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Cover Page Footnote

Thank you to Professor Tuneen Chisolm for her support throughout the process of writing this article. Thank you to Jennifer Hillman for helping me understand the intricacies of dumping and the WTO process. Thank you to Joe and Adom in Kantamanto Market for allowing me to interview you on short notice. I am extremely grateful to the Natural Resources Journal for their thorough editing which took this article to the next level. Lastly, thank you to all my colleagues who sent articles and videos my way when they saw media related to second hand clothing and its impact on the environment; your support made this a more valuable piece of work.

Bisi Ogunmefun*

BEND DOWN SELECT: ANALYSIS OF SECONDHAND CLOTHING WASTE IN AFRICA UNDER THE CURRENT ANTI-DUMPING REGIME

ABSTRACT

The second-hand clothing market is a multi-billion-dollar industry that has helped many developing countries stimulate their economy. Over the years, however, the quality of secondhand clothing has declined as the fast-fashion market rises. Countries such as India and the Philippines have banned secondhand clothing imports to protect their textile industries from demise. African countries like Kenya, Rwanda, and Uganda also attempted to ban secondhand clothing imports but were sanctioned with a threat of removal from the African Growth Opportunity Act. This article explores how Anti-Dumping Laws fail to fulfill their ordinary meaning in the secondhand fashion market in African countries by analyzing the trade of secondhand clothing between the United States and Ghana under Ghanaian Anti-Dumping Laws. The Article then provides recommendations for amending World Trade Organization Anti-Dumping Laws that fully solve the issue of price discrimination as well as the other harmful environmental effects of dumping. Lastly, this Article provides solutions to persons who rely on the secondhand clothing trade considering the anticipated impact of the proposed change.

“They think that in Africa here, sorry to say, we are not like human beings. Even if somebody knocked on your door to beg, you cannot just . . . pick something from your dustbin. In this case . . . they’re doing that to us.”

- Emmanuel Ajaab, Ghanaian Secondhand Clothing Importer¹

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1. Linton Besser, *Dead White Man’s Clothes*, ABC NEWS (Oct. 21, 2021, 3:42 PM), <https://www.abc.net.au/news/2021-08-12/fast-fashion-turning-parts-ghana-into-toxic-landfill/100358702>.

INTRODUCTION

Bend down select (okirika), dead white man's clothes (obroni wawu), and salaula;² across the continent, there is a negative connotation associated with secondhand clothing.³ People across Africa have a certain love-hate relationship with secondhand clothing.⁴ On one hand, it provides well-made clothes at a heavily discounted rate.⁵ On the other, it can require you to live around informal landfills.⁶

Kantamanto market, the premier clothing market in Accra, Ghana, is packed with around 30,000 second-hand clothing with some retailers selling used shirts for 1 USD, while some ready-made dresses go for 20 USD.⁷ Kantamanto is recirculating approximately 25 million garments every month.⁸ Secondhand clothes can come from a range of donations from western countries.⁹ These clothes are not products of

2. *Bend Down Select*, THE SAGE MUSIC BOOK (Jan. 29, 2017), <https://thesagemusicbook.blogspot.com/2017/01/bend-down-select.html?m=0> (Bend down select is the colloquial term for second hand clothes in Nigeria). See Franck Kuwonu, *Ghana: 'Protectionist ban on imported used clothing - US threatens East Africa with AGOA expulsion'*, AFRICAN GROWTH AND OPPORTUNITY ACT (Jan. 24, 2018), <https://agoa.info/news/article/15331-ghana-protectionist-ban-on-imported-used-clothing-us-threatens-east-africa-with-agoa-expulsion.html>. (Dead white man's clothes is the English translation of "obroni wawu" in Ghana; "Mitumba" is Swahili for bundles or second hand; and "salaula" is Zambian for second hand clothes).

3. Eudy Bassey, *Love or loathe: Bend down select*, HUMOUR & STYLE, <https://www.humourandstyle.com/love-or-loathe-bend-down-select/> (last visited Jan. 5, 2024, 9:38 AM) (discussing the Nigerian vacillating views on second hand clothes sold by the roadside.); see, e.g. Yaa Gyasi, *HOMEGOING* 274 (Random House Large Print, 1st ed. 2016) (breaking down obroni, which has boiled down to mean "white man" in modern usage, into its foundational words abro ni, which means wicked man; the one who feigns niceness and then bites you).

4. Clement Uwiringiyimana, *Trump suspends duty-free status for clothes imports from Rwanda*, REUTERS (July 31, 2018) <https://www.reuters.com/article/us-usa-trade-rwanda/trump-suspends-duty-free-status-for-clothes-imports-from-rwanda-idUSKBN1KK2JN/>. ("On the streets of Kigali, where residents say the increased duties on used clothing imports have driven up prices, condemnation of the U.S. decision was muted. 'The 'Made in Rwanda' clothes are expensive,' said Jean-Marie Nsengimana, a hotel worker and father of four. 'It used to be cheaper with second-hand clothes. Rwanda should try and negotiate with the U.S.'"); See, e.g. Bassey, *supra* note 3.

5. Uwiringiyimana, *supra* note 4.

6. Besser, *supra* note 1.

7. Victoria Okoye, *Kantamanto Market: A Premier Destination for Secondhand Trade*, SMART CITIES DIVE, <https://www.smartcitiesdive.com/ex/sustainablecitiescollective/kantamanto-market-accra-premier-destination-secondhand-trade/129296/> (last visited Mar. 4, 2023); Interview with Adom, Ready-Made Clothing Seller, Kantamanto Market (Dec. 26, 2022) (stating that she sells dresses from 150 cedis and up); *Ghanaian Cedi (GHS) To US Dollar (USD) Exchange Rate History for December 23, 2022*, EXCHANGE RATES, <https://www.exchange-rates.org/exchange-rate-history/ghs-usd-2022-12-23> (last visited Oct. 4, 2023) (At the time of the interview the conversion rate for cedis to dollars was 10 cedis a dollar).

8. Liz Ricketts, *Carrying Capacity*, THE FRONTLINE (March 30, 2022), <https://atmos.earth/kantamanto-market-ghana-clothing-waste-women/>.

9. *Id.*; Interview with Joe, Secondhand Seller, Kantamanto Market (Dec. 26, 2022) (stating that he buys jeans for 25 cedis and sells for 35); see Interview with Adom, *supra* note 7; EXCHANGE RATES, *supra* note 7.

Ghana's circular economy¹⁰; rather most are imports of unsold, donated items to western charities such as Goodwill and the Salvation Army.¹¹

The fast fashion cycle begins with the production of massive amounts of clothing units which are then bought by retailers and sold to consumers.¹² Consumers, when ready to part with a clothing item, will discard it.¹³ Clothes that consumers discard in America will end up in a landfill or exported to developing countries through the secondhand clothing trade.¹⁴

The secondhand clothing trade is a multibillion-dollar industry, and Ghana is the largest importer of secondhand clothing.¹⁵ The trade of secondhand clothing in Ghana has caused the ready-made clothing industry in Ghana to suffer. With the influx of fast fashion, the quality of secondhand clothing has decreased to the point that majority of imported secondhand clothes in Ghana ending up as waste – filling up Ghanaian landfills and harming the health of residents.¹⁶

In 2016, the East African Community (EAC) – Kenya, Tanzania, Rwanda, and Uganda – established a plan to ban imports of secondhand clothing.¹⁷ In 2016, the EAC announced it would phase in the ban by 2019.¹⁸ The EAC believed that by eliminating the significantly cheaper imported alternatives, their domestic textile and clothing manufacturing industries would develop.¹⁹ The United States Trade Representative's (USTR) office initiated an out-of-cycle review of these countries and declared that the ban violated the African Growth and Opportunity Act (AGOA).²⁰ Kenya, Uganda, and Tanzania did not move forward with the ban and

10. *Keeping clothes in use to reduce waste: thredUP*, ELLEN MACARTHUR FOUND., <https://ellenmacarthurfoundation.org/circular-examples/keeping-clothing-in-use-to-save-us-money-and-reduce-waste-thredup> (last visited Mar. 4, 2023) (describing the circular economy as keeping clothes within the marketplace by establishing resale markets).

11. Sarah Johnson, *'It's like a death pit': how Ghana became fast fashion's dumping ground*, THE GUARDIAN (Jun 5, 2023), <https://www.theguardian.com/global-development/2023/jun/05/yvette-yaakonadu-tetteh-how-ghana-became-fast-fashions-dumping-ground#:~:text=Donated%20clothes%20come%20from%20countries,of%20stalls%20crammed%20with%20clothes> ("Donated clothes come from countries including the UK, US and China and are sold to exporters and importers who then sell them to vendors in places such as Kantamanto in Accra").

12. Katrina L. Wilkinson, *A Legal Solution to A Fast Fashion Problem*, 11 ARIZ. J. ENV'T. L. & POL'Y 186, 188 (2021).

13. *Id.*

14. *Id.* at 206, 208.

15. *Used Clothing*, OBSERVATORY OF ECON. COMPLEXITY, <https://oec.world/en/profile/hs/used-clothing> (last visited Apr. 22, 2023).

16. Besser, *supra* note 1.

17. Shannon Brady & Sheng Lu, *'Here's Why The Used Clothing Trade Deserves More Attention'*, AFRICAN GROWTH OPPORTUNITY ACT (Dec. 11, 2018), <https://agoa.info/news/article/15539-here-s-why-the-used-clothing-trade-deserves-more-attention.html>.

18. *Id.*

19. *Id.*

20. 19 U.S.C. § 3703(1)(A), (C); *President Donald J. Trump Upholds AGOA Trade Preference Eligibility Criteria with Rwanda*, OFF. OF THE U.S. TRADE REPRESENTATIVE (July 30, 2018), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/july/president-donald-j-trump-upholds-agoa> (stating "In 2000, Congress created AGOA to impose certain eligibility criteria to encourage recipient countries to adopt free market-oriented development models and to ensure fair market access for

chose to remain AGOA signatories; Rwanda, however, lost their AGOA apparel benefits.²¹

Under Article 2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (“Anti-Dumping Agreement”) from the World Trade Organization (WTO), “dumping” is the introduction of a product into the commerce of another country at less than normal value.²² Under Article 7 of the Anti-Dumping Agreement, member nations can react to the action of dumping by imposing an anti-dumping duty.²³ Ghana and the United States are member nations of WTO and each have ratified anti-dumping regulations in their respective countries.²⁴

This Article will explore the deficiencies of current Anti-Dumping Laws as applied to the second-hand clothing trade in Ghana. It will also provide solutions to reduce the waste accumulating in African countries by way of the secondhand clothing trade. Part I explores the issue of fast fashion in America and the harms it causes in African countries.²⁵ Part II will discuss how anti-dumping laws have fallen short of fully rectifying this issue.²⁶ Lastly, Part III will highlight current solutions being implemented and offer novel solutions.²⁷

I. AMERICA IS DUMPING ITS CLOTHING WASTE IN AFRICA

The secondhand clothing market is a multibillion-dollar industry based on selling high volumes of low to no-cost products to developing countries.²⁸ Many Americans believe they are helping to cloth people in undeveloped countries by donating their clothes to the Salvation Army or Goodwill, but, they are causing harm.²⁹ In previous years, the secondhand clothing market offered many benefits to

United States firms. The AGOA eligibility requirements include: “making continual progress toward establishing . . . a market-based economy . . . [and] the elimination of barriers to United States trade and investment.” . . . The United States Trade Representative (USTR) is charged with enforcing AGOA’s requirements).

21. Brady & Lu, *supra* note 17; Tara John, *How the US and Rwanda have fallen out over second-hand clothes*, BBC (May 27, 2018), <https://www.bbc.com/news/world-africa-44252655>.

22. Uruguay Round Agreement – Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, 1868 U.N.T.S. 201.

23. *Id.*

24. *Id.*; MEMBERS AND OBSERVERS, WTO, https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last visited April 22, 2023); 19 U.S.C. § 1673 (U.S. anti-dumping laws); GHANA INTERNATIONAL TRADE COMMISSION, (ANTI-DUMPING) REGULATIONS, 2019 (Ghanian anti-dumping laws).

25. Andrew Brooks, *Stretching Global Production Networks: The International Second-Hand Clothing Trade*, 44 GEOFORUM 10, 11 (2013) (“In recent decades the international trade in second-hand clothing has been fueled in the Global North by the rapid circulation, consumption and disposal of garments for recycling, export and reuse in the Global South.”). *See* discussion *infra* Section I.

26. *See* discussion *infra* Section II.

27. *See* discussion *infra* Section III.

28. Brooks, *supra* note 25, at 10 (“[T]he back-end of the global economy and explore how profit is accumulated from the trade in low-value commodities from the Global North to the Global South.”).

29. Radhika Goyal, *What Actually Happens to Your Donated Clothes?*, SUSTAINABLE REV. (Feb. 6, 2023), <https://sustainablereview.com/what-happens-donated-clothing/>; Céire Kealty, *Our Clothing Donations May Cause More Harm Than Good*, NAT’L CATHOLIC REP. (Nov. 25, 2021), <https://www.ncr-online.org/news/opinion/our-clothing-donations-may-cause-more-harm-good>.

importers and exporters, but with the increase in fast fashion—the general population’s desire to keep up with the latest fashion trends—clothes are increasingly being wasted than circled in the economy.³⁰ Section (A) provides the background of America’s overconsumption issue and how clothes end up as waste.³¹ Section (B) will provide insight on the secondhand clothing trade in developing countries such as Ghana.³² Then section (C) will expound on the history of laws that have affected the trade of clothing.³³ Lastly, section (D) will end by discussing how African countries have attempted to remedy this issue in the past.³⁴

A. American overconsumption is generating massive amounts of waste.

The desire to spend money, demonstrate wealth, and stay on frequently changing trends, coupled with companies like SHEIN, Zara, and H&M massively churning out cheap clothing units, leads Americans to overconsume.³⁵ The fast fashion cycle begins with trend-setting celebrities acquiring high price point clothing items, which then creates a demand within the general population to look like them.³⁶ Fast fashion companies understand this demand and have fueled the current fast fashion regime.³⁷ 2,000 to 10,000 new units are added to the stock of SHEIN each day.³⁸ Since market demands currently change every week, the fast fashion cycle completes in less than 2 weeks; much faster than the traditional 6-month fashion cycle.³⁹

Overconsumption of products has an inherent effect of “throwaway culture.”⁴⁰ American throwaway culture has manifested in Americans discarding

30. See Nina Gbor, *Secondhand Fashion, Trash and Inequality: How the Global North Continues to Colonise*, ECO STYLES (Sept. 30, 2021), <https://www.ecostyles.com.au/blogs/secondhand-fashion-trash-and-inequality-how-the-global-north-continues-to-colonise> (“With the increasing rise of fast fashion over the last two decades and an estimated 150 billion being manufactured each year, this notion has become malignant for the most part.”).

31. See discussion *infra* Section I.A.

32. See discussion *infra* Section I.B.

33. See discussion *infra* Section I.C.

34. See discussion *infra* Section I.D.

35. See Anna Noel Huttner, *Overdressed & Underprotected: The Not-So Glamorous Side of the United States Clothing Industry Without Explicit Copyright Protection*, 70 CLEV. ST. L. REV. 357, 362–63 (2022); Wilkinson, *supra* note 12, at 187–88.

36. Adam Hayes, *Fast Fashion: How It Impacts Retail Manufacturing*, INVESTOPEDIA (Sept. 27, 2023), <https://www.investopedia.com/terms/f/fast-fashion.asp>.

37. Huttner, *supra* note 35, at 363.

38. Astha Rajvanshi, *Shein Is the World’s Most Popular Fashion Brand—at a Huge Cost to Us All*, TIME (Jan. 17, 2023), <https://time.com/6247732/shein-climate-change-labor-fashion/>; Audrey Stanton, *What is Fast Fashion, Anyway?*, THE GOOD TRADE (Apr. 2, 2024), <https://www.thegoodtrade.com/features/what-is-fast-fashion/>; Owen Mulhren, *The 10 Essential Fast Fashion Statistics*, EARTH.ORG (July 24, 2024), <https://earth.org/fast-fashion-statistics/>.

39. Achim Berg et al., *Faster Fashion: How to Shorten the Apparel Calendar*, MCKINSEY & CO. (May 17, 2018), <https://www.mckinsey.com/industries/retail/our-insights/faster-fashion-how-to-shorten-the-apparel-calendar>; Besser, *supra* note 1.

40. See Rose Morisson, *Throwaway Culture Is Drowning Us in Waste*, EARTH.ORG (Dec. 22, 2022), <https://earth.org/throwaway-culture/> (throwaway culture refers to the act of discarding clothing within the year of purchase).

85%—or nearly 3.8 billion pounds—of clothing annually.⁴¹ To control the tons of textile waste Americans discard, the United States must export millions of pounds of clothing to developing countries.⁴² Currently, the United States exports approximately 1.58 billion pounds of secondhand clothing—equal to 80 pounds of clothing per American per year.⁴³ The Environmental Protection Agency states that “32% of the 12.4 million tons of textile waste generated in 2013 was recovered for export.”⁴⁴ Consequently, this recovery has contributed to a 20% drop in total waste tonnage deposited in United States landfills.⁴⁵ The current fast fashion cycle, fueled by American overconsumption, ends with the dumping of massive amounts of clothing waste on the Global South.

B. The secondhand clothing market in Ghana, once prosperous, is now wasteful.

The secondhand clothing industry is a 96-billion-dollar industry where profit is accumulated from the trade of low-value commodities from the Global North to the Global South.⁴⁶ Secondhand clothing processors purchase unsold donated clothing, then sell the clothing to developing countries.⁴⁷ Trans-Americas is one of the most experienced secondhand clothing processors in the United States.⁴⁸ They produce and sell quality grades of secondhand clothing to other countries.⁴⁹ Trans-Americas purchases 70,000 pounds of secondhand clothes every day from

41. Rachel Bick et al., *The Global Environmental Injustice of Fast Fashion*, 17 ENV'T HEALTH 1, 1 (2018).

42. *Id.* at 1–2.

43. Zoya Wazir, *How Fast Fashion Dumps Into the Global South*, U.S. NEWS (Nov. 11, 2021, 6:00 AM), <https://www.usnews.com/news/best-countries/articles/2021-11-11/how-dead-white-mans-clothing-is-clogging-the-global-south>; Bick et al., *supra* note 41.

44. Scott Elliot, *Exporting Used Textiles Helps Global and Local Economies*, U.S. DEP'T OF AGRIC. (May 22, 2018), <https://www.usda.gov/media/blog/2018/05/22/exporting-used-textiles-helps-global-and-local-economies>.

45. *Id.*; see also *Surprising New Life Awaits Some Castoff Clothes*, THE JOURNAL RECORD (July 29, 1997), <https://journalrecord.com/1997/07/surprising-new-life-awaits-some-castoff-clothes/> (clothes that could never be sold in America are being bought up in African countries for 50 cents and resold for 75 cents); GORDON WALKER, ENVIRONMENTAL JUSTICE: CONCEPTS, EVIDENCE AND POLITICS, 98 (2012) (“the rich are unlikely to give up their local amenity at any price, whereas the poor, who are least able to sustain the loss, are likely to sacrifice it for a trifling sum” (internal citation omitted)).

46. Asha Athman, *Let's Go to the Bale? The Woes and Gains in the Global Secondhand Clothes Trade*, TUNIQ (Apr. 20, 2020), <https://tunioasis.com/blogs/the-oasis-journal/lets-go-to-the-bale-the-woes-and-gains-in-the-global-secondhand-clothes-trade>; P. Smith, *Secondhand Apparel Market Value Worldwide from 2021 to 2027*, STATISTA, <https://www.statista.com/statistics/826162/apparel-resale-market-value-worldwide/> (last visited Apr. 5, 2024).

47. Neil Reynolds, *Goodwill May Be Stunting African Growth*, THE GLOBE & MAIL (Dec. 24, 2008), <https://www.theglobeandmail.com/report-on-business/goodwill-may-be-stunting-african-growth/article20391732/>; Sandi Doughton, *Here's What Goodwill Really Does with The Stuff You Donate*, THE SEATTLE TIMES (Sept. 27, 2021), <https://www.seattletimes.com/pacific-nw-magazine/heres-what-goodwill-really-does-with-the-stuff-you-donate/>.

48. *Home*, TRANS-AMERICAS TRADING CO., <https://tranclo.com/> (last visited Apr. 22, 2023).

49. *Secondhand Clothing for Export*, TRANS-AMERICAS TRADING CO., <https://tranclo.com/buyers/secondhand-clothing-for-export/> (last visited Apr. 5, 2024); *Premium/Crème Quality Clothing*, TRANS-AMERICAS TRADING CO., <https://tranclo.com/buyers/premium/> (last visited Apr. 5, 2024).

charities such as Goodwill.⁵⁰ Trans-America also has a Municipal Textile Recycling Program where Trans-America will provide containers and transportation to municipalities so their constituents can recycle their clothing properly.⁵¹ Trans-America repurposes 2.5 million pounds of textile waste, decreasing landfill potentials by approximately 20%.⁵² Once purchased, the clothes are sorted into different grades using a sophisticated material handling system.⁵³ Once sorted into grades, the clothes are packed into bales weighing between 100 to 1,000 pounds.⁵⁴ The bales are then sold for a minimum of 100 USD per ton—2,000 pounds—even though they are worth more to most municipalities.⁵⁵ A&E Clothing Corp., another secondhand clothing processor, sells secondhand clothing at around .05 – 2 USD per pound, with clothes being packed to 44-55 pounds per bale.⁵⁶ They are so cheap, local African textile makers cannot compete.⁵⁷

Ghana is one of the main importers of secondhand clothing.⁵⁸ Once imports reach Accra, the capital of Ghana, the clothes are sorted between high-quality, i.e., sellable, and waste.⁵⁹ Clothes in the waste pile have sweat markings, missing buttons, tears, and bloodstains.⁶⁰ The high-quality clothes are taken to be sold by local retailers.⁶¹ The clothes in the waste pile are packed and hauled to landfills.⁶² 40-60% of imported secondhand clothes end up as waste to be sent to landfills.⁶³ The main landfills are at capacity and informal landfills have begun to spring up around Accra, decreasing the quality of life of Ghanaians.⁶⁴

50. *Sellers of Mixed or Credential Rags and Charities Interested in Raising Money*, TRANS-AMERICAS TRADING CO., <https://tranclo.com/sellers/charities/> (last visited Apr. 22, 2023).

51. *Municipal Textile Recycling Programs*, TRANS-AMERICAS TRADING CO., <https://tranclo.com/sellers/municipal-programs/> (last visited Apr. 22, 2023).

52. See TRANS-AMERICAS TRADING CO., *supra* note 50; *Frequently Asked Questions*, TRANS-AMERICAS TRADING CO., <https://tranclo.com/sellers/recycling-faqs/> (last visited Jan. 5, 2024).

53. See *Secondhand Clothing for Export*, TRANS-AMERICAS TRADING CO., *supra* note 49.

54. *Id.*

55. See TRANS-AMERICAS TRADING CO., *supra* note 51.

56. *A&E Used Clothing Wholesale*, A&E CLOTHING CORP., <https://www.aeclothing.net/> (visited Oct. 15 2022) (to obtain a catalog for any secondhand clothing processor, you will need to subscribe to their website <https://www.aeclothing.net/>); see also *How to Order*, A&E CLOTHING CORP., <https://www.aeclothing.net/how-to-order/> (last visited Oct. 15 2022).

57. Besser, *supra* note 1.

58. OBERVATORY OF ECON. COMPLEXITY, *supra* note 15.

59. See generally Besser, *supra* note 1.

60. See generally *id.*

61. Interview with Joe, Secondhand Seller, in Kantamanto Market, Accra, Ghana (Dec. 26, 2022) (stating that he buys jeans for 25 cedis and sells for 35); Interview with Adom, Ready-Made Clothing Seller, in Kantamanto Market, Accra, Ghana (Dec. 26, 2022) (stating that she sells dresses from 150 cedis and up); Besser, *supra* note 1.

62. Besser, *supra* note 1.

63. *Id.*

64. *Id.*; see generally *Donated Clothing Worsening Kenya's Plastic Pollution: Report*, RFI (Feb. 16, 2023, 06:04 AM), <https://www.rfi.fr/en/international-news/20230216-donated-clothing-worsening-kenya-s-plastic-pollution-report>, (“One third of all second-hand clothing shipped to Kenya in 2021 was “plastic waste in disguise,” creating a slew of environmental and health problems for local communities”).

C. The history and present state of fast fashion law.

Fashion laws have evolved over time to help give structure in the production of clothing and spread global competition. The Arrangement Regarding International Trade in Textiles (Multifiber Arrangement (MFA)) was established in 1974 and regulated the trade of international textiles and clothing.⁶⁵ The MFA was a short-term measure to help address the threat of cheap clothing imports from developing countries such as Bangladesh and China on the American and European clothing industry.⁶⁶ Under Article 3(2) of the MFA, imports from low-cost, overseas manufacturers were given quotas to protect the textile economies of developed countries.⁶⁷ The MFA ended in 1995 and was replaced by the WTO Agreement on Textiles and Clothing.⁶⁸ The WTO Agreement on Textiles and Clothing was a transitional agreement, per Article 1, to remove the quotas and bring the textile industry within compliance with WTO rules by 2005.⁶⁹ After the Transitional Agreement on Textiles and Clothing in 2005 ended, there was a shift in the trade of textiles.⁷⁰ For example, countries like Bangladesh and China exported more freely. Countries like Bangladesh and China can “produce high volumes of products for low costs because of the unsafe working conditions, corruption, shoddy oversight, low wages, and child labor that exist in manufacturing companies in these areas”.⁷¹ These low costs in production allow for more low quality products to be made, further enabling overconsumption.

D. African countries tried fixing this problem before.

In 2017, Rwanda, along with Ethiopia, Uganda, Tanzania, and Kenya (EAC), banned secondhand imports to prioritize developing a domestic textile industry for the benefit of its people.⁷² The textile industry in each country had been steadily declining as the trade of secondhand clothes prospered.⁷³ The EAC, thus, increased the tariffs on secondhand clothing imports evenhandedly and banned the trade of used underwear.⁷⁴

65. *Textiles: Back in The Mainstream*, WORLD TRADE ORG. (last visited Apr. 22, 2023, 11:03 AM), https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm5_e.htm.

66. *Id.*

67. *Id.*; The Multifiber Arrangement, Inv. No. 332-108, USITC Pub. 1131 (Mar. 1981), <https://www.usitc.gov/publications/332/pub1131.pdf>.

68. *Supra* note 65.

69. *Id.*

70. Elisha Teibel, *Waste Size: The Skinny on the Environmental Costs of the Clothing industry*, 43 WM. & MARY ENV'T. L. & POL'Y REV. 595, 596 (2019).

71. Marc Bain & Jenni Avins, *The Thing That Makes Bangladesh's Garment Industry Such A Huge Success Also Makes It Deadly*, QUARTZ (Apr. 24, 2015), <https://qz.com/389741/the-thing-that-makes-bangladeshs-garment-industry-such-a-huge-success-also-makes-it-deadly>.

72. Athman, *supra* note 46.

73. Arthur Friedman, *Used-Clothing Trade Causes Contention Between US And East African Nations*, AFR. GROWTH & OPPORTUNITY ACT (Oct. 13, 2017), <https://agoa.info/news/article/15277-used-clothing-trade-causes-contention-between-us-and-east-african-nations.html>.

74. E. AFR. CMTY., EAC RESPONSE TO THE PETITION BY SMART FOR AN OUT-OF-CYCLE AGOA ELIGIBILITY REVIEW FOR RWANDA, TANZANIA AND UGANDA (June 30, 2017), <https://agoa.info/images/documents/15430/eac-response-to-the-petition-by-smart.pdf>.

On March 21, 2017, the Secondary Materials and Recycled Textiles Association (SMART), a group of 40 used clothing exporters, submitted a petition asserting that the decision to phase in a ban on imports of used clothing and footwear imposes significant economic hardship on the United States's used clothing industry.⁷⁵ Furthermore, the petition asserted that the ban is inconsistent with the African Growth Opportunity Act (AGOA) beneficiary criteria for countries to establish a market-based economy and eliminate barriers to United States trade and investment.⁷⁶ The petition requested an out-of-cycle review to determine whether Kenya, Rwanda, Tanzania, and Uganda – the AGOA-eligible members of the EAC – are meeting the AGOA's eligibility criteria.⁷⁷ SMART argued that the ban would harm an estimated 40,000 United States jobs related to the collecting, processing, and distributing of used clothing.⁷⁸ SMART further argued that the ban would harm 40,000 jobs in the secondhand clothing sectors in EAC countries and America.⁷⁹

The United States Trade Representative's (USTR) office accepted the SMART petition and initiated an out-of-cycle review of Rwanda, Tanzania, and Uganda's AGOA eligibility on June 20, 2017.⁸⁰ The USTR determined that an out-of-cycle review of Kenya's AGOA eligibility was not warranted due to the government's commitment to reverse the tariff back to pre-2016 levels, effective July 1, 2017, and a commitment not to ban imports of used clothing through other policy measures.⁸¹ Tanzania and Uganda made similar commitments during the out-of-cycle review.⁸²

On March 29, 2018, President Trump determined that Rwanda was not making sufficient progress toward the elimination of barriers to United States trade and investment, and, therefore, Rwanda was out of compliance with AGOA's eligibility requirements.⁸³ In particular, Rwanda continued to impose prohibitive tariff rates on imports of used apparel and footwear and indicated its intent to continue to phase in a ban on these products.⁸⁴ As a result, President Trump notified Congress and the Government of Rwanda that he intended to suspend duty-free

75. Friedman, *supra* note 73; *SMART Membership Directory*, SECONDARY MATERIALS & RECYCLED TEXTILES, https://smart.memberclicks.net/index.php?option=com_mcdirectorysearch&view=search&id=10351#/ (last visited Apr. 22, 2023) (identifying Trans America as a member).

76. Friedman, *supra* note 73; *SMART Membership Directory*, SECONDARY MATERIALS & RECYCLED TEXTILES, https://smart.memberclicks.net/index.php?option=com_mcdirectorysearch&view=search&id=10351#/ (last visited Apr. 22, 2023) (identifying Trans America as a member).

77. Friedman, *supra* note 73.

78. *Id.*

79. *Id.*; SECONDARY MATERIALS AND RECYCLED TEXTILES, RE: ANNUAL REVIEW OF AFRICAN GROWTH AND OPPORTUNITY ACT ELIGIBILITY AND BENEFITS FOR RWANDA, TANZANIA, AND UGANDA, 82 C.F.R. § 32042 (JULY 11, 2017)– PUBLIC COMMENTS OF SECONDARY MATERIALS AND RECYCLED TEXTILES ASSOCIATION, 9 (Aug. 4, 2017); *Update on East African Community Ban on Importation of Used Clothing*, SECONDARY MATERIALS & RECYCLED TEXTILES, <https://www.smartasn.org/advocacy/update-on-east-african-community-ban-on-importation-of-used-clothing/> (last visited Apr. 22, 2023).

80. *See* SECONDARY MATERIALS AND RECYCLED TEXTILES, *supra* note 79.

81. *Id.*

82. *See* John, *supra* note 21.

83. *Id.*; *see* OFF. OF THE U.S. TRADE REPRESENTATIVE, *supra* note 20.

84. *Id.*; Tara John, *How the U.S. and Rwanda Have Fallen Out Over Second-Hand Clothes*, BBC (May 27, 2018), <https://www.bbc.com/news/world-africa-44252655> (Tanzania and Uganda backstep from importing duties).

treatment for all AGOA-eligible apparel products from Rwanda.⁸⁵ This decision foreshadowed how the Trump administration planned to apply its “America First” trade ideology to the continent.⁸⁶ Rwanda has now joined the ranks of Canada, Mexico, the European Union, and China; all of which have been targeted by Trump’s aggressive trade tactics, even though the United States has a trade surplus with Rwanda.⁸⁷

Rwanda is a rural, agrarian country with agriculture accounting for about 63% of export earnings, and with some mineral and agro-processing.⁸⁸ The 1994 genocide decimated Rwanda’s fragile economic base, severely impoverished the population—particularly women—and temporarily stalled the country’s ability to attract private and external investment.⁸⁹ In 2015, 39% of the population lived below the poverty line, according to government statistics, compared to 57% in 2006.⁹⁰ The government has embraced an expansionary fiscal policy to reduce poverty by improving education, infrastructure, and foreign and domestic investment.⁹¹ The United States’ suspension would affect about \$1.5 million in Rwandan exports, or about three percent of its total exports to the United States.⁹² Rwandan exporters are now seeking other international markets such as Europe.⁹³

Removing Rwanda from the AGOA could be seen as unnecessary, as most of the benefits under AGOA do not pertain to the clothing industry. AGOA was established in 2000 to help developing countries in sub-Saharan Africa grow their economies through expanded exports to the United States.⁹⁴ The loss of AGOA benefits for apparel has resulted in Rwanda’s apparel exports to the United States being subjected to most-favored-nation (MFN) tariff rates, averaging 12.8% for knitted apparel and 10.1% for woven apparel.⁹⁵ This represents a significant shift from the previous duty-free status given to these exports.⁹⁶ United States exports to Rwanda, however, are historically dominated by civilian aircraft, engines, equipment, and parts.⁹⁷ Rwandan exports to the United States are dominated by

85. *Id.*; OFF. OF THE U.S. TRADE REPRESENTATIVE, *supra* note 20.

86. Clement Uwiringiyimana, *Trump Suspends Duty-Free Status for Clothes Imports from Rwanda*, REUTERS (July 31, 2018, 8:34 am), <https://www.reuters.com/article/us-usa-trade-rwanda/trump-suspends-duty-free-status-for-clothes-imports-from-rwanda-idUSKBN1KK2JN>.

87. *Id.*; CGTN Africa, *Mixed reactions over Rwanda’s ban on second-hand clothes import*, YOUTUBE <https://www.youtube.com/watch?v=s8aEFaP98kA> (Rwanda has experienced double digit growth since 2015 in their textile industry by incentivizing industrialization and job creation by implementing this prohibitive tariff).

88. *Country Info: Rwanda*, AFR. GROWTH & OPPORTUNITY ACT, <https://agoa.info/profiles/rwanda.html> (last visited Apr. 10, 2024).

89. *Id.*

90. *Id.*

91. *Id.*

92. Clement Uwiringiyimana, *Trump Suspends Duty-Free Status for Clothes Imports from Rwanda*, REUTERS (July 11, 8:34 AM), <https://www.reuters.com/article/us-usa-trade-rwanda/trump-suspends-duty-free-status-for-clothes-imports-from-rwanda-idUSKBN1KK2JN>.

93. *See id.*

94. African Growth & Opportunity Act, 19 U.S.C. § 3701.

95. Brady & Lu, *supra* note 17.

96. *See id.*

97. *Rwanda - Country Commercial Guide*, INT’L TRADE ADMIN. (Oct. 7, 2022), <https://www.trade.gov/country-commercial-guides/rwanda-market-overview>.

coffee, tantalum ores and concentrates, tungsten concentrates, and macadamia nuts (shelled, fresh, or dried).⁹⁸ Moreover, the United States only imported a little over 1 billion USD of apparel from African countries in 2021, in comparison to the over 11.1 billion USD in metals and 6 billion USD in mineral fuels.⁹⁹ In looking at the totality, America is using AGOA to strong arm African countries to accept their waste despite the harm it causes.

II. ANTI-DUMPING

The history of the clothing industry and the harm fast fashion is having on the Global South indicate that secondhand clothing is being dumped in Africa. African countries attempted to phase out imports of used clothing to help revitalize their clothing industry, but were forced to stop the phase out in order to remain AGOA beneficiaries. Dumping laws should help rectify the issue, but, ultimately, fall short. This section will, therefore, look at (A) what dumping is and international entities that monitor dumping, (B) what difficulties exist in proving dumping, and (C) what the secondhand clothing trade analysis would be under current antidumping laws.

A. What is dumping and who monitors it?

“Dumping” under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (Article VI of GATT (Anti-Dumping Agreement (ADA)) occurs when one country or firm exports products to another country for less than what the product is normally sold for.¹⁰⁰ Subsequently, the importing foreign market sells the products at lower prices than domestic market prices, thereby saturating the domestic marketplace with unfairly priced products.¹⁰¹ The establishment of an anti-dumping regime has become commonplace for a government that seeks to protect and promote its local industries.¹⁰²

The World Trade Organization (WTO) is the governing body of international trade, setting and enforcing rules of trade between nations.¹⁰³ Per the Agreement Establishing the World Trade Organization (WTO Agreement), two primary purposes of the WTO is to ensure that developing countries secure a share in the growth of international trade and to eliminate discriminatory treatment in

98. *Id.*

99. KATHERINE TAI, 2022 BIENNIAL REP. ON THE IMPLEMENTATION OF THE AFR. GROWTH & OPPORTUNITY ACT (June 2022).

100. The General Agreement on Tariffs and Trade, Article VI: Anti-dumping and Countervailing Duties (1947), 1867 U.N.T.S. 187; Sikhwari Tshivhasa Tshedza & Yende Nsizwazonke Ephraim, *An Analysis of China's 'Dumping' of Cheap Products in South Africa in the Perspective of Import Substitution Policy*, 8 J. OF AFR. FOREIGN AFF. 115, 120 (2021).

101. *See id.*

102. Anass Mohammed, *An Assessment of Ghana's Anti-Dumping Regime in Line with the World Trade Organisation Anti-Dumping Agreement*, UNIV. OF THE WESTERN CAPE FAC. OF L. 1, 1 (2017).

103. *See* GLOB. MKTG. STRATEGIES, DICTIONARY OF INTERNATIONAL TRADE 192 (Olegario Llamazares ed., 2015).

international trade relations.¹⁰⁴ The United States, Ghana, and Rwanda are members of the World Trade Organization, and must establish an Anti-Dumping Regime.¹⁰⁵

Robert Willig describes dumping in two categories: non-monopolization dumping, and monopolization dumping.¹⁰⁶ Under monopolistic dumping, the exporting country or firm strategically engages in predatory pricing to drive out domestic competition, which is destructive to the importing country.¹⁰⁷ Under non-monopolistic dumping, three sub-categories exist: cyclical, market expansion, and trade dumping.¹⁰⁸ Cyclical dumping occurs when there is substantial excess production due to a downturn in demand, or market recession, and the exporting entity concludes that the cost of reducing its workforce and cutting down production capacity is higher than continuing production.¹⁰⁹ Thus, cyclical dumping is the export of goods at unusually low prices for which there is substantial excess production capacity because of a downturn in demand.¹¹⁰ The most common finding of dumping, and a prime example of cyclical dumping, is in the steel industry.¹¹¹ Manufacturing steel is very expensive because of its high heat point, causing an enormous upfront capital expenditure.¹¹² With the high initial cost, coupled with the high demand, almost all steel companies are subsidized by the state.¹¹³ China, who produces half of the world's steel, consistently overproduces and exports steel at lower prices than the production costs.¹¹⁴

In the context of secondhand clothing, massive amounts of unwanted fast fashion items are donated to or purchased by secondhand clothing processors, who need to get rid of their supply while still making a profit.¹¹⁵

104. United Nations, *Treaties and International Agreements Registered on 1 June 1995*, 1867 TREATY SERIES 1, 154 (1998).

105. *WTO Analytical Index*, WORLD TRADE ORG. 1, 1 (explaining in Article 2(2) of the WTO Agreement that the multilateral trade agreements in Annexes 1, 2, and 3 are binding on all members); see Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, *supra* note 22 (stating that during the Uruguay Round in 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (Article VI of GATT (Anti-Dumping Agreement (ADA))) was passed and is found in Annex 1a of the WTO agreement).

106. Robert D. Willig, *Economic Effects of Antidumping Policy*, 1998 BROOKINGS TRADE F. 57, 61.

107. *Id.* at 64–65.

108. *Id.* at 61; Tshedza & Ephraim, *supra* note 100.

109. Willig, *supra* note 110, at 62–63; Mohammed, *supra* note 102, at 14.

110. Willig, *supra* note 110, at 62.

111. *Fact Check: is China Dumping Steel?*, THE CONVERSATION (June 14, 2017, 3:59 AM), <https://theconversation.com/fact-check-is-china-dumping-steel-76916>.

112. *Id.*; *Why Steel*, AMERICAN INSTITUTE OF STEEL CONSTRUCTION, <https://www.aisc.org/why-steel/resources/life-cycle-costs> (last visited Apr. 10, 2024).

113. THE CONVERSATION, *supra* note 115.

114. Ian Greenwood, *Fact Check: is China Dumping Steel?*, THE CONVERSATION (June 14, 2017, 3:59 AM), <https://theconversation.com/fact-check-is-china-dumping-steel-76916>.

115. Clement Uwiringiyimana & Joe Bavier, *Trump versus Rwanda in trade battle over used clothes*, REUTERS (May 24, 2018, 5:18 AM), <https://www.reuters.com/article/us-rwanda-usa-trade-insight-idUSKCN1IP0WB/> (explaining that if SMART, the group of secondhand clothing processors, is not able to export their clothes, there would be major job loss, and that they need to get this surplus out of the country without increase in duties by EAC).

B. Difficulties with determining if dumping has occurred.

So far, this Article has oversimplified the extremely contentious and complex topic of dumping. Per Article 2.1 of the ADA, dumping occurs when “a product is introduced into the commerce of another country at less than normal value” in the ordinary course of trade.¹¹⁶

Anti-dumping duties are activated when a member country proves that the product was brought into the country for less than “normal value.”¹¹⁷ However, in many cases, anti-dumping investigations cannot determine the product’s normal value.¹¹⁸ In the United States, for example, the Department of Commerce (D.O.C.) initially examines the price set for the product in the exporter’s domestic market. Should the product not be marketed there, or if its sales in the home market constitute less than 5% of the volume sold in the United States, the D.O.C. turns to alternative third-party markets. If no analogous market is available, the D.O.C. formulates its assessment of the product’s price by extrapolating the costs associated with selling the product in its home country.¹¹⁹ The difficulty with determining a correct normal value makes the application of dumping duties more difficult.¹²⁰

In addition to requiring proof that the product is being dumped, Article VI requires the importing country to prove that the dumping causes or threatens material injury to an established industry.¹²¹ The ADA’s omission of a clear definition for material injury diminishes its effectiveness as a protective measure. Although the Appellate Body has stated that injury assessments must rely on “an ‘objective examination’ of ‘positive evidence’” and verifiable data, these terms grant significant discretion to investigating agencies in interpreting evidence. Moreover, there’s no obligation for the importing nation to divulge all the factors influencing its decision-making process.¹²²

Finally, to determine if dumping has occurred, there must be evidence of a causal link between the dumping and material injury to the product’s industry in the importing country.¹²³ This final element virtually eliminates any cause of action against the secondhand clothing industry because it is difficult to single out a reason for a decline in the industry. A country’s clothing industry can be upset for several reasons such as war, increased costs for materials, increased competition, financial recessions, and so on. Thus, singling out a “but-for” cause for the decline in the clothing industry is virtually impossible.

116. WORLD TRADE ORG., *supra* note 109.

117. *Id.*

118. Reid M. Bolton, *Anti-Dumping and Distrust: Reducing Anti-Dumping Duties Under the W.T.O. Through Heightened Scrutiny*, 29 BERKELEY J. INT’L L. 66, 74 (2011).

119. *Id.* at 74–75.

120. It was difficult to ascertain the normal value of used clothing. Some thrift shops specialize in vintage clothing, others sell clothes per piece with no regard for brands, secondhand clothes have no standard price, since the prices are set by the new owner, not the producer, unlike the steel industry.

121. WORLD TRADE ORG., *supra* note 109.

122. Bolton, *supra* note 118, at 75.

123. *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, WORLD TRADE ORG., https://www.wto.org/english/docs_e/legal_e/19-adp_01_e.htm (last visited April 22, 2023, 10:09 AM).

To file a petition for dumping, however, the injured country need not have all the particularities, but must generally provide evidence of dumping.¹²⁴ The reviewing body will then, attempt to find definitive evidence of dumping by requiring trade parties to complete questionnaires that detail the prices of their trade.¹²⁵

C. Determining if dumping has occurred in Ghana.

Although the WTO set forth the dumping specifications, initial dumping petitions are filed and reviewed by the injured country.¹²⁶ To file an anti-dumping petition there must be an established dumping regime within the injured (importing) country.¹²⁷ Ghana has anti-dumping laws that are within the specifications set out by the WTO ADA—the Ghanaian International Trade Act (“Act”).¹²⁸ Here, Ghana is the injured country and would be the country to institute a petition of dumping by the United States.

Under the Act, the Ghanaian International Trade Commission (GITC) oversees the imposition of anti-dumping duties in Ghana.¹²⁹ First, the GITC looks to whether the product’s export price is less than its normal value.¹³⁰ If so, then the GITC looks to whether: (i) the dumping is causing or threatening to cause material injury to a domestic producer; (ii) the domestic industry produces a like or directly competitive product; and (iii) the dumping is likely to retard the establishment of a domestic industry.¹³¹ Last, per 32(b), if sufficient evidence indicates dumping occurred and the dumping caused material injury, then the Commission shall initiate and conduct an investigation to determine the existence, degree, and effect of the dumping.¹³²

In other words, to have your petition acted upon in Ghana, there must be (1) a product in a home country being sold for less in an importing country and the product is (2) causing material injury to the (3) products industry in the importing country.¹³³

1. *The determination of dumping runs amok in practical application.*

The issue is whether the United States dumps secondhand clothes in Ghana. Dumping is when a product in a home country is sold for less in a receiving country.

124. Interview with Jennifer A. Hillman, Former WTO Appellate Body Member, World Trade Org. (Jan. 9, 2023) (Prior to her time at WTO, she served for nine years as a commissioner at the United States International Trade Commission (USITC), rendering decisions in more than six hundred investigations regarding injury to U.S. industries caused by imports that were dumped or subsidized).

125. *Id.*

126. *Id.*; *Ghana International Trade Commission Homepage*, GHANA INT’L TRADE COMM’N, <https://www.gitc.gov.gh/service/dispute> (last visited Apr. 22, 2023).

127. *Anti-dumping, Subsidies, Safeguards: Contingencies, etc.*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm (last visited May 6, 2024); Hillman, *supra* note 126.

128. Ghana International Trade Commission Act, 2016 (Act No. 926).

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. Interview with Jennifer Hillman, *supra* note 130.

Here, secondhand clothing (the product) from the United States (home country) is sold in Ghana (receiving country). This section dives deeper into the analysis of whether the secondhand clothes are sold for less in Ghana than in the United States.

Trans-Americas processes its clothes specifically for export, thus dumping comparisons using home rates will not be feasible. The ADA permits the use of other methods to determine the normal value when: (i) the volume of the product's sales in the home country is below five percent of the volume of sales to the importing country, unless the volume provides proper comparison; (ii) no sales of the like product in the home market in the ordinary course of trade exists; or (iii) a particular market situation does not make for proper comparison of prices.¹³⁴ In any of these situations, the ADA permits an investigating authority to construct a normal value considering the cost of production, reasonable administrative costs, selling and general costs, and profit.¹³⁵

Trans-America does not sell its secondhand clothing the local market. Thus, it squarely falls under the exception. First, as evidenced by the fact they only sell their products to foreign countries, the volume of Trans-Americas' secondhand clothing's sales in their home country falls well under five percent of the volume of sales to the importing country.¹³⁶ Second, there are no sales of the like product in the home market because second hand clothes in Ghana are imported and not within their circular economy unlike second hand clothes in the US.¹³⁷ Therefore, to determine if Trans-America is dumping clothes, we must determine (a) the full cost and (b) if Trans-America is selling below the full cost.

a. Full cost.

Typically, when analyzing if dumping has occurred you would compare the normal value to the export price. However, when the normal value does not exist, the rules allow a "constructed normal value" to be calculated by adding the cost of production, selling, general and administrative expenses, and profits. Secondhand clothes can be donated directly to donation stores like Goodwill or bought by a processor like Trans-America to then be exported.¹³⁸ Since clothes are donated, the only "production" costs are costs associated with hauling, sorting, and packaging the bales of clothing.¹³⁹ The information on these types of is generally vague and

134. *Id.*

135. Mohammed, *supra* note 102 at 18.

136. *Secondhand Clothing for Export*, TRANS-AMERICAS TRADING CO., <https://tranclo.com/buyers/secondhand-clothing-for-export/> (last visited Apr. 5, 2024).

137. Adele Burney, Things to Consider When Starting a Used Clothing Store, CHRON <https://smallbusiness.chron.com/things-consider-starting-used-clothing-store-25168.html> (last visited May 6, 2024) (Used clothing stores offer a higher profit margin due to the fact that the inventory is donated or consigned rather than purchased).

138. See Allyson Chui, *What Really Happens to Your Clothes After You Donate Them*, WASH. POST (Jan. 4, 2023, 6:30 AM) <https://www.washingtonpost.com/climate-solutions/2023/01/04/how-to-donate-clothes-waste-environment/>.

139. See *How to Price Used Clothes for Resale*, INDETEXX CLOTHING (Dec. 26 2022) <https://www.indetexx.com/how-to-price-used-clothes-for-resale/>; Chun-Wei Remen Lin, et al., *Multi-Objective Production Programming to Systematic Sorting and Remanufacturing in Second-Hand Clothing Recycling Industry*, 12 *Symmetry* 1, 6 (2020).

inconsistent.¹⁴⁰ Laymen, however, can ascertain that 2,000 pounds of clothing sold for 100-400 USD is underpriced.¹⁴¹ Trans-America even admits that their secondhand clothes are “worth more.”¹⁴² Regardless, the difficulty in finding concrete prices likely means that a dumping will not be found in Ghana, despite the situation fitting squarely into the plain meaning of cyclical dumping meaning.

2. *The dumping of secondhand clothing is creates unfair competition for first-hand clothing retailers in Ghana.*

Moving to the second element, for dumping to be found, there must be a causal relationship between the the product being dumped and the material injury suffered by the importing country.¹⁴³ The Act does not describe what constitutes material injury, or how to know whether a material injury has manifested. Any injury, however, is only actionable if it is an injury to the domestic industry.¹⁴⁴ To determine if there has been a material injury, the ADA instructs investigators to evaluate all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, employment, and growth.¹⁴⁵ This list is not exhaustive, and no one factor is determinative. Causation can be established by temporal connections such as correlations.¹⁴⁶ Here, local ready-made fashion marketers have described their material injury as not being able to compete with the extremely low-priced secondhand clothes being imported.¹⁴⁷ In Ghana, jobs in textiles plunged by 80% between 1975 and 2000.¹⁴⁸ Furthermore, in a recent study, 32% of Ghanaian fashion designers said that the most challenging issue facing the industry was the competition of cheap imported clothes.¹⁴⁹ As more cheap clothing is imported into Ghana, the

140. The author attempted to establish communication with Trans America through both telephone and email channels to request information regarding their pricing structures and retail procedures to no avail. In addition, processors situated within the Washington D.C. area, namely Goodwill and Value Village were contacted. Interactions with these entities were marked by evasive and uncooperative behavior in response to the posed inquiries. Specifically, Value Village purported that they sourced their clothing inventory from an entity named “Central Processing” and purportedly sold their garments to an entity identified as “Sunny D,” an assertion that was later confirmed as inaccurate, given the abrupt termination of the call. Likewise, Goodwill hastened to conclude the conversation when questions were raised regarding their procedures for the acquisition and disposal of clothing items. The disconcerting and elusive responses exhibited by these parties give rise to a conspicuous suspicion regarding potential irregularities within the realm of the secondhand clothing trade.

141. Looking at A&E prices, multiply the .05*2000 pounds for a ton.

142. *Municipal Textile Recycling Programs*, TRANS-AMERICAS TRADING CO., <https://tranclo.com/sellers/municipal-programs/> (last visited May 6, 2024).

143. *Republic v. Yebbi & Avalifo*, 2 GLR 50 (Sup. Ct. Accra 2000); Mohammed, *supra* note 102.

144. Mohammed, *supra* note 102.

145. WORLD TRADE ORGANIZATION, *ANTI-DUMPING AGREEMENT – ARTICLE 3 (DS REPORTS): ARTICLE 3 DETERMINATION OF INJURY 4* (1994).

146. 60: *America May be Doing away with WTO Dispute Settlement*, TRADE TALKS (Oct. 29, 2018) <https://tradetalkspodcast.com/podcast/60-america-may-be-doing-away-with-wto-dispute-settlement/>.

147. Friedman, *supra* note 73.

148. *Id.*

149. John Abbam Nyarko, *History Of The Fashion Industry In Ghana*, University of Cape Coast (2022).

more the exports and local sales of readymade clothing decrease.¹⁵⁰ This temporal relationship demonstrates a causation between the introduction of secondhand clothing into Ghanaian markets and the material injury of the clothing industry.

Competition with cheap imported clothes, however, is not the sole reason for the decline in the Ghanaian clothing industry. About 62% of Ghanaian fashion designers said that the major problem facing the industry is the lack of capital and credit facilities needed to acquire current and more efficient equipment, tools, and materials.¹⁵¹ Since cheap imports are not the sole cause for the decline in Ghana's clothing industry, a dumping will not be found despite its effect on Ghana's economy and the ADAs purpose to eliminate discriminatory treatment in international trade relations.¹⁵²

3. *Secondhand clothing is the same as readymade clothing in Ghana because they are directly competitive.*

Last, the injury must be to the products industry within the importing country. The GITC Act and the ADA determine products are similar by looking to whether: (i) the products are identical in all respects; or (ii) the products have similar characteristics.¹⁵³ The product here is secondhand clothing, however, the injury is suffered by the readymade clothing industry in Ghana. Secondhand clothing is directly competitive with readymade clothing in Ghana because they are sold within the same physical market, they are both clothing items with the function of fashioning individuals, they are being directly compared by consumers in the physical markets, and the effect on readymade clothes by secondhand clothing is direct as evident by many consumers purchasing imported clothes over readymade clothes simply because of the price point and origin story.¹⁵⁴

A bale of used clothing is directly comparable to readymade clothing even though their physical conditions differ.¹⁵⁵ Thus, even if secondhand and readymade clothes are not physically identical in all respects, the products have similar characteristics such as retail locations and functions.¹⁵⁶ Therefore, if dumping would have been found, secondhand clothing would be seen as causing material injury to the readymade clothing industry.

150. *See id.*

151. *Id.*

152. GLOB. MKTG. STRATEGIES *supra* note 107.

153. Mohammed, *supra* note 102, at 53, 97.

154. Nyarko, *supra* note 155; *see* James Brooke, *Used U.S. Clothes a Best Seller in Africa*, N.Y. TIMES (Feb. 16, 1987), <https://tranclo.com/pdfs/Article5.pdf> (it is hard for people in African countries to buy new clothes as they are reliant on the second hand clothing trade); *see* GORDON WALKER, ENVIRONMENTAL JUSTICE CONCEPTS, EVIDENCE AND POL. 98 (1st ed. 2012) (Bullard describes the phenomenon as environmental blackmail, where communities are so desperate for jobs and income that they are prepared to trade their environmental quality and health at any cost).

155. *See* Panel Report, *China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States*, WTO Doc. WT/DS427/RW (adopted Jan. 18, 2018) (“Given substitutability of the product models within the larger domestic basket, there was some risk that price effects were the effects of competition from product models within the domestic basket that were not in the dumped import basket.”)

156. *Ghana International Trade Commission Act*, Act 926 (2016); Mohammed, *supra* note 102, at 53.

D. Anti-dumping duties will only solve half the issue.

Even if dumping could have been found in the secondhand clothing trade it would do little to solve the larger issue. Anti-dumping duties being assessed will level the playing field for readymade garments in Ghana, but will make the secondhand clothing market more expensive for those that rely on it.¹⁵⁷

Furthermore, with the decline in quality of clothing due to the rise in fast fashion, most items imported through the secondhand clothing trade end up as waste. Between 40-90% of clothing imported into Ghana is sent to landfills.¹⁵⁸ Anti-dumping duties will not resolve the excessive waste that the environmental dumping of these products generate.

III. SOLUTIONS

Assessing anti-dumping duties is what the EAC had initially done but without the proper procedures. The higher tariffs would have decreased secondhand clothing imports, but would have also affected the local economy that depends on the secondhand clothing market. This section explores current solutions as well as offers a change to dumping laws that considers inherent environmental harms.

A. Current solutions.

While current solutions could thwart the overconsumption issue and rehabilitate Ghana's economy exist, they cannot fix the ineffective dumping laws. Solutions include: (i) subsidies and (ii) supply chain transparency.

1. Subsidies.

Currently, in Ghana, the government may provide temporary subsidies to readymade clothing manufactures since imported secondhand clothes are sold below the prevailing domestic market prices. A subsidy essentially helps Ghanaians within the domestic market to sell their garments for less because an amount has been offset by the government.¹⁵⁹ This will in turn keep the secondhand clothing trade available

157. Friedman, *supra* note 73 ("In Rwanda, where the per capita gross domestic product is \$700, many people oppose the ban, saying it has thrown thousands out of jobs distributing and selling secondhand clothes and has hurt the nation's youth in particular. Since Rwandan import tariffs on used garments have been raised 12 times, clothes sellers in Kigali have watched their revenues plummet. The government decision was premature, they said, put in place before the country was able to produce clothes that are affordable. And though the ban excludes imports of secondhand clothing, it hasn't stopped the influx of more expensive new clothing from China.").

158. Jackie King, *Re: Annual Review of African Growth and Opportunity Act Eligibility and Benefits for Rwanda, Tanzania, and Uganda*, 82 Fed. Reg. 32042 (July 11, 2017)—Public Comments of Secondary Materials and Recycled Textiles Association, SMART (Aug. 4, 2017), https://www.smartasn.org/SMARTASN/assets/File/advocacy/smart_comments_agoa_review.pdf (looking at the value of clothes that are diverted from landfills and exported abroad when filing a petition to end the ban on secondhand clothing).

159. Sanjay Bulaki Borad, *Advantages and Disadvantages of Dumping in International Trade*, EFIN. MGMT., <https://efinancemanagement.com/economics/advantages-and-disadvantages-of-dumping-in-international-trade> (last visited Apr. 22, 2023).

at the same rate for those who depend on it while allowing readymade clothing manufacturers to compete equally.¹⁶⁰

Some view subsidies as a drain on national resources that eat up the government's funds and increase Ghana's debt. However, diverting funds from one industry to another does not have to result in harm.¹⁶¹ Instead of directly diverting funds from one program, initiatives could be introduced that would increase the flow of revenue in Ghana, and that influx can be poured into industries such as the fashion market. For example, tourism in Ghana peaks between the beginning of December and the end of January.¹⁶² During this time, tourism revenue increases significantly.¹⁶³ This influx in cash should be taxed and redistributed as a subsidy to the clothing industry. Thus, the subsidy will not drain resources or increase Ghana's debt.

2. *Supply chain transparency.*

In New York, legislators have attempted to pass the Fashion Sustainability and Social Accountability Act (The Fashion Act) which requires every fashion retail seller and manufacturer that does business in New York and has over 100 million USD in annual worldwide gross receipts to make several sustainability and social disclosures.¹⁶⁴ Notably, compared to existing disclosure laws (like the California Transparency in Supply Chains Act) the Act's disclosure requirements are significantly more detailed and carry potentially large financial penalties as well as a private right of action.¹⁶⁵ First, the Fashion Act will require fashion retailers and manufacturers to use "good faith efforts" and a "risk-based approach" to conduct supply chain mapping and make a related disclosure.¹⁶⁶ Specifically, the Act requires companies to map at least 50% of their suppliers across all tiers of production, from raw material to final production, ranked by volume.¹⁶⁷ The names of the mapped suppliers must be subsequently disclosed.¹⁶⁸

Second, fashion retailers and manufacturers will have to make an "impact and due diligence disclosure," that includes a social and environmental sustainability report focused on externally relevant information on due diligence policies, processes, and activities conducted to identify, prevent, mitigate, and account for

160. *Id.*

161. See discussion *infra* Section III, B.

162. See DeAnna Taylor, *Ghana In December Is More Than A Vibe, It's A Time For Reconnection*, EBONY (Dec. 23, 2022), <https://www.ebony.com/ghana-december-travel/>.

163. See Nana Oye Ankrah, *Ghana bets on 'Detty December' tourists to boost revenue*, SEMAFOR, <https://www.semafor.com/article/12/19/2023/ghana-bets-on-detty-december-visitors-for-revenue> (Dec. 21, 2023, 12:12 AM).

164. Reagan R. Demas & Maria Piontkovska, *Upping the Ante: New York Bill Will Require Fashion Corporate Supply Chain Mapping and Social and Sustainability Disclosures*, GLOB. SUPPLY CHAIN COMPLIANCE (Jan. 18, 2022), <https://supplychaincompliance.bakermckenzie.com/2022/01/18/upping-the-ante-new-york-bill-will-require-fashion-corporate-supply-chain-mapping-and-social-and-sustainability-disclosures/>.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

potential adverse impacts.¹⁶⁹ The disclosure will have to include the following information: (i) a link on the retailer's or manufacturer's website to relevant policies on responsible business conduct; (ii) information on measures taken to embed responsible business conduct into policies and management systems; (iii) the retailer's or manufacturer's identified areas of significant risks in the context of its activities and business relationships such as supply chains; (iv) the significant adverse impacts on risks identified, prioritized, and assessed in the context of its activities and business relationships such as supply chains; (v) the prioritization criteria; (vi) the actions taken to prevent or mitigate those risks, such as corrective action plans, to be cited where available, including estimated timelines, targets, and benchmarks for improvement and their outcomes; (vii) measures to track implementation and results; and (viii) the retailer's or manufacturer's provision of or cooperation in any remediation.¹⁷⁰ Extensive disclosures of this nature would force companies like SHEIN and Zara to reevaluate and use better means for their production schemes, which will slow down manufacturing and consumption.

Third, the Act will require fashion retailers and manufacturers to make an impact disclosure on prioritized adverse environmental and social impacts, including: (i) a quantitative baseline and reduction target on energy and greenhouse gas emissions, water, and chemical management; (ii) the annual volume of material produced, including a breakdown by material type which shall be independently verified; (iii) how much production has been displaced with recycled materials as compared to growth targets, which must be independently verified; (iv) the median wages of workers of prioritized suppliers and how this compares with local minimum wage and living wages; and (v) the company's approach for incentivizing supplier performance on workers' rights (including any key performance indicators used).¹⁷¹ This will undercut fast fashion's reliance on improper labor practices and require production to meet slower fashion standards.

Finally, the Act will require fashion retailers and manufacturers to disclose impact reduction targets and track due diligence implementation and results. Violations of the Act could lead to civil liability and result in a fine of up to 2% of annual revenues, provided they exceed USD 450 million.¹⁷²

While only a New York state proposal, the WTO should add an addendum like this to their bylaws and recommend all countries create similar laws in their respective countries. Supply chain transparency fights fast fashion at the beginning stages, thus, reducing the waste garnered in developing countries. If more companies are required to disclose how much they are generating, and the prices of generating products, manufacturers will be more equitable in their production practices.¹⁷³

Currently, fast fashion is created in inhumane sweatshops sprinkled around countries such as China and Bangladesh. Manufacturers that are required to disclose their practices will likely decrease their production to ensure that their workers are adequately compensated and that their facilities meet health and safety

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

requirements.¹⁷⁴ This will decrease the production amount, leaving Americans will less to consume and, ultimately, decrease demand in the long run. The quality of clothing will also rise if producers are disclosing their raw materials because consumers will be more inclined to buy from better sources. Ghana will then, in turn, be able to have better secondhand imports, sell more quality clothes, send fewer clothes to informal landfills, and have fewer piles of waste in their marketplaces. Conclusively, supply chain transparency decreases the amount of clothing entering the market and, thus, decreases the amount of waste generated and dumped in African countries.

B. Author's solution.

Secondhand clothing should be classified as waste under international law, allowing for the identification of environmental harm as a material injury under Dumping Laws. In light of the environmental damage caused by the United States to the African continent, AGOA should be interpreted to favor African countries rather than detriment them. Below the author proffers two innovative solutions that will help countries in Africa reap the possible benefits of dumping laws. The solutions consist of (1) establishing environmental issues as material injury under dumping laws and (2) reading AGOA as a reparation.

1. *Secondhand clothing should be identified as waste under international law so that environmental harms can constitute a material injury under Dumping Laws.*

Environmental harm should be classified as a material injury in assessing dumping duties. If products are being economically dumped, especially in situations of cyclical dumping where there is massive overproduction, there is also environmental dumping. Looking at the plain meaning of dumping, dumping has an incidental effect of waste in the importing country. Cambridge Dictionary defines dumping as “the act of getting rid of something that is not wanted.”¹⁷⁵ Oxford defines dumping as “leaving something that you do not want in a place that is not suitable, especially dangerous substances.”¹⁷⁶ Dumping under the ADA is when one country or firm exports products to another country, at a price lower than theirs.¹⁷⁷ Countries selling massive amounts of low-cost goods flood the importing country with products that saturate the country. The saturation of these products, however, does not only hurt the economic industry but also ends up as waste in the country. Here, secondhand clothing processors ship off massive amounts of no-production-cost clothing items, to offset their waste as evidenced by the clothes in American landfills decreasing as they are shipped overseas.¹⁷⁸ The injury to the Ghanaian environment is the informal landfills that are full of clothes that saturate Ghanaian neighborhoods,

174. *Id.*

175. *Dumping*, CAMBRIDGE ENGLISH DICTIONARY, https://dictionary.cambridge.org/us/dictionary/english/dumping#google_vignette (last visited May 6, 2023).

176. *Dumping*, OXFORD ENGLISH DICTIONARY, https://www.oxfordlearnersdictionaries.com/us/definition/american_english/dumping (last visited May 6, 2023).

177. Tshedza & Ephraim, *supra* note 100.

178. Elliot, *supra* note 44.

as well as the excessive incinerations that cause local smoke inhalation as a result of the packed landfills.¹⁷⁹ These environmental harms should qualify as material injury to the importing country. Not just to a particular industry, but to the physical country. This injury should be sufficient for antidumping assessments.

Strongarming countries with removal from AGOA, unless they take in massive amounts of used clothing, is suggestive that the United States is aware that these items are nothing but waste to them. The trade of secondhand clothing accounts for less than 5% of the benefits the United States obtains from AGOA imports.¹⁸⁰ The fact that SMART, consisting of only clothing exporters, pressured African countries to accept their waste or face removal from AGOA implies that their stated concerns about harm to the United States if the ban were imposed may lack sincerity. It does imply, however, that the harms inflicted on America, are also experienced by the importing nations.

SMART was very calculated in maintaining that if secondhand clothing was not allowed to re-enter the African marketplace, the United States will suffer job loss and environmental decline. The United States knows that their exports of secondhand clothing are no more than them attempting to inexpensively deal with their issue of waste in a manner that will not force them to deal with their waste on their own. Dumping is an inexpensive alternative for the disposal of hazardous waste.¹⁸¹ By processing and selling it, the clothes can no longer fall under the category of waste, and African countries must allow them free trade without barriers per AGOA—even though the processing proves useless as most imports are discarded as soon as they arrive.¹⁸²

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal came into force in 1992, and is the most comprehensive global environmental agreement on hazardous wastes and other wastes. Per Article 2 of the convention, “wastes” are substances or objects that are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law.¹⁸³ If classified as a waste, countries like Rwanda and

179. Besser, *supra* note 1.

180. Katherine Tai, 2022 *Biennial Rep. On The Implementation of The Afr. Growth & Opportunity Act*, UNITED STATES TRADE REPRESENTATIVE (June 2022), <https://ustr.gov/sites/default/files/files/reports/2022/2022AGOAImplementationReport.pdf> (taking the total AGOA apparel imports (1.4 billion) found in Appendix 6 and dividing that by Total U.S. goods imports (28.2 billion)).

181. See Laura A. W. Pratt, *Decreasing Dirty Dumping? A Reevaluation of Toxic Waste Colonialism and the Global Management of Transboundary Hazardous Waste*, 41 TEX. ENV'T. L.J. 147 (2011) (explaining a practice where underdeveloped states are used as inexpensive alternatives for the export or disposal of hazardous waste pollution by developed states); see GORDON WALKER, ENVIRONMENTAL JUSTICE: CONCEPTS, EVIDENCE AND POL. 95 (2012) (Environmentalists have described this concept as toxic imperialism. In 1991 a leaked memo from the world bank stated that African countries are under populated and under polluted, thus it would be economically logical to dump toxic waste. This memo demonstrates the logic that can lead to a movement of wastes and risky industries from one part of the world to another).

182. Besser, *supra* note 1.

183. The Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal, Mar. 22, 1989, 1673 U.N.T.S. 126.; see Gordon Walker, *supra* note 188, at 96 (The Basel Convention has made wastes the responsibility of the producing country however, various loopholes have

Ghana could have more leverage to decrease the number of imports. Retailers can also continue their practice of sifting through the waste to find resellable items, but now fines will be assessed under antidumping laws.

It is understood that antidumping laws exist to resolve price discrimination and not environmental issues, however, because the environmental issues coexist with the activities that occur under cyclical dumping, the environmental injury should be qualified as a material injury to the importing country.

If environmental harm is classified as material injury, then the penalty should not be an assessment of duties, but fines paid to organizations that aid with clean-up in African countries. Duties increase the cost of products in the importing country which harms retailers who rely on affordable goods. Instead of duties, fines should be imposed on entities that dump their goods in countries and those fines should be directed to clean-up organizations located in the importing country.¹⁸⁴ In Ghana, for instance, clean-up organizations, such as Jekora Ventures, safely discard waste that reduces the use of incinerations in landfills, as well as clean up around marketplaces where clothes are initially dumped.¹⁸⁵ Their mission is to deliver operationally efficient, cost-effective, affordable services and products and promote a sustainable environment.¹⁸⁶ These fines will be better used in this manner and will not increase the cost of affordable goods.¹⁸⁷

2. AGOA as reparations.

The United States was one of the forerunners of the slave trade that robbed Africa of its people, stripping them of their identity, and forcing them into servitude.¹⁸⁸ Slavery lasted 400 years and the effects are still present today in the descendants of slaves and those broken families in Africa.¹⁸⁹

been exploited such as “sham recycling” where wastes are fraudulently labelled to be reused rather than disposal. For example, London based oil traders dumped hazardous waste off the coast of Africa after first attempting to get rid of the waste cheaply by describing it as routine slops for tank-cleaning).

184. E.g., *Carbon Border Adjustment Mechanism, European Commission: Taxation and Customs Unit*, EUROPEAN COMM., https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en (last visited March 25, 2024) (CBAM is an initiative by the EU to level the playing field by assessing tariffs on cars imported from outside countries that would undermine their carbon emission goals. This program could be replicated when assessing the environmental harms of clothing waste and fines to be imposed.).

185. *Jekora Ventures*, JEKORA VENTURES, <https://jekoraventures.com/> (last visited Apr. 22, 2023).

186. *Id.*

187. *Id.*

188. Bob Koigi, *The Impact of Slavery on Modern Africa*, FAIR PLANET, <https://www.fairplanet.org/dossier/beyond-slavery/the-impact-of-slavery-on-modern-africa/> (last visited Oct. 4, 2023); ROBERT D. BULLARD, *THE QUEST FOR ENVIRONMENTAL JUSTICE* 294-296 (2005) (It is time for governments to guarantee economic rights by the elimination of illegitimate debts of Third World nations. There is a global call for reparations for the harm inflicted on these communities. Countries like the US need to reform their economic processes to support sustainable development and refrain from the exploitation of developing countries and people who have been historically disenfranchised).

189. See John Green, *Slavery – Crash Course*, YOUTUBE (May 2, 2013) https://www.youtube.com/watch?v=Ajn9gSGsv98&t=3s&ab_channel=CrashCourse; Koigi, *supra* note 195 (They indicate that if slavery never took place, the 72 percent gap in average income between Africa and the rest of the world would not be experienced today. If anything, they argue, Africa would be at par in development with Asia or Latin America).

AGOA is a remedial treaty to help African economies prosper because of documented history of America abusing the African continent and its people. Per section 102 of AGOA, AGOA was established to “promote stable and sustainable economic growth and development in sub-Saharan Africa.”¹⁹⁰ It further states that it intends to “strengthen [] and expand [] the private sector in sub-Saharan Africa, especially enterprises owned by women and small businesses.”¹⁹¹ Looking at the statute, AGOA should not be interpreted to benefit the United States, but rather to repair the harm the United States caused African countries. This is not to say that AGOA should only benefit African countries, but in situations such as these, where African countries are harmed, the frame of mind should be for the betterment of Africa. Here, where USTR was tasked with deciding if a clothing ban was appropriate, they should have given more weight to the fact that the EAC had been planning the clothing ban for years, they had researched the effects, they know what was best for their constituents, and they were not taking away much from the United States. Instead, the USTR took the view that the demise of African countries for the benefit of the United States was more important, which contradicts the spirit of AGOA.

The AGOA should be seen as a reparation for harm against Africa. A reparation is compensation for abuse or injury.¹⁹² While foundational Black Americans continue to fight for the overdue 40 acres and a mule promised centuries ago, acts such as AGOA should act as a continuing reparation to compensate for the injuries the United States caused Africans on the continent of Africa such as ripping families apart and pilfering the continent for its resources.¹⁹³ With AGOA as reparations and not a strongarm, African countries will be freer to act for the betterment of their countries without fear of reprimand.

IV. CONCLUSION

Fast fashion has depleted the benefits of the secondhand clothing trade and countries such as Rwanda and Ghana who seek to withdraw from such trade are out of options because Anti-Dumping Laws prove useless despite their potential to help developing countries prosper. Anti-dumping duties in their current state do not solve the dumping afflicted on these African countries. Subsidies and a supply chain transparency initiative should be established in all WTO entities to decrease the number of fast fashion items entering the marketplace, thereby decreasing the waste received by African countries. Dumping should be amended to include environmental dumping as a material injury to fully solve the issues that cyclical

190. P.L. 106-200.

191. *Id.*

192. *Reparations*, UNITED NATIONS HUMAN RIGHTS, <https://www.ohchr.org/en/transitional-justice/reparations> (last visited Apr. 22, 2023).

193. See G. Macharia Munene, *The United States And The Berlin Conference On The Partition Of Africa, 1884 – 1885*, 19 TRANSAFRICAN J. OF HISTORY 73, 73 (1990) (exploring the United States role in the Berlin Conference); Rhoda E. Howard-Hassmann, *Should the USA Offer Reparations to Africa for the Transatlantic Slave Trade?*, 59 SOCIETY 339, 339 (2022) (concluding that the USA ought to offer reparations, including participation in and financing of a truth commission on the slave trade; an apology for the harms caused by the trade; and symbolic financial assistance to establish monuments to the slave trade, museums exhibits, and educational programs).

dumping creates. Last, acts such as AGOA should be read as a reparation to African countries when the USTR is posed with reviews.¹⁹⁴

194. Thank you for taking the time to read my work and reviewing the supplemental information found in the footnotes. I would like to thank my parents and my siblings, Qudus, Ruka, & Akeem, for always supporting me.