

2023

## From Drawstring to Drawback: A Proposal for the Donation Alternative Program to Promote Environmental Responsibility in Fashion Act

Elliot O. Jackson

Follow this and additional works at: <https://ir.lawnet.fordham.edu/iplj>



Part of the [Intellectual Property Law Commons](#)

---

### Recommended Citation

Elliot O. Jackson, *From Drawstring to Drawback: A Proposal for the Donation Alternative Program to Promote Environmental Responsibility in Fashion Act*, 33 Fordham Intell. Prop. Media & Ent. L.J. 475 (2023).

Available at: <https://ir.lawnet.fordham.edu/iplj/vol33/iss2/4>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Intellectual Property, Media and Entertainment Law Journal by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

---

## From Drawstring to Drawback: A Proposal for the Donation Alternative Program to Promote Environmental Responsibility in Fashion Act

### Cover Page Footnote

\* Elliot O. P. Jackson, Esq., LL.M., Fashion Law, Fordham University 2022, J.D., Florida Agricultural and Mechanical University College of Law, B.S. in Forensic Science, Fayetteville State University. Mr. Jackson thanks Susan Scafidi, Director of the Fashion Law Institute at Fordham University, for her unmeasurable support and guidance throughout the LLM program. Mr. Jackson also thanks Ariele Elia, Assistant Director of the Fashion Law Institute, for her support and connections; Jeffrey Trexler, Associate Director of the Fashion Law Institute, for his continued support and strategic advisement throughout the writing process; Don Obert, Adjunct Professor of Fashion Law & International Trade, for his advice, experience, and industry-specific considerations; and Kenya Wiley, Adjunct Professor of Fashion Law & Social Justice, for her advice, experience, and strategic considerations. Lastly, Mr. Jackson is grateful to Lynne Dixon-Speller, Elka M. Stevens, Valerie L. Giddings, Darlene Eberhart-Burke, Sue “Aleta” Ballard de Ruiz, Dozy Butler, Angela Bacskocky, and Laura Chapuis, for their participation in independent interviews. Mr. Jackson dedicates this article to his mother, Dianne Jackson, whose style, grace, and dress has influenced many for years—including him. This article reflects the thoughts of the author independently and not that of the federal judiciary. \*\* The Author uses “import” and “duty” interchangeably because both are synonymous with a government tax levied on the value of imported products typically freight and insurance costs. \*\*\* The Author uses the term drawback broadly to reflect the general refund of imports or duties, though it encompasses manufacturing drawback, rejected merchandise drawback, and unused merchandise drawback. However, where specific mention is made to amending the TFTEA, all provisions are implicated.

# From Drawstring to Drawback: A Proposal for the Donation Alternative Program to Promote Environmental Responsibility in Fashion Act

Elliot O. Jackson\*

*Given the modern interest in resold, repurposed, upcycled, and thrifted goods, the fashion industry was forced to welcome new players into its global market. In turn, these players offer new meaning to the phrase: “one man’s trash is another man’s treasure,” especially in light of post-pandemic consumer relations. Pairing creativity and innovation with existing techniques has allowed many*

---

\* Elliot O. P. Jackson, Esq., LL.M., Fashion Law, Fordham University 2022, J.D., Florida Agricultural and Mechanical University College of Law, B.S. in Forensic Science, Fayetteville State University. Mr. Jackson thanks Susan Scafidi, Director of the Fashion Law Institute at Fordham University, for her unmeasurable support and guidance throughout the LLM program. Mr. Jackson also thanks Arielle Elia, Assistant Director of the Fashion Law Institute, for her support and connections; Jeffrey Trexler, Associate Director of the Fashion Law Institute, for his continued support and strategic advisement throughout the writing process; Don Obert, Adjunct Professor of Fashion Law & International Trade, for his advice, experience, and industry-specific considerations; and Kenya Wiley, Adjunct Professor of Fashion Law & Social Justice, for her advice, experience, and strategic considerations. Lastly, Mr. Jackson is grateful to Lynne Dixon-Speller, Elka M. Stevens, Valerie L. Giddings, Darlene Eberhart-Burke, Sue “Aleta” Ballard de Ruiz, Dozy Butler, Angela Bacskocky, and Laura Chapuis, for their participation in independent interviews. Mr. Jackson dedicates this article to his mother, Dianne Jackson, whose style, grace, and dress has influenced many for years—including him. This article reflects the thoughts of the author independently and not that of the federal judiciary.

\*\* The Author uses “import” and “duty” interchangeably because both are synonymous with a government tax levied on the value of imported products typically freight and insurance costs.

\*\*\* The Author uses the term drawback broadly to reflect the general refund of imports or duties, though it encompasses manufacturing drawback, rejected merchandise drawback, and unused merchandise drawback. However, where specific mention is made to amending the TFTEA, all provisions are implicated.

*designers, ateliers, and skilled professionals across the world to transform old or mundane goods into vibrant apparel. A worthy example of this practice is Dapper Dan’s transformation of garment bags from a high-fashion brand into upcycled or repurposed, one-of-a-kind products. The origin of Dapper Dan’s initial and very limited creations is evaluated herein as model for codifying reverse engineering in fashion. Reverse engineering is a deconstructive process that permits the extraction of design and functional information from electronics and other technological equipment. In fashion, however, this process exists in the form of deconstructing apparel or other goods to appreciate the skillful methodology and artful techniques that are used in the creative process. A duty drawback program, facilitated by the USCBP, would allow reverse engineering to be possible in fashion. Therefore, this article advocates for the expansion of USCBP’s duty drawback program by highlighting preexisting gaps in the program that currently present issues of sustainability, environmental, and social justice across the country. This article also discusses the feasibility of the duty drawback expansion, which would require congressional action to amend the Tariff Act of 1930, and proposes a legislative amendment—the Donation Alternative Program to Promote Environmental Responsibility in Fashion Act (hereinafter, the “DAPPER Fashion Act”).*

INTRODUCTION .....	477
I. BACKGROUND .....	481
II. DUTY DRAWBACK .....	485
A. PURPOSE .....	488
B. Application Process for Duty Drawback .....	492
III. THE CONSEQUENCES OF EXPORTATION OR DESTRUCTION .....	494
A. Environmental Effects .....	495
B. Waste Accumulation.....	496
C. Emissions .....	498
D. Energy .....	500
E. Exportation.....	501
IV. LEGISLATIVE SOLUTION: THE DONATION ALTERNATIVE PROGRAM TO PROMOTE ENVIRONMENTAL RESPONSIBILITY IN	

FASHION ACT.....	503
A. Overview .....	503
B. Proposed Language .....	503
C. Donation As A Mechanism To Apply Drawback .....	510
1. Internal Donation.....	512
2. External Donation.....	513
D. Modifications to the Drawback Application Process .....	514
1. Administrative Changes – Form 7553.....	515
2. Supporting Documentation for ACE.....	515
E. Legislative Support for Donation.....	516
F. INDUSTRY IMPACT.....	519
1. Government .....	519
2. Luxury Brands .....	523
3. Institutions .....	525
CONCLUSION.....	529

## INTRODUCTION

Fabrics and textiles often undergo many changes to become finished products. Creative minds, the increase in online apparel purchases, and transformative practices have all disrupted the concept of a ‘finished product’ in fashion.<sup>1</sup> These practices have reimagined fashion and redefined creativity because today you own a scarf, but tomorrow you own a quilted coat colloquially known as a puffer.<sup>2</sup> Transformations like these are often considered repurposing or up-cycling. To repurpose something means to give it a new purpose or

---

<sup>1</sup> Compare BUREAU OF LAB. STAT., CONSUMER EXPENDITURES IN 2020, <https://www.bls.gov/opub/reports/consumer-expenditures/2020/pdf/home.pdf> [<https://perma.cc/7HYR-UMWB>]; with Katia Vladimirova et al., *Fashion Consumption During COVID-19: Comparative Analysis of Changing Acquisition Practices Across Nine Countries and Implications for Sustainability*, 5 CLEANER & RESPONSIBLE CONSUMPTION 1, 5 (2022).

<sup>2</sup> See, e.g., @rznrocket\_, INSTAGRAM, (Aug. 10, 2022), <https://www.instagram.com/reel/CacoZaijyAD/?igshid=YmMyMTA2M2Y=> (last visited Oct. 3, 2022) [<https://perma.cc/DJG7-U5GH>].

use.<sup>3</sup> However, upcycling is the process of converting one article into another article “of higher value and/or quality.”<sup>4</sup> While these terms are often used interchangeably, they are distinctively different as repurposing is the general concept of finding new use for a garment and upcycling is more specific because the outcome must be an article of higher value.<sup>5</sup>

Repurposing and upcycling in American fashion is not new, rather these techniques are longstanding practices that have only resurfaced and become re-popularized in the wake of ethical fashion, sustainability efforts, and environmental consciousness.<sup>6</sup> However, repurposing and upcycling have yet to be studied in the context of international trade. When fashion products are imported into the United States, importers are required to pay a tax or “duty” on the imported merchandise.<sup>7</sup> However, importers are often able to recoup most of this duty under a program known as “Drawback.” Drawback is a program facilitated by United States Customs and Border Protection (hereinafter, “USCBP”) that allows a brand to recover up to

---

<sup>3</sup> *Repurpose*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/repurpose> (last visited Oct. 3, 2022) [<https://perma.cc/5853-VCQV>]; *Repurpose*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/repurpose> (last visited Oct. 3, 2022) [<https://perma.cc/DU8L-XZLC>]; *Repurpose*, THE BRITANNICA DICTIONARY, <https://www.britannica.com/dictionary/repurpose> [<https://perma.cc/4E5D-435C>].

<sup>4</sup> Kyungeun Sung, *A Review on Upcycling: Current Body of Literature, Knowledge Gaps and a Way Forward*, 17 INT’L CONF. ON ENV’T, CULT., ECON. & SOC. SUSTAINABILITY 28, 28, 30 (2015) (collecting definitions of upcycling).

<sup>5</sup> *See id.* at 30.

<sup>6</sup> Compare David Marshall, *Why Upcycling Clothes Is the Next Big Thing in Sustainable Fashion*, IMMAGO (May 6, 2021), <https://immago.com/upcycling-clothes/> [<https://perma.cc/NT5X-JMHZ>]; Lauren Cochrane, *Reuse, Renew, Recycle! Is Making New From Old the Future of Fashion?*, THE GUARDIAN (Sept. 2, 2020, 7:37 AM), <https://www.theguardian.com/fashion/2020/sep/02/reuse-renew-recycle-is-making-new-from-old-the-future-of-fashion> [<https://perma.cc/7ZWF-T2ZY>]; and KEN PEATTIE, GREEN MARKETING 88 (1992); with ALISON GWILT & TIMO RISSANEN, SHAPING SUSTAINABLE FASHION: CHANGING THE WAY WE MAKE AND USE CLOTHES 24 (2011) (explaining that the concept of remaking garments emerged in 1990s).

<sup>7</sup> *See generally* U.S. CUSTOMS AND BORDER PROT., WHAT EVERY MEMBER OF THE TRADE COMMUNITY SHOULD KNOW ABOUT: DRAWBACK 16 (2004), <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/ICP-Customs-Value-2006-Final.pdf> [<https://perma.cc/LNM9-36QU>].

99 percent of the import duty paid on merchandise imported into the United States if it is exported or destroyed.<sup>8</sup>

Exporting or destroying imported merchandise has raised a number of concerns in recent discussions amongst fashion professionals.<sup>9</sup> Those concerns have included environmental damage,<sup>10</sup> waste,<sup>11</sup> and an overall lack of sustainability.<sup>12</sup> In fact, individual fashion brands have reportedly destroyed up to \$37 million worth of unsold merchandise for many reasons that include—receiving a drawback.<sup>13</sup> After realizing the impact of destroying unsold merchandise, leaders in fashion have rallied in support of reducing fashion’s environmental footprint.<sup>14</sup> One possible solution is to integrate repurposing and upcycling regimes into business and drawback regimes.

Luxury brands remain indecisive on their support for upcycling and instead explore other environmental solutions to eliminate waste within the fashion industry.<sup>15</sup> However, Congress elected to focus

---

<sup>8</sup> See *id.* at 8; see also 19 U.S.C. § 1313.

<sup>9</sup> See generally, Elizabeth Napier & Francesca Sanguineti, *Fashion Merchandisers’ Slash and Burn Dilemma: A Consequence of Over Production and Excessive Waste?*, 3 RUTGERS BUS. REV. 159 (2018) (examining the disposal of unsold luxury goods); John Annamma Joy et al., *Fast Fashion, Sustainability, and the Ethical Appeal of Luxury Brands*, 16 FASHION THEORY 273, 274, 280 (2012).

<sup>10</sup> See Napier & Sanguineti *supra* note 9, at 160–64; see also *infra* notes 91–128 and accompanying text.

<sup>11</sup> See *infra* notes 96–110 and accompanying text.

<sup>12</sup> See Annamma Joy, *supra* note 9, at 274–75.

<sup>13</sup> Elizabeth Paton, *Burberry to Stop Burning Clothing and Other Goods It Can’t Sell*, N.Y. TIMES (Sept. 6, 2018), <https://www.nytimes.com/2018/09/06/business/burberry-burning-unsold-stock.html> [<https://perma.cc/V8DQ-TQCV>]; Sam Kaur, *Does Louis Vuitton Really Destroy Unsold Bags?*, LUXURY VIEWS (Dec. 20, 2020), <https://luxuryviewer.com/does-louis-vuitton-really-destroy-unsold-bags/> [<https://perma.cc/VC4Q-BV4U>]; see also Napier & Sanguineti, *supra* note 9, at 161.

<sup>14</sup> See Emily Farra, *150 Brands Have Joined Emmanuel Macron’s “Fashion Pact” to Make the Fashion Industry More Sustainable*, VOGUE (Aug. 26, 2019), <https://www.vogue.com/article/fashion-pact-sustainability-g7-summit-emmanuel-macron> [<https://perma.cc/HTM9-54DE>].

<sup>15</sup> See *Brands File Suit as Counterfeit Masks Continue to Pop Up Online*, THE FASHION L. (Apr. 19, 2021), <https://www.thefashionlaw.com/brands-file-suit-as-counterfeit-face-masks-continue-to-pop-up-online/> [<https://perma.cc/QMP4-ALAZ>]; *Counterfeit Fashion-Manufacturers Are Pivoting to Making Counterfeit Masks*, THE FASHION L. (Mar. 31, 2020), <https://www.thefashionlaw.com/counterfeit-fashion-makers-pivot-to-making-counterfeit-masks/> [<https://perma.cc/53NE-U7BL>] (reporting that “fake masks may pose a

on international trade and environmental sustainability separately without recognizing a correlation between the two.<sup>16</sup> Congressional efforts aimed at passing an environmental justice bill have not yet materialized.<sup>17</sup> Instead, Congress enacted the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) to modernize the drawback program and ensure a fair and competitive trade environment.<sup>18</sup> However, the TFTEA failed to address the environmental implications and the lack of sustainability in drawback.<sup>19</sup> Many stakeholders such as, fashion brands, consumers, and government officials, have suggested alternatives to this unsustainable practice, including donation.<sup>20</sup> However, none of these stakeholders have suggested a viable method of implementing a donation regime into USCBP's drawback program.

This Article offers a proposed legislative amendment to the Tariff Act of 1930 to pick up where the TFTEA left off and adopt donation as a method to qualify for duty drawback under the United States Customs and Border Protection's (the "USCBP") program. That amendment to the Tariff Act of 1930 would be coined the DAPPER Fashion Act. To introduce the proposed amendment, Part I of this Article offers some background on the practice of repurposing in fashion, and concludes by drawing a parallel between repurposing and international trade, specifically the drawback program facilitated by United States Customs and Border Protection. Part II

---

threat to the wellbeing of [their wearers] because they are not made with the correct materials or in sterile environments.”).

<sup>16</sup> Compare The Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. No. 114–25, 130 Stat. 122 (2016) (establishing new procedures for drawback without addressing environmental concerns) with Environmental Justice for All Act, S. 4401, 116th Cong. (2020), H.R. 5986, 116th Cong. (2020), and Environmental Justice for All Act, S. 872, 117th Cong. (2021), H.R. 2021, 117th Cong. (2021).

<sup>17</sup> See H.R. 5986 (2020); Environmental Justice for All Act, S. 872, 117th Cong. (2021), H.R. 2021, 117th Cong. (2021).

<sup>18</sup> See generally The Trade Facilitation and Trade Enforcement Act of 2015.

<sup>19</sup> See *id.*; see also Andrew Miller, *Repurposing Ecolabels: Consumer Pressure as a Tool to Abate Human Rights Violations in International Fisheries*, 44 NYU ENV'T L. J. SYNDICATE 116 (Apr. 25, 2017).

<sup>20</sup> KATE FLETCHER, SUSTAINABLE FASHION AND TEXTILES: DESIGN JOURNEYS 95–108 (2008); see also Arielle Elia, *Fashion's Destruction of Unsold Goods: Responsible Solutions for an Environmentally Conscious Future*, 30 FORDHAM INTELL. PROP., MEDIA & ENT. L. J. 539, 574–76 (2020).



of this Article explores the origin, purpose, and application process for duty drawback. Part III of this Article investigates the consequences of the drawback and its connection to the fashion industry in five subparts. Parts III.(A)-(E) survey the environmental effects, waste accumulation, chemical emissions, energy dissipation, and other harms caused by drawback's exportation and destruction provisions. Part IV of this Article offers a comprehensive legislative solution to address the fashion industry's concerns and to eliminate the environmental and sustainability issues caused by exportation and destruction. Part IV.(C), elaborates on the structure of drawback donations by defining internal and external donation. Part IV.(D) explains the modifications that would be required to implement donation into the current drawback program. Part IV.(E) juxtaposes donation with legislative history to support its integration. Finally, Part IV.(F) outlines the industry impact of this addition on the government, luxury brands, and institutional recipients.

## I. BACKGROUND

Most scholars agree that repurposing originated in the nineteenth century, but they disagree about the historical event tethered to the practice.<sup>21</sup> Others argue that repurposing originated centuries prior, as a function of economy as remade clothing were a large part of the second hand trade market.<sup>22</sup> Notwithstanding its origin, fashion professionals credit repurposing and its modern counterpart—

---

<sup>21</sup> GWILT & RISSANEN, *supra* note 6, at 22; RB Chavan, *Environmental Sustainability Through Textile Recycling*, 2 J. TEXTILE SCI. & ENG'G 1, 1 (May 2014) <https://www.hilarispublisher.com/open-access/environmental-sustainability-through-textile-recycling-2165-8064.S2-007.pdf> [<https://perma.cc/MXY4-JYZW>] (attributing textile repurposing to the Napoleonic war); Natalie Scola, *Sustainability in 18th Century Style: Remaking and Reusing Garments*, MUSINGS (Mar. 24, 2021), (noting that garments were not “static object[s],” but instead “were continually remade into other clothes or items”); Katie Knowles, *Fashioning Slavery: Slaves and Clothing in the U.S. South, 1830–1865*, at 71 (May 2014) (Ph.D. dissertation, Rice University) (available at <https://scholarship.rice.edu/bitstream/handle/1911/77185/KNOWLES-DOCUMENT-2014.pdf;sequence=1>) [<https://perma.cc/XVM9-T2V2>] (suggesting that repurposing originated with Antebellum slavery and the formerly enslaved creating new garments from used, old, or ragged ones).

<sup>22</sup> See Scola, *supra* note 21; see also ELIZABETH WAY, *BLACK DESIGNERS IN AMERICAN FASHION* 32 (2021) (suggesting that repurposing originated with American slavery during the eighteenth century).

upcycling— and related concepts to pioneers like Maison Margiela<sup>23</sup> and Dapper Dan.<sup>24</sup>

Martin Margiela, the Belgian designer responsible for creating his own French luxury fashion house, has been recognized for decades as a pioneer. Margiela is considered a pioneer because he “re-defined secondhand” fashion. Secondhand fashion was once associated with working class and poorer individuals, but Margiela is credited with elevating the public’s association of secondhand fashion products. These goods were once considered poor but are now considered to have “high commercial value” based on Margiela’s contemporary transformation of raw materials.<sup>25</sup> Margiela is a 1980 graduate of Antwerp’s Royal Academy of Arts and was a trained

---

<sup>23</sup> Carla Binotto & Alice Payne, *The Poetics of Waste: Contemporary Fashion Practice in the Context of Wastefulness*, 9 FASHION PRAC. 1, 12 (2017), <https://eprints.qut.edu.au/100060/15/The%2BPoetics%2Bof%2BWaste.pdf> (collecting academic sources that discuss Maison Margiela and his work with repurposing/second hand products); Maria Skivko, *Deconstruction in Fashion as a Path Toward New Beauty Standards: The Maison Margiela Case*, 10 ZONE MODA J. 39, 45 (2020) (“With many references to the Japanese designers and their deconstructivist fashion, Maison Margiela was at the forefront of the Belgian wave of deconstructivist fashion.”); Ellie Davies, *6 Genius Upcycled Looks to Note from Maison Margiela’s AW20 Show*, VOGUE (Feb. 26, 2020), <https://www.vogue.co.uk/fashion/gallery/maison-margiela-aw20-recicla> (discussing and attributing upcycling efforts to Margiela based on his current work expanding on the 1994 collection); *Martin Margiela | Upcycling Since the 1990s*, CEMELI (July 22, 2021), <https://www.cemeli.com/blogs/cemeli-blog/high-end-fashion-is-turning-circular>.

<sup>24</sup> Jolie B. Schenerman, *One Consumer’s Trash is Another’s Treasure: Upcycling’s Place in Trademark Law*, 38 CARDOZO ARTS & ENT. L.J. 745, 756-58 (2020) (associating Dapper Dan with upcycling); Alessandra D’Alessandro, *The Evolution and History of Upcycling: From the 40s to Nowadays*, STAIN (Apr. 4, 2022), <https://www.revibe-upcycling.com/blog/case-studies/the-evolution-and-history-of-upcycling> (associating Dapper Dan with repurposing and upcycling); see generally, Deborah Bradley, *Agoraphobia and Music Education: Fear of the Closed, Fear of the Open*, 16 ACTION, CRITICISM & THEORY FOR MUSIC EDUC. 38, 41 (Aug. 2017) (book review), available at [http://act.maydaygroup.org/articles/Bradley16\\_1.pdf](http://act.maydaygroup.org/articles/Bradley16_1.pdf) (associating Dapper Dan with repurposing); MICHELE T. FINAMORE, FASHIONING AMERICA: GRIT TO GLAMOUR 30 (2022) (recognizing that Dapper Dan’s first piece was a “jacket made from a Gucci garment bag”).

<sup>25</sup> Caroline Evans, *The Golden Dustman: A Critical Evaluation of the Work of Martin Margiela and a Review of Martin Margiela: Exhibition (9/4/1615)*, 2 FASHION THEORY 73 (1998); see also Skivko, *supra* note 23, at 45.

designer who studied under Jean Paul Gaultier before launching his own brand.<sup>26</sup>

On the other side of the world, Daniel Day, who is professionally known as Dapper Dan, is an African American couturier who spent much of his life hustling on the streets in Harlem and opened a luxury boutique at the age of thirty-seven.<sup>27</sup> The upbringing of Dapper Dan resembles that of other African Americans raised in poverty—witnessing parents work multiple jobs, turning neighborhoods into familial communities of shared history and culture, and by systemic design, the introduction of drugs and gentrification.<sup>28</sup> Dan was surrounded by fashion his whole life, as he observed women in mink stoles, men in suits and bowlers, and even teachers in tailored suits.<sup>29</sup>

Dapper Dan was largely responsible for outfitting “everybody who was anybody” in Harlem in the 1980s.<sup>30</sup> While Dan’s initial clientele included gangsters, hustlers, and drug dealers, he later clothed basketball players, rappers, hip hop legends, and other celebrities of color.<sup>31</sup> Dan is considered the father of logomania, incorporating brand logos in a way that popularized streetwear’s emphasis on logos, and is responsible for introducing luxury to Black Harlem.<sup>32</sup> Dan’s silk screening process allowed him to have more creative freedom and industry-leading exclusivity.<sup>33</sup> However, Dan was not originally supported by his entire community; the Black middle class of Harlem “snubbed him” until his designs and identity were recognized in the fashion industry and eventually around the

---

<sup>26</sup> Suzy Menkes, *Preface* to KAT DEEBO ET AL., *MARGIELA, THE HERMÈS YEARS* 7 (2018).

<sup>27</sup> See DANIEL R. DAY, *DAPPER DAN MADE IN HARLEM: A MEMOIR* 3–11, 70–90, 163–73 (2019).

<sup>28</sup> *Id.* at 3–11, 22, 26–30.

<sup>29</sup> *Id.* at 4, 18; see generally André Leon Talley, *Haute in Harlem*, *ESSENCE MAG.*, Sept. 2018, at 100.

<sup>30</sup> See DAY, *supra* note 27, at xiv.

<sup>31</sup> See DAY, *supra* note 27, at xii, 178–82, 195–97; David Marchese, *Dapper Dan on Creating Style, Logomania and Working with Gucci*, *N.Y. TIMES* (July 1, 2019), <https://www.nytimes.com/interactive/2019/07/01/magazine/dapper-dan-hip-hop-style.html> [<https://perma.cc/M9Q9-EMQY>]; Talley, *supra* note 29.

<sup>32</sup> See Marchese, *supra* note 31.

<sup>33</sup> Email from Jelani Day, son of Dapper Dan (Daniel Day), to Arielle Elia (Oct. 12, 2022) (on file with author).

world.<sup>34</sup> Eventually, Dan started to receive cease-and-desist letters that cited claims of trademark infringement from several luxury brands, including Fendi, which eventually led to him closing his boutique and going underground.<sup>35</sup> He later resurfaced and was given the respect and admiration he earned by the industry and his community, commensurate with that of Maison Margiela.<sup>36</sup>

Dapper Dan's initial creations, also considered "knock-ups," were the product of upcycling or repurposing garment bags from Gucci—and are worthy of being examined further.<sup>37</sup> The origin of Dan's initial line is clear. One day, Dan made what he initially thought was a promise that he could not keep. Dan suggesting that he could turn a brown leather Louis Vuitton bag with gold lettering into a jacket.<sup>38</sup> To carry out this mission, Dapper Dan first traveled to the Louis Vuitton store on Fifth Avenue in New York to investigate his claim, but to no avail proceeded to the Gucci store.<sup>39</sup> Thinking he was out of options, Dan noticed beige garment bags, on his way out of the store, that he later purchased to ensure his word was his bond.<sup>40</sup> For weeks, Dan purchased all the garment bags that Gucci sold to keep up with the demand of his clientele.<sup>41</sup> The

---

<sup>34</sup> Marchese, *supra* note 31 (noting that many Blacks considered his work fake and made him a laughingstock).

<sup>35</sup> *Id.*; see also *Two of Fashion's Favorite Lawsuits Never Actually Happened*, FASHION L. (Aug. 22, 2019), <https://www.thefashionlaw.com/two-of-fashions-favorite-lawsuits-never-actually-happened/> [<https://perma.cc/Q27M-R27S>] (noting that while Dapper Dan did in fact receive cease-and-desist letters from many brands, the Gucci lawsuit that many recite never truly existed).

<sup>36</sup> See *supra* notes 23–26.

<sup>37</sup> The term "knock up," as used by Dapper Dan refers to his self-made monogrammed leather goods that featured "high-end materials and craftsmanship of a luxury item" that are new and different. Though these products were the result of him blackening various brands, his term is a variation of the legal term of art—knock off—which refers to confusingly similar product of lesser quality, See DAY, *supra* note 27 at 189; Yomi Adegoke, 'I Came Up a Black Staircase': How Dapper Dan Went From Fashion Industry Pariah to Gucci God, GUARDIAN (Jan. 14, 2021), <https://www.theguardian.com/society/2021/jan/14/i-came-up-a-black-staircase-how-dapper-dan-went-from-fashion-industry-pariah-to-gucci-god> [<https://perma.cc/8SLP-VNYF>].

<sup>38</sup> See DAY, *supra* note 27, at 178–82.

<sup>39</sup> *Id.* at 180.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 181.

demand soon overtook the supply and Dan decided to silk-screen print luxury logos on his creations in lieu of using the garment bags.<sup>42</sup>

Under existing intellectual property laws, upcycled garment bags are considered knockoffs because they featured authentic Gucci fabric but are not manufactured by Gucci or sold as authentic by Dan.<sup>43</sup> Despite concerns with the legal sufficiency of his products, Dan has promoted the ongoing relevancy of cultural creative interpretation for American designers. There are countless brands—new and old—that unconsciously draw from his inspiration.<sup>44</sup> Therefore, this Article focuses on the transformative concept of up-cycling, as a theme that warrants further exploration to justify adopting donation as mechanism to obtain duty drawback on imported merchandise.

## II. DUTY DRAWBACK

Dating back to the first English settlement in 1607, the process of importing and exporting goods was essential to everyday life.<sup>45</sup>

---

<sup>42</sup> *Id.* at 182–90.

<sup>43</sup> Compare Susan Scafidi, *Of Burch Battles, White Bread, and Wonder About WASPs*, COUNTERFEIT CHIC (Nov. 7, 2012), <http://counterfeitchic.com/2012/11/of-white-bread-and-wondering-about-wasps.html> [<https://perma.cc/CB3D-4KHF>] (suggesting that a knockoff is a strikingly similar product that does not claim to be an original product by comparing Tory Burch’s orange storefront door to the green equivalent of Chris Burch’s C Wonder store), *with* Anthem Sports, LLC v. Under the Weather, LLC, 320 F. Supp. 3d 399, 415 (D. Conn. 2018) (featuring a dictionary definition of knockoff), *and* H–D U.S.A., LLC v. SunFrog, LLC, 311 F. Supp. 3d 1000, 1028 (E.D. Wis. 2018) (suggesting that a knockoff becomes actionable when it successfully exploits a consumer’s association of the knocked off product with a genuine article or the creator seeks to profit from the goodwill of the recognized trademark).

<sup>44</sup> See, e.g., Rocket Made It (@rznrocket\_), INSTAGRAM, <https://www.instagram.com/reel/CacoZaijyAD/?igshid=YmMyMTA2M2Y=> [<https://perma.cc/5NAX-W3QG>] (last visited Nov. 6, 2022); Unilad, *Upcycling Designer Fashion*, FACEBOOK (Apr. 19, 2021), <https://www.facebook.com/uniladmag/videos/1376209952734777/> [<https://perma.cc/VKQ6-Z6PH>].

<sup>45</sup> See DOUGLAS A. IRWIN, CLASHING OVER COMMERCE: A HISTORY OF US TRADE POLICY (MARKETS AND GOVERNMENTS IN ECONOMIC HISTORY) 31–32 (2017) (explaining that trade “was an integral part of the economic life of the North American colonies”); see generally JOHN M. DOBSON, TWO CENTURIES OF TARIFFS: THE BACKGROUND AND EMERGENCE OF THE UNITED STATES INTERNATIONAL TRADE COMMISSION (1976).

Early North American colonies specialized in different activities based on their location and resources, which promoted international trade and encouraged economic development.<sup>46</sup> This emphasis on trade continued upon the establishment of a federal government.<sup>47</sup> In fact, Congress enacted the nation's first Tariff Act on July 4, 1789, which was designed to “support [the] government, for the discharge of the debts of the United States, and the encouragement and protection of manufactures, that duties be laid on goods, ware and merchandises imported.”<sup>48</sup> Specifically, § 3 of the Act introduced America's first drawback provision, which allowed for the return of 99% of “the duties paid, or secured to be paid upon any of the goods” mentioned in the Act if the goods are exported within one year of the duty being paid or security being given.<sup>49</sup>

America's steady growth, expansion, and development was supported by Congress' use of drawback as a common tool to advance trade.<sup>50</sup> For example, drawback was extended to imported products that were later exported as a manufactured product (1789), articles

---

<sup>46</sup> See IRWIN, *supra* note 45, at 32–34; see generally THE FEDERALIST NO. 11 (Alexander Hamilton) (“There are rights of great moment to the trade of America which are rights of the Union—I allude to the fisheries, to the navigation of the Western lakes, and to that of the Mississippi. The dissolution of the Confederacy would give room for delicate questions concerning the future existence of these rights; which the interest of more powerful partners would hardly fail to solve to our disadvantage. The disposition of Spain with regard to the Mississippi needs no comment. France and Britain are concerned with us in the fisheries, and view them as of the utmost moment to their navigation. They, of course, would hardly remain long indifferent to that decided mastery, of which experience has shown us to be possessed in this valuable branch of traffic, and by which we are able to undersell those nations in their own markets. What more natural than that they should be disposed to exclude from the lists such dangerous competitors? This branch of trade ought not to be considered as a partial benefit. All the navigating States may, in different degrees, advantageously participate in it, and under circumstances of a greater extension of mercantile capital, would not be unlikely to do it. As a nursery of seamen, it now is, or, when time shall have more nearly assimilated the principles of navigation in the several States, will become, a universal resource.”).

<sup>47</sup> See IRWIN, *supra* note 45, at 16, 77–79.

<sup>48</sup> Tariff Act of 1789, ch. 2, 1 Stat. 24, 24–27 (1789).

<sup>49</sup> *Id.* (permitting an allowance in lieu of drawback for “quintal of dried, and on every [exported] barrel of pickled fish . . . and salted provision,” prepared with imported salt by American fisheries).

<sup>50</sup> See IRWIN, *supra* note 45, at 77; see generally U.S. TARIFF COMM'N, STUDY OF TEMPORARY ENTRY PROVISIONS OF TITLE 19 OF THE UNITED STATES CODE, INVESTIGATION 332–45 (1966) [hereinafter “USTC Study”].

in transit within the United States (1804), silk fabrics dyed domestically (1824), steels and building materials other than lumber (1832/1872), vessel supplies use in foreign trade (1884) and now, almost any product.<sup>51</sup> Congress made its last and major reorganization of drawback in the Smoot-Hawley Tariff, also known as the Tariff Act of 1930, codified at 19 U.S.C. § 1313.<sup>52</sup> However, Congress did not limit its revisions only to drawback coverage, but also made changes to the implementation and administration of the process.<sup>53</sup>

Specifically, Congress amended the Tariff Act of 1930 to establish an additional category of drawback, which expanded the drawback process, yet again.<sup>54</sup> This new category was named “unused merchandise” drawback and authorized a refund for unused goods that were subsequently exported or destroyed.<sup>55</sup> The Senate explained its rationale as follows:

Importers would receive drawback in those instances in which the merchandise imported was not used, and they were unable to anticipate the need to export. Such domestic demand for the imported product, that the merchandise cannot be disposed of commercially without financial loss, and that is desirable to return the merchandise to the foreign source or sell it in a foreign country. This provision would be particularly helpful in preventing ‘distress’ sales of imported merchandise, which could have a disruptive effect on U.S. markets. The higher the duty rate and the lower the cost of the freight, the greater the probability would be of importers using this provision to return

---

<sup>51</sup> See USTC Study, *supra* note 50, at 5–7; see also 19 U.S.C. § 1313.

<sup>52</sup> Tariff Act of 1930, ch. 497, § 313, 46 Stat. 693 (codified as amended at 19 U.S.C. § 1313).

<sup>53</sup> See generally, HOUSE COMM. ON WAYS AND MEANS, OVERVIEW AND COMPILATION OF U.S. TRADE STATUTES 84–88 (2010); North American Free Trade Agreement Implementation Act, Pub. L. No. 103-182, § 638, 107 Stat. 2057 (1993) (modifying the drawback system to permit unused merchandise to qualify for drawback, extending the viability of drawback claims for rejected merchandise to three years).

<sup>54</sup> See USTC Study, *supra* note 50, at 11.

<sup>55</sup> See U.S. CUSTOMS & BORDER PROT., *supra* note 7.

unused merchandise or to make sales in foreign markets.<sup>56</sup>

Second, Congress revitalized the manufacturing drawback by introducing the concepts of “substitution” and “same condition” drawback, which modified many definitions within the statute to realize broad results throughout.<sup>57</sup> As a result of these changes, now there are three categories of goods that are eligible for drawback: manufacturing, rejected merchandise, and unused merchandise.<sup>58</sup>

#### A. PURPOSE

Many debated the power that would be granted to each branch of government upon the ratification of the U.S. Constitution.<sup>59</sup> Much of the controversy was centered around the revenue raising power

---

<sup>56</sup> See S. REP. NO. 96-999 at 7347 (1980).

<sup>57</sup> See U.S. CUSTOMS & BORDER PROT., *supra* note 7; see also S. REP. NO. 98-308 at 29 (1983) (“It would allow drawback of 99 percent of the duties paid for articles being exported after use for their intended purpose. The importer of such packaging materials would be able to avoid either absorbing the duties or using temporary importation bonds, customs bonded warehouses, or foreign trade zones, although substantial recordkeeping would be needed to obtain drawback payments.”).

<sup>58</sup> For the latest state of drawback, see Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. No. 114-25, 130 Stat. 122 (2016). For the evolution of drawback, see S. REP. NO. 82-323 (1951), as reprinted in 1951 U.S.C.C.A.N. 1688, 1688, S. REP. NO. 83-632 (1953), as reprinted in 1953 U.S.C.C.A.N. 2283, 2290, S. REP. NO. 84-2782 (1956), as reprinted in 1956 U.S.C.C.A.N. 4458, 4458, S. REP. NO. 85-2165 (1958), as reprinted in 1958 U.S.C.C.A.N. 3576, 3576, S. REP. NO. 90-1659 (1968), as reprinted in 1968 U.S.C.C.A.N. 4479, 4480, S. REP. NO. 91-1475 (1970), as reprinted in 1970 U.S.C.C.A.N. 6121, 6121, S. REP. NO. 96-999 (1980), as reprinted in 1980 U.S.C.C.A.N. 7345, 7347, S. REP. NO. 98-308 (1983), as reprinted in 1983 U.S.C.C.A.N. 4910, 4912, H.R. REP. NO. 98-1156, (1984) (Conf. Rep.), as reprinted in 1984 U.S.C.C.A.N. 5220, 5241, H.R. REP. NO. 99-841, (1986) (Conf. Rep.), as reprinted in 1986 U.S.C.C.A.N. 4075, 4075, S. REP. NO. 100-509 (1988), as reprinted in 1988 U.S.C.C.A.N. 2395, 2407–08, S. REP. NO. 101-252 (1990), as reprinted in 1990 U.S.C.C.A.N. 928, 966, H.R. REP. NO. 101-650, (1990) (Conf. Rep.), as reprinted in 1990 U.S.C.C.A.N. 989, 1009, H.R. REP. NO. 103-361, pts. 1–3 (1993), as reprinted in 1993 U.S.C.C.A.N. 2552, H.R. REP. NO. 103-826, pts. 1–2 (1994), as reprinted in 1994 U.S.C.C.A.N. 2721, S. REP. NO. 104-393 (1996), as reprinted in 1996 U.S.C.C.A.N. 4036, 4042, H.R. REP. NO. 106-789, at 4 (2000), H.R. REP. NO. 108-224, pts. 1–2 (2003), as reprinted in 2003 U.S.C.C.A.N. 1050, H.R. REP. NO. 108-771 (2004) (Conf. Rep.), as reprinted in 2004 U.S.C.C.A.N. 2405, 2405; Statement by President, see 2004 U.S. Code Cong. and Adm. News, p. S41. H.R. REP. NO. 110-627 (2008) (Conf. Rep.), as reprinted in 2008 U.S.C.C.A.N. 536, 536.

<sup>59</sup> See, e.g., THE FEDERALIST NO. 47 (James Madison).



of the federal government<sup>60</sup> In fact, then-Representative James Madison advocated for a broad revenue-raising power that would promote economic trade and ensure economic stability.<sup>61</sup> He explained in the Federalist papers that:

It cannot be doubted that [taxes on imports] will always be a valuable source of revenue; that for a considerable time it must be a principal source; that at this moment it is an essential one. But we may form very mistaken ideas on this subject, if we do not call to mind in our calculations, that the extent of revenue drawn from foreign commerce must vary with the variations, both in the extent and the kind of imports; and that these variations do not correspond with the progress of population, which must be the general measure of the public wants . . . In a more remote stage, the imports may consist in a considerable part of raw materials, which will be wrought into articles for exportation, and will, therefore, require rather the encouragement of bounties, than to be loaded with discouraging duties. A system of government, meant for duration, ought to contemplate these revolutions, and be able to accommodate itself to them. Some, who have not denied the necessity of the power of taxation, have grounded a very fierce attack against the Constitution, on the language in which it is defined. It has been urged and echoed, that the power “to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States,” amounts to an unlimited commission to exercise every power which may be alleged to be necessary for the common defense or general welfare.<sup>62</sup>

---

<sup>60</sup> See Douglas A. Irwin, *Revenue or Reciprocity? Founding Feuds over Early U.S. Trade Policy*, in FOUNDING CHOICES: AMERICAN ECONOMIC POLICY IN THE 1790s 89, 98–99 (Douglas A. Irwin & Richard Sylla eds., 2010).

<sup>61</sup> See THE FEDERALIST NO. 41 (James Madison).

<sup>62</sup> *Id.*

Madison's words undeniably influenced the legislature, as it thereafter adopted the first piece of legislation imposing a tax—i.e., a tariff—on imports and etching in stone a federal drawback.<sup>63</sup> Therefore, it is undebatable that a purpose of drawback is to stimulate trade.<sup>64</sup>

In 1890, Chairman of the House of Representatives' Ways and Means Committee, William McKinley, reiterated that drawback is “intended to encourage domestic manufactures, [and] this encouragement is intended only when such manufactures are endeavoring to build up the foreign trade of the United States.”<sup>65</sup> However, scholars posit that the 1890 drawback law was designed to stimulate trade, increase domestic wages, and provide employment opportunities to Americans.<sup>66</sup> Some years later, the United States Supreme Court ratified the latter by concluding that “the object of the drawback was partly, at least, to encourage domestic manufactures, and that all the substantial work done in this country was in nailing together the tops, bottoms, and sides of these boxes, we think it clear

---

<sup>63</sup> See DOBSON, *supra* note 45, at 6.

<sup>64</sup> Compare Tariff Act of 1789, *supra* note 47 (“in consideration of the expense which shall have accrued by the entry and safekeeping thereof”), with Tariff Act of 1791 (“encouragement of the export trade of the United States”); Ways and Means Committee report on 1930 Tariff Act (“building up of a foreign commerce”); and An Act of June 6, 1872 (“That from and after the passage of this act all lumber, timber, hemp, manila, and iron and steel rods, bars, spikes, nails, and bolts, and copper and composition metal, which may be necessary for the construction and equipment of vessels built in the United States for the purpose of being employed in the foreign trades, including the trade between the Atlantic and Pacific ports of the United States, and finished after the passage of this act, may be imported in bond, under such regulations as the Secretary of the Treasury may prescribe; and upon proof that such materials have been used for the purpose aforesaid, no duties shall be paid thereon”).

<sup>65</sup> See Drawback on Cigarettes Sent Abroad for Destruction, 31 Op. Att’y Gen. 6 (1916) (citing remarks from Rep. William McKinley contained within the Congressional Record at 21 CONG. REC. 4247–48 (daily ed. May 7, 1890) (statement of Rep. William McKinley)).

<sup>66</sup> See GEORGE B. CURTISS, PROTECTION AND PROSPERITY: AN ACCOUNT OF TARIFF LEGISLATION AND ITS EFFECT IN EUROPE AND AMERICA 641–43 (1896) (explaining how the McKinley Tariff Act of 1890 permitted a drawback on sugar and expanded employment opportunities for Americans because it saved over \$53 million); see IRWIN, *supra* note 45, at 2 (explaining that U.S. trade policy was aimed at “achieving three principle objectives: raising revenue for the government by levying duties on imports, restricting imports to protect domestic producers from foreign competitors, and concluding reciprocity agreements to reduce trade barriers and expand exports,” which could arguably be translated to drawback).

that it cannot be said that the boxes so constructed were wholly manufactured in the United States.”<sup>67</sup> In 1958, it appears the Senate also interpreted the history of drawback broadly by concluding that “[drawback] is designed to relieve domestic processors and fabricators of imported dutiable merchandise, in competing for export markets, of the disadvantages which the duties on the imported merchandise would otherwise impose upon them. . . . [and] has long been regarded as a concomitant of the tariff system.”<sup>68</sup> Unmoved by these interpretations of legislative history, a 1993 report from the House of Representatives detailed its position that drawback is designed to “promote economic activity in the United States, resulting in increased exports.”<sup>69</sup>

Currently, debates about the legislative purpose of USCBP’s drawback program are still ongoing. For example, in 2020 the Court of International Trade revisited the legislative purpose of substitution practices within drawback in *National Ass’n of Manufacturers v. United States Dep’t Treasury*, and concluded the legislative purpose was “to encourage exports by expanding the ability to claim drawback.”<sup>70</sup> Consequently, the expansion of drawback has resulted in a revised application process.<sup>71</sup>

---

<sup>67</sup> See *Tide-Water Oil Co. v. United States*, 171 U.S. 210, 219 (1898); see, e.g., Paul Wooton, *Scientific Tariff Specialists Would Keep Copper on Free List*, 117 ENG’G. & MINING J. PRESS 458 (1924) (discussing the potential of extending drawback to copper to bolster American trade).

<sup>68</sup> See S. REP. NO. 85–2165 (1958), as reprinted in 1958 U.S.C.C.A.N. 3576, 3577; but see Customs Regulations Revision Relating to Drawback; Specialized and General Provisions, 48 Fed. Reg. 46740, 46741 (Oct. 14, 1983) (to be codified at 19 C.F.R. pts. 7, 10, 22, 113, 145, 158, 191) (“The rationale for drawback has always been to encourage American commerce or manufacturing, or both. It permits the American manufacturer to compete in foreign markets without the handicap of including in his costs, and consequently in his sales price, the duty paid on imported merchandise.”).

<sup>69</sup> See H.R. REP. NO. 103–361, pt. 1 (1993), as reprinted in 1993 U.S.C.C.A.N. 2552, 2680.

<sup>70</sup> See *Nat’l Ass’n of Mfrs. v. U.S. Dep’t of the Treasury*, 427 F. Supp. 3d 1362, 1373–74 (Ct. Int’l Trade 2020) (collecting the legislative history of drawback laws since the addition of substitution practices).

<sup>71</sup> See *CBP’s TFTEA Implementation Updates*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/trade/trade-enforcement/tftea/knowledge-center> [<https://perma.cc/4SDQ-JUL4>] (last modified Mar. 8, 2022) (“TFTEA extends funding for ACE, which transmits the private sector’s import-export data to 47 PGA’s, eliminating over 200 different forms, and streamlining trade processes.”).

### B. Application Process for Duty Drawback

Post-Trade Facilitation and Trade Enforcement Act, someone filing a claim for drawback must be eligible pursuant to statute and file the claim electronically to the Automated Commercial Environment (ACE) via the Automated Broker Interface (ABI).<sup>72</sup> However, before 2019, drawback claims could be filed electronically or manually to one of the drawback offices in Chicago, IL; Houston, TX, New York/Newark, NJ; Los Angeles, CA; or San Francisco, CA.<sup>73</sup> Now, “[a] complete drawback claim shall consist of a successful claim acceptance in ACE and the successful upload of mandatory documents into the Digital Image System (DIS).”<sup>74</sup> Submitting a claim via ABI requires that a filer include information from eight (8) groups to describe the item eligible for drawback.<sup>75</sup> Those groupings are: (1) header grouping, (2) bond details grouping, (3) imports grouping, (4) exports/destroy grouping, (5) notice of intent grouping, (7) NAFTA grouping and (8) totals grouping.<sup>76</sup>

Each of the groupings will allow a filer to input corresponding information that supports their claim for drawback:

**Header** – claim type (new or existing), drawback/entry claim number, port of processing, type of drawback claim, and drawback privileges, such as waiver type or accelerated payment.

**Bond Details** – bond type – Continuous or Single Transaction bond (STB) and the surety code of the bond.

---

<sup>72</sup> See 19 C.F.R. § 191.33 (2022) (providing the eligibility standard for persons seeking to claim drawback); U.S. CUSTOMS AND BORDER PROT., BUSINESS RULES AND PROCESS DOCUMENT: AUTOMATED COMMERCIAL ENVIRONMENT (ACE) ENTRY SUMMARY (VERSION 10.5) (2021) [hereinafter “CUSTOMS BUSINESS RULES DOCUMENT”], [https://www.cbp.gov/sites/default/files/assets/documents/2021-Mar/ACE%20Entry%20Summary%20Business%20Rules%20V10.5\\_0.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2021-Mar/ACE%20Entry%20Summary%20Business%20Rules%20V10.5_0.pdf) [https://perma.cc/4K55-8YSS].

<sup>73</sup> See IBP INC., UNITED STATES: IMPORTING INTO THE UNITED STATES: A GUIDE FOR COMMERCIAL IMPORTERS 79 (2018).

<sup>74</sup> CUSTOMS BUSINESS RULES DOCUMENT, *supra* note 72, at 82.

<sup>75</sup> *Id.*

<sup>76</sup> See U.S. Customs and Border Protection, *ACE Webinar for the Trade on Drawback Claims*, YOUTUBE (June 26, 2019) [hereinafter “Customs ACE Webinar”], <https://www.youtube.com/watch?v=ieD1nq1R4SI> [https://perma.cc/8HF7-SMPR].

**Imports** – Entry Number, Harmonized Tariff Schedule (HTS) Number, Description, Quantity, UOM, Claimed Amount.

**Manufactured/Produced Article** – quantity, HTS/Schedule B Number, Production Date, and Factory Location.

**Exports/Destroy** – desired action (exportation or destruction), BOL indicator, Country of Ultimate Destination, Name of Destroyer, and/or date of destruction.

**Notice of Intent** – includes information from the CBP Form 7553, such as place of destruction, date of destruction, and contact information of the destroyer.

**NAFTA** – Entry Number, Entry Date, and Exchange Rate

**Totals** – revenue information.<sup>77</sup>

After inputting this information and submitting the claim, the filer must upload mandatory documents to the Digital Image System (DIS) that correspond to the appropriate type of drawback claim, within twenty-four hours.<sup>78</sup> What is required for each type of drawback claim varies, but filers regularly submit a USCBP (“Customs”) Form 7553 to evidence the filer’s notice of intent to export, destroy, or return merchandise.<sup>79</sup> For exportation, filers should upload actual proof of exportation in the form of a bill of lading, air waybill, or freight waybill.<sup>80</sup> These documents must clearly reflect the date of exportation, the fact of exportation, exporter, and the item exported.<sup>81</sup> However, for destruction the filer should include a certified statement of destruction from a Customs agent or disinterested third

---

<sup>77</sup> *Id.*

<sup>78</sup> See CUSTOMS BUSINESS RULES DOCUMENT, *supra* note 72, at 82.

<sup>79</sup> See *id.*; see also U.S. CUSTOMS AND BORDER PROTECTION, NOTICE OF INTENT TO EXPORT, DESTROY OR RETURN MERCHANDISE FOR PURPOSES OF DRAWBACK (2008) [hereinafter “Customs Form 7553”], <http://dutyrefund.com/assets/downloads/forms/CBP%20Form%207553%20-%20Notice%20of%20Intent.pdf> [https://perma.cc/MLN4-HULL].

<sup>80</sup> See CUSTOMS BUSINESS RULES DOCUMENT, *supra* note 72, at 10; Customs ACE Webinar, *supra* note 76.

<sup>81</sup> See Customs ACE Webinar, *supra* note 76.

party.<sup>82</sup> Once the required documentation is received, Drawback Specialists will review the claim for sufficiency and completeness and then notify filers of incomplete or missing information.<sup>83</sup> ACE will notify filers once their claim has been validated and this signifies acceptance of a drawback claim.

While Congress' intent in passing the TFTEA was to streamline and modernize the application process, it has created additional problems. For example, the Government Accountability Office (GAO) reports that TFTEA's modern changes have caused USCBP to face a growing workload because "CBP has not adequately managed the increased workload and has not developed a plan to do so."<sup>84</sup> As a result, "CBP faces delays in processing drawback claims that could result in uncertainty for industry, potentially impeding trade."<sup>85</sup> Despite the reported \$1 billion paid out in drawback claims in 2019, the GAO concludes that USCBP remains at risk of overpaying drawback claims annually.<sup>86</sup>

Surprisingly, the GAO did not address the environmental harm caused by drawback claimants, who destroy their unused merchandise to claim a drawback.<sup>87</sup>

### III. THE CONSEQUENCES OF EXPORTATION OR DESTRUCTION

Over the last decade alone, the United States has entered international agreements and passed laws with the objective of facilitating trade in an environmentally conscious manner.<sup>88</sup> While Congress has acknowledged the intersection between the environment

---

<sup>82</sup> *Id.*

<sup>83</sup> CUSTOMS BUSINESS RULES DOCUMENT, *supra* note 72, at 87.

<sup>84</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, CUSTOMS AND BORDER PROTECTION RISK MANAGEMENT FOR TARIFF REFUNDS SHOULD BE IMPROVED (Dec. 2019) [hereinafter "2019 GAO REPORT"], <https://www.gao.gov/assets/gao-20-182.pdf> [https://perma.cc/7ARV-Q7E5].

<sup>85</sup> *Id.*

<sup>86</sup> *See id.*

<sup>87</sup> *See id.*

<sup>88</sup> *See U.S. Mex.-Can. Agreement*, OFF. OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement> [https://perma.cc/HF8W-B2KY] (last visited Nov. 1, 2020).

and trade, it has failed to address one serious domestic pollutant—the destruction of goods under drawback. Independent studies and environmental professionals have recognized the environmental, ethical, and social consequences of destroying goods, but no concrete solution has been offered.<sup>89</sup> Instead, studies and reports continue to monitor the progress of fashion’s exportation and destruction practices and the environmental consequences that result in the areas of waste accumulation, atmospheric emissions, and energy dissipation.<sup>90</sup>

#### A. *Environmental Effects*

Globally, fashion retailers from the value market to luxury brands are destroying unsold merchandise in myriad ways.<sup>91</sup> One of the most common ways that fashion brands carry out this practice is to simply cut unsold products, which typically results in those products ending up in a landfill.<sup>92</sup> Another way is to burn them.<sup>93</sup> In essence, when one garment is discarded or destroyed it signals production of a new garment. Under either approach, environmentally

---

<sup>89</sup> Cf. Elia, *supra* note 20.

<sup>90</sup> See *id.*; see also ELLEN MACARTHUR FOUND., A NEW TEXTILES ECONOMY: REDESIGNING FASHION’S FUTURE 73 (Jan. 12, 2017), [https://static1.squarespace.com/static/5afae80b7c93276139def3ec/t/5b07ea5f88251b7468549158/1527245413992/A-New-Textiles-Economy\\_Full-Report\\_Updated\\_1-12-17.pdf](https://static1.squarespace.com/static/5afae80b7c93276139def3ec/t/5b07ea5f88251b7468549158/1527245413992/A-New-Textiles-Economy_Full-Report_Updated_1-12-17.pdf) [<https://perma.cc/K28H-GSYA>]; see generally, Julia Corradini, *The Clothing Industry and Human Rights Violations: Consumption, Individuals and the Role of Big Players* (2018) (M.A. thesis, National University of Ireland), <https://repository.gchumanrights.org/bitstream/handle/20.500.11825/819/Corradini.pdf?squence=1&isAllowed=y> [<https://perma.cc/7YF8-5N3L>].

<sup>91</sup> See generally Napier & Sanguinetti, *supra* note 9.

<sup>92</sup> See, e.g., Adele Peters, *Nike Appears to be Shredding Brand-New Shoes at a European Recycling Center*, FAST CO. (Nov. 16, 2021), <https://www.fastcompany.com/90697259/nike-appears-to-be-shredding-brand-new-shoes-at-a-european-recycling-center> [<https://perma.cc/CH5C-43CF>] (offering investigative testimony that demonstrates a Nike store in Germany is cutting up unsold sneakers); see also EPA, *Facts and Figures about Materials, Waste and Recycling* (last modified Dec. 14, 2021), <https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/nondurable-goods-product-specific-data#ClothingandFootwear> [<https://perma.cc/V5BF-73NJ>] (providing that since 1960, at least 65% of clothing generated will end up in a landfill).

<sup>93</sup> Napier & Sanguinetti, *supra* note 9.

harmful toxins are released and these toxins harm human life now existing and to come.<sup>94</sup>

### B. Waste Accumulation

Once fashion goods are sliced open to prevent future use, most of these remnants are discarded and carried off to landfills across the nation.<sup>95</sup> The remnants are exported to other countries.<sup>96</sup> Research distinguishing the different types of waste is scant, but the amount of textile and apparel waste is significant.<sup>97</sup> Overconsumption and fast fashion promote a single-wear-then disposal culture and facilitate short apparel life cycles.<sup>98</sup> Remnants accumulate in landfills, generating and releasing gases into the atmosphere and other toxins into the nearby soil and groundwater.<sup>99</sup>

---

<sup>94</sup> See ELLEN MACARTHUR FOUND., *supra* note 90 (concluding that “one garbage truck of textiles is landfilled or incinerated every second”).

<sup>95</sup> See Luz Claudio, *Waste Couture: Environmental Impacts of the Clothing Industry*, 115 ENV'T HEALTH PERSPS. 450, 451 (May 28, 2014), [https://www.researchgate.net/publication/6035885\\_Waste\\_Couture\\_Environmental\\_Impact\\_of\\_the\\_Clothing\\_Industry/link/0fcfd51118f709be4600000/download](https://www.researchgate.net/publication/6035885_Waste_Couture_Environmental_Impact_of_the_Clothing_Industry/link/0fcfd51118f709be4600000/download) [https://perma.cc/XQ8M-P987].

<sup>96</sup> See *infra* notes 129–37 and accompanying text.

<sup>97</sup> See Autumn S. Newell, *Textile Waste Resource Recovery: A Case Study of New York State's Textile Recycling System* 8 (Aug. 2015) (M.A. thesis, Cornell University), <https://ecommons.cornell.edu/bitstream/handle/1813/40888/asn53.pdf?sequence=1> [https://perma.cc/8PEC-9G2Z].

<sup>98</sup> See Rachel Bick et al., *The Global Environmental Injustice of Fast Fashion*, 17 J. ENV'T HEALTH 92, 93 (2018) (finding that fast fashion companies encourage “consumers to view clothing as disposable,” which results in more clothing being discarded to landfills to be replaced with newer garments); compare Hyunsook Kim et al., *The Motivational Drivers of Fast Fashion Avoidance*, 17 J. FASHION MKTG. & MGMT. 243, 245 (2013), [https://www.researchgate.net/publication/263193975\\_The\\_motivational\\_drivers\\_of\\_fast\\_fashion\\_avoidance/link/5dfa0b13a6fdcc283728fdeb/download](https://www.researchgate.net/publication/263193975_The_motivational_drivers_of_fast_fashion_avoidance/link/5dfa0b13a6fdcc283728fdeb/download) [https://perma.cc/6UCA-EA9A], with Andrew McAfee et al., *Zara: IT For Fast Fashion*, HARV. BUS. REV. (2004).

<sup>99</sup> CHANGING MARKETS, FOSSIL FASHION: THE HIDDEN RELIANCE OF FAST FASHION ON FOSSIL FUELS 29 (Feb. 2021), [http://changingmarkets.org/wp-content/uploads/2021/01/FOSSIL-FASHION\\_Web-compressed.pdf](http://changingmarkets.org/wp-content/uploads/2021/01/FOSSIL-FASHION_Web-compressed.pdf) [https://perma.cc/5Y8S-HVNU]; see generally Melanie Blasing & Wulf Amelung, *Plastics in Soil: Analytical Methods and Possible Sources*, 612 SCI. TOTAL ENV'T 422 (2018) (detailing the need for more research on the effects of plastics in soil); Dana Adamcová & Magdalena Vaverková, *Degradation of Biodegradable/Degradable Plastics in Municipal Solid-Waste Landfill*, 23 POLISH J. ENV'T STUD. 1071, 1077 (2014), <http://www.pjoes.com/Degradation-of-Biodegradable-Degradable-r-nPlastics-in-Municipal-Solid-Waste-Landfill,89283,0,2.html> [https://www.mdpi.com/2073-



Even fashion goods that decompose offer little to no nutritional value to the neighboring soil at landfill.<sup>100</sup> Chemicals used in the creation of fashion goods often otherwise-compostable materials undecomposable, or at least delay the decomposition process.<sup>101</sup> It takes last as long as thirty to forty years for synthetic fibers to start unwinding and 100 years until their ultimate decomposition.<sup>102</sup> While these products are decomposing, they produce gases that affect global warming and introduce sulfates into the soil. Additionally, toxin-filled soil can lead to erosion and eliminate the commercial value of nearby soil.

Soil productivity is also diminished by effluent water—or ground water that is contaminated by chemicals, often through the garment manufacturing process.<sup>103</sup> Wastewater or effluent water is produced from manufacturing processes like finishing/dyeing, a process which uses nearly 125 liters of fresh water to add color to a garment and remits colorants, metals, and other chemicals into the water.<sup>104</sup> On average, 200 tons of water are used to produce one ton of textiles.<sup>105</sup> In fact, the Economic Commission of the United Nations has reported that fashion contributes to twenty percent of

---

4441/14/7/1073/pdf] (concluding that the polyethylene can remain undegraded in landfills).

<sup>100</sup> Meital P. Mizrahi & Alon Tal, *Regulation for Promoting Sustainable, Fair and Circular Fashion*, 14 MDPI J. SUSTAINABILITY 502, 516 (2022), <https://www.mdpi.com/2071-1050/14/1/502/pdf> [<https://perma.cc/7LUD-DRNM>].

<sup>101</sup> Liu Yu, *A Study on Decomposition of Nanoparticle Finished Textiles*, 4 INT’L J. NANOSCI. & NANOENG’G 80, 80 (2018) (“However, the problem recur[s] when the functionality attributed textiles are compared with non-functional textiles and considered environmentally less harmful. In reality, the chemicals present on the textiles are more persistent than the textile itself.”).

<sup>102</sup> Antonella Patti et al., *Eco-Sustainability of the Textile Production: Waste Recovery and Current Recycling in the Composites World*, 13 MPDI J. POLYMERS 134, 142 (2020).

<sup>103</sup> *Id.*

<sup>104</sup> D. A. Yaseen & Miklas Scholz, *Textile Dye Wastewater Characteristics and Constituents of Synthetic Effluents: A Critical Review*, 16 INT’L J. ENV’T SCI. & TECH. 1193, 1193 (2018); ELLEN MACARTHUR FOUND., *supra* note 90, at 110, 117.

<sup>105</sup> See QUANTIS, *Measuring Fashion—Insights from the Environmental Impact of the Global Apparel and Footwear Industries Study* (2018), [https://quantis-intl.com/wp-content/uploads/2019/11/measuringfashion\\_globalimpactstudy\\_quantis\\_2018.pdf](https://quantis-intl.com/wp-content/uploads/2019/11/measuringfashion_globalimpactstudy_quantis_2018.pdf) [<https://perma.cc/L3MD-62C2>]; see also Sarah Murray, *Fixing the Fashion Industry*, NRDC (Jan. 5, 2016), <https://www.nrdc.org/stories/fixing-fashion-industry> [<https://perma.cc/WZP2-YJCQ>].

global wastewater.<sup>106</sup> Wastewater is detrimental to the environment because it hinders the photosynthesis process for nearby vegetation, hinders water's self-purification process, and prevents soil absorption.<sup>107</sup> The water used to produce these textiles become filled with chemicals and must be released—often through runoff.<sup>108</sup> Moreover, wastewater often carries carcinogens that cause the development of cancer and other illnesses in humans because it often reacts with other disinfectants present in the atmosphere.<sup>109</sup> Likewise, microplastics are another form of water pollutant that has been found in sea species and have the potential of causing irreparable harm to those ecosystems, thereby diminishing the availability of commercial seafood available to humans.<sup>110</sup>

### C. Emissions

An alternative to cutting and discarding fashion products is to burn them. While empirical data covering air emissions release from burned textiles is not widely available, garment burning has the potential to cause death or serious bodily injury.<sup>111</sup> Additionally, incinerating or burning fashion products is not better than discarding them in landfills; both disposal methods release toxic carbons and

---

<sup>106</sup> Kerrice Bailey et al., *The Environmental Impacts of Fast Fashion on Water Quality: A Systematic Review*, 14 MPDI J. WATER 1073, 1073 (2022), <https://www.mdpi.com/2073-4441/14/7/1073/pdf> [<https://perma.cc/AGW3-56U5>].

<sup>107</sup> See Rita Kant, *Textile Dyeing Industry an Environmental Hazard*, 4 NAT. SCI. 22, 22 (2012).

<sup>108</sup> NIKOLAY ANGUELOV, *THE DIRTY SIDE OF THE GARMENT INDUSTRY: FAST FASHION AND ITS NEGATIVE IMPACT ON ENVIRONMENT AND SOCIETY* 79–81 (2016).

<sup>109</sup> Claudio, *supra* note 95, at 450 (“The manufacture of polyester and other synthetic fabrics is an energy-intensive process requiring large amounts of crude oil and releasing emissions including volatile organic compounds, particulate matter, and acid gases such as hydrogen chloride, all of which can cause or aggravate respiratory disease.”).

<sup>110</sup> David Azoulay et al., *Plastics and Health: The Hidden Costs of a Plastic Planet*, CTR. INT’L HEALTH (Feb. 2019), <https://www.ciel.org/wp-content/uploads/2019/02/Plastic-and-Health-The-Hidden-Costs-of-a-Plastic-Planet-February-2019.pdf> [<https://perma.cc/5SMZ-CEK3>].

<sup>111</sup> Phillip Chang et al., *Discardscapes of Fashion: Commodity Biography, Patch Geographies, and Preconsumer Garment Waste in Cambodia*, 10 J. SOC. & CULT. GEO 539, 549 (2020) (reporting that Indian workers were dying from smoke created from garment burning).

other greenhouses gases into the atmosphere.<sup>112</sup> Burned fashion products specifically account for approximately eight percent of the world's greenhouse gas emissions.<sup>113</sup> In fact, 0.3% of these emissions come from the final stages of a garment's life cycle where it is landfilled or incinerated.<sup>114</sup>

Incineration results in the release of dust and lint, solvent mists, acid vapor, and other chemicals into the atmosphere.<sup>115</sup> Those chemicals often include methane, which is largely emitted from landfill waste, but also carries a 100-year global warming potential, which amounts to sixteen percent of the world's methane production.<sup>116</sup> Moreover, where fashion goods manufactured with oils and plastics are burned, a cloud of chemicals—a fog—is often the result.<sup>117</sup> Direct or indirect inhalation of these fumes will result in respiratory illnesses or death for most people, particularly those in the early stages of their lives.<sup>118</sup>

---

<sup>112</sup> CHANGING MARKETS, *supra* note 99, at 24; UNITED KINGDOM WITHOUT INCINERATION NETWORK, *Evaluation of the Climate Change Impacts of Waste Incineration in the United Kingdom* (Oct. 2018), <https://ukwin.org.uk/files/pdf/UKWIN-2018-Incineration-Climate-Change-Report.pdf> [<https://perma.cc/V59U-L8MN>].

<sup>113</sup> QUANTIS, *supra* note 105; *see also* GARY COOK & MAYA ROMMWATT, FASHION FORWARD: A ROADMAP TO FOSSIL FREE FASHION 6 (Aug. 12, 2020), <https://www.stand.earth/sites/stand/files/standearth-fashionforward-roadmaptofossilfreefashion.pdf> [<https://perma.cc/5XG2-FE83>].

<sup>114</sup> *Compare* QUANTIS, *supra* note 105, at 3 (“0.3% End of Life: Collection and management of apparel products at the end of their useful life (incineration and landfilling)”) *with* COOK & ROMMWATT, *supra* note 113, at 9 (“The fast fashion business model has further accelerated the take-make-waste production model of the sector: 97% of material coming from virgin sources, clothing that is worn only a handful of times, generating a tremendous amount of clothing related waste around the world as the vast majority of clothing arrives in a landfill or incinerator within just a few years of being made.”).

<sup>115</sup> ELLEN MACARTHUR FOUND., *supra* note 90, at 45, 59.

<sup>116</sup> TREVOR M. LETCHER, PLASTIC WASTE AND RECYCLING 120 (2020).

<sup>117</sup> Tuba Toprak & Pervin Anis, *Textile Industry's Environmental Effects and Approaching Cleaner Production and Sustainability, An Overview*, 2 J. TEXTILE ENG'G & FASHION TECH. 429, 438 (Aug. 10, 2017), <http://medcraveonline.com/JTEFT/JTEFT-02-00066.pdf> [<https://perma.cc/WKP8-TLSP>].

<sup>118</sup> Ioannis Manisalidis et al., *Environmental and Health Impacts of Air Pollution: A Review*, 8 FRONTIERS PUB. HEALTH (Feb. 20, 2020), <https://www.frontiersin.org/articles/10.3389/fpubh.2020.00014/full> [<https://perma.cc/4V4E-CAWU>].

Another point of concern with air pollutants is textile processing, since garments are rushed from retail rack to landfill.<sup>119</sup> More greenhouse gases are emitted from dyeing and finishing, yarn preparation, and fiber production,<sup>120</sup> so it is important to note fast fashion creates a need for more production cycles per year, resulting in the emission of even more greenhouse gases. Consumer overconsumption and fast fashion's disposal culture collectively promote a never-ending cycle of garment production, which includes producing organic and synthetic fibers. Crackling is a process in textile manufacturing where heavy hydrocarbon molecules are broken down into lighter molecules; this is how oil is synthesized to create synthetic fibers.<sup>121</sup> Scholars report that over 300 million barrels of oil are used annually to create synthetic fibers such as polyester.<sup>122</sup> The chemicals released during processing are likewise as deadly and problematic as those generated from burns or landfills. Just as water is required for garment manufacturing and processing, so is energy.

#### D. Energy

Garment production and garment destruction are energy-intensive processes that account for greenhouse gas emissions mentioned above.<sup>123</sup> Environmentally conscious brands often celebrate their practice of incinerating goods because it is believed to recover energy and is a green process.<sup>124</sup> A scholar has reported that cotton, polyester, wool, and flax can each recover 20.2, 21.2, 23.2, and 20.2

---

<sup>119</sup> ELLEN MACARTHUR FOUND., *supra* note 90, at 19, 36.

<sup>120</sup> *Id.*

<sup>121</sup> CHANGING MARKETS, *supra* note 99, at 7, 17.

<sup>122</sup> PLANET TRACKER, *The Emperor Has No Clothes: Toxic Textiles in Today's Age* (Apr. 24, 2020), <https://planet-tracker.org/the-emperor-has-no-clothes-toxic-textiles-in-todays-age/> [<https://perma.cc/AFC8-P3RZ>]; see also COMMON OBJECTIVE, *Fibre Briefing: Polyester* (Oct. 22, 2021), <https://www.commonobjective.co/article/fibre-briefing-polyester> [<https://perma.cc/EYE8-L9RL>].

<sup>123</sup> MCKINSEY, *Fashion on Climate* 1, 5 <https://www.mckinsey.com/~media/mckinsey/industries/retail/our%20insights/fashion%20on%20climate/fashion-on-climate-full-report.pdf> [<https://perma.cc/X2JP-MQD3>]; see also COOK & ROMMWATT, *supra* note 113.

<sup>124</sup> See, e.g., Julia Kollwe, *Burberry to Stop Burning Unsold Items After Green Criticism*, GUARDIAN (Sept. 6, 2018), <https://www.theguardian.com/business/2018/sep/06/burberry-to-stop-burning-unsold-items-fur-after-green-criticism> [<https://perma.cc/X8AM-2XXA>] (detailing that Burberry defended the practice of burning goods because it saved energy).

megajoules of energy per kilogram after incinerated.<sup>125</sup> Many fashion brands that utilize incineration plants believe they are able to recover at least half of the energy used to incinerate goods if the incineration plant is properly equipped.<sup>126</sup> While these numbers seem positive, they are not. Energy recovery from incineration recoups less than five percent of the overall energy used in the garment manufacturing process.<sup>127</sup> Therefore, 95% of the energy used to create a garment is un-recoupable and proves that energy recovery through incineration cannot serve as a permanent solution because this method of energy conservation depends largely on the garment's fiber composition and the resources available to the incineration plant.<sup>128</sup>

### E. Exportation

Fashion products that are not destroyed or landfilled are exported, creating a second-hand or second-world market. Annually, it is estimated that 500,000 tons of used garments are exported to developing countries.<sup>129</sup> This practice is not new and has existed for centuries, as the market for secondhand clothing remains profitable, fueling international trade.<sup>130</sup> However, a large percentage of these garments are worthless upon arrival, and recreate America's landfill and waste production problem in other countries.<sup>131</sup> Many garments

---

<sup>125</sup> ANDERS SCHMIDT ET AL., GAINING BENEFITS FROM DISCARDED TEXTILES 56 (2016).

<sup>126</sup> See MCKINSEY, *supra* note 123, at 10–12; ELLEN MACARTHUR FOUND., *supra* note 90, at 117 (“Using this technique, 95% of the carbon dioxide can be recovered and reused, and while the capital investment in the equipment is higher than for conventional dyeing, it can reduce operating costs by 45%, due to energy savings of 50%”).

<sup>127</sup> LETCHER, *supra* note 116, at 273 (detailing that incineration should be used as a worst-case scenario because it does not save energy).

<sup>128</sup> SCHMIDT ET AL., *supra* note 125; see also KIRSI NIINIMÄKI, SUSTAINABLE FASHION IN A CIRCULAR ECONOMY 195 (2018), <https://core.ac.uk/download/pdf/301138773.pdf> [<https://perma.cc/97RY-RPJ2>].

<sup>129</sup> ANGUELOV, *supra* note 108, at 113; see also Linton Besser, *Dead White Man's Clothes*, ABC NEWS, <https://www.abc.net.au/news/2021-08-12/fast-fashion-turning-parts-ghana-into-toxic-landfill/100358702> [<https://perma.cc/C4HQ-KE3F>] (last updated Oct. 21, 2021) (reporting that 15 million used garments are sent to Ghana each week and rarely any of the garments are reused).

<sup>130</sup> KAREN T. HANSEN, SALAULA: THE WORLD OF SECONDHAND CLOTHING AND ZAMBIA 10 (2000).

<sup>131</sup> Besser, *supra* note 129; *Chile's Desert Dumping Ground for Fast Fashion Leftovers*, ALJAZEERA (Nov. 8, 2021), <https://www.aljazeera.com/gallery/2021/11/8/chiles-desert->

are deemed worthless either because the item is of poor quality or the item's quality is not worth the tax that locals would have to pay to haul it from the landfill.<sup>132</sup> Of the viable garments, second-hand sellers employ local citizens to compete—often violently—and barter for the best of these items and return with them to be resold.<sup>133</sup> While exportation has created some economic opportunities in these countries, it also has perpetuated violence, increased environmental pollution, and frustrated foreign economies. Accordingly, many countries have considered bans on imported clothing, but efforts have proven unsuccessful.<sup>134</sup> Domestic recycling might soon become the only alternative for fashion goods imported into the United States.

The latest Environmental Protection Agency (EPA) report provides that since 1960, clothing is recycled at a rate of 11.15% per ton generated (in thousands) on average.<sup>135</sup> However, some scholars have even argued that recycling apparel and footwear will not eliminate the environmental implications advanced by fashion production.<sup>136</sup> Many brands have pledged to become sustainable, but a pledge without a viable plan is nothing more than a dream deferred. At least one source has posited that extending the life cycle of apparel and footwear could result in a reduction of fashion's carbon

---

dumping-ground-for-fast-fashion-leftovers [https://perma.cc/THW8-8ST9] (explaining that Chile and Latin American countries receive tons of used clothing annually, but much of which is un-reusable).

<sup>132</sup> Besser, *supra* note 129; ALJAZEERA, *supra* note 131.

<sup>133</sup> Besser, *supra* note 129.

<sup>134</sup> See OFF. OF U.S. TRADE REPRESENTATIVE, 2021 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS (2021), <https://ustr.gov/sites/default/files/files/reports/2021/2021NTE.pdf> [https://perma.cc/XJ6Y-HPJM]; Franck Kuwonu, *Protectionist Ban on Imported Used Clothing*, AFR. RENEWAL (Dec. 2017), <https://www.un.org/africarenewal/magazine/december-2017-march-2018/protectionist-ban-imported-used-clothing> [https://perma.cc/ZN7D-WRWP]; Joe P. Daniels, *Latin America Urges US To Reduce Plastic Waste Exports To Region*, GUARDIAN (Dec. 24, 2021), <https://www.theguardian.com/environment/2021/dec/24/latin-america-urges-us-to-reduce-plastic-waste-exports-to-region> [https://perma.cc/D34M-JAGT].

<sup>135</sup> EPA, FACTS AND FIGURES ABOUT MATERIALS, WASTE AND RECYCLING 16, <https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/nondurable-goods-product-specific-data#ClothingandFootwear> [https://perma.cc/L76Y-729S] (last modified Dec. 14, 2021).

<sup>136</sup> CHANGING MARKETS, *supra* note 99, at 24.

footprint.<sup>137</sup> Permitting the donation of unsold, rejected, or otherwise imported merchandise under the Tariff Act of 1930 may provide a solution that would drastically reduce greenhouse gas emissions by extending the life cycle of garments.

IV. LEGISLATIVE SOLUTION: THE DONATION  
ALTERNATIVE PROGRAM TO PROMOTE  
ENVIRONMENTAL RESPONSIBILITY IN FASHION ACT  
(THE “DAPPER FASHION ACT”)

*A. Overview:*

As introduced in Part III, the following is proposed statutory text that legislators and lobbyists should adopt to reduce the environmental effects of destroying unsold merchandise, foster a circular economy, and promote the progress of useful art. The suggested text would not necessarily have to stand alone; it may also be offered as a component of a larger trade related bill.

*B. Proposed Language:*

A Bill

To amend the Tariff Act of 1930 to eliminate environmental deterrents from the facilitation of trade.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Short Title; TABLE OF CONTENTS.

(a) Short Title.— This Act may be cited as the “Donation Alternative Program to Promote Environmental Responsibility in Fashion Act of 2022.”

---

<sup>137</sup> Sandra Roos et al., *Supply Chain Guidelines: Vision and Eco-design Action List*, MISTRA SWEDISH FOUND. STRATEGIC ENV’T RSCH. 1, 11–12 (June 2019); ELLEN MACARTHUR FOUND., *supra* note 90; *see also* Søren E. Laursen et al., *Sustainable Recovery of Products and Materials—Scenario Analysis of the UK Clothing And Textile Sector*, 4TH INT’L CONF. ON DESIGN AND MFR. FOR SUSTAINABLE DEV. 1 (July 2005), [https://www.researchgate.net/publication/282249231\\_Sustainable\\_recovery\\_of\\_products\\_and\\_materials\\_-\\_scenario\\_analysis\\_of\\_the\\_UK\\_clothing\\_and\\_textile\\_sector](https://www.researchgate.net/publication/282249231_Sustainable_recovery_of_products_and_materials_-_scenario_analysis_of_the_UK_clothing_and_textile_sector) [<https://perma.cc/RN4S-WCDM>].

(b) Table of Contents.- The table of contents for this Act is as follows:

Sec. 1. Short Title; table of contents.

Sec. 2. Definitions.

#### TITLE I - DAPPER FASHION ACT

Sec. 101. Drawback and Refunds

Sec. 2. Definitions.

In this Act:

(1) Donation.- The term "Donation" means to give without pay or compensation received in exchange and without expectation of return. "Donation" includes-

(A) internal donation as described herein; and

(B) external donation as described herein.

(2) Internal Donation.- The term "Internal Donation" includes-

(A) earmarking of imported merchandise, articles made from imported merchandise, merchandise classifiable under the same 8-digit HTS subheading number as such imported merchandise, merchandise not conforming to sample or specifications, or unused merchandise, for the purpose of-

i. labeling and cataloging said merchandise as not for commercial or revenue generating use "NFU"; and

ii. housing labeled merchandise in a separate location for controlled use by charitable or educational institutions.

(3) External Donation.- The term "External Donation" includes -

(A) earmarking of imported merchandise, articles made from imported merchandise, merchandise classifiable under the same 8-digit HTS subheading number as such imported merchandise, merchandise not conforming to sample or specifications, or unused merchandise, for the purpose of-

i. labeling and cataloging said merchandise as not for commercial or revenue generating use "NFU"; and



- ii. providing labeled merchandise to charitable or educational institutions for instructional use.
- (4) NFU.- The term “NFU” or “not for commercial or revenue generating use” means use in connection with or for the furtherance of a revenue generating enterprise.
- (5) Controlled Use.- The term “Controlled Use” means any use that involves supervision of the importer in an area controlled by the importer.
- (6) Instructional Use.- The term “Instructional Use” means any non-infringing activity that is part of the construction or design process, where any construction exists only temporary and adheres to the guidance, indirect or contractual, received from an importer.
- (7) Charitable.- The term “Charitable” means relief of the poor, the distressed, or the underprivileged; advancement of education or science; lessening neighborhood tensions; eliminating prejudice and discrimination; and defending human and civil rights secured by law. Charitable purposes are educational, scientific, or literary.
- (8) Educational Institution.- The term “Educational Institution” means any institution with a purpose of serving students that attend-
  - (i) a part B institution defined in section 322 of the Higher Education Act of 1965 (20 U.S.C. §1061);
  - (ii) an institution defined by 20 U.S.C. §1101a(a)(5);
  - (iii) an institution defined by 20 U.S.C. §1059c(b)(3);
  - (iv) an institution defined by 20 U.S.C. §1059d(b)(2);
  - (v) an institution defined by 20 U.S.C. §1059d(b)(4);
  - (vi) an institution defined by 20 U.S.C. §1059e(b)(6);
  - (vii) an institution defined by 20 U.S.C. §1059f(b)(2); and
  - (viii) an institution defined by 20 U.S.C. §1059g(b)(2).

TITLE I - DONATION ALTERNATIVE PROGRAM TO PROMOTE ENVIRONMENTAL RESPONSIBILITY

Sec. 101. Drawback and Refunds

(a) ARTICLES MADE FROM IMPORTED MERCHANDISE.—Section 313(a) of the Tariff Act of 1930 (19 U.S.C. 1313(a)) is amended by striking “Upon the exportation or destruction under customs supervision of articles manufactured or produced in the United States with the use of imported merchandise, provided that those articles have not been used prior to such exportation or destruction,” and inserting “Upon the exportation, destruction, and/or donation under customs supervision of articles manufactured or produced in the United States with the use of imported merchandise, provided that those articles have not been used prior to such exportation, destruction, or donation,”.

(b) SUBSTITUTION FOR DRAWBACK PURPOSES.— Section 313(b) of the Tariff Act of 1930 (19 U.S.C. 1313(b)) is amended—

(1) by striking all references to the phrase “exportation, or destruction” and replacing it with “exportation, destruction, or donation”

(2) by striking all references to the phrase “exported or destroyed” and replacing it with “exported, destroyed, or donated”

(c) MERCHANDISE NOT CONFORMING TO SAMPLE OR SPECIFICATIONS.—Section 313(c) of the Tariff Act of 1930 (19 U.S.C. 1313(c)) is amended—

(1) by striking all references to the phrase “exportation, or destruction” and replacing it with “exportation, destruction, or donation”

(d) UNUSED MERCHANDISE DRAWBACK.—Section 313(j) of the Tariff Act of 1930 (19 U.S.C. 1313(j)) is amended—

(1) by striking “destroyed under customs supervision; and” at the end of (ii) and replacing it with “destroyed, or” and inserting a new subsection (iii) which shall read “(iii) donated according to customs guidance; and”

(2) replacing all remaining references to the phrase “exportation or destruction” and replacing it with “exportation, destruction, or donation”

(e) LIABILITY FOR DRAWBACK CLAIMS.—Section 313(k) of the Tariff Act of 1930 (19 U.S.C. 1313(k)) is amended by—

(1) adding new subsection

“(4) Liability of Third Parties

Any person that receives or otherwise obtains merchandise that was reported to U.S. Customs and Border Protection as exported, destroyed, or donated, shall be liable for—

(A) the amount of duties, taxes, and fees applicable to the imported merchandise; and the

(B) misuse or any non-de minimis use of another’s copyright, trademark, patent or other registered intellectual property right associated with the imported merchandise, if that merchandise is sold or otherwise enters the stream of commerce.

(C) Criminal and civil penalties that would otherwise be available as under any other Act of Congress with respect to (A) or (B).”

(2) adding new Section (5) which shall read—

“(5) Infringing Use

Notwithstanding the provisions of this chapter, a person who has lawfully obtained the right to use articles protected under intellectual property laws may alter and transform that article for the sole purpose of identifying and analyzing the techniques and processes that are necessary to achieve interoperability of an independently created article, and that have not previously been readily available to the person engaging in the practice, to the extent any such acts of identification and analysis do not constitute infringement under this title.”

(3) adding new Section (6) which shall read—

“(6) Drawback Forfeiture

Drawback applications made pursuant to donation, will render the merchandise eligible for taxation under the Internal Revenue Code. Specifically, taxation for donated merchandise will be made pursuant to IRC § 170(e)”

(f) REGULATIONS.—Section 313(l) of the Tariff Act of 1930 (19 U.S.C. 1313(l)) is amended by—

(1) adding a new sub-subsection (iii) to Section 2 CALCULATION OF DRAWBACK (B) Claims with respect to unused merchandise, which shall read—

“(iii) in the case of an article that is donated, the amount of the refund shall be equal to 99 percent of the lesser of—

(I) the amount of duties, taxes, and fees paid with respect to the imported merchandise; or

(II) the amount of duties, taxes, and fees that would apply to the exported article if the exported article were imported.”

(2) adding new Section (4) which shall read—

“(4) Procedure for Donation:

For drawback claims to qualify under donation, the importer or person claiming drawback must meet the evidentiary standard set by the Secretary of the Treasury to evidence that either an internal or external donation has occurred. A modified U.S. Customs Form 7553 and annual catalogue of drawback-eligible merchandise will generally suffice, so long as it is accompanied by evidence of further compliance with the provisions of this chapter.

(A) An importer or drawback claimant qualifies for the full drawback calculated in accordance with (l) when an internal donation is performed on 33% of the imported merchandise on which drawback is sought.

(B) An importer or drawback claimant qualifies for the full drawback calculated in accordance with (l) when an external donation is performed on 33% of the imported merchandise on which drawback is sought.

(C) Nothing within this Chapter shall prevent an importer from entering a contractual relationship with educational or charitable institutions.

(g) DEFINITIONS.—Section 313(z) of the Tariff Act of 1930 (19 U.S.C. 1313(z)) is amended by adding the following definitions at the end—

- (4) Donation.- The term “Donation” means to give without pay or compensation received in exchange and without expectation of return. “Donation” includes-
- (i) internal donation as described herein; and
  - (ii) external donation as described herein.
- (5) Internal Donation.- The term “Internal Donation” includes-
- (i) earmarking of imported merchandise, articles made from imported merchandise, merchandise classifiable under the same 8-digit HTS subheading number as such imported merchandise, merchandise not conforming to sample or specifications, or unused merchandise, for the purpose of-
    - (I) labeling and cataloging said merchandise as not for commercial or revenue generating use “NFU”; and
    - (II) housing labeled merchandise in a separate location for controlled use by charitable or educational institutions.
- (6) External Donation.- The term “External Donation” includes -
- (i) earmarking of imported merchandise, articles made from imported merchandise, merchandise classifiable under the same 8-digit HTS subheading number as such imported merchandise, merchandise not conforming to sample or specifications, or unused merchandise, for the purpose of-
    - (I) labeling and cataloging said merchandise as not for commercial or revenue generating use “NFU”; and
    - (II) providing labeled merchandise to charitable or educational institutions for instructional use.
- (7) NFU.- The term “NFU” or “not for commercial or revenue generating use” means use in connection with or for the furtherance of a revenue generating enterprise.
- (8) Controlled Use.- The term “Controlled Use” means any use that involves supervision of the importer in an area controlled by the importer.
- (9) Instructional Use.- The term “Instructional Use” means any non-infringing activity that is part of the construction or

design process, where any construction exists only temporary and adheres to the guidance, indirect or contractual, received from an importer.

- (10) Charitable.— The term “Charitable” means relief of the poor, the distressed, or the underprivileged; advancement of education or science; lessening neighborhood tensions; eliminating prejudice and discrimination; and defending human and civil rights secured by law. Charitable purposes are educational, scientific, or literary.
- (11) Educational Institution.— The term “Educational Institution” means any institution with a purpose of serving students that attend—
- (ix) a part B institution defined in section 322 of the Higher Education Act of 1965 (20 U.S.C. §1061);
  - (x) an institution defined by 20 U.S.C. §1101a(a)(5);
  - (xi) an institution defined by 20 U.S.C. §1059c(b)(3);
  - (xii) an institution defined by 20 U.S.C. §1059d(b)(2);
  - (xiii) an institution defined by 20 U.S.C. §1059d(b)(4);
  - (xiv) an institution defined by 20 U.S.C. §1059e(b)(6);
  - (xv) an institution defined by 20 U.S.C. §1059f(b)(2); and
  - (xvi) an institution defined by 20 U.S.C. §1059g(b)(2).

(h) Effective Date.—

- (1) IN GENERAL.— The amendments made by this section shall—
- A. take effect on the date of the enactment of this Act; and
  - B. except as provided, apply to drawback claims filed on or after the date that is 2 years after such date of enactment.

### *C. Donation As A Mechanism To Apply Drawback*

Dapper Dan’s initial creations that transformed luxury garment bags into new products serve as an example of circular fashion warranting further exploration.<sup>138</sup> Dan’s short-lived but transformative

---

<sup>138</sup> *But see* Jordan Levy, *Bootlegging in the Age of Luxury Streetwear and Logomania*, DOCUMENT J. (Feb. 7, 2020), <https://www.documentjournal.com/2020/02/bootlegging-in-the-age-of-luxury-streetwear-and-logomania/> [<https://perma.cc/VS83-8VCK>] (referring to

practice increased access to luxury materials for underrepresented communities in Harlem, NY, and prompted Dan, as an American couturier, to develop a proficiency in working with luxury fabrics.<sup>139</sup> The legislative solution presented herein aims to replicate that model, support cultural creative interpretation, and provide underrepresented communities with access to luxury fabrics and skills development, which in turn will promote a circular economy.

The DAPPER Fashion Act would substantively change the Tariff Act of 1930's drawback provision, authorizing donation as a third vehicle for importers who seek the manufacturing, rejected, or unused merchandise drawback. The DAPPER Fashion Act defines "donation" as "given without pay or compensation received in exchange and without expectation of return" and donation is performed in one of two ways—internal or external. To execute an internal donation, a fashion brand would earmark, label, and house drawback-eligible merchandise in a separate location for controlled use by charitable or educational institutions. To execute an external donation a fashion brand would earmark, label, and provide drawback-eligible merchandise to charitable and educational institutions. While scholars and industry professionals have offered donation as a suggestion, none have provided the comprehensive framework presented here.

First, fashion brands will need to identify or earmark thirty-three percent of products that are considered imported merchandise, articles made from imported merchandise, merchandise classifiable under the same 8-digit HTS subheading number as such imported merchandise, merchandise not conforming to sample or specifications, or unused merchandise (hereinafter "drawback eligible merchandise"). Second, earmarked products must be labeled not for commercial, or revenue generating use ("NFU") and then catalogued. Labeling is explored further in section (D) below. The final step before completing the donation process and applying for drawback depends on whether the donation is internal and external.

---

Dapper Dan's work as bootlegging, which is defined as "bind[ing] imitation and differentiation into a single piece").

<sup>139</sup> See generally DAY, *supra* note 27.

### 1. Internal Donation

To complete an internal donation, a fashion brand must house labeled, drawback-eligible merchandise in a separate location and facilitate its controlled use by charitable and educational institutions. The DAPPER Fashion Act intentionally omits a definition for “separate location,” so as to avoid importers or brands from incurring additional financial burdens to obtain a drawback. Next, “controlled use” will permit fashion brands and importers to directly supervise how charitable and educational institutions work with drawback-eligible merchandise.

Gucci is one of the few fashion brands to partially facilitate educational use through its North America Changemakers Scholarship program that offers young people from diverse backgrounds up to \$20,000 and internship opportunities.<sup>140</sup> While most of the recipients have been minorities, annually only four (4) of the recipients’ schools tend to be minority serving.<sup>141</sup> More recently, however, Harlem’s Fashion Row announced a partnership with LVMH North America which would further support HFR’s HBCU Summit.<sup>142</sup> As a component of the HFR’s summit, Tiffany & Co. would offer a ten-week lecture series on topics including jewelry design and innovation.<sup>143</sup> Some participating fashion brands have agreed to sponsor an HBCU senior capstone fashion show and offer industry experience to students through internship opportunities across their roster of brands.<sup>144</sup> While Gucci’s program would not qualify as an internal

---

<sup>140</sup> Press Release, Gucci, Announcing Gucci Changemakers: Community Fund and Scholarship Program for North America Alongside Global Volunteering Program (Mar. 18, 2019) (on file with author).

<sup>141</sup> *Gucci North America Changemakers Scholars 2020*, EQUILIBRIUM (Dec. 6, 2020), <https://equilibrium.gucci.com/gucci-north-america-changemakers-scholars-2020/> [https://perma.cc/7E95-U6JX]; *Gucci North America Changemakers Scholars 2021*, EQUILIBRIUM (Aug. 7, 2021), <https://equilibrium.gucci.com/gucci-announces-2021-north-america-changemakers-scholars/> [https://perma.cc/D4R7-MCA9].

<sup>142</sup> Benjamin Fitzgerald, *LVMH North America Links with Harlem’s Fashion Row*, FASHION NETWORK (June 17, 2022), <https://www.fashionnetwork.com/news/Lvmh-north-america-links-with-harlem-s-fashion-row,1415735.html> [https://perma.cc/6ECA-5MQJ].

<sup>143</sup> *Id.*

<sup>144</sup> See, e.g., *Kate Spade New York and Harlem’s Fashion Row Partner on 2022 HBCU Fashion Summit, the First Installment in Tapestry, Inc.’s Multi-Year Mentorship Program*, BUS. WIRE (Sept. 27, 2022), <https://www.businesswire.com/news/home/20220927005481/en/Kate-Spade-New-York-and-Harlem%E2%80%99s-Fashion-Row->



donation program eligible for drawback, the HFR HBCU Summit would likely qualify.

A fashion brand can comply with the internal donation provision in several ways. First, by offering internships to students of educational institutions, as defined in § 106(g) of the DAPPER Fashion Act, whereby students can directly work with drawback-eligible merchandise. Second, a fashion brand is compliant by granting educational institutions access to housed merchandise to perform skills labs or other class-like instruction. Third, by coordinating externships or clinics where students are permitted to access housed merchandise for portfolio development or other capstone related projects for the fulfillment of their degrees. Notably, all these activities are subject to the supervision of the importer and must occur in an area controlled by the importer.

## 2. External Donation

To complete an external donation, a fashion brand must provide catalogued and labeled, drawback-eligible merchandise to charitable and educational institutions for instructional use. The DAPPER Fashion Act intentionally omits how a fashion brand is to “provide” the drawback-eligible merchandise to institutions. This omission coupled with Section 101 (f)(2) permits fashion brands and importers alike, the opportunity to enter contractual agreements that dictate the scope of any donative relationship with institutions.<sup>145</sup> Further, the DAPPER Fashion Act limits use of drawback-eligible merchandise to only instructional purposes that are a part of the design or construction process and subject to the guidance of the importer.<sup>146</sup>

---

Partner-on-2022-HBCU-Fashion-Summit-the-First-Installment-in-Tapestry-Inc.%E2%80%99s-Multi-Year-Mentorship-Program.

<sup>145</sup> See, e.g., RENT THE RUNWAY, *Terms of Service* (last updated June 2, 2021), <https://www.renttherunway.com/pages/terms-of-service><https://www.renttherunway.com/pages/intellectual> [<https://perma.cc/7ERS-5ESK>] (providing specific instructions for use of products provided to members and establishing that the terms listed therein create a contractual relationship).

<sup>146</sup> See Canadian Copyright Act, Temporary Reproductions for Technological Processes, 2012, *reprinted in* R.S.C. 1985, c. 20, s. 32, <https://laws-lois.justice.gc.ca/eng/acts/c-42/page-9.html> [<https://perma.cc/MS99-SU7G>] (permitting temporary reproductions that are non-infringing and are a part of the technological process or exists temporarily); *but see* 17 U.S.C. § 102.

The activities that satisfy instructional use include: deconstructing and constructing, bleaching, stitching, sewing, dyeing, tearing, and other chemical and textile analysis based actions. Practically, this means that fashion brands remain in control of their intellectual property.<sup>147</sup>

As an example of external donation, Coach has engaged in donation-like activities, as it donated nearly 2,000 apparel items to six (6) Historically Black Colleges and Universities (HBCUs) with fashion programs.<sup>148</sup> For example, Virginia State's Textile, Apparel, and Merchandise Management (TAMM) program "will use the donations to prepare students for careers in the fashion and apparel industries. TAMM students will create their own fashion designs for a retail display window featuring the COACH® items."<sup>149</sup> Coach's donation complies with the external donation scheme presented herein but is not the only format that is permissible. For example, a fashion brand would also be compliant by entering a contractual agreement with the school and outlining the permissible uses of any donated products to counter allegations of intellectual property right violations.<sup>150</sup>

#### *D. Modifications to the Drawback Application Process*

Given this addition, the drawback application process would need to be minimally revised to ensure the integrity of the longstanding practice. First, administrative changes to recognize donation

---

<sup>147</sup> To understand why brands prefer to remain in control of their intellectual property, see Kersi D. Antia et al., *Competing with Gray Markets*, 46 MIT SLOAN MGMT. REV. 63, 64–65 (2004); see also Reza Ahmadi et al., *Gray Markets, A Product of Demand Uncertainty and Excess Inventory*, 21 PROD. & OPERATIONS MGMT. 1102, 1112 (Oct. 1, 2011) (identifying that a primary harm is imposed on a fashion brand/producer "when goods move from the salvage market to the gray market").

<sup>148</sup> *Product Donations*, COACH <https://www.coach.com/sustainability-product-donations> [<https://perma.cc/KA28-3EG4>] (last visited Nov. 6, 2022) (highlighting six HBCUs as recipients: Cheyney University, Delaware State University, Florida A&M University, Harris-Stowe State University, Tuskegee University, and Virginia State University).

<sup>149</sup> *VSU Receives Massive Donation from Global Fashion Designer Coach*, VA. ST. UNIV. (Mar. 24, 2022), <https://www.vsu.edu/news/2022/donation-fashion-coach.php> [<https://perma.cc/KA28-3EG4>].

<sup>150</sup> Elia, *supra* note 20, at 557–58.

would need to occur in all automated systems like ACE and ABI.<sup>151</sup> Second, Customs and the Department of Treasury would need to establish the documentary evidence sufficient to warrant approval of an internal or external donation claim in ABI/ACE.<sup>152</sup>

### 1. Administrative Changes – Form 7553

Among the administrative changes to be made is to update Customs Form 7553, which is an importer's Notice of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback.<sup>153</sup> The form's title and contents would need to be updated to include donation, along with the inclusion of a new section to report method of donation and institutional recipients of the merchandise. In addition to modifying the form 7553, the ABI would also need to reflect these changes.<sup>154</sup> Next, a process would need to be created for Customs to monitor donation claims and confirm compliance with the provisions of the DAPPER Fashion Act. That process is simple, Customs should request that institutional recipients confirm an importer's compliance by submitting an affidavit that lists the drawback-eligible merchandise received and their quantities.

### 2. Supporting Documentation for ACE

Once a drawback claim is submitted via the ABI, a claimant is required to upload supporting documentation within twenty-four (24) hours.<sup>155</sup> In addition to the updated Customs Form 7553, the DAPPER Fashion Act would permit a claimant to upload a copy of any contracts that the claimant has entered with institutional recipients and also attach the catalogues of shipped materials. In fact, the

---

<sup>151</sup> See U.S. CUSTOMS AND BORDER PROT., *supra* note 71 (explaining the modification to drawback based on the TFTEA, which includes updating the technological aspects of the system).

<sup>152</sup> See CUSTOMS BUSINESS RULES DOCUMENT, *supra* note 72, at 82; Customs ACE Webinar, *supra* note 76; see generally Gary Lawson, *Delegation and Original Meaning*, 88 VA. L. REV. 327, 330 (2002) (outlining the non-delegation doctrine that requires Congress to provide an intelligible principle if it chooses to delegate its power to an administrative agency).

<sup>153</sup> Customs Form 7553, *supra* note 79, at 1.

<sup>154</sup> Customs ACE Webinar, *supra* note 76 (reflecting that the ABI reports the same information as the CBO Form 7553 but requires physical signatures).

<sup>155</sup> See CUSTOMS BUSINESS RULES DOCUMENT, *supra* note 72, at 82; Customs ACE Webinar, *supra* note 76.

catalogue produced by importers may be used as a supporting document if it resembles a bill of lading, waybill, or otherwise identifies the products included in each shipment.<sup>156</sup> Importers would have a heavier burden to corroborate internal donations, but the supporting documentation could consist of a rental lease for separately housed merchandise and documents that support usage by institutional recipients.

#### *E. Legislative Support for Donation*

Several legislative sources support modifying the Tariff Act of 1930 to include donation as a method for claiming drawback. First, the DAPPER Fashion Act aims to allow importers of fashion products to internally retain drawback-eligible merchandise under an internal donation scheme. The internal donation scheme requires that drawback-eligible merchandise be used by charitable and educational institutions in a location designated by the importer and under the importer's supervision. The DAPPER Fashion Act's internal storage procedure and limitation on subsequent use is similar to the bonded warehouse system for imported goods.<sup>157</sup> In 1832, Congress allowed importers to avoid paying duties on imported goods if they were held in "custom-house stores" and this concept later developed into a full warehouse system.<sup>158</sup> Stored materials were also excluded from the domestic market and later, Congress even permitted the manipulation of stored goods while they were in warehouses.<sup>159</sup> The internal donation framework is supported by Congress' creation and development of bonded warehouse system because importers and fashion brands would now store drawback-eligible in a separate location to be manipulated or otherwise processed for practices not impacting the domestic market. Accordingly, these products would be almost-duty free like merchandise stored in bonded warehouses.

Second, the legislative history of drawback itself supports the adoption of the DAPPER Fashion Act because this addition will stimulate foreign trade, create employment, and encourage domestic

---

<sup>156</sup> See CUSTOMS BUSINESS RULES DOCUMENT, *supra* note 72; Customs ACE Webinar, *supra* note 76.

<sup>157</sup> See USTC Study, *supra* note 49, at 53.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* at 57.

manufacturing. Annually, millions of dollars are spent on the importation of luxury goods into the United States.<sup>160</sup> The DAPPER Fashion Act will increase the importation of luxury and other goods because it will create more students and in turn fashion designers, creators, and professionals from an untapped market to also contribute to the import and export regime.<sup>161</sup> Additionally, the DAPPER Fashion Act's emphasis on increasing access to luxury fabrics and textiles will create employment because some of the targeted institutions will need to increase staffing to manage the integration of luxury fabrics and textiles.

Third, the DAPPER Fashion Act borrows reverse engineering language from Section 1201 (f) of the Digital Millennium Copyright Act ("DMCA") and serves a similar purpose.<sup>162</sup> Specifically, the DMCA provides that:

a person who has lawfully obtained the right to use a copy of a computer program may circumvent a technological measure that effectively controls access to a particular portion of that program for the sole purpose of identifying and analyzing those elements of the program that are necessary to achieve interoperability of an independently created computer program with other programs, and that have not previously been readily available to the person engaging in the circumvention, to the extent any such acts of identification and analysis do not constitute infringement under this title.

During his testimony a hearing before the Congressional Subcommittee on Telecommunications Trade and Consumer Protection,

---

<sup>160</sup> DELOITTE, GLOBAL POWERS OF LUXURY GOODS (2018); *French Luxury Giants Among the Potential Targets of U.S. Government's Proposed Tariffs on \$2.4 Billion-Worth of Imports*, THE FASHION L. (Dec. 3, 2019), <https://www.thefashionlaw.com/french-luxury-brands-among-targets-of-us-governments-proposed-tariffs-on-24-billion-worth-of-imports/> [<https://perma.cc/E44L-5JNL>] ("A whopping \$2.4 billion-worth of imports from France are set to be taxed by the U.S., putting coveted luxury goods in the crossfire of a bi-national fight over a new French digital services tax.").

<sup>161</sup> See generally CFDA & PVH CORP., STATE OF DIVERSITY, EQUITY & INCLUSION IN FASHION (Feb. 2021).

<sup>162</sup> Digital Millennium Copyright Act of 1998, 17 U.S.C. § 1201.

Walter Hinton, then-Vice President of Strategy and Marketing Enterprises of the Computer & Communications Industry Association, stated “Reverse engineering is by no means a practice particular to the computer industry . . . Companies want to make and sell better products. This is an accepted part of competition in a free enterprise society. We call this innovation . . . .”<sup>163</sup> Others, in addition to Hinton, referenced *Sega Enterprises Ltd. v. Accolade, Inc.*, during their congressional testimony as support for protecting the act of reverse engineering. The United States Court of Appeals for the Ninth Circuit decided *Sega* and determined that reverse engineering of video games was “precisely th[e] growth in creative expression, based on the dissemination of other creative works and the unprotected ideas contained in those works, that the Copyright Act was intended to promote.”<sup>164</sup> Ultimately, the DMCA was enacted and included Section 1201 to foster competition and innovation.<sup>165</sup>

The DAPPER Fashion Act and the DMCA’s reverse engineering provisions embody a similar purpose because the former aims to provide underrepresented communities with access to luxury fabrics, textiles, and materials to foster skills development.<sup>166</sup> Akin to reverse engineering, charitable or educational institutions would be permitted to evaluate the stitching, upholstery, and construction of fashion products by de-construction and otherwise working with various products under the DAPPER Fashion Act. In turn, this would stimulate apparel and fashion design research from underrepresented communities and strengthen the creative skills of members in these communities.<sup>167</sup> To address concerns with infringement and misuse, the Ninth Circuit’s analysis of *Sega* is

---

<sup>163</sup> Testimony regarding H.R. 2281, The WIPO Copyright Treaties Implementation Act, 1998 WL 373131.

<sup>164</sup> *Sega Enters. Ltd. v. Accolade, Inc.*, 977 F.2d 1510, 1523 (9th Cir. 1992).

<sup>165</sup> See 17 U.S.C. § 1201.

<sup>166</sup> H.R. REP. NO. 105-551, at 42 (1998) (noting that the goal of this section is “not to encourage or permit infringement.”).

<sup>167</sup> Cf. 144 CONG. REC. E1640-02, at E1640 (1998) (noting that the reverse engineering provision “would ensure that companies and individuals engaged in what is presently lawful encryption research and security testing and those who legally provide these services could continue to engage in these important and necessary activities which will strengthen our ability to keep our nation’s computer systems, digital networks and systems applications private, protected and secure.”).

instructive. Given the limited protections afforded to fashion products, copyright and trademark law are inadequate arguments to combat reverse engineering in fashion because the disassembly of protected fashions cannot constitute infringing use because to do so, would arm fashion brands with a “monopoly over the functional aspects of his [or her] work.”<sup>168</sup> Copyright and trademark are not the proper vehicle for a fashion brand to acquire a monopoly over an idea or functional principle; patent law is.<sup>169</sup>

#### F. INDUSTRY IMPACT

*We are proud to . . . help break cycles of inequality. Realizing dreams is incredibly important to us at Coach, going back to our earliest days as a small, family-run workshop in New York City. Today, we believe in the power of dreams to not only enable each of us to become our best selves, but to help make the world a better place, dream by dream.*<sup>170</sup>

—Todd Kahn, CEO and President of Coach

Incorporating donation into drawback will provide underrepresented communities with both the access to learn from luxury fabrics, garments, and textiles, and the skills to handle them. Under the DAPPER Fashion Act, donation will have broad implications for positively impacting the government, fashion brands, and institutional recipients alike.

##### 1. Government

The creation of a donation scheme for importers to attain drawback will produce certain benefits to the government, specifically United States Customs and Border Protection. Drawback is far from a perfect system, despite its liberal expansion and development from a prior system of complete duty exemption to refund program, as an importer can now recollect up to 99% of the duties paid on imported

---

<sup>168</sup> *Sega*, 977 F.2d at 1526.

<sup>169</sup> *Id.*; see also 17 U.S.C. §§ 102, 106(b).

<sup>170</sup> Sarah Guirguis, *Coach’s ‘Dream It Real’ Initiative*, FLAIR (Aug. 16, 2021), <https://flair-magazine.com/coachs-dream-it-real-initiative/> [https://perma.cc/53E6-HFLU] (outlining Coach’s global Dream It Real initiative).

merchandise.<sup>171</sup> These modifications have resulted in new issues for the government to face. For example, as drawback was extended to virtually every product over the years, the government had to balance the public's interest with its own economic issues.<sup>172</sup> This balancing occurred in 1986, where one political analyst evaluated the government's considerations of extending drawback to copper and the negative implications that doing so would have on the domestic market because there was no subsidization for domestic component production.<sup>173</sup>

In 1966, the United States Tariff Commission recognized a major criticism of drawback was “the cost of compliance with the regulatory procedures which [is] frequently said to deter the use of the provision”<sup>174</sup> Over one-half century later, the cost of compliance with drawback's regulatory scheme is still reported as an area of concern.<sup>175</sup> Specifically, in the Government Accountability Office's 2019 report, the Committee made the following conclusions:

TFTEA generally expanded eligibility for drawback refunds, with some caveats, but CBP is not adequately managing its growing workload of claims resulting from the changes . . . On balance, these changes, along with certain limitations in CBP's Automated Commercial Environment (ACE), have led to an increase in the workload of drawback specialists. However, CBP did not anticipate the increased workload and does not have a plan to manage the increased workload, which has caused delays resulting in uncertainty for industry—potentially impeding trade

\*\*\*

---

<sup>171</sup> See Elena Ianchovichina, *Duty Drawbacks, Competitiveness and Growth: Are Duty Drawbacks Worth the Hassle?* (World Bank Pol'y Rsch., Working Paper No. 3498, 2005), <https://openknowledge.worldbank.org/bitstream/handle/10986/8890/wps3498.pdf?sequence=1&isAllowed=y> [https://perma.cc/G93M-GBCW].

<sup>172</sup> *Id.*

<sup>173</sup> Mark G. Herander, *Export Drawback and the Structure of Protection*, 38 BULL. ECON. RSCH. 43 (1986).

<sup>174</sup> See USTC Study, *supra* note 50, at 7.

<sup>175</sup> See 2019 GAO REPORT, *supra* note 84, at 39.



CBP has not adequately managed the growing workload drawback specialists have been experiencing since TFTEA . . . The workload of the Drawback Centers is growing because of a learning curve related to the switch from a paper-based to an electronic process, delays in processing claims, and an increase in the number of claims . . .

\*\*\*

Additionally, USCBP has not been able to respond to all privilege applications within 90 days, as set forth in the regulations . . . According to drawback specialists, they missed this deadline because of their workload. According to an industry representative, delays in processing privilege applications mean companies cannot receive their drawback money in a timely manner. Such delays cause uncertainty for industry, potentially impeding trade . . .

CBP has not brought staffing to its optimal level, and has not adjusted the workload in Drawback Centers through ACE to account for the increase in claims, rulings, and privilege applications. Prior to TFTEA, CBP officials explained that CBP could not control the workload of the Drawback Centers because claimants mailed their paper-based claims to the Drawback Center of their choice. Now, CBP has greater visibility and flexibility to potentially control the work flow to the Drawback Centers through ACE, but has not done so. CBP officials said they had anticipated that ACE automation would reduce drawback specialists' workload, but experience, to date, indicates that workload increased.

\*\*\*

CBP lacks effective automated controls to prevent overpayment of drawback refunds related to export information . . . To compensate for the lack of automated controls, CBP designed an internal control for the drawback program that targets a selection of claims for a manual full desk review by drawback specialists . . . However, CBP has not addressed

several other risks for improper payments in the drawback program. These risks relate to (1) limitations in CBP's existing desk review process, (2) establishing electronic proof of export, and (3) targeting a selection of claims for review.

\*\*\*

CBP has not taken any steps to establish electronic proof of export, although it has a longstanding goal to designate the Automated Export System as an electronic means of establishing proof of export. Federal standards for internal control call for agency management to design the entity's information system and related control activities to achieve objectives and respond to risks.

\*\*\*

CBP Has Not Targeted over 35,000 Claims for Review since It Disabled the Selection Feature, and the Number of Claims Not Targeted for Review Continues to Increase.<sup>176</sup>

Given these concerns, it is clear the TFTEA and the progressive expansion of drawback over the last century have done no more than complicate an already complicated system. Therefore, it is imperative that the DAPPER Fashion Act eliminate or alleviate the concerns mentioned and not further exacerbate the mountain of compliance issues.

The addition of donation to the drawback framework will not be completely without issue, because a learning curve is presumed for drawback specialists to become acclimated with the new filing distinctions for donated merchandise. However, once drawback specialists are prepared to handle donation claims, the desk review process will become straight-forward. The desk review process which is currently three (3) years may experience a streamlined result because the statutory and regulatory requirements for donation are rudimentary.<sup>177</sup> The DAPPER Fashion Act will also not add any additional or incidental burdens on staffing because this issue has existed

---

<sup>176</sup> *Id.* at 18–46.

<sup>177</sup> *Id.* at 28.

and will continue to exist until it is remedied.<sup>178</sup> To the contrary, donation should reduce the workload of drawback specialists because the supporting documentation used for donation will likely become duplicative or standardized over the years. For example, take Louis Vuitton’s famous “Neverfull” handbags that were introduced in 2007: if the handbags were deconstructed down to the raw leather and donated annually, the same supporting documentation would be used consistently.<sup>179</sup>

Additionally, donation will further burden USCBP and may in fact serve as an internal control against overpayments. Specifically, the DAPPER Fashion Act has a proposed record keeping measure—the internal catalogue of drawback-eligible merchandise—which requires that an importer specifically label and denote what merchandise is being sought for drawback from an overall imported shipment. In essence, fashion brands would identify the 33% of drawback-eligible merchandise from an overall imported shipment and explain that those items are being donated, while others are not. This measure will prevent and discourage importers from double dipping on the same drawback, which has been a problem for other drawback-eligible products like spirits and wines.<sup>180</sup> Donation is largely positioned to alleviate burdens on the government in its administration of the drawback program, but it is also positioned to help luxury brands as well.

## 2. Luxury Brands

Luxury brands generally stand in support of the ideology expressed by Mike Jeffries, the former Abercrombie CEO, who opposed the idea of donating any of brand’s merchandise and stated that he would rather burn clothing than donate it.<sup>181</sup> Brands share

---

<sup>178</sup> *Id.* at 31–32.

<sup>179</sup> See generally Amra Hadzic, *History of a Classic: Ultimate Guide to the Louis Vuitton Neverfull*, WLD (May 17, 2021), <https://www.weeklyluxdrop.com/post/history-of-a-classic-ultimate-guide-to-the-louis-vuitton-neverfull> [<https://perma.cc/L882-PT4R>].

<sup>180</sup> See USTC Study, *supra* note 50; see also Nat’l Ass’n Mfrs. v. United States Dep’t of Treasury, 427 F. Supp. 3d 1362, 1365–66 (explaining the double drawback on spirits and wines).

<sup>181</sup> Matt Wilson, *Activist’s Bid to Undermine A&F Brand Catches Fire*, PR DAILY (May 17, 2013), <https://www.prdaily.com/activists-bid-to-undermine-af-brand-catches-fire/> [<https://perma.cc/GK2J-NKN4>].

this position for many reasons, including the preservation of intellectual property rights against unauthorized goods, exclusivity, and cost savings from programs like drawback.<sup>182</sup>

Generally, fashion brands aim to protect their creations in America through various intellectual property laws, such as the Copyright, Lanham, and Patent Acts.<sup>183</sup> US Copyright protections include graphic designs used on useful articles in fashion that are deemed separable.<sup>184</sup> The Lanham Act's protections cover logos, symbols, distinctive marks, and product packaging in the form of trademark and trade dress protection.<sup>185</sup> The Patent Act affords fashion brands protection in the form of design and utility patents for their inventions.<sup>186</sup> With these limited measures of protection, brands aim to protect their business from third parties selling authentic products—grey market goods—outside of the brand's authorized distribution channel.<sup>187</sup> Brands have articulated that grey market goods dilute their brand and infringe on their intellectual property rights.<sup>188</sup> In line with the fight against grey market goods, is the concern that unauthorized sellers and excess products reduce exclusivity, or the appearance thereof, that fashion brands would like to promote for their products and reputation.<sup>189</sup> Brands promote exclusivity because it enables the brand to control pricing, promotions, the channels that its products reach, and most of all the type of customer.<sup>190</sup>

---

<sup>182</sup> Elia, *supra* note 20, at 557.

<sup>183</sup> See Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541; Lanham Act, Pub. L. No. 79-489, 60 Stat. 427; Patent Act, Pub. L. No. 117-120, 66 Stat. 792.

<sup>184</sup> See *Star Athletica, LLC v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1016 (2017).

<sup>185</sup> See 15 U.S.C. § 1127.

<sup>186</sup> See 35 U.S.C. § 271.

<sup>187</sup> Richard A. Fogel, Note, *Grey Market Goods and Modern International Commerce: A Question of Free Trade*, 10 FORDHAM INT'L L.J. 308, 308 (1986).

<sup>188</sup> See, e.g., *Bourdeau Bros., Inc. v. Int'l Trade Comm'n*, 444 F.3d 1317, 1320–24 (Fed. Cir. 2006); *Gamut Trading Co. v. United States ITC*, 200 F.3d 775, 779 (Fed. Cir. 1999); *Olympus Corp. v. United States*, 627 F. Supp. 911, 913–15 (E.D.N.Y. 1985), *revised*, 792 F.2d 315 (2d Cir. 1986); *Coalition to Preserve Integrity v. United States*, 598 F. Supp. 844, 846–48 (D.D.C. 1984), *rev'd*, 790 F.2d 903 (D.C. Cir. 1986), *cert. granted sub nom. K-Mart Corp. v. Cartier, Inc.*, 107 S. Ct. 642 (1986).

<sup>189</sup> MARGARET BRUCE ET AL., *INTERNATIONAL RETAIL MARKETING: A CASE STUDY APPROACH* 158 (2004).

<sup>190</sup> See MCKINSEY, *THE STATE OF FASHION 2021* 45 (2021), <https://www.mckinsey.com/~media/mckinsey/industries/retail/our%20insights/state%20of%20fashion/2021/the-state-of-fashion-2021-vf.pdf> [https://perma.cc/KX86-7SW8].

Scholars have also recognized that exclusivity is a typical component of a brand's marketing strategy and is an integral ingredient of the brand's international success.<sup>191</sup> The donation of merchandise, highly-priced in most instances, without a framework to protect the intellectual property rights of the donor is a legitimate concern.

However, the DAPPER Fashion Act directly counters every argument against donation because it provides a comprehensive approach. First, the DAPPER Fashion Act requires earmarking of 33% of drawback-eligible merchandise, which would allow a brand to identify merchandise that does not feature signature marks or trademarks. Second, the term "grey market goods" becomes a misnomer within the context of donated goods, as institutional recipients may be held liable for infringing uses of donated goods, merchandise is labeled to identify their non-commercial use, and merchandise is not authentically manufactured and imported into the United States, as understood within the general context of grey market goods. Third, the DAPPER Fashion Act would equip fashion brands with exclusivity and brand control because it empowers the brand to identify what institutions it will donate to and the terms of the donation. Charitable organizations can also make use of products and independently determine if goods are of quality before destroying or reselling to recyclers.<sup>192</sup>

### 3. Institutions

Most HBCU and minority-serving institutions with fashion, apparel or textile-related degree programs do not have uniform or reasonable access to luxury fabrics and textiles that professors at these institutions can use for teaching their students.<sup>193</sup> This deficiency largely contributes to the lack of diversity within the fashion industry's design space. Antoine Phillip corroborated this fact when he announced Gucci's Changemakers program and stated, "education is vital to implementing real change and ensuring diverse voices are in positions of power, it is more important than ever to foster the

---

<sup>191</sup> CHRISTOPHER M. MOORE & STEVE BURT, *Developing A Research Agenda for the Internationalization of Fashion Retailing*, in *FASHION MARKETING* 89, 95 (Tony Hines & Margaret Bruce eds., 2d ed. 2007).

<sup>192</sup> See HANSEN, *supra* note 130, at 113.

<sup>193</sup> See CFDA & PVH CORP., *supra* note 161.

next generation of talent.”<sup>194</sup> The next generation of talent must reflect the world’s diversity and not simply reflect the most notable fashion schools around. In 2021, PVH Corp. prepared a report on the State of Diversity, Equity, and Inclusion in Fashion and detailed the lack of diversity in fashion and listed that fashion industry professionals should “recruit from nontraditional sources” as an intervention to remedy this inequity.<sup>195</sup> The report even details that top fashion schools act as feeders into the pipeline of fashion that underrepresented groups are often unaware of or are not privy to.<sup>196</sup>

Given the lack of diversity in fashion, the DAPPER Fashion Act will act as a direct connection for non-feeder fashion programs to join the pipeline and feed their students into high fashion opportunities. The author conducted interviews of institutions<sup>197</sup> that would qualify for donation-related drawback under the DAPPER Fashion Act to gauge the future impact of the Act.<sup>198</sup>

---

<sup>194</sup> Mike Bederka, *Fashion Students Earn Top Honors from Gucci, AATCC, and Dior*, NEXUS (June 16, 2020), <https://nexus.jefferson.edu/business/fashion-students-earn-top-honors-from-gucci-and-aatcc/#:~:text=%E2%80%9CAs%20education%20is%20vital%20to,of%20brand%20and%20culture%20engagement> [https://perma.cc/7JTZ-HLY3].

<sup>195</sup> CFDA & PVH CORP., *supra* note 161.

<sup>196</sup> *Id.* at 10 (“A Black student said, ‘It’s hard for people of color to reach for opportunities they don’t even know about,’ and a non-profit leader who works in this space pointed to the lack of information about fashion in underrepresented communities.”).

<sup>197</sup> Zoom Interview with Lynne Dixon-Speller, Acad. Dean & Lead Dev., Edessa School of Fashion (Apr. 1, 2022) [hereinafter “Edessa Interview”]; Telephone Interview with Dr. Elka M. Stevens, Assoc. Professor & Coordinator Fashion Design, Howard Univ. in Wash., D.C. (Mar. 4, 2022) [hereinafter “Howard Interview”]; Telephone Interview with Dr. Valerie L. Giddings, Dep’t Chairperson, N.C. A&T State Univ. in Greensboro, NC (Mar. 8, 2022) [hereinafter “NC A&T Interview”]; WebEx Interview with Dr. Darlene Eberhart-Burke, Dep’t Chairperson, N.C. Cen. Univ. in Durham, NC (Mar. 29, 2022) [hereinafter “NCCU Interview”]; Zoom Interview with Sue “Aleta” Ballard de Ruiz, Assistant Professor, Tenn. State Univ. in Nashville, TN (Mar. 21, 2022) [hereinafter “TSU Interview”]; Telephone Interview with Dozy Butler, Professor, Univ. of Ark. at Pine Bluff in Pine Bluff, AR (Mar. 4, 2022) [hereinafter “UAPB Interview”]; Telephone Interview with Angela Bacskocky, Assistant Professor, Va. State Univ. in St. Petersburg, VA (Mar. 2, 2022) [hereinafter “VSU Interview”]; Telephone Interview with Laura Chapuis, Fashion Design Chairperson, Wade Coll. in Dallas, TX (Mar. 28, 2022) [hereinafter “Wade Interview”]. Hereinafter, collectively “Fashion Interviews 2022.”

<sup>198</sup> In pursuit of this pipeline, several institutions that serve underrepresented communities were interviewed and asked *inter alia* the following five questions, to initiate the dialogue: (1) In rough approximations, what percentage of your students will work with luxury or high-quality fabrics before they graduate from your program?; (2) In rough

The interviews revealed that, on average, less than five percent of students, who attend non-feeder fashion schools, will have access to work directly with luxury fabrics, intern in a luxury or designer market, or secure post-graduation employment within the luxury or designer fashion markets.<sup>199</sup> A trend was also noticed that students with the money, means, and opportunity to leave their hometown are typically among the handful of students who secure more luxurious internships and post-graduation employment opportunities.<sup>200</sup> At bottom, these institutions are only equipped with enough resources to provide a rudimentary supply of mass market, yet cost-effective materials.<sup>201</sup> Their inability to provide high-quality fabrics, materials, and furs is likely due to America's history of systemically underfunding certain institutions.<sup>202</sup>

It is worth noting that some of the interviewed institutions are located near resources like history and art museums or luxury fashion houses.<sup>203</sup> Notwithstanding location, these institutions are only able to introduce their students to luxury materials, not teach full courses with the materials.<sup>204</sup> "Not having material makes it difficult to teach what we would like to teach, [for example] . . . without wool it is very difficult to make a blazer."<sup>205</sup> Access to quality fabrics and textiles for student use is a common barrier shared by these institutions.<sup>206</sup> All of the interviewees shared that their institutions are prepared to receive donated goods, but few noted that very large shipments might present a problem for storage and security. While storage and security were concerns for two institutions, the remaining

---

approximations, what percentage of your students will intern in a luxury fashion house or in a role that works with high-quality fabrics?; (3) In rough approximations, what percentage of your students will graduate to work with a luxury fashion house or designer company?; (4) If the Act was implemented, would your program have the resources to accept the materials provided?; and (5) Would your program have the capability to teach with these resources that were not previously used within the program?

<sup>199</sup> Fashion Interviews 2022.

<sup>200</sup> Howard Interview; Edessa Interview.

<sup>201</sup> Fashion Interviews 2022.

<sup>202</sup> See generally, Jennifer M. Smith & Elliot O. Jackson, *Historically Black Colleges & Universities: A Model for American Education*, 14 FLA. A&M U. L. REV. 103 (2021).

<sup>203</sup> Howard Interview; NCCU Interview.

<sup>204</sup> Howard Interview.

<sup>205</sup> Wade Interview.

<sup>206</sup> Fashion Interviews 2022.

institutions shared proactive approaches and a willingness to store large quantities of goods—methods for storing donated goods include placing materials on rolls for easier storage and cutting materials into smaller portions for other educational uses.<sup>207</sup>

Collectively, the interviewees shared an interest in deconstructing or reverse engineering luxury garments to teach their students about “the fiber down to the fashion.”<sup>208</sup> In the context of external donation, interviewees agreed that student learning would be enhanced by (i) having deconstructed fabrics for use in textile labs, (ii) teaching textile knowledge through the creation of swatch books, and/or (iii) mastering apparel design and construction techniques on all qualities of fabric. In the context of internal donations, all interviewees welcomed the opportunity for internships or skills seminars because their students are often overlooked.<sup>209</sup> In sum, institutional recipients would make use of products or opportunities almost instantly.

Finally, Interviewees were even asked to consider safety and staffing. Invariably, the response echoed that the respective institutions are equipped with storage to safeguard donated goods.<sup>210</sup> While some critics may argue that faculty at these institutions will lack the expertise to work with these materials,<sup>211</sup> this argument is unfounded for several reasons. The faculty members at the interviewed institutions possess masters and terminal level educations in art, apparel, or related disciplines from feeder and non-feeder schools.<sup>212</sup> Additionally, an institution’s resources are not determinative of the expertise of the individual faculty members that work there.

---

<sup>207</sup> *Id.*

<sup>208</sup> NCCU Interview.

<sup>209</sup> Fashion Interviews 2022.

<sup>210</sup> *Id.*

<sup>211</sup> See generally, Elliot O. Jackson, *Velvet Rope Racism: When Discriminatory Dress Code Policies Go Too Far*, 15 S.J. POL’Y & JUST. 23 (2022) (citing Calvin John Smiley & David Fakunle, *From ‘[B]rute’ to ‘[T]hug:’ The Demonization and Criminalization of Unarmed Black Male Victims in America*, 26 J. Hum. Behav. Soc. Env’t 350 (2016), wherein Smiley and Fakunle explain that post-Reconstruction, a loss of political power among white Americans occurred and caused them to picture Black Americans as brute or unintelligent to diminish their political and educational advancement).

<sup>212</sup> Fashion Interviews 2022.



## CONCLUSION

Fashion, though driven in part by inspiration, is defined by the curator. If creativity and inspiration are defined solely by those educated at what some define “elite” schools, how will fashion ever be sustainable, let alone ethical. By revealing the theme of new purpose, Dapper Dan’s upcycled Gucci garment bags tells us how.<sup>213</sup> One man took a product of general use—garment bags—and gave it a new purpose: couture. In the process, he developed his skills and mastered them, transforming canvas garments bags into highly desired outfits by cutting the bags up, trimming, and even adding accents.<sup>214</sup> Instead of traveling with these bags or allowing them to collect dust, Dan found a new purpose for these garment bags—couture.

Under the DAPPER Fashion Act, the story of Dapper Dan’s transformative use of a limited supply of canvas designer garment bags lives on, as fashion brands will no longer have to export or destroy imported merchandise. Instead, these brands can donate their unsold, rejected, or otherwise imported merchandise to educational or charitable institutions that serve underrepresented communities. Brands are compensated by qualifying for a refund of 99% of the duty paid to import this merchandise in exchange for donating it, just as Gucci was compensated for the sale of their garment bags. Directly, the DAPPER Fashion Act will provide underrepresented communities with access to luxury fabrics and the opportunity to learn how to use them in fashion design, construction, and more. The DAPPER Fashion Act extends beyond access and opportunity for underrepresented communities, for it even reaches the progression of intellectual property. Reverse engineering in fashion is what stimulates it and what will keep it going. Techniques that are used today will become tomorrow’s norm, such that innovation and creativity will ascend to new levels.

Dapper Dan says that some have considered his life to be synonymous with a “Popsicle stick floating in the Harlem River, seen as trash by some but offering something of value to those paying

---

<sup>213</sup> See DAY, *supra* note 27, at 177–82.

<sup>214</sup> *Id.* at 182.

attention . . . .”<sup>215</sup> Should Congress enact the DAPPER Fashion Act, this legislative act will send a clear message that Congress is paying attention to the underrepresented communities, the evolution of domestic and foreign trade, and the promotion of sciences and useful arts. To achieve true diversity in fashion, there must be equitable representation at all levels and from all institutions. The DAPPER Fashion Act will ensure that.

*Certainly not all fashion professionals get a degree in the discipline, but for the many who do, fashion school is where they develop the thinking, skills and networks that will guide their future careers and shape our industry.*<sup>216</sup>

—Ben Barry

---

<sup>215</sup> See DAY, *supra* note 27, at 272–73.

<sup>216</sup> Ben Barry, *How Fashion Education Prevents Inclusivity*, BUS. FASHION (Jan. 6, 2020), <https://www.businessoffashion.com/opinions/workplace-talent/op-ed-how-fashion-education-prevents-inclusivity/> [<https://perma.cc/773Z-R2KA>]; see also DAY, *supra* note 27, at 174 (reflecting on his life and realizing that “[t]here weren’t many black students in fashion schools, or black-owned luxury-goods factories where I could just take my furs and leather skins and ask them to create my designs.”).