



**LEGAL ASPECTS OF
SUSTAINABLE NATURAL
RESOURCES**

**LEGAL WORKING
PAPER SERIES**

**LEGAL AND INSTITUTIONAL
BARRIERS TO FAIR TRADE**

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RETURNING TO E'DEN: COMBATting ECOLOGICAL CHANGE THROUGH INDIGENOUS RIGHTS

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1. Introduction	3
2. About Fair Trade	4
2.1. What is fair trade?	4
2.2. What Development of Fair Trade as a tool for legal empowerment for the poor	5
2.3. Anticipated benefits of fair trade	6
2.4. How Fair Trade Works... A closer look	8
2.4.1. Becoming a fair trade organisation	9
3. Legal and institutional barriers on getting fair trade products to markets	10
3.1 Steps to fair trade: relevant factors, associated challenges, and solutions that have been used elsewhere	11
3.1.1. <i>Step 1: Certification and requirements of certification</i>	11
A) The high costs of certification – micro finance and grants to help certification	12
Solution: Locally based fair trade certification organisations and networks	13
Solution: capacity building for the most poor producers	15
B) Difficulties in forming a cooperative legal form	15
Solution: Better cooperative laws	17
<i>Create an internal government representation for cooperatives</i>	17
<i>Cooperative legislation</i>	18
<i>Innovative capital raising methods for cooperatives</i>	18
<i>Public awareness of rights, obligations, costs-benefits of cooperatives</i>	19
3.1.2 <i>Step 2: Access to markets and how to facilitate international trade</i>	19
Importance of markets for the rural poor	19
Traditional barriers to market access	20
Solution: Knowledge and capacity building projects	21
Barriers to imports	21
Governments can influence the enabling environment for trade	22
4. Conclusion	23

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1. Introduction

Global and local initiatives to combat poverty and strengthen food security have been met with varying degrees of success and credibility. Among the most innovative of these manifold campaigns, project, and initiatives is the large scale implementation of the principles fair trade. This quickly institutionalising regime rests on the premise that trading partnerships should feature sustainable development for excluded and disadvantaged producers.² Overall, evidence indicates that poor producers and communities have experienced significant social and economic benefits from fair trade.³

This paper seeks to look beyond the glowing praise of fair trade and the vitriolic denunciations of fair trade from different economic ideological perspectives. The objective of this research is to explore the nuances that define the complex reality of producer livelihoods, and social, political and legal institutions in developed countries to determine what are the actual legal and institutional barriers to fair trade for producers. An overarching feature of development literature on the topic is the emphasis on the contextual nature of fair trade problems and solutions. However some barriers to fair trade can be generalised to focus on the different steps necessary to achieve success as a fair trade producer.

Particular points of discussion will be barriers to fair trade certification, such as access to financing for certification and creating the legal business form demanded by fair trade certification organisations. The obstacles for market access for fair trade producers will also be examined. Aspects of labelling and regulation and producer networks have been identified as possible areas for policy action. Where applicable, best practice laws, government policies, or projects that have effectively addressed problems will be presented as a potential inspiration for policy responses to similar problems elsewhere. Fair trade is a movement and a set of business initiatives.⁴ Duly noting the manifold dimensions of the fair trade movement, this paper will narrow its study of fair trade to the producer elements and tangible business initiative of fair trade.

The genesis and development of fair trade as a social movement and alternative market for products has traditionally been outside of the policy realm. As part of its institutionalisation, fair

² Robinson, 2000, p. 21

³ fisher 996 citing (e.g. Murray et al., 2003; Ruben, 2008).

⁴ acf3c8c p. 3

trade is developing a policy framework that may create greater opportunities for increased government and legal participation.⁵ The historical foundations of the development of fair trade are pertinent to understand how it has gotten to where it is today, and what possible roles might emerge for national lawmakers.

2. About Fair Trade

2.1. What is fair trade?

The concept of fair trade, broadly defined, is a trading partnership that seeks sustainable development for marginalized, disadvantaged and poor producers.⁶ The official definition of fair trade as agreed to by the organisations that have come to represent the movement is:

“Fair Trade is a trading partnership, based on dialogue, transparency and respect, that seeks greater equity in international trade. It contributes to sustainable development by offering better trading conditions to, and securing the rights of, marginalised producers and workers – especially in the South. Fair Trade organisations (backed by consumers) are engaged actively in supporting producers, awareness raising and in campaigning for changes in the rules and practice of conventional international trade.”⁷

An ambitious concept that has been met with varying degrees of success on a global level, fair trade fosters legal and economic empowerment of the poor by removing institutional and economic barriers. It seeks to create opportunities for poor producers with the goal of creating a better standard of living for the world’s poor.

The extreme poverty that almost 3 billion people live in perpetuates a vicious cycle of poverty that is fuelled by a degradation of capacity to reverse their impoverishment.⁸ The unequal international distribution of wealth has been likened to a global apartheid in that accidental birth into a particular nationality and income class forces people into a position of poverty, inequality, and

⁵ 1633 998

⁶ Robinson, 2000, p. 21). From Peter Leigh Taylor p. 132

⁷ <http://www.european-fair-trade-association.org/observatory/index.php/en/fairtrade>

⁸ Trachtman 3

disenfranchisement.⁹ Thus, fair trade's objective is to work within the current market system to cultivate better trading conditions for developing producers through a multifaceted approach.¹⁰

The fair trade concept of improving standards of living through trade seeks to reinforce the idea of commercial solidarity between wealthier consumers in the North and the economically, politically and socially marginalised. It suggests that trade and consumption there can be used as a social development mechanism.¹¹

2.2. What Development of Fair Trade as a tool for legal empowerment for the poor

The fair trade movement originated in the 1960s in developing countries as a reaction to perceived unfair terms of trade from unrestrained international free trade regimes and globalization.¹² The popular slogan "Trade not aid" illustrated the view that achieving better trading conditions was essential for development, and preferred to aid.¹³ The movement claimed that the unfair and unsustainable characteristics of international trading relations would be exacerbated with increased globalisation.¹⁴

The fair trade movement began with the establishment of Alternative Trading Organisations (ATOs). These networks facilitated the sale of a range of products from developing countries such as food and handicrafts to consumers in the North. Incorporating all levels of the market chain, ATOs were responsible for importing, distribution, and sale of the products. Originally, sale of fair trade products was limited to specialty shops in the North.¹⁵ Trade with marginalised producers in developing countries was based on equitable commercial terms, fair wages and fair prices. This meant that producers were paid above market prices and that identified unfair trade structures, mechanisms, and practices were avoided.¹⁶

Over time the fair trade business has come to be defined by a labeling regime based on certification processes. This process has allowed the movement to grow and assure quality to

⁹ Trachman 4

¹⁰ Milford Coffee 8

¹¹ Alberto Arce 1031

¹² Milford Coffee 7

¹³ Rice 2001 Rice, Robert A. (2001): 'Noble goals and challenging terrain: Organic and Fair Trade coffee movements in the global marketplace', *Journal of Agricultural and Environmental Ethics*, Vol. 14, No. 1

¹⁴ acf3c8c 3

¹⁵ Milford Coffee 8

¹⁶ acf3c83 4

consumers.¹⁷ Benefitting from the established distribution networks, fair trade labels expanded the purchasing base for fair trade products by enabling commercial businesses to attract consumers with the 'Fair Trade' labels on products purchased from producers in the South.¹⁸ The ascent of the 'Fair Trade' label brought fair trade products out of the confines of the specialty store and made the products and the ideas they represented accessible to the population at large via mainstream stores in many Northern countries.¹⁹

The indisputable leader in the fair trade labeling industry is the Fairtrade Labelling Organisation (FLO). This organization, whose product sales have steadily increased over the last two decades, serves a variety of functions along the certification and fair trade supply chain. The organization has national initiatives in 17 countries, whose mandate is to increase demand for FLO certified products.²⁰ Fair Trade labeled products include coffee, sugar, oranges, cocoa, bananas, tea and honey from Latin America, Asia and Africa. Handicrafts and artisanal work are also sold under fair trade labels.²¹ Some countries have created their own national initiatives since the inception of the fair trade labeling system in the late 1980s.²²

2.3. Anticipated benefits of fair trade

Many fair trade certification regimes offer a cheap source of credit by paying producers before they supply their product. This access to capital is crucial, especially in countries where credit is expensive or access to it is restricted. Secured loans can be particularly unattainable where property rights are not properly recognized or enforced.²³

Producers that are economically disadvantaged or marginalised by the mainstream trading system may have greater market access through their registration with a fair trade label.²⁴ Products with fair trade labels grant local producers greater visibility to international traders by facilitating communication and business with them. The label inspires a confidence in the local producer where the international trader might be otherwise sceptical of conducting business with small insulated

¹⁷ Arce 1032

¹⁸ Milford Coffee 8

¹⁹ Milford Coffee 8

²⁰ Milford Coffee 8

²¹ Milford Coffee 8

²² Milford 9

²³ p. 30 <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-0270.2007.00727.x/pdf> Booth and Whetstone CHECK SOURCE

²⁴ <http://www.european-fair-trade-association.org/observatory/index.php/en/fairtrade>

producers.²⁵ Commercial relations are based on principles of transparency and accountability to cultivate fair and respectful trading relationships.²⁶

The holistic social and economic benefits that fair trade business practices hope to accomplish include:

Capacity building. Fair trading relationships are meant to establish stable trading relationships that allow producer and trading organisations to improve management capacity and access to markets.²⁷

Paying fair prices. Protecting small producers from volatile market price fluctuations is one of the fundamental objectives of fair trade.²⁸ A fair price is one that considers the social and environmentally sound cost of production. Payment is made promptly, and access to pre-harvest financing is a desirable goal.²⁹ The guaranteed minimum price ideally includes consideration for investment costs by the producer cooperative.³⁰

Gender Equity. Men and women are paid equally for their work. Women are compensated for their work in the production process. They are empowered through the producer organisations they participate in.³¹

Working conditions and child labour. A prerequisite for ongoing certification status is the maintenance of safe and healthy working conditions for producers. Particular attention is given to limiting the participation of children, depending on the specific label organisation. Practices of children participating in production generally must conform to the UN Convention on the Rights of the Child as well as the law and norms in the local context with particular focus on well-being, security, educational requirements and need for play.

The environment. Most fair trade organisations emphasise environmentally sound practices as part of sustainable development.

²⁵ Milford 9

²⁶ <http://www.european-fair-trade-association.org/observatory/index.php/en/fairtrade>

²⁷ <http://www.european-fair-trade-association.org/observatory/index.php/en/fairtrade>

²⁸ Whetstone?

²⁹ <http://www.european-fair-trade-association.org/observatory/index.php/en/fairtrade>

³⁰ Milford 9

³¹ <http://www.european-fair-trade-association.org/observatory/index.php/en/fairtrade>

Trade Relations. Fair trade organisations aim to maintain long-term trading relationships based on solidarity, trust, and mutual respect.³²

2.4. How Fair Trade Works... A closer look

Two distinct strategies have come to predominate the distribution of fair trade products: fair trade products that carry the fair trade label and alternative trading organisations. The introduction of fair trade product certification has come to encompass most fair trade agricultural products. This particular mobilisation of fair trade, which works through a standards and labelling system, represented a major shift in the fair trade movement.³³ The other is a cluster of alternative trade organisations (ATOs) that use their own business model, distribution and marketing. They also use labels to guarantee their organisations (as opposed to specific products) are certified fair trade.^{34,35} In addition to ATOs and labelling organisations, organisations that are main actors in the fair trade movement are southern producer organisations and fair trade networks and umbrella associations.³⁶

Fair trade producer organizations are based on the principle that democratic, producer-controlled organisation are necessary for producer empowerment and to create more equitable trade relationships.³⁷ In line with this democratic vision, many fair trade producer organizations take on a cooperative form. This decision can be voluntary or because the fair-trade certifier requires the organisation to be a cooperative.³⁸ Aggregating producers into one large group is considered an efficient alternative to other options for small-scale producers.³⁹ A producer organization that satisfies the requirements of a fair trade certification organisation, such as FLO International, is considered a fair trade organization. Producer organisations might only sell a portion of their total output to ATOs or under fair trade labels. Affiliation as a fair trade producer organization can be a valuable means to access the resources for capacity building and markets that ATOs provide.⁴⁰

Alternative trading organisations' trading initiatives usually trade in handicrafts, clothes and food. Many have their own retail outlets in developed countries. Examples include, Oxfam and Traidcraft. The main difference from fair trade labelling organisations is that ATOs do not strictly

³² <http://www.european-fair-trade-association.org/observatory/index.php/en/fairtrade>

³³ J. Int. Dev. 21, 985–1003 (2009) p. 988

³⁴ J. Int. Dev. 21, 985–1003 (2009) p. 988

³⁵ <http://www.european-fair-trade-association.org/observatory/index.php/en/fairtrade>

³⁶ ac3c83 p. 9

³⁷ acf3c8c 7

³⁸ Whetstone

³⁹ ac3c83 p. 3

⁴⁰ ac3c83 p. 7

sell fair trade labelled products. Rather their fair trade credibility is derived from the reputation of the organisation as being fair trade. ATOs also have a significant advocacy dimension. They raise awareness for fair trade and try to influence mainstream consumer habits.⁴¹

Separate from ATOs and labelling organisations is a network of umbrella fair trade organisations. The organisations facilitate synergy and cooperation between the plethora of fair trade organisations in the North and South. These organisations take on an array of functions depending on their mandate. Examples include the International Federation for Alternative Trade (IFAT), the European Fair Trade Association (EFTA) and the Network of European World Shops (NEWS).⁴²

Fair trade labelling organisations, such as FLO, set the fair trade standards and provide support to producers. A parallel organisation, FLO-CERT, is in charge of inspecting and certifying producer organisations and auditing of traders.⁴³ The criterion for fair trade certification is differentiated according to the commodity being produced. Producer organisations that have passed the certification process can sell products with the fair trade label. Its also possible for mainstream businesses to use the fair trade label if the products have been traded according to fair trade rules and the product's producer organisation is approved. FLO International has emerged as the international umbrella organisation for Fair Trade labelling.⁴⁴

There are generally three types of fair trade product.⁴⁵ The most predominant are smallholder crops. Though the reduced role of the state in markets regulation for commodities such as coffee provides private market opportunities, there are risks of exposing small producers to volatile price fluctuations that can be mediated by fair trade pricing.⁴⁶ Fair trade products can also be from plantations crops such as tea and bananas. Finally, handicrafts and other small manufactured goods also represent a share of fair trade products sold.⁴⁷

2.4.1. Becoming a fair trade organisation

The first step in the certification process is forming a producer organisation. While not all fair trade certification labels are the same, a general example of the necessary steps to become a fair

⁴¹ ac3c83 p. 8

⁴² ac3c83 p. 8

⁴³ http://www.fairtrade.net/history_of_fairtrade.0.html

⁴⁴ ac3c83 p 9

⁴⁵ ac3c83 p 11

⁴⁶ ac3c83 p. 11

⁴⁷ ibid 12

trade producer can be derived from FLO-CERT. Producers must first analyse which set of applicable standards relating to their characteristics as a producer apply to them. Different categories relate to whether the producer uses hired labour, and the product being sold. Each category has a corresponding minimum fair trade price for product and origin. Before actual certification begins, the producer organisation must find buyers willing to buy the product at the higher fair trade price and on fair trade terms in the importing countries. As previously mentioned, usually a significant share of fair trade producers products are sold outside of the fair trade chain. Certification does not promise complete fair trade market access for all of a producer's output.

There are three categories of requirements for co-operatives: social, economic and environmental development. Social development criteria concentrate on guaranteeing that most of the members in the necessarily democratic organization are small producers. This democracy must be participatory, transparent and non-discriminatory. The economic development criterion related to use of the Fair Trade price premium, and export standards. Environmental conditions related to production methods, notably the use of pesticides.⁴⁸

Certification costs can be accessed on the FLO-CERT website. The producer organisation must pay an application fee before the certification evaluation can begin. If the application evaluation is successful, the labelling organisation undertakes an initial audit and will communicate any non compliant elements which must be rectified before certification will pass.⁴⁹

Once certified, the producer organisation must be prepared to pay the costs for annual audits, which are not subsidized. Part of certification demands ongoing maintenance and improvement of production and organization. This implies annual investments in improvements and in access to fair trade markets.⁵⁰

3. Legal and institutional barriers on getting fair trade products to markets

The disparity in discourses on fair trade between the global marketing level and local perspectives can at times be remarkable. Fair trade is by no means immune to critiques. Questions of

⁴⁸ Milford 9

⁴⁹ <http://www.flo-cert.net/flo-cert/main.php?id=64>

⁵⁰ http://www.fairtrade.net/becoming_a_fairtrade_producer.0.html

uncertainty regarding unequal power relations, inequality, gender gaps, and exclusionary practices are often concealed behind the stronger voices that laud the partnership and equity elements of fair trade.⁵¹

Building on the foundation set by the previous section, this subsequent analysis will identify some of the specific obstacles related to fair trade, and will offer examples of solutions that have been applied elsewhere. The experiences of other communities, producers, and nations in overcoming the crushing weight of mismanagement and poverty to be able to export fair trade products can be germane to others in like situations. Issues such as massive rural poverty, marginalisation and exclusion are global. The challenges related to fair trade for producers are multidimensional and overlapping. As such, the following section attempts to outline the barriers to fair trade according to the steps necessary to achieve fair trade. These problems overlap, as do the practices that have been implemented to overcome them.

3.1 Steps to fair trade: relevant factors, associated challenges, and solutions that have been used elsewhere

3.1.1. Step 1: Certification and requirements of certification

Producers must become certified by one of many fair trade certification organisations before they can begin to enjoy the advantages the regime is intended to deliver. This necessary initial step comes with a plethora of requirements, many posing prohibitive challenges to small producers. Certification is essential because it enable the producer to gain access to the use of a certain label. Labels are essential to the mechanics of the fair trade marketing scheme. Consumer confidence in a fair trade product is derived from their trust in a sign or seal. Labels with established reputations convey to the consumer that the product incorporates the social, economic and environmental values of fair trade.⁵² Without certification a fair trade producer doesn't have access to this consumer niche and lacks the credibility that their product is produced according to fair trade values.

⁵¹ 1633 ftp 993 (see in txt citation)

⁵² http://www.sciencedirect.com/science?_ob=ArticleURL&_udi=B6VD9-4HDX6RP-1&_user=458507&_coverDate=10%2F31%2F2005&_rdoc=1&_fmt=high&_orig=search&_origin=search&_sort=d&_docanchor=&view=c&_acct=C000022002&_version=1&_urlVersion=0&_userid=458507&md5=113749292b59af08961b34a514533575&searchtype=a#SECX3

Considered from another angle, there are actually costs for producers that are not fair trade certified. Fair trade coffee fixes prices in order to prevent volatile price fluctuations for producers. This regulation serves to protect producers. To borrow from the traditional criticisms of market regulation, those producers left inside the fair trade regime will benefit and the small producers outside will be relatively worse off.⁵³

A) The high costs of certification – micro finance and grants to help certification

In some cases, fair trade certification and pursuant contracts with importers and other labels have essentially rescued producers from destruction. This was the case for Nicaraguan smallholder coffee producers during times of crises. The fair trade contracts allowed peasants to gain access to credit.⁵⁴ This credit is crucial in countries that do not have accessible credit for poor farmers. However, the concept of fair trade as a tool of empowerment of the poor is not without a sense of irony. The fair trade certifier does not provide for the funding to cover the costs of certification. The potentially high costs of fair trade certification may effectively restrict access to the most poor producer groups.

Many fair trade labels, such as Fairtrade have a minimum fee for certification of a group of producers. For a small group of under 100 producers or employees, the minimum charge is around € 2,200. Many certification schemes also have annual renewal fees that can cost up to half of that initial amount. This cost can be excessive for poor producers with very low incomes.⁵⁵ There are also costs related to satisfying the certification requirements, and the certification process.^{56,57} The administrative costs of maintaining the necessary cooperative structures, and other fair trade certifier requirements persist as long as the producer carries the label. Moreover, once certified, lingering debt held by the cooperatives, can be transferred to the producer members. Thus small producers receive less than the expected fair trade price.⁵⁸ In some cases, up to half of the fair trade price is used to pay

⁵³ Whetstone 34

⁵⁴ http://www.sciencedirect.com/science?_ob=ArticleURL&_udi=B6V68-4WYCT7G-1&_user=10&_coverDate=01%2F31%2F2010&_rdoc=15&_fmt=high&_orig=browse&_srch=doc-info%28%23toc%235808%232010%23999589998%231574185%23FLA%23display%23Volume%29&_cdi=5808&_sort=d&_docanchor=&_ct=21&_acct=C000050221&_version=1&_urlVersion=0&_userid=10&md5=9cd9dce9d74c374225526369713f1664

⁵⁵ p. 31 <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-0270.2007.00727.x/pdf> Booth and Whetstone

⁵⁶ p. 31 <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-0270.2007.00727.x/pdf> Booth and Whetstone

⁵⁷ <http://www.flo-cert.net>.

⁵⁸ <http://www.informaworld.com/smpp/section?content=a713993832&fulltext=713240928>

off cooperative debt.⁵⁹ The problem of finding the money to pay for these costs is exacerbated by the lack of access to credit and capital that is characteristic in most developing countries.⁶⁰

Fair trade impact assessments have opined that viable groups for fair trade are unlikely to include the poorest and most marginal of producers. Before being candidates for fair trade, it may first be necessary for producers to enter the conventional supply chain and develop a minimum level of capacity.⁶¹

It has been suggested that **alternative sources of credit** for producers would facilitate entry into fair trade markets. In conjunction with this, **the strengthening of property rights** would help producers, particularly small crop holders, to access other sources of credit.⁶² Looking towards international **NGOs for initial financing** may also be a possibility to consider.

Some success stories of fair trade certification and promotion can be attributed to technical and financial support for European NGOs. Two examples of such partnerships of support for producers can be found with the cooperatives “Les Femmes de Marrakech” and “CentroCafe, Peru”.⁶³

Solution: Locally based fair trade certification organisations and networks

Experiences with fair trade across the spectrum have resulted in a common realisation that empowerment cannot be achieved without granting producer groups a greater voice in the process of defining fair trade and fair trade criteria. Certification and standard-setting agencies create power dynamics and impose technocratic knowledge requirements intrinsic to auditing processes. Without greater producer participation, there is a risk that rules and power relations will be imposed that put the very producers fair trade is supposed to help, at a disadvantage.⁶⁴ It is clear that there is a need to strengthen capacity for certification at the local producer level as the verification process for fair trade labels and standards depends on local capacities. One suggestion for empowerment of

⁵⁹ Development in Practice, Volume 15, Numbers 3 & 4, June 2005 p. 589 (pdf 71399...)

⁶⁰ Jason Potts 6

⁶¹ ACF3c83 p 31

⁶² p. 30 <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-0270.2007.00727.x/pdf> Booth and Whetstone

⁶³ <http://www.befair.be/fr/articles/www-befair-be/1-accueil/appui-a-la-commercialisation/cenfrocafe--peru.cfm> and <http://www.cenfrocafe.com.pe/>

⁶⁴ 1633 ft 990

producers and to reduce costs for certification is for local communities to create their **own local definitions and standards for fair trade**.⁶⁵

Fair trade networks that are regionally or nationally based have been established in several countries. Many of these networks or organisation have set up their own standards against which producers can be certified.⁶⁶ Locally run fair trade standards allow for the criteria to be custom fitted for local circumstances, while still meeting the conditions that allow them access to fair trade markets. The certification procedures of these local organisations are in principle less expensive than the certification process and auditing of the international labelling corporations.

Some examples of country or regional Fair Trade networks that are established or in the process of establishment include the ECOTA Fair Trade Forum in Bangladesh, Fair Trade Group Nepal, the Asia Fair Trade Forum, Kenyan Federation of Alternative Trade as well as networks on Sri Lanka, Indonesia, Zimbabwe and Brazil.⁶⁷ These steps towards localisation are similar to positive experiences in the ethical trade sector. In Zimbabwe, the Agricultural Ethics and Assurance Association of Zimbabwe (AEAAZ) developed their own code of practice and audit infrastructure. Farmers are assessed and certified against the association's standard.⁶⁸ Forming large umbrellas groups of cooperatives representing stakeholders from all along the supply chain not only facilitates synergy, but also can enable access to credit.

State involvement in fair trade has been a growing trend in Europe primarily in public sector policies and public procurement decisions. Government involvement for southern producers has been increasing as well, namely in the establishment of region specific fair trade production and certification. The South African policy on Black Economic Empowerment has become involved in production and certification projects and government policy in Brazil has included fair trade into its policy discussions.⁶⁹

Comercio Justo⁷⁰ is Central America's own fair trade label that is associated with Central American governments and the European Commission for financing.⁷¹ Comercio Justo has a positive policy impact in Mexico and Guatemala that involves building on the importance of fair

⁶⁵ Market op 31 *SEE IN TXT CITATION*

⁶⁶ Market op p. 32

⁶⁷ Market op 31

⁶⁸ Market op 31

⁶⁹ 1633 933

⁷⁰ <http://www.comerciojusto.org/es/>

⁷¹ 1633ftp 993

trade by aggregating producers from different regions and countries and the use of traditional practices and collective action.⁷²

Solution: capacity building for the most poor producers

The basic requirements for small farmers to become fair trade certified may exclude the most poor and marginalised from eligibility to the programs and the accompanying assistance, market access and social development premiums. The nature of fair trade organisations and the certification requirements often exclude households that have severe restrictions on labour and input. Producers may also be excluded from international fair trade labelling and market access because the quality of their product is too low and they have few resources and opportunities to make improvements.⁷³ These differences can fragment producer communities between those that have the capacity for fair trade certification and those that do not. Therefore, it is also useful to examine programs and projects that helped elevate producers out of the very lowest echelon of poverty, thus enabling them to become candidates for fair trade certification.

The partnership of CropLife Taiwan and crop protection associations with the Taiwanese government's Environment Protection Administration has resulted in more robust farmer outreach initiatives. The government and CropLife Taiwan have been working in rural farming areas of the country to train farmers on proper treatment of used pesticide containers. The training has allowed farmers to increase their yield, and develop practices that are environmentally sound. This project is part of the government's plan to make the country's agriculture industry more competitive and environmentally sustainable.⁷⁴ These types of projects help growers harness technology to increase yields thus bringing them increased revenues. The environmental practices they support are useful for producers that may want to become candidates for fair trade. Many fair trade certifiers demand certain environmentally sound practices from their producers.

B) Difficulties in forming a cooperative legal form

Fair trade limits the legal vehicle used by producers as well as who can be a part of the cooperative. Fair trade labellers require that producers form a group and become certified as a group.

⁷² 1633. P 997 also : http://www.kenfap.org/?menu=projects&view=project&project_id=24626 and <http://www.new-ag.info/03-3/focuson/focuson7.html> on the African Agricultural Ethics and Assurance Association of Zimbabwe (AEAAZ). Educating.

⁷³ Arce 1032

⁷⁴ <http://www.farmingfirst.org/2011/01/transferring-knowledge-to-farmers-in-taiwan/>

Most fair trade certifiers further require that these groups take on a cooperative form. Some go as far as to prohibit the use of hired labour and only allow farms that are strictly family run and part of large cooperatives.⁷⁵ For example, FLO requires that producers be organised in cooperatives or “other organisations with a democratic, participative structure”.⁷⁶ Cooperatives, especially those made up of small producers, have been criticized for being an inefficient form of business organisation because they subdue incentives and efficiency and increase the costs of the deployment of technology.⁷⁷ ⁷⁸ The critique of the use of cooperatives in the fair trade context has emphasized the difficulty of using cooperatives in primary products markets as a tool for sustainable development.⁷⁹

The successful establishment and management of a producer cooperative are essential in order to reap the benefits of fair trade. Research and experience has shown that cooperatives are ripe for corruption and mismanagement. A lack of transparency can lead to situations where the heads of the co-operatives take advantage of the members, for example, by paying them a lower price for their coffee than the co-op receives. Supervision of cooperatives by fair trade certifiers is not always adequate.⁸⁰ In general, experiences in building a strong and stable cooperative have been varied.

Usually only a small proportion of sales of fair trade registered producer organisations are under the fair trade label and or through ATOs. The direct fair trade marketing channel and the accompanying advantages are not always present.⁸¹ This is relevant because advantages of the higher price and advance payment that might cushion the cooperative from its problems are not always present and producers might continue to sell their product through this particular legal form. Therefore developing a strong and stable cooperative is important not only for fair trade certification, but for mainstream market initiatives as well.

Some of the main obstacles the groups in developing countries face when developing cooperatives are generated by misconceptions by policy makers and planners of what cooperatives actually are and how they work. Other problems include unrealistic expectations of what

⁷⁵ DP0709pdf p 7

⁷⁶ http://www.fairtrade.net/generic_producer_standards.0.html

⁷⁷ p. 30 <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-0270.2007.00727.x/pdf> Booth and Whetstone p. 32

⁷⁸ p. 31 <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-0270.2007.00727.x/pdf> Booth and Whetstone

⁷⁹ p 34 <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-0270.2007.00727.x/pdf> Booth and Whetstone and Milford, A. (2004) 'Coffee, Cooperatives and Competition: The Impact of Fair Trade', CMI Reports, Chr Michelson Institute, Bergen, Norway.

⁸⁰ p 33 <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-0270.2007.00727.x/pdf> Booth and Whetstone

⁸¹ acf3c8c p. 6

cooperatives are capable of accomplishing. Often cooperatives are established without regard to whether the minimum requirements for successful cooperative development are met.⁸²

Solution: Better cooperative laws

Commentators have suggested that in many states, what is needed is a recalibration of the balance between state regulatory, supervisory and promotional involvement in cooperative affairs and the autonomous cooperative movement of civil society. Legislative reforms regarding cooperatives should consider providing an equal status for cooperatives to enable them to compete on the same terms as investor driven enterprises.⁸³ That being said, a national cooperative law is neither a sufficient nor necessary conditions for the development of cooperatives. If cooperatives are to be meaningful actors in the economy then they will need to function within a developed corporate legal structure that underpins any robust liberal market economy. This means that countries with strong legal rules conducive to cooperatives can be at an advantage.⁸⁴ This section examines various approaches to cooperative legislation and policy.

Create an internal government representation for cooperatives

The increasingly complex nature of government initiatives raises the importance of policy coordination. To ensure that cooperatives are treated fairly and equally throughout the government system, some governments have created state bodies responsible for overseeing the special needs to cooperatives in all departments of government. This mandate can materialise by establishing a ministry of cooperatives, or creating a specific cooperative portfolio as part of a larger set of duties for a minister. It would be important to balance consideration of cooperatives in government initiatives with the threat of intervention into the affairs of cooperatives.⁸⁵

One positive example of a government body existing for the interests of cooperatives is the special directorate established within the European Commission of the European Union. This entity's role is to promote the interests of cooperatives, associations and mutual benefit societies. In the 1980s and 1990s the Canadian government also had a department whose role was to confirm that proper attention was given to cooperatives when government policy was being developed.⁸⁶

⁸² <http://www.ilo.org/public/english/standards/relm/ilc/ilc89/rep-v-1.htm#1.2.%20Developing%20countries>

⁸³ <http://www.ilo.org/public/english/standards/relm/ilc/ilc89/rep-v-1.htm#1.2.%20Developing%20countries>

⁸⁴ Coop_henry p. 9

⁸⁵ <http://www.ilo.org/public/english/standards/relm/ilc/ilc89/rep-v-1.htm#Chapter%20II>

⁸⁶ <http://www.ilo.org/public/english/standards/relm/ilc/ilc89/rep-v-1.htm#Chapter%20II>

Cooperative legislation

The problems and corruption that emanate from the cooperative legal model that certification organisations are unable to supervise or police, can be disciplined by cooperative legislation in some cases. It can also help in the building efficient and established cooperatives.

Analysts have suggested that a specific cooperative law should permit the incorporation and registrations of cooperatives. This would serve to instil a sense of confidence in cooperatives, and their financial and commercial partners. There are a variety of cooperatives that have different goals and types of members, such as urban, rural, and agricultural. Legislation can include all the different types of cooperatives under one single legislation or government authority. This type of law would better uphold the interests of cooperatives than if they were all registered under different acts and supervised by different public authorities. State cooperative law within a democratic and market-oriented country should be a part of a greater legal framework that supports private organisations. The legal elements should serve to facilitate the autonomous development of cooperative activities.⁸⁷ A country with a stable cooperative legal framework and regime might give confidence to potential creditors of the newly formed cooperative. It may also bestow the supplier cooperative with credibility, an asset for a new group that is seeking the necessary wholesaler who will buy their product at fair trade prices.

Examples of cooperative legislative reform in developing countries, especially in Latin America reflect a shift away from state influence and sponsorship of cooperatives. Legislative trends have gravitated towards cooperative autonomy and self reliance.⁸⁸

Innovative capital raising methods for cooperatives

As previously noted, cooperatives have a reputation for being less efficient business models. One of the main difficulties in this respect is in the cooperative's ability to raise sufficient capital. Traditionally in cooperative enterprises controlling power or dividends are not granted in return for financial investments. Some states have made laws to overcome these restrictions to raising capital without belying the principles of the cooperative model. The 1987 Cooperative Act of Sweden is one example of an innovative capital raising method instituted through cooperative legislation. This law allows cooperative societies to accept debenture contributions from non-members as long as they do

⁸⁷ <http://www.ilo.org/public/english/standards/relm/ilc/ilc89/rep-v-1.htm#Chapter%20II>

⁸⁸ Side note: The drafting process that incorporates participatory consultations was beneficial for creating legislation that reflected the needs of the people that are closely involved in cooperatives

not exceed the amount of the regular share value and do not attach voting rights.⁸⁹ Another law that grants cooperatives more freedom in their financing decisions is the 1992 Modernizing Cooperatives Act of France. This law allows coop members to include in the cooperative's by-laws provisions for non-member investors and the revaluing of shares through the incorporation of reserves. Canada's 1998 Cooperatives Act permits several financing options such as issuing investment shares and membership shares without par value. In some countries the fundamental 'one member, one vote' principle of cooperatives has been diluted, a decision whose full impact has not yet been fully appreciated.⁹⁰

Public awareness of rights, obligations, costs-benefits of cooperatives

As many cooperatives in developing countries were once state controlled, the idea has developed a negative connotation, is plagued with misconceptions, or both. As a result of this, members or potential members of cooperatives do not know their rights.⁹¹ The highly participatory and democratic character of cooperatives makes it crucial that cooperative law be understandable and accessible to regular people who will be the cooperative's members. Where a large portion of the relevant people are illiterate or unfamiliar with legal language then the creation and distribution of a layperson's guide to the law can be a useful educative tool. National promotional campaigns can also serve to inform the general public.⁹² Successful awareness campaigns have been documented in Cameroon (1993), in Andhra Pradesh in India (1996), Malawi (1999), Namibia (1997), Niger (1997) and Vietnam (1997). In the private sector, cooperative umbrella or apex organisations have also published simplified guides or commentaries to cooperatives laws.⁹³

3.1.2 Step 2: Access to markets and how to facilitate international trade ***Importance of markets for the rural poor***

The challenges to creating and maintaining long-term, mutually beneficial trading relationships are wide-ranging. One of the major factors contributing to the inability of the rural poor to improve their living standards is their difficulty in accessing markets.⁹⁴ Not only of concern for fair trade, facilitating market access to the rural poor is a crucial requirement for poverty reduction and food security.

⁸⁹ find law

⁹⁰ <http://www.ilo.org/public/english/standards/relm/ilc/ilc89/rep-v-1.htm#1.2.%20Developing%20countries>

⁹¹ <http://www.ilo.org/public/english/standards/relm/ilc/ilc89/rep-v-1.htm#1.2.%20Developing%20countries>

⁹² <http://www.ilo.org/public/english/standards/relm/ilc/ilc89/rep-v-1.htm#1.2.%20Developing%20countries>

⁹³ <http://www.ilo.org/public/english/standards/relm/ilc/ilc89/rep-v-1.htm#1.2.%20Developing%20countries>

⁹⁴ <http://www.ruralpovertyportal.org/web/guest/topic/home/tags/market%20access>

The global fair trade market is relatively small. This is especially true for high selling commodities such as coffee, where fair trade coffee makes up less than 1 % of world production.⁹⁵ Despite its small size, the market growth for fair trade products continues. The global retail value of fair trade was approximately 2.9 billions Euros in 2008, with annual sales growth at 22 percent. Over time, fair trade has become more ‘mainstream’ and has incorporated conventional business norms and practices that have facilitated growth.

The increasing engagement of fair trade with the mainstream neo-liberal economic processes it is designed to circumvent is a source of many access barriers.⁹⁶ As such, it is imperative that fair trade producers have access to as much of the fair trade market as possible. Each approach to market access within the fair trade regime comes with its own strengths and weaknesses and successes may not always be transferable to other situations.⁹⁷

Fair trade certification, its rules and principles can minimize the traditional market barriers by helping smallholder producers gain access through meaningful and transparent trade relationships and trade networks.⁹⁸ However, fair trade certification is not a panacea for the market access barriers the poorest producers continue to struggle with. Fair trade is unable to address weak logistics, insufficient funding, quality problems and discriminatory trading regimes.⁹⁹ This section will identify the main market access barriers and identify legislative, policy, or other projects that have helped overcome these barriers elsewhere.

Traditional barriers to market access

Some of the main constraints to mainstream market access are echoed in the fair trade regime. For instance, fair trade producers do not create the standards, including **product quality standards**, as well as social and environmental exigencies, which they must abide by in order to sell their product under the fair trade label. These labelling standards are often exogenous factors that the producers had little participatory role in developing if at all.¹⁰⁰ One of the main risks to producers from the increased corporate involvement and mainstreaming of fair trade is more stringent standards demands on producers, and resulting limited eligibility for fair trade certification.¹⁰¹ A

⁹⁵ Jason Potts PDF p. 5

⁹⁶ Fisher 996

⁹⁷ Market Op p. 21

⁹⁸ la cruz 77

⁹⁹ La cruz 72

¹⁰⁰ La cruz 70

¹⁰¹ 16333 ft 990

possible response to this dilemma could be the propagation of local or regional fair trade certification networks, which was discussed in the previous section.

Market access problems related to different label certifications are also linked to the high cost of certification. A common theme throughout the discussion of barriers for fair trade is the need for real participation by producers on international standards setting and implementation requirements. Along the same line of thought is the suggestion of national accreditation systems. This would be less costly, and more tailored to the particular social, environmental, economic and legal circumstances of that country.

Lack of knowledge is one of the primary difficulties that small-scale producers have with regards to accessing foreign markets.¹⁰² Projects regarding this problem will often be specific to the nature of the knowledge needed, depending on the product, the producers, and the market to be entered.

Solution: Knowledge and capacity building projects

One positive case of knowledge dissemination that focused on market access and design help is the ECOTA Fair Trade Forum in Bangladesh. This project is recognized as a good example of a local NGO that coordinates support for fair trading opportunities for handicrafts. Their 4-year Bangladesh Marketing Assistance Programme has been praised for its success in bringing the right products to the right customers and shops in Europe. European designers held capacity building workshops and training sessions to work on designs that would appeal to a European consumer. Buyers and designers in the UK were able to see a first wave of samples in order to make suggestions for producers to modify their designs. The products were displayed at various trade fairs and then ordered by shops and customers. This project is based on the use of designers involved in the European market and well as Bangladeshi designers to make the product more appealing to Northern consumers.¹⁰³

Barriers to imports

Trade liberalisation is considered by the United Nations Millenium Declaration to be a valuable instrument for growth and development. The fact remains that the main products exported

¹⁰² <http://www.new-ag.info/03-3/focuson/focuson7.html>

¹⁰³ <http://www.worldaware.org.uk/awards/awards2001/ecota.html>

from developing countries continue to struggle with impediments to access rich country's markets. These challenges broadly include, agreements to protect domestic industries with tariff and non-tariff barriers, quota agreements and product labelling.¹⁰⁴ Increased tariffs connected with goods exported from developing countries restrict market access for agriculture, textiles, and tropical products, as well as other manufactured goods.¹⁰⁵

High duties on imports of processed goods deny exporting developing countries the lucrative financial and employment gains from the processing business. For this reason, many fair trade goods are "assembled" in European countries with imported fair trade ingredients. As an example, pineapples have an import tax of 8% when raw, but 46% for processed pineapple products.¹⁰⁶

Several recurring themes at the WTO and in global trade in general, are particularly germane to market access challenges for fair trade producers. The fundamental core of trade liberalisation is a reduction of trade barriers for equal participation in commerce. In theory, it can serve to allow the world's poor to compete in the global market, and have a higher standard of living. The issues of market access for poor people in developing countries were emphasised in the WTO Doha Ministerial Declaration.¹⁰⁷ One of the potential strategies of the Millennium Development Goals is to confirm that the promises made by developed countries under the Uruguay Round of Multilateral trade negotiations to improve market access for products from developing countries are respected. Other strategies that follow the same vein are to accomplish improvements in market access in developed countries for agricultural products from developing countries and to provide capacity building and technical assistance for trade negotiations and dispute settlements.¹⁰⁸ It is evident that if fair trade is to continue to develop, markets will have to be less regulated.¹⁰⁹ ***What is being done at the policy level to help these goals materialise?***

Governments can influence the enabling environment for trade

Incorporating fair trade into government policy has been part of progress made on a macro-economic and national level. Government involvement and interest in fair trade in Europe has been strongest at local and regional levels. This trend is also noted in the UK and the United State with the participation of local governments in 'fair trade towns' campaigns. Wales became a 'Fair Trade

¹⁰⁴ Market op 36

¹⁰⁵ Tractman 13

¹⁰⁶ market op 36

¹⁰⁷ Tractman 4

¹⁰⁸ IFAD report/ <http://www.ruralpovertyportal.org/web/guest/topic/home/tags/market%20access>

¹⁰⁹ la cruz 77

Nation' in 2008 as a reproduction of the 'fair trade towns' initiatives, which is the concept that individual towns and cities can become certified. The fair trade regime has become a legal duty to implement sustainable development and ensure the wellbeing of the people of Wales. This initiative increases the number of 'direct' links between fair trade producers and consumers, in this case between Wales and Africa. It also strengthens market channels, and product development. The idea for 'Fair Trade Nation' was put forward by the Welsh Assembly Government and Fair Trade Wales with input from its Scottish counterparts.¹¹⁰

This case is pertinent for producers and government's in developing countries as an example of potential partnerships that might be possible to implement with developed countries. An important lesson is that it may be advantageous to look beyond the national level to the regional and local.

4. Conclusion

Any policy aiming to facilitate access to fair trade must have a good grasp of the broader contexts in which fair trade must be considered. This specifically applies to the issues surrounding producer agency.¹¹¹ There are many difficulties with the fair trade model of business that often cannot be overcome by the most poor and disempowered producers.

Indeed, the fair trade movement has generated many real success stories of producers rising out of poverty. However, information emanating from fair trade organisations is (understandably) self-promotional. The fact that millions of producers are not eligible for fair trade certification might suggest that the fair trade way of business is not always an objectively better way of doing business for the poor than others.¹¹² Where fair trade is a better way of doing business for some, are the effects of legal empowerment exaggerated? Repeated calls for greater developing nation participation in standards making and auditing processes imply that there is much opportunity for progress in this respect.

The fair trade movement has acted within a policy space defined by historical North-South trade inequities maintained through conditions of neo-liberal trade. A diverse set of actors that began as a social movement has challenged dominant discourses, business practices and regulatory regimes

¹¹⁰ 1366 ftp 995

¹¹¹ 1366 p. 998

¹¹² <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-0270.2007.00727.x/pdf> Booth and Whetstone

in an effort to overcome global trade inequalities and to make trade fairer for poor southern producers. From these shifts, new policy and state roles have emerged, representing a new set of actors.¹¹³ State policies, political support of fair trade, and resulting new policy spaces for fair trade indicate that there is potentially a greater role for government and legislation in fair trade for both developed and developing states.¹¹⁴

The next great challenge and opportunity for fair trade will involve the mainstreaming of the fair trade regime. More specifically, the risks are from corporate licensees, plantation production, and the entry of mainstream supermarkets into the fair trade game that do not treat fair trade differently than other products.¹¹⁵ The broader challenge will be for fair trade to continue to mobilize principles of social justice and empowerment of the poor through trade relations, in the context of mainstreaming processes that emphasise market expansion.

Critiques aside, this paper wishes to reaffirm that that diversity of knowledge, experiences and agency that persist within the fair trade domain signifies the potential for innovative solutions to the challenges of fair trade. Fair trade continues to be a forum to generate new linkages between markets, consumers, and the state that can improve the lives to producers.¹¹⁶

¹¹³ 1633 998

¹¹⁴ 1633 ftp 995

¹¹⁵ 1633 ftp 991

¹¹⁶ 1633 p. 999

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