

# THE NEPAL COFFEE MARK

A Roadmap from Obscurity to Opportunity



PRAKAT KHATI & PRABISHA BASNET

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Authors

## TABLE OF ABBREVIATIONS

<b>AD</b>	Anno Domini
<b>ANACAFE</b>	ASOCIACION NACIONAL DEL CAFÉ
<b>BS</b>	Bikram Sambat
<b>CIB</b>	Coffee Industry Board
<b>CO</b>	Certificate of Origin
<b>DO</b>	Designation of Origin
<b>EIPO</b>	Ethiopian Intellectual Property Office
<b>EU</b>	The European Union
<b>FNC</b>	Federación Nacional de Cafeteros de Colombia
<b>FNCCI</b>	Federation of Nepalese Chambers of Commerce and Industries
<b>GI</b>	Geographical Indication
<b>GoN</b>	The Government of Nepal
<b>HS</b>	The Harmonized System of Codes
<b>ICAFAE</b>	Instituto del Café de Costa Rica
<b>ICO</b>	International Coffee Organization
<b>IP</b>	Intellectual Property
<b>ITC</b>	International Tea Committee
<b>MoAD</b>	The Ministry of Agricultural Development
<b>MoICS</b>	The Ministry of Industry, Commerce and Supplies
<b>MoU</b>	Memorandum of Understanding
<b>NBSM</b>	Nepal Bureau of Standards and Measures
<b>NCPA</b>	Nepal Coffee Producers' Association
<b>NOCP</b>	Nepal Organic Coffee Products
<b>NPIA</b>	Nepal Pashmina Industries Association
<b>NTCDB</b>	Nepal Tea and Coffee Development Board
<b>NTIS</b>	Nepal Trade Integration Strategy
<b>PDO</b>	Protected Designation of Origin
<b>PGI</b>	Protected Geographical Indication
<b>QA</b>	Quality Assurance
<b>SICA</b>	Sistema de Información Cafetero
<b>TEPC</b>	Trade and Export Promotion Centre
<b>US</b>	The United States of America
<b>WTO</b>	World Trade Organization

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## Executive Summary

Coffee has been grown in Nepal since the late 1930s. Mr. Hira Giri first introduced coffee in Nepal from Burma in the year 1938 A.D. The first coffee plantation was done in Aanpchaure of Gulmi District. Initially, the coffee crop attracted little attention. In 1978 A.D., the incumbent King Birendra declared Gulmi a coffee region marking the beginnings of commercial coffee production in Nepal. As coffee plantation was accelerated across Nepal and coffee production grew, the need for an institutional mechanism to govern the coffee sector was realized.

The decade of the 1980s played a pivotal role in defining the progress of the coffee sector of Nepal. During this period, Nepal's first coffee mill known as Nepal Coffee Company (NeCCo) was established in Butwal. In 1988 A.D., Nepalese Coffee Producers Associations working committee was formed in Palpa. However, the institutional development of coffee sector only started in earnest after the establishment of Nepal Tea and Coffee Development Board (NTCDB) in 1993 A.D. The objective of the Board is to promote as well as strengthen Tea and Coffee sector through formulating policy, providing technical and managerial support. In 2005, the Coffee Producers Association was renamed into the Nepal Coffee Producers Association (NCPA). Today, NCPA has grown into an umbrella organization that encompasses 17 Districts Coffee Producers Associations, 1700 coffee producer groups, 120 coffee co-operatives and 30,000 coffee farmers.

In 2003, a national coffee policy was drafted which included a provision to create a national coffee logo to be used in exportable coffee and coffee products. With the Coffee Policy in place, the Government of Nepal via its Trade and Export Promotion Centre provided the financial resources necessary for the formulation of the coffee logo. Subsequently, a coffee logo was created with the involvement of businesses individuals from the coffee sector. The logo was then registered as a trademark in eight countries including Canada, Japan, Norway, Singapore and Hong Kong. However, in subsequent years, the coffee logo could not be brought in general usage. Subsequently, the registration of the logo has been nullified in countries including Canada, Norway and Japan due to the failure to bring the mark into use.

To ameliorate the situation, we recommend actions to be taken in three different time-frames. In the near term, we recommend that the use of the old logo be ceased while its registration status is evaluated and the logo itself is evaluated for its fitness for continued future use. We make a general recommendation that due to the accumulated errors made in the earlier process of defining and designing the logo, a fundamental rethinking of the role of the logo in the broad context of coffee marketing is required. Additionally, we recommend that the logo be redesigned keeping in mind the current requirements of the industry and the aesthetic standards expected of such national marks in the international market. We also recommend the NCPA to formulate a comprehensive policy position and begin communications with relevant government agencies to create an environment of effective collaboration for conducting future coffee promotion and marketing activities.

In the medium term, we recommend a host of policy and legislative changes intended to strengthen the NTCDB in regulating, inter alia, the proper usage of existing national marks or other marketing material. This includes amendments to the coffee policy, the NTCDB Act and

the Procedure Guidelines that regulate the use of the national logo. We also recommend the drafting of a comprehensive coffee marketing strategy, a part of which should be the creation and promotion of a new national coffee mark. Additionally, we also recommend that the NCPA pursue agreements with the Federation of Nepalese Chambers of Commerce and Industries to ensure that certificates of Nepal origin are only issued to coffee produced in Nepal or coffee products in which substantial value was added within the territory Nepal.

In the long run, we state that the coffee sector will be required to formulate an institutional framework for continuous third-party quality assurance of all coffee and coffee products bearing the national mark. We also recommend creating an environment of universal usage of the mark by all exporters of Nepal origin coffee or coffee products either by creating economic incentives or by creating appropriate legislation or both. Additionally, we recommend that the scope of the national logo be expanded to include additional marks or versions of a single mark to represent regional varieties and to signal quality certification such as organic or fair trade certifications. Finally, we recommend that an institutional mechanism be created for the maintenance and upkeep of all IP owned by the NTCDB.

## Background

### Who is this report for?

The initiative to assess the gap in the implementation of the national coffee logo has been undertaken as part of ‘Hamro Coffee: Expanding Opportunities for Nepalese Coffee Growers and Traders’ on behalf of ICCO and NCPA. The report is formulated for consideration by all stakeholders of the coffee industry as well as regulatory authorities. The coffee exporters, NCPA, NTCDB, cooperatives, roasters, producers and TEPC are the relevant entities that will benefit from considering the recommendations of this report. Additionally, we hope that the report can be of some assistance to scholars studying the Nepalese coffee industry or the history of use of collective trademarks in Nepal in general.

### Introduction to the Nepalese Coffee Industry

#### *Coffee as a cash crop in Nepal: A History*

Coffee is one of the most popular beverages in the world prepared from the roasted seeds of an evergreen plant of the genus *Coffea*. The two most important species of coffee are *Coffea arabica* (Arabica coffee) - which accounts for over 60 per cent of world production - and *Coffea canephora* (Robusta coffee). Coffee is one of the highly traded commodities in the world. In Nepal, coffee was introduced in the late thirties in Aapchaur of Gulmi. The self-pollinating Coffee Arabica is a highly acclaimed species of the coffee and entire coffee of Nepal belongs to this species. The agroclimate of mid-hills is highly suitable for the farming of this high-value plant thereby contributing to livelihood, income generation and economic growth. It creates employment not only in the farms but also in pulping centres, coffee industries and café houses. Coffee was introduced by a Nepali national, Hira Giri from Myanmar back in 1938 in Aapchaur, Gulmi. It remained as curiosity plant for several decades onwards until the then His Majesty’s government decided to import Coffee seeds from India in 1968. The early 1980s witnessed significant progress in Nepali coffee sector: the first ever coffee mill, Nepal Coffee Company (NeCCo), established in 1983 and just a year after, Coffee Development Centre under the Department of Agriculture was established in Aapchaur, Gulmi. The early nineties brought about the concept of organic farming in Coffee, particularly around the pockets of Madanpokhara, Palpa.<sup>1</sup>

Coffee is a high-value cash crop with environmental importance and is being popular among Nepalese since last few decades. It has been spreading in over 40 districts of the middle hills of Nepal.

All Nepali Coffee is of Arabica variety, a mix of bourbon and typical, grown above 1000 meters up to 1600 meters altitude with organic and eco-friendly practices by small farmers. Selective hand picking of fully ripen cherries is done and pulped right after harvesting with mini hand pulper (wet processing) with necessary additional procedures. However, for domestic and

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<sup>1</sup> Coffee Database in Nepal 2014.

home consumption dry processing method is also adopted where cherries are harvested and dried in sun at the farm level.

Nepal Coffee is considered speciality Coffee for its distinct flavour aroma and body as it is grown in higher altitude, away from the main Coffee growing Capricorn and Cancer belt (beyond 230 degrees of latitude). Coffee produced in Nepal is Organic & Fair-trade and is readily accepted as a Specialty Coffee in specific international markets.

Coffee can be commercially produced in many parts of the country. However, there is great potentiality in the mid hilly region for organic Coffee production as it has got suitable climate, topography, soil, relative humidity, temperature and rainfall for Arabica Coffee. Some districts like Gulmi, Palpa, Argakhanchi, Lalitpur, Tanahu, Kavre, Sindhupalchowk, Lamjung, Kaski, Gorkha, Syangja, Parbat and Baglung are successfully growing and producing Coffee beans and is increasing gradually. This will certainly help in diversifying process and will increase the income of the farmers as well as other individuals involved in Coffee processing and marketing enterprise.<sup>2</sup>

The coffee sector has been in existence since the late 1930s. However, the development of the coffee sector started after the establishment of NTCDB Act in 1993 recognized by the Nepalese government. Coffee has been ranked fourteenth by the Ministry of Agricultural Development (MoAD) in the value chain development.<sup>3</sup>

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<sup>2</sup> National Tea and Coffee Development Board “Nepali Coffee” <  
<https://www.teacoffee.gov.np/coffeeinfo/nepali-coffee>> accessed 18 April 2019

<sup>3</sup> Ministry of Agricultural Development, Agricultural Development Strategy 2015.



***The trend of coffee production, processing, sale and export in Nepal***

The crop remained unnoticed as a curiosity crop until the 1970s. Then it spread from one farmer to another as a curiosity plant for about 4 decades.

In the late seventies, expansion of Coffee as a commercial crop to some extent took place when the Government of Nepal imported Coffee seed from India for distribution. The major shift to commercial Coffee production took place in mid-eighties. After the establishment of Nepal Coffee Company (NeCCo) in Manigram, Rupandehi district, in 1983/84, the Coffee producers were able to sell Coffee. NeCCo used to collect dry cherry from the Coffee producers and processed the Coffee for the domestic market. Until early 2000, Coffee producers were not very sure whether Coffee can be a dependable source of income due to market uncertainties. However, after the year 2002, a substantial increase in the export and also increase in domestic market consumption to some extent motivated Coffee producers to consider Coffee as a major income generating crop.

Respecting the interest of people on Coffee and favourable climatic conditions for its cultivation. Ministry of Agriculture decided to launch the Coffee Development Programme in the country. The Government provided technical and financial support to the farmers; its cultivation has gradually spread to about 40 districts of the middle hills of Nepal. Lalitpur, Gulmi, Palpa, Shyangja, Kaski, Sidhupalchowk, Kavre, are some districts known for Coffee production.<sup>4</sup>

### *Legislative, policy and institutional history*

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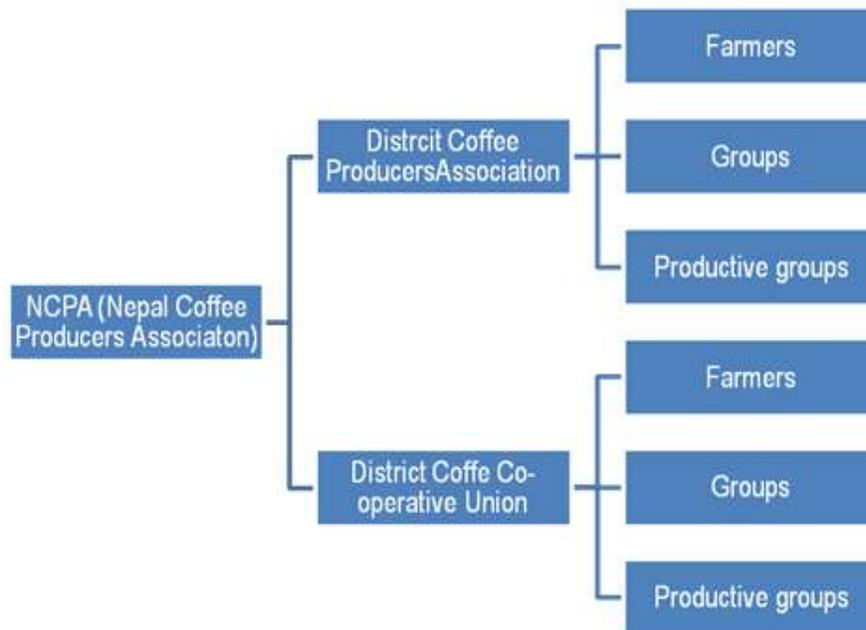
<sup>4</sup> National Tea and Coffee Development Board “History” < <https://www.teacoffee.gov.np/coffeeinfo/history>> accessed 18 April 2019



The legislative history of the Coffee sector started in the early 1990s with the promulgation of National Tea and Coffee Development Board Act. A Tea and Coffee Board was established by the subsequent Act to support and promote the Tea and Coffee industry. In 2003, the Board developed a specific policy for the coffee sector to enhance the production, processing and commercial transaction. Further, the Coffee Policy, 2003 had the policy to formulate a national logo. This resulted in the creation of a national coffee logo and a Procedural Guidelines for the use of the National Logo in 2010 was created by the Board.

## *Institutional History of NCPA*

### STRUCTURE OF NCPA AND PRIORITIES



NCPA is the umbrella organization for all the Nepalese coffee organization, businessman & co-operatives involved in the coffee industry. It was established as a central committee in 2054 B.S. (1997) & since 2061 B.S. (2003) it has been running as an association. This institute mainly works for institutional development, coffee production, processing technology, advertisement & marketing. It has also been working jointly with the government of Nepal, private sectors, social organizations & industrialists for policy development & implementation.

#### Vision

The main objective of the organization is to unify the small and marginalized group of farmers located at hilly region (800-1600 meter) and help them produce, process and market organic and high-quality coffee which will enhance their living standard and national income on the whole.

Target group: small and middle-class farmers, women, marginalized and professional coffee producers.

#### Objectives

- To produce, process and manage markets for coffee and help provide different short term, mid-term and long term planning regarding these.
- To provide necessary research, training, visit, etc. to promote coffee producers, professional organizations and cooperatives in order to achieve international standards in production and processing of coffee.<sup>5</sup>

<sup>5</sup> Nepal Producers Association "Introduction" < <http://www.coffeenepal.org.np/about.html>>

### *Introduction to the Nepal Coffee mark*



The process of creation of the logo was catalyzed by the activism of some industry stakeholders. The logo was a result of collective effort of NTCDB, NCPA and coffee entrepreneurs. Initially, three coffee producers were given permission to use the logo to promote Nepali coffee. Nepal Organic Coffee Products (NOCP), Highland Coffee and Everest Coffee were provided with the permission. Mr. Shyam Prasad Bhandari and Mr. Dhakeswor Ghimire from NOCP, Mr. Phul Kumar Lama from Everest Coffee and Mr. Krishna Ghimire from Highland Coffee were the key industry leaders who participated in the creation of the logo.

The Procedure Guidelines created by the NTCDB describes the logo as follows:

“The sky blue colour of the logo has indicated the peace, the seed of coffee and picture of mountain in center of the Logo clearly showed the quality of Nepali coffee and climate of Nepal which is cold and appropriated for coffee production and the symbol of vapour come out from the cup of coffee having the bottom of the logo indicates the fascinating sweet smell of coffee.”<sup>6</sup>

The logo is registered as a trademark in Nepal under the ownership of NTCDB. For registration of the logo in a foreign jurisdiction, an agreement was reached that the GoN via TEPC would bear seventy per cent of the cost of registering the logo in ten countries while the remaining thirty per cent was expected to be borne by NCPA. Subsequently, the logo was registered in a total of eight countries. The status of the registration is summarized below:

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<sup>6</sup> Ibid pg 3.

Countries	Singapore	Canada	Norway	Japan	Hong Kong	Korea
Registered in the Name of NCPA	✓	✓	✓	✓	✓	✓
Registered in the Name of NTCDB	–	–	–	–	–	–
Registration Date	25 <sup>th</sup> September, 2012	13 <sup>th</sup> February, 2014	6 <sup>th</sup> December, 2012	25 <sup>th</sup> January, 2013	Information not available	Information not available
Trademark Duration	10 years	15 years	10 years	10 years	Information not available	Information not available
Renewal Date	September, 2022	13 <sup>th</sup> February, 2029	27 <sup>th</sup> September, 2022	25 <sup>th</sup> January, 2023	Information not available	Information not available
Disuse Clause	–	Before 13 <sup>th</sup> February 2017 or in any subsequent continuous three-year period	Before 17 <sup>th</sup> March 2018 or in any subsequent continuous five-year period	Before 25 <sup>th</sup> January 2016 or in any subsequent continuous three-year period	Information not available	Information not available

It is noteworthy that the logo is not in general use or circulation at the moment of writing of this report. While a few producers have included the logo in their packaging material, none have reported using the logo for economic reasons. Instead, the few individuals using the logo are generally doing so for sentimental reasons.

## Literature Review

### **Welcome to the Club? - An Economical Approach to Geographical Indications in the European Union.**

Generally, collective name monopolies are understood as geographical indications. The four types of geographical indications recognized by the European Union (EU) are generic geographical indications, indications with full legal protection, indications protected by competition law and individualized geographical indications.<sup>7</sup>

The geographical indications which can be used without restrictions, if the consumers do not expect a certain provenance are known as generic geographical indications. Example: Gouda.<sup>8</sup> Likewise, the protection of geographical indication by a legal act, either a law or regulation results in indications with full legal protection. Example: Champagne in France.<sup>9</sup> The GIs protected by competition law can be protected somewhere between the generic and the full legal protection.<sup>10</sup> Subsequently, absolute rights on geographical indications have been denied by the German constitutional court.<sup>11</sup> Individualized geographical indications can be used by a single firm. Example: Fachinger mineral water.<sup>12</sup> Thus, offering the protected designation of origin (PDO) and the protected geographical indication (PGI).<sup>13</sup>

### **The competitive significance of collective trademarks.**

Collective trademarks are usually owned by one legal person or entity. However, multiple persons can lawfully use and enforce the collective trademark. Generally, the holder of the trademark is either an association of producers of goods or suppliers of services. Such member of the association can bring an action against infringement, provided that the association gives its consent.<sup>14</sup> There are three sub-categories of collective trademark:

Conventional collective marks

Collective guarantee marks

Collective geographical indications marks

Conventional collective marks distinguish either the goods or service of the members of an association from the outsiders or other associations.<sup>15</sup> The collective guarantee marks

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<sup>7</sup> Frank Thiedig and Bertil Sylvander, 'Welcome To The Club? - An Economical Approach To Geographical Indications In The European Union.' (2000), pg 1

<sup>8</sup> Frank Thiedig and Bertil Sylvander, 'Welcome To The Club? - An Economical Approach To Geographical Indications In The European Union.' (2000), pg 4-5

<sup>9</sup> Frank Thiedig and Bertil Sylvander, 'Welcome To The Club? - An Economical Approach To Geographical Indications In The European Union.' (2000), pg 5

<sup>10</sup> Frank Thiedig and Bertil Sylvander, 'Welcome To The Club? - An Economical Approach To Geographical Indications In The European Union.' (2000), pg 5

<sup>11</sup> Frank Thiedig and Bertil Sylvander, 'Welcome To The Club? - An Economical Approach To Geographical Indications In The European Union.' (2000), pg 6

<sup>12</sup> Frank Thiedig and Bertil Sylvander, 'Welcome To The Club? - An Economical Approach To Geographical Indications In The European Union.' (2000), pg 6

<sup>13</sup> Frank Thiedig and Bertil Sylvander, 'Welcome To The Club? - An Economical Approach To Geographical Indications In The European Union.' (2000), pg 6-7

<sup>14</sup> Alexander Peukert, 'The competitive significance of collective trademarks' Individualism and Collectiveness in Intellectual Property, in Jan Rosén (ed.), Edward Elgar Publishing (2011), pg 1

<sup>15</sup> Alexander Peukert, 'The competitive significance of collective trademarks' Individualism and Collectiveness in Intellectual Property, in Jan Rosén (ed.), Edward Elgar Publishing (2011), pg 2

distinguish either goods or services on the basis of nature, quality or other properties.<sup>16</sup> These marks have more and broader protected functions than conventional collective marks. In addition, to ensuring quality, these marks distinguish and guarantee origin.<sup>17</sup> The final sub-category is known as collective geographical indication marks. It is designated the geographical origin of either goods or services of the members of the association.<sup>18</sup> Example: Bavarian beer, Parmigiano Reggiano.

### **Development of collective trademark for Batik Industry in Kampung Batik Laweyan (Laweyan Batik's Village), Solo.**

The domestic market of Indonesia was filled with imported “batik” products. Specifically, those batiks were imported from China and Malaysia.<sup>19</sup> The local Kampung Batik Laweyan had been long famous for its inland batik (Batik Pedalaman) production. Their history states there existed a community of batik traders with women running the business, who are called as mbok mase or nyah nganten, and their husbands as mas nganten.<sup>20</sup> Their products are comprised of stamped batik, written batik, combined stamped and written batik, and combined or non-combined batik prints made by using the copper stamps motifs.

The 92 batik SMEs reside in a single village known as Kampung Batik Laweyan. And, gather in village organization (FPKBL) that serves the Laweyan's batik and village development.<sup>21</sup> Most of the SMEs residing in the Laweyan are aware of the importance of the trademark and have registered it as a collective trademark.<sup>22</sup> To ensure the quality control, they have adhered to the national standard (Standard Nasional Indonesia – Indonesian National Standard) issued by the Indonesian government. The association or organization acts as the facilitator that monitors the compliance of the Indonesian National Standard. Article 50 paragraph (3) of the Trademark Law stipulates that collective trademark rules should at least regulate:

- a. Characteristic, general features or certain qualities of the products or services being produced and traded;
- b. Effective monitoring on the use of trademark, and
- c. Penalty for the use of a trademark which infringes the collective trademark rules.

### **Brands as Productive Assets: Concepts, Measurement, and Global Trends.**

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<sup>16</sup> Alexander Peukert, ‘The competitive significance of collective trademarks’ Individualism and Collectiveness in Intellectual Property, in Jan Rosén (ed.), Edward Elgar Publishing (2011), pg 5

<sup>17</sup> Alexander Peukert, ‘The competitive significance of collective trademarks’ Individualism and Collectiveness in Intellectual Property, in Jan Rosén (ed.), Edward Elgar Publishing (2011), pg 5

<sup>18</sup> Alexander Peukert, ‘The competitive significance of collective trademarks’ Individualism and Collectiveness in Intellectual Property, in Jan Rosén (ed.), Edward Elgar Publishing (2011), pg 7

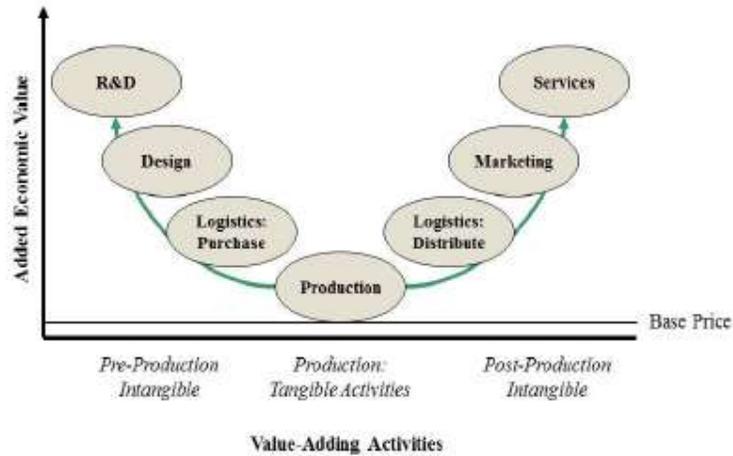
<sup>19</sup> Sardjono, Agus & Amy Prastyo, Brian & Larasati, Desrezka. (2015). Development of Collective Trademark for Batik Industry in Kampung Batik Laweyan (Laweyan Batik's Village), Solo. Indonesia Law Review. 5. 33. 10.15742/ilrev.v5n1.136, pg 34

<sup>20</sup> Sardjono, Agus & Amy Prastyo, Brian & Larasati, Desrezka. (2015). Development of Collective Trademark for Batik Industry in Kampung Batik Laweyan (Laweyan Batik's Village), Solo. Indonesia Law Review. 5. 33. 10.15742/ilrev.v5n1.136, pg 39

<sup>21</sup> Sardjono, Agus & Amy Prastyo, Brian & Larasati, Desrezka. (2015). Development of Collective Trademark for Batik Industry in Kampung Batik Laweyan (Laweyan Batik's Village), Solo. Indonesia Law Review. 5. 33. 10.15742/ilrev.v5n1.136, pg 40

<sup>22</sup> Sardjono, Agus & Amy Prastyo, Brian & Larasati, Desrezka. (2015). Development of Collective Trademark for Batik Industry in Kampung Batik Laweyan (Laweyan Batik's Village), Solo. Indonesia Law Review. 5. 33. 10.15742/ilrev.v5n1.136, pg 40

Figure 9. Intangibles in a Global Value Chain



Source—"Knowledge-based Capital, Growth and Competitiveness" by Dirk Pilat. Available at [http://simpatic.eu/wp-content/uploads/2013/03/2013-03-26\\_Dirk-Pilat.pdf](http://simpatic.eu/wp-content/uploads/2013/03/2013-03-26_Dirk-Pilat.pdf)

The beginning of a product life cycle starts with the goods produced being sold locally. Slowly, the product establishes a reputation and the operation expands. Resulting in the establishment of a brand that consumer can associate. Over time, the brand acquires intangible value on the basis of customers' perception towards that commodity or service. This is reflected in the revenue stream that is accrued by a company via its brand name or mark or logo.<sup>23</sup> Precisely, branding creates information about either a company or its products or services. Subsequently, the information flows from producers to consumers.

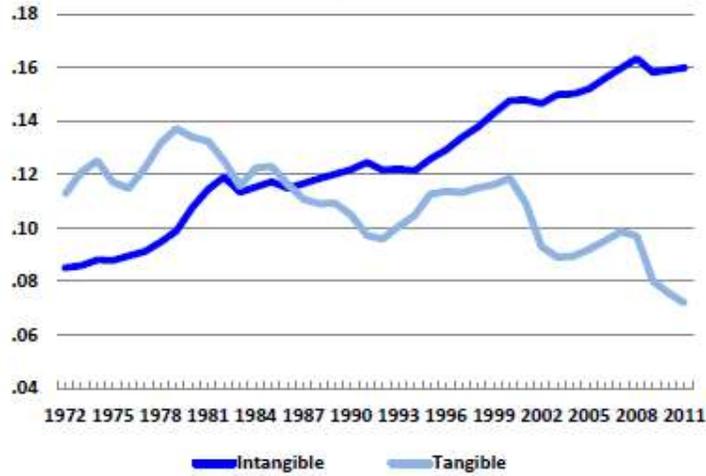
The Chart depicted above shows that pre and post-production intangibles go concurrently. The chart shows that the company that innovates alongside R&D tends to be effective in their marketing strategy.<sup>24</sup> In the short-run, a strong brand can be created via carefully designed marketing investments. The brand equity specifically grows with the interaction of a company's name with the quality of its products.<sup>25</sup>

<sup>23</sup> Brands as Productive Assets: Concepts, Measurement and Global Trends (WIPO, 2014), pg 15

<sup>24</sup> Brands as Productive Assets: Concepts, Measurement and Global Trends (WIPO, 2014), pg 19

<sup>25</sup> Brands as Productive Assets: Concepts, Measurement and Global Trends (WIPO, 2014), pg 20

Figure 11. Intangible and Tangible Investment, 1972 to 2011 (ratio to output adjusted to include new intangibles)



Note--Estimates are for private industries excluding real estate, health, and education. R&D is on a performer basis.  
 Source--Unpublished update to Corrado and Hulten (2010).

The figure shows the tangibles and intangibles of U.S. Investments. The chart shows that American companies or investors in 1972 were investing more on the tangible aspect of the company whereas; very fewer investments were made to intangibles. The recent trend from the graph depicts that the investors and companies are inclined towards investing in the intangible aspect of the company. Thus, resulting in the creation of brand equity and generating revenues from such strategies.

## Policy Environment:

### Legislation

An umbrella act for patent, design and trademark exists. The Patent, Design and Trademark Act, 1965 recognizes the trademark as “any word, symbol or picture or a combination thereof to be used by any firm, company or individual in its products or services to distinguish them with the product or services of others.”<sup>26</sup> However, this particular legislation is outdated and fails to recognize the use of a collective mark. The National Intellectual Property Policy 2017 has recognized the use of the collective mark to differentiate goods or services as authentic under the trademark policy.<sup>27</sup> The Ministry of Industries, Commerce and Supplies also intends to protect the use of such marks under the Nepalese territory.

National Tea and Coffee Development Board (NTCDB) is a commodity board established on 1993/06/02, under the aegis of Ministry of Agricultural Development, by Tea and Coffee Development Board Act 1992 of Nepal. The broad objective of this board is to promote and strengthen the Tea and Coffee sector through policy formulation, technical and managerial support.

The National Tea and Coffee Development Act, 1993 has mandated the following objectives to the board:

- Assist to formulate & implement the Tea and Coffee Development policy.
- Identify problems and ways to solve them for the development of the Tea and Coffee Sectors.
- Manage import of tools & equipment for the Tea and Coffee production process.
- Establish Tea & Coffee Training and Research Center and provide technical knowledge and skills to people and organization involved in the Tea and Coffee sectors.
- Conduct research and studies for the development of Tea & Coffee sectors.
- Establish coordination and networking with all the stakeholders of the Tea & Coffee sectors.
- Support Tea & Coffee Industries

The following general functions have been assigned to NTCDB:

- Policy Formulation.
- Feasibility study of Tea and Coffee cultivation in the possible areas.
- Support farmers of Tea and Coffee Industries.
- Capacity development of Tea and Coffee professionals.
- Market survey at national and international levels.
- Tea and Coffee quality management.
- Branding and marketing of Nepal Tea and Nepal Coffee.
- Extension of Tea and Coffee plantation.<sup>28</sup>

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<sup>26</sup> Patent, Design and Trademark Act 1965, s 2 (c).

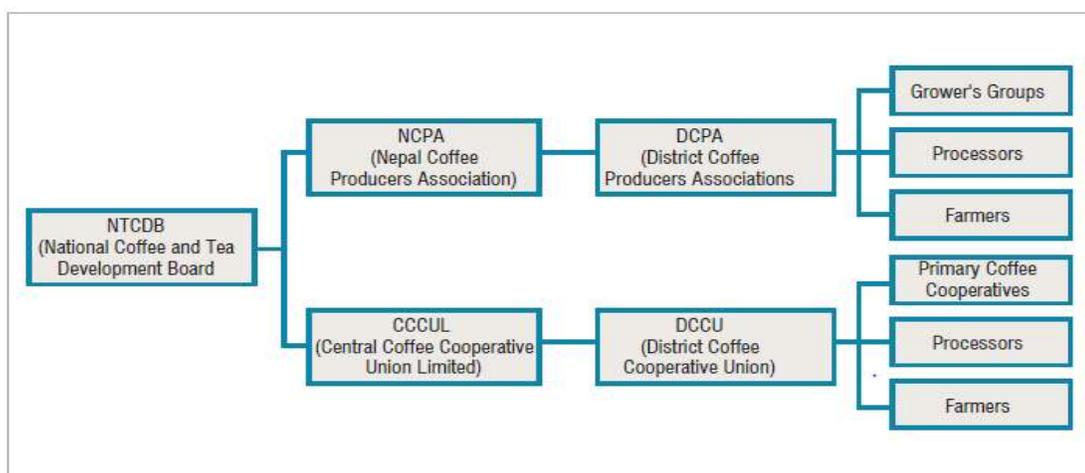
<sup>27</sup> National Intellectual Property Policy 2017, 8.2 (d) (12).

<sup>28</sup> National Tea and Coffee Development Act 1993, s 3

The following general milestones have been claimed by NTCDB:

- Government of Nepal has accepted & adopted national Coffee Policy 2003.
- 1st Mangsir, which falls on mid-November, has been declared as National Coffee Day.
- In order to create the different identity of Nepal Tea and Coffee in the international market, NTCDB has developed national emblems for Tea and Coffee.
- Nepal became a member of the International Tea Committee (ITC) in 2007 and the International Coffee Organization (ICO) in 2017.<sup>29</sup>

Figure 17: Structure of the cooperatives and producers associations



A Procedure Guideline for the implementation of the Nepal Coffee mark was issued by exercising the power granted by Section 71 of National Tea and Coffee Development Board Act, 1992 and Rule 10 of National Tea and Coffee Development Board Operation Byelaw, 2009.<sup>30</sup>

## Sectoral Policies

Nepal formulated a national Coffee policy in 2003. This coffee policy explicitly mentions that an attractive national logo will be promoted for exportable coffee items.<sup>31</sup>

<sup>29</sup> Nepal Tea and Coffee Board “Introduction” < <https://www.teacoffee.gov.np/about/introduction> > accessed 18 April 2019

<sup>30</sup> Procedural Guidelines for the use of National Logo of Nepali Coffee 2010, pg 1

<sup>31</sup> National Coffee Policy 2003, pg 2.

The Trade Policy of Nepal, 2015 aims to promote and protect the use of intellectual property within Nepal as well as in other countries.<sup>32</sup> The policy encourages registration and use of a collective trademark of exportable commodities in the international market.<sup>33</sup>

NTIS 2016 is Nepal's third generation trade integration strategy. NTIS 2016 seeks to address the outstanding trade and competitiveness challenges confronted by the country's export sector. This strategy, thus, focuses on identifying actions to address protracted constraints in a number of cross-cutting areas. They include:

- i. Institutional capacity building for trade, including the capacity for trade negotiations
- ii. The business environment for investment and trade
- iii. Trade and transport facilitation
- iv. Standards and technical regulations
- v. Sanitary and phytosanitary measures
- vi. Intellectual property rights
- vii. Issues related to trade in service<sup>34</sup>

Similarly, Nepal Trade Integration Strategy (NTIS) has recognized coffee amongst the other potentially exportable commodity.<sup>35</sup>

The National Intellectual Property Policy, 2017 has recognized the collective mark as intellectual property and aims to manage and protect such marks.<sup>36</sup>

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<sup>32</sup> Trade Policy of Nepal 2015, pg 7.

<sup>33</sup> Ibid pg 17.

<sup>34</sup> NTIS 2016, pg 16.

<sup>35</sup> Ibid pg 32.

<sup>36</sup> National Intellectual Property Policy 2017, pg 10.

## Analysis of Evidence

### Analysing the Legal Framework

The following are the common complaints forwarded by stakeholders when discussing the legal framework around the implementation of the national coffee logo:

1. National Coffee Logo is in disuse only one company/producer is regularly using the logo.
2. Coffee producers and exporters are not sure if going through the hassle of getting licensed to use the logo is of any value.
3. Producers and exporters are uncertain on the future of the logo.
4. The NCPA and the NTCDB had conflicts on how to regulate the use of the logo.
5. The users of the logo report that no action has been taken to regulate the use of the logo. They feel no compulsion to adhere to any rules regarding the logo.

The complaints are surface symptoms of deeper systemic problems in the regulatory framework put in place for the usage of the logo. The underlying problems can be diagnosed as follows:

### *Enforceability of Existing Laws and the NTCDB's ability to regulate*

Nepal Tea and Coffee Development Board Act, 1993 has the following sections relevant to the implementation of the logo:

- a. The Preamble stipulates that the board was created to “create concrete policies” and “[to aid in] the systematic development of the tea and coffee industries in Nepal”.
- b. Section 3 stipulates that the Board was created to draft plans, to render the tea and coffee industries well managed and to enhance the capacity of such industries.
- c. Section 6 Objectives:  
(a) to prepare and enforce policy relating to production, processing, market management and export  
(g) Aiding the tea and coffee industries
- d. Section 7 Duties Responsibilities and Rights of the Board:  
(a) Drafting and enforcing policy

The regulatory capabilities of the NTCDB are limited by the Act in the following ways:

- a. The Board has not been envisioned explicitly as a regulatory body. While it has the objective and duty to “draft and implement the policy”, the extent of that right is not clear. Specifically, the act never explicitly defines the regulatory authority of the Board.
- b. The Act does not explicitly specify that the Board has a right/duty to hear complaints, conduct investigations, and conduct hearings or to pass judgment or award punishments.
- c. The Act does not allow fines and export restrictions and does not specify the limits placed upon the Board on the manner and extent of punishment it can award.
- d. If the principle of “ nullum crimen sine lege” (no crime without law) and “in dubio pro reo” (while in doubt, the accused should be given to benefit) are to be taken in conjunction, it would become clear that the Act’s lack of explicit authorization would disable the Board from awarding any punishment at all, severely limiting its ability to enforce regulations such as the ones for the usage of the National Coffee logo.

- e. As long as the uncertainty in the Board’s ability to use negative incentives (punishments) to enforce regulations exists, the Board will not be able to take decisive regulatory actions.
- f. This will result in the reduction of the industry’s faith towards the Board and diminish the incentives to adhere to the Boards regulation.

These regulatory limitations have had the following ill effects on the adoption and usage of the logo:

- a. Diminished perception of the value of the logo caused by uncertainty in whether the logo can be protected from misuse or other harms to its reputation.
- b. Similarly, diminished trust in the fact that the logo will be able to build and maintain a high reputation among buyers given the weak enforcement environment.
- c. Diminished confidence that any investment made into licensing and usage of the logo (eg. Printing, integrating the logo into marketing materials) will result in substantial returns.

### ***Board’s Role in Marketing and Regulating Intellectual Property***

The following sections of the NTCDB Act are relevant in defining the Board's role in conducting marketing activities and regulating the creation and use of IP for the purpose of marketing:

- a. Section 7 (b): “.... To prepare the necessary technical and financial basis for the development and expansion of tea and coffee production”
- b. Section 7 (f): “....develop market management by conducting surveys”
- c. Section 7 (g): “.....to inform producers of the demand for tea and coffee in the international market”

Problems:

- (1) Whether the Board itself has the right/duty to engage in tea/coffee related marketing and promotion activities is unclear.
- (2) The act does not envision a need for the board to regulate the usage of intangible public property such as logos or marks.

Impact on the national coffee logo:

- (1) Since the responsibility of the promoting tea and coffee along with the associated intellectual property has not been explicitly and exclusively entrusted to the Board, there is no clear answerability in cases of failure to do so.
- (2) Since the act does not define the Board as the sole and authorized custodian of intellectual property related to public tea and coffee, confusion may and indeed has/arise on the laws and rules concerning the ownership, licensing and registration of such IP domestically and abroad. This situation is exacerbated by the fact that it is not a common practice among liberal economies for a government entity to own and use commercial intellectual property.

### ***Evaluating the Procedure Guidelines for the Use of National Logo of Nepali Coffee, 2010***

The following are the weaknesses of the Procedure Guidelines:

- (1) The Procedural Guidelines does not define the regime for the ownership and registration of the logo. This lack of legal clarity has caused confusion and conflict relating to the procedures governing the registration of the logo in foreign jurisdictions.
- (2) The Guidelines does not define the regime of the usage of the logo in the domestic marketplace. This legal uncertainty will inhibit firms from promoting the usage of the logo in the domestic market where progress can be made towards popularization of the logo.
- (3) Section 5 procedure for registration does not require proof of quality or origin. Thus all standards of quality are only applicable post-registration, at the phase of monitoring.
- (4) Section 5: The section does not define the period of the validity of a license and does not outline the procedure for renewal of such a license. This creates no incentives for the licensed firms to report the usage of the logo, pay the applicable cess or fee or to adhere to the quality and origin standards. While Section 13 requires annual reporting, no incentive exists to submit a report or submit a correct report.
- (5) The procedure does not define the regime for assuring that licensed firms are using the logo to exclusively export coffee or coffee products of Nepali origin.
- (6) The definition of “coffee” in the guidelines is short-sighted and restrictive. The definition should refer to Chapter 9 of this code.
- (7) The 1% of invoice value fee defined by the regulation (later amended in a separate agreement) is potentially inhibitive and not based on any justification of need or efficiency.  
This fee applies to all coffee products and all scales of coffee producers or exporters in the same proportion. This does not distinguish between small producer-large producers, competitive export market vs. non- competitive export market, high value-added product vs. raw product etc. A more scientific and nuanced approach to determining usage fee as well as provisions for a usage fee waiver for early adopters/promoters of the logo should be put in place.
- (8) The regulation has defined a role of NCPA and similar organizations in monitoring and oversight of the many areas of work of the Board, oversight is one area where producers or organizations of producers should have no role whatsoever. This has to be done to avoid serious conflicts of interest where the regulated party plays a role in its own regulation aside from the primary regulatory body.
- (9) Section 7, 8, 9 and 10: The constitutionality of these sections is highly dubious. The parent act to this regulation has no explicit provisions for conducting hearings or according to punishment. Moreover, the procedure does not outline the mechanism by which anything remotely equivalent to a fair trial will be conducted if a breach of rules is alleged. Moreover, no explanation of the standard of evidence or any other rights of the accused firm can be found. Finally, the procedure defines a Minister and its own executive directors as destinations of appeal while the ability of these executive officers to hear an appeal is not clearly constitutional.  
This procedure defines the board as its own judge and prosecutor as well as its own court of appeal which is incompatible with the principles of natural justice. “Nemo iudex in causa sua” no one can be a judge in his/her own case

## **Analysing the Policy Framework**

### ***Evaluating the National Coffee Policy, 2003***

The policy can be adequately analysed by considering some of its sections in isolation.

Section A (6) states that “[An] attractive national logo shall be promoted for exportable coffee items”

Problems:

1. The policy statement is extremely high level, non-specific and does more harm than good by failing to provide adequate direction so as to the goals of creating and promoting the logo.
2. The focus on the usage of the logo on exportable coffee products is restrictive and does not allow for the domestic usage and promotion of the logo.

Section B of the policy related to the marketing and trade promotion makes no mention how the intangible value of the logo should be increased or how the logo’s reputation should be preserved.”

The policy fails to cover the following areas:

1. Laying out a clear set of incentives to promote the consumption of locally produced coffee,
2. Encouraging import substitution of coffee products,
3. Defining how Nepal origin coffee can be differentiated from other coffees,
4. Discouraging import of foreign coffee and re-export as Nepali Coffee.
5. Recognizing the unique qualities of Nepali Highland Arabica Coffee and to lay the groundwork for the exploitation of this advantage in the international market.

### **Evaluating the process of the design and development of the National Coffee Mark**

#### ***The design of the logo***

While the visual form of the logo was created through a competition, the outcome is average in design sophistication, compatibility with modern aesthetics or with modern trends in coffee branding and packaging.

The design process was supply driven and no effort was made to take into account the views and tastes of the demand side actors (such as importers, foreign/domestic consumers etc.) While compared to the national marks used by other coffee producing nations, the Nepal Coffee mark fails to stand out as an exceptional or memorable icon.

#### ***The process of developing the logo***

The designing of a national mark is an important step but it must be one part of a larger marketing strategy and campaign to promote Nepal’s coffee domestically and abroad. As such, creating the logo in the absence of a holistic plan rendered the logo unsupported and unpromoted. The logo failed to define its intrinsic value or to come out as a reputation thus

falling into disuse. In short, the process of creating the logo was not thought through and not thorough.

### ***The efficacy of the logo***

No data or information exists on the efficacy of the logo as a marketing or promotional aid for Nepalese Coffee. Independent evaluation of the logo by a large sample of consumers is necessary to build confidence in the success of the logo.

Initially, three coffee producers were given the logo to promote Nepali coffee. Nepal Organic Coffee Products (NOCP), Highland Coffee and Everest Coffee were provided with the logo. Around Rs 50 lakhs has had been invested by the TEPC and NCPA to register the coffee logo. It is certain that this investment has not produced any returns yet and is unlikely to do so in the future.

### ***Efforts to bring the logo back into general usage***

An MOU (Memorandum of Understanding) exists that clearly states that NCPA has the authority to regulate the national logo internationally. Regarding export and domestic market, the board should handover the responsibility as regulatory of the logo to the NCPA. However, the monitoring of the use of the logo should be done by the Board itself.

Awareness amongst the farmers, producers, exporters and international partners is necessary for the implementation of the existing coffee logo. A program jointly hosted by NCPA and NTCDB along with representatives from the TEPC will be sufficient to raise awareness amongst the stakeholders of the coffee industry. Some Nepali coffee producers aren't under NCPA. Those producers despite not becoming the member of NCPA should be subject to the regulation of NCPA in regards to national mark. With the use of the logo, the authenticity of Nepalese coffee has to be inherent itself.

NCPA is an umbrella organization that encompasses 17 district level coffee associations, 12 cooperatives, 32000 farmers, 1400 groups, cafes, coffee entrepreneurs as well as equipment importers. The sheer number of members listed under the organization clearly reflects that it has the reach within the coffee industry to implement the existing logo. Despite having the reach, NCPA has comparatively less human resource personnel for implementation of the logo. The levied amount seems to be very small. However, the larger producers will have to pay a significantly large sum of money for using the logo. The levied amount has to resonate with its (logo) recognition and value addition as a brand; nationally and internationally. The levied amount should be deposited into the specified fund. In order to avoid misappropriation of the fund, NTCDB should monitor and take action in case the fund is misappropriated.

### **Evaluating the weaknesses of NCPA in effectively catalyzing the use of the logo**

#### ***Institutional capacity to evaluate policies and to lobby for more favourable/effective laws and policies***

As the primary and largest representative body of the coffee industry in Nepal, NCPA has failed to build capacity in deeply analyzing the policies and laws passed by the GoN including the NTCDB.

It has failed to identify fatal flaws in the regulations and administrative decisions that eventually led to the status quo. Of all the perceivable objectives of NCPA, ensuring a favourable policy and legal environment for the coffee industry should be the number one focus now.

***Effective representation of interest***

NCPA has failed to build an image and a reputation as a trade group with a large support base that needs to be taken seriously by the policymakers and regulators. While cooperating with the Board and GoN it is important, being able to take positions and defend them which is valuable.

***Having clearly defined positions in policy matters***

NCPA needs democratically sourced, clearly defined, thought through and well-communicated positions in policy areas that are of importance to the industry. In the absence of such positions, the GoN has had no incentive to put much thought or effort into the laws and policies.

## Case Studies and Best Practices

### Cases of success of a collective mark in Nepal: Chyangra Pashmina



Chyangra Pashmina was initially discovered by people living around the mountain region. The use of pashmina and weaving dates back to ancient civilization. It was specifically popular amongst the Kings and nobles.<sup>37</sup> The use of pashmina by aristocracy paved the way for it to become a luxury good. Pashmina has been recognized by NTIS, 2016 amongst other products as an exportable good.<sup>38</sup>

Nepal Pashmina Industries Association (NPIA) was established in 2000 as an autonomous non-governmental organization that represents the Nepalese pashmina entrepreneurs. NPIA is an umbrella organization that is responsible for ensuring the quality of Pashmina through national pashmina logo.<sup>39</sup> The national pashmina logo was formulated as a collaborative effort by Ministry of Commerce, TEPC and NPIA in 2010. This logo was formulated in order to distinguish Nepalese pashmina from the counterfeit products from India, China and also Nepal which destroyed the Nepalese pashmina market between 2000 and 2006.<sup>40</sup> The export of pashmina declined to Rs 1.67 billion in the fiscal year 2008-2009.<sup>41</sup>

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<sup>37</sup> Nepal Pashmina Industries Association “Nepali Pashmina” <[http://www.pashminaassociation.org.np/npia/nepalese\\_pasmina.php?id=his#history](http://www.pashminaassociation.org.np/npia/nepalese_pasmina.php?id=his#history)> accessed 18 April, 2019

<sup>38</sup> NTIS 2016, pg 30

<sup>39</sup> Nepal Pashmina Industries Association “About Us” <[http://www.pashminaassociation.org.np/npia/about\\_us.php](http://www.pashminaassociation.org.np/npia/about_us.php)> accessed 18 April, 2019

<sup>40</sup> Business “PM launches pashmina brand logo” (The Himalayan Times, 22 January, 2010) <<https://thehimalayantimes.com/business/pm-launches-pashmina-brand-logo/>> accessed 18 April, 2019

<sup>41</sup> Business “PM launches pashmina brand logo” (The Himalayan Times, 22 January, 2010) <<https://thehimalayantimes.com/business/pm-launches-pashmina-brand-logo/>> accessed 18 April, 2019

A company which is a member of NPIA is only able to use the Chyangra Pashmina® logo.<sup>42</sup> And, they must adhere to the criteria mentioned in the Code of Conduct.<sup>43</sup> NPIA is authorized to take action against unauthorized use of the logo by third parties.<sup>44</sup> Till date, the national pashmina logo has been registered and recognized in forty-seven countries.<sup>45</sup> According to the data of export earnings from pashmina industry published by TEPC, has surged from Rs1.63 billion in 2010-2011 to Rs2.44 billion in 2016-2017.<sup>46</sup> A laboratory has been set up by the GoN in Kathmandu to verify the quality.<sup>47</sup> Through the laboratory, the GoN and Nepal Bureau of Standards and Metrology (NBSM), ensures the authenticity of the pashmina based upon its quality, softness and natural fibres.<sup>48</sup> The enforcement and use of the collective trademark have helped revive the pashmina industry.

### **Cases of success elsewhere: how did the most popular coffee collective marks succeed?**

#### ***Colombia***



Colombia is the second largest coffee producer in the world and employs about 560,000 people.<sup>49</sup> The first commercial production of coffee in Colombia started in the first half of the 19<sup>th</sup> Century.<sup>50</sup> In 1927, the Colombian Coffee Federation (Federación Nacional de Cafeteros de Colombia, FNC) comprised of farmers was created that expanded the existing Colombian coffee market overseas.<sup>51</sup>

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<sup>42</sup> Nepal Trade Issue 4 2012, pg 12

<sup>43</sup> Nepal Trade Issue 4 2012, pg 12

<sup>44</sup> Nepal Trade Issue 4 2012, pg 12

<sup>45</sup> Money “Nepal’s Chyangra Pashmina logo okayed by 47 countries” (Kathmandu Post, 6 March, 2018) <<https://kathmandupost.ekantipur.com/news/2018-03-06/nepals-chyangra-pashmina-logo-okayed-by-47-countries.html>> accessed 18 April, 2019

<sup>46</sup> Money “Nepal’s Chyangra Pashmina logo okayed by 47 countries” (Kathmandu Post, 6 March, 2018) <<https://kathmandupost.ekantipur.com/news/2018-03-06/nepals-chyangra-pashmina-logo-okayed-by-47-countries.html>> accessed 18 April, 2019

<sup>47</sup> Nepal Trade Issue 4 2012, pg 8

<sup>48</sup> Nepal Trade Issue 4 2012, pg 8

<sup>49</sup> Making the Origin Count: The Colombian Experience “Background” (WIPO, 3 September, 2010) <<https://www.wipo.int/ipadvantage/en/details.jsp?id=2617>> accessed 30 April, 2019

<sup>50</sup> Making the Origin Count: The Colombian Experience “Background” (WIPO, 3 September, 2010) <<https://www.wipo.int/ipadvantage/en/details.jsp?id=2617>> accessed 30 April, 2019

<sup>51</sup> Making the Origin Count: The Colombian Experience “Background” (WIPO, 3 September, 2010) <<https://www.wipo.int/ipadvantage/en/details.jsp?id=2617>> accessed 30 April, 2019

In the 1950s, the Coffee price plummeted as a necessity to retain the price and spread awareness of origin, FNC branded the Colombian coffee.<sup>52</sup> The logo depicted above was created with the help of a New York-based advertising agency which was known as Juan Valdez logo in the early 1980s.<sup>53</sup> And, to obtain the use of the Juan Valdez trademark, the product was required to consist of 100% Colombian coffee as well as the quality stipulated by the FNC.<sup>54</sup> The logo was widely recognized and synonymous with Colombian coffee.

In December 2004, the FNC presented with an application to recognize a GI, “Café de Colombia”.<sup>55</sup> After, three months the application was ratified. An administrative body known as Sistema de Informacion Cafetero (SICA) was created to monitor the proof of origin and traceability of the product. Similarly, the exports of coffee in Colombia are monitored by the customs authorities. And, FNC has entrusted an organization ALMA CAFE to inspect and check the quality of the coffee being produced.<sup>56</sup>

### *Costa Rica*



The coffee cultivation in Costa Rica started under the leadership of Governor Tomás de Acosta in 1808.<sup>57</sup> In 1993, a non-state public institution named Instituto del Café de Costa Rica (ICAFFE) was formed.<sup>58</sup> ICAFFE is regulated by the provisions of Law 2762 of 21 June 1961.<sup>59</sup> ICAFFE supports the coffee industry in technology transfer and quality control.<sup>60</sup> Similarly, the institute also launched a coffee quality improvement program as part of National Coffee Plan

<sup>52</sup> Making the Origin Count: The Colombian Experience “Background” (WIPO, 3 September, 2010) <<https://www.wipo.int/ipadvantage/en/details.jsp?id=2617>> accessed 30 April, 2019

<sup>53</sup> Making the Origin Count: The Colombian Experience “Branding” (WIPO, 3 September, 2010) <<https://www.wipo.int/ipadvantage/en/details.jsp?id=2617>> accessed 30 April, 2019

<sup>54</sup> Making the Origin Count: The Colombian Experience “Certification Marks and Infringement” (WIPO, 3 September, 2010) <<https://www.wipo.int/ipadvantage/en/details.jsp?id=2617>> accessed 30 April, 2019

<sup>55</sup> Making the Origin Count: The Colombian Experience “Geographical Indications” (WIPO, 3 September, 2010) <<https://www.wipo.int/ipadvantage/en/details.jsp?id=2617>> accessed 30 April, 2019

<sup>56</sup> Akundi Santaram, Geographical Indications on Coffee (2018), pg 4-5

<sup>57</sup> Instituto del Café de Costa Rica “Coffee History of Costa Rica” <<http://www.icafe.cr/nuestro-cafe/historia/>> accessed 30 April, 2019

<sup>58</sup> Instituto del Café de Costa Rica “About ICAFFE” <<http://www.icafe.cr/icafe/acerca-del-icafe/>> accessed 30 April, 2019

<sup>59</sup> Instituto del Café de Costa Rica “About ICAFFE” <<http://www.icafe.cr/icafe/acerca-del-icafe/>> accessed 30 April, 2019

<sup>60</sup> Akundi Santaram, Geographical Indications on Coffee (2018), pg 6-7

in 2001.<sup>61</sup> All eight coffee producing regions have signed a Quality Improvement Agreement.<sup>62</sup> Furthermore, there is a national GI in existence.<sup>63</sup>

### ***Guatemala***



The Guatemalan government and the Guatemalan National Coffee Association (ANACAFE) have profiled coffee regions on a scientific basis.<sup>64</sup> The regional GIs are collectively validated and promoted as national GI as depicted in the picture above.<sup>65</sup> Efforts are also made to preserve the identities of specific coffee growing territories as seen in the marks used for each of the coffees from diverse regions.<sup>66</sup> The ANACAFE is a consortium comprised of 125 thousand families of coffee growers from all over Guatemala.<sup>67</sup> ANACAFE represents the coffee sector of Guatemala.

ANACAFE is directed by the Board of Directors that are elected annually from all over Guatemala. The Board also consists of representatives of the President of the Republic and the Ministry of Agriculture, Livestock and Food.<sup>68</sup>

### ***Jamaica Blue Mountain***

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<sup>61</sup> Akundi Santaram, Geographical Indications on Coffee (2018), pg 6-7

<sup>62</sup> Instituto del Café de Costa Rica “Coffee Regions of Costa Rica” <<http://www.icafe.cr/nuestro-cafe/regiones-cafetaleras/>> accessed 30 April, 2019

<sup>63</sup> Geographical Indication <<http://cafedecostarica.com/>> accessed 30 April, 2019

<sup>64</sup> Guatemalan Coffee “Region and Profiles” <<http://www.guatemalancoffees.com/main/regions-and-profiles/>> accessed 30 April, 2019

<sup>65</sup> Akundi Santaram, Geographical Indications on Coffee (2018), pg 7

<sup>66</sup> Akundi Santaram, Geographical Indications on Coffee (2018), pg 7

<sup>67</sup> Anacafé “About Anacafé” <<https://www.anacafe.org/conozcanos/mision-vision/>> accessed 30 April, 2019

<sup>68</sup> Anacafé “About Anacafé” <<https://www.anacafe.org/conozcanos/mision-vision/>> accessed 30 April, 2019



Coffee was introduced to Jamaica from Hispaniola, now Haiti in 1728 by Sir Nicholas Lawes.<sup>69</sup> Coffee cultivation expanded rapidly in the early 1800s. The Coffee Industry Board (CIB) of Jamaica exported Blue Mountain Coffee initially to England in 1789.<sup>70</sup> The Government of Jamaica has played a significant role in the coffee industry. In 1950, the government officially established the CIB to promote, regulate, monitor and guide the development of the coffee sector of Jamaica.<sup>71</sup>

Despite producing a small quantity of coffee, Jamaica obtains a very high price. The Jamaican coffee supply chain is structured and regulated by the law and managed by the CIB.<sup>72</sup> The registration of Blue Mountain Coffee was done by the CIB as a GI to ensure better protection against imitation.<sup>73</sup> In addition to certifying the coffee grown within the Blue Mountain region, the CIB ensures the quality of the coffee produced.<sup>74</sup> Till the date, the Blue Mountain coffee mark has been registered in 51 countries.<sup>75</sup> CIB has registered the trademark through its wholly owned subsidiary company Coffee Marks Limited.<sup>76</sup> CIB spends annually the sum of US\$ 250,000 to US\$ 400,000 depending upon the activities to ensure certification and quality control.<sup>77</sup> The lump sum includes the cost of registration in other countries, cost of monitoring companies, cost of legal issues and cost of salaries for full-time administrators and a legal officer.<sup>78</sup>

## ***Honduras***

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<sup>69</sup> Coffee Industry Board “Brief Historical Background of Coffee” <<http://www.ciboj.org/index/brief-historical-background-coffee>> accessed 30 April, 2019

<sup>70</sup> Report By JAMAICA to the WIPO Standing Committee on the Law of Trademarks Industrial Designs and Geographical Indications (SCT) , pg 9

<sup>71</sup> Report By JAMAICA to the WIPO Standing Committee on the Law of Trademarks Industrial Designs and Geographical Indications (SCT) , pg 9

<sup>72</sup> Akundi Santaram, Geographical Indications on Coffee (2018), pg 7-8

<sup>73</sup> Akundi Santaram, Geographical Indications on Coffee (2018), pg 7-8

<sup>74</sup> Report By JAMAICA to the WIPO Standing Committee on the Law of Trademarks Industrial Designs and Geographical Indications (SCT) , pg 9

<sup>75</sup> Report By JAMAICA to the WIPO Standing Committee on the Law of Trademarks Industrial Designs and Geographical Indications (SCT) , pg 9

<sup>76</sup> Coffee Industry Board “Trade Mark Registration” <<http://www.ciboj.org/index/trade-mark-registration>> accessed 30 April, 2019

<sup>77</sup> Report By JAMAICA to the WIPO Standing Committee on the Law of Trademarks Industrial Designs and Geographical Indications (SCT) , pg 10

<sup>78</sup> Report By JAMAICA to the WIPO Standing Committee on the Law of Trademarks Industrial Designs and Geographical Indications (SCT) , pg 10



The exact date of coffee cultivation in Honduras is unknown. However, the first news about coffee cultivation in Honduras was found in a report prepared by Ramón de Anguiano, Governor of the Province of Honduras in 1801.<sup>79</sup> The region of Marcala in Honduras enjoys a reputation for its quality and history of the coffee. This region was usurped by other coffees of Honduras, declining the revenue of the coffee growers of Marcala.<sup>80</sup> Subsequently, it led the growers to seek protection for their coffee and resulted in the registration of the GI by the Consortium known as Café Marcala.

The consortium is comprised of 2400 members and encompasses the farmers, exporters, brokers and roasters.<sup>81</sup> The mission of the consortium is to, “Defend, market, control and regulate the Marcala Name, in the commercialization of coffee, through the application of Internal regulations in the process of achieving the supply of a high-quality product to the market.”<sup>82</sup> Similarly, the consortium’s Board of Directors grants certificated of origin after approved by the Management of DO Café Marcala.<sup>83</sup> Similarly, inspection before awarding certification is done by a supervisor identified by DO Café Marcala. The regulatory board is responsible for carrying out traceability and quality control. The general criteria for traceability are:

1. Have their productive unit in the territory protected by the DO Café Marcala (Art. 5, 6 and 7 of the DO Regulation).
2. That his farm is located at an altitude equal to or higher than 1100 meters above sea level (meters above sea level).
3. That the coffee bean complies with the characteristics of the species (*Coffea arabica*), physical and organoleptic required in the cup profile of the Marcala DO.
4. Be enrolled in the IHCAFE.
5. Photocopy of the ID card.<sup>84</sup>

## **India**

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<sup>79</sup> Café Marcala “Origins of Coffee” <<http://www.docafemarcala.org/historia-del-cafe-en-honduras/>> accessed 30 April, 2019

<sup>80</sup> Akundi Santaram, Geographical Indications on Coffee (2018), pg 8

<sup>81</sup> Akundi Santaram, Geographical Indications on Coffee (2018), pg 8

<sup>82</sup> Café Marcala “Mission” <<http://www.docafemarcala.org/mision-y-vision/>> accessed 30 April, 2019

<sup>83</sup> Café Marcala “Certification Process” <<http://www.docafemarcala.org/area-tecnica/proceso-de-certificacion/>> accessed 30 April, 2019

<sup>84</sup> Café Marcala “Traceability Control” <<http://www.docafemarcala.org/area-tecnica/control-de-trazabilidad/>> accessed 30 April, 2019



Indian coffee plantation dates back to 1600 AD. A saint, Baba Buda planted “seven seeds” of “Mocha” brought from Yemen in his courtyard in Karnataka.<sup>85</sup> Those seven seeds have grown to sixteen different varieties of Arabica and Robusta coffee. Amongst them, the three specialities of India: Monsooned Malabar, Mysore Nuggets and Robusta Kappi Royal have been registered under geographical indication by the Coffee Board of India.<sup>86</sup> Besides geographical indicators, the Board has a collective trademark.

The coffee industry of India was in crisis in the 1940s due to World War II which resulted in fetching lower prices and infestation of crops by pests and diseases.<sup>87</sup> Subsequently, the Government of India passed “Coffee Act VII of 1942” establishing the “Coffee Board”.<sup>88</sup> The Board functions under the administrative control of Ministry of Commerce and Industry. The major objectives of the Board are:

- i. Enhancement of production, productivity and quality of Coffee;
- ii. Promotion of export of coffee to achieve higher returns and

<sup>85</sup> Coffee Board of India “About the Coffee Board” <<https://www.indiacoffee.org/aboutus.aspx>> accessed 27 April, 2019

<sup>86</sup> Coffee Board of India “Coffee Regions-India, Specialty Coffees” <<https://www.indiacoffee.org/coffee-regions-india.html>> accessed 27 April, 2019

<sup>87</sup> Coffee Board of India “Genesis of Coffee Board” <<https://www.indiacoffee.org/research.aspx>> accessed 27 April, 2019

<sup>88</sup> Coffee Board of India “Genesis of Coffee Board” <<https://www.indiacoffee.org/research.aspx>> accessed 27 April, 2019

iii. Supporting the development of the domestic market.<sup>89</sup>

Further, the Board issues the Permits to Export Indian Coffee under Section 20 of the Coffee Act, 1942.<sup>90</sup> Also, the Board also issues the Certificates of Origin as per the provisions of the International Coffee Agreement.<sup>91</sup> The quality control division or committee is responsible for the improvement of coffee produced in India.<sup>92</sup>

### *Ethiopia*



The Ethiopian government launched the Ethiopian Coffee Trademarking and Licensing Initiative in 2004.<sup>93</sup> The initiative is organized and run by the Ethiopian Fine Coffee Stakeholder Committee. The committee is comprised of cooperatives, private exporters and Ethiopian Intellectual Property Office (EPIO) and other governmental bodies.<sup>94</sup> EIPO under the initiative has registered trademarks for the three speciality coffees in an effort to establish partnerships between Ethiopian growers, exporters and buyers in the international market. The EIPO aims to improve the grower's share of returns.<sup>95</sup> EIPO has registered these trademarks in about 30 countries.<sup>96</sup> Despite the huge cost involved to develop and maintain, Ethiopia proceeds with the trademark system of the geographical indications.<sup>97</sup>

The three speciality coffees registered are Harrar®, Sidamo® and Yirgacheffe®. The branding was outsourced to a United Kingdom-based company. The company worked with the stakeholders and developed a total of four brands. An umbrella brand named as “Ethiopian

<sup>89</sup> Coffee Board of India “Role of Coffee Board” < <https://www.indiacoffee.org/aboutus.aspx> > accessed 27 April, 2019

<sup>90</sup> Coffee Board of India “Role in Export Promotion” < <https://www.indiacoffee.org/aboutus.aspx> > accessed date 27 April, 2019

<sup>91</sup> Coffee Board of India “Role in Export Promotion” < <https://www.indiacoffee.org/aboutus.aspx> > accessed date 27 April, 2019

<sup>92</sup> Coffee Act of India 1942, Section 18 (f)

<sup>93</sup> The Coffee War: Ethiopia and the Starbucks Story “Background” (WIPO, 3 September,2010) < <https://www.wipo.int/ipadvantage/en/details.jsp?id=2621> > accessed 30 April, 2019

<sup>94</sup> The Coffee War: Ethiopia and the Starbucks Story “Background” (WIPO, 3 September,2010) < <https://www.wipo.int/ipadvantage/en/details.jsp?id=2621> > accessed 30 April, 2019

<sup>95</sup> O’Kicki M. Lessons Learned from Ethiopia’s Trademarking and Licensing Initiative: Is the European Union’s Position on Geographical Indications Really Beneficial for Developing Nations? *Loyola University Chicago International Law Review* 6(2): 311-337.

<sup>96</sup> Akundi Santaram, *Geographical Indications on Coffee* (2018), pg 11

<sup>97</sup> Akundi Santaram, *Geographical Indications on Coffee* (2018), pg 12

Fine Coffee” and three individual brands entitled “Harar Ethiopian Fine Coffee,” “Yirgacheffe Ethiopian Fine Coffee” and “Sidamo Ethiopian Fine Coffee”. Subsequent, logos for each brand was also created.<sup>98</sup>

Ethiopia opted for a trademark approach via commercial origin rather than a geographical indication. Setting up a certification system would be too expensive. Further, GIs are used to indicate the regional origin of a particular product. The speciality coffees in Ethiopia are grown in over four million small plots of land by an estimated 600,000 independent farmers spread throughout the country in remote areas. And the government oversight of the coffee is nearly impossible. Registering of the trademark was the strategy adopted by the Government as it would grant the legal right to provide a license. <sup>99</sup>

Ethiopia opted for a royalty-free licensing scheme after acquiring the trademarks. Under the scheme, a royalty-free license agreement was created which required the licensee to sell the speciality coffee using the registered trademarks (free of charge) on any product consisting of 100% Ethiopian speciality coffee. As a result, around 100 license agreements were concluded by mid-2009 with various coffee exporters, producers and companies both domestically and internationally.<sup>100</sup>

Various aspects of the institutional setups of the countries studied can be summarized as follows:

Ownership of the Logo with the government	–	–	✓	✓	✓	–	–
Ownership of the logo with the private sector	✓	✓	–	–	–	✓	✓
Geographical Indication	✓	✓	✓	✓	✓	✓	✓
Collective Mark	–	–	–	✓	✓	–	–
Standards and quality control	✓	✓	✓	✓	✓	✓	✓
Country	Colombia	Guatemala	Jamaica	Ethiopia	India	Costa Rica	Honduras

<sup>98</sup> The Coffee War: Ethiopia and the Starbucks Story “Branding” (WIPO, 3 September, 2010) < <https://www.wipo.int/ipadvantage/en/details.jsp?id=2621>> accessed 30 April, 2019

<sup>99</sup> The Coffee War: Ethiopia and the Starbucks Story “IP Management” (WIPO, 3 September,2010) < <https://www.wipo.int/ipadvantage/en/details.jsp?id=2621>> accessed 30 April, 2019

<sup>100</sup> The Coffee War: Ethiopia and the Starbucks Story “Licensing” (WIPO, 3 September,2010) < <https://www.wipo.int/ipadvantage/en/details.jsp?id=2621>> accessed 30 April, 2019

## Policy Options

### Urgent

#### *Review the status of registration and validity of the mark in all relevant jurisdictions*

As has been clearly indicated in the previous chapter, the status of registration of the Nepal Coffee Trademark in various countries needs to be reviewed. At last three jurisdictions, viz, Japan, Canada and Norway have specified deadlines or periods of time in which the trademark must be brought into usage to avoid automatic annulment of the trademark's registration. It is uncertain whether similar rules apply in the cases of other countries.

Additionally, the period of validity of the registration in four of the eight countries where the logo has been registered is currently unknown to NCPA. This situation is a result of the lack of documentation and difficulty in accessing existing records which are spread across numerous offices or even individuals. Consolidating all available records and ascertaining the legal status of each registration is an essential first step.

#### *Suspend all use of the current logo and retract the Procedure Guidelines*

An environment of legal risk has been created by the uncertainty surrounding the status of registration of the Nepal Coffee mark in various countries and the general failure of the existing Procedure Guidelines in regulating the usage of the logo. As such, pending future studies and efforts to recreate the logo, it is highly recommended that a blanket cessation of usage of the logo is affected. This will prevent extra-legal usage of the logo and minimize any adverse effects the use of the logo may have on future marketing efforts. As such, the Procedure Guidelines should also be retracted to prevent further usage of the logo. Committing to this step will also ensure that adequate incentives are created to pursue future activities to redesign the mark.

#### *Evaluate the logo for viability*

It has become clear in the course of studying the processes that led to the creation of the Nepal Coffee trademark, marketing professionals have not been consulted in the creation of the logo. It can be safely concluded that the logo was put in place without the requisite marketing research, strategies and without quantifying whether the logo in its current form is viable for use in modern marketing.

Additionally, the visual form of the logo fails to meet the aesthetic standards expected of such marks. For example, the logo has not been optimized for use in websites, screen, print or large-format applications. Thus, the first step towards creating an effective national logo would be to evaluate the shortcoming of the current logo and produce the marketing and branding research needed to create a new logo in the future.

Future efforts to create a logo should include retaining the services of a competent marketing agency, which in turn should aid NCPA and other stakeholders in creating the necessary marketing strategies and materials, including a re-designed mark.

#### *Develop a position paper and a work plan*

It is evident that NCPA can and should play a greater role in the process of creating policies and laws relating to the coffee industry in general and the national coffee logo in particular. The methods adopted by the Association in communicating the industry's needs and concerns have met with little success. Additionally, the Association has not had the power to effectively represent the vast numbers of coffee related business and professionals.

An urgent need is for the Association to develop one or more position papers outlining in clear terms the needs, expectations and concerns of the various coffee industries and professionals. The absence of such written position has caused the creation of policies, laws which are not in consonance with the need of the industry. This, however, should be done with widespread participation of NCPA members. Additionally, the Association needs to have a clear plan of action on advocacy and lobbying. This should include the following:

1. Hiring or assigning full-time personnel dedicated to lobbying and advocacy.
2. Creating 'clear terms of reference for personnel described in (1) including requirements for periodic visits to relevant government agencies, participating in all policy and law drafting exercises etc.
3. Creating a schedule of activities related to advocacy in the annual calendar of the Association.
4. Allocating the resources (budget) required for all planned and continuous advocacy activities.
5. Retaining the services of a competent legal and policy advisor.
6. Most importantly, consistently projecting and communicating a coherent set of policy positions in all public and events.

### ***Begin communications with the NTCDB and TEPC***

The consultations with NTCDB and TEPC needs to be conducted to ensure that the key stakeholders remain abreast to the NCPA's policy reorientation, especially relating to the national coffee mark. In the near term, key officials from NCPA may benefit from opening lines of communications with relevant government departments. This task should, however, become the priority task of a full-time advocacy employee. The objectives of such communications should include:

- 1) To create an environment of cooperation and mutual assistance between various bodies within the GoN and NCPA.
- 2) To communicate NCPA's policy preferences and needs effectively to the bodies authorized to initiate and conduct policy reviews.
- 3) To secure technical assistance in developing a comprehensive Coffee Marketing Strategy.
- 4) To secure the technical, administrative and financial assistance in the processing of redesigning the Nepal Coffee mark and other related marketing materials.

## **Medium Term (1-2 years)**

### ***Review the Coffee Policy***

In the medium term, a priority goal of NCPA should be to persuade the GoN to review the existing coffee policy. In relation to the National Coffee logo, the following changes in the policy can be pursued:

- 1) Whereas the National Coffee Logo has been treated in isolation in the current policy, it can instead be imagined as a part of a wider branding and marketing strategy.
- 2) The current policy imagines the logo solely in the context of promoting the export of Nepali origin coffee abroad. However, there is an opportunity to redefine the role of the logo as a tool to differentiate coffee produced within Nepal from non-Nepalese origin coffee both in the domestic market and internationally.
- 3) On a similar vein, there is an opportunity for the promotion of Nepal origin coffee in the domestic market, especially in domestic cafes and in coffee products being sold domestically to tourists (for e.g. packaged premium roasted and ground/whole coffee).
- 4) Additionally, the usage of the logo can be extended to value-added and processed coffee products such as instant coffee being marketed domestically and abroad.
- 5) The current policy fails to define clear incentives for private industries and businesses to adopt and promote the Logo in the early stages of the logo's usage. There is an opportunity to explore means to incentivize the adoption and promotion of the Logo.
- 6) Reviewing the Policy will provide opportunities to include longer-term goals for the Logo such as the extension of the logo to different versions representing local agricultural variants, organic certified coffee, free trade coffee or even Arabica/Robusta coffee.

### ***Amend the NTCDB Act 2049***

It is clear that the NCPA and the coffee industry, in general, expect the NTCDB to, inter alia, perform the role of a regulatory authority. The Board, in its rulemaking and in its activities, has been striving to perform this expected role. However, the NTCBD Act 2049 remains the basis of the NTCDB's regulatory authority. The previous chapter clearly lays out the potential weaknesses in the Act which may diminish or nullify the Board's ability to act as a regulatory authority. In the absence of the Board's ability to enforce regulations, bringing the usage of the National Coffee logo under an effective rules-based regime may prove impossible. Thus, an amendment to the Act is a precondition to the effective implementation of the Logo. In particular, the following general changes can be pursued in this regard:

- 1) Explicit definition of the Board as a regulatory authority and delimitation of its regulatory powers.
- 2) Clearly defining the Board's roles and rights in regulating public intangible properties (such as the National Coffee Logo) related to tea and coffee.
- 3) Defining the scope and limits of the Board's authority to levy fees and to use negative incentives such as admonishment, fines and export bans.

### ***Amend the Procedure Guidelines for the Use of National Logo of Nepali Coffee 2010***

As pointed out previously, the Procedure Guidelines have numerous weaknesses which, in the past, have caused administrative difficulties and friction among various stakeholders. The more recent Nepali Orthodox Tea Certification Trademark Implementation Directive 2017 has avoided many of the errors that exist in the Guidelines. In particular, the following general amendments to the Guidelines can be pursued:

- 1) Expanding/adding rules governing the ownership and licensing of the Logo(s). This should include rules that may allow the Board to permit third party bodies such as NCPA to register the logo in countries where government ownership of commercial intellectual property may not be allowed.
- 2) Defining rules to govern the licensing and usage of the logo by foreign third parties such as importers, marketers, packagers or retailers.
- 3) Requiring ex-ante proof of quality and national origin at the time of providing Logo usage licenses to domestic businesses or individuals.
- 4) Expanding the scope of usage of the logo and creating rules to govern such use:
  - a. For value-added coffee products
  - b. For advertising or other promotional activities
- 5) Defining protocols of usage for the use of the Logo(s) in various forms and for various purposes to prevent misuse and defacing of the Logo(s). For example, this should include rules specifying the minimum size and resolution of the logo that can be used, what colour backgrounds can it be used on, how much clearance should be allowed for the logo, how it should be used etc. This should be specified for use of the Logo(s) on screen, in web interfaces, on print, on retail packaging, on bulk packaging etc.
- 6) Moving away from an annual self-reporting regime towards a more robust quality assurance regime involving third-party auditors. In general, a more credible system of assuring quality and origin is required. Similarly, the role of coffee producers or their associations should be removed from the monitoring, quality assurance and certification processes to remove conflicts of interests.
- 7) Preventing the usage of the Logo on coffee or coffee products that are not substantially of Nepali origin.
- 8) The processes of filing complaints, conducting investigations, conducting hearings and prescribing punishments should be re-designed to make them compatible with existing laws, the principles of natural justice and the Constitution.
- 9) In its current form, the Guidelines do not afford the accused party to pursue an appeal at court of law. Instead, a Ministry within the GoN is specified as the final authority to hear appeals. This procedure must be examined for its constitutionality and amended as necessary.

***Adhere to legal best practices in creating a new mark***

In particular, the use of the registered trademark symbol “®” and the inclusion of legal disclaimer such as “The Nepal Coffee name and the Nepal Coffee mark are registered trademark of Nepal tea and Coffee development Board” should be developed for use alongside the mark. Appropriate

## ***Marketing and Brand Development***

The following goals can be pursued in the medium term:

1. Commissioning the drafting of a comprehensive Coffee Marketing Strategy. This strategy should cover the following general areas:
  - 1.1 Accounting for existing market research and conducting additional market research where necessary.
  - 1.2 Establishing the relative strengths and weaknesses of the Nepal Coffee brand by studying existing research material or by conducting research anew.
  - 1.3 Defining the process to be adopted in redesigning the Nepal Coffee mark and other marketing instruments. Also defining the desired outcomes from implementing such instruments.
  - 1.4 Defining strategies for the use of marketing material in various platforms including product packaging, broadcast media, print media, web and large format advertisement platforms such as billboards.
  - 1.5 Formulating a set of realistic and measurable performance targets to be met by implementing the Strategy. These should include indicators that measure performance both in the domestic market and in the export sector, among others.
  - 1.6 Clearly demarcating the roles of NCPA, NTCDB and other potential actors in pursuing the targets.
  - 1.7 Creating timelines and plans of action to implement the Strategy.

Once the strategy is put in place, the Nepal Coffee mark should be re-designed with appropriate and adequate consultation with experts in marketing, branding and commercial graphic design. A more comprehensive recommendation on conducting marketing activities should be sought from an expert in the field.

## ***Incentivize the use and promotion of the mark***

One of the most significant errors of the previous efforts to bring the Nepal Coffee logo into use was the immediate imposition of fees for all users of the logo. This had an effect of creating immediate disincentives for exporters to adopt a logo which was new and without and potential to add value to their products. The expectation that all exporters will adopt the logo automatically was misguided.

In fact, a creative regime of incentives is needed to encourage early adopters of the logo to bring it into use and general circulation. In the early stages of circulations, not only should all fees should be removed but additional positive incentives should be created. Such incentives may include:

- 1) Commitments from NTCDB to allow the firm to continue free usage of the logo for a defined long period of time.
- 2) Cash incentives to encourage assimilation of the logo in new packaging materials.
- 3) Financial incentives to encourage the display and promotion of the logo in various trade fairs and forums.
- 4) Tax or cash incentives for the display of the logo and related marketing material in cafes, points of sale and in advertisement spaces both within and outside Nepal.
- 5) Removing surcharges or fees such as those for receiving certificates of origin.

However, all such promotional measures should be conducted for a limited time with a strict purpose of popularizing the mark. Abuse of privileges granted at this stage may have sustainability implication in the later stages of the mark's use.

***Create a mechanism to ensure Certificates of (Nepalese) Origin are only issued to coffee or coffee products produced in Nepal***

In the medium term, it is imperative that coffee produced in Nepal is sufficiently differentiated from coffee imported into Nepal and re-exported as Nepal origin coffee. A potential solution to this problem is ensuring that certificates of origins stating Nepal as the place of origin for coffee products (HS codes 0901xx and 2101xx) are only issued to products truly produced within the territory of Nepal or products in which sufficient value was added within the territory of Nepal. Currently, all CO is issued by FNCCI but no mechanisms exist to ensure whether products within these HS chapters are of true Nepali origin. It is highly recommended that NCPA enter into an agreement with FNCCI to create an administrative system under which COs are only issued to those consignments which the NCPA has certified as being produced in Nepal or being sufficiently processed in Nepal.

## **Long Term (3- 5 years)**

### ***Create an institutional framework for third-party quality assurance***

In the long run, it is inevitable for the maintenance of the reputation of the Nepal Coffee brand that all quality assurance activities are undertaken by an independent third party firm. Lessons can be learned from the practice of countries like Ethiopia which employ independent firms to conduct QA activities and audits in a manner the firm itself deems appropriate. The firm is then required to assure that all producers certified by it are indeed compliant to the stated quality standards. It must be clarified that neither the GoN nor the NCPA should undertake to conduct the QA activities since both parties have significant conflicts of interest and QA activities conducted by either is unlikely to build confidence in the brand or to contribute towards maintaining its reputation.

An adequate legal framework should be put in place to ensure that any third party entrusted with such QA activities has sufficient incentives to adhere to its terms of reference.

### ***Create an institutional framework for the maintenance of Intellectual Property***

Like a tangible property, the intellectual property requires upkeep and maintenance. In the past, absolutely no efforts were made to periodically maintain the Nepal Coffee mark as a piece of IP owned by the GoN. In the long run, the NTCDB should create an institutional framework under which responsible officers conduct regular maintenance of all the IP owned by the GoN via NTCDB. Maintenance activities may include:

- 1) Keeping regularly updated public records of all registered IP in all jurisdictions along with the status of such registrations.
- 2) Ensuring all IPs are being used according to applicable rules prescribed by all registering countries.
- 3) Ensuring all IP are regularly renewed in all countries.
- 4) Periodically updating protocols governing the usage of such IP in various contexts.
- 5) Periodically evaluating such pieces of IP for effectiveness and relevance.
- 6) Conducting periodic reviews, re-design and re-branding activities as necessary.

### ***Expand the scope of the Nepal Coffee mark***

As prescribed in earlier chapters, the Nepal Coffee mark should be expanded from a singular national mark to a set of multiple marks or multiple versions of the national mark that represent additional characteristics such as:

- 1) Organic certification
- 2) Fairtrade certification
- 3) Regional agricultural varieties
- 4) Species (Arabica/Robusta)

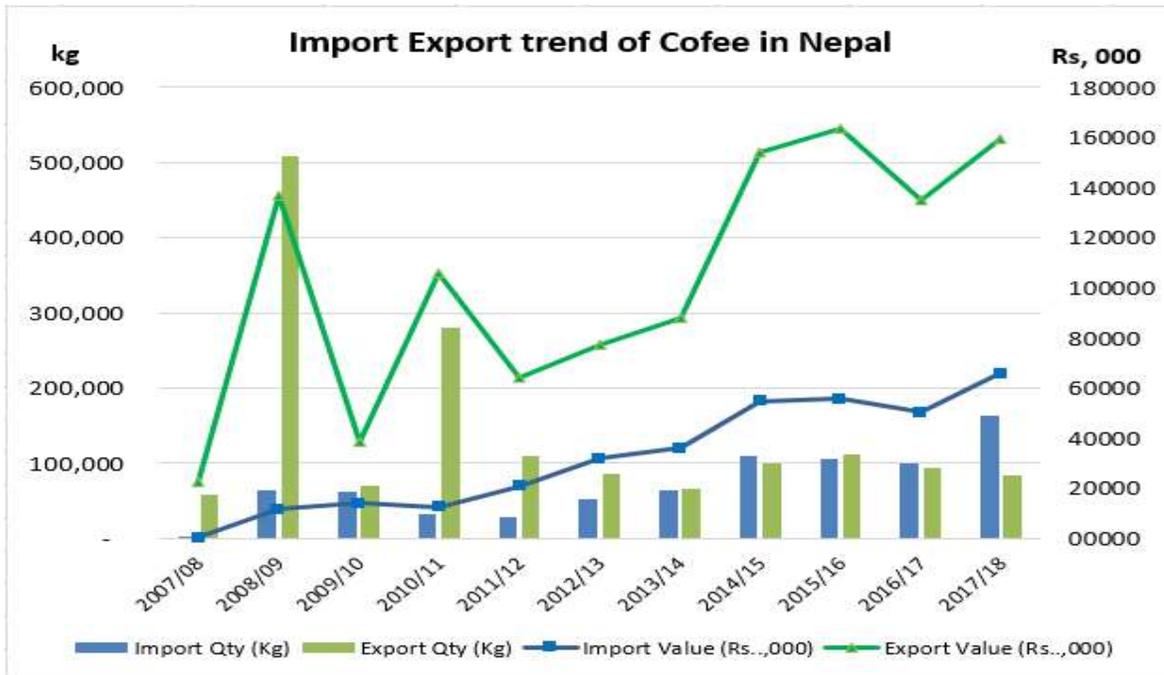
It should be reiterated that such expansion should not be done in isolation but should rather be a part of a comprehensive marketing strategy. Highly competent marketing and design consultants should be retained during these steps.

### ***Make use of mark mandatory for exporters of Nepali origin coffee and coffee products***

Once the Nepal Coffee mark is sufficiently reputed and widely used, policies to make the usage of such mark(s) mandatory for all exports of Nepal origin coffee and coffee products may be put in place. However, this can only succeed if sufficient value can be added to coffee products by the use of the mark. In fact, this step may become completely unnecessary if the mark can be developed and promoted effectively since such a situation would create the necessary incentives for all exporters to adopt the mark voluntarily.

## Appendices

### Import/Export trend for Coffee 2007-2018



### Import-Export of Coffee and Coffee Products across various HS Codes

Import/Export of Coffee and related products (Mid July 2018 to Mid January 2019)

