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## The Fast Fashion Industry: Formulating the Future of Environmental Change

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## **PACE ENVIRONMENTAL LAW REVIEW**

### **NOTE**

#### **The Fast Fashion Industry: Formulating the Future of Environmental Change**

ALEXA MARATOS\*

##### **ABSTRACT**

*This Note focuses on the harmful environmental impacts the fast fashion industry has created, and continues to create, on our planet. In the 1960s, consumer attitude towards clothing shifted drastically when demand for new, disposable clothing skyrocketed. These choices led fashion retailers to give life to the environmentally detrimental breed of “fast fashion.” Moving production from a domestic to an international level, increasing the amount of clothing collections on a yearly basis, and lack of transparency in supply chain are just a few examples of the dangers this industry has created for our planet. The fast fashion industry in particular is one that has been overlooked for decades, now only in focus due to the almost irreparable harm it has caused on a transnational level. No clear, collective legal definition exists for “sustainability” in the fashion industry. This Note explores, analyzes and compares current and potential fashion-specific legislation, domestically and internationally, that has not only created definitions but policies going forward for collective action. This Note focuses on the “four c’s”: compliance, caliber, consumers and circularity. These “c’s” create a broad answer as to how some of this environmental damage can be stopped going forward. The solution lies in collective transparency as well*

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*as a circular economy. The growth of investment in companies who value environmental, social, and governance (ESG) standards has allowed consumers to change past behaviors toward a circular economy. It is vital that consumers invest in spaces they know are working towards a better future, in all aspects.*

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## I. INTRODUCTION

### A. The Influence of Fashion

The significance of fashion is rooted within its adaptability to our everyday lives. While we understand clothing to be a basic essential in society, fashion is the actualization of ideation. Fashion encourages outward self-expression, allowing one to display their personality to the world. Easily influenced by world events and pop culture, generations are framed by certain “staple” pieces of clothing, identifying moments in time. Fashion has played a vital role in shaping history by being interactive and representative.

This idea of self-expression has been catapulted through the ever-changing trends fashion designers declare as “chic.”<sup>1</sup> Privileged with expansive technology, impeccable machinery and fast supply chains, our society is spoiled with an almost immediate entitlement to clothing. It is important to understand the relationship between consumer choice and the fashion industry as it affects our planet. As consumers, we dictate the way in which fashion companies conduct business through our demands, wants and needs. Therein lies a danger in this behavior, as it has led the industry to trail behind a detrimental environmental footprint.

## B. Background

Fashion is not only an essential, but an art form. Clothing, shoes, jewelry and accessories allow a person to display to the world who they are and what they stand for. It is not only a need, but a desire.<sup>2</sup> Trends have always come and go, but lately, at a great pace.

The fashion industry has been skating past environmental regulation for quite some time. For an industry valued roughly at \$2.5 trillion dollars, it cannot hide in the dark much longer.<sup>3</sup> Its power has been truly underestimated. With heavy government focus on industries such as energy, food, and transportation, it has been easy to turn a blind eye as the fashion industry produces for aesthetic and materialistic value. Fashion has less of a “personal investment” in comparison to these other industries, as we outrightly see their effects in our air, water ways and land use.<sup>4</sup> The environmental effects of the fast fashion supply chain are not only invisible

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1. Hilary George-Parkin, *The Most Influential Fashion Trends, Decade by Decade*, YAHOO! ENT. (Feb. 16, 2021), <https://www.yahoo.com/entertainment/most-influential-fashion-trends-decade-053000327.html> [https://perma.cc/Y85P-3643].

2. Francesca M. Witzburg, *Fashion Forward: Fashion Innovation in the Era of Disruption*, 39 CARDOZO ARTS & ENT. L.J. 705, 706 (2021).

3. Julia Gall, *How Fashion’s Boldest Legislation Came to Be*, MARIE CLAIRE (Jan. 11, 2022), <https://www.marieclaire.com/fashion/fashion-act-new-york-state/> [https://perma.cc/CC6V-59NQ]; *The Fashion Sustainability and Accountability Act*, LEGISLATIVE BACKGROUNDER, <https://static1.squarespace.com/static/5bfdbd37710699f8ca47af1f/t/6193da0430b59a65966db18f/1637079558255/Legislative+Backgrounder+%E2%80%94+The+Fashion+Sustainability+and+Social+Accountability+Act.pdf> [https://perma.cc/3TMM-T6S7].

4. Andrea Cheng, *The Problem with Fashion Brands that Call Themselves ‘Sustainable,’* FASHIONISTA (Oct. 18, 2018), <https://fashionista.com/2017/04/sustainable-fashion-brands-problems> [https://perma.cc/GAB3-99GD].

in some respects, but are also purposely hidden. These harmful impacts can mainly be seen in underdeveloped parts of the world.<sup>5</sup>

### C. The Importance

The primary concerns that arise out of the fast fashion industry are social and environmental. The industry is transnational, connecting many countries and their unique markets. The fashion chain is of high global importance, as it provides millions of jobs, generates foreign exchange revenue, and provides goods that are essential for human welfare.<sup>6</sup>

Fast fashion is a money hungry business. With soaring demand, almost all companies transfer manufacturing to undeveloped countries.<sup>7</sup> These facilities pump out merchandise as fast as possible, often underpaying their laborers who are already working in highly dangerous and unsanitary conditions.<sup>8</sup> Production at high rates keeps the brand's promise to consumers that they can have what they want, when they want it. This type of large-scale production is typically in locations that lack any sort of formal regulation, let alone social or environmental standards.<sup>9</sup>

The clothing and textile industry employs 300 million people globally, many of them women.<sup>10</sup> These jobs are on the bottom tier of textile productions, exposing them to hazardous conditions and next-to-nothing pay.<sup>11</sup> Abuse through labor has been an outstanding topic within the past few decades, exposing popular brand names for their exploitation of workers.

One popular example can be seen through the athletic company, Nike. In the 1990s, Nike was exposed for underpayment, exploitation and abuse of their laborers.<sup>12</sup> As many large retailers do, Nike outsourced production

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5. Guilherme Barroca & Madalena Andrade, *Fast Fashion: What We are not Seeing*, AWARENESS NEWS (Mar. 25, 2021), <https://theawarenessnews.com/2021/03/25/fast-fashion-what-we-are-not-seeing/> [<https://perma.cc/K44Z-4ZJK>].

6. LEONIE MEIER, U.N. ALL. FOR SUSTAINABLE FASHION, SYNTHESIS REPORT ON UNITED NATIONS SYSTEM-WIDE INITIATIVES RELATED TO FASHION 4 (2021).

7. Barroca & Andrade, *supra* note 5.

8. *Id.*

9. Manon Huckle, *When it Comes to Cleaning up its Act, Fast Fashion is No Fast Fix*, THE FASHION L. (Sept. 6, 2021), <https://www.thefashionlaw.com/when-it-comes-to-cleaning-up-its-act-fast-fashion-is-no-fast-fix/> [<https://perma.cc/7N73-XUA7>].

10. *The Clothing and Textile Industry Today*, U.N. ALL. FOR SUSTAINABLE FASHION, <https://unfashionalliance.org/> [<https://perma.cc/7GG7-HXMB>] [hereinafter *Textile Industry*].

11. MEIER, *supra* note 6, at 5.

12. Rhys McKay, *The Truth Behind the Alleged Nike Sweatshops*, WHO MAG. (Aug. 21, 2019), <https://www.who.com.au/nike-sweatshops-does-nike-use-sweatshops> [<https://perma.cc/DQD6-ZRYV>].

to a plethora of underdeveloped countries.<sup>13</sup> It was revealed that pay was as little as 14 cents an hour, laborers suffered as employers paid them slave wages and forced overtime.<sup>14</sup> Horror stories of the working conditions surfaced, disclosing exposure to harsh chemicals, limited breaks, as well as physical and verbal abuse.<sup>15</sup> Consumers in the United States quickly began to protest the company.<sup>16</sup> For a few years, Nike did not address the allegations, eventually stating they were going to reconstruct their employment practices in 1998.<sup>17</sup> Prior to stating their intention to reconstruct, Nike attempted to place the blame on subcontractors. Nike claimed they did not have direct supervision over the events occurring in the subcontracted factories.<sup>18</sup> This Nike story is a prime example of the lack of supply-chain oversight across the fast fashion industry.

Yet, among these social issues, fast fashion practices also account for a massive amount of greenhouse gases and environmental pollution. The overall impact on the climate due to fast fashion alone has increased by 35 percent between 2005 and 2016.<sup>19</sup> The industry's emissions continue to rise, accounting for 8.6 percent of the world's greenhouse gases, some even estimating a higher rate of 10 percent.<sup>20</sup>

Experts predict that global clothing consumption will rise 63 percent by 2030.<sup>21</sup> This consumption is fueled by an increasing demand for trendy fashion that is made readily available to "a growing middle class population with disposable income."<sup>22</sup> This demand fuels fast fashion companies to produce at a large-scale level. What is the danger of this? "One global fashion retailer supply chain map can reveal 750 suppliers that manufacture

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13. *Id.*

14. Ashley Lutz, *How Nike Shed its Sweatshop Image to Dominate the Shoe Industry*, BUS. INSIDER (June 6, 2015), <https://www.businessinsider.com/how-nike-fixed-its-sweatshop-image-2015-6> [<https://perma.cc/4UBL-G8WX>].

15. McKay, *supra* note 12.

16. Lutz, *supra* note 14.

17. McKay, *supra* note 12.

18. *Id.*

19. Elizabeth Jane Poland, *Fashioning Compliance: The Fashion Charter for Climate Action and Strategies for Forming a More Effective Fashion Industry Agreement*, 49 GA. J. INT'L & COMP. L. 407, 414 (2021).

20. Stephanie Alzate, *America May Get the First Fashion Sustainability Law*, IMPAKTER (Jan. 20, 2022), <https://impakter.com/america-first-fashion-sustainability-law/> [<https://perma.cc/6JBU-XELU>]; Jason M. Halper et al., *Is Sustainability En Vogue or the Newest Staple? What New York's Proposed Fashion Sustainability and Accountability Act Could Mean for the Fashion and Other Industries*, NAT'L L. REV. (Feb. 11, 2022), <https://www.natlawreview.com/article/sustainability-en-vogue-or-newest-staple-what-new-york-s-proposed-fashion> [<https://perma.cc/GQD5-SE6R>].

21. Huckle, *supra* note 9.

22. *Id.*

for eight global brands at 1,400 factories across 41 countries, selling in 5,000 stores in 75 different markets across 52 markets online.”<sup>23</sup> The chain is *vast*. Most companies do not truly know where their products are coming from, many “[do not] have visibility on suppliers more than one degree removed.”<sup>24</sup> Companies may think they only have roughly 1,000 suppliers, but have closer to 50,000 sub-suppliers.<sup>25</sup> With gaining complexity, the process becomes more vulnerable to fraud and error.<sup>26</sup>

If this industry is left unregulated, “[it] will be responsible for more than ¼ of the world’s global carbon budget by 2050.”<sup>27</sup> The industry *must* drastically reduce its emissions in the next five to ten years or else the damage will be too far gone.<sup>28</sup> Reducing annual emissions by half (around 1.1 billion tons) requires transparency across the entire supply chain “from upstream production and processing, through retail operations, to the consumers themselves.”<sup>29</sup>

#### D. Scope and Purpose

A note analyzing the vast supply chain at every intimate detail is far too expansive, as one minute detail has many particulars. As many different harms brew out of the fashion industry, particularly social and labor related, the environmental aspects are rapidly destroying our planet as we know it. The purpose of this note is to explore, analyze, and compare current and potential regulation, domestically and internationally, that can diminish the industry’s harsh environmental impact.

In Part II, the note will discuss the history behind fast fashion’s unfolding. It will explore how the industry expanded its supply chain process due to consumer demand. In Part III, the note will focus on the industry’s detrimental environmental impacts, particularly plastic polluting the globe’s water supply. It will touch on the human right to water and how legislative efforts can protect against plastic pollution. It will also explore one fashion

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23. MEIER, *supra* note 6, at 4.

24. AMED ET AL., *THE STATE OF FASHION 2019* 65 (THE BUS. OF FASHION & MCKINSEY & CO., 2019).

25. *Id.* at 63, 65 (summarizing that a factory could take an order, then realize that they do not have the full capacity to complete it; thus, delegating the work out to other factories, which could be unregistered and allow for unsafe conditions to occur for the laborers and environment).

26. *Id.* at 63.

27. LEGISLATIVE BACKGROUNDER, *supra* note 3.

28. See generally Rachel Cernansky, *Deconstructing New York’s Fashion Act*, *VOGUE BUS.* (Jan. 13, 2022), <https://www.voguebusiness.com/sustainability/deconstructing-new-yorks-fashion-act> [<https://perma.cc/ZWQ5-PPZJ>] (discussing the link between brand accountability and measurable reductions of environmental harm).

29. MEIER, *supra* note 6, at 34.

brand who has taken extensive and impressive initiative to help combat water pollution and waste in the industry.

In Part IV, the note will describe the issues in defining and interpreting “sustainability” in the realm of fashion. It will explore the term “greenwashing” and provide examples of how deceptive many fast fashion retailers can be. Part V explores the various regulatory and non-regulatory actors who have played a part in putting forward transparency and supply chain standards. Domestically, New York and California are the two largest jurisdictions that have acted, or have begun to act, on the issues the fast fashion industry presents. As states with influential power, they are leaders in effectuating change since there is no federal legislation in the United States effecting the fashion industry *directly*. Internationally, countries such as France and Germany have taken their own regulatory initiatives through due diligence reporting. Such reporting has set the tone for the European Union to put the transparency issue of the fashion industry on their agenda. Although voluntary organizations may lack legal power to enforce, their behind-the-scenes work has created collaborative efforts, standards, and measuring tools that are vital for legislators drafting laws to regulate this industry.

Part VI describes a combination of factors that will be powerful moving forward to bring change. First, focusing on the caliber used in future legislative initiatives. Second, exploring consumers’ role in effectuating change, as they are the leading force of profit for the industry. Lastly, recognizing growth of investment in companies who value environmental, social, and governance (ESG) standards and a circular economy. People want to invest in spaces they know are working towards a better future, in all aspects.

To combat the environmental impacts of the fast fashion industry, change must start now. Four components need to be formulated to create this change: compliance, caliber, consumers, and circularity.

## II. HISTORY: FAST FASHION’S UNFOLDING

What makes fashion “fast”? An accelerated supply chain cycle. Fast fashion is defined as, “the practice of rapidly translating high fashion design trends into low-priced garments and accessories by mass-market retailers at low costs.”<sup>30</sup> Its elements include: low price point, method, timeline, trend-based nature, and quick disposability.<sup>31</sup>

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30. Poland, *supra* note 19, at 410.

31. *Id.*



Fast fashion began to emerge with change in industrial and consumer behavior. Industrial changes of rapid producing machinery allowed for the price of clothing to drop after World War II, leading consumers to believe clothing was now next to disposable.<sup>32</sup> Clothing was a significant purchase up until the 1950s, it was “pricey and precious enough that [it was] mended and cared for and reimagine[d] countless times.”<sup>33</sup> In the 1960s, consumers began to step away from their traditional tailors, expanding to larger retailers who carried new, trendy pieces.<sup>34</sup>

In the United States alone, people have purchased “400% more clothing than they did thirty years ago.”<sup>35</sup> Seasonal trends now allow for pieces of clothing to be thrown away within a couple of months.<sup>36</sup> It is projected that a piece is worn only seven times before being disposed.<sup>37</sup> According to the Circular Fibres Initiative, there exists at least 100 billion dollars worth of material loss due to underutilization of these pieces;<sup>38</sup> it is in the nature of the industry to sell and get consumers to buy more, leading to great rates of overproduction.<sup>39</sup> This underutilization is due to the lack of environmentally conscious life cycle practices.<sup>40</sup>

The main markets of the fashion industry dwell in Europe and the United States.<sup>41</sup> Due to the increasing demand in these locations, retailers have shifted their domestic production overseas to economically developing countries, particularly to countries in Asia.<sup>42</sup> This transition has allowed retailers to reduce their costs immensely with the return promise of great profit.<sup>43</sup> Few brands own the assets of their factories, most outsource final

32. *Id.* at 411–12.

33. *Id.* at 411.

34. *Id.*; see also Sara Idacavage, *Fashion History Lesson: The Origins of Fast Fashion*, FASHIONISTA (Oct. 17, 2018), <https://fashionista.com/2016/06/what-is-fast-fashion> [<https://perma.cc/S2AU-PUDW>].

35. Poland, *supra* note 19, at 412.

36. Press Release, UNEP, UN Alliance for Sustainable Fashion Addresses Damage of ‘Fast Fashion’ (updated June 21, 2022) [hereinafter *UNEP Press Release*].

37. Eleanor Beardsley, *COVID-19 is Turning the Fashion Industry on its Head*, NPR (Oct. 11, 2020), <https://www.npr.org/2020/10/11/922756218/covid-19-is-turning-the-fashion-industry-on-its-head> [<https://perma.cc/DR5F-6WRD>].

38. AMED ET AL., *supra* note 24, at 65; [https://emf.thirdlight.com/file/24/lwnEDbf15JTfoAlw\\_2QI2Yg-6y/A-New-Textiles-Economy\\_Summary-of-Findings\\_Updated\\_1-12-17.pdf](https://emf.thirdlight.com/file/24/lwnEDbf15JTfoAlw_2QI2Yg-6y/A-New-Textiles-Economy_Summary-of-Findings_Updated_1-12-17.pdf) (in citation 14)

39. Kenneth P. Pucker, *The Myth of Sustainable Fashion*, HARV. BUS. REV. (Jan. 13, 2022), <https://hbr.org/2022/01/the-myth-of-sustainable-fashion> [<https://perma.cc/E8UC-Z9JE>].

40. *Id.*

41. MEIER, *supra* note 6, at 5.

42. *Id.*

43. Poland, *supra* note 19, at 412.

production, not knowing where their supplies directly derive from.<sup>44</sup> With an almost immediate consumer demand, these pieces are produced at an alarming rate. Due to the necessity of a quick turnaround time, the materials used in production are cheap, readily available, and *far* from “environmentally friendly.”<sup>45</sup>

To combat the traditionally slow turnaround time between runway shows and item availability, fast fashion retailers grew by extending the number of fashion “seasons” to every four to six weeks.<sup>46</sup> In comparison, a traditional cycle of new clothing comes out every season, four times a year.<sup>47</sup> Brands now produce dozens of clothing collections in a single year, specifically designed to draw consumers in, coming back for more.<sup>48</sup> For example, “Zara offers 24 new clothing collections each year; H&M offers 12 to 16 and refreshes them weekly.”<sup>49</sup> Many of these brands function primarily online to skip the obstacle of brick-and-mortar overhead.<sup>50</sup>

Fast fashion stores began to pop up around the late 1990s/early 2000s as flaunting low-cost, savvy fashion slowly became more acceptable and desirable.<sup>51</sup> The first company to become a “fast fashion” retailer is up for debate. Some say it was Zara, as it was the first to be coined by the New York Times in the 1990s.<sup>52</sup> Zara announced it could take only 15 days for a garment to go from the design table to hanging on the rack.<sup>53</sup> This pace shook traditional retail and department stores as they began to fall behind.<sup>54</sup> Traditional stores struggled to stay stocked with new merchandise every few weeks, which led to intense competition.<sup>55</sup>

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44. Pucker, *supra* note 39.

45. See *id.*; see, e.g., Lucielle Salomon, *Can You Compost Your Clothing? Here’s Why Most Fashion Isn’t Biodegradable*, ECOCULT (Jan. 28, 2021), <https://ecocult.com/can-you-compost-your-clothing/> [<https://perma.cc/PN9C-MHDW>].

46. Poland, *supra* note 19, at 413; see also Witzburg, *supra* note 2, at 727.

47. Poland, *supra* note 19, at 413.

48. Emma Bryce, *Are Clothes Made from Recycled Materials Really More Sustainable?*, THE GUARDIAN (Nov. 6, 2021), [https://www.theguardian.com/environment/2021/nov/06/clothes-made-from-recycled-materials-sustainable-plastic-climate?utm\\_campaign=later-linkinbio-thesustainablefashionforum&utm\\_content=later-22261733&utm\\_medium=social&utm\\_source=linkin.bio](https://www.theguardian.com/environment/2021/nov/06/clothes-made-from-recycled-materials-sustainable-plastic-climate?utm_campaign=later-linkinbio-thesustainablefashionforum&utm_content=later-22261733&utm_medium=social&utm_source=linkin.bio) [<https://perma.cc/V27M-6DHG>].

49. Pucker, *supra* note 39.

50. Witzburg, *supra* note 2, at 727.

51. Idacavage, *supra* note 34.

52. Rashmila Maiti, *Fast Fashion and its Environmental Impact*, EARTH.ORG (June 12, 2022), <https://earth.org/fast-fashions-detrimental-effect-on-the-environment/> [<https://perma.cc/8YJH-7KRL>].

53. *Id.*

54. Idacavage, *supra* note 34.

55. *Id.*

### III. FAST FASHION'S ENVIRONMENTAL FOOTPRINT

Think about your favorite pair of jeans. Have you ever wondered what it took to create them? Probably not. One pair can require nearly 2,000 gallons of water, 400 megajoules of energy, and emit more than 30 kilograms of carbon dioxide in its "lifetime."<sup>56</sup> Would you feel better knowing your favorite jeans released toxic chemicals and microplastics into our waterways too?<sup>57</sup>

This is just a tiny example of how the fast fashion industry impacts a vital human resource. Of the world's wastewater, 20 percent stems from the life cycle processes of the fashion industry.<sup>58</sup> The industry also consumes around 215 trillion liters of water per year, holding second place as the largest consumer of water.<sup>59</sup> Material production of fibers used in the supply chain process has had the largest impact on freshwater withdrawal, causing extensive damage to our drinking supply.<sup>60</sup>

#### A. Our Human Right

##### i. United Nations

In 2010, the United Nations officially recognized the human right to water.<sup>61</sup> Resolution 64/292 acknowledged clean drinking water and sanitation as essentials for leading a human life in dignity.<sup>62</sup> The right to water entitles everyone access to safe, sufficient, physically accessible and affordable water for personal and domestic use.<sup>63</sup> The government has an obligation to respect, protect and fulfill this right.<sup>64</sup> If the government has an obligation to do so, legislation should exist to enforce and protect this right in all participating jurisdictions. However, the standard exists as

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56. *Higg Facility Tools: Standardizing the Measurement of Social and Environmental Impacts in Facilities*, SUSTAINABLE APPAREL COAL., <https://apparelcoalition.org/higg-facility-tools/> [<https://perma.cc/SC98-EKZX>].

57. Beardsley, *supra* note 37.

58. María Fleischmann, *How Much Do Our Wardrobes Cost to the Environment?*, WORLD BANK (Sept. 23, 2019), <https://www.worldbank.org/en/news/feature/2019/09/23/costo-moda-medio-ambiente> [<https://perma.cc/F3KP-A3RJ>].

59. *Textile Industry*, *supra* note 10.

60. Maiti, *supra* note 52.

61. G.A. Res. 64/292, ¶ 1 (July 28, 2010).

62. *Id.*

63. *Human Rights to Water and Sanitation*, U.N. WATER, <https://www.unwater.org/water-facts/human-rights/> [<https://perma.cc/T2C7-J7GJ>].

64. *See Human Rights*, SAFE DRINKING WATER FOUND., <https://www.safewater.org/fact-sheets-1/2017/1/23/human-rights> [<https://perma.cc/R87L-B4YS>].

“progressive realization.”<sup>65</sup> There is no human rights violation *if* governments are making strides to provide such.<sup>66</sup> There is a large gray area when it comes to determining what is effective enough in providing governmental assistance to the right to water. The question becomes: How broad does this power reach?

#### ii. The United States: California and New York

There exists no American right to water. It is not stated in the Bill of Rights or Constitution.<sup>67</sup> However, the existence of the Clean Water Act and Safe Drinking Water Act alludes to the fundamental importance and right, without concretely stating it.<sup>68</sup> California was the first state to recognize the human right to water in 2012,<sup>69</sup> stating “every human being has the right to safe, clean, affordable and accessible water adequate for human consumption, cooking and sanitary purposes.”<sup>70</sup> In 2019, the state set aside \$1.4 billion dollars to ensure, over the next 11 years, residents have access to affordable, clean water.<sup>71</sup>

As of November 2021, New Yorkers voted to amend the state’s constitution to include the right “to clean air and water, and a healthful environment.”<sup>72</sup> What this signifies is not necessarily clear, especially regarding legislation and court decisions going forward.<sup>73</sup> However, it provides an opportunity to hold the state government accountable to consider our environment when acting.<sup>74</sup> This amendment now allows New Yorker’s to bring a legal cause of action to protect their water rights.<sup>75</sup>

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65. Brian Palmer, *Is Water a Human Right?*, NRDC (Mar. 3, 2016), <https://www.nrdc.org/onearth/water-human-right> [<https://perma.cc/4VCF-8FXE>].

66. *Id.*

67. Wilfredo Lopez, *Access to Water is an American Human Right*, PACE INT’L L. REV. BLOG (Aug. 14, 2017), <https://pilir.blogs.pace.edu/2017/08/14/access-to-water-is-an-american-human-right/> [<https://perma.cc/LP3W-VLCW>].

68. Palmer, *supra* note 65.

69. Lopez, *supra* note 67.

70. CAL. WATER CODE § 106.3(a) (West 2022).

71. See Alesandra Nájera & Juliet Christian-Smith, *California Becomes First State to Fund Human Right to Water*, WATER FOUND. (July 24, 2019), <https://waterfdn.org/california-becomes-first-state-to-fund-human-right-to-water/> [<https://perma.cc/ZRS8-XYZJ>].

72. Press Release, Earthjustice, Environmental Rights Amendment Passes in New York (Nov. 3, 2021), <https://earthjustice.org/news/press/2021/environmental-rights-amendment-passes-in-new-york> [<https://perma.cc/N4E5-CK4W>].

73. Rachel Hellman, *What the Right to Clean Air and Water Will Mean for New Yorkers*, THE RIVER (Nov. 11, 2021), <https://therivernewsroom.com/environmental-rights-amendment-prop-2-new-york/> [<https://perma.cc/B92W-V3B8>].

74. See *New York Proposal 2, Environmental Rights Amendment (2021)*, BALLOTEDIA, [https://ballotpedia.org/New\\_York\\_Proposal\\_2,\\_Environmental\\_Rights\\_Amendment\\_\(2021\)](https://ballotpedia.org/New_York_Proposal_2,_Environmental_Rights_Amendment_(2021)) [<https://perma.cc/QA9G-XVC9>].

75. *Id.*

## B. Microplastics

A leading environmental harm of the fast fashion industry on our water rights stems from microplastics. The world consumes nearly “80 billion new pieces of clothing every year.”<sup>76</sup> Globally, the industry uses 82 million tons of fiber just in the manufacturing process of clothing.<sup>77</sup> Each type of fiber has its own specific way of affecting our water usage; however, together, fiber accounts for “9% of annual microplastic losses to the oceans.”<sup>78</sup> Synthetic fibers such as polyester, nylon and acrylic, make up about 69 percent of clothing.<sup>79</sup> These man-made fibers shed microplastics into water every time they are washed.<sup>80</sup> There are 1.5 million tons of microplastics entering our oceans each year, 34.8 percent of which stem from these synthetic materials.<sup>81</sup> The more plastic produced the more fossil fuel usage increases, leading to an increase in greenhouse gas emissions, directly impacting global warming.<sup>82</sup>

The full effects of microplastics are not yet known, but so far do not sound promising. They have been found “in everything from beer and table salt to seafood and drinking water.”<sup>83</sup> Microplastics are believed to have an extreme effect on the human body. Research has shown microplastic can be inhaled, consumed through food and water and absorbed through our skin.<sup>84</sup> Even more disturbing, plastic has been found in our lungs, livers, spleens, kidneys and even in the placenta of newborns.<sup>85</sup> It is believed that such exposure to microplastics can impact fertility, hormones, metabolism, and our neurological systems.<sup>86</sup>

Not only is plastic detrimental to our bodies, but also to biodiversity. Plastic pollution disrupts the ecosystem’s natural processes and ability to

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76. Maiti, *supra* note 52.

77. Poland, *supra* note 19, at 413–14.

78. *Textile Industry*, *supra* note 10.

79. Bryce, *supra* note 48.

80. Poland, *supra* note 19, at 415–16.

81. *Id.* at 416.

82. *From Pollution to Solution*, UNEP, <https://www.unep.org/interactive/pollution-to-solution/> [<https://perma.cc/DVD3-SRXF>] [hereinafter *Pollution to Solution*].

83. Poland, *supra* note 19, at 416.

84. *Pollution to Solution*, *supra* note 83.

85. *Id.*

86. Press Release, UNEP, Historic Day in the Campaign to Beat Plastic Pollution: Nations Commit to Develop a Legally Binding Agreement (Mar. 2, 2022).

adapt.<sup>87</sup> It also interrupts food production capabilities, affecting millions of people and their livelihood.<sup>88</sup>

The United States has not enacted any fashion specific legislation regarding microplastics, but has done something similar in the cosmetics industry.<sup>89</sup> Microbeads, which are made of plastic, were a large part of cosmetic and personal care items prior to 2015.<sup>90</sup> In 2015, the United States banned microbeads as ingredients in these products.<sup>91</sup> This action suggests there may be similar legislation passed in the future for microplastics of the fashion industry.

### i. UNEA-5's Draft Resolution

In March 2022, the United Nations Environmental Assembly-5 (UNEA-5) met in Nairobi to discuss issues following the theme of “Strengthening Actions for Nature to Achieve the Sustainable Development Goals.”<sup>92</sup> UNEA-5 aimed to “create momentum for governments to build on and catalyze impact on multilateral environmental efforts to protect and restore the natural world on which our economies and societies depend.”<sup>93</sup> In relation to the earth’s water supply, UNEA-5 initiated a historic draft resolution to end plastic pollution through a formal, binding agreement.<sup>94</sup> As the fast fashion industry is a large contributor to the amount of microplastic in our water ways, it *will* be impacted by this resolution. The resolution specifically acknowledges that plastic pollution includes microplastics.<sup>95</sup> The draft stresses:

The urgent need to strengthen science-policy interface at all levels, improve understanding of the global impact of plastic pollution on the environment,

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87. *Plastic Pollution*, UNEP, <https://www.unep.org/plastic-pollution> [<https://perma.cc/UL3F-4FXM>].

88. *Id.*

89. See *What are Microplastics?*, NOAA (Feb. 26, 2021), <https://oceanservice.noaa.gov/facts/microplastics.html> [<https://perma.cc/2N8E-8AZG>] (stating that the U.S. signed a ban on plastic microbeads in cosmetics and personal care products into law that does not apply to fashion products).

90. *Id.*

91. *Id.*; see also H.R. 1321, 114<sup>th</sup> Cong. (1<sup>st</sup> Sess. 2015) (enacted).

92. *Fifth Session of the United Nations Environment Assembly*, U.N. ENV'T ASSEMBLY, <https://www.unep.org/environmentassembly/unea5> [<https://perma.cc/V9X9-D5HE>].

93. *Id.*

94. See *What You Need to Know About the Plastic Pollution Resolution*, UNEP (Mar. 2, 2022), <https://www.unep.org/news-and-stories/story/what-you-need-know-about-plastic-pollution-resolution> [<https://perma.cc/HB6K-P678>].

95. UNEP Res. EA.5/L.23/Rev.1, at 1 (Mar. 2, 2022) (representing the first draft of the plastic pollution resolution).

and promote effective and progressive actions at the local, regional and global level, recognizing the important role of plastics for society . . .<sup>96</sup>

The draft speaks to the importance of pushing forward sustainable materials and products to promote a no-waste supply chain cycle.<sup>97</sup> Products and materials “[should be] retained in the economy for as long as possible along with the resources they are made of . . . [to] minimiz[e] the generation of waste. . . .”<sup>98</sup> The draft emphasizes the importance of starting local and expanding outwards.<sup>99</sup> It recognizes every country has their own particular set of circumstances that relate to their contribution of microplastics, therefore, they are in the best position to decide how to tackle plastic pollution in their jurisdiction.<sup>100</sup> Further, the draft states international action is necessary by developing a specific binding instrument regarding plastic pollution.<sup>101</sup> The intergovernmental negotiating committee is set to lay out provisions of a binding instrument that include various ways to specify, promote, develop and assess plastic pollution.<sup>102</sup> Similar provisions that have been seen elsewhere in fashion-based legislation include: circular economy approaches, resource efficiency, country-driven approaches, supporting of regional cooperation, reporting of progress of implementation of instruments, scientific and socio-economic assessments, addressing compliance, and creating financial mechanisms to support implementation.<sup>103</sup>

While there is no singular solution, the goal remains the same: to reduce the use of plastics and stop their flow into our water sources.<sup>104</sup> This draft is a large steppingstone to international collaboration regarding plastic pollution to our water, not just in the fashion industry, but beyond.

### C. Levi’s: Water<Less

Remember your favorite pair of jeans? Hopefully they are Levi’s, as the brand has been a significant leader in not only the jeans industry, but the fashion industry as a whole. Levi’s has done its own due diligence by taking

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96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. UNEP Res. EA.5/L/23/Rev.1, at 2 (Mar. 2, 2022) (representing the first draft of the plastic pollution resolution).

101. *Id.*

102. *Id.* ¶ 3(a)–(d).

103. *Id.* ¶¶ 3(a), 3(d)–(e), 3(i), 3(k), 3(p), 4(b).

104. See generally *Pollution to Solution*, *supra* note 82.

steps towards transparency and responsibility, environmentally and socially. Levi's has acted ahead of regulatory measures by taking matters into their own hands to initiate important trends in corporate responsibility.

Levi's has committed to reducing supply chain emissions by 40 percent at a 2025 target through their Climate Action Strategy.<sup>105</sup> This strategy scales water recycling and reuse in the manufacturing process by using only as much it would naturally replenish, wherever they operate.<sup>106</sup> Their commitments include reducing their manufacturing use of water by 50 percent and having their fabric and garment suppliers comply with their [Water<Less](#) targets.<sup>107</sup> Levi's initiative sets realistic goals through their [Water<Less](#) program, allowing for collective action from other retailers in the industry to join in.

Levi's was the first apparel company to do a comprehensive analysis of a garment's "cradle-to-grave" environmental impact in 2007.<sup>108</sup> This analysis highlighted their own contribution, but could also be used to predict other brand's output in the industry.<sup>109</sup> Levi's measured the percentage of lifecycle water consumption by phase in the process of making a single pair of jeans. The results concluded: 68 percent was from the textile itself (the fiber); 23 percent from consumer care (the washing and drying of the jeans), and 9 percent for fabric production, packaging and sewing.<sup>110</sup>

To combat the considerable textile consumption, Levi's partnered with the Better Cotton Initiative (BCI) in 2010.<sup>111</sup> BCI educates cotton farmers on how to yield their cotton supply while drawing back their water and chemical usage.<sup>112</sup> As of 2018, BCI has contributed to 67 percent of Levi's cotton supply in the use of their apparel.<sup>113</sup> Levi's continues to support the movement by setting a target of using 100 percent BCI cotton in the near future.<sup>114</sup>

In terms of manufacturing, Levi's created the [Water<Less](#) program in 2011 to help combat the excessive use of water during the creation process.<sup>115</sup> [Water<Less](#) is a program based on various technological

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105. LEVI STRAUSS & CO., CLIMATE ACTION STRATEGY 2025 2 (2018).

106. LEVI STRAUSS & CO., 2025 WATER ACTION STRATEGY 2 (2019).

107. *Id.*

108. *Id.* at 4.

109. *Id.* at 9.

110. LEVI STRAUSS & CO., *supra* note 107, at 4 fig..

111. *Id.* at 4.

112. *Id.*

113. *Id.*

114. *Id.* at 8.

115. LEVI STRAUSS & CO., *supra* note 107, at 5.



innovations that helped reduce water consumption during the manufacturing process in comparison to traditional methods.<sup>116</sup> One large focus is the removal of hazardous chemicals in the process of dyeing, contributing to the reduction of pollution into our water streams caused by such activity.<sup>117</sup> *Water<Less* is a program Levi's has been open about with its competitors, showcasing their true commitment to have a larger impact, not just focusing on profit.<sup>118</sup> Since the initiation of *Water<Less*, Levi's has saved over four billion liters of water.<sup>119</sup>

As a large and profitable company, Levi's has been a figurehead in revamping the way retailers produce clothing. They are a prime example of how sustainable measures can be achievable with focus and genuine intention of change.

#### IV. SUSTAINABILITY: ACCORDING TO WHO?

##### A. Sustainability Defined

In 1987, *Our Common Future*, a report created by the World Commission on Environment and Development with the United Nations, defined sustainability as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."<sup>120</sup> This definition is ambiguous as the Environmental Law Institute stated it "must be overcome if governmental and private-sector decision-makers are to optimize the concept's potential."<sup>121</sup> Lack of concrete definition also arises with environmental "buzzwords" such as: green, eco-friendly, sustainable, responsibly-made, etc.<sup>122</sup> There is no single legal definition for these words. Therein the definition lies subjectiveness, creating a lack of overall standard, allowing companies to create their *own* definitions.

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116. *Id.*

117. *See, e.g., id.*

118. *See id.*

119. Brooke Bryant, *Circularity Comes to Life Through Water Recycling*, LEVI STRAUSS & CO.: UNZIPPED BLOG (Mar. 22, 2021), <https://www.levistrauss.com/2021/03/22/circularity-comes-to-life-through-water-recycling/> [https://perma.cc/2YK4-KNYX].

120. *The Problem with Sustainability? It Doesn't Really Mean Anything*, THE FASHION L. (Aug. 12, 2019), <https://www.thefashionlaw.com/the-problem-with-sustainability-it-doesnt-really-mean-anything/> [https://perma.cc/2WPU-ULXW] [hereinafter *TFL Problem*].

121. *Id.*

122. *Id.*

## B. Greenwashing

Greenwashing is defined as “the corporate practice of making diverting sustainability claims to cover a questionable environmental record.”<sup>123</sup> Greenwashing was popularized in the late 1980s when consumers received their information from the same media sources that retailers ran slick, borderline false advertising through.<sup>124</sup> It is a “harmful and deceitful way of advertising that a company is more sustainable than it actually is.”<sup>125</sup> Together, the limited access to correct information has allowed retailers to be hypocritical as they engage in unsustainable practices by default of these misleading advertisements.<sup>126</sup>

It is hard to decipher whether a fashion brand is *actually* taking the steps to initiate change or if they are just slapping a few environmentally pleasing words to their advertisements. The ways in which fashion companies greenwash include: “outright deception, subtle advertising, and . . . ambitious claims without full transparency around the actual impacts.”<sup>127</sup> Specifically, retailers may state grand energy efficient initiatives at their office space, mention eco-friendly packaging, and creation of “sustainable” collections, yet, fail to state any method of tracking initiatives to meet these sustainable goals.<sup>128</sup>

As the industry accounts for a high volume of trade in the United States, the Federal Trade Commission released a guide for Use of Environmental Marketing Claims in 2012.<sup>129</sup> The guide provides information about how to not deceive customers when making claims about fashion brands’ environmental efforts.<sup>130</sup> As useful as it may sound, it again holds

123. Bruce Watson, *The Troubling Evolution of Corporate Greenwashing*, THE GUARDIAN (Aug. 20, 2016), <https://www.theguardian.com/sustainable-business/2016/aug/20/greenwashing-environmentalism-lies-companies> [https://perma.cc/G9KF-Z2J8].

124. *Id.*

125. Deena Robinson, *10 Companies Called Out For Greenwashing*, EARTH.ORG (July 17, 2022), <https://earth.org/greenwashing-companies-corporations/#:~:text=H%26M%2C%20Zara%20and%20Uniqlo%20are,caused%20by%20the%20clothing%20industry> [https://perma.cc/PM94-JHB2].

126. See, e.g., Watson, *supra* note 123.

127. Solene Rauturier, *Greenwashing Examples: 8 Notorious Fast Fashion Claims and Campaigns*, GOOD ON YOU (Jan. 21, 2022), <https://goodonyou.eco/greenwashing-examples/#:~:text=H%26M's%20Loop%20campaign&text=Recycling%20a%20few%20items%20and,greater%20accountability%20for%20its%20actions> [https://perma.cc/NBD5-WN2D].

128. See *id.* (describing use of these practices across various “greenwashed” brands).

129. 16 C.F.R. § 260 (2012).

130. *TFL Problem*, *supra* note 120.

the common trend of lacking in any degree of specificity.<sup>131</sup> Broad definitions and explanations are one of many reasons why fast fashion retailers have not been held accountable for false advertising, despite the clear violations they have committed.<sup>132</sup> There is a critical need for concrete legislative definitions to be implemented and tested against retailers' environmental policies. If a higher standard is applied, many companies will be forced to amend and rebuild their policies to withstand these definitions.<sup>133</sup>

### C. Examples of Greenwashing

"Sustainable" clothing collections are often used to disguise the fact that these collections account for a *very* small portion of the production retailers actually do.<sup>134</sup> United Kingdom fast fashion brand, Boohoo, offers a "sustainable" collection, yet the materials used include acrylic (a harsh plastic known for its detrimental environmental effects).<sup>135</sup> H&M released a "Conscious" collection that wound up having a higher amount of synthetic fiber than their regular fast fashion collections.<sup>136</sup> Zara launched a "Join Life" collection and pledged to eliminate the use of toxic chemicals in 2020.<sup>137</sup> However, the reduction in use of harmful materials is *not* enough to be sustainable in the big picture. The activities used to create and process these collections are still causing major environmental damage.<sup>138</sup>

### V. WHO IS RESPONSIBLE?

Home to the elite fashion capitals of the world, the United States and Europe are the two superpowers to analyze first. In the United States, the federal legislative system lacks *any* fashion industry specific regulation. This leaves the states with an opportunity to influence the federal government

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131. *Id.*

132. *Id.*; see, e.g., *H&M Accused of Destroying 60 Tons of Recyclable Garments in Danish TV Investigation*, THE FASHION L. (Nov. 25, 2017), <https://www.thefashionlaw.com/hm-accused-of-destroying-over-60-tons-of-recyclable-garments-in-danish-tv-investigation/> [<https://perma.cc/D6CH-VNTY>].

133. *TFL Problem*, *supra* note 120.

134. See, e.g., Rauturier, *supra* note 127 (describing ASOS' circular line example).

135. *Id.*

136. Sally Ho, *Nearly 60% of Sustainable Fashion Claims Are Greenwashing, Report Finds*, GREEN QUEEN (July 10, 2021), <https://www.greenqueen.com.hk/fashion-brands-sustainability-claims-greenwashing/> [<https://perma.cc/84RV-XG4P>].

137. Alex Assoune, *Fast Fashion Brand Accused of Greenwashing*, PANAPRIUM <https://www.panaprium.com/blogs/i/fast-fashion-brands-accused-of-greenwashing> [<https://perma.cc/69GU-ZRGX>].

138. *Id.*

by creating their own legislation. Europe is a prime example of this as Germany and France have both impacted the European Union to investigate the matter of supply chain transparency further.<sup>139</sup> If a member, or a few members, are putting forth legislation in the realm of fashion, it should draw attention of higher authority to consider its own regulatory enactment.

## A. The United States: State Action

### i. New York's Fashion Sustainability and Social Accountability Act

New York City is one of the fashion capitals of the world. As a highly influential actor in the industry, it has the utmost power to launch change. New York has recently taken the first step out of all states to implement *fashion specific* legislation to combat the industry's harmful environmental and social effects. The Fashion Sustainability and Social Accountability Act was sponsored by New York State Senator Alessandra Biaggi and Assembly Member Dr. Anna Kelles, and drafted with the help of various nonprofit organizations and key actors of the industry.<sup>140</sup> Biaggi states that this bill ". . . ties together all of these components that we've seen [exist separately] in other places."<sup>141</sup>

Introduced in October 2021, the proposed Fashion Sustainability and Social Accountability Act ("Act") would "[require] fashion retail sellers and manufacturers to disclose environmental and social due diligence policies . . ."<sup>142</sup> These due diligence policies are described as "identify[ing], prevent[ing], [mitigating] and account[ing] for how [companies] address actual and potential adverse impacts in their own operations, their supply chain and other business relationships . . ."<sup>143</sup> Noncompliance with the Act

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139. See sources cited *infra* note 192 and note 206.

140. Alzate, *supra* note 20; Halper et al., *supra* note 20 (listing industry actors, including: the New Standard Institute, Natural Resources Defense Council, New York City Environmental Justice Alliance, and designer Stella McCarthy).

141. Cernansky, *supra* note 28.

142. Assemb. B. 8352, 245th Leg., Reg. Sess. (N.Y. 2021) (in committee); Mackenzie S. Schoonmaker et al., *New York Proposes to Require Sustainability Reporting for the Fashion Industry*, NAT'L LAW REV. (Jan. 12, 2022), <https://www.natlawreview.com/article/new-york-proposes-to-require-sustainability-reporting-fashion-industry#:~:text=On%20January%207%2C%202022%2C%20Senator,going%20towards%20a%20fund%20to> [<https://perma.cc/B4EP-JWD8>]; see generally Roxanne Robinson, *Fashion Industry Reacts To New York Sustainability Legislation That Could Upend Transparency Practices*, FORBES (Jan. 11, 2022), <https://www.forbes.com/sites/roxannerobinson/2022/01/11/fashion-industry-reacts-to-new-york-sustainability-legislation-that-could-upend-transparency-practices/?sh=1a6f381739b3> [<https://perma.cc/XB4Q-64EG>].

143. N.Y. Assemb. B. 8352 § 2.

would result in civil liability or heavy fines which would be placed in a benefit fund for the state's environmental justice community.<sup>144</sup> It is the first, groundbreaking piece of legislation in the United States that would require companies to set and achieve targets backed by science and not company standards.<sup>145</sup> This Act would be setting a wave of precedent, denoting the lack of transparency in the industry.

The Act would apply to global apparel and footwear companies doing principal business in New York who earn more than 100 million dollars in worldwide gross revenue.<sup>146</sup> Several luxury companies would be amongst the first entitled to report. Kering, parent company of Gucci, Bottega Veneta, Yves Saint Laurent, Balenciaga, and other high fashion designers, has already begun similar reporting, having announced a 2025 Sustainability Strategy in 2017 (first reporting in 2020.)<sup>147</sup> Since they have already begun reporting, complying in New York does not seem like an outrageous burden.

Disclosure under the Act is to be provided in various ways. The specifics ask for due diligence and corporate responsibility measures and solutions, including supply chain mapping and environmental impact reporting.<sup>148</sup> Companies, in good faith, must map *at least* 50 percent of their suppliers, from beginning to end of their supply chain, specifically identifying names.<sup>149</sup> They would also be required to develop and disclose figures that relate to their social and environmental impact, further implementing and describing solid plans to combat their impact and reach sustainable targets.<sup>150</sup> Disclosure will be shared on the company website within 18 months of initiation of these policies and processes.<sup>151</sup> There must also be a tracking mechanism in place for areas of significant risk to keep companies responsible in preventing or mitigating such.<sup>152</sup> With this, New York is requiring companies to recognize, reflect and revamp.

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144. *Id.* (The "community" the bill refers to here is to be determined by the Comptroller with the consultation from the Department of Environmental Conservation, the Department of Labor and relevant stakeholders).

145. Robinson, *supra* note 142.

146. *Id.*; N.Y. Assemb. B. 8352 § 2 (requiring a high level of revenue for the Act to apply to certain businesses, which is standard in other legislation internationally).

147. Halper et al., *supra* note 20.

148. Robinson, *supra* note 142.

149. N.Y. Assemb. B. 8352 § 2.

150. *Id.*

151. *Id.*

152. *Id.*

Current company reports, when they exist, stem from inconsistent, incompatible standards that are not factually checked.<sup>153</sup> The standards of reporting under this Act are held to align with the UN Guiding Principles on Business and Human Rights, Greenhouse Gas Protocol Corporate Standard, International Labor Organization, Organisation for Economic Co-operation and Development, and the goals of the Paris Climate Agreement.<sup>154</sup> The goals of the Paris Agreement are in line with Science Based Targets, a partnership between the Carbon Disclosure Project (CDP), United Nations Global Compact, World Resources Institute (WRI), and the World Wide Fund for Nature (WWF),<sup>155</sup> working towards the goal of limiting global warming to a temperature of 1.5°C.<sup>156</sup> These standards would allow for a uniform measure, leveling the playing field to avoid competitive advantage.

The Act provides for a periodic check-in after 18 months on prioritized adverse environmental and social impacts.<sup>157</sup> This includes emissions reporting on climate reduction targets (estimating timelines and benchmarks), volume of materials produced, production of recycled materials, and labor rights.<sup>158</sup> In terms of labor reporting, companies must show median wages and how theirs compare to other local minimum and living wages.<sup>159</sup> Emissions reporting will be independently verified and must meet the standards of the World Resources Institute.<sup>160</sup>

The Attorney General is the governmental authority that would enforce disclosure, making public a list of companies in compliance and violation.<sup>161</sup> Companies who appear on this list risk facing hardship from stakeholders in terms of how they are handling the environmental

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153. LEGISLATIVE BACKGROUNDER, *supra* note 3; Pucker, *supra* note 39 (statement from Business of Fashion report) (“With no standardized language or related frameworks, deciphering what companies are actually doing is extremely challenging.”). Most CSR reports do not accurately quantify the full carbon emissions profile of fashion brands and remain unaudited by external parties.

154. LEGISLATIVE BACKGROUNDER, *supra* note 3; Gall, *supra* note 3.

155. See *generally About Us*, SCI. BASED TARGETS, <https://sciencebasedtargets.org/about-us> [<https://perma.cc/9P3J-4XVC>] (last visited Oct. 24, 2022).

156. LEGISLATIVE BACKGROUNDER, *supra* note 3; see Cernansky, *supra* note 28; *The Paris Agreement*, UNFCCC, <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement> [<https://perma.cc/5R8R-ZZHW>] (last visited Oct. 24, 2022) (explaining that the Paris Agreement is the first legally binding international treaty on climate change entered into force in 2016. To implement the agreement, countries submit Nationally Determined Contributions, which are plans to reduce their Greenhouse Gas Emissions.).

157. N.Y. Assemb. B. 8352 § 2.

158. *Id.*

159. *Id.*

160. *Id.*

161. N.Y. Assemb. B. 8352 § 2.

challenges.<sup>162</sup> Pressure can also come from their consumer base.<sup>163</sup> The Attorney General, as well as the public, can bring an action for civil liability against companies who are in violation.<sup>164</sup> Companies have a three-month period to meet their obligations if in violation, and if they do not, they can be charged a fine up to 2 percent of their annual global revenue.<sup>165</sup> These fines would be placed in an environmental justice community fund for various uses as seen fit.<sup>166</sup> Any citizen of the state is also allowed to commence a civil action against any person who is alleged to have violated this Act, and against the Attorney General, either to urge them to investigate an entity's compliance or for failing to investigate and impose penalties on an entity.<sup>167</sup>

New York State itself has a target to reduce its' own environmental emissions by 85 percent by 2050.<sup>168</sup> This legislation will become a tell-tale sign of which companies are willing and passionate about change and which were just cutting corners to please the new sustainability "hype." This Act could make influential change in other industries as well, taking steps towards a circular economy.

#### a. Critiques

One critique of the Act is that it does not apply to small businesses, only to large retailers with immense global revenue. However, the Act in and of itself should influence smaller businesses to consider their own supply chain transparency. The Act should be expanded onto smaller businesses with less revenue in a reasonable amount of time after initial enactment, mimicking a tier like system.<sup>169</sup>

Another critique is whether the Act's transparency requirements will result in significant change.<sup>170</sup> One worry is that "companies will simply report more publicly on problems that continue to go unsolved," causing more concern and no real solution since there are no real requirements to fix them.<sup>171</sup> "It is a great step forward . . . because the bar is so low . . . the devil is in the details, and the enforcement . . ." shares Semaan, founder of

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162. Halper et al., *supra* note 20.

163. *Id.*

164. *Id.*

165. *Id.*; Robinson, *supra* note 142; N.Y. Assemb. B. 8352 § 2.

166. N.Y. Assemb. B. 8352 § 3.

167. *Id.* § 2.

168. LEGISLATIVE BACKGROUNDER, *supra* note 3.

169. See discussion *infra* Part V.B.i-ii.

170. Cernansky, *supra* note 28.

171. *Id.*

the Slow Factory Foundation.<sup>172</sup> In terms of transparency, the Act does not specify *which* 50 percent of the supply chain to report. Therefore, companies could be dishonest in reporting. It leaves it up to the companies “to use ‘good faith efforts’ to focus on ‘the suppliers and associated supply chains relevant to [their] prioritized risk.’”<sup>173</sup> It becomes an issue of trust. However, how are we supposed to know what works if no one even *attempts* to report potential issues?

A large actor in the drafting of this Act has been Maxine Bédard, director of the New Standard Institute.<sup>174</sup> Bédard shares “[i]t’s not just about reporting. It’s about the setting and meeting of these targets . . . [the] language [is] crystal clear within the Science Based Targets component, and we’re looking at amendments to further clarify that . . . .”<sup>175</sup> Details around implementation are important because they will ensure reparations and equitable benefits will arise from legislative change.<sup>176</sup>

Competition is another concern. Businesses have always wanted to keep their suppliers and manufacturers confidential, so competitors do not know where products are being sourced from and at what price, thus making it difficult for them to create identical apparel.<sup>177</sup> However, the bill is “pro-business” because competition within businesses would be reduced if they are all dutifully reporting.<sup>178</sup> Reporting and standards will allow all companies to compete fairly.

Collaborators and drafters of this Act researched, discussed, and brainstormed with various organizations, academics, and legislators to decide what was the most realistic approach in drafting. In doing so, there was no real *fashion* standard in the United States law to weigh in on. However, one influential piece of legislation they turned to was California’s Transparency in Supply Chains Act.<sup>179</sup>

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172. *Id.*

173. Halper et al., *supra* note 20.

174. Cernansky, *supra* note 28.

175. *Id.*

176. *Id.*

177. AMED ET AL., *supra* note 24, at 64.

178. Halper et al., *supra* note 20.

179. Zach Lemaster, *Human Right in Vogue: How New York’s Proposed Fashion Sustainability and Social Accountability Act Could Change the Fashion Industry*, IMMIGR. & HUM. RTS. L. REV. THE BLOG (Apr. 24, 2022), <https://lawblogs.uc.edu/ihr/r/2022/04/24/human-rights-in-vogue-how-new-yorks-proposed-fashion-sustainability-and-social-accountability-act-could-change-the-fashion-industry/> [<https://perma.cc/SAC3-2NSU>].



## ii. California: Transparency in Supply Chains Act

California is an example of one of the few jurisdictions that holds extended producer responsibility legislation for their businesses.<sup>180</sup> California passed the Transparency in Supply Chains Act in 2012 (“Transparency Act”).<sup>181</sup> Although not an environmentally centered piece of legislation, it focuses on labor, one of the social issues revolving around the fashion industry. The Transparency Act asks retailers and manufacturers to provide information regarding their supply chain so consumers can be alert to who is acting responsibly and who cares about the risks of human trafficking known to occur in the industry.<sup>182</sup>

The Transparency Act applies to any company with more than 100 million dollars in annual worldwide gross receipts.<sup>183</sup> Disclosure is required for five specific areas: verification, audits, certification, internal accountability, and training.<sup>184</sup> Such information is to be posted on the company’s website in a conspicuous way so consumers can have this information readily available.<sup>185</sup> The disclosure does not mandate any specific statements about trade secrets or confidential information, but has a standard of providing enough information to inform consumers about their own supply chain processes.<sup>186</sup> The Attorney General can bring an action if a company were to violate the Transparency Act, seeking injunction as a remedy.<sup>187</sup>

Although not environmentally related, this was the first piece of transparency legislation in the United States to directly impact the fashion industry, making it a quality starting point in drafting New York’s Act.

## B. Europe

### i. France: Duty of Vigilance

France is on a path to upholding all industries in its jurisdiction to supply chain transparency. It is working towards a no-waste, circular

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180. Pucker, *supra* note 39.

181. KAMALA D. HARRIS, CAL. DEP’T OF JUST., THE CALIFORNIA TRANSPARENCY IN SUPPLY CHAINS ACT: A RESOURCE GUIDE 1 (2015).

182. *California Transparency in Supply Chains Act*, PILLSBURY WINTHROP SHAW PITTMAN LLP 1, <https://www.pillsburylaw.com/en/services/california-transparency-in-supply-chains-act.html> [<https://perma.cc/9EER-EAAL>] [hereinafter *California Transparency Act*].

183. HARRIS, *supra* note 181, at 3.

184. *Id.* at 4.

185. *Id.* at 5.

186. *Id.* at 9.

187. *California Transparency Act*, *supra* note 182, at 2.

economy to meet its climate goals.<sup>188</sup> This fast implementation and dedication has sparked other jurisdictions, in Europe and beyond, to follow suit.

Home to Paris, another fashion capital of the world, France recognizes the impact the fashion industry has on the environment. This proposed supply chain legislation, titled “Projet de loi relatif à la lutte contre le gaspillage et à l’économie circulaire” or the “Bill on the fight against waste and the circular economy,” particularly targets the wasteful behavior the industry is guilty of as it constantly renews inventory with a large amount of unsold stock still lying around.<sup>189</sup> Unfortunately, it is a popular practice for companies to destroy unsold merchandise in an effort to avoid selling at a discounted price.<sup>190</sup> It is estimated that roughly 710 million dollars worth of product is destroyed yearly in France alone due to this practice.<sup>191</sup>

In 2017, the corporate duty of vigilance law was created, placing a legal obligation upon French businesses to implement and publish their own vigilance plan to improve corporate social responsibility programs.<sup>192</sup> The law applies to:

Any company that at the end of two consecutive financial years, employs at least five thousand employees within the company and its direct and indirect subsidiaries, whose head office is located on French territory, or that has at least ten thousand employees in its service and in its direct or indirect subsidiaries, whose head office is located on French territory or abroad.<sup>193</sup>

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188. *New French Legislation Prohibits the Destruction of Unsold Goods, Including Clothing*, THE FASHION L. (Feb. 11, 2020), <https://www.thefashionlaw.com/new-french-legislation-prohibits-the-destruction-of-unsold-goods-including-clothing/> [https://perma.cc/Q9F7-TZWS] [hereinafter *New French Legislation*].

189. *Id.*

190. *Id.*

191. *Id.*

192. *France’s Duty of Vigilance Law*, BUS. & HUM. RTS. RES. CTR., <https://www.business-humanrights.org/en/big-issues/corporate-legal-accountability/frances-duty-of-vigilance-law/> [https://perma.cc/R6FK-YTMR] [hereinafter *France Vigilance Law*]; *What Is the French Corporate Duty of Vigilance Law?*, ASSENT, <https://www.assent.com/resources/knowledge-article/what-is-the-french-corporate-duty-of-vigilance-law/#:~:text=The%20French%20Corporate%20Duty%20of%20Vigilance%20Law%20places%20the%20onus,result%20of%20their%20business%20activities> [https://perma.cc/LAA6-JUEK] [hereinafter *French Corporate Vigilance Duty*].

193. Eur. Coal. for Corp. Just., *French Duty of Vigilance Law - English Translation*, BUS. & HUM. RTS. RES. CTR. (Dec. 14, 2016), <https://www.business-humanrights.org/en/latest-news/french-duty-of-vigilance-law-english-translation/> [https://perma.cc/7LKW-JSP4].

It is important to recognize that this law holds not only the company accountable, but their agents under their direct *and* indirect control. This allows for more accountability not just in France, but beyond.

The vigilance plan must include reasonable measures on how to identify, prevent and diminish any potential risk of human rights or environmental damage.<sup>194</sup> There must be assessment means for risk mapping, planned actions for compliance when risks occur, and monitoring measures to calculate efficiency of the measures being taken.<sup>195</sup> The plan and its corporate minutes must be available to the public.<sup>196</sup>

In terms of non-compliance, the duty of vigilance law allows for court enforcement, sanctions and civil liability.<sup>197</sup> Court enforcement will allow the company three months to comply;<sup>198</sup> if not, they could be charged up to 10 million euros for non-compliance and upwards of 30 million euros for harmful effects that could have been prevented had there existed a plan.<sup>199</sup>

How effective has the duty of vigilance law been since 2017? According to a February 2022 Report by the French Parliament, there lies some ambiguity and need for stricter standards.<sup>200</sup> The Report speaks of a few critiques and recommendations that could be helpful in revising this legislation and the formation of legislation in other jurisdictions.

The first lies in terms of standards: What standards should companies refer to? What triggers a company to investigate their agents? What are “serious” enough violations? What is adequate in a company’s internal vigilance system?<sup>201</sup> Due to subjectiveness, French case law has not yet determined these answers.<sup>202</sup>

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194. *French Corporate Vigilance Duty*, *supra* note 192.

195. *France Vigilance Law*, *supra* note 192; *see also French Corporate Vigilance Duty*, *supra* note 192.

196. *See Sarah A. Altschuller & Amy K. Lehr, The French Duty of Vigilance Law: What You Need to Know*, FOLEY HOAG LLP: GLOB. BUS. & HUM. RTS. BLOG (Aug. 3, 2017), <https://www.globalbusinessandhumanrights.com/2017/08/03/the-french-duty-of-vigilance-law-what-you-need-to-know/> [<https://perma.cc/PD2B-YJXS>].

197. *France Vigilance Law*, *supra* note 192.

198. *French Corporate Vigilance Duty*, *supra* note 192.

199. EUR. COAL. FOR CORP. JUST., FRENCH CORPORATE DUTY OF VIGILANCE LAW: FREQUENTLY ASKED QUESTIONS (2017), <http://corporatejustice.org/wp-content/uploads/2021/04/french-corporate-duty-of-vigilance-law-faq-1.pdf> [<https://perma.cc/5PYG-C4HA>].

200. Elise Auvray et al., *French Parliament Publishes Evaluation Report on Corporate Duty of Vigilance Law*, LATHAM & WATKINS LLP (Mar. 18, 2022), <https://www.jdsupra.com/legalnews/french-parliament-publishes-evaluation-4234155/> [<https://perma.cc/MZ5L-WB67>].

201. *Id.*

202. *Id.*

The Report seeks to maintain broad definitions so pressure is placed on large companies to comply and to avoid the risk of companies just acting in a “purely procedural” manner “by which companies would simply check predetermined boxes to comply . . . without effectively considering the scope of potential . . . risks that their activities may entail.”<sup>203</sup> In terms of broadening the law, the Report suggests both lowering the employee requirement of companies and requiring company turnover to be a factor.<sup>204</sup> In suggestion for better implementation, the Report provides ways in which harmonized vigilance plans can be created and proposes having a governmental authority overlook the application of the vigilance statute.<sup>205</sup>

## ii. Germany: Supply Chain Due Diligence Act

Germany has its own supply chain compliance law set to take full effect in January 2023.<sup>206</sup> The legislation is meant to “prevent or minimize risks related to human rights or the environment or end the violation of duties related to human rights or the environment.”<sup>207</sup>

The law is set to impact companies with a head office in Germany, with over 3,000 employees;<sup>208</sup> then after two years, it will apply to companies with more than 1,000 employees.<sup>209</sup> The law focuses on supply chain transparency for the company itself and their direct suppliers, but not its indirect agents.<sup>210</sup> Indirect agents would be included on a case-by-case basis

203. *Id.*

204. *Id.* (explaining that large companies under French law are entities with at least 1.5 billion euros or a balance sheet total of at least 2 billion euros).

205. Auvray et al., *supra* note 200.

206. See Paul A. Davies, Stefan Bartz & Alexander Wilhelm, *New German Law Aims To Strengthen Global Human and Environmental Rights*, LATHAM & WATKINS LLP: ENV'T, SOC. & GOVERNANCE (June 30, 2021), <https://www.globalelr.com/2021/06/new-german-law-aims-to-strengthen-global-human-and-environmental-rights/> [<https://perma.cc/F5W3-Z7KR>].

207. *Germany: New Law Obligates Companies to Establish Due Diligence Procedures in Global Supply Chains to Safeguard Human Rights and the Environment*, LIBR. OF CONG. (Aug. 17, 2021), <https://www.loc.gov/item/global-legal-monitor/2021-08-17/germany-new-law-obligates-companies-to-establish-due-diligence-procedures-in-global-supply-chains-to-safeguard-human-rights-and-the-environment/#:~:text=Germany%3A%20New%20Law%20Obligates%20Companies,the%20Environment%20%7C%20Library%20of%20Congress> [<https://perma.cc/8QTM-ZUCG>] [hereinafter *Germany New Law*].

208. *Id.*

209. *Id.*; Press Release, Int'l Fed'n for Hum. Rts., Germany: Call for an Improvement of the Supply Chain Due Diligence Act (Nov. 15, 2021), <https://www.fidh.org/en/issues/globalisation-human-rights/germany-call-for-an-improvement-of-the-supply-chain-due-diligence-act> [<https://perma.cc/W7MA-3QJV>].

210. Davies, Bartz & Wilhelm, *supra* note 206.

depending on the amount of *substantial knowledge* the head company had of the violation.<sup>211</sup> Compliance is to be submitted to the Federal Office for Economic Affairs and Export Control.<sup>212</sup>

Environmental related risks are defined in the legislation as “a situation in which there is a sufficient degree of probability based on factual indications that a violation of [the following provisions occurred].”<sup>213</sup> Such provisions look to various conventions that have introduced harms and established standards: the Minamata Convention (spoke on mercury added products), the Stockholm Convention on Persistent Organic Pollution (referenced production and use of chemicals), and the Basel Convention (discussed hazardous waste).<sup>214</sup>

There is no civil liability imputed upon these companies if in violation.<sup>215</sup> If one wants to sue a company, they must meet a legal interest level of “paramount importance,” then reach out to a non-government agency or trade union to bring forward a suit on their behalf.<sup>216</sup> This procedure leaves damages and remedies unaccounted for, only the threat of fines and possibly public procurement.<sup>217</sup> Fines can range from two percent of global revenue for companies that make over 400 million euros annually.<sup>218</sup> In comparison to France, Germany’s due diligence law seems to be held to a lower standard, indicating a slower approach to implementation of true supply chain transparency.

### iii. European Union

As of February 2022, the European Commission has pushed this lack of transparency issue to the head of its agenda. Following in the footsteps of France and Germany, the Commission is looking to target large companies operating within their realm by enacting disclosure laws for environmental violations and human right abuses related to supply chains.<sup>219</sup> The proposal

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211. *Id.*

212. *German Parliament Passes Mandatory Human Rights Due Diligence Law*, BUS. & HUM. RTS. RES. CTR. (June 16, 2021), <https://www.business-humanrights.org/en/latest-news/german-due-diligence-law/> [<https://perma.cc/2CVA-AYW7>].

213. *Germany New Law*, *supra* note 207.

214. *Id.*

215. Davies, Bartz & Wilhelm, *supra* note 206.

216. *Germany New Law*, *supra* note 207.

217. *Id.*

218. *Id.*

219. Monika Pronczuk, *Companies in the E.U. Could Be Held Liable for Violations Along Their Supply Chain*, N.Y. TIMES (Feb. 23, 2022), <https://www.nytimes.com/2022/02/23/business/economy/eu-supply-chain-violations.html> [<https://perma.cc/R495-W94E>]; Paul A. Davies, Michael D. Green & James Bee, *European*

announced was entitled “Directive on Corporate Sustainability Due Diligence.”<sup>220</sup> The draft applies to companies with over 500 employees that have an annual revenue of over 150 million euros.<sup>221</sup> The plan is to be implemented at a high gross level and after two years, start implementation to smaller business in “high-impact sectors.”<sup>222</sup> The due diligence includes similarities to New York’s Act and France’s Duty of Vigilance, requiring “[public identification of] ‘actual and potential’ adverse impacts on the environment and/or human rights of the operations of not only the company itself and its subsidiaries, but also ‘value chain operations carried out by entities with which the company has an established business relationship.’”<sup>223</sup> It also includes typical implementation of protective measures to prevent and mitigate potential risks, as well as a list of procedures the company would need to take when acting in regard to their supply chain.<sup>224</sup> The Commission would give member states two years to create national legislation that would allow for implementation of this plan.<sup>225</sup>

On March 30<sup>th</sup>, 2022, the Commission announced further strategies on how to make a circular economy the norm through the proposed Ecodesign for Sustainable Products Regulation.<sup>226</sup> The goal is to create a common approach with set standards to “level [the] playing field” for all members.<sup>227</sup> The proposal “[sets] minimum criteria not only for energy efficiency but also for circularity and an overall reduction of the environmental and climate footprint of products.”<sup>228</sup> The requirements include life-cycle environmental impact, restrictions on certain substances, energy use and efficiency in creation, product durability, reusability, minimum recycled

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*Commission Proposes New Supply Chain Due Diligence Rules for Large Companies*, LATHAM & WATKINS LLP: ENV’T, SOC. & GOVERNANCE (Feb. 24, 2022), <https://www.globalelr.com/2022/02/european-commission-proposes-new-supply-chain-due-diligence-rules-for-large-companies/> [<https://perma.cc/H8H3-UXLB>].

220. Davies, Green & Bee, *supra* note 219.

221. Pronczuk, *supra* note 219.

222. *Id.*; see Davies, Green & Bee, *supra* note 219, tbl. (discussing the types of companies that fall into the scope of the Directive).

223. Davies, Green & Bee, *supra* note 219.

224. *Id.*

225. *Id.*

226. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions on Making Sustainable Products the Norm*, at 10, COM (2022) 140 final (Mar. 30, 2022) [hereinafter *Communication on Sustainable Products*].

227. *Id.* at 2.

228. *Id.*

content in products, amongst more.<sup>229</sup> An interesting component of the proposal includes a Digital Product Passport that would allow for products to be “tagged, identified and linked to data relevant to their circularity and sustainability.”<sup>230</sup> Specifically regarding textiles, the Commission plans to use this passport and labeling to help confront the issues textiles bring to the picture.<sup>231</sup> The Commission recognizes that “[a] clear and harmonized regulatory framework on product environmental sustainability will provide the conditions for this approach to become mainstream and drive companies . . . to innovate and invest in circular business models and the products of tomorrow.”<sup>232</sup> Therefore, they speak to aligning with existing and future legislation and policies member states have created, as well as promoting their ideas globally through the UN.<sup>233</sup>

### C. Non-Regulatory Actors

While many non-regulatory organizations and their initiatives for supply chain transparency exist, two rise above the rest. At an international level, the United Nations is a powerful actor in impacting change and setting the tone for how the world works collaboratively. The Sustainable Apparel Coalition (SAC) is a notable non-regulatory organization that also functions at an international level. It has created a brilliant method of measurement for transparency and sustainability in the industry through its Higgs Index tool.<sup>234</sup>

One downfall of non-regulatory actors is that while a large set of players are brought to the table, and collaborative pushed initiatives are being put forward, membership remains voluntary. There lies no legal consequences or obligation for actors in this industry to be reprimanded or participate. However, an upside is that such collaboration brings forward ideas and initiatives that can aid regulatory actors in researching what works best when it comes to drafting and enforcing legislation.

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229. *Id.* at 5.

230. *Id.*

231. *Communication on Sustainable Products, supra* note 226, at 5.

232. *Id.* at 3.

233. *Id.* at 6, 13.

234. Sustainable Apparel Coalition, *The Higg Index*, YOUTUBE (Apr. 5, 2021), <https://www.youtube.com/watch?v=rK-Or8ylffU> [https://perma.cc/2WXV-JEPS] [hereinafter *Higg Index Video*].

### i. UN Alliance for Sustainable Fashion

Within the past several years, the UN has taken steps to help combat the growing environmental threats the fast fashion industry produces. In early 2018, several UN organizations discussed the lack of coherence and knowledge on the many ways in which the UN was addressing social and environmental sustainability issues in the fashion industry.<sup>235</sup> In 2019, the UN Alliance for Sustainable Fashion (“Alliance”) was created.<sup>236</sup> Comprised of various task-forces, a collaborative effort was created to eliminate environmental consequences by identifying solutions and gaps in actions, then presenting these findings to generate governmental policy.<sup>237</sup>

Its scope extends from production of raw materials and manufacturing of garments to their distribution, consumption, and disposal.<sup>238</sup> It captivates the whole life cycle. The Alliance’s objectives include: promoting active collaboration, knowledge sharing, strengthening of synergies, as well as outreach and advocacy.<sup>239</sup> The goals of this Alliance are a part of the UN’s overall 17 Sustainable Development Goals as all interconnect at a transnational level.<sup>240</sup> This Alliance creates a common platform allowing UN agencies to work collaboratively, utilizing each other’s resources.<sup>241</sup> President of the UN Environmental Assembly stated this collaboration is not a “limitation . . . but rather a trigger for bringing real creativity and passion into the industry.”<sup>242</sup>

In 2021, the Alliance set forth a synthesis report of more than 50 of their fashion related initiatives from 10 member alliances and 19 with non-members alliances.<sup>243</sup> The report makes recommendations and brainstorms how to possibly address future issues. The three largest issues being: “[s]tronger governance and policies to drive change, [c]ollaboration and

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235. MEIER, *supra* note 6, at 4.

236. *Id.*

237. UNEP Press Release, *supra* note 36.

238. MEIER, *supra* note 6, at 4.

239. *Id.*

240. See *United Nations Releases Special 2020 Broadcast Calling for Collective Action*, U.N. (Sept. 18, 2020), <https://www.un.org/sustainabledevelopment/blog/2020/09/united-nations-releases-special-2020-broadcast-calling-for-collective-action/> [<https://perma.cc/RH46-7ED8>] (listing the 17 Sustainable Development Goals); see also MEIER, *supra* note 6, at 7.

241. UNEP Press Release, *supra* note 36.

242. *Id.*

243. MEIER, *supra* note 6, at 6 (demonstrating some of the initiatives, including: communications campaigns, knowledge repositories, multi-stakeholder initiatives, private sector partnerships, corporate responsibility campaigns, development cooperation projects, value chain development projects, labeling schemes and tools).



financing to implement solutions [and] [c]hange in consumption habits.”<sup>244</sup> Looking forward, the Alliance will continue to work with other UN groups and members in goals that will also impact the fashion industry. An example of a collaborative initiative to be taken is with the UN Decade on Ecosystem Restoration which will aim to prevent, halt, and reverse degradation of the ecosystem on land and sea.<sup>245</sup> This will impact the fashion industry in terms of raw materials like cotton cultivation, agricultural residues, and microbial fibers.<sup>246</sup>

## ii. Sustainable Apparel Coalition

The Sustainable Apparel Coalition (SAC) is a global, multi-stakeholder, non-profit alliance for the consumer goods industry.<sup>247</sup> At creation in 2009, its mission was to transform business for exponential impact through groundbreaking tools, collaborative partnerships and trusted leadership for industry sustainability.<sup>248</sup> SAC has more than 250 global members spanning from retailers, manufacturers, academic institutions, affiliates, governments and non-governmental organizations.<sup>249</sup> Some major member names include: Amazon, Crocs, Disney, H&M, Levi’s, Macy’s, and Nike.<sup>250</sup> SAC “provides a framework for sustainable production by which companies can measure their social and environmental impact[s].”<sup>251</sup> In 2011, SAC created a tool called the “Higg Index” that generates a value of standardized measurement for chain sustainability for brands, retailers, and manufacturers.<sup>252</sup>

The Higgs Index is composed of five different tools. The Brand and Retail Module assesses the social and environmental performance at the corporate level.<sup>253</sup> This module assesses the “life cycle stages of a product as it goes through a company’s operations, identifying sustainability risks

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244. *Id.* at 33–34 tbl. (providing the key needs with various bullet points on how there is opportunity for the UN agency to share expertise amongst the industry).

245. *Id.* at 35.

246. *Id.*

247. *The Sustainable Apparel Coalition*, SUSTAINABLE APPAREL COAL., <https://apparelcoalition.org/the-sac/#> [<https://perma.cc/4ELW-B4AC>] (last visited Oct. 28, 2022) [hereinafter *Apparel Coalition*].

248. *See generally Our Origins*, SUSTAINABLE APPAREL COAL., <https://apparelcoalition.org/origins/> [<https://perma.cc/N8XJ-6VJ9>].

249. *Our Members*, SUSTAINABLE APPAREL COAL., <https://apparelcoalition.org/members/> [<https://perma.cc/265Y-3TEM>].

250. *Id.*

251. Huckle, *supra* note 9.

252. *See Apparel Coalition*, *supra* note 247.

253. *See Higg Index Video*, *supra* note 234.

and impacts . . .”<sup>254</sup> Identification is determined through management systems, supply chain, packaging, use and end of use, retail stores, offices, transportation and distribution centers.<sup>255</sup> This in turn allows corporate retailers to institute firm social responsibility strategies and practices.<sup>256</sup>

The Materials Sustainability Index (MSI) measures the environmental impact of the materials being used, helping actors make environmentally conscious decisions.<sup>257</sup> The index covers inception at raw material extraction, raw material processing, and material production.<sup>258</sup> The index consists of 90-plus example materials which can be compared to one another.<sup>259</sup>

Following MSI, the Product Module (PM) determines the overall environmental impact from the inception of the product to the end of its life; thus, expanding the “cradle to grave” approach.<sup>260</sup> It can assess the product’s global warming potential, nutrient pollution in water, water scarcity, fossil fuel depletion, and chemistry.<sup>261</sup> This module covers the finished product assembly, brand and retail space, consumer use and end of life.<sup>262</sup> This tool was initially created to help retailers prepare for any litigation revolving around the development of products, especially concerning countries subject to the European Union.<sup>263</sup> As commitment to science-based corporate goals increases, PM will be able to provide brand’s ESG departments with a better understanding of how they can obtain sustainability performance and reach circulatory goals.<sup>264</sup>

The Facility Environmental Module calculates the environmental performance of individual facilities to help manufacturers find room for

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254. *Higg Brand & Retail Module*, SUSTAINABLE APPAREL COAL., <https://apparelcoalition.org/higg-brand-tool/> [<https://perma.cc/5UTJ-VM7U>].

255. *Id.*

256. *Id.*

257. See *Higg Index Video*, *supra* note 234.

258. Press Release, Sustainable Apparel Coal., Completed Product Module Marks a Major Milestone for the Higg Index, Delivering a Comprehensive Tool for the Consumer Goods Industry to Assess Sustainability (June 15, 2021) (on file with author) (displaying in chart form the full lifecycle) [hereinafter SAC Press Release].

259. *Higg Product Tools*, SUSTAINABLE APPAREL COAL., <https://apparelcoalition.org/higg-product-tools/> [<https://perma.cc/7BZ9-YRFT>] (last visited Nov. 2, 2022) [hereinafter *Higg Product Tools*].

260. *Id.*

261. *Id.*

262. SAC Press Release, *supra* note 258, at fig.

263. *Higg Product Tools*, *supra* note 259.

264. SAC Press Release, *supra* note 258 (“For any company planning to track their Scope 3 emissions [from Paris Agreement and Science Based Targets Initiative standards], Higg MSI and Higg PM would be the best starting point . . .”) (quoting Dhanujie Jayapala, Environmental Sustainability Manager for MAS Holdings).

improvement.<sup>265</sup> It includes assessment of energy use and greenhouse gas emissions, water use, wastewater, emissions to air, and waste and chemical management.<sup>266</sup>

There is a Social and Labor Module to assess the conditions of employees and the environment in which they are working in.<sup>267</sup> Some of this module's information is based upon: recruitment and hiring, hours, wage/benefits, employee treatment and involvement, and health and safety.<sup>268</sup> This evaluation allows retailers to see how their corporate policies work out in reality, also giving them the opportunity to make "lasting systemic changes."<sup>269</sup>

Since many large companies are already utilizing this measuring tool,<sup>270</sup> it could act as a standard system of measurement in legislative due diligence reporting.

## VI. MOVING FORWARD

### A. Sustainability as the Caliber

Compliance and caliber go hand-in-hand. Transparency is key to change because voluntary action is not enough.<sup>271</sup> Starting at the domestic level, supply chain transparency legislation must incorporate science-based standards, a high caliber, in drafting. Science needs to dictate the degrees and methods on how the fashion industry will combat climate change;<sup>272</sup> not a brand's "sustainable" marketing language. Successful policy needs to be built upon existing initiatives with science-based targets, so there is no duplicity and unnecessary burdens.

There must be legal and social consequences for not committing to or abiding by these requirements. "Without legislation, apparel companies that seek to do the right thing are put at a competitive disadvantage as their costs increase . . ."<sup>273</sup> Slowly but surely, local legislation will create a wave

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265. *Higg Facility Tools: Standardizing the Measurement of Social and Environmental Impacts in Facilities*, SUSTAINABLE APPAREL COAL., <https://apparelcoalition.org/higg-facility-tools/> [<https://perma.cc/R4HD-E7AH>].

266. *Id.*

267. *Id.*

268. *Id.*

269. *Id.*

270. *Our Members: Brands & Retailers*, SUSTAINABLE APPAREL COAL., <https://apparelcoalition.org/brands-retailers/> [<https://perma.cc/C4CL-JGAV>].

271. Robinson, *supra* note 142.

272. See Cernansky, *supra* note 28.

273. LEGISLATIVE BACKGROUNDER, *supra* note 3.

of change to meet growing, global environmental deadlines. International change will only be *truly* effective as the sum of local regulation begins to emerge and is challenged against this caliber.

### B. Conscious Consumers

With younger generations comes different perspective. The fashion industry is currently responding to a younger generation who thrives on “newness.”<sup>274</sup> The best example to describe this: 1 in 7 of this younger generation consider being photographed in the same outfit twice a *tragedy*.<sup>275</sup> Nevertheless, this need for constant, “new” items is interestingly coupled with an interest in access versus ownership.<sup>276</sup> Why? This generation is highly concerned about sustainability.<sup>277</sup>

Generation Z and Millennial consumers hold a ton of purchasing power, roughly 350 billion dollars.<sup>278</sup> “Nine in ten Generation Z consumers believe companies have a responsibility to address environmental and social issues.”<sup>279</sup> These consumers want to see integrity throughout ESG formalities and will question when they are not up to standard. Companies’ expectations should be attentive to consumers as they are closely examining the level of ESG continuity, from strategies to operational decisions.<sup>280</sup>

Consumer behavior is mirroring personal beliefs like never before.<sup>281</sup> People want to know where their clothing is coming from. In the last decade, consumers have led to the fall of business revenue in that they did not know which brands to trust anymore.<sup>282</sup> Luxury brands have been historically trusted due to high prices in the belief these products are made with high quality, sustainable materials.<sup>283</sup> Yet, trust has been greatly depleted as news of luxury designers reveals the deliberate destruction of millions upon millions of dollars of unused merchandise.<sup>284</sup>

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274. AMED ET AL., *supra* note 24, at 39.

275. *See id.*

276. *Id.* at 40 (discussing “the successes of rental and pre-owned [luxury brands]”).

277. *Id.* at 45.

278. Imran Amed et al., *The Influence of ‘Woke’ Consumers on Fashion*, MCKINSEY & CO., (Feb. 12, 2019), <https://www.mckinsey.com/industries/retail/our-insights/the-influence-of-woke-consumers-on-fashion> [<https://perma.cc/9HLP-AWLX>].

279. *Id.*

280. *Id.*

281. *See, e.g., id.*

282. AMED ET AL., *supra* note 24, at 64.

283. *Id.*

284. *Id.*; *see also* Alexa Maratos, *How Committed Are You, Coach? Designer Brand Called Out For Shockingly Contradictory Policy*, PACE ENV’T L. REV. BLOG (Nov. 15, 2021),

Consumers can get information at the touch of their fingertips through various social media platforms about what brands are “ethical” and “clean.” There are several apps and websites that list brand statistics, sharing their environmental footprint and labor usage, awarding an overall ethical rating in comparison to brands.<sup>285</sup> With outright transparency from companies themselves, consumers will be empowered to make informed purchasing decisions and support those who abide by the eventual, collective standard.

The fashion industry is one that relies heavily upon public investment. Consumers hold the power. Sensitive to public opinion, this sector of industrial change could be pushed to the forefront through public outcry.

### C. Rise of ESG Investment and Circularity

It is human nature to want to invest in the future. With a growing trend for environmental sustainability, there calls for a need to stabilize expectations to guide investment decisions. Investors are becoming more conscious about where they are putting their money. With more crackdowns and regulations, investing in companies that are doing large amounts of environmental harm is not sensible. “Activities on fashion should help address climate change, biodiversity loss and pollution by taking a value chain approach to ensure the most impactful actions are being taken, informed by science-based evidence and stakeholder consultations.”<sup>286</sup>

Growth in this area revolves around a circular economy. The idea of engaging in a circular business model allows optimizing and limiting resource use.<sup>287</sup> Product requirements and transparency standards are essential to encourage the use of circular business models in the industry.<sup>288</sup> This not only helps environmentally, but also holds many financial benefits to companies engaging in a circular business model.<sup>289</sup> However, if the majority of companies do not shift to a circular model there will be an uneven playing field leading to an increase in competition.

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<https://pelr.blogs.pace.edu/2021/11/19/how-committed-are-you-coach-designer-brand-called-out-for-shockingly-contradictory-policy/> (on file with author); see also *New French Legislation*, *supra* note 188.

285. See, e.g., *How We Rate Fashion Brands*, GOOD ON YOU, [https://goodonyou.eco/how-we-rate/?\\_ga=2.92697241.547200707.1663712834-1355883102.1663712834&\\_gl=1\\*4jdvhn\\*\\_ga\\*MTM1NTg4MzEwMi4xNjYzNzEyODM0\\*\\_ga\\_TTB1J3Q9MN\\*MTY2MzcxMjgzNC4xLjEuMTY2MzcxMzg0MC41OC4wLjA](https://goodonyou.eco/how-we-rate/?_ga=2.92697241.547200707.1663712834-1355883102.1663712834&_gl=1*4jdvhn*_ga*MTM1NTg4MzEwMi4xNjYzNzEyODM0*_ga_TTB1J3Q9MN*MTY2MzcxMjgzNC4xLjEuMTY2MzcxMzg0MC41OC4wLjA). [<https://perma.cc/6N3Q-CZQH>].

286. MEIER, *supra* note 6, at 34.

287. *Communication on Sustainable Products*, *supra* note 226, at 10.

288. *Id.*

289. See *id.* at 1.

We must move away from a linear “take, make, waste” model to a circular model that encompasses the entire life cycle of a product.<sup>290</sup> A circular supply chain cycle allows a “reduce, reuse, recycle” model to be put into action.

## VII. CONCLUSION

It is time to shift to a mindset where sustainability equals the standard. “Less unsustainable is *not* sustainable.”<sup>291</sup> Eco-friendly terminology should not be a choice, but a legislative requirement. Consumers must be put on notice so their habits can continue to be a powerful, collective voice fashion companies are forced to listen to. Advocating for circularity in fashion is an easy way to save resources, and most importantly our planet, going forward.

To create change, there must be a formulation of compliance, caliber, consumers, and circularity. What once began as a fundamental commodity to society has now become the very epicenter of modern life as we know it. The profoundness in its capacity further exhibits the power the fashion industry has on our planet.

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290. See generally Cernansky, *supra* note 28 (reporting on a proposed regulation with the goal of implementing this shift).

291. Pucker, *supra* note 39 (emphasis added).