

WHY FAIR TRADE IS ESSENTIAL FOR THE TRIPLE BOTTOM LINE, SUSTAINABILITY, AND FREE TRADE: SEEKING EQUILIBRIUM AS THE EAGLE MEETS THE CONDOR

by

Paulette L. Stenzel*

I. Introduction

The labels Fair Trade and free trade sound similar, but they are based on substantially different principles.¹ One of Fair Trade's underlying principles is that it promotes sustainability. Free trade agreements talk about sustainability but do not actively promote it. Yet we can no longer afford to pursue trade that ignores its effects on the environment, U.S. citizens, and citizens of our trade partners. Therefore, it is time to pursue a different approach to trade.

Various scholars have recognized the need to acknowledge that trade does not operate in isolation. This discussion has led to development of the concept of the Triple Bottom Line: economy, social equity, and environment.² The Triple Bottom Line is a tool to help companies and individuals pursue sustainable practices. As Andrew W. Savitz and Karl Weber say in their book The Triple Bottom Line, "Sustainability in practice can be seen as *the art of doing business in an interdependent world*."³⁴ This paper explores how Fair Trade is related to the Triple Bottom Line.

Fair Trade helps integrate the perspectives of various stakeholders affected by trade, not just shareholders. It is based on practices and principles including fair wages, gender equity, safe living and working conditions, respect for cultural identity, transparency, and decisions by community groups. If, through free trade, society were doing what it ought to do with respect to human beings, businesses would adhere to those practices and principles. Fair Trade provides a way to stop and examine the way society conducts trade. As a result, society is more likely to see what is harmful and make choices to do things in more sustainable ways.

Fair Trade is not new. The movement emerged in the aftermath of World War II as church organizations conducted sales of handicrafts in countries that were recovering from the devastation.⁵ The movement was based on direct sales and spread to efforts to help others around the world living in poverty.⁶ In recent years, the movement has grown significantly, particularly in Europe. Today, Fair Trade points toward ways to do things that are supportive of the Triple Bottom Line.

This paper explains how application of Fair Trade principles provides a way for businesses to pursue sustainable trade. Free traders have much to learn from the Fair Trade community, and free trade would be much fairer if it incorporated the principles of Fair Trade. The principles of Fair Trade can lead to trade that supports the Triple Bottom Line. Therefore, Fair Trade deserves attention and its principles should be integrated in the world of trade.

This paper is not about choosing Fair Trade in lieu of free trade. Rather, it is about integration – using principles of Fair Trade within the global free trade arena. To illustrate this need for integration, this paper refers to free trade agreements between the United States and its Southern trade partners in the Western Hemisphere.

The prophesy of the Eagle and Condor, told by indigenous people of the Andes Mountains of South America, provides an instructive metaphor for the relationship between free trade and Fair Trade.⁷ The Eagle represents reliance on the head and brain and manifests itself in materialism, technology, and the intellect. Indigenous people say that many people in this world have gone too far in the direction of the Eagle. The Condor represents reliance on the heart and attention to *Pachamama* (Mother Earth).⁸ Those who live in traditional indigenous ways in the Andes of South America have stayed closer to the

ways of the heart, as represented by the Condor. The indigenous prophesy of the Eagle meeting the Condor says that, in terms of overall tendencies, it is time for the North and the South, the head and the heart, to meet and find the good in each other to protect the Earth and all sentient beings.

This is not to say that everyone in the United States and other developing countries focuses exclusively on profits and materialism. Nor is it to say that everyone in a developing country, such as Nicaragua or Ecuador, focuses on the heart, environmentalism, and care for the Earth. The ways of materialism and consumption have entered every country. The message of the Eagle and the Condor is that human beings must integrate individual and societal tendencies to reach equilibrium, seeking the best of both. In other words, this is about integration, not just a balancing of two sides of a scale. People must draw the best from both ways of approaching life as they interact with each other through trade.

This parallels the need for a change in the way the United States relates to countries of Latin America through trade agreements. It is important to harmonize the interests of companies based in the United States with the interests of individuals in the United States, businesses in trade partners, and citizens of U.S. trade partners. This has not been done, and this failure is a significant reason why the North American Free Trade Agreement (NAFTA) and other free trade agreements are being questioned.⁹ For example, the Dominican Republic- Central American Free Trade Agreement (DR-CAFTA or, more commonly, CAFTA) continues to meet serious criticism.¹⁰ Plans for the Free Trade Area of the Americas (FTAA)¹¹ have stalled, and The U.S.-Colombia Free Trade agreement is on hold in the U.S. Congress.¹²

All four of those agreements include language about sustainable development, and increasing numbers of people are talking about using the Triple Bottom Line to examine whether business activities promote sustainable development.¹³ Therefore, this paper discusses the components of the Triple Bottom Line.¹⁴ Multinational businesses speak of sustainable development with the implication that business growth must be perpetual. Unfortunately, under the current free trade paradigm, growth leads to increasing consumption of limited natural resources. Free trade, as it is being implemented under agreements such as NAFTA, ignores the interrelationships among economy, social equity, and environment. Moreover, although free trade promotes economic development by generating profits, those profits are not evenly distributed through society. This overreliance on profits for some, with harm to social equity and environment, has created severe imbalances in the United States and its trade partners.

The purposes of this paper are twofold. First, it will show that Fair Trade, free trade, and law are integrally related. Second, it will show that the principles of Fair Trade strongly support the Triple Bottom Line. This, in turn, can help remedy the deficiencies of free trade agreements. Fair Trade is not anti-trade, but it takes a far broader approach to trade than does free trade, incorporating multiple values, with profit being only one of them. The multiple values promoted by Fair Trade support sustainability in meaningful ways.

As interest grows in the Fair Trade movement, it is important to pay attention to its legal ramifications. Fair Trade has earned a serious place in the world – a world that is increasingly globalized and that relies substantially on free trade in interactions between and among countries. Yet only a limited number of law review articles have been published about Fair Trade.¹⁵ Therefore, this paper focuses on integration of Fair Trade and free trade. Part II outlines the basic principles and history of Fair Trade. Part III explores relationships among globalization, sustainability, and shifting perspectives on free trade agreements. Part IV explains the Triple Bottom Line and that Fair Trade is trade that meets the criteria of the Triple Bottom Line. Finally, Part V shows that the time is right for active and widespread application of Fair Trade principles. Politically, the time is right to turn to Fair Trade principles. They are one set of tools that can help guide toward trade that is sustainable. It is all about equilibrium.

II. Context: Basic principles and History of Fair Trade

A. What is Fair Trade?

Fair Trade is a label for a process, not an end result. Moreover, there is no universally accepted definition of Fair Trade, but the following is put forth by F.I.N.E., an information organization that includes four major Fair Trade networks: Fairtrade Labeling Organizations International (FLO), the International Fair Trade Association, the European Fair Trade Association, and the Network of World Shops.¹⁶

Fair Trade is a trading partnership, based on dialogue, transparency, and respect, that seeks greater equity in international trade. It contributes to sustainable development by offering better trading conditions to, and securing the rights of, marginalized producers and workers – especially in the South. Fair Trade [o]rganizations, backed by consumers, are engaged actively in supporting producers, awareness raising and in campaigning for changes in the rules and practices of conventional international trade. Fair Trade products are produced and traded in accordance with these principles – wherever possible verified by credible, independent assurance systems.¹⁷

There are many common practices and principles underlying Fair Trade. Here is a survey of the most common ones. First, Fair Trade promotes fair wages.¹⁸ In some cases, such as in the coffee industry, it does so by guaranteeing a minimum price for the product, regardless of market fluctuations.¹⁹ Second, Fair Trade often eliminates the middle people in the chain of distribution of goods, thus allowing retailers to direct more funds to producers.²⁰ Third, Fair Trade emphasizes long-term relationships with producers extending long beyond specific sales contracts.²¹ Fourth, Fair Trade emphasizes safe and decent working conditions.²² Fifth, Fair Trade recognizes the right to collectively organize and form trade unions.²³ Sixth, it emphasizes cooperative workplaces. Workers must make decisions for themselves. They organize into democratic or cooperative associations, as is appropriate to the circumstances.²⁴ Seventh, in general, Fair Trade avoids use of child labor.²⁵ This is a complex topic, however. For example, sometimes child labor is acceptable such as when a child works with his or her parents in a family business after school. Eighth, it promotes environmental sustainability.²⁶ Fair Trade food products are often, but not always, associated with organic food products.²⁷ The terms are not synonymous, but organic principles promote similar goals: safer working conditions for workers and care for the environment. One source says that producers, at least in the coffee industry, prefer organic practices.²⁸ Ninth, Fair Trade includes social premiums for cooperatives and communities to use to improve the lives of all community members.²⁹ Tenth, it provides for public accountability through transparency.³⁰

Fair Trade started out with grass-roots, ground-up action by individuals and groups. It continues to receive a lot of support within churches and charitable groups. “More recently, [F]air [T]rade has moved on to use conventional retail and marketing methods across a range of tropical food products, looking for a wider impact on the ‘mainstream’ through supermarkets and sophisticated advertising campaigns.”³¹

There are now over 2,000 Fair Trade – certified products available.³² They include foods such as coffee, tea, chocolate, sugar, almonds, and pecans. Fair Trade goods also include clothing, furniture, home décor items, house wares, ceramics, and toys. To provide a way to identify Fair Trade goods and set standards for use of the term “Fair Trade,” various organizations provide certification for Fair Trade goods, particularly Fair Trade foods.³³

B. History of Fair Trade

A review of the history of the Fair Trade movement is necessary in order to understand its relationship to free trade in a world of rapid globalization. This summary of the history of the Fair Trade movement will discuss the key players and ideals that have pushed the movement into the 21st century.

Fair Trade principles promote sustainable development as measured by the relatively new tool called the Triple Bottom Line. Yet Fair Trade has a deep history preceding the days when sustainable development and the Triple Bottom Line became key phrases in public discussions. During Fair Trade's early days following World War II, its advocates emphasized an ideology of "social justice and equity in commercial relations."³⁴ The Sales Exchange for Refugee Rehabilitation and Vocation (SERRV) and Oxfam were pioneers in the movement when they began purchasing handicrafts from poor producers in developing nations and selling the products directly to consumers.³⁵ These organizations were called Alternative Trade Organizations (ATOs).

Since World War II, the Fair Trade movement has shifted from its original mission, which focused on help for people recovering from World War II, to a more broad commitment to helping people throughout the world. Its original ideology has been expanded.³⁶ The newer, broader commitment "highlight[s] the injustices facing the world's poor and unequal trading relations that maintained this poverty."³⁷ During this expansion of Fair Trade, ATOs established World Shops in locations throughout Europe.³⁸ The shops gave consumers an opportunity to buy handicrafts with a promise "to return a greater portion of the market price to Third World [developing nation] producers by eliminating intermediaries and providing a more direct route into Northern Markets."³⁹ By promoting better returns to the producers in developing nations, the ATOs developed a market for conscious consumers to buy goods that would improve the lives of the producers. The shops were run by organizations including Traidcraft, Christian Aid, and Oxfam.⁴⁰

In addition to serving as an outlet for Fair Trade goods, the World Trade shops provided education about the "unfairness" of the world trade system.⁴¹ The World Shops and the ATOs operating them helped small producers find "export markets based on principles of commercial transparency, social justice, and community support."⁴² These networks facilitated connections between Northern consumers and Southern producers. For example, Twin Trading was a pioneer of the Fair Trade movement in the United Kingdom.⁴³ Twin Trading set out to create trading links with countries that were not typically included in international trade at the time, such as Vietnam, Cuba, Nicaragua, and Mozambique.⁴⁴ Twin Trading based its operations on developing relations between the North and South and focused on mutual advantage, independence of partners, and countering exploitative relations.⁴⁵

During the 1960s and the 1970s, the Fair Trade networks expanded in number and geography.⁴⁶ Thousands of World Shops were established throughout Europe.⁴⁷ The movement also expanded its products to include commodities such as tea, coffee, and cocoa.⁴⁸ As the Fair Trade movement gathered momentum, Fair Traders publicized and followed the motto "Think Globally, Act Locally."⁴⁹

The United States did not adopt the Fair Trade model as quickly as European nations, but eventually U.S. groups started projects to sell products through catalogues and small shops.⁵⁰ A pioneer Fair Trade organization in the United States is Ten Thousand Villages.⁵¹ Ten Thousand Villages has contributed to the growth in popularity of Fair Trade over the last thirty years, and it continues to be a flagship for Fair Trade in the United States. The organization works to provide "vital, fair income to Third World people by marketing their handicrafts and telling their stories in North America."⁵² Additionally, Ten Thousand Villages seeks to "bring justice and hope to the poor, trade with artisan groups who pay fair wages and demonstrate concern for their members' welfare, and provide consistent purchases, advances, and prompt final payments."⁵³

Overall, Ten Thousand Villages exemplifies the core values of the Fair Trade movement. It bases its business operations on the following nine principles:

1. [It] honor[s] the value of seeking to bring justice and hope to the poor.

2. [It] trade[s] with artisan groups who pay fair wages and demonstrate concern for their members' welfare.
3. [It] provide[s] consistent purchases, advances and prompt final payment to artisans.
4. [It] increase[s] market share in North America for fairly traded handicrafts.
5. [It] market[s] quality products that are crafted by underemployed artisans.
6. [It] build[s] sustainable operations using a variety of sales channels, including a network of stores with a common identity.
7. [It] choose[s] handicrafts that reflect and reinforce rich cultural traditions, that are environmentally sensitive and which appeal to North American consumers.
8. [It] encourage[s] North American customers to learn about Fair Trade and appreciate artisans' cultural heritage and life circumstances with joy and respect.
9. [It] use[s] resources carefully and value[s] volunteers who work in [its] North American operations.⁵⁴

These reflect the principles of Fair Trade outlined earlier in this paper.⁵⁵

Equal Exchange is another major participant in the U.S. Fair Trade, and it was a pioneer in application of Fair Trade to food items.⁵⁶ It is a worker-owned cooperative with a “top-to bottom pay ratio of three to one.”⁵⁷ That means that the highest paid worker earns no more than three times that which the lowest paid worker earns. Equal Exchange sets an example for sustainable business in that it has average annual sales growth of 24%.⁵⁸ Overall, Equal Exchange proves that a “for-profit enterprise can be 100 [%] committed to Fair Trade and experience significant and sustained growth.”⁵⁹

As Fair Trade continued to grow through the 1980s, it became important to have a distinct way of distinguishing between goods that were Fair Trade and those that were not. The first efforts to create a Fair Trade label were in the early 1980s by the *Unión de Comunidades Indígenas de la Región del Istmo (UCIRI)* – Union of Indigenous Communities of the Isthmus Region), a cooperative of small coffee producers in the state of Oaxaca, Mexico.⁶⁰ People from the Netherlands and Germany assisted the UCIRI. Father Franz Vanderhoff was one of them. He explained “We don't want charity; we want a just market... Justice in the marketplace, that means that the cost of production at least has to be paid... the farmer has a family, he has to have upkeep of the family so that has to be part of the cost of [the] product.”⁶¹

In 1988 the Max Havelaar Foundation in the Netherlands launched the first Fair Trade certification system.⁶² The foundation was named after “a fictional character in Dutch literature who was a champion of coffee farmers.”⁶³ It “help[s] customers recognize a Fair Trade product [and] also [provides] an independent system to verify claims that a product was fairly traded.”⁶⁴

By the mid-1990s, organizations similar to the Max Havelaar Foundation joined forces to form the FLO, a “certification umbrella mandated to apply and monitor Fair Trade standards worldwide.”⁶⁵ TransFair USA and TransFair Canada are the FLO-authorized labels in the United States and Canada respectively.⁶⁶

III. Globalization, Sustainability, and Shifting Views on Free Trade Agreements

In response to NAFTA's deficiencies, people throughout society are looking for better ways to do things. Fair Trade provides principles that provide such better ways. This section discusses the relationship between globalization and sustainability and the relationship between globalization and free trade. It also explains how the Triple Bottom Line is used to measure sustainability and shows how NAFTA fails the three legs of this tool for evaluation.

A. Context: Globalization, Sustainability, and Free Trade Agreements

Globalization operates as a two-edged sword, bringing benefits and harms. Free trade, which has been facilitated by globalization, also brings benefits and harms. While it opens new markets for companies in developed and developing countries, it allows businesses from developed countries to take advantage of cheap labor, limited regulation, limited taxation, and cheap natural resources in developing countries. The costs of labor are an essential factor in business decisions. A significant reduction in labor costs often results in moving U.S. factories to other countries, resulting in a loss of U.S. - based jobs. This action of a “profitable business exploiting [the] international wage difference” is referred to as labor arbitrage.⁶⁷ Labor arbitrage has been practiced for years, and its use has accelerated recently. Jack Welch, former CEO of General Electric, takes a highly favorable view of the practice suggesting “that the ideal factory would be on a barge that would move from country to country, taking advantage of the cheapest labor available at any given time.”⁶⁸

People in developing countries including Mexico, Nicaragua, China, and many others have been hurt by these practices. Developing countries end up offering cheap labor, tax concessions, and other benefits to entice foreign investment, because those are the best tools they have to compete in a challenging world marketplace. For example, Nicaragua, a member of CAFTA, is working hard to entice companies to establish foreign investment in its *maquiladoras*.⁶⁹ In Nicaragua the minimum wage of 41 cents U.S. per hour is the standard in the *maquiladoras*.⁷⁰ The government sets a minimum monthly wage for each employment sector, but none of those minimums meets the \$141 U.S. that Nicaragua’s government estimates is needed for a family of four to buy basic goods each month.⁷¹ These low wages are a significant enticement companies. Emilio C. Noguera Cáceres, *Asesor Laboral* (labor assessor) for Managua’s free trade zone, acknowledges that he would like to offer higher paying jobs to his fellow Nicaraguans, but he has to face realities.⁷² The jobs at low wages are the best he and his colleagues can bring to his country at the present.⁷³ Moreover, there is a race to the bottom as companies choose among developing countries seeking ever less expensive labor. The owner of a *maquiladora* in Nicaragua simply says, “China can pay its workers less than what I’m legally required to pay these people.”⁷⁴ The manager of a Nicaragua *maquiladora* says, “The [Triple Bottom Line] means nothing to the brands. They only care about the wages.”⁷⁵

In addition, developing countries often give up taxes to entice foreign investment. The largest free trade zone in Nicaragua is *Las Mercedes* in Managua, the capital city.⁷⁶ In January 2007, the zone had 109 companies and 80,514 employees, and it accounted for 49% of the country’s total exports.⁷⁷ Many of the zones, including *Las Mercedes*, are state-owned. The state provides huge tax incentives to private businesses that establish facilities in these zones.⁷⁸ Owners of *maquiladoras* pay virtually no taxes: they are 100% exempt from income, municipal, property, capital gains, and sales tax.⁷⁹ They are also 100% exempt from taxes on the importation of raw materials, equipment, machinery, and spare parts.⁸⁰ By giving up taxes, a developing country gives up the income it needs to develop infrastructure, protect the natural environment, and institute social programs. Free trade critics point to this when they say that free trade promotes a race to the bottom for wages, labor standards, and environmental protection.⁸¹

B. Free Trade Agreements Questioned

Western Hemisphere free trade agreements between the United States and partners in Latin America are being questioned in the political arena. For example, prior to his election in November 2008, President Barack Obama said,

I will work with the leaders of Canada and Mexico to fix NAFTA so that it works for American Workers. I believe that NAFTA and its potential were oversold to the American people. It has not created the jobs and wealth that were promised. We can, and must, make trade work for American workers by opening up foreign markets to U.S. goods and maintaining strong labor and environmental standards.⁸²

The U.S.-Colombia FTA was negotiated in 2006.⁸³ In April 2008 observers were surprised when the U.S. House of Representatives exercised its rights to change its rules, deciding to allow an unlimited number of days for consideration of the agreement. Essentially, consideration of the agreement is “on hold” within that body. There are many reasons for questioning the agreement. For example, opponents say it will force small peasant farmers in Colombia out of business because they cannot compete with cheap imports of food from the United States, which subsidizes its farmers.⁸⁴ This has happened in other developing countries partnering with the United States. For example, low priced corn (subsidized by the U.S. government) has forced over a million small Mexican farmers out of business since 1994 when NAFTA took effect.⁸⁵ Additionally, there are serious questions about labor rights and human rights in Colombia.⁸⁶

IV. The Triple Bottom Line and its Intersection with Fair Trade

Many business managers are realizing that they must recognize the interconnected nature of our world and the multiple effects of their business decisions and actions.

In today’s interconnected world, thinking about profits as if they were unrelated to the economic and social impacts of what you do to get them is shortsighted and counterproductive. Social and environmental issues are creating risks and opportunities the fundamental playing field for individual firms, industries, and business itself.⁸⁷

This section describes the Triple Bottom Line, a concept developed by sustainability activist John Elkington.⁸⁸ It recognizes the need to consider economic, social, and environmental impacts of business decisions.

A. Defining the Triple Bottom Line: Economy, Social Equity, and Environment

Measures of the economic leg of the Triple Bottom Line include (1) sales, profits and return on investment, (2) taxes paid, (3) monetary flows; and (4) jobs created.⁸⁹ The environmental leg is evaluated according to (1) air quality, (2) water quality, (3) energy usage, and (4) waste produced.⁹⁰ The social equity leg is measured according to (1) labor practices, (2) community impacts, (3) human rights, and product responsibility.⁹¹

These measures are supported by voluntary programs as well as laws that are already in place. Most companies must comply with the 1980 Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as Superfund, which was amended in 1986.⁹² The Emergency Planning and Community Right-to-Know Act (EPCRA) is the 1986 amendment.⁹³ It requires companies to issue annual reports on the types and amounts of hazardous materials they have on site or release into the environment. Even though the law does not require the removal of hazardous materials, companies found it uncomfortable to have to tell employees and community members about these chemicals in their backyards. “Between 1988 and 2003, the RTK law drove a 59 [%] reduction in the amount of hazardous chemicals stored on-site by U.S. companies, by far the most dramatic voluntary environmental improvement in history—all because of a simple disclosure requirement.”⁹⁴

A voluntary program, the Global Reporting Initiative (GRI), “has become the world’s benchmark” for measuring, monitoring, and reporting corporate sustainability efforts.⁹⁵ It includes eleven reporting principles used to produce a Triple Bottom Line report, and it has issued series of 146 indicators to be measured and evaluated.⁹⁶ The system is modeled after “generally accepted accounting principles (GAAP), which were established as a way of codifying, simplifying, and unifying disparate and occasionally conflicting accounting methodologies.”⁹⁷ Thus, the GRI puts Triple Bottom Line reporting into a format that is comparable to financial reporting, striving for “clarity, accuracy, usefulness, comparability, and influence” with those who review the reports.⁹⁸

B. Fair Trade: Trade that Promotes the Triple Bottom Line

Fair Trade principles and practices coincide with the principles and indicators of the Triple Bottom Line. Thus, it provides a way to make trade sustainable, and it can help counteract the ill effects of free trade.

First, Fair Trade meets the economic leg of the triple bottom line in numerous ways. It creates jobs that allow workers to gain a living wage, not just subsistence. Monetary flows come from the “ground up.” Less money goes to a middle person; thus workers improve their lives and those of their families. When people earn a living, they enter the ranks of those who are able to contribute to society through payment of taxes. When a social premium is paid to communities through Fair Trade, more funds come through the community to meet basic needs including water, sewage treatment, and schools. An emphasis on long-term relationships also contributes to economic stability. This counteracts one of the harmful trends promoted by free trade agreements: companies moving from country to country seeking ever cheaper labor and causing economic upheaval as they move elsewhere.⁹⁹

Second, Fair Trade meets the environmental leg of the Triple Bottom Line through its emphasis on sustainability. Organic products protect the natural environment as well as workers. For example, Fair Trade food products such as coffee, cocoa, and bananas are often organic.¹⁰⁰ “[F]air [T]rade farms rely mainly on biological or organic fertilizers and natural pest control.”¹⁰¹ Workers and families are safer because they are not exposed to toxic pesticides. Simultaneously, the land, water, and air are protected. Additionally, Fair Trade farms plant cocoa or coffee with shade and fruit trees. This promotes biodiversity, encouraging insects, plants, animals, and birds to form a more natural ecosystem. This helps prevent erosion of top soils, too.¹⁰²

Third, Fair Trade meets the social equity leg of the Triple Bottom Line in multiple ways including recognition for labor unions, avoidance of child labor (under most circumstances),¹⁰³ safe and clean working conditions, and fair wages. Moreover, the social premium paid to Fair Trade organizations for their collective projects promotes social equity in addition to bringing funds into the community (the economic leg). Fair Trade’s emphasis on democratic organization (including transparency and self-determination) also contributes to social equity.

Just as Triple Bottom Line recognizes interrelationships among economics, social equity, and environment, many of the individual principles and practices of Fair Trade promote more than one leg of the Triple Bottom Line. Fair wages help the economy and promote social equity. Long-term relationships promote economic stability and social equity. Overall, Fair Trade brings in values that are left by the wayside under free trade agreements and moves businesses and society toward sustainable development as defined by the Triple Bottom Line.

V. The Time is Right: Seeking Equilibrium through Sustainable Practices

A. The Doors Are Opening: A Valuable Movement at the Right Time

Political leaders are recognizing the need for a change in trade policy. For example, U.S. Senator Sherrod Brown responded to proposals to deal with the U.S. annual trade deficit of \$800 billion, saying, “It takes real change in trade policy – labor and environmental standards that will raise living standards at home and abroad, ...and no more NAFTAs and other corporate trade deals. We need more trade – but under a very different set of rules that work for our families and our communities.”¹⁰⁴

Many U.S. Congresspeople are actively looking at Fair Trade. For example, it was reported that in the November 2008 U.S. elections, “at least [forty-one] new [F]air [T]raders were elected to House and Senate Seats, which represent a net gain of [thirty-three] in Congress’ overall economic justice contingent.”¹⁰⁵ “This comes on top of the [thirty-seven] net fair-trade pick-ups in the 2006 congressional elections.”¹⁰⁶

Moreover, this coincides with the trend toward community involvement and grass roots action, green economy, and sustainable development movements. For example, Paul Hawken describes a worldwide movement of people working to heal the planet.¹⁰⁷ Andrew R. Edwards describes how society is on the cusp of a sustainability revolution.¹⁰⁸ Edwards presents an alternative that supports economic viability and healthy ecosystems by modifying consumption patterns and implementing a more equitable social framework.¹⁰⁹

B. Fair Trade Principles Guide Us toward Equilibrium in All Trade

Fair Trade's principles and practices support the Triple Bottom Line, but Fair Trade is not the same as the Triple Bottom Line. Fair Trade promotes a new paradigm. As one Fair Trade advocate says, "The point is to restore to trade its essential purpose—either it enhances human well-being as a whole or it is a useless enterprise that enriches some, impoverishes many more, and gets us all precisely nowhere."¹¹⁰ Fair Trade complements the Triple Bottom line by promoting human rights within the context of trade. It helps producers help themselves, and is, therefore, the antithesis of charity. It treats producers with the dignity they deserve.

Fair Trade enables individuals to take steps, one purchase at a time, to make the system fair. At Fair Trade stores, artisans are highlighted by including with the product a picture of the artisan and words about his or her life. This allows potential customers to see the human beings behind the product.¹¹¹ A connection is made between the producer and the consumer, allowing the consumer to see the producer as a fellow human being.

The current, complex world trade system has evolved over centuries. Its ill effects cannot be eliminated with any one tool nor can they be eliminated instantaneously. Meaningful change will be gradual. Fair Trade is one set of tools that can help work toward a fairer and more just trade system that will be truly sustainable. In other words, it is one piece of the spider web of steps to build a new paradigm in trade. It empowers individuals to do something each day to create a more sustainable world. People want to do the right thing. Fair Trade helps open people's eyes to the consequences of their specific purchases and free trade overall. As Fair Trade spreads and more people see its benefits, it could, and should, become a norm.

VI. Conclusions

The Triple Bottom Line is tool for measuring whether businesses are promoting the economy, social equity, and environment through their actions. When businesses stop to look and measure the effects of their actions, businesses are far more likely to do the right thing. This is illustrated by the fact that storage of hazardous substances has been significantly reduced as a result of EPCRA. Similarly, by implementing the Triple Bottom Line, companies are being prompted to promote sustainability in meaningful ways. Fair Trade is all about principles and practices that align businesses with the Triple Bottom Line. In short, Fair Trade allows society to come back to trade that is truly fair.

The Triple Bottom Line recognizes interconnectedness by looking at the links among economy, social equity, and environment. The current free trade system, as exemplified by NAFTA and free trade agreements modeled on it, fails to promote sustainability. In contrast, the Fair Trade movement can help individuals and businesses create trade practices and relationships that are truly sustainable for the future.

To some people, Fair Trade may appear to be a new practice based on a new paradigm, but it is not new. The movement goes back to the closing days of World War II. In practice its principles help individuals and businesses return to what they know they ought to be doing in their interactions with other human beings. Fair Trade is a reintegration of the values of fairness and equity that people throughout the United States espouse. The movement reflects the view of indigenous people of the

Andes: They say it is time for the Eagle and the Condor to fly together, integrating the head and the heart. When business leaders and consumers face the environmental, social, and economic consequences of conventional trade, their heart-oriented traits are likely to surface. Business leaders can harmonize the good parts of business with the more heart-oriented traits of Fair Trade. Individuals who purchase Fair Trade products put their values into action with each purchase. In short, Fair Trade provides a useful set of tools that promote a shift toward trade that is truly fair to all human beings and all of the Earth.

Footnotes

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¹ The term “fair trade” is sometimes used by writers in its plain language sense of “fairness” without reference to the Fair Trade movement. For example, see Kevin J. Fandl, *Bilateral Agreements and Fair Trade Practices: A Policy Analysis of the Colombia-U.S. Free Trade Agreement* (2006) 10 YALE UM. RTS. & DEV. L.J. 64 (2007). Therefore, in this paper, the term Fair Trade is capitalized to make it clear that it refers to the movement. In contrast, free trade is a term of common usage that is generally not capitalized.

² Writers speaking of the Triple Bottom Line often capitalize the terms; therefore, I will capitalize them. See, ANDREW W. SAVITZ & KARL WEBER, *THE TRIPLE BOTTOM LINE* (2006).

³ *Id.*

⁴ ANDREW W. SAVITZ & KARL WEBER, *THE TRIPLE BOTTOM LINE*, x (2006).

⁵ *Id.*

⁶ *Id.*

⁷ For discussion of the prophesy of the Eagle and the Condor, see JOHN PERKINS, *PSYCHONAVIGATION: TECHNIQUES FOR TRAVEL BEYOND TIME XII-XIII* (1990).

⁸ *Pachamama*. “Quechua for ‘Mother Earth,’ ‘Mother Universe,’ or ‘Universal Mother,’ the Earth, goddess of the Earth, the place where Inti’s sweat (gold) and Mam Kilya’s tears (silver) are woven into the universal Dream.” JOHN PERKINS, *THE WORLD IS AS YOU DREAM IT: TEACHINGS FROM THE AMAZON AND ANDES* 133 (1994).

⁹ North American Free Trade Agreement, U.S.-Can.-Mex. Dec 8-17, 1992 32 I.L.M (1993) [hereinafter NAFTA].

¹⁰ Paulette L. Stenzel, *Why CAFTA Faces Opposition From Citizens of Central America and the Dominican Republic*, Vol. 2, No. 3, 2008, at 1, available at <http://globaledge.msu.edu/newsAndViews/businessReviews/gBR2-3.pdf> (last visited Jan. 15, 2009).

¹¹ Paulette L. Stenzel, *CAFTA: Its Origins and Its Provisions*, *globalEDGE, Business Review*, Vol. 2, No. 2, 2008, at 1, available at <http://globaledge.msu.edu/newsAndViews/businessReviews/gBR2-2.pdf> (last visited Jan. 15, 2009).

¹² Greg Delawie, U.S. Department of State, and Charles Shapiro, Senior Coordinator for the Western Hemisphere Affairs Free Trade Task Force, Teleconference on Various Trade Issues (Apr. 24, 2008). Participants included the author of this paper and professors from various U.S. universities.

¹³ See *infra* text accompanying notes 84-95 discussing the Triple Bottom Line.

¹⁴ This trilogy is also sometimes referred to as “people, planet, profits” or “society, environment, economy.” Others refer to it as the “Three E’s” which represent “economy, equity, and environment.” For clarity, I use the term “social equity” instead of choosing between society and equity.

¹⁵ Jill Draeber, *Perking Up the Coffee Industry Through Fair Grade*, 11 MINN. J. GLOBAL TRADE 337 (2002); Alician Mooris Groos, *International Trade and Development: Exploring the Impact of Fair Trade Organizations in the Global Economy and the Law*, 34 TEX. INT'L L. J. 379 (1999); & John Stencel, *Free Trade Versus Fair Trade*, 36 DENV. J. INT'L L. & POL'Y 349 (2008). Nevertheless the Stencel article is misleading, because it uses "Fair Trade" in a general sense, and not as it is used by Fair Trade organizations.

¹⁶ As cited in JACQUELINE DECARLO, *FAIR TRADE: A BEGINNER'S GUIDE* 3 (2007).

¹⁷ *Id.*

¹⁸ For discussion of a "Fair Trade Wage guide," *see Id.* at 119-21.

¹⁹ For detailed discussion of Fair Trade and the coffee industry, *see* Draeber, *supra* note 13. For stories of Fair Trade in coffee and its benefits in various countries throughout the world, *see* DEAN CYCON, *JAVATREKKER: DISPATCHES FROM THE WORLD OF FAIR TRADE COFFEE* (2007). And, for an in-depth study of Fair Trade coffee in Mexico, *see* BREWING JUSTICE: FAIR TRADE COFFEE, SUSTAINABILITY, AND SURVIVAL (2007).

²⁰ DAN RANSOM, *NO-NONSENSE GUIDE TO FAIR TRADE* 25 (2d ed. 2002).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 24.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See DECARLO, *supra* note 16, at 34-36 discussing organic foods in the context of Fair Trade and Environmentalism.

²⁸ RANSOM, *supra* note 20, at 25.

²⁹ *Id.*

³⁰ DECARLO, *supra* note 16, at 28.

³¹ RANSOM, *supra* note 20, at 22.

³² MILES LITVINOFF & JOHN MADELEY, *50 REASONS TO BUY FAIR TRADE* 17 (2007).

³³ See *infra* text accompanying notes 59-63 (discussing Fair Trade certifying organizations).

³⁴ Douglas L. Murray & Laura T. Raynolds, *Globalization and its antinomies: Negotiating a Fair Trade movement*, in FAIR TRADE: THE CHALLENGES OF TRANSFORMING GLOBALIZATION 7 (Laura T. Raynolds, Douglas L. Murray, & John Wilkinson eds.) (2007).

³⁵ Laura T. Raynolds & Michael A. Long, *Fair/Alternative Trade: Historical and empirical dimensions*, in FAIR TRADE: THE CHALLENGES OF TRANSFORMING GLOBALIZATION 15-16 (Laura T. Raynolds, Douglas L. Murray, & John Wilkinson eds.) (2007). The author refers to "Third World" nations, however, in this instance and others not involving a direct quotation, this paper uses the phrase "developing nations."

³⁶ The term Alternative Trade Organization is usually capitalized by those who advocate Fair Trade. Therefore, this author will do so also.

³⁷ Murray & Raynolds, *supra* note 34, at 7.

³⁸ World Shops is another label for Fair Trade shops.

³⁹ Murray & Raynolds, *supra* note 34, at 7.

⁴⁰ Stephanie Barrientos, Michael E. Conroy, & Elaine Jones, *Northern social movements and Fair Trade*, in FAIR TRADE: THE CHALLENGES OF TRANSFORMING GLOBALIZATION 52 (Laura T. Raynolds, Douglas L. Murray, & John Wilkinson eds.) (2007).

⁴¹ *Id.*

⁴² *Id.* at 53.

⁴³ *Id.* For more information about Twin Trading, see *Twin Trading*, <http://www.twin.org.uk/twin-trading> (last visited Jan. 15, 2009).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Reynolds & Long, *supra* note 35, at 16.

⁴⁷ *Id.*

⁴⁸ Barrientos, *supra* note 40, at 53.

⁴⁹ DECARLO, *supra* note 16, at 75.

⁵⁰ Reynolds & Long, *supra* note 35, at 16.

⁵¹ Barrientos, *supra* note 40, at 55. For information about Ten Thousand Villages, see *Ten Thousand Villages*, <http://www.tenthousandvillages.com> (last visited Jan. 15, 2009).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ DECARLO, *supra* note 16, at 68-69.

⁵⁵ See *supra*, text accompanying notes 16-28.

⁵⁶ For information about Equal Exchange, see *Equal Exchange*, <http://www.equalexchange.coop/> (last visited Jan. 15, 2009).

⁵⁷ DECARLO, *supra* note 16, at 75.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 79-80 (2007). For detailed information about UCIRI in English and in Spanish, see *Unión de Comunidades Indígenas de la Región del Istmo*, <http://www.uciri.org> (last visited Nov. 25, 2008). The website includes links to Mexican and international Fair Trade organizations.

⁶¹ As quoted by *id.* at 80 (2007). DeCarlo attributes the assistance to the Netherlands, but UCIRI speaks of visitors from the Netherlands and Germany who helped with them through “The Alternative Market.” See *Unión de Comunidades Indígenas de la Región del Istmo*, <http://www.uciri.org> (last visited Jan. 15, 2009).

⁶² *Id.* For detailed information about the Max Havelaar Foundation, see *Max Havelaar*, <http://www.maxhavelaar.ch/en/> (last visited Jan. 15, 2009).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* For detailed information about Flo, see *FLO International*, <http://www.fairtrade.net/> (last visited Jan. 15, 2009).

⁶⁶ *Id.* at 60.

⁶⁷ GREG SPOTTS, CAFTA AND FREE TRADE: WHAT EVERY AMERICAN SHOULD KNOW 48 (2005).

⁶⁸ *Id.*

⁶⁹ The term *maquiladora* is used in Mexico and in most literature describing the industry. In Nicaragua, many business people and government officials use the term *maquila*. For history and discussion of the *maquiladora* program, which originated between the United States and Mexico, see David W. Eaton, *Transformation of the Maquiladora Industry: The Driving Force Behind the Creation of a NAFTA Regional Economy*, 14 ARIZ. J. INT’L & COMP. L. 747 (1997); Jesus Silva & Richard K. Dunn, *A Free Trade Agreement Between the United States and Mexico: The Right Choice?*, 27 SAN DIEGO L. REV. 937, 956-59 (1990).

⁷⁰ Leia Raphaelidis, *Sewing Discontent in Nicaragua: The Harsh Regime of Asian Garment Companies in Nicaragua*, at <http://multinationalmonitor.org/hyper/mm0997.08.html> (last visited Aug. 3, 2008). The hourly wage is reported as 39 cents U.S. per hour in some sources and 41 cents U.S. per hour in others. This may be because of fluctuations in the exchange rate between the U.S. dollar and the Nicaraguan *córdoba*.

⁷¹ *Nicaragua*, *supra* note 321. *Nicaragua: Country Report on Human Rights Practices (2005)*, U.S. Department of State, Mar. 8, 2006, at <http://www.state.gov/g/drl/rls/hrrpt/2005/61734.htm> (last visited July 26, 2008). For discussion, see Brandie Ballard Wade, CAFTA-DR Labor Provisions: Why They Fail Workers and Provide Dangerous Precedent for the FTAA, 13 L. & BUS. REV. AMERICAS 645 (2007).

⁷² *Asesor Laboral* translates as labor consultant, which is an important position. The *Asesor Laboral* is the Nicaraguan government's representative to the country's *Corporación de Zonas Francas* (Free Trade Zone Corporation).

⁷³ Interview with Emilio C. Noguera Cáceres and visit to the *Las Mercedes* free trade zone, Managua, Nicaragua, September 24, 2007.

⁷⁴ *Dead-End Trade Deal Nears Dead End*, Witness for Peace, July 16, 2007, available at <http://citizen.typepad.com/eyesontrade/deadend.pdf> (last visited Aug. 4, 2008).

⁷⁵ *Id.*

⁷⁶ *Nicaragua*, UK TRADE AND INVESTMENT, Sept. 26, 2007, at https://www.uktradeinvest.gov.uk/ukti/appmanager/ukti/countries;jsessionid=H0vjmqbJQwNlnM8bhYp4MVnHJRgKJL9TYBVBG5LQ5Yyh1hVJv3l!750510!NONE?_nfpb=true&portlet_3_5_actionOverride=%2Fpub%2Fportlets%2FgenericViewer%2FshowContentItem&_windowLabel=portlet_3_5&portlet_3_5_navigationPageId=%2Fnicaragua&portlet_3_5_navigationContentPath=%2FBEA+Repository%2F327%2F226139&_pageLabel=CountryType1 (last visited Sept. 5, 2008).

⁷⁷ *About the Foreign-Trade Zone (FTZ) Corporation*, Foreign-Trade Zone Corporation, at <http://www.ftzcorp.com/aboutus.htm> (last visited July 26, 2008).

⁷⁸ For detailed information in Spanish, see *Zona Franca Industrial Las Mercedes*, at http://www.cnzf.gob.ni/index.php?Itemid=99999999&id=98&option=com_content&task=view&lang=es (last visited Sept. 5, 2008).

⁷⁹ *Comisión Nacional de Zonas Francas (CNZF – National Free Zones Commission)*, available at <http://www.czf.com.ni/english/Projects/OUTSOURCING%20BPO%20CZF.pdf> (last visited Sept. 2, 2008). This is a PowerPoint presentation in English prepared by the CNZF. Mr. Emilio C. Noguera Cáceres, *Asesor Laboral* of the *Corporación de Zonas Francas* (Free Trade Zone Corporation) discussed this with this author in a meeting at Las Mercedes, Nicaragua, on Sept. 24, 2007.

⁸⁰ *Id. Comisión Nacional de Zonas Francas (CNZF – National Free Zones Commission)*, available at <http://www.czf.com.ni/english/Projects/OUTSOURCING%20BPO%20CZF.pdf> (last visited Sept. 2, 2008). This is a PowerPoint presentation in English prepared by the CNZF. Mr. Emilio C. Noguera Cáceres, *Asesor Laboral* of the *Corporación de Zonas Francas* (Free Trade Zone Corporation) shared this discussed this with the author of this paper in a meeting at Las Mercedes, Nicaragua, on Sept. 24, 2007.

⁸¹ In-depth discussion of this topic will be included in a law review article based on this paper.

⁸² Massimo Calabresi, *Where They Stand*, TIME, Nov. 10, 2008, at 38, 41.

⁸³ *United States and Colombia Sign Trade Promotion Agreement*, at http://www.ustr.gov/Document_Library/Press_Releases/2006/November/United_States_Colombia_Sign_Trade_Promotion_Agreement.html (Nov. 22, 2006). U.S. Colombia Free Trade Agreement, full text, available at http://www.ustr.gov/Trade_Agreements/Bilateral/Colombia_FTA/Section_Index.html (last visited, Jan. 15, 2009).

- ⁸⁴ Paulette L. Stenzel, *The U.S.-Colombia Free Trade Agreement*, Vol. 2, No. 6, 2008, at 1, available at <http://globaledge.msu.edu/newsAndViews/businessReviews/gBR2-3.pdf>.
- ⁸⁵ *Peru, Yes; Colombia? Free Trade Agreements: Lessons from Latin America's Recent Past*, Council on Hemispheric Affairs, Dec. 6, 2007, available at <http://www.coha.org/2007/12/06/peru-yes-colombia-free-trade-agreements-lessons-from-latin-america>.
- ⁸⁶ Jack Epstein, *Bad Business: U.S. trade preference should not be a reward for Colombia's tolerating political violence*, LATIN TRADE, Oct. 2007, at 18.
- ⁸⁷ SAVITZ & WEBER, *supra* note 4, at xvi.
- ⁸⁸ *Id.* at xii.
- ⁸⁹ *Id.* at xiii.
- ⁹⁰ *Id.*
- ⁹¹ *Id.*
- ⁹² Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601-9672 (1982 & Supp IV 1986); as amended by Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986).
- ⁹³ Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. § 11021 (Supp. IV 1986).
- ⁹⁴ SAVITZ & WEBER, *supra* note 4, at 210.
- ⁹⁵ *Id.*
- ⁹⁶ G3 Sustainability Reporting Guidelines, by the Global Reporting Initiative available at www.globalreporting.org/ReportingFramework/G3Guidelines (last visited January 21, 2009).
- ⁹⁷ SAVITZ & WEBER, *supra* note 4, at 210.
- ⁹⁸ *Id.*
- ⁹⁹ *See Dead-End Trade Deal Nears Dead End*, Witness for Peace, July 16, 2007, available at <http://citizen.typepad.com/eyesontrade/deadend.pdf> (last visited Jan. 23, 2009) discussing how Nicaragua faces stiff competition because of low wages in China.
- ¹⁰⁰ MILES LITVINOFF & JOHN MADELEY, 50 REASONS TO BUY FAIR TRADE 98-101 (2007).
- ¹⁰¹ LITVINOFF & MADELEY, *supra* note 100 at 98.
- ¹⁰² *Id.* at 99.
- ¹⁰³ "Work is not always bad for children, so long as it is light, undertaken willingly, and does not interfere with their health, safety or education. *Id.* at 101.
- ¹⁰⁴ Letter to the Editor, Sherrod Brown, U.S. Senator, Avon, Ohio, TIME, June 23, 2008, at 10.
- ¹⁰⁵ Todd Tucker & Lori Wallach, *Fair Trade Victory*, Foreign Policy in Focus, <http://www.fpif.org/fpiftxt/5692> (Nov. 21, 2008).
- ¹⁰⁶ *Id.*
- ¹⁰⁷ PAUL HAWKEN, *BLESSED UNREST: HOW THE LARGEST MOVEMENT IN THE WORLD CAME INTO BEING AND WHY NO ONE SAW IT COMING* (2007).
- ¹⁰⁸ ANDREW R. EDWARDS, *SUSTAINABILITY REVOLUTION: PORTRAIT OF A PARADIGM SHIFT* (2005).
- ¹⁰⁹ *Id.*
- ¹¹⁰ RANSOM, *supra* note 20, at 26.
- ¹¹¹ KIMBERLY GRIMES, *A GUIDE FOR RETAILERS: CREATING A SUCCESSFUL FAIR TRADE BUSINESS* 22 (2004).