Green Is the New Black: Achieving Whole-System Sustainability in U.S. Coffee via a Hybrid Certification Scheme

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I. INTRODUCTION

Near the village of Las Capucas, in the Copán region of Honduras, Omar Rodríguez Romero manages a coffee farm and a coffee farmer cooperative called Cooperativa Cafetalera Capucas Limitada (COCAFCAL).[1] COCAFCAL assists hundreds of small coffee farmers in the region with growing, processing, and distributing their coffee each season.[2] Coffee is a labor of love, with trees requiring several seasons' growth before producing a single coffee cherry.[3] During the Honduran harvest season from December to March,[4] coffee cherries bound for specialty coffee shops around the world must be carefully handpicked by teams of seasonal and permanent employees.[5] COCAFCAL farmers then promptly process the fruit at their

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1. *See* Chris Davidson, *Te Van a Conocer, Compa!*, ATLAS COFFEE IMPORTERS, https://www.atlascoffee.com/coffees/cocafcal-las-capucas/ [https://perma.cc/Q6DL-QGYV].

2. *Id.*

3. *10 Steps from Seed to Cup*, NAT'L COFFEE ASS'N, https://www.ncausa.org/About-Coffee/10-Steps-from-Seed-to-Cup#:~:text=Depending%20on%20the%20variety%2C%20it,coffee%20trees%20to%20bear%20fruit [https://perma.cc/YB7U-LEKZ]. Readers curious about the emergence of coffee as a global commodity—and the legend of the caffeinated Ethiopian goats who changed the course of history—should see *The History & Legend of Ethiopian Coffee & the Story Behind Misty Valley*, PERFECT DAILY GRIND (June 12, 2015), https://perfectdailygrind.com/2015/06/the-history-legend-of-ethiopian-coffee-the-story-behind-misty-valley/ [https://perma.cc/82VX-LDKQ].

4. Davidson, *supra* note 1.

5. *10 Steps from Seed to Cup*, *supra* note 3; *see Supply Chain—the Where: How Does Coffee Get from a Farm to Your Cup?*, COUNTER CULTURE (Dec. 27, 2017), https://counterculturecoffee.com/blog/coffee-basics-supply-chain-how-does-coffee-get-from-the-farm-to-my-cup [https://perma.cc/GRS2-XYAS]; *Harvesting of Coffee*, COFFEE MASTERS, https://www.coffeemasters.com/coffee-101/harvesting-of-coffee/#:~:text=Traditionally%20coffee%20is%20harvested%20by,Robusta%20coffee%20is%20strip%20picked [https://perma.cc/X6ZM-5BGX].

group facilities to prevent cherries from spoiling.[6] The resulting coffee beans are then sorted for quality and packaged for export.[7]

Farmers in the COCAFCAL cooperative alone produce thousands of bags of green (unroasted) coffee—enough to fill 245 standard shipping containers—every annual harvest.[8] The portion of that COCAFCAL coffee purchased by U.S. roasters then travels to port and arrives in the United States via container ship, likely spending several weeks at sea.[9] From port, green coffee is distributed to storage or roasting facilities.[10] Eventually, green COCAFCAL coffee is roasted and sold or served to consumers.

The supply chain—the journey from farm to cup—for a COCAFCAL coffee is complex. Farming, processing, transportation, storage, roasting, and preparation all raise various ethical questions concerning environmental sustainability and social justice.[11] Certification and labeling schemes such as "Fair Trade" and "Organic" have emerged as one method to regulate producers and others along coffee supply chains, as well as to leverage consumer preferences for environmentally or ethically produced products.[12] Cooperatives and producer support organizations like COCAFCAL help ensure farmer access to resources like nurseries and group processing facilities, industry connections to roasteries in Europe and the United States,[13]

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6. *10 Steps from Seed to Cup*, *supra* note 3.

7. *Id.*

8. *See* Davidson, *supra* note 1.

9. *See Supply Chain—the Where*, *supra* note 5; *see also Shipping Information*, CAFÉ IMPS. N. AM., https://www.cafeimports.com/north-america/blog/shipping/ [https://perma.cc/KC3Y-R2LE].

10. *See Supply Chain—the Where*, *supra* note 5; *Shipping Information*, *supra* note 9.

11. Bethany Gullman, Note, *Rescuing the Future of the International Coffee Trade with a Voluntary Certification and Labeling Scheme*, 46 GEO. WASH. INT'L L. REV. 647, 648–49 (2014); Mark Maslin & Carmen Nab, *Coffee: Here's the Carbon Cost of Your Daily Cup—and How To Make It Climate Friendly*, CONVERSATION (Jan. 4, 2021, 10:26 AM), https://theconversation.com/coffee-heres-the-carbon-cost-of-your-daily-cup-and-how-to-make-it-climate-friendly-152629 [https://perma.cc/2CWU-DJBS]; *Calculating the Coffee Industry's Carbon Emissions*, UNITED BARISTAS (Sept. 27, 2019), https://unitedbaristas.com/articles/insights/2019/09/calculating-the-coffee-industrys-carbon-emissions/ [https://perma.cc/G8UK-VVS5].

12. *See* Mary Jane Angelo & Joanna Reilly-Brown, *Whole-System Agricultural Certification: Using Lessons Learned from LEED To Build a Resilient Agricultural System To Adapt to Climate Change*, 85 U. COLO. L. REV. 689, 692 (2014); Megan S. Houston, Note, *Ecolabel Programs and Green Consumerism: Preserving a Hybrid Approach*, 7 BROOK. J. CORP., FIN. & COM. L. 225, 226 (2012).

13. COCAFCAL coffee lands in cups all over the world. *See, e.g.*, *Cooperativa Cafetalera Capucas Ltda.*, ALGRANO, https://www.algrano.com/en/groups/10920 [https://perma.cc/7C7H-ZJKZ] (COCAFCAL coffee has relationships with roasters in Germany, Denmark, United

and the often-costly certifications like Fair Trade and Organic that can boost a coffee's value.[14]

However, the COCAFCAL cooperative demonstrates how certification schemes like these have so far failed to meet an urgent need for environmental sustainability and social and economic equity in coffee supply chains. The COCAFCAL cooperative has been successful in building their reputation as a reliable, quality producer largely due to independently undertaking costs to achieve Organic, Fair Trade, and Rainforest Alliance certifications on their hundreds of farms.[15] And despite their popularity, such farm-level certifications often fail to capture social justice concerns like labor practices, do little to address environmental implications along the coffee supply chain, and remain economically inaccessible to independent smallholder farmers who lack the benefits of cooperative membership.[16]

To capture more of these concerns, this Comment argues for a whole-system sustainable coffee certification with a consumer-facing label, with standards crafted by a reputable coffee industry member organization and promoted via government incentives. This hybrid private and government certification scheme would implement sustainable agriculture goals in the coffee industry better than a purely government model or other proposed or existing certification and labeling schemes, and could incorporate the environmental, economic, and social sustainability goals of the coffee industry.

Part II provides background information on the U.S. and global coffee industries, discusses the attributes of the coffee economy that make it uniquely suited for a whole-system sustainability certification, and explores current coffee labeling schemes in greater depth. Part III evaluates several labeling schemes from other industries to explain where they fall short and how they might be improved or combined to form a more effective, efficient, successful label for coffee. Part IV posits that a hybrid certification system

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Kingdom, Norway, and Poland); *Honduras—Las Capucas*, GHOST TOWN COFFEE ROASTERS, https://www.ghosttowncoffee.com/products/honduras-las-capucas [https://perma.cc/X3LD-AXEL] (COCAFCAL coffee sold by small roastery in Montana); *Honduras Omar Rodriguez Washed*, BOREA SPECIALTY COFFEES, https://www.boreaspecialtycoffees.com/en/honduras-omar-rodriguez-washed-2/ [https://perma.cc/L9VT-XLAY] (Omar Rodríguez Romero's coffee sold in Italy).

14. *See* Davidson, *supra* note 1.

15. *Id.*

16. Farmers producing fewer than four sacks (a few hundred pounds) of unroasted coffee annually are considered "smallholder" producers. Jan von Enden, *Can Smallholder Coffee Farming Be Sustainable? German Vineyards Might Have Some Answers*, DAILY COFFEE NEWS BY ROAST MAG. (June 5, 2018), https://dailycoffeenews.com/2018/06/05/can-smallholder-coffee-farming-be-sustainable-german-vineyards-might-have-some-answers/ [https://perma.cc/VPN6-2RN5]; *see* Davidson, *supra* note 1.

developed by private industry and promoted by government is the most promising path for implementation and enforcement of whole-system sustainability in coffee.

II. THE COFFEE INDUSTRY

While the coffee industry has increasingly prioritized sustainable practices in recent years, only piecemeal progress has been made toward a coffee trade that is environmentally, socially, and economically sustainable. This Part provides background information on the coffee industry and discusses why sustainable coffee goals deserve policy attention in the United States. Section A discusses the coffee industry's scale and structure and defines sustainability concepts in the coffee industry. Section B briefly explains sustainability standards and labels. Finally, Section C explores the existing landscape of labeling programs in coffee, with a focus on existing approaches' inability to effectively and comprehensively implement and enforce sustainability goals.

A. The Coffee Industry and Sustainability Defined

Coffee is a massive global industry.[17] The global coffee trade represents between $19 and $23 billion annually.[18] As of 2017, the world consumed more than 600 billion cups of coffee annually, sourced from over 25 million producers in more than 70 countries.[19] Notably, the United States is the world's largest importer of coffee, making up nearly 23% of global imports[20]—in excess of $4 billion per year.[21] Over 50% of U.S. adults—or

17. Conservation Int'l, *The Path to Agricultural Sustainability Starts with Coffee*, YOUTUBE (Sept. 19, 2017), https://www.youtube.com/watch?v=99UuWy4mXbo&feature=emb_logo [https://perma.cc/Z5N2-USFV].

18. These estimates are based on export statistics from the International Coffee Organization, the World Bank, and Starbucks. *See* Jon Greenberg, *No, Coffee Is Not the Second-Most Traded Commodity After Oil*, POLITIFACT (May 8, 2017), https://www.politifact.com/factchecks/2017/may/08/starbucks/no-coffee-not-second-most-traded-commodity-after-o/ [https://perma.cc/CT3G-HSMM]. By dollar-value, the global coffee market—at 15th largest in the world—is a fraction of the size of markets like oil, aluminum, and copper, and similarly falls behind other agricultural products like wheat ($29 billion) and soy ($57 billion). *Id.*

19. Conservation Int'l, *supra* note 17.

20. INT'L COFFEE ORG., IMPORTS BY SELECTED IMPORTING COUNTRIES 2 (2020), http://www.ico.org/historical/1990%20onwards/PDF/2b-imports.pdf [https://perma.cc/YPY8-ZMVL].

21. *See id.*; Greenberg, *supra* note 18.

150 million people—drink coffee daily, amounting to 400 million cups of coffee consumed each day in the United States alone.[22]

"Sustainability" refers generally to an ability to "meet[] the needs of the present without compromising the ability of future generations to meet their own needs."[23] Accordingly, sustainability goes beyond environmental issues, also incorporating economic and social justice considerations.[24] For example, *environmentally* sustainable practices in coffee may entail employing shipping methods with lower carbon impacts,[25] developing farms so that they do not damage or disrupt surrounding forests and ecosystems,[26] or powering facilities or equipment at any point in the supply chain with renewable energy.[27] But such practices also carry *economic* and *social* sustainability implications. The cost of a low-carbon shipping method may be assigned to any number of involved parties, increasing the economic burden on farmer, shipper, distributor, roaster, or consumer. A coffee farmer that protects neighboring natural resources ensures her community can utilize those resources in the future, but may incur costs in the present. In this way, environmental, economic, and social sustainability are distinct but frequently interconnected.

The concept of "whole-system" sustainability in coffee refers to implementing sustainable practices in each of these dimensions and at various stages of production.[28] The coffee industry presents unique opportunities for whole-system sustainability intervention. First, agricultural practices and the environment are intimately connected.[29] Thus, the sheer size and global reach of the coffee agriculture industry suggest that achieving whole-system sustainability in coffee will have far-reaching effects for consumers, workers across industries, and the environment.[30] Second, the coffee industry has historically demonstrated eagerness to innovate and experiment with new

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22. *Coffee Statistics 2021*, E-IMPORTS, https://www.e-importz.com/coffee-statistics.php#:~:text=Coffee%20Consumption%3A%20Over%2050%25%20of,%2Ficed%20coffee%20beverages%2C%20etc [https://perma.cc/3CT8-VRQ8].

23. *The Sustainable Development Agenda*, UNITED NATIONS: SUSTAINABLE DEV. GOALS, https://www.un.org/sustainabledevelopment/development-agenda/ [https://perma.cc/KX6F-VVSR] (under "Frequently Asked Questions," click "What is sustainable development?").

24. *Id.*

25. Maslin & Nab, *supra* note 11.

26. Bruno Vander Velde, *What on Earth Is 'Sustainable' Coffee?*, CONSERVATION INT'L (Sept. 29, 2016), https://www.conservation.org/blog/what-on-earth-is-sustainable-coffee [https://perma.cc/SD84-D2MT].

27. *See* Maslin & Nab, *supra* note 11.

28. Angelo & Reilly-Brown, *supra* note 12, at 736–47.

29. *Id.* at 691–92.

30. *See id.*; Conservation Int'l, *supra* note 17.

approaches to sustainability.[31] Some coffee professionals have indicated that coffee has the potential to become the first fully sustainable crop, and to serve as a test case and model for implementing whole-system sustainability in other agricultural products and industries.[32]

Coffee consumers also have a unique level of intimacy[33] with the product, making the coffee industry well-suited for use of consumer preferences to stimulate rapid transition to sustainable practices.[34] This consumer intimacy goes beyond a coffee brand's alignment with their consumers' needs. By virtue of many millions of consumers' daily coffee habits, as well as the emotional sensory experience of drinking coffee,[35] coffee consumers are arguably more connected with their morning cup than with other ubiquitous products like oil, aluminum, and wheat.[36] The specialty coffee experience demonstrates this particularly well.[37] Patrons at a specialty coffee shop or their local Starbucks are able to customize their product, specifying flavor and sweetener additions, their preferred dairy or plant-based milk, brewing method, and even source and roast profile of the beans. Often, they leave a coffee shop with their name printed on the product. This intimate relationship

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31. JASON POTTS ET AL., INT'L INST. FOR SUSTAINABLE DEV., THE STATE OF SUSTAINABILITY INITIATIVES REVIEW 2014: STANDARDS AND THE GREEN ECONOMY 155 (2014), https://www.iisd.org/system/files/pdf/2014/ssi_2014.pdf [https://perma.cc/87RU-7DPH] ("Coffee is generally regarded as the pioneering industry for sustainability standards and certification."); *id.* at 183 ("[T]he coffee sector has operated as the testing ground for many of the sustainability initiatives operative across commodities today.").

32. *Projects: Sustainable Coffee Challenge*, THE SUSTAINABILITY CONSORTIUM, https://www.sustainabilityconsortium.org/projects/sustainable-coffee-challenge/ [https://perma.cc/F699-ZLPH]; *Coffee Could Be… Sustainable*, SUSTAINABLE COFFEE CHALLENGE, https://www.sustaincoffee.org/framework/ [https://perma.cc/E4JE-8DB5]; Conservation Int'l, *supra* note 17; *see also Ethical Sourcing: Coffee*, STARBUCKS, https://www.starbucks.com/responsibility/sourcing/coffee [https://perma.cc/9TGZ-ARZD]; POTTS ET AL., *supra* note 31, at 158, 183.

33. Ashley Greene, *11 Strategies To Maintain Customer Intimacy at Scale*, HELP SCOUT, https://www.helpscout.com/blog/customer-intimacy/ [https://perma.cc/B9NL-8W2P].

34. *See* Danielle Eiseman & Martin Jonsson, *Leveraging the Coffee Experience as a Tool for Engagement with Climate Change*, 22 QUALITATIVE MKT. RSCH. 570, 570–73 (2019).

35. *Id.*

36. *Id.* Indeed, apocalypse preppers have theorized that the *emotional* value of coffee—as well as the caffeine content—will make coffee one of the most highly sought-after commodities following inevitable global collapse: "More than chocolate, or booze, or delicious RUFFLES® Cheddar & Sour Cream flavored potato chips, coffee is what we will crave to the point of necessity . . . ." Cam Wolf, *The Apocalypse Preppers Who Think Coffee Will Save Them*, GQ (Dec. 18, 2017), https://www.gq.com/story/coffee-apocalypse-preppers [https://perma.cc/F452-YAK7].

37. *See* Eiseman & Jonsson, *supra* note 34, at 570–73.

between the consumer and the cup means consumer choice can act as a particularly strong mechanism for implementing change in the industry.[38]

B. Coffee Industry Sustainability Goals, Standards, and Labels

In the last few decades, sustainability has been a common goal among coffee industry actors large and small.[39] For instance, the Specialty Coffee Association (SCA), a United States-based member organization for specialty coffee shops, roasters, and other coffee professionals, prominently features sustainability in its organization goals.[40] The SCA acknowledges sustainability in its Statement of Purpose as well as in its Mission and lists achieving a "Sustainable Coffee Industry" and "Ethical Operation" among its Core Values.[41] The National Coffee Association (NCA), a similar coffee industry member organization, also features sustainability on its website.[42]

This interest in sustainability goes beyond environmental benefits. Sustainable coffee production can also advance economic and social justice initiatives, and industry professionals have expressed a collective desire to better the lives of smallholder producers along their supply chains[43] and ensure lasting health, safety, and economic security for farmers and farming communities through regular trade practices and special initiatives.[44] In recent years, large coffee industry actors like Starbucks have invested in researching and implementing sustainable practices (environmental, economic, and social) on their own initiative via voluntary sustainability standards.[45]

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38. *Id.*

39. *See* POTTS ET AL., *supra* note 31, at 158.

40. *About SCA*, SPECIALTY COFFEE ASS'N, https://sca.coffee/about [https://perma.cc/J95N-7GT8].

41. *Id.*

42. *See People & Planet: The NCA Guide to Sustainable Coffee*, NAT'L COFFEE ASS'N, https://www.ncausa.org/Sustainability [https://perma.cc/YB3B-P4VS].

43. *See* von Enden, *supra* note 16.

44. For example, during the COVID-19 pandemic, one coffee roaster in Los Angeles learned that lack of access to face masks was preventing children from attending school in Marcala, Honduras (a community from which the roaster sourced some of its coffee). Katrina Yentch, *Buy a Mask, Give a Mask: Tectonic Coffee Wants To Send 1,000 Face Masks to Honduras*, BARISTA MAG. (Oct. 26, 2020), https://www.baristamagazine.com/buy-a-mask-give-a-mask-tectonic-coffee-wants-to-send-1000-face-masks-to-honduras/ [https://perma.cc/F2TQ-VDER]. In response, the roaster partnered with a patron to create a "buy a mask, give a mask" program. *Id.*

45. *See Committed to 100% Ethically Sourced*, STARBUCKS [hereinafter *Ethically Sourced*], https://www.starbucks.com/responsibility/community/farmer-support/farmer-loan-programs [https://perma.cc/9729-QTWF].

Much of the coffee produced in recent years is certified under some type of voluntary sustainability standard. A *voluntary* standard simply indicates that an individual, business, or organization has developed and sought to meet the standard on their own initiative or in collaboration with other industry actors, and not due to a strict regulatory requirement.[46] The International Institute for Sustainable Development (IISD) found that in 2012, 3.3 million metric tons of coffee, constituting 40% of total global production, were produced in compliance with at least one of seven voluntary sustainability standards surveyed by the IISD.[47]

Consumer-facing labels accompany many of the coffee industry's existing sustainability standards.[48] The purpose of consumer-facing labels, often called "eco-labels," is to indicate to consumers that the product meets or exceeds a particular certification or standard.[49] The IISD distinguishes labels from sustainability standards. The IISD characterizes labels as targeted, limited "precursors" to voluntary sustainability standards.[50] Sustainability standards, in contrast, offer a more systemic approach to implementing sustainability goals by incorporating a broader range of factors across an industry's supply chain.[51] Many modern standards relating to consumer goods now include labels, which indicate to consumers that the particular product complies with the given standard.[52]

Consumer-facing labels seek to leverage the consumers' interest in promoting or furthering the standard or practice associated with the label, and rely on consumers to self-select products.[53] For example, the Rainforest Alliance label indicates to consumers that the product "was produced using methods that support . . . social, economic, and environmental" sustainability.[54] Other consumer-facing labels are currently used to communicate a plethora of odd and specific meanings, from the "Dolphin Safe" label for dolphin-friendly tuna to the "GoodWeave" label for

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46. *See About UNFSS*, UNITED NATIONS F. ON SUSTAINABILITY STANDARDS, https://unfss.org/home/about-unfss/ [https://perma.cc/XW77-KHHR].

47. POTTS ET AL., *supra* note 31, at 158.

48. *Id.* at 37. For example, the Rainforest Alliance certification features a consumer-facing label with the image of a green tree frog. *See* RAINFOREST ALL., https://www.rainforest-alliance.org/ [https://perma.cc/Y2KZ-FCRG].

49. *See* Jason J. Czarnezki, *The Future of Food Eco-Labeling: Organic, Carbon Footprint, and Environmental Life-Cycle Analysis*, 30 STAN. ENV'T L.J. 3, 5 (2011).

50. POTTS ET AL., *supra* note 31, at 19.

51. *Id.*

52. *See id.* at 32 n.18.

53. *See generally* Czarnezki, *supra* note 49.

54. *What Does "Rainforest Alliance Certified" Mean?*, RAINFOREST ALL. (Oct. 28, 2020), https://www.rainforest-alliance.org/faqs/what-does-rainforest-alliance-certified-mean [https://perma.cc/3652-WYAW].

eradication of child labor in the carpet industry.[55] Labels like Fair Trade, Certified Humane, and Non-GMO will doubtlessly be more familiar to readers.[56] Despite their popularity, however, labeling initiatives have had mixed success and sometimes confuse or mislead consumers.[57]

C. Shortcomings in Existing Coffee Industry Sustainability Labeling

The fragmented structure of sustainability labeling initiatives in coffee has led to unique challenges for implementing and enforcing sustainability goals in the industry. This Section discusses how the current structure fails to incorporate sustainability initiatives along the entire supply chain, leads to consumer confusion and misinformation, and thus fails to further social justice and equitable development initiatives.

1. "Chaotic" State of Coffee Sustainability Labeling

Although the proportion of coffee that is grown and sold under voluntary sustainability standards is increasing,[58] sustainability certification in the coffee industry is, at best, "chaotic."[59] Such certifications and labels in the industry fall into several broad categories: (1) international, industry-specific certifications by member organizations (like the International Coffee Organization); (2) private certification schemes by large industry actors (like Starbucks); (3) non-profit and private certifications that apply to other agricultural products, rather than just the coffee industry (like Rainforest Alliance or Fairtrade); and (4) hybrid certifications with standards set by the government and enforced by government as well as by certified private actors (like USDA Organic). A coffee-specific whole-system sustainability label does not yet exist.

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55. For a list of all 202 ecolabels in use in the United States as of April 2021, see *All Ecolabels in United States*, ECOLABEL INDEX, http://www.ecolabelindex.com/ecolabels/?st=country,us [https://perma.cc/38WJ-MGZK].

56. *See generally id.*

57. Angelo & Reilly-Brown, *supra* note 12, at 735; POTTS ET AL., *supra* note 31, at 21 (noting that "voluntary standards have, historically, focused on building their markets rather than measuring them"); Lucy Atkinson, '*Wild-West' of Eco-Labels: Sustainability Claims Are Confusing Consumers*, GUARDIAN (July 4, 2014, 2:00 AM), https://www.theguardian.com/sustainable-business/eco-labels-sustainability-trust-corporate-government [https://perma.cc/5BRC-9US7].

58. POTTS ET AL., *supra* note 31, at 160–63.

59. *See* E. Thomas Watson, *Green Marketing: It's Not All Bunnies and Flowers*, LANDSLIDE, Mar./Apr. 2010, at 11, 13.

The very existence of the IISD's State of Sustainability Initiatives program is evidence of the fragmented nature of sustainability certifications.[60] This project is dedicated to ensuring that businesses and others along diverse supply chains have access to independent and accurate information about the many different sustainability standards and labeling schemes that exist so that companies can decide which ones to participate in. Actors along supply chains can then turn this comprehensive information into workable sustainability solutions.[61] Research by the IISD attempts to capture impact beyond environmental sustainability, offering analysis of labels and certifications purporting to protect labor rights and promote participatory governance, among others.[62] While such information is helpful for producers and distributors looking to market their products as "sustainable," the extensive research necessary to communicate the meaning of such standards suggests these standards and associated labels do not yet successfully communicate their meanings to consumers.

Although several coffee-specific sustainability certifications exist, none have achieved an industry-wide whole-system sustainability rating. For example, the International Coffee Organization (ICO) is an intergovernmental organization that conducts research, sets goals for the coffee industry, and encourages member states to pursue certain labor, trade, and farming practices.[63] The ICO assesses sustainability impacts all along coffee supply chains, but lacks any enforcement or certification mechanism.[64] The ICO instead leaves implementation and enforcement to member states.[65] Recent years have seen proposals to redesign the framework of the ICO or otherwise revitalize international regulation and certification by establishing a new international organization to set coffee industry standards.[66] Member nations could then choose to implement the new standards set by the ICO.[67] However, the main international agreement overseen by the ICO—the 1989 International Coffee Agreement—dissolved quickly after its inception.[68]

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60. *See generally* POTTS ET AL.*, supra* note 31. Notably, the 2014 IISD report regarding sustainability standards and labels across ten agricultural markets, including coffee, spans more than 300 pages. *Id.*

61. *About SSI*, INT'L INST. FOR SUSTAINABLE DEV. STATE OF SUSTAINABILITY INITIATIVES, https://www.iisd.org/ssi/about/ [https://perma.cc/BHR7-CG8F].

62. *See* POTTS ET AL., *supra* note 31, at 48, 69–70.

63. *Developing a Sustainable Coffee Economy*, INT'L COFFEE ORG., http://www.ico.org/sustaindev_e.asp?section=What_We_Do [https://perma.cc/6EEJ-FDL2].

64. *Id.*

65. *Id.*

66. *See generally* Gullman, *supra* note 11.

67. POTTS ET AL., *supra* note 31, at 163.

68. *Id.*

Similarly, the Common Code for the Coffee Community (4C) is an "independent, stakeholder-driven, internationally recognized sustainability standard for the entire coffee sector, aim[ed] at anchoring sustainability in coffee supply chains."[69] 4C assesses coffee producers and processors in economic, social, and environmental categories, and promotes itself as a lower cost certification system.[70] The program has seen significant growth in recent years.[71] Interestingly, however, 4C specifically avoids any consumer labeling scheme, instead electing to collaborate with popular existing labeling initiatives like Fair Trade and Rainforest Alliance.[72]

Further, some individual coffee companies have undertaken to create and implement voluntary standards. For instance, Starbucks's Coffee and Farmer Equity (C.A.F.E.) Practices program takes a whole-system approach to grading the ethical practices of their coffee producers, but the program is limited to Starbucks and thus cannot be widely adopted by other industry actors.[73] Starbucks has declared a commitment to "100% ethically sourced" coffee, and has created their own monitoring and certification system for farmers and others along their supply chains.[74] To gain this Starbucks-specific certification, producers must meet set standards in economic accountability and transparency, social responsibility, and environmental leadership.[75] Economic accountability measures require detailed proof-of-payment between distributors and producers to ensure fair pay reaches farmers.[76] Social responsibility is much broader, requiring showing that farms paid workers a fair minimum wage, did not use child labor, and protected workers from exposure to agrochemicals and

69. *The 4C Certification System*, 4C, https://www.4c-services.org/about/what-is-4c/ [https://perma.cc/6QPS-EFCQ].

70. *Id.*

71. POTTS ET AL., *supra* note 31, at 164.

72. *Id.* at 165.

73. *Id.* at 165–66. While competing coffee industry actors could technically adopt standards identical to Starbucks's C.A.F.E. Practices, of course, their C.A.F.E. Practices-compliant products could not bear the private Starbucks label and would lack the consumer appeal of the Starbucks standard.

74. *Ethically Sourced*, *supra* note 45.

75. *Id.*

76. *Id.*; STARBUCKS COFFEE CO., C.A.F.E. PRACTICES GENERIC SCORECARD 2 (2016) [hereinafter SCORECARD], https://cdn.scsglobalservices.com/files/program_documents/cafe_scr_genericv3.4_011516.pdf [https://perma.cc/Z8A4-B38A].

pesticides.[77] Finally, environmental leadership indicators revolve around coffee growing and processing practices, such as minimizing water consumption, preventing contamination and deterioration of soil, and preserving biodiversity and ecosystems.[78]

Many other standards that apply across industries are similarly used to certify coffee products. For example, Fairtrade measures and certifies labor standards across diverse industries.[79] Rainforest Alliance certification signifies holistic embrace of sustainability standards across agricultural sectors.[80] While sustainability standards in coffee are therefore abundant, this varied structure has sometimes hindered sustainability goals.

2. Fragmented Labeling Hindering Sustainability Initiatives

The push for sustainability, social justice, and economic equity in coffee production has thus far been fragmented, and that fragmentation has limited the movement's effectiveness. Current standards are disjointed and difficult to follow because many standards address discrete (and often niche) elements of the coffee supply chain, without attention to the full system of coffee production and distribution. Many certifications and labels exist, representing an array of approaches to a variety of specific concerns including carbon-footprint, country-of-origin, and "bird friendly" labels.[81] But this array of labels diminishes the value of labeled products, confuses both consumers and companies, and disproportionately burdens and disenfranchises producers.

The myriad existing sustainability standards and labels for coffee lead to market inefficiencies in several ways. First, oversupply of certified products confuses consumers and diminishes the credibility and effectiveness of

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77. SCORECARD, *supra* note 76, at 3–7; ANA LÓPEZ, CONSERVATION INT'L, STARBUCKS C.A.F.E PRACTICES IMPACT ASSESSMENT 2011–2015 11 (2018), https://www.conservation.org/docs/default-source/publication-pdfs/starbucks_cafe_practices_impact_assessment_2011-2015.pdf [https://perma.cc/J7VT-WG87].

78. *Ethically Sourced*, *supra* note 45; SCORECARD, *supra* note 76, at 8–16.

79. POTTS ET AL., *supra* note 31, at 166; *Hired Labour: Fairtrade Standard*, FAIRTRADE INT'L https://www.fairtrade.net/standard/hl [https://perma.cc/C8MA-MWS5].

80. *Id.* UTZ Certification, another popular standard for sustainable farming and environmentally responsible supply chain management in coffee, tea, cocoa, and hazelnut production, merged with Rainforest Alliance in 2018 and established a joint certification scheme in 2020. *About Us*, UTZ CERTIFIED, https://utz.org/who-we-are/about-utz/ [https://perma.cc/7K9K-9SEF]; *The UTZ Standard*, UTZ CERTIFIED, https://utz.org/what-we-offer/certification/the-standard/ [https://perma.cc/E56D-3TFX].

81. Angelo & Reilly-Brown, *supra* note 12, at 733–35; *see also* Juliane Reinecke et al., *The Emergence of a Standards Market: Multiplicity of Sustainability Standards in the Global Coffee Industry*, 33 ORG. STUD. 791, 794–96 (2012).

standards labels. An increasing number of coffee producers certify their coffee under some type of sustainability program, such that supply of "sustainable" products currently outpaces demand.[82] Because of the sheer number of coffee products on the shelf with "sustainability" labels, those specific certifications begin to lose their meaning and value in the eyes of consumers.[83] Many consumers are no longer able to accurately discern the meaning of the labels, nor do they place great value on such labels, since sustainability labels appear on so many products. An oversupply of fragmented standards breeds consumer misinformation and confusion, diminishing the value of sustainability initiatives.

The number of standards also leads to concerns about "greenwashing," the practice of using vague and ambiguous terms—like "green," "natural," or "sustainable"—to market products that have been falsely characterized as environmentally beneficial or neutral.[84] Thus, a fragmented labels market not only confuses consumers, but also leaves them vulnerable to devious advertising.

For producers and suppliers, the oversupply of sustainable products and the resulting confusion defeats some of the incentive to create and use consumer-facing labels at all. Oversaturation of standards means that these labels no longer do their job of incentivizing purchases,[85] despite producers and distributors taking on the cost of implementing sustainable practices. Further, even if consumers *do* understand a specific label and its meaning, the label will only be effective if the sustainable practices that it purports to stand for are actually put into practice by producers and distributors.[86] When standards lose clarity and credibility with consumers due to market saturation, voluntary standards no longer create the same incentives for producers or distributors and will fail to further sustainability goals.

The current certification market also hinders social and economic sustainability, because it manifests unequal outcomes down the supply chain and across producer communities.[87] Broadly, the current certification structure is disproportionately costly for all producers, who face increasingly burdensome standards[88] as well as pressure to certify their products under

82. POTTS ET AL., *supra* note 31, at 90–93, 163.

83. *See* Reinecke et al., *supra* note 81, at 792.

84. Watson, *supra* note 59, at 9.

85. POTTS ET AL., *supra* note 31, at 90–93.

86. *Id.* at 53.

87. Tad Mutersbaugh, *Ethical Trade and Certified Organic Coffee: Implications of Rules-Based Agricultural Product Certification for Mexican Producer Households and Villages*, 12 TRANSNAT'L L. & CONTEMP. PROBS. 89, 90 (2002).

88. *Id.* at 104.

every label for which they meet the standards.[89] This model is patently inefficient, as it asks producers to incur costs of multiple certifications, even where standards overlap significantly.[90]

This structure also deepens inequalities between producers. For example, in a study of several coffee farming communities in Oaxaca, Mexico, resources unique to individual communities fueled disparate outcomes.[91] One wealthier village of Oaxacan farmers, for instance, was able to pay a local community member with a high school education to handle certifications for their village, and easily earned an international organic certification for their farms.[92] Conversely, Oaxacan communities with fewer resources struggled to get certified at all, having neither the funding nor the expertise of the wealthier community.[93] The obvious consequence of such disparities is that the wealthier community can better and more quickly increase the value of their products and, accordingly, their compensation. Smallholders, by contrast, face much higher relative costs.[94] The current labeling structure thus risks leaving the neediest communities in the coffee supply chain behind.[95]

Current certification practices may likewise create conflicts with indigenous governance practices in coffee producer communities.[96] Often, one cost of implementing certifications is limiting the sovereignty and agency of individual producers and communities.[97] Unique certification programs are often rigid in their requirements and unresponsive to local needs and resources.[98] Thus, individual producers who deviate from arbitrary requirements set by more powerful standard-setters risk loss of certification and all the associated product value.[99] By undermining producer communities' "capacity for self-determination" in this way, the fragmented standards structure subverts sustainable social and economic development.[100]

In summary, despite the great collective drive to achieve a sustainable and ethical coffee trade, as evidenced by the large number and variety of sustainability standards, the fragmented nature of coffee labeling means that

89. Reinecke et al., *supra* note 81, at 792.
90. *See About UNFSS*, *supra* note 46.
91. Mutersbaugh, *supra* note 87, at 102–04.
92. *Id.* at 103.
93. *Id.*
94. POTTS ET AL., *supra* note 31, at 94.
95. *Id.* at 49.
96. Mutersbaugh, *supra* note 87, at 90, 92.
97. *Id.*
98. *Id.* at 93.
99. *Id.*
100. *See* POTTS ET AL., *supra* note 31, at 59 ("Capacity for self-determination is not only a human right, but a cornerstone of sustainable development.").

only limited progress has been made toward an environmentally, economically, and socially sustainable coffee supply chain.

III. LEARNING FROM OTHER INDUSTRIES: ALTERNATIVE CERTIFICATION AND LABELING SCHEMES

In the interest of exploring solutions for the coffee industry, this Part evaluates three certification and label regimes that already exist in the United States: (1) the USDA Organic program, (2) the Energy Star program, and (3) the United States Green Building Council's Leadership in Energy and Environmental Design (LEED) certification program. The structures, advantages, and shortcomings of each are described in turn, with attention to their potential to be used as models for developing an industry-specific sustainable coffee certification scheme.

A. USDA Organic Certification

The Organic Foods Production Act of 1990[101] provided for the establishment of the National Organic Program (NOP) within the United States Department of Agriculture (USDA).[102] Under the NOP, the U.S. government creates standards for production, handling, and labeling of organic agricultural products.[103] The program is voluntary, allowing producers to "opt in" to certification if their agricultural product meets program standards.[104] The Organic standards prohibit the use of synthetic substances like fertilizers and growth hormones in agricultural products.[105]

The NOP labeling scheme consists of four "tiers" of organic product certification and labeling.[106] A product that is produced with completely organic processes and ingredients may bear the "100% organic" label,[107] whereas products with fewer than 70% organic ingredients are only allowed to list those organic ingredients specifically, and may not otherwise label their product "organic."[108] The NOP likewise establishes appropriate labeling

101. Organic Foods Production Act of 1990, 7 U.S.C. §§ 6501–23.
102. *Id.* § 6503(a).
103. Czarnezki, *supra* note 49, at 15; Angelo & Reilly-Brown, *supra* note 12, at 730.
104. Angelo & Reilly-Brown, *supra* note 12, at 730.
105. Czarnezki, *supra* note 49, at 15.
106. *See* 7 C.F.R. §§ 205.301(a)–(d) (2022); Czarnezki, *supra* note 49, at 16.
107. 7 C.F.R. § 205.301(a).
108. *Id.* § 205.301(d).

conventions for products with at least 95% organic inputs and at least 70% organic inputs.[109]

While the organic label in the United States only indicates avoidance of synthetic add-ins and chemicals in their products, one of the weaknesses of the program is that consumers frequently conflate the label with other indicators of overall health, safety, or sustainability.[110] For example, organic certification does not require commitment to low-carbon or low-waste production methods.[111] While organic production often *does* carry some of these positive environmental outcomes beyond just avoiding harmful chemicals, organic certification is not *intended* to incentivize or communicate such practices.[112]

Further, the structure of organic labeling in the United States, much like other voluntary sustainability standards, increases producer costs by requiring certification to meet buyer demand and placing the onus on producers to undergo certification.[113] Under the NOP, certification of organic products is carried out by third-party "certifying agents."[114] To gain organic certification and the right to use the associated consumer label, a producer must establish and follow an "organic plan" created in conjunction with their certifying agent, as well as take on the costs of annual inspections and tests of their products.[115]

This structure is particularly relevant for the coffee industry, where it has been estimated that 70% of coffee producers worldwide qualify as smallholders, producing only a few hundred pounds of coffee annually.[116] For these smallholder farmers, acquiring certification can be costly or

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109. *Id.* § 205.301(b)–(c). Products made with at least 95% organic ingredients may be labeled "organic" as long as the remaining ingredients were produced to organic standards wherever available. *Id.* § 205.301(b). Products made with at least 70% organic ingredients may draw attention to those particular ingredients by labeling their end-product "made with organic (specified ingredients or food group(s))." *Id.* § 205.301(c).

110. Angelo & Reilly-Brown, *supra* note 12, at 732 (noting that "[t]he organic label . . . fails to inform the consumer whether the product was grown using environmentally harmful practices such as intensive fossil fuel use, intensive water use, . . . or other practices that result in air or water pollution").

111. *Id.*

112. *See* Ana María Aldanondo-Ochoa & Carmen Almansa-Sáez, *The Private Provision of Public Environment: Consumer Preferences for Organic Production Systems*, 26 LAND USE POL'Y 669 (2009).

113. Watson, *supra* note 59, at 9.

114. 7 U.S.C. § 6503(d).

115. *Id.* § 6504–05; *see* Angelo & Reilly-Brown, *supra* note 12, at 730.

116. Von Enden, *supra* note 16; *see also Conversions and Statistics*, INT'L TRADE CENTRE: THE COFFEE GUIDE, http://www.thecoffeeguide.org/coffee-guide/world-coffee-trade/conversions-and-statistics/ [https://perma.cc/ATQ6-HUWW].

cost-prohibitive, as they already face higher relative costs than large farms,[117] and buyer demand requires certification under multiple standards.[118] While an exemption from formal certification exists for smallholder producers whose annual gross organic sales are $5,000 or less, their organic products may not be labeled as organic on end-products if they pass through a larger handler or producer.[119] Thus, if a smallholder would like to use "conventional distribution channels" and market their products as organic, certification—and all associated efforts and costs—is required.[120]

Another challenge for the USDA organic label program has been irregular and unreliable enforcement.[121] The NOP is tasked with ensuring standards and labeling specifications are met, yet NOP staff and budget are consistently insufficient for meeting this need.[122]

B. Energy Star Certification

The Environmental Protection Agency (EPA) and Department of Energy jointly oversee the ENERGY STAR® (Energy Star) certification and label program.[123] The Energy Star label is intended to promote energy efficiency and conservation and to inform consumers about the energy impact of products like household appliances, electronics, and building materials.[124] Energy Star certification may additionally be earned by residential, commercial, and industrial buildings.[125] Like organic certification and labeling, Energy Star certification is voluntary[126] and certification is

117. POTTS ET AL., *supra* note 31, at 94.

118. Reinecke et al., *supra* note 81, at 794.

119. 7 C.F.R. § 205.101(a)(1) (2022). Rather than formally certifying their products, such smallholder producers must simply maintain a record of their operations and produce it for inspection if requested. *Id.* §§ 205.101(c)(1)–(2).

120. Czarnezki, *supra* note 49, at 16.

121. Houston, *supra* note 12, at 241–42.

122. *Id.* at 242 (noting that the program "had a staff of [only] sixteen and a budget of about four million dollars in 2009").

123. 42 U.S.C. § 6294a; *see Statutory Authority for Energy Star*, ENERGY STAR, https://www.energystar.gov/about/origins_mission/epas_role_energy_star/epa%E2%80%99s_statutory_authority_energy_star [https://perma.cc/A6VD-WGLQ].

124. U.S. EPA, ABOUT ENERGY STAR®—2019 1 (2020) [hereinafter ENERGY STAR FACTSHEET], https://www.energystar.gov/sites/default/files/asset/document/2020_EPA_ES_Factsheet_About_EnergyStar_v3_For508.pdf [https://perma.cc/DK7E-3KRE]; *Energy Efficient Products for Consumers*, ENERGY STAR, https://www.energystar.gov/products [https://perma.cc/Y7HP-B2L6].

125. ENERGY STAR FACTSHEET, *supra* note 124, at 1.

126. Watson, *supra* note 59, at 11.

implemented by third-party certifying agents.[127] Notably, the federal government promotes Energy Star certification via tax credits for things like residential use of certified appliances and compliant construction of residential and commercial buildings.[128]

The Energy Star label works by measuring a product's or building's energy efficiency relative to other products in the same category.[129] For instance, commercial buildings are scored by ranking them against peer-buildings, adjusted for factors like size, function, and location.[130] The building then receives a score between 1 and 100, with 100 being the most energy efficient.[131] A score of 75 is intended to correspond to a building that performed better than 75% of peer buildings.[132] Scores between 75 and 100 will earn the building an Energy Star label.[133]

This grading structure leads to the primary consumer misunderstanding of the Energy Star label—that it signifies innovative and environmentally friendly products or products creating *positive* environmental change.[134] In 2020, 90% of U.S. households surveyed by the Energy Star program recognized the label.[135] Other surveys indicate that consumers generally understand the label to communicate environmental benefits.[136] However, because the label ranks all products within a category, it is more accurate to say that an Energy Star label simply indicates a product is more efficient—or *less bad*—than competitors.[137] Nonetheless, this structure does not necessarily subvert the label's goals, as it still guides consumers to products that are more energy efficient than competitors, even if Energy Star certified

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127. *See EPA's Role in Energy Star*, ENERGY STAR, https://www.energystar.gov/about/origins_mission/epas_role_energy_star [https://perma.cc/9UFT-Z8BN]; Houston, *supra* note 12, at 246.

128. *Federal Income Tax Credits and Other Incentives for Energy Efficiency*, ENERGY STAR, https://www.energystar.gov/about/federal_tax_credits [https://perma.cc/6PRQ-WVWL].

129. Houston, *supra* note 12, at 243.

130. *How the 1–100 Energy Star Score Is Calculated*, ENERGY STAR, https://www.energystar.gov/buildings/benchmark/understand_metrics/how_score_calculated [https://perma.cc/E3MD-V4UC].

131. *Sample Energy Star Scorecard*, ENERGY STAR, https://www.energystar.gov/buildings/tools-and-resources/sample_energy_star_scorecard [https://perma.cc/2JH5-L7VL].

132. *Id.*

133. *Id.*

134. Houston, *supra* note 12, at 244.

135. ENERGY STAR FACTSHEET, *supra* note 124.

136. *See, e.g.*, Houston, *supra* note 12, at 244 (noting that consumer perceptions of the Energy Star label included "helping to protect the environment for future generations," "contributing to society," or carrying "environmental benefits").

137. *Id.*

products are not carbon neutral, completely renewable, or otherwise innovative.

However, the EPA's failure to maintain current standards has made the label less effective, and demonstrates one risk of relying on government agencies alone to set industry standards.[138] The Energy Star label relies on continual revision to ensure that high-scoring products actually correspond to the top 25% of products in a category.[139] For instance, as a product category becomes more efficient on the whole, a greater proportion of products will achieve qualifying scores.[140] When the EPA fails to rework the grading criteria, the meaning of the Energy Star label is diminished because it no longer communicates to consumers which products are truly exemplary.[141] This structure also creates few incentives to innovate, since producers can earn certification even if they are not leaders in their product categories.[142]

Thus, the Energy Star model is ill-suited for addressing coffee sustainability goals. Beyond offering incentives in the form of tax credits, it does not effectively reward or incentivize innovative practices. Further, Energy Star's practice of scoring within broad product and building categories provides only limited local flexibility, a model that would be inattentive to the high degree of local variation among coffee producers. Finally, the inability of the EPA to keep pace with industry actors, thus diminishing the value of the Energy Star label, suggests that relying more directly on industry actors could be a more efficient and successful approach to a new coffee sustainability standard.

C. USGBC LEED Certification

As a whole-system certification maintained by a reputable industry member organization, Leadership in Energy and Environmental Design (LEED) certification demonstrates strong potential for application in the coffee industry, because it has capacity to respond to local needs and capitalize on industry expertise better than a purely governmental model. LEED certification is a "green building rating system" created and carried out by the United States Green Building Council (USGBC), a nonprofit

138. *Id.* at 245.
139. *Id.* at 243.
140. *See id.*
141. *Id.* at 245.
142. *See id.* For example, in recent years up to 75% of the household appliances in some categories have earned the label, indicating that standards have not kept pace with energy efficiency technology. *Id.*

membership organization for building industry professionals and entities.[143] To conduct LEED certification, the USGBC monitors building projects via certified third-party industry actors.[144] Projects reviewed and graded by USGBC certification agents may then bear the LEED certification label.[145]

LEED Certification has been innovative in its ability to incorporate sustainability initiatives across differences. A wide variety of project types in many different sectors may seek certification, including residential and commercial new construction, major and minor renovation, interior redesign, neighborhood development, and city planning.[146] Each project receives points for sustainable strategies across a broad range of categories,[147] such as Water Efficiency, Materials and Resources, and Innovation.[148] Within these different categories, building projects earn points for measures like water use reduction, responsible sourcing of raw materials, proximity to public transit, or simple on-site practices like recycling collection or installing bicycle storage.[149] Depending on the number of points earned, a building project will be awarded Certified, Silver, Gold, or Platinum status.[150] The point system is continually developed with input from all members of the organization, a practice that includes and honors the input of diverse stakeholders.[151] This practice is particularly well-suited for translation to a coffee sustainability label, since the coffee industry involves so many uniquely situated stakeholders and current label programs fail to adequately incorporate producer concerns.

LEED certification has become so widely recognized and respected that some municipal governments have recently adopted the standards into law,

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143. *The History of LEED*, USGBC, https://www.usgbc.org/about/mission-vision [https://perma.cc/G799-XVS8].

144. *Why LEED*, USGBC, https://www.usgbc.org/leed/why-leed [https://perma.cc/F7MP-EQXX].

145. *Id.*

146. *LEED Rating System*, USGBC, https://www.usgbc.org/leed [https://perma.cc/4Q7V-RVCU]. Even law school buildings may be LEED certified! *See ASU Law Named No. 2 'Best Law School Building' in the Nation*, ASU NEWS (May 28, 2020), https://news.asu.edu/20200528-asu-law-awarded-no-2-best-law-school-building-nation [https://perma.cc/5E7Z-TGV2].

147. *LEED Rating System*, *supra* note 146.

148. *LEED Credit Library*, USGBC, https://www.usgbc.org/credits?Version=%22v4.1%22&Rating+System=%22New+Construction%22 [https://perma.cc/HE9F-R5NC].

149. *Id.* For example, a new construction project can earn up to five points for "Access to Quality Transit," or one point for "Bicycle Facilities." Curious readers are encouraged to explore the interactive LEED Credit Library. *Id.*

150. *Id.*; *LEED Rating System*, *supra* note 146.

151. Angelo & Reilly-Brown, *supra* note 12, at 745.

hoping to advance local sustainable building goals.[152] Critics of this practice have expressed concerns about both the legal authority and the wisdom of local governments effectively delegating their responsibilities to a private, third-party actor.[153] By adopting LEED standards as law, it is argued, government impermissibly imposes industry interests on the public and limits both the efficacy and legitimacy of such sustainability initiatives.[154] Indeed, importing LEED standards wholesale without any attention to local needs, resources, or idiosyncrasies undermines one of the strengths of the LEED model—incorporation of a wide array of sustainability strategies and practices into a single score. However, government can create positive incentives to participate in LEED certification without adopting the private standard as law.[155] For example, similar to the Energy Star label, both states and the federal government have offered tax credits related to green building.[156] This approach allows government to encourage use of a successful and respected private standard like LEED without mandating it.

LEED has also been criticized for its potential conflicts of interest.[157] Critics warn of the danger of allowing industry actors to also serve as their own regulators.[158] However, involvement of industry experts—and the associated reputation for excellence—is one factor that has contributed to the label's success.[159] Additionally, LEED boasts a "transparent" standard-

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152. *Id.* at 744; Patrick Kain, Comment, *Improving Green Building: Comparing LEED Certification to the FDA and Its Private, Third-Party Ratings Approach*, 5 AM. U. BUS. L. REV. 291, 295 (2016); Philip J. Weiser, *Entrepreneurial Administration*, 97 B.U. L. REV. 2011, 2059–60 (2017).

153. *See, e.g.*, Kain, *supra* note 152, at 302–08 (arguing that adoption of LEED certification standards as law violates the nondelegation doctrine); Sarah B. Schindler, *Following Industry's LEED®: Municipal Adoption of Private Green Building Standards*, 62 FLA. L. REV. 285, 290 (2010) (arguing that wholesale adoption of voluntary standards as regulatory requirements is contrary to public policy and traditional notions of property ownership).

154. Schindler, *supra* note 153, at 289–91.

155. *See* Weiser, *supra* note 152, at 2059–60.

156. *Id.*; *see also* U.S. GREEN BLDG. COUNCIL, ENCOURAGING BUILDING ENERGY IMPROVEMENTS THROUGH TAX INCENTIVES 1 (2015), https://www.usgbc.org/sites/default/files/Encouraging%20Building%20Energy%20Improvements%20Through%20Tax%20Incentives.pdf [https://perma.cc/PV36-GBF9]; Katherine Gillespie et al., *Congress Extends Renewable Energy Tax Credits in 2021 Omnibus Spending Bill*, JDSUPRA (Dec. 23, 2020), https://www.jdsupra.com/legalnews/congress-extends-renewable-energy-tax-98223/ [https://perma.cc/MX9K-7PU3].

157. *See, e.g.*, Kain, *supra* note 152, at 308–10; Kaleb Keller, Note, *LEEDing in the Wrong Direction: Addressing Concerns with Today's Green Building Policy*, 85 S. CAL. L. REV. 1377, 1379 (2012); Schindler, *supra* note 153, at 332.

158. Kain, *supra* note 152, at 308–10; Keller, *supra* note 157, at 1401–02.

159. *See* Weiser, *supra* note 152, at 2058 (noting that LEED's success and integrity serves as proof that responsible industry self-regulation is possible).

setting process that includes stakeholders with widely varied interests.[160] Thus, to the degree that LEED standards are driven by diverse stakeholders, fewer concerns about the integrity of self-regulation should arise.[161]

IV. APPLYING A WHOLE-SYSTEM APPROACH TO THE COFFEE INDUSTRY

A hybrid private-government system has the potential to provide the coffee industry with whole-system environmental, social, and economic sustainability and address many of the shortcomings of the current coffee certification landscape. This Part argues for a new coffee certification program modeled primarily after the USGBC's LEED certification program and Starbucks's C.A.F.E. Practices program, designed and implemented by a well-reputed member organization in the coffee industry and promoted by the government via incentives programs. Section A discusses how this program could increase consumer clarity and boost the credibility of sustainability initiatives in the coffee industry. Section B explains how this program could better honor the needs and contributions of historically underrepresented producer communities, thus leading to more equitable and sustainable development in the coffee industry.

A. Improving Credibility and Clarity of Sustainability Standards

Most modern sustainability initiatives in coffee put the onus on consumers to increase demand for sustainable coffee by investigating their coffee and its labels and selecting coffees that conform to ethical practices they would like to promote.[162] However, sustainability initiatives that depend on consumer demand for a label will fall short unless the label incorporates the sustainability goals of the industry in a way that consumers can understand. It is nonsensical to depend on consumer choice as the main propellant of sustainability without consumer-facing labels that can be accurately interpreted, widely implemented, and reliably enforced.[163] Thus, a successful

160. Angelo & Reilly-Brown, *supra* note 12, at 745.

161. *See generally* Jodi L. Short & Michael W. Toffel, *The Integrity of Private Third-Party Compliance Monitoring*, 42 ADMIN. & REGUL. L. NEWS 22 (2016).

162. *See, e.g.*, Conservation Int'l, *supra* note 17 (encouraging sustainability-minded coffee consumers to increase demand for sustainable coffee by investigating their purchases and asking their barista about coffee sourcing).

163. *See* Kate Macdonald, *Globalising Justice Within Coffee Supply Chains? Fair Trade, Starbucks and the Transformation of Supply Chain Governance*, 28 THIRD WORLD Q. 793, 798 (2007). *See generally* Reinecke et al., *supra* note 81.

whole-system[164] and industry-specific coffee certification should learn from the successes and failures of existing certification programs in coffee and across other industries.

Improving customer understanding via a uniform point system such as C.A.F.E. Practices and LEED certification could increase demand for sustainable coffee products and improve overall effectiveness of sustainability strategies. Both C.A.F.E. Practices and LEED make their standards and scoring mechanisms transparent and accessible to consumers, helping to mitigate consumer confusion concerns. For example, Starbucks makes available their C.A.F.E. Practices "scorecards,"[165] which are updated on a regular basis. When a C.A.F.E. Practices certified farm gets a specific point value, consumers are assured that the producer meets certain non-negotiables (called "Zero-Tolerance" indicators), as well as accumulating points in economic, social, and environmental sustainability categories.[166] Similarly, consumers can easily locate and peruse the LEED certification point system online.[167] A similar universal rating system could improve transparency and consumer clarity in the coffee industry.

Additionally, unifying factors under one label program with a flexible point system could help remedy the inefficient oversupply of sustainability labels. Currently, the oversupply of niche sustainability labels reduces benefits to producers and distributors of coffee,[168] since consumers may mistakenly conflate any given label, such as organic certification, with environmentally sustainable farming, local governance, fair labor, animal ethics, or overall nutritional value.[169] A consolidated point system and label could include many of these considerations, while presenting customers with a simple and easy-to-understand product score.

To this end, some have proposed authorizing the USDA to expand or redesign the organic label to include carbon-footprint, product life-cycle analysis, and similar measures.[170] However, this is problematic on several fronts. First, organic certification is already disproportionately costly and time-consuming for producers, particularly smallholders. The limited exemptions within the organic label are inadequate for addressing significant

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164. It is worth noting that a whole-system approach modeled after LEED standards has been proposed for agriculture generally. Angelo & Reilly-Brown, *supra* note 12.

165. SCORECARD, *supra* note 76.

166. *Id.*; LÓPEZ, *supra* note 77, at 11.

167. *LEED Credit Library*, *supra* note 148.

168. POTTS ET AL., *supra* note 31, at 183.

169. Houston, *supra* note 12, at 240–41.

170. Czarnezki, *supra* note 49, at 31–32; *see also* Kate L. Harrison, Comment, *Organic Plus: Regulating Beyond the Current Organic Standards*, 25 PACE ENV'T L. REV. 211, 227–28, 232–33 (2008).

local variations in coffee producer communities.[171] Additionally, while expansion of the organic label is compelling from the standpoint of building upwards from existing statutory structure, the existing organic label already faces significant enforcement challenges. It is unrealistic to expect the USDA and the NOP to take on a significantly more rigorous, expensive, and comprehensive certification.[172] Finally, expanding organic would mean incorporating *more* factors into a label that already confuses consumers and that consumers already erroneously associate with a variety of environmental and ethical standards.[173] Building upwards from point systems like LEED certification and C.A.F.E. Practices would therefore be more effective than expanding on a purely government standard.

Other critics argue that an unregulated "standards market," rather than a unified standard, is ideal because a market creates competition and consequently innovation.[174] A standards market, it is argued, allows for broader consumer choice and for consumer preferences to drive the development of increasingly superior standards.[175] However, this argument is uncompelling in the face of evident oversupply and consumer confusion in the current coffee label market. Consumer preference fails to effectively drive innovation if consumers misunderstand labels. Further, and perhaps more importantly, the current market of niche standards subverts social and economic sustainability goals because producers disproportionately shoulder the costs of multiple certifications to remain competitive, while standard-setters devote resources to in-fighting rather than action.[176] A unified standard, by contrast, would allow industry *collaboration* on innovative sustainability goals, without steeping consumers in a confusing sea of standards or burdening producers with the bulk of sustainability labeling costs.

By consolidating and legitimizing the current mosaic of labels under a point system managed by a reputable member organization, the resulting label is more likely to operate as a powerful tool of consumer persuasion. Both LEED certification and the C.A.F.E. Practices program demonstrate the tremendous influence that large, well-known industry actors can have in

171. *See* Czarnezki, *supra* note 49, at 16; 7 C.F.R. § 205.101 (2021).

172. *See* Houston, *supra* note 12, at 241–42 (describing that "[t]he biggest problem with the USDA Organic label is its inconsistent enforcement and monitoring mechanisms" and that the "NOP's resources are insufficient to monitor 30,000 certified farms and facilities and 100 accredited certifiers" that it is responsible for overseeing).

173. *Id.* at 240–41; *see* David Conner & Ralph Christy, *The Organic Label: How To Reconcile Its Meaning with Consumer Preferences*, 35 J. FOOD DISTRIB. RSCH. 40, 42–43 (2004).

174. *See, e.g.*, Reinecke et al., *supra* note 81.

175. *Id.* at 798.

176. *See id.* at 805–06.

advancing sustainability goals.[177] Widespread industry and governmental recognition of LEED certification as a reputable standard, for example, has created incentives for businesses to become members, for projects to seek certification, and for the USGBC to maintain high standards. This respect for the LEED label is evidenced by municipal governments adopting LEED standards in furtherance of their own sustainable building goals (however ill-advised),[178] as well as governments offering tax incentives to green building projects.[179] Large coffee industry actors like Starbucks that already have the means to develop their own private certification systems should therefore participate in crafting new sustainability standards, and commit to sourcing under the new unified label in an effort to promote the reputation of the standard within the coffee industry.[180]

Further, the new label's credibility should be bolstered by government through a tax credit or similar incentive program similar to those used for both Energy Star and LEED certification. This structure would encourage large and small coffee industry actors to participate, lend legitimacy to the program, and conserve government resources, while entrusting industry experts with the bulk of standard-setting, implementation, and enforcement responsibilities.

Critics also worry about potential conflicts of interest when industry actors—especially powerful actors—control industry standards.[181] However, potential for democratic governance is one strength of developing a coffee sustainability standard under a reputable coffee member organization like the SCA or NCA. LEED standards are continually developed with input from all members, helping to ensure diverse stakeholders have a voice in standards.[182] In the coffee industry, producer communities have been disenfranchised by the current structure. Likewise, many U.S. coffee industry actors interested in implementing social and economic sustainability measures are dispersed local cafés and roasteries. So, while many coffee professionals would like to promote ethical supply chains and sustainable agriculture practices,[183] implementing such policies at their own cafés, roasteries, or farms on an individual basis may be cost-prohibitive. By virtue of their membership in an industry organization, small, independent stakeholders can gain greater

177. Macdonald, *supra* note 163, at 803–06.

178. Schindler, *supra* note 153, at 290; *see* Kain, *supra* note 152, at 302–08.

179. *See* Weiser, *supra* note 152, at 2059–60; U.S. GREEN BLDG. COUNCIL, *supra* note 156; Gillespie et al., *supra* note 156.

180. *See* Macdonald, *supra* note 163, at 806–07 (describing how C.A.F.E. Practices has "diffused" sustainability goals across conventional coffee supply chains).

181. *Id.*

182. Angelo & Reilly-Brown, *supra* note 12, at 745.

183. *See supra* Part II.B.

collective influence. Setting standards through a respected member organization like the SCA or NCA would allow more participation by these vulnerable stakeholders in setting standards and could thus limit self-regulation concerns[184] and help ensure honest, progressive standards.

More novel (and farther reaching) accountability measures could also be adopted to address lingering self-regulation concerns. For example, the majority of certification and labelling programs utilize third-party certification agents to monitor compliance, leading to concerns about credibility and honest enforcement of standards when industry pays monitoring agents directly.[185] To remedy this, a joint private-government certification fund could be established. The funding would be earmarked to pay for certifying agents for the label program, paid into by organization members, and overseen by a government agency. So, rather than members paying their certification agents directly,[186] members' certification funds would funnel through the agency fund, thus limiting the potential perverse incentives created when standard-setters are tasked with self-enforcement.[187] Accordingly, a coffee industry member organization could still be empowered to set and monitor standards, while remaining accountable to government through oversight of the group fund. Such a novel approach could lessen self-regulation concerns without relying solely on government to fund the certification program.

B. Embracing Economic and Social Justice Through Flexible Standards and Diverse Membership

A whole-system certification championed by a reputable member organization in the coffee industry additionally promotes economic and social sustainability by helping to resolve the problems of (1) inflexible sustainability standards and (2) limited producer involvement in standard-setting. A new sustainable coffee standard could thus build from the LEED and C.A.F.E. Practices models by increasing sensitivity to regional and local variations and soliciting active participation from producers, small businesses, and individual coffee professionals through a member organization.

Unlike the narrowly focused labels that currently dominate the coffee industry, both LEED certification and C.A.F.E. Practices feature

184. *See* Weiser, *supra* note 152, at 2058.
185. *See generally* Short & Toffel, *supra* note 161.
186. *Id.* at 22.
187. *See id.* at 24.

whole-system structures that award points across many categories affecting holistic sustainability and result in a unified score that is easy to compare across products. The LEED structure ensures that diverse sustainability efforts are incorporated into a whole-building score.[188] C.A.F.E. Practices likewise allows for the collection of sustainability points in environmental, economic, and social responsibility categories.[189] Recognizing diverse sustainability efforts by awarding points across different categories is a good first step toward accurately representing and rewarding local differences; this model helps ensure that smallholder farmers get credit for more of their environmental, social, and economic investments.

However, both LEED certification[190] and C.A.F.E. Practices[191] have been criticized for failing to adequately adjust for nuanced regional and local variations. LEED, for example, captures some local differences by allowing for points in many categories, but does not award weighted points for regional characteristics, such as responsibly managing resources that are particularly scarce in a given region, or relying primarily on regionally abundant building materials.[192] The C.A.F.E. Practices program also responds to this challenge on a limited scale, offering unique scorecards for "Generic" versus "Smallholder" producers.[193] In this way, C.A.F.E. Practices is somewhat sensitive to the unique circumstances of different coffee producers.

A new member-driven label in the coffee industry could go further. One benefit of a member organization is the potential for increased input by producers and more vulnerable stakeholders; the more participation of local stakeholders, the more likely that the new standard will accurately account for these local variations.[194] The new standards could take a flexible approach, perhaps incorporating region-specific scorecards collaborated upon by producer members.[195] In this way, building upon LEED certification and C.A.F.E. Practices in a new coffee label could better capture local differences, and allow producers to internalize more of the benefit of the sustainable practices they undertake.

Finally, relying on a diverse member organization to develop a new holistic coffee sustainability standard recognizes that the best custodians of a

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188. *LEED Rating System*, *supra* note 146.

189. SCORECARD, *supra* note 76.

190. Schindler, *supra* note 153, at 322–23, 333.

191. Macdonald, *supra* note 163, at 806–09.

192. Schindler, *supra* note 153, at 322–23, 333.

193. *Starbucks C.A.F.E. Practices*, SCS GLOB. SERVS., https://www.scsglobalservices.com/services/starbucks-cafe-practices [https://perma.cc/H722-T5RN].

194. *See* POTTS ET AL., *supra* note 31, at 47–49.

195. *Id.*

new standard are the coffee professionals throughout the complex system that grows and supplies U.S. coffee. From a normative perspective, participatory governance and involvement of diverse stakeholders are necessary elements of socially and economically equitable development.[196] Absent the input of the most vulnerable stakeholders, development of U.S. coffee supply chains simply advances the interests of powerful industry actors.[197] Prioritizing greater involvement by producers in the standard-setting process through a member organization honors the U.S. coffee industry's proclaimed goals of promoting ethical treatment of producer communities and crafting a coffee industry that is socially and economically sustainable.

V. CONCLUSION

The current landscape for sustainable coffee certification and labeling takes a fragmented approach, attempting to remedy unfavorable environmental, economic, and social practices with myriad niche standards and consumer labels. A hybrid private-government model that builds primarily upon the learnings of an existing coffee certification system (Starbucks's C.A.F.E. Practices) and a whole-building certification system (USGBC's LEED certification) would address several of the challenges to implementing whole-system sustainability. Uniting fractured standards under a single score could reduce consumer confusion. Relying on industry members to set standards could also leverage their expertise and reduce government burden. Perhaps most importantly, a new hybrid certification scheme that includes producers as members could help to ensure that those producers, from the COCAFCAL cooperative farmers in Honduras to smallholder farmers in Oaxaca, more completely realize the benefits of their achievements and exercise greater agency in the coffee sustainability movement. In this way, such a certification has potential to go beyond environmental sustainability, promoting economic justice, ethical labor practices, sovereignty of producer communities, and truly holistic sustainability standard in the coffee industry.

196. *Id.* at 59, 77; Macdonald, *supra* note 163, at 806–09.

197. *See* Macdonald, *supra* note 163, at 805–06.