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A LEGAL SOLUTION TO A FAST FASHION PROBLEM

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Clothing is one of life's necessities. Fashion—the prevailing style of clothing of a particular time—offers an important medium through which people from all walks of life can express themselves through personal style.¹ While the garments we put on our back may be an indispensable part of daily life, many take for granted where they come from and how they entered their wardrobe. The fashion industry, for all its merits, takes a major toll on resource use and has broad environmental impacts. From cultivation of fibers that will later become textiles, to dyeing processes, to consumption, the clothes we wear impact our environment at every step.

The emergence of the “fast fashion” industry—the rapid production of inexpensive clothing to mimic the ever-changing trends of high-fashion labels—has exacerbated these effects. Popular retailers like H&M and Zara have a wide global reach. Although these retailers made explicit commitments to responsible use and production with in-store textile recycling and rewards programs, the actual value of these efforts is less clear. In contrast, other retailers like The Reformation and Everlane founded their brands on the tenets of sustainable fashion. This note acknowledges the difficulty of defining “sustainable fashion” and recognizes that its overuse in general discourse has perhaps rendered the term meaningless; marketing and advertising campaigns have flung the term around with abandon and it has become more of a marketing ploy instead of an important standard. However, in an attempt to give this phrase meaning in the context of this discussion, “sustainable fashion” is defined as a system of clothing production and consumption that assesses and attempts to meaningfully reduce the impact of each stage of a garments life, from the production of the fibers to its disposal. Sustainable fashion seeks to minimize and reduce consumption of resources at all stages and can be done through forgoing use, recycling, and repurposing so as not to compromise the availability of such resources for future generations.²

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¹ *Fashion*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/fashion> (last visited Apr. 11, 2020).

² See Solene Rauturier, *The Ultimate Sustainable and Ethical Fashion Glossary*, MEDIUM (Apr. 3, 2019), <https://medium.com/@solenerauturier/sustainable-ethical-fashion-glossary-cef252976abb>.

However, with these commitments to alternative materials, limited production, and longer-lasting clothing comes higher costs and inaccessibility to consumers. While others have suggested that simply allowing the industry to regulate itself by promoting self-imposed labelling and encouraging consumers to change their shopping habits will correct the negative environmental impacts from the fashion industry, this paper proposes that more is needed.³ This note suggests that using existing legal frameworks for the imposition of international trade policies to disincentivize consumption of fast fashion and to incentive limited consumption of responsibly-made clothing is the quickest and easiest method to solve the multi-faceted problems of the fast fashion industry.

I. The Impacts of Fiber Cultivation and Increased Consumption	187
A. Wide-Ranging Resource Use of Natural Fiber Cultivation	188
B. Current Consumption Patterns	191
II. The Good Actors v. The Bad Actors	193
A. The Good Actors: The Reformation and Everlane	194
1. The Reformation	194
2. Everlane	196
B. The Bad Actors: H&M and Zara	198
1. H&M	198
2. Zara	200
III. The Law of Sustainable Fashion	202
A. Self-Regulation and Other Ineffective Methods for Solving the Problem	202
B. International Economic Regulation	204
IV. Conclusion	208

I. The Impact of Fiber Cultivation and Increased Consumption

The production and use of textiles and garments as we know it today has evolved over time. Clothing has always been a necessity for everyday life but has also been a medium for artistic expression.⁴ Clothing and textiles served as protection against the elements, an indicator of wealth and social status, and even played a role in religious contexts.⁵ As the world developed, so too did textiles and fashion.⁶ Innovations in science often led to innovations in new materials and methods of production.⁷ From the invention of viscose to nylon to polyester, and even more recently with the development and use of lyocell and jute, textiles and clothing have not stopped changing.

This rapid movement is perhaps more apparent now than ever with the emergence of the “fast fashion” industry. Increases in consumer demand coupled with ever-changing modern

³ Elisha Teibel, *Waste Size: The Skinny on the Environmental Costs of the Fashion Industry*, 43 WM. & MARY ENVTL. L. & POL'Y REV. 595 (2019).

⁴ Mary Ellen Snodgrass, *Cotton and Cotton Products*, in *WORLD CLOTHING AND FASHION: AN ENCYCLOPEDIA OF HISTORY, CULTURE, AND SOCIAL INFLUENCE* (2013).

⁵ *Id.*

⁶ *Id.*

⁷ Mary Ellen Snodgrass, *Fibers, Synthetic*, in *WORLD CLOTHING AND FASHION: AN ENCYCLOPEDIA OF HISTORY, CULTURE, AND SOCIAL INFLUENCE* (2013).

fashion trends have led producers to mass produce garments at an accelerated rate.⁸ Such garments are designed to be made very quickly and at a low cost to compete with expensive designer labels, meaning they are generally made with cheaper fabrics and with quality as a secondary consideration.⁹ Along with these low cost and quality clothes comes immense resource waste.¹⁰ Clothes of such a low quality cannot be worn for very long and are therefore soon thrown away and are usually in such bad condition that they are not able to be reused or repurposed as clothes again.¹¹

In stark contrast, traditional “legacy” brands—high fashion labels such as Calvin Klein, Ralph Lauren, and Tommy Hilfiger—offer limited seasonal releases of different collections of clothes.¹² For classic fashion labels, the design, treatment, manufacture, and distribution of each collection can take up to almost two years for a garment to go from concept to consumer.¹³ Fast fashion giant Zara can take a garment from concept to consumer in approximately four months.¹⁴

The current pattern of rapid production and consumption of garments is not typical of the history of the fashion and clothing industry. This very recent pattern is having disastrous effects.¹⁵ Given the wide variety and quantities of resources needed to create clothing—to cultivate individual fibers, to spin them into yarns and threads, to weave into textiles, to dye, to compile into a garment, to ship from factory to market, to maintain the clothing—such rapid use and disposal cannot be justified.

This section outlines fibers and textiles that have been used throughout history for clothing and touches on the environmental impact of their continued production in modern times. It then traces patterns of consuming textiles, from pre-Industrialization patterns and the shift to a higher level of consumption generally as it translates to consumption of clothing. It then discusses the development of new and synthetic fibers and textiles and their impacts on the environment. This section concludes by outlining the development of the fast-fashion industry and the shift from mere increased consumption post-Industrialization to the period of hyper-consumption we see now.

A. Wide-Ranging Resource Use of Natural Fiber Cultivation

Evidence for the use of cotton in clothing dates back nearly 7,000 years.¹⁶ From what is now Asia, to North America, to Africa and beyond, cotton has been used all over the world for myriad purposes.¹⁷ Diverse uses such as clothing for daily wear, reinforcement for combat uniforms, and luxury pieces indicating status were prevalent across civilizations across the world.¹⁸

⁸ *Find Out How This Unique Business Practice Has Benefited Consumers and Taken the Fashion Industry by Storm*, EDOLOGY, <https://www.edology.com/blog/fashion-media/rise-of-fast-fashion/> (last visited Apr. 11, 2020).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² The Patriot Act with Hasan Minhaj, *The Ugly Truth of Fast Fashion* (YouTube Nov. 25, 2019), <https://www.youtube.com/watch?v=xGF3ObOBbac>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Alden Wicker, *Fast Fashion is Creating an Environmental Crisis*, NEWSWEEK (Sept. 1, 2016), <https://www.newsweek.com/2016/09/09/old-clothes-fashion-waste-crisis-494824.html>.

¹⁶ Snodgrass, *supra* note 6.

¹⁷ *Id.*

¹⁸ *Id.*

Today, the United States is the number one producer of cotton fibers yet production is slightly declining.¹⁹ Cotton alone currently accounts for 40 percent of textile materials.²⁰ Cotton provides a soft, lightweight, and breathable material that can be used for a wide variety of garments.²¹

Despite this prolific use, cotton is not without its negative impacts. A life cycle assessment (LCA) is one tool commonly used to evaluate the environmental impacts of textiles and garments.²² A life cycle assessment is “a systematic set of procedures for compiling and examining the inputs and outputs of materials and energy and the associated environmental impacts directly attributable to the functioning of a product or service system throughout its life cycle.”²³ An LCA helps to observe not only the environmental impact of a garment as a whole, but also the impact of each component part.²⁴ The three biggest areas of environmental impact by cotton cultivation are found in water consumption and contamination, synthetic fertilizers, and fossil fuel use.²⁵

Water consumption is the first area of cotton’s significant impact.²⁶ Cotton requires an immense amount of water to grow and also thrives in arid climates.²⁷ Because it thrives in arid climates where precipitation by rainfall is rare, most cotton fields require irrigation methods to grow.²⁸ Fifty-three percent of the world’s cotton fields require irrigation which in turn produces 73 percent of the world’s cotton supply.²⁹ Countries that account for a large percentage of cotton cultivation—such as Egypt, India, and China—use flood irrigation techniques, which can account for up to 887,325 gallons of water per acre.³⁰ Furthermore, flood irrigation systems have very low efficiency, meaning that the percentage of water that reaches the plant from the source is low; in some countries efficiency is a mere 40 percent.³¹ Flood irrigation is difficult to control, and is therefore more difficult to alter water levels to meet the changing needs of the crop.³² This leads

¹⁹ *Cotton Outlook*, U.S. DEP’T OF AGRIC. (February 22, 2019)

<https://www.usda.gov/oce/forum/2019/outlooks/Cotton.pdf>.

²⁰ A.K. Chapagain et al., *The Water Footprint of Cotton Consumption: An Assessment of the Impact of Worldwide Consumption of Cotton Products on the Water Resources in the Cotton Producing Countries*, 60 *ECOLOGICAL ECON.* 186, 187 (2006).

²¹ Snodgrass, *supra* note 6.

²² *Design for the Environment Life-Cycle Assessments*, U.S. ENVTL. PROT. AGENCY, <https://www.epa.gov/saferchoice/design-environment-life-cycle-assessments> (last visited Apr. 11, 2020). A life cycle assessment can be used in many contexts, not just in the textile and clothing industry. It can be used to assess the environmental impact of different processes, products, materials, and activities.

²³ *Defining Life Cycle Assessment*, GDRC, <https://www.gdrc.org/uem/lca/lca-define.html> (last visited Apr. 11, 2020).

²⁴ Teibel, *supra* note 3.

²⁵ Maurizio Bevilacqua, *Environmental Analysis of a Cotton Yarn Supply Chain*, 82 *J. OF CLEANER PRODUCTION* 154, 154 (2014).

²⁶ *Id.*

²⁷ F.A. Esteve-Turrias & M. de la Guardia, *Environmental Impact of Recover Cotton in Textile Industry*, 116 *RESOURCES, CONSERVATION AND RECYCLING* 107, 107 (2017); Bevilacqua, *supra* note 25, at 154.

²⁸ Bevilacqua, *supra* note 25.

²⁹ Chapagain, *supra* note 20, at 187.

³⁰ Bevilacqua, *supra* note 25, at 158. The cited study collected data that showed that India’s flood irrigation technique uses 8,300,000 liters per hectare of water, the highest volume of the four countries studied (along with Egypt, China, and the United States). The conversion from liters per hectare to gallons per acre is an approximation based on Google conversion resources.

³¹ *Id.* at 161.

³² *Id.* at 162.

to overwatering, which in turn leads to increased runoff.³³ Given the effects of climate change on water resources, and contamination and depletion of existing freshwater resources, it is highly unlikely that cotton cultivation can continue as it has for millennia.³⁴

The use of synthetic fertilizers, pesticides, and herbicides in cotton growth presents another major negative environmental effect of the fiber production.³⁵ Synthetic fertilizers heavy in phosphorous, nitrogen, and potassium can contribute to poor human health—like respiratory issues and risk of cancer—and can also lead to overall depletion of soil fertility.³⁶ Furthermore, unbridled use of synthetic fertilizers, particularly in regions that depend on flood irrigation, can runoff into water sources, contaminating drinking water and creating dead zones in river mouths and the surrounding coastal area.³⁷ Trends toward intensification and a resistance to leaving fields fallow or planting other less-profitable crops in between harvests increases the need for synthetic fertilizers and thereby makes this problem worse and worse.³⁸

Fossil fuel consumption and emissions from heavy machinery used in cotton harvesting and processing offers a secondary source of negative environmental impacts in the cultivation of cotton fibers.³⁹ The effects of fossil fuel consumption are more pronounced in industrialized countries where harvesting and processing stages are reliant almost entirely on machinery powered by fossil fuels or electricity.⁴⁰ A noticeable difference exists between the impact of fossil fuels in cotton production in countries that do not rely on heavy machines to harvest and process cotton fibers.⁴¹ Fossil fuel consumption also takes place heavily in the yarn production phase of the cotton lifecycle, primarily through the use of electricity dependent machines.⁴²

Not only does the cultivation stage produce drastic negative impacts, but so too does the production of cotton yarn for weaving, which includes sorting, spinning, dyeing, and finishing.⁴³ The dyeing stage of the yarn production process offers the most detrimental environmental effects.⁴⁴ Dyeing requires a number of harsh chemicals and even more water for the pigments to adhere to the fiber.⁴⁵ Fossil fuels are also used to heat water in the dyeing process, produce steam, and to then cool facilities.⁴⁶ After using the water to dye the yarn, the wastewater must then be treated with more harsh chemicals or otherwise disposed of through drains.⁴⁷ If allowed to drain untreated, then the wastewater will likely leach into the drinking supply through drainage and sewage systems.⁴⁸

³³ *Id.* at 161.

³⁴ *Id.* at 164.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 161.

⁴² *Id.* at 162.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

Moreover, these effects are exacerbated when cotton fields do not maximize productivity.⁴⁹ Efficiency is reduced when water, fertilizers, and other cultivation resources are used but do not produce maximum amounts of cotton fiber per unit of land; this means already scarce or abused resources are wasted further.⁵⁰ Such effects are seen in India, where rampant fertilizer use is contaminating and even poisoning already dangerously scarce water resources.⁵¹

B. Current Consumption Patterns

Past trends of consumption had less of an environmental impact than its modern-day counterpart.⁵² Prior to Industrialization, clothing production from cultivation to final product was an expensive and labor-intensive process.⁵³ While water and resource use for the production of fibers was perhaps similar to modern day use, impacts from synthetic fertilizers, electric and mechanical machinery, and chemical dyes would not have been present. It was not uncommon for most people to own one full outfit for everyday wear, an outfit for Sunday best, and perhaps a few individual garments to piece together.⁵⁴ Linen, wool, and cotton were the most popular and easily accessible textiles, but even those required effort to obtain.⁵⁵ Linen had to be cultivated from the flax plant and then extracted, wool had to be sheered from sheep, and cotton had to go through its intensive cultivation; then came the yarn spinning, cloth weaving, and garment sewing.⁵⁶ Additionally, particularly with women's clothing, garments required much more materials than they typically do today—skirts that went down to the ankles, high necklines, and long sleeves required more yards of fabric.⁵⁷ Washing clothes also presented a challenge that kept textile and clothing consumption at low levels.⁵⁸ The complex construction of such extensive dresses, the trouble of gathering, heating and disposing of water, and the harsh chemicals in the soap of the time all contributed to the difficulty of washing clothing and the corresponding low number of garments per person.⁵⁹ Past trends of textile and garment consumption were based on necessity, with style and fashion coming secondary.

Many forces contributed to changes in patterns of clothing consumption: industrialization, department stores, and advertisements.⁶⁰ Industrialization provided many middle-class Americans with a steady and stable job that eventually led to more disposable income.⁶¹ It also made the

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Sandra Yin, *Lifestyle Choices Affect U.S. Impact on the Environment*, PRB (October 2, 2006), <https://www.prb.org/lifestylechoicesaffectusimpactontheenvironment/>.

⁵³ Jane Wheeler, *Clothing of the 1830s*, CONNER PRAIRIE, <https://www.connerprairie.org/educate/indiana-history/clothing-in-the-1800s/> (last visited Apr. 11, 2020).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Peter N. Stearns, *The Explosion of Consumerism in Western Europe and the United States*, in *CONSUMERISM IN WORLD HISTORY: THE GLOBAL TRANSFORMATION OF DESIRE* (2006).

⁶¹ *Id.*

production of garments faster and cheaper.⁶² With this faster and less-expensive production came more frequent consumption.⁶³ Consumers began to buy less durable goods more frequently as opposed to the inverse.⁶⁴ Moreover, producers began making products with “planned obsolescence,” meaning products and garments were made specifically with changing fashion trends in mind so that people would be forced to buy the newer and better versions as the old ones either went out of style or wore out.⁶⁵ Now that buying things was so easy, convenient, and enjoyable, it logically flows that consumption of clothing and other consumer goods increased so quickly.

The variety of goods also began to diversify, and department stores began to develop to provide a single place to purchase such diverse items.⁶⁶ In addition to variety and quantity, department stores turned buying necessities into a full on experience; from beautiful displays to soothing store layouts, the department store provided a place people could go to shop and enjoy.⁶⁷ As an extension of the department store, the catalog and mail in shopping service made it possible to obtain wants and needs without having to leave the house.⁶⁸ The department store also led to a shift from a consumer-and-producer relationship to a consumer-and-product relationship, taking the personal touch out of the consumption of clothing and other goods.⁶⁹

The development of the advertising industry went hand-in-hand with the development of the department store.⁷⁰ As part of the shopping experience, advertisements were posted in the stores to make perfectly clear what items were available and at what cost.⁷¹ Advertisements also changed from lengthy, objective descriptions of the products they advertised to shorter, evocative phrases.⁷² Silk, for example, went from being advertised for its durability and quality to being described with words like “alluring” and “bewitching.”⁷³ Soon enough, entire firms devoted specifically to advertising developed, and the advertising techniques recognized today were born.⁷⁴ One example of intensive advertising efforts and its ties to increased clothing consumption is that of the soap industry.⁷⁵ Soap companies began enlisting increasingly prevalent school systems to promote hygiene to its students and soaps became better quality and more useful for washing clothes.⁷⁶ Rather than adding to the degeneration of clothing as old lye soap did, new soaps were gentler and quickly became a staple in American households.⁷⁷

⁶² *Id.*

⁶³ DAVID FLASHER, INDUSTRIAL REVOLUTIONS AND CONSUMPTION: A COMMON MODEL TO THE VARIOUS PERIODS OF INDUSTRIALIZATION (2005), <https://halshs.archives-ouvertes.fr/halshs-00132241>.

⁶⁴ *Id.* at 6.

⁶⁵ Stearns, *supra* note 60.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Flasher, *supra* note 63, at 23.

⁷⁰ Stearns, *supra* note 60.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Stearns, *supra* note 60.

⁷⁶ *Id.*

⁷⁷ *Id.*

As a result, changing fashion trends are not a new development now and they were not new during the Industrial Revolution. However, the Industrial Revolution led to many developments in manufacturing, communications, and the economy so as to accelerate and facilitate the dissemination and the flow of those trends. That, coupled with increases in consumerism that came with post-Industrialization prosperity, led to the increased consumption of textiles and clothing.

Industrialization forced drastic change in the social and economic spheres of the United States in the early-1900s, and textile production was not immune.⁷⁸ Scientists and chemists began experimenting with new sources for fibers and eventually created new materials such as rayon, which competed with silk, and casein, which would compete with wool fibers.⁷⁹ These new fibers led to increased competition with the cotton market, causing it to tank with the occurrence of the Great Depression.⁸⁰ World War II breathed new life into textile production and offered an opportunity to develop even more never-before-seen synthetic materials.⁸¹ During World War II and after, chemical companies began producing petroleum-based synthetic fabrics such as nylon and polyester.⁸²

II. The Good Actors v. The Bad Actors

As consumers become more conscious of the negative impacts of the fast-fashion industry, their demand for more sustainable options increases.⁸³ Market forces can be a powerful impetus for producers and retailers to shift their focus to responsibly made clothing. Forever 21, one of the fast-fashion industry's leading retailers, recently filed for bankruptcy, indicating that even the business model of the industry may not be sustainable.⁸⁴ Similar retailers Zara and H&M have seen 27 percent and 23 percent decreases in share value, respectively, since June of 2017.⁸⁵ Brands centered on sustainability—like The Reformation—and second-hand shopping websites have seen increases in popularity by contrast.⁸⁶ This section evaluates the efforts of two “good actors”—The Reformation and Everlane—brands that have sustainability and resource responsibility in their mission. This section will also evaluate two “bad actors”—H&M and Zara—traditional fast fashion brands that either do not have any focus on sustainability or that have recently implemented sustainability efforts in response to shifts in demand. This section seeks to determine whether the good actors are actually helping to solve the problems in clothing production and whether any

⁷⁸ Mary Ellen Snodgrass, *Textile Manufacturing*, in *WORLD CLOTHING AND FASHION: AN ENCYCLOPEDIA OF HISTORY, CULTURE, AND SOCIAL INFLUENCE* (2013).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ Tensie Whelan & Randi Kronthal-Sacco, *Research: Actually, Consumers Do Buy Sustainable Products*, HARV. BUS. REV. (June 19, 2019), <https://hbr.org/2019/06/research-actually-consumers-do-buy-sustainable-products>; *2018 Was the Year of the Sustainable Consumer*, CSNEWS (Jan. 24, 2019), <https://csnews.com/2018-was-year-sustainable-consumer>.

⁸⁴ Lauren Hirsch & Lauren Thompson, *Forever 21 Files for Bankruptcy, Plans to Close Most of Its Stores in Asia and Europe*, CNBC (Sept. 29, 2019), <https://www.cnbc.com/2019/09/30/apparel-retailer-forever-21-files-for-bankruptcy.html>.

⁸⁵ *Id.*

⁸⁶ *Id.*

products section, some areas of focus are materials, chemical management, and traceability.⁹⁶ In people, areas of focus include social responsibility, stakeholder engagement, and advocacy.⁹⁷ Improvements for the planet involve environmental resource management—like lifecycle impacts for each garment—and a focus on high-quality clothing and low impact washing and care.⁹⁸ Lastly, the progress section underscores recycling materials, sustainable sourcing, and education as areas of improvement.⁹⁹

All of these easily accessible reports and goals demonstrate The Reformation's commitment to its consciousness, its actual impacts, and transparency. However, this affirmative effort is not without its flaws. First, The Reformation's clothing is cost-prohibitive for most consumers who may wish to support the company's environmental mindset. In 2018, the average consumer spent \$1,866 USD on apparel and services over the course of the whole year.¹⁰⁰ Furthermore, the average consumer purchases about 68 articles of clothing per year.¹⁰¹ Assuming that all \$1,866 USD was spent on clothing, this corresponds to an average cost of \$27.44 USD per garment. The least expensive garment available on The Reformation's online store is an organic cotton tank top that costs \$28 USD, not including shipping costs.¹⁰² One of the least expensive pairs of jeans is comprised of 57 percent organic cotton, 37 percent TENCEL Modal, four percent Elastrell-p, and two percent elastane and costs \$98 USD.¹⁰³ Even the most inexpensive articles of clothing The Reformation has to offer are not accessible to the average consumer, meaning their positive efforts do not extend beyond the few people who can afford it.

Additionally, The Reformation aims to be able to produce these environmentally conscious garments at the same rapid pace as other fast fashion retailers.¹⁰⁴ The company's "About" section claims that it can take a dress from sketch to completed product in about a month, as opposed to the year to year and a half process of other retailers.¹⁰⁵ In essence, The Reformation wants to be "sustainable fast fashion."¹⁰⁶ However, the goals of sustainable fashion and fast fashion may be mutually exclusive. Fast fashion focuses on rapid production and intense consumption and may create more garments than necessary. Even if these garments are created with materials and

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Consumer Expenditures—2018*, U.S. BUREAU OF LAB. STAT., <https://www.bls.gov/news.release/cesan.nr0.htm> (last visited Apr. 11, 2020).

¹⁰¹ The Patriot Act with Hasan Minhaj, *supra* note 12.

¹⁰² *Shop*, THE REFORMATION, https://www.thereformation.com/categories/shop?sort=price_asc (last visited Apr. 11, 2020); *Dylan Tank*, THE REFORMATION, <https://www.thereformation.com/products/dylan-tank?color=White&via=Z2lkOi8vcmlvbnR1b3JtYXRpb24td2VibGluYy9Xb3JrYXJlYTo6Q2F0YWxvZzo6Q2F0ZWdvcnkvNWE2YWVmZDZmOTJlYUExNmNmMDRlOWM1> (last visited Apr. 11, 2020).

¹⁰³ *Jeans*, THE REFORMATION, https://www.thereformation.com/categories/jeans?sort=price_asc (last visited Apr. 11, 2020); *High & Skinny Jean*, THE REFORMATION, <https://www.thereformation.com/products/high-skinny-jean?color=Black&via=Z2lkOi8vcmlvbnR1b3JtYXRpb24td2VibGluYy9Xb3JrYXJlYTo6Q2F0YWxvZzo6Q2F0ZWdvcnkvNWE2YWVmZDZmOTJlYUExNmNmMDRlOWM1> (last visited Apr. 11, 2020).

¹⁰⁴ *Our Stuff*, THE REFORMATION, <https://www.thereformation.com/pages/our-stuff> (last visited Apr. 11, 2020).

¹⁰⁵ *Id.*

¹⁰⁶ Kari Chitrakorn, *This Brand Wants to Be the Next Zara. It Also Wants to Stay Green*, VOGUE BUS. (Sept. 13, 2019) <https://www.voguebusiness.com/companies/reformation-retail-sustainability-zara-fast-fashion>.

methods that are overall more sustainable than traditional fast fashion retailers, the fact remains that there are still more articles of clothing than may actually be “necessary.”¹⁰⁷ Founder and chief executive Yael Aflalo appears to accept that changing modern consumer habits of wanting and buying the most on-trend styles is unrealistic and seeks to offer a pragmatic alternative that still supports those habits.¹⁰⁸ With 2019 revenues reaching the \$150 million mark, the question of whether this actually makes a positive environmental impact, or simply perpetuates the issue, remains.¹⁰⁹

2. Everlane

Everlane, by stark contrast, claims to eschew trends and aims to create timeless and durable pieces as its method to be a sustainable retailer.¹¹⁰ It also emphasizes its use of the “finest materials” to create these pieces, but does not define whether this means sustainable materials as well.¹¹¹ Everlane also values its commitment to “radical transparency” in its pricing, and purports to mark up the sale price of its items far less than traditional department stores, and goes so far as to have a materials, labor, transport, duties, and hardware cost breakdown for each garment it produces and sells.¹¹² The company also puts a heavy focus on choosing only factories with ethical labor practices to produce its clothing.¹¹³

Similarly, Everlane does not expressly state to have internal goals and commitments to sustainable fabrics or responsibly made and grown fibers, in contrast with The Reformation.¹¹⁴ However, Everlane has advertised its commitment to reducing plastic waste.¹¹⁵ Its goals to reduce plastic waste includes using recycled plastic packaging and eliminating plastics in its offices and stores by 2021.¹¹⁶ Most notably, Everlane has created its ReNew line that uses plastic water bottles to make a number of different articles of clothing.¹¹⁷ From full-length puffer jackets, to fleece pullover sweaters, to parkas, Everlane has managed to create large pieces of outerwear made entirely from recycled plastic water bottles.¹¹⁸ The ReNew line has extended to Re:Down, coats made entirely out of recycled lining and recycled down from pillows and comforters; Re:Cashmere, sweaters made from 60 percent recycled cashmere and 40 percent merino wool; Tread, a line of sneakers that seeks to be carbon neutral and reduce the use of virgin plastic for production by at least 54 percent; and more ReNew options, like hoodie sweatshirts, fleece cardigans, and travel tote bags—all made entirely out of recycled plastic water bottles.¹¹⁹

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *About Us*, EVERLANE, <https://www.everlane.com/about> (last visited Apr. 11, 2020).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *ReNew*, EVERLANE, <https://www.everlane.com/renew> (last visited Apr. 11, 2020).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *See Re:Down & ReNew*, EVERLANE, <https://www.everlane.com/collections/womens-renew> (last visited Apr. 11, 2020); *The ReCashmere Vintage Crew*, EVERLANE, <https://www.everlane.com/products/womens-recashmere-crew>

Moreover, Everlane offers a step-by-step summary of the process used to take a bundle of water bottles and transform it into thread capable of making entire garments.¹²⁰ Additionally, Everlane also purports to use Clean Silk: silk that is produced in factories that are LEED Certified and Bluesign Certified for its clean dye use.¹²¹

Another area of note for its efforts for recycling is in Everlane's denim production. Everlane claims to source its denim from the "the world's cleanest denim factory."¹²² This factory—Saitex, located in Vietnam—recycles 98 percent of the water used to produce its jeans, resulting in only 1.5 liters of water used per pair of jeans, as opposed to 80 liters used in traditional manufacturing processes.¹²³ This water is recycled and filtered to drinking quality.¹²⁴ Furthermore, Saitex does not use any fossil fuels to power its factory and relies on solar energy and other biofuels.¹²⁵ Finally, Saitex converts the toxic sludge filtered out of its water into bricks to be reused in building other things.¹²⁶ Denim jeans are one of the most resource and chemical intensive garments to make and these efforts are making leaps and bounds to reduce the negative effects.

However, Everlane is still much like The Reformation in that it has its flaws as well, despite its innovations and progress. While Everlane has committed to reducing plastics and recycling other fabrics and fibers in its own supply chain, it also still uses other materials that have a significant environmental impact. The company sells a number of different styles of 100 percent cotton t-shirts without any indication of whether they are traditionally grown, organic, or recycled cotton.¹²⁷ Also offered are dresses and jumpsuits available in their Japanese GoWeave material which is 100 percent triacetate.¹²⁸ While triacetate is made from wood pulp, it requires a chemical-

sweater-toastedcoconutblock (last visited Apr. 11, 2020); *Tread*, EVERLANE, <https://www.everlane.com/tread#about> (last visited Apr. 11, 2020).

¹²⁰ *ReNew*, *supra* note 119.

¹²¹ *Clean Silk*, EVERLANE, <https://www.everlane.com/silk> (last visited Apr. 11, 2020). LEED stands for Leadership in Energy and Environmental Design and is a globally recognized green building certification created by the U.S. Green Building Council. According to USGBC, "LEED provides a framework that project teams can apply to create healthy, highly efficient, and cost-saving green buildings." Bluesign is an independent authority that sets guidelines for "sustainable processing and manufacturing" and offers support to firms attempting to meet those standards. *See What Is LEED?*, U.S. GREEN BUILDING COUNCIL, <https://www.usgbc.org/help/what-lead> (last visited Apr. 11, 2020). *See also The Blue Way*, BLUESIGN, <https://www.bluesign.com/en> (last visited Apr. 11, 2020).

¹²² *Denim Factory, Sustainable Practices*, <https://www.everlane.com/denim-factory> (last visited Apr. 11, 2020).

¹²³ *Id.* *See also Our Planet Matters*, SAITEX, <https://www.sai-tex.com/enviroment/> (last visited Apr. 11, 2020); Kim Bhasin & John Boudreau, *Making Jeans is Bad for the Planet. This Factory Could Change That*, BLOOMBERG (January 16, 2019) <https://www.bloomberg.com/features/2019-saitex-clothing-factory-eco-friendly/>.

¹²⁴ Bhasin, *supra* note 123.

¹²⁵ *Id.*

¹²⁶ *Denim Factory, Sustainable Practices*, <https://www.everlane.com/denim-factory> (last visited Apr. 11, 2020); Bhasin & Boudreau, *supra* note 123.

¹²⁷ *The Cotton Box Cut Tee*, EVERLANE, <https://www.everlane.com/products/womens-cotton-boxcut-tee-black?collection=womens-tees> (last visited Apr. 11, 2020). On March 15, 2020, Everlane announced its new goal of using only organic cotton for its products by the year 2023 because of the negative environmental impacts of traditionally grown cotton. *See Organic Commitment*, EVERLANE, https://www.everlane.com/organic-commitment?profile=58a466cb72fbf2fe268b4be6&utm_source=Sailthru&utm_medium=email&utm_campaign=Content%20-%20-%20U%20-%20GOTS%20Commitment%20-%20-%202020_03_15&utm_term=All-Market%20-%20All (last visited Apr. 11, 2020).

¹²⁸ *The Japanese GoWeave Short-Sleeve Wrap Dress*, EVERLANE, <https://www.everlane.com/products/womens-japanese-goweave-ss-wrap-dress-black?collection=womens-dresses> (last visited Apr. 11, 2020).

heavy process to create, and therefore, any benefits from the use of the wood pulp—such as renewability—may be negated.¹²⁹ And many of its shoes, from boots, to flats, to sandals, are made from 100% leather, which uses many chemicals in the tanning process.¹³⁰ Everlane does not give information on what processes its suppliers use to tan its leather products.¹³¹

Also, just like The Reformation, Everlane's price point may make many of its more environmentally conscious products unattainable for a large section of the consumer population. While it would be unfair to say that Everlane's items are as costly as those offered by The Reformation, they certainly are still cost prohibitive. Everlane's standard 100 percent cotton short-sleeved t-shirt sells at a regular price of \$18 USD.¹³² Its denim jeans are much more affordable than those from The Reformation with prices ranging from \$68-\$78 USD.¹³³ But to partake in the environmental benefits of one of its sweatshirts or jackets made entirely from recycled water bottles, a consumer must spend \$48 USD for the sweatshirt and anywhere from \$98 to \$198 USD for the jackets.¹³⁴ Everlane's sales continue to show strong growth, with revenues reaching \$225 million in 2019, up from \$50 million in 2016.¹³⁵ Despite the immense growth, the most fundamental problem with "sustainable" fashion remains: it is not accessible to most consumers and therefore its benefits are drastically limited.

B. The Bad Actors: H&M and Zara

1. H&M

H&M represents one of the "bad actors": a traditional fast fashion retailer that focuses on the prevailing trends of the time at the expense of the environment, resources, labor, and the consumer. H&M's parent company Hennes & Mauritz is a Swedish-based company founded in 1944.¹³⁶ It is currently the second-largest fast fashion retailer coming in behind Inditex, the parent company of fast fashion giant Zara.¹³⁷

¹²⁹ *Sustainable Fabrics—The Ugly*, TRUSTED FABRICS (April 21, 2016),

<https://www.trustedclothes.com/blog/2016/04/21/ethical-fabrics-to-consider-the-ugly-draft/>.

¹³⁰ *The Boss Boot*, EVERLANE, <https://www.everlane.com/products/womens-boss-boot-black-pebbled?collection=womens-boots> (last visited Apr. 11, 2020); ANNIE GULLINGRUD, *FASHION FIBERS: DESIGNING FOR SUSTAINABILITY* 80–81 (2017).

¹³¹ *The Modern Leather Jacket*, EVERLANE, <https://www.everlane.com/products/womens-leather-flight-jacket-black> (last visited Apr. 13, 2020).

¹³² *The Cotton Crew*, EVERLANE, <https://www.everlane.com/products/womens-the-cotton-crew-white?collection=womens-tees> (last visited Apr. 11, 2020).

¹³³ *Denim*, EVERLANE, <https://www.everlane.com/collections/womens-jeans> (last visited Apr. 11, 2020).

¹³⁴ *Sweatshirts*, EVERLANE, <https://www.everlane.com/collections/womens-sweatshirts> (last visited Apr. 11, 2020);

Outerwear, EVERLANE, <https://www.everlane.com/collections/womens-outerwear> (last visited Apr. 11, 2020).

¹³⁵ Mallory Schlossberg, *This Hot \$250 Million Start-Up is Being Called J. Crew for Millennials*, BUS. INSIDER (March 7, 2016), <https://www.businessinsider.com/everlane-is-projecting-major-growth-2016-3>. See also *E-Commerce Revenue Analytics: Everlane.com*, ECOMMERCEDB, <https://ecommercedb.com/en/store/everlane.com> (last visited Apr. 11, 2020).

¹³⁶ *H&M - Hennes & Mauritz*, FORBES, <https://www.forbes.com/companies/hm-hennes-mauritz/#54140d12727b> (last visited Apr. 11, 2020).

¹³⁷ The Patriot Act with Hasan Minhaj, *supra* note 12.

In 2013, due partly to pressures from a more climate conscious consumer base, H&M implemented an in-store textile recycling program.¹³⁸ With this program, a person need only bring their used clothing—“any brand, any condition”—and even “odd socks, worn-out T-shirts and old sheets” and drop it into the bins located in every H&M store.¹³⁹

The items are then sent off to a recycling plant.¹⁴⁰ To incentivize customers to participate, H&M offers a 15 percent off coupon for each purchase at H&M for every bag of old textiles brought in.¹⁴¹ The company claims it collected 20,649 tons of textiles for reuse in 2018.¹⁴² H&M also has a line of clothing called “Conscious,” which is its “range of organic and sustainable clothing.”¹⁴³

A deeper look into H&M’s corporate “sustainability” information finds something less explicit than the information and efforts found in The Reformation and Everlane. H&M created a 109 page Sustainability Report that outlines its vision and strategy, goals for 100 percent circularity by the year 2030, its standards and policies, and how it reports to the public.¹⁴⁴ The company’s 2018 Sustainability Report notes that it has developed goals to reduce greenhouse gas emissions by 2030, without any reference to what the goal reduction is.¹⁴⁵ The report also claims that 57 percent of the materials used to make H&M’s products are recycled or otherwise sustainably sourced.¹⁴⁶ The company also makes an ambitious goal of becoming “climate positive” by 2040; this means it will “remove more emissions from the atmosphere than our value chain emits.”¹⁴⁷ The report then admits that it does not know what measures it will take to achieve this goal, but sets the goal because of its importance.¹⁴⁸

H&M exhibits an outward appearance of wanting to curb the environmental effects of its actions, but a closer look suggests that this may be only for the sake of its publicity. Most of the clothes that are dropped in its recycle bins are not recycled at all, and end up thrown away, incinerated, or shipped to other countries where the clothes may be used but also may be thrown away or burnt.¹⁴⁹ Less than one percent of the clothing dropped in the recycle bins are reused to make new clothes.¹⁵⁰ Furthermore, this recycling program does nothing to address the sheer amount of clothing being produced in the first place, and it contributes to the nearly one billion

¹³⁸ Stephanie Matteis & Charlsie Agro, *What Really Happens to Old Clothes Dropped in Those In-Store Recycling Bins*, CBC (Jan. 19, 2018), <https://www.cbc.ca/news/business/clothes-recycling-marketplace-1.4493490>.

¹³⁹ *Be a Fashion Recycler*, H&M, https://www2.hm.com/en_us/women/campaigns/16r-garment-collecting.html (last visited Apr. 12, 2020).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Sustainability Performance Report 2019*, H&M GROUP, 31, <https://sustainabilityreport.hmgroup.com/wp-content/uploads/2020/04/HM-Group-Sustainability-Performance-Report-2019.pdf> (last visited Apr. 12, 2020).

¹⁴³ *Conscious-Sustainable Style*, H&M, https://www2.hm.com/en_us/women/concepts/conscious-sustainable-style.html (last visited Apr. 12, 2020).

¹⁴⁴ *Sustainability Performance Report 2019*, *supra* note 142, at 2.

¹⁴⁵ *Id.* at 7.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 53.

¹⁴⁸ *Id.*

¹⁴⁹ The Patriot Act with Hasan Minhaj, *supra* note 12.

¹⁵⁰ Stephanie Matteis & Charlsie Agro, *What Really Happens to Old Clothes Dropped in Those In-Store Recycling Bins*, CBC (Jan. 19, 2018), <https://www.cbc.ca/news/business/clothes-recycling-marketplace-1.4493490>.

items of clothing wasted as a result of this overproduction.¹⁵¹ In fact, the recycling program encourages further consumption of H&M's own products by offering discounts. Perhaps if H&M truly cared about sustainability and its environmental impacts, it would work to curb consumption in the first place. Of course, it is highly unlikely the company would ever do this because the business model can only profit off of high volume. H&M's existence is therefore entirely incompatible with sustainability.

Further investigation into H&M's Conscious line of "sustainable" clothing will show that it may not be as conscious as it claims to be. According to its own sustainability reports, only 0.7 percent of its more than half a billion articles of clothing per year is made from recycled materials.¹⁵² A wool coat offered on its website during the fall of 2019 is composed of a 100 percent viscose lining, 100 percent polyester padding, and an outer shell made of 70 percent wool and 30 percent polyamide—a synthetic fiber similar to nylon.¹⁵³ Nowhere does it mention that any of these materials are made from recycled textiles or are sustainably sourced. Their website only lists the coat's fabric composition again and reiterates its goal to use 100 percent recycled by 2030.¹⁵⁴ It is unclear to the consumer what, if anything, about this garment makes it "sustainable." Moreover, this coat retails for \$129 USD.¹⁵⁵ Not only does this coat cost nearly as much as Everlane's ReNew and Re:Down outerwear products, but it does not have any of the environmental benefits as Everlane's products.

A comparison between H&M's Sustainability Report and The Reformation's shows a stark contrast. Where The Reformation's reports listed specific areas of concern, specific goals for each area, and specific actions to take to achieve each goal, H&M's reports layout lofty goals, yet admits that it fails to know or have any ideas as to how to achieve those goals. The goals are admirable but are not worth much help without action plans to reach them. Given these facts, it appears that H&M is more concerned with appearing sustainable and environmentally conscious rather than actually being so.

2. Zara

Inditex—the Spanish-based parent company of Zara—is the largest clothing retailer in the world.¹⁵⁶ In 2018, the company produced almost 1.6 billion items of clothing to sell in its more than 7,000 stores worldwide.¹⁵⁷ Zara revolutionized the fast fashion model by introducing new collections almost every single week, as opposed to once every season.¹⁵⁸ This means that there is constant turnover of its products and creates an attention problem for consumers; with new styles coming out at a near-constant rate, there is not enough time for consumers to view and take in one

¹⁵¹ The Patriot Act with Hasan Minhaj, *supra* note 12.

¹⁵² Matteis & Agro, *supra* note 150.

¹⁵³ *Wool-Blend Coat*, H&M, https://www2.hm.com/en_us/productpage.0763327001.html (last visited Apr. 12, 2020); *Polyamide Fabric and Nylon Fabric*, NATURAL CLOTHING, <https://www.naturalclothing.com/what-is-polyamide-fabric-nylon-fabric/> (last visited Apr. 12, 2020).

¹⁵⁴ *Wool-Blend Coat*, *supra* note 153.

¹⁵⁵ *Id.*

¹⁵⁶ The Patriot Act with Hasan Minhaj, *supra* note 12.

¹⁵⁷ *Id.*

¹⁵⁸ Alden Wicker, *Fast Fashion is Creating an Environmental Crisis*, NEWSWEEK (Sept. 1, 2016), <https://www.newsweek.com/2016/09/09/old-clothes-fashion-waste-crisis-494824.html>.

style before another is released. This constant turnover and attention splitting can lead to unsold items, and the massive stockpile of unsold clothes accumulated in warehouses.¹⁵⁹

Like H&M, Zara has a line of “sustainable” clothing, yet does not promote it as explicitly on its website as H&M does.¹⁶⁰ A click through of all of its subsections on the website menu takes visitors to its Join Life collection, its sustainable line of clothing.¹⁶¹ Ignoring the small type and difficulty to navigate and read the page, this section of the website outlines Zara’s commitment to sustainability, its incremental goals into the year 2025, its collection of sustainable clothing, and its clothing collection program—one that closely resembles H&M’s.¹⁶²

On its Commitments page, Zara claims that its “commitment to sustainability is a goal [it] sets every day to ensure [it] can offer the most ethical and responsible products,” without any reference to what constitutes being “ethical” or “responsible.”¹⁶³ The page then outlines goals for the years 2019, 2020, 2023, and 2025.¹⁶⁴ Its 2019 goals included 20 percent of its clothing would be comprised of its Join Life collection—clothes produced using “best processes” and “more sustainable” raw materials; 100 percent “eco-efficient” stores; and an online clothing collection program for New York, London, and Paris.¹⁶⁵ Long term goals include 100 percent sustainable cotton and linen use, 100 percent recycled polyester use, and 80 percent renewable energy use.¹⁶⁶ The subsections that outline more details of these goals indicate the types of cotton and linen the brand seeks to use and indicates that the polyester will “be recycled.”¹⁶⁷ None of the easily-visible goals outlines methods for achieving those goals. Further, unlike The Reformation, Zara gives no indication as to whether it met its goals for 2019.

To its credit, Zara’s clothing recycling program appears more transparent than H&M’s.¹⁶⁸ Zara’s website lists a number of non-profit organizations it partners with to handle and reuse the recycled clothing.¹⁶⁹ Its stated goal of this program is to not only “lengthen the useful life” of garments, but to also foster positive relationships with local organizations.¹⁷⁰ Furthermore, Zara has a Frequently Asked Questions section regarding its recycling program and it explains how the clothes are handled from the time of collection to time of reuse, what happens to clothing that cannot be reused, and whether there is any direct benefit to those who donate.¹⁷¹ Zara explains that its role is limited to collecting and shipping—at the brand’s cost—the clothing it receives, while its non-profit partners handle the items.¹⁷² The items can either be directly reused as clothing, sold to fund the non-profits’ social projects, repurposed into other textile products like

¹⁵⁹ The Patriot Act with Hasan Minhaj, *supra* note 12.

¹⁶⁰ ZARA, <https://www.zara.com/us/> (last visited Apr. 12, 2020).

¹⁶¹ *Join Life*, ZARA, <https://www.zara.com/us/en/sustainability-11449.html?v1=742016> (last visited Apr. 12, 2020).

¹⁶² *Id.*

¹⁶³ *Commitments*, ZARA, <https://www.zara.com/us/en/z-commitment-11390.html?v1=1243180> (last visited Apr. 12, 2020).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Clothing Collection*, ZARA, <https://www.zara.com/us/en/sustainability-collection-program-11452.html?v1=967749> (last visited Apr. 12, 2020).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

cloths and rags, or shredded and used as filling.¹⁷³ Zara also admits that some clothing cannot be reused for any of these purposes and its disposal is subject to strict waste management requirements.¹⁷⁴ Finally, Zara does not offer any incentive for donating; in contrast to that of H&M, Zara's clothing recycling program does not promote further consumption of its own products.

The individual products in the Join Life collection leaves the consumer wondering how these garments are sustainable. A plain white t-shirt retails for merely \$9.90 USD and is composed of 100 percent cotton.¹⁷⁵ Information about the garment indicates that it is "100% ecologically grown," yet nowhere does it explain precisely what that means.¹⁷⁶ A pair of 1980s style black denim jeans retails for \$49.90 USD and is composed of 94 percent cotton, four percent elastomultiester, and two percent elastane.¹⁷⁷ The cotton used in this garment is only comprised of "at least 50% ecologically grown cotton," again with no specification as to what constitutes "ecologically grown."¹⁷⁸ In contrast, a pair of 1970s style denim jeans that retail for \$69.90 USD is made from 100 percent cotton, but without any statements or claims to the type or quality of cotton used.¹⁷⁹ The price and composition of these three garments vary drastically. From only ten dollars USD for the t-shirt to \$69.90 USD for a pair of jeans, even some of Zara's sustainable line of clothing may be out of the price range for the average consumer.¹⁸⁰ However, that higher price range does not come with the guarantees of being responsibly made like the similarly priced denim from Everlane. How can producers balance the need to have a profitable business while also ensuring they are cognizant of their impacts? How can consumers support businesses that take affirmative action to be more sustainable without spending a significant portion of their income on clothing?

III. The Law of Sustainable Fashion

A. Self-Regulation and Other Ineffective Methods for Solving the Problem

The fashion industry can be directly regulated in ways that have down-stream effects on the consumer and upstream effects on deterring production in the first place. Others have suggested that industry and consumer self-regulation is the first place to look to curb the negative impacts of the fashion industry and fast fashion clothing machine.¹⁸¹ However, this work suggests

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *White Collection Short Sleeved T-Shirt*, ZARA, <https://www.zara.com/us/en/white-collection-short-sleeve-t-shirt-p03253309.html> (last visited Apr. 12, 2020).

¹⁷⁶ *Id.*

¹⁷⁷ *Shadow Black ZW Premium '80s High Waist Jeans*, ZARA, <https://www.zara.com/us/en/shadow-black-zw-premium--80s-high-waist-jeans-p07223241.html?v1=42114923&v2=1445721> (last visited Apr. 12, 2020).

¹⁷⁸ *Id.*

¹⁷⁹ *ZW Premium '70s Revival Bootcut Jeans*, ZARA, <https://www.zara.com/us/en/zw-premium-'70s-revival-bootcut-jeans-p06045048.html?v1=36029094&v2=1445721> (last visited Apr. 12, 2020).

¹⁸⁰ Compare with a \$39 USD pair of jeans from its normal line of women's clothing. *Z1975 High Rise Wide Leg Seamless Jeans*, ZARA, https://www.zara.com/us/en/z1975-high-rise-wide-leg-seamless-jeans-p05862068.html?v1=103430825&gclid=CjwKCAjwhMmEBhBwEiwAXwFoEX9VQhNMUdU-cvhELvrqfpdJ8k0X11Ps2XJISNpVb0yiXQojPf-PixoCGXMQAvD_BwE (last visited May 5, 2021).

¹⁸¹ Teibel, *supra* note 3, at 601.

that it is “entirely possible that official regulations will be necessary” as a last resort in the event consumers and the fashion industry itself cannot reduce their impact.¹⁸² I propose that government regulation is the first step in addressing industry and consumer behavior. Given trends of increased clothing consumption over time—perhaps exacerbated by social forces such as the Internet and social media platforms—and the reduced transparency and ease of access for information regarding where garments come from, regulation must be implemented and enforced to reduce the vast negative impacts of over consumption on the one hand and over production on the other.

It is important to note that consumers are responsible for buying too many articles of clothing per year, but that fact does not exist in a vacuum. Consumers have the full might of multibillion-dollar companies working against them.¹⁸³ Retailers employing clever marketing and advertising tactics that label clothing as “sustainable” and “eco-friendly” without providing easily accessible information on what those words mean, or how their clothing complies with their ideals, coupled with relatively inexpensive prices, makes it difficult for consumers trying to meaningfully evaluate their impact. Rapidly evolving social pressures, whether explicitly or implicitly, also affect consumer habits, such as the pressures to have the trendiest and most recent styles as a way to have social capital.¹⁸⁴

Finally, a recent development with another very prominent fast fashion giant must also be acknowledged. In the summer of 2019, Forever 21 filed for bankruptcy and is set to close 350 stores worldwide.¹⁸⁵ This, coupled with decreases in overall sales in recent years for H&M and Zara, may just be the signal to the whole fast fashion industry to change their ways or go down fighting for the old, wasteful practices.¹⁸⁶ Perhaps Forever 21’s fall is just the occurrence needed—the industry self-regulation suggested by others—to force the whole industry to truly commit to reducing its waste on the front end.¹⁸⁷ Or perhaps it will serve as an excuse for retailers to continue to perpetuate the fallible idea that fast fashion can somehow be sustainable if only the proper materials are used. Either way, robust direct regulation is imperative to curtail the rampant overconsumption of clothing and its associated resources in the United States and throughout the world.

Unfortunately, existing United States federal environmental laws are not adequate to police the problem of overproduction and overconsumption. These laws only apply to manufacturers operating in the United States; many of the garments in the fast fashion industry are produced in other countries.¹⁸⁸ This means that statutes like the Resource Conservation and Recovery Act (RCRA), the Clean Air Act (CAA), and the Clean Water Act (CWA) have no force of law over much of the fast fashion consumed in the United States.¹⁸⁹ Even for producers that do manufacture

¹⁸² *Id.*

¹⁸³ Alden Wicker, *supra* note 15.

¹⁸⁴ Terry Nguyen, *Fast Fashion, Explained*, VOX (Feb. 3, 2020), <https://www.vox.com/the-goods/2020/2/3/21080364/fast-fashion-h-and-m-zara>.

¹⁸⁵ Bethany Biron, *Forever 21 could close 111 underperforming stores in the US. Here's the full list of locations at risk*, BUS. INSIDER (Oct. 31, 2019), <https://www.businessinsider.com/forever-21-closing-stores-could-include-these-list-2019-10>.

¹⁸⁶ Hirsch & Thompson, *supra* note 84.

¹⁸⁷ Teibel, *supra* note 3, at 601.

¹⁸⁸ The Patriot Act with Hasan Minhaj, *supra* note 12.

¹⁸⁹ *Id.* In this episode, Minhaj shows footage of a textile factory operator seemingly joking about the unknown effects of the chemicals leaking into the water source. The factory owner says that perhaps the chemicals will give those who consume the water special powers like the mutants in the X-Men comics and films.

clothing in the United States, these statutes merely address what to do with the materials after they have already been produced but do not address or aid in the reduction of the use of materials on the front end of the process.

For example, the Resource Conservation and Recovery Act (RCRA) is a federal statute that seeks to control the disposal of hazardous wastes from facilities that produce, transport, or treat or store such hazardous wastes.¹⁹⁰ RCRA seeks to treat waste once it is already produced and does nothing to reduce or incentivize reduction in the volume of waste produced in the first place.¹⁹¹ It is true that the textile and clothing production industries are already heavily regulated by the EPA through RCRA and other environmental statutes.¹⁹² But again, RCRA only has force of law within the boundaries of the United States, and because 97 percent of the clothing sold in the United States is made overseas, a scant three percent of clothing sold is subject to RCRA regulations.¹⁹³

Enforcement of the CAA and CWA would pose the same problems as those presented by attempting to enforce RCRA against the fast fashion industry. The CAA seeks to reduce the emissions of six harmful pollutants from factories and businesses within the United States.¹⁹⁴ The CWA prohibits discharging pollutants into waters of the United States.¹⁹⁵ As with RCRA, because the CAA and CWA can only regulate activity occurring within the borders of the United States, and because a vast majority of the production of fast fashion clothing occurs in other countries, these statutes have very little effect in addressing the overproduction and overconsumption issues of the fast fashion industry.

B. International Economic Regulation

The most logical source of regulation—given the international nature of the fast fashion industry—would be economic policies in the form of tariffs and subsidies. International economic policy serves many functions, one of which is for the country imposing the policy to assert a position of leadership establishes “rules of the road” for other countries to follow.¹⁹⁶ Tariffs and subsidies are both considered protectionist economic policies.¹⁹⁷ Protectionist policies seek to help domestic producers of a good by making imported goods more expensive or domestic products cheaper and thereby encouraging consumers to buy the domestic product.¹⁹⁸ The positive and

¹⁹⁰ U.S. ENVTL. PROT. AGENCY, RCRA IN FOCUS: TEXTILE MANUFACTURING (Sept. 2002), <https://www.epa.gov/sites/production/files/2015-01/documents/k02028.pdf>.

¹⁹¹ See 42 U.S.C. § 6902.

¹⁹² RCRA IN FOCUS, *supra* note 190.

¹⁹³ Robert Farley, *Yes, Donald Trump, Some Clothes Are Made in the U.S.A.*, HUFFINGTON POST (May 11, 2016), https://www.huffpost.com/entry/donald-trump-clothes-usa_n_5733508ce4b096e9f0935956.

¹⁹⁴ See 42 U.S.C. § 7401.

¹⁹⁵ See 33 U.S.C. § 1251.

¹⁹⁶ Timothy Meyer & Ganesh Sitaraman, *Trade and the Separation of Powers*, 107 CAL. L. REV. 583, 598 (2019).

¹⁹⁷ *Principles of Economics 2E*, BC OPEN TEXTBOOKS,

<https://opentextbc.ca/principlesofeconomics2eopenstax/chapter/protectionism-an-indirect-subsidy-from-consumers-to-producers/> (last visited Apr. 12, 2020).

¹⁹⁸ Kimberly Amadeo, *Trade Protectionism Methods With Examples, Pros, and Cons*, THE BALANCE (March 23, 2020), <https://www.thebalance.com/what-is-trade-protectionism-3305896>.

negative effects of protectionist policies are hotly contested, and there seems to be no right answer to the true value of the polices.¹⁹⁹

Tariffs are a tax on imported goods.²⁰⁰ Tariffs are often imposed against another country's industry or specific good in an effort to protect or promote the domestic version of the industry or good.²⁰¹ The benefits and detriments are debated heavily.²⁰² On the one hand, they serve to increase or correct the price of goods that may be artificially low due to dumping—selling a good on the international market for a price that is lower than it is sold in the domestic market—yet, on the other hand, can often slow economies due to burdensome interference with markets.²⁰³ Another negative consequence of tariffs is that, despite helping domestic producers, it raises prices for domestic consumers.²⁰⁴ For example, in the clothing industry, consumers can spend up to one billion additional dollars per year because of tariffs on imported garments.²⁰⁵ One view of tariffs is that if such barriers were reduced or eliminated, then consumers would take those savings and spend more in another area.²⁰⁶ However, if those savings are spent in an area that has an adverse effect on the area sought to be promoted, then a lack of tariff doesn't really help anything.

Alternatively, while tariffs may be harmful to consumers, that does not per se mean that completely free markets are good for them.²⁰⁷ Some government regulation of markets may be needed to have both a healthy economy and one that does not disadvantage certain groups of consumers. Subsidies are funds or incentives given to consumers or industries in an effort to promote that industry or to promote social policy.²⁰⁸ Subsidies primarily take two forms: direct, which is usually cash grants, and indirect, which is usually tax deductions, rebates, and low interest loans.²⁰⁹ Where tariffs raise the price of goods in an effort to prevent consumers from buying them, subsidies can help to lower the price of goods and encourage consumers to purchase them.²¹⁰

However, like tariffs, subsidies also have negative outcomes.²¹¹ Subsidies can extend too far and become “perverse subsidies,” meaning they can end up taking a negative toll on both the economy and environment.²¹² Subsidies, while not initially having a negative effect, can become perverse if left in effect for too long; they can be expensive for governments or organizations implementing them and they can encourage increased consumption.²¹³ One way to ensure that

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ Adam Barone, *Dumping*, INVESTOPEDIA (Apr. 7, 2020), <https://www.investopedia.com/terms/d/dumping.asp>.

²⁰⁴ *Principles of Economics 2E*, *supra* note 197.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ Chris Seabury, *The Cost of Free Markets*, INVESTOPEDIA (Feb. 8, 2020), <https://www.investopedia.com/articles/economics/08/free-market-regulation.asp>.

²⁰⁸ Kimberly Amadeo, *Government Subsidies (Farm, Oil, Export, Etc)*, THE BALANCE (Jan. 16, 2020), <https://www.thebalance.com/government-subsidies-definition-farm-oil-export-etc-3305788>.

²⁰⁹ *Id.*

²¹⁰ *Principles of Economics 2E*, *supra* note 197.

²¹¹ Amadeo, *supra* note 208.

²¹² *Id.*

²¹³ *Id.*

subsidies do not become perverse is to remove the subsidy after they serve their purpose but before they allow over consumption.²¹⁴

The history of farm subsidies in the United States presents two examples where subsidies may not be the most effective solution to the problems faced in those industries.²¹⁵ Farm subsidies began in the 1920s during the Dust Bowl and Great Depression.²¹⁶ These subsidies aimed to help provide farmers with guaranteed income when farmlands and crops were being destroyed by severe drought.²¹⁷ The United States government still provides farm subsidies to this day—crops like corn, wheat, and rice are subsidized.²¹⁸ This can lead to overproduction which creates the problem of what to do with the excess.²¹⁹ Excess product can then be exported to other countries—often poorer—which then affects those countries' domestic production.²²⁰ Perhaps the most glaring negative effect of tariffs and subsidies is illustrated in the Trump Administration's 2019 \$16 billion farm subsidy package allocated after lost incomes as a result of the Administration's tariffs on imports from China.²²¹ After imposing tariffs on Chinese imports, China imposed retaliatory tariffs against U.S.-produced soybeans.²²² China is the biggest importer of American soybeans, and thus, U.S. farmers felt the brunt of the negative effects of the Trump Administration's tariffs.²²³ To counteract the lost revenue, the Administration announced the new subsidies in addition to the billions of dollars in subsidies already given to farmers each year.²²⁴ This example shows the perverse effects of unbalanced tariffs and subsidies for an industry because the amount of the subsidies far exceeds the income benefit of the tariffs.²²⁵

In the fast fashion context, tariffs or subsidies alone may not be the best option to modify and regulate consumer and producer behavior. A careful balance between the two policies is necessary to alter consumer and producer behavior to maximize positive effects and minimize negative externalities. While application of tariffs and subsidies in this context is not meant to promote United States domestic production of clothing—because the United States has such a small share of total production—the goal of altering consumer behavior with these mechanisms could still have the potential to produce negative effects. While it may seem natural to “punish” the “bad actors” and make it more cost-prohibitive to produce and import the amount of clothing they currently do, consumers who truly need clothes might feel the brunt of the cost increases. Tariffs alone may not do much to curb consumer practices of buying irresponsibly-made clothing, but may only make both responsibly- and irresponsibly-made clothing inaccessible to lower income consumers.

Subsidizing the good actors and thereby rewarding them for their “good” production behavior may be the best economic option to help shift consumer habits. Subsidizing retailers like

²¹⁴ *Id.*

²¹⁵ Amadeo, *supra* note 208.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Principles of Economics 2E*, *supra* note 197.

²²¹ Emily Moon, *The Trump Administration Will Pay Farmers \$16 Billion for Its Trade War*, PAC. STANDARD (July 26, 2019), <https://psmag.com/news/the-trump-administration-will-pay-farmers-16-billion-for-its-trade-war>.

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

Everlane and the Reformation, reducing the prices of their items, and making them more affordable would open their more responsible production practices to more subsections of consumers. Subsidies would make it more about promoting and supporting best practices in the industry by recognizing that clothing is a necessity for all people but that that necessity should be responsibly produced and responsibly consumed. Consumers want to purchase sustainably made goods; it's not as though consumers seek to be wasteful.²²⁶ Making the options for sustainably made clothing for sustainably minded consumers is just the remedy needed to help consumers to fully make the shift from fast fashion to responsible fashion. Subsidies and the shifts they help to provide, coupled with the recent fall of Forever 21, might just be the signal to other fast fashion retailers to make meaningful and substantive changes to their supply chains and production and marketing practices, rather than the facial commitments they've made without taking substantive measures.

However, as with all subsidies, a subsidy for the "good actors" could also produce perverse incentives. A subsidy that works a little too well for a little too long could encourage consumers to then over consume even the responsibly produced clothing, which would increase production, which would still not solve the problem of overproduction, overconsumption, and waste. However, a production-based subsidy might help to keep producers from producing too much while also keeping prices low for consumers.²²⁷ Like farm subsidies in the United States, a subsidy that helps responsibly produced fashion for too long can lead to over production, continued over consumption, and continued waste.

Implementing tariffs and subsidies may be simpler than initially meets the eye. Under the United States Constitution, Congress has the power to "to lay and collect taxes, duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States."²²⁸ However, Article II of the United States Constitution also gives the president ample power to negotiate with foreign countries and to articulate foreign policy.²²⁹ Additionally, a series of statutes passed towards the beginning of the 20th Century delegated power to the president to single-handedly impose tariffs under certain circumstances.²³⁰ Some of these statutes include the Trade Act of 1974, which would allow the president to impose a temporary tariff for 150 days if there is an adverse effect to national security from imports; and the International Emergency Economic Powers Act of 1977, which allows the president to impose tariffs during a time of national emergency.²³¹ These pieces of legislation have decreased Congress' role in international trade policies and have survived non-delegation doctrine challenges and are seen as the president merely executing the laws Congress passed, thereby giving the president immense and often little-checked power in the realm of tariffs.²³²

²²⁶ Tensie Whelan & Randi Kronthal-Sacco, *Research: Actually, Consumers Do Buy Sustainable Products*, HARV. BUS. REV. (June 19, 2019), <https://hbr.org/2019/06/research-actually-consumers-do-buy-sustainable-products>; *Was 2018 the Year of the Influential Sustainable Consumer?*, NIELSEN, <https://www.nielsen.com/us/en/insights/article/2018/was-2018-the-year-of-the-influential-sustainable-consumer/> (last visited Apr. 12, 2020).

²²⁷ Amadeo, *supra* note 208.

²²⁸ U.S. Const. art. I, § 8, cl. 1.

²²⁹ Meyer & Sitaraman, *supra* note 196.

²³⁰ Tara Golshan, *Why Trump Can Raise Steel Tariffs Without Congress*, VOX (Mar. 8, 2018), <https://www.vox.com/2018/3/8/17097206/trump-tariffs-congress>.

²³¹ *Id.*

²³² Meyer & Sitaraman, *supra* note 196. *See also* Field v. Clark, 143 U.S. 649, 672 (1892).

Recently, the Trump Administration has used a provision of a different act of Congress to unilaterally impose tariffs on steel and aluminum imports from China.²³³ This provision, Section 232 of the Trade Expansion Act of 1962, allows the Secretary of Commerce to determine the effects of imports on the country's national security and allows the president to adjust tariffs according to the secretary's findings.²³⁴ The president could possibly unilaterally impose tariffs or implement subsidies for the fast fashion industry based on the many avenues created by Congress. The bar for what constitutes a threat to national security is fairly low, and presidents have used the "national security" reason to support many different kinds of reasons.²³⁵ The current use and waste of natural resources in the form of clothing represents a threat to national security in that it creates resource insecurity, waste management crises, and economic instability. Furthermore, Congress' limited role in the realm of international trade would make imposing tariffs on imported fast fashion an easy and quick task. Despite the ability and relative ease to impose tariffs and subsidies against the fast fashion industry and for the slow fashion industry, a healthy balance between the two economic mechanisms is necessary to prevent perverse effects such as over-priced and irresponsibly-made clothing or overconsumption of responsibly made clothing.

IV. Conclusion

The fashion industry is both a necessity and a hindrance. People need clothing to function in day-to-day life, yet the amount consumed far exceeds the amount needed. Social and cultural forces like advertising and marketing, the Internet, social media, and ideas about social importance in the United States have driven clothing consumption to new and harmful heights. Many of the most popular materials and textiles used are resource intensive to begin with, and patterns of overproduction and overconsumption exacerbate the use of those resources which often leads to waste. As of right now there are no meaningful checks on the production of garments which has led to tons of clothing clogging landfills and degenerating in warehouses. While the bankruptcy of fast-fashion giant Forever 21 may be the internal industry signal needed to encourage other actors to change their ways, self-regulation thus far has done little to mitigate the problems.

Current federal environmental laws will be ineffectual in regulating the fashion industry; because 97 percent of all apparel sold in the United States comes from overseas, domestic law cannot regulate the production of these garments. International trade regulation—in the form of carefully crafted tariffs and subsidies—is needed to both make inexpensive and short-lived fast fashion garments less accessible, and to make more responsibly made and long-lasting clothing more accessible. It is possible to change both producer and consumer behavior—particularly when consumers have a desire to change their behaviors—but a little bit of help and motivation in the form of legal intervention is necessary to be the catalyst for change.

²³³ *Id.*

²³⁴ *Id.*

²³⁵ One example of this is the Ninth Circuit's recognition that the Trump Administration can waive myriad environmental laws to build the border wall along the U.S.-Mexico border. *See In re Border Infrastructure Environmental Litigation*, 915 F.3d 1213 (9th Cir. 2019); *see also* Matthew Schwartz, *Government Can Waive Environmental Laws to Build Border Wall Prototypes*, *Court Rules*, NPR (Feb. 12, 2019), <https://www.npr.org/2019/02/12/693777466/government-can-waive-environmental-laws-to-build-border-wall-prototypes-court-ru>.