

## The African IP Trust

A to-be-formed, highly credible, organization to support and enforce the rights of African farmers, producers, artisans and others whose incomes are diminished, and opportunities lost, by not being able to fully use their Intellectual Property (“IP”) for development.



The African IP Trust seeks to help African producers of distinctive products achieve better negotiating positions and higher incomes by establishing their IP rights and managing the distribution of these products in foreign markets.

### The problem:

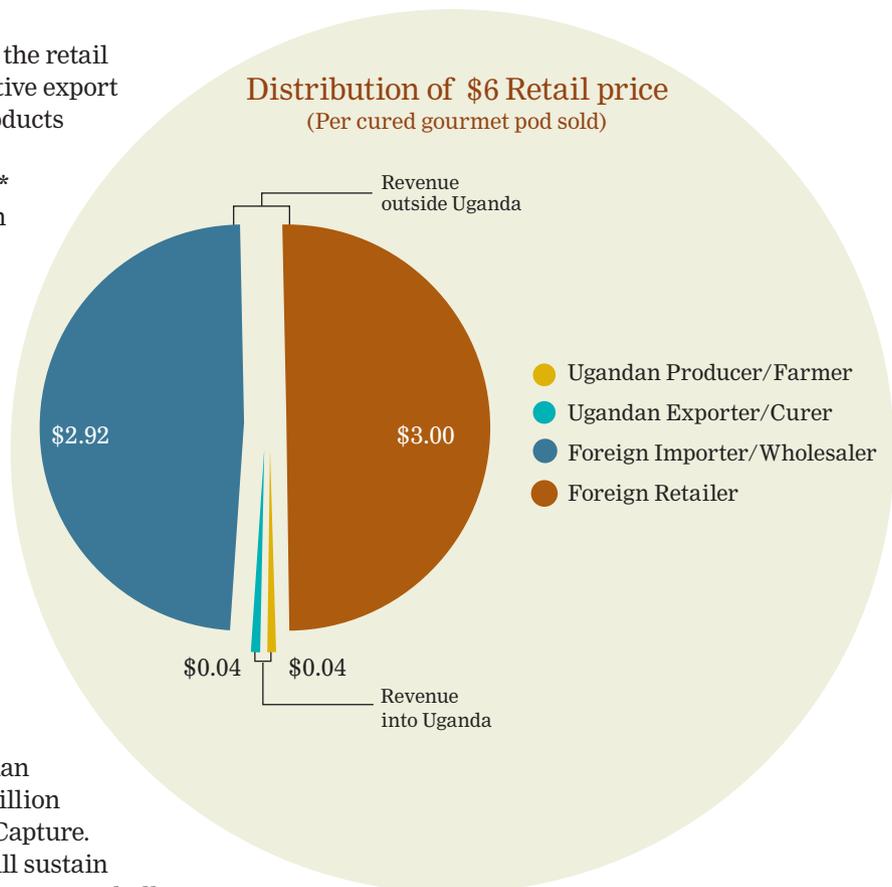
Africans currently receive 3-5% of the retail value of almost all of their distinctive export products. In a sample of just 14 products analyzed, farmers, producers and artisans lose \$1.4billion every year\* This is a major driver of poverty in Africa

This chart depicts one distinctive product – Ugandan vanilla which is the finest vanilla in the world, but returns only about .04 out of \$6.00 from the retail price back to Ugandan vanilla farmers. This situation repeats across Africa. In other products analyzed by Light Years IP, the return to the farmers holds a weighted average of 2.5%.

\*Distinctive values in African exports, LYIP, p. 16

### A solution

Light Years IP has assisted Ethiopian coffee farmers to receive \$US100 million more in FY 2008 through IP Value Capture. An established African IP Trust will sustain these gains by helping producers overcome challenges and opposition and secure more effective negotiating positions.





## How will the African IP Trust help poor farmers, producers and artists?

When Light Years IP secured more export income for Ethiopia, there were many obstacles and barriers as there are numerous companies and corporations, as well as individuals and groups who benefit from keeping Africans poor, by taking most of the value of their products in foreign market wholesale and retail arenas. These groups have little incentive to shed power easily. Too, there is often a mentality that making money by taking brands from Africa is acceptable practice. In the case of Ethiopia, Starbucks, for example, believed they could own the brands Yirgacheffe and Harar, two regions in Ethiopia that have long grown wonderful coffees, simply because they knew the IP law of trademark. Light Years IP, Ron Layton and his team engaged in a protracted fight to secure proper ownership of Ethiopian fine coffee brands. While a public campaign took place, it was ultimately Howard Schultz who agreed, in part due to collective action but primarily as he realized that sustaining Ethiopian farmers was also good for Starbucks – paying a little more for the brands would enable the farmers to continue to produce fine coffee, and his humanitarian side prevailed. This example illustrates the value of what we perceive the new African IP Trust (AIPT) will do: move businesses to negotiate by creating a highly public, collective action and support the rights of the African producers, indigenous people, farmers and artisans who seek the AIPT protection.

## The Functions of the African IP Trust:

### **The African IP Trust has the following goals and functions:**

- » Support and reinforce stakeholders aiming to control brands and other IP and distribution
- » Income gains and ownership of IP have been and are being realized. The AIPT will support stakeholders as challenges are made to their rights
- » The goal is to reduce the protracted challenges such as in the Ethiopian coffee project
- » Develop processes for defining relevant stakeholders with a fair claim to ownership of brands and other IP instruments
- » Help stakeholders to design organizing structures, suitable for each different situation, structuring the group ownership entities for their IP (brands, trade marks, designs, trade secrets, etc.), in transparent, participatory and legally robust ways
- » Facilitate membership for all, to enable collective rights and ownership
- » Campaign by persuading opposition groups or organizations, such as exemplified in the Ethiopian coffee initiative in the successful struggle over trademark ownership with “big coffee” in the U.S.
- » Negotiate across national borders, all along the supply chain
- » Provide an “umbrella” of protection for qualifying groups of owners, gradually extending this to millions of Africans
- » Facilitate the transition from dependency toward IP ownership and improved negotiating positions
- » The AIPT will be a guide star toward new models of IP ownership and collective awareness.

## The African IP Trust is based on IP Value Capture

The African IP Trust is based on the concept, method and process of IP Value Capture as it will seek to support and sustain the gains through this business and legal strategy.

How IP Value Capture works and why it is a viable approach to poverty in Africa. First, IP Value Capture is based on the simple reality that many products across Africa are distinctive and have the most valuable asset called – Intangible Value.



**Intangible value = 80-90% of a products value**

With intangible assets being so important to their income, producers and businesses in the developed world use IP (Intellectual Property) management as the core of business strategies.

Whether they produce computer software, cars, soft drinks, artisan products or music, producers from rich countries use various forms of IP tools to own and control income from their products.

For them, IP is not merely a “legal issue,” it is the base of their business strategy, the means by which they achieve their business objectives. This is true for modern companies the world over.

### There are potential export income gains from IP Value Capture all over Africa

Kenyan Tea:	\$US561,000,000*
Ugandan vanilla	\$90,000,000
Ethiopian coffee	\$1,600,000,000
Mozambique cashews	\$72,000,000
Malian Mudcloth	\$700,000,000
Tanzanian Blackwood	\$320,000,000
Madagascar Cocoa	\$25,000,000
Ethiopian Leather	\$500,000,000
Sengalese Tuna	\$100,000,000
Namibian Marula oil	\$1,700,000
Creative Industries	\$60,000,000

\* Prices in US dollars based on LYIP analysis of retail prices v. farmer prices, considering export volume (LYIP and DFID, 2008)

**1 The product holds genuine distinctiveness:** For example, while there are many honey products, some honey is distinctive by its rareness, content quality, story of origin, reputation or perceived value in the marketplace. Finding and determining true distinctiveness is shown by the examples below of Grenadian nutmeg to Belizian xate; Jamaican logwood honey to West Indies Sea Island cotton.

**2 Retail market price and export price gap:** In many examples, there is a dramatic gap in export and wholesaler and retail prices. Light Years IP has found large price gaps for many Caribbean exports with the large majority of retail price value remaining outside of the export country.

**3 Potential for leverage in the supply chain:** The next step is assess all aspects of the fully supply chain to determine where the best IP Value Capture opportunities lie.

**4 Clear social impact potential for low-income farmers and producers:** Light Years IP mission and purpose is to help achieve higher and more secure income for producers who most need it. Does this product have potential to generate significant income return for large numbers of low income farmers and producers?

**5 Local stakeholder interest and enthusiasm:** The farmers/producers own the projects and their full participation will take these business strategies forward if they so choose. Producers tend to become active stakeholders and own the business strategies.

**6 Investment-ready projects:** Assistance can be provided to design initiatives ready for investment that will finance the new business strategies.

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## What IP Value Capture is Not:

IP Value Capture strategies are sometimes confused with 2 approaches. It is important for members of the African IP Trust and proponents of IP Value Capture to understand and clarify these differences and that IP Value Capture is not:

### 1) Value-Added; and 2) Branding and licensing in isolation

Value-added has been an approach of many development agencies such as USAID. The concept is rooted in the strategy literature and business interventions such as Michael Porter's core competency – determine what a business does well and focus on that aspect, be it selling widgets; a focus brand; or business strategy, tangible or service-oriented. Value-added as a development strategic intervention focuses on country products. For example, in Mozambique, which produces fine cashews, value-added involved a strategic intervention of renovated constructed factories to process cashews and sell the processed, rather than the raw nuts as exports, with the underlying belief that since this was a dominant Mozambique export, processing improvements would be a benefit. Upon closer examination, however, the factory work produced very low wage jobs under deleterious conditions, for an output with processed nuts that sold for slightly higher prices but not enough to offset the costs of processing. While value-added strategies sometimes have merit, the underlying problem remains: the price and value of the exports are taken in foreign markets, returning too low an export price return. Value-added strategies focus is in country; producing more of a good or producing it differently to export under a different form does not address the fundamental underlying root cause problem – low returns from export markets. Thus, value-added often ends in frustration because strategic interventions, sometimes costly, usually well-intended oftentimes do not change poverty, and all too often make poverty worse.

#### How does value-added sometimes make poverty worse?

Production may improve volume which by the law of supply and demand, lowers price.

Production focuses on improvements in-country which seem useful on the surface; however if the majority of intangible value is captured out of country, production-based solutions do not change this balance.

Value-added strategies, by not effecting the price, do not change poverty and oftentimes discourage those who make large efforts and sacrifices to implement.

#### IP Value Capture is not Branding or Licensing, or Copyrighting or Geographical Indicators, as an end-outcome

Many developing countries now comprehend and utilize the power of branding. This business strategy has dominated the marketing literature for over a decade. Countries such as Jamaica have “Brand Jamaica” campaigns, and are well-intended, aiming to raise consumer awareness and confidence, as well as domestic pride, with the goal of fostering valuable distinctiveness. Country brands may fail to realize two critical things: Brand alone does not improve prices nor price-return to country and second, a country brand does not always create valuable distinctiveness. *For example, vanilla from Uganda being branded as “Ugandan vanilla” may not improve price-return as much as a snappier brand title that does not mention country name.* Apple computer has nothing to do with apples; we brand a Cricket phone; Coach purse; or Mrs. Field's cookies, which generate interest in the retail market. The US, for example, does not sell USA tennis shoes, but exports the Nike brand and famous swish and “just do it” goes far in retail markets, being worth billions of dollars.

IP Value Capture is part of an overarching strategy that has a 6 part methodology; whereas branding, in isolation may or may not improve export income and direct income return to farmer/producer stakeholders.

Similarly, geographical indicators, licensing, and copyrights are part of the legal tools that IP value capture strategies appropriate. IP Value capture combines these legal tools with business strategies for a more comprehensive strategic intervention.

#### What is the relationship between the African IP Trust and improving export income for Africans to reduce poverty?

The African IP Trust will positively counter the challenge among African countries that view the IP rights system as designed and being used against them rather than for their long-term interests and the deeply entrenched view that fairness will not accompany their efforts however appreciable those efforts may be.

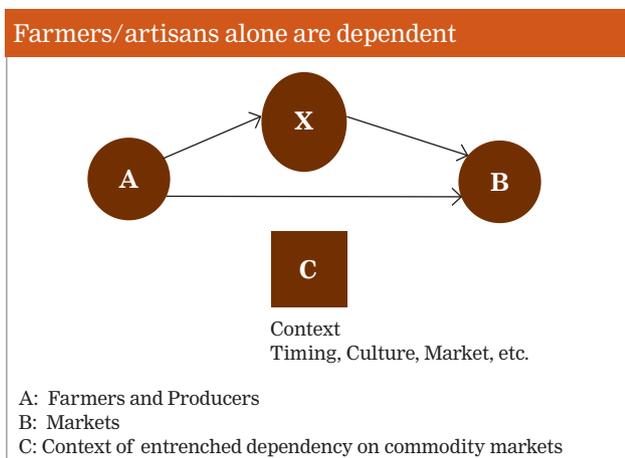
Through the tools and methods of IP Value Capture, supported by the power and negotiating arm of the African IP Trust, Africans can better appropriate and sustain the income gains.

### The African IP Trust affects the Power and Dependency Relationship

The African IP Trust will work to alter and change the power and dependency relationship inherent in Africa between farmer/producer and artisans and foreign markets.

Why are African farmers and producers exploited and receive only 3-5% of the price value from their distinctive products? While much can be said about colonial rule and centuries of exploitation, alongside varied political and military strife, this does not tell the whole story. An underlying cause of poverty is the dependency Africans have assumed and been forced into, taking the situation of powerlessness in the markets as a taken-for-granted norm. A great deal of the change that is needed is to alter this deeply entrenched power and dependency framework.

To illustrate, the power and dependency model outlines the current situation:



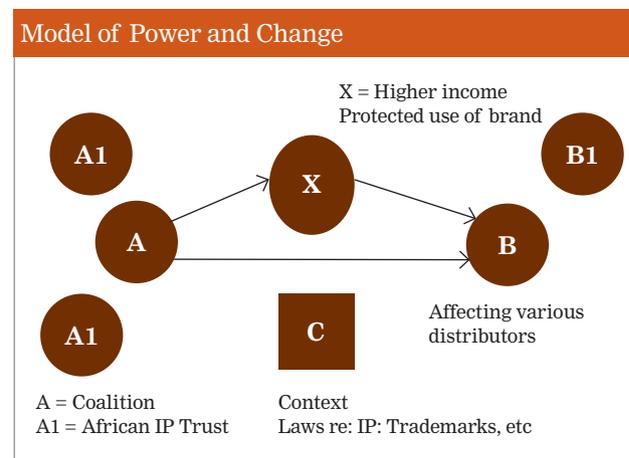
African farmers and producers (A) sell their products toward markets (B) in the context (C) of commodity markets, low and fluctuating prices dictated by foreign markets.

In any power and dependency sense of situation, power is derived from:

- » The Agent's real and perceived dependency upon the Target
- » The availability of alternatives to either A or B
- » When A has many alternative choices, there is less dependency and usually more power on the part of A
- » When B, the target has many alternatives, B can be more selective, powerful and sometimes exploitive toward A's dependency.
- » The African farmers, producers and artisans are as (A)s dependent upon B – export markets that often offer few options.
- » The African IP Trust affects the power relationship by adding collective power to the side of the farmers, producers and artisans.

This diagram demonstrates what happens when A is trying to influence or affect B alone. Low-income farmers and producers (A) sell to limited export markets (B) who have many options.

The second diagram illustrates the power of collective support, such as is one function of the African IP Trust



Prepared for the African IP Trust conference  
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