TITLE: Globalization, The WTO and Fair Trade: Is the International Trade System Working in the Interests of Coffee Farmers?

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> "Trade liberalization has not lived up to its promise. But the basic logic of trade -- its potential to make most, if not all, better off -- remains. Trade is not a zero-sum game, in which those who win do so at the cost of others; it is, or least it can be, a positive-sum game, in which everyone can be a winner. If that potential is to be realized, first we must reject two of the long-standing premises of trade liberalization; that trade liberalization automatically leads to more trade and growth, and that growth will automatically "trickle down" to benefit all. Neither is consistent with economic theory or historical experience."[1]

> "We need to keep in view the possibility that a shift to internationally traded crops can put farmers at risk."[2]

Introduction

1 An assumption exists that free trade and fair trade support incompatible visions.[3] Fair trade supporters say that trade exchanges between developed and less developed countries occurs on uneven terms, and should be made more equitable by protecting the weaker countries.[4] However, supporters of free trade argue that over the long run the markets will correct the imbalance, and both developed and developing nations will benefit from full access to each others' markets.[5] "In this way, free traders hold that free trade is fair trade."[6] This paper will explore the role globalization, the WTO's trade rules, and fair trade have played in the global coffee market, and whether fair trade is truly needed to protect the interests of coffee producers.

2 The first part of this paper will provide an overview of coffee as a commodity and agricultural product, and of the history of the coffee trade. The second part looks at the impact of globalization, specifically kaleidoscopic comparative advantage, on the coffee trade. The third part of this paper introduces the World Trade Organization (WTO) and analyzes the framework of the agreements governing agriculture and labour to understand how it impacts the coffee trade and coffee producers. The fourth part of the paper provides an overview of fair trade coffee, its role in the global coffee market, and arguments for and against fair trade coffee. The final part of the paper draws the conclusion that while free trade will bring economic prosperity to rich and poor nations alike, until such time as free trade -- or even liberalized trade -- is realized, fair trade is needed.

I. Coffee: The Commodity and a History of its Trade

3 Coffee is a tree crop that is produced by developing countries for consumption in developed nations.[7] Once planted, a coffee tree takes three to five years to mature; only mature bushes bear the fruit that hold the coffee bean. It must be grown in frost-free conditions -- making coffee a key export commodity for tropical non-arid countries.[8] The coffee trade is a source of foreign exchange, cash income, and employment in developing and least-developed countries.[9] As a primary product, coffee is second only to oil in its export value for developing nations.[10]

4 There are two primary varieties of coffee: arabicas and robustas. Arabica beans -- considered higher quality and sold at a higher price than robustas -- grow at higher altitudes, feature a milder flavour, and have traditionally been cultivated in Latin America, Ethiopia, and Kenya.[11] Robusta beans are hardier, with a stronger flavour, and are largely produced by Brazil, Vietnam, and Uganda.[12] The traditional divide between the two varieties has begun to blur. Due to mechanical efficiencies and strategic planting, Brazil now produces close to half of the world's arabica coffee.[13] In addition, technological advances allow roasting companies to substitute robustas for arabicas in their blends, without sacrificing the taste.[14]

5 Small-scale family farms in eighty-five Latin American, Asian, and African countries produce over seventy-five percent of the world's coffee.[15] Coffee farmers usually live in poverty and produce on small sections of land.[16] In the ordinary commodity chain, farmers sell to purchasers, known as "coyotes", who sell the beans to corporations from developed nations, who then process (roast and package) the coffee for sale to the end-consumer. Generally, coffee farmers are not familiar with or informed about the international coffee market, and rely upon coyotes for a price that accurately reflects the commodity's value in the open market. By contrast, coyotes are well-informed and act to maximize their profits by acquiring beans for the lowest possible price regardless of global market conditions.

6 Coffee's importance as an international commodity rose during the nineteenth century.[17] It has since suffered from extended periods of oversupply and low prices intermittent by relatively brief periods of short supply -- increasing demand -- and high prices.[18] This volatility led to an intergovernmental initiative to stabilize the market and halt the fall in prices: an international commodity agreement.[19] From 1962 to 1989, coffee producing and consuming nations signed International Coffee Agreements (ICA) by which production quotas were implemented to stabilize the international price of coffee.[20] The quotas established the volume of coffee that each producing nation was permitted to place on the market.

7 In 1989, due to a lack of support by developed nations and abuses of the quota system by producing states, the economic clauses of the ICA were suspended.[21] Without the quota restrictions, developing nations flooded the market with previously stockpiled beans and increased their domestic production. The market value of coffee fell substantially as a result.[22] The impact of the fallen price largely hit the farmers; the coffee surplus provided coffee roasters and coyotes with a range of beans to select from -- all at a lower price. Under the ICA the value of coffee ranged from $.95 U.S. to $1.60 U.S. -- depending on the variety -- for a pound of coffee. After the demise of the ICA's economic clauses, the price fell to between $.50 U.S. and $.80 U.S. per pound.[23] Coffee producers were left to sink or swim in a liberalized market.

II. The Coffee Trade and Globalization

8 In its largest sense, globalization denotes the "growing inter-connectedness of the world."[24] There are various aspects of globalization. This paper is concerned with economic globalization, which constitutes "integration of national economies into the international economy through trade, direct foreign investment (by corporations and multinationals), short-term capital flows, international flows of workers and humanity generally, and flows of technology..."[25]

9 Globalization presents the opportunity for increased consumption from a larger market, but it also invites enhanced competition.[26] The theory of comparative advantage states that nations are better off developing the industries in which they have a relative advantage in production costs as compared with other nations. Coffee producing nations, mainly developing or least-developed countries, are competing with each other for the markets of developed countries. The relative advantage of one coffee-producing nation over another is narrow.

10 In his book In Defence of Globalization, Jagdish Bhagwati observes that agriculture poses special problems related to volatility of prices and earnings:[27]

> [problems] arise from the intensification of competition today and the thinning of competitive advantage so that...we have knife-edge situations where sudden loss of a market to foreign rivals can occur. A number of potential and actual competitors are in the market today; and small changes in conditions abroad can make them more deadly rivals. I say therefore that comparative advantage today has become kaleidoscopic: a small turn of the instrument and you get a different image, a configuration of costs and prices that suddenly and swiftly turns you from a winner into a loser.[28]

The number of competitors, the unpredictability of weather conditions, and the lack of crop diversification in coffee producing nations, makes the threat of kaleidoscopic comparative advantage potentially disastrous.

11 A factor of kaleidoscopic comparative advantage in the coffee industry is the relative strength of a producing country's currency and cost of living.[29] The value of coffee is measured in U.S. dollars per pound. Depending on the value of the national currency against the U.S. dollar, and the relative cost of living in a producers' home country, the price a producer receives per pound will be higher in some nations than in others. When prices decrease, farmers in nations with stronger currencies or higher costs of living will not be able to continue production, and will have to exit the market sooner than those in countries where the currency or the cost of living is lower.

12 A second factor is the effect of increased efficiency in the market. Business development depends on competitors pursuing methods that lower costs while increasing overall production. In the last ten years, Brazil has more than doubled its production of arabica coffee and now produces close to half of the world's arabicas through technological advances, intense production methods and geographical shifts away from traditional frost-prone growing areas.[30]

13 Another factor is the policies implemented by governments of producing nations, such as domestic and export subsidies, on the ability of other nations to compete in the market. From the time Vietnam entered the coffee industry until its accession to the WTO in 2007, it heavily subsidized its coffee market, ensuring that its industry thrived despite price fluctuations.[31] The problem with such policies is twofold: first, they encourage over-production by the subsidizing nation as farmers no longer take their production cues from the open market; second, they leave farmers from other producing nations, unless subsidized by their own government, at a disadvantage. The governments of competing countries are faced with a choice: subsidize their coffee industry, or allow it to fail.

14 Globalization has changed the coffee industry. Enhanced efficiency in production and the comparative advantage in labour held by some nations are realities that coffee producers must face to remain competitive. However, protectionist measures employed by governments to provide an advantage to their producers distort the global trading system and put producers from poorer nations at an unfair disadvantage.

III. The Coffee Trade and The WTO

15 The WTO is a multinational forum for governments to negotiate and implement trade agreements and resolve trade disputes.[32] The rules of the system are a result of a major revision of the 1947 General Agreement on Tariffs and Trade (GATT).[33] The WTO's current body of trade agreements consists of sixteen multilateral agreements, to which all WTO members are party, and two plurilateral agreements, to which some WTO members are party. Although it is not a global organization, as of 23 July 2008, 153 nations were WTO members.[34]

16 Free trade is the unhindered trade of goods, services, capital and investments between or within countries. The governments of trading states agree not to impose restrictions -- such as taxes and tariffs, and non-tariff barriers like regulatory legislation and quotas -- on trade. The theory is that absolute free trade, which is opposed to all forms of intervention, allows trading partners to benefit from the increased demand for their goods and services, while also benefiting from access to a trading partner's goods and services. Liberalized trade, by contrast, is the lowering, but not total rejection, of trade barriers as a means of encouraging trade. Unlike free trade, liberalized trade allows tariffs and, in limited circumstances, other forms of protection.

17 While the WTO encourages as few trade restrictions as possible, it also permits states to maintain trade barriers for certain policy reasons.[35] Its stated goal is to "help producers of goods and services, exporters, and importers conduct their business, while allowing governments to meet social and environmental objectives."[36]

18 Having explained the basic framework of the WTO, this paper will investigate two areas where the trade of coffee could be covered: agriculture and labour.

A. The WTO and Agriculture

19 Prior to the WTO, the GATT 1947 rules that applied to industrial products did not necessarily apply to agricultural primary products.[37] Under the GATT 1947, export subsidies on agricultural primary products were allowed with the sole condition that the subsidies should not be used to gain more than an "equitable share" of world exports of the product concerned.[38] The GATT rules also allowed nations to resort to import restrictions where restrictions were necessary to enforce measures to effectively limit domestic production.[39]

20 The Uruguay Round established the Agreement on Agriculture (AoA) in 1994.[40] The primary objective of the AoA was to reform the principles of, and disciplines on, agricultural policy as well as to reduce the distortions in agricultural trade caused by agricultural protectionism and domestic support.[41] There are three main components to the AoA: market access restrictions, export subsidies, and domestic support.

21 The first component, market access restrictions, includes import tariffs and quotas that protect local producers from competing imports. The rule is "tariffs only;" agricultural import quotas that existed before the Round were converted into import tariffs.[42] In addition, through a system of "tariff-quotas," the AoA provided that quantities imported before it took effect could continue to be imported, and any additional quantities are charged duty rates that are not prohibitive.[43]

22 The second component, export subsidies, include government payments that cover some of the costs of exporters such as marketing expenses, special domestic transport charges, and payments to domestic exporters to make sourcing products from domestic producers competitive.[44] Such subsidies are prohibited unless they are specified in a member's lists of commitments.[45] Even where listed, the AoA requires developed and developing members to cut both the amount of money they spend on export subsidies and the quantities of exports that receive subsidies.[46]

23 The third component, domestic support, includes direct support to farmers linked to the type, price, and volume of production.[47] The AoA differentiates between programmes that stimulate the industry directly, which fall into the "amber" box and should be reduced, and those that have no direct effect, which fall into the "green" box and can be used freely.[48] The green box includes: government services such as research, disease control, training services, marketing and promotion services, infrastructure, and food security.[49] Also included are payments made directly to farmers that do not stimulate (over-) production, such as forms of direct income support, assistance to restructure agriculture, and direct payments under environmental and regional assistance programmes.[50] The "blue" box is another category of acceptable domestic support.[51] It includes some direct payments to farmers where they are required to limit production, certain government assistance programmes to encourage agricultural and rural development in developing countries, and other small scale support that does not exceed the total value of the product or products supported by five percent or less for developed countries, and ten percent or less for developing countries.[52]

24 In their schedules Uruguay Round participants agreed that developed countries would reduce tariffs, domestic support, and export subsidies over six years beginning in 1995; developing countries would make lesser cuts over ten years; and least-developed countries would not be required to make any changes.[53]

Table 1: Agreement on Agriculture Subsidy
and Tariff Targets

Type of Country	Agreed cuts in: Domestic subsidies	Tariffs	Value of export subsidies	Volume of subsidized exports
Developed	20% over 6 years	36% over 6 years	36% over 6 years	21% over 6 years
Developing	13.3% over 10 years	24% over 10 years	24% over 10 years	14% over 10 years
Least-developed	None	None	None	None

25 Critics of the AoA argue, "the current WTO legal texts do not yet reflect a full integration of agriculture within the rules for goods in general."[54] They point to export subsidies, which are banned in the WTO legal framework for all other goods, but are still permitted for agricultural products in the current AoA.[55]

26 Developed countries, motivated to ensure the survival of their agricultural industries, have negotiated less liberalization in agriculture. By securing exemptions for some of their policies, such as green box domestic subsidies and non-inclusion of products on schedules of commitment, developed nations were allowed to continue making large expenditures for domestic support and export subsidies.[56] For example, if a subsidy fell within the amber box, some creative programme restructuring could convert it into either a green or blue box subsidy.[57] Developing countries are entitled to employ similar protectionist polices, but lack the financial resources to give the policies effect.[58]

27 When Vietnam began large-scale coffee production, it protected its fledgling industry by imposing export subsidies.[59] Vietnam's subsidies distorted the global price of coffee; other producing nations could not compete without imposing similar subsidies, which they could not afford. Upon accession to the WTO in 2007, Vietnam reduced its export subsidies for coffee.[60]

28 This raises the question of what legal options are available for coffee producing nations when a competitor engages in trade distorting behaviour. For a period of time the AoA provided an exception to The Agreement on Subsidies and Countervailing Measures (SCM Agreement) disciplines; that exception has now expired.[61] Export subsidies on agricultural products that violate Article 3.1(a) of the SCM Agreement are prohibited.[62] However, the language of the SCM Agreement export subsidy provisions allow that export subsidies within the AoA domestic support commitment levels do not violate Article 3.1(a).[63]

> 3.1 Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited:
>
> (a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I;

"This clause...indicates that the WTO-consistency of an export subsidy for agricultural products has to be examined, in the first place, under the Agreement on Agriculture."[64] If the subsidy is within the AoA domestic support commitments levels, the SCM Agreement does not apply, and the WTO member can continue using the subsidy.

29 If the subsidies are outside the commitment levels, or are for products not listed on the subsidizing state's schedule, injured nations have three remedies outlined in the SCM Agreement: seek consultations with the subsidizing state, refer the matter to a Dispute Settlement Body (DSB), or impose countervailing duties against the subsidizing state.[65] Consultations with competitors, requesting an end to trade distorting actions that give the subsidizing state an advantage, may not produce results. While referring the matter to a DSB may result in a favourable decision for the injured state, the subsidizing nation may choose to compensate the injured nation financially rather than halt their trade distorting behaviour. Additionally, the cost of litigation may deter developing and least-developed nations from referring the matter to a DSB. Finally, countervailing duties are of little use, since neither party is importing the product. Thus, the use of the SCM Agreement's remedies to deter another member's trade distorting behaviour is unlikely to produce successful results for developing and least-developed nations exporting agricultural products.

30 Arguably, the lack of liberalization in agriculture benefits developed nations more than developing and least-developed countries. "Simulation models for the Uruguay Round, as well as preliminary projection of possible scenarios for the current negotiations, all show increases in agricultural production in developing countries, if the distortions in world agricultural policies, which are dominated by those of the industrial countries, are reduced."[66] The agricultural products dominated by the developed nations, without protectionist subsidies and tariffs, could likely be produced by developing and least-developed nations at lower cost, benefiting not only the producers in developing and least-developed countries, but also taxpayers of subsidizing nations and consumers worldwide. As long as developed nations are permitted to rely on subsidies and tariffs, world market prices will not reflect the true cost of production.

31 Tropical products such as coffee, sugar, tea, cocoa, and oilseeds are traditional exports for developing nations. There is a considerable risk of overproduction in these products, as they compose a significant percentage of developing and least-developed nations' exports.[67] Even if nations could control their own domestic production (this is difficult when producers are mostly small-scale farmers), they cannot control global production. To protect themselves from the volatility of the open market, developing nations should diversify their agricultural offerings. However, developing nations are faced with a choice: either diversify into other tropical crops, which would place them in the position they are currently in with coffee; or diversify into crops grown by developed countries, and face high import tariffs and export subsidies that make their crops less competitive; or find underdeveloped products in which to diversify. Some developing and least-developed countries have successfully accomplished the latter, by diversifying their export markets into horticulture, livestock, fish, cut flowers, and organic products.[68] Unfortunately, there is limited demand for horticulture, cut flowers and organic products; the risk of over-production remains, especially if more developing nations diversify into these markets.

32 Agriculture is one of the trade topics on the Doha Development Agenda, and has been a sticking point in negotiations.[69] The Doha Rounds' stated objectives for agriculture are: "substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support".[70] Until Doha, only modest progress was made reforming these policies. So far, members participating in the Doha Round have been unable to agree on modalities to realize the agricultural objectives. The Doha Round's inability to come to an agreement on agriculture stems from the unwillingness of developed countries to further liberalize their agriculture -- by making changes to their schedules -- without reciprocal action from other developed nations. For their part, developing and least-developed nations are unwilling to abandon protectionist measures that they have been permitted to maintain under the AoA.

B. The WTO and Labour

33 As mentioned above, small-scale family farms produce seventy-five percent of the world's coffee; larger family-run farms or corporate plantations, using hired labour to harvest the coffee, produce the remainder. This raises the issue of labour standards, including a decent wage for workers, in the production of coffee.

34 Labour is not new topic for the international community. Prominent international bodies and instruments have turned their mind to the issues surrounding labour. In the its Charter, the United Nations (UN) promotes "higher standards of living, full employment, and conditions of economic and social progress and development".[71] The Universal Declaration of Human Rights guarantees that everyone has: "the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity;" and "the right to a standard of living adequate for the health and well-being of himself and of his family".[72] The International Covenant on Economic, Social and Cultural Rights recognizes everyone's right to just and favourable conditions of work, including fair wages.[73] These guarantees and recognitions are merely evidence of what the international community aspires to be, and there are no legal consequences if signatories, or on non-signatories, fail to adhere to them.

35 At the 1996 Singapore Ministerial Conference, WTO members defined the WTO's stance on labour standards:

> We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration.[74]

In the Ministerial Declaration for the Doha Round of negotiations, the Ministers reasserted that:

> We reaffirm our declaration made at the Singapore Ministerial Conference regarding internationally recognized core labour standards. We take note of work under way in the International Labour Organization (ILO) on the social dimension of globalization.[75]

In short, labour standards are not included in the WTO's mandate or subject to the WTO's disciplines.[76] The inclusion of labour standards is a controversial issue that began at the Ministerial Conference of the General Agreement on Tariffs and Trade held in Marrakesh in April 1994, and has yet to be resolved.[77] Although developed nations are arguing to bring labour standards within the umbrella of the WTO, many developing countries counter that such steps are simply protectionist measures designed to reduce their competitive advantage.[78]

36 Currently, while there are more ILO members than WTO members, all of the WTO members are also members of ILO.[79] As a practical point, the WTO's support of the ILO suggests that member-states intend to give effect to the ILO guidelines. However, the non-inclusion of labour standards by the WTO, and its assertion that the ILO is the competent body to establish and implement such standards means that the standards are not legally binding. The ILO does not have the strength of a legally binding judicial body to give effect to its standards.[80] Instead, the ILO relies on strong moral suasion to encourage nations to comply with the established guidelines.[81]

37 The ILO's labour standards do not appear to include a fair wage for labour. The preamble of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (ILO Declaration) states:

> Whereas, in seeking to maintain the link between social progress and economic growth, the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned, to claim freely and on the basis of equality of opportunity, their fair share of the wealth which they have helped to generate, and to achieve fully their human potential...[82]

The text of the declaration focuses on freedom of association, the elimination of forced labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation. The right to fair compensation for labour, while suggested in the preamble, is absent from the body of the ILO Declaration. It should be assumed that the drafters of the ILO Declaration were cognizant of the omission; including the price of labour would have constituted a direct assault on the comparative advantage held by developing nations. However, labour standards that protect freedom of association are aimed at better balancing the power of workers and employers, and may support an increase in wages. Freedom of association, together with the preamble, which suggests the spirit in which the declaration should be read, imply that the member-states to the ILO support the proposition that labourers should receive a fair wage, though not if fair" is understood as being an internationally defined standard.[83] What is "fair" ought to be determined in the context of each country's level of income and standard of living.[84]

C. The Coffee Trade and the WTO: Conclusion

38 The agricultural provisions of the WTO agreements do not support liberalized trade, which results in price distortion in the coffee trade. The fact that coffee producing countries are either developing or least-developed nations, neither of which are required to substantially reduce their trade distorting behaviour, results in the coffee industry being susceptible to government subsidies without viable recourse to WTO remedies. Futhermore, the possibility of coffee farmers engaging in crop diversification is limited by the protectionist measures employed by developed nations.

39 The WTO's deferral of labour standards to the ILO means that there is no legally binding mechanism that will protect the interests of coffee labourers. Even if the ILO had a mechanism to legally enforce its standards the right to a decent wage is markedly absent from the ILO Declaration, suggesting that no legal decision would be made to protect the income of labourers. The conclusion is that coffee farmers and labourers are subject to an unregulated industry skewed by the heavy subsidies imposed by some governments.

40 Fair trade addresses that gap left by the WTO and the ILO. It provides a wage that accurately reflects the cost of production and offers options for producers to maintain a sustainable livelihood.

IV. The Coffee Trade and the Fair Trade Movement

41 The fair trade movement emerged as an alternative to the current global trading system. Fair trade operates on consumer awareness; consumers in the developed world are willing to pay more than market price -- a so-called premium -- for a product in solidarity with workers in developing countries.[85]

A. The Role of Fair Trade in the Coffee Trade

42 Fair trade has evolved into a mechanism to ensure that producers (farmers and artisans) in the developing world receive sustainable compensation for their services. "Northern activists working with producers, labo[u]rers, and other impoverished sectors of the Global South, are using market-based strategies to mobilize consumer awareness in order to bolster incomes and empower Southern producers and workers. In doing so, Fair Trade seeks to redirect globalization's transformative powers toward the creation of greater social equity on a global scale."[86]

43 Fair trade organizations establish standards and use labelling to signal to consumers that a product has met the required criteria and can be considered fairly traded.[87] The fair trade standards are set with the cooperation of producers, traders and external experts.[88]

44 Today fair trade products represent one of the fastest growing segments of the global food market.[89] The Fairtrade Labelling Organization International (FLO) estimates that the sales of fair trade certified products grew an average of 40% per year from 2001 to 2007.[90] In 2007, FLO estimates that fair trade certified sales amounted to approximately _2.3 billion worldwide, which represents a 47% increase over 2006.[91] The table below shows the significant growth in the sale (in volume) of fair trade coffee between 1999 and 2007.[92]

Table 2: Fair Trade Coffee Sales
Volumes from 1999 - 2007

[Editor's note: Table 2, Fair Trade Coffee Sales Volumes from 1999 - 2007, could not be reproduced online. Please contact Quicklaw Customer Service at 1-800-387-0899 or service@lexisnexis.ca and request the following document: 9asp201.doc.]

Although fair trade's year-over-year growth, as evidence in the above chart, is impressive, the sales value of fair trade goods represents only 0.01% of total global trade, and specifically, fair trade coffee constitutes 1.8% of total coffee sales.[93]

45 Fair trade organizations operate by cutting out the intermediaries and providing the small producers with a higher price or wage.[94] Removing coyotes from the coffee commodity chain provides more opportunity for small producers to profit.

B. The Arguments For and Against Fair Trade Coffee

46 This paper will now identify and consider arguments in support of and against the fair trade model.

Fair trade does not fit within the supply and demand economic model

47 From a simple theoretical economic perspective the solution to the difficulties experienced by the coffee trade can be rectified. If the price is too low, producers can respond in one of two ways: they can produce less, which would generate more demand and thus raise prices; or, if unable to support themselves on the prices supported by the global market, producers can pursue more lucrative ventures, either by leaving coffee production altogether, or by producing higher priced varieties.[95] The suggested options all result in lower coffee supplies, thus raising the global demand and price.[96]

48 However, there are problems with this economic theoretical assessment. Sustained periods of low coffee prices have not had the corresponding effect in reducing production as is envisioned by the classic free market model.

49 The Fairtrade Foundation identifies two reasons why low prices have not had the corresponding reduction in production.[97] First, coffee producers, usually small-scale growers, are almost entirely dependant on coffee production for the livelihoods.[98] Instead of reducing output, growers will increase production to compensate for the loss of income.[99] Providing producers with a higher wage reduces the risk of over-production to compensate for lost income.

50 Second, the Fairtrade Foundation points to the fact that coffee consumption occurs largely in the developed world.[100] Since the price consumers' pay for coffee is relatively inelastic, the potential for low prices stimulating demand is limited.[101] The demand remains constant regardless of fluctuations in price.

51 Two additional reasons can be articulated. Technological advances made by roasters and a farmer's geographical location limit their ability to produce higher priced varieties instead of exiting the market. Arabica beans had traditionally offered producers higher prices; however, now that roasters can substitute robustas for arabicas in their blends by extracting the bitterness, there is less demand for arabicas.[102] In the same vein, producers can enter into niche markets that yield higher prices, such as shade grown or organic coffees, but the nature of niche markets is that there is limited demand.

52 In addition, the initial capital expense of acquiring coffee trees coupled with the wait period for trees to attain fruit-bearing maturity, deter producers from exiting the market. Instead, farmers continue to cultivate their crops while remaining hopeful that the market will turn-around and generate high returns.

Fair Trade is based on the assumption that a higher price will give more to the producers

53 The concept of fair trade is premised on the assumption that the fair trade premium paid by consumers goes directly to the producer.

54 It would be incorrect to assume that under the ICA quota system the higher coffee prices translated into higher incomes for coffee farmers.[103] In fact, "[e]conomic analysis suggests that coffee farmers, generally received below-market prices while quotas were in effect."[104] Similarly, it cannot be assumed that because consumers are willing to pay a higher price for fair trade coffee that the entire premium goes to the farmers and labourers. Instead, it is more likely that all the stakeholders along the production chain -- retailers, roasters, importers, and producers -- benefit from the increased price. Producers will receive between ten and forty percent more through fair trade than through the ordinary coffee market.[105] In practical terms, it is perhaps an additional ten cents per pound of coffee.

55 The fact that producers do not receive the entire premium should not stop consumers from purchasing fair trade coffee. Fair trade coffee should not be viewed separate from the international coffee context. Through the ordinary coffee commodity chain, even when the global coffee prices are high, the existence of coyotes limit the profits realized by producers. The price offered by the coyote may be the only offer a producer receives. Poor and ill-informed farmers cannot hold out until a better price comes along. The choice is either to get little, or to get nothing.

56 An extra ten to forty percent, when compared to the "little or nothing" reality of the ordinary coffee industry, is still something.

Fair Trade encourages non-competitive producers to remain in the market

57 As Brazil continues to enhance its modes of production, leading to more efficiency and lower production costs, other producers either have to keep up with Brazil, or be left in the dust. Critics argue fair trade encourages non-competitive producers to remain in the market.[106]

58 While enhanced production techniques make Brazil's coffee industry more competitive, Brazil is not producing enough coffee to satisfy the global demand. Producers are needed to satisfy the remaining demand. The extra income provided to farmers through fair trade can assist them in improving their own production techniques, or provide them with the resources to invest in new crops to diversify their farms. "People cannot think about investment for future years when they are struggling to put food on the table tomorrow, and this is something that the Fairtrade price addresses."[107]

Fair Trade is unfair to non-fair trade producers

59 Critics of fair trade claim that by paying fair trade workers on better terms than non-fair trade workers in the same area, fair trade distorts the market for labour.[108]

60 Arguably, farmers using the same techniques on side-by-side plots could receive different prices for their identical products. The research of Mark Hayes and Geoff Moore suggests that other employers in the region were obliged to offer wages at or close to those offered by fair trade.[109] The non-fair trade farmers can use the leverage that fair trade organizations have been purchasing coffee in the area to receive a higher price from coyotes when prices are high. However, when global coffee prices are low, coyotes have less flexibility and great discrepancies can exist between seemingly similar products and producers.

61 Fair trade is a niche market and accounts for approximately two percent of total global coffee sales. "By far not all producers that wish to participate in fair trade can actually do so; above all because only a fifth of the coffee produced as Fair Trade is also sold at Fair Trade prices."[110]

C. The Coffee Trade and the Fair Trade Movement: Conclusion

62 Fair trade has seen impressive growth over the last decade; however, it remains a niche market. The limited consumer base can only support a limited number of producers, with the result that not all farmers -- even if interested in pursuing fair trade methods -- can benefit from the slightly higher prices. However, those producers who do sell their beans to fair trade organizations have the increased opportunity to improve their production techniques and diversify their crops. Although it is not the ideal economic model, the fair trade movement is recognizing and responding to the difficulties faced by coffee producers.

Conclusion

63 Ideally, the global market would run on the principles of free trade. Free of protectionist tariffs and barriers, prices would reflect the true cost of production and workers would be fairly compensated. Competitors would strive to improve efficiency, and if not able to maintain a comparative advantage, would exit the market. In such an economic system there would be no need for fair trade.

64 However, the global trading system is not based on free trade -- it is liberalized trade. Within the scope of liberalized trade, it seems that the WTO has failed to liberalize agriculture. Developed nations, concerned for their own agricultural industries, resist eliminating subsidies. Developing and least-developed nations, who have the most to gain from free trade in agriculture, do not benefit from the current protectionist market. However, protectionist markets are not limited to developed nations. Instead of assisting developing and least-developed nations ease into liberalized trade in agriculture, the AoA allowed them to maintain trade distorting tariffs and subsidies.

65 The volatility of the coffee industry and the risk of kaleidoscopic comparative advantage in the age of globalization, raise concerns for the livelihood of the coffee farmers and workers. The number of competitors, the effect of extreme weather, and the growing efficiency of some producers, makes it difficult to predict the volume of coffee that will be available in any given year. Small-scale farmers whose income depends entirely on their coffee crop are at a significant risk; when prices are low a coffee farmer cannot resort to eating his crop for dinner.

66 Government policies and programmes are needed in coffee producing nations to support farmers and workers. This is especially true when the price of coffee is low. Such policies should provide the necessities of life, education regarding the coffee industry, support to improve efficiencies, and encourage the diversification of producers' crops. That being said, governments of developing and least-developed nations may not be able to provide such programmes because they "typically have not developed the necessary institutions to handle the intensified challenges of increasing openness to the world economy."[111]

67 Coffee producers, and the nations they live in, would benefit most from diversifying their crops. To do that, the WTO members need to liberalize agriculture; special agricultural exceptions for subsidies and tariffs should be abandoned. Such a move would allow farmers in developing and least-developed countries the opportunity to use their comparative advantage in labour to produce food products at a truly lower price, which would benefit not only producers, but also consumers worldwide. A successful outcome of the Doha Round of trade talks would help in this regard.

68 Fair trade provides coffee producers and workers with a sustainable wage, and encourages diversification of crops.

> We agree with others, from Oxfam to neo-conservatives, that small-scale coffee farmers would benefit from access to market information, technical support, investment in diversification, a co-ordinated strategy to promote consumption, the reduction or scrapping of tariff escalators on processed agricultural products, and the scrapping of rich nations' agricultural subsidies. Until that day arrives, Fairtrade will continue to engage with producers, consumers and commercial organizations in the development of an equitable coffee market.[112]

In the face of a global trading system that has failed to consider their interests and governments that cannot financially support them, fair trade is helping the people on the ground.

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Notes

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19 See generally Bhagwati, supra note 2 at 236. Bhagwati discusses commodity schemes aimed at stabilizing prices.

20 Supra note 17.

21 Fairtrade Foundation, "Is Fairtrade a subsidy that encourages farmers to grow more coffee and therefore contribute to global oversupply and low prices?" at 4, online: Fairtrade Foundation <www.fairtrade.org.uk/resources/reports_and_briefing_pa pers.aspx> [Fairtrade Foundation, "Does Fairtrade encourage global oversupply and low prices?"].

22 See Fairtrade Foundation, "Comparison of Fairtrade price and world market price", supra note 14.

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24 Simon Lester et al., World Trade Law: Text, Materials and Commentary (Portland: Hart Publishing, 2008) at 4.

25 Bhagwati, supra note 2 at 3.

26 See The World Bank, Agriculture for Development: World Development Report 2008 (Washington DC: 2008) at 97.

27 Bhagwati, supra note 2 at 236.

28 Ibid. at 237.

29 See The World Bank, supra note 26 at 39-40. In Uganda, the devaluation of the exchange rate contributed to reduced rural poverty during 1992-2000.

30 Bacon, supra note 11 at 498. Oxfam, "Mugged: Poverty in Your Coffee Cup", (2002) at 18, online: <www.maketradefair.com/en/index.php?file=16092002163229 .htm>. Oxfam quotes a coffee trader "...in some areas of Guatemala, it could take over 1,000 people working one day each to fill the equivalent of one container of 275 bags...In the Brazilian cerrado, you need five people and a mechanical harvester for two or three days to fill a container..."

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36 Ibid.

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39 Ibid., Article XI:2(c).

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42 Agreement on Agriculture, supra note 40, Part III: Articles 4 and 5. See also ibid.

43 Agreement on Agriculture, ibid., Part V: Article 8. See also WTO: fairer markets for farmers, ibid.

44 Agreement on Agriculture, ibid., Part V: Article 9(1). See also WTO: fairer markets for farmers, ibid.

45 Agreement on Agriculture, ibid., Part V: Article 8.

46 WTO: fairer markets for farmers, supra note 41.

47 Ibid.

48 Ibid.

49 Agreement on Agriculture, supra note 40, Annex 2(2), (3) and (4).

50 Ibid., (5)-(13).

51 WTO: fairer markets for farmers, supra note 41.

52 Agreement on Agriculture, supra note 40, Part IV: Article 6(4). See also ibid.

53 WTO: fairer markets for farmers, ibid.

54 Eugenio Díaz-Bonilla et al., "WTO, Agriculture, and Developing Countries: A Survey of Issues" (Washington, D.C.: International Food Policy Research Institute, 2002) at 20, online: International Food Policy Research Institute <www.ifpri.org/divs/tmd/dp/tmdp81.htm>.

55 Ibid. at 20.

56 Ibid. at 22.

57 See Joseph A. McMahon, The WTO Agreement on Agriculture: A Commentary, (Oxford: Oxford University Press, 2006) at 85 and 88.

58 Díaz-Bonilla et al., supra note 54 at 22.

59 See Ann Grodnik and Michael E. Conroy, "Fair Trade coffee in the United States: Why companies join the movement" in Laura T. Raynolds, Douglas Murray & John Wilkinson, eds., Fair Trade: The challenges of transforming globalization (New York: Routledge, 2007) 83 at 86; and see Fairtrade Foundation, "Does Fairtrade encourage global oversupply and low prices?", supra note 21 at 4.

60 WTO, Report of the Working Party on the Accession of Viet Nam, WTO Doc. WT/ACC/VNM/42/Rev.1 (2006), online: WTO <docsonline.wto.org>. See also David Kinleg & Hai Nguyen, "Viet Nam, Human Rights and Trade: Implications of Viet Nam's Accession to the WTO", Friedrich-Ebert-Stiftung Dialogue on Globalization (May 2008) at 27, online: Social Science Research Network Electronic Library <ssrn.com/abstract=1105952>.

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62 SCM Agreement, ibid., Article 3.1(a).

63 Ibid.

64 Canada -- Measures Affecting the Importation of Milk and the Exportation of Dairy Products Recourse to Article 21.5 of the DSU (Complaint by New Zealand and the United States) (2001), WTO Doc. WT/DS103/AB/RW and WT/DS113/AB/RW, at para. 123 (Appellate Body Report), online: WTO <www.wto.org/english/tratop_e/dispu_e/cases_e/ds113_e.h tm>.

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67 Christopher Stevens, "The need for Special Product and Special Safeguards Mechanisms for agriculture in the WTO: A Situational Analysis" (Paper prepared for ICTSD Informal Roundtable entitled Special Products and Special Safeguard Mechanism after the July Framework: How do we Move Forward?, Geneva, 30 September 2004).

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72 Universal Declaration of Human Rights, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) 71 at art. 23(3) and 25(1).

73 International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 U.N.T.S. 171, art. 7(a).

74 World Trade Organization: Trade and Labour Standards: Subject of intense debate [WTO Trade and Labour Standards], online: <www.wto.org/english/thewto_e/minist_e/min99_e/english/ about_e/18lab_e.htm>.

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76 WTO Trade and Labour Standards, supra note 74.See also Farkhanda Mansoor, "Trade versus Peace: A Contextual Analysis of Core Labour Standards in the Global Trading Community", (2005) 5 Asper Rev. Int'l Bus. & Trade L. 133 at 143-147 (QL).

77 Ibid.

78 Ibid. See also James Mercury & Bryan Schwartz, "Creating the Free Trade Area of the Americas: Linking Labour, the Environment, and Human Rights to the FTAA" (2001) 1 Asper Rev. Int'l Bus. & Trade L. 37 at 44 (QL); Peter Barnacle, "Promoting Labour Rights in International Financial Institutions and Trade Regimes", (2004) 67 Sask. L. Rev. 609 at 629-630. Barnacle points out that no WTO member-state has brought an international labour case to the Dispute Settlement Body (DSB) so the possibility exists that the DSB may include labour in the WTO's mandate. See fn 105 of Barnacle's article for a list of authors who have argued the enforcement of labour rights and other human rights in the DSU process.

79 Cleopatra Doumbia-Henry, "The role of Social Standards in Promoting Fair Trade" (Panelist for session at the WTO Public Forum 2007, Friedrich Ebert Stiftung, 5 October 2007), online: Friedrich Ebert Stiftung <www.fes-globalization.org/geneva/documents/Public_Forum/Publi cForum07_Role-of-Social-Standards_Report.pdf> and WTO <www.wto.org/audio/forum07_session24.mp3>. Cleopatra Doumbia-Henry is the Director of ILO.

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81 Supra note 79. Ibid. Kamil Ahmed, "International Labor Rights a Categorical Imperative?", (2004) 35 Revue de Droit Universite de Sherbrooke 145 at 158-159 (QL).

82 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, ILO, 86th Sess., (1998), online: International Labour Organization <www.ilo.org/declaration/thedeclaration/textdeclaration/lang-en/index.htm>.

83 The issue of whether there should be a legislated (agreed upon through international agreements) minimum wage is a distinct topic that will not be further treated in this paper.

84 See Mansoor, supra note 76 at 145-146.

85 Steffen Grammling, "The Role of Social Standards in Promoting Fair Trade" (Moderator's opening statements at the WTO Public Forum 2007, 5 October 2007), online: World Trade Organization <www.wto.org/audio/forum07_session24.mp3>.

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95 Lindsey, supra note 11 at 1 and 9.

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97 Fairtrade Foundation, "Does Fairtrade encourage global oversupply and low prices?", supra note 21 at 2.

98 Ibid.

99 Ibid. See also The World Bank, supra note 26 at 122.

100 Ibid.

101 Ibid.

102 Lindsey, supra note 11 at 5.

103 Ibid. at 8.

104 Ibid.

105 The World Bank, supra note 26 at 133.

106 Marc Sidwell, Unfair Trade (London: Adam Smith Institute, 2008) at 13, online: Adam Smith Institute <www.adamsmith.org/publications/economy/unfair-trade-200802259 61/>.

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110 See also Bitzer, Francken & Glasbergen, supra note 7 at 280.

111 Bhagwati, supra note 2 at 239.

112 Fairtrade Foundation, "Does Fairtrade encourage global oversupply and low prices?", supra note 21 at 2.