2002

Perking Up the Cofee Industry through Fair Trade

Jill Draeger

Perking Up the Coffee Industry Through Fair Trade

Jill Draeger*

INTRODUCTION

Many coffee farms around the world have been completely abandoned and overgrown by weeds, with the coffee cherries left to rot on the trees.[1] The farmers who once cultivated these farms took their families and established camps on roadsides[2] or in city parks[3] to beg for food and jobs. Some even journeyed to capital cities to urge their governments to provide needed relief.[4] These families were forced to leave an industry and the farms they had toiled on for generations.[5] In stark contrast is the television image created by Colombian Coffee of Juan Valdez, a jolly, plump coffee farmer standing next to his mule.[6] The reality is that even when there is an increase in the price of cof-

---

* J.D. Candidate, 2003, University of Minnesota Law School; B.S. 2000, University of Wisconsin-Madison. Thank you to my friends and family for their support and a special thank you to the wonderful editors and staff of the Minnesota Journal of Global Trade.

1. Elizabeth Neuffer, *The Shadow of Globalization: The Coffee Connection: Thousands of Miles from Boston's Breakfast Tables and Fast-Food Restaurants, at the Other End of a Global Trade Network, Guatemala's Farmers are Barely Scraping By*, THE BOSTON SUNDAY GLOBE, July 29, 2001, at A1, *available at* http://www.globalexchange.org/economy/coffee/news2001/bostonglobe072901.html.

2. David Gonzalez, *A Coffee Crisis' Devastating Domino Effect in Nicaragua*, N.Y. TIMES, Aug. 29, 2001, at A3, *available at* http://www.globalexchange.org/ economy/coffee/news2001/nyt082901.html.

3. Niko Price, *Weak from Hunger, Nicaraguan Peasants Flee the Fields; Coffee Glut, Feudal Traditions Combine to Starve Communities*, SEATTLE POST-INTELLIGENCER, Aug. 28, 2001, at D1, *available at* http://www.globalexchange.org/economy/coffee/news2001/ap082801.html.

4. Gonzalez, *supra* note 2.

5. Price, *supra* note 3.

6. Robert Collier, *Fair Trade Offers Better Deal to Farmers: Network Ensures Cooperative Farmers Get Paid Higher Price*, SAN FRANCISCO CHRONICLE, May 20, 2001, at A21, *available at* http://www.globalexchange.org/economy/ coffee/sfchron052001a.html.

fee, although the farmers and their families do not starve, they still remain at poverty level.[7]

A big dip in the market price of coffee has caused the utter desolation of farmers living in developing countries.[8] The price for coffee has dropped so low that the cost of producing coffee is greater than the sum farmers receive for their yield.[9] The recent low price was the culmination of a steep fall in prices since the price of coffee beans peaked in 1995.[10]

While growers in developing countries are being paid less for their coffee beans, consumers in developed countries have been paying increasing prices for a cup of coffee.[11] Demand for coffee in developed countries is also on the rise.[12] Unfortunately, this increase in demand and profits is seen only by the coffee companies, with little or no increase in profit trickling down to the coffee grower.[13] The result is an increasing gap be-

7. Neuffer, *supra* note 1.

8. Gonzalez, *supra* note 2. Prices went from $3 per pound in 1996 to $0.51 per pound in August of this year. Price, *supra* note 3.

9. *See* Neuffer, *supra* note 1. "It currently costs most Guatemalan coffee farmers about $90 to produce a hundred pounds of coffee. One hundred pounds of coffee will sell for about $45." *Id.*

10. Nick Mathiason & Patrick Tooher, *World Takes Caffeine Hit: Coffee Has Fallen to Its Lowest Price in Decades, Plunging Growers into Poverty—Yet Demand in the West Is at Record Levels*, THE OBSERVER, Aug. 12, 2001, at 3, *available at* http://www.globalexchange.org/economy/coffee/news2001/observer081201.html.

11. *Id.* "Americans will pay $2 or more for a premium cup of coffee" sold over the counter, but small farmers see very little of that money. Neuffer, *supra* note 1. Statistics show that the price for coffee in the United States "var[ies] from $2.69 for a 13-ounce can of Folgers to $8.49 for a one-pound bag of Starbucks beans [but] farmers get less than 35 cents and coffee pickers less than 14 cents." *Id. See also* Chris Tomlinson, *Kenyan Coffee Growers Wonder Where All the Money is Going*, CHI. TRIB., July 29, 2001, at (Business) 7 *available at* http://www.globalexchange.org/economy/coffee/new2001/ap072901.html ("Roasters pay $1.65 a pound, which includes agent fees and transportation and warehouse costs. Though his clients include Starbucks and Nestle, [the exporter's] agent said he made only 2 to 3 cents a pound.").

12. Mathiason & Tooher, *supra* note 10. "In Britain alone, the UK coffee shop market grew by 55 percent between 1997 and 2000 and is not expected to reach saturation until 2003." *Id.* According to statistics produced by the International Coffee Organization, the "value of the coffee trade has increased by two-thirds" in the last ten years. *Id.*

13. Stephen Franklin, *'Fair Trade' Coffee Perking Up Life: Higher Prices Bring Benefits to Poor Growers*, CHI. TRIB., Apr. 17, 2001, http://www.globalexchange.org/economy/coffee/chicagotrib041701.html ("[t]he falling price of coffee has meant bigger profit margins for wholesalers and retail coffee chains, even as it inflicts hardship on most coffee farmers"). *See also* Liz Stuart, *Change the World with Your Shopping Trolley; You Buy Organic Vegetables and You've Got the Environmentally Friendly Tee Shirt. So What Else Can You Do? The Answer, if You Want to Help Some of the World's Poorest Workers, Is Look for Products With the Fairtrade Mark.*,

tween the wealth of developed and developing countries.[14]

This Note seeks to evaluate possible solutions for the present crisis in the coffee market and argue that a global Fair Trade solution is a viable solution to the present problems in the coffee market. Part I describes the structure of the coffee market and Part II explains the reasons for the presently low prices paid to coffee farmers. Part III discusses historical solutions to volatility in agricultural markets and more specifically in the coffee market. Part IV evaluates possible solutions to the current devastation caused by the low price of coffee. This Note concludes that Fair Trade is a viable short term solution to the coffee market crisis.

I. THE COFFEE MARKET

Coffee is the second largest world commodity following oil, with $55 billion annually in sales.[15] Developing countries account for a large percentage of the world's coffee exports.[16] A majority of these developing countries are highly dependent on coffee for export and foreign exchange earnings.[17] Therefore, when coffee prices plummet, the entire economy of coffee reliant countries plummets as well.[18] To make matters worse for devel-

---

THE GUARDIAN (London), June 23, 2001 (Job and Money Pages) at 2, *available at* LEXIS, Nexis Library, UPI File. The author stated that Nestle's thirty-three percent profit on every pound of the 720,000 tons of coffee the company buys is understandable, after she observed that farmers receive only seven percent of the price of a jar of instant coffee, down from fourteen percent three years ago. *Id.*

14. JOHN CAVANAUGH, FAIR TRADE FEDERATION, *Why Fair Trade? A Brief Look at Free Trade in the Global Economy, at* http://www.fairtradefederation.com/ab_whyft.html (last visited Oct. 2, 2001). "Today, the richest 20% of the world's population has 60 times the income of the poorest 20%." *Id.*

15. Neuffer, *supra* note 1.

16. Ad Koekkoek, *Tropical Products, Developing Countries and the Uruguay Round*, 23:6 J. WORLD TRADE 127, 129 (1989). Developing countries account for ninety percent to 100 percent of the world's exports in coffee. *Id.*

17. *See* J. DE GRAAFF, THE ECONOMICS OF COFFEE: ECONOMICS OF CROPS IN DEVELOPING COUNTRIES No. 1, 91 (1986). "In coffee economies such as those of El Salvador and Guatemala in 1971-1975, coffee contributed 80% of total export tax revenues and 10-15% of government revenues." *Id.* at 56.

18. *See* Jonathan Carlson, *Symposium: International Law and World Hunger: Hunger, Agricultural Trade Liberalization, and Soft International Law: Addressing the Legal Dimensions of a Political Problem*, 70 IOWA L. REV. 1187, 1220 (1985) (stating "there has been significant detrimental reliance on export agriculture"). The decrease in coffee prices has had far-reaching effects on the region. For example, towns have become poorer due to a decrease in tax receipts, causing these towns to decrease services to their citizens. Farms have scaled back or closed, leaving numerous people without means to support themselves. Also, small growers face the

oping countries, the unregulated coffee market is extremely volatile.[19] Out of all agricultural products, the instability of the coffee market is ranked highest, tying with the market for cocoa.[20] This price instability is due to inelasticity of supply and inelasticity of demand in the short run.[21]

Price inelasticity of supply in the short run occurs for a variety of reasons. With a decline in price, growers are unlikely to reduce their supply because the growers, as well as their countries, depend heavily on coffee production.[22] Countries have explored various alternative crops with limited success, thereby leaving farmers with no alternative but to produce coffee.[23] Another reason why a decrease in price does not cause a decrease in supply is the relationship between fixed and variable costs in the industry.[24] Fixed costs account for a large portion of overall production costs, while variable costs of harvesting are only a very small portion of overall costs.[25] If growers can cover their variable costs, there is no incentive for them to discontinue or reduce production regardless of how low the market price for coffee falls.[26] On the other hand, when prices increase, growers cannot increase their supply because new coffee plants require three to five years before beans can be harvested.[27] The supply of coffee is also affected by the fact that consuming nations have considerable coffee stocks.[28]

---

loss of their land due to their debts to banks and coffee processors. *See* Gonzalez, *supra* note 2.

19. *See* Mathiason & Tooher, *supra* note 10

20. DE GRAAFF, *supra* note 17, at 92.

21. Matthew J. Foli, *International Coffee Agreements and the Elusive Goal of Price Stability*, 4 MINN. J. GLOBAL TRADE 79, 81 (1995). This means that price changes do not readily coincide with changes in supply and demand. *Id.*

22. M. TH. A. PIERTERSE & H.J. SILVIS, THE WORLD COFFEE MARKET AND THE INTERNATIONAL COFFEE AGREEMENT, 21 (1988).

23. DE GRAAFF, *supra* note 17, at 81. *See also* PIETERSE & SILVIS, *supra* note 22, at 23. Estate holders can engage in at least some alternative activities but a smallholder has few other alternatives and will pick at least a portion of his crop. *Id.* The problem is that smallholders produce the majority of coffee in eighty percent of countries. *See* DE GRAAFF, *supra* note 17, at 34.

24. Foli, *supra* note 21, at 81-82.

25. *Id.* at 82.

26. *Id.*

27. *Id.* The first harvest occurs between three and four years, but a coffee tree does not reach its maximum yield for another two to three years beyond the first harvest. Coffee trees can have an economic life of up to fifty years, but after fifteen years the trees start to show a decline in yield. PIETERSE & SILVIS, *supra* note 22, at 6.

28. Edward Quill, *The Failure of International Commodity Agreements: Forms, Functions, and Implications*, 22 DENV. J. INT'L L. & POL'Y 503, 521 (1994).

Demand for coffee is also relatively inelastic in both the short term and long term.[29] Economists believe the inelasticity of demand is caused by consumer taste preferences.[30] A drop in demand for coffee only occurs at extremely high prices.[31] The problem is that high coffee prices often lead to a drop in demand for extended periods of time.[32] At this price level, consumers are willing to substitute for other less costly beverages, such as soft drinks, juices, and tea.[33]

II. REASONS FOR THE LOW PRICE OF COFFEE PAID TO GROWERS

Many reasons exist for the present markedly low price of coffee paid to growers. The primary rationale cited for the decrease in price is oversupply.[34] Oversupply is mainly a result of the World Bank[35] and the French Government's investment in Vietnam's coffee industry to help the country develop a new cash crop.[36] The heavy investment caused Vietnam to go from being a peripheral player in the coffee industry to the world's second largest producer.[37] In the past five years, Vietnam has doubled its production of low quality *robusta* beans,[38] flooding the world's coffee market.[39] The decrease in the price of *robusta*

---

29. Foli, *supra* note 21, at 83.
30. *Id.*
31. PIETERSE & SILVIS, *supra* note 22, at 33.
32. DE GRAAFF, *supra* note 17, at 58.
33. *Id.* at 88.
34. Mathiason & Tooher, *supra* note 10.
35. The World Bank has issued a statement that they have not encouraged coffee production in Vietnam. Notwithstanding their official statement, the World Bank has a list of programs that they say could have financed an increase in Vietnam's coffee industry. They claim all decisions regarding the dispersal of money in these programs were in the hands of Vietnamese officials. *Worldbank and Coffee in Vietnam*, The World Bank, *at* http://www.worldbank.org.vn/coffee.htm (last visited Feb. 25, 2002).
36. Price, *supra* note 3.
37. Tomlinson, *supra* note 11.
38. *Robusta* beans are used in inexpensive blends and instant coffee, while, in contrast, *arabica* beans are used in better coffee blends. Robert Collier, *Mourning Coffee: World's Leading Java Companies Are Raking in High Profits, but Growers Worldwide Face Ruin as Prices Sink to Historic Low*, THE SAN FRANCISCO CHRONICLE, May 20, 2001, at A1, *available at* http://www.transfairusa.org/update/2001/chron_20_.html. *Robusta* beans are heartier than *arabica* beans, *see* PIETERSE & SILVIS, *supra* note 22, at 7; have a greater yield, DE GRAAFF *supra* note 17, at 49; and the two beans are grown in different areas of the world. *Id.* at 73.
39. Mathiason & Tooher, *supra* note 10.

beans subsequently brought down the price of *arabica* beans.[40] Coffee companies wanted the cheapest coffee the market had to offer, and pursued low quality coffee that otherwise would have been dumped and not sold in the market.[41]

Oversupply in the industry has also been attributed to advancements in technology,[42] including new strains of coffee plants and new intensive farming methods.[43] In particular, Brazil has created mechanized *robusta* farms, which farmers have located in areas not prone to frosts, to prevent crop destruction similar to the destruction caused by previous frosts.[44] Because of these technological advances, Brazil, like Vietnam, has also been able to flood the market with low quality *robusta* beans, thereby contributing to falling coffee prices.[45]

A third reason for the drop in prices paid to farmers is the structure of the market itself.[46] The coffee industry is an oligopsony,[47] wherein a few global corporations acquire beans from a number of small producers.[48] Many coffee corporations in developed countries rely solely on a limited group of elite exporters from which the corporations get their beans.[49] Most of these coffee corporations are unaware of the plight of farmers in developing countries because they have no direct contact with these farmers.[50]

---

40. Collier, *supra* note 38.

41. Price, *supra* note 3.

42. *See* Mathiason & Tooher, *supra* note 10.

43. *Id.* In Colombia, farmers are decreasing coffee areas, but they increase yields by self-shading and applying greater amounts of fertilizer. DE GRAAFF, *supra* note 17, at 42, 165.

44. DEGRAFF, supra note 17, at 124. Farms that are mechanized have a machine that shakes the tree and a device to collect the beans. *Id.* at 40. Mechanization is not available in countries that have a sloping terrain. *Id.* at 165.

45. Tomlinson, *supra* note 11.

46. *See* Neuffer, *supra* note 1.

47. An oligopsony exists where a few large firms purchase the existing supply in a particular product market. DAVID N. HYMAN, MODERN MICROECONOMICS G.7 (1986).

48. *Id.* In North America and Western Europe, fifty percent of the coffee trade is handled by four corporations. Two corporations account for seventy-five percent of all world sales of soluble coffee. DE GRAAFF, *supra* note 17, at 63. More recent statistics show that four companies account for sixty percent of coffee sales in the United States and forty percent of coffee sales worldwide. Neuffer, *supra* note 1.

49. Neuffer, *supra* note 1. "[I]t is estimated that 50% of all trade is handled by predominantly large international trading houses." PIETERSE & SILVIS, *supra* note 22, at 39.

50. *Fair Trade Coffee*, Peace Coffee, *at* http://www.peacecoffee.com/fair_trade.htm (last visited Sept. 11, 2001) [hereinafter *Fair Trade*]. When the executive at Nestle was asked what the difference between sun versus shade-grown

What these large corporations are ignoring is a system where coffee beans pass through as many as fifteen different entities before the beans finally reach the consumer.[51] Each entity that handles the coffee between the farmer and the exporter works to increase its profit, at times padding the price.[52] The group that does the most damage to the local coffee growers is the local speculators or "coyotes."[53]

Small farmers are individually unable to market and distribute their crops for themselves,[54] and thus find themselves in a weak negotiating position.[55] These farmers produce too small a volume to be able to sell directly to exporters, who buy in bulk lots.[56] Thus, the farmers have no choice but to sell their coffee to a "coyote," who retains most of the profit from the sale of the farmer's coffee.[57] "Coyotes" are able to pay coffee farmers an unfair price for coffee because the farmers lack knowledge of the commodity market price.[58] Coffee growers agree to sell to "coyotes" at low prices because they harvest only once a year, and by that time are desperate for money, which puts them at a distinct disadvantage in bargaining.[59] Moreover, coffee farmers are forced to borrow money from "coyotes" in order to finance their next crop because, unlike estate owners, many farmers are unable to obtain credit.[60] The advances from "coyotes" ensure that farmers will be paid an even lower price than the small sum they would normally receive.[61]

Coffee farmers have no recourse against the "coyotes" that are price gouging them.[62] If coffee farmers complain about the price they are receiving for their coffee, "coyotes" will simply

---

coffee, a controversial issue in the coffee business, he was unable to respond. *Id.*

51. Neuffer, *supra* note 1. A coffee bean starts with the small farmer, and then travels up the chain to the local speculator, the exporter, the importer/broker, the roaster, the distributor, the retail outlet or cafe, who finally sells to the consumer. *Fair Trade, supra* note 50. Another estimate says the coffee can change hands as many as 150 times. Mathiason & Tooher, *supra* note 10.

52. Neuffer, *supra* note 1.

53. *See Fair Trade*, supra note 50.

54. Andrew Bibby, *Ethical Business: Where to Find Coffee That Doesn't Leave a Nasty Taste*, THE OBSERVER, Nov. 30, 1997, at 8 *available at* 1997 WL 13001588.

55. Mathiason & Tooher, *supra* note 10.

56. Neuffer, *supra* note 1.

57. Bibby, *supra* note 54, at 8.

58. Stuart, *supra* note 13, at 2.

59. Mathiason & Tooher, *supra* note 10.

60. *Fair Trade, supra* note 50.

61. *Id.*

62. *See* Neuffer, *supra* note 1.

find another supplier.[63] Governments have tolerated the existence of "coyotes" in the coffee market, despite industry efforts to remove them.[64]

III. PREVIOUS SOLUTIONS

A. INTERNATIONAL COFFEE AGREEMENTS BETWEEN PRODUCERS AND CONSUMERS

International Coffee Agreements were signed in 1962, 1968, 1976, and 1983 as an attempt to stabilize the market price of coffee.[65] These agreements were each enacted as a short term means of fixing a crisis in the market, but each failed to achieve the long term goal of stabilization.[66] The International Coffee Agreements were more successful in preventing prices from dropping than preventing prices from rising.[67] The principal means employed by these agreements to stabilize prices was to place restrictions on the amount of coffee being exported to participating countries.[68]

The United States originally rejected an International Coffee Agreement because any such agreement would be a restriction on free trade.[69] The Kennedy administration later rethought the U.S. position because the administration was afraid that an economic disruption from a coffee market drop would lead Latin American countries to succumb to communism.[70] The main factor that paved the way for passage of the first International Coffee Agreement in Congress was the U.S. coffee industry's support, which the coffee industry gave freely for fear that the supply of coffee would be disrupted.[71]

The final International Coffee Agreement of 1983 was

63. *Id.*

64. *Id.*

65. Foli, *supra* note 21, at 84-94; *see also* Int'l Coffee Agreement 1962, *opened for signature* Sept. 28, 1962, art. 2(2), 14 U.S.T. 1911, 1914, 469 U.N.T.S. 169, 174; Int'l Coffee Agreement 1968, *opened for signature* Mar. 18, 1968, 19 U.S.T. 6333, 647 U.N.T.S. 3; Int'l Coffee Agreement 1976, *opened for signature* Jan. 31, 1976, 28 U.S.T. 6401, 1024 U.N.T.S. 3; Int'l Coffee Agreement 1983, *opened for signature* Jan 1, 1983, 1333 U.N.T.S. 119.

66. Foli, *supra* note 21, at 85.

67. DE GRAAFF, *supra* note 17, at 95.

68. Foli, *supra* note 21, at 84-85.

69. *Id.* at 85.

70. *Id.* at 85-86.

71. *Id.*

abandoned in 1989, due to rigidity of supply in the quota system and enforcement problems.[72] The International Coffee Organization was unable to prevent producing countries from selling coffee to countries not bound by the agreement, who in turn sold the coffee to countries that were bound.[73] In this way, producing countries were able to circumvent their quota restrictions.[74] The United States issued a more formal statement declaring that withdrawal was appropriate because the agreement circumvented free trade.[75]

When the agreement expired in 1989, Brazil, Colombia, and Mexico flooded the coffee market.[76] The countries released large quantities of coffee that they had warehoused because of the export quotas.[77] Flooding the market led to a drop in price, which continued to remain at low levels from 1989 through 1993.[78] The agreement had controlled more than ninety percent of the world's coffee production.[79]

B. COFFEE AGREEMENTS AMONG PRODUCERS

Brazil made the first unilateral move to control the coffee market in the 1900's.[80] The Brazilian government decided that the best way to control the market was to restrict output, a model the International Coffee Agreements later followed.[81] Brazil, therefore, started to burn coffee from the bumper crops the country was producing in the 1920s.[82] The artificially high price level that was created led farmers to increase the amount of coffee trees and production.[83] This increased planting of coffee led to an over production in the coffee market that lasted until World War II.[84] The most detrimental effect of Brazil's ex-

72. *Id.* at 92.
73. *Id. See also* PIETERSE & SILVIS, *supra* note 22, at 80.
74. *See* Foli, *supra* note 21, at 92.
75. *Id.* at 94.
76. *Id.* at 93.
77. *Id.* at 88.
78. *Id.* at 93-94.
79. Quill, *supra* note 28, at 523.
80. *Id.* at 519. At that time, Brazil controlled sixty percent of the coffee market. *Id.*
81. *Id.*
82. *See id.*
83. *Id.*
84. *See* Quill, *supra* note 28, at 519. The overproduction and price decrease lasted for such an extended period due to the amount of time it takes for a coffee plant to produce beans and reach its full productive capacity. *See id.*

periment was its resulting loss of market share.[85] Brazil then realized the need for a concerted industry effort, but other producing countries were unwilling to enter into an output agreement at that time.[86]

In 1945, Central American and the Caribbean countries, along with Mexico formed FEDECAME.[87] The organization was comprised of fourteen nations but was a rather weak entity.[88] Countries continuously bypassed its channels of international negotiation and negotiated individually with other countries.[89]

In 1954, talks were initiated regarding the first international coffee agreement.[90] The United States pulled out of the agreement at the last minute, claiming the agreement inhibited free trade.[91] In 1957, due to a rapid decrease in price, seven Latin American countries signed an agreement to limit exports via quotas, which eventually came to be known as the Latin American Coffee Agreement.[92] Eight more South American countries later signed the agreement, and France and Portugal pledged the support of their African colonies.[93] Despite the degree of support, this agreement was not successful in preventing a further decrease in coffee prices.[94] There was no enforcement provision in the agreement, which allowed a number of countries to cheat, and made the agreement somewhat ineffectual.[95]

Some conclusions may be drawn from the history of agreements between coffee-producing countries. First, quotas instituted by a single country are not adequate to stabilize the market.[96] Second, the large number of coffee producing countries

---

85. *See id.*
86. *See id.*
87. PIETERSE & SILVIS, *supra* note 22, at 62.
88. *Id.*
89. *Id.*
90. *See id.* at 60. Even though prices were still high, officials in coffee producing countries knew that a market drop was soon to follow. *Id.*
91. *Id.*
92. PIETERSE & SILVIS, *supra* note 22, at 60.
93. *See id.* Brazil later convinced other African countries to participate in the agreement by threatening to unload its surplus of stored coffee into the market. Although Brazil was not going to make good on this threat because doing so would decrease their profits, African countries believed the credibility of the threat and signed the agreement. *See id.* at 61.
94. *Id.* at 60.
95. *See id.* at 61.
96. *See* Quill, *supra* note 28, at 519. Also, unity in coffee exporting countries is beneficial because it is necessary to elicit change in the policy of industrialized nations. Kelè Onyejekwe, *Gatt, Agriculture, and Developing Countries*, 17 HAMLINE L. REV. 77, 94 (1993).

and their varied interests make the enforcement of agreements between them extremely difficult.[97] Finally, producing countries needed the assistance of consuming countries to be able to adequately enforce any agreement and the necessary quotas contained therein.[98]

C. THE U.S. APPROACH TO FALLING AGRICULTURAL PRICES

Critics have accused the United States of being hypocritical in its endorsement of free trade, while at the same time protecting it own agricultural industry.[99] In the U.S. farm industry, the United States has used nonrecourse loans,[100] deficiency payments,[101] and acreage reduction programs.[102] The United States also implemented the Export Credit Guarantee Program, where the government guarantees payment to exporters if a foreign buyer defaults, thus allowing domestic producers to sell at a lower price because the producers face less risk.[103] Another program the government has implemented to help U.S. farmers is the Export Enhancement Program. Through this program, the government provides relief to U.S. exporters that have been harmed by unfair trade practices.[104] Relief is paid either in cash or an equivalent amount of the commodity that was treated unfairly in the market, which the government collects from its nonrecourse loans.[105]

The U.S. farm policy has the most beneficial effects on do-

97. *See* Quill, *supra* note 28, at 521. *See also* Onyejekwe, *supra* note 96, at 93 (Developing countries "differ in size, levels of development, composition of trade, and indebtedness; in short, the countries have few things in common"). *See also* Ricardo Cevallos, *The Central American Bank for Economic Integration*, 4 TUL. J. INT'L & COMP. L. 245, 267 (1996) ("[S]ome countries are more industrialized than others, some are densely populated, and some are still reconstructing their infrastructure.").

98. *See* PIETERSE & SILVIS, *supra* note 22, at 62.

99. *See* Raj Bhala, *Marxist Origins of the "Anti-Third World" Claim*, 24 FORDHAM INT'L L.J. 132, 150-51 (2000) ("[C]apitalists advocate free trade policies vis-à-vis developing countries . . . simultaneously, they lobby their governments for protection from foreign imports, so as to avoid exacerbating competitive pressures in domestic markets.").

100. *Id.* Nonrecourse loans allow farmers to use their crops as collateral. *Id.*

101. *See* Liane L. Heggy, *Free Trade Meets United States Farm Policy: Life After the Uruguay Round*, 25 LAW & POL'Y INT'L BUS. 1367, 1372 (1994). Deficiency payments are where the government sets a target market price and if the actual market price falls below this level, the difference is paid to the farmer. *See id.*

102. *See id.*

103. *Id.* at 1374.

104. *Id.*

105. *Id.*

mestic producers and foreign importers.[106] Through United States programs, U.S. farmers can receive greater income from their crops, while at the same time foreign importers pay lower prices.[107] The problem with the farm policy is that the U.S. government picks up the tab, totaling about $20 billion per year, not including the cost to American consumers,[108] a feat which developing countries are unable to replicate.[109] Moreover, while demand has not increased and the amount of exports from the United States has not changed, farm productivity has continued to rise, creating a largely inefficient market.[110]

A number of reasons have been offered for the subsidization of U.S. farms, some of which will be addressed here. The main reason for subsidization was the concern that the United States would become dependent on other nations for food, and thereby be at the mercy of those countries' political whims.[111] The government's goal is to have farmers increase the agricultural base and produce surpluses to ensure the country's food security and independence.[112] Also, because it is a leading exporter in world agricultural markets, the United States can influence a large share of the world's food supply and thus has considerable economic and political power.[113] A second reason for subsidization is the political support gained from romantic notions of farmers as self-determinative people working on their "golden fields of grain."[114] Subsidization secures the jobs of many of these independent farmers.[115] Finally, agriculture is unlike any other in-

---

106. *See id.* at 1374-75.

107. *Id.*

108. Jeffrey J. Steinle, *The Problem Child of World Trade: Reform School for Agriculture*, 4 MINN. J. GLOBAL TRADE 333, 340 (1995). In 1989, it was estimated that Americans paid $67 billion through taxes and the increased cost of goods from the U.S. farm policy. *Id.* A study has also estimated that the United States loses $80,000 for every farm job gained. *Id.* at 340-341. Worldwide the cost of protectionism for farmers is estimated at $150 billion per year. *Id.* at 340. *See* Collier, *supra* note 38, at 3 ("As a result, nations that cannot subsidize their farm sectors are falling deeper into debt while their people get poorer.").

109. Heggy, *supra* note 101, at 1374.

110. Steinle, *supra* note 108, at 339-40.

111. *Id.* at 335. Food embargos have been used in times of war, to stop human rights violations, and to dissuade countries from using military force. Steinle, *supra* note 108, at 335-336. *See also*, Jon G. Filipek, *Agriculture in a World of Comparative Advantage: The Prospects for Farm Trade Liberalization in the Uruguay Round of GATT Negotiations*, 30 HARV. INT'L L.J. 123, 128-129 (1989).

112. Steinle, *supra* note 108, at 336.

113. *See id.* at 335. *See also* Heggy, *supra* note 101, at 1370-71.

114. Steinle, *supra* note 108, at 337.

115. Filipek, *supra* note 111, at 129.

dustry in the economy in that farm prices are unstable and farmers suffer declining incomes in the long run.[116]

D. THE FAIR TRADE SOLUTION ON A SMALL SCALE

Fair Trade is another program developed by independent organizations to improve the market for coffee.[117] The overall objective of the Fair Trade movement is to establish a more equitable relationship between consumers in developed countries and producers in developing countries.[118] Fair Trade organizations try to encourage producer self-sufficiency through fair wages and educational programs, while also being culturally and environmentally conscious.[119] The program does not provide aid or charity, but instead promotes fairness for farmers in the global trading scheme.[120] In the coffee industry, the primary goal of Fair Trade organizations is to ensure that coffee farmers receive a fair price for their coffee, providing farmers with a decent living wage.[121]

Fair Trade is a grass roots movement that began in Europe.[122] In 2000, four million pounds of Fair Trade coffee were sold in the United States alone, double the amount sold the previous year.[123] Currently, there are ninety-seven coffee

---

116. *Id.*

117. *See Fair Trade, supra* note 50.

118. *What is Fair Trade Certified Coffee All About?*, Global Exchange, *at* http://www.globalexchange.org/economy/coffee/background.html (last visited Sept. 10, 2001). *See also* Alicia Morris 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, 380 (1999) ("The fair trade movement's goal is to change the way in which international trade is conducted between developed world consumers and developing world producers by making the welfare of the producer of primary importance.").

119. *See FTF Principles and Practices*, Fair Trade Federation *at* http://fairtradefederation.com/ab_princ.html (last visited Feb. 25, 2002).

120. *Fair Trade, supra* note 50.

121. *Id.*

122. Eve Mitchell, *Better or Bitter?*, OAKLAND TRIBUNE, May 21, 2000, *available at* http://www. transfairusa.org/update/2000/oaktrib.5.21.00.html. Last year in the United States, Transfair waged a campaign to convince Starbucks to sell Fair Trade coffee. Collier, *supra* note 6. Activists demonstrated outside stores, disrupted meetings of top officials, and threatened a boycott. *Id.* Starbucks finally relented and now sells a minimal amount of Fair Trade coffee. *Id.*

123. Franklin, *supra* note 13. Fair Trade coffee is expected to sell twenty five million pounds by the year 2004, which would make up one percent of all coffee sales in the U.S. coffee market. *Id.* This year, sales have already exceeded eight million pounds of coffee. *Surviving Globalization: "Fair Trade: The Human Buzz," Livelyhood*, PBS *at* http://www.pbs.org/livelyhood/planetwork/surviving/fair.html (last visited Feb. 25, 2002). In Europe, where Fair Trade coffee has existed for around

roasters and importers in the United States that sell Fair Trade coffee,[124] and 550,000 farmers in twenty-one countries producing that coffee.[125] The current minimum price paid to growers for Fair Trade coffee is $1.26 per pound for *arabica* and $1.06 per pound for *robusta*.[126] Of that price, a portion goes to the cooperative, while the farmers only receive between $1.00 and $1.10 per pound.[127] By contrast, growers that are not associated with a Fair Trade cooperative receive between thirty cents and fifty cents per pound from "coyotes."[128]

Fair Trade organizations have established a system where small coffee growers can bypass the "coyotes" who price gouge them.[129] Coffee is purchased directly from the grower, eliminating the "coyote" entirely.[130] In pooling their resources, cooperatives are increasing their power in and access to the market, thus eliminating the function of a "coyote."[131] Fair Trade organizations also help coffee growers acquire the resources and skills to process coffee to the point of export, increasing the coffee's value and eliminating the middlemen involved in processing.[132]

---

twelve years, last year's sales exceeded $300 million. *See Fair Trade, supra* note 50.

124. *See* Collier, *supra* note 6. Fair Trade coffee can be found at Starbucks and Borders Books, for example. *Id.* Fair Trade coffee is expected to be introduced by Safeway supermarkets and Denny's restaurants in the near future. *Id.* Fair Trade coffee is also served in English Parliament, several national legislatures, and the headquarters of companies such as Toyota and Warner Bros., Europe. *Fact Sheet*, TransFair USA *at* http://www.transfairusa.org/update/facts.html (last visited Feb. 25, 2002). Concord Democrat George Miller has started a petition to convince Congress to require Starbucks to sell only Fair Trade coffee in Congress, the Supreme Court, and other public buildings. Patt Morrison, *Legislators Back on the Job After Letting Hair Down: Saying No to an Unfair Cuppa Joe*, L.A. TIMES, August 27, 2001, at Part 2, Page 2, Metro Desk, *available at* http://www.transfairusa.org/update/2001/latimes_8_27.htm.

125. Franklin, *supra* note 13.

126. Stuart, *supra* note 13. Growers receive an extra fifteen cents a pound if the coffee is certified organic. *Fact Sheet*, TransFair USA *at* http://www.transfairusa.org/update/facts.html (last visited Feb. 25, 2002).

127. Franklin, *supra* note 13.

128. Franklin, *supra* note 13 (thirty cents). *Fact Sheet*, TransFair USA *at* http://www.transfairusa.org/update/facts.html (last visited Feb. 25, 2002) (thirty-eight cents). Collier, *supra* note 6 (fifty cents).

129. *Fair Trade, supra* note 50.

130. *Id.*

131. *See* Groos, *supra* note 118, at 391. *See supra* note 54 and accompanying text (discussing the problem that growers receive low prices because exporters only buy in bulk and small farmers do not produce enough to meet these demands).

132. *Fair Trade, supra* note 50. Farmers are still unable to eliminate roasters in the equation because green coffee is easier to store, easier to transport, and importers prefer to mix their own coffee blends. DE GRAAFF, *supra* note 17, at 86.

Under the Fair Trade program, farmers no longer need the "coyote" to function as a creditor.[133] Previously, growers were forced to accept a lower advance price from "coyotes" for fear their next harvest would not be profitable.[134] Farmers are now able to receive advance credit on coffee purchases and establish long term relationships with buyers.[135] Fair Trade organizations also teach farmers much needed financial management skills.[136]

Fair Trade programs are also beneficial because they emphasize community, education, environment, and culture.[137] Farmers are required to reinvest a portion of their earnings into both the community and the infrastructure through their democratically run cooperatives[138] to provide for such things as healthcare and education.[139] Families and communities are strengthened by the community-oriented aspects of the cooperatives in the production of coffee.[140] Moreover, cooperatives also emphasize education of the farmers by teaching them to become more productive[141] and giving them the means to purchase new technology.[142]

Even though farmers are increasing their productivity, they are still required to respect the environment.[143] Through Fair Trade, coffee growers have enough capital to engage in tradi-

---

133. *Fair Trade, supra* note 50.

134. *Id.*

135. *Id.* Fair Trade organizations provide farmers with financial assistance in the form of direct loans, prepayment, or by connecting farmers to creditors. *FTF Principles and Practices*, Fair Trade Federation *at* http://www.fairtradefederation.com/ab_princ.html (last visited Feb. 25, 2002). Also, Fair Trade organizations offer immediate financing to coffee growers in time for production rather than waiting sixty to ninety days like many commercial importers. *Id.*

136. *See Fair Trade, supra* note 50.

137. *FTF Principles and Practices*, Fair Trade Federation *at* http://www.fairtradefederation.com/ab_princ.html (last visited Feb. 25, 2002).

138. *See supra* note 127 and accompanying text. One cooperative in Loma Linda used the extra money they received from fairly traded coffee to bring electricity into their village, pave a road so trucks could pick up coffee beans, and send their children to school which they otherwise could not afford. Franklin, *supra* note 13.

139. *Fair Trade, supra* note 50.

140. Groos, *supra* note 118, at 391 ("supplemental income from these activities keeps family members at home who would otherwise have to travel great distances to find work, thus preserving the family unit").

141. *See FTF Principles and Practices,* Fair Trade Federation *at* http://www.fairtradefederation.com/ab_princ.html (last visited Feb. 25, 2002).

142. TransFair USA *at* http://www.transfairusa.org/update/facts.html (last visited Feb. 25, 2002).

143. *Membership Criteria*, Fair Trade Federation *at* http://www. fairtradefederation.com/memcrit.html (last visited Feb. 25, 2002).

tional, low-impact farming.[144] Fair Trade farmers use the shade-grown coffee technique,[145] where coffee trees are planted under taller rainforest trees.[146] This technique allows less land to be cleared to produce coffee, thus preserving wildlife.[147] Moreover, these coffee farmers are more likely to produce organic beans and therefore, less likely to use pesticides.[148] Cooperatives that are not already producing organic coffee use their joint profits to provide education to farmers about organic farming.[149]

In order to determine which coffee has been fairly traded, Fair Trade organizations have established a certification system.[150] Coffee that meets these Fair Trade standards is stamped with a Fair Trade label.[151] Fair Trade organizations, through a network, independently monitor compliance with fair trade certification standards.[152] This network employs more than fifty inspectors who ensure that coffee is being fairly traded and cooperatives are investing money in the community and infrastructure.[153]

Critics have noted some problems with the Fair Trade system that is presently in place. The main concern is that not enough high quality coffee exists to meet the needs of coffee corporations,[154] especially in the specialty coffee sector.[155] Coopera-

---

144. *See Fair Trade, supra* note 50.

145. The two growing techniques of coffee are shade-grown and full-sun or technified. Shade-grown is the traditional method where coffee plants are grown under the canopy of trees. Through this method, less chemicals are needed for pesticides and fertilizer. Full-sun coffee, as its name suggests, is grown without shade trees, thus requiring farmers to clear the land for coffee farms and use more chemical fertilizers to compensate for the loss of nutrients previously supplied by the canopy trees. The benefit of full-sun coffee is that yields and profits are increased, in part because farmers can plant more trees closer together. *Organic/Shade Grown*, Peace Coffee *at* http://www.peacecoffee.com/ organic/htm (last visited Feb. 25, 2002).

146. *See* TransFair USA, *supra* note 142.

147. Morrison, *supra* note 124.

148. TransFair USA, supra note 142.

149. *Id.*

150. *See Fair Trade, supra* note 50. Standards require that 100 percent of the coffee be from a fair trade cooperative. Mitchell, *supra* note 122.

151. *See Fair Trade, supra* note 50. Coffee must be purchased through the network of fair trade organizations before the coffee is stamped with a black-and-white Fair Trade label. Collier, *supra* note 6.

152. *What is Fair Trade Certified Coffee All About?*, Global Exchange *at* http://www.globalexchange.org/economy/coffee/background.html (last visited Feb. 25, 2002).

153. Collier, *supra* note 6.

154. Franklin, *supra* note 13.

155. Mitchell, *supra* note 122. This is due in part to the fact that Fair Trade

tives pool the coffee that is produced, regardless of whether that coffee is gourmet coffee or a cheaper version, which results in the gourmet sector's disinterest in Fair Trade coffee.[156] Other critics claim that Fair Trade organizations can do nothing for gourmet coffee growers, because gourmet growers' specialty coffee does not allow them to join a cooperative.[157] On the demand side, Fair Trade coffee will cost consumers an additional twenty-five to fifty cents per pound.[158] This concern is offset, however, by customer polls showing that seventy-five percent of people would pay more for Fair Trade products.[159]

A number of critics believe that the better solution to the problem is either to teach farmers to grow gourmet quality coffee at increased profit,[160] or let market forces take over and let less efficient producers remove themselves from the market.[161] Still others advocate another International Coffee Agreement.[162]

IV. EVALUATION OF POSSIBLE SOLUTIONS TO THE COFFEE MARKET CRISIS

A. WHY FREE MARKET FORCES ARE NOT THE SOLUTION

1. Free Market Forces Have Not Worked in the Past

The main reason cited for the decline in the market price of coffee is that the supply of coffee is exceeding consumer demand for coffee.[163] According to economic models, under normal market forces, this situation should result in a decrease in supply

---

originated in Europe and was targeted at commercial coffee, rather than specialty coffee. *Id.* Moreover, specialty coffees are grown in specific regions, thereby exacerbating the problem. *Id.*

156. *Id.* This concern has been rejected by the certification manager at TransFair USA and the manager of Uncommon Grounds, a wholesale roaster, who said, "[t]he coffee that I've cupped has been top quality." *Id.*

157. Mitchell, *supra* note 122.

158. Sam MacDonald, *Want Some Justice in Your Coffee? Using the Market to Make Social Change*, REASON MAGAZINE ONLINE, Aug. 24, 2001, *available at* http://www.transfairusa.org/update/2001/reason_8_24.htm (last visited Feb. 25, 2002).

159. Bibby, *supra* note 54.

160. Mitchell, *supra* note 122.

161. *See* Collier, *supra* note 38.

162. *Id. See also* Mathiason & Tooher, *supra* note 10.

163. Foli, *supra* note 21, at 84.

culminating in a state of market equilibrium.[164] Unfortunately, a stable equilibrium in the coffee market is next to impossible due to inelasticity of supply and demand.[165] The coffee market continuously vacillates between a state of undersupply and oversupply, which inflicts a great deal of harm on the economies of underdeveloped countries that produce the majority of the world's coffee.[166]

When a state of oversupply occurs, like at present, economic theory suggests that more efficient firms will continue to produce a greater amount of the product while less efficient firms will leave the market to engage in other activities.[167] Critics have suggested that small coffee growers should switch production to either gourmet coffee that fetches a higher market price or to a different agricultural crop when the price of coffee drops.[168] This assumes that the opportunity cost of producing other agricultural products or gourmet coffee is lower than the opportunity cost of producing their grade of coffee, or producing nothing at all.[169] However, few viable alternative agricultural crops actually exist for farmers who wish to discontinue production of coffee.[170] Also, the production of gourmet coffee requires special resources and knowledge that the average farmer does not possess.[171] Therefore, the opportunity cost to farmers of producing an alternative agricultural product or of producing gourmet coffee would be very high. Coffee farmers would need additional education in order to switch production, which they

164. *See* JAMES D. GWARTNEY & RICHARD L. STROUP, ECONOMICS: PUBLIC AND PRIVATE CHOICE 64-65 (7th ed. 1995).

165. *See supra* text accompanying notes 21-33.

166. *See* PIETERSE & SILVIS, *supra* note 22, at 68. Undersupply has resulted from events as diverse as frosts in Brazil, floods, and political unrest, all culminating in an increase in the price of coffee. *Id.*

167. Collier, *supra* note 38. The principal economist for the World Bank, Don Mitchell, explained the idea that "losers [in the coffee market] must switch to farming other crops." Collier, supra note 38.

168. *See supra* text accompanying notes 158-159.

169. *See* GWARTNEY & STROUP, *supra* note 164, at 32-33.

170. *See supra* note 23 and accompanying text. Few agricultural alternatives are available in areas where coffee is the main commodity, because alternatives do not have the same "ecological requirements, agro-economic characteristics, and world market of a similar magnitude." DE GRAAFF, *supra* note 17.

171. *See* Mitchell, *supra* note 122 (citing Gerry Baldwin, chairman of Peet's Coffee & Tea, "In order to produce specialty coffee, you need altitude and experience in growing the coffee and selling it and producing it as a high-valued product."). Another concern about gourmet coffee production is that the gourmet industry accounts for only eight percent of the coffee industry, leaving very little room for an influx of a large amount of farmers. *See* Price, *supra* note 3.

are unable to afford in developing countries.[172]

Economic theory assumes that, in the free market, other rational alternatives are available to a producer that is suffering economic loss.[173] A complete lack of resources in developing countries means that no such alternatives exist, aside from camping on streets and in parks begging for food.[174] In fact, other layoffs are also occurring because of the collapse in the coffee market.[175] As industry spokespeople have suggested, the free market has failed the coffee industry and particularly, has failed these farmers.[176] Left to its own devices, the free market has been unable to solve the humanitarian problems that result from the instability of the world coffee market.

Moreover, economists note that price stability is one factor that leads to efficiency in a market.[177] Price stability produces predictability, increased certainty, and security in contractual agreements.[178] When price uncertainty is present, investors are less likely to invest in that unstable environment.[179] Not only do coffee-producing countries face a loss of investors because of the inherent price instability in the coffee market, they will continue to face a lack of investment, which has negative effects on the countries' individual economies.[180] Coffee farmers continue to be left with no other alternative than to produce coffee because no other industry will be inclined to invest in such an unstable environment.[181] The humanitarian problems resulting from the drop in coffee prices will continue unless there is intervention in this fluctuating market.

---

172. *See* Mitchell, *supra* note 122.

173. *See* Collier, *supra* note 38.

174. In Nicaragua, the President offered to bus coffee farmers back to their farms and offered them jobs building roads, but few jobs have actually been created. Price, *supra* note 3. *See also* Gonzalez, *supra* note 2 (quoting a migrant farm worker, "there is no work"). *See also* Collier, *supra* note 38 ("[N]ations that cannot subsidize their farm sectors are falling deeper into debt while their people get poorer."). *See also* Foli, *supra* note 21, at 99 ("From the perspective of coffee producing countries, coffee is often an important source of export revenues. A decrease in coffee prices can have a devastating effect on these economies").

175. *See supra* note 18 and accompanying text. In Guatemala, the unemployment rate in rural areas is said to have reached forty percent. Moreover, there is no one hiring in the area. Collier, *supra* note 38.

176. *See* Neuffer, *supra* note 1.

177. GWARTNEY & STROUP, *supra* note 164, at 927.

178. *See id.* at 928.

179. *Id.*

180. *See id. See supra* text accompanying notes 17-18.

181. *See supra* text accompanying note 179.

2. *Doing Away With "Coyotes" and Oligopsony Power*

Farmers receive low prices for their crops in part because of the structure of the industry.[182] Two factors are pertinent to a free market analysis, the "coyotes" or middlemen and the coffee market's structure as an oligopsony. Middlemen are in some cases beneficial to the market because they can reduce transaction costs.[183] For a fee or markup in price, middlemen provide information and arrange trades that would be more costly to producers if the producers engaged in these activities themselves.[184] Middlemen have the potential to increase efficiencies in the market, but the situation becomes problematic when coffee farmers are forced to rely solely on "coyotes" or middlemen to sell their coffee to exporters.[185] Exporters only purchase coffee in bulk lots and small farmers produce too small a volume to individually negotiate with them.[186] According to economists, this arrangement is an efficient market because middlemen provide the service of selling to exporters and obtaining information that growers are unable to do for themselves.[187] Such analysis ignores the fact that growers in underdeveloped countries do not have the resources to engage in these activities by themselves. The farmer's choice to sell to a "coyote" is not the result of a strategic business decision, but rather is the result of a lack of education and a desperate need for basic necessities.[188]

The middleman economic theory assumes that middlemen free producers from activities with high transaction costs, allowing producers to expend these resources on other beneficial activities.[189] In the present situation, farmers only increase their profits and efficiency in the market by not dealing with the "coyotes," which farmers are unable to do because of their lack of resources.[190] The free market system assumes that "coyotes" are the most efficient means of selling coffee in the coffee market, but there is the distinct possibility that if small farmers had the education and resources to form themselves into coopera-

182. *See supra* text accompanying note 46.

183. *See* GWARTNEY & STROUP, *supra* note 164, at 35. "The costs of the time, effort, and other resources necessary to search out, negotiate, and conclude an exchange are called transaction costs." *Id.*

184. *See id.*

185. *See supra* text accompanying notes 54-57.

186. *See supra* text accompanying note 56.

187. *See id.*

188. *See supra* text accompanying notes 58-61.

189. *See* GWARTNEY & STROUP, *supra* note 164, at 35.

190. *See supra* text accompanying notes 54-59.

tives, they would function more efficiently than the present system involving "coyotes." Either way, cooperatives would increase the price paid to farmers, possibly allowing farmers to obtain a price that covers the cost of their expenses.[191]

A second concern to economists should be the oligopolist structure of the coffee market.[192] Two corporations account for seventy-five percent of world sales in coffee.[193] Moreover, fifty percent of all trade is handled by large international exporters, which coffee corporations rely on almost exclusively for their supply.[194] Oligopolists tend to recognize their interdependence and act somewhat collusively, while still maintaining some competition.[195] Oligopolistic prices tend to fall between levels of monopolies and perfect competition.[196] Although economists normally look at oligopolist pricing as that charged to end consumers, the same theoretical model applies when oligopolists are purchasing in an inelastic market where an adequate supply exists. This phenomenon is called an oligopsony.[197] Oligopsonists in the coffee industry have no incentive to outbid one another for available supplies and can set prices paid to producers at their desired level.[198] Coffee growers are somewhat unable to cease production of coffee due to a lack of alternatives,[199] so oligopsonists can collude with each other and pay the lowest price possible to maximize their profits. Oligoposonists are able to take advantage of a market that has such an inelastic supply because they are assured the supply of coffee will meet their needs, especially in the short run.[200]

This scenario is likely happening today because as demand increases and the price paid per cup of coffee increases, producers are being paid lower prices for their crops.[201] Oversupply

---

191. *See supra* text accompanying notes 54-57.

192. *See supra* note 48 and accompanying text.

193. DE GRAAFF, *supra* note 17, at 63.

194. *See supra* note 49 and accompanying text.

195. GWARTNEY & STROUP, *supra* note 164, at 606.

196. *Id.*

197. DAVID N. HYMAN, MODERN MICROECONOMICS 465 (1986).

198. *See id.* Competing firms are aware of their interdependence, and often agree to restrain price competition. *Id.*

199. *See supra* note 23 and accompanying text.

200. *See* Foli, *supra* note 21 and accompanying text.

201. *See supra* text accompanying notes 11-12. *See also* Rob Crilly, *News: Consumer: Others*, ABERDEEN PRESS AND JOURNAL, Oct. 20, 2000, at 17 (citing a commercial manager for the Fairtrade Foundation, "Prices are often determined by going backwards. Retailers decide how much they want to sell products for, and then how much they will pay producers." He went on to acknowledge that this is the reason farmers in the developing world are paid a price that did not cover their costs of

could be the sole reason for the declining prices paid to growers, but if supply has been somewhat stagnant in part because of the low price of coffee,[202] an increase in demand should increase the price.[203] This indicates that other forces are at work aside from normal supply and demand.

In the present free market system in the coffee market, it is unclear whether the increased price paid by consumers is going to "coyotes," to the oligopsonist coffee companies, or some combination thereof.[204] What is known is that producers are seeing little or none of the extra money paid by consumers, and are still unable to cover the costs of producing their coffee.[205] Without government intervention, the free market system has led to gross inefficiencies.[206] All consumer and producer surpluses are going directly to the oligopsonists and the "coyotes."[207] These surpluses would be more beneficial if they were going to the people who need them the most: the small farmers.

In conclusion, economic theory suggests that markets are most efficient when there is full information and a competitive market in equilibrium.[208] Both of these factors are lacking in the coffee market. Growers do not have full information regarding the market price of coffee, mainly because coffee prices are based on the New York futures market.[209] These farmers are accepting whatever price they are offered by the "coyotes" for their coffee because they are simply unaware of the price they could be receiving if there was full information in the market.[210] Moreover, the presence of an oligopsonist structure also leads to the question of whether a truly competitive market exists in the coffee industry.[211] Also, the coffee industry is so unstable that

---

production).

202. One can assume that some reduction in supply is occurring if farmers are leaving coffee beans to rot on the trees and have left the farms to camp on roads and in parks. *See supra* note 1 and accompanying text.

203. *See* GWARTNEY & STROUP, *supra* note 164, at 58.

204. *See supra* note 13 and accompanying text.

205. *See id.*

206. *See supra* text and accompanying note 9.

207. *See* STEVEN C. HACKETT, ENVIRONMENTAL AND NATURAL RESOURCES: THEORY, POLICY, AND THE SUSTAINABLE SOCIETY, 42, 402, 416 (2d ed. 2001) Consumer surplus is the difference between the maximum price a consumer is willing to pay and the price that is actually charged to the consumer. Producer surplus is the difference between the minimum price a seller is willing to accept and the price actually paid to the seller. *Id.*

208. *See id.* at 39, 47.

209. *Fair Trade, supra* note 50.

210. *See supra* text and accompanying note 58.

211. *See supra* text accompanying notes 203-204.

no equilibrium is possible under a free market system.[212] Therefore, the free market system in place in the coffee market causes a large amount of inefficiency in that market.

3. *Ethical Consumerism*

Ethical consumerism uses free market techniques to encourage businesses to pay attention to social and ethical issues in their global trading markets.[213] The idea behind ethical consumerism is that consumers who value social justice will pay more for products that incorporate these values in their production and trade methods.[214] Under a free market theory, no protectionist measures should be used to protect underdeveloped countries, but rather consumers can protect these countries by purchasing products made in an ethical manner.[215] Unfortunately, ethical consumerism cannot solve the imminent problems presently faced by the coffee industry.

In the coffee market, Fair Trade is the means for consumers to exercise their ethical buying power.[216] The success of the Fair Trade initiative rests exclusively on the public's shoulders, who must decide whether they are willing to pay an increased price for coffee in order to help small farmers earn a living wage.[217] One of the best examples of how consumers have used their power in the coffee market is when Starbucks adopted Fair Trade coffee. Starbucks was pressured into adopting Fair Trade coffee when civil rights groups picketed the corporation's stores.[218] Activists are currently threatening to boycott Star-

---

212. *See supra* text accompanying notes 21-33.

213. *See* Roger Trapp, *Finance: How Companies Can Give Themselves a Moral Flavour*, THE INDEP. (London), Nov. 12, 1997, at 10-11.

214. *See* Crilly, *supra* note 201. *See also* Natasha Walter, *You Can Have Your Cake and Eat It; 'As You Watch Programmes About Modern-Day Slave Labour, You Don't Have to Weep Those Fat Tears Into Slave-Produced Cocoa'*, THE INDEP. (London), June 11, 2001, at 5 (Critics call this idea "exploiting idealism for profit."). *See also* GWARTNEY & STROUP, *supra* note 164, at 601 (stating that if consumers continue to purchase a product after an increase in price, the consumer must be gaining something valuable for that increase in price).

215. *See* Bruce D. Fisher, *The Ethical Consumer: A Rejecter of Positive Law Arbitrage*, 25 SETON HALL L. REV. 230, 265 (1994).

216. *See* Jacqueline Donachy, *Charity Shoppers Enjoy a Fair Trade; Helping Out Good Causes While You Do Your Shopping Is Catching On*, EVENING TIMES (Glasgow), Oct. 27, 2000, at 28. *See also Fair Trade, supra* note 50.

217. *See* Donachy, *supra* note 6.

218. Franklin, *supra* note 13. *See also* G. Pascal Zachary, *Business Brief: Starbucks Adopts Guidelines to Improve Conditions for Foreign Coffee Workers*, WALL. ST. J., Oct. 23, 1995, at B4. Unfortunately, less than one percent of the coffee that

bucks again unless Starbucks agrees to sell brewed Fair Trade coffee in addition to the beans.[219]

Fair Trade as a consumer effort is a good long term goal, but unfortunately this solution will not solve the problems that the coffee market currently faces, particularly the large unemployment level of coffee farmers.[220] At present, Fair Trade coffee accounts for less than one percent of coffee sales in the world,[221] but is continuing to grow.[222] There is also evidence that consumers are not as eager about ethical consumerism as they once were.[223] Some people claim that ethical consumerism is just a passing trend that is already out of vogue with consumers.[224] Others claim that ethical consumerism does not help the social problems of the world because eventually consumerism overpowers all other concerns.[225]

Whether ethical consumerism is losing its momentum or not, information is a big problem in attracting customers to Fair Trade products.[226] One of the main concerns is that information from companies regarding their social policies tends to be misin-

---

Starbucks buys is Fair Trade coffee. Jake Batsell, *Growers From Fair-Trade Co-op Appeal to Starbucks' Taste Buds*, SEATTLE TIMES, Aug. 29, 2001, at Business & Technology *available at* http://archives.seattletimes.nwsource.com/ (last visited Feb. 25, 2002). *See also* Walter, *supra* note 214 ("consumers' power to stay away makes corporations change").

219. Franklin, *supra* note 13.

220. *See supra* text accompanying note 175. *See also* Collier, *supra* note 38 (stating that "any such solution would take place too far in the future to help the people").

221. *See supra* text accompanying note 123.

222. *See supra* text accompanying notes 123-124. Cafedirect, a Fair Trade coffee retailer, started by selling their coffee at church and community events but has since entered into the mainstream coffee market and is a leading brand sold in most stores. *See also* Donachy, *supra* note 216.

223. *See* Crilly, *supra* note 201. In a recent study by the Co-operative Bank, eighty-eight percent of shoppers claim to buy products with ethics in mind, only twenty-three percent could name a specific instance of such conduct. *Id.*

224. *Id.* (citing one of the authors of the Co-operative Bank study as stating that, "The enthusiasm of the early 90s seems to have leaked away and the most pessimistic interpretation of these figures is that ethical consumerism is just a temporary trend which is already sliding out of fashion."). *See also* Walter, *supra* note 214 (stating that, "Apparently consumers are tired of getting 'hectoring messages.'"). The only kind of "ethical" consumerism that people actually buy into is organic food because consumers like the fact that it benefits themselves. *Id.*

225. Walter, *supra* note 214.

226. Crilly, *supra* note 201. *See also* Natasha Walter, *Where Are the Ethical Consumers?*, THE INDEP. (London), Oct. 16, 2000, at 5 ("Most people [in the survey] said that they just didn't have the information to make judgments on a company's behaviour.").

formation.[227] A number of corporations have made changes that are only cosmetic.[228] Untrue claims made by corporations serve to undermine the entire ethical consumerism ideal because they make customers believe there is no essential difference between products claimed to be "ethical" and their counterparts.[229] Consumers will then stop paying higher prices for ethical products and switch to cheaper products.[230] A second problem is that not enough easily accessible consumer information is available.[231] Most consumers have no knowledge that the Fair Trade market exists,[232] which gives them no incentive to pay the higher prices for fairly traded products. This situation is somewhat ameliorated by the fact that Fair Trade coffee is distinguished by "easily-identifiable labelling [sic],"[233] but the labeling cannot target a consumer unless the consumer is aware of the label's existence and knows what the label represents.

A final problem with Fair Trade as a consumer movement is the question of whether labeling undertaken by Fair Trade organizations is legal under the rules of the World Trade Organization.[234] The rule in question prohibits products from being labeled and thereby differentiated on the basis of how they are produced.[235] However, a GATT panel has since decided that

---

227. *Id.*

228. Kevin Watkins, *Green Dream Turns Turtle Environment: Fair Trade Produce Is Increasingly Fashionable, With New Lines Launched Each Week*, THE GUARDIAN, Sept. 9,1998, at Guardian Society Page, *available at* 1998 WL 18664532.

229. *See* Watkins, *supra* note 226 ("It is not just the gap between corporate public relations and market practices which is undermining ethical consumerism."). *See also* Mitchell, *supra* note 122 (citing a commodities analyst who stated, "'I am not persuaded that the average consumer going into a shop or a restaurant is really going to make a distinction' as to whether the coffee is fair-trade certified.").

230. *See supra* text accompanying note 214.

231. Crilly, *supra* note 201. To sift through all the information available to consumers regarding products they buy, a person would need both time and money. Most consumers do not have the inclination, and therefore do not bother to put in the effort required to sort through all of the information. *Id.*

232. Groos, *supra* note 118, at 381. In contrast to the slow spread of consumer awareness in the United States, "Surveys indicate that '86% of consumers in the United Kingdom said they were now aware of fair trade labeled products' . . . the statistics for Sweden, the Netherlands, and Belgium are similar." *Id.* at 402.

233. Crilly, *supra* note 201 ("The ultimate ethical consumer wouldn't buy anything. Instead we are talking about consumers who are more ethical than others . . . and products that are more ethical than others.") Fair Trade labels are protected by intellectual property so that retailers cannot use the label unless they have been certified by the organization that possesses the label. Groos, *supra* note 118, at 406. Therefore, consumers have the assurance that the product was produced in an ethical manner. *Id.*

234. Watkins, *supra* note 228.

235. *Id.*

voluntary adoption of labels that are based on ethical consumerism is not a violation of the rule.[236]

For these reasons, Fair Trade as a consumer movement, within the free trade framework, is not a viable solution. Fair Trade is unable to solve the imminent problems facing farmers, such as starvation and homelessness, fast enough. Not enough truthful information has been promulgated regarding Fair Trade to alert consumers, who could increase demand to alleviate the problem. If anything, there might even be a decrease in consumer patronage of Fair Trade products. Moreover, the whole Fair Trade scheme may be illegal. Consequently, the free market idea of allowing consumers to solve the social problems confronting coffee farmers by selecting products through ethical consumerism is not going to solve the present market crisis.

4. Politics and the Coffee Market

As stated earlier, economic theory under a free trade regime assumes that when there is a drop in market price, producers will discontinue supply.[237] Unfortunately, economic theory does not address theft, political turmoil in countries, and the production of illicit goods that can result from both a decrease in price and supply.[238] In the coffee market, a market stabilizer is needed to prevent farmers from turning to socially harmful activities when coffee prices are low.

In past months, groups of armed rebels have re-formed and started a campaign of harassment in coffee growing areas.[239] These rebels have also been protesting the injustices resulting from the coffee industry.[240] Agreements signed between guerrillas and coffee producing governments are becoming shaky.[241] History shows that civil unrest also resulted from the last price crash in the early 1990's causing farmers to join Zapatista rebels in Chiapas and contributing to the Hutu massacres of the Tutsis in Rwanda.[242] Extremely low coffee prices create chaos

---

236. Groos, *supra* note 118, at 408.
237. *See supra* note 164 and accompanying text.
238. *See* Collier, *supra* note 38.
239. Rebels have been "holding up buses and trucks and making speeches about injustice." *Id.*
240. *Id.*
241. There is fear that the plunge in the price of coffee could quash Guatemala's 1996 peace agreement ending Guatemala's civil war against guerrillas. *Id.*
242. *Id.*

and instability in underdeveloped coffee producing countries.[243] The U.S. government has previously recognized that this state of civil unrest is not in its best interest.[244]

The United States initially signed an International Coffee Agreement with producing countries to prevent the spread of communism if decreased coffee prices caused market failures in underdeveloped countries.[245] This shows that the United States previously recognized the problem of instability in developing countries when coffee prices fall.[246] The United States implicitly acknowledged that free trade did not fix the problem, but instead, restrictions on trade were needed to prevent political problems associated with decreases in coffee prices.[247]

Illicit activity has also resulted from a steep fall in coffee prices.[248] Officials in coffee producing areas have reported an increase in theft, specifically of items such as baby bottles, powdered milk, and food.[249] There is also growing concern that coffee farmers in Colombia will find new work in the drug market, working on coca plantations and in cocaine laboratories.[250] Like economists have suggested, coffee growers have found an alternative to producing coffee,[251] although this alternative is not in the best interest of society as a whole. Because the free market leads to such negative social effects, the best interests of countries are met when there is some market stabilizer that prevents the steep drop in the price of coffee.

B. INTERNATIONAL AGREEMENTS AS A SOLUTION

As history has shown, in order to be effective, any quota system put in place in the coffee industry must be established between a number of countries, rather than implemented by a single country.[252] Moreover, producing and consuming countries must be a part of any agreement to ensure enforcement of re-

243. Collier, *supra* note 38.
244. *See id.*
245. *See supra* text accompanying notes 69-70. A steep fall in the price of coffee can cause the economies of coffee dependent nations to collapse. Foli, *supra* note 21.
246. *See supra* text accompanying notes 69-70.
247. *See id.*
248. Collier, *supra* note 38. *See also* Neuffer, *supra* note 1.
249. Collier, *supra* note 38.
250. *Id.* Thousands of coffee workers that cannot get money for their crops are flooding into the southern jungles of Colombia to find work in the cocaine industry in order to support themselves. *Id.*
251. *See supra* text accompanying notes 5 and 11.
252. *See supra* text accompanying note 80-86, 96.

strictions on trade.[253] Therefore, the only possible solution would be an international agreement between producing and consuming nations like the aforementioned International Coffee Agreements.[254]

Some commentators have suggested that what is needed to perk up the coffee market is a New Deal type agreement that would ensure that farmers get a fair price for their coffee.[255] This agreement would need to artificially reduce the supply of coffee in order to raise and stabilize prices.[256] Unfortunately, farmers would feel the effects of such an agreement too far in the future for the agreement to deal with the hardships coffee farmers now face.[257] An international agreement may be a long term goal, but right now the concern should be about ensuring that farmers and their families have enough food to eat.

A second concern about an international agreement between producing and consuming countries is that any agreement between these countries is highly unlikely. The United States has already issued a formal statement to the effect that international coffee agreements are contrary to the tenets of free trade and therefore against U.S. foreign policy.[258] An agreement would also be unlikely because of the probable failure of consuming and producing countries to agree on the terms of such an agreement. The quota structure of the previous International Coffee Agreements has been very problematic.[259]

---

253. *See supra* text accompanying notes 97-98, 87-89, 92-95. Successful agreements have been seen between producing countries for other commodities such as the oil industry by the formation of the Organization of Oil Producing Countries (OPEC). *See* Quill, *supra* note 28, at 509. The coffee market is unlike oil in four essential ways that prevents an agreement between producers from working: 1) stabilization of the supply of coffee is more difficult in the short run due to the time lag of tree growth, 2) corporations in developed countries maintain stockpiles of coffee, 3) there are too many producing countries to have effective enforcement of agreements, 4) there are substitutes for coffee. *Id.*

254. *See supra* text accompanying notes 65-75.

255. Collier, *supra* note 38 (citing the president of the Institute for Agriculture and Trade Policy in Minneapolis, "What's needed is a new version of producer-consumer price agreements, a 'global Roosevelt New Deal to ensure that farmers get a fair price and have a level playing field.'").

256. Foli, *supra* note 21, at 101 ("Over the long term, the only way to effectively maintain a target price above the free market level is to artificially reduce long term aggregate coffee exports through a persistent storage of coffee stocks or a decrease in overall production."). Quotas stop the fluctuation of prices in the market by keeping supply constant. *Id.* at 99.

257. Collier, *supra* note 38.

258. *See supra* text accompanying note 75.

259. *See* Foli, *supra* note 21, at 92. The 1983 Agreement had both a fixed and a variable quota component. *Id.* at 91. The variable quota encouraged producers to

A final concern about using international agreements as a solution is whether these agreements actually work to stabilize prices on a long term basis.[260] History has shown that none of the previous International Coffee Agreements were able to stabilize prices in the long term.[261] There have also been concerns that producers use agreements solely as a means of increasing oligopoly or monopoly profits through artificial prices.[262] The agreements do not state that they intend to raise prices above free market levels, but the question remains open whether previous agreements had this effect.[263]

Therefore, another International Coffee Agreement does not seem to be the solution, most importantly because all previous international coffee agreements failed.[264] In the short term, an agreement involving producers and consumers would not solve the present situation of coffee growers and the question remains whether such an agreement would be viable as a long term solution.

C. FAIR TRADE ON THE GLOBAL SCALE AS A SHORT TERM SOLUTION

1. *The Fair Trade Program Globally*

Another potential solution is to enforce the Fair Trade program globally, requiring every coffee company in developed countries to pay producers an agreed upon minimum price per pound of coffee that would act as a "living wage" for farmers.[265] Every small grower would be grouped into a cooperative, pref-

---

increase production, and because they could not sell this to member consuming countries, they sold the excess to nonmember countries at a discount. *Id.* at 92. This upset U.S. coffee companies who wanted to see an end to the two-tiered pricing system. *Id.* A second problem was that the quota system failed to differentiate between traditional and gourmet beans leading to an inadequate supply of gourmet beans. *Id.* The United States then insisted that any new agreement use a universal quota system. *Id.* at 93.

260. Foli, *supra* note 21, at 102 ("Continued reliance upon export quotas or export retention plans to stabilize market prices, however, has been unsuccessful in the past.").

261. *Id.* at 80.

262. *Id.* at 100 ("Producers can rationally be expected to artificially inflate coffee prices to maximize monopoly profits.").

263. *Id.*

264. *See supra* text accompanying notes 65-75; *see also* Foli, *supra* note 21, at 102.

265. *See supra* text accompanying note 121.

erably with farmers selling a similar grade of coffee, which would bypass the "coyote" and deal directly with the company purchasing the coffee.[266] Long term relationships between growers and buyers will be established, making buyers more willing to give farmers advanced credit on their harvest.[267] Creditors in general will also be more willing to extend credit to coffee farmers in underdeveloped countries because of an assurance that the price paid to farmers will remain stable.[268] This solution could ultimately be short term if, based on the contacts and long term relationships farmers have established with coffee companies, they can continuously negotiate a profitable price per pound of coffee.

In exchange for this minimum price per pound of coffee, farmers would reinvest part of their profits back into the cooperative to support the infrastructure and projects in the community.[269] This would minimize the amount of monetary aid the United States would expend on coffee producing underdeveloped countries.[270] Small communities, in the form of cooperatives, would be in possession of the "aid" from developed countries, which would allow them to implement the programs that are most needed.[271] "Aid" would go to those that need the money most rather than to the governments of underdeveloped countries, where there is some question as to how the money is in fact used.[272] Under this system, there is not an absolute wealth transfer, but instead, developing countries are learning to com-

---

266. *See supra* text accompanying notes 129-131.

267. *See supra* text accompanying note 135.

268. *See supra* text accompanying note 179.

269. *See supra* text accompanying notes 127, 137-142.

270. Bartram S. Brown, *Developing Countries in the International Trade Order*, 14 N. ILL. U. L. REV. 347, 369 (1994) ("the fact remains that adjustment of the trade relationship between North and South could in principle obviate any need for foreign aid"). The United States spent $7.4 billion in foreign aid in 1995. *See also* Tim Shorrock, *Drop in US Foreign Aid Seen Dulling Export Edge*, J. OF COM., July 23, 1997, at 2A.

271. *See supra* note 138 and accompanying text. *See also Fair Trade and Ethical Trade: Distinct But Complementary*, IFAT *at* http://www.ifat.org/dwr/resource2.html (last visited Feb. 25, 2002) ("Fair trade's fundamental objective is to increase the incomes of disadvantaged communities, thereby increasing the range of choices available to them in relation to food, education, welfare, and work").

272. *See* Doug Bandow, *Foreign Aid Does Not Prevent Social Breakdown. (Failure of Financial Aid Policies in the United States)*, USA TODAY (mag.), Mar. 1998, *at* http://www.findarticles.com/ (last visited Feb. 25, 2002). U.S. foreign aid has been used to fund brutal dictators and inefficient programs in underdeveloped countries. *Id.* But most alarmingly, funds have been given to corrupt governments, causing their complete disappearance. *Id.*

pete in the global market and are given the means to do so.[273]

Farmers under the Fair Trade system would also be expected to farm in an environmentally friendly manner.[274] At present, weak international environmental standards exist that are hard to police.[275] Any environmental restrictions actually come from trade agreements themselves.[276] Countries with strong environmental regulations have started requiring countries with weaker environmental regulations to meet their standards before any trade between the countries occurs.[277] The environmental requirements of the Fair Trade system are to some extent a continuation of that practice, but producers under the Fair Trade system are being rewarded for their efforts with an increased price. Farmers under Fair Trade actually have the ability to engage in environmentally friendly practices because they have the money to do so.[278]

The U.S. government is unlikely to adopt Fair Trade as a solution because it has a detrimental effect on free trade,[279] but the price aspect of the Fair Trade solution closely resembles the U.S. policy for the U.S. agricultural market.[280] In the face of instability and a steady decline in agricultural prices,[281] the United States adopted a program where small farmers were assured a minimum price for their crops and credit was made available to farmers using their present crop as collateral.[282] The United States funds this program by taxing the U.S. public.[283] Therefore, funds are in effect being redistributed from the wealthier taxpayer to the poorer small farmer.

---

273. *See* Brown, *supra* note 270, at 369. *See also* Paul Craig Roberts, *Rescuing Poor Countries From Foreign Aid*, THE FIN. POST (Toronto), Mar. 8, 1989, § 1, at 11 (The Agency for International Development made the comment that, "too often, dependency has won out over development." Entire developing countries are being converted into a welfare class).

274. *See supra* text accompanying notes 143-144. At present, the World Bank requires that certain environmental conditions be met before underdeveloped countries are allowed to borrow money. Brown, *supra* note 270, at 380.

275. *Id.* at 382.

276. *Id.*

277. *Id.*

278. *See supra* text accompanying note 144.

279. *See supra* text accompanying note 75. *See also* Groos, *supra* note 118, at 409 ("Certainly from a legal perspective, seemingly radical positions on trade are not likely to transform themselves into legislation, international agreements, or policies.").

280. *See supra* text accompanying note 101.

281. *See supra* text accompanying note 116.

282. *See supra* text accompanying note 101.

283. *See supra* text accompanying note 108.

If developing countries had the funds with which to implement such a program, they probably would happily subsidize their local growers.[284] Because developing countries lack the resources, this program needs to be implemented on a broader scale to prevent farmers in developing countries from starving when there is a steep drop in the price of coffee. Consumers in developed countries would essentially be asked to pay a "tax" on their coffee in order to support small farmers in developing countries, which consumers in most countries are already asked to do for other agricultural products.[285] Although the aims of the subsidization would be different because very little political power can be gained through a strong coffee trade,[286] the effects of the U.S. agricultural program and the Fair Trade program would be nearly identical.

2. *Evaluation of Fair Trade as a Global Program*

The main concern if a Fair Trade system were implemented globally would be a further increase in the supply of coffee due to the inflated price.[287] To solve this problem, any global Fair Trade program should be implemented as a short term policy only. In the short term, farmers should be able to acquire the financial management skills necessary to compete globally and acquire enough resources through their cooperatives to allow for alternatives to the coffee industry when the market is bad. The goals of the Fair Trade program are to teach small coffee growers business savvy[288] and to organize the market in such a way that small growers can compete on a global scale, without being taken advantage of by "coyotes."[289] Fair Trade programs have the additional beneficial effect of supplying cooperatives with the money necessary to invest in infrastructure and education in the cooperative's community.[290] Technology, education, and capital would become available to small farmers, so they would not face the utter lack of alternatives that have driven many to

---

284. *See supra* text accompanying note 109.
285. *See supra* text accompanying note 101.
286. *See supra* text accompanying notes 111-113. The coffee industry does not have as great an effect on industrialized economies as the oil industry does. Quill, *supra* note 28, at 522. Coffee could be eliminated from the present economy. *Id.*
287. *See* GWARTNEY & STROUP, *supra* note 164, at 78-79 (this phenomenon is known as a price floor).
288. *See supra* note 136 and accompanying text.
289. *See supra* text accompanying notes 129-136.
290. *See supra* text accompanying notes 138-139, 141-142.

camp on roads and in parks during the current plunge in the coffee price.[291] Even though the Fair Trade program would only be implemented for a short duration, the beneficial effects generated from the program will hopefully last in the long term. If the amount of supply does increase disproportionately to demand, quotas on production could be implemented and adherence monitored on a per cooperative basis.

Another concern is that, with an increase in the price paid to the grower by the coffee companies, there will be a corresponding increase in the price paid by consumers that will decrease demand for coffee.[292] A decrease in demand for coffee would thereby magnify the effects of the current oversupply. This suggestion ignores the fact that demand for coffee is relatively inelastic.[293] Only at extremely high price levels will there be a decrease in demand for coffee.[294] If the increase in price to the consumer coincides with a reasonable increase in price paid to the Fair Trade grower, this added cost to consumers should not decrease demand.[295] But, if oligopolistic coffee companies substantially increase the price at a rate that will compensate them for their lost profits, there is a greater likelihood that demand will decrease.[296] To solve this problem, the Department of Justice and the Federal Trade Commission should look into possible antitrust violations committed by coffee companies against U.S. consumers.

The cost of implementing the Fair Trade program and enforcing the requirements on both coffee companies and cooperatives may also be problematic. Within the present Fair Trade scheme, certifying agents are sent out by TransFair USA to inspect cooperatives and educate them, teaching them how to implement the Fair Trade program.[297] Because the goal of any global Fair Trade program would be to increase profits to growers,[298] placing the expense of enforcement on their shoulders is not logical. Therefore, if non-profit organizations, such as

---

291. *See supra* text accompanying notes 173-175.

292. *See* GWARTNEY & STROUP, *supra* note 164, at 58.

293. *See supra* note 29 and accompanying text.

294. *See supra* text accompanying notes 31-33.

295. *See* PIETERSE & SILVIS, *supra* note 22, at 33. It should be noted that other factors besides the cost of coffee beans contributes to an increase in the price of coffee to the consumer. Mathiason & Tooher, *supra* note 10, at 3.

296. *See* PIETERSE & SILVIS *supra* note 22, at 33.

297. *See Fair Trade, supra* note 50.

298. *See supra* text accompanying notes 119, 121, 126-128.

Transfair,[299] do not certify growers, then coffee-consuming countries should bear the responsibility. If aid is being discontinued to coffee producing developing countries,[300] then a small portion of this money could be used to pay for certification agents. These agents would visit coffee cooperatives to guarantee funds are being used for community projects, environmental standards are being met, and growers are receiving the correct price for their coffee.

A related problem is that the cost of implementation of Fair Trade to developed countries[301] and to coffee companies[302] will pose a political barrier to a global Fair Trade program. Large coffee companies would likely lobby governments to prevent the passage of legislation instituting a Fair Trade program, because the companies would not voluntarily agree to lose profits. However, coffee companies do have the incentive of instituting some form of a price stabilization mechanism because they have an interest in protecting the supply chain.[303] Moreover, hopefully there would be a countervailing group of civil rights activists and taxpayers of equal proportion to the coffee company's lobbying group. History has shown that a group of protesters, through boycotts, was able to force Starbucks, a large retailer, to sell Fair Trade coffee.[304] Groups already in existence such as those that address sweatshops, globalization, and the environment would be expected supporters of a Fair Trade program.[305] In addition, if taxpayers knew that they could pay less for a Fair Trade program than they are paying now to aid developing countries, large scale support could be attained for a Fair Trade program.[306]

A final concern is that a global Fair Trade program designed to assist small farmers will not be beneficial to all farms. The two main categories of farmers that will have difficulties being included in the program are larger coffee plantations[307] and

---

299. *Fair Trade*, *supra* note 50.

300. *See supra* note 270 and accompanying text.

301. *See supra* text accompanying notes 298-299.

302. *See supra* text accompanying note 295.

303. *See* Mathiason & Tooher, *supra* note 10, at 3.

304. *See supra* text accompanying notes 122, 218-219. *See also* Franklin, *supra* note 13 (Starbucks is the "world's largest retailer of specialty coffee."). *See also* Mitchell, *supra* note 122 (Starbucks is the "biggest gourmet coffee company to sign a fair-trade agreement with TransFair.").

305. *See* Sarah Tomlinson, *Group's Goal: Fair Price for Coffee*, THE BOSTON GLOBE, May 20, 2001 (City Weekly 8).

306. *See* Brown, *supra* note 270 at 369; *see also* Shorrock, *supra* note 270, at 2A.

307. *See* Mitchell, *supra* note 122.

gourmet coffee growers.[308] Pickers from larger coffee plantations are not directly benefited by the increase in the price paid for coffee through a Fair Trade system, but they should be indirectly benefited. If a plantation owner receives an increased price for coffee, a portion of this increased profit should be passed along to the picker. If pickers do not benefit from the increase in profit, then a minimum wage could be implemented and enforced by certifying agents.

Gourmet growers should also not have a problem in the global Fair Trade system. Even though gourmet growers are unable to join a cooperative with growers that grow a lower grade of coffee,[309] they still should be able to combine to form a cooperative group specifically for gourmet growers. An example of a gourmet coffee cooperative that has existed for seventy years is the Colombian Coffee Federation.[310] Like Fair Trade cooperatives, the Colombian Coffee Federation guarantees a minimum price to members and reinvests profits in infrastructure.[311]

CONCLUSION

The price paid to coffee growers for a pound of coffee in recent years has continued to plunge to the point where growers find it economically disadvantageous to harvest their crops. With no income from their crops, these growers are forced to set up camps on roadsides and in parks to beg for food. The developing countries in which most of these growers are found do not have the economic resources to either subsidize their coffee growers or find them other means of sustaining themselves. The present low price for coffee is largely due to instability in the coffee market caused by inelasticity of supply and demand in the short run. Moreover, coffee growers see very little of the actual price paid for coffee because middlemen or "coyotes" price gouge small growers.

Many solutions have been advanced to solve the present problems in the coffee market. The solution endorsed by the United States is to allow free market forces to solve the problems in the industry. This approach has proven unable to stabilize prices and fix the structure of the market. A new Interna-

---

308. *See supra* text accompanying notes 156-157.

309. *See supra* note 157 and accompanying text.

310. *See* Mitchell, *supra* note 122.

311. *Id.*

tional Coffee Agreement is also a possible solution, but the effects of such an agreement would be realized too far in the future to help growers in the present crisis. The most plausible solution to the coffee crisis is a short term global Fair Trade program patterned on the present grassroots movement. The Fair Trade program ensures that growers receive a minimum "living wage" price for their coffee and puts them in direct contact with buyers. Growers would be required to use a portion of these earnings toward community, infrastructure, education, and the environment, thereby reducing the amount of aid developed countries must provide to developing countries. If enough information could be disseminated to voters regarding the benefits of a Fair Trade program, Fair Trade could be the answer to the present coffee market crisis.