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MAINSTREAMING FAIR TRADE AND RESULTING TURMOIL: WHERE SHOULD THE MOVEMENT GO FROM HERE?

PAULETTE L. STENZEL*

Dans ses écrits, un sage Italien Dit que le mieux est l'ennemi du bien.

–Voltaire¹

INTRODUCTION

Fair Trade is an important tool in the pursuit of sustainability.² It is a way of doing business that builds equitable, long-term partnerships between consumers and producers throughout the world. Fair Trade provides a stepping stone toward a just and sustainable economic system that ensures that people get paid a fair wage for their work. In short, Fair Trade moves businesses along the path toward sustainability.

The Fair Trade movement has grown substantially in recent years, bringing both blessings and challenges.³ This Article discusses the current movement toward the mainstreaming of Fair Trade.

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¹ VOLTAIRE, *LA BÉGUEULE: CONTE MORAL* (1772). Literally translated as “in his writings, a wise Italian says that the best is the enemy of the good,” Voltaire’s phrase is often paraphrased as “don’t let the perfect be the enemy of the good.”

² The term “fair trade” is sometimes used by writers in its plain language sense of “fairness” without reference to the Fair Trade movement. *See, e.g.*, JOSEPH E. STIGLITZ & ANDREW CHARLTON, *FAIR TRADE FOR ALL* 67–68 (2005); Kevin J. Fandl, *Bilateral Agreements and Fair Trade Practices: A Policy Analysis of the Colombia-U.S. Free Trade Agreement*, 10 *YALE HUM. RTS. & DEV. L.J.* 64, 64, 73, 80, 81 (2007); John Stencel, *Free Trade Versus Fair Trade*, 36 *DENV. J. INT’L L. & POL’Y* 349, 349, 366 (2008). In this Article, the term “Fair Trade” is capitalized to clarify that it refers to the movement.

³ John Bowes, *Introduction: A Brilliant Idea*, in *THE FAIR TRADE REVOLUTION* 1–2 (John Bowes ed., 2011).

The good news is that Fair Trade is becoming more widely known and sought out by consumers, and Fair Trade goods are offered by increasing numbers of companies, including multinationals. However, this has led to a major split among Fair Trade advocates.⁴ The “transformers” focus on the needs of producers and want to stay close to the origins of Fair Trade.⁵ Their goal is to link farmers to eaters and craftspeople to purchasers through noncorporate partnerships.⁶ A second view is that of the “reformers,” who prefer to work within existing business structures.⁷ They focus on building volume so that Fair Trade can help as many producers as possible.⁸

Part I of this Article defines Fair Trade, provides a brief history of Fair Trade, and discusses its value. Part II discusses the motives of companies that sell Fair Trade, including original mission-driven companies as well as major corporations that have recently added Fair Trade goods to their product lines. Corporate participation is a step toward the mainstreaming of Fair Trade. However, it also contributes to a splintering of the Fair Trade movement. Fair Trade USA has separated from the Fairtrade Labelling Organization (“FLO”) because Fair Trade USA is choosing a different approach to the entry of conventional sellers into Fair Trade.⁹ Additionally, competing programs called Direct Trade, Direct Fair Trade, and others have entered the marketplace.¹⁰ Some of them avoid certification programs while promoting goals similar to those of Fair Trade. A few have created their own certification programs.¹¹ Therefore, this section discusses the problems that arise from this divergence from the original mission-based model for sellers. Part III identifies problems in Fair Trade and discusses possible new directions for the movement. Those possibilities include action by producers, consumers, non-governmental organizations, and government. Part IV examines possible new directions, explains why

⁴ See *infra* notes 211–26 and accompanying text.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Fairtrade is spelled as one word by the organization. See FAIRTRADE LABELLING ORGANIZATIONS INTERNATIONAL E.V. CONST. pmbl. and defs., May 25, 2007.

¹⁰ Direct Trade and Direct Fair Trade are capitalized to indicate that the terms have specific meanings among those who use them to label their products. See *Direct Trade Criteria*, INTELLIGENTSIA COFFEE, <http://www.intelligentsiacoffee.com/content/direct-trade> (last visited Apr. 9, 2013); *Direct Fair Trade*, LEVEL GROUND TRADING, <http://www.levelground.com/about/direct/> (last visited Apr. 9, 2013).

¹¹ *Counter Culture Direct Trade: 3rd Party Certification*, COUNTER CULTURE COFFEE, <http://counterculturecoffee.com/direct-trade> (last visited Apr. 9, 2013).

some options should be rejected, and recommends steps to help Fair Trade progress.

The Fair Trade movement needs time to develop. Therefore, consumer education should be expanded and transparency should be increased. All Fair Trade organizations should follow the example of those that currently provide complete information about their supply chains, including the identities of all suppliers and intermediaries. They should also reveal exactly how much of the purchase price goes to each member of the supply chain. While the government should support Fair Trade, it should refrain from creating its own certification program. The various participants in Fair Trade have important roles to play as the Fair Trade movement develops: consumers, producers, businesses of all sizes, and even government. The government's role, at this point, should be limited to facilitating the development of Fair Trade and similar programs. Fair Trade has come a long way since its post–World War II origins, and, if its development is facilitated and nurtured, it has the potential to help make trade more just and fair for millions of people throughout the world.

I. THE NEED FOR FAIR TRADE, DEFINITION, AND ITS VALUE IN PURSUIT OF SUSTAINABILITY

Fair Trade originated in Europe with grassroots, ground-up action by individuals and groups in the aftermath of World War II.¹² Fair Trade began around that same time in the United States, although it was not embraced as quickly and extensively in the U.S.¹³ Since its inception, Fair Trade non-governmental organizations (“NGOs”) have articulated the goals and practices of Fair Trade and created working definitions of Fair Trade.¹⁴ They have also formed organizations that certify Fair Trade goods and membership organizations for retailers that are committed to Fair Trade.¹⁵

A. *The Need for Fair Trade*

Fair Trade helps producers around the world gain access to markets that would otherwise be closed to them and pays them a fair price for their product. For example, coffee is the second most traded commodity on Earth.¹⁶ Yet, coffee farmers who sell through traditional channels receive

¹² EUROPEAN FAIR TRADE ASSOCIATION, SIXTY YEARS OF FAIR TRADE, 1 (Nov. 2006), <http://www.european-fair-trade-association.org/efta/Doc/History.pdf>.

¹³ *Id.* at 1, 3.

¹⁴ *Id.* at 1–3.

¹⁵ *Id.* at 3.

¹⁶ Caroline Winter, *Another Reason to Hate Global Warming: Lousy Coffee*, BLOOMBERG

only a small portion of the total price paid by consumers.¹⁷ Coffee farmers in Guatemala and other developing countries work long hours, often hiking an hour or more to reach their plots of land.¹⁸ According to the human rights organization Global Exchange, farmers in Guatemala typically receive about thirty-five to forty cents per pound if they sell their coffee to intermediaries, traditionally the only market available for their crops.¹⁹ For those farmers who find ways to export directly to the international market, the price is sixty to seventy cents per pound.²⁰

B. Definition

A widely accepted definition of Fair Trade was compiled by FINE, a consortium of four major Fair Trade networks that work together to educate the public about Fair Trade: FLO, the International Fair Trade Association, the European Fair Trade Association, and the Network of World Shops.²¹ FINE states, "Fair Trade is a trading partnership, based on dialogue, transparency, and respect, that seeks greater equity in international trade."²² The partnership is not a legal agreement among countries like a free trade agreement. Instead, it is a voluntary partnership among producers, sellers, and consumers. FINE says:

Fair Trade [o]rganizations, backed by consumers, are engaged actively in supporting producers, awareness raising

BUS. WK. (Nov. 15, 2012), <http://www.businessweek.com/articles/2012-11-15/the-coffee-beans-endangered-gene-pool>.

¹⁷ See *Fair Trade Farmers in Guatemala*, GLOBAL EXCHANGE, <http://www.globalexchange.org/fairtrade/coffee/cooperatives#6> (last visited Apr. 9, 2013).

¹⁸ See Paulette L. Stenzel, *Direct Trade & Creative "Vertical Integration,"* MARIPOSA PAULETTE (July 7, 2012), <http://www.mariposapaulette.com/2/archives/07-2012/1.html>.

¹⁹ See *Fair Trade Farmers in Guatemala*, *supra* note 17.

²⁰ For further discussion see *Farmers in Guatemala*, GLOBAL EXCHANGE, <http://www.globalexchange.org/fairtrade/coffee/cooperatives#6> (last visited Apr. 9, 2013). For further discussion of the value of Fair Trade, particularly as it promotes sustainability, see *infra* text accompanying notes 63–80.

²¹ FINE is an acronym for the names of the member organizations: FLO; the International Fair Trade Association, which is now the World Fair Trade Organization ("WFTO"); the Network of European Worldshops ("NEWS!"); and European Fair Trade Association ("EFTA"). FINE, ECONOMY-POINT.ORG, <http://www.economypoint.org/ffine-40087.html> (last modified July 13, 2011). The acronym does not coincide directly with the four named organizations because of name changes in recent years.

²² FAIR TRADE ADVOCACY OFFICE, FAIR TRADE DEFINITION AND PRINCIPLES AS AGREED BY FINE IN DECEMBER 2001 1 (2001) [hereinafter FAIR TRADE DEFINITION AND PRINCIPLES], available at http://vse72398.nfrance.com/~v1032/wikisblogs_2009/docs/equipres/doc_1234295216.pdf.

and in campaigning for changes in the rules and practices of conventional international trade. Fair Trade products are produced and traded in accordance with these principles—wherever possible verified by credible, independent assurance systems.²³

FINE supplements its definition of Fair Trade with five basic principles which can be summarized as follows²⁴:

- Fair Trade organizations are committed to Fair Trade as their core mission. This includes financial and technical support to producers and campaigning for changes in conventional international trade.
- Fair Trade is created through a partnership based on dialogue, transparency and respect.
- Fair Trade improves trading conditions by ensuring fair prices for products, helping with pre-harvest and pre-production financing, and making long term commitments.
- Fair Trade secures producers' and workers' rights.
- Fair Trade promotes the process of sustainable development.²⁵

These principles are put into action through specific practices, which are described below.

C. *Three Ways to Identify Fair Trade Products*

1. Certification Programs

The FINE definition is cumbersome and not particularly helpful for a consumer selecting a product from a retailer's shelf.²⁶ Therefore, certification processes have been developed to help consumers identify goods

²³ *A Charter of Fair Trade Principles*, WFTO & FLO, 1, 6–7 (2009), available at http://www.wfto.com/index.php?option=com_docman&task=doc_download&gid=1732&&Itemid=1.

²⁴ For the definition, see FAIR TRADE DEFINITION AND PRINCIPLES, *supra* note 22.

²⁵ *See id.* FINE explains the emphasis on sustainable development as follows: "Process of sustainable development[:] To promote long term improvements in the economic and social opportunities of small producers and wageworkers and in the environmental practises of their organisations . . ." *Id.*

²⁶ Bowes, *supra* note 3, at 4–5.

that meet high standards for Fair Trade.²⁷ In 1988, the Max Havelaar Foundation launched the first Fair Trade certification system.²⁸ The program created a Fair Trade label and sold fair trade coffee to supermarkets in the Netherlands.²⁹ The program gave disadvantaged producers a fair price for their coffee and enabled them to sell their products in a mainstream market.³⁰

In the 1990s, the Max Havelaar Foundation and several other organizations with similar goals formed FLO, a “certification umbrella mandated to apply and monitor Fair Trade standards worldwide.”³¹ Today, FLO operates worldwide as a standard-setting body and Fair Trade certification organization.³² FLO owns the rights to the FAIRTRADE Certification Mark, which can be used on products that meet FLO’s requirements.³³ FLO links member organizations in at least twenty-four countries and owns the rights to the “Fairtrade” Certification Mark.³⁴ Fairtrade Canada³⁵ is the FLO-authorized label in Canada. Additionally, Fairtrade International is creating a legal presence in the United States and Fairtrade Canada will be integral to this project.³⁶ In addition to labeling entities, FLO members include regional producer networks in Africa, Asia, the Caribbean, and Latin America. In turn, the networks are comprised of

²⁷ JACQUELINE DECARLO, *FAIR TRADE: A BEGINNER’S GUIDE* 80 (2007).

²⁸ *Id.* Max Havelaar was a fictional character who was an advocate for coffee farmers. For detailed information about the Max Havelaar Foundation, see MAX HAVELAAR, <http://www.maxhavelaar.nl/faq/what-max-havelaar-foundation-doing?destination=english&backtitle=FAQ's> (last visited Apr. 9, 2013).

²⁹ See DECARLO, *supra* note 27.

³⁰ Bowes, *supra* note 3, at 4. Fair Trade has received limited attention in the legal community; authors of previous articles have focused on Fair Trade coffee. See, e.g., Jill Draeger, *Perking up the Coffee Industry Through Fair Trade*, 11 MINN. J. GLOBAL TRADE 337, 337–38 (2002).

³¹ DECARLO, *supra* note 27.

³² Geoff Moore, *The Fair Trade Movement: Parameters, Issues and Future Research*, 53 J. BUS. ETHICS 73, 75 (2004).

³³ See *The FAIRTRADE Mark*, FAIRTRADE INT’L (FLO), http://www.fairtrade.net/the_fair_trade_mark.0.html (last visited Apr. 9, 2013); *List of Fairtrade International Standards*, FAIRTRADE INT’L (FLO) 1, 1 (Nov. 2011), http://www.fairtrade.net/fileadmin/user_upload/content/2009/standards/documents/2012-08-03_LIST_OF_FLO_Standards.pdf.

³⁴ See *Bringing Fairtrade to Market*, FAIRTRADE INT’L (FLO), http://www.fairtrade.net/fileadmin/user_upload/content/2009/resources/2012-01_Fairtrade_to_Market-A4.pdf (last visited Apr. 9, 2013).

³⁵ Fairtrade Canada was known as TransFair Canada until recently. See *A New Look, New Name and Renewed Focus*, FAIRTRADE CAN. (Mar. 1, 2011), <http://fairtrade.ca/en/news-views/news/a-new-look-new-name-and-renewed-focus>.

³⁶ *Selling Fairtrade Certified Products in the USA*, FAIRTRADE CAN., <http://fairtrade.ca/en/business-centre/selling-fairtrade-certified-products-usa> (last visited Apr. 9, 2013).

groups including small-scale producers and workers.³⁷ Additionally, there are marketing organizations in Korea and the Czech Republic,³⁸ and FLO also has an associate member in Mexico.³⁹ Actual certification takes place through the international certification company FLO-Cert, which is owned by FLO but operates independently.⁴⁰

The number of products that can be certified is increasing rapidly. At the present, the Fairtrade Foundation, based in the United Kingdom, licenses the use of the F[airtrade] Mark for over 3000 products⁴¹ which meet international Fairtrade standards.⁴² Certification is available for foods such as coffee, tea, chocolate, cocoa, fruit, rice, beer, and wine.⁴³ Additionally, thousands of non-food products can be certified including cosmetics, clothing, homewares, toys, flowers, and sports balls.⁴⁴

2. Membership Organizations

For handicrafts, musical instruments, and many other products, certification is not available.⁴⁵ Therefore, a second kind of Fair Trade organization provides an alternative, offering membership to sellers that meet stringent Fair Trade standards in their operations.⁴⁶ These include the World Fair Trade Federation (“WFTF”), which operates in most of the World, and the Fair Trade Federation (“FTF”), which operates in the

³⁷ *Producer Networks*, FAIRTRADE INT’L (FLO), http://www.fairtrade.net/producer_networks.html (last visited Apr. 9, 2013).

³⁸ See *Bringing Fairtrade to Market*, *supra* note 34.

³⁹ See *National Fairtrade Organizations*, FAIRTRADE INT’L (FLO), http://www.fairtrade.net/labelling_initiatives1.html (last visited Apr. 9, 2013).

⁴⁰ For a concise description of the certification process, see Bowes, *supra* note 3, at 7.

⁴¹ *Products*, FAIRTRADE FOUND., <http://www.fairtrade.org.uk/products/default.aspx> (last visited Apr. 9, 2013).

⁴² Another source speaks of licensing for over 4500 products. *Fairtrade Foundation Statement on Banana Price Wars*, FAIRTRADE FOUND. (Oct. 8, 2009), http://www.fairtrade.org.uk/press_office/press_releases_and_statements/october_2009/fairtrade_foundation_statement_on_banana_price_wars.aspx.

⁴³ *Retail Products*, FAIRTRADE FOUND., http://www.fairtrade.org.uk/products/retail_products/default.aspx (last visited Apr. 9, 2013).

⁴⁴ *Id.*

⁴⁵ The WFTO is considering proposals for Fair Trade craft certification. For discussion of the perspectives of three major U.S. Fair Trade craft businesses, see Dana Geffner, *Challenges of Certification for Fair Trade Crafts: Part 2*, FORA BETTER WORLD (Spring 2012), available at <http://www.fairworldproject.org/voices-of-fair-trade/challenges-of-certification-for-fair-trade-crafts-part-2/>.

⁴⁶ *FAQ*, WORLD FAIR TRADE ORG. (Apr. 25, 2009), http://www.wfto.com/index.php?option=com_content&task=view&id=150&Itemid=181.

United States.⁴⁷ The two organizations work together closely to evaluate applicants.⁴⁸ Members may sell both Fair Trade–certified goods as well as non-certified goods that are produced under conditions specified by the WFTF and FTF.⁴⁹

The World Fair Trade Organization (“WFTO”) operates in seventy-five countries and represents over 450 organizations, and the FTF is the North American Affiliate of the WFTO.⁵⁰ Both organizations evaluate Fair Trade organizations based on their commitment to and implementation of Fair Trade principles.⁵¹ Membership is limited to organizations that demonstrate full compliance with WFTO principles.⁵² Members ranging in size and type from small cooperatives to major companies offer well-known brand names.⁵³ The companies that meet WFTO requirements are placed on a list called the FT100.⁵⁴ The WFTO’s members represent the entire Fair Trade supply chain: from production to sale.⁵⁵

In addition to offering membership to sellers of Fair Trade goods, the WFTO and FTF work to educate the international trade community about the need for Fair Trade.⁵⁶ This work includes advocating Fair Trade before international organizations such as the G8.⁵⁷

⁴⁷ *Id.*

⁴⁸ See WFTO & FLO, *supra* note 23.

⁴⁹ *Id.*

⁵⁰ *The World Fair Trade Organization*, WORLD FAIR TRADE ORG. (Jan. 5, 2012), http://www.wfto.com/index.php?option=com_content&task=view&id=890&Itemid=292; FAIR TRADE FED., <http://www.fairtradefederation.org/ht/d/Home/pid/175> (last visited Apr. 9, 2013).

⁵¹ See *10 Principles of Fair Trade*, WORLD FAIR TRADE ORG. (Oct. 6, 2011), http://www.wfto.com/index.php?option=com_content&task=view&id=2&Itemid=14. The WFTO was known as the International Fair Trade Association (“IFAT”) until February 9, 2009. *IFAT Votes WFTO*, WORLD FAIR TRADE ORG. (Feb. 9, 2009), http://www.wfto.com/index.php?option=com_content&task=view&id=892&Itemid=293.

⁵² *Find Members/Verify a Claim*, WORLD FAIR TRADE ORG., http://www.wfto.com/index.php?option=com_content&task=view&id=6&Itemid=37 (last visited Apr. 9, 2013) (“Monitored Fair Trade Organizations are those organizations that have been through [the WFTO’s] monitoring process and are eligible to carry the WFTO logo.”).

⁵³ See, e.g., *id.*

⁵⁴ See *IFAT Votes WFTO*, *supra* note 51.

⁵⁵ *Welcome to the Source of Authentic Fair Trade*, WORLD FAIR TRADE ORG., http://www.wfto.com/index.php?option=com_content&task=view&id=889&Itemid=290 (last visited Apr. 9, 2013).

⁵⁶ See *Welcome to the Source of Authentic Fair Trade*, *supra* note 55.

⁵⁷ *Id.* “The G8 is made up of the seven most powerful economies of the world, (United States, Japan, Germany, France, UK, Canada, Italy) and Russia. Together they form a very powerful and influential . . . group of nations.” Anup Shah, *G8 Summits: Empty Promises Each Year*, GLOBAL ISSUES, Aug. 25, 2008, <http://www.globalissues.org/article/720/g8>

3. Informed Consumer Decision-Making in Response to a Seller's Self-Declaration

Finally, consumers sometimes find products that are labeled “fair trade,” yet the product is neither certified, nor is the seller a member of the FTF or WFTF.⁵⁸ In the absence of certified products or verified membership in one of those groups, consumers face a complicated decision-making task. In some instances, a product may be labeled in another way such as Direct Trade, Direct Fair Trade, or Partnership Coffee.⁵⁹ First, a consumer must become familiar with the principles and practices of Fair Trade and decide which ones are important to him or her. Then, the consumer must seek information about each product he or she buys to verify that it is made and delivered in accordance with those principles and practices.

Below are characteristics of Fair Trade certification requirements that an informed and motivated consumer can use to recognize Fair Trade goods. Investigation of all of these criteria would require substantial efforts by a consumer, but some may be easier to explore than others. Also, some may be more crucial to an individual consumer as compared to others.

First, Fair Trade promotes fair wages for producers, while recognizing that what constitutes fair wages depends on conditions in the producer's country and region. Sometimes, Fair Trade organizations set wages,⁶⁰ and, in other instances, they set minimum prices for products.⁶¹ For example, producers of Fair Trade–certified coffee are guaranteed a minimum price for the product, regardless of market fluctuations.⁶² This information can be made readily available to consumers, although few sellers do so.

-summits-empty-promises-each-year. The G20 members are Argentina, Australia, Brazil, Canada, China, the European Union, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, the United Kingdom, and the United States. *See About G20 Member Countries*, RUSSIA G20, <http://en.g20russia.ru/infographics/20121201/780989503.html> (last visited Apr. 9, 2013).

⁵⁸ *Issue of Labeling in the Fair Trade Movement*, U. OF WIS., <http://www.uwosh.edu/fairtrade/about/conflict/labeling.pdf/view> (last updated Oct. 18, 2011).

⁵⁹ For discussion of programs that share similar goals and practices as compared to Fair Trade, see *supra* notes 14–23.

⁶⁰ See DECARLO, *supra* note 27, at 119–21 (discussing a “Fair Trade Wage Guide”).

⁶¹ See 10 *Principles of Fair Trade*, *supra* note 51.

⁶² See Daniel Jaffee & Phil Howard, *Visualizing Fair Trade Coffee*, FOR A BETTER WORLD 8, 391, available at <http://www.fairworldproject.org/voices-of-fair-trade/visualizing-fair-trade-coffee/> (last visited Apr. 9, 2013). See generally DEAN CYCON, JAVATREKKER: DISPATCHES FROM THE WORLD OF FAIR TRADE COFFEE (2007) (discussing the Fair Trade coffee industry).

Second, Fair Trade eliminates or reduces the number of intermediaries.⁶³ Consumers can visit a company's website for information about how much is paid to each party in the supply chain from the producer to the retailer. This matters, but it is suggested that the number of intermediaries is not as crucial to the consumer as is the information about how much of the purchase price is actually paid to the producer.⁶⁴

Third, Fair Trade emphasizes long-term working relationships between producers and buyers.⁶⁵ Long-term relationships provide stability for workers and help maintain communities and families. Traders that use the FLO label must use long-term contracts for their purchases from farmers.⁶⁶ It is challenging for a consumer to find this information unless the seller reveals it in an accessible place such as the Internet, yet this is important information in light of labor abuses around the world.⁶⁷

Fourth, Fair Trade goods are often produced by worker-owned cooperatives or collectives.⁶⁸ The collectives and cooperatives distribute social premiums in addition to Fair Trade prices for their product.⁶⁹ They decide how to use the funds in their communities for projects to meet community needs for infrastructure, health care, education, or similar endeavors.⁷⁰ A consumer should seek information about similar funding provided to producers beyond the price of goods or wages.

⁶³ See ALEX NICHOLLS & CHARLOTTE OPAL, FAIR TRADE: MARKET-DRIVEN ETHICAL CONSUMPTION 6–7 (2005).

⁶⁴ For discussion of Fair Trade coffee prices, the price paid for coffee sold to buyers on the street, and one company's Direct Trade pricing, see *infra* notes 163–68.

⁶⁵ DAVID RANSOM, NO-NONSENSE GUIDE TO FAIR TRADE 25 (New ed. 2006).

⁶⁶ Laura T. Reynolds & Michael A. Long, *Fair Alternative Trade: Historical and Empirical Dimensions*, in FAIR TRADE: THE CHALLENGES OF TRANSFORMING GLOBALIZATION 15, 19 (Laura T. Reynolds et al. eds., 2007).

⁶⁷ For discussion of how concerns about child labor abuses in China came to the public's attention in the months leading up to the 2008 Summer Olympics, see David Barboza, *China Says Abusive Child Labor Ring is Exposed*, N.Y. TIMES, May 1, 2008, available at http://www.nytimes.com/2008/05/01/world/asia/01china.html?ref=childlabor&_r=3&. For discussion of U.S. plans to file a complaint against Guatemala for labor abuses under the Dominican Republic–Central American Free Trade Agreement (DR–CAFTA), see Sewell Chan, *U.S. Plans Trade Complaint Against Guatemala*, N.Y. TIMES, July 30, 2010, available at http://www.nytimes.com/2010/07/31/business/global/31trade.html?_r=0.

⁶⁸ NICHOLLS & OPAL, *supra* note 63, at 34–35.

⁶⁹ *Id.*

⁷⁰ FLO has increased the premium for Fair Trade coffee over time. See *Not Just Nickel and Diming: The Social Premium Makes Fair Trade Different*, FAIR TRADE USA (Mar. 21, 2007, 10:16 PM), <http://fairtradeusa.org/get-involved/blog/not-just-nickel-and-diming-social-premium-makes-fair-trade-different>. In 2007, FLO raised it from \$0.05 to \$0.10 per pound. *Id.* As of November 2011, the premium was \$0.20 per pound. FAIRTRADE LABELLING ORGS. INT'L, FAIRTRADE MINIMUM PRICE AND FAIRTRADE PREMIUM TABLE 2–3 (Nov. 21,

Fifth, Fair Trade certifiers typically guarantee workers the right to collectively organize and form trade unions.⁷¹ FLO ties this to International Labor Organization (“ILO”) conventions on freedom of association.⁷² Additionally, Fair Trade emphasizes safe and fair working conditions.⁷³ FLO’s certification requires “adherence to [ILO] conventions related to . . . freedom from discrimination [and] minimum work, occupational health and safety conditions.”⁷⁴ This criterion is difficult for consumers to investigate.

Sixth, Fair Trade prohibits inappropriate use of child labor.⁷⁵ Again, FLO ties this to ILO conventions.⁷⁶ Fair Trade advocates acknowledge, however, that some child labor may be appropriate in the workplace, such as when a child assists his or her parents in a family business after school.⁷⁷

Seventh, Fair Trade sets out norms of “‘fairness’ by requiring that benefits be shared democratically.”⁷⁸ One mechanism is the required payment of social premiums to producers’ organizations; these payments are in addition to the price paid for the goods.⁷⁹ FLO requires that small producers form associations such as cooperatives, and these associations determine how the premiums are to be used.⁸⁰ For example, the social premium for coffee is typically twenty cents per pound and goes to local development projects such as schools, health centers, and roads.⁸¹ In fact, some go beyond the requirements of Fair Trade certifiers by paying increased social premiums and raising funds for major needs such as water treatment and schools.⁸²

2011), available at http://www.fairtrade.net/fileadmin/user_upload/content/2009/standards/documents/2011-11-21_EN_Fairtrade_Minimum_Price_and_Premium_table.pdf.

⁷¹ RANSOM, *supra* note 65, at 24–25.

⁷² Raynolds & Long, *supra* note 66, at 19.

⁷³ RANSOM, *supra* note 65, at 25.

⁷⁴ Raynolds & Long, *supra* note 66, at 19.

⁷⁵ RANSOM, *supra* note 65, at 25.

⁷⁶ Raynolds & Long, *supra* note 66, at 19.

⁷⁷ The children of Fair Trade producers in Nicaragua often work within the family business after school. Fair Trade prices enable parents to keep their children in school. Extra income allows families to buy books and uniforms and pay fees charged by public schools. See Interview with Francisca Caña, Producer of Fair Trade Ceramics, in San Juan de Oriente, Nicar. (Sept. 25, 2007) (on file with author); Interview with Yamileth Pérez, Director of Artisan Program, Esperanza en Acción, in Estelí, Nicar. (Sept. 28, 2007) (on file with author).

⁷⁸ Raynolds & Long, *supra* note 66, at 19.

⁷⁹ RANSOM, *supra* note 65, at 25.

⁸⁰ Raynolds & Long, *supra* note 66, at 19.

⁸¹ The premium is greater if the product is both Fair Trade and organic certified. FAIRTRADE MINIMUM PRICE AND FAIRTRADE PREMIUM TABLE, *supra* note 70, at III. For discussion of increases in the coffee Fair Trade premium, see *supra* note 70.

⁸² For a discussion of the contributions of Higher Grounds and Dean’s Beans, both of which are Fair Trade coffee roasters, see Part II.D.

Eighth, Fair Trade facilitates access to credit for producers. Small producers in developing countries suffer because credit is either unavailable or available only at high interest rates.⁸³ In Fair Trade agriculture, “importers generally have much easier access to credit than do developing country producers, [and] importers are required to pre-finance up to 60 per cent [sic] of the total purchase of seasonal crops.”⁸⁴ In addition, some Fair Trade organizations offer small loans to their producers at little or no interest.⁸⁵ For example, in 2009, the Fair Trade organization Esperanza en Acción, based in Managua, Nicaragua, began to grant micro-loans at no interest to assist its artisan groups.⁸⁶

Ninth, Fair Trade emphasizes transparency.⁸⁷ A consumer can choose to buy from a seller that reveals extensive information about its practices including sourcing, working conditions, and how each and every penny received from the consumer is distributed to those in the supply chain.

Note that many of these criteria depend on information that many Fair Trade-based companies reveal on their websites.⁸⁸ These include information about social premiums, sourcing and payments to each member of the supply chain, and credit arrangements.⁸⁹ If a consumer cannot find this information for a company that labels itself with the term Fair Trade, Direct Trade, or something similar, he or she might be advised to avoid purchasing from this company. A lack of transparency may indicate that the company is using “Fair Trade” as a marketing tool, rather than an indication of authentic commitment to the goals and practices of Fair Trade.

In the end, a consumer’s ability to find this information will be facilitated or thwarted by the transparency, or lack thereof, of all parties in the supply chain. This kind of investigation takes effort on the part of the consumer, but it can be made less cumbersome through use of labeling, websites, and even quick response (“QR”) codes facilitating connections

⁸³ NICHOLLS & OPAL, *supra* note 63, at 19.

⁸⁴ *Id.* at 7.

⁸⁵ *Id.*

⁸⁶ Letter from Emily Hewes, Exec. Dir., Esperanza en Acción, Managua, Nicar., to Paulette L. Stenzel (Sept. 10, 2009) (on file with author). For in-depth study of the growth of the microfinance movement, see MARIO LA TORRE & GIANFRANCO A. VENTO, MICROFINANCE (2006); MARGUERITE S. ROBINSON, THE MICROFINANCE REVOLUTION: SUSTAINABLE FINANCE FOR THE POOR (2001); MUHAMMAD YUNUS, BANKER TO THE POOR: THE AUTOBIOGRAPHY OF MUHAMMAD YUNUS, FOUNDER OF THE GRAAMEEN BANK (1998).

⁸⁷ DECARLO, *supra* note 27, at 53.

⁸⁸ See, e.g., *Vineyard Partner*, THE FAIR TRADE WINE CO., <http://Thefairtradewinecompany.com/vineyard-partner> (last visited Apr. 9, 2013).

⁸⁹ *Id.*

to materials available on a website.⁹⁰ But, it would be a daunting task for even the most diligent consumer to seek information related to each of these characteristics of Fair Trade for each product he or she buys. Inevitably, a lot depends on trust. Therefore, later this Article discusses how trust and direct connections, whether local or across the globe, can facilitate decision-making by purchasers of goods whether they carry the words “Fair Trade” or some other label.⁹¹

D. *Fair Trade Promotes Sustainability*

On the other hand, most consumers prefer something more efficient than the set of inquiries outlined above. It is much easier to look for Fair Trade certification or the words “Fair Trade” than to delve for information about each product and seller.⁹² Most people do not have the time to make such an inquiry for each purchase.⁹³ Moreover, few sellers are so transparent that the information related to the nine criteria listed above would be easily accessed by a consumer. Thus, Fair Trade certification programs play an important role for those who wish to “vote with their dollars” each time they make a purchase.

1. Fair Trade as a Tool to Promote Sustainability

An underlying premise of this Article is that Fair Trade is a valuable tool to promote sustainability. Therefore, it is important to define sustainability, explain how sustainable action can be identified, and explain how Fair Trade illustrates such action.

2. What Is Sustainability?

A twenty-first century discussion of sustainability coincides with the centuries-old teachings of indigenous people of the Western Hemisphere.⁹⁴

⁹⁰ Stephanie Rosenbloom, *Want More Information? Just Scan Me*, N.Y. TIMES, Sept. 21, 2011, http://www.nytimes.com/2011/09/22/fashion/qr-codes-provide-information-when-scanned.html?_r=0; see *infra* notes 425–27 describing how QR codes are useful to trace the supply chain of Fair Trade goods or any goods.

⁹¹ See Part IV.F.

⁹² *Certifying Fairtrade*, FAIRTRADE INT’L, http://www.fairtrade.net/certifying_fairtrade.html (last visited Apr. 9, 2013).

⁹³ *Id.*

⁹⁴ THE CONSTITUTION OF THE IROQUOIS NATIONS: THE GREAT BINDING LAW, GAYANASHAGOWA, art. 28, available at <http://www.indigenouspeople.net/iroqcon.htm> (last visited Apr. 9, 2013).

The Great Law of the Iroquois states, “[L]ook and listen for the welfare of the whole people and have always in view not only the present but also the coming generations, even those whose faces are yet beneath the surface of the ground—the unborn of the future Nation.”⁹⁵

One of the most widely accepted definitions of sustainability was developed by the United Nations’s World Commission on Environment and Development, and published in *Our Common Future* in 1987, where it reaffirms the long-term perspective.⁹⁶ The Commission defined sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”⁹⁷ Many businesses and governmental organizations use this definition. For example, President Clinton’s Council on Sustainable Development used it in its 1996 report entitled “Sustainable America: A New Consensus for Prosperity, Opportunity, and a Healthy Environment for the Future.”⁹⁸

3. The Triple Bottom Line

The World Commission’s definition of sustainability gives a starting point for discussion, but it does not provide specific metrics to guide daily actions by businesses and help observers identify sustainable business activities.⁹⁹ Therefore, business managers and law makers have worked to identify the objectives of sustainability and articulate criteria that will help them identify actions that promote those objectives.¹⁰⁰

The “Great Law of the Iroquois” can be paraphrased as follows: in all decisions, the impact of that choice on the next seven generations must be considered. *Id.*

⁹⁵ *Id.*; see, e.g., *Executive Summary, Seven Generations Sustainability Plan*, ARNERICH MASSENA, INC., available at <http://www.am-a.com/company/sustainability/sustainability.pdf> (last visited Apr. 9, 2013) (this version of the Great Law appears on the cover page of the company’s sustainability plan).

⁹⁶ See U.N. Rep. of the World Commission on Environment and Development: *Our Common Future*, U.N. Doc A/42/427, at 8 (1987).

⁹⁷ *Id.* at 41.

⁹⁸ President’s Council on Sustainable Development (“PCSD”), *Sustainable America: A New Consensus for Prosperity, Opportunity, and a Healthy Environment for the Future* 12–13 (1996); see also Molly Olson Harriss, *Charting a Course for Sustainability*, 38 ENVT 10, 10 (1996) (discussing the PCSD report).

⁹⁹ See U.N. Rep. of the World Commission on Environment and Development: *Our Common Future*, *supra* note 96.

¹⁰⁰ For a more in-depth discussion of the concept of sustainability, the Triple Bottom Line, and the Global Reporting Initiative, see Paulette L. Stenzel, *The Pursuit of Equilibrium as the Eagle Meets the Condor: Supporting Sustainable Development Through Fair Trade*, 49 AM. BUS. L.J. 557, 589–96 (2012). See also ANDREW W. SAVITZ & KARL WEBER, *THE TRIPLE BOTTOM LINE: HOW TODAY’S BEST-RUN COMPANIES ARE ACHIEVING ECONOMIC, SOCIAL AND ENVIRONMENTAL SUCCESS—AND HOW YOU CAN TOO* 21-39 (2006).

As they discuss sustainability, business managers and lawmakers are embracing the perspective of the Triple Bottom Line that includes economy, social equity, and environment.¹⁰¹ Businesses are realizing that sustainability involves the pursuit of long term viability, and that approach pushes them beyond a focus on traditional profit and loss statements.¹⁰²

Working with the United Nations Environment Programme (“UNEP”),¹⁰³ a Boston-based non-profit organization called the Coalition for Environmentally Responsible Economies (“CERES”)¹⁰⁴ developed a program called the “Global Reporting Initiative” (“GRI”).¹⁰⁵ The GRI program has become a benchmark around the world for measuring, monitoring, and reporting corporate sustainability efforts.¹⁰⁶ Its reporting principles are used to produce a Triple Bottom Line report.¹⁰⁷ The organization has also issued a series of over 140 indicators used to measure and evaluate performance.¹⁰⁸ The metrics of the GRI cover all three legs of the Triple

¹⁰¹ Some writers speak of a fourth bottom line. *See, e.g.*, JON HAWKES, CULTURAL DEVELOPMENT NETWORK VICTORIA, THE FOURTH PILLAR OF SUSTAINABILITY: CULTURE’S ESSENTIAL ROLE IN PUBLIC PLANNING (2001), available at <http://burgosciudad21.org/adftp/Jon%20Hawkes%20-%20Fourth%20Pillar%20of%20Sustainability.pdf> (arguing that culture should be a fourth category and that “a sustainable society depends upon a sustainable culture. If a society’s culture disintegrates, so will everything else”). SOUTHERN AFRICAN FAITH COMMUNITIES’ ENVIRONMENT INSTITUTE (May 4, 2012), <http://safcei.org/introducing-a-4th-pillar-of-sustainable-development/> (explaining that other scholars assert that spirituality is a fourth leg and an important component of sustainability because it provides moral and ethical perspectives).

¹⁰² SAVITZ & WEBER, *supra* note 100, at 14-17.

¹⁰³ For information about UNEP, see U.N. ENV’T PROGRAMME, <http://www.unep.org/> (last visited Apr. 9, 2013).

¹⁰⁴ Founded in 1989, CERES is a network of investors, public interest groups, and environmental organizations whose mission is to integrate “sustainability into capital markets for the health of the planet and its people.” *About Us*, CERES, <http://www.ceres.org/about-us> (last visited Apr. 9, 2013).

¹⁰⁵ *What is GRI?*, GLOBAL REPORTING INITIATIVE, <http://www.globalreporting.org/information/about-gri/what-is-GRI/pages/default.aspx> (last visited Apr. 9, 2013).

¹⁰⁶ The concept for the GRI started in 1997 with the Boston-based non-profit the Coalition for Environmentally Responsible Economies (“CERES”). The CERES Principles, <http://www.gdrc.org/sustbiz/ceres-principles.html> (last visited Apr. 9, 2013). The GRI’s first Sustainable Reporting Guidelines were released in 2000. *History*, GLOBAL REPORTING INITIATIVE, *supra* note 105. Since that time, the GRI guidelines have gone through into second and third versions based on the feedback of companies using the guidelines. *Id.* As of 2006, the organization began its “G3” guidelines. *Id.* SAVITZ & WEBER, *supra* note 100, at 210-11.

¹⁰⁷ *G3 Guidelines*, GLOBAL REPORTING INITIATIVE, <http://www.globalreporting.org/Reporting/latest-guidelines/g3-guidelines/pages/default.aspx> (last visited Apr. 9, 2013).

¹⁰⁸ *Id.*

Bottom Line.¹⁰⁹ Economic measurements under the GRI cover, for example, sales, profits, return on investment, taxes paid, monetary flows, and jobs created.¹¹⁰ The social equity leg is measured by looking at criteria such as labor practices, community impacts, human rights, and product responsibility.¹¹¹ The environmental leg is evaluated according to criteria including air quality, water quality, energy used, and waste produced.¹¹²

The system is modeled after Generally Accepted Accounting Principles (“GAAP”), which were established as a way of codifying, simplifying, and unifying disparate and occasionally conflicting accounting methodologies.¹¹³ “The GRI guidelines help an organization manage its overall impact on the [Triple Bottom Line], as it can improve the quality and transparency of sustainability reporting and provide a reasonable and balanced presentation of performance.”¹¹⁴

4. Fair Trade Promotes the Three Legs of the Triple Bottom Line

John Bowes, formerly a leading manager of the Co-op, a major Fair Trade retailer in the UK, points out that to meet Fair Trade standards, “Producers . . . have to demonstrate that they are adhering to specific economic, environmental and social standards.”¹¹⁵ Without specific reference to the phrase “Triple Bottom Line,” he is nonetheless referring directly to its three legs.¹¹⁶

E. Fair Trade’s Progression Across the World

Fair Trade is spreading across the world.¹¹⁷ One leader in the Fair Trade movement estimates that currently more than seven million people in the developing world benefit from it.¹¹⁸

¹⁰⁹ *Id.*

¹¹⁰ SAVITZ & WEBER, *supra* note 100, at 214.

¹¹¹ *Id.*

¹¹² *Id.* at 213.

¹¹³ *Id.* at 212.

¹¹⁴ Dennis M. Gawlik, *A Common Language*, INSIDE SUPPLY CHAIN MANAGEMENT 34, 35 (June 2009).

¹¹⁵ Bowes, *supra* note 3, at 6.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 2.

1. Europe and Great Britain

In Europe, the Fair Trade movement began post–World War II through the efforts of church-based organizations called Alternative Trading Organizations (“ATOs”).¹¹⁹ Leaders in Europe included the Sales Exchange for Refugee Rehabilitation and Vocation (“SERRV”) and Oxfam.¹²⁰ They focused on “social justice and equity in commercial relations.”¹²¹ The groups purchased products, most of which were handicrafts, from low-income producers in war-torn Eastern Europe and developing nations, and sold them directly to consumers.¹²²

Gradually, the Fair Trade movement shifted its emphasis on recovery from war to efforts geared toward alleviating poverty in underdeveloped countries.¹²³ In their early days, ATOs established World Shops throughout Europe.¹²⁴ The shops eliminated intermediaries, giving consumers reassurance that a greater portion of the prices paid for goods would go to producers as compared to conventional sales.¹²⁵ World Shops were designed to help remedy inequitable distribution of wealth and opportunity under the prevailing world trade system.¹²⁶ Additionally, the World Shops’ efforts focused on reducing the gap between Northern Hemisphere consumers and southern producers.¹²⁷ For example, Twin Trading promoted cooperative

¹¹⁹ Mary A. Littrell & Marsha A. Dickson, *Alternative Trading Organizations: Shifting Paradigm in a Culture of Social Responsibility*, 56 HUMAN ORG. 344, 344 (1997). This reflects that Fair Trade was called “alternative trade” in its early days. See Marlike Kocken, *Sixty Years of Fair Trade, A Brief History of the Fair Trade Movement*, EUR. FAIR TRADE ASS’N 2 (Nov. 2006), available at <http://www.european-fair-trade-association.org/efta/Doc/History.pdf>.

¹²⁰ See Alicia Morris Groos, *International Trade and Development: Exploring the Impact of Fair Trade Organizations in the Global Economy and the Law*, 34 TEX. INT’L L.J. 379, 392 (1999) (describing the histories of SERRV and Oxfam).

¹²¹ Douglas L. Murray & Laura T. Reynolds, *Globalization and Its Antinomies: Negotiating a Fair Trade Movement*, in FAIR TRADE: THE CHALLENGES OF TRANSFORMING GLOBALIZATION, *supra* note 66, at 3, 7.

¹²² Reynolds & Long, *supra* note 66, at 16.

¹²³ *Id.*

¹²⁴ “World Shops” is a European label for Fair Trade shops. See MILES LITVINOFF & JOHN MADELEY, 50 REASONS TO BUY FAIR TRADE 43 (2007).

¹²⁵ Murray & Reynolds, *supra* note 121, at 7. The authors refer to “Third World” nations; however, the preference in this article is to use the phrase “developing nations.” See *id.*

¹²⁶ Stephanie Barrientos et al., *Northern Social Movements and Fair Trade*, in FAIR TRADE: THE CHALLENGES OF TRANSFORMING GLOBALIZATION 51, 52 (Laura T. Reynolds et al. eds., 2007).

¹²⁷ According to international relations theorists, the North-South conflict pits “the ‘have’ nations, often called the ‘North,’ because most developed countries are located in the northern hemisphere, against the ‘have not’ nations, many of which are clustered in the southern

relationships between the North and South¹²⁸ by connecting UK consumers with producers in Vietnam, Cuba, Nicaragua, and Mozambique.¹²⁹

Today, Fair Trade is moving into the everyday lives of consumers in the EU.¹³⁰ The Commission of the European Communities states in a 2009 report entitled, "Contributing to Sustainable Development: The Role of Fair Trade and Nongovernmental Trade-Related Sustainability Assurance Schemes," that Fair Trade enjoys a high level of customer recognition and a significant presence in much of the EU market.¹³¹ This is especially true in the UK, where it is reported that seven in ten households purchase Fair Trade goods.¹³²

2. The United States

Paralleling developments in Europe and the UK, the Fair Trade movement in the United States also began post–World War II.¹³³ The Mennonites and the Church of the Brethren, churches known for their work toward peace, began importing crafts from refugees, producers in developing countries, and low-income people in depressed communities through their respective ATOs. The Brethren worked through SERRV, and the Mennonites worked through SELFHELP: Crafts of the World, an organization now known as Ten Thousand Villages.¹³⁴ In their early days, both sold goods through churches, holiday fairs, and not-for-profit stores called Third World Shops.¹³⁵ Currently Ten Thousand Villages is a major

half of the globe." WILLIAM A. JOSEPH ET AL., INTRODUCTION TO POLITICS OF THE DEVELOPING WORLD 4 (2007). Connections between northern consumers and southern producers established through Fair Trade help reduce tensions between the North and South. *Id.*
¹²⁸ Barrientos et al., *supra* note 126, at 53; *see also* TWIN TRADING, <http://www.twin.org.uk/trading> (last visited Apr. 9, 2013) ("The trading arm of Twin, we've been creating market access for smallholder farmer organisations in the global south for over 25 years.").

¹²⁹ Barrientos et al., *supra* note 126, at 53.

¹³⁰ Commission of the European Communities, *Contributing to Sustainable Development: The Role of Fair Trade and Nongovernmental Trade-related Sustainability Assurance Schemes* (May 5, 2009), available at http://trade.ec.europa.eu/doclib/docs/2009/may/tradoc_143089.pdf.

¹³¹ *Id.*

¹³² Harriet Lamb, *The Impact of Fair Trade*, in THE FAIR TRADE REVOLUTION 21, 35 (John Bowes ed., 2011); *see also* Fairtrade Foundation Statement on Banana Price Wars, FAIR-TRADE FOUND. (Oct. 8, 2009), http://www.fairtrade.org.uk/press_office/press_releases_and_statements/october_2009/fairtrade_foundation_statement_on_banana_price_wars.aspx.

¹³³ Barrientos et al., *supra* note 126, at 51, 55.

¹³⁴ *Id.*; *see also* Our History, TEN THOUSAND VILLAGES, <http://www.tenthousandvillages.com/php/about.us/about.history.php> (last visited Apr. 9, 2013).

¹³⁵ Jonathan Rosenthal, *The Greatest Challenge*, in THE FAIR TRADE REVOLUTION 158, 159 (John Bowes ed., 2010).

force in Fair Trade retailing in the United States, selling goods through a network of Ten Thousand Villages retail stores, hundreds of “Alliance stores,” and short-term events called “Festival Sales.”¹³⁶

In the 1980s, groups such as Equal Exchange and Friends of the World joined the movement as a way to show their political solidarity with cooperatives and social movements.¹³⁷ Some were non-profits, as were the earlier ATOs.¹³⁸ Friends of the World created a division called Coop Trading and began to import what they called “ethical” coffee to the U.S. for the first time.¹³⁹ Equal Exchange was the first for-profit ATO, selling Fair Trade coffee and other foods.¹⁴⁰ Its focus was highly political, thus differing from the earlier faith-based initiatives.¹⁴¹

Gradually, a network evolved, leading to the North American trade association called Fair Trade Federation (“FTF”).¹⁴² And, in 1999, the FTF’s educational division was moved to a separate nonprofit organization called the Fair Trade Resource Network (“FTRN”).¹⁴³ To this day, it is the world’s only Fair Trade non-profit that is exclusively devoted to Fair Trade education.¹⁴⁴

3. Other Countries

Today, Fair Trade has spread throughout the world. In Latin America, the Bolivian Alliance for Peoples of the Americas (“ALBA”) was formed in reaction to the proposed Free Trade Area of the Americas.¹⁴⁵ The Alliance currently includes Antigua, Barbados, Bolivia, Cuba, the Dominican Republic, Ecuador, and Nicaragua.¹⁴⁶ ALBA is committed to food security and Fair Trade (called *Comercio Justo* in Spanish).¹⁴⁷

¹³⁶ See *Store Locator*, TEN THOUSAND VILLAGES, <https://admin.tenthousandvillages.com/index.php/storelocator/> (last visited Apr. 9, 2013).

¹³⁷ Rosenthal, *supra* note 135.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Rosenthal, *supra* note 135.

¹⁴² For discussion of the work of the Fair Trade Federation, see *supra* notes 40–44.

¹⁴³ *About*, FAIR TRADE RESOURCE NETWORK, <http://www.fairtraderesource.org/about-2/> (last visited Apr. 9, 2013).

¹⁴⁴ *Id.*

¹⁴⁵ *Bolivarian Alliance for the Peoples of Our America (“ALBA”)*, BRITANNICA ONLINE ENCYCLOPEDIA, <http://www.britannica.com/EBchecked/topic/1271045/Bolivarian-Alliance-for-the-Peoples-of-Our-America-ALBA> (last visited Apr. 9, 2013).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

The Fair Trade movement has been spreading throughout the world with increased sales volume and numbers of producers.¹⁴⁸ Currently, FLO certifies 827 Fair Trade producers in fifty-eight different countries, representing 1.2 million farmers and workers.¹⁴⁹ Fair Trade certification has expanded from its origins working with coffee producers in Latin America to include programs certifying products from around the globe.¹⁵⁰ FLO now certifies products made in Ghana, the Democratic Republic of the Congo, Madagascar, China, India, Kazakhstan, Indonesia and many others.¹⁵¹ These producers are linked through three producer networks based on region: Fair Trade Latin America and the Caribbean (“CLAC”),¹⁵² Fair Trade Africa¹⁵³ and the Network of Asian and Pacific Producers (“NAPP”).¹⁵⁴

II. MAINSTREAMING OF FAIR TRADE AND SPLINTERING OF THE FAIR TRADE MOVEMENT

In recent years, Fair Trade products have started to move into mainstream commerce.¹⁵⁵ In connection with this movement, much dissent has arisen regarding the purpose of Fair Trade and the terms under which mainstreaming is or would be desirable.¹⁵⁶ The tensions and divisions

¹⁴⁸ William H. Friedland & Anna Hutchens, *Changing Big Business: The Globalisation of the Fair Trade Movement*, J. AGRIC. ENVTL. ETHICS (2011). This is a review of a book about the globalization of Fair Trade. *See id.* The book focuses on the developing crisis within Fair Trade globalization resulting from the conflicting goals of producers, consumers, and Fair Trade certifiers. *See id.*

¹⁴⁹ *Facts and Figures*, FAIRTRADE INT'L (FLO), http://www.fairtrade.net/facts_and_figures.html (last visited Apr. 9, 2013).

¹⁵⁰ *About Fair Trade, Fair Trade and You*, FAIRTRADE INT'L (FLO), http://www.fairtrade.net/fairtrade_near_you.html (last visited Apr. 9, 2013).

¹⁵¹ *Id.*

¹⁵² Coordinadora Latinoamericana y del Caribe de Comercio Justo (“CLAC”), *Producer Networks*, FAIRTRADE INT'L, <http://www.fairtrade.net/clac.html> (last visited Apr. 9, 2013). CLAC was officially registered in 2004.

¹⁵³ Fairtrade Africa, *Producer Networks*, FAIRTRADE INT'L, <http://www.fairtrade.net/afn.html> (last visited Apr. 9, 2013). By May 2011, Fair Trade Africa had over 260 certified producer organizations in 26 different countries located in the Middle East and Africa. *Id.*

¹⁵⁴ Network of Asian and Pacific Producers (“NAPP”), *Producer Networks*, FAIRTRADE INT'L, <http://www.fairtrade.net/nap.html> (last visited Apr. 9, 2013). NAPP was registered in 2005 and currently has ninety-six producers.

¹⁵⁵ William Neuman, *A Question of Fairness*, N.Y. TIMES (Nov. 24, 2011), <http://www.nytimes.com/2011/11/24/business/as-fair-trade-movement-grows-a-dispute-over-its-direction.html> (identifying several major U.S. companies which sell Fair Trade items, such as Starbucks and Walmart).

¹⁵⁶ *Id.*

came to the attention of the U.S. public in September 2011, when Fair Trade USA announced that it would end its affiliation with FLO as of December 31, 2011.¹⁵⁷ Therefore, this section will discuss reasons why companies have entered the Fair Trade market in the past and why they are doing so today. It will also discuss current tensions and divides within the movement and why a proliferation of labels and certifications is challenging for members of the public.

A. *Differing Reasons Why Companies Enter the Fair Trade Market*

Companies enter Fair Trade for various reasons. Originally, Fair Trade market entry was mission-based with a focus on giving a hand up to small producers.¹⁵⁸ Many Fair Trade sellers maintain that commitment, but a new form of Fair Trade has arisen that is market-driven.¹⁵⁹

1. Mission-Driven Origins

Fair Trade was initially developed as a way to help impoverished producers of coffee and handicrafts.¹⁶⁰ A small number of mission-driven activists worked to create a new trading model.¹⁶¹ That new model would give small farmers improved access to markets as well as a fair price for their products.¹⁶² The program focused on self-development of producers, to enable them to protect themselves from exploitation.¹⁶³

2. Fair Trade and Businesses with Similar Missions Purchased by Conventional Businesses

Some mainstreaming is being accomplished through acquisitions of Fair Trade companies by major conventional businesses. There is the potential for a conflict of interest between the ethically based company and the acquiring conventional company. For example, in 2008, the Coca-Cola

¹⁵⁷ *Id.*; see also Press Release, Fair Trade USA, Fair Trade USA Resigns Fairtrade International (FLO) Membership (Sept. 15, 2011), available at http://www.fairtradeusa.org/press-room/press_release/fair-trade-usa-resigns-fairtrade-international-flo-membership.

¹⁵⁸ See Neuman, *supra* note 155.

¹⁵⁹ *Id.*

¹⁶⁰ Bowes, *supra* note 3, at 3–4.

¹⁶¹ *Id.* at 4.

¹⁶² *Id.* at 5–6.

¹⁶³ Rudi Dalvai, *The Metamorphosis of Fair Trade*, FOR A BETTER WORLD (2012), <http://fairworldproject.org/voices-of-fair-trade/metamorphosis-of-the-fair-trade-movement/>.

Company (“Coke”) purchased a forty percent share in the Honest Tea Company, which sells only organic ingredients.¹⁶⁴ Coke acquired the remaining shares in the company in 2011, although it is reported that the founder, Seth Goldman, bought back a significant part of that interest.¹⁶⁵ Coke reports that it has kept Honest Tea’s high ethical standards.¹⁶⁶ Nevertheless, these companies’ philosophies result in drastically different public stances on important issues.¹⁶⁷ For example in 2012, California voters considered Proposition 37, which would have required retailers and food companies to label all products made with genetically modified ingredients.¹⁶⁸ The proposition was defeated.¹⁶⁹ Major food companies including Monsanto, The Hershey Company, and Coke contributed millions in an effort to defeat Proposition 37.¹⁷⁰ Thus, Coke was opposing legislation that would require transparency with regard to GMOs. Many of Honest Tea’s customers were upset with Coke for this opposition to a proposition that would have merely given the public information about the content of their product.¹⁷¹ This conflict of values illustrates the hazards involved when a conventional business acquires a company committed to values of Fair Trade, organics, or both.

3. Major Corporations Add Fair Trade to Their Product Lines

In recent years, major corporations are moving Fair Trade into the mainstream by adding one or more Fair Trade products to their existing offerings.¹⁷² Products include major commodities such as cocoa, chocolate, and coffee.¹⁷³ This mainstream is driven by the “ethical demands” of consumers and has been accompanied by increased emphasis on certification programs.¹⁷⁴ The certification programs focus on guarantees to

¹⁶⁴ *How Honest Tea Has Kept its Corporate Soul*, CNN MONEY (Sept. 17, 2012), <http://management.fortune.cnn.com/2012/09/17/honest-tea-coke-seth-goldman/>.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* (asserting that Honest Tea’s philosophy rubbed off on Coke, and the company recently converted several bottling plants to meet organic certification).

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Anna Almendrala, *Prop 37 Defeated: California Voters Reject Mandatory GMO-Labeling*, THE HUFFINGTON POST (Nov. 11, 2012), http://www.huffingtonpost.com/2012/11/07/prop-37-defeated-californ_n_2088402.html.

¹⁷⁰ *Id.*

¹⁷¹ *How Honest Tea Has Kept its Corporate Soul*, *supra* note 164.

¹⁷² *See* Bowes, *supra* note 3, at 8–12.

¹⁷³ *Id.* at 10.

¹⁷⁴ *Id.* at 8–12.

consumers that workers are not exploited during cultivation or production processes.¹⁷⁵ This is a shift away from the mission-based Fair Traders who continue to partner with and work to help marginalize small producers.¹⁷⁶

a. Chocolate and Cocoa

The cocoa and chocolate markets are particularly important to Fair Trade advocates because of the long history of abuse of child labor and slave-like conditions in African countries, especially in the Ivory Coast, the world's largest supplier of cocoa.¹⁷⁷ Fair Trade pricing in cocoa markets is also highly significant because the cocoa market is historically known for its volatility in pricing.¹⁷⁸

Cadbury, a company known for its commitment to corporate social responsibility ("CSR"), announced in 2009 that it was going to move to Fair Trade sourcing for Dairy Milk, the most popular chocolate bar in Britain.¹⁷⁹ In the Fair Trade movement, Cadbury's decision was viewed as bringing something to the movement rather than taking a "free-ride" for the sake of its own image.¹⁸⁰ This was a major step in light of the fact that Fair Trade chocolate was viewed as being fixed on small, premium brands such as Green & Black's.¹⁸¹ Cadbury is a leader in mainstreaming because it has dealt with complex concerns about meeting consumers' tastes, providing value, and dealing with the need for volume.¹⁸² To meet its concerns, especially those related to supply chain sustainability, Cadbury entered the Cadbury Cocoa Partnership.¹⁸³ The partnership focuses on cocoa farmers,

¹⁷⁵ *Id.* at 8.

¹⁷⁶ *Id.*

¹⁷⁷ Interestingly, 2012 pricing for cocoa was more stable than the norm. In 2012, prices did not increase more than eight percent, nor did they decrease more than four percent in any one month of 2012. This compares to prices over the past ten years during which it was common for prices to increase as much as thirty percent in one month and then fall twenty percent soon thereafter. Emiko Terazono, *Cocoa Prices Break Mould of Volatility*, FIN. TIMES (Nov. 26, 2012), <http://www.ft.com/intl/cms/s/0/823d215c-37c5-11e2-a97e-00144feabdc0.html#axzz2DN0muato>.

¹⁷⁸ *Id.*

¹⁷⁹ David Croft & Alex Cole, *A Glass and a Half Full—How Cadbury Embraced Fairtrade*, in *THE FAIR TRADE REVOLUTION* 107, 108 (John Bowes ed., 2011).

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.* at 108–09; Oliver Nieburg, *Hershey Stuns Critics with Commitment to Source 100% Certified Cocoa by 2020*, CONFECTIONARY NEWS (Oct. 4, 2012), <http://www.confectionerynews.com/Markets/Hershey-stuns-critics-with-commitment-to-source-100-certified-cocoa-by-2020>.

¹⁸³ Croft & Cole, *supra* note 179, at 109.

working to reduce poverty rates, reduce social inequity, and give farmers improved market access.¹⁸⁴ This project carried Fair Trade further into mainstream business when the even larger multinational company, Kraft, acquired Cadbury in 2010.¹⁸⁵ David Croft, director of Conformance and Sustainability for Cadbury, and Alex Cole, former Corporate Responsibility Director for Cadbury, describe this takeover as swift and successful. Part of this integration included Kraft's decision to integrate its existing work with the Rainforest Alliance with Cadbury.¹⁸⁶

On the other hand, this integration should be watched carefully. At least one report reveals problems.¹⁸⁷ About twenty executives from functions including supply chain, sales, legal, and finance have resigned since the integration began, including their CEO, CFO, and Chairman.¹⁸⁸ Observers note that business decisions are taking up to a month instead of two or three days, creating inefficient operations.¹⁸⁹

Other chocolate companies have joined the movement. In the UK and Ireland, Nestlé began using Fair Trade cocoa in four-finger KitKats as of January 2010.¹⁹⁰ Whatever Nestlé's motivation might be, this has the potential to improve the lives of at least some small cocoa farmers.¹⁹¹ Nestlé purchases about ten percent of the world's cocoa, one-third of which it gets from the Ivory Coast.¹⁹² The Fair Labor Association studied Nestlé's practices and concluded that it needs to make greater efforts to avoid use of child labor in the Ivory Coast, because about eighty percent of the cocoa it gets from that country comes from a standard supply chain which lacks transparency.¹⁹³

¹⁸⁴ For further discussion of the Cadbury Cocoa Project, see Croft & Cole, *supra* note 179, at 107–24.

¹⁸⁵ *Id.* at 122.

¹⁸⁶ *Id.*

¹⁸⁷ Kala Vijayraghavan, *Cadbury-Kraft Not as Sweet as Chocolate*, ECONOMICTIMES (Nov. 23, 2011), http://articles.economicstimes.indiatimes.com/2011-11-23/news/30433453_1_irene-rosenfeld-markets-and-global-categories-anand-kripalu. It is interesting to note that Cadbury was not for sale; the takeover was actively resisted. Scott Moeller, *Case Study: Kraft's Takeover of Cadbury* (Jan. 9, 2012), <http://www.ft.com/intl/cms/s/0/1cb06d30-332f-11e1-a51e-00144feabdc0.html>.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*; Moeller, *supra* note 187.

¹⁹⁰ Dermot Doherty, *Nestle U.K. to Produce More KitKat Bars Under Fairtrade Label*, BLOOMBERG BUS. WK. (Oct. 25, 2012), <http://www.businessweek.com/news/2012-10-25/nestle-u-dot-k-dot-to-produce-more-kitkat-bars-under-fairtrade-label>.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

Hershey, a U.S.-based chocolate company, responded to pressure from non-governmental organizations such as Stop the Traffik.¹⁹⁴ The company surprised observers in October of 2012 with its announcement that it will use only Fair Trade–certified cocoa by 2020.¹⁹⁵ This will be a significant accomplishment in light of the fact that, as of 2012, only 0.5% of Hershey’s chocolate was Fair Trade–certified.¹⁹⁶ Interestingly, Hershey’s announcement came one day after Whole Foods stopped selling Scharffen Berger chocolate, a Hershey’s brand, because of Hershey’s reluctance to work toward ending its use of child labor.¹⁹⁷ Just as Cadbury faced supply challenges, so will Hershey. Antonie Fountain, director of Stop the Traffik, observed, “I hadn’t expected them to do this. Until this year, Hershey seemed to be impervious to public pressure. It’s a good first step. The question is; how are they going to do it?”¹⁹⁸

b. Coffee

Several mainstream retailers have added Fair Trade coffee line.¹⁹⁹ Walmart now offers two certified Fair Trade coffee lines.²⁰⁰ Green Mountain Coffee, which is sold in supermarkets throughout the country, offers 100% Fair Trade Coffee.²⁰¹ Dunkin’ Donuts is a leader among coffee shops.²⁰²

¹⁹⁴ Sharon Robinson, *Hershey’s to Switch to Certified Cocoa by 2020*, FOODWORLDNEWS (Oct. 05, 2012, 7:56 AM), <http://www.foodworldnews.com/articles/2635/20121005/hershey-cocoa-un-fao-food-price.htm>.

¹⁹⁵ *See id.*

¹⁹⁶ Oliver Nieburg, *Hershey Outlines Details of Cocoa Child Labor Pledge*, CONFECTIONERY NEWS (Oct. 5, 2012), <http://www.confectionerynews.com/Commodities/Hershey-outlines-details-of-cocoa-child-labor-pledge>.

¹⁹⁷ Leon Kaye, *Scharffen Berger Booted Out of Whole Foods Over Child Labor Concerns*, TRIPLE PUNDIT (Oct. 05, 2012), <http://www.triplepundit.com/2012/10/scharffen-berger-whole-foods-child-labor/>.

¹⁹⁸ *Hershey Stuns Critics with Commitment to Source 100% Certified Cocoa by 2020*, *supra* note 182.

¹⁹⁹ Press Release, Fair Trade USA, Mainstream Consumer Drive Fair Trade Certified Sales Up 24 Percent (Mar. 7, 2011), http://www.fairtradeusa.org/press-room/press_release/mainstream-consumers-drive-fair-trade-certified-sales-24-percent-0.

²⁰⁰ Paul Rice, *How Walmart’s Support of Fair Trade is Helping Farmers Live Better*, WALMART GREENROOM (Oct. 5, 2012), <http://www.walmartgreenroom.com/2012/10/how-walmarts-support-of-fair-trade-is-helping-farmers-live-better/>.

²⁰¹ Andrew A. Newman, *This Wake-Up Cup Is Fair-Trade Certified*, N.Y. TIMES (Sept. 27, 2012), http://www.nytimes.com/2012/09/28/business/media/green-mountain-coffee-begins-fair-trade-campaign-advertising.html?_r=0.

²⁰² Mary Ann DiMascio, *Dunkin’ Donuts Runs on Fair Trade Certified Espresso*, FAIR TRADE USA (Oct. 25, 2011), <http://www.fairtradeusa.org/blog/dunkin-donuts-runs-fair-trade-certified-espresso>.

Since 2004, it has used 100% Fair Trade-USA certified coffee in its espresso-based beverages.²⁰³

Starbucks has entered the Fair Trade market, too.²⁰⁴ Its participation seems to be directly related to public demand. Starbucks started to serve all Fair Trade coffee in its espresso-based beverages in England and Ireland, and in March 2010, the company switched to Fair Trade coffee for those same beverages in Europe.²⁰⁵ In the United States, eighty-four organizations joined forces and wrote an open letter to Starbucks to encourage it to sell Fair Trade-certified coffee.²⁰⁶ They also helped organize twenty-nine demonstrations across the country.²⁰⁷ In October of that year, Starbucks introduced whole-bean Fair Trade coffee in over 2300 stores.²⁰⁸ Grassroots organizers are still working to convince Starbucks to offer brewed coffee and espresso throughout the United States.²⁰⁹ Starbucks purchased 428 million pounds of coffee in 2011; of that amount, 367 million pounds (86%) followed Starbucks Coffee and Farm Equity (C.A.F.E.) Standards.²¹⁰

B. *Fair Trade USA Splits from FLO as Mainstreaming Gains Momentum*

1. Conceptual Differences: Reformers or Transformers

One perspective is that of the “transformers,” also referred to as the “traditional” Fair Trade advocates.²¹¹ They focus on protecting farmers

²⁰³ *Id.*

²⁰⁴ Press Release, Fairtrade Int'l (FLO), 100% of Starbucks Espresso in Europe to Be Starbucks™ Shared Planet™ and Fairtrade Certified (Sept. 10, 2009), [http://www.fairtrade.net/single_view1.html?&cHash=310933d202&tx_ttnews\[backPid\]=361&tx_ttnews\[tt_news\]=111](http://www.fairtrade.net/single_view1.html?&cHash=310933d202&tx_ttnews[backPid]=361&tx_ttnews[tt_news]=111).

²⁰⁵ *Id.*

²⁰⁶ Starbucks Campaign, GLOBAL EXCHANGE, <http://www.globalexchange.org/fairtrade/coffee/starbucks> (last visited Apr. 9, 2013).

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Starbucks: Offer Brewed Fair Trade Coffee Daily in U.S. Stores*, <http://www.change.org/petitions/ceo-howard-shultz-offer-brewed-fair-trade-coffee-daily-in-us-stores> (last visited Apr. 9, 2013) (petitioning Starbucks to increase its Fair Trade options).

²¹⁰ *Responsibly Grown Coffee*, STARBUCKS.COM, <http://www.starbucks.com/responsibility/sourcing/coffee> (last visited Apr. 9, 2013) (explaining that C.A.F.E. applies the following standards: product quality; economic accountability, including providing information about how much money goes to local farmers; social responsibility, including assurances of safe, fair, and humane working conditions; and environmental leadership).

²¹¹ Dalvai, *supra* note 163, at 7, 8.

and craftspeople, who were the intended beneficiaries during the early days of Fair Trade.²¹² The transformers want to link farmers to eaters and craftspeople to purchasers through noncorporate partnerships. They fear that if corporations sell a small portion of their product line as Fair Trade, they will take advantage of the good name of Fair Trade to cast all of their products in a favorable light.²¹³ Some commentators assert that the benefits of Fair Trade decrease as they “trickle down” from conventional companies to producers.²¹⁴

Another view is that of the reformers, who want to work within existing business structures.²¹⁵ This is called a “market-oriented” approach to Fair Trade.²¹⁶ Reformers argue that corporations should be brought into the Fair Trade system, even if with just one product, and that later they can be convinced to increase Fair Trade’s share of their product line.²¹⁷ They focus on building volume so that Fair Trade can help as many producers as possible.²¹⁸ The reformers are associated with Fair Trade labeling through certification systems.²¹⁹ One commentator adds,

Fair Trade’s sharpest challenge comes from the rise of “market-driven” corporate buyers who may meet audited certification requirements, but otherwise advance mainstream business practices fostering competition and intensive buyer control, causing a shift in network relations from partnership to traceability.²²⁰

In some cases, Fair Trade advocates view mainstreaming through the market-oriented approach as highly positive in spite of its shift from the emphasis on partnership with small producers.²²¹ They believe that

²¹² See Rosenthal, *supra* note 135, at 159. Alternative Trade Organizations (“ATOs”) were created in the aftermath of World War II to help refugees and low income people. Most ATOs were faith-based initiatives designed to help eliminate poverty. *Id.*

²¹³ *Id.* at 157–58.

²¹⁴ See Eileen Davenport & Will Low, *The Labour Behind the (Fair Trade) Label*, 8 CRITICAL PERSP. ON INT’L BUS. 329, 334 (2012).

²¹⁵ See Jeff Goldman, *Some Insights into the State of Fair Trade*, FAIR TRADE RESOURCE NETWORK (Apr. 27, 2011), <http://www.fairtraderesource.org/2011/04/27/some-insights-into-the-state-of-fair-trade>.

²¹⁶ Dalvai, *supra* note 163, at 7, 8.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ Laura T. Raynolds, *Mainstreaming Fair Trade Coffee: From Partnership to Traceability*, 37 WORLD DEV. 1083, 1083 (June 2009).

²²¹ See, e.g., Bowes, *supra* note 3, at 4.

the entry of major companies into Fair Trade will assist millions of impoverished people around the world.²²² One Fair Trade leader comments,

As fair trade has moved into the mainstream it has inevitably involved businesses in the distributive industries that have been drawn in by its commercial potential rather than by any commitment to its social and trading goals. On the positive side this has enabled fair trade to grow rapidly. On the negative side, it is obvious that many of these businesses would just as rapidly switch out from fair trade in a downturn as they have switched into it during its growth cycle. They are simply partners of convenience.²²³

Others, however, viewed this as “sleeping with the enemy.”²²⁴ One Fair Trade advocate notes that mainstreaming is beneficial in some ways, but comes with downsides.

Where once alternative trade was ethical from initial production through distribution to final purchase, it was now mixed with commercial trade. Fair trade products were clearly certified, but whether .1% or 100% of a company's sales were fair trade, the company could still promote themselves as a fair trade company. Thus, a whole product line could benefit from the halo effect of having one or two fair trade products, and consumers had no way to tell how dedicated a company was to fair trade.²²⁵

Critics of this shift toward meeting market demands list major concerns. For example, multi-ingredient foods and personal care products often carry a Fair Trade certification seal but have a low overall content of certified Fair Trade ingredients.²²⁶ Critics also object to mainstreaming of Fair Trade that ignores handicraft producers, who were among the original beneficiaries of Fair Trade.²²⁷ Additionally, certification of plantations is

²²² *Id.*

²²³ *Id.* at 11–12.

²²⁴ *Id.* at 10.

²²⁵ Jonathan Rosenthal, *Fair Trade: The Long Journey That Informs the Current Reality*, FOR A BETTER WORLD, <http://www.fairworldproject.org/voices-of-fair-trade/fair-trade-the-long-journey-that-informs-the-current-reality> (last visited Apr. 9, 2013).

²²⁶ Dalvai, *supra* note 163.

²²⁷ *Id.*

likely to marginalize small agricultural producers who were also originally intended to be the primary beneficiaries of Fair Trade.²²⁸

2. The Break-up: Fair Trade USA Leaves FLO

As of December 31, 2011, Fair Trade USA resigned its membership in FLO.²²⁹ This decision was attributed, in part, to its “Fair Trade for All” program which it asserts will double the impact of Fair Trade by 2015.²³⁰ At the heart of this program is Fair Trade USA’s plan to allow certification of plantations, first for coffee and later for cocoa.²³¹

Fair Trade USA’s decision has split the Fair Trade movement, and increasing numbers of Fair Trade companies are switching from Fair Trade USA certification to certification by FLO or others.²³² On its website, FLO lists over twenty-five well-recognized U.S. companies in the that are certified by FLO, some of which are long-standing Fair Trade companies while others are relatively new to the movement.²³³

Opposition to Fair Trade USA’s Fair for Life focuses on concerns about small producers and the Global South.²³⁴ Many Fair Trade advocates are deeply concerned that Fair Trade is being co-opted by conventional businesses that have entered Fair Trade for profit-based reasons, not based on the mission of Fair Trade.²³⁵ It has been observed that

Fair trade’s record as it relates to hired labor or plantation operations, like tea and bananas has been anything but successful. In fact, the literature suggests that fair trade’s benefits miss the mark on plantations, undermining the

²²⁸ *Id.* at 7.

²²⁹ Press Release, Fair Trade USA, Fair Trade USA Resigns Fairtrade International (FLO) Membership (Sept. 15, 2011), http://www.fairtradeusa.org/press-room/press_release/fair-trade-usa-resigns-fairtrade-international-flo-membership (announcing the joint resolution for Fair Trade USA to resign).

²³⁰ *Fair Trade for All*, FAIR TRADE USA, http://www.fairtradeusa.org/fair_trade_for_all (last visited Apr. 9, 2013).

²³¹ William Neuman, *A Question of Fairness*, N.Y. TIMES (Nov. 23, 2011), <http://www.nytimes.com/2011/11/24/business/as-fair-trade-movement-grows-a-dispute-over-its-direction.html?pagewanted=all&r=0>.

²³² *Id.*

²³³ *Where to Find Fairtrade Products*, FAIR TRADE INTERNATIONAL (2012), <http://fairtradeinternational.us/fairtrade/find-the-mark> (last visited Apr. 9, 2013).

²³⁴ *See id.*

²³⁵ *See, e.g.*, Ryan Zinn, *FWP’s Statement on Fair Trade USA’s Resignation from Fairtrade International (FLO)*, FOR A BETTER WORLD (Oct. 3, 2011), <http://fairworldproject.org/in-the-news/fwps-statement-on-fair-trade-usa-s-resignation-from-fairtrade-international-flo/>.

presence of farmworker unions and ceding decision-making power to plantation owners and managers when allocating the fair trade premium.²³⁶

This ceding of power to plantations is the antithesis of the origins of Fair Trade certification programs, which were developed to support and empower small-scale, marginalized farmers, most of who were organized through democratically governed cooperatives.²³⁷

Opponents also assert that Fair Trade USA's programs for multiple ingredient products allow "fairwashing."²³⁸ In a draft policy, Fair Trade USA said it would lower Fair Trade content requirements to a minimum of twenty-five percent for a "whole product" seal and ten percent for an "ingredients" seal.²³⁹ In response to objections from over 2000 Fair Trade advocates, Fair Trade USA changed its draft to require ninety-five percent for the "whole product" seal.²⁴⁰ This is similar to organics products, which also allow for five percent for other ingredients.²⁴¹ The revised draft also raised the standard to a minimum of twenty percent for the "ingredients" seal.²⁴² The Fair World Project has called on Fair Trade USA to take several actions:

- Set aside plans to certify coffee and cocoa plantations;
- Engage citizens in development of new standards and set up mechanisms for stakeholder review;
- Allow producer networks to participate on Fair Trade USA's Board of Directors;
- Create a labeling scheme that does not allow a certifying seal on the front of the package unless the majority of the product is Fair Trade, that clearly identifies Fair Trade ingredients on the package front, and states whether the product includes plantation-grown coffee or cocoa; and
- Cooperate with FLO, the IMO, and other certifiers to set a "high bar" for Fair Trade certification.²⁴³

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Zinn, *supra* note 235.

²⁴² *Id.*

²⁴³ *Id.*

3. Fairtrade Canada to Assist in U.S. Market

Fair Trade USA's decision to discontinue its affiliation with FLO has left a void with respect to certification of products in the United States.²⁴⁴ Therefore, as of March 2012, FLO started to develop a program that will enable companies to use the FAIRTRADE Mark in the U.S. market. Fairtrade Canada is integral to the transition.²⁴⁵ During 2012–2013, Fairtrade Canada will assist U.S. companies that want to stay within the international FLO system.²⁴⁶

C. *New Certifiers Enter the Fair Trade Movement*

As a result of Fair Trade USA's decisions, a number of leading mission-driven Fair Trade companies in the U.S. have changed to FLO certification.²⁴⁷ One leader is Ben & Jerry's, which is in the process of moving to all Fair Trade ingredients in its ice creams.²⁴⁸ Harriet Lamb, CEO of Fair Trade International, says,

Hats off to Ben & Jerry's deepening commitment to the international Fairtrade system and how fantastic that US consumers will get to enjoy even more Fairtrade certified ice cream. . . . We believe in the power of the globally-recognized FAIRTRADE Certification Mark and internationally-agreed Fairtrade Standards; and we will work tirelessly with our partners and supporters to achieve our common vision of trade justice for farmers and workers.²⁴⁹

Lamb's emphasis on trade justice for farmers and workers highlights the break between FLO and Fair Trade USA, much of which is based on Fair Trade USA's decision to certify coffee plantations.²⁵⁰ Other Fair Trade

²⁴⁴ *Important Steps for Fairtrade in the USA*, FAIRTRADE INT'L (FLO) (Mar. 16, 2012), http://www.fairtrade.net/single_view1+M543415be22c.html.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Implications for Certification—Fair Trade USA Is No Longer a Member of Fairtrade International*, FLO-CERT (Nov. 7, 2012), <http://www.flo-cert.net/flo-cert/24+M5cd04135bc5.html>.

²⁴⁸ Press Release, Fairtrade International USA, Ben & Jerry's Fortifies Fairtrade Effort: Ice Cream Maker Solidifies its Commitment with Fair Trade International's Headquarters (Jan. 15, 2013), <http://www.businesswire.com/news/benjerry/20130115006530/en>.

²⁴⁹ *Id.*

²⁵⁰ See Zinn, *supra* note 235.

sellers have left Fair Trade USA because of its position on plantations.²⁵¹ Among them, Dr. Bronner's²⁵² and Equal Exchange²⁵³ have switched to certification Institute for Marketecology's ("IMO") Fair for Life certification.

1. Fair for Life

Fair for Life was created in 2006 by IMO and the Swiss Bio-Foundation.²⁵⁴ Owned by the Bio-Foundation, Fair for Life was created as a response to the increasing demands of individuals in all niches of business organization.²⁵⁵ The Fair for Life Social & Fair Trade Certification Programme builds on the IMO's experience since 1989 with organics certification.²⁵⁶ The organization set out to cover products, production situations, and trade relationships in ways that were not covered by third-party Fair Trade certifiers.²⁵⁷ To accomplish this goal, Fair for Life offers several social and Fair Trade certifications.²⁵⁸ The Social Responsibility Certification focuses on working conditions and internal structures for producer groups.²⁵⁹ The Social and Fair Trade Certification includes social standards and encompasses values of Fair Trade such as transparency, cooperation among trade partners, and social development of producers' communities.²⁶⁰ The IMO also offers audits called Individual Performance Ratings to companies that want verification of their compliance with criteria set by privately run CSR programs.²⁶¹ Thus, its certification covers more of the Triple Bottom Line than FLO or Fair Trade USA certifications.

²⁵¹ *Id.*

²⁵² *Fair Trade Announcement*, DR. BRONNER'S MAGIC "ALL-ONE" SOAPS, http://www.drbronner.com/fair_trade.php (last visited Apr. 9, 2013).

²⁵³ *Who are Equal Exchange's Certifiers?*, EQUAL EXCHANGE, <http://equalexchange.coop/about/equal-exchange/faqs/who-are-equal-exchanges-certifiers> (last visited Apr. 9, 2013).

²⁵⁴ *See History*, FAIR FOR LIFE, http://www.fairforlife.net/logicio/pmws/indexDOM.php?client_id=fairforlife&page_id=history&lang_iso639=en (last visited Apr. 9, 2013).

²⁵⁵ *Id.* Industry is familiar with the kinds of voluntary standards programs on which Fair for Life is based. The Fair for Life program standards are based on the widely accepted standards already used by the International Labour organization, SA 8000, Flow, and IFOAM Social Chapter. *Id.*

²⁵⁶ *Who We Are*, INSTITUTE FOR MARKETECOLOGY, http://www.imo.ch/logicio/pmws/indexDOM.php?client_id=imo&page_id=about&lang_iso639=en (last visited Apr. 9, 2013).

²⁵⁷ *History*, FAIR FOR LIFE, *supra* note 254.

²⁵⁸ *See About the Fair for Life Social & Fair Trade Certification Programme*, FAIR FOR LIFE, http://www.fairforlife.net/logicio/pmws/indexDOM.php?client_id=fairforlife&page_id=about&lang_iso639=en (last visited Apr. 9, 2013).

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *About*, FAIR FOR LIFE, *supra* note 258.

2. The Small Producers' Organization

Small producers' organizations ("SPOs") are especially upset with the way mainstreaming of Fair Trade is shifting attention away from small producers, who were the founders of coffee certification in the 1980s.²⁶² In 2004, small producers banded together to promote common interests through CLAC.²⁶³ Today the organization includes over 300 cooperatives that produce coffee as well as honey, bananas, sugar, oil, and other foods in twenty-one Latin American countries.²⁶⁴

In 2006, CLAC announced plans for a Small Producers' Seal ("SPS") at a global Fair Trade conference,²⁶⁵ and in 2009 it established the *Fundación de Pequeños Productores Organizados, Asociación Civil* (Foundation of Organized Small Producers, a Civil Society, known in English as FUNDEPPO or the Small Producers' Organization).²⁶⁶ The SPS was finally launched in 2010.²⁶⁷ The organization is devoted to increasing the visibility of small producers in the Fair Trade marketplace.²⁶⁸ SPOs will face a continuing struggle against high volume, big business. This can be attributed to a variety of factors including product pricing, lack of long-term purchase agreements, and inability to comply with existing Fair Trade certification standards.

3. Whole Foods—"Whole Trade"

The Whole Trade Guarantee is specific to Whole Foods,²⁶⁹ and that company's entry to the Fair Trade market is another example of the proliferation of Fair Trade certification programs. It is not a major player because its program is solely for its own use. It is a participant in the Fair World Project ("FWP").²⁷⁰ The FWP publishes *For a Better World*, a

²⁶² Jeronimo Pruijn, *Small Producers Organizations at the Forefront of Fair Trade*, FAIR WORLD PROJECT, <http://fairworldproject.org/voices-of-fair-trade/small-producers-organizations-at-the-forefront-of-fair-trade/> (last visited Apr. 9, 2013).

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ Pruijn, *supra* note 262.

²⁶⁹ *Mission & Values*, WHOLE FOODS MARKET, <http://www.wholefoodsmarket.com/mission-values/whole-trade-program> (last visited Apr. 9, 2013).

²⁷⁰ See Nasser Abufarha et al., *How Do You Know it's Really Fair Trade?*, FAIR WORLD PROJECT, <http://www.fairworldproject.org/overview/validation-programs/> (last visited Apr. 9, 2013).

semi-annual magazine with articles that express the perspectives of various participants in Fair Trade, in an effort to help consumers decipher Fair Trade certification programs.²⁷¹

D. *Fair Trade "Plus"*

Some mission-based Fair Trade companies go far beyond the requirements of their certifiers. Higher Grounds, based in Traverse City, Michigan, runs the Coffees for Change ("CFC") program through which it partners with organizations in developing countries.²⁷² Projects include Schools for Chiapas (in Mexico), the Chiapas Water Project (also in Mexico), Safe Passage (assisting children living in the Guatemalan garbage dump), as well as two projects in Michigan.²⁷³ Dean's Beans invests in environmental initiatives as well as recycling.²⁷⁴ It addresses the social equity leg of the Triple Bottom Line through projects with its farming communities including a revolving loan fund to help farmers build wells in Ethiopia.²⁷⁵ It also partnered with a center in Nicaragua to create a coffee café and roaster that is owned and operated by a prosthetics clinic that provides free limbs to land mine victims.²⁷⁶ In Peru, Dean's Beans partners with coffee growers to reforest sacred lands of the indigenous people.²⁷⁷

E. *Fair Trade's Cousins: Direct Trade and Similar Options*

1. Direct Trade

The term Direct Trade is used by an increasing number of organizations that share similar goals with Fair Trade and many Fair Trade practices.²⁷⁸ One objective of Direct Trade is to get as many of the

²⁷¹ See, e.g., *For a Better World Publication*, FAIR WORLD PROJECT, <http://www.fairworldproject.org/fairtradenews/for-a-better-world-publication/> (last visited Apr. 9, 2013).

²⁷² *Our Mission*, HIGHER GROUNDS TRADING CO., <http://www.highergroundstrading.com/16/our-mission> (last visited Apr. 9, 2013).

²⁷³ *Coffees for Change*, HIGHER GROUNDS TRADING CO., <http://www.highergroundstrading.com/3/coffees-for-change> (last visited Apr. 9, 2013).

²⁷⁴ *About Us*, DEAN'S BEANS, <http://www.deansbeans.com/coffee/aboutus.html> (last visited Apr. 9, 2013).

²⁷⁵ See *What is People-Centered Development?*, DEAN'S BEANS, http://www.deansbeans.com/coffee/people_centered.html (last visited Apr. 9, 2013).

²⁷⁶ See *id.*

²⁷⁷ See *id.*

²⁷⁸ *Direct Trade*, ETHICALCOFFEE.NET, <http://www.ethicalcoffee.net/direct.html> (last visited Apr. 9, 2013).

proceeds of a sale directly to the producer instead of an intermediate distributor.²⁷⁹ Direct Trade advocates are concerned about insufficient Fair Trade premiums for coffee farmers, marginal differences in prices comparing Fair Trade–certified coffee to conventional coffee, that Fair Trade certification creates a middle person, and that certification is expensive for small producers.²⁸⁰

Direct Trade organizations differ in their approaches.²⁸¹ As Green as it Gets (“AGAIG”), a non-profit organization operating in Guatemala, eschews certification altogether, relying on personal relationships and transparency to build connections between producers and buyers.²⁸² Through AGAIG’s Direct Trade approach, the farmer receives every penny.²⁸³ Their coffee sells for \$12.25 per pound in the U.S. because of costs to ship to a distribution point in the U.S., and the farmer still receives approximately \$8 per pound.²⁸⁴ The \$8 is not pure profit, though, because there are many expenses involved in cultivating coffee. Nevertheless, it is a much more profitable business model for coffee farmers as compared to either conventional pricing or even Fair Trade pricing.

In contrast, Intelligentsia Coffee²⁸⁵ and Counter Culture Direct Trade²⁸⁶ each offer a certification program. Intelligentsia handles certification by sending an inspector at least once each year to each coffee cooperative.²⁸⁷ It pays the farmers twenty-five percent more than the Fair Trade price set by FLO, but it does not address environmental issues.²⁸⁸

²⁷⁹ *Id.* This is a goal of Fair Trade. See, e.g., *10 Principles of Fair Trade*, WORLD FAIR TRADE ORG. (Oct. 6, 2011), http://www.wfto.com/index.php?option=com_content&task=view&id=2&Itemid=14.

²⁸⁰ For a discussion of the various approaches taken by organizations that call their programs “Direct Trade,” see *id.*

²⁸¹ For an article discussing several Direct Trade companies, including Counter Culture Direct Trade and Intelligentsia Coffee, see Peter Meehan, *To Burundi and Beyond for Coffee’s Holy Grail*, N.Y. TIMES (Sept. 12, 2007), http://www.nytimes.com/2007/09/12/dining/12coff.html?_r=0.

²⁸² For information about AGAIG, see AS GREEN AS IT GETS, <http://www.asgreenasitgets.org/> (last visited Apr. 9, 2013).

²⁸³ See *Coffee*, AS GREEN AS IT GETS, <http://www.asgreenasitgets.org/shop/coffee.html> (last visited Apr. 9, 2013).

²⁸⁴ See *id.*

²⁸⁵ See INTELLIGENTSIA COFFEE, <http://www.intelligentsiacoffee.com/> (last visited Apr. 9, 2013).

²⁸⁶ See *Counter Culture Direct Trade*, COUNTER CULTURE COFFEE, <http://counterculturecoffee.com/direct-trade> (last visited Apr. 9, 2013).

²⁸⁷ *Direct Trade: How We Buy Coffee*, INTELLIGENTSIA COFFEE, <http://www.intelligentsiacoffee.com/content/direct-trade> (last visited Apr. 9, 2013).

²⁸⁸ *Id.*

For comparison, Counter Culture Coffee offers “Counter Culture Direct Trade Certification.”²⁸⁹ Counter Culture hires Quality Certification Services (“QCS”) to do inspections.²⁹⁰ QCS is an organization authorized by the United States Department of Agriculture (“USDA”) for inspections for certification of organics.²⁹¹ Counter Culture sets a minimum price; it is currently \$1.60 U.S. per pound.²⁹² Going beyond the practices of Fair Trade, it also establishes quality standards. Unlike Intelligentsia Direct Trade, Counter Culture does not talk about environmental standards nor does it address labor standards. Unlike the traditional Fair Trade model (the one predating Fair Trade USA programs to certify plantations), Counter Culture does not require growers belong to a cooperative.²⁹³

2. Other Labels

Consumers face an increasing number of choices in addition to the Direct Trade label. For example, Level Ground Trading, a company that sells coffee and other products such as dried fruits, calls itself a Direct Fair Trade company.²⁹⁴ Additionally, there are many small companies that are coining their own labels. “Partnership Coffee” is sold by Uncommon Grounds Coffee Roasters of Saugatuck, Michigan, which sells coffee from countries around the world.²⁹⁵ Simpatico Coffee, a roaster also based in Michigan which obtains all of its coffee from small farms in Mexico, calls its product “Nice Coffee.”²⁹⁶ As the labels proliferate, consumers may become increasingly confused if they do not have a reliable connection with the seller. To make fully informed decisions, consumers need credible information about the seller’s practices.

F. *Certifications That Compete with Fair Trade and its Cousins*

Across the world, consumers are faced with multiple competing ethically based labels and certification programs. Many of them address

²⁸⁹ *Counter Culture Direct Trade*, *supra* note 286.

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *See Direct Trade*, *supra* note 287.

²⁹⁴ *See Direct Fair Trade*, LEVEL GROUND TRADING, <http://www.levelground.com/about/direct/> (last visited Apr. 9, 2013). Among the practices that distinguish its products from those with certification from Fair Trade USA is that it emphasizes work with small farmers, defining small farms as those with twelve acres (five hectares) of land or less. *Id.*

²⁹⁵ UNCOMMON GROUNDS CAFÉ, <http://uncommongroundscfe.com/> (last visited Apr. 9, 2013).

²⁹⁶ DRINK NICE COFFEE, <http://www.drinknicecoffee.com/home> (last visited Apr. 9, 2013).

one aspect of the Triple Bottom Line, but not all three legs as is true of Fair Trade. The Rainforest Alliance is one example; its work is valuable and important, but, with its focus on the environmental leg of the Triple Bottom Line, its reach is far more narrow than that of Fair Trade organizations.²⁹⁷

The Rainforest Alliance was formed in 1986 in response to massive loss of rainforest across the world.²⁹⁸ Daniel Katz, who later served as chairperson of the group, and a group of volunteers held a conference which later became known as the first meeting of the Rainforest Alliance.²⁹⁹ The group launched its sustainable forestry program in 1989 and quickly added a focus on sustainable farming.³⁰⁰ During the early 1990s, some rainforests in Indonesia, Honduras, Mexico, and Belize were certified as sustainable according to the standards laid out by the Rainforest Alliance.³⁰¹ Next, the group began to certify banana farms in Costa Rica and Hawaii.³⁰² By 2000, fifteen percent of the world's bananas came from farms certified by the Rainforest Alliance.³⁰³ Since its inception, the group has expanded its certifications to include coffee, tea, bananas, paper, pencils, cattle, biofuel, and tourism.³⁰⁴ The certification should be familiar to many consumers because as of 2010, American Airlines began to serve only Rainforest Alliance–certified coffee. Additionally, highly visible companies including McDonald's, Holiday Inn, and Whole Foods Market offer at least some Rainforest Alliance–certified coffees. The major coffee chain, Caribou Coffee, recently converted to 100% Rainforest Alliance–certified coffee.³⁰⁵

Rainforest Alliance is one among many eco-labels food. The Organic Monitor says that over 200 seals and labels with some kind of ethical, ecological, or sustainability programs or certifications are offered in the global food industry alone.³⁰⁶ The complication, however, is that a majority

²⁹⁷ See *Certification, Verification, and Validation Services*, RAINFOREST ALLIANCE, <http://www.rainforest-alliance.org/certification-verification> (last visited Apr. 9, 2013).

²⁹⁸ See *25 Years of Conservation*, RAINFOREST ALLIANCE, <http://www.rainforest-alliance.org/history> (last visited Apr. 9, 2013).

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *25 Years of Conservation*, *supra* note 298. It is fun to note that the final book in the Harry Potter series, *Harry Potter and the Deathly Hallows*, was printed with sixty-five percent of its paper certified by the Rainforest Alliance. *Id.*

³⁰⁵ *Caribou Coffee*, RAINFOREST ALLIANCE, <http://www.rainforest-alliance.org/newsroom/news/caribou-100percent-release> (last visited Apr. 9, 2013).

³⁰⁶ *Proliferation of Food Eco-Labels to Continue*, ORGANIC MONITOR, <http://www.organicmonitor.com/r0801.htm> (last visited Apr. 9, 2013).

of the general public does not realize that Rainforest Alliance and many other certifications cover a far less broad base in terms of the Triple Bottom Line as compared to Fair Trade certification. Therefore, Rainforest Alliance and others that are more narrow in their focus should work with Fair Trade certifiers expand their standards and harmonize them with those of Fair Trade.

G. Sellers that Opt Out of Labeling Programs

In the face of competing labels and changes in Fair Trade certification by Fair Trade USA and other certifying organizations, some committed Fair Trade companies are simply turning away from the use of third party labels. Dean Cycon, founder of the Fair Trade coffee roasting company Dean's Beans, posted the following on his website:

These days, words like Fair Trade, Sustainably Sourced, or Farmer Friendly can be found on almost every bag of coffee out there. Could it really be true that all coffee is now sourced with respect to farmers and the environment? Have we come this far in creating trade justice?

As you might guess, unfortunately the answer is no. What's happened is that large corporations and small companies alike have discovered that there is money to be made by claiming sustainability, Fair Trade etc., and that there aren't any hard and fast regulations to make them actually practice what they advertise. Some companies may be well intentioned, but instead of doing actual research or getting to know their farmers, they jump onto the Fair Trade bandwagon and hang on tight, assuming that that is 'good enough'. Other companies, especially the big boys, aren't committed to fairness at all, just profits, and jump on the bandwagon because their market researchers tell them it's time.³⁰⁷

Although Dean's Beans participated in several Fair Trade labeling initiatives in the past, it now performs its own stringent Fair Trade audit and

³⁰⁷ *Fair Trade Roadmap*, DEAN'S BEANS, http://www.deansbeans.com/coffee/fair_trade_roadmap.html#how_can_i_be_sure (last visited Apr. 9, 2013).

practices transparency by posting extensive information on its website.³⁰⁸ For example, it purchases all of its coffee from certified organic FLO cooperatives, and payment is always at or above the international Fair Trade coffee price.³⁰⁹ It gives an additional six cents per pound social premium for farmers to use as they choose, and it pays for an independent public audit by Quality Assurance International.³¹⁰ That audit is posted on the Dean's Beans website.³¹¹

H. Problems Related to Changes in Existing Certification Programs and Creation of New Programs

Changes in certification systems are likely to increase costs for producers and Fair Trade companies. Moreover, as consumers are faced with increasing numbers of labels and programs, they are likely to be confused and even become skeptical.³¹² In light of the many decades of hard work among mission-oriented Fair Trade advocates, it is important to avoid erosion of consumer confidence.³¹³

Some mainstays in the Fair Trade movement are upset by Fair Trade USA's decision to certify plantations. One of them is Equal Exchange, the largest 100% Fair Trade firm in the United States.³¹⁴ Equal Exchange quit buying Fair Trade USA-certified coffee and began to try to convince other companies to do the same.³¹⁵ Rodney North of Equal Exchange explains his company's strong stance stating that "small farmer cooperatives were the co-creators of fair trade; to now take it and change it in a way that threatens their viability is unacceptable."³¹⁶ The company has also campaigned actively to convince other large coffee distributors to move from Fair Trade USA.³¹⁷ Equal Exchange met with executives of Green Mountain Coffee in an attempt to convince them to do so.³¹⁸ When those talks failed, Equal Exchange took out a full page ad in Vermont's largest

³⁰⁸ *Dean's Beans Fair Trade Audit*, DEAN'S BEANS, http://www.deansbeans.com/coffee/fair_trade_roadmap/audit.html (last visited Apr. 9, 2013).

³⁰⁹ *Fair Trade Roadmap*, *supra* note 307.

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² Phillip H. Howard & Daniel Jaffee, *Tensions Between Firm Size and Sustainability Goals: Fair Trade Coffee in the United States*, 2013 SUSTAINABILITY 72 (2013).

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ Howard & Jaffee, *supra* note 312, at 83.

newspaper to publicly continue its efforts to convince Green Mountain to leave Fair Trade USA.³¹⁹ Meanwhile, Equal Exchange currently purchases Fair Trade coffees certified by FLO, Fair for Life, and FUNDEPPO.³²⁰

III. WHAT FAIR TRADE ADVOCATES SHOULD DO

This section outlines ways in which Fair Trade advocates should proceed to help the Fair Trade movement progress and solidify. These recommendations relate to the need to focus on producers, clarify motives of those who sell Fair Trade products, and strengthen Fair Trade's public image.

A. *Renewed Focus on Needs of Producers*

Equal Exchange is adamant in its support of small producers.³²¹ New directions for Fair Trade are eroding the rights of marginalized small producers for whom Fair Trade was originally created.

We can all go and read different definitions of Fair Trade. Fair Trade is for small farmers and small producers who are democratically organized. If you take the democracy out you have traditional aid or [W]orld [B]ank development or what the TransFair USA and the European certifiers are now trying to call fair trade. And fair trade is about access for those small producers. By slowly developing over time at significant risk small farmers and producers can build solidarity networks and enter commercial supply chains. When they succeed at this there are benefits or positive development for their communities. That's what fair trade is all about. If you want the fastest supply chain that produces the most tea or coffee or bananas at commercial terms you have entered into some socially responsible product world of which there are many examples. It just ain't fair trade, and it won't have the same positive benefits.³²²

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ See, e.g., *Fair Trade*, EQUAL EXCHANGE, <http://www.equalexchange.coop/fair-trade> (last visited Apr. 9, 2013).

³²² Phyllis Robinson, *An Analysis of Fair Trade: Reflections From a Founder (Part III)*, SMALL FARMERS BIG CHANGE (Oct. 25, 2011), <http://www.smallfarmersbigchange.coop/2011/10/25/an-analysis-of-fair-trade-reflections-from-a-founder-part-iii/>.

B. Clarify Motives of Companies that Offer Fair Trade Products

To better understand why there is dissent within the Fair Trade movement, it is important to identify values and goals of the companies that offer Fair Trade products.

Some companies continue to enter the Fair Trade movement as a mission, just as was true in the early days of Fair Trade. For example, Alta Gracia is a company that demonstrates grassroots efforts by a mission-driven company and its customers, many of whom are college students.³²³ Alta Gracia was founded by Knights Apparel of South Carolina in 2010.³²⁴ It is a mission-driven company that manufactures sweatshirts and shirts licensed by universities.³²⁵ The company promotes economic stability and social equity for its workers by paying three times the minimum wage in the Dominican Republic.³²⁶ The company depends on university students around the United States who convince their schools to offer Alta Gracia products.³²⁷ Currently, Duke University is one of its largest customers, and others include North Carolina, Washington University, Wisconsin, New York University, and Notre Dame.³²⁸

On the other hand, companies like Walmart and Starbucks have entered the market in limited ways that reflect a response to market demands, not a core mission.³²⁹

C. Clarify the Image Presented to the Public: Quality and Type of Goods

Unfortunately some people assume that Fair Trade goods do not meet the quality standards of conventional goods. In fact, some may view them as cheap products targeted to young people or even “hippies” who are not among mainstream consumers. The Urban Dictionary, a web-based dictionary of slang words and phrases in popular culture, even mentions

³²³ Steven Greenhouse, *Factory Defies Sweatshop Label, but Can it Thrive?*, N.Y. TIMES (July 17, 2010), http://www.nytimes.com/2010/07/18/business/global/18shirt.html?page-wanted=all&_r=0; Peter Dreier, *Is the Perfect Factory Possible?*, THE NATION, <http://www.thenation.com/article/164072/perfect-factory-possible#>.

³²⁴ Alex Vera, *Alta Gracia: An Alternative Solution to Sweat Shops*, THE MINARET, Sept. 1, 2010, <http://www.theminaretonline.com/2010/09/01/article12074>.

³²⁵ *Id.*

³²⁶ *See id.*

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ *See* Part II.A.3.b for discussion of how these companies participate in Fair Trade.

Fair Trade in its definition of “hippie.”³³⁰ It says, “‘hippie,’ can be used as a shrug off to someone, or as a label of being ‘free spirited,’ or having ‘alternative views.’”³³¹ It goes on to say that hippies prefer Fair Trade and family businesses over mainstream companies.³³²

Fair Trade companies are aware of this unwarranted stigma. In fact, Fair Trade products are often of higher quality than conventional goods.³³³ The Fair Trade Resource Network, devoted to education and discussion of Fair Trade, lists “Top 10 Reasons to Support Fair Trade”³³⁴ including that Fair Trade goods are high quality and that Fair Trade foods are fresh, safe, and cultivated in sustainable ways.³³⁵

IV. RECOMMENDATIONS

“The truth is that fair trade is still very much in its infancy.”³³⁶ Participants’ motivations and goals vary and, as a result, there are many competing practices within Fair Trade.³³⁷ The Fair Trade movement must move forward in new directions. Therefore, Fair Trade participants should be allowed time to explore options through discussion and by experience in the marketplace. This section examines the role of government, and the need for different kinds of Fair Trade labels, consumer education, and transparency.

A. *Should Government Certify Fair Trade?*

One possible route for Fair Trade would be to turn over certification to government.³³⁸ In the 1980s, the U.S. organic movement worked with the U.S. government to create a public-private partnership for certification of organics.³³⁹ A comparison of Fair Trade to organics is highly relevant because the two movements have much in common, and a great

³³⁰ See *Hippie*, URBAN DICTIONARY, <http://www.urbandictionary.com/define.php?term=hippie%20trade> (last visited Apr. 9, 2013).

³³¹ *Id.*

³³² *Id.*

³³³ *Top 10 Reasons to Support Fair Trade*, FAIR TRADE RESOURCE NETWORK, http://www.fairtraderesource.org/downloads/top_10_reasons_to_support_ft.pdf (last visited Apr. 9, 2013).

³³⁴ See *id.*

³³⁵ *Id.*

³³⁶ Bowes, *supra* note 3, at 3.

³³⁷ *Id.*

³³⁸ Michael Sligh, *Fair Trade at the Crossroads—Lessons from the Organic Movement*, 2012 FORA BETTER WORLD 17, available at <http://fairworldproject.org/voices-of-fair-trade/fair-trade-at-the-crossroads-lessons-from-the-organic-movement/>.

³³⁹ *Id.*

deal of Fair Trade–certified coffee is also organic certified.³⁴⁰ Government certification has some advantages, but has proven to be an unsatisfactory path for organics certification.

1. Advantages

There are potential advantages to U.S. government certification of Fair Trade in the face of competing certification schemes, and the organics movement serves as a model for the potential consequences of such action. The USDA took over certification of organics in the midst of competition among many organics certifiers.³⁴¹ Their goals were to harmonize standards and third party verification systems and gain consumer confidence in the organics label.³⁴² The main advantage for organics was a harmonization of standards.³⁴³ The USDA program could serve as a model for Fair Trade certification, thus side-stepping current turmoil in the Fair Trade movement.³⁴⁴ This model is a logical one because Fair Trade and organic certification programs promote similar goals: to protect the land and workers.³⁴⁵ Harmonization could save time and money for producers because a single program would eliminate the need to do research and choose among competing programs.³⁴⁶ Nevertheless, it is not a desirable model, for reasons discussed below.

2. Disadvantages

Organics certification by the USDA has been highly controversial.³⁴⁷ Some support it with reservations and others are deeply upset by the way it reduces organics certification to a low common denominator.³⁴⁸

Michael Sligh, founding director of the USDA/National Organics Standards Board, takes the position that on the whole, USDA certification has been a positive move.³⁴⁹ He states that

[t]he governmental definition was narrower than the community definition and specifically left out the fairness to

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² See Todd Mumford, Note, *Voluntary International Standards: Incorporating “Fair Trade” Within Multilateral Trade Agreements*, 14 Sw. J.L. & TRADE AM. 171 (2007).

³⁴³ See Sligh, *supra* note 338.

³⁴⁴ See Mumford, *supra* note 342.

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ See Sligh, *supra* note 338.

³⁴⁹ *Id.*

farmers and workers, research, promotion and energy-efficiency. What we had hoped to be the “floor” under standards also became for practical purposes the “ceiling” and driving up standards is very slow and difficult and is not pro-active in signaling market directions.³⁵⁰

Sligh acknowledges that the Fair Trade movement is at a crossroads as Fairtrade USA separates from FLO.³⁵¹ He notes that the Fair Trade and organic movements can help each other, in that Fair Trade includes the notions of fairness that were set aside when the government stepped into organics certification.³⁵² Therefore, he suggests that fairness be brought into organics “through the marketplace and outside of the federal process” in light of the “enduring value” of Fair Trade.³⁵³

Other commentators take a dimmer view of the effectiveness of the USDA program. Daniel Jaffee and Phillip Howard have conducted extensive research on coffee and Fair Trade standards.³⁵⁴ They point to two events that were highly significant in the world of organics regulation.³⁵⁵ In October of 2005, the Fairtrade Foundation in the United Kingdom granted the use of its FAIRTRADE mark to Nestlé for one line of coffee to be sold in British grocery stores.³⁵⁶ In November of that year, the U.S. Congress approved the “Organic Trade Association Rider” in response to heavy lobbying by agribusiness firms.³⁵⁷ The rider overturned a federal court ruling and significantly weakened USDA Organic Standards.³⁵⁸ In response, consumers and activists protested that organics standards had been sold out to corporations that want to render the standards toothless.³⁵⁹

A writer for Organics Consumers interviewed various organic farmers who contend that USDA certification allows agribusiness to capitalize on the growing popularity of organics and take market share away from small farmers.³⁶⁰ Organic blueberry farmer Arthur Harvey sued the USDA

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ Daniel Jaffee & Philip H. Howard, *Corporate Cooptation of Organic and Fair Trade Standards*, 27 AGRIC. & HUM. VALUES 387, 387–88 (2010).

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ *Id.*

³⁵⁸ *Id.*

³⁵⁹ *Id.*

³⁶⁰ Michaela Cavallaro, *Lawsuit Launched Against USDA Over Organic Standards*, ORGANIC CONSUMERS ASS'N, <http://www.organicconsumers.org/Organic/mofga.cfm> (last visited Apr. 9, 2013).

over what he believes to be loophole-filled organics guidelines that benefit factory farmers.³⁶¹ He expresses objections raised by many small organics farmers.³⁶² John Fromer, a MOFGA-certified grower who runs Appleton Ridge Flower & Vegetable Farm in Appleton asks “What’s the other 5%, heavy metals? It’s either 100% organic or it’s not, if you ask me.”³⁶³ He adds, “I think the word ‘organic’ has been abused to the point where it has no meaning anymore.”³⁶⁴ Another objection is that there are four different labels with the word organic on them.³⁶⁵ Observers point out that organics certification is biased toward large scale production and leaves out small farmers.³⁶⁶ This should serve as a caution to Fair Trade advocates who are concerned about protecting small producers.

3. The U.S. Should Follow Europe’s Example

Governmental bodies in the European Union, where Fair Trade has a more solid base than in the U.S., have taken a limited approach, to intervention in Fair Trade, emphasizing support for, but not intervening in, certification programs.³⁶⁷ In its May 5, 2009 Communication on Fair Trade, the European Commission acknowledged that the existence of many different types of private programs can contribute to sustainability, but it pointed out that the multiplicity creates the risk of consumer confusion.³⁶⁸ The Commission observed that consumers would benefit from these private schemes working in concert, especially with regards to “arriving at a common understanding of what basic process requirements, such as independent monitoring, are reasonable to expect.”³⁶⁹ However, the Commission found that there was not reason enough to intervene with the private labeling schemes.³⁷⁰ The European Union should continue that approach, and the U.S. should follow that lead by refraining from taking over Fair Trade certification.

³⁶¹ *Id.*

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ Cavallaro, *supra* note 360.

³⁶⁷ For further discussion of that proposal and precedent for such a policy, see Stenzel, *supra* note 100, at 627–28.

³⁶⁸ *Id.* at 617.

³⁶⁹ *Communication from the Commission to the Council, the European Parliament and the European Economic and Social Community, in PRIVATE FOOD LAW 404*, 413 (Bernd van der Meulen ed., 2011).

³⁷⁰ *Id.*

B. Limited Role for Government

The U.S. Federal Trade Representative (“USTR”) should establish a website documenting Fair Trade sales between the United States and countries with which it has free trade agreements.³⁷¹ The USTR should maintain two lists of Fair Trade organizations.³⁷² One list would identify companies selling goods certified by FLO or one of its affiliates.³⁷³ Fair for Life and the Small Producers’ Organization certifications should be added to that list. The second list would list Monitored Fair Trade Organizations as identified by the WTFO or its affiliates.³⁷⁴

The U.S. federal government should also give preference to bids from Fair Trade suppliers in its procurement contracts, so long as the goods meet government specifications.³⁷⁵ Fair Trade goods should be defined as those certified by FLO, Fair Trade USA, the IMO, or the Small Producer’s Association.³⁷⁶

C. Create Differing Fair Trade Certification Labels and Educate the Public

It is time to acknowledge the fact that Fair Trade has been split into two categories: mission-based Fair Trade and Fair Trade that is mixed with conventional Fair Trade.³⁷⁷ The two views cannot be reconciled under one kind of certification.³⁷⁸ Rudi Dalvai, a co-founder of the European Fair Trade association, observes:

Fair Trade certification and labeling initiatives are proceeding in a “zig zag” way, trying to keep together both the traditional Fair Trade movement (the base they don’t want to lose) and large commercial licensees, who are repeatedly trying to control and water down Fair Trade principles.³⁷⁹

³⁷¹ Stenzel, *supra* note 100.

³⁷² *Id.*

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ *Id.* at 676.

³⁷⁶ *Id.*

³⁷⁷ See Dalvai, *supra* note 163, at 7,8; see, e.g., *Fair Trade*, FRANKLIN COMMUNITY CO-OP, <http://www.gfm.coop/index.cfm?p=p.5&title=Fair+Trade> (last visited Apr. 9, 2013).

³⁷⁸ Dalvai, *supra* note 163, at 7, 8.

³⁷⁹ *Id.*

Currently, consumers may misinterpret Fair Trade labels.³⁸⁰ A Fair Trade label may indicate that the product includes only one Fair Trade ingredient.³⁸¹ Further, most consumers are unaware of the differences between and among Fair Trade certifications such as those of Fair Trade USA, FLO, and the IMO.³⁸²

Therefore, labeling and education should be improved to convey differences to consumers quickly and easily. The Fair World Project correctly calls on Fair Trade USA, to create a labeling program that

does not allow a fair trade seal to appear on the front of packaging unless a majority of the product is fair trade; and clearly identifies fair trade ingredients on the front of packaging and whether the product contains coffee or cocoa from plantations.³⁸³

The recommendations below apply to all Fair Trade certifiers.³⁸⁴

First, it is important to create seals that clearly label a product as 100% Fair Trade as compared to products that only include some Fair Trade ingredients. Even by a five percent rule that allows other “minor” ingredients is troubling. The Fair World Project calls on Fair Trade USA to prohibit a Fair Trade seal on the front of a product unless a “majority” of the product is Fair Trade.³⁸⁵ A better rule would require any product that is not 100% Fair Trade to indicate Fair Trade ingredients on a product ingredient list on the back or side of a package. Further, the exact percentage of total Fair Trade ingredients by volume or weight should be stated on that ingredients list. All Fair Trade programs should implement labels to distinguish and reward the efforts of committed companies. Differing labels will also help consumers distinguish products that include only one Fair Trade ingredient from those that include all or a majority of Fair Trade components. Distinct seals are needed, not just words of explanation, to give consumers a way to choose between such products efficiently.

³⁸⁰ Murray Carpenter, *Fair Trade Labeling May Confuse Coffee Drinkers*, NPR (Nov. 30, 2011), <http://www.npr.org/2011/11/30/142929292/fair-trade-labeling-dispute>.

³⁸¹ *Multiple Ingredients Product Policy*, FAIR TRADE USA, <http://www.fairtradeusa.org/certification/producers/ingredients> (last visited Apr. 9, 2012).

³⁸² *See generally Fairtrade Intl. vs. Fair Trade USA: Battle for Consumers Heats up*, ORGANIC & WELLNESS NEWS (Aug. 25, 2012), <http://organicwellnessnews.com/en/?p=4849>.

³⁸³ Zinn, *supra* note 235.

³⁸⁴ *See infra* Part IV.D.

³⁸⁵ Zinn, *supra* note 235, at 11.

Second, Fair Trade USA now allows coffee plantations to be certified.³⁸⁶ In principle, Equal Exchange and the Fair World Project are correct that plantations should not be certified.³⁸⁷ Facing reality, however, they are not going to win their campaigns in the face of far more wealthy conventional businesses that want a Fair Trade label for their plantation-sourced coffee.³⁸⁸ Therefore, it is essential that Fair Trade USA and any other organizations certify plantation-grown products, clearly indicate that fact on their label. This is simple transparency that will give consumers the opportunity to make an informed choice.

Third, Fair Trade certifiers should create a designation for a company such as Indigenous that has adopted Fair Trade throughout its supply chain. In this case, two labels are not needed. A second label might convey a negative message about Fair Trade if consumers see messages highlighting the fact that a product is not part of a Fair Trade supply chain. Yet companies that bring Fair Trade into all of their operations should be recognized by an additional designation on the fair trade label. A supply chain that is completely Fair Trade should be the ultimate goal in the world of Fair Trade, but the movement is not ready for that as of 2013.

D. *Consumer Education and Transparency*

Research, consumer education, and transparency are essential tools. The following are recommendations for achieving these ends.

1. Research on Fair Trade Participants

More information is needed about the perspectives of producers and plantation workers and whether their needs are being met in the midst of mainstreaming.

This can be accomplished through various means. Funds should be made available to non-profit institutions that gather and disseminate information and research on Fair Trade.³⁸⁹ The U.S. government should

³⁸⁶ *Id.*

³⁸⁷ *Id.*

³⁸⁸ *Fair Trade Certification Doesn't Do for Plantations What it Does for Co-ops*, GOOD (Oct. 16, 2012), <http://www.good.is/posts/fair-trade-certification-doesn-t-do-for-plantations-what-it-does-for-co-ops>. *But see First Fair Trade Certified Coffee Estate Already Improving Lives*, FAIR TRADE USA (Aug. 1, 2012), <http://www.triplepundit.com/2012/08/first-fair-trade-certified-coffee-estate-already-improving-lives/>.

³⁸⁹ *See About*, FAIR TRADE RESOURCE NETWORK, <http://www.fairtraderesource.org/about-2/> (last visited Apr. 9, 2013).

allocate funds for such research to the FTRN because it is already a repository for Fair Trade research. The FTRN is an apt choice because its focus is purely educational. A second set of funding should be allocated through the U.S. Department of Education, Title VI for International Business Education. This is compatible with its funding for research oriented toward increasing international trade for the United States.³⁹⁰ Such funds are administered through Centers for International Business Education and Research (“CIBER”).³⁹¹

There are several advantages to this. First, CIBERs are pre-established and a new office would not be needed.³⁹² Second, this research would place Fair Trade among other international business initiatives, giving it visibility that may increase motivation for professors from various disciplines to generate information and understanding in the area.

2. Consumer Education

Fair Trade education must continue and expand. Citizens need to understand what Fair Trade is so that they can make informed choices in the marketplace.³⁹³ This section explores some ways to educate citizens.

Fair Trade advocates are working to engage people around the world through local events that are fun, playful, and engaging for people of various ages.³⁹⁴ They use channels such as websites and Facebook pages.³⁹⁵

The Fairtrade Fortnight is an annual event designed to educate the public about Fair Trade’s goals and practices, promote its products, and encourage support for the movement. The first Fairtrade Fortnight was held in Scotland in 1995.³⁹⁶ The 2012 Fair Trade Fortnight was held from February 27 to March 11 in cities across the world.³⁹⁷ The events include taste testing, fairs, and guest speakers.³⁹⁸ The theme was “Take a Step

³⁹⁰ *Title VI Programs: Building a U.S. International Education Infrastructure*, INT’L EDUC. PROGRAMS SERV., U.S. DEP’T OF EDUC., <http://www2.ed.gov/about/offices/list/ope/iegps/title-six.html> (last modified Jan. 21, 2011); 20 U.S.C.A. § 1121 (2008).

³⁹¹ *See id.*

³⁹² *See About*, CTRS. FOR INT’L BUS. EDUC. & RESEARCH, <http://ciberweb.msu.edu/about/> (last visited Apr. 9, 2013).

³⁹³ *See* Carpenter, *supra* note 380.

³⁹⁴ *See, e.g.*, FAIRTRADE FOUNDATION, <http://step.fairtrade.org.uk/> (last visited Apr. 9, 2013).

³⁹⁵ *See, e.g.*, *Fairtrade Foundation*, FACEBOOK, <https://www.facebook.com/FairtradeFoundation> (last visited Apr. 9, 2013).

³⁹⁶ *History*, FAIRTRADE FOUNDATION, http://www.fairtrade.org.uk/what_is_fairtrade/history.aspx (last visited Apr. 9, 2013).

³⁹⁷ *Take a Step for Fairtrade in 2012*, FAIRTRADE FOUNDATION, http://www.fairtrade.org.uk/resources/films/take_a_step_for_fairtrade_in_2012.aspx (last visited Apr. 9, 2013).

³⁹⁸ *Id.*

for Fairtrade,” where a “step” is any action that supports Fair Trade.³⁹⁹ For example, a consumer might go to a coffee shop and ask for Fair Trade coffee. Organizers set a goal for 1.5 million steps around the world toward Fair Trade.⁴⁰⁰

Chicago, Illinois obtained the Fair Trade City designation in 2011; it is currently the second largest Fair Trade city in the world and hosts an annual Fair Trade Day.⁴⁰¹ The 2012 Chicago Fair Trade day included over twenty Fair Trade vendors, music, and various speakers.⁴⁰² Coffee producers from Guatemala spoke about Fair Trade growth, while representatives from Dr. Bronner’s Magic Soaps and Mindful Metropolis talked about their respective companies.⁴⁰³ The day-long annual event in Daley Plaza in downtown Chicago is designed to raise public awareness of Fair Trade goods and increase their availability.⁴⁰⁴

The Go Bananas Challenge is a fun and creative annual two-week-long event.⁴⁰⁵ Held in October, the event promotes Fair Trade through banana-themed events.⁴⁰⁶ Originating in the UK, it now extends to the United States. Events educate the public about the benefits of Fair Trade while providing them with information about how to bring Fair Trade bananas to their local supermarkets.⁴⁰⁷ They sponsor competitions for Fair Trade towns, cities, colleges, and universities.⁴⁰⁸ For example, Boston and Penn State Brandywine⁴⁰⁹ won the 2012 competition, and organizers

³⁹⁹ *Id.*

⁴⁰⁰ *Id.*

⁴⁰¹ See Jerome McDonnell, *Celebrating Chicago’s Annual Fair Trade Day*, WBEZ 91.5 CHICAGO, <http://www.wbez.org/worldview/2012-05-08/celebrating-chicagos-annual-fair-trade-day-98932> (last visited Apr. 9, 2013); *Chicago Achieves Fair Trade City Status: Global Connections Celebrated in Daley Plaza May 6th*, CHICAGO FAIR TRADE, <http://www.chicago-fairtrade.org/cftevents/icalrepeat.detail/2011/05/06/369/-/NThiODQwZDAyYzU4MzQxNThiZGUyMGRiODM3NDM3YTA=.html> (last visited Apr. 9, 2013).

⁴⁰² *Id.*

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

⁴⁰⁵ *Go Bananas Challenge*, FAIR TRADE TOWNS USA, fairtradetownsusa.org/g/gobananaschallenge/ (last visited Apr. 9, 2013).

⁴⁰⁶ *Id.*

⁴⁰⁷ *The Need for Fair Trade Bananas*, FAIR TRADE TOWNS USA, fairtradetownsusa.org/g/the-need-for-fair-trade/ (last visited Apr. 9, 2013); *Go Bananas Toolkit*, FAIR TRADE TOWNS USA, http://fairtradetownsusa.wpengine.netdna-cdn.com/wp-content/uploads/downloads/2012/08/FT_Banana_Toolkit_FINAL.pdf (last visited Apr. 9, 2013).

⁴⁰⁸ *Go Bananas Challenge*, *supra* note 405.

⁴⁰⁹ See *Fair Trade Gathering over Ben & Jerry’s Ice Cream*, FAIR TRADE AT PENN STATE BRANDYWINE, <http://pennstatebrandywinefairtrade.wordpress.com/2013/01/31/fair-trade-gathering-over-ben-jerrys-ice-cream/> (last visited Apr. 9, 2013).

received free Ben & Jerry's ice cream.⁴¹⁰ Fair Trade Boston participants ate 1167 bananas.⁴¹¹ They made presentations to five elementary school classrooms, and they helped Ben & Jerry's shops switch to Fair Trade bananas for their banana splits.⁴¹²

Ben & Jerry's and Fairtrade International USA ("FIU") are working to educate the public about Fair Trade.⁴¹³ They will hold a stakeholder summit early in 2013.⁴¹⁴ Ben & Jerry's participates in both international and domestic Fairtrade celebrations throughout the year,⁴¹⁵ and uses social media and its website⁴¹⁶ to educate "fans" about Fair Trade.⁴¹⁷

3. Transparency

Information posted on the Internet and the use of QR codes to access the Internet are powerful tools that enable consumers to make informed decisions in their purchases.

Ben & Jerry's is among those companies that post extensive information about their producers, products, and sustainability efforts.⁴¹⁸ It has committed to exclusive use of Fair Trade ingredients in its ice creams by 2013.⁴¹⁹ Ben & Jerry's practices transparency by listing on its website its various ice cream flavors with information about the ingredients in each that are Fair Trade.⁴²⁰

Some smaller companies are even more transparent. For example, Higher Grounds of Traverse City, Michigan is part of Cooperative Coffees, a group of twenty-three Fair Trade coffee roasters in the United States

⁴¹⁰ *America Goes Bananas for Fair Trade!*, FAIR TRADE TOWNS USA, <http://fairtradetownsusa.org/news/america-goes-bananas-for-fair-trade/> (last visited Apr. 9, 2013).

⁴¹¹ *Id.*

⁴¹² *Id.*

⁴¹³ *Ben & Jerry's Fortifies Farmer Focus with Fairtrade Effort*, BUSINESSWIRE (Jan. 15, 2013), <http://www.businesswire.com/news/benjerry/20130115006530/en>.

⁴¹⁴ *Id.*

⁴¹⁵ *Id.*

⁴¹⁶ *Id.*

⁴¹⁷ BEN & JERRY'S HOMEMADE ICE CREAM, <http://www.benjerry.com/> (last visited Apr. 9, 2013).

⁴¹⁸ *Ben & Jerry's Fortifies Farmer Focus with Fairtrade Effort*, BUSINESSWIRE, *supra* note 413.

⁴¹⁹ Genevieve Roberts, *Ben & Jerry's Builds on Its Social-Values Approach*, N.Y. TIMES (Nov. 16, 2010), http://www.nytimes.com/2010/11/17/business/global/17iht-rbofice.html?pagewanted=all&_r=0.

⁴²⁰ *See Fair Trade Flavors*, BEN & JERRY'S HOMEMADE ICE CREAM, <http://www.benjerry.com/activism/inside-the-pint/fair-trade> (last visited Apr. 9, 2013) for a list of ice creams and the Fair Trade ingredients of each Ben and Jerry's flavor.

and Canada.⁴²¹ The members emphasize transparency, and are dedicated to finding innovative ways to be sustainable in their operations.⁴²² They maintain a website called Fair Trade Proof, through which every shipment of coffee can be traced, giving origins, price, and organic and Fair Trade Certification documents.⁴²³ This complete transparency should be emulated by all Fair Trade producers and should be the goal in all trade. As a start, Fair Trade certifying organizations should strongly encourage all companies that use their services to use the Internet to make such information available to the public. Ultimately, Fair Trade certification standards should require the use of the Internet to reveal this information as a requirement for continuing certification.

A QR code is a type of bar-code that is readily scanned by QR scanners or mobile phones. It originated in Japan in the automotive industry but caught on in the United States because of its ability to store virtually all types of data.⁴²⁴ Today, QR codes are used by a few Fair Trade companies to make it easy for their customers to find information about their supply chain and the people who make their products. Indigenous is a Fair Trade apparel company.⁴²⁵ As of 2010, it obtained a Program-Related Investment ("PRI") Fund loan that it is using to develop a Fair Trade Tool.⁴²⁶ The tool allows shoppers to scan a hang tag with a QR code to learn where the garment originated, who produced it, and how its fibers were cultivated. It also gives details about the social impact of the garment.⁴²⁷ All Fair Trade producers and sellers should develop and use QR codes. In the near future, Fair Trade certifiers should require QR codes as a condition of certification.

E. Vigilance to Protect Name of Fair Trade

Use of litigation to protect the good name of Fair Trade may become more feasible if certification criteria are harmonized in the future. Litigation brought by Dr. Bronner's Magic Soaps against thirteen cosmetics

⁴²¹ *Who We Are*, COOPERATIVE COFFEES, <http://www.coopcoffees.com/who> (last visited Apr. 9, 2013).

⁴²² COOPERATIVE COFFEES, <http://www.coopcoffees.com> (last visited Apr. 9, 2013).

⁴²³ FAIR TRADE PROOF, <http://www.fairtradeproof.org/> (last visited Apr. 9, 2013).

⁴²⁴ Stephanie Rosenbloom, *Want More Information? Just Scan Me*, N.Y. TIMES (Sept. 21, 2011), http://www.nytimes.com/2011/09/22/fashion/qr-codes-provide-information-when-scanned.html?_r=0.

⁴²⁵ *Indigenous Sets Out to Remake the Apparel Industry*, RSF SOCIAL FINANCE, <http://rsfsocialfinance.org/2012/09/indigenous/> (last visited Apr. 9, 2013).

⁴²⁶ *Id.*

⁴²⁷ *Id.*

companies for their misleading use of the term “organics” on their products provides a model.⁴²⁸ The lawsuit was filed in 2008 in San Francisco, California against well-known companies including Kiss My Face, Estee Lauder, and the Hain Celestial Group.⁴²⁹ Dr. Bronner’s was able to go to the USDA, which offers organics certification in this country, for support in its claim.⁴³⁰

At the present, it would be difficult for plaintiffs to make a significant impact through such lawsuits for two reasons. First, the USDA offers organics certification but there is no government certification for Fair Trade. Second, Fair Trade certification programs are divergent in their practices at the present. If private certification programs are harmonized in the future, litigation may become a more powerful tool.

F. Why the Recommendations Make Sense

It’s all about trust. That is why education and transparency are at the heart of Fair Trade and programs such as Direct Trade that share Fair Trade’s values and goals.

Whether in the case of Intelligentsia’s Direct Trade label specifically, or other coffee roasters and vendors in general, the consumer must believe in the company. If you trust the company to stick to its own standards, without third-party certification (and if you agree with their standards), then all’s well.⁴³¹

Regardless of the certification or label on a product or something else, trust is essential.

Government budgets are shrinking. Therefore, it would not be advisable to rely on government regulation to make decisions about Fair Trade for consumers. A benefit is that minimal government intervention encourages consumers to take personal responsibility for their purchasing decisions. Fair Trade organizations and sellers, educational institutions, and government should educate citizens about Fair Trade and related

⁴²⁸ For discussion of the litigation, see Heather Struck, *Dr. Bronner’s Organic Discord*, FORBES (May 1, 2008), http://www.forbes.com/2008/05/01/bronner-organic-soap-faces-markets-cx_hs_0501autofacescan01.html.

⁴²⁹ *Id.*

⁴³⁰ *Id.*

⁴³¹ *Direct Trade*, *supra* note 287.

ethically oriented labels. Sellers and certifiers should follow the example of those Fair Trade organizations such as Equal Exchange, Indigenous, and Higher Grounds that are highly transparent with respect to the sourcing of their product and payments to participants in the supply chain.

If a consumer finds one coffee company and determines that company is indeed holding itself to Fair Trade's practices and principles, that person can and should continue to purchase that product. In other words, a plethora of offerings does not compel a consumer to learn about every brand of coffee (or any other product) that is available. There is plenty of room in the Fair Trade market for individual decision-making in the absence of standardized Fair Trade certification. Moreover, in some instances, the consumer may identify non-certified products that are produced under even more stringent criteria than those required for Fair Trade certification or membership in the WFTF or FTF.

Much of this is related to community, which can be local as well as global. In our local communities, a citizen can purchase vegetables from a local farmer that are not organic-certified but are produced in conformity of the practices and goals of organic farming. Even without certification, based on personal interaction and proximity to the farm, the consumer can know that he or she is purchasing products that are free from pesticides and that workers have been treated fairly.

In Fair Trade, the producer is often across the country from the consumer, or even in another country. Yet, community can be established across the globe through the Internet, travel, and personal relationships. For example, the small Fair Trade organization *Esperanza en Acción* operates from the East Lansing area in Michigan.⁴³² Many of its volunteers have visited with producers in Nicaragua. They come back with firsthand knowledge of the Fair Trade practices of *Esperanza* and share that information with family, friends, and local community members. They maintain contact and a sense of community. Thus, a community link between people of East Lansing, Michigan and Managua, Nicaragua is established and nurtured.

G. *Allow the Fair Trade Movement to Mature*

The Fair Trade movement needs time to mature and gain support from those who share similar goals. Leaders in the organics movement are taking steps to bring Fair Trade into community dialogue. "With

⁴³² ESPERANZA EN ACCIÓN, <http://www.esperanzaenaccion.org/> (last visited Apr. 9, 2013).

most eco-labels representing some ethical or sustainability attributes, a wider question is whether a new umbrella eco-label will eventually emerge and integrate existing ones.”⁴³³ The Organic Monitor hosted a Sustainable Foods Summit in January of 2013.⁴³⁴ Leading organizations involved in eco-labeling at the summit included: FLO, Fair Trade USA, Rainforest Alliance, Oregon Tilth, Demeter USA, Certified Humane, Bird Friendly Coffee, Food Alliance, Carbon Free, Non-GMO Project Verified, and others.⁴³⁵ The summit provided an opportunity for these leading organizations to share data on Fair Trade, organic, and other eco-labels, discuss common objectives, and work toward harmonization of their policies and practices.⁴³⁶

Publications such as the Organic Monitor and organizations including The Fair World Project, FLO, the Fair Trade Resource Network can help the Fair Trade movement through its current state of metamorphosis. A solid coalition of groups would have the potential to take a prominent role in the pursuit of Fair Trade and sustainable markets.⁴³⁷

CONCLUSION

Fair Trade is a fast growing, grassroots-based tool that promotes sustainable development through the three legs of the Triple Bottom Line: economy, social equity, and environment. As Fair Trade becomes part of mainstream business, however, it is suffering from growing pains. This Article explores cross currents in Fair Trade, looks at possible directions for the movement, and recommends ways to move forward.

This Article provides a definition of Fair Trade, outlines its history, and explains how the Fair Trade certification system has evolved. It also demonstrates how Fair Trade promotes sustainability in each of the three legs of the Triple Bottom Line. Next, it discusses the motivations of Fair Trade sellers. Sellers range from mission-driven companies that were founded for the purpose of helping marginalized producers in developing regions to conventional companies that are entering Fair Trade in response to market demands and focus primarily on certification programs.

⁴³³ *Research News*, ORGANIC MONITOR, <http://www.organicmonitor.com/r0801.htm> (last visited Apr. 9, 2013).

⁴³⁴ SUSTAINABLE FOODS SUMMIT, <http://www.sustainablefoodssummit.com/aboutthesummit.htm> (last visited Apr. 9, 2013).

⁴³⁵ *Id.*

⁴³⁶ *Id.*

⁴³⁷ *Id.*

This Article also explores current trends in Fair Trade. Fair Trade USA has separated from FLO, thus triggering much dissent among Fair Trade advocates. Many Fair Trade producers and sellers fear that Fair Trade USA's certification of plantations will marginalize the small producers for whom Fair Trade was created. Small producers fear that Fair Trade certification standards will be lowered to allow major, conventional companies to dilute the norms of Fair Trade and minimize its impact on trade in general.

In the midst of this divide, Fair Trade sellers are moving to newer certification programs such as Fair for Life, and the Small Producers' Organization. Moreover, new cousins to Fair Trade are being created, such as Direct Trade. These programs share many, but not all, of Fair Trade's goals and practices. As labels and programs proliferate, it becomes increasingly difficult for even highly motivated consumers to make informed choices.

Fair Trade has begun to help alleviate the economic, environmental and social equity disparities that exist when we compare consumers of developed countries with producers of developing regions. But, the process is still in its infancy. This Article examines possible directions for Fair Trade, explains why some options for Fair Trade should be rejected, and recommends best options to support continued, healthy growth of Fair Trade. Those recommendations focus on participants in the Fair Trade movement. Therefore, small producers should be kept fully in the circle of Fair Trade decision-making, and their partnerships with mission-based Fair Trade companies must be protected and nurtured. Transparency and education are essential to help consumers learn about Fair Trade and choose products based on reliable and harmonized sets of information about products.

Additionally, Fair Trade sellers should be identified in ways that clarify their level of commitment to Fair Trade. Mission-based companies need and deserve support because of their focus on education and partnerships with producers. Their efforts should be recognized through labels that distinguish between various levels of commitment to Fair Trade. Labels should distinguish products based on several criteria. First, is the product 100% Fair Trade or does it include only one or a small percentage of Fair Trade ingredients? Second, does the company offer only Fair Trade products or just a few product lines that are Fair Trade? Third, does the company's entire supply chain follow Fair Trade principles? Companies that offer a single product line or perhaps a product with only a portion of Fair Trade ingredients should be recognized for their early steps and be encouraged to participate more extensively in Fair Trade. Nevertheless, clear

labeling to designate the company's level of participation in Fair Trade, will enable consumers to choose companies and products that are more fully Fair Trade, and market forces can continue to propel the movement.

Finally, government's role should be minimized. Through policy making and spending on research and education, the government can support Fair Trade without directing its course. Fair Trade should not go the way of organics, a movement that turned to government regulation to resolve problems resulting from competing certification programs and labels.

In summary, Fair Trade needs time to mature and develop with support of consumers, sellers, and government, but that development should be free from government mandates. Fair Trade is a valuable tool that promotes economic, social, and environmental sustainability, and its current growth should be nurtured and protected. As Fair Trade develops, its advocates must continue to work to bring divergent voices together toward a common goal: to make all trade fair.