sup> 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.<sup>319</sup>

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<sup>315</sup> Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 13(9)

<sup>316</sup> Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 4, Art 15

<sup>317</sup> Ziway Dugda International Business and Industry Private Limited Company v. Ministry of Agriculture and Rural Development, cited above at 214

<sup>318</sup> Interview with Ato Adugna Fete, cited above at note 171

<sup>319</sup> Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note 165, Art 5 to Art 6

Third, regional bureaus issue, suspend or revoke certificate of competence for different participants of the industry except for coffee exporters.<sup>320</sup> 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.<sup>321</sup> 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.<sup>322</sup> Finally, regional 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.”<sup>323</sup> 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.<sup>324</sup>

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

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<sup>320</sup> 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.

<sup>321</sup> Coffee Quality Control and Marketing Directive, cited above at note 245, Art 7, Introductory Paragraph

<sup>322</sup> Id, Art 10.3

<sup>323</sup> Coffee Quality Control and Marketing Proclamation, cited above at note36, Art 2(17)

<sup>324</sup> Id, Art 4(1)

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.<sup>325</sup> 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, where they believe that the coffee may be removed until the time they secure it, without court warrant or, after taking sample, seal warehouses.<sup>326</sup>

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.<sup>327</sup>

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:<sup>328</sup> 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

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<sup>325</sup> Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note 165, Art 20(1) cum (2)

<sup>326</sup> Id, Art 20(2) to (3)

<sup>327</sup> Coffee Quality Control and Marketing Directive, cited above at note 245, Art 7.2.1

<sup>328</sup> Id, Art 7.2.2

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.

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.<sup>329</sup> 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.<sup>330</sup> 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.

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<sup>329</sup> Coffee Quality Control and Marketing Proclamation, cited above at note 36, Art 8(2)

<sup>330</sup> Id, Art 8(6)

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:<sup>331</sup>

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;
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;<sup>332</sup>

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

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<sup>331</sup> This list is not exhaustive

<sup>332</sup> 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

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 manner transports coffee;<sup>333</sup> 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.<sup>334</sup> Police are also obliged to extend their assistance in the course of seizing illegal coffee. In addition, the coffee laws

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<sup>333</sup> 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.

<sup>334</sup> Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note Art 165, Art 23(1)

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.<sup>335</sup>

### *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 Abdela PLC, Seid Yasin PLC, Ersede PLC.<sup>336</sup> The confiscation of the coffee and revocation of the license of the coffee exporters was made on the following four grounds.<sup>337</sup> 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.

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<sup>335</sup> See Arts 13(9), 21 and 9.1.10 of the proclamation, regulation and directive respectively

<sup>336</sup> The government authorities frequently accused these coffee traders for conspiring against the ECX before taking such measures

<sup>337</sup> 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)

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.<sup>338</sup> Fourthly, they hoarded coffee by-product and consequently, coffee scarcity resulted in the domestic market.

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.<sup>339</sup> 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.<sup>340</sup> 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.

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<sup>338</sup> 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)

<sup>339</sup> ሪፖርት: 23 /2001, p. 1, col. 3

<sup>340</sup> Id

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<sup>341</sup> 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.<sup>342</sup>

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.<sup>343</sup> 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.<sup>344</sup> 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.

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<sup>341</sup> According 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

<sup>342</sup> 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

<sup>343</sup> 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.

<sup>344</sup> The writer couldn't get access to this case as it is still pending

## 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 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.<sup>345</sup>

Later on, the definition of commodity was extended to refer to all goods, services, articles, rights, interests which are the subject of futures trading.<sup>346</sup> 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.<sup>347</sup> Accordingly, every thing which can be the subject of futures trading whether tangible or intangible comes within the purview of commodity. Futures trading or otherwise known as futures markets refers to a market in which a

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<sup>345</sup> *US Commodity Exchange Act, 1936, Section 2(a)(1)*

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

<sup>347</sup> Philip McBride Johnson, *Commodities Regulation* (1982, Little, Brown and Company, Boston; Toronto), p. 4

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.<sup>348</sup>

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."<sup>349</sup> 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.

Ethiopian law defines commodity as "a product which is interchangeable with another product of the same kind."<sup>350</sup> 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."<sup>351</sup>

Commodity exchange, more or less, thus is "any organized market place where trade, with or without the physical commodities, is funneled through a single mechanism, allowing for maximum effective competition among buyers and among sellers."<sup>352</sup> 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

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

<sup>349</sup> Mesay Zegeye, *Market Information System and the Ethiopia Commodity Exchange*, (2007, Unpublished, AAU, FBE Library), p. 7

<sup>350</sup> Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 2(4)

<sup>351</sup> WA. Redmond, "Exchange (Business)," 2008 Microsoft Corporation, Microsoft® Encarta® 2009

<sup>352</sup> 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

products traded in the system, the market actors and the contract.<sup>353</sup> 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.<sup>354</sup>

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.<sup>355</sup> 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.<sup>356</sup>

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.<sup>357</sup>

Forward contract is a contract which involves the initiation of the contract at one time and performance takes place at a subsequent time.<sup>358</sup> 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.<sup>359</sup> 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.<sup>360</sup>

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<sup>353</sup> Id

<sup>354</sup> Messeret Nega, ECX, Chief Compliance Officer, *Rules of the Game: ECX* (2008, PPT Presentations), Slide 3

<sup>355</sup> Eleni and Googin, cited above at note 352, p. 8

<sup>356</sup> Messeret Nega, cited above at note 354, slide 5

<sup>357</sup> P. M. Johnson, cited above at note 347, pp. 28-29

<sup>358</sup> Robert W. Kolb, *Understanding Futures Markets* (4<sup>th</sup> Ed., 1994, Kolb Publishing Company, Miami, Florida), p. 2

<sup>359</sup> J. D. Schwager, cited above at note 348, pp. 7-8

<sup>360</sup> Bemnet, cited above at note 31, Slide 7

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<sup>361</sup> 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.”<sup>362</sup>

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 following main purposes.<sup>363</sup> 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.

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<sup>361</sup> Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 3(1)

<sup>362</sup> East Africa Forum, *The Ethiopia Commodities Exchange*, Available at <file:///D:/files%20up%20to%20june%2015/East%20Africa%20Forum%20C2%BB%20The%20Ethiopia%20Commodities%20Exchange.htm>, Last Accessed on June 14, 2009

<sup>363</sup> Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 6

## 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.<sup>364</sup> 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.<sup>365</sup> Also, they are illiterate, poorly connected to one another and with market systems.<sup>366</sup> Moreover, they lack information and bargaining power which effectively deny them the required level of benefits from the high consumer price of their produces.<sup>367</sup> Others include primary collectors, local suppliers, farmers cooperatives, local and central brokers, wholesalers, few investors and/or state farms, exporters, processors, retailers, consumers, various government institutions, etc.<sup>368</sup>

These result in, among other things, excessive transaction costs, costs incurred in relation to a commodity from the producer to the consumer.<sup>369</sup> 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.<sup>370</sup>

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

<sup>364</sup> Bemnet, cited above at note 31, Slide 6

<sup>365</sup> MoFED, cited above at note 32, p. 49

<sup>366</sup> Ibid

<sup>367</sup> Ibid

<sup>368</sup> የኢትዮጵያ ምርት ገበያ ባለሥልጣን የምርት ግብይት አሰራርና የባለድርሻ አካላት ሚና፣ የግንዛቤ ማስጨበጫ ፅሁፍ፣ የካቲት 2001 ፣ገፅ 7

<sup>369</sup> Id, p. 6

<sup>370</sup> Ibid

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.<sup>371</sup>

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.<sup>372</sup> 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 goods, costs of negotiating a contract, costs of monitoring contract performance, and the costs of contract enforcement.<sup>373</sup>

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.<sup>374</sup> As the commodities are traded publicly and prices are determined by the demand and supply forces, everyone has access to a neutral reference price.<sup>375</sup> Second and related to this is that commodity exchange system serves as a true instrument of price discovery,

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<sup>371</sup> Eleni and Goggin, cited above at note 352, p. 2

<sup>372</sup> Ibid, p. 3

<sup>373</sup> Id

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

<sup>375</sup> Id

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.”<sup>376</sup> 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.<sup>377</sup>

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.<sup>378</sup> 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.<sup>379</sup> 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.<sup>380</sup>

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.”<sup>381</sup> 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.<sup>382</sup> 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.<sup>383</sup> In August 2008, the new coffee proclamation was enacted and this law

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<sup>376</sup> Gabre-Madhin and Googin, cited above at note 352, p. 6

<sup>377</sup> Ibid

<sup>378</sup> Eleni, cited above at note 374, Slide 4

<sup>379</sup> Id

<sup>380</sup> Id

<sup>381</sup> International Food Policy Research Institute, Cited above at note 147, p. 60

<sup>382</sup> የኢትዮጵያ ምርት ገበያ ባለሥልጣን፣ cited above at note 368, p. 12

<sup>383</sup> Ethiopia Commodity Exchange, Press Release, May 2008

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.<sup>384</sup>

### 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.”<sup>385</sup> Participating in this trading system presupposes membership in same.<sup>386</sup> Broadly, there are two classes of members: ordinary members and special members.<sup>387</sup> 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.<sup>388</sup> Intermediary member is one who may trade either on his account or on behalf of his clients.<sup>389</sup> This member may appoint an agent called Associate Member who shall trade through the former only on behalf of clients.<sup>390</sup>

On the contrary, Limited Trading member is a member who participates only as a buyer or seller of a single specified product.<sup>391</sup> 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.<sup>392</sup> Limited Trading Member does not have clients, hence transacts only on behalf of himself.<sup>393</sup> Nonetheless, a coffee exporter Buy-only Limited Trading member may sell its coffee by-product in the ECX.<sup>394</sup> In contrast, Limited Intermediary

<sup>384</sup> Ethiopia Commodity Exchange, Press Release, Nov. 27, 2008

<sup>385</sup> 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 April 28, 2009

<sup>386</sup> Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 20(1)

<sup>387</sup> 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

<sup>388</sup> Ibid, Art 4.1.2

<sup>389</sup> Ibid, Art 4.1.3

<sup>390</sup> 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

<sup>391</sup> Ibid, Art 4.1.4

<sup>392</sup> በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የኢትዮጵያ ምርት ገበያ: cited above at note 171, p. 6

<sup>393</sup> Revised Rules of the Exchange, cited above at note 310, Art 4.1.4

<sup>394</sup> Id

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<sup>386</sup> Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 20(1)

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<sup>390</sup> 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

<sup>391</sup> Ibid, Art 4.1.4

<sup>392</sup> በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የኢትዮጵያ ምርት ገበያ: cited above at note 171, p. 6

<sup>393</sup> Revised Rules of the Exchange, cited above at note 310, Art 4.1.4

<sup>394</sup> Id

Member is one who participates only as a seller for his own account or on behalf of clients.<sup>395</sup> This kind of membership is suitable for coffee suppliers who have other suppliers in the coffee producing areas.<sup>396</sup>

Any person, business organization: public enterprise or cooperative can be a member to the Exchange provided they fulfill the eligibility requirements.<sup>397</sup> But according to Art 4.2.2, however, requires that a member can not acquire more than one seat. Moreover, a person who has 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.<sup>398</sup> 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

<sup>395</sup> Ibid, Art 4.1.5

<sup>396</sup> በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የኢትዮጵያ ምርት ገበያ፣ cited above at note 171, p.6

<sup>397</sup> 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.

<sup>398</sup> Revised Rules of the Exchange, cited above at note 310, Art 4.2.3



“As an institution, a commodity exchange itself depends on a number of linked institutions which are critical to its functioning.”<sup>408</sup> The so called “allied” sectors such as warehouse receipt systems and clearing institutions are among the institutions that are necessary for functioning of exchanges.<sup>409</sup> 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.<sup>410</sup>

The members in exchange system are required to clear their trade at the end of each transaction and they do this through clearing institutions.<sup>411</sup> 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.<sup>412</sup> 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.<sup>413</sup> Buyers are required to deposit exchange buy funds in their Pay-In account by 3:30 P.M of the day before the trading day.<sup>414</sup> 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.<sup>415</sup> 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.<sup>416</sup> The ECX thus assures enforcement of coffee trade contracts in this way.<sup>417</sup>

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<sup>408</sup> 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

<sup>409</sup> Ibid

<sup>410</sup> Revised Rules of the Exchange, cited above at note 310, Art 9.2.2

<sup>411</sup> 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

<sup>412</sup> Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 2(1)

<sup>413</sup> Revised Rules of the Exchange, cited above at note 310, Art 10

<sup>414</sup> Id, Art 10.5.1.1

<sup>415</sup> Ibid

<sup>416</sup> Id, Art 10.6.2.1

<sup>417</sup> 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

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.<sup>418</sup> As a result, the ECX is said to have “zero default system.”<sup>419</sup>

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.<sup>420</sup> Likewise, members are liable for, among other things, non-performance of exchange traded contracts, acts or omissions of their agents, etc.<sup>421</sup>

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 extent of saying that, in the words of him, “ECX can not be claimed.”<sup>422</sup> 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

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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

<sup>418</sup> Id, 12.5.1.2, 12.6.1

<sup>419</sup> Keith Thomas, Chief Clearing & Settlement Officer, “*Who owes Who What*”: *Clearing & Settling Transactions*, (2008, Presentation), Slide 12

<sup>420</sup> 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

<sup>421</sup> Id, Art 9(4)-(5)

<sup>422</sup> Interview with anonymous coffee exporter, Dec. 11, 2009, held at the premises of the ECX

ECX itself. Except in the later case, all disputes are required to be referred to conciliation or arbitration.<sup>423</sup> Conciliation, however, presupposes the agreement of the parties to the dispute.<sup>424</sup> The arbitrator/s may use expert opinion at the expense of the parties for their arbitral award.<sup>425</sup> 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.<sup>426</sup>

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.<sup>427</sup>

#### 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 coffee,<sup>428</sup> organic certified coffee,<sup>429</sup> bird-friendly coffee, forest coffee, etc.<sup>430</sup> Others still use different mechanisms such as the trademarks, branding, geographical indicators, etc.<sup>431</sup> 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.<sup>432</sup>

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<sup>423</sup> 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 የኢ.ት.ዮ.ጵ.ያ ምርት ገበያ ባለሥልጣን፣ cited above at note 368, p. 22

<sup>424</sup> Revised Rules of the Exchange, cited above at note 310, Art 15.1.4.1

<sup>425</sup> Id, Art 15.1.25

<sup>426</sup> 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.

<sup>427</sup> Interview with Ato Yohannes Assefa, cited above at note 193

<sup>428</sup> 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

<sup>429</sup> Ethiopia is second largest supplier of organic coffee in the world next to Peru. Id, p. 94

<sup>430</sup> Ethiopia Commodity Exchange, cited above at note 17, p. 9

<sup>431</sup> Ibid

<sup>432</sup> Ibid

Specialty coffee originally was referring to coffee beans with unique flavors and attributes produced from special geographic microclimates.<sup>433</sup> 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.”<sup>434</sup> 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.<sup>435</sup>

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).<sup>436</sup> Moreover, third party operated certification agencies which may be accredited by different national and international bodies are expanding from time to time.<sup>437</sup> In addition, certification for different forms of specialty is made at the national level.

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%.<sup>438</sup> 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

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<sup>433</sup> Ibid

<sup>434</sup> Id, p. 10

<sup>435</sup> Id, p. 13

<sup>436</sup> Id, p. 14

<sup>437</sup> Ibid

<sup>438</sup> 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

the auction centers in commercial grade and sell it in the international specialty coffee market fetching much higher price than the purchasing price.<sup>439</sup>

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.”<sup>440</sup>

Based on this power, ECX has recently launched trading in specialty coffee which is primarily aimed at connecting coffee farmers directly with international buyers.<sup>441</sup> Consequently, only coffee producers are now participating in the specialty market.<sup>442</sup> Similarly, international buyers or their representatives are allowed to buy the specialty coffee.<sup>443</sup> 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.<sup>444</sup>

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.<sup>445</sup> 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

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<sup>439</sup> Interview with Ato Yohannes Assefa, cited above at note 193

<sup>440</sup> Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note Art 165, Art 4(2)

<sup>441</sup> *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

<sup>442</sup> 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.

<sup>443</sup> Interview with Ato Yohannes Assefa, cited above at note 193

<sup>444</sup> *Addis Fortune*, cited above at note 441

<sup>445</sup> Ethiopian Organic Agriculture System Proclamation, March 2006, Proclamation No. 488, *Federal Negarit Gazeta*, 12<sup>th</sup> year, No. 21

coffee, Sidama, Yirgacheffe, 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.<sup>446</sup> This is supposed to give about 47 million pound additional benefits to Ethiopian coffee producers.<sup>447</sup>

#### 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.”<sup>448</sup> 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 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.<sup>449</sup> Taking such lessons

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<sup>446</sup> 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.

<sup>447</sup> Yangyang Li, *Trade marks of Ethiopian coffee beans?* December 2006, available at [file:///D:/view\\_article.asp.htm](file:///D:/view_article.asp.htm), accessed on Nov. 12, 2009

<sup>448</sup> Eleni Z. Gabre-Madhin, cited above at note 408, p. 33

<sup>449</sup> *Id.*, pp. 33-34

the Ethiopian government has subjected the Ethiopia Commodity Exchange to close regulation of the Ethiopia Commodity Exchange Authority (hereinafter, "ECEA").<sup>450</sup>

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."<sup>451</sup> 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.<sup>452</sup>

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<sup>453</sup> and the Exchange proclamation.<sup>454</sup> 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;<sup>455</sup> determining the principles related to independent auditing operations;<sup>456</sup> regulation of the ECX, Clearing Institutions, and Exchange Actors and fees and

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<sup>450</sup> Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 3(4) cum Preamble, Ethiopia Commodity Exchange Authority Proclamation, cited below at note 437

<sup>451</sup> Ethiopia Commodity Exchange Authority Proclamation, September 2007, Art 5, Proclamation 551, *Fedral Negarit Gazeta*, 13<sup>th</sup> Year, No 62,

<sup>452</sup> Id, Art 5(1) to (4)

<sup>453</sup> Id, Art 34

<sup>454</sup> Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 31(2)

<sup>455</sup> Ethiopia Commodity Exchange Authority Proclamation, cited above at note 451, Art 6(5)

<sup>456</sup> Id, Art 6(8)

charges related to these;<sup>457</sup> 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,<sup>458</sup> 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<sup>459</sup> and include the rules and by-laws relating to membership, clearing and settlement, contracts traded in the ECX,<sup>460</sup> admission, suspension or expulsion of a member of the Exchange,<sup>461</sup> dispute settlement.<sup>462</sup>

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.<sup>463</sup>

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.”<sup>464</sup> 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 Authority proclamation. Exchange actors association on the other hand refers to exchange

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<sup>457</sup> Id, Art 6(3), (13)

<sup>458</sup> 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.

<sup>459</sup> Directives of the Ethiopia Commodity Exchange Authority(hereinafter “ECEA Directive”), October 2008, Art 13(1)

<sup>460</sup> Id, Art 12(10). See also Art 8(3)

<sup>461</sup> Id, Art 12(11)

<sup>462</sup> Ethiopia Commodity Exchange Authority Proclamation, cited above at note 451, Art 6(12)

<sup>463</sup> Tsegaye cited above at note 60, p. 73

<sup>464</sup> Ethiopia Commodity Exchange Authority Proclamation, cited above at note 451, Art 2(7)

members organized in group for the purpose of upholding and maintaining the standards of integrity, professionalism, and skills of their members.<sup>465</sup> Recently, an exchange actors association comprising members trading in different commodities was established though it was not yet operational.<sup>466</sup>

A commodity exchange system is not self-contained. Instead, it “depends on a number of linked institutions which are critical to its functioning.”<sup>467</sup> 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.<sup>468</sup> 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.<sup>469</sup> To such end, ECEA is empowered to, among other things, take appropriate measures to prevent, investigate and correct activities such as insider trading,<sup>470</sup> fraudulent, deceptive, manipulative<sup>471</sup> and unfair practices relating to Exchange traded contracts;<sup>472</sup> regulate the clearing and settlement of Exchange trade contracts;<sup>473</sup> regulate the conduct of investment advisors, consulting companies, law practitioners, accounting professionals related to the ECX;<sup>474</sup> inspect financial statements, reports and other documents

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<sup>465</sup> Id, Art 20

<sup>466</sup> Interview with Ato Yohannes Assefa, cited above at note 193

<sup>467</sup> Eleni, cited above at note 408, p. 34

<sup>468</sup> 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

<sup>469</sup> የኢትዮጵያ ምርት ገበያ ባለሥልጣን፣ cited above at note 368, p. 25

<sup>470</sup> 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.”

<sup>471</sup> 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.”

<sup>472</sup> Ethiopia Commodity Exchange Authority Proclamation, cited above at note 451, Art 6(7), Art 27(1) cum Art 2(10)

<sup>473</sup> Id, Art 6(6)

<sup>474</sup> 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.<sup>475</sup> 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.<sup>476</sup>

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.<sup>477</sup> Ultimately, however, it is the Administrative Tribunal which is responsible for deciding violation or otherwise.<sup>478</sup> Appeal is allowed from the decision of the tribunal to the Authority Board whose decision is the final decision of the authority.<sup>479</sup> 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:<sup>480</sup> 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.<sup>481</sup> Exchange Designated Settlement banks. or any other Clearing Institution or is

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<sup>475</sup> Id, Art 6(9), Art 18, Art 22

<sup>476</sup> Id, Art 19, Art 23, and Art 26 respectively

<sup>477</sup> ECEA Directive, cited above at note 459, Art 9.7.2.1

<sup>478</sup> Id, Art 10.2.1

<sup>479</sup> Id, art 10.19

<sup>480</sup> ECEA Directive, Art 12.9

<sup>481</sup> "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:<sup>482</sup> 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.<sup>483</sup> 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.<sup>484</sup>

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<sup>482</sup> ECEA Directive, cited above at note 459, Art 12.2

<sup>483</sup> Interview with Ato Girma Biftu, Assistant Director General, Ethiopia Commodity Exchange Authority, on January 2, 2010

<sup>484</sup> 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%<sup>485</sup> 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

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<sup>485</sup> In the past it even used to exceed 60%

sector then started to play its distinctive role which resulted in what can be termed as the rebirth 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.<sup>486</sup> 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,

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<sup>486</sup> 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.

ECX, ECEA signify that the government extends heavy hand to the sector leaving little or no say 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.<sup>487</sup> 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.<sup>488</sup> 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.<sup>489</sup> 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.<sup>490</sup> But they were not effective in controlling coffee smuggling. This is due to two main reasons.<sup>491</sup> 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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<sup>487</sup> Interview with Ato Adugna Fete, cited above at note 171

<sup>488</sup> Id

<sup>489</sup> Id

<sup>490</sup> Id

<sup>491</sup> 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.<sup>492</sup>

Moreover, the Regulation provides that coffee graded by the coffee liquoring center and sold at the ECX can not be resold in the later.<sup>493</sup> 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.<sup>494</sup>

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.

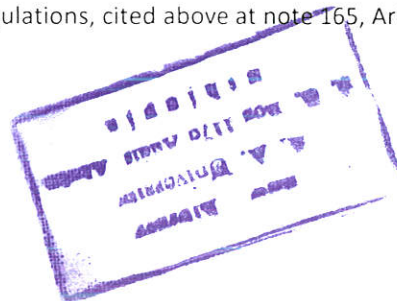
But two main concerns exist in this regard. First, the minimum requirements are not specified by law. Hence, they are not uniformly set in different regions or localities as the directive does not discriminate among different requirements. Moreover, while the coffee producing regions are

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<sup>492</sup> Interview with Ato Yohanes Assefa, cited above note 193

<sup>493</sup> Coffee Quality Control and Transactions Council of Ministers Regulations, cited above at note 165, Art 4(4)

<sup>494</sup> Interview with Ato Yohannes Assefa, cited above at note 193



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

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."<sup>497</sup> 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

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<sup>495</sup> Interview with Ato Adugna Fete, cited above at 171

<sup>496</sup> 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

<sup>497</sup> Eleni Z. Gabre-Madhin, *An Eye on the Future: Can the Ethiopia Commodity Exchange Succeed Without Futures?* May 31, 2007

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 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.<sup>498</sup> 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

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<sup>498</sup> Ethiopia Commodity Exchange Proclamation, cited above at note 228, Art 11(1)

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 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 within 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 realities 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.<sup>499</sup> 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,

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<sup>499</sup> Eleni, cited above at note 497

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

## Interviews

- Interview held with anonymous suppliers on October 20, 2009
- Interview with Anonymous Coffee Exporters, on Dec. 11, 2009
- Interview with an anonymous official, MoARD, on January 2, 2010
- Interview with Ato Abdela Osman, Trade controlling Expert, Bureau of Trade, Industry and Transportation, Oromia, Nov. 13, 2009
- Interview with Ato Adugna Fete, Coffee Development Expert, Oromia Bureau of Agriculture and Rural Development, Coffee Development Department, November 10, 2009
- Interview with Ato Firew Momo, Attorney, MoARD, and who is, professionally, in charge of the cases related to the recent coffee controversy, Nov. 9, 2009
- Interview with Ato Girma Biftu, Assistant Director General, Ethiopia Commodity Exchange Authority, on January 2, 2010
- Interview with Ato Nata'a Balcha, Head, Legal Department, MoARD, on January 2, 2010
- Interview with Ato Nuredin Mohammed, Trade Licensing and Registration Director, Ministry of Trade and Industry, Nov. 14, 2009
- Interview with Ato Yohannes Assefa, Chief Compliance Officer, Ethiopia Commodity Exchange, Nov. 12, 2009
- Interview with Ato Yosef Alemu, Trade licensing and Registration Officer, MoTI, Nov.10, 2009

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Wondwossen Mezlekia, *Coffee Brews Feud, Drowns out Voices*, Available at <http://www.ethiomeia.com/ad.>, Last Accessed on April 9, 2009

# Appendices





ቁጥር: 01/724/1/22

ቀን: 15/07/01

ሰሙሰን ኃ/የተ/የግል ማህበር  
ለኤሲባራ ቡና ላኪ ድርጅት  
ለለገሰ ሸረፋ ኃ/የተ/የግል ማህበር  
ለከማል አብይላ አንተር ኃ/የተ/የግ/ማህበር  
ለሰይድ ያሲን ዔሊ ቡና ላኪ ድርጅት  
ለኢርሲዴ ኃ/የተ/የግል ማህበር  
አዲስ አበባ

ጉዳይ:- የብቃት ማረጋገጫ የም/ወረቀት ዕገዳን ደመለከታል

ድርጅትዎ ከንግድና ኢንዱስትሪ ሚ/ር የቡና ንግድ ፍቃድና ከሚ/ር መ/ቤታችንም የቡና ላኪነት የብቃት ማረጋገጫ የም/ወረቀት በማግኘት በቡና ላኪነት ሲሰራ መቆየቱ ይታወቃል።

ይሁን እንጂ ድርጅትዎ የአዋጁንና አዋጁን ለማስፈፀም የወጣውን ደንብና መመሪያ በመተሳለፍ እ.ኤ.አ. በ2008 መፈፀም የሚገባዎትን የቡና ኮንትራት ሙል በወቅቱ ባለመፈፀም፣ የምርት ዘመኑ ያለፈበት የምርት ክምችት በመያዝ፣ ለሃገር ውስጥ ዝብያ በወቅቱ መለቀቅ የሚገባውን የኤክስፖርት ቡና ሲዘጋጅ የወጣውን ተረፈ ምርት እክማችቶ በመገኘትና ለኤክስፖርት የሚመጥን ቡናን ከጨረታ ማዕከል ገዙተው በመሰጠት ተደጋጋሚ ጥፋት ፈጽመው በመገኘትዎ በደንቡ እንቀጽ 16/1/ መሠረት የብቃት ማረጋገጫ የምስክር ወረቀትዎ የታገደ መሆኑን እናስታውቃለን።

ግልባጭ የተደረገላቸው የሥራ ክፍሎችም አስፈላጊውን ጥንቃቄ እንዲያደርጉ እናሳስባለን።

ከሠላምታ ጋር  
*[Signature]*

ተፈራ ደርባው  
ሚኒስትር

ግልባጭ:-

- ለአ.ት.ዮ.ጳ.ያ ምርት ዝብያ
- ለግብርና ግብይት ጻይ.ሬ.ክትራት
- ለቡና ጥራት ምርመራ ማዕከል
- አዲስ አበባ
- ለቡና ጥራት ምርመራ ማዕከል
- ድራደዋ

የልዩ ባለሙያ ምስክርነት የሚሰጡ ጉዳዩ የሚመለከታቸው ባለሞያዎች


ከቡና ጥራትና ጣዕም ምርመራ ማዕከል

1. አቶ መንግሥቱ ታደሰ .....የቡና ጥራትና ጣዕም ምርመራ ማዕከል አስተባባሪ
2. አቶ መኰንን ኃ/ሚካኤል..... ከቡና ጥራትና ጣዕም ምርመራ ማዕከል ባለሞያ
3. ወ/ሮ ፋንቱ በዛብህ..... ከቡና ጥራትና ጣዕም ምርመራ ማዕከል ባለሞያ


ከግብርና ግብይት ዳይሬክቶሬት

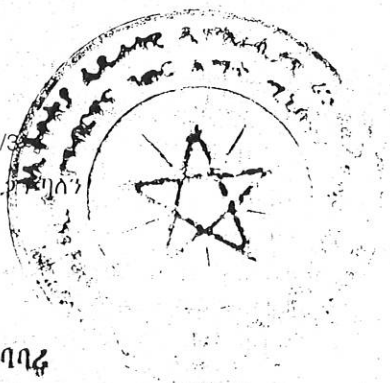
1. አቶ አሰፋ ሙሉጌታ .....የግብርና ግብይት ዳይሬክተር
2. አቶ ተሾመ ለማ..... የግብርና ግብይት ባለሙያዎች
3. አቶ ሰለሞን ጥላሁን ..... የግብርና ግብይት ባለሙያዎች

ይግባኝ ባይ የከረመ ቡና ይዘው ስለመገኘታቸው ቡና ስለመሠወራቸውና ያልፈጸሙት የኮንትራት ውል መኖሩን በቆጠራና በስታትስቲካዊ መረጃ ቀርበው ማስረዳት የሚችሉ የግብርና ግብይት ባለሙያዎች ያስረዳሉ የክሱ ጭብጥ ካልተለወጠ በስተቀር የማቀርባቸው ማስረጃዎች እነዚህ ናቸው። የቀረበው ማስረጃ በዩ/ብ/ሥ/ሥ/ሕ/ቁጥር 92 መሠረት እውነት መሆኑን አረጋግጣለሁ።

  
 ፍሬው ማሞ  
 የመ/ቤቱ ነገረራይ

የቀረበው መልስ እውነት መሆኑን 92/3  
 በዩ/ብ/ሥ/ሥ/ሕ/ቁጥር መሠረት እናረጋግጣለሁ

  
**ናታኦ ባልቻ**  
 የህግ ጉዳዮች መምሪያ አስተባባሪ



ማስታወሻ

ለ : ሕግ ጉዳዮች መምሪያ

ከ : ቡና ጥራትና ጣዕም ምርመራ ማዕከል

*[Handwritten signature]*  
የጥገናና ምርመራ ማዕከል  
ፍ.ም.ፍ.ግ

ግብርናና ገጠር ልማት ሚኒስቴር

ቀን : 25/10/01

ጉዳዩ:- መረጃን ስለመስጠት፣

መንግሥት ባለፈው በቡና ላኪዎች ላይ በወሰደው እርምጃ ኤስ.ሣራ ኃላፊነቱ የተወሰነ የግል ማኅበር ከቀን 23-24/07/01 በተወሰደው መጋዘን የማሸግ ሥራ ወቅት ከድርጅቱ መጋዘን ከተወሰደው ናሙና ምን ያህሉ የከረመ ቡና ጣዕም እንዳለው እንደንገልፅ በቃል ተጠይቀናል።

በዚህ መሠረት ከድርጅቱ መጋዘኖች ያሉትን ቡና የሚወክል 39/ሰላሣ ዘጠኝ /ናሙናዎች ተወስዶ በ 11 /አሥራ አንድ/ ናሙናዎች ላይ ማለትም:-

- ❖ የተዘጋጀ የከረመ - - - - - 29,500 ኪ/ግ
- ❖ » በመጠኑ የከረመ - - - - - 18,120 »
- ድ ም ር      47,700    »
- ❖ ያልተዘጋጀ የከረመ - - - - - 53,236    »
- ❖ » በመጠኑ የከረመ - - - - - 26,112    »
- ድ ም ር      79,348    »

አጠቃላይ 127,048 ኪ/ግ የከረመ ጣዕም የተገኘበት መሆኑን እንገልጻለን።

*[Handwritten signature]*  
ከሃዘ 5600-  
25/10/2001

ከሰላምታ ጋር

ቁጥር 13/28/25/1147

ቀን 6/8/2001



የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ  
የግብርናና ገበያ ልማት ሚኒስቴር  
The Federal Democratic Republic of Ethiopia  
Ministry of Agriculture & Rural Development

ለኤስ ሳራ ቡና ላኪ ኢንተርፕራይዝ

አዲስ አበባ

*አርቲስት ማህተም*  
*ሥራ ልማት*

ጉዳዩ: በወቅቱ ያልተሸጠና ምርት ዘመን ያለፈበትን ምርት ስለመረከብ

በቡና ጥራትና ግብይት አዋጅ ቁጥር 602/2000 አንቀጽ 19(2) እና እንዲሁም ይህንን ተከትሎ የወጣውን የማስፈጸሚያ ደንብ ቁጥር 159/2001 እና የአፈጻጸም መመሪያውን ተላልፎ በመገኘትም መጋዘናችሁን እንዲታሸግ እና የንግድ ሥራ ፍቃዳችሁ እንዲታገድ ተደርጎ የማጣራት ሥራ ሰነድን መቆየቱ ይታወሳል።

በዚህ መሠረት ድርጅቱ በአንድ የቡና ምርት ዘመን ማለትም፡- የታጠበ ቡና በኢትዮጵያ የቀን አቆጣጠር አዲስ ዓመት ከገባ ከህዳር 1 ቀን እስከ መጨረሻ ዓመት ጥቅምት 30 ድረስ እና ያልታጠበ ቡናን ከሆነ በኢትዮጵያ የቀን አቆጣጠር አዲስ ዓመት ከገባ ከሆነ ተከትሎ 1 ቀን እስከ መጨረሻ ዓመት ጥር 30 ድረስ በሚመለከተው የገበያ መድረክ አቅርቦ መሸጥ ሲገባው ሳይሸጥ የከረመውን

1ኛ በቡና ማዘጋጃና ማከማቻ ድርጅት የሚገኘውን ጠቅላላ 1,303,210 ኪ.ግራም የልታጠብ/ደረቅ (የተዘጋጀ፣ ያልተዘጋጀ እና ብጣሪ) እና 912,816 ኪ.ሎ ግራም የታጠበ (የተዘጋጀ፣ ያልተዘጋጀ እና ብጣሪ) በድምሩ 2,216,025 ኪ.ሎ ግራም የምርት ዘመን ያለፈበት/የከረመ ቡና፤

2ኛ በንፋስ ስልክ ላፍቶ ክፍለ ከተማ ቀበሌ ቀራንዮ የቡና ማዘጋጃና ማከማቻ መጋዘን የሚገኘውን ጠቅላላ 1,550,485 ኪ.ሎ ግራም የልታጠብ/ደረቅ (የተዘጋጀ፣ ያልተዘጋጀ እና ብጣሪ) እና 108,960 ኪ.ሎ ግራም የታጠበ (የተዘጋጀ፣ ያልተዘጋጀ እና ብጣሪ) በድምሩ 1,659,445 ኪ.ሎ ግራም የምርት ዘመን ያለፈበት/የከረመ ቡና፤

*5*

3ኛ ሰምርት ገበያ በተለያዩ መጋዘኖች በኤስ ሳራ ቡና ላኪ ኢንተርፕራይዝ ስም ያለ ጠቅላላ  
208,492 ኪሎግራም ያልታጠበ፣ 6,801<sup>ፎንብ</sup> ኪሎግራም እና ብጣሪ 173,400 ኪሎ  
ግራም በድምሩ 388,693 ኪሎ ግራም ቡና፣

4ኛ ስድራዳዋ በተለያዩ የቡና ማከማቻና ማዘጋጃ መጋዘን በኤስ ሳራ ቡና ላኪ  
ኢንተርፕራይዝ ስም የሚገኘውን 1207 ኪሎ ግራም ያልታጠበ ደረቅ ያልተዘጋጀ  
ቡና በአጠቃላይ ድምር 4,265,371 ኪሎ ግራም ቡና መንግሥት መረከቡን  
እናስታውቃል።

ግላጣጭ

ሰቡና ማዘጋጃና ማከማቻ ድርጅት 07/08/01  
አዲስ አበባ

ስድራዳዋ የቡና ማበጠሪያና ማዘጋጃ ኃ/የተ/የገ/ ማህበር  
ለዳንዲ ኃ/የተ/የገ/ ማህበር  
ድራዳዋ

ከሰላምታ ጋር



የዕቅድ ያለ  
ግንባታ ጸሐፊ


**ሰኢድ ሳሲን ኃላፊነቱ የተወሰነ የግል ማህበር**  
**مؤسسة سعيد ياسين ذو مسؤولية محدودة**  
**SEID YASSIN PRIVATE LIMITED COMPANY**

P.O. Box 1382, Addis Ababa, Ethiopia, Tel. +251-1-525255/522246, Fax +251-1-526233/527272

ሚያዚያ 30 ቀን 2001 ዓ.ም

ለፌዴራል ከፍተኛው ፍ/ቤት  
 ይግባኝ ሰሚ ፍትሐብሔር ችሎት  
 አ.አበባ

ይግባኝ ባይ.....ሰይድ ያሲን ኃላፊነቱ የተወሰነ የግል ማህበር  
 አድራሻ አዲስ አበባ

መልስ ሰጪ..... የግብርናና የገጠር ልማት ሚኒስቴር  
 አድራሻ አዲስ አበባ

**የ ይ ግ ባ ኝ አ ቤ ቱ ታ ::**

**1. ይግባኝ የተባለበት ምክንያት፣**

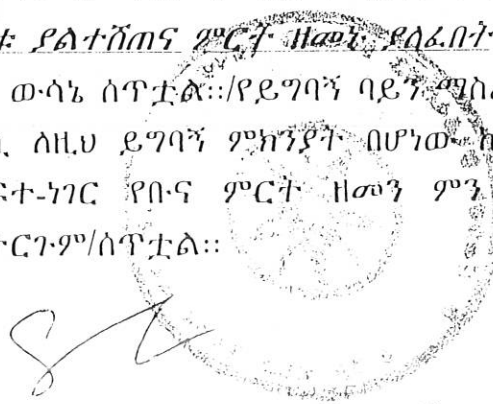
ይግባኝ ባይ በፈረንጆች ዲሞክራሲ 02/08 እስከ ማርች 24/09 በእኛ ከህዳር 24/01 እስከ መጋቢት 15/01 ከኢትዮጵያ ምርት ገበያ ገዝቶ በከፊል የሸጠውንና ለሽያጭ ለማቅረብ በገዝጅት ላይ የነበረን 893,013 ኪ.ሎ ግራም ቡና መልስ ሰጪ “በወቅቱ ያልተሸጠና ምርት ዘመኑ ያለፈበት” ነው በማለት መንግሥት እንዲረከበው ሚያዚያ 6 ቀን 2001 ዓ.ም በቁጥር 13/28/25/143 የሰጠውን የአስተዳደር ውሳኔ በይግባኝ ለማስለወጥ የቀረበ አቤቱታ ነው::

- የይግባኝ አቤቱታው የቀረበው መልስ ሰጪ ይግባኝ የተባለበትን ውሳኔ በስጠ በ30 ቀን ውስጥ ስለሆነ የይግባኝ አቤቱታው በሚኒስትሮች ምክር ቤት ደንብ ቁጥር 161/01 አንቀጽ 22/3 በተወሰነው ጊዜ ውስጥ ቀርቧል::
- የተከበረው ይግባኝ ሰሚው ፍ/ቤት የቀረበለትን የይግባኝ አቤቱታ ከላይ በተገለጠው ደንብና አንቀጽ መሠረት ለማየት ከሕግ የመነጨ የጻጻነት ሥልጣን አለው::

**2. የይግባኝ መነሻ ምክንያት፣**

2.1 መልስ ሰጪ ሚያዚያ 6 ቀን 2001 ዓ.ም በቁጥር 13/28/25/143 ለይግባኝ ባይ በአድራሻ በፃፈው በይግባኝ ባይ ቂርቆስ ክፍለ ከተማ ቀበሌ 20/21፣ በመንግሥት ልማት ድርጅቶች ሥር ባለው፣ በድራ-ደዋ ከተማ በሚገኙ ሁለት የቡና ማከማቻና ማዘጋጃ መጋዘኖች ውስጥ የሚገኘውን በይግባኝ ባይ እጅ የነበረውን እና ከኢትዮጵያ ምርት ገበያ ገዝቶ ያልተረከበውንና በመንግሥት እጅ የሚገኘውን ጠቅላላ ክብደቱ 893,013 ኪ.ሎ ግራም ቡና “በወቅቱ ያልተሸጠና ምርት ዘመኑ ያለፈበት” ነው በማለት መንግሥት እንዲረከበው የአስተዳደር ውሳኔ ሰጥቷል::/የይግባኝ ባይን ማስረጃ ተራ ቁጥር 1 ይመለከታል/

2.2 መልስ ሰጪ ለዚህ ይግባኝ ምክንያት በሆነው ከላይ በተገለጠው ውሳኔ ገጽ 1 በ2ኛው አዲስ ዐረፍተ-ነገር የቡና ምርት ዘመን ምን ማለት እንደሆነ በሚከተለው ሁኔታ ማብራሪያ/ትርጉም/ሰጥቷል::



አንድ የቡና ምርት ዘመን ማለትም የታጠበ ቡና በኢትዮጵያ የቀን አቆጣጠር አዲስ ዓመት ከገባ ከህዳር 1 ቀን አስከመጨው ዓመት ጥቅምት 30 ቀን ድረስ የልታጠበ ቡና ከሆነ በኢትዮጵያ የቀን አቆጣጠር አዲስ ዓመት ከገባ ከየካቲት 1 ቀን አስከ መጨው ዓመት ጥር 30 ቀን ድረስ በሚመለከተው የገበያ መድረክ መሸጥ ሲገባው ሳይሸጥ የከረመበማለት ለሽያጭ ሳይቀርብ የምርት ዘመኑ አልፎበታል የሚባልን ቡና በማያሻማ ሁኔታ አመልክቷል።

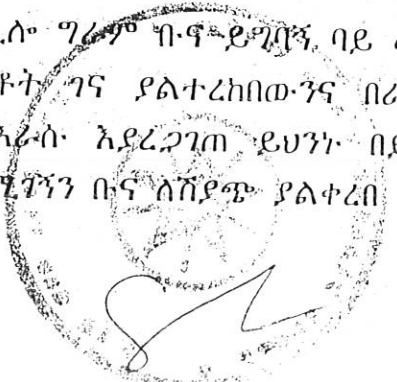
2.3 በወቅቱ ሳይሸጥ የምርት ዘመኑ አልፎበታል የሚባለው ቡና ከላይ በተገለጠው ትርጉም የሚሸፈን ስለመሆኑ በኢትዮጵያ ሬደራላዊ ዲሞክራሲያዊ ሪፐብሊክ የተወከዮች ምክር ቤት ስለቡና ጥራት ቁጥጥርና ግብይት በወጣው አዋጅ ቁጥር 602/2000 አንቀጽ 8 የቡና ላኪዎች ግዴታ ሆኖ በንዑስ ቁጥር 3 የተጻፈው፤

“ከጨረታ ማዕከላት ወይም ከኢትዮጵያ ምርት ገበያ የተገዛውን የአቅርቦት ወይም ከራሱ ማሣ ያመረተውን ቡና ምንም ሳያባንክ የሚቀጥለው ምርት ከመድረሱ በፊት ለውጭ ሀገር የመላክ” በማለት የተገለጠውና በአንቀጽ 14 “የተከለከለ ተግባራት” በሚል ርዕስ ሥር በንዑስ ቁጥር 3 የተጻፈው፤

“ማንኛውም በቡና ንግድ የተሰማራ ሰው ቡናውን ከአንድ ምርት ዘመን በላይ ማከማቸት” የተከለከለና የሚያስቀጣ ጥፋት መሆኑ የተገለጠው ይግባኝ ባይ ለውጭ ገበያ አቅርቦት የመንግሥት ድርጅት ከሆነው ከኢትዮጵያ ምርት ገበያ የገዛውን ቡና የሚቀጥለው ዓመት ከሚሰጠው አዲስ ምርት በፊት በማናቸውም ጊዜ አከማችቶና ከዘጋጅቶ ለሽያጭ ማቅረብ እንዳለበት የሚያስጠነቅቅ በመሆኑ ከላይ የተገለጡት ድንጋጌዎች መልስ ሰጪ “በወቅቱ ያልተሸጠና የምርት ዘመኑ ያለፈበት ቡና” ከሰጠው ትርጉም ጋር የሚስማማ ብቻ ሳይሆን አንድ ዓይነት ነው።

2.4 መልስ ሰጪ “በወቅቱ ያልተሸጠና የምርት ዘመኑ ያለፈበት” ነው በማለት መንግሥት እንዲረከበው የአስተዳደር ውሳኔ የሰጠበት ቡና ይግባኝ ባይ ከኢትዮጵያ ምርት ገበያ የገዛው በፈረንጅ ከዲሰምበር 02/08 አስከ ማርች 24/09 በእኛ አቆጣጠር ከህዳር 24/01 አስከ መጋቢት 15/01 ዓ.ም ድረስ ባሉት ጊዜያት ለመሆኑ ከዚህ የይግባኝ አቤቱታ ጋር የቀረቡት ይግባኝ ባይ ግዢ የፈጸመባቸው ደረሰኞች ያስረዳሉ። መልስ ሰጪውም ቡናውን ቆጥሮ ለይግባኝ ባይ የሰጣቸው መንግሥታዊ የሆኑ መተማመተኛ ሰነዶች ይህንኑ ያረጋግጣሉ።/የይግባኝ ባይ ማስረጃ ዝርዝር 2 እና 6 የተገለጡ/

2.5 በተለይም መልስ ሰጪ በሰጠው የአስተዳደር ውሳኔ ገጽ 2 ተራ ቁጥር 3 የተገለጠው 70,917 ኪሎ ግራም ቡና ይግባኝ ባይ መንግሥታዊ ተቋም ከሆነው ከኢትዮጵያ ምርት ገበያ ገዝቶት ገና ያልተረከበውንና በራሱ ቁጥጥር ሥር ያላዋለው መሆኑን መልስ ሰጪው እራሱ እያረጋገጠ ይህንኑ በይግባኝ ባይ እጅ ያልገባን በመንግሥት ይዞታ ውስጥ የሚገኝን ቡና ለሽያጭ ያልቀረበ ስለሆነ የምርት ዘመኑ አልፎበታል በማለት



መንግሥት እንዲረከበው የሰጠው የአስተዳደር ውሳኔ የተሳሰተ መሆኑን በግልጽ ያሳያል።

2.6 በሌላ በኩል በኢ.ፌ.ዲ.ሪ.ፊትብሊክ የተወካዮች ምክር ቤት በወጣው አዋጅ ቁጥር 602/2000 አንቀጽ 8/3 እና 14/3 በግልጽና በማያሻማ ሁኔታ እንደተገለጠው ይግባኝ ባይ ከኢትዮጵያ ምርት ገበያ የገዛውን ቡና ለውጭ ገበያ ማቅረብ ያለበት መልስ ሰጪ "በወቅቱ ያልተሸጠና ምርት ዘመኑ ስለአለፈበት" ቡና በሰጠው ትርጉም መሠረት ቡናው እጁ ከገባበት ቀን ጀምሮ የሚቀጥለው አዲስ ዓመት የምርት ዘመን ከመድረሱ በፊት ነው። ይህም ማለት ከህዳር 2001 ዓ.ም ወዲህ እስከ መጋቢት 15 ቀን 2001 ዓ.ም ይግባኝ ባይ ከኢትዮጵያ ምርት ገበያ ድርጅት በሽያጭ ተላልፎለት የተረከበውንም ሆነ ወደፊት የሚረከበውን ቡና የታጠበውን እስከ ጥቅምት 30 ቀን 2002 ዓ.ም ያልታጠበውን እስከ ጥር 30 2002 ዓ.ም ድረስ ለውጭ ሀገር ገበያ ለሽያጭ የማቅረብ ከሕግ ያገኘው መብቱ በምንም ምክንያትና በየትኛውም መመዘኛ ሊነካ አይችልም።

2.7 ይግባኝ ባይ ከላይ የተገለጠው የተደላደለ መብት እያለው የቡና ዋጋ እያሻቀበ የሚሄድበትን ወቅት ሳይጠብቅ መልስ ሰጪው ያልተሸጠና የምርት ዘመኑ አልፎበታል የሚለውን ቡና ይግባኝ ባይ ከህዳር 24 ቀን 2001 ዓ.ም እስከ መጋቢት 15 ቀን 2001 ዓ.ም ባሉ ጊዜያቶች ውስጥ ከኢትዮጵያ ምርት ገበያ ድርጅት የገዛውንና በማያቋርጠው የገበያ ሂደት ወደፊት እገዛለሁ ብሎ ያቀደውን ተጨማሪ ቡና ለውጭ ሀገር ደንበኞቹ በሽያጭ ለማስተላለፍ የተስማማ ለመሆኑ አንደሚከተለው ያስረዳል።

2.7.1 ይግባኝ ባይ በቡና ላኪነት ንግድ ሥራ ውስጥ የገባው የኢትዮጵያ ምርት ገበያ ድርጅት የቡና ግብይት ሥርዓትን በብቸኝነት ማከናወን በጀመረበት ህዳር 23 ቀን 2001 ዓ.ም/ማስረጃው ቀርቧል/ ማግሥት ህዳር 24 ቀን 2001 ዓ.ም ድርጅቱ ለመጀመሪያ ጊዜ ለሽያጭ ያቀረበውን 34,416 ኪሎ ግራም የታጠበና ያልታጠበ ቡና በደሰኝ ቁጥር 00000005 በብር 762,393 ከገዛበት ቀን ጀምሮ ነው። ከዚህ ጊዜ በፊት ይግባኝ ባይ በቡና ንግድ ሥራ ውስጥ ተሳትፎ እንዳልነበረው በገቢዎችና ጉምሩክ ባለሥልጣን ከሚገኘው ማህደሩ ጋር የተያያዘው ፋይናሽያል እስቴትመንት እና የኢትዮጵያ ምርት ገበያ ድርጅት የቡና ግብትይን ሥራ ከማከናወኑ በፊት ተመሳሳይ ሥራን ሲያከናውን የኖረው የቡና የጨረታ ማዕከል ይባል የነበረው የመንግሥት ተቋም ያረጋግጣል። /በማስረጃ ዝርዝሩ ተራ ቁጥር 5 እና የተገለጠውን ማስረጃ ይመለከቷል/

2.7.2 ይግባኝ ባይ ከህዳር 24 ቀን 2001 ዓ.ም ወዲህ እስከ መጋቢት 15 ቀን 2001 ዓ.ም ከኢትዮጵያ ምርት ገበያ ድርጅት ገዝቶ የተረከበውን 1,524,272.5 ኪሎ ግራም ያልታጠበ ቡና እና 330,321.94 ኪ.ግ.የታጠበ ቡና እንዲሁም ሳይረከበው በመንግሥት እጅ የሚገኘውን 178,056 ኪሎ ግራም ያልታጠበ ቡና ገዝቷል።

የግዥ ዋጋውንም ይግባኝ ባይ ከአዋሽ ኢንተርናሽናል ባንክ ቡብድር ካገኘውና የኢትዮጵያ ምርት ገበያ ድርጅት በቀጥታ ከሚያዝበት የባንክ ሳጥን ወጪ ሆኖ ተከፍሏል።

2.7.3 ይግባኝ ባይ ከኢትዮጵያ ምርት ገበያ ድርጅት ከገዛው ቡና ውስጥ በሕግ የተሰጠውን የመሸጫ የ1 ዓመት ጊዜ ሳይጠበቅ የኤክስፖርት ደረጃንና ጥራትን በሚያሟላ ሁኔታ አዘጋጅቶ 972,000 ኪሎ ግራም /972 ቶን/ ቡና ለውጭ ሀገር ገበያ ሽጦ የሽያጭ ዋጋው በባንክ በኩል በሌተር ኦፍ ክሬዲት ገቢ ሆኖአል።/የማስረጃ ዝርዝሩን ተራ ቁጥር 3 ይመለከታል/

2.7.4 ይግባኝ ባይ ከመጋቢት እስከ ግንቦት ወር 2001 ዓ.ም በተከታታይ 1,260,000 ኪሎ ግራም /1260 ቶን/ ቡና ኤክስፖርት ለማድረግ ከውጭ ሀገር ደንበኞቹ ጋር ያደረጋቸው አዋጁ በሚያስገድደው ሁኔታ በኢትዮጵያ ብሔራዊ ባንክ የተመዘገቡ የኢትዮጵያ ምርት ገበያን ለማቋቋም በወጣው አዋጅ ቁጥር 150/99 አንቀጽ 2/10 የተመለከተው ለወደፊት የሚፈፀም የሽያጭ ውሎች/Future contract/ ከዚህ አቤቱታ ጋር ለአስረጂነት ቀርቦአል።/ በማስረጃ ዝርዝሩ በተራ ቁጥር አባሪ ሆኖ የቀረበውን ይመለከታል/ መጠኑ ከተገለጠው ቡና ውስጥ አብዛኛው ሌተር ኦፍ ክሬዲት የተከፈተለት በመሆኑ መልስ ሰጪው በውሳኔው በገለጣቸው በተለያዩ መጋዘኖች ከሚገኘው ቡና ተጨማሪ የቡና ግዢ ማከናወን እንዳለበት በግልጽ እየታወቀ ያልተሸጠና የምርት ዘመኑ ያለፈበት ነው በማለት በይግባኝ ባይ እጅ ያለውንና በመንግሥት እጅ የሚገኘውን ይግባኝ ባይ ገና ያልተረከበውን ቡና ጭምር መንግሥት እንዲረከበው የተሰጠው ውሳኔ ሕጋዊ አይደለም።/የማስረጃ ዝርዝሩ ተራ ቁጥር 4 ይመለከታል/

2.8 መልስ ሰጪው ያለአንዳች መነሻ ምክንያት ያሸጋቸውን የይግባኝ ባይ ቡና የሚገኝባቸውን የቡና ማከማቻና ማዘጋጃ መጋዘኖች ከፍቶ መጋቢት 23 እና 24 ለሁለት ቀናት ባከናወነው ቆጠራ በይግባኝ ባይ እጅ የተገኘው ቡና የኢትዮጵያ ምርት ገበያ ድርጅት የቡና ግብይት ሥርዓትን ማከናወን ከጀመረበት ከህዳር 23 ቀን 2001 ዓ.ም ወዲህ በይግባኝ ባይ የተገዛ መሆኑን “በግብርና ገጠር ልማት ሚኒስቴር የቡና ላኪዎች የቡና ክምችት ቆጠራ ውጤት መግለጫ ቅጽ” በተባለው ሰነድ አረጋግጧል። ይልቁንም በመልስ ሰጪው ውሳኔ ገጽ 2 ተራ ቁጥር 3 የተገለጠው 70,917 ኪሎ ግራም ቡና ይግባኝ ባይ ከኢትዮጵያ ምርት ገበያ ድርጅት ከገዛው እና ካልተረከበው 178,056 ኪሎ ግራም ቡና ውስጥ የሚጠቃለል በመሆኑ በይግባኝ ባይ እጅ ያልገባንና ለሽያጭ ሊያቀርበው የማይችልን የቆይታ ጊዜው ዜሮ የሆነውን ቡና ለሽያጭ ሳይቀርብ የምርት ዘመኑ እንዲቃጠል አድርገሃል በማለት መንግሥት እንዲረከበው ውሳኔ መስጠት

በይግባኝ ባይ የባለቤትነት መብት ላይ የተሰነዘረ ሕገ-ወጥ ጥቃት ነው።/የማስረጃ ዝርዝሩን ተራ ቁጥር 1 እና 6 ይመለከቷል/

2.9 መልስ ሰጪው የአስተዳድር ውሳኔ የሰጠበት ቡና ይግባኝ ባይ ከኢትዮጵያ ምርት ገበያ ከህዳር 24/01--መጋቢት 15/01 የገዛው ለመሆኑ በመንግሥት እጅ የሚገኙት ሰነዶች እያስረዱ፣ ይግባኝ ባይ ከኢትዮጵያ ምርት ገበያ ድርጅት ከአራት ወራት ወዲህ በተከታታይ የገዛውን ቡና ለሽያጭ ለማቅረብ ሕጉ የሰጠውን ሰፊ ጊዜና እያሻቀበ የሚሄደውን የቡና ዋጋ ሳይጠብቅ በአጭር ጊዜ ውስጥ አብዛኛውን ቡና ኤክስፖርት ማድረጉን በተጨማሪም የሚያስረዱ የሽያጭ ውሎችንና የሽያጭ ዋጋው የተከፈለባቸው የሌተር ኤፍ ክሬዲት ማስረጃዎች በግልጽ እያረጋገጡ እና ይግባኝ ባይ በተለያዩ የቡና ማከማቻ ማዘጋጃ መጋዘኖች ለኤክስፖርት በዝግጅት ላይ ከነበረው የቡና መጠን በላይ ተጨማሪ ቡና በመግዛት ወደፊት በሚፈፀም የሽያጭ ውል ለውጭ ሀገር ደንበኞቹ ለማቅረብ የተስማሟትን ቡና ማሟላት የሚገደድ መሆኑን በብሔራዊ ባንክ የተመዘገቡና በመልስ ሰጪው የሚታወቁ የሽያጭ ውሎች አፍ አወጥተው እየተናገሩ ያልተሸጠና የምርት ዘመኑ ያለፈበት ቡና አከማችተሃል በማለት በሕግና በመንግሥት አምናና ተማምኖ ኤክስፖርት ለማድረግ የገዛውን እና ለሽያጭ በማዘጋጀት ላይ የሚገኘውን ቡና መውሰድ ከላይ የተገለጠውን አዋጅ ብቻ ሳይሆን ሕገ-መንግሥታዊ ጥበቃን የተቀዳጀን የንብረት ባለቤትነት መሠረታዊ መብትን ከሥር-ከመሠረቱ መናድ ነው።

3. በይግባኝ ባይ የዳኝነት ጥያቄ፣

3.1 ይግባኝ ባይ የቡና ላኪነት ንግድ ሥራ ማከናወን ከጀመረበት በፈረንጅ ዲሴምበር 02/08 ጀምሮ እስከ ማርች 24/09 በእኛ ከህዳር 24 ቀን 2001 ዓ.ም እስከ መጋቢት 15 ቀን 2001 ዓ.ም ድረስ የመንግሥት ድርጅት ከሆነው የኢትዮጵያ ምርት ገበያ የገዛውን ቡና እስከመጨረሻው አዲስ የምርት ዘመን እስከ ጥቅምት 30 ቀን 2002 ዓ.ም እና እስከ ጥር 30 ቀን 2002 ዓ.ም ድረስ እንዲሸጥ የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የተወካዮች ምክር ቤት ባወጣው አዋጅ ቁጥር 602/2000 አንቀጽ 8/3 እና 14/3 የተሰጠው መብት በመልስ ሰጪ ሊነካ እና ሊገሰስ ስለማይችል።

3.2 መልስ ሰጪው ያልተሸጠና የምርት ዘመኑ ያለፈበት ነው በማለት መንግሥት እንዲረከበው ውሳኔ የሰጠበት በመልስ ሰጪው ውሳኔ በተገለጡ በተለያዩ የቡና ማከማቻና ማዘጋጃ መጋዘኖች የሚገኘው 893,013 ኩሎ ግራም ቡና የሀገሪቱን የቡና ግብይት ሥርዓት በብቸኝነት ከሚያከናውነው የመንግሥት ተቋም ከሆነው ከኢትዮጵያ ምርት ገበያ ይግባኝ ባይ ከህዳር 24 ቀን 2001 ዓ.ም ወዲህ የገዛው መሆኑን መልስ ሰጪው በራሱ ሰነድ ስለአረጋገጠ እና በይግባኝ ባይም የቀረቡ





የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ጠቅላይ ሚኒስትር  
 የግብርናና ገጠር ልማት ሚኒስቴር  
 The Federal Democratic Republic of Ethiopia  
 Ministry of Agriculture and Rural Development

01/07/2001

ሰፊ ደራሰ አገልግሎት ፍ/ቤት

የመ.ቁ 80047

6ኛ ፍትሐብሔር ይግባኝ ሰሚ ችሎት

አዲስ አበባ

❖ ይግባኝ ባይ - - - - - ሰይፍ ያሲን ኃ/የተ/የግ/ማሕበር

❖ መልስ ሰጪ - - - - - ግብርናና ገጠር ልማት ሚኒስቴር

ጉዳዩ:- ይግባኝ ባይ በ6/9/2001 ላቀረበው ይግባኝ የቀረበ መልስ ነው።

1. የቀረበው መልስ በፍ/ሥ/ሥ/ሕ ቁጥር 234 መሠረት ተሟልቶ የቀረበ ነው።

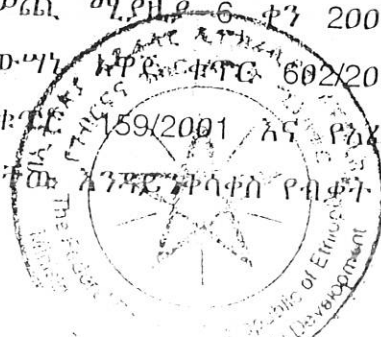
2. መልስ ሰጪ ጉዳዩን በነገረ ፈጅ አማካኝነት ይከታተላል።

3. የይግባኝ ባይ አቤቱታ ባጭሩ :-

ይግባኝ ባይ ከሕዳር 24 ቀን 2001 እስከ መጋቢት 15 ቀን 2001 ዓ/ም ከኢትዮጵያ ምርት ገበያ ገዝቶ በከፊል የሸጠውንና ለሽያጭ ለማቅረብ በዝግጅት ላይ የነበረውን 893013 ኪ.ሎ ግራም ቡና የአሁኑ መልስ ሰጪ በወቅቱ ያልተሸጠና የምርት ዘመኑ ያለፈበትን ነው በሚል ሚያዚያ 6 ቀን 2001 ዓ/ም በቁጥር 13/28/25/143 የሠጠውን አስተዳደራዊ ውሳኔ በመቃወም የቀረበ የይግባኝ ማመልከቻ ነው።

4. የፍሬ ነገር መልስ

4.1 የአሁኑ መልስ ሠጪ ሚያዚያ 6 ቀን 2001 ዓ/ም በቁጥር 13/28/25/143 ያስተላለፈው አስተዳደራዊ ውሳኔ በቁጥር 602/2000 ፣ ስለቡና ጥራት ቁጥጥርና ግብይት የወጣውን ደንብ ቁጥር 159/2001 እና የጥሬ ቡና መመሪያ ቁጥር 1/2001 ተላልፈው በመገኘታቸው ቡና ጥሬ ስራ ለማረጋገጫ የምስክር ወረቀታቸው

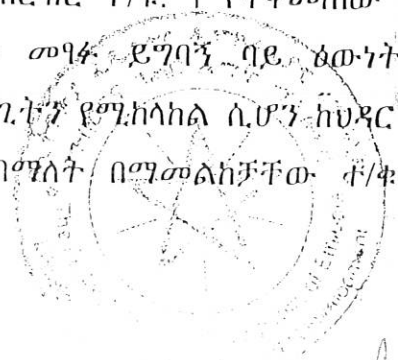


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እንዲታገድ መደረጉን እና በተለያዩ ቦታ በሚገኙ የማዘጋጃና ማከማቻ መጋዘኖች የምርት ዘመኑ ያለፈባቸው (የከረሙ ቡናዎች) መንግሥት እንዲረከባቸው ተደርጓል የሚለውን ውሳኔ በመቃወም የቀረበ ይግባኝ አቤቱታ ሆኖ እያለ የፍ/ሥ/ሥ/ሕ/ቁጥር 80(2) መሠረት የጉዳዩን ፍሬ ነገር ብቻ በአጭሩ መግለፅ ሲገባቸው በጭብጥ ሊያዝ የሚገባውን ፍሬ ነገር በሚያደናግርና በተንዛዛ ሁኔታ ያቀረቡት አቤቱታና ጉዳዩን የማያመለክቱ ማስረጃዎች ውድቅ ሊደረጉ ይገባል። ምክንያቱም በዚህ ጉዳይ ላይ ሊያስረዱና ማስረጃም ሊያቀርቡ የሚገባቸው አዋጁን፣ ደንቡንና የአፈፃፀም መመሪያውን ስላለመተላለፋቸውና መንግሥት የተረከበው ቡና የምርት ዘመኑ ያላለፈበት ስለመሆኑ ብቻ ነበር።

2. ይግባኝ ባይ በይግባኝ ማመልከቻቸው ተቁፎቻ 2.4 “በወቅቱ ያልተሸጠና የምርት ዘመኑ ያለፈበት” ነው በሚል መንግሥት የተረከባቸው የቡና ምርቶች ከህዳር 24 እስከ መጋቢት 15 ቀን 2001 ዓ/ም የተገዙ ስለመሆናቸው በማስረጃ ዝርዝር 2 የገለፁት ብዛት ድምር 2,068,279.44 ኪ/ግ ሲሆን በማስረጃ ዝርዝር 6 በቆጠራ የተረጋገጠ በሚል ያቀረቡት ብዛት ድምር 792,926 ኪ/ግ ነው። መንግሥት የተረከበው ቡና ብዛት ድምር ደግሞ 893,013 ኪ/ግ ነው። ስለዚህ በማስረጃ ዝርዝር ተ/ቁ 2 እና 6 ያቀረቡት ምንን ለማስረዳት እንደሆነ ግልፅ አይደለም። መንግሥት የተረከበውን ቡናንም የሚያስረዳ ባለመሆኑ ውድቅ ሊደረግ ይገባል። ምናልባት በይግባኝ አቤቱታቸው 2.7.1- በቡና ንግድ ሥራ ውስጥ ከህዳር 24 ቀን 2001 ጀምሮ ነው የተሳተፈው የሚለውን ለማሳየት ከሆነ ድርጅታቸው ከሐምሌ 10 ቀን 1998 ዓ/ም ጀምሮ ሰኢድ ያሲን ኃላፊነቱ የተወሰነ የግል ማህበር በሚል (ይግባኝ ያቀረቡትም በዚህ ስም ነው) የቡና ላኪነት ፍቃድ የተሰጣቸውና በዚህ ስም የሚታወቁ ለመሆኑ ሐምሌ 10 ቀን 1998 ዓ/ም በቁጥር ተ13/34/32/288 ለቡና ጥራትና ጣዕም መቆጣጠሪያ ማዕከል የተፃፈ ደብዳቤ ማስረጃ ዝርዝር 1 በአባሪነት ተያይዞ ይገኛል። ይህም ድርጅቱ ከህዳር 24 ቀን 2001 ዓ/ም በፊትም በቡና ንግድ ሥራ ውስጥ ተሳትፎ የነበረው መሆኑን በግልፅ ያሳያል። ከሐምሌ 10 ቀን 1998 ዓ/ም በፊትም ቢሆን ይኸው ድርጅት ሰኢድ ያሲን አለ በሚል ስም በቡና ንግድ ሥራ ተሰማርተው እንደነበረ በዚህ ደብዳቤ የተገለፀ ሲሆን ፣ መንግሥት ቡናውን ስለመረከቡ በፃፈላቸው ደብዳቤ (6/8/2001 የተፃፈውና በይግባኝ ባይ በማስረጃ ዝርዝር ተ/ቁ. 1 የተቀመጠው ደብዳቤም) ለጥንቃቄ ሲባል በሁለቱም ስሞች አድራሻ ተደርጎ መፃፉ ይግባኝ ባይ ፅውነትን ለማጥፋትና የተከበረው ፍ/ቤትን ለማሳሳት ያቀረቡት ድርጊትን የሚከላከል ሲሆን ከህዳር 24/01 ጀምሮ ነው በቡና ንግድ ሥራ መሳተፍ የጀመርኩት በሚለት በማመልከቻቸው ተ/ቁ 2.7.1 የገለፁትና በማስረጃ ዝርዝር

*[Handwritten mark]*



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ተ/ቁ. 5 እና 7 የተገለጸው ሊመሠርቱ የፈለጉትን ጭብጥ የሚያረጋግጥ ባለመሆኑ ውድቅ ሲሆን ይገባል። (ከህዳር 24 ቀን 2001 ዓ/ም በፊት በቡና ንግድ ሥራ ስለመሠማራታቸው ማስረጃ በማስረጃ ዝርዝር ቁጥር 1 አባሪ ሆኗል)

4.3 ይግባኝ ባይ በይግባኝ ማመልከቻቸው ተ/ቁ. 2.5 እና ዳኝነት የጠየቁበት ተ/ቁ 3.3 ከኢትዮጵያ ምርት ገበያ ተገዝቶ ገና በእጁ ያልገባና በአሁኑ መልስ ሰጪ እጅ ያለ ቡናን “የምርት ዘመኑ አልፎበታል” በሚል መንግሥት እንዲረከብ ተደርጓል በማለት ያነሱት መቃወሚያ ሆኑ ብለው የተከበረውን ፍ/ቤት ለማሳሳት የተጠቀሙበት እንጂ ከይግባኝ ማመልከቻቸው ጋር ባቀረቡት የማስረጃ ዝርዝር ተ/ቁ. 1 ባቀረቡት የአሁኑ መልስ ሰጪ የአስተዳደር ውሳኔ ላይ በተገለጸው መሠረት አዋጁን፣ ደንቡንና የአፈፃፀም መመሪያውን ተላልፈው በመገኘታቸው በመጋዘኖቻቸው የሚገኙ ቡናዎች እንዳይንቀሳቀሱ የታገደ መሆኑና ስለቡና ጥራት ቁጥጥርና ግብይት የወጣው “ደንብ ቁጥር 159/2001.ተ/ቁ. 17 የዕገድ ወይም የመሠረዝ ውጤት” በቡና ግብይት ሥራ ላይ መሠማራት እንደማይችል የሚደነግግ ሲሆን ፍቃድና የብቃት ማረጋገጫ ምስክር ወረቀት ሳይኖራቸው (ታገደ) የቡና ንግድ ሥራን ማካሄድ ስለማይችሉ ገዝተዋቸው በመንግሥት እጅ የሚገኙት ቡናዎችን መንግሥት መረከቡ የግድ ነው። (ይህንን ጭብጥ የሚያረጋግጥ ማስረጃ በ15/7/01. በቀጥር 01/424/1/22 እና በ15/7/01. በቀጥር 01/424/1/23. የተፃፈ ደብዳቤ እንዲሁም በ15/7/01. በቀጥር 01/324/1/24. ንግድ ፍቃዳቸው እንዲታገድ የተፃፈ ደብዳቤ በማስረጃ ዝርዝር 2፣3፣4፣ እና 5 በአባሪነት ተያይዞ ቀርቧል።)

4.4 ይግባኝ ባይ በይግባኝ ማመልከቻቸው ተ/ቁ 6 እና 7 ላቀረቡት አቤቱታ በዚህ መልስ ተ/ቁ 4.2 በዝርዝር ምላሽ የተሠጠበት ሲሆን የምርት ጊዜው ያለፈበት በሚል መንግሥት የተረከበው ቡና ከህዳር 24 ቀን 2001 እስከ መጋቢት 15 ቀን 2001 ዓ/ም ድረስ የተገዛ ለመሆኑ ያተረቡት አቤቱታቸውም ይሁን ማስረጃዎቻቸው የሚያስረዱ አይደሉም። ከዚህ በተጨማሪ የምርት ጊዜው ያለፈበት ቡናውንና ተጨማሪ ቡና ገዝተው ለውጭ ሃገር ደንበኞቻቸው ለማስተላለፍ ማቀዳቸውን ሲያስረዱ የምክሩበት ሁኔታ በአዋጁ ቁጥር 6 ንዑስ ቁጥር 9 የአገሪቱን የቡና ስም ከሚያገዙት ማናቸውም ድርጊቶች የመቆጠብ ግዴታን የሚጥስ ሲሆን የቡና ንግድ የሃገሪቱ ዋነኛ የኢኮኖሚ መሠረትና ለብዙ ዜጎች መተዳደሪያ

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ከመሆኑም አንጻር ሲመዘን ያቀዱት ዕቅድ እጅግ ከፍተኛ ጉዳትን በሃገር ኢኮኖሚ ላይ የሚያስከትልም ነው።

ሆኖም የምርት ዘመን ያለፈ ቡና የሚረጋገጠው በአዋጁና አዋጁን ለማስፈፀም በወጣው መመሪያ ቁጥር 1/2001 ቁጥር 20 መሠረት ፣ የቡና ጥራትና ግብይት ተቆጣጣሪ ሥልጣንና ተግባር በመሆኑ ጊዜው ያለፈበት ቡና በድርጅታቸው መጋዘኖች ለመገኘቱ ናሙና በመውሰድ የተገኘው ውጤት የሚያስረዳ ሲሆን የምርት ጊዜው ያለፈበት ቡና ስለመገኘቱም ይህን ሊያሳዩ የሚችል ቴክኒካዊ የምርመራ ሃደቱን በተመለከተ በወቅቱ ምርመራውን ያደረጉት ልዩ ሙያተኞች የምርት ዘመን ያለፈበት/የክረመ ቡና ስለመሆኑ በስታትስቲካዊ መረጃ የሚያረጋግጡ የግብርና ግብይት ባለሙያዎች በፍ/ሥ/ሥ/ሕ/ቁጥር 163 መሠረት ለክቡር ፍ/ቤቱ የሚያስረዱ ሲሆን እስታትስቲካዊ መረጃዎቹ ለፍዴራል ፓሊስ ወንጀል ምርመራ መምሪያ በ4/09/2001 በቁጥር 08517/12/161 በተባሉ ደብዳቤ ሸኚነት የተላለፈ በመሆኑ መረጃው እዛ የሚገኝ መሆኑን እያሳሰብን መሸኛው በአባሪነት ተያይዞ ይገኛል። (በተወሰደ ናሙና የምርት ዘመን ያለፈበት ቡና ስለመሆኑ መረጋገጡን የሚያስረዳ ማስረጃ ዝርዝር ተ/ቁ.6 የተያያዘ እና ጉዳዩን የሚያስረዱ ልዩ ሙያተኞች ዝርዝርም በማስረጃ ዝርዝር ተቀምጧል)።

4.5 ይግባኝ ባይ በይግባኝ ማመልከቻቸው ተ/ቁ 2.7.1 ከህዳር 24 ቀን 2001 ዓ/ም ጀምሮ ነው በቡና ንግድ ሥራ መሳተፍ የጀመርኩት ለሚሉት በዚህ መልስ ተ/ቁ 4.2 የተብራራ በሆነም በተለያዩ ጊዜያት የድርጅታቸውን ስም እያቀያየሩ ከመጠቀማቸው አኳያ የተለየ ጭብጥ ካላቸው ፍቃዳቸውን፣ የብቃት ማረጋገጫ የምስክር ወረቀት፣ እንዲሁም በመመሪያው ቁጥር 6.2.3.3 በዓለም አቀፍ የቡና ድርጅት ቡና ላኪነት (ICO) እና የመ/ቤቱ የመለያ ቁጥር ያላቸው መሆኑን ማስረጃ ማቅረብ የሚገባቸው ሲሆን ይህን ባለማድረጋቸው ያቀረቡት መከራከሪያ ውድቅ ሊሆን ይገባል።

4.6 ይግባኝ ባይ በይግባኝ ማመልከቻቸው 2.7.2፣2.7.3፣2.7.4፣2.8፣እና 2.9 ያቀረቡት ድግግሞሽና በጭብጥ ለተያዘው ጉዳይ የማይጠቅም ፣ የተከበረውን ፍርድ ቤትንና ፣ የመልስ ሰጪን ጊዜን የሚያባክን ነው። በጭብጥ ለተያዘው ጉዳይ ማስረጃ ማቅረብ የነበረባቸው የምርት ጊዜው አለፈ የተባለው ቡናን በተመለከተ የምርት ጊዜው ያለማለፉን እና አዋጁ ፣ የአፈ.ዓፀም መመሪያውንና ጸንቡን ስላለመተላለፋቸው ሲሆን በዚህ ረገድ የቀረበ ማብራሪያም ይሁን ማስረጃ ባለመኖሩ ይግባኛቸው ውድቅ ሊሆን ይገባል።

*[Handwritten signature]*

5. መልስ ሰጪ የመጠይቀው ዳኝነት

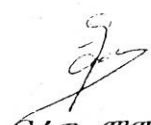
5.1 የአሁኑ መልስ ሰጪ የምርት ዘመኑ አልፏል በሚል መንግሥት እንዲረከባቸው ያደረገው ቡናን በተመለከተ ይግባኝ ባዩ በማስረጃ ደግፈው ያሳስረዱ በመሆኑና በሕገ-መሠረት የተፈጸመ ስለሆነ ተገቢ ነው እንዲባልልን ፤


5.2 ይግባኝ ባይ የአዋጁን ቁጥር 6(2) ፣ 6(9)፣ 8(3) ፣ 14(3) ፣ 4(6) አዋጅን ለማስፈጸም የወጣውን ደንብ ቁጥር 159/2001 ቁጥር 10 (4) እንዲሁም የአፈ.ፃፀም መመሪያው 6(2) ፣ 6.2.3.10 የተደነገጉትን ድንጋጌዎች በመተላለፋቸው የመጋዘኖቻቸው መታሸግና ቡናዎቻቸው እንዳይንቀሳቀሱ መደረጉ፣ (የብቃት ማረጋገጫቸው የታገደና የተሰረዘ በመሆኑ እና ሕገወጥ ድርጊት የተፈጸመበት ቡናን መንግሥት መረከቡ አግባብ ነው እንዲባልልን፤

5.3 በአዋጁ ቁጥር 13(5) እና (7) ፣ አዋጁን ለማስፈጸም በወጣው ደንብ 20(3) እንዲሁም በአፈ.ፃፀም መመሪያው አንቀፅ 7.2.1.13 የአሁኑ መልስ ሰጪ የወሰዳቸው እርምጃዎች በሙሉ አግባብ ነው እንዲባልልን፤

5.4 መልስ ሰጪ ያለአግባብ ይግባኝ ተብሎበት ያወጣቸውን ወጪዎች ከበቂ ኪሳራ ጋር ቆርጦ እንዲያሠናብተን የተከበረው ፍ/ቤትን እየጠየቅን ፣ የቀረበው መልስ በፍ/ሥ/ሥ/ሕ/ቁጥር 92 መሠረት እውነት መሆኑን አረጋግጣለሁ።

የቀረበው መልስ እውነት መሆኑን በፍ/ሥ/ሕ/ቁጥር 92(3) መሠረት አረጋግጣለሁ።

  
ፍሬው ማሞ  
የመ/ቤቱ ነገረፈጅ

  
ናታአ ባልቻ  
የህጻን ጉዳዮች መምሪያ አስተባባሪ



**ለፌዴራል ከፍተኛ ፍ/ቤት**

**አዲስ አበባ**

ይግባኝ ባይ . . . . . ኤስ.ሳራ ቡና ላኪ ድርጅት (ወ/ሮ ሳራ ይመር)

አድራሻ:- ንፋስ ስልክ ላፍቶ ክ/ከተማ ቀበሌ 05 የቤ.ቁ 2998

መልስ ሰጪ . . . . . የግብር እና የገጠር ልማት ሚኒስቴር

አድራሻ:- አዲስ አበባ

**መልስ ሰጪ በቡና ላኪነት የብቃት ማረጋገጫ ላይ የሰጠውን ዕገድ እና የድርጅቱን ቡና ለመረከብ የሰጠውን ውሳኔ ለማሻር በፍርድ ቤቱ ትእዛዝ ተሻሽሎ የቀረበ ይግባኝ ነው**

ሀ. ፍ/ቤቱ ይግባኙን ተቀብሎ ለመወሰን በሚኒስትሮች ምክር ቤት ደንብ ቁጥር 161/2001 አንቀፅ 16(3) መሠረት ስልጣን አለው፤

ለ. በዚህ ጉዳይ ከዚህ በፊት የቀረበ ይግባኝ የለም፤

ሐ. መጥሪያ ለመልስ ሰጪ ይግባኝ ባይ አደርሳለሁ።

**የክርክሩ አመጣጥ**

ይግባኝ ባይ ኤስ.ሳራ ቡና ላኪ ድርጅት ከተቋቋመበት ጊዜ ጀምሮ እስከአሁን ድረስ በስራ ጉድለት የተወቀሰበት አንድም ጊዜ አልነበረም። ይልቁንም ይህ ድርጅት በመንግስትና በህብረተሰቡ ዘንድ በሚገባ የሚታወቀው በአኩሪ የሥራ ውጤቶቹ ነው።

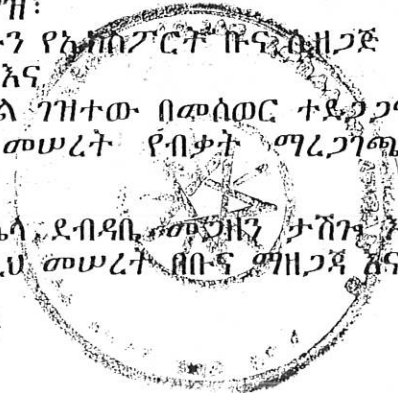
ድርጅቱ በቡና ላኪነት ሥራ ከተሰማራበት ጊዜ ጀምሮ ለሀገራችን ከፍተኛ የውጭ ምንዛሬ በማስገኘት ግንባር ቀደም ሚና ሲጫወት በመቆየቱ ያተረፈውን ዝናና መልካም ስም ከብዙ በጥቂቱ ለማስታወስ፤ በደቡብ ብሔር ብሔረሰቦችና ሕዝቦች ክልላዊ መንግስትና በአሮሚያ ብሔራዊ ክልላዊ መንግስት ሽልማት ተሰጥቶታል። ከዚህ በላይ በ2000ዓ.ም እና 2001ዓ.ም ከኢ.ፌ.ዴ.ሪ ጠ/ሚኒስትር በከፍተኛ ማዕረግ ተሸላሚ ሆኗል።

በመልካም ሥራ አፈፃፀሙ ለድርጅቱ መንግስት የሐገሪቱን ከፍተኛ ሽልማት በሰጠኝ 4ወር ባልሞላ ጊዜ ውስጥ ባልተጠበቀና ባልተገመተ ሁኔታ መጋቢት 15 ቀን 2001 ዓ.ም በተፃፈ ደብዳቤ አዋጅ ቁጥር 602/2000ን እና ደንብ ቁጥር 159/2001 (161/2001) በመተላለፍ

- እ.ኤ.አ. በ2008 መፈፀም የሚገባዎትን የቡና ኮንትራት ውል በወቅቱ ባለመፈፀምዎ፤
- የምርት ዘመኑ ያለፈበት የምርት ክምችት በመያዝ፤
- ለሐገር ውስጥ ገበያ በወቅቱ መለቀቅ የሚገባውን የኢኮኖሚክስ ጥሬ ጥቃቅ የወጣውን ተረፈ ምርት አከማችተው በመገኘቱ እና
- ለኢኮኖሚክስ የሚመጥን ቡናን ከጨረታ ማእከል ገዝተው በመሰወር ተደጋጋሚ ጥፋት ፈጽመው በመገኘቱ በደንብ አንቀጽ 16(1) መሠረት የብቃት ማረጋገጫ ምስክር ወረቀትዎትን አግጁአለሁ ሲል ጽፎልኛል።

መልስ ሰጪው ሚያዚያ 6 ቀን 2001 ዓ.ም በተፃፈ ሌላ ደብዳቤ መጋዘን ታሸገ እና ፈቃድ ታግዶ የማጣራት ሥራ ሲደረግ መቆየቱ ይታወሳል። በዚህ መሠረት በቡና ማዘጋጃ ጽና ማከማቻ

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ድርጅት፣ በምርት ገበያ በተለያዩ መጋዘኖች፣ በድሬደዋ እና በንፋስ ስልክ ላፍቶ ክ/ከተማ መጋዘኖች የሚገኝ በአጠቃላይ 4,265,371 ኪ.ግ ቡና ተረክቤአለሁ ሲል ገልጾልኛል።

ይግባኝ ባይ ሚኒስቴር መስሪያ ቤቱ እራሱን እንዲያርም በተደጋጋሚ በባህሪ ለተደባደቀው በየአለቱ ከኢትዮጵያ ምርት ገበያ በጨረታ ቡና መግዛቱን፣ ለሐገር ውስጥ ፍጆታ የሚውለውንም በዚሁ ማዕከል እያቀረብኩ መሸጤን፣ የምርት ዘመኑ ያለፈበት ቡና ክምችት አለመያዘን፣ እንዲሁም የውጪ ሽያጭ ያለመጠዘን ማከናወኔን፣ በተለይም ጅቡቲ ወደብ የደረሰ 720,800 ኪ.ግ፣ ኤል.ሲ ተከፍቶለት እና በመጫን ሂደት ላይ ያለ 1,224,000 ኪ.ግ እንዲሁም ኮንትራት ተፈርሞ ኤል.ሲ እስኪከፈት በመጠባበቅ ላይ ያለ 1,396,800 ኪ.ግ በጠቅላላው 3,345,600 ኪ.ግ 7,641,764.27 ዶላር የተሸጠ መሆኑን፣ እንኳን የምርት ዘመኑ ያለፈ የቡና ክምችት ሊኖረኝ ይቅርና ከኢትዮጵያ ምርት ገበያ (ECX) ህዳር 5 ቀን 2001 ዓ.ም ጀምሮ የብቃት ስርተፊኬት እስከታገደበት መጋቢት 15 ቀን 2001 ዓ.ም ድረስ 5,685,994.25 ኪ.ግ ቡና የገዛሁ መሆኔን፣ ጥር 8 ቀን 2001 ዓ.ም መንግስት ባደረገው ቆጠራ የሰወርኩት አንድም ኪሎ ቡና አለመኖሩን መረጋገጡን በመግለጽ ውሳኔው በበቂ ማስረጃ ላይ ያልተመሰረተ መሆኑን ተረድቶ ውሳኔውን እንዲያነሳ ብጠይቅም ፈቃደኛ አልሆነም። በዚህ ውሳኔ ምክንያት የድርጅቱ ሠራተኞች ከነቤተሰቦቻቸው ለችግር ተዳርገዋል፤ ሀገሪቱም ታገኝ የነበረውን የውጭ ምንዛሬ አጥታለች። ድርጅቱም ከፍተኛ ለሆነ የባንክ ወለድና የመጋዘን ኪራይ ተዳርጓል።

በዚህ ምክንያት የሚኒስትሩን ውሳኔ እንዲሸርልኝ ለተከበረው ፍርድ ቤት ይግባኝ ለማቅረብ ተገድጄአለሁ።

**የይግባኝ ባይ ቅሬታዎች**

**የመልስ ሰጪ ውሳኔዎች አዋጅ ቁጥር 602/2000 እና ደንብ ቁጥር 161/2001ን የጣሱ እና ሊሻሩ የሚገባ ስለመሆኑ፡-**

**1. መልስ ሰጪው አዋጅን እና ደንቡን በህግ አውጪው ሥራ ላይ እንዲውሉ ከተወሰነበት ቀን በፊት (ወደኋላ በመውሰድ) ያለአግባብ ሥራ ላይ ያዋለ ስለመሆኑ፡-**

መልስ ሰጪ መጋቢት 15 ቀን 2001 እና ሚያዝያ 6 ቀን 2001 ዓ.ም ለወሰዳቸው የብቃት ስርተፊኬቱን ማገድ እና ቡናዬን መረከብ ውሳኔዎቹ መሠረት ያደረገው አዋጅ ቁጥር 602/2000 እና ደንብ ቁጥር 159/2001 ያለው ነገር ግን ትክክለኛው እና በነጋሪት ጋዜጣ ታትሞ የወጣውን የሚኒስትሮች ምክር ቤት ደንብ ቁጥር 161/2001 አንቀፅ 16(1)ን ነው።

የተከበረው ፍርድ ቤት እንደሚረዳው ከወንጀል ህግ በስተቀር ህግ አውጪው ማንኛውንም ህግ ሲያወጣ ህጉ ወደኋላ ተፈጻሚ የሚሆንበትን ቀን ይወስናል። ህጉን የሚያስፈጽሙ አካላትም ህጉ ሥራ ላይ እንዲውል ከተወሰነበት ቀን ጀምረው ሥራ ላይ ያውሉታል። ይገባልም። አዋጅ ቁጥር 602/2000 ከነሐሴ 19 ቀን 2000 ዓ.ም ጀምሮ ሥራ ላይ የሚውል መሆኑ ተመልክቷል። ደንብ ቁጥር 161/2001 ደግሞ በነጋሪት ጋዜጣ ታትሞ የወጣው ጥር 27 ቀን 2001 ዓ.ም ቢሆንም ከህዳር 5 ቀን 2001 ዓ.ም ጀምሮ የፀና ይሆናል ተብሎ ተደንግጓል።

ሚያዝያ 6 ቀን 2001 ዓ.ም መልስ ሰጪው በባሬልኝ ደብዳቤ በአዋጁ አንቀጽ 8(3) እና 14(3) አንድ የምርት ዘመን ለሚለው በሰጠው ትርጉም ለታጠበ ቡና ከህዳር 1 ቀን 2001 ዓ.ም እስከ ጥቅምት 30 ቀን 2002 ዓ.ም ሲሆን ለደረሰ ቡና ደግሞ ከየካቲት 1 ቀን 2001 እስከ ጥር 30 ቀን 2002 ዓ.ም መሆኑን አረጋግጧል። የሁለቱም አይነት ቡናዎች የምርት ዘመን የሚጀምረው አዋጅ ቁጥር 602/2000 ከነሐሴ 19 ቀን 2000 ዓ.ም ሥራ ላይ ከዋለ በኋላ ነው። ደንቡም ከህዳር 5 ቀን 2001 ዓ.ም ጀምሮ ሥራ ላይ እንዲውል በህግ አውጪው የተወሰነ በመሆኑ ሁለቱም ህጎች በሥራ ላይ ከዋሉበት ጊዜ ጀምሮ ያለው የቡና ምርት ዘመን ገና አላበቃም። በመሆኑም መጪው ጥቅምት 30 ቀን 2002 ዓ.ም ከመምጣቱ በፊት ለታጠበ ቡና ጥር 30 ቀን 2002 ዓ.ም ላልታጠበ ቡና ከመድረሱ በፊት ቡናዎቹ ከአንድ የምርት ዘመን በላይ ተከማችተዋል ለባል የሚችልበት አንዳችም የህግ ምክንያት የለም።

በብቃት ስርተፊኬቱ ላይ የዕግድ ውሳኔ ለመስጠት መልስ ሰጭ በደንቡ ስልጣን ያገኘው ከህዳር 5 ቀን 2001 ዓ.ም ጀምሮ ነው። ሚኒስቴር መስሪያ ቤቱ በደንቡ አንቀፅ 16(1) ሥር የገመገሙት ጥፋቶች ተፈጽመው ሲገኙ የብቃት ስርተፊኬት የማገድ ስልጣን ያገኘበት ጊዜ እና የገመገሙት ቡና



ድርጅት፣ በምርት ገበያ በተለያዩ መጋዘኖች፣ በድሬደዋ እና በንፋስ ስልክ ላፍቶ ክ/ከተማ መጋዘኖች የሚገኝ በአጠቃላይ 4,265,371 ኪ.ግ ቡና ተረክቤአለሁ ሲል ገልጻልኛል።

ይግባኝ ባይ ሚኒስቴር መስሪያ ቤቱ እራሱን እንዲያርም በተደጋጋሚ በባፍኩለት ደብዳቤ በየእለቱ ከኢትዮጵያ ምርት ገበያ በጨረታ ቡና መግዛቱን፣ ለሐገር ውስጥ ፍጆታ የሚውለውንም በዚህ ማዕከል እያቀረብኩ መሸጤን፣ የምርት ዘመኑ ያለፈበት ቡና ክምችት አለመያዘን፣ እንዲሁም የውጪ ሽያጭ ያለመጠዘን ማከናወኔን፣ በተለይም ጅቡቲ ወደብ የደረሰ 720,800 ኪ.ግ፣ ኤል.ሲ ተከፍቶለት እና በመጫን ሂደት ላይ ያለ 1,224,000 ኪ.ግ እንዲሁም ኮንትራት ተፈርሞ ኤል.ሲ እስኪከፈት በመጠባበቅ ላይ ያለ 1,396,800 ኪ.ግ በጠቅላላው 3,345,600 ኪ.ግ 7,641,764.27 ዶላር የተሸጠ መሆኑን፣ እንዲሁም የምርት ዘመኑ ያለፈ የቡና ክምችት ሊኖረኝ ይቅርና ከኢትዮጵያ ምርት ገበያ (ECX) ህዳር 5 ቀን 2001 ዓ.ም ጀምሮ የብቃት ስርተፊኬት እስከታገደበት መጋቢት 15 ቀን 2001 ዓ.ም ድረስ 5,685,994.25 ኪ.ግ ቡና የገዛሁ መሆኔን፣ ጥር 8 ቀን 2001 ዓ.ም መንግስት ባደረገው ቆጠራ የሰወርኩት አንድም ኪሎ ቡና አለመኖሩን መረጋገጡን በመግለጽ ውሳኔው በበቂ ማስረጃ ላይ ያልተመሰረተ መሆኑን ተረድቶ ውሳኔውን እንዲያሳ ስጠይቅም ፈቃደኛ አልሆነም። በዚህ ውሳኔ ምክንያት የድርጅቱ ሠራተኞች ከነቤተሰቦቻቸው ለችግር ተዳርገዋል፤ ሀገሪቱም ታገኝ የነበረውን የውጭ ምንዛሬ አጥታለች። ድርጅቱም ከፍተኛ ለሆነ የባንክ ወለድና የመጋዘን ኪራይ ተዳርጓል።

በዚህ ምክንያት የሚኒስትሩን ውሳኔ እንዲሸርልኝ ለተከበረው ፍርድ ቤት ይግባኝ ለማቅረብ ተገድጄአለሁ።

**የይግባኝ ባይ ቅሬታዎች**

**የመልስ ሰጪ ውሳኔዎች አዋጅ ቁጥር 602/2000 እና ደንብ ቁጥር 161/2001ን የጣሱ እና ሊሻሩ የሚገባ ስለመሆኑ፡-**

**1. መልስ ሰጪው አዋጅን እና ደንቡን በህግ አውጪው ሥራ ላይ እንዲውሉ ከተወሰነበት ቀን በፊት (ወደጎሳ በመውሰድ) ያለአግባብ ሥራ ላይ ያዋለ ስለመሆኑ፡-**

መልስ ሰጪ መጋቢት 15 ቀን 2001 እና ሚያዝያ 6 ቀን 2001 ዓ.ም ለወሰዳቸው የብቃት ስርተፊኬቱን ማገድ እና ቡናዬን መረከብ ውሳኔዎቹ መሠረት ያደረገው አዋጅ ቁጥር 602/2000 እና ደንብ ቁጥር 159/2001 ያለው ነገር ግን ትክክለኛው እና በነጋሪት ጋዜጣ ታትሞ የወጣውን የሚኒስትሮች ምክር ቤት ደንብ ቁጥር 161/2001 አንቀፅ 16(1)ን ነው።

የተከበረው ፍርድ ቤት እንደሚረዳው ከወንጀል ህግ በስተቀር ህግ አውጪው ማንኛውንም ህግ ሲያወጣ ህጉ ወደጎሳ ተፈጻሚ የሚሆንበትን ቀን ይወስናል። ህጉን የሚያስፈጽሙ አካላትም ህጉ ሥራ ላይ እንዲውል ከተወሰነበት ቀን ጀምረው ሥራ ላይ ያውሉታል። ይገባልም። አዋጅ ቁጥር 602/2000 ከነሐሴ 19 ቀን 2000 ዓ.ም ጀምሮ ሥራ ላይ የሚውል መሆኑ ተመልክቷል። ደንብ ቁጥር 161/2001 ደግሞ በነጋሪት ጋዜጣ ታትሞ የወጣው ጥር 27 ቀን 2001 ዓ.ም ቢሆንም ከህዳር 5 ቀን 2001 ዓ.ም ጀምሮ የፀና ይሆናል ተብሎ ተደንግጓል።

ሚያዝያ 6 ቀን 2001 ዓ.ም መልስ ሰጪው በባፈልኝ ደብዳቤ በአዋጁ አንቀጽ 8(3) እና 14(3) አንድ የምርት ዘመን ለሚለው በሰጠው ትርጉም ለታጠበ ቡና ከህዳር 1 ቀን 2001 ዓ.ም እስከ ጥቅምት 30 ቀን 2002 ዓ.ም ሲሆን ለደረቅ ቡና ደግሞ ከየካቲት 1 ቀን 2001 እስከ ጥር 30 ቀን 2002 ዓ.ም መሆኑን አረጋግጧል። የሁለቱም አይነት ቡናዎች የምርት ዘመን የሚጀምረው አዋጅ ቁጥር 602/2000 ከነሐሴ 19 ቀን 2000 ዓ.ም ሥራ ላይ ከዋለ በጎሳ ነው። ደንቡም ከህዳር 5 ቀን 2001 ዓ.ም ጀምሮ ሥራ ላይ እንዲውል በህግ አውጪው የተወሰነ በመሆኑ ሁለቱም ህጎች በሥራ ላይ ከዋሉበት ጊዜ ጀምሮ ያለው የቡና ምርት ዘመን ገና አላበቃም። በመሆኑም መጨረሻ ጥቅምት 30 ቀን 2002 ዓ.ም ከመምጣቱ በፊት ለታጠበ ቡና ጥር 30 ቀን 2002 ዓ.ም ላልታጠበ ቡና ከመድረሱ በፊት ቡናዎቹ ከአንድ የምርት ዘመን በላይ ተከማችታል ለባል የሚችልበት አንዳችም የህግ ምክንያት የለም።

በብቃት ስርተፊኬቱ ላይ የዕግድ ውሳኔ ለመስጠት መልስ ሰጭ በደንቡ ስልጣን ያገኘው ከህዳር 5 ቀን 2001 ዓ.ም ጀምሮ ነው። ሚኒስቴር መስሪያ ቤቱ በደንቡ አንቀጽ 16(1) ሥር የተመለከቱት ጥፋቶች ተፈጽመው ሲገኙ የብቃት ስርተፊኬት የማገድ ስልጣን ያገኘበት ጊዜ እና የታጠበ ቡና



ምርት አመት የሚጀምርበት ህዳር 1 ቀን 2001 ዓ.ም በህግ አውጪው ሆነ ተብሎ እንዲገጣጠሙ ተደርጓል። ህግ አውጪው ደንቡ ጥር 27 ቀን 2001 ዓ.ም በነጋሪት ጋዜጣ ወጥቶ ሲያበቃ ወደ ጎሳ ወስዶ ከምርት ዘመኑ የመጀመሪያ ወር ህዳር ጀምሮ ሥራ ላይ እንዲውል ያደረገው ወደ ፊት ያለውን ጊዜ በሚገባ ለማስተዳደር እንዲቻል በመፈለጉ እና አላስፈላጊ ክርክሮችን ለማስወገድ ሲል ነው።

ደንቡ ሥራ ላይ ከዋለበት ከአሁኑ የምርት አመት ጀምሮ የአንድ አመት ጊዜ ያልተቆጠረ በመሆኑ ሚኒስቴር መስሪያ ቤቱ ከአንድ የምርት ዘመን በላይ ያከማቸኸው ምርት አለ በማለት የብቃት ሰርተፊኬትን ደንቡን መሠረት አድርጎ ሊያግደው አይችልም።

ህጎቹ ከወጡ አመት ሳይሞላቸው በእነሱ መሠረት ለአንድ የምርት ዘመን ልትሸጥ የሚገባህን ቡና ሳትሸጥ አከማችተህ ይዘኸል በማለት የብቃት ሰርተፊኬትን ማግዳት እና ቡናዬን መረከቡ አዋጁን እና ደንቡን ያልተከተለ ህገ ወጥ እርምጃ ስለሆነ የተከበረው ፍ/ቤት ሊያርመው ይገባል።

**2. መልስ ሰጪ በደንብ አንቀጽ 16(1) የተደነገጉት ጥፋቶች መፈጸማቸውን ሳያረጋግጥ የዕግድ ውሳኔ የሰጠ ስለመሆኑ፡-**

በደንቡ አንቀጽ 16(1) እንደተመለከተው የብቃት ማረጋገጫ ሰርተፊኬት ከመታገዱ በፊት በንኡስ አንቀጽ ፊደል ሀ እና ለ የተመለከቱት ጥፋቶች መፈጸማቸው በቅድሚያ ሊረጋገጥ ይገባል። አዋጁ ወይም ደንቡ እና ሌሎች መመሪያዎች መጣስ አለመጣሳቸውን ለማረጋገጥ ሚኒስቴር መሥሪያ ቤቱ በማናቸውም ጊዜ የማንኛውንም በቡና ሥራ ላይ የተሰማራ ሰው ፋሲሊቲዎች መጎብኘት እና ማብራሪያ መጠየቅ መብት በደንቡ ተሰጥቶታል።

ይኸ ሁሉ ስልጣን የተሰጠው ሚኒስቴር መስሪያ ቤት ግን ጥፋቶች መፈጸማቸውን አጣርቼአለሁ ያለው የዕግድን ትእዛዝ ከሰጠ በኋላ ነው። መጋቢት 15 ቀን 2001 ዓ.ም በተፃፈው ደብዳቤ ፍቃዴን አግዶ ሚያዝያ 6 ቀን 2001 ዓ.ም በተፃፈ ደብዳቤ የሚኒስቴር መስሪያ ቤቱ የብቃት ሰርተፊኬትን ካገደ በኋላ ያጣራ መሆኑን በማረጋገጥ ደብዳቤ ጽፎልኛል። ይኸ የሚያረጋግጠው ተከላኸ በደንቡ አንቀጽ 16(1) የተጣለበትን አዋጁን ወይም የደንቡን መጣስ የማረጋገጥ ግዴታውን ያልተወጣ መሆኑን ነው።

መልስ ሰጪ ጥፋቶቹን አረጋግጦ ቢሆን ኖሮ ያልተፈጸመውን ኮንትራት በግልጽ በቀን እና በተዋዋይ ወገኖች ስም በመግለጽ፣ ስንት ኪሎ ግራም ቡና ከአንድ የምርት ዘመን በላይ በክምችት እንደተያዘ እና ምን ያህል ኪሎ ግራም ቡና እንደሰወርኩ ገልጾ የዕግድን ትእዛዝ በሰጠ ነበር። ይኸ ባለመሆኑ ግን ከተቋቋመ ዓመት ካልሞላው ከኢትዮጵያ ምርት ገበያ ማዕከል ተገዝተው እጅ ያልደረሱ፣ ውል ተገብቶላቸው ኤል.ሲ በገዢው ተከፍቶላቸው ወደ ወደብ ለመጓጓዣ በዝግጅት ላይ ያሉ እና የኤል.ሲን መክፈት የሚጠበቁ ቡናዎች እንዲሁም መልስ ሰጪ በመጋዘኔ የሚገኙትን ቡናዎች ቆጠራ ካደረገበት ጥር 8 ቀን 2001 ዓ.ም በኋላ ብቻ ከኢትዮጵያ ምርት ገበያ ማዕከል 4,580,595.65 ኪሎ ግራም ቡና መግዛቴን እያወቀ በየመጋዘኑ በኔ ስም ያገኛቸውን ቡናዎች መቼ እንደተገዙና በባለሞያ የከረሙ መሆናቸውን ሳያረጋግጥና ለውጭ ገበያ መሸጣቸውን የሚያውቀውን ጨምሮ 4,265,371 ኪ.ግ አክርመህል ብሎኛል።

መልስ ሰጪ በዚህ ተግባር እርምጃውን ወስጄበታለሁ ያለውን አንቀጽ 16(1) ድንጋጌ የጣስ ስለሆነ የተከበረው ፍ/ቤት ውሳኔውን ሊሸርልኝ ይገባል።

**3. አዋጁ እና ደንቡን የሚጥስ አንዳችም ተግባር ሳልፈጸም የብቃት ሰርተፊኬት መታገዱ አዋጁን እና ደንቡን የጣስ ስለመሆኑ፡-**

የግብርናና ገጠር ልማት ሚኒስቴር ከኢትዮጵያ ምርት ገበያ ማዕከል ከተገዛ ቡና ውስጥ 20 በመቶው ተረፈ ምርት ተደርጎ የሚወሰድ ለመሆኑ በሥራ ላይ ያዋለው አሰራር ያስገነዝባል። በዚህም መሠረት ለውጪ ገበያ የሚውለው ቡና ከገዛው ቡና 80 በመቶው ብቻ ነው።

በዚህ ሁኔታ የተዘጋጀው ቡና የውጪ ገበያ ሲያገኝ ውሉ በተፈረመ በ24 ሰዓት ውስጥ ለብሔራዊ ባንክ ይቀርባል በ15 ቀን ውስጥ ደግሞ ለመልስ ሰጪ ቀርቦ ይረጋገጣል። ገዢው ለቡናው ክፍያውን በባንክ በኩል ስለሚፈጽም ኤል.ሲ ከፍቶ ለሐገር ውስጥ ባንክ ይከመንቱ ሲደርስ ቡናው በብሔራዊ ባንክ እና በሚኒስቴሩ ፍቃድ ወደ ወደብ ይጓጓዛል። ሚኒስቴር መስሪያ ቤቱም እኛ

3  
20  


ለምናቀርበው ሪፖርት በተጨማሪ የገዛነውን ቡና ለታለመለት አላማ ማዋላችንን ለማረጋገጥ ቆጠራ ያደርጋል። ስምሳሌም ጥር 8 ቀን 2001 ዓ.ም የቡና ቆጠራ ተደርጎ ነበር።

ከኢትዮጵያ ምርት ገበያ በጨረታ ገዢዎች የሰወርኩት ቡና መጠን ሳይገለጥ በተደጋጋሚ ቡና ሰውረሀል መባሌ እጅግ አሳዝኖኛል።

እንደሚታወቀው የአለም የቡና ገበያ በተለያዩ አለማቀፋዊ ምክንያቶች ስለሚለዋወጥ ከይግባኝ ባይ ቡናውን ወደ ውጪ ለመላክ ቡና ሳይኖረኝ ውል አልገባም። ቡና ኤክስፖርት ለማድረግ ውል ገብቼ ገዢው በባንክ በኩል ክፍያ ለመፈፀም የኤል.ሲ ዶክመንቶችን ልኮ እኔ ቡናውን መላክ ባለመቻሌ ወይም ባለመፈለጌ ሐገሪቱ ያጣችው አንዳችም የውጪ ምንዛሪ የለም። የኢትዮጵያ መንግስትም የደረሰው አንዳችም ወቀሳ የለም በውጪ አገርም የቀረበብኝ ክስ የለም። በዚህ ሁኔታ ያልፈፀምኩ ኮንትራት አለ በደፈናው መባሉ ተገቢ አይደለም።

አዋጅ ቁጥር 602/2000 እና ደንብ ቁጥር 161/2001 ለአንድ የምርት አመት ቡና ማቆየት የተፈቀደ መሆኑን ደንገገዋል። ይግባኝ ባይ ከህዳር 5 ቀን 2001 ዓ.ም የብቃት ሰርተፊኬት እስከ ታገደበት መጋቢት 15 ቀን 2001 ዓ.ም ድረስ 5,658.994.25 ኪሎ ግራም ቡና ከኢትዮጵያ ምርት ገበያ ማዕከል ገዢዎች አለሁ። ለዚህ ቡና ግዢም በአዋሽ እና የኢትዮጵያ ንግድ ባንክ በኩል ከኔ አካውንት ወደ ኢትዮጵያ ምርት ገበያ ማእከል አካውንት ገቢ ሆኖ ለተገዛው ቡና የተከፈለው ብር 120,914,193.37 (አንድ መቶ ሃያ ሚሊዮን ዘጠኝ መቶ አስራ አራት ሺህ አንድ መቶ ዘጠና ሶስት ብር ከሰላሳ ሰባት ሳንቲም) ነው። መልስ ሰጪው በመጋዘን ተከማቻ አገኘሁት ያለው የቡና መጠን በሶስት ወር ተኩል ጊዜ ውስጥ ከኢትዮጵያ ምርት ገበያ ማእከል ከገዛሁት ቡና በ1,393,623.25 ኪሎ ግራም ያንሳል። ይኸም ማለት እንኳንስ ከአለፈው የምርት ዘመን የተሸጋገረ ቡና ሊኖረኝ ይቅርና በሶስት ወር ጊዜ ውስጥ ከገዛሁት ቡና ላይ 1,393,623.25 ኪሎ ግራም ቡና ወደ ውጭ ልኬያለሁ ማለት ነው።

በሌላ በኩል በመጋዘን ውስጥ መልስ ሰጪ ተረክቤአለሁ ካለኝ ቡና ውስጥ ኤል.ሲ ተከፍቶለት በመጫን ሂደት ላይ ያለ 1,224,000 ኪሎ ግራም እንዲሁም ውል ተፈርሞለት ውሉ በብሔራዊ ባንክ እና መልስ ሰጪ ተቀባይነት አግኝቶ የገዢውን ኤል.ሲ መክፈት የሚጠበቅ 1,396,800 ኪ.ግ ቡና ተሸጦ ሲያበቃ መልስ ሰጪ መሸጡን እያወቀ አልተሸጠም ብሏል።

ያልተሸጠውም ቡና ቢሆን የአገዳው ውሳኔ በተሰጠበት ወቅት ገና ተገዝቶ አራት ወር ያልሞላው ከመሆኑም በላይ ለሐገር ውስጥ ገበያ የሚውል 173,287 ኪ.ግ በኢትዮጵያ ምርት ገበያ ማእከል ለገበያ ቀርቦ ይገኛል። እነዚህ ሁሉ የቡናውን ታሪክ የሚያስረዱ ማስረጃዎች በ መልስ ሰጪ እጅ ይገኛሉ። መልስ ሰጪው ከኢትዮጵያ ምርት ገበያ ማዕከል ተገዝተው ያልተረከብናቸውን እና በመንግስት የማዘጋጃ ተቋም በዝግጅት ላይ የሚገኙትን ቡናዎች ጭምር አክርመራል ማለቱ የአዋጅ ቁጥር 602/2000ን አንቀፅ 8(3) እና 14(3) እና ደንብ ቁጥር 161/2001 የጣስ ነው። ስለሆነም የተከበረው ፍ/ቤት ሊያርመው ይገባል።

**4. መልስ ሰጪ የደንቡን አንቀፅ 16(1) በመጣስ አሉ ያላቸውን ጉድለቶች እንዳርም ተገቢ የሆነ ጊዜ ያልሰጠኝ ስለመሆኑ፡-**

ከፍ ሲል እንደተብራራው ይግባኝ ባይ የብቃት ሰርተፊኬትን ለማሳገድ የሚያበቃ ጥፋት አላጠፋሁም እንጂ አጥፍተሁም የምባል ቢሆን እንኳን ሚኒስቴር መስሪያ ቤቱ ተፈጽመዋል ያላቸውን ጉድለቶች በግልጽ ለይቶ በማሳየት ተገቢ በሆነ ጊዜ ውስጥ እንዳርም ከማስገንዘብ ጋር ነው ፍቃዴን ሊያግድ የሚችለው።

መጋቢት 15 ቀን 2001 ዓ.ም በተፈጸመው እና የብቃት ሰርተፊኬትን ያገደው ደብዳቤ የትኛውን ኮንትራት እንዳልፈፀኩ፣ ምን ያህል ቡና እንዳከረምኩ፣ ምን ያህል ሰውጪ ገበያ የሚውል ቡና እንደሰወርኩ በመግለጽ እነዚህን ጥፋቶች እንዳርም ጊዜ ሊሰጠኝ ሰጋገደው አላደረገም። የመታረሚያ ጊዜ የመስጠት እና ያለመስጠት መብት ለመልስ ሰጪው የተሰጠ ሳይሆን አንድን የብቃት ሰርተፊኬት ለማገድ ከሚሰጥ ውሳኔ ጋር አብሮ የግዴታ ሊሰጥ የሚገባው ነው። የተሰጠውን እድል ያልጠቀመ ነጋዴ በአንቀፅ 16(2) መሠረት የብቃት ማረጋገጫ ብቃቱ ይሰረዝበታል።



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ሚኒስቴር መስሪያ ቤቱ በደንቡ አስገዳጅ በሆነ ሁኔታ የመታረሚያ ጊዜ መስጠት ሲገባው አለመስጠቱ የደንቡን አንቀጽ 16(1) የሚፃረር ነው።

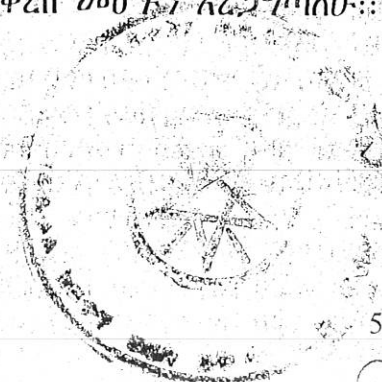
ሚኒስቴር መስሪያ ቤቱ ፈጽመሀል ያላችን ጥፋት እንዳርም ጊዜ በመስጠት እራሱን ማረም አለማረማን መቆጣጠር ይገባል። በዚህ መወሰን ሲገባው ደንቡን በመጣስ ቡናዬን ለመረከብ በመወሰን ሚያዚያ 6 ቀን 2001 ዓ.ም ተረክቦኛል።

በአጭሩ ጥፋት መፈፀሙን አረጋግጦ የብቃት ሰርተፊኬትን ሲያግድ ተፈጽመዋል ያላቸውን ጥፋቶች ዘርዘሮ በቂ ጊዜ ሰጥቶኝ ስህተቶቼን እንዳርም ማድረግ ሲገባው አላደረገም እንዲሁም በእግዱ እና የመታረሚያ ጊዜ በመስጠት መታቀብ ሲገባው ቡናዬን የመረከብ እርምጃ መውሰዱ የደንቡን አንቀጽ 16 የጣሰ ስለሆነ ሊታረም ይገባል።

**የይግባኝ ባይ የዳኝነት ጥያቄ**

1. መልስ ሰጪው ለወሰነው ውሳኔ መሠረት ያደረገው ደንብ ቁጥር 161/2001 ተግባራዊ የሆነው የዚህ አመት የምርት ዘመን በጀመረበት ከህዳር 5 ቀን 2001 ዓ.ም ጀምሮ መሆኑ እየታወቀ ደንቡን ከህግ ውጪ ወደኋላ (retroactively) ተፈጻሚ መደረጉ መሠረታዊ የሆነ ስህተት ነው እንዲባልልኝ፤
2. መልስ ሰጪው በደንቡ አንቀጽ 16(1) መሠረት እርምጃ ከመውሰዱ በፊት ጥፋት መፈፀሙን አስቀድሞ ማረጋገጥ ሲገባው ሳያረጋግጥ የብቃት ማረጋገጫ ፍቃዴን አግዶ ወደ ማጣራት ገብቷል እንዲሁም እራሱ ባረጋገጠው ውል የተሸጡ ቡናዎችን ጭምር የከረሙ ናቸው በማለት ፈቃዴን ማገዱ ደንቡን የጣሰ ውሳኔ ነው እንዲባልልኝ፤
3. ይግባኝ ባይ ከ 120,000,000 (አንድ መቶ ሃያ ሚሊዮን ብር) በላይ በማውጣት ከህዳር 5 ቀን 2001 እስከ መጋቢት 2001 ዓ.ም ድረስ የገዛሁት ቡና መልስ ሰጪው በመጋዘኖች ውስጥ የከረመ ሆኖ አግኝቼዋለሁ ካለው ቡና በሁለት ሚሊዮን ኪሎ ግራም የላቀ መጠን ያለው ሆኖ እያለ፤ በመጋዘን ውስጥ ያለው ቡና ግማሹ ተሸጦ ኤል.ሲ የተከፈለተለት፤ ሌላው ተሸጦ የኤል.ሲ መከፈትን የሚጠበቅ መሆኑን መልስ ሰጪ እያወቀ እንዲሁም ጥር 8 ቀን 2001 ዓ.ም በተደረገ ቆጠራ የሰወርኩት ቡና አለመኖሩ ተረጋግጦ እያለ የከረመ ቡና ይዘሀልና ለውጭ ገበያ የሚውል ቡና ሰውረሃል ሲል የብቃት ሰርተፊኬትን ማገዱ የአዋጁን አንቀጽ 8(3)፣ 14(3) እና የደንቡን አንቀጽ 16(1) የጣሰ ነው እንዲባልልኝ፤
4. የእግዱን ትእዛዝ መስጠት የሚያስችል ሕጋዊ ምክንያት የለም እንጂ አለ ቢባል እንኳ በደንቡ አንቀጽ 16(1) መሠረት ፈጽመሀል የተባልኩትን ጥፋቶች ለማረም እንድችል በቂ ጊዜ ሊሰጠኝ ሲገባ አለመስጠቱ፤ እርምጃውም በማገዱ እና የመታረሚያ ጊዜ በመስጠት ብቻ ሊወሰን ሲገባው ቡናዬን መረከቡ መልስ ሰጪው ደንቡን በመጣስ የወሰነው ውሳኔ ስለሆነ እንዲሻርልኝ፤
5. በአጠቃላይ በመልስ ሰጪ የተሰጠው የዕገድ እና ቡና መረከብ ውሳኔ የተከበረው ፍ/ቤት ህገ ወጥ ነው በማለት እንዲሻርልኝ በማክበር እጠይቃለሁ።
6. በዚህ ክስ ምክንያት ከይግባኝ ባይ ያወጣሁት ወጪ መልስ ሰጪ እንዲተካልኝ እንዲወስንልኝ እጠይቃለሁ።

ይግባኝ በእውነት የቀረበ መሆኑን አረጋግጣለሁ።



የይግባኝ ባይ ጠበቃ  
ቸርነት/ወርዶፋ



ለፌዴራል ከፍተኛ ፍ/ቤት  
6ኛ ይግባኝ ሰሚ ችሎት  
አዲስ አበባ

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ  
የጥገናና ጥገና ልማት ግብር  
The Federal Democratic Republic of Ethiopia  
Ministry of Agriculture and Rural Development

የመ/ቁ. 81081

ይግባኝ ባይ ... .. ኤስ.ሳራ. ቡና ላኪ ድርጅት/ወ/ሮ ሳራ ይመር/  
መልስ ሰጪ ... .. ግብርናና ገጠር ልማት ሚ/ር

ጉዳይ፣ ይግባኝ ባይ በ4/9/2001 ዓ.ም ላቀረበው የይግባኝ አቤቱታ በፍ/ሥ/ሥ/ሕ/ቁጥር  
234 መሠረት የቀረበ መልስ ነው።

1. የይግባኝ ባይ አቤቱታ ባጭሩ

ይግባኝ ባይ በይግባኝ ማመልከቻቸው የክርክሩ አመጣጥ በሚል ርዕስ ሥር  
ያቀረቡት የፍሬ ነገር ጥያቄ ይዘት የአሁኑ መልስ ሠጪ በ15/7/2001 ዓ.ም  
ያስተላለፋቸውን ይግባኝ ባይ በወቅቱ ውል ያለመፈጸማቸው ፣ የምርት ዘመኑ  
ያሰፈሩት የምርት ክምችት በመያዝና ተረፈ ምርት አስማችተው በመገኘታቸው  
ለኤክስፖርት የሚመጥን ቡና በተደጋጋሚ በመሠወራቸው የብቃት ማረጋገጫ  
የምስክር ወረቀታቸው መታገድና በ15/7/2001 ዓ.ም በተጻፈ ደብዳቤ በአጠቃላይ  
4265371 ኪ.ግ ቡና የመረከበ ውሳኔን በመቃወም የቀረበ አቤቱታ ነው።

2. የመጀመሪያ ደረጃ መቃወሚያ

ይግባኝ ባይ አቤቱታቸውን ለክቡር ፍ/ቤቱ ያቀረቡት ግንቦት 4 ቀን 2001 ዓ.ም  
ነው።  
የተከበረው ፍ/ቤት ለመልስ ሰጪ የጽሁፍ መልስ ለሰኔ 30 ቀን 2001 ዓ.ም ይዘን  
እንደንቀርብ ያዘዘው ሰኔ 15 ቀን 2001 ዓ.ም በተጻፈ ደብዳቤ ሸኘነት ነው።  
በተ.ቁ 2.2 የተጠቀሰው ትዕዛዝ ለመልስ ሰጪ የደረሰው ሰኔ 18 ቀን 2001 ዓ.ም  
ነው።  
ከዚህ መረዳት የቻልነው የይግባኝ አቤቱታው ለተከበረው ፍ/ቤት ከቀረበበት  
ለመልስ ሰጪ እንዲላክ እስካዘዘበት ጊዜ ድረስ ለአንድ ወር ከአሥራ አንድ ቀናት  
ወይም ለ41 ቀናት ያህል መቆየቱን ነው። ይህ ሁኔታ ደግሞ ይግባኝ ባይ  
አቤቱታ ያቀረቡበት የአሁኑ መልስ ሰጪ መጋቢት 15 ቀን 2001 ዓ.ም በተጻፈ  
ደብዳቤ ያስተላለፈው የብቃት ማረጋገጫ የምስክር ወረቀት የመታገድ ውሳኔ  
በደንብ ቁጥር 159 አንቀጽ 16/3/መሠረት የብቃት ማረጋገጫ የምስክር ወረቀት  
የታገደበት በሕግ ጉዳይ ላይ ወሳኔው ከደረሰው ቀን ጀምሮ ባሉት 60 ቀናት  
ውስጥ ይግባኝ ማቅረብ እንደሚቻል የሚደነገገውን አንቀጽ ፣ የአሁኑ መልስ  
ሰጪ ሚያዚያ 6 ቀን 2001 ዓ.ም ያስተላለፈው የይግባኝ አቤቱታ የቀረበበት  
ውሳኔ ደግሞ በደንብ አንቀጽ 22/1/ መሠረት ለሚኒስቴር መ/ቤቱ ወይም አግባብ  
ላለው አካል ተቋውሞ ማቅረብ የሚችል መሆኑን ይደነገጋል። ይግባኝ ባይ  
ይህንንም አላደረጉም። ለማድረጋቸውም አላስረዱም። ይህን ሥነ- ሥርዓት  
ሳይፈጽሙ። ወይም ሳያስረዱ ደግሞ ይግባኝ መጠየቅ አይችሉም። ይግባኝ  
መጠየቅ ይችላሉ ቢባል እንኳን የደንብ አንቀጽ 22/3/ ውሳኔው በደረሰው በ30  
ቀናት ውስጥ ይግባኝን እንደአግባቡ ለፌዴራል ወይም ለክልሉ ፍ/ቤት ማቅረብ  
እንደሚችል ይደነገጋል። ስለዚህ ይግባኝ ባይ ያመለከቱበት ቀን ለመልስ ሰጪ  
እንዲደርስ በክቡር ፍ/ቤት የታዘዘበት ቀን ሲነጻጸር ይግባኝ ቅሬታቸው በይርጋ  
መታገዱ ታወቆ ሆን ተብሎ በይርጋ እንዳይታገዱ የፈጸሙት የተቀነባበረ ድርጊት  
ያስመስለዋል።

*[Handwritten signature]*



በዚህ ዓይነት ሁኔታ የሚመለስ ከሆነ ደግሞ ለዚህ መልስ መነሻ የሆነው የይግባኝ አቤቱታ በፍ/ቤቱ ትዕዛዝ የተመለሰ በመሆኑ ተደጋጋሚ የሰነ-ስርዓት ግድፈት መፈፀም የክቡር ፍ/ቤቱን ጊዜ የሚያባክን በመሆኑ ተገቢው ቋጭ እንዲወሰን

4. ለቀረበው የይግባኝ አቤቱታ የመልስ ሠጪ መልሶች

4.1 ይግባኝ ባይ የይግባኝ አቤቱታቸው ማስረጃ ማቅረብ የማያስፈልጋቸው የህግ ጥያቄዎች ናቸው የሚባል ከሆነ የአሁኑ መልስ ሠጪ ሚያዝያ 6 ቀን 2001 ዓ.ም ለይግባኝ ባይ ውሳኔውን ባሳወቀበት ደብዳቤ አዋጅን፣ የማስፈፀሚያ ደንብንና የአፈፀፀም መመሪያውን ተላልፈው በመገኘታቸው መጋዘናቸው እንዲታሸግና የንግድ ሥራ ፍቃዳቸው እንዲታገድ ተደርጎ የማጣራት ሥራ ሲከናወን መቆየቱንና በውሳኔው ተ.ቁ 1 እና 2 የተገለፀው የምርት ዘመኑ ያለፈበት ቡና ይዘው መገኘታቸው ሲሆን ይህን ውሳኔ እንዲሻር ሲጠይቁ ደግሞ የክርክሩ አመጣጥ በሚል ርዕስ ሥር «የምርት ዘመኑ ያለፈበት ቡና ሊይዙ ይቅርና ከህዳር 5 ቀን 2001 ዓ.ም እስከ መጋቢት 20 ቀን 2001 ዓ.ም ድረስ 5 665 984 .25 ኪ.ግ ቡና ከኢትዮጵያ ምርት ገበያ መግዛታቸውን የገለፁት እና በማስረጃ ዝርዝራቸው ተ.ቁ 4፣ 5 እና 6 ያስረዳልኛል ያሉት የምርት ዘመን ያለፈበት ቡናና የተሠወረ ቡና ያለመኖሩን ነው። በቅድሚያ እነዚህ ማስረጃዎች ሊመሠረቱ የፈለጉት ጭብጥ የከረሙ ቡና አለመኖሩን ሊያሳይ የሚችል አይደለም። በዚህ ጉዳይ ላይ በማስረጃ ደግፈው ሊያቀርቡ ይገባ የነበረው በውሳኔው ተ.ቁ 1 እና 2 የተገለፀው ቡና የምርት ዘመኑ ያለፈበት ያለመሆኑን የሚያስረዳ ባለመሆኑ ሙሉ ለሙሉ ጥያቄያቸው ውድቅ ሊሆን ይገባል ይግባኝ ባይ የምርት ዘመኑ ያለፈበት ቡና ይዘው ስለመገኘታቸው ይህን ለማረጋገጥ በአዋጁ፣ በደንቡና በመመሪያው ስልጣን የተሠጣቸው አካላት የግብርና ግብይት ዳይሬክቶሬት የሱና ግብይት ዳይሬክቶሬቱ ያረጋገጡበት ስታስተካዊ ዳታ እና የቡና ጥራትና ጣዕም ምርመራ ማዕከል በወካይ ናሙና አማካኝነት የምርት ዘመኑ ያለፈበት ቡና ይዘው ለመገኘታቸው ተረጋግጧል። ይህንንም የሚያስረዳ፡- በማስረጃ ዝርዝር ተ.ቁጥር 3 የተገለፀው የቡና ጥራትና ጣዕም ማዕከል የከረሙ ቡና ይዘው መገኘታቸውን ያረጋገጠበት በአባሪነት ተያይዞ ይገኛል። የምርት ዘመኑ ያለፈበት ቡና ይዘው ስለመገኘታቸው የሚያስረዳ ማስረጃ ኦርጅናል በፌዴራል ፖሊስ ወንጀል ምርመራ መምሪያ የሚገኝ በመሆኑ እንዲቀርብ በክቡር ፍ/ቤቱ እንዲታዘዝልን ለመምሪያው መተላለፉን የሚያስረዳ በማስረጃ ዝርዝር ተ.ቁጥር 4 የተገለፀው በአባሪነት ተያይዟል። በማስረጃ ዝርዝር ከተመለከቱት ከዚህ በተጨማሪም ጉዳዩ የሚመለከታቸው የግብርና ግብይት ዳይሬክቶሬት እና የቡና ጥራትና ጣዕም ቁጥጥር ማዕከል ኃላፊዎችና ልዩ ሞያተኞች ቀርበው የልዩ ባለሞያ ምስክርነት እንዲሰጡ ክቡር ፍ/ቤቱን እንጠይቃለን።

መጋቢት 15 ቀን 2001 ዓ.ም እና ሚያዝያ 6 ቀን 2001 ዓ.ም የአሁኑ መልስ ሰጪ ያስተላለፋቸው ውሳኔዎች በማስረጃ ዝርዝር 1 እና 2 የተገለፀው በአባሪነት ተያይዞ ይገኛል።

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ይግባኝን ባይ በይግባኝ ማመልከቻቸው የክርክሩ አመጣጥ በሚል ርዕስ ሥር ለኢክስፖርት የሚመጥን ቡና ከጨረታ ማዕከል ገዝተው በመሠወር ተደጋጋሚ ጥፋት አጥፍተዋል የመባላቸው አግባብነትን በመቃወሚያ ያነሱት የአሁኑ መልስ ሰጪ በ15/7/2001 በአድራሻቸው በተጻፈ የብቃት ማረጋገጫ የም/ወረቀት ዕገዳ ምክንያት አንዱ የሆነውን በመቃወም የቀረበ ሲሆን በማስረጃ ዝርዝር ተቁ 4 ላይ ያቀረቡት /ማስረጃው ያልቀረበ/ ቡና በቆጠራ ወቅት የተገኘውን ስታስትክስ እንጂ የተሰወረ ቡና ያለመኖሩን አያስረዳም። ይግባኝ ባይ የሠወሩት ቡና ስለመኖሩ የቦና ግብይትን ለማስተዳደር በአዋጅ ሥልጣን የተሠጠው አካል ቡናዎቹን መሠወራቸውን ያረጋግጣል። የስታስትክ ማጠቃለያው በማስረጃ ዝርዝር 5 ቻቹ የተገለፀው በአባሪነት ተያይዞ ይገኛል። በማስረጃ ዝርዝር 4 የተገለፀውና የልዩ ሞያተኛ ምስክርነት ለዚህም ምስክር ይሆኑኛል።

5. የአሁኑ መልስ ሠጪ ሚያዚያ 6 ቀን 2001 በተጻፈ ደብዳቤ ተቁ3 እና 4 ላይ የወሰናቸው ውሳኔዎችን ለመወሰን ያበቃው በ15/7/2001 በተጻፈ ደብዳቤ «የብቃት ማረጋገጫ የምስክር ወረቀት ዕገዳ» ውሳኔ መነሻነት ሲሆን በደንብ አንቀፅ 17/1/ «በዚህ ደንብ አንቀፅ 16 የብቃት ማረጋገጫ የምስክር ወረቀት የታገደበት ----- ይግባኝ እየታየም ቢሆን በቡና ንግድ ሥራ ላይ ማሠማራትን የሚያግድ በመሆኑ ነው። ስለዚህ በዚህ በኩል የቀረቡት የይግባኝ አቤቱ ውድቅ ሊሆን ይገባል።

ስለዚህ ይግባኝ ባይ በይግባኝ ማመልከቻቸው «የክርክሩ አመጣጥ» በሚል ያቀረቡትና የተከበረውን ፍ/ቤት ዳኝነትም የጠየቁበት መሆኑ የህግ ጥያቄ ሳይሆን የፍሬ ነገር ጥያቄ በመሆኑና በማስረጃም ያልተደገፈ ስለሆነና በማስረጃ ዝርዝር ያቀረቡት ማስረጃዎች እንዲቀርቡ ቢደረግ እንኳን ለክርክሩ መንስኤ የሆኑትን የአሁኑ መልስ ሠጪ ውሳኔዎች ህጉን ተከትሎ ያለመፈፀሙን የሚያሳዩ ባለመሆናቸው ማስረጃ የማቅረብ መብታቸው ታልፎ በዚህ ረገድ የቀረበው ይግባኝ አቤቱታቸው ውድቅ ሊደረግ ይገባል።

6. ይግባኝ ባይ "የይግባኝ ባይ ቅሬታዎች" በሚል ርዕስ ሥር የአሁኑ መልስ ሠጪ ውሳኔዎች አዋጅንና ደንቡን የጣሱ በመሆናቸው እንዲሻሩ ሲጠይቁ፤

6.1 በይግባኝ አቤቱታቸው ተቁ 1 የአሁኑ መልስ ሠጪው አዋጅ እና ደንቡ በህግ አውጪው በሥራ ላይ እንዲውሉ ከተወሰነበት ቀን በፊት ወደኋላ በመወሰድ ያለአግባብ ተጠቅሞበታል። ለዚህም ለታጠበ ቡና መጪው ጥቅምት 30 ቀን 2002 ከመምጣቱ በፊት ላልታጠበ ቡና ደግሞ መጪው ጥር 30 ቀን 2002 ከመምጣቱ በፊት ቡናዎቹ ከአንድ የኃገርት ዘመን በላይ ተከማችተዋል ሲባሉ አይችሉም በሚል ያቀረቡት መከሪከሪያን በተመለከተ የአሁኑ መልስ ሰጪ የወሰናቸው አስተዳደራዊ ውሳኔዎች ሕጉ ከወጣ በኋላ ሲሆን በአዋጁ የመሸጋገሪያ ድንጋጌዎች አንቀጽ 18 ይህ ሕግ ተፈጻሚ ሳይሆን የሚችልበት ሁኔታን ደንገገን። በዚህም አዋጅ ከመውጣቱ በፊት በክርክር ላይ ያሉ ጉዳዮችን ብቻ የማይመለከት መሆኑን ደንገገን። የይግባኝ ባይ ጉዳይም ከሕጉ በፊት "በክርክር ላይ ያለ" ባለመሆኑ የሕጉ ድንጋጌዎች ተፈጻሚ ይሆናሉ። ከዚህ በተጨማሪም በደንብ አንቀጽ 25 ደንቡን የሚቃረን ማንኛውም ደንብና መመሪያ በዚህ ደንብ ላይ በተመለከቱ ጉዳዮች ላይ ተፈጻሚነት እንደማይኖረው የደነገገ በመሆኑ ጉዳዩ በዚህ ደንብ መተያቱ አግባብ ነው።

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6.2 ይግባኝ ባይ በይግባኝ ቅሬታቸው ተቁ 1 ላይ የአሁኑ መልስ ሰጪ የዕግድ ወሳኔ ለመስጠት ከሕዳር 5 ቀን 2001 ጀምሮ ሥልጣን ያገኘው የምርት ዘመን ከሚጀምርበት ሕዳር 1 ቀን 2001 ጋር በሕግ አውጪው ሆን ተብሎ እንዲገጣጠም ተደርጓል በሚል የቀረበው ይግባኝ ባይ ስለመንግስት ያላቸውን ደካማ አመለካከት የሚያሳይ ከመሆኑ ውጪ በጭብጥ ለተያዘው ጉዳይ የሚፈይደው የለም። ይልቁንም ሕግ አውጪው ከሕዳር 5 ቀን 2001 ዓ.ም ጀምሮ እንዲጸና ያደረገው የቡና ገበያን የሚያስተዳድረው መ/ቤት ከተቋቋመበት ጋር እንዲጠጣምና ለሌሎችም ለቡና ንግድ ሥራ አመቺ የሆኑ ምክንያቶችን ተከትሎ ነው። በዚህ ጉዳይ ላይ አንድ ከፍተኛ የሕዝብ ኃላፊነቶችን የተሸከመ መንግስት የሚያወጣቸው ሕጎች ግለሰቦችን ለመጉዳት ታልሞ ነው መባሉ አግባብነት የሌለው በመሆኑ ሊታረም የሚገባ ሲሆን ሕግ አውጪው ይህን ያደረገበት ምክንያት ከራሱ ከሕግ አውጪው ጠይቀው መረዳት ይችላሉ። ሕጎቹ ከወጡ ዓመት ሳይሞላቸው የምርት ዘመን ያለፈበት ቡና አካማችተዋል መባላቸውን ሊቃወሙ የፈለጉበት ሁኔታም የሕግ መሠረት የሌለው አባባል ሲሆን የተፈጸመውም አዋጁንና ደንቡን ተከትሎ በመሆኑ ውድቅ ሊሆን ይገባል።

6.3 ይግባኝ ባይ የይግባኝ ቅሬታ በሚል በተቁ 2 ያረቡት የአሁኑ መልስ ሰጪ በደንቡ አንቀጽ 16/1/ የተደነገገ ጥፋቶች መፈጸማቸውን ሳያረጋገጥ የዕግድ ወሳኔ ሰጥተል በሚል ያቀረቡትን በተመለከተ የአዋጁ አንቀጽ 13/5/፤ በደንቡ አንቀጽ 20/3/ እና በመመሪያው አንቀጽ 7.2.1.13 መጋዘኑ እንዲታሸግ ተደርጎ አስፈላጊው ሕጋዊ እርምጃን መውሰድን የሚደነግግ በመሆኑና ከዚህም በተጨማሪ የዕግዱን ትዕዛዝ የሰጠው መልስ ሰጪ ጥፋቶቹ ስለመፈጸሙ አረጋግጦ ነው ይህንንም አውነት በማስረጃ ዝርዝር 3 እና 4 የተገለጸው የሚያስረዳ ሲሆን የተጠቀሱት ልዩ ሞያተኞችም ለክቡር ፍ/ቤቱ ማስረዳት ይችላሉ።

ያልተፈጸመ ኮንትራትን በተመለከተም መፈጸም ሊገባቸው ያለፈጸሙት ውል የለም በማለት ሙሉ ለሙሉ ክደው ይቀረቡ እንጂ ያልፈጸሙት ውል መኖሩን ከሚያረጋግጠው ከብሔራዊ ባንክ የተገኘ መረጃ በጊዜ ዕጥረት በአማርኛ ያልተተረጎመ በግልጽ ያረጋግጣል። /ይህን የሚያስረዱ በማስረጃ ዝርዝር ተቁ 5 የተገለጸው በአባሪነት ተያይዞ ይገኛል። የምርት ዘመኑ ያለፈበት ቡናንም በተመለከተ በባለሞያዎች አልተረጋገጠም ለማለት የሞከሩትንና በዚህ ቁጥር ውስጥ የተገለጹትን ይግባኝ ባይ ከሚሉት በስተቀር በማስረጃም የተደገፈ አይደለም እንደ ህግ ጥያቄም ሊነሳ የሚገባው ጉዳይም አይደለም። ሆኖም ግን ቡናዎቹ ጉዳዩ በሚመለከታቸው ጥራትና ጣዕም ማዕከል ባለሞያዎችና የግብርና ግብይት ዳይሬክቶሬት ባለሞያዎች በጣዕም ምርመራና በስታስቲክስ ያረጋገጡ በመሆኑ ቅሬታቸው ተቁ 2 ያቀረቡት ሙሉ ለሙሉ ውድቅ ሊሆን ይገባል። ይህንን አውነት በማስረጃ ዝርዝር ተቁጥር 3 የተገለጸው ያስረዳል። በልዩ ሞያተኛ ምስክርነትም ሊረጋገጥ የሚችል ነው።

6.4 ይግባኝ ባይ በይግባኝ ቅሬታቸው ተቁ3 ላይ ያቀረቡት እና የሠወኩት ቡና መጠን ሳይገለጥ ያሉት የመጠን ጥያቄ እንጂ የሠወሩት ቡና እንዳለ ማመናቸውን በግልፅ ያሳያል። በዚህ ጉዳይ ላይ ሊነሳ የሚችለው የመጠን ጥያቄ ሳይሆን የአሁኑ መልስ ሰጪ የወሰናቸው አስተዳደራዊ ወሳኔዎችን ለመወሰን የሚያበቃው ቡና የመሠወራቸው ጉዳይ ስለሆነ አቤቱታቸው ውድቅ ሊሆን

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ይገባል። የሰውነት ቡናን እና የቡናውን መጠን የሚያሳይ ማስረጃ በማስረጃ ዝርዝር ተቁጥሮ 6 የተገለጸው በአባሪነት ተያይዟል። በዚህ ነጥብ ሥር የገለጸት ቡናውን ወደ ወጪ ሀገር ለመላክ ቡና ሳይኖረኝ ውል አልገባም ያሉት የህግ መሠረት የሌለው ነው። ቡናው የሌላቸው ስለመሆኑም በማስረጃ ደገፈው ያላረጋገጡ ስለሆነ ለመመለስ እንቸገራለን። ሆኖም ግን ይግባኝ ባይና መሠሎቻቸው የቡና ዋጋ ሊጨምር ይችላል በሚል ማክረማቸው የዘንድሮ የቡና ኤክስፖርት ገቢ ከአምናው ጋር ሲተያይ እስከ 25% ቅናሽ ማሳየቱን የንግድና ኢንዱስትሪ ሚኒስትር ክቡር አቶ ግርማ ብሩ የዘጠኝ ወር ሪፖርት ለንግድና ኢንዱስትሪ ጉዳዮች ቋሚ ኮሚቴ ያቀረቡ ሲሆን ክቡር የኢ.ፌ.ዴ.ሪ ጠቅላይ ሚኒስትርም በተለያዩ ጊዜያቶች በብዙሃን መገናኛ የሃገሪቱን የኤክስፖርት ቡናና በአጠቃላይም የሃገሪቱን ኢኮኖሚ የሚጎዳ መሆኑን አስታውቀዋል። ይህ ደግሞ በይፋ የሚታወቅ እውነት ተደርጎ ሊታይ የሚችል በመሆኑ ሃገሪቱ ያጣቸው የውጪ ምንዛሬ የለም መባሉ አግባብነት ስለሌለው ውድቅ ሊሆን ይገባል። ከዚህ በተጨማሪም ጉዳዩ በሚመለከተው ባለስልጣን የተነገረ እውነት ነው። (ማሳሪያ 7)

\* የኢ.ፌ.ዴ.ሪ ጠቅላይ ሚ/ር ክቡር አቶ መለስ ዜናዊና የኢ.ፌ.ዴ.ሪ ም/ሚኒስትር ክቡር አቶ አዲሱ ለገሰ እንዲሁም ጉዳዩ የሚመለከታቸው የግብርናና ገጠር ልማት ሚ/ር ዲኤታ ይግባኝ ባይን ጨምሮ በመሰብሰብ የቡና ላኪዎች የኤክስፖርት ቡናን ከመሠወር ጀምሮ የሚያደርጉት ህጉን ያልጠበቀ አሰራር ያደረሰውን የኢኮኖሚ ተፅዕኖ በተመለከተ ለስብሰባዎች የመከሩበትና እርምጃ እንዲያደርጉ አስጠንቅቀዋል። ይህ እውነትን የሚያስረዳ በማስረጃ ዝርዝር ተቁጥሮ 8 የገለጸው በፍ/ቤት ትዕዛዝ መልስ ሰጪ ሊያቀረብ ይችላል። ሆኖም ጉዳዩ በባለስልጣን የነገረና በአ/ሠቡ በስፋት የሚታወቅ በመሆኑም ፍ/ቤቱ ሊቀበለው ይገባል።

\* በዚህ ነጥብ ስር ይግባኝ ባይ የአሁኑ መልስ ሰጪ ተረክቤያለሁ ካለኝ ቡና ውስጥ ተሸጦ ሲያበቃ የአሁኑ መልስ ሠጪ መሸጡን እያወቀ አልተሸጠም ብሎኛል በሚል ያቀረቡት ለዚህ ክርክር መነሻ የሆነው የአስተዳደር ውሳኔ ውስጥ አልተሸጠም የሚል ሳይሆን የምርት ዘመን ያለፈበት ቡና ይዘው መገኘታቸውና ሌላም ይግባኝ ባይ የክርክሩ አመጣጥ በሚል ርዕስ ሥር የተቀመጡ እና በአስተዳደራዊ ውሳኔዎቹ የተገለጹት ምክንያቶች ናቸው። ይህ ደግሞ ከአስተዳደራዊ ውሳኔው ጭብጥ ውጪ አዲስ የተፈበረከ አባባል በመሆኑ ተቀባይነት የለውም። በሚያዚያ 6 ቀን 2001 ዓ.ም የአሁኑ መልስ ሠጪ በተቁ1 እና 2 ላይ የወሰናቸው ውሳኔዎችን ለመቃወም የቀረበ ኃሳብ ከሆነ ከዚህ ርዕስ በፊት ባሉት መልሶች በሚገባ ተገልጻል።

\* ይግባኝ ባይ በይግባኝ አቤቱታቸው በዚህ ተቁ ሥርዓቱ ያቀረባቸው ገና ተገዝቶ 4 ወር ያልሞላው መሆኑንና ለሀገር ውስጥ ገበያ የሚውል በሚልና ከኢትዮጵያ ምርት ገበያ ተገዝተው ያልተረከባቸው ቡናዎችን በተመለከተ ከዚህ ርዕስ በፊት ባሉት ገጾች የተብራራው ለዚህ ነጥብ በመልስነት ያገለግላል። ሌላው «እንዚህ ሁሉ የቡናውን ታሪክ የሚያስረዳ ማስረጃዎች በመልስ ሰጪ እጅ ይገኛሉ» በሚል ያቀረቡት ጉዳዩን ያስረዳልኛል ያሉትን ማስረጃዎች የማቅረብ ኃላፊነት የራሳቸው እንጂ መልስ ሰጪ እጅ ይገኛል ማለት ብቻ ማስረጃ እንዳቀረቡ ሊያስቆጥር አይችልም ስለዚህ የይግባኝ አቤታታቸው መሉ ለመሉ ውድቅ ሊሆን ይገባል።

ይግባኝ ባይ በይግባኝ አቤቱታቸው ተቁ. 4 ያቀረቡት ጉድለቶችን አንጻርም ተገቢ የሆነ ጊዜ ያልተሠጠኝ መሆኑን በሚል ያቀረቡት መቃወሚያን በተመለከተ የሃገሪቱን ኢኮኖሚ የሚጎዳ፣ የሃገሪቱን የኤክስፖርት ቡና ሥራ የሚበድል የሃገሪቱን የውጪ ምንዛሬ የሚቀንስና ሌሎችም በአዋጅና በደንብ የተገለጹ ጥፋቶች መፈፀማቸውን የተከበሩት የኢ.ፌ.ዴ.ሪ ጠቅላይ ሚኒስትር

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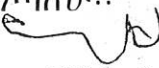
እና ም/ጠቅላይ ሚኒስቴር እንደዚሁም ጉዳዩ የሚመለከታቸው የግብርናና ገጠር ልማት ሚኒስቴር ሚ/ር ዲኤታ ይግባኝ ባይ በተጠናባት ስብሰባ በተለያዩ ግዜያት እንዲያርሙ የተነገራቸውና በቂ ጊዜ የተሰጣቸው ስለመሆኑ በይፋ የሚታወቅ ተደርጎ ሊወሰድ የሚገባ ሲሆን ይግባኝ ባይም ይህን የሚያውቁና በቂ ጊዜ የተሰጣቸው ለመሆኑ ያስረዳል። ይህ እውነት ከተካደ ግን የተከበረው ፍ/ቤት የተደረጉት ስብሰባዎች ይዘት ይህን ያካተተ እንደነበር በማስረጃ ዝርዝር ተቁጥር 6 የገለጽነውን እንድናቀርብ እንዲፈቀድልን ክቡር ፍ/ቤቱን እንጠይቃለን።

መልስ ሰጪ የሚጠይቀው ዳኝነት

1. የአሁኑ መልስ ሰጪ መጋቢት 15 ቀን 2001 ዓ.ም እና ሚያዝያ 6 ቀን 2001 ዓ.ም የወሰናቸው ውሳኔዎች የህግም ይሁን የፍሬ ነገር መሠረት ያለው በመሆኑ እንዲፀናልኝ፤
2. አዋጅና ደንብ ከህግ ውጪ ወደኋላ ሄዶ /retroactive/ ተፈጻሚ ያለመደረጉንና በተቁ 6.1 ባብራራነው መሠረት ለይግባኝ መንስኤ የሆኑት የመልስ ሰጪ ውሳኔዎች ወደኋላ ሄደው የተወሰኑ ሳይሆን በህጉ መሠረት የተወሰኑ ናቸው እንዲጻጸቡና ውሳኔው የህግ ስህተት የለበትም እንዲባልልኝ፤
3. የአሁኑ መልስ ሰጪ ውሳኔዎች ደንቡንና አዋጁን ተከትለው የተላለፉ ውሳኔዎች ናቸው እንዲባልልኝ፤
4. ይግባኝ ባይ የይግባኝ አቤቱታቸውን ህጉ በሚፈቅደው መሠረት አላስረዳም እንዲባልልኝና ለይግባኝ መንስኤ የሆኑት የአሁኑ መልስ ሰጪ ውሳኔዎች እንዲፀናልኝ፤
5. የአሁኑ መልስ ሰጪ ለዚህ መልስ ያወጣው ወጪ ከበቂ ኪሣራ ጋር ተቆርጦ እንዲያሰናብተን የተከበረው ፍ/ቤት እየጠየቅሁ የቀረበው መልስ እውነት መሆኑን በፍ/ሥ/ሥ/ሕ/ቁጥር 92 መሠረት አረጋግጣለሁ።

የቀረበው መልስ እውነት መሆኑን በፍ/ሥ/ሥ/ሕግ ቁጥር 92/3/ መሠረት አረጋግጣለሁ።

  
ፍሬው ማሞ  
የመ/ቤቱ ነገረፈጅ

  
ናታአ ባልቻ  
የህግ ጉዳዮች መምሪያ አስተባባሪ



ለፌዴራል ከፍተኛ ፍ/ቤት  
6ኛ ፍ/ብ ይግባኝ ሰሚ ችሎት  
አዲስ አበባ

ይግባኝ ባይ :- ኤስ ሳራ ቡና ላኪ ድርጅት (ወ/ሮ ሳራ ይመር)  
አድራሻ:- ንፋስ ስልክ ላፍቶ ክ/ከተማ ቀበሌ 05 የቤ. ቁ.2998

መልስ ሰጪ:- የግብርናና የገጠር ልማት ሚኒስቴር  
የድራሻ:- አዲስ አበባ

የይግባኝ አቤቱታን ለማንሳት የቀረበ አቤቱታ ነው

ይግባኝ ባይ መልስ ሰጪው የብቃት ሰርተፊኬትን በማገድ እና ቡናዬን ለመረከብ የሰጠው ውሳኔ እንዲሻርልኝ ይግባኝ አቅርቤ በክርክር ላይ እንገኛለን።


መንግስት ጉዳዩን አጥንቶ በሰጠው አስተዳደራዊ ውሳኔ የተሸጠው ቡናዬን ዋጋ ከባንክ ለተበደርኩት ገንዘብ መክፈያ እንዲሆን ለባንክ ክፍያ ተፈጽሞልኛል።

ያልተሸጠውን ቡና ዋጋ እና የብቃት ሰርተፊኬትን በተመሳሳይ መንግስት ጉዳዩን አጠናቆ መብቴን የሚያስከብር ውሳኔ ይሰጥልኛል የሚል ጽኑ እምነት ስላደረብኝ ያቀረብኩት ይግባኝ ለማንሳት ወስኜአለሁ።

የተከበረው ፍ/ቤት ይግባኝን ያነሳሁ መሆኔን ተረድቶ መዝገቡን በመዝጋት መልስ ሰጪውን እንዲያሰናብተው በማክበር እጠይቃለሁ።

አቤቱታው በአውነት መቅረቡን አረጋግጣለሁ።

የይግባኝ ባይ ጠበቃ

  
ቸርነት/ወርዶፋ



የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ  
የሕዝብ አብዮት ፍርድ ቤቅ

የኮ/መ/ቁጥር 80081

ሐምሌ 30 ቀን 2001 ዓ.ም

**ዳኛ:- በረከት ቡሽራ**

**ይ/ባይ:-** ኤስ ሳራ ቡና ላኪ ድርጅት

**መ/ሠጪ:-** የግብርናና የገጠር ልማት ሚኒስቴር

መዝገቡ ዛሬ የተቀጠረው ለውሳኔ ቢሆንም የይ/ባይ ጠበቃ ሐምሌ 30/2001 በተባራ አቤቱታ በዚህ መዝገብ አቅርቦን የነበረው አቤቱታ በብቃት ማረጋገጫ ሠርተፍኬት የታገደብን ያለ አግባብ ስለሆነ ይነሳልን የተወሰደብን ቡናም ይመልስን የሚል ነገር። ነገር ግን መንግስት ጉዳዩን አጠኖ መብቴን የሚያስከብር ውሳኔ ይሠጥልኛል የሚል ጽኑ እምነት ስላደረብኝ ያቀረብኩትን ይግባኝ ለማንሳት ወስኛለሁ ስለዚህ ይግባኝን ያነሳሁ ስለሆነ መዝገቡን ዘግቶ መ/ሠጪን ያሠናብትልኝ በማለት ጠይቋል።

በሌላ በኩል የመ/ሠጪ ነ/ራጅ ወጪና ኪሣራ የማቅረብ መብት ይጠብቅልን በማለት ለፍ/ቤቱ አመልክቷል ፍ/ቤቱም የሚከተለውን ትዕዛዝ ሠጥቷል።

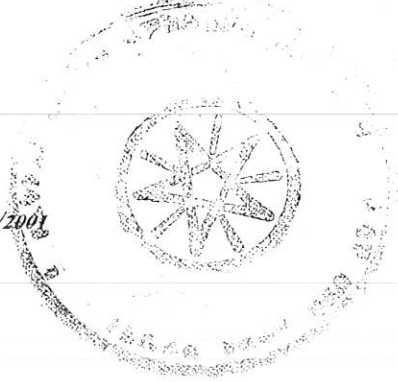
**ት ዕ ዛ ዝ**

1. ይ/ባይ ይግባኝን አንስቻለሁ በማለት ባመለከቱት መሰረት ይግባኝ ተሠርዟል።
2. የመ/ሠጪ ነ/ራጅ ያቀረቡትን የወጪና ኪሣራ ይጠብቅልን አቤቱታ በተመለከተ ደግሞ የተረከቡትን የይ/ባይ ቡና ለመመለስ የተስማሙት ስለሆነ የወጪና ኪሣራ ዝርዝር የማቅረብ መብቱ የሚጠበቅበት ምክንያት የለም ስለዚህ የመ/ሠጪን የወጪ እና ኪሣራ ይጠብቅልኝ አቤቱታ ፍ/ቤቱ አልተቀበለውም።

መዝገቡ ተዘጋ ይመለስ።

**የዳኛ ፊርማ:- በረከት ቡሽራ**

10-11  
4/12/2001



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የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ጠቅላይ ሚኒስትር  
የትምህርትና ልምድ ሚኒስቴር

የመ.ቁ 84636

ታህሣሥ/ 2/2002

**ዳኛ:- በረከት ቡሽራ**

**ከሣሽ:-** ዝዋይ ዱግዳ ኢንተርናሽናል ቢዝነስ ኢንዱስትሪ ሃላፊነቱ የተወሰነ የግል ማህበር ጠበቃ ጥበብ ተስፋዬ ቀረቡ

- ተከሣሾች:-**
1. የግብርናና ገጠር ልማት ሚኒስቴር (ነገረፊጅ አሰግድ ተ/ዓድቅ ቀረቡ)
  2. የኢትዮጵያ ምርት ገበያ (ጠበቃ ዘነበ ቡርቃ ቀረቡ)

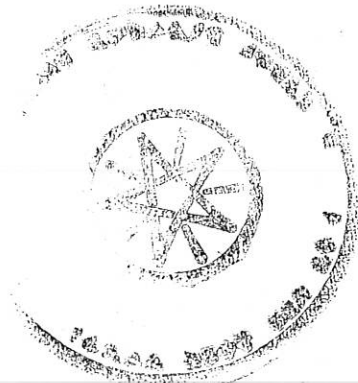
**ትእዛዝ**

መዝገቡ የቀረበው ክስን ለመስማት ቢሆንም ፍ/ቤቱ የቀረበውን ክስ እንደተመለከተው የሚኒስትሮች ምክር ቤት ባወጣው ደንብ ቁጥር 161/2001 አንቀጽ 22 መሠረት ከሣሽ ተቃዋሚውን ለግብርናና ገጠር ልማት ሚኒስቴር ወይም አግባብነት ላለው የክልሉ አካል ሊያቀርብ በነዚህም የተሰጠውን ውሳኔ በመቃወም በይግባኝ ለፌዴራል ከፍተኛ ፍ/ቤት ከሚያቀርብበት በቀር በቀጥታ ክስ የሚያቀርብበት ስላለሆነ መዝገቡ ተዘግቷል። ወደ መዝገብ ቤት ይመለስ።

ከሣሽ ለዳኝነት ከከፈሉት ውስጥ በደንቡ መሠረት የሚቀነሰው ተቀንሶ ቀሪው ይመለስላቸው።

**የዳኛ ፊርማ:- በረከት ቡሽራ**

/ሐክ  
8/4/2002



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ETHIOPIA COMMODITY EXCHANGE

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ቁጥር:- ኢ.ም.ገ/09-2719/2001

ቀን:- ሚያዝያ 30 ቀን 2001 ዓ.ም.

ለዝቀደ ዱግዳ ኢንተርናሽናል ቢዝነስ እና ኢንዱስትሪ ኃ. የተ. የግል ማህበር  
አቶ ይስሐቅ በየነ - ሥራ አስኪያጅ  
አዲስ አበባ

ጉዳዩ: በኢትዮጵያ ምርት ገበያ የውስን አባልነት ቅድመ ዕውቅና መስጠት

ያቀረቧቸው መረጃዎች አስፈላጊ የሆኑትን መመዘኛዎች አሟልተው በመገኘታቸው በኢትዮጵያ ምርት ገበያ የውስን አባልነት ቅድመ ዕውቅና ማግኘትዎን ስገልፅ በደስታ ነው። የውስን አባልነት ማረጋገጫው የኢትዮጵያ ምርት ገበያ ባለሥልጣን (ኢ.ም.ገ) የምስክር ወረቀት ከተሰጠበት ቀን ጀምሮ በባለሥልጣኑና በኢትዮጵያ ምርት ገበያ (ኢ.ም.ገ) ደንብ መሠረት ለአንድ ዓመት የፀና ይሆናል።

የኢትዮጵያ ምርት ገበያ ባለስልጣን በተቋቋመበት አዋጅ ቁጥር 550/1999 አንቀፅ 16 መሰረት ሙሉ የውስን አባልነትን ለማግኘት አንድ አባል ከባለስልጣኑ መስሪያ ቤት ዕውቅና መጠየቅና ማግኘት ይኖርበታል። በመሆኑም በቀጣይ የኢትዮጵያ ምርት ገበያ ባለስልጣንን ማነጋገር ይኖርብዎታል።

የኢትዮጵያ ምርት ገበያ ውስን አባልነትን በማግኘትዎ እንኳን ደስ አለዎ!

ከሰላምታ ኃር

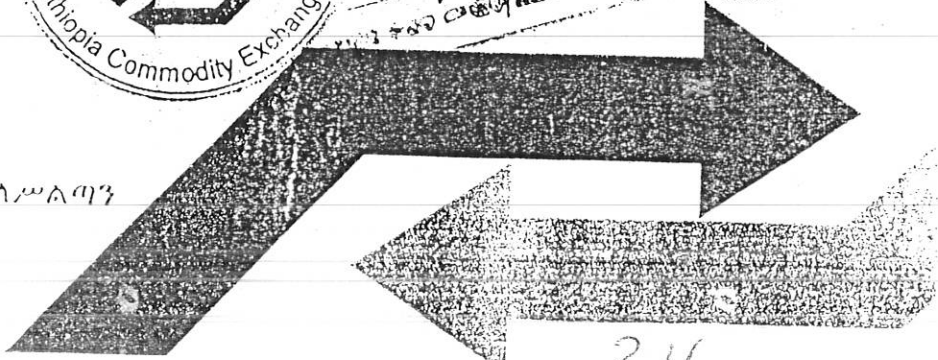
*[Handwritten Signature]*

አሌኒ ዘውዴ ዝብረመድህን (ዶ/ር)  
የኢትዮጵያ ምርት ገበያ  
ፋና ሥራ አስፈጻሚ



ግልባጭ፣

• ለኢትዮጵያ ምርት ገበያ ባለሥልጣን

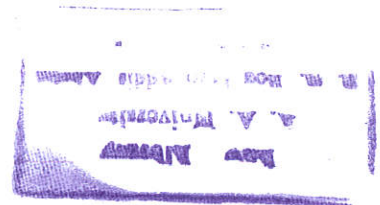






## ECX WASHED COFFEE CONTRACTS: STANDARD SETTLEMENT TERMS

Pay-in of Funds (Time when funds will be withdrawn from buyer pay-in accounts).	On T+1 ( Trade + one working day)
Pay-out of Funds (Time when funds will be deposited into seller pay-out account)	On T + 1, (Trade + one working day)
Weight Tolerance Adjustment	The tolerance for difference between exact weight recorded and the contract standard weight is adjusted at settlement
Exchange transaction fee	0.2% of transaction value
Handling and Product Certification fee	Sampling and grading, weighting, loading and unloading fees- Birr 3.25 per bag.
Warehouse Storage charge	Birr 0.16 per bag per day





# ETHIOPIA COMMODITY EXCHANGE

TIN: 0004385071 VAT No: 960500003 VAT Regd Date: 02-Dec-08  
 Address: Addis Ababa, Subcity: Lideta Kebele: 07/14, House No: 001 PO BOX: 17341 Tel Number : 0115547001 Email: info@ecx.com.et

## Member Net Obligation Report

Member: **Zewav Duqda Int'l Business & Ind. PLC**

TIN: 0005030214 VAT No: 100052000 VAT Regd Date: 10-Mar-09  
 Address: Kebele 01-02-03, House No: 716 PO BOX: 2291 Tel Number: 0915800266 Email:

Member ID: 566

### MEMBER PURCHASES

ECX Trade ID	WHR Number	Contract	Qty	Trade Price	Trade Value	Loc Adj	Adjusted Price	Actual Weight	Adjusted Trade Value	VAT Charged (15%)	TOT Charged (2%)	WT Deducted (2%)	Total	Trading Fee	WH Handling Charge	WH Storage Charge	WH Other Charges	Total Fees & Charges	VAT	Total	Grand Total (Birr)	CounterParty Info	TIN NO.	VAT NO.
22471	32233	1UFRU	4	395	237,000.00	0	395	10,224.00	237,557.65	35,633.65 *	0.00	4,751.15	273,191.30	503.63				503.63	75.54	579.17	273,770.47	0000797145	31267	
									<b>Total (Birr)</b>	<b>237,557.65</b>	<b>35,633.65</b>	<b>0.00</b>	<b>4,751.15</b>	<b>273,191.30</b>					<b>503.63</b>	<b>75.54</b>	<b>579.17</b>	<b>273,770.47</b>		

\* this VAT is on a VAT voucher commodity and will not be paid by the exporter at time of trade therefore it is deducted in the final Net Ob

### ECX SALES INVOICE

ECX Trade ID	WHR Number	Contract	Qty	Trade Price	Trade Value	Loc Adj	Adjusted Price	Actual Weight	Adjusted Trade Value	VAT Charged (15%)	TOT Charged (2%)	WT Deducted (2%)	Total	Trading Fee	WH Handling Charge	WH Storage Charge	WH Other Charges	Total Fees & Charges	VAT	Total	Grand Total (Birr)	CounterParty Info	TIN NO.	VAT NO.
22471	32233	1UFRU	4	395	237,000.00	0	395	10,224.00	237,557.65	35,633.65 *	0.00	4,751.15	273,191.30	503.63				503.63	75.54	579.17	273,770.47	0000797145	31267	
									<b>Total (Birr)</b>	<b>237,557.65</b>	<b>35,633.65</b>	<b>0.00</b>	<b>4,751.15</b>	<b>273,191.30</b>					<b>503.63</b>	<b>75.54</b>	<b>579.17</b>	<b>273,770.47</b>		

ECX Total Charges (Birr):  
 Total Fees: 503.63  
 VAT 15%: 75.54  
 Grand Total: 579.17

Coffee Sports Club (0.005 birr / Kg) : 0.00  
 Member Net Obligation (Birr): -238,136.82

Authorized Stamp:



Floor Representative Report, which you have read and signed.

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01-Aug-09



## ECX WASHED COFFEE CONTRACTS: DETAILS AND GRADES

Coffee Class	Processing	Origin	Symbol	Grades
<b>YIREGACHEFE A</b>	WASHED	Yirgacheffee (partial), Wenago (partial), Kochere (partial) and Gelana Abaya (partial). (having good Yirgacheffe flavour)	WYCA	1 TO 9, UG
<b>YIGRACHEFE B</b>	WASHED	Yirgacheffee (partial), Wenago (partial), Kochere (partial) and Gelana Abaya (partial). (lacking good Yirgacheffe flavour)	WYCB	1 TO 9, UG
<b>SIDAMA A</b>	WASHED	Borena, Benssa, Guji, Arroressa, Arbigona, Bale and W. Arsi.	WSDA	1 TO 9, UG
<b>SIDAMA B</b>	WASHED	Aleta Wendo, Dale, Chiko, Dara, Shebedino, Borena, Wensho and Loko Abaya	WSDB	1 TO 9, UG
<b>SIDAMA C</b>	WASHED	Kembata & Timbaro, Wellayta, S. Omo and Gamugoffa.	WSDC	1 TO 9,UG
<b>Limmu A</b>	WASHED	Limmu Seka, Limmu Kossa, Manna, Gomma, Gummay, Seka Chekoressa, Kersa, Shebe and Gera.	WLMA	1 TO 9,UG
<b>Limmu B</b>	WASHED	Bedelle, Loppa, Chorra, Yayu, and Alididu Dedessa.	WLMB	1 TO 9,UG
<b>Tepi</b>	WASHED	Mezenger (Godere) and Sheka.	WTP	1 TO 9,UG
<b>Bebeka</b>	WASHED	Bench Maji.	WBB	1 TO 9,UG
<b>Lekempti</b>	WASHED	Kelem, East and West Welega.	WLK	1 TO 9,UG



# ECX WASHED COFFEE CONTRACTS: GRADES AND STANDARDS

## GENERAL REQUIREMENTS

The moisture content of unwashed coffee shall not be more than 11.5% by weight and minimum 85% by weight of beans remain on top of screen 14 after sieving.

DEFINITIONS	
Washed Coffee	Green coffee prepared by wet processing of the fruit.
Moisture Content	The moisture content, expressed on a wet weight bases, shall be determined using an approved moisture meter.
Raw Value	The sum of points of Defect and Odour.
Defect	<ul style="list-style-type: none"> <li>• Foxy</li> <li>• Immature</li> <li>• Black</li> <li>• White</li> <li>• Solid</li> <li>• Broken</li> <li>• Wanza</li> <li>• Stone</li> <li>• Stick</li> <li>• Grains</li> <li>• Jenfel</li> <li>• Stinkers</li> <li>• Others</li> </ul>
Foxy	Reddish coloured beans caused by harvesting either over-ripe, sometimes yellow or delays in pulping.
Immature	Unripe coffee bean often with a wrinkled surface.
Black Bean	Coffee bean of which more than one half of external and/or internal surface is black.
White Bean	Coffee beans white in colour and very light in weight, with a density well below that of a healthy bean.
Broken	Fragment of coffee bean of volume equal to or greater than half a bean.
Wanza	A dry fruit of tree called cordia abyssinica which resembles "jenfel".
Grains	Seeds like wheat, barley, Maize, etc
Jenfel	Dried fruit of coffee comprising its external envelopes and one or more beans.
Stinkers	Coffee beans giving off, on being freshly cut, a very unpleasant odour. The bean may be light-brown or brownish or have occasionally a waxy appearance.

<b>Cup Quality Value</b>	The sum of points of Cup defect, Acidity, Body and Flavour.
<b>Liquoring (Cup testing)</b>	The organoleptic examination of brewed coffee by professional liquors to determine acidity, body and flavor, detection of defects and characters.
<b>Cup Defect</b>	The number of cup defects out of five cups
<b>Flavour</b>	Coffee brew taste in the mouth, is a means of determining the natural taste and a specific coffee characteristics.

**The grades and Standards-**

The grade will be defined based on the parameters determined by coffee and tea quality control & liquoring center. The grading will be based points assigned to the sample divided into **40% Raw Quality**, comprising of Shape & make (15%), Color (15%) & odor (10%) and **60% Liquor Value** comprising of Cup Cleanness (15%) Acidity (15%), Body (15%) and Flavor/ Character (15%).

**GRADING FACTORS FOR WASHED COFFEE**

<b>1. RAW VALUE 40%</b>					
Shape & Make 15%		Colour 15%		Odour 10%	
Type	Point	Type	Point	Type	Point
V. good	15	Bluish	15	Clean	10
Good	12	Greyish	12	F. clean	8
F. good	9	Greenish	9	Trace	6
Average	6	Coated	6	Light	4
Fair	3	Faded	3	Moderate	2
Small/Mixed	1	White	1	Strong	1

<b>2. CUP QUALITY VALUE 60%</b>							
Cup Cleanness 15%		Acidity 15%		Body 15%		Flavour 15%	
Type	Point	Type	Point	Type	Point	Type	Point
Clean	15	Pointed	15	Full	15	Good	15
F. clean	12	M.pointed	12	M. full	12	F. good	12
1 cup defect	9	Medium	9	Medium	9	Average	9
2 cup defect	6	Light	6	Light	6	Fair	6
3 cup defect	3	Lacking/Dull	3	Thin	3	Commonish	3
>3 cup defect	0						

**GRADING OF WASHED COFFEE**

Grade	Total Value (Raw Value + Cup Quality Value)
Grade 1	91-100
Grade 2	81-90
Grade 3	71-80
Grade 4	63-70
Grade 5	58-62
Grade 6	50-57
Grade 7	40-49
Grade 8	31-39
Grade 9	20-30
<b>Undergrad coffee</b>	
Grade UG	15-19 (Total Value)
Sound Beans % by weight	<50
Flavour	Fair



## ECX WASHED COFFEE CONTRACTS: STANDARD TRADING TERMS

<b>Standard Lot Size</b>	30bags: with a net weight of 60 kg Tolerance limit:2%
<b>Maximum order size</b>	Maximum order size represents the maximum number of contracts that a Member may transact in a single transaction 100 Lots.
<b>Tick size (Minimum price movement)</b>	<b>1birr increments</b> (All prices will be quoted and traded on 1 whole birr basis)
<b>Daily Position Limit</b>	Daily position limit represents the maximum number of Lots that a Member may transact in a single day- For member collectively for himself and all his clients- 1000 Lots For himself or for a single client- 200 Lots
<b>Daily price filter</b>	The daily price filter is the maximum percentage range, relative to the previous day's closing price, outside of which offer and bid prices may not fall or rise. ECX may change these limits from time to time, on a pre-announced basis. Coffee: 5%
<b>Warehouse Receipt</b>	All Coffee must be placed under the supervision and control of one of the ECX warehouses before trade can be done. Such warehouse receipt can be traded only once between coffee supplier and exporter.
<b>Warehouse Receipt expiration Period</b>	The Warehouse receipt will be available for trading for a period on 90 days from the day of deposit. However, once traded, the warehouse receipt will expire on the execution of the trade.
<b>Penalty on warehoused goods after expiration</b>	A penalty of 3.5% per day calculated on the tradable value using the closing price of the same grade as the warehoused goods, will be applied after the expiry of warehouse receipts
<b>Price Quote</b>	All prices will be quoted Ex Warehouse inclusive of the husk/ parchment but exclusive of taxes, fees and charges.
<b>Quotation factor</b>	Birr/ feresula
<b>Trading Session</b>	Monday through Friday Between 1:30 PM to 6:00 PM



## ECX WASHED COFFEE CONTRACTS: STANDARD DELIVERY TERMS

ECX Warehouse Locations	Addis Ababa, Dilla, Bonga, Dire Dawa, Jimma, Bedele, Gimbi, Nekempt, Awasa
Delivery Notice (Warehouse pick-up instructions will be delivered to the Member representing the buyer)	Next working day after the trade day
Pick Up Notice (Member must fill out a pick up notice (PUN) with the exchange before picking up goods)	After delivery notice is issued but before trade plus ten (T+10) calendar days
Delivery Period (Number of days the buyer will have to pick up the lots from the warehouse without paying additional charges)	Trade plus ten (T+10) calendar days
Failure to Pick up	Buyer is responsible for making arrangement to pick up commodity within the delivery period (T+10). There will be a 1% charge per day of the value of the trade if buyer fails to pick up goods from warehouse after the allotted time.
Extension of Delivery Period	As per the Exchange decision due to a force majeure.

