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The Threads of Justice: Economic Liberalization and the Secondhand Clothing Trade Between the U.S. and Haiti

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THE THREADS OF JUSTICE: ECONOMIC LIBERALIZATION AND THE SECONDHAND CLOTHING TRADE BETWEEN THE UNITED STATES AND HAITI

Abstract: After World War II, as economic liberalization spread across the globe through international negotiations like the General Agreement on Tariffs and Trade, so too did used clothing. Though many proponents of the trade laud its capacity to create employment opportunities in less developed countries, critics suggest it has a more insidious deleterious effect on local industry. To this day, however, little research has been done regarding the symbiotic relationship between trade liberalization and the secondhand clothing industry. Some economic scholars suggest that current approaches to liberal trade—unilateral trade preferences particularly—stymy, instead of stimulate sustainable and just economic growth in less developed countries. The secondhand clothing industry, though a relatively minor component of global trade in apparel, may play a crucial role in justifying inequitable trade programs and allowing well-intentioned donors to unwittingly foist unmanageable burdens onto the very people they intend to help.

INTRODUCTION

Used clothing consumption in the United States crested during the Great Depression and through World War II.1 As the rate of globalization and economic recovery accelerated in the postwar era, used clothing vendors found themselves with a surplus of goods and a dwindling local consumer base.2 To adapt to changing times, used clothing vendors shifted their business overseas.3 Since the multilateral General Agreement on Tariffs and Trade (“GATT”) was initiated in 1947, the “world trading system” has undergone multiple rounds of liberalization, which opened a two-way door to the interna-

2 See Shujiro Urata, Globalization and the Growth in Free Trade Agreements, ASIA-PACIFIC REV., no. 1, 2002, at 1, 20 (rapid globalization); McNeil, supra note 1, at 68 (diminishing demand for used clothes).
3 See, e.g., Hanna Rose Shell & Vanessa Bertozzi, Textile Skin, 13 TRANSITION, no. 2, 2006, at 152, 154 (U.S. shipments to Haiti began in the 1960s); McNeil, supra note 1, at 68 (expansion of the SHCI); About Us, USAGAIN, http://www.usagain.com/about-us [https://perma.cc/5UT7-ADUU] (detailing an organization that exports used clothing to “struggling countries” for economic, environmental, and social gain in the United States and abroad); Welcome to the World of Secondhand Clothes, GARSON & SHAW LLC (collecting clothes from charities like The Gaia Movement, Planet Aid, and USAgain, and selling them to “importers, graders, wholesalers, and retailers in 40 countries”).
tional apparel trade.\textsuperscript{4} Policy makers in origin countries have extolled the many benefits of economic liberalization, emphasizing trade liberalization’s dual aim of increasing domestic wealth and spurring economic growth in less developed countries (“LDCs”).\textsuperscript{5} Recent trade agreements, known collectively as the Caribbean Basin Initiative (“CBI”), were carried out between the United States and numerous Caribbean nations with the ostensible aims of advancing democracy, spurring economic growth in both national and foreign markets, and increasing overall economic security.\textsuperscript{6} These agreements offer preferential treat-


\textsuperscript{5} See generally Rick Wicks & Arne Bigsten, Used Clothes as Development Aid: The Political Economy of Rags, at 7, 28 (Göteborg Univ. Dep’t Econ., Report of a Study for the Swedish Int’l Dev. Cooperation Agency, 1996) (analyzing potential positive and negative benefits of subsidizing used clothing exports from Sweden to various destination countries). In addition to the term “LDCs” (less developed countries), this Note adopts the designations “origin” and “destination” to distinguish between countries exporting and importing used clothing, respectively. Id. The U.N. defined a closely-related term, “least developed countries,” as countries with low-incomes and infrastructural deficiencies that impede sustainable development. Least Developed Countries (LDCs), U.N. Dep’t ECON. & SOC. AFF., https://www.un.org/development/desa/dpad/least-developed-country-category.html [https://perma.cc/B3X2-ZRL8].

ment to exports from beneficiary countries, like Haiti, through reduced tariffs and quantity restrictions, as well as the option of creating free trade zones (“FTZs”) designed to attract foreign investors onto developing nations’ soil.\(^7\)

In return, beneficiary countries agree to lower obstacles to U.S. exports, which coincidentally facilitated the entry of secondhand clothing into their markets.\(^8\)

Theoretically, such accommodations would allow developing economies to catch up to rapidly globalizing economic powerhouses like the United States and the United Kingdom, but the past seventy years have revealed these policies falling short of their lofty goals.\(^9\)

Though some beneficiary nations, including Haiti, experienced a boom in their apparel manufacturing industries, the revenue has proved insufficient to resolve endemic poverty in the local community.\(^10\)

Factors such as political

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\(^{7}\) See Haiti Economic Lift Program Act of 2010, § 2, 124 Stat. at 1195 (recognizing U.S. obligations to offset the costs of natural disaster recovery, maintain economic gains through trade preference programs, and “encourage buyers and investors to stand with Haiti”); U.S.-Caribbean Basin Trade Partnership Act, sec. 202(b)(1), sec. 410(a), § 484(i)(4), 114 Stat. at 276, 298 (duty- and quota-free opportunities); U.S. Customs and Border Protection, Haitian Hemispheric Opportunity Through Partnership Encouragement Acts of 2006 and 2008, 42 CUSTOMS BULL. & DECISIONS 1, 5, 7 (identifying certain apparel items eligible for duty-free treatment in unrestricted quantities, so long as they are manufactured in Haiti).


\(^{9}\) See MURRAY & HEUMANN, supra note 4, at 57 (emphasizing that while some destination countries benefit from jobs in the secondhand clothing industry (“SHCI”), others, “such as those that become waste disposal sites” may suffer greater losses in the form of “environmental degradation”); Brooks & Simon, supra note 4, at 2, 12, 19 (liberalization potentially undercuts existing or emerging local markets); Carter Dougherty, Trade Theory v. Used Clothes in Africa, N.Y. TIMES (June 3, 2004), http://www.nytimes.com/2004/06/03/business/trade-theory-vs-used-clothes-in-africa.html?_r=0 (quoting one clothing producer in Uganda as lamenting loss of the “beautiful” local apparel industry due to secondhand clothing imports); Joseph Stiglitz, Arrested Development, THE GUARDIAN (Aug. 10, 2016), https://www.globalpolicy.org/component/content/article/220/47279.html; Ana Swanson, Why Trying to Help Poor Countries Might Actually Hurt Them, WASH. POST (Oct. 13, 2015), https://www.washingtonpost.com/news/wonk/wp/2015/10/13/why-trying-to-help-poor-countries-might-actually-hurt-them/ (identifying a sufficient tax system as the key to economic development in LDCs, and suggesting helping “poor people in developing countries” has a corrupting influence on LDC economies); Nick Wadhams, Bad Charity? (All I Got Was This Lousy T-Shirt!), TIME (May 12, 2010), http://content.time.com/time/printout/0,8816,1987628,00.html (Flooding the market with free goods could bankrupt the people who already sell them.”); Wicks & Bigsten, supra note 5, at 65 (the SHCI has the potential to harm economic growth and development).

instability and corruption, dependence on used clothing imports, and highly competitive emerging Asian manufacturers continue to play a role in diverting the benefits of liberalization from LDCs back toward already affluent economies.11

The growing secondhand clothing industry (“SHCI”) has been touted as a mutually-beneficial solution to this liberalization conundrum.12 The SHCI involves used clothing donations, which a variety of nonprofit and for-profit businesses run through a process of recycling, export, and re-sale.13 The SHCI promised a host of positive results: lessening the environmental impact of consumerism, offering economic growth opportunities in destination and origin countries, and fulfilling a moral imperative to help to those in need.14

[https://perma.cc/N7S5-LFJB](https://perma.cc/N7S5-LFJB) (describing Haiti as one of most impoverished nations in the Western hemisphere, with over 59% of the population (over 6 million people) “liv[ing] under the national poverty line of US$ 2.42 per day” and 24% of the nation (over 2.5 million people) “under the national extreme poverty line of US $1.23 per day.”); World Factbook: Haiti, CIA [https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html](https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html) [https://perma.cc/X78L-AYJT] [hereinafter CIA].


14 See Tasha L. Lewis & Anne Pringle, Local Buttons: Sustainable Fashion and Social Entrepreneurship in Haiti, NKA J. CONTEMP. AFRICAN ART, Nov. 2015, at 114, 117 (sustainable fashion and employment opportunities); Uratea, supra note 2, at 26 (policy-makers supporting the SHCI due to its potential to spur economic growth); Dougherty, supra note 9 (consumers largely welcome used clothing imports); Pam Fessler, Thanks, But No Thanks: When Post-Disaster Donations Overwhelm, NPR: AROUND THE NATION (Jan. 9, 2013), http://www.npr.org/2013/01/09/168946170/thanks-but-no-thanks-when-post-disaster-donations-overwhelm [https://perma.cc/HEP7-5XS9]; IMF, supra note 4 (stressing the importance of liberalizing in a competitive global market); GARSON & SHAW LLC, supra note 13 (the SHCI is good for the environment, the economy, and people); GOODWILL INDUS.
Newly-relaxed trade barriers facilitated the establishment of the SHCI, which has become a key source of apparel for many developing economies across the globe. The United States is currently the largest exporter of used clothing, with the bulk of its goods coming from donations made to charities such as the Salvation Army, Goodwill Industries, and Planet Aid. Reactions to the SHCI have run the gamut of tolerance, from open acceptance to protectionist policies banning used clothes. Others, like Haiti, have significant contradictions between written law and actual practice. Some laud its eco-


17 See GAUTHIER, supra note 16, at 101. Mexico, like Haiti, has officially banned used clothing imports, yet the SHCI remains popular and thriving. See id. at 101, 105; see also, Wicks & Bigsten, supra note 5, at 21 (citing open as well as protectionist responses). See generally Lewis & Pringle, supra note 14, at 117 (providing an example of one company extolling the value of the SHCI due to its potential to create jobs as secondhand clothing tailors in Haiti); Fessler, supra note 14 (highlighting the potential for inundating destination countries with unsolicited clothing, medical supplies, and food donations); Richard Stupart, 7 Worst International Aid Ideas, MATADOR NETWORK (Feb. 20, 2012), http://matadornetwork.com/change/7-worst-international-aid-ideas/ [https://perma.cc/U5R3-4MAV] (criticizing seven international aid projects as exploitative of LDCs); Wadhams, supra note 9 (contending free aid is not a sustainable long term solution to economic growth); GARSON & SHAW LLC, supra note 13 (extolling economic and environmental benefits of used clothing recycling and export company); GOODWILL INDUS. INT’L, supra note 13 (“When you donate your stuff to Goodwill, you create opportunities for individuals in your community looking to find a job” and “[help] keep billions of pounds of clothing and household items out of landfills.”); PLANET AID, supra note 14 (identifying recycling used textiles as an effective means “to protect the environment and support sustainable development in impoverished communities around the world”); USAGAIN, supra note 14 (citing economic, environmental, ethical benefits of recycling used clothing).

friendly and economy-boosting aspects, while others criticize it as a misguided attempt at charity that undermines the very economies it claims to benefit. In the 1960s, the United States began to export used clothing to Haiti, as part of a foreign assistance program under the Kennedy administration. These clothes have come to dominate the apparel market in Haiti, thanks to their relatively high quality and unbeatably low cost. They are distinguished from new clothing by the designations pepe, Kennedy, and Reagan. The origin of pepe is in dispute, some maintaining it came from the “P.P.” label used to mark clothes imported to Port-de-Paix, others that it originated when priests in Haiti would distribute donated clothing in village centers, shouting “paix, paix” to encourage recipients to wait for clothing in an orderly fashion. The lack of neutral organizations tasked with monitoring, evaluating, and enforcing trade agreement policies also leaves many LDCs vulnerable to economic abuse. Though the trade policies discussed in this Note do not control the SHCI, the two sectors provide reciprocal justifications for each other.

19 See, e.g., Lewis & Pringle, supra note 14, at 117 (providing a positive example of Haitians finding employment upcycling SHCI imports into custom clothing suitable for export to Canada); Fessler, supra note 14 (criticizing flood of donated goods as “dumping”); Stupart, supra note 17 (highlighting exploitative nature of many donation programs in LDCs); Wadhams, supra note 9 (emphasizing risk of SHCI displacing local manufacturing); GARSON & SHAW LLC, supra note 13 (explaining logistics of the for-profit side of the SHCI, extolling the industry’s potential to reduce waste and increase employment opportunities worldwide); GOODWILL INDUS. INT’L, supra note 13 (emphasizing moral and environmental benefits of donating used clothing); PLANET AID, supra note 14 (enumerating positive environmental and economic development impacts of SHCI); USAGAIN, supra note 14 (promoting clothing recycling as economically beneficial, environmentally friendly, and key source of funding for community development projects).

20 Shell & Bertozzi, supra note 3, at 154; McNeil, supra note 1, at 68.

21 See McNeil, supra note 1, at 68 (omnipresence of imported used clothes); GARSON & SHAW LLC, supra note 13 (same); Secondhand (Pepe), supra note 15 (same).

22 Lewis & Pringle, supra note 14; Shell & Bertozzi, supra note 3, at 154; Secondhand (Pepe), supra note 15. Most of these terms entered into common usage because the clothing originated from the United States during the Kennedy and Reagan administrations. See Lewis & Pringle, supra note 14, at 116; Shell & Bertozzi, supra note 3, at 154; Secondhand (Pepe), supra.


24 See, e.g., Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2008, sec. 15402(c), § 213A(b)(1)(C)–(D), sec. 15403(3), § 213A(e)(1), sec. 15409, 122 Stat. at 2299, 2303, 2308 (charging various U.S. government officials and agencies with monitoring, evaluation, and enforcement responsibilities); Atkins, supra note 11 (unfulfilled promises of foreign aid); Bill Clinton’s Heavy Hand on Haiti’s Vulnerable Agricultural Economy: The American Rice Scandal, COUNCIL ON HEMISPHERIC AFF. (Apr. 13, 2010), http://www.coha.org/haiti-research-file-neoliberalism’s-heavy-hand-on-haiti’s-vulnerable-agricultural-economy-the-american-rice-scandal/ [https://perma.cc/7XY8-DKFX] (discussing how subsidized rice exports from the U.S. under the Clinton administration undermined local rice production in Haiti, exacerbated by lack of control mechanisms to curb smuggling); AMÉLIE GAUTHIER & MADALENA MOITA, VULNERABILITY AND CAUSES OF FRAGILITY IN HAITI, FRIDE 2, 3, 6 (2010) (lack of consistent governmental oversight).

25 See infra notes 87–167 and accompanying text.
Part I of this Note offers background information on the SHCI and relevant international economic policies, providing an overview of its effects in both origin and destination countries. The effects addressed will include clothing consumption, recycling, and waste; a description of the process of recycling and exporting used clothing; and an outline of the influence twentieth century trade liberalization policies had on the secondhand clothing industry. Part II discusses contemporary accolades and criticisms of the SHCI by comparing and contrasting arguments from moral/ethical, environmental, and economic points of view. Part III analyzes the arguments from Part II by applying theories borrowed from economic justice scholars John Rawls, Joseph Stiglitz, and Frank Garcia to the economic ecosystem created by the interplay of the SHCI and CBI in Haiti.

I. AN OVERVIEW OF UNILATERAL U.S. TRADE AGREEMENTS WITH HAITI AND THE SECONDHAND CLOTHING INDUSTRY

This Part provides background information on the development of unilateral trade preference programs between the United States and Haiti. Section A discusses general trends of economic liberalization and trade preference programs since the mid-twentieth century, and the emergence of the international SHCI. Section B provides scope on the size and prevalence of the SHCI. Sections C and D discuss the economic consequences the SHCI has on origin and destination countries, respectively.

A. International Economic Liberalization and Trade Agreements Between the United States and Haiti

In the aftermath of WWII, many of the world’s sovereign states convened at the United Nations (“U.N.”) to address economic, social and political concerns in a new age of rapid technological advancement and globalization.
Beginning with GATT in 1947, a chain of multilateral trade agreements ensued. According to the International Monetary Fund, eight major rounds of multilateral trade liberalization have been completed, accompanied by smaller bilateral and regional agreements, such as those between the United States and nations falling within the Caribbean geographical region. In particular, beginning in 1983, the United States has enacted a series of trade programs known collectively as the CBI.

The agreements most relevant to this Note include the Caribbean Basin Economic Recovery Act, Caribbean Basin Trade Partnership Agreement (“CBTPA”), the Haiti Economic Lift Program, and the Haitian Hemispheric Opportunity through Partnership Encouragement Acts (“HOPE” and “HOPE II”). These acts provide certain Haitian goods with preferential status upon entry into U.S. ports; clothing manufactured in Haiti, for instance, can enter the United States duty-free and without quantity restrictions. The ostensible goals of these acts are to expand U.S.-Haiti trade in order to assist Haiti’s “economic growth and recovery,” as well as its economic security. To remain eligible for this preferential status Haiti must abide by certain stipulations, namely, to advance workers’ rights in accordance with International Labor Organization (“ILO”) standards, to open its borders to U.S. commerce, complete all manufacturing in Haiti, and implement policies that further democracy,

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35 IMF, supra note 4.
36 Id.; see CIA, supra note 10 (providing examples of smaller regional agreements between the U.S. and Haiti, including the U.S.-Caribbean Basin Trade Partnership Act, the Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2008, and the Haitian Economic Lift Program Act of 2010).
37 Caribbean Basin Initiative (CBI), OFF. U.S. TRADE REPRESENTATIVE, https://ustr.gov/issue-areas/trade-development/preference-programs/caribbean-basin-initiative-cbi [https://perma.cc/EX6D-FST2]. The “Caribbean Basin” involved in these agreements consists of seventeen countries: Antigua and Barbuda, Aruba, the Bahamas, Barbados, Belize, the British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago. Id. Not all are members of each trade agreement, however; only eight are involved in the CBTPA. Id.
combat corruption, and ensure observance of “the rule of law.” Since the implementation of these acts, Haitian apparel manufacturing has experienced an upsurge; for instance, in 2015 apparel comprised ninety percent of all Haitian exports and over ten percent of Haiti’s Gross Domestic Product (“GDP”).

In spite of the substantial nature of Haiti’s apparel exports, there are sparse regulations on the exchange between the United States and Haiti. The most apparent mode of supervision is the submission of biennial reports by the U.S. Trade Representative to the U.S. Congress, which provide information on CBI beneficiary countries’ performance under the agreements. According to the CBTPA, the U.S. President reserves the right to impose quantity restrictions on a beneficiary country if it is determined the country is not fulfilling certain eligibility requirements. According to the U.N., this relative dearth of legal structure conforms with the larger global trend toward international trade liberalization, which entails an overall reduction of export barriers. Advocates for economic liberalization tout the many benefits of deregul-
lation, with special emphasis on its ability to incentivize foreign investment that can catalyze economic growth in “new globalizers,” like Haiti.47 In reality, although Haiti’s apparel exports increased due to trade liberalization, many of the purported economic benefits failed to offset loss of tariff revenue and increased dependence on cheap imports.48 Despite the prevalence of pepe in Haiti, there is no formal regulation of the SHCI; used goods are technically banned by a 1962 Haitian law but secondhand goods enter the country through a variety of channels, including individual vendors with family connections and charitable organizations.49

B. Global Overview of the Secondhand Clothing Industry

U.S. consumers purchase an estimated national total of twenty billion garments annually, and discard approximately seventy pounds of clothing per person each year.50 With the U.S. population increasing from approximately 281 million in 2000 to 309 million in 2010—approximately a 9.7% increase in only ten years—it is likely this trend of consumption and disposal of clothing will continue to increase in the coming decades.51 Some consumers elect to

supra note 5, at 2, 19, 21, 24 (trend toward increasing economic accessibility); IMF, supra note 4 (economic integration). Typically, trade liberalization is defined as a process of eliminating obstacles to international trade by reducing or removing tariffs, quotas, and other non-tariff factors that restrict trade. Tejvan Pettinger, Trade Liberalisation, ECONOMICS HELP (Nov. 28, 2012), http://www.economicshelp.org/blog/glossary/trade-liberalisation/ [https://perma.cc/Y5PM-CZHP].

47 See U.N. Dep’t Econ. & Soc. Aff., supra note 12, at 99 (lowering impediments to trade); Urata, supra note 2, at 20, 26 (development in East Asian LDCs); IMF, supra note 4 (economic integration). The term “new globalizers” is used by the World Bank to describe developing countries that open their borders to liberal trade agreements. IMF, supra note 4.


49 See McNeil, supra note 1, at 68 (family connections); Secondhand (Pepe), supra note 15 (charitable avenues); U.S. Dep’t STATE, supra note 18.


donate these goods to charitable organizations like the Salvation Army, Young Men’s Christian Association, or Goodwill.52 Presumably due to increases in new clothing consumption and high volume of discarded clothes in recent decades, the SHCI evolved from the domestic rag merchant businesses of the Great Depression to process and repurpose used clothing internationally.53 Though some organizations operate at a predominantly local level, others have expansive operations at the national or even international levels.54

Used clothing organizations in the United States operate under both not-for-profit and for-profit business models.55 These companies collect donations from bins at convenient drop-off locations, grocery stores, gas stations, or schools, for example.56 Collectors transport clothing to a sorting center where


52 See Brooks & Simon, supra note 4, at 10, 11 (charitable donations); Donation Options, YMCA BOSTON, http://ymcaboston.org/giving/donationoptions [https://perma.cc/A854-7BWP]; GOODWILL INDUS. INT’L, supra note 13; SALVATION ARMY, supra note 13.


54 See GARSON & SHAW LLC, supra note12; What Happens to Your Used Clothing?, PLANET AID, http://www.planetaid.org/what-we-do/for-the-environment/what-happens-to-your-used-clothing [https://perma.cc/EFK2-US5L]. For example, Garson and Shaw estimates that 45% of the clothing they collect from donations is exported overseas. GARSON & SHAW LLC, supra note 13.

55 See, e.g., PLANET AID, supra note 16 (“Planit Aid is a 501(c)3 nonprofit organization that collects and recycles used textiles to protect the environment and support sustainable development in impoverished communities around the world.”); USAGAIN, supra note 14 (“At USAgain, we work for people, for planet and for profit.”).

it is divided into categories, like women’s blouses, shoes, men’s pants, winter coats, etc. If donations are handled by a local organization, such as the Salvation Army or Goodwill, some clothing is typically transported directly to the organization’s local brick and mortar location where it is resold to the community. Alternatively, if the donations are processed by organizations operating internationally, collected clothing is weighed, labeled, and packaged into bales for transportation. Generally, clothing bales are sold to an intermediary company, such as Garson & Shaw, that prepares the bales for export and eventual sale to foreign purchasers.

C. Economic Impacts of Secondhand Clothing on Origin Countries

1. Macroeconomic Effects

The United States is the largest global exporter of “other made textile articles,” with approximately $2.2 billion exported in 2015. Used clothing, though not always a good actually produced in the United States, still counts toward the country’s total exports. To some critics, this is a problematic way for countries to offset “some of the effects of being a net importer,” casting an apparently healthy veneer over a problematic economic reality. Nonetheless, relatively little scholarship has focused on this issue, presumably due to the

57 See Brooks & Simon, supra note 4, at 11 (sorting); Rodgers, supra note 13 (same). The Trans-Americas Trading Company reports that 85 employees sort 70,000 pounds of used clothing each day. TRANS-AM. TRADING CO., supra note 53.


59 See Brooks & Simon, supra note 4, at 12 (processing for shipment); GARSON & SHAW LLC, supra note 13.

60 See Andrew Brooks, Stretching Global Production Networks: The International Second-hand Clothing Trade, 2012 GEOFORUM 1, 2; GARSON & SHAW LLC, supra note 13.


63 Milner, supra note 62.
small-scale of secondhand clothing exports in comparison to more lucrative and large-scale exports such as iron, computer parts, and other machinery.64

According to secondhand clothing processors in the United States, the SHCI creates a wealth of domestic employment opportunities, especially at the collection, sorting and baling stages.65 First, drivers can earn money to gather clothing donations from centralized collection bins and drop it off at local charities like Goodwill and the Salvation Army.66 Planet Aid, for instance, has 19,000 collection bins in the United States, and they are not the only textile recycling company operating in the country; organizations like the Red Cross and USAgain (with 12,500 collection bins) also operate nationally, whereas smaller organizations like Charity Clothing Pickup in Texas collect donations from numerous drop boxes in major cities across the state.67 Second, sorting centers such as Global Clothing Industries in Atlanta, Georgia, pay employees to check the quality, and sort donations, processing an estimated 150,000 pounds per day.68 Third, companies like Global Clothing Industries employ

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65 See GARSON & SHAW LLC, supra note 13 (providing examples of domestic employment); GOODWILL INDUS. INT’T., supra note 13 (same); TRANS-AM. TRADING CO., supra note 53 (same).

66 GARSON & SHAW LLC, supra note 13. Some drivers are paid by for-profit companies who frequently contract with charities to give them a small percentage of profits from clothing sales in exchange for use of the charity’s brand/name and location. See McNeil, supra note 1, at 68 (charitable organizations involved in the SHCI); Wicks & Bigsten, supra note 5, at 36 (local donation collection and partnerships between charities and for-profit organizations); GARSON & SHAW LLC, supra note 13; Our Company, GLOBAL CLOTHING INDUS., http://www.gciatl.com/our-company/ [https://perma.cc/XX4Q-DVCF].


68 GLOBAL CLOTHING INDUS., supra note 66.
people to sort and sell bales of clothing to foreign buyers. Although at first glance it appears the SHCI has given rise to plentiful job opportunities within the United States, scant data is available on the precise impact of this industry on the domestic economy.

2. Microeconomic Effects

The SHCI has a number of highly positive effects in the United States. First, individual donors as well as businesses may qualify for tax deductions of charitable donations of $250 or more. Second, the Internal Revenue Service recognizes generally that charitable organizations are exempt from owing corporate income tax. Congress did enact some limitations on charitable deductions with the policy goal of rewarding gifts designated for the public good, and to avoid affording tax benefits to donors with ulterior motives. The main rationale behind allowing donors to deduct the full amount of charitable donations is that such donations are beneficial to the general public, and should be rewarded. U.S. tax law also identifies charitable donations as a viable way to ease one’s tax burden. In theory, donors will appreciate the eased tax burden and continue to engage in philanthropic activity in the future.

Currently, only domestic charitable donations are eligible for deduction. Nonetheless, there is a “water’s edge policy” that has been in existence since
the 1930s, which asserts that donations cannot be deducted if given directly to a foreign nonprofit, but can be deducted if given to a nonprofit based in the United States, regardless of whether that U.S.-based nonprofit uses the donation in the United States or abroad.79 In this way, charitable organizations benefit from tax deductions even though their primary activities may occur abroad.80

D. Economic Impact of Secondhand Clothing on Destination Countries

Since the trade liberalization policies of the 1980s and 1990s, there has been an enormous influx of used clothing into destination country markets.81 The majority of this clothing flows from several ‘developed’ countries, including the United States, the United Kingdom, Canada, and South Korea.82 Vendors in destination markets, such as Haiti, then purchase bales of clothing from foreign exporters.83 They then typically grade the clothing, sending lower quality items to less lucrative rural markets.84 Because of the high availability of secondhand clothes and their temporally diffused production costs, vendors are able to offer secondhand clothing at a fraction of the price of locally-produced apparel.85 Over the past five decades, used clothing has come to dominate the local Haitian clothing markets.86

II. A COMPARISON OF SUPPORT AND CRITICISM OF THE SECONDHAND CLOTHING INDUSTRY

This Part compares and contrasts parallel arguments for and against the SHCI.87 Section A lays out justifications for used clothing imports in destina-

79 Id.
80 See id.; PLANET AID, supra note 16.
81 See Brooks & Simon, supra note 4, at 12 (trade liberalization ushered in used clothing trade); McNeil, supra note 1, at 68 (shipments to Haiti in the 1960s).
82 Brooks & Simon, supra note 4, at 10; Wicks & Bigsten, supra note 5, at 5; BBC NEWS, supra note 61; INT’L TRADE IN GOODS 2015: OTHER MADE TEXTILES, supra note 16.
84 Velia, supra note 83, at 37; Dougherty, supra note 9.
85 See Wicks & Bigsten, supra note 5, at 48 n.8, A-51 (local goods cannot compete with the low cost of imported used clothing); Secondhand (Pepe), supra note 15 (one long-sleeved blouse cost $0.13 USD in Haiti); see, e.g., Milner, supra note 62 (illustrating low cost of imported secondhand goods; secondhand shirts sell for just $0.20–$5.00 in East Africa).
86 See McNeil, supra note 1, at 68 (“all pepe, all the time”); Shell & Bertozzi, supra note 3, at 157 (used clothing considered a “new natural resource” in Haiti); Velia, supra note 83, at 4 (similarly, since its arrival in ports across the globe, secondhand clothing has come to dominate the markets in developing economies); USITC, supra note 61, at 5–34; Secondhand (Pepe), supra note 15 (everything is pepe).
87 See infra notes 90–167 and accompanying text.
tion countries, including reduced environmental impact, increased economic growth opportunities, and fulfilling a moral imperative to alleviate poverty. Section B provides rebuttal critiques of U.S. involvement in the SHCI, including shifting environmental burdens, undercutting local industries, and failing to implement well-intentioned policies and programs in a beneficial manner.

A. Justifications for U.S. Participation in the Secondhand Clothing Industry as a Mutually-Beneficial Derivative of Trade Liberalization

In surveying a variety of academic and media sources, three principle justifications for the SHCI and U.S. involvement therein emerge, proliferated by people in origin and destination countries alike. They are categorized as follows: (1) environmental consciousness, (2) economic development and liberalization, and (3) moral imperative. All three cast the SHCI in an ultimately favorable light, as a mechanism for increased sustainability and international economic cooperation between the United States and Haiti.

1. Reducing the Environmental Impact of U.S. Textile Consumption Through Donation

A 2014 Environmental Protection Agency report estimated that 12.15 million tons of clothing was discarded into the U.S. municipal solid waste stream. Of this quantity, 15.64% was recycled (1.9 million tons), 16.54% was combusted (2.01 million tons), and 67.82% was sent to a landfill (8.24 million tons). Proponents of the SHCI frequently encourage donating clothing as a...
feasible means of reducing one’s carbon footprint and reducing global waste.\textsuperscript{95} Recycling clothing through donation also precludes energy expenditures needed to power various manufacturing machinery (boilers, ovens, and storage tanks), as well as the expulsion of harmful chemicals, dust, and fiber waste into the environment.\textsuperscript{96}

Understandably, not all used clothing is suitable for wearing, precipitating the emergence of various organizations, in origin as well as destination countries, whose businesses specifically address this problem.\textsuperscript{97} One such company in California, SOEX Group USA, processes unwearable clothing into rolls of padding, which major buyers like Toyota and Lexus use to insulate their cars.\textsuperscript{98} Used clothing buyers in destination countries frequently transform unsuitably large items of clothing into smaller, more fashionable pieces, or decorative add-ons to otherwise bland clothing and footwear.\textsuperscript{99} Truly unwearable clothing and textile material is generally converted into wiping rags, furniture padding, and fuel for stoves.\textsuperscript{100} Thanks to these innovative and environmentally-friendly solutions to used-clothing waste, some have lauded the SHCI as a praiseworthy “self-financing recycling system” for used clothing and related waste.\textsuperscript{101}

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{95} See Lewis & Pringle, supra note 14, at 117 (sustainable fashion); Garson & Shaw LLC, supra note 13; Planet Aid, supra note 14; USAgain, supra note 14.
\item\textsuperscript{96} See Garson & Shaw LLC, supra note 13; Planet Aid, supra note 14; USAgain, supra note 14. USAgain’s website estimates that since its founding in 1999, its used clothing recycling program has saved nearly 731 million items from being sent to a landfill. USAgain, supra note 3. That translates into saving nearly 4.7 million pounds of CO\textsubscript{2} emissions, and 3.8 million cubic yards of landfill space. Id.
\item\textsuperscript{97} See Garson & Shaw LLC, supra note 13; see, e.g., Hoang, supra note 53, at 19; Planet Aid, supra note 14; USAgain, supra note 14. See generally Lewis & Pringle, supra note 14 (providing the organization, Local Buttons, deals solely in altering used clothing in Haiti and reselling its tailored products in Canadian markets).
\item\textsuperscript{98} See Garson & Shaw LLC, supra note 13. Donated unwearable clothing is run through a series of machines: first, blades chop the fabric into small pieces; second, the fabric is pulled into smaller fibers; third, the fibers are rolled flat and compressed, then heated in an oven to bind the fibers together. See id. The California-based company SOEX West Textile Recycling USA may be affiliated with the German SOEX Group, which owns a U.S. trademark and advertises the aforementioned textile processing services. See SOEX Group, http://www.soexgroup.de/group.html?&L=1 [https://perma.cc/AVV2-G9TC]; SOEX Group—Trademark Details, Justia, https://trademarks.justia.com/779/40/soex-group-77940863.html [https://perma.cc/NHD2-W2R2]; SOEX West Textile Recycling, http://www.co.contra-costa.ca.us/depart/ed/recycle/options/v6618.htm [https://perma.cc/T8BG-69EM].
\item\textsuperscript{99} See Garson & Shaw LLC, supra note 13. One vendor showed how he collected discarded scraps of leather and tailored them to fit on an otherwise bland-looking used tennis shoe, creating a much more elaborate and attractive product for his clientele. See Lewis & Pringle, supra note 14, at 119 (demonstrating Local Buttons’ technique of combining fabric from distinct used garments to create new products); Garson & Shaw LLC, supra note 13.
\item\textsuperscript{100} See Garson & Shaw LLC, supra note 13.
\item\textsuperscript{101} Brooks & Simon, supra note 4, at 12; Goodwill Indus. Int’l, supra note 13; Secondary Materials & Recycled Textiles, supra note 12; USAgain, supra note 14.
\end{itemize}
\end{footnotesize}
2. Spurring Economic Growth through Job Creation

Proponents of trade liberalization tout open borders as an essential ingredient in sustainable economic growth.\(^{102}\) The SHCI, as an offshoot of trade liberalization, serves as a prime source of employment for workers in both origin and destination countries.\(^{103}\) In origin countries, people find work as clothing donation collectors, sorters and packagers, fiber processors, and vendors who coordinate overseas shipments.\(^{104}\) Although many companies operate on a large scale, there is also significant smaller-scale business activity between the United States and Haiti.\(^{105}\) Some individuals, often immigrants or persons of Haitian descent with family/friends in Haiti, purchase used clothing from U.S. organizations and send it to personal connections in Haiti.\(^{106}\) Additionally, donors and charitable organizations giving to the SHCI can qualify for tax deductions and, in theory, will then reinvest their savings in the local economy.\(^{107}\)

In destination countries, the impact of the SHCI can be seen on both micro and macroeconomic levels.\(^{108}\) One seminal study conducted in 1996 for the Swedish International Development Cooperation Agency acknowledged the potential for widespread economic benefits resulting from used clothing imports in destination countries.\(^{109}\) Noted benefits included reducing waste by recycling “still-serviceable goods,” increased productive capacity “by increasing the stock of human capital in the form of better-clothed workers,” directly transferring “real income” to people in Haiti, and generating employment.\(^{110}\)

\(^{102}\) See Urata, supra note 2, at 26 (liberalization’s precept of deregulation); IMF, supra note 4 (“No country in recent decades has achieved economic success, in terms of substantial increases in living standards for its people, without being open to the rest of the world.”).

\(^{103}\) See Dougherty, supra note 9 (the SHCI employs many people in developing countries like Uganda); GARSON & SHAW LLC, supra note 13; GOODWILL INDUS. INT’L, supra note 13.

\(^{104}\) See Rogers, supra note 13 (employment opportunities exist at collection, sorting, and export stages of the SHCI); GARSON & SHAW LLC, supra note 13. The Trans-Americas Trading Company reports that its 85 employees sort 70,000 pounds of used clothing each day. TRANS-AM. TRADING CO., supra note 53.

\(^{105}\) See McNeil, supra note 1, at 68 (individuals and family members involved); GARSON & SHAW LLC, supra note 13 (charities); PLANET AID, supra note 67 (operating 19,000 donation bins in 20 U.S. states); Secondhand (Pepe), supra note 15 (charities and family connections).

\(^{106}\) See McNeil, supra note 1, at 68 (family ties); Secondhand (Pepe), supra note 15 (same).


\(^{108}\) See Brooks & Simon, supra note 4, at 12; Wicks & Bigsten, supra note 5, at 7, 28 (potential employment for individuals, potential structural instability for local industries); GARSON & SHAW LLC, supra note 13 (creating jobs); Secondhand (Pepe), supra note 15 (“all pepe all the time”).

\(^{109}\) See Wicks & Bigsten, supra note 5, at 65 (acknowledging the greatest potential for benefits would be in countries lacking an existing apparel manufacturing industry, but inconclusive regarding countries with existing or developing apparel manufacturing industries).

\(^{110}\) Id. at 19, 41, 48, 49. Used clothing constitutes “real wealth,” and reusing it creates a “net worldwide gain” by reinjecting that wealth into the commerce stream. Id. at 41.
The 1996 study adds that the SHCI not only benefits individual vendors and importers, but helps offset “inflation and the erosion of purchasing power” in LDC economies. Additionally, destination country governments profit from duty payments made on secondhand clothing entering their ports. In a country like Haiti, where individual income tax collection is insufficient to sustain economic development, robust trade is a vital source of revenue for the government.

On a microeconomic level, the SHCI in Haiti offers a significant number of jobs in a region where unemployment and underemployment run rampant. The unemployment rate in Haiti is estimated at 40.6%, with 67% of the population lacking consistent or formal jobs. Thus, some theories posit that the SHCI stimulates destination country economies through a cascading chain of employment and diffused benefits. To illustrate, purchasers in Haiti buy...
clothing bales from exporters in the United States and sell the bales to retail vendors (generally in urban areas near ports) who prepare the clothes for sale to the public.\footnote{clothing bales from exporters in the United States and sell the bales to retail vendors (generally in urban areas near ports) who prepare the clothes for sale to the public.} Sometimes urban vendors sell their wares to other businespeople who transport the clothing to rural markets.\footnote{Sometimes urban vendors sell their wares to other businesses who transport the clothing to rural markets.} SHCI vendors often develop a niche market to mitigate the risk of losing revenue to competitors selling identical wares to the same consumer base.\footnote{SHCI vendors often develop a niche market to mitigate the risk of losing revenue to competitors selling identical wares to the same consumer base.} For example, retailers will specialize in selling women’s clothing, men’s pants, sandals, or sports shoes.\footnote{For example, retailers will specialize in selling women’s clothing, men’s pants, sandals, or sports shoes.} While some vendors select wares purely on the basis of clothing type, others are known for selling sought-after designer brands like Lacoste or Gucci.\footnote{While some vendors select wares purely on the basis of clothing type, others are known for selling sought-after designer brands like Lacoste or Gucci.} Consumers, in turn, benefit from readily available, high quality goods, which reduces their search costs and allows them to stretch meager incomes further than they would be able to otherwise.\footnote{Consumers, in turn, benefit from readily available, high quality goods, which reduces their search costs and allows them to stretch meager incomes further than they would be able to otherwise.} One company in the SHCI, Local Buttons, specializes in altering used clothing in Haiti and exporting it to Canada.\footnote{One company in the SHCI, Local Buttons, specializes in altering used clothing in Haiti and exporting it to Canada.} Though apparently the import/export process and eventual sale of redesigned clothing is handled by Local Buttons’ Canadian founders, Haitians can find employment through the organization as clothing disassemblers, pattern makers, and tailors.\footnote{Though apparently the import/export process and eventual sale of redesigned clothing is handled by Local Buttons’ Canadian founders, Haitians can find employment through the organization as clothing disassemblers, pattern makers, and tailors.}

3. Meeting a Moral Imperative to Alleviate Poverty

Some proponents of the SHCI favor a “moral imperative” justification, which follows a line of reasoning similar to that of disaster relief response.\footnote{Some proponents of the SHCI favor a “moral imperative” justification, which follows a line of reasoning similar to that of disaster relief response.}

\textsuperscript{117} \footnote{clothing bales from exporters in the United States and sell the bales to retail vendors (generally in urban areas near ports) who prepare the clothes for sale to the public.} \textsuperscript{118} \footnote{Sometimes urban vendors sell their wares to other businesses who transport the clothing to rural markets.} \textsuperscript{119} \footnote{SHCI vendors often develop a niche market to mitigate the risk of losing revenue to competitors selling identical wares to the same consumer base.} \textsuperscript{120} \footnote{For example, retailers will specialize in selling women’s clothing, men’s pants, sandals, or sports shoes.} \textsuperscript{121} \footnote{While some vendors select wares purely on the basis of clothing type, others are known for selling sought-after designer brands like Lacoste or Gucci.} \textsuperscript{122} \footnote{Consumers, in turn, benefit from readily available, high quality goods, which reduces their search costs and allows them to stretch meager incomes further than they would be able to otherwise.} \textsuperscript{123} \footnote{One company in the SHCI, Local Buttons, specializes in altering used clothing in Haiti and exporting it to Canada.} \textsuperscript{124} \footnote{Though apparently the import/export process and eventual sale of redesigned clothing is handled by Local Buttons’ Canadian founders, Haitians can find employment through the organization as clothing disassemblers, pattern makers, and tailors.}
This approach appeals to a general sense of humanity and duty to support those in need, citing consumer demand and high instances of poverty as its principle rationalizations. With countries like Haiti, where over two thirds of its population live below the poverty line and a little over half of those living in “abject poverty,” people often can only afford secondhand goods. If consumers coincidentally enjoy the clothing available through the SHCI, and the arrangement appears to harmonize with liberal economic policies, then origin countries should supply these clothes. Other supporters of the moral imperative take a slightly different tack, recognizing the many negative economic effects that colonialism inflicted on destination countries. In particular, after Haiti’s independence, France demanded the Haitian government pay 150 million gold francs—later reduced to 90 million—as an “independence debt.” Haiti finally repaid the debt 122 years later in 1947. This staggering and longstanding debt encumbered Haiti’s process of economic development and industrialization, thus preventing the nation from gaining a competitive foothold in the global market. From the moral imperative perspective, Haiti’s economic

ished communities”); USAGAIN, supra note 14 (“contribut[ing] to the well-being of those whose means give only the choice of no new clothes or used new clothes”).

126 See Fessler, supra note 14; GARSON & SHAW LLC, supra note 13; see, e.g., PLANET AID, supra note 14; USAGAIN, supra note 14.

127 See CIA, supra note 10 (high unemployment and poverty rates); Secondhand (Pepe), supra note 15 (illustrating how used clothing dominates the apparel market).

128 See Wicks & Bigsten, supra note 5, at 2, 21 (“trade is good” viewpoint); Pettinger, supra note 46; Weiss, supra note 4; GARSON & SHAW LLC, supra note 13; U.N. Dep’t Econ. & Soc. Aff., supra note 12, at 99 (exports spur economic development).

129 See Weiss, supra note 4. Dr. Andrew Brooks, who lectures on “Development Geography” at King’s College London, asserts that Western banks and governments were the main drive behind Africa’s economic liberalization in the 1980s and 1990s. See id. African leaders approved liberalization policies under pressure due to the “massive interest repayments” they owed to Western entities who had lent them significant sums of money throughout the African decolonization and independence movements. Id. Trade liberalization opened the path to secondhand clothing imports, which fostered African reliance on cheap textiles from abroad. Id.


131 Ives, supra note 130. The final amount was 90 million gold francs, plus interest from loans that Haiti had to take out from French banks in order to comply with payment deadlines. Id. France was criticized for this illegitimate debt collection, and sources have urged it to pay $40 billion USD to Haiti as a form of reparations. Amy Goodman, France Urged to Pay $40 Billion to Haiti in Reparations for “Independence Debt,” DEMOCRACY NOW! (Aug. 17, 2010), https://www.democracynow.org/2010/8/17/france_urged_to_pay_40_billion [http://perma.cc/4AG8-GFE6]; Ives, supra note 130.

132 See Goodman, supra note 131; Ives, supra note 130; MacDonald, supra note 130.
partners today have an obligation to counterbalance these delays.\textsuperscript{133} In this vein, the SHCI is a mutually advantageous means of mitigating the economic disadvantages inflicted by dominant players over the course of globalization.\textsuperscript{134}

\textbf{B. Criticisms of U.S. Participation in the Global Secondhand Clothing Industry}

1. Shifting the Environmental Burden of U.S. Textile Consumption onto Destination Countries

The primary critique of the environmentally-friendly justification for the SHCI is that the practice overloads countries with goods that they may (1) be ill-equipped to handle, or (2) not actually need or desire.\textsuperscript{135} Some critics categorize the SHCI as a form of dumping,\textsuperscript{136} or SWEDOW, “Stuff We Don’t Want,” emphasizing how used clothing imports can be overbearing in degree of necessity and sheer volume.\textsuperscript{137} Assuming, for argument’s sake, that SHCI goods are in demand—leaving aside any discussion of truly unsolicited cloth-

\textsuperscript{133} See GARCIA, supra note 41, at 194 (preferential treatment can, in some cases, make international trade fairer than a solely free trade approach); see, e.g., U.S. TRADE REPRESENTATIVE, SEVENTH REPORT TO CONGRESS ON THE OPERATION OF THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT 9 (Dec. 31, 2007); Goodman, supra note 131; Ives, supra note 130; Weiss, supra note 4.

\textsuperscript{134} See Ives, supra note 130; Weiss, supra note 4; Hoang, supra note 53, at 18; GARSON & SHAW LLC, supra note 13; U.N. Dep’t Econ. & Soc. Aff., supra note 12, at 99 (exports support economic growth).

\textsuperscript{135} See JOSEPH STIGLITZ, MAKING GLOBALIZATION WORK 63 (2007) (developing countries not sufficiently equipped to bear the risks of trade liberalization); Shell & Bertozzi, supra note 3, at 156 (urban “mountains” of used textile waste); Fessler, supra note 14; Wadhams, supra note 9; Stupart, supra note 17.


\textsuperscript{137} See Wadhams, supra note 9; Stupart, supra note 17. Three extraordinary situations, but ones that illustrate the “dumping” theme in the secondhand clothing industry, are the disaster relief responses to Hurricane Sandy, the 2010 earthquake in Haiti, and the 1988 hurricane in Honduras. See Fessler, supra note 14. One relief group, Occupy Sandy, coordinated efforts to help rebuild cities and towns in the northeastern U.S. after the hurricane struck in 2012. Id. Donors from across the U.S. sent unsolicited donations that quickly cluttered and impeded the Occupy Sandy relief efforts. Id. Similarly, donors from across the world sent unsolicited clothes, water, food and other personal products to Haiti after the devastating 2010 earthquake. Id. Disaster relief workers had to move piles of boxes, many of which were never used, to make enough space for “critical relief supplies,” such as medicine and medical equipment. Id. Hurricane relief efforts in Honduras in 1988 were also hindered by unsolicited donations, which were piled up on an airport tarmac, presumably because there was nowhere else to put them. See id. At least one cargo plane delivering essential medical supplies had nowhere to land because of the flood of donations on the runway. Id. A disaster relief specialist in Honduras at the time recalled that the unwanted donations “ended up upend[ing] everyone’s plans by about 48 hours, which is critical time in a disaster.” Id.
ing—the main environmental problem with an influx of used clothing is that it shifts the eventual burden of solid waste disposal onto Haiti instead of the United States.\textsuperscript{138} Haiti lacks effective nationwide sanitation and waste management systems.\textsuperscript{139} Though used clothing imports may experience extended life in Haiti, inevitably all textiles will wear out their usefulness as clothing.\textsuperscript{140} When this occurs, used clothing in Haiti is typically burned or cast onto the ground, both of which are unique and detrimental tolls on the environment and public health.\textsuperscript{141}

Like other destination countries, when waste management systems are lacking, individuals in Haiti tend to opt for open-air burning of household trash.\textsuperscript{142} Open-air burning expels dangerous gases into the environment, exposing anyone nearby to health risks.\textsuperscript{143} If Haitians decide not to burn their used


\textsuperscript{140} See, e.g., Lewis & Pringle, supra note 14, at 116–17 (tailors redesigning used apparel for resale abroad); Jane Cartwright et al., Assessing the Environmental Impacts of Industrial Laundering: Life Cycle Assessment of Polyester/Cotton Shirts (April 2011) (group project brief, University of California, Santa Barbara) (on file with Donald Bren School of Environmental Science & Management, University of California, Santa Barbara) (estimating the average life span of shirts); GARSON & SHAW LLC, supra note 13.

\textsuperscript{141} See Bras, supra note 138, at 2–3 (noting “open dumps” are commonly used for waste); Morgan, supra note 139; Vigersky, supra note 138.

\textsuperscript{142} See Mamady Keita, Factors Influencing Attitude, Safety Behavior, and Knowledge Regarding Household Waste Management in Guinea: A Cross-Sectional Study, 2016 J. ENV. & PUB. HEALTH 1, 3; Amadou Touré, L’Incineration des Ordures à Domicile Aggrave le Problème [Burning Household Waste Exacerbates the Problem], INTER PRESS SERV. NEWS AGENCY (June 27, 2008), http://ips.international.org/fr/_note.asp?idnews=4129 [http://perma.cc/52GA-BCW6]. One example across the Atlantic Ocean is The Republic of Guinea, West Africa, where there is no functioning waste management system. See Touré, supra. For example, a 2008 news article by a journalist in the capital of Conakry reported that the Guinean government announced that 36 small and medium sized enterprises functioned in the field of waste management. Id. Statements from the inhabitants of Conakry revealed that the enterprises had long-since ceased their operations. See id. Because there is no reliable waste management system in place, people opt to dispose of garbage by incineration. See id.

\textsuperscript{143} See Morgan, supra note 139; Main Greenhouse Gases, CTR. FOR CLIMATE & ENERGY SOLUTIONS, http://www.c2es.org/facts-figures/main-ghgs [http://perma.cc/HV5W-484Y]. Many of the gases released during open-air trash burning are identified carcinogens, poisons, toxins, and greenhouse gases. See Chemicals Released During Open Burning, ZENDER ENVTL. HEALTH & RESEARCH Grp. (Dec. 12, 2005). Open burning releases the following harmful substances: (1) known carcinogens: asbestos, benzene, butadiene, chromium, chromium oxide, cadmium, dioxins, formaldehyde, lead (suspected), methylene chloride, perchloroethene, polybrominated diphenyl ethers; (2) poisons: acrolein, arsenic, cadmium, chromium, copper, hydrogen bromide,
clothing, the only viable alternative is to cast it outside onto the ground. 144 Further, decaying garbage poses health risks to the general public. 145 Although donating used clothing may save landfill space in the United States, it shifts the burden of waste disposal onto countries whose infrastructures are often ill-equipped to handle it. 146

2. Sabotaging Sustainable Economic Growth by Increasing Dependence on Used Clothing

The brunt of economic-based criticisms of the SHCI is that the steady supply of low-cost goods into destination countries (1) displaces more jobs than it creates, and (2) nurtures economic dependence instead of self-sufficiency. 147 Some scholars posit that the influx of secondhand clothing corrupts local economies either by undermining existing manufacturing industries or forestalling their creation altogether. 148 In Haiti, pepe has become omnipresent in the coun-

hydrogen cyanide, hydrogen fluoride, hydrogen sulfide, mercury, phosgene; (3) toxins: benzene, butadiene, carbon tetrachloride, chlorine, hexachlorobenzene, hydrochloric acid, hydrogen chloride, methylene chloride, nitrogen oxide, styrene; (4) greenhouse gases: carbon dioxide, methane. See id. In densely populated urban areas in Haiti, the number of people exposed to noxious gases could be staggering; Port-au-Prince alone houses an estimated 71,000 people per square mile. Capital Facts for Port-au-Prince, Haiti, WORLD’S CAPITAL CITIES, http://www.worldscapitalcities.com/capital-facts-for-port-au-prince-haiti/ [http://perma.cc/C2WV-BGMP]. Haiti’s national average population density is 985 people per square mile. Id.

144 See Bras, supra note 138, at 2; Morgan, supra note 139; Vigersky, supra note 138. There are few areas designated as actual landfills in the Port-au-Prince area, leaving Haitians effectively on their own to find suitable dumping sites. See Bras, supra note 138; Morgan, supra note 139; Vigersky, supra note 138.

145 See Morgan, supra note 139. Aside from the fact that urban landfills produce noxious odors and unpleasant sights that deter tourism in Haiti, decaying waste emits methane gas that “can cause serious long-term lung, heart and brain defects” upon inhalation. Id.

146 See STIGLITZ, supra note 135, at 63 (people in developing countries lack the resources necessary to assume many economic risks); see, e.g., Bras, supra note 138; GARSON & SHAW LLC, supra note 13; Reducing and Reusing Basics, ENVTL. PROT. AGENCY, https://www.epa.gov/recycle/reducing-and-reusing-basics [http://perma.cc/DFB6-LIUJ]; USAGAIN, supra note 14.

147 See Philippe R. Girard, Underdevelopment in Haiti, in NATION BUILDING, STATE BUILDING, AND ECONOMIC DEVELOPMENT: CASE STUDIES AND COMPARISONS 160 (S.C.M. Paine ed., 2015); Jennifer L. Shoaff, Borders Within Borders, in TRANSATLANTIC FEMINISMS: WOMEN AND GENDER STUDIES IN AFRICA AND THE DIASPORA 244 (Cheryl R. Rodriguez et al. eds., 2015); Swanson, supra note 9. The 1996 report by Wicks and Bigsten suggests that in areas with no existing domestic textile industry the SHCI could offer employment nearly equivalent to the amount lost in the tailoring and clothing distribution sectors, but acknowledged the need for further empirical research to determine the effect in countries with an existing domestic textile industry. Wicks & Bigsten, supra note 5, at 47, 65.

148 See MURRAY & HEUMANN, supra note 4, at 55, 63–64 (used clothing edging out local manufacturers in the southern United States and Zambia); Brooks & Simon, supra note 4, at 2, 12 (displacing local manufacturing industries); Wicks & Bigsten, supra note 5, at 65 (same); Dougherty, supra note 9 (same); Wadhams, supra note 9 (same). One illustrative example:

In Mozambique in the 1990s and early 2000s, economic liberalization curtailed opportunities for clothing industry growth and existing state-owned clothing firms were pri-
try’s local clothing market. Even if proponents of the SHCI point to increased manufacturing job opportunities as an indication of the success of liberal trade agreements like the CBI, and proof that the SHCI does not unfairly interfere with the Haitian manufacturing industry. Though Haiti has experienced enhanced manufacturing and concomitant export capacities thanks to the CBI, these agreements bestow preferential treatment on clothing destined for prosperous markets abroad, not the local community. These locally-manufactured goods—Levi’s and GAP were commonly produced in Haitian factories from 1960–1980—cannot compete with the low cost of the SHCI. Furthermore, these trade agreements stipulate that clothing eligible for preferential treatment must be manufactured from U.S. yarn and fabrics, which further diminishes business opportunities for local Haitian farmers, herders, weavers, and textile manufacturers. Many of these displaced workers likely transitioned into the SHCI, took on multiple jobs or fell back on subsistence farming to provide food and shelter for their families, and/or joined the ranks of the jobless in Haiti. As such, alt-
hough the SHCI provides some job opportunities, it cannot be said definitively to have no negative effect on Haiti’s local apparel manufacturing industry. In fact, in combination with the CBI, it appears to be a significant contributor to unemployment and underemployment.

The major shortcomings of the SHCI’s economic justifications are the scarcity and limited scope of precise economic data on the effects of used clothing. Moreover, the many peripheral factors at play, in addition to infrequent and often contradictory reports, further complicate thorough and comprehensive analysis of the SHCI’s economic impact. Some economic scholars maintain that the overall economic effects of trade liberalization and the SHCI has been ruinous for certain destination economies. Data from destination countries worldwide reveal decreased purchasing power, failing textile manufacturing industries, heightened competition from Asian producers, reduced local incomes, and amplified dependence on secondhand clothing from the United States.

3. Misapplying the Moral Imperative to Combat Poverty

There is evidence that many people who donate clothing in the United States do not understand what is done with their donations or that the SHCI even exists. Though organizations operating within the SHCI do not actively conceal their activities, it appears many donors presume their clothing is either sold locally or given away for free. A recent slew of news reports focused on used clothing exports—many of which convey a general sense of surprise,

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155 See STIGLITZ, supra note 135, at 67 (likelihood of increasing unemployment rates); Wicks & Bigsten, supra note 5, at 47, 49 (calling for further research).
156 See Velia, supra note 83, at 4, 14 (curbing and displacing employment). In Ghana, for example, from 1975–2000 employment in the local textile industry declined by 80%, coinciding with increased secondhand imports. Rodgers, supra note 13. Andrew Brooks shared that in Nigeria, what was once a “200,000-person textile workforce has also all but disappeared.” Id. In Zambia the local industry decreased by over 40% (25,000 down to 10,000) from the 1980s–2002. Brooks & Simon, supra note 4, at 15, 17.
157 See Wicks & Bigsten, supra note 5, at 47, 48 (calling for further research).
158 See Brooks & Simon, supra note 4, at 1, 18, 20 (discussing the situation in African countries and influence of diminished purchasing power and competition from Asian manufacturers); Wicks & Bigsten, supra note 5, at 22 n.a, 37, 47, 49, A-62, A-63; Atkins, supra note 11 (citing natural disaster, U.S. occupation, political instability during the Duvalier dictatorships, and massive debt to France as key factors impeding Haiti’s economic growth and stability).
159 See Brooks & Simon, supra note 4, at 4–5 (availability of used clothing retards or prevents outright the growth of local industries).
160 Brooks & Simon, supra note 4, at 1, 2, 20; Wicks & Bigsten, supra note 5, at 22 n.a, 65; see MURRAY & HEUMANN, supra note 4, at 55, 63–64 (cheap used clothing obviating the need for local production); Dougherty, supra note 9 (local manufacturer describes the SHCI as “a scourge”); Secondhand (Pepe), supra note 15 (“all pepe all the time”).
161 See GARSON & SHAW LLC, supra note 13.
162 Weiss, supra note 4; GARSON & SHAW LLC, supra note 13.
even outrage—reflects this fundamental misunderstanding of the SHCI within origin countries.163

Although SHCI organizations like Garson & Shaw do not appear to purposefully mislead donors, the industry’s profitability remains veiled in limited data sets and lackluster oversight.164 According to the “Haiti Country Commercial Guide,” prepared by the U.S. Commercial Service of the U.S. Department of Commerce, secondhand goods imports reached a total of $38 million USD in 2014 alone.165 Because used clothing imports are technically prohibited by the Haitian Government, this revenue presumably was generated either through charitable or unsanctioned trade channels.166 Consequently, donors might be contributing inadvertently to illicit trade and economic corruption.167

III. UNRAVELLING THE APPAREL TRADE BETWEEN THE UNITED STATES AND HAITI

This Part draws on two primary economic justice theories to illustrate how the injustices inherent to the new and used apparel trade between the United States and Haiti far outweigh its benefits.168 Section A highlights key deficiencies in the U.S. approach to trade preference programs.169 Section B addresses the limiting effect shortsighted unilateral trade agreements have on economic independence.170 Section C discusses how trade conditions ensure that most economic benefits are felt by the United States, and leave Haiti without a means of negotiating to equalize this imbalance of economic power and gains.171

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164 See Weiss, supra note 4. Garson & Shaw LLC, for example, openly functions on a for-profit business model and has created promotional materials both to increase their organization’s transparency and to educate the public about the SHCI. See GARSON & SHAW LLC, supra note 13; Haiti Country Commercial Guide: Haiti—Prohibited Imports, EXPORT.GOV (July 13, 2016), https://www.export.gov/article?id=Haiti-Prohibited-Restricted-Imports [http://perma.cc/755N-WQQE].

165 EXPORT.GOV, supra note 164.

166 See McNeil, supra note 1, at 68 (charities involved); EXPORT.GOV, supra note 164; Secondhand (Pepe), supra note 15 (same).

167 See McNeil, supra note 1, at 68 (some engage in “off-the-books” used clothing business); EXPORT.GOV, supra note 164; Secondhand (Pepe), supra note 15 (showing methods of clothing shipment).

168 See infra notes 172–250 and accompanying text.

169 See infra notes 172–182 and accompanying text.

170 See infra notes 183–214 and accompanying text.

171 See infra notes 215–250 and accompanying text.
A. Overview of the Shortcomings in the Contemporary U.S. Approach to Trade Preference Agreements

One major theme underlying justifications and criticisms of the SHCI and trade preference agreements is the notion that international economic exchanges ought to further justice. The Justice as Fairness theory, applied in a wide-reaching, international setting, espouses one tenet that has particular relevance to the economic, environmental, and moral analyses of the SHCI: “International social and economic inequalities are just only if they result in compensating benefits for all states, and in particular for the least advantaged states.” This tenet seems to have been embraced by proponents of free trade in the United States, as evidenced by its incorporation into trade preference programs. In the past three decades essential precepts of trade liberalization have butted up against this shifting focus on enhancing justice and welfare across national borders. Justifications for the SHCI trade between the United States and Haiti serve a predominantly self-interested purpose domestically, failing to take into account the complex and interconnected nature of U.S. trade policies and their effects on foreign economic, environmental, and social prosperity.

Although the SHCI undoubtedly offers a considerable deal of employment opportunities where they otherwise would not exist, trade agreements like the CBI destabilize its effectiveness and potential for sustainable growth in Haiti. Additionally, the SHCI runs the risk of being used by some as a fallback justification to conceal the shortcomings of the CBI and affiliated


173 GARCIA, supra note 41, at 194. The Justice as Fairness theory was first proposed by John Rawls in A Theory of Justice and later modified in Justice as Fairness: Political Not Metaphysical. See JOHN RAWLS, A THEORY OF JUSTICE (1971); John Rawls, Justice as Fairness: Political Not Metaphysical, 14 PHILOSOPHY & PUB. AFF. 223 (1985). Professor Garcia expands Rawls’ theories—originally limited to domestic relations—by analyzing them through the lens of international trade relations. GARCIA, supra, at 194.


175 See GARCIA, supra note 41, at 17, 103–04, 155–56 (one-sided trade preference programs limit efficacy and fairness); Wicks & Bigsten, supra note 5, at x (potential decrease in welfare overall in destination countries).

176 See 19 U.S.C. § 2703(a)(d)(1)(A) (2012); GARCIA, supra note 41, at 5, 162, 164, 165, 213 (trade conditions tend to favor already powerful economic nations); OTEXA, supra note 37; Urrata, supra note 2, at 25 (citing the “complex mix” of factors involved in the growth of free trade); see, e.g., Wicks & Bigsten, supra note 5, at 45 (illustrating that trade policies—in this instance, protectionist policies against used clothing imports—will affect not only the textile manufacturing industry, but all “unprotected industries,” even those only marginally related to clothing).

177 See GARCIA, supra note 41, at 9, 157 (the conditional and periodic nature of trade preference programs creates unpredictability).
The principle shortcomings of regional trade preference agreements are: (1) disregard for the intertwining nature of trade policy, environmental and public health, economic growth, and political stability; (2) many provisions are largely self-serving for the U.S. economy, and for this reason do not fulfill the loftier purported goal of advancing democracy and economic stability in the Caribbean; (3) these trade agreements lack unbiased monitoring and evaluation systems, as well as accessible dispute resolution mechanisms; and (4) the agreements are transitory in nature, which foils the predictability necessary for sustainable growth and investment.

B. Trade Preference Agreement Shortsightedness Undercuts Stable and Sustainable Economic Growth of the Secondhand Clothing Industry

Despite the increasingly complex nature of international economic relations, trade preference programs remain laser-focused on the apparel industry without paying sufficient attention to correlated industries. At this point, such “trade linkage” appears to be limited to sectors directly related to apparel manufacturing, like labor standards. Agreements like HOPE II, for instance,

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178 See Velia, supra note 83, at 4 (stymying local apparel production).
179 See GARCIA, supra note 41, at 3, 5 (discussing trade linkages).
180 See U.S.-Caribbean Basin Trade Partnership Act, sec. 202(a), 114 Stat. 275–76; GARCIA, supra note 41, at 162 (U.S. unilateral trade programs are largely self-serving); Hornbeck, supra note 151, at 16 (rules of origin favoring the United States and U.S. trade partners).
182 GARCIA, supra note 41, at 157. The 2005 World Summit called for “responsible” and “counter-cyclical macroeconomic policies” designed to promote investment and employment opportunities. U.N. Dep’t Econ. & Soc. Aff., supra note 12, at iv. Additionally, macroeconomic policies must account for both short-term and long-term effects in order to achieve sustainable growth. Id. at 86, 91.
183 See 19 U.S.C. § 2703a(d)(1)(A) (2012); GARCIA, supra note 41, at 5, 162–65, 213 (trade linkages); OTEXA, supra note 37. One economic scholar noted that with increasingly global and complex economic agreements, trade law has begun to overlap with other policy sectors like the environment, labor and employment, foreign aid, and international human rights. GARCIA, supra note 41, at 5. One “egregious” exception, found in the Andean Trade Preference Act, predicates eligibility for becoming a beneficiary country upon the state’s ability to meet specific “narcotics cooperation certification criteria” imposed by the U.S. Government. 19 U.S.C. § 3202(d)(11); GARCIA, supra note 41, at 164–65.
require adherence to ILO standards in order to maintain preferential status eligibility. Such policies, however, have not kept pace with current academic discourse concerning the connection between trade and the environment, human rights, and development. For example, trade preference agreements not only opened the door to the SHCI, but also contribute heavily to increasing demand for secondhand goods, which exacerbates issues of public health and sustainable economic growth in Haiti.

Haiti is a particularly favorable candidate for U.S. trade preference programs for two reasons: its proximity to the United States helps keep transportation and shipping costs to a minimum, and its low cost of living allows apparel manufacturing companies to offer low wages to its workers. The most recent wage increase for Haitian workers in the textile sector occurred in 2015, raising the minimum wage to 240 G per eight hours of work, the equivalent of $3.59 USD today. With the international poverty line set at $1.90 USD, this minimum wage increase appears sufficient for workers to meet basic costs of living. The minimum wage is potentially misleading, however, as it is set at $3.52 USD for the equivalent of eight hours of work, not per day. As stipulated by certain trade preference programs, Haiti must comply with ILO international labor standards, but it is unclear whether this mandates paying a $3.52 USD minimum wage to workers within the FTZs. According to Article 3 of...
the ILO Minimum Wage Fixing Convention, minimum wages may be determined on an ad hoc basis, taking into consideration various elements including the income necessary to support both individual workers and their families, workers’ productivity, and revenue needed to sustain economic growth and development. This standard leaves open the possibility of paying workers significantly more or less than the minimum wage in Haiti, or paying them on the basis of their output instead of an hourly rate.

Given the relatively low cost of living in Haiti—in 2014 one source estimated that Haitian apparel workers could subsist earning between $23.00 USD and $30.35 USD per day—and the availability of inexpensive SHCI goods, paying workers less than $4.00 USD for eight hours of work could be justifiable. What this does not consider is that the accessibility of the SHCI may, in fact, make people more willing to settle for the bare minimum necessary to purchase used goods. Imagine, for a moment, that the SHCI was prohibited in Haiti, yet FTZs and trade preferences still existed. To continue benefitting from preferential status, companies operating in Haiti would be compelled to increase the minimum wage to allow their workers to meet basic costs of living. Further empirical evidence is needed to determine to what result such a scenario would eventually lead, but it seems possible that raising minimum wages could counteract the doles of unlimited, duty free access to U.S. ports to

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194 See Minimum Wage Convention, supra note 193, art. 3.

195 See The High Cost of Low Wages in Haiti: Living Wage Estimate for Export Apparel Workers, SOLIDARITY CTR. 1, 6 (May 2014); Minimum Wage Convention, supra note 193, art. 3; see also Wicks & Bigsten, supra note 5, at 47 (cheap goods allow impoverished buyers to stretch their incomes). With the low cost of pepe, Haitian consumers can stretch their dollar further, thus saving a portion of their income for other important expenditures to cover their basic costs of living. See Wicks & Bigsten, supra note 5, at 47; Secondhand (Pepe), supra note 15 (low cost of used clothing). One used clothing vendor in Guatemala City offered the following opinion on the SHCI: “It’s incredible . . . how beneficial used clothing is for the people of Guatemala. The minimum salary, here in Guatemala now, is SQ2,300 [quetzales]. And a nice blouse, or a nice skirt . . . [are] about $Q200 or $Q300 per piece.” GARSON & SHAW LLC, supra note 13.

196 See GARCIA, supra note 41, at 45 n.14 (economic and social circumstances shape human conduct); Wicks & Bigsten, supra note 5, at 47 (“true economic effects” of the SHCI unknown).

197 See Secondhand (Pepe), supra note 15 (used clothing dominates Haitian apparel market); U.S. DEP’T STATE, supra note 18.

198 See Wicks & Bigsten, supra note 5, at 47 (cheap goods allow people to stretch their incomes further); Minimum Wage Convention, supra note 193, art. 3 (wages should allow workers to meet their cost of living). CBI agreements themselves do not mandate that minimum wage meet basic costs of living, but that they be commensurate with “acceptable conditions of work,” as defined by Haitian labor law. See 19 U.S.C. § 2703a(d)(1)(A)(vi), (e)(3)(B) (2012); Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2008, sec. 15403(1), § 213A(3)(A)–(B), 122 Stat. at 2304.
the extent that it would negate the benefits of preferential trade status.\textsuperscript{199} Companies unwilling to pay higher wages would likely elect to leave the country and seek cheap labor elsewhere.\textsuperscript{200} This illustrates but one element of the interdependence between the SHCI and trade preference programs in the United States and Haiti.\textsuperscript{201}

The SHCI in Haiti is conducted largely through informal networks.\textsuperscript{202} Because used clothing imports are technically illegal in Haiti, there are very few—if any—formal regulations in place to provide for quality-assurance.\textsuperscript{203} Because most dealers and retailers in Haiti do not personally inspect the goods before they are baled and shipped from the United States, there is no guarantee that the items they purchase will be in good condition, appropriately-sized for Haitian

\textsuperscript{199} See U.S.-Caribbean Basin Trade Partnership Act, sec. 202(b)(1), 114 Stat. at 276; Minimum Wage Convention, supra note 193, art. 3; CIA, supra note 10 (90% of exports, 10% of GDP); Hornbeck, supra note 151, at 16 (explaining Haiti’s usefulness in the apparel industry revolves around its abundance of cheap labor); Brooks, supra note 60, at 1; Wicks & Bigsten, supra note 5, at viii, 48, 65 (calling for further empirical research). A “duty” is a tax on goods transported from one country to another. Customs Duty Information, U.S. CUSTOMS & BORDER PROT. (May 31, 2017), https://www.cbp.gov/travel/international-visitors/kbyg/customs-duty-info [http://perma.cc/8LY9-AXWZ].

\textsuperscript{200} Hornbeck, supra note 151, at 10–11; see, e.g., Fred de Sam Lazaro, Can Garment Factories Pay a Living Wage and Still Compete in the Global Economy?, PBS NEWS HOUR (Feb. 18, 2014), http://www.pbs.org/newshour/bb/can-garment-factories-pay-living-wage-compete-in-global-economy/ [http://perma.cc/3SWC-BT3L] (showing workers in the Dominican Republic are able to support their families earning $3 per hour); Pan Kwan Yuk, Want Cheap Labour? Head to Mexico, Not China, FIN. TIMES (Jan. 14, 2016), https://www.ft.com/content/bdcd8121-a7a0-3788-a74c-cd2b49cd3230 [http://perma.cc/K5AC-5M5S] (comparing wage rates in Mexico and China, both under $4 per hour).

\textsuperscript{201} See Hornbeck, supra note 151, at 10 (cheap labor); Lewis & Pringle, supra note 14, at 120 (imported used clothing upcycled into valuable exports); Secondhand (Pepe), supra note 15 (high demand for inexpensive clothing, lack of local industry).

\textsuperscript{202} See McNeil, supra note 1, at 68 (charity and “off-the-books” business); Secondhand (Pepe), supra note 15 (showing methods of used clothing shipments). As mentioned, this could be at the level of an individual sending used clothing to friends/family in Haiti to be resold, or an international charitable organization like Salvation Army or Friends of Humanity selling the clothing to finance community development programs. See McNeil, supra note 1, at 68; Secondhand (Pepe), supra note 15; see, e.g., Donate Goods or Services, FRIENDS OF HUMANITY, http://friendsofhumanity4haiti.org/?page_id=39 [http://perma.cc/5G34-QHEL].

\textsuperscript{203} See Velia, supra note 83, at 19 (allowing brand names to compensate for poor quality); GARSON & SHAW LLC, supra note 13 (noting that people donate anything from new, designer clothing to cleaning rags); Secondhand (Pepe), supra note 15 (describing “hollywood pepe,” or, high quality used clothing); U.S. DEP’T STATE, supra note 18. The only restrictions on used clothing brought into Haiti by luggage are: (1) if accompanied by a traveler, that its quantity be restricted to that which the traveler would “reasonably need” throughout their trip; and (2) if unaccompanied, that the used clothing be purchased and sent to Haiti within one month—before or after—the traveler’s visit. See Haitian Ministry of Economy and Finance, Personal Effects, OFFICE OF CUSTOMS, http://www.douane.gouv.ht/index.php?option=com_content&view=article&id=231&Itemid=265 [http://perma.cc/XK2F-6Q38]. For larger shipments of pepe, the Haitian Ministry of Economy and Finance mandates that it be accompanied by a (1) record of transport (e.g. plane ticket), (2) certificate of purchase, (3) list of inventory, and (4) certificate of fumigation. See Ministère de L’Économie et des Finances, Importation de Marchandises Usagées, ADMINISTRATION GENERALE DES DOUANES, http://www.douane.gouv.ht/index.php?option=com_content&view=article&id=227&Itemid=259 [http://perma.cc/9WZH-PDQV].
consumers, or even in style. If the used clothes are unsuitable for sale, they will likely be discarded or taken to a tailor to be altered, both of which exacerbate the existing solid waste problem in Haiti. According to Haiti’s Ministry of the Environment, people in Port-au-Prince alone create 5,000 tons of solid waste every day, but thirty five percent or less is collected by public waste management services, leaving the rest to be either burned, buried, or left in heaps outside. Proponents of environmental justifications cite eco-friendliness and self-sustaining financing as the primary benefits of the SHCI. Environmentally-based criticisms of the industry provide a more compelling argument, however, considering the drastically underfunded and overburdened system of waste management in Haiti. The health hazards associated with solid waste accumulation in Haiti are many: (1) burning fabrics (along with other household waste) produces toxic and noxious chemicals into the air; (2) waste left in piles will inevitably rot and release methane gas and other substances which are harmful when inhaled; (3) piles of waste can create pockets of stagnant water, which serve as breeding grounds for mosquitos carrying dangerous diseases like malaria and Zika; and (4) waste piles can block water run-off, increasing the likelihood of flooding and ensuing property damage.

If the SHCI did not exist, it is likely Haitians would purchase new apparel manufactured in Asia instead. Asian imports, however, must abide by certain industry standards that provide for more reliable quality assurance than those

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204 See Brooks, supra note 60, at 4; McNeil, supra note 1, at 68 (people in the United States collect clothing and ship it); Wicks & Bigsten, supra note 5, at 12–14 (many buyers do not personally inspect used clothing before purchase); GARSON & SHAW LLC, supra note 13 (describing differences in quality of donated clothing); Secondhand (Pepe), supra note 15 (same).

205 See McNeil, supra note 1, at 68 (tailors and seamstresses); GARSON & SHAW LLC, supra note 13 (tailors specialize in altering used clothing); Secondhand (Pepe), supra note 15 (same). Tailors may cut fabric as needed to alter the item appropriately, and these fabric clippings could be cast outside onto the ground or burned along with household waste. See Bras, supra note 138, at 1; McNeil, supra; GARSON & SHAW LLC, supra; Secondhand (Pepe), supra.

206 See Bras, supra note 138, at 1–2 (deficiencies in waste management in Haiti); Morgan, supra note 139 (same).

207 Brooks, supra note 60, at 4; Brooks & Simon, supra note 4, at 12; USAGAIN, supra note 14.

208 See Bras, supra note 138, at 1–2 (deficiencies in waste management in Haiti); Morgan, supra note 139 (same).


210 See Wicks & Bigsten, supra note 5, at 22 n.a (Asian manufacturer competition); Kelsey Halling, Not So Fast (Fashion)! African Countries to Ban Secondhand Clothing Imports, SUSTAINABLE BRANDS (Aug. 10, 2016), http://www.sustainablebrands.com/news_and_views/waste_not/kelsey_halling/not_so_fast_fashion_african_countries_ban_secondhand_clothing [http://perma.cc/A3NS-NRS4] (discussing likelihood that African countries banning the SHCI would turn to Asian imports for clothing supply); GARSON & SHAW LLC, supra note 13 (cheap Asian competitors).
offered by the informal, unregulated SHCI. Theoretically, new clothing from Asian manufacturers would not wear out as quickly as already-worn garments, and dealers would not run the risk of purchasing tattered, unsellable items. Thus, at first glance, removal of the SHCI would not reduce the detrimental effects of clothing consumption. Currently, textile waste contributes substantially to Haiti’s solid waste problem and further proliferates instances of disease and property damage, both of which undermine Haiti’s economic stability.

C. Certain Trade Agreement Provisions Impose Conditions on Preferential Status Which Benefit the United States at the Expense of Haiti and Further Ingrain Reliance on the Secondhand Clothing Industry

1. The Problem of Restricting Materials and Shipping Methods

U.S. trade preference programs are designed with the purported aim of assisting LDCs in their economic recovery and development efforts. Peripheral goals include: advancing democracy and national security, reducing poverty and inequality, combatting corruption, and protecting workers’ rights. To accomplish these goals in the Caribbean region specifically, U.S. economic policy-makers constructed a series of unilateral trade agreements that granted preferential trade status to LDCs like Haiti. The primary benefits of these agreements are duty free and quota free access to U.S. ports for apparel items

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212 See Wicks & Bigsten, supra note 5, at 14 (Asian goods); Cartwright, supra note 140 (life span of cotton and polyester clothing); CHINA INSPECTION SERVS., supra note 211 (quality control); Doshi, supra note 211 (same); Xian & Zhenzhen, supra note 211, at 28 (same); GARSON & SHAW LLC, supra note 13 (lack of buyer inspection before shipping used clothing).

213 See Wicks & Bigsten, supra note 5, at 22 n.a (cheap clothing from Asia already competes with used goods); Morgan, supra note 139 (problem of clothing waste in urban areas); GARSON & SHAW LLC, supra note 13 (citing methane emissions as one hazardous by-product of new clothing production).

214 See Morgan, supra note 139 (risks of unmanaged waste); Vigersky, supra note 138 (same).

215 U.S.-Caribbean Basin Trade Partnership Act § 202(a); see Goodman, supra note 131 (Haiti still struggling to recover from its debt to France); Ives, supra note 130 (same).


manufactured in Haiti. On its face, such preferential trade status appears to be wholly favorable to eligible beneficiary countries; however, specific provisions within these unilateral trade agreements curtail economic gains by restricting which materials and processes beneficiary countries can utilize. For example, the HOPE I Act required that between fifty-five and sixty percent of the “value-added” to the apparel items must come from materials and processes from Haiti, the United States, or another country approved by the United States. This restricted Haiti from using potentially cheaper yarn or fabrics, in favor of materials that provided some opportunity to U.S. producers or U.S. economic partners.

HOPE II altered this issue of origin slightly, amending the act so that apparel assembled in Haiti can use materials sourced from any country, with a few exceptions. Transshipment, however, still remains a basis for revocation of preferential status. These limitations on origin of materials and free flow of goods and are not necessarily in Haiti’s best interest because they could raise manufacturing and transportation costs.


220 Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2006, sec. 5002(a), § 213a(b)(2)(A)(i), 120 Stat. at 3183–84; Hornbeck, supra note 151, at 11, 21. These “other countries” must either be party to a free trade agreement with the U.S., or a beneficiary country of a unilateral trade preference agreement with the U.S. See Hornbeck, supra note 151, at 21.


222 Hornbeck, supra note 151, at 11, 16, 21–22. Typically, a minimum percentage of materials used to produce the apparel must come from U.S.-sources or from a country that is also a beneficiary of either a U.S. unilateral trade preference or free trade agreement. Id. at 16.

223 U.S.-Caribbean Basin Trade Partnership Act, sec. 211(a), § 213(b)(2)(D), 114 Stat. at 281–82 (giving the U.S. President reserves the right to unilaterally withdraw preferential status if a beneficiary country engages in “transshipment”). Transshipment is defined as falsely stating “the country of origin, manufacture, processing, or assembly of the article or any of its components.” Id.

224 See Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2008, sec. 15405, § 213A(f)(3)(A), 122 Stat. 2307–08; Anthony, supra note 10, at 2. To transport goods by motor vehicle from the FTZ in Ouanaminthe to Port-de-Paix and Port-au-Prince in Haiti would take approximately 5.5 and 7 hours, respectively. See Driving Directions from Ouanaminthe, Haiti to Port-de-Paix, GOOGLE MAPS, http://maps.google.com (follow “Directions” hyperlink; enter “Ouanaminthe Arrondissement, Haiti” and “Port-de-Paix, Haiti” as starting point and destination, respectively); Driving Directions from Ouanaminthe, Haiti to Port-au-Prince, GOOGLE MAPS, http://maps.google.com (follow “Directions” hyperlink; then enter “Ouanaminthe Arrondissement, Haiti” and “Port-au-Prince, Haiti” as starting point and destination, respectively). In contrast, to transport goods by motor vehicle from Ouanaminthe to Santo Domingo in the Dominican Republic would take approximately 4.75 hours, even though it is nearly double the distance between Ouanaminthe and Port-de-Paix. See Driving Directions from Ouanaminthe, Haiti to Port-de-Paix, GOOGLE MAPS, http://maps.google.com
2. Inequitable Monitoring and Evaluation, and Lack of Access to Dispute Resolution Mechanisms

Monitoring and evaluation for CBI agreements consist mainly of periodic reports by U.S. officials and reviews by ILO agents.\(^{225}\) HOPE II requires the following: (1) monthly reports from the Commissioner for U.S. Customs and Border Protection (“CBP”) submitted to the U.S. International Trade Commission (“USITC”) during the first year of HOPE II’s implementation, (2) a final report from USITC to Congress after the first full year of the act’s implementation, and (3) reports on HOPE II’s implementation each year thereafter from the U.S. President to Congress.\(^{226}\) Regular enforcement of HOPE II is left up to U.S. government entities, including the CBP, Committee for the Implementation of Textile Agreements, Department of Homeland Security, Department of Commerce, The U.S. Government Accountability Office, the Secretary of Commerce, the President, and Congress.\(^{227}\) If it is found that Haiti violates the provisions of HOPE II, then the U.S. President has the power to limit or completely revoke its preferential trade status unilaterally.\(^{228}\)


\(^{228}\) Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2008, sec. 15402(e), § 213A(b)(5)(B)(ii), sec. 15403(3), § 213A(e)(1)(A)–(C), 122 Stat. at 2300, 2302–03. The President may also choose to give Haiti additional time to rectify non-compliance, if it is determined that Haiti has attempted to comply and agrees to adopt measures to meet full compliance standards. Id. at sec. 15403(3), § 231A(e)(1)(B), 122 Stat. at 2302–03.
One additional eligibility requirement is that Haiti participate in the Technical Assistance Improvement and Compliance Needs Assessment and Remediation (“TAICNAR”) Program. Haiti is required to assist the ILO in implementing the TAICNAR program, and the ILO must submit biannual reports on whether producers participating in the program have met labor conditions standards, and what remedial measures producers are planning to take to rectify any deficiencies. In and of itself, a requirement concerning reporting and compliance with ILO labor standards is not unreasonable for a trade agreement; the unilateral nature of HOPE II’s implementation, however, is troubling.

3. Disparate Economic Dependence Between the United States and Haiti Leads to Unjust Consequences

Unlike multilateral trade agreements, the CBI consists of unilateral agreements that do not involve a process of negotiations with foreign nations. As such CBI functions more as a conditional offer than a binding accord. The condition is that Haiti must adhere to provisions that (1) increase U.S. access to the Haitian market and its resources, (2) do not harm U.S. interests, and (3) align with international legal standards. Unilateral agreements like this do not involve Haiti in a bargaining process, yet result in an offer that Haiti can ill-afford to refuse, given its crippling lack of employment and dependence on inexpensive goods ushered into the market by economic liberalization. Furthermore, they maintain Haiti in a subservient position; Haiti must abide by U.S.-prescribed

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229 Id. at sec. 15403(3), § 213A(e), 112 Stat. 2302–07. The TAICNAR Program requires the program to (1) be operated by the ILO and/or its subdivisions or designees, (2) be developed in a collaborative manner between the Labor Ombudsman and designated government and agency representatives, (3) assess—through site visits and interviews, among other tactics—whether each participating producer is complying with HOPE II provisions and whether any deficiencies are present, (4) ensure that producers rectify deficiencies to bring their operations into compliance. See id.

230 Id. at sec. 15403(3) § 213A(e)(3)(C)–(D), 122 Stat. at 2304–06.

231 See GARCIA, supra note 41, at 5, 156, 157, 163, 164, 167 (discussing unjust imbalances inherent in unilateral trade policy-making and implementation).


234 GARCIA, supra note 41, at 162–64.

235 See id. at 157, 163–64 (beneficiary countries did not negotiate the terms of the CBI); CIA, supra note 10 (high unemployment); Secondhand (Pepe), supra note 15 (demand for cheap clothing, local industries unable to compete).
rules and internationally-decreed labor standards, and submit itself for periodic review by a group of foreign government officials. The United States, through unilateral trade liberalization, has placed Haiti between the proverbial rock and hard place. Lowering trade barriers facilitated the flow of SHCI goods into Haiti and cultivated dependence on these low-cost goods and trade preference benefits. Apparel manufacturing in Haiti was and continues to be destined for affluent U.S. markets, and does not meet the demand for affordable clothing in Haiti. Therefore, the SHCI became both progeny and protector of unilateral trade preference agreements between the United States and Haiti.

Haitian apparel manufacturers now operate in a tenuous state, with effectively no forum in which to air potential grievances regarding trade preference agreements. Though Haiti could theoretically bring a claim against the United

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237 See Hornbeck, supra note 233, at 18–19 (eligibility for trade preferences depends on Haiti’s compliance with U.S. and international standards); U.S. Trade Representative, Seventh Report to Congress on the Operation of the Caribbean Basin Economic Recovery Act (Dec. 31, 2007) at 58 [hereinafter USTR] (Haiti relies on U.S. economic aid); Weiss, supra note 4 (local industry undercut); CIA, supra note 10 (citing high unemployment rates and significance of apparel exports made possible by trade preference programs). Despite increased revenue collection, Haiti could not operate in a fiscally sustainable manner without foreign aid and assistance programs. Hornbeck, supra note 233, at 19; CIA, supra note 10.

238 See Brooks & Simon, supra note 4, at 2, 12, 17 (liberalization’s trend of trade deregulation); Wicks & Bigsten, supra note 5, at 47 (liberalization ushered in used clothing imports); USTR, supra note 237, at 58 (dependence on U.S. economic aid); Kubania, supra note 15 (local industries undercut); Weiss, supra note 4 (same); CIA, supra note 10 (Haiti depends on “formal international economic assistance”); Secondhand (Pepe), supra note 15 (describing the growth of the SHCI in Haiti during the Kennedy administration).

239 See Brooks & Simon, supra note 4, at 16 (African clothing manufactured for “affluent export markets”); Secondhand (Pepe), supra note 15 (local goods unable to compete with cheap used apparel); see, e.g., Lewis & Pringle, supra note 14 (upcycling secondhand clothing for export to Canada).

240 See Brooks & Simon, supra note 4, at 2, 12, 17 (citing potential for economic growth and stagnation, depending on existing circumstances in the local apparel industry); Wicks & Bigsten, supra note 5, at 47 (same); Han, supra note 53, at 11–18 (discussing environmental, economic and ethical motivations for sustaining the SHCI); IMF, supra note 4 (enumerating many economic benefits of liberal trade); USTR, supra note 237, at 58 (citing Haiti’s dependence on U.S. economic aid); Kubania, supra note 15 (the SHCI a product of trade liberalization); Weiss, supra note 4 (charities “applaud” the SHCI for creating jobs); CIA, supra note 10 (citing employment benefits of trade preference programs); GARSON & SHAW LLC, supra note 13 (same); PLANET AID, supra note 54 (same); Secondhand (Pepe), supra note 15 (citing prevalence of used clothing and related businesses).

241 See Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2008, sec. 15403(3), § 213A(e)(1)(A)–(C), 122 Stat. at 2302–03 (offering no neutral dispute resolution mechanism, only unilateral action by the U.S. President). Haiti’s continued eligibility relies entirely upon approval by the U.S. President; HOPE II offers no forum in which Haiti could bring a legal claim.
States for violating GATT’s “anti-dumping” provision, its incentives to do so are minimal. Additionally, if Haitian policy-makers elected to initiate a bilateral trade agreement with the United States, their disparate bargaining power might result in an impasse. Though the United States would likely be able to compel Haiti to agree to its stipulated provisions—evidenced by Haiti’s already emphatic participation in the CBI—Haiti’s only significant bargaining chip appears to be an abundance of inexpensive labor. The fundamental problem with this is that labor is a fungible resource, one which U.S. companies could find elsewhere without much difficulty. With so little economic weight, what hope would Haiti have of compelling the United States to agree to reciprocal, binding trade obligations? This imbalance of bargaining power, and the disproportionate consequences of the discontinuation of the CBI illustrates the inherently unjust nature of the program. Were the United States to eliminate the CBI, it would likely arising from the agreement. See id. This absence of dispute resolution options extends to the SHCI due to its largely informal and unregulated nature. See McNeil, supra note 1, at 68 (charity and “off-the-books” business); Secondhand (Pepe), supra note 15 (used clothing donation and shipment).

See General Agreement on Tariffs and Trade art. iv, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 (prohibiting dumping cheap commodities in a way that edges out the local industry); STIGLITZ, supra note 135, at 75–76 (responsibility to right an economic wrong rests with the injured party); Understanding the WTO: Settling Disputes, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/dispu_e/cov_wto_e/whatis_e/tif_e/displ1_e.htm [http://perma.cc/WZ68-C75L] (describing general dispute resolution procedures). Because Haiti and the United States are members of the World Trade Organization (“WTO”), the process for a panel review to settle disputes is available for claims arising from a unilateral trade-related action, or other conduct other WTO members deem to be violations of a WTO agreement or obligation. WORLD TRADE ORG., supra. When doing so could lead to the destruction of significant employment opportunities and a decline in GDP revenues, what real incentive does the Haitian government have for challenging the SHCI? See STIGLITZ, supra note 135, at 75–76; WORLD TRADE ORG., supra; CIA, supra note 10 (citing Haiti’s dependence on foreign aid).

See GARCIA, supra note 41, at 204 (citing disparate economic power as an impediment to justice); STIGLITZ, supra note 135, at 66–67 (free trade relies on leveraging comparative advantages); Hornbeck, supra note 151, at 10, 12–13 (trade preferences a “critical benefit” to Haiti); Coughlin, supra note 23 (describing Haitian society as degraded due to U.S. and U.N. intervention).

See Hornbeck, supra note 151, at 10–12 (apparel manufacturing “gravitates toward” cheap labor); Lewis & Pringle, supra note 14, at 120 (low minimum wage); HAITI LIBRE, supra note 188 (newly-established minimum wage in Haiti still significantly low); CIA, supra note 10 (90% of Haiti’s exports are apparel).

See STIGLITZ, supra note 135, at 67 (jobs move from country to country depending on labor wages); Lazaro, supra note 200 (highlighting the difficulty of apparel manufacturers to pay a living wage to a worker supporting their family, while remaining competitive in the global market); Yuk, supra note 200 (low wages in Mexico versus China).

See GARCIA, supra note 41, at 157–58 (leverage imbalance between the U.S. and beneficiary countries); Lazaro, supra note 200 (low-wage jobs are often dispensable to workers in low-income countries); Yuk, supra note 200 (Mexican wages per hour significantly lower than those in China); see, e.g., Coughlin, supra note 23 (calling for the U.S. to reduce economic interventionist policies so Haiti can create its own truly independent democracy).

GARCIA, supra note 41, at 84, 91, 204; STIGLITZ, supra note 9, at 62. By way of comparison, a “treaty-based international economic system” ensures at least a limited level of mutualcy and equality for parties involved in the bargaining process. GARCIA, supra note 41, at 91.
experience little more than chastisement in the international community. Haiti, on the other hand, would face a calamitous loss of employment and trade revenues. With this in mind, it seems clear that the SHCI can no longer be used, as it has until now, to soothe concerns over trade inequality; just because U.S. organizations can supply Haiti with affordable used goods, does not negate the reality that the Government’s trade programs are taking advantage of a less powerful nation in other ways under the guise of dutiful economic cooperation.

CONCLUSION

The dawn of international trade liberalization led to a dramatic evolution in the SHCI. Serial multilateral and regional trade agreements felled trade barriers across the globe, and the SHCI expanded into new markets in LDCs. Though trade preference agreements and the SHCI appeared to develop in a parallel, nonintersecting fashion, recent economic scholarship has revealed that the two sectors are far more interrelated. Proponents of the SHCI offer a multitude of justifications for its existence, the most compelling of which is that it offers employment and affordable clothing in Haiti. These positive effects, however, are counteracted by the environmental burden of disposing of textile waste, and increased dependence on the SHCI. This dependence is especially problematic in light of the economic stagnation cultivated by trade preference programs like the CBI.

On paper, trade preference programs are designed to spur economic advancement and stability by providing countries like Haiti with preferential access to U.S. ports. The CBI did, in fact, facilitate a boom in Haitian apparel manufac-

248 See GARCIA, supra note 41, at 91, 157 (U.S. unilateral trade programs are, by nature, at the discretion of the U.S.); STIGLITZ, supra note 135, at 67–68 (fear of job loss a powerful motivation to acquiesce to liberal trade); Hornbeck, supra note 233, at 17 (early criticisms of HOPE I related to very specific provisions, not overall justness of the program); Irwin, supra note 232 (explaining dispute resolution mechanisms available for signed trade agreements, with no mention of unilateral public laws like HOPE II, HELP, or the U.S.-CBTPA); WORLD TRADE ORG., supra note 242 (dispute resolution requires one or more WTO members to accuse another member of trade violations).

249 See STIGLITZ, supra note 135, at 62, 66–67 (“fear of job loss”); Hornbeck, supra note 151, at 8, 10, 12 (apparel manufacturing is one of the few available remedies for severe and pervasive unemployment in Haiti); Lewis & Pringle, supra note 14, at 120 (Haitians finding employment through redesigning used clothing); Gauthier & Moita, supra note 24; Report by the Secretariat, Trade Policy Review: Haiti, WORLD TRADE ORGANIZATION WT/TPR/S/327 (Oct. 27, 2015) at 6, 27; CIA, supra note 10 (already high unemployment and trade dependent on economic assistance programs).

250 See Coughlin, supra note 23 (describing U.S. intervention in Haiti as monopolizing). See generally, GARCIA, supra note 41 (urging that trade agreements must be consensual and work to the benefit of the least advantaged country in order to be just); Rawls, supra note 173, at 227, 232, 235–36 (propounding that equality may necessitate unequal application of laws to provide equal opportunities for disadvantaged countries, and all concerned parties must be involved in negotiations to reach a just result); Sundaram et al., supra note 48, at 29 (noting economic growth does not guarantee a reduction in poverty or economic equality, but that policies must be designed in a manner that ensures “inclusive and egalitarian outcomes”).
turing and continues to provide substantial work opportunities. Nonetheless, these programs have not achieved the kind of widespread economic wealth they promised; Haitians continue to struggle with high rates of underemployment and unemployment, and remain avid consumers of secondhand clothing. This dichotomy reveals a few critical flaws in contemporary U.S. trade preference agreements, namely their unilateral approach. Unilateral initiatives like the CBI eventually divert economic and political power away from beneficiary countries. The United States and ILO are currently charged with authorization, monitoring and continual oversight of trade preference programs. Meanwhile Haiti, in order to receive economic benefits, must submit to provisions that curtail its ability to maximize manufacturing efficiency, and do not provide an opportunity for equitable bargaining or dispute resolution.

This manner of economic arrangement, though cooperative in name, is unjust in that it further solidifies Haitian dependence on the United States. Haiti’s autonomy and right to engage in the process of its own economic development are nullified by adherence to unilateral trade agreements. The SHCI appears to be a well-established reality in Haiti, but to nurture its progression into an economically sustainable and profitable trade, international trade preferences must be adapted. Trade preference agreements must focus not only on equity, but their provisions must possess the foresight to prevent further economic dependence and environmental harm. Though agenda items like pollution and public health may not appear to be directly related to trade policy, they have a direct influence on a nation’s economic stability. As such, trade preference agreements going forward must adapt accordingly to address the complexities of conducting trade in increasingly globalized, yet vulnerable, economies like Haiti’s. Eventually, if trade preference agreements accomplish their purported aims, Haiti will accrue the economic and political resources necessary to dictate its own international trade policy, this time as an equal partner in the global market.

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