



LABEL BEFORE LABOR:

Fair Trade USA's
Dairy Label
Fails Workers

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Label Before Labor: Fair Trade USA’s Dairy Label Fails Workers

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INTRODUCTION

Fair Trade USA has released their new “Fair Trade Dairy” label in partnership with Chobani - it’s another step in the race to the bottom for certification standards. While this comes as a disappointment, it is no surprise - this program has been opposed by farmworker and human rights organizations since it was first announced. When a program is denounced by the very people it is supposed to benefit - farmworkers - it would seem that Fair Trade USA should re-examine their process and objectives. Instead, they have rolled out a label that is essentially all marketing: there are currently no publicly available standards backing the labeling claims of “Fair Trade Dairy.”

Their marketing is also inaccurate. In an interview promoting the new label, Fair Trade USA’s CEO Paul Rice claims that their label represents, “a rigorous 200-point checklist of social, labor and environmental criteria.”¹ But the standard piloted to back that label explicitly

omits the environmental criteria.² At every turn, their marketing goes before the actual standards that back the promise made to consumers.

The lack of published standards make it impossible to make a detailed analysis of the dairy standard. Instead, the following critique is based on review of the draft standard released in advance of the pilot as well as our decade of experience watchdogging fair trade labeling claims, and specifically Fair Trade USA’s Agricultural Production Standard (APS)³, on which the dairy standard is based.

The critique breaks down into four key areas, reviewing Fair Trade USA’s:

- Inadequate standards development process
- Standards that are not fit for purpose
- Lack of enforcement mechanisms

Finally, we also review the rising tide of research that shows that corporate-developed and led certifications are inadequate and point instead to existing models that are better suited to defending workers’ rights and safety.

INADEQUATE STANDARDS DEVELOPMENT PROCESS

Fair Trade USA's Dairy program was developed to support the "Worker Wellbeing" pillar of Chobani's Milk Matters initiative. Yet since its initial announcement, this program has been opposed by the very farmworkers it claims to benefit. Dangerous, even deadly working conditions have been documented on the New York dairy farms where Chobani sources milk for their yogurt. In conjunction with academic scholars, the Workers' Center of Central New York (WCCNY) and the Workers' Justice Center of Central New York co-authored a damning report, titled *Milked: Immigrant Dairy Farmworkers in NY State*.⁴ This report was the basis for an extended campaign calling on Chobani to address conditions in their supply chains. Yet the statements from WCCNY chronicle a series of refusals from Chobani to engage with workers and their organizing and instead to pursue Fair Trade USA for a corporate social responsibility partnership. In 2019, WCCNY issued a statement declaring,

"There is no fair trade without workers' rights. And respect for worker wellbeing has to include respect for workers' right to freely associate. You say that you want to empower dairy farmworkers. Well, our power comes from having a collective voice to stand up for our rights."⁵

Chobani has continued not to engage with these workers' organizing directly. And Fair Trade USA willingly entered into this ongoing dispute to develop a certification. In press following the release of the label, a Fair Trade USA spokesperson spoke of Fair Trade USA being "a voice for the voiceless."⁶ This kind of savior language glosses over the fact that they are applying their label in a situation where workers are organizing and have a strong, collective voice. It's just not saying what the company wants to hear.



A “SHAM PROCESS” - FAIR TRADE USA’S STANDARDS DEVELOPMENT

Since its inception, the “fair trade dairy” standard development process has faced opposition from those who should be its most committed stakeholders. Last fall, when the draft standard was released, we were among 30+ workers’ and human rights organizations who sent a letter⁷ to Fair Trade USA refusing to engage in the pilot and stakeholder comment period, dubbing it “a sham process” and “an exercise that doesn’t reflect the needs and values of workers.”

This opposition was grounded in an assessment that the process was not designed to actually incorporate workers’ feedback. Previously, labor and human rights groups had expressed concerns about their participation in the development of both Fair Trade USA’s apparel⁸ and domestic produce⁹ standards. Despite setting standards that claim to benefit workers, Fair Trade USA does not have any requirements for worker organizations or unions to be represented or have a majority voice on either their standards-setting council or governance or advisory board. In addition to no requirement for representation, there is no sitting workers’ organization representative on either of these bodies.¹⁰

These concerns about the standard development process are not merely movement organizations disagreeing as to a theory of change or methods. While Fair Trade USA’s statements mention that they are members of the international body ISEAL to underline the rigor of their standards, their flawed development process does not adhere to ISEAL recommendations in several key regards. ISEAL Codes of Good Practice¹¹ set out principles for standards development, as well as basic requirements. These include requirements for public consultation, including the requirement that “Stakeholders have sufficient time and opportunity to provide input on the standard and can see how their input has been taken into account.”¹² Fair Trade USA held a public comment period - and then skipped straight to selling yogurt tubs with their “fair trade” label on them. Over a month after the product appeared on shelves, they have not published a final dairy standard, or provided information on worker organizations they consulted with, or how that feedback was been implemented, if at all - all of which are supposed to be made publicly available.¹³

Worker organizations that Fair World Project has consulted with remain unsure if they have participated in stakeholder processes. Fair Trade USA carried out informal “listening sessions ” as part of another

conference and may have also interviewed workers on a farm. However, these workers remain unclear who they spoke with or what their affiliation or purpose was. According to ISEAL guidelines, these consultations are part of the standards development process.¹⁴

Further, weeks after the label launched and the pilot was supposedly completed, organizers confirmed that workers on farms that were supposedly participating in Fair Trade USA and Chobani’s pilot program were unaware of the program or what it meant for their work. If workers are neither involved nor aware of the program, it is clear that any claims to “empower” them are no more than feel-good marketing copy.

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STANDARDS NOT FIT FOR PURPOSE

A flawed process is unlikely to yield strong results. While Fair Trade USA's Dairy final standard remains unpublished, it is impossible to comment specifically on the additions. However, there are key issues that were not addressed in the additions to their main Agricultural Production Standard (APS) that were piloted that will be addressed here.

In short, one of the key flaws is that Fair Trade USA is attempting to take a one-size-fits all approach to their agricultural standard. This is basically the same standard that certifies coffee farms with just a few acres of land as well as massive banana or tea plantations – or produce farms in the U.S. This model was initially developed to protect the interests of small-scale coffee farmer co-ops – it is not designed or equipped to protect the rights of workers in a very different economic and political environment.

U.S.-based dairy farms are quite different from small-scale coffee farms in a number of ways, from the risks and dangers that workers face on the job to the degree of mechanization on many dairy farms. That means that a farmer milking hundreds of cows can have just a few workers. Workers on small farms are already uniquely vulnerable. The *Milked* report estimates that 80% of workers on New York dairy farms surveyed live and work on farms with too few workers to fall under Occupational Safety and Health Administration (OSHA) jurisdiction.¹⁵ That means that even in cases where someone dies on the job, OSHA is prohibited from inspecting, regulating, or sanctioning small farms, which make up the majority of U.S. dairy farms. Some small farms are also exempt from some U.S. minimum wage laws for farm workers.¹⁶ The majority of farmworkers are also undocumented, meaning that threats of deportation loom large in all on- and off-farm interactions with authority figures.

Fair Trade USA's standards only exacerbate this vulnerability - and gloss over it with a veneer of fairness. Many critical workplace protections that are ostensibly included in the standard do not apply to farms with fewer than 6 workers.¹⁷ This exemption, and the ways that fair trade certification standards fail to improve livelihoods for workers¹⁸ on the smallest farms has been previously criticized by researchers.¹⁹ Human rights apply



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to all people, regardless of the size of their workplace. Yet the scale of a coffee farm with just a few hired workers is vastly different than a dairy farm, where just a few hired workers can tend to hundreds of cows.

This one-size-fits all approach allows a dairy farmer with hundreds of cows and producing as much as 1.5 million gallons of milk per year to slide through an exemption written for cocoa farmers who might make just \$1 per day. The hazards, challenges, and working environment are vastly different. To extend that same exemption is a massive loophole and one that undermines any claims of focusing on workers' safety, let alone rights.

Farms employing fewer than 6 workers can be certified with the following items only listed as a best practice, not a mandatory requirement:

- Pay slips or written contracts,
- Access to first aid supplies (required only after year 3 of certification) or medical care for workplace injuries;
- Safe, well-maintained buildings, fire escapes, etc.;
- Documentation of safety instructions and recordkeeping of workplace accidents;
- Limits to overtime;
- Know your rights under Fair Trade USA & ILO standards trainings; policy & training on sexual harassment,
- Grievance policy & procedure and a record of grievances filed;
- Non-retaliation for using grievance procedure;
- Notice of Fair Trade USA complaints procedure.

Further, for farms with fewer than 6 workers, employers who provide housing are only required to have it meet "basic minimum standards of safety & sanitation" after three years of certification. That housing is then required to meet "standards of decency" after six years of certification.

Farms employing fewer than 6 workers also have until the sixth year of certification before the following become mandatory:

- Training on workplace risks and avoiding hazards,
- Limit to working hours & availability of breaks.

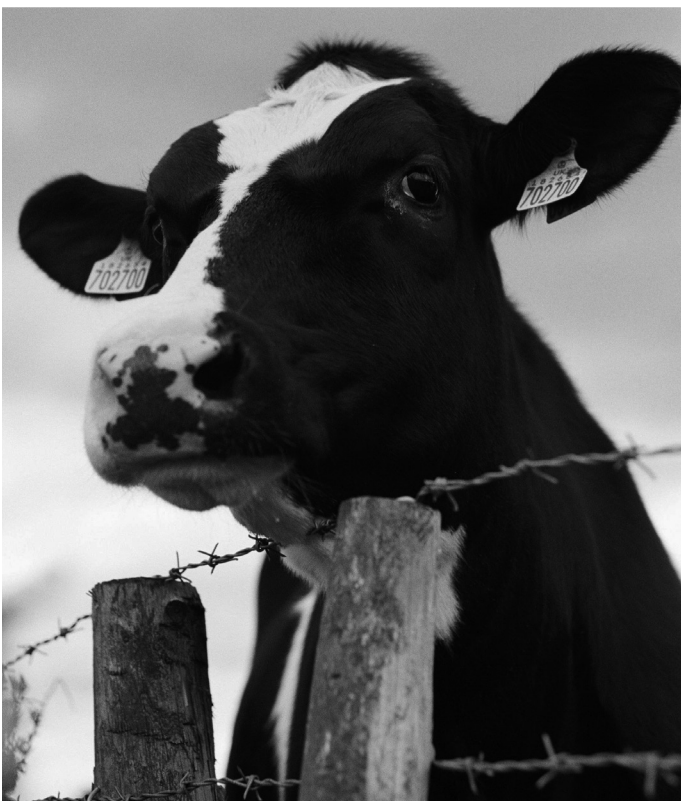
These workplace protections and trainings are vital. The *Milked* report documents just how dangerous the dairy industry is for the people who work in it: two-thirds of workers surveyed had been injured on the job, the majority of them seriously enough to require

medical attention.²⁰ And one of the key issues that worker interviews highlighted was inadequate training from their employers²¹ as well as fear of retaliation, and even deportation, for reporting injuries or dangerous conditions.²²

Yet solutions to these critical hazards are just a suggested “best practice” for small farms.²³ While Fair Trade USA’s marketing talks about workers’ wellbeing, in practice, the vulnerable majority are getting left behind. Instead of filling in the gaps in state regulations, Fair Trade USA’s standards leave the same workers vulnerable. These gaping loopholes are an example of what happens when a standards development process leaves out the workers it is supposed to benefit.

It’s worth noting once again that Fair Trade USA has yet to make the Dairy addition to their standard APS public. The above points were not addressed in the pilot standard proposed, yet this is by no means a comprehensive analysis of the standard. Instead, these omissions and the way the standard has been released underscore its lack of credibility. How strong or accurate could a label be that is willing to “certify” product on the shelf without a complete process - and over the objections of the very workers it is supposed to benefit?

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LACK OF ENFORCEMENT MECHANISMS

Fair Trade USA's standards have loopholes that leave out far too many of the most at-risk workers on dairy farms. Yet the lack of real enforcement mechanisms mean that even the workers to whom the standards purportedly apply lack protections.

In the first place, leaving critical know-your-rights trainings as well as training on workplace risks and hazards as a "nice to have" best practice undermines workers' ability to protect themselves. Knowledge is truly power, and while Fair Trade USA's marketing speaks a lot of empowerment, this critical omission does nothing to support workers building their own power.

Yet the protections for people who are informed are also woefully inadequate. The *Milked* report yet again provides crucial insight into the conditions on New York dairy farms. Fear of employer retaliation is cited repeatedly as an obstacle to speaking up about unsafe practices and conditions, getting medical attention, or organizing for better conditions.²⁴ Yet one of the additions made to the draft Dairy amendment to the Fair Trade USA's APS was a line to clarify that this standard was in no way an exception to a workers' at-will employment status.²⁵ At-will employment status, that is, the right to fire workers for no cause, has been highlighted by labor advocates in the U.S. as an obstacle to workers' organizing. By contrast, Fairtrade International standards explicitly require employers to document reasons for termination²⁶, and the Milk with Dignity program spells out that just cause is required for termination and other disciplinary actions.²⁷ By including a nod to at-will status in their standards, Fair Trade USA signals just whose interests they are focused on protecting: not the workers.

While Fair Trade USA's Agricultural Production Standard (APS) includes fairly standard language prohibiting discrimination in hiring and firing, as well as other abuses, the standards are written so as to be unenforceable. As noted above, people who work on small farms with fewer than six workers are not required to receive "know-your-rights" trainings, so they wouldn't necessarily be aware of the rules that exist on paper. Even on larger farms, trainings are only required to cover the Fair Trade USA standard - information about

rights protected by law and by ILO convention are only a continuing improvement for additional points.²⁸

Yet, despite all these obstacles, even if a worker knows their rights and is brave enough to speak up, Fair Trade USA's grievance process is seriously flawed. In the first place, all aspects of the grievance process outlined in the standards are merely a "best practice" for workers on farms with fewer than six workers. The guidelines for how to resolve a grievance layout that workers should make use of the internal process before engaging with Fair Trade USA. Yet how a worker should escalate a problem is rather confusing, even if one is fluent in English, which many farmworkers may not be. Take a look at Fair Trade USA's site. It's easy to find information "For Business" or on "Products." But there's nothing "For Workers." Indeed, the navigation to "Report an Issue" is buried at the bottom of the page - and not even available when navigating on a mobile device.²⁹ It's definitely clear here who the focus of Fair Trade USA's programming is: business and consumers, not workers.

Workplace hazards can be deadly and require urgent resolution. Yet in the past, Fair Trade USA has failed to address workers' concerns in a timely manner. A particularly egregious example of this was when Fair Trade USA certified a Fyffes melon plantation in 2018, despite documented ongoing and unremediated abuses.³⁰ At the time of certification, there was an active complaint filed under the Central American Free Trade Agreement (CAFTA).

"The U.S. Department of Labor (USDOL) confirmed the complaint's allegations that Suragroh [the Fyffes plantation] failed to pay the minimum wage, among a lengthy list of other violations, which have also been documented by Honduran government labor inspectors. The complaint remains active and, in October 2018, USDOL cited Fyffes as one of the two cases with ongoing labor rights violations."³¹

Yet just one month later, in November of 2018, Fair Trade USA's Paul Rice wrote in an email to the International Labor Rights Forum that their last audit "did not yield any evidence of ongoing anti-union activities or human rights abuses." The United States Department of Labor was aware of labor rights violations on the Honduran plantation, yet Fair Trade USA continued to defend their certification. It was only in December, after Fair World Project and allies launched a public campaign that Fair Trade USA finally took action to decertify. The report *Fyffes Farms Exposed* chronicles the process - and the clear conclusion is that organized workers remain the

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best defenders of their own rights.³² Solidarity actions from international labor and human rights groups supported their calls to action. But up until the end, Fair Trade USA continued to defend their licensee Fyffes - and still certifies their melons from other farms.

The Fyffes case shows how Fair Trade USA worked to paper over an ongoing labor dispute with positive PR. But the lessons are more than anecdotal. A growing body of research underscores that reliance on an annual audit alone is inadequate to protect workers' rights. The report *Not Fit for Purpose* describes some of the structural challenges with audits across Multi-Stakeholder Initiatives (MSIs):

"Yet, rights holders [in this case, workers] face multiple barriers—fear of reprisal, language, lack of awareness of rights— that may prevent them from reporting abuses or sharing their experiences with external monitors. The individuals that MSIs seek to protect often have little power or few resources to fight or prevent abuse."³³

The rollout of Fair Trade USA's dairy program, as well as their past process suggests that they have done nothing to address these concerns about how auditing will work to protect workers. Indeed, they have specifically drafted a standard that writes in at-will employment, and thus, workers' fear of reprisal will continue. And standards that leave trainings on workers' rights as a nice-to-have best practice instead of a cornerstone of the program makes it clear that workers and their rights are not the central focus.

Fair Trade USA spokespeople speak of their program as providing guidance for employers to improve their practices. In isolation, that sounds good. But this framing makes clear who is the center and focus of their program: business and brands. There's a fundamental difference between envisioning people as rights-holders or as beneficiaries of a company's corporate social responsibility programming. Workers' rights are essential, while corporate social responsibility puts the focus on the company doing good--and hopefully some of those benefits trickling down to the people they employ. But rights can't be an afterthought. Workers' rights, and their vision and experience, must be central to the development of any programming intended to benefit them.

CORPORATE LABELS FAIL WORKERS

So far, we have discussed that Fair Trade USA's rollout of a "fair trade dairy" label is fundamentally flawed. Developed out of a "sham process," the standards are not equal to protecting workers, and the enforcement mechanisms are both flawed and contrary to current research. Applying Fair Trade USA's certification model to the dairy industry fails to consider the material conditions of the workers and the realities, and real challenges the dairy industry faces.

While research points to the flaws in relying on top-down certification standards and annual audits to protect workers' rights, there is also research showing what *is* working across industries - and with relevant applications for the dairy industry as well.

Inside the label, Chobani's "fair trade certified" yogurt claims that it "provides extra income to the people who helped make this product."³⁴ While standards that back the label claims are not publicly available for review, it would take a fundamental overhaul of Fair Trade USA's Agricultural Production Standard (APS) to take significant steps towards improving incomes. Currently, standards only require that workers be paid the local minimum wage.³⁵

Minimum wages in the U.S. have stagnated over the past decade. Further, farmworkers in the U.S. are systematically left out of many basic labor protections - including, crucially, many minimum wage and collective bargaining requirements. Fair Trade USA's APS completely overlooks the reality for U.S. farmworkers - despite the research showing that the strongest thing that voluntary sustainability standards can do to improve livelihoods is to require living wages and support the worker organizing that allows them to negotiate Collective Bargaining Agreements (CBAs) for better wages.³⁶





ORGANIZED WORKERS PUSH POLICY CHANGES

While Fair Trade USA standards do not include meaningful, timebound measures to increase wages, worker organizing has made real gains in increasing wages in New York state. Farmworkers have long been excluded from other basic labor protections. Both the National Labor Relations Act (NLRA) and the Fair Labor Standards Act (FLSA) specifically excluded farmworkers (as well as domestic workers)—workers who were disproportionately Black when these laws were first developed in the 1930s. In the words of one researcher, this exclusion “was well-known to be a race-neutral cover for maintaining the domination of white supremacy in the South and excluding Black workers from labor law’s protection.”³⁷ Farmworkers continue to be disproportionately people of color today. And they continue to be deliberately left out of many labor protections considered standard in other industries. However, the Workers Center of Central New York (WCCNY) successfully won protection for retaliation against workers organizing under New York state law, thus shifting the balance of power for workers who are too easy to fire as soon as they start to know their rights.³⁸

As WCCNY’s *Milked* report notes, the majority of farmworkers are undocumented. Their immigration status makes them more vulnerable to retaliation, raising the stakes so deportation is a constant threat. Through their organizing, WCCNY, Migrant Justice, and others have tackled the vulnerabilities that undocumented workers experience by addressing issues like drivers’ license eligibility, immigration officials involvement with law enforcement, and other policy solutions. In the last year, WCCNY has also organized with others to push for Covid-19 relief that includes these too-often excluded workers.³⁹

All these efforts build power for workers, regardless of immigration status, and make concrete strides towards more fairness. In press for the new “fair trade dairy” label, Chobani’s CEO gives a nod to the challenges, saying “[Undocumented farm workers] have no rights: How do they get paid? What are the conditions they live in? What kind of safety measures do they have [at work]?”⁴⁰ Yet the solutions that Fair Trade USA’s label offers are not suited to the problem. All workers have rights, regardless of their immigration status.⁴¹ However, the threat of deportation is often used to threaten people and prevent them from exercising those rights. Fair Trade USA’s available standards do nothing to expand on legal

protections that already exist, nor do they address the underlying power imbalances that prevent people from defending their rights.

WCCNY's work, along with that of other worker-led organizations, also means that New York has a higher minimum wage than the federal minimum wage - and it applies to farmworkers as well, something that is not guaranteed in all states.⁴² New York farmworkers have also recently won overtime pay requirements.⁴³ These victories increase wages for all workers, and set the conditions for more organizing to make still more improvements.

These victories also mean that workers in New York will have different rules that apply to them than workers on Idaho dairy farms that also are supplying Chobani and are allegedly part of their "fair trade" program. In Idaho, minimum wages are lower, and farmworkers lack organizing and overtime protections⁴⁴ - it remains to be seen how Fair Trade USA will address this lack of fairness.

WORKER-DRIVEN SOCIAL RESPONSIBILITY - A PROGRAM BY AND FOR WORKERS

While Fair Trade USA has dubbed their label "a first-of-its-kind certification standard for US dairy that protects and empowers dairy workers,"⁴⁵ there's actually already a worker-led program that's doing just that. In Vermont, workers organizing with the group Migrant Justice created the "Milk with Dignity" program. The difference? "It's led by the workers and has enforceable standards," in the words of organizer Marita Canedo.⁴⁶ "We build the voice, the capacity, and the power of the community. We engage with allies who accomplish these goals for human rights." While Fair Trade USA has led with marketing, the Milk with Dignity standards are led by workers. Instead of speaking of the potential marketing return on investment from certification, their campaign is based on legally binding contracts that guarantee protections and measurable improvements for dairy farmworkers.

The Milk with Dignity program breaks new ground by incorporating requirements into buyers contracts that spell out not just quality but an entire list of vital human rights protections that suppliers must meet to sell to brands who have signed onto the program. Ben & Jerry's is the first brand to sign onto the Milk with Dignity Program. To sell to them, farms must meet a range of standards for wages, health and safety requirements,

housing conditions, scheduling requirements, as well as a non-discrimination policy, non-retaliation, and other requirements to foster a safe, dignified workplace. These standards were created out of workers' conversations and they remain front and center in the implementation. From the outset, workers attend an education session where they are provided with the information they need to enforce their own rights and know how the program works. Furthermore, instead of a single annual audit to enforce compliance, the Program runs a 24-7 bilingual support line where workers can confidentially report any issues or abuses to the Council tasked with implementing the program. This provides an ongoing monitoring system where workers are encouraged to speak up, and the structures are in place to protect those who do. Contrast this to Fair Trade USA's complaints process, buried deep in the fine-print of their English language home page, and not even visible from a mobile device. Changes to the Program are also timely and enforceable due to market consequences and commitments from the brand that holds leverage in the supply chain. Thus, frontline workers are truly put in charge of enforcing their own rights and making measurable improvements on farms.

The Milk with Dignity program is based on the Coalition of Immokalee Workers' Fair Food Program, and is part of a Worker-driven Social Responsibility model that research is proving more effective than traditional third-party certifications at protecting workers' rights.⁴⁷ The Fair Food Program has been widely recognized for their penny-per-pound premium that redistributes money from the brands with the most money and power in supply chains to the workers who are furthest from that wealth, and for their successes at stamping out abuses on vegetable farms.⁴⁸

Fair Trade USA's model of voluntary certification is fundamentally different from the worker-led council enforcing binding contracts that forms the Milk with Dignity program. While Fair Trade USA's dairy additions to their Agricultural Production Standard have yet to be finalized, their basic standards can be compared.

FAIR TRADE USA DAIRY vs MILK WITH DIGNITY

Fair Trade USA(FTUSA)		Milk with Dignity
Know-Your-Rights Training Mandatory for all Workers & Farmers	Exemptions for most vulnerable workers.	Yes, yearly worker-to-worker training.
Living Wages for Workers	Requires plan by year 5 (no implementation).	Monthly wage bonuses must be paid to employees who are paid less than the Vermont Livable Wage.
Protections against Retaliation	No, specifically allows at-will employment and termination without cause.	Yes, just cause required for termination, discipline. Zero-tolerance for retaliation.
Emphasizes Freedom to Organize	FTUSA has a documented history of failing to support worker organizing, and auditing has failed to detect company union-busting efforts.	Supports workers who seek improvements beyond baseline standards requirements. Retaliation is treated as a zero-tolerance violation. Discipline that interferes in organizing efforts would violate just cause discipline standard, and may violate additional rights, depending on the circumstances.
Complaints Process	Address with internal on-farm process, then escalate to FTUSA via web form (non-mandatory for small farms). Processes do not adequately address workplace power imbalances or tools available to workers.	24/7 bilingual support line. Prompt investigations required. Third-party monitor authorized to enforce complaint resolutions where necessary.
Workplace Safety	Refers to existing law. Includes exemptions for small farms on fundamental safety.	Requires compliance with health & safety laws even for farms otherwise exempt.
Market Consequences for Compliance	No - label released before standards.	Yes, Code of Conduct is part of a legally binding purchase contract.
Enforcement	Certified Entities are audited annually - a portion of farms will be audited. Approximately 10% of audits are unannounced. # of workers interviewed based on square root of total workers. Audits may result in Corrective Action Plans. Online complaint process for farms with 6+ workers.	Worker reporting 24/7 hotline as well as in-depth audits resulting in Corrective Action Plans and deadlines set every year in a collaborative process. Yearly in-depth audits with confidential interviews of close to 100% of workforce at each site.
Standards Created by Intended Beneficiaries	No	Yes
Premium	⅓ of premium goes to farmers, ⅓ goes to Community Development fund as determined by the Fair Trade Committee.	Premium goes to support compliance with the Code as well as to direct payment to workers. If farm is fully compliant, they can use premium to support other farm-needs.
Transparency	No publicly available standards or records of complaints or resolutions. Reporting on premium distribution across all commodities.	Documents, and reports on, complaints received & resolved, improvements made through audit and corrective action process, premium distribution.

CONCLUSION

Over the past decade, Fair World Project has been highly critical of Fair Trade USA's corporate-driven, business-friendly standards and lax enforcement. At the core of our critique: any program must have the intended beneficiaries in the lead when setting out the program goals. Meanwhile, since the outset, Fair Trade USA's "fair trade dairy" label has been opposed by dairy farmworker organizations from the start - that is, those working with the very people the program is supposed to benefit. And, even now that "certified" tubs of yogurt have been on the shelf for over a month as of this writing, far too many workers don't even know what the program means for them, or that it even exists.

In the past decade, there has been a proliferation of labels making eco-social claims. And there has also been a good amount of research into just what makes the programs that back those labels meaningful and impactful on the lives and livelihoods of the people they are supposed to benefit. Those key elements are: organized workers, and programs where those workers get to set the terms and conditions of just what's fair.

While this document includes a side-by-side comparison of Fair Trade USA's "fair trade dairy" label and Migrant Justice's Milk with Dignity program, the foundations of these two programs are completely different. One is led by business interests and the other is led by the people whose living and working conditions are the focus of the program. The issues with Fair Trade USA's label are not just points for continual improvement - the structure that such improvements would go on is fundamentally unsound.

Corporate consolidation, trade policy, and other macro trends are squeezing farmers and workers in the dairy industry. To address the forces at work requires addressing the imbalance of power head on. If we are to envision a world where those at the top of supply chains are held accountable, we must support programs that are transformative. Instead of reinforcing existing systems of power, we should look to the leadership of those who have been protesting, leading, and advocating for their own communities for hundreds of years.

By launching this "fair trade dairy" label, Fair Trade USA has chosen to distance themselves from both the available, relevant research and the demands of dairy workers, who should have a key voice in setting their own futures.

Instead, Fair Trade USA is recycling leftover feel-good messaging co-opted from the old fair trade movement of small-scale coffee farmers and their cooperatives, along with patronizing language about being "a voice for the voiceless." In the words of Arundhati Roy, "There's really no such thing as the 'voiceless'. There are only the deliberately silenced, or the preferably unheard."

Farmworker organizations like the Workers Center of Central New York and Migrant Justice epitomize this. Their voices, as well as their analysis and strategy, are clear and strong. Their organizing has changed laws, rewritten contracts, and shifted power in the industry. It's just that Fair Trade USA, and Chobani, have chosen not to hear their calls to action.

ENDNOTES

- 1 Misleading quote from this article: <https://www.forbes.com/sites/denizcam/2021/05/06/chobani-launches-the-first-fair-trade-certified-dairy-product-in-the-us/?sh=658dae0c1e60>.
- 2 “Module 4: Biodiversity, Ecosystem Function, and Sustainable Production The ability of the land to provide livelihoods for farmers and workers is directly linked to the long-term environmental impacts of farming practices. Sustainable farming practices protect biodiversity, maintain soil productivity, conserve water, minimize the use of harmful pesticides, and ensure proper waste management. These practices help preserve environmental systems, enhance farms’ resilience to climate change, and protect the health and quality of life of farmers, workers, their families, and their communities. Module 4 is not applicable to dairies participating in the pilot program.” Version 1.0 of the Dairy Amendment to Fair Trade USA’s Agricultural Production Standard, accessed May 2021 https://www.fairtradecertified.org/sites/default/files/filemanager/documents/APS/Dairy/DRAFT_FTUSA_STD_APSDairyAmendment_EN_1.0.0.pdf
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- 6 Interview with Dairy Reporter podcast, <https://www.dairyreporter.com/Article/2021/05/12/Dairy-Dialog-podcast-133-Chr.-Hansen-Fair-Trade-USA-Lloyd-s-Register#>
- 7 Text of letter: https://fairworldproject.org/wp-content/uploads/2021/05/FTUSA-letter-9-17-2020_updated.pdf
- 8 Pilot participants in Fair Trade USA’s apparel program were highly critical of both the process and the standard development. This page sums up objections raised by International Labor Rights Forum, Workers Rights Consortium, Clean Clothes Campaign, Ethix Merch, and others: <https://ethixmerch.com/fair-trade-t-shirts/>.
- 9 Letter opposing domestic produce standards development <http://fairworldproject.org/wp-content/uploads/2016/03/FTUSA-domestic-program.pdf>
- 10 Fair Trade USA’s website shows current board and advisory council members as of May 2021: <https://www.fairtradecertified.org/about-us/board>. Fair World Project has consistently critiqued the lack of representation of intended beneficiaries, including in the 2016 report *Justice in the Fields*: <https://fairworldproject.org/choose-fair/certifier-analysis/farmworker-certification-analysis/>
- 11 ISEAL Code of Good Practice, version 6 https://www.isealalliance.org/sites/default/files/resource/2017-11/ISEAL_Standard_Setting_Code_v6_Dec_2014.pdf
- 12 See ISEAL Code of Good Practice, version 6, Clause 5.4 https://www.isealalliance.org/sites/default/files/resource/2017-11/ISEAL_Standard_Setting_Code_v6_Dec_2014.pdf
- 13 See ISEAL Code of Good Practice, version 6, Clause 5.7 See ISEAL Code of Good Practice, version 6, Clause 5.4 https://www.isealalliance.org/sites/default/files/resource/2017-11/ISEAL_Standard_Setting_Code_v6_Dec_2014.pdf
- 14 See ISEAL Code of Good Practice, version 6, Clause 5.4 https://www.isealalliance.org/sites/default/files/resource/2017-11/ISEAL_Standard_Setting_Code_v6_Dec_2014.pdf
- 15 “More than 80% of dairy farmworkers in New York are estimated to live and work on farms with too few workers to fall under OSHA jurisdiction for inspection and sanctioning. Even though 80% of our sample works on a farm with at least 500 cows, many of these farms still do not have a sufficiently large non-family workforce to fall under OSHA’s ambit for inspections. In fact, the Occupational Safety and Health Administration is prohibited from regulating small farms, even when someone dies on the job.” https://milkedny.files.wordpress.com/2017/05/milked_053017.pdf
- 16 https://www.farmworkerjustice.org/advocacy_program/us-labor-law-for-farmworkers, accessed May 2021.
- 17 Fair Trade USA’s definitions of farm size come from their Agricultural Production standard as follows: Small farm (SF): 5 or fewer permanent workers & no more than 25 total workers onsite at any time
Mid-sized (MF): 6-25 permanent workers & no more than 100 total workers onsite at any time
Large farm/facility: all others
- 18 Fair World Project response to an academic paper that is not publicly available: <https://fairworldproject.org/is->

19 Study of workers on cocoa farms in the report *The Global Business of Forced Labour*: <http://globalbusinessof-forcedlabour.ac.uk/wp-content/uploads/2018/05/Report-of-Findings-Global-Business-of-Forced-Labour.pdf>

20 “Two-thirds of dairy farmworkers surveyed have experienced one or more injuries while on the job. Sixty-eight percent of those injured said the damage was serious enough to require medical attention. Most reported the injury to their boss, but some were too afraid or were not confident enough in their English skills to tell their boss what had happened.” https://milkedny.files.wordpress.com/2017/05/milked_053017.pdf

21 “One-third of workers received no job training of any kind. Of those who were trained, that training was often insufficient either because it was brief (as little as ten minutes), offered in English, or conducted by immigrant co-workers who were not trained to educate others thoroughly.” https://milkedny.files.wordpress.com/2017/05/milked_053017.pdf

22 “First and foremost is the fear of employer reprisal—intricately linked to the fear of deportation—in response to collective efforts to obtain a raise or better conditions.” https://milkedny.files.wordpress.com/2017/05/milked_053017.pdf

23 Fair Trade USA’s Agricultural Production Standard breaks down their compliance criteria into three categories: Each compliance criterion is classified as one of the following:

- . 1) C-Y# = Critical. Critical criteria describe requirements that must be met by a specified timeframe to receive or maintain an APS Certificate. A majority of Critical criteria are C-Y0, meaning that they must be met by the initial certification (Year Zero). All remaining Critical criteria must be achieved within a specified timeframe, by one, three, or six years of certification. Some Critical criteria must be met in a specified order in addition to a specified timeframe, before or after other related criteria have been implemented.
- . 2) P-# = Progress. Progress criteria describe continuous improvement requirements that must be met over time, with all requirements needing to be met by year six of certification. Each Progress criterion is worth a specified number of Progress Points, valued at 1, 3, or 5.
- . 3) BP = Best Practice. Best Practice criteria are optional and are not required (immediately or in the future). Only Small Farms and Facilities have criteria which are classified as Best Practice. However, we encourage Small Farms and Facilities to aspire to meet these goals over time.

24 Fear of retaliation is a recurring theme throughout the report. https://milkedny.files.wordpress.com/2017/05/milked_053017.pdf

25 “In most states in the United States, employment duration is considered “at will” by default. Documenting the terms of employment in the manner required by this criterion does not prevent employers from operating as an “at will” employer.” Module 3.1.1.c in version 1.0 of the Dairy Amendment to Fair Trade USA’s Agricultural Production Standard https://www.fairtradecertified.org/sites/default/files/filemanager/documents/APS/Dairy/DRAFT_FTUSA_STD_APS-DairyAmendment_EN_1.0.0.pdf

26 “Your company keeps a record of all terminated contracts. These records include the reason for termination and indicate if workers are members of a trade union or are elected worker representatives.” Section 3.1.8, Fairtrade International Hired Labour Standard version 15.01.2014_v1.6 https://files.fairtrade.net/standards/HL_EN.pdf

27 “Participating Farms will not discharge or discipline a Qualifying Worker except for just cause and in accordance with progressive disciplinary measures.” Milk with Dignity Code of Conduct, point 48. Definition of process for “Just Cause” is letter E under Key Terms. [https://migrantjustice.net/sites/default/files/2018%20MD%20Code%20English%20\(1\).pdf](https://migrantjustice.net/sites/default/files/2018%20MD%20Code%20English%20(1).pdf)

28 Objective 3.7.1a & b in version 1.0 of the Dairy Amendment to Fair Trade USA’s Agricultural Production Standard https://www.fairtradecertified.org/sites/default/files/filemanager/documents/APS/Dairy/DRAFT_FTUSA_STD_APS-DairyAmendment_EN_1.0.0.pdf

29 Fair Trade USA’s homepage, accessed May 2021 <https://www.fairtradecertified.org/>

30 Documentation of this case, as well as quotations from Paul Rice’s email and USDOL findings all come from

the report *Fyffes Farms Exposed*: <https://fairworldproject.org/wp-content/uploads/2020/04/Fyffes-Farms-Exposed-Report-2020.pdf>

31 Documentation of this case, as well as quotations from Paul Rice’s email and USDOL findings all come from the report *Fyffes Farms Exposed*: <https://fairworldproject.org/wp-content/uploads/2020/04/Fyffes-Farms-Exposed-Report-2020.pdf>

32 <https://fairworldproject.org/choose-fair/certifier-analysis/fyffes-farms-exposed/>

33 https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI_Not_Fit_For_Purpose_FORWEBSITE.FINAL_.pdf

34 As seen inside peel-off top of Fair Trade Certified Chobani yogurt tub, April 19 2021.

35 “Salaries and wages are in line with or exceed legally mandated minimum wages for the job and similar occupations, and applicable Collective Bargaining Agreements (CBA) (whichever is highest).” Objective 3.3.1 in version 1.0 of the Dairy Amendment to Fair Trade USA’s Agricultural Production Standard. Progress criteria in 3.3.1.b & c state that employers should know what living wages are and develop a plan to work towards them, but there are no timebound criteria for meeting living wages. https://www.fairtradecertified.org/sites/default/files/filemanager/documents/APS/Dairy/DRAFT_FTUSA_STD_APSDairyAmendment_EN_1.0.0.pdf.

36 See “Voluntary Sustainability Standards: A Squandered Opportunity to Improve Workers’ Wages” <http://www.elizabethannebennett.com/wp-content/uploads/2013/06/2018-SUSTAINABLE-DEVELOPMENT-worker-wages-voluntary-standards-BENNETT-1.pdf>.

37 <https://onlabor.org/martinez-cuevas-reckoning-with-labor-laws-racist-roots/>

38 The Farm Worker Fair Labor Practices Act gives farmworkers in New York State the right to form unions and other important protections. <https://www.workerscny.org/en/statement-from-wccny-on-gov-cuomo-signing-the-fflpa>

39 In April 2021, New York State created the first-in-the-nation \$2.1 Billion Excluded Workers Fund. This fund provides direct cash assistance to workers ineligible for state unemployment benefits or federal COVID-related income relief. <https://fundexcludedworkers.org/>.

40 Quote comes from Chobani CEO, Hamdi Ulukaya. <https://www.forbes.com/sites/denizcam/2021/05/06/chobani-launches-the-first-fair-trade-certified-dairy-product-in-the-us/?sh=658dae0c1e60>.

41 People in the U.S. have rights, regardless of their immigration status, and federal discrimination laws apply regardless of citizenship status. However, the threat of deportation is often used to threaten people and prevent them from exercising those rights. <https://www.nelp.org/publication/faq-immigrant-workers-rights-and-covid-19/>

42 New York has gradually phased in a higher minimum wage for all workers, including farmworkers. The minimum wage for farmworkers outside of the major metro areas is \$12.50 as of 12/31/20.

43 Farmworkers in New York state are eligible for time-and-a-half pay after working 60 hours in a week, 50% more time worked than required for other workers, who are eligible after working 40 hours. They join just a handful of other states where farmworkers are eligible for overtime pay at all. <https://thecounter.org/farm-workers-lack-overtime-pay-systemic-racism/>

44 Minimum wage is \$7.25 in Idaho <https://www.labor.idaho.gov/dnn/Businesses/Agricultural-Services#:~:text=Minimum%20wage%20coverage,hour%20with%20a%20few%20exceptions>.

45 <https://www.fairtradecertified.org/news/press-releases/dairy-certification-launch>

46 <https://www.forbes.com/sites/errolschweizer/2021/05/10/marita-canedo-of-migrant-justice-on--milk-with-dignity/?sh=47f9d0c01239>

47 “The influence of Multi-Stakeholder Initiatives (MSIs) is eroding. In its place is a resurgence in advocacy for public regulation and more accountable private mechanisms, such as the Worker-driven Social Responsibility model, that are displacing MSIs as the “gold standard,” and which may better bridge the governance gaps that MSIs had promised to fill.” From MSI Integrity’s report, *Not Fit for Purpose*, based on 10 years of research into Multi-Stakeholder Initiatives and certifications. https://www.msi-integrity.org/wp-content/uploads/2020/07/MSI_Not_Fit_For_Purpose_FORWEBSITE.FINAL_.pdf

48 <https://fairworldproject.org/how-worker-driven-social-responsibility-is-ending-gender-based-violence/>

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