

Conference Draft

Microtrade and the Fair Trade Movement Prapanpong Khumon *

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Introduction: Imperatives of Microtrade and the Fair Trade Movement

The critiques of globalization have focused on an emerging crisis of social problems being induced by free trade policies under a current system of international trade and business corporate structures.¹ Global corporations have consistently sought an incredible amount of products from countries where there are cheaper materials and labor to increase cost advantage for their business.² 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.³ Despite an era of corporate domination and profit managements, social movements have been creating an impact on the changing direction of corporate practices over the past decades.⁴

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.⁵ Influenced by globalized social movements, legal concepts see an emerging set of rights (i.e., fundamental social and economic rights, and other individual rights to a fair wage) which represents, for example, a new consideration in the law of contract and employment which shapes legislative and judicial responses to a fair treatment of workers.⁶ The realization of fair business practice has been gaining momentum

¹ A number of scholars have shared this view; See for example, Joseph E. Stiglitz, *Making globalization work* (W.W. Norton & Co., 2006). Janet Dine, *Companies, international trade and human rights* (Cambridge studies in corporate law: Cambridge University Press, 2004).; Jagdish N. Bhagwati and Rudolf Hudec, *Fair trade and harmonization : prerequisites for free trade?* (MIT Press, 1996).; and Jennifer A. Zerk, *Multinationals and corporate social responsibility : limitations and opportunities in international law* (Cambridge: Cambridge University Press, 2006).

² Alex Nicholls and Charlotte Opal, *Fair trade : market-driven ethical consumption* (London, 2005)., p. 4.

³ Dine, *Companies, international trade and human rights.*, supra note1, p. 263.

⁴ Alain Touraine, 'An Introduction to the Study of Social Movements', *Social Research*, 52/4 (1985), 787, 49-87, 49., p. 773.

⁵ Rob Van Tulder, 'The Role of Business in Poverty Reduction. Towards a Sustainable Corporate Story?', (UNRISD, 2008), 1-24., p. 4.

⁶ Paul Davies and Mark Freedland. “National Style in Labor Law Scholarship: The United Kingdom”. (2002) *Comparative Labor Law and Policy Journal*, 23, p. 781; See also, Steven Anderman, 'The interpretation of protective employment statutes and contracts of employment', *Ind Law J*, 29/3 (2000), 223-42.

from an array of initiatives by international organizations launched in 1970s on issues of fair labor practices; for example, United Nations Code of Conduct on Transitional Corporations⁷, ILO guidelines⁸ and OECD guidelines on Multilateral Enterprises⁹. These social initiatives are influential in creating 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 trading regulation that yields the best interest to the poor.¹⁰ Unlike the current system of international trade, arguably only favouring the rich¹¹, the fair trade movement seeks to gather a force from consumer demands in a marketplace to influence corporate decisions to purchase fair trade products which will eventually benefit impoverished producers around the world.¹² Microtrade is described as a small-scale trade based primarily on manually products using small amounts of capital and technologies to

⁷ UN, “The Impact of Multinational Corporations on Development and on International Relations”, UN DOC. E/5500/Rev.1., ST/ESA/6 (New York: UN, 1974) 13 *International Legal Materials* 800, p. 79.

⁸ ILO, “The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy”, (1978) 17 *International Legal Materials* 422.

⁹ OECD, “The 1976 OECD Declaration on International Investment and Multilateral Enterprises”, Paris, 21 June 1976; (1976) 15 *International Legal Materials* 967, 969.

¹⁰ 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 processes; see Janet Dine, 'Democratization: The Contribution of Fair Trade and Ethical Trading Movements', *Indiana Journal of Global Legal Studies*, 15/1 (2008), 177-212., p. 180.; Other scholars have shared the view that fair trade proposes alternative trading practices; see in general for example, Nicholls and Opal, *Fair trade : market-driven ethical consumption.*, supra note 2; Marie-Christine Renard, 'Quality Certification, Regulation and Power in Fair Trade', *Journal of Rural Studies*, 21/4 (2005), 419-31.; Anne Tallontire, 'Challenges facing fair trade: which way now?', *Small Enterprise Development*, 13 (2002), 12-24.; Laura T. Reynolds, Douglas L. Murray, and John Wilkinson, *Fair trade: The Challenge of Transforming Globalization* (Routledge, 2007).; Orly Lobel, 'Crowding Out or Ratcheting Up? Fair Trade Systems, Regulation and New Governance', in Kate Macdonald and Shelley Marshall (eds.), *Fair trade, corporate accountability and beyond : experiments in globalizing justice* (Ashgate, 2010).

¹¹ The argument is put forward by Stiglitz in the situation where the developed countries employ unfair trade measures from the agreements such as non-tariff barriers to trade, protectionism and safeguard measures, which hurt the poor countries and benefit the developed countries more; see Joseph E. Stiglitz and Andrew Charlton, *Fair trade for all : how trade can promote development* (Oxford University Press, 2007).

¹² In terms of consumer demands in the fair trade movement, Fridell proposes a term ‘consumer sovereignty’ to mark the importance of a consumer force that remain the core premise to the viability of the fair trade movement; see Gavin Fridell, *Fair trade coffee : the prospects and pitfalls of market-driven social justice* (Toronto: University of Toronto Press, 2007)., p. 266.

raise income and eliminate poverty for people in least-developed countries (LDCs).¹³ The fair trade movement shares with microtrade the same aspiration in curbing poverty by means of trade to link demands of ethical consumers from the North to purchase ethical-valued products from small-scale producers in the South.¹⁴ Microtrade purports to eliminate poverty in developing countries where economy is not supported by a well-functioning government and effective administrative assistance, and where the private sector as a whole does not function to make economic progress.¹⁵ Both microtrade and the fair trade movement commit to social movement structures to assert an alternative system of trade to render welfare to impoverished people. Microtrade and the fair trade movement are parallel trade ideologies seeking to employ 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 for legitimacy to operate as a distinct model of social and justice development.¹⁶ The important moment for the fair trade movement occurred when the certification label of Max Havelaar was created in 1988, which later became the basis for the Fair Trade Labeling Organization (FLO).¹⁷ FLO is a voluntary organization overseeing the activities of global fair trade networks with its certification scheme that carries a logo of “Fairtrade”. Presently, nineteen ‘labeling initiatives’¹⁸ have been designated under the FLO to set standards and promote fair trade products resulting in the appearance of fair trade

¹³ Yong-Shik Lee, 'Theoretical Basis and Regulatory Framework for Microtrade: Combining Volunteerism with International Trade towards Poverty Elimination', *Law and Development Review*, 2/1 (2009), 367-99., p. 368.

¹⁴ For a clarification on 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 Laura T. Reynolds, 'Consumer/Producer Links in Fair Trade Coffee Networks', *Sociologia Ruralis*, 42/4 (2002), 404-24., p. 410.

¹⁵ Lee, 'Theoretical Basis and Regulatory Framework for Microtrade: Combining Volunteerism with International Trade towards Poverty Elimination', supra note 13, p. 372.

¹⁶ Alex Nicholls, 'What gives fair trade its right to operate? Organizational legitimacy and strategic management', in Kate Macdonald and Shelley Marshall (eds.), *Fair trade, corporate accountability and beyond : experiments in globalizing justice* (Ashgate, 2010), p. 93.

¹⁷ Daniel Jaffee, *Brewing justice : fair trade coffee, sustainability, and survival* (Berkeley, Calif. ; London: University of California Press, 2007).

¹⁸ The Fair Trade Labeling Initiatives license fair trade certification mark and also carry duties to promote fair trade in their territory; there are nineteen Labeling Initiatives covering 23 countries at the moment (FLO, 2011); available at: http://www.fairtrade.net/labelling_initiatives1.html. (accessed 31 October 2011).

products in mainstream shops, and the dramatic rise of fair trade sales.¹⁹ FLO designates certification agents around the world who certify commodity products from poor producers and connect with commodity buyers who purchase products directly from small-scale farmers in developing countries.²⁰ Within the fair trade system, small-scale producers are provided with stable, guaranteed prices for their commodities, offering them protections from the fluctuated prices of commodities markets.²¹ Small-scale producers set up cooperatives who deal with managerial matters including fair trade sales, interactions with buyers, and connecting with FLO activities. Fair trade also eliminates the middlemen who typically take benefits from a long line of communication between producers and consumers.²² Fair trade also sets up producers' democratically-organized associations to act as self-empowerment and realization of their capabilities to learn how to deal with markets and commercial interactions.²³ In addition, it encourages long-term relationships between buyers and sellers, which protects producers' production from an urgent cancellation of purchasing agreements.²⁴

A study in Latin American fair trade cooperative in Mojamut region in 2002 reported an increase of a 100-200 per cent in overall income.²⁵ After setting up fair trade cooperative, Majomut coffee producers harvest an average of 1,500 pounds of coffee, for which farmers earned US\$ 1,700 for organic fair trade certified coffee, compared to the local market price for conventional coffee of US \$ 550.²⁶ With coffee production representing roughly 80 per cent of Majomut family incomes, fair trade represents a dramatic increase in their

¹⁹ Jaffee, *Brewing justice : fair trade coffee, sustainability, and survival.*, supra note 17, p. 14.

²⁰ Nicholls and Opal, *Fair trade : market-driven ethical consumption.*, supra note 2, p. 5.

²¹ Jaffee, *Brewing justice : fair trade coffee, sustainability, and survival.*, supra note 17, p. xiv.

²² id.

²³ id.

²⁴ id.

²⁵ Edith Cervantes and Victor Pérez-Grovas, 'Poverty Alleviation through Participation in Fair Trade Coffee Networks: The Case of Union Mojamut, Chiapas, Mexico', in Colorado State University Report Prepared for Fair Trade Research Group (ed.), (2002), 1-24., p. 15.

²⁶ id., 12.

livelihoods.²⁷ Fair trade products are now part of agenda for most major retailers, including Starbucks, Nestlé, Tesco, Marks and Spencer, and Carrefour.²⁸ Recent statistics indicate a drastic corporate participation to the fair trade movement's regime resulting in job creation and social leverages to more than 1.5 million impoverished farmers worldwide.²⁹ The movement reshapes the patterns of international trade and the very process of corporate expansion in the global economy that have historically undermined globally ecological and social conditions.³⁰

The International Trade System – Free but not fair

International trade system puts together the agenda on market orientation and free trade to render significant economic changes globally.³¹ The free trade policies help enhance an inward of northern corporations that operate their business in the south, bringing in capital flows and prospects to increase 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 to enhance economic growth and development.³² Some developing countries have performed greatly after implementing policies under free trade after 1970s resulting in an increase of fivefold the rate of GDP per capita and trade.³³ Despite claiming to have raised an unprecedented level of economic growth in the past decades³⁴, a wider gap of inequality has also simultaneously

²⁷ id.

²⁸ Nicholls and Opal, *Fair trade : market-driven ethical consumption.*, supra note 2, p. 92.

²⁹ Fair Trade Labeling Organization (FLO), Consumers Purchase Fair Trade Products More Than Ever Before, Press Release, available at: http://www.fairtrade.net/single_view1.html (accessed 11 June 2010).

³⁰ David Ransom, *The no-nonsense guide to fair trade* (Oxford: New Internationalist Publications, 2001)., p. 28.

³¹ Stiglitz and Charlton, *Fair trade for all : how trade can promote development.*, supra note 11, p. 43.

³² Zerk, *Multinationals and corporate social responsibility : limitations and opportunities in international law.*, supra note 1, p. 8.

³³ The countries in this group are four European countries – Greece, Ireland, Portugal and Spain. Seven of the remaining countries are in Asia – Hong Kong, South Korea, Singapore and Taiwan, together with Malaysia, Thailand and China, cited in, Angus Maddison, *The world economy : historical statistics* ([Paris]: OECD, 2003).

³⁴ John Croome, *Reshaping the world trading system : a history of the Uruguay Round* (World Trade Organization, 1995)., p. 38.

grown pointing out the fact that the benefits in terms of trade have not been 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 8 per cent).³⁵ International trade rules have also carried criticism on restraining human development and causing social problems such as labor exploitation and poverty.³⁶ This criticism fleshes out that poverty occurs as a result of corporations exercising their superior power inappropriately towards the poor in developing countries.³⁷ Global corporate power is enriched by the underlying philosophy of 'race to the bottom' under the international trade system which affects the rights and freedoms of the poor as corporations seeks to maximize profits by exploiting the lowest cost human and environmental inputs to take advantage of cheap labor costs in order to maintain their cost-effectiveness in competition.³⁸ The profit-focused feature of corporations is accelerated by the structure of corporate management under primary duties to maximize profits to shareholders.³⁹ To maintain their cost-effectiveness in a competitive market, the corporate maximizing goals usually result in reducing the labor costs and a deduction in welfare spending and social infrastructure.⁴⁰ 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.⁴¹ This causes poverty problems

³⁵ Ransom, *The no-nonsense guide to fair trade.*, supra note 30, p. 9.

³⁶ Dine, *Companies, international trade and human rights.*, supra note 1, p. 5.

³⁷ David Milman, *National corporate law in a globalised market : the UK experience in perspective* (Cheltenham: Edward Elgar, 2009)., p. 146.

³⁸ Fridell, *Fair trade coffee : the prospects and pitfalls of market-driven social justice.*, supra note 12, p. 15.

³⁹ Dine has made a remark 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 benefits of shareholders; see Janet Dine, 'Democratization: The Contribution of Fair Trade and Ethical Trading Movements'. (2008), p. 189; and also, Janet Dine and Fagan Andrew, *Human rights and capitalism : a multidisciplinary perspective on globalisation* (Cheltenham: Edward Elgar, 2006)., p. 49.

⁴⁰ Collin Crouch, 'CSR and changing modes of governance: towards corporate noblesse oblige?', in Peter Utting and Jose Carlos Marques (eds.), *Corporate social responsibility and regulatory governance : towards inclusive development?* (Basingstoke: Palgrave Macmillan, 2009)., p. 34.

⁴¹ Dine, 'Democratization: The Contribution of Fair Trade and Ethical Trading Movements'., supra note 10, p. 189.

and severe living conditions to those who work for the corporations under the regime of globalized markets that deprives them of rights and freedom which are fundamental to their development.⁴²

The globalized investment regime under the international trade system also depicts a restraint on human development when it induces small countries to become over-reliant on exports and investments from developed countries; and therefore, small countries have been pushed to involve in negotiations where they have to accept business deal which are abusive in labor wages, working hours, and child's rights.⁴³ The poor have been forced to work under highly intensive and abusive labor management in trying to maximize productivity in a limited time.⁴⁴ The case of labor exploitation has been a widespread phenomenon in developing countries hosting foreign direct investments (FDIs) where they create export processing zones (EPZs)⁴⁵, principally in Asia, to offer those investing corporations tax exemptions and cheap labor rates, and also allow them to bypass some law and regulations.⁴⁶

Under EPZs, minimum or average wages officially paid in EPZs are subject to arbitrariness of employers; and also the labor contracts have generally been ignored to manipulate the wage's conditions.⁴⁷ With no trade unions to defend them or give them advice, the workers do not usually realize how to refuse or modify conditions of employment, or are not even aware that they should sign a contract.⁴⁸ This labor violation is referred to as 'labor arbitrage'

⁴² Sen proposes that the current markets restrict access to the poor who lack capabilities both socially and economically, which further traumatize the poverty problems in those living in poor countries; see Amartya Sen, *Development as Freedom* (Oxford: Oxford University Press, 2001), p. 3.

⁴³ Ronaldo Munck, *Globalization and social exclusion : a transformationalist perspective* (Bloomfield, 2005), p. 15.

⁴⁴ Shireen Hassim and Shahrashoub Razavi, *Gender and social policy in a global context : uncovering the gendered structure of 'the social'* (Basingstoke ; New York: Palgrave Macmillan : UNRISD, 2006), p. 15.

⁴⁵ A case of EPZs in the province of Shenzhen provides a good example of 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 labor force in Shenzhen EPZ plants was less than 25 years of age, worked longer hours, and paid less than standards under national labor law; see Pun Ngai, 'Women workers and precarious employment in Shenzhen Special Economic Zone, China', *Gender & Development*, 12/2 (2004), 29-36., p. 29.

⁴⁶ Jayati Ghosh, 'Globalization, Export-Oriented Employment for Women and Social Policy: A Case Study of India', *Social Scientist*, 30/11/12 (2002), 17-60., p. 4.

⁴⁷ Munck, *Globalization and social exclusion : a transformationalist perspective.*, supra note 43, p. 15.

⁴⁸ id.

which has been practiced for years by global corporations.⁴⁹ 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*”.⁵⁰

In terms of trade policies, international trade rules have urged concerns from small countries to address the issue in WTO’s ministerial conference in Cancun where they expressed that the free trade policies aggrieved their basic labor rights and carried unfair provisions that further traumatized the social and economic development of small countries.⁵¹ Provisions under the WTO trade rules give ways for rich countries to export their heavily subsidized agricultural products to small countries.⁵² In particular, NAFTA (North American Free Trade Agreement) has endangered the lives of small farmers in the developing countries; when it appeared that NAFTA permitted the American subsidization of corn products into the Mexican domestic market which resulted income loss from an inability of Mexican producers to compete with cheap products from America.⁵³ The free trade agreement between America and Colombia provides the same scenario where an agreement has been initiated to dump a price of American commodities in Colombian markets driving a number of small farmers in Colombia of out of business.⁵⁴

Constraints in over-reliance on commodity exports in developing countries have been central to proposal by microtrade to convert the disadvantages within the larger trade system into empowering locally-produced products (LPPs) to be placed in affluent markets of developed

⁴⁹ Paulette L. Stenzel, 'Why Fair Trade is Essential for the Triple Bottom Line, Sustainability, and Free Trade: Seeking Equilibrium as the Eagle Meets the Condor ', *2009 Proceedings of the Midwest Academy of Legal Studies in Business* (2009), p. 3.

⁵⁰ id.

⁵¹ Jaffee, *Brewing justice : fair trade coffee, sustainability, and survival.*, supra note 17, p. 14.

⁵² id.

⁵³ Gary Clyde Hufbauer and Jeffrey J. Schott, *NAFTA revisited : achievements and challenges* (London, 2005), p. 323-325.

⁵⁴ Paulette L. Stenzel, 'The U.S.-Columbia Free Trade Agreement', *Global Edge Business Review* 2/6 (2008), cited in, Stenzel, 'Why Fair Trade is Essential for the Triple Bottom Line, Sustainability, and Free Trade: Seeking Equilibrium as the Eagle Meets the Condor ', supra note 49, p.7.

countries.⁵⁵ Instead of subjecting to the larger system of international trade, the fair trade movement proposed a contradiction to the free trade ideology by positioning itself as a marginal and alternative system of fair trade and organic networks.⁵⁶ The fair trade movement proposes to challenge the prevailing idea of free trade by asserting ethical significance to the traded commodities.⁵⁷ These ethical values will attract concerned consumers to express solidarity with those small producers whose lives are endangered by the current international trade policies.⁵⁸ Microtrade can benefit from fair trade's already-established principles and systems to develop its own framework for operational functions in the future.

The Fair Trade Principles

Fair trade principles include social and economic measures that ensure both market mechanisms such as channeling products to importers, and non-market mechanisms such as paying additional social premium to be used in a community project.⁵⁹ While microtrade raises concerns in terms of logistical issues including shipment and distribution of locally-produced products, locating supply and demand, and financing issues⁶⁰, 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 certification requirements for both producers entering the fair trade market and traders permitted to utilize the fair trade label.⁶¹ FLO monitors producer and trader groups

⁵⁵ Lee, 'Theoretical Basis and Regulatory Framework for Microtrade: Combining Volunteerism with International Trade towards Poverty Elimination', supra note 13, p. 372.

⁵⁶ Maurie J. Cohen and Joseph Dr Murphy, *Exploring sustainable consumption : environmental policy and the social sciences* (Oxford: Pergamon, 2001), p. 99.

⁵⁷ Dine, 'Democratization: The Contribution of Fair Trade and Ethical Trading Movements', supra note 10, p. 180.

⁵⁸ id.

⁵⁹ Nicholls and Opal, *Fair trade : market-driven ethical consumption.*, supra note 2, p. 32.

⁶⁰ Lee, 'Theoretical Basis and Regulatory Framework for Microtrade: Combining Volunteerism with International Trade towards Poverty Elimination', supra note 13, p. 380.

⁶¹ T. Raynolds Laura, Murray Douglas, and Taylor Peter Leigh, 'Fair trade coffee: building producer capacity via global networks', *Journal of International Development*, 16/8 (2004), 1109-21., p. 1111.

and retains a power to revoke the certification for those who fail to respect standards.⁶² Its certification tasks are to be responsible for monitoring importer groups and maintaining the information for farmers on the registration of the products.⁶³ The certification agencies - labelling initiatives - within the FLO (such as Fair Trade USA in America and Fair Trade Foundation in UK) are responsible for licensing, monitoring and collecting fees from commodity traders.⁶⁴ For example in 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) pursue ecological goal by conserving natural resources and limiting chemical input use.⁶⁵ The following are core principles of the fair trade movement.

1. Direct Trade with Importers

Under the principles of FLO, one of the most important benefits of fair trade model is the requirement to that commodity importers have to work directly with producers.⁶⁶ Fair trade importers must, wherever possible, buy directly from farming cooperative, a farming estate, or local producers group.⁶⁷ Thorough the history, the large-scale plantations and manufactures have enjoyed access to export markets, leaving the small-scale producers lose out from the gain.⁶⁸ The direct trading is the principle that transforms the historically disadvantage to a fairer level of trade practice.⁶⁹ In addition, FLO requires fair trade

⁶² L. T. Reynolds, P. L. Taylor, and Murray, 'One cup at a time: poverty alleviation and Fair Trade coffee in Latin America', *Forth Collins: Colorado Sate University*, (2003), p. 12.

⁶³ id.

⁶⁴ id.

⁶⁵ FLO (2010), *Becoming a Fair Trade Producer*, available online at: http://www.fairtrade.net/becoming_a_fairtrade_producer.html (accessed 22 June 2010).

⁶⁶ Nicholls and Opal, *Fair trade : market-driven ethical consumption.*, supra note 2, p. 33.

⁶⁷ Anne Tallontire, 'Partnerships in Fair Trade: Reflections from a Case Study of Cafédirect ', *Development in Practice*, 10/2 (2000), 166-66., p. 170.

⁶⁸ id.

⁶⁹ id.

importers to sign long-term contract to ensure the real benefits to small producers.⁷⁰

2. The Guaranteed Price

Fair trade commodities have been set with the guaranteed price that reflects mutual and fair pricing standard between commodity importers and small-scale producers. For example in coffee, its guarantee minimum price is \$1.40 per pound for washed Arabica coffee or the market price if it is higher; also FLO pays an additional US \$0.30 per pound for coffee certified as organic; and the social premium is US \$0.20 per pound which is to be collected by cooperatives for the purpose of local and community development.⁷¹ Other price benefit is the pre-financing option, which offers up to 60 percent of the contract values.⁷² If the market price rises above the fair trade guaranteed price, producers will be paid for the price on whichever is better.⁷³

3. The Social Premium

In addition to the fair trade guaranteed price, fair trade standards require a payment of a social premium (US \$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.⁷⁴ Requiring fair trade importers to pay 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.⁷⁵ Social premium represents a direct transfer to the producers in developing countries to be used for development projects in

⁷⁰ Nicholls and Opal, *Fair trade : market-driven ethical consumption.*, p. 40.

⁷¹ 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 rationale of 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 the devalue in the local currency of producers countries which affected the income of producers considerably; and (iii) to encourage greater investment in a better production system, in particularly to comply with standards and to protect the environment (FLO, 2009), available at: <http://www.fairtrade.net/coffee.html> (accessed 3 November 2011).

⁷² Nicholls and Opal, *Fair trade : market-driven ethical consumption.*, supra note 2, p. 41.

⁷³ id.

⁷⁴ id., 45.

⁷⁵ Darryl Reed, 'What do Corporations have to do with Fair Trade? Positive and Normative Analysis from a Value Chain Perspective', *Journal of Business Ethics*, 86/0 (2009), 3-26., p. 3.

their local communities such as schools, roads, or health centers.⁷⁶

Beyond economic benefits, there are external social benefits which are more difficult to measure in monetary terms but greatly significant in the meaning of social development.⁷⁷ The social premium reflects Sen's idea that a promotion to the poor's opportunity can lead to the 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*".⁷⁸

How Fair Trade Works: A Case for Fair Trade Coffee

For one of the global highest-traded commodities as coffee, its market is relatively monopolistic, with five major companies dominating the market - Kraft, Nestlé, Sara Lee, and Procter & Gamble, buying almost half of the global supply.⁷⁹ 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 production⁸⁰ Coffee is therefore a commodity that is greatly important 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.⁸¹ Considering a 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 (US \$0.44 – US \$0.50 per pound).⁸² To stabilize

⁷⁶ Geoff Moore, 'The Fair Trade Movement: Parameters, Issues and Future Research', id.53/1 (2004), 73-86., p. 80.

⁷⁷ Nicholls and Opal, *Fair trade : market-driven ethical consumption.*, supra note 2, p. 45.

⁷⁸ Sen, *Development as Freedom.*, supra note 42, p. 7.

⁷⁹ Peter Leigh Taylor, 'In the Market But Not of It: Fair Trade Coffee and Forest Stewardship Council Certification as Market-Based Social Change', *World Development*, 33/1 (2005), 129-47.

⁸⁰ id.

⁸¹ Nicholls and Opal, *Fair trade : market-driven ethical consumption.*, supra note 2, p. 53.

⁸² Charis Gresser and Sophia Tickell, *Mugged : poverty in your coffee cup* (Oxford: Oxfam, 2002)., p. 15; available online at: <http://www.maketradefair.com/assets/english/mugged.pdf> (accessed 24 May 2009).

the price, governments in both producing and consuming countries sought to agree to pre-determined supply levels by setting export quotas for producing countries.⁸³ 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 US \$0.38 to US \$0.26 per pound which was below the cost of production for most small farmer in developing countries).⁸⁴

Due to a long distance in 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).⁸⁵ 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.⁸⁶ 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.⁸⁷ Far from getting a fair share of its profitability, producers have collectively been receiving a smaller and smaller share of the market's value.⁸⁸ In 1990s, producers earned in a ratio of US \$10 from a coffee market worth of US \$30; but a decade later, they received less than US \$6 of export earnings from the market that has more than doubled in size.⁸⁹ This has been the indication of an imbalance of power in the global coffee supply chain.⁹⁰ Producers face a whole series of obstacles, starting with the very low international price for coffee to the competition from the new technology in productivity.⁹¹ Also, producers also complained of having to accept the price offered by the

⁸³ *id.*, 17.

⁸⁴ *id.*

⁸⁵ Nicholls and Opal, *Fair trade : market-driven ethical consumption.*, supra note 2, p. 45.

⁸⁶ Gresser and Tickell, *Mugged : poverty in your coffee cup.*, supra note 82, p. 33.

⁸⁷ Geoffrey Jones, *Multinationals and global capitalism : from the nineteenth to the twenty-first century* (Oxford University Press, 2005)., p. 72.

⁸⁸ Gresser and Tickell, *Mugged : poverty in your coffee cup.*, supra note 82, p. 57.

⁸⁹ *id.*

⁹⁰ *id.*

⁹¹ *id.*

trader and of having very little power to negotiate.⁹²

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.*”⁹³

Even though traders take advantages of the farmers in maximizing profit margins of the coffee production, the real margins in the market are made even higher by the roaster companies.⁹⁴ 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.⁹⁵ In Uganda, the coffee producers receive 14 cents per kilogram for their green beans; and these beans pass through various traders before arriving at the roaster factory at a price of US \$1.64 per kilogram.⁹⁶ 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 \$26.40, which means that the price is inflated by more than 7000 per cent.⁹⁷

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

⁹² id.

⁹³ id., 58.

⁹⁴ Jones, *Multinationals and global capitalism : from the nineteenth to the twenty-first century.*, supra note 87, p. 72.

⁹⁵ Id.

⁹⁶ Gresser and Tickell, *Mugged : poverty in your coffee cup.*, supra note 82, p. 55.

⁹⁷ id.

⁹⁸ Kirsty Golding and Ken Peattie, 'In search of a golden blend: perspectives on the marketing of fair trade coffee', *Sustainable Development*, 13/3 (2005), 154-65.

⁹⁹ Nicholls and Opal, *Fair trade : market-driven ethical consumption.*, supra note 2, p. 82.

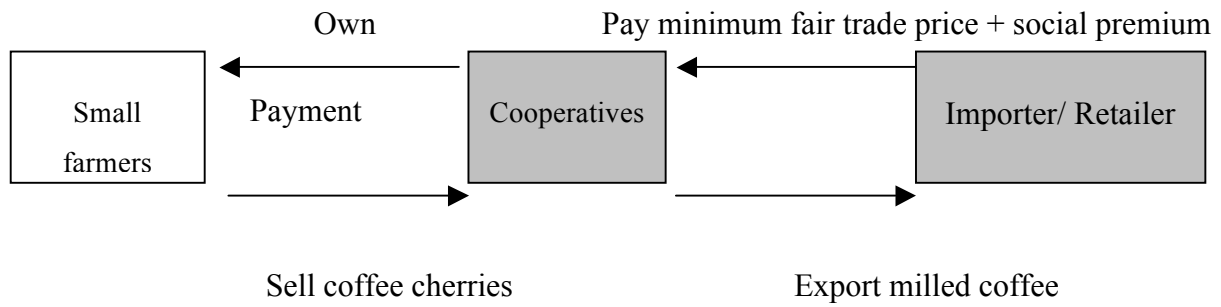


Figure 1: *Fair trade in the coffee supply chain*

Source: Nicholls, A. and Opal, C., *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.¹⁰⁰ Pablo Dubois, Head of operations, International Coffee Organization, marks an importance of the fair trade movement that: “*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*”.¹⁰¹ Fair trade has proved to become a significant platform for many producer cooperatives in developing countries.¹⁰² Fair trade has given rise to many commercial businesses which operate at profit but also retain the explicit development objectives of improving lives of farmers.¹⁰³ The most important impact of fair trade has been on the lives of producers who have been able to sell their coffee at prices that meet their basic needs.¹⁰⁴ 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, selling in the conventional market, receive only 30 per cent.¹⁰⁵

¹⁰⁰ id.

¹⁰¹ Gresser and Tickell, *Mugged : poverty in your coffee cup.*, supra note 82, p. 57.

¹⁰² id.

¹⁰³ id.

¹⁰⁴ id.

¹⁰⁵ id.

Challenges for Microtrade and Fair Trade

There is no mandatory provision that encapsulates 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; in which participants can choose to opt out with no obligations. Microtrade and the fair trade movement are both established on voluntary platform. Even though the fair trade movement has its bureaucrats on 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 FLO to develop certification bodies outside FLO's mandate.¹⁰⁶ What this means to the fair trade movement is that corporations can become license holders of certification mark and have control over fair trade productions.¹⁰⁷ 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 of living of the poor.¹⁰⁸ Some corporations have been reported to take part in a 'greenwashing' process where they purchase only small amount of fair trade products to publicize as ethical corporations to attract new base of customers.¹⁰⁹ The co-operative supermarket in UK indicated that 9 out of its best 10 fair trade lines in 2002 were own-brand products outside FLO.¹¹⁰

To fight the corporate pressure, CSR is viewed as a complementary voluntary regulation that

¹⁰⁶ Golding and Peattie, 'In search of a golden blend: perspectives on the marketing of fair trade coffee', supra note 98, p. 163.

¹⁰⁷ Geoff Moore, 'The Fair Trade Movement: Parameters, Issues and Future Research', *Journal of Business Ethics*, 53/1 (2004), 73-86., p. 78.

¹⁰⁸ Will Low and Eileen Davenport, 'Organizational Leadership, Ethics and the Challenges of Marketing Fair and Ethical Trade', *id.86/0* (2009), 97-108., p. 144.

¹⁰⁹ It is reported that Starbucks Coffee Company uses Conservation International, which is financed by the United States Agency for International Development and large corporations, including Starbucks itself, as the certification organization for their fair trade coffees; See Marie C. Renard and Victor Pérez-Grovas, 'Fair Trade Coffee in Mexico: At the Centre of the Debates', in Douglas L. Murray Laura T. Raynolds, John Wilkinson (ed.), *Fair Trade: The Challenge of Transforming Globalization* (London, 2007)., p. 151.

¹¹⁰ Moore, 'The Fair Trade Movement: Parameters, Issues and Future Research', supra note 107, p. 83.

is able to support the fair trade movement in creating ethical force towards corporate conduct.¹¹¹ CSR has been argued to compliment fair trade to employ a new market approach to assert good governance in the regime of a current international trading system.¹¹² Fair trade and CSR both use the credibility in social performance within the market to induce corporations to adopt concrete development policy for business agenda (for example, publicizing the corporate policy about fair trade products will attract concerned consumers that feel responsible to conditions of workers in developing countries).¹¹³ From the growing participating corporations in a wide range of CSR platform 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 influential for the business model in modern times.¹¹⁴ 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, proposing to transform the way of globalized trading by using producer drive in the market to create a force of governance upon the corporations.¹¹⁵ However, fair trade is more than just a market-based regime for the poor's economic justifications; it has become an important movement toward an improvement of corporate human policies that stands for a global justice toward the worker's and human rights.¹¹⁶ With the growing importance of fair trade in the current global market, it has been argued to be able to assert a certain form of social control toward corporations to influence them to take accounts of a wide range of social rights, i.e., rights to fair wages, basic human rights, and worker's rights.¹¹⁷

¹¹¹ See generally, Steve Knapp, 'Fair Trade at the Centre of Development', in Kate Macdonald and Shelley Marshall (eds.), *Fair trade, corporate accountability and beyond : experiments in globalizing justice* (Ashgate, 2010).

¹¹² Peter Utting, 'Regulating For Social Development: The Potential and Limits of Corporate Responsibility and Accountability', *Melbourne Law School Conference* (2007), 1-21., p. 13.

¹¹³ id.

¹¹⁴ id.

¹¹⁵ Dine, 'Democratization: The Contribution of Fair Trade and Ethical Trading Movements', supra note 10, p. 180.

¹¹⁶ Kléber Ghimire, 'The Contemporary Global Social Movements: Emergent Proposals, Connectivity and Development Implications', (2005), 1-34., p. 2.

¹¹⁷ Utting, 'Regulating For Social Development: The Potential and Limits of Corporate Responsibility and Accountability', supra note 112, p. 13.

These CSR initiatives have been incorporated in the business agenda as a way to improve reputation and credibility to the public in company's documents such as codes of conduct, business policies, partnership agreements and certification schemes.¹¹⁸ In a case of fair trade, it normally appears in purchasing agreements and policies under initiatives of CSR such as Fair Labor Association (FLA)¹¹⁹ and Ethical Trading Initiative (ETI)¹²⁰, which involve partnerships to offer fair conditions to impoverished producers among global corporations, thousands of suppliers, international trade union bodies, and international bodies.¹²¹ The corporations respect the ETI standards under ETI Based Code of the International Labor Organization (ILO) which is an internationally-recognized code for labor practice.¹²² It has been asserted that there is a room for sustainable development concept within corporate function.¹²³ Since a composition of a corporation includes not only financial resources (capital and investments), a link between sustainable development and fair trade is created when social resources are also another components that make up a corporation; for example, a local community where the products are supplied, requirements for worker rights and freedom to have fair wages and working hours.¹²⁴ Therefore, small fair trade producers that export their products into the corporations are entitled to the protection of their rights not only from FLO, but also from corporate commitment to sustainable development in international codes such as ETI, FLA, OECD Guidelines, and ILO Declarations.¹²⁵ In regards to ILO impacts on purchasing contracts, the Labor Clauses (Public Contracts) Convention 1949¹²⁶ provides that "*all public procurement contracts must include clauses ensuring wages*

¹¹⁸ Jem Bendell, 'Barricades and Boardrooms: A Contemporary History of the Corporate Accountability Movement', *UNRISD, Business Responsibility for Sustainable Development*, (2004), 1-63., 252.

¹¹⁹ See FLA website available at: <http://www.fairlabor.org>.

¹²⁰ See ETI website available at: <http://www.ethicaltrade.org>.

¹²¹ Id.

¹²² Id.

¹²³ Andrew W. Savitz and Karl Weber, *The triple bottom line : how today's best-run companies are achieving economic, social, and environmental success-and how you can too* (John Wiley, 2006)., p. x.

¹²⁴ id.

¹²⁵ id.

¹²⁶ International Labour Organization, *The Labour Clauses (Public Contracts) Convention* (1949)., opened for signature 29 June 1949 (entered into force 20 September 1952)., ILO C94, art 2(1).

hours of work, and other considerations of labor which are no less favorable than those established for work of the same character in the trade or industry concerned".¹²⁷ Experience in Australia has displayed an adoption of ILO's labor standards into their 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.¹²⁸

Corporations can see the opportunity from participating in CSR and fair trade to promote their social reputation.¹²⁹ Corporations that incorporate CSR have been reported to gain better credibility in the eyes of consumers who concerned about human and environmental issues, resulting in the achievement in both financial and social terms.¹³⁰ A UK-based coffee retailer, Cafédirect, sees support from ethically concerned consumers which maintain the position of the company as the largest 100 per cent fair trade distributor in the UK.¹³¹ Cafédirect provides a platform for a social integrated company that purchases 100 per cent fair trade products, and even involves in the workers' development such as providing shares and gives additional profits.¹³² The company takes on board the three-year brand building program to create a strong brand meanings that emphasizes on brand equity and exceptional products quality derived from a unique group of small producers in developing countries.¹³³ It is successful in creating a set of strategies to blend the quality and ethical feeling to the brand when consumers can get both quality and a feeling of ethical purchasing.¹³⁴

¹²⁷ John Howe, 'The Regulatory Impact of Using Public Procurement to Promote Better Labour Standards in Corporate Supply Chains', in Kate Macdonald and Shelley Marshall (eds.), *Fair trade, corporate accountability and beyond : experiments in globalizing justice* (Ashgate, 2010), p. 334.

¹²⁸ *id.*, 336.

¹²⁹ Savitz and Weber, *The triple bottom line : how today's best-run companies are achieving economic, social, and environmental success-and how you can too.*, supra note 123, p. x.

¹³⁰ *id.*

¹³¹ Cafédirect Annual Report (2008-9), available at: http://www.cafedirect.co.uk/pdf/annual_reports/Annual_Report_0809.pdf (accessed 10 June 2010).

¹³² Tallontire, 'Partnerships in Fair Trade: Reflections from a Case Study of Cafédirect ', supra note 67, p. 173.

¹³³ *id.*

¹³⁴ *id.*

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 that deals with profit and growth objectives, being profit making is however complemented with the fair trade ideals that are also considered important with the aim of making a difference and producing change to the industry.¹³⁵ From the managing director's point of view, the mission of the company is to be the catalyst to the industry about what the company is and where the products have come from.¹³⁶ The company takes fair trade goals as an encouragement to decision making which integrates both profit consideration and ethical supply and conduct which fair trade exists as an overriding aim to help developing-world producers.¹³⁷

However, the main criticism for voluntary regulation like CSR and the fair trade movement is that they are rather 'soft law' and questionable on legal-binding force.¹³⁸ Despite increasing trend of corporate adoption on CSR and fair trade each year, recent statistics indicate that the results towards the change remain abysmal.¹³⁹ This criticism directly concerns the viability of fair trade when voluntary initiatives like ETA and FTA are not deemed to be able to render substantial legal forces to motivate corporate practice.¹⁴⁰ An study by UN Secretary-General's Special Representatives (SGSR) for business and human rights in 2006 depicted that only 25 per cent of the surveyed 314 corporations had committed to the community

¹³⁵ Iain A. Davies and Andrew Crane, 'Ethical Decision Making in Fair Trade Companies', *Journal of Business Ethics*, 45/1 (2003), 79-92., p. 86.

¹³⁶ *id.*

¹³⁷ *id.*, 87.

¹³⁸ Problematic legal forces in soft law and CSR have been an raised; *see* for example, Peter Utting and Jennifer Clapp, *Corporate accountability and sustainable development* (Oxford University Press, 2008)., Michael E. Cloghesy, 'a corporate perspective on globalisation, sustainable development, and soft law', in John Kirton and Micheal Trebilcock (ed.), *Hard Choices, Soft Law: Voluntary Standards in Global Trade, Environment and Social Governance* (Ashgate, 2004).; John Kirton and Micheal 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* (Aldershot ; Burlington, Vt.: Ashgate, 2004).; and, Martin Marcussen, 'OECD Governance through Soft law', in Ulrika Morth (ed.), *Soft Law in Governance and Regulation: An Interdisciplinary Analysis* (Edward Elgar, 2004).

¹³⁹ Stefano Pogutz, 'Sustainable development, corporate sustainability, and corporate social responsibility', in Peter Utting and Jenifer Clapp (ed.), *corporate accountability and sustainable development* (Oxford, 2008)., p. 36.

¹⁴⁰ *id.*

consultation process that care about human rights standards set in their CSR agenda.¹⁴¹ It is believed that the reason which corporations have chosen to shy away from CSR commitment is due to the problematic soft law effectiveness of international initiatives which render only a minimal legal-binding force.¹⁴²

In assessing the corporate inception of voluntary regulation, a CSR study in Australian garment sectors (*Ethical Threads*)¹⁴³ has found that corporations have shown a slow progress to embrace soft and voluntary obligations to protect workers in international and local manufacturing supply chains.¹⁴⁴ Although most of the corporations adhere to the OECD guidelines and ILO labor practices, it was reported that six of the 23 corporations had developed their codes of practice unilaterally without embracing those international labor practices.¹⁴⁵ *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 for a success in improving labor conditions.¹⁴⁶

While voluntary regulation have been questioned on authority to create compliance, it is important to look at incidents where government's roles can constitute support for the fair trade movement.¹⁴⁷ Department for International Development in UK (DFID) referred fair trade and sustainable development to discuss in House of Commons in 2001 which then adopted agenda to support corporations that sought for fair trade products such as Day

¹⁴¹ id.

¹⁴² id.

¹⁴³ Emer Diviney and Serena Lillywhite, *Ethical Threads: Corporate Social Responsibility in the Australian Garment Industry* (Melbourne: Brotherhood of St Laurence, 2007).; available online at: http://www.bsl.org.au/pdfs/DivineyLillywhite_ethical_threads.pdf (accessed 11 July 2010).

¹⁴⁴ Emer Diviney and Serena Lillywhite, 'Corporate Responsibility and Stakeholder Governance: Relevance to the Australian Garment Sector', in Kate Macdonald and Shelley Marshall (eds.), *Fair trade, corporate accountability and beyond : experiments in globalizing justice* (Ashgate, 2010).

¹⁴⁵ id., 160.

¹⁴⁶ id., 162.

¹⁴⁷ Prapanpong Khumon, 'CSR as a Means of Law: Regulation of Business Conduct to Take Account on Social Responsibility', *Transnational Corporations Review*, 3/3 (2011), 84-95., p. 92.

Chocolate and Cafédirect where small-scale producers were granted shares in a company.¹⁴⁸ In 2000, DFID issued a loan of £400,000 to the Devine Chocolate Company as part of its programs for poverty alleviation in Ghana.¹⁴⁹ 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 £112,900, in which local farmers use to develop social infrastructures such as schools and local development projects.¹⁵⁰ In 2009, the European Parliament reflected similar support by issuing the Communication¹⁵¹ 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, highlighting the sustainable development and the role of fair trade in the purchasing scheme. Since microtrade proposes the establishment of an organization to liaise with government and other international bodies, it is important to draw examples from UK DIFD and EU Commission in taking account of fair trade attempts and raise awareness in government forum and national policies.

Even though the fair trade movement points toward positive feedback in alleviating poverty in developing countries,¹⁵² 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.¹⁵³ FLO is being criticized as their stricter standards become more and more unattainable to poor producers.¹⁵⁴ The

¹⁴⁸ Department for International Development, 'DFID and Fair Trade', *Draft Paper for Discussion* (London: Department for International Development, 2001).

¹⁴⁹ Department for International Development, 'Fair Trade and Development: Seventh Report of Session 2006-07', (London: House of Commons, International Development Committee, 2007).

¹⁵⁰ *id.*

¹⁵¹ Communication to the Commission on 5 May 2009, Brussels, COM (2009) 215 Final; available at http://trade.ec.europa.eu/doclib/docs/2009/may/tradoc_143089.pdf.

¹⁵² See generally, Josefina Aranda and Carmen Morales, 'Poverty Alleviation through Participation in Fair Trade Coffee Networks: The Case of CEPCO, Oaxaca, Mexico', *Report Prepared for Fair Trade Research Group, Colorado State University*, (2002).

¹⁵³ Michael K. Goodman, 'reading fair trade: political ecological imaginary and the moral economy of fair trade foods', *Political Geography*, 23/7 (2004), 891-915., p. 892; and, Philip Booth and Linda Whetstone, 'half a cheer for fair trade', *Economic Affairs*, 27/2 (2007), 29-36., p. 32.

¹⁵⁴ Goodman, 'reading fair trade: political ecological imaginary and the moral economy of fair trade foods', supra note 153, p. 909.

stringent fair trade rules now create rather a burden for producers with long and complex documents and criteria requiring producers to comply.¹⁵⁵ For example, producer cooperatives need to obtain a letter of intent from a wholesale or retailer agreeing to buy their products at higher price before applying for a certification mark.¹⁵⁶ While the registration fee for certification used to belong to importer's obligation, this fee is now a requirement for producers.¹⁵⁷ The fee is, however, not reflective of the disadvantaged position of the poor. The fee for smallest group (both 100 producers and less) is US \$3,000 – US \$3,800.¹⁵⁸ In addition, there is also annual fee of US \$1400 which is subject to renewal.¹⁵⁹ Since statistics show that the average income for Kenyan is US \$300 per year, there is no doubt that it becomes a challenge already for the poor to be able to pay that much amount for a certification.¹⁶⁰ Recent news have shown conflicting direction in business aims between FLO and Fair Trade USA, one of FLO labeling initiatives, which result in the resignation of Fair Trade USA from FLO effective 31 December 2011.¹⁶¹ Fair Trade USA will continue to pursue its own fair trade endeavors independent from FLO.

Another debate concerns whether the benefits from the fair trade price actually go to the hands of the poor.¹⁶² It is argued that the higher price from fair trade products contribute to FLO's use for marketing purpose rather than empowering poor producers.¹⁶³ FLO is reported to receive the majority of income by charging an 8 per cent in each company's turnover, and is argued to spend this amount of money developing its marketing strategies and increasing

¹⁵⁵ *id.*

¹⁵⁶ Whetstone, 'half a cheer for fair trade', *supra* note 153, p. 31.

¹⁵⁷ *id.*

¹⁵⁸ *id.*

¹⁵⁹ *id.*

¹⁶⁰ *id.*

¹⁶¹ See FLO (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)

¹⁶² Whetstone, 'half a cheer for fair trade', *supra* note 153, p. 29.

¹⁶³ *id.*, 29 and 30.

the organization size.¹⁶⁴ While fair trade prohibits employment of child labor, it is argued that child labor is an important factor in welfare generating in poor countries.¹⁶⁵ Therefore, prohibiting child labor could result disastrously to livelihoods of poor families.¹⁶⁶ It has also been argued that producers do not always receive the fair prices according to the principles; this is because the price granted to producers is normally decided by cooperative leaders, also there is a possibility for corruption issues within cooperatives.¹⁶⁷

There is another concern that the future growth in fair trade movements might induce competition among the same movements leading to confusion about product information, original sources, and intercrossed ethical labels.¹⁶⁸ Bananas provide a great example of how multiple alternative trade regimes result in consumer's confusion.¹⁶⁹ In addition to bananas carrying FLO mark, another organization, Rainforest Alliance, is also certified by FLO to carry labels 'ECO-OK' and 'Better Banana' to notify consumers that these bananas are produced in the way that protects the rainforests.¹⁷⁰ It has raised an important argument to what criteria that other alternative organizations have to be met in order to be classified for fair trade labels.¹⁷¹ There are doubts whether the criteria set by FLO is prescriptive enough as it seems so that those who have met criteria do not contribute to actual commitments to fair trade ethical standards.¹⁷²

It has been debated that slow growth of fair trade sales could be another issue leading to

¹⁶⁴ id., 32.

¹⁶⁵ Krisztina Kis-Katos and Günther G. Schulze, 'Regulation Of Child Labour', id.25/3 (2005), 24-30., cited in, Whetstone, 'half a cheer for fair trade', supra note 153, p. 32.

¹⁶⁶ Whetstone, 'half a cheer for fair trade', supra note 153, p. 32-33.

¹⁶⁷ id.

¹⁶⁸ Ian Hudson and Mark Hudson, 'removing the veil: commodity fetishism, fair trade, and the environment', *Organization & Environment*, 16/4 (2003), 413-30., p. 425.

¹⁶⁹ id.

¹⁷⁰ id.

¹⁷¹ id., 426.

¹⁷² id., 425.

uncertainty in a future viability of fair trade.¹⁷³ Although the fair trade sales have risen gradually representing 5 per cent growth each year, the impact of fair trade sales still represent only 0.1 per cent of the overall goods exported worldwide.¹⁷⁴ A survey in UK indicates that only one in three consumers consider buying fair trade or ethical products.¹⁷⁵ 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 FLO tends to be selective in providing coverage to particular groups who are capable of setting up cooperatives.¹⁷⁶ Since commodity products can be competitive in the market, the promotion of fair trade can create a shift in demands further away from producers outside fair trade.¹⁷⁷ The other argument is that FLO tends to encourage and prolong the production of traditional and cultural products which could halt individual economic independency and development.¹⁷⁸

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.¹⁷⁹ 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 characteristic as well as the location of market.¹⁸⁰ Since fair trade always drives consumer's demands in targeted products such as primary commodities, fair trade can only be regarded as yielding a better income distribution than free

¹⁷³ id.

¹⁷⁴ Fair Trade Foundation UK (2003), Fair Trade Facts, June 2003, available at: http://www.fairtradefederation.com/ab_facts.html.

¹⁷⁵ Deborah Doane, *Taking flight : the rapid growth of ethical consumerism : the Ethical Purchasing Index 2001* (New Economics Foundation, 2001)., cited in, Caroline Wright, 'consuming lives, consuming landscapes: interpreting advertisements for cafe cafédirect coffees', *Journal of International Development*, 16/5 (2004), 665-80., p. 678.

¹⁷⁶ Mark S. Leclair, 'Fighting the tide: alternative trade organizations in the era of global free trade', *World Development*, 30/6 (2002), 949-58., p. 955.

¹⁷⁷ id.

¹⁷⁸ id., 956.

¹⁷⁹ Robbert Maseland and Albert De Vaal, 'how fair is fair trade?', *De Economist*, 150/3 (2002), 251-72., p. 251.

¹⁸⁰ id.

trade as long as the focus is on the product range in which fair trade particularly targets and aims at selling.¹⁸¹ Also, while fair trade maintains the edge of income development to producers in poor countries, the evidence shows that it has caused deteriorations elsewhere, especially in labor wages in manufacturing sectors in rich countries.¹⁸²

Despite various benefits that small producers are entitled under the regime of fair trade, the debate still occurs whether those benefits actually go to the hands of producers.¹⁸³ While many of the above examples in Latin America give a clear picture of efficient transfer of wealth to the poor, a number of evidence have indicated that fair trade does not give large amount of money back to poor farmers.¹⁸⁴ Oxfam argued that Border's bookstores were charging US \$3.6 extra on an organic fair trade coffee over other coffee; and of that US \$3.6, farmers only get US \$0.57 (account for only 15 per cent of the actual entitlement).¹⁸⁵ 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.¹⁸⁶

Concluding Remarks

The fair trade movement provides mechanism to redirect adverse effect from global trade pressure towards disadvantaged small producers in developing countries by its creation of ethical networks of certified commodity. While the fair trade movement has developed the certification system overseen by a voluntary organization, FLO; microtrade has also proposed a voluntary participation from global producers, industries, and international organizations to congregate demands for locally-produced products. It is important to view fair trade and

¹⁸¹ *id.*, 259.

¹⁸² *id.*, 268.

¹⁸³ Kate Raworth, *Trading away our rights : women working in global supply chains* (Oxford: Oxfam, 2005)., p. 48.

¹⁸⁴ *id.*

¹⁸⁵ *id.*

¹⁸⁶ John Wilkinson, 'Fair Trade: Dynamic and Dilemmas of a Market Oriented Global Social Movement', *Journal of Consumer Policy*, 30/3 (2007), 219-39., p. 224.

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 all the standards are met. However, unlike commodity products, 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 proposal to include non-commodity products within its certification mark. A recent attempt by the World Fair Trade Organization (WFTO) has been on a process of creating a new fair trade certification system, 'Sustainable Fair Trade Management System (SFTMS)', which will include non-commodities and even entire business and all of its products and services.¹⁸⁷ It is interesting to consider that locally-produced products under microtrade may be able to collaborate with the new WFTO certification proposal.

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 FLO in Asia, despite recent growing demands in fair trade products in the region.¹⁸⁸ 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.¹⁸⁹ 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 why establishing certification agencies in developing countries become so important, so that more resources in knowledge and competency are drawn into developing countries to raise more participation and awareness of the fair trade activities. The

¹⁸⁷ WFTO (2011), available at: <http://www.wfto.com/sftms> (accessed 12 November 2011).

¹⁸⁸ FLO (2011), Building Fair Trade in Asia (13 April 2011) available at: <http://fairtradeblog.tumblr.com/post/4577787268/building-fairtrade-in-asia>

¹⁸⁹ Vitoon panyakul, ILEIA Newsletter, December 1998.

same can be said about microtrade activities, drawing international attention to local process can be a path for attaining a goal of creating local competency and development.

There has been an argument 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, who pays a fair trade producer in some developing countries.¹⁹⁰ 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.¹⁹¹ 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.¹⁹² 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; rather they reflect significant concepts of social and economic development that purports the idea of justice and freedom to raise the capabilities and realization of the poor's economic and social rights. Advantages of both movements are composed of not only monetary benefits, but also several non-monetary benefits aiming to have impact beyond economic outcome such as social empowerment and a psychological benefit in the sense of achievement in choices of employment and local unity.

¹⁹⁰ Wilkinson, 'Fair Trade: Dynamic and Dilemmas of a Market Oriented Global Social Movement'., supra note 186, p. 224.

¹⁹¹ Gresser and Tickell, *Mugged : poverty in your coffee cup.*, supra note 82, p. 57.

¹⁹² Wilkinson, 'Fair Trade: Dynamic and Dilemmas of a Market Oriented Global Social Movement'., supra note 186, p. 224.

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