

**TAG: YOU ARE IT!**  
**HOW AMENDING GARMENT LABELING REQUIREMENTS IS A  
FIRST STEP TOWARDS TRANSPARENCY IN THE FASHION  
INDUSTRY**

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INTRODUCTION

In 2015, Fashion Revolution<sup>1</sup> conducted an experiment whereby video captured people lined up in Berlin’s Alexanderplatz in front of a vending machine selling 2-euro tee-shirts. After consumers selected their size and remitted payment, a video appeared on a screen before them. “Meet Manisha,” it read, “one of millions making our cheap clothing.”<sup>2</sup> Images of the hundreds of young women crammed into filthy, overcrowded sweatshops emerged, with subtitles noting the sixteen-hour days spent fabricating those shirts, earning only thirteen cents per hour.<sup>3</sup> The consumer is then asked: “[d]o you still want to buy this €2 T-shirt?”<sup>4</sup> One by one, given the choice to buy or donate their two euros, consumers click

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\* Labels have taken new meaning and shape in this world -- and like other aspects of the fashion industry, it's high time this issue is revisited. I thank Professor Jeff Trexler for elucidating the need for heightened ethical scrutiny in the fashion industry; Professors Ursula Wynhoven and Nicole Karlebach for their Business and Human Rights course and the opportunity to learn from experts and true optimists in this field; and Professor Don Obert for encouraging me to "be Picasso" in examining how change can be affected just as easily from the inside out as from the outside in, one label at a time. I am immensely grateful to the Fashion Law Institute at Fordham for the silver lining of Covid and my career in being able to matriculate at Fordham's Fashion Law LLM Program, as it has allowed me to merge my life, my loves, and pursue my dream career in a way I could have only dreamed. Nothing would be possible without the love and support of my family—Adam, Zachary and Gabby: you are the reasons for everything I do. Thank you for encouraging me to keep dreaming, supporting me as I "went for it," and for your patience along the way. I love you most. To my fashion industry colleagues: It's time to get curious. We have much work to be done to improve our industry from the outside in and inside out. The only way is forward—tag, you are it. Let's make it happen.

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1. Fashion Revolution is a campaign for “a clean, safe, fair, transparent and accountable fashion industry” achieved through “research, education, collaboration, mobilisation and advocacy.” FASHION REVOLUTION, <https://www.fashionrevolution.org> (last visited Nov. 18, 2021).

2. Fashion Revolution, *The 2 Euro T-Shirt - A Social Experiment*, YOUTUBE (Apr. 23, 2015), [https://www.youtube.com/watch?v=KfANs2y\\_frk](https://www.youtube.com/watch?v=KfANs2y_frk).

3. *Id.*

4. *Id.*

“donate.”<sup>5</sup> Though many conclusions (even suspect ones) can be drawn from this experiment, if one suspends one’s disbelief, reasonable minds can likely agree on at least two things: first, information about how, where, under what conditions, and by whom our clothes are made is material information that could impact a consumer’s purchasing decision; and second, garment labels and price tags ultimately fail to reveal a garment’s complete story or its true price.

When the United States Congress first enacted textile and garment labeling requirements, Congress mandated identifying country of origin not simply to promote domestic products over imported ones, but to inform consumer purchasing. However, in the modern day global commercial marketplace where United States general imports dwarfed total exports by over sixty percent in 2020<sup>6</sup> alone, identifying the country of origin provides only the tip of the iceberg when garment supply chains resemble spider webs in complexity. Ignorant as to whether their factories employ slave labor, violate human rights by failing to pay workers living wages, or provide safe working conditions, fashion brands can and have turned a blind eye. Moreover, the shift to retail e-commerce from brick and mortar has further concealed what little information consumers can glean from garment labels as there is no legal requirement mandating the disclosure of the actual garment label or its contents online.

To better reflect the global realities of textile and garment manufacturing, production, and sales, and to promote transparency and brand accountability, applicable labeling laws must be amended, namely the Textile Fiber Products Identification Acts (“TPIA”), which include the Misbranded Wool Products Act (“Wool Act”),<sup>7</sup> Misbranded Fur Products Act (“Fur Act”),<sup>8</sup> and Misbranded and Falsely Advertised Textile Fiber Products Acts (“Textile Fibers Act”).<sup>9</sup> This paper proposes that garment labeling laws mandate: (1) the disclosure of the factory name, address, and location (in addition to the country of origin) where the garment was substantially transformed; (2) digital access to the garment label and its contents; and (3) fines for non-compliance. Section I addresses the history and significance of the Federal Trade Commission’s (“FTC”) promulgation of the Textile Fiber Products Identification Acts’ labeling requirements. Section II addresses how economic globalization, the complex supply chain, and the advent of the internet and e-commerce have revolutionized the retail commercial landscape; and why current labeling laws prove inadequate and outdated. After discussing the above referenced amendments in Section III, Section IV explains how these disclosures successfully balance protecting brands’ legal rights with

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5. About 90% of the people who initially wanted to buy cheap t-shirts decided against the purchase and donated instead. Robert Bader, *Fashion Revolution: The 2 Euro T-Shirt*, UNIT9, <https://www.unit9.com/project/fashion-revolution> (last visited Feb. 24, 2022).

6. U.S. INT’L TRADE COMM’N, *The Year in Trade 2020: Side By Side Donut*, [https://www.usitc.gov/publications/332/yit\\_sidebysidedonut.html](https://www.usitc.gov/publications/332/yit_sidebysidedonut.html) (last visited Nov. 20, 2021).

7. Textile Fiber Products Identification Act, Misbranded Wool Products, 15 U.S.C. § 68b.

8. *Id.* at § 69b.

9. *Id.* at § 70b. Because the Wool and Fur Acts specifically addressed those materials, Congress enacted the Textile Fibers Act to regulate all other fibers and materials. See *Textile Labeling Legislation: Hearings on H.R. 469 Before the S. Comm. on Interstate and Foreign Commerce*, 85th Cong. 12 (1958) [hereinafter *Textile Hearings*].

consumers' and the industry's demands for transparency and accountability with respect to human rights violations.

I. CONGRESS FIRST ENACTED LABELING LAWS TO ADDRESS RAMPANT MISREPRESENTATION IN THE TEXTILE MANUFACTURING INDUSTRY AND TO PROMOTE DOMESTICALLY MANUFACTURED TEXTILE PRODUCTS

When Congress codified the Misbranded Wool Products Act in 1939,<sup>10</sup> the Misbranded Fur Products Act in 1951,<sup>11</sup> and the Misbranded and Falsely Advertised Textile Fiber Products Act in 1958<sup>12</sup> (collectively referred to as the "Textile Acts"), Congress mandated the disclosure of four pieces of information on every textile/garment label: (1) the fiber content; (2) country of origin;<sup>13</sup> (3) manufacturer/dealer identity; and (4) care instructions.<sup>14</sup> In so doing, Congress recognized the need to address several pressing issues impacting consumers generated by developments in the garment and textile industries. First, regulations were needed to address pervasive misrepresentation in the sale of textiles and garments.<sup>15</sup> Technological advancements not only accelerated textile manufacturing, but also facilitated the development of cheaper synthetic textiles that mimicked natural, more expensive ones.<sup>16</sup> To increase bottom lines,<sup>17</sup> manufacturers began integrating synthetic fibers into natural ones and misrepresenting their contents as being, for example, 100% wool when the fabric was actually a blend of wool and synthetics, to deceive consumers.<sup>18</sup> Requiring that garment labels identify fiber content percentages helped to ensure that a consumer was "getting what she wants and is paying for when she buys textile products."<sup>19</sup> Also, the blending of fabrics raised concerns about proper garment care. Because the "launderability, durability, warmth, strength, and other well-known or advertised characteristics"<sup>20</sup> of garments were material to consumers,

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10. 15 U.S.C. § 68b.

11. *Id.* at § 69b.

12. *Id.* at § 70b.

13. See Tariff Act of 1930, 19 U.S.C. § 1304; see also 16 C.F.R. §§ 303.33(d)–(f), 300.25(d)–(f).

14. See 15 U.S.C. §§ 68b, 69b, 70b; 16 C.F.R. § 423.5(a).

15. Indeed, the Misbranded Wool Act was popularly known as the "truth in fabrics law." See Robert E. Freer, *The Wool Products Labeling Act of 1939*, XX Temp. L.Q. 42 (1946), reprinted in FTC.GOV, [https://www.ftc.gov/es/system/files/documents/public\\_statements/674191/194607\\_freer\\_the\\_wool\\_products\\_labeling\\_act\\_of\\_1939.pdf](https://www.ftc.gov/es/system/files/documents/public_statements/674191/194607_freer_the_wool_products_labeling_act_of_1939.pdf) (last visited Apr. 20, 2022).

16. Jessica Bucci, *Fashion Archives: A Look at the History of Synthetic Fiber*, STARTUP FASHION (Apr. 25, 2015), <https://startupfashion.com/fashion-archives-history-synthetic-fiber/>.

17. See *Textile Counterfeiting DNA to Improve Supply Chain Integrity*, INDUS. FABRICS ASS'N INT'L (Sept. 18, 2015), <https://advancedtextilesource.com/2015/09/18/textile-counterfeiting-dna-to-improve-supply-chain-integrity/>.

18. Ernie Smith, *Let 'Er Rip*, TEDIUM (May 31, 2016) <https://tedium.co/2016/05/31/clothing-tags-why-they-exist/>.

19. *Textile Hearings*, *supra* note 9, at 41 (statement of J. Banks Young, Washington Rep., National Cotton Council of America).

20. S. REP. NO. 1658, 85th Cong., 2d Sess. 2, 4 (1958).

care information was needed to adequately inform them and to ensure garments' longevity.<sup>21</sup>

Second, laws were needed to address the flood of foreign goods saturating United States' markets which followed the United States' adoption of more favorable trade policies. Lingering prejudices following World War II translated into consumer preference for domestic instead of foreign manufactured goods.<sup>22</sup> To properly distinguish domestic from imported goods, Congress mandated the identification of a textile or garment's country of origin on the product label both to readily identify its source to consumers and as a means of promoting domestic products.

Third, following the Triangle Shirtwaist Factory Fire,<sup>23</sup> consumers demanded to know who manufactured their garments. This consumer demand for increased transparency and accountability in knowing where and by whom their garments were manufactured resulted in the required disclosure of the manufacturer's name on labels.<sup>24</sup> Not only did identifying the manufacturer help consumers make educated purchasing choices, but it also helped to both hold factory owners accountable and bolster labor and workplace safety laws enacted following the fire to afford workers sound working conditions, reasonable hours, and living wages.<sup>25</sup>

Finally, providing information about a garment on its label for consumer use and inspection reflected the physical interactive nature of how consumers shopped. Historically, retail concentrated itself in brick-and-mortar locations, first in department stores, and later in retail chains often found in shopping malls as well as in freestanding locations.<sup>26</sup> The consumer experience was three-dimensional, whereby consumers visited a store where they could physically touch, try on garments, and inspect the attached clothing label to ascertain the product's fabrication and country of origin prior to purchase. Having physical access to labeling information contemporaneously with physical access to the garment meaningfully apprised consumers as to what they were buying prior to their purchase.

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21. CLOTHES CAPTIONING: COMPLYING WITH THE CARE LABELING RULE, FED. TRADE COMM'N (May 2014), <https://www.ftc.gov/tips-advice/business-center/guidance/clothes-captioning-complying-care-labeling-rule>.

22. *Textile Hearings*, *supra* note 9, at 115 (statement of Earl Kintner, General Counsel, Federal Trade Commission; Accompanied by Harvey Hannah, Chief, Division of Wool, Fur, and Flammable Fabrics, and Henry Miller, Federal Trade Commission).

23. See generally David von Drehle, *Uncovering the History of the Triangle Shirtwaist Fire*, SMITHSONIAN MAG. (Aug. 2006), <https://www.smithsonianmag.com/history/uncovering-the-history-of-the-triangle-shirtwaist-fire-124701842/>.

24. *Wool Products Labeling Act of 1939: Hearings on S. 162 Before a Subcomm. of the S. Comm. on Interstate Com.*, 76th Cong. 129 (1939) (statement of Curt E. Forstmann, President, Forstmann Woolen Co.).

25. Patrick J. Kiger, *How the Horrific Tragedy of the Triangle Shirtwaist Fire Led to Workplace Safety Laws*, HISTORY (Mar. 24, 2021), <https://www.history.com/news/triangle-shirtwaist-factory-fire-labor-safety-laws>.

26. See Dolores Monet, *Ready to Wear: A Short History of the Garment Industry*, BELLATORY (Nov. 29, 2021) <https://bellatory.com/fashion-industry/Ready-to-Wear-A-Short-History-of-the-Garment-Industry>; see also Susan Meyer, *The History and Evolution of Retail Stores: From Mom and Pop to Online Shops*, BIG COM., <https://www.bigcommerce.com/blog/retail/> (last visited Mar. 3, 2022).

## II. GLOBALIZATION, INTERNATIONAL SUPPLY CHAINS, PROLIFERATION OF E-COMMERCE AND FAST FASHION HAVE TRANSFORMED COMMERCE AND THE FASHION RETAIL LANDSCAPE

While the Textile Acts' labeling requirements successfully addressed concerns about garments' origins, manufacturers' accountability, and care concerns for many decades, four developments not only irrevocably transformed the textile and garment industries but also necessitated revision of the labeling laws. Indeed, (1) globalization; (2) an opaque, increasingly complex global supply chain; (3) the proliferation of retail e-commerce; and (4) the emergence and popularity of fast fashion have changed the commercial, fashion, and global landscape prompting a long overdue review of current labeling laws.

### *A. Globalization Shifted the Textile and Garment Industry Overseas*

In the decades following World War II, after the Fur and Textile Fabrics Acts' respective enactments, globalization, or the "increase[ed] interconnectedness and interdependence of world cultures and economies" as a result of trade and technology,<sup>27</sup> materialized. Several discoveries and events accelerated this, namely (1) the Second Industrial Revolution's technological and transportation advancements in the car and airplane; (2) the Cold War and eventual collapse of the Iron Curtain,<sup>28</sup> which once divided the world into two spheres of influence;<sup>29</sup> and (3) the World Trade Organization's formation, which facilitated free-trade agreements with nations all over the world.<sup>30</sup> Between 1970 and 2015, global exports and imports of goods each multiplied more than fifty times<sup>31</sup> as a result of transportation's facilitation of international trade. Companies readily scaled into multinational enterprises with international operations, with manufacturing hubs located predominantly in Asia and Latin America, where both raw materials and

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27. *Globalization*, NAT'L GEOGRAPHIC SOC'Y, <https://www.nationalgeographic.org/encyclopedia/globalization/> (last visited Mar. 26, 2022).

28. *What Was the Iron Curtain?*, HISTORYONTHENET, <https://www.historyonthenet.com/what-was-the-iron-curtain/> (last visited Mar. 26, 2022).

29. *A Brief History of Globalization*, WORLD ECON. FORUM, <https://www.weforum.org/agenda/2019/01/how-globalization-4-0-fits-into-the-history-of-globalization> (last visited Mar. 27, 2022); I. M. Destler, *America's Uneasy History with Free Trade*, HARV. BUS. REV. (Apr. 28, 2016), <https://hbr.org/2016/04/americas-uneasy-history-with-free-trade> (last visited Mar. 26, 2022).

30. Ana Swanson, *The World Today Looks Ominously Like It Did Before World War I*, WASH. POST (Dec. 29, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/12/29/the-world-today-looks-ominously-like-it-did-before-world-war-i/>.

31. *An Overview of Globalization*, WORLD101 FROM THE COUNCIL ON FOREIGN REL., <https://world101.cfr.org/sites/default/files/video-transcripts/2019/05/Transcript%20An%20Overview%20of%20Globalization.pdf> (last visited Mar. 26, 2022).

labor were cheap<sup>32</sup>—and where large-scale orders could be mass produced in short order.<sup>33</sup>

Recognizing the cost savings this afforded for textile and garment manufacturers, retailers ceased domestic production and offshored garment manufacturing—a move that became even more financially advantageous following the elimination of import taxes for garments manufactured abroad with the passage of the North American Free Trade Agreement (“NAFTA”) in 1994.<sup>34</sup> While offshoring garment manufacturing and production improved garment brands’ bottom lines, it cost domestic workers dearly. Offshoring garment manufacturing resulted in the loss of approximately 800,000 United States clothing manufacturing jobs<sup>35</sup> and the closure of over 650 textile plants.<sup>36</sup> Whereas in 1993 just over 50% of garments sold in the United States were domestically produced, by 2015, 97% of United States-sold clothes were imported from China and other offshore manufacturing hubs like Bangladesh, Vietnam, India, and Indonesia.<sup>37</sup> Though globalization benefitted consumers by giving them access to diverse goods from across the world and helped boost economically struggling countries with capital infusions and industrial development, it effectively became “a race to the bottom.”<sup>38</sup> Companies now prioritized their bottom line over living wages and safe working conditions for factory workers abroad more than ever.<sup>39</sup> And in so doing, they lost oversight, transparency and accountability. No longer could managers simply walk down to the plant floor to address a manufacturing issue, inspect the garments, or ensure the enforcement of safety and health protocols. Indeed, oversight and compliance with environmental and labor standards became

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32. See Press Release, INT’L LAB. ORG., Globalization Changes the Face of Textile, Clothing and Footwear Industries (Oct. 28, 1996), [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_008075/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_008075/lang--en/index.htm) (last visited Apr. 30, 2022).

33. See Paige Stanton, *The History of American-Made Clothing*, GOODWEAR (Aug. 30, 2017), <https://www.goodwear.com/blogs/news/the-history-of-american-made-clothing>.

34. See Stephanie Vatz, *Why America Stopped Making Its Own Clothes*, KQED (May 24, 2013), <https://www.kqed.org/lowdown/7939/madeinamerica>.

<sup>35</sup> See Kate Abnett, *Does Reshoring Manufacturing Make Sense?*, BUS. OF FASHION (Mar. 9, 2016), <https://www.businessoffashion.com/articles/news-analysis/can-fashion-manufacturing-come-home/> (last visited Apr. 30, 2022).

36. See Michael Collins, *The Abandonment of Small Cities in the Rust Belt*, INDUS. WEEK (Oct. 10, 2019), <https://www.industryweek.com/talent/article/22028380/the-abandonment-of-small-cities-in-the-rust-belt> (last visited Apr. 30, 2022).

37. See Lauren Sherman, *Unraveling the Myth of “Made in America”*, BUS. OF FASHION (Nov. 7, 2016), <https://www.businessoffashion.com/articles/news-analysis/the-myth-of-made-in-america-ttp-agreement/>.

38. See generally ANN T. LAWRENCE & JAMES *Business and Society* (2013), *The Challenges of Globalization*. See also, Ajit Singh & Ann Zammit, *Labour Standards and the ‘Race to the Bottom’: Rethinking Globalization and Workers’ Rights from Developmental and Solidaristic Perspectives*, 20 OXFORD REV. ECON. POLY 85 (2004); Phillip Andrew Hough, *A Race to the Bottom? Globalization, Labor Repression, and Development by Dispossession in Latin America’s Banana Industry*, 3(2) GLOBAL LAB. J. (Sept. 2022).

39. Shannon White, *When Shrouded Prices Signal Transparency: Consequences of Price Disaggregation* (June 2020) (Ph.D. dissertation, University of Chicago) (on file with the Booth School of Business, University of Chicago).

aspirational at best<sup>40</sup> when domestic managers became wholly reliant on overseas ones<sup>41</sup> for enforcement of already lax labor standards and poor policing of human rights violations.<sup>42</sup>

Furthermore, as offshoring consequently transformed domestic companies into international conglomerates, so too followed the complexities associated with international operations in an integrated global economy which has its “own rules and logic that [] directly and indirectly influence the politics, geopolitics, and economics of every country in the world.”<sup>43</sup> Interdependency reigned supreme, such that overseas occurrences or market ongoings abroad caused a ripple effect that directly impacted the United States and the rest of the world.<sup>44</sup>

### *B. Globalization Also Obscured the Supply Chain Web, Eradicating Brand Accountability*

Globalization also eliminated the transparency that domestic production afforded, replacing it instead with a complex, international, tangled web, devoid of tracing, oversight, or accountability.

The obscurity now commenced at the beginnings of the supply chain, as companies could no longer discern where their raw materials heralded from because raw materials from multiple sources are blended in the spinning process and may take years thereafter to be made into a garment.<sup>45</sup> Indeed, of over 250 international fashion brands<sup>46</sup> recently surveyed, only 11% could identify their raw material suppliers.<sup>47</sup> Regrettably, that opacity continued down the supply chain:

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40. See generally Luis Encinas, *Ethical Dilemmas Surrounding Manufacturing Offshoring: Assessing the Morality of Offshoring Decisions Through a Utilitarian Viewpoint* (Dec. 15, 2019) (B.S. thesis, University of Connecticut) (on file with Honors Scholar Theses, University of Connecticut).

41. *Advantages (And Disadvantages) of Manufacturing Overseas*, GEMBAH (May 3, 2021), <https://gembah.com/blog/advantages-and-disadvantages-of-manufacturing-overseas>.

42. Michael Blanding, *How Big Brands Should Monitor Factory Conditions in Their Supply Chains*, FORBES (Sept. 12, 2016), <https://www.forbes.com/sites/hbsworkingknowledge/2016/09/12/how-big-brands-should-monitor-factory-conditions-in-their-supply-chains/?sh=2864f2be796d> (last visited Mar. 26, 2022); see also Julia Zenker, *Made in Misery: Mandating Supply Chain Labor Compliance*, 51 VAND. J. TRANSNAT'L L. 297 (2018), available at <https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=1082&context=vjtl>.

43. LAWRENCE & WEBER, *supra* note 38, at 117; BEN WISNER ET AL., *AT RISK: NATURAL HAZARDS, PEOPLE'S VULNERABILITY AND DISASTERS* 22 (2nd ed. 2004).

44. See INT'L LAB. ORG., *THE SUPPLY CHAIN RIPPLE EFFECT: HOW COVID-19 IS AFFECTING GARMENT WORKERS AND FACTORIES IN ASIA AND THE PACIFIC* 3 (2020).

45. See Vivek Ramachandran, *Supply Chain Transparency for Apparel: No Longer Lip Service*, SOURCING J. (Apr. 26, 2021, 9:44 AM), <https://sourcingjournal.com/topics/thought-leadership/serai-supply-chain-transparency-apparel-nike-zara-germany-esg-traceability-276257/>.

46. For a list of the brands surveyed, see FASHION REVOLUTION, *FASHION TRANSPARENCY INDEX: 2021 EDITION* 28 (2021), [https://issuu.com/fashionrevolution/docs/fashiontransparencyindex\\_2021](https://issuu.com/fashionrevolution/docs/fashiontransparencyindex_2021).

47. See *id.* at 7.

less than a quarter of brands could identify their processing facilities,<sup>48</sup> and because of unauthorized subcontracting, many brands could not identify manufacturers who were involved in their garment manufacturing.<sup>49</sup> The reason for this is that the majority of brands are kept in the dark about the tiers of subcontracts their first tier suppliers subsequently enter—and even when auditing rights are reserved with first tier suppliers or manufacturers, exercising them is often cost prohibitive.<sup>50</sup> And even when they do exercise them, brands do not always know what to do with that information.<sup>51</sup> As first tier suppliers generally concern themselves only with their practices and compliance with the brands' supplier codes of conduct, they rarely police those of their subcontractors.<sup>52</sup> As such, whatever supplier codes of conduct, contractual provisions, or other policies<sup>53</sup> prohibiting employment of slave or forced labor or inhumane working conditions corporations codify are seemingly for show<sup>54</sup> since their purview is limited to the

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48. See U.N., Mandate of the Special Representative of the Secretary-General on Human Rights and Transnational Corporations and other Business Enterprises, The Corporate Responsibility Too Respect Human Rights in Supply Chains: 10th OECD Roundtable on Corporate Responsibility Discussion Paper (June 30, 2010), <https://www.oecd.org/corporate/mne/45535896.pdf> (June 30, 2010); see also FASHION REVOLUTION, FASHION TRANSPARENCY INDEX: 2021, *supra* note 46.

49. See Michael Totty, *How Brands Can Anticipate Unauthorized Subcontracting of Apparel Manufacturing*, UCLA ANDERSON REV. (Sept. 2, 2020), <https://anderson-review.ucla.edu/brand-ignorance/> (last visited Apr. 30, 2022) (stating that after investigators at the Rana Plaza accident found clothing items from major fashion brands in the ruins, the brands revealed they did not know their garments were being manufactured there because they “weren’t authorized to be made there.”).

50. Rachel Ceransky, *Consumers Want Labour Rights Transparency. Fashion is Lagging*, VOGUE BUS., <https://www.voguebusiness.com/sustainability/consumers-want-labour-rights-transparency-fashion-is-lagging> (last visited Mar. 26, 2022).

51. See Blanding, *supra* note 42.

52. See Verónica H. Villena and Dennis A. Gioia, *A More Sustainable Supply Chain*, HARV. BUS. REV. (Mar./Apr. 2020), <https://hbr.org/2020/03/a-more-sustainable-supply-chain>.

53. See, e.g., Code of Ethics, KERING, [https://keringcorporate.dam.kering.com/m/33a7ab2485a5e2ed/original/Kering\\_CodeEthique2019\\_DEF-A4-English.pdf](https://keringcorporate.dam.kering.com/m/33a7ab2485a5e2ed/original/Kering_CodeEthique2019_DEF-A4-English.pdf) (whereby Kering prohibits child and forced labor, but only commits to working with its “main suppliers” while promising it does not “knowingly work with partners who do not share these essential principles”); see also *Human Rights Policy*, H&M GROUP (Nov. 17, 2020), [https://hmgrouppdf.com/wp-content/uploads/2021/01/HM-Group-Human-Rights-Policy\\_17Nov202011.pdf](https://hmgrouppdf.com/wp-content/uploads/2021/01/HM-Group-Human-Rights-Policy_17Nov202011.pdf) (stating broadly that they respect fundamental human rights across their supply chains and in the communities where they operate, and have an “assessment programme” that follows up on compliance with their requirements without any delineations of specifics); see also *Supplier Code of Conduct*, LVMH GROUP, <https://www.lvmh.fr/wp-content/uploads/2014/11/code-of-conduct.pdf> (last visited Nov. 26, 2021) (requiring its suppliers, contractors, and subcontractors to comply with its ethical standards).

54. See e.g., Aryuna Kashyap, *“Paying For A Bus Ticket and Expecting to Fly”: How Apparel Brand Purchasing Practices Drive Labor Abuses*, HUM. RTS. WATCH (Apr. 23, 2019), <https://www.hrw.org/report/2019/04/23/paying-bus-ticket-and-expecting-fly/how-apparel-brand-purchasing-practices-drive> (last visited Mar. 26, 2022) (commenting that “Internal integration of policy should be combined with comprehensive contractual reform. Such reforms should ensure that contracts with suppliers accurately outline brand responsibilities to factor in labor and social compliance costs and production times. Contracts should outline brand responsibility to provide the supplier with complete and accurate technical details, brand approvals, consequences of brand delays, and business

first tier of the supply chain, where these violations can still occur, but are less likely.<sup>55</sup> The result is the shroud of secrecy that shields workplace, safety, and human rights violations replete in Tier 2<sup>56</sup> and below.

Moreover, as one report reveals, “[c]ompanies are also reticent about disclosing the numbers of supply chain employees receiving a living wage”<sup>57</sup> because they either do not know or do not want to know; or because they regard such information as akin to a trade secret.<sup>58</sup> This lack of supply chain visibility not only precludes accountability, but “allow[s] exploitative, unsafe working conditions and environmental damage to thrive, while obscuring who has the responsibility and power to redress these issues.”<sup>59</sup> Increased transparency would enable workers’ rights and environmental advocates to identify, report, and redress suspected abuses and help brands and retailers to better track and manage social, environmental and governance risks that may affect their business. However, the industry’s opaque construct precludes it, instead providing inherent plausible deniability at best, and willful blindness at worst.<sup>60</sup> Without laws, regulations, or other legal mechanisms to ensure accountability, discoverability is left to human rights and environmental groups and activists as well as non-profit organizations to privately investigate<sup>61</sup> or for companies to voluntarily disclose<sup>62</sup> as there is little

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incentives for factories that comply with labor laws and collective bargaining agreements. This kind of contractual reform will help mitigate the power imbalance between brands and suppliers by transposing brand commitments into contracts. It will also help mitigate brands’ exposure to heightened human rights risks arising from brand actions and omissions, and allow a brand to demonstrate through legal certainty for its suppliers that it is committed to assuming a fair share of its responsibility to prevent or mitigate human rights risks in factories.”)

55. See Felipe Caro et al., *Four Myths About Unauthorized Subcontracting*, MIT SLOAN (Sept. 8, 2021), <https://sloanreview.mit.edu/article/four-myths-about-unauthorized-subcontracting/>; see generally U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, *THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS: AN INTERPRETIVE GUIDE* (2012), [https://www.ohchr.org/documents/publications/hr.pub.12.2\\_en.pdf](https://www.ohchr.org/documents/publications/hr.pub.12.2_en.pdf).

56. See Rachel Cernansky, *Is Transparency in Fashion a Dead End?*, VOGUE BUS. (May 28, 2020), <https://www.voguebusiness.com/sustainability/is-transparency-in-fashion-a-dead-end>; see also Ellen Delisio, *Making Garment Industry Supply Chains Measure Up*, REUTERS (Aug. 18, 2016), <https://www.reutersevents.com/sustainability/making-garment-industry-supply-chains-measure>

57. Annachiara Biondi, *Covid-19 Has Emphasized the Importance of Brand Transparency*, VOGUE BUS. (Apr. 21, 2020), [www.voguebusiness.com/sustainability/fashion-revolution-transparency-index-2020-covid-19](http://www.voguebusiness.com/sustainability/fashion-revolution-transparency-index-2020-covid-19); see also FASHION REVOLUTION, *FASHION TRANSPARENCY INDEX: 2021*, *supra* note 46.

58. Alice Newbold, *The Human Cost Of Fashion Is Taking its Toll, Why Can't We Understand The Value Of People?*, BRITISH VOGUE (Apr. 21, 2021), <https://www.vogue.co.uk/fashion/article/fashion-revolution-campaign>.

59. FASHION REVOLUTION, *FASHION TRANSPARENCY INDEX: 2021*, *supra* note 46.

60. The United Nations noted the need for due diligence because businesses cannot responsibly feign ignorance when it comes to their supply chain and human rights violations but acknowledged that it can be “difficult for an enterprise to know all the entities in its supply chain.” The Corporate Responsibility to Respect Human Rights in Supply Chains, *supra* note 49.

61. See, e.g., THE TRANSPARENCY PLEDGE, <https://transparencypledge.org/> (last visited Nov. 26, 2021); *Resources*, CLEAN CLOTHES CAMPAIGN, <https://cleanclothes.org/resources> (last visited Nov. 26, 2021); FASHION REVOLUTION, *supra* note 46.

62. See, e.g., *Open Data Standard for the Apparel Sector*, ODSAS, <https://odsas.org/> (last visited Nov. 26, 2021).

incentive—financial or otherwise—for companies to spend the time, money, or other resources shining the light on their supply chains. Indeed, true leverage lies “with . . . policies, not . . . purchases.”<sup>63</sup>

*C. Retail's Shift from Brick and Mortar to E-Commerce Has Transformed the Way Consumers Shop and Deprived Consumers Access to the Physical Labels Themselves, Rendered Labeling Regulations Ill Equipped to Address the Move*

The advent and proliferation of the internet following the Third Industrial Revolution,<sup>64</sup> both furthered and exacerbated by globalization, gave rise to e-commerce. Not only is e-commerce open twenty-four hours a day, seven days a week, but the ease of access allows consumers to “shop online as often as [they] take out the trash,”<sup>65</sup> with purchases arriving on their doorsteps in a matter of days all from the comforts of consumers’ homes. Unsurprisingly, as e-commerce burgeoned, brick and mortar waned: as online apparel sales accounted for 38.6% of total U.S. apparel sales in 2019,<sup>66</sup> in 2020 alone (likely helped by the pandemic), online apparel sales constituted almost half of all apparel sales,<sup>67</sup> with sales revenues of \$4.28 trillion which will likely exceed \$5.4 trillion by 2022.<sup>68</sup>

The shift to online shopping also transformed the consumer shopping experience from a 3D experience, where consumers could physically interact with the apparel, to a 2D experience on e-commerce. What e-commerce makes up for in convenience, it lacks in physicality because as an e-commercial shopping experience fails to afford shoppers the ability to touch, feel, and try on garments. With only broad guidelines, devoid of any bright lines, to advise e-retailers as to what information they “should” provide on their websites, consumers are left to rely on e-retailers’ sole discretion about what information they choose to provide about a product on their websites.<sup>69</sup> As such, e-consumer purchasing decisions are presumptively premised almost entirely on e-retailers’ carefully curated high-

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63. Michael Hobbes, *The Myth of the Ethical Shopper*, HUFFPOST (Apr. 2, 2016), <https://downtheglobalsupplychain.wordpress.com/2016/04/02/huffington-post-the-myth-of-the-ethical-shopper/>.

64. See Vanham, *supra* note 32.

65. Bryan Lufkin, *The Curious Origins of Online Shopping*, BBC (July 26, 2020), <https://www.bbc.com/worklife/article/20200722-the-curious-origins-of-online-shopping>.

66. See April Berthene, *E-Commerce is 38.6% of All Apparel Sales*, DIGITAL COM. 360 (Aug. 8, 2020), <https://www.digitalcommerce360.com/2020/08/08/ecommerce-is-38-6-of-all-apparel-sales/>.

67. April Berthene, *Ecommerce is 46.0% of All Apparel Sales*, DIGITAL COM. 360 (June 28, 2021), <https://www.digitalcommerce360.com/article/online-apparel-sales-us/>.

68. STEPHANIE CHEVALIER, RETAIL E-COMMERCE SALES WORLDWIDE FROM 2014-2024, STATISTA (July 7, 2021), <https://www.statista.com/statistics/379046/worldwide-retail-e-commerce-sales/>.

69. See *infra* Appendix A; see also FED. TRADE COMM’N, ELECTRONIC COMMERCE: SELLING INTERNATIONALLY A GUIDE FOR BUSINESS, <https://www.ftc.gov/tips-advice/business-center/guidance/electronic-commerce-selling-internationally-guide-businesses>, (last visited Nov. 26, 2021) (offering broad guidance without delineating any categories of mandatory information e-retailers must provide on their site: “E-businesses...[need to] disclose the information consumers need to understand whom they are dealing with and what they’re buying...provide a clear and complete description of the product.”).

resolution photographs and marketing information, which often only vaguely references the label's contents. This forces consumers to purchase the garment online and wait for it to arrive to determine if the garment and its label align with the website's description. Not only is it burdensome to have to purchase the item prior to trying it on, but consumers are then forced to wait for the item to arrive to determine whether to keep or return it. Embedded within the e-commerce model is an underlying cycle of constant buying and returning not only requires the production and ultimate disposal of packing materials which pollute the environment, but fuel and greenhouse gas emissions emanating from the transportation vehicles facilitating the shipping, delivery and returns of the goods themselves.

*D. The Emergence and Nature of Fast Fashion Not Only Changed  
How Consumers Shop, But Further Contributed to the Fashion Industry's  
Opacity*

It is no wonder that the unprecedented pace and volume with which overseas manufacturing can produce garments combined with the emergence of retail e-commerce gave rise to fast fashion. Fast fashion has superseded the fashion calendar's traditional two to four seasonal fashion cycle offerings, with new collections dropping several times a week, if not weekly, all accessible with a mere swipe or click. It has created a different cycle, one that is consumer driven, as frequent new product offerings perpetuate insatiable consumer demands and expectations for new products<sup>70</sup>—many of which cost less than a sandwich.<sup>71</sup> This cycle, however, also propagates another one of discard. What is new one week is vintage the next, as consumers toss last week's sandwich-priced garment to consume this week's latest and greatest,<sup>72</sup> or, because the clothing was so haphazardly made, it falls apart after one use.<sup>73</sup>

Regarding fast fashion and clothing as disposable promulgates hyper and overproduction. In thirty years, the formerly large orders, which once consisted of 5,000–10,000 pieces, are now but a fraction of the small orders of 20,000–40,000 units Bangladesh factories routinely manufacture as part of their contracts with mega-suppliers or the huge conglomerates that can take a design sketch, split the production between thousands of factories, box up the goods, and ship them to stores in short order.<sup>74</sup> Indeed, these third world factories and the impoverished workers they employ churn out over 100 billion units to remain the highest volume producers with the lowest prices just to secure their contracts<sup>75</sup> so eight-five

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70. Tenzin Noryang Bhutia, *Globalisation and the Impacts of Fast Fashion*, CTR. FOR ECON., STRATEGIC & POL. DISCOURSE (Aug. 2, 2020), <https://cespd.org/article/discourse/globalisation-and-the-impacts-of-fast-fashion/>.

71. Imran Amed, *How Can a Garment Be Cheaper Than a Sandwich?*, N.Y. TIMES (Dec. 10, 2020), <https://www.nytimes.com/2020/12/10/opinion/covid-fashion-industry-worker-exploitation.html>.

72. Dana Halferty, *Why We Need to Stop Thinking of Our Clothing as Disposable*, PBS (Apr. 10, 2019), <https://www.pbs.org/wnet/peril-and-promise/2019/04/clothing-as-disposable/>.

73. Bhutia, *supra* note 70.

74. Hobbes, *supra* note 63.

75. Bhutia, *supra* note 70.

percent of the clothing can end up in a landfill.<sup>76</sup> Mega-suppliers achieve this by keeping brands at arm's length. Mega-suppliers fear that supplying factory disclosure information to brands will cut them out of the supply chain, as brands contract directly with the factories to preserve the profit margins for themselves—just so<sup>77</sup> eighty-five percent of the garments they ultimately manufacture ultimately end up in landfill.<sup>78</sup> However, keeping brands in the dark also incidentally benefits brands because it effectively functions as a scrutiny evasion tactic given that labor regulations are lax at best and often unenforced. Keeping brands in the dark is why factories can pay young women and children pennies on the dollar to work double shifts,<sup>79</sup> often under duress and subject to abuse,<sup>80</sup> in structurally unsafe, filthy, improperly ventilated, overcrowded rooms, without breaks. It is also why families were forced to dig through debris of what once stood as an eight-story garment factory complex in Rana Plaza, Dhaka, Bangladesh, to find their loved ones' remains and the brands' clothing labels to ascertain who to hold responsible—because even the brands themselves did not know the factory origins of their products.<sup>81</sup>

Undeniably, brands refuse or only reluctantly disclose information—whether it pertains to human rights or environmental policies—because they simply do not know it. In a recent survey of more than 200 brands, retailers, suppliers, manufacturers, and sourcing agents in the Asia Pacific, North America, and Europe, only nineteen percent of respondents had complete visibility over their entire supply chain.<sup>82</sup> Brands are similarly in the dark about all of “the water that goes into growing the cotton, dyeing the clothing, all of the energy—the fossil fuels—used to heat up the boilers in the textile mills...[and] this addiction to fossil fuels at its core.”<sup>83</sup> Of 250 brands surveyed, just under two-thirds could disclose the carbon emissions footprint of their own facilities; those statistics shrink to twenty-six percent for emissions from manufacturing and seventeen percent for

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76. Morgan McFall-Johnsen, *The Fashion Industry Emits More Carbon Than International Flights and Maritime Shipping Combined. Here are the Biggest Ways it Impacts the Planet.*, BUS. INSIDER (Oct. 21, 2019), <https://www.businessinsider.com/fast-fashion-environmental-impact-pollution-emissions-waste-water-2019-10>.

77. Hobbes, *supra* note 63.

78. McFall-Johnsen, *supra* note 76.

79. In 2020, ninety-three percent of brands surveyed by Fashion Checker did not pay their garment workers a living wage. Jennifer Darmo, *20 Hard Facts and Statistics About Fast Fashion*, GOOD ON YOU (July 27, 2020), <https://goodonyou.eco/fast-fashion-facts/>.

80. See Kate Hodal, *Abuse is Daily Reality for Female Garment Workers for Gap and H&M, Says Report*, GUARDIAN (June 5, 2018), <https://www.theguardian.com/global-development/2018/jun/05/female-garment-workers-gap-hm-south-asia>.

81. See Emily Chan, *8 Years After the Rana Plaza Disaster, We Still Aren't Doing Enough to Protect Garment Workers*, VOGUE (Apr. 19, 2021), <https://www.vogue.com/article/garment-worker-rights-protection-eight-years-after-rana-plaza>.

82. See Jasmin Malik Chua, *Most Fashion Companies Agree Transparency is Important. Few Have Achieved It.*, SOURCING J. (Dec. 2, 2021), <https://sourcingjournal.com/topics/sustainability/serai-kpmg-transparency-visibility-fashion-supply-chains-forced-labor-315941/>.

83. Elizabeth L. Cline, *We Need Policy to Stop New Clothes from Making a 'Straight Line' to the Landfill*, U.S. PUB. INT. RSCH. GRP. (Feb. 23, 2021), <https://calpirg.org/blogs/blog/usp/elizabeth-l-cline-we-need-policy-stop-new-clothes-making-%E2%80%98straight-line%E2%80%99-landfill>.

raw material production.<sup>84</sup> Without incentives or legal mandates to encourage or prompt brands to uncover risks, discern their impact, and/or invest the time-consuming work of mapping out a supply chain that is constantly in flux, “the cycle of turning a blind eye continues.”<sup>85</sup>

*E. Globalization and The Human Rights Impact of Fast Fashion Mandates Increased Business and Human Rights Accountability Through Enforceable Legal Means*

Though globalization and fast fashion have contributed to the economic and industrial development of many developing countries, growth has occurred at the expense of human rights. Production of cheap clothes at faster rates in countries with lax enforcement of labor laws, if any even exist,<sup>86</sup> expedites “work-intensifications and safety shortcuts.”<sup>87</sup> As factories are overworked, or unable to meet quantity demands, first and second tier suppliers will subcontract to manufacturers further down the supply chain—generally without the brands’ knowledge<sup>88</sup>—where most human rights violations occur.<sup>89</sup> However, few, if any, United States regulations or laws compel brands to undertake this due diligence despite<sup>90</sup> US legal and legislative commitments to protecting human rights.<sup>91</sup>

84. *Most Fashion Brands ‘Failing to Disclose Supply Chain Emissions’, Despite Net-Zero Pledge*, EDIE (July 7, 2021), <https://www.edie.net/news/6/Most-fashion-brands—failing-to-disclose-supply-chain-emissions—despite-net-zero-pledge>.

85. Newbold, *supra* note 58.

86. See Julia Corradini, *The Clothing Industry and Human Rights Violations: Consumption, Individuals and the Role of Big Players*, IRISH CTR. FOR HUM. RTS. (2017-2018), <https://repository.gchumanrights.org/bitstream/handle/20.500.11825/819/Corradini.pdf?sequence=1&isAllowed=y>.

87. *Id.*

88. Fact Sheet: Hidden Subcontracting in the Garment Industry, SOMO (Sept. 2015), <https://www.somo.nl/wp-content/uploads/2015/09/Hidden-subcontracting.pdf>.

89. See Rachel Deeley, *Human Rights Violations Are Increasing in Fashion Manufacturing Hubs*, BUS. OF FASHION (Oct. 7, 2021), <https://www.businessoffashion.com/news/sustainability/human-rights-violations-are-increasing-in-fashions-manufacturing-hubs/>; see also Alysha Khambay & Gurdeep Mall, *New Digital Platform Shines Light on Labour Rights Issues in Fashion Supply Chains*, BUS. & HUM. RTS. RES. CTR. (Dec. 7, 2020), <https://www.business-humanrights.org/en/blog/new-digital-platform-shines-light-on-labour-rights-issues-in-fashion-supply-chains/>.

90. See *infra* Part II, Section E.

91. While states like California and New York passed legislation elucidating human rights violations through recent legislation, it was only recently that similar federal legislation has been introduced. See, e.g., California Transparency in Supply Chain Act, CAL. CIV. CODE § 1714.43; New York Fashion Sustainability Act, S.B. 7428 (2021) (requiring fashion retailers to map their supply chains, disclose environmental and social impact of their activities, and set targets to improve those impacts). Indeed, on May 12, 2022, Senator Kirsten Gillibrand introduced the Fashion Accountability and Building Real Institutional Change Act (“FABRIC” Act) which seeks to “amend the Fair Labor Standards Act of 1938 to prohibit employers from paying employees in the garment industry by piece rate, to require manufacturers and contractors in the garment industry to register with the Department of Labor, and for other purposes.” See Fashion Accountability and Building Real Institutional Change

While the United States, in recognizing the supply chain's opacity and the veil it shrouds over egregious labor and human rights violations, historically embraced the United Nations ("U.N.") Universal Declaration of Human Rights ("UDHR");<sup>92</sup> the U.N. Global Compact's Ten Principles addressing human rights, labor rights, the environment and corruption;<sup>93</sup> and ratified the International Covenant on Civil and Political Rights in 1992,<sup>94</sup> the United States had yet to formally promulgate any domestically generated proclamation or set of guidelines. However, in 2013, the United States Government developed and adopted the United States Approach on Business and Human Rights (the "Approach") which formally adopted the U.N. Guiding Principles on Business and Human Rights.<sup>95</sup> Heeding the Guiding Principles, the United States Approach provides the blueprint for companies to implement the three-pillar "Protect-Respect-Remedy" Framework developed by John Ruggie, Special Representative to the United Nations Commission on Human Rights. Therein, the Approach outlines concrete and practical recommendations for how United States corporations and businesses can most effectively implement the Framework's pillars<sup>96</sup> and delineates how United States businesses can "'know and show' they respect human rights by putting in place policies and processes, as appropriate, to uphold the responsibility to respect human rights in their operations."<sup>97</sup>

Specifically, in addition to recommending businesses develop policy statements reflecting their commitment to human rights, the Approach encourages businesses to (1) conduct due diligence to identify, prevent, mitigate and account for actual and potential adverse human rights impacts through its own direct activities or which may be linked to its operations, products, services or through its business relationships; (2) identify and assess actual or potential human rights impacts by drawing on expertise and in meaningful consultation with affected groups; (3) integrate the findings into relevant internal business functions and processes; (4) take necessary action where the organization causes or contributes

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Act, S.B. 4213, 117th Cong. (2022). The bill also seeks to incentivize clothing manufacturers, brands, and companies to engage in onshore textile production by offering grants as well as various tax incentives to do so. Ana Colón, *Everything You Need to Know About the FABRIC Act, the First Federal Fashion Bill*, FASHIONISTA (May 16, 2022), <https://fashionista.com/2022/05/fabric-act-federal-fashion-bill-explainer>.

92. See G.A. Res. 217 (III) A, Universal Declaration of Human Rights, arts. 1, 3, 4, 5, 7, 23, 25 (Dec. 10, 1948) (declaring that fundamental human rights include that all human beings are born free, equal in dignity and in rights, with rights to life, liberty and security of person; to be free of slavery and servitude; to be free of torture and cruel inhuman treatment; to work in favorable conditions for equal pay; to unionize; and to a standard of living consistent with health and well-being, among others).

93. See *The Ten Principles of the U.N. Glob. Compact*, U.N. GLOB. COMPACT, <https://www.unglobalcompact.org/what-is-gc/mission/principles> (last visited Dec. 5, 2021).

94. See G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights (Dec. 16, 1966). The ratification of the International Covenant gives it the same status as any other federal law, and requires US federal, state and local government and government agency compliance therewith. See FAQ: The Covenant on Civil and Political Rights (ICCPR), ACLU, <https://www.aclu.org/other/faq-covenant-civil-political-rights-iccpr> (last visited Dec. 5, 2021).

95. See U.S. DEPT OF STATE BUREAU OF DEMOCRACY, HUM. RTS., AND LAB., U.S. GOVERNMENT APPROACH ON BUSINESS AND HUMAN RIGHTS (2013).

96. See *id.* at 4.

97. *Id.* at 17.

to any adverse impact and cooperating in remedial processes; and (5) comply with applicable laws in respecting internally recognized human rights.<sup>98</sup> Though the Approach regards these as “a global standard of expected conduct for all business enterprises, wherever they operate,”<sup>99</sup> compliance with its recommendations remains voluntary, as both the Approach and the U.N. Guiding Principles are a “step for the development of international corporate accountability standards.”<sup>100</sup> Without any enforcement mechanisms or means of enforcing accountability therewith, however, United States companies are left to their own devices as to whether, how, and to what extent they adopt the Approach, without anyone or anything to hold them accountable.

To give the Approach some teeth, and to shed much needed light on the supply chain, the labyrinth of brands’ manufacturing infrastructure and the inevitable human rights violations embedded therein, legislation could be a start towards compelling companies to implement the Approach’s supply chain due diligence and overall accountability. Human rights groups’ reports reveal staggering statistics that of over seventy-five million garment workers worldwide, eighty-five percent are women. These female workers toil in marginalized communities, earning pennies on the dollar (and 60-75% less than their male counterparts) and endure unending harassment and violence during their ten-to-sixteen-hour workdays, six days a week.<sup>101</sup> In fact, countries such as France,<sup>102</sup> Germany,<sup>103</sup> the European Union,<sup>104</sup> Australia,<sup>105</sup> and the United Kingdom<sup>106</sup> have enacted legislation mandating due diligence in supply chains to determine involvement, directly or indirectly, in human rights violations or environmental

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98. *Id.*

99. *Id.* at 16.

100. See CONNIE DE LA VEGA ET AL., HOLDING BUSINESSES ACCOUNTABLE FOR HUMAN RIGHTS VIOLATIONS 6–8, (2011).

101. *Global Garment and Textile Industries: Workers, Rights and Working Conditions*, SOLIDARITY CTR. (Aug. 2019), <https://www.solidaritycenter.org/wp-content/uploads/2019/08/Garment-Textile-Industry-Fact-Sheet.8.2019.pdf>.

102. See Sarah A. Altschuller & Amy K. Lehr, *The French Duty of Vigilance Law: What You Need to Know*, GLOB. BUS. AND HUM. RTS. (Aug. 3, 2017), <https://www.globalbusinessandhumanrights.com/2017/08/03/the-french-duty-of-vigilance-law-what-you-need-to-know/> (mandating as part of yearly corporate due diligence public filings that French corporations doing business outside of France issue “vigilance plans” identifying their businesses’ human rights and environmental due diligence policies, which address all business relationships, including those of contractors and all subcontractors throughout the supply chain).

103. *Germany: New Law Obligates Companies to Establish Due Diligence Procedures in Global Supply Chains to Safeguard Human Rights and the Environment*, LIBR. OF CONG. (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/> (last visited Mar. 26, 2022).

104. See European Commission Press Release IP/22/1145, Just and Sustainable Economy: Commission Lays Down Rules for Companies to Respect Human Rights and Environment in Global Value Chains (Feb. 23, 2022) (approving a new due diligence law that holds companies, suppliers and sub-contractors liable when they harm or contribute to harming human rights, the environment, and good governance).

105. Modern Slavery Act 2018 (Cth) (Austl.).

106. Modern Slavery Act 2015, c. 30 (Eng.).

harm. While some American states have respectively instituted or introduced legislation mandating supply chain disclosures, such California vis-à-vis the California Transparency in Supply Chains Act of 2010<sup>107</sup> and New York via the Fashion Sustainability Act,<sup>108</sup> apart from federal law prohibiting human trafficking,<sup>109</sup> no federal counterpart exists. With pressure mounting on the US government to hold corporations accountable for their foreign business operations' impact and contribution to human rights violations, amending manufacturer disclosures on garments may be a beginning toward forcing corporations to lift the veil shrouding their supply chains and the human rights violations embedded within them.

### III. GARMENT LABELING LAWS NO LONGER PROVIDE RELEVANT INFORMATION BECAUSE THEY NO LONGER REFLECT INDUSTRY REALITIES

The fashion industry's top-to-bottom evolution has rendered labeling laws both outdated and deficient because they no longer reflect the realities of the textile and garment industries for several reasons. First, given the complexities of a global supply chain, disclosing the country of origin alone is of little value. Textiles and the garments they comprise no longer herald from a single source. Indeed, threads from different mills, often from different regions, are often woven together into a single fabric roll. Once fabricated, dozens of hands work to assemble garments from the fabric at numerous factories across multiple locations, leaving importers to discern where the product was "substantially transformed"<sup>110</sup> given the legal complexities sometimes involved in rendering that determination<sup>111</sup>—something

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107. See S.B. 657, 2010 Leg., Reg. Sess. (Cal. 2010) (requiring qualifying companies doing business in California to disclose efforts (or lack thereof) to eradicate human rights violations from their supply chains to provide consumers with relevant information on which companies responsibly manage their supply chains in hopes of improving the lives of human rights victims); see also California Department of Justice, The California Transparency in Supply Chains Act, State of Cal. Dep't of Justice, <https://oag.ca.gov/SB657><https://oag.ca.gov/SB657> (last visited Jan. 19, 2021).

108. See The Fashion Sustainability Act, New York Senate Bill 7428 (mandating, among other things, that fashion companies earning more than \$100 million, disclose: (1) at least 50% of their supply chain; (2) their business operations' environmental impact; and (3) publish an annual "social and environmental sustainability report" that must address environmental and social due diligence policies, processes and activities conducted to identify, prevent, mitigate and account for potential environmental and social risks, as well as the findings and outcomes for each).

109. See 48 C.F.R. § 52.222-50 (2021).

110. United States Customs and Border Patrol employs the "substantial transformation" test to determine a product's country of origin where the item was not wholly produced in a single locale. A product is "substantially transformed" in the country where it underwent a fundamental change in form, appearance, nature or character such that the product loses its identity and is transformed into a new product having "a [new] name, character, [and] use" is the Customs and Border Patrol standard for determining where a good was substantially transformed. <https://www.trade.gov/rules-origin-substantial-transformation> (defining "substantial transformation"); see e.g., *Anheuser-Busch Brewing Ass'n v. United States*, 207 U.S. 556, 562 (1908); see also *United States v. Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267 (C.A.D. 98) (1940).

111. George R. Tuttle, *Substantially Transformed or Not, That Is the Question: Understanding U.S. Origin Rules in Uncertain Times*, TUTTLE L. NEWSL. (Oct. 18, 2018), [https://www.tuttlelaw.com/newsletters/2018/10-18-18\\_country\\_of\\_origin.html](https://www.tuttlelaw.com/newsletters/2018/10-18-18_country_of_origin.html).

COVID-19 further complicated when supply chain disruption scattered sourcing outside usual channels.<sup>112</sup> Notwithstanding that determination, it remains, however, only one piece of the much larger puzzle that is a garment's origin story, one that extends well before and likely after a garment's substantial transformation. It is a story consumers want to know in more detail, start to finish.

Second, current labeling regulations fail to reflect how brands now utilize labels. Once merely a source identifier, labels now constitute a significant branding tool for brands to further their marketing strategy and promote trust based on its reputation, ethos, and product quality. Given the labels' broad function and that "labeling is data" which is "only useful if it is accurate and transparent,"<sup>113</sup> updating labeling regulations affords an opportunity to enhance corporate branding while providing increased transparency.

Third, and relatedly, brands' lack of transparency breeds consumer distrust. In 2017, consumer trust in the fashion business fell in forty percent of countries worldwide,<sup>114</sup> and in 2018, seventy-seven percent of surveyed consumers wanted to ask brands where their clothes came from, despite knowing the country of origin.<sup>115</sup> Over half of millennials today will research for a piece of clothing's background prior to purchase, while forty-two percent of millennials surveyed indicate they "want to know what goes into products and how they are made before they buy."<sup>116</sup> Evidently, consumers feel "completely in the dark about what fashion has cost the environment and American jobs... costs [that] certainly aren't on price tags which are dropping lower and lower every year."<sup>117</sup> Additionally, the industry is not helped by the fact that journalists, and consumer and human rights groups such as Fashion Revolution,<sup>118</sup> Human Rights Watch,<sup>119</sup> and Clean Clothes Campaign

<sup>120</sup>—and not the brands themselves—are the ones to disclose the staggering statistics about human rights violations and environmental harm. Consequently, consumers engage in a:

[D]ouble layer of unethical behaviour—the first being supporting harsh labour practises and the second being ignorance of all labour

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112. Niall Murphy, *The Need for a Globally-Connected Supply Chain System is Clearer than Ever*, WORLD ECON. F. (Apr. 17, 2020), <https://www.weforum.org/agenda/2020/04/covid-19-globally-connected-supply-chain-system-interoperability-whitepaper/>.

113. George Arnett, *What the Rise of "Ecolabeling" Means for Retailers*, VOGUE BUS. (Dec. 13, 2019), <https://www.voguebusiness.com/sustainability/ethical-labelling-selfridges-net-a-porter-kering-allbirds-kering>.

114. BoF Team, McKinsey & Company, *The Year Ahead: The Case for Radical Transparency*, BUS. OF FASHION (Jan. 10, 2019), <https://www.businessoffashion.com/articles/news-analysis/the-year-ahead-the-case-for-radical-transparency/>.

115. FASHION REVOLUTION, CONSUMER SURVEY REPORT 4 (2018).

116. See Imran Amed et al., *What Radical Transparency Could Mean For The Fashion Industry*, MCKINSEY & CO. (Feb. 14, 2019), <https://www.mckinsey.com/industries/retail/our-insights/what-radical-transparency-could-mean-for-the-fashion-industry>.

117. ELIZABETH CLINE, OVERDRESSED: THE SHOCKINGLY HIGH COST OF CHEAP FASHION 8 (2013).

118. See FASHION REVOLUTION, [www.fashionrevolution.org](http://www.fashionrevolution.org) (last visited Nov. 28, 2021).

119. See HUMAN RIGHTS WATCH, [www.hrw.org](http://www.hrw.org) (last visited Nov. 28, 2021).

120. See CLEAN CLOTHES CAMPAIGN, [www.cleanclothes.org](http://www.cleanclothes.org) (last visited Nov. 28, 2021).

practises. It can be deduced from this that not only are consumers feeding modern slavery—a negative effect of fast fashion, but also consciously and purposely deciding to be unaware.<sup>121</sup>

Industry transparency is “a necessary first step to hold brands accountable”<sup>122</sup> for more humane, sustainable, environmental, and ethical practices. Without incentives to improve upon the deeper social and environmental issues that public disclosure is supposed to bring to light, “transparency” will only start and stop with what a brand itself decides it wants to “disclose.”<sup>123</sup> It begs the question “if clothing had labels that were as rigorous as food ingredients,” whether “people would begin to reconsider purchasing a T-shirt that could potentially affect their own wellbeing.”<sup>124</sup>

#### IV. AMENDING THE LABELING LAWS TO REQUIRE FACTORY NAME AND LOCATION AND TO PROVIDE DIGITAL ACCESS TO LABELS ON E-COMMERCE SITES WILL PROMOTE TRANSPARENCY AND ACCOUNTABILITY ACROSS THE GARMENT AND FASHION INDUSTRY

##### *A. The Proposed Amendments Provide Transparency for Consumers Which Will Help Restore Their Trust in Brands*

To address the commercial realities of the garment industry, promote brand accountability, and satisfy consumer demands for transparency, the Textile Acts should be amended as follows: (1) in addition to disclosing the country of origin, the label must state the factory name and location (address, including city, state/provenance) where the product was manufactured/substantially transformed; (2) the label’s contents must be reproduced both in writing and digitally, via digital image or otherwise, for consumer inspection and review on the e-commerce site; and (3) financial fines and penalties will be imposed for non-compliance.

The proposed amendments will provide consumers with the transparency they demand while restoring trust in fashion brands in several ways. First, identifying specific factory information evidences a brand’s due diligence to achieve supply chain visibility, undermining consumer perception that “fashion has a fake news problem.”<sup>125</sup> Publishing this information on garment labels also restores trust in providing consumers with relevant material information that serves as a starting point for further research (especially for Millennials and Gen Z

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121. Lumin Hew, *To What Extent Was The Emergence of Fast Fashion’s Negative Effects Led by Consumerism*, LINKEDIN (Sept. 29, 2021), <https://www.linkedin.com/pulse/fast-fashions-negative-effects-led-consumerism-lumin-hew/>.

122. Cernansky, *supra* note 50.

123. *Id.*

124. Alice Cary, *What’s in My Clothes? Why a New Hashtag Asks Us to Go Deeper*, VOGUE (Apr. 21, 2020), <https://www.vogue.co.uk/fashion/article/fashion-revolution-hashtag>.

125. See Sarah Kent, *Fashion’s Greenwashing Problem Begins with Bad Data*, BUS. OF FASHION (Sept. 16, 2020), <https://www.businessoffashion.com/articles/sustainability/fashion-sustainability-data-greenwashing/>.

consumers). Where or how brands manufacture should not be “an exploratory mission. It should be instantly visible when you go buy a garment.”<sup>126</sup>

Moreover, factory disclosure information facilitates consumer connection with the brand. Buying from brands that share social, humanitarian, economic and environmental values reflects consumers’ hyper awareness of the consequences of their shopping habits<sup>127</sup> and their own values, as “what [they] wear is a reflection of who they are and what they think.”<sup>128</sup> Not only will consumers endorse and remain loyal to brands whose values align with theirs, but the more brands are willing to pull back the curtain, the more loyalty they can garner.<sup>129</sup> Indeed, “the push and pull of positive and negative information has created a tension for some consumers in what to believe and who to trust,” leaving consumers to “question the extent, authenticity, and transparency of the actions taking place.”<sup>130</sup> Often left with too many questions and too few answers, “consumers want the brands they buy from to tell a story, and to tell a story that’s honest and transparent.”<sup>131</sup> With statistics that reveal “94 percent of consumers would be more loyal to brands that practice transparency, while 56 percent claim that brand transparency would make them ‘loyal for life,’”<sup>132</sup> it is clear that transparency breeds trust.

Brand accountability and trust is also furthered by affording customers digital access to labels and their contents. Apart from being able to physically interact with the garment, accessing the label and its contents digitally online affords consumers a much-needed brick-and-mortar-like informational opportunity prior to purchasing online.<sup>133</sup> Moreover, this requirement incidentally homogenizes labeling content disclosure across the board – from what the garment identifies to what the e-commerce site describes about the garment. Now a consumer will

126. Amy Nguyen, *Carbon Labels, Digital Passports and Traceability Tags—Clothing Labels’ New Normal*, FORBES (June 7, 2021), <https://www.forbes.com/sites/amynguyen/2021/06/07/carbon-labels-digital-passports-and-traceability-tags—clothing-labels-new-normal/?sh=6f06084314aa>.

127. See, e.g., Remi Rosemarie, *Sustainability Sells: Why Consumers and Clothing Brands Alike Are Turning to Sustainability as a Guiding Light*, INSIDER (Apr. 21, 2020) <https://www.businessinsider.com/sustainability-as-a-value-is-changing-how-consumers-shop>.

128. Vivek Ramachandran, *Transparency for Apparel, No Longer Lip Service* (Apr. 26, 2021), <https://sourcingjournal.com/topics/thought-leadership/serai-supply-chain-transparency-apparel-nike-zara-germany-esg-traceability-276257/>.

129. BoF Team, McKinsey & Company, *supra* note 114.

130. SUSTAINABLE APPAREL COALITION, EMPOWERING CONSUMERS THROUGH TRANSPARENCY: REPORT ON GLOBAL CONSUMER RESEARCH 5, <https://3ng5l43rkkzc34ep72kj9as1-wpengine.netdna-ssl.com/wp-content/uploads/2021/04/GlobeScan-SAC-Research-Report-Empowering-Consumers-Through-Transparency-1.pdf> (last visited Dec. 3, 2021).

131. Tara Donaldson, *This Startup Is Turning Clothing Labels Digital to Boost Transparency*, SOURCING J. (July 26, 2017), <https://sourcingjournal.com/topics/technology/startup-turning-clothing-labels-digital-transparency-td-69606/>.

132. Nicole Audrey, *Consumers Prefer ‘Honest’ Brands—And Are Willing to Pay Extra for Them*, NBC NEWS (Sept. 8, 2016), <https://www.nbcnews.com/business/consumer/consumers-prefer-honest-brands-are-willing-pay-extra-them-n644916>.

133. Note that several iterations of the Country of Origin Labeling Requirements Act have floated through Congress in 2020 and 2021, whereby bills have proposed that the country of origin be disclosed online. However, neither iteration has advocated for complete label disclosure online. See, e.g., H.R. 1386, 117th Cong. (2021).

know that the e-commercially described “imported” white tee shirt was produced in Vietnam,<sup>134</sup> as noted on the physical tag—and perhaps based on this more complete (though hardly complete) disclosure, consumers may be inclined to dig a bit deeper into the manufacturing history prior to purchasing—or may decline to purchase at all based on that information. This in turn better serves both the environment in eliminating needless purchases and returns which further tax the supply chain and pollute the environment, and it helps better manage inventory demands and production overall.

*B. The Proposed Amendments Benefit Garment and Fashion Brands as Disclosure Earns Consumer Trust, Investment Opportunity and Higher Valuations While Forcing the Law to Keep Pace with the Fashion Industry.*

Amending labeling disclosure laws also serves multiple brand interests. First, requiring labels to disclose factory identification information aligns with the increased government regulation mandating supply chain transparency that is emerging globally in response to supply chain issues. For instance, in response to the discovery that Xinjiang’s cotton industry employed slave labor to procure raw materials, United States Customs and Border Patrol issued both sanctions against China and new regulations whereby importers will be responsible “for ensuring that the products they plan to import do not exploit forced labor at any point along their supply chain, including the production or harvesting of the raw material.”<sup>135</sup> As the government regulations begin to forcibly remove brands’ blinders to the opacity of their supply chains, businesses with greater transparency will avoid fines and regulatory penalties, all the while improving their bottom line as a result of their improved risk management.<sup>136</sup>

Second, despite the upfront costs of mapping their supply chain and implementing oversight mechanisms, apparel brands know transparency is a first step towards increased sustainability<sup>137</sup> and enhanced reputation credibility.<sup>138</sup> Insight into the infrastructure and inner dimensions of its supply chain can help mitigate negative reports which can otherwise undermine corporate revenues, revenue reporting, and brand value.<sup>139</sup> In a hyper competitive industry, transparency can—and will—distinguish brands for the better not just in consumers’ eyes, but in those of investors. For brands looking to scale, grow, expand and/or diversify, supply chain visibility garners favorable positioning with investment and venture capital firms who no longer value companies based on their product offerings, profit margins, market share, and sales alone. The growing trend is to focus additionally, if not equally, on a company’s sustainability efforts, values, and practices, their environmental, social, and governance (“ESG”) goals,

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134. See Appendix A; see also *Slub Cotton-Modal Crew Neck T-Shirt*, BANANA REPUBLIC <https://bananarepublic.gap.com/browse/product.do?pid=551544002&pcid=999&vid=1&&searchText=white%20slub%20tee#pdp-page-content> (for website tee shirt content) (last visited Dec. 3, 2021).

135. Jasmin Malik Chua, *Xinjiang Cotton Faces Sweeping New Western Sanctions*, SOURCING J. (Jan. 13, 2021), <https://sourcingjournal.com/topics/labor/xinjiang-cotton-ban-u-s-cbp-aafa-ncto-forced-labor-255289/>.

136. Donaldson, *supra* note 131.

137. Kent, *supra* note 125.

138. Ramachandran, *supra* note 45.

139. Chua, *supra* note 82.

and established policies concerning working conditions in their manufacturing and production, as financial firms regard companies with such robust programs as more attractive long-term investments.<sup>140</sup>

Finally, affording consumers digital access to garment labels on their retail e-commerce sites reflects the fashion digitalization trend—and finally, the law’s attempt to catch up. With brands moving towards immersive digital shopping experiences, including digitalizing labeling all together,<sup>141</sup> mandating digital availability of garment labels is a natural first step in this direction.<sup>142</sup>

*C. The Proposed Amendments Implement Enforceable Legal Regulations that Balance Governments, Brands and Consumers’ Competing Interests*

The proposed amendments also successfully balance the numerous stakeholders’ competing legal, human rights and business interests compelling information’s disclosure. While the law is generally regarded as ineffective at keeping pace, in the instant case, baby steps initiated by legislative amendments may just yield the “tangible transparency outcomes” that otherwise “good intentions” have not.<sup>143</sup>

As the fashion industry is no stranger to activism by way of boycotts and protests,<sup>144</sup> exposé documentaries,<sup>145</sup> and investigative reports exposing the perils, horrors of human rights violations, and environmental damage<sup>146</sup> it yields, activism sadly has done little to ultimately move the needle. In 2021, Bangladesh, Honduras, Myanmar, Cambodia, and others remain the worst countries for working people and over seventy-five percent of countries continue to violate the most fundamental of human rights set forth The Universal Declaration of Human Rights by violating workers’ rights to strike, collectively bargain, and unionize.<sup>147</sup> Workers in forty-five countries continue to be exposed to violence in the

140. See, e.g., BLACKROCK ESG INVESTMENT STATEMENT (May 19, 2021), <https://www.blackrock.com/corporate/literature/publication/blk-esg-investment-statement-web.pdf>; Todd Klein, *Founders Must Show Investors That Sustainability is More Than Lip Service*, TECH CRUNCH (June 8, 2021), <https://techcrunch.com/2021/06/08/founders-must-show-investors-that-sustainability-is-more-than-lip-service/>; see Chua, *supra* note 82.

141. See Amy Nguyen, *Carbon Labels, Digital Passports and Traceability Tags—Clothing Labels’ New Normal*, FORBES (June 7, 2021), <https://www.forbes.com/sites/amynguyen/2021/06/07/carbon-labels-digital-passports-and-traceability-tags—clothing-labels-new-normal/?sh=47d2953214aa>.

142. Blake Morgan, *The Fashion Industry is Ready for a Makeover: 4 Changes We’ll See in the Future*, FORBES (Dec. 3, 2020), <https://www.forbes.com/sites/blakemorgan/2020/12/03/the-fashion-industry-is-ready-for-a-makeover-4-changes-well-see-in-the-future/?sh=5b29d76a914a>.

143. Chua, *supra* note 82.

144. Imran Ahmed et al., *The Influence of “Woke” Consumers on Fashion*, MCKINSEY & CO. (Feb. 12, 2019), <https://www.mckinsey.com/~media/mckinsey/industries/retail/our%20insights/the%20influence%20of%20woke%20consumers%20on%20fashion/the-state-of-fashion-2019.pdf>.

145. See, e.g., ENDEVR, *The True Cost: Who Pays the Real Price for YOUR Clothes*, YOUTUBE (Feb. 7, 2021), <https://www.youtube.com/watch?v=5-0zHqYGnlo>.

146. See, e.g., CLEAN CLOTHES CAMPAIGN, *supra* note 120.

147. See 2021 ITUC Global Rights Index: COVID-19 Pandemic Puts Spotlight on Workers’ Rights, INT’L TRADE UNION CONFEDERATION (June 30, 2021), <https://www.ituc-csi.org/2021-global-rights-index>.

workplace, while those in sixty-eight countries continue to be subjected to arbitrary arrests and detentions.<sup>148</sup> Even concerted international efforts, though well-intentioned in theory, prove impracticable to implement without deputized international organizations with oversight and enforcement power. For instance, the recent COP26 summit reflected great international consensus on global warming perils but set environmental goals that can only be met by razing and rebuilding the entire fashion industry.<sup>149</sup> Accords, like the International Accord for Health and Safety in the Textile and Garment Industry, ensure garment factory worker safety in Bangladesh and abroad—but only for another two years.<sup>150</sup> Even if corporations adopt and integrate some, any or all of the U.N.’s Guiding Principles tri-pillar Respect-Protect-Remedy framework<sup>151</sup> into their corporate ESG policies, processes, and procedures, while it may build awareness, adherence to it remains largely voluntary and ultimately unenforceable as there is no external body to hold the corporation accountable. It is only when regulations are legislatively codified that companies will be forced to comply, and undertake the necessary due diligence to investigate, evaluate, and expose the perils buried within their supply chains, and be the start to end the cycle of willful blindness.<sup>152</sup>

Moreover, the amendments may successfully and indirectly implement disclosure and accountability requirements where direct legal attempts in the United States have otherwise failed. Most notably, despite high hopes for the Alien Torts Claims Act (“ATCA”),<sup>153</sup> federal courts have been reluctant to employ it as a basis to hold United States corporations accountable for their corporate violations of international human rights law and complicity in human rights violations and environmental crimes, respectively.<sup>154</sup> In fact, United States courts, including the United States Supreme Court, chiseled away at the ATCA, limiting its application to three common law torts: (1) violation of safe-conduct assurances; (2) infringement on the rights of ambassadors; and (3) piracy.<sup>155</sup> Even in cases where direct links to United States corporate activity or decision making were established,<sup>156</sup> courts refused to hold United States companies liable for human

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148. *Id.*

149. See Sarah Kent, *What COP26 Means for the Fashion Industry*, BUS. FASHION (Nov. 12, 2021), <https://www.businessoffashion.com/briefings/sustainability/what-cop26-means-for-fashion/>.

150. Ruma Paul & Victoria Waldersee, *Retailers agree to Extend Bangladeshi Garment Workers’ Safety Pact*, REUTERS (Aug. 25, 2021), <https://www.reuters.com/business/retail-consumer/exclusive-retailers-unions-extend-legally-binding-worker-safety-accord-2021-08-25/>.

151. Rep. of the U.N. Secretary-General, U.N. Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011).

152. Chua, *supra* note 82.

153. Established as part of the Judiciary Act of 1789, the ATCA grants United States federal courts original jurisdiction over any civil action brought by an alien (foreign national) for a tort committed in violation of international law or a United States treaty. 28 U.S.C. § 1350.

154. *Alien Tort Claims Act*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/Alien-Tort-Claims-Act> (last visited Dec. 5, 2021).

155. Richard Deutsch & Robert A. James, *Supreme Court Restricts Broad Application of the Alien Tort Statute for Domestic Corporations*, PILLSBURY L. (June 23, 2021), <https://www.pillsburylaw.com/en/news-and-insights/supreme-court-restricts-alien-tort-statute-domestic-corporations.html>.

156. See, e.g., *Nestle USA Inc. v. Doe*, 141 S. Ct. 1931 (2021).

rights violations that stemmed United States corporate decision-making and activity.<sup>157</sup> Until Congress authorizes additional causes of action under the ATCA for which companies may be held accountable for their United States based decision-making that results in continued human rights violations and environmental harm abroad, indirect attempts to do so are a step in the right direction. As mandating disclosure of the factory name and address forces companies to untangle their supply chain webs to discern the who, what and where's behind where their products are manufactured and substantially transformed, the truth about their company activities will be revealed. In the age where sustainability reigns supreme, these revelations can be a first step towards confronting what is happening in their company versus what companies tout. It affords a real opportunity for companies to align their values and marketing with their corporate operations at every level—which will ideally, in turn, yield opportunities to clean up their acts literally and figuratively in working to clean up their supply chains, ensure living wages and healthy work environments for their workers in factories, and reclaim responsibility for their environmental and humanitarian footprint—less be prosecuted by the relentless and unforgiving court of public opinion.

Furthermore, the amendments balance a fashion brands' corporate First Amendment rights with the government's interest in compelling speech as a means of protecting consumers.<sup>158</sup> Because limits exist as to what and how much speech the government can compel without violating a corporation's First Amendment rights to speak—or not to speak at all,<sup>159</sup> striking that balance has been the subject of numerous Supreme Court decisions and continued debate.<sup>160</sup> In summary, courts have seemingly moved away from a more exacting intermediate scrutiny standard<sup>161</sup> to rational basis review, requiring that the government regulation compelling commercial speech be reasonably related to the state's interest in preventing consumer deception.<sup>162</sup> Moreover, because an advertiser's protected

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157. *See id.* (holding that domestic application of the ATCA must plead facts in sufficient detail beyond the corporate operational decisions made in the United States that may nonetheless violate international law or United States treaties); *see also* *Kiobel v. Dutch Petroleum Co.*, 569 U.S. 108 (2013) (alleging that Dutch Petroleum holding that because there is a presumption against the extraterritorial application of United States law under the ATCA, without a claim that touches and concerns the territory of the United States with sufficient force, it cannot apply).

158. *See Electronic Commerce: Selling Internationally A Guide for Businesses*, F.T.C. (Mar. 2000), <https://www.ftc.gov/tips-advice/business-center/guidance/electronic-commerce-selling-internationally-guide-businesses>.

159. *See* *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 761–62, 771 n.24 (1976); *see also* *Zauderer v. Off. of Disciplinary Couns. of the Sup. Ct. of Ohio*, 471 U.S. 626, 651 (1985).

160. *See generally* Emma Land, Note, *Corporate Transparency and The First Amendment: Compelled Disclosures in the Wake of National Association of Manufacturers v. SEC*, 69 OKLA. L. REV. 519 (2017) (discussing the evolution of the commercial speech doctrine).

161. *See* *Cent. Hudson Gas & Elec. Corp v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557 (1980) (articulating the four-part intermediate scrutiny test analyzing government regulations of commercial speech, namely that the speech must contain lawful content and is not misleading; the government interest must be substantial and directly advance the government interest asserted and must not be more extensive than necessary to achieve interest).

162. *See Zauderer*, 471 U.S. at 651.

interest in not providing factual information is “minimal,”<sup>163</sup> courts have upheld government regulations compelling disclosure of “factual and uncontroversial”<sup>164</sup> information. Indeed, courts have upheld regulations requiring meat importers to identify their product’s country of origin<sup>165</sup> to identify whether food was genetically engineered on grounds that the information sought was purely factual.<sup>166</sup>

In contrast, compelled disclosures seeking the company’s characterization of a product, or that compel a conclusion about those facts, such as the SEC’s requirement that imported minerals be labeled either “Conflict Minerals” or “Conflict Free Minerals,” were struck down as seeking “ideological” disclosures that were not purely factual.<sup>167</sup> As applied here, the proposed amendment seeks purely factual information—the factory name and address—which in and of itself is not controversial.<sup>168</sup> While information about the factory may yield controversial information, such as its use of slave labor or abuse, a regulation compelling the brand to disclose the factory name and location information would seemingly pass muster without infringing on a brand’s right not to speak.

Fourth, compelling brands’ disclosure of factory information not only aligns with the United Nations Guiding Principles and United States Approach’s recommendations for increased corporate policies and supply chain due diligence, but it constitutes an enforceable federal corollary commanding, though indirectly, a corporations’ inquiry into its supply chain and where its products are substantially transformed and manufactured. Moreover, it furthers the United States and United Nations’ commitment to the 2030 Global Agenda’s commitment to protecting people and our planet while ensuring peace and prosperity, among other goals, and the revised Sustainable Development Goals of ending poverty, hunger, gender inequality, inequalities while promoting good health and well-being, decent work for all, responsible production, climate and natural resource preservation and use<sup>169</sup> by holding companies accountable for their actions and those of their agents.

Finally, though the proposed amendments do impose costly due diligence obligations on brands, ascertaining factory names and addresses is both a reasonable move towards increased transparency and just the tip of the iceberg. Factory information allows consumers, NGO’s, consumer rights groups, international organizations and activities to “pinpoint where workers are facing problems,” facilitating the discernment of gender-based discrimination, worker

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163. *Id.*

164. *See Nat’l Ass’n of Mfrs. v. SEC (NAM III)*, 800 F.3d 518, 530 (D.C. Cir. 2015).

165. *See Am. Meat Inst. v. U.S. Dep’t of Agric. (AMI)*, 760 F.3d 18 (D.C. Cir. 2014).

166. *See Grocery Mfrs. Ass’n v. Sorrel*, 102 F. Supp. 3d 583, 621, 628 (D. Vt. 2015).

167. *See Nat’l Ass’n of Mfrs.*, 800 F.3d at 530 (where a statute compels a company to characterize its products as “Conflict Free” or “Not Conflict Free” is to render a determination that they are “ethically tainted” as the mandated determination “conveys moral responsibility,” and forced the companies to “confess it has blood on its hands;” therefore the Dodd Frank statute compelling importers of minerals to label its minerals accordingly interferes with the exercise of their First Amendment rights).

168. *See Am. Meat Inst.*, 760 F.3d at 18.

169. *Transforming our World: the 2030 Agenda for Sustainable Development*, U.N., <https://sdgs.un.org/2030agenda> (last visited Dec. 5, 2021).

grievances, and modern slavery.”<sup>170</sup> To affect real change, “transparency policies need to . . . divulge the working conditions of those factories . . . to be more inclusive and stretch deeper into the supply chain” with standardization imposed across the industry along with “systemic changes, including laws that would make actions mandatory rather than voluntary.”<sup>171</sup> Notwithstanding industry opposition, the truth is that the push for transparency from consumers and governments alike means such arguments against transparency will fall on deaf ears. Indeed, brands can no longer afford not to examine long-standing practices across their businesses<sup>172</sup>—and this legislation is a necessary and reasonable first step towards it.

## CONCLUSION

“The biggest catastrophes that we’ve witnessed rarely come from information that is secret or hidden. It comes from information that is . . . available and out there, but that we are willfully blind to.”<sup>173</sup>

As the fashion, garment, and textile industries have evolved, so must the regulations that govern them. Globalization, which led to complex international supply chains, transformed supply chains into complex intricate and opaque webs, leaving brands with little visibility over their operations—and thus little accountability for what are ultimately their corporate operations. This lack of accountability is the unfortunate result of willful blindness for fast fashion, and the exceedingly high and expedient demands it places on factories inevitably means short cuts are taken, rights are neglected, laws are not enforced, and human rights are violated all in the name of profit and securing future contracts. Further complicating things is the proliferation of e-commerce, which transformed every aspect of retail: from how consumers shop to how goods are marketed and sold. Whatever transparency domestic production and brick and mortar retail afforded got lost in the shuffle. While once a source of material information that addresses consumer concerns about whether their garments were made in the United States of America or imported, textile and garment labels no longer serve consumer decision-making. To provide transparency in the textile and garment industries, labeling laws must be amended to provide consumers with material information that reflects not only how textiles and garments are currently manufactured, but that reflects how consumers shop and the globally integrated world in which we live. By amending the respective Textile Product Act’s labeling requirement to require brands to disclose the factory name and address, make labels and their contents digitally available on their e-commerce sites, and impose penalties for failures to comply, everyone wins: it provides consumers with transparency and

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170. Jasmin Malik Chua, *GOTS and BCI ‘Willfully Blind’ to Xinjiang Risks: Report*, SOURCING J. (Dec. 8, 2021), [https://sourcingjournal.com/topics/labor/bci-gots-cotton-made-in-africa-xinjiang-forced-labor-uyghurs-317547/#recipient\\_hashed=756c441c465ffbb262d4cdd6637b67fc0777640e6612ba74f1bf835fb4d85f](https://sourcingjournal.com/topics/labor/bci-gots-cotton-made-in-africa-xinjiang-forced-labor-uyghurs-317547/#recipient_hashed=756c441c465ffbb262d4cdd6637b67fc0777640e6612ba74f1bf835fb4d85f).

171. Ceransky, *supra* note 50.

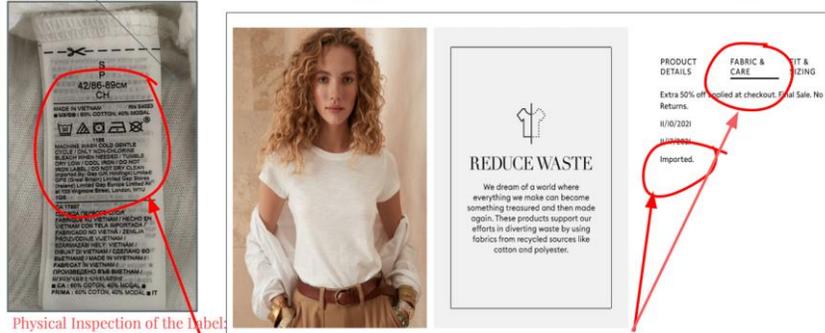
172. See Amed et al., *supra* note 116.

173. Rose O. Sherman, *Why Daring to Disagree Is So Important*, EMERGING RN LEADER (Oct. 27, 2014), <https://www.emergingrnleader.com/daring-disagree-important/> (last visited Apr. 30, 2020) (quoting Margaret Heffernan).

heeds their sustainability concerns, and brands benefit as to their market positioning, investment potential, and in garnering customer favor and loyalty. As both state and international law move in transparency's direction, the proposed revisions will help all stakeholders ascertain the true cost and price paid for the clothing we buy. Once that is known, true transparency will be more visible throughout every step of the process; and ultimately, visible on the garment label itself.

APPENDIX A<sup>174</sup>

Labeling Information: The Tag's Contents v. E-Commerce Description



Physical Inspection of the Label:

- Countries of Origin Named;
- Complete Care Information Listed

VS.

Label Info As Described Online:

- No Identified Country of Origin - "Imported;"
- No Care Information

174. *Slub Cotton-Modal Crew Neck T-Shirt*, BANANA REPUBLIC, <https://bananarepublic.gap.com/browse/product.do?pid=551544002&pcid=999&vid=1&&searchText=white%20slub%20tee#pdp-page-content> (for website tee shirt content).