

THE FASHION INDUSTRY’S INNER BEAUTY: DOES THE UK’S FIGHT AGAINST MODERN SLAVERY MEASURE UP TO ITS ILO OBLIGATIONS?

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I. INTRODUCTION

Cumulatively, consumers across the world purchase approximately eighty billion new clothing pieces per year, not including garments that consumers thrift, upcycle, or purchase second hand.¹ This marks an astonishing 400% increase from the amount purchased annually just two decades ago.² However, most retail consumers are carelessly inattentive and uninformed about how their personal contribution to those eighty billion pieces affects a global economy underwritten with modern slavery. Modern slavery exists behind the scenes of the clothing manufacturing process, from textile sourcing to the final product displayed in a store or on an online platform.³

Unfortunately, unbeknownst to most consumers, the fashion and garment industry exploits modern slavery throughout the supply chains of many of the world's largest apparel companies.⁴ In fact, the fashion industry is the second largest industry in the world to funnel money to modern slavery practices.⁵

Because the fashion industry's supply chain is so complex and interconnected, there are many areas both throughout production and the world that are conducive to modern slavery. For example, a 2018 report that surveyed approximately eighty percent of world trade showed an estimated \$127.7 billion worth of garments annually imported by G20 countries were at risk of involving modern slavery within their supply chain manufacturing.⁶ The report further stated that in 2016, 40.3 million people were enslaved within the global economy, of which women constituted seventy-one percent.⁷ These statistics show that consumers, even while shopping in developed nations, still contribute to forced labor through purchases and retail demands.⁸

¹ *Environmental Impact, THE TRUE COST*, <https://truecostmovie.com/learn-more/environmental-impact/> (last visited Oct. 8, 2021).

² *Id.*

³ Whitney Bauck, *The Fashion Industry is One of the Biggest Supporters of Modern Slavery Across the Globe*, FASHIONISTA (Nov. 21, 2018), <https://fashionista.com/2018/07/fashion-industry-modern-slavery-report-2018>.

⁴ *Id.*

⁵ *Id.* The tech industry is the number one industry to channel money towards modern slavery. *Id.*

⁶ *Id.* The report was an index of G20 countries, which is a group of nations that account for approximately eighty percent of the world's trade. *Id.*

⁷ *Id.*

⁸ When consumers purchase garments that have traces of forced labor within their supply chain, no matter the phase, the consumer is economically endorsing those practices and funneling money and financial resources to its continuance. *Id.* However, consumers who purchase clothing from developed nations often do not think that the product has touched the hands of many different people across many different countries, and thus have an "out of sight, out of mind" mentality. *Id.*

Modern slavery throughout apparel manufacturing reaches the entire spectrum of the fashion industry's supply chains, from the world's most established luxurious brands to fast fashion retailers.⁹ A common assumption made by consumers is that the more deluxe and expensive the brand, the less the company exploited its supply chain with outsourced, inexpensive slave labor.¹⁰ Many consumers think they are shopping ethically by avoiding brands with a low bottom line and instead purchasing apparel from brands they assume use high-quality and ethical manufacturing practices.¹¹ However, many popular luxury brands such as Prada, Salvatore Ferragamo, the LVMH Conglomerate,¹² and Hermès subject their employees to modern slavery and low wages.¹³ However, Burberry and Kering Society¹⁴ scored slightly better than average on KnowTheChain's global scoring system¹⁵ for worker treatment and lead the industry in transparency efforts.¹⁶ However, on the opposite end of the spectrum, the world-wide fast street fashion enterprise ASOS has problems clearing its supply chains, with just forty-two percent of its brands meeting current requirements for publishing a modern slavery

⁹ Fast fashion is inexpensive and trendy clothing that seeks to mimic high street pieces from the runway and styled by celebrities. Solene Rauturier, *What is Fast Fashion?*, GOOD ON YOU (July 26, 2021), <https://goodonyou.eco/what-is-fast-fashion/>. Specifically, fast fashion results in quick, low-priced production to get current styles on the market before there is no longer a demand. *Id.*

¹⁰ Elizabeth Segran, *Did a Slave Make Your Sneakers? The Answer is: Probably*, FAST CO. (Dec. 14, 2018), <https://www.fastcompany.com/90279693/did-a-slave-make-your-sneakers-the-answer-is-probably>.

¹¹ *Id.*

¹² *Id.* The LVMH conglomerate consists of brands including Fendi, Celine, and Christian Dior. *Id.*

¹³ *Id.*

¹⁴ *Id.* Kering owns Gucci, Balenciaga, and Saint Laurent. *Id.*

¹⁵ "KnowTheChain assesses companies' publicly disclosed efforts to address forced labor risks in upstream supply chains. The KnowTheChain methodology is based on the UN Guiding Principles on Business and Human Rights and covers policy commitments, due diligence, and remedy. The methodology uses the ILO core labor standards (which cover the human rights that the ILO has declared to be fundamental rights at work: freedom of association and collective bargaining and the elimination of forced labor, child labor, and discrimination) as a baseline standard. The methodology has been developed through consultation with a wide range of stakeholders and a review of other benchmarks, frameworks, and guidelines such as the OECD Due Diligence Guidance on Responsible Business Conduct." *2021 Apparel and Footwear Benchmark Report*, KNOWTHECHAIN, <https://knowthechain.org/wp-content/uploads/2021-KTC-AF-Benchmark-Report.pdf> (last visited Nov. 16, 2021) (citations omitted).

¹⁶ Segran, *supra* note 10. Although these luxury brands did better than others, their scores still reflect the fact that their supply chains are littered with labor issues. *Id.* This is because consumers assume the high purchase price reflects decent wages throughout manufacturing. *Id.* As a result, the consumers of luxury brands are not applying as much public pressure on the companies to focus on their supply chains. *Id.*

report.¹⁷ These statistics prove that both global brands and consumers have a larger role to play in combating modern slavery.

Consumers, legal advocates, and designers are beginning to understand the ethical repercussions of their indirect endorsement of these inhumane practices through the production process. Now, many brands are monitored, encouraged, or legally obligated to report a transparent supply chain in efforts to renew a fight against forced labor, modern slavery, and human trafficking.¹⁸ Although international efforts to end modern slavery have existed for more than ninety years, modern legal initiatives against these practices are becoming more effective, geographically extensive, and legally binding.¹⁹

Specifically, with the fashion industry being one of the United Kingdom's top revenue-producing industries in 2020, the United Kingdom ("UK") has recently gained momentum to combat modern slavery and has made many efforts to provide increased protection from these abuses.²⁰ To help combat modern slavery, the UK passed the Modern Slavery Act in 2015 ("the Act") to provide consumers with supply chain transparency by requiring large enterprises to submit annual supply chain reports.²¹ Additionally, in 2016, the UK became a signatory to the International Labour Organization's 2014 Protocol to the Forced Labor Convention ("the Protocol"), which placed an additional layer of obligatory penalties for companies that failed to comply with the Protocol's modernized labor protections.²²

¹⁷ David Styles, *Just 42% Brands Meet ASOS Modern Slavery Standards*, ECOTEXTILE NEWS (Apr. 1, 2019), <https://www.ecotextile.com/2019040124195/fashion-retail-news/just-42-brands-meet-asos-modern-slavery-standards.html>. These statistics reflect ASOS' 2018-2019 report. *Id.*

¹⁸ *What is the State of the Law for Companies When it Comes to Modern Slavery?*, THE FASHION L. (July 14, 2020), <https://www.thefashionlaw.com/what-is-the-state-of-the-law-when-it-comes-to-companies-and-modern-slavery>. For example, recently enacted modern slavery legislation includes The California Transparency in Supply Chains Act, The UK Modern Slavery Act, and The French Devior de Vigilance Law. *Id.*

¹⁹ *International Law on Forced Labor (C29)*, FREEDOM UNITED, <https://www.freedomunited.org/landing/forced-labor-c29/> (last visited Oct. 8, 2021).

²⁰ *What is the State of the Law for Companies When it Comes to Modern Slavery?*, *supra* note 18; see also *The Economic Impact of the Fashion Industry*, U.S. CONG. JOINT ECON. COMM. DEMOCRATS (Feb. 22, 2019), <https://www.jec.senate.gov/public/index.cfm/democrats/2019/2/the-economic-impact-of-the-fashion-industry>.

²¹ *What is the State of the Law for Companies When it Comes to Modern Slavery?*, *supra* note 18. In order to be included within this Act's reach, the enterprise must have an annual turnover of thirty-six million pounds or more per year. *Id.*

²² *Ratifications of PO29 – Protocol of 2014 to the Forced Labour Convention, 1930*, INT'L LABOUR ORG., https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTUMENT_ID:3174672 (last visited Oct. 8, 2021). On January 22, 2016, the United Kingdom of Great Britain and Northern Ireland became the third country to ratify the 2014

However, these two pieces of legislation set inconsistent standards. Hence, the motivating question for this Note arises. Within the fashion industry, does the UK's Modern Slavery Act fulfill the requirements under the 2014 Protocol to the Forced Labor Convention? Or does the Modern Slavery Act's reliance on consumer disgust fail to effectively satisfy the International Labour Organization Protocol's obligations to take effective measures and sanction perpetrators in abolishing slavery-like practices?

In its evaluation, this Note will first discuss previous practices within the UK's fashion industry that led to the 2015 enactment of the Modern Slavery Act. After informing the reader about the Act and the Protocol, this Note will argue that the UK's attempts to regulate supply chains fall short of its international obligations. Next, this Note will argue that more forceful enforcement is necessary to achieve both the UK's and the International Labour Organization's goal. In doing so, this Note will look to France's more successful 2017 *Devoir de Vigilance* law, which provides for more strenuous annual reports and imposes fines for noncompliance.

II. BACKGROUND AND HISTORY

A. *Origins of the Fashion Industry: Production Over the Years*

The fashion industry's history, dating back to the beginning of the nineteenth century, is rich with labor-based innovation.²³ Introduced in the 1800s, fashion first began to accelerate during the Industrial Revolution, which created innovative production techniques such as textile machines, factories, ready-made clothing, and bulk stock.²⁴ The invention of the sewing machine in 1846 drastically dropped clothing prices and provided for an enormous increase in production quantity.²⁵ However, at the twentieth century's start, despite the opening of many new garment factories, clothing was still often produced in small workshops or within the home.²⁶ That said,

Protocol, behind Niger and Norway, who both signed in 2015. *Id.* Now, there are fifty-six ratifications to this International Labour Organization agreement with forty-six currently in force. *Id.*

²³ Sue Taylor, *The History of Fashion Design*, FIBRE2FASHION (Oct. 2006), <https://www.fibre2fashion.com/industry-article/458/the-history-of-fashion-design>. This Note defines fashion as "a form of art dedicated to the creation of clothing and other lifestyle accessories." *Id.* Thus, this Note assumes that fashion design was invented when the industry expanded to more than simple seamsters. *Id.*

²⁴ Sara Idacavage, *Fashion History Lesson: The Origins of Fast Fashion*, FASHIONISTA (Oct. 17, 2018), <https://fashionista.com/2016/06/what-is-fast-fashion>.

²⁵ *Id.*

²⁶ *Id.*

since the late 1990s, global fashion brands have outsourced their manufacturing to less expensive and less regulated geographic regions.²⁷

The outsourcing locations most utilized by fashion and textile companies are mainly found in developing countries and countries throughout Asia.²⁸ Because this is a competitively priced globalized marketplace that lacks a cohesive, legally binding regulation, modern slavery is a popular tactic used by multinational brands competing for the lowest bottom line.²⁹

B. Explication of the Law at Issue

i. The United Kingdom's Modern Slavery Act

The UK's Modern Slavery Act was created to solve and overcome human trafficking and forced labor problems, specifically against companies who source their materials or manufacturing from overseas, essentially creating a muddled supply chain in countries that lack strict employment regulation.³⁰ The Act applies to all businesses operating within the UK with an annual turnover of at least £36 million per year; the Act also has an extraterritorial application, and thus applies to all offensive actions of these businesses, no matter their location in the world or point within the supply chain where the slavery-like practice takes place.³¹ This Act is aimed against large and dominant enterprises to encourage transparency within their supply chains. In effect, the Act accomplished this by requiring the applicable companies to report annual statements that set forth their steps taken to ensure that their supply chain does not contain traces of slavery or human trafficking.³²

The annual report required by the Modern Slavery Act is a necessary component for a company to be in compliance. However, because the Act is

²⁷ Fabio Leonardi, *What a Modern Slavery Law Means for the Fashion Industry*, THE FASHION L. (Mar. 16, 2020), <https://www.thefashionlaw.com/what-a-modern-slavery-law-means-for-the-fashion-industry>.

²⁸ *Globalization Changes the Face of Textile, Clothing and Footwear Industries*, INT'L LABOUR ORG. (Oct. 28, 1996), https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_008075/lang--en/index.htm. China is the largest clothing manufacturer in the world followed by Bangladesh, which was home to the world's largest garment factory, the Rana Plaza, before its collapse. Larisa Epatko, *5 Years After the World's Largest Garment Factory Collapse, Is Safety in Bangladesh Any Better?*, PBS NEWS HOUR (Apr. 6, 2018), <https://www.pbs.org/newshour/world/5-years-after-the-worlds-largest-garment-factory-collapse-is-safety-in-bangladesh-any-better>.

²⁹ Leonardi, *supra* note 27.

³⁰ *Modern Slavery Act 2015 – What Does it Mean for Fashion?*, FOX WILLIAMS (June 1, 2016), <https://www.foxwilliams.com/news/1167>.

³¹ *Id.*

³² ENV'T AUDIT COMM., *FIXING FASHION: CLOTHING CONSUMPTION AND SUSTAINABILITY*, 2017-19, HC 1952, ¶ 56 (UK).

soft legislation that does not create a legally binding obligation, corporations are not expected to guarantee a slavery-free supply chain.³³ Instead, the report must describe what actions, if any, the corporation implemented to combat forced labor, modern slavery, and human trafficking.³⁴ That said, corporations are still technically complying with the Act if the corporation's report states they took no steps against these risks. Corporations are only required to publish a statement, even if the statement reflects their inaction.³⁵ The Act's leniency contributes to its ineffectiveness. Although a statement that disclosed the corporation took no action still complies with the Act, the UK recommends that a corporation's annual report cover six areas. These include "(1) [o]rganisation structure and supply chains; (2) [p]olicies in relation to slavery and human trafficking; (3) [d]ue diligence processes; (4) [r]isk assessment and management; (5) [k]ey performance indicators to measure effectiveness of steps being taken; [and] (6) [t]raining on modern slavery and trafficking."³⁶

Although the UK's recommendations and the requisite intent that motivated the Act's enactment are a step in the right direction, the Act does not provide any criminal sanctions for failure to produce an annual report.³⁷ Nor does the soft legislation provide financial penalties for failure to oblige with its requirements or initiatives.³⁸ Instead, if a corporation finds itself in violation of its responsibilities under the Act, the UK government can apply to the High Court for an injunction, which would only force the corporation to publish their slavery and human trafficking statement. This can include one that states the corporation did not take any steps towards clearing its supply chain.³⁹ However, even with that authorized power from the High Court, it is still unknown how prepared the UK government is to take that step.⁴⁰

Although it may lack effectiveness, the emergence of modern slavery legislation is significant to the industry and its current problems. First, the Act gives light to public scrutiny on corporate supply chains and highlights these corporate abuses that, until now, corporations and consumers previously

³³ *Publish an Annual Modern Slavery Statement*, GOV.UK (July 28, 2021), <https://www.gov.uk/guidance/publish-an-annual-modern-slavery-statement#what-to-include-in-a-modern-slavery-statement>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Modern Slavery Act: Is Your Firm at Risk of Failing to Comply?*, FOX WILLIAMS (Jan. 15, 2019), <https://www.foxwilliams.com/news/1471/>.

³⁸ *The Modern Slavery Act 2015: 10 Key Points for Businesses*, SQUIRE PATTON BOGGS (Aug. 2015), <https://www.globalsupplychainlawblog.com/wp-content/uploads/sites/22/2015/09/20453-Modern-Slavery-Act-Alert.pdf>.

³⁹ *Id.*

⁴⁰ *Id.*

disregarded.⁴¹ Second, this new supply chain transparency standard allows consumers to judge and take actions against corporations that have annual reports littered with abuse, which in turn improves the quality of labor, goods, and services.⁴² Lastly, many companies, especially those newly emerging in the fashion industry, will use the Act as inspiration to improve their due diligence, regulation, and implementation of anti-slavery models for their culture and conduct.⁴³

ii. *The International Labour Organization's 2014 Protocol to the Forced Labour Convention, 1930*

The International Labour Organization, developed to promote international social justice, is a tripartite U.N. Agency composed of 187 member states to “set labour standards, develop policies and devise programmes promoting decent work for all women and men.”⁴⁴ The UK joined in 1919 as a founding member and partner.⁴⁵

The International Labour Organization's 2014 Protocol added new and modernized provisions to the International Labour Organization's Forced Labor Convention of 1930 in an attempt to revive the movement against modern slavery.⁴⁶ In his closing remarks at the International Labour Convention, the International Labour Organization's Director-General, Guy Ryder, stated that “[t]he adoption of the Protocol to the Convention is ‘the fruit of our collective determination to put an end to an abomination which still afflicts our world of work and to free its [twenty-five] million victims.’”⁴⁷ The 2014 Protocol, specifically Article 1(1), added extra strength to its signatories' fights against forced labor by providing more victim support and a newfound state obligation to take stronger action by imposing sanctions against noncompliers.⁴⁸ This addition to the International Labour

⁴¹ *What is the State of the Law for Companies When it Comes to Modern Slavery?*, *supra* note 18.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *About the ILO*, INT'L LABOUR ORG., <https://www.ilo.org/global/about-the-ilo/lang-en/index.htm> (last visited Oct. 8, 2021).

⁴⁵ *United Kingdom-ILO Cooperation*, INT'L LABOUR ORG. (July 2018), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---exrel/documents/genericdocument/wcms_344228.pdf.

⁴⁶ *United Kingdom Joins Renewed Fight to End Forced Labour*, INT'L LABOUR ORG. (Jan. 22, 2016), https://www.ilo.org/global/standards/WCMS_445132/lang-en/index.htm.

⁴⁷ *The Protocol to the Forced Labour Convention*, INT'L LABOUR ORG., https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_321414.pdf (last visited Oct. 8, 2021).

⁴⁸ *United Kingdom Joins Renewed Fight to End Forced Labour*, *supra* note 46. Article 1(1) of the International Labour Organization's Protocol of 2014 to the Forced Labour Convention states: “In giving effect to its obligations under the Convention to suppress

Organization's stance on global modern slavery shows international momentum to abolish modern slavery, forced labor, human trafficking, and other slavery-like practices.⁴⁹

In effect, the Protocol adds a fundamental obligation for signatories to suppress all forms of modern slavery. "This means that States must not only criminalize and prosecute forced labour, but also – as the new Protocol makes clear – take effective measures to prevent forced labour and provide victims with protection and access to remedies, including compensation."⁵⁰ The International Labour Organization, through this Protocol, provides global momentum in efforts of making the world's future, and consequentially the fashion and garment industry, slavery-free.

III. ANALYSIS

Unlike the 2014 Protocol's legal requirements and remedies, the UK's Modern Slavery Act is soft legislation that does not create a legally binding obligation, nor does it provide authority for serious sanctions for noncompliance outside of consumer disgust.⁵¹ Additionally, even if the Act did legally obligate large corporations to publish their annual reports and sanction those who did not, under the terms of the Act, companies could still comply by simply publishing an annual report stating they had not taken any action to stop forced labor.⁵²

As a result, in early 2019, only nineteen percent of annual statements reported by the applicable corporations met the Act's minimum requirement to publish a statement that the corporation took no internal action against forced labor that year.⁵³ The reason behind this statistic cannot be rooted in confusion, research problems, or lack of experience because the UK implemented the Act over five years ago. Instead, the absence of criminal and financial sanctions depletes the incentive to expend valuable resources on researching and publishing a report annually.

Not only are the applicable enterprises failing to comply with their disclosure duties under the Act, but it is possible that within the UK, the Act

forced or compulsory labour, each Member shall take effective measures to prevent and eliminate its use, to provide to victims protection and access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators of forced or compulsory labour."

Int'l Labour Org. [ILO], *Protocol of 2014 for the Forced Labour Convention, 1930*, art. 1(1), P029 (Nov. 9, 2016), https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/ILO_P_029.pdf.

⁴⁹ *United Kingdom Joins Renewed Fight to End Forced Labour*, *supra* note 46.

⁵⁰ *The Protocol to the Forced Labour Convention*, *supra* note 47.

⁵¹ *The Modern Slavery Act 2015: 10 Key Points for Businesses*, *supra* note 38.

⁵² Modern Slavery Act 2015, c. 30, § 42 (UK).

⁵³ *Modern Slavery Act: Is Your Firm at Risk of Failing to Comply?*, *supra* note 37.

itself fails to comply with the terms of the International Labour Organization's 2014 Protocol. This discrepancy between the soft legislative requirements of the Act and the more stringent legal obligations under the 2014 Protocol gives rise to the issue at hand: does the Modern Slavery Act meet the higher enforcement standard set by the Protocol?

A. Statement of the Problem

Article 1(1) of the Protocol sets forth the International Labour Organization Forced Labour Convention's overarching goal to "suppress forced or compulsory labour"⁵⁴ with specific obligations that each member of the Convention, including the UK,⁵⁵ "shall take effective measures to prevent and eliminate [forced labor's] use . . . and to sanction the perpetrators of forced or compulsory labor."⁵⁶ However, due to lack of participation and legal reprimand, the Act's market-regulation approach and reliance on consumer disgust as a means of enforcement has continually proven ineffective.

Not only is the Act ineffective in combating modern slavery overall, but it also fails to meet two legal requirements within Article 1(1) of the Protocol. First, the Act's standards and recommendations, coupled with its shortcomings in action, do not constitute "effective measures to prevent and eliminate [forced labor's] use" under the Protocol.⁵⁷ Second, its market-based regulation approach that relies on consumer disgust and public scrutiny for company shaming does not adequately "sanction . . . perpetrators of forced or compulsory labor" as required by the Protocol.⁵⁸

B. Analysis of the Problem

*i. The Modern Slavery Act Lacks "Effective Measures"*⁵⁹

Article 1(1) of the Protocol provides some leeway for what each signatory considers "effective measures" and does not enumerate specific actions.⁶⁰ However, after five years in action, the Act likely does not meet the Protocol's effective standard.⁶¹ Because the Act "is vague by nature[,] [it] thus

⁵⁴ ILO, *supra* note 48, art. 1(1).

⁵⁵ *United Kingdom-ILO Cooperation*, *supra* note 45.

⁵⁶ ILO, *supra* note 48, art. 1(1).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Molly Millar, *Five Years On, Is the UK's Landmark Anti-Slavery Law Fit for Purpose?*, REUTERS (Oct. 17, 2019, 9:08 PM), <https://www.reuters.com/article/us-britain-slavery-expertviews-trfn/five-years-on-is-the-uks-landmark-anti-slavery-law-fit-for-purpose-idUSKBN1WX02J>. "The Modern Slavery Act was a landmark piece of legislation, but five

creates a vague response.”⁶² Specifically, Ardea International identified seven shortcomings of the Act’s effectiveness.⁶³

First, the Act is not specific enough due to its unclear requirements and its option of stating in a report that the company took no actions to combat modern slavery.⁶⁴ Second, the complexity of global supply chains presents the issue of accurate assessment and audit, making it nearly impossible for each corporation to know where to start and end their reviews.⁶⁵ Third, the Act is a tick box exercise that results in yes/no culture, mostly harming the communities with weak capitalism that do not have a strong enough economy to replace a company once one shuts down.⁶⁶ Fourth, the Act highlights many companies’ “pass the buck” mentalities, which cause corporations to shift blame and responsibility throughout suppliers.⁶⁷ Fifth, the Act lacks depth and diversity and does not provide enough legal incentive for corporations to research and eradicate slavery within both multi-tiered supply chains and small businesses.⁶⁸ Sixth, the “incredibly limiting belief” that actions combating modern slavery need to be taken slowly defeats the purpose of its momentum.⁶⁹ Finally, the Act favors large western corporations because of their size and wealth.⁷⁰ Compared to the 2014 Protocol, which strengthened global cooperation and international dialogue regarding labor abuse, these issues and statistics show that the Act’s provisions and implementation are ineffective.

ii. *The Modern Slavery Act Fails to “Sanction the Perpetrators”*⁷¹

The 2014 Protocol specifically provides that “each Member shall . . . sanction the perpetrators of forced or compulsory labour.”⁷² However, the UK’s Modern Slavery Act mainly relies on consumers to regulate the market via public scrutiny, in turn only hurting companies that report forced labor in their supply chains.⁷³ The Act itself only provides that the UK Government

years on it is failing to live up to its promise. The main problem is still enforcement—the law has no teeth.” *Id.* (internal quotation mark omitted).

⁶² Laura Haworth, *7 Things Wrong With the Modern Slavery Act*, ARDEA INT’L (Oct. 19, 2017), <https://www.ardeainternational.com/thinking/7-things-wrong-modern-slavery-act/>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ ILO, *supra* note 48, art. 1(1).

⁷² *Id.*

⁷³ *What is the State of the Law for Companies When it Comes to Modern Slavery?*, *supra* note 18.

can apply to the High Court for an injunction that would require the company to, at minimum, report their lack of action.⁷⁴ Not only is it still unclear how prepared the Government is to act on that authority, but notably an injunction is not equal in penalty or force to a sanction.⁷⁵

The injunction provided for by the Act is simply a court ordered mandate to comply with the Act by publishing a report.⁷⁶ However, the sanction within the 2014 Protocol provides for a monetary penalty against perpetrators for noncompliance.⁷⁷ The two are unequal in force and effect. Not only is this lack of monetary sanctions contributing to the Act's ineffectiveness, but on its face the Act fails to meet the obligatory standards set forth by the 2014 Protocol.

C. Problem Solutions

Because the Act fails to meet the standards of the International Labour Organization Protocol, the UK should look to other countries, ones with stricter provisions and opportunities for enforcement, to reform and strengthen its Act. For example, France's Devoir de Vigilance Law, passed in 2017, has an almost identical purpose as the UK's Modern Slavery Act: to require and support supply chain transparency to end modern slavery.⁷⁸ However, this French law goes farther than the transparency provision in the UK's Act by "requiring companies to establish vigilance plans and to properly implement them or face potential, civil claims."⁷⁹ Therefore, France's Devoir de Vigilance Law meets the Protocol's two obligations that the Modern Slavery Act fails on, effective measures and sanctions.

Unlike the requirements under the Act, the annual reports under France's Devoir de Vigilance law must include a vigilance plan with the company's strategy to investigate and prevent modern slavery in their supply chain, including procedures for risk mapping and management.⁸⁰ Additionally, this French law goes beyond public scrutiny and provides financial and legal sanctions for noncompliance.⁸¹ Specifically, judges have

⁷⁴ *The Modern Slavery Act 2015: 10 Key Points for Businesses*, *supra* note 38.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ ILO, *supra* note 48, art. 4(1).

⁷⁸ *A Historic First Step: France Adopts Corporate Duty of Vigilance Law*, EUR. COAL. FOR CORP. JUST. (Feb. 21, 2017), <https://corporatejustice.org/news/a-historic-first-step-france-adopts-corporate-duty-of-vigilance-law/>.

⁷⁹ *French Duty of Vigilance Law Takes Trend Toward Mandated Corporate Disclosure Regimes to New Level*, FRESHFIELDS BRUCKHAUS DERINGER (Apr. 6, 2017), <https://sustainability.freshfields.com/post/102e4aq/french-duty-of-vigilance-law-takes-trend-toward-mandated-corporate-disclosure-reg>.

⁸⁰ *Id.*

⁸¹ European Coal. for Corp. Just., *French Duty of Vigilance Law – English Translation*, BUS. & HUM. RIGHTS RES. CTR. (Dec. 14, 2016), <https://www.business->

the authority to enforce up to €10 million in civil fines against disobedient corporations.⁸²

The French duty of vigilance is a higher and more effective standard than the UK's duty of transparency. Although the *Devoir de Vigilance* law is imperfect and only three years old, France is more successful in forcing company compliance regarding its law compared to the rest of the global fashion industry. For example, Kering, the multinational corporation owning Gucci, Balenciaga, and Saint Laurent, among others, scored a forty-five out of one hundred on KnowTheChain's global scoring system for worker treatment, which was barely above the thirty-seven point average.⁸³ However, under French law and jurisdiction, Kering received the highest score for legal compliance at one hundred percent.⁸⁴ This statistic shows that the measures France implemented are leading the fashion industry in the right direction ahead of other country's efforts.

IV. CONCLUSION

Ultimately, the fashion industry is a growing \$2.5 trillion global industry that shows no signs of slowing down.⁸⁵ On a global scale, the UK sits at the number three global revenue rank for 2020,⁸⁶ with the fashion industry being the UK's largest creative industry.⁸⁷ Thus, if the UK continues to rely on public shaming and consumer disgust to penalize and regulate the fashion industry's lack of supply chain transparency, modern slavery will never end in such a sizeable and complex industry.

It is this Note's position that while the UK took multiple steps towards abolishing slavery-like practices, no action has yet to effectively clear

humanrights.org/documents/7492/Texte_PPL_EN-US.docx. Specifically, the "relevant jurisdiction can . . . urge said company, under financial compulsion if appropriate, to comply with its duties." *Id.*

⁸² *Id.*

⁸³ Segran, *supra* note 10.

⁸⁴ IPOINTE-SYSTEMS GMBH, *Reporting Transparency Still Low in French Companies, Devoir de Vigilance Study Shows*, 3BL CSR WIRE (June 10, 2020), https://www.csrwire.com/press_releases/45249-reporting-transparency-still-low-in-french-companies-devoir-de-vigilance-study-shows. This score was assessed by "[a]pplying 42 key performance indicators and 14 qualitative indicators[.] [T]he report assesses compliance with the law, conformance to the UN Guiding Principles (UNGP), and disclosure transparency." *Id.*

⁸⁵ *What is the State of the Law for Companies When it Comes to Modern Slavery?*, *supra* note 18.

⁸⁶ *Fashion: United Kingdom*, STATISTICA, <https://www.statista.com/outlook/244/156/fashion/united-kingdom> (last visited Oct. 8, 2021).

⁸⁷ *The Power of Fashion*, BRIT. COUNCIL (Mar. 2016), <https://www.britishcouncil.org/research-policy-insight/insight-articles/power-fashion>. The United Kingdom also leads the world in fashion education. *Id.*

its fashion industry's supply chains of these abuses. As the industry continues to grow and the market becomes more competitive for brands and designers alike, it is likely that the exploitation of modern slavery will continue at every stage within the fashion industry, from sourcing materials to the customer's silent validation of these practices upon purchase.

Although the UK's Modern Slavery Act is a step in the right direction, its terms are weak, ineffective, and fail to satisfy the legal obligations under the International Labour Organization's 2014 Protocol to the Forced Labor Convention. Thus, until the Act is strengthened, the burden unfortunately rests on consumers to research the annual reports and make ethical decisions when purchasing apparel. The UK should provide stricter provisions and opportunities for enforcement similar to France's *Devoir de Vigilance* Law. However, when weighing a company's littered supply chain with the value of the wanted purchase, will the consumer really care more about an enterprise's inner beauty?