

# Trading Fairly and Prompting Decent Work in Global Supply Chains

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This blog post is based on the intervention of Leonard Feld in the webinar on Trading Fairly and Prompting Decent Work in Global Supply Chains that took place in the series of webinars *Sustainability Talks*, on the 21<sup>st</sup> of April, organized by the Nova Centre on Business, Human Rights and the Environment.

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**How can we ensure that Fairtrade companies respect human rights throughout the value chain? Do you think that international certification schemes, such as Fairtrade standards, are sufficient to address the problem?**

The range of companies participating in the Fairtrade System is wide. There are, of course, original producers, but also traders and retailers involved. So, there are very different forms of companies participating. One could argue that these companies are dedicated to address the negative impacts, particularly on human rights along the supply chain, simply because they choose to take part in the Fairtrade system. However, it must be emphasised that participating in Fairtrade is not the same as respecting human rights according to international standards. However, many of the tools that Fairtrade provides are very useful for companies when they wish to comply with their responsibility to respect human rights and the environment. But it is not all they are expected to do, and I think Fairtrade holds the same view that there is more to respecting human rights than engaging in Fairtrade. Not at least because human rights challenges are very diverse. As Elinor mentioned, Fairtrade has particular expertise in sectors like agriculture or in specific textile products. And this is where the strength of the organisation lies. Yet, human rights abuse in the business context is more diverse in practice. Take the example of labour rights issues – an area where Fairtrade holds expertise. With respect to this kind of impacts, Fairtrade offers businesses useful management tools. However, the responsibility to respect human rights requires corporate to take *all* forms of human rights impacts throughout their own operations and value chains into account. For instance, human rights impacts may occur further up or down the supply chain. Insofar, the tools of Fairtrade are useful but not sufficient to address human rights issues comprehensively.

So, if we now come to your question of how to ensure that Fairtrade companies in particular respect human rights throughout the value chain, I would say that – notwithstanding their participation in the Fairtrade system – the same applies as to other types of companies. Very basically, they should commit to human rights by adopting a human rights policy statement and engage in comprehensive human rights and environmental due diligence. Besides, they should engage in appropriate remediation where they contribute to or cause a human rights impact. To facilitate corporate compliance with these demands, we need what the UN Guiding Principles are advocating for, that is, a smart mix of measures combining hard and soft means of regulation.

Importantly, the work of Fairtrade plays into many policy measures. For instance, we need more awareness on the part of consumers and companies, which is something that Fairtrade is contributing to. In addition, we need consumer activism – a means Fairtrade is facilitating by providing consumers with a label that signals compliance with a specific standard and gives more information on the origin of a product and on how it was produced, sourced, developed, etc. We also need multi-stakeholder initiatives to address human rights and environmental issues in specific contexts. Also in this respect Fairtrade is a positive example because the organisation brings stakeholders from all parts of the supply chain together to manage social and environmental concerns. Personally, I further believe that we need the engagement of shareholders and institutional investors that can exert pressure and demand from investee companies to engage in more sustainable sourcing practices. Demanding a participation in Fairtrade or similar initiatives would be one option at this point.

Aside from these soft initiatives, I see great potential in further legislation. On the EU level, we currently have some interesting developments with the recent proposal for a *Corporate Sustainability Due Diligence Directive* as well as the adoption of further transparency laws requiring companies to disclose what they are doing in terms of human rights and environmental due diligence.

**Fairtrade, as well as other soft law approaches to regulating corporate conduct throughout the value chain as to what concerns human rights, labour rights, or environmental protection have consistently failed in establishing responsible business conduct. Do you think a hard law approach is the only possible solution for this problem?**

First of all, I would say that soft law approaches have not failed entirely. The *UN Guiding Principles* as the main framework on business and human rights were adopted in 2011 and today, more than ten years later, we are definitely a few steps ahead. We now have an international framework that is generally accepted as a gold standard for responsible business conduct, we have more dedicated companies that strive to respect human rights and the environment, and we have numerous international actors, such as the OECD, the EU or even organisations like FIFA, which have adopted new guidelines in line with these international standards. These improvements are at least worth mentioning.

But notwithstanding this modest progress, it's also fair to say that we still have a bumpy road ahead of us. The way many companies address human rights issues in practice is still insufficient. Today, only a minority of companies engages in comprehensive human rights and environmental due diligence. There are studies, like the Corporate Human Rights Benchmark Report for 2020, that show that not only there are not enough companies complying with international standards, but that there are also considerable misconceptions among the companies that are taking action. So, some companies do wish to implement tools like a human rights and environmental due diligence process, but they don't fully understand how to put it into practice. For example, some businesses confuse risks to human rights with risks to the company, which are not necessarily the same; or they might prioritise specific human rights issues, not on a risk-based approach, but based on

what is easy to address, or what looks best in the eyes of their investors and so forth.

Against this background, I believe, there is value in adopting legislation and strengthening the role of hard law within the smart mix of measures the EU is currently taking. As the EU is clearly preparing relevant steps, I am very curious to see what comes out of it. Generally, I am rather optimistic that there are further developments coming that might actually change corporate conduct in the long-term by increasing compliance with international standards as well as the quality of human rights and environmental due diligence in practice. However, I still believe that the smart mix approach is the policy strategy that should be favoured – not at least because the adoption of a due diligence law does not automatically lead to an adequate implementation of the law in practice. This will take time and requires sufficient enforcement action, monitoring and disclosure, capacity building for companies so that they fully understand their responsibilities, and a careful consideration of the potential negative effects of relevant EU laws, for instance, in the Global South. So, I believe we have to stay watchful and follow-up on the development of EU hard law on human rights and environmental due diligence. After all, it is an important development, but only one brick in the wall of measures that are necessary to bring about change for right holders and the environment.

### **What lessons can Fairtrade teach us when it comes to protecting human rights throughout the value chain?**

In my view, the experience of Fairtrade can teach us something about the value of transparency, both from an economic perspective as well as from a sustainability perspective. Many global supply chains remain non-transparent – for instance, in the electronic industry with regards to minerals and metals. I think here the example of Fairtrade shows that the traceability of a product and its components is of great value, both economically and from a sustainability perspective. It puts companies in a better position to identify problems in terms of economic efficiency as well as in terms of sustainability. By engaging directly with suppliers, sub-suppliers and other stakeholders up the chain, businesses simply have more and better information to draw on. I think this is a major advantage of Fairtrade that we can learn from.

Supply chain transparency is also very important in the discussion about future due diligence laws. Here, it is crucial to require human rights and environmental due diligence processes that cover the entire supply chain. This is worth mentioning because the proposal by the European Commission for a *Directive on Corporate Sustainability Due Diligence* focuses on so-called ‘established relationships’ – whatever this means in practice. At this point, the experience of Fairtrade may become relevant once again. As already emphasized, Fairtrade encourages continuous and long-term business relationships, which, of course, allow companies down the chain to establish partnerships with their suppliers to address human rights and environmental concerns. In other words, a dedicated and long-term business relationship allows for problem resolution and capacity building also with respect to human rights and the environment. This may be what the European Commission has in mind when it requires due diligence with a focus on established business relationships.

What is also important to emphasise are the risks and limits of certification. Certification schemes are certainly a valuable source of information, but research by academics and NGOs shows that they also have their flaws. In particular, it is very important for companies not to rely only on social audits, but also to engage directly with relevant stakeholders, such as civil society organisations, local human rights defenders or affected right holders and communities.

Finally, I think Fairtrade is a good example showing that demands and standards

concerning human rights and the environment should not simply be pushed down the supply chain – with the risk of overburdening small and medium-sized enterprises with often limited capacities at the outset of supply chains. Supply chain management should rather be a matter of partnership where companies along the chain are working together to adhere to international standards and where they are sharing the costs of compliance. This would be the lessons I would personally draw from the work of Fairtrade.

Finally, there is one aspect that has not been mentioned yet. Fairtrade is a consumer-driven tool, which means that the impact of Fairtrade relies on consumer demand for Fairtrade products. The reliance on consumer demand leads inherently to limitations of the approach. Thus, Fairtrade only makes an impact, a positive impact especially on small farmers and producers, to the extent that Fairtrade products are demanded by consumers. This, in turn, presupposes that consumers are willing to pay a premium for products that have a Fairtrade label. With respect to consumer demand, however, I see a positive development. I looked up some data on the share of the total revenues of Fairtrade products in the past years. And one can see that demand has increased considerably in the past two decades. So, to conclude, I think there is reason for optimism that this trend continues and that Fairtrade products are making up an increasing share on the world markets. This would give the organisation also a greater voice in the debate on international trade.

**At the European level there has been a legislative push for mandatory human rights and environmental diligence. From a policymaking perspective, should Fairtrade be integrated in the human rights' due diligence discourse and legislative proposals or doing that would take the focus away from the Fairtrade movement itself?**

In my view, the question is less about integrating Fairtrade in the development of the proposal, but more about using the Fairtrade scheme at the stage of implementation. As the concept of human rights and environmental due diligence is, as we discussed, broader than the tools provided by Fairtrade. Yet, the more specific Fairtrade tools may serve companies to implement the future Directive effectively, which will certainly be a huge challenge in the upcoming years. I think here Fairtrade has valuable experiences and can play a vital role in helping companies to comply with potential due diligence obligations.

**The upcoming EU directive and maybe also other hard law initiatives that have been brought up in Europe on human rights due diligence, specifically, the ones that have civil liability schemes associated with them, can also foster responsible business conduct as to what concerns Fairtrade licensing. So, in case a company uses Fairtrade certification and does not comply with its standards, if the company is also violating human rights or environmental principles or environmental law, could a lawsuit be brought against this company on that basis?**

I believe, it is important to separate the role of labels like Fairtrade as consumer targeting tools and the role of human rights and environmental due diligence as a management process. So, of course, there are overlaps, for instance, one could imagine the development of a label that guarantees compliance with specific management standards. But I think the two aspects principally have to be distinguished.

About liability in connection with due diligence laws – it might be possible under a future directive to hold companies to account where they have not complied with their due diligence obligations and where the non-compliance directly resulted in a damage on the part of a right holder. To the extent that companies rely on Fairtrade tools to implement their due diligence obligations, compliance with Fairtrade standards may play a role in this context.

Another path for civil litigation involves consumers or consumer organizations, which may file a lawsuit in cases where companies use Fairtrade or other labels without complying to the underlying standards. So, if there is proof of false labelling, companies may be liable under consumer protection law. This is one potential avenue to enforce Fairtrade standards. Similarly, it is possible for companies to bring a claim forward on grounds of unfair competition, where their competitors use the Fairtrade label or similar standards without fully complying with the underlying standards. There is, consequently, some potential for civil litigation where the labels such as Fairtrade are misused. But of course, this presupposes that consumers, consumer organizations and competitors have the necessary information to file a lawsuit against the company in question. This again requires monitoring and investigations by civil society organisations like Fairtrade, the media, human rights defenders, etc. to bring relevant information to the attention of the general public.

What is key in this regard is the sufficient quality of labelling schemes and initiatives. For the approach to work, it is crucial that labels actually stand for compliance with substantive international standards – rather than serving as hollow tools to attract the attention of consumers – thus, greenwashing. At this point, it is worth mentioning the EU Taxonomy Regulation. It defines what is sustainable from an *environmental* perspective. By defining what is sustainable, the Taxonomy helps preventing greenwashing. Importantly, the act only applies to the financial sector – thus, it aims to prevent financial institutions, like banks or investment funds, to promote a financial product, let's say a green fund, without adhering to the new sustainability standards defined by the European Commission. Here, we see the legislator stepping in to define what is environmentally sustainable. Potentially, the standards defined by the Taxonomy may be used in the future for a label initiative. I'm not an expert in this field, but there is potential for the Taxonomy to have an impact on consumer labels like Fairtrade in the future.

### **Do you have any final words you'd like to say today?**

I would like to thank you for the invitation and for the interesting discussion. I very much enjoyed the different perspectives – Elena providing more of an NGO and policy perspective and Margarida with her great input on trade. Both perspectives, I think, are really important, when talking about Fairtrade as an NGO trying to change the power imbalances in the global markets that Elena explained. I also would like to thank the audience, especially the participants asking questions. It is great to see so many people participating in this kind of event. For the future, I think all of us should keep our eyes open and keep researching and looking into the ongoing political negotiations concerning the proposed *Corporate Sustainability Due Diligence Directive*. As we have learnt today, it is worthwhile to consider in this context how actors like Fairtrade may help companies when it comes to the implementation of future legislation. In this respect, there remains a lot of research to be done.

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