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RESEARCH ARTICLE

FAST FASHION, HUMAN RIGHTS, AND TRADE: TOWARDS CREATING A HUMAN RIGHTS CENTRIC FASHION THROUGH TRADE LAW

Aishwarya Ramkumar [↑] & Adyasha Das[*]

ABSTRACT

This essay throws light on the exploitative nature of international fast fashion brands and how they often treat their workers in inhumane ways. In this light, we seek to discuss solutions to these human rights violations. Two possible solutions are proposed in the realm of international trade law that can help minimize or prevent such exploitation of workers. The first approach is a labeling regime where products manufactured free of worker exploitation will receive a human rights friendly label. In the second approach, we discuss a ban on all products which do not conform with human rights standards. We will discuss the feasibility of both these approaches.

Keywords: International Trade Law, Human Rights, Fast Fashion, US-Tuna II, EC-Seals

[↑] Aishwarya Ramkumar is a final year student from Jindal Global Law School. She can be reached out at aish25899@gmail.com.

[*] Adyasha Das is a final year student from Jindal Global Law School. She can be reached out at dasadyasha99@gmail.com.

INTRODUCTION

The term 'fast fashion' is defined by the Cambridge Dictionary as "[*c*]*lothes that are made and sold cheaply so that people can buy new clothes often*".[1] The definition suggests that fast fashion is about low prices and frequent replacements due to changing fashion trends. Ethical concerns about fast fashion have been around since the time it came into existence, even though subconsciously it was expected that for clothes to be that cheap, exploitation on some level had to be present.

The subconscious feeling, however, was soon affirmed with evidence. Various brands like Zara, Marks and Spencer, Asos, and Levis, amongst others, refused to disclose the location of their factories to prevent authorities from checking their work conditions and worker treatment.[2] In a Hennes & Mauritz ('**H&M**') factory in Bangalore, India, women workers were physically abused to meet production targets.[3] Other brands like Mango and Asos were also found exploiting labor and paying a wage that is far below the minimum wage set by Turkey. Many fast-fashion brands such as Mango and H&M have also illegally subcontracted garment making to unauthorized factories which commonly engage in worker abuse such as denying maternity leaves, sick leaves, etc.[4] In 2011, a factory in Sao Paolo, Brazil, employed workers who had migrated from Peru and Bolivia and made them work in sweatshop conditions. The workers were made to work for 16 to 19 hours every day with little or no time off in inhuman conditions.[5]

The pressure to meet the deadlines set by these fast fashion brands often translates to female employees at GAP and H&M being physically and sexually abused as a consequence, as reported by the Global Labour Justice.[6] In 2018, between January and May, over 540 employees of factories in Bangladesh, Cambodia, India, Indonesia, and Sri Lanka reported cases of abuse by their employers.[7] This abuse included but was not just limited to, slapping, bullying, molestation,

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[1] CAMBRIDGE ADVANCED LEARNER'S DICTIONARY (3rd ed., 2008).
[2] Aruna Kashyap, *When Clothing Labels Are a Matter of Life or Death,* HUMAN RIGHTS WATCH (May 2, 2018, 9:21AM EDT), https://www.hrw.org/news/2018/05/02/when-clothing-labels-are-matter-life-or-death.
[3] GLOBAL LABOUR JUSTICE, *Gender Based Violence in GAP Garment Supply Chain – Worker Voices from the Global Supply Chain: A Report to the ILO 2018* (2018), available at https://globallaborjustice.org/handm-gbv/
[4] Kashyap, *supra* note 2.
[5] Kate Hodal, *Abuse is daily reality for female garment workers for Gap and H&M, says report,* THE GUARDIAN (June 5, 2018), *https://www.theguardian.com/global-development/2018/jun/05/female-garment-workers-gap-hm-south-asia.*
[6] GLOBAL LABOUR JUSTICE, *Gender Based Violence in GAP Garment Supply Chain – Worker Voices from the Global Supply Chain: A Report to the ILO 2018* (2018), available at https://www.globallaborjustice.org/wp-content/uploads/2018/06/GBV-Gap-May-2018.pdf.
[7] The Guardian, *Abuse is daily reality for female garment workers for Gap and H&M, says report*, June 5, 2018, https://www.theguardian.com/global-development/2018/jun/05/female-garment-workers-gap-hm-south-asia.

and rape. There were also instances of forced overtime and denial of bathroom breaks for women.[8] All of this is a consequence of the supply chain model of fast fashion which sets unreasonable production targets which lead to unpaid overtime in extreme pressure situations.[9] Such instances of labor abuse are common in fast-fashion brands' factories as the capitalistic need of maximum production with minimum resources takes away from paying heed to human rights and labor regulations, witnessed by the instances discussed earlier. Therefore, in this pursuit of profit maximization, these brands ignore international law standards of human and labor rights, which ultimately adversely affects the workers who are already vulnerable owing to unequal power positions.

Therefore, the fast fashion industry, owing to its capitalistic need to focus on mass production often ignores the human rights of those who are employed in the manufacturing of such apparel. This essay argues that international trade cannot take place in a manner that derogates the basic human rights of those workers who are involved in factory-level production. The fast fashion industry is specifically focused on, owing to many recent incidents of gross human rights violation and exploitation of workers employed by international brands in this industry, as discussed in the examples cited earlier.

This essay, therefore, advocates for a position where there are trade restrictions on those products which are a result of human rights violations. This is because absolutist claims that focusing singularly on the right to trade in isolation is problematic, as trade liberalization has harmful effects on human rights.[10]

While it is true that this would seem to be a rather imperialist restriction on free trade, such restrictions are reasonable and justifiable,[11] as the essay aims to elucidate moving ahead.

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[8] *Id.*
[9] *Id.*
[10] Lorand Bartels, *Trade and Human Rights* in OXFORD HANDBOOKS ONLINE 573 (Oxford University Press, 2018).
[11] General Agreement on Tariffs and Trade, October 30 1947, 61 Stat. A-11, 55 U.N.T.S. 194 (henceforth GATT) art. XX.

A BRIEF OVERVIEW

In Part I of this essay, we will propose two alternative measures that seek to protect the human rights of workers employed in fast fashion factories. We will briefly explain the two measures and the objective that they seek to meet. In Part II, we will test the viability of the measures by testing them against the international trade law framework, specifically the General Agreement on Tariffs and Trade, 1947 (GATT) and the Technical Barriers to Trade (TBT) Agreement. This discussion will be aided by drawing from the cases of *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Product*[12]*s* (henceforth, *US Tuna-II)* and *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products* (henceforth, *EC Seal*).[13]

Briefly, the first approach seeks to impose upon all international fast fashion brands, the need to use a safety label.[14] This label would carry the note that the product that is it placed upon was not produced in a setting of human rights violation or is not a result of workers' exploitation and human rights violation. Those products that do not carry this label, would, therefore, be outcomes of production under exploitative conditions. In this manner, consumers would be informed of the product they are purchasing, and under what conditions it was manufactured. The second approach would consider countries imposing a ban on products that are manufactured by brands under exploitative conditions. Therefore, if a scarf is manufactured by fast fashion brand "Z" under conditions that violated human rights, it would not receive a safety label but would be placed on the market, under the first method. However, under the second approach, the said scarf would just not be placed for sale in any country, including the one it was manufactured in.

We will discuss these approaches in detail subsequently.

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[12] Report of the Appellate Body, *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Product* (May 16, 2012 adopted on June 13, 2012) (henceforth, *US Tuna-II*).
[13] Report of the Appellate Body, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products,* (May 22, 2014, adopted on June 18, 2014) (henceforth, *EC-Seals).*
[14] This Measure-Is very similar to the one in *US Tuna-II* and is based around it.

MEASURES PROPOSED

In furtherance of our discussion above, the following two alternative measures are proposed.

Measure-I- Under this method, all products that are either domestically manufactured or imported from fast fashion brands in other countries, which are produced under favorable factory working conditions, and have not been manufactured by exploiting workers and impinging on their human rights, will carry a 'human rights friendly' label. Any product that has been manufactured under exploitative conditions will not carry this label.

A standard must be developed to determine what constitutes non-exploitative treatment, in consonance with the human rights of workers. This may be done by relying on various human rights declarations and treaties such as the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), among others.[15]

Measure-II- All countries must stop the import and sale of products that are manufactured by fast fashion brands under conditions of worker exploitation and violation of human rights. So, any product that is a result of such exploitation will not be placed in the country's market.

Standards must be developed to determine was constitutes non-exploitative treatment of workers. For this, a special treaty may be drafted, which must be compulsorily signed and ratified by all countries. This is to ensure stringent enforcement and to make sure that this is not just another human rights treaty that countries can follow using their discretion.

The objective of Measures I and II – The measures are presented to ensure that products of international fast fashion brands that are made under exploitative and human rights violative conditions are not sold in the national market of a country to protect the public morals of the country. The Public moral in question would be ensuring the human rights of workers.

Therefore, the measures seek to ensure that only those products which are not made under such conditions (human rights friendly products) are sold in the market. This can be achieved through

[15] UDHR, December 10, 1948, 17 A (III) art. 23-25; ICCRP, December 16, 1966, 2200A (XXI) art. 10(1); ICESCR, December 16, 1976, 2200A (XXI) art. 10.

Measure-I by reducing the global demand for such products to some extent. Measure-II seeks to achieve this objective by appealing to the consumers' conscience and allowing them to decide whether they want to purchase a product that was made through human rights violations. As awareness of this increases, the demand for those products resulting from exploitation may decrease, and manufacturers will be compelled to adopt more sustainable means of production.

METHODOLOGY ADOPTED

This essay seeks to test the validity of these measures against the international trade law framework.[16] For this purpose, we will specifically be considering two Appellate Board decisions in *US Tuna-II* and *EC Seal*. This is because the measure in *US Tuna-II* resembles Measure-I and that in *EC Seals* is similar to Measure-II.

In *US Tuna,* the United States placed a measure such that only those tuna products, that were procured without hurting dolphins would receive a dolphin-safe label, while those products that are not eligible for such a label would not.[17] The Appellate body decision, in this case, will be used to guide the analysis of this essay concerning Measure-I.

In *EC Seals*, a measure similar to Measure-II was put in place by the European Union (EU) such that those products that were made by commercially hunting seals would be banned from being placed in the EU market as this was against the public morals of the EC community.[18] Since the nature of this ban is similar to the one proposed in Measure-II, this will guide our analysis of Measure-II.

THE HUMAN RIGHTS FRIENDLY LABEL – MEASURE-I

Measure-I seeks to implement a worldwide safety label measure to ensure that products that were made under ethical working conditions have a 'human rights friendly' label, thus separating them from products that were made by exploiting labor under unfavorable working conditions.

The labeling measure was pioneered by the US in the 1990s during the *US Tuna-II* case which allowed for a 'dolphin safe' label to be marked on tuna cans that were acquired through the methods specified to obtain the 'dolphin safe' label. To qualify for the label, the tuna ships

[16] International Trade Law Framework, including the GATT, Technical Barriers to Trade (TBT) agreement, etc.
[17] *U.S Tuna- II,* ¶5.1.
[18] *Id.,* at ¶4.

needed to have observers on board to confirm that the fishing methods being used were the same as those specified by the label.[19] This measure focused on the Eastern Tropical Pacific (ETP) part of the ocean and tuna caught outside that could be labeled as 'dolphin safe' regardless of compliance with the measure.[20]This measure was challenged on various grounds including under Article 2.1 of the TBT as well as under the GATT.

Article 2.1 of the TBT Agreement states that concerning technical regulations, products imported from the territory of any Member country shall not be treated less favorably than like products of national origin and like products originating in any other country.[21] A technical regulation is a document consisting of product characteristics, related processes, and production methods, mandatory compliances, etc. [22] For a measure to be inconsistent with this article, the three following conditions must be present i) the measure must be technical regulation within the meaning of Annex 1.1 to the TBT Agreement; ii) the imported products must be "like" the domestic product and products from other countries; iii) the imported products must be treated less favorably than that like domestic products and like products from other countries.[23]

Before we delve into an analysis of this, we must address the potential extra-territorial impact of this measure. Indeed, this measure might have an impact on the trade and exports of other countries which do not subscribe to human rights friendly working conditions. However, this extra-territorial reach of Measure-I can be justified by the *erga omnes* requirements of a country. *Erga Omnes* translates to 'towards all'.[24] In the context of international law, this is a term for the rights and obligations that are owed to all states.[25] Therefore, some common standards are shared by the international community, and it is the obligation of states to ensure these. Instances of these shared standards are the prevention of genocide, slavery, etc.[26] These *erga omnes* obligations of a state are towards the international community and, therefore, all states

[19] *Id.,* ¶5.15.
[20] *Id.,* ¶5.2.
[21] Technical Barriers to Trade Agreement, 1868 U.N.T.S. 120 (henceforth, TBT), art. 2.1.
[22] TBT, annexure 1.1.
[23] *US-Tuna II*, ¶202. *See*, Appellate Body Report, *United States — Measures Affecting the Production and Sale of Clove Cigarettes*, (April 4, 2012, adopted on April 24, 2012) ¶87. (Henceforth, *US- Clove Cigarettes*).
[24] Malcom Shaw, *Chapter 4*, in INTERNATIONAL LAW (Cambridge University Press, 3rd ed., 2014).
[25] *Id.*
[26] *Id.*

have a legal interest in their protection. Human rights obligations are also *erga omnes* obligations.[27] A state seeking to place labels only on products that are manufactured in conditions that violate human rights is consonant with that states' *erga omnes* obligations towards individuals who are exploited, regardless of which country this takes place in.[28]

Measure-I shall be now analyzed by using the criteria set by *US Tuna- II* to see if it is violative of Article 2.1 of the TBT Agreement.

5.1 Is Measure-I a Technical Regulation?

Annex 1.1 defines technical regulation as a document that deals with issues like labeling and marking requirements of a product, and it must apply to an identifiable group of products, it must lay down characteristics of the said product, and compliance with these characteristics must be mandatory.[29]

Measure-I applies to an identifiable group of products, i.e., fast fashion products as identified and characterized by the Cambridge Dictionary. Since Measure-I is about labeling, it lays down the characteristics of the product. For mandatory compliance, it may be argued that since compliance with the measures is not necessary for a product to be placed in the market, it only guides whether or not the product receives a label.[30] This was held in a separate opinion of a Panel member according to whom, since dolphin-safe label regime was not a mandatory requirement, the measure was not a technical regulation.[31] The same argument can be made in the case of Measure-I, where compliance is not necessary for the fast-fashion product to be placed in the market, but only to procure the human rights friendly label. If this were to be followed, Measure-I would not constitute a technical regulation for not meeting the third criteria and the question of violating Article 2.1 of the TBT would not arise and Measure-I would be valid.

However, the Appellate Body in *US Tuna-II* said that the measure prescribed exhaustive conditions that were necessary to claim dolphin safety.[32] Therefore, even though the label was

[27] *Id.*
[28] Yoram Dinstein, *The Erga Omnes Applicability of Human Rights* 30 ARCHIV DES VÖLKERRECHTS 1(1992).
[29] *US-Tuna II,* ¶183.
[30] *Id.,* ¶12.
[31] *Id.,* ¶ 180.
[32] *Id.*

not mandatory for the products to be placed in the market the Appellate Body ruled that the measure was a technical regulation by relying on *EC*- Sardines. They stated that the ability to sell or the legality of selling a product without using a label is not a determinative factor while checking if a measure is a technical regulation. [33] This conclusion was arrived at by relying on the fact that only those sardines which contained a particular spice were given the label of "preserved sardines" while those that did not use this spice could still be sold but under some other appellation.[34] However, this conclusion is erroneous as the *EC Sardines* case itself laid down the condition of the technical regulation being mandatory. It clearly states that the third condition for a measure to be a technical regulation is that it must be mandatory.[35]

There is also an argument that EC- Sardines is not applicable in US-Tuna II because in the former case, using a particular ingredient was 'intrinsic' to the product being called 'preserved sardine'. However, in US-Tuna, this was not the case as being dolphin-safe was not 'intrinsic' to the Tuna and it could still be sold in the market regardless of the label. This argument is misinformed for the reason that it tries to co-relate how intrinsic-ness of the product characteristic to the measure being mandatory. These, however, are two separate conditions laid down in *EC-Sardines*. According to this case, the product characteristics must be intrinsic to or related to the product,[36] and, compliance must also be mandatory.[37] Therefore, if the argument is that the dolphin-safe label is not an intrinsic part of the Tuna, then it stops being a technical regulation at that point itself.

Therefore, Measure-I is not a technical regulation and would not attract scrutiny under Article 2.1 of the TBT Agreement.

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[33] *Id.,* ¶ 198.
[34] *Id.*
[35] *European Communities–Trade Description of Sardines,* (26 September, 2002, adopted on 23 October, 2002) ¶ 176 (henceforth, *EC-Sardines).*
[36] *Id.*
[37] *Id.*

5.2 Are the Imported Products Like the Domestic Products in Measure-I?

The criteria to establish likeness under Article 2 of the TBT is similar to that under Article III of the GATT.[38] This means that some indicators of likeness are properties of the product, end uses, competitive relationship between the products, consumer's taste, etc.[39] However, another important criterion to determine if two products are, in fact, like is to look at their processing and production methods.[40] This means that even if the end product is the same, they can have different methods of production and processing. This is known as a non-product-related process and production method (NPR-PPM).[41] However, there are different views on whether NPR-PPMs are a legitimate basis for distinguishing products.[42] Therefore, it is possible to deem the products unlike if the method of production used is different. This must, however, be determined on a case-to-case basis.[43]For instance, in the case of Measure-I, only those products that are made under human rights friendly conditions are given the label. Therefore, there are two methods of production, one, that is sensitive to the human rights of workers, and one that relies on worker exploitation. Therefore, it can be argued that the NRP PPM, in this case, is different, and the products are unlike, and therefore, Measure-I is not inconsistent with Article 2.1 of the TBT.

5.3 Are the Imported Products Treated Less Favourably than Domestic Products?

There is a two-step analysis to assess whether a measure gives less favorable treatment to imported products than other like goods, i) the measure modifies market conditions to the detriment of imported products, as against domestic ones, and (ii) whether the measure is exclusively responsible for the detrimental impact.[44]

Unlike *US Tuna-II* which was disputed because the laws set for the 'dolphin-safe' label applied to only the ETP, Measure-I is applicable worldwide, and for any fast-fashion brand to have

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[38] WTO ANALYTICAL INDEX, *TBT Agreement – Article 2 (Jurisprudence)*, 9. https:// www.wto.org/english/res_e/publications_e/ai17_e/tbt_art2_jur.pdf.
[39] *US – Clove Cigarettes*, ¶107-112, 121-160.
[40] World Trade Organization, *WTO rules and environmental policies: key GATT disciplines*, available at https://www.wto.org/english/tratop_e/envir_e/envt_rules_gatt_e.htm.
[41] *Id.*
[42] John Polak, *Trade as an Environmental Policy Tool? GEN, Ecolabeling and Trade*, WTO PUBLIC SYMPOSIUM CHALLENGES AHEAD ON THE ROAD TO CANCUN 5 (2003).
[43] See, *European Communities — Measures Affecting Asbestos and Products Containing Asbestos* (September 18, 2000, adopted on 5 April, 2001).
[44] *US- Tuna II*, ¶7.2.

access to the 'human-rights friendly' label, they have to meet the requirements set by the label. Hence, the proposed measure does not modify the conditions of competition to the detriment of imported products because the garments produced in the country and outside are subjected to the same requirements to have access to the 'human-rights friendly' label.

The above analysis proves that Measure-I is not violative of Article 2.1 of the TBT Agreement and therefore, is a valid measure that can be implemented in trade law. In *US Tuna-II,* the measure was also challenged on grounds of not being justified by Article XX of the GATT.[45] The next section of this essay specifically deals with this provision, and the arguments and discussion in that section would apply to Measure-I as well.

Based on our analysis, there is a strong case for Measure-I being a viable option to ensure human rights protection in the international trade law framework. However, we must be cognizant of the fact that Measure-I proposes a labeling regime, meaning that even those products that do not conform to human rights standards would be placed in the market, just without a label. While this does make the consumer aware of the conditions under which the product was made, it is possible and likely that the consumer still opts for a non-labeled product. Considering the exponential sales of fast fashion brands such as H&M, this inference is all the more acceptable.

Therefore, while this measure might lower the demand for products made under exploitative conditions, it does not prevent such human rights violations from taking place. In light of this, let us consider our other alternative Measure-II, which proposes a complete ban on fast fashion products made under exploitative conditions.

A BAN – MEASURE-II

Article XX of the GATT 1947 carves out justifications or reasonable restrictions to free trade.[46] These include those restrictions which are necessary to protect public morals,[47] human, animal, plant life, and health,[48] among others. Measure-II advocates that countries ban fast fashion

[45] *Id.,* ¶7.2.
[46] GATT, art. XX.
[47] GATT, art. XX (a).
[48] GATT, art. XX (b).

products that are made by violating the worker's human rights. This indeed places restrictions on free trade as it not only bans the sale of domestically manufactured fast fashion products that were made by labor elaboration but also bans the import of such products from other countries. This restricts trade under Article XI of the GATT that seeks to eliminate any restrictions on importation.[49]

This essay, however, argues that restriction can be justified under Article XX(a) of the GATT that allows restrictions that are necessary to protect public morals.[50] Public morals are standards of wrong or right conduct that are to be maintained by, or on behalf of a country or community.[51]

A two-level test has been formulated to determine if the justification of public morals can be applied. Firstly, it must be checked whether such a measure is designed to protect public morals.[52]Secondly, a necessary analysis must take place, i.e., whether the measure is necessary to protect the said public moral.[53]

This essay argues that the protection of human rights is a part of the morals held by various countries and communities. This may be established through various countries being parties to human rights treaties, the prevalent state practice, and the *erga omnes* obligations of a country. Let us consider these.

6.1 Parties to Human Rights Treaties

As of 2020, the ICESCR has 171 parties, the ICCPR, has 173 parties and all members of the United Nations are parties to the UDHR.[54]These are all treaties that seek to protect human rights. The fact that so many countries are parties to these treaties means that these countries realize the value and importance of human rights and are committed to their protection. Therefore, it can be argued that this falls within the standards of right and wrong held by these

[49] GATT, art. XI.
[50] GATT, art. XX (a).
[51] Appellate Body Report- *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services* (April 7, 2005, adopted on April 20, 2005) ¶296.
[52] *Id.,* ¶79.
[53] *Id.,* ¶79.
[54] United Nations Treaty Collection, *Multilateral Treaties Deposited with the Secretary-General*, https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=_en.

countries such that human rights violations, which are against the spirit of these treaties are necessarily wrong.

6.2 State Practice

State practice refers to acts by a country with the help of which we can infer if a particular practice is an international custom.[55]The domestic legislature, diplomatic resolutions a country is a party to, etc. are ways of determining state practice.[56] As discussed above, numerous countries are parties to human rights treaties such as the ICESCR and ICCRP, and all members of the UN are UDHR signatories. As these treaties are representative of the diplomatic resolutions that countries are a part of, these show state practice. Therefore, human rights considerations are a part of the state practice of these countries and form what constitutes rights and wrong in the eyes of these countries and communities.

6.3 *Erga Omnes* Obligations

Finally, let us consider the *erga omes* obligations of a country. *Erga Omnes,* as discussed previously, translates to 'towards all'.[57] Some common standards are shared by the international community (such as prevention of slavery, protection of human rights, etc.), and states should ensure these. Human rights obligations are also *erga omnes* obligations, as previously discussed.[58] A state refusing to trade in products that are manufactured in conditions that violate human rights aligns with that state's *erga omnes* obligations towards individuals who are exploited, albeit in another country.[59] Therefore, since these obligations, including maintenance of human rights standards, are owed towards the international community at large, these form a part of the public morals that are held by a country.

Based on the above analysis, it can be established that the protection of human rights forms a part of public morals.

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[55] SHAW, *supra* note 24.
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] DINSTEIN, *supra* note 28.

THE PUBLIC MORALS EXCEPTION

In a similar instance in *EC Seals,* the public morals exception was used to justify a ban on commercial seal hunting in the European Union (EU). Here, the appellate body held that the killing and hunting of seals was in fact against the morals of the EU by relying on evidence such as government declarations, legislation preventing such hunting, and protests in the EU to stop this practice, etc.[60] Similarly, the human rights protection envisaged in Measure-II of this essay forms a part of public morals which have been depicted through evidence such as international covenants countries, state practice, and *erga omnes* obligations.

Having established that human rights form a part of public morals, let us check if Measure-II passes the two-stage test of Article XX(a) of the GATT as previously discussed.

In the first stage, we must assess if Measure-II is designed to protect the said public moral, i.e., prevention of human rights violation. The objective of this measure, as discussed above, is to ensure that products of fast fashion brands (either domestic or international) that are made under exploitative and human rights violative conditions are not sold in the national market of a country to protect public morals of the country. By imposing a ban on the sale and importation of such products, this objective is achieved. In a similar case in *EC Seals*, the Appellate Body held that the EU's measure of banning importation and sale of seal products was designed to protect the EU community's public moral of seal welfare.[61] Likewise, banning the sale and importation of fast fashion products will protect the public moral of prevention of human rights violations. This, therefore, indicates a relationship between the measure and the protection of public morals.[62]

Now, that the first step has been passed, let us consider the second stage of testing if Measure-II is necessary to protect the public moral of prevention of human rights violation. To establish necessity, three steps must be met, (i) the importance of the value/ moral, (ii) the degree of contribution of the measure towards the achievement of the said public moral, and, (iii) the extent of trade restrictiveness.[63]

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[60] *Supra* note 13, ¶2.141.
[61] *Id.,* ¶5.3.2.3.
[62] Appellate Body Report- *Columbia Measures Relating to the Importation of Textiles, Apparel and Footwear* (June 7, 2016, adopted on June 22, 2016).
[63] *EC-Seals,* ¶5.3.3.2- 5.3.2.5.

As previously discussed, numerous countries are party to various human rights treaties, establishing the importance given to the value of protection of human rights. This was also used to establish state practice. Further, we also discussed that countries also have an *erga omnes* obligation to protect human rights. Therefore, the protection of human rights is an important societal value or public moral, satisfying the first stage of the necessity test. The Appellate Body in *EC Seals* too considered that the protection of public moral concerns about animal welfare is an "important value or interest", based on similar evidence presented.[64] Therefore, we may argue that the protection of human rights is an important societal value.

To meet the second step, it has to be established that there is a "genuine relationship of ends and means between the objective pursued and the measure at issue".[65] This means that they should at least have a material relation between the measure and its contribution towards the objective.[66] Like the *EC Seals* case which held that "since the ban contributed to the EU's objective by reducing, to a certain extent, the global demand for seal products and by helping the EU avoid being exposed to seal products by killing them inhumanely", a similar argument can be made here. In the case of Measure-II, there is a genuine relation between the measure and its objective as Measure-II seeks to protect the public morals of a country by ensuring that only human rights-friendly fast fashion products are placed in its market. Here too, the ban would contribute to reducing the global demand for such products and also protect the public morals of countries and the international community. Therefore, the second stage is met.

Finally, we need to measure the extent of Measure-II's trade restrictiveness. For this, it needs to be considered if a less restrictive but equally effective alternative can be found.[67] In the *EC-Seals* case, the Appellate Body report stated that the ban was the most effective alternative as other options like animal welfare standards, certificate and labeling requirements, etc.[68] were not reasonable as "there would be difficulties with monitoring, enforcement, and compliance which

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[64] *Id.,* ¶5.179

[65] *Id.,* ¶5.180; *see also*, Appellate Body Report-*Brazil — Measures Affecting Imports of Retreaded Tyres*, (December 3, 2007, adopted on December 17, 2007) ¶145-157. (henceforth, *Brazil – Retreaded Tyres*).

[66] *Id.,* ¶5.180; *see also*, *Brazil – Retreaded Tyres*, ¶150- 151.

[67] *Id.,* ¶5.180

[68] *Id.,* ¶ 5.262.

would adversely affect the objective in question."[69] This means that while the ban would contribute to the seal product market diminishing (which is the objective that the measure seeks to meet), alternatives such as setting standards and regulation would still ensure that this market is alive. Furthermore, it stated that ensuring compliance is difficult as there is no way of differentiating a humanely killed seal from an inhumanely killed one.[70]

Following this logic, a similar argument can be made for Measure-II. The ban is the most effective alternative as any other measure that seeks to regulate or create standards, etc. will not diminish the exploitative fast-fashion industry. Additionally, like in *EC-Seals,* it will be difficult to ensure compliance, especially if fast-fashion does not disclose factory locations, engage in sub-contracting, etc. as discussed earlier. Since the proposed ban seeks to stop the import and sale of all fast-fashion products that are not human rights friendly, there is no alternative measure that can achieve the objective with equal effectiveness. Therefore, Measure-II is the most effective way to achieve the objective and a less trade-restrictive measure does not exist.

Now that the necessity test has been met and it has been established that Measure-II is designed to protect the public moral or protection of human rights, we can establish that the measure may be justified under Article XX(a) of the GATT. However, once this is done, the measure must also pass the chapeau of Article XX,[71] to ensure that the measure is not applied in a discriminatory, arbitrary, or unjustified manner.

In the case of Measure-II, it is proposed to be applied to all countries, brands, and communities without any exception.[72] Therefore, it is not applied in a discriminatory or unjustified manner. Let us understand this by considering *EC Seals.* In this case, the measure did not qualify the chapeau stage as the application of the measure was subject to some exceptions in the case of indigenous communities, travelers' exceptions, etc. It was held that these exceptions led to unjustified and arbitrary discrimination, as there was no justification as to why these exceptions were consistent with the public morals of the EU community.[73] This does not arise in Measure-II as it is applied uniformly across communities and countries without any unjustifiable

[69] *Id.,* ¶ 5.270.
[70] *Id.,* ¶ 5.272.
[71] Appellate Body Report- *United States — Import Prohibition of Certain Shrimp and Shrimp Products* (Oct. 12, 1998, November 6, 1998).
[72] This is different from the situation in *EC Seal* where the measure was applied with exceptions granted to indigenous communities, travellers, etc.
[73] *EC-Seals,* ¶5.320.

exceptions. Further, in *EC Seals,* the indigenous community exception resulted in a situation such that only some countries were benefitting from it. As a result, it was held that there was discrimination between countries where the same conditions prevailed.[74] Even this does not apply to Measure-II owing to no exceptions in its application.

Therefore, Measure-II qualifies the chapeau and is justified under Article XX of the GATT 1947.

CONCLUSION

This essay sought to make a case for ensuring that domestic and international fast fashion brands do not violate the basic human rights of workers and so that international trade and human rights could go hand in hand. For this, two alternatives were provided, and their viability was analyzed by checking them against the framework of international law. As discussed, both Measure I and Measure II, present viable methods to ensure that human rights are given their due in the course of international trade.

A sustainable fashion that is sensitive towards its workers is imperative, and we hope that this essay creates and becomes a part of the collective dialogue and discussion towards this.

CONFLICT OF INTEREST

The authors declare that the research work does not have any conflict of interest and was conducted in absence of any commercial or financial relationship that could be construed as a potential conflict of interest.

[74] *Id.,* ¶5.333.