

Study on the potential of marketing of Kenyan Coffee as Geographical Indication

Case study related to the study on the potential for marketing agricultural products of the ACP countries using geographical indications and origin branding

DECEMBER 2013



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List of Acronyms

ACA	Anti Counterfeiting Agency
ACP	African Caribbean Pacific
AFD	Agence Française de Développement
ARIPO	African Regional Intellectual Property Organisation
AUC	Africa Union Commission
CBK	Coffee Board of Kenya
CdC	Cahier des Charges
CIRAD	Centre de Coopération Internationale en Recherche Agronomique
CMB	Coffee Marketing Board
CoP	Code of Practice
CRF	Coffee Research Foundation
EAC	East African Community
ECA	Eastern and Central Africa
ECCOS	Ethical Commission for Co-operative Societies
EPA	European Projects and Partnerships
EU	European Union
FAO	United Nation Organisation for Food and Agriculture
FEPA	Framework Economic Partnership Agreements
GI	Geographical Indication
GSP	Generalised System of Preferences
ICO	International Coffee Organization
ILO	International Labour Organisation
IP	Intellectual Property
KEBS	Kenya Bureau of Standards
KEPHIS	Kenya Health Plant Inspectorate
KIPI	Kenya Industrial Property Institute
KPCU	Kenya Planters Co-operative Union
KCPTA	Kenya Coffee Producers and Traders Association
LDC	Less Developed Countries
SACCOS	Savings and Credit Co-operative
SCAA	Specialty Coffee association of America
SPS	Sanitary and Phyto-sanitary
STABEX	Stabilisation of Exports
TBK	Tea Board of Kenya
TRIPS	Trade Related Intellectual Property Rights
WTO	World Trade Organisation

Exchange rate: 1 Euro = 116.3 KES

Introduction

The importance of coffee to the world economy cannot be underestimated. It is one of the most widely traded agricultural commodities in the world market. Around 400 billion cups are consumed per year, most of which are sold in Europe where drinking coffee is an integral way of life. The global coffee consumption reached 128 million bags in 2007 and 130 million in 2008. Total consumption of coffee has grown by 2% per year and this trend is likely to continue¹. Coffee demand in Middle East countries as well as in newly industrialized countries like China is increasing too. As such, coffee is crucial to the economies and politics of many developing countries among which, the 21st coffee producing country, Kenya.

French missionaries introduced coffee in Kenya in the Coast Province in 1893. At the independence (1963), the coffee production was grown on a total 45,538 hectares (ha), and reached 43,778 metric tonnes. Coffee is a key industry of the Kenyan economy, as it is the fourth largest earner after tourism, tea and horticulture². It is further estimated that out of the 70% of Kenya's workforce engaged in agriculture, 30% (about 6 million Kenyans) are employed in the coffee industry³.

Historically, the first government after independency created a centralized and capitalistic management of coffee in Kenya under the supervision of the "Coffee Board of Kenya" (CBK). Later on, Kenya was encouraged by the World Bank to liberalize the sector through the Structural Adjustments Programmes (SAP). The idea was to increase free competition. As a consequence, the government removed its regulation and support mechanism to the coffee sector, thus causing direct and harder exposure of producers to stronger competition on the globalized market. Recently, the coffee crisis (2004) caused some farmers to replace their coffee plantations with other crops; this had heavy consequences on the quality and quantity of the Kenyan coffee production. The Kenyan coffee industry is still recovering from this crisis, which asks for the rehabilitation of the growing zones and the improvement of both quantity and quality of coffee produced.

As regards quality, it should be noted that traditionally, Kenya has enjoyed the reputation of being one of the best producer of Arabica coffee in the world. Kenyan coffee still owns a certain reputation, but the choice to introduce Ruiru 11, a hybrid, to replace local Arabica cultivars negatively affected coffee quality, to the point that roasters having quality as the first criteria for selecting their coffee supplies have stopped sourcing from Kenya. The drop of quality combined with the high prices of Kenyan coffee contributed to the decrease of exports, too.

Daviron B., Ponte S. (2005), argued that the global coffee market is currently plagued by two paradoxes: a coffee boom in consuming countries, and a coffee crisis in producing countries, characterised by oversupply of low quality coffee and shortage of high quality coffee⁴.

Therefore, the challenges of the coffee sector in Kenya are twofold: to improve quality on the international markets; to secure supplies in order to satisfy the demand in coffee and fully benefit from their product from an economical point of view.

¹ Kirumba E. G., *Coffee Certification and Small Holder Farmers' Livelihoods in Kenya*, 2011.

² Karanja N., et Gichovi B., *Coffee Prices and Regulation and their Impact on Livelihoods or Rural Commodity Area*. 2005.

³ Omondi et al., *Resistance of Coffea Arabica cv. Ruiru 11 tested with different isolates of Colletotrichum kahawae, the casual agent of coffee berry disease Euphytica* 121:19-2, 2001.

⁴ Daviron B., Ponte S. (2005), "The coffee paradox. Global markets, commodity trade and the elusive promise of development", Zed Books, London and Ponte S. (2002), "The 'Latte Revolution'? Regulation, Markets and Consumption in the Global Coffee Chain", *World Development*, 30(7), pp.1099-1122

From certification schemes to protection of GIs (Geographical Indications), many options may be confronted for Kenyan coffee. As a matter of fact, this study deals with the potential of marketing coffee from Kenya as a GI. While differentiation through origin is constantly increasing as international trade evolves, the development of GIs on foodstuffs in Africa, Caribbean and Pacific Countries is very slow despite the apparent advantages associated with them. This is why the study also considered other certified standards (organic, FairTrade, etc.) and trademarks

We needed describing the world coffee market (Part 1), the Kenyan Coffee Supply Chain (Part 2) and the legal framework with regards to geographical names, before coming to the potential for Kenyan coffee to benefit from GIs (Part 4), the impediments to implement them (Part 5) and the possible alternative routes (Part 6).

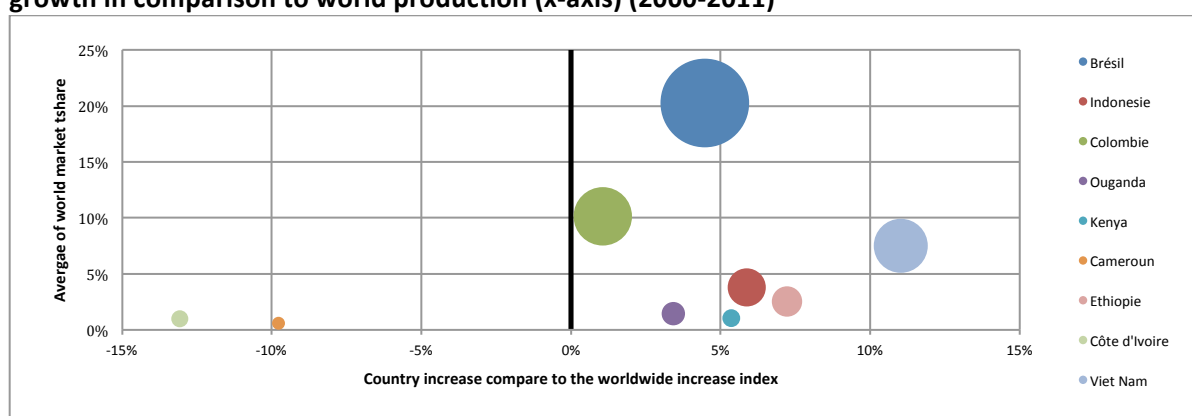
1 Coffee Market

1.1 International Context

All major ACP (African, Caribbean and Pacific region Countries) coffee producers are located in Africa, with an exception for Papua New Guinea (PNG). The main ACP producers in 2009-2010 were Ethiopia (with almost 7,5 million bags produced, and an increase of 7,5% over the previous year), Uganda (3,1 million), Ivory Coast (2,2 million), PNG (1,1 million) and Tanzania and Kenya (approximately 0,9 million). Over the 2001-2010 decade, ACP countries accounted for less than 15 per cent of the total coffee production, showing a decreasing trend if compared with the 19 per cent share they held in 1990 and 25 per cent in the 1980s.

The EU accounts for over 40 per cent of the total coffee consumption in importing countries, and remains the most important market for ACP producers. ACP countries' share in global coffee exportation almost halved over the last 20 years, due to a production increase in non-ACP countries, such as Indonesia and Vietnam. However, production value in some ACP countries has been increasing since 2000, and at a higher rate than other non-ACP countries (see Figure 1).

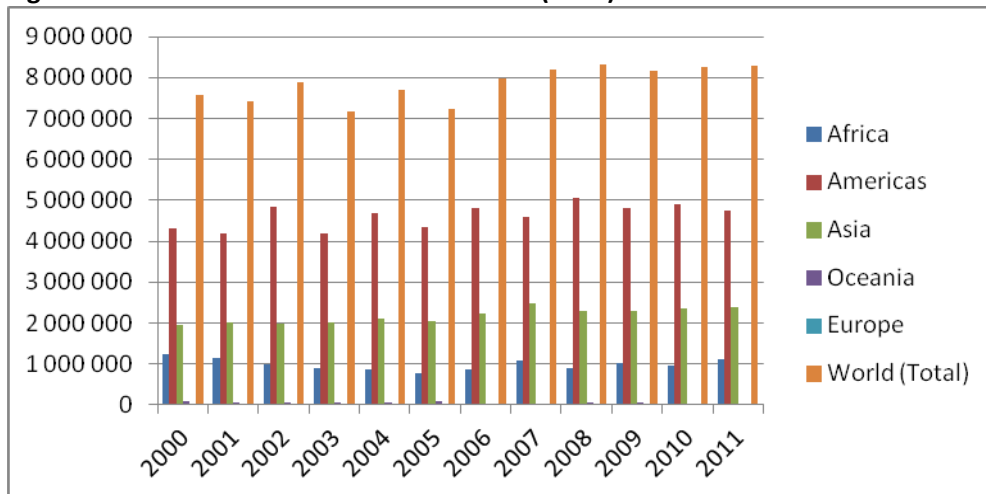
Figure 1: Trends of green coffee export values (size of balls), market share (y-axis) and relative growth in comparison to world production (x-axis) (2000-2011)



Source: Comtrade

After a significant increase between 1970 and 2000s (doubling of production), the world coffee harvesting has entered a phase of stagnation. In 2000, the total harvest was 7,5 million tonnes, reaching 8,2 million tonnes in 2011 (see Figure 2). Over the past five years, the harvest has reached a stable level of about 8,2 million tonnes (144,646 thousand bags of 60 Kg, according to ICO, (International Coffee Organisation).

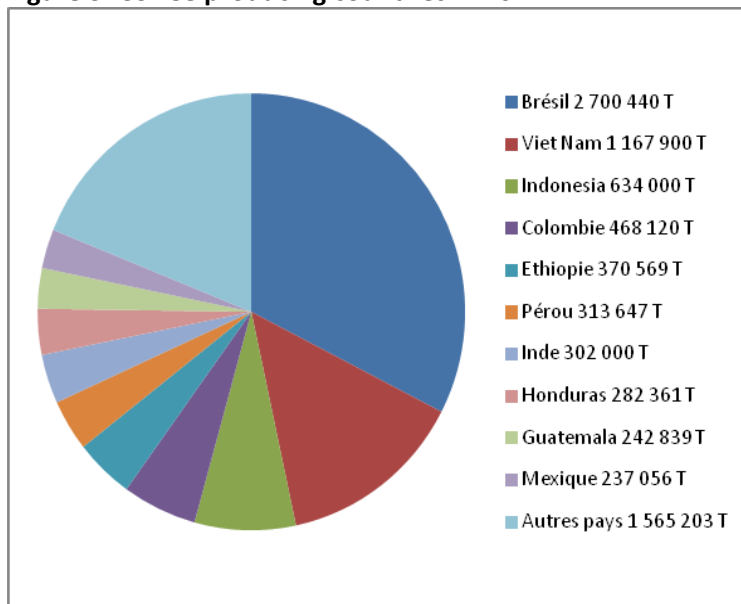
Figure 2: Evolution of Green Coffee Harvest (Tons)



Source: FAOSTATS

South America is the largest coffee producer in the world. America as a whole accounted for 56 per cent of global supply in 1970, 200 and 2011. Africa, which accounted for over 33 per cent of the global harvest in 1970, switched to represent only the 11 per cent in 2000 and just over 11 per cent in 2010 (13,5 per cent in 2011). Remarkable in the recent period is the rise of Asia, which in 1970 accounted for just 8,7 per cent of the global harvest, but reached 25 per cent in 2000, supplanting Africa. In 2010 and 2011, Asia accounted for 28,7 per cent, with a harvest of more than 2,3 million tonnes. In particular, Vietnam achieved a considerable increase of its production capacity: while having an almost inexistent production in 1985 (12,000 tonnes), in 2010 it was producing over a million tonnes.

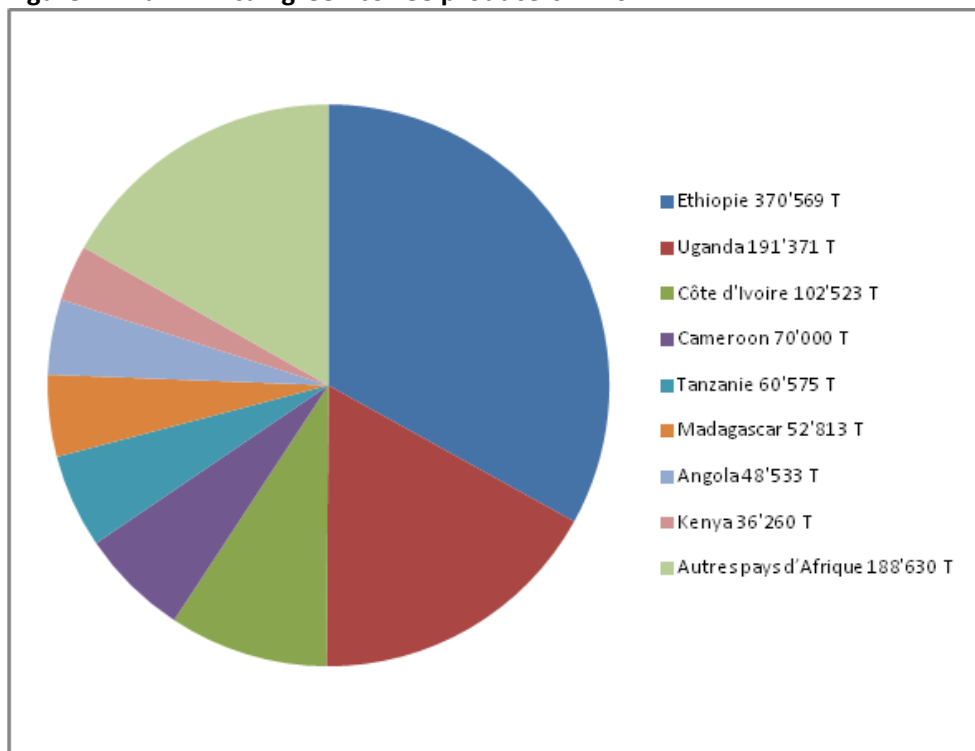
Figure 3: Coffee producing countries in 2011.



Source: FAOSTATS

The global supply appears relatively fragmented (see Figure 3). Brazil is the major coffee producer, and Vietnam has gained the second position ahead of Indonesia and Colombia, whose relative share is experiencing a decrease. Africa as well, as it has been mentioned, has registered a significant decline, and only Ethiopia still remains among the top 10 global producers.

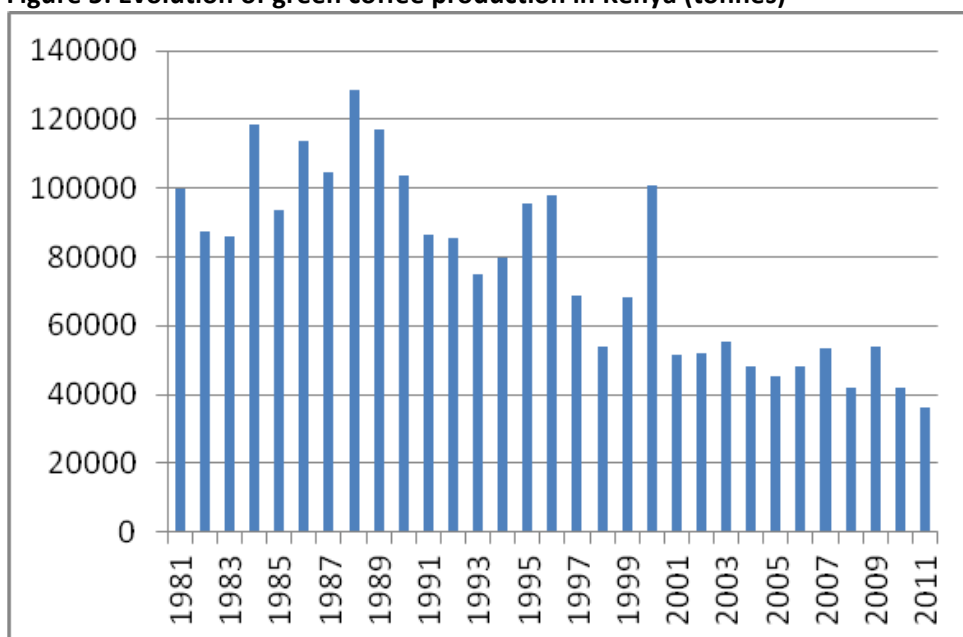
Figure 4: Main African green coffee producers in 2011.



Source: FAOSTATS

Kenya appears as a small producer (see Figure 4). Additionally, its production has seen a marked decline over the last 10 years. Anyway, data on production volumes have to be considered carefully. Indeed, observing the data on exports (see Figure 16), traded volumes are greater than produced quantities. Considering that data on traded quantities are based on custom data, either data on production are lower than actual production or coffee from neighbouring countries is imported to Kenya before to be re-exported.

Figure 5: Evolution of green coffee production in Kenya (tonnes)



Source: FAOSTATS

Production has been around 100,000 tonnes until 1980, and then saw a significant decline (with the exception of the years 1995 and 2000, when a remarkable harvest was achieved). From 2001, the harvest has been around 50,000 tonnes, reaching its minimum level in 2011 (36,260 tonnes). However, 2012 recovery seems to be confirmed in 2013: according to ICO, in 2012/2013 the harvest reached 767'000 bags of 60 Kg against 660'000 in 2010/2011 and 680'000 in 2011/2012 (Figure 6). Higher prices in 2012 led Kenyan producers to invest in order to increase yields and production. Though, despite those recent results, coffee industry in Kenya faces a difficult situation, as producers prefer to turn to other activities⁵.

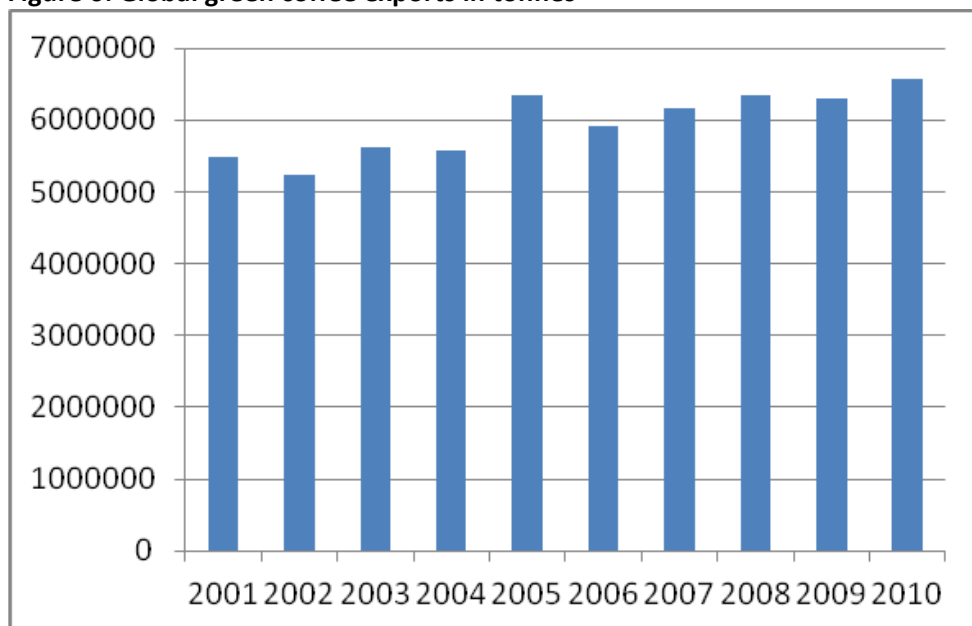
Kenya produces mainly Arabica coffees. Kenyan Coffee is well renown, and especially its AA grade coffee. Although it is also used for superior quality coffees, Kenya coffee is especially employed in blends with coffees of other origins. According to certain researches, more than 60 per cent of Kenyan coffee is used in blends (CHARLERY DE LA MASSELIERE B., MBATARU P., 2007).

1.2 Global Coffee Trade

1.2.1 Global Coffee Exports

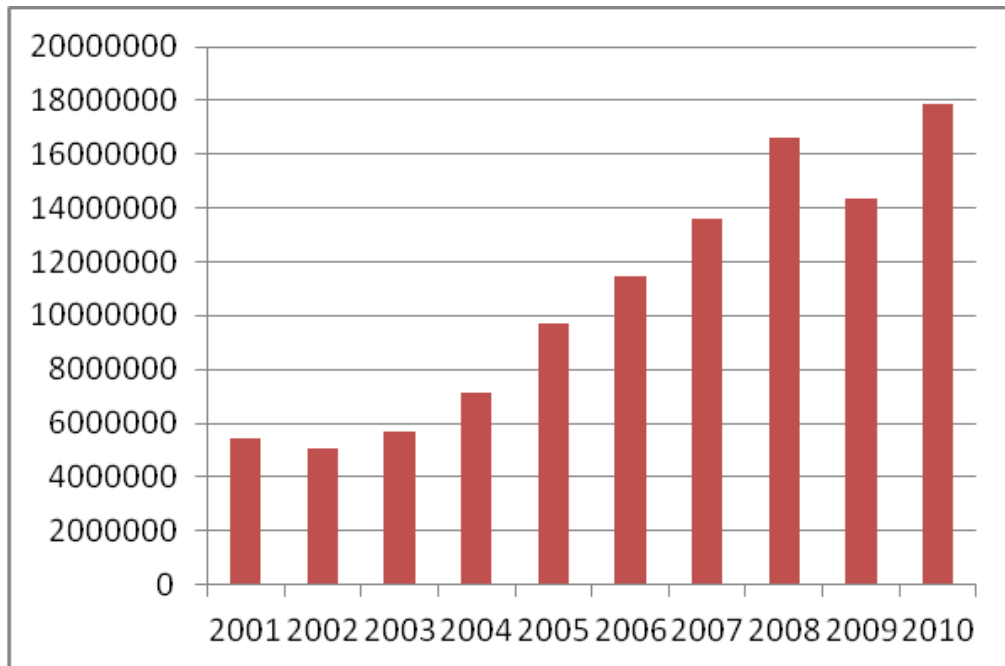
Global green coffee exports increased from 5,4 million tonnes in 2001 (Figure 7) equivalent to 5.4 billion US\$ to 5.5 million of tonnes in 2005 worth US\$9,7 billion, US\$, and up to 6,5 million tonnes worth US\$17.8 billion US\$ in 2010. Global exports are experiencing a steady growth in terms of volumes, while prices and value of traded coffee significantly increased.

Figure 6: Global green coffee exports in tonnes



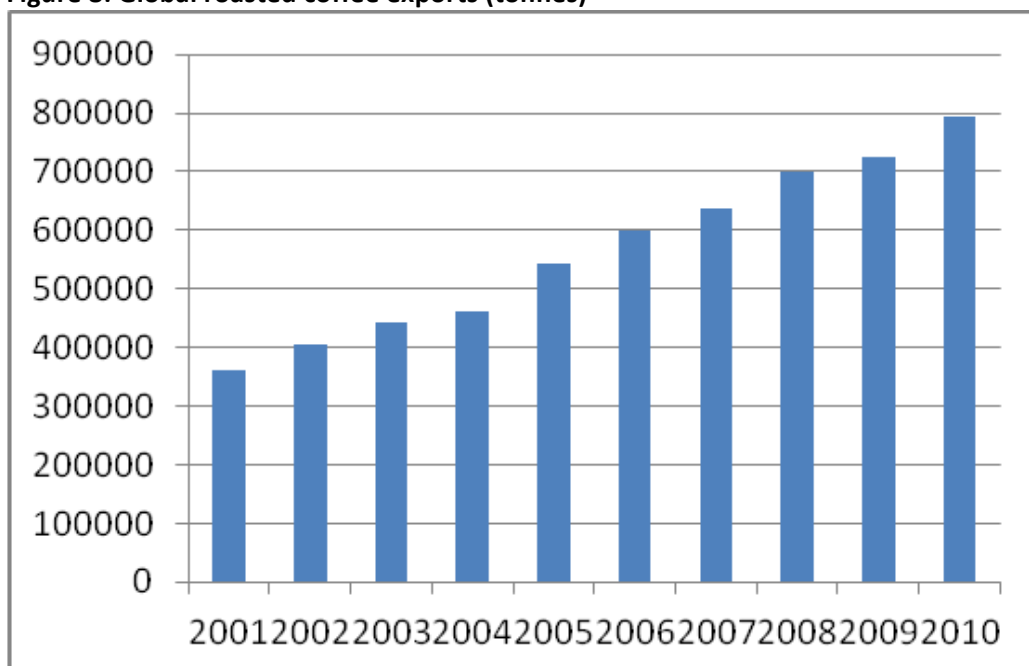
Source: Comtrade

⁵ Mbataru P., Charlery de la Masseliere B., *Les fondements économiques de la guerre du café au Kenya*, 2011.

Figure 7: Global green coffee exports in monetary value (1000 USD)

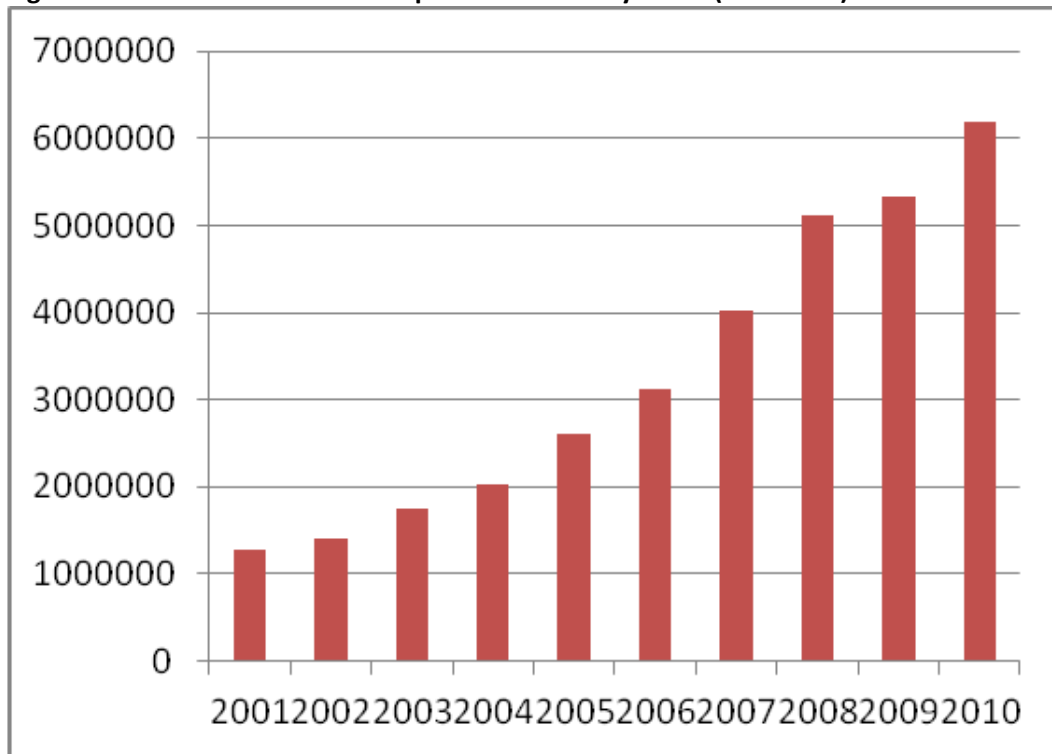
Source: Comtrade

Exports of roasted coffee growth from 361,000 tonnes in 2001 (Figure 8) up to 542,000 tonnes (worth US\$ 2.6 billion) in 2005. Then, they reached 794,000 tonnes (worth US\$ 6,2 billions) in 2010 (Figure 10). Thus, a very regular growth in the global exports of roasted coffee can be noted as well.

Figure 8: Global roasted coffee exports (tonnes)

Source: Comtrade

Figure 9: Global roasted coffee exports in monetary value (1000 USD)

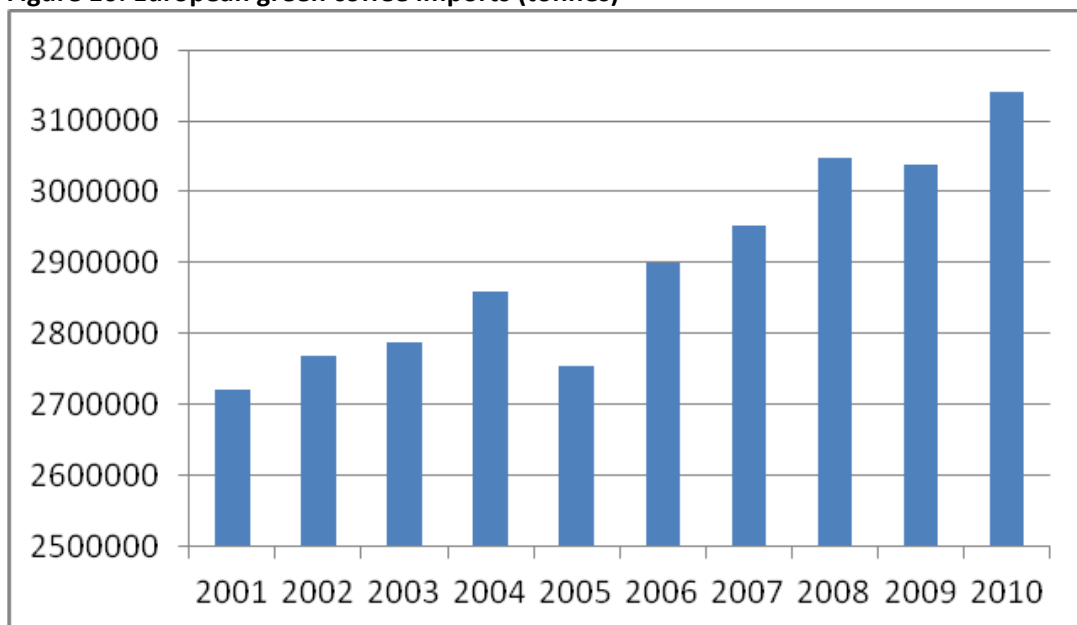


Source: Comtrade

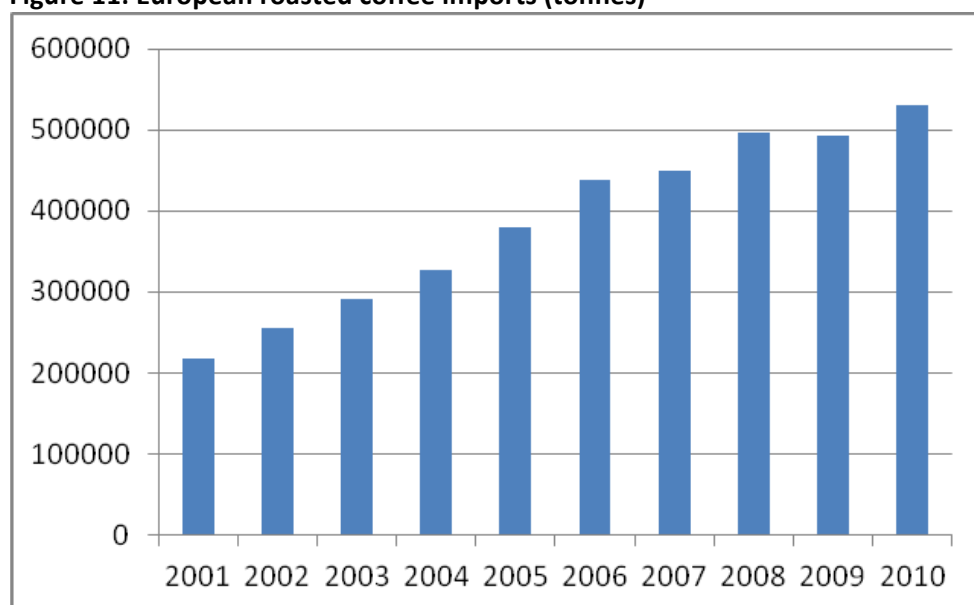
1.2.2 Trade with the European Union

With an amount of 3,14 million tonnes of green coffee imports in 2010 (worth US\$6,25 billion), the European Union (EU) accounts for about half of global imports (Figure 10 and Figure 11). European imports have slightly increased over the recent years. In the same way, we can observe a slight increase for what concerns roasted coffee imports.

Figure 10: European green coffee imports (tonnes)



Source: FAOSTATS

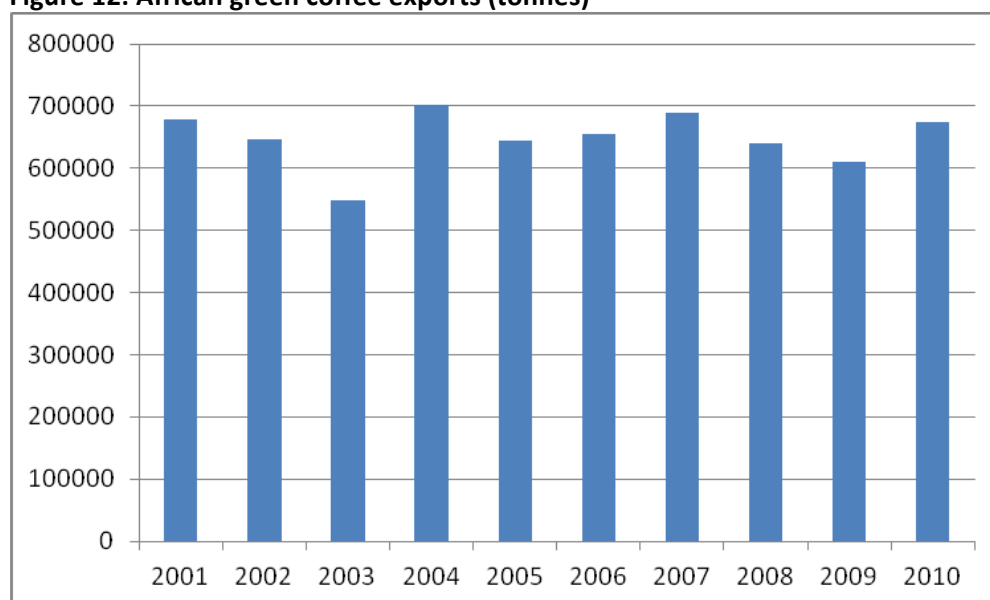
Figure 11: European roasted coffee imports (tonnes)

Source: FAOSTATS

Brazil is by far the first supplier of coffee for EU. Vietnam is now the second partner, while the contribution of African exports to EU has experienced a sharp declining trend over the long run.

1.2.3 Global Trade of African Coffee

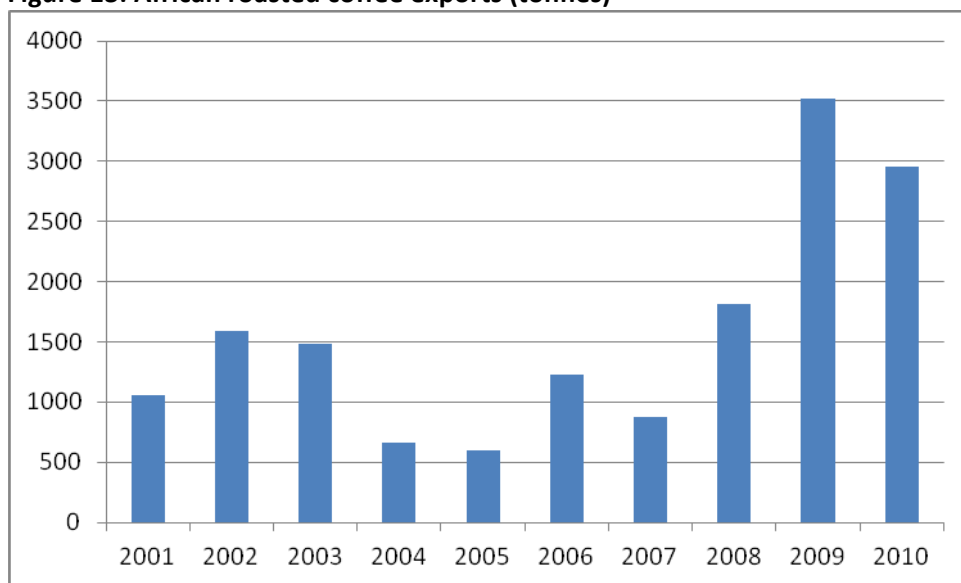
African green coffee exports kept fairly stable over the period between 2001 and 2010, with an average of 650,000 tonnes exported per year in the last 5 years (Figure 12).

Figure 12: African green coffee exports (tonnes)

Source: FAOSTATS

The exports of roasted coffee seem quite variable and minor as compared to green coffee, as they never exceed 1% of the total exported coffee, but a remarkable increase can be noted between 2009 and 2010 (Figure 13).

Figure 13: African roasted coffee exports (tonnes)



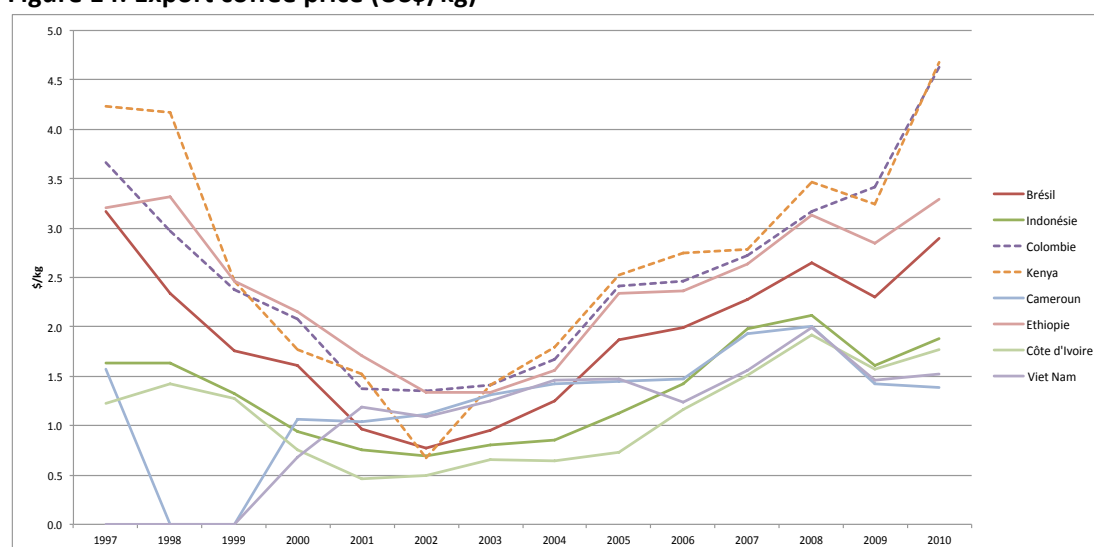
Source: FAOSTATS

The trade relation between Africa and European countries are asymmetric, since though African coffee represents a small share of European imports, the European market is by far the main market for coffee producing African countries.

1.3 Coffee Prices

Coffee prices are mainly determined by two futures market: London for Robusta and New York for Arabica. Kenyan coffee prices are primarily set at the Nairobi Stock Exchange. This Stock Exchange Market was the only authorized before the liberalisation, while after the reforms this step is no longer necessary. However, the “off-market” trade still does not represent more than the 20% of the Kenyan production.

Figure 14: Export coffee price (US\$/kg)



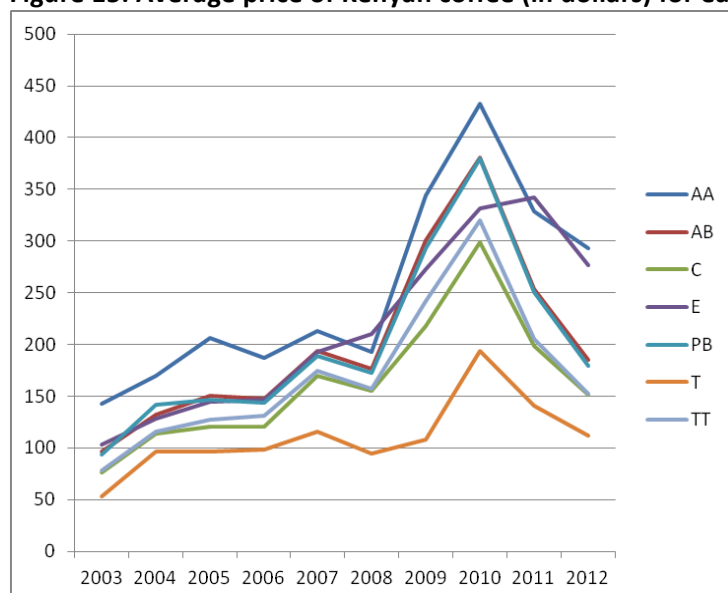
Source: ComTrade

Coffee prices greatly vary, according to the country of origin and the variety. Robusta coffee price is significantly cheaper than Arabica. The gap between the two varieties tends to get bigger. On the NY

coffee market, the relation between the two went from US\$120 for Robusta against US\$160 for Arabica in 2007, to US\$140 against US\$300 in 2012.⁶ Kenya coffee prices are among the highest worldwide and behave similarly to Columbian coffee (see Figure 14).

In a sector where quality is highly relevant, prices also strongly vary on the base of quality (see Figure 15).

Figure 15: Average price of Kenyan coffee (in dollars) for each type of quality

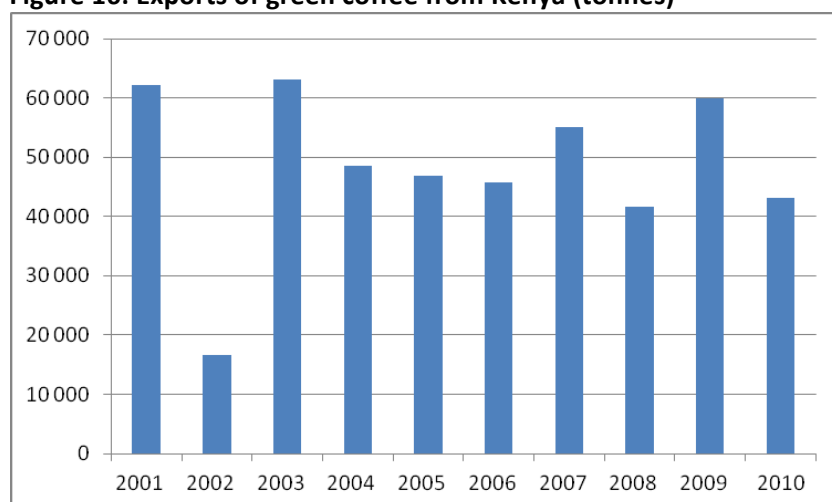


Source: NCE

1.3.1 Kenya's Coffee Trade

Kenya's coffee exports have experienced a significant decrease, from 62,000 tonnes in 2001 to 43,000 tonnes in 2010 (Figure 16). As for the rest of African countries, the majority of Kenya's exports are bound to the EU. In the last years they accounted for two thirds of the total exports.

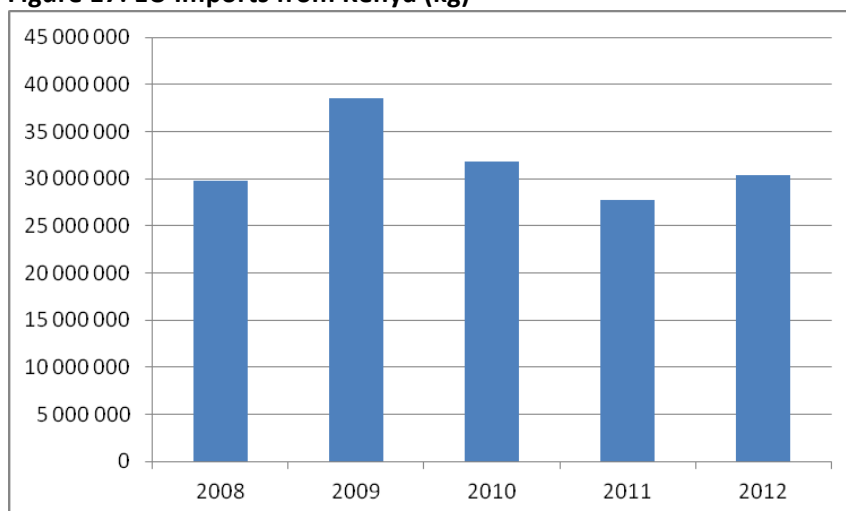
Figure 16: Exports of green coffee from Kenya (tonnes)



Source: FAOSTATS

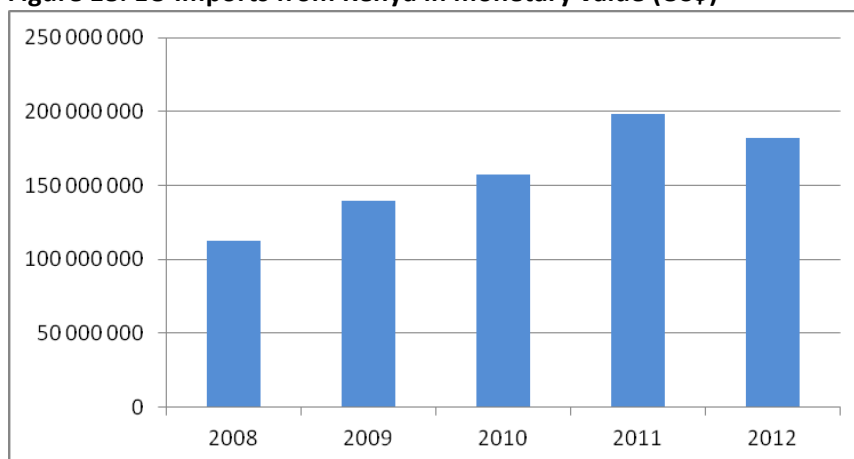
⁶ GAIN Report, Kenya Coffee Annual Report, 2012

Figure 17: EU Imports from Kenya (kg)



Source: Comtrade

Figure 18: EU Imports from Kenya in monetary value (US\$)



Source: Comtrade

2 Kenyan Coffee Supply Chain

French missionaries introduced coffee in Kenya in the late twentieth century. Its role in the Kenyan agricultural sector is very important. It has been estimated that 70 per cent of the work force is employed in agriculture in Kenya, of whose 30 per cent in the coffee sector.

Currently, the production covers 170,000 ha, 75.5% is cultivated by cooperatives composed by small and medium size farmers, and 24.5% by Estates (large producers).

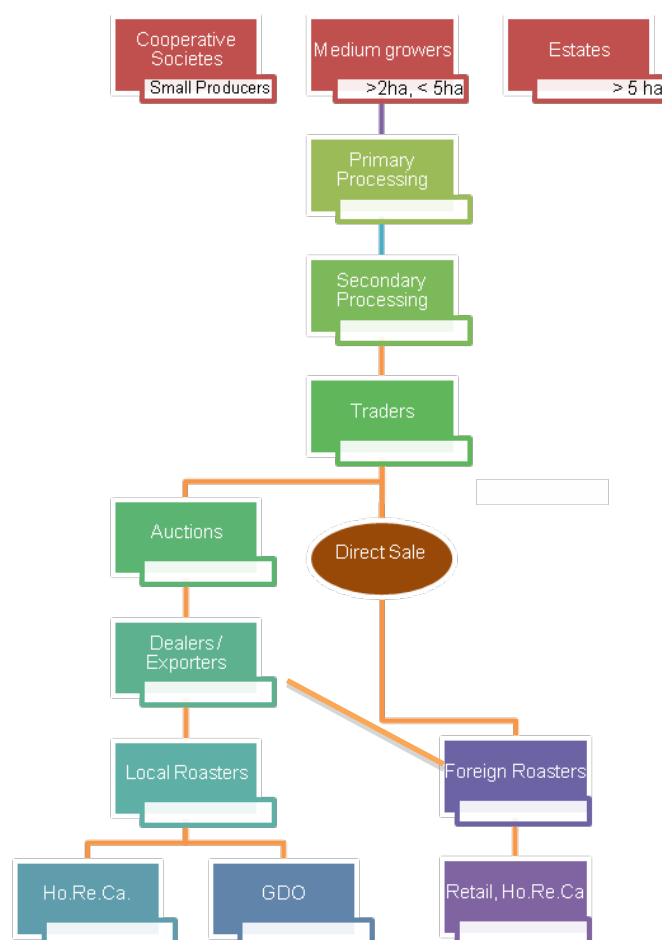
Over the years, the total annual production has varied considerably depending on climate and socio-economic factors. The highest production volume was reached in 1987-1988, with 128,926 tonnes of green coffee. Since then, production declined until 2005 (48,000 tonnes in 2004/5), mainly due to lower prices on the international coffee market. This trend seems to have then reversed, as production has been increasing since 2006, and Kenyan production is gaining a growing popularity in some high quality niche markets. In 2012 Kenya production has been of 46,000 tonnes, which is to say 0.5% of the world production.

2.1 Structure of the production

In the upstream part of the value chain, it is possible to distinguish medium and large coffee growers (called “Estates”), who do not necessarily belong to collective organisations, and smallholders (with cultivations smaller than 5 acres) who are required by the Law to join a cooperative in charge of marketing their product (See 4.1.3.2).

2.2 Presentation of the supply chain

Figure 18: The Coffee Kenya value chain



2.2.1 Millers

A commercial miller “means any person who mills ten thousand or more metric tonnes of parchment coffee⁷ per crop year on wholesale basis for the purpose of providing service for financial profit”⁸;

Milling coffee involves hulling, polishing and grading the wet-processed berries to remove layers covering the green coffee.

⁷ Dried but unhulled coffee beans

⁸ See Coffee Act, Part I, Preliminary

It is divided into two processes:

- **The wet milling:** As stated before, smallholders (less than 5 acres) deliver harvested cherries to a co-operative society's processing factory, where it is pulped, washed and dried. Estates are able to wet-process their coffee on their own. The parchment coffee is delivered to a commercial dry coffee mill for milling or secondary processing.
- **The dry milling:** Both co-operative societies and estates transport the obtained parchment to a miller where it is milled to remove the parchment skin, and then grade it. Millers process into seven official grades based on bean size and bean density, ready for auctioning (See 1.2.2 a). Once this is done, the coffee is referred to as clean/green coffee beans.

There are 8 commercial coffee mills in Kenya, licensed by the Coffee Board of Kenya for the purpose of milling farmers' coffee. The KPCU (Kenya Planter's Cooperative Union) used to run the largest mill and controlled 70% of milling capacity in the country. Since it collapsed, private mills have appeared and are licensed to mill only the coffee of growers by virtue of a contract. Under the law, the millers have to approach the cooperatives to propose their services on a competitive basis. Every milling contract lasts one year, and each single farmer (or society in the case of smallholders) can have a contract with only one commercial miller per year.

Considering that the milling significantly influences the green bean quality, millers are bound to be associated to the GI process.

Besides, in addition to growers' certification, voluntary standards certification schemes always include millers who have to be certified in order to mill a certified producer.

As for their strategic interest in the GI process, comments were that as a service provider, the miller is likely to engage in anything that will add value to the product. Another important point raised was the issue of consistency. In other words, millers would be interested only if the GI raises the volume of production, if it raises the activity of the milling company and stabilizes their business. The millers are about to gather within a «Commercial Coffee Millers and marketing agents Association» (CCMMAA) whose main purpose is to come up with a code of practice and to be more united when disputes arise with growers. This association is an asset that would allow millers to speak of the same voice if the GI initiative succeed.

The miller can also be the marketing agent for a given producer or group of producers provided he is duly licensed by the Board and appointed by the grower through a specific agreement to market the grower's clean coffee⁹.

2.2.2 The Marketing Agents

There are two types of marketing agents:

- The **Commercial marketing agents** offer a service to the contracted farmers for a fee. The commercial millers send the graded coffee to marketing agents who prepare, classify the coffee (See 1.2.2 a), prepare catalogues for the dealers before the auction (two weeks before) and set a reserved price for each coffee to be sold.
- The **Grower marketing agents** are registered and licensed by the Board to market their own coffee only. Generally for the cooperatives, the marketing agent is also the miller of the coffee.

Prior to April 2002 (liberalization), CBK was the sole marketing agent. As of 13th April 2011, there are 8 marketing agents. According to the Coffee Act, no dealer who exports coffee and no roaster of coffee shall be licensed as a marketing agent. Considering that the marketing agent acts on behalf of

⁹ See Coffee Act, Part I, Preliminary

the producer, his participation to the GI is needed especially considering the marketing services provided to the grower. The marketing agents met during the mission did not express neither interest nor disregard to the GI project.

2.2.3 Coffee dealers/buyers

These are coffee buyers, licensed by the Coffee Board of Kenya to buy coffee from the auction through a competitive bidding process. Most coffee dealers are agents of some overseas coffee buyers and buy coffee as directed by their principals abroad. Two weeks before the auction, the dealer receives the catalogue from the marketing agent and is able, within these two weeks, to carry out his own quality analysis (cupping on each lot of coffee) and make a decision on what coffee(s) to target during the given auction¹⁰. According to the last list of license holders (13th April 2011), there are 76 traders of coffee in Kenya of which only around 5 are really active.

Dealers are intermediaries; as such, their interest in the trade of coffee is to fulfil their contract with the roasters abroad in terms of quantity and quality agreed upon with the latter. Also, the participation of the dealer in a potential GI association does not guarantee him or her, the acquisition of the coffee bearing a GI within a marketing system based on auction. Right the opposite, the scenario of strong and well-structured producers, in position to upgrade and harmonise quality, would significantly reduce the services provided by these dealers and eventually threaten their existence.

2.2.4 Green coffee end-users: The roasters and the big multinational companies

Two types of stakeholders are actually the users of green coffee: the roasters who are producing roasted coffee and larger companies who dominate the market and produce coffee and coffee based products.

Four large multinational companies provide more than half of all the coffee consumed by the 25 main consumer countries. These companies are Jacobs/Kraft General Foods, Nestlé, Procter & Gamble and Sara Lee/DE. The first three control 73% of the USA market and the concentration is said to increase. In Germany the big-four market share has risen from 75% to 86% while in Netherlands, Sara Lee/DE has a market share of 70%¹¹.

In terms of interest of the roaster in the GI process, it is to be noted that the roaster's reasoning is based on security (stability) and profitability of the coffee. Still, two groups can be identified:

- Roasters consuming the commodity coffee to produce low and medium quality coffee and different industrial products containing coffee (Soluble coffee, coffee flavoured beverage, etc.)
- The producers of blended coffee for preparation of quality coffee for Ho.Re.Ca, offices or home consumption who in some cases wish a de-commoditisation of the coffee, because these roasters need high quality green coffee unlike most of the roasters of the previous group who need rather standardized quality.

The second group, clearly quality driven, sees positively initiatives that promote quality with the commitment of producers.

The other group, more price sensitive, rather aims at detaining full bargaining power in negotiations, in order to impose conditions and prices to the producers. Usually the second group strategy relies on their direct presence in the production country, integration of the exporting activities and direct relation with specific producers in order to get the best quality green coffee. The first group relies

¹⁰ François M., Gichovi B., *Feasibility study: Establishment of Geographical Indications for Kenyan coffees*, October 2011.

¹¹ Karanja A.M. and Nyoro J.M., *Coffee Prices and Regulation and their Impact on Livelihoods of Rural Community in Kenya*, October 2002. http://fsg.afre.msu.edu/kenya/o_papers/coffee_study_sc.pdf

more on intermediaries even though in many cases, branch offices are in the capitals of the main producing countries. Still, this first group might have in some cases the same quality objectives for specific brands or line of premium products.

When coffee exporters buy the coffee at the auction, they ship it through the Ocean Coast of Mombasa (between March and July); the international buyers who import the coffee sell it to roasters who roast it and sell it to distributors. Hence, there is no direct contact with producers of coffee in Kenya, who stated that they ignore what happens with their product once it's exported. Moreover, the roasters and some distributors such as Starbucks already use the geographical names "Kenya" or else when selling the coffee (*see 4.2.1*) within their single origin program; the GI protection (provided the protection is extended to the export markets) being a limitation to the free use of such names, it is highly likely that its registration will create a conflict between exporters and importers.

The case of "Coffee from Ethiopia" shall be cited at this stage as the delivery of licenses has allegedly degraded Ethiopia's relationships with its roasters. However, the payment of license is not applied systematically. What is rather playing against the Ethiopian producers are the high inconsistency of the quality, indicating that the enforcement of the CoP (Code of Practice) of the collective mark is not really working, and the weak institutional environment does not protect business interests.

According to some interviewed stakeholders, "there are possible linkages to build with the roasters based on GIs, but there is still a lot to do".

As for roasting coffee in Kenya and implementing the GI at the local level, it appears that it has its own challenges especially if you want to ship as Nespresso or Nestlé. According to a dealer interviewed in Kenya, they will never accept because they will fear the lack of consistency, the defaults in quality and they will never disclose industrial secrets linked to some ingredients they use. According to an Italian roaster, the know-how needed for making a good coffee in terms of appropriate roasting and blending is just not present in the raw material producing countries. Another issue is the requirements of certain markets, which can be very bureaucratic: to ship to the US you have to register, make a pre declaration, and have the product tested.

The participation of local roasters in the GI association is also an issue to be considered. There are 2 roasters registered in Kenya: Java and Dorman's. As far as Java is concerned, they manage to buy coffee from the Central province of Kenya i.e Kiambu, Kirinyaga, Kerugoya, Maragua, Murang'a, Nyandura, Nyahururu, Nyeri, Thika. According to Java, the central region is more advanced in the technology of coffee. Production is more consistent and the quality is better looking at the agro practices.

However, the commercial strategy of the local roasters is based on the commercial trademarks "Kenya AA" and "Dormans" which have already acquired a certain reputation. In appearance the GI may not add any added value to their business. Nonetheless, the doubts originating the authentic origin and quality of the coffee sold by those roasters might be removed by the external control attached to a GI.

2.2.5 The retailers

Increasing volumes of coffee are being sold in supermarkets and hypermarkets across the world. Considering that coffee from Kenya is used in blending it is difficult to have visibility on the final retailer.

Retailers have over the last decades increased the product sold under their own brand. To compensate their own brand weakness and average quality level, they often use certified coffee on their own-labelled products.

2.2.6 Research Infrastructures

The **Coffee Research Foundation** (CFR) has the responsibility to promote research on coffee and investigate on a wide range of issues related to this product, including agricultural and commercial systems.

The CRF (Coffee Research Foundation) conducted researches in Nyeri and Kirinyaga, on organoleptic properties of 178 specimens with a focus on their aroma, bitterness and acidity. At this stage, it was not possible to verify the accuracy of this information. We also note the existence of the **Kenya Institute for Public Policy Research and Analysis**.

2.3 Governance of the Value Chain

The first government, after the independence, created a centralized management system for coffee, structured around the supervision of CBK. Later, Kenya was encouraged by the World Bank (WB) to liberalize the sector through SAPs (Structural Adjustment Programs). As a result, the government withdrew its support to the coffee sector, exposing Kenyan producers to worldwide competition.

Recently, the coffee crisis (2004) forced the producers to abandon or replace their plantations by other crops. This had a significant impact on the quality and quantity of coffee produced. In 2012, Kenya coffee industry was still recovering from that crisis, with a rehabilitation of growth areas and initiatives to improve quantity and quality of the production.

Coffee sector in Kenya is characterized by a co-operative system of production, processing, milling, marketing and auction. These cooperatives federate smallholders' produce nearly 70 per cent of Kenyan coffee.

In addition, there are three associations representing the interests in the sector of coffee in the country.

- The Kenya Coffee Producers Association (KCPA, 1991).
 - Lobby for policy changes, but the means of this lobbying are not clearly defined.
- The Kenya Coffee Traders Association (KCTA, 2002).
 - Addressing the concerns of its members (that is to say all companies involved in the coffee industry: grinding agent, traders, warehouse equipment suppliers). In June 2011, the KCTA included 21 permanent members and 16 associate members.
- Kenya Coffee Producers and Traders Association (KCPTA, 2005).
 - Support the marketing of the product.

It is to be noted that a recent survey has showed that many coffee farmers are not affiliated with any of these associations and their existence is hardly known.

2.4 Commercialisation of the product

97% of the gross national production is exported. Kenyan coffee is mainly used in blends, so its origin rarely appear on the retail market.

The CBK adopted a push-pull strategy to encourage stakeholders to market under the logo and the name "Coffee Kenya" (push) and to promote the brand and encourage consumers to demand quality Coffee Kenya (pull).

2.4.1 Vertical redistribution and identification of causality links

In 2006, the government amended the Coffee Act allowing two coffee marketing systems to co-exist in Kenya: besides the traditional auction system, a “second window” was introduced. The aim of the two systems is to encourage the marketing agents to secure the best price for the growers. Indeed, in this channel, the coffee is sold at a price higher than the current average price of the same coffee grade in the most recent coffee auction at the Nairobi Coffee Exchange. However, most of the coffee is still sold through the auction (2.4.1.1). Only 10% to 20% of growers sell their coffee directly (2.4.1.2) and this second window remains underdeveloped at the cooperative level.

2.4.1.1 Vertical redistribution of the coffee sold at the auction

The Coffee act has organized a vertical redistribution of value added among the stakeholders. Money goes from the dealers to marketers/millers and from marketers to producers. The coffee remains the property of the farmer until he/she receives the full payment.

At the Nairobi Coffee exchange, the auctions are organized through an electronic bidding system with large screen indicating the price movements. When there is only one bidder remaining, an electronic hammer seals the deal¹².

Marketing agents and producers set reserve prices below which they do not sell their coffee. If the price does not reach the reserve set, the bid is noted. It’s worth noting that only the farmer and his/her marketing agent know this reserve price.

This means that the marketing agent must reveal his price to the dealer before 5:30pm on the day of the auction. At this point, the dealer may take or reject it. If he accepts, then it is confirmed as a true sale. If he rejects, the coffee is returned and will then be re-offered in subsequent auctions in two or three weeks. It is worth noting that the delay in selling the coffee directly affects the quality of the cup and further reduces prices. On the day (Wednesday) following the auction day, all the marketing agents issue final invoices to all the dealers advising them at which banks they will remit the payments within 7 days (prompt date).

Once a buyer buys coffee from the auction, he is required to pay the money to the marketing agent within 7 days after the auction which is then passed on to the grower minus the marketing cost, milling costs¹³ and the statutory deductions of 2% to Coffee Research Foundation, 1% to the Coffee Board of Kenya and 1% to the local authority (0.8% to Kenya Roads Board and 0.2% to the county councils)¹⁴. According to the Coffee Act, *the grower shall pay to the marketing agent fees in an amount not exceeding three per cent (3%) of the gross coffee sale proceeds.*

Highlands, one big milling company in Kenya, charge producers (cooperatives) 65US\$/tonne to mill the coffee. 1.50US\$/bag is charge to store the coffee in the warehouse for 6 weeks 3,5US\$/bag is charged to the producers for the jute bag. The millers are taxed at 16% VAT that has to be paid to the government.

The marketing agents are supposed to pay the farmers or his/her appointed commission agent within 14 days. However this is rarely the case, thereby causing delays in paying farmers. Kirumba (2011) indicates that farmer’s payment could be delayed up to 6 months, which means that producers are paid twice or sometimes once a year.

¹² KCPTA, 2013.

¹³ As foreseen by the Coffee Act: Except as otherwise agreed between the miller and the grower, milling charges shall be deducted by the marketing agent from the payments due to the grower on each outturn for remittance to the contracted commercial coffee miller.

¹⁴ François M., Gichovi, B., *Feasibility Study: Establishment of Geographical Indications for Kenyan Coffees*, 2011.

As of December 2010, farmers received KES76.50 on average for a kilogramme of coffee from cooperatives. For purposes of computing the value addition, Chege (2012) assumes that this is the “buying” price for the cooperatives. Cooperatives indicated that they received KES94.50 for a kg of coffee. On average then, the value addition at cooperative level is KES18 (94.50 minus 76.50) minus what they incur for wet processing¹⁵. Indeed, cooperative may have high operational costs and never manage to pay farmers decently. Other cooperatives have corrupt leaders who embezzle the funds. Historically, farmers have complained of unfair financial retribution by cooperatives, coffee stealing and misconduct¹⁶. It is indicated however that farmers have more control of coffee factories unlike before.

The problem of irregular prices on the market was stressed during the field mission. It is not always well understood by the farmers who perceive it as an unfair burden. A producer from Nyeri has explained that in 2011 he had got 114 US\$/kg (for 170 trees) and that in 2012, then had 60 US\$/kg with the same production. The general feeling is that **support mechanisms should be in place to secure prices to growers when world market is depressed**. The case of Colombia was quoted especially with regards to the fact that the Federación Nacional de Cafeteros sets a reserved price for its members.

It is to be noted that, according to ICO, in the 1990s coffee producing countries earned US\$10-12 billion per year while the value of retail sales in industrialized countries was about US\$30 billion. In 2002, the sales exceeded US\$70 billion but coffee’s producing countries only received US\$5.5 billion per year¹⁷. In 2010, the exports nearly reached US\$18 billions¹⁸ while total consumption amounting to US\$100 billions through retail and food services for 2011.

2.4.1.2 Vertical redistribution of the coffee through the second window

The direct sales of coffee came into being through the amendments of the Coffee Act in 2006. A direct coffee sale consists in an agreement between a coffee grower and a licensed coffee marketing agent to sell the grower’s coffee to a foreign buyer. The grower directly negotiates with the final buyer and a contract is duly signed and registered with the Board. The Board registers the contract after carrying out an inspection and analysing the coffee for quality and value as per the contract.

While some estates have managed to engage in long-term commitments with roasters abroad, the marketing agent remains a key player of the second window. Coffee Board data on direct sales indicate that 49,155 bags valued at US\$24,631,827 were sold via direct sales for the coffee year 2010/11. This represents approximately 8% of the total marketed coffee (610,493 bags). The practice has been that whenever roasters engage with producers (especially the mainstream ones), they need to have someone who takes the responsibility in case of deficiency of quality and quantity. Usually, the marketing agent will be responsible. In Tanzania they have created a Commission to deal with this issue.

According to some growers, direct sale is not very interesting when you don't have enough quantity and also because the partner asks many conditions. There are too many steps to follow.

Exporters buy the coffee according to their market. Therefore and in the light of the above, a GI building on quality and the respect of a code of practice could impact positively the number of direct

¹⁵ Chege J., *Value addition in coffee industry in Kenya*, 2012.

http://www.trustafrica.org/documents/research_findings/%5BTA-10-089%5D-%20Chege%20Final%20research%20report.pdf

¹⁶ Nyangito H.O., *Policy and legal framework for the Coffee subsector and the impact of liberalization in Kenya*. KIPRA Policy Paper No. 2. Productive Sector Division. 2001.

¹⁷ Karanja A.M. and Nyoro J.K., *COFFEE PRICES AND REGULATION AND THEIR IMPACT ON LIVELIHOODS OF RURAL COMMUNITY IN KENYA*, October 2002. http://fsg.afre.msu.edu/kenya/o_papers/coffee_study_sc.pdf

¹⁸ COMTRADE

sales by cooperatives provided the code of practice specifications fulfil the expectations of foreign roasters.

2.5 Economic, environmental and social sustainability

With an exporting value of US\$500M, coffee is the fourth source of income for Kenya after tourism, horticulture and tea. According to CBK, if 700,000 smallholders are involved in the cultivation of coffee, nearly 1 million people work directly in the coffee sector, with many coffee farmers being also specialised in tea production.

The establishment of a GI in the coffee sector could play a beneficial role, also allowing differentiation of certain export markets. Currently, over 95% of Kenyan coffee is exported as green coffee, without a separate identity. Roasters, with the aim of stabilizing the final taste of the cup, eventually integrate most of the coffee of different origins in blends, achieving the possibility to arbitrage on international prices.

GIs could allow producers to achieve a fair price, also thanks to prevention of counterfeiting and deceptive marketing practices (such as the marketing of 'Kenyan coffee' which only contains a small percentage of grains actually from Kenya). One of the measures that have been adopted to improve the income of farmers consists in authorizing a different auction system, with producers' direct sales. However, to date, only 6,000 to 7,000 bags, equivalent to about 400 tonnes were sold through this channel.

While traders are rather sceptical about a possible increase in producer prices, farmers themselves and the Coffee Board showed great interest in the development of a GI.

A strategic choice will have to be made between two options: to implement a national GI 'Coffee Kenya' (thus benefiting from the reputation acquired by that name on export markets) or instead to opt for a specific GI for each geographical area of production (that is to say Mount Kenya West, Kiambu, Kirinyaga, Murang'a, Nyeri, Thika and Ruiru).

3 Geographical Indication for Kenyan Coffee

3.1 Legal Framework

The applicable legal framework is the Trademarks Act, Cap 506, No.51 of 1956, as amended in 2002 and the Trademarks rules, LN575/1956, as amended in 1994 and 2002. In Kenya, GIs are protected by trademark laws, which cover certification marks including geographic names. Indeed, Article 12 - (1) - (d) of the Act provides that a trademark with a direct reference to a geographical name does not have sufficient distinctive criteria. This is why certification marks and collective marks can be registered to protect a geographical name. This registration constitutes a brand for ten years from the date of the request. Six months before the expiration of 10 years, holders may apply for renewal of registration. The authority responsible for the registration is the Head of the Intellectual Property Institute of Kenya (KIPI).

Since 2001, a Bill on Geographical Indications is being developed in Kenya. However, the Geographical Indications Bill is under revision in Kenya. Meanwhile, the Kenya Trademarks Act provides for the protection of geographical names through certification marks or collective marks.

«Certification trademark» is defined by Part VII of Trademarks Act (CAP506) as «A mark adapted in relation to any goods to distinguish it in the course of trade goods certified by any person in respect to origin, material, mode of manufacture, quality, accuracy or other characteristic from not certified

goods shall be receivable as a certification trade mark in Part A of the register in respect of those goods in the name, as proprietor thereof {...}».

«Collective trademark» is defined by Part VIIA of the same law as: «A mark capable of distinguishing, in the course of trade, the goods or services of persons who are members of an association, from goods or services of persons who are not members of such association, shall on application in the prescribed manner, be receivable as a collective trade mark or service mark in respect of the goods or services in the name of such an association.».

The competent institute for the registration process in Kenya is KIPI. This institution is in charge of the elaboration of the legislative framework and will be in charge of the administration of GIs in Kenya when this legislative framework will be in place.

The registration costs are rather low and vary according to the applicant nationality. For local applicants, the registration costs KES 4,000 (€35) for the first class and KES 3,000 (€25) for each subsequent class. Foreign applicants have to add a “foreign fee” of KES 200 (€1.7).

3.2 National GI

Since the beginning of 2010, CBK has engaged in the registration of a trademark for Kenya Arabica coffee, aiming to give it a unique identity in the world and to distinguish it from beans of other origins. In addition, a logo depicting the silhouette of Mount Kenya is on the way to be registered as «Coffee Kenya».



The certification mark is not yet registered, and the implementing rules of this logo (specifications, or CoP) are being developed by a local consultant company which has worked on origin differentiation for “Tea from Kenya”. This code of practice is expected to be ready by the end of 2013. In the meanwhile, the above logo is already promoted as well as industrial standards which are attached with the future rules of application of the mark.

3.3 Local GIs

The coffee cultivated around Mount Kenya, especially Murang'a or Nyeri coffee, is reported to have distinctive qualities, but at this moment no scientific evidence of this local typicality has been provided as requested by the law.

The Nyeri region (western slopes of Mount Kenya) is characterized by red volcanic soil, and is located at an average altitude of 1,800 mamsl. The cup varies from a very light to a good acidity with citric hints and smooth full body, and has a complex sweet flavour with fruity, floral, fruit, vinous, chocolate, nuts and vanilla tones (interview of cuppers). This is a favourable GI, thanks not only to the high quality of its coffee, but also to the dynamism of the coffee certification context. According to some experts, Nyeri is the most important production region, and many estates refer to it as geographical area.

Murang'a region is located in central Kenya, near the Aberdare Mountains and south toward Mount Kenya. About 50 per cent of the district is composed of rich red volcanic soil, organic matter and it is characterized by good fertility.

Coffee quality within Murang'a region varies, depending on the area where the coffee is produced: the lower zone (crossing Nyeri), the upper zone and the middle zone. According to the Cooperative Union Mugama a GI for each of these three areas could be registered. A project financed by the French Development Agency and implemented by the Coffee Research foundation with the support

of CIRAD (Centre de Coopération Internationale en Recherche Agronomique) aims at implementing an origin differentiation on Coffee from Kenya.

In general, high citrus acidity, the full body of black currant and the taste of chocolate characterize the cupping profile.

Therefore, for those two *terroirs* origin differentiation is envisaged. Nonetheless, the combination of the local GIs with the national GIs is not yet clarified. The Coffee Board of Kenya foresees a diachronic strategy where the local producers would have to implement the national branding before enforcing a local differentiation. Interestingly, such diachronic strategy was adopted by Colombia and Guatemala.

In practice, no official discussion was engaged to clarify the strategy of enforcement of GIs in Kenya. Uncertainty in that respect is reinforced both: 1) by the strategy implemented at the local level notably in Murang'a 2) by the change in the form of the Kenyan State which give decisional power to counties and create the risk of discrepancy between the CBK's strategy on coffee in general and the county's strategy on its particular natural resources including coffee.

The herein below analysis of the potential and drawbacks of the GI strategy will be analysed for both levels.

4 Potential of the GI strategy for Kenyan coffee industry

Coffee from Kenya has proved, over time, to have specific characteristics linked to the origin. Despite endeavours to register a collective trademark "Coffee Kenya", the origin of this crop remains legally unprotected. Therefore, the economic benefits of the origin of the Kenyan Coffee will be analysed with regard to a non-registered GI. The current initiatives related to the valorisation of the origin of coffee are currently twofold: (1) at national level, the CBK is working on the protection of the "Coffee Kenya" as GI, (2) at local level, a few initiatives are on-going, aiming at defining and promoting GI in smaller territories.

4.1 Potential of "Coffee Kenya" to qualify as a geographical indication

This part seeks to identify the distinctive characteristics of coffee from Kenya from a national and a local perspective. The existence of different levels of specificity for coffee in this country shows foresight for different level of use for the potential GI.

4.1.1 Principal distinctive characteristics of Kenyan coffee

Coffee requires specific temperature, rainfall, and altitude conditions that limit the growing region to tropical areas. To the opinion of various stakeholders, Kenya has the reputation to grow one of the finest Arabica coffees in the world. Basic natural factors explain the typicality of this coffee resulting in a unique national coffee. Indeed, the main regulatory body (Coffee Board of Kenya) is implementing a national branding strategy aiming at gaining value from this comparative advantage. Additionally, distinctive qualities appear at the regional levels depending on the type of soils, the altitude and human practices.

4.1.1.1 Reputation

A century of long tradition of coffee cultivation exists in Kenya¹⁹. The national origin is well known on the export market through the appellation "Kenya AA TOP".

¹⁹ CondliFFE et al., *Kenya Coffee: A Cluster Analysis*, 2008.

As a member of the ICO, Kenya belongs to the group of countries producing “Mild Arabicas” (ICO quality groups) alongside with Colombia and Tanzania.

4.1.1.2 Specific quality of the Kenyan coffee

In Kenya, Arabica coffee (*Coffea Arabica*) accounts for more than 90% of the country’s production and is considered of higher grade world over, compared to its overly grown counterpart Robusta (*Coffea canephora*), produced in many other African countries such as Uganda, Republic of Guinea, Tanzania, etc. However, the coffee quality has started decreasing and losing its specificity with the introduction of the variety Ruiru 11 that contains some Robusta (genes). The controversy about the use of Ruiru is still on-going, but scientific investigation has shown the close relationship observed between HDT, Ruiru 11 and Catimor Line 90 to Robusta. The explanation of this relation is to be found in the fact that the cultivar Ruiru 11 is a composite F1 hybrid between lines of the variety Catimor, and male selections most of which have Hybrid de Timor a natural hybrid of Arabica x Robusta in their pedigree. According to an important Italian roaster, the Ruiru 11 organoleptic properties reveal some similarities with Robusta coffees and are not in line with Arabica traditionally used in Kenya. Kenya coffee reputation will certainly depend of a reasonable balance between productivity and quality of the used varieties.

Like wine, which quality relies on the maturity, Coffee from Kenya grown in the Highlands will take a longer time to mature (11-12 months); in Tanzania however, coffee will mature earlier because of the heat: the beans will be bigger but their quality poorer than Kenyan beans. Therefore, Kenya has a typicality compared to its African counterparts.

Besides, Coffee from Kenya is mainly produced on the highlands surrounding the Mount Kenya, the second highest mountain in Africa. It is cultivated at altitudes between 1,400 and 2,000 mamsl and cultivations are extended on a surface of about 170,000 ha.

Altitude influences the flavour and aroma of the coffee. Whilst its characteristics vary depending on the level of altitude, the common denominator of Kenyan coffee’s quality appears to be the high acidity.

Based on this national identity of the coffee, the entire national production (around 43,366 tonnes in 2012) could be submitted to the national project of differentiation through a GI.

Now, the issue of quality is relative and varies from a client to another. While some will prefer coffee from low lands (less acid), others would like coffees from high lands (more acid). Germany, France, and Scandinavian countries prefer the acid taste of Kenyan beans whereas consumers in the United States and in Japan do not accord the same value to this attribute of Kenyan coffee.

The level of acidity for coffee has been considered as the potential criteria to be enhanced through the national certification trademark. Enforcing the GI at the regional level is also considered.

4.1.1.3 The specificity of terroirs

Whilst there is no scientific evidence of specific characteristics linked to origin of the Coffee in Kenya, local experts and sectors stakeholders have reported that coffee grown around Mount Kenya, in particular that from Murang’a or Nyeri have distinctive qualities.

Figure 19: Coffee growing regions in Kenya



Source: CBK

As above-mentioned, the intuitive reason for local differentiation is the altitude at which the coffee is cultivated. The typicality may as well vary according to the type of soils on which the coffee is grown (see Table 1 below).

4.1.1.4 The quality according to soils and altitude

The (non-exhaustive) table 1 shows the complexity of the distinctive qualities of Coffee in Kenya in different *terroirs*. Terroir is a French denomination, which is defined as “A terroir is a delimited geographic area where a human community has developed, over the course of history, a collective production method and knowhow. A terroir is based on a system of interactions between physical and biological milieu and a set of human factors involved to convey originality, confer typicality and engender reputation for a product. Typicality is an inheritance which has historical and geographical origins and which is anchored to a territory through a cultural identity and heritage.”²⁰

²⁰ Vandecandelaere E, et al., *Linking people, places and products*, <http://www.fao.org/docrep/013/i1760e/i1760e.pdf>, 2009.

Indeed, Kericho coffee in the Rift valley region comprises different types of soils corresponding to different cup profile²¹.

Table 1: Examples of differentiations of local coffees based on soils and altitude

Soils types	Altitude (mamsl)	Cup profile	Geographical location
Red volcanic soils	1500-1550	Medium acidity and balanced smooth body	Machakos
	Between 1400 and 1650m	Medium acidity	Kericho
Well drained, deep, friable red clays with good fertility	Between 1680 and 1900	Citrus Acidity	Kericho Embu Nyeri Kirinyaga
Red deep loam to sandy soils	Above 1900	Citrus flavoured	Kericho
	1550	Medium acidity, medium body smooth and creamy	Nyamira

4.1.1.5 The distinctive quality of coffees from Mount Kenya

Tropical mountains are often characterized by high population density, and are the heart of very important area of production located in Ethiopia, Colombia, Kenya and Central America²².

In particular in Kenya, most of the coffee is grown on the volcanic slopes around the Mt. Kenya, which rises to about 5,199 mamsl. The foothills of Mt. Kenya and the Aberdare ranges host a pristine indigenous forest teeming with wildlife that frolics in its unique microclimate, and the coffee produced in this region is rich in acidity, full bodied with hints of citric fruits.

European roasters are however from a different opinion about how different and specific can be coffee of different terroirs of a same country. The interviewed Italian roaster, while recognising strong specificities between coffees originating from different countries did show more scepticism about local specificities, except for Colombian coffees grown in the 3 different sierras, more or less influenced by the Pacific Ocean. It seems that local differences are rather perceived by local experts, but worldwide the local specificities are minimal and do not affect the choice of roasters for their coffee blends.

4.1.2 The potential level of use of the GI

As a collective right, the GI has to be registered by a collective group or an entity representing the relevant stakeholders. Coffee is characterised by the diversity of stakeholders and the heterogeneity of interests. As such, the issue of the group of stakeholder who will initiate the GI process and eventually manage it is sensitive.

Although Kenya does not (yet) enjoy a *sui generis* system for the protection of GIs, an alternative route to protect origin exists under the law: the registration of a collective or a certification trademark.

The legal frameworks available in that respect are relevant when it comes to choosing the potential holder of the GI(s). Indeed, according to the Trademarks Act (CAP 06), the certification trademark requires for a “certifier” to grant the certification and thereby to hold property on the name. The law

²¹ Cupping is one of the coffee tasting techniques used by cuppers to evaluate coffee aroma and the flavor profile of a coffee.

²² Bart S., A Fair Share For Smallholders. A value chain analysis of the coffee sector, 2006.

does not specify the nature of the certifier. Collective trademarks²³ are to be held by **an association of stakeholders**. On the other hand, the draft GI bill states that the following stakeholders shall have the right to fill an application: (a) **legal entities** carrying on activities as producers in the geographical area specified in the application, with respect to the products specified in the application; (b) **a group of representative producers**; or (c) in respect to indications with a national character, **any competent authority** as provided under Schedule III of the regulations²⁴.

On the road of high-level recognition, the use of the national GI “Coffee Kenya™ ” might have to overcome several obstacles. The first challenge is the relatively low demand on the origin of coffee on many markets that first of all ask for taste, and few others who expect south products to be socially and/or environmentally sustainable. Overall, the promotion of the origin approach comes much more from producing countries and producers than from importing countries and consumers, who first of all trust the brand when it comes to pleasure attributes.

Another challenge is the fact that quality coffee in term of taste is in principle obtained with blends, where by definition the origin is not the determining factor. On the contrary, roasters tend to keep secret the composition of their blend.

The GI could be used at all stages of the chain until the final consumer or be used for business to business (B2B) purpose (producer/exporter and the roaster). For the roasters searching for quality coffee, the use of the GI, including all its dimensions (quality control, traceability, etc.) could offer a greater level of guarantee on the green coffee to the roasters. In case the use of the GI is extended to the roasted coffee, several issues arise. The first is the need to establish agreements between the exporting countries and the roasters defining the conditions of the GI use. Another question that could appear is that all the processing phase should be included in the CoP. Indeed, the roasting of coffees of the different origins varies. The interviewed Italian roaster when mentioning the existing GIs, and in particular the coffee from Ethiopia and café de Columbia, described two different situations. In the case of Ethiopia, the agreement between the roaster and the government stipulates the size of the logo, and the wording referring to the Coffee from Ethiopia. The agreement does not refer to any premium or other financial measures. The roaster does not expect any sensible marketing impacts, but makes happy the suppliers who see his coffee origin promoted. The legal experts of the Italian company are preparing a similar agreement related to Café de Colombia

We therefore see that the actual use of the GI for coffee faces low incentives combined with concrete difficulties linked to negotiations among value chain stakeholders. In this kind of specialized supply chains, transaction costs might happen to be very high and slow down or prevent the use of GI.

4.1.3 Who to carry and manage the GI

Considering the specificity of the value chain of coffee in Kenya where coffee is regulated by a State-related agency, harvested by farmers, processed by wet and dry millers, sold by marketing agents, exported by dealers as a green bean, roasted abroad, and then retailed, a cross-reading of the above-mentioned provisions suggest to consider the possible holders of a GI to be either **a regulatory body** (a), **a group of producers** (b) or **an ad hoc association** (c).

Each category would be described with regard to its role in the value chain and with a view to assessing the interest of a given category for the origin branding.

²³ «Collective trademark» is defined by Part VIIA of the same law as: «A mark capable of distinguishing, in the course of trade, the goods or services of persons who are members of an association, from goods or services of persons who are not members of such association, shall on application in the prescribed manner, be registered as a collective trademark or service mark in respect of the goods or services in the name of such an association.»

²⁴ Draft Geographical Indications Bill, part IV, 2011.

4.1.3.1 Regulatory bodies

Whilst Kenya has liberalized the coffee sector in 2001, the reforms in that respect were more limited than in countries like Uganda. Indeed, the public and State-related organizations still have a regulation role in the production and marketing of the product. As such, they may be foreseen as rightful holders of the future a GI.

I. Ministry of cooperatives

The Ministry of cooperatives is mandated to support and regulate cooperatives, ensuring that elections are held on time - and that they are fair - assisting in negotiations between cooperatives and its farmers and ensuring that the cooperative act is upheld.

The choice of having the Ministry of cooperatives as GI holder could be based on the fact that the Ministry of cooperatives has, among its duties²⁵, the **“cooperative Marketing”, including value addition processing**. Consequently, the Ministry of cooperative has created the Co-operative Marketing Department.

With the new political reforms, the Ministry of cooperative will become a department of the Ministry of industrialization and enterprise development. The role will not necessarily change. At the national level, the Ministry’s main task mainly consists, but it is not limited to, in policy making. Since cooperatives are business enterprises, if there is, for instance, a huge order, and only one cooperative is not able to supply, they will help to support the cooperative’s coordination with other stakeholders. Yet, the degree to which the Ministry will be involved in coffee trade of the different counties will be function of their presence on the field. In Nyeri County, there is already a department in charge of cooperative.

If the Ministry of cooperative becomes the holder a GI (national or regional), a representative of this institution should exist in every county where coffee is grown. Additionally, this would automatically lead to the exclusion of some producers growing coffee on more than 5 acres, even when they comply with the given code of practice. It is to be noted that the Ministry of co-operatives has not yet made any suggestion respect the possibility to be the holder of the GI.

ii. Ministry of Agriculture

The Ministry of Agriculture is mandated with data collection on coffee, trainings for farmers and research on coffee through its research division: the Coffee Research Foundation. The marketing of the coffee is indirectly monitored by the Ministry of Agriculture through the Kenyan Coffee Producer’s and Trader’s Association. Moreover, this Ministry plays a major role in the industry through its regulatory division for coffee: the CBK. As they regulatory bodies, and considering the export crop nature of coffee, each of these entities should be considered as the possible holder of a national GI.

lii The Coffee Research Foundation (CRF)

The Foundation was set up in 1908. In 1944 the government purchased the Jacaranda Estate near Ruiru and established the Coffee Research Station. The main objective of the Foundation is to promote research and investigate all issues relating to coffee.

²⁵ According to the Ministry of cooperative website, his duties can be summed up as follows: Cooperative Policy Formulation and Implementation, Cooperative Legislation and Registration, Provision of Cooperatives Extension Services, Cooperative Education and Training, Cooperative Financing Policy, Cooperative Savings, Credit and Banking Services Policy, Cooperative Governance, Cooperative Tribunal, Cooperative College, New Kenya Cooperative Creameries (KCC), Promotion of Cooperative Ventures

In 1963, after considering requests by coffee farmers, the Government handed direct responsibility for the coffee research for the farmers. Therefore, CRF is a farmers' association financed by Coffee Board of Kenya through a levy on coffee seeds production and it could be quite legitimate to hold the GI. Coffee Research Foundation is the only authorized source of Certified Coffee seeds.

CRF is composed of a socio-economic unit, research and advisory extensions and runs a training college. It is to serve those who want to empower in coffee management or to acquire diploma in the field of coffee (one to two weeks courses). The Foundation has its headquarters at Coffee Research Station, Ruiru (33 km from Nairobi) and substations at Koru (Kipkelion District), Kitale (Trans Nzoia District), Kisii (Kisii District) and Mariene (Meru Central District). CRF also operates a demonstration plot at Namwela (Bugoma District) and several trail sites located in various coffee growing regions.

iv. Kenyan Coffee Producer's and Trader's Association (KCPTA)

KCPTA was created in 2002 after liberalization and the collapse of the former Kenyan Coffee Auction. KCPTA's work is to check the grade and class before the auction at Nairobi Coffee Exchange. They receive two (2) bags of seven (7) kg give 250g of each sample to dealers two weeks before that coffee is sent at the auction.

The objects of the Association are non-political, and are **to gather all the categories of stakeholders involved in the Kenyan coffee industry and trade, so as to handle all the issues relating the floor of the auction (Nairobi Coffee Exchange) occurring every Tuesday.** To this end, producers and traders of Kenya coffee elect a committee of eleven (11) people from the industry to run the Association i.e. six (6) producers and five (5) traders as follows: Three (3) license dealers, two (2) commercial millers, three (3) farmers representing large estates, three (3) farmers representing co-operative.

v. The Coffee Board of Kenya

Originally, the CMB (Coffee Marketing Board) was established in 1946 and became fully operational in 1947 to cater for the coffee marketing activities. The CMB was further abolished in 1971 and its functions consolidated with those of the Coffee Board Kenya (CBK). Since then, CBK has been managing the industry up to 2001 when a new Coffee Act 2001 No. 9, was enacted that specified new roles for the CBK as an industry regulator:

In a nutshell, CBK's role is twofold:

- Carry out registration and licensing of coffee nurseries, growers, pulping stations, millers, marketing agents, management agents, buyers, roasters, packers, warehousemen and auctioneers to ensure adherence to standards.
- Promote good agricultural practices as well as the virtues of drinking coffee and the image of Kenyan coffee in the market place. On this specific issue, the CBK has a "Quality Control, Research & Marketing Department".

As such, the relevance of CBK as a GI holder is obvious. As stated before, CBK has already engaged in the process of registering a certification trademark – "Coffee Kenya, so rich, so Kenyan" (See Figure 3) to enhance the visibility of Kenyan coffee on the market.

The relevance of CBK as the holder of the GI is all the more so important that Coffee Board is highly representative; Coffee Board from Kenya comprises coffee growers, coffee buyers/Dealers/Millers/marketing agents. Therefore, CBK brings together upstream and downstream partners of the value chain and acts like an inter-professional body. In an effort to favour economies of scales, it seems difficult to conceive that another body than CBK will be the holder of the GI.

However, it was reported that the CBK faces problems to federate all the producers around the GI strategy remains a challenge.

4.1.3.2 *The coffee growers*

According to the Coffee Act, “Grower” means any person who cultivates coffee in any area in Kenya and is registered with the Board and includes a co-operative society, cooperative union, growers’ association or a plantation owner²⁶”.

By virtue of the Coffee Act, producers owning less than five (5) acres of coffee land have to sell their product through cooperative societies. Producers owning above five (5) acres of land are called “estates” and may sell their coffee directly through their marketing agent.

The interest that these two categories of producers could have in the GI may be different, as the estates may have a direct interest, while small producers would participate through the cooperative they belong to.

Cooperative societies

CBK estimates that they are currently over 700,000 (2011) smallholders who market through about 450 Co-operative Societies. Each cooperative owns and manages one or more wet-processing factories (primary processing). Farmers have to process cherries within 24 hours after harvest²⁷. With limited access to transportation, they are forced to work through the closest cooperative. These smallholder growers account for 60% of the coffee production in Kenya.

Estates

CBK estimates that they are currently 3,300 small to medium estates with farm size ranging from five (5) to ten (10) acres and one hundred (100) large estates with sizes of between 10 acres and over 200 acres²⁸. They carry out the primary processing of their coffee on their own farms, which converts the coffee cherry into parchment coffee through the wet processing method. On average, this category of producers account for about 40% of the national coffee production.

Being the cornerstone of the production of coffee from Kenya, it is natural to consider those growers as the rightful holders of the GI. Considering that coffee from Kenya enjoys a national typicality, all the producers from cooperative societies and estates could possibly be associated with a national GI project. If the differentiation through origin is local, the governance between estates and cooperatives of the same growing zone around this common project has to be organized.

However, unlike larger estates, the small farmer would usually meet all the requirements for quality. Indeed, it is general notice that the cooperatives societies are producing higher quality of coffee than the large estates one justification being the minor involvement of the workforce in those plantations²⁹. **On the other hand, if the coffee growers hold the GI, no umbrella producer’s entity represents them all in Kenya.**

In some cases, like in Murang’a, a union of cooperatives exists at the regional level; however, not every cooperative is part of a union. Usually, the estates are not; sometimes, no union exist at the

²⁶ See Coffee Act, Part I, Preliminary

²⁷ Mude, G., *Institutional Incompatibility and Deregulation: Explaining the Dismal Performance of Kenya’s Coffee Cooperatives*. *Agricultural Finance Review*, Vol 66, No. 2, pp. 267-281, 2006.

²⁸ USAID, 2010.

²⁹ *The smallholders will use family – which will feel involved – while the big farmers use external workforce (less involvement).*

regional level. Therefore, it has been said, in particular in Nyeri, that the registration of a local GI would require the creation of an *ad hoc* body.

4.1.3.3 An ad hoc GI association

An *ad hoc* association could allow all interest to be taken into consideration. The issue of participation minimizes the risks of bringing «outsiders». There is for instance awareness that one of the biggest estates (Kofinaf) is seeking to produce coffee of high quality and possibly register a GI. However, the lack of trust between this company and other stakeholders does not create a conducive environment to build a GI and could lead to a GI in which not all stakeholders would be associated. This GI association could comprise all the interested stakeholders including coffee growers.

4.2 Capacity of local, national and regional markets to pay a premium price for the origin «Kenya»

In the frame of a study aiming at analysing the potential of marketing coffee from Kenya as a GI, the impacts of this labelling on the industry have to be analysed from an economic point of view. This is foremost important considering that interviewed stakeholders are of the opinion that it is getting more and more difficult to introduce new labels and certified standards. Indeed, most of the growers are discouraged notably because of the lack of return on investment obtained thanks to the various labels. This is the result of the introduction of various actors within the value chain after liberalization, which has led to extreme fragmentation at the grower's level (cooperatives) and a heavy concentration of powerful players further upstream. Kenya has one of the most expensive coffees in the world (In 2006, Kenya AA 12 US dollars per pound against 11, 45 for Ethiopia Harar) JAMAICA Blue Mountain (43, 44 us/pound) and Kona coffee (29,87 us/pound)³⁰. However, these premiums are according to growers insufficiently redistributed at the cooperative level. In theory, estates owners who integrate more operation of the value chain have more negotiation power thanks a better link to the market.

Therefore, on one hand, this part will try to analyse the vertical redistribution of earnings among the stakeholders in particular for what concerns smallholders. One of the questions we'll try to answer in this section is whether the registration of the GI could add value to the product Kenyan Coffee. The second important question is if the potential GI will reinforce certain unfair redistribution of margins or if on the contrary it will create an opportunity for producers to earn more value from their product.

This part also seeks to analyse the existence of actual means of differentiation for Kenyan coffee and analyse their compatibility or competition with the GI system.

When answering these questions, we will also take into account the different profiles of the different markets. The main export market is Europe, in particular Germany, which accounts for almost 30% of the exports of Kenyan coffee and is the biggest market for this product might be willing to pay premium prices for enhanced certified quality. However, other markets (US, Japan) seem less incline to pay a premium for coffee from Kenya because they do not attach the same importance to its specificity. Is the origin branding a viable strategy on the international markets?

4.2.1 Origin Kenya vs. other types of differentiation on the market: which place for GI?

Farmers and consumers are increasingly selling and buying differentiated coffees. Therefore, it is not only the generic quality that contemporary coffee consumers pay for, but also symbolic quality start

³⁰ FAO Guide, *Linking people, places and products*, p.20. 2009.

to be relevant in purchasing choices. Through the reference to human (history, know-how) and natural factors, the GI labelling builds on this symbolic quality.

However, this strategy is not new in the trade of coffee from Kenya, which raises the question of the place of GI as a type of differentiation. If the coffee beans are exported in “jute bags” indicating “Coffee from Kenya”, what is the identity of Coffee from Kenya after all? The grade? The cup? (a), the standards? (b), the single-origin (c) or a mere trademark (d)?

4.2.1.1 Grading value-creation vs. GI value creation

In Kenya, coffee is bought according to the **physical** and **organoleptic** quality.

Within the catalogue prepared by the marketing agent, Coffee from Kenya is presented and sold to the dealers according to the grade. There is no universal grading and classification system – each producing country has its own. The coffee beans after milling are separated mechanically into various grades, which differ in size, weight or shape.

4.2.1.1.1 The physical quality of beans: Issues at stake with the grading system³¹

In Kenya there are around 9 size grades, with AA being the largest size of the bean (and therefore considered the best). Indeed, size is important because bigger beans imply more aroma and flavour which are both of the utmost importance for coffee drinkers. Bigger coffee beans are perceived to produce better quality of coffee.

The nine grades are presented below from the premium grade to the smaller ones.

AA This grade has good size formation of large beans (7.20 mm screen). This grade usually fetches a higher price than any other grade.

AB is a combination of two grades A and B A- 6.80mmscreen, B-6.20mm screen. AB is regarded as a representative of the other grades in a consignment and usually there is more coffee of his grade than of other grades in a consignment. It is also a popular grade which fetches good prices.

PB Round beans which usually grow as one bean in a single cherry bean. About 10% of coffee falls in this grade.

E This is the largest of all the grades in size and has been named Elephant grade in the grading. Usually there are two seeds joining together to form the seed in a single cherry. It is the source of ears when the seeds part during handling. This grade also includes the very large PB beans. Like PB this grade is normally in small quantities in a consignment.

C Smaller beans than AB and most of the thin beans in this grade.

TT This grade is composed of smaller beans, which are ranged and are usually normally separated from more saleable AA, AB and E grades.

T The smallest and thinnest beans, most of the beans are in the form of chips. Most of the beans in this grade are broken and faulty. In classification, this grade is always below the other grades.

MH /ML this is the coffee that has not gone through the wet processing either because it was not picked, or because it fell from the trees after ripening. About 7% of total crop falls into this grade, which generally fetches lower prices and which has sour tasting liquor.

Even if the size of the bean is not the only parameter to fix the price of coffee, there remains a close link between price and the size.

³¹ Unless otherwise stated, information in this table was quoted from the website of CBK. (http://www.coffeeboardkenya.co.ke/index.php?option=com_content&view=article&id=45&Itemid=39)

4.2.1.1.1.2 *The organoleptic quality or the system of classification*

Besides the size grading, a class system also influences the price paid by the dealers. The classes are on scale of 1 to 10 describing the qualities of the raw, roast and liquor are analysed based on this scale: 1 applies to the finest coffee and 10 to the least pleasant cup. Some exporters work with roasters selling the raw product; for those ones, the size of the bean is important; some have clients selling the finished product, for those quality of the cup is important. For the latter, the coffee will be "cupped" in order to determine for which coffees they would bid at the auction.

The literature³² and the field mission reveal that the Kenyan cup categories are the following:

- 1-2** medium bold/greyish, free from dejects, fine raw appearance, good fine cup and flavour
- 3-4** Medium size, few defects
- 5** Small/medium size, brownish to grey-green, fair cup quality
- 6** Small/medium size, few major defects, black taint cup allowed
- 7-8** Mixed size, many major defects, and poor tainted cup taste
- 9-10** Mixed size, full major defects, foul cup taste.

It should be noted that the classification of a given coffee is kept confidential along the transactions chain, and therefore does not appear in the catalogue prepared by the marketing agent. This explains why a condition to get a license as a dealer is to possess a roasting machine.

Prices are really determined by the quality of the cup the best coffees being those with AA grade and class 1. Some AA coffee would be sold at very low prices because of their organoleptic characteristics. Therefore, to implement a GI on coffee from Kenya, it would be difficult to delimit the area of production on the basis of the grades. If the great majority of AA beans are found in the Central region, grower within one area may use some seeds that cup worst in this very region. One option would be to have a GI "Coffee from Kenya" applying to AA and AB coffees, which would give Kenyan coffee a physical identity.

However, the GI should rather take into consideration the cup rather than a mere geographical area. Indeed, the "Specialty Coffee Association of America" had developed and implemented cupping protocols and recommends these standards for cupping coffee³³. According to Kenya Coffee and Traders Association, cupping could be the distinctive criteria to enforce the GI for coffee in Kenya. Indeed, thanks to the climatic conditions, coffees from Nyeri and from Embu have distinctive qualities. However, it is possible to find the best and the worst coffees in those growing regions. *"Unfortunately to implement the GI, the grade can't give the whole picture. We can't draw the line on the basis of these grades. Besides, prices are determined by the quality of the cup. A grower within one area may use some seeds that cup better for instance. Furthermore, quality of the coffee keeps on changing according to the practices of farmers. Thus the GI should rather take into consideration the cup rather than a mere geographical area"*.

Considering there is a link between the cup and the premium, the cupping protocols could be enforced as the international standards to distinguish the coffees eligible to the GI from the others. As for KCCE (Kenya Co-operative of Coffee Exporters), the quality of the coffee is due by 60% to human factors (processing/harvesting/pulping/ fermentation/ drying and milling of the coffee); the storage is also very important (warehousing) and 40% to natural factors.

³² Kirumba E.G., *Coffee certification and smallholder farmers' livelihoods in Kenya*, 2011.

³³ See «Cupping protocols», <http://www.scaa.org/?page=resources&d=cupping-protocols>

According to the interviewed Italian roaster, one of the obstacles for the assessment of the coffee quality is the absence of espresso machines that prevent to cup the coffee supposed to enter into blends for espressos.

Either ways (physical or organoleptic), based on the grades and/or classification, the GI would automatically exclude some growers from that differentiation.

The Coffee Board of Kenya is implementing an integrative certification trademark, which creates a national identity to the coffee by enforcing industrial standards.

4.2.1.2 Standards vs. GI system: “Coffee Kenya”, so rich, so Kenyan

The idea to have an origin branding within the framework of the Trademarks Act was envisaged way back in 2007 by the CBK in discussion with the stakeholders to reach de-commodification of Kenya coffee.

As a collective right, this branding implied the drafting of rules of application that would be needed to respect in order to license the use of the mark.

The content of the rules of application has generated several discussions over the last years. Finally, The Kenyan Bureau of Standards (KEBS) has been hired by CBK to come up with a CoP. The CoP covers the whole process of production for coffee from seeds to selling. KEBS has elaborated this document in direct involvement with the coffee industries. The CBK has also hired a consultant company to come up with the Standard Operating Procedure (technical aspects of the implementation of the trademark: audit check list, approval committee), which is on-going. The consultant is Good Manufacturing Practice (GMP) & Allied Certification Corporation Ltd, a conformity assessment body that managed the origin branding of tea from Kenya.

In the next future, the identity of the “Coffee Kenya™ ” should be the future “certification trademark” relying on the enforcement of the existing industrial standards.

Various factors make standards functional criteria for the origin differentiation. The industry is facing major challenges, which the farmers find difficult to overcome, mainly due to drawbacks in crop husbandry. Kenya coffee is sought because it usually complies with the standard, and players maximize on it blending other coffees.

However, some stakeholders are blaming the content of the CoP, and claiming that industrial standards for coffee are regulatory. While they want the certification trademark, the CBK Trademark should be voluntary. It does not seem right to mix the two, as the trademark should stand for a voluntary way of differentiation. Thus, the implementation of this mark is not clear for many stakeholders. They also argue that this certification trademark should not, with the passing of time, destroy or expose their commercial strategy to some risks. They do not understand, as well, why they should have this mark, which is set for each and every stakeholder while some are selling AA.

For instance, Java sells coffees that comply with the standards of KEBS, without using it for the marketing purpose.

Figure 3: Dorman's label



Figure 4: Java House label



GMP (the consultant) argues that it is foreseen that the national mark is not exclusive of regional GI or of other types of differentiation. The enforcement of the standards allows the industry to comply with at least some quality parameters or to enhance what already exist by giving it a formal dimension. It also offers the consumers the assurance of product authenticity and quality which strategies based on commercial trademark don't.

Would the certification trademark – and thereby the generic GI- be a value addition tool that grants the producers bargaining power in the market place? Would this branding translate into a category in the catalogue of the auction? Would the name Coffee from Kenya be granted to international buyers through a licensing system implying supplementary costs for them?

Nothing is less certain especially given that Kenya coffee receives a premium through single origin program or indication of source. In other words, those roasters don't need this trademark to sell Kenyan coffee.

4.2.1.3 Single origin coffee and GI

These exceptional tasting coffees originate from a single estate or farm in a specific growing area. The growing conditions (soil, altitude, climate, shade) in these areas are considered ideal for creating premium specialty coffees. A small amount of top quality coffee is sought after by the special industry and sold as single origin coffee³⁴. Being produced in low volume with high quality, KCCE believes that the single origin or a GI would apply to Coffee from Kenya.

However, the body of literature shows that some roasters sell "single origin" coffees containing more than one origin. This unfair behaviour that creates confusion for the consumer represents a clear threat for the all concept of origin coffees. Indeed, the branding of coffee as "single origin" does not necessarily imply a promise to the consumer or a proof of compliance with what is expected, which the GI does through the code of practice usually enforcing control mechanisms.

4.2.1.4 The use of indication of provenance by roasters or degeneration of the names?

Starbucks Kenya Coffee Beans, Climpson and Sons Climpson Estate Kenya-Led Blend Coffee Beans from Kenya», Marks and Spencer Kenyan Coffee, Whittard Kenya Coffee, Waitrose Kenya AA Coffee Beans, Jacques Vabre Terroir De Kitale Kenya Coffee, AA *Kemani* etc.; these are few indications of provenance under which roasters sell Kenya coffee on export market because it certainly helps to reach the consumer.

³⁴ Daviron B., Ponte S., *The Coffee Paradox*. 2005.

Interviewed stakeholders in Kenya have expressed concerns about the fact that their national or regional names are being used abroad. Yet and considering the weak international protection of GIs on products other than wines and spirits (under TRIPS - Agreement on Trade Related Aspects of Intellectual Property Rights-), the Kenyan branding strategy cannot prevent the registration of the name(s) on the exports market. The historical uses of the above-mentioned names create a window of opportunity to oppose the registration of such names on the grounds of degeneration.

Interestingly, in Kenya, the name «Mount Kenya» has been declared generic by virtue of law. Therefore, it is not possible to register it as a trademark or a GI.

Moreover, relying on a regional strategy would imply strong promotion activities, considering that consumers do not associate names such as Nyeri or Muranga to Kenya.

Nyeri

Nyeri County has fertile Central Highlands, lying between the eastern base of the Aberdare (Nyandarua) Range, which forms part of the eastern end of the Great Rift Valley, and the western slopes of Mount Kenya. Nyeri town is the County's headquarter. It is characterized by red volcanic soils, and it is located at an average altitude of 1.800 mamsl. Temperature varies in a range between 18 to 27°C. Depending on wet mill, the cup ranges from very bright to good citrus acidity and full smooth body. The flavour of the cup has a complex sweetish flavour with fruity, floral, berry, winey, chocolate, vanilla and nutty tones.

This district is relevant, besides the high quality of its coffee, for the consistency that has characterized this coffee growing area over the last years and for its activeness with regard to coffee certification in Kenya. According to some of the experts, Nyeri is the most important of the production zones where estates are attempting to brand the geographical areas.

Murang'a

Murang'a is another notable region with regard to local typicality of coffee. Murang'a is located in Central Kenya, near the Aberdare Mountains and south to Mount Kenya. Its altitude varies between 914m and 3.353m. About 50% of the district is composed of red volcanic soils, usually rich in organic matter and characterized by high/moderate fertility. However, its eastern side is mainly covered with shallow stony soils and black cotton soils.

The quality of coffee within Murang'a varies according to the area where coffee is produced within Murang'a of production. In Murang'a county, it is possible to distinguish between three main geographical zones: the lower zone (which crosses Nyeri), the upper zone and the middle zone. According to the Union of cooperatives of Mugama, a GI for each of on those three zones should be registered.

In general, the cup profile is characterized by sharp citrus acidity, full body with blackcurrant and chocolate taste.

4.2.2 Constraints characterizing the value-chain and impeding access to national and international markets.

Kenyan coffee enjoys a good reputation on international markets. Unlike Coffee from Cameroun, all Kenyan coffee is bought and/or exported. The challenges of the industry are to be sought in the low local consumption (nationally) and the inconsistency of the production (internationally), which affect the performance of the coffee sector.

Moreover, because of EU import measures, exporting green coffee offers fewer constraints than roasted product. However, the future negotiations of the Economic Partnership Agreements (EPA) offer new perspective for export of certified roasted coffee.

Finally, the main roasters abroad have declared that by 2015, they won't buy any coffee that is not certified. This statement leads us to assess the compliance of coffee from Kenya production with social and environmental standards.

4.2.2.1 *Inconsistency of the production of Kenyan Coffee*

Both the supply and quality of fine Kenya coffee is inconsistent and therefore considered unreliable for sustainable business relationship. Hence, every initiative aiming at improving the marketing of Coffee from Kenya should be able to address the issue of consistency of the production as well in order to create the desired impact in the global market place.

While the coffee orchard in Kenya can produce up to 20 to 30 kg of coffee cherry per tree annually, yields have been way below over the last years. This decline in coffee production has caused low incomes for producers despite the better prices due to increased global demand and decrease of quality coffee supply.

- Inconsistency of Kenyan coffee is due to the environmental issues notably the climate change: unpredictable rainfall patterns cause coffee berry diseases that have cut Kenya's coffee output by 23% in 2007/08 season. It should be recalled that Kenya produces mostly Arabica coffee, which is more sensitive to diseases.
- Occasionally Kenyan coffee suffers from high temperature, that should remain below 25°C during the drying process to prevent beans to dry too fast.

Another reason has been the increase of real estate investment on coffee land. Statistics for Central Kenya show that 8 to 10% of the best coffee land has been converted to housing projects over the last 10 years. This trend is more rampant around Kiambu, but Thika and Nyeri are catching up³⁵. Despondency of growers who have converted to a more profitable business is also part of the problem.

Within the national strategy, public authorities have adopted number of measures to redress the industry. The Coffee Research Foundation has recently introduced in Kenya two new varieties aside traditional varieties (SL 34, SL 28, K7): the Batian variety, almost three decades after Ruiru 11 was launched.

Ruiru 11 is planted at a density of 2500/3300 trees/ha compared to 1300 trees/ha for the traditional varieties. This translates into a higher production per unit area of land. However, despite a thorough promotion from the CBK, growers do not want to use the new Ruiru 11 because of the rumours that it tastes like a low-grade coffee from a different country³⁶. This is because it may lack the traditional Kenya coffee attributes that coffee drinkers are keen on³⁷. The recently introduced Batian variety present similar characteristics on the productivity side (yields, resistance), but is supposed to have a better aroma than Ruiru 11.

The enforcement of the industrial standards may be part of the solution to inconsistency. According to several interviews, the compliance to the standards will allow the production of quality coffee to double. As a case in point, a cooperative in Kirinyaga County has doubled its production after training from "Sustainable Management Services". The trainings dealt with good agricultural practices, waste management, soil and water conservation, improved record keeping, good harvesting and post harvesting practices³⁸. But as stated before, they also face reluctance from different stakeholders.

³⁵ Kirumba E.G., *Coffee Certification and Smallholder Farmers' Livelihoods in Kenya*. 2011.

³⁶ *The Ruiru has some Robusta in its genes*.

³⁷ CRF

³⁸ KCTA, *The Coffee Quarterly*, p.26. 2011.

4.2.2.2 *Environmental risks and impacts of the production of coffee*

Abundant irrigation by large estates owners is an issue. Sporadic flowering as well as pest attacks at different stages of the growth - that impedes the farmer from having a good harvest - compels him to increase the number of sprayings.

Another threat to coffee industry is climate change, which is bound to impede the performance of the industry and augment the negative environmental impacts. Apart from the above-mentioned raise in temperatures, which affects the quality of the beans, the risks are:

- Soils erosion will deprive coffee trees of the vital topsoil that is rich in nutrients and organic matter reducing bearing potential over the coming season. This will also increase the farmer's costs to rebuild the soil nutrient. Immediate measures can be taken to conserve the soils.
- Coffee diseases caused by heavy rains. In particular, the risk of late blight (infection) is imminent which makes coffee pulping very difficult. Farmers have to pick the ripe cherries as soon as possible.
- Complicated harvesting: with heavy rains, coffee pickers may abandon the exercise.
- Complicated processing: farmers will have to make sure they have enough sunshine to operate the drying of the skin.
- Proliferation of vegetative growth.

These negative effects are worsened by bad agriculture practices, such as inappropriate application of fertilisers that result in leaching of nutrients and reduced soil fertility.

Those issues will translate into long-term degradation of the agro-ecosystem and reduced productivity and income for the farmers over the next seasons.

Researches aiming at determining the impacts of trees on plantations (Agroforestry) are implemented through CRF as a way of improving the quality of coffee. It seems that association between the plantations and specific kind of high trees can interact and give a higher value to the coffee. Some have a positive impact on the soils. Some might compromise the quantity produced but improve quality. Moreover, shading the coffee by growing it under right trees can reduce temperatures up to 4 degrees. Recommended trees are Cordia, Albizia, Malkamia; the use of grass strips can reduce erosion and at the same time conserve soil. Those recommendations come from the CRF.

Efforts to reduce the impact of coffee production on the environment are also made through the certification trademark. Indeed the CoP comprises environmental management crop protection. A whole chapter is dedicated to "environmental management". Issues at stake are: conservation plant, energy use, soil conservation, waste management, pollution and water management.

4.2.2.3 *Social risks and impacts of the production of coffee*

Participation of women and other weaker groups

Key informants thought that women and youth were not necessarily restricted in the participation of their cooperative society, but were limited in the level of participation at different stages of coffee production. Because men have more access to land than women, the discourse of coffee farming in Kenya favours men. Women are maybe not restricted in coffee participation per se, but rather in land ownership that limits their decision-making processes in the coffee cooperatives.

In the last years things have started to change, with widows who inherited their late husbands' memberships participating in coffee cooperatives. Also, some people start to refrain from cultural norms, dividing land equally between their sons and daughters³⁹.

The Kenya Coffee Producers Association, a membership organization for the coffee farmers in Kenya with a membership base of over 140 cooperative societies and 98 coffee estates representing over 300,000 farmers is keen on developing an institutional Gender Strategy. It is expected that the gender strategy will guide the organization in serving the members in a gender sensitive manner and will also assist the stakeholders in the coffee industry in Kenya to appreciate the importance of mainstreaming gender along the whole coffee value chain. CRF is incorporating gender empowerment in the management of cooperatives.

Child labour

Article 1 of the ILO (International Labour Organisation) Minimum Age Convention, 1973 (No. 138) has been ratified by Kenya in 1979. Kenya declared 16 years to be the minimum age for admission to employment or work. According to UNICEF, 27% of boys and 26% of girls are victim of child labour (2001 – 2011). 2009 data show 32% of children between 5 and 14 years old to be working. Roughly 79% of these working children are engaged in agriculture, working on tea and sugar plantations, ranches, and in the production of coffee⁴⁰. They work, often with their families, in subsistence and commercial agriculture, on tea, coffee, rice, and sugar plantations⁴¹. In the agricultural sector, girls are sometimes forced to provide sexual services in order to obtain plantation work⁴².

The Government of Kenya's National Development Plan for 2002-2008 recognizes child labour as a problem and calls for an evaluation of the impact of child labour on the individual and the country, as well as its implications for the quality of the future labour force.⁴³ In recent years, employers have been particularly sensitized to the need for the elimination of child labour. Many coffee growers have policies against child labour, require a national identity card as proof of age at the time of recruitment and post notices at convenient points to the effect that they do not hire under age youth at all.

The table below summarises social, economical and environmental issues observed in smallholders' farms and estates.

³⁹ Gitu S., *A Need for Better Organizational Capacity in Kenya's Coffee Co-operatives. A Case Study of New Gatanga Coffee Co-operatives Society, Kenya*. 2012.

⁴⁰ United States Department of Labor, 2009 Findings on the Worst Forms of Child Labor - Kenya, 15 December 2010, available at: <http://www.refworld.org/docid/4d4a6806d.html>

⁴¹ ILO-IPEC, *Supporting the National Plan of Action for the Elimination of Child Labor, Project Document*, vi, 42.

⁴² ECPAT, 2007, *Global Monitoring, Report on the status of action against sexula commercial exploitation of children*

⁴³ ILO-IPEC, 2002, *Prevention, Withdrawal and Rehabilitation of Children Engaged in Hazardous Work in Commercial Agriculture in Kenya, Tanzania, Uganda, Malawi, Zambia, Technical Progress Report*, Geneva, August 29

Table 2: Summary of social, economical and environmental issues faced by the producers in Kenya

	Smallholders	Estate
SOCIAL	Food security Poor access to education and healthcare Low level of organisation Gender inequality Ageing farmer's community	Labour abuse Access to clean water Poor conditions of living Gender issues, Discrimination
ECONOMICAL	Lack of farm credit Lack of market information Lack of direct market access Rising cost of living Poor management Low productivity Ageing growing trees	Lack of unionisation Poor minimum wages High casualization of labour
ENVIRONMENTAL	Conversion of primary forest habitat Loss of biodiversity and habitat destruction Soil erosion Agro chemical use Coffee tree diseases	

Source: Solidaridad, Kenya, <http://www.solidaridadnetwork.org/partners/flo-kenya>

5 Obstacles for ACP producers to gain value from using geographical indication and other origin-labels for marketing agricultural products

Under this part, a list and assessment of the inhibiting factors with respect of GIs and origin labelling is compiled. However, given the novelty of the interest in GI protection in ACP regions, it is challenging to concretely assess the obstacles and difficulties inescapably associated with the GI setting-up. Therefore, the obstacles for Kenyan coffee stakeholders growers to gain value from using GIs can be identified through the operational aspects of the implementation of the GI especially considering the recent withdrawn of the State from the marketing component of the coffee sector.

Indeed, through the GI, national or local coffee from Kenya aim at reinforcing their position on international markets; as such, the GI has an **offensive dimension** which goes along with the setting-up of the label (governance, registration, specifications, promotion) (5.1).

Geographical names associated with coffee from Kenya are also often misused on the market place. As such the registration of a GI has a **defensive dimension**. A defensive GI calls for an analysis of the scope of the protection under the existing legal frameworks, the mechanisms of traceability and the surveillance of the market (5.2).

The following chapter will particularly focus on impediments linked to the governance at the grower level and the credibility of control mechanisms.

5.1 Obstacles to perform the offensive aspects of the GI strategy

While the Trademarks Act protects origin through certification or collective trademarks, Article 5 of the future GI Bill foresees that “Protection (of GIs) shall be available regardless of whether a GI has been registered or not”. However, the GI Bill encourages the registration of a GI, considering that the use of an indication is a sufficient proof to register it.

Anyhow, the offensive dimension of the protection of the names of coffee in Kenya justifies the analysis of obstacles associated with their registration.

Based on examples from other GIs in ACP countries such as Jamaica Blue Mountain Coffee, Poivre de Penja, Café Ziama-Macenta and on the body of literature on the setting-up of a GI, the practical challenges as far as the GI is offensive can be grouped in three categories: issues at stake with the governance of the GI holders (5.1.1), with the definition of rules governing the GI (5.1.2) and with the promotion of it (5.1.3).

5.1.1 Challenges associated with the governance of the GI

5.1.1.1 Establishing a domestic legal structure

Short-term challenges: who is in, who is out?

As stated in Part 1, by virtue of law “any person” (for the certification trademark), an association (for a collective mark) or a legal entity (for the sui generis GI) or a public authority (for the sui generis GI) may hold the origin branding.

A first challenge in the effort of implementing a GI on Coffee is, of course, the choice of its holder. This choice is strongly related with the origin-branding strategy that will be adopted, in particular if the object of the protection will be a national or local GI, and if the objective is the use of the GI for the business-to-business relationship with the roasters or to differentiate the product on the retailer shelves.

The national GI

Based on information gathered, the CBK foresees an “umbrella GI” in the form of a certification trademark and later on local GIs. Therefore, CBK, as a regulatory Board, embraces the great majority of stakeholders (who have to buy licenses to work in the field of coffee) and favours scale economies as a holder of the GI.

Nonetheless, it is highly likely that the enforcement of such marketing strategy will translate into **increase of the levies** collected by CBK to the producers. On the other hand, **there is some apathy and suspicion towards CBK** from the part of the private sector, because of the role the state plays in it, and the lack of control by the private sector.

The regional GI

The new constitution changes the form of the State of Kenya thus creating a room of opportunity for local governments to play a proactive role on agriculture in rural areas. Forty-seven (47) counties have been created including twenty (20) where coffee is grown. According to the majority of people interviewed, the new legislation empowering counties is helping a lot (see Fourth Schedule of the Constitution of Kenya, 2010). There is the belief that this decentralisation will trigger competition between people and regions. The case of Nyeri County who has already contacted donors to have their financial and technical support is illustrative of the possible new perspectives for local development. People feel that governance has been improved by considering another way of differentiating than the national one. One of the main **limits will certainly be discrepancy in the counties capacities.**

Cooperatives are recognized as organizations that can contribute to improve welfare. Forming cooperatives is one way to allow small-scale farmers to participate in the global trade of coffee by selling coffee collectively. Farmers are likely to get better market prices and buy farm inputs at lower costs. Therein their small quantities of coffee yield collectively can create a meaningful bread win. The organization of smallholders into cooperatives allows them to enjoy economies of scale.

By virtue of law, the minimum for a cooperative to exist is ten (10) producers (cooperative society). If two (2) or more cooperative societies come together, they form a Cooperative Union. There are 10 coffee cooperative unions in Kenya. By virtue of law, the cooperative societies also need: to deal with a specific product, provide for a preliminary economic appraisal and to register as a cooperative (KES 3,500).

However, it is not mandatory to have technical competencies, which are needed to engage in the GI path. Besides, geographical areas of production generally comprise estates and cooperatives societies. The law should thus foresee how to make possible estates to enter in the GI system even if a cooperative society as holder of the regional GI.

An *Ad hoc* association would have the advantage of gathering interested growers irrespective of their affiliation to a cooperative or an estate. In this scheme, a challenge may appear in relation with the priorities that may differ from cooperatives to estates and/or discrepancies affecting the capacity for cooperatives to invest in this branding strategy.

Stakeholders' capacity to collectively invest in the GI process

For a long time the Kenyan coffee sector used to be a public holding. Through the Coffee Board of Kenya, the KPCU, the Coffee Research Foundation and the cooperative unions the government maintained control over the sector and ensured it operated efficiently and effectively. Under this structure, producers received advances credit and cash timely according to a transparent schedule. The liberalization included the government pulling out of cooperative management and ending financial support to cooperatives⁴⁴.

The branding will take a long time: Training is needed to understand the whys and wherefores of GIs. However, very little expertise exists in the country in this respect. It requires an expert (organization) in charge of circulating the information; lead the meetings on the rules of governance of the GI.

The issues at stake with collective organization are related to the capability to agree on a common vision on the long run notably for the Board member of a cooperative society. Mandates of Board members are not lasting long enough to allow them to build a viable strategy for their growers. There is a lot of competition, corruption and low interest for them to focus on the needs of the producers.

Coffee producers – in particular small growers - face technical and financial challenges; it is therefore difficult for them to plan on the long run and implement a GI. Constraints at producer level encompass:

- **High production costs:** Kenya production costs are high in comparison with other countries. This plays as a deterrent for growers who reduce labour input and fertilizers. Kenya is a high cost producer coffee also due to the system of production (washed Arabica), transportation costs. Kaplinsky and Fitter (2001) reported that in Mount Kenya region, the chief of coffee region in Kenya, the coffee crisis had not only led to household poverty but also to emigration and urban squalor⁴⁵.

⁴⁴ Kirumba E.G. *Coffee Certification and Small Holder Farmers' Livelihoods in Kenya*. 2011.

⁴⁵ Kaplinsky R., Fitter R., *Who gains from product Rent as the Coffee Market becomes more Differentiated? A Value Chain Analysis*. 2001.

- **The work force:** The issue of pickers (workforce) was brought up. Producers have issues to pay coffee pickers. They get 60KES/ day and are not yet able to raise their wages. They fear they might not come back to coffee farms because they can earn better money in other sectors.
- **Technical knowhow:** Good agricultural practices are encouraged by organisation like ECOM, Sustainable Management Service or Solidaridad through training and advice. However, the implementation of these GAPs requires the capacity to invest that growers often do not have. The incentive to get new competences and skills is therefore limited.
- **Access to finance:** Access to credit is limited for smallholders, reducing key inputs like fertilizer. The need for inputs before the revenue distribution often puts farmers in dependency situation towards their business partners. Long-term investments in the infrastructure of the farm are even more problematic. In absence of own finance and collaterals obtaining investment funds is virtually impossible. Still to have some financial means, growers often turn to informal loan providers known for their high interest rates. This low finance capacity is a real threat that could jeopardise an IG initiative, as this would require building up a management system that require money and upgrade the production means in some cases to comply with the requirement of the standards. Eventually, the CBK who is promoting the national GI might be in the position to influence the overall GI strategy thanks to the financial means the CBK has at disposal.

However, in the case of GIs, much depends on how the CoP will be written. If the CoP is based on current production practices, production costs wouldn't change that much, and extra-costs will be only given by certification fees.

The government has recognized that lack of readily available credit has prevented coffee growers implementing improvements in production and post-production, and has therefore established the Coffee Development Fund (CoDF) as a source of grower credit to rehabilitate their coffee trees. According to Diaby and Kamau the government also provides 50US\$ million in debt relief to cooperatives societies⁴⁶.

The cooperative themselves have formed their own financing cooperative called SACCOS. SACCOS is the acronym for Savings and Credit Co-operative. They can advance farmers some money. The growers can borrow money from Coffee Development Fund or Coop-Bank. The interest can go up to 40%. In Kenya, the facility of STABEX (Stabilization of Exports) exists as well (to process their coffee once its ready, maybe factory rehabilitation). Some of the STABEX funds have also been allocated to other sectors of the economy such as tourism. However, much of the funds allocated have not yet been disbursed. Murang'a coffee co-operatives owe a total of KES782.2 million (€6.7 million). Most of these loans have arisen from SCIP II project and STABEX components. These loans significantly increase the deductions made by the societies leading to low pay-out to farmers. Indeed, in some instances, farmers do not receive any money as the proceeds from coffee sales goes to servicing the debts⁴⁷. At the end of the government's 2008/9 financial year, some KES 1.065 billion (€13.7 million) had been made available as credit to growers; this will be doubled to KES 2 billion (€17.1 million) in 2013. Costs of fertilizer and pesticides has, in some cases, forced the farmers to reduce application of these inputs, resulting in delivery of low quality cherries and substantial loss of small. As a result, 55,000 farmers have been able to borrow and pay back as per the agreement.

5.1.1.2 Code of Practice

An application for the registration of a collective trademark as certification trademark (Trademarks Act) must be accompanied by a copy of the rules governing the use of the mark. Interestingly, Article

⁴⁶ Diabi S., Kamau C.N., *Kenya Wheat Report*, 2011.

⁴⁷ Karanja A.M. and Nyoro J.M., *COFFEE PRICES AND REGULATION AND THEIR IMPACT ON LIVELIHOODS OF RURAL COMMUNITY IN KENYA*, October 2002.

9 of the draft GI bill foresees that (1) *The application shall specify (...) the quality, reputation or other characteristic of the products attributable to its geographical origin.*

This requires using participatory processes, to agree on the area of production, and to establish common codified standards, all aspects required for any GI. These learning costs require considerable reliance on assets that can be more valuable than money: dedication and patience⁴⁸. It also requires leading a consultative process involving information management, mediation and consensus building. Illiteracy or semi-literacy between farmers contributes to difficulties in making such processes efficient for drafting a code of practice.

i. Short-term challenges

The success of the GIs relies on the direct capacities of growers to invest in:

- Qualification of the specificity linked to their origin (or *terroir*): this process involves the mobilisation of the producers and participation of support organisation. As Kirumba (2012) notes, small-scale farmers with less than 5 acres (2 ha) of land account for 70% of the world coffee production. The community of small-scale coffee producers is defined by its limited savings and capital, which impede them to thwart low prices cycles and take advantage of new market opportunities through new instruments such as GIs. The funding plan of the qualification of coffees relies on the intervention of external donors. A number of aspects require the support of experts and institutions. This might involve the participation of agronomic research centres and other support organisations.

In the framework of the forthcoming AFD (Agence Française de Développement) project on Validation of Geographical names a characterization work will be undertaken for coffees coming from Mugama County. The qualified staff of the CRF cupping laboratory will cup and characterise coffees according the SCAA (Specialty Coffee Association of America) grid, which gives a full profile of the coffee (aroma, acidity, etc.). This activity will be performed for each cropping season, during the 3 years of the project. CIRAD characterisation staff will deliver the samples to CRF cupping lab that will do the cupping⁴⁹.

- The drafting of the code of practice: Local capacities exist at the Kenyan level for this technical task. The company “Good Manufacture Practices” was contracted by CBK to build between 2010 and 2013 the origin-branding specifications for coffee from Kenya, after have worked on the tea.

ii. Structural Challenges linked with the establishment of a code of practice

In the process of implementing GIs on coffee, the challenge would be to gather the growers around one strategy and come to one agreement on the name to protect and the quality.

Poor governance is one of the key weaknesses identified for the cooperative movement in Kenya. Cooperatives are criticized for their reluctance or incapacity to include the 700'000 coffee growers' participation in the decision-making. Having in mind one cooperative counts between 1000 and 15,000 growers. How to reach an agreement without falling in the shelf of lack of consultation? Besides, Kenyan coffee growers have different practices in the production of coffee. Therefore, this phase may be relatively long depending on: the state of knowledge of the growers, nature of conflicts among them and remedies and the means invested in this path. Indeed, if having the means to invest in the GI protection is important, durability of those means is even more important.

⁴⁸ ITC, 2010.

⁴⁹ François M., Gichovi B., *Feasibility study: Establishment of Geographical Indications for Kenyan coffees*, October 2011.

Once they have agreed on the names and quality to enhance, the challenging part would be linked to complying to the specification in the long run. This also depends on the premium associated with the GI and its return to the growers.

Hence, the issue of redistribution of the value added to the smallholder is a condition in the perspective of achieving the goals of an offensive GI. Yet, on one hand, a FLO-CERT report on fair trade (2008) certified cooperatives in Kenya confirmed that the marketing agents were not passing important information to the cooperatives regarding the marketing of their coffee. On the other hand, at the cooperative and growers' level, corruption takes multiple forms, including the election of unqualified but politically connected cooperative managers who sometimes unduly influence union election meetings.

Over the past decades international prices of coffee have declined. As a commodity, coffee suffers from market volatility attributed to reduced cooperation at the international level, increased speculative activity⁵⁰. Potts (2007) finds that international coffee prices are among the most volatile of all commodities, with an average of 20% deviation from the market trend at any given time⁵¹. This volatility causes revenues instability and makes difficult the sharing of value added among the different stakeholders of the value chain. Farmers also have limited information on coffee market and existing producer organisations are weak in circulating market information to farmers. There is no warrant system in place. This is partly due to the fact that no organisation has been able to take over the role of the government who use to regulate the market and guarantee minimum prices to producers. To address the issue of fluctuation of prices, reserves made when prices are up should be used to top low prices when world market is depressed.

While coffee from individual farms is processed separately, it is often mixed together with cherries from other farms at the milling stage and sold by lot to exporters. This reduces incentives for smallholders to produce quality coffee, because they are paid based on revenue generated from the lot and not for the quality of their own produce⁵².

5.1.1.3 Promotion

An offensive commercial strategy aims at improving the position the product on its traditional markets or on other markets.

In theory, the CBK has the responsibility to promote coffee identity. It does so by developing strategic networks with foreign embassies, approaching consumer and industry organizations in order to increase awareness on the quality and the expectations of the market to further advice the stakeholders accordingly.

Besides, the marketing of a GI product can combine the collective strategy with the individual one. In the case of coffee from Kenya, the extreme fragmentation of the marketing (described in part I) often leads the grower (in particular the smallholder) to sell his product to intermediaries.

Packaging and labelling

Packaging is a big deal in coffee. Because it can ruin the quality, a good packaging is expensive (According to KCTA it costs probably twice more as expensive as producing coffee). The issue of the final product bearing the GI is at stake for the promotion of coffee from Kenya on international markets.

⁵⁰ Kirumba E.G., *Coffee Certification and Small Holder Farmers' Livelihoods in Kenya*. 2011.

⁵¹ Potts J., Giovannucci D., *Seeking Sustainability COSA Preliminary Analysis of Sustainability Initiatives in Coffee Sector*. 2008.

⁵² Condliffe K. et al., *Kenya Coffee: A Cluster Analysis*. 2008.

Interestingly, the Article 9 of the draft GI bill foresees that (1) *The application shall specify (g) where applicable, any trademark to be used alongside the indication.* Interestingly, Columbia and Ethiopian Governments negotiate with roasters the conditions of the use of the GI, and in particular the obligation of the use of the logo.

5.1.1.4 Tariff barrier

In the case Kenya would like to increase the part of coffee exported as roasted, it would face high import taxes in EU for instance. In the case of Kenya, the shipping of roasted coffee will be free of charge for the European markets only if Kenya ratifies the Economic Partnership Agreement (EPA). Indeed, Kenya being the only non-Least Developed Country of the EAC (Eastern and African Community) region, it falls under the “Generalised System of Preferences”(GSP), which offers a less generous market access than EPA (See table 5). However, the know-how for roasting is for the time being the main obstacle for substituting green with roasted coffee.

Table 5: taxes applied for coffee according to the tariffs available ⁵³

	Average Value of Exports to the EU (2007-2010)	EPA Tariff	MFN Tariff	GPS Tariff
Roasted Coffee	€ 4M	0.00%	0.00%	7.5%
Coffee/Tea	€ 247M	0.00%	0.00%	0 - 3.2%

Source: EC Europa Website

5.1.1.5 Market information

The context of price instability creates an urgent need for market information accessed by producers including smallholders. Even where market information is available, the absence of appropriate training and infrastructure can render it difficult for producers to use the information in the most effective manner possible.

5.1.1.6 Position the product on the domestic market

As stated before, the Kenyan local consumption of coffee is very low. Additionally, the CBK estimates that more that 70% of Kenyans who drink coffee consume imported brands. While the consumption of tea by Kenyans is rising constantly, it remains very marginal.

GIs for coffee is foremost seen as an instrument to improve exports, but they may as well create a sense of belonging and increase domestic demand. It is felt that CBK needs to put effort to strengthen local consumption. Indeed, in Brazil that could count on the tradition of coffee drinking of European immigrants, the local consumption of coffee has been the driving force of the product's enhancement. In Nairobi, six coffee houses (Java, Dorman's, Art cAFé, The mug, Savannah Coffee Lounges and Coffee World) opened 28 new coffee shops in the last two years.

5.2 Obstacles to perform the defensive aspects of the GI strategy on coffee in Kenya

The challenges associated with the development of a GI extend far beyond the challenges associated with its registration. In this part obstacles are analysed with regards to the public authorities' input to provide for an efficient institutional environment to the benefit of the defensive dimension of the GI. Hence, the legal framework available as well as the control (Section 5.2.2) and repression of fraud (Section 5.2.3) mechanisms will be analysed.

⁵³ Information in this table was taken from.

5.2.1 The limits to the legal framework

5.2.1.1 Availability of the name

Contrary to the registration of GIs which is often undetermined, the registration of a trademark last be for a period of ten years and is subject to renewal.

Additionally, *“no trademark shall be registered in respect of any goods or description of goods that is identical with or nearly resembles a mark belonging to a different proprietor and already on the register in respect of the same goods or description of goods, or in respect of services, is identical with or nearly resembles a mark belonging to a different proprietor and already on the register in respect of the same services or description of services”*. In other words, the registration of “Coffee Kenya” may face opposition from local roasters who sell their products under the geographical names “Kenya AA” (Java) or Kenyan Coffee (Dorman’s).

If those names are registered trademarks, the principle “first in time, first in right” may apply and impede the registration of the trademark “Coffee Kenya” unless the *bona fide* rule is retained by the Registrar: *“In case of honest concurrent use, or of other special circumstances which in the opinion of the court or the Registrar make it proper so to do, the court or the Registrar may permit the registration of trademarks that are identical or nearly resemble each other in respect of the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as the court or the Registrar may think it right to impose”* (Article 15 of the Trademarks Act).

If those names are mere indications of provenance, they may be opposed on the grounds that Kenya is generic. The Trademarks Act also binds the registration of *indications which are similar or identical to well known-marks* (Part 1, Article 15 Trademarks Act).

5.2.1.2 Scope of protection of the trademark

According to legal advisors, trademark for origin branding is not the ideal protection for geographical name.

Indeed, trademark, collective marks and certification marks insure protection of geographical names based on private initiative. In countries having adopted trademark legislations, GI producers must pay attention to the scope of protection. Generally, the registration of a geographical name through a mark does not necessarily prevent a third party from using it in its translated version (in another language) or to use the same name preceded by a delocalizing expression (e.g.: Californian Champagne) or with terms such as «style», «kind», «type», others⁵⁴.

Besides, trademark protection implies important financial resources mainly linked to registration fees. This registration formality must be renewed periodically (generally every ten years). Finally, as a private mechanism, enforcement through trademarks is entirely at the costs of the owners. For each case of alleged violation of its rights, the owner would have to establish the confusion of the consumer. The costs linked to the trial or, upstream, to the monitoring of the compliance with the defined standards, are entirely supported by the owner.

Kenya has engaged in the drafting of a GI law. A quite comprehensive *sui generis* law was completed in 2011 by KIPi in the frame of the project. The draft law produced is now in the office of the Attorney General in Nairobi and should be submitted to the parliament for adoption. The recent political developments (elections, new government and new constitution) have kept government bodies busy. The fact that only few competencies have been left to the central government including in the field of IP has not helped to speed up the process of adoption of the law. As legislative activity of the parliament is quite intense, there is a need of some support to give priority to this law. The support could come from some high level authorities possibly concerned by the GI issue (Ministry of

⁵⁴ Bagal M., Vittori M., *Manuel sur les IG dans les pays ACP*, 2011.

Agriculture, Ministry of Environment for example) and / or from some stakeholders potentially interested in the development of GIs in their sector (for example stakeholders in the coffee or tea commodity chain). The next step is to pass the law to the parliamentary commissions. The relevant commissions could be (at least) agriculture and commerce⁵⁵.

5.2.2 The control mechanisms

Control mechanisms are the spinal column of GI differentiation. Indeed, if the GI is associated with the code of practice, the compliance with those rules has to be assessed for the sake of credibility of the GI and transparency vis-à-vis consumers.

i. Traceability system in the field of coffee in Kenya

Martine François has described the traceability system in the field of coffee from Kenya as well as its flaws.

The weighing stage is a stage where a lot of transparency and integrity of the recording clerk is required. This is because in many instances the unscrupulous farmers have colluded with the weighing clerks to record higher figure and get higher payment. A lot of frauds occur at this stage.

A cooperative society is the frontline coffee marketing legal unit that brings together smallholder farmers for purposes of processing and marketing their coffee. A first level of bulking is done at the pulping station. The rest of the commodity chain is organized so that there is traceability on coffee up to the level of the pulping station. So that when a lot of coffee is sold at the auction or in direct sales it is possible to identify the pulping station that processed it, but not the single grower in case of smallholders.

Once coffee is delivered to the mill, it is weighed and recorded. It is then assigned a special number called the **outturn number**. This is the number by which coffee is identified until it is sold to a buyer. Every miller is assigned a block of outturn numbers by the Board, which he/she uses on a given year to identify the growers or cooperatives delivering him/her coffee. The importance of this number is to identify the coffee along the chain, as it is unique to the coffee consignment to which it is allocated, allowing traceability along the chain. This number makes it easy to trace back the coffee up to the factory level in case of small-scale growers or to the individual grower in case of estate farmer.

The marketing agent (who is generally the miller) cups each lot of coffee, and the result of this cupping is the basis to fix the reserve price. The result of this evaluation is sometimes, but not systematically communicated to the cooperative and pulping station by the mill. The corresponding documents are not recorded and exploited by cooperatives, in order for instance to improve quality.. If a producer has a doubt on the result on quality of his coffee, he can ask the Coffee Board of Kenya to cup the coffee. This arbitration is free for the producer. The results of these cuppings are kept at the level of CBK sensory laboratory analysis and provide a good source on coffees' quality.

Once his coffee enters in the mill, the producer has no clear view of what happens then. The miller can bulk the coffee according his own interests, which might not be the producers' interest (for example mixing good quality coffee from the producers with his own coffee – as some millers also owns farms). The way the coffee is bulked at the mill level has an influence on the quality of the coffee marketed at the auction or in direct sales.

Trade disputes on quality deviation and weight loss at times do arise, but arbitration rules take care of that. A pool of arbitrators comes together and reviews the problem, delves into the inner details and comes up with a mutually satisfactory settlement.

⁵⁵ François M., Gichovi B., *Feasibility study: Establishment of Geographical Indications for Kenyan coffees*, October 2011.

ii. National control mechanisms for food safety: the role of Kenya Bureau of Statistics (KEBS)

Standards are not compulsory in Kenya but technical Boards such as the Tea Board or the Coffee Board may adopt compulsory standards. Although within the framework of the new certification trademark, CBK has the duty to check the compliance with the industrial standards and to bring to court producers who break the rules, in case of dispute, KEBS has the last word by virtue of law.

The KEBS testing laboratories are managed in accordance to International standard ISO/IEC 17025 on general requirements for competence of testing and calibration laboratories. The laboratories are committed to ensure reliable and timely delivery of test reports. The primary function of the testing services is to provide tests in areas of chemistry, food, microbiology, material engineering. The tests on products are carried out against national standards, international standards, specific government and other client specifications.

It is to be noted that getting a hard copy of the current coffee industrial standards costs **KES 3,800**. The prices of audit and further compliance were not brought up during this interview.

On the other hand, KEBS has come up with a way of differentiating products respecting the standards.

The standardization mark is a mandatory product certification scheme for locally manufactured products. The Import Standardization Mark goes for product that conforms to a specific Kenyan or International standard. The Diamond Mark of Quality (also referred to as D-Mark) is a mark of excellence awarded to manufacturers (either locally based or abroad), which has demonstrated high degree of excellence in product manufacturing and quality. Those who are seeking to export their product should enforce the diamond mark.

The diamond mark of quality is a perfectly controlled process. There are issues with control of the two other marks. The KEBS mark's rules are fairly scanty. It is a difficult scheme to manage. Some industrials have been able to create their own stickers. Those stickers are fairly controlled by KEBS, who gives the mark to those who comply with the standards.

The "Coffee Kenya™ " is a *prima facie* evidence of compliance with the rules. However, in the light of the above, means to use the logo have to be reassessed.

5.2.3 The market surveillance

5.2.3.1 KEBS market surveillance

KEBS routine check is free of charge for a given actor. When a control is requested by a specific operator, the latter is charged a fee. Besides, there is coordination on standards enforcement (through a Community convention) between Kenya, Rwanda, Tanzania, Burundi, and Uganda for the sake of facilitating trade.

5.2.3.2 ACA (Anti Counterfeiting Agency)

In Kenya, IP (Intellectual Property) has constitutional protection. Interviewees stated however that lack of capacities prevents Kenya to implement WTO (World Trade Organisation) Agreement + TRIPS on criminal activities and infringements.

There an Anti-Counterfeit Agency was created under the Ministry of Industrialization to coordinate market surveillance of protected goods of which beverages seeds & fertilizers.

Seeds are easy to counterfeit especially during the planting season. The complaints would usually come from the farmers. However, the risk of non-certified seedlings is lower in coffee production as, the time needed for the production is long, the supply chain is consistent and there are limited and well identified sellers (CRF or cooperatives).

Owners of Intellectual property Rights / Manufacturers can now sue for damages and restraint the sale of counterfeit goods in the domestic market. The Anti-counterfeit Act provides teeth and muscle to fight business crime and sanction offenders with stiff penalties. It should be noted that KEBS, KEPHIS and KIPI collaborate with ACA.

More efforts should be put on consumer awareness and knowledge, by authorities but also by manufacturers through communication and advertising. The staff enrolled in counterfeit in Kenya needs training.

There are several consumers' organizations including one main "Consumer Federation of Kenya". More efforts should be put on consumer awareness and knowledge.

5.2.3.3 *International mechanisms*

International mechanisms are worth studying considering the international scope of protection of GIs applying to products other than wines and spirits.

Multilateral mechanisms

Article 22.2 of TRIPS states the general rules of protection, which must be made available for any product bearing a GI. In particular, the Agreement compel States to provide for laws impeding the use of GIs in a manner which misleads the public as to the true geographical origin of the good or which constitutes an act of unfair competition.

Hence: Member States' national legislation must provide the means to declare illegal the use of a geographical sign which may mislead the public or be an act of unfair competition. The burden of proof lies on the plaintiff producer. To prevent from the abusive use of a GI, the latter shall prove not only that the use of a geographical name is not correct but also that it may mislead the public or be an act of unfair competition. This allowed many States (e.g.: in Brazil, where the label "Jamon crudo tipo Parma" is currently in use) to admit the use of delocalizers in connection with geographical names; the reasoning being that those delocalizers do not mislead the public as the origin of the product is indicated⁵⁶. Another example could be "Kenya AA, made in Tanzania". This will not be an infringement of the TRIPS Agreement per se. The Kenyan producers of coffee will have to bring the case before a tribunal in Tanzania with the costs that this implies.

Kenya is a "GI friend" and defends the "majority proposal" within the negotiations held at the WTO on TRIPS. A coalition of 108 countries (among them, "the group of ACP countries" and "the group of the African countries"), fight for the extension of article 23 (additional protection for GIs on wines and spirits). The negotiations are still on-going.

In other words, for the moment, the coffee sector in Kenya relies on bilateral agreements and regional or multilateral union to defend their names.

Regional mechanisms

The ARIPO (African Regional Intellectual Property Organisation) council has adopted the Banjul protocol on (1993) trademarks which gives mandate to ARIPO to receive and process the registration among the countries members of ARIPO. Under this protocol GIs may be registered through collective and certification marks. The granting of the protection for a stakeholder in one country of ARIPO is applicable to all the countries. However, Kenya has signed but not ratified the Banjul Agreement; therefore Kenya is not yet a member of ARIPO and does not benefit from automatically regional protection of its distinctive signs. No mechanisms on repression of fraud are enforced within the Union.

⁵⁶ Bagal M., Vittori M., *Manuel Rapport sur les IG dans les pays ACP, le potentiel des Indications Géographiques en Cote d'Ivoire produits potentiels et cadre juridique pertinent*. 2011.

Other mechanisms

Kenya is a member of Madrid Agreement concerning the international registration of marks (14 April 1891) and its Protocol relating to the Madrid Agreement concerning the International Registration of Marks (1989). This Agreement gives a certain level of protection for trademarks (prohibition of deceptive indications) among 92 member states as of 2013. However, not only is the scope of this protection deemed limited, but certain countries have had problems registering trademarks within the Madrid Agreement.

Kenya is considering ratifying the Lisbon Agreement. At the moment there is still a problem of human capacities at the diplomatic level. No one in the Kenyan delegation in Geneva has an IP Background. Finally, Kenya participates in the international network of GI producers (ORIGIN). Kenya is represented at each general assembly of Origin. This participation is mainly from the tea sector (Tea Board of Kenya – TBK) and coffee sector⁵⁷.

6 Potentially transferable methods and systems

Certified producers seem to get more money

By year 2015, the market will only buy certified coffee. The market demands for more sustainable coffee. The millers have to build capacities in this respect. Therefore, Highlands is the first mill in Africa to win the Sustainable Agriculture Network (Chain-of-custody certificate). The mill is also certified by UTZ, Certificate Good Inside, and Rainforest Alliance and has secured a license to process Fair-trade Certified Coffee. This and north countries consumers' expectations would indicate that GI scheme should include sustainability issues. Many growers have also expressed a certain label fatigue.

6.1 Analysis and evaluation of potentially transferable methods and systems

6.1.1 Concurrence / complementarity with other quality labels

6.1.1.1 Coffee Kenya and Fair trade


Fairtrade is defined as an alternative approach to conventional trade that aims to improve the livelihoods and wellbeing of small producers. Although this standard regards environmental sustainability as necessary to underpin sustainable livelihoods, its emphasis is on fairness and building livelihoods through its minimum prices and social premium.

The Fairtrade "social" premium has delivered development benefits in some cases; in others the premium has been used mainly for production infrastructure necessary to meet the quality requirements of Fairtrade itself. Financial premiums may be only a small part of the benefits accruing to farmers from Fairtrade certification – improved relations with buyers and long-term contracts may be more significant⁵⁸.

⁵⁷ François M., Gichovi B., *Feasibility study: Establishment of Geographical Indications for Kenyan coffees*, October 2011.

⁵⁸ Blackmore E., Keeley J., *Pro-poor Certification*. IIED 2012.

Fairtrade typically demands the creation of a democratic producer organisation, which can build social capital and be a tool for learning, but in some cases producer organisations can be costly and lacking in accountability of members.

 FAIRTRADE	Mission		Audit		Price		GMO	Traceability	
					Premium Price	Minimum Price			
	Support a better life for farming families in the developing world through fair prices, direct trade, community development and environmental stewardship.		Fairtrade members pay a fixed annual audit fee, independently of whether audits have been conducted in that specific year.		A Fairtrade premium is specified, whose specific use (restricted to investment in the producers' business, livelihood and community or to the socio-economic development of the workers and their community) is democratically decided by the producers.	A "price to be fixed" is used between seller and buyer, which cannot be below the Fairtrade Minimum Price. For Arabica coffees the reference market price shall be based on the New York Board of Trade "C" contract (NYBOT/ICE). For Robusta coffees the reference market price shall be based on the London "EURONEXT LIFFE" contract.	Genetically engineered seed or planting stock must not be intentionally used and practices to avoid GM contamination must be implemented.	Fairtrade products must be physically separated from non-Fairtrade ones and identifiable along the supply chain. The physical product must be identifiable as Fairtrade	
	Product							Labour Conditions/wage level and Child Labour	
	Composite Product		Product description, requirements, quality					- No discrimination. - Freedom of labour. - Children below the age of 15 must not be employed, but are allowed to help under strict conditions. - Freedom of association and collective bargaining. - Conditions of employment are specified, as well as occupational health and safety norms.	
	Composite products shall be sold following FT Trade standards.		Only distinguishes between Arabica and Robusta.						
	Production								
	Production Practices				Management		The standard does not require a formal internal quality management system.		
	Cultivation	Harvesting	Post-Harvesting/Processing	Milling, storage and transport					
	The standard distinguishes between 3 processing systems (washed, natural and pulped natural).								
Environment									
Pesticides/Fertilizers	Water	Waste Disposal	Soil	Biodiversity					
Training must be provided to members on Management of integrated pest, and requirements for the proper use and handling of pesticides and other hazardous chemicals is described.	Sources of water used for irrigating must be listed. Training must be provided to members on measures to use water efficiently and about waste water and health risks it bears.	Farms must be kept free of hazardous waste	Land at risk of soil erosion and land that is already eroded must be identified. Measures to improve soil fertility must be reported.	Negative impacts on protected areas within or outside the farms must be avoided. Activities carried out in order to protect /enhance biodiversity must be reported. Buffer zones around bodies of water required. Awareness on protection of the rare species also not introducing alien invasive species must be arisen.					

The costs associated with Fairtrade certification include: application fees, initial certification fees, renewal certification fees and the costs of implementing the standard itself. Costs depend on the size of the organisation and type, the number of products the farmers wish to sell and whether there are processing facilities. Some studies have found that the cost of Fairtrade certification for small-scale farmers is lower than other certification schemes.

Main costs associated with FairTrade certification are:


- Application fees.
- Initial certification fees.
- Renewal certification fees.
- Costs of implementing the standard itself – e.g. training, internal control systems.

6.1.1.2 Coffee Kenya and Rainforest

Rainforest Alliance is oriented to a comprehensive sustainable farm management. It is stronger on environmental issues than Utz Certified. It has focused on larger growers and estates, though this is now changing. This certification scheme has been criticised for allowing coffee containing between 30 and 90 per cent of certified produce to carry the label, thereby diluting its impact and misleading consumers.

Farmers may receive a premium for producing Rainforest Alliance certified coffee because of associations with higher quality but this is not part of the scheme.

Though relatively quick to implement, the costs associated with certification have been found to be high and not tailored to small-scale production. Rainforest Alliance certification may bring environmental benefits, such as the conservation of natural resources and a reduction in pesticide use.

 RAINFOREST ALLIANCE	Mission		Audit		Price		GMO	Traceability	
					Premium Price	Minimum Price			
	Integrate biodiversity conservation, community development, workers' rights and productive agricultural practices to ensure comprehensive sustainable farm management.		The audit is done annually by a third party audit and prices are determined by the market.		Differential is negotiated between buyer and seller.	Not required.		Requirement to take steps to avoid introducing, cultivating or processing transgenic crops. Plan to isolate crops from nearby transgenic materials.	The farm must have a system for avoiding the mixing of certified and non-certified products during all the phases of the process.
	Product							Labour Conditions/wage level and Child Labour	
	Composite Product	Product description, requirements, quality						- No discrimination. - Equal pay, training and promotion opportunities and benefits to all workers for the same type of work. - Wage major or equal to the legally established minimum. - Children below the age of 15 must not be employed, but are allowed to participate under strict conditions. - No forced labour. - Protection equipment for all workers that come into contact with agrochemicals.	
	Any specific requirement.								
	Production								
	Production Practices				Milling, storage and transport		Management		
	Cultivation	Harvesting		Post-Harvesting/Processing					
	Any specific requirement.								
Environment									
Pesticides/Fertilizers	Water		Waste Disposal		Soil		Biodiversity		
List of chemical/biological substances that cannot be used on certified farms.	It is prohibited to deposit into natural water bodies any organic or inorganic solids. Natural water channels must be protected.		Farmers are responsible for their waste disposal and should be trained on waste management following the principles established in Rainforest Alliance guidelines. Burning of waste in open air areas is not allowed under any circumstances.		Not specified.		- Conservation program to protect, conserve and restore all existing natural ecosystem of areas within the farm. - Protection of wild animals. - As part of the conservation program, the farm must establish and maintain vegetation zones that must consist of permanent native vegetation with trees, bushes or other types of plants, in order to promote biodiversity.		

6.1.1.3 Coffee Kenya and UTZ

Utz Certified's mission is to achieve sustainable agricultural supply chains. It applies the principle of Good Agricultural Practices, as specified by GLOBALGAP. Its primary emphasis is on traceability and production practices and processes. It offers producers access to high-specification traceability technologies and also incorporates some social and environmental criteria. Some farmers do achieve higher prices due to improved quality (2008: US\$0.07¢ per pound average for Arabica: US\$56 per metric ton for Robusta, based on quality and market drivers⁵⁹). However, it seems that for small farmers is not easy to meet the requirements of the scheme. Moreover, the significant difference between the volumes produced as Utz Certified and the amount sold indicate that there is insufficient demand for this certification. As a result a significant Certified coffee is sold on the conventional market as non-certified.

The cost of inspection for certification is determined by the relevant in-country certification body and is based on the time required for the certification inspection to take place. This will depend on the producer's situation and starting point.

UTZ CERTIFIED	Mission		Audit		Price		GMO	Traceability		
	Achieve sustainable agricultural supply chains, where: Producers are professionals implementing good practices which enable better businesses, livelihoods and environments; The Food industry takes responsibility by demanding and rewarding sustainably grown products; Consumers buy products which meet their standard for social and environmental responsibility.		The audit is done annually by third parties and prices are determined by the market.		<table border="1"> <tr> <td>Premium Price</td> <td>Minimum Price</td> </tr> <tr> <td>Only under certain conditions.</td> <td>Not mentioned.</td> </tr> </table>				Premium Price	Minimum Price
	Premium Price	Minimum Price								
	Only under certain conditions.	Not mentioned.								
	Product							Labour Conditions/wage level and Child Labour		
	Composite Product		Product description, requirements, quality					<ul style="list-style-type: none"> - Risk management for working conditions, workers health and safety procedures training are mentioned and are responsibility of the certificate holder. - Freedom of association and collective bargaining. - Compliance with several ILO conventions. - Freedom of labour. - No discrimination. - Maximum number of weekly normal working hours. - Point of control on wages, maternity and child care provision. - UTZ Codes of Conduct include explicit requirements that prohibit child labour based on ILO conventions. 		
	Any specific requirement.									
	Production									
	Production Practices									
	Cultivation		Harvesting		Post-Harvesting/Processing		Milling, storage and transport	Management		
In-house or external nursery must comply with some control points referred to varieties and visible signs of pest/disease.		Annually reviewed hygiene and food safety risk analysis concerning harvest activities. Tools used to define the weight or volume of harvested coffee is calibrated or graduated annually.		Hygiene and food safety risk-analysis concerning post-harvesting product handling facilities reviewed every years. Control points for wet and dry post-harvesting processing methods		Moisture and hygiene management in place during storage. Reliably techniques to measure humidity percentage of dried green coffee beans (documents kept) Prevention of wetting of the coffee beans during loading and transportation.	The production area must be mapped and identified with a unique name/number/code or specific colour on all the records. Fields must be physically identified with permanent signs. At least one self-inspection per year must be undertaken.			
Environment										
Pesticides/Fertilizers		Water		Waste Disposal		Soil	Biodiversity			
A responsible person who chooses the fertilizers and who is able to demonstrate competence to estimate quantity, time of application and type of fertilizer to use is designated. Documented fertilizer program. Clear instruction in place. A record of application must be kept and application equipment is required. Use of crop protection products is regulated in detail and must be recorded. Control points are specified also for transport, storing and mixing the protection products.		Control points for the rational use of irrigation water and for the check of its quality.		Not specified.		Control points about maintaining the structure and improving the fertility of the soil and prevent soil erosion.	Assessment on environmental impacts and plan to address these. Conservation plan or participation in a regional biodiversity/forest management plan. Degradation and/or deforestation of primary forests is prohibited and other control points on forest and biodiversity.			

⁵⁹ SCAA, 2009.

6.1.1.4 Coffee Kenya and organic

The protection of GIs should not be exclusive of other means of valorisation such as the organic differentiation.

Organic certification put the stress on environment, and it does not have any social or economic implication. It is technically challenging, knowledge and labour intensive.

Moreover, it is not necessarily associated with higher quality or better taste, even if it delivers environmental benefits. The distribution of costs and benefits of organic certification is highly context specific, and depends a lot on the forms of production that farmers use.

Organic certification can be demanding in terms of the organic inputs needed, the labour intensity of production, and the internal control systems required for documentation and record keeping. In many cases the internal control systems required may be beyond the capabilities of many poor farmers. External support may be critical for farmers who want to certify as organic. If farmers cannot meet the exacting requirements of organic certification, they risk being decertified.

The direct cost of organic certification depends on the number of products for which organic certification is being sought, the complexity of operations, the support provided to applicants and the size of the operation. The benefits of organic certification can include higher prices (associated with improved product quality), more resilient farming systems through improved biodiversity and reduced pest and disease problems, improved water quality, and a more diversified farming system. Other benefits can include improved health for farmers, improved social capital and positive demonstration effects where other, non-certified, farmers imitate organic agricultural practices. Organic certification is thus likely to result in improvements in environmental sustainability, but its economic benefits are less clear.

ORGANIC (IFOAM Standards)	Mission	Audit	Price		GMO	Traceability	
			Premium Price	Minimum Price			
	Create a verified sustainable agriculture system that produces food in harmony with nature, supports biodiversity and enhances soil health.	IFOAM requires the group of operators who wish to benefit from the organic certification to establish an internal control system to guarantee that every member complies with the standard. The certification body in charge of verifying that the system of internal control operates correctly. The certification is valid up to 5 years and it is subject to annual surveillance audits. Also visits and unannounced inspections may be conducted without warning by one of the certification bodies accredited by IFOAM / IOAS.	Premiums versus non organic certified coffees are normally paid to farmers (but not mentioned in the standard protocol).	Not mentioned.	No use of GMO or their derivatives in all stages of organic production and processing is permitted.	The farm must have a system for avoiding the mixing of certified and non-certified products during all the phases of the process.	
	Product					Labour Conditions/wage level and Child Labour	
	Composite Product	Product description, requirements, quality			Organic operations in countries where social legislation is not in place or not enforced have social policies in place. Such policies should be in accordance with the International Labor Organization's Declaration on Fundamental Principles and Rights at Work. In particular some requirements are specified: - Freedom of association and bargaining. - Equal opportunities and no discrimination. - No violation of human rights and fair working conditions. - No forced labour. - Well being of any children who work in the operation.		
	Labelling fully discloses ingredients, including whether or not they are organic. Processed products can be defined organic only if they contains at least 95% organic ingredients.	Not specified.					
	Production						
	Production Practices				Management		
	Cultivation	Harvesting	Post-Harvesting/Processing	Milling, storage and transport	Management		
	Unless such seeds and materials are unavailable, organic crop production uses organic seeds and planting materials, non chemically threaten.	Organic processing requires to use only processing methods that are biological and physical in nature, and to use only additives, processing aids, other substances that modify organic products and solvents used for extraction if that are on a list referenced by the standard.		Measures to prevent co-mingling of organic products with non-organic products in processing, packaging, storage and transport shall be taken.	Measures to avoid contamination shall be taken and risk of product contamination shall be identified and minimized.		
Environment							
Pesticides/Fertilizers	Water	Waste Disposal	Soil	Biodiversity			
Only certain substances specified in a list (based on criteria in international organic standards) can be used. Synthetic fertilizers or fertilizers made soluble by chemical methods cannot be used.	Requirement to sustainably use water resources and to prevent them to be polluted.	Not specified.	Enhance soil primarily by incorporating manures and other biodegradable inputs, and/ or by nitrogen fixation from plants. Requirement to avoid soil pollution.	Organic management maintains or enhances biodiversity in crop and non-crop habitats on the farm holding.			

The impact of organic certification on gender issues varies but on balance is probably positive⁶⁰. Evidence of costs and benefits is embedded in a wide range of context-specific economic, cultural, and social relations.

Mr Mwangi has also stressed the assets of organic branding which eliminates the heavy charges of fertilizers (50 to 60% of the budget of cooperatives).

6.1.1.5 State of development of Rainforest, UTZ labels, FairTrade in Kenya.

Before considering GI, it is felt that stakeholders need to look at which impact on the consumer is sought. About 30% of the coffee in Kenya is certified. Certification has not necessarily proven to bring premium prices. However, if certification helps to increase the production, producers are already winning somehow even if it was not sold as UTZ. A survey conducted during the 2008/2009 coffee season found there were only two certification schemes that have been adopted by coffee cooperatives in Kenya, and these were Fairtrade and CAFE Practices. A research⁶¹ on the impacts of different certification schemes on the three dimensions of sustainability showed that these were keener on environmental and social matters than they were on economic ones, with the exception of Fairtrade, which places the highest importance on economic issues, being the only certification scheme that guarantees minimum prices and social premiums to producers.

Another important point that has been evidenced is the fact that certified farmers had significantly higher access to credit than their non-certified counterparts did. In particular, in Kenya, most farmers who had access to credit received it from SACCOs, considered more advantageous than banks because of their lower interests rate and their acceptance of coffee production as collateral for loans. Access to credit is important to farmers in order to be able to purchase inputs.

Besides, having drivers of inclusion and exclusion of producers into programs, certification schemes have a governance approach, especially in the initial implementation, which can be defined top-down. This means that in the governance strategy used by actors to introduce certification schemes to coffee farmers, farmers have a very passive role.

Usually, the buyers are those who take the initiative and write proposals to donors, in order to fund the implementation of the project. Buyers then convince cooperatives officials, who will subsequently convince farmers. Promoter farmers are then selected and trained with the aim of training other farmers, and at last the scheme is implemented in the farms.

This kind of governance can create tension and dissatisfaction between producers, who do not always agree with the decisions taken by the cooperative, with consequent suspicion and disunity within the cooperative itself. Concisely, the top-down strategy lacks support from stakeholders, and farmers can feel like they are being side lined with respect to the decisions taken by the cooperative, all this resulting in a lack of co-operation that can lead to poor success of the strategy.

6.2 Identification and analysis of public support policies

In Kenya, Coffee is said to be a “political crop”. Therefore and with a view to formulating recommendations for the way forward, it is deemed necessary to identify and analyse the public policies supporting the industry of coffee.

⁶⁰ Lyon S. et al., *Gender Equity in Fairtrade-organic coffee producer organizations: cases from Mesoamerica*. 2009.

⁶¹ Kirumba E.G., *Coffee Certification and Small Holder Farmers' Livelihoods in Kenya*. 2011

6.2.1 Draft Bill of GI

As stated before, a draft GI bill is the process to be adopted in Kenya following a Swiss Project with the Intellectual Property Office. Unfortunately, it has not been achieved within the expected time. Kenya has engaged in the drafting of a GI law. The last draft was completed in 2011.

6.2.2 Murang'a project

CRF has been identified as the main partner of the forthcoming project on Validation of Coffee from Murang'a (project financed by AFD and technically assisted by CIRAD). Indeed, one aspect would be to characterize coffee from Murang'a. The differentiation of Murang'a seems to be based on:

A technical cooperation project in order to implement a GI for the coffee produced in Murang'a district is supposedly starting in September 2013, after that the existence of a potential in Kenya for several GIs has been assessed.

The project objective is to make a key contribution to the establishment of a functional GI protection system in Kenya and to support the country in raising awareness on GIs within EAC member states.

This project could be important to secure the local origin of coffee, completing the action of the initiatives to protect national quality, such as the national trademark "Coffee Kenya", and supporting the development of Kenya coffees sold as "single origin", possibly with other certifications (UTZ, Rainforest alliance, fair trade, organic, etc.). Indeed, at this moment, their intrinsic quality is not valorised on the most remunerative markets, even if it is much appreciated in blends.

Moreover, although it is very difficult to make reasonable hypothesis on the increase of price that could provoke a GI on Murang'a coffees, the implementation of a regional GI could increase or at least maintain high prices for coffees in the region, improve techniques, yields and average quality.

6.2.2.1 Accreditation of the CBK

There is a need for a strengthening of the traceability in the field of coffee. Accreditation is the next step. It gives formal attestation that Conformity Assessment Bodies (CABs) are competent to carry out specific conformity assessment activities. In Kenya, KENAS⁶² carries out accreditation based on the following: regional directives, relevant statutes and government regulations; requirements for health, safety, and protection of the environment; and the market and needs of clients. Accreditation comes from a demand of the market for quality products and services. The market demands quality and there is a need to have a system in place to ensure this quality.

CBK is a potential client for accreditation as they are coming up with a logo. Their focus should be the norm 17,065 which is a product certification standard. There will be a need for the accreditation body to be accredited. CBK, while implementing this trademark, would like to make sure and reassure the market on the fact that not only do they have a proper management system for their mark, they also have the technical competencies (knowledge, skills, ability) to manage it. They will still have to clarify whether they want to certify a product (Coffee from cooperatives and estates) or a process (certification by them of cooperatives and estates) or both. 17,065 could be incorporated as part of the rules of application. Either CBK will have to comply with those rules, or they will specify that the competent control body must be accredited. Whichever route they go, they can create accountability. 17'065 cannot protect from counterfeit/misuse. It primarily checks the compliance with the defined practices and product specifications.

⁶² Kenya Accreditation Service (KENAS) is the Sole National Accreditation Body mandated to offer accreditation services in Kenya. KENAS is established under the States Corporations Act, Cap 446; vide Legal Notice No. 55 of May 2009 under the Ministry of industrialization. We operate under international standards within ISO ICE17 011 which gives requirements for accreditation bodies.

As for the regional GIs, both the creation of an internal control (within the GI association) and an external control (by accredited bodies) will translate into costs. The following table shows the costs associated with accreditation.

Table 1: Accreditation fees assessment

FIRST SCHEDULE

All scopes (Minimum)	Rate (KES)	Rate (€)
Application	40,000	343
Document Review	95,000	814
Assessment (initial)	250,000	2143
Total	385,000	3300

SECOND SCHEDULE

Other Charges

All scopes (Minimum)	Rate (KES)	Rate (€)
Pre-assessment	50,000	428
Additional Assessor per day	60,000	514
Application for Extension (all inclusive, except for VAT)	250,000	2143
Review of re-submitted Documents	45,000	385
Total	405,000	3470

THIRD SCHEDULE

Annual fees

All scopes	Rate (KES)	Rate (€)
Annual Accreditation Fee	192,500	1645

It is to be noted the European Legislation on GIs compels the control of the product by an accredited body to 17,065. As of today only Kenyan Bureau of Standard is accredited 17,065.

6.2.3 European projects and/or partnerships

6.2.3.1 The Economic Partnership Agreement (EPA)

Kenya current trade relations with the European Union are based on the “interim” Framework Economic Partnership Agreement (FEPA) which was initiated by the member states of the East African Community (EAC) and the European Commission in November 2007. This Agreement is a stepping-stone towards a comprehensive Economic Partnership Agreement, for which negotiations

are on-going. The stated objective of the EPAs (according to the EC) is to introduce reciprocity into (and therefore achieve WTO compatibility for) the long standing trade relationships between the EU and the ACP. The issue of "market access for goods" has been reciprocally agreed in the FEPA. While the EU opens its markets to EAC products in full from the start, the EAC liberalizes 82.5% of current trade over a period of 25 years. In fact, already 65.4% of this trade is already entering into the EAC at zero duty given the EAC Common External Tariff is set at 0% for raw materials and capital goods. Thus, effective liberalization is on products that account for 17.2% of current total trade with the EU. Further, 15.2% of these products are intermediated products, sorts of unilateral preferences under its GSP, (i) "Everything but Arms" for Least-Developed Countries (LDCs), offers an access to the EU market similar to EPAs, (ii) the standard GSP, for those developing countries without LDC-status, offers a less generous market access than an EPA, and (iii) GSP-plus, provides a more generous regime than the standard GSP for those non-LDC developing countries that have ratified a number of international conventions on labour rights and environment.

On Economic Partnerships agreements, Kenya is very reluctant so far. It has not yet appeared to be profitable to the country. The file has to be examined by a Trade Expert.

6.2.3.2 The Kenya Rural Development Program

The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) entered into force with the establishment of the WTO on 1 January 1995. The SPS Agreement recognizes the right of WTO Members to take sanitary and phytosanitary measures to protect life and health, while avoiding unnecessary barriers to trade. The AUC (African Union Commission) has not yet developed an SPS policy framework. However, the establishment of a consultative process to develop and adopt a "draft legal framework" is part of the background and rationale a study conducted in July 2010. The East African Community (EAC) has come up with a Final Draft of the Protocol on Sanitary and Phytosanitary Measures in May 2009. This is a good step towards quality enforcement.

The Kenya Rural Development Program, with EU financing of € 66.4 million, aims at improving food security by increasing crop productivity, improving food marketing and increasing drought resilience of local communities in arid and semi-arid lands. It covers agricultural research, spreading knowledge on high-yielding and drought-resistant crops and technologies as well as better access to seeds, fertilizer, and markets for small-scale farmers. Concrete activities include the development and marketing of crops and fodder that can resist drought as well as the improvement of post-harvest storage. The program also helps the government in developing better policies for drought management.

7 Conclusion

7.1 Analysis Results

The situation of the GI "Coffee Kenya" remains opaque from many points of view, and it is difficult to make scenario assumptions about the way in which it might evolve over a de-commodification objective. It is possible to imagine a use of the certification mark Coffee Kenya according to a strategy similar to the one that has been implemented for Colombia Coffee. This was indeed first registered as a trademark, then as *sui generis* GI, with the aim to protect the geographical name associated, in the minds of consumers, to a high-quality coffee, and so preventing traders to prefer other sources that can be sold at a lower price.

In the same way, the certification mark Kenya Coffee may prevent a "migration" of demand to other coffees, especially from Eastern African countries such as Tanzania, if through the GI it was possible to make the name of Kenya appear also at the last phase of the sale, which is to say the final

consumer. As for the strategy with a local approach, it is possible to imagine that the two marks could be mutually reinforcing: the brand on a regional basis would benefit from the reputation of the national brand. This would frame an approach to the GI as a substitute for standards, and guarantee quality.

For coffee with local GI it is more conceivable the sale as single origin, possibly combined with other certification schemes related to sustainability such as UTZ Certified, Fairtrade, etc.

Despite the difficulty of imagining the future scenario for these GIs, it is important to emphasize that the GI is a long-term strategy, which requires long-term investment and involvement of stakeholders, and that may have positive impact on small producers only if they exercise a degree of control over the intellectual property tool. This does not seem to be the case in Kenya where, in contrast to what it is possible to state for Colombia, the cooperatives do not seem to pay great attention to the needs of producers and, above all, do not seem to make their interests.

7.2 SWOT

Strengths

Kenyan coffee definitely has a good reputation of quality on the market, and it is already well known with reference to the national dimension. This allows the Arabica coffee produced in the country to fetch the highest prices in the market at the New York Board of Trade. According to the KCTA (2012), the premium price received by this coffee is related to its excellent properties with reference to blending. This suggests that the GI strategy, for the moment, is not so interesting from the point of view of the sale as a single origin. However, there are traders who have stated that Kenyan coffee can be effectively marketed through a single origin strategy. For example, Starbucks has already developed a line of specialty coffee under the name of Kenya.

Weaknesses

Kenyan coffee still has a limited presence in the market segment of coffee with single origin. The collective dimension, which is necessary for the success of a strategy pivoted on the geographical name, is very weak in this value chain, because of the critical issues that characterize the cooperative system, which not only fails to work in the direction of the interest of the smallholders, but it is the only channel through which small farmers can market their product. Furthermore, also if the associations of producers could sell their coffee directly, they would not have the know-how to do it effectively. Finally in Kenya there is a lack of sense of pride around the coffee culture. Indeed, from interviews emerged a strong sense of destitution.

Opportunities

Although, at the moment, Kenyan coffee is not very present in the segment market represented by single origin coffee, the interest of end consumers for specialty coffees is experiencing a steady growth, and consequently also roasters begin to assess the various possibilities offered by this type of niches. There is thus the opportunity to catch the possibility to increase the presence of the Kenya Coffee in niche markets, where prices are not related to the signal given by the stock exchanges, especially if they have a certification that guarantees intrinsic quality. The advantages that can bring the geographical indication in this sense could be numerous: firstly, it would permit facilitated access to the specialty coffees channels of trade and, in the case where GI was associated with an effective marketing strategy, it could help to build a new balance of power between producers and intermediaries, enhancing the producers' bargaining power.

Challenges

At this time it is even more difficult to assess the potential of the GI (especially with reference to the implementation of a sui generis legal framework) because in Kenya there is still no formal geographical indications, and in general experiences with names of origin are very young. In general, the certifications can improve the price at which the coffee is sold in Kenya, but it must be said that these increases are not substantial (about 10/40 cents per pound, as mentioned).

Another challenge is posed by the fact that the different markets require different types of blends and roasting, and it is not possible to promote this type of product through the link with the origin. In addition, many of the interviewed stakeholders said they were still sceptical about the possibility of carrying out the processes of roasting in the country of origin.