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## Microtrade and the Fair Trade Movement

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# Microtrade and the Fair Trade Movement

Prapanpong Khumon

## Abstract

The present paper aims to illustrate an alternative trading regulation currently assumed by *The Fair Trade Movement* and a newly established concept of *Microtrade* in curving global poverty. The fair trade movement reflects microtrade activities by asserting voluntary initiatives to create mutual benefits between customers from the North and producers from the South. It has established a form of microtrading networks between impoverished producers and Northern importers/retailers overseen by FLO (The Fair Trade Organization). While claiming to have achieved a certain level of poverty reduction, debate arises whether such appraisal renders a real impact. Both positive and negative feedbacks of the fair trade movement will be explored as well as its future proposal which aligns with microtrade activities.

**KEYWORDS:** fair trade, microtrade, international trade

## I. INTRODUCTION

The critiques of globalization have focused on the emerging crisis of social problems being induced by free trade policies under the current system of international trade and business corporate structures.<sup>1</sup> Global corporations have consistently sought out an incredible amount of products from countries where there are cheaper materials and labor to increase cost advantage for their businesses.<sup>2</sup> This practice of corporations has become regularized by the way of “business as usual”—when the nature of business always comes down to profit maximization so as to increase financial returns to shareholders.<sup>3</sup> Despite an era of corporate domination and profit management, social movements have been creating an impact on the changing direction of corporate practices over the past decades.<sup>4</sup>

Pioneered by social initiatives such as CSR (Corporate Social Responsibility) in the 1970s, corporations have since been subject to modular forces from social demands to take additional interests in social issues, such as human development, poverty, environment protection, and local community.<sup>5</sup> Influenced by globalized social movements, legal fields see an emerging set of rights (i.e. fundamental social and economic rights, and other individual rights to a fair wage) representing, for example, a new consideration in the law of contract and employment shaping legislative and judicial responses to a fair treatment of workers.<sup>6</sup> The realization of fair business practice has been gaining momentum from an array of initiatives by international organizations launched in the 1970s on fair labor practices issues; for example, the *United Nations Code of Conduct*

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<sup>1</sup> This view has been stressed by following works: see, for example, J. Stiglitz, *Making Globalization Work* (New York: W. W. Norton & Company, Inc., 2006); J. Dine, *Companies, International Trade and Human Rights* (Cambridge University Press, 2004); J.N. Bhagwati and R. Hudec (eds.), *Fair Trade and Harmonization: Prerequisites for Free Trade?* (Cambridge: MIT Press, 1996); and J. Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (Cambridge: Cambridge University Press, 2006).

<sup>2</sup> A. Nicholls and C. Opal, *Fair Trade: Market-Driven Ethical Consumption* (London: Sage Publications, 2005), p. 4.

<sup>3</sup> Dine (2004), *supra* note 1, p. 263.

<sup>4</sup> A. Touraine, *An Introduction to the Study of Social Movements*, 52 *Social Research*, no. 4 (1985), 749-787, at 773.

<sup>5</sup> R.V. Tulder, *The Role of Business in Poverty Reduction. Towards a Sustainable Corporate Story?* (UNRISD. Geneva. 2008), p. 4.

<sup>6</sup> P. Davies and M. Freedland, *National Style in Labor Law Scholarship: The United Kingdom*, 23 *Comparative Labor Law and Policy Journal* (2002), 781; see also, S. Anderman, *The Interpretation of Protective Employment Statutes and Contracts of Employment*, 29 *Indiana Law Journal*, no. 3 (2000), 223-42.

on *Transitional Corporations*<sup>7</sup>, the *ILO guidelines*<sup>8</sup> and the *OECD guidelines on Multilateral Enterprises*<sup>9</sup>. These social initiatives are influential in creating an alternative development model that benefits impoverished people worldwide.

The fair trade movement is viewed by many scholars as an emergence of a social solidarity seeking to propose a new aspect of trade regulation that yields the best interest to the poor.<sup>10</sup> Unlike the current system of international trade, arguably favoring only the rich,<sup>11</sup> the fair trade movement seeks to gather a force from consumer demands in the marketplace to influence corporate to purchase fair trade products which will eventually benefit impoverished producers around the world.<sup>12</sup> Microtrade is described as a small-scale trade based primarily on manually produced products using small amounts of capital and technologies to raise income and eliminate poverty for people in least-developed countries (LDCs).<sup>13</sup> The fair trade movement shares with microtrade the same aspiration of curbing poverty by linking, through trade, ethical consumers from the North with

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<sup>7</sup> UN, “The Impact of Multinational Corporations on Development and on International Relations”, UN DOC. E/5500/Rev.1, ST/ESA/6 (1974), p. 79.

<sup>8</sup> ILO, *The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*, 17 International Legal Materials, no. 1 (1978).

<sup>9</sup> OECD, *Declaration on International Investment and Multilateral Enterprises*, 15 International Legal Materials, no. 1 (1976), 967, 969.

<sup>10</sup> This view is suggested by Dine proposing that fair trade’s influence on trading policies might be democratic in nature and, thus, could be recognizable as a legitimate process to involve in political decision-making; see J. Dine, *Democratization: The Contribution of Fair Trade and Ethical Trading Movements*, 15 *Indiana Journal of Global Legal Studies*, no.1 (2008), 177-212, at 180. Other scholars have shared the view that fair trade proposes alternative trading practices; see in general, for example, Nicholls and Opal (2005), *supra* note 2; M.C. Renard, *Quality Certification, Regulation and Power in Fair Trade*, 21 *Journal of Rural Studies*, no. 4 (2005), 419-31; A. Tallontire, *Challenges Facing Fair Trade: Which Way Now?*, 13 *Small Enterprise Development* (2002), 12-24; D.L. Murray, L.T. Reynolds and J. Wilkinson, *Fair Trade: The Challenge of Transforming Globalization* (New York: Routledge, 2007); O. Lobel, “Crowding Out or Ratcheting Up? Fair Trade Systems, Regulation and New Governance”, in K. Macdonald and S. Marshall (eds.), *Fair Trade, Corporate Accountability and Beyond: Experiments in Globalizing Justice* (Ashgate, 2010).

<sup>11</sup> This argument is put forward by Stiglitz in the situation where the developed countries employ unfair trade measures from agreements, such as non-tariff barriers to trade, protectionism and safeguard measures, which hurt poor countries and benefit developed countries more; see A. Charlton and J. Stiglitz, *Fair Trade for All: How Trade Can Promote Development* (Oxford: Oxford University Press, 2007).

<sup>12</sup> In terms of consumer demands in the fair trade movement, Fridell proposes the term “consumer sovereignty” to mark the importance of a consumer force that remains the core premise to the viability of the fair trade movement; see G. Fridell, *Fair Trade Coffee: The Prospects and Pitfalls of Market-Driven Social Justice* (Toronto: University of Toronto Press, 2007), p. 266.

<sup>13</sup> Y.S. Lee, *Theoretical Basis and Regulatory Framework for Microtrade: Combining Volunteerism with International Trade towards Poverty Elimination*, 2 *Law and Development Review*, no. 1 (2009), 367-99, at 368.

ethical-valued products for purchase from small-scale producers in the South.<sup>14</sup> Microtrade purports to eliminate poverty in developing countries where the economy is not supported by a well-functioning government or effective administrative assistance, and where the private sector as a whole does not function to make economic progress.<sup>15</sup> Both microtrade and the fair trade movement commit to social movement structures asserting an alternative system of trade to render welfare to impoverished people. Microtrade and the fair trade movement are parallel trade ideologies seeking to employ a market-based regime to secure benefits of small-scale producers around the world.

The fair trade movement was first rooted in the social movement campaigns and advocacy, and faith groups seeking legitimacy to operate under a distinct model of social and justice development.<sup>16</sup> The important moment for the fair trade movement occurred when the *Max Havelaar* certification label was created in 1988, later becoming the basis for the Fair Trade Labeling Organization (FLO).<sup>17</sup> FLO is a voluntary organization overseeing the activities of global fair trade networks through its certification scheme that carries a logo of “Fairtrade”. Presently, nineteen “labeling initiatives”<sup>18</sup> have been designated under the FLO to set standards and promote fair trade products. This has resulted in the appearance of fair trade products in mainstream shops and the dramatic rise of fair trade sales.<sup>19</sup> FLO designates certification agents around the world who certify commodity products from producers and small-scale farmers in developing countries and then connect those products with commodity purchasers.<sup>20</sup> Within the fair trade system, small-scale producers are provided with stable, guaranteed prices for their commodities, protecting them from the fluctuating prices of commodities markets.<sup>21</sup> Small-scale producers set up cooperatives who deal with managerial matters, including fair trade sales, interactions with buyers, and

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<sup>14</sup> For a clarification of the terms “North” and “South”, the fair trade movement seeks to create new egalitarian commodity networks that link customers from the global North to marginalized producers in the global South; see L.T. Reynolds, *Consumer/Producer Links in Fair Trade Coffee Networks*, 42 *Sociologia Ruralis*, no. 4 (2002), 404-24, at 410.

<sup>15</sup> Lee (2009), *supra* note 13, p. 372.

<sup>16</sup> A. Nicholls, “What Gives Fair Trade Its Right to Operate? Organizational Legitimacy and Strategic Management”, in K. Macdonald and S. Marshall (eds.), *Fair Trade, Corporate Accountability and Beyond: Experiments in Globalizing Justice* (Ashgate, 2010), p. 93.

<sup>17</sup> D. Jaffee, *Brewing Justice: Fair Trade Coffee, Sustainability, and Survival* (Berkeley: University of California Press, 2007).

<sup>18</sup> The Fair Trade Labeling Initiatives licenses fair trade certification marks and also carries duties to promote fair trade in their territory. There are nineteen labeling initiatives covering 23 countries at the moment; Fairtrade Labeling Organizations International, *Fairtrade Labeling Initiatives*, available at: <[http://www.fairtrade.net/labelling\\_initiatives1.html](http://www.fairtrade.net/labelling_initiatives1.html)>, accessed 31 October 2011.

<sup>19</sup> Jaffee (2007), *supra* note 17, p. 14.

<sup>20</sup> Nicholls and Opal (2005), *supra* note 2, p. 5.

<sup>21</sup> Jaffee (2007), *supra* note 17, p. xiv.

connections with FLO activities. Fair trade also eliminates the middlemen who typically take benefits from the long line of communication between producers and consumers.<sup>22</sup> Fair trade also sets up producers' democratically-organized associations for self-empowerment and realization of their capacity to learn how to deal with markets and commercial interactions.<sup>23</sup> In addition, it encourages long-term relationships between buyers and sellers, which protect producers' production from an urgent cancellation of purchasing agreements.<sup>24</sup>

A 2002 study of a Latin American fair trade cooperative in the Mojamut region reported an increase of 100-200 percent in overall income after implementing a fair trade initiative.<sup>25</sup> After setting up the fair trade cooperative, Majomut coffee producers harvested an average of 1,500 pounds of coffee, and farmers earned US Dollars (USD) 1,700 for organic fair trade certified coffee, as compared to the USD 550 local market price for conventional coffee.<sup>26</sup> With coffee production representing roughly 80 per cent of Majomut family incomes, the gain under fair trade represents a dramatic increase in their livelihoods.<sup>27</sup> Fair trade products are now part of the agenda for most major retailers, including Starbucks, Nestlé, Tesco, Marks and Spencer, and Carrefour.<sup>28</sup> Recent statistics indicate a drastic corporate participation in the fair trade movement's regime resulting in job creation and social leverages for more than 1.5 million impoverished farmers worldwide.<sup>29</sup> The movement reshapes the patterns of international trade and the very process of corporate expansion in the global economy that have historically undermined global ecological and social conditions.<sup>30</sup>

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<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> E. Cervantes and V. Pérez-Grovas, *Poverty Alleviation through Participation in Fair Trade Coffee Networks: The Case of Union Mojamut, Chiapas, Mexico* (Fair Trade Research Group. Colorado State University. 2002), p. 15.

<sup>26</sup> *Ibid.*, p. 12.

<sup>27</sup> *Ibid.*

<sup>28</sup> Nicholls and Opal (2005), *supra* note 2, p. 92.

<sup>29</sup> Fairtrade Labeling Organizations International, *Consumers Purchase Fair Trade Products More Than Ever Before*, available at: <[http://www.fairtrade.net/single\\_view1.html](http://www.fairtrade.net/single_view1.html)>, accessed 11 June 2010.

<sup>30</sup> D. Ransom, *The No-Nonsense Guide to Fair Trade* (Oxford: New Internationalist Publications, 2001), p. 28.

## II. THE INTERNATIONAL TRADE SYSTEM – FREE BUT “NOT” FAIR

The international trade system sets the agenda on market orientation and free trade, rendering significant economic changes globally.<sup>31</sup> The free trade policies help enhance the activities of northern corporations that operate their businesses in the South, bringing in capital flows and prospects of increasing economic growth in the developing countries. These corporations are regarded as economic agents that bring in investments and employment opportunity to local people in developing countries with the hope of enhancing economic growth and development.<sup>32</sup> Some developing countries have performed greatly after implementing policies under free trade post-1970s, resulting in a fivefold increase in the rate of GDP per capita and trade.<sup>33</sup> Despite the claim of unprecedented levels of economic growth in the past decades,<sup>34</sup> a wider gap of inequality has also simultaneously grown, and the trade benefits have not been evenly distributed throughout the world (the share of the world’s income distributed among the poor fell by 15 per cent between the late 1980 and 2000, while the share going to the richest increased by eight per cent).<sup>35</sup>

International trade rules have also received criticism for restraining human development and causing social problems such as labor exploitation and poverty.<sup>36</sup> This criticism points out that poverty occurs as a result of corporations exercising their superior power inappropriately towards the poor in developing countries.<sup>37</sup> Global corporate power is enriched by the underlying philosophy of a “race to the bottom” under the international trade system. This affects the rights and freedoms of the poor as corporations seek to maximize profits by exploiting the lowest-cost human and environmental inputs in order to maintain their cost-effectiveness in competition.<sup>38</sup> The profit-focused feature of corporations is accelerated by the structure of corporate management under primary duties to

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<sup>31</sup> Charlton and Stiglitz (2007), *supra* note 11, p. 43.

<sup>32</sup> Zerk (2006), *supra* note 1, p. 8.

<sup>33</sup> The countries in this group include four European countries—Greece, Ireland, Portugal and Spain. Seven of the remaining countries are in Asia—Hong Kong, South Korea, Singapore, Taiwan, Malaysia, Thailand and China; see A. Maddison, *The World Economy: Historical Statistics* (Paris: OECD Publishing, 2003).

<sup>34</sup> J. Croome, *Reshaping the World Trading System: A History of the Uruguay Round* (Kluwer Law International, 1995), p. 38.

<sup>35</sup> Ransom (2001), *supra* note 30, p. 9.

<sup>36</sup> Dine (2004), *supra* note 1, p. 5.

<sup>37</sup> D. Milman, *National Corporate Law in a Globalised Market: the UK Experience in Perspective* (Cheltenham: Edward Elgar Publishing, 2009), p. 146.

<sup>38</sup> Fridell (2007), *supra* note 12, p. 15.

maximize profits to shareholders.<sup>39</sup> To maintain their cost-effectiveness in a competitive market, the corporate maximizing efforts usually result in a reduction of labor costs and a deduction in welfare spending and social infrastructure.<sup>40</sup> A terrain of corporate “evil regimes” on slave labor and excessive profit-ripping are direct consequences of the legal design of corporations favored by international trade rules.<sup>41</sup> This creates poverty problems and severe living conditions for those working for corporations under the globalized markets regime that deprives them of rights and freedom fundamental to their development.<sup>42</sup>

The globalized investment regime under the international trade system also creates a restraint on human development when it induces small countries to become over-reliant on exports and investments from developed countries. Therefore, small countries have been pushed into negotiations where they have to accept business deals on labor wages, working hours, and child’s rights that are abusive.<sup>43</sup> The poor are forced to work under highly intensive and abusive labor management to maximize productivity in a limited time.<sup>44</sup> The labor exploitation has been a widespread phenomenon in developing countries hosting foreign direct investments (FDIs) where they create export processing zones (EPZs),<sup>45</sup> principally in Asia, to offer investing corporations tax exemptions and cheap labor rates, also allowing them to bypass some laws and regulations.<sup>46</sup>

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<sup>39</sup> Dine has remarked on the company’s duties to shareholders that directors are to act in the interest of the company and usually owe no direct duties to shareholders. Even though the primacy of company’s focus needs to be for the interests of shareholders, this does not mean that shareholders always require directors to equate their interests with profit maximization. This opens up a view that companies can reflect other interests rather than profit maximization as long as they are to the benefit of shareholders; see Dine (2008), *supra* note 10, p. 189; and also, F. Andrew and J. Dine, *Human Rights and Capitalism: A Multidisciplinary Perspective on Globalisation* (Cheltenham: Edward Elgar Publishing, 2006), p. 49.

<sup>40</sup> C. Crouch, “CSR and Changing Modes of Governance: Towards Corporate Noblesse Oblige?”, in J.C. Marques and P. Utting (eds.), *Corporate Social Responsibility and Regulatory Governance: Towards Inclusive Development?* (Basingstoke: Palgrave Macmillan, 2009), p. 34.

<sup>41</sup> Dine (2008), *supra* note 10, p. 189.

<sup>42</sup> Sen proposes that the current markets restrict access to the poor who lack both social and economic capabilities, further traumatizing the poverty problems of those living in poor countries; see A. Sen, *Development as Freedom* (Oxford: Oxford University Press, 2001), p. 3.

<sup>43</sup> R. Munck, *Globalization and Social Exclusion: A Transformationalist Perspective* (Bloomfield: Kumarian Press, Inc., 2005), p. 15.

<sup>44</sup> S. Hassim and S. Razavi, *Gender and Social Policy in a Global Context: Uncovering the Gendered Structure of “the Social”* (New York: Palgrave Macmillan, 2006), p. 15.

<sup>45</sup> A case of EPZs in the province of Shenzhen exemplifies the extraction of labor force from rural areas in response to the model of export-led economic promotion. It was found that 90 percent of the labor force in Shenzhen EPZ plants was less than 25 years of age, worked longer hours, and was paid less than the standards under national labor law; see P. Ngai, *Women Workers and Precarious Employment in Shenzhen Special Economic Zone, China*, 12 *Gender & Development*, no. 2 (2004), 29-36, at 29.

<sup>46</sup> J. Ghosh, *Globalization, Export-Oriented Employment for Women and Social Policy: A Case*



In EPZs, minimum or average wages officially paid are subject to the arbitrariness of employers; also, the labor contracts have generally been ignored to manipulate the wage conditions.<sup>47</sup> With no trade unions to defend workers or give them advice, workers do not usually realize how to refuse or modify their conditions of employment, or are not even aware that they should sign a contract.<sup>48</sup> This labor violation is referred to as “labor arbitrage” which has been practiced for years by global corporations.<sup>49</sup> An insight statement on the issue of labor arbitrage was given by a former CEO of General Electric, Jack Welch, taking a view on corporate behavior that:

An ideal company would be on a barge that would move from country to country, taking advantage of the cheapest labor available at any given time.<sup>50</sup>

In terms of trade policies, small countries urged at the WTO’s ministerial conference in Cancun that international trade rules address the labor arbitrage issue. They expressed their concerns that the free trade policies aggrieved their basic labor rights and carried unfair provisions that further traumatize the social and economic development of small countries.<sup>51</sup> Provisions under the WTO trade rules give ways for rich countries to export their heavily subsidized agricultural products to small countries.<sup>52</sup> In particular, the North American Free Trade Agreement (NAFTA) has endangered the lives of small farmers in Mexico. It appeared that NAFTA permitted the American subsidization of corn products flowing into the Mexican domestic market, resulting in income loss from an inability of Mexican producers to compete with cheap products from America.<sup>53</sup> The free trade agreement between America and Colombia provides the same scenario allowing dumping lower priced American commodities into Colombian markets, driving a number of small farmers in Colombia out of business.<sup>54</sup>

The constraints in over-reliance on commodity exports to developing

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*Study of India*, 30 *Social Scientist*, no. 12 (2002), 17-60, at 4.

<sup>47</sup> Munck (2005), *supra* note 43, p. 15.

<sup>48</sup> *Ibid.*

<sup>49</sup> P.L. Stenzel, *Why Fair Trade is Essential for the Triple Bottom Line, Sustainability, and Free Trade: Seeking Equilibrium as the Eagle Meets the Condor*, paper given at the Midwest Academy of Legal Studies in Business Annual Meeting (Denver, 2009), p. 3.

<sup>50</sup> *Ibid.*

<sup>51</sup> Jaffee (2007), *supra* note 17, p. 14.

<sup>52</sup> *Ibid.*

<sup>53</sup> G.C. Hufbauer and J.J. Schott, *NAFTA Revisited: Achievements and Challenges* (London: Institute for International Economics, 2005), p. 323.

<sup>54</sup> P.L. Stenzel, *The U.S.-Columbia Free Trade Agreement*, 2 *Global Edge Business Review*, no. 6 (2008), 7.

countries has been central to a microtrade proposal to convert the disadvantages of the larger trade system into advantages for locally-produced products (LPPs), placing LPPs on the affluent markets of developed countries.<sup>55</sup> Instead of subjecting itself to the larger system of international trade, the fair trade movement proposes, in contradiction to the free trade ideology, to position itself as a marginal and alternative system of fair trade and organic networks.<sup>56</sup> The fair trade movement proposes to challenge the prevailing idea of free trade by asserting the ethical significance of the traded commodities.<sup>57</sup> These ethical values will attract concerned consumers, and induce them to express solidarity with those small producers whose lives are endangered by the current international trade policies.<sup>58</sup> Microtrade can benefit from fair trade's already-established principles and systems to develop its own framework for operational functions in the future.

### **III. THE FAIR TRADE PRINCIPLES**

Fair trade includes social and economic measures that ensure both market mechanisms, such as channeling products to importers, and non-market mechanisms, such as paying an additional social premium to be used in a community project.<sup>59</sup> While microtrade raises concerns in terms of logistical issues, including shipment and distribution of locally-produced products, locating supply and demand, and financing issues,<sup>60</sup> the fair trade movement uses a certification system to create commodity chains of ethical demands that link consumers to create partnerships with poor producers. FLO established detailed standards and certification requirements for both producers entering the fair trade market and traders permitted to utilize the fair trade label.<sup>61</sup> FLO monitors producer and trader groups and retains a power to revoke the certification for those who fail to respect standards.<sup>62</sup> Its certification tasks are to be responsible

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<sup>55</sup> Lee (2009), *supra* note 13, p. 372.

<sup>56</sup> M.J. Cohen and J.D. Murphy, *Exploring Sustainable Consumption: Environmental Policy and the Social Sciences* (Oxford: Pergamon, 2001), p. 99.

<sup>57</sup> Dine (2008), *supra* note 10, p. 180.

<sup>58</sup> *Ibid.*

<sup>59</sup> Nicholls and Opal (2005), *supra* note 2, p. 32.

<sup>60</sup> Lee (2009), *supra* note 13, p. 380.

<sup>61</sup> D. Murray, L.T. Raynolds and P.L. Taylor, *Fair Trade Coffee: Building Producer Capacity via Global Networks*, 16 *Journal of International Development*, no. 8 (2004), 1109-21, at 1111.

<sup>62</sup> D. Murray, L.T. Raynolds and P.L. Taylor, *One Cup at a Time: Poverty Alleviation and Fair Trade Coffee in Latin America* (Fair Trade Research Group. Colorado State University. 2003), p. 12.

for monitoring importer groups and maintaining the information for farmers on the registration of the products.<sup>63</sup> The certification agencies—labeling initiatives—within the FLO (such as Fair Trade USA in America and Fair Trade Foundation in the UK) are responsible for licensing, monitoring and collecting fees from commodity traders.<sup>64</sup> For example, for a coffee commodity to be included on FLO's approved registry of producers permitted to supply fair trade coffee, producers must: (i) be small, family based coffee growers; (ii) be organized into politically independent democratic associations; and (iii) be pursuing ecological goals by conserving natural resources and limiting chemical input use.<sup>65</sup> The following are core principles of the fair trade movement.

### **A. Direct trade with importers**

Under the principles of FLO, one of the most important benefits of fair trade model is the requirement that commodity importers have to work directly with producers.<sup>66</sup> Fair trade importers must, wherever possible, buy directly from a farming cooperative, a farming estate, or a local producers group.<sup>67</sup> Throughout history, large-scale plantations and manufactures have enjoyed access to export markets, leaving small-scale producers to lose out from the gain.<sup>68</sup> Direct trading is the principle that transforms the historical disadvantage to a fairer level of trade practice.<sup>69</sup> In addition, FLO requires fair trade importers to sign long-term contracts to ensure real benefits to small producers.<sup>70</sup>

### **B. The guaranteed price**

Fair trade commodities have been set with the guaranteed price that reflects mutual and fair pricing standards between commodity importers and small-scale producers. For example, coffee's guaranteed minimum price is USD 1.40 per

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<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> Fair Trade Labor Organization, *Becoming a Fair Trade Producer*, available online at: <[http://www.fairtrade.net/becoming\\_a\\_fairtrade\\_producer.html](http://www.fairtrade.net/becoming_a_fairtrade_producer.html)>, accessed 22 June 2010.

<sup>66</sup> Nicholls and Opal (2005), *supra* note 2, p. 33.

<sup>67</sup> A. Tallontire, *Partnerships in Fair Trade: Reflections from a Case Study of Cafédirect*, 10 *Development in Practice*, no. 2 (2000), 166-66, at 170.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> Nicholls and Opal (2005), *supra* note 2, p. 40.

pound for washed Arabica coffee or the market price if it is higher; also FLO pays an additional USD 0.30 per pound for certified organic coffee; and the social premium is USD 0.20 per pound, to be collected by cooperatives for the purpose of local and community development.<sup>71</sup> Another price benefit is the pre-financing option, which offers up to 60 per cent of the contract values.<sup>72</sup> If the market price rises above the fair trade guaranteed price, producers will be paid for the price on whichever is better.<sup>73</sup>

### **C. The social premium**

In addition to the fair trade guaranteed price, fair trade standards require a payment of a social premium (USD 0.20 per pound) to the cooperative or farm worker organization. The social premium is paid regardless of organic or quality product features and must be spent by the cooperative or farm worker organization on social development projects in the grower community.<sup>74</sup> Requiring fair trade importers to pay a social premium represents an attempt to offer producers incentives to sell to the fair trade market, even when non-fair trade market prices are high, to ensure the sustainability of the market.<sup>75</sup> A social premium represents a direct transfer to the producers in developing countries for use in development projects in local communities, such as schools, roads, or health centers.<sup>76</sup>

Beyond economic benefits, there are external social benefits which are more difficult to measure in monetary terms, but are highly significant in the context of social development.<sup>77</sup> The social premium reflects Sen's idea that a promotion to

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<sup>71</sup> The FLO Standards Committee and FLO Board have decided to increase the Fair Trade minimum prices for coffee from US \$1.25 for washed Arabica to US \$1.40 in 2011. The rationales for adjusting the price are; (i) the costs of sustainable production have increased, particularly in higher costs of labor and certain input (such as oil); (ii) the depreciation of the US Dollar has caused a devaluation in the local currency of producers' countries which has affected the income of producers considerably; and (iii) the desire to encourage greater investment in a better production system, particularly to comply with standards and to protect the environment; Fairtrade Labeling Organizations International, Coffee, available at: <<http://www.fairtrade.net/coffee.html>>, accessed 3 November 2011.

<sup>72</sup> Nicholls and Opal (2005), *supra* note 2, p. 41.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*, p. 45.

<sup>75</sup> D. Reed, *What do Corporations Vave to Do with Fair Trade? Positive and Normative Analysis from a Value Chain Perspective*, 86 *Journal of Business Ethics*, no. 1 (2009), 3-26, at 3.

<sup>76</sup> G. Moore, *The Fair Trade Movement: Parameters*, 53 *Issues and Future Research*, no. 1 (2004), 73-86, at 80.

<sup>77</sup> Nicholls and Opal (2005), *supra* note 2, p. 45.

the poor's opportunity can lead to a solution to the source of deprivation. Sen wrote:

There is strong evidence that economic and political freedom help to reinforce one another...social opportunities of education and health care, which may require public action, complement individual opportunities of economic and political participation and also help to foster our own initiatives in overcoming our respective deprivations.<sup>78</sup>

#### IV. HOW FAIR TRADE WORKS: A CASE FOR COFFEE

Coffee, as one of the globally highest-traded commodities, has relatively monopolistic market. Five major companies dominate the market, including Kraft, Nestlé, Sara Lee, and Procter & Gamble, buying almost half of the global supply.<sup>79</sup> Nearly all coffee has been grown in developing countries, with Brazil, Vietnam, Colombia and Indonesia accounting for over 60 per cent of the world's production.<sup>80</sup> Coffee is therefore a greatly important commodity to developing countries; yet, coffee relies on the supply chains largely controlled by transnational coffee exporters and roasters rather than by the millions of farmers who grow the beans.<sup>81</sup> Considering the monopolistic situation, from 1962-1989, producing and consuming nations jointly controlled supply through the International Coffee Agreement, which aimed to keep coffee price relatively high and stable (USD 0.44 – USD 0.50 per pound).<sup>82</sup> To stabilize the price, governments in both producing and consuming countries sought to agree to pre-determined supply levels by setting export quotas for producing countries.<sup>83</sup> However, the agreement fell apart when the United States of America pulled out in 1989, leading to an increase in the world's supply and decline in price (in 2003 coffee price was traded at USD 0.38 to USD 0.26 per pound which was below the cost of production for most small farmer in developing countries).<sup>84</sup>

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<sup>78</sup> Sen (2001), *supra* note 42, p. 7.

<sup>79</sup> P.L. Taylor, *In the Market but Not of It: Fair Trade Coffee and Forest Stewardship Council Certification as Market-Based Social Change*, 33 *World Development*, no. 1 (2005), 129-147, at 136.

<sup>80</sup> *Ibid.*

<sup>81</sup> Nicholls and Opal (2005), *supra* note 2, p. 53.

<sup>82</sup> C. Gresser and S. Tickell, *Mugged: Poverty in Your Coffee Cup* (Oxfam International, 2002), p. 15, available at:

<<http://www.maketradefair.com/assets/english/mugged.pdf>>, accessed 24 May 2009.

<sup>83</sup> *Ibid.*, p. 17.

<sup>84</sup> *Ibid.*

Due to a long distance in the supply chain, small farmers must sell their coffee to middlemen who come to visit their farms (these middlemen are normally referred as “coyotes” among coffee farmers in Latin America).<sup>85</sup> The coyotes then gather small farmers’ production and sell either directly to transnational-owned mills, or to independent mills, which process and then sell to transnational brokers and roasters.<sup>86</sup> The supply chain of coffee represents a complex network comprising producers, local traders, roasters, and retailers, but most of the value is captured by transnational roaster companies.<sup>87</sup> Far from getting a fair share of its profitability, producers have collectively been receiving a smaller and smaller share of the market’s value.<sup>88</sup> In the 1990s, producers earned USD 10 from a coffee market worth US \$30; but a decade later, they received less than USD 6 of export earnings from the market that had more than doubled in size.<sup>89</sup> This has indicated an imbalance of power in the global coffee supply chain.<sup>90</sup> Producers face a whole series of obstacles, starting with the very low international price for coffee to the competition from new technology in productivity.<sup>91</sup> Also, producers complained of having to accept the price offered by traders and of having very little power to negotiate.<sup>92</sup>

In Peru, Carmela Rodriguez talked about the lack of negotiation power:

We see that the coffee is dry, but the buyers say give us a discount. I don’t know what grade it is, but I think they are taking advantage of us because they know we have no choice but to sell to them.<sup>93</sup>

Even though the traders take advantage of the farmers in maximizing the profit margins of coffee production, the real margins in the market are made even higher by the roaster companies.<sup>94</sup> In sharp contrast with the current losses by producers and exporters in developing countries, the roaster companies in America and Europe are making extraordinary profits on their retail coffee business.<sup>95</sup> In Uganda, the coffee producers receive 14 cents per kilogram for

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<sup>85</sup> Nicholls and Opal (2005), *supra* note 2, p. 45.

<sup>86</sup> Gresser and Tickell (2002), *supra* note 82, p. 33.

<sup>87</sup> G. Jones, *Multinationals and Global Capitalism: From the Nineteenth to the Twenty-First Century* (Oxford: Oxford University Press, 2005), p. 72.

<sup>88</sup> Gresser and Tickell (2002), *supra* note 82, p. 57.

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*, p. 58.

<sup>94</sup> Jones (2005), *supra* note 87, p. 72.

<sup>95</sup> *Ibid.*

their green beans; and these beans pass through various traders before arriving at the roaster factory at a price of USD 1.64 per kilogram.<sup>96</sup> If these beans were to end up in a soluble coffee sold on supermarket shelves in the UK, an average price per kilogram would be USD 26.40, which means that the price is inflated by more than 7,000 per cent.<sup>97</sup>

To counterattack this suffering by small-scale producers worldwide, within the fair trade movement, coffee is imported directly from farmer-owned cooperatives; this prevents middlemen from taking the benefits of the coffee price and allows farmers to retain the actual price.<sup>98</sup> The fair trade system also requires the cooperatives to own or have a minimum control over the milling process in order to be able to export directly for the benefit of the fair trade farmers.<sup>99</sup>

Figure 1: Fair Trade in the Coffee Supply Chain



Source: A. Nicholls and C. Opal, *Fair Trade: Market-Driven Ethical Consumption* (2005), page 83.

In the fair trade model above, fair trade coffee importers are obliged to give a guaranteed price to cover costs borne by small-scale producers.<sup>100</sup> Pablo Dubois, Head of Operations, International Coffee Organization, remarked on the importance of the fair trade movement:

In coffee the fair trade movement has clearly shown that producers can be paid double in today's disastrously low prices without affecting the consumer's willingness to buy a good quality product.<sup>101</sup>

<sup>96</sup> Gresser and Tickell (2002), *supra* note 82, p. 55.

<sup>97</sup> *Ibid.*

<sup>98</sup> K. Golding and K. Peattie, *In Search of a Golden Blend: Perspectives on the Marketing of Fair Trade Coffee*, 13 *Sustainable Development*, no. 3 (2005), 154-65, at 160.

<sup>99</sup> Nicholls and Opal (2005), *supra* note 2, p. 82.

<sup>100</sup> *Ibid.*

<sup>101</sup> Gresser and Tickell (2002), *supra* note 82, p. 57.

Fair trade has proved to be a significant platform for many producer cooperatives in developing countries.<sup>102</sup> Fair trade has given rise to many commercial businesses which operate at profit but also retain the explicit development objective of improving the lives of farmers.<sup>103</sup> The most important impact of fair trade has been on the lives of producers who have been able to sell their coffee at prices to meet their basic needs.<sup>104</sup> At the Oromiya Coffee Farmers Cooperative Union in Ethiopia, producers receive 70 per cent of the export price for coffee that sells as fair trade, while those in the Jimma zone of Ethiopia's Kafa province receive only 30 per cent selling in the conventional market.<sup>105</sup>

## **V. CHALLENGES FOR FAIR TRADE AND MICROTRADE**

There is no mandatory provision that confines corporations to purchasing only fair trade and microtrade products. At the same time, microtrade so far merely proposes to leverage poor producers by seeking participation from voluntary retailers, organizations, and producers, allowing participants to opt out with no obligations. Microtrade and the fair trade movement are both established on a voluntary platform. Even though the fair trade movement has its bureaucrats in the FLO that systemize certification and standard rules, it is still a voluntary regulation absent of state law. The important question for both movements becomes whether voluntary regulation can resist the force of business effects from international trade. To that question, it has been reported that corporate force has negotiated its way through the FLO to develop certification bodies outside FLO's mandate.<sup>106</sup> What this means to the fair trade movement is that corporations can become license holders of certification marks and have control over fair trade productions.<sup>107</sup> The concern is that corporations may not accord the same standards as FLO's and, more importantly, corporations generally look exclusively on commercial perspectives, not standard on the living of the poor.<sup>108</sup> Some corporations have been reported to take part in a "greenwashing" process where they purchase only small amount of fair trade products to publicize

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<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid.*

<sup>106</sup> Golding and Peattie (2005), *supra* note 98, p. 163.

<sup>107</sup> G. Moore, *The Fair Trade Movement: Parameters, Issues and Future Research*, 53 *Journal of Business Ethics*, no. 1 (2004), 73-86, at 78.

<sup>108</sup> E. Davenport and W. Low, *Organizational Leadership, Ethics and the Challenges of Marketing Fair and Ethical Trade*, 86 *Journal of Business Ethics*, no. 1 (2009), 97-108, at 144.



themselves as ethical corporations to attract new base of customers.<sup>109</sup> The co-operative supermarket in the UK indicated that nine out of its best ten fair trade lines in 2002 were own-brand products outside FLO.<sup>110</sup>

To fight the corporate pressure, CSR is viewed as a complementary voluntary regulation that is able to support the fair trade movement in creating an ethical force within corporate conduct.<sup>111</sup> CSR has been argued to compliment fair trade by employing a new market approach to asserting good governance under the regime of the current international trading system.<sup>112</sup> Fair trade and CSR both use the credibility in social performance within the market to induce corporations to adopt a concrete development policy for their business agendas (for example, publicizing the corporate policy about fair trade products will attract concerned consumers that feel responsible for the conditions of workers in developing countries).<sup>113</sup> From the growing participating corporations in a wide range of CSR platforms, including the international codes such as UN code of practice and ILO and OECD guidelines, CSR has gained popularity in becoming a standard feature of mainstream influence for the business model of modern times.<sup>114</sup> Fair trade uses the market to create a commodity-supply link between its unique civil movement from small producers in a developing South and consumer demands in the North. It proposes to transform globalized trading by using consumer drive in the market to create a force of governance upon corporations.<sup>115</sup> However, fair trade is more than just a market-based regime for the poor's economic justifications; it has become an important movement toward improvement of corporate human policies that stands for global justice for workers' and human rights.<sup>116</sup> With the growing importance of fair trade in the current global market, it has been argued that fair trade can assert a certain form of social control on

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<sup>109</sup> It is reported that Starbucks Coffee Company uses as their certification organization for fair trade coffees Conservation International, which is financed by the United States Agency for International Development and large corporations, including Starbucks itself; see M.C. Renard and V. Pérez-Grovas, "Fair Trade Coffee in Mexico: At the Centre of the Debates", in D. Murray, L.T. Reynolds and J. Wilkinson (eds.), *Fair Trade: The Challenge of Transforming Globalization* (London: Routledge, 2007), p. 151.

<sup>110</sup> Moore (2004), *supra* note 107, p. 83.

<sup>111</sup> See generally, S. Knapp, "Fair Trade at the Centre of Development", in K. Macdonald and S. Marshall (eds.), *Fair Trade, Corporate Accountability and Beyond: Experiments in Globalizing Justice* (Ashgate, 2010).

<sup>112</sup> P. Utting, *Regulating For Social Development: The Potential and Limits of Corporate Responsibility and Accountability*, paper given at the Melbourne Law School Conference (Melbourne, 2007), p. 13.

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

<sup>115</sup> Dine (2008), *supra* note 10, p. 180.

<sup>116</sup> K. Ghimire, *The Contemporary Global Social Movements: Emergent Proposals, Connectivity and Development Implications*, (UNRISD. Geneva. 2005), p. 2.

corporations and influence them to take account of a wide range of social rights, e.g. fair wage rights, basic human rights, and worker's rights.<sup>117</sup>

These CSR initiatives have been incorporated into the business agenda as a way to improve corporate reputation and credibility to the public in a company's documents, such as codes of conduct, business policies, partnership agreements and certification schemes.<sup>118</sup> In the case of fair trade, it normally appears in purchasing agreements and policies under CSR initiatives, such as *Fair Labor Association (FLA)*<sup>119</sup> and *Ethical Trading Initiative (ETI)*,<sup>120</sup> which involve partnerships offering fair conditions to impoverished producers among global corporations, thousands of suppliers, international trade union bodies, and international bodies.<sup>121</sup> The corporations respect the ETI standards under the *ETI Based Code of the International Labor Organization*, which is an internationally-recognized code for labor practice.<sup>122</sup> It has been asserted that there is room for the sustainable development concept within corporate function.<sup>123</sup> The composition of a corporation includes not only financial resources (capital and investments). A link between sustainable development and fair trade can be created when social resources are also included, for example, having a local community where the products are supplied, requiring workers' rights and freedom of fair wages and working hours.<sup>124</sup> Therefore, small fair trade producers that export their products into the corporations are entitled to the protection of their rights not only from the FLO, but also from a corporate commitment to sustainable development in international codes such as ETI, FLA, OECD Guidelines, and ILO Declarations.<sup>125</sup> In regard to ILO impacts on purchasing contracts, the *Labor Clauses (Public Contracts) Convention, 1949*<sup>126</sup> provides that:

All public procurement contracts must include clauses ensuring wages hours of work, and other considerations of labor which are no less favourable than those established for work of the same character in the trade or industry concerned.<sup>127</sup>

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<sup>117</sup> Utting (2007), *supra* note 112, p. 13.

<sup>118</sup> J. Bendell, *Barricades and Boardrooms: A Contemporary History of the Corporate Accountability Movement*, (UNRISD. Geneva. 2004), p. 52.

<sup>119</sup> See Fair Labor Association (2011), available at: <<http://www.fairlabor.org>>.

<sup>120</sup> See Ethical Training Initiative (2011), available at: <<http://www.ethicaltrade.org>>.

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

<sup>123</sup> A.W. Savitz and K. Weber, *The Triple Bottom Line: How Today's Best-Run Companies Are Achieving Economic, Social, and Environmental Success-and How You Can Too* (San Francisco: John Wiley & Sons, Inc., 2006), p. x.

<sup>124</sup> *Ibid.*

<sup>125</sup> *Ibid.*

<sup>126</sup> International Labour Organization, *Labor Clauses (Public Contracts) Convention, 1949*, art. 2(1).

<sup>127</sup> J. Howe, "The Regulatory Impact of Using Public Procurement to Promote Better Labour

Consider how Australia has adopted the ILO's labor standards into its purchasing policies. In Victoria, for example, the Victorian Government Purchasing Board 2003 requires that all businesses need to comply with ethical employment standards according to state's codes of practice.<sup>128</sup>

Corporations can see the opportunity from participating in CSR and fair trade to promote their social reputation.<sup>129</sup> Corporations that incorporate CSR have been reported to gain more credibility in the eyes of consumers who are concerned about human and environmental issues, resulting in achievement in both financial and social terms.<sup>130</sup> A UK-based coffee retailer, Cafédirect, has seen support from ethically concerned consumers, maintaining the position of the company as the largest 100 per cent fair trade distributor in the UK.<sup>131</sup> Cafédirect provides a platform for a socially integrated company that purchases 100 per cent fair trade products, and is even involved in workers' development, by providing shares and giving additional profits.<sup>132</sup> The company uses the three-year brand building program to create strong brand meanings that emphasize brand equity and exceptional product quality provided by a unique group of small producers in developing countries.<sup>133</sup> It is successful in creating strategies to provide consumers and associate the brand with both quality and a feeling of making ethical purchases.<sup>134</sup>

Also, a study has been conducted on one of the major fair trade companies in the UK, Day Chocolate, illustrating that while Day Chocolate is a business organization dealing in profit and growth objectives, it nonetheless considers fair trade ideals important and aims on making a difference and producing change within the industry.<sup>135</sup> From the managing director's point of view, the mission of the company is to be an industry catalyst through what the company is and where the products have come from.<sup>136</sup> The company considers fair trade goals as an encouragement to integrating both profit consideration and ethical supply and conduct into decision making, where fair trade exists as an overriding aim to help

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Standards in Corporate Supply Chains", in K. Macdonald and S. Marshall (eds.), *Fair Trade, Corporate Accountability and Beyond: Experiments in Globalizing Justice* (Ashgate, 2010), p. 334.

<sup>128</sup> *Ibid.*, p. 336.

<sup>129</sup> Savitz and Weber (2006), *supra* note 123, p. x.

<sup>130</sup> *Ibid.*

<sup>131</sup> Cafédirect, *Cafédirect Annual Report* (2008-09), available at:

<[http://www.cafedirect.co.uk/pdf/annual\\_reports/Annual\\_Report\\_0809.pdf](http://www.cafedirect.co.uk/pdf/annual_reports/Annual_Report_0809.pdf)>, accessed 10 June 2010.

<sup>132</sup> Tallontire (2000), *supra* note 67, p. 173.

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*

<sup>135</sup> A. Crane and I.A. Davies, *Ethical Decision Making in Fair Trade Companies*, 45 *Journal of Business Ethics*, no. 1 (2003), 79-92, at 86.

<sup>136</sup> *Ibid.*

developing-world producers.<sup>137</sup>

However, the main criticism for voluntary regulations like CSR and the fair trade movement is that they are “soft law” and questionable in terms of legal-binding forces.<sup>138</sup> Despite the increasing trend of corporate adoption of CSR and fair trade each year, recent statistics indicate that the movement towards change remains abysmal.<sup>139</sup> This criticism directly concerns the viability of fair trade when voluntary initiatives like ETI and FTA are not deemed able to render enough substantial legal force to motivate corporate practice.<sup>140</sup> A study by the UN Secretary-General’s Special Representatives (SGSR) for business and human rights in 2006 showed that only 25 per cent of 314 surveyed corporations had committed to the community consultation process and cared about the human rights standards set in their CSR agenda.<sup>141</sup> It is believed that the reason why corporations have chosen to shy away from CSR commitments is due to the problematic soft law nature of international initiatives that render only a minimal legal-binding force.<sup>142</sup>

In assessing the corporate inception of voluntary regulation, a CSR study in Australian garment sectors (*Ethical Threads*)<sup>143</sup> has found that corporations have made slow progress in embracing soft and voluntary obligations to protect workers in international and local manufacturing supply chains.<sup>144</sup> Although most of the corporations adhere to the OECD guidelines and ILO labor practices, it was

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<sup>137</sup> *Ibid.*, p. 87.

<sup>138</sup> Problematic legal forces in soft law and CSR have been an raised; see, for example, J. Clapp and P. Utting, *Corporate Accountability and Sustainable Development* (Oxford: Oxford University Press, 2008); M.E. Cloghesy, “A Corporate Perspective on Globalisation, Sustainable Development, and Soft law”, in J. Kirton and M.J. Trebilcock (eds.), *Hard Choices, Soft Law: Voluntary Standards in Global Trade, Environment and Social Governance* (Ashgate, 2004); J. Kirton and M.J. Trebilcock, “Introduction: Hard Choices and Soft Law in Sustainable Global Governance”, in John J. Kirton and M.J. Trebilcock (eds.), *Hard Choices, Soft Law: Voluntary Standards in Global Trade, Environment, and Social Governance* (Burlington: Ashgate, 2004); and, M. Marcussen, “OECD Governance through Soft Law”, in U. Morth (ed.), *Soft Law in Governance and Regulation: An Interdisciplinary Analysis* (Cheltenham: Edward Elgar Publishing, 2004).

<sup>139</sup> S. Pogutz, “Sustainable Development, Corporate Sustainability, and Corporate Social Responsibility: The Missing Link”, in J. Clapp and P. Utting (eds.), *Corporate Accountability and Sustainable Development* (Oxford: Oxford University Press, 2008), p. 36.

<sup>140</sup> *Ibid.*

<sup>141</sup> *Ibid.*

<sup>142</sup> *Ibid.*

<sup>143</sup> E. Diviney and S. Lillywhite, *Ethical Threads: Corporate Social Responsibility in the Australian Garment Industry* (Melbourne: Brotherhood of St. Laurence, 2007), available at: <[http://www.bsl.org.au/pdfs/DivineyLillywhite\\_ethical\\_threads.pdf](http://www.bsl.org.au/pdfs/DivineyLillywhite_ethical_threads.pdf)>, accessed 11 July 2010.

<sup>144</sup> E. Diviney and S. Lillywhite, “Corporate Responsibility and Stakeholder Governance: Relevance to the Australian Garment Sector”, in K. Macdonald and S. Marshall (eds.), *Fair Trade, Corporate Accountability and Beyond: Experiments in Globalizing Justice* (Ashgate, 2010).

reported that six of the 23 corporations had developed their codes of practice unilaterally without embracing those international labor practices.<sup>145</sup> *Ethical Threads* also reported that all except one corporation had developed and implemented their codes of practice in the absence of external involvement from NGOs, labor organizations, workers, and government, arguing that reporting measures under ETI initiatives and other CSR instruments do not contribute to successful improvement in labor conditions.<sup>146</sup>

While the authority to create compliance under voluntary regulations has been questioned, it is important to look at incidents of governmental support for the fair trade movement.<sup>147</sup> The Department for International Development in UK (DFID) referred fair trade and sustainable development for discussion in the House of Commons in 2001, which then adopted an agenda to support corporations that sought fair trade products and where small-scale producers were granted shares in a company, such as Day Chocolate and Cafédirect.<sup>148</sup> In 2000, DFID issued a loan of GBP 400,000 to the Devine Chocolate Company as part of its programs for poverty alleviation in Ghana.<sup>149</sup> The company reports that the loan enables it to expand financial assistance to cocoa farmers in Ghana. The amount of social premiums in 2006 reached GBP 112,900 which local farmers used to develop social infrastructures like schools and local development projects.<sup>150</sup> In 2009, the European Parliament demonstrated similar support by issuing a communication<sup>151</sup> to the Commission to provide guidelines for raising customer awareness about fair trade products and implementing CSR procurement policies. The Commission provided initiatives to include fair trade matters in the Communication of the Commission of European Communities on 5 May 2009,<sup>152</sup> highlighting sustainable development and the role of fair trade in the purchasing scheme. As microtrade proposes the establishment of an organization to liaise with government and other international bodies, it is

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<sup>145</sup> *Ibid.*, p. 160.

<sup>146</sup> *Ibid.*, p. 162.

<sup>147</sup> P. Khumon, *CSR as a Means of Law: Regulation of Business Conduct to Take Account on Social Responsibility*, 3 *Transnational Corporations Review*, no. 3 (2011), 84-95, at 92.

<sup>148</sup> See generally, Department for International Development, *DFID and Fair Trade* (Department for International Development. London. 2001).

<sup>149</sup> See generally, Department for International Development, *Fair Trade and Development: Seventh Report of Session 2006-07*, (House of Commons, International Development Committee. London. 2007).

<sup>150</sup> *Ibid.*

<sup>151</sup> European Union: European Commission, *Communication from the Commission to the Council, The European Parliament and the European Economic and Social Committee, Contributing to Sustainable Development: The role of Fair Trade and Nongovernmental Trade-Related Sustainability Assurance Schemes*, 5 May 2009, COM(2009) 215 final, available at: <[http://trade.ec.europa.eu/doclib/docs/2009/may/tradoc\\_143089.pdf](http://trade.ec.europa.eu/doclib/docs/2009/may/tradoc_143089.pdf)>.

<sup>152</sup> *Ibid.*

important to draw upon practices from the UK DIFD and EU Commission in taking account of fair trade attempts. It is also important to raise awareness of fair trade in government forums and national policies.

Even though fair trade positively correlates with the alleviation of poverty in developing countries,<sup>153</sup> there are political and economic debates that the newest fair trade's vision has been moving dramatically towards mainstream markets by shifting from its cultural values to incorporate more aspects of corporate culture.<sup>154</sup> FLO is being criticized as their stricter standards are becoming more and more unattainable to poor producers.<sup>155</sup> The stringent fair trade rules now create a burden for producers via long and complex documents and requirements for producers.<sup>156</sup> For example, producer cooperatives need to obtain a letter of intent from wholesale or a retailer agreeing to buy their products at a higher price before applying for a certification mark.<sup>157</sup> While the registration fee for certification used to be paid by the importers, the producers are now responsible for this fee.<sup>158</sup> The fee is, however, not reflective of the disadvantaged position of the poor. The fee for smallest group (both 100 producers and less) is USD 3,000 – USD 3,800.<sup>159</sup> In addition, there is also an annual fee of USD 1400, subject to renewal.<sup>160</sup> Since statistics show the average income for a Kenyan is USD 300 per year, there is no doubt that it becomes a challenge for the poor to be able to pay that amount for a certification.<sup>161</sup> Recent news has shown conflicting direction in business aims between the FLO and Fair Trade USA, one of FLO labeling initiatives, resulting in the resignation of Fair Trade USA from FLO effective 31 December 2011.<sup>162</sup> Fair Trade USA will continue to pursue its own fair trade endeavors independent from FLO.

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<sup>153</sup> See generally, J. Aranda and C. Morales, *Poverty Alleviation through Participation in Fair Trade Coffee Networks: The Case of CEPCO, Oaxaca, Mexico*, (Fair Trade Research Group, Colorado State University, 2002).

<sup>154</sup> M.K. Goodman, *Reading Fair Trade: Political Ecological Imaginary and the Moral Economy of Fair Trade Foods*, 23 *Political Geography*, no. 7 (2004), 891-915, at 892; and, P. Booth and L. Whetstone, *Half a Cheer for Fair Trade*, 27 *Economic Affairs*, no. 2 (2007), 29-36, at 32.

<sup>155</sup> Goodman (2004), *supra* note 154, p. 909.

<sup>156</sup> *Ibid.*

<sup>157</sup> Booth (2007), *supra* note 154, p. 31.

<sup>158</sup> *Ibid.*

<sup>159</sup> *Ibid.*

<sup>160</sup> *Ibid.*

<sup>161</sup> *Ibid.*

<sup>162</sup> See Fairtrade Labeling Organizations International, *Joint Announcement from Fairtrade International and Fair Trade USA* (15 September 2011), available at: <[http://www.fairtrade.net/single\\_view1.html?&cHash=83530908053341515989732ff7936571&tx\\_ttnews\[tt\\_news\]=235](http://www.fairtrade.net/single_view1.html?&cHash=83530908053341515989732ff7936571&tx_ttnews[tt_news]=235)>, accessed 12 November 2011.

Another debate concerns whether the benefits from the fair trade price actually reach the hands of the poor.<sup>163</sup> It is argued that the higher price from fair trade products contribute to FLO's use for marketing purposes rather than empowering poor producers.<sup>164</sup> FLO is reported to receive the majority of income by charging an eight per cent in each company's turnover, and is argued to spend this amount of money developing its marketing strategies and increasing the organization size.<sup>165</sup> While fair trade prohibits employment of child labor, it is argued that child labor is an important factor in welfare generation in poor countries.<sup>166</sup> Therefore, prohibiting child labor could prove disastrous to livelihoods of poor families.<sup>167</sup> It has also been argued that producers do not always receive fair prices according to the principles; this is because the price granted to producers is normally decided by cooperative leaders, and there is a possibility of corruption within cooperatives.<sup>168</sup>

There is also the concern that the future growth in the fair trade movements might induce competition among the same movements leading to confusion about product information, original sources, and multiple ethical labels.<sup>169</sup> Bananas labels provide a great example of how multiple alternative trade regimes can lead to consumer confusion.<sup>170</sup> In addition to bananas carrying the FLO mark, bananas can carry the mark of another organization, Rainforest Alliance, certified by the FLO to issue the labels 'ECO-OK' and 'Better Banana,' which notify consumers that their bananas are produced in a way that protects the rainforests.<sup>171</sup> It has been questioned as to what criteria alternative organizations have to meet in order to be classified for fair trade labels.<sup>172</sup> There are doubts as to whether the criteria set by FLO are prescriptive enough, as it seems that those who have met criteria do not contribute to actual commitments to fair trade ethical standards.<sup>173</sup>

It has been debated that the slow growth of fair trade sales could be another issue, leading to uncertainty on the future viability of fair trade.<sup>174</sup> Although fair trade sales have risen gradually, representing five per cent growth each year, the impact of fair trade sales still represent only 0.1 per cent of the overall goods

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<sup>163</sup> Booth (2007), *supra* note 154, p. 29.

<sup>164</sup> *Ibid.*, p. 29, 30.

<sup>165</sup> *Ibid.*, p. 32.

<sup>166</sup> K. Kis-Katos and G. Schulze, *Regulation Of Child Labour*, 25 *Economic Affairs*, no. 3 (2005), 24-30, at 26.

<sup>167</sup> Booth (2007), *supra* note 154, p. 32-33.

<sup>168</sup> *Ibid.*

<sup>169</sup> I. Hudson and M. Hudson, *Removing the Veil: Commodity Fetishism, Fair Trade, and the Environment*, 16 *Organization & Environment*, no. 4 (2003), 413-30, at 425.

<sup>170</sup> *Ibid.*

<sup>171</sup> *Ibid.*

<sup>172</sup> *Ibid.*, p. 426.

<sup>173</sup> *Ibid.*, p. 425.

<sup>174</sup> *Ibid.*

exported worldwide.<sup>175</sup> A survey in the UK indicates that only one in three consumers consider buying fair trade or ethical products.<sup>176</sup> From an economist's point of view, Leclair suggests that it is highly unlikely that fair trade benefits will reach out to all small producers within a given country due to the fact that the FLO tends to be selective in providing coverage to particular groups that are capable of setting up cooperatives.<sup>177</sup> Since commodity products can be competitive in the market, the promotion of fair trade can create a shift in demands away from producers outside fair trade.<sup>178</sup> The other argument is that the FLO tends to encourage and prolong the production of traditional and cultural products which could halt individual economic independency and development.<sup>179</sup>

Economists like Maseland and Vaal examine the comparative aspects of fair trade and free trade to argue that it is not always the case that fair trade will always result in better income development than free trade.<sup>180</sup> They suggest that the question as to whether or not fair trade can result in better income to small producers than free trade depends on several considerations depending on product characteristics and market locations.<sup>181</sup> Because fair trade always drives consumer demand in targeted products, such as primary commodities, fair trade can only be regarded as yielding a better income distribution than free trade where the focus is on the product range fair trade particularly targets and aims at selling in.<sup>182</sup> Also, while fair trade maintains an edge on income development for producers in poor countries, the evidence shows that it has caused deteriorations elsewhere, especially in labor wages in manufacturing sectors within rich countries.<sup>183</sup>

Despite various benefits that small producers are entitled to under the regime of fair trade, the debate still occurs as to whether those benefits actually reach the hands of producers.<sup>184</sup> While many of the above examples in Latin America create a clear picture of efficient transfer of wealth to the poor, other

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<sup>175</sup> Fair Trade Federation, *Fair Trade Facts* (June 2003), available at: [http://www.fairtradefederation.com/ab\\_facts.html](http://www.fairtradefederation.com/ab_facts.html).

<sup>176</sup> See generally, D. Doane, *Taking Flight: The Rapid Growth of Ethical Consumerism: The Ethical Purchasing Index 2001* (New Economics Foundation, 2001), and also, C. Wright, *Consuming Lives, Consuming Landscapes: Interpreting Advertisements for Cafe Cafédirect Coffees*, 16 *Journal of International Development*, no. 5 (2004), 665-80, at 678.

<sup>177</sup> M.S. Leclair, *Fighting the Tide: Alternative Trade Organizations in the Era of Global Free Trade*, 30 *World Development*, no. 6 (2002), 949-58, at 955.

<sup>178</sup> *Ibid.*

<sup>179</sup> *Ibid.*, p. 956.

<sup>180</sup> A. De Vaal and R. Maseland, *How Fair is Fair Trade?*, 150 *De Economist*, no. 3 (2002), 251-72, at 251.

<sup>181</sup> *Ibid.*

<sup>182</sup> *Ibid.*, p. 259.

<sup>183</sup> *Ibid.*, p. 268.

<sup>184</sup> K. Raworth, *Trading Away Our Rights: Women Working in Global Supply Chains* (Oxford: Oxfam International, 2005), p. 48.



evidence has indicated that fair trade does not give a substantial amount of financial return to poor farmers.<sup>185</sup> Oxfam argued that Border's bookstores were charging USD 3.6 extra on an organic fair trade coffee over other coffee; and of that USD 3.6, farmers only get USD 0.57 (account for only 15 per cent of the actual entitlement).<sup>186</sup> Do these examples represent the failure of the fair trade system in giving real benefits for the poor? While there appears to be several other fair trade cooperatives that function efficiently, these backdrops represent the algorithm of business-as-usual, as long as there are corporations involved.<sup>187</sup>

## VI. CONCLUDING REMARKS AND FUTURE PROSPECTS

The fair trade movement provides a mechanism for redirecting adverse effects from global trade pressures away from disadvantaged small producers in developing countries by its creation of ethical networks of certified commodity. While the fair trade movement has developed a certification system overseen by a voluntary organization, the FLO, microtrade has also proposed a voluntary participation by global producers, industries, and international organizations to aggregate demands for locally-produced products. It is important to view fair trade and microtrade as parallel initiatives, and not overlapping approaches. Microtrade can learn from fair trade's functional mechanics in dealing with logistical issues and supply chains. Microtrade may follow the path of fair trade to develop its own certification model by establishing an independent organization which oversees overall activities and ensures that all the standards are met. However, unlike commodity products, a certification system might prove to be problematic for microtrade products due to the diversity of the products and complications about product origins. Nevertheless, the fair trade movement has undergone a series of proposals to include non-commodity products within its certification mark. Recently the *World Fair Trade Organization (WFTO)* has been attempting to create a new fair trade certification system, "Sustainable Fair Trade Management System (SFTMS)", which will include non-commodities and even an entire business, including all of its products and services.<sup>188</sup> It is interesting to consider that locally-produced products under microtrade may be able to collaborate with the new WFTO certification proposal.

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<sup>185</sup> *Ibid.*

<sup>186</sup> *Ibid.*

<sup>187</sup> J. Wilkinson, *Fair Trade: Dynamic and Dilemmas of a Market Oriented Global Social Movement*, 30 *Journal of Consumer Policy*, no. 3 (2007), 219-39, at 224.

<sup>188</sup> World Fair Trade Organization (2011), available at: <<http://www.wfto.com/sftms>>, accessed 12 November 2011.

Despite its capability-building aim, it is interesting to note that fair trade certification agencies are only located in developed countries. Except Japan, there are no fair trade certification agencies under the FLO in Asia, despite recent growing demands in fair trade products in the region.<sup>189</sup> There are also no fair trade certification agencies in developing continents worldwide (South America and Africa—where the majority of fair trade products are sought). It is feasible to propose an establishment of certification agencies in developing regions to ensure empowerment and learning capability of local producers because, after all, these fair trade products are what they are most accustomed to. It has been suggested that a main obstacle to creating fair trade certification agencies in developing regions is the lack of resources to build up a system and competency.<sup>190</sup> As for a developing country like Thailand, the fair trade practice has been scattered and relying much on NGOs and independent support at times. This is a justification for why the establishment of certification agencies in developing countries has become so important, so that more resources in knowledge and competency are drawn into developing countries to increase participation and awareness of fair trade activities. The same can be said about microtrade activities, drawing international attention to local processes can be a path for attaining the goal of creating local competency and development.

It has been argued that the most efficient way to maintain true benefits for the poor is actually to hand them money directly, rather than to systemize money from a retailer, who hands some of it to a distributor, who hands some of that to a fair trade product retailer, who hands some of it to an importer, and who pays a fair trade producer in some developing country<sup>191</sup> This is because of the fact that every link along the chain takes an amount of money away, leaving less in the hands of producers.<sup>192</sup> The argument suggests that charity might come to provide a better management of the poor's income, rather than a complicated system of fair trade.<sup>193</sup> However, aid is not the aim of fair trade and microtrade. The significance of fair trade and microtrade is to be a development project, as it operates within normal free trade regime. They both are anything but income-oriented movements for retailers; rather, they reflect the significant concepts of social and economic development that support the idea of justice and freedom, leading to the realization of the poor's economic and social rights. The advantages of both movements comprise not only monetary benefits, but also comprise

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<sup>189</sup> Fairtrade Labeling Organizations International, *Building Fair Trade in Asia* (13 April 2011), available at: <<http://fairtradeblog.tumblr.com/post/4577787268/building-fairtrade-in-asia>>, accessed 22 October 2011.

<sup>190</sup> V. Panyakul, "Creating a green market: experiences from Green Net-Thailand", LEISA, 01 December 1998.

<sup>191</sup> Wilkinson (2007), *supra* note 187, p. 224.

<sup>192</sup> Gresser and Tickell (2002), *supra* note 82, p. 57.

<sup>193</sup> Wilkinson (2007), *supra* note 187, p. 224.

several non-monetary benefits aiming to have an impact beyond economic outcome, such as social empowerment and a psychological benefit of having local unity and choices in employment.

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