



Summary of Changes:

Feedback Received on the Fair Trade USA Draft Trade Standard And Fair Trade USA Responses

November 2013

www.FairTradeUSA.org

© 2013 Fair Trade USA. All rights reserved.

Contents

- 1. Introduction and Background 2
- 2. Comments and responses: Economic Development section..... 3
 - 2.1 Fair Trade Price Requirements..... 3
 - 2.2 Fair Trade Premium Requirements..... 4
 - 2.3 Sustaining Trade..... 6
 - 2.4 Pre-Finance 7
- 3. Comments and responses: Trade section 12
 - 3.1 Physical Product Traceability 12
 - 3.2 Contracts 12

1. Introduction and Background

A Thank You to our Stakeholders

Fair Trade USA sincerely thanks all of our partners, colleagues and stakeholders for providing critical and insightful feedback. Without your commitment and diverse expertise, our Trade Standard would not be as strong as it is today. Based on this consultation, we have made approximately twenty modifications to the standards and compliance criteria. This document explains in detail all the feedback received and how it was incorporated into our new Standard. We will continue to monitor its implementation and seek ways to improve our standards in order to deliver more impact for more people. We are deeply committed to delivering on our promise of economic development.

Background

Fair Trade USA (FTUSA) published the Draft Version 1.0 Fair Trade USA Trade Standard in June 2012, and requested stakeholder feedback through a 60-day online comment period and continued personal communications over several more months, through August 2013. We informed licensed partners and producers about the consultation period, and proactively contacted NGOs, producers, exporters, manufacturers and importers.

During the consultation period we received feedback from 40 different groups from farming, trade, lending, NGO and brand backgrounds--13 Fair Trade producer organizations, four Fair Trade exporters, 16 Fair Trade importers, four third-party lenders and two brands from across the cocoa, coffee, floral, produce, sugar and tea categories, as well as one NGO. Some prefer to remain anonymous, but stakeholders consulted include:

Agrocoex	Asoguabo
Arroyense	Bourbon Specialty Coffees
Sustainable Harvest	Capespan North America
Organics Unlimited	InterAmerican Coffee Corp
Occicafe	COOPAYAAF
CoopeTarrazu	CAC Pangoa
Oro Verde	Prodelsur/ Volcafe Peru
Transmar	Alberts Organics
RGC	Atlas Coffee Importers
Annies Inc.	Triodos Bank
Progreso	Root Capital
Grassroots Business Fund	Sierra Flowers

This paper summarizes the comments received on the content of the Standard and its Compliance Criteria, and how we have addressed these comments in the final version of the Trade Standard. The Final Trade Standard will be posted on the Standards section of our website. In this document, clauses

from the Standard are indicated in round numbers (e.g. ED-FTP 1) and compliance criteria by their decimal point (e.g., ED-FTP 1.2). Please note that additional details regarding definitions of terms can be found in our “Standards Glossary”, which is also available in the Standards section of our website.

2. Comments and responses: Economic Development section

2.1 Fair Trade Price Requirements

ED-PR 1

One stakeholder stated that “the costs of inputs and primary materials are rising, whereas the prices are falling. The FLO pricing research was done a long time ago and does not reflect the current reality of producers anymore.”

FTUSA response:

While we understand the concerns with FLO’s minimum price calculations, we respect what they have been able to achieve and will continue to accept FLO’s minimum prices where possible. We will, however, review Fair Trade pricing where necessary. Fair Trade USA has, for example, recently reviewed the pricing for quinoa, and posted the consultation and its results on the Standards section of our website. The Fair Trade USA Pricing Database is the official reference for Fair Trade Price requirements.

ED-PR 2.3

During this consultation, we also asked stakeholders about how export costs are accounted for if producers are not exporting themselves but the Fair Trade Price is set at the export (FOB) level. (This situation occurs only in certain supply chains and mainly in the coffee and cocoa categories.)

The draft compliance criterion was worded in such a way as to imply that after the producers had sold the product to exporters at the Fair Trade FOB price (or higher) minus any export costs, the exporters had to then retroactively reimburse producers if they eventually sold that same product to importers at a higher price, but exporters were not able to recoup any losses if the market moved in the other direction. Stakeholders explained that this is not how Fair Trade pricing is audited in other systems, and a majority of respondents questioned whether it is fair or realistic to require exporters to pass through gains while absorbing losses. Others explained that compliance with this requirement would require a specific type of contracting, where the Fair Trade producer asks for the price to be fixed to secure the floor price, while leaving open the option to re-fix the price if the market price rises.

FTUSA Response:

Fair Trade USA concluded from these conversations that the core principle to follow is that exporters must pay producers at least the Fair Trade Price (Fair Trade Minimum Price or relevant market price, whichever is higher) at the FOB level on the day of fixing the price with the

producer, minus agreed deductions. The new compliance criteria clarify this principle in the following scenarios:

- In the case of open contracts, the standard requires that the producers decide when to fix the price. In this case, producers must be paid at least the Fair Trade Price on the day the price is fixed, minus agreed deductions. If the exporter then holds on to the product and makes a Fair Trade Certified sale later and in the interim the Fair Trade Price has increased or decreased, no retroactive adjustment need be paid (or charged to) the producer.
- When the exporter and producer agree on an outright contract and the price is fixed the day of the purchase (the standard allows for this in specific scenarios such as when the producer has product in stock at the moment of contracting), the same rule applies: producers must be paid at least the Fair Trade Price at the FOB level on the day of the purchase minus agreed deductions. If the Fair Trade Price later goes up or down, no retroactive adjustment need be paid or charged.

2.2 Fair Trade Premium Requirements

ED-FTP 2

Two stakeholders said that payment deadlines should be extended when there are quality claims.

FTUSA response:

The Trade Standard focuses on the general requirements of contracting, rather than for exceptional circumstances such as quality claims. There are additional safeguards for producers in products where quality claims are more prevalent, such as produce, but in general the Standard does not regulate this topic. For most contracts, quality claims would be covered via breach of contract requirements. Under general contract law, where quality is defined as a material term in a contract, the failure to deliver a product of such quality would be considered a breach in the contract by the seller. Because of this material breach, the buyer has the option to refuse to buy the goods or to renegotiate the contract, as the buyer cannot be expected to pay the previously-agreed fixed price for a product of lesser quality.

Introduction of reference to PACA for the produce category

Fair Trade USA consulted extensively on whether we should embed references to PACA, the US Perishable Agricultural Commodities Act, within our Trade Standard for the produce category. PACA details the terms of trade requirements for produce imports to the US, and is regulated by the US Department of Agriculture. PACA protects produce growers and importers by establishing and enforcing a code of fair business practices for produce sellers and buyers and by helping companies resolve business disputes. Fair Trade USA introduced a reference to PACA law in the Draft Trade Standard in

order to simplify compliance management for Fair Trade produce growers and importers who must abide by both PACA and Fair Trade standards. Additionally, Fair Trade USA aims to ensure that growers stay within their “PACA trust rights” and do not sign a contract that nullifies the rights and protections that PACA offers them.

The majority of the stakeholders that we spoke to responded positively to the introduction of reference to PACA law in the Trade Standard and welcome this as a simplification of their compliance management, because they have to comply with both standards. Some respondents thought that PACA law governed the transactions between US produce traders only, and did not apply to international trading. However, the PACA Division at the USDA confirmed that PACA law does govern produce imports to the US.

ED-FTP 2.1

Produce Category: The Draft Trade Standard required that payment terms in the produce category be in line with PACA law. Additionally, the standard required that where banana is purchased at the farm gate or ex works level, the Fair Trade Payer makes the payment within 15 days after delivery of the product.

All respondents supported the payment terms given in the Draft Trade Standard. Several importers and growers noted that payment terms differ between different categories and regions. However, all respondents agreed that PACA payment terms strengthen the Trade Standard as long as producers understand they can negotiate better terms.

FTUSA response:

In the final Trade Standard, Fair Trade USA aligned the payment terms for Fair Trade produce transactions to PACA law. In October 2013 Fair Trade USA held a webinar for produce growers on PACA law and how it relates to quality claims, independent inspections and contracts.

ED-FTP 2.2

In the Draft Trade Standard, Fair Trade USA introduced the option that, where Premium payments are made separately from payment for product (for instance to the Fair Trade Committee’s account instead of the exporter’s account), the Premium payments can be made monthly or, where Premium amounts are small (below USD 500), quarterly, rather than with each Fair Trade transaction. This measure was intended to address the high cost of wire transfers, especially in product categories where product is shipped frequently, such as weekly shipping in flowers or produce.

Feedback on this standard was varied. One stakeholder felt that this was a useful approach. Another stakeholder indicated that the buyer should have to pay the full amount for every invoice. Three stakeholders recommended that any variation in the timing of payment of price or Premium should be agreed upon between the Fair Trade Payer, the producer and the Fair Trade Committee in writing – either in the sales contract or in a separate agreement. Two producers mentioned that they have used this method in the past. One stakeholder felt that allowing the Fair Trade Payer to pay even small amounts of Premium at a later date seemed arbitrary. Another producer noted that Premium payment

rules should be more flexible, not less, because (1) more rules slow down business, discouraging companies from participating in Fair Trade and (2) Fair Trade Committees are not reliant on Premium payments for cash flow in the same way that traditional businesses are.

FTUSA response:

As a compromise, Fair Trade USA will continue to allow Premium payments to be made in lump transfers, rather than with each transaction. However, the final Trade Standard requires that these lump payments are communicated at the end of each month and paid within 30 days, rather than quarterly. Fair Trade USA will allow different payment schedules only if the Fair Trade Payer and Fair Trade Committee/ Smallholder Organization have signed documentation of their agreement to this payment schedule and submitted this documentation to Fair Trade USA, and in such cases they must still be made at least quarterly.

2.3 Sustaining Trade

ED-ST 2

In most Fair Trade supply chains, producers sell directly to a Fair Trade Payer, who pays them the Fair Trade Price and Premium directly. In some supply chains, however, producers sell to an exporter ('conveyor'), who then sells to the Fair Trade Buyer. In this case the conveyor receives the Fair Trade Price and Premium from the buyer and passes it through to producers. Fair Trade USA specifically sought feedback from stakeholders on the level of transparency from conveyors to producers. The Draft Trade Standard required Fair Trade Conveyors to share copies of the Fair Trade contracts signed with Fair Trade Payers with the producers from whom they purchase Fair Trade products.

Fair Trade USA spoke with eight Fair Trade producers, seven Fair Trade exporters, four Fair Trade importers and one market analyst specifically about this topic. The feedback was very mixed, and it became clear that the significance of this requirement depends very much on the set-up of the supply chain. In different supply chains, exporters assume varying roles. Where exporters act simply as a link and service provider between importers and producers, prices are fixed at the same time throughout the supply chain. In these cases, Fair Trade contracts were reported to be shared throughout the supply chain with great transparency on prices received by each party and costs concurred by each party. The same feedback was received from supply chains where there is some level of vertical integration between producer and exporter, for instance with the cooperative holding a controlling stake in the export company.

Feedback was more varied from supply chains where exporters act as traders and assume the risk of market fluctuation. In some of these supply chains, producers and exporters reported that either Fair Trade contracts with Fair Trade Payers were shared, or that a report summarizing the information given in Fair Trade contracts (such as volumes, Price, and Premium) was provided at the end of the trading season. In these supply chains, some Fair Trade Conveyors were less prepared to share the contracts that they sign with Fair Trade Payers with the Fair Trade producers from whom they bought Fair Trade

product. Some of the reasons stated were that there is too much sensitive information in contracts, for instance margins and pricing, or that producers might bypass exporters in the next harvest if they knew the ultimate buyer.

Several stakeholders suggested that contracts do not need to be shared as long as it is clear in the original contract between the producer and the exporter how prices will be set and how Premiums will be communicated and paid (which is already required under TR-PR 2.3). Other suggestions included making documentation including Price and Premium (for instance a purchase receipt) available without exposing the full contract, or having the auditor check Premium payments due to the producer when auditing the exporter.

FTUSA response:

Due to the very mixed nature of the feedback received, Fair Trade USA has kept the core and intent of the standard intact, while taking into account the concern expressed by some stakeholders that Fair Trade producers may use knowledge of the final buyer of their product to cut out their current trade partners. The final Fair Trade USA Trade Standard will therefore require that Fair Trade conveyors provide a report to their Fair Trade suppliers at the end of each trading season (at least once per year) that details the volumes sold as Fair Trade Certified as well as Fair Trade Price and Fair Trade Premium received, including price differentials and Premium calculations if applicable. We should note that most Fair Trade Price and Premium payments are made directly by Fair Trade buyers to producers, and that conveyance is only found in some cocoa, coffee, and sugar supply chains.

2.4 Pre-Finance

Due to the introduction of additional requirements and clarifications to the pre-finance section of the Draft Trade Standard, Fair Trade USA consulted extensively on this section. We spoke to four Fair Trade producers, one Fair Trade exporter, six Fair Trade importers, four third-party lenders, and one NGO about the Pre-Financing section of the Trade Standard.

Scope of applicability

In order to achieve fairness and consistency, multiple stakeholders said that pre-financing should be available for all producer structures, not only Small Producer Organizations. One stakeholder disagreed, recommending to restrict pre-harvest financing to Small Producer Organizations, including cooperatives.

FTUSA Response:

Fair Trade USA followed the recommendation of the majority of stakeholders. The final Trade Standard will apply the pre-financing standard to all Fair Trade producers, no matter which Standard they are certified against. Because the standard puts the onus on the producer requesting support for accessing pre-finance, it can be assumed that producers will self-select and only those that are in need of pre-harvest financing will ask their buyers for assistance.

Most stakeholders agreed that producers across all categories should be able to request support from buyers to access pre-harvest financing. Additionally, one stakeholder commented that the provision of pre-harvest financing should depend on the existence of sales contracts with firm volume commitments, noting that fixed volume contracts are not required for the flowers and plants category in Fair Trade.

FTUSA Response:

Pre-harvest financing is a very common need in some categories, while producers in other categories will likely not request this type of financing. The need for pre-harvest financing depends on the harvest cycles and is of special importance in industries with one or two annual harvest seasons, such as coffee or cocoa. The standard does apply to all categories, but given that the onus is on the producer to request support for pre-harvest financing, it will likely not be actually applied where it is not necessary or not possible due to the lack of sales contracts.

ED-PF 1

There was consensus among almost all respondents that most Fair Trade Payers are unable to provide direct pre-harvest financing due to their own limitations in cash flow and access to capital. All producers commented that they receive almost all pre-harvest financing through third-party lenders. Importers either commented that they are unable to provide direct pre-finance altogether, or that they are only able to provide pre-harvesting loans to a very small subset of their numerous suppliers.

We were pleased that almost all of the respondents, with their varying backgrounds and perspectives on Fair Trade, agreed with the core of the standard and believed that our additions strengthened the standard. Specifically, they agreed that upon request from producers, Fair Trade Payers must either provide direct pre-harvest financing to producers, or support the producer in accessing pre-financing from a third-party lender. The majority of the respondents also agreed that the “either-or” statement of the standard solves for this issue. As one cooperative noted: *“If it is possible to give direct pre-finance – perfect. If not, then it is important that the buyers help the cooperatives with pre-financing from social lenders and banks”*. One importer felt that: *“It is right to be more transparent about how the pre-financing process actually works: saying that the Payer either provides the financing or helps the producer to get it. It doesn’t matter what the source of the funding is, it matters that the farmers get it. There are many avenues for suppliers to get financing, but . . . Payers must be willing to help”*.

However, one cooperative commented that the standard should not allow importers to choose between supporting producers via third-party lenders and directly providing pre-harvest financing. The respondent argued that loans through third-party lenders are generally readily available, yet less

desirable than direct pre-harvest financing because of the higher interest rates and paperwork associated with these third-party loans.

One third-party lender, on the other hand, thought that the standard should not allow for the provision of direct pre-financing by buyers to producers, as buyers do not have the capacity or skills of third-party lenders. They indicated that this may create an undesirable dependency on the buyer that could hamper sales negotiation.

FTUSA Response

Based on the consensus across the majority of the many stakeholders who provided input, the final Trade Standard continues to require that upon request from the producer, Fair Trade Payers either provide direct pre-harvest financing or support the producer in securing pre-harvest financing via a third-party.

While almost all respondents agreed that the pre-financing standard should require Fair Trade Payers to support Fair Trade producers in accessing pre-harvest financing from third-party lenders, there were different ideas on what this support should look like.

The majority of the producers consulted thought it was valuable to have buyers serve as a credit reference and recommend them as candidate for loans to third-party lenders. This was especially true wherever producers work with local banks. Importers said that they would likely be able to provide this kind of recommendation. As one social lender pointed out, however, such references should not be required of buyers across the board, as the ability to serve as a credit reference depends on whether the producer is actually recommendable.

FTUSA Response

Based on this feedback, the final Fair Trade USA Trade Standard will require that Fair Trade Payers serve as a credit reference and recommend producers to lenders upon producer request. However we have added the condition that this only applies if a buyer has successfully sourced from the producer in the past.

Producers also agreed that it is helpful if importers confirm the validity of their purchase contracts to third-party lenders, so that these agreements can be used as collateral. This again seemed especially useful when producers work with local banks, which often require such confirmation. One of the social lenders pointed out that the sales contracts usually do not require additional confirmation, and one stakeholder mentioned that for some product categories, contracts would not be valuable as collateral for third party lenders since there are not strict volume commitments in them. Nevertheless the majority of the importers agreed that confirming the validity of contracts is something that they are willing and able to do.

FTUSA Response

As recommended by the majority of stakeholders, the final Trade Standard will require that importers confirm to third-party lenders that the Fair Trade contract is valid and can be used as collateral for loans (if producers request help with accessing pre-financing).

Stakeholder feedback showed that the most effective and crucial action to support pre-harvest financing for producers is the importers' willingness to funnel payments through third-party lenders. Producers, importers and social lenders all agree that this is how the producers receive pre-harvest financing for the majority of Fair Trade contracts.

FTUSA Response

As recommended by the majority of stakeholders, the final Trade Standard USA will require that importers are willing to funnel payments through third-party lenders in order to enable producers to receive pre-financing (if producers request help with accessing pre-financing).

Two social lenders confirmed that these three actions from Fair Trade buyers (serving as references, validating contracts, and funneling payments through lenders) will help producers access third-party pre-harvest financing. Other ways in which importers can help producers to receive pre-harvest financing would be to help in the due diligence process by providing information on the quality and reliability of the product, to guarantee loans, or to sign long-term contracts and provide letters of intent.

Some stakeholders were concerned that the standard implied that they had to be co-signatories on the loan. One importer commented that there could be a reputational risk to requiring something that could be harmful to the businesses of buyers of Fair Trade products, for instance if buyers are held responsible or liable by the financier or lender in cases where the producer paid late or does not pay at all.

FTUSA Response

As recommended by stakeholders, Fair Trade USA has clarified in the standard that buyers are not liable for re-payment of third-party loans. The standard continues to require support with pre-financing in the three actions that are discussed above, since they do not represent a financial risk to buyers. The applicability of the standard will depend on the existence of sales contracts with firm volume commitments, which are required in all product categories except produce and floral.

The Draft Trade Standard stated that assistance with pre-finance is only required when there is a trade relationship that is at least one year old. We received very mixed feedback on this. Some stakeholders commented that this would be detrimental to fledgling producer groups who have a clear need for credit, especially during the critical first year of a buying relationship. Lack of access to financing might contribute to a cooperative's failure to fulfill the terms of its contract, so it would be in the best interest of the buyer to aid in access to financing for the producer. On the other hand, several other stakeholders indicated that providing direct pre-harvest financing or recommending producer groups to

third party lenders with whom they have no relationship and no experience with involves a great deal of risk, and felt that a one-year relationship was acceptable as it allows time to build trust and confidence.

Other stakeholders felt that one year was too short a time period, and that two to three years was more realistic for establishing a relationship. Finally, there was a recommendation to add to the standards' guidance that buyers that have not had to secure pre-financing for a producer before seek access to the Finance Alliance for Sustainable Trade (FAST).

FTUSA response:

Due to the mixed feedback, we will remove the "one-year-rule" from the standard, giving producers the opportunity to request support with pre-financing whenever they need it.

ED-PF 2

One stakeholder commented that when the buyer is directly pre-financing the producer, it is not realistic to require the buyer to charge only the same interest rate as that which it pays on its own line of credit, because there are additional risks and costs to consider. This stakeholder suggested that the interest rate being charged should be equal to or less than the rate charged by other social lending institutions.

FTUSA response:

We understand the challenges in providing direct financing. However, the final Trade Standard will continue to prohibit Fair Trade Payers providing direct pre-finance to producers from charging interest rates on this financial service. Fair Trade Payers who find themselves unable to bear the risk of pre-financing loans without charging interest can opt to support producers by helping them to access pre-financing through other avenues.

ED-PF 3

One stakeholder indicated that it is common for product delivery delays to occur, and that it should be part of the standard that if there is pre-financing on a contract, the producer organization must communicate any changes to the contract (i.e. delivery date, pricing, quality, or cancellation) to the lender immediately.

FTUSA response:

We agree that efficient communication among all three partners is crucial for successful loan provision. However, the scope of certification against the Trade Standard is limited to the relationship between the Fair Trade Payer and the producer and does not include the relationship between producer organization and lender.

3. Comments and responses: Trade section

3.1 Physical Product Traceability

TR-PT 4 and TR-PT 5

One stakeholder mentioned that the physical product traceability requirements, as written, are easy to comply with. This stakeholder also acknowledged the difficulty in segregating Fair Trade product from non-Fair Trade product for certain product categories, but indicated that waiving this requirement should only be a temporary allowance. This stakeholder recommended setting a limited time period for mass balance and voluntary adherence to physical product traceability requirements, and indicated that any product that continues to use the mass balance method after a set time period should not be permitted to label the product as Fair Trade.

FTUSA response: Fair Trade USA critically assessed the exemptions of physical traceability requirements for the product categories where it is allowed (currently sugar, fruit juice, tea, and cocoa), but found that requiring their physical traceability, or phasing in such a requirement, would prevent certification and benefits for thousands of small producers who grow these crops. Smallholder growers in these categories usually do not have their own processing facilities, and sell small volumes of product to large-scale processing facilities. In many cases, running separate processing batches in these facilities would be economically unfeasible, due to the small volumes of Fair Trade certified product and the time sensitivity of the processing. These factors would ultimately force the exclusion of small-scale producers from Fair Trade certification unless physical traceability requirements are adapted to reality. Our standard on physical product traceability is consistent with that of other leading certification groups.

3.2 Contracts

TR-CT 1

For produce contracts, one stakeholder mentioned that it is often unknown how much volume is needed or even will be delivered by producers until shipment day. This stakeholder felt that it is necessary to be able to give a wide range of volume in the contracts, and then adjust those weekly as needed.

FTUSA response:

The Trade Standard requires that Fair Trade contracts include a volume specification. However, in the produce category this requirement is considered as fulfilled if a volume *range* is given and purchase orders are then used to amend the contract. This is specified in the compliance criteria

applicable to produce only. No changes to the final Trade Standard are needed in order to allow for this practice in the produce category.

TR-CT 1.5

Regarding defaults on coffee contracts, several stakeholders acknowledged that advance and immediate notice is helpful, especially in terms of finding alternative supply or avoiding unnecessary disruptions to the supply chain, but felt that a two month notification requirement is a bit arbitrary, does not ultimately solve the issue, and may even give the impression it is acceptable to default on contracts. They felt that timeframes for notification of default can vary, so this should be outlined in the guidelines, not the standard.

Some stakeholders said that suspension for a contract default seems fair, but decertification does not result in getting the product to the buyer. Additionally, contract defaults are not always because of an exporter's actions, so this should not be considered a major non-compliance for an exporter, but that it should be a major non-compliance for a producer.

One stakeholder suggested that when a supplier defaults, the supplier should have to share some of the cost of the replacement, specifically the difference between the contracted price and the cost of the replacement product (not the whole cost of the replacement product). In terms of auditing this requirement, the difference could be deducted from the price in the next contract; the risk being that it may incentivize the supplier to sell to a different buyer in the next harvest.

Another stakeholder suggested that there should be a requirement in the standard to report a contract default to Fair Trade USA, which could result in an investigation and documentation of the reasons, circumstances and decisions regarding the default.

FTUSA response:

Based on feedback from stakeholders, Fair Trade USA has removed this draft requirement from the final Compliance Criteria. Instead, Fair Trade USA will outline its expectations on unavoidable defaults in its guidelines. Defaulting producers and their exporters should follow Fair Trade USA expectations and aim to avoid suspension through: early communication of defaults to their buyers, a willingness to negotiate in good faith with their buyers and efficient communication on the issue with all relevant certification bodies.

TR-CT 1.6

One stakeholder felt that there needs to be an arbitration process or panel for defaults, or else that the terms of rectification of a default need to be outlined in the original purchase contract. This stakeholder felt that the supplier must be protected in case of acts of nature or a force majeure.

FTUSA response:

The Trade Standard already requires an arbitration mechanism (TR-CT 1.1), and for the produce category reference to force majeure is also required (TR-CT 1.7). Based on this feedback, Fair

Trade USA will additionally specify in guidelines that suppliers are protected in case of force majeure.

TR-CT 1.7

One stakeholder suggested that producers be required to give several weeks' notice if they are short on volume, as often they do not communicate shortages until the product is on the water.

FTUSA response:

Fair Trade USA will add to the contract requirement guidelines in the Trade and Producer Standards that volume shortages and potential defaults should be communicated as early as possible.

TR-CT 1.7

A stakeholder commented that two to three weeks of shipments are needed prior to signing contracts in order to understand the quality of the product, especially in produce.

FTUSA response:

FTUSA will not adapt the Trade Standard, but will clarify in guidelines that sample shipments are permissible.

TR-CT 2 and TR-CT 3

The Draft Trade Standard excludes buyers of flowers and plants from the contract requirement, yet TR-CT 2 specifies that Fair Trade Payers of flowers and plants provide letters of intent to their suppliers. The letters of intent function as a purchase commitment; buyers must purchase at least 50% of the volumes indicated in the letters of intent in the first year of a trading relationship and 75% in subsequent years (TR-CT 3).

Based on consultation with certified and non-certified farms, importers and distributors, Fair Trade USA confirmed that purchase contracts are not customary in the floral industry. One buyer additionally commented that the purchase commitment linked to the letter of intent is counter-productive, as it leads them to make very cautious volume predictions in the letters of intent. Another agreed that purchase commitments are hard for importers to make, yet also explained that a part of the flower business relies on "standing orders" that are made for the upcoming season based on the purchases made in the previous year. Finally, flower farms felt that the letters of intent and purchase commitment are useful for them, help them to plan, and are usually reflective of reality, as they are based on the previous year's purchases.

FTUSA Response:

Based on positive feedback from flower farms that letters of intent are both valuable and realistic, Fair Trade USA will continue to require letters of intent and purchase commitments in the flowers and plant category.

TR-CT 4

In produce, stakeholders responded that letters of intent seem redundant, since anything in such a letter would also be in the contract and/or purchase order.

FTUSA response:

Based on this feedback and the fact that purchase contracts as well as purchase orders are required in the produce category, we have decided to remove the requirement regarding letters of intent, as we agree that this is redundant. The contract should define how and when volumes can be adjusted and that the volumes be adjusted in writing or via email, based on producer's availability and importer's demand. Volume confirmation then occurs when the purchase orders are placed.

TR-CT 5.2

Produce Quality Claims:

Some stakeholders felt that the PACA law was good and protected producers fairly well in regards to quality claims. They also stated that it is advantageous to use PACA in the standard because it is understood by inspectors, shippers and warehouses. While one producer mentioned that they do not always want to use PACA inspectors as these are expensive, another producer mentioned preferring to work with PACA inspectors. One stakeholder noted that any variation from PACA could be explicitly outlined in the contract, for instance for higher quality grades.

Conversely, one stakeholder suggested that rather than refer to PACA, the standard should require that the purchase contract clearly outline how quality claims will be handled, specifically that: 1) all product will be inspected within an agreed number of business days, 2) the quality inspection will be done by an agreed third-party service, 3) all claims must be submitted within an agreed number of business days, and 4) that any additional quality requirements should be communicated and agreed upon prior to shipping so that the supplier has an idea of what they will be checked against. Other stakeholders echoed that PACA does not provide enough flexibility in terms of the quality inspection, expressed skepticism with regard to the skills and knowledge of USDA inspectors, and would prefer to make inspections optional, at request of the buyer or supplier. This would reduce cost of inspections; one stakeholder suggested that the buyer could photograph quality issues along with lot numbers and send those directly to the supplier in order to increase understanding of quality issues on behalf of the supplier.

Some stakeholders requested clarity around what "acceptance" and "quality at arrival" means, and at what point. One stakeholder said that "acceptance" meant unloading the product for any reason other than inspection, and that acceptance for importers happens after arrival in the U.S., not at the port of origin.

FTUSA response:

Based on this mixed feedback, Fair Trade USA will continue requiring that the purchase contract clearly indicates that quality claims are in line with PACA, and also outlines how quality claims will be handled. This allows trade partners to define quality claim mechanisms within the PACA law restrictions. In August we held a PACA 101 Training for internal staff and will be holding a similar training for growers later this month in order to increase producers' understanding of PACA law and their rights.

TR-CT 9

Several stakeholders indicated that they are only able to do Fair Trade via retro-certification, since at the time of purchase they do not know what will be sold as Fair Trade. They felt that the only way to remove systemic retro-certification (currently allowed in sugar and tea) would be to lower Fair Trade Premiums, since with retro-certification buyers risk paying Fair Trade Premiums on large quantities of product that may never end up being sold as Fair Trade. One stakeholder felt that retro-certification allows producers to sell more products and get paid the Fair Trade Premium, while giving buyers additional flexibility in their supply chain. Another outlined that, due to processing and industry practices, both retro-certification and mass balance alternatives are necessary in order to participate in Fair Trade.

In contrast, other stakeholders remarked that retro-certification weakens buyers' clout with suppliers due to the inherent delay in Premium payment, causing suppliers to be less inclined to work with Fair Trade buyers. Finally, one stakeholder wanted to know if or how Fair Trade USA will help or require operators to move away from a high risk retro-certification model, and what steps Fair Trade USA is taking to prevent abuses in the system, which this stakeholder feels presents risks to the continued support of stakeholders and the integrity and credibility of the system overall.

FTUSA response:

Due to the particular nature of the US sugar and high-quality tea markets, which are imported infrequently and long in advance of sales, Fair Trade USA feels it necessary to continue to allow systemic retro-certification in the tea (camellia) and sugar categories, as this enables a greater volume of Fair Trade sales and more benefits to farmers and workers. For other products, Fair Trade USA will continue to grant exceptions on a case-by-case basis if there is benefit to producers.