STEEPED IN INEQUITY: AN EXAMINATION OF COFFEE'S VOLATILE MARKET

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I. INTRODUCTION

While many criticize the high price of a latte at their favorite local coffee shop, few take the time to consider the sheer amount of money and human capital invested in every step of the process. As a top international commodity, second only to oil and its derivatives, coffee is traded and consumed at increasingly massive levels.[1] In the past year, roughly 8.6 billion kilograms of green coffee was produced by 47 coffee producing countries.[2] In that same year, 9.1 billion kilograms of coffee

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[1] InvestorGuide Staff, *What are the Most Commonly Traded Commodities?*, INVESTOR GUIDE, http://www.investorguide.com/article/11836/what-are-the-most-commonly-traded-commodities-igu/ (last visited Oct. 14, 2016) [hereinafter *Trade Commodities*].

[2] *World Coffee Consumption*, INT'L COFFEE ORG., http://www.ico.org/prices/new-consumption-table.pdf (last updated July 2017).

was consumed globally.[3] The coffee that is consumed in stores is the final product in an immense chain of processing, starting with small red coffee cherries.[4] When consumers receive the final product, they only receive the roasted seed of the coffee fruit, which is actually a very small portion of what is originally harvested.[5] Coffee suffers from drastic reductions in volume during processing; for 8.6 billion kilograms of green beans in 2015, 43 billion kilograms of fruit were picked, most of which is done by hand.[6] Assuming zero losses during processing, this produces approximately 7.2 billion kilograms of roasted coffee.[7] The burden of meeting these demands with annual or bi-annual crops is placed on the farmers and laborers, primarily in developing countries.[8]

The coffee market, like other agriculture markets, is susceptible to fluctuation from environmental factors such as weather and crop yield, as well as the evolution of consumer preference. The US coffee market, in particular, is a major player in the coffee trade, "consum[ing] nearly half of the world's coffee" by the nineteenth century.[9] Preferences in how coffee should taste and how it is prepared have been in a state of flux since the First World War, developing in cultural waves that changed how coffee was consumed and produced.[10] The current trend, known in the industry as the "Third Wave," treats coffee as an artisanal product with a focus on its origin and sourcing methodology.[11] This trend towards flavorful, single origin coffees comes with its own implications, and the corporations that process these green beans must navigate a historically volatile market in order to meet the demand.

Coffee producers and processors scrambled to meet the quickly changing demands of their consumers, attempting to get ahead of the curve on robusta production and the subsequent exposure of consumers to more flavorful arabicas.[12] These developments forced corporations to drive their prices down, massively destabilizing the market price of beans.[13] Producers and consumers alike learned

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3 *The Current State of the Global Coffee Trade*, INT'L COFFEE ORG., http://www.ico.org/monthly_coffee_trade_stats.asp (last updated Nov. 30, 2016).

4 *10 Steps from Seed to Cup,* NAT'L COFFEE ASS'N USA, http://www.ncausa.org/About-Coffee/10-Steps-from-Seed-to-Cup (last visited Oct. 15, 2016).

5 *Id.*

6 *See id.*

7 *See* WILLIAM H. UKERS, ALL ABOUT COFFEE 167 (1922) (stating that on average, coffee loses about 16% of its weight to evaporation during roasting, and 84% of 8.6 billion kilograms would equal 7.2 billion kilograms after roasting according to this percentage).

8 *World Coffee Consumption, supra* note 2.

9 MARK PENDERGRAST, UNCOMMON GROUNDS: THE HISTORY OF COFFEE AND HOW IT TRANSFORMED OUR WORLD 42 (2010).

10 *The History of First, Second, and Third Wave Coffee*, CRAFT BEVERAGE JOBS (Apr. 17, 2016), https://www.craftbeveragejobs.com/the-history-of-first-second-and-third-wave-coffee-22315/.

11 Lisa Baertlien, *Peet's Rides Coffee's 'Third Wave' with Stake in Intelligentsia*, REUTERS (Oct. 30, 2015), http://www.reuters.com/article/us-intelligentsiacoffee-m-a-peets-idUSKCN0SO24220151030.

12 *See infra*, Part I.

13 *See* PENDERGRAST, *supra* note 9, at 202–03.

to predict and navigate these droughts and gluts, squaring off against one another through the tense lens of International Coffee Agreements (ICA) after the Second World War.[14] The agreements served both sides well, for a time, until they were eventually abandoned in the late 1980s in favor of free market trade.[15] The return of the International Coffee Organization (ICO) in the beginning of the twenty-first century came with a change of pace; gutted of its quota-based regulatory power, the ICO has taken on an advisory role focused on the notion of international cooperation.[16]

This Note examines the developments in coffee consumer culture in the United States and how this impacts the global supply chain. Part I explores the basics of the coffee industry, from the basics of the bean to its rise in popularity and destabilization of the coffee market as a result of competing market interests and consumer tastes. Parts II and III offer case studies of modern issues faced by laborers in the coffee industry, unintentional casualties at the losing end of a volatile market. Part III offers two classes of mechanisms for effectuating positive change in the coffee market. It provides an array of possibilities for addressing the modern issues of the market, arguing for a bottom-up approach driven by new approaches to corporate social responsibility, the enforcement of established standards and trade deals, and the activity of non-profits and non-governmental organizations. This Note concludes that economic stabilization of the coffee market is a readily available reality, should the stakeholders of the industry continue utilize the mechanisms available in international and domestic law and reinforce the incentives of social responsibility.

II. FROM FIELD TO CUP, THE COMPLEXITIES OF THE MODERN COFFEE TRADE

A. Coffea

While the origins of coffee and its cultivation are infrequently alluded to in early historical text, there is consensus that the two common genera of coffee come from Eastern and Sub-Saharan Africa.[17] The first coffee plant was discovered in Ethiopia, called *Coffea arabica* for the Arabic merchants who brought it from the Ethiopian Empire to the Arabian Peninsula during the fifteenth century.[18] Known to the contemporary industry simply as *Arabica*, beans from this genus are known

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[14] M.TH.A. PIETERSE & H.J. SILVIS, THE WORLD COFFEE MARKET AND THE INTERNATIONAL COFFEE AGREEMENT 47 (1988).

[15] *See* PENDERGRAST, *supra* note 9, at 328.

[16] *The International Coffee Organization 1963 – 2013: 50 Years Serving the World Coffee Community*, INT'L COFFEE ORG. 1, 18 (2013), http://www.ico.org/documents/cy2012-13/history-ico-50-years-e.pdf [hereinafter *International Coffee Organization 1963-2013*].

[17] KENNETH DAVIDS, HOME COFFEE ROASTING, REVISED, UPDATED EDITION: ROMANCE AND REVIVAL 15 (2003).

[18] CORBY KUMMER, THE JOY OF COFFEE, REVISED AND UPDATED 8 (1997).

for their mild, complex flavor and lower caffeine content.[19] *Arabica's* high price comes, not only from its flavor, but from the difficulties in cultivation; *Arabica* only thrives under very specific conditions, growing best at high, steep altitudes with temperate weather and shade.[20] *Arabica* contributes to about 70% of the world's coffee production, growing in various regions throughout Africa, Central America, Asia, and the Pacific.[21] Coffee's second genus is *Coffea canephora*, a much hartier variety that thrives in a wide variety of conditions.[22] Unlike *Arabica*, *Coffea canephora* is comparatively more disease and parasite resistant, with a higher caffeine content and distinct flavor, gaining it the contemporary name of *robusta*.[23] Produced almost exclusively in Brazil, Central and Eastern Africa, and Southeast Asia, *robusta* meets the remaining global needs for coffee.[24]

As previously noted, the coffee bean is the seed of the coffee cherry, a bright red fruit produced by the coffee tree.[25] Coffee trees, once planted, take between three and four years to bear fruit for an annual harvest.[26] Once ripe, the beans are harvested either by hand or by machine.[27] Machine harvesting is made difficult by the steep-growing regions of coffee, so hand-picking is still the most common method.[28] From there, the fruits are processed in a variety of ways to remove the fruit and dry the bean; the process here imparts the most flavor on the final product and depends heavily on the resources of the farmer.[29] Since the bean is such a small part of the fruit, a 100 to 200 pound harvest (the average yield of a skilled picker) will only yield between 20 and 40 pounds of beans.[30] After processing, the beans are milled, graded, sorted, and stored in 60-kg jute or sisal bags for export.[31]

B. Coffee Consumption in the United States

Coffee has been a common drink in the United States since the colonial era.[32] The burgeoning nation saw an increase in consumption during the War of

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19 *What is Coffee?*, NAT'L COFFEE ASS'N USA, http://www.ncausa.org/About-Coffee/What-is-Coffee (last visited Oct 15, 2017).

20 *Id.*

21 *Id. See also Coffee Around the World*, NAT'L COFFEE ASS'N USA, http://www.ncausa.org/About-Coffee/Coffee-Around-the-World (last visited Oct. 15, 2017).

22 *What is Coffee?*, *supra* note 19.

23 *Id.*

24 *Id.*

25 *10 Steps from Seed to Cup*, *supra* note 4.

26 *Id.*

27 *Id.*

28 *Id.*

29 *Flavor Characteristics Due to Coffee Processing*, COFFEE RES. INST., http://www.coffeeresearch.org/agriculture/flavor.htm (last visited Oct. 14, 2017).

30 *10 Steps from Seed to Cup*, *supra* note 4.

31 *Id.*

32 *See* PENDERGRAST, *supra* note 9, at 43.

1812, when French tea products were cut short and coffee filled the gap.[33] Coffee consumption globally rose until it outpaced production, leading to a supply crisis that bottomed out the market at 11 cents per pound in 1825, a cyclical trend that would prove to be endemic to the market well into the twentieth century.[34] The low price of beans, while damaging to the producers, made coffee more accessible in the States and appealed to the lower economic classes.[35] During the American Civil War, coffee prices out of Brazil increased steadily from 11 cents to 42 cents per pound at the peak of the war.[36] The inclusion of coffee in soldier's rations led to its increased popularity and demand, helping to bring the value of coffee up until the war ended and Brazilian coffee dropped down to 18 cents per pound.[37]

Just before the Civil War ended, London-born New York inventor Jabez Burns patented a self-emptying coffee roaster that would revolutionize coffee in the United States.[38] In the same year, John Arbuckle purchased a Burns roaster and began his own packaged coffee and grocery business, beginning the trend of selling pre-roasted, packaged coffee in one pound bags.[39] By 1910, Arbuckle Brothers' brand had made strides in the market, accounting for one of every seven pounds sold country-wide.[40] In the northeast, Charles & Sais utilized advertising to drive their coffee dynasty, balancing higher prices with promises of premium coffee.[41] Meanwhile, James Folgers found success in San Francisco by monopolizing on the needs of gold-rush miners.[42] Joel Cheek and John Neal started Cheek-Neal Coffee Company in 1900, with their coffee blend sold at the Maxwell House in Nashville, Tennessee.[43] These local roaster success stories repeated themselves all over the country, and coffee sales boomed; by 1876 coffee importation by the United States accounted for 340 million pounds of coffee annually.[44]

The World Wars rapidly changed the landscape for coffee in the United States. Re-exportation of coffee through the United States increased to over one billion pounds, with the majority headed overseas.[45] Instant coffee was developed in 1910 and requisitioned entirely by the US Army by 1918.[46] Its association with the war effort, the marketing of coffee during prohibition, and the advent of coffee radio spots saw the coffee industry through the gap between the wars.[47]

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33 *See* PENDERGRAST, *supra* note 9, at 44.
34 *Id.* at 45.
35 *Id.* at 44.
36 *Id.* at 46.
37 *Id.* at 48.
38 *The History of Innovation*, PROBAT, http://www.probatburns.com/about/history-of-innovation/ (last visited Oct. 14, 2017).
39 *Id.*
40 *See* PENDERGRAST, *supra* note 9, at 126.
41 *Id.* at 51.
42 *Id.* at 53.
43 *Id.* at 124.
44 *Id.* at 59.
45 *See* PENDERGRAST, *supra* note 9, at 135.
46 *Id.* at 137.
47 *Id.* at 143–98.

Coffee made its appearance on the frontlines again during the Second World War, when the US government made instant coffee a part of the standard military ration.[48] With the United States' entry into the war in 1941, the army requisitioned coffee to supply a 32.5 pound annual per capita consumption.[49] Import prices were frozen at 13.38 cents per pound from 1941–1946 by the Office of the Price Administration, damaging the producing countries whose prices averaged 5% above that mark for thirty years prior.[50] When the cap was lifted, coffee prices climbed steadily and tropical growers planted coffee trees in hopes of cashing in.[51] However, in 1955, overproduction spurred by this influx of new growers and the high yield of robusta coffee in African countries from plantations that planted excessively in anticipation of capitalizing on instant coffee markets led to a glut that would finally serve as a catalyst for international discussions of price stabilization.[52]

C. The Other Side of the Coin: Coffee Production in Developing Countries

Five countries, none of which are classified by the United Nations as developed nations,[53] bear the burden of producing the majority of the world's green coffee.[54] Brazil, the largest producer of coffee in the world, contributes roughly 40% of the world's coffee.[55] It achieves these yields through the use of manual labor to handpick the coffee and the utilization of harvesting machines to take advantage of Brazil's expansive, flat coffee fields.[56] Vietnam is the largest provider of *robusta* coffees in the world, the second largest producer in the world generally, and accounts for roughly 15% of global green coffee production.[57] Colombia is second to Brazil in the production of *Arabica* coffee, and third overall.[58] Indonesia

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48 JOHN M. TALBOT, GROUNDS FOR AGREEMENT: THE POLITICAL ECONOMY OF THE COFFEE COMMODITY CHAIN 136 (2004).

49 PENDERGRAST, *supra* note 9, at 203.

50 *Id.* at 209.

51 *Id.* at 235.

52 *Id.* at 235–48. The International Coffee Agreements that resulted from this glut and the destabilization of the market is discussed at length in Part IV.

53 U.N. DEP'T OF ECON. & SOC. AFF., WORLD ECONOMIC SITUATION AND PROSPECTS 2014, at 143–50, U.N. Sales No. E.14.II.C.2 (2014).

54 *Total production by all exporting countries*, INT'L COFFEE ORG., http://www.ico.org/historical/1990%20onwards/PDF/1a-total-production.pdf (last visited Oct. 14, 2017).

55 *Id*.

56 *10 Steps from Seed to Cup*, *supra* note 4.

57 *See Total production by all exporting countries*, *supra* note 54 (referencing the 2016/2017 crop year); U.S. DEPARTMENT OF AGRICULTURE, FOREIGN AGRICULTURAL SERVICE, *Coffee: World Markets and Trade,* Dec. 2017, available online at https://apps.fas.usda.gov/psdonline/circulars/coffee.pdf.

58 *Total production by all exporting countries*, *supra* note 54.

trails behind Vietnam as the second largest *robusta* producer and fourth largest total global producer.[59]

The global coffee trade has been historically unfavorable to producing countries, which must deal not only with unpredictable weather shifts, but also with extended cycles of boom and bust caused by market forces.[60] Various producing countries in Latin America have come together throughout the centuries in an effort to stabilize the market. Prompted by Brazil in 1936, a multinational conference commenced leading to the creation of the Pan American Coffee Bureau (PABC) to promote the consumption of coffee during the United States' Great Depression.[61] The entangled global economies wrapped up in the coffee market felt the effects of the Great Depression acutely, with low coffee prices bringing unrest in Central American countries.[62] Brazil banned new coffee tree plantings and began burning their coffee stocks, which had swelled so far as to exceed the world's coffee consumption.[63]

The burden of coffee production has seen Brazil through high and low points in its trade history with the United States.[64] Brazil was able to use the increased demand for beans during wartime as leverage for steadily increasing the price, revitalizing its burdened economy in the process.[65] During the Second World War, the US government was concerned that the declining price of coffee and the heavy demands would lead Latin American countries to open trade with Axis states.[66] The Inter-American Coffee Agreement, a predecessor to the ICA, was signed into effect in 1940.[67] The United States agreed to restrict its importation of coffee, while Latin American signatories agreed to restrict their export.[68] The value of coffee nearly doubled by the end of the following year, and continued a steady yet lessening increase until 1957, when it stabilized.[69]

The stabilization of the market price of coffee in the mid-1950s came along with an anticipated coffee glut.[70] Major coffee producing countries at the time saw increased production, while the rapid output of newly planted African plantations

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59 *Total production by all exporting countries*, *supra* note 54.

60 *See* PENDERGRAST, *supra* note 9, at 61.

61 *Id.* at 171.

62 *Id.* at 168–69. In El Salvador, the military ousted the elected President and installed a dictator, whose rule crippled the plantations and led to a massacre of some 30,000 people. Dictator Jorge Ubico of Guatemala authorized the murder of coffee plantation workers with impunity. *Id.*

63 *Id.* at 166. In 1930, Brazil had 26 million bags of coffee in storage while world consumption was at 25 million in 1929. PENDERGRAST, *supra* note 9, at 165.

64 PENDERGRAST, *supra* note 9*,* at 46.

65 *Id.*

66 GAVIN FRIDELL, FAIR TRADE COFFEE: THE PROSPECTS AND PITFALLS OF MARKET-DRIVEN SOCIAL JUSTICE 122 (2007).

67 Paul C. Daniels, *The Inter-American Coffee Agreement*, 8 L. & CONTEMP. PROB. 708, 714–15 (Fall 1941).

68 *Id.*

69 FRIDELL, *supra* note 66, at 123.

70 *Id.*

dominated more than 10% of United States' coffee imports.[71] In Brazil, coffee farmers left old growing regions for Parana, bringing with them advancing agricultural technologies that increased yields per acre fivefold.[72] An unseasonably harsh frost shortly after this boom led to increased prices, which prompted even more planting in the region.[73] Meanwhile, in the African European colonies, the end of colonial rule in India and Egypt led for a push towards market independence that coincided with the swell in the coffee industry.[74] At the same time, the Cold War led the United States to fear the spread of communism and its impact on producing countries.[75]

In 1958, 18 producing countries (observers from five other producing countries were also in attendance and 11 consuming countries) met in Rio de Janeiro and established the International Coffee Organization.[76] The initial purpose of the organization was not coffee market stabilization; rather, they focused on improving data collection, exchanging information, and promoting the consumption of coffee.[77] The Coffee Study Group, created in 1958 by the Eisenhower administration of the United States, responded to the dwindling interest of participants in the months after the meeting.[78] The first attempts of this group failed on the fundamental differences between Latin American and African approaches to the coffee crisis; the former called for percentile withholdings based on production, while the latter called for strict quotas.[79] In under four years, the Group produced a draft document that became the basis for the International Coffee Agreement of 1962.[80] This agreement set export quotas between 15 Latin American Countries, France, and Portugal for a year, and was subsequently extended until 1961.[81] By then, the Study Group agreed that there was enough interest in an International Agreement to merit revising the old Agreement on a grander scale.[82]

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71 FRIDELL, *supra* note 66, 123.

72 *Id.*

73 *Id*.

74 *See* PENDERGRAST, *supra* note 9, at 236.

75 BART S. FISHER, THE INTERNATIONAL COFFEE AGREEMENT: A STUDY IN COFFEE DIPLOMACY 27 (1972).

76 MARCELO RAFFAELLI, RISE AND DEMISE OF COMMODITY AGREEMENTS: AN INVESTIGATION INTO THE BREAKDOWN OF INTERNATIONAL COMMODITY AGREEMENTS 40 (1995). The agreement establishing the International Coffee Organization was signed by Brazil, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Peru, Portugal, and Venezuela. *Id.*

77 *Id.*

78 *Id.* at 41.

79 *Id.* (noting that these policy positions align with the respective production styles of the two regions: African countries were producing primarily Arabica beans that came from high yield crops, while Latin American growing regions exported fairer, more sensitive Arabica crops).

80 *See* RAFFAELLI, *supra* note 76, at 41–44.

81 *Id.* at 42–43.

82 *Id.* at 43.

D. The International Coffee Agreements

The International Coffee Agreement of 1962, designed to last for five years before review and potential reinstatement, set export quotas for producing countries based upon the country's historical production[83] to prevent the price of coffee from dropping in the face of another coffee glut.[84] On the other end of the enforcement mechanisms, importing countries were forbidden from importing coffees without Certificates of Origin.[85] Many countries were quick to circumvent the enforcement of the agreement, either by simply ignoring the certificate requirements, creating invalid certificates, or routing coffee through smaller consumer countries for re-export to the United States and other high intake countries.[86]

The ICA of 1968 maintained the same focus of the 1962 agreement, while allowing for some flexibility within the quota system.[87] An indicator price was established to address the issue; if the cut-off market price remained above or below the indicator price for fifteen days or longer, the International Coffee Organization could intervene and raise or lower the quotas accordingly.[88] Smaller producing countries were also given the liberty to increase exports if there was a severe decrease in production by major exporting countries that led to market price hikes.[89] The 1968 Agreement succeeded in its stabilizing goals until the devaluation of the US dollar led producing countries to call for the increase of quotas, deadlocking the 1972–73 quota negotiations for three years.[90]

The devastating frost that damaged Brazil's crops in 1975 interrupted the relative stability following the failed negotiations in 1973.[91] After the price of Arabica coffee from Brazil increased drastically for the United States, they reentered negotiations for a new ICA.[92] The United States took a more forceful stance in this round of negotiations, requesting that incentives be put in place to stimulate world coffee production.[93] To that end, each producing country received

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83 International Coffee Agreement 1962 art. 28(1), Annex A, *opened for signature* Sept. 28, 1961, 14 U.S.T. 1911, 1926, 469 U.N.T.S. 168, 198.

84 *Id.*

85 PIETERSE & SILVIS, *supra* note 14, at 47.

86 *Id*. at 64.

87 *International Coffee Organization 1963-2013*, *supra* note 16, at 10–11.

88 RICHARD L. LUCIER, THE INTERNATIONAL POLITICAL ECONOMY OF COFFEE: FROM JUAN VALDEZ TO YANK'S DINER 133 (1988).

89 International Coffee Agreement 1968 art. 35, Oct. 1, 1968, 647 U.N.T.S. 3, 38.

90 LUCIER, *supra* note 88, at 148.

91 *Rising Coffee Prices and the Federal Response: Joint Hearings Before Certain Subcomms. of the H.R Comm. on Gov't Operations & the Comm. on Agric.*, 95th Cong., 135–39 (1977). The frost killed or severely damaged more than half of Brazil's trees. *Id. See also* FRIDELL, *supra* note 66, at 123.

92 FOREIGN AGRIC. SERV., U.S. DEP'T OF AGRIC., NO. 2-94, TROPICAL PRODUCTS: WORLD MARKETS AND TRADE 3 (1994). The price of coffee increased from $0.68 to $3.69 per pound between 1975 and 1977. *Id.*

93 *Rising Coffee Prices and the Federal Response*, *supra* note 91, at 169–80.

a partially variable quote that was actively determined by output.[94] This framework was maintained through the 1983 Agreement, which would eventually breakdown in 1989 after the variable quota created a surplus market.[95]

Another critical factor in the breakdown of the 1983 Agreement was changing consumer tastes.[96] Rising coffee prices for lower quality beans brought them in line with gourmet beans, and consumers began to take notice.[97] Brazil kept prices at $3.20 a pound against a world market that had fallen below $2, while retail prices remained over $3 to account for processing costs.[98] Pushed out of National Coffee Association (NCA) recognition by bigger, entrenched companies, small artisan roasters gathered at small events like the National Fancy Food & Confection Show, creating a network of independent roasters across the country.[99]

The ICA of 1987 was quickly abandoned by the coffee consuming community.[100] Within a year, the NCA called it a risk to the "free and unrestricted trade in coffee."[101] Brazil had diversified its crops well enough that it didn't depend on coffee to survive, and the United States was not ready to take risks when the re-export market allowed for cheaper prices elsewhere.[102] Coffee prices fell to $0.85 a pound, and when ICA members announced the maintained funding of the ICO *without* any quotas, it dropped further to $0.70.[103] By 1993, the United States withdrew from the ICO entirely, prompted in part by advisement from the NCA.[104] Meanwhile, Vietnam entered the coffee market as a producer of low-grade *robusta* beans, surpassing Colombia as a producer to become the second largest in the world.[105] Their meteoric rise to production led to another cheap coffee glut, leaving the cost for green beans at $0.50 a pound in 2001.[106]

The 2001 and 2007 iterations of the ICA reflect a changing landscape in coffee. Without quotas, the ICO and ICA are focused on "a number of areas where international cooperation could be of value."[107] The ICO, under the 2001 ICA, sought to "provide a forum for consultations on coffee matters with the private sector," in order to encourage the development of a "sustainable coffee economy."[108] Staying true to its original purpose as an organization created to

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[94] International Coffee Agreement 1976 art. 35(1), *opened for signature* Jan. 31, 1976, 28 U.S.T. 6401, 6435–36, 1024 U.N.T.S. 3, 22.

[95] *See* PENDERGRAST, *supra* note 9, at 328.

[96] *See id.* at 294.

[97] *Id.* at 295.

[98] *Id.*

[99] *Id.* at 296.

[100] PENDERGRAST, *supra* note 9, at 328.

[101] *Id.*

[102] *See id.*

[103] *Id.*

[104] PENDERGRAST, *supra* note 9, at 329; *NCA Special Bulletin No. 259*, NAT'L COFFEE ASS'N (1992) ("[t]he interests of the United States Coffee Consumer and industry are best accommodated by free and unrestricted trade in coffee.").

[105] *See* PENDERGRAST, *supra* note 9, at 349.

[106] *Id.*

[107] *International Coffee Organization 1963-2013*, *supra* note 16, at 17–24.

[108] *Id.* at 18.

exchange information about the coffee trade, the ICO continues to provide informational seminars and studies that are topical to the current coffee market.[109] The 2007 ICA addresses the developments in coffee culture and the shift towards conscientious coffee practices.[110] Additionally, the ICO notes that various aspects of sustainability are an important part of the specified objectives of the 2007 Agreement.[111] Without the enforcement mechanisms that exportation quotas provided the ICO, the ICAs have served as advisory documents for those at the forefront of the coffee arena: the private sector actors and the producers.

III. A CASE STUDY: BRAZIL

The past decade's demands for single-origin, artisanal coffee have taken their toll on Brazil. One of the greatest consequences of demand outstripping the supply and human capital is the prevalence of agricultural labor being completed without labor contracts or representation.[112] In the Brazilian state of Minas Gerais, where half of the country's coffee is produced, the agricultural labor union admits that "during the harvest, about 40–50% of the [laborers] work informally, without being registered."[113] Additionally, "forty percent of those with official contracts still experience violations of their rights" due to their illiteracy and complicit signing of labor contracts.[114]

This ignorance of rights amongst agricultural laborers in Minas Gerais has allowed constitutional and statutory violations to run rampant. Without sufficient government oversight, plantations have been cutting corners wherever possible: whereas, the Brazilian workweek is limited to 44 hours by the Brazilian Constitution,[115] workers are often clocking in 14 hour days, seven days a week to make up for the inconsistent pay.[116] Falling drastically below the state-required four reais (R$4) per hour,[117] workers are being paid anywhere between R$4 and R$2 for every 60 liter bag they fill to the top with coffee fruit.[118] With experienced workers being able to "fill four or five sacks in a day... [and] the least productive

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109 *International Coffee Organization 1963-2013*, *supra* note 16, at 18–20.

110 *See id.* at 22.

111 *Id.* at 23 ("The Organization is working to promote an awareness of the need for a sustainable coffee economy by making stakeholders in the coffee sector aware of the threat to sustainability posed by negative economic conditions for producers . . .").

112 *Bitter Kaffe*, DANWATCH ch. 3, https://old.danwatch.dk/en/undersogelse/bitter-kaffe/ (last visited Oct. 14, 2017) [hereinafter *Bitter Kaffe*].

113 *Id.*

114 *Id.*

115 CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 7 (Braz.)

116 *See Bitter Kaffe*, *supra* note 112.

117 CONSOLIDACAO DAS LEIS DO TRABALHO [C.L.T.]. art. 428 (Braz.); Lisa Alves, *Brazil's Government Raises Monthly Minimum Wage to R$880*, RIO TIMES ONLINE (Dec. 30, 2015), http://riotimesonline.com/brazil-news/rio-business/brazils-government-raises-monthly-minimum-wage-to-r880.

118 *See Bitter Kaffe*, *supra* note 112112, at ch. 6.

only manag[ing] to fill about three sacks per day," the minimum wage is hardly being met.[119]

Beyond wage and hour violations, Brazilian coffee harvesters are subject to violations of their most fundamental rights. As a regulatory right, the Brazilian Ministry of Labor and Employment requires all agricultural workers to have access to clean water.[120] However, year-round workers who must live on the plantations have reported farms where they are forced to go without water or share the same water source as livestock.[121] Without access to clean water, workers who are on plantations without work contracts risk getting sick and being unable to make money.

Some plantations have resorted to debt bondage and slavery to meet production needs.[122] During the harvest season of 2015, Brazilian authorities, tipped off by Danwatch,[123] inspected five coffee plantations in Minas Gerais.[124] They found 128 men, women, and children subjected to "conditions analogous to slavery."[125] The Department of Labor released a report stating that these workers were victims of a human trafficking system in Minas Gerais, and that they "believed that they would be working under totally different conditions."[126] Additionally, the report stated that the living conditions were "degrading, unsanitary, and unsuitable for the large number of workers being housed."[127] The Brazilian criminal code criminalizes such conditions, classifying this exact conduct as a form of slavery.[128]

IV. A CASE STUDY: GUATEMALA

Guatemala is second only to Honduras in its growing region and one of the top ten producers of the world.[129] In comparison to coffee giants like Brazil, it accounts for a small portion of the global coffee trade.[130] Despite their difference, the human rights landscape in the Guatemalan coffee industry is quite similar to Brazil's. During the First World War, Guatemala was caught up in land-grabs between its dictator Estrada Cabrera, German immigrants, and the United States

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119 *Bitter Kaffe*, *supra* note 112112, at ch. 6.

120 CONSOLIDACAO DAS LEIS DO TRABALHO [C.L.T.] § 31.23.9 (Braz.).

121 *See Bitter Kaffe*, *supra* note 112.

122 *See id.* at ch. 10.

123 Danwatch is an investigative media research center focusing on public interest. ABOUT DANWATCH, https://www.danwatch.dk/om-danwatch/ (last visited Oct. 14, 2017).

124 *See Bitter Kaffe*, *supra* note 112¸ at ch. 10.

125 *Id.*

126 *Id.*

127 *Id.* ("The workers did not have access to filtered drinking water, and had therefore been drinking contaminated water, exposing them to the risk of illnesses like hepatitis and diarrhea, as well as a host of different parasites.").

128 Decreto No. 2.848 Art. 149, de 7 de Dezembro de 1940, DIARIO OFICIAL DE UNIANO [D.O.U.] de 11.12.2003 (Braz.).

129 *See World Coffee Consumption, supra* note 2.

130 *See id.*

government.[131] The Roaring Twenties that followed in the United States saw Guatemala through a major boom, after Cabrera sold many of the contested plantations back to their German owners.[132] During the coffee glut of the 1930s, Guatemala suffered through the reign of yet another dictator with his hands in the coffee industry.[133] As the first ICA came to its close, the effects of the widening gap between industrialized wealthy countries and developing producers were felt by laborers in Guatemala, who earned less than a quarter of the daily wages of United States laborers at the time.[134] After the rigged election of Romeo Lucas Garcia, Guatemala saw a resurgence of death squad activities, and the Guatemalan Indian community continued to suffer deplorable housing and working conditions during harvest season.[135] The Guatemalan coffee community continued to suffer through a series of dictators, notable among them being Efrain Rios Montt in 1982.[136] General Montt's military attempted to involve the coffee plantations in the fight against the guerilla movement, while the guerilla retaliated against the farms for being peaceable with the military.[137]

When the coffee giant, Starbucks, saw opportunities in promoting a socially and economically stable relationship within producing countries in the 1990s, it became the largest corporate contributor to the Cooperative Assistance and Relief for Everyone (CARE) global charity.[138] With a positive public reception for their actions, Starbucks folded socially conscious practices into its business model; during the coffee crisis spurred by Vietnam's entry into the *robusta* market, the company donated to external foundations to assist in the promotion of farmers before creating their own internal program.[139] Despite these measures by corporations to promote equitable farm practices, the reality today is that Guatemala is facing the same level of human rights violations as Brazil, trying to compete with an artisan coffee market and high demand.

Shortly after launching an investigation in the Minas Gerais growing region, investigators from Danwatch commenced a similar investigation in Guatemala.[140] The conditions there, notably for internal migrants from the

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131 *See* PENDERGRAST, *supra* note 9, at 135, 141.

132 *Id.* at 141, 162.

133 *Id.* at 270.

134 *Id.*

135 *Id.* at 300.

136 PENDERGRAST, *supra* note 9, at 315.

137 *Id.* The owner of the *La Paz* farm, Walter Hannstein, noted that General Montt's military would come to the plantation to borrow vehicles. Hannstein would stall and host the military, attempting to avoid involvement with the war. Later, the guerillas noted that Hannstein was too friendly with the military and burned his farm. *Id.*

138 *Id.* at 339.

139 *Id.* at 349 (discussing that Starbucks donated $1 million to the Calvert Social Investment Foundation before creating C.A.F.E. Practices (Coffee and Farmer Equity), paying a premium to coffee farms that "met environmental, social, and quality measures for its beans").

140 *Bitter Coffee – Guatemala*, DANWATCH ch. 1 (2016), https://old.danwatch.dk/wp-content/uploads/2016/09/Bitter-coffee-Guatemala-2016.pdf.

Guatemalan Indian community, are harsh.[141] The World Bank reports that 59.3% of Guatemalan citizens live in poverty.[142] According to Guatemala's national statistics institute, the living wage for a family of five is roughly GTQ 3540 ($464 USD) for a month's worth of basic foodstuffs; in order to afford basic needs like clothing and transportation, that number increases to GTQ 6460 ($847 USD).[143] With the help of their children, families have reported earning between GTQ 500 and 900 a month, well below the line of what they need.[144] Widespread child labor has developed as a common practice in response to low wages;[145] laborers are paid by volume, and receive significantly less than the statutory minimum wage.[146] The *Instituto Nacional de Estadistica* (INE) stated that 10.7% of Guatemalan children between the ages of seven and 14 work, with 46.5% working in agriculture.[147] Verite, an American non-governmental organization, drafted a 2011 report indicating that some plantations used the labor of children under eight years old, and even some using the labor of children under five years of age.[148]

Without a formally recognized right to due process and the risk of armed attacks, union organization and labor rights defense is dangerous work.[149] The stratification in quality of bean produced by the farms has little to no impact on the working conditions; laborers from wealthy and destitute farms alike remarked that child labor and wage violations occurred across the board.[150] Rights watch groups like Anacafe have no legal authority in the country to impose sanctions for violations of international or domestic labor laws.[151] As a result, few Guatemalans are willing to risk unionization, with less than 3% of the total workforce organizing and less than 0.1% of coffee workers organizing.[152] Much like in Brazil, Guatemalan coffee workers are working without labor contracts and representation, and are facing withheld pay and violence as tools of extortion.[153]

The conditions in Guatemala violate both public international laws and the domestic laws in place that purport to forbid such conduct. In regards to child labor, Guatemala signed and ratified the United Nations Convention on the Rights of the

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141 *Bitter Coffee – Guatemala*, *supra* note 140, at ch. 1.

142 *The World Bank in Guatemala – Overview*, WORLDBANK, http://www.worldbank.org/en/country/guatemala/overview (last updated Oct. 10, 2017).

143 *Bitter Coffee – Guatemala*, *supra* note 140, at ch. 2.

144 *Id*. at ch. 1, 2.

145 *Id.* at ch. 1.

146 *Id.* at ch. 2.

147 *Id.*

148 *Bitter Coffee – Guatemala*, *supra* note 140, at ch. 1. Of the 372 coffee workers interviewed, 87% saw children under the age of 14, 22% saw children under the age of 8, and 12% saw children under the age of 5. *Id.*

149 *Id*. The International Trade Union Confederation lists Guatemala among the ten worst countries to be a laborer. Over 50 representatives from unions were murdered between 2007 and 2013. *Id.*

150 *Id.* at ch. 2.

151 *Bitter Coffee – Guatemala*, *supra* note 140, at ch. 2 ("We have no legal authority to impose sanctions.").

152 *Id.* at ch. 3.

153 *Id.* at ch. 1, 3.

Child in 1990.[154] The Convention codified the right of children to "be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development."[155] This protection is reinforced by the United Nation's International Labor Organization's (ILO) conventions on child labor, which Guatemala also signed, expressly forbidding children from working until they are over the mandatory school age.[156] The ILO additionally forbids forced labor and protects the freedom to organize and unionize, rights that Guatemala has also ratified yet failed to enforce.[157] Guatemala's constitution sets the minimum age for labor at 14, and prohibits minors from working on jobs outside of their physical capacity or that endanger their morality.[158] The constitution also provides workers the right to organize and to strike, with exceptions to vital work positions considered necessary to public health.[159] These constitutional provisions, as observed by various labor watch groups, are perpetually violated and rarely actualized.[160]

V. MECHANISMS FOR CHANGE

The history of the coffee trade reveals a set of mechanisms already in place that shapes the economic market and legal landscape. Stakeholders have the ability to both facilitate the growth of trade and to address the injuries to stakeholders and laborers harmed in the constantly shifting landscape of a volatile agricultural market. Chief among these and most explored by state entities are the economic mechanisms—free trade agreements and the dichotomy of proactive and reactive trade decisions. Beyond the basic market mechanisms, legal regimes have filled the gap where positive reinforcement mechanisms failed, providing countries with the tools to modify behavior. The past 30 years have seen the rise of a burgeoning regime of social responsibility, suffusing the market and bringing together interested consumers and entrepreneurs to change the face of the consumer culture and link together small instances of positive change in the hopes of eventually causing a schematic shift in the way the market is perceived. The following is a brief foray into these mechanisms.

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[154] Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3, 139 [hereinafter C.R.C.].

[155] *Id.* at 55.

[156] Convention Concerning Minimum Age of Admission to Employment, *ratified* Apr. 27, 1990, 1566 U.N.T.S. 456.

[157] Forced Labor Convention, *ratified* June 13, 1989, 39 U.N.T.S. 55.

[158] Constitución de 1985 con las reforma de 1993 [Constitution] Nov. 17, 1993, No. 18-93, art. 102 (Guat.).

[159] *Id.* art. 104.

[160] *See generally* U.S. DEP'T OF LABOR, FINDINGS ON THE WORST FORMS OF CHILD LABOR (2014), https://www.dol.gov/ilab/reports/child-labor/findings/2014TDA/2014TDA.pdf [hereinafter FINDINGS ON WORST FORMS OF CHILD LABOR]; International Trade Union Confederation, *Guatemala – ITUC Survey of Violations of Trade Union Rights*, SURVEY, https://survey.ituc-csi.org/Guatemala.html#tabs-3 (last visited Oct. 15, 2017).

A. Economic and Legal Mechanisms

1. Economic Mechanisms

When discussing international mechanisms for change in the realm of commerce, one would be remiss not to revisit the availability and efficacy of trade agreements—in particular, a case study of the coffee trade must address the rise and fall of the ICAs and the problems associated with liberalized trade and fair trade agreements. One particularly helpful lens through which we may view these agreements is that of a commodity chain approach.[161] Through this lens, a commodity chain is "the interrelated system of production processes and economic transactions that creates a commodity such as coffee."[162] Rather than focusing on the way that a single producing country interacts with the market, this lens allows for the examination of the entire commodity market as a series of chains.[163]

With this in mind, an analysis of the interests involved in the first coffee trade agreement, the Inter-American Coffee Agreement (IACA), is apt. The IACA sought to protect the drastically varied interests of consumers and producers during the world's second global war, when wartime heightened coffee consumption and producing countries were resorting to destroying surplus to ensure that the prices of coffee didn't decrease.[164] Latin America found itself closed off from European coffee markets, in a cycle of overgrowth and destruction of glut crops.[165] On the flip side of that coin, unpredictably worsening coffee prices from Brazil fed United States' fears that Latin American countries would turn to Axis countries for business.[166] John Talbot posits this dynamic as an expression of Polanyian double movement,[167] whereby countries [Polanyi's 'reformers'] that had been historically reluctant to risk losing bargaining power by forming international commodity agreements were forced to acquiesce by massive political pressures from Polanyi's 'counter-movement' reactionaries.[168] In particular, Talbot highlights the cycle wherein the IACA and its successors are allowed to expire when coffee prices have stabilized at a higher value than pre-agreement.[169]

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[161] *See* JOHN TALBOT, GROUNDS FOR AGREEMENT 5 (1997) (discussing how the commodity chain approach was developed in the 1970s by Immanuel Wallerstein et. al. as part of the framework of world-system analysis, which posited that the capitalism has expanded to encompass the globe with the intention of creating "a unitary social system with a single, capitalist division of labor.").

[162] *Id.* at 6.

[163] *Id.*

[164] FRIDELL, *supra* note 6666, at 122; Daniels, *supra* note 67, at 709.

[165] PIETERSE & SILVIS, *supra* note 14, at 58.

[166] *Id.*

[167] *See generally* KARL POLANYI, THE GREAT TRANSFORMATION (1944). In short, Polanyian double movement is a dialectic process between those who hold financial power and those on upon whom that power is exercised. *Id.* The commodification of labor, land, and money (what Polanyi refers to as "false commodities") is met by reactionary counter-movements for social protections in the market such as labor laws or tariffs. *Id.*

[168] TALBOT, *supra* note 161, at 16.

[169] FRIDELL, *supra* note 66, at 139.

Unsurprisingly, the IACA's successors were intrinsically linked to global efforts at trade liberalization—in 1962, following negotiations prompted by the Havana Charter and the advent of the International Trade Organization (ITO) under the General Agreement on Tariffs and Trade (GATT), the ICA was signed and set to be ratified within a year.[170] The World Bank considered the 1962 ICA to be a success—despite making dismal progress towards a long-term goal of stabilizing supply and demand, the 1962 ICA had "been able to prevent a collapse of the coffee market … without a significant disruption of normal trade practices."[171] The primary mechanism of the ICA was the basic export quota (BEQ): each producing country was assigned a portion of the global BEQ to be determined by the International Coffee Organization, the ICA's governing body.[172] If a "type" of coffee (then only distinguished as the two genera, arabica and robusta) were to increase in price, this would increase what the ICO labeled as the 'indicator price,' an average of the daily prices of these coffee groups measured in New York.[173] The next iteration in 1968 sought the same goals, but with more forward-thinking goals—it raised the global BEQ and tried to implement anti-circumvention measures to prevent exporting countries from shipping without origin stamps.[174]

The ICAs began to break down after the implementation of the 1968 agreement; the misbalance of decision-making power and the cycle of Talbot's posited Polanyian double movement became apparent. The United States failed to get Congressional approval to extend the ICA to a full five-year period, and the ICO failed to set quotas for the 1972/73 period.[175] The ICA that was signed for 1976 was functionally meaningless in its first few years—coffee prices were high relative to the quotas set to trigger once prices dipped to a certain point.[176] Producing countries were denied a trigger increase while rate of inflation in the United States remained high.[177] Serious frosts in Brazil in the late 1970s led to the further capitulation of the market, with producing countries overplanting and causing a glut later in the 1980s.[178] With changing consumer tastes shifting the prices of Arabica beans higher and higher and rejection of the ICAs by the National Coffee Association as a threat to free trade, the ICAs were allowed to expire and abandoned wholesale.[179]

A critical takeaway from the rise and fall of the International Coffee Agreements is the prisoner's dilemma that trade liberalization can pose for the coffee trade. It is neither the focus nor the position of this paper that trade liberalization is an impossible fit for coffee or that it does not have its place in the global market; rather, the history of trade agreements for this commodity have

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170 FRIDELL, *supra* note 66, at 139.
171 RAFFAELLI, *supra* note 76, at 51.
172 *Id.* at 44.
173 *Id.* at 47.
174 *Id.* at 56.
175 *Id.* at 57.
176 FRIDELL, *supra* note 66, at 143.
177 *Id.*
178 *Id.*
179 *Id.*

shown a disparity between the bargaining powers of consumers and producers which can cause as much damage to price stability in attempting to remedy the issue. This does not mean that the coffee trade is dying—other mechanisms have come to light that not only help to stabilize smaller commodity chains, but have also found a nexus between human rights progress and economic stabilization, drawing together varied interest groups that may have otherwise found themselves at odds.

2. International Legal Mechanisms

Where international economic mechanisms have lost their teeth to the prisoner's dilemma, public international law has found some success. The state of Guatemala's coffee farms provides a comprehensive framework for the exploration of international treaty mechanisms: as a signatory and ratifying country to the United Nations Convention on the Rights of the Child (UNCRC), the United Nations International Labor Organization's (ILO) Convention on Child Labor, and the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), Guatemala stands in violation of a variety of its labor standards agreements.[180] Unfortunately, the UNCRC does not have a strong enforcement mechanism and ratifying states must provide the UN Committee on the Rights of the Child with progress reports every five years after initial reporting and receive comments and recommendations in return.[181] The ILO's Convention on Child Labor provides similar mechanisms, with signatories developing their own mechanisms of implementation and self-policing with the supplemental support of ILO's Recommendation No. 190.[182] Here, community reporting has had the benefit of illuminating the issue, but not remedying it; the US Department of Labor has released a yearly report on the Worst Forms of Child Labor, often citing conditions in Guatemala but ultimately providing no mechanism for solution.[183]

The United States instead took action through the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR).[184] CAFTA-DR created the first free trade agreement between the United States and the Central American countries, promoting stronger trade and investment ties.[185] Two articles of CAFTA-DR are notable here: the labor clause and the dispute resolution clause. The labor clause requires that parties to the agreement "effectively enforce [their respective] labor laws, through a sustained or recurring course of action."[186] Article

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[180] C.R.C., *supra* note 154; Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999, 2133 U.N.T.S. 161; Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), Dom. Rep.-Central Am.-U.S., Aug. 2, 2005.

[181] C.R.C., *supra* note 154, at arts. 42–45.

[182] *See* Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999, 2133 U.N.T.S. 161.

[183] FINDINGS ON WORST FORMS OF CHILD LABOR, *supra* note 160.

[184] *See generally* OFF. OF THE U.S. TRADE REP., IN THE MATTER OF GUATEMALA – ISSUES RELATING TO THE OBLIGATIONS UNDER ARTICLE 16.2.1(A) OF THE CAFTA-DR (2014).

[185] CAFTA-DR, *supra* note 180.

[186] *Id.* art. 16.

16.1(2) was drafted with the value of sovereignty in mind, recognizing with "full respect" the power of each country's power to set labor standards through their own constitutions.[187] However, CAFTA-DR was written with sacrifices in mind; Article 16.2(2) notes that, "it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws."[188] To enforce the entirety of this agreement, Article 20 and its annexes lays out an extensive dispute settlement plan for parties to confront one another on the meaning and application of the agreement.[189]

In April 2008, the United States requested a meeting on behalf of a submission filed by Guatemalan and US labor organizations.[190] The United States began the arbitration process with Guatemala, requesting a consultation in May 2010 under Article 16 and proceeding within the following months.[191] Following the consultation, the United States activated the arbitration process outlined in Article 20.[192] Working together to address these issues, both countries created an 18-point Enforcement Plan by April 2013.[193] After a year of observation, the United States chose to proceed with its labor enforcement case, citing Guatemala's continued failure to meet its own established labor standards.[194] At the time this Note was written, the arbitral panel had yet to release a report.

The matter of Guatemala provides a fantastic example of the international treaty mechanisms coming together to provide a method of enforcement for positive change. The CAFTA-DR provides cooperative economic incentives through free trade mechanisms while simultaneously protecting labor, highlighting the ease with which fair labor standards can be preserved through treaty mechanisms. This approach can be a simple caveat to further trade agreements between the United States and other regional groups, perhaps even Brazil, ensuring that labor standards are met. Article 16 sets a purposefully low baseline, requiring only that a member state uphold *its own standards*.[195] While the success of the Guatemala suit in

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[187] CAFTA-DR, *supra* note 180, at art. 16.

[188] *Id.*

[189] *Id.* art. 20.

[190] News Release, Hilda L. Solis, U.S. Sec. of Labor, Labor Consultations with Guatemala under CAFTA-DR Agreement (July 30, 2010) (on file with United States Department of Labor).

[191] Letter from Ron Kirk, U.S. Trade Rep., and Hilda Solis, U.S. Sec. Labor, to Erick Haroldo Coyoy Echeverria, Minister of Econ. of Guat. and Edgar Alfredo Rodriguez, Minister of Labor and Soc. Prot. of Guat. (July 30, 2010) (on file with the Office of the United States Trade Representative).

[192] Press Release, Ron Kirk, U.S. Trade Rep., Next Step in Labor Rights Enforcements Case Against Guatemala (Aug. 2011) (on file with the Office of the United States Trade Representative).

[193] Fact Sheet: Guatemala Agrees to Comprehensive Labor Enforcement Plan, OFF. OF THE U.S. TRADE REP. (Apr. 11, 2013), https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2013/april/guatemala-labor-enforcement.

[194] Press Release, Michael Froman, U.S. Trade Rep., United States Proceeds with Labor Enforcement Case Against Guatemala (Sept. 2014) (on file with the Office of the United States Trade Representative).

[195] *Id.*

coming years is undetermined, the outlook is positive and insulated by a variety of other approaches to preserving labor standards.

B. Social Mechanisms

Corporate social responsibility, a fairly new incentive driven approach to progressive reform in corporation-driven markets, has two primary potential drivers: regulation and incentive.[196] Given the wealth of possible regulatory mechanisms available to governments for the purpose of maintaining the baseline standards in industries such as coffee, the following section will focus on the potential approaches to incentivizing corporations and non-profits to make positive changes to their practices and the market to bring equity.

1. Corporate Social Responsibility: Tax Deductions, Credits, and Exemptions

Corporate Social Responsibility is the notion that companies should consider the greater good of society by taking responsibility for the impact that their practices may have on the community and environment.[197] It shifts attention from state apparatuses to non-state actors, emphasizing their role in creating, establishing, and spreading various forms of authority that only indirectly, if at all, rely on the enforcement powers of the state.[198] Given the profit-based motivations of corporations in the free market, reducing costs can provide a significant motivation for positive behavior, especially as a result of tax-based incentives.[199] Tax incentives for corporations can come in two forms: tax credits which reduce tax liability and tax deductions that reduce taxable income.[200] The motivations behind these existing tax-based incentives can easily be paralleled to the coffee market, providing corporations with the incentive to invest in the roots of their industry.

Take for example the New Markets Tax Credit, a federal tax credit provided to entities that invest in Community Development Entities (CDEs).[201] Drafted in 2000, the creation of this tax credit was aimed at investment in low

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[196] Margaret Ryznar & Karen E. Woody, *A Framework on Mandating Versus Incentivizing Corporate Social Responsibility*, 98 MARQ. L. REV. 1667 (2015).

[197] *Id.*

[198] Jeyapalan Kasipillai & Shanthy Rachagan, *Tax Incentives and Corporate Social Responsibility,* UNIV. SCI. & TECH., http://congress.ustc.edu.cn/pro/2_.pdf (last visited Oct. 15, 2017).

[199] Mark J. Cowan, *A GAAP Critic's Guide to Corporate Income Taxes*, 66 TAX L. 209, 232 (2012).

[200] Mildred Wigfall Robinson*, It Takes a Federalist Village: A Revitalized Property Tax as the Linchpin for Stable, Effective K-12 Public Education Funding*, 17 Rich. J.L. & PUB. INT. 549, 582 (2014).

[201] 26 U.S.C. § 45D (2015).

income communities through investment in qualified CDEs that meet the statutory standards.[202] As for tax deductions, a readily transferable model is the Charitable Contribution Tax Deduction, which allows businesses to deduct their charitable contributions to qualified organizations.[203] Tax credits and deductions of this like can be adapted for an international framework to promote the creation and maintenance of proper working conditions for disadvantaged laborers. The living wage, public safety concerns, and difficulties inherent in the Minas Gerais and the Guatemalan growing regions rival and often surpass the conditions in the low-income communities that the New Markets Tax Credit targeted. When combined with the principles supported by the Charitable Donations Tax Deduction, these tax modifications can provide a powerful incentive for corporations to improve the conditions of their suppliers. Evidence would suggest that economic stimulus and agricultural education reform would provide immediate benefits for producers and buyers: when the International Finance Corporation launched its supply chain training and maintenance program in Kenya in 2011, local farmers more than doubled their crop yield and improved the quality of their coffee.[204] With higher crop yields and more sustainable coffee practices, corporate bean buyers could ensure a more stable and predictable future free from the droughts and gluts of the past.

Whereas providing tax deductions and credits to existing corporations incentivizes these entities to take on a socially responsible path at either for benefit or at least for no risk, the 501(c)(3) tax exemption designation ("501(c)(3) designation") provides a way for non-profit organizations to reduce operation costs.[205] A non-profit obtains the 501(c)(3) designation from the Internal Revenue Code by being operated exclusively for the exempt purposes[206] and profiting neither a private shareholder nor an individual.[207] Additionally, to maintain exempt status, the non-profit must not engage in attempts to influence legislation as a substantial part of its activities or participate in political campaigns.[208] This caveat to the non-

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[202] *New Market Tax Credits Fact Sheet*, NEW MARKETS TAX CREDIT COALITION, http://nmtccoalition.org/fact-sheet/ (last visited Oct. 15, 2017).

[203] 26 U.S.C. § 170 (2015).

[204] *Improving the Productivity of Smallholder Coffee Farms in Kenya*, INT'L FIN. CORP., http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/learning+and+adapting/knowledge+products/project+examples/improving_productivity_smallholder_coffee_farms_kenya (last visited Oct. 15, 2017).

[205] 26 U.S.C. § 501(c)(3) (2016).

[206] *Id.* ("charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition… and preventing cruelty to children or animals"). The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency. *The Concept of Charity*, IRS (1980), https://www.irs.gov/pub/irs-tege/eotopicb80.pdf.

[207] 26 U.S.C. § 501(c)(3) (2016).

[208] *Id.*

profit's form, known under the label of an 'action organization,' limits the utility of the 501(c)(3) designation to existing, for-profit coffee corporations. In recent years, however, mainstream coffee culture has seen a wave of non-profit organizations springing up with the exact focus of improving the industry from the bottom. Two of these industry giants are the sister corporations Relationship Coffee Institute (RCI) and Sustainable Harvest.

2. Transparency: B Corps and Beyond

The RCI and Sustainable Harvest embody the socially responsible, forward-thinking approach that the coffee industry needs in order to thrive in the coming decades. Sustainable Harvest, the first of the two entities to be created, occupies the space of a "B Corp".[209] B Corp, or Benefit Corporation, is a burgeoning business designation devoted to meeting "rigorous standards of social and environmental performance, accountability, and transparency."[210] This status is recognized by 33 states, with pending legislation in an additional six.[211] Sustainable Harvest imports coffee beans from over 15 countries, turning profits around to benefit coffee farmers through their Projects at Origin program.[212] The Relationship Coffee Model is a vast sustainable restructuring initiative that touches upon everything from water management to food security and everything in between.[213] These projects have met with success that indicates a positive correlation between farm-level investment and market value increase: in Peru, their technical training continues to bring in local farmers from across the country;[214] in Tanzania, the provision of micro-irrigation systems freed local coffee farmers from a stagnating food crop.[215] In Rwanda, Sustainable Harvest has partnered with Bloomberg Philanthropies, Women for Women International, and the government

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[209] *About Sustainable Harvest*, B CORP., https://www.bcorporation.net/community/sustainable-harvest (last visited Oct. 15, 2017).

[210] *What are B Corps*, B CORP., https://www.bcorporation.net/what-are-b-corps (last visited Oct. 15, 2017).

[211] *State by State Status of Legislation*, BENEFIT CORP., http://benefitcorp.net/policymakers/state-by-state-status (last visited Oct. 15, 2017).

[212] *Projects at Origin*, SUSTAINABLE HARVEST, https://www.sustainableharvest.com/projects-at-origin (last visited Dec. 23, 2017).

[213] *Projects at Origin*, SUSTAINABLE HARVEST, http://www.sustainableharvest.com/projects-at-origin?hsCtaTracking=a03c8de0-29f6-49df-88af-f9a3b9b13791%7C210eee69-45e7-4788-8b49-3ff11e5db44e (last visited Oct. 15, 2017). Other programs include water management, quality control, biodiversity protection, food security, farm productivity, mobile technology, strengthening value chains, and empowering women in need with knowledge and skills. *Our Model*, SUSTAINABLE HARVEST, http://www.sustainableharvest.com/our-model (last visited Oct. 15, 2017).

[214] Claudia Aleman, *An on-the-ground view of Peru farmer training event,* SUSTAINABLE HARVEST (May 18, 2015), https://www.sustainableharvest.com/blog/an-on-the-ground-view-of-peru-farmer-training-event.

[215] Laura Paslawksi, *Water is Dripping in Kigoma*, SUSTAINABLE HARVEST (June 13, 2011), http://www.sustainableharvest.com/blog/water-is-dripping-in-kigoma.

of Rwanda to bring the Relationship Model to low-income female farmers.[216] The extensive training and restructuring plan there has, in the first three years, given nearly 900 women independence from privately owned processing stations in the Nyaguru and Kayonza cooperative regions.[217] This has given the women of those regions a much stronger grasp on the coffee market and fulfills the social responsibility that B Corporations laud.

The Relationship Coffee Institute was born from the efforts of Bloomberg Philanthropies, Women for Women, and Sustainable Harvest. As a non-profit public benefit organization, it focuses on continuing the project in Rwanda and expanding it to the Congo.[218] RCI pioneered the Sustainable Harvest Premium Sharing Rewards, a program which gives farmers reward points for participating in free training programs, spendable towards coffee harvesting tools.[219] These tools are funded in part by the profits that roasters earn from the value-added price of the roasted beans they obtain from Sustainable Harvest.[220]

Sustainable Harvest, the RCI, Women to Women International, and Bloomberg Philanthropies are just a few of the innumerable actors in the current coffee market. These small case studies highlight the power that actors at all levels of the industry have to effectuate positive change. From the actions of roasters giving back, to sustainable harvest, to the massive donations made by industry giants like Starbucks, giving back to the roots of the coffee industry has been demonstrated time and again to be an investment in the future of the industry, and a stable future at that.

VI. CONCLUSION

The plight faced by laborers in the current market is the result of a myriad of forces that have shaped the coffee industry since the early days of international trade. Some catalysts have been replaced with others; the disruptive rise of *robusta* popularity has been replaced in kind by the drive for unique, artisanal *arabica* varieties that present similar challenges for seasoned and burgeoning farms alike. The volatile market price of coffee and the effect that it has as costs travel up the supply chain continues to be one of the greatest influences on producing countries that heavily rely on coffee exports for their welfare. This volatility is seen not only in the damage it does to producing economies, but the cost-driven lowering of labor welfare standards and the disregard for worker's rights in some producing countries.

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216 *Rwanda Project: High Quality Coffee for an International Market*, RELATIONSHIP COFFEE INST., www.relationshipcoffeeinstitute.org/rwanda-project/ (last visited Oct. 15, 2017).

217 *Id.*

218 *Our Mission: Social and Economic Empowerment*, RELATIONSHIP COFFEE INST., http://www.relationshipcoffeeinstitute.org/about/our-mission/ (last visited Oct. 15, 2017).

219 *Rwanda Project: Sustainable Harvest*, RELATIONSHIP COFFEE INST. http://www.relationshipcoffeeinstitute.org/psr/ (last visited Oct. 15, 2017).

220 *Id.*

With the waning efficacy of international commodity agreements and the reduction of the International Coffee Organization to an advisory agency between coffee producing and consuming countries, alternative sources of market stability center on a dichotomy of choice: do more or pay more. Absent a market-wide consensus to raise coffee prices at the refinery level, positive change can still be effectuated through the utilization of existing mechanisms in various trade and labor agreements, as well as by the actions of interest groups of various legal power. The former relies on the navigation of various trade agreements by signatories and the fight for enforcement, either through mechanisms provided within the agreement or through renegotiation. As touched upon, this process has been brought into play by the United States in its confrontation of Guatemala, with a strong enforcement backing the principle that fair labor standards should not be sacrificed for economic gain. The latter approach, one of social responsibility and its returns on investment, relies on the other interested actors in US coffee culture: the roasters, the brokers, the buyers, and the consumers all have the power to participate in revitalizing the coffee industry from the bottom up. This comes to fruition in a variety of ways, through the utilization of non-profit tax exemptions, the promotion of farm independence, and the power of consumer choice.

This examination of coffee's volatile history cannot do justice, in so many pages, to the sheer depths of change that the coffee landscape has undergone as a commodity, a social ritual, and a cultural staple. Much like that final cup reaching the everyday drinker, this paper represents merely one expression of the ostensibly romantic narrative of coffee. It provides a cautionary tale for a market that has made a fairly recent collision with rapidly advancing technology and the normalization of artisan coffee culture in the United States. As the consumer world stands at the cusp of a new wave of coffee culture, the time has come to sow the seeds of a stronger, more equitable harvest.